

Neutral Citation Number: [2014] EWHC 3081 (Ch)

Claim No: A00DH285

IN THE HIGH COURT OF JUSTICE
CHANCERY DIVISION
LEEDS DISTRICT REGISTRY

Date: 29/09/2014

Before :
Mr Andrew Sutcliffe QC, sitting as a Judge of the High Court

Between :

MISS PAULA JAYNE CAMPBELL

Claimant

and

REDSTONE MORTGAGES LIMITED

Defendant

The Claimant, Miss Paula Jayne Campbell, in person
Mr Wilson Horne (instructed by TLT LLP) for the Defendant

Hearing dates: 11-12 and 19 September 2014

JUDGMENT

I direct pursuant to CPR PD 39A para 6.1 that no official shorthand note shall be taken of this judgment and that copies of this version as handed down may be treated as authentic.

.....

Andrew Sutcliffe QC

MR ANDREW SUTCLIFFE QC :

Introduction

- 1 This is the trial of a preliminary issue of liability, namely, whether the Claimant as mortgagor (“Miss Campbell”) has a claim for damages against the Defendant as mortgagee (“Redstone”) in respect of chattels which Miss Campbell left behind at her property known as Milkup Bank Farm, Willington, Crook, County Durham, DL15 0RN (“the Property”) following the execution by Redstone of a warrant for possession.
- 2 As mortgagee in possession, Redstone became an involuntary bailee of those chattels. The principal question I have to decide is whether having regard to all the circumstances of the case (including the relevant mortgage conditions, warnings given by Redstone that it intended to dispose of the chattels and orders made by the court), what Redstone did with the chattels was right and reasonable.
- 3 In considering all the circumstances of the case, it is necessary to set out the background facts in some detail. I have largely taken these from the third witness statement of James Chadwick, Redstone’s solicitor, whose evidence as to the chronological history of events was not challenged.

Background facts

Execution of the mortgage

- 4 Miss Campbell executed a mortgage deed over the Property dated 3 August 2006 (“the mortgage”) in favour of Beacon Homeloans Limited (“Beacon”). The mortgage was a re-mortgage of an existing debt of approximately £500,000 secured on the Property in favour of Bristol & West Building Society. Miss Campbell’s signature on the mortgage was purportedly witnessed by one Andrea Steel of 52 High Street, Byers Green, Spennymoor DL16 7PG, although Miss Campbell says that the witness was not present when she signed the mortgage.
- 5 Shortly after the mortgage was executed by Miss Campbell, Beacon assigned the mortgage to Redstone. Redstone was then known as Redstone Mortgages Plc and became a private company limited by shares following a change in status on 4 December 2009.

- 6 The mortgage conditions included the following clauses G6.1 and 6.2 entitled “Your Furniture and Personal Possessions”:

“6.1 If we [ie Redstone] or a receiver take possession of the Property, you [ie Miss Campbell] must, on Notice, remove all of your furniture and belongings. If you have not done so within 7 days of the Notice, we may as your agent remove, store or sell any items left behind.

6.2 Neither we nor the receiver will be responsible for any resulting loss or damage to your possessions. You must reimburse us for all the expenses of dealing with your furniture and goods. If we sell any of them we will pay you what’s left after deducting those expenses. ...”

The possession proceedings

- 7 Miss Campbell fell into arrears and possession proceedings were issued by Redstone in Bishop Auckland County Court under claim number 7PA18647.
- 8 A possession hearing was initially set for 20 March 2007. However, Miss Campbell made a payment of £10,727.88 on 24 January 2007. The proceedings were adjourned and Redstone’s solicitors’ file was closed and returned to Redstone.
- 9 Miss Campbell again fell into arrears when the next contractual instalment became due. A number of further instalments were unpaid and Redstone restored the possession proceedings on 20 July 2007. The arrears at this date were £7,555.50.
- 10 A new date for the possession hearing was set for 18 September 2007. Again Miss Campbell made a substantial payment shortly before the proposed hearing causing the matter to be further adjourned.
- 11 The possession claim was restored once more on 20 December 2007 when the arrears were £7,905.00. A hearing was listed for 11 March 2008.
- 12 The matter came before District Judge Mainwaring-Taylor on 11 March 2008 at which time the arrears were £15,858.30. Upon hearing Miss Campbell’s submissions, the Judge granted an adjournment to the first open date after 28 days. Miss Campbell’s submissions were that she was nursing both parents, her

mother had cancer, she was going through a divorce and she had paid £10,600 the day before the hearing and promised to pay a further £9,400 that day.

- 13 At the adjourned hearing on 3 June 2008, when the arrears were £23,810.60, District Judge Mainwaring-Taylor granted an order for possession in 28 days (“the Possession Order”), suspended on payment of the monthly instalment by 10 June 2008 and payment of future monthly instalments plus £500 thereafter, commencing on 1 July 2008. No appeal was made against this order.
- 14 During the hearing on 3 June 2008, Miss Campbell stated (i) she had been let down by a third party who had promised to make payment for her; (ii) she was commissioned to write a play for which she would receive £25,000 within three months; (iii) she had two children at home, one of whom had just come out of hospital following two and a half months in intensive care (although Miss Campbell had not mentioned this at the previous hearing seven weeks earlier); and (iv) she received an income of £4,000 per month.
- 15 Of the two initial payments due under the Possession Order, £2,651.10 was due on 10 June 2008 but only £1,500.00 paid and £3,151.10 was due on 1 July 2008 but only £1,200.00 was paid (on 30 June 2008). So of the total of £5,802.20 that was due, only £2,700.00 was paid. In view of the considerable shortfall in payments due (i.e. £3,102.20), Redstone sent a letter before warrant to Miss Campbell on 13 July 2008 asking her to remedy the default. Further letters before warrant were sent on 15 August 2008 and 23 December 2008.
- 16 Shortly after the second letter before warrant was sent, Redstone and its solicitors began receiving emails from third parties asking for leniency to be shown towards Miss Campbell. It was at that point that it came to Redstone’s attention that Miss Campbell was running the Rainbow Ark Animal Sanctuary (“the Sanctuary”) from the Property.
- 17 Further letters before warrant were sent on 23 March 2009 and 13 May 2009. On 24 May 2009, when the arrears were £23,663.90, Redstone received a letter from a volunteer at the Sanctuary stating that Miss Campbell had suffered a “family loss” and was unable to contact Redstone or its solicitors. The letter stated that the volunteers were raising awareness of the Sanctuary through local media appeals and peaceful demonstrations. The volunteer also claimed that Miss Campbell had progressed to the live shows in the ITV programme ‘The X Factor’. Redstone’s solicitors responded to this letter on 27 May 2009 stating that Redstone and its representatives could not discuss the mortgage with anyone other than Miss Campbell as Redstone did not hold a third party authority.

- 18 As the account was falling further into default, a warrant for possession was requested on 8 July 2009. The arrears at that date were £29,198. A bailiff appointment was listed for 13 August 2009. However, Miss Campbell filed an application to suspend the warrant which was heard on 11 August 2009 (when the arrears were £31,965.06).
- 19 At the hearing on 1 August 2009 Miss Campbell stated that (i) her adult son, his wife and their new baby lived at the Property along with Miss Campbell's other two children and her disabled mother; (ii) there were more than 400 animals at the Sanctuary; (iii) her primary income was fundraising for the Sanctuary; (iv) she was in the process of securing funding from a "benefactor", Mark French, a London property developer and special needs teacher; (v) she was in a position to maintain the monthly instalments plus £500 (this being the amount ordered on 3 June 2008); and (vi) an offer of payment of £16,000 had been accepted by Redstone.
- 20 Upon receiving these submissions, District Judge Traynor ordered that the matter be adjourned to 8 September 2009 so that Miss Campbell could make the £16,000 payment by 31 August 2009 as she had promised. The payment of £16,000.00 was made on 31 August 2009. Therefore, at the adjourned hearing on 8 September 2009, District Judge Traynor suspended the warrant on payment of the monthly instalments plus £500 per month with effect from 1 October 2009.
- 21 Miss Campbell immediately defaulted and Redstone therefore requested that the warrant be reissued on 19 October 2009 when the arrears stood at £20,612.96. A bailiff appointment was listed for 25 November 2009 but, prior to execution of the warrant, Miss Campbell filed a further application to suspend which was heard on 19 November 2009. At the hearing of this application, Miss Campbell stated (i) there were 12 people living in the Property, including her elderly mother who had suffered a stroke, her daughter-in-law and her baby grandchild who had been in intensive care since birth; (ii) she was fundraising through car boot sales and a market stall; (iii) she was selling three acres of land at the Property to a registered charity; (iv) she was the widow of an ex-serviceman but had not enquired as to her entitlement to his benefits (Miss Campbell had previously stated that she was going through a divorce); (v) one of her sons was due to join the police and the other the armed forces; and (vi) payments made to Redstone had gone missing.
- 22 At the hearing on 19 November 2009, Deputy District Judge Harrison adjourned the application to 24 November 2009 in order that Miss Campbell could make a payment in the sum of £11,200. Miss Campbell made that payment and, accordingly, Redstone withdrew the warrant. At the adjourned hearing on 24 November 2009, District Judge Robertson ordered that the warrant be suspended and Miss Campbell was to pay the monthly instalments plus £500 per month.

- 23 In mid-January 2010, Miss Campbell contacted Redstone's solicitors on a number of occasions stating that she was struggling to make payment of £5,000 owing to Redstone due to the inclement weather. Miss Campbell was afforded additional time in which to make payment. Following further default, Redstone received a letter from Miss Campbell on 26 February 2010 stating that there had been another loss in the family. A further letter was received on 16 March 2010 stating that three (unnamed) celebrities had offered to help the Sanctuary. This letter crossed with a further request from Redstone for a warrant of possession. The bailiff appointment was listed for 6 April 2010. However, Miss Campbell filed a further application to suspend which was heard on 30 March 2010. The arrears at that time were £15,491.37.
- 24 At the hearing on 30 March 2010, Miss Campbell told District Judge Robertson that (i) her family continued to suffer ill health; (ii) she was pursuing legal action against a third party; (iii) in order to draw attention to the plight of the Sanctuary, she had chained herself to the Angel of the North and appeared on 'The X Factor', gaining the support of Simon Cowell; (iv) she was raising money by selling books and taking stalls at craft fairs; and (v) a number of fundraising events had been planned over the Easter break.
- 25 District Judge Robertson adjourned the matter for 28 days and suspended the warrant pending re-issue seven days after the next hearing should that prove necessary. Redstone did not receive notice of the adjourned hearing which took place on 6 May 2010 in Redstone's absence. Redstone checked with the court and discovered that the warrant had been suspended pending payment of the full arrears by 14 May 2010. On 20 May 2010, Redstone received a payment of £17,700 into the mortgage account which cleared the arrears in full.
- 26 Following receipt of this payment, arrears continued to accrue but no further action was taken for some eight months when Redstone instructed its solicitors to send another letter before warrant on 27 January 2011. Miss Campbell was unable to remedy the default and Redstone therefore requested another warrant of possession on 2 February 2011. The arrears were £7,087.57 at the time. A bailiff appointment was listed for 2 March 2011. Miss Campbell filed a further application to suspend the warrant which was heard on 22 February 2011 by Deputy District Judge Hankey. In support of her application, Miss Campbell stated that (i) her son suffered from Gulf War Syndrome; (ii) she had been the victim of a fraud perpetrated by Mr Ian Frost, a surveyor; (iii) Mr Frost and Redstone were being investigated by the Financial Services Authority ("the FSA"); (iv) the celebrities who had assisted her previously were prepared to offer further assistance; (v) she was due to receive proceeds from the sale of her book (the release of which had been delayed due to the bad weather); (vi) a number of fundraising events had been cancelled due to the bad weather; and (vii) a charity shop was being set up to raise funds.

- 27 Deputy District Judge Hankey adjourned the matter for 28 days to allow for full clearance of the arrears of £8,868.22. The adjourned hearing took place on 5 April 2011 before District Judge Mainwaring-Taylor. Miss Campbell attended the hearing with a member of the local press. She stated that (i) £6,000 had been paid by CHAPS on 4 April 2011, courtesy of a Mr S D Johnson; (ii) Redstone had been fined £630 in July 2010 and, as a result, she had made complaints to the FSA and the Ombudsman; (iii) as a freelance writer and artist, she had an annual income of £32,000; (iv) she was due to receive sale proceeds from her book, the release of which had been delayed due to the bad weather (she denied having relied on this factor at the previous hearing); and (v) the RSPCA would destroy the animals at the Property were she to be evicted.
- 28 District Judge Mainwaring-Taylor adjourned the hearing on 5 April 2011 to allow Miss Campbell to file and serve a witness statement by 26 April 2011, setting out her income and expenditure and her proposals for clearing the arrears. Miss Campbell provided details of her expenditure and forecast income to Redstone on 26 April 2011. At the adjourned hearing on 3 May 2011, District Judge Mainwaring-Taylor revoked the warrant of possession. Thereafter Miss Campbell defaulted on payment yet again. A letter before warrant was sent to Miss Campbell on 5 July 2011 requesting payment of the arrears of £7,904.64 by 14 July 2011. No payment was made and Redstone therefore requested a warrant of possession on 27 July 2011. An appointment for the bailiff was listed for 29 September 2011.
- 29 Miss Campbell made a further application to suspend the warrant dated 19 September 2011. There were four elements to her application, namely: (i) monies had been paid to Redstone towards the arrears; (ii) she only received notice of the bailiff's appointment on 19 September 2011 which did not afford her enough time to re-home disabled family members and the animals; (iii) Redstone was being investigated by the FSA and the Ombudsman; and (iv) she was in the process of restructuring her borrowing to redeem the mortgage account. Redstone's response was that (i) the last payment had been made by Miss Campbell on 4 May 2011; (ii) she had been given sufficient notice of the eviction date; (iii) it was not under investigation and (iv) Miss Campbell had failed to provide evidence of the alleged restructuring. Redstone also instructed a specialist contractor to deal with the animals who was aware of the various requirements which apply to the transportation of livestock.
- 30 Miss Campbell's application was initially heard by District Judge Traynor on 22 September 2011 who adjourned it until 27 September 2011 to allow Miss Campbell time to produce evidence of payments made since May 2011 together with a statement replying to the statement of Redstone's solicitor. The adjourned hearing took place before District Judge Alderson on 27 September 2011. Miss Campbell provided the court with a document purporting to evidence standing

- order payments to Redstone. District Judge Alderson suspended the warrant and further adjourned the hearing to 30 November 2011 so that Miss Campbell could provide evidence of payments allegedly made. Miss Campbell was ordered to pay the monthly instalments until the adjourned hearing date.
- 31 In the meantime, Redstone queried with Michael O’Farrell of Barclays Bank the schedule of standing order payments produced by Miss Campbell. Mr O’Farrell responded on 6 October 2011 confirming that: (i) the standing order history did not match the bank’s records; and (ii) none of the payments listed in the standing order history had been debited from Miss Campbell’s account. In light of Mr O’Farrell’s letter, Redstone had serious concerns as to the authenticity of Miss Campbell’s standing order history.
- 32 The adjourned hearing took place on 30 November 2011. District Judge Alderson dismissed Miss Campbell’s application and ordered that the warrant be returned to the bailiff in order that an eviction appointment could be rearranged as soon as possible after 1 January 2012.
- 33 Miss Campbell made another application dated 19 December 2011 to set aside the eviction on the grounds that new information had come to her attention. Her application was heard on 5 January 2012. District Judge Robertson adjourned the matter to 13 January 2012. Miss Campbell was ordered to file further evidence by 12 January 2012. The adjourned hearing took place on 13 January 2012, at which District Judge Traynor dismissed Miss Campbell’s application and leave to appeal was refused.
- 34 Miss Campbell made an immediate application for permission to appeal. She made the following claims: (i) she had money to clear the arrears (which she disputed in any event); (ii) she had money to maintain the future monthly payments (albeit she disputed the figures); (iii) she would produce “true evidence of money paid”; (iv) she was being discriminated against; (v) she trusted “someone” with important documents and money and they let her down; (vi) she had not produced the bank documents at court during the previous hearing “because of past issue with document” (possibly a reference to the Barclays standing order); and (vii) she was the “victim” and was trying to prove her “innocence”. She indicated that she would file a skeleton argument within 14 days of filing her appellant’s notice. However, no skeleton argument was filed.
- 35 Miss Campbell’s application was heard on 17 January 2012 before Judge Walton. Miss Campbell attended and produced evidence of a payment of £6,000 which had not previously been allocated to her account by Redstone. This was because the payment was made by a third party and the account number was not provided. Redstone subsequently allocated the money to Miss Campbell’s account but the

arrears still stood at £13,237.52. Miss Campbell produced evidence suggesting that she held sufficient funds in a Santander bank account to clear the arrears. In light of the evidence provided by Miss Campbell, Judge Walton granted her permission to appeal but made it clear to her that the warrant was only stayed on condition that the arrears were cleared by 4pm on 24 January 2012.

- 36 In breach of Judge Walton's order, Miss Campbell failed to clear the arrears, or to make any further payment towards the arrears, before the deadline of 24 January 2012. Redstone therefore applied to the court asking that Miss Campbell's application be dismissed. A further hearing then took place before Judge Walton on 17 February 2012. Miss Campbell did not attend. However, the court received a telephone message that she had been admitted to hospital following an accident. In the circumstances, Judge Walton adjourned the hearing to 13 April 2012 and ordered Miss Campbell to file and serve a statement setting out her case and in particular explaining whether the payment required by paragraph 1 of the order dated 17 January 2012 had been made and, if so, by what means. Judge Walton also ordered that, if Miss Campbell sought to adjourn the next hearing or extend the time for compliance with the order by reason of any incapacity resulting from her accident, she must file evidence in support from a medical practitioner.
- 37 On 13 April 2012, Miss Campbell failed to attend. Judge Walton made a further order that Miss Campbell file and serve witness evidence setting out where, when and by what means she made payments to Redstone which cleared the mortgage debt. The order stated that this was to be in writing with a statement of truth and was to be filed and served by 25 April 2012.
- 38 On 26 April 2012, Redstone's solicitors contacted the court asking whether Miss Campbell had filed any witness evidence. They were faxed a copy of an emailed letter Miss Campbell had sent to the court which was not in the form of a witness statement and was not verified by a statement of truth and had not been served on Redstone. The letter did not set out any details of where, when and by what means the mortgage debt was allegedly cleared. The only reference to the payment was that it had been made by bank card on 27 January 2012.
- 39 The hearing was adjourned to 11 May 2012. Again, Miss Campbell failed to attend. Judge Walton granted a further adjournment and again made an order that Miss Campbell file and serve witness evidence setting out where, when and by what means she made payments to Redstone which cleared the mortgage debt. In default, the Judge ordered that Miss Campbell's application for permission to appeal would stand dismissed and the warrant for possession could be enforced. Judge Walton also ordered that, if Miss Campbell were to produce at the next hearing the recorded message in which she alleged that Redstone acknowledged that the account had been cleared, she should also produce a means of playing the

- message. Miss Campbell was put on notice that, if she failed to attend the next hearing, an order would be made in her absence.
- 40 Miss Campbell failed to attend the adjourned hearing on 8 June 2012. The application for permission to appeal was therefore dismissed by Judge Walton and permission was given for the warrant of possession to be executed.
- 41 Notwithstanding this order, Miss Campbell made an application to suspend the eviction on 22 June 2012. Miss Campbell made the following claims: (i) money had been paid to Redstone; (ii) she had had an accident which had led to numerous hospital and doctor's appointments; (iii) she had contracted an infection following the accident; and (iv) she was able to provide documentary evidence which had not previously been before the court.
- 42 On 2 July 2012, the application was heard before District Judge Traynor. Miss Campbell alleged that her friend, Neil Johnson, had made a payment of £13,000 on her behalf in January 2012. However, Miss Campbell claimed that Mr Johnson was on a tour of Afghanistan with the armed forces and so was unavailable to confirm this. At the hearing Miss Campbell accepted that she had failed to comply with the order suspending the warrant made in September 2011, had not paid the monthly instalments due and was unable to afford the arrears. Her application was dismissed.
- 43 Miss Campbell immediately applied for permission to appeal based on the "misconduct of [the] District Judge" and the hearing was listed to be heard on 3 July 2012. On that day she was granted permission to appeal, due to a "material change in circumstances". The material change in circumstances was that a local convent of Carmelite nuns had agreed to pay the arrears on Miss Campbell's behalf. A payment of £22,809.33 was received by Redstone from the convent on 17 July 2012. Combined with a payment of £2,490 received on 6 July 2012, this was sufficient to clear the arrears in full.
- 44 On 3 July 2012 Miss Campbell was ordered to provide bank statements to support her assertions regarding her income and future affordability. Although nothing was provided, given that the arrears had been cleared, Redstone decided to instruct its solicitors to withdraw the warrant.
- 45 However, Miss Campbell again failed to make payments and a further warrant was issued. An eviction was listed for 20 November 2012. Miss Campbell made an application to suspend on 7 November 2012. She said she would pay £4,065.00 in cash before the eviction date and promised to pay the balance of the

arrears by 3 December 2012. On that basis, Redstone again agreed to withdraw the warrant.

- 46 Despite her assurances, Miss Campbell failed to make the payments as promised before the eviction date or at all. The eviction was relisted for 18 January 2013. As at 2 January 2013, the arrears on the account amounted to £11,320.27. On that day, Miss Campbell made another application to suspend the warrant and stay the eviction. She made the following claims: (i) money had been paid; (ii) she had an ongoing claim for “violation of mortgage code”; (iii) she had been mis-sold a contract; (iv) misrepresentation; (v) non-disclosure of documents; and (vi) there was a pending court case for damages and compensation. None of these claims was substantiated, particularised or supported by documentary evidence. The hearing was listed for 8 January 2013 but subsequently adjourned.
- 47 The adjourned hearing was listed for 1 March 2013. Miss Campbell advised the court that she could not attend due to a medical appointment and the hearing was adjourned to the following week. She was ordered to bring evidence of the medical appointment. At the hearing on 8 March 2013, Miss Campbell’s application was dismissed and she was debarred from bringing any further applications without the permission of the court.
- 48 Despite being barred from doing so, Miss Campbell made a further application to suspend the warrant. Miss Campbell merely stated that she had paid the arrears but provided no evidence in support of her contention. At that time (March 2013), no payment had been made since the payment from the nuns made on 17 July 2012.
- 49 Miss Campbell’s application was due to be heard on 10 April 2013. However, on 9 April 2013, Redstone received a payment of £17,000 which cleared the arrears on Miss Campbell’s account. The eviction was therefore cancelled and the warrant withdrawn.
- 50 No further payments were received. Redstone’s solicitors wrote to Miss Campbell on 21 June 2013 to put her on notice that a further warrant would be requested unless the arrears were cleared within 14 days. No response was received and the arrears were not cleared. Redstone’s solicitors therefore requested a further warrant on 9 July 2013 and an eviction date was set for 19 August 2013.
- 51 Miss Campbell made a further application to suspend the warrant of possession which was listed to be heard on 14 August 2013. She made the following claims: (i) the arrears had been paid in full; (ii) she was in hospital and was not willing to allow anyone to speak for her; (iii) she was undergoing treatment; (iv) her elderly

father lived at the Property; and (v) the mortgage contract was under investigation and the "Mortgage Code of Conduct" had been breached on numerous occasions.

- 52 Miss Campbell's application was heard on 14 August 2013 hearing when the following order was made by Deputy District Judge Large: (i) the hearing was adjourned to the first available date after 28 days; (ii) Miss Campbell was required to produce by 4pm on 28 August 2013 an income and expenditure form, supported by evidence for each item on the form, with trading accounts as well as a report from her GP on her medical condition; (iii) there were to be no further adjournments of the application; and (iv) Miss Campbell was ordered to pay the monthly instalments in the meantime.
- 53 Miss Campbell failed to file and serve any evidence as ordered and failed to pay the monthly instalments. On 3 October 2013, her application to suspend the warrant of possession was heard by District Judge Stapely in Durham County Court. The application was dismissed and it was ordered that the warrant should be returned to the bailiff for execution. It was further recorded that the order dated 8 March 2013 debarring Miss Campbell from making any further applications without permission of the court remained in force.
- 54 On 24 October 2013, Miss Campbell made an application for permission to appeal the order dated 3 October 2013. The permission hearing took place before Judge Walton in Newcastle County Court on 1 November 2013 when Miss Campbell's application for permission to appeal the order of 3 October 2013 was dismissed. Judge Walton's order recorded that "Any further application for permission to appeal an order refusing to stay a warrant for possession in this case is reserved to the Designated Civil Judge".
- 55 An eviction was then listed for 20 November 2013, for which Redstone prepared extensively. On 18 November 2013, Miss Campbell made yet another application to suspend the warrant of possession. The hearing was listed for 10.30am on 19 November 2013 before Judge Walton sitting in the Sunderland County Court. Judge Walton dismissed the application and refused permission to appeal is refused. He stated that any renewed application for permission to appeal had to be made to a High Court Judge. Miss Campbell immediately made a further application for permission to appeal. In the circumstances, Judge Walton listed the application for hearing on 12 December 2013 and granted a stay of execution in the intervening period. The eviction was therefore cancelled.
- 56 Judge Walton's order of 19 November 2013 stated that Redstone was entitled to attend the renewed hearing of the application for permission to appeal but unless it was able to show good reason, it was unlikely to be awarded the costs of attendance. Redstone did not therefore arrange for representation to attend the

hearing and instead sent a letter to the court dated 5 December 2013 containing written representations. Mr Chadwick (Redstone's solicitor) spoke to Newcastle County Court on 12 December 2013 and was informed that the hearing had been adjourned for one day following an application that had been made by Miss Campbell. The hearing went ahead in Newcastle on 13 December 2013 before Mr Justice Norris who refused permission to appeal, stating that the appeal was totally without merit.

- 57 Following the hearing before Mr Justice Norris, the warrant was returned to the bailiffs and the eviction was listed for 29 January 2014. Despite further applications made by Miss Campbell (including an application that the warrant be stayed due to Miss Campbell not owing any money to Redstone which was struck out by District Judge Grey pursuant to CPR r. 3.4(2)(a) on the basis that the application disclosed no reasonable grounds for bringing the application), the eviction went ahead as planned on 29 January 2014.

Execution of the warrant for possession on 29 January 2014

- 58 The warrant for possession was finally executed on 29 January 2014. Mr Chadwick (Redstone's solicitor) attended at the eviction together with the court bailiffs, police and Redstone's agents. On this date Miss Campbell, her daughter Jayne and two of her three sons were present. I was shown an article from Mail Online dated 30 January 2014 containing a photograph of Miss Campbell's daughter standing on a roof at the Property in a chicken costume as well as other photographs of Miss Campbell prostrate on the ground and with her animals. The article is headed "*Heartbreaking moment distraught animal sanctuary owner collapsed into mud as bailiffs arrived to evict her after 20 years*". It was evidently Miss Campbell or her family or friends who arranged for the press to be notified of the eviction. A number of her supporters were in attendance, including one individual who stood on top of a vehicle by the entrance to the Property with a megaphone, reading out a notice (handed into the court during this trial) entitled "Notice of Removal of Implied Right of Access". Mr Chadwick gave evidence (which I accept) that Miss Campbell and her supporters obstructed the bailiffs in the execution of their duties. In particular a large transit van was parked up against the entrance to the Property preventing the gate from being opened, with the result that it was only possible to gain entry by climbing over the gate.
- 59 The bailiffs and Redstone took possession of the Property on 29 January 2014 and left notices at the Property pursuant to clause G6.1 of the mortgage conditions and the Torts (Interference with Goods) Act 1977 ("the Notices") warning that all goods contained at the Property would be disposed of should they not be collected. The Notices were fixed to the metal gate at the entrance of the property and to the main dwelling house door in plastic transparent sleeves. They bore the date 29 January 2014, were headed "Notice to Remove Personal Effects" and

gave the name and address of the Property and details of Redstone's marketing agent Reed Rains; their precise wording was as follows:

"On behalf of our clients, who have taken possession of the Property, we hereby give you notice requiring you to remove all your goods, chattels and furniture from the above Property within 7 days of this Notice and further give you notice that under the conditions of your mortgage, in the event of your refusing or failing to remove all items of furniture or chattels from the above Property within 7 days of this Notice, the mortgagee now in possession will thereupon become and be your agent with full authority at your expense to remove, store, preserve, sell or otherwise dispose of such items of furniture and chattels in such manner and in all respects as they shall see fit. Any monies arising from the sale may be applied by the mortgagee in or towards discharging the mortgage debt.

Should you wish to remove personal affects [sic] from the Property, please contact the estate agent below within 7 days who will arrange for your request to be forwarded to the mortgagees in possession for consideration, such items will be left at the Property at your own risk."

- 60 Mr Chadwick's evidence (which I accept) was that after Miss Campbell's daughter had come down from the roof of one of the outbuildings, he had a number of discussions with her in relation to the removal of personal possessions, that she used her car to clear some of her goods at the time of the eviction and was informed of the steps required to collect the remainder of the items. Having heard Miss Campbell giving evidence, there is no doubt in my mind that she was fully aware of her obligation to give vacant possession of the Property to Redstone and of the Notices requiring her to take steps to remove her possessions from the Property within 7 days of 29 January 2014.

Events following 29 January 2014

- 61 On 10 February 2014, Miss Campbell issued an application to extend the period for collection of her chattels and personal possessions. This application came before Deputy District Judge Welch sitting at Durham County Court on 12 February. Counsel, Mr Wilson Horne, who appeared for Redstone at this trial, was instructed to appear for Redstone. He and Miss Campbell agreed that Miss Campbell, her daughter and two sons would be permitted access to the Property for the purpose of collecting chattels between the hours of 10am and 3pm on 24 and 25 February 2014, subject to such supervision as Redstone deemed appropriate ("the First Order").
- 62 On 18 February 2014, Miss Campbell made an application for permission to appeal the order made by District Judge Grey on 28 January 2014 (see paragraph

- 57 above). That application was refused by Judge Behrens sitting in the Newcastle County Court on 28 February 2014. On the same occasion, following an application by Miss Campbell and oral submission by Counsel instructed on her behalf (with Miss Campbell in attendance) and by agreement with Redstone, the First Order was varied to allow access to the Property to remove chattels between the hours of 10am and 3pm on 11, 12 and 13 March 2014 for Miss Campbell, her daughter, two sons and Mr Graeme Brown (“Mr Brown”) and one vehicle, subject to such supervision at Redstone's discretion (“the Second Order”).
- 63 The Second Order expressly stated “This order shall not be varied”. Notwithstanding this indication, following Miss Campbell’s application on short notice dated 13 March 2014, Judge Reaside QC made an order on 14 March 2014 (after hearing oral submissions from Miss Campbell and by agreement with Redstone) varying the Second Order to allow access to the Property for the purpose of removing chattels between the hours of 10am and 3pm on 26, 27 and 28 March 2014 for Miss Campbell, her daughter, three sons and Mr Brown and one vehicle, subject to such supervision at Redstone's discretion (“the Third Order”).
- 64 At the date of expiry of the permitted access granted to Miss Campbell and others under the Third Order on 28 March 2014, she and her son refused to leave the Property and barricaded themselves into the cottage attached to the main dwelling house on the Property. Miss Campbell finally left the Property of her own accord on 2 April 2014 under police escort.
- 65 Despite being given three opportunities to remove her chattels Miss Campbell failed to remove the same, whether in accordance with the First Order, the Second Order or the Third Order or otherwise. It is clear to me that she had no genuine intention of taking steps to remove her chattels and her real objective in gaining access to the Property was to make life as difficult as she possibly could for Redstone’s agents. Having heard evidence from Kevin Howes, an employee of K9 Search Solutions Limited (“K9”), the contractors employed by Redstone to guard the Property, I am satisfied that Redstone took no steps to prevent Miss Campbell from collecting her chattels. In the circumstances, given the numerous opportunities she was given to collect and the numerous occasions on which she simply failed to act, I have concluded that Redstone was entirely justified in instructing its agents to remove those chattels from the Property and dispose of them.
- 66 On 1 April 2014 Redstone commenced clearance of the chattels from the Property. Miss Campbell’s daughter, two of her sons and others (including Mr Brown) then sent five purported notices relating to undefined goods which they claimed were left by them at the Property. These notices were sent by e-mail timed at 09.58 on 4 April 2014 to Mr Chadwick’s colleague Amy Wells from an

e-mail account "rainbowarc@hotmail.co.uk". Mr Chadwick responded at 11:34 on the same day (to the same e-mail address) stating that Miss Campbell had failed to provide any documentation to evidence any third party ownership despite having in excess of two months to provide the same and being repeatedly requested to do so.

Injunction granted on 4 April 2014

- 67 Following this exchange of e-mails Miss Campbell's daughter, one of her sons, a Mr John Shepherd and Mr Brown ("the Third Party Claimants") issued an application and then obtained a without notice injunction under claim number A00DH198 on 4 April 2014 in Durham County Court. This injunction prevented Redstone or its agents from removing, disposing or otherwise dealing with named personal belongings from the Property.
- 68 On receiving notice of the injunction, Redstone immediately complied with its terms. In fact Redstone ceased removal of any chattels or other goods from the Property whether expressly referred to in the injunction of 4 April 2014 or otherwise. Redstone also commenced work itemising all chattels remaining on the Property.
- 69 On 8 April 2014 Redstone's solicitors received a communication from Mr Brown asking (amongst other things) for a copy of Redstone's insurance policy and threatening to make a damages claim for any of his goods not returned to him.
- 70 By e-mail dated 17 April 2014 timed at 13:14, Mr Chadwick wrote to the Third Party Claimants (using Miss Campbell's e-mail address) providing a lengthy summary of the history of the matter, noting that the Third Party Claimants would have been fully aware of the First, Second and Third Orders (as I find they were) but offering them one final opportunity to collect chattels, without prejudice to Redstone's contention that the chattels had been abandoned. To assist in this process Mr Chadwick attached a full inventory with photographic evidence taken following notification of the injunction detailing all chattels left at the Property and stated that all other items had been properly disposed of prior to notification of the injunction in accordance with the Notices left at the property on 29 January 2014. Mr Chadwick requested that the Third Party Claimants identify by 4pm on 23 April 2014 the items from the list which they stated belonged to them providing documentary evidence to confirm ownership of the same and/or Miss Campbell's written confirmation that the goods could be removed.
- 71 Mr Chadwick chased a response to his 17 April e-mail by emails dated 22 April 2014 timed at 11:15 and 24 April 2014 timed at 12:34. Consistent with their

previous behaviour, neither Miss Campbell nor the Third Party Claimants made any attempt to enter into any form of dialogue which would result in the collection of their personal possessions.

- 72 On 14 May 2014, on the return date for the without notice injunction granted to the Third Party Claimants on 4 April 2014, Mr Horne appeared for Redstone and Mr Brown appeared in person. Miss Campbell was also in attendance. Following a full hearing (a transcript of which I have read), District Judge Traynor discharged the injunction and dismissed each of the applications made by the Third Party Claimants in claim number A00DH198. I have read the approved transcript of District Judge Traynor's judgment included in the trial bundle and am not in the least surprised that he took the view that Redstone was an involuntary bailee who had provided the Third Party Claimants with "ample and adequate opportunity" to remove the items which they alleged belonged to them. Mr Brown's application for permission to appeal was refused.
- 73 After the discharge of the injunction on 14 May 2014, Redstone's contractors returned to the Property on 15 May 2014 and continued removing chattels and disposing of them. This process was completed by 23 May 2014.
- 74 Immediately following the hearing before District Judge Traynor on 14 May 2014, on the same day Miss Campbell issued her own injunction application in Durham County Court as claim number A00DH285 seeking an order that Redstone "must not remove/destroy or otherwise any of the chattels what so ever lying upon [the Property]". This claim was adjourned by the order of District Judge Traynor on the same date to be heard in Leeds Combined Court at a hearing due to take place on 16 May 2014. The hearing on 16 May 2014 related to an application made by Miss Campbell in claim number A00DH168 (to which I refer in paragraph 76 below). On 16 May 2014, Judge Behrens struck out claim A00DH168, recording that the claim was totally without merit. He also ordered that the application under claim number A00DH285 be adjourned to be heard on 23 May 2014. The application was then adjourned by the order of Judge Raeside QC to be heard on 10 June 2014.
- 75 At the hearing on 10 June 2014, no order was made on the injunction application. However, Judge Raeside QC ordered that the part 8 application should continue as a part 7 claim as if Miss Campbell had not used the part 8 procedure, and gave directions leading to the current trial on the issue of liability only, the question being whether Miss Campbell has a right to claim damages arising from Redstone's disposal of her goods found at the Property. The court ordered that upon the service of the parties' statements of case, they should annex all documents relied upon and any witness statements on the issue of liability. Miss Campbell served a witness statement dated 7 July 2014 complaining about the manner in which Redstone had disposed of her goods. She attached to her

statement two further documents entitled “Chronology” and “Exhibit C1” as well as copies of other documents on which she relied. Redstone served a Defence and all its witness statements save that of Kevin Howes (referred to in paragraph 84 below) on 4 August 2014. No Reply has been served by Miss Campbell.

Allegation that mortgage deed procured by fraud: claim number A00DH168

- 76 In the meantime, on 26 March 2014, Miss Campbell had issued claim number A00DH168 in Durham County Court seeking possession of the Property on the grounds that the execution of the mortgage deed was perpetrated by a fraud committed by Redstone (incorrectly described as Redstone Mortgages Plc) and raising other ancillary legal arguments. This claim was transferred to Leeds District Registry and (following the grant of a without notice interim injunction by Judge Kaye QC on 8 May 2014) considered by Judge Behrens on 16 May 2014. Redstone was represented by Mr Horne and the court gave Miss Campbell permission to be represented by Mr Brown as her lay representative. I have been supplied with copies of Mr Horne’s skeleton argument lodged on Redstone’s behalf in advance of the hearing on 16 May 2014 and have also read Judge Behrens’ approved judgment. Miss Campbell’s application for the continuation of the interim injunction was dismissed and her claim was struck out. Permission to appeal was refused. Judge Behrens’ order recorded that “(a) the Court considered that the claim was totally without merit and (b) the Court considered making a civil restraint order against [Miss Campbell] however decided not to make such an order of its own motion”.
- 77 Miss Campbell made an application to the Court of Appeal for permission to appeal against the order of Judge Behrens. That application was considered on 20 June 2014 by the Rt. Hon. Sir Stanley Burnton who refused permission to appeal, ruling that the application was “totally without merit and [Miss Campbell] may not request the decision to be reconsidered at an oral hearing”. In his reasons, Sir Stanley Burnton stated: “The Judge’s judgment is impeccable. [Miss Campbell]’s late allegations are clearly inconsistent with findings made in earlier proceedings enforcing the mortgage. No arguable error of law has been identified.”
- 78 Notwithstanding the orders of Judge Behrens and Sir Stanley Burnton made on 16 May 2014 and 20 June 2014 respectively, Miss Campbell (through Mr Brown) has sought to raise in this trial the same or very similar arguments concerning the alleged fraudulent procurement of the mortgage.

*Allegation that mortgage deed not validly executed because not properly attested:
claim number A30LS606*

- 79 On 8 September 2014, three days before the start of this trial, Miss Campbell issued a new claim number A30LS606 seeking a without notice interim injunction alleging that the mortgage had not been validly executed in the presence of a witness who attested her signature contrary to s.1(3) of the Law of Property (Miscellaneous Provisions) Act 1989 and relying on a recent decision of Judge Behrens dated 21 July 2014, *Bank of Scotland Plc v Waugh & others* [2014] EWHC 2117 (Ch). Miss Campbell asked that the possession proceedings be struck out and the Possession Order set aside. Mr Brown and Miss Campbell appeared before Judge Gosnell on a without notice application on 8 September. Judge Gosnell dismissed the application for a without notice injunction and adjourned the rest of the application to be heard at this trial starting on 11 September.

This Trial

- 80 At the outset of this trial on 11 September 2014, I gave permission to Mr Brown to act as the lay representative of Miss Campbell, as he had done at many of the hearings referred to above. As one of the Third Party Claimants and someone who was present at the Property on the day the warrant for possession was executed on 29 January 2014 and on most of the days since then when there have been activities at the Property involving Miss Campbell and her chattels, Mr Brown was well familiar with the issues in the case. He made opening submissions, examined Miss Campbell in chief and then cross-examined Redstone's witnesses, with Miss Campbell contributing some questions herself. Finally, on the third (final) day of the trial, Mr Brown made closing submissions on Miss Campbell's behalf.
- 81 Throughout the hearing (and on the first and last days in particular) Miss Campbell and Mr Brown had a great many supporters present in court who made their views known during certain parts of the evidence. I pay tribute to Mr Horne who appeared for Redstone for the professional way in which he conducted himself throughout the hearing and the assistance he has given the court in both his written and oral submissions.

The oral evidence

- 82 The only witness for the Claimant was Miss Campbell herself. I did not find her a convincing witness. She was intent on setting her own agenda and was not a witness on whose evidence I could rely. In parts her evidence was evasive and

contradictory. For example, at one point she denied that the signature on the mortgage bearing her name as mortgagor was hers whilst at another she appeared to be accepting that it was her signature but insisted that the witness had not witnessed her signature at the time. She denied that the Possession Order was validly made or that she had seen a copy of the order, asserting that she had been “hoodwinked”, when it is clear from the lengthy chronology of events earlier in this judgment that she was fully involved in the process both before and after the Possession Order was made and that no appeal was made against the District Judge’s decision. She denied having seen the Notices requiring her to remove her chattels placed on the Property by Redstone. Whether or not Miss Campbell saw the Notices on 29 January 2014 (having collapsed and been taken to hospital in the course of, as she herself stated, “trying to keep the bailiff off the Property”), I am in no doubt that she was fully aware of her obligation to remove all her chattels from and thus give Redstone vacant possession of the Property. Mr Nealon, one of Redstone’s witnesses to whom I refer below, gave evidence that he spoke to Miss Campbell’s daughter and one of her sons on 29 January 2014 about the Notices and they were fully aware of the process in relation to the removal of goods at the Property. It is to my mind inconceivable that Miss Campbell was unaware of the existence and content of the Notices.

- 83 When asked about the First Order (made on 12 February 2014) entitling her to have access to the property on 24 and 25 February 2014, Miss Campbell asserted that she had agreed to this order under duress and that Deputy District Judge Welch had “made her” do it. She initially claimed that K9 personnel had obstructed her in her attempts to gain access to the security but when pressed on this by Mr Horne who specifically put to her that K9 did not stop her from removing her possessions from the Property, she replied “I’m not saying yes or no”. When it was put to her that on 24 February 2014, the first day on which access was permitted under the First Order, she only attended the Property with her daughter for about one and a half hours, she said she couldn’t remember and would need to look at her diary. She couldn’t remember attending the Property at all on 25 February 2014 and was unable to say whether she personally had removed any chattels on either 24 or 25 February.
- 84 On the final day of the trial, Redstone called Kevin Howes as a witness. I allowed Mr Howes to be called in place of Jayne Sedley, a director K9, whose statement had been served on 4 August 2014. Ms Sedley had been in court on the first day of trial but did not attend on the following day (12 September) as she had been taken to hospital. Medical evidence was produced to the court on 19 September which satisfied me that Ms Sedley was unfit to give evidence and I gave Redstone permission to call Mr Howes in her place. Mr Howes is employed by K9 as a Security Dog Handler and he was present at the Property with his dog on 24 and 25 February, 11, 12, 13, 26, 28, 29, 30 and 31 March, 1 and 2 April 2014. He produced in evidence 25 pages of log book reports, each described as a Daily Occurrence Report (“DOR”), prepared by K9 operatives working on the site over

this period. He stated that while he did not prepare the DORs himself, most of the DORs prepared for days when he had been working on the site had been signed by him as being correct, having been completed by his colleague Mr Rogers. Mr Howes confirmed what is apparent from the documents themselves, namely that the DORs are a contemporaneous and accurate record of each day's events. They were prepared by a K9 operative immediately following the events of each day or as soon as possible thereafter. I accept Mr Howes' evidence without qualification and I regard the DORs as evidence on which I can rely.

- 85 The DOR for 24 February 2014 records that Miss Campbell and her daughter arrived at the Property at 9.30am, entered the main dwelling house and removed three bins bags' worth of items, leaving the Property at 11am. Miss Campbell's daughter and son then returned at 12.15pm and left at 12.50pm. The DOR for 25 February 2014 records that Miss Campbell, her son Joseph and Mr Brown arrived at the Property at 11am and left at 1pm. Apart from the three bin bags' worth of items removed on 24 February, and despite the terms of the First Order, it is clear that Miss Campbell made no attempt to collect her chattels from the Property on either of 24 or 25 February.
- 86 When asked about the Second Order (made on 28 February 2014) entitling her to have access to the property on 11, 12 and 13 March 2014, Miss Campbell was unable to recall whether any of those permitted to have access to the Property attended on 11 March (it was put to her that no one had attended on that day) and at first could not remember but later accepted that she attended with Mr Brown and her son Joseph on 12 March. She accepted she was at the Property for a few hours with her daughter on 13 March when her daughter removed some of her personal items. Miss Campbell said she had called the police on 13 March as she had found some items of sentimental value missing from her bedroom and the police had told her not to remove anything else from her bedroom.
- 87 The DOR for 11 March 2014 shows that no one referred to in the Second Order came to the Property on that date. The DOR for 12 March 2014 shows that Miss Campbell, her son Joseph and Mr Brown arrived at the date to the Property at 10.40am and that her daughter Jayne arrived 5 minutes later in a vehicle. The four of them are recorded as removing items from the house between 11.55am and 1pm when they left the Property. The DOR for 13 March 2014 shows that Jayne Campbell, Miss Campbell's daughter, was on site between 10.20am and 11.15am and removed various saddles and horse equipment from the house and tool shed. Then at 1pm Miss Campbell arrived with her daughter and three sons and stayed until 17.35. It is recorded that they started a fire in what is described as the "bottom field" at 6.30pm. It is clear that, despite the terms of the Second Order and despite Miss Campbell and others attending at the Property on 12 and 13 March 2014 (there being no attendance on 11 March 2014), very few items were removed from the Property on either of those dates.

- 88 When asked about the Third Order (made on 14 March 2014) entitling her to have access to the property on 26, 27 and 28 March 2014, Miss Campbell stated that she, Mr Brown, her daughter Jayne and one of her sons attended in a van on 26 March. She claimed that they were obstructed by K9 personnel for about half a day because K9 were refusing to accept Mr Brown's identity. The DOR for that day records that Mr Brown, Miss Campbell, her daughter and two of her sons arrived at the Property at 11.45am and were afforded access at 11.50am. Miss Campbell said in evidence that she used the van to remove about three loads of her possessions that day to a site some 6 or 7 miles away and she accepted that no one stood in her way or prevented her from removing those items. The DOR records that they left the site at 3.05pm.
- 89 The DOR for 27 March 2014 records that Miss Campbell's daughter attended alone at the Property at 10.25am "to take belongings" and that Mr Brown, Miss Campbell and her son Joseph attended at the Property at 13.05. The DOR does not record when they left the Property.
- 90 The DOR for 28 March 2014 records that Mr Brown, Miss Campbell, her daughter and two of her sons arrived at the Property at 10.05am. Miss Campbell and one of her sons left in a van at 11am and returned at 11.40am. The police then arrived at Miss Campbell's request after she had alleged that one of K9's security guards, a Mr David Anko, had been carrying a knife. Two DORs dated 29 March 2014 prepared by Mr Anko and a Mr Carl Nevit, were submitted under the Civil Evidence Act. These DORs give a near contemporaneous account of the event in question. It was the evidence of those K9 employees, corroborated by Mr Howes who was also on duty nearby that day, all of which I accept, that at about 1.30pm Miss Campbell and two of her sons, Joseph and James, were in the cottage next to the main dwelling house and that as the police took Mr Anko away from the door of the cottage to question him, they barricaded themselves inside the cottage and refused to leave. Miss Campbell's daughter and Mr Brown left the Property at 3pm but Miss Campbell herself and her two sons remained barricaded in the cottage. One of the sons, Joseph, left the cottage at 2.15pm on 30 March 2014. Miss Campbell and her other son James remained there for some 6 days. The DOR for 2 April 2014 records that they finally left the site with a police presence at 4.30pm that day.
- 91 It was Miss Campbell's evidence that she remained on the Property on 28 March 2014 because it was the last day she was permitted access and there was so much being left behind that she felt she had to "make a stand". This was despite the fact that by her conduct she was acting in breach of the Third Order. She said that her family had received a telephone call from Amy Wells of Redstone's solicitors threatening to destroy any items that were not removed from the Property. She accepted that she and her sons moved a fridge in front of the door to the cottage to prevent anyone gaining access. I was handed a DVD and asked to view various

clips of video footage, some or all of which was taken by Miss Campbell or one of her sons whilst they occupied the cottage over this period but it did not assist me in resolving any of the issues I have to determine.

- 92 After Miss Campbell's evidence was concluded, I heard evidence from four witnesses on behalf of Redstone. The first was Mr Fred Hindley, Customer Service Team Leader for Mitie Property Services ("Mitie"), the contractor employed by Spicerhaart Corporate Sales ("Spicerhaart"), Redstone's agent, to undertake clearance work at the Property. Mr Hindley was responsible for overseeing Mitie's work. His evidence was that Mitie's contractors Allaway Waste Carriers ("Allaway") started the clearance and disposal of Miss Campbell's property on 1 April 2014 using two removal vans which could each accommodate 12 cubic yards of chattels and that they removed and disposed of 24 cubic yards of chattels between 9.30am and 5pm from the out-house nearest the road on that day. He said that Allaway were attacked by protestors throwing items at their van and the police on site had to control the protestors. Between 2 and 4 April 2014 Allaway cleared a further 96 cubic yards of chattels from the out-house nearest the road and the barns. It was on 4 April 2014 that the Third Party Claimants obtained an injunction (see paragraph 67 above) and so no further clearance work took place until 15 May 2014, after which there were a further 6 days of clearance ending on 23 May 2014. Each day Allaway cleared 36 cubic yards of chattels from the Property. Mr Hindley was challenged by Mr Brown as to whether Allaway were properly licensed to do this work. He confirmed that they were and I was subsequently handed a colour copy of a photograph of what appeared to be the relevant licence.
- 93 Mr Hindley's evidence was followed by that of Mr John Nealon, whose job description is Third Party Vendor and Compliance Manager for Spicerhaart. He was responsible for overseeing third party contractors involved in site management, and concerned in particular with the eviction of Miss Campbell and her supporters from the Property on 29 January 2014. He attended in person with Mr Chadwick, the court bailiffs and other contractors on that day.
- 94 Mr Nealon's evidence was that immediately following the eviction he supervised the erection of the Notices in plastic sleeves on the metal gate entrance to the Property and on the door to the main farmhouse stating that all goods on the Property would be disposed of should they not be collected. As mentioned in paragraph 82 above, he said he spoke to Miss Campbell's daughter and one of her sons on 29 January 2014 and in response to their question as to whether they were entitled to remove chattels, he explained that they should take whatever they were able and will to take immediately. Miss Campbell's daughter made two trips that day using her car to clear personal possessions. Mr Nealon explained that should they wish to attend again they would need to liaise with the instructed estate agent whose name appeared on the Notices (Reeds Rains) to agree a suitable time to

collect the remainder of the chattels. Mr Nealon then confirmed Mr Hindley's evidence as to what was removed by Allaway from the site between 1-4 April and 15-23 May 2014.

- 95 It was Mr Nealon's evidence (which I accept) that despite the three opportunities afforded to her by the First, Second and Third Orders, Miss Campbell failed to remove her chattels and that neither Redstone nor Spicerhaart took any steps to prevent Miss Campbell or the others named in those orders from collecting the chattels.
- 96 The next witness for Redstone who gave evidence on the second day of the trial was its solicitor Mr Chadwick. He was a careful and impressive witness whose written and oral evidence I accept without reservation. He was cross-examined at length by Mr Brown. The cross-examination did not challenge the accuracy of the evidence in his three witness statements but was principally focussed on what Mr Brown referred to as the "physical impossibility" for Miss Campbell of removing her chattels within the time allotted to her by Redstone and the court. Mr Brown's point was that it had taken Redstone's contractors 11 days to clear the Property and it simply would not have been possible for Miss Campbell to do this during the period allowed by the First, Second and Third Orders and the further period permitted by Mr Chadwick on Redstone's behalf in April 2014 following service of the injunction obtained by the Third Party Claimants on 4 April 2014. Mr Chadwick did not accept this proposition and nor do I. As Mr Chadwick explained, the combination of the three court access orders and the further time permitted by Redstone in April 2014 meant that Miss Campbell was allowed a maximum of 18 days and a minimum of 13 days in which to collect her chattels in the period after Redstone took possession of the Property on 29 January 2014.
- 97 In order to understand Mr Chadwick's evidence on this point, it is necessary to set out in full his email sent to 'rainbowarc@hotmail.co.uk' (the email address used collectively by Miss Campbell and the Third Party Claimants) at 13.15 on 17 April 2014:

Dear Sirs/Madam,

We refer to the Injunction Order, Part 7 Claim Form and associated documents issued in the Durham County Court on 4 April 2014 under Claim no: A00DH198 (the **Claim**).

Following recent telephone conversations with Mr Graeme Brown, and his confirmation that this e-mail address may be used to contact all claimants in claim no: A00DH198 (i.e. Jayne Elizabeth Campbell, James Campbell, John Sheppard and Graeme Brown), please treat this e-mail as written to all four Claimants. References to "you" below are to all four Claimants accordingly.

It is not accepted that service of the Claim has been properly effected. Our Mr Chadwick confirmed to Mr Graeme Brown in a telephone conversation prior to the hearing of the Claim that TLT LLP were not instructed to accept service of

proceedings. Mr Chadwick stressed repeatedly that if papers were sent to TLT LLP then service would not have been effected.

Notwithstanding this, and purely to progress matters, our client has today instructed us to acknowledge service of the claim form as issued as an act of cooperation and in order to deal with this matter as quickly and as efficiently as possible. We reserve our client's right to make application to strike out the Claim as being without merit and having no reasonable prospects of success. In making that application we will seek and enforce orders for costs against you.

Our client accepts that it was placed on notice of the Injunction Order on receipt of an e-mail from the Court dated 4 April 2014 and timed at 16:06 which attached the same.

We confirm that our client has not breached the terms of the Injunction Order and indeed immediately ceased all removal and disposal of goods from the Property on receiving notice of the same.

We thought it useful at this juncture to set out a brief summary of the background to the removal of goods prior to the Claim following various orders made in the possession claim between Redstone Mortgages plc and Paula Jayne Campbell. We confirm as follows:

1. The Possession Order granted by District Judge Mainwaring-Taylor sitting in the Bishop Auckland County Court dated 3 June 2008 was enforced on 29 January 2014 by our client.

2. Notices pursuant to the Torts (Interference with Goods) Act 1977 were erected on site confirming that all goods contained at the Property would be disposed of should they not be collected (**the Notices**). Ms Paula Campbell, Ms Jayne Campbell and others attended at the eviction and were fully aware of the process in relation to the removal of goods at the Property.

3. Applications to extend the period for collection of chattels and personal possession were made by Ms Paula Campbell as follows:

3.1. The Order of Deputy District Judge Welch dated 12 February 2014 - following an application and oral submission by Ms Paula Campbell and by agreement with our client it was ordered that Ms Paula Campbell, her daughter and two sons be permitted access to the Property for the purpose of collecting your chattels between the hours of 10am and 3pm on 24 and 25 February 2014, subject to such supervision as our client deemed appropriate (**the First Order**);

3.2. The Order of HHJ Behrens dated 28 February 2014 - following an application by Ms Paula Campbell and oral submission by her Counsel (and with Ms Paula Campbell in attendance) and by agreement with our client the First Order was varied to allow access between the hours of 10am and 3pm on 11, 12 and 13 March 2014 for Ms Paula Campbell, her daughter, two sons and Graeme Brown and one vehicle, subject to such supervision at our client's discretion (**the Second Order**); and

3.3. The Order of HHJ Reaside QC dated 14 March 2014 - following an application and oral submission by Ms Paula Campbell and agreement with our client the Second Order was varied to allow access between the hours of 10am and 3pm on 26, 27 and 28 March 2014 for Ms Campbell, her daughter, three sons and Graeme Brown and one vehicle, subject to such supervision at our client's discretion (**the Third Order**). The Judge stated that no further indulgence would be granted by the Court and that this was the final chance for you to collect the chattels from the Property.

4. As is clear you have failed to remove chattels from the Property in accordance with the First Order, Second Order and Third Order despite our client giving you

more than ample opportunity to collect the same. Our client in no way prevented you from collecting the chattels and assumed quite correctly that the same had been abandoned given the numerous opportunities you were given to collect and the numerous occasions on which you simply failed to act.

Accordingly our client was well within its rights pursuant to the Notices to remove and dispose of the items left by you which it did up to it receiving notice of the Injunction Order.

The only person (or persons) who can be criticised for failing to remove such items are you having been named in the three orders and having been given 40 hours over 8 days to arrange collection of the same. You were given three opportunities to remove the chattels and you have chosen for whatever reasons to leave the same at the Property.

We note that you rely upon four purported Notices relating to undefined goods which you claim were left by you at the Property, provided by e-mail on 4 April 2014. As explained to Mr Brown and as set out within our e-mail in response dated 4 April 2014 timed at 11:34 (sent to this e-mail address) you have failed to provide any documentation to evidence any third party ownership despite having in excess of 2 months to provide the same and being repeatedly requested to do so.

Our client has never refused any party the right to collect goods properly due to them. Unfortunately whilst access has been granted under Court Order you have failed to take any steps to collect. In one final attempt to allow collection of chattels, and entirely without prejudice to our client's contention that the Claim should be struck out on the basis that it has no prospect of success given your abandonment of your chattels, we confirm as follows:

1. We attach full inventory with photographic evidence taken following notification of the Injunction Order detailing all chattels left at the Property (all other items having been properly disposed of in accordance with the Notice prior to notification of the Injunction Order);
2. Please identify by 4pm on 23 April 2014 the items from the list which you state are yours providing documentary evidence to confirm ownership of the same together with Ms Paula Campbell's written confirmation that the goods to which you lay claim over are indeed yours to collect. If documentary evidence is not available please provide signed confirmation from Ms Paul Campbell that she consents to the collection of the items detailed by you;
3. Once confirmed we will arrange for collection of the goods; and
4. Please note that collection must take place by 4pm on 28 April 2014 on a date and at a time to be agreed by us. The handover will be completed at the entrance to the Property under our client's supervision (as it deems fit) and no access whatsoever will be allowed to the buildings or outhouses at the Property. Access to complete the collection will not be allowed to anyone other than you. Police presence will be arranged by our client.
5. If you fail to withdraw the Claim we will make immediate application to the Court to strike out the same and to discharge the Injunction Order seeking costs awards against you.

We look forward to hearing from you in accordance with the timescales set out above.

Should you have any questions or require any clarification of the above please call our James Chadwick on 0161 669 8845.

Yours faithfully,
TLT LLP

98 Neither Miss Campbell nor Mr Brown responded to this email so Mr Chadwick sent a chasing email on 22 April 2014 timed at 11.15. This provoked three telephone calls from Mr Brown to Mr Chadwick on 23 April 2014, the gist of which can be ascertained from Mr Chadwick's email to Mr Brown sent at 12.33 on 24 April 2014 in the following terms:

Dear Mr Brown

We refer to your three telephone conversations yesterday with our Mr Chadwick during which you accused him of lying and incompetency and repeatedly used expletives. We will not tolerate ill founded and unacceptable conduct of that nature and hope that as requested by him you will adopt a professional manner when dealing with us.

We have been trying to maintain a dialogue with you in order to facilitate the removal of chattels from the Property as set out within our email of 17 April 2014 timed at 13.14pm.

Despite repeated requests you have failed to identify the items from the full inventory provided which you state are yours. Further you have not provided documentary evidence to confirm ownership of the same together with Ms Paula Campbell's written confirmation that the goods to which you make claim over are indeed yours to collect. As we have repeatedly explained, if documentary evidence is not available, please simply provide signed confirmation from Ms Paula Campbell that she consents to the collection of the items detailed by you. You have failed and refused to confirm that position.

We have also asked for confirmation on the date upon which you would like to arrange collection of the goods. Again, you have failed to answer that question.

As set out in our email of 17 April 2014 timed at 13.14pm, should you fail to withdraw the Claim we will make immediate application to the Court to strike out the same, and to discharge the Injunction Order seeking costs awards against you (i.e. the four claimants to the Claim).

Your repeated unwillingness to enter into any form of constructive dialogue further evidences your approach to this matter and will be referred to the Court when the issue of your conduct to date is considered.

Please come back to us with a definitive list of those items you wish to collect, providing the appropriate documentation/consents by 4pm on 24 April 2014 (a further extension of 24 hours). In doing so please also confirm the date for collection.

Finally there is one issue upon which we would like to make ourselves very clear. You have repeatedly stated that our Mr Chadwick has perjured himself by suggesting that you (Mr Graeme Brown) barricaded yourself into the Property with Ms Paula Campbell. As explained to you repeatedly, and as referred to in Redstone's application for permission of the Court to issue a warrant of restitution dated 31 March 2014, there has never been a suggestion that you were involved in that unlawful activity. The application notice stated "other attendees" and/or "other named attendees". We have been quite clear that this reference does not in any way refer to you, and accordingly, your repeated accusations that Mr Chadwick has intentionally misled the Court are without merit and ill-founded. We would be grateful if you would desist from making repeated accusations of some form of wrongdoing on Mr Chadwick's part, and focus on the issues at hand

being the chattels which currently remain at the Property and are the subject matter of your without merit claim.

Yours faithfully
TLT LLP

- 99 Neither Mr Brown nor Miss Campbell made any attempt to revert to Mr Chadwick in the terms requested in the penultimate paragraph of this email of 24 April 2014 or indeed at any time thereafter. Given the terms of both emails and the fact that neither Miss Campbell nor the Third Party Claimants made any attempt to engage with Redstone or its solicitors, it is hardly surprising that the without notice injunction granted to the Third Party Claimants was discharged when it came back to court on 14 May 2014 (see paragraph 72 above).
- 100 Mr Chadwick stated that on 29 January 2014 he saw the lead court bailiff produce the warrant for possession at the entrance to the Property and show it to Miss Campbell and that he signed the warrant to confirm that it had been executed. He also saw the Notices being placed on the entrance gate and main domestic dwelling of the Property. He confirmed that all items removed by Redstone's contractors were not sold but sent to a tip. He was asked about the state of the Property on the day he attended, 29 January. His evidence (which I accept) was that there were numerous animals on the Property and there was animal excrement throughout the main dwelling house on the Property including on the work surfaces, such that in his opinion the house was uninhabitable. He said the smell was very strong and that there were numerous items scattered about the house in no semblance of order, the majority of which were thoroughly soiled. He said he could see nothing on the Property of any saleable value.

The issues

- 101 I have to decide the following issues:
- 101.1 Is Miss Campbell entitled to have the mortgage set aside on the basis that it was procured by fraud or that it does not comply with s.1(3) of the Law of Property (Miscellaneous Provisions) Act 1989 (“the mortgage issue”)?
- 101.2 Is Redstone liable to Miss Campbell in damages as a result of the steps it took when it was involuntary bailee of her chattels (“the damages issue”)?

The mortgage issue

102 Miss Campbell's claim in respect of the mortgage issue is hopeless for a number of separate and distinct reasons.

103 First, this represents a misconceived and vexatious attempt by Miss Campbell to challenge the decision of Judge Behrens given on 16 May 2014 in respect of which the Court of Appeal refused permission to appeal on 20 June 2014 (see paragraphs 76 and 77 above). Miss Campbell comes nowhere near establishing the special grounds for admitting fresh evidence set out in *Ladd v Marshall* [1954] 1 WLR 1489 (CA, per Denning LJ at p1491). In particular, I am in no doubt that (1) whatever fresh evidence Miss Campbell might wish to rely upon (as to which her position is unclear) could have been obtained with reasonable diligence for use in the possession proceedings before the Possession Order was made and (2) her evidence is not such as is presumably to be believed; it is not apparently credible for two principal reasons: first, on its face the mortgage has been executed by Miss Campbell in the presence of a witness and no proper evidence has been produced by Miss Campbell to cast doubt on that fact; second, the allegation that the mortgage deed was forged or somehow failed to comply with s.1(3) of the 1989 Act has been raised far too late. As Judge Behrens said in his judgment dated 16 May 2014 (regarded as impeccable by Sir Stanley Burnton) at paragraph 5:

“My problem with all of this is that it is all water under the bridge. There has been an action for possession. Possession has been granted and it seems to me that it is far too late now to be challenging the mortgage. Furthermore these documents do not go anywhere near, so far as I am concerned, raising a serious issue as to whether the mortgage deed was forged. Not only that of course, there is the undisputed fact that she was lent £500,000. There have been extensive proceedings since then. The mortgage debt I am now told according to the evidence is in excess of £700,000 and there is an executed possession order in relation to it. It does not seem to me that it is realistic or it seems to be to be hopeless to suggest that the whole matter can now be re-opened after all the hearings that have taken place. In my view therefore there is no basis for the claim that is being made by Miss Campbell and it follows that there is no basis for any injunction to support it.”

104 Second, even if I am wrong about that, Miss Campbell's claim in this regard constitutes an abuse of process as it seeks to attack a final decision that was adverse to her by a tribunal of competent jurisdiction, namely the court in the original possession proceedings. If (which it does not) the claim form disclosed a case on which Miss Campbell could mount a claim to retake possession of the Property, that issue should have been raised as a defence to the original possession claim because the parties to those proceedings were the same and it was obviously an issue that could and should have been raised in those

proceedings: see *Secretary of State for Trade and Industry v Bairstow* [2004] Ch 1, (CA per Morritt V-C at §§28-38).

- 105 Third, Miss Campbell would in any event be estopped from asserting that the mortgage was procured by fraud or executed as a deed by reason of the fact that, as is apparent from the lengthy chronology summarised in paragraphs 7-57 above, Redstone has throughout the original possession proceedings accepted the payment of mortgage arrears by Miss Campbell, resulting in the dismissal or suspension of numerous warrants of possession: see *Shah v Shah* [2002] QB 35, (CA per Pill LJ at §13 and §§30-34).
- 106 As mentioned above in paragraph 79, Mr Brown referred me to a recent decision of Judge Behrens dated 21 July 2014, *Bank of Scotland Plc v Waugh & others* [2014] EWHC 2117 (Ch) and submitted that the facts of that case are indistinguishable from the present case, with the result that no estoppel can arise and the mortgage in this case has to be set aside. I cannot accept that submission. There is a clear distinction between the facts in *Waugh* and the facts in this case. This case, similar to the *Shah* case, concerns a document purporting to be a deed regular on its face in that it appears that Miss Campbell's signature was attested by a witness. Miss Campbell's allegation is that the witness was not in fact present when the mortgage was signed and thus the formalities of s.1(3) of the 1989 Act were not complied with. As Judge Behrens pointed out at §72 in *Waugh*, that situation is factually different from a situation where the document has no attestation clause at all and is thus not even regular on its face (which was the position in *Waugh* and in *Briggs v Gleeds* [2014] EWHC (Ch) 1178, a recent decision of Newey J).
- 107 Accordingly, for the above reasons, claim number A30LS606 issued on 8 September 2014 must be struck out. Miss Campbell has no grounds for setting aside the mortgage.

The damages issue

The law on involuntary bailment

- 108 The law on involuntary bailment is helpfully reviewed in the recent Court of Appeal authority of *Da Rocha-Afodu and another v Mortgage Express Limited and another* [2014] EWCA Civ 454; [2014] 2 P. & C.R. DG10, a judgment of Arden LJ (with whom Jackson and Sharp LJJ agreed) handed down on 20 March 2014.

- 109 In that case Mr and Mrs Da Rocha (the Appellants) appealed against the dismissal of their claim for damages for conversion of personal chattels. The alleged conversion of the Appellants' chattels arose out of events relating to the enforcement by Mortgage Express Ltd (the Respondent) of its security over their property. The Appellants fell into arrears. The Respondent obtained a suspended order for possession on 12 October 2005. The Appellants breached the terms of the suspension. The Respondent obtained a warrant of execution on 11 November 2005. There were attempts to delay execution of the warrant. The Appellants were finally served with notice of eviction on 4 September 2006, given an eviction date of 9 September 2006 and the letter which accompanied that document or the notice itself warned the Appellants to arrange "to leave the property with all your belongings before this date and time". This was only one of the warnings which the Appellants received. The Respondent's solicitors wrote to them about the need to remove their possessions from the property on 29 November 2005, 22 May 2006 and 5 September 2006. Nonetheless, when the Appellants left the property, they left a considerable amount of their personal belongings on the property. Mr Da Rocha returned to remove his possessions on some three occasions: 1 October, 5 October and 21 October 2006. Meanwhile, the Respondent's agents had put up notices at the property stating that if the chattels were not removed within 14 days, the agents would be entitled to dispose of the chattels in an appropriate manner. The first such notice was put up on 29 September 2006. An employee of the Respondent noticed that this had been removed. She replaced it with a second notice warning about removal of the chattels if they were not removed within 14 days. Mr Da Rocha made a fourth appointment to collect further chattels from the property on 3 November 2006. However, when he and the agent arrived, the subcontractor had already removed and disposed of the chattels remaining in the property. That had led the Appellants to bring the claim.
- 110 The judge heard the matter over two days. She held that the Appellants had an obligation to deliver up vacant possession of the property on execution of the warrant. Having considered the decision of Mr David Kitchin QC, as he then was, sitting as a Deputy High Court Judge in *Scotland v Solomon* [2002] EWHC 1886, she held that on the authorities, the duty of an involuntary bailee was to do what was right and reasonable. Further, she held that what was right and reasonable would depend upon the findings of fact in each case. She summarised the evidence and found as a fact that the Respondent's employee wrote the second notice on 12 October 2006 and put it up in a window of the property on that date. She held that the notice would still have been there on 21 October 2006 when Mr Da Rocha attended again to collect further belongings and that he must have seen the notice in the window. She also held that on the balance of probabilities she was satisfied that he had removed the notice on that date. She found that the Respondent wanted to sell the property with vacant possession without delay. It would have been simpler for them and their agents if the Appellants had removed their property. The Respondent acceded to oral requests for access made by the Appellants and offered on one occasion to provide a house sitter so that the removal could be completed under secure conditions. The judge was satisfied that

- the Respondent had complied with its duties as an involuntary bailee of the Appellants' goods to do what was right and reasonable. On that basis, she held that the claim based on conversion must fail.
- 111 In *Scotland v Solomon*, the facts were that a charging order had been made over a residential property in favour of the neighbour following a dispute between two neighbours. The former owners were evicted and the locks were changed. Some arrangements were made for the former owners to collect their possessions, but they claimed that they were denied the opportunity to remove all their possessions. The property was sold. The purchasers removed the remaining contents.
- 112 The deputy judge held that there was a triable issue as to whether or not the Defendants' neighbour who had obtained the charging order had met the test of doing everything right and reasonable to enable the former owners to recover their chattels. However, he also held that if the Defendants had done what they had contended, then even though the former ejected owners may have lost some of their possessions, the Defendants would not, in his judgment, be liable in conversion. Because there was a dispute on the facts, the judge held that there had to be a trial.
- 113 The classic statement regarding the duty of an involuntary bailee is set out in *Elvin & Powell Ltd v Plummer Roddis Ltd* [1933] Solicitors Journal 48. In that case, a rogue ordered goods for delivery to a well known shop. The shop delivered the goods to the rogue who then disappeared. It was held that the shop was an involuntary bailee, but that it was not liable in damages to the true owner of the goods because it had acted reasonably. Hawke J held that the shop had done everything which was reasonable: "An involuntary bailee has an obligation to do what was right and reasonable." It was that statement of the law that was relied on by the deputy judge in *Scotland v Solomon*.
- 114 In *Houghland v RR Low* [1962] All ER 159, Ormrod LJ said obiter:
"It seems to me that to try to put a bailment, for instance, into a watertight compartment — such as gratuitous bailment on the one hand, and bailment for reward on the other — is to overlook the fact that there might well be an infinite variety of cases which might come into one or the other category. The question that we have to consider in a case of this kind (if it is necessary to consider negligence) is whether in the circumstances of this particular case a sufficient standard of care has been observed by the defendants or their servants."
- 115 In *De Rocha*, Arden LJ commented on the above passage as follows at paragraph 50:
"... in my judgment, the point that Ormrod LJ was making was that within each

category of bailee there will indeed be a wide variety of circumstances. However, the Court can take those into account when applying the duty which is imposed on involuntary bailees that they should do what is right and reasonable in all the circumstances. The Court must be alert to have regard to all the particular circumstances in the case.”

116 Mr Horne submitted, and I accept, that the following propositions of law form part of the ratio of *Da-Rocha* (references to paragraph numbers below are to those in the judgment of Arden LJ):

116.1 A mortgagor is subject to an obligation to deliver up vacant possession of the Property on the execution of a warrant for possession (§8).

116.2 A mortgagee who finds himself in possession of chattels on the execution of a warrant for possession is in law an involuntary bailee (§9 and also paragraph 13-001 of *Palmer on Bailment*).

116.3 The duty of an involuntary bailee is to do what is right and reasonable. What is right and reasonable depends upon the findings of fact in each case (§8).

116.4 The relevant conditions of the mortgage provide a framework within which the common law duty of care, which is imposed on an involuntary bailee, is to operate. Further, any of the trigger events in the mortgage conditions is merely a starting point. The court has to go on and ask whether what the mortgagee did was, in the particular circumstances of the case, what was right and reasonable (§52).

The law applied to this case

117 When Redstone enforced the Possession Order in the present case on 29 January 2014 and found that Miss Campbell had made not the slightest attempt to clear the Property in order to comply with her duty to give vacant possession, it became an involuntary bailee of the goods left at the Property. As the mortgagee in possession, Redstone became a bailee through events over which it had no proper control. Its obligation in law as involuntary bailee was to do what was right and reasonable in the circumstances of the case. In this regard it is relevant to consider the mortgage conditions and what warnings Redstone gave to Miss Campbell that it intended to dispose of the chattels on the Property.

118 Not only had Miss Campbell made no attempt to clear the Property with a view to complying with her obligation to Redstone to give vacant possession upon the

- execution of the warrant for possession on 29 January 2014, she subsequently sought to undermine the original possession order and to prevent Redstone proceeding to a sale of the Property. I find that Miss Campbell's tactic of leaving her goods at the Property was a deliberate one, designed to prevent Redstone from being able to have and give vacant possession of the Property, and thus impede Redstone's attempt to market and sell the Property in order to apply the sale proceeds against Miss Campbell's debt.
- 119 After Redstone took possession of the Property on 29 January 2014, it caused Notices to be affixed to the Property pursuant to the Torts (Interference with Goods) Act 1977 and its mortgage conditions. The Notices gave Miss Campbell seven days in which to remove the goods from the Property, otherwise the goods could be, amongst other matters, disposed of by Redstone. The Notices also invited the owner of the goods to contact the agents appointed to market the Property for sale. Clause G6 of the mortgage conditions (see paragraph 6 above) is phrased in a disjunctive way, and provides for three alternative possibilities: removal, storage or sale. I accept Mr Horne's submission that removal in this context obviously includes the disposal of the goods, otherwise there would be no need for the clause to refer to removal as it is implicit in the act of storage or sale that the goods may be removed from the Property.
- 120 On three occasions (on 12 February 2014, 28 February 2014 and 14 March 2014) the court ordered Redstone to afford access to Miss Campbell and others to remove their goods from the Property. The First Order was made by consent. When the Second Order was made by Judge Behrens, it said in terms that the order should not be varied. Ultimately the Second Order was varied by the Third Order. On that occasion, Judge Raeside QC stated that this would be the last opportunity for Miss Campbell and others to collect their goods. When Miss Campbell and others attended at the Property pursuant to the Third Order, she barricaded herself in the Property. This was a deliberate act in defiance of the court order granting access.
- 121 Despite the three court orders, Miss Campbell and others did not remove their chattels from the Property. I find that at no time did Redstone or its agents take any step which had the effect of interfering or otherwise hindering the exercise by Miss Campbell and others of their rights to collect their chattels. On the contrary, I find that Redstone made every attempt to facilitate the clearance of those chattels. It was of course in Redstone's interests that the chattels should be removed from the Property and vacant possession given.
- 122 Accordingly, Redstone was entirely justified in commencing to clear the Property and dispose of the goods on 1 April 2014. I consider that Redstone's decision to dispose of the goods, as opposed to putting them into storage or selling them, was entirely appropriate as the goods appeared to have no intrinsic value, and given

the substantial mortgage account in excess of £730,000, this was the most sensible and cost effective way for Redstone to deal with matters. Furthermore, given the amount and different nature of goods left at the Property, it simply was not feasible for Redstone to put these goods in storage.

- 123 Upon the grant of the without notice interim injunction on 4 April 2014, Redstone immediately ceased disposing of the goods and instructed its agents to inspect the Property and prepare an inventory of the remaining goods at the Property. By its solicitors' e-mail sent to Miss Campbell on 17 April 2014 (see paragraph 97 above), Redstone stated, without prejudice to its contention that it was fully entitled to remove and dispose of the goods left on the Property, that it was prepared to offer one further opportunity to Miss Campbell (and others) to remove their goods from the Property. This offer was extended by Redstone's solicitors' further email of 24 April 2014 (see paragraph 98 above). Neither offer was taken up.
- 124 After the interim injunction was discharged on 14 May 2014, Redstone recommenced clearing the Property and ultimately disposed of the remaining goods.
- 125 I accept Redstone's submission that, in what must be considered the exceptional and egregious circumstances of this case, its conduct was right and reasonable. Miss Campbell had more than sufficient notice of Redstone's intention to remove and dispose of the goods on the Property. It was entirely due to her own deliberate actions that she chose not to avail herself of the opportunities offered by the court and by Redstone to clear those goods from the Property, despite the fact that she was obliged upon the enforcement of the warrant for possession to give vacant possession of the Property to Redstone.
- 126 Accordingly I find that what Redstone did with the goods left at the Property when it took possession was, in the circumstances, right and reasonable. On the preliminary issue that I have to determine, I hold that Redstone has no liability in damages to Miss Campbell or indeed any of the other owners of chattels left on the Property, including Mr Brown and the other Third Party Claimants who obtained the interim injunction on 4 April 2014 that was subsequently discharged on 14 May 2014.

Other applications by Miss Campbell

- 127 As is apparent from the chronological section of this judgment, Miss Campbell has issued a plethora of applications in this matter. I must conclude this judgment by dealing with three further applications which I believe are outstanding and have been transferred to be dealt with as part of this trial.
- 128 The first application is made in the original possession claim pursuant to which Miss Campbell secured possession of the Property under case number 7PA18647. That application seeks a declaration that those proceeding are null and void, whereupon Miss Campbell should retake possession of the Property. The application disputes the validity of the grounds on which possession was ordered on the basis that Miss Campbell was never served with those proceedings and Redstone has never provided a receipt to prove that it paid the court fee. It is therefore said that there was never a possession order made by the court on which the court had jurisdiction to make an order for the issue of a warrant of possession, and Miss Campbell has not been supplied with a court order or a copy of the warrant. By order dated 8 August 2014, that application was transferred to be heard at this trial.
- 129 This application is hopeless and must be dismissed. The original possession claim lasted 6 years from the date of issue until possession of the Property was secured by Redstone. There were numerous hearings attended by Miss Campbell in person. She therefore had notice of the proceedings and cannot complain about service. In any event, this point should have been taken in the original possession proceedings, and to do so now is an abuse of the court's process. The claim would not have been issued by the court if Redstone had not paid an issue fee. As is apparent from the chronology of events earlier in the judgment, a suspended possession order was made by District Judge Mainwaring-Taylor on 3 June 2008 sitting in Bishop Auckland County Court. The terms of the suspension were not adhered to by Miss Campbell. This led to several attempts by Redstone to issue warrants for possession and cross-applications by Miss Campbell to suspend them. The cross-applications ultimately failed, leading to possession being secured on 29 January 2014. It is simply too late for Miss Campbell to complain about these matters and the application is dismissed.
- 130 The second application made by Miss Campbell is undated and it is unclear if it has been issued. It seeks an order that Redstone pay into an account with the court the sum of £1,000,000 as (so the application contends) Redstone may not have adequate insurance in place to cover Miss Campbell's damages claim. Such an application is simply not recognised by the Civil Procedure Rules. In any event, in view of the fact that I have determined the preliminary issue in Redstone's favour, there are no damages to award to Miss Campbell. This application is dismissed.

- 131 The third and final application before the court seeks an injunction to restrain Redstone from selling the Property, and is made under claim number A30LS606. The basis for the application appears to be that the mortgage, pursuant to which Redstone has obtained possession of the Property, is not valid and hence unenforceable, and consequently Redstone has no power of sale. As I have already found in relation to the mortgage issue, these contentions should have been raised in the original possession claim. They are made too late; this application is an abuse of process and must be struck out.