



Swift 1st upholds power of sale in non Land Registry filed mortgages – a word of warning and one to watch

Can the Land Registry any longer be taken at face value?

Why this is important

In *Swift 1st Limited v Colin and others* the High Court has recently held that a lender which failed to register a mortgage at the Land Registry was entitled to sell the property and give good title even though a subsequent lender had a valid and registered mortgage. This means that the Charges Register at the Land Registry cannot be taken as conclusive evidence of charges and restrictions affecting a title.

Facts

Swift 1st lent £348,148 to a Borrower secured by a mortgage over the Borrower's property which was properly executed as a deed. Swift 1st failed to register the mortgage so no entry was made on the Charges Register and no restriction placed in the proprietorship Register at the Land Registry.

The Borrower then granted a second ranking charge over the property to a third party which was registered properly.

When the Borrower defaulted Swift 1st enforced its mortgage, obtained possession and sold the property, executing a TR2 to effect the transfer.

The Land Registry refused to register the transfer. An interim charging order against the original Borrower was then registered against the title Swift 1st brought proceedings to have the title registered.

Decision

The Power of Sale had been conferred by S.101 Law of Property act 1925 because the mortgage had been executed properly as a deed. This overrode subsequent interests. The power of sale stemmed from that legislation and not from the Land Registry or its procedures. The TR2 was effective to transfer legal title in the property and interests of the other

parties, the subsequent mortgagee and the owner of the interim charging order, were overreached.

Comment

This is a first instance decision and the Defendants did not oppose the application, so it may not be followed in future or may be overturned in a subsequent case on appeal.

The purpose of the Land Registry system is to give certainty to those dealing with interests in land. That certainty is holed below the waterline if an unregistered charge can overreach subsequent interests which are registered. It therefore remains to be seen whether this case will be followed in future.

The fact that the second charge was expressed to be a second ranking charge and the charge holder did not oppose the application is likely to be very significant. It is not clear why the beneficiary of the interim charging order did not oppose the application, but probably because on any analysis he stood behind the second charge holder.

The decision does not affect the requirement for companies to register charges at Companies House.

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