Neutral Citation Number: [2010] EWHC 2991 (Ch)

Case No: CH 32, 75, 76, 87, 88, 93, 95, 119, 133, and 144 of 2009

IN THE HIGH COURT OF JUSTICE
CHANCERY DIVISION
NEWCASTLE-UPON-TYNE DISTRICT REGISTRY

IN THE MATTER OF THE NORTH EAST PROPERTY BUYERS LITIGATION

The Court House
Oxford Row
Leeds LS1 3BG

Date: 19th November 2010

Before:

His Honour Judge Behrens sitting as a Judge of the High Court in Leeds

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Between:

Various Mortgagors (as set out in Appendix 1)	**Claimants**
- and -	
(1) Various Mortgagees	
(2) Various Occupiers (as set out in Appendix 1)	**Defendants**

Clifford Payton, James Shirley, Nicole Sandells, Daniel Gatty (instructed as set out in Appendix 1) for the **Claimants**
Jonathan Small QC, James Stark and Phillip Barber (instructed as set out in Appendix1) for the **Defendants**

Hearing dates: 19, 20 October 2010

Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

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BEFORE HIS HONOUR JUDGE BEHRENS SITTING AS A JUDGE OF THE HIGH COURT

Judge Behrens:

1 Introduction

1. In this case the Court is asked to determine three preliminary issues in 9 test cases. In each case the Claimant is a mortgagee seeking possession of mortgaged residential property pursuant to the terms of its security. In each case the mortgagor is or is assumed to be a nominee for North East Property Buyers ("NEPB"). In each case the nominee is a Defendant to the relevant proceedings but has taken no part in them. It is not in dispute that there are substantial arrears under the mortgages and that the mortgagor Defendants have no defence to the claims. The mortgagors are not, however, in possession of the properties. They are in fact occupied by the former registered proprietors[1] of the property. The occupiers have been joined as Defendants and the dispute between the parties is as to the priority between the rights of the mortgagees and the assumed rights of the occupiers.

2. In each case the occupiers as registered proprietors have sold their properties to nominees of NEPB. In most (but not all) of the cases the price paid under the contract was or was assessed as the market value but the occupiers have paid back to NEPB a significant part of the completion monies ("the lump sum payment"). In every case the occupiers allege that promises were made to them by NEPB or their agents as to their right to occupy the properties. The precise nature of the promises varies from case to case. In all cases the occupiers contend that they were offered a tenancy of their property. In some cases the tenancies were to be at what was assessed as the market rent; in some cases the rent was to be below the market rent and in one case the occupation was to be rent free. Differing representations were also made as to the length of the tenancies that were to be granted to the occupiers. In many cases it was that the occupiers could stay at their property for as long as they liked provided they complied with the terms of their tenancy.

3. In many of the cases NEPB offered to repay to the occupiers part of the lump sum payment if they remained in occupation and paid the rent for a period of 10 years. The amount to be repaid was less if the occupiers were paying less than the market rent for the property. In one case (Wood) where no rent was to be payable for the life of the occupier, the price paid was significantly less than the market value, and there was to be no money paid back by NEPB.

4. In each case the nominee purchaser[2] applied for a loan from the mortgagees. The application form disclosed that the property was being purchased on a "buy to let" basis and that the tenancies granted would be Assured Shorthold Tenancies (AST) of 6 months duration. The applications were successful and secured loans were made to the nominees of NEPB. It is the mortgagees' case that the conveyancing transactions were unexceptional.

5. In each case exchange of contracts between the occupiers and the nominee of NEPB and completion of the contracts by the execution of the Transfers of the properties and the execution of the Mortgage by the purchaser all took place on the same day

6. Subsequent to completion NEPB did purport to grant ASTs to the occupiers. The period for which the AST was granted varies from case to case from 6 months in one case to 10

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[1] In two of the cases only one of the former registered proprietors is in occupation but nothing turns on this for the purpose of the preliminary issues.

[2] In fact a slightly different procedure was adopted in cases where less than the market value was paid by NEPB. In those cases the purchaser appears to have entered into a subsale with another nominee of NEPB at the market value. That nominee applied for the loan to the mortgagees. Furthermore the transfer from the occupiers was to that (second) nominee. It is not suggested that anything turns on this.

years in two cases. There are a number of 2 year leases. In one case the AST purports to be for the life of the occupier. There are arguments as to the validity of these documents but those arguments are not the subject of the preliminary issues.

7. The cases before me are, as I have indicated, test cases. I am told that there are something like 100 cases in all where mortgagees have commenced possession proceedings against occupiers who have sold their homes to NEPB under a sale and lease back scheme. In addition there are a substantial number of other cases where mortgagees are awaiting the outcome of these proceedings.

2 The Preliminary Issues

8. By Order dated 2nd June 2010 I ordered a determination of the following preliminary issues:

1. With reference to the section 29 of the Land Registration Act 2002 ("the 2002 Act") are any of the interests alleged by the Defendants capable of being interests affecting the estates immediately before and/or at the time of the disposition, namely the transfer and/or charge of the property in question, sufficient to be an overriding interest under paragraph 1 and/or 2 of Schedule 3 of the 2002 Act. For the avoidance of doubt this encompasses (but is not limited to) arguments arising out of Abbey National v Cann [1991] AC 56 ("Cann"), City of London Building Society v Flegg [1988] AC 54 ("Flegg"), the Law of Property (Miscellaneous Provisions) Act 1989 and section 63 of the Law of Property Act 1925
2. Can any of the tenancy agreements alleged by the Defendants have obtained priority over the Claimants' charges under section 29(4) of the 2002 Act if (a) the Claimants did not have the benefit of a priority search at the relevant time or (b) if the Claimants did have the benefit of such a search.
3. Is it possible for the Claimants' priority to be adversely affected by notice of such promises as were made and the circumstances of the transaction by virtue of their agent's knowledge:
   a) If passed on, or
   b) If not passed on to the Claimant mortgagee.

9. Those issues were agreed by Counsel at the Case Management Conference on that day in the hope that the resolution would significantly shorten the time necessary to determine all of the 100 or so cases that have been issued.

10. At the hearing before me the majority of the argument was devoted to the first issue. Mr Small QC sought to argue that the occupiers' interests were overriding interests with priority over the interests of the mortgagees. He made his submissions on two fronts. First he submitted that the interests arose at the time of the contracts which necessarily must have been exchanged before completion. He drew an analogy with an unpaid vendor's lien. Consequently the interests existed immediately before completion. As the occupiers were in actual occupation the interests were overriding interests which thus had priority over the interests of the mortgagees.

11. Second he sought to apply the decision in Cann in the manner suggested by Judge Worster in Redstone v Welch & Jackson [2009] EG 98. He submitted that following Cann and the later decision of the Court of Appeal in Whale v Viasystems [2002] EWCA Civ 480 ("Whale") the Court should look at the reality of the situation. The reality of this situation is that there was here a sale and leaseback to the occupiers. The leaseback was created as a

result of the promises of NEPB. In those circumstances NEPB's nominee never had more than a title to the property subject to the occupiers' equitable rights and that is all that was charged to the mortgagees. He accepted that Judge Worster was sitting in the Birmingham County Court and that the decision in Redstone is not binding on me. It was however a carefully considered decision after full argument by experienced Counsel and he invited me to follow it. He pointed out that it had been approved by Judge Purle QC in Delaney v Chen [2010] EWHC 6 (Ch) ("Chen").

12. All four Counsel representing the mortgagees made detailed written submissions on the first issue. The main oral submissions were presented by Miss Sandells on behalf of MEX. However Mr Payton on behalf of RML, Mr Shirley on behalf of SPML and Mr Gatty on behalf of TMB all made oral submissions on various aspects of the issue.

13. Counsel for the mortgagees submitted that Mr Small QC's submissions that the interests arose at the time of the contract could be answered in a number of ways. First it was not accepted that NEPB had any interest in the land sufficient to create a proprietary estoppel prior to completion. The analogy with an unpaid vendor's lien is a false one. Such a lien is sui generis and not comparable to the rights suggested by the occupiers in this case. Second they do not accept that there is the necessary time interval between contract and completion. The reality is that contract and completion were all part and parcel of the same transaction. They rely on the judgment of Aldous LJ in Nationwide v Ahmed [1995] 70 P & C R 381 ("Ahmed"). Third, they rely on section 63 of the Law of Property Act 1925 the "implied all estates clause". They contend that by virtue of this section the whole of the estate passed on Transfer notwithstanding the equitable interests alleged. Finally in cases where there is more than one vendor they rely on the overreaching provisions of section 2 of the Law of Property Act 1925.

14. They contend that Judge Worster's decision in Redstone is, with respect, both unorthodox and wrong. It goes beyond the decisions in both Cann and Whale and is inconsistent with principle. It is also inconsistent with the decision in Cann itself, the decision of the Court of Appeal in Ahmed and the decision of John Randall QC in Hardy v Fowle [2007] EWHC 2423 (Ch) ("Fowle"). Whilst it is true that Judge Purle QC expressed approval of Redstone in Chen, Chen was not a case where priorities were in issue at all. In all the circumstances they invite me to reject Judge Worster's decision and to hold that the mortgagees have priority.

15. Far less time was devoted to the second of the preliminary issues. It is in any event of far less significance than the first issue. It only comes into play where NEPB has granted to the occupiers a lease of less than 7 years prior to the date when the charge of the mortgagees is registered. Mr Small QC contended that in such a case the effect of section 29(4) when read with section 23 and section 24 of the 2002 Act is that the interest of the lessee has priority over that of the mortgagee. He also submits, albeit very tentatively and without much enthusiasm, that the position is no different even if the mortgagees have carried out a priority search prior to completion and make the application for registration within the priority period allowed by the search. This is because the protection afforded by section 72 of the 2002 does not, as a matter of construction apply to a deemed registration under section 29(4).

16. Mr Gatty sought to answer these submissions by pointing out that the effect of Mr Small QC's submissions would be to create an anomaly which cannot have been intended by Parliament. He submitted that the solution to the problem lay in the construction of section 23 of the 2002 Act. In effect he submitted that whilst a person entitled to be registered had the power to exercise the owner's powers pending registration, the exercise of such powers would only give rise to an equitable interest pending registration. Prior to registration he was

only an owner in equity and thus could not create a legal interest. He also submitted that section 72 should in any event be construed to afford protection to a mortgagee acting within the priority period of an Official search.

17. Almost no time at all was spent on the third issue. In his skeleton argument and in his oral submissions Mr Small QC accepted that in registered conveyancing priorities are governed by the provisions of the 2002 Act and that, save as provided by the Act, the question of knowledge is irrelevant. Priority may be obtained by a notice on the register (which does not apply in these cases) or by the establishment of an overriding interest in accordance with the Act. Mr Shirley endorsed these submissions by reference to a passage from Lord Wilberforce's opinion in Williams & Glyn's Bank v Boland [1981] AC 487, 584 A-D.

18. Before dealing with these submissions it is right that I should acknowledge with thanks the very considerable assistance I have received from all Counsel in this matter. The issues in these cases are by no means straightforward. The cases are important because the occupiers are potentially liable to lose their homes. All of the skeleton arguments were of the highest quality and the oral submissions were concise and clear so that it was possible to complete the oral argument in two days.

3 Additional facts

19. In the introduction I have summarised the facts in a generic fashion and avoided making reference to the facts of the individual cases. This was because the parties were anxious that I should, so far as possible, deal with the preliminary issues as points of principle. Accordingly for the purpose of the preliminary issues they were prepared to assume that the promises alleged by the occupiers were made and gave rise to some form of equitable interest and to assume that the ASTs produced took effect as between NEPB and the occupiers as valid leases. They have reserved their position in respect of any future hearings.

20. In order to add some flesh to the generic statements in the introduction I have, in Appendix 2 of this judgment set out some of the salient facts in the nine cases before the Court. These demonstrate the purchase price, the loan, the lump sum payment, the amount to be paid back, the representations allegedly made and the documents executed.

21. In the course of his submissions Mr Payton invited me to look in a little more detail at the Coates case (Ch 75/09) so that he could demonstrate that these were normal mortgage transactions. Thus he took me through a standard mortgage application from a Mr David Old. The application indicated that the purchase was "buy to let" and that the property would be let on 6 month AST. On 5th January 2007 there was a mortgage offer of £95,750 from RML based on a purchase price of £115,000. The Mortgage offer contained a term that the property must be let on an AST with a 6 month break clause. On 10 the January 2007 requisitions on title were answered on behalf of the vendor. Those answers implied that vacant possession would be given by the vendors on completion[3]. On 10th January 2007 solicitors acting for RML signed a clear certificate of title.

22. On 19th January 2007 RML transferred £95,750 to its solicitors. On the same day its solicitors transferred the purchase price of £115,000 to the solicitors for the vendor. The completion statement of the vendor's solicitors shows that out of those moneys all but £41,029 was used to discharge prior mortgages. Out of the £41,029 £38,000 was paid to NEPB and £3,029 paid to the vendors.

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[3] This is true in 8 of the 9 cases before me.

23. The whole transaction was completed on 19th January 2007. On that day contracts were exchanged, the vendor executed a transfer in favour of Mr Old and Mr Old executed the mortgage deed in favour of RML. The Agreement for Sale is in standard form. It provides for completion on the same day. It provides for a Full Title Guarantee. There is nothing in the contract that suggests that there will be any lease in favour of the vendors or that vacant possession will not be given on completion. There is nothing in the TR1 executed by the vendor which in any way limits the interest that is transferred to Mr Old.

24. Both the occupiers and the mortgagees assert that they are the victims of a mortgage fraud. The mortgagees assert that representations in the mortgage application form were untrue; the occupiers assert that the whole scheme was a fraud on a vulnerable section of society.

25. In his skeleton argument Mr Small QC made a number of points about the NEPB scheme

1. In paragraph 3 he pointed out that it was aimed at those who were financially embarrassed and proposed a quick purchase and leaseback of their property enabling them to retain occupation in the long term.
2. In paragraph 18 he referred to the fact that equity release schemes are now common. He points out that many property owners (such as all of the occupiers in these cases) are of modest means and that equity release schemes then operated in an unregulated market.

4 Issue 1

4.1 The relevant Statutory Provisions

26. The starting point is the statutory provisions within the Land Registration Act 2002 regarding priorities, which, so far as material, are as follows:

> ***28 Basic rule***
> *(1) Except as provided by sections 29 and 30, the priority of an interest affecting a registered estate or charge is not affected by a disposition of the estate or charge.*
> *(2) It makes no difference for the purposes of this section whether the interest or disposition is registered.*
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> ***29 Effect of registered dispositions: estates***
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> *(1) If a registrable disposition of a registered estate is made for valuable consideration, completion of the disposition by registration has the effect of postponing to the interest under the disposition any interest affecting the estate immediately before the disposition whose priority is not protected at the time of registration.*
> *(2) For the purposes of subsection (1), the priority of an interest is protected—*
> *(a) in any case, if the interest—*
> *(i) is a registered charge or the subject of a notice in the register,*
> *(ii) falls within any of the paragraphs of Schedule 3, or*
> *(iii) appears from the register to be excepted from the effect of registration, and*
> *(b) in the case of a disposition of a leasehold estate, if the burden of the interest is incident to the estate.*
> *(3) Subsection (2)(a)(ii) does not apply to an interest which has been the subject of a notice in the register at any time since the coming into force of this section.*
> *(4) Where the grant of a leasehold estate in land out of a registered estate does not involve a registrable disposition, this section has effect as if—*
> *(a) the grant involved such a disposition, and*

(b) the disposition were registered at the time of the grant.

Section 116 :
"It is hereby declared for the avoidance of doubt that, in relation to registered land, each of the following—
(a) an equity by estoppel, and
(b) a mere equity,
has effect from the time the equity arises as an interest capable of binding successors in title (subject to the rules about the effect of dispositions on priority)."

Section 132(3) *In this Act—*

(b) references to an interest affecting an estate or charge are to an adverse right affecting the title to the estate or charge

Sch. 3:

Leasehold estates in land

1 *A leasehold estate in land granted for a term not exceeding seven years from the date of the grant, except for—*
(a) a lease the grant of which falls within section 4(1)(d), (e) or (f);
(b) a lease the grant of which constitutes a registrable disposition.

Interests of persons in actual occupation

2 *An interest belonging at the time of the disposition to a person in actual occupation, so far as relating to land of which he is in actual occupation, except for—*
(b) an interest of a person of whom inquiry was made before the disposition and who failed to disclose the right when he could reasonably have been expected to do so;
(c)……
(d) a leasehold estate in land granted to take effect in possession after the end of the period of three months beginning with the date of the grant and which has not taken effect in possession at the time of the disposition.

4.2 Preliminary Comments

27. Before considering the authorities to which I was referred during the course of the hearing it is worth making a number of uncontroversial points:

1. Under section 27 of the 2002 Act registrable dispositions include transfers and legal charges. In each of the cases the transfers and the charges are dispositions made for valuable consideration and have been duly registered.
2. The effect of section 29(1) is to protect only those interests listed in subparagraph (2) which affected the estate immediately before the disposition. In this case the only relevant interest are those within section 29(2)(a)(ii) that is to say those that fall within Schedule 3
3. The occupiers contend that they are within paragraph 2 of Schedule 3. In particular they were in actual occupation and had an interest in the land at the time of the disposition to the nominee of NEPB. The interest that they claim is the equitable right to tenancies in accordance with the promises made to them.

4.3 The authorities

28. As will be apparent from the summary of the submissions in section 2 above I was referred to a number of authorities during the course of the hearing.

Cann

29. The first defendant[4] in the action, Mr Cann, purchased a house with the aid of a mortgage from a building society. He had applied for the mortgage advance on the footing that the house was for his own occupation, whereas in truth it was to be occupied by his mother and her husband-to-be (whom she subsequently married). Subsequently, Mr Cann defaulted on the mortgage repayments and the building society brought proceedings for possession against Mr Cann, his mother and her husband. Mr Cann took no part in the proceedings, but his mother resisted the claim for possession on the basis that (a) she had an equitable interest in the house arising by reason of proprietary estoppel, and (b) that since, by chance, she was in actual occupation of the house at the time when completion took place, she had an overriding interest under section 70(1)(g) of the Land Registration Act 1925, with the result that her equitable interest took priority over the interest of the building society as chargee. This defence was founded on the proposition that since the charge to the building society was executed after the transfer of the title to the house to Mr Cann, there was a moment in time between the execution of the two deeds during which the legal title to the house vested in Mr Cann free from any charge. The consequence of that, so the argument ran, was that the estoppel was "fed" when the transfer of the (at that point unencumbered) title to Mr Cann was executed, so that by the time the charge came to be executed the mother had an equitable interest in the house which, by virtue of the fact that she was in actual occupation of the house, constituted an overriding interest which took priority over the building society's charge.

30. As explained in paragraph 29 of Jonathan Parker LJ's judgment in Whale, the House of Lords rejected the "moment in time" argument. It held that where a purchaser relied on a bank or building society loan for the completion of his purchase, the transactions of acquiring the legal estate and granting the charge were one indivisible transaction, at least where (as in Cann) there had been a prior agreement to charge the legal estate when obtained; that in substance Mr Cann had never acquired anything more than a equity of redemption in the house, subject to the charge; and that there was no moment in time at which it could be said that the legal estate was vested in Mr Cann free from the charge so that the estoppel relied on by the mother was "fed" so as to become binding on the chargee and take priority over its interest.

31. I was referred to passages in the judgment of Lord Oliver at 92F. Lord Oliver [who had to choose between inconsistent decisions in the Court of Appeal] said:

> *The reality is that, in the vast majority of cases, the acquisition of the legal estate and the charge are not precisely simultaneous but indissolubly bound together. The acquisition of the legal estate is entirely dependent upon the provision of funds which will have been provided before the conveyance can take effect and which are provided only against an agreement that the estate will be charges to secure them. Indeed, in many, if not most, cases of building society mortgages, there will have been, as there was in this case, a formal offer and acceptance of an advance which will ripen into a specifically enforceable agreement immediately the funds are advanced which will normally be a day or more before completion. In many, if not most, cases, the charge itself will have been executed before the execution, let alone the exchange, of the conveyance or transfer of the property. This is given particular point in the cases of registered land where the vesting of the estate is made to depend upon registration, for it may well be that the transfer and the charge will be lodged for registration on different days so that the charge, when registered, may actually take effect from a date prior in time to the date from which the registration of the transfer takes effect: see section*

[4] This summary of the facts is taken from paragraph 27 of the judgment of Jonathan Parker LJ in Whale.

27(3) of the Act of 1925 and the Land Registration Rules 1925, rule 83(2). Indeed, under rule 81 of the Rules of 1925, the registrar is entitled to register the charge even before registration of the transfer to the chargor if he is satisfied that both are entitled to be registered. The reality is that the purchaser of land who relies upon a building society or bank loan for completion of his purchase in fact never acquires anything but an equity of redemption, for the land is, from the very inception, charged with the amount of the loan without which it could never have been transferred at all and it was never intended that it should be otherwise. The 'scintilla temporis' is no more than a legal artifice and, for my part, I would adopt the reasoning of the Court of Appeal in In re Connolly Brothers Ltd (No 2) [1912] Ch 25 and of Harman J in Coventry Permanent Economic Building Society v Jones [1951] 1 All ER 901 and hold that Piskor's case was wrongly decided. It follows, in my judgment, that Mrs Cann can derive no assistance from this line of argument."

32. I was also referred to a passage in the judgment of Lord Jauncey (at 101F– 102C) which is also cited by Jonathan Parker LJ in Whale and at 102G – 103A where he said:

In the present case George Cann borrowed money from the society in order to complete the purchase of 7, Hillview and in return granted to them a mortgage. The mortgage was executed by George Cann prior to 13 August 1984 when the purchase was completed. It follows that as a matter of reality George Cann was never vested in the unencumbered leasehold and was therefore never in a position to grant to Mrs. Cann an interest in 7, Hillview which prevailed over that of the society. The interests that Mrs. Cann took in 7, Hillview could only be carved out of George Cann's equity of redemption. In reaching this conclusion it is unnecessary to consider whether or not Mrs. Cann was aware that George Cann would require to borrow money in order to finance the purchase of 7, Hillview.

Ahmed

33. The First Defendant agreed to purchase a business from the Second Defendant for £160,000. £80,000 was raised by way of a secured loan from the Claimant and was paid to the Second Defendant. The balance of £80,000 was left outstanding and secured by way of a second charge against the property. The arrangements for the sale and purchase of the business and the property were embodied in an agreement dated June 1, 1990. The agreement expressly contemplated that the Plaintiffs' legal charge would rank in priority over the Second Defendant's charge on the property. Clause 6 of the agreement provided that the Second Defendant was to retain the use of the property until the whole of the principal money and interest due under the agreement had been paid. The transfer of the property and the mortgage deed were also dated June 1, 1990. The First Defendant failed to pay the Second Defendant the sums due under the agreement, and also fell into arrears on the mortgage repayments. In proceedings for possession the Second Defendant sought to defend on the grounds that the Plaintiffs were not entitled to possession of the property, on the basis of the Second Defendant's overriding interest in the property taking priority over the first legal charge. It was argued that the Second Defendant had an unpaid vendor's lien which had priority over the first charge.

34. The submission failed for a number of reasons. It was held that there was in fact no vendor's lien because the Second Defendant had received all he bargained for when he received the second charge. It was also held that the rights under clause 6 were a contractual licence which could not give rise to an overriding interest. Only proprietary interests can be overriding. Aldous LJ went on to hold that the submission also failed because of the decision in Cann. He said this

The submission also fails because the charges, the agreement and the transfer were all signed on the same day namely June 1. Thus, his right to occupation under clause 6 did not accrue prior to the creation of the respondent's charge. In Abbey National Building Society v. Cann

the House of Lords decided that the relevant date for determining the existence of an overriding interest was the date of registration of the estate affected. In this case that date was August 3, 1990. They went on to hold that to acquire an overriding interest against a chargee by virtue of occupation, the person claiming the interest had to have been in actual occupation at the time of the creation of the legal estate. In this case that was June 1, 1990. They concluded that when a purchaser relied on a building society, such as the respondent, to enable completion, the transactions involved were one indivisible transaction and, therefore, there was no scintilla temporis during which the right to occupation vested free of charge.

The same reasoning is applicable to the facts of this case. On June 1, the contract, the transfer and the legal charges were completed. They formed an indivisible transaction and there was no scintilla temporis during which any right to occupation under clause 6 of the agreement vested in the appellant which was free of the respondent's charge. Thus, the right given by clause 6 did not provide an overriding interest under section 70(1)(g) of the 1925 Act, even if the right was a proprietary right.

Mr Collins submitted that that conclusion ignored the reality of the position and that at all times the appellant was in occupation. However that submission ignores the reality of the legal position. The appellant gave up his right to occupy as an unpaid vendor by signing the agreement and thereby obtained permission to occupy, which permission did not take effect prior to the respondent's charge.

35. Thus it can be seen that the decision in Cann applies so as to exclude contractual proprietary rights where the contract, conveyance and charge took place on the same day. It also applies to a vendor who reserved himself what was assumed to be a proprietary right of occupation in the contract for sale.

Whale

36. The facts in Whale were complex. For present purposes it is sufficient to summarise them. In 1998 the Company entered into an option agreement for the company to take a (head) lease of an area of development land in Tyneside. In 2000 (before the option was exercised) the Company entered into a facility letter for the provision of finance. It also executed a debenture in favour of D which secured "all present and future leasehold property wherever situated". In March 2001 a number of relevant dealings took place. These included the exercise of the option and an agreement by the Company to grant an underlease to a third party, G for the full term less 3 days. G borrowed funds from a lender, L, to pay the premium on the underlease. Those funds were also used to fund the acquisition of the head lease

37. On completion all of the head lease, the underlease and the charge in favour of G were executed. In the proceedings the issue to be determined was whether the rights of underlessees, G, were or were not subject to the rights of the debenture holders, D. It was held by both Mr Michael Briggs QC (as he then was) and the Court of Appeal that G had priority. The crucial part of the judgment is paragraphs 71 to 73 of the judgment of Jonathan Parker LJ:

71. In the instant case the court is faced with a sequence of dealings relating to the Property. At the start of the sequence, the Property is vested in the Agency for a freehold estate free of relevant encumbrances. At the end of the sequence, the freehold title is subject to a registrable Headlease in favour of the Company for a term of 125 years, which is in turn subject to a registrable Underlease in favour of Grantax expiring three days before the expiry of the Headlease. In determining whether the Debenture takes priority over the Underlease, the question (as it seems to me) is whether in reality the Company ever acquired anything more than the three-day reversion on the Underlease.

> *72. In my judgment, in the light of the decision of the House of Lords in Cann it must now be taken as settled law that, in the context of an issue as to priorities as between equitable interests, the court will have regard to the substance, rather than the form, of the transaction or transactions which give rise to the competing interests; and in particular that conveyancing technicalities must give way to considerations of commercial and practical reality. I agree with the judge that this approach is not limited to cases involving the purchase of a property coupled with the grant of a mortgage or charge to secure repayment of the funds which were required to enable completion of the purchase to take place. In my judgment it falls to be adopted generally, in every case where an issue arises as to priority as between equitable interests. The case of a purchase of property coupled with the grant of a security is likely to be the paradigm case where the Cann principle applies, but, like the judge, I can see no reason in logic or principle why its application should be limited to such cases. That said, the result of applying the Cann principle will inevitably depend on the facts of each particular case.*
>
> *73. In my judgment the substance and reality of the sequence of dealings in the instant case is that the Company acquired no more, in terms of property interest, than the nominal three-day reversion on the Underlease. It seems to me that it would be wholly unreal, in the context of the Priority Issue, to regard the Company as being the owner of an unencumbered 125-year term on the execution of the Headlease, in circumstances where in commercial terms the exercise of the option and the obligation to grant the Underlease to Grantax were directly connected, where completion of the grant of the Headlease and the grant of the Underlease took place together, and where the purchase price for the Headlease was satisfied out of the moneys paid by Grantax for the Underlease. To adopt the words of Sir Herbert Cozens-Hardy MR in Connolly (which I quoted earlier), we should in my judgment be shutting our eyes to the real transaction if we were to hold that an unencumbered 125-year term was at any point in time vested in the Company so that it became subject to the Debenture.*

38. It is to be noted that in paragraph 72 of the judgment Jonathan Parker LJ expressly holds that the Cann approach is not limited to cases involving the purchase of property coupled with the grant of a mortgage but falls to be applied more generally whenever an issue arises as to priority between equitable interests. Those words were relied on by both Judge Worster in Redstone and by Mr Small QC in this case.

Fowle

39. The facts in Fowle were complicated. It was a possession action by mortgagees of residential property. The Defendants sought to defend on the ground that they were entitled to occupy pursuant to a 30 year lease which had priority over the charge. Thus there was an issue over priorities.

40. The property, Trelan, had been owned by Mrs Fowle's father and was occupied by her grandparents. On the death of her father Mrs Fowle sought to purchase Trelan together with other properties from the residuary estate with the assistance of borrowing from the Bank. The arrangement was structured through a company – Bramridge Developments Ltd. Contracts were exchanged on 13th May 1988. It was a term of the contract that on completion a lease would be granted to Mrs Fowle's grandparents for a term of 30 years determinable on death at no rent. Completion took place on 9th June 1988. Three Deeds were executed – the Conveyance, the Charge in favour of the Bank, and the Lease in favour of the grandparents. The Defendants sought to rely on the lease to defeat the possession action. Mrs Fowle's defence failed on a number of grounds one of which relied on the decision in Cann. The Cann argument is contained in paragraphs 99 – 104 of the judgment of Mr Randall QC. In paragraphs 99 – 101 he sets out the submissions of Mr Cawson QC (for the Bank). Those submissions are similar to the submissions of the mortgagees in this case:

He submitted that, given that the Bank advanced the purchase monies to enable the purchase to take place, Bramridge only acquired an equity of redemption, and did so when and at that time as the legal charge bit. Only thereafter, Mr Cawson submitted, was Bramridge in a position to grant any lease, and thus the Lease must have been granted subject to the (prior) legal charge. Further, he pointed out, the Conveyance made no reference to the Lease, or to Trelan being purchased subject thereto, as was consistent with the earlier part of his submission. Consequently, the Bank's legal charge imposed by the Mortgage was free of the Lease even if, which it "emphatically denied", the Bank was aware thereof at the time that the legal charge was taken.

41. Mr Randall QC then cited the passage from Lord Oliver's opinion in Cann to which I have referred. In paragraph 102 he set out and rejected the argument of Mr Macdonald QC on behalf of Mrs Fowle:

Mr Macdonald submitted that, far from being against him, Lord Oliver's speech should be developed and applied in his favour in respect of this four-party situation (vendor, purchaser/mortgagor/lessor, mortgagee bank, and lessees). He submitted that here there were three, not two, precisely simultaneous transactions indissolubly bound together. The difficulty to which that submission, without something more, gives rise is that once there is such a third transaction introduced, i.e. once two different dispositions (or grants) by the purchaser are introduced into the picture, the question necessarily arises as to the priority between the interests thereby created/the grantees. There cannot in law be a 'dead heat' between two mutually inconsistent and competing interests over a legal estate in land. There must be a priority as between them. It is, in my judgment, significant that the whole transaction was not 'entirely dependent' on the grant of the Lease, as it was on the Bank advancing the purchase monies. As for the second part of Mr O'Connor's recollection expressed in the first sentence of paragraph 8 of his witness statement, I do not accept it – the question of whether the purchase of the portfolio from Max's estate by Bramridge would have gone ahead if the bank had been told of the proposed grant of a 30 year lease with priority over its charge and refused to proceed simply never arose. The acquisition of the legal estate, on which the whole transaction was founded, was necessarily dependent on the latter (the conditional advance) but not the former (the Lease). Therefore, without 'something more', Mr Macdonald's submission would fail.

42. The importance of this decision is that there was an express contractual term for the lease to be granted in favour of the grandparents yet the Cann principle applied so as to give the Bank priority over the lease. If Mr Small QC's submissions are correct it means that a vendor with an equitable right to a leaseback from the purchaser is in a different position to a third party to whom the purchaser is contractually bound to grant a lease or a third party to whom the purchaser is equitably bound to grant some right.

Redstone

43. Although there are some differences between the facts in Redstone and the facts in the nine cases with which I am concerned they are sufficiently similar to be indistinguishable. Redstone was an action by a mortgagee for possession against occupiers who had been registered proprietors of the property. Being in financial difficulty they had entered into a sale and lease arrangement with a third party who charged the property to the lender.

44. Judge Worster found that the vendor occupiers were entitled as against the third party to :

1. an agreement to grant an Assured Tenancy
2. a proprietary estoppel in respect of representations made as to the right of occupation subject to paying the rent

3. a right to set aside the sale for fraud.

45. As in the cases before me, he was faced with an argument that as the vendors were in actual occupation the first two of these rights took effect as overriding interests with priority over the charge. The lender sought to rely on the decision in Cann. As already noted Judge Worster rejected the argument. In paragraphs 55 and 56 of the judgment he cited passages from the speeches of Lord Oliver and Lord Jauncey in Cann. In paragraph 57 to 59 he summarised the facts in Whale and then set out paragraphs 72 and 73 from the judgment of Jonathan Parker LJ. In paragraph 64 he set out the submissions of Counsel for the lenders. He expressed his conclusions in paragraphs 65 to 68

> *65. Mr Rosenthal's first point limits the application of the principle to a party who provides money. In most cases the provision of money will be the key element in the reality and substance of the transaction. Looking at this transaction from the purchaser/mortgagee's end, that is indeed the case. But the argument put by Mr Walker looks at the other end of the transaction. It is that the agreement to sell and purchase as between Miss Welch and Mr Jackson is indissolubly bound up with agreement to grant the AT. The one is dependent on the other. The fact that (in addition) the indebtedness to Mr Jackson's original mortgagees is to be paid off is one part of the picture. But the agreement to grant the AT cannot be separated out. I prefer Mr Walker's submissions on this point.*
>
> *66. As to the second point whilst I see the potential for a distinction between a reason for a transaction and the transaction itself, here the reality is that it is all one. There is an agreement for a secure tenancy which is indissolubly bound up with the transaction.*
>
> *67. It is the substance and reality of the transaction which the Court has to focus upon. On the facts I find that the agreement to grant the AT was an indissoluble part of the Jackson's agreement to sell and Miss Welch's agreement to buy. It was never intended that Miss Welch should have more than a title encumbered by the Jackson's right to a secure tenancy. That lay at the heart of what was agreed. To ignore that would be shutting my eyes to the real transaction. I accept that there is a significant distinction between the factual situation the Court was dealing with in Cann and Whale and the facts of this case, for there the reality was that the provision of the money secured by the mortgage fed the whole series of transactions. But Whale applies the principle more generally. On the peculiar facts of this case, the agreement by which the Jacksons were to stay in their house as tenants is directly connected to Miss Welch's purchase of it. It is unreal to separate it out.*
>
> *68. I therefore find that Miss Welch never had more than a title to the property subject to the Jacksons' equitable rights. Those rights have priority over Beacons' equitable rights under the mortgage. They arise prior to registration and are protected by the Jacksons' actual occupation. The sequence is that on registration those rights are not postponed to the mortgage because they are protected by the operation of section 29(2)(a)(ii) and Schedule 3 paragraph 2 of the LRA.*

46. Not surprisingly Mr Small QC relies on this passage in its entirety and submits it has direct application to the test cases. He submits that NEPB never had more than a title to the property subject to the occupiers' equitable rights. Those rights have priority over the mortgagees' rights under their respective mortgages. [Mr Small QC accepts that the use of the phrase "prior to registration" in the third sentence of paragraph 68 of the judgment is wrong because the critical time is completion of the charge. However he attributes this to a slip of the pen].

47. Counsel for the mortgagees accept that if this decision is correct they will fail on the first issue. However for a variety of reasons they submit that the decision is wrong. Mr Shirley, for example, submits that it is inconsistent with the decision in Cann. In his submission Cann is binding authority for the proposition that that the mortgagees' interest

bites simultaneously with NEPB's acquisition and therefore necessarily before prior to any other interests created by NEPB. He also makes the point that in one case (Scott) the vendors and the occupiers were not identical. This is a further reason why the sale and leaseback cannot be regarded as one indissoluble whole. Miss Sandells submits that Judge Worster placed too heavy reliance on the question of whether it was an indissoluble transaction. She submits he applied the case back to front. She submits that he was wrong to look at the transaction from the vendor's point of view. To do so is to confuse the vendor's rights as seller with the entirely separate rights as a person claiming an interest from the purchaser. In addition she submits that Redstone is inconsistent with Ahmed and Whale. It undermines the decision in Cann in a significant number of cases. In so far as Judge Worster thought that the facts of his case were "peculiar", it is apparent from these proceedings that there are a large number of such cases. Mr Payton and Mr Gatty's submission were to much the same effect. Mr Gatty specifically drew my attention to the error in paragraph 68 of the judgment.

Chen

48. Chen was an application under section 423 of the Insolvency Act 1986 in respect of a sale and leaseback transaction. The sellers had sold to the Buyer their house on terms that they would be granted a lease for a term of 21years. The sale was not a sale with vacant possession. The price that was paid by the buyer was less that the open market value of the property and at first instance the District Judge had held that the sale was indeed at an undervalue within the meaning of section 423. The appeal was allowed by Judge Purle QC who upheld the submission that the sale was not a sale of the unencumbered freehold but of a freehold subject to the tenancy. He was not satisfied on that basis that the transaction was at an undervalue.

49. In paragraphs 10 and 11 of the judgment Judge Purle QC referred to both Cann and Redstone. In paragraph 10 he refers to the decision in Cann making the point that the transfer and the tenancy were indissolubly bound up. In paragraph 11 he referred to Judge Worster's decision in Redstone. He said that he found the reasoning compelling on the point and he agreed with it.

50. Mr Small QC suggested that it was a decision of co-ordinate jurisdiction and I should only disagree with it if I was convinced it was wrong. Counsel for the mortgagees made the point that the question at issue was whether the arrangement was an undervalue within the meaning of section 423 and that the question of priorities was not in issue.

4.4 Discussion

Completion

51. It is convenient to deal with the completion argument first. I have already set out the rival submissions on this issue and shall not repeat them. I have considerable sympathy for the occupiers in each of these cases and take into account all that Mr Small QC has said about the vulnerable nature of many of them and the exploitation of equity release schemes. I have, however, come to the conclusion that the arguments of the mortgagees are to be preferred and that the mortgagees' rights under their charges have priority over any equitable rights that the occupiers may have acquired as against NEPB as a result of the representations that may have been made by NEPB. It follows that I disagree with the views of Judge Worster and would decline to follow the decision in Redstone. It is not wholly clear from the report in Chen whether Judge Purle's approval of Redstone relates to the decision on priorities rather than to the nature of the transaction itself. If it does I respectfully disagree with it.

52. My reasons, which have largely been foreshadowed in the discussion on the authorities, may be summarised:

1. It is plain from his decision that Judge Worster recognised that his decision went beyond the decision in both Cann and Whale. I agree with Miss Sandells that Judge Worster put too heavy a reliance on whether it was an indissoluble transaction. As Mr Randall QC pointed out in paragraph 110 of Fowle once two different dispositions (or grants) by the purchaser are introduced into the picture, the question necessarily arises as to the priority between the interests thereby created. There cannot in law be a 'dead heat' between two mutually inconsistent and competing interests over a legal estate in land. There must be a priority as between them. Whilst it is true, as Judge Worster pointed out, that the vendors' assumed equitable right to a lease back is bound up with the sale of their properties to NEPB, the sale is equally bound up with the charge in favour of the mortgagees which funded the transaction.
2. The solution in Cann and the other cases that follow it is that mortgagee gets priority for reasons already set out. Mr Small QC in his submissions suggested that in a case of sale and lease back there was "something more" to borrow Mr Randall's phrase which affected the position. I cannot accept that submission. In particular, I agree with Miss Sandells that that is to confuse the vendor's rights as vendor with the quite separate rights of a person seeking an interest from the purchaser.
3. The cases show that a person claiming an equitable interest cannot normally get priority. Thus Mrs Cann who claimed an equitable interest against George Cann failed to establish such an interest; similarly Mrs Fowle who claimed under a lease pursuant to a contractual provision and the vendor in Ahmed. There is, in my view, no logical reason why a vendor with an equitable right to occupation against a purchaser should be in any different position from any other person with an equitable right. Indeed the decision in Ahmed (which does not appear to have been cited to Judge Worster) does not suggest that the vendor is in any special position. In that case the claim to priority by a vendor was rejected on conventional Cann grounds.
4. I accordingly agree with the submission that the decision in Redstone is inconsistent with that of Cann, Ahmed, and Fowle. I also think, contrary to the submission of Mr Small QC, that the effect of a contrary decision would add significantly to the obligations on the mortgagees in investigating title to have to make specific inquiries of the vendors. Whilst it is often the case that the mortgagee instructs the same solicitors as the mortgagor it does not always do so. In such a case it might not even know who the vendor is.

Contract

53. Mr Small QC recognised that his argument based on contract was a novel argument and was not one that had been raised in the decided cases. In my view it fails for at least three of the reasons argued by Counsel for the mortgagees. In each of the cases before me contracts were exchanged on the same day as completion. In my view the decision in Ahmed is authority for the proposition that in such a case there is no "moment in time" between contract and completion to enable an interest to arise. Mr Small QC sought to distinguish Ahmed on its facts. He made the point that there was in that case a second charge. However the observations of Aldous LJ were being specifically directed to the Cann argument in relation to the claim by the vendor under clause 6 of the contract assumed (for that purpose) to give rise to a proprietary right. In my view the decision in Ahmed is authority binding on me on the point.

54. I also consider that Miss Sandells was correct to submit that prior to completion the occupiers' equitable rights were at best personal and not proprietary. At that stage (prior to completion) the vendors were in possession and entitled to remain in possession by virtue of their ownership of their properties. NEPB had no right to possession prior to completion and could not therefore grant a proprietary right to possession. As the rights were personal rights they could not give rise to overriding interests. They became proprietary rights as against NEPB on completion. I do not find the supposed analogy with the unpaid vendor's lien compelling.

55. Similarly I agree with the submission that under section 63 of the Law of Property Act 1925 the Transfers (TR1) executed by the vendors would have transferred any interest that they might have had in their property. Section 63 provides:

> *63.—(1) Every conveyance is effectual to pass all the estate, right, title, interest, claim, and demand which the conveying parties respectively have, in, to, or on the property conveyed, or expressed or intended so to be, or which they respectively have power to convey in, to, or on the same.*
>
> *(2) This section applies only if and as far as a contrary intention is not expressed in the conveyance, and has effect subject to the terms of the conveyance and to the provisions therein contained.*

56. As Mr Payton pointed out there is nothing in the contracts or the TR1s to limit the estates transferred. Both refer simply to transferring with full title guarantee.

57. Mr Small QC seeks to avoid section 63 by arguing that NEPB would be using the statute as an instrument of fraud and referred me to some observations of Russell LJ in Hodgson v Marks [1971] Ch 892, 933G. I cannot accept that submission. As Mr Gatty pointed out a fresh proprietary estoppel would arise on completion so that there would be no question of NEPB avoiding the equitable interests. The effect of section 63 is simply that the occupiers cannot rely on any pre-completion equitable interest.

58. Mr Small QC also submitted that the words "in the conveyance" in subsection (2) should be construed widely so as to include any oral terms that have been agreed between the parties. I cannot accept that submission either. In my view the words "expressed in the conveyance" mean what they say. They refer to the actual words written in the conveyance.

59. I prefer to express no view on the question of whether the interests of the vendors are overreached under section 2 of the Law of Property Act 1925. It is plain from the cases referred to by Mr Small QC that there is considerable debate in the authorities as to whether equitable interests such as those claimed here are or are not overreached. It is not necessary for me to express a view on it and I prefer to leave it to a case where it is decisive.

5 The second issue

60. This issue is of limited application in any of the cases that are before me. In so far as there are non-registrable leases they are of relatively short duration and the mortgagees could now gain possession without undue difficulty. Furthermore in almost all the cases the registration of the mortgagees' charge was made within the period of a priority period. In those circumstances I propose to deal with the matter relatively briefly.

61. The occupiers' argument depends on the combined effect of sections 23, 24, 27 and 29(4) of the 2002 Act. Under section 27(2)(b)(i) leases for not more than 7 years are not registrable dispositions. Under sections 23 and 24 persons entitled to be registered as owners are entitled to deal with the property as if they are the registered owner. As such they are entitled to grant leases. Thus it is argued that under section 29(4) the grant of such a lease has

effect as if the disposition were registered at the time of the grant. If that is a date before the date of the registration of the mortgage it thereby gains priority over the mortgage.

62. In Redstone Judge Worster accepted that argument although he described it as curious. Counsel for the mortgagees submit that he was wrong to do so. They point out that it gives rise to wholly unintended consequences and that there is no reason to construe the Act in the way accepted by Judge Worster. They point out that prior to registration the purchaser only has an equitable estate. Thus any lease granted prior to registration can only take effect in equity. There is only the grant of a legal lease when the purchaser acquires a legal estate on registration. Thus it is at that date when section 29 has effect in respect of leases granted by the purchaser. An alternative argument (which amounts to much the same) is that section 29(4) applies to the grant of a leasehold interest out of a registered estate. Prior to the registration of the purchaser the grant of the leasehold interest is not made out of a registered estate and thus is not within section 29(4). I agree with both these submissions. In my view the unintended consequences which would result from the contrary interpretation do not arise. I accordingly respectfully disagree with Judge Worster on this issue as well.

63. In the light of my view of section 29(4) the question of priority searches does not arise. If contrary to my view section 29(4) has the effect suggested by Judge Worster I would have held that section 72 of the 2002 Act should be construed so as to give priority to any mortgagee who made an application for registration within the priority period granted by an official search. Any other construction would lead to results which can only be regarded as bizarre and wholly unintended by Parliament.

6 The Third Issue

64. In the light of the concession made by Mr Small QC in the course of his submissions I do not need to say anything more about the third issue. Suffice it to say I agree with Mr Shirley and would follow the observations of Lord Wilberforce in Boland

> *The exception just mentioned consists of "overriding interests" listed in section 70. As to these, all registered land is stated to be deemed to be subject to such of them as may be subsisting in reference to the land, unless the contrary is expressed on the register. The land is so subject regardless of notice actual or constructive. In my opinion therefore, the law as to notice as it may affect purchasers of unregistered land, whether contained in decided cases, or in a statute (the Conveyancing Act 1882, section 3, Law of Property Act, section 199) has no application even by analogy to registered land. Whether a particular right is an overriding interest, and whether it affects a purchaser, is to be decided upon the terms of section 70, and other relevant provisions of the Land Registration Act 1925, and upon nothing else.*

65. Save that it is now necessary to substitute the 2002 Act for the references to the 1925 Act those observations apply with as much force under the 2002 Act as they did under the 1925 Act.

7 Conclusion

66. In the result I would answer the preliminary issues as follows:

1. No
2. No
3. No

67. Preliminary issues 1 and 2 are both plainly arguable. My views are different from the considered views of Judge Worster. In those circumstances I would be provisionally minded to grant permission to appeal on either or both.

Appendix 1 – Parties and Representation

Case No	Claimant Mortgagee	Solicitor for Mortgagee	Counsel For Mortgagee	Defendant Mortgagor	Defendant Occupier	Solicitor for Occupier	Counsel for Occupier	Property
75/09	Rooftop Mortgages Ltd ("RML")	Glenisters	Clifford Payton	David Old	(1) John Coates (2) Pamela Coates	David Gray	Jonathan Small QC James Stark	32 Garden Avenue Langley Park Durham DH7 9LJ
76/09	RML	Glenisters	Clifford Payton	Shaun Douglass	Derek Wood	David Gray	Jonathan Small QC James Stark	8 Don Crescent Great Lumley DH3 4JY
133/09	Southern Pacific Mortgage Ltd ("SPML")	Glenisters	James Shirley	Amee Wilkinson	Rosemary Scott	David Gray	Jonathan Small QC James Stark	23 Goathland Ave Longbenton Tyne & Wear NE12 8HA
93/09	RML	Glenisters	Clifford Payton	David Old	(1) Michael Rutter (2) Dorothy Rutter	David Gray	Jonathan Small QC James Stark	13 Ransom Crescent South Shields NE34 9BL
144/09	SPML	Glenisters	James Shirley	Brenda Old	(1) Lee Taylor (2) Alison Taylor	David Gray	Jonathan Small QC James Stark	16 Parkway, Guidepost, Choppington NE62 5EA
87/09	SPML	Glenisters	James Shirley	Thomas Thompson	(1) Leslie Tweddell (2) Anne Tweddell	David Gray	Jonathan Small QC James Stark	122 Birchwood Avenue North Gosforth Newcastle NE13 6QB
119/09	Mortgage Express ("MEX")	Cobbetts LLP	Nicole Sandells	Julie O'Shaughnessy	(1) John Proud (2) Carole Proud	Clark Willis	Jonathan Small QC Phillip Barber	86 Stratton Street Spennymoor County Durham DL16 7TR
95/09	The Mortgage Business PLC ("TMB")	Eversheds	Daniel Gatty	Julie O'Shaughnessy	Denise Cook	Clark Willis	Jonathan Small QC Phillip Barber	175 Hesleden Avenue Acklam Middlesbrough TS5 8RX
88/09	RML	Glenisters	Clifford Payton	Tracey Thompson	(1) Thomas Wallace (2)Margaret Wallace	Clark Willis	Jonathan Small QC Phillip Barber	19 Rosedale Grove Redcar Cleveland TS10 5HR

Appendix 2

Summary of relevant facts

Case No	Claimant Mortgagee	Defendant Occupier	Sale Price	Amount Paid to NEPB	Amount Payable after 10 yrs	Amount borrowed	Date of Completion Contract Mortgage	Date of Registration	Promises allegedly made	Actual Documents
75/09	RML	(1) John Coates (2) Pamela Coates	£115,000	£38,000	£19,800	£96,772	19/1/2007	31/1/2007	Mr and Mrs Coates could live at the dwellinghouse for the rest of their lives and that their son Kevin would have the right to succeed to the tenancy if anything happened to them	AST for 2 years from 19/1/2007 at a rent of £350 per month AST for 1 yr from 19/7/2009
76/09	RML	Derek Wood	£55,000 subsale		Nil	£85,895	13/12/2006	8/1/2007	Mr Wood would be offered a rent free lease for life	AST – the rent is free for the life of the tenant Signed only by Mr Wood – undated
133/09	SPML	Rosemary Scott	£135,000	£40,000	£15,000	£116,501	12/8/2005	16/9/2005	Mrs Scott could stay at the property indefinitely. Also that if anything happened to her during the tenancy it would be transferred to the son and he would receive the lump sum	2 year AST dated 16/8/2005 at £250 per month Promissory Note
93/09	RML	(1) Michael Rutter (2) Dorothy Rutter	£115,000	£31,000	£30,000	£98,772.50	11/7/2006	28/9/2006	Offered a 2 year AST but that they could stay there as long as they liked	9/7/2006 – 2 year AST at £455 per month
144/09	SPML	(1) Lee Taylor (2) Alison Taylor	£64,000 subsale			£81,489	12/12/2005	22/12/2005	Would be granted an AST for 10 years but could stay there as long as they liked	10 yr AST rent £350 p.m Unsigned /dated 2005 Promissory Note unsigned
87/09	SPML	(1) Leslie Tweddell (2) Anne Tweddell	£235,000	£64,500	£35,000	£200,524	15/12/2005	5/1/2006	A tenancy for 10 years renewable by option for as long as they liked	Undated 10 year lease from 2005 at a rent of £800 per month

										Also 6 month AST from 1/10/2008 at a rent of £800 p.m Promissory Note
119/09	MEX	(1) John Proud (2) Carole Proud	£75,000	£22,500	£9,000	£63,750	28/9/2007	16/10/2007	They could remain there as long as they liked as tenants	AST – 2 years from 28/9/2007 at a rent of £250 p.m Promissory Note
95/09	TMB"	Denise Cook	£155,000	£46,000	?	£131,750	11/5/2007	24/5/2007	Rent back for 10 years with an option to buy back at the end of the term	2 yr AST from 11/5/2007 at a rent of £350 per month
88/09	RML	(1) Thomas Wallace (2)Margaret Wallace	£77,000 £105,000		£32,000	£90,187	18/1/2007	6/2/2007	They could remain in the property as long as they required as long as the rent was paid	19/1/2007 2 yr AST Promissory Note relating to payment of 32k in 10 years.