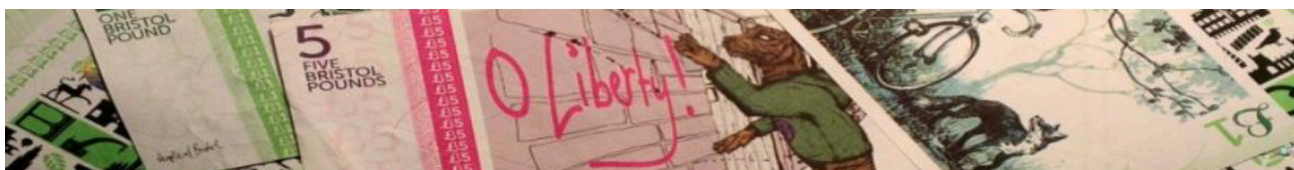


# Bank Notes Newsletter



## Featured in this issue

### Receivership

CENTENARY HOMES LTD v LIDDELL [2020] EWHC 1080 (QB)

### Possession orders

SANGHA v AMICUS FINANCE PLC [2020] EWHC 1074 (Ch)

### Adjournments

MORGAN v EGAN [2020] EWHC 1025 (QB)

### Animals on mortgaged property

BORWICK DEVELOPMENT SOLUTIONS LTD v CLEAR WATER FISHERIES LTD [2020] EWCA Civ 578

## Also this month at [www.banknotesuk.com](http://www.banknotesuk.com)

### Pleading dishonesty

HRH THE DUCHESS OF SUSSEX v ASSOCIATED NEWSPAPERS LTD [2020] EWHC 1058 (Ch)

BROOMHEAD v NATIONAL WESTMINSTER BANK PLC [2020] EWHC 1005 (Ch)

### Writs of control

365 BUSINESS FINANCE LTD v BELLAGIO HOSPITALITY WB LTD [2020] EWCA Civ 588

## **CENTENARY HOMES LTD v LIDDELL [2020] EWHC 1080 (QB)**

Summarises duties owed by receivers to the mortgagor when selling mortgaged property [58] - [77]. The court rejected submissions that mere negligence is not sufficient to establish a breach of duty [63] and that receivers are under a duty only to sell so much of the charged property as is required to repay the mortgage [69]. The receivers had not been under a duty to make the properties more marketable by purchasing an indemnity policy in respect of lack of consent to change of use of part of the property [81]. Claims that the receivers had failed to maintain the properties were dismissed on the facts [85] - [115]. Claims that flats had been sold at an undervalue succeeded only to the extent that the value of a storage room had not been taken into account, which would have added £10,000 to the sale proceeds.

*Comment:* Successful claims against receivers are relatively rare, especially because receivers are not liable for breach of their equitable duty of care unless 'plainly on the wrong side of the line'. Even so, receivers and their agents should not overlook the need for good record keeping to evidence and support their reasons for all key decisions they take. Absence of good records or, as in *Liddell*, a simple failure to make an accurate appraisal of the charged property, leaves receivers vulnerable to breach of duty claims.

## **SANGHA v AMICUS FINANCE PLC [2020] EWHC 1074 (Ch)**

A possession order made in favour of a mortgagee at a hearing attended by the mortgagor was a final order, not an interim order [28]. Considers the test for setting aside a final order [34]. To set aside a final order using the power under CPR r 3.1(7) exceptional circumstances are required [36]. If the defendant attended the possession hearing, CPR r 39.3(5) does not apply [44].

*Comment:* Hearings in possession cases are often short affairs. There will not usually have been any disclosure and no live evidence may be heard. This can give rise to doubt whether a possession order made in such circumstances is a final or interim order. If interim, the test for setting aside is less stringent. *Sangha* confirms that the order is final. Proceedings under CPR Part 55 are not unlike Part 8 claims in which the court can dispose of the claim on a final basis at the first hearing. Different points come into play under r 39.3(5) if the defendant doesn't attend the hearing.

## **MORGAN v EGAN [2020] EWHC 1025 (QB)**

Considers principles to be applied on appeals against a refusal to adjourn a trial [25], and the approach to applications to adjourn on medical grounds [38]. The judge below had been wrong to refuse an adjournment without seeking or permitting the appellant to file further medical evidence.

*Comment:* Although appeals against the exercise of discretion in a case

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### **Adoption of contracts by administrators**

RE DEBENHAMS RETAIL LTD [2020]  
EWCA Civ 600

### **Exceptions to the without prejudice rule**

BERKELEY SQUARE HOLDINGS v  
LANCER PROPERTY ASSET  
MANAGEMENT LTD [2020] EWHC  
1015 (Ch)

### **Restraining solicitors from acting**

GLENCAIRN IP HOLDINGS LTD v  
PRODUCT SPECIALITIES INC [2020]  
EWCA Civ 609

### **Validating administration of an FCA regulated firm**

GREGORY v ARG (MANSFIELD) LTD  
[2020] EWHC 1133 (Ch)

### **Refusal to rectify the land register**

REES v 82 PORTLAND PLACE  
INVESTMENTS LLP [2020] EWHC  
1177 (Ch)

DHILLON v BARCLAYS BANK PLC  
[2020] EWCA Civ 619

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management context are not easy, they may succeed if, as here, the appeal court is persuaded that the lower court erred in principle. The court stressed that it is not required to accept evidence from a party about his or her medical condition at face value, but the judge had erred in suggesting that expert medical evidence is always required. The judge had also wrongly failed to take into account evidence as to why a medical report had not been provided, and had not considered whether to make further enquiries.

### ***BORWICK DEVELOPMENT SOLUTIONS LTD v CLEAR WATER FISHERIES LTD [2020] EWCA Civ 578***

A mortgage of land including fishing lakes which did not expressly create any charge on the fish in the lakes cannot have included any rights in respect of the fish in the lakes [52]. The fish were to be regarded as wild animals and any rights to them depended on ownership and control of the land [55]. Following a sale of the land by receivers appointed under the mortgage, the purchaser therefore became entitled to the fish, not the mortgagor. The mortgagor could have removed the fish before the sale, but his rights to do so came to an end on transfer of the land [59].

*Comment:* This unusual case turned on the distinction between wild and domestic animals. Although the fish were stocked in enclosed lakes from which they could not escape, they were categorised as wild animals which are not capable of ownership but in effect 'follow' the land. Query whether mortgagees or receivers can be liable for sale at an undervalue if they do not take the value of such animals into account, even if the animals are not strictly charged property.

### ***Did you see ...***

20 March 2020 Mortgages and Coronavirus, FCA guidance for mortgage lenders.

28 March 2020 Corporate Insolvency & Governance Bill announced, to include new company moratorium, suspension of termination clauses, and prohibition on statutory demands during the COVID-19 emergency.

2 April 2020 FCA guidance on the impact of coronavirus on credit cards, overdrafts, loans, motor finance agreements and high-cost short-term credit.

27 April 2020 FCA report on final PPI complaints deadline.

30 April 2020 Lending Standards Board summary report on reimbursement of customers under the CRM code.

1 May 2020 FCA announced its intention to apply for a High Court declaration on the effect of the COVID-19 emergency on business interruption insurance.

7 May 2020 Financial Services Regulatory Initiatives Forum Grid of planned regulatory work over the next 12 months.

