Neutral Citation Number: [2021] EWHC 797 (QB)

Case No: QA-2019-000224

IN THE HIGH COURT OF JUSTICE
QUEENS BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 31/03/2021

Before :

THE HONORABLE MR JUSTICE CALVER

- -

Between :

TERRY CHUKWUEMEKA IKEJI	**Defendant/ Applicant**
- and –	
BANK OF SCOTLAND PLC	**Claimant/ Respondent**

- -
- -

James Bogle (Direct Access counsel) for the **Defendant/ Applicant**
Nicholas Macklam (instructed by **Walker Morris LLP**) for the **Claimant/ Respondent**

Hearing dates: 26 March 2021

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Approved Judgment

Covid-19 Protocol: This judgment was handed down by the judge remotely by circulation to the parties' representatives by email and release to Bailii. The date and time for hand-down is deemed to be 31 March 2021 at 10:30 am

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Mr. Justice Calver:

Factual background to the applications

1. This dispute has a long, complicated and sorry procedural history as a result of the indefatigable and, at times, guileful activity of the Applicant ("**Mr. Ikeji**").

2. Mr. Ikeji purchased a property known as the Torrens, Shenton Gate, Gorse Lane, Cobham, Surrey, GU24 8RU (the "**Property**") on or about 10 August 2006. His purchase of the Property was funded by a mortgage from Birmingham Midshires (a trading name of the Respondent ("**the Bank**")). Mr Ikeji failed to meet his mortgage payments and the Bank obtained a possession order on 13 November 2009. Despite this, the Bank is still engaged in a dispute with Mr. Ikeji for possession of the Property to this day as a result of the constant procedural manoeuvring of Mr. Ikeji as follows.

3. A possession order for the Property was first made in favour of the Bank on 13 November 2009.

4. On 26 September 2018, by consent, the possession order was suspended on terms that Mr. Ikeji paid the current monthly mortgage instalments, a further sum towards arrears of £196,027.87 and various lump sums towards reduction of the arrears. That order provided for the Bank to have permission to issue a warrant of possession forthwith if Mr. Ikeji failed to comply with the terms of the order ("**the Consent Order**").

5. Mr. Ikeji failed to comply with the terms of the Consent Order and on 12 February 2019 the Bank issued a **warrant of possession**.

6. Mr. Ikeji applied to have the warrant of possession set aside but his application was refused on 5 March 2019 by District Judge King and permission to appeal that decision was refused by His Honour Judge Simpkiss on 7 March 2019.

7. Mr. Ikeji made a further application to stay or suspend the warrant of possession on 22 March 2019 which was refused by District Judge King on 25 March 2019. The warrant was due to be executed at 11am on 26th March 2019.

8. Mr. Ikeji applied for permission to appeal the Order of District Judge King of 25 March 2019 by a notice dated 26 March 2019 (which refers to the order of DJ King "dismissing my application <u>to suspend</u> the warrant of possession"), which application came on before Her Honour Judge Raeside on 26th March (emphasis added). The Judge dismissed the application for permission to appeal at 11.16am. Her order records in particular the fact that the application was being heard urgently "*in the light of eviction at 11am*", and that "*the Appellant [refused] to come into court when invited to do so"*. A Note written by the Usher in respect of the hearing also states as follows:

> *"I have a conversation with Mr. Ikeji and explained he needed to come into court to have his appeal heard. He refused to come into court and I explained that the eviction would proceed if he did not come into court. He said this was unfair as he*

> *needed legal representation. He was going to the High Court for a judicial review – Mr. Ikeji kept saying the court was being unfair to him. When I went out to inform Mr. Ikeji that his appeal had been dismissed he was nowhere to be seen."*

9. In *Kingsdale v Mann*[1], the Court of King's Bench held that, upon a warrant of possession/restitution:

> *"it is not a complete execution until the sheriff, or his bailiffs, deliver the possession to the party, and are gone away."*

10. There is a dispute between the parties as to when (i.e. at what time) on 26th March 2019 the warrant was executed. The Bank changed the locks on the five doors to the Property but the time by which it did so is in dispute.

11. The reason that that dispute was material, at least at the time when the dispute came before the courts *prior to* this application for permission for appeal, was because at some point on 26th March 2019, Mr Justice Stewart purported to stay or suspend the warrant until 16.00 on 4th April 2019. If the warrant had already been executed when Stewart J made his order, it would be of no effect.

12. In oral submissions Mr. Bogle for Mr. Ikeji said that he himself made the application before Stewart J sometime between 11am and 12 noon on 26th March, such that the warrant had not been fully executed at the time when Stewart J made his order granting a stay of the warrant. I asked my court clerk to check the court's records as to when Stewart J made his order, and the record in fact shows that he made it in the late afternoon, at 16.50 hours on 26th March, the hearing having taken place between 16.12 and 16.50 hours, with the time of the first intimation of the application being at 14.30 hours that day. Whilst the parties agree that it is not a matter which *this* court needs to decide, it accordingly appears more probable than not that the warrant was indeed fully executed before Stewart J made his order. I say that because it appears from the evidence that 2 bailiffs were at the Property at the moment when the Order of Judge Raeside was made at 11.16am and they immediately set about changing the 5 locks on the Property. Even if Mr. Ikeji's evidence is accepted that it took one man 5 hours to change the 5 locks, two men would have been likely to have completed the task before 16.50 hours when Stewart J made his order, despite the fact that Mr. Ikeji's friend, Mr. Owusu stated in a witness statement made much later on 28 November 2019 that when he left the Property that day at 4.15pm the 2 bailiffs were still changing locks outside (which is part of Mr. Ikeji's fresh evidence application).

13. In any event, despite the changing of the locks by the two bailiffs, Mr. Ikeji re-entered the Property on 26 March 2019 at about 6.00pm (although there is also a dispute as to whether he did so without forcibly entering the Property).

14. On 4th April 2019 Mr Justice Goose refused Mr. Ikeji's application to extend the stay which had been granted by Mr. Justice Stewart.

[1] 6 Mod 27, Salk 321, *per* Holt LCJ and Powell J.

15. On 10th April 2019 the Bank issued an application for permission to issue a **warrant of restitution** under CPR Part 83.26(9).

16. By an order of 3 June 2019, District Judge King granted permission to the Bank to issue a warrant of restitution. This Order was forwarded to Mr. Ikeji by the Bank's solicitors on 17 June 2019.

17. On 25 July 2019 the Bank's solicitors wrote to Mr. Ikeji and informed him that the County Court Bailiff at Guildford had set the eviction date as 6 August 2019 at 10am.

18. By an order of 2 August 2019, Deputy District Judge Mardell dismissed Mr Ikeji's application to suspend or stay the warrant of restitution (this application notice was not put in the bundle before the court by Mr. Ikeji).

19. By an Appellant's Notice and grounds of appeal of 5 August 2019, Mr Ikeji applied for permission to appeal against the orders of District Judge King and Deputy District Judge Mardell, inviting the court to "*set aside or suspend*" the orders.

The 5 August 2019 hearing and order

20. Mr. Ikeji's application for permission to appeal came on before HHJ Evans-Gordon, sitting at the County Court at Guildford on 5 August 2019.

21. Mr. Ikeji's grounds of appeal contended that both (i) the order of District Judge King of 3 June 2019 granting permission to the Bank to issue a warrant of restitution in respect of the Property ("**the DJ King order**") and (ii) the order of Deputy District Judge Mardell of 2 August 2019 dismissing Mr. Ikeji's application to suspend or stay the warrant of restitution ("**the DDJ Mardell order**"), together with the warrant of restitution itself were wrongly obtained and made because there was no lawful taking of possession of the Property, nor any lawful eviction, and a warrant of restitution could only be made *after* lawful eviction.

22. This was a reference to the argument, which is disputed by the Bank, that the execution of the warrant of possession issued on 12 February 2019 in respect of the Property was unlawful by reason of the fact that it had not been *fully* executed on 26 March 2019 before, or on that same day, Mr. Justice Stewart had, at the hearing of a without notice application of Mr. Ikeji, granted a stay of execution of the warrant until 4pm on 4th April 2019 ("**the unlawful execution argument**").

23. At the hearing before me, Mr. Bogle also sought to contend that HHJ Evans-Gordon misunderstood the nature of Mr. Ikeji's application in that he was seeking to *set aside* and not merely *stay or suspend* the orders of DJ King and DDJ Mardell (I return to this below).

24. Mr. Ikeji specifically advanced the unlawful execution argument in his skeleton argument at the hearing before HHJ Evans-Gordon on 5 August 2019 at which he applied for permission to appeal against the DJ King order and the DDJ Mardell order. In particular in paragraphs 10 and 11 of his skeleton argument he argued that:

(a) There was no evidence before the court that eviction had actually taken place; and

(b) The attempted eviction was unlawful and contrary to the order of Mr. Justice Stewart made on the same day: "*The claim that the eviction took place before the order of Mr. Justice Stewart had been made is neither supported by evidence of anyone actually present at the time nor is it true*."

25. At this stage the evidence before the court was as follows:

(1) A signed witness statement from Ms McLean on behalf of the Bank in which she stated that:

(a) The county court bailiff took possession of the Property around 10.15am on 26 March 2019 (she mistakenly said February, but it is obvious what she meant);

(b) Possession of the Property was handed over to the Bank around 11.15am;

(c) At 3.30pm that day Mr. Ikeji telephoned her to ask how he could take back possession of the Property. He said nothing about the fact that his counsel was seeking to attend before Stewart J that afternoon;

(d) On the morning of 27 March it was discovered that Mr. Ikeji had unlawfully broken back into the Property.

(2) Mr. Ikeji's 7th witness statement contained the following:

(a) He did inform the Bank that he was attending Stewart J by counsel (Mr. Bogle) on 26 March 2019;

(b) The High Court order was not, contrary to the evidence of Ms Goddard for the Bank, obtained after 11.15am. Mr. Ikeji states "*I know. I was there. She was not*". In fact, the court record shows that he was wrong and Ms Goddard was correct.

(c) When he returned to the Property at 6pm all of the 5 locks had been changed.

(d) Mr. Ikeji said he managed to gain access to the Property via one of the patio window doors which he claimed was left unlocked.

26. On 5 August 2019 HHJ Evans-Gordon heard and rejected this argument on the evidence, which was squarely before her, in dismissing Mr. Ikeji's application for permission to appeal against the two orders. That is clear from the terms of her order as follows on 5 August 2019 (emphasis added):

"UPON the application of the Defendant, the Defendant, for permission to appeal

i) the Order of District Judge King dated 3 June 2019, by which she gave permission to the Claimant to issue a warrant of restitution pursuant to CPR Part 83.26(8); and

ii) the Order of Deputy District Judge Mardell of 2 August 2019 by which she refused his application to suspend or stay the warrant of restitution

AND UPON hearing the Defendant in person and the Claimant not having notice of the application

AND UPON the Defendant seeking to appeal the order of District Judge King on the basis that:

i) he did not receive a copy of it until last week and it contained a provision permitting him to apply to set it aside or vary it and that he had no opportunity to do so; and,

ii) permission to issue such a warrant should not have been granted because the warrant of possession dated 12 February 2019 was unlawfully executed on 26 March 2019 because Stewart J had stayed the warrant on the same date

AND UPON the Defendant seeking to appeal the order of Deputy District Judge Mardell on the basis that the warrant of restitution should not have been issued for the reason given at ii) above

AND UPON the court being satisfied that the appeal has no real prospect of success because:

…

ix) The warrant was executed at 11.15am on 26th March 2019 when, on the Defendant's own account, the Claimant changed the locks on the five doors to the property;

x) at some point later in the day, after the Defendant had travelled from the Guilford County Court to the Royal Courts of Justice, in ignorance of the execution of the warrant of possession, Mr. Justice Stewart stayed or suspended the warrant until 16.00 on 4th April 2019;

xi) as the warrant was executed before it was stayed it cannot be said that its execution was unlawful;

…

xv) as the execution of the warrant was lawful, there is no basis on which District Judge King's order could be set aside or varied whether on application or appeal;

xvi) for the same reason there is no basis on which Deputy District Judge Mardell's Order of 2 August 2019 could be set aside

IT IS ORDERED THAT

1. Permission to appeal the Order of District Judge King of 3 June 2019 is refused.

2. Permission to appeal the Order of Deputy District Judge Mardell of 2 August 2019 is refused.

3. No order as to costs."

27. It follows that the Judge directly addressed the unlawful execution argument and rejected it on the evidence before her. She was perfectly entitled to find on the evidence before her that the warrant had been executed before the order of Stewart J was made. Contrary to Mr. Bogle's submission before me, she also plainly considered whether to *set aside* or vary DJ King's order and whether to *set aside* DDJ Mardell's order. She refused to do so. It also follows that she would have been aware of this fact when the matter came back before her on 7 August 2019 (see paragraph 31ff below).

28. Indeed the unlawful execution argument had also been advanced by Mr. Ikeji before Mr. Justice Goose on 4 April 2019, when the Judge refused to extend the stay which had been granted by Mr. Justice Stewart. Both parties were represented by counsel. As is apparent from the face of the Court's order, Mr. Justice Goose dismissed the application for a further stay pending an application to quash the warrant of possession, having read Mr. Ikeji's 6th witness statement of 4th April 2019 and the witness statement of Ms Ellen McLean of the Bank dated 3 April 2019. It can be seen from Mr. Ikeji's 6th witness statement (see for example paragraphs 2 and 108) that he put squarely before Goose J his argument that the eviction was not properly executed or completed. Mr. Justice Goose clearly rejected that argument. (Mr. Bogle on behalf of Mr. Ikeji confirmed that this witness evidence was also before HHJ Evans-Gordon when she made her order of 7 August 2019 – see below).

29. Returning to the sequence of events, after HHJ Evans-Gordon dismissed Mr. Ikeji's application of 5 August 2019, he then immediately made an application to the High Court for a stay of execution of the warrant of restitution. That application was heard on the same day (5 August 2019) by telephone by the out of hours judge (Mr Justice Morris). At that hearing, in ignorance of the fact that HHJ Evans-Gordon had already dismissed Mr. Ikeji's appeals earlier that day and Mr. Ikeji having failed to inform the judge of that fact (which was a serious breach of his duty of full and frank disclosure), Morris J made an order which stayed execution of the warrant of restitution:

> *"… until 4pm on Friday 9 August 2019 and thereafter, in the event that the Respondent/Applicant files the Notice of Appeal in Guildford County Court, until the determination of the Respondent/Applicant's application in that Court for a stay of execution pending the outcome of the application for permission to appeal or until further order by Guildford County Court".*

30. In order to continue the stay as *per* the mistaken order of Morris J (mistaken because he was not told that Mr. Ikeji's application for permission to appeal had already been dismissed by HHJ Evans-Gordon), on 7 August 2019 Mr Ikeji filed a Notice of Appeal against the orders of DJ King and DDJ Mandell in the County

Court at Guildford. The Appellant's Notice dated 7 August 2019 relied on the same grounds of appeal (dated 5 August 2019) on which permission to appeal had already been sought and refused by HHJ Evans-Gordon on 5 August 2019.

The 7th August 2019 application and order

31. Thus, having dismissed Mr. Ikeji's appeal against the DJ King order and the DDJ Mardell order on 5 August, HHJ Evans-Gordon then found herself, just two days later on 7 August 2019, being asked by Mr. Ikeji to determine the same grounds of appeal all over again on the basis of the same evidence. Mr. Bogle, who agreed in oral submissions that Mr. Ikeji "*filed the same Notice on 7 August as he did on 5 August*", submitted that it was open to Mr. Ikeji to do this. In fact, it was clearly not open to him to do this and it was an abuse of the process of the court for him to do so. The Note to CPR 52.3.9 explains, absent rules of court, it is not possible to challenge subsequently the refusal of permission to appeal at the earlier hearing: s.54(4) of the Administration of Justice Act 1999[2]. Mr. Bogle was unable to point the court to any such rules of court allowing a second application for permission to the county court judge (nor was Mr. Macklam, counsel for the Bank). HH Judge Evans-Gordon's order was accordingly made in the following terms (emphasis added):

"UPON the application of the Defendant, the Defendant, by an Appellant's Notice dated 7 August 2019 for permission to appeal:

i) the Order of District Judge King dated 3 June 2019, by which she gave permission to the Claimant to issue a warrant of restitution pursuant to CPR Part 83.26(8); and,

ii) the Order of Deputy District Judge Mardell of 2 August 2019 by which she refused his application to suspend or stay the warrant of restitution

AND UPON the Defendant having issued an Appellant's Notice dated 5th August 2019 by which he sought to appeal the same two orders

AND UPON Her Honour Judge Evans-Gordon having refused permission to appeal at an oral hearing on 5th August 2019 having heard from the Defendant

AND UPON the Defendant on 5th August 2019 having obtained a stay of the above-mentioned warrant of restitution from Mr Justice Morris, the out-of-hours judge

AND UPON it appearing from the face of the Order of Mr Justice Morris that he was not informed of the appeal hearing on the afternoon of 5th August 2019 or the refusal of permission to appeal

AND UPON the Defendant informing the court staff that he would not appear before a judge today

AND UPON the court being satisfied that, in the circumstances, the Appellant's Notice of 7th August 2019 is an abuse of process and should be struck out

IT IS ORDERED THAT:

[2] He did not make any application for judicial review in respect of the decision of 5 August: see *Gregory v Turner* [2003] EWCA Civ 183.

1. The Appellant's Notice is struck out as an abuse of process pursuant to CPR part 52.18.
2. The court shall send a copy of this order to the High Court forthwith.
3. No order as to costs.

An appeal from this Order lies to the High Court of Justice and must be made within 21 days of today
For the avoidance of doubt, as this appeal has been finally determined, the stay granted by Mr Justice Morris expires at 4pm on 9th August 2019"

32. It follows that on 7 August 2019 HHJ Evans-Gordon struck out the Notice of Appeal ("**the Strike Out order**"). The Judge's reasoning cannot be faulted.

33. I should add that Mr. Bogle's submission before me that the Judge failed to consider whether to *set aside* or vary DJ King's order and whether to *set aside* DDJ Mardell's order (as opposed to merely suspending them) is without merit. It has already been seen that she expressly considered the application to set aside 2 days earlier on 5 August and recorded it in her order of that date. In addition, the Appellant's Notice of 7 August 2019 itself referred to the application being to set aside the warrant; the 7th witness statement of Mr. Ikeji, in its final paragraph, invites her to set aside the warrant; the grounds of appeal of 5 August 2019 ask for the warrant and orders to be set aside; and Mr. Ikeji's skeleton argument which was before the judge invites her to set aside the warrant and orders. She would obviously have been aware that that was the relief which was sought.

Events after 7 August 2019

34. Despite the terms of the Judge's order, by his Appellant's Notice and grounds filed on 9 August 2019, Mr Ikeji applied for permission to appeal from the High Court in respect of the Strike Out order. This is the Permission to Appeal Application ("**the PTA Application**") that is before this court. It can be seen that this document is materially identical to the Appellant's Notice and grounds filed at the County Court at Guildford on 7 August 2019 and which was struck out by HHJ Evans-Gordon, save for certain manuscript amendments to the Appellant's Notice (e.g. to Section 2).

35. On 13 August 2019, Mr Ikeji then made an application to the High Court for a stay of execution of the warrant of restitution pending determination of the PTA Application. That application was heard, out of hours, by Morris J. By an order of 13 August 2019, Morris J refused to grant the stay, stating as follows (emphasis added):

> *"First, I had serious doubts that, despite the suggestion in the Strike Out Order itself, there is any right of appeal to the High Court from the Strike Out Order.*
>
> *Secondly, and in any event, I would not order such a stay in circumstances where (a) no sufficient reason was given why the application was not made in open court during court hours on Friday or Monday (b) there was prior and serious non-*

> *disclosure to the High Court on 5 August 2019; (c) there was no verified witness statement evidence from Mr. Ikeji/Applicant to support this application for a stay … , (d) counsel did not even have before him the 5 August County Court Order; and (e) ultimately the prospects of successfully contending that, given the terms of the 5 August County Court Order, the second application for permission to appeal, made by the Appellant's Notice was not an abuse of process are, at best, weak."*

36. Before me, Mr. Bogle sought to suggest that in fact Morris J *had* been told about the order of HHJ Evans-Gordon, contrary to the Judge's statement that he had been misled by not being told of it. I unhesitatingly reject that regrettable submission. The Judge clearly records the fact that he was not told.

37. On 13 August 2019, the Bank's warrant of restitution was executed. The Bank then took steps to market the Property for sale as mortgagee in possession.

38. The Property was marketed for sale by Hamptons, estate agents, on behalf of the Bank at an asking price of £1.55m in September and October 2019. Only two offers were received, each for £1.2m.

39. On 22 October 2019, Mr. Ikeji made an urgent application for an interim injunction to restrain the Bank from selling the Property, arguing that the true value of the Property was between £2.4-2.5m.

40. The interim injunction application was heard by Mrs Justice Lambert on an urgent basis, without any notice to the Bank, later that day (at 5pm). Mr Ikeji was represented by counsel. At that hearing an interim injunction was granted, but Lambert J listed the return date for 2pm on the next day.

41. On 23 October 2019 at an *inter partes* hearing, Lambert J discharged the interim injunction and recorded in her order at paragraph 3 that Mr Ikeji's application had been "*totally without merit*". In her *ex tempore* judgment, Lambert J recorded concerns as to the circumstances in which the application had come before her the previous day, without any notice to the Bank, and about the way in which it had been advanced at the without notice hearing.

42. Despite this, on 31 October 2019, being just over a week later, Mr Ikeji made the application for an injunction which is presently before the Court ("**the Injunction Application**"), which included an application for interim relief which purported to "vary" the order of Lambert J. The Injunction Application is essentially the same as the application already dismissed by Lambert J, save that the Injunction Application relies on a valuation by Mr Richard Winder, initially of £1.95m (by way of a "drive-by" valuation); then of £1.85m (report dated 4 March 2020 after a brief internal inspection) and finally by email of 19 March 2021 in the sum of £1.85m (although this is expressly stated not to be a formal valuation, and is part of the application to adduce fresh evidence before this court). By the Injunction Application, Mr. Ikeji seeks to restrain a sale of the Property by the Bank and an order requiring the parties to agree a price at which the Property is to be marketed for sale (and, failing agreement, for the Court to determine the price).

43. The Injunction Application was first heard by Mrs Justice Carr on 1 November 2019, the day after it was issued. It was heard at extremely short notice to the Bank. Carr J granted an interim injunction, pending a return date of 12 November 2019, to allow the Bank time to respond to the application and also for the Bank to consider a request by Mr Ikeji that his valuer (Mr Winder) be given access to the Property.

44. On 11 November 2019 the parties agreed a consent order to adjourn the return date to the first open date after 28 November 2019. This was to allow Mr Winder to visit the Property on 19 November 2019, as per Carr J's request for the Bank to consider the same. The consent order required any valuation report following that inspection to be filed and served by Mr Ikeji by 21 November 2019. The consent order was approved by Jefford J[3] on 12 November 2019.

45. On 19 November 2019 Mr Winder visited the Property as agreed. However, no valuation report was filed or served by Mr Ikeji by 21 November 2019, despite the agreed directions in Jefford J's consent order. Accordingly, in a letter dated 27 November 2019, the Bank notified Mr Ikeji that it would seek the return date to be relisted at the earliest opportunity. There was no response to that letter.

46. In a further letter dated 10 December 2019, Mr Ikeji was invited to consent to the dismissal of the Injunction Application and the discharge of the interim injunction. That letter also received no response.

47. On 10 February 2020 the return date was re-listed for 5 March 2020.

48. On 28 February 2020, without any prior warning to the Bank, Mr Ikeji made a further application to the Court, supported by his tenth witness statement (the "**February 2020 Application**"). By the February 2020 Application, Mr Ikeji sought: (i) a breakdown of his mortgage account, (ii) permission to rely on a valuation report (which he still had not served on the Bank), and (iii) a request for "*an order that sale of the property be stayed pending the determination of the Appeal*", being the PTA Application. This was despite the fact that, as Mr. Ikeji knew, Mr. Justice Morris had already refused a stay pending the PTA Application on 13 August 2019.

49. On 4 March 2020, i.e. the day before the return date, Mr Ikeji served the Bank with his eleventh witness statement, exhibited to which was a valuation of the Property by Mr Winder for £1.85m, which had been prepared following his "*brief internal inspection of the property*" on *19 November 2019*, on which Mr Ikeji wishes to rely.

50. On 4 March 2020 the parties agreed a consent order which provided for the Bank to rely on valuation evidence in response to Mr Ikeji's valuation report (i.e. as originally envisaged in the Jefford J consent order) and for the return date to be adjourned to the first open date after 1 April 2020. Mrs Justice Tipples approved the consent order, which was sealed on 5 March 2020.

51. On 20 March 2020, the Bank filed and served a second witness statement from Mr Beck, in accordance with the order of Tipples J, which had exhibited to it a

[3] The order incorrectly recites that it was approved by Carr J.

valuation report by Mr Roger Armstrong FRICS dated 18 March 2020, which valued the Property at £1.5m. Also exhibited to the statement were valuation updates from Mr Blanchett, Mr Beresford and Seymours Estate Agents.

52. On the same date (20 March 2020) the Bank provided Mr Ikeji with the breakdown of his mortgage account requested in the February 2020 Application.

53. Finally, on or around 5 November 2020, the return date of the Injunction Application was listed for 15 December 2020 before Mr Justice Bourne.

The applications

54. Pursuant to the Order of Mr. Justice Bourne dated 15 December 2020, there are two applications before the Court:

    (1) The PTA Application: by an Appellant's Notice filed on 9 August 2019, Mr Ikeji seeks permission from this court to appeal against the order of HHJ Evans-Gordon (sitting in the Guildford County Court) dated 7 August 2019, by which she struck out as an abuse of process an Appellant's Notice filed at the County Court at Guildford by Mr Ikeji on 7 August 2019 (the Strike Out order). That Appellant's Notice sought an order *"refusing to grant me either setting aside of, or suspension of, the warrant of restitution wrongly obtained by the Banks."*

    (2) The Injunction Application: the application dated 31 October 2019 for an interim injunction restraining the sale of the Property.

55. In addition, on 23 March 2021 Mr. Ikeji issued a further application ("**the amendment application**"), seeking amongst a series of other orders, permission to amend his Grounds of Appeal in the form of a draft amended grounds of appeal which were before the court on 15 December 2020 and which are attached to his 10th witness statement, as well as permission to rely upon fresh evidence, being in particular (i) a witness statement of a Mr. Owusu dated 28 November 2019; (ii) a letter from JJ Locksmiths dated 28 August 2019; and (iii) his 9th witness statement purporting to explain what took place at the hearing before HHJ Evans-Gordon on 7 August 2019. This is despite the fact that Mr Ikeji was directed by Mr Justice Bourne on 15 December 2020 to make any interlocutory applications in support of the PTA Application by 15 January 2021.

The nature of the grounds of appeal: the unlawful execution argument

The PTA Application

56. The issue for this court to determine is whether Mr Ikeji has a real prospect of successfully contending that the Strike Out order is "*wrong*" or "*unjust because of a serious procedural or other irregularity*" or there is some other compelling reason for the appeal against that order to be heard (CPR rules 52.6 and 52.21).

57. Not only was the Strike Order not wrong, it was obviously correct. On 5 August 2019 Mr. Ikeji's appeal was dismissed and the Judge rejected his argument that the eviction was not properly executed or completed. It was not open to Mr. Ikeji to seek

permission to appeal against the refusal to grant permission to appeal from the same judge on the same evidence. Mr Ikeji's application for permission to appeal had already been finally adjudicated upon by the Court, and there is accordingly no legal basis on which Mr Ikeji can properly argue that HHJ Evans-Gordon's decision on 7 August to strike out the (second) Appellant's Notice was "*wrong*" or "*unjust because of a serious procedural or other irregularity*". She was obviously right to do so. Mr. Ikeji's second application for permission to appeal was an impermissible collateral attack on the earlier refusal of permission and as such an abuse of the process of the court.

58. Moreover, Mr. Ikeji's Grounds of Appeal do not allege any arguable ground for saying that the Strike Out order is wrong. The Grounds of Appeal filed at the High Court with the Appellant's Notice on 9 August 2019 are those, dated 5 August, that were before HHJ Evans-Gordon on 5 and 7 August 2019. Obviously, therefore, those grounds of appeal do not set out why the Strike Out order is said to be wrong, and Mr. Ikeji has simply crossed out the reference to the orders of DJ King and DDJ Mardell and replaced them with a reference to the Strike Out Order of 7 August 2019.

59. Mr Ikeji's PTA Bundle included a document headed "Amended Grounds of Appeal". The Bank objected to reliance upon this document for which no permission had been sought or granted, notwithstanding the terms of Bourne J's order. The application was therefore out of time.

60. This prompted Mr. Ikeji to belatedly apply for permission to rely upon these Amended Grounds by an Application Notice dated 23 March 2021 (just 2 clear days before this application was heard) and he served his 12th witness statement in support of it. That Application Notice also contained within it numerous other orders which he sought and for which he had failed to apply in accordance with the order of Bourne J.

61. I agreed to consider the amended grounds of appeal and fresh material *de bene esse*, without prejudice to the Respondent's right to argue that permission to amend and/or permission to adduce and rely on the fresh material ought to be refused. The Amended Grounds completely re-write the basis for the application. However, none of the Amended Grounds of Appeal are remotely arguable.

62. The Amended Grounds of Appeal contain 9 grounds in paragraph 7:

    (1) Ground 1 (The Order does not state its reasons for striking out the Appellant's Notice as an abuse)): this ground is wrong: on the contrary, clear reasons are given in the order (see paragraph 31 above).

    (2) Ground 2 (There is no restriction on the number of applications for permission to appeal, which can be made): this is obviously wrong: such conduct is abusive and vexatious. Mr Ikeji's assertion that his previous application "*had not been heard, properly or at all*" is unarguable: HHJ Evans-Gordon's Strike Out order records that an oral hearing had taken place on 5 August 2019 at which she heard from Mr Ikeji. In consequence, the repeated application for permission was bound to be struck out.

    (3) Ground 3 (Determination was made on paper in the absence of Mr. Ikeji): it is not "*unjust*" and there is no "*serious procedural or other irregularity*" for an

Appellant's Notice to be determined on paper. The rules expressly provide for it: CPR rule 52.4(1): "*the appeal court will determine the application on paper without an oral hearing, unless the court otherwise orders*". Moreover, the order records on its face that Mr Ikeji informed the court staff that he would not appear before a judge: see paragraph 31 above ("*AND UPON Mr. Ikeji informing the court staff that he would not appear before a judge today*").

(4) (i) Grounds 4-9: these grounds (which consist of the unlawful eviction argument, together with a generalised complaint of oppressive conduct on the part of the Bank) fundamentally misunderstand the nature of the order against which this application for permission to appeal is brought: the grounds do not concern whether HHJ Evans-Gordon was wrong to make the Strike Out Order. Rather, they concern the earlier orders of DJ King and DDJ Mardell and HHJ Evans-Gordon's refusal of permission to appeal those orders following the oral hearing on 5 August 2019. But that issue has already been determined against Mr. Ikeji.

(ii) Mr. Ikeji makes the same mistake in paragraphs 20.1 and 25-35; 36.4-36.7; and 62-82; 83.1 of his skeleton argument. This is all *irrelevant* to this application; and contrary to what is said in paragraph 20.1 and 62, the central issue on this application is most definitely not "*the alleged eviction which the Bank claims took place on 26 March 2019 but which Mr. Ikeji submits was undertaken in breach, if not indeed contempt, of the order of Mr. Justice Stewart of even date.*" That bird has flown: the argument was run and rejected on 5 August; it has no relevance to the Strike Out Order which concerns whether it is an abuse of process to seek permission to appeal for a second time on the basis of the same arguments and the same evidence just 2 days after the court had rejected that application the first time. It plainly is.

(iii) This mistaken approach can also be seen in para 83.1 of Mr. Bogle's skeleton where he refers to the fact that in his view "permission to appeal against that order [the 5 August 2019 order] should have been allowed and not dismissed"; as well as in para 4.9 of the Amended Grounds of Appeal, which reads: "*... so that his application for permission to appeal should not have been refused by HHJ Evans-Gordon and thus his attempt to have that application properly heard should not have been struck out by HHJ Evans-Gordon as an abuse of process by the 7 August Strike Out Order"* (emphasis added). In other words, Grounds 4-9 are seeking, impermissibly, to challenge HHJ Evans-Gordon's previous refusal of permission to appeal on 5 August 2019. That is not a submission open to Mr Ikeji.

(iv) Likewise, what may or may not have happened at an appeal hearing before HHJ Raeside on 26 March 2019 (discussed at length in Mr. Bogle's skeleton argument, paragraph 36) is of no relevance to this application.

(v) Similarly, it is simply not open to Mr. Ikeji now to make submissions that (i) DJ King and DDJ Mardell fell into error (see his skeleton at paragraphs 38-42); and (ii) that HHJ Evans-Gordon fell into error on 5 August 2019 (see Mr. Ikeji's skeleton paragraphs 43-46; 50-51). That ship has sailed and does not form the subject-matter of this hearing. Once again, this fundamentally misunderstands the nature of this application and the order which this court is

being asked to grant permission to appeal against, namely the Strike Out Order of 7 August 2019.

63. There are many criticisms of both the courts and the Bank in Mr. Bogle's skeleton argument. None of them have merit. Mr. Bogle relied upon the argument of the appellant in *Leicester City Council v Aldwinckle* [1992] 24 HLR 40, para 45, for the submission that there was here knowingly unfair dealing on the part of the Bank, which constituted oppressive behaviour and an abuse of the process of the court such as rendered a nullity the request actually made for a warrant of possession. The result, he submits, is that the request and the consequences of it, namely the issue and execution of the warrant for possession, should be set aside. I reject unreservedly this suggestion.

64. This power of the Court was examined by the Court of Appeal in *Hammersmith and Fulham London Borough Council v. Hill* (1994) 27 H.L.R. 368. In that case Nourse L.J., who gave the first judgment, said this (at page 371):

> *"... the effect of the decision in Leicester City Council v. Aldwinckle is that after a warrant for possession has been executed in this class of case it can only be suspended or set aside if either (1) the order on which it is issued is itself set aside; (2) the warrant has been obtained by fraud; or (3) there has been an abuse of process or oppression in its execution."*

65. There is no abuse of process or oppression in the execution of the warrant in this case and nor can Mr. Ikeji point to any. In particular, the suggestion that Mr. Ikeji has not been allowed time to take legal advice and file grounds of appeal is without any foundation whatsoever: he has compelled the Bank to incur very substantial costs for a very long period of time in meeting numerous meritless applications, of which this is yet another. He was able to put his case at court hearings on 5 March 2019, 7 March 2019, 25 March 2019 and 26 March 2019 (although on this last occasion he refused to come into court). He had further opportunities to put his case to the court on at least 26 March 2019; 4 April 2019; 2 August 2019 and 5 August 2019 (twice) before the order of 7 August 2019 was made. Contrary to Mr. Bogle's skeleton argument and his (unagreed) chronology of events which I have carefully considered, Mr. Ikeji has not been treated unfairly, with a degree of peremptoriness, haste and error; he has not been mishandled; there has been no bias in the decisions against him. Rather, he has been treated indulgently and with considerable patience and courtesy by the courts and the Bank and the Bank has certainly not conducted the eviction process oppressively: it has conducted it in the proper manner through the usual court processes.

66. In any event, these are arguments which should have been taken at a much earlier stage, but none of these points were argued by Mr. Ikeji on 5th August 2019 before HHJ Evans-Gordon; nor were they argued before DDJ Mardell on 2 August 2019.

67. Finally, paragraphs 20.2 and 83.2 of Mr. Bogle's skeleton argument are also completely irrelevant to this appeal (an allegation that the Bank misled Mr. Ikeji in obtaining possession of the Property). There is no evidential foundation for this suggestion in any event, which I reject.

68. The large amount of fresh material on which Mr Ikeji seeks permission to rely (see item (f) at box 3 of his form N244) is irrelevant to the sole question that arises in relation to his application for permission to appeal: was the Judge entitled to strike out his second application for permission to appeal made on the same grounds and evidence just 2 days after she had dismissed it the first time?

69. As is mentioned above, Mr. Ikeji relies in particular upon the matters described in paragraph 26(a)-(c) of his 12th witness statement. The evidence of Mr. Owusu and JJM Locksmiths might have been relevant to an appeal against the orders of DJ King and DDJ Mandell, but is entirely irrelevant to an appeal against the Strike Out Order. As for (c), this is the same as ground 3 above. It does not afford any ground of appeal as the Judge was perfectly entitled to decide the strike out application on paper.

70. As regards the other orders sought:

    a) The basis on which Mr Ikeji seeks the order at item (c) of box 3 of the N244 appears not have been preceded by any correspondence requesting such a calculation and breakdown. It is inappropriate for such an application to be made without prior correspondence; nor is it appropriate for such an application to be made so shortly before the hearing. In any event, Mr. Macklam constructively indicated that the Bank had no difficulty in providing Mr. Ikeji with this information and is willing to do so within 10 days. There is no need to make an order.

    b) As regards the order sought at item (g) of box 3 of the N244, namely the filing of an updated valuation report by Mr. Winder, the material is of no assistance to Mr Ikeji on this application and there is no need for an order.

71. Whilst none of these Grounds are arguable, I do not consider that Mr. Ikeji is in any event entitled to relief from sanctions arising out of the order of Bourne J. I have read paragraphs 15-23 of his 12th witness statement but the explanation which he gives there is insufficient. I agree with the Bank that the complete failure to comply with the order of Bourne J is a serious and significant breach (and this application for relief was only made 2 clear days before the hearing of the PTA Application); no good reason has been put forward for it (other than that he misunderstood Bourne J's order, which is insufficient); and in all the circumstances of the case the application should be refused. Moreover, in so far as the application seeks to rely on fresh evidence, the *Ladd v Marshall* criteria are not satisfied and no attempt is made to explain how they might be satisfied. In the 5 months available between March and August 2019, the evidence could easily have been obtained and placed before HHJ Evans-Gordon; and in any event it is irrelevant to issue which this court has to determine.

72. In all the circumstances, this application is hopeless, itself abusive and I certify that it is totally without merit[4]. My having refused permission to appeal, the orders sought at paragraphs 3(a) and (b) of Mr. Ikeji's Form N244 fall away. I therefore refuse to make any of the orders set out in section 3 of Mr. Ikeji's N244 form dated 23 March 2021.

[4] It was bound to fail in the sense that there was no rational basis on which it could succeed: see *Ghassemian Hamila Sartipy v Tigris Industries Inc* [2019] EWCA Civ 225 at [27].

Injunction Application

73. I turn next to the Injunction Application.

74. Despite not even having issued and served a Claim Form, Mr. Ikeji nonetheless seeks an interim injunction as follows:

> *"1. The Bank shall be, and hereby is, restrained from selling the property until the return date or further order of the court and the order of Mrs Justice Lambert dated 23 October 2019 is hereby varied, accordingly.*
>
> *2. The parties shall each instruct a valuation expert to enter upon the property and thereafter to provide a current market valuation of the property by 2019 and each party shall file and serve the aforesaid valuation reports by 2019.*
>
> *3. The Bank shall give and provide access to the property to Mr. Ikeji's surveyor for the purposes of the aforesaid valuation.*
>
> *4. If, upon service of the aforesaid valuation reports, the parties are unable to agree upon a price at which the property shall thereafter be marketed for sale, there will be a further hearing in respect of this order on [ ] 2019 at which the court will determine the initial sale price at which the property shall be marketed."*

75. However, his skeleton argument advances no submissions in support of the Injunction Application; instead Mr. Bogle made some oral submissions.

76. The test for whether to grant an interim injunction is well known:

(1) Is there a serious issue to be tried? If there is no serious issue to be tried, an injunction will be refused.

(2) Where does the balance of convenience lie?

a) Would the applicant be adequately compensated by an award of damages (including whether the Bank would be able to pay them)? If so, no injunction should be granted.

b) If an interim injunction is granted but the respondent succeeds at trial, would the respondent be adequately compensated in damages payable by the applicant (including whether Mr Ikeji would be able to pay them). If so, the respondent's prospects of success at trial would be no bar to the grant of the injunction.

c) If there is doubt as to the adequacy of the respective remedies in damages available to either party or both, the Court must consider the wide range of matters which go to the make up of the balance of convenience, i.e.: (i) where other factors appear to be evenly balanced it is a counsel of prudence to take such measures as are calculated to

preserve the status quo; (ii) where one party's case is disproportionate to that of the other, this may be taken into account in tipping the balance; and (iii) any other special factors.

Legal principles: a mortgagee's sale of property

77. Where a mortgagor wishes to restrain a mortgagee from selling mortgaged property prior to any contract for sale having been made, the mortgagor is required to pay into Court the full amount due (i.e. principal, interest and costs), unless it can be shown that the mortgagee is not exercising its powers in good faith or is otherwise acting improperly (*Fisher & Lightwood's Law of Mortgage* (15th ed.) paras 30.35 and 30.37).

78. As regards a mortgagee's duties in relation to the sale of mortgaged property, the position is as follows (*Fisher & Lightwood* at para 30.24):

    (1) A mortgagee's duty is to take reasonable care to obtain the best price reasonably available for the mortgaged property at the time. The duty arises in equity.

    (2) It is a matter for the mortgagee how that general duty is to be discharged in the circumstances of any given case and such decisions inevitably involve an exercise of informed judgment: the mortgagee will not be adjudged to be in default unless it is "*plainly on the wrong side of the line*",[5] even though it might have obtained a higher price.

    (3) The burden of proof is on the mortgagor to prove a breach of duty on the part of the mortgagee.

    (4) Often, an alleged undervalue will merely be the difference in the opinions of valuers: a sale price may be considered to be on the low side and yet not at an undervalue. The best price reasonably obtainable is *not* synonymous with a RICS 'red book' valuation.

    (5) A mortgagee will not breach its duty to the mortgagor if, in the exercise of its power of sale, it exercises its judgment reasonably and to the extent that the judgment involves assessing the market value of the property, the mortgagee will have acted reasonably if its assessment falls within an acceptable margin of error.

    (6) A mortgagee, who is selling, need not consult the mortgagor or keep the mortgagor informed as to the proposed sale.

79. In *Gray & Gray on Elements of Land Law* (5th ed.) at para 6.4.63 the mortgagee's duties in relation to the sale price are described in the following terms:

> *"The mortgagee cannot, of course, be held to any absolute obligation to realise 'the true value' or to obtain the 'best price' of the mortgaged property. 'Perfection is not required' of the mortgagee. His duty is merely to invest reasonable care*

[5] See *Cuckmere Brick Co Ltd v Mutual Finance Ltd* [1971] Ch 949 at 969.

> *in the exercise of his power of sale: it is 'the effect rather than the result to which the court looks'. The question whether 'reasonable steps have been taken … to obtain the best price' must be examined 'in the round … in practical commercial terms'. It is readily recognised that a forced sale by a mortgagee seldom achieves the 'highest', 'best possible' or even 'market' price. The 'market' for repossessed land is inevitably distorted and cogent evidence is required to rebut the inference that the actual sale price represented the proper price in the circumstances. Provided that the mortgagee exercises an informed judgment as to market conditions and market value, he cannot be faulted if the price achieved is broadly within the correct 'bracket' or falls within an acceptable 'margin of error'.*[6] *The point remains, however, that the mortgagee is not simply entitled to adopt any arrangement or accept any price merely because it will see him paid out. He has no right to sacrifice the interest of the mortgagor in the surplus of the proceeds of sale."*

80. Applying these legal principles to the facts of this case, the existing interim injunction must be discharged and the Injunction Application dismissed because:

(1) Damages would plainly be an adequate remedy for Mr Ikeji. If the Bank were to sell the Property for a price which amounted to a breach of its duty to take reasonable care to obtain the best price reasonably obtainable, Mr Ikeji would have a claim against the Bank for an account of what he ought to have received. There can be no suggestion that the Bank could not easily satisfy any such claim. This alone means that an interim injunction is not an appropriate remedy. Mr. Bogle argued that damages would not be an adequate remedy for Mr. Ikeji because *"it is notoriously difficult to show what the true price should have been once a property has been sold and one cannot test the price any longer in the open market."* I do not accept that submission; that is frequently done by the calling of expert valuation evidence at trial and by the use of comparables. In any event, the relevant question is "Is the Bank failing to exercise reasonable care to obtain the best price reasonably available for the property?" What the Bank has to do is to obtain expert valuation evidence for the property and then to test the market for a sale of the property at or around that valuation, which is precisely what the Bank has been doing.

(2) In any event, there is no serious issue to be tried: see paragraph 79ff below.

(3) So far as the balance of convenience is concerned, it weighs firmly in the Bank's favour:

(i) Mr Ikeji offered, through Mr. Bogle in his oral submissions, an undertaking in damages but Mr. Ikeji has provided no evidence in relation to his ability to meet such an undertaking. In view of the fact that his property has been repossessed, any undertaking without fortification is obviously worthless.

[6] Citing *Michael v Miller* [2004] 2 EGLR 151 at [138].

(ii) The Bank would obviously be good for any award of damages against it.

(iii) The Bank has a very strong case that no injunction should be granted; this is not a case where the merits are evenly balanced.

No serious issue to be tried

81. I am told that in an *ex tempore* judgment on the return date of 23 October 2019, Lambert J held that there was no serious issue to be tried since the Bank's duty of care to Mr Ikeji had been more than adequately discharged. That was because the Property had been placed on the market on behalf of the Bank in September 2019 for an asking price of £1.55m. That asking price was supported by the valuation report of Mr Blanchett and the market appraisal of Mr Beresford of Hamptons.

82. In concluding that the Bank had more than adequately discharged its duty of care, and that Mr Ikeji's contention to the contrary was totally without merit, the Judge held that:

(1) Neither Mr Beresford nor Mr Blanchett had any interest in artificially undervaluing the Property and their valuations were independent; and

(2) In contrast, a document from Chancellors, which was the only document on which Mr Ikeji relied, and which asserted that the Property could be marketed at £2.5m, was not reliable valuation evidence. It was simply a marketing pitch and indeed the document itself expressly states that it was not a valuation report and could not be relied upon as such.

83. By the Injunction Application, Mr Ikeji again seeks to contend that the Bank is seeking to sell the Property at an undervalue, in breach of duty, and that this should be restrained by an injunction. Mr Ikeji relies on valuation reports prepared by Mr Winder, which initially valued the Property at £1.95m (31 October 2019) and subsequently valued the Property at £1.85m (4 March 2020).

84. Mr. Macklam submits that the Bank's position is straightforward. At the return date of the First Injunction Application before Lambert J, the Judge decided that the Bank had more than adequately discharged its duties to Mr Ikeji. The fact that, a week later, Mr Ikeji produced a drive-by valuation report (or, some months later, an updated valuation report) which values the Property at £1.85m rather than £1.5m, does not undermine the Judge's conclusion in this regard.

85. I accept that submission. This is not a trial. This is an application for an interim injunction. The relevant question is whether Mr Ikeji can establish to the satisfaction of the Court that he has a real prospect (as opposed to a fanciful one) of successfully persuading the Court that the Bank has *failed to take reasonable care* in its approach to the sale of the Property.

86. In my judgment, Mr Ikeji has no prospect whatsoever of doing so.

87. The Bank has now obtained valuation evidence from no fewer than five separate, independent, individuals over the course of more than a year. Each of those

independent individuals has valued the Property at £1.5m or lower. More particularly, the relevant evidence obtained by the Bank is as follows:

(1) **Mr Blanchett FRICS (e.surv Chartered Surveyors)**:

a) On 16 August 2019, Mr Blanchett FRICS prepared a valuation report, following an inspection of the property, which valued the Property at £1.5m.

b) On 6 November 2019, Mr Blanchett confirmed that he remained satisfied with his valuation, notwithstanding Mr Winder's "drive-by" valuation of £1.95m.

c) On 20 March 2020, Mr Blanchett confirmed, again, that he remained satisfied with his valuation of £1.5m, notwithstanding Mr Winder's reduced valuation of £1.85m.

(2) **Mr Beresford (Hamptons estate agents)**:

a) On 15 August 2019, Mr Beresford prepared a market appraisal document which valued the Property at £1.5m.

b) On 7 November 2019, Mr Beresford noted that the Property had struggled to sell for many years and described Mr Winder's (then) valuation of £1.95m as "*not credible*".

c) On 17 March 2020, Mr Beresford prepared a further market appraisal document which, again, valued the Property at £1.5m.

d) On 20 March 2020, Mr Beresford explained, with reasons, why he disagreed with Mr Winder's reduced valuation of £1.85m.

(3) **Mr Moss (Seymours estate agents)**: On 4 November 2019, Mr Moss prepared a market appraisal which valued the Property at £1.25m to £1.3m.

(4) **Mr Biffen (Seymours estate agents)**: On 17 March 2020, Mr Biffen prepared a market appraisal document, which valued the Property at £1.35m.

(5) **Mr Armstrong FRICS (Westburys Chartered Surveyors)**: On 19 March 2020, Mr Armstrong FRICS prepared a valuation report which valued the Property at £1.5m.

88. The valuations obtained by the Bank can therefore be summarised in tabular form as follows:

Date	**Individual**	**Profession**	**Valuation**
15.08.19	Mr Beresford	Estate agent (Hamptons)	£1.5m
16.08.19	Mr Blanchett FRICS	Chartered Surveyor	£1.5m

04.11.19	Mr Moss	Estate agent (Seymours)	£1.25-£1.3m
06.11.19	Mr Blanchett FRICS	Chartered Surveyor	£1.5m
07.11.19	Mr Beresford	Estate agent (Hamptons)	£1.5m
17.03.20	Mr Biffen	Estate agent (Seymours)	£1.35m
17.03.20	Mr Beresford	Estate agent (Hamptons)	£1.5m
19.03.20	Mr Armstrong FRICS	Chartered Surveyor	£1.5m
20.03.20	Mr Beresford	Estate agent	£1.5m

89. It is not suggested by Mr. Bogle, and nor could it be, that any of these individuals has an interest in putting their professional reputations at risk by artificially undervaluing the Property. Despite this, he still considered it appropriate to argue that the Bank was not exercising its powers in good faith. I find that submission to be wholly unsustainable in light of the valuation evidence.

90. Moreover, it is positively against the Bank's own commercial interests to sell the Property at an undervalue. The balance of Mr Ikeji's mortgage account was approximately £1.79m as at 4 March 2020.

91. The Property was on the market during September 2019 and October 2019 for an asking price of £1.55m. During that time, it received limited interest and no offers at that asking price: it received two offers, each for £1.2m. As Seymours Estate Agents have explained, "*The property has previously been marketed at higher prices before possession and at £1.55m over the past two months and has yet to obtain valuable interest to achieve a sale on the property*". It follows that I reject Mr Ikeji's submissions that the Bank's asking price represented a "*very substantial undervalue*"; that a sale was likely to take place within 24 hours; and that the Bank was seeking to sell "*at a 'crash sale valuation' to obtain an immediate sale*". If the Property had been very substantially undervalued when it was previously marketed for sale, one would have expected it to generate considerable interest. It did not. The Bank cannot therefore be criticised by not increasing the price at which it has been marketing the property and the Bank is plainly not "on the wrong side of the line" in this respect.

92. The fact that Mr. Ikeji has obtained one valuation on a much less thorough basis from Mr. Winder which suggests that the current value of the property may be some £300,000 or so higher is irrelevant.

93. Accordingly, there is no serious issue to be tried and Mr Ikeji's contention that the Bank's conduct amounts (or will amount) to a breach of its duty is hopeless.

94. In the circumstances, I discharge the injunction and dismiss the Injunction Application. There is no action to strike out because Mr. Ikeji has, inexplicably, failed even to issue a Claim Form.

95. I also certify that the Injunction Application is totally without merit (in the sense described in footnote 4 above).