



**Neutral citation number [2025] EWHC 908 (Ch)**

**IN THE HIGH COURT OF JUSTICE                      CLAIM NUMBER: PT-2024-000012  
BUSINESS AND PROPERTY COURTS ENGLAND AND WALES  
PROPERTY TRUSTS AND PROBATE LIST (ChD)**

**Before Andrew Lenon KC  
sitting as a Judge of the High Court**

**Date: 17 April 2025**

**BETWEEN:**

**HNW LENDING LIMITED**

**Claimant**

**and**

**MS NICOLE STACEY ANN LAWRENCE**

**Defendant/Part 20 Claimant**

**and**

**SETFORDS SOLICITORS**

**Third Party**

**Charles Sinclair instructed by LCF Law Limited appeared for the Claimant  
Michael Hartman instructed by direct access appeared for the Defendant**

**Hearing date 25 February 2025**

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**JUDGMENT**

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## Introduction

1. There are two applications before me. The first in time is the application of the Claimant (“HNW”) dated 8 April 2024 which seeks, amongst other things, to amend the Particulars of Claim and to strike out the Defence and Counterclaim. The second is the application of the Defendant (“Ms Lawrence”) dated 28 August 2024 which seeks, amongst other things to strike out the claim. HNW was represented at the hearing by Charles Sinclair of Counsel and Ms Lawrence by Michael Hartman of Counsel. Ms Lawrence has at various points in the proceedings acted as a litigant in person.
2. HNW is claiming possession of the property known as and situated at Former Social Club, Horton Lane, West Park Road, Epsom KT19 8PH registered with Title Number SY829927 (the “Property”), together with payment of an amount alleged to be owing to HNW pursuant to a first charge registered against the Property at the Land Registry on 3 December 2018 (“the Charge”) securing monies advanced to Ms Lawrence pursuant to a loan agreement which it contends was made on 30 November 2018. I will refer to the agreement contended for by HNW as “the Loan Agreement”.
3. HNW’s case is, in summary, that pursuant to the Loan Agreement a loan of £1,520,000 was made to the Ms Lawrence for a term of nine months, secured by first and second charges on ten properties owned by Ms Lawrence, including the Property; that in the course of 2019 and 2020 further advances of £284,000 were made to Ms Lawrence; that Ms Lawrence did not make all of the interest payments under the Loan Agreement and, the term having expired, Ms Lawrence failed to repay the balance of the monies loaned. HNW seeks possession of the Property and payment of £3,535,965.82 plus further interest pursuant to the Loan Agreement.
4. Ms Lawrence advances a number of different arguments by way of defence and counterclaim. She denies that she agreed to the terms of Loan Agreement and contends that the Loan Agreement and further advances were agreed to by her as a result of duress and/or undue influence. She also contends

that, on the correct construction of the Loan Agreement and the Charge, HNW does not have title to sue. She counterclaims an unspecified amount by way of damages in respect of loss and damage which she claims to have suffered as a result of HNW's unlawful conduct.

## **The Procedural Background**

5. On 10 November 2021 HNW issued proceedings in Kingston County Court claiming possession of the Property and payment of an amount then said to be owing to HNW of £3,535,965.82.
6. On 3 May 2022 District Judge Smart heard the possession claim and, in the absence of Ms Lawrence, made a possession order in favour of HNW and adjourned the money claim generally. On 13 July 2023, nearly a year later, District Judge Smart set aside the possession order on the ground that Ms Lawrence had not been served with the proceedings and made directions for the filing and service of a defence. An amended Defence and Counterclaim was served on or about 28 July 2023 followed by a Reply and Defence to Counterclaim dated 7 September 2023 and a Reply to Defence to Counterclaim dated 20 September 2023.
7. By an order made on 14 December 2023, District Judge Smart transferred the proceedings to the Chancery Division of the High Court. On 9 April 2024 HNW issued an application to amend its Particulars of Claim and to strike out the Defence and Counterclaim. By order made on 19 April 2024, Master Brightwell gave directions for Ms Lawrence to issue a Part 20 claim dated 15 April 2024 against the Third Party ("Setfords"), Ms Lawrence's former solicitors. This was followed by a Part 20 Defence dated 20 June 2024. By a further order made on 13 June 2024, Master Brightwell gave directions for the service of evidence in relation to HNW's strike out application.
8. On 28 August 2024 Ms Lawrence issued an application to strike out the claim, for security for costs, for disclosure and for amendment of its Defence and Counterclaim.
9. Pursuant to the Court's directions, HNW has served three witness statements and Ms Lawrence has served one witness statement for the purposes of the parties' applications.

## **The Facts**

10. HNW carries on business as an FCA authorised peer-to-peer lender arranging loans from lenders to businesses. Ms Lawrence, at the time of the material events in this case, was carrying on business as a property investor with a portfolio of ten residential properties in London and Surrey
11. The relevant facts concerning the making of the Loan Agreement, as evidenced by the contemporaneous documentary evidence, are as follows.
12. In or around August 2018 a Mr Harry Eddery (“Mr Eddery”) of Eunisure Limited, who was acting as a broker for Ms Lawrence, approached HNW to enquire about a loan for Ms Lawrence for the purpose of refinancing existing lending from third parties that had been taken for the redevelopment of the Property.
13. After some initial negotiations, on 20 September 2018 HNW made a loan offer of £800,000 secured by, amongst other things, a first charge on the Property. By 20 November 2018 the proposed loan amount had been increased to £900,000. On that day, Setfords forwarded a loan agreement in that amount which had been signed by Ms Lawrence in anticipation of completion.
14. On 29 November 2018 Fiona Bee (“Ms Bee”) of Berlad Graham LLP, the solicitors instructed on behalf of HNW, emailed Michael Kwatia (“Mr Kwatia”) on behalf of Setfords, raising enquiries regarding the loan amount. Specifically, Ms Bee noted that Ms Lawrence would have no funds remaining for the development of the Property once the existing charges had been paid off and that HNW would be open to lending further funds in return for first or second charges over other properties.
15. At 10:20 on 30 November 2018 Benjamin Shaw (“Mr Shaw”) , a director of HNW, emailed Mr Eddery, expressing his concern about the loan in its existing form and the limited security provided, anticipating that further advances in future might be required to enable Ms Lawrence to complete the development of the Property. She would need an additional £300k + to finish the development and he was not comfortable lending another £300k with the existing collateral. He asked whether HNW could get first or second charges on properties where currently HNW was only getting equitable charges behind existing lending or if HNW could otherwise repay the existing borrowing on those properties which would enable HNW to lend Ms Lawrence the extra £300,000 he thought she needed. In response, Mr Eddery emailed Mr Shaw that these issues could be “overcome no problem”. At 13:09 Ms Lawrence emailed Mr Shaw directly in response to the points raised in his earlier email to Mr Eddery. In response to the question about first or second charges on the other properties she wrote “Yes, 1<sup>st</sup> or 2<sup>nd</sup> charges”, indicating that 1<sup>st</sup> or 2<sup>nd</sup> charges could be obtained in respect of the other properties. Ms Lawrence also

explained that she needed to complete on that same day in order to get away from the “extortion rates” being charged by Seculink, one of her then current lenders.

16. At 15:00 on the same day Ms Lawrence emailed Mr Shaw informing him that the development of the Property was close to completing and that she had access to approximately £180,000 from two family members who would provide her with any funds needed.
17. At 15:11 Ms Bee emailed Mr Kwatia stating she understood there was an update to the terms of the loan agreement and the requirement for signed legal charges to be provided in respect of the additional properties. She also requested an undertaking from Mr Kwatia to redeem the charges and notices against ten properties.
18. At 15:28 Ms Bee emailed Mr Kwatia stating as follows “Please see attached and confirm my amendments are agreed” and attaching the proposed loan agreement now amended by her in manuscript to show a significantly increased loan amount from £900,000 to £1.6 million and showing as collateral a first charge over the Property and amending details of the security to be provided, to include a first charge over four properties instead of two and the purpose of the loan being stated to be “Refinance to enable completion of build of [the Property]” instead of “Purchase of land and development.”
19. At 15:49 Mr Kwatia forwarded the emails of Ms Bee timed at 15:11 and 15:28 (including the proposed loan agreement with manuscript annotations) to Ms Lawrence and her partner Beresford Greene.
20. By this time Ms Lawrence was on a flight to Jamaica for her father’s funeral. Her evidence is that during the flight she received the 15:28 email from Fiona Bee which she “scan read” and that she noticed the attachment but did not read it.
21. At 15:51 Ms Lawrence texted Mr Kwatia “I hereby give you consent to sign on my behalf” and at 15:52 “Please send paperwork is email [*sic*] Beresford can have a look and he also have consent to give the go ahead on my behalf.” Ms Lawrence’s evidence is that in addition she sent an email to Mr Kwatia at 16:04 to proceed to sign the proposed loan agreement.
22. Mr Kwatia then reported to Ms Bee (at 16:21) by email that his client was not able to sign at the present time. Ms Bee replied confirming that they could not complete until Ms Lawrence had signed. Mr Kwatia responded by email at 16:25 stating, “Your client had spoken to mine about me signing as I have their consent”.

23. At 16:28 Ms Bee stated that the Land Registry would not accept the additional charges signed by Mr Kwatia on behalf of his client and suggested that Ms Lawrence was able to sign the copies electronically.
24. At 16:31 Mr Shaw emailed Ms Bee to confirm that Mr Kwatia would be calling her to “sort out a way you will both find acceptable”. Ms Bee then responded to Mr Shaw at 16:57 to confirm that partial completion would take place on that day with the urgent loans being paid off and funds being retained until the outstanding charges had been received.
25. Mr Kwatia then proceeded to take steps to complete the transaction. At 17:07 he provided an undertaking to Berlad Graham LLP (as requested in Ms Bee’s email at 15:11) that upon receipt of funds in respect of the Loan Agreement Setfords would redeem the charges and notices against the Property and three other properties. Ms Lawrence’s solicitors further undertook to provide HNW’s solicitors with the outstanding legal charges within 5 working days of completion. At 17:15 Ms Bee emailed Mr Kwatia, providing a completion statement confirming that the charge in favour of Seculink had been redeemed and that upon receipt of duly executed legal charges she would release the remaining completion funds in accordance with Setfords’ undertaking.
26. The completion statement showed the initial drawdown figure as being £1,600,000. This was subsequently reduced to £1,520,000 when HNW decided that it would be happy with a second charge on a property called Belenoyd Court and would not repay the £80,000 loan on that property.
27. At 17:19 Ms Lawrence sent a text to Mr Kwatia stating “... please can you gonahead [*sic*] Go ahead”.
28. At 17:33 Mr Shaw emailed Ms Lawrence confirming they had completed (“Nicole Glad to hear we have completed”) and requesting valuations for the Venus Mews Properties and the Watson Place Properties. Ms Lawrence replied by email to Mr Shaw at 18:26 saying, “Thank you very much, greatly appreciated! I will ask my broker to arrange valuations”.
29. Ms Lawrence directly and through her solicitors, subsequently provided HNW with the up-to-date redemption figures and signed legal charges to enable the release of the funds held by HNW following completion.
30. On 11 December 2018 Ms Lawrence emailed Mr Shaw to say that her understanding was that the original loan was for £900,000 and that if she wanted additional lending, first charges could be

taken on two properties (Watson Place and Venus Mews) if needed but that she did not need the extra money yet and wanted to keep the repayments affordable.

31. On 19 December 2018 Mr Kwatia sent Ms Lawrence the updated completion statement for her records showing the £1,520,000 loaned.
32. Some eight months later, on 16 August 2019 Ms Lawrence emailed Mr Shaw informing him that she had expended her funds, including those from family members. She sought further borrowing of £100,000 for the purpose of completing the development of the Property. In an email dated 9 October 2019 Ms Lawrence referred to the redemption figure of £1,520,000. By an email dated 16 October 2019, she confirmed that she had received legal advice from her solicitor and was in a position to sign a further loan agreement with HNW. Further loan agreements between Ms Lawrence and HNW, signed by Ms Lawrence and witnessed by a solicitor and referring to the Loan Agreement, were made on the following dates and for the following amounts: 15 October 2019 (£67,000); 14 November 2019 (£50,000); 2 December 2019 (£50,000); 3 February 2020 (£60,000).
33. By July 2020 the development of the Property was still not completed and Ms Lawrence needed further funding. There were some negotiations between Ms Lawrence and HNW for a payment holiday but the relationship broke down. At some point, Ms Lawrence moved into the Property and is still living there.
34. On 21 October 2021 HNW through its solicitors sent a letter of demand to Ms Lawrence notifying her that the loan amount and interest were due and payable and that the security was now enforceable.

## **The Loan Agreement**

35. The Loan Agreement, which is headed “HNW LENDING LIMITED LOAN AGREEMENT”, states that it is made between Ms Lawrence and “*the Lender (acting by HNW Lending Limited (as Security Agent))*”. The Lender is not named in the Loan Agreement but is identified in Schedule 4 to the Agreement by the number “1” and is described as “*a person ... who lends money through HNW Lending Limited who has granted permission for ‘HNW Lending Limited to act as their Security Agent in entering into and administering this loan to the Borrower.’*”
36. The Loan Agreement includes the following provisions:

## **2. LOAN AGREEMENT**

- 2.1 The Lender hereby agrees to make a loan of the Loan Amount to the Borrower for the Loan Period upon the following preconditions ...
- 2.2 This Loan Agreement is entered into by the Lender as detailed in Schedule 4...

## **3. CONSUMER CREDIT LEGISLATION**

- 3.1 The Borrower is borrowing for business purposes and prior to the loan under this Loan Agreement being entered into, the Borrower will sign a Declaration for exemption relating to businesses attached at Schedule 2. Therefore this Loan Agreement is exempt under the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001.

## **4. REPAYMENT AND INTEREST**

- 4.1 The Borrower shall repay the Loan Amount to the Lender on or before the end of the Loan Period.
- 4.2 Interest shall accrue on the Loan Amount at the Standard Interest Rate and the Borrower shall pay accrued interest on the Interest Repayment Dates.

## **13. LENDER**

- 13.1 The Lender has appointed the security agent to act as its security agent under and in connection with the finance documents.
- 13.2 The Security Agent declares that it holds the security on trust for the lender on the terms contained in this agreement.
- 13.3 The Lender authorises the Security Agent to perform the duties, obligations and responsibilities and to exercise the rights, powers, authorities and discretions specifically given to the Security Agent (as applicable) under or in connection with the Finance Documents, including to, among other things:
  - 13.3.1 Enter into loan(s) upon receipt of signed Security Agent instructions;
  - 13.3.2 Receive payments in respect of either interest or capital or any other amounts payable by the borrower due under the loan(s);
  - 13.3.3 make payments in respect of either interest or capital or any other amounts payable by the borrower due under the loan(s) to the Lender;
  - 13.3.4 take steps to procure the payment of a debt under the loan(s);
  - 13.3.5 exercise or enforce rights under the loan(s) on behalf of the Lender and therefore to take proceedings against the Borrower;
  - 13.3.6 hold any security provided under the loan(s) on behalf of the Lender;
  - 13.3.7 perform any other actions agreed in writing between the Security Agent and the Lender ...
  - 13.3.8 exercise any other incidental rights, powers, authorities and discretions.

## **14. POWERS OF THE LENDER**



- 14.1 The Security Agent or Lender shall be entitled (but shall not be obliged) to remedy, at any time, a breach by the Borrower or any of its obligations contained in this Loan Agreement and the Borrower irrevocably authorises the Lender and its Security Agents to do all things that are necessary or desirable for that purpose.

...

## **15. ENFORCEMENT OF SECURITY**

- 15.1 After the Security constituted by this Loan Agreement has become enforceable, the Lender may, in its absolute discretion, enforce all or part of that Security at the times, in the manner and on the terms it, acting reasonably and properly, thinks fit, and take possession of and hold or dispose of all or any part of the Collateral.

...

## **26. GENERAL**

...

- 26.7 The Borrower and Lender agree that, while HNW Lending Limited is not a party to this Loan Agreement, HNW Lending Limited may take the benefit of and specifically enforce each express term of this Loan Agreement and any term implied under it pursuant to the Contracts (Rights of Third Parties) Act 1999.

## **The Charge**

37. The Charge provides that is made between Ms Lawrence as Borrower and “*HNW Lending Limited ... acting as security agent for the Lender as defined in the Loan Agreement ... made in consideration of the Lender making or continuing advances or otherwise giving credit or affording banking facilities for as long as the Lender may in its absolute discretion think fit to the Borrower.*”
38. The Charge includes a covenant to pay to the Lender all moneys and liabilities owing or due to the Lender (Clause 1) and charges the Property by way of legal mortgage as a continuing security for the payment of all monies, obligation and liabilities to the Lender under or in connection with the Loan Agreement. Clause 9.1 provides that the monies due under the Charge only become payable at any time after the Lender shall have demanded payment after which it shall be lawful for the Lender or any receiver appointed by the Lender to enter upon and take possession of the mortgaged property.

## **HNW's Application**

### **Application to amend**

39. I deal first with HNW's application to amend the Particulars of Claim. The proposed amendment has two parts. First, it substitutes as an annex the Loan Agreement with the manuscript annotations in place of the version of the Loan Agreement without the manuscript annotations which was annexed to the original Particulars of Claim. HNW explains that the version of the Loan Agreement without the manuscript annotations was annexed to the Particulars of Claim by mistake.
40. This proposed amendment is objected to by Ms Lawrence on the ground that the substitution of the Loan Agreement would be "misleading if not deceitful". Ms Lawrence's case appears to be essentially that reliance on the Loan Agreement is misleading because it gives the false impression that Ms Lawrence signed a version of the Loan Agreement which included the annotations whereas the version she signed did not have the manuscript annotations which were added later. This ground of objection is misconceived. HNW's case is not that Ms Lawrence signed the version of the Agreement containing the manuscript annotations (it is common ground that she signed the Loan Agreement before the manuscript annotations were added) but that she did nevertheless agree to the terms of the Loan Agreement including the manuscript annotations. The proposed amendment is not misleading or otherwise objectionable.
41. The second part of the proposed amendment comprises the addition of a claim for relief in the alternative in response to the issues raised by the Defence and Counterclaim. This part of the proposed amendment does not appear to be seriously challenged and I grant permission for it.

### **Application to strike out the Defence and Counterclaim**

42. HNW is seeking to strike out the Defence and Counterclaim and/or for summary judgment in respect of the Counterclaim.
43. It is common ground that the test for a strike out application under CPR rule 3.4(2)(a) is whether a claim is unwinnable and whether its continuance would be without any possible benefit to the respondent to the application. *MF Tel Sarl v Visa Europe Limited* [2023] EWHC 1336 (Ch) per Master Marsh. In that case, Master Marsh observed that this test is more stringent than the test for summary judgment. He held that the focus under CPR rule 3.4(2)(a) is on the statement of case and for the purposes of the application the applicant is usually bound to accept the accuracy of the facts pleaded unless they are contradictory or obviously wrong. In contrast to CPR rule 24.2, the court does examine or evaluate the evidence.

44. HNW does not seek summary judgment under CPR rule 24.2 in relation to its possession claim recognising that summary judgment is not available in proceedings for possession of residential premises under CPR Part 55. CPR rule 55.8(1) provides that at the hearing of a possession claim the court may either decide the claim or give case directions. Case directions, including allocation to a track, are given where a claim is “genuinely disputed on grounds which appear to be substantial” (CPR rule 55.8(2)). By implication, where a possession claim is not genuinely disputed on grounds which appear to be substantial, the court may decide the case. In *Global 100 Ltd v Laleva and others* [2021] EWCA Civ 1835 [2022] 1 W.L.R. 1046 Lewison LJ held (at paragraph 11 to 14) that the test to be applied when deciding whether a claim is “genuinely disputed on grounds which appear to be substantial” is the same as that for summary judgment under Part CPR Part 24 .
45. The central allegations advanced in the Defence, which is confusingly drafted with unhelpful paragraph numbering, are as follows:
- a. The Property was not the subject of any legal charge in favour of HNW (paragraph 1 of the Defence).
  - b. Ms Lawrence is not bound by the terms of the Loan Agreement because she did not agree to it. The signatures on the Loan Agreement and the Charge were a forgery or fraudulently obtained by duress or undue influence (paragraphs 2a, 2b, 2e and 2f)
  - c. The Further Advances should be set aside on the ground of duress and/or undue influence (paragraph 2 g and j).
  - d. HNW negligently or fraudulently misrepresented to the Defendant that she was bound by the Loan Agreement, including the requirements to make monthly interest payments (paragraph 2l and 4e).
46. These allegations are considered in turn below.

#### **“No Charge”**

47. This allegation appears to be based on an error in the postcode committed by the Land Registry when registering the charge. The argument was abandoned in the course of the hearing.

#### **“Not bound by the Loan Agreement”**

48. Ms Lawrence's case that she did not agree to, and is not bound by, the terms of the Loan Agreement is central to her case and is based on the following contentions:
- a. that she expressly rejected the proposed amendments to the proposed Loan Agreement in the course of a telephone conversation with Mr Shaw on 30 November 2018, shortly before she boarded the flight to Jamaica (paragraph 8 of her first witness statement);
  - b. that she made a different agreement with Mr Shaw in the course of a telephone conversation with Mr Shaw at 10:20 on 30 November 2018 under which HNW would provide additional funding of £300,000 to enable her to complete the development of the Property (paragraph 2(xii)(3) of the Defence);
  - c. that she expressly told Mr Shaw in the course of this conversation that Mr Kwatia did not have authority to sign documents on her behalf and/or Mr Kwatia did not have authority to do so (paragraph 2 (a)(xii)(4) of the Defence);
  - d. that as she never signed the Loan Agreement with the manuscript additions she is not bound by it; the signatures on the Loan Agreement are forgeries.
49. The assertion in Ms Lawrence's witness statement that she told Mr Shaw in the course of a conversation on 30 November 2018 that she did not agree to the terms of HNW's revised offer contained in the Loan Agreement is not mentioned in her Defence. Conversely, the account in her Defence of the conversation with Mr Shaw on the morning of 30 November 2018, according to which Mr Shaw made an offer to lend £300,000 which she says she accepted in principle, is not set out in her witness statement.
50. Ms Lawrence's account of these conversations is fundamentally inconsistent with the contemporaneous documentation. There is no reference in that documentation to the alleged conversations with Mr Shaw rejecting the revised offer or to any agreement in principle to a loan of a smaller amount than was actually lent. The alleged conversations are inconsistent with the fact that HNW proceeded to make a loan of £1.6 million and the fact that Ms Lawrence, who was made aware of the amount of the loan after completion, even if she had not read the Loan Agreement on 30 November 2018, at no stage told HNW that she had not agreed to the loan. Her email of 11 December 2018 referring to an "understanding" that the loan was for £900,000 does not indicate that she had explicitly rejected HNW's offer to lend £1.6 million or that there was an agreement to lend £300,000 over and above the £900,000 originally offered.

51. The assertion that Ms Lawrence told Mr Shaw in the course of a conversation that Mr Kwatia did not have authority to agree to the Loan Agreement on her behalf is similarly inconsistent with the contemporaneous documentation, in particular her texts at 15:51 and 17:19. which clearly shows that Ms Lawrence authorised Mr Kwatia to proceed with the Loan Agreement. Whether or not Ms Lawrence had read the Loan Agreement including the manuscript annotations by this stage does not alter the fact that she authorised Mr Kwatia to proceed. Even if Mr Kwatia had not had actual authority, he would, as Ms Lawrence's solicitor, have had ostensible authority to agree to the terms of the Loan Agreement and complete the transaction. There is no evidence that Ms Lawrence ever complained to Mr Kwatia or to HNW at the time that Mr Kwatia had acted without authority. Even if, contrary to the facts, Mr Kwatia had acted without her authority, Ms Lawrence ratified the Loan Agreement by, amongst other things, accepting the loan from HNW and subsequently agreeing with HNW on further advances by reference to the Loan Agreement.
52. It is common ground between the parties that Ms Lawrence did not sign the Loan Agreement with the manuscript annotations. HNW's case is that she is nevertheless bound by it. Given the undisputed facts that Ms Lawrence was sent the Loan Agreement with the manuscript annotations, that she instructed Mr Kwatia by text to sign it, that Mr Kwatia then proceeded to complete the transaction, that Ms Lawrence took the full amount of the loan and later arranging for additional lending through HNW, I consider that her case that she is not bound by the Loan Agreement on the basis that she did not sign it or agree to its terms, is unwinnable and/or does not raise any genuine dispute on grounds which appear to be substantial.
53. As noted earlier in this judgment, there is no sustainable basis for the allegation of forgery or fraud. Ms Lawrence accepts that she signed the Loan Agreement prior to the addition of the manuscript annotations.

### **Duress/Undue influence**

54. In order to establish economic duress, a defendant must show that there has been illegitimate pressure which caused it to enter into a contract and that there was no practical alternative but to accept the terms of the contract; see *Pakistan International Airline Corporation (Respondent) v Times Travel (UK) Ltd (Appellant)* [2021] UKSC 40. In order to set aside a transaction on the ground of undue influence, it is

necessary to show that the parties were in a relationship of trust and confidence or emotional or physical dependency and that the transaction was an abuse of this relationship.

55. The facts pleaded at paragraph 2j of the Defence in support of Ms Lawrences' case on undue influence/duress are as follows:

“Further and alternatively the Claimant knew or ought to have known that by obtaining 1<sup>st</sup> charges and by not providing the said £300,000, the Defendant would not be able to complete the development and generate income to fund the exit of the loan within 9 months, The Claimant thereby caused the Defendant to suffer undue influence and/or duress by causing the Defendant to be unable to pay the interest charges of the Claimant of between £20,000 and £80,000 per month. So the Defendant was disabled from exiting the loan.”

56. In short, Ms Lawrence is alleging that HNW knowingly caused Ms Lawrence to enter into the Loan Agreement knowing that she would not be able to complete the development and exit the loan within nine months and that she would not be able to afford the interest charges. These allegations do not, in my judgment, amount to a valid basis for a defence of either economic duress or undue influence. No facts are pleaded, or alleged in Ms Lawrence's witness statement, to support a case that HNW exerted illegitimate pressure on Ms Lawrence to enter the Loan Agreement or that there was no practical alternative to entering the Loan Agreement/the Further Advances or that there was a relationship of trust and confidence between Ms Lawrence and HNW which HNW abused. It is incidentally no part of Ms Lawrence's case that she was in the position of a consumer in her dealings with HNW and so entitled to protection under consumer credit legislation.

### **Fraudulent/negligent misrepresentations**

57. The premise of Ms Lawrence's case that HNW misrepresented the binding nature of the Loan Agreement is that the Loan Agreement was not binding. If the Loan Agreement was binding, as I consider that it was, the allegation of misrepresentation falls away.

### **Other allegations**

58. The Counterclaim includes allegations of trespass and/or unlawful interference with contracts made between Ms Lawrence and tenants of the properties. These allegations are completely unparticularised and, as such, do not appear to have any substance in fact with a realistic prospect of success.

## **Conclusion on HNW's strike out/summary judgment application**

59. For the reasons set out above, I conclude that Ms Lawrence's case set out in her Defence and Counterclaim that she is not bound by the Loan Agreement or the Further Advances or that they should be set aside on the grounds of duress and/or undue influence is unwinnable and does not give rise to a genuine dispute on grounds which appear to be substantial. Her case that she did not agree to the Loan Agreement is unsupported by and inconsistent with the contemporaneous documentation and her own conduct and, as regards duress/undue influence, is not substantiated by the requisite factual allegations. To reach this conclusion it has not been necessary for me to conduct a mini-trial.
60. I do not consider that this is a case of such complexity as to preclude a conclusion at this stage that Ms Lawrence's case that she is not bound by the Loan Agreement/the Further Advances is unwinnable. The confusing way in which her case is pleaded and the plethora of allegations of serious wrongdoing made by her against HNW do not make the case complex.
61. It was submitted on behalf of Ms Lawrence that it would be wrong to decide the case prior to disclosure of documents from Setfords. I do not accept this submission. It is not enough to assert that the case should be allowed to go to trial because something may turn up on disclosure; see *Easyair Limited (Trading As Openair) v Opal Telecom Limited* [2009] EWHC 339 (Ch) at paragraph 15(iv) per Lewison J (as he then was). There are no reasonable grounds for believing that a fuller investigation into the facts of the case, in particular documents held by Setfords, would lead me to alter my conclusion that the Loan Agreement is binding.
62. I should make clear that in reaching my conclusion on the binding nature of the Loan Agreement I have attached no weight to the two file notes prepared by Mr Shaw dated respectively 29 November and 30 November 2018 which are relied upon by HNW but whose authenticity is disputed by Ms Lawrence.

## **Ms Lawrence's Application**

### **Application to strike out the claim**

63. The primary basis on which Ms Lawrence seeks to strike out the claim is that HNW has no standing to bring the claim because HNW has no enforceable rights against Ms Lawrence under the Charge and the Loan Agreement.
64. This argument which, is not advanced in the Defence, is based on the judgment dated 7 August 2024 of his Honour Judge Dight CBE in proceedings in the Central London County Court brought by HNW against Derek Keith Mark ("*HNW v Mark*").
65. The claim in *HNW v Mark* was similar to the claim in these proceedings in that HNW was seeking possession of a residential property in reliance on a first charge and a loan agreement which were on materially the same terms as the Loan Agreement and the Charge in the present case. The lender under the loan agreement was identified, as in the present case, only as "1" and HNW was described as the Security Agent. Clause 26.7 of the loan agreement was in the same terms as the corresponding clause in the present case, that is to say:
- "the borrower and lender agree that while HNW Lending Limited is not a party to this loan agreement, HNW Lending Limited may take the benefit of and specifically enforce each expressed term of this loan agreement and any term implied under it, pursuant to the Contracts (Rights of Third Parties) Act 1999."
66. HHJ Dight commented on the description of HNW as a "security agent" in the following passage:
69. The reference to the claimant as a security agent causes difficulty. The defendant submits that the expression security agent is not a term of art in English law and that the precise nature of the alleged role is not defined in the Loan Agreement, although reference must be made to clause 13 of the Loan Agreement, which I will turn to in due course. The defendant says this is not like the situation that arises when loans and associated security are securitised for administrative purposes, where the legal title to the debt and the security remains with the original lender, as described by Jonathan Parker LJ in *Paragon Finance Ltd v Pender* [2005] 1WLR 3412 at 13 and 14. The defendant further argues that it would have been possible to structure arrangements as between the claimant and the true lender so as to give the claimant the right at law to recover the loan and enforce the Charge but that the parties in this case have failed to do so. It is said that there could have been a legal assignment of the debt and a charge by the lender to the claimant. There could have been a trust whereby bare legal title to the debt and the Charge stayed with or was moved to the claimant. Or there could have been an equitable assignment of the debt and Charge. However none of those things have happened in this case. Therefore the Loan Agreement, it is said, is not an agreement to which the claimant is party or pursuant to which the claimant has a right, a debt, and in respect of which the claimant has a cause of action.
67. It was submitted on behalf of Mr Mark that, as HNW was not the lender or a party to the loan agreement in that case, it had no free-standing cause of action to bring the claim for possession or for repayment of



the loan: HNW was a party to the charge and registered as the proprietor of the charge but the covenant to pay was given to the lender and not to HNW.

68. After referring to the terms of the loan agreement and charge, HHJ Dight held as follows:

76. My conclusion on this issue is as follows: the Loan Agreement was made between the claimant and 1, albeit that 1 acts through its agent, the claimant. The contract specifically provides that the claimant is acting as the agent for 1, and as clause 26.7 recognises, is not a party to the agreement. Therefore, it seems to me that the starting point is that the contract is that of the principal, not the agent and that it is prima facie the principal who is entitled to enforce the contract, not the agent. However, if, on a proper construction of the Loan Agreement the claimant has, in effect, contracted personally whether alone or jointly with the principal, to advance monies to the defendant and be entitled recover them then it seems to me that the claimant would be entitled to sue on the Loan Agreement. I ask myself whether the claimant is a contracting party. It is plain to me, however, that the claimant is not a contracting party and clause 26.7 expressly says so. The claimant has no obligations under the contract. The claimant has purportedly limited rights.

...

79. At no point has the claimant had its own cause of action against the defendant. The cause of action on the proper construction of these documents has always been the lender's cause of action, and the lender's cause of action has to be brought through proceedings in the lender's name. Had there been an assignment of the cause of action to the claimant, albeit on trust for the lender, then the claim could have been brought in the claimant's name. But it is not asserted that that is the case. It does not seem to me that clause 13 takes the matter any further. Nor do the provisions in clauses 14, 15 and 18 make any difference.

80. The provision on which the claimant really stakes its right to bring the claim are to be found in sub-clause 26.7 and the reference in that sub-clause to the Contract (Rights of Third Parties) Act 1999. It said that this is the gateway to the enforcement of the Loan Agreement by the claimant. Under the Contract (Rights of Third Parties) Act 1999 a third party is able to acquire and enforce the rights under a contract if and to the extent that the parties to the contract intend that should be the case. The difficulty in the application of that principle in the present case is that under the Loan Agreement, the defendant does not owe any obligations to the claimant, nor is the claimant expressed to benefit from the Loan Agreement. All the relevant obligations, as I have already said, were owed by the defendant to 1, and all the benefits under the Loan Agreement are intended to be for 1 rather than the claimant and therefore there is nothing which, in my judgment, the claimant could enforce under the 1999 Act.

81. The Act is intended typically, for a case where A and B agree to enter into a contract for the benefit of C, who is not a party to the contract, but in their contract A and B agree that C can enforce a claim to that benefit, pursuant to the Act of 1999. This is the opposite factual scenario; this is a case where the claimant has no cause of action because it has been expressly retained by 1. Therefore there is no benefit to be enforced by the claimant, no cause of action in its own name which it can rely on. For all those reasons, therefore, I have come to the conclusion that whatever the position of 1 may have been, the claimant has no cause of action under the Loan Agreement and cannot enforce it.

82. So far as the Charge is concerned, the arguments are slightly different but I am of the view that the Charge, for similar reasons as I have given in respect of the Loan Agreement, cannot be enforced by the claimant because the covenant to pay was not given to the claimant and the

Charge was not granted to the claimant. It just so happens that the claimant is a part to the Charge itself but, on the construction of the Charge, in my judgment, the claimant has no right to enforce it. The most powerful countervailing argument is that the claimant has, by virtue of being registered at HM Land Registry as the sole proprietor of the Charge, a proprietary interest in the property, as mortgagee and that as a legal mortgagee, it is entitled to possession as soon as the ink was dry on the mortgage.

83. There are two answers to that. First, having regard to clause 9, the right to possession only accrues when demand for repayment has been made, not on execution of the Charge. Secondly, it cannot be right, in my judgment, where enforcement of a charge is sought in respect of a debt which cannot be collected by the chargee, to grant a possession order: the charge is not security for anything on those facts.
84. I would, therefore, on the basis of my conclusions in respect of issue 1 alone, dismiss the claim.
69. In the present case, it was submitted on behalf of HNW that HHJ Dight's analysis of Clause 26.7 was wrong in that he failed to give due weight to section 1(1)(a) of the 1999 Act and that I should not follow his decision.
70. Section 1 of the 1999 Act provides as follows:

**1 Right of third party to enforce contractual term**

- (1) Subject to the provisions of this Act, a person who is not a party to a contract (a "third party") may in his own right enforce a term of the contract if—
- (a) the contract expressly provides that he may, or
- (b) subject to subsection (2), the term purports to confer a benefit on him.
- (2) Subsection (1)(b) does not apply if on a proper construction of the contract it appears that the parties did not intend the term to be enforceable by the third party.
- (3) The third party must be expressly identified in the contract by name, as a member of a class or as answering a particular description but need not be in existence when the contract is entered into.
- (4) This section does not confer a right on a third party to enforce a term of a contract otherwise than subject to and in accordance with any other relevant terms of the contract.
- (5) For the purpose of exercising his right to enforce a term of the contract, there shall be available to the third party any remedy that would have been available to him in an action for breach of contract if he had been a party to the contract (and the rules relating to damages, injunctions, specific performance and other relief shall apply accordingly).
71. Clause 26.7 appears to have been drafted with the 1999 Act in mind and with the intention of conferring on HNW equivalent rights to those of the lender, enabling HNW to enforce obligations owed to and benefitting the lender. There is a dearth of case law on the scope of section 1(1). The example given in *Chitty on Contracts* (35<sup>th</sup> Edition) of a situation where a third party may enforce a term of the contract

pursuant to section 1(1)(a) (“*if the contract expressly provides that he may*”) is materially different from what the parties appear to have had in mind in the present case. In Chitty’s example, which is similar to the example given by HHJ Dight at paragraph 81 of his judgment quoted above, one contracting party (A) promises to the other (B) to pay £1,000 to a third party (C) and the contract goes on to provide that C is to be entitled to enforce the term containing this promise. Under this example, the term enforced by C consists of a term benefitting C rather than an obligation owed to and benefiting one of the contracting parties, A or B. On the facts of the present case, in contrast, there was no promise made by Ms Lawrence to the lender to pay anything to, or otherwise benefit, HNW.

72. In my judgment, contrary to what Chitty’s example might suggest, section 1(1)(a) is not limited to the enforcement by a third party of a term purporting to benefit the third party, since this type of term is specifically addressed in section 1(1)(b). It is sufficient that the contract expressly provides that the third party may enforce the term. That is what Clause 26.7 does in relation to all the express and implied terms of the Loan Agreement. Alternatively Clause 26.7 is effective pursuant to section 1(1)(b) to confer on HNW the benefit of the covenants and rights of enforcement owed to the lender because that is also what Clause 26.7 purports to do. HHJ Dight said “ .... *nor is the claimant expressed to benefit from the Loan Agreement*”. Clause 26.7 does, however, expressly provide that “*HNW Lending Limited may take the benefit of and specifically enforce each expressed term of this loan agreement and any term implied under it*”.
73. Construing Clause 26.7 as legally effective accords with the principle that the courts should endeavour, if possible to give effect to the parties’ contractual provisions rather than treating any part of them as otiose; see *Lewison: The Interpretation of Contracts* 8<sup>th</sup> Edition paragraph 7.26.
74. Turning to the Charge, HHJ Dight’s view that the Charge was ineffective was based on his conclusion that HNW had no right to enforce the provisions of the Loan Agreement. He noted that, as the registered proprietor of the Charge, HNW is deemed to have the legal estate vested in it pursuant to section 58 of the Land Registration Act 2002 but he considered that it cannot be right for enforcement of a charge to be sought in respect of a debt which cannot be collected by the chargee. In my view, HNW is entitled to enforce the repayment provisions in the Loan Agreement pursuant to both Clause 26.7 and Clauses 13.3.5 and 14.1 of the Loan Agreement. What is secured under the Charge is the money, liabilities and obligations owed to the lender but HNW is entitled to enforce those liabilities and obligations.
75. It follows that, in my judgment, HNW does have title to sue on the Loan Agreement and the Charge and the claim should not be struck out.

76. Given that, with no disrespect to HHJ Dight, I have reached a different conclusion to him on the question of the enforceability of the Loan Agreement and the Charge, I propose, subject to the observations of the parties, to give permission to Ms Lawrence to appeal to the Court of Appeal on this issue and to stay enforcement of HNW's claim in the meantime.

#### **Application for security for costs**

77. Ms Lawrence seeks security for her costs in the sum of £300,000 and security for the costs of Setfords in the sum of £500,000 on the grounds that there is reason to believe that HNW will be unable to pay these costs if ordered to do so.
78. Given my conclusion that the Defence and Counterclaim are to be struck out, it would not be appropriate to order security for costs. Had it been otherwise appropriate to order security, Ms Lawrence would have needed to provide a detailed breakdown of her anticipated costs rather than simply asserting that her estimated costs will amount to £300,000. The basis for the claim for security in respect of Setfords' costs is unexplained.

#### **Application for disclosure**

79. Ms Lawrence has asked for disclosure of all records and communications including email and text messages made between the parties, and representatives of the parties and/or with others, particularly of Mr Kwatia and Ms Bee, in any way concerning the Loan Agreement. The application is not supported by any evidence. As I have indicated earlier in this judgment, I do not consider that further disclosure would serve any useful purpose. The application is refused.

#### **Overall conclusion**

80. In summary I grant HNW's application to amend the Particulars of Claim and to strike out/grant summary judgment on the Defence and Counterclaim. I refuse Ms Lawrence's application to strike out the claim.