

Dispute Resolution
Case Law Update
Rosling King LLP



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This recent decision of the Court of Appeal looks at the application of the Brocklesby Principle in relation to claims by occupiers for an overriding interest. It confirms that, in some circumstances, mere occupation may not be enough to claim an overriding interest as against a mortgagee.

The Facts

Kaymuu Ltd (“Kaymuu”) was a company controlled and wholly owned by Mr Sami Muduroglu. In or around May 2010 Kaymuu purchased the property known as “Dalhanna”. At the time of the purchase the Defendant was a close friend Mr Muduroglu, but by the time of trial it transpired that Mr Muduroglu was a fraudster and acted contrary to the Defendant’s interests.

In or around June 2010, Mr Muduroglu caused Kaymuu to borrow £500,000 from the Claimant in return for a first legal charge over Dalhanna. However, at the time the Claimant’s charge was registered the Defendant was in occupation. Mr Muduroglu took the money obtained from the Claimant, lost it all gambling, disappeared and was subsequently declared bankrupt. As a result of which, Kaymuu defaulted on their loan agreement.

The Claimant subsequently sought to exercise its rights under the mortgage, issued proceedings for possession and arranged for Dalhanna to be sold. At the trial of the main action, the Claimant sought to retain £694,072.75 from the net proceeds of sale to realise its security. However, the Defendant argued that he was entitled to this sum, and any surplus, on the basis that he had an overriding interest at the time of the Claimant’s charge. In relation to the surplus, the Claimant contended that it was entitled to recoup the costs of all of its legal proceedings, not just in relation to the possession but also the costs of bringing the claim against the Defendant.

At first instance, the Court confirmed that the Defendant was the beneficial owner of Dalhanna at the time it was acquired by Kaymuu and he was in occupation at the time Dalhanna was charged to the Claimant. However, the Court held that the Defendant’s interest did not qualify as an overriding interest because of the application of the Brocklesby Principle (a principle that can prevent an occupier from having a right against a legal owner in circumstances where he represents that a third party has full authority to deal with the property). The Court also found that on a proper construction of the mortgage deed, the Claimant was only entitled to recover the costs of possession proceedings and not the costs of dealing with the claim against the Defendant.

The Appeal

The Defendant appealed in relation to the application of the Brocklesby Principle and the Claimant cross appealed in relation to the question of costs.

Although confirming that the actual occupation is important in deciding whether an occupier has an overriding interest, the Court of Appeal held that in order to establish an overriding interest actually exists the occupier must also show he has the relevant rights capable of binding the legal purchaser.

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In this case, it was found that the Defendant left the acquisition of Dalhanna completely in the hands of Mr Muduroglu and gave him the authority to make whatever arrangements he saw fit in relation to the acquisition of Dalhanna, without making clear the limitations of Mr Muduroglu's authority. Accordingly, it was held that the Court of first instance was entitled to find that "the Defendant's abstinence from any involvement in the mechanics of the purchase meant that he had given [Mr Muduroglu] the means of representing himself as beneficial owner of Dalhanna, with full authority to deal with third parties as owner". As a result, it was held appropriate to decide that the Defendant could not claim to have an overriding interest as against the Claimant.

On the question of costs the Court of Appeal found that, on a true construction of the mortgage deed, the Claimant was entitled to recover all of its costs, including those against the Defendant.

Analysis

This case is a useful reminder to lenders that actual occupation may not be enough for an occupier to assert an overriding interest. It is important to consider what rights the occupier may have and whether any of their actions may mean that they are estopped from claiming such an interest.

For further information, please contact [Georgina Squire](#) or the Partner with whom you usually deal.