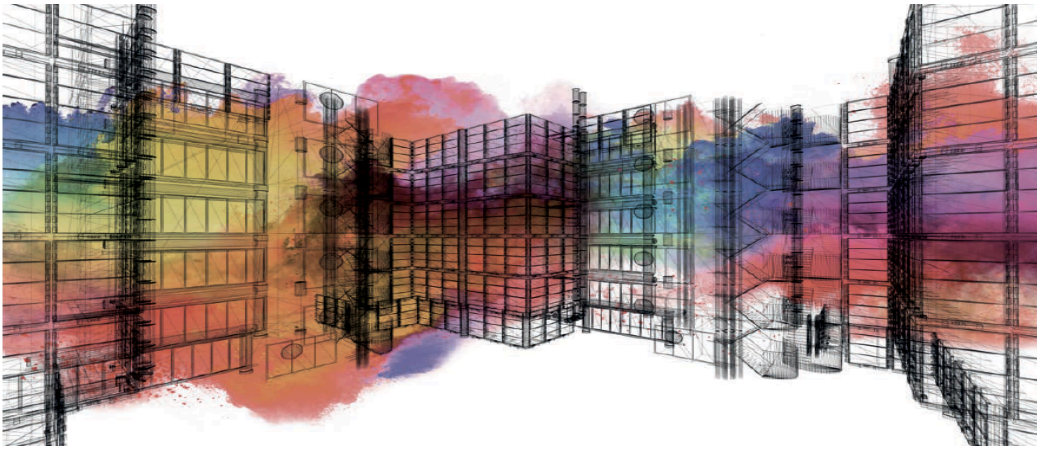


THE PRINCIPLES OF LAND LAW

EMMA LEES

2 June 2020



Welcome to the online resources for *The Principles of Land Law*. Find more online: www.oup.com/he/lees1e/

Dhillon v Barclays Bank [2020] EWCA Civ 619

In this case, the Court of Appeal was required to consider the consequences of mortgage fraud for the integrity of the land register.

FACTS

Mrs Dhillon had lived in the property in East London since 1993. She commenced her occupation as a secure tenant (see chapter 10), but in 2002, unbeknownst to Mrs Dhillon, title to the property was transferred from the previous freeholder, London Borough of Hackney, into her name (transfer one). Her signature on this transfer was forged, and she knew nothing about the purchase price paid. Shortly thereafter, title was transferred again to Crayford Estates.

Limited (CEL) (transfer two). Again, her signature was forged and she knew nothing of the provision of a purchase price. CEL then granted a charge over the property. Both transfers one and two were void.

Nevertheless, in October 2002, CEL was registered with title and the original charge was re-financed with a charge to the Woolwich, now Barclays Bank. This charge was registered in November 2002. Mr Hussein, Mrs Dhillon's husband, was subsequently convicted of fraud. His company, CEL, was dissolved, and the property fell *bona vacantia* to the Crown. The Crown disclaimed the property (see chapter 9). Mrs Dhillon then applied to become registered proprietor in February

2010. The court ordered this in late 2010, and Mrs Dhillon was registered subject to Barclays' charge. Mrs Dhillon then sought rectification of the register to remove the charge.

DECISION

The first potential issue was whether this ought to be considered an alteration of the register (so as to render it up to date) or a rectification following the correction of a mistake. In the former case, the land registry could not have been liable to Barclays in respect of any indemnity. The Court did not however address this issue substantively, given the pleadings by the land registry did not initially include this issue and they were not allowed to argue it

This case relates to the discussion in chapter 5 concerned with registration of the register. If reading the case in full, it may also be useful to consider the material on dissolution of companies, and escheat in chapter 9.

<https://global.oup.com/academic/product/the-principles-of-land-law-9780198810995?q=lees%20principles%20of%20land%20law&lang=en&cc=gb>

subsequently.

The key issue became, therefore, whether there were exceptional circumstances in the case justifying *not* rectifying the register.

Why was this the key question? If we return to schedule 4, para 3 (see below) LRA 2002, the scheme there establishes that in cases where a registered proprietor is *not* in possession, as was the case with Barclays, then the register should be rectified against them in cases of mistake unless exceptional circumstances were present. Were there such exceptional circumstances in this case?

To answer this seemingly simple question, as is often the case in land registration disputes, a number of complex issues arose. These are discussed below, but the most important factor in the Court's decision was whether, assuming there was a rectifiable mistake, in the very unusual circumstances of this case, the Court should use its discretion *not* to rectify the register. The result of this would be that the property would still be subject to the charge. Mrs Dhillon would then be entitled only to the remaining equity in the property once the debt (of around £600,000) had been discharged, leaving her with approximately £350,000. The Court decided that there were exceptional circumstances here.

Coulson LJ reasoned that: "it is wholly exceptional for such a loss to occur in circumstances where the occupier never owned the freehold of the property; paid nothing towards the property; could never have afforded to buy the property without immediately



EXCEPTIONAL CIRCUMSTANCES AND RECTIFICATION OF THE REGISTER

selling it; where the original conveyance to the occupier was void because it was procured by fraud; and that, if the Register was rectified, the occupier would become the owner of the unencumbered freehold as a result of that fraud.

In my view those are unusual and uncommon factors which are not routinely or normally encountered. There is no evidence to suggest that these circumstances are anything other than unique, or at least very rare. They are, on any view, 'exceptional.'" [70]-[71].

This was enough to dispose of the appeal and is useful guidance as to how the exceptional circumstances test operates.

CORRECTION OF A MISTAKE

There were a few other issues raised however. The first of these

was whether the removal of Barclays charge should be considered "the correction of a mistake" and if so, what was the relevant mistake? Was it the registration of CEL's title? The registration of Mrs Dhillon's title? Or the grant of the charge? This is essentially the same argument as in *Barclays Bank v Guy (No 1)*. Whilst the registration of CEL was plainly a mistake, because the transfer was void, the transaction between CEL and the lender was not void. It was a validly executed charge by a registered proprietor. The Court did not answer this question.

Instead, Coulson LJ reasoned that deciding this was irrelevant to the outcome:

"For present purposes, I am content to assume (without deciding) that the court has the necessary jurisdiction. I acknowledge that the wider question, of whether a charge can be removed from the Register

in circumstances where:

- (a) the person who was the registered proprietor of the land grants a charge to an innocent lender, as security for a loan;
- (b) the transfer of the land to the registered proprietor was in fact void; but
- (c) the application for rectification is limited to an application to remove the charge, and does not also seek to remove the registration of the title of the borrower; is not straightforward. It would be wrong to embark on a consideration of that issue in this case, where it is immaterial to the outcome of the appeal." [27]

ILLEGALITY

The second issue addressed by the Court was whether Mrs Dhillon was seeking to rely on an illegal transaction to substantiate her claim for rectification. The illegality in question was the fraudulent transfer to herself from Hackney. The Court held that this was not a grounds in itself for refusing to rectify, but it might have been relevant to the exceptional circumstances test.

Per Coulson LJ:

"Of course, this does not mean that



the extent to which, however indirectly, Mrs Dhillon is seeking to rely on her husband's fraud is irrelevant to the court's consideration of the question of exceptional circumstances, and whether or not the non-rectification of the Register is justified. It is plainly relevant to those issues... The inescapable fact that Mrs Dhillon is seeking to wind the clock back to a point in time between the two fraudulent transfers means that, inevitably, she is seeking to rely on the first act of fraud, namely the void Transfer 1, and it would be contrary to common sense, and any notion of justice, to consider the question of exceptional circumstances, and perhaps more particularly whether or not the nonrectification of the Register was justified, without having regard to that fact." [34]

RECTIFICATION OF THE REGISTER Schedule 4, Paragraph 3

"3(1) This paragraph applies to the power under paragraph 2, so far as relating to rectification.

(2) If alteration affects the title of the proprietor of a registered estate in land, no order may be made under paragraph 2 without the proprietor's consent in relation to land in his possession unless—

- (a) he has by fraud or lack of proper care caused or substantially contributed to the mistake, or
- (b) it would for any other reason be unjust for the alteration not to be made.

(3) If in any proceedings the court has power to make an order under paragraph 2, it must do so, unless there are exceptional circumstances which justify its not doing so.

(4) In sub-paragraph (2), the reference to the title of the proprietor of a registered estate in land includes his title to any registered estate which subsists for the benefit of the estate in land".