



Neutral Citation Number: [2023] EWHC 1445 (Ch)

Case No: BL-2020-002144

**IN THE HIGH COURT OF JUSTICE**  
**BUSINESS & PROPERTY COURTS OF ENGLAND AND WALES**  
**PROPERTY, TRUSTS & PROBATE LIST (Ch)**

Rolls Building  
Fetter Lane  
London, EC4A 1NL

14 June 2023

**Before :**

**MR JUSTICE RICHARDS**  
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**Between :**

(1) **PRESCOTT PLACE FREEHOLDER LIMITED** **Claimants**  
(2) **THOMAS PHILIP THRELFALL**  
(3) **BEN FREEMAN**  
(4) **ELENA BLANCA BACCINI**  
(5) **KIMBERLEY SUM**  
(6) **ESTHER CARRAGHER**  
(7) **ANNE CAMILLA FRANCES DARLING**  
(8) **EDWINA MARY GILLIAN BARKER**

**- and -**

(1) **CONSTANTIN BATIN** **Defendants**  
(2) **JOSEPH DONOVAN**

**- and -**

(3) **TOGETHER FIRST COMMERCIAL FINANCE LTD** **Interested Party**

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**Michael Walsh** (instructed by **Judge & Priestley LLP**) for the **Claimants**  
**Nathaniel Duckworth** (instructed by **Ashurst LLP**) for the **Second Defendant**  
**Jamal Demachkie** (instructed by **Priority Law Limited**) for the **Interested Party**  
The **First Defendant** did not appear and was not represented

Hearing date: 12 May 2023

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**Approved Judgment**

**I direct 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.**

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This judgment was handed down remotely at 10am on 14 June 2023 by circulation to the parties or their representatives by email and by release to the National Archives.

**Mr Justice Richards:**

## **A. INTRODUCTION**

1. This judgment deals with matters consequential on the judgment (the “Trial Judgment”) that I handed down on 3 March 2023. I will not seek to summarise the Trial Judgment and instead will treat this judgment as a continuation of the Trial Judgment. Words and phrases defined in the Trial Judgment have the same meaning in this judgment unless I specify otherwise.
2. At trial, D1 and D2 put forward untrue evidence as to the date on which various documents effecting transactions in connection with the Property were executed. Much of the Trial Judgment was concerned with the making of factual findings including as to the true dates of execution of these documents. It is therefore convenient to introduce the issues with which I now deal with a brief chronology that draws on the various factual findings made in the Trial Judgment:
  - i) SD became registered proprietor of the Property in 2004.
  - ii) The 2004 Trust Deed was executed on 5 July 2004. By the 2004 Trust Deed, SD declared that he held the property on trust for D2 absolutely.
  - iii) On or around 7 May 2014, SD and D1 executed the 2014 Transfer that transferred the Property to D1 for a consideration of £125,000. D1 was registered as proprietor of the Property with a deemed date of registration of 29 May 2014. The 2014 Transfer resulted in D1 taking free of D2’s beneficial interest under the 2004 Trust Deed.
  - iv) The 2014 Transfer was a “relevant disposal” for the purposes of s4 of the 1987 Act. That triggered C1’s right under the 1987 Act to seek to acquire the freehold interest in the Property from D1. On 25 February 2019, the Claimants commenced the County Court Proceedings seeking an order under s19 of the 1987 Act requiring D1 to convey the freehold interest in the Property to C1.
  - v) Some time between 4 April 2019 and 7 June 2019, D1 and D2 executed the 2014 Trust Deed. That document was executed during the course of the County Court Proceedings and backdated to make it appear as though it was executed on or around 29 May 2014. Neither D1 nor D2 asserted in the County Court Proceedings or the FTT Proceedings that D2 had a beneficial interest in the Property that had any bearing on the application of the 1987 Act.
  - vi) On 25 October 2019, HHJ Lethem made the Section 19 Order that required D1 to convey the freehold interest in the Property to C1 “on the same terms as [D1] acquired the freehold of the Property, or alternatively on terms as may be determined by the [FTT]”.
  - vii) C1 entered a unilateral notice in respect of the Section 19 Order in the Charges Register of the freehold title at HM Land Registry on 11 November 2019.

- viii) After the Section 19 Order was made, and before 14 January 2021, D1 and D2 executed the Equitable Leases granting long leases over Flats 36C and 36E to D2 for no premium and a nominal rent. The Equitable Leases were backdated to make it appear as though they had been executed in 2014. Their purpose was to devalue the freehold interest that C1 was entitled to acquire pursuant to the Section 19 Order. They were backdated, with an intention to mislead, in order to disguise the fact that they were granted after the Section 19 Order.
- ix) The Equitable Leases take effect in equity only because no application was made to register them as legal estates within the time period specified in s6 of the LRA. No notice has been registered against the freehold title of the Property in respect of the Equitable Leases. Indeed, since 15 January 2021, D2 has been subject to an injunction that restricted his ability to register interests arising out of the Equitable Leases at HM Land Registry.
- x) By its decision of 12 April 2021, the FTT determined that the consideration that C1 should pay to acquire the Property in accordance with the Section 19 Order was £125,000.

### **The positions of the parties in outline**

- 3. The principal issue to be addressed is what form of order the court should now make in the light of the Trial Judgment. It was held in the Trial Judgment that it is an abuse of process for D2 now to assert any interest in the Property under the 2014 Trust Deed. For that reason, both parties focused their submissions on the rights if any that D2 retains, or should be permitted to retain, pursuant to the Equitable Leases.
- 4. The Claimants' position is as follows:
  - i) They already have the benefit of interim injunctions, including an injunction made by Zacaroli J on 8 February 2021 following a contested on-notice hearing. That injunction precludes D2 from marketing for sale any estate or interest in the Property and/or granting any interests out of D2's own interest (subject to exceptions). The injunction also precludes D2 from registering, or seeking to register, any estate or interest over the Property at HM Land Registry.
  - ii) Those injunctions should be continued as final injunctions. They should be supplemented with an injunction precluding D2, whether by himself, his agents or any other person, from going into occupation of the Property until the freehold title is conveyed to C1. That would preclude D2 from seeking to assert that his rights under the Equitable Leases are overriding interests by virtue of his actual occupation under paragraph 2 of Schedule 3 of the LRA.
  - iii) The Claimants advance a secondary argument to the effect that the court should exercise powers under s12B(5) of the 1987 Act so as to order that D1's transfer of the Property to C1 should result in C1 taking free of any interest of D2 under the Equitable Leases.

5. D2's position is diametrically opposed. He argues that:
  - i) The Claimants have no legal right or cause of action that could restrain D2 from protecting the Equitable Leases at HM Land Registry or from disposing of an interest in the Property. Accordingly, there is no proper basis for the court either to grant or continue the injunctions that the Claimants request.
  - ii) Even if the court does have the power to grant or continue the injunctions, it should not do so.
  - iii) The court should not simply decline to grant or extend injunctions made against D2. It should make a declaration that D2's rights under the Equitable Leases will bind C1 when the freehold in the Property is transferred pursuant to the Section 19 Order if either (a) D2 is in actual occupation of Flat 36C and/or Flat 36E by the time of the transfer of the Property to C1 or (b) the Equitable Leases are protected by notices in the registered title of the Property by the time the transfer of the Property to C1 is registered.

### **The application of Together to be joined in the proceedings**

6. After the Trial Judgment was handed down, on 3 May 2023, Together First Commercial Finance Limited ("Together") applied to be joined as a party to these proceedings under the provisions of CPR 19.2. At the hearing, I allowed Together's application and gave brief oral reasons in the interests of time. I said that I would provide fuller reasons in my reserved judgment and these are those reasons.
7. CPR 19.2 provides as follows:
  - (2) *The court may order a person to be added as a new party if*
    - (a) *It is desirable to add the new party so that the court can resolve all the matters in dispute in the proceedings; or*
    - (b) *there is an issue involving the new party and an existing party which is connected to the matters in dispute in the proceedings, and it is desirable to add the new party so that the court can resolve that issue.*
8. Given that Together is applying to become a party after service of the claim form, the consent of the court is required under CPR 19.4.
9. The background to Together's application is as follows:
  - i) As noted in the Trial Judgment, Together advanced money secured on the Property in 2017. More specifically it is the registered proprietor of a first legal charge over the property dated 29 August 2017 which was registered at HM Land Registry on 11 September 2017 (i.e. after the 2014 Transfer but before the Claimants served section 12B notices on D1 pursuant to the 1987 Act).

- ii) Together's charge secures a loan of £950,000 advanced to D1 and D2. D1 and D2 are significantly in arrears on their loan and, because of these arrears, on 14 October 2022, Together appointed receivers (the "Receivers") under the Law of Property Act 1925 (the "LPA").
  - iii) Together says that it has no record of ever being notified of the County Court Proceedings. It acknowledges that it received a letter from the FTT during the course of the FTT Proceedings on or around 10 March 2020. Together decided not to apply to join the FTT Proceedings at that time.
  - iv) Together says that it became aware of the present High Court proceedings in or around October 2022. However, it says that it did not realise the full implication of those proceedings on its security interest until after the trial in January 2023.
10. Paragraph 143(iv) of the Trial Judgment noted that, unless any further or additional orders are made, s12B(5) of the 1987 Act will apply so that, on a conveyance of the freehold interest in the Property to C1, C1 will take free of Together's charge. Together accepts that paragraph 143(iv) of the Trial Judgment correctly sets out the position. It does not seek any further orders under s12B(5) of the 1987 Act altering that position. Even though it is not seeking to disturb any of the findings made in the County Court Proceedings, the FTT Proceedings or the Trial Judgment, Together submits that it still has an interest in being joined in the present proceedings for the following reasons:
- i) It argues that s12B(5)(a) of the 1987 Act will only result in C1 taking the freehold interest free of Together's charge if the requirements of paragraph 2 of Schedule 1 of that Act are complied with. One such requirement is that C1 pays any consideration due to Together. Accordingly, Together argues that it has a legitimate interest in the form of the order made following this hearing.
  - ii) Together notes that D2 is arguing that C1 should take the freehold interest in the Property subject to the Equitable Leases and that C1 argues that if the court accepts this position, the price that it pays for the freehold interest should be reduced. Together wishes to argue that there is no scope under the 1987 Act for the court to order a price reduction in circumstances where the entire consideration payable must be paid to Together under the provisions of Schedule 1 of the 1987 Act, rather than to D1. That is a technical argument on the proper interpretation of the relevant provisions of the 1987 Act.
  - iii) D2 is arguing that he should be permitted to make applications to HM Land Registry to protect the Equitable Leases. Together does not seek to influence the court's decision on this issue one way or the other. However, if the court is minded to permit D2 to protect his interest under the Equitable Leases, Together wishes to argue that D2's interest should be encumbered by a security interest in its favour.
  - iv) Together notes that C1 is advancing the secondary argument noted in paragraph 4.iii) above which did not form the basis of the trial in January 2023. If the court is now considering making an order under s12B(5)(b) that would preclude all possibility of the Equitable Leases binding the

freehold title acquired by C1, Together would like the right to make submissions on that issue given its position that the Equitable Leases are, or should be, subject to a security interest in its favour.

- v) The Claimants are seeking injunctions that apply both to D2 and to his agents. The Receivers are, in law, agents of D2. However, Together has a legitimate interest in the Receivers' freedom to act given that their function is to collect money to enable Together's loans to be repaid.
11. The parties appeared agreed that the mere fact that I have handed down the Trial Judgment does not of itself make Together's application too late to succeed. That follows from the judgment of Foxton J in *Hotel Portfolio II UK Ltd v Ruhan* [2022] EWHC 1695 (Comm) [22] to [25].
  12. In his oral submissions objecting to Together's application, Mr Walsh on behalf of the Claimants, understandably pointed to the lengthy period since March 2020 when Together became aware of the 1987 Act proceedings. He argued that, having overlooked the significant implications of those proceedings for its own security interest for such a long time, it is too late for Together to assert any legitimate interest in becoming a party to the proceedings now. Mr Walsh described Together's application as an "ambush" and its focus on s12B(5) of the 1987 Act as an after-the-event attempt to avoid the consequences of its lengthy delay in seeking to join the dispute relating to ownership of the Property.
  13. In my judgment, that overstates matters. Together's failure to act in 2020 when it became aware of the FTT Proceedings appears to have had serious repercussions already. As matters stand, Together faces the very real prospect of losing valuable security for a loan of £950,000 (plus unpaid interest) in return for a payment of just £125,000 from C1. Together realistically recognises that it is now too late to do anything about that.
  14. However, D2 is mounting a rearguard action by asserting that he is entitled to register the Equitable Leases. Moreover, the Claimants are advancing an argument, that was not before the court at the trial in January 2023, to the effect that D2's interest in the Equitable Leases should be swept away altogether by means of an order under s12B(5) of the 1987 Act. Mr Walsh objects to the secondary argument under s12B(5)(b) being categorised as a "new point" since it was alluded to in the Trial Judgment and I myself canvassed the possibility of such an order being made in correspondence with the parties following the hand down of the Trial Judgment. However, I consider that the point is "new" from Together's perspective since it was not part of the pleadings or a significant part of the argument that led up to the Trial Judgment. Moreover, s12B(5)(b) sets out a possibly different route by which Together could lose the benefit of its security interest that it could not realistically have responded to until it saw Mr Walsh's skeleton argument for this consequential hearing.
  15. In any event, in my judgment, Together's application should not be determined simply by an analysis of conduct in the past or whether points now being made, both by D2 and by the Claimants about s12B(5) of the 1987 Act, can be categorised as "new". Rather, as John Kimbell QC, sitting as a High Court judge, said in *Molavi v Hibbert* [2020] EWHC 121 (Ch):

*64. For an applicant to succeed with an application under CPR 19.2(1)(b), three conditions must be met: (1) an issue must be identified between the proposed new party and an existing party (2) the issue must be connected to the matters already in dispute in the proceedings (3) it is desirable to add the new party so that the court can [decide] the issue identified in condition (1).*

16. I quite understand that there will be cases in which a party's delay means that condition (3) is not met. However, I consider the condition is met in this case. Some of Together's points that I have summarised in paragraph 10. above are perhaps stronger than others. Perhaps Together's interest in some of those issues could be adequately addressed without the formal step of making Together party to the proceedings. However, in my judgment the cumulative effect of those points is that the three conditions identified by Mr Kimbell QC are satisfied. Some of the issues set out in paragraph 10 arise only if the court decides other issues in a certain way. However, to the extent that the issues in paragraph 10 arise, they lie between Together and C1, or between Together and D2. The court would benefit from hearing submissions from Together on the matters touching on its own interest.
17. That leads to Mr Walsh's other objection namely that there would be undue additional complexity and expense occasioned by joining Together as party at this late stage. I do not agree. Of course, there will be additional cost and some additional complexity. However, the points that Together has identified in which it has an interest are sufficiently circumscribed that they could be addressed by giving Together the opportunity to make brief written submissions on them to which other parties could respond in their own written submissions as necessary.

## **B. THE POSITION IF D2 IS PERMITTED TO REGISTER AN INTEREST IN THE EQUITABLE LEASES AND/OR GO INTO "ACTUAL OCCUPATION"**

18. During the hearing, Mr Duckworth confirmed on behalf of D2 that D2 no longer seeks permission to make any application for an extension of time under section 6(4) of the LRA so as to enable his leases to be registered as legal estates. Rather, D2 wishes to be permitted to register a notice in respect of the Equitable Leases against the freehold of the Property under s32 of the LRA. Further or alternatively, D2 wishes to ensure that, at the time of any transfer to C1, he is in "actual occupation" for the purposes of paragraph 2 of Schedule 3 of the LRA so that the Equitable Leases rank as overriding interests to which C1 would then necessarily take subject by virtue of s29(1) of the 2002 Act.
19. The steps I have outlined in paragraph 18. are precisely those that the Claimants argue that D2 should be restrained, by injunction, from taking. Nevertheless, both parties made submissions on the what the outcome would be if D2 were permitted to take either or both of these steps. Therefore, while I initially thought that I should approach the question simply by considering whether I would, or would not, make the injunctions that the Claimants seek, I have taken the parties to accept that there is some utility in me first reaching some conclusions on what that outcome would be.
20. To reach a conclusion on that point, it is necessary to determine two issues:



- i) whether C1's rights under the Section 19 Order constitute an "interest in land"; and
- ii) if so, how any question of priority as between that interest in land and the interest in land arising under the Equitable Leases would be resolved following a conveyance of the freehold title to C1 under the Section 19 Order.

### **Whether C1's rights under the Section 19 Order constitute an "interest in land"**

#### Applicable principles

21. It is common ground that the status of the Section 19 Order as an "interest in land" or otherwise must be determined purely on general principles. The parties agree that there is no statutory provision or judgment of a court that determines the issue.
22. After the hearing, I raised with the parties the question whether s87 of the LRA is of any significance. Section 87(1)(b) at first sight showed some promise as it provides that a writ or order of the kind mentioned in s6(1)(a) of the Land Charges Act 1972 is to be treated, for the purposes of the LRA, as an "interest affecting an estate or charge". Section 6(1)(a) of the Land Charges Act 1972 in turn refers to "any writ or order affecting land issued or made by any court for the purposes of enforcing a judgment...". That description seems to cover the Section 19 Order.
23. Nevertheless, it was common ground between the parties that s87 was of no relevance. D2 reasoned that, by s14 of the Land Charges Act 1972, s6(1)(a) was of no application to interests over registered land. I confess to doubt on that point as it seems to me at least conceptually possible to read s87(1)(b) of the LRA as simply cross referring to a defined term used in s6(1)(a) of the Land Charges Act 1972. The Claimants' position, that s87(1)(b) simply permitted relevant writs or orders to be the subject of a notice under s32 of the LRA, without determining the anterior question of whether those writs or orders created proprietary interests, struck me as a more persuasive explanation of why s87 is not relevant. Ultimately, since the parties are agreed that s87 does not assist to determine whether the Section 19 Order is an interest in land, and since I have not heard full argument on s87, I will proceed on the basis of the parties' agreed position.
24. I take the following propositions, which were set out in the skeleton argument submitted on behalf of D2, to be common ground between the parties:
  - i) An "interest in land" can only be created by someone who has sufficient title to create proprietary rights (see, for example [79] of the judgment of Lord Collins in *North East Property Buyers* [2014] UKSC 52).
  - ii) Rights which are purely personal in nature are not capable of constituting interests in land (a principle that is also set out at [79] of Lord Collins's judgment in *North East Property Buyers*).
  - iii) An interest in land must be "definable, identifiable by third parties, capable in its nature of assumption by third parties, and have some degree of permanence and stability" (see the speech of Lord Wilberforce in

*National Provincial Bank Ltd v Ainsworth* [1965] AC 1175 at 1261F to G). It must be a “right in reference to land which is capable of transmission through different ownerships of the land” (see the speech of Lord Cohen in *Ainsworth* at 1228D to E).

25. It is common ground between the parties that where a contract is made for the sale of land, and the purchaser is potentially entitled to the equitable remedy of specific performance, the purchaser obtains an immediate equitable interest in the property contracted to be sold. The basis for that outcome is the maxim of equity which looks upon things agreed to be done as actually performed (see *Re Cary-Elwes Contract* [1906] 2 CH 143 at 149 per Swinfen Eady J).

### Jones v Mahmut

26. The Claimants’ first argument is that the status of the Section 19 Order as an “interest in land” has conclusively been established by the judgment of the Court of Appeal in *Jones v Mahmut* [2018] 1 WLR 6051, a case concerning the operation of the 1987 Act. Particular reliance is placed on paragraph [13] of the judgment of Lewison LJ as follows:

*13. I accept, as Mr Staunton submitted, that an application under section 19 [of the 1987 Act] is an application on the kind contemplated by section 17. But the main thrust of these provisions is, in my judgment, that the [1987 Act] contemplates two ways in which the tenants’ rights might be vindicated: either by the parties voluntarily entering into a contract following the establishment of the tenants’ rights or by the court making an order. Thus, the scheme of the [1987 Act] is that the court’s order requiring the reversioner to comply with his obligations is the equivalent of a contract voluntarily made.*

27. This passage, argue the Claimants, sets out a binding statement of the effect of the Section 19 Order. It is, they submit, to be treated in all respects as the equivalent of “a contract voluntarily made”. Since such a contract would confer on the purchaser an equitable interest in the land in question, the Section 19 Order does likewise.
28. It is, however, important to read paragraph [13] of Lewison LJ’s judgment in its relevant context which was as follows:
- i) The defendants were, by an order of 29 October 2013, ordered to dispose of a freehold interest in a property to the claimants. The claimants were ordered to provide the defendants with a form of transfer by 5 December 2013 ([6] of Lewison LJ’s judgment).
  - ii) The claimants provided the form of transfer required on 3 December 2013 with the result that the defendants were obliged, by the court order, to provide an executed transfer in favour of the claimants by 19 December 2013 ([8] and [6] of Lewison LJ’s judgment).
  - iii) The defendants failed to provide an executed transfer by 19 December 2013. On 2 January 2014, their solicitors said that they held an executed transfer but they did not send it to the claimants or their solicitors ([8] and [9] of Lewison LJ’s judgment).

- iv) On 2 April 2014, the defendants purported to terminate all obligation to transfer the freehold in the property pursuant to s17(4) of the 1987 Act. Section 17(4) of the 1987 Act would be engaged only if the defendants could establish that “no binding contract has been entered into” for the transfer of the property in question.
29. I agree with Mr Duckworth that the quotation in paragraph [13] of Lewison LJ’s judgment does not have the broad effect for which the Claimants argue. That passage is not concerned with the question of whether an order under s19 of the 1987 Act creates an interest in land or not. Rather, read in context, it sets out a conclusion on a question of statutory construction, namely whether the order under s19 of the 1987 Act was to be treated as a “binding contract” for the purposes of s17(4) of the 1987 Act.
30. That Lewison LJ was expressing a conclusion on the proper construction of s17(4) of the 1987 Act is emphasised by the reasoning in paragraphs [16] and [17] of his judgment. At [16] Lewison LJ explained that an order under s19 of the 1987 Act is not actually an order for specific performance under a contract because it is “enforcing non-consensual statutory rights”. In the paragraph [17] that follows, Lewison LJ explains why a purposive construction of the relevant provisions of the 1987 Act supports the conclusion that an order under s19 should be treated, for the purposes of s17(4) as if it were a contract. The reason for reaching that conclusion is that Parliament cannot have intended that a “recalcitrant landlord who refused to enter into a contract [following a valid notice in 1987 Act proceedings] was in a better position than a compliant one [who entered into a contract following such a notice rather than waiting for a court order]”.

#### Application of general principles

31. Since I do not accept the Claimants’ argument that the status of the Section 19 Order as an interest in land is conclusively established by *Jones v Mahmut*, I will determine the question by applying the general principles outlined in paragraphs 24. and 25..
32. The Section 19 Order provided, so far as material, as follows:
- 2. By no later than 4.00 pm on 22 November 2019, the Defendant shall comply with the purchase notice pursuant to section 12B of the Landlord and Tenant Act 1987 dated 12 December 2018 in the following manner:*
- i. The Defendant shall transfer to the First Claimant the freehold interest of [the Property]; and*
- ii. On the same terms as the Defendant acquired the freehold of the Property, alternatively on terms as may be determined by the Appropriate Tribunal.*
33. The Section 19 Order was made against D1, who was the registered proprietor of the freehold interest in the Property. It is clear, therefore, that D1 had a sufficient proprietary interest in the Property for the Section 19 Order to constitute an interest in land so that the requirement summarised in paragraph 24.i) is satisfied. Therefore, in my judgment, the central question is whether the

Section 19 Order creates purely personal rights and obligations in relation to the freehold of the Property or whether it creates a proprietary interest (the requirement summarised in paragraph 24.ii)). If it does create a proprietary interest, I see no difficulty with the requirement set out in paragraph 24.iii).

34. Notwithstanding my conclusion on the effect of *Jones v Mahmut*, it remains the case that there are considerable similarities between the Section 19 Order and a contract for the sale of land which have a bearing on the question whether the Section 19 Order creates an interest in land. Significantly, the Section 19 Order provides that D1 must convey the freehold interest in the Property to C1. The maxim that equity regards as done that which should be done is ostensibly just as applicable to the Section 19 Order as it is to a contract for sale of land. In fact, the maxim might be said to be more applicable to the Section 19 Order than to a mere contract, since, in the case of the contract, it is only following the exercise of the court's discretion that an order for specific performance will be granted whereas, in the present case, a court order has already been made.
35. D2's first objection to that line of reasoning involves an argument based on the scheme of the 1987 Act. He submits that, if D1 who is subject to the Section 19 Order proposed to transfer the Property to someone other than C1, C1's remedy would be to apply for a further injunction under s19(3) of the 1987 Act. If D1 nevertheless transferred the freehold in the Property to a third party, the Claimants would have a statutory right under s16 of the 1987 Act to compel that third party to transfer the freehold interest to C1. D2 therefore argues that the presence of this "enforcement code" in the 1987 Act is at odds with the Section 19 Order being an interest which "runs with the land".
36. I do not accept that argument. As I have explained, the Section 19 Order was a court order requiring the Property to be transferred. If anything, that confers more of a proprietary right over the Property than would a contract for sale which gives a purchaser only the prospect of obtaining a discretionary order for specific performance. The fact that the Claimants might have other statutory remedies against D1 or D1's transferee does not of itself cause C1's rights under the Section 19 Order to become purely personal rights.
37. Nor do I see any force in D2's argument that, if D1 breaches the requirements of the Section 19 Order, the sanction would be committal for contempt of court, a sanction that is said to be "personal" as distinct from "proprietary". Yet that is precisely the sanction that would apply if D1 was party to a contract for sale of the Property, but refused to comply with an order for specific performance requiring him to convey the Property to C1.
38. D2's next argument relies on the fact that the Section 19 Order contemplated that some of the terms on which the Property was to be transferred remained to be fixed by the FTT. D2 relies on the principle, referred to by Swinfen Eady J in *In re Carey-Elwes Contract* [1906] 2 Ch 143 to the effect that a court would only order specific performance of a statutory contract for the compulsory sale of property after the point at which the purchase price and other matters have been ascertained. By parity of reasoning, argues D2, the Section 19 Order cannot have created a proprietary right in the Property when it was made because there still remained terms to be ascertained. Accordingly, the Section 19 Order could at most have given rise to a proprietary interest in land following completion of the FTT Proceedings in April 2021. (This would also

be significant to D2's arguments on the priority of competing interests over the Property because it would mean that the Equitable Leases were granted before C1 obtained any interest in land by virtue of the Section 19 Order).

39. I reject that argument as based on a false comparison. I quite accept that a court might decline to grant the discretionary remedy of specific performance in relation to a statutory contract, or indeed any other contract, at a point when important terms remain to be ascertained. If a court is not prepared to grant the remedy of specific performance, it will necessarily decline to make an order compelling the transfer of the land in question. Yet in our case a court has made an order compelling D1 to transfer his freehold interest in the Property to C1. At the point when the Section 19 Order was made, D1 was obliged to transfer his freehold interest to C1 either on the same terms as D1 originally acquired his interest or on such other terms as the FTT might specify.
40. That introduces D2's next objection, namely that by s14 of the 1987 Act, C1 has a statutory right to withdraw from the transaction. Therefore, looking at matters when the Section 19 Order was made it could not be said that the Property would definitely be conveyed to C1. Conceptually, C1 might not like the terms that the FTT fixed and exercise its right to withdraw. I see little force in that argument either. At most it suggests that, if C1 chooses to exercise its right to withdraw, any interest that it has in the Property will fall away. It is not inconsistent with C1 having an interest in land up to the point, if any, at which it chooses to withdraw.
41. D2 also emphasises the absence of any statutory provision to the effect that an order under s19 is to be an interest in land. He points out, for example, s31(2) of the Family Law Act 1996 which provides expressly that matrimonial "home rights" are to be a charge on the relevant estate or interest in land. In a similar vein, he points out that, by s3(4) of the Charging Orders Act 1979, a charge imposed by a charging order is to "have the like effect and... be enforceable in the same courts and in the same manner as an equitable charge created by the debtor by writing under his hand". However, I consider that this sheds relatively little light on the issue. When Parliament creates particular rights by statute, I accept that it is significant whether it expresses those rights to take effect as an interest in the land concerned. That is particularly important given the provisions of s4 of the Law of Property Act 1925 (the "LPA"). However, any rights to land that are created by the Section 19 Order were created by the county court's decision to make such an order, and not by Parliament. It follows that little significance attaches to the fact that Parliament has not expressly stated that an order under s19 of the 1987 Act is to constitute an interest in land. Moreover, even though the 1987 Act was obviously enacted after 1925, C1's right conferred by the Section 19 Order, to obtain a transfer of the freehold interest in the Property, is not a "new" specimen of equitable rights created after 1925. The proposition that a right to acquire land amounts to an interest in land was in existence well before the LPA was enacted.
42. My conclusion is that the Section 19 Order constituted an interest in land from the moment it was made.

## The question of priorities

43. It follows from this that there are presently two categories of equitable interest subsisting over the Property:
- i) there is C1's interest under the Section 19 Order. That interest was created on 25 October 2019 and is the subject of a notice registered against the freehold interest;
  - ii) there are D2's interests under the two Equitable Leases. Those interests were created after C1's interest under the Section 19 Order and are not currently the subject of any notice registered against the freehold interest.
44. It is common ground that, unless either (i) D2 is in "actual occupation" or (ii) D2 has registered a notice in respect of the Equitable Leases against the freehold title when D1 transfers the freehold interest to C1 pursuant to the Section 19 Order, C1 will take free of D2's interest under the Equitable Leases.
45. The issue addressed in this section is what the position would be if D2 is either in actual occupation, or has registered a notice against the freehold interest, at the time D1 transfers the freehold interest to C1. Both the Claimants and D2 proceed on the basis that the analysis if D2 is in "actual occupation" at the relevant time is the same as the analysis if he has registered a notice against the freehold title. I will therefore refer to the two different situations generically as situations in which D2's interests in the Equitable Leases are "protected".
46. The parties agree that the answer to the question of priority is to be found somewhere in sections 28 and 29 of the LRA which provide, so far as material, as follows:

### ***28 Basic rule***

*(1) Except as provided by sections 29 and 30, the priority of an interest affecting a registered estate or charge is not affected by a disposition of the estate or charge.*

*(2) It makes no difference for the purposes of this section whether the interest or disposition is registered.*

### ***29 Effect of registered dispositions: estates***

*(1) If a registrable disposition of a registered estate is made for valuable consideration, completion of the disposition by registration has the effect of postponing to the interest under the disposition any interest affecting the estate immediately before the disposition whose priority is not protected at the time of registration.*

*(2) For the purposes of subsection (1), the priority of an interest is protected—*

*(a) in any case, if the interest—*

*(i) is a registered charge or the subject of a notice in the register,*

(ii) falls within any of the paragraphs of Schedule 3,  
or

47. The Claimants argue that s28 provides the answer. They submit that s28 preserves the rule that competing equitable interests in land rank in the order in which they were created. C1's interest under the Section 19 Order was created before D2's equitable interest under the Equitable Leases. Accordingly, when C1 acquires the freehold interest in the Property pursuant to the Section 19 Order D2's interests under the Equitable Leases, even if protected, will be postponed to C1's interest.
48. D2 disagrees. He argues that no question of priority as between competing equitable interests arises and so s28 cannot provide an answer to the outcome of such a competition. Rather, on D2's analysis, the first question is what happens when D1 conveys the freehold to the property to C1. The answer to that question is found in s29. Since the transfer of the freehold to D1 is for valuable consideration, and since both the interest arising under the Section 19 Order and the interests arising under the Equitable Leases are "protected" in the requisite sense, s29 provides that both equitable interests run with the freehold estate. C1's rights under the Section 19 Order are then extinguished with those rights merging into the freehold title that C1 acquired (see *Re Selous* [1901] 1 Ch 921). The end result is that C1 takes the freehold title subject to D2's rights under the Equitable Leases.
49. For the following reasons, in my judgment, the analysis of the Claimants is to be preferred.
50. At [25] of his judgment in *Halifax v Curry Popeck* [2008] EWHC 1992, Norris J analysed s28 of the LRA as follows:

*As is explained in Ruoff and Roper, Law and Practice of Registered Conveyancing, 2008 edition, at paragraph 15.025:*

*The effect of the basic priority rule in section 28 is that the priority of competing equitable interests affecting a registered estate or charge is determined by the order in which they were created. A later disposition which creates a subsequent equitable interest will not affect the priority of a prior equitable interest which affected the registered estate or charge. Under the general law, competing equitable interests in property generally ranked in the order in which they were created provided that the equities were equal. The conduct of the holder of the prior equitable interest might disentitle him from asserting priority over the later equitable interest."*

*The effect of section 28 is to maintain the rule under the general law that the priority of competing equitable interests was determined by the order in which they were created. However, it removes the qualification that priorities might be changed if the holder of the prior equity was at fault.*

51. It was not suggested that I should interpret s28 differently from Norris J and I will therefore follow his approach.

52. D2's analysis proceeds on the basis that the above effect of s28 is somehow "switched off" because the transfer from D1 to C1 is for valuable consideration so as to engage s29. I do not accept that proposition. Section 28, as Norris J held, maintains the general law rule to the effect that the priority of competing equitable interests was determined by the order in which they were created. A transfer for valuable consideration falling within s29 does not "switch off" that rule. Rather, s29 provides for a different priority in cases to which it applies. Importantly, s29 is concerned with the priority of equitable interests affecting a registered estate that are not "protected" where the registered estate is transferred for valuable consideration and completed by registration.
53. Here, we are concerned with a situation where, applying the hypothesis in paragraph 45. above, the equitable interests in question are are "protected". The interest arising under the Section 19 Order is the subject of a registered notice against the freehold title. The Equitable Leases are assumed, for the purposes of this section, to be protected either by a notice being registered or by D2 being in "actual occupation". Section 29, accordingly, does not disturb the basic rule of priority that is to be found in s28.
54. Accordingly, the answer to the question of priority is given by s28 and the only remaining task is to determine what that answer is. The effect of the judgment of Norris J in *Curry Popeck* is that the equitable interest arising under the Section 19 Order is to have priority over the interest arising under the Equitable Leases. The very reason why the Section 19 Order creates an equitable interest in land is because it requires D1 to convey the freehold estate in the Property to C1. Yet on D2's analysis, the freehold estate conveyed pursuant to the Section 19 Order would be encumbered by the Equitable Leases despite the Section 19 Order having priority over the Equitable Leases. In my judgment, that cannot be the correct outcome. It is the very antithesis of the Section 19 Order having priority over the Equitable Leases.
55. In testing that conclusion, I asked the parties for their submissions on a possibly analogous situation. Suppose that A holds registered freehold land and contracts to sell it to B with B registering a notice in respect of the resulting estate contract against A's freehold title. After contracting to sell the land to B, but before completion of that sale, A enters into a later contract to sell the same land to C with C also registering a notice in relation to the resulting estate contract. After C has registered that notice, A honours the contract with B by executing a Form TR1 transferring the property to B.
56. On that transfer, both B's and C's interests are protected by registration of a notice at HM Land Registry. Moreover, s28 provides that B's equitable interest is to take priority over that of C. D2's proposed analysis would, if correct, apply to this situation as well and would result in B taking the freehold title subject to C's interest.
57. That outcome would, in my judgment clearly be anomalous. D2 evidently agreed because he submitted that, even on his interpretation, B would take free of C's interest. He argued that no court would grant specific performance of the later contract (between A and C) since A had already contracted to sell that land to B. Therefore, reasoned D2, the contract between A and C was not capable of creating any interest in land.



58. I am not persuaded by that reasoning. It is not necessary, in order for a contract to create an interest in land, for the remedy of specific enforcement definitely to be available. As explained in paragraph [32] of Lord Walker's speech in *Jerome v Kelly* [2004] UKHL 25, the nature of the equitable interest of a purchaser of land pursuant to an uncompleted contract is complicated. It is not the same as an immediate irrevocable declaration of trust over the land, but is more nuanced. The purchaser's equitable interest reflects the fact that beneficial ownership of the land "is in a sense split between the seller and buyer on the provisional assumptions that specific performance is available and that the contract will in due course be completed". Accordingly, it is not "entitlement" to an immediate order for specific performance (which would be a misnomer anyway given that specific performance is a discretionary remedy) that gives a purchaser under an uncompleted contract an interest in the relevant land. Rather, the interest derives from the "assumption" that specific performance may be available. I see no reason why C would not have an interest in land in the sense outlined in *Jerome v Kelly*. Accordingly, I consider that the anomalous outcome that I have identified in paragraph 56. would arise on D2's interpretation of s28 and 29 of the LRA which is an indication that his interpretation is not correct.
59. D2 relied on anomalies in support of his interpretation. He postulated a scenario in which A agrees to sell land to B with the contract expressly permitting A to grant leases over the land in the interval between exchange and completion. If, as permitted by the contract, A grants an equitable lease to C, and both B and C protect their interests by notice against the freehold title, D2 argued that the Claimants' interpretation would produce an anomaly as, on registration of the transfer from A to B, B would take free of C's equitable lease.
60. I regard this asserted anomaly as being less pronounced than the anomaly I have outlined in paragraph 56.. Even if s28 and s29 of the LRA produce the outcome for which D2 argues (a matter on which I expressed no view) that would not be the end of the story. In D2's example, B would expressly have consented to C's lease being granted. If B sought to resile from that consent, the law could intervene.
61. D2's counterexample does, however, demonstrate that the matter cannot be conclusively resolved by a consideration of competing anomalies. Ultimately, I see nothing in the analysis of competing anomalies that calls into question the reasoning that I have expressed in paragraphs 49 to 54. above.

### C. THE INJUNCTIONS REQUESTED

62. The conclusions that I have expressed in Section B above might be said to render unnecessary any consideration of whether to make the final injunctions that the Claimants request. Even if D2 is not enjoined from protecting his interests under the Equitable Leases, on the analysis set out in Section B, C1 will take free of D2's interests.
63. However, I note that two experienced legal teams have sharply differing views on the issues I have considered in Section B. Neither side has been able to find any previous authority as to whether an order under s19 of the 1987 Act constitutes an interest in land. There must, therefore, be some possibility that the analysis in Section B is incorrect. Moreover, the analysis in that section focuses

only on the Equitable Leases given my conclusion in the Trial Judgment that it is an abuse of process for D2 to assert, in these proceedings, any interest arising under the 2014 Trust Deed. D2 has indicated that he will seek permission to appeal against my determination of that issue. If I ceased the analysis at the end of Section B, and declined to make final injunctions against D2, D2 would be able to protect his interest in the Equitable Leases (either by registering a notice or by going into actual occupation) and protect his interest under the 2014 Trust Deed (by going into actual occupation). If he took those steps and successfully challenged conclusions reached in Section B above and in the Trial Judgment, that might result in C1 acquiring the freehold interest in the Property subject to D2's equitable interest or interests.

64. It is right, therefore, that I consider whether the Claimants should be granted the kind of injunctions they seek. D2 argues that such injunctions should not be granted, on two bases. First, he submits that the actions proposed to be enjoined do not infringe any legal or equitable right that the Claimants have. Accordingly, he argues that the court's jurisdiction to make those injunctions is not engaged. Second, even if the court does have jurisdiction to make the injunctions, D2 argues that in all the circumstances of the case the discretion should not be exercised.

#### **Whether the court has jurisdiction**

65. In his skeleton argument on behalf of the Claimants, Mr Walsh quoted from paragraph 18-008 of *Snell's Equity* (34<sup>th</sup> Edition) in support of his argument that the court has jurisdiction to make the final injunctions that the Claimants seek. That paragraph reads as follows:

*A perpetual injunction is granted only at the instance of a person who has a right (including a statutory right) which is justiciable before the court. For these purposes, there will be a sufficient right (i) if the claimant has a present cause of action against the defendant; or (ii) if the claimant would have such a cause of action, were the defendant to act as he threatens to do; or (iii) if the defendant is behaving (or threatening to behave) in an unconscionable manner. Although it is not necessary for a claimant to wait until his rights have been interfered with before he can seek an injunction, the court should be satisfied that there is a real risk of future interference. It will not normally be equitable to grant relief unless there is such a risk.*

66. In his oral submissions, Mr Walsh argued that the Trial Judgment demonstrated that D2 engaged in "industrial levels of dishonesty" to defeat the Claimants' rights under the 1987 Act. That prompted Mr Duckworth to argue, on behalf of D2, that the Claimants were impermissibly seeking injunctions against D2 based on an impressionistic analysis of aspects in which his behaviour was said to be "unconscionable". The true position, submitted Mr Duckworth, is that the Claimants have standing to request injunctions only if there is an invasion, actual or threatened, of a legal or equitable right. He submitted that the case footnoted in *Snell's Equity* as authority for the proposition that an injunction can be made to restrain "unconscionable" conduct was *British Airways Board and others v Laker Airways Ltd and others* [1985] 1 AC 58. In that case, however,

the “unconscionable” conduct referred to was, on closer inspection, conduct said to infringe a legal or equitable right not to be sued in the US courts.

67. In my judgment, the Claimants plainly have standing to request injunctions restraining D2’s ability to protect equitable interests in the Property. C1 has the right to require a conveyance of the freehold interest in the Property that is set out in the Section 19 Order. This is not a case like *Day v Brownrigg* (1878) 10 Ch. D 294, in which a claimant who lived at “Ashford Lodge” sought to restrain his neighbour from calling his house “Ashford Villa” even though that would not infringe any legal or equitable right. Having granted the Equitable Leases after the Section 19 Order was made, with a purpose of devaluing the freehold interest that C1 was entitled to acquire (see [139] of the Trial Judgment), D1 and D2 between them are seeking to “invade” C1’s rights. That invasion can be effective only if D2 is able to protect the Equitable Leases either by registering a notice against the freehold title or by going into actual occupation. The Claimants have standing to request the court to restrain D2 by injunction from taking these steps.
68. D2 seeks to escape from that conclusion by arguing that, instead of seeking injunctions, the Claimants should be seeking orders under s12B(5) of the 1987 Act to the effect that C1 will take the freehold interest in the Property free of D2’s equitable interests, whether those interests are protected or not. D2 criticises the Claimants for, as he puts it, seeking to put a “square peg in a round hole” by seeking injunctions rather than an order under s12B(5).
69. I do not accept that argument. I agree with the general point that the Claimants could potentially have approached matters by seeking an order under s12B(5). However, the fact that this alternative remedy might be available does not of itself make it wrong for the Claimants to seek injunctions. After all, the court has already granted interim injunctions restraining D2 from taking certain steps to protect his asserted interests in the Property. The Claimants cannot fairly be criticised for asking the court to continue those injunctions (with modifications) on a permanent basis now that the trial has concluded.
70. Next D2 argues that there is no invasion or interference with the Claimants’ rights because there was no restriction on D1 granting interests in respect of the Property even after the Section 19 Order was made. Reliance is placed on paragraphs [20] and [21] of the Trial Judgment. However, that reliance is misplaced. The fact that there is no statutory restriction on new interests being granted after the making of the Section 19 Order does not mean that D1 and D2 have free rein to create whatever interests they choose in order to frustrate the effect of the Section 19 Order. By way of analogy, there is no statutory restriction on a potential defendant to civil proceedings dissipating assets as that defendant sees fit. However, a court can act by making a freezing injunction to prevent a defendant from depriving a future judgment of practical effect by unconscionable dissipation of assets.
71. I therefore reject D2’s argument that the Claimants lack standing, and the court lacks jurisdiction, to make the injunctions requested. On the contrary, I find that the court has discretion to make those injunctions and I now proceed to consider how the court should exercise that discretion.

**The exercise of the court's discretion**

72. D2 does not suggest that the court should decline to make the injunctions requested on the basis that damages would be an adequate remedy. D2 does, however, make a related argument. If D2 is able to protect his equitable interests in the Property with the result that they bind the interest that C1 acquires, D2 submits that it would be open to C1 to request an order under s12B(5) of the 1987 Act reducing the purchase price payable. That, D2 argues, would provide C1 with sufficient compensation for acquiring a freehold that is encumbered by D2's equitable interests.
73. I do not accept that argument. The FTT Proceedings have determined that the consideration payable by C1 is £125,000. Although it did not have valuation evidence, the FTT, an expert tribunal experienced in real estate valuation, estimated that the value of an unencumbered freehold interest in the Property would be in the order of £1 million to £1.5 million. It estimated that, if Flats 36C and 36E were subject to long leases, the freehold interest would be worth around £400,000. D1 and D2 chose not to co-operate to any significant extent with the County Court Proceedings or the FTT Proceedings. That conduct meant that the implications of the 2014 Trust Deed could not be considered during those proceedings. They granted the Equitable Leases only after the Section 19 Order was made in order to devalue the freehold that D1 had been ordered to convey to C1. Making an order under s12B(5) to reduce the purchase price, even to nil, would not compensate C1 for the loss of the unencumbered freehold that it could reasonably have expected to obtain following the County Court Proceedings and the FTT Proceedings.
74. D2 disputes the validity of that line of reasoning, arguing that C1 seeks a windfall, namely an unencumbered freehold interest in the Property worth in excess of £1 million but for a purchase price of only £125,000. He argues that it would not be a legitimate use of the court's discretionary injunctive powers to secure that windfall. However, the difficulty with that argument is that Parliament has, by statute, legislated to provide C1 with the prospect of the windfall that D2 considers objectionable. For whatever reason, SD chose to transfer a valuable property in Clapham at the significant undervalue of £125,000. Since he did so, the Claimants acquired rights under the 1987 Act to require D1 to convey the freehold in the Property to their nominee for a consideration of £125,000. Even if this can be referred to colloquially as a "windfall", it is nothing more than the result for which Parliament has legislated.
75. D2's next point is that, while the court can justifiably take a dim view of D2's untrue evidence relating to the dating of the Equitable Leases and the 2014 Trust Deed, the giving of that untrue evidence does not justify the making of draconian injunctions of the kind that the Claimants seek. If D2's equitable interests, appropriately protected, do bind the freehold interest that C1 is to acquire pursuant to the Section 19 Order, he argues that that consequence flows from statutory provisions relating to registered land irrespective of whether D1 and D2 have lied to the court in these proceedings or not. He notes that D2 has already been significantly penalised for the untrue evidence surrounding the date of execution of the 2014 Trust Deed since that has clearly weighed in the court's conclusion that it is an abuse of process for D2 now to assert an equitable interest under that trust deed, having failed properly to draw it to the

attention of either the county court or the FTT. It follows, D2 submits, that he should not be precluded from taking the benefit of those statutory provisions as a “punishment” for the untrue evidence that he and D1 have given.

76. D2 is correct to say that injunctions should not be granted simply as a “punishment” for D1 and D2’s untrue evidence to the court. However, I consider that the submissions I have summarised in paragraph 75. overlook the effect of D1 and D2’s calculated decision not to comply with the terms of the Section 19 Order.
77. To avoid criticism of the fact that D1 did not convey the freehold of the Property to C1 by 22 November 2019 as ordered, D2 seeks to portray the Section 19 Order as simply a prelude to a determination of applicable terms by the FTT. However, that characterisation is not accurate. The Section 19 Order (quoted in paragraph 32. above) makes it clear that D1 was obliged to convey the freehold interest in the Property to C1 either (i) on the terms on which D1 had acquired that interest from SD; or (ii) on such other terms as the FTT might direct. Item (i) was entirely within the knowledge of D1 and D2. Item (ii) was a matter for the FTT. However, the FTT would need, at the very least, a proper explanation of the terms of D1’s actual acquisition before it could consider imposing different terms.
78. Given that the Section 19 Order was made in those terms, D1 and D2 should have provided a full and truthful account of the terms on which D1 acquired his interest from SD. D1 should then either have transferred the freehold interest in the Property to C1 on those terms or sought to persuade the FTT that different terms should apply. However, instead D1 and D2 chose not even to provide the requisite truthful account of D1’s acquisition. Moreover, D1 failed to cooperate with the FTT Proceedings to such an extent that he was ultimately precluded from advancing any positive case (see [46] of the Trial Judgment).
79. This was not simply a matter of giving untrue evidence to the court. After the Section 19 Order was made, D1 and D2 strung out compliance with that order, including by failing to co-operate with the FTT Proceedings, so as to delay unjustifiably a transfer of the Property to C1 which the court had ordered D1 to execute. D1 and D2 used the time that they bought themselves with this conduct to mount a rearguard action against the Section 19 Order by executing the Equitable Leases in order to reduce the value of the interest that C1 was entitled to acquire pursuant to that order. That conduct is unconscionable not because the court disapproves of it on a moral level, but because it represents a concerted attempt to deprive the Section 19 Order of a good part of its intended effect. It is appropriate for the court to exercise discretion to make injunctions that would prevent this behaviour from achieving its desired result.
80. D2 notes that it was D1 who was, by the Section 19 Order, required to transfer the freehold interest in the Property to C1. Accordingly, he argues that any blame for not doing so should be attributed to D1 and D2 should not be made subject to an injunction because of D1’s default. I am quite unable to accept that argument. D1 and D2 are, as they both explained during the trial, good friends as well as business associates. D1 currently holds the Property as trustee for D2 pursuant to the 2014 Trust Deed. D1 acted as he did with a view to advancing D2’s interests. It is appropriate for D2 to be restrained by injunction from taking the benefit of machinations of which he was the intended beneficiary.

81. I therefore regard it as equitable in principle for the court to continue the interlocutory injunctions that have been made thus far in the High Court proceedings until D1 complies with the Section 19 Order by conveying the freehold title to the Property to C1. D2 argues that I should not extend those injunctions by prohibiting him from going into actual occupation of Flat 36C and/or Flat 36E. However, he has not put forward any evidence demonstrating that he would suffer hardship if such an injunction were made. I am not satisfied, therefore, that D2 would be homeless if he were not allowed to live in Flat 36C or Flat 36E. He has not been living in either flat during the currency of the High Court proceedings and indeed these proceedings commenced because D2 was marketing the two flats for sale. Given the propensity that both D1 and D2 have already shown for seeking to frustrate the effect of the Section 19 Order, I regard both a continuation of the existing injunctions, and an extension of those injunctions to prevent D2 from going into actual occupation, to be a proportionate and equitable remedy.
82. In his oral submissions on behalf of the Claimants, Mr Walsh suggested a further basis on which the court might make the injunctions he seeks. He argued that, applying the principle of *Welwyn Hatfield Borough Council v Secretary of State for Communities and Local Government* [2011] 2 AC 304, D1 and D2 would be misusing the relevant provisions of the LRA if permitted to rely on those provisions to protect D2's interests under the Equitable Leases. This argument seems to me to raise a quite difficult question of statutory construction namely whether, properly construed, s32 of the LRA and/or Schedule 3 of the LRA would deny D2 the benefit of protection of the Equitable Leases in the circumstances of this case. I do not need to address this argument since, for the reasons I have already given, an injunction is amply justified by reference to the conduct of D1 and D2.

## DISPOSITION

83. The conclusions that I have set out above make it unnecessary for me to consider in addition whether to make any order under s12B(5) of the 1987 Act. Moreover, apart from some details as to the form of order, few of the points that bear on Together's interests summarised in paragraph 10. above have actually arisen and so I do not consider it necessary to seek further written submissions from Together.
84. I will leave the parties to seek to agree the precise form of an order and flesh out the details, but I consider that some salient features should be as follows:
- i) D1 must convey the freehold title to C1 within a reasonably short period. That transfer must take the form of a Form TR1 whose provisions are in all material respects identical to those of the Form TR1 dated 7 May 2014 by which SD conveyed his freehold interest in the Property to D1.
  - ii) The consideration payable is £125,000. The mechanism for payment of that £125,000 must respect the rights of Together as provided for in the 1987 Act.
  - iii) If D1 fails to execute the Form TR1 within the stipulated time period, a specified partner or partners at the Claimants' solicitors (or perhaps the

court itself) should be authorised to execute it on D1's behalf.

- iv) Until the Form TR1 is executed, the existing injunctions granted on an interlocutory basis against D1 and D2 shall continue.
  - v) In addition, D2 is to be restrained from going into "actual occupation" of Flat 36C or Flat 36E. To the extent that this injunction applies to D2's agents, the interests of Together in the formulation of that injunction will need to be reflected given the points made in paragraph 10.v) above.
85. There will also need to be other orders, for example dealing with costs and any application for permission to appeal that any party wishes to make. My clerk will be in touch with the parties with a view to making some directions permitting both these issues and the form of the order to be settled.