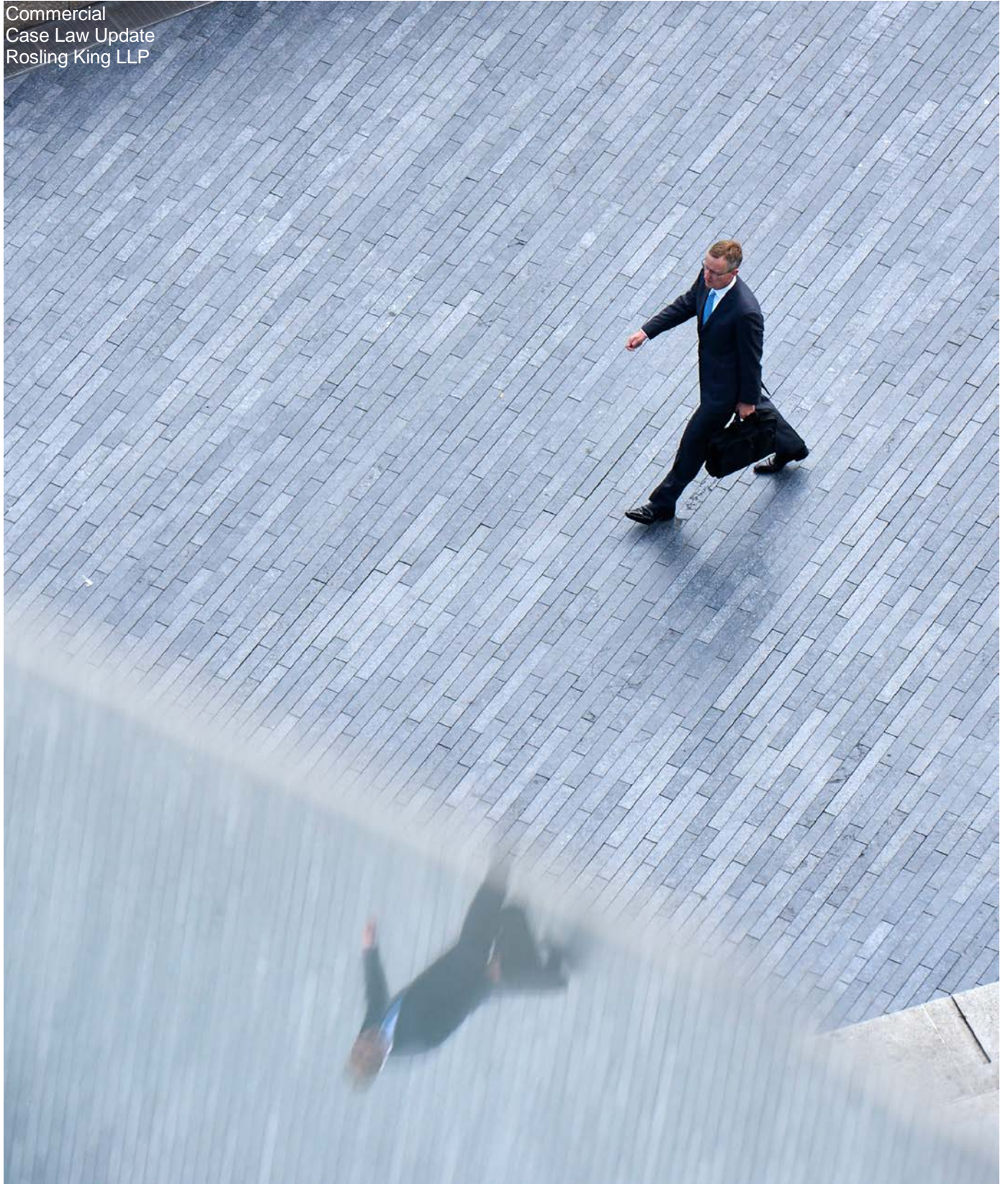


Commercial
Case Law Update
Rosling King LLP



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This Chancery decision is a useful reminder to lenders of the ability to apply to Court for rectification of the Register in cases of mistake. However, it is also a lesson to solicitors acting for borrowers of the need to ensure that they have requested, and quote, all relevant mortgage account numbers in correspondence with a lender.

The Facts

During 2004 the Defendants applied to the Claimant for a loan to be secured over their property (the “2004 Loan”). The 2004 Loan completed and the legal charge was registered at the Land Registry on or around 23 December 2004. In or around September 2005 the Defendants wrote to the Claimant to request that all their borrowing be transferred to one product to reduce their monthly repayments. The Claimant subsequently offered the Defendants a new secured loan (the “2005 Loan”), on completion of which the 2004 Loan was redeemed.

Around August 2014 the Defendants became interested in selling their property and instructed a firm of solicitors to act on their behalf. The solicitors wrote to the Claimant, quoting the 2004 Loan account number, and requested that, as they were advised the 2004 Loan was redeemed, an e-DS1 be provided to remove the charge from the property’s title at Land Registry. On the basis of the content of the solicitor’s letter the Claimant duly provided an e-DS1 and the charge was removed.

Mistake

The Claimant eventually realised that the e-DS1 should not have been provided as the charge noted on the Register was intended to secure both the 2004 Loan and the 2005 Loan. However, a deficiency in the Claimant’s system meant that the 2005 Loan was not picked up until sometime later. The Claimant applied to Court for the e-DS1 to be set aside for mistake and the Register rectified so that it could be reinstated as proprietor of a legal charge over the property.

The Defendants alleged that the charge created as a result of the 2004 Loan was not intended to secure the 2005 Loan. However, the Court held that on the terms of the legal charge, this was clearly not the case. It therefore allowed the e-DS1 to be set aside and the Register rectified.

Relying on the decision of *Pitt v Holt* [2011] EWCA Civ 132, the Court confirmed that it had the equitable jurisdiction to set aside a voluntary disposition for mistake if “the mistake [was one] of sufficient gravity either as to the legal effect of the disposition or as to an existing fact which is basic to the transaction”. Applying this test, the Court held that the Claimant did not intend to release the only security it held and had made a mistake as to the legal effect of providing the e-DS1. This was especially so given that the mistake was induced by the solicitor’s letter. It decided that the mistake was clearly of relevant seriousness as to disregard it would result in the Claimant losing its security. It was held unjust and unconscionable to allow the Defendants to retain an unencumbered property when it was clearly intended that the 2005 Loan be secured.

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The Defendants argued that the Claimant's failure to realise that the e-DS1 should not have been provided amounted to negligence. However, commenting that each case must be considered in the round and quoting *Futter & Anor v Revenue and Customs* [2013] UKSC 26, the Court decided that although "forgetfulness, inadvertence or ignorance is not, as such a mistake", "the true requirement is simply for there to be a causative mistake of sufficient gravity".

Commentary

This case is a useful reminder of the principles relating to setting aside a voluntary disposition for mistake and rectification of the Register. Accordingly, it may provide some comfort to lenders who mistakenly provide an e-DS1. However, this was also a decision confined to its facts and it is therefore also an important lesson for lenders to ensure that their systems are correctly set up to show all loans made to their borrowers, as failure to do so may result in losing a charge. Finally, this case is also a lesson to conveyancing solicitors to ensure that they have full details of all of their clients' loans and account numbers as failure to obtain such information can have unintended consequences.

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