HENDERSON CHAMBERS

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Consumer Finance

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A Warning: all that glisters is not gold

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In *Stamp & Ors v Capital Home Loans Ltd & Ors* [2024] EWHC 1092 (KB) Master Gidden has provided guidance on the proper approach to the growing problem of the potential conduct of litigation by unauthorised persons who, online and on social media, encourage unrepresented litigants to bring claims based on wholly misguided arguments, resulting in litigants having their claims struck out and incurring a liability in costs.

William Hibbert and Thomas Samuels were instructed for the three defendants.

BACKGROUND

1. During the course of 2023-24 the King's Bench Division of the High Court received over 200 claims by purported litigants-in-person. All of the claimants sought substantial financial remedies following alleged securitisation of mortgages held by them with the various defendants.

2. All of the claims advanced substantially similar but hopeless arguments and, in many instances, in so doing deployed identical language and documentation. In particular, many of the claims placed central reliance upon a Parliamentary Memorandum of evidence from a Ms Carmel Butler to a Treasury Select Committee in 2009 that put forward an incorrect analysis

of the effect of mortgage securitisation, and referred to a raft of other antiquated and irrelevant statutory material from Magna Carta onwards.

3. These unusual features gave the Court cause for concern in relation to the potential waste of Court resources in dealing with the claims, as well as the possibility of unknown party or parties conducting the claims and the risk to litigants encouraged to bring such claims. Accordingly, a small number of the claims having been struck out of the Court's own motion and the remainder were stayed pending further order.

4. The three claims which form the subject of the decision were listed by the Court of its own volition in order to hear from the parties on these issues and to determine a way forward. In the first, *Stamp*, the defendant mortgagee had applied to strike out or for summary judgment on the claim. In the second, *Whitworth*, the claimant had applied to set aside or vary the Court's earlier order striking out the claim of its own volition. In the third case, *Le Clere*, the claimant had applied to set aside or vary the Court's earlier order staying the claim, and the defendant invited the Court to strike it out.

THE CLAIMS

5. The basis and scope of each of the claims was far from obvious. At their core, however, each apparently alleged that the defendant mortgagee had transferred its interest in the claimant's mortgage to a Special Purpose Vehicle ("SPV") but had not registered the transfer with HM Land Registry and, in so doing, had not only unlawfully concealed the transaction from the claimant but caused the contractual relationship between the parties to cease. The claimants relied on s.33 of the Land Registration Act 1925 (long since replaced by equivalent provisions in the Land Registration Act 2002) and/or s.136 of the Law of Property Act 1925 as giving rise to a duty on the

mortgagee to register a transfer and give notice of it to the mortgagor. The claimants claimed to be entitled to substantial damages for unjust enrichment and/or unidentified 'mis-selling'.

6. These undisclosed "*legal manoeuvres*" (as they were styled in each of the claims) were also alleged to be a violation of each claimant's fundamental constitutional rights by reference to materials including Magna Carta, the Petition of Right 1628, Habeas Corpus Act 1679, the Bill of Rights 1689, the Parliament Acts 1911 and 1949, the European Communities Act 1972 and the Human Rights Act 1998.

7. In its judgment, the Court noted that claims on such bases were fundamentally misconceived. They were incoherent and/or failed to disclose any legally recognisable cause of action. Even insofar as a core complaint about securitisation could be distilled from the statements of case, it was hopeless in law in light of the clear statutory scheme in place pursuant to the Land Registration Act 2002 and the decisions of the Court of Appeal in ***Paragon Finance plc v Pender*** [2005] 1 WLR 3412 and ***Promontoria (Oak) Ltd v Emanuel*** [2022] 1 WLR 2004, whereby a transfer of a charge takes effect as a transfer of the mortgagee's equitable interest only unless the transfer is registered and until registration no transfer of the legal interest is effected.

8. Accordingly, all three claims were struck out as disclosing no reasonable grounds for being brought under CPR r.3.4(2)(a).

THE WIDER ISSUE

9. However, the important point which emerges is the danger of litigants-in-person being drawn to such futile arguments in the hope of a financial windfall.

10. Of particular concern to the Court was the explanation of two of the claimants as to how they came to bring their claims. Mr Whitworth informed the Court that he had engaged a company known as Matrix Freedom Limited (of which another of the claimants, Mr Stamp, was apparently a director) to provide him with documentation to be submitted to the court for an upfront fee of £1,000. He said he had further agreed to pay the company 10% of any compensation awarded to him at the conclusion of the case. Another of the claimants, Mr Le Clere, had obtained his documents from a different claimant in the cohort who was not before the Court. His documents consequently shared similarities with all other such claims and he had relied upon them because he thought them to be of a very good quality.

11. Despite the opacity of the information as to how the claims came to be drafted, the Master noted that all of the 200-plus issued claims shared "*a near miraculous uniformity of common purpose, style and prose.*" At [31]:

> *"In the absence of greater explanation… they have the appearance of involving a person, or more likely persons, whose involvement may well amount to the conduct of litigation and a conduct that is likely to be a contempt of this Court. It is worth being clear; this is potentially criminal conduct."*

12. At [37] the Master noted that claims brought in that fashion have "every appearance of deceit, of abuse and contempt of Court" such that "[t]hose who promote them are duly warned." Thus:

> *"Claims presented with these hallmarks can expect the Court's mercy and forbearance to be particularly limited. Claimants that are unable to explain the meaning of words that they appear to rely upon can expect to be frustrated and to lose money in the payment of fees that cannot be recovered and in costs ordered against them. Claimants that rely upon stock templates that are purchased or*

> *given to them and that are nonsensical can expect to incur the Court's displeasure. Those indifferent to wasting the Court's resources can anticipate having claims stayed or struck out and costs ordered against them."*

13. Alongside the abuse of process and potential criminality of persons encouraging such claims, there is also serious concern regarding harm to litigants taken in by them. Indeed, as the Master noted at [2], such claims are "*to all intents and purposes a 'get-rich-quick' scheme.*" In fact, however, they are:

> *"…nothing of the sort because the arguments that it relies upon, and which have clearly been made available to people to widely adopt, are so misconceived as to be fundamentally wrong. This deceit is all the uglier because the material that forms the building blocks of the claims… is a nonsensical and harmful mix of legal words, terms, maxims, extracts and statutes designed to look and sound good… But they only stand as an approximation of a claim in law, a parody of the real thing. This is not only harmful to those finding themselves relying upon this material but, given the scale of that reliance and the volume of cases generated, it unjustifiably draws heavily upon the resources of the Court."*

DISCUSSION

14. For those regularly engaged in retail banking and financial services litigation, the activities of the Freemen on the Land movement and related groups will be well-known. While apparently not directly related, this cohort of claims included several of the motifs commonly deployed by such groups.

15. The arguments deployed by those using materials distributed by such groups have been repeatedly described as both wholly misguided and detrimental to the efficient administration of justice. Detailed and helpful guidance was provided by a Canadian judge in the case of ***Meads v Meads*** (2012) ABQB

571 and, more summarily, by the Northern Irish High Court in ***Ulster Bank v Pollock*** [2021] NICh 23.

16. However, this decision now represents for the first time invaluable guidance in this jurisdiction for other defendants and courts faced with such claims. In difficult times, people are apt to resort to desperate measures. Organisations that promote such claims cause real harm to vulnerable litigants who know no better; they may have to pay up-front fees in exchange for materials promising substantial financial windfalls but in reality, all they will receive is an adverse costs order. Thus, for the sake of all concerned, the answer is to grasp the nettle at an early stage and either to stay or strike out such claims as totally without merit.

17. Master Gidden's decision acts as a serious warning to those as yet unknown unauthorised individuals who peddle such claims: to do so is an abuse of process and "*potentially criminal*". And for those litigants tempted by what seems a magic bullet: if it seems too good to be true, it almost certainly is.

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