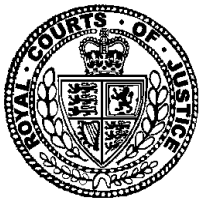

Neutral Citation Number: [2016] EWHC 1923 (Ch)

Case No: HC-2015-004180; HC-2016-001401

IN THE HIGH COURT OF JUSTICE
CHANCERY DIVISION

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

Date: 27/07/2016

Before :

TIMOTHY FANCOURT QC

- -

Between :

GREENPINE INVESTMENT HOLDING LIMITED	**Claimant**
- and -	
(1) HOWARD DE WALDEN ESTATES LIMITED	**Defendants**
(2) CHARLES RUSSELL SPEECHLEYS LLP	

- -
- -

Ms Ellodie Gibbons (instructed by **Bilmes Solicitors**) for the Claimant
Mr Mark Loveday (instructed by Charles Russell Speechleys LLP) for the Defendants

Hearing dates: 7, 8 July 2016

- -

Judgment Approved by the court for handing down (subject to editorial corrections)

If this Judgment has been emailed to you it is to be treated as 'read-only'. You should send any suggested amendments as a separate Word document.

Mr Fancourt QC :

1. This judgment is given in two Part 8 claims that were heard together. The first action is a claim by the Claimant ("Greenpine") under section 48(3) of the Leasehold Reform, Housing and Urban Development Act 1993 ("the Act") for an order that the First Defendant ("Estates") grant Greenpine new leases of Flat 12 and Garage 22, 30 Harley Street, London W1G 9PW ("the Flat"). Greenpine is a BVI registered company.

2. The second action is a claim by Greenpine to enforce a professional undertaking. It is alleged to have been given by the Second Defendant firm of solicitors ("CRS") by email timed at 19:51 on 28 April 2015 to complete the grant of the new leases on receipt of funds from Greenpine's solicitors.

3. The first action was issued in the County Court at Central London, as it had to be pursuant to section 90(1) of the Act, and was transferred to be heard in the High Court with the second action by order of Deputy Master Cousins made on 27 November 2015. Section 90(3) of the Act confers jurisdiction on the High Court in those circumstances.

4. In the first claim, the main issues are whether Estates' requirement for a foreign lawyer's opinion letter on the status of Greenpine ("FLO") was a "term of acquisition" as defined in section 48(7) of the Act, and if so when that term was agreed by the parties. These issues raise a difficult question about how the statutory scheme in Chapter II of Part I of the Act works, namely by when a term of acquisition has to be identified as being a matter in dispute between the parties. Estates' case is that all the terms of acquisition were agreed by 7 January 2015 and that, absent any application to the County Court by 7 May 2015, Greenpine's notice of claim to new leases was deemed withdrawn pursuant to section 53(1) of the Act on 7 May 2015. Greenpine's case is that one term of acquisition, namely the precise terms of the FLO, was not finally agreed until 27 April 2015, so that its application to the County Court to enforce the statutory contract for new leases was made in time. If Greenpine is right in that regard, its notice of claim was not deemed withdrawn and it is entitled to new leases.

5. On the second claim, the main issue is whether a statement made by CRS in the course of pre-completion exchanges of correspondence amounts to a solicitor's undertaking to complete upon receipt of funds from Greenpine. If it is, a second issue of whether the undertaking should be enforced falls to be determined. CRS denies that the statement in question amounted to a professional undertaking.

Factual background

6. The facts are not in dispute but determination of the legal issues that I have identified depends on the particular facts of the case and the sequence of events. I therefore summarise the relevant facts below, as necessary to explain my decisions on the legal issues.

7. Greenpine holds two underleases of the Flat for terms of 75 years, granted on 25 April 1982 (in the case of the flat itself) and 23 July 1982 (in the case of the garage). Estates is the freehold owner of the Flat. There is an intermediate landlord, whose existence is irrelevant to the issues in these claims. The fact that there are separate leases of the flat and the garage is of no materiality to the legal issues, and for convenience I shall refer hereafter to a single existing lease of the Flat ("the Lease") and a claim for the grant of a single new lease.

8. On 20 May 2014, Greenpine served on Estates a notice of claim to a new lease, pursuant to section 42 of the Act. The notice proposed a premium of £274,500 payable to Estates and £500 payable to the intermediate landlord, and set out Greenpine's proposed terms of the new lease in a schedule. This referred to the terms of the existing Lease, but subject to an additional provision relating to the landlord's obligations in Schedule 3 to the Lease to insure the building. No other proposals (other than those reflecting the mandatory terms of section 56 of the Act) were made in the notice.

9. On 21 July 2014, Estates served on Greenpine a counternotice pursuant to section 45 of the Act. The counternotice admitted Greenpine's right to a new lease. It further stated that Estates did not accept any of Greenpine's proposals in its notice. It made counter-proposals of a premium of £434,950 and £750 payable to the intermediate landlord, and that "the lease should contain terms and conditions in accordance with section 57 of the Act and be in the form of the draft leases annexed to this Notice". The draft new lease was annexed. No other counter-proposals, or proposals for other terms on which the new lease would be acquired, were identified in the counternotice. The solicitors acting for Greenpine on its claim for a new lease were Bilmes Solicitors ("Bilmes").

10. By email dated 18 November 2014, CRS sent to Bilmes a marked up version of the new lease and stated:

> "We note that your client is a company incorporated in the British Virgin Islands and accordingly, our client shall require, before completion of the new leases, an original legal opinion from a duly qualified lawyer in the British Virgin Islands confirming the following:
>
> 1. Greenpine Investment Holdings Limited is duly incorporated in the British Virgin Islands;

2. Greenpine Investment Holdings Limited has the capacity under its constitutional powers to enter into the new leases;

3. Greenpine Investment Holdings Limited has validly executed the new leases; and

4. Greenpine Investment Holdings Limited is solvent and not involved in any actual or pending insolvency proceedings.

Please ensure that the opinion is addressed to our client and that a copy of each of the executed leases is attached to the opinion and referred to therein."

11. Bilmes replied to the above email on 2 December 2014. The author of the reply said that she noted its contents and that she was arranging for the legal opinion and would let CRS have it shortly. The email then addressed amendments to the draft leases and the question of the lease plans.

12. On 9 December 2014, Bilmes informed CRS that Greenpine approved the draft leases. This agreement was acknowledged by CRS on 10 December, noting that the lease plans were incorrect and that fresh lease plans would be sent shortly. Agreement on the terms of the new lease was not otherwise qualified in any way. On 17 December 2014, the substitute lease plans were agreed by Bilmes, again unconditionally.

13. On 7 January 2015, the parties' surveyors agreed the amount of the premium to be paid by Greenpine to Estates for the new lease and the amount of costs payable to Estates in the aggregate sum of £415,500. Agreement was again unconditional. (The amount of the premium payable to the intermediate landlord must have been agreed previously, but there is no evidence before me relating to this.)

14. Prior to agreement on the terms of the new lease and the premiums, Greenpine had issued an application to the First-tier Tribunal (Property Chamber) ("the Tribunal") under section 48(1) of the Act, with a view to having any terms of acquisition that remained in dispute determined by the Tribunal. A hearing date of 3 and 4 February 2015 had been obtained. On 9 January 2015, CRS wrote to Bilmes confirming that the terms of acquisition had been agreed and seeking confirmation that the Tribunal would be informed that the hearing could be vacated. CRS then wrote to the Tribunal on 13 January stating that the parties had agreed all of the terms of acquisition and that, in the circumstances, they requested the vacation of the hearing. That letter was copied to Bilmes.

15. At about the same time, Bilmes sent to CRS the draft of an FLO that had been written by Harney Westwood & Riegels LLP ("Harneys"). This was acknowledged by CRS on 15 January 2015, when they sent to Bilmes a version of the FLO with some amendments marked in red. The amendments were relatively minor in nature and related to the way that statements about Greenpine's capacity and solvency and about the due execution of the new lease was expressed. On the same day, Bilmes thanked CRS for their email and said that they would communicate with Harneys regarding the amendments.

16. By letter dated 20 January 2015, Bilmes told the Tribunal that they confirmed that the terms of the lease and premium had been agreed and that they would be grateful if the hearing could be vacated. At that stage, therefore, the parties appeared to be in complete agreement that all the terms of acquisition had been agreed.

17. On 30 January 2015, Bilmes sent to CRS an amended FLO from Harneys, together with an email from Harneys to Bilmes explaining some of the changes to the draft opinion that had been made. On 5 February 2015, CRS sent the draft back to Bilmes with further suggested amendments of a minor character marked on it. That email appears to have been overlooked by Bilmes until they were reminded that they had not dealt with it by a further email on 9 April. Thereupon, the amended version was returned to Harneys, who in due course produced a further revision, which in turn was sent to CRS on 13 April.

18. In the meantime, Bilmes had sent to CRS the executed counterpart leases on 18 March 2015. On 31 March, Bilmes enquired whether CRS held executed leases and whether completion could happen that day, on the basis that this would be convenient for Greenpine since its tax year ended on 31 March. At that time, therefore, Bilmes clearly understood that nothing remained to be agreed, though the further minor amendments to the wording of the FLO had temporarily been overlooked by them.

19. A further simple enquiry about whether CRS were in possession of the signed leases was made by Bilmes by email on 9 April 2015. Thereafter, further small corrections and amendments were made to the wording of the FLO and this was finally agreed by CRS on 27 April, by email timed at 19:15. On the following day, Bilmes sent an email to CRS thanking them for their email and stating: "can you please let me know your suggested dates for completion". That email was timed at 19:09. By reply timed at 19:51 on the same day, CRS said, merely, "we will complete on receipt of funds". It is this sentence that is relied on by Greenpine as being a solicitor's undertaking. I shall refer to it, neutrally, as the 28 April Statement.

20. On 1 May 2015, CRS sent an email to Bilmes drawing attention to a typographical error in the FLO and asking for confirmation, by return, as to when CRS might expect the funds and the legal opinion (i.e. the final signed and dated version of the FLO). By email of 7 May, Bilmes told CRS that they were arranging for the completion funds to be

transferred to CRS's client account in readiness for completion. By reply, CRS reminded Bilmes that, prior to completion, they would also need the final form of the FLO. A version of the FLO signed and dated 6 May 2015 was sent to CRS later on 7 May, to which CRS responded that it had to bear the date of the day of completion.

21. If Estates' case as to when the terms of acquisition were all agreed is correct, the last day for Greenpine to make an application to the County Court to enforce the terms of the statutory contract for the new lease was 7 May 2015. No such application was made. Instead, the following day, Bilmes informed CRS that the completion monies had been sent and requested to be informed when they arrived in CRS's account so that an updated FLO could be requested. There was then, apparently, a conversation between the lawyers at the two firms. Following that, a different lawyer at CRS sent Bilmes an email stating that they would need to see a copy of "the protective application made in respect of your client's claim". Bilmes responded enquiring whether the writer meant the priority search at the Land Registry, to which the reply on 11 May was that what was meant was an application to the County Court under section 48 of the Act.

22. Later that day, Bilmes wrote to CRS referring to the 28 April Statement and asserting that, since funds were received by CRS on 8 May, completion therefore took place on 8 May. Alternatively, Bilmes said, the wording of the FLO was not agreed until 27 April and so Greenpine had until 26 June to make an application to the County Court. (In fact, if the premise was correct, Bilmes had until 27 August.)

23. CRS thereafter maintained that the notice of claim was deemed to have been withdrawn on 7 May 2015 and in due course Greenpine issued the application in the County Court seeking to enforce the terms of the statutory contract for a new lease. This application was made in time if Greenpine is correct in its case that the terms of acquisition were not finally all agreed until 27 April.

The relevant provisions of the Act

24. In order to avoid over-burdening this judgment with statutory provisions, I shall set out in full here only the centrally relevant section of the Act. I quote or summarise parts of other sections of the Act, where relevant, later in the judgment.

25. Section 48 of the Act provides as follows:

> "(1) Where the landlord has given the tenant –
>
> (a) a counter-notice under section 45 which complies with the requirement set out in subsection (2)(a) of that section, or

(b) a further counter-notice required by or by virtue of section 46(4) or section 47(4) or (5),

but any of the terms of acquisition remain in dispute at the end of the period of two months beginning with the date when the counter-notice or further counter-notice was so given, [the appropriate tribunal] may, on the application of either the tenant or the landlord, determine the matters in dispute.

(2) Any application under subsection (1) must be made not later than the end of the period of six months beginning with the date on which the counter-notice or further counter-notice was given to the tenant.

(3) Where –

(a) the landlord has given the tenant such a counter-notice or further counter-notice as is mentioned in subsection (1)(a) or (b), and

(b) all the terms of acquisition have been either agreed between those persons or determined by [the appropriate tribunal] under subsection (1),

but a new lease has not been entered into in pursuance of the tenant's notice by the end of the appropriate period specified in subsection (6), the court may, on the application of either the tenant or the landlord, make such order as it thinks fit with respect to the performance or discharge of any obligations arising out of that notice.

(4) Any such order may provide for the tenant's notice to be deemed to have been withdrawn at the end of the appropriate period specified in subsection (6).

(5) Any application for an order under subsection (3) must be made not later than the end of the period of two months beginning immediately after the end of the appropriate period specified in subsection (6).

(6) For the purposes of this section the appropriate period is –

(a) where all of the terms of acquisition have been agreed between the tenant and the landlord, the period of two months beginning with the date when those terms were finally so agreed; or

(b) where all or any of those terms have been determined by [the appropriate tribunal] under subsection (1) –

(i) the period of two months beginning with the date when the decision of the tribunal under subsection (1) becomes final, or

(ii) such other period as may have been fixed by the tribunal when making its determination.

(7) In this Chapter "*the terms of acquisition*", in relation to a claim by a tenant under this Chapter, means the terms on which the tenant is to acquire a new lease of his flat, whether they relate to the terms to be contained in the lease or to the premium or any other amount payable by virtue of Schedule 13 in connection with the grant of the lease, or otherwise."

Determination of the legal issues

26. The first issue that arises is whether CRS's requirement on behalf of Estates for an FLO in the terms specified in the email of 18 November 2014 was a "term of acquisition" within the definition in section 48(7) of the Act.

27. The terms of the definition in that subsection are not wholly satisfactory. By reason of the punctuation used, it is not clear exactly what the words "or otherwise" qualify. Greenpine's case is that the words are to be treated as if they followed the words "the terms on which the tenant is to acquire a new lease of his flat". In my judgment that cannot be right. So understood, the definition would place no limit on the subject-matter of such other terms, which necessarily would not be terms on which the tenant is to acquire a new lease of his flat. It seems to me that the core of the definition is "the terms on which the tenant is to acquire a new lease of his flat". The words following those words indicate that the terms in question may relate to terms to be contained in the new lease or to sums payable under Schedule 13 or to other matters, but that they must be terms on which the tenant is to acquire the new lease. The words "or otherwise" are intended to prevent the words starting "whether they relate to …" from defining exclusively what terms are "terms of acquisition". The central concept is that the terms of acquisition are the terms *on which* the tenant *is to acquire* a new lease of his flat, that is to say the terms of the transaction arising from the statutory contract.

28. The substantial majority of those terms will be comprised in the terms of the new lease itself and in the payments that the tenant must make by virtue of Schedule 13 for the grant of the new lease. But there could be others. For example, section 57(3) and (9) of the Act expressly contemplates that there may be tenant or third party obligations in

collateral agreements, and provides that such collateral agreements may be replicated upon the grant of the new lease. Further, there may be obligations or requirements relating to the completion of the new lease, apart from the landlord's costs (which are separately provided for by s.60 of the Act and which are not terms of acquisition), and these may be equally terms on which the tenant is to acquire the new lease.

29. How and when the terms of acquisition are identified as such is not expressly stated in the Act. A substantial clue to the answer lies in the statutory scheme contained in Chapter II. Section 42 requires the tenant's notice of claim to specify, among other matters, the premium, any other amount payable under Schedule 13 and "the terms which the tenant proposes should be contained in any such [new] lease". Section 45 requires a landlord's counternotice admitting the tenant's right to a new lease to specify, among other matters, which (if any) of the proposals contained in the tenant's notice are accepted and which (if any) are not accepted, and in relation to each proposal that is not accepted to specify the landlord's counter-proposal. Section 48(1) entitles either party to apply to the Tribunal at the end of a period of 2 months beginning with the date of the counternotice where "any of the terms of acquisition remain in dispute" at that time. The subsection further provides that the Tribunal may "determine the matters in dispute" on any such application.

30. Section 49(1) of the Act provides that, where a landlord's counternotice is not validly served, the County Court may make an order determining the terms of acquisition in accordance with the proposals contained in the tenant's notice. The word "may" in this sub-section has been held to mean "must": Willingale v Globalgrange Limited [2000] 2 EGLR 55 (a decision on the equivalent subsection in Chapter I relating to collective enfranchisement). Section 57(1) provides that, subject to the other provisions of Chapter II, the new lease is to be on the same terms as those of the existing lease, subject to certain modifications, and the remainder of section 57 specifies particular changes to the terms of the existing lease that may be made in defined circumstances. Section 91(1) and (2) provides that the Tribunal shall have jurisdiction to determine, among other matters, the terms of acquisition relating to any new lease which is to be granted in pursuance of Chapter II.

31. Given that the terms of the new lease are firmly based on the terms of the existing lease, it seems clear that the terms of acquisition that are in dispute are contemplated by the draftsman to arise from the terms of the tenant's notice and the landlord's counternotice. That is why section 48(1) refers to any terms of acquisition that *remain in dispute* 2 months after the counternotice and why the Tribunal is given jurisdiction to determine those matters in dispute. The parties have a further 4 months in which to make any application to the Tribunal, so many of the matters in dispute at the end of 2 months may be resolved before an application to the Tribunal is made. It is equally possible that other matters in dispute may arise during that time, but what is unclear is whether these can be

"terms of acquisition". CRS's requirement for the FLO was made during that period of time.

32. Once the terms of acquisition are agreed, or finally determined by the Tribunal, there is a further period of time within which the new lease should be entered into. If it is not, there is a yet further period for an application to the County Court in connection with enforcement or discharge of the statutory contract. In Cawthorne v Hamdan [2006] 3 EGLR 182 at [28(3)], H.H. Judge Huskinson considered that it is impossible, under the scheme of the Act, for terms of acquisition to be raised for the first time once the Tribunal has determined all matters in dispute. I respectfully agree. It is equally impossible for terms of acquisition to be raised once the parties have agreed all matters in dispute, thereby avoiding the need for the Tribunal to make a determination. In this context "agreed" means finally and unconditionally agreed, though not as a binding contract: City of Westminster v CH 2006 Limited [2009] UKUT 174 (LC) at [21] – [23]. The statutory scheme then moves on to its next stage, namely that of settling the drafting of the new lease and its completion, once the terms of acquisition have been either agreed or determined by the Tribunal. Both the decisions to which I have referred are decisions under Chapter I of the Act, but the structure of the scheme in Chapter I is, in these respects, identical to the scheme in Chapter II, and in my judgment the conclusions in those cases apply equally under Chapter II.

33. Judge Huskinson was inclined to conclude that a term of acquisition had to be identified by the notice or counternotice and that it was too late for the landlord to raise a new term of acquisition after the date of the counternotice: see para [28] of his judgment. But that conclusion was not necessary for his decision, so he did not decide the point. What can be added is that there is no jurisdiction, other than in limited circumstances specified in para 9 of Schedule 12 to the Act, to amend the terms of a notice or counternotice: see Oakwood Court (Holland Park) Limited v Daejan Properties Limited [2007] 1 EGLR 121 at [25]. It therefore makes obvious sense of the statutory scheme that the terms of acquisition (which are not the same as the exact wording of the new lease) are defined by the notice and counternotice – against the backdrop of section 57 of the Act, which provides that the new lease will otherwise be on the same terms as the existing lease (subject to changes specified in that section). If they are not so defined, it is difficult to see how all the terms of acquisition are identifiable as such, rather than as issues to be dealt with in the drafting of the new lease, and what (if any) time limit there is on raising further terms of acquisition before the Tribunal has finally determined the matters in dispute.

34. In case it is thought that such an interpretation places an undue burden on the parties at the stage of giving their notices, and so cannot be correct for that practical reason, I do not consider that that is so. The tenant is generally able to give its notice of claim at a time of its choosing; it knows the terms of the existing lease, and should specify in its notice of claim not just the premium to be paid but any changes it seeks from the terms contained in

the existing lease or in any collateral agreement. If it wants any additional or different terms it should propose them. The landlord has a generous period of 2 months under the Act in which to decide whether or not to admit the tenant's claim and, if so, whether it agrees with the tenant's proposals and what premium, new lease terms and other terms of acquisition it seeks. Although section 45(3) of the Act requires the landlord to specify its counter-proposals where any tenant's proposal is not accepted, the section does not prevent the landlord from advancing its own proposals as to the terms of acquisition that it requires. In practice, this is frequently done (as was done in this case) by the landlord's annexing to his counternotice a draft new lease.

35. Further, in Bolton v Godwin-Austen [2014] EWCA Civ 27 [2014] 1 EGLR 137, the Court of Appeal held that the "terms of acquisition" were a different concept from the final form of the lease, and that a landlord's counternotice that put forward counter-proposals in compendious form, by reference to the provisions of the Act, was valid and perfectly capable of determination by the Tribunal if the tenant did not accept the counter-proposals. In response to the tenants' specific proposals for changes to be made to the terms of their existing leases, the landlord proposed "the new leases terms should contain such modifications and amendments as the Landlord is entitled to under and/or may be necessary to give effect to the requirements of Chapter II of Part I of the Act and without prejudice to the generality of the above such further reasonable modifications to be agreed". The tenant accepted the proposals in the counternotice. The Court of Appeal held that the County Court was perfectly able to work out the precise terms to be included in the new lease, if necessary.

36. For all these reasons, it cannot be said that it is impractical for tenant and landlord to identify their proposals as to the terms of acquisition in their respective notices. What is slightly odd, perhaps, is that the draftsman did not define "terms of acquisition" in section 48(7) expressly by reference to the proposals contained in the notice and counternotice, as he might have done. However, the reason why he did not is probably that section 48(1) makes it clear enough that any disputed terms of acquisition are those that remain in dispute two months after the counternotice was given, and that it is the tenant's and the landlord's proposals as to the terms on which the tenant is to acquire his new lease that give rise to the terms of acquisition.

37. Reading section 48 as a whole, and in the context of the statutory scheme, my conclusion would be that the terms of acquisition to be agreed or determined by the Tribunal are the proposals contained in the respective notices that remain in dispute at the relevant time. That, of course, would not prevent the parties from agreeing additional or different terms if they are able to do so. Nor would it prevent either party from contesting the appropriate drafting of the new lease, in accordance with the provisions of section 57, at a later stage. But it would mean that the time limit for an application to the court to enforce or discharge the statutory contract runs from the time, as defined in section 48(6),

when the terms of acquisition – not other terms or requirements – have been agreed or determined by the Tribunal.

38. Such an interpretation would not prevent the tenant and the landlord – after the counternotice is served – from agreeing other terms as terms on which the tenant is to acquire a new lease of his flat. Chapter II, like Chapter I, is based on giving the parties sufficient time to agree as much as possible, before any application has to be made to the Tribunal or to the County Court to resolve any dispute. Even those terms of the new lease prescribed by section 57 of the Act are expressed to be "subject to any agreement between the landlord and the tenant as to the terms of the new lease or an agreement collateral thereto": section 57(6). If the parties can agree something beyond the statutory scheme, then it may well be possible for an estoppel or waiver to arise in connection with such matters (though the time limits specified in section 48 are themselves strict time limits).

39. It is not however necessary for me to decide this case on the basis that the requirement for the FLO was made too late to be a term of acquisition within the meaning of section 48. Given that, as I understand it, the practice of many lawyers and surveyors who specialise in this field is not entirely aligned with my interpretation of the Act, I should leave that decision to be made in a case where it is essential to the outcome of the case.

40. Assuming, therefore, that a term of acquisition can be raised as such after the date of the counternotice but before all terms of acquisition have been agreed or determined, the first question is whether the requirement for the FLO falls within the definition of "terms of acquisition". In my judgment, the requirement did amount to a term of acquisition. In substance, Estates was making provision of an FLO confirming the four specified matters a condition of the grant of the new lease. As such, the terms of the transaction proposed were that Greenpine was to have a new lease of the Flat on terms of payment of the agreed premiums, on the terms contained in the new lease (as agreed), and upon provision of the FLO. The requirement for the FLO, as a condition of completion, is the type of additional requirement that is capable of being caught by the words "or otherwise" in the definition in section 48(7).

41. The fact that Estates has no entitlement under the Act to require any such FLO, as a condition of completion or otherwise, does not mean that it cannot be a disputed term of acquisition. In Pledream Properties Limited v 5 Felix Avenue London Limited [2010] EWHC 3048 (Ch) [2011] L&TR 20, Lewison J held that a tenant's stipulation for the transfer of the freehold (under Chapter I) with title absolute, to which the landlord objected, was a term of acquisition in dispute notwithstanding that the Act expressly provided that freehold transfers are made only with qualified title. As Lewison J put it: "a dispute may arise in fact even if the outcome of a dispute is a foregone conclusion". The

fact that Greenpine would have been entitled to refuse to provide any FLO does not mean that it could not have been a disputed term of acquisition.

42. However, Greenpine did not dispute Estates' requirement for an FLO confirming the four matters specified in the email of 18 November 2014. On the contrary, Bilmes' response on 2 December 2014 was that they were arranging for the legal opinion and would let CRS have it shortly. A draft legal opinion, confirming all the matters that CRS had indicated that the FLO should address, was provided on or shortly after 12 January 2015. The provision of the draft FLO, if not the email of 2 December 2014, was a clear demonstration that Greenpine agreed the requirement to provide an FLO confirming the specified matters. In my judgment, that amounted to a final and unconditional agreement to provide the FLO in the sense explained by H.H. Judge Alice Robinson in the CH2006 Limited case. The other terms of acquisition having been recently expressly agreed, CRS then wrote to the Tribunal stating that all of the terms of acquisition had been agreed (copying the letter to Bilmes) and Bilmes wrote to the Tribunal on 20 January 2015 confirming that the terms of the lease and premium had been agreed and inviting the Tribunal to vacate the hearing. Although Bilmes' letter does not refer in terms to "all the terms of acquisition", it is clear that the writer understood that all the terms of acquisition had been agreed: that is why she requested vacation of the hearing.

43. Before Bilmes' letter to the Tribunal was written, CRS had returned the draft FLO with suggested amendments, to which Bilmes responded that they would communicate with the foreign lawyers regarding the amendments. Although at that time the exact wording of the FLO had not been finalised, there was no dispute about the principle that an FLO should be provided to confirm the four matters identified by CRS on 18 November 2014. The exact wording of such a document does not prevent agreement on its provision as a term of acquisition any more than the fact that the exact wording of the new lease is outstanding prevents agreement on the terms of acquisition: see the Bolton case, referred to above, and reg. 6 of the Leasehold Reform (Collective Enfranchisement and Lease Renewal) Regulations 1993 (S.I. 1993/2407).

44. Accordingly, in my view, if Estates was entitled to raise a new term of acquisition nearly 4 months after the date of its counternotice, it did so by the 18 November 2014 email, but the term of acquisition in question was finally agreed either by Bilmes' email dated 2 December 2014 or, at the latest, upon provision of the draft FLO on or about 12 January 2015. No application was made to the County Court until 25 August 2015, and accordingly on or about 12 May 2015 at the latest Greenpine's notice of claim was deemed withdrawn, pursuant to section 53(1) of the Act.

45. Greenpine advanced a secondary argument, which was that even if all terms of acquisition were agreed on 7 January 2015 (or, if it is the case, 12 January 2015), any such agreement on the terms of acquisition was conditional on agreement of the exact wording

of the FLO. Greenpine contends that if the FLO was not agreed in its exact terms, some of the other terms of acquisition might have had to be revisited, for example in connection with the entitlement of Greenpine to have a new lease without providing some security for the performance of its obligations.

46. In my judgment, that argument does not stand up to analysis and does not reflect the way in which the scheme of Chapter II is intended to operate. I have already explained why the requirement for an FLO was a term of acquisition but that its exact wording was not a term of acquisition. Agreement on the requirement for an FLO addressing the four specified matters was not made conditional on agreement on its precise wording, nor can any such condition be implied. If Greenpine had objected to providing an FLO at all, or objected to its having to confirm any of the four matters specified in CRS's email, Bilmes would have raised that objection, or would at least have reserved its position until it was clear whether or not the BVI lawyers could in fact confirm the four matters. Bilmes did not do so. Nor was there any reason to expect that the FLO could not be provided: such letters are routinely required and provided in new transactions involving overseas companies. The inability of Harneys to confirm in terms that Greenpine was solvent was not a matter of substance (and no objection was taken on that basis): what the requirement meant was that confirmation should be provided by lawyers that there was no evidence that Greenpine had become insolvent or that insolvency proceedings were pending.

47. If the exact wording of the FLO could not be agreed then it would have to be resolved by the County Court, on application made within 4 months of the date on which the terms of acquisition were agreed, just as any disagreement about the precise wording of the new lease would have to be so resolved. But there is no possibility of revisiting the terms of acquisition once they have been agreed or determined. It is possible expressly (or, I suppose, impliedly) to agree terms of acquisition conditionally on other terms being agreed: see the CH2006 Limited case at [23]. But by 12 January 2015 there were no other terms of acquisition to be agreed or determined, and the agreement on the other terms of acquisition was not expressed to be conditional on the exact wording of the FLO. In my judgment, there is no scope for implying any such term because Bilmes had not raised any objection or potential objection to the requirement for provision of the FLO.

48. Accordingly, I reject Greenpine's secondary case.

49. The appropriate order to make, subject to any question arising from the determination of the second claim, is to dismiss Greenpine's claim. The Act itself has already deemed the notice of claim to have been withdrawn and so the Court need make no such order.

Second claim

50. I turn now to the claim brought by Greenpine against CRS to enforce the undertaking alleged to have been given in CRS's email dated 28 April 2015. The issue is whether the words of that email – the 28 April Statement – amounted to a solicitor's undertaking.

51. Enforcement of a solicitor's undertaking is an aspect of the High Court's supervisory jurisdiction over solicitors, now given a statutory foundation in section 50(2) of the Solicitors Act 1974:

> "Subject to the provisions of this Act, the High Court, the Crown Court and the Court of Appeal respectively, or any division or judge of those courts, may exercise the same jurisdiction in respect of the solicitors as any one of the superior courts of law or equity from which the [Senior Courts were] constituted might have exercised immediately before the passing of the Supreme Court of Judicature Act 1873 in respect of any solicitor, attorney, or proctor admitted to practise there."

The general nature of the Court's jurisdiction to enforce undertakings is discussed and summarised in Udall v Capri Lighting Limited [1988] QB 907 at 916C – 918D, per Balcombe LJ.

52. Since enforcement of an undertaking is a quasi-disciplinary matter, it is common ground that it is appropriate to take the definition of "undertaking" from the Glossary in the SRA Handbook (2012 edition), which was in force at the relevant time:

> "means a statement, given orally or in writing, whether or not it includes the word "undertake" or "undertaking", made by or on behalf of you or your firm, in the course of practice, or by you outside the course of practice but as a solicitor or REL, to someone who reasonably places reliance on it, that you or your firm will do something or cause something to be done, or refrain from doing something."

53. Where the word "undertake" is not expressly used, an assurance or promise may nevertheless be an "undertaking", as the definition states, but whether it has the character of an undertaking in accordance with the definition will often depend on the context in which the assurance is made: see, for example, Reddy v Lachlan [2000] Lloyds Rep PN 858 at [4], [5] and [15], and Fox v Bannister, King & Rigbeys [1988] 1 QB 925 at 926F – 927D and 928E-G.

54. From the Reddy case, it is clear that the relevant question to ask is: how would the 28 April Statement reasonably have been understood by the recipient in the circumstances in which it was received?

55. The circumstances in which the 28 April Statement was made are that:

(1) the terms of acquisition, including the exact terms of the new lease, had been agreed on 12 January 2015 at the latest;

(2) the executed counterpart lease had been sent by Bilmes to CRS on 18 March 2015;

(3) on 31 March 2015, Bilmes had enquired whether completion could take place on that day, to which the response was that CRS would be in touch when the signed lease had been returned;

(4) a further enquiry as to whether CRS were in possession of the signed leases was made on 9 April 2015;

(5) correspondence about the exact wording of the FLO had continued sporadically and was concluded later on 27 April 2015;

(6) CRS never did inform Bilmes that the executed lease was in their possession – whether it was so in fact is not established by the evidence;

(7) by email dated 28 April 2015, Bilmes asked CRS to let them know their "suggested dates for completion".

56. In those circumstances, although tentative enquiries about completion had previously been made, CRS were not in default, in any sense, and Estates had not failed to complete at any time at which it had agreed to do so. There was no particular pressure being placed on Estates to complete. Indeed, Greenpine had not yet provided the completion monies, or if it had done so Bilmes had not seen fit to send them to CRS to be held to their order pending actual completion.

57. Read in that context, on 28 April 2015 CRS had to reply to a polite enquiry as to the dates that CRS suggested would be appropriate for completion to take place.

58. There would, in my judgment, have been no reasonable expectation on the part of Bilmes at that time that CRS would give any solicitor's undertaking in response.

59. Greenpine's case is, essentially, that the use of the words "we will" changes what would otherwise be an indication of when CRS intended to effect completion into an undertaking to do so. Greenpine accepts that if the 28 April Statement had simply said "on receipt of funds", or had said "our client will complete on receipt of funds", then no solicitor's undertaking would have been given. Greenpine argues that the giving of an undertaking in such circumstances would not be regarded as unusual, since the Law Society Code for Completion by Post, which is invariably used for residential transactions, is based on the giving of undertakings by the seller's solicitors. Greenpine contends that the word "we" is clearly referable to CRS personally, rather than to Estates, and that the word "will" is used to signify a firm commitment rather than as an indication of what is expected to take place.

60. In the context that I have identified, I consider that the 28 April Statement does not have the character of a solicitor's undertaking. In substance, it amounts to no more than a statement that CRS suggest that completion take place as soon as the completion monies are received (implying that there is no other matter outstanding that cannot be dealt with on completion). I reach that conclusion for the following reasons.

61. First, the machinery of completion is invariably operated by a solicitor or licensed conveyancer rather than by their client, and so the use of the pronoun "we" is hardly surprising in this context. It does not, in my view, bear the substantial weight that Greenpine seeks to place on it as an indication of a personal obligation on CRS.

62. Secondly, the Code for Completion by Post provides the machinery, including undertakings, where the parties have agreed to complete on a particular day or at a particular time. It would not therefore be expected, or necessary, for a further express and perfectly general undertaking to be given by a conveyancing solicitor to effect completion, absent something in the surrounding circumstances that suggested that such an undertaking was required and intended to be given.

63. Thirdly, although the mechanics of completion would be effected by the solicitor, the right of the solicitor to do so would depend on the client's authority. No previous indication had been given to Bilmes that Estates had authorised completion, or indeed that they had provided CRS with the executed lease. No solicitor would be expected to give an undertaking to complete in advance of obtaining such specific authority.

64. Fourthly, completion of the new lease was to take place pursuant to the rights conferred by the Act. Those rights were not unqualified. In particular, the right to a new lease would be lost if there had been neither completion nor an application to the Court by 7 (or 12) May 2015. An open-ended undertaking to perform completion whenever Bilmes chose to provide the completion monies would therefore potentially conflict with Estates' rights under the Act. The context therefore would make it surprising (though not impossible) for a formal undertaking to be given to complete at an unspecified time in the future.

65. Fifthly, and most particularly, there is nothing in the background leading up to 28 April to suggest that an undertaking was expected or would be given in response to Bilmes' 28 April enquiry, or to warrant interpreting the 28 April Statement as an undertaking.

66. In my judgment, for the reasons given above, the solicitor recipient of the 28 April Statement would not reasonably have understood it to be a formal solicitor's undertaking,

but merely an indication that Estates would be ready to complete the grant of the new lease once the completion monies had been received by CRS.

67. Accordingly, I dismiss the second claim.