Neutral Citation Number: [2014] EWHC 128 (Ch)

Case No: 3MA30146

IN THE HIGH COURT OF JUSTICE
CHANCERY DIVISION
MANCHESTER DISTRICT REGISTRY

Civil Justice Centre
1 Bridge Street West
Manchester M60 9DJ

Date: 31/01/2014

Before :

HIS HONOUR JUDGE PELLING QC
SITTING AS A JUDGE OF THE HIGH COURT

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Between :

BANK OF SCOTLAND PLC — **Claimant**

- and -

(1) GREVILLE DEVELOPMENT COMPANY (MIDLANDS) LIMITED
(2) CAVALIER UNIVERSAL LIMITED
(a company incorporated in the British Virgin Islands)
(3) DAVID ANDREW BLUNDELL
(4) GUY ALEXANDER BLUNDELL
(5) RICHARD ANDREW BLUNDELL
(6) SARAH HELEN SHARPE
(7) JENNIFER SUTCLIFFE
(8) ARTHUR SUTCLIFFE
(9) PATRICK JAMES MORTIMORE DOHERTY
(10) HEIDE DOHERTY
(11) THE GOVERNOR AND COMPANY OF THE BANK OF IRELAND
(a company incorporated in Ireland)
(12) UCB HOME LOANS CORPORATION LIMITED
(13) SANTANDER UK PLC
(14) WEST ONE LOAN LIMITED
(15) CHASEWOOD INVESTMENTS LIMITED
(16) ANTHONY RAYMOND TROWERS — **Defendants**

Mr Jonathan Allcock (instructed by **Walker Morris**) for the **Claimant**
The First and Second Defendants were represented by the **Third Defendant**
The Third Defendant appeared in person
The remaining Defendants did not appear and were not represented

Hearing dates: 20-23 and 27 January 2014

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Judgment

HH Judge Pelling QC:

Introduction

The Nature of the Dispute

1. In May 2003, the First Defendant ("GDL"), a company controlled by the Third Defendant ("Mr. Blundell"), purchased all the shares in the Second Defendant

("CUL"). Mr. Blundell controlled CUL and GDL. CUL owned property consisting of one site then registered at HM Land Registry ("HMLR") under two title numbers being respectively WK286818 and WK388916. The share purchase was the means by which GDL could acquire the Property, which was CUL's only asset. I refer to this property hereafter as "the Property". Where it is necessary for me to distinguish between the two title numbers I refer to them respectively as "818" and "916".

2. Plans showing the land within each of the titles are reproduced at Appendices 1-3 of this Judgment. The land within the 818 Title as it was in May 2003 is shown in Appendix 2. The land within the 916 Title as it was in May 2003 is shown in Appendix 3. Appendix 1 shows the various new titles created on the Property in and after 2008 that I refer to in more detail below. It is necessary to note at this stage that the original south eastern boundary between the two titles (shown in Appendix 1 as a dotted line) cut through at least one existing building on the site which contained some of the residential units at the Property in 2002 -3, and also across the area marked with a "X" in Appendix 1. That is an upper floor of one of the residential units, under which is the entrance for vehicles to the courtyard that is surrounded by the various buildings at the Property.

3. In order to raise the money needed to purchase the shares in CUL, Mr. Blundell on behalf of GDL negotiated a loan from the Claimant ("BoS") of the sum of £1,065,000. The loan offer is contained in a formal offer letter from BoS to GDL dated 15 November 2003. The letter called for security that included:

   i) a debenture over the assets of GDL;

   ii) a first legal charge over " … *the freehold property known as Pools Cottages and Retreat, Crackley Lane, Kenilworth … 'the Property' … including an equitable assignment of rental monies for each of the above properties …*"; and

   iii) a guarantee from CUL supported by a debenture over its assets

4. BoS's case is that it had been agreed with Mr. Blundell acting on behalf of GDL and CUL that the loan by BoS would be charged by way of a first legal charge over the Property and thus both the titles or that there was a mutual understanding between them to that effect. Mr. Blundell maintains that it was only ever agreed that the loan was to be charged by way of a fixed legal charge over the residential units located on the property in 2003. Most of these units were located on land within the 818 title but as I have explained the boundary between the two titles passed through one of the residential units and also the vehicular access to the courtyard. Mr Blundell maintains that the remainder of the security was to be provided by the Debenture over CUL's assets.

5. Heatons, the solicitors acting for BoS in relation to the loan, drew up a Deed that was ultimately executed on behalf of BoS and CUL dated 2 May 2003 ('the Deed") by which, as drawn and executed, the loan was secured by way of a first legal charge against the 818 title only. Heatons applied to register the Deed as a charge against both title numbers. HMLR identified the difference between the terms of the application and the terms of the Deed and made contact with Heatons. The solicitor with conduct of the transaction at Heatons told HMLR that the Deed should have

referred to both title numbers and the omission of the 916 title number from the definition in the Deed of the property to be charged was an error. In consequence HMLR altered the Deed so that it referred to both title numbers, using the powers conferred by Rule 130 of the Land Registration Rules 2003, ("LRR") and registered the Charge in the Charges Register for each title ("the Charges")

6. Mr. Blundell maintains that (a) the Deed was only ever intended to create a fixed charge over the 818 Title (even though a charge over that title alone would not in fact give the bank what he maintains had been agreed namely a charge over all the residential units at the Property), (b) that the solicitor or solicitors at Heatons acting for BoS acted fraudulently in asking HMLR to effect the change to the Deed either by representing that an error had been made when it had not and/or by representing that all parties were agreed that the Deed should have referred to both titles, and (c) in consequence, applying the rule in Pigot's Case (1614) 11 Co.Rep. 26b, the Deed was void as and from the date when it was altered, or, in any event, (d) the power to alter under LRR, Rule 130 was not engaged and thus the alteration was void and of no effect so that the Deed was only ever effective to create a charge over the 818 Title.

7. BoS maintain that (a) they are entitled to seek rectification of the Deed, or would have been entitled to seek rectification of it at the time it was altered by HMLR because the true agreement or mutual understanding of the parties was that the Property and thus both titles were to be the subject of a first fixed legal charge in favour of the bank securing the loan, (b) in consequence the rule in Pigot's Case as it is properly to be understood does not have the effect for which Mr. Blundell contends and either (c) HMLR was thus empowered to alter the Deed by reason of the power conferred by LRR, Rule 130(2)(a) or (d) the bank is and was at all material times entitled to have the Deed rectified so that the charge created thereby applies to both titles. Thus it is necessary for me to decide whether it was agreed, or there was a mutual understanding, between BoS and Mr. Blundell on behalf of CUL that the fixed charge would apply to the Property, and thus both titles, and if such was the case whether a reference to the 916 Title was omitted by Heatons from the Deed as the result of a clerical or similar error.

8. In 2008, two form DS1s were submitted to HMLR by which BoS purportedly discharged the Charges. HMLR rejected the first but accepted the second and, in consequence, removed the Charges from the two titles. BoS's case is that this first came to its attention in late 2012 and that it knew nothing of the purported release prior to that date. Its case is that the DS1 that HMLR acted upon was a forgery by or procured by Mr. Blundell that was sent to HMLR by him or by someone acting on his behalf. Mr. Blundell disputes that to be the case and maintains that the DS1 was signed on behalf of BoS and delivered to HMLR by the bank pursuant to an agreement he had reached with agents acting for BoS as a precursor to the re-finance of the loans then outstanding to BoS with a new third party commercial lender. Mr. Blundell maintains that whether or not the DS1 acted upon by HMLR was a forgery is in any event immaterial given what he submits to have been the effect of the alteration to the Deed.

9. The Property was redeveloped after 2003 and a number of additional mostly residential buildings were constructed. 14 new 125 year leases were purportedly created out of the Property, each of which was registered as a new title over the

Property, which were then purportedly sold to Mr Blundell or to one of the Fourth to Sixth Defendants, each of who are members of Mr Blundell's family or otherwise closely connected to him. One freehold title was charged to the Eighth Defendant and later transferred to his wife the Seventh Defendant. Appendix 1 to this Judgment contains a plan that shows the current titles at the Property. These purchases were funded by third party lenders being the Ninth to Sixteenth Defendants. It is common ground that these leases are invalid because they were purportedly signed on behalf of CUL (the registered proprietor of the Property) at a time when it had been struck off the Register of BVI companies. The bank goes further and maintains that the signatures on the long leases have been forged by Mr Blundell or at his direction. The bank ask me to make findings as to whether this is so or not because such a finding is material to the question that will arise in the second trial (if otherwise it is necessary) whether it is open to the directors of CUL to ratify the grant of the leases now that CUL has been restored to the Register.

10. BoS seeks declarations that the effect of the Deed was to charge the whole of the Property with repayment of the loan to GDL and to the extent that it is necessary either rectification of the Deed so as to reflect that or a declaration that the Deed has been validly altered by HMLR. In addition, BoS seeks money judgments against both GDL and CUL. It is common ground that in excess of £1.7 million remains due and owing to BoS from GDL as primary debtor and (on BoS's case) from CUL under its guarantee. BoS seeks judgment against each of these entities on that basis. It also brings damages claims against Mr. Blundell for various alleged torts on the basis that any loss suffered by BoS that it is unable to recover from GDL and CUL has been caused by the alleged conduct of Mr. Blundell in procuring the release of its charges over the Property.

11. Following discovery of the discharge of the Charges, BoS commenced these proceedings initially against the First to Seventh Defendants. Wide ranging freezing and ancillary relief was granted, initially at a without notice hearing. These orders were continued following various on notice applications. The Eighth to Sixteenth Defendants were joined into the proceedings following an application heard by me in August 2013. The claims against the Eighth to Sixteenth Defendants can succeed only if BoS succeeds in establishing its rectification claim, and that the DS1 by which release of its charge over the Property was obtained was forged. With that in mind I directed that these issues should be tried first in the interests of saving costs with each of the Eighth to Sixteenth Defendants agreeing to be bound by the findings of fact made by me in this trial. If BoS fails to establish its entitlement to rectification and its forgery allegation, it is common ground that the claims against the Eighth to Sixteenth Defendants must necessarily fail. As I have said already, BoS also contend that the signatures on the long leases purportedly on behalf of CUL are forgeries. It was agreed that this factual issue would be agreed at this trial as well.

12. The final substantive issue that I have to decide concerns an assertion by Mr. Blundell that the claims against GDL and him by BoS has been settled by compromise agreement. This issue arose following the commencement of these proceedings. In essence Mr. Blundell made a complaint concerning an alleged failure by the bank to supply statements as and when requested. The complaint was passed to the bank's claims handling unit where the claim was handled by Mr. Marzec, a junior official employed by the bank in its claims handling unit. Mr. Blundell's case is that he was

not willing to settle the dispute concerning the alleged failure of the bank to supply copy statements other than on terms that involved settlement of the whole dispute, that Mr. Marzec was aware of that fact and that on a proper construction of the settlement agreements between the bank on the one hand and Mr. Blundell and GDL on the other, the whole of the bank's claims were discharged and in addition the bank agreed to pay each of them £50. The bank disputes this at every level. It is not necessary for me to address that issue in further detail at this stage. I refer to it in detail below.

The Trial

13. The trial took place between 20-23 and 27 January 2014. I heard oral evidence called on behalf of BoS from:

    i) Mr. Russell Parker, a solicitor who had day to day conduct of the legal work carried out on behalf of BoS by Heatons in relation to the original loan to GDL until he left Heatons in late May 2003, when conduct was taken over by Mr. Davies;

    ii) Mr. Davies, a solicitor who was employed by Heatons between 2002 and 2006 who took over conduct from Mr. Parker;

    iii) Mr. Sinclair, an Assistant Manager in the Recoveries Department of BoS who has been responsible for the accounts of GDL with BoS since April 2012;

    iv) Mr Grassick, an official employed by BoS who was responsible for GDL's accounts with the bank between May 2007 and July 2010;

    v) Mr. Sandford, a solicitor and partner in Walker Morris, the solicitors who act for BoS in these proceedings and who has conduct of these proceedings on behalf of BoS;

    vi) Mr. Marzec, the complaints handler employed by BoS in its Customer Services Department referred to above; and

    vii) Mr. Witherington, who was BoS's relationship manager for GDL between early 2002 and April 2004, when he was employed as an associate director of the bank.

    The bank's remaining witnesses were not required to give evidence by Mr. Blundell and thus the statements of Mr. Crawford, Ms Ebby-Lee Cudlipp, Mr. Ellson and Mr. Smith stand as their unchallenged evidence.

14. I record that Counsel for BoS told me at the start of the trial that Mr. Witherington was unable to attend court because he was recovering from an operation that took place earlier this month. Initially it was hoped that he could attend in person but in the end he declined to do so by reason of his health – see Transcript Day 2, pages 4-5. It was not possible to arrange a video link but he was available to give evidence by phone. I informed Mr. Blundell that in those circumstances the statement could be admitted under the Civil Evidence Act and in that event he would be able to make submissions as to weight given that no cross examination had been possible, or he

could cross examine Mr. Witherington by phone. He opted for the latter course. He did not challenge the suggestion that Mr. Witherington was unfit to attend or explore that issue in cross-examination.

15. Following completion of the evidence, and after closing submissions from counsel for BoS, Mr. Blundell maintained for the first time that the assertion by the bank that Mr. Witherington was too ill to attend court was a stratagem devised by the bank's advisers to prevent effective cross examination. I reject that allegation. The bank considered that they were unable to force the issue with Mr. Witherington, that they had attempted to arrange a video link but without success and were content either for his evidence to be given orally by phone (the course in fact adopted and selected by Mr. Blundell as the most appropriate) or for his statement to be admitted under the Civil Evidence Act subject to submissions as to weight. None of this is consistent with the position being as alleged by Mr. Blundell. Mr. Blundell also maintained that he ceased cross-examining Mr. Witherington because it was obvious that he was giving untruthful answers that were the result of impermissible preparation of the witness by Walker Morris. I reject that suggestion not least because it was not one made at the time Mr. Blundell finished cross examining Mr. Witherington either to Mr Witherington or otherwise – see Transcript Day 2, Page 5.

16. I record finally that counsel for the bank accepted that, to the extent that demeanour was relevant to an assessment of Mr. Witherington's evidence, I could not carry out that exercise because I had not seen him. That was a fair concession that I accept. Thus I have tested Mr. Witherington's evidence by reference to the whole of the evidence available and in particular by reference to the contemporaneous documentation where its authenticity is not in dispute.

17. As to the Defendants, none appeared or were represented other than GDL and CUL, each of which was represented throughout by Mr. Blundell, and Mr. Blundell. The only witness called by those Defendants was Mr. Blundell. Statements had been served on behalf of GDL, CUL and Mr. Blundell from various other witnesses. Counsel for the bank made it clear that he wished to cross-examine them all. Mr. Blundell indicated that he did not intend that they should be called and abandoned reliance upon their evidence – see Transcript Day 3, 159, line 33- 160, line 18 and Day 5, 47/line 34 to 48/line 14.

18. Finally, there was a single joint expert on handwriting and document authenticity who was Dr Audrey Giles. Neither party required Dr Giles to give oral evidence. Neither had asked any questions of her in writing. Her report is thus unchallenged and I accept it.

Challenges to Credibility

19. It was submitted on behalf of BoS that Mr. Blundell was a witness whose evidence could not safely be relied on. It was suggested that he was thoroughly dishonest both in the manner in which he had conducted himself and the affairs of GDL in relation to the bank, had given perjured evidence in a number of highly material respects and was the author of in excess of 50 forged documents or had instigated their forgery. It was submitted that in a number of material respects he could be shown to be highly and unscrupulously opportunistic as and when he considered it to be in his interest to

be so and was willing to make highly charged allegations of fraud and dishonesty against others without any even arguable basis for so doing. It was submitted that in those circumstances, I ought not to accept Mr. Blundell's evidence save where it was against his interest or was corroborated by a document whose authenticity was accepted by the bank. It was submitted that Mr. Blundell had made allegations of serious impropriety against Mr. Parker, Mr. Davies and Mr. Sandford, each of whom were and are practising solicitors, and that I should make clear that the allegations against those individuals were unfounded. It was submitted that each of the witnesses called by the bank were honest and straightforward witnesses whose evidence was corroborated in vital respects by contemporaneous documentation and that I should accept it.

20. This is a heavily documented case. The main trial bundles number 60 lever arch files, and the core bundle consists of 12 lever arch files. Whilst it is alleged that over 50 documents have been fabricated by Mr. Blundell or fabricated on his instructions, the vast majority of the documents are accepted as authentic. In those circumstances, I prefer to test the veracity of the evidence given by the various witnesses by reference to the contemporaneous material where authenticity is not in issue and by reference to the evidence of the witnesses whose evidence has been admitted unchallenged. In my judgment that represents the soundest initial basis for fact finding in a case such as this. Whilst it might be possible to undertake an analysis of whether Mr. Blundell's evidence should be accepted ahead of considering the substantive issues that arise, in my judgment on the facts of this case that approach is unrealistic quite simply because many of the issues that are or are likely to be relevant to that assessment will have to be considered as part of the substantive fact finding exercise. It is artificial and confusing to attempt to resolve some factual issues as part of an assessment of the credibility of Mr. Blundell and others as part of a substantive fact finding exercise. It is undesirable that I should attempt to reach a conclusion concerning the credibility of Mr. Blundell by reference to some of the factual allegations relevant to that assessment but leave others to be considered as part of the substantive fact finding. I make it clear however that I accept that the credibility of Mr. Blundell as a witness is plainly a material issue at this trial if only because to succeed in his case his evidence on critical points has to be accepted over that of other witnesses.

21. I conclude this part of the judgment by reminding myself that (a) the legal burden of proof rests throughout on BoS, which must prove its case on the balance of probabilities but (b) if and to the extent that a positive case is advanced by the Defendants, the evidential burden of proving that positive case on the balance of probabilities rests on them. Finally I remind myself of two other general principles that need to be borne in mind throughout in a case of this sort. First, whilst the standard of proof in a civil case such as this is always the balance of probabilities, the more serious the allegation or the more serious the consequences of such an allegation being true the more cogent must be the evidence if the civil standard of proof is to be discharged – see Re H (Minors) (Sexual Abuse: Standard of Proof) [1996] AC 563 per Lord Nicholls at 586, where he said:

> "'The balance of probabilities standard means that a court is satisfied that an event occurred if a court considers that on the evidence the occurrence of the event was more likely than not. In assessing the probabilities, the court will have in mind as a

> factor to whatever extent it is appropriate in the particular case that the more serious the allegation the less likely it is that the event occurred and hence the stronger should be the evidence before court concludes that the allegation is established on the balance of probabilities. Fraud is usually less likely than negligence…Built into the preponderance of probabilities standard is a generous degree of flexibility in respect of the seriousness of the allegation.'"

22. Secondly, it is necessary to remember that it does not necessarily follow from the fact that a witness has been shown to be dishonest in one respect that his evidence in all other respects is to be rejected. Experience suggests that people may tell lies for a variety of reasons including an entirely misplaced wish to strengthen a true case that is perceived to be evidentially weak as opposed to a desire to advance a dishonestly conceived case in a dishonest manner.

The effect of the Rule in Pigot's Case on the alteration of the Deed, and the Rectification Claim.

The Undisputed Facts

23. The property charged was described in the Deed as executed as "… *the freehold property known as Pools Cottages, Crackley Lane, Kenilworth [registered at H.M.Land Registry under title number WK286818."* The Deed was submitted in that form to the Registry for registration under cover of a Form AP1, which is an application to change the register. The title numbers in respect of which the application had been made were both 818 and 916 as is apparent from Box 2 of the form. An official at HMLR noted this inconsistency and made contact with Mr. Davies, the solicitor with conduct of the transaction on behalf of the bank. HMLR's records suggest that the official concerned was told by Mr. Davies that "… *Charge affects both titles"*. Mr. Davies gave evidence that he does not recall the conversation with HMLR that is referred to on the Land Registry's records as leading to the alteration of the Deed. This is not surprising given that over 9 years have passed since the occurrence of the events with which I am now concerned. However he accepts that he would have told HMLR what is recorded and believes that he was correct to have done so, having now checked the Heatons file, which, of course, was the file he was managing at the time. This also reflects Mr. Parker's evidence.

24. The definition in the Deed of the property to be charged was thereafter amended in red so as to add "…*and WK388916"*. In the right hand margin of the Deed, again in red, there appears a stamp with gaps completed in red in manuscript. The whole reads: "*Altered on 4-2-04 under Rule 130 of the Land Registration Rules 2003 by H Leaver Gloucester DLR for Chief Land Registrar"*. Thus the alteration was made by an HMLR official after the deed had been executed by the parties and submitted for registration and following a conversation between Mr. Davies and an official at HMLR. Registration was completed on 4th February 2004 as is apparent from the letters from HMLR of that date, one of which was written in respect of each of the relevant title numbers.

25. In his written opening (but not in any pleading or statement) Mr Blundell alleged that Mr Davies had acted dishonestly in informing HMLR that the omission of the 916 Title from the Deed was an error. By the time Mr Blundell came to make his closing submissions, he seemed no longer to maintain that allegation but instead alleged that Mr Davies had acted dishonestly by representing to HMLR that all the solicitors involved in the transaction consented to the alteration of the Deed. This last point was not one that was put to Mr Davies in cross examination but in any event is not supported by the only record that exists of his conversation with HMLR, being the notes relating to the conversation that are within HMLR's records. HMLR have a separate note in respect of each of the two titles. Respectively the notes are "*Amended with permission of Paul Davies, Sol*", and "*With consent from Paul Davies, Sols*." Neither suggests that Mr Davies asserted that all the solicitors involved in the transaction consented to the alteration of the Deed. In those circumstances I reject Mr Blundell's alternative allegation of dishonesty against Mr Davies as unsupported by any evidence in this case and further conclude that it was late invention because it was not put to Mr Davies in the course of his cross examination. I regard that as a material factor in assessing the credibility of and weight than can safely be attached to Mr Blundell's evidence and supportive of the bank's submission that I ought not to accept Mr Blundell's evidence save where it is against his interest or corroborated either by a document whose authenticity is not in dispute or by a witness whose credibility is not in issue. I postpone further consideration of whether Mr Davies was dishonest in informing HMLR that the omission of a reference to the 916 Title was an error until after I have considered the factual material relevant to the bank's claim to be entitled to rectify the Deed.

The Rule in Pigot's Case

26. The Rule in Pigot's Case is that "… *when any deed is altered in a point material by the plaintiff himself, or any stranger without the privity of the obligee, … by … addition … the deed thereby becomes void …*". The rule is anachronistic for the reasons identified by Sir Roger Ormerod in Steed v. Neale and others (1986) 30 July Unreported, is primitive and arbitrary – see Armor Coatings (Marketing) Pty Ltd v. General Credit (Finance) Ltd [1976] 17 SASR 259 - and thus is one that should be confined to "… *cases that fall strictly within its ambit …*" – see Farrow Mortgage Services Pty Ltd v. Slade and Nelson (1996) 38 NSWLR 636 at 640. Each of these Australian authorities was referred to and approved by Potter LJ in Raiffeisen Zentralbank Osterreich AG v. Crosseas Shipping Limited and others [2000] 1 WLR 1135, who nonetheless accepted that the rule remained part of English law. It applied however only where the person seeking to avoid the instrument under challenge could show "…*that the alteration is one which, assuming the parties act in accordance with the other terms of the contract, is one that is potentially prejudicial to his legal rights and obligations under the instrument. … the rule remains a salutary one aimed at preventing fraud and founded upon inference of fraudulent or improper motive at the time of alteration. It seems to me that absent any element of potential prejudice, no inference of fraud or improper motive is appropriate.*" – see Raiffeisen Zentralbank Osterreich AG v. Crosseas Shipping Limited and others (ante) *per* Potter LJ at Paragraph 27.

27. For the rule to apply the alteration must be material – see Lombard Finance Limited v. Brookplan Trading Limited [1991] 1 WLR 271 *per* Dillon LJ at 274. Immaterial

alterations include *"… those where it either was or could have been said that the alterations either rendered express, or had no effect on, in the sense of adding nothing to, what the law would otherwise provide or imply …"* and *"… where the alteration corrects a 'mere misdescription' which can be cured by parol evidence that a person or entity referred to has in fact been misdescribed and that the alteration merely corrects the error in description in accordance with the original intention …"* – see Raiffeisen Zentralbank Osterreich AG v. Crosseas Shipping Limited and others (ante) *per* Potter LJ at Paragraph 21.

28. In my judgment BoS is correct in its submission that the rule can have no application if it is either now entitled to seek rectification of the Deed, or would have been entitled to do so at all times down to the date when the alteration to the Deed was made. If that is so, then the alteration would be immaterial because it was one that " *… rendered express, … what the law would otherwise provide …"*, and the Rule ought not to apply because the alteration was not one that was "… *potentially prejudicial to* [the] *legal rights and obligations under the instrument …"* of CUL in the sense identified by Potter LJ because the alteration merely gives effect to what could otherwise have been obtained by rectification – something that can be ordered only if the court is satisfied that the rectification sought will give effect to the parties' common continuing intention: see Swainland Builders Limited v. Freehold Properties Limited [2002] EWCA Civ 560 [2002] 2 EGLR 71 *per* Peter Gibson LJ at Paragraph 33(1).

BoS's Rectification Claim

29. Against that background I now turn to the bank's case that it is or would have been entitled to rectification of the Deed in the terms of the alterations made by HMLR. In assessing that case I remind myself that the party seeking rectification must show an outward expression of a common intention that continued down to the date of execution of the instrument sought to be rectified and that the instrument failed to reflect the common intention as a result of a mistake – see Swainland Builders Limited v. Freehold Properties Limited (ante) *per* Peter Gibson LJ at Paragraph 33; and that convincing proof is required to counteract the cogent evidence of the parties intention displayed by the executed instrument – see Swainland Builders Limited v. Freehold Properties Limited (ante) *per* Peter Gibson LJ at Paragraph 34(1).

30. Mr. Blundell's case is that the alteration did not reflect the true understanding between, and common intention of, the parties. In my judgment Mr. Blundell's evidence that the true understanding between the parties was that there would be a fixed first legal charge only over the residential units at the Property or only over the 818 Title is to be rejected, as is his assertion that Mr. Davies acted dishonestly or fraudulently by informing HMLR that a reference to the 916 title had been omitted from the Deed in error. My reasons for reaching that conclusion are as follows.

31. First, Mr. Blundell's case as to what was agreed makes no practical sense given the layout of the buildings on the site at the time. As is apparent from an examination of Appendices 1 to 3 to this Judgment, the part of the building forming the west part of the Property (labelled in Appendix 1 as 17, 16, X and 15) marked 15 is split between the two titles. The X on the Appendix 1 plan marks the access to the courtyard. It too is split between the two titles. The courtyard itself is split between the two titles. All

this makes it highly unlikely that a funder would be willing to accept one title as a fixed charge security but not the other because it would have an obvious adverse effect on the value of the security. It would be worth less than the whole obviously and would make realisation in the event of a sale significantly more difficult if not impossible without variation of the boundary, which could be achieved only by agreement. Whilst it is conceivable that security might have been offered over the residential units, practical effect could be given to such an arrangement only if the boundary between the titles was varied so that all of the residential units fell within one title. It is a significant feature of this case that such a variation was not at any stage suggested by any of the solicitors retained respectively by CUL or GDL and that is so even though as Mr Blundell accepted he was the source of the instructions to each of those firms.

32. Secondly, Mr. Blundell's suggestion that it was agreed that there would be a fixed legal charge only over the 818 title with the bank relying on its debenture security in relation to the balance of the Property makes no practical sense either. Such a proposal could have been made only with the intention that the land comprised in the 916 title would be dealt with subsequently by CUL whether by charging or selling it or parts of it following a subdivision of the title into smaller titles. However, the debenture in fact executed secured CUL's continuing liability under its guarantee to BoS by way of a legal mortgage over all of CUL's freehold and leasehold property (see Clause 3.1.1) and Clause 3.4 precluded CUL from charging or disposing of its assets without the consent of the bank. Thus the debenture did not provide in any sense the flexibility that Mr Blundell maintains was the purpose of structuring what he called "the deal" so that there was a registered first legal charge over the 818 Title with the 916 Title falling within the scope of the debenture. If that had been his understanding, it is inconceivable that he would not have instructed the solicitors acting for CUL that such was the case and it is equally inconceivable that those solicitors would have failed to negotiate the terms of the Debenture so as to enable the flexibility which Mr Blundell maintains was critical to be maintained. There is no mention of any such concept in any of the correspondence between solicitors that has been drawn to my attention.

33. The documentation relevant to the loan by BoS to enable GDL to acquire the shares in CUL starts with a valuation procured by Mr. Blundell dated 16 September 2002. The property being valued is described as being "*Pools Cottage, Crackley Lane, Kenilworth, Warwickshire CV8 2JW*". It was not suggested to me that there was a different address or post code for each of the two titles or a different post code for the various units at the Property. There is nothing in the report that suggests the valuation was of anything other than the site as a whole. Section 2 of the Report describes what is being valued as a "*… dwelling that … comprises a stand alone unit which has been divided into a number of commercial, residential and leisure facilities … the bulk of the accommodation is residential although this emphasis will change shortly with the conversion of the main wing of the courtyard to commercial use …*". The accommodation is that described in detail at section 5 as consisting of Units 1 to 7. Unit 6 is described as being "*… a garage block which has been substantially converted into office accommodation and is utilised by a local building company for their base premises. A new lease has recently been granted in respect of this on full repairing and insuring terms for 15 years … being wholly commercial this element is not per se included within our current Open Market Valuation figure ..*". Section 9 of

the Report makes clear that what is being valued is "*… this complex … situated in a sought after location …"*. It is nowhere suggested that it is only the residential elements that are being valued although the valuation of the complex as a whole is valued by reference to the yields from the residential units. The valuation was of "*… the freehold interest in this property with the benefit of vacant possession …*" – see Paragraph 10 of the Report. The valuation attributed to the property so described was £1,420,000. Unit 6 was within the 916 title. The reference within the report to a local building company is to Sage Roofing Limited. The lease to that company is included within the trial bundles as part of the relevant conveyancing documentation. The lease was for a term of 15 years from 1st July 2002. The lease was of a property called "*Pools Retreat*". The plan attached to the lease shows what was being leased to be located wholly within the 916 title.

34. There is no mention of two titles anywhere in this report, nor is there any evidence that the existence of the two titles was drawn to the attention of the valuer or that the valuation was confined to the residential units alone. It is noteworthy that the valuation was on the basis that the property was not subject to any unusual encumbrances, restrictions or covenants – see Paragraph 13 of the Report. It is unreal to suggest that this valuation was in some way limited to the 818 title given the location of the boundary and its effect on the residential units expressly referred to. It is equally unreal to suggest that the valuation was of the residential units alone given the terms of the report when read as a whole.

35. The summary of the terms and conditions applicable to the proposed loan prepared by Mr Witherington is consistent only with the loan being offered against a fixed charge over the whole of the property. This document was prepared following a visit by Mr Witherington to the Property and an inspection of it by him in the company of Mr Blundell.

36. There is nothing to suggest the bank was aware at this stage of the existence of two title numbers. The property to be charged is identified by name as being "*Pools Cottages and Retreat"*. The Countrywide Surveyors' valuation referred to above in the sum referred to above is expressly noted. The facility being considered is described as being a "*Commercial mortgage facility being £1,065,000 being 75% LTV"*. The sum quoted is 75% of the full value of the whole of the Property by Countrywide Surveyors. The Security against which the bank was prepared to lend is described as including "*First legal charge over Freehold Property known as Pools Cottages and Retreat … valued on 14th September 2003 by Countrywide Surveyors at £1.42m."*. As I have said already, the valuation was of the whole property albeit by reference to the yield obtainable from the residential units alone. The borrower was described as being GDL. The repayment of the loan was to be guaranteed by CUL. The debenture to be provided by CUL was to support the guarantee obligation. There is nothing within this description that is consistent with the understanding between Mr Witherington and Mr Blundell being as he now alleges it to be. The description set out by Mr Witherington is entirely consistent with what he says the true understanding between them was – namely that the whole of the Property was being offered as security together with the other elements noted above for a 15 year term loan of a sum equivalent to 75% of the full value of the Property as a whole.

37. In the Introduction section of this document the property is described as being "*Pools Cottages and Retreat (one freehold) …"*. Mr Blundell alights on the phrase in parenthesis as being supportive of his case that only one of the titles (the 818 Title) was to be charged. In relation to security Mr. Witherington said:

> "Our security will principally comprise a first legal charge over the freehold investment property known as Pools Cottages and Retreat (one freehold)... There are seven elements to this accommodation being four residential units, to office complexes and a leisure complex … the property is flexible in its use … there is also a substantial garden at the site which could provide scope for further development."

38. This section of the report taken as a whole is clearly supportive of Mr Witherington's evidence as to his understanding of what was being proposed. As I have said already the seven units indentified were the total of the units then at the Property. The office and leisure units were both located on the 916 Title. The reference to Pools Retreat is important for this reason. The bank's case is that is clear evidence that it was intended that the whole of the Property was included within the description contained in Mr. Witherington's report. In support of that proposition it refers to the lease to Sage Roofing Limited referred to above. The property leased is called in the lease "Pools Retreat". The plan attached to the lease shows what was being leased to be located wholly within the 916 title.

39. I am satisfied that the references within the documentation I have so far considered to Pools Retreat are to the office accommodation in the converted garages building. Mr. Witherington describes the complex as including the lease to Sage that I have referred to above - see the section of his internal report headed "*Nature of Trade*".

40. On the factual issues I have so far been considering there is a clash of evidence between Mr. Witherington on the one hand and Mr. Blundell on the other. Mr. Blundell maintains very strongly that all that Mr. Witherington was invited to consider as available to be charged were the residential units within the 818 Title. In my judgment this is unreal. A fixed charge cannot take effect against particular buildings. It can take effect only against a defined estate which in registered conveyancing is defined by a title number. It is wrong to say that the 818 Title applied to the cottages. It applied to most of the cottages. Thus if the true understanding between the parties was as suggested by Mr Blundell the bank would have to have been willing to take a charge over the 818 Title even though it did not encompass all the residential units or it would have to have been agreed that the boundary between the titles would be redrawn so as to bring all the residential units within the scope of the 818 Title. It is not suggested by Mr Blundell that there was any such discussion between him and Mr Witherington when Mr Witherington inspected the Property. There is no mention of any such arrangement being contemplated in the valuation report that Mr Blundell supplied to Mr Witherington and there is no mention of any such arrangement made at any stage in any of the correspondence between solicitors that followed once a formal loan offer had been made by the bank. This is so notwithstanding that the bank, CUL and GDL were each separately represented by solicitors in relation to the loan.

41. Although Mr Blundell suggested that the contrary was the case, the reference to "*one freehold*" within Mr Witherington's internal report supports that analysis. Mr Witherington did not conduct any searches and had not been supplied with title information when he made this presentation. Thus this phrase could not have referred to one of the two registered titles making up the Property because he was not informed of the existence of the two titles by Mr Blundell and there is no evidence that he was aware of the two titles at the time he wrote his internal report proposing approval of the loan. There is no reference to the existence of the two titles in the Countrywide Surveyors' report.

42. Mr. Witherington's evidence on his use of the phrase "*one freehold*" is set out at Transcript Day 2, Page 33. In response to the question from Mr Blundell set out below he replied as follows:

> "Q. You detail quite specifically there that you would take security over – a legal charge over the freehold investment property known as Pools Cottage and Pools Retreat, which is one freehold. You are quite clear there in the discussions that we had that it is only one freehold that you were taking security on. Can you confirm that?
>
> A. No, I can't, but the basis upon which I sought to take security for the bank was on the basis of you having walked me round the whole site and in my credit application probably the wording wasn't particularly good, but what I was trying to put across to the bank's credit committee was that we were looking to take a charge over Pools Cottages and Pools Retreat as one site. There was no requirement for a relationship managers, business development managers to ascertain the legal nitty gritty because that's dealt with by external solicitors. What I was trying to put across to my credit department was that they were not two individual sites, everything was on the one site and that site was known as Pools Cottages and Pools Retreat, … and if you read my witness statement it did go on to say that there were several elements to the accommodation, a residential and office complex, leisure complex, single swimming pool, Jacuzzi, outdoor tennis courts and a summer house. As I say, you walked me round the whole site because I know that would have been the case because I would have insisted on a tour of the property that we were taking as security. I had been in banking for 27 years, I've been in property finance for 17/18 years of those and the way that I do my business and interact with my customers has changed very little over the course of time, other than where required to by the bank that I work for, some have different requirements. "

43. Critically, Mr. Blundell put to Mr. Witherington that he would not have known of the existence of the various applicable titles at the time of his inspection of the Property – something Mr. Witherington agreed with. As far as he was concerned what he was being offered as security was Pools Cottages and Retreat and that was one site, one

property. As he put it at Transcript Day 2, Page 35 the proposal was put together on the basis that the bank would be taking a charge over the whole of the site and "… *whether that is one title or two titles … I do not have to know and do not need to know. We were taking a charge over the whole of the site"*. A little later in his evidence he said "… *you walked me round the whole of the site and if you would have said to me at the time that only part of the site was available to be fair Mr. Blundell I would have probably walked away. … if we were only being offered part … I wouldn't have felt comfortable in making any proposal to the bank whatsoever.*

44. Mr. Blundell suggested to Mr. Witherington that a fixed charge over one title with a debenture in addition would have provided the bank with the security that it was looking for and was the only practical arrangement that could be made given that it was the intention to develop the Property. Mr. Witherington rejected that suggestion in terms that were entirely convincing – see Transcript, Day 2, Page 35. The existence of a fixed charge does not prevent a site being developed and realised in phases, where that is what is intended. There is nothing in the contemporaneous documentation that suggests this was suggested at any time up to the date of execution of the Deed.

45. In relation to Pools Retreat, Mr Blundell maintains that there was another unit formerly occupied by Sage also called Pools Retreat that formed part of the 818 title and in truth that was what was being referred to when references are made to Pools Retreat in the material that I have so far referred to rather than that referred to in the lease to Sage Building Limited. In my judgment there are a number of difficulties about that suggestion. First it was not suggested to Mr. Witherington by Mr. Blundell that there were two units at the Property called Pools Retreat. Thus Mr Witherington did not have an opportunity to deal with the point made by Mr Blundell that in referring to Pools Retreat Mr Witherington was referring to a property on land the subject of the 818 Title, not the property leased or partly leased to Sage Roofing Limited that was located on land the subject of the 916 Title. Secondly, there is no evidence apart from Mr Blundell's uncorroborated oral evidence that supports the proposition that at the time when Mr Witherington visited the site in 2002 there were two units each called Pools Retreat. Thirdly it is inherently unlikely that there would be two units at the Property both called Pools Retreat. It would be an endless source of confusion and difficulty. Finally the only document that Mr Blundell was able to point to that suggested there might have been two units each called Pools Retreat was a letter from GDL that gave its address as Pools Retreat. That does not of itself support what Mr Blundell alleges. However, it does not really matter. Mr Blundell's case is that what was being offered were the residential units and he does not suggest that the other Pools Retreat, if it existed, was a residential unit.

46. I did not have the opportunity to assess Mr. Witherington's demeanour when giving evidence and I bear that factor in mind in favour of Mr. Blundell when reaching my conclusion on the matters I have so far considered. Nonetheless I found Mr. Witherington's account to be entirely credible because (a) he is an experienced banking professional who is well used and was then well used to assessing lending proposals to be secured against land, (b) he is entirely independent of the parties in the sense that he does not work for BoS, has not done so for a number of years and left the employment of the bank because he received a better offer from another banking organisation (c) his evidence on the issues I am now considering self evidently

reflects obvious commercial sense and (d) critically is entirely consistent with the documentation to which I have referred. I reject Mr. Blundell's evidence on the issue I am now considering. From the time when he first consulted Countrywide Surveyors prior to approaching the bank for facilities it was his intention to offer the whole of the Property as security by way of a first fixed charge and that was the understanding of both Mr. Blundell and Mr. Witherington

47. There was in my judgment a common continuing intention down to the stage when Mr. Witherington submitted his internal report that the proposed loan would be secured against a first fixed legal charge against the whole of the property. That was the basis on which the Countrywide Surveyors valuation prepared on the instructions of Mr. Blundell proceeded. That was the basis of Mr. Blundell's presentation to Mr. Witherington at the site visit referred to above and it was the basis on which Mr. Witherington presented the opportunity to the bank's decision makers. Mr. Blundell did not at any time suggest what was being offered as security consisted of less than the whole of the Property.

48. Furthermore, I conclude that Mr Blundell's evidence on the factual issues I have so far considered was not merely wrong but untrue. The issues that I have so far considered are not issues where that can be a legitimate difference of recollection and it is not suggested that Mr Blundell's evidence is qualified by any memory loss on his part. At no stage between the date when the bank made its formal offer of facilities (referred to below) and the date when the transaction was completed and Heatons sent the Deed to HMLR was it suggested by either the solicitors acting for CUL or the solicitors acting for GDL that the true nature of the arrangement was as alleged by Mr Blundell. This is something I expand upon as I consider the progress of the legal aspects of the transaction below. This point is a highly significant one in my judgment because Mr Blundell accepted in answer to a question from me during the course of his closing submissions that he was the person who provided the instructions to each of the firms concerned. Had the position been that the scope of the fixed legal charge was to be limited to the 818 Title, it is inconceivable that the point would not have arisen in correspondence between solicitors in the course of the transaction as the basis on which the Deed was to be prepared. Equally if the position was that the Charge was to be limited to the residential units, it is inconceivable that the apparently competent conveyancing solicitors engaged by the parties would not have appreciated that the existing boundary between the titles would compromise the effectiveness of such a charge. This leads to the conclusion that the solicitors concerned were not instructed by Mr Blundell in the terms that he now suggests was the true understanding of the parties. It is noteworthy also that the correspondence that he maintains he had with Mr Witherington after completion of the transaction is not consistent with the understanding between the parties being as he now alleges. This conclusion is material to and impacts adversely upon the credibility of Mr Blundell as a witness.

49. The formal offer letter from BoS is dated 15 November 2002. As I have said already, it was conditional upon security for the loan including a first legal charge "*… over the freehold property known as Pools Cottages and Pools Retreat …*". For the reasons I have given, the reference to Pools Retreat is a reference to the office accommodation within the 916 title and is consistent with the understanding of the bank being as I have described it so far. There could be no ambiguity about the terms of the offer in

the mind of Mr. Blundell given the meaning of Pools Retreat being as I have described and given the true effect of the discussion between him and Mr Witherington.

50. Solicitors (Richardson & Davies ["RD"]) were retained by GDL. Another firm called Blakemores were retained by CUL. Both received their instructions concerning the transaction from Mr Blundell as he accepted as I have mentioned already. BoS as I have said retained Heatons.

51. Initially RD suggested that there was no separate title for Pools Retreat. Given what I have said already it is beyond doubt that it was intended that Pools Retreat should be subject to the fixed legal charge and that the Pools Retreat referred to was that occupied by Sage which was located wholly within the 916 title. This again was put beyond doubt by a letter from Heatons to RD dated 17 January 2003, by which they requested a set of title papers for Pools Cottages and Pools Retreat including in particular all documentation relevant to the lease to Sage. This makes it entirely clear that the bank considered it was entitled to a fixed charge over both Pools Cottages and Pools Retreat and thus against each of the titles which together formed the whole of the Property.

52. There was some delay in dealing substantively with these requests. However, on 14 February 2003, RD sent to Heatons a copy of a draft share sale agreement prepared by RD and approved as amended by Blakemores. The draft defined "*Properties*" as meaning "*… the properties of* [CUL] *shortly described in schedule 4 …*" and schedule 4 described the properties as being "*All that freehold property known as Pools Cottages … as registered at H.M. Land Registry with title absolute under Title Numbers WK286818 and WK388916*". It is of course the case that this agreement was not concerned directly with what was to be the subject of the first legal charge but it is very strong support for the proposition that Mr Blundell was instructing both RD and Blakemores that what was formally the subject of two titles was regarded as being a single property. This is entirely consistent with Mr Witherington's understanding following his visit to the Property at the outset that is described earlier in this judgment.

53. By a letter dated 13 February 2003, RD had told Heatons that they had applied for office copy entries and filed plans for Pools Cottages and under cover of a letter dated 21 February 2003, various documents were sent to Heatons including office copy entries for each of the 916 and 818 Titles. RD's searches were in respect of both titles. There was nothing in any of this correspondence that suggests it was understood or intended by either CUL or GDL that the 818 Title alone should be the subject of a fixed legal charge. Rather it is consistent with the understanding being that both titles were to be the subject of the first legal charge. It is difficult to see why office copy entries for both titles would be required if the first legal charge was to be confined to the 818 Title.

54. There then follow a number of letters dealing with the minutiae of the transaction. None of them suggest that the first legal charge is to be confined to one of the two Title numbers and many of them if anything are consistent with the opposite being the case.

55. On 7 April 2003, RD sent copy Land Registry searches concerning both title numbers to Heatons together with the Sage Roofing Limited lease. This is consistent only with a belief on the part of RD that BoS was to have a first legal charge over both titles and that the Pools Retreat that the bank had referred to from the outset was the building occupied by Sage Roofing Limited and was so understood by all parties.

56. On 15 April 2003, Blakemores wrote to Heatons offering an undertaking that they would hold the Charge certificates for each of the Titles to be forwarded to Heatons immediately they were in receipt of the £1,065,000 that BoS was lending. They also undertook to remit a sufficient sum to the then registered chargees of the Property to pay off what was then secured against the property and forward the appropriate form of discharge within 3 days of receipt. Although the whole of the conveyancing material has to be read, this letter is in my judgment one that clearly points in only one direction namely that Blakemores the solicitors acting for CUL on the instructions of Mr Blundell, and Heatons, the solicitors instructed on behalf of the bank, each knew and understood that the lending by BoS was to be secured against the Property and thus against each of the two titles.

57. On 2 May 2003, Heatons sent a report on title to BoS. The description of the Property was given as "*Pools Cottages, Crackley Lane, Kenilworth*" and under the heading ""*Title"*, Heatons certified at Paragraph 1a that "*… the property is registered at HM Land Registry with Freehold Title Absolute under title numbers WK 268818 and WK 388916"* and confirmed at Paragraph 1j that "*… the Bank will obtain a first legal charge over the property"*. This is plainly reflective of the understanding that Heatons had at the time, is reflective inferentially of the instructions that had been received from the bank and is entirely consistent with the understanding of Blakemores as was apparent from the correspondence referred to in the preceding paragraph of this judgment.

58. On 13 May 2003, in fulfilment of their undertaking given in their letter of 15 April 2003 referred to above, Blakemores sent to Heatons "*full title deeds and documents including the Charge Certificate under title number WK386818 and WK388916, bound under cover of the same Charge Certificate, together with executed Form of Debenture, Legal Charge and Corporate Guarantee*". They added that they would be forwarding the DS1 in respect of the titles once it had been received from the previous lender. I conclude that this correspondence too is consistent only with Blakemores, the solicitors acting for CUL on the instructions of Mr Blundell and Heatons, the solicitors instructed on behalf of the bank each knowing and understanding that the lending by BoS was to be secured against each of the two titles.

59. In my judgment this material taken as a whole but in particular the letters of 15 April and 13 May are plainly reflective of the true mutual understanding between the parties' solicitors being as alleged by the bank in these proceedings – that is that the loan advanced to GDL was to be secured amongst other methods by a fixed legal charge over both titles which were regarded as together constituting a single property. I conclude that this was correctly reflective of the true mutual understanding of the principals involved – that is CUL acting by Mr Blundell and the bank. I so conclude because this understanding is entirely consistent with all the documentation generated by the bank or passing between it and its solicitors and because Blakemores received their instructions from Mr Blundell. The Deed was executed on 2 May 2003.

60. There was a delay in registering the Charges. Aside from two letters to which I refer in a moment, none of the correspondence that passed between the parties suggests that the understanding of the parties changed during the period between the execution of the Deed and its eventual registration. Most of the correspondence passing between solicitors and HMLR refers specifically to both title numbers. It is not suggested that either of the two letters I refer to at the start of this paragraph were ever sent to Heatons.

61. The two letters that Mr Blundell alleges passed between him on behalf of GDL and Mr Witherington purport to be dated respectively the 26 June and 3 July 2003. They were respectively in the following terms:

> "Dear Mark
>
> Reference our telephone conversation last week in respect of the [CUL] security, whereas – the Roundhead Trust, previous owners of [CUL] have an issue as they only agreed to provide one legal charge over "the property" Title number WK286818 – which in fact is the only security the loan was based on, as you know!
>
> The executive directors have exceeded authority in allowing the agreement to include Title WK388916 as security (especially as it is subject to a long term lease)
>
> I thank you for the bank's response and their support (particularly yours) allowing the loan to the company to be ongoing unsecured whilst the company resolves the issue rather than have to reverse the takeover and refund the loan to your goodselves.
>
> Yours sincerely,
>
> [David] (manuscript)
>
> Mr. David Blundell"

The response to this letter is alleged by Mr Blundell to have been as follows:

> "Dear David
>
> I am writing further to your letter of 26th June 2003, whereas I can confirm that the bank are only looking at "the property" Pools Cottages Title No WK 268818 as their security in respect of the recent commercial loan of £1,065,000 provided to the Company.
>
> I will undertake to have the bank release Title No WK388916 as discussed.

Yours sincerely

[Mark] (manuscript)

Mark Witherington

Associate Director

Specialist Property Finance"

62. Not merely do neither of these letters appear on Heatons file but they do not appear on the bank's files either. In his statement in these proceedings, Mr Witherington says that (a) he had not seen either letter until he was contacted by Walker Morris in connection with the preparation of his statement and (b) "*I am certain that it is not my signature on the 3 July 2003 letter.*". He says that all formal correspondence would be signed with his full name and that he signed short informal memos or letters with his first name only.

63. There are a number of reasons to be suspicious about these letters. First and foremost at the dates when each of letters were purportedly written each of the relevant parties (CUL and the bank) either were or had been represented in relation to the transaction. Had an issue arisen concerning the scope of the Deed, I would have expected the correspondence to pass between solicitors and even if Mr Blundell thought the issue was one best raised by him with Mr Witherington, I would have expected Mr Witherington to have passed the correspondence on to the bank's solicitors. Secondly, the letter that purports to have come from Mr Blundell is not consistent with the case he advanced at trial. His case at trial was that the charge was to be against the residential units at the Property not against the 818 Title. Thirdly, the second paragraph of the 26 June 2003 letter expressly acknowledges that the agreement between the parties provided for the loan to be secured against the 916 Title whereas his case at trial is that there was never any such agreement or understanding. For what it is worth, there is no mention either of any understanding that the bank's security over the 916 Title was to be by operation of the CUL debenture. Fourthly and perhaps most tellingly, no attempt was made by Mr Blundell to rely on the 3 July letter at any stage down to the filing of his Defence in these proceedings. That is highly significant given the terms of the letter and the attempt that Mr Blundell made to avoid the effects of the Charges in later discussions with the bank and its solicitors. Put quite simply, had the bank given an undertaking as alleged then that is a point that could would and should have been deployed at the first opportunity when the issue of whether the Deed ought to extend to the 916 title became live. Mr Blundell sought to explain this away by saying he had misplaced the letter and Mr Witherington had left the employment of the bank. I reject that explanation – if what Mr Blundell says is true then he would have anticipated that a copy of the letter would be within the bank's files relating to CUL and would have asserted the existence of the undertaking as requiring the bank to adopt the course he was demanding.

64. Aside from these points, the further difficulty that faces Mr Blundell in relation to this correspondence that he did not actually put either letter to Mr Witherington in the course of his cross examination. He suggested that there was a telephone conversation

between them in May or June 2003 as to which Mr Witherington's response was that he did not recall such a conversation. He suggested then that there was a meeting at a small office upstairs at a local branch of Halifax Building Society. Mr Witherington denied that any such meeting could have taken place because he did not have access to offices of Halifax Building Society – see Transcript, Day 2, page 37.

65. The Bank's case is that the 26 June letter was never sent and that the 3 July letter is a forgery. This is perhaps one of the most serious allegations that can be made in civil proceedings against any party or witness because if true it is a criminal offence; asserting in oral evidence on oath or affirmation a positive case advanced on the basis that the document is genuine will probably constitute the additional criminal offence of perjury; asserting in a witness statement or pleading signed under a statement of truth a positive case on the basis that the document is genuine when it is not exposes the person making the statement to the risk of punishment for civil contempt; and such conduct undermines the foundation on which civil dispute resolution rests. In my judgment therefore the principles identified in Re H (ante) apply and evidence of the clearest cogency will be required before a court can conclude on the balance of probability that a document relied on by a party is a forgery. In my judgment, the bank has satisfied that test in this case and in relation to what purports to be the letter of 3 July. I reach that conclusion for the following reasons.

66. First as I have said the circumstances that surround the coming into existence of each of the letters gives rise to severe suspicion for the reasons that I have identified. Secondly, as I have said, the letter purportedly dated 26 June 2003, is in highly material respects not consistent with what Mr Blundell now alleges the position to be. Thirdly, it is in the highest degree improbable that someone in the position of Mr Witherington would give undertakings on behalf of the bank without directing the issue to be addressed by the bank's solicitors who continued to act for the bank in relation to the securitisation of the loan to GDL. I also consider it inherently improbable that a senior bank official would give a formal undertaking to a customer in a letter signed as informally as this one has been signed. What strongly tips the balance is the evidence of Dr Giles in relation to these letters.

67. As I have observed, Dr Giles' evidence has not been challenged by Mr Blundell in any particular. Notwithstanding that, I have considered the evidence she gives critically because of course ultimately the issue is one for me not for an expert to decide. Dr Giles' evidence on this issue is at pages 36-40 of her report. She carried out a detailed technical examination of the letter using a variety of identified techniques and equipment. The result is that she concludes that "… *there is very strong positive evidence to support the view that the letter dated 3rd July 2003 is not a genuine letter signed and sent by Mark Witherington of Bank of Scotland to Mr David Blundell.*". This is the strongest expression of conclusion used by Dr Giles short of the material being conclusive evidence of forgery. Dr Giles reaches this conclusion because:

    i) The header and footer of the letter (which purport to be those used by BoS) are not printed as would be expected of genuine letterhead but are photocopy images as is apparent from the facts that (a) toner particles can be observed in the header and (b) a security code invisible to the naked eye is visible on examination of the white part of the image;

ii) The text of the letter has been produced on a ink jet printer in a Bookman Old Style font whereas all the other BoS documents examined by Dr Giles were printed using the Times New Roman font; and

iii) There are differences between the signature that appears on the letter and genuine signatures of Mr Witherington. In particular there is a lack of fluency in the cursive section of the signature on the letter and a number of unexplained pen line breaks. The signature is consistent with being a traced simulation.

Dr Giles also concludes that the code referred to in (i) is sufficiently similar to other copy documents produced by Mr Blundell to suggest that Mr Blundell produced the questioned letter using the same printer but the similarity is not sufficient to constitute positive evidence that he did so.

68. I am satisfied that the letter has been shown to be a forgery for the reasons identified by Dr Giles in combination with the other facts and circumstances surrounding the letter that I referred to in Paragraph 66 above. Further, whilst I accept that the code evidence available to Dr Giles is not of itself sufficient to support a conclusion that Mr Blundell forged the 3 July letter or directed its forgery, there are other factors available to me that lead me to conclude on the balance of probability that the letter was not only forged but forged either by Mr Blundell or at his direction. Those factors are that (a) Mr Blundell disclosed the letter, (b) Mr Blundell does not suggest that it came to him other than directly from Mr Witherington or via a third party (c) it was purportedly written in reply to a letter purportedly sent to Mr Witherington by Mr Blundell and (d) the letter is of benefit only to Mr Blundell and CUL – a company that is ultimately controlled by Mr Blundell through his majority control of GDL.

69. In those circumstances, I accept Mr Witherington's unchallenged evidence set out in his witness statement that the signature on the letter of 3 July is not his, I conclude that the letter is a forgery and I reject as untrue Mr Blundell's evidence to contrary effect. I conclude also that the forgery was carried out by Mr Blundell or carried out under his direction.

70. These conclusions, in combination with the other factors concerning Mr Blundell's credibility that I have identified earlier in this judgment, are sufficient to convince me that I ought not to accept the evidence of Mr Blundell save where it is against his interest or corroborated by a document whose authenticity is not in dispute I have found established or witness whose credibility I accept.

The application of the Rule in Pigot's Case to the facts of this case

71. In light of the factual findings that I have made so far, I conclude that the bank has established on the balance of probabilities that it would have been entitled to seek rectification of the Deed at all times from its execution down to the date when it was altered by HMLR as I have described. In those circumstances, I conclude that the rule in Pigot's Case is of no application to the alteration of the Deed because it was immaterial in the sense identified by Potter LJ in Raiffeisen Zentralbank Osterreich AG v. Crosseas Shipping Limited and others (ante) because it was one that " … *rendered express, … what the law would otherwise provide …*", and the Rule ought

not to apply because the alteration was not one that was "… *potentially prejudicial to the legal rights and obligations under the instrument …"* of CUL.

The Decision to alter under Rule 130 of the Land Registration Rules 2003

72. Rule 130 provides:

> "(1) This rule applies to any alteration made by the Registrar for the purposes of correcting a mistake in any application or accompanying document.
>
> "(2) The alteration will have effect as if made by the applicant or other interested party or parties:
>
> (a) in the case of a mistake of a clerical or like nature, in all circumstances;
>
> (b) in the case of any other mistakes, only if the applicant and every other interested party has requested to or consented to the alteration."

Mr Blundell's submission was that on any view the omission of one of the titles from the Deed was not a clerical mistake and thus could not come within sub-paragraph (a) but could only fall within (b) and thus the alteration could only have effect if all parties had consented to the alteration. Since it is common ground that all parties did not consent to the alteration, Mr Blundell submits that the alteration is void and of no effect.

73. In my judgment the Bank is correct in its submission that if an error is shown to have been made and it is one that comes within Rule 130(2)(a) then the effect of the rule is that an alteration will take effect without any other legal formalities being required. Thus in this case there would be no need for the court to direct rectification (even though on the facts as I have found them the bank would be entitled to such an order) because the alteration by HMLR has the effect of rectifying the document.

74. If the error is one that falls within sub-paragraph (b) then an alteration by HMLR will have that effect only if the applicant and every other interested party has requested to or consented to the alteration. If all the relevant requests or consents have not been received then the effect of the alteration as between the parties to the document will be to engage the rule in Pigot's Case (ante) and thus, in a case such as this, the chargor will be discharged from liability unless the alteration is one that is immaterial applying the principles referred to above. Even if the alteration is immaterial and thus is one to which the Rule in Pigot's Case does not apply, the Deed will take effect as originally drawn unless rectification is ordered.

75. On the facts as I have found them I am entirely satisfied that reference to the 916 Title was omitted from the Deed as a result of an error by the solicitor responsible for drafting the Deed, that is Mr Parker. I am equally entirely satisfied that Mr Davies was the solicitor contacted by HMLR in relation to the omission and that as he said was the position he checked the file and satisfied himself that an error had been made

before responding to HMLR in the terms recorded in summary in HMLR's notes. No evidence to contrary effect was adduced and Mr Davies' evidence was entirely unshaken by cross examination. I accept too that had he checked the file as he says he did, he could honestly and reasonably have concluded that an error had been made in the manner in which the Deed had been prepared. This conclusion is inevitable given the contents of the documents to which I have referred and in particular the report on title and the letters containing the undertakings from Blakemores. The presence of this material on the file is inconsistent with Mr Blundell's allegation that Mr Davies' acted dishonestly in informing HMLR that an error had been made in the preparation of the Deed. This allegation of dishonesty made against Mr Davies is without substance and ought not to have been made. As I have said already, the alternative allegation against Mr Davies that he dishonestly misrepresented to HMLR that all the parties consented to the alteration was entirely misplaced because no such representation was made. That allegation too ought never to have been made.

76. The remaining point argued by Mr Blundell in relation to this part of the case is whether the erroneous omission of a registered title number is capable of being a mistake of a clerical or like nature and thus one that falls within sub-paragraph (a). What constitutes a clerical mistake depends to an extent on the context in which that phrase or one to similar effect is used. In its most narrow meaning such an error is one made in writing out a document. Thus it will include mistakes as to spellings, transposition of letters, names or numbers and similar errors including at least some omissions. However, whether an error outside these narrow confines is capable of being a clerical as opposed to some other error will depend on the context in which the, or a similar, phrase is used and the circumstances in which the error came to be made – see Marley v. Rawlings and another [2014] UKSC 2 at [76], a case that concerned the effect of Section 20 of the Administration of Justice Act 1982, which confers a statutory power to rectify a will that fails to carry out a testator's intentions as the result of a "*clerical error*". There is a clear distinction between s.20 of the 1982 Act which identifies clerical errors alone as the basis of rectification and Rule 130(2), which distinguishes between clerical errors and the like in Paragraph (a) and other errors in Paragraph (b). This leads me to conclude that the scope of LRR Rule 130(2)(a) should be confined to clerical errors in the narrower sense identified in Marley v. Rawlings and another (ante) at [71] and [75] – that is amongst other things an error that occurs "*… when …* [a] *solicitor … omits something that he intended to insert …*" when writing out a document.

77. There is very little evidence as to how the omission came to occur in this case. That is the consequence of the passage of time. My conclusion on the material available however is that the omission that occurred here is properly to be called a clerical error as defined in the previous paragraph because it is inferentially one that results from an accidental drafting error. In my judgment that inference is fuelled in particular by the terms of the two letters from Blakemores in first offering the undertakings and then complying with them, each of which is referred to above. It is also an inference that is supported by the totality of the material referred to above. I am satisfied therefore that in the particular circumstances of this case the error was one falling within LRR Rule 130(2)(a).

78. Had that not been the case I would have directed rectification. It was not suggested by any of the parties that the intervention of third party rights would have precluded such

a direction. The third party rights that arise in this case arose as the result of the removal of the Charges from the charges register of each relevant title not the error contained in the Deed. All that said had rectification been necessary I would have postponed reaching a final conclusion as to whether that ought to be ordered until completion of the second trial (should one be necessary). For the reasons I have given however, there is no necessity to order rectification.

The Removal of the Charges from the Charges Register of Title Nos. WK286818 and WK388916

Introduction

79. During 2004, Mr Blundell approached BoS with a view to the boundary between the titles being redrawn and for the borrowing to be restructured. Arrears had accumulated and nothing came of these proposals. It is worthwhile noting that the substance of the underlying proposal involved BoS agreeing to confine its security interest to the 818 Title but expanded by the alteration of the boundary between the titles. The arrears continued to accumulate and in June 2005 a formal demand for repayment was made. This led to a complaint concerning the manner in which the bank had accounted for the proceeds of sale of another property also charged to the bank called 3 Walcote House. This dispute has continued into the present litigation but ceased to have practical importance because of a proposal made by counsel for the bank concerning how the claims that the bank maintains in these proceedings should be qualified that was acceptable to Mr Blundell. I need not say anything more about that issue in this judgment. What was proposed will be embodied in the Order that follows delivery of this judgment. Mr Blundell continued to seek the release of the charge against the 916 Title and to move the boundary down to the end of February 2007 but nothing was agreed.

80. The bank's case is that from January 2007, Mr Blundell embarked on a course of fraudulent misconduct in which he sought to obtain release of the charge over the 916 Title, using a forged letter dated 31 January 2007 created by or on the direction of Mr Blundell that purported to come from a BoS official called Ms Julie McAuliffe and thereafter seeking and ultimately obtaining the release of the Charges over each of the titles by submitting to HMLR a forged DS1. Both then and thereafter and unknown to the bank, CUL by Mr Blundell had embarked on the programme of creating new titles for the various units that had been built at the Property and entering into the long leases that I described at the outset of this judgment. In the result, the bank alleges, CUL was able to sell to the various original defendants registerable long leasehold interests financed as described at the start of this judgment free of the security to which I have concluded the bank was entitled.

81. Mr Blundell denies these allegations. He accepts that he "*doctored*" a letter that he had received from Ms McAuliffe but maintains that he then sent the doctored version to her and that she signed it and thus the document was not in truth a forgery at all. In relation to the DS1, he maintains that this document was not a forgery at all but was a document that was prepared by his solicitors and sent to an individual who he claims was an officer or agent of the bank and with whom he claims he was negotiating a settlement. He alleges that in order to raise £600,000 (the sum that he maintains the official concerned was prepared to settle BoS's claims against GDL for) his new

funder (GE Money Limited ["GE Money"]) required release of the existing fixed charges over the Property. Mr Blundell claims that the official with whom he was negotiating agreed to that course and that in consequence a DS1 was prepared by solicitors acting for Mr Blundell, who passed it to Mr Blundell who in turn sent it to the office at the bank at which he claims the official concerned was based. He maintains that the DS1 was then sent by the bank to HMLR and that the release of the Charge that followed was thus entirely legitimate.

82. BoS's allegations are very serious, involving as they do allegations of criminal misconduct against Mr Blundell. It follows that the principle identified in Re H again applies and that evidence of the clearest cogency will be required before I can conclude on the balance of probability that these allegations have been made out. This must be tempered by remembering that I have already concluded that Mr Blundell has advanced an earlier part of his case that in any event lacked any substance relying on a document that I have concluded has been proved to be a forgery that was forged by him or at his direction and thus that I cannot safely rely on his uncorroborated evidence.

The January Letter Issue

83. Ultimately this issue is not substantively relevant because although the allegedly forged letter was submitted to HMLR by Mr Blundell, HMLR did not act on it. The issue is material to credit however.

84. I have explained already what Mr Blundell was seeking to negotiate with BoS at this time. On 18 January 2007, Mr Blundell sent a fax to Ms McAuliffe who by now had become the relationship manager responsible for managing the bank's relationship with GDL, CUL and Mr Blundell. The fax was hand written. It commenced by referring to the fact that the bank had security over the two titles. This is contrary to the case Mr Blundell has advanced in these proceedings, which I have already rejected above, as regards the true understanding between the parties down to the date when the Deed was executed. This inconsistency provides a further reason for rejecting his case that the true understanding between the parties was as he alleged, for rejecting as untrue his suggestion that Mr Witherington had undertaken to discharge the charge over the 916 Title by his letter of 3 July 2003 and for concluding that letter was a forgery. The 18 January fax then asserts that the original lending "… *was based on Units 1-5 only as per valuation for Bank by Countrywide in Sept/02 (attached)* …" This assertion was untrue as well for the reasons that I have already given. The fax then continued:

> "We are suggesting
>
> 1. Agreement with yourselves to ask Land registry to redraw the boundaries of [the 916 and 818 Titles] in order all the properties 1-5 Pools Cottages fall within WK 286818 – this title to be retained by BofS
>
> 2. Title WK388916 now amended to be returned unencumbered to [CUL] with which we anticipate raising additional capital 50% of which will be used to reduce part of [GDL] indebtedness to B of S.

3. I am also arranging a new mortgage to purchase Nos 1,2 and 3 … and would thus clear remaining indebtedness to yourselves … ”

The proposed alteration to the boundary between titles is that shown in Appendix 1 to this judgment as “current boundary”.

85. Ms McAuliffe responded by a letter dated 30 January 2007. The relevant part of this letter was in these terms:

> “Dear Mr Blundell
>
> **Term Loan & Current Account Arrears**
>
> Further to your recent fax regarding the possibility of the Bank agreeing to you redrawing the boundaries of title number WK286818. I have taken advice regarding this and my colleague and myself have come to the conclusion that it would possibly be more cost effective for you to initiate the change in titles at the same time as you complete the refinance.
>
> For the Bank to even consider this proposal we would require new valuation on each of the properties by one of the Bank’s panel valuers. We would also have to enlist the services of a solicitor which will again incur fees. As you are in the process of arranging a re-mortgage it would possibly be more cost effective to re-mortgage of all the lending and change the title boundaries at this time.
>
> In your letter you have also made reference to the properties and land we hold as security. On checking your term loan offer letters it would appear we have security over Pools Cottages, Pools Lodge and Pools Retreat.
>
> …
>
> Could you please advise me how you propose to proceed.
>
> …”

86. Mr Blundell maintains that he amended the letter by setting out the text of his proposed amendment in a fax dated 6 February 2007. This necessarily involved physically copying the letter, cutting out certain parts of it, then copying the document in its altered form onto the fax sheet he allegedly then sent to Ms McAuliffe. The fax was allegedly in the following form:

> “[Manuscript]
>
> Your letter 30/1/07

> Julie as discussed – your letter totally inappropriate to show new lender(s). Have amended content as below – please re-send ASAP
>
> [Typescript]
>
> **Term Loan**
>
> Further to your recent fax regarding the possibility of the Bank agreeing to you redrawing the boundaries of title number WK286818. I have taken advice regarding this and from my colleague and myself have come to the conclusion that it would possibly be more cost effective for you to initiate the change in titles.
>
> In your letter you have also made reference to the properties and land we hold as security. On checking your term loan offer letters it would appear we have security over Pools Cottages, Pools Lodge and Pools Retreat.
>
> Could you please advise me how you proceed."

Mr Blundell has produced what he claims to be the fax transmission report which he says demonstrates that the fax sheet I am now considering was sent to a fax number 0131 658 2798.

87. Mr Blundell maintains that Ms McAuliffe re-sent the letter (without changing its date and apparently without any covering letter fax or email) back to Mr Blundell in the following form:

> "Dear Mr Blundell
>
> **Term Loan**
>
> Further to your recent fax regarding the possibility of the Bank agreeing to you redrawing the boundaries of title number WK286818. I have taken advice regarding this and from my colleague and myself have come to the conclusion that it would possibly be more cost effective for you to initiate the change in titles.
>
> In your letter you have also made reference to the properties and land we hold as security. On checking your term loan offer letters it would appear we have security over Pools Cottages, Pools Lodge and Pools Retreat.
>
> Could you please advise me how you proceed.
>
> …"

88. Ms McAuliffe has not given evidence before me. There is thus no direct evidence from her as to what happened. However, as soon as the version of the letter referred to

in the preceding paragraph was drawn to her attention (when it was sent to her by Brindley Twist Taft & James ("BTTJ") [the solicitors who by this time were acting for CUL on the instructions of Mr Blundell] apparently in the ordinary course of some conveyancing work concerning one of the units at the Property, she sent an internal memo to Mr Grassick, the official in the bank's Recoveries department who had conduct of the matter at the time, in which she said:

> "As requested please find attached a copy of my original letter and also a copy of the letter with David Blundell's solicitor faxed to me as you will see this is considerably shorter and reads totally different. … "

89. Has the Bank proved that the letter referred to at Paragraph 86 above was a forgery as it alleges? In my judgment they have. I reach that conclusion for the following reasons. First, I regard it as inherently improbable that a relationship manager would so radically change the terms of a letter previously written as a result of a request of the sort ostensibly sent to her by Mr Blundell without leaving on the file any internal notes that record a discussion or reasoning that led to the radical change of position. Secondly, I regard it as inherently improbable that a senior bank official would simply fax the letter through to Mr Blundell as he alleges without any form of covering documentation even if limited to a fax sheet explaining why it was being sent. Thirdly, I regard it as inherently improbable that a bank official who was minded to withdraw a letter previously sent to a customer (particularly one with whom the relationship was becoming strained) would simply alter the text of the letter previously sent and then re-send it to the customer without altering the date or making clear in a covering letter or fax that the previous letter was withdrawn or superseded by the new version. If that was not done there would be two letters of the same date to contradictory effect. Bank officials do not operate in that way. Fourthly, there is no logic in the methodology that Mr Blundell maintains he adopted. If he had wished to contact Ms McAuliffe in order to suggest an alternative form of letter, there is simply no rational reason why he would go to the trouble of physically cutting up a copy of the letter received then pasting the parts he wanted to keep onto a fax sheet and then (presumably) copying it again so that it could be transmitted using a fax machine. The clearly obvious way of communicating in writing would have been to write out in longhand on the fax sheet the text required. That would have been manifestly quicker and easier. Fifthly, it is inherently improbable that Ms McAuliffe would herself then embark on a cutting and pasting exercise. As is apparent from a comparison of the draft that Mr Blundell says he sent to Ms McAuliffe by fax set out in Paragraph 84 with the letter that Mr Blundell maintains she then sent to him set out in Paragraph 85 above, it is clear that not merely is the second textually identical to the first but, critically, it is physically identical as well. Thus if Mr Blundell is correct in what he says occurred it must follow that Ms McAuliffe must have received the fax from Mr Blundell, cut out the typed text from his fax and physically cut and pasted into her previous letter, then copied and then re-sent it. Bank officials do not manage their correspondence in this manner. Finally, the bank maintain that there is no record of either Mr Blundell's fax being received or the version of Ms McAuliffe's letter referred to at Paragraph 85 being sent or a copy of either on its files prior to the copy being received from BTTJ as I have described.

90. The points that I have so far made go a very long way to establishing the bank's case that (a) Mr Blundell did not send to Ms McAuliffe the fax that he claims that he sent to her and (b) Ms McAuliffe did not send the letter I refer to at Paragraph 87 above as Mr Blundell alleges. There is however one piece of evidence that I regard as decisive when considered with the other points I have so far referred to. The fax transmission sheet that Mr Blundell relies on has been examined by Dr Giles. She says of this document:

> "I note that the telephone number of the Recipient on the transmission Report is out of alignment with the rest of the line of printing both horizontally and vertically. However, there are dashes above the figures in this telephone number, displaced to the right, which are in alignment with the other printing on the line. The appearance of these dashes is consistent with them being remnants of another telephone number which has been largely obliterated by the one currently visible. This provides strong positive evidence to support the view that the Recipient telephone number on the Transmission Report … has been altered. "

In my judgment this evidence (which I accept because it has not been challenged) in combination with the other matters referred to in Paragraph 87 above establishes on the balance of probabilities that the fax dated 6 February 2007 was not sent by Mr Blundell to Ms McAuliffe as she alleges and that the letter referred to in Paragraph 86 above was not sent by Ms McAuliffe to Mr Blundell as he alleges. The remaining question is whether I can safely infer that it was Mr Blundell who fabricated the document. In my judgment I can. It is not suggested that anyone else had access to the letter other than Ms McAuliffe and Mr Blundell. If Ms McAuliffe did not prepare the letter then only Mr Blundell remains. Secondly, Mr Blundell admits to having prepared the text set out in the 6 February fax and that text is not merely textually but physically identical to the text that appears in the letter that Mr Blundell says Ms McAuliffe sent to him. Unless Ms McAuliffe physically cut and pasted the text in the alleged fax onto the letterhead of her previous letter (and for the reasons I have given I conclude she did not) then the only other person who could have done so was Mr Blundell. The only evidence there is that supports Mr Blundell's case is his own oral evidence. That cannot safely be accepted without corroboration as I have explained.

The DS1 Issue

91. Mr Blundell in the name of CUL sought to persuade HMLR to alter the boundary between the 916 and 818 Titles using the letter referred to in Paragraph 87 above which he sent to HMLR under cover of an AP1 form in which he asserted that the bank claimed security only over Pools Cottages, Pools Lodge and Pools Retreat, which he claimed were all within the 818 Title or would be once the boundary was re-drawn in the manner sought which Mr Blundell represented was agreed by all parties. In fact, and as is apparent from the original form of Ms McAuliffe's letter, the bank had agreed to no such thing. By a requisition dated 2 August 2007, HMLR rejected the application, saying that the letter was not sufficient evidence to remove the charge from the 916 Title and that a Form DS3 was required from the bank before this course could be adopted.

92. The position was becoming difficult for Mr Blundell because CUL had started to sell long leases of units at this stage located on land within the 916 Title but the long leases that were being sold could not be registered unless and until Mr Blundell had obtained a release of the charge over the 916 Title. In July 2007, BTTJ had sought consent from the bank to a long lease of 8 Pools Cottages which had otherwise all but completed. It was this application that alerted Ms McAuliffe to the existence of the letter referred to at Paragraph 85 above. In August 2007, solicitors were instructed in relation to the sale of a long leasehold interest in 7 Pools Cottage to the Sixth Defendant. At the same time the bank had been pressing for repayment and by the end of November 2007, the bank had informed Mr Blundell that the time had now come for the bank to enforce its security over the Property. Contracts were exchanged on 18 July 2008 in relation to 7 Pools Cottages but of course could not be registered because the relevant title remained charged to the bank. The issue concerning the bank's charge over the 916 Title was becoming pressing.

93. Negotiations between Mr Blundell and the bank concerning repayment continued. Ultimately it was agreed in principle in the course of negotiations between Mr Blundell and Mr Grassick and Mr Sandford on behalf of the bank that the bank would accept the sum of £1.25 million in full and final settlement of what was due providing it was paid by 30 June 2008.

94. Mr Blundell was introduced to GE Money as a possible lender of sufficient funds to enable the bank to be re-paid. There is much about the detail of these arrangements that emerges from the disclosure. Most of it is of no substantive consequence and I do not propose to address it in detail in this judgment. It was a fruitful source of cross examination material but given the conclusions I have reached so far, it is unnecessary for me to consider that material further in this judgment. In summary however, by June 2008, GE Money had offered a loan of £755,000 odd subject to satisfactory security. Mr Blundell had offered some land situated to the north of the Property but by June 2008, it was clear that GE Money were looking to charge not merely that property but the 818 Title as well. It had also become clear that GE Money was not prepared to deal with CUL and that the Property or at least the 818 Title would have to be transferred to Mr Blundell if the loan was to proceed. A meeting took place between Mr Blundell and BTTJ on 17 June 2008. His instructions as recorded in an attendance note of that date were that the 818 Title was to be security for the proposed new loan in addition to the land to the north of the Property, and that Mr Blundell had agreed with BoS that the bank's charge over the 818 Title would be released. He told his solicitors that he would arrange for a DS1 from the bank.

95. The deadline of 30 June 2008 passed without repayment to the bank being made. On 8 July, the bank gave instructions to Mr Sandford to send a letter before action to GDL and call the guarantee as against CUL. On the same day, BTTJ told Mr Blundell that a transfer of the 818 Title from CUL to Mr Blundell had been prepared but nothing could be done until the bank had discharged its charge. The difficulty about registering the long leasehold interests referred to above remained unless the charge over the 916 Title was lifted.

96. Against that background I now turn to the DS1 issue. Mr Blundell's case as to how these documents came into existence in summary is this. He maintains that he received a call without any pre-warning from an officer or agent of BoS who he

identifies as "*Mr Brian Smith*" who he maintains introduced him in the course of a phone call to a "*Mr Jim Rennick*". He says that call took place on 11 April 2008. He maintains that these individuals entered into negotiations with him for the settlement of the bank's claim against GDL and that it was ultimately agreed that the bank would settle for £600,000. He says that he conducted these negotiations at all times without informing either Mr Grassick or Mr Sandford of these discussions. He maintains that these discussions were taking place with Messrs. Smith and Rennick at a time when as I have said he had already agreed in principle to settle the claim in discussion with Mr Grassick and Mr Sandford for the sum of £1.25 million. He maintains that he was under very strict instructions from Messrs. Smith and Rennick not to reveal the existence of his discussions with them to anyone connected with the bank because the willingness of the bank to settle for such a relatively low figure was likely to cause panic amongst staff and those who acted for the bank. There is no evidence of any sort that suggests the existence of these discussions other than the oral evidence of Mr Blundell, which is entirely uncorroborated apart from some laconic entries in Mr Blundell's diaries. In so far as the diary entries support Mr Blundell's case they are entirely self serving.

97. Mr Blundell maintains that GE Money was not prepared to advance money to him to be secured against the Property unless and until the Charges had been discharged and that his ability to pay what he says had been agreed between him and Messrs. Smith and Rennick depended on being able to raise that sum from that source. He says that he explained that to Messrs. Smith and Rennick and that they agreed to provide a DS1 discharging the Charges. There is no correspondence of any sort that evidences this agreement. Even if the requirement to keep the transaction confidential from the employees of the bank and its advisers is accepted at face value, that does not lead to the conclusion that Mr Rennick would could or should not write to Mr Blundell confirming what had been agreed, or that Mr Blundell would could or should not write in such terms to Mr Rennick. It does not lead either to the conclusion that Mr Blundell could, should or would not have informed his own solicitors of the arrangement and the need to keep it confidential, not least because those solicitors had been retained to act in relation to the borrowing from GE Money.

98. There are a number of difficulties about Mr Blundell's case as I have summarised it so far. First and foremost, the bank has been unable to identify anyone employed by it at any material time called Jim or James Rennick or any possible variations to that name – see Paragraphs 10-11 of Mr Sandford's fourth affidavit filed in these proceedings. Secondly, only three individuals named Brian Smith have been identified by the bank as employed by it at any material time. Of these only one could even conceivably have been engaged in negotiations of the sort suggested by Mr Blundell. He has filed a statement that was not challenged by Mr Blundell that he has never heard of Mr Blundell or a Mr Rennick. Mr Blundell seeks to explain this away by suggesting that the individuals were agents acting for the bank but not employed by it. It is inconceivable that the bank would authorise third parties to negotiate on its behalf without being able to identify such individuals if it became necessary to do so. Thus either the bank is unwilling, or unable through what would be serious incompetence, to do so, or Mr Blundell's evidence is untrue. It is necessary to consider some other evidence before reaching a final conclusion on that point. This I do hereafter.

99. As I have said already, there were two DS1s that came into existence; the first is dated 10th July 2008 and was rejected by HMLR. It describes the "*Date of Charge"* as being 4 February 2004 and within Box 8, under the heading "*to be executed as a deed by the lender …"*, there appears the following:

> "~~Executed~~ signed as a deed by
> The Bank of Scotland
>
> FOR AND ON BEHALF OF
> THE GOVERNOR AND COMPANY
> OF THE BANK OF SCOTLAND
>
> Gill Wright [Manuscript signature]
>
> Specialist Property Finance"

100. This document is beyond dispute a forgery. The signatory had signed at least one document on behalf of the bank for GDL in the past but, critically, she left the employment of the bank in January 2008 and that although the signature looks like hers it is in fact not her signature. Dr Giles has examined the signature and has concluded that there is strong positive evidence that the signature is not that of Ms Wright. It is inconceivable in my judgment that agents authorised to negotiate the settlement on behalf of the bank of major liabilities such as those of GDL would not have the authority to sign a DS1 or have access to someone with authority to execute such documents. It is close to inconceivable that such individuals would forge the signature of a bank official on such an instrument and it is even more unlikely that they would forge the signature of a former official. There are three other points that fuel my conclusion that this document was an obvious forgery. First it wrongly describes the bank as "*the Bank of Scotland"* when by the date of the document concerned it was called "*Bank of Scotland Plc"* and the reference to the Governor and Company was wrong as well, having become an invalid form of execution as and from September 2007 following the enactment of the HBOS Reorganisation Act 2006. Thirdly, the document does not contain what at this time was the bank's standard execution clause – see Paragraph 106 below. It is inconceivable that authorised agents acting on behalf of the bank would have prepared or executed a document on its behalf containing these errors.

101. Mr Blundell's evidence as to how the DS1 came to be executed lacks any commercial sense. It is in my view inconceivable that the bank or an official or agent acting on its behalf would discharge a charge over property **before** receiving what it had been agreed was to be paid in discharge of the borrower's liability to the bank or even finally agreeing what was to be received. The reasons for this conclusion are obvious. I consider it equally implausible that a commercial lender such as GE Money would insist on such an arrangement when payments and discharges are managed in thousands of transactions every day on the basis of simultaneous payment and discharges using the mechanism of the delivery of discharges and transfers in escrow.

102. On 19 August 2008 HMLR contacted BTTJ concerning the first DS1 referred to above that had been sent to HMLR by BTTJ. The note records that HMLR official as advising that the "*… DS1 we had sent in had the incorrect date of charge in panel 4.*

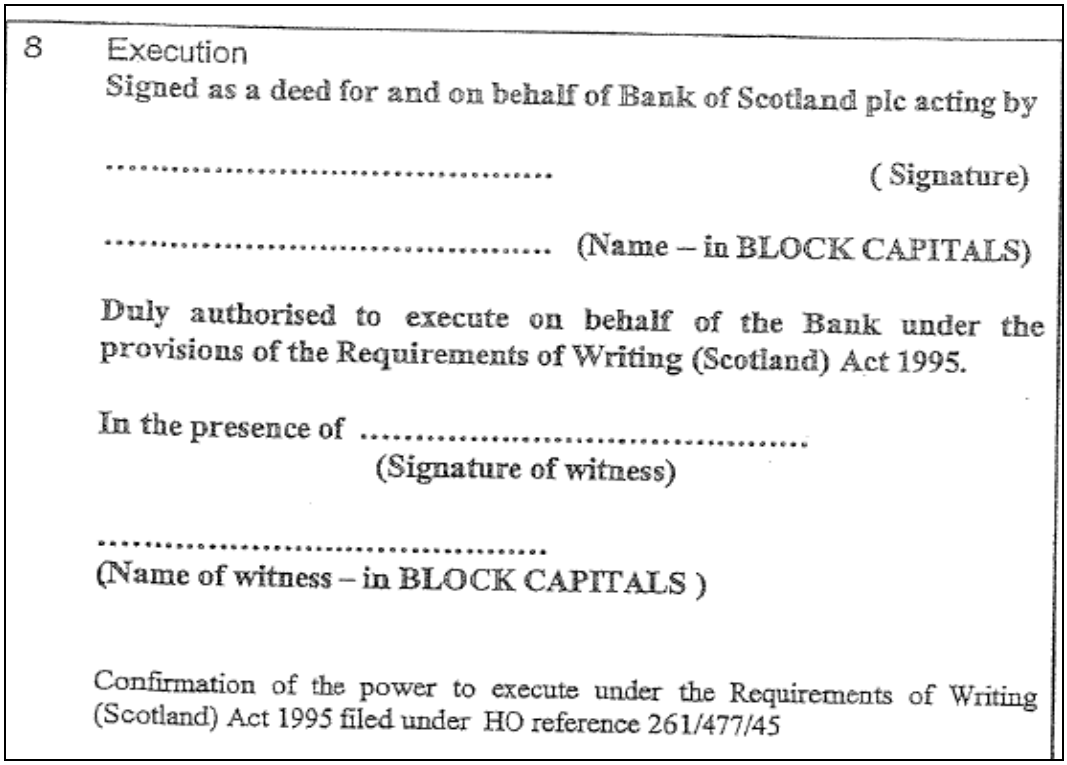
The bank had put in the date of registration rather than the date of charge and we either needed a new DS1 or a letter from the Bank of Scotland confirming the correct date for insertion in Panel 4. He thought the best option was a new DS1.". In such circumstances, it might be expected that the solicitor with conduct of the transaction would make contact with the bank and obtain either a new DS1 or the corrective letter. The note records Mr Blundell's instructions as being "*… given that he had all the negotiations with Bank of Scotland and obtained the original DS1, he would get the new one signed off by them if I could let him have an amended DS1 for him to collect"*.

103. BTTJ drew up a replacement DS1. It too referred to BoS as "Bank of Scotland" rather than "Bank of Scotland Plc". This document was not returned signed to BTTJ. Mr Blundell maintains that it was sent by him to a particular office of BoS on the instructions of Mr Rennick and then forwarded by BoS to HMLR by or pursuant to instructions given by either Mr Smith or Mr Rennick. The bank denied that to be so and further denies that the second DS1 has been executed by or on its behalf.

104. I conclude that Mr Blundell's evidence on this issue is to be rejected and that on the balance of probabilities the second DS1 was one that was completed and thus forged by Mr Blundell or by someone acting on his directions and sent to HMLR either by Mr Blundell or someone acting on his directions. I reach that conclusion for the following reasons.

105. First, as I have said I am unable to accept the evidence of Mr Blundell save where it is corroborated by a witness whose evidence I accept or a document whose authenticity I accept or is against his interest. His whole case on the issue I am now considering depends exclusively on his own evidence, which as I have said is wholly uncorroborated save by the entries in his diary, which again as I have said are entirely self serving. Secondly, Mr Blundell's case on the issue I am now considering is inherently implausible. My reasons for reaching that conclusion are set out above in detail in Paragraphs 100 and 101 above. Thirdly, the first DS1 was forged and I have concluded it was forged by Mr Blundell or in compliance with directions from him. That document was only not successful in its objective because it was rejected by HMLR because it wrongly stated the date of the Deed. If it was necessary to forge the first document then it was equally necessary to forge the second – it is not suggested by Mr Blundell that anything had changed between the rejection of the first and the submission to HMLR of the second. Fourthly, the second DS1 contained the same descriptive error that was in the first DS1 – namely it referred to BoS as "Bank of Scotland" not "Bank of Scotland Plc". It is true that this was inserted into the second DS1 by BTTJ when it was in draft form but that is not the point. BoS would have corrected it if an official authorised to do so had genuinely executed the document on its behalf. Fifthly, neither DS1 contains what Mr Sandford said in Paragraph 98 of his first affidavit was the bank's standard execution clause. The execution box is in the

following form:



8 Execution

Signed as a deed for and on behalf of Bank of Scotland plc acting by

..... (Signature)

..... (Name – in BLOCK CAPITALS)

Duly authorised to execute on behalf of the Bank under the provisions of the Requirements of Writing (Scotland) Act 1995.

In the presence of .....
(Signature of witness)

.....
(Name of witness – in BLOCK CAPITALS)

Confirmation of the power to execute under the Requirements of Writing (Scotland) Act 1995 filed under HO reference 261/477/45

Reliance on this point was expressly trailed in the bank's written opening submissions – see Paragraph 9.8.1 – and never been answered by Mr Blundell. Sixthly, someone has written after the otherwise illegible signature on the second DS1 "*(Securities Div:)*". Mr Blundell's evidence was that he had written this on the document after he had received it from BTTJ and before it was sent to the bank for execution – see Transcript 3/129/27-34. He maintained that he did so on the instructions of Mr Rennick or Mr Smith. I do not see why either would be telling the bank's customer to write anything on a document that was to be executed by the bank. Mr Blundell maintains that Mr Smith or Mr Rennick told him that the document should be sent to the "Securities Division" for signature. If that is so, and if Mr Blundell did as he was asked, then I do not see any proper basis for him writing anything on the document or for doing anything other than posting or delivering it to the place he was told to send it to together with a covering letter saying that was being sent on the instructions of either Mr Smith or Mr Rennick. It was suggested that Mr Blundell wrote the date on the document as well – see Transcript 3/130. His response was that he could not remember whether he inserted the date but he certainly had not signed the document. If his explanation for not signing the document - that there would be no point in him doing so because the document had to be sent to the bank for submission to HMLR - then similar considerations would apply to dating the document. In my judgment there is simply no proper explanation for why Mr Blundell would write "*Securities Div* " on the DS1 before it was signed and before sending it to the bank for execution. I regard this admitted insertion into the document when taken together with the other facts and matters I have so far considered as pointing strongly to the document never having been sent to the bank but signed and dated by Mr Blundell and then sent by him to HMLR.

106. Finally it is noteworthy that GE Money withdrew from the transaction after the second DS1 had purportedly been executed. It is not suggested by Mr Blundell that Messrs Smith or Rennick ever followed up on the fact that the bank's security had been released but no payment received. It is not even suggested by Mr Blundell that he took any steps to attempt to inform Messrs Smith or Rennick that GE Money had withdrawn and that he did not have any other source of finance available.

107. In my judgment the conclusions I have reached so far on the issue I am now considering is further supported by the following facts and matters. Mr Blundell says that the unexecuted DS1 was sent to the bank under cover of a letter ostensibly from him dated 19 August 2008. This letter has a number of unusual features that require explanation. First it is addressed to "*Bank of Scotland, Securities Div., Specialist Property, 8 Lochside Ave., Edinburgh …*". It is written impersonally to "*Dear Sirs*". It contains no reference and indeed no caption identifying either the property or the accounts or anything else that would help the recipient identify the purpose of the correspondence. The letter said:

> "Please find enclosed H.M.Land Registry security discharge form DS1 for completion as agreed with the bank's director Mr Smith.
>
> Please forward the executed DS1 direct to H.M. Land Registry (Gloucester) as this matter is most urgent"

As I have said there were only three employees of BoS named Brian Smith and none of them was a director. Thus if this letter had been sent to the bank, it is likely that the letter and attachment would have been returned on the basis that there was no such person employed in the relevant division and no means of identifying the transaction to which the documentation related or an internal paper trail within the bank by which attempts were made to identify the customer the transaction and the officials within the bank to whom the communication ought to be referred. There is no evidence of either. It was suggested that if the transaction was confidential Mr Blundell would not have been instructed to send a document to the bank in this fashion. Mr Blundell's only response was that he did as he was told – see Transcript Day 2/ 131/31-32.

108. No response was received to this letter and Mr Blundell claims he sent a chasing fax on 21 August 2008. This document too has a number of unusual features that require explanation. It is addressed impersonally to "Securities Div", it too contains no reference and additionally contains no reference to Mr Smith within it. It attached a copy of the 19 August letter and says:

> "Please confirm receipt of my letter 19/8/08 and current status.
>
> This matter is most urgent …"

This fax suffers from all the unusual features that I have indentified in relation to the letter of the 19 August in addition to those I have mentioned above.

109. Extraordinarily, in answer to the question "*How was [the fax] going to reach them when it does not contain either of their names"*, Mr Blundell's response was:

> "That was again – I am sorry it sounds a bit lame but I am not aware of – I presume that they would have been at that fax number or had access to that fax number and were standing by when it was sent."

That is a surprising explanation given that it had not been suggested by Mr Blundell that he had called either Mr Smith or Mr Rennick before he sent the fax or that he had any reason for supposing that they would be standing by the fax machine at the time and date when Mr Blundell chose to send the fax. As far as I can see that suggestion was first made in a response to a question from me - see Transcript Day 2/ 134/11-18 but again that makes no sense. If Mr Blundell was chasing a response from Mr Smith or Mr Rennick to a letter and draft DS1 sent a couple of days earlier, why would he not do the chasing in the course of the phone call rather than ring and say a fax was coming to them. If the bank was so desperate for cash (the rationale suggested by Mr Blundell for why Messrs Smith and Rennick were prepared to agree what it is alleged they agreed and why they were conducting secret negotiations with customers) a phone call ought to have been sufficient.

110. The fax transmission sheet for the 21 August fax has been examined by Dr Giles. Mr Blundell maintains that the documents examined by Dr Giles were copies of the original fax transmission sheets, that he delivered the originals to Dr Giles and that she has acted erroneously in failing to examine the originals. I reject that evidence as untrue. It is not corroborated. Dr Giles report suggests that very great care has been taken by her in managing what was a substantial piece of work. All the documents sent to her have been logged. There is no reference to these additional documents that Mr Blundell refers to. This point was not one that was made to Dr Giles by way of written question at any stage and as I have said Mr Blundell did not request that she attend for cross examination. In short, her point is that the copy of the letter of 19th August has black lines on it as a result of the copying process. It therefore follows that the same black lines ought to appear on the image of the letter in the transmission report dated 21 August by which a copy of the letter supposedly sent to BoS. The point Dr Giles makes is that the vertical lines are not in the same position on each image and thus the image in the transmission report is not of what Mr Blundell maintains is a copy of the letter sent to the bank on 19 August. This is unexplained other than on the basis that there was another document as alleged by Mr Blundell.

111. These unexplained and unusual features lead me to conclude that the bank has established that these letters are fabrications and that the letter and fax were never sent to the bank as alleged.

112. Mr Blundell's case is that the bank sent the second DS1 to HMLR. There is no evidence available as to who sent the document. I have already noted that it would be highly unusual for a commercial lender to send a DS1 to HMLR before the lender or its solicitors had received the money necessary to discharge the secured indebtedness. The invariable practice would be for the lender to retain a lawyer who would hold an executed DS1 in escrow pending receipt of the monies who would then send the document to the customer's solicitors or the solicitors acting for the replacing lender. Aside from this point, the correspondence from HMLR suggests that the second DS1 was sent to HMLR without a new AP1. Although Mr Blundell suggests this supports his case that the bank sent the document to HMLR I do not agree. That fact of itself is

neutral. He also suggested that it was impossible for the DS1 to be acted on without a new AP1 and suggested that was what HMLR had suggested was required when informing BTTJ that the first DS1 was being rejected. This point is without substance. I have referred earlier to the BTTJ note of 19 August 2008 that records what HMLR had in fact told them – as recorded it was that "… *we either needed a new DS1 or a letter from the Bank of Scotland confirming the correct date for insertion in Panel 4. He thought the best option was a new DS1.*". Thus it was not a new AP1 that was required but a new DS1. The letter from HMLR dated 21 January 2013 suggests that the AP1 originally sent to HMLR by BTTJ was used by HMLR in combination with the new DS1, but the position is not entirely clear. On balance of probabilities however and having regard to each and all the facts and matters I have referred to above, I conclude that it was Mr Blundell who sent the second DS1 to HMLR, not the bank. I make it clear that I reject his suggestion of a parallel negotiation between him and Mr Smith and Mr Rennick as untrue. I reject the suggestion that any such individuals existed or at any rate acted for or were employed by the bank. This was a fabrication on the part of Mr Blundell.

The Signatures On The Long Leases Purportedly On Behalf Of CUL

113. It is now common ground that CUL was struck off the BVI Register of Companies and thus that it could not have entered into any of the long leases that were purportedly executed on its behalf. The factual issue between the parties that I am required to resolve at this trial is whether (as Mr Blundell contends) the leases were signed by the nominal directors of CUL.

114. At the outset of this judgment I identified a statement from Ms Ebby-Lee Cudlipp as being one that had been served on behalf of the bank and admitted unchallenged by Mr Blundell. Ms Cudlipp is a former employee of Lincoln Trust Company (Jersey) Limited ("LTCL"), a company that was based in Jersey and whose business was the provision of offshore corporate and fiduciary services. It provided such services to CUL. Ms Cudlipp signed various documents on behalf of CUL during 2002 to 2003, in each case signing in her maiden name of Gibbons. In March 2003, Ms Cudlipp ceased any active role in LTCL when she went on maternity leave. She did not sign any documents on behalf of LTCL or its related company at any stage thereafter although she did some temporary work for LTCL in April 2008. Her relationship with LTCL formally ended in December 2008 following its take over by Helm Trust Company Limited.

115. It follows from this that if I accept her evidence then her purported signature on the following documents is not and cannot have been hers – (a) lease and allied documentation for (i) 1 Pools Cottages dated 1 August 2012, (ii) 8 Pools Cottages dated 5 July 2007, (iii) 9 Pools Cottages dated 24 August 2009, (iv) 11 Pools Cottages dated 7 May 2010, (v)12 Pools Cottages dated 1 March 2012, (vi) 13 Pools Cottages, (vii) 15 Pools Cottages dated 1 June 2012, (viii) 16 Pools Cottages dated 1 August 2012, and (ix) 17 Pools Cottage dated 20 September 2012; and (b) the transfer of the 818 Title from CUL to the Seventh Defendant.

116. In this regard, Ms Cudlipp's evidence is strongly corroborated by Dr Giles who having carried out a forensic examination of the signatures, concludes that there is very strong positive evidence that the signature on each of these documents is not

genuine. This is only one stage short of there being conclusive evidence. As I have said already, I accept Dr Giles evidence. This provides very substantial corroboration for Ms Cudlipp's evidence, which in any event I accept as true because it is not challenged. It necessarily follows that the signatures on each of these documents that purport to be that of Ms Cudlipp in each case signing in her maiden name of Gibbons are forgeries. I also accept Ms Cudlipp's evidence that she was not at any time a director of CUL although LTCL was a corporate director and she had been an authorised signatory of LTCL.

117. Dr Giles uncontested evidence is that there is very strong positive evidence that the signature of Ms Suzanne Hogetoorn (another former official employed by LTCL) on the leases and allied documentation for (a) 3 Pools Cottages, (b) 6 Pools Cottages, (c) 7 Pools Cottages, (d) 8 Pools Cottages are not genuine signatures. I find that on the balance of probabilities these too have been forged.

118. There are signatures on the various documents I am now considering that are not those of either Ms Cudlipp or Ms Hogetoorn. Whilst there is no direct evidence that they are forgeries, because the identity of the signatories cannot be discerned from the signatures, I infer that the other signatures on the leasing documentation are either forgeries or fabrications as well for the reasons that follow.

119. Mr Blundell's case in relation to these documents is that he was unaware at the time the various leases contracts and allied material were signed that CUL had been struck off the register. He was not aware that LTCL had been taken over. As far as he was concerned LTCL and its associated company continued to operate and he procured signatures on the documents that needed to be signed on behalf of CUL in the manner that he had always previously adopted. This involved making contact with a person called "Mr Davies" and later a person called "Lucy". On each occasion when a document needed to be signed he would travel to London and meet Mr Davies or, latterly, Lucy and ask them to obtain the required signatures for which (again latterly) he was asked to pay a cash fee of £100. The documents were returned to him (usually after a delay and a stay by Mr. Blundell overnight) duly signed. As far as he was concerned the returned documents had been signed on behalf of the corporate directors.

120. I reject Mr Blundell's evidence on this issue as untrue for the following reasons. First, as I have explained earlier in this judgment, I cannot safely accept his uncorroborated evidence and his evidence on the issue I am now considering is entirely uncorroborated. Secondly, the evidence as to the practice he adopted in obtaining signatures is inherently unlikely and indeed is positively implausible. If and to the extent that a signature is required on documents in relation to the affairs of an offshore company then the invariable practice is that the documents are sent to the offices of the corporate director and secretary who will then procure the necessary signatures and return the documents in ordinary course. There is absolutely no need whatsoever to adopt the sort of course Mr Blundell maintains that he adopted. The type of arrangement he describes is only necessary in order to explain away the absence of a paper trail showing the delivery to draft documents to the corporate directors and the return of the documents duly signed. Such a paper trail cannot be demonstrated because that is not what occurred and could not occur because LTCL and its associated companies had ceased to trade. Thirdly, Mr Blundell maintained

that when he made contact with Lucy, he did not ask for any form of identification or even a business card. That is inherently unbelievable given that Mr Blundell had not met this person before and was planning to entrust important corporate documentation into her care. Mr Blundell said that he had known Mr Davies for a number of years and that it was he who had told him to make contact with Lucy. That is not the point. Mr Blundell had never met Lucy before and it is inherently incredible that he would not have sought some form of identification from her before proceeding further.

121. Having regard to the whole of the evidence I conclude on the balance of probabilities that the signatures on the leasing documentation I am now considering are either forgeries or fabrication (that is signatures of people who do not exist) and that the forgeries and fabrications were carried out by Mr. Blundell or a person or persons acting on his directions.

122. I would add this before leaving this part of the case. A recurring feature throughout this part of the case and the material relevant to the DS1 issues is that in relation to critical elements of the relevant transactions Mr. Blundell took over custody of the relevant documents from his solicitors rather than leaving his solicitors to deal with the documents in the ordinary course. Thus Mr. Blundell handed the first (apparently signed) DS1 to his solicitors. No explanation is offered as to why that document could not be sent by the bank to those solicitors as would ordinarily be expected. The second DS1 was prepared in draft and handed to Mr. Blundell rather than being sent by the solicitors to the bank. Such a communication could not even arguably compromise the confidentiality requirement, which Mr. Blundell relies on as the reason for not explaining about the parallel negotiations to those representing the bank in the official negotiations. His solicitors suggested that they should deal with it but Mr. Blundell resisted that suggestion. Again his solicitors sending on the DS1 could no more violate the confidentiality requirement than did Mr. Blundell in sending on the DS1 as he claims to have done. Likewise, in relation to the leases and other related documentation that was required to be signed on behalf of CUL, there is no rational reason why that could not be dealt with by solicitors in the ordinary course sending the material to the corporate directors and asking them to be signed and returned. It was only if Mr. Blundell knew that CUL had been struck off and/or that LTCL was no longer trading and thus that the relevant signature could not be obtained that he would want to take on the onerous obligation that he alleges he took on of getting the documents signed in the way he described. The reality I conclude is that all this is consistent only with Mr. Blundell taking control of critical documents at critical stages so that he could dishonestly make progress in the manner I have described. This point is relevant both to the issue I am now considering and to the DS1 issues considered in the previous section of this judgment. It is a point that fuels the inferences that I have drawn in relation to each issue but required consideration of the other factual issues I have so far considered before it could properly be made

The Settlement Issue

123. This is the final substantive issue that I have to consider. This issue can be relatively shortly stated. In order to comply with the disclosure obligation imposed on him by the Freezing Order made against him, Mr. Blundell had to obtain and disclose certain bank statements. He applied for statements in relation to accounts held with BoS by him in the name of CUL and by GDL. It is alleged by Mr. Blundell that there was a

delay in dealing with this request. He complained about the delay. The complaint was allocated to the complaints handling team of which Mr. Marzec is and was a junior member. The team consists of 30 claims handlers supervised by two team leaders who in turn are supervised by a team manager. The complaints were allocated to Mr. Marzec to resolve. Mr. Marzec has actual authority to compromise complaints by agreeing payments to customers of up to £1300. Any greater payment requires approval by a more senior member of staff.

124. Mr. Blundell alleges that the effect of the settlement that he negotiated with Mr. Marzec was that the bank acting by Mr. Marzec agreed to settle Mr. Blundell's complaint not merely on the basis of a payment of £50 to each of Mr. Blundell and GDL (which is what Mr. Marzec believes was agreed) but that Mr. Marzec agreed also to discharge the whole of the claim (which totals in excess of £1.7 million) and waived the right of the bank to collect the various outstanding costs orders that in the aggregate total over £40,000.

125. I prefer the evidence of Mr. Marzec where it differs from that of Mr. Blundell for the following reasons. First, the internal documentation clearly shows that what Mr. Marzec intended to do was to offer a payment of £50 to each affected customer by way of redress on the assumption that the allegations made by Mr. Blundell were correct – see the relevant log concerning the complaints (numbered 94598 and 94602). It is consistent too with the letters sent by Mr. Marzec to Mr. Blundell and the standard acceptance form that accompanied each letter. The letter referred to the complaint about the conduct of the branch concerned, apologised for what had happened and then continued "*… In respect of the delay and inconvenience you've had, I would like to offer your £50. … I hope you are pleased with what I have suggested to put things right. If so, please sign and return the enclosed acceptance form …*" The Acceptance Form referred to the complaint by number and then said "*I accept the offer of £50, detailed in your letter dated 23 February, in full and final settlement of my complaint against Bank of Scotland.*".

126. Mr. Blundell altered the terms of the Acceptance Form. He admits having done so. He replaced the phrase " … *my complaint against Bank of Scotland…*" with the phrase "*… all matters pertaining Bank of Scotland and myself …*". Mr. Marzec says he did not see any reason not to sign the document as amended and did so and sent it together with a cheque back to Mr. Blundell in relation to each complaint.

127. Mr. Blundell suggests that he sent two letters to the bank at the same time as he sent the varied Acceptance Form back to the bank. The first is a handwritten letter dated 2nd March 2013. The paragraph that matters for present purposes reads:

> I will only agree to your offer of compensation on the basis that all current legal action, instigated by the bank on 6/12/12 is forthwith withdrawn and that the amount of £50 is in full and final settlement of all matters pertaining to myself.
>
> I therefore enclose two amended Acceptance letters with the new terms added and ask that if agreed, you sign date and return one letter with you cheque enclosed and retain the other for your records. …"

128. Mr. Marzec denies ever receiving this letter or a subsequent letter dated 14 March 2013, which was to similar effect – see Transcript, Day 2, Page 24. He said and I accept that the first he heard of the letters was when he was asked about them by one of Walker Morris's solicitors who act on BoS's behalf in relation to these proceedings. I reject the suggestion of Mr. Blundell that there must have been a letter attached to the amended Settlement Form. This document did not need any letter attached. It was addressed to the correct office and contained a claims reference number that allowed the claim to which the form related to be identified.

129. Mr. Marzec accepted in the course of his oral evidence that he had made contact with Mr. Sinclair following the receipt of the complaints and did so because the block on the accounts alterted him to the need to do so – see Transcript, Day 2, Page 23. Mr. Sinclair alerted Mr. Marzec to the existence of a legal dispute but not the details of it - see Transcript, Day 2, Page 23. Mr. Marzec was not told and did not ever know the substance of the dispute between the bank and Mr. Blundell and GDL.

130. Against those findings I now turn to the claim by Mr. Blundell that the whole dispute was settled as he alleges. First, I find as a fact that Mr. Marzec did not have actual authority to settle anything other than the complaint concerning the failure to supply statements as and when the bank was asked to do so. Secondly, I conclude that he did not have any ostensible authority to settle anything except that dispute. At no stage did the bank hold out Mr. Marzec as having such authority, nor can it be said that he had implied authority to settle the whole dispute by reason of his job title or description or anything else to do with his employment. I find that the two letters on which Mr. Blundell seeks to rely were not sent as he alleges but in any event were never seen or read by Mr. Marzec at any time down to the date when he signed the revised Acceptance Forms and sent the cheques to Mr. Blundell. It was entirely clear both from Mr. Marzec's statement and, more importantly, from his oral evidence that he did not consider he was doing anything other than settling the consumer complaint concerning the failure to deliver statements as requested.

131. In my judgment, the agreement constituted by the amended Acceptance Form does not on true construction have the effect for which Mr. Blundell contends. Every agreement must be construed in its factual matrix. I have found that the letters relied on by Mr. Blundell were not ever seen or read by Mr. Marzec at any time down to the date when he signed the Acceptance Form and sent the cheques for £50 to Mr. Blundell. Although the added wording is capable when viewed on its own of applying to the whole dispute, that wording must be read in the context of the document as a whole. The document still referred to a particular complaint identified by the complaint number allocated to the complaint concerning the failure to deliver statements as and when requested. In my judgment that was critical to the true construction of the Acceptance Form. Had I concluded that Mr. Marzec had received or read the letters that Mr. Blundell alleges he sent with the acceptance forms that is likely to have led to a different outcome but I have found Mr. Marzec did not receive and did not read those letters before signing the amended settlement form. In those circumstances it is simply not possible to construe the Acceptance Form as having the effect for which Mr. Blundell contends.

The Guarantee Claim Against CUL

132. The only issue here was whether a demand had been made under the Guarantee. The bank relies on a letter from BoS to CUL sent to its registered office dated 7 December 2012. Mr. Blundell did not dispute this was sent as a matter of fact. I was not addressed however on whether CUL remained struck off at this point or if it was as to what the effect of the demand would be in those circumstances. I will hear short further legal argument on this issue on the hand down of the judgment

The Claims

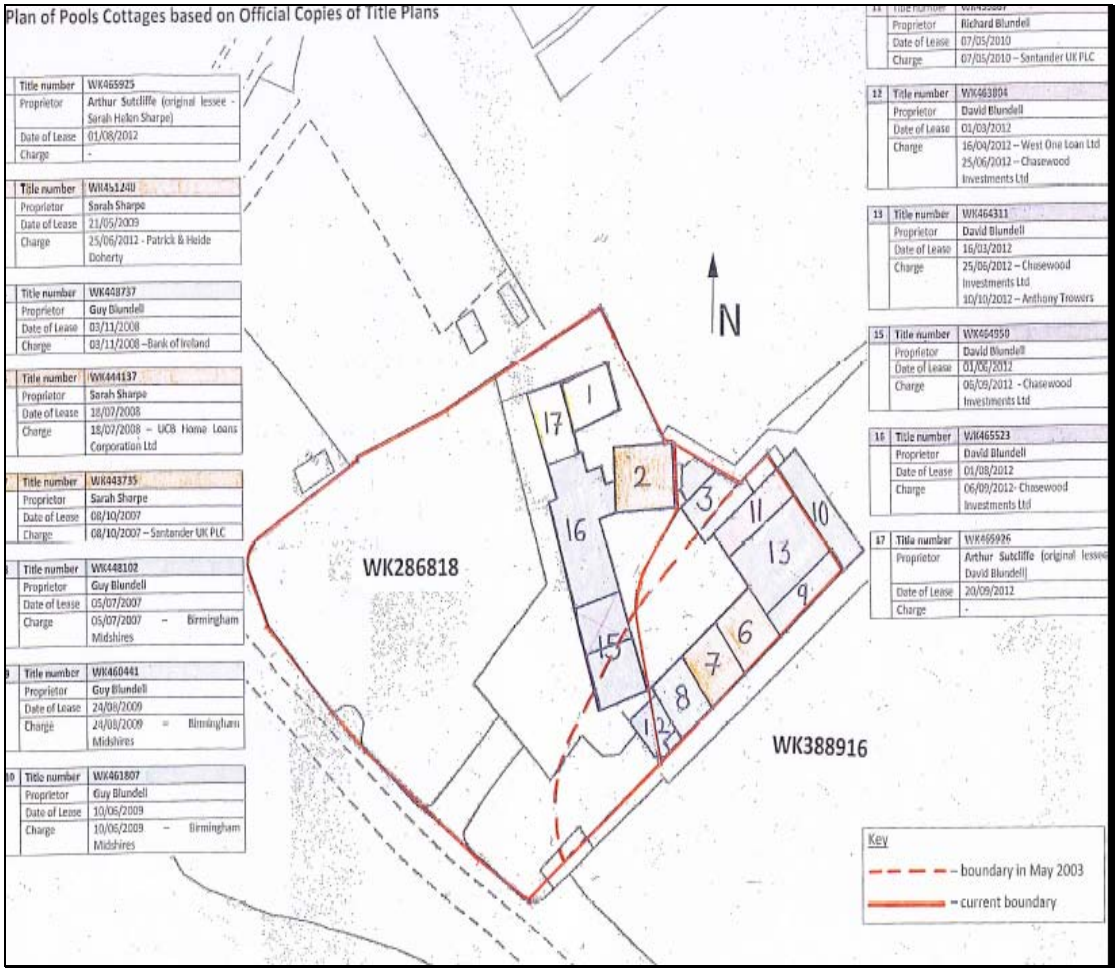
133. I will hear the parties on the terms of the Order that it is appropriate to make in the light of this judgment. Provisionally however, and subject to the point made in Paragraph 133 above, I conclude that there ought to be a declaration to the effect that the Deed was validly altered by HMLR pursuant to Rule 130(2)(a); Declarations that record that discharge of the Charges against the titles constituting the Property were procured by a forged instrument namely the second DS1 and money judgments against GDL and CUL adjusted in the manner agreed between the parties at the start of the trial in order to adjust out the effect of the receipt from the sale of Walcote House.

134. I do not consider it appropriate as yet to enter judgment against Mr. Blundell in respect of the claims made against him because as counsel for the bank accepted at the end of his closing submissions, it will not become apparent whether a loss has been suffered until the remaining claims have been resolved at the second trial.

Postscript

135. As will be apparent from the terms of this judgment I have made very serious adverse findings against Mr. Blundell and in particular that he forged a number of documents and, critically forged four documents which he then deployed in an attempt to obtain for CUL and thus ultimately himself a very substantial financial benefit. This is not a criminal trial and I emphasise that the findings I have made are ones that I have arrived at applying the civil standard. Nonetheless the evidence in relation to each is overwhelming. As I have attempted to explain in the body of this judgment conduct of this sort is at least potentially criminal being forgery and obtaining or attempting to obtain by deception. As I have also explained, forgery of this sort, and the perjury that necessarily goes with it when forged documents are relied on as supporting a party's case, hits at the foundation on which the resolution of civil disputes in England and Wales is based, not merely because it brings the process into disrepute but because it exposes the other parties to the risk of an adverse outcome that would not otherwise arise and exposes such parties also to the substantial cost of contesting the litigation and the authenticity of the forged documents in the course of that litigation. In those circumstances, I consider that it is appropriate for me to direct that a copy of this judgment be supplied to the Director of Public Prosecutions. It will of course be for the Director alone to decide what if any action should be taken.

APPENDIX 1


Plan of Pools Cottages based on Official Copies of Title Plans
Title number WK465925
Proprietor Arthur Sutcliffe (original lessee - Sarah Helen Sharpe)
Date of Lease 01/08/2012
Charge -
Title number WK451240
Proprietor Sarah Sharpe
Date of Lease 21/05/2009
Charge 25/06/2012 - Patrick & Heide Doherty
Title number WK448737
Proprietor Guy Blundell
Date of Lease 03/11/2008
Charge 03/11/2008 - Bank of Ireland
Title number WK444137
Proprietor Sarah Sharpe
Date of Lease 18/07/2008
Charge 18/07/2008 - UCB Home Loans Corporation Ltd
Title number WK443735
Proprietor Sarah Sharpe
Date of Lease 08/10/2007
Charge 08/10/2007 - Santander UK PLC
Title number WK448102
Proprietor Guy Blundell
Date of Lease 05/07/2007
Charge 05/07/2007 - Birmingham Midshires
Title number WK460441
Proprietor Guy Blundell
Date of Lease 24/08/2009
Charge 24/08/2009 - Birmingham Midshires
Title number WK461807
Proprietor Guy Blundell
Date of Lease 10/06/2009
Charge 10/06/2009 - Birmingham Midshires
Proprietor Richard Blundell
Date of Lease 07/05/2010
Charge 07/05/2010 - Santander UK PLC
12 Title number WK463804
Proprietor David Blundell
Date of Lease 01/03/2012
Charge 16/04/2012 - West One Loan Ltd
25/06/2012 - Chasewood Investments Ltd
13 Title number WK464311
Proprietor David Blundell
Date of Lease 16/01/2012
Charge 25/06/2012 - Chasewood Investments Ltd
10/10/2012 - Anthony Trowers
15 Title number WK464950
Proprietor David Blundell
Date of Lease 01/06/2012
Charge 06/09/2012 - Chasewood Investments Ltd
16 Title number WK465523
Proprietor David Blundell
Date of Lease 01/08/2012
Charge 06/09/2012- Chasewood Investments Ltd
17 Title number WK465926
Proprietor Arthur Sutcliffe (original lessee David Blundell)
Date of Lease 20/09/2012
Charge -
N
WK286818
WK388916
1
2
3
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9
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11
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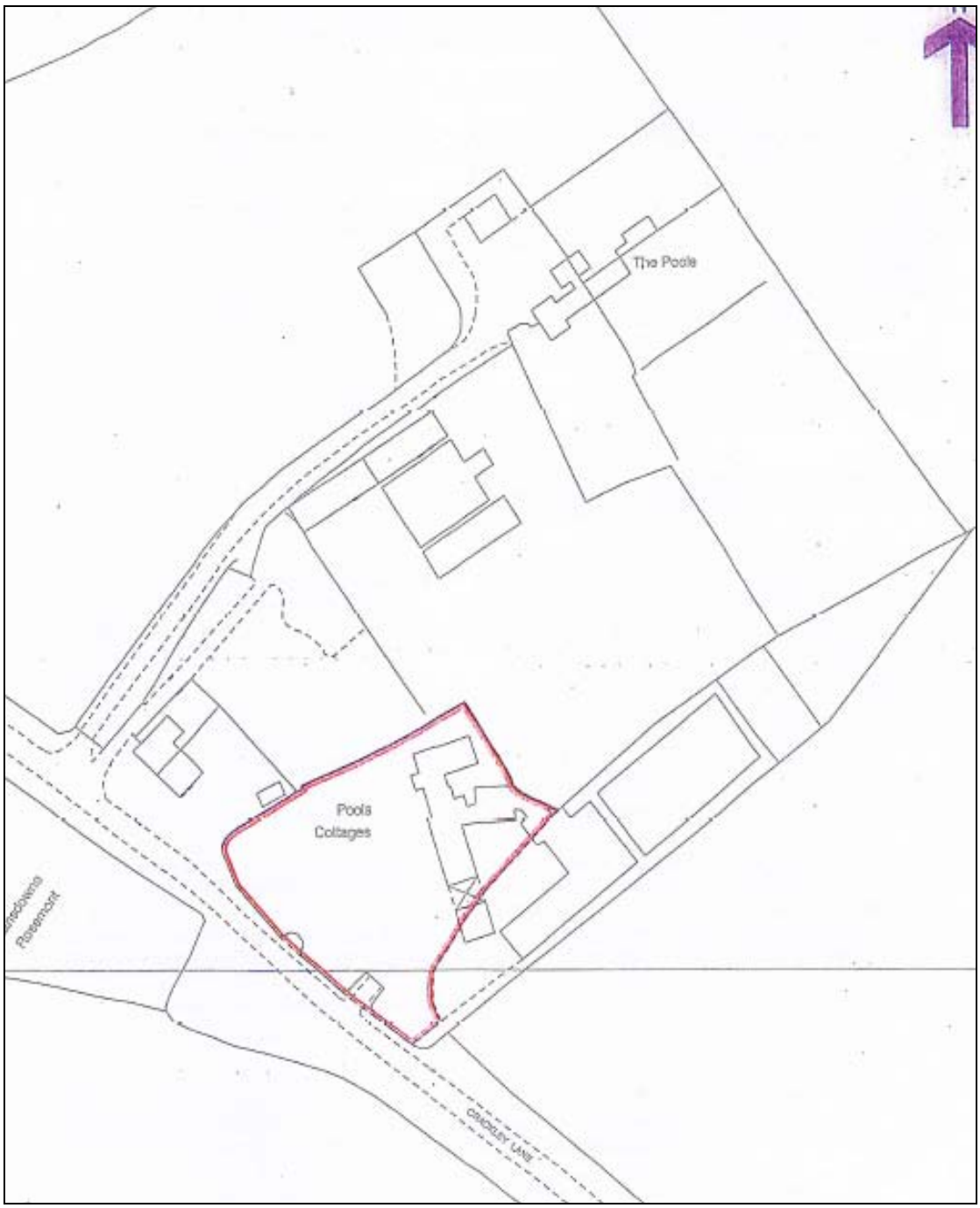
15
16
17
Key
boundary in May 2003
current boundary

APPENDIX 2



APPENDIX 3