Case No: HC-2015-000656

Neutral Citation Number: [2016] EWHC 161 (Ch)
IN THE HIGH COURT OF JUSTICE
CHANCERY DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 03/02/2016

Before :

MASTER MATTHEWS

- -

Between :

Chief Land Registrar	**Claimant**
- and -	
Caffrey & Co	**Defendant**

- -
- -

Nicholas Trompeter (instructed by **the Treasury Solicitor**) for the **Claimant**
The Defendant did not appear and was not represented

Hearing dates: 2 November 2015

- -

Judgment

Master Matthews :

Introduction

1. This is my judgment on the Claimant's application by notice dated 22 June 2015 for judgment against the Defendant in default of filing an acknowledgment of service, with damages to be assessed. The claim was begun by claim form issued on 25 February 2015, with particulars of claim attached.

2. In summary the allegations made in the claim are as follows. The Defendant was a firm of solicitors retained by Mr William and Mrs Evelyn Turner to act for them in the discharge of a mortgage over their registered property in favour of a bank, DB UK Bank Ltd. The bank was the victim of a fraud, and the mortgage ought never to have been discharged. The bank was indemnified by the Claimant under the statutory scheme in the Land Registration Act 2002. By statute, the Claimant thereupon became entitled to exercise any cause of action which the bank could have exercised if the indemnity had not been paid.

3. The Claimant says in this claim that, if no indemnity had been paid, the bank would have been entitled to exercise a cause of action in negligence against the Defendant, arising out of the Defendant's failure to verify facts and matters where it had assumed a duty to the bank to do so. In addition, the Claimant says that he is entitled to bring a claim in his own right for misrepresentations made by the Defendant in submitting documents to the Land Registry.

Procedure

4. On 2 June 2015 Deputy Master Cousins ordered that service of the claim form and particulars of claim on the Defendant could be effected by service on Mr Aurang Khattak, a partner in the Defendant, by "first-class pre-paid post" addressed to a particular address. A first attempt to serve the proceedings by post pursuant to that order failed, as the envelope was returned through the post on 27 July 2015 for insufficiency of postage. This was of course after the four-month period for service had expired.

5. On 3 August 2015 I was therefore asked to and did extend the time for service of the claim form to 25 September 2015. The claim form and particulars of claim were finally served in accordance with the order of Deputy Master Cousins by letter dated 14 September 2015. By virtue of CPR rr 6.14, 6.26 and 7.5(1), service was deemed to have taken place on 16 September 2015, and a certificate of service to that effect was filed at court. By virtue of CPR r 10.3(1), the Defendant had until 30 September 2015 to file an acknowledgment of service. No such acknowledgement has ever been filed.

6. The notice of application for judgment in default of acknowledgment of service had been issued as early as 22 June 2015, anticipating that the first attempt at service by post would be successful. That application was for a 30 minute hearing on 10 July, but it was adjourned on that day (when the Claimant was represented by a solicitor, Mr Turek) because I considered that the case raised a point of law which required an hour's appointment rather than 30 minutes. Since the service envelope was subsequently returned through the post on 27 July, that was in some ways fortuitous.

7. On 14 September the application was relisted for 2 November 2015, but for some reason again only for 30 minutes. Nevertheless I heard it on that day. This time Mr Nicholas Trompeter of counsel appeared for the Claimant. A certificate of service of the application notice (as well as other documents) on the Defendant was filed at court on 27 October 2015. However, the Defendant did not appear and was not represented. Because there was only limited time, I invited Mr Trompeter to supplement his oral submissions with written ones, and he supplied me with these by email on 5 November. I am grateful to him, and to his solicitor Mr Turek.

8. By CPR r 12.11(1), "Where the claimant makes an application for a default judgment, judgment shall be such judgment as it appears to the court that the claimant is entitled to on his statement of case." Mr Trompeter submits that, since the Claimant has pleaded relevant material facts in his statements of case to support the two distinct causes of action summarised in paragraph 3 above, the Claimant must be entitled to the relief which he seeks on the basis of the statement of case alone, with nothing more required by way of substantive legal analysis or explanation.

9. I reject this submission. CPR r 12.11(1) does not leave it to the claimant to identify what relief he is entitled to, and then require the court to award it. It is "such judgment *as it appears to the court* that the claimant is entitled to on his statement of case" (emphasis supplied). So the court must consider the claimant's statement of case and decide what relief (if any) the factual assertions gives rise to.

10. For example, suppose that A serves proceedings on B, claiming to rescind a contract between them on (and only on) the basis that there was an eclipse of the sun that day. B then fails to acknowledge service. The court considering those allegations would have to assume that they were true, but would not be obliged to assume that an eclipse of the sun was in law a good ground for rescinding a contract.

11. The statement of Warby J in *Sloutsker v Romanova* [2015] EWHC 2053 (QB) at [84], relied on by Mr Trompeter at para 13 of his skeleton argument for the hearing, does not demonstrate the contrary. In my judgment it was directed at fact-finding. It was a case where there was no doubt as to the relevant principles of law.

Factual allegations

12. So I turn to consider the two causes of action pleaded. In the present case in summary form the allegations made in the statement of case (which, for the purposes of the present application only, I assume to be true) are as follows. The Turners were registered as joint proprietors of Walnut Hill Farm. In 2007 they charged it to the bank as security for a loan. Subsequently they instructed the Defendant to act for them in arranging the discharge of the mortgage.

13. In October 2009 the Turners supplied to the Defendant a Form DS1 purportedly signed on behalf of the bank to discharge the mortgage. In fact it was not so signed. The Turners told the Defendant that the bank was represented by another firm of solicitors, but this was not true either. The Defendant did not contact the bank or the solicitors allegedly instructed by them to verify the DS1 or the instruction of

solicitors. Instead it submitted the Form DS1 to the Land Registry together with a Form AP1 to apply to alter the register and delete the charge.

14. The Land Registry raised a requisition requesting evidence that the person signing the DS1 had authority to do so on behalf of the bank. The Turners supplied the Defendant with a purported power of attorney apparently appointing four individuals, including one whose name and signature were on the Form DS1, as the bank's attornies. It was however a fabrication. The Defendant sent a certified copy of the purported power to the Land Registry. The Claimant acted on the application, the copy power and the Form DS1, and removed the mortgage from the title of the property.

15. Subsequently Mr Turner purported to purchase Mrs Turner's share of the property, raising finance to do so from another bank, Santander UK plc, on the security of a charge on the property. He was registered as the sole proprietor. In 2010 Mrs Turner was adjudicated bankrupt. In 2011 DB Bank discovered that its charge had been removed, and applied to alter the register to reinstate it. Santander objected. In 2012 an adjudicator decided that the charge should be reinstated, but ranking after that of Santander. DB Bank then sought and obtained an indemnity from the Claimant.

The causes of action

16. The Claimant firstly asserts that in acting for the Turners in making the application to the Land Registry the Defendant owed a common law duty of care to the bank to take reasonable care and skill to verify that Form DS1 had been properly completed on behalf of the bank, that the other firm of solicitors had been instructed on its behalf, that the power of attorney was genuine, that the bank wished to discharge the charge, and that the property was no longer charged as security for the payment of sums due under the charge. The Claimant further asserts that this duty was breached, causing loss to the bank.

17. The Claimant alternatively asserts that, in making the application for the Turners in the way and using the documents which it did, the Defendant expressly or impliedly represented to the Claimant that it had taken sufficient steps or knew of sufficient facts to satisfy itself that the Form DS1 had been properly executed on behalf of the bank, the other firm of solicitors had been instructed on behalf of the bank, the power of attorney was valid, the bank wished to discharge the charge, and that the property was no longer charged as security for the payment of sums due under the charge.

18. The Claimant further asserts that in all the circumstances the Defendant owed to the Claimant a duty to take reasonable care that the representations were true. In fact they were false, and in reliance on them the Claimant completed the application and discharged the charge, thereby suffering loss.

First cause of action: negligence

19. The first is a claim to be subrogated by statute (Land Registration Act 2002, s 103, Schedule 8, paragraph 10) to the claim of the bank against the Defendant, as the chargors' solicitor, in the tort of negligence, for having assumed a duty of care to the bank and then having breached it. Here the point is that the Defendant was acting for

the chargors in the discharge of the bank's mortgage, and not for the bank, whose interests were opposed.

20. In *Dean v Allin & Watts* [2001] PNLR 39, Lightman J, with whom Sedley and Robert Walker LJJ agreed, said:

> "[33] In a situation such as the present where (to the knowledge of both parties) a solicitor is retained by one party and there is a conflict of interest between the client and the other party to a transaction, the court should be slow to find that the solicitor has assumed a duty of care to the other party to the transaction, for such an assumption is ordinarily improbable. But the special circumstances of a particular case may require a different conclusion to be reached."

21. In that case, the Court of Appeal *did* reach a different conclusion, where the borrowers' solicitor knew that the lender (an unsophisticated person) was relying on him to provide an effective security from third party assets for the loan he was to make to the solicitor's clients, and did not disclaim any duty or advise the lender to seek independent advice. Moreover, there was actually an *identity* of interest between the borrowers and the lender *on the issue of the provision of the security*.

22. In the present case the Defendant having been told that the bank had its own solicitors, had no reason to think that the bank was relying on it in any way, no reason to disclaim any duty towards the bank and no reason to advise it to take its own advice. Nor was the bank unsophisticated. And, unlike *Dean v Allin & Watts*, the interests of the Defendant's clients and the bank were absolutely opposed. There was no third party involved.

23. Mr Trompeter also referred me to *Al-Sabah v Ali* [1999] EWHC 840 (Ch), reversed by the Court of Appeal on a point of quantification of loss, but with a neutral citation reference of [2000] EWHC 1559 (Ch). The claimant successively bought two London flats with his own money, and was registered as proprietor. In doing so, he had the assistance of the defendant, who gave instructions on behalf of the claimant to the solicitor acting for him.

24. Subsequently the defendant represented to the same solicitor that the claimant was selling first one and then the other flat to the defendant, producing transfers to the solicitor on which the claimant's signature had been forged. The defendant charged both these properties to lenders to secure advances, but did not comply with the mortgage obligations, and the facts eventually came to light.

25. Ferris J held that the solicitor was liable to the claimant in negligence. He said:

> "If instructions come to a solicitor not from the client himself but from a third party claiming to represent the client, the solicitor needs to take special care to satisfy himself that the client wishes him to act, by seeing the client personally or obtaining written confirmation from the client or taking some other step which is sufficient, in the circumstances, to show that the client wants the solicitor to act fro him in the manner in question…

> Here [the solicitor] purported to act on behalf of [the claimant] in a transaction in which [the claimant] was selling property to the very person who was giving instructions on behalf of [the claimant] and who was instructing [the solicitor] to act on his own behalf as well. In such circumstances it was imperative that [the solicitor] should obtain confirmation of his instructions from [the claimant] himself. He did not do so."

26. In the Court of Appeal, Chadwick LJ summarised the case against the solicitor in this way:

> "The breach [by the solicitor] lay in failing to confirm with [the claimant] the instructions which [the defendant] was purporting to give on his behalf. The judge accepted that [the defendant] had no authority to give those instructions on behalf of [the claimant]; and it is, I think, implicit in his judgment that he accepted, also, that, if confirmation of those instructions had been sought by the respondents from [the claimant], that confirmation would not have been forthcoming."

27. Again, the present case is different. The Defendant was never asked to act on behalf of the bank, and never thought it was doing so. Indeed, it thought that the bank was separately advised. The Defendant's clients were Mr and Mrs Turner, not the bank. They were not giving instructions to the Defendant on behalf of the bank, but on their own behalf.

28. The most recent authority to which I was referred on this area of the law was the decision of Edis J in *Sebry v Companies House and the Registrar of Companies* [2015] EWHC 115 (QB). In that case the claimant was managing director of a company which went into administration after it was wrongly described in the companies register as having been the subject of a winding-up order of the High court. The order had been made in respect of a company with a very similar name. By an error attributable to the defendants the winding-up order was recorded against the name of the wrong company. The administrator of the innocent company assigned to the claimant any cause of action it may have had against the defendants.

29. Three preliminary issues were ordered to be tried, including the question whether the defendants owed the innocent company a duty of care at all. In considering this question the judge considered a number of authorities from *Hedley Byrne v Heller* [1963] 2 AC 465 onwards. These included *Customs & Excise Commissioners v Barclays Bank plc* [2007] 1 AC 181. This was discussed by Edis J, and Mr Trompeter cited a short passage where Lord Bingham suggested that consideration of the question of the duty of care (in the words of the judge, at [80]):

> "should start with assumption of responsibility. This should be judged objectively, and is a sufficient but not necessary condition of liability."

30. I am of course bound by the decision of the judge and for that matter the decision of the House. But, with great respect, I doubt that this extract is a fair summary by itself of the reasoning of Lord Bingham overall, let alone of the whole House, or that Edis J meant it as such (see further at [107]). Lord Bingham was certainly summarising the effect of some of the authorities. But, as I read him at the end of paragraph 5, he

criticised the "voluntary assumption" test, as tending to become indistinguishable from the well-known *Caparo Industries v Dickman* [1990] 2 AC 605 "threefold test" of reasonable foreseeability, sufficient proximity and being fair, just and reasonable (which he went on to consider). Indeed, Edis J went on to point out that Lord Hoffmann (at [38]) doubted the utility of the phrase "assumption of responsibility" in some cases.

31. Nor does the quotation from Lord Bingham reflect the actual decision of the House in that case. In that case, a freezing order addressed to a bank-account holder prohibiting it to give instructions to dispose of its assets was served on the defendant bank by the claimants. The defendant then by accident paid away monies from the account. The House rejected the idea that the defendant had assumed responsibility to the claimants, but also did not agree that the assumption of responsibility test was appropriate.

32. Since the defendant was obliged to comply with the terms of the freezing order once notified to it, and there had been no relevant communication or act between the claimants and the defendant, or any reliance by the claimants on the defendant, it could not be understood as having voluntarily assumed responsibility towards the claimants so as to give rise to a duty of care. Nor would it be just and reasonable to impose one in the circumstances.

33. Edis J in *Sebry v Companies House and the Registrar of Companies* [2015] EWHC 115 (QB), [91], compared the position of the company wrongly described as in winding-up to that of the disappointed will beneficiaries in *White v Jones* [1995] 2 AC 207. It had no way of protecting itself against the harm resulting from the promulgation of a false statement that it was in liquidation. So too in the present case the bank had no way of protecting itself against the fraud that was practised upon it. It had registered its charge, and could do no more.

34. But, if anything, that points to a duty owed *by the Claimant* to the bank to avoid harm to the bank by wrongfully removing the bank's charge on the basis of a forged document. The Claimant was in control of the land register, just as the companies registrar in *Sebry* was in charge of the companies register. Yet the argument for the Claimant here, based as it is on an alleged duty owed by the Defendant to the *bank*, would mean, in the context of the *Sebry* case, a duty owed by *those who supplied the information to the companies registrar* to see that it was correct and, for example, referred to the correct company. But of such an argument, and of such a duty, in that decision there is of course no trace, since it did not arise. As the judge said at [101], the decision of the majority in *White v Jones* concentrated on the actual context of the case before them. So too the decision of the judge in *Sebry*.

35. Edis J concluded that the companies registrar *had* voluntarily assumed responsibility for taking reasonable care to attribute the information about a company in liquidation to the correct company:

> "It appears to me that when the Registrar undertakes to alter the status of a company on the Register which it is his duty to keep … he does assume a responsibility to that company (but not to anyone else) to take reasonable care to ensure that the winding-up order is not registered against the wrong

> company. *This does not impose a duty to verify information supplied by a third party* such as an Insolvency Practitioner, but only to ensure that the information is accurately recorded on the Register …" (at [111], emphasis supplied; see also at [118]).

36. It is notable that the judge considered that the duty was one to *register* the information correctly: it was not one of *verification* of the information. In my judgment, that is also the present case. The Defendant in this case was under a duty by contract to present the document with which it was supplied to the correct person. It was under no duty to a third party to take care to verify the genuineness of the information contained in it.

37. Moreover, the actual act which caused the loss was the act of the Claimant in removing the charge, not the act of the Defendant in supplying the information to the Claimant. There *are* cases where liability attaches for negligence in facilitating the causing of harm by another person, but they are exceptional. Examples include cases where the first person supplies a dangerous object to or creates a dangerous situation for the second who is known to be in some way irresponsible (*eg* a child, or a suicide risk), and cases where the first person's job is (wholly or partly) to take reasonable care to prevent the second person's act. Neither of these is this case, either.

38. Accordingly, for all these reasons, I distinguish the decision of Edis J in *Sebry v Companies House and the Registrar of Companies* from the present.

39. Returning to *Customs & Excise Commissioners v Barclays Bank plc* [2007] 1 AC 181, Lord Bingham also said that attention should be concentrated

> "on the detailed circumstances of the particular case and the particular relationship between the parties in the context of their legal and factual situation as a whole."

Mr Trompeter refers to a number of factors which he says are all present in this case, including: (1) acts or omissions capable of causing harm to a particular person if done carelessly; (2) responsibility for the act being entirely placed on that actor; (3) ease of avoidance of the act or omission; (4) no other remedy available.

40. I am bound to say that, whilst I accept Lord Bingham's recommendation to concentrate on circumstances and relationship between the parties, I am not impressed by any of these points in the context of the present case. A solicitor asked to do something for his or her client and against the interests of another person is necessarily doing something capable of harming the other person. If it is done carelessly, it may harm that person even more. But that hardly militates for imposing a duty of care.

41. Here the Defendant was indeed responsible for doing the particular act (submitting the documents to the Land Registry without making the checks suggested). But that is what it was asked to do. Indeed, its clients could have complained had it not done just that. And that contractual duty, undertaken to the client alone, in itself differentiates the case from the ordinary case of the person who need not do anything but who decides to do something. Of course the act (of submitting the documents without first

making checks) would have been easy to avoid, but at the price of not acting for the clients, or at any rate of greater expense to the clients. Moreover, the bank also has another remedy, *ie* against the Claimant.

42. I can test the position in this way. Suppose a solicitor on the basis of statements made by the client initiates a claim, on the assumed facts constituting a good cause of action in law, against B on behalf of A. By carrying out a simple internet search the solicitor could discover that the claim is bogus. Does the solicitor owe a duty of care to B not to sue B without carrying out such simple checks that might expose the worthlessness of the claim? In my judgment No. If the solicitor does not *know* that the claim is bogus in fact, he or she has no duty to test it in advance of launching it.

43. Another example, this time one away from litigation. Suppose the owner of a valuable chattel deposits it in a safety deposit vault. A solicitor or other agent instructed by a rogue, who has prepared a forged sale agreement and supplied it to him or her, in good faith produces this document to the operator of the vault. A simple check with the true owner would have shown the signature of the "owner" to be forged, or at least questionable. Believing the sale to be genuine, however, the vault operator hands over the chattel to the solicitor or agent, who hands it to the rogue, who in turn disappears with it.

44. Does the solicitor or agent owe any duty of care to the true owner to check the genuineness of the sale agreement? In my judgment No. If there is to be such a burden, then as between the solicitor/agent and the vault operator, it must surely lie on the vault operator, whose business it is to keep things safely, and not on the solicitor or agent, whose job is to do all such things on the client's instructions as it believes to be proper and lawful.

45. These cases seem to me to be in substance indistinguishable from the present. The problem is that the system of registered land at the time of these events unfortunately was, and was known to property lawyers and to others to be, not sufficiently secure against this kind of fraud. That was not the Defendant's fault. There were media reports of such cases, articles written in learned journals, and even debates in Parliament, about this problem. The real question at bottom for me therefore is how the law should allocate the risks of such fraudulent activity where, and in the circumstances in which, it is successfully practised.

46. I am not concerned here with the question whether *the Land Registry*, which administered the system containing these risks, is entitled to look to the solicitors and other professional conveyancers who operated within it, and to transfer such risks to them. The Claimant here claims to be subrogated to the rights *of the bank*, so the correct question is as between the bank and the Defendant. But the Defendant did not design or run the system. In my view it is not fair just or reasonable to make the solicitor in this case responsible to the bank for the risk of fraud within an inherently risky system. Accordingly I refuse the application for judgment in default so far as based on negligence.

Second cause of action: negligent misrepresentation

47. I turn to the case for the Claimant based on negligent misrepresentation. The negligent misrepresentations in question are pleaded at paragraph 27 of the Particulars of Claim. They are that by completing and/or submitting the application to the Land Registry and/or certifying a copy of the purported power of attorney and/or supplying it to the Registry, the Defendant "expressly or impliedly represented to the Claimant that it had taken sufficient steps or measures and/or knew of sufficient facts to satisfy itself that" the discharge form had been properly executed, solicitors had been instructed, the power of attorney was valid, the bank wished to discharge the charge, and the property was no longer charged in favour of the bank.

48. Paragraph 28 then pleads that the relationship between the Claimant and the Defendant was such that the Defendant "knew or ought to have known that the Claimant would rely upon" the pleaded representations in dealing with the application to discharge the bank's charge, and that therefore "the Defendant owed to the Claimant a duty to take reasonable care to ensure that the [representations] were true." The Claimant pleads the falsity of the representations, and reliance by the Claimant upon them, causing loss to the Claimant.

49. Again, I must assume that all the facts so alleged are true. It may be that, if the Defendant had chosen to defend this claim, it would have cavilled at the notion that doing the acts set out in paragraph 27 amounted to representations of having taken sufficient steps or knowing of sufficient facts as there alleged. But the Defendant has not done so, and if there existed any relevant evidence as to what it did or did not represent the Defendant has not placed it before the court. The Defendant has said nothing at all. (I also have some doubt as to whether an allegation that, because of a relationship between them, the Defendant "ought to have known" something is an allegation of *fact*, rather than of *law*. But in all the circumstances I will assume for present purposes that it is the former.)

50. As a result, whether a judge accepting the primary facts of the Defendant's acts in this case would in the face of a challenge have drawn the inference of the secondary facts of the representations alleged by the Claimant will never be known. After all, the Defendant was only doing those acts which are required by the rules to be done to make an application to the registry. As I have said, in these circumstances however I must proceed on the basis of the alleged representations having been made. But whether the Defendant in the pleaded circumstances *owed a duty of care* as alleged or at all is not a matter of fact but of law. I must therefore consider it separately.

51. The Claimant accepts in paragraph 22 of his skeleton argument that liability for a tortious misrepresentation only arises where the representor owes a duty of care in making the representation to the representee. He asserts that the existence of a duty of care is determined as already argued in relation to negligence. But he expressly relies (paragraph 23) on "one particularly significant fact": that the Defendant knew or ought to have known that the Claimant would rely upon the pleaded representations in dealing with the application to discharge the bank's charge. He says that "this is of itself sufficient to found the existence of a duty of care of the sort alleged by the Claimant".

52. Unlike the case in negligence, in which the Claimant claimed to be subrogated to the rights of the bank, and the question therefore arose as between the bank and the

Defendant, here the question arises directly between the Claimant and the Defendant. As I have said, I must proceed on the assumed factual basis that the Defendant made representations to the Claimant about the sufficiency of the steps it had taken or the knowledge it had in circumstances where it knew or ought to have known that the Claimant would rely on those representations in deciding whether to remove the bank's charge from the title to the farm.

53. Mr Trompeter in his skeleton referred to determining the existence of a duty of care owed by the Defendant to the Claimant in this connection by reference to authorities he had referred to earlier on the tort of negligence. One of these was *Sebry v Companies House and the Registrar of Companies* [2015] EWHC 115 (QB), [91], which I have already mentioned.

54. In that case Edis J cited a passage from the speech of Lord Browne-Wilkinson who was part of the majority decision in *White v Jones* [1995] 2 AC 207, 274F:

> "The law of England does not impose any general duty of care to avoid negligent misstatements or to avoid causing pure economic loss even if economic damage to the plaintiff was foreseeable. However, such a duty of care will arise if there is a special relationship between the parties. Although the categories of cases in which such special relationship can be held to exist are not closed, as yet only two
> categories have been identified, viz. (1) where there is a fiduciary relationship and (2) where the defendant has voluntarily answered a question or tenders skilled advice or services in circumstances where he knows or ought to know that an identified plaintiff will rely on his answers or advice. In both these categories the special relationship is created by the defendant voluntarily assuming to act in the matter by involving himself in the plaintiff's affairs or by choosing to speak."

55. In the present case, on the assumed facts, there is no fiduciary relationship between the Defendant and the Claimant. But the Defendant volunteered information which he knew or ought to have known the Claimant would rely upon. It is true that the Claimant did not ask for that information, and also true that the Defendant was not in any sense an expert in checking the truth or sufficiency of what its clients had told it. Yet there is no justification that I can see for treating solicitors less favourably than (say) licensed conveyancers, or legal executives, or indeed practised but non-legally qualified agents lodging application forms with the registry. If solicitors owe a duty of care in what they tell the registry, so does anyone doing what they did.

56. But the two classes of special relationship cited by Lord Browne-Wilkinson are not the only two. Indeed, in that case neither of those two existed, but liability was still held by the majority to exist. Lord Nolan, also in that majority, said (at 293F):

> "a professional man or an artisan who undertakes to exercise his skill in a manner which, to his knowledge, may cause loss to others if carelessly performed, may thereby implicitly assume a legal responsibility towards them. The fact that he is doing so in pursuance of a contractual duty or a statutory function cannot of itself exclude that responsibility. The most that can be said

> is that it may be one of the circumstances to be taken into account in determining the nature and extent of the responsibility."

57. It is clear that there are cases where a person who, exercising a particular skill, makes a statement to a person intended to rely on it assumes a duty to that person to make such statements with reasonable care. The question is whether the present is one of them. What jars with me here is the idea that, in making the representations which are alleged here, and which I must assume, the solicitors were acting as professionals exercising their skill. They were certainly professional conveyancers exercising *that* skill. But they had no particular qualifications for making the statements that are to be attributed to them. They were not detectives, for example.

58. Moreover, the statements were not made to a layman, but to the Claimant's professional staff engaged in running the registration system, who might be expected to have systems for checking matters themselves. Indeed, the registry staff raised a requisition on the question of the authority of the person signing the discharge form to bind the bank. They did not just blindly accept whatever the Defendant told them. And I have already noted (at [36] above) that Edis J in the *Sebry* case made clear that the duty of the defendant in that case was not to verify information supplied to him by third parties, but rather to attribute it correctly.

59. Nevertheless, and despite my doubts, I am narrowly persuaded that, on the peculiar facts of this case, which may not be replicated in other cases where the solicitors challenge the allegations of express or implied representations that must be accepted here, it is right to treat the Defendant as having assumed a duty to take care in the representations which it made to the Claimant. In these circumstances I will give default judgment to the Claimant, on the second cause of action, for damages to be assessed.

60. I would ask Mr Trompeter to settle an appropriate order to give effect to this judgment and to lodge it for approval.