Appeal Ref: CH/2014/0074

Neutral Citation Number: [2015] EWHC 3072 (Ch)
IN THE HIGH COURT OF JUSTICE
CHANCERY DIVISION

Royal Courts of Justice, Rolls Building
Fetter Lane, London, EC4A 1NL

Date: 27/10/2015

Before :

MR JUSTICE MORGAN
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Between :

	STEVEN JAMES HUNT	**Appellant**
	- and -	
	(1) RODERICK WITHINSHAW **(Former trustee in bankruptcy of Steven James Hunt)** **(2) CONWY COUNTY BOROUGH COUNCIL** **Second Respondent**	**First Respondent**

Case No: County Court Ref: OCJ 70015/ 15 of 2008

And between :

	STEVEN JAMES HUNT	**Applicant**
	- and -	
	CONWY COUNTY BOROUGH COUNCIL	**Respondent**

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Mr Steven Hunt appeared in person
Mr Graham Sellers (instructed by **DWF LLP**) for **Mr Withinshaw**
Mr Louis Doyle (instructed by **Head of Legal and Democratic Services, Conwy County Borough Council**) for **Conwy County Borough Council**

Hearing dates: 13, 14 and 15 October 2015
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Judgment**MR JUSTICE MORGAN:**

Introduction

1. This case concerns the Victoria Pier, Colwyn Bay ("the pier"). The freehold of the pier was owned by Mr Hunt until July 2008 when he was made bankrupt and the freehold vested in his trustee in bankruptcy, Mr Withinshaw ("the trustee").

2. The issues which now need to be addressed include:

    (1) whether the trustee effectively disclaimed the freehold in the pier and the consequences of an effective disclaimer, alternatively, of an ineffective attempt to disclaim; and

    (2) whether the court should make a vesting order in favour of Mr Hunt and, if so, the extent of the property to be vested by such order.

3. The issues arise by reason of the admitted facts that:

    (1) as at the date of the presentation of the bankruptcy petition and as at the date of the bankruptcy, one part of a pavilion on the pier came with the definition of "dwelling house" in section 385(1) of the Insolvency Act 1986 ("the 1986 Act");

    (2) as at the date of presentation of the bankruptcy petition, Mr Hunt was in occupation of, or entitled to occupy, that dwelling house for the purposes of sections 320(2)(c) and 320(3)(c) of the 1986 Act; and

    (3) as at the date of the bankruptcy, that dwelling house was the sole or principal residence of Mr Hunt for the purposes of section 283A of the 1986 Act.

4. If there had not been a dwelling house on the pier at a relevant time or times, then the disclaimer would have been undoubtedly effective, there would be no question of a vesting order in favour of Mr Hunt and section 283A would not apply.

5. In procedural terms, there are now before the court:

    (1) an appeal by Mr Hunt against an order dated 13 January 2014, made in the Caernarfon County Court, dismissing an application by him for a declaration that the

pier vested in him under section 283A of the 1986 Act;

(2) an application of 9 October 2015 by Mr Hunt for various heads of relief including an order striking out Conwy County Borough Council ("Conwy") as a respondent to the above appeal; and

(3) two issues directed to be tried by an order of 8 May 2013, such issues being the remaining issues arising in an application by Mr Hunt, pursuant to section 320 of the 1986 Act, for a vesting order in relation to the pier.

6.In this judgment, the Insolvency Act 1986 will be referred to as "the 1986 Act" (as already indicated) and the Insolvency Rules 1986 will be referred to as "the 1986 Rules".

7.Mr Hunt appeared before me in person. The issues which have arisen in the course of this litigation have been technical and complex. To the usual technicalities of the law of bankruptcy there are added in this case further complications as to the operation of the rules as to disclaimer, in particular disclaimer of a freehold estate, the creation of a second freehold estate and an application for a vesting order. Over the course of this litigation, Mr Hunt has impressively developed a familiarity with at least some of these technicalities. Somewhat less admirably, he has also had a tendency to argue points which are untenable and to continue to argue points even after they have been judicially determined against him.

8.Mr Sellers appeared on behalf of Mr Withinshaw and Mr Doyle appeared on behalf of Conwy.

The facts

9.The pier was originally constructed in around 1900. It suffered serious fires in 1922 and 1933 but was then repaired or rebuilt. The pavilion on the pier dates from 1934. The pavilion was built in the Art Deco style and contains what have been described as important Art Deco murals designed by Mary Adshead and Eric Ravilious. I will refer later in this judgment to the more recent condition of the pier.

10.Many of the background facts concerning Mr Hunt's involvement with the pier, and many of the facts relating to his bankruptcy in 2008, are set out in detail in a judgment given by Sir William Blackburne, sitting as a High Court Judge, when dealing with an earlier round in this litigation. That judgment was given on 8 May 2013 and is reported at [2014] 1 WLR 254. In the present judgment, I will restate some of those facts, so that they are immediately available to the reader of this judgment, and I will also refer to matters which have occurred since the earlier judgment was given.

11.On 11 December 2003, Mr Hunt acquired the freehold of the pier and on 8 April 2004 he was registered at the Land Registry, under title no. WA727155, as proprietor in relation to that freehold title.

12.On 9 October 2007, Conwy made a statutory demand of Mr Hunt for unpaid rates and council tax. On 30 January 2008, Conwy presented a bankruptcy petition on the basis of Mr Hunt's failure to comply with the statutory demand. On 17 July 2008, a bankruptcy order was made in relation to Mr Hunt. Mr Withinshaw ("the trustee") was appointed trustee in bankruptcy and all of the property comprised in the bankrupt's estate, including the freehold title to the pier, vested in the trustee.

13.Section 283A of the 1986 Act 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 the bankrupt. It was accepted in this case that the unit of accommodation on the pier was a dwelling house which was the sole or principal residence of Mr Hunt on 17 July 2008 so that the interest in the dwelling house was governed by section 283A. The three year period referred to in section 283A expired on or about 16 July 2011. On 8 July 2011 (or at any rate at the latest by 12 July 2011), the trustee applied for an order for possession of the pier. This application was made within the three year period referred to in section 283A and the application came within section 283A(3)(c), with the result that the interest in the dwelling house did not re-vest in Mr Hunt on 16 July 2011.

14.On 18 August 2011, the trustee signed a notice of disclaimer of the freehold interest in the pier pursuant to section 315 of the 1986 Act. The notice was in the prescribed form (Form 6.61). On 19 August 2011, the trustee filed a copy of the notice of disclaimer at the Caernarfon County Court.

15.On 18 August 2011, the solicitor acting for the trustee stated in an email to Mr Hunt that the trustee had decided to disclaim the freehold of the pier, that the notice of disclaimer would be filed at the court that day (it was in fact filed the following day) and that upon receipt by the trustee of a sealed copy of the notice of disclaimer, the trustee would serve a copy of the notice of disclaimer on Mr Hunt and his mother (who was understood to be claiming an interest in the pier). This email enclosed a copy of a letter which the trustee's solicitors had written to the court seeking a dismissal on 19 August 2011 of the trustee's application for possession of the pier.

16.On 19 August 2011, there was a hearing before District Judge Williams in the Caernarfon County Court in relation to the trustee's application for possession of the pier. The trustee did not attend but relied on the letter sent to the court on 18 August 2011. Mr Hunt did attend the hearing. The District Judge made an order which contained the recital "upon the trustee having disclaimed his interest in the pier pursuant to s. 315 of

the Insolvency Act 1986". The order dismissed the application for possession of the pier.

17. On 22 August 2011, the trustee sent to Mr Hunt a copy of the notice of disclaimer dated 18 August 2011 which notice was endorsed with a statement that it had been filed at the court on 19 August 2011. This copy of the notice was received by Mr Hunt on 24 August 2011.

18. On 14 November 2011, within the period of three months permitted by rule 6.186(2) of the 1986 rules, Mr Hunt applied pursuant to section 320 of the 1986 Act for a vesting order in relation to the freehold title to the pier. The Respondent to the application was Her Majesty's Attorney General. The application was supported by Mr Hunt's affidavit sworn on 15 November 2011. The application and the affidavit were prepared on the basis that the freehold had been effectively disclaimed by the trustee. On 23 February 2012, Mr Hunt applied for summary judgment in relation to his application for a vesting order.

19. On 27 March 2012, acting on the basis that the disclaimer by the trustee had caused the freehold in the pier to escheat to the Crown, the Crown Estate Commissioners, exercising powers under the Crown Estate Act 1961 and section 79(1) of the Land Registration Act 2002, created a new freehold interest in the pier (and the foreshore on which it stood) in favour of the Welsh Government which transferred the same to Conwy. The transfer was subject to all third party interests in the pier including the right of any person to obtain a vesting order in respect of the pier.

20. On 23 April 2012, Judge Jarman QC dismissed Mr Hunt's application for summary judgment in relation to his application for a vesting order and substituted Conwy as the sole respondent to the application.

21. On 17 August 2012, Judge Jarman heard the substantive application by Mr Hunt for a vesting order and dismissed it. At the hearing it seemed that Conwy accepted that the pavilion on the pier included a dwelling house at some time. It was also accepted that the dwelling house was "Mr Hunt's accommodation" at the date of the bankruptcy order. As the application before the court was for a vesting order under section 320, the relevant date was the date of the bankruptcy petition: see sections 320(2)(c) and 320(3)(c). However, it seems to have been assumed that the position would have been the same at the time of the petition and at the date of the bankruptcy order. There was discussion in the argument before Judge Jarman as to whether Mr Hunt still occupied the dwelling house at the date of the disclaimer. Mr Hunt submitted that that was irrelevant. The judge stated that the evidence on that point was unsatisfactory but for the purposes of the application for a vesting order only, he would proceed on the basis that Mr Hunt still occupied something which was a dwelling house at the date of the disclaimer.

22. Judge Jarman then held that he would not make an order vesting the pier in Mr Hunt because the dwelling house was only part of the property disclaimed so that section 320(2)(c) was not satisfied. He further ruled that he did not have power to make a vesting order in relation to a part of the disclaimed property. Finally, he held that even if he did have power to make a vesting order of the pier or of the dwelling house, he would not in the exercise of his discretion make such an order.

23. On 4 January 2013, the trustee obtained his release under section 299 of the 1986 Act having held a final meeting under section 331 of the 1986 Act on the basis that the administration of the bankrupt's estate was for all practical purposes complete.

24. On 17 April 2013, Sir William Blackburne, sitting as a High Court Judge heard an appeal by Mr Hunt against Judge Jarman's dismissal of his application for a vesting order. Judgment on the appeal was reserved and was handed down on 8 May 2013.

25. The judgment dealt with a large number of points which are relevant for present purposes. I will summarise the judgment, giving references to the paragraphs in the judgment in square brackets, as follows:

(1) the judge set out the background facts;

(2) he held that it was too late for Mr Hunt to attempt to challenge the validity of the bankruptcy order or the entitlement of Conwy to be the respondent to the appeal: [21];

(3) he stated that Conwy accepted that the case came within section 283A(1) of the 1986 Act: [24];

(4) he held that the trustee's application for possession of the pier was made within the three years referred to in section 283A: [27];

(5) he held that, assuming that the disclaimer was valid, then the dismissal of the application for possession of the pier on 19 August 2011 did not trigger the application of section 283A(4) because the freehold had been disclaimed before the application for possession was dismissed: [29];

(6) he held that the trustee could validly extend the three year period in section 283A by making a valid application for possession within the three year period: [31];

(7) he referred to two arguments put forward by Mr Hunt that there was no valid

disclaimer; he noted an objection from Conwy to these arguments on the ground that they had not been put and were inconsistent with the application for a vesting order; however, the judge said that he would deal with the arguments because he was of the view that they were without merit: [32];

(8) Mr Hunt's first argument was that the pier was not onerous property within section 315 of the 1986 Act; the judge was not persuaded by this argument and he added at [36]:

> "36 I am also of the view that it was far too late, very many months later, when an application for a vesting order was before the court which assumed the validity of the disclaimer, to seek to run an argument that, in truth, there was no valid disclaimer either because the property was not "onerous" within the meaning of section 315 or because the trustee's act in seeking to disclaim the property was in some other way open to challenge."

(9) the judge then dealt with the second challenge to the validity of the disclaimer; he ruled that a failure to serve a copy of the notice of disclaimer on the Chief Land Registrar (if there had been such a failure) did not invalidate the disclaimer: [42];

(10) in the course of considering the arguments as to the effect of non-service of a copy of the notice of disclaimer on the Chief Land Registrar, the judge referred to sections 317 and 318 of the 1986 Act and he said at [42]:

> "Likewise, section 318 provides that disclaimer of a dwelling house "does not take effect unless a copy of the disclaimer has been served (so far as the trustee is aware of their addresses) on every person in occupation of or claiming a right to occupy the dwelling-house". The obvious purpose of giving such notice is to enable the person so notified either to challenge the validity of the disclaimer or, if otherwise eligible, to apply for a vesting order under section 320. (Mr Hunt has not suggested that that provision was not satisfied in his case by the service on him of a copy of the disclaimer within the stipulated period.)"

(11) the judge then addressed the arguments as to the operation of section 320 of the 1986 Act on the basis that there had been a valid disclaimer: [43];

(12) he rejected Mr Hunt's argument that the whole of the pier was a "dwelling house" within the definition of that phrase in section 385(1) of the 1986 Act: [44];

(13) he held that to qualify under section 320(2)(c) of he 1986 Act, it was not necessary

to show that the whole of the disclaimed property was a dwelling house: [48];

(14) he held that the court had power under section 320(3) of the 1986 Act to make a vesting order in relation to all of the disclaimed property or to a part of it: [48];

(15) the judge then considered in detail the exercise by Judge Jarman of his discretion under section 320(3); I will not set out all of that reasoning at this stage although I will need to refer to some of it later in this judgment; the judge concluded that Judge Jarman's exercise of his discretion was flawed and the matter should be remitted for him to consider the matter afresh: [55] and [64];

(16) finally, the judge considered various matters in relation to an application made by Mr Hunt's mother for a vesting order, but it is not necessary to refer to those matters.

26. Following judgment on 8 May 2013, the court ordered that Mr Hunt's application for a vesting order be remitted to Judge Jarman for him to determine the application but so that the determination was to be limited to two issues. The first issue was whether the court ought to exercise its discretion under section 320(3) of the 1986 Act in favour of Mr Hunt on the basis that Mr Hunt had standing to apply for a vesting order under section 320(2)(c). The second issue was that if the court would exercise its discretion to make a vesting order under section 320(3) in favour of Mr Hunt, whether the vesting order should relate to the dwelling house or to the pier or some other part or parts of the pier and upon what terms.

27. On 10 December 2013, before any hearing in relation to the questions remitted by Sir William Blackburne, Mr Hunt issued a new application in the Caernarfon County Court. The sole respondent to this application was the former trustee who had been released on 4 January 2013. Mr Hunt's application described him as "the trustee in bankruptcy". This application sought a declaration that the disclaimer was invalid. The application was supported by Mr Hunt's witness statement dated 7 December 2013. Mr Hunt contended that there had not been an effective disclaimer of the pier on 18 or 19 August 2011. That was because the case came within section 318 of the 1986 Act with the result that there would not be an effective disclaimer until a copy of the notice of the disclaimer was served on Mr Hunt. That did not occur on the 18 or 19 August 2011. On 19 August 2011, when the trustee's application for possession of the pier was dismissed, that event triggered section 283A(4). The result was that the freehold interest in the pier ceased to be comprised in the bankrupt's estate and vested in Mr Hunt. In particular, the court did not "order otherwise" as it could have done under section 283A(4). The fact that the court order of 19 August 2011 recited that the pier had been disclaimed was a mistake and could simply be ignored. The copy of the notice of disclaimer served on Mr Hunt on 24 August 2011 was of no effect because after 19 August 2011, the pier was not

vested in the trustee and so he could not disclaim it.

28. The solicitors for the former trustee in bankruptcy wrote to the county court on 8 January 2014. They explained that the former trustee had been released as trustee and was not the right respondent to the application. They stated that the former trustee wished to remain neutral in relation to the application. They went on to provide some brief information about the disclaimer and stated their understanding that the disclaimer was effective on 18 August 2011.

29. Mr Hunt's application came before Judge Jarman on 13 January 2014 when it was dismissed. There was no appearance on behalf of the former trustee. Judge Jarman gave a short judgment which set out some of the history of the matter. As to the operation of sections 315 and 318 of the 1986 Act he held that the disclaimer was effective under section 315 on 18 August 2011 and section 318 did not have the effect of postponing the point at which the disclaimer was effective until a notice was served under section 318.

30. Mr Hunt served an appellant's notice in relation to Judge Jarman's dismissal of his application. On 14 August 2014, Peter Smith J considered the matter on the papers and refused permission to appeal. He referred to the decision of Sir William Blackburne and stated that Mr Hunt could not make multiple applications; he referred to Henderson v Henderson (1843) 3 Hare 100. He further stated that Judge Jarman's decision was correct and the appeal was totally without merit.

31. On 7 November 2014, Mr Hunt renewed his application for permission to appeal at an oral hearing before Peter Smith J. Mr Hunt submitted that he had not argued the point based on section 318 before Sir William Blackburne so the point had not already been decided against him. He said he had not thought of that point at that stage. Peter Smith J granted permission to appeal but he pointed out that the respondent would be entitled to submit that Mr Hunt should not be allowed to succeed on the new point because it ought to have been raised earlier.

32. On 16 January 2015, Conwy applied to be joined as a respondent to Mr Hunt's appeal. On 20 January 2015, Peter Smith J ordered that Conwy be joined as a respondent pursuant to CPR r. 19.2(2). He also ordered that the trial of the issues directed by the order of 8 May 2013 be transferred to the High Court and that the appeal and the trial of those issues be listed for hearing together.

33. I was told that on 26 January 2015, Mr Hunt applied to join the Attorney General, the Crown Estate Commissioners and the Welsh Government to some or all of these proceedings but his application was dismissed by Proudman J on 4 February 2015. I was not shown a copy of Mr Hunt's application nor of the order of Proudman J.

34. On 9 October 2015, Mr Hunt issued a further application. He sought various orders. He asked that Conwy be struck out as respondent to the appeal (but seemingly not the application for the vesting order). He sought a declaration that Conwy did not have ownership of the pier because Mr Hunt had remained registered as the proprietor at the Land Registry under title no. WA727155. He asked for summary judgment on the appeal.

35. The various matters came before me at a hearing which began on 13 October 2015. I first dealt with Mr Hunt's application of 9 October 2015. I indicated that I would not remove Conwy as a respondent to the appeal. I then heard argument on the appeal. For the sake of good order, I invited Conwy to serve a Respondent's Notice formally raising the point argued in Mr Doyle's skeleton argument to the effect that Mr Hunt's application dated 10 December 2013 and the appeal against Judge Jarman's order of 13 January 2014 were an abuse of process. Conwy then served a Respondent's Notice raising that point and I extended its time for doing so. Following the conclusion of argument on the appeal, I heard Mr Hunt's application for a vesting order. This judgment deals with all three matters.

The application of 9 October 2015

36. Although Mr Hunt has sought various heads of relief in this application, his case is essentially based on the fact that he has remained the registered proprietor of the pier under title no. WA727155. As he is the registered proprietor of the pier, he says that Conwy cannot be the legal owner of the pier. From this starting point, Mr Hunt submits that Conwy has no rights in the pier, that Conwy misled the court when it applied to be joined as a respondent to the appeal and that it should be removed as respondent.

37. Mr Hunt's submissions on this application fail for multiple reasons. First, his analysis of the position as to title is wrong. Mr Hunt was correctly registered as proprietor of the pier following his purchase of it. When he became the subject of a bankruptcy order and a trustee was appointed, the freehold title to the pier vested in the trustee under section 306 of the 1986 Act and Mr Hunt ceased to be the owner of the pier. There was an effective disposition, by operation of law, in favour of the trustee even though the trustee did not apply to be registered as the proprietor: see the Land Registration Act 2002, section 27(5)(a). The position of a trustee in bankruptcy in relation to registered land formerly owned by the bankrupt is discussed in detail in Helman v Keepers etc of Free Grammar School of John Lyon [2014] 1 WLR 2451 at [21], [29] – [31]. If I hold that the freehold in the pier, registered under WA727155, was effectively disclaimed by the trustee, then that title came to an end and the Land Registry will close the registered title. As explained earlier, the Crown has created a new freehold title which was transferred to Conwy. I understand that Conwy has applied to be registered in relation to that new freehold title but the Land Registry has not yet completed that registration in view of an objection from Mr Hunt. Accordingly, the question as to the ownership of the pier will be answered by the determination of the various disputes between Mr Hunt and Conwy.

The answer all depends on the outcome of this litigation. If I allow Mr Hunt's appeal and hold that all of the pier vested in him under section 283A(4), then the register will be brought into line with that finding. If I hold that the entirety of the title registered under WA727155 was terminated by disclaimer, and if I do not make a vesting order in favour of Mr Hunt, then that title will be closed and a new title opened showing Conwy as the registered proprietor. If I hold that the title registered under WA727155 was terminated by disclaimer but I make an order vesting that title in Mr Hunt, then again the register will be brought into line with that finding. If I hold that the title registered under WA727155 was terminated as to everything but not the dwelling house or if I make a vesting order in relation to the dwelling house alone, then again the register will show the position in accordance with the court's determination.

38. Conwy is the obvious respondent both to Mr Hunt's appeal and to his application for a vesting order. It was correctly joined as a respondent to the appeal under CPR r. 19.2(2). There was no appeal against the order joining Conwy. Indeed, there were no possible grounds for such an appeal. Further, there has not been a change of circumstances which would arguably allow me to vary or revoke, pursuant to CPR r. 3.1(7), the order for joinder made on 20 January 2015. Mr Hunt's application of 9 October 2015 is hopeless, totally without merit and will be dismissed. I add that Mr Hunt has raised a similar point on previous occasions and his point has previously been rejected. His attempt to raise it again was an abuse of process.

39. Apart from all of the above, Mr Hunt's attempt to remove Conwy as a respondent to the appeal would be pointless. The result would be that Conwy would not be bound by the result of the appeal as it would not have been a party to the appeal.

The appeal

40. Leaving aside any question as to abuse of process, the issues potentially raised by the application of 10 December 2013 and the appeal against Judge Jarman's dismissal of that application are as follows:

(1) did the disclaimed property include a dwelling house at the time of the disclaimer for the purposes of section 318?

(2) if so, was Mr Hunt a person in occupation of the relevant dwelling house at that time or was he a person claiming a right to occupy the dwelling house at that time?

(3) if section 318 applied on the facts at the time of the disclaimer, did the copy of the notice of disclaimer given to Mr Hunt on 24 August 2011 have the effect that the disclaimer operated pursuant to section 315 with effect from 18 or 19 August 2011

(prior to the dismissal of the application for possession on 19 August 2011)?

(4) if section 318 applied on the facts at the time of the disclaimer, did the copy of the notice of disclaimer given to Mr Hunt on 24 August 2011 have no effect because before that date (i.e on 19 August 2011), the pier had vested in Mr Hunt pursuant to section 283A(4)?

(5) if the case came within section 283A(4), did the pier or only the dwelling house vest in Mr Hunt?

(6) if only the dwelling house vested in Mr Hunt under section 283A(4), then did the disclaimer nonetheless take effect in relation to the remainder of the pier?

(7) if the dwelling house vested in Mr Hunt under section 283A(4), but the disclaimer was effective in relation to the remainder of the pier, would Mr Hunt enjoy any easements over the remainder of the pier for the benefit of his freehold dwelling house?

41. Before considering the question of the alleged abuse of process, I will identify the matters which would need to be addressed in order to decide the above issues. As to the first and second issues, these arise under section 318 of the 1986 Act and seemingly require one to investigate the position at the time of the disclaimer. Mr Hunt has not at any stage adduced any reliable evidence in relation to them and Conwy has not been aware that they were live issues on which it might need to lead evidence. As regards the first issue, given the admission that there was a dwelling house on the pier at the date of the bankruptcy order (17 July 2008), the suggestion that there was no dwelling house on the pier in August 2011 might be thought to be a little surprising. However, the unit of accommodation which was there in July 2008 was a little unusual, being a converted part of a pavilion on a pier, probably without any sleeping accommodation, and there appear to have been physical changes in the condition of that unit between 2008 and 2012 and possibly prior to August 2011. There was some limited evidence about the circumstances of the unit in 2012. At that date it was plainly uninhabitable. It seems to me on the basis of inadequate material, which was not prepared for the purpose of addressing this issue, that there might have been a real dispute as to whether a part of the pavilion could still be called a dwelling house in August 2011. Further, on the basis of the inadequate evidence before me, there might have been a real dispute as to whether Mr Hunt was claiming a right to occupy any relevant dwelling house at that time; it seems quite likely that he was not in occupation of any relevant dwelling house at that time.

42. The third and fourth issues raise a question of law on which there is no binding authority. Mr Hunt submitted that if section 318 applied, then the disclaimer did not take effect unless

and until the trustee served a copy of the notice of disclaimer under section 318. Mr Hunt is able to point to text book authority which provides support for this submission: see Muir Hunter on Personal Insolvency (looseleaf) para. 3-2034 and Fletcher on the Law of Insolvency, 4th ed., para. 8-130. Both of these passages discuss the meaning of "unless" in section 317 but the same reasoning would seem to apply to section 318 also. Conversely, counsel for both the trustee and Conwy argued that a postponement of the effect of the disclaimer in this way under section 317 or 318 would detract significantly from the intended benefit of a disclaimer for a trustee and I should hold that disclaimer always operated from the date of the notice of disclaimer calculated in accordance with section 315 of the 1986 Act and rule 6.178 of the 1986 Rules. I was told that there was no authority on the point but my own researches turned up the case of Lee v Lee [2000] BCC 500 where the Court Appeal described the operation of sections 317 and 318 of the 1986 in a way which accords with Mr Hunt's submission as to their effect; as against that, the court's discussion of the point was not in the end relevant to the decision in that case.

43. As to the fifth issue, Mr Hunt argued that if the case came within section 283A(4), then the freehold in the whole pier vested in him. That seems to me to be wrong. Sir William Blackburne has already held that the extent of any dwelling house, as that term is defined by section 385(1) of the 1986 Act did not extend to the whole of the pier. On the true construction of section 283A, the interest which would vest under section 283A(4) would be the dwelling house alone. That answer would give rise to the sixth issue where the answer would seem to be that the disclaimer would take effect in relation to the remainder of the pier.

44. As to the seventh issue, in the event that the freehold title survived in relation to the dwelling house (vested in Mr Hunt) and ceased to exist in the remainder of the pier, there would seem to be great difficulty in Mr Hunt demonstrating that he had a right of way to get to the dwelling house, or any easement of support for the dwelling house or any easements to run pipes, wires and drains to the dwelling house.

45. I will now consider the correct way procedurally for Mr Hunt to have raised the case which he wished to raise by the application of 10 December 2013. As Mr Hunt wished to contend that the disclaimer was ineffective, he plainly needed to amend his application for a vesting order which was premised on the disclaimer being effective. He ought therefore to have applied for permission to amend that application. The fate of that application would depend upon the time at which Mr Hunt made it and any prejudice to other parties by reason of any delay in making it. If the application had been made in good time before the trial before Judge Jarman of the application for a vesting order on 17 August 2012, and if permission to amend had been granted, then the court would have given directions as to the filing of evidence in relation to any issues of fact arising. As I have explained, issues 1 and 2 did raise issues of fact. Those directions were neither sought nor given. Instead, Judge Jarman tried the application for a vesting order. Sir William Blackburne then considered an appeal against Judge Jarman's refusal of a

vesting order. All that time, Mr Hunt's application was for a vesting order which was premised on the disclaimer being effective. The order made on 8 May 2013 directed a trial of two issues as to a possible vesting order; those issues were premised on the disclaimer being effective.

46. Prior to the appeal heard by Sir William Blackburne, Mr Hunt had not amended his application for a vesting order to assert that the disclaimer was ineffective. Nonetheless, he argued before Sir William Blackburne that the disclaimer was ineffective. The judge considered those arguments to the extent that he was able to do so on the basis of inadequate evidence and he dismissed them. He added that it was far too late to raise any such arguments. I consider that that comment applies to the argument which Mr Hunt now wishes to raise based on section 318. Indeed, it applies with even greater force in relation to that argument because even more time went by before Mr Hunt made his application on 10 December 2013 and Mr Hunt's point as to section 318 clearly raised issues of fact which had not been considered at the trial of the application for a vesting order. If Mr Hunt had raised his point on section 318 on the appeal before Sir William Blackburne, I expect the judge would have said that he could not consider a new point on appeal where the resolution of the point turned on matters of fact which had not been explored in the evidence at the trial: see Pittalis v Grant [1989] QB 605.

47. Mr Hunt plainly did not adopt the correct approach to raising a point as to the effect of section 318 of the 1986 Act. Instead of applying for permission to amend his application for a vesting order, he simply started a new inconsistent claim. Further, he made matters worse by failing to join the obviously relevant respondent, Conwy, who were the respondent to the application for a vesting order. This meant that the hearing before Judge Jarman on 13 January 2014 proceeded in the absence of the relevant respondent and where the chosen respondent, the former trustee, had no interest in the outcome of the application.

48. In my judgment, if Mr Hunt had applied as at 10 December 2013 to amend his application for a vesting order to include a claim that the disclaimer was ineffective, I would expect that permission would have been refused in view of the fact that the issue involved disputed matters of fact which had not been investigated at the trial in August 2012, that the matter had proceeded to trial and then to appeal in May 2013, that Sir William Blackburne had said that it was far too late then for Mr Hunt to allege that the disclaimer was ineffective and that the order of 8 May 2013 was premised upon the disclaimer being effective. A refusal of permission to amend would have meant that it was not open to Mr Hunt to take his point on section 318. In those circumstances, it was plainly an abuse of process for Mr Hunt to bring a new application for a declaration on 10 December 2013 on a basis which was inconsistent with his own application for a vesting order and with the order he had obtained on 8 May 2013.

49. Accordingly, I will dismiss the appeal against the dismissal of the application dated 10 December 2013 on the basis that both the application and the appeal were an abuse of

the process of the court.

The application for a vesting order

50.I will first set out my findings in relation to matters of fact which were investigated at the trial.

51.At all material times, the pier has been a grade II listed building.

52.In the period from 2003 to 2008, when Mr Hunt owned the pier, he did not receive any statutory notices from the local authority, Conwy, requiring him to carry out repairs to the pier.

53.In the period from 2008 until the release of the trustee in 2013, Conwy wrote to the trustee on a number of occasions requesting or requiring the trustee to carry out repairs to the pier. Some of those requests took the form of statutory notices requiring repairs to be carried out. The trustee did not have any, or any sufficient, funds to carry out repairs and he did not do so. Conwy did not initiate any formal procedures to compel the trustee to do so.

54.Following the creation of the new freehold interest and the transfer of that interest to Conwy in March 2012, Conwy has not carried out any repairs to the pier. However, it has incurred substantial expenditure in cordoning off the pier to prevent injury to the public as a result of the pier being in an unsafe condition and in continuing to monitor the pier.

55.Conwy acquired its interest in the pier with a view to supporting the strategic development of the town of Colwyn Bay in various respects, to assist with the regeneration of the Colwyn Bay waterfront and to ensure public safety (in view of the unsafe condition of the pier).

56.Conwy explored the idea of restoring the pier in conjunction with third parties and also explored the availability of funding for the works of restoration. Mr Hunt told me that he had offered to grant Conwy a lease of the pier for a term of 35 years at a rent which was significantly more than a nominal rent. Conwy did not accept that offer and did not offer to negotiate with Mr Hunt in relation to any revised terms of a lease to be granted to it by Mr Hunt. In December 2013, Conwy considered a range of options for the future of the pier. These options included the demolition of the pier. In December 2013, Conwy resolved to proceed to the demolition of the pier and to seek planning permission and listed building consent for such demolition and associated works.

57.The condition of the pier has deteriorated since 2008. Since 2009, Conwy has received engineering advice in respect of the pier. By April 2010, some 60% of the structure of

the pier had failed. By August 2014, some 75% of the structure of the pier had failed. The deterioration in the condition of the pier is no longer linear but is now exponential. At the present time, the pier is in an unsafe condition presenting a clear risk to the life of anyone in the vicinity of the pier. The pier could collapse at any time. The time at which the pier might collapse cannot be modelled. The deterioration of the structural members of the pier has resulted in non-structural parts of the pier acting temporarily in a structural way to defer the moment of collapse. In view of the extent of deterioration, the pier is beyond the point of being repaired. The pier is not capable of being insured.

58. Since December 2013, Conwy has applied for and obtained planning permission for the demolition of the pier and associated works. Conwy has also applied for listed building consent for the demolition of the pier and the relevant Minister's decision on that application is expected in early November 2015. There are many local objectors to the proposal to demolish the pier.

59. The evidence as to the extent and character of the dwelling house in the pavilion was not clear. I am able to find that the unit in question did at one time exist in a corner of the pavilion. It had a living area and a kitchen and a shower. It probably did not have any separate sleeping accommodation. Beyond that, I am not able to make findings as to any other facilities in this unit. By early 2012 (and probably earlier), the unit was not capable of being used as a residence. It seems likely that there were no services to the unit and it was infested by pigeons. There was no evidence as to the current condition of the unit but there is no reason to think that its condition is any better today than it was in 2012. No work of improvement or safeguarding has been carried out to it since 2012. It will inevitably now be in an even worse condition. At the hearing, Mr Doyle referred to the dwelling house, or former dwelling house, as "the accommodation unit". I will call it "the dwelling house" because that is the term used in the statutory provisions which I need to consider and which refer to an earlier point in time. However, I emphasise that the use of that phrase does not indicate any finding that it currently is a dwelling house.

60. Conwy obtained two valuations of the freehold of the pier in 2012. The District Valuer valued it at minus £1. An outside firm of valuers valued it at minus £600,000.

61. Mr Hunt's attitude to Conwy is deeply hostile. He has accused Conwy of fraud in relation to his bankruptcy, in relation to the pier and the conduct of this litigation. If the pier were to be vested in him he says that he would "of course" sue Conwy for some remedy or other.

62. The court's powers to make a vesting order following disclaimer by a trustee in bankruptcy were considered in detail by Sir William Blackburne in the judgment to which I have referred. The persons who may apply for a vesting order are listed in section 320(2) of the 1986 Act. Mr Hunt did not come within paragraphs (a) or (b) of that subsection. In particular, he could not say that he had an interest in the pier (by reference to his former ownership of the pier) within section 320(2)(a) because that interest vested in the trustee

under section 306 and the effect of section 315(3)(a) was to determine all possible right or interest of the bankrupt in the disclaimed property.

63. Sir William Blackburne held that Mr Hunt had standing to apply for a vesting order under section 320(2)(c). It was an admitted fact that Mr Hunt had been in occupation of the dwelling house when the bankruptcy petition was presented on 30 January 2008. It was also held that the dwelling house for the purposes of section 385(1) of the 1986 Act was restricted to the unit of accommodation and did not extend to other parts of the pier.

64. Where a person has standing under section 320(2) to apply for a vesting order then the court has power under section 320(3) to make a vesting order. Sir William Blackburne held that the power under section 320(3) to make a vesting order is a power to make a vesting order in relation to the whole of the disclaimed property or to a part of it. This means that although Mr Hunt's standing was derived from occupation of a part of the pier, the court has power to make an order vesting in him the whole pier or a part of it. It follows from this reasoning that the court has power in the present case to vest the following in Mr Hunt:

(1) the whole of the pier;

(2) the dwelling house only;

(3) the dwelling house and another part or other parts of the pier; or

(4) a part of the pier not including the dwelling house.

65. In the present case, it is difficult to see circumstances in which the court would make an order of the fourth kind referred to above. It may be worth mentioning why I have included in the list an order of the third kind. There is real doubt as to whether, if I vested in Mr Hunt the dwelling house alone and no other parts of the pier, I could confer on Mr Hunt easements over other parts of the pier for the benefit of the dwelling house. I will refer to this matter again below. If the court could not confer such easements, then it might be relevant to consider whether the court should vest in Mr Hunt the title to an access way along the pier to enable him to gain access to the dwelling house. A similar question might be whether, in the absence of an easement of support for the benefit of the dwelling house, the court could vest in Mr Hunt the soil of the beach vertically beneath the dwelling house and the supporting steelwork between the level of the beach and the dwelling house.

66. There was discussion at the hearing as to whether the court has power in the present case to confer on Mr Hunt easements over the remainder of the pier for the benefit of the

property which is to vest. If I were to make a vesting order in relation to the dwelling house, then Mr Hunt would need a right of way along the pier to access it. He would also need easements to enable him to run pipes wires and drains to serve it. He might also wish to have an easement of support for the dwelling house.

67. The language of section 320 does not contain any express words which deal with the possible grant of easements. The definition of dwelling house in section 385 does not assist in this respect. Section 320 appears to be designed to meet the simple case where the court vests in the applicant something which is a self-contained dwelling house or something which benefited from ancillary easements prior to the disclaimer. The section does not contain language designed to deal with a case like the present where a freehold is being split so that a part of a pre-existing freehold is to be vested and the other part of that freehold is terminated on escheat to the Crown. Although the statutory context considered in Sovmots Investments Ltd v Secretary of State for the Environment [1979] AC 144 was very different from the present statutory context, many of the difficulties which were considered in that case seem to arise in the present case also. Section 320(3) allows the court to make a vesting order on such terms as it thinks fit. This plainly allows the court to impose terms on the applicant for the vesting order. However, it seems unlikely that the court would be able to impose terms on the Crown or someone (like Conwy) deriving title under the Crown. It was these considerations which led me to comment earlier that there is real doubt as to the court's powers to confer easements upon Mr Hunt for the benefit of any property which is to vest.

68. Sir William Blackburne held that the court's powers are not restricted to vesting in Mr Hunt the dwelling house alone. Nonetheless, I ought to consider whether the starting point in the present case should be to consider whether the court should vest the dwelling house in Mr Hunt rather than making a vesting order in relation to the whole pier. For this purpose, I have considered whether the starting point should be that any vesting order should reflect the fact that Mr Hunt's standing to apply for a vesting order is due to his occupation of a dwelling house and his former ownership of the pier did not give him standing to apply for such an order. To put it another way, but for the fact that Mr Hunt was in occupation of a dwelling house upon the pier at the relevant date, he would not have had any entitlement to seek a vesting order in respect of any part of the pier.

69. It is clear that the extent of the vesting order is not intended to be limited by the precise way in which the applicant has acquired standing. For example, under section 320(2)(a) a person has standing if he claims an interest in the disclaimed property. If the disclaimed property were a freehold, the interest which is claimed need not have been a freehold; a lesser interest will suffice. If a person can bring himself within section 320(2)(a) and obtains a vesting order, then the interest which is vested will be the interest which was disclaimed which may be greater than the interest which was claimed. The same reasoning applies to section 320(2)(c). A person can have standing under that paragraph by being entitled to occupy the disclaimed property. If a vesting order is made in favour of such a person, the interest vested may be greater than the interest which conferred the

entitlement to occupy. However, all of these examples are cases where the extent of the legal interest which is vested is greater than the pre-existing interest of the applicant. None of those examples relates to a case where the vesting order relates to a greater area of land than the land which gave the applicant standing to apply.

70. It is worth considering why a person who comes within section 320(2)(c) was given standing to apply for a vesting order. This provision is one of a number of provisions in the 1986 Act which are designed to protect the rights of occupation of the bankrupt or a spouse or others in relation to a dwelling house. It is consistent with the statutory purpose to confer on such persons rights in relation to the dwelling house, or a part of it. It would seem to go beyond the statutory purpose to confer on such person rights in relation to the dwelling house and, in addition, other land which is not needed to enable such person to enjoy the dwelling house.

71. I consider that it makes sense to address first of all whether the court should vest the dwelling house in Mr Hunt whilst recognising that there is no rule of law which limits the court's powers to a vesting order in the dwelling house alone. I note that Mr Hunt submitted that the court only had power to vest the whole pier in him and did not have power to make an order restricted to the dwelling house. That submission is contrary to what was held by Sir William Blackburne.

72. I pay particular attention to what was said by Sir William Blackburne in his judgment at [51], as follows:

> "51 The court has a discretion under section 320(3) whether to make an order in favour of a qualifying applicant. Except that there are limits to what the court may order when the applicant qualifies under section 320(2)(b) and certain requirements exist where the vesting order relates to property of a leasehold nature (see sections 320(4) and 321), the discretion is at large in the sense that the legislation provides no guidance as to how it is to be exercised. In the absence of some competing applicant for a vesting order and in the absence of some good reason to the contrary, I would have thought that the court's discretion ought ordinarily to be exercised in favour of the qualifying applicant, at any rate where the interest in the property in question is a freehold interest in land. The bankrupt's estate is no longer interested since, by the disclaimer, the trustee makes clear that he has no further wish to exploit the disclaimed property for the benefit of the bankruptcy estate. The interest of the Crown arises, so to speak, by default in that the consequence of the disclaimer has been to cause the property to revert automatically to the Crown."

73. Mr Hunt's case was as follows:

(1) he has standing to apply for a vesting order;

(2) there is no competing applicant;

(3) the interest of the Crown and those deriving title under the Crown, such as Conwy, arises by default;

(4) Conwy's statutory powers in relation to the condition of the pier will be available to it following the pier revesting in Mr Hunt;

(5) there is no good reason to deny Mr Hunt a vesting order;

(6) the court's discretion to make a vesting order should therefore be exercised in his favour.

74. Because the court has a discretion whether to make a vesting order in respect of the dwelling house in favour of Mr Hunt, I obviously need to consider the consequences for all relevant persons of making such an order, alternatively, of declining to make such an order. Mr Hunt is obviously a relevant person and I must consider the effect on him of either course. What attitude should I take to Conwy? Mr Hunt relies on the passage quoted above, where Sir William Blackburne referred to the interest of the Crown being "by default". That suggests that the court should give little or no weight to any consequences of a vesting order for the interest of the Crown. Mr Hunt points out that Conwy's interest in the matter is as a person deriving title under the Crown. Conwy has not applied for a vesting order under section 320(2)(a) or (b). In that sense, it is not a competing applicant for a vesting order. Mr Hunt submits that if the court would give little or no weight to the consequences of a vesting order for the Crown, then Conwy as a person deriving title under the Crown is in no better position. I am content to proceed on that basis. However, there is another interest which needs to be considered, namely, the public interest. There is no reason to leave out of account the public interest and, on the special facts of this case, there were arguments put to me based on the public interest. Conwy is a public body. It is the local authority for the area in question. It has duties and responsibilities which include acting in the interests of the public in that area. In that capacity, I consider that it is right to have regard to the consequences of a vesting order for Conwy.

75. Conwy relied heavily on the fact that the pier is now in a dangerous condition and could collapse at any moment. It submitted that I should consider the consequences of making a vesting order against that background. Mr Hunt submitted to me that the deterioration

in the condition of the pier since the bankruptcy order made on 17 July 2008 was not his fault. If it was anyone's fault, it was the fault of the trustee and of Conwy. Therefore, he submitted, I should consider the application for a vesting order without regard to the deterioration in the condition of the pier and the dwelling house after July 2008. At that date, the pier was not on the point of collapse and the dwelling house was not uninhabitable.

76. The engineering evidence was to the effect that some 60% of the steel work of the pier had failed by April 2010. Accordingly, it is likely that there were considerable shortcomings in respect of the condition of the pier as at the slightly earlier date of July 2008. It is true that Conwy had not served any statutory notices on Mr Hunt prior to July 2008 but that does not itself establish that the pier was then in good condition. Following July 2008, the trustee did not carry out repairs to the pier. The trustee had no funds to enable him to do so and given the degree of deterioration of the pier when he was appointed, the costs of repairs would have been very substantial. I do not consider that the trustee was in breach of any duty owed to Mr Hunt which would enable him to argue that I should ignore the deterioration in the condition of the pier before the trustee disclaimed it in August 2011 by applying some rule such as the trustee should not be allowed to take advantage of a breach of duty owed to Mr Hunt. As regards the period after the disclaimer, the default owner of the pier was the Crown which did not owe any duty to Mr Hunt and from March 2012, Conwy derived title under the default owner. Conwy acted as if it were the owner but it was at all times subject to Mr Hunt's application for an order vesting the pier in him. Conwy incurred considerable expense in safeguarding the pier but did not incur the heavy costs which would have been needed to restore the pier (assuming that it was then capable of being restored). Conwy pursued various options for funding for the restoration of the pier but ultimately the attempt to obtain funding failed and it resolved to demolish the pier. I cannot see that, in acting as it did, Conwy was in breach of any duty to Mr Hunt. Thus, there is no arguable basis for saying that I should ignore the deterioration in the condition of the pier on the ground that it was attributable to a breach of duty by Conwy. In these circumstances, when considering whether to make a vesting order I ought to have regard to the actual circumstances and the real facts as to the condition of the pier.

77. I now consider the effect on Mr Hunt of making a vesting order. The present position is that the pier is unsafe, is a serious risk to public safety and might collapse at any moment. If the pier were to collapse, a vesting order of the dwelling house would give Mr Hunt a freehold title in a part of the airspace many feet above the beach. Even if the pier did not collapse, it would not be safe for Mr Hunt to walk along the pier to get to the dwelling house (assuming that the vesting order gave him a legal right to walk along the pier for that purpose). If the vesting order did not give him a legal right to walk along the pier then that would be an extra reason why he could not get to the dwelling house. In addition to all that, the dwelling house was uninhabitable in 2012 and will now be in an even worse condition.

78. Mr Hunt is not in a financial position to restore the dwelling house or any part of the pier to enable him to have access to the dwelling house. If the dwelling house were vested in him, he would not be able to live in it and he would not be able to permit anyone else to live in it or make any use of it. He has not given any evidence as to whether he could borrow any money to restore the dwelling house and any part of the pier and he has not given evidence that if he could borrow money that he would spend any money on any such works. It seems to me that it would foolish to spend money on restoring the dwelling house and any access way to it. The evidence before me was that the pier has a negative value. There was no evidence that the freehold of the dwelling house, separately considered, would have any value. It seems extremely improbable that it would have any value even if there were easements or similar rights which would give the freeholder of the dwelling house rights of access and support and rights to services. Accordingly, I consider that a vesting order in relation to the dwelling house, even assuming I vested ancillary areas or ancillary rights in Mr Hunt would be of no use to him and of no value, unless one regarded such a vesting order as having a nuisance value.

79. I next consider the public interest. On the evidence before me, the pier is unsafe. It now cannot be restored at all and it certainly cannot be restored at reasonable expense. It will either collapse or be demolished and when it is cleared away the danger to public safety will be removed. If I do not make a vesting order in relation to the dwelling house, then Conwy has resolved to demolish the pier. It has obtained planning permission for that and associated works and it awaits listed building consent. If it obtains listed building consent it will demolish the pier. If it does not obtain listed building consent, I do not know for certain what would then happen. I imagine that in the short term, Conwy would continue to safeguard the public as best it could at a cost to it (and ultimately the rate payers and charge payers) of £100,000 per year.

80. If I made a vesting order in relation to the dwelling house in favour of Mr Hunt, Conwy would be an owner in possession of most of the pier but not of the small area represented by the area vested in Mr Hunt. That would certainly inhibit Conwy in acting as an owner in possession and demolishing the pier. If I had vested in Mr Hunt an access strip leading to the dwelling house and/or the area vertically below the dwelling house then that would further inhibit Conwy from demolishing the pier. Conwy would have certain statutory powers under sections 77 to 83 of the Building Act 1984 and/or Chapter V of the Planning (Listed Buildings and Conservation Areas) Act 1970 but there is likely to be difficulty in them serving worthwhile or effective notices under those Acts on Mr Hunt who would not be the owner of the dangerous structure, the pier, but only of an uninhabitable dwelling house upon the pier.

81. Standing back and weighing the total, or almost total, lack of benefit to Mr Hunt from a vesting order and the adverse consequences of such an order so far as the public interest, represented by Conwy, is concerned it is plain to me that the scales come down very heavily in favour of not making a vesting order in respect of the dwelling house, even if

all of the difficulties about ancillary property or ancillary rights could be overcome.

82. So far I have not addressed the question of the nuisance value which a vesting order would confer on Mr Hunt. It is quite clear that that is a value which Mr Hunt would like to be given. I am confident that he would make use of it to the full. I am also confident that his attitude to the matter would cause delay and expense, probably quite heavy expense, for Conwy as a result. Should I confer that nuisance value on Mr Hunt? He says that he would have been in that position if he had not gone bankrupt and if the pier had not been disclaimed. Now that the trustee has disclaimed and the freehold interest will not be realised for the benefit of the creditors, why should he not obtain a vesting order so that he can again assert rights as owner including the right (if he so wishes) to be obstructive to the local authority? I do not consider that the court should give any support to this possibility. It is clear that the whole purpose of section 320(2)(c) and 320(3)(c) is to enable a person, with a right to occupy a dwelling house, to enjoy occupation of a dwelling house, or conceivably its normal value as a dwelling house. I consider that making a vesting order to give Mr Hunt a nuisance value wholly unconnected with the occupation of a dwelling house or the normal value of a dwelling house is outwith anything that was contemplated by section 320.

83. I next consider Mr Hunt's case, which was his primary case, that I should make an order vesting in him the freehold of the whole pier. My first reaction to that is that the court's power is conferred in a case like the present to enable a person formerly entitled to occupy a dwelling house to occupy the same or to realise its normal value as a dwelling house. If, as I have concluded, it would not be right to make a vesting order in respect of the dwelling house, it seems to me remarkable to think that the court would then vest in Mr Hunt the whole pier.

84. If I did vest the pier in Mr Hunt, he would be the owner of an interest with no value or a negative value. He has no funds to enable him to restore the pier or to demolish the pier. He has no funds to pay for safeguarding the pier. The pier is not insurable and, even if it were, Mr Hunt could not pay the premium. If the uninsured pier caused injury to a member of the public, Mr Hunt could not afford to pay any substantial sum by way of compensation. If Conwy continued to safeguard the pier and sought reimbursement from him, he could not pay. If Conwy obtained a charge over the property to secure repayment, the property would be valueless and would not provide security although Conwy might be entitled to apply for an order for sale and the court might be prepared to direct that the property could be sold to Conwy or to an associate at nil consideration. If that happened, Mr Hunt's ownership of the pier would end. While Mr Hunt owned the pier pursuant to a vesting order, his ownership would inhibit Conwy's ability to demolish the pier. It could plainly not act as an owner in possession and would have to resort to its statutory powers. That may well result in the pier being demolished with Conwy incurring the cost and without any prospect of reimbursement by Mr Hunt. The result of the vesting order would be liable to delay the time when the pier was demolished in the public interest and increase the cost to Conwy, which would be ultimately borne by the

rate payers and charge payers. The vesting order would give Mr Hunt nuisance value but I do not consider that it would be right for the court to exercise its discretion in order to confer a nuisance value on Mr Hunt at the expense of the public interest.

85.I therefore conclude that there are good reasons for refusing to make a vesting order of either the dwelling house alone or of the whole of the pier.

86.Thus far, I have directed myself in accordance with paragraph 51 of Sir William Blackburne's judgment. He indicated that a vesting order should not be made if there was a good reason for not making it. I have held there are good reasons for not making a vesting order. However, Sir William Blackburne commented on some of the arguments about making a vesting order and he set aside Judge Jarman's refusal to make a vesting order. On the other hand, Sir William Blackburne was careful to say that he did not have all the material which would enable him to form his own view on whether there was a good reason to refuse to make a vesting order and the matter ought to be remitted for determination. Nonetheless, I have considered his comments on some of the arguments to see if they should persuade me to take a different view to the one I have formed. Those comments were made by reference to possibilities as to Mr Hunt having a plan for restoration of the dwelling house or the pier and Conwy having no plans for the pier. Things have moved on since those comments were made. The pier is now on the point of collapse. Conwy has clear plans to demolish it. Mr Hunt has in effect no plans of his own for the pier or the dwelling house. He told me that he would grant a lease of the pier to Conwy but Conwy has considered his offer and is not prepared to accept his offer. I cannot hold that Conwy is acting unreasonably in that respect.

87.I therefore conclude that it would not be appropriate in all the circumstances to make an order vesting in Mr Hunt the pier or any part of it. I will therefore dismiss his application for a vesting order.