



REF/2016/0692

PROPERTY CHAMBER, LAND REGISTRATION DIVISION
FIRST-TIER TRIBUNAL

IN THE MATTER OF A REFERENCE FROM HM LAND REGISTRY

BETWEEN

BRIAN KAYE ELLIS

Applicant

-and-

MYRUM MELTZER

Respondent

Property Address: 15 Julius Caesar Way, Stanmore, HA7 4PZ

Title Number: NGL842814

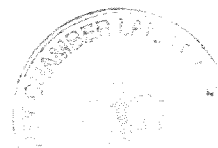
ORDER

The Tribunal orders as follows

- (1) that the Chief Land Registrar do cancel the Unilateral Notice of the Applicant registered on 5th October 2015 on the title to 15 Julius Caesar Way, Stanmore, HA7 4PZ being title number NGL842814
- (2) any application for costs should be supported by a schedule of costs and made by 25th January 2018, to be served on the Tribunal and the other parties
- (3) any submissions in response to any application for costs to be served on the Tribunal and the other parties by 8th February 2018
- (4) any submission by a party applying for an order for costs in response to the submissions of the other party to be served on the Tribunal and the other parties by 22nd February 2018

Dated this 21st day of December 2017

Andrew Bruce



BY ORDER OF THE TRIBUNAL

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Property Address: 15 Julius Caesar Way, Stanmore

Title Number: NGL842814

Before: Judge Bruce
Sitting: Alfred Place, London
On: 11 December 2017

Applicant Representation: In person

Respondent Representation: Mr Michael Jefferis of Counsel

DECISION

Unjust Enrichment – Subrogation – Solicitors’ Undertaking – Bankruptcy – Unsecured Creditor

Cases referred to:

Bank of Cyprus v. Menelaou [2015] UKSC 66

Banque Financiere de la Cite SA v. Parc (Battersea) Ltd [1999] 1 AC 221

Introduction

1. The Respondent [“Mr Melzer”] is the sole registered freehold proprietor of 15 Julius Caesar Way, Stanmore, HA7 4PZ [“the Property”]. Mr Meltzer works as a dentist. The Applicant [“Mr Ellis”] is a solicitor. Mr Ellis was until December 2013 the sole principal of B.K. Ellis & Co., a firm of solicitors, which latterly traded from 76/78 Shenley Road, Borehamwood. Mr Ellis now works as a Consultant with HerbertLewis Solicitors of 78 Shenley Road.

2. On 5 October 2015 Mr Ellis applied for and obtained the entry of a Unilateral Notice against the registered title to the Property. The Notice was recorded as being *"against the Charge dated 8 December 2005 in favour of National Westminster Bank Plc referred to above in respect of rights of subrogation arising from a payment of £73,571.59 made on behalf of Myrum Meltzer by Brian Kaye Ellis trading as B.K. Ellis & Co. to National Westminster Bank Plc."* On 21 April 2016 Mr Meltzer applied on Form UN4 to cancel the Unilateral Notice. On 11 May 2016 Mr Ellis objected to the cancellation on the ground that he remained interested in the Property by virtue of his subrogated rights.
3. The dispute was referred to the Land Registration division of the Property Chamber, First Tier Tribunal under rule 5 of the Land Registration (Referral to the Adjudicator to HM Land Registry) Rules 2003 and s.73(7) of the Land Registration Act 2002 on 30 August 2016.

Agreed Facts

4. This matter has a somewhat complicated history. In what follows I have drawn extensively from the Agreed Statement of Facts which the parties prepared for the hearing, together with the uncontested documentary evidence.
5. By a Transfer dated 3 December 2004 Mr Meltzer acquired the Property. The purchase price of £560,000 was funded as to £300,000 from a mortgage provided by The Woolwich plc to Mr Meltzer's in his sole name and as to the balance by funds provided by Elaine Carole Lassman from the sale of her property known as "Stoney Cottage". Elaine Carole Lassman became Elaine Carole Meltzer ["Mrs Meltzer"] when she married Mr Meltzer in 2005.
6. By a Declaration of Trust dated 12 December 2004, Mr Meltzer declared that he held the Property upon trust as to 50% for himself and 50% for Elaine Carole Lassman and that he would be solely responsible for the mortgage payments due to The Woolwich plc.
7. On 8 December 2005 Mr Meltzer purchased The Red House Dental Surgery at 28 High Street, Kings Langley, Hertfordshire, WD4 8BH ["28 High Street"]. 28 High

Street comprised a dental surgery with two residential flats above, *viz.* Flat 2 [“Flat 2”] and Flat 3 [“Flat 3”]. Long leases of Flat 2 and Flat 3 were granted to Mr Meltzer on 8 December 2005 and the premium stated to have been paid on the grant of the leases was recorded as being £160,000 for Flat 2 and £125,000 for Flat 3. The purchase of the dental practice was financed by a loan of £236,000 from National Westminster Bank plc pursuant to a Flexible Business Loan Agreement dated 8 November 2005. In addition, mortgages from National Westminster Home Loans Ltd were obtained in order to fund the premiums for Flat 2 (under mortgage number 32337657) and Flat 3 (under mortgage number 32692774).

8. The leasehold title for Flat 2 is registered at HM Land Registry under title no.HD448107. At all material times the registered title showed: (i) at entry no.3 to the Proprietorship Register a restriction; and at entries no.3 & 4 to the Charges Register a charge, in favour of National Westminster Home Loans Ltd (of PO Box 12201, Brindley Place, Birmingham); and (ii) at entry no.4 to the Proprietorship Register a restriction; and at entries no.5 & 6 to the Charges Register a charge, in favour of National Westminster Bank plc (of PO Box 953, 1 Croydon Road, Caterham, Surrey).
9. During 2009 Mr Meltzer ran into financial difficulties. On 5 August 2009 HM Revenue & Customs presented a bankruptcy petition (under ref.no.7100 of 2009) against Mr Meltzer in respect of a debt of c.£95,000. In view of this Mr Meltzer resolved to sell Flats 2 and 3.
10. In November 2009 Mr Meltzer instructed B.K. Ellis & Co. to act on the sale of Flat 2. On 2 November 2009 B.K. Ellis & Co. sent to Mr Meltzer a client care letter setting out the terms of the firm’s retainer, which Mr Meltzer accepted by counter-signing on 26 November 2009.
11. By an e-mail dated 9 February 2010 Mr Meltzer notified Ms Doherty of B.K. Ellis & Co. that he had accepted an offer for Flat 2. Mr Meltzer wrote:
“...I’m unable to get 300k for the 2 flats together – this will clear all debt. The best I’ve been offered for the 2 is 260k not enough. So I’ve provisionally accepted £196,000 for the middle flat. With a mortgage of £116,000, this will leave me with about 70k after your and agents fees ? This is definitely the maximum achievable on this flat as I’ve rejected several lower offers.”

The question now is, can this deal be done with the revenue getting £70k now and carrying on trying to sell the attic flat separately. This flat sold on its own can release between 30k and 50k. Please advise as I need to confirm acceptance of offer. Also should I get my accountant to speak to HR Revenue or can you communicate this proposal to them ?”

There is no written response to this e-mail from B.K. Ellis & Co.. Mr Meltzer’s calculations ignored the fact that, in addition to the mortgage with National Westminster Home Loans Ltd, his outstanding borrowing of, at that time, over £150,000 from National Westminster Bank plc was secured against Flat 2.

12. On 9 April 2010, by a Consent Order made in the bankruptcy proceedings, Mr Meltzer was permitted to sell Flat 2. The Order provided as follows:

“1. Any sale by the Debtor of [Flat 2] made before 21 May 2010 shall be permitted and deemed valid notwithstanding the Petition issued in this matter and bankruptcy notice registered against the title of [Flat 2].

2. The Petition be adjourned until the first available date after 21 May 2010 to enable the Debtor to sell [Flat 2].

3. The net proceeds of the sale of the Property be paid directly to the Petitioner [i.e. HMRC] no later than 2 working days following completion of the sale...”

13. On 11 May 2010 contracts for the sale of Flat 2 to Ms D Patel at a price of £196,000 were exchanged.

14. On 17 May 2010 B.K. Ellis & Co. provided Replies to Requisitions on Title. These provided as follows:

“6.1 Charge dated 8 December 2005 in favour of NatWest Bank

6.2 Please accept this reply as our undertaking to discharge the above-mentioned charges and forward to you Form DS1/END 1 as soon as it is to hand.”

15. On 18 May 2010 B.K. Ellis & Co. received a redemption statement from National Westminster Home Loans Ltd (in Birmingham). This showed a total amount due to redeem the mortgage of £116,653.15.

16. On 18 May 2010 the sale of Flat 2 was completed and B.K. Ellis & Co. paid out £116,653.16 to National Westminster Home Loans Ltd (to redeem its mortgage). B.K. Ellis & Co. paid the balance of the completion monies (after deduction of its charges, the estate agents’ fees, the costs of a HIP and an indemnity premium), being £73,571.59 to HM Revenue & Customs.

17. On 13 July 2010 The Royal Bank of Scotland (for and on behalf of National Westminster Bank plc) wrote to B.K. Ellis & Co. in respect of Flat 2 as follows:

"We understand that the above property has now been sold and that funds have been remitted to the first mortgagee National Westminster Home Loans Limited.

You will be aware that the Bank – National Westminster Bank Plc – has a registered charge, dated 8 December 2005.

In this respect we should be obliged if you would kindly provide details of the sale and to whom sale proceeds were paid.

To date it would appear that the Bank has not been requested to provide a redemption figure or received funds from the sale..."

Thereafter, following some discussions and correspondence, The Royal Bank of Scotland wrote to B.K. Ellis & Co. on 9 August 2010:

"We refer to recent correspondence and our subsequent telephone conversation regarding the sale of the above Property.

In this respect we would advise that as second mortgagees, the Bank was entitled to the balance of sale proceeds following the repayment of National Westminster Home Loans Limited.

We understand that the balance of funds of £73,571.59 was paid to HMRC.

We should therefore be obliged if you would kindly arrange for the funds to be repaid to the Bank..."

18. During the remainder of 2010 B.K. Ellis & Co. sought to persuade The Royal Bank of Scotland to agree to release the charge which National Westminster Bank plc continued to hold over Flat 2. Eventually, B.K. Ellis & Co. wrote to Mr Meltzer on 24 January 2011:

"...As you know, after payment of the amount required to redeem the mortgage to National Westminster Home Loans, the amount remaining of £73,571.59 (which should have been paid to National Westminster Bank PLC) was, in fact, paid to HMRC in accordance with your instructions so that HMRC would not pursue their bankruptcy proceedings against you.

In the circumstances, please let me know whether you are now able to pay the sum of £73,751.59 or any part of that sum to the Bank or your proposals as to when you will be in a position to pay it.

The Solicitors for the Purchaser of the flat inform me that their Mortgagees are raising objections to the continuing delay in being able to complete the registration of the purchase at the Land Registry and it is clear that the matter must be resolved without further delay if costly proceedings are to be avoided."

19. On 24 May 2011 a Bankruptcy Order was made against Mr Meltzer on the petition of HMRC Enforcement and Insolvency Services (apparently under ref.no.7740 of 2010) and on 15 June 2011 Stephen Paul Grant of Wilkins Kennedy was appointed trustee. It appears that Mr Ellis was not aware of these developments at the time.

20. On 24 June 2011 B.K. Ellis & Co. paid £14,571.59 to National Westminster Bank plc and on 27 June 2011 a further £59,000 was paid. These monies came from Mr Ellis' own resources. On 28 June 2011 Mr Rogers (for and on behalf of National Westminster Bank plc) e-mailed Mr Ellis:

"I can confirm that we have now received the funds and are arranging for our Legal Charge over the property to be discharged. Our Securities Centre have been asked to forward the Release Form to you..."

On or about 28 June 2011 the entries relating to the charge in favour of National Westminster Bank plc were removed from the registered title to Flat 2.

21. By letter dated 2 February 2012 Mr Ellis wrote to Mr Meltzer:

"...Subsequently, under pressure from National Westminster Bank PLC and the Solicitors for the Purchaser of the flat, in order to secure the release of the Bank's Charge on the property I was obliged with borrowed funds to pay the Bank the above-mentioned sum of £73,571.59 on 27 June 2011 towards satisfaction of the debt owed by you to the Bank. As this was your debt, I look to you to reimburse me for the sum paid to the Bank..."

Mr Meltzer did not respond to this letter.

22. It appears that at about this time Mr Ellis became aware of Mr Meltzer's bankruptcy. On 24 April 2012 B.K. Ellis & Co. wrote to Mr Grant (Mr Meltzer's Trustee in Bankruptcy) as follows:

"We refer to our telephone conversation with your office last week when we gave you some information regarding the debt owed to our Mr Ellis by the above-named Myrum Meltzer and we explained that the delay in our contacting you was due to the fact that we were unaware of his bankruptcy. As arranged, we now enclose a Proof of debt for your attention."

23. The Proof of Debt (in Form 6.37) submitted by Mr Ellis identified the total amount of his claim as £73,571.59. In the box adjacent to "Particulars of any security held, the value of the security, and the date it was given", Mr Ellis wrote "NONE".

24. On 28 September 2012 Mr Meltzer's Trustee in Bankruptcy paid to Mr Ellis the sum of £23,691.39 by way of an interim dividend of 32.20p in the £ on the claimed debt of £73,571.59.

25. By a Consent Order made in Mr Meltzer's Bankruptcy (No.7740 of 2010) on 28 April 2015, a Possession Order of the Property was made in favour of Mr Grant. The

Possession Order was, though, suspended upon terms that Mrs Meltzer pay £80,000 to Mr Grant on or before 28 October 2015, upon which payment Mr Grant would transfer his interest in the Property to Mrs Meltzer or whoever she nominated for a consideration of £1.00. In the event an agreed enhanced payment of £85,000 was accepted by Mr Grant on or about 24 March 2016 and thereafter the Restriction which had been registered against the Property on 28 July 2011 in respect of Mr Meltzer's bankruptcy was discharged. The payment on 24 March 2016 was facilitated through a loan to Mr Meltzer of £239,390 from Assetz Capital Trust Company Ltd, which loan also enabled the secured sums remaining outstanding to National Westminster Bank plc (of £116,620.03) to be cleared.

26. Following an Order of the Tribunal on 8 June 2017 both Mrs Meltzer and Mr Grant were formally notified of these proceedings and invited to make such representations as they wished, but both have chosen not to participate. Mr Grant has prepared a Report dated 22 June 2017 in which he indicates that there are no outstanding secured creditors and that a further dividend may be payable to unsecured creditors. This dividend would likely be finalised prior to 15 June 2018 at which point Mr Meltzer's bankruptcy would be discharged.

Oral Evidence

27. Oral evidence was given by Ms Verne Adele Doherty, Mr Ellis and Mr Meltzer. Ms Doherty is a Chartered Legal Executive who had the conduct of the sale of Flat 2 on behalf of Mr Meltzer. All three witnesses confirmed the truth of the witness statements that they had submitted in these proceedings. All three witnesses struck me as honest witnesses doing their best to recall events which occurred some substantial time ago. In cross-examination, the following important points emerged:
 - (a) Ms Doherty never met with Mr Meltzer. All her dealings with him were conducted by telephone and e-mail.
 - (b) Ms Doherty did not appreciate that Flat 2 was encumbered with 2 separate charges - one in favour of National Westminster Home Loans Ltd and the other in favour of National Westminster Bank plc. She assumed only one redemption amount was to be paid.

- (c) Mr Ellis' first involvement in the matter was when National Westminster Bank plc began pressing its claim.
- (d) Mr Ellis accepted that it would have been normal good conveyancing practice once the office copy entries for Flat 2 revealed two charges to make enquiries as to those two charges. However he explained that Ms Doherty was under pressure at this time from Mr Meltzer to proceed quickly.
- (e) Mr Meltzer explained that the Declaration of Trust entered into on 12 December 2004 had been prepared at the instigation (and upon the advice) of Ms Lassman (his fiancée)'s solicitor in order to protect her contribution towards the Property. Mr Meltzer could not explain why the restriction referred to at para.5 of the Declaration of Trust had not been entered on the title register for the Property. However, this was not the result of any instructions he had given as he had simply left all such matters to the solicitors.
- (f) Mr Meltzer had not appreciated that National Westminster Bank plc and National Westminster Home Loans Ltd were separate entities. He had, as at 2010, believed that a payment of c.£116,000 to NatWest would have "got Flat 2 released".

Unjust Enrichment

28. In *Bank of Cyprus v. Menelaou* [2015] UKSC 66 Lord Clarke JSC stated as follows:

"18. In the course of the argument, there was much discussion of the relevant legal principles. However, in my opinion it is not necessary to resolve all the possible issues which were discussed. It appears to me that this is a case of unjust enrichment. In Benedetti v. Sawiris [2014] AC 938 the Supreme Court recognised that it is now well established that the court must ask itself four questions when faced with a claim for unjust enrichment. They are these: (1) Has the defendant been enriched? (2) Was the enrichment at the claimant's expense? (3) Was the enrichment unjust? (4) Are there any defences available to the defendant? See, for example, Benedetti, at para.10, following Banque Financière de la Cité v. Parc (Battersea) Ltd [1999] 1 AC 221, 227, per Lord Steyn (and per Lord Hoffmann to much the same effect at p.234) and Investment Trust Companies v. Revenue and Customs Comrs [2012] STC 1150, para.38, per Henderson J ("ITC")."

19. In that paragraph Henderson J noted that Professor Andrew Burrows QC said in The Law of Restitution, 3rd ed.(2011), p.27 that, if the first three questions are answered affirmatively and the fourth negatively, the claimant will be entitled to restitution and that those four elements "constitute the fundamental conceptual structure of an unjust enrichment claim". In para.39, Henderson J accepted that approach, although he said that the four questions were no more than broad headings for ease of exposition, that they did not have statutory force and that there may be a considerable degree of overlap between the first three questions. I agree."

It is therefore appropriate to consider the claim of unjust enrichment bearing in mind the four questions referred to by Lord Clarke JSC. Once it has been determined that a claim in unjust enrichment is established it is then necessary to consider whether subrogation is an appropriate remedy – this being the basis of Lord Hoffman’s approach in *Banque Financiere de la Cite SA v. Parc (Battersea) Ltd* [1999] 1 AC 221 at 234 *et seq.*.

29. **Has Mr Meltzer been enriched ?** Counsel for Mr Meltzer contends that, because Mr Ellis’ payments were made after Mr Meltzer had been adjudged bankrupt, Mr Meltzer could not have been enriched. He says that after 24 May 2011 Mr Meltzer was divested of all his assets and insofar as he had a 50% beneficial interest in the Property (which Property encumbered by the charge to National Westminster Bank plc) this interest was vested in his trustee when Mr Ellis made payment. In answer, Mr Ellis contends that the payments made served to reduce Mr Meltzer’s secured indebtedness to National Westminster Bank plc. Mr Ellis says that because he paid National Westminster Bank plc £73,571.59 in June 2011, Mr Meltzer has had to pay (through his loan from Assetz Capital Trust Company Ltd) a lesser sum to redeem the charge against the Property in favour of National Westminster Bank plc. Mr Ellis says that Mr Meltzer’s secured indebtedness persisted throughout his bankruptcy. On balance, I prefer the argument of Mr Ellis. It seems to me that Mr Ellis’ payments have enriched Mr Meltzer because the loan he has obtained from Assetz Capital Trust Company Ltd has only been required to cover Mr Meltzer’s residual secured indebtedness to National Westminster Bank plc. By virtue of Mr Ellis’ payments, Mr Meltzer has been left with a lesser indebtedness to National Westminster Bank plc. Mr Meltzer has thereby been enriched.

30. **Was the enrichment at Mr Ellis’ expense ?** Counsel for Mr Meltzer argues that the enrichment was not at Mr Ellis’ expense because the payments were made because B.K. Ellis & Co. were under an obligation (pursuant to the solicitor’s undertaking given on 17 May 2010 at Reply 6.2 of the Replies to Requisitions on Title) to make them. This argument seems to me to focus on the wrong issue. The question is not why was Mr Meltzer enriched, but at whose expense was he enriched. Since the

payments totalling £73,571.59 came out of Mr Ellis' personal funds, I am satisfied that the enrichment was at Mr Ellis' expense.

31. **Was the enrichment unjust ?** It is here that, it seems to me, Mr Ellis' claim runs into difficulties. Under the client care letter dated 2 November 2009, B.K. Ellis & Co. identified as one of their duties: "*Redeeming your mortgage*". By reason of the oversight of Ms Doherty and an admitted failure to comply with normal good conveyancing practice, B.K. Ellis & Co. failed to appreciate that Flat 2 was subject to two charges. As a result, B.K. Ellis & Co. failed to secure the release of the second charge in favour of National Westminster Bank plc upon completion. In order to remedy this default and in order to comply with the solicitor's undertaking given on 17 May 2010 at Reply 6.2 of the Replies to Requisitions on Title, Mr Ellis made payments totalling £73,571.59 to National Westminster Bank plc. Having made these payments, as it seems to me, Mr Ellis was not entitled to any security, still less any security against the Property. Rather, he had a personal contractual claim against Mr Meltzer pursuant to the client care letter dated 2 November 2009 which provided as follows:

"PAYMENT

We shall require you to ensure that sufficient funds are available prior to completion of the contract, so that the transaction will be processed smoothly. These funds must include the cost of the firm's fees in dealing with this matter, as specified above. Upon completion, we will deduct the fees from the funds directly. If there is any outstanding money due to the firm at the end of the completion, we will send you a bill for this amount. If the bill is not settled within 1 month, interest may be charged on the outstanding balance at the appropriate court rate in force at the time, from the date on which payment of the bill is due."

Thus, having paid out monies for the benefit of Mr Meltzer and there being a shortfall in the completion monies, B.K. Ellis & Co. was entitled to bill Mr Meltzer for this shortfall and thereafter (if the bill was not paid) commence Court proceedings for the principal sum together with interest. Mr Ellis was not, though, entitled to stand as a secured creditor of Mr Meltzer. This was not something the parties ever contemplated or agreed as at the date of the retainer and/or as at June 2011. Whilst as a general rule the negligence of the lender does not comprise a bar to subrogation in an unjust enrichment context (see *Banque Financiere de la Cite SA v. Parc (Battersea) Ltd* [1999] 1 AC 221), here, the negligence of B.K. Ellis & Co. is material as it forms the

basis for his claim in restitution. This is not a case where Mr Ellis grounds his restitution claim in lack of consent or want of authority or mistake or failure of basis, rather he seeks to found his claim upon a breach of contract (which arguably has not crystallised because no bill has ever been sent) which itself arises out of a voluntary payment made in order to remedy a negligent omission.

32. It therefore seems to me that, in all the circumstances, it cannot be said that the enrichment is unjust. The reason why Mr Ellis is pursuing this claim is, as is made clear in his skeleton argument, because, by reason of Mr Meltzer's bankruptcy, Mr Ellis has no other remedy available to him which will secure him full recovery. Mr Ellis' claim in Mr Meltzer's bankruptcy now seems unlikely to yield 100p in the £. To permit Mr Ellis to be subrogated to the position of a secured creditor would give him an unwarranted and unjust advantage over other unsecured creditors of Mr Meltzer by reason of the happenstance that, in addition to holding a charge over Flat 2, National Westminster Bank plc held a charge over the Property.
33. **Are there any defences available to Mr Meltzer ?** It is well established that a claim in unjust enrichment may be defeated by defences of change of position, bona fide purchase, receipt for good consideration and illegality or public policy. The only defence suggested by Counsel for Mr Meltzer is change of position. This, it is said, arises because in 2015 Mr Meltzer, when negotiating the Consent Order made on 28 April 2015, did not appreciate that Mr Ellis had any interest which would need to be dealt with in order to obtain clear title to the Property. It does not seem to me that this is a good defence for a number of reasons: (i) the acquisition of the trustee's interest in the Property was made by Mrs Meltzer, not Mr Meltzer, such that there has been no change of position by Mr Meltzer; (ii) the payment to Mr Grant was not made until 24 March 2016, by which time Mr Ellis had intimated his claim in that he had registered a unilateral notice against the Property; and (iii) subsequent to 24 May 2011 Mr Meltzer was an undischarged bankrupt such that his assets were vested in his trustee and he could hardly be said to be capable of changing his position.
34. It follows from all of the above that I do not consider that Mr Ellis has made out a claim in unjust enrichment. Even had he done so, it does not seem to me that the remedy of subrogation would lie. This is because at no stage was it ever envisaged

that Mr Ellis would have any proprietary interest in the Property. Albeit his payment to National Westminster Bank plc did, as a matter of fact, serve to reduce Mr Meltzer's secured indebtedness the payment could only properly give rise to a personal contractual remedy against Mr Meltzer.

Mr Meltzer's Bankruptcy

33. Even if I am wrong in my analysis of Mr Ellis' unjust enrichment claim and entitlement to subrogation as a remedy, there remains a fundamental difficulty with Mr Ellis' stance. Mr Ellis has proved in Mr Meltzer's bankruptcy as an unsecured creditor. As such he has been paid, and has retained, a dividend. Rule 6.116 of the Insolvency Rules 1986 provides:

- "(1) If a secured creditor omits to disclose his security in his proof of debt, he shall surrender his security for the general benefit of creditors, unless the court, on application by him, relieves him from the effect of this Rule on the ground that that omission was inadvertent or the result of an honest mistake.*
- (2) If the court grants relief, it may require or allow the creditor's proof of debt to be amended, on such terms as may be just."*

It follows that, when Mr Ellis submitted his Proof of Debt in which he stated he held no security, any security that he might have held by reason of any subrogated claim was surrendered to Mr Grant. This Tribunal has no jurisdiction to relieve Mr Ellis from this surrender. It may be that the Court could be persuaded that Mr Ellis' failure to disclose any security was inadvertent or the result of an honest mistake and might allow Mr Ellis' proof of debt to be amended, perhaps upon terms as to the repayment of any dividend, but that is not something that this Tribunal has any jurisdiction over. Furthermore it is not something which has already occurred. As things stand, to date no application has been made by Mr Ellis to amend his proof of debt and hence any security that might have been held over the Property stands surrendered. There is therefore no basis upon which Mr Ellis can currently claim to have a security over the Property which falls to be protected by a unilateral notice.

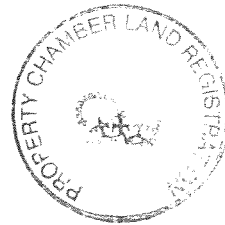
Disposition

34. In the circumstances, I am not satisfied that Mr Ellis has made out an entitlement to maintain the unilateral notice registered against the Property on 5 October 2015 and I will accordingly direct that it be discharged and cancelled.

35. Subject to the necessary applications and any submissions being made I would be minded to order Mr Ellis, as the unsuccessful party, to pay Mr Meltzer's costs. If any party wishes to apply for an order for costs they should make an application in writing, accompanied by a schedule of costs, by 25 January 2018. Such an application should be served on the other parties who will then have 14 days to respond to the application by way of written submission sent to the First Tier Tribunal's offices, copying any submissions to the applying party or parties. Any response to such submissions should be provided to the office and the other party within 14 days of receipt of the submissions.

Dated this 21st day of December 2017

Andrew Bruce



BY ORDER OF THE TRIBUNAL

