

BETWEEN:

BLEMAIN FINANCE LIMITED

Claimant

And

(1) STEVEN JOHN CUGLEY

(2) IAN KEITH GOULDING

Defendant

DRAFT JUDGMENT

1. This is a case in which Mr Goulding, the Second Defendant, applies to set aside an order made by Deputy District Judge Cronin on 20 January 2009 giving the claimant, Blemain Finance Limited, the Claimant (“Blemain”), possession of Green Pastures, Churchend Lane, Charfield, Wooton-under-Edge, Gloucestershire (“the Property”).
2. Mr Cugley, the First Defendant, is the registered proprietor of the Property and, on 27 July 2007 granted a legal charge on the property to Blemain. Mr Cugley has not defended the proceedings brought by Blemain.
3. Mr Goulding claims an overriding interest in priority to Blemain’s rights as mortgagee, on the basis that Mr Cugley held the Property on trust for a third party, Mrs Burrige, who granted Mr Goulding an interest in the property, and on the further ground that Mr Goulding was in actual occupation of the Property when Blemain’s legal charge was granted.
4. Blemain contends that Mr Goulding did not have any interest in the Property when its legal charge was granted.

The Issues

5. In an order of District Judge Exton, dated 11th February 2011, the following issues were identified for resolution:

“(a) What interest (if any) does Beverley Jane Burridge have in the Property?”

“(b) What interest (if any) does the Second Defendant have in the Property?”

*“(c) Whether there is a subsisting leasehold interest held by Limeheath Limited?
[Subject to the Claimant’s application to strike out]”*

“(d) If any interest(s) are found under a), b) or c) above, do the owners of the interest(s) have priority over the interests of the Claimant in the Property?”

6. The parties are agreed that issue (c) does not arise because, in the same Order, paragraph 8 of Mr Goulding’s defence was struck out. Furthermore, issue (a) no longer arises in the light of the concession made by Mr Adams, counsel acting on behalf of Mr Goulding, to the effect that the disposition to Mr Cugley was void by virtue of s. 284(1) of the Insolvency Act, as a result of which he could not have granted an interest to Mrs Burridge.

7. At the conclusion of the evidence I invited counsel for both parties to agree a more detailed List of Issues. Both Mr Adams and Mr Levy, on behalf of Blemain, provided separate Lists of Issues. Prior to the making of submissions they tentatively agreed a List of Issues entitled “Provisionally Agreed List of Issues”. I say “tentatively” because Mr Levy also adhered to his original List of Issues in case the Provisionally Agreed List of Issues did not contain all those issues set out in his initial list. During the course of submissions it did not become apparent that there were any additional issues which were not set out in the Provisionally Agreed List of Issues, save for one issue relating to Blemain’s subrogated claim.

8. The Provisionally Agreed List of Issues was as follows:

“The overall question for the court is can Blemain establish a better right to possession than Mr Goulding? In answering this question the court must consider

both the legal and beneficial interests in the property at the time Mr Cugley executed a charge in favour of Blemain:

- 1. Had the TIB's interest re-vested in Mr Goulding before the execution of the charge in favour of Blemain? In particular:*
 - 1.1. did Mr Goulding occupy the Property as his sole or principal residence at the date of his bankruptcy?*
 - 1.2. what was Mr Goulding's interest in the Property for the purpose of section 283A IA1986?*
 - 1.3. can Blemain (or Mr Goulding if the burden lies on him) establish that the TIB did not become aware of such interest until after 27th July 2004? There being an issue as to where the burden lies.*
- 2. If the TIB's interest had re-vested before 27th July 2007, then the questions are:*
 - 2.1 Did Mr Goulding execute the consent form?*
 - 2.2 Does section 58 LRA 2002 give Blemain a good legal title?*
 - 2.3 If so does Mr Goulding's beneficial interest override Blemain's interest by reason of his actual occupation? In particular can Blemain establish it made appropriate enquiries of Mr Goulding and that he failed to disclose his interest on inquiry?*
- 3. If it did not, then does section 86 LRA 2002 apply to the relative priorities of the TIB's and Blemain's titles?*
- 4. If section 86 applies, can Blemain prove it had no notice, actual or constructive of the bankruptcy petition or the adjudication pursuant to section 86 Land Registration Act 2002?*
- 5. If section 86 does not apply, did Blemain otherwise obtain good legal title to its charge?*

6. *If Blemain's registration as proprietor defeated the TIB's legal title, was Mr Goulding's occupation representative of the TIB?*
7. *If yes did the TIB's beneficial interest in the Property take priority over Blemain's charge as a result of Mr Goulding's occupation?*
8. *Alternatively was Mr Goulding's contingent interest in having the property re-vested in him pursuant to section 283A an interest in the Property capable of overriding Blemain's charge?*
9. *If yes did such interest take priority over Blemain's charge as a result of Mr Goulding's occupation of the Property? In particular can Blemain establish it made appropriate enquiries of Mr Goulding and that he failed to disclose his interest on inquiry?"*

The Evidence

9. The only witnesses called to give oral evidence were Mr Goulding who relied for his evidence in chief upon a witness statement, dated 2 January 2013; and Mr Lawton, for Blemain, who relied upon his statement, dated 5 March 2013.
10. Both parties have served statements without calling the makers of those statements, and without serving Civil Evidence Act notices. Counsel for both parties agreed that the statements could be read and that the court could give such weight to the statements as it thought fit. Mr Goulding relies upon an undated statement of Mrs Burridge which he says was drafted by other Counsel than Mr Adams, and that he, Mr Goulding, wrote the statement in manuscript. He says the statement was signed by Mrs Burridge. In the statement she states that she agreed to purchase the Property from Mr Goulding in 2002, but was unable to obtain finance due to the fact that she lived outside of the UK. Her financial interests in the UK were managed by Mr Potter-Daniels with assistance from Mr Goulding. She says that she paid a deposit of £70,000 towards the purchase of the Property which was carried out in the name of Mr Cugley who held the Property in trust for herself. In addition to the deposit she paid the sum of £10,000 towards the purchase costs. The payments to the mortgage taken out by Mr Cugley were paid by one of Mrs Burridge's companies with, since 2005, a contribution from Mr Goulding.

11. Blemain relies upon the statement of Mr Cugley which states that he purchased the Property on 12 February 2003 by way of a mortgage with Northern Rock plc and a deposit of £80,000 “funded through the business I jointly owned with Mr Goulding”. He states that he was unaware of any Deed of Trust with Mrs Burridge and that he did not sign such a document. At the time of the purchase he was aware that Mr Goulding was in financial difficulties and that bankruptcy proceedings had been brought against him. He understood that Mr Goulding wanted to sell the property quickly as a result of his financial position. He wants the Property to be sold so that the mortgages with Northern Rock and Blemain can be repaid.
12. The spectres of Mr Cugley and Mrs Burridge have hung over this case and it is remarkable that neither of them have been called as witnesses. One might understand why Mr Cugley would not be called by Mr Goulding given that there is a clear conflict between them. Blemain could have called Mr Cugley although they might well have been concerned that he would be cross examined as to the genuineness of the alleged signature of Mr Goulding on the Consent Form, dated 18 July 2007. However, it is very difficult to understand why Mrs Burridge has not been called to give evidence on behalf of Mr Goulding given the importance of her evidence to his case. Given the fact that neither witness has been called to give evidence and subjected to cross-examination, and given that Mrs Burridge's statement was written by Mr Goulding himself, I find that I am unable to give any weight to the two statements submitted in evidence.
13. Mr Cugley is the son of Roger Cugley who was a director of Ellacombe Ltd which ran Fromebridge Garage in which Mr Goulding was involved. Steven Cugley and Mr Goulding together instructed Davies & Partners to act as solicitors in the transfer of the Property within one month of the presentation of the petition of bankruptcy. The instruction of one solicitor to act on behalf of both men, and the urgency of the transaction, were clearly unusual if the matter had been an arms length transaction.
14. Mr Lawton gave evidence on behalf of Blemain. He had no personal knowledge of the transaction and his evidence was solely based upon his reading of Blemain's files

and those maintained by its solicitor, and upon his knowledge of Blemain's procedures.

15. Mr Goulding's evidence was overshadowed by the fact that he had, on his Counsel's own admission, concealed his interest in the Property from the Trustee in Bankruptcy, and had stated in his examination in September 2004 for the purposes of his bankruptcy, and in his Defence in these proceedings, that he had not lived at the Property until 2005, a fact which he sought to deny in his witness statement and in his oral evidence, contending that he has lived at the property since 1980. He has shown himself as someone who is quite prepared to mislead others in order to achieve his own ends. For, example, he was asked in cross examination about the examination in September 2004 and his response to the question as to why Mr Cugley bought the Property from Mr Goulding in 2003. He had responded that Mr Cugley wanted to buy it for his son and that he, Mr Goulding, was advised that that was in order providing it was sold at market value. In evidence before me he accepted that he had not mentioned in the examination that the Property was held in trust by Mr Cugley in favour of Mrs Burridge and was unable to give any credible answer as to why he had not mentioned that fact and the existence of the Deed of Trust, as now contended by Mr Goulding, but had replied with a lie that Mr Cugley had bought the Property for his son.
16. I conclude that the evidence of Mr Goulding has to be treated with considerable circumspection.
17. The names of other individuals arise in the evidence. First, Mr Potter-Daniels who, according to Mr Goulding, was in the motor trade and became company secretary of Limeheath Ltd when Mr Goulding was made bankrupt. He died on 12 July 2005. Second, Naomi Poslett who is the wife of Paul Cugley, who is Steven Cugley's brother.
18. In addressing the factual issues and in reaching conclusions in respect of the disputed facts I have given weight to contemporaneous documentation insofar as it has not been challenged as being not genuine. I have also had regard to any inherent probabilities or improbabilities.

19. I have been asked by Mr Adams to carry out comparisons of handwriting and signatures on the basis that there are readily apparent differences in Mr Goulding's signatures on various documents. Neither party has sought to call a handwriting expert. I am unable to step into that role and it would be wrong for me to do so. I am very much aware of the dangers of passing any judgment on the genuineness of any sample of handwriting or a signature. However, whilst bearing in mind those dangers, I have given consideration to the genuineness of Mr Goulding's signature on the Occupier's Consent Form.
20. In the following account of the facts I have included my findings of fact and my observations on the evidence where the facts are in dispute.

The Facts

21. Title to the Property was originally in Mr Goulding's name. He says in his statement that he has lived at the Property since 1980. I am unable to comment upon the accuracy of the statement in respect of the period prior to 2002 and 2003. However, I find, for the reasons set out below, that he was not living in the Property in 2003 as his sole or principal residence, and did not take up occupation of the Property until 2005.
22. By January 2002, on his own admission, Mr Goulding was in severe financial difficulty owing significant sums to HMRC which he had been unable to pay following a settlement with them. The difficulties of his situation are demonstrated by the letter from Girobank to Mr Goulding, dated 17 January 2002, in which it was stated that: "we are at a make or break moment in time".
23. By 2002 Mr Goulding knew he was on the verge of bankruptcy and took some steps to divest himself of his assets. Blemain contend that he sought to put his assets (or their value) beyond the reach of his creditors.

24. Mr Goulding says Mrs Burridge had a charge on his properties, including Green Pastures. He says he gave her the charge in April 2002 because he had borrowed from her for business purposes. He says that Mrs Burridge is a long-standing close friend whom he has known over 30 years and who lives in Crete. He was a mandated signatory on a Natwest Bank account in the name of “Mrs B J Burridge TPM” (account no. 41683595). Mr Goulding signed cheques on that account and received the bank statements for the account. He said that he owed her over £150,000. She knew he was in financial trouble but he said that he probably did not make it clear to her that bankruptcy was threatened.
25. Mr Goulding says that he agreed to sell the Property to Mrs Burridge in June 2002 but that she was unable to obtain a mortgage because she lived abroad. He says Mr Cugley agreed to buy it instead, and to obtain a mortgage, on the basis that Mrs Burridge would pay the deposit money, costs and monthly mortgage payments, and that the Property would be held on trust by Mr Cugley for Mrs Burridge.
26. Mr Goulding says he also sold a property, 11 Cottonwood Drive, to Mr Cugley’s father, Roger Cugley, in June 2002 for £59,000, and paid £10,000 to Mrs Burridge which she had originally contributed towards the deposit for the purchase of the property. It was alleged by the Trustee in Bankruptcy that this sale was at undervalue.
27. In August 2002 Mr Goulding mortgaged the Property to GMAC-RFC Limited to secure a loan of £245,930 which he used to refinance his existing mortgages with Bank of Scotland and Girobank, and to raise an extra £50,930. This was paid to Mrs Burridge. At the same time he sold part of the land at the rear of the Property for £11,500.
28. Prior to 2002 the Property was unregistered land. First registration of title at the Land Registry took place on 12 August 2002 with Mr Goulding being registered as proprietor.

29. On 24 October 2002 HMRC presented a bankruptcy petition against Mr Goulding. Within a week, on 1 November 2002, he and Mr Cugley contacted Roger Gibbs, solicitor of Davies & Partners, and both instructed Mr Gibbs to prepare a contract for Mr Goulding to sell the Property to Mr Cugley for £249,000 with a £1,000 deposit. Mr Gibbs noted being told that Mr Goulding had outstanding debts to Girobank and the Revenue and both could make him bankrupt, and that exchange on the Property was to take place as soon as possible. On 4 November 2002 Mr Gibbs recorded that Mr Cugley was to rent the Property back to Mr Goulding under a shorthold tenancy following completion. Subsequently the purchase price was increased to £320,000.
30. On 25 October 2002 Mr Goulding paid £22,000 to Mrs Burridge allegedly in respect of equipment that was stolen belonging to Mr and Mrs Burridge and which had been the subject of an insurance settlement.
31. It was put to Mr Goulding that Mrs Burridge was simply a name by which he could keep money out of the hands of his creditors, and that she acted as a nominee or puppet. He denied the allegation and said that she was owed money by him. However, it is clear that by November 2002 Mr Goulding had sold assets to Mrs Burridge and that she had put them into Limeheath Limited, a company over which Mr Goulding was given a power of attorney by Mrs Burridge. Mr Levy observes that in total £82,000 was paid by Mr Goulding to Mrs Burridge between June and October 2002.
32. On 6 November 2002 a £1,000 deposit was paid to Davies & Partners. On 21 November 2002 the Property was valued for Northern Rock at £320,000.
33. On 27 January 2003 Mr Gibbs noted that Mr Goulding would be giving vacant possession of the Property. On 28 January 2003 Mr Cugley paid Davies & Partners £50,000. On 29 January 2003 Mr Gibbs noted the condition that Mr Cugley's own mortgage would be repaid. The outstanding sum was £65,000. If the sale was to proceed on that basis another £90,000 would be required. Later that day he noted that the extra money could not be raised, so that the £50,000 was to be repaid. It was sent

back to Mr Cugley the same day. On 3 February 2003, however, Northern Rock confirmed it would not require the Abbey National mortgage to be repaid.

34. On 4 and 5 February 2003 Mr Cugley and Mr Goulding signed letters confirming to Davies & Partners that they wished to proceed with the sale, with Mr Cugley obtaining a Northern Rock mortgage, and that vacant possession would be provided by Mr Goulding. Mr Goulding signed the contract of sale and transfer on 5 February 2003. He gave Mr Gibbs a bankers draft payable to Davies & Partners for £80,000 issued by National Westminster Bank, Chepstow. Mr Goulding told Mr Gibbs there was an unregistered second charge on the Property to Mrs Burridge and the balance of the sale proceeds were to go to her bank account in Greece.

35. Mr Goulding says that the £80,000 came from Mrs Burridge. He has produced a poor copy Natwest Bank statement for an account of Mr and Mrs Burridge showing an £80,000 banker's draft was issued. £78,000 of that money appears to have come from account no. 41683595 being the account on which Mr Goulding was a mandated signatory.

36. Mr Goulding says that Mr Cugley signed a deed of trust dated 6 February 2003 agreeing to hold the Property on trust for Mrs Burridge. Mr Cugley denies that he signed such a deed. Blemain does not accept this document is authentic. Davies & Partners have confirmed they were not told about it and did not draft it. That was accepted by Mr Goulding in cross-examination. In evidence Mr Goulding said that it was drawn up by Mr Potter-Daniels. He also said that Mr Cugley got nothing financially out of the arrangement. He denied that the deed of trust was created much later on in time in order to show that Mrs Burridge had a beneficial interest in the Property. It is, indeed, remarkable that the deed of trust was not mentioned to Davies & Partners or drawn up by them if, indeed, it was created in February 2003. I find it so improbable that a deed of Trust would be drawn up by a person and not mentioned to the solicitor acting on behalf of the main protagonist that I am satisfied that the deed of trust was drafted much later than the date given to it, although if Mr Potter-Daniels signature is authentic it must have been completed before his death on 12 July

2005. I am also satisfied that the intention behind the trust document was to ensure that the asset was placed under Mrs Burridge's name in order to avoid the asset falling into the hands of the Trustee in Bankruptcy. That is the only logical conclusion resulting from Davies and Partners lack of knowledge of the deed, the urgency in completing the sale following the presentation of the Petition, and Mr Goulding's failure to mention the Trust Deed or that the Property was held on trust when examined for the purposes of his bankruptcy in September 2004. Indeed, in closing submissions Mr Adams accepted that the evidence pointed towards "warehousing" of Mr Goulding's assets.

37. On 11 February 2003 Mr Gibbs noted that Mr Goulding wanted to complete the sale of the Property and was "trying to do a deal with the Inland Revenue to withdraw the mortgage [sic] petition".
38. There is a document dated 11 February 2003 on notepaper headed Limeheath Ltd which is signed by Mrs Burridge and Mr Goulding, and witnessed by Mr Potter-Daniels as company secretary. It states:

"Since your resignation as an officer of the company for personal reasons we need to confirm the way forward. You have agreed to work part time for Limeheath as necessary for a wage of £72.80p per week. You will manage the day to day running of the company generating income to service the Northern Rock loan on Greenpastures and repay the eight year loan on Oak Lane Fishponds. In return for this I agree to you living at Greenpastures (sharing with me when I am there) free of rent. In addition to which I agree at the end of each successful year to give you a £5000 stake in the purchase deposit paid on Greenpastures up to a maximum of period of seven years".
39. The document was not relied on in Mr Goulding's Defence in any way and was not disclosed to Blemain until 2013. In his Defence Mr Goulding did, however, rely on a letter of October 2005 (see paragraph 7 of the Defence). Mr Levy, on behalf of Blemain, argues that the document was created at a much later date in an attempt to demonstrate that Mr Goulding had a pre-2005 interest in the Property, thereby enabling him to take advantage of the extension provisions of s. 283A(5) of the

Insolvency Act 1986. Mr Goulding, however, denied that it had been created at a later date.

40. In my judgment this document, dated 11 February 2003, is linked to the Deed of Trust of 6 February 2003 and is a further attempt to evidence the transfer of the equity in the Property back to Mr Goulding from Mrs Burridge for whom Mr Cugley allegedly held the Property on trust. I am not satisfied that the document was in fact created in February 2003 as the document suggests, if it had been it would have been relied on in the Defence and would have been disclosed at an early stage of these proceedings.
41. On 12 February 2003 the proceeds of the mortgage arranged by Mr Cugley with Northern Rock of £250,500 were received by Davies & Partners. The transfer of the Property to Mr Cugley and the mortgage to Northern Rock were dated the same day. The transfer contains no declaration of trust.
42. After payment of the GMAC mortgage (£263,626), stamp duty, costs and expenses, a surplus (£55,798.25) remained. Mr Goulding faxed details of Mrs Burridge's bank account in Crete to Davies & Partners who sent the surplus by CHAPS transfer to that account on 14 February 2003.
43. On the same day, 14 February 2003, Mr Goulding was made bankrupt on the petition of HMRC.
44. There exists a lease of the Property, dated 4 November 2003, for a 5 year term from Mr Cugley to Mr Goulding. Mr Goulding says this document was not signed by him and has been fabricated. For the reasons set out below I am not satisfied that Mr Goulding has proved the lease to be a fabrication.
45. On 9 September 2004 Mr Goulding was interviewed by agents acting for his trustee in bankruptcy. A transcript of the interview has been included as an exhibit to the

statement of Mr Lawton and Mr Goulding has been cross examined on several passages in the examination, and I have referred to those passages in this Judgment.

46. On 24 November 2004 a loan agreement to borrow £44,750 from Southern Pacific Personal Loans Limited was signed in the name of Mr Cugley giving the Property as his address. A mortgage of the Property was also signed and registered as a second charge.
47. On 1st April 2005 Mr Goulding was discharged from his bankruptcy.
48. There exists a lease of parts of the Property dated 4 May 2005 for a 7 year term from “The Trustee of Greenpastures” to Limeheath Limited and “associated companies owned by” Mrs Burridge. The lease was purportedly signed by Mr Cugley, Mr Goulding and Mrs Burridge. Blemain does not accept this document is authentic, arguing that it was created at a later date in order to provide a case whereby Limeheath Ltd could argue that it had an interest in the Property which was an issue identified by DJ Exton, but now not relevant following the dissolution of Limeheath Ltd. Mr Goulding contends that the document was a means of trying to reduce a tax liability. For the purpose of this application I do not have to decide upon the authenticity of this document.
49. There also exists a letter dated 11 October 2005 from Mrs Burridge to Mr Goulding. Mr Goulding relies on this letter as showing that he acquired an interest in the Property from Mrs Burridge. It has no address for the sender except “Limnes Crete” and reads as follows:

“Dear Ian

Further to our recent discussions, I confirm our agreement.

1. I hereby appoint you a trustee of the property of Greenpastures, Churchend, Charfield, Wotton under Edge, Glos. With immediate effect (copy of the deed of trust enclosed).

2. *You agree to represent & look after my UK interested [sic] and business, contribute £150.00 per month towards the loan on Greenpastures (as you can afford payments). In return for this you will receive a 25% interest in the Net value of the property.*

Please sign and return the copy of this letter to confirm your agreement”.

50. The letter purports to have been signed by Mrs Burridge and Mr Goulding. Blemain argue that this document was created in order to enable Mr Goulding to recoup his interest in the Property from Mrs Burridge following the discharge from bankruptcy. I have no reason to doubt the authenticity of the signatures and it would appear that Mr Goulding did subsequently make various monthly payments of £150 towards the loan. However, those payments were made by cheques signed by Mr Goulding from the bank account bearing Mrs Burridge’s name, which merely serves to demonstrate that the bank account in Mrs Burridge’s name was used for the personal use of Mr Goulding. How this letter works with the purported agreement of 11 February 2003 has not been explained. It adds further doubt as to the intention behind, and the timing of, the agreement of 11 February 2003.
51. On 16 April 2007 Mr Goulding was given a power of attorney by Mrs Burridge to deal with her assets, including Limeheath Limited, which she owned.
52. Mr Goulding has produced a certified photocopy of Mrs Burridge’s passport issued on 9 December 2005 which includes an example of her signature. Whilst the document may prove the existence of Mrs Burridge, it does not in any way alleviate the concerns as to her precise role in her dealings with Mr Goulding. I have certainly seen no compelling evidence of her business interests in respect of which it is alleged that she was represented by Mr Goulding in the UK.
53. On 9 July 2007 a loan application seeking a secured loan of £70,000 on the Property was completed in the name of Mr Cugley giving his address as 18 Cottonwood Drive, Longwell Green and stating that he had been at that address for 1 year and 4 months.

A loan agreement with Blemain for a total loan of £74,328 was signed in the name of Mr Cugley the same day.

54. There exists an occupier's consent form dated 18 July 2007 purportedly signed by Mr Goulding and witnessed by Naomi Poslett of 11 Cottonwood Drive, by which Mr Goulding agreed to a mortgage being taken by Blemain on the Property as security for the proposed advance to Mr Cugley. Mr Goulding says this document was not signed by him and has been fabricated. He says that he was travelling to Germany on 18 July 2007 to attend the German Grand Prix when it was signed. I have seen a ticket for the Grand Prix. However, it does not bear the purchaser's name and does not preclude the signing of the form on 18 July 2007 before travelling to the Grand Prix. There is no other evidence to corroborate his contention that he was out of the country at that time. I have addressed the authenticity of the document below.
55. Mr Goulding says that he never met a valuer at the Property and that he would never have said that he was a tenant at the Property, because he was not. He was simply living at the Property free of charge as a result of Mrs Burridge's generosity. In re-examination he referred to the photographs attached to the valuer's report which show numerous vehicles at the house which suggests that the valuer could have been admitted to the Property by any one of a number of people.
56. On 19 July 2007, Blemain was provided with a redemption statement indicating that £49,096.34 was required to redeem the Southern Pacific mortgage on the Property as at 31 July 2007.
57. On 20 July 2007 a mortgage valuation report was prepared for Blemain by a Mr Keay of Besley Hill, surveyors. The market value of the Property was stated to be £440,000. It was noted in the report that the Property was tenanted and that "for the purpose of this valuation it has been assumed that the tenant occupies the property on a shorthold basis and that vacant possession is available". Mr Keay has since stated in a letter, dated 4 November 2010 and relied upon by Blemain, that he has looked at the report and his site notes relating to his inspection and that "from memory and the site

notes, it appears we met a Mr Golding at the property who we understood to be the tenant. We would not however be able to recognise the same person now". The site notes have not been obtained. Mr Keay has not been called as a witness by Blemain. The valuation report itself gives no indication that the valuer met a tenant on the premises. The report is equally consistent with the valuer being informed by the broker that the property was tenanted, following which the valuer made the assumptions identified in the report. Mr Lawton accepted that such a scenario was quite possible.

58. On 27 July 2007 the transaction with Blemain was completed with the counter-signature by Blemain of the loan agreement, the dating of a second legal charge on the Property, and payment by Blemain of £49,096.34 to redeem the Southern Pacific second mortgage. Blemain was registered as second mortgagee in place of Southern Pacific on 3 August 2007.
59. Mr Goulding has produced copies of cheques drawn on Mrs Burridge's Natwest Bank account but signed by him, evidencing monthly payments of £1150 to Northern Rock from September 2008 to April 2009.

Conclusion

60. **Issue 1 – Had the Trustee in Bankruptcy's interest re-vested in Mr Goulding before the execution of the charge in favour of Blemain? In particular:**
 - 1.1. **did Mr Goulding occupy the Property as his sole or principal residence at the date of his bankruptcy?**
 - 1.2. **what was Mr Goulding's interest in the Property for the purpose of section 283A Insolvency Act 1986?**
 - 1.3. **can Blemain (or Mr Goulding if the burden lies on him) establish that the Trustee in Bankruptcy did not become aware of such interest until after 27th July 2004? There being an issue as to where the burden lies.**

61. It is common ground that the disposition of the Property to Mr Cugley is void by virtue of section 284 of the Insolvency Act 1986 which provides under subsections 1 to 3 (subsections 4 to 6 omitted):

“Restrictions on dispositions of property.

(1) Where a person is adjudged bankrupt, any disposition of property made by that person in the period to which this section applies is void except to the extent that it is or was made with the consent of the court, or is or was subsequently ratified by the court.

(2) Subsection (1) applies to a payment (whether in cash or otherwise) as it applies to a disposition of property and, accordingly, where any payment is void by virtue of that subsection, the person paid shall hold the sum paid for the bankrupt as part of his estate.

(3) This section applies to the period beginning with the day of the presentation of the petition for the bankruptcy order and ending with the vesting, under Chapter IV of this Part, of the bankrupt’s estate in a trustee.”

62. The disposition to Mr Cugley by Mr Goulding occurred in the period between the presentation of the petition for bankruptcy and the vesting of Mr Goulding’s estate in the trustee in bankruptcy.

63. I have been referred to *Power v Brown* [2009] EWHC 9 (Ch) in which Gabriel Moss QC sitting as a deputy High Court Judge at paras. 20 – 24 found that s. 284 can be relied on “in a proper case” by persons other than the trustee in bankruptcy, and that, regardless of section 284, blatant warehousing of an asset with a view to avoiding an asset passing into the hands of a trustee in bankruptcy on a pre-arranged basis that the assets should come back into the hands of the bankrupt after the bankruptcy creates no more than a nominee ship in the purported transferee, so that the beneficial interest never left the bankrupt’s estate. In such circumstances it was unnecessary to rely on s. 284 because: “*There was simply no effective disposition of the beneficial interest in the alleged rights Mr Power relies on and they never ceased to be his*”.

64. Mr Adams argues that the only “proper cases” are those in which individuals claim in similar circumstances to a derivative action where they have direct interests in the estate and in the insolvency. No restriction of that nature is evident from *Power v Brown* and I have not been referred to any authority which makes such a restriction. The case of *Merton v Hammond Suddards* [1996] 2 BCLC 470 was an analogous case in which a party operating outside the liquidation of a company was permitted to rely upon s. 127 of the Insolvency Act 1986. In my judgment s. 284 can be relied on by Blemain in this case since it does, in any event, have a genuine and legitimate interest by virtue of its legal charge even though its reliance upon s. 284 is in a situation outside of the insolvency.
65. Whilst the beneficial interest in the Property did not pass to Mr Cugley by virtue of s. 284 of the Insolvency Act 1986, the legal interest did pass upon registration by virtue of section 58 of the Land Registration Act 2002. Mr Adams, however, contends that section 86 of the Act has a contrary effect when it comes to consideration of Blemain's interest and means that neither the legal nor the beneficial interest passed to Blemain. However, this is an issue I will return to in my conclusions in respect of Issue No. 2.
66. Since the disposition to Mr Cugley was void the beneficial interest in the Property remained with Mr Goulding and then automatically vested in the Trustee in Bankruptcy, pursuant to section 306 of the Insolvency Act 1986, upon the making of the Bankruptcy Order on 14th February 2003. The question then arises whether the Property re-vested in Mr Goulding, pursuant to section 283A(2) of the Insolvency Act 1986, following the expiry of 3 years from the date of the Bankruptcy Order or some other extended period, pursuant to section 283A(5) of the Act. Mr Goulding contends that the Trustee in Bankruptcy's interest re-vested in him. It is for him, therefore, to prove that the requirements of s. 283A are satisfied.

67. Section 283A(1) of the Insolvency Act 1986 provides:

“This section applies where property comprised in the bankrupt’s estate consists of an interest in a dwelling house which at the date of the bankruptcy was the sole or principal residence of –

(a) the bankrupt,

(b)

(c)”

68. Section 283A(2) provides:

“at the end of the period of 3 years beginning with the date of the bankruptcy the interest mentioned in subsection (1) shall –

(a) cease to be comprised in the bankrupt’s estate, and

(b) vest in the bankrupt (without conveyance, assignment or transfer).”

69. Mr Goulding contends that the Property was his sole and principal residence in 2003. He points to the fact that his bank statements, mobile telephone bills, and correspondence relating to financial investments were addressed to the Property. He also relies upon a council tax bill, dated 12th September 2003, addressed to the Property, although the bill is in fact addressed to Mr Ian Goulding of IKG Associates at the Property.

70. Blemain contends that the Property was not Mr Goulding's sole or principal residence in 2003, and points to the answers given by Mr Goulding when examined on 9 September 2004 for the purposes of the bankruptcy when he stated that he was, at that time, living at Falfield Garage rent free. He used the Falfield address for correspondence with the Trustee in Bankruptcy and received the discharge from bankruptcy at that address in April 2005. At paragraph 4 of his Defence in these proceedings Mr Goulding states that: *“Subsequent to the purchase of the property the Defendant continued to live in Falfield, but spent an increasing amount of time at the property until eventually, in 2005, the Defendant moved into the property on a full-*

time basis. It was at this time that the Second Defendant entered into the arrangement with Mrs Burridge as referred to in paragraph 7 hereof” (the arrangement whereby Mr Goulding paid £150 per month towards the mortgage on the Property). At paragraph 6 of the Defence it is stated that: “throughout the whole period subsequent to 2005 the Second Defendant has remained in full-time occupation of the property on a rent free basis”.

71. Mr Goulding responded in cross-examination by saying that he used to live at Falfield Garage until 1980 when he moved to live at the Property. He said that he used Falfield Garage as his correspondence address for the Trustee in Bankruptcy but otherwise lived at the Property. In advancing this factual account Mr Goulding was effectively contending that he misled the Trustee in Bankruptcy and sought to conceal his occupation of the Property from the Trustee. However, he did not confine this alleged deceit to the bankruptcy proceedings but continued it in his Defence in these proceedings. He contended in evidence that the contents of his Defence relating to this issue were wrong.
72. It is clear that one can place little reliance upon the address to which Mr Goulding’s correspondence or bills were sent. Whilst it may be that someone with Mr Goulding’s disregard for factual accuracy might have sought to mislead the Trustee in Bankruptcy, there is no reason why he should have continued to contend in his Defence in these proceedings that he did not live at the Property in 2003 unless such a statement was accurate. I am, therefore, driven to the conclusion that Mr Goulding did not occupy the Property as his sole or principal residence at the date of his bankruptcy in 2003, and that the true position was accurately stated in his Defence in these proceedings.
73. It follows that the interest of the Trustee in Bankruptcy did not revert in Mr Goulding pursuant to section 283A(2) or s. 283A(5) of the Insolvency Act 1986.
74. If I am wrong in my finding that the Mr Goulding did not occupy the Property as his sole or principal residence, it would be necessary to consider whether the interest reverted in Mr Goulding three years after the Bankruptcy Order or at some later date in accordance with s. 283A(5) of the Act which provides that:

“If the bankrupt does not inform the trustee or the official receiver of his interest in a property before the end of the period of 3 months beginning with the date of the bankruptcy, the period of 3 years mentioned in subsection (2) –

(a) shall not begin with the date of the bankruptcy, but

(b) shall begin with the date on which the trustee or official receiver becomes aware of the bankrupt’s interest.”

75. Both Counsel contended that the other party bore the burden of proving the awareness or lack of awareness in the Trustee in Bankruptcy. I am inclined to the view that the burden of proof lies upon Mr Goulding both as the party contending that the beneficial interest re-vested in him, and as the applicant in seeking to set aside the possession order as against Blemain, even though in normal circumstances the burden might be on the Trustee in Bankruptcy in the light of the “use it or lose it” policy (see Lawrence Collins J in *Re Byford (decd)* [2003] EWHC 1267 (Ch)). However, the location of the burden of proof is not determinative because I am entirely satisfied on the balance of probabilities that the Trustee in Bankruptcy was not aware of Mr Goulding's interest in the Property. The Trustee in Bankruptcy was neither “informed” by the bankrupt, Mr Goulding, of the interest (s. 283A(5)), nor was he “aware of the bankrupt’s interest” (s. 283A(5)(b)). It is quite clear that Mr Goulding was denying his interest in the Property as at the date of his examination in September 2004, and, at the time of his Defence in July 2009 was solely contending for an interest which commenced in 2005 after the bankruptcy had been discharged. Whilst the Trustee did know about the Property and might have been suspicious of its disposal, he did not have the knowledge required by s. 283A(5), and did not know that Mr Cugley was purely a nominee. Even if Mr Goulding had informed the Trustee in Bankruptcy of his interest obtained in 2005, 3 years would not have then elapsed until after 27th July 2007, the date of Blemain’s charge.

76. **Issue 2 - If the Trustee in Bankruptcy's interest had re-vested before 27th July 2007, then the questions are:**

2.1 Did Mr Goulding execute the consent form?

2.2 Does section 58 LRA 2002 give Blemain a good legal title?

2.3 If so does Mr Goulding's beneficial interest override Blemain's interest by reason of his actual occupation? In particular can Blemain establish it made appropriate enquiries of Mr Goulding and that he failed to disclose his interest on inquiry?

77. It follows from the answer to Issue no. 1 that the interest of the Trustee in Bankruptcy had not reverted in Mr Goulding by 27 July 2007. However, if I am wrong in that conclusion the answers to Issue no. 2 are:

(2.1) Yes, Mr Goulding did execute the Occupier's Consent form. Mr Goulding contends that he did not execute the consent form and that his signature on the form was forged by someone else. Mr Adams, on behalf of Mr Goulding, asked me to make comparisons of Mr Goulding's signatures appearing in various documents within the trial bundle and contends that the signature on the consent form is very different to his genuine signature in other documents. I acknowledge that the signature of Mr Goulding on the consent form shows significant variation from other examples of his signature. It was open to Mr Goulding to apply for, and call, expert evidence on the issue. He has not done so. That is in spite of the fact that Mr Goulding's original solicitors, Gregg Latchams, informed Blemain's solicitor by letter dated 6 October 2011 that: "If needs be we will obtain expert evidence" in respect of the authenticity of the signature.

78. In support of the contention that the consent form was forged, Mr Adams refers to a tenancy agreement which is dated 4th of November 2003 and purports to be between Mr Goulding, as tenant, and Mr Steven Cugley, as landlord. Some of the handwriting within the tenancy agreement does appear to be similar to that within the consent form. Both documents were witnessed by Naomi Poslett of 11 Cottonwood Drive, Longwell Green, Bristol. The tenancy agreement gives Mr Cugley's address as 18 Cottonwood Drive, Longwell Green, Bristol, even though it appears that Mr Cugley states in the Blemain loan application that he had only lived at 18 Cottonwood Drive

for 1 year and 4 months which is consistent with him having purchased the property in March 2006 as evidenced by a mortgage deed, dated 24 March 2006. However, it is apparent that Steven Cugley's parents purchased 18 Cottonwood Drive in 1999 and so it may well be that he used that address in 2003, either as a postal address or to live in, before purchasing the property from his parents in 2006. Given the freedom with which addresses can be used, and have been shown to be used in this case, I am unable to derive any significant assistance from the fact that the tenancy agreement, which I am told accompanied the loan application and the consent form, gave Mr Cugley's address in 2003 as 18 Cottonwood Drive.

79. Mr Goulding contends that he was at a motor racing event in Germany on the date of the consent form, 18th July 2007. A ticket for the event, from 19 July to 22 July 2007, is included in the Core Bundle. The ticket does not include Mr Goulding's name and does not, in any event, prove that the consent form was not signed on 18 July 2007 before he departed for the event.

80. The burden lies upon Mr Goulding to prove that the consent form is a forgery. Given the freedom with which Mr Goulding has been shown to have treated the truth in the past, I must treat his evidence with considerable circumspection. His signing of the consent form would have been entirely in character with the dealings between Mr Cugley and himself when dealing with third parties. It may well be that at the time Mr Goulding did not anticipate that he would lose his occupation of the Property. However, it is entirely in keeping with his previous behaviour that he would seek to deny the genuineness of the consent form when faced with the loss of his occupation.

81. Whilst the signature does not to my eye replicate the normal signature of Mr Goulding, I am not a handwriting expert. I can well conceive of Mr Goulding signing this document with a poor example of his signature with the intention of being able to disown the signature at a later date in the event of him needing to do so in order to remain in occupation of the Property. Such behaviour is entirely consistent with

examples of manipulation and deceit by Mr Goulding which I have already referred to in this judgment. In the light of such concerns I do not feel able to draw the conclusion from a perusal of the signature that, on the balance of probabilities, the document was not signed by Mr Goulding.

82. I have considered whether the signature was forged by Mr Cugley and recognise that such a possibility exists, and that the witness, Naomi Poslett, may have falsely witnessed the signature. I have real concerns as to the probity of Mr Cugley given the nature of his dealings with Mr Goulding in respect of the Property. However, those concerns do not warrant my taking the step of concluding that on the balance of probability the document was not signed by Mr Goulding.

83. **(2.2)** Yes, section 58 does give Blemain good title. Section 58(1) of the Land Registration Act 2002 provides that:

“(1) If, on the entry of a person in the register as the proprietor of a legal estate, the legal estate would not otherwise be vested in him, it shall be deemed to be vested in him as a result of the registration.

(2) Subsection (1) does not apply where the entry is made in pursuance of a registrable disposition in relation to which some other registration requirement remains to be met.”

84. The wording of section 58(1) clearly provides that registration caused the legal estate to be vested in Blemain. Mr Adams, however, contends that by virtue of section 86 of the Land Registration Act 2002 the legal estate was not vested in Blemain. Section 86 provides for the registration of the interest of the Trustee in Bankruptcy. However, by section 86(5) it is provided that:

“(5) where the proprietor of a registered estate or charge is adjudged bankrupt, the title of his trustee in bankruptcy is void as against the person to whom a registrable disposition of the estate or charge is made if—

(a) the disposition is made for valuable consideration,

(b) the person to whom the disposition is made acts in good faith, and

(c) at the time of the disposition –

(i) no notice or restriction is entered under this section in relation to the registered estate or charge, and

(ii) the person to whom the disposition is made has no notice of the bankruptcy petition or the adjudication.”

85. In the circumstances of this case it is clear that the disposition to Blemain was made for valuable consideration in that it lent money secured by the charge. Its interest was registered as a land charge. There is no suggestion that Blemain acted other than in good faith. No notice or restriction was entered under section 86 in relation to the registered estate or charge of the trustee in bankruptcy. Furthermore, Blemain had no notice of the bankruptcy petition. Indeed, there is no reason why Blemain should have been aware of Mr Goulding's bankruptcy, if the bankruptcy was not registered in accordance with s. 86.

86. I have been referred by Mr Levy to the case of *Pick v Chief Land Registrar* [2011] EWHC 206 (Ch). In that case a bankrupt transferred property to a third party after the bankruptcy order. The third party allowed the priority period in which to effect registration to lapse. The Land Registry then entered a restriction on the title to the property which was soon followed by a bankruptcy restriction being entered against the title. Thereafter, the Chief Land Registrar registered the third party as the registered proprietor in place of the bankrupt and cancelled the bankruptcy restriction. Proudman J. found that the effect of s. 86(5) of the Land Registration Act 2002 was to invalidate the Trustee's title as against the third party. She held that s. 58 of the Act worked “a statutory magic” by vesting land in a person merely by virtue of the fact that he was the registered proprietor.

87. In the instant case the disposition by Mr Goulding to Mr Cugley occurred before the bankruptcy rather than after, as occurred in *Pick*. Proudman J. found that s. 86(5) focuses on the time of disposition rather than the time of registration. Mr Cugley's title was registered after the bankruptcy petition was presented. Blemain's interest was registered and by virtue of s. 29 of the Land Registration Act 2002 it obtained good title – s. 29(1) stating that: *“If a registrable disposition of a registered estate is made for valuable consideration, the completion of the disposition by registration has the effect of postponing to the interest under disposition any interest affecting the estate immediately before the disposition whose priority is not protected at the time of registration”*. Neither the trustee in bankruptcy, nor Mr Goulding, registered their interests in the Property. I cannot conceive of any other usual and proper or reasonable inquiry Blemain could have undertaken which might have revealed the interest of the Trustee in Bankruptcy. Mr Goulding was certainly unlikely as occupier to have divulged such information.

88. For the reasons given I reject Mr Adams submission.

89. **(2.3)**

S. 29(2)(a)(ii) of the Land Registration Act 2002 provides:

“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

*(iii) Appears from the register to be excepted from the effect of registration
and*

(b) In the case of a disposition of a leasehold estate, if the burden of the interest is incident to the estate”.

90. Schedule 3 of the Act provides:

“2. An interest belonging at the time of the disposition to a person in actual occupation, so far as relating to land of which he is in actual occupation, except for:

(a) an interest under a settlement under the Settled Land Act 1925;

(b) an interest of a person of whom inquiry was made before the disposition and who failed to disclose the right when he could reasonably have been expected to do so;

(c) an interest –

(i) which belongs to a person whose occupation would not have been obvious on a reasonably careful inspection of the land at the time of the disposition, and

(ii) of which the person to whom the disposition is made does not have actual knowledge at that time;

(d) a leasehold estate in land granted to take effect in possession after the end of the period of three months beginning with the date of the grant and which has not taken effect in possession at the time of the disposition.”

91. Mr Goulding contends that by virtue of s. 29(2)(a)(ii) and Schedule 3 (2) of the Act he was a person in actual occupation of the Property at the time of the disposition to Blemain, and that he was not someone who failed to disclose his right of occupation upon inquiry (Schedule 3(2)(b)), and was not a person whose occupation would not have been obvious on a reasonably careful inspection of the land at the time of the disposition and of which Blemain did not have actual knowledge at that time.

92. I am satisfied that Mr Goulding’s beneficial interest would override Blemain’s interest were it not for the execution of the Occupier's Consent form by Mr Goulding. I am satisfied that Blemain made, and procured, no appropriate enquiries as to the occupation of the Property by Mr Goulding in 2007. It is apparent from the evidence of Mr Lawton that Blemain itself made no enquiries and that it relied upon a broker and / or a valuer to supply it with information. The only person who would have gone to the Property was the valuer who may or may not have been told that there was a tenant in occupation. If he was told of a tenant in occupation he might not have asked further questions of the tenant or concerning the tenancy. The broker would not have

witnessed or checked the signature of a person in occupation. It appears, therefore, from Mr Lawton's evidence that Blemain ran considerable risks as a result of the failure to carry out proper enquiries concerning the occupation of the property and, in particular, in failing to ensure that any occupant's consent form was witnessed, or advised on, by a solicitor.

93. I have been referred to *The Law of Real Property* 8th ed para. 7-096 as to the meaning of "actual occupation", and to the cases of *Hodgson v Marks* [1971] 1 Ch 892 at 931 to 932 and *Thompson v Foy* [2009] EWHC 1076 (Ch) at para 127. In this instance it is alleged that Mr Goulding's actual occupation of the Property arose by virtue of his full time and permanent residence at the Property in 2007. If proved, then, I am satisfied, such residence amounts to "actual occupation".

94. I have been referred by Mr Adams to *The Law of Real Property* 8th ed paras 8-018 and 8-019 and the requirement in cases of unregistered land for a purchaser to plead absence of notice only if he had made all usual and proper inquiries and had still found nothing to indicate an equitable interest. "*A purchaser should therefore: (i) ascertain whether there is anybody in possession or occupation of the land apart from the vendor, at least if there are any circumstances from which a reasonable person might infer this; and (ii) make inquiry of any such person*". The footnote to that sentence refers to the case of *Hodgson v Marks* and the observation of Russell LJ at 932 in respect of registered land that: "*The purchaser should make enquiry of the occupier or possessor personally since 'the untrue ipse dixit of the vendor will not suffice'*".

95. I am satisfied that, on the evidence I have heard, Mr Goulding was in actual occupation of the Property at the relevant time following his move into the Property in 2005.

96. **Issue 3 - If it did not, then does section 86 LRA 2002 apply to the relative priorities of the TIB's and Blemain's titles?**
97. No, for the reasons given above.
98. **Issue 4 - If section 86 applies, can Blemain prove it had no notice, actual or constructive of the bankruptcy petition or the adjudication pursuant to section 86 Land Registration Act 2002?**
99. Yes, for the reasons given above.
100. **Issue 5 - If section 86 does not apply, did Blemain otherwise obtain good legal title to its charge?**
101. Yes, for the reasons given above.
102. **Issue 6 - If Blemain's registration as proprietor defeated the Trustee in Bankruptcy's legal title, was Mr Goulding's occupation representative of the Trustee in Bankruptcy?**
103. Mr Adams, on behalf of Mr Goulding, argues that Mr Goulding occupied the Property as the representative of the Trustee in Bankruptcy. He relies on the case of *Thompson v Foy* [2009] EWHC 1076 (Ch) at para 127 in which Lewison J. identified that actual occupation can be by “a caretaker” or “representative of a company on behalf of his employer”, but that occupation by a licensee did not count as occupation by the

licensor. It is contended that Mr Goulding had the obligation under s. 291(2) of the Insolvency Act 1986 to preserve the Property for the Trustee in Bankruptcy and that he is, therefore, in a position analogous to that of a caretaker. This would enable the Trustee in Bankruptcy to contend that he was in occupation of the Property through the occupation of the bankrupt. S. 291(2) provides: *“In the case of any part of the bankrupt’s estate which consists of things possession of which cannot be delivered to the official receiver, and in the case of any property that may be claimed for the bankrupt’s estate by the trustee, it is the bankrupt’s duty to do all such things as may reasonably be required by the official receiver for the protection of those things or that property”*.

104. In my judgment s. 291(2) is purely for the preservation of the estate and does not require occupation by the bankrupt for the purposes of protecting the property. In any event, the Trustee in the instant case was unaware of any interest that Mr Goulding had in the Property and it cannot, therefore, be legitimately suggested that Mr Goulding was occupying the Property on behalf of the Trustee. The concept of occupation by a caretaker or employee requires knowledge and authorisation by the employer, or other commissioning party, of the occupation of the property concerned. I have also heard no evidence to the effect that Mr Goulding had any concept of such a duty to the Trustee in Bankruptcy.
105. It follows that Mr Goulding cannot be seen as having occupied the Property as a representative of the Trustee in Bankruptcy.
106. **Issue 7 - If yes did the Trustee in Bankruptcy's beneficial interest in the Property take priority over Blemain's charge as a result of Mr Goulding's occupation?**
107. This does not arise in the light of my conclusion on Issue no. 6.

108. **Issue 8 - Alternatively was Mr Goulding's contingent interest in having the property re-vested in him pursuant to section 283A an interest in the Property capable of overriding Blemain's charge?**
109. Mr Adams, on behalf of Mr Goulding, argues that Mr Goulding had a contingent interest in the Property by reason of his contingent interest in having the Property re-vested in him by the Trustee in Bankruptcy pursuant to section 283A of the Insolvency Act 1986. Mr Levy, on behalf of Blemain contends that Mr Goulding cannot have a contingent interest simply based upon the possible re-vesting of the property in him by virtue of the statute.
110. I have been provided with no authority supporting Mr Adams' argument and I am satisfied that the complete lack of certainty as to the re-vesting of the Property with Mr Goulding means that the possibility of re-vestment does not amount to an interest in the Property which is capable of overriding Blemain's registered charge.
111. **Issue 9 - If yes did such interest take priority over Blemain's charge as a result of Mr Goulding's occupation of the Property? In particular can Blemain establish it made appropriate enquiries of Mr Goulding and that he failed to disclose his interest on inquiry?"**
112. The answer to Issue no. 8 is "No". Furthermore, whilst I have found that Blemain did not carry out appropriate enquiries in respect of Mr Goulding's occupation of the Property in 2007, I have also found that Mr Goulding signed the consent form and that, accordingly, Mr Goulding has waived the priority of his right of occupation over that of Blemain under the Legal Charge

113. In the light of my findings the issue of Blemain's's right to bring a subrogated claim based upon Southern Pacific's legal charge, dated 24 November 2004, does not arise.

CONCLUSION

114. I conclude, in response to the issues posed by DJ Exton's order, that:

(a) Mrs Burridge has no interest in the Property, this being agreed by the parties given that the transfer of the beneficial interest of the Property to Mr Cugley was void ab initio;

(b) Mr Goulding did not have an interest in the Property at the time of the disposition to Blemain because any such interest had vested in his trustee in bankruptcy, and, furthermore, whilst I have found that he was in occupation at the time of the disposition to Blemain under s. 29(2)(a)(ii) and Schedule 3(2) of the Land Registration Act 2002, he waived that interest by signing the Consent Form;

(c) This issue does not arise by reason of the order of DJ Exton of 11 February 2011, by which paragraph 8 of which Mr Goulding's Defence was struck out;

(d) The interest of Mr Goulding at (b) above does not have priority over the interest of the Claimant in the Property given the waiver contained in the Consent Form signed by Mr Goulding.

115. The application to set aside the Possession Order is, therefore, dismissed.

Recorder Richard Stead

3.6.13