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Case No: QB/2018/0096

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
On appeal from the Portsmouth County Court
District Judge Ball exercising the jurisdiction of a Circuit Judge

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 21/12/2018

Before:

MR JUSTICE DINGEMANS

- -

Between:

Dr Munir Zaman	**Claimant and Appellant**
- and -	
Portsmouth City Council	**Defendant and Respondent**

- -
- -

Dr Munir Zaman in person
Daniella Gilbert (instructed by **Legal Services for Portsmouth City Council**) for the **Defendant and Respondent**

Hearing dates: 12th December 2018

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Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

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THE HONOURABLE MR JUSTICE DINGEMANS

Mr Justice Dingemans:

Introduction

1. This is the hearing of an appeal from the judgment of District Judge Ball exercising the jurisdiction of a Circuit Judge ("the Judge") at Portsmouth County Court dated 3 November 2017. The Judge dismissed a claim brought by Dr Munir Zaman, the Claimant and Appellant, against Portsmouth City Council ("the City Council"), the Defendant and Respondent to the appeal. Dr Zaman had claimed £10,674.27 in respect of a grant and loan for building works at Dr Zaman's property at 6 Whitecliffe Avenue, Portsmouth ("the property").

2. By the time that the parties had got to trial it was common ground that £10,674.27 was due to be paid to Dr Zaman but the parties were in dispute about whether it was a condition precedent to payment that Dr Zaman complete a form of authority for payment. The Judge found that of the sum of £10,674.27, the sum of £8,099.40 was a loan to be provided secured by a charge over Dr Zaman's property. This meant that the parties were in reality arguing before me over whether a form of authority was a condition precedent to the payment of £2,574.87 (being the balance of £10,674.27 less £8,099.40).

3. In earlier case management of this case when dealing with Dr Zaman's application to remove the case from the small claims track and put it on to the fast track, District Judge Ackroyd noted the dispute about the form of authority and had asked counsel then acting for Dr Zaman whether there was any reason why Dr Zaman "should not go out and compete that and submit it", and counsel was unable to suggest any reason, whilst recording that it was Dr Zaman's case that there was no need to do so (pages 6-7 of the transcript of the hearing on 29 March 2016). District Judge Ackroyd specifically doubted that it was the intention of the Civil Procedure Rules that there should be "a day's hearing on the principle of whether someone should fill in a two sided form or not". District Judge Ackroyd made an order recording that Dr Zaman agreed to "submit to the Defendant without delay an application on the appropriate form in order to draw down the balance of monies he claims are payable ….".

4. By letter dated 8 May 2016 Dr Zaman said that the point about a form of authority had not been raised in the defence (although it had, as appears below) and he submitted a form of authority dated 6 May 2018 for £74.87, but he refused to submit a form of authority for the balance.

5. It is very unfortunate that both parties could not resolve the matters given the very small sums at stake and the costs involved. They have managed to incur considerable costs all because one party insisted on a form being signed and the other refused to sign it. It is difficult to avoid the inference that both parties were being unreasonable, and there was nothing said at the hearing by way of explanation to justify such a considerable expenditure of costs on the point dividing the parties.

6. When the matter came on for hearing on 6 December 2016 on the fast track Dr Zaman had filed a 37 page statement and a bundle of over 800 pages was lodged. In a judgment on 6 December 2016 District Judge Ackroyd recorded that the clam had at one stage gone up to £19,000 but was now again £10,500. He recorded that the issue

had become one of costs. He allocated the claim to the multi-track and the trial was heard at a later date.

Relevant factual background

7. The City Council operated a scheme providing funds for the renovation of privately owned houses if certain criteria were met. The basis of the scheme was to ensure that all owners of properties, and in particular those in vulnerable groups, had resources to keep their houses in good repair. Monies were provided by way of grant and by way of equity assistance (being 30 per cent of the total cost of the works) to be paid by way of loan secured on the property.

8. The scheme was originally made pursuant to the Housing Grants, Construction and Regeneration Act 1996 ("the 1996 Act"). However amendments were made pursuant to the Regulatory Reform Act 2001 ("the 2001 Act") and pursuant to the Regulatory Reform (Housing Assistance)(England and Wales) Order 2002 ("the 2002 Order"). This meant that disability grants continued to be governed by the 1996 Act but that the relevant scheme in this case was made pursuant to the 2002 Order.

9. Article 3 of the 2002 Order provided a power for the council to provide assistance to any person for the purpose of enabling them to improve and repair living accommodation. Article 4(a)-(c) of the 2002 Order provided that the council could not exercise the powers to provide assistance unless they had adopted a policy to provide for assistance, given public notice of the policy and made it available for inspection. Article 4(d) provided that the powers to provide assistance had to be exercised in accordance with the policy. Article 6 permitted a local housing authority to require information and evidence from applicants for assistance.

10. Dr Zaman applied for renovation assistance from the City Council. By letter dated 8 November 2005 addressed to Dr Zaman, the head of community housing noted that the application for renovation assistance had been approved. So far as is material the letter recorded: "(4) if a payment is required during the progress of works my officer will make an inspection before payment is released. He will have the relevant paperwork for you to sign to release the interim payment. (5) on completion of the works my officer will make an inspection before any payments are released and he will have the relevant paperwork for you to sign to approve payment to your builder."

11. It was common ground between the parties that the relevant policy for the purposes of article 4(d) of the 2002 Order adopted by the City Council was dated 1 April 2006 and it was headed "Financial Assistance Policy for Private Sector Housing 2006". This set out the objectives behind the scheme.

12. The following were terms of the policy:

    (1) On page 1 it was noted that "this policy document … details the help that is available, who can apply for assistance, the mechanisms for accessing that help and the conditions that apply".

    (2) The types of assistance were set out including "renovation assistance", "home repairs assistance" and "equity loans". So far as equity loans were concerned it was provided "loans of up to £5,000 to help low income households … to meet

the cost of small-scale repair and improvement. The amount of the loan will be registered as a local land charge repayment on sale or transfer".

(3) Under "contracts" it was provided "the council, in approving an application for assistance, is agreeing to pay a specified sum of money on the satisfactory completion of an approved package of works subject to relevant conditions being complied with. Failure to comply with the terms and conditions will render the applicant liable for the full costs incurred".

(4) Under "payment for assistance" it was provided "the council will normally make payments direct to the contractor and the applicant will need to sign a form of authority for this to happen. Payments will be made on satisfactory completion of the work subject to a valid final account from the contractor. For works in excess of £5,000 interim payments can be arranged for up to 90 % of the sum approved".

(5) Under "Repayment of assistance" it was provided "all loans … are subject to repayment conditions. The value of a grant/loan will in normal circumstances be registered as a local land charge for a period of 5 years from the date of completion of that work. After that period any loan outstanding will continue to be registered and such loans will need to be repaid when the property is sold or transferred to another owner."

(6) Under "making an application for financial assistance" various stages were set out. Stage 5 was headed "payment of assistance". It provided "On satisfactory completion of the works the applicant should notify the council and sign and return the completion certificate, together with the contractors signed invoices. A member of the Housing renewals team will inspect the works to ensure that they have been satisfactorily completed before arranging payment. Assistance will normally be paid direct to the contractor. In certain circumstances staged payments can be made up to 90% of the total cost of the works".

(7) Under "Service standards" bullet points of service standards were set out. The final bullet point provided "payments will be made within 28 days of receiving final accounts and any necessary guarantees. This will be subject to inspection and confirmation of satisfactory completion of works …".

13. On 25 August 2005 a letter about loan assistance was sent to Dr Zaman. By 4 September 2006 the figures for the works were £26,998 of which the 30 per cent equity contribution was to be £8,099.40. The works started and were supervised by the City Council's agency, but Dr Zaman was unhappy with the quality of the work carried out by the builder. It would appear from Mr Springthorpe's evidence at trial that Dr Zaman's concerns were justified. The agency ceased to supervise the works and Dr Zaman managed the works. It was agreed that Dr Zaman would not be charged for the agency's work.

14. On 1 November 2006 Dr Zaman was presented with the legal charge which was to secure the equity loan. This was blank when presented to him. So far as is material it recorded that "in consideration of the sum of £8,099.40 now paid by the council to the borrower (the receipt of which the borrower hereby acknowledges) the borrower covenants with the council" to pay the sum on sale or transfer of the property, and in

clause 1.2.1 "to pay to the council interest on the principal sum at the local authority rate of 6.98 per cent per annum from the fifth anniversary of the date of this deed …".

15. At some stage the legal charge was completed and the date was given as 17 October 2005 so that the opening words read "This legal charge is made the 17th day of October 2005 …". The only explanation for the date of 17 October 2005 was that it was a mistake. It appears from the charges register that the charge was registered against the property on 29 April 2008.

16. On 6 May 2008 Dr Zaman completed a document headed "Form of Authority: Payment of Grant" requesting an interim payment in the sum of £10,000. The sum of £4611.26 was paid.

17. On 11 June 2008 Dr Zaman completed another document headed "Form of Authority – Payment of Grant" requesting payment in the sum of £10,000. There was attached an "undertaking to compete the works" attached to this document. Dr Zaman emailed the City Council pointing out changes between the heading and signature requirements on this Form of Authority and the first Form of Authority that he had signed. The sum of £8941.72 was paid.

18. On 2 July 2008 Dr Zaman completed a third "Form of Authority – Payment of Grant" which was in the same format as the second form of authority requesting payment in the sum of £7500. The sum of £5000 was paid.

19. By 1 September 2008 the majority of the works had been completed, but the kitchen units still needed to be fitted. That led to correspondence between the City Council and Dr Zaman about whether the works could be said to be completed, because the house was not habitable without a kitchen. Matters appear to have been complicated by the fact that Dr Zaman was going on holiday for about a month. It appears that Dr Zaman was asking for a further interim payment, but the City Council were, because the date by which the project had to be finished had passed, pushing for one final payment to be made after final accounts had been submitted.

20. On 6 April 2010, and in various letters thereafter, the City Council wrote to Dr Zaman recording that it was nearly 5 years since the City Council had helped Dr Zaman with works at the property, recording that a loan of £8,099.40 had been provided, that the loan had been interest free for 5 years, and the loan would start to accrue interest from 19 October 2010. Correspondence from Dr Zaman contesting that he had not been paid any money pursuant to the deed led to a response from the City Council that "the effective date for the loan is when the loan is approved and the money set aside for the applicant, not when the money is drawn down …".

21. Matters then became delayed by investigations, which did not disclose anything material, about Dr Zaman's capital position. It then appears that there was concern that there might have been an overpayment to Dr Zaman because he had not had to pay VAT on the building works, even though that had been allowed in the original figures. By 16 June 2010 Mr Lomax, the Housing Standards Manager wrote to Dr Zaman about moving matters forward requiring a "full and complete breakdown of costs incurred" stating that once he had that he would be in a position to finalise the full cost of the grant. He noted that, in order to move things forward, he was prepared to accept the invoices submitted although they did not specifically identify what

works had been undertaken. Dr Zaman pointed to this letter as showing that invoices were sufficient. Ms Gilbert noted that a full and complete breakdown of costs was still being required. Mr Lomax wrote further letters dated 25 October 2010 and 11 March 2011 seeking information from Dr Zaman. By letter dated 28 October 2011 Coral Cunningham of Corporate Complaints of the City Council responding to a complaint made by Dr Zaman, wrote to Dr Zaman recording that interim payments had been made and that "a final inspection was made, which highlighted some unfinished works … To finalise the grant, Mr Lomax would require confirmation from you that all have been completed to your satisfaction and confirmation that all invoices have been submitted and what cost you are expecting …Mr Lomax would expect to see a breakdown of the cost incurred by you … Any professional fees that you feel should be included within the grant must have been incurred in relation to the building work only. Once these have been fully submitted, Mr Lomax would then be in a position to see if the fees can be made part of the eligible expense incurred". The letter asked Dr Zaman to contact Mr Lomax to take matters forward.

22. Dr Zaman complained to the Local Government Ombudsman about the charging of interest on a loan which had not been paid. The Ombudsman determined that the City Council was at fault and suggested a remedy of extending the interest free period. This was agreed by the City Council, and on that basis the Ombudsman discontinued the investigation.

23. In September 2015 Dr Zaman, then acting in person, issued proceedings in the County Court claiming £8711.86 and interest and fees.

24. On 31 May 2016 following the completion of the form of authority for £74.87 the sum of £74.87 was paid.

The hearing of the trial and judgment

25. The Judge had a day's pre-reading, and there was a 2 day trial before the Judge on 11 and 12 July 2017. Evidence was given on behalf of Dr Zaman: by Dr Zaman; and by Mr Geoffrey Springthorpe, a chartered surveyor, whose statement was not challenged. Evidence was given on behalf of the City Council by Mr Bruce Lomax, the private sector housing manager. Both parties were represented by counsel. The Judge noted the dispute between the parties about whether there was any requirement for a form of authority to be submitted to the City Council to release the funds.

26. The Judge set out the background to the dispute. In paragraph 8 of his judgment the Judge set out that part of the original defence recording that "payments were to be released from the funding for approved work following the submission by the Claimant to the Defendant of the Form of Authority – Payment of Grant Form". This showed that the issue about the form of authority was not a point being taken only in the amended defence, as had been suggested by Dr Zaman in his witness statement and submissions.

27. The Judge dealt with the legal charge from paragraph 16 of the judgment. He accepted Dr Zaman's evidence that the deed had been signed on 1 November 2006. The Judge recorded that the deed had been subsequently dated 17 October 2005 which could not be right, if only because the figures had not been agreed by then. The Judge found that "something has gone awry in relation to the dating and

registration of the charge …". The Judge noted the Claimant's case that because the legal charge had been backdated it was void, but recorded that it was not uncommon to date a deed a few days later, and accepted the defendant's submissions that backdating the deed was not a material alteration. He held that the charge was valid. However he noted "whether or not the defendant can rely upon the deed for any interest is not a matter that I must resolve because there is no claim or counterclaim for interest".

28. The Judge also held in paragraph 23 that even if he had been wrong about that the conduct of the parties was such as to create an equitable charge over the property.

29. The Judge considered the documents in relation to the funding streams in relation to the issue of whether the interim payments which had been paid to Dr Zaman from the grant or from the loan. He noted that the City Council's documents were "confused, confusing and woefully inadequate" in paragraph 30 of his judgment holding that the payments were made first from the grant. He found that Dr Zaman had received a total of £19.543.18 in 4 tranches. The judge rejected a claim in respect of the loss of the advance of the loan in paragraph 33 of the judgment because there was no evidence that Dr Zaman had taken out a loan.

30. In relation to the dispute about whether a form of authority was required before payment could be made, the Judge referred to the pleadings and evidence. The Judge recorded in paragraph 38 of the judgement that Dr Zaman's evidence was that "the form of authority required by the defendant referred only to the grant element of the funds and not to the loan element" and that it "related to payments to be made to other parties and not payments to be made directly to him". Mr Lomax's evidence that a form of authority was required was summarised, and he denied that it had been a requirement recently invented.

31. In paragraph 39 of his judgment the judge rejected the evidence of Dr Zaman holding that his position was untenable and somewhat naïve. This was because Dr Zaman knew that public funds were being provided and that there were strict procedures for the auditing of these funds. The Judge noted that Dr Zaman had signed the form of authority on 4 occasions and it was fanciful to suggest that the defendant could make payments merely on provision of the final invoices. The Judge held that Dr Zaman was "somewhat stubborn in his attitude to this particular aspect of the claim". He found that Dr Zaman "was well aware of the need to complete a further form of authority to obtain payment of the final amount but he has failed to do so". In paragraph 40 of the judgment the Judge rejected Dr Zaman's claim for breach of contract noting that "paragraph 69 of the amended Particulars of Claim claims £9,979.61 alleging a breach of the agreement to release the eligible funds. I find there is no such breach by the Defendant and this part of the claim fails".

Issues

32. It appears from the written and oral submissions that the following matters are in issue: (1) whether completion of a form of authority was a condition precedent to the liability of the City Council to make payment under the scheme; (2) whether the City Council acted in breach of contract by stopping supervising the works meaning that Dr Zaman incurred fees with Mr Springthorpe which, whilst included in the approved

sums, have not yet been paid; (3) whether the legal charge was enforceable; (4) if it was not, whether there was an equitable charge over the property.

Form of authority was required – issue (1)

33. Dr Zaman suggested that the City Council's requirement on a form of authority had been suggested late in the day to defeat his claim, that it was not a contractual requirement and it was unnecessary because it told the City Council nothing. He referred to the previous scheme under the 1996 Act. Ms Gilbert submitted that the policy provided for completion of a form of authority, and under article 6 of the 2002 Order the City Council was entitled to require information, that the Judge had made a finding of fact that this was a requirement of the scheme and the parties had recognised and agreed this by conduct, and the judge was entitled to make that finding. Ms Gilbert submitted that the 1996 Act had nothing to do with the current scheme.

34. It is well-established that appellate courts have to be very cautious in overturning findings of fact made by a trial judge, see *McGraddie v McGraddie* [2013] UKSC 58; [2013] 1 WLR 2477. This is because trial judges have seen witnesses and because duplication of effort on appeal is undesirable and will increase costs and delay. Further appellate courts will only interfere if the trial judge was plainly wrong, *Henderson v Foxworth Investments Ltd* [2014] UKSC 41. This means making a finding of fact which had no basis in the evidence, or which showed either a demonstrable misunderstanding of relevant evidence or a demonstrable failure to consider relevant evidence so that the decision cannot reasonably be explained or justified. Appellate Courts must have regard to the fact that a trial judge will have seen the whole of the evidence rather than isolated parts, see *Fage UK Ltd v Chobani UK Ltd* [2014] EWCA Civ 5; [2014] ETMR 26.

35. In my judgment the 1996 Act is not relevant because this was a new scheme established under the 2002 Order. The Home Office circular and covering letter for the 2002 Order makes it plain that the aim was to provide wide-ranging powers to local authorities. Dr Zaman is right that the City Council had to exercise its powers under the scheme in accordance with a policy, pursuant to article 4(d) of the 2002 Order. However the policy did not require to set out every requirement of the contract which would govern the relationship between Dr Zaman and the City Council because that would involve the policy dealing with contractual terms, but to be lawful the contractual terms did need to be consistent with the policy. In this case if there was a contractual obligation to provide a form of authority it was consistent with the policy. This is because the policy specifically provided for a form of authority to be signed under the heading "payment for assistance" as set out in paragraph 12(4) above. The exact wording provided that "the council will normally make payments direct to the contractor and the applicant will need to sign a form of authority for this to happen". This meant that payments direct to the householder would be out of the ordinary run of arrangements contemplated by the policy but permissible under the policy because of the use of the word "normally". However there was nothing impermissible under the policy in requiring payments to the applicant householder only once a form of authority had been signed, because it is apparent that the policy usually contemplated the completion of a form of authority. In my judgment the provisions of article 6 of the 2002 Order do not assist on this point, because the question is whether there was a

contractual obligation to sign the form of authority, not whether information or evidence needed to be provided pursuant to the policy.

36. This therefore means that it became a matter of analysis of the contract between Dr Zaman and the City Council as to whether there was a requirement that a form of authority be signed before payment is made. In that respect I note that the letter dated 8 November 2005 from the City Council to Dr Zaman specifically noted at (4) and (5) the requirement to sign "relevant paperwork" in order to release payments, as appears from paragraph 10 above. That was sent at a time when it seemed that payments would be made direct by the City Council to contractors, however I also note that even after Dr Zaman had taken over supervision of the works Dr Zaman had signed the form of authority to have interim payments released. The Judge recorded that Dr Zaman's evidence was that a form of authority was required, but it only related to the grant element and not the loan element, but there was nothing to suggest that such a distinction was made at the time.

37. In these circumstances in my judgment the Judge was entitled to find that there was a contractual obligation on Dr Zaman to provide a form of authority before payment would be made, part evidenced by the letter dated 8 November 2005 and part evidenced by the conduct of the parties after Dr Zaman had started to supervise the works. As the judge noted it was not particularly surprising that a public authority would require procedures to be in place before releasing public funds and although Dr Zaman was entitled to say that the form of authority made more sense when directed to a contractor, it did provide for payments direct to the applicant.

38. In further submissions sent after circulation of the draft judgment Dr Zaman suggested that his claim was not for breach of contract but a claim under the 2002 Order. The Judge dealt with the claim as a claim for breach of contract, and the Amended Particulars of Claim made a claim for breach of the agreement. In oral submissions at the hearing of the appeal Dr Zaman had attempted to draw a distinction between a claim for breach of contract and breach of agreement, but I had difficulty in following the point he was attempting to make. In my judgment the claim made by Dr Zaman in his amended Particulars of Claim was a claim for breach of contract, and this was the correct way for him to make a claim. This is because the 2001 Act and 2002 Order provided powers to the City Council, whose powers as a statutory body are limited by statute, to operate a scheme to provide funds for the renovation of privately owned houses. The scheme was to be operated under a policy in accordance with the 2002 Order, and permitted the City Council to enter into contracts with householders for the renovation of houses. Relevant terms could include the requirement to provide a form of authority before payment was made, and legal charges to be given over the renovated property to secure repayment of loans. This scheme of a contract with the householder is what the policy appears to provide under the heading "contracts" as set out in paragraph 12(3) above. Even if Dr Zaman had attempted to formulate his claim as some sort of claim for restitution (and in submissions he has claimed to own the monies to be provided by the City Council) or as some sort of public law claim (impermissibly brought in the County Court) for infringement of a legitimate expectation of payment, the Judge made a clear finding, having read the trial bundle and having heard Dr Zaman and Mr Lomax, that a form of authority was required before payment would be made. In my judgment, for the reasons given above, the Judge was entitled to make that finding. That finding would

prevent payment to Dr Zaman before completion of the form of authority, however Dr Zaman had attempted to formulate his claim.

No breach of contract in relation to the management of the works – issue (2)

39. It was common ground that Mr Springthorpe's fees are included in the payment to be made to Dr Zaman, once a form of authority has been provided. However Dr Zaman submitted that the claim arose because the original intention had been that the City Council's agency would supervise the works, the agency withdrew from supervising the works because Dr Zaman had (justifiably) criticised the works carried out by the contractor being supervised, that Dr Zaman had stepped in to supervise the works, that he had used Mr Springthorpe to assist, and there was therefore a breach of contract on the part of the City Council in not supervising the works, which had caused him loss being the amount of the surveyor's fees. It mattered not that the fees would be paid under the claim because this was a separate breach of contract.

40. The first difficulty with this claim is that it was not pleaded in the Amended Particulars of Claim. The second difficulty with this claim is that Dr Zaman's evidence strongly suggested that the parties varied the contract between them to provide for Dr Zaman to manage the works in the place of the City Council's agency. This appears from paragraph 8 of the particulars of claim "… it was agreed that the claimant will manage the works …" and paragraph 130 of his witness statement "… it was agreed that I would substitute the agency in managing the works". I can discern no breach of contract and this attempt to avoid the requirement to provide a form of authority to the City Council by framing a claim in breach of contract fails.

There was a material change to the legal charge – issue (3)

41. Dr Zaman submits that the City Council made a material alteration to the deed by back-dating it to a year before he signed it, this meant that interest was payable for a whole year earlier, and that the deed is therefore void. Ms Gilbert submitted that the deed had been incorrectly back-dated, but that the City Council recognised that no interest was payable and that interest ran on the deed from its date, which was when it had been filled in, and not its date. Ms Gilbert also pointed out that this was not an issue on the pleadings and although the judge had dealt with it he had expressly not dealt with the issue of interest.

42. As the point was argued and dealt with in part by the judge then I should deal with it to the extent that it was dealt with by the judge. As appears from paragraph 15 above Dr Zaman signed the legal charge when it was blank, but it was backdated from 1 November 2006 to 17 October 2005. In my judgment this was a material alteration because there was an obligation to pay interest from the "fifth anniversary of the date of the deed". Backdating the legal charge by a year brought forward the time at which interest would be payable. I agree that, as Ms Gilbert submitted, it is possible to fill in dates of a deed at a later time but this does not answer the point that, on the face of the legal charge, interest was payable over a year earlier than it had been signed and this was the relevant date for the purposes of the deed. This was therefore a material alteration, and I note that the City Council had, before the intervention of the Ombudsman, attempted to claim the interest under the legal charge..

43. However it seems to me to be plain, and to be common ground, that the wording of the deed, providing for interest to be paid 5 years after 17 October 2005 did not represent the joint intention of the parties. In these circumstances Dr Zaman may have remedies of rectification or removal of the legal charge, but Dr Zaman has not sought those remedies in this action, nor has he sought a declaration. I am therefore not able to make any order in this respect on appeal, but the parties have this judgment recording the matters set out above.

Equitable charge

44. Dr Zaman submitted that the Judge was wrong to conclude that there was an equitable charge over the property, because the loan had not yet been paid. In my judgment the judge was right to record that it was the common intention of the parties, as evidenced by all of the documents and evidence, that any loan provided by the City Council to Dr Zaman would be secured on the property, and Dr Zaman appeared to accept this. Whether this is achieved by seeking rectification of the legal charge, entering into a new legal charge with the correct dates, or by way of equitable charge is not something for me to determine. It will need to be addressed if Dr Zaman does provide a form of authority so that payment can be made by the City Council.

Conclusion

45. In my judgment, for the reasons set out above, the judge was: (1) entitled to find that a form of authority was required to be provided by Dr Zaman before payment was made by the City Council; (2) there was no valid claim for breach of contract entitling Dr Zaman to claim the surveyor's fees other than as part of the assessed sums: (3) there was a material alteration to the legal charge which it is common ground does not reflect the intention of the parties; (4) it was agreed that any loan provided to Dr Zaman would be secured by way of charge on the property. I do not make an order in relation to my finding set out in (3) above because no order was sought in the claim, but the parties have this judgment recording my findings. I therefore dismiss the appeal.