

[2018] UKFTT 327 (PC)

PROPERTY CHAMBER
FIRST-TIER TRIBUNAL
LAND REGISTRATION DIVISION

IN THE MATTER OF A REFERENCE FROM HM LAND REGISTRY

LAND REGISTRATION ACT 2002

REF No 2016/0411
BETWEEN

THAVARAJAN THARAJAN THAVANESAN

Applicant

and

PARAGON GLASS SERVICES LIMITED

Respondent

Property Address: 135 Long Lane, Hillingdon, Uxbridge (UB10 OAT)

Title number: MX471048

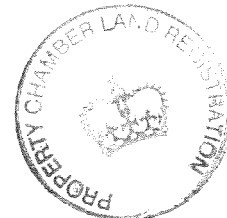
ORDER

The Chief Land Registrar is ordered to cancel the application dated 16 October 2015

BY ORDER OF THE TRIBUNAL

Ann McAllister

Dated this 23rd day of May 2018.





[2018] UKFTT 0327 (PC)

**PROPERTY CHAMBER
FIRST-TIER TRIBUNAL
LAND REGISTRATION DIVISION**

IN THE MATTER OF A REFERENCE FROM HM LAND REGISTRY

LAND REGISTRATION ACT 2002

REF No 2016/0411

BETWEEN

THAVARAJAN THARAJAN THAVANESAN

Applicant

and

PARAGON GLASS SERVICES LIMITED

Respondent

Property Address: 135 Long Lane, Hillingdon, Uxbridge (UB10 0AT)

Title number: MX471048

**Before: Judge McAllister
Sitting at Alfred Place, London
1 March 2018**

Representation: Mr Maurice Rifat of Counsel instructed by Shergill & Co appeared for the Applicant: Mr Edward Bennion-Pedley instructed by Everatt's Solicitors appeared for the Respondent.

DECISION

Introduction

1. By a transfer dated 24 July 2015 made between Abdul Majeed Mohammed Yusuf (Mr Yusuf) as personal representative and widower of Sithy Marikkar, and the Applicant

(Mr Thavanesan) the property known as 135 Long Lane, Hillingdon, ('the Property') was transferred to Mr Thavanesan for the sum of £670,000.

2. The Property remains registered in the name of Sithy Marikaar. Two charges are registered against the Property; the first is in favour of Santander UK Plc, and the second is in favour of the Respondent ('Paragon'). The charge in favour of Santander, as I understand it, has been redeemed by the Solicitors Compensation Fund.
3. The charge in favour of Paragon is dated 9 February 2010 and was registered on 20 April 2010 ('the Charge'). The Charge was stated to secure £75,000 together with interest in lieu of credit obtained by Pound Window Centre Limited, a company owned by Mr Yusuf. The amount outstanding under the Charge at the date of the hearing, I am told, is in excess of £107,000.
4. By an application dated 5 August 2015 Mr Thavanesan applied to cancel the Charge. The date of application as notified to the Tribunal is 16 October 2015. A discharge form DS1 executed by Paragon was lodged at Land Registry. Mr Thavanesan has also applied to register the transfer dated 24 July 2015 and to register a new charge. Neither of these two applications have yet been given effect to by Land Registry.
5. Paragon objected to the application to cancel the Charge on the grounds that the DSI was only delivered in escrow pending payment of the outstanding debt. No payment has been made, and Paragon have purported to revoke the discharge. Alternatively, it was said that the Form was not dated and therefore not 'delivered'. In the event, the case at trial as presented on behalf of Paragon proceeded essentially on the first point.
6. The matter was referred to the Tribunal on 8 June 2016.
 - (1) For the reasons set out below I find that the DS1 was delivered in escrow. It was delivered in escrow. It was delivered on condition that the full outstanding debt would be repaid. That debt has not been repaid.
 - (2) The solicitor acting for the seller, LG Law Chambers ('LG Law') did not have actual or ostensible authority to act on behalf of Paragon, and no presumption of authority arises.

7. My decision was initially sent in draft on 20 April 2018. This was for the following reasons. On the day after the hearing I received an email from Mr Bennion-Pedley, Counsel for Paragon, attaching an extract from The Law Society's Conveyancing Handbook, 24th Ed. The section dealt with accepting undertakings on completion, in light of the decision in the Court of Appeal in *Patel v Daybells* [2001] EWCA Civ 1229. During submissions, Counsel had raised the question whether Mr Thavanesan's solicitor should have accepted undertakings from the seller's solicitors in circumstances where the chargee is not a member of the Council of Mortgage Lenders.
8. Mr Rifat objected to this further material, on the basis that the handbook merely describes best practice and did not clarify the law in any way. He stated that it would be improper for me to consider this further.
9. I do not agree. There are two issues in this case. The first is whether the DS1 was delivered conditionally or unconditionally. The second is whether, in any event, Mr Thavanesan was, in all the circumstances, entitled to rely on the duly executed DS1.
10. In fairness to Mr Thavanesan, I sent the decision in draft, to allow his representatives to make further submissions on the point if so advised. I asked that any further submissions be made by 11 May 2018. No further submissions have been received.

Background and evidence

11. Paragon was incorporated in June 1997. In October 1999 Zahid Choudry became a director of the company. In 2004 Mr Yusuf set up his own double glazing company which placed orders for doors and windows from Paragon on extended credit terms. Mr Yusuf was on occasion in default and it was agreed that if he was to continue doing business with Paragon security would be obtained.
12. The Property was purchased on 8 February 2008 by Mrs Sithy Marikkar. Mrs Marikkar owned another property (16 Stuart Avenue, South Harrow). Paragon also had a charge over this property. Mrs Marikkar was made bankrupt in January 2011. Paragon obtained

over this property. Mrs Marikkar was made bankrupt in January 2011. Paragon obtained a possession order against this property and a judgment for over £130,000 in June 2011. It is Paragon's case that no monies were received from the sale of this property which took place in September 2013. The sale price was £233,000 and the outstanding debt to the Halifax was in the region of £210,000. The sale was made by Mrs Marikkar. Mr Choudry's evidence is that he was persuaded by Mr Yusuf that there was sufficient equity in the Property for the entirety of the debt to be met.

13. Paragon's case is that as February 2013 the parties agreed that the outstanding debt secured by the Charge was £69,696. The agreed schedule of repayments was not met and a further meeting took place in May 2014. A further agreement was reached whereby Mr Choudry would pay £700.00 per month with effect from 1 January 2015, with a view to clearing the debt by 31 December 2017. There are letters from Paragon dated 27 February 2013 and 15 May 2014 recording the amount owing and the agreement to repay.
14. There is an issue as to when Mr Choudry, on behalf of Paragon, signed the DS1. In a letter before action sent to Mr Yusuf by Mr Choudry's solicitors on 7 September 2015, it was stated that the DS1 was signed some two years earlier in anticipation of a then sale of the Property but on the clear condition that the Charge would only be released on full payment of the outstanding debt. In previous correspondence Mr Choudry had stated that he had no recollection of signing the DS1. In his statement, Mr Choudry stated that he had signed it in about August 2015.
15. In oral evidence Mr Choudry stated that the DS1 was signed by him in August 2013, in the presence of a Mr Shiyam, who witnessed his signature. Mr Shyam was employed by LG Law Chambers (LG Law), although he was not a solicitor. Mr Shyam acted for Mr Yusuf on the sale of the Property, and, it seems, had earlier acted for, or assisted, Paragon in the proceedings relating to Stuart Avenue, presumably in some capacity other than a solicitor. Mr Choudry was assured at the meeting that the DS1 form would not be released until the full amount of the debt had been repaid. The DS1 was signed at Mr Choudry's offices in Hayes. Mr Choudry was not given a copy of the DS1 which was retained by Mr Yusuf or Mr Shyam.

16. Mr Choudry signed DS1 in respect of both the Property and the Stuart Avenue property. Both were on the market. Mr Choudry was asked why it was that he did not mention the DS1 in respect of Stuart Avenue in his statement. His reply was that he could not recall why he did not mention it. Mr Choudry did not ask for written confirmation that the DS1 in respect of the Property was executed on the basis that it would only be used if the debt was repaid. He trusted both Mr Yusuf and Mr Shiyam. The Property was on the market and he believed a sale was imminent. He had worked with Yusuf for 10 years and knew Mr Shyam very well.
17. In short, on his case, Mr Choudry signed the DS1 in relation to Stuart Avenue unconditionally (since he was not expecting to be repaid from the sale of this property) but signed the DS1 in relation to the Property on the strict understanding that he would be repaid. He continued to be assured by Mr Yusuf that all the money his company owed would be repaid on the sale of the Property.
18. In April 2015 Mr Thavanesan instructed solicitors (Shergill & Co) in connection with the purchase of the Property. On 15 July 2015 the solicitors then acting for the seller (Hanover Solicitors) requested a redemption statement from Paragon. On 20 July Mr Choudry replied, stating that the outstanding sum was £82,147.
19. LG Law took over the conduct of the sale on behalf of Mr Yusuf at about this time. Mr Shiyam at one point dealt with the matter. LG Law completed the Completion Form and Undertakings, required by the purchaser in the usual way, on 16 July 2015. In response to question 5.2 they stated that they undertook to redeem or discharge the two charges registered against the title of the Property and to send a DS1 or other appropriate confirmation. In response to question 5.3 they stated that they were the duly authorised agents of the proprietors of the mortgages and charges referred to in answer to question 5.1. The covering letter dated 23 July 2015 confirmed that they undertook to redeem the charge in favour of Santander UK Plc and that they held the DS1 in respect of the Charge.
20. Contracts were exchanged on 16 July 2015. On 28 July 2015 completion of the sale of the Property took place. The purchase price was £670,000. The completion statement refers to the amount due to Santander (£478,994) but no reference is made to the amount

due under the Charge. The proceeds of sale are shown as £189, 935. £159,935 was remitted by LG Law to Mr Yusuf on 29 July 2015, and other payments made (although it is very hard to read the bank statements).

21. On the same day as completion Everatt's Solicitors, acting for Paragon, wrote to Hanover inquiring about the sale of the Property. This was followed by a further letter on 30 July 2015 in which the writer expressed surprise that the sale had gone through, and gave details of the amount due under the Charge. Hanover replied on 30 July stating that they no longer acted and that the file had been returned to the original lawyers. On 6 August 2015 Hanover informed Everatt's that LG Law had been instructed by Mr Yusuf.
22. On 6 August 2015 Mr Yusuf sent Mr Choudry a text message requesting details of his wife's bank account so that he could arrange payment to be made. He does not know why those details were sought, rather than his.
23. The DS1 is dated 5 August 2015. The date is written in blue ink; the remainder of the form is filled in with black ink. It is, of course, a standard form. Paragraph 6 states that the Property is no longer charged as security for the sums due under the Charge. By a letter purporting to be dated 6 August 2015 the DS1 was sent Shergill & Co. It is common ground that the letter was in fact sent in November as the envelope in which it was received is dated 6 November 2015.
24. On the 6 August 2015 Everatt's wrote to LG Law enquiring as to the sale of the Property, and as to the amount of equity available towards the Charge. LG Law replied on 7 August stating as follows: *' We refer to your email of 06 August 2015 and are surprised with the query raised therein. We are surprised because at the start of the matter over a year ago, Mr Zahid Choudry provided us with a duly executed DS1 in respect of the subject query. The DS1 was provided with any condition or undertaking. Being fully aware of the circumstances that led to registration of the Charge, the discussions with Mr Zahid Choudry at his office and together with his brother; Mr Khalid Choudry at their office in Edmonton we understand that the matter relating to the Charge was settled and confirmed with the subsequent DS1 provided by Mr Zahid Choudry which was at the time verified.'*

25. On 7 August 2015 Everatt's wrote denying the circumstances of the execution of the DS1, and stating that the authenticity of the DS1 was not accepted. Mr Choudry recalled signing a DS1 in relation to another property, namely Stuart Avenue, South Harrow. The email also asked why, if the DS1 was provided over a year ago, it had not been lodged with the Land Registry. On 10 August LG Law emailed Everatt's confirming a telephone conversation to the effect that they would hold onto to the DS1 and would not use it until the issues raised had been resolved. On the same day a further letter was sent by LG Law to Everatt's, stating that Mr Yusuf had cleared his debts to Mr Choudry following the sale of 16 Stuart Avenue, and asked for further details of any alleged outstanding balance.
26. On 11 August 2015 Everatt's put Shergill & Co on notice that the DSI had not been executed by Mr Choudry, and confirmed that they had received an undertaking from LG Law that they would not use or act upon the DS1. This, of course, was following completion. On 13 August Everatt's stated that the DS1 was provided more than 2 years earlier in anticipation of a sale of the Property which did not in fact take place. A request was made for the return of the original DS1. The outstanding debt, including interest, was put at £103,000 odd.
27. On 19 August 2015 Teacher Stern LLP, instructed by Mr Yusuf, wrote to Everatt's. They informed Everatt's that LG Law had sought guidance from the SRA on the DS1 which remained in their possession in view of their undertaking to the buyer's solicitors that they would remove the Charge. The original DS1 remained with LG Law who had agreed not to file it with Land Registry until Teacher Stearn had properly considered his position.
28. On 9 September 2015 Shergill & Co applied to register their client as proprietor of the Property. Land Registry requested the DS1. Shergill & Co asked LG Law for the DS1 on 11 and 22 September 2015.
29. On 30 October 2015 the SRA intervened in LG Law on the grounds of suspected dishonesty on the part of the principal and failure to comply with SRA Accounts Rules

by the other partner. Mr Ahmad's Practising Certificate was suspended. On 2 November 2015 LG Law was closed down.

30. It appears that Mr Yusuf kept the majority of the purchase money paid by Mr Thavanesan.
31. As mentioned above, the DS1 was sent to Shergill & Co on 5 November 2015, under cover of a letter dated 6 August 2015. The letter simply stated that further to completion of (sic) 29 July 2015, the original DS1 from Paragon was enclosed and asking for a receipt. On 11 November 2015 Shergill & Co, in reply to the earlier requisition by Land Registry asking for the DS1, submitted the DS1 to Land Registry.
32. Mr Choudry dealt with the amount due under the Charge in his evidence by reference to a number of documents. The sum due in July 2017, including interest, was £107,328.67. The debt was made up of two sums (£69,000, and £9,000) and the remainder is interest. When asked why these sums did not appear in the 2013 accounts, the answer was that invoices are issued when Paragon was paid.
33. I also heard evidence from Mr Viring, the solicitor dealing with the purchase of the Property on behalf of Mr Thavanesan. He stated that he had no contact with Hanover Solicitors and was not aware at the time that they had been previously instructed. In relation to the DS1, he stated that he relied on the undertaking given by LG Law, and confirmed that he did not receive the DS1 until 6 November 2015. He was clear that in his mind LG Law were acting for the vendor, not Paragon. He did not accept that, since Paragon was a non institutional lender, he should have checked with Paragon.
34. Mr Viring was aware that Paragon were stating that the DS1 had not been executed (this was the position as set out in Everatt's letter dated 11 August 2015) but again took the view that this was not a matter for him. By then, of course, the sale had been completed. He was also asked why, when he completed an application to change the register in December 2015, he continued to state that LG Law acted for Paragon in relation to the DS1 when he knew by then that LG Law had been shut down. His answer was that the dispute in the background was not a matter for him, and that it was correct

to say that LG Law acted for Paragon in the sense that the DS1 had come from them, but, as I say, he was clear that LG Law were acting for the vendor, not Paragon.

Submissions and Analysis

35. There is a considerable measure of common ground in relation to the relevant legal principles. The issues which, in my judgment, arise are:

(1) Did Paragon provide an executed unconditional DS1 to either Mr Yusuf or Mr Yusuf's solicitors, LG Law? Or was the provision of the DS1 conditional on repayment of the outstanding loan?

(2) Was LG Law Paragon's agent with ostensible authority to deliver the DS1 and does the conclusive presumption in section 1(5) of the Law of Property (Miscellaneous Provisions) Act 1989 come into play? If not, did the relationship of agency arise in any other way?

Execution of the DS1

36. There is now no dispute that the DS1 was validly executed. Notwithstanding the way in which the evidence has evolved over time, it is now clear that Mr Choudry, on behalf of Paragon, executed the DS1 in the presence of Mr Shiyam and Mr Yusuf in about August 2013. His signature was witnessed by Mr Shiyam. The DS1 was handed over by Mr Choudry to either Mr Shiyam or Mr Yusuf. The DS1 was not dated.

37. The issue is whether the DS1 was delivered unconditionally. In *Longman v Viscount Chelsea* (1989) 58 P&CR 189 Nourse LJ stated the law as follows: 'A writing cannot become a deed unless it is signed sealed and delivered as a deed. Having reached that stage, it is correctly described as having been 'executed' as deed. Having been signed and sealed it may be delivered in one of three ways. First, it may be delivered as an unconditional deed, being irrevocable and having immediate effect. Secondly, it may be delivered in escrow, being irrevocable but not taking effect unless and until the condition or conditions of the escrow are fulfilled. Thirdly, it may be handed to an agent of the maker with instructions to deal with it in a certain way in a certain event, being

revocable and of no effect unless and until it is so dealt with, whereupon it is delivered and takes effect.'

38. Mr Bennion- Pedley for Paragon submits that the real issue is whether or not the DS1 was to take effect in escrow, that is to say not taking effect until the condition of repayment had been met. The third category referred to in Nourse LJ's judgment above does not come into play. The question whether or not it is delivered in escrow is a question which depends on intention, having regard to all the evidence to show the character in which and the terms upon which it was delivered. Intention may be established from statements or surrounding circumstances prior to or simultaneous with the delivery of the deed.
39. In relation to companies, statutory presumptions arise both in relation to execution (section 44(5) of the Companies Act 2006) and in relation to delivery. In relation to delivery section 46(2) of the Act provides that: '*A document is presumed to be delivered upon its being executed, unless a contrary intention is proved*'.
40. Mr Bennion-Pedley submitted that the following factors support Paragon's case that the DS1 was delivered conditionally on repayment. First, the DS1 was provided some 2 years before the sale of the Property and was left undated. Secondly, no steps were taken by Mr Yusuf or anyone else to use the DS1 in the intervening period. Third, there is ample evidence that a debt still existed at the time of the sale of the Property, including letters written in 2013 and 2014, the request for a redemption statement made by Hanover solicitors and the figure provided by Mr Choudry (£82,146.00 on 20 July 2015), the text message on 6 August 2015 from Mr Yusuf asking for his wife's bank details, so he could transfer the money, and all the steps which were taken by Paragon's solicitors as soon as they became aware of the sale of the Property to ensure that the DS1 was not used. This behaviour is consistent only with instructions to the effect that a debt was still outstanding.
41. Mr Rifat, on behalf of Mr Thavansan relies on a number of factors, which it is said, point to the presumption not being rebutted. First, Mr Choudry's own case as to the signing of the DS1 changed over time. He first challenged the authenticity of his signature, then stated that he had only executed a DS1 over the Stuart Avenue property,

and was confused as to the date when he signed it. In his witness statement he stated that he had signed it in August 2015, and then said that he had forgotten about it, In evidence he corrected the date to August 2013 and for the first time referred to having executed two DS1 forms, one of which was conditional, one of which was not. In a letter dated 11 August 2015 his solicitors had stated that a DS1 had been given in relation to Stuart Avenue only.

42. Mr Rifat reminded me of the need to wary of evidence given by a witness if not backed up by documentary evidence or inferences from documents or probable facts. He referred in particular to *Gestmin SGPS SA v Credit Suisse* [2013 EWHC 3560 at 15-22 and the passage of Leggatt J's judgment as follows: *'In the light of these considerations, the best approach for a judge to adopt in the trial of a commercial case is, in my view, to place little if any reliance at all on witnesses' recollections of what was said in meetings and conversations, and to base factual findings on inferences drawn from the documentary evidence and known or probable facts. This does not mean that oral testimony serves no useful purpose..... its value lies largely, as I see it, in the opportunity which cross examination affords to subject the documentary scrutiny and to gauge the personality, motivations, and working practices of a witness...'* (reference was also made to *Blue v Ashley* [2017] EWHC 1928 at 65-70).
43. Secondly, Mr Rifat submitted that there is no documentary or other evidence to support Mr Choudry's version of events. There is no correspondence to either Mr Shiyam or Mr Yusuf confirming that the DS1 was delivered conditionally, nor was any statement of account as to the monies owed at the time. Thirdly there is no satisfactory explanation as to why the DS1 in relation to the Property was handed over in August 2013 when there is no evidence of a pending sale of the Property. Fourthly, (and this is perhaps another way of making the first point) Mr Choudry's evidence is self serving and should be treated with care. Fourthly, it is not clear whether any monies were owing at the time of the sale of the Property. Finally, Mr Choudry applied for a warrant of possession in relation to the Stuart Avenue property, and there is no clear account as to the sale price.
44. Having taken all these points into account, I am satisfied nonetheless that the DS1 was delivered in escrow, conditional on the repayment of the debt due from Mr Yusuf 's company, which debt remained outstanding at the time of the sale of the Property. I

accept Mr Choudry's evidence, and found him to be an honest witness. The apparent inconsistency in his account is, in my judgment, in fact wholly consistent with a situation where a DS1 was executed and handed over in the expectation of an imminent sale of the Property, and where, in reality, the financial arrangements between Mr Choudry and Mr Yusuf were conducted on the basis of a long standing trading arrangement and trust. The factors relied on by Mr Bennion-Pedley all, in my judgment, lend weight to and are consistent with the oral evidence given at court by Mr Choudry.

45. I am satisfied that Mr Yusuf's company was in debt to Paragon when the DS1 was executed, and remained in debt throughout. It is telling that Hanover solicitors asked for a redemption statement, and that Mr Yusuf himself texted asking for bank details. I also accept the evidence relating to Stuart Avenue. Evidence was produced to show that, once the outstanding sums due to the Halifax had been paid, very little was left over.

The conveyancing point: the role of LG Law

46. Mr Rifat submitted that, even if the DS1 was given to Mr Shiyam of LG Law on condition that it would not be effective until all the outstanding sums due had been paid, Mr Shiyam acted as Paragon's agent with ostensible authority. By sending the DS1 to Shergill & Co, the presumption set out in clause 1(5) of the Law of Property (Misc Provisions) Act comes into play. This provides as follows:

' Where a relevant lawyer, or an agent or employee of a relevant lawyer, in the course of or in connection with a transaction purports to deliver an instrument as a deed on behalf of a party to the instrument it shall be conclusively presumed in favour of a purchaser that he is authorised so to deliver the instrument.'

47. The presumption, on his case, applies even if, on the facts, the DS1 was not delivered until 5 November 2015, after the intervention of the SRA of LG Law. This was not known to Mr Thavenesan and he is still entitled to rely on the protection of the 1989 Act.

48. With respect to Mr Rifat, the relation of agency does not arise by virtue of this provision. In the ordinary course of events, the solicitor acting for the vendor is not acting as agent for any chargee.

49. The question of how conveyancers for both parties deal with the discharge of the seller's mortgage is dealt with in some detail in *A Practical Approach to Conveyancing*, by Abbey and Richards, 19th Ed, at paragraphs 8.06 and 8.100 ff and in *The Law Society's Conveyancing Handbook* at 4.2.13 and VI.4, and has been considered by the courts in *Patel v Daybells*, and *Edward Wong Finance Co Ltd v Johnson, Stokes and Master* [1984] AC 296 PC.
50. The issue usually arises because, in most transactions, the sale proceeds will be applied after completion for the purposes of redemption. The Form DS1 will not therefore be available at completion. Practitioners must therefore rely on professional and enforceable undertakings, which must be given by solicitors or licensed conveyancers.
51. In *Patel v Daybells* the court at first instance held that it was negligent for a buyer's solicitor to accept an undertaking for a DS1 except in exceptional circumstances. The Court of Appeal, recognising the wide spread practice of accepting undertakings in the profession and in the practical implications of reversing this practice, allowed the appeal. In the standard case it was reasonable to rely on the existence of compulsory insurance, the Compensation Fund and the summary procedure for enforcing undertakings.
52. However, the 'exceptional circumstances' in which it might be negligent for a buyer's solicitor to accept an undertaking were not specified. Expert evidence suggested that the position might be different where the amount to redeem the seller's mortgage exceeds the minimum level of solicitor's indemnity insurance, or, more relevantly to this case, where the mortgagee is not a member of the Council of Mortgage Lenders. The reason for this is that members will stand by the redemption statements issued by them at completion even if they subsequently turn out to be incorrect.
53. One way of addressing the risks posed by accepting an undertaking in respect of a non commercial lender is to ensure that the seller's solicitor is the duly appointed agent of the lender. If the agent fails to redeem by not paying the due amount, the dispute will be between the agent (the seller's solicitor) and the principal, the lender. The lender will be bound to redeem. (see also *Edward Wong Finance Co Ltd v Johnson et al*). To ensure that the risk of default is placed with the lender it is necessary to obtain express written

54. I have considered whether the reply given to 5.3, in these circumstances, could give rise to an argument that LG Law were appointed as, or could be held to be appointed, as agents for Paragon. There was clearly no express appointment. Nor was there any ostensible authority. Paragon did not, by words or conduct, represent or allow a representation that LG Law had authority to act on its behalf. (see generally *Freeman & Lockyer v Buckhurst Park Properties* [1964] 2 QB 480).
55. In conclusion, the answer to this case, in my judgment, lies in the nature of the undertaking given by LG Law in paragraph 5 of the Completion Information and Undertakings, and in the undertaking given by letter dated 23 July 2015 which enclosed the form. This letter stated that LG Law confirmed that they undertook to redeem the charge in favour of Santander and that they held the DS1 in respect of Paragon's charge.
56. The seriousness of the undertaking given in the Completion Information is underlined by the warning given in the form which reads: '*WARNING: a reply to requisition 5.2 is treated as an undertaking. Great care must be taken before answering the requisition.*' 5.2 specifically asks whether the seller's solicitor '*undertakes to redeem or discharge the mortgages and charges listed in 5.1 on completion and to send us Form DS1, DS3, the receipted charges or confirmation that notice of release or discharge in electronic form has been given to the Land Registry as soon as you receive them?*' The answer to that question was yes. The Charge was listed in 5.1.
57. The reason for the seriousness with which these questions must be answered is precisely to avoid the situation where the seller's solicitor may have to redeem the charges. No answer should be given to these questions unless it is clear that there will be sufficient monies on completion to pay off the lenders. Default by the seller's solicitor is dealt with by the requirement for compulsory insurance and ultimately by the Compensation Fund. These are the remedies open to Mr Thavanesan.
58. As Counsel for Paragon accepted this is an unfortunate case in many respects. But, as he put it, the provision of an undated DS1 in the clear anticipation of being repaid out of the sale proceeds cannot result in the buyer being entitled to rely on the DS1 to cancel the charge when the money remains outstanding.

59. Accordingly I will order the Chief Land Registrar to cancel the application dated 16 October 2015.

Costs

60. I have seen a statement of costs served on behalf of Paragon dated 28 February 2018. The Tribunal only has jurisdiction to award costs from the date the matter was referred to the Tribunal, that is to say 8 June 2016. I assume the schedule of costs is limited to this period: if not, it will need to be re-drawn.

61. In principle, the successful party is entitled to its costs. Mr Thavanesan may of course raise such objections and representations as he considers appropriate by 15 June 2018. The total currently claimed is £52,445.25. Unless the costs can be agreed, it is very likely that the costs will have to be the subject of a detailed assessment made by a costs judge.

BY ORDER OF THE TRIBUNAL

Ann McAllister

Dated this 23rd May 2018.