CH/2007/APP/0403

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IN THE HIGH COURT OF JUSTICE
CHANCERY DIVISION

Royal Courts of Justice
Strand
London WC2A 2LL

Thursday, 5th March, 2009

BEFORE:

MR JUSTICE KITCHIN

BETWEEN:

SCOTLAND

Appellant

-v-

PATEL & OTHERS

Respondents

The Claimant appeared in person.
MR T WATKIN (instructed by Edell James & Leness) appeared on behalf of the First and Fifth Respondents.
MR P STADDON (instructed by Talfourds) appeared on behalf of the Second Respondent.
MR G CHAPMAN (instructed by Squire & Co) appeared on behalf of the Third Respondent.
MR A MUNRO (instructed by Foskett Marr Gadsby & Head) appeared on behalf of the Fourth Respondent.

A P P R O V E D J U D G M E N T

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J U D G M E N T

MR JUSTICE KITCHIN:

1. I have before me applications for permission to appeal against judgments and orders of Master Teverson of 12 and 13 June 2007 and 16 September 2008 whereby he dismissed or struck out claims against the first to fifth defendants inclusive in these proceedings. In addition, I have various ancillary and related applications by the claimant, Mr Scotland, to adduce new evidence and amend his claim.

2. In the hope of bringing some finality to these proceedings, I propose to address the applications for permission taking into account all the additional evidence before me and the new allegations and claims which Mr Scotland now seeks to advance.

3. The background to the dispute between the parties is set out in the various judgments of Master Teverson from which the following account is largely and gratefully taken. It extends as far back as the early 1990s. Mr Scotland and his wife were the owners of a property at 36 Bathurst Road, Ilford, which was divided into two flats. The first floor flat was let and the ground floor flat was occupied by Mr and Mrs Scotland. In about 1993 the neighbouring property, 48 Bathurst Road, was purchased by Dr Solomon and his wife. At some date thereafter they began to renovate and restore their property, and Mr Scotland became concerned regarding the works they were carrying out, taking the view that they encroached on his property and were causing a nuisance. Accordingly he issued proceedings in the Ilford County Court in which he proceeded to act in person. The second defendant, Mr Frankish (as he then was), a partner in the firm of Talfourds, solicitors, of Hornchurch in Essex, represented Dr and Mrs Solomon. A trial took place in front of HH Judge Platt and the outcome was that Mr Scotland was awarded £1,000 in connection with some water damage, but as that did not exceed offers made to Mr Scotland he was ordered to pay Dr and Mrs Solomon's costs on an indemnity basis. Those costs were subsequently taxed at a sum in the region of £40,000.

4. Enforcement measures took place thereafter, with Mr Frankish acting on behalf of Dr and Mrs Solomon. Charging orders were obtained over the freehold and leasehold interests in the property and on 7 April 2000 an order for sale was made. On 5 June 2000 and following an unsuccessful application by Mr Scotland to the Court of Appeal seeking permission to appeal, a warrant for possession was enforced. A valuation report was obtained from a Mr Peter Gumby of the fourth defendant, Bailey & Co, dated 10 June 2000 but which may not have been completed until 19 June 2000. Bailey & Co valued the property at £176,000. It was marketed by the third defendant, Hull & Co, as selling agents, who, on 10 July 2000, recommended acceptance of an offer from the first defendant, Mr Patel, of £175,500.

5. On 11 July 2000 Mr Frankish made an application to the Ilford County Court for an order permitting the sale of the property at £175,000, although it is

accepted by all parties that a hearing did not take place on that day.

6. By a letter dated 12 July 2000, Mr White of Hull & Co wrote to Mr Frankish, informing him that they had been contacted by a member of the planning department of the London Borough of Redbridge in connection with the property and a single storey back extension constructed by Mr Scotland. He related that a neighbour had contacted the Borough to report that this extension did not have planning permission. The Borough then contacted Hull & Co, Mr White assumed because of their sale board, to enquire after the owner. Hull & Co responded to the Borough that the property was currently in possession awaiting a decision from the court as to sale, and accordingly the Borough had agreed to put the planning permission issue aside until a clearer picture of who would actually end up with the property had become evident. Hull & Co noted that obviously this might present problems if the sale progressed with regard to contract enquiries and it was for this reason they were providing the information to Mr Frankish.

7. The information was passed on by Mr Frankish to Mr Gumby shortly afterwards, and Mr Frankish requested a revised recommended figure in the light of the planning problem if, indeed, a revised figure was required. Acting upon that request, Mr Gumby prepared and wrote a letter to Mr Frankish dated 18 July 2000 in which he observed that, since his original valuation, there was evidence of a change in market conditions and, in particular, what he described as a "cooling down" of the market, reflected in the collapse of a number of sales and the acceptance by his firm of a number of instructions on properties which other agents had not been able to sell. He also observed that a firm of auctioneers had reported catalogues being left over from a recent auction, indicating the market was not as active as it had been only eight weeks before. Taking these matters into consideration and the potential planning difficulty, he anticipated an impact on the value of the property in two ways. First, a finance company might restrict the amount which it would be prepared to lend on the property and, secondly, it might unsettle any potential purchaser. Having taken into account the nature of the property, the existence of the back addition, how long it had been constructed and its impact on adjoining properties, Mr Gumby reached the conclusion that a reasonable reassessment would be in the region of £3,000, giving a revised figure for the value of the property of £173,000.

8. That same day, 18 July 2000, Mr Frankish attended the Ilford County Court and obtained an order from Deputy District Judge Smith permitting the property to be sold for not less than £173,000. Due to an administrative error, that order was not drawn up and instead, on 16 August 2000, an order was drawn up permitting the sale of the property for not less than £175,000.

9. In or about early September 2000 Mr Patel evidently became aware of the concern over the rear extension and the issue of planning permission in relation to it and, having consulted the London Borough of Redbridge, approached Hull & Co with a revised offer of a maximum of £171,500. This was recorded in a letter from Mr White to Talfourds of 12 September 2000. He related Mr Patel's concerns and new offer and sought instructions. He

observed that he would prefer to resolve the situation with Mr Patel as any new alternative purchaser would face the same problems and, if a price reduction could be agreed, he understood Mr Patel would be able to at least exchange contracts by the end of the week and possibly complete at the same time.

10. Talfourds replied by a letter of the same date, observing that, as Hull & Co were aware, they had court approval at the sale price of £173,000 subject to contract, and felt that the proposed maximum figure offered by Mr Patel was somewhat low. They continued that it would appear that the court-approved figure of £173,000 met Mr Patel halfway and that they were prepared to proceed at a revised price of £173,000, subject to contract, on the basis that exchange was effected by return, failing which they would be required to offer the property at the original price to other prospective buyers.

11. Thereafter, negotiations took place with Mr Patel, following which he did agree to pay £173,000 to purchase the property, and on 22 September 2000 the sale of the property was completed at that price.

12. Meanwhile, on or about 9 July 2000, Mr Scotland had commenced fresh proceedings concerning the property in the High Court against Dr and Mrs Solomon. On 25 October 2000, Master Moncaster gave summary judgment in favour of Dr and Mrs Solomon and made a Grepe v Loam order preventing Mr and Mrs Scotland from taking any steps, including the issuing of any new proceedings in the High Court or in any County Court against Dr and Mrs Solomon "in or arising out of, or concerning any matter including or relating to or touching upon or leading to the proceedings in the Ilford County Court IG501770", which were the original proceedings, "or IG901943", which were the proceedings to enforce the charging order, "without the permission of Master Moncaster or some other Master of the Chancery Division first being obtained".

13. On 2 October 2000 Mr Scotland issued further proceedings against Dr and Mrs Solomon alleging that they had converted or destroyed goods and chattels belonging to him which had been left at the property and, on 15 August 2001, Master Moncaster gave permission for the claim to proceed. It was ultimately tried by HH Judge Crawford Lindsay QC over four days, commencing on 12 May 2004, and by his judgment he dismissed the claim.

14. In parallel, Mr Scotland sought the permission of Master Moncaster to bring a claim against Dr and Mrs Solomon alleging the wrongful sale of the property. In a letter to Mr Scotland dated 31 May 2001 Master Moncaster set out his reasons for refusing Mr Scotland's application. He said he was satisfied that the order to which I have referred made in the Ilford County Court on 18 July 2000 authorising the property to be sold at £173,000 had indeed been made, and referred to the fact that the property had been the subject of valuations by Mr Gumby on 10 June 2000 and 18 July 2000. He continued:

> "In those circumstances, I consider that it is impossible to claim that the sale at that price on the advice of the valuer and with the permission of the court, was wrongful. I therefore refuse your

application to litigate this matter."

The Master did, however, as I have said, give permission to Mr Scotland to litigate his claim in relation to the contents of the property.

15. Thereafter, Mr Scotland sought permission to appeal against the refusal to allow him to bring a claim based on the alleged wrongful sale of the property, and one of the issues that he again raised was whether or not an order had in fact been made in the Ilford County Court on 18 July 2000. As I have mentioned, the order was not drawn up on that date, but instead an order was drawn up in August 2000 giving permission to sell in the sum of £175,000. As Master Teverson recorded in his judgment of 13 June 2007 in respect of the application by Bailey & Co, Mr Scotland's application for permission to appeal was eventually refused by Neuberger J (as he then was) on 30 December 2003. It is clear from his reasons for refusing permission that Neuberger J had before him the valuation material upon which Mr Scotland sought to rely but he nevertheless thought that the prospect of establishing some sort of wrong doing was "pretty remote" and not enough to justify the giving of permission. He continued that he had borne in mind the substantial way in which the matter had dragged on, taking up a great amount of court time and involving the parties in what was already a disproportionately large amount of worry and cost. His reasons include the following passage:

> "while it is fair to say that the evidence available does not put the point beyond argument, it seems to me significantly more likely than not that the court did in fact approve the sale of the property at £173,000."

16. Finally, it seems that various further claims and applications for an account in respect of the purchase of the property led to a compromise recorded in an order of HH Judge Levy QC of 10 January 2005, under which Mr Scotland accepted a reduction in costs against him of £3,000 in full and final settlement of all claims against Dr and Mrs Solomon and their solicitors, with Mr Scotland further undertaking to bring no further claims against them.

17. I can now come to these proceedings and consider first, the claims against Mr Patel and the fifth defendant, Consumer Loans. By his judgment and order of 12 June 2007 Master Teverson struck out the claims against Mr Patel and Consumer Loans on the basis that the statements of case disclosed no reasonable grounds for bringing a claim against either of these defendants, that in so far as the claim against Mr Patel related to Mr Scotland's goods and chattels, it was an abuse of process and that Mr Scotland had no real prospect in succeeding in any of his claims.

18. The claim was issued on 5 December 2006, that is to say more than six years after the sale of the property, and soon afterwards Mr Patel and Consumer Loans launched their applications to strike it out and for summary judgment. They first came before Master Teverson for a substantive hearing on 20 March 2007, at which time he adjourned them, directing Mr Scotland to file a concise statement of the nature of his claim against each of these defendants.

Meanwhile, Mr Frankish and Bailey & Co made like applications and all were ultimately listed for hearing in June 2007.

19. The issues which Mr Scotland contends are triable against Mr Patel have been helpfully summarised by counsel appearing on his behalf as follows:
(i) That Mr Patel entered into a scheme led by Mr Frankish, the object or purpose of which was to effect the sale and transfer of 36 Bathurst Road at an undervalue "in order to destroy any right of redemption or recovery of the property".
(ii) That Mr Patel "knowingly assisted a dishonest breach of trust in that he (1) fraudulently claimed to be a cash buyer of the property when in fact the property was purchased and is still held subject to a mortgage"; (2) "knowingly assisted in the fraudulent breach of trust of sale of the property and remains in possession of the same"; (3) "concealed the truth in breach of the terms of the Theft Act 1968 and the Fraud Act 2006"; (4) "had no legal or lawful interest or right in or right of possession of the goods and chattels passed to him on 22.9.00, and receipt, sale, disposal and/or destruction of the same were knowing acts of conversion effected in breach of the terms of the Theft Acts 1698 and 1978 and the Torts (Interference with Goods) Act 1977 ss.1 and 11".

20. It is apparent that the allegations essentially fall into two parts: those concerning the sale of the property and those in respect of Mr Scotland's goods and chattels which were left in the property. Master Teverson dealt with all of these allegations in his comprehensive, thorough and careful judgment. As to the allegation that the property was sold at an undervalue, Master Teverson formed the clear view, as expressed more fully in the judgment which he gave the same day on the application of Mr Frankish, that there was no evidence of any sale at an undervalue and indeed positive evidence that the property was sold at its true value. In that latter judgment, Master Teverson related the various facts and matters to which I have referred concerning the valuations given by Mr Gumby of Bailey & Co, including specifically the revised valuation given at the request of Mr Frankish and the fact that the Ilford County Court had approved the sale, if not at £173,000 then at £175,000. For my part, and in the light of the matters to which I have referred, I think that was a generous assumption by the Master. The Master considered that, for Mr Scotland's claim to succeed, he would have to show that Bailey & Co's valuation of £176,000 was well outside the range of reasonable values that could have been prepared in order to give advice to mortgagees as to a reasonable sale price, and he had absolutely no material upon which to base any such case. The only document put before the Master of potential relevance was a letter from a firm of marketing agents, Douglas Allen & Spiro, dated 12 June 2000 relating to advice on marketing at a price range of £195,000 to £200,000. As the Master observed, that was not, however, a valuation report but rather a letter giving advice on marketing.

21. Master Teverson also considered that the claim asserting that the sale was at an undervalue would involve an element of a collateral attack on the refusal of the court to allow Mr Scotland to pursue a claim against Dr and Mrs Solomon that the property was sold at an undervalue. Even if that were not right and

Mr Scotland could persuade the court that there was no direct collateral attack, then Master Teverson reached the conclusion that, on the basis of a broad merits-based judgment and taking into account all the facts of the case and the interests involved, to allow Mr Scotland now to bring a fresh claim against Mr Frankish did indeed amount to an abuse, and that that was particularly clear in the context of the proposed claim relating to goods and chattels. In my judgment, exactly the same must pertain to Mr Patel.

22. In relation to the existence of a fraudulent scheme, Master Teverson found, rightly in my judgment, that it was incumbent on Mr Scotland to set out clearly and concisely the acts on which he relied in support of a case that Mr Patel had engaged in any such scheme, but despite a careful consideration of the statement of claim and the endorsement of statement of claim served by Mr Scotland pursuant to the Master's order of 20 March 2007, he was unable to identify any such facts. The Master also considered the evidence on which Mr Scotland sought to rely in support of his own application against Mr Patel for summary judgment. That evidence included the valuation reports of Mr Gumby and the letter from the marketing agents suggesting that the property should be marketed in the range of £195,000 to £200,000, to which I have referred, but the Master concluded, once again in my judgment rightly, that there was nothing here which could be said to connect Mr Patel to a fraudulent scheme or which could be said to form the basis of an allegation of fraud.

23. In so far as any claim in respect of the conversion of the goods or chattels of Mr Scotland were to be brought based on some form of claim in contract or tort alone, Master Teverson considered that these were time-barred and, moreover, that the claim against Dr and Mrs Solomon having failed and Mr Scotland having originally elected not to pursue Mr Patel in that action, an attempt now by Mr Scotland to pursue Mr Patel in relation to the goods and chattels amounted to a collateral attack upon the judgment of HH Judge Crawford Lindsay QC and a misuse of the court's process.

24. Mr Scotland has elaborated at some length before me today by reference to the documents which he seeks to introduce why these claims are, as he would submit, properly conceived. However, I have reached the opposite conclusion. First, the correspondence to which Mr Scotland has taken me seems to me to point not to sale at an undervalue but, quite the contrary, to a sale at a fair value. He has put forward no basis for criticising Master Teverson's finding that he had failed to produce any evidence of undervalue at the hearing before him; nor, in my judgment, has he made out any proper basis for challenging the finding of the Master that further litigation of the issue of undervalue amounts to a collateral attack upon the decision of Master Moncaster and is a misuse of the court's process.

25. Secondly, despite extensive written submissions and the development of those submissions orally before me, I have been unable to detect any facts which can properly be said to form the basis of an allegation that Mr Patel has engaged in a fraudulent scheme or, indeed, that there was any such scheme on foot at all. I accept Mr Patel's submission that, in the face of Mr Scotland's inability to identify any overt acts, the court had no alternative but to strike out his claim.

26. Turning to the claim in respect of the goods and chattels, I accept Mr Patel's submission that the conclusions of the Master were plainly correct. As the background to which I have referred makes clear, the claim which Mr Scotland seeks to advance is exactly the same claim as that which was dismissed by HH Judge Crawford Lindsay QC and, moreover, Mr Scotland has not put forward any proper basis for contending that it is right to pursue Mr Patel now, having not sued him in those original proceedings.

27. In my judgment, the Master's decision to strike out the claim and make the various consequential orders that he did was plainly right and an appeal has no real prospect of success.

28. Turning to the fifth defendant, Consumer Loans, they had the benefit of security in the form of a charge over the ground floor flat. It appears Mr Scotland seeks to contend that they owed a duty of care to obtain the market value of the property and to account for the same, that they colluded with and materially assisted Mr Frankish and Dr and Mrs Solomon in a fraudulent breach of trust in connection with the valuation and sale of 36 Bathurst Road at an undervalue, that Consumer Loans were paid a sum of £12,000 to which they had neither right nor title, and that Consumer Loans "have refused and failed to register and file certification of sale and settlement of their mortgage, and have refused to render up accounts either as requested or as required by the terms of the Law of Property Act 1925 section 105, or at all."

29. Master Teverson concluded that a claim based upon the assertion that the property had been sold at an undervalue was hopeless. I agree with him for all the reasons I have given. Likewise Mr Scotland has no basis for contending that there was any fraudulent scheme involving Consumer Loans or, indeed at all, and I need say no more about it.

30. The Master did appear to have more concern about two other claims which, though not properly raised prior to the hearing, were apparently elaborated in the course of the hearing before him. The first was a claim in respect of the sum of £6,994.74 included within the redemption figure to pay costs incurred by Consumer Loans with Sherringtons, a firm of solicitors, in relation to possession proceedings occurring between 1992 and 1999. In relation to this sum, the Master concluded that Mr Scotland's appropriate remedy, had he been concerned, would have been to seek a taxation of the costs pursuant to section 71 of the Solicitors Act 1974. Not having exercised that remedy, it seemed to him to be wrong in principle now to allow Mr Scotland to proceed to challenge that part of the redemption account, particularly bearing in mind that it had been paid in or around the end of September or the beginning of October 2000.

31. The second part of the claim was in respect of a sum of £4,379.21, being six months' interest incurred as a charge by reason of the early redemption of the mortgage. As to this, the Master observed that it was not a claim which had been made by Mr Scotland in his statement of case, nor in his concise endorsement of claim. As a result, the terms of the credit agreement entered

into between him and Consumer Loans were not before the court and there was no basis upon which the issue could properly be considered. The Master concluded that it would not be in accordance with the overriding objective for Mr Scotland to be allowed to amend his claim to attempt to challenge that individual item, particularly bearing in mind that he was aware of the content of the settlement statement as long ago as February 2002.

32. I am satisfied that Mr Scotland has not advanced any basis for contending that Master Teverson's conclusions were wrong, and indeed, in my judgment, they were right and an appeal against them has no real prospect of success.

33. So far as the solicitors' costs are concerned, Consumer Loans were entitled to their costs on an indemnity basis. Mr Scotland did not exercise his statutory right to a taxation of the costs under the Solicitors Act 1974, and in my judgment it would not be right to allow him to seek to challenge the bill more than eight years after its receipt without proffering any indication of the basis for that challenge.

34. As for the six months' interest charge for early redemption, this was not a matter to which Consumer Loans could plead or direct evidence because of the way it was introduced into the proceedings. I am satisfied that the burden lay on Mr Scotland to show he had a basis for challenging the account which Consumer Loans provided and, further, that, had the matter been raised properly, Consumer Loans could and would have directed evidence to it, including evidence which is now before me indicating that the terms of the loan included a contractual provision entitling Consumer Loans to six months' interest upon early redemption.

35. There is one final matter concerning Consumer Loans with which I must deal. Mr Scotland seeks to raise yet another issue, namely that Consumer Loans were not entitled to interest after the date upon which they obtained a possession order against Mr Scotland, because at that point Consumer Loans' claim merged in the judgment such that they was only entitled to interest under the judgment.

36. There are two problems with this claim. The first is that I see no reason why it could not have been introduced before the Master, and in my view it should have been. Secondly, and more substantively, in response to the attempt by Mr Scotland to introduce this further claim I have evidence before me confirming that the terms of the loan provide for interest to run before and after any judgment. I am therefore satisfied that there is nothing in this further claim and it is not proper to give permission to introduce it at this stage.

37. Turning to the second defendant, Mr Frankish, the complaint and claim against him by Mr Scotland is, in substance, that in his capacity as an officer of the court charged with conduct of a trust of land held under the court's administration, he fraudulently and dishonestly sold the trust assets at a gross undervalue in order to serve his own interests. He is therefore personally liable for all the loss and damage flowing from his breach of trust and, further, that "he remains personally liable to account as a constructive trustee for all

that loss and damage flowing from and occasioned by the aforesaid breaches of trust and breaches of duty of care". It seems that Mr Scotland also seeks damages against Mr Frankish in respect of the loss of his goods and chattels.

38. The Master dealt with all of these allegations in the judgment to which I have referred and concluded that Mr Frankish acted as solicitor for Dr and Mrs Solomon and therefore owed no duty of care to Mr Scotland. Moreover, the fact that Mr Frankish's firm, Talfourds, were given conduct of the sale did not impose a separate duty of care over and above that owed by Dr and Mrs Solomon as mortgagees to obtain the best price reasonably obtainable at the time. Further, the Master concluded that, given the expiry of the 6-year time limit in tort, Mr Scotland would have to establish a claim which amounted to something equivalent to a conspiracy either to injure or involving the use of unlawful means, and that any other claim for breach of duty would be statute barred.

39. As to whether or not a claim for conspiracy to injure or involving the use of unlawful means could be said to have a real prospect of success, the Master considered all of the materials before him and reached the conclusion that it did not. In addition, and looking at the background of the matter, he formed the view that the claim included within it an element of a collateral attack on the refusal of the court to allow Mr Scotland to pursue a claim against Dr and Mrs Solomon that the property had been sold at an undervalue. In any event, and applying a broad, merits-based judgment, he considered that to allow Mr Scotland to bring a fresh claim against Mr Frankish would amount to an abuse, and that this was particularly clear in the case of goods and chattels. Having regard to the judgment and order of HH Judge Crawford Lindsay QC, the Master concluded that this claim amounted to an abuse of process.

40. I can deal with the application before me for permission to appeal in respect of this claim rather more quickly, because much of what I have said in relation to the claims against Mr Patel and Consumer Loans is equally applicable.

41. In my judgment, the Master was entirely right in reaching the conclusion that a claim for conspiracy either to injure or involving the use of unlawful means has no real prospect of success. No primary or overt acts which could justify such a claim have been identified and, indeed, the evidence before me shows that the property was sold not at an undervalue but, on the contrary, at a fair value. It is submitted on behalf of Mr Frankish, and I agree, that the evidence is overwhelming that the price paid by Mr Patel for the property was a reasonable one. Second, I accept the submission that the duties of mortgagees in possession exercising their power of sale is that articulated by Lightman J in Silven Properties v RBS [2004] 1 WLR 997. At paragraph 19 he said:

> "When and if the mortgagee does exercise the power of sale, he comes under a duty in equity (and not tort) to the mortgagor (and all others interested in the equity of redemption) to take reasonable precautions to obtain "the fair" or "the true market" value of or the " proper price" for the mortgaged property at the date of the sale... The mortgagee is not entitled to act in a way which unfairly prejudices the mortgagor by selling hastily at a

> knock-down price sufficient to pay off his debt… He must take proper care whether by fairly and properly exposing the property to the market or otherwise to obtain the best price reasonably obtainable at the date of sale. The remedy for breach of this equitable duty is not common law damages, but an order that the mortgagee account to the mortgagor and all others interested in the equity of redemption, not just for what he actually received, but for what he should have received…"

42. In my judgment no separate duty of care was owed by Mr Frankish to Mr Scotland above and beyond that owed by Dr and Mrs Solomon as mortgagees to obtain the best price reasonably obtainable.

43. I am also satisfied that any wider or more general allegation for breach of the duty of care would be time-barred, six years having elapsed since the sale before the issue of proceedings, and that to allow Mr Scotland to bring this claim now against Mr Frankish would amount to an abuse of process, as would any claim in respect of Mr Scotland's goods and chattels.

44. For all of these reasons, I am wholly satisfied that an appeal by Mr Scotland against the judgment and decision of Master Teverson in respect of Mr Frankish has no real prospect of success.

45. That leaves the third defendant, Hull & Co, and the fourth defendant, Bailey & Co. So far as Hull & Co is concerned, the allegation is, in summary, that they were involved together with Mr Patel, Mr Frankish and possibly Consumer Loans and Bailey & Co in a fraudulent conspiracy to sell the property at an undervalue, namely at a value just high enough to redeem in full the charges secured against the property, including Dr and Mrs Solomon's charge and Consumer Loans' charge. Alternatively, Hull & Co owed to Mr Scotland a duty of care in relation to the sale which they breached by selling the property at an undervalue, and in the circumstances Mr Scotland is entitled to bring a claim for restitution of the property or for damages. In addition, Mr Scotland contends that Hull & Co are liable to pay damages for having wrongfully removed or destroyed his goods and chattels.

46. Master Teverson once again set out the background to this claim in considerable detail in paragraphs 8 through to 14 of his judgment. At paragraphs 17 to 19 he indicated that he was prepared to accept, without deciding, that it was at least arguable that Hull & Co did assume a duty of care to Mr Scotland as well as to the court. He therefore proceeded to consider whether Mr Scotland had a realistic prospect of establishing that there was a breach of duty on the part of Hull & Co in conducting the marketing of the property. Having asked himself that question, he proceeded to answer it in paragraphs 20 to 26 of his judgment. He there set out in detail the chronology of the activities of Bailey & Co and of Hull & Co and the preparation by Hull & Co of their report of 10 July 2000, which expressed the opinion that the market had been tested as fully as possible within the timeframe provided and that the price offered by Mr Patel of £175,550 represented the best price likely

to be achieved in the open market at that time. The Master considered the opinions expressed by Hull & Co in the light of all the other material before him, including the letter from Douglas Allen & Spiro and the valuation reports from Bailey & Co and, in the light of that full and careful consideration, reached the view that Mr Scotland did not have a real prospect of success in his claim. He came back to the issue in paragraphs 30 to 34 of his judgment, where he concluded that Mr Scotland had no real prospect of success in his claim against Hull & Co insofar as it was based upon their role in the marketing of the property.

47. The Master addressed the allegation of fraud in paragraphs 27 and 28 of his judgment and concluded that there was no evidence at all of any fraud on the part of Hull & Co.

48. Finally, he considered the allegation concerning Mr Scotland's goods and chattels and, in paragraphs 37 and 38 of his judgment, expressed the view that the claim for conversion had no real prospect of success and in any event was time-barred.

49. I do not believe that an appeal against any of these findings has any real prospect of success for all of the reasons that I have given hitherto, which apply equally to Hull & Co in so far as Mr Scotland makes the same allegations against them as against Mr Patel, Mr Frankish and Consumer Loans. I see no basis at all for contending that Hull & Co have failed in any duty of care they owed to Mr Scotland in the way they set about preparing their reports or acting upon their instructions. An allegation of fraud is, on the facts, hopeless, and I agree with the Master that a claim in respect of goods and chattels has no prospect of success for the reasons that he gave.

50. Finally, I must deal with Bailey & Co. In short, it appears to be contended by Mr Scotland that, in breach of the duty owed by them as expert valuers, they wilfully, knowingly and negligently assisted in facilitating a breach of trust, they knowingly and falsely claimed their reports were independent, they knowingly undervalued the trust property, they falsely and negligently valued the property at a gross undervalue to facilitate a sale to Mr Patel, they aided and abetted a sale of the trust property at a gross undervalue, and they accepted and implemented instructions for Mr Frankish by which they falsely claimed to have found a diminution in value of the land due to the lack of planning permission. Accordingly, it is said, they are liable to account as constructive trustees for all that loss and damage flowing from their breaches of duty and negligence.

51. In substance, Mr Scotland wishes to advance a case that Bailey & Co combined with the other defendants to procure the sale of the property at a price which Mr Patel, the eventual purchaser, was willing to pay, and that thereby they engaged in the creation of a false market. There is no basis whatsoever for such an allegation, and it does represent a collateral attack on the decision of Master Moncaster not to allow Mr Scotland to litigate further in relation to the sale of the property. I think it is generous to say that the prospects of establishing wrongdoing are remote, and I have no doubt that the

Master was entirely correct in his conclusion that any prospect of success, such as it may be, is not sufficiently strong to enable Mr Scotland to satisfy the court that the claim is one which passes the threshold required for the purpose of CPR 24. In my judgment, the Master was also right to hold that this claim was an abuse of process. The Master was right to strike it out for all the reasons which he gave.

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