



Neutral Citation Number: [2023] EWHC 919 (Ch)

Case No: HC-2017-000147 & 158

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
PROPERTY TRUSTS AND PROBATE LIST (ChD)

Royal Courts of Justice, Rolls Building
Fetter Lane, London, EC4A 1NL
Date: 21/4/2023

Before:

MASTER CLARK

HC-2017-000147

Between:

DAVID RAYMOND BRIERLEY
- and -

Claimant

(1) FRANK OTUO
(2) RUTH OTUO
(3) JASON ADU-GYAMFI
(4) JAYANA THENUARA

Defendants

HC-2017-000158

Between:

FRANK OTUO

Claimant

- and -

(1) DAVID RAYMOND BRIERLEY
(2) LISA-JAYNE BRIERLEY

Defendants

Adam Stewart-Wallace (instructed by **Helix Law**) for the **Claimant** in **HC-2017-000147** and the **First Defendant** in **HC-2017-000158**

Frank Otuo, the **First Defendant** in **HC-2017-000147** and the **Claimant** in **HC-2017-000158** in person for himself and the **Second Defendant**

Hearing date: 31 January 2023

Approved Judgment

Remote hand-down: This judgment was handed down remotely on 21 April 2023 by circulation to the parties or their representatives by email and by release to The National Archives.

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Master Clark:

Definitions

1. In this judgment, I refer to:
 - (1) the parties in their capacities in claim no. HC-2017-000147
 - (2) 311 Leigham Court Road, Putney SW16 2RX as “311 Leigham Court Road”
 - (3) 31B Oxford Road, Putney SW15 2LH as “31B Oxford Road”
 - (4) the order dated 2 August 2019 of Nicholas Le Poidevin KC in these claims as “the Le Poidevin order”
 - (5) “the costs and expenses of effecting the sale of 311 Leigham Court Road” (para 14(i) of the Le Poidevin order) as “the LCR costs”
 - (6) “the costs and expenses of effecting the sale of 31B Oxford Road” (para 13(i) of the Le Poidevin order) as “the OXR costs”

Scope of the judgment

2. This judgment deals with:
 - (1) the outstanding issues (following the hearing on 5 October 2022) in respect of
 - (i) the first defendant’s applications by notices dated 17 March 2021 and 13 September 2021;
 - (ii) the first and second defendants’ application by notice dated 11 March 2022;
 - (iii) the first defendant’s application by notice dated 21 September 2022;
 - (2) the claimant’s applications by notices dated 10 March 2022 (“the release application”) and 19 January 2023.

Parties and the background

3. These applications are the latest stage of long-running litigation between the claimant, David Brierley and the first defendant, Frank Otuo, who has acted in person

throughout. A brief background is set out in my judgment dated 28 June 2022 [2022] EWHC 1530 (Ch) (“the June 2022 judgment”). The procedural history is one of labyrinthine complexity, with 57 orders (including 17 charging orders) having been made in claims between these parties.

4. The first relevant event for present purposes is the Le Poidevin order. This made orders for the sale of 311 Leigham Court Road and 31B Oxford Road, and ordered the first and second defendants (Mr Otuo and his wife, Ruth Otuo – to whom I will refer as “the defendants”) to pay £90,000 on account of the costs ordered against them. The orders for sale were made to enforce charging orders in respect of costs orders against the defendants in previous proceedings (commenced in 2012). Expanding the scope of the terminology in my judgment dated 8 April 2022 [2022] EWHC 688 (ChD) (“the April 2022 judgment”), I refer to the charging orders against each of 311 Leigham Court Road and 31B Oxford Road which were the basis of the Le Poidevin order as “the 2012 claim charging orders”.
5. The claimant obtained possession from the tenants of 311 Leigham Court Road in January 2020, and that property has remained unoccupied since then. Neither property has been sold, although for different reasons.
6. The £90,000 payment on account of costs ordered by the Le Poidevin order (and sums due under other later costs orders) were secured by two final charging orders dated 17 February 2020 of Deputy Master Lloyd against each of the defendants on 311 Leigham Court Road (“the 2020 charging orders”).
7. On 12 March 2020, the parties entered into a consent order approved by Deputy Master Bowles (“the 2020 consent order”), under which the claimant agreed to:
 - (1) accept £250,000 in part payment of sums due to him under the charging orders on both properties (which by that stage included charging orders made after the 2012 claim charging orders), and on other properties that had also been ordered to be sold by the Le Poidevin order;
 - (2) remove all charges held by him on 31B Oxford Road;
 - (3) give the defendants vacant possession of 31B Oxford Road;
 - (4) cease the sale of 31B Oxford Road.The order recited (at para 1.2) that the claimant did not thereby waive any his rights to remaining sums presently owed, or to any sums that might in future be owed by the defendants to the claimant.
8. On 20 September 2021, I made an order requiring the claimant to file and serve a redemption statement setting out the total sum required to discharge all the charging

orders on the first defendant's properties. I did so because, the defendants having paid £250,000¹ and released 31 Oxford Road from the order for sale, wished to recover 311 Leigham Court Road as well, but the claimant had not told them what sum was required to be paid to do so.²

9. At the hearing on 20 September 2021, one of the issues was whether the 2012 claim charging orders on 311 Leigham Court Road had been discharged as a result of payment of the £250,000 pursuant to the 2020 consent order. The claimant's position (in paragraph 6 of his skeleton argument) was that

“The existing court orders, and in particular the [Le Poidevin order] and the [2020 consent order], offer a comprehensive and rigid set of instructions as to how and in what manner the debts of the First and Second Defendants to the Claimant are to be paid, and make any further question of allocation of payments or release of particular charges redundant.”

The claimant's authorities at that hearing included *Holder v Supperstone* [2000] 1 All E.R. 473, but his counsel did not refer the Court to it, and did not submit that the 2012 charging orders were not discharged in circumstances where the LCR costs had not been paid.

10. The first redemption statement was filed and served on 22 October 2021. At this stage, the claimant's position was that the unassessed costs ordered by the Le Poidevin order (and which remain unassessed 3½ years later) were also secured by the 2020 charging orders; so that payment of all the liquidated sums secured by those charging orders would not result in their discharge.
11. On 14 February 2022, in circumstances set out below, the claimant gave an undertaking to the court (“the Undertaking”) not to sell 311 Leigham Court Road until 28 days after the determination of the applications which were outstanding (“the outstanding applications”) following the June 2022 judgment.
12. On 16 February 2022, I ordered the claimant to file and serve by 2 March 2022 breakdowns of the following sums in the first redemption statement:
- (1) £23,302.60 claimed as the LCR costs;
 - (2) £7,158.67 claimed as the OXR costs;

¹ In fact, £250,180.25 was paid

² The claimant had produced (and exhibited to the 10th witness statement dated 23 February 2022 of Brendan Rimmer) a statement of sums owed by the defendants under costs orders made against them, but this was directed to an earlier issue as to how the £250,000 was to be appropriated.

The order required the breakdowns to identify the categories of costs incurred, those categories to include solicitors' costs and third party disbursements, and in the case of disbursements, to be accompanied by receipts or invoices evidencing them.

13. The breakdowns provided on 2 March 2022 can be summarised:

Property	Disbursements	Solicitors' fees	Estate agents fees	Total
311 LCR	12,248.60	24,555.60	11,250	50,672.60
31B OXR	"TBC"	7,163		TBC

No details were provided of the solicitors' fees claimed. Although the note accompanying the breakdown stated that details of disbursements in respect of 31B Oxford Road would be provided upon return of the solicitor with conduct of the case, it seems that the first occasion when the claimant provided a list of those disbursements was on 10 May 2022, when they were quantified at £8,437.

14. On 10 March 2022, the claimant issued an application notice seeking to be released from the Undertaking ("the release application"). The background to the application was that the claimant had found a buyer for 311 Leigham Court Road, and wished to proceed with the sale.
15. On 8 April 2022, in the April 2022 judgment, I held that the 2012 claim charging orders on 311 Leigham Court Road had been discharged because the underlying debts (and interest on them) had been discharged by the payment of £250,000 referred to above.
16. The claimant has produced numerous versions of the redemption statement ordered by me on 30 September 2021. These are summarised in the table below.

	Date	Total to redeem	LCR costs	OXR costs
1.	22 Oct 2021	246,366.64	23,302.60	7,158.67
2.	13 Jan 2022	226,598.41	48,053.60	7,158.67
3.	8 Mar 2022	230,731.63	46,947.60	14,572.16
4.	24 May 2022	232,892.88	37,852.60	14,812.16
5.	8 Jun 2022	183,107.25	37,852.60	14,332.16
6.	4 Oct 2022	163,261.74	37,852.60	14,332.16

17. On 28 June 2022, in the June 2022 judgment, I held that in determining the sum required to discharge all charging orders on 311 Leigham Court Road, the unassessed

costs ordered by the Le Poidevin order were to be disregarded. The claimant appealed this decision; and permission to appeal was refused by Miles J on 20 January 2023.

18. At the hearing on 5 October 2022 to determine the order consequential on the June 2022 judgment, the claimant conceded that his calculations as to interest were flawed, and that the defendant’s approach was correct. This resulted in the parties agreeing (after the hearing) that the sum required to discharge the 2020 charging orders was £52,429.73, inclusive of interest to 5 October 2022 (plus continuing interest to payment). At that hearing, the claimant’s position was that he no longer pursued his application to be released from the Undertaking on the basis that the outstanding applications would be determined at that hearing.
19. At that hearing, I held that the defendants were entitled to detailed assessment of all the costs and expenses of the sales of all properties ordered to be sold by the Le Poidevin order. I also decided that since the LCR costs had been ordered³ to be paid from the proceeds of sale of 311 Leigham Court Road, the defendants could only recover it, i.e. prevent its sale, by payment into court pending the detailed assessment of those costs. That was, in the light of the case law considered below, an error, for the reasons which I also set out below. In these circumstances, where the order has not been drawn up, the court is not only entitled but obliged to revisit that decision to correct the error: *In re L and another (Children) (Preliminary Finding: Power to Reverse)* [2013] UKSC 8, [2013] 1 W.L.R. 634 .
20. The parties were unable to agree the order to be made following the 5 October hearing. I therefore sent them a draft order I proposed to make, subject to the parties' comments. Following those comments, a further hearing was listed on 31 January 2023 to determine all outstanding issues.
21. On 19 January 2023, the claimant issued an application notice seeking the determination of the release application at the hearing on 31 January 2023. His solicitors also informed the defendants that the further LCR costs incurred since 29 September 2022 were:

	Disbursements	Solicitors’ fees	Total
311 LCR	1,850	6,793	8,643

22. On 30 January 2023, the claimant filed an “activity list” in respect of his solicitors’ time costs (untotaled, but later filed with a total of £12,446.50) and disbursements totalling £4,757.50.

³ by the Le Poidevin order

23. Finally, on 2 February 2023 (having been directed to do so at the hearing on 31) the claimant filed and served a more extensive “activity list” of his solicitors’ time costs claimed by him in respect of the 2 properties. His position as to his total sale costs as at that date was:

Property	Disbursements	Solicitors’ fees	Total
311 LCR	Up to 29/9/22: 12,248.60 29/9/22 to 30/1/23: 4,575.50 Total: 17,006.10	2/3/21 to 13/1/22: 8,292 14/1/22 to 4/10/22: 13,910 5/10/22 to 30/1/23: 12,446.50 Total: 34,648.50	51,654.60
31B OXR	6,997.16	4,919	11,916.16
Total	24,003.26	39,567.5	63,570.76

Outstanding issues

24. In these circumstances the following issues apparently arose:
- (1) What sum should be paid into court pending detailed assessment of the LCR costs as a precondition of revoking (or permanently staying) paragraph 8 of Le Poidevin order i.e. the order for the sale of 311 Leigham Court Road: whether it should be the full sum sought by the claimant in respect of the LCR costs or a lesser sum;
 - (2) Whether the sum payable in respect of the LCR costs ought to account for the OXR costs;
 - (3) Whether the court should stay of paragraph 8 of the Le Poidevin order pending detailed assessment of the LCR costs on payment into court of a lesser sum;
 - (4) Whether on the true construction of paragraph 14(i) of the Le Poidevin order, the claimant was, without more, entitled to any payment under this paragraph if the sale of 311 Leigham Court Road did not take place;
 - (5) Whether the claimant’s entitlement to the LCR costs extended to costs incurred after the Undertaking;
 - (6) Whether the court should allow the defendants 6 weeks after the determination of the total sum required to discharge the 2020 charging orders to enable them to do so.
25. However, in the course of preparing this judgment, my own research revealed the following passage (which had not been drawn to my attention by the claimant’s counsel) in Fisher & Lightwood’s *Law of Mortgage* at para 55.6:

"In the absence of an express term, there is no implied obligation upon the mortgagor to pay the costs, charges and expenses so incurred by the mortgagee. Consequently, unless the mortgage so provides, they are not recoverable from the mortgagor personally (except if in the particular case he has become personally liable to pay them).

However, the costs are added to the secured debt and, both as against the mortgagor and other persons interested in the equity of redemption, they are added by the mortgagee to the amount due upon his security and must be paid as a condition of redeeming. With the principal and interest they form a single debt and are payable in the same priority."

26. The authorities referred to in support of the first sentence of this paragraph are *Re Sneyd, ex p Fewings* (1883) 25 Ch D 338 at 352, CA; *Sinfield v Sweet* [1967] 1 WLR 1489. Similar passages to that in *Fisher & Lightwood* are found in other textbooks on mortgages e.g. *Cousins on Mortgages* (4th edn) at para 26-29; *Halsbury's Laws* (5th edn) at para 743.
27. The principle that the liability is not a personal liability extends to equitable charges: see *Ezekiel v Orakpo* [1997] 1 WLR 340, CA.; and accordingly applies to charging orders: *Charging Orders Act 1979*, s 3(4); *Holder v Supperstone* [2000] 1 All ER 473.
28. I therefore drew the passage in *Fisher & Lightwood* (and the two supporting authorities) to the parties' attention, commenting,
- "Since
- (1) all charging orders on 31B Oxford Road were discharged by agreement;
- (2) I held in my judgment of 8 April 2022 that the 2012 claim charging orders had been discharged by payment of the underlying debt,
- it would seem that there is no basis on which the claimant may recover the costs and expenses of effecting the sale of each property.
- In addition, since the basis of the orders for sale made in the *Le Poidevin* order was the 2012 claim charging orders, it is unclear whether, those orders having been discharged, the claimant remains entitled to sell 311 *Leigham Court Road*."
29. I provided the parties with an opportunity to file written submissions on the above, and they did so. The claimant does not seek to challenge the legal principles set out above.

Discussion and conclusions

30. The starting point is the *Le Poidevin* order, which, after ordering the sale of 311 *Leigham Court Road* and 31B *Oxford Road*, provided, in the usual way:

"13. The Claimant's solicitors shall apply the proceeds of sale of 31B *Oxford Road* as follows:

(i) to pay the costs and expenses of effecting the sale of that property;

...

(iv) to reduce or discharge the First Defendant's indebtedness to the Claimant as secured by all and any charging orders (including accrued

interest) made in favour of the Claimant upon the First Defendant's interest in that property, including ... the amount due under all orders for costs made against the First Defendant ... (including the order hereinafter made).

- ...
14. The Claimant's solicitors shall apply the proceeds of sale of 311 Leigham Court Road as follows:
- (i) to pay the costs and expenses of effecting the sale of that property;
 - ...
 - (iv) out of the First Defendant's share
 - a. to pay all sums as required to reduce or discharge the First Defendant's indebtedness to the Claimant as secured by all and any charging orders (including accrued interest) made in favour of the Claimant upon the First Defendant's interest in that property, including ... the amount due under all orders for costs made against the First Defendant ... (including the order hereinafter made).
 - (vi) out of the Second Defendant's share:
 - a. to pay the amount due under all orders for costs made against the Second Defendant ... (including the order hereinafter made)."

31. The provisions for payment of the sale costs reflect the position that a charge holder is entitled to reimburse himself out of the charged property for all costs, charges and expenses reasonably and properly incurred in enforcing or preserving his security: *Holder v Supperstone* [2000] 1 All E.R. 473, following *Parker-Tweedale v Dunbar Bank (No.2)* [1991] Ch. 26, [1990] 2 WLUK 223.
32. These costs include the costs of an attempted sale: *Corsellis v Patman* (1867) L.R. 4 Eq. 156; *Farrer v Lacy, Hartland & Co* (1885) L.R. 31 Ch.D. 42.
33. As noted above, the 2012 claim charging orders on which the orders for sale were based have been discharged. In the case of 311 Leigham Court Road, this was, as I have held, by payment of the underlying debts secured by the 2012 claim charging orders. In the case of 31B Oxford Road, all charges on it were discharged by agreement; and, in any event, the debts underlying the 2012 claim charging orders on it were also discharged by that payment.
34. The Le Poidevin order does not contemplate this event. It assumes that the properties will be sold to pay the sums due under the 2012 claim charging orders, and provides for the LCR costs and OXR costs to be paid from the net proceeds of sale. This position is, of course, subject to the claimant only being entitled to recover his reasonable costs and expenses. In the usual case, where a claimant sells to recover the charged sum, those

costs and expenses are assessed after the sale, and to the extent that they are reduced on assessment, that sum is credited to the defendant.

Recoverability of the OXR costs

35. At the hearing on 31 January 2023, the claimant’s counsel made the following submissions in respect of the OXR costs. First, he submitted that the OXR costs were recoverable under the Le Poidevin order. I reject that submission. The OXR costs were recoverable under the 2012 claim charging orders as being chargeable to the security, and the Le Poidevin order merely reflected that fact – it did not in my judgment create a new liability independently of the charging orders. More importantly, as noted above, the costs and expenses of sale are not, as a matter of law, personally recoverable from the chargee; and the Le Poidevin order did not, in my judgment, alter that position.
36. The claimant’s counsel then submitted that the £250,000 paid pursuant to the 2020 consent order must be treated as being applied to the debts secured by charging orders on 31B Oxford Road (which was held to be solely beneficially owned by the first defendant); and that those debts included the OXR costs.
37. He relied particularly upon the fact that the terms of the 2020 consent order provided that the payment of £250,000 was “...in part payment towards outstanding monies owed to the Claimant under the Charging Orders⁴” (recital 2.1) and referred to as “... reducing or discharging the indebtedness” of the first defendant to the claimant.
38. He also relied upon the fact that there was no broader agreement to waive the OXR costs in the order.
39. The difficulty with that submission arises out of para 2.5 of the 2020 consent order, which, as set out above, provided that, on payment of the £250,000 the claimant would
 - (1) remove all restrictions and charges held by him over 31B Oxford Road, and
 - (2) cease the sale of the property.
40. Since the claimant’s only entitlement to the OXR sale costs was, pursuant to the 2012 claim charging orders on 31B Oxford Road, to have them paid out of the proceeds of sale, it follows, in my judgment, that that entitlement ended as a result of the 2020 consent order. The provisions in that order preserving the claimant’s rights to sums presently owed could not in my judgment change the nature of those rights: it did not convert his right to have those costs paid from the proceeds of sale of the property into

⁴ This is defined as the charging orders on all 4 properties that were the subject of the Le Poidevin order, so includes the 2012 claim charging orders and the 2020 charging orders

a right against the first defendant personally. Having agreed to remove the charging orders on Oxford Road, the claimant's only means of payment of the OXR costs was therefore also removed. The claimant could have required the first defendant to agree to become personally liable for those costs as a term of the 2020 consent order, but he did not do so.

41. I therefore reject the claimant's counsel's submission that the sums due to him include any sum in respect of the OXR costs.

Recoverability of the LCR costs

42. The position is analogous in the case of the LCR costs. Here, there was no express agreement to discharge the 2012 claim charging orders, but, as I held in the April 2022 judgment, the £250,000 was applied to the debts set out at paragraph 41 of my judgment dated 8 April 2022, with the consequence that the 2012 claim charging orders were discharged: see para 53 of the judgment.
43. The effect of that was, in my judgment, to remove, the claimant's entitlement to recover the LCR costs, because 311 Leigham Court Road was no longer charged with the payment of those costs.
44. The claimant submitted, however, that, if the effect of the April 2022 judgment is that the defendants are not obliged to account for the costs and expenses of sale, then that decision is wrong. If that is a submission that the defendants are personally liable for those costs and expenses, that is plainly wrong. If it is a submission that although the underlying costs debts (and interest on them) have been paid, the 2102 charging orders have not been discharged, then I reject that submission, as being contrary to the decision on that point in the April 2022 judgment. If my decision was wrong, then the claimant's remedy was to appeal it. He is not entitled to re-open it before me.
45. The claimant submitted in the alternative that he is entitled to recover the LCR costs pursuant to:
- (1) paragraph 14 of the Le Poidevin order; and/or
 - (2) the 2020 charging orders.

Recoverability under paragraph 14 of the Le Poidevin order

46. I reject the submission that the effect of the Le Poidevin order is to create a free-standing personal liability for the LCR costs for the reasons set out at paragraph 39 above.

Recoverability under the 2020 charging orders

47. I also reject this submission. The 2020 charging orders had not been made at the date of the Le Poidevin order, though they charged 311 Leigham Court Road with payment of the £90,000 ordered on account of costs. No order for sale has been made in respect of the 2020 charging orders, and therefore the costs and expenses of such a sale cannot be charged by them.

Whether the claimant remains entitled to sell 311 Leigham Court Road

48. The jurisdictional basis of the order for sale of 311 Leigham Court Road was, in my judgment, the 2012 claim charging orders, and only those orders. Those charging orders having been discharged, it follows that the order for sale cannot stand.

The position if the claimant remains entitled to sell 311 Leigham Court Road in order to recover the LCR costs

49. I turn to consider the position if I am wrong in my conclusions above, and the claimant remains entitled to sell 311 Leigham Court Road, in order to recover the LCR costs, even though the principal debts and interest secured by the 2012 claim charging orders have been paid.
50. In what circumstances therefore would the claimant's entitlement to sell cease? In my judgment, this could only occur if:
- (1) the LCR sale costs were paid in the full amount claimed; or
 - (2) the undisputed amount of the LCR sale costs were paid, and the balance paid into court;
- in both cases, pending their assessment.
51. If this were done, then I can no basis on which the defendants would not be entitled to regain possession of 311 Leigham Court Road. The defendants submitted that they should be entitled regain possession of 311 Leigham Court Road on payment or payment into court of a lesser sum reflecting the sum which the claimant is reasonably likely to recover. I was initially attracted by this suggestion, particularly because the costs of sale claimed by the claimant seem to me to be excessive, and to include sums not properly recoverable. However, ultimately, I have rejected it for two reasons. First, the court is not in a position on the material provided to it to carry out even a summary assessment of those costs. Secondly, this course would expose the claimant to the risk that sums to which he is found to be entitled were not recoverable by him as provided for by the Le Poidevin order. The claimant should not in my judgment be exposed to this risk.
52. I would however be willing to stay (pending detailed assessment) the order for sale in the Le Poidevin order on payment of a lesser sum. To do so would reflect my view that

the claimant is unlikely to recover the full amount sought by him, whilst protecting him if he should in fact do so.

53. In this context, it is relevant to note that the sale price agreed by the claimant in November 2021 was £750,000. Although house prices have been static or dropped slightly since autumn 2022, I take judicial notice of the fact that they rose in London in the intervening period. The secured debts having priority over the 2020 charging orders total about £560,000, comprising
- (1) NatWest charge - £443,863 as at 6 January 2022
 - (2) Progressive Financial Services - £60,854 as at 23 August 2021
 - (3) Charles Oteng – about £55,000
- The claimant is currently therefore more than adequately secured in respect of the entirety of the LCR costs.

Sum to be paid as condition of granting a stay

54. I turn therefore to consider the appropriate sum which would need to be paid in to court as a condition of granting a stay.
55. The defendants strongly dispute the level of the LCR costs on several grounds.
56. First, the defendants oppose in principle the recovery of any costs and expenses of effecting the sale after 14 February 2022, the date when the Undertaking was given. In my judgment, this is misconceived. Having agreed, subject to contract, to sell the property, the claimant could reasonably have incurred costs in relation to the proposed purchaser, including updating them as to the position. I agree, however, that the amount of the costs and disbursements for that period seems to be excessive.
57. Secondly, the defendants submit that the activity lists include costs clearly referable to the various applications heard by the court, which either have or will be the subject of separate costs orders by the court (and in which the defendants have had a measure of success). As to this, it is clear on the face of the activity reports and the list of disbursements that they include costs referable to applications in this litigation; and unclear why the claimant has considered it appropriate to include them. I take into account however, that the claimant may wish to maintain at the detailed assessment that certain of these costs are properly to be characterised as falling within the category of LCR costs.
58. Thirdly, the defendants rely upon the fact that the claimant's litigation solicitors, Helix Law, are not the conveyancing solicitors acting in the sale of 311 Leigham Court Road – this is a firm called Sherwood Solicitors. The first defendant has undertaken an

analysis of the claimant's activity lists by reference to the descriptions of the items, including items shown under the descriptions AGENTS, BUYER, CONVEYANCER AND LAND REGISTRY; and excluding items under the descriptions CLERKS, CLIENT, COUNSEL, COURIER, COURT, DOCUMENTS, DRAFT, EMAIL, E-FILE, FINANCE, INTERNAL, GENERATING, KEY DOCUMENT, OPS, OTHER, PLEADINGS, REVIEW, SUBJECT & WITNESS STATEMENT. This produces total time costs of £4,826, and disbursements of £9,098.60. On this basis, the defendants are willing to pay £15,000 into court.

59. In my judgment, the first defendant's analysis is plainly too restrictive. By way of example only, the items in the activity list include work done by counsel and solicitors in preparing letters to be sent to the various other charge holders of 311 Leigham Court Road. This is at least arguably to be included in the costs of effecting the sale.
60. The claimant's final position was set out in his solicitors' letter of 7 February 2023, in which he accepted the following reductions in respect of the LCR costs for the purposes only of payment into court:

Solicitors' costs

2/3/21 to 13/1/22:	£7,500 (from £8,292)
14/1/22 to 4/10/22:	£10,000 (from £13,910)
5/10/22 to 30/1/23:	£9,000 (from £12,446.50)
Total:	£26,500 (from £34,648.50)

Disbursements

£11,901.60 (adjusted down from £12,248.60)
£1,850 - counsel's fees (18 and 22 November 2022, but excluding brief fee for 31 January 2023)
Total: £13,750

Grand total: £40,250

61. Taking all the matters raised by the defendants into account, and inevitably approaching this issue on a relatively broad brush basis, I consider that the appropriate amount to be paid into court as a pre-condition of a stay would be £25,000.
62. The stay would be pending the detailed assessment of LCR costs. Once they had been assessed and the amount payable determined, then the defendants would have a short period within which to make payment, failing which the stay would end.

Release of the Undertaking

63. My primary conclusion is that, since the 2012 claim charging orders have been discharged, there no longer remains any jurisdictional basis for the order for sale of 311 Leigham Park Road. In these circumstances, I shall order a stay of those parts of the Le Poidevin order that provide for the sale. That order will render the Undertaking otiose, and it is unnecessary therefore to consider the claimant's arguments in support of it being released. It will be released when I make the stay order.