
Property Litigation
Case Law Update
Rosling King LLP

The Facts

On 26 November 2004, Mr and Mrs Evans (the "**Borrowers**") took out a loan (the "**2004 Loan**") with NRAM Ltd's predecessors, Northern Rock Plc (together known as the "**Bank**") secured against their property (the "**Property**").

Over the next year the Borrowers obtained further loans from the Bank and, in 2005, applied to consolidate the 2004 Loan with the further loans. A new loan was granted on 15 December 2005 (the "**2005 Loan**") and the proceeds were used to redeem the 2004 Loan. It was understood by the Borrowers that the 2005 Loan was to be secured over the Property. The Bank did not obtain any further security in relation to the 2005 Loan as the charge securing the 2004 Loan secured "*further advances*".

The Borrowers had both been made bankrupt by January 2008. The Official Receiver considered the Bank's security over the Property and, in light of the value of the 2005 Loan, considered there to be negative equity in the Property.

In 2014, the Bank was contacted by the Borrowers' solicitor, who wrote to the Bank and requested the removal of the charge over the Property in respect of the 2004 Loan, on the basis that the 2004 Loan had been redeemed in 2005. The letter made no reference to the 2005 Loan. The letter was processed by the Bank's administrative office who, as a result of an administrative error, issued an e-DS1 form to remove the Bank's charge from the title register of the Property.

Shortly after, the Bank realised its error and it registered a unilateral notice to protect its interest and applied to Court for rectification of the title. The Borrowers disputed this, on the basis that they believed the charge over the Property did not secure the 2005 Loan.

On review of the charge and the governing mortgage terms and conditions, the Court ruled that the 2005 Loan was secured over the Property. The Court considered that this was obvious from the wording of the charge and the mortgage terms and conditions, which were sufficiently wide enough to incorporate the 2005 Loan. The Court ruled that the title should be rectified on the basis that, in accordance with paragraph 2(1)(a), Schedule 4 of the Land Registration Act 2002 (the "**Act**"), a mistake had been made by the Bank when discharging their charge. The Court held that whilst the Bank had been careless in failing to notice that the 2004 Loan and 2005 Loan were linked, they had been induced into issuing the e-DS1 in respect of the 2004 Loan by the Borrowers' solicitors failing to mention the 2005 Loan. The Court held that the Borrowers, via their solicitor, had contributed to this mistake. Further, the Court found that the Official Receiver's actions were consistent with the parties' belief that the 2005 Loan was secured against the Property. Given the severe consequences of the mistake, the Court held that the bank was entitled to rectification of the title of the security property.

The Borrowers appealed the decision on the basis that there had not been a mistake which required correction and that, had there actually been a mistake, then the Bank was responsible, not the Borrowers.

The Decision

The Court of Appeal dismissed the appeal. However, the terms of the original Order were varied. The Court of Appeal found that the title should have been rectified under paragraph 2(1)(b), Schedule 4 of the Act, which states that title rectification is allowed in circumstances where it is necessary to bring "the register up to date" rather than "correcting a mistake" under paragraph 2(1)(a).

The basis for this variation was that, in 2016, a consultation paper entitled "Updating the Land Registration Act 2002" was published which stated that for a mistake to have been made it had to have been a mistake at the time the entry was made or deleted. At the time the Bank's charge was discharged, the Land Registry had received a valid e-DS1 form which stated that that the charge was to be removed. Therefore, the removal of the Bank's charge was valid up until it was rescinded. It was irrelevant that the e-DS1 was issued by mistake. For it to be a mistake under the Act the Land Registry must have made a mistake when carrying out their instructions in accordance with the e-DS1 submitted. As a valid e-DS1 had been filed, no mistake had been made by the Land Registry in removing the charge.

The Court of Appeal therefore relied upon paragraph 2(1)(b) of the Act, which stated that once the e-DS1 had been rescinded, the Court has the power to make an Order to "bring the register up to date".

Commentary

This decision highlights the importance of ensuring that internal systems are clear and employees have the necessary information to make informed decisions. Lenders should be careful to ensure they have sufficient checks and procedures in place to minimise the risks of their security being discharged by error.

This case should however provide some comfort to lenders, as it shows that when mistakes do happen, depending on the circumstances that lead to that mistake, the Courts are willing to grant permission for the title to be rectified.

For further information, please contact Ann Ebberson or the Partner with whom you usually deal.