



Corporate Turnaround and Insolvency

Mistaken discharge of land mortgages and rectification at the Land Registry – can a discharged mortgage secure a subsequent advance?

It is well-established law that a mortgage can be used to secure further advances made by a lender. What happens when a registered mortgage is mistakenly discharged at the Land Registry however? Can it be rectified and used as security for a subsequent advance? *NRAM Plc v Evans and another - 2015 EWHC 1543* explores the issues.

The background

In this recent High Court case, a lender advanced funds for the purchase of a property by Mr and Mrs Evans in 2004 secured by a charge over property. In 2005 the lender then advanced a further loan. Mr and Mrs Evans fell into arrears in respect of the 2005 loan.

Upon redemption of the 2005 loan, the Bank agreed to effectively consolidate Mr and Mrs Evans' accounts. Mr and Mrs Evans' solicitor wrote to the lender asking it to discharge the charge at the Land Registry. The solicitors' letter made no mention to the 2005 loan account. The lender proceeded to submit the relevant form of discharge and the charge was removed.

The lender, realising their mistake in releasing security when only one loan had been redeemed, argued that their further advance under the 2005 loan was a further advance secured by the charge. They claimed that they had made a mistake in submitting their form of discharge. Mr and Mrs Evans had since been declared bankrupt which meant that the lender would otherwise be an unsecured creditor.

The relevant mortgage conditions were:

- a. The mortgage debt was defined as: *'all of the money you owe us from time to time under any offer, including any unpaid interest, costs and fees...'*
- b. Clause 3 provided that: *'This mortgage secures further advances.'*

The issues

The Court was asked (i) whether the charge secured the 2005 loan in addition to the 2004 loan; and (ii) whether the charge had been cancelled by mistake (and so the register should be rectified to correct that mistake and reinstate the Charge).

What did the court decide?

The court interpreted the mortgage conditions under the charge as being sufficiently clear and wide so as to encompass both the 2004 loan and the 2005 loan.

The court also agreed that the discharge had been a mistake, on the basis that the terms of the solicitor's letter referred to the 2004 loan account number and not the 2005 loan account number (a point which was crucial to the court's decision).

What does this mean for practitioners?

This will provide some reassurance to commercial lenders concerning consolidation and "tacking". However, this decision does not affect the position of tacking and **priority**, which requires the appropriate notice at the Land Registry that further funds may be lent.

Contact

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