Neutral Citation Number: [2015] EWHC 3481 (Ch)

Case No: A03MA522

IN THE HIGH COURT OF JUSTICE
CHANCERY DIVISION
MANCHESTER DISTRICT REGISTRY

Rolls Building
Fetter Lane
London EC4

Date: 09/12/2015

Before :

HIS HONOUR JUDGE PELLING QC
SITTING AS A JUDGE OF THE HIGH COURT

Between :

HABIB BANK AG ZURICH	**Claimant**
- and -	
UTOCROFT 2 LIMITED	**Defendant**

Mr Francis Collaco Moraes (instructed by **Berwin Leighton Paisner**) for the **Claimant**
Mr Louis Doyle (instructed by **Excello Law**) for the **Defendant**

Hearing dates: 23-25 November 2015 (Manchester CJC)

Approved Judgment

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

.....

HIS HONOUR JUDGE PELLING QC SITTING AS A JUDGE OF THE HIGH COURT

HH Judge Pelling QC:

Introduction

The Issue for Determination

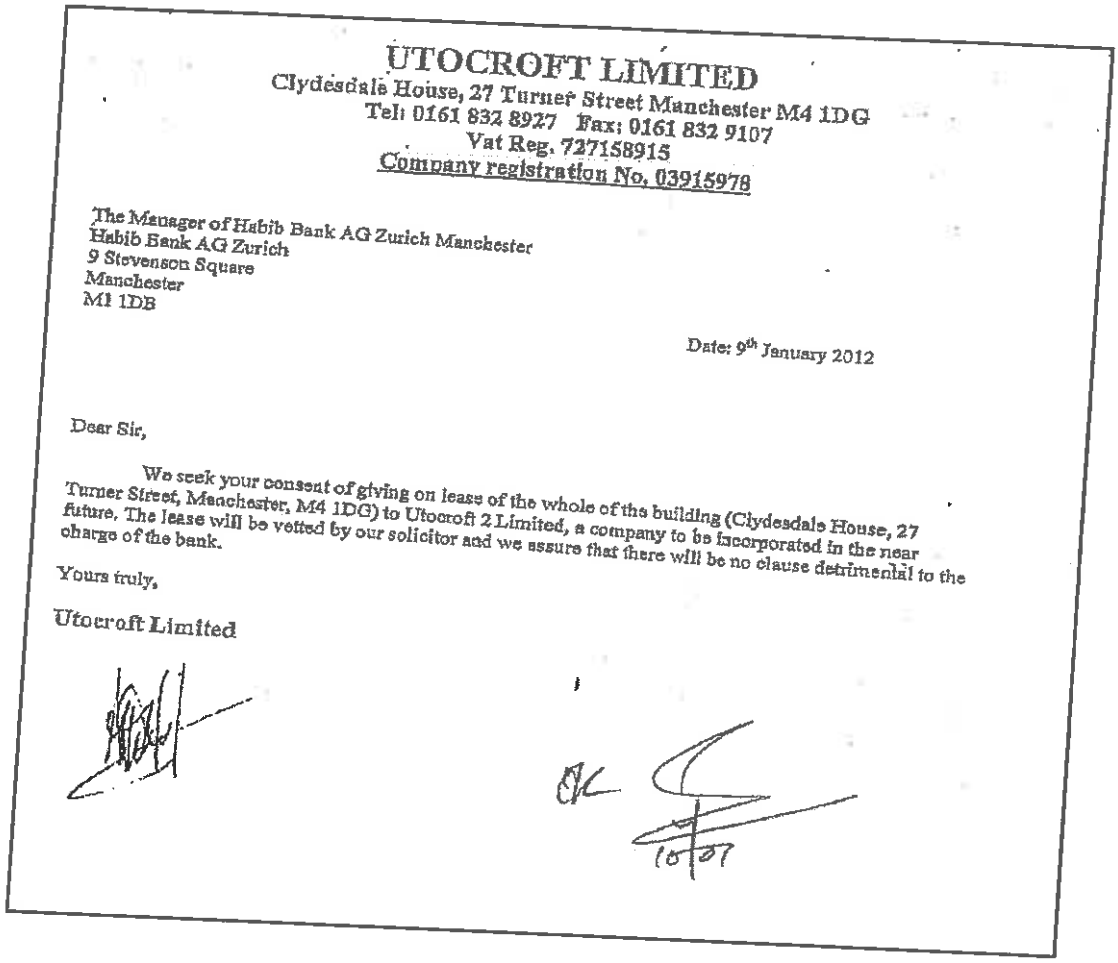
1. This is the trial of a claim by the claimant, as mortgagee, for possession of Clydesdale House, 27 Turner Street, Manchester ("the property"). The mortgagor is Utocroft Limited ("UL"). The Defendant is the lessee of the property under a lease between it and UL dated 27 April 2012 ("the Lease"). The defendant maintains that any possession order should take effect subject to its leasehold interest. The claimant's case is that there is no defence to this claim because the lease was granted without its written consent contrary to the express terms of two charges ("the charges") by which UL charged the property with the repayment of sums due to the claimant.

The Parties' Cases

2. The Defendant's case is that the required consent was given by the endorsement of the letters "*OK*" by Mr Ahmed Saeed, then one of the claimant's senior officials, on a letter to the claimant from UL dated 9 January 2012 ("the 9 January letter") requesting consent that was then returned to the defendant and/or (until the second day of the trial) by a letter dated 2 February 2015, which the defendant maintained was sent to UL by the claimant and was signed by Mr Mohammed Mirza, the manager of the claimant's Manchester branch ("the 2 February letter").

3. The claimant admits the endorsement on the 9 January letter but maintains that it was not intended to be, and was not, consent, and/or on proper construction does not constitute consent, as required by the charges. Mr Saeed has provided a signed statement that broadly supports the defendant's case. However, that evidence is challenged by reference to hearsay material which suggests that when Mr Saeed was first contacted by the claimant his explanation was in essence that advanced by the claimant. It is common ground that unless I accept Mr Saeed's evidence as set out in his signed statement then the effect of the 9 January letter and its endorsement will have to be determined as a matter of construction. The claimant denies that the 2 February letter was sent by the claimant and asserts that it is a forgery.

4. Given the nature of the assertions and counter-assertions of the parties it is convenient that I reproduce the relevant letters in the form relied on by the defendant. The 9 January letter as endorsed by Mr Saeed is in the following form:



UTOCROFT LIMITED
Clydesdale House, 27 Turner Street Manchester M4 1DG
Tel: 0161 832 8927 Fax: 0161 832 9107
Vat Reg. 727158915
Company registration No. 03915978

The Manager of Habib Bank AG Zurich Manchester
Habib Bank AG Zurich
9 Stevenson Square
Manchester
M1 1DB

Date: 9th January 2012

Dear Sir,

We seek your consent of giving on lease of the whole of the building (Clydesdale House, 27 Turner Street, Manchester, M4 1DG) to Utocroft 2 Limited, a company to be incorporated in the near future. The lease will be vetted by our solicitor and we assure that there will be no clause detrimental to the charge of the bank.

Yours truly,

Utocroft Limited

10/01

The authenticity of the 2 February letter is challenged on a number of different bases including what is submitted to be its unusual layout, and its inaccurate grammar and sentence construction. It is unavoidable therefore that I set it out in its unedited form and size:

(INCORPORATED IN SWITZERLAND)
1967

Habib Bank AG Zurich

HABIB HOUSE, 9 STEVENSON SQUARE, MANCHESTER M1 1DB
Authorised and Regulated by the Financial Services Authority

02nd February 2012

The Directors
Utocroft Limited
Clydesdale House
27 Turner Street
Manchester
M4 1DY

Dear Sirs

Re: Lease for Clydesdale House, 27 Turner Street, Manchester, M4 1DY

We acknowledge the draft copy of the lease you have provided to our branch, although the consent was already granted to yourselves on the 10th January 2012 by our management, our senior management in London still agree to the consent given to yourselves on the 10th January 2012. The senior management have read through the draft copy of the lease and are fully satisfied with the draft copy of the lease. Like before the senior management have agreed to give Utocroft Limited the consent to issue the lease to Utocroft 2 Limited which is to be incorporated in the near future.

Yours sincerely

M. YOUSAF MIRZA
ASSISTANT VICE PRESIDENT

Alteration of Defendant's Position during Trial

5. The position of the defendant altered at the start of the second day of the trial. At the end of the first day of the trial, Mr Moraes had applied (orally and without a Part 23 Application Notice or any evidence in support) for permission to rely on a statement from Mr Stuart Greatbanks and to call him to give evidence. The statement had been first disclosed to the defendant's solicitors on the 16 November 2015 (7 days before trial) but they had been unable to obtain instructions on it because the directors of the defendant were either out of the country or about to depart when the statement was received and they did not return to the UK until the day prior to the start of the trial. The application was opposed by Mr Doyle. I directed that the application be heard at the start of the second day in order to allow Mr Doyle an opportunity to consider the application and to obtain instructions.

6. The detail surrounding the application is set out in the ruling that I gave dismissing the application. In summary however, the defendant alleges that one of the reasons why the Lease was granted by UL to the defendant was because a significant amount of work needed to be carried out to the property and UL did not have the financial or managerial resources to carry out the work required. A large number of documents that purported to be invoices for the work that was carried out at and to the property by the defendant after the Lease had allegedly been granted were disclosed.

7. Mr Greatbanks is a private investigator who was retained by the claimant's solicitors to carry out an investigation of the addresses of at least some of the contractors concerned. He was first instructed in November 2015, shortly before trial, long after disclosure of the relevant documents had taken place (the end of March 2015) and after the date when witness statements were required to be exchanged (the end of May 2015). The evidence (had it been admitted) would have established that the addresses appearing at the head of a number of the invoices did not in fact exist. Had it been admitted, this material would have been relied on by the claimant as evidence in support of their inference case concerning the authenticity of the 2 February letter.

8. At the start of his submissions concerning the application to adduce evidence from Mr Greatbanks, Mr Doyle informed me that the defendant wished to re-amend its Defence so as to withdraw reliance on the 2 February letter as containing or evidencing consent by the claimant to the grant of the Lease. This enabled Mr Doyle to submit that the application to adduce the evidence of Mr Greatbanks should fail not merely applying the tripartite test for relief from sanctions identified in Denton v. TH White Limited [2014] 1 WLR 3926 but also on the basis that the evidence was no longer admissible because it was relevant only to credibility and thus was evidence relevant to issues that were collateral to the substantive issues in these proceedings – see Phipson on Evidence, 18th Ed., Para.12-46 and footnotes 189 and 192.

9. In the result I (a) acceded to Mr Doyle's application and (b) dismissed the claimant's application to adduce evidence from Mr Greatbanks on the grounds that (i) the material was inadmissible following the re-amendment of the Defence but (ii) in any event the failure to serve the witness statement in accordance with the District Judge's directions was a serious breach of that order for which there was no proper

explanation and in those, and all the other, circumstances permission ought not to be given.

10. It follows that the sole and ultimate issue that arises in this case is whether the required consent was given by the endorsement of the letters "OK" on the 9 January letter.

The Trial

11. The trial took place on 23-25 November 2015. I heard oral evidence called by the claimant from Mr Syed Kazmi, the claimant's Chief Executive and Mr Mirza. In addition, I read evidence submitted pursuant to a Civil Evidence Act Notice dated 3 July 2015 consisting of various emails from and to Mr Mark Williams who at the time was a vice president and senior manager employed by the claimant in its remedial management department but who is no longer employed by the claimant.

12. I heard oral evidence called by the defendant from Mr Farhaan Hamzah Ahmed ("FHA"), a director of and shareholder in the defendant, Mr Anjum Ahmed ("AA"), the father of FHA and a director of UL, and from Mr Saeed, who was employed by the claimant as its Area Chief of Provincial Branches down to 31 March 2012 and was the official who endorsed the letter of 9 January 2012.

13. In addition both parties relied on expert valuation evidence. The claimant relied on a report from Mr Derek Nesbitt MRICS. The Defendant relied on a report from Mr Paul Naylor MRICS. The valuation evidence is relevant only to a single issue to which I refer below and in the end was agreed.

Background

14. On 11 September 2000, UL was registered as the freehold proprietor of the property, subject to the charge in favour of the claimant that was registered on the same date. Thereafter a further charge between the claimant as mortgagee and the defendant as mortgagor were registered against the title of the property. Nothing turns on the timing of the charges and the wording of each is similar to the extent that wording is material. It is not in dispute that the sums secured by the charges far exceed the value of the property.

15. The property consists of 6 floors including a basement. The basement and ground floor were used for non-residential purposes and was subject to a lease in favour of the Muslim Youth Foundation. Although AA maintained that written consent for this lease was given by the claimant, the document that is said to contain that consent has never been produced. The remainder of the property consists of 62 student rooms and flats, yielding an annual rental income currently of about £172,000. It is this part of the property that is subject to the Lease. This is a consideration to bear in mind when considering the issues that arise concerning the 9 January letter.

16. Each of the charges in favour of the claimant contain the following express provisions:

> "4.6.3 Not without the Bank's prior written consent to sell assign license sub-licence discount factor or otherwise dispose of or deal in any way with the Mortgaged Property...
>
> ...
>
> 4.7.1 Not without the Bank's prior written consent to exercise the powers of leasing agreeing to lease ... conferred on the Chargor by Sections 99 and 100 of the Law of Property Act 1925 ... and not permit any parting with or sharing of the possession or occupation of the Mortgaged Property.
>
> 4.7.2 In the event of the Bank consenting to the grant of any new lease or underlease or agreement for lease or underlease of the Mortgaged Property ... to deliver to the Bank a duly completed and stamped counterpart lease or agreement for lease or deed of variation or a certified copy of a Deed of Assignment or Transfer or Underlease (as the case shall require)."

17. The Lease is dated 27 April 2012. Its term is for 7 years running from 27 April 2012 and the rent payable was £24,000 per annum commencing on 26 October 2012. There was thus a contractual rent free period of 6 months. There was no rent review provision other than for the period after expiry of the initial term. The expert witnesses were agreed that the rent payable under the Lease was below normal commercial rates for properties such as the property at the date when the Lease was entered into and thereafter, and thus that the grant of the lease constituted impairment on the property's value on the open market. There was a dispute between the experts as to whether the value of the impairment was either £275,000 or £300,000 but both parties were agreed that it was the fact rather than the value of the impairment that was material for the purposes of these proceedings.

Effect of the Charges and Any Consent if Granted

The Charges

18. Clause 4.6.3 of the charges prohibited UL from disposing of any part of its interest in the property subject to clauses 4.7.1 and 4.7.2. In my judgment clause 4.6.3 is concerned with all forms of disposal other that those referred to expressly in Clause 4.7.1. This is so because the forms of disposal referred to expressly in Clause 4.7.1 are not included within the list of prohibited activities set out in Clause 4.6.3, because the phrase "*... otherwise dispose...*" in that clause is to be construed as limited by the specific words that precede it in the clause, and because Clause 4.7.1 would be unnecessary if the intention had been that the activities to which it expressly refers would come within the scope of Clause 4.6.3. It follows that the power of UL as mortgagee to lease the property or any part of it depends upon the effect of and compliance with Clause 4.7.1.

The Law of Property Act 1925 and Effect of Clause 4.7.1 of the Charges

19. Clause 4.7.1 has to be read together with Clause 4.7.2 and Sections 99 and 100 of the Law of Property Act 1925 ("LPA"). It is LPA, Section 99 that is principally relevant for present purposes. In so far as that section is relevant, it is to the following effect:

> "(1) A mortgagor of land while in possession shall, as against every incumbrancer, have power to make from time to time any such lease of the mortgaged land, or any part thereof, as is by this section authorised.
>
> ...
>
> (6) Every such lease shall reserve the best rent that can reasonably be obtained, regard being had to the circumstances of the case, but without any fine being taken.
>
> ...
>
> (11) In case of a lease by the mortgagor, he shall, within one month after making the lease, deliver to the mortgagee, or, where there are more than one, to the mortgagee first in priority, a counterpart of the lease duly executed by the lessee, but the lessee shall not be concerned to see that this provision is complied with.
>
> ...
>
> (13) ... this section applies only if and as far as a contrary intention is not expressed by the mortgagor and mortgagee in the mortgage deed, or otherwise in writing, and has effect subject to the terms of the mortgage deed or of any such writing and to the provisions therein contained.
>
> ...
>
> (14) The mortgagor and mortgagee may, by agreement in writing, whether or not contained in the mortgage deed, reserve to or confer on the mortgagor or the mortgagee, or both, any further or other powers of leasing or having reference to leasing; and any further or other powers so reserved or conferred shall be exercisable, as far as may be, as if they were conferred by this Act, and with all the like incidents, effects, and consequences ..."

20. LPA, Section 99 confers on a mortgagor the power to lease mortgaged land - see LPA, Section 99(1) - subject to the expression of a contrary intention in the mortgage deed or otherwise in writing – see LPA, section 99(13). Clause 4.7.1 prohibited UL from exercising the powers of leasing conferred on the Chargor by LPA, Section 99 without the Bank's prior written consent. Its inclusion within the charges was thus the

23. In my judgment Mr Doyle's argument on this point was mistaken. The letter of 9 January sought consent to the grant of a lease of the whole of the property to the Defendant as and when it was incorporated. It does not contain a request for further or other powers of leasing beyond those that would be conferred by LPA, Section 99 if the consent sought was forthcoming. Indeed, the final sentence of the letter is if anything inconsistent with it being a request for further or other powers of leasing given the assurance contained within it that any lease granted to the defendant would not contain any "*... clause detrimental to the charge of the bank*". On any view the letter cannot be construed as a request for consent to enter into a lease at a rent that was less than the best rent that could reasonably be obtained given the inclusion of that sentence.

24. It might have been argued that if (as is the defendant's case) a draft lease was provided to the claimant on either 4 or 9 January 2012, and if it could be proved that the draft set out the rent payable under it, then the claimant waived the right to rely on the point I am now considering or is estopped from relying on it. That point was not argued by Mr Doyle however. Had it been, I would have rejected it because (a) for the reasons I give later in this judgment I conclude that a draft lease was not supplied to the claimant by the defendant as alleged; but (b) in any event there is no evidence as to the terms set out in the draft and in particular no evidence that it contained the rent that was ultimately inserted into the Lease.

25. In the light of these conclusions, it is not necessary for me to determine whether, by endorsing the 9 January letter as he did, Mr Saeed intended to give the consent of the claimant to UL to lease the property to the defendant. Any such consent could only be consent to exercise the power to lease conferred by LPA Section 99 that UL would otherwise not have been able to exercise by reason of Clause 4.7.1 of the charges. That was a power to lease only at the best rent that could reasonably be obtained and on the agreed evidence of the experts the Lease was not such a lease. In those circumstances, the Lease was not one that was binding on the claimant irrespective of whether consent was given by endorsement of the 9 January letter. I make findings below concerning that issue only in case I am wrong to reach this conclusion and because most of the trial was taken up with evidence relevant to that issue so that my conclusions on that issue are likely to be a relevant consideration in determining who should be responsible for the costs (or part of the costs) of these proceedings.

26. Before turning to the effect of the endorsement of the 9 January letter, there is one additional point that arises concerning Clause 4.7.2 of the charges. By LPA, Section 99(11) a mortgagor who has entered into a lease of the charged property is required, within one month after making the lease, to deliver to the mortgagee, a counterpart of the lease duly executed by the lessee. It is common ground that this requirement was not complied with either. The claimant relied on this failure as an additional reason why the Lease was not binding on the claimant.

27. Mr Doyle submits that this failure is not relevant because Clause 4.7.2 of the charges is in unqualified terms and thus on true construction disapplies this provision or if that is not right he repeated his submission to the effect that the 9 January letter constituted an agreement pursuant to LPA, Section 99(14) that conferred the power to lease the property free of the constraints otherwise imposed by LPA, Section 99. The latter argument is one that I reject for the reasons already given.

expression of a contrary intention referred to in LPA, Section 99(13). Three points follow:

i) Before UL could lease the or any part of the property it first required the written consent of the claimant to exercise the powers of leasing otherwise conferred on a mortgagor by LPA, Section 99;

ii) There was no express requirement imposed on UL to produce a copy of the Lease in draft to the claimant before consent under Clause 4.7.1 could be sought or given. Clause 4.7.1 is concerned with the exercise of a power to lease. Since LPA, Section 99 imposes limits on the power of the mortgagor to lease charged property, the effect of clause 4.7.1 is that consent to exercise the power could be sought and granted prior to any lease having been negotiated or a tenant identified, and, if unconditional consent was given in such circumstances, the power to lease could be exercised at any time thereafter by the mortgagor subject only to the constraints imposed by LPA, Section 99. This approach is consistent with the wording of Clause 4.7.2, which imposes an obligation to supply a copy of the any lease granted pursuant to consent conferred on the mortgagor to exercise the powers of leasing only after the lease concerned has been granted. Nothing within either the LPA or the charges prevented the claimant from imposing conditions before granting consent however; and

iii) Even if unqualified consent was forthcoming, it could only be consent to exercise the power conferred by LPA, Section 99, unless any further or additional powers had been conferred on UL pursuant to LPA, Section 99(14). It follows that unless any further or additional powers were conferred on UL pursuant to LPA, Section 99(14), any lease entered into by UL following the grant of consent pursuant to Clause 4.7.1 had to be one that reserved the best rent that could reasonably be obtained – see LPA, Section 99(6).

Effect of the Terms of the Lease

21. In the course of his closing submissions, Mr Moraes submitted that even if I concluded that consent had been given by endorsement of the 9 January letter, the Lease was not a lease that reserved the best rent that could reasonably be obtained. Mr Moraes submitted that this necessarily followed from the agreement of the expert valuers that the rent payable under the Lease was below normal commercial rates for properties such as the property at the date when the Lease was entered into and generally. Mr Moraes submitted that if this was correct then it necessarily followed that the Lease was not one that UL was permitted to grant and thus was not one that was binding on the claimant.

22. Mr Doyle addressed this issue in his closing submissions in reply. He did not submit that the point I am now considering was not a point that was open to the claimant either on the pleadings or otherwise, nor did he challenge the submission that the Lease failed to reserve the best rent that could reasonably be obtained. His only submission in relation to this point was that on true construction the 9 January letter constituted an agreement pursuant to LPA, Section 99(14) that conferred the power to lease the property free of the constraints otherwise imposed by LPA, section 99.

28. The first of these arguments is one that I need not resolve because of the conclusions that I have reached already concerning the effect of the Lease reserving a rent that was less than the best rent that could reasonably be obtained. Whilst I can see force in the first argument because it is not at all clear why Clause 4.7.2 was included as a term of the Charge if that was not intended to be its effect given the terms of LPA, Section 99(11), I prefer not to express a concluded view on this issue given that it is hypothetical.

The Effect of the Endorsement on the 9 January Letter

The Witness Evidence

29. The evidence of Mr Saeed concerning the 9 January letter as set out in his signed witness statement in summary is as follows. He says that Mr Kazmi visited the claimant's branch in Manchester on 4 January 2012; that AA called at the branch and met with Mr Kazmi and that he says he overheard them discussing the lease but was not directly involved and did not hear what was said. AA's evidence was that there had been such a meeting. Mr Kazmi's evidence on this issue was that he was not in Manchester on 4 January and did not have any such discussion with AA though there was a meeting between him and AA on 6 January 2012.

30. Mr Saeed says that a few days later he received a phone call from Mr Kazmi telling him that he had been approached by the "freeholder" (that is UL) for consent to the grant of a lease of the property and that Mr Kazmi instructed him to provide the consent on behalf of the claimant. He then says in paragraph 10 of his witness statement that:

> "... on 10 January 2012, I received a request from the freeholder to obtain consent in relation to providing a lease for the property to the defendant and a draft copy of the lease was provided at this point."

Mr Saeed maintains that it was "*... the claimant's policy and practice to refer all leases for properties pledged as security to the Management Team within the Zonal Office based in London for approval ..*" and that "*... this procedure was followed in relation to obtaining the consent to lease the property*". He concludes at paragraph 9 of his statement by saying that he marked the correspondence "*OK*" pursuant to the instructions that he had been given to consent to the grant of the Lease. In his oral evidence, Mr Saeed said that he took the copy of the draft lease he claims to have been provided with and attached it to the original of the 9 January letter and filed both. He says that during the meeting on 10 January he handed a copy of the endorsed 9 January letter to AA.

31. Finally Mr Saeed says in paragraph 10 of his statement that had proceedings been commenced or intended against UL, consent would not have been provided because "*... this would have compromised the security of the claimant...*". I do not understand this element of Mr Saeed's evidence. The claimant's security would be compromised (irrespective of whether there were proceedings between the claimant and the defendant on 10 January 2012) only if the value of the property was reduced as a result of the Lease being granted. It was common ground between the parties that the value of the property as a security would be reduced only if any lease granted

pursuant to the consent allegedly given was for a rent that was less than a full commercial rent. Mr Saeed was not competent to assess the rent payable and does not suggest that he was or did. He does not suggest that he examined the lease and does not suggest that it contained a rental figure. In my judgment it is inherently more likely that he gave consent because he was instructed to do so by Mr Kazmi, or did not give consent at all. He was fully aware of the claimant's internal procedures; and that those procedures required the terms of any lease to be considered by the claimant's credit committee. I consider it probable that Mr Saeed would have ignored those procedures only if instructed by Mr Kazmi to do so.

32. AA's evidence is that a meeting to the effect referred to by Mr Saeed took place between him and Mr Kazmi on 4 January 2012. He maintains that in the course of the meeting, Mr Kazmi told him that whilst he was authorised to consent and consented to the granting of the lease, a written request should be made to the claimant. AA maintains that it was as a result of that meeting that he wrote a letter dated 4 January 2012 to Mr Kazmi. It was addressed to him at the claimant's London offices. The relevant sentences were "*... I refer to my earlier conversation with you of issuing a lease of Clydesdale House in favour of our new company to be incorporated soon. I would appreciate your confirmation at the soonest*".

33. AA says that "*subsequently to this*" a response was received by phone from Mr Kazmi in which he said again that he consented but a written request would need to be addressed to the manager of the Manchester branch of the claimant. He maintains that the 9 January letter was written as a result of that request. He says that he contacted the claimant's Manchester branch (which was only a few hundred metres from UL's offices) and made an appointment to see Mr Saeed on 10 January. He says he attended the claimant's branch, that he met with Mr Saeed by appointment there, handed Mr Saeed the letter which he then endorsed as I have described and as is shown on the reproduction of the letter set out above.

34. Contrary to what Mr Saeed says, AA maintains that the draft lease was handed to Mr Kazmi on 4 January 2012. However, he then says in the following paragraph of his statement that "*pursuant to the copy of the lease being provided to the claimant, the claimant corresponded with the company on 2 February 2012 ...*"

35. The claimant contests these versions of events on a number of different bases. It maintains that AA's evidence in untrue and that Mr Saeed's evidence is either untrue or in any event unreliable and the evidence given by them should not be accepted unless it constitutes an admission, is contrary to interest or is corroborated either by documentation or by the oral evidence of a witness whose evidence has been found to be truthful and accurate. Mr Doyle submits that a similar approach should be adopted to the evidence given by the claimant on the basis that in particular Mr Kazmi sought to avoid answering questions directly or frankly.

36. In relation to the evidence of Mr Saeed, it is submitted by the claimant that his evidence as set out in his signed statement should be rejected because it is contradicted by material attached to a Civil Evidence Act Notice served by the claimant. The material consists of emails and attachments to emails sent by Mr Mark William to and received from Mr Saeed, and to others within the organisation of the claimant. Mr Williams could not be called to give evidence, according to the Notice,

because "*... he has left the employment of the Claimant and ... has not agreed to attend trial*".

37. The first relevant email is dated 2 October 2013 and purports to summarise a conversation between Mr Williams and Mr Saeed. As I said earlier, Mr Saeed had left the employment of the claimant in March 2012. The evidence is, and I find, that he left on good terms with his former employers and in particular Mr Kazmi and without any criticism having been made of his conduct while employed by the claimant. Mr Williams contacted Mr Saeed only following an assertion by UL and the defendant that the lease of the property by UL to the defendant had taken place with the consent of the claimant. According to Mr William's email, Mr Saeed:

> "... confirmed to me that he did write OK and initial the letter from [UL]. However, he believed that this was merely confirmation to the client that he had received their letter and was in principle agreeing that the request could continue. His practice was to acknowledge letters and requests from clients this way. Not a formal agreement.
>
> ..."

The email goes on to record Mr Saeed as saying that he did not see the letter as the bank formally approving the lease as the letter indicated that the defendant had yet to be incorporated and the lease had yet to be vetted by the claimant's solicitors in accordance with the usual process. There is no mention of instructions to consent being given to him by Mr Kazmi. This is surprising (if the email is correct) because Mr Saeed would have had no reason to hide this fact and every reason to make that point if it was correct. If Mr Saeed is correct when he says that he told Mr Williams the true position then it is entirely unclear to me why Mr Williams would have written the email in the terms that he did. It was an internal report and there is no obvious reason why he would misrepresent what he had been told by Mr Saeed in such a report.

38. On 22 November 2013, Mr William sent to Mr Saeed a draft witness statement based on the conversation referred to in his 2 October internal email. The draft witness statement confirmed that Mr Saeed had endorsed the letter as shown on the copy above, then set out the claimant's process before consent could be given before saying at paragraph 12 that by endorsing the letter Mr Saeed was doing no more than to indicate that the claimant was prepared to proceed with the usual process of obtaining consent for the grant of a lease. The witness statement was sent under cover of an email. The email said that the draft witness statement confirmed the matters that Mr Williams had discussed with Mr Saeed, that there were some sections within the draft marked by square brackets where additional information was required and that "*...if there are any parts that you believe are not correct or you would like to add any further information ...*" then Mr Saeed should let Mr Williams know.

39. Mr Saeed responded just under a month later by email in which he said that he would need to consult solicitors, that this would entail expenses and that a banker's draft for £2,000 should be sent to him. Mr Williams offered to meet any solicitors' fees and

asked that the solicitors be instructed to bill the claimant direct. This was met by an email from Mr Saeed on 17 December 2013 which said:

> "Please find enclosed an invoice for my time spent on the matter. There will be no separate invoices from the solicitors. Please ensure early payment into the account."

The invoice was dated 17 December 2013 and claimed payment for the meeting in October (2 hours), other claimed activity by Mr Saeed and a 5 hour meeting said to have taken place with unidentified solicitors. Mr Williams responded saying that the claimant could not pay Mr Saeed for his time but was willing to pay for reasonable expenses incurred by instructing a solicitor. The email string ended with an email from Mr Saeed that said that he considered the claimant was being unreasonable and that if the claimant was not willing to pay "*... it will be difficult for me to give any more of my time to this matter*".

40. It is necessary that I should resolve two issues at this stage – the first concerns whether a draft lease was or could have been provided to the claimant either to Mr Kazmi on 4 January 2012 as AA alleges, or on 10 January as Mr Saeed alleges. This is relevant to the credibility of the evidence of each of Mr Saeed and AA and is also relevant to the question whether the letter of 9 January 2012 was in fact a consent given by Mr Saeed on behalf of the claimant. The other issue that it is necessary to resolve at this stage is whether the letter of 2 February 2012 is an authentic document. This is no longer substantively relevant but was challenged by the claimant on the basis that it was relevant to credibility. It is also necessary for me to decide whether the letter of 4 January 2012 was written on the date it bears.

41. Once I have decided those issues I will turn to the ultimate factual issue that arises – that is whether the endorsement of the 9 January letter constituted consent pursuant to Clause 4.7.1 of the charges. The answer to that question does not necessarily follow from a conclusion that a draft lease was not provided to the claimant on either the 4 or 10 January (although in my judgment such a conclusion will be a factor of significant weight in resolving that question) but depends upon an evaluation of the evidence as a whole including that concerning the nature of the claimant's relations with its customers generally and with the Ahmed family in particular.

The Draft Lease Issue

42. The evidential burden of proving the delivery of a draft lease to the claimant on either the 4 or 10 January rests on the defendant as the party asserting that such was the case. In my judgment it has failed to discharge that burden. I reach that conclusion for the following reasons.

43. First, the claimant maintains that no such document has been found on its files. I accept that this is not of itself a sufficient reason for reaching the conclusion that I have reached but it is nonetheless a material consideration when taken together with the other factors to which I refer below.

44. Secondly, no such draft has been disclosed by the defendant.

45. Thirdly, the only material that has been disclosed that refers to a draft lease is a letter to the defendant dated 25 April 2012 from MWG Solicitors to the defendant. MWG were instructed by UL. The letter records that the defendant had not appointed solicitors to act for it in relation to its lease of the property. The rent payable under the lease enclosed with the letter was described as being at a rent of £24,000 and as being subject to a 6 month (incorrectly expressed as being a 6 year) rent free period. The letter said:

> "We enclose herewith Lease for [the property] for your perusal, approval and or amendment".

This makes it entirely clear that the lease enclosed with the letter was at that stage a draft because it could not otherwise be approved or amended. Its terms suggest that no draft had been in the hands of the defendant prior to that date. Had it been, the letter would have referred to earlier correspondence, drafts and/or meetings at which earlier drafts had been discussed. The letter would not have included the statement that MWG was instructed by UL if there had been any earlier contact.

46. When pressed about this point AA suggested for the first time in the course of his cross examination that a different firm of solicitors had produced an (undisclosed) draft that was the document provided to the claimant. In my judgment this was an untruthful suggestion invented by AA for the purpose of explaining away that which could not truthfully be explained away. I say that because there is no mention of this in the pleadings, in AA's witness statement nor has a single document been disclosed that supports such a suggestion. This is all the more significant because in his case management order relevant to these proceedings, District Judge Smith had directed the defendant to give specific disclosure of copies of any lease or any drafts and the file of the lawyers instructed to draft the Lease.

47. Fourthly, on 14 April 2012 the defendant had apparently entered into an agreement with UL under which the defendant was to manage the property on behalf of UL. Under this agreement a management fee of 12% of the rental income derived from the property was payable to the defendant by UL. If it was being contemplated by UL and the defendant that UL would let the property (or most of it) to the defendant, it is inherently improbable that they would enter into a management agreement that applied to the whole of the property – and thus the part of the property ultimately leased to the defendant under the Lease. This provides support for the proposition that there were no negotiations concerning such a lease prior to 14 April and that the draft lease enclosed with MWG's letter of 25 April was the first that had been produced.

48. Fifthly, on 16 July 2012, the claimant made formal demand for the sums secured by the charges and on 27 July appointed receivers in respect of the property. What happened thereafter suggests that the Lease was not entered into until much later than 27 April 2012. There was correspondence between AA and the receivers concerning the rent due to it from the property. At no stage did AA assert that the only rent to which UL was entitled was £24,000 under the Lease. Rather the discussion took place by reference to the rents paid by the students who occupied rooms and flats within the property. If the Lease had been entered into on 27 April 2012, then all such rents thereafter were rents that were payable to the defendant not UL and the only rent

payable to UL would be that due under the Lease. In fact no rent was due under the Lease until the end of October 2012, because of the rent free period included within the Lease. Further, the defendant maintains and it is the evidence of AA and FHA that shortly after the Lease was entered into on 27 April 2012, the defendant twice extended the rent free period. It is asserted that the first of theses extensions was granted by a letter dated 1 May 2012 by which it is said that that the rent free period was extended by 6 months from the expiry of the rent free period fixed by the Lease. This extension took the rent free period to April 2013. It was said to have been agreed over "... *the weekend 28/04/2012* ..." – that is the day after the Lease. It is alleged that this rent free period was further extended by a letter dated 1 June 2012 (that is a month after the first extension) under which the rent free period was extended to 26 April 2014.

49. If the Lease had been entered into on 27 April and if there were extensions of the rent free period as alleged, then UL's position concerning rents would have been a simple one – the property had been leased to the defendant with the consent of the claimant and no rent was due because the rent free period within the lease did not expire until October 2012 and in any event had been extended to 26 April 2014 so that no rents were payable to UL in respect of the property. That was not the position adopted however – see the run of emails including that from the receivers to AA dated 21 August 2012, 18 September 2012, 9 October 2012, 17 October 2012, and the response of UL's agents dated 24 October 2012 that "... *our client ... will be forwarding the ... net rents to the requested account at the earliest opportunity*" and their letter to the receivers dated 6 November 2012. This correspondence culminated in a letter from the solicitors then acting for UL (Blackstone Solicitors Limited) accepting a proposal by which the rents were to be paid into an escrow account.

50. Sixthly, after the appointment of the receivers the only agreement between the defendant and UL that was produced was the management agreement to which I referred earlier. This position was maintained down to 15 February 2013, when the receivers wrote to UL saying that they would take over the management of the property. This resulted in an email from Blackstone on 18 February 2013 the operative paragraph of which was as follows:

> "We are instructed to pursue a claim in respect of the early termination of the management contract. Further, as our client has a lease of the whole premises we are not clear what your legal rights are to terminate the management contract, please explain"

This was responded to by the claimant's solicitors by a letter of 20 February in which it was pointed out that this was the first time a lease had been referred to. The lease relied on was identified as the Lease for the first time by a letter from Blackstone to the claimant's solicitors dated 22 February 2013. Ultimately a copy of the Lease was sent to the claimant's solicitors by Blackstone under cover of a letter date 13 March 2013.

51. This course of events makes no sense if the Lease had been entered into on 27 April 2012 as alleged. The only correspondence relating to the Lease that has been produced is that from MWG dated 25 April 2012 enclosing the draft lease referred to

in that letter. Given the description contained in the letter it is probable that the draft enclosed with that letter is what became the Lease. However there is no evidence at all that supports the conclusion that the Lease was executed and became binding on 27 April 2012. The way in which UL conducted itself in relation to the receivers suggests that the Lease had either not been executed on 27 April or was not executed, or was not considered to be binding between the parties to it for many months afterwards – and probably not earlier than on or about 15 February 2013, when the receivers threatened to take over management of the property thereby cutting off the revenue stream that the student rents represented. This of course of itself does not mean necessarily that there was no draft in existence on 4 January 2012 or that consent was not sought and given on 10 January but in combination with the other factors that I have so far referred to it makes it unlikely that such was the case.

52. It is now necessary to turn to the relationship between the Ahmed family and the claimant. The nature of this relationship is relied on by the defendant as supporting its case, because it was such as to make informal arrangements more likely than would be normal in a banker/customer relationship. I accept that the Ahmed family had a close professional relationship with the claimant going back a number of years. It was principally a relationship that focussed on a group of companies of which UL was part that had in the past operated profitably in the clothing import and wholesale market.

53. The claimant is not a major clearing bank – it operates in effect as a personal bank offering a personalised service to its customers which is based on the relationship that is maintained between its senior officials and its customers and the individuals who own them. I accept that such an operation might lead to the claimant operating informally on some occasions. I accept that in the period down to 2010, the claimant had conducted itself in a manner that resulted in it being fined by the FSA in relation to the manner in which it complied with money laundering regulations. It is important to note however that it was not alleged that money laundering had occurred. All of this accepted, I consider there is a fundamental difference between the claimant acting informally in relation to at least some of its customers and its senior officials maintaining a close relationship with those customers and the claimant and its officials acting contrary to the interests of the claimant. The purpose of maintaining a close relationship with a customer was to maintain the relationship in the interests of the claimant. It does not lead to the conclusion that the claimant's senior officials would manage the affairs of the claimant in a manner that would damage its interests.

54. This leads me back to a point I made much earlier in this judgment. In January 2012, the affairs of the group of companies controlled by the Ahmed family were in disarray – there were very significant cash flow difficulties which it was hoped that the group could trade out of and it would appear that the claimant was prepared to continue supporting the group. I am sure that the willingness of the claimant to continue supporting the group took into consideration factors such as the lengthy relationship between the claimant and the Ahmed family and a belief that there was a realistic prospect that the group could trade itself out of the difficulties it was in. However, in my judgment it is likely also that the claimant would have arrived at such a conclusion because it considered that it was under secured (as in fact it was) in respect of the global liability of the group to the claimant and thus the best chance of securing a full recovery lay in supporting the group. However, that does not lead to the

conclusion that the claimant's senior officials would be willing to further undermine the claimant's security position. If anything, the contrary was the case.

55. There is a clear difference between providing support in the form of marginal increases in facilities and not taking enforcement action on the one hand and permitting a company such as UL to conduct itself in relation to properties against which liabilities had been secured in a manner that might adversely affect the value of the claimant's security. That is particularly so in relation to the property. Refusing permission to UL to lease the property to the defendant could have no impact at all on the strategy of supporting the group in its attempt to trade out of its difficulties. What required support was the commercial trading of the group, principally through the provision of trade finance facilities. It is not suggested that leasing the property to the defendant had any impact on the recovery strategy being operated by either the Ahmed family of their group of companies or the bank's support for that strategy. The only impact that leasing the property could have so far as the claimant was concerned was to damage the security that it had. Leasing the property to the defendant did not provide any support on the recovery strategy so far as the Ahmed family and the group was concerned. If the Lease was entered into on 27 April 2012, and rent free periods were granted as alleged, the only effect would be to reduce UL's revenues.

56. That being so, I reject the suggestion that the claimant's senior officials would act contrary to the procedures of the claimant either because of the close personal relationship that those officials had with the Ahmed family including AA or would consider themselves obliged to do so by reason of the group's level of indebtedness to the claimant. Mr Doyle suggested that the officials might have been concerned about the possibility that the group would attempt to enter administration, that there would be a "*prepack*" arrangement entered into and if there was such an arrangement the claimant would suffer significant losses. I agree that this is likely to have been a consideration in the claimant deciding to provide support for the recovery strategy but it had no impact on the decisions concerning the property. It is not suggested that this was a consideration by any of the witnesses and it is close to absurd to suggest that AA and his father would have considered entering into a prepack administration with all the cost and uncertainty that would entail, and the risk it would pose for the group's trading and commercial connections, simply because of a refusal on the part of the claimant to consent to the lease of the property to the defendant.

The events of January 2012

57. I turn first to the events of 4 January 2012. Mr Kazmi maintains that there was no meeting on 4 January but there was a meeting in London on 6 January between him and AA. AA maintains that there was a meeting in Manchester on 4 January and in this he is supported by Mr Saeed.

58. It is at this stage that I have to consider the credibility of Mr Saeed as a witness. In the course of his oral evidence Mr Saeed told me that he maintains a very detailed personal diary which includes entries relevant to his professional activity. This was I think a surprise to all parties not least because there had been no mention of it in the discussions between Mr Williams and Mr Saeed, and it was not mentioned in his signed witness statement. In my judgment had such a diary existed, or if it supported any part of his evidence in these proceedings if it does exist, then he would have

mentioned it and probably produced it at a much earlier stage. First mentioning the diary in the course of cross examination leads me to conclude that either the diary does not exist or if it does that it does not support what Mr Saeed says or does not assist in determining whether what he says is correct or not.

59. The hearsay material that is relied on by the claimant has to be approached with some caution because Mr Williams did not give evidence and thus the material relied on by the claimant has not been tested by cross examination. This inevitably affects the weight that can be given to it. All of that said, unless the material relied on has been fabricated, in my judgment the material is significant. As I have said already, there is no rational basis on which Mr Williams would have sent the internal email describing the effect of his initial meeting with Mr Saeed unless he considered what he said to be an accurate summary. Further, and for similar reasons it is improbable that Mr Williams would have drafted the draft witness statement in the terms that he drafted it unless he considered that it reflected what he had been told at the earlier meeting. Whilst it was suggested that the statement was an initial draft that was a mixture of surmise, speculation and expectation, in my judgment that analysis does not survive an examination of the terms of the email under cover of which the statement was sent to Mr Saeed. Finally, whilst it is clear that the discussion between Mr Williams and Mr Saeed became concerned with payment, it is surprising that Mr Saeed did not respond at any stage with a couple of lines saying that in any event Mr Williams had got it all wrong because in endorsing the 9 January letter as he had he was giving the consent of the claimant to the leasing of the property to the defendant.

60. Mr Saeed was cross examined about his continuing relationship with the Ahmed family. He accepted that he was still in contact with the family and he also told me that he had been operating on a self-employed basis providing consultancy advice since he had left the employment of the bank. He accepted that his income from this activity was less than £100,000 per annum. He accepted that he had given advice from time to time to the Ahmed family but said that he had not charged for any of it. This suggests to me that Mr Saeed hopes that by maintaining his relationship with the Ahmed family he will benefit at some stage in the future from that relationship.

61. These factors all lead me to conclude that I ought to approach Mr Saeed's evidence with caution. This leads me to conclude that I ought to be cautious before I accept his evidence unless it is an admission, is corroborated or is against his interest.

62. I turn first to the events of 4 January. AA maintains that what he says occurred on that day is corroborated by the letter from UL to Mr Kazmi. Mr Kazmi maintains that his denial of any contact on 4 January is supported by the absence of any entry for 4 January. He says that his diary is kept electronically by his secretary, that he and other senior officials were concerned with end of year activities that kept him in London during the early part of January and that the absence of any entry at all in his diary for 4 January shows that he was in London that day and not in Manchester. He maintains that had he been in Manchester there would have been an entry to that effect in his diary.

63. I conclude that I cannot safely accept the evidence of AA save where it is an admission, is corroborated or is contrary to his interests. I reach that conclusion because of the untruthful evidence he gave me concerning the genesis of the Lease.

64. I conclude that a meeting did not take place on 4 January and even if there was such a meeting no draft lease was provided to Mr Kazmi on that occasion. The draft lease was not produced until shortly before it was sent to the defendant on 25 April 2013. It was probably not executed until much later and probably on or about the date when the receivers indicated an intention to take over management of the property. On that basis a draft lease cannot have been provided to the claimant on either 4 or 10 January.

65. I have grave doubts as to whether the letter of 4 January is an authentic document. First it makes no reference whatsoever to a draft lease having been handed to Mr Kazmi at the earlier meeting to which it purports to refer. That is consistent with the conclusions that I have reached concerning the genesis of the Lease. However that omission is inconsistent with what AA maintains he did at the meeting on 4 January. I am bound to say that I consider the terms of the letter of 9 January are inconsistent with a lease being handed over in draft on 4 January given the terms of the final sentence of that letter. The terms of the lease would have been those in the draft handed over on 4 January.

66. Secondly, and perhaps more importantly in relation to whether there was any meeting on 4 January, AA says that he was told to write the letter of 4 January by Mr Kazmi. If that is so, it is difficult to understand why Mr Kazmi would not have told him to write the letter to the branch rather than to him personally if, as AA maintains, he had the letter of 4 January delivered to Mr Kazmi at the Manchester branch and that after the letter had been delivered he received a phone call from Mr Kazmi saying that the written request had to be addressed to the manager of the Manchester branch. Accepting that as being the correct procedure, it is improbable that Mr Kazmi (if in fact he had received the letter while he was at the Manchester branch as AA alleges) would not simply pass it to Mr Mirza for action and even more improbable that if Mr Kazmi was really concerned about this issue he did not tell AA that such was the position at the alleged meeting on 4 January when he supposedly told to write the letter. .

67. There are two further points to make about the 4 January letter. First, when being pressed in cross examination to explain why there is no reference within the letter to a draft lease being supplied to Mr Kazmi when on AA's evidence that had occurred, AA initially said that this was a mistake and then that the terms of the letter had been dictated to him by Mr Kazmi. This was an untruthful response. It is not an explanation that appears in AA's witness statements and had not been put to Mr Kazmi in cross examination. It was an untruthful explanation that he was driven to give when faced in cross examination with MWG's letter and its implications for the suggestion that a draft lease had been provided to Mr Kazmi at the meeting that it is alleged took place on 4 January in Manchester. If it was true, then there is no explanation as to why Mr Kazmi would not have dictated the letter as addressed to the branch manager rather than to him – the point that AA maintains caused Mr Kazmi to contact him by phone on 4 January after the 4 January letter had been hand delivered to the claimant's Manchester branch. The final point is one of timing. If as AA alleges he was told in the course of a telephone conversation with Mr Kazmi to send the letter to the branch not him, it is entirely unclear why he waited until 9 January before making further contact with the claimant.

68. All this leads me to conclude that the evidence of Mr Kazmi is to be preferred over that of AA in relation to the issue I am now considering. The absence of an entry in the diary for 4 January is ambiguous when taken on its own but is consistent with Mr Kazmi's evidence being accurate in this respect once all the other factors I have referred to are considered. In those circumstances, I conclude that there was no meeting in Manchester on 4 January as AA asserts. It necessarily follows that Mr Saeed's evidence that he witnessed such a meeting must also be wrong. This is a further reason why in my judgment caution is required before Mr Saeed's evidence is accepted where it is not an admission, corroborated or against interest.

69. It is next necessary to consider whether a draft lease was provided to the claimant acting by Mr Saeed on 10 January. I find that it was not. My reasons for reaching that conclusion are those I have set out earlier in this judgment concerning the genesis of the Lease. In addition, I consider it highly improbable, if Mr Saeed had been handed a draft lease at the meeting on 10 January that he would not have kept a record of that fact or recorded on his endorsement on the letter that a draft lease had been provided by AA to the claimant. Furthermore, given that Mr Kizmi's alleged instructions to Mr Saeed to give the consent was contrary to the claimant's internal procedures, I consider it improbable that Mr Saeed would not have prepared an internal memorandum recording the fact of his instructions and what he had done as a result of them. Even if he had not adopted that course I would have expected him to record something as unusual as that in his diary if the diary was as detailed and relevant to his work as he suggested. Finally, the terms of the 9 January letter are inconsistent with its author (AA) intending to provide a draft lease either with the letter or subsequently. The terms of the final letter contradict the suggestion that a draft was available that could be vetted by the claimant's advisors.

The 2 February Letter

70. As I have said already, this issue is now relevant only to the credibility that I should attach to AA's evidence. Given the conclusions that I have reached so far this issue is now much less important than it might otherwise have been. I should make clear however that I conclude that the defendant has not established the authenticity of this letter. I reach that conclusion for the following reasons. As with all the other issues that arise in this case, this question is one of inference from surrounding facts and circumstances. None of the points I now turn to are decisive in themselves but taken together they all point unequivocally to the conclusion that I have reached.

71. First, the formatting of the document appears inconsistent. The date is in a smaller font than the rest of the letter. It is closer to the margin than the address that appears beneath. The gaps that appear between the date, the address, the salutation, the caption, the text, and the words "Yours sincerely" are uneven and unusually wide. The name and title of Mr Mirza that appear at the end of the letter are in a different font and type face to the rest of the letter. The use of the phrase "Yours sincerely" is incorrect usage for a letter that commences "Dear Sirs". The text of the letter is not clearly expressed.

72. The letter refers to a draft lease, but for reasons that I have given at length already, no draft lease was available or delivered to the claimant or any of its officials on or

before 2 February 2012 and thus the letter is entirely inconsistent with what in fact happened.

73. The letter is not one for which there is any purpose. If, as is the defendant's case, consent was given on 10 January, there is no reason for the claimant to be writing the 2 February letter. If a draft lease was provided to and accepted by Mr Saeed on 10 January, it is unclear why he would not have provided the receipt himself either by endorsement on the copy of the 9 January letter that it is alleged was handed to AA on 10 January. If consent had been given, it is unclear why the claimant would have been writing to repeat what had already been done.

Effect of the Endorsement on 9 January Letter

74. As I have indicated in the preceding parts of this judgment, I have rejected the version of events given by AA and Mr Saeed concerning what happened on 4 January 2012 and I am unable to accept the evidence of either AA or Mr Saeed in relation to what occurred on 10 January 2012. I have accepted the evidence of Mr Kazmi in relation to what he says concerning what happened on 4 January 2012. The key question that remains is whether as Mr Saeed asserts he gave consent on behalf of the claimant by endorsing the 9 January letter because he had been instructed to do so by Mr Kazmi.

75. In my judgment my assessment of the credibility of Mr Kazmi over that of AA and Mr Saeed coupled with the relevant surrounding circumstances lead me to conclude that Mr Seed's evidence to this effect should be rejected. As I have said, I have preferred the evidence of Mr Kazmi over that of Mr Saeed in relation to what happened on 4 January. I have rejected the evidence of Mr Saeed on the critical question of whether a draft lease was provided to him on 10 January. This gives me confidence that what Mr Kazmi says on the issue I am now considering is more likely to be correct than what Mr Saeed says.

76. In my judgment that conclusion is supported by the surrounding background that I have referred to already at length above. In summary the Ahmed family group of companies was very substantially in debt to the claimant. The claimant was under secured and in any event would not want to have taken any step that would have risked reducing the value of the security that it had. Giving permission to lease without having had sight of the lease proposed, much less without considering the effect of the terms of the proposed lease, clearly and obviously courted that risk. Whilst I accept that the claimant may not have wanted to do anything that precipitated the collapse of the group, there is no tenable basis for suggesting that refusing to give consent without first having gone through the claimant's usual procedures which included vetting a proposed lease of property against which it had taken a security interest, would have or even might rationally be thought to have triggered such a result. Indeed, it is not suggested by any of the defendant's witnesses that such was the case. Whilst it might have been in the interests of the claimant to preserve goodwill in order to avoid the risk of an administration of the companies within the Ahmed family group, there is no basis on which it could have been thought that refusing consent would have had that result.

77. I now return to the issue concerning the effect of the endorsement on the 9 January letter. In my judgment the endorsement was not intended by Mr Saeed to be consent

on behalf of the claimant, is not to be construed as such consent, and was not in truth understood by AA to be such consent. Mr Saeed had not been instructed to give consent and the internal procedures of the claimant prevented consent being given without credit committee approval which in turn depended on sight of the proposed lease. As I have explained, it was open to the claimant to give consent to lease without sight of a draft but that is a different point. The claimant was fully entitled to insist on sight of a proposed lease and to grant permission only after having seen the proposed draft and on the basis that only a lease in the terms of an approved draft would be entered into. Mr Saeed accepted that he was fully aware of the claimant's internal procedures. This was inevitable given the position he occupied within the claimant. I conclude that he would not have even considered giving consent in the absence of an instruction to do so from Mr Kazmi, in the absence of approval to do so in accordance with the claimant's internal procedures. I have rejected the notion that any such instruction was given. Finally, if Mr Saeed had been authorised to give consent there is no rational reason why he would have proceeded as he did. He would not have endorsed the letter as he did. He would have written formally to UL.

78. AA knew that consent had not been given. He asserted repeatedly in the course of his cross examination that consent could not be given by the bank without sight of a draft lease. That was evidence that it was against his interest to give and I accept it reflects his true understanding in January and February 2012. That being so, and because no draft lease had been supplied and because I have rejected AA's evidence that Mr Kazmi had indicated oral consent at the meeting he alleges took place on 4 January, it necessary follows that in truth AA knew that the endorsement on the 9 January letter did not constitute consent.

Conclusions

79. The defendant's defence of this claim fails (a) because consent had not been given by the claimant in accordance with clause 4.7.1 of the charges and (b) because even if that is wrong, the lease was not one that satisfied the requirements of LPA Section 99(6) and thus was not in any event a lease for which permission had been given. It follows that the claimant is entitled to possession of the property as against the defendant. I will hear the parties further as to the form of the order at the hand down of this judgment unless the terms of an order can be agreed prior to then.