Legal Mortgage Monthly Update
December 2025

Contents	White v Chief Constable of Kent Police [2025] EWCC 68 Mortgage enforcement – warrant of possession – entitlement to use reasonable force with Police assistance Estate of Euan McIntyre Dec'd v Outlook Finance Ltd (in liquidation) [2025] EWHC 3100 (KB) Orders made in mortgage proceedings – fraud – setting aside judgment The Conditioning House Ltd v JBG Enterprises Ltd [2025] EWHC 3260 (Ch) Sale at undervalue – approach to be taken – dishonest assistance – unlawful means conspiracy Ashrafi v Belmont Green Finance Ltd [2025] EWHC 3247 (Ch) Mortgage fraud – Overriding interest - *Brocklesby* principle – merger of possession in money judgment – s 36 Administration of Justice Act 1970 – unconscionability

Case name Neutral citation	White v Chief Constable of Kent Police [2025] EWCC 68
Legal points	Mortgage enforcement – warrant of possession – entitlement to use reasonable force with Police assistance
Facts	W and his wife defaulted in repayment of their Nat West Home Loan which resulted in an order for possession and a money judgment which NWHL sought to enforce by a warrant of possession. An initial attempt by the bailiff was met with resistance and resulted in a further appointment with Police assistance. On that occasion, the Police had to use force to enter the property and arrested W for affray (he was subsequently charged and acquitted). W subsequently sued Kent Police for damages, including aggravated and exemplary damages for alleged assault and battery, false imprisonment and malicious prosecution, arising out of their conduct in assisting the county court bailiff to gain entry. When the matter came on for trial (judge alone) the parties agreed a list of issues concerning the circumstances surrounding the eviction, including (so far as relevant) whether the warrant of possession permitted the use of force to gain entry to the property, including with Police assistance.

Held	(HHJ Brown, sitting at the County Court at Canterbury): 1. Where the court makes an order for possession in favour of a mortgagee, and the time for the mortgagors to deliver up possession has passed, the mortgagee is entitled to possession; not the mortgagors. 2. Accordingly, by the time of the first appointment, W had no right to possession (his application for a stay had been refused). It meant that W had no right to use force to prevent NWHL from obtaining possession (the court noted that in *Tuohy v Bell* [2002] EWCA Civ 423, Neuberger J said that a person might be guilty of contempt of court if he failed to comply with an order requiring him to deliver up possession and would be guilty of contempt if he obstructed a bailiff seeking to execute a lawful warrant of possession). 3. A mortgagee cannot enforce a county court order for possession itself; it may only be enforced by a warrant of possession (CPR 83.26). This does not affect the right of the person entitled to a possession order to authorise someone acting pursuant to a warrant to use reasonable force. Since NWHL obtained the possession order and time for W to give up possession had passed, it was entitled to authorise [those acting on its behalf] to use reasonable force. 4. It followed that this issue was not correctly framed. The warrant itself does not give any person acting on behalf of the mortgagee or with the authority of the mortgagee, the right to use force and it is not necessary for the authorisation to use force to be endorsed on the warrant. It is the possession order that gives the mortgagee the right to authorise those acting on the mortgagee's behalf or with the mortgagee's authority, to use reasonable force. 5. The legal position is accurately reflected in Form EX96 Notice of Appointment (with Bailiff) for Execution of Warrant of Possession or Delivery (in which the bailiff confirms that he or any agent attending will have authority to use reasonable force, if required, to carry out the eviction (with Guidance Notes on the rear). Further, Form N54 (Notice of Eviction) and Form N54A (Notice of further attempt at Eviction) state that the warrant gives a county court bailiff the authority to evict and hand over possession of the property to the claimant (the court also referred to the Bailiff Manual). 6. In the circumstances, both the bailiff and the Police had power to use reasonable force if necessary to gain entry to the property – that being authorised by the possession order rather than by virtue of the warrant. No endorsement on the warrant was necessary. [The court went on to consider a number of other issues about the use of Police powers, including arrest, detention and prosecution under PACE etc]. Incidentally, the court also made some relevant observations about the process of sealing a warrant (by a court stamp) (para [64] etc). Ultimately, the court gave judgment for W in the sum of £2.00 for false imprisonment (for a 4-min delay in reviewing his detention under PACE) but dismissed the remainder of his claims.

Comment	Mortgage enforcement under CPR 83 is not particularly straightforward. See the helpful Procedural Table on the website and the range of Forms. This decision confirms both the requirement for a mortgagee to proceed with enforcement of a residential possession order with a warrant of possession, and for the entitlement of the bailiff, with Police assistance if required, to use reasonable force – this being an entitlement which is vested in the mortgagee pursuant to the order for possession, not the warrant itself.

Case name Neutral citation	Estate of Euan McIntyre Dec'd v Outlook Finance Ltd (in liquidation) and Butcher [2025] EWHC 3100 (KB)
Legal points	Orders made in mortgage proceedings – fraud – setting aside judgment
Facts	In 2008, L obtained a loan from O, secured on farms in Scotland and Cumbria. Following default in repayment, O appointed an LPA Receiver B who in 2012 took possession of the farm in Cumbria and subsequently sold it. L challenged the Receiver's conduct (without challenging the underlying loan or security) in proceedings in Manchester, but the claims were dismissed. The court preferred the evidence given by F, the director and controlling mind of O. O then sought to enforce its charge over the farm in Scotland, with L now seeking to set aside the loan and security documentation. The Outer House of the Court of Session made a number of damaging findings against O and the evidence given by F and held that the loan and security documents had been obtained by fraudulent misrepresentation and undue influence and that the amount due under the loan was much less than claimed, with O systematically overcharging L. The court set aside the loan and security on the Scottish Farm and ordered O to repay £180k. L then issued the present proceedings against O and B alleging the Manchester judgment had been obtained by the fraud of F (who had since died).
Held	(Kerr J): (1) Despite diligent researches, neither counsel could find any authority or commentary on whether a judgment obtained by fraud could be set aside against not just the original fraudster but as against another party to the original proceedings who was not a party to the fraud, having regard to the three principles to be applied in the judgment of Aikens LJ in *Royal Bank of Scotland Plc v Highland Financial Partners LP* [2013] EWCA Civ 328.

	(2) There was no bar which prevents the court, in an appropriate case, from exercising the equitable jurisdiction to set aside a judgment against other parties to the original proceedings who are affected by the fraud but who are not themselves guilty of it. Direct precedent is not necessary to reach that conclusion. Equity has an inherent flexibility and capacity to adapt to new situations. The vice of the relevant fraud is that it taints the impeached judgment. The setting aside of that judgment is done not to punish the fraudster but to protect the integrity of the legal process. The tests propounded by Aikens LJ in the RBS case are directed not at the parties but at the impeached judgment. (3) (Having reviewed the evidence) the findings of the Scottish court were wholly inconsistent with the findings of the Manchester Court and it was clear that F had lied to the judge in Manchester. (4) The Manchester judgment was set aside as against both O and B and there would be a retrial at the Manchester BPC (the court rejected a defence of laches). The court gave a separate judgment in respect of consequential matters [2025] EWHC 3241 (KB) including on costs (awarding the claimants their costs on the standard basis less 25% to reflect conduct) and giving B permission to appeal.
Comment	Setting aside a judgment for fraud is a tall order. The principles to be applied were set out by Aikens LJ in *Royal Bank of Scotland Plc v Highland Financial Partners LP* [2013] EWCA Civ 328, and require (1) a conscious and deliberate dishonesty in relation to the relevant matter which is relevant to the judgment sought to be impugned; (2) the relevant matter must be 'material' (i.e. that it is an operative cause of the court's decision to give judgment in the way that it did (i.e it would have entirely changed the way in which the first court approached and came to its decision); and (3) the question of materiality is to be assessed by reference to its impact on the evidence supporting the original decision, not by reference to its impact on the evidence supporting the original decision, nor by reference to its impact on what decision might be made if the claim were to be retried on honest evidence. In this case, the fact that the fraud was committed by a non-party to the impugned proceedings did not prevent the intervention of equity. The object is to protect the legal process, not to punish the fraudster.

Case name Neutral citation	The Conditioning House Ltd v JBG Enterprises Ltd [2025] EWHC 3260 (Ch)
Legal points	Sale at undervalue – approach to be taken – dishonest assistance – unlawful means conspiracy
Facts	C charged an industrial property to JBG for £900,000, which JBG sold pursuant to its power of sale to a company (which had previously been involved in a joint venture to develop the property) of which P was a director, for £1M, without exposing it to the market.

	C claimed P was acting in breach of his duties as director and that the sale was at an undervalue – claiming against JBG damages for unlawful means conspiracy and equitable compensation for dishonest assistance in P's breach of duties. The court made an order for a split trial on liability issues.
Held	(Joanna Wicks KC, sitting as a judge of the High Court): 1. The court directed itself about the approach to the pleadings and evidence in a case involving dishonesty (*National Bank Trust v Yurov* [2020] EWHC 100 (Comm) at [50]; *Sofer v Swissindependent Trustees* [2020] EWCA Civ 699 at [23]; and *ED & F Man Capital Markets Ltd* [2022] EWHC 229 at [69]-[71]. The court also noted that the allegations of serious wrongdoing were against Mr P who was not a party to the proceedings (and had not been called by either side as a witness). 2. Following a detailed review of the evidence, the court then directed itself about the equitable duties of a mortgagee (para [148] etc), including good faith and proper purposes (*Devon Commercial Property Ltd v Barnett* [2019] EWHC 700 (Ch) per HHJ Paul Matthews) and the duty to take reasonable case to obtain best price. 3. In particular, on best price, the court quoted at some length the decision of Jonathan Parker LJ in *Michael v Miller* [2004] EWCA Civ 282 on the correct approach to be taken by a first instance judge in deciding whether there had been a breach of duty noting that it was unsatisfactory to start first with the market value and then ask whether the [mortgagee] had been negligent in achieving a price substantially less. Instead, where the property has been exposed to the market the more logical approach is to start by considering the steps taken by the mortgagee to sell the property and then consider whether, in all the circumstances, the mortgagee had acted reasonably in accepting the particular offer and contracting to sell the property at that price. 4. The facts of this case absolutely cried out for JBG to obtain advice not just on valuation but also on marketing but they failed to advertise or otherwise expose the property to the market in any way at all. It was also unreasonable to proceed without a full valuation. JBG was plainly on the 'wrong side of the line'. The principles discussed in *Michael v Miller* mean that the 'bracket' is relevant in assessing whether a mortgagee has acted reasonably. 5. A mortgagee who breaches its duty to take reasonable care to obtain the best price is liable to account to the mortgagor for the proceeds of sale it would have achieved if it had complied with its duty; credit being given for the proceeds in fact obtained. 6. Following an assessment of the valuation evidence, the court held that the market value was £1,331,000, less auction fees + VAT of £21,562.20 so that JBG was liable to account for the difference over £1M = £309,437.80. 7. On dishonest assistance, the court reviewed the legal principles and the evidence and held that C had established its claim against JBG, but that once it has accounted to C as mortgagee, there is no further loss for which equitable compensation for dishonest assistance is payable.

	8. The court went on to consider what would have happened but for P's breaches of duty under the Companies Act 2006. 9. Finally, the court considered the unlawful means conspiracy claim, noting that P's breaches of duty under the CA 2006 were capable of being unlawful means for the purposes of the tort of unlawful means conspiracy, but held that the claim failed on the ground of lack of the necessary intention to injure on the part of JBG (who was not itself in breach).
Comment	We don't often come across dishonest assistance in mortgage cases, let alone unlawful means conspiracy (had to look it up – it's in *Clerk & Lindsell on Torts, 24th Edition, para 23-101* etc). As it turned out, these did not add anything to the action for an account based on a sale at an undervalue. As to this, the case is notable for the reliance placed on the important judgment of Jonathan Parker LJ in *Michael v Miller* [2004] EWCA Civ 282 (which is often overlooked) on the correct approach for the court to take in assessing evidence of undervalue. The starting point is the conduct of the mortgagee and its selling agents, with the most important issues of fact being (1) whether the property was properly marketed (having regard to the particular type of property and the appropriate manner of sale); and (2) whether it was exposed to the market for a sufficiently long period of time. The court should not simply start with market valuation evidence and work backwards to see whether the mortgagee achieved best price or not. That's relevant on quantum; not breach of duty. Whenever I am instructed on undervalue cases, I invariably require a litigation style CPR 35-compliant export report which covers both breach of duty (first), and valuation evidence (second). For a helpful summary of the principles on sale at undervalue, see the website. *Michael v Miller* [2004] EWCA Civ 282 is a helpful and informative case. I acted for the successful mortgagee both at [a two-week] trial in Bristol and in the Court of Appeal. My opponent is now the Head of Falcon Chambers. Stephen will be delighted I have mentioned this.

Case name Neutral citation	Ashrafi v Belmont Green Finance Ltd [2025] EWHC 3247 (Ch)
Legal points	Mortgage fraud – Overriding interest - *Boscklesby* principle – merger of possession in money judgment – s 36 Administration of Justice Act 1970 – unconscionability
Facts	Mr & Mrs A owned a property on which they wished to raise mortgage finance, but couldn't afford it, so they asked Mrs A's brother, S to obtain the mortgage on their behalf, representing himself as the owner. BGF duly advanced funds to S on a buy-to-let mortgage which prohibited occupation by family members, and following default in repayment, they obtained a money judgment against S and an order for possession.

	Mr & Mrs A appealed the order for possession, contending (1) that they had an overriding interest in the property, (2) that the bank's security interest merged in its money judgment such that it was no longer able to enforce its security; (3) that Mr & Mrs A could nonetheless could claim to be 'mortgagors' for the purposes of s 36 Administration of Justice Act 1970; and (4) whether the bank had behaved so unconscionably that an order for possession should not have been made.
Held	(Adam Johnson J): Appeal dismissed. (1) Mr & Mrs A did not have an overriding interest. Applying the *Brocklesby* principle (*Brocklesby v Temperance BS* [1895] AC 173) and subsequent authorities, including *Wishart v Credit & Mercantile Plc* [2015] EWCA Civ 655 per Sales LJ at [43]-[55]), there is a principle akin to estoppel which prevents an occupier from having a relevant right against a purchaser or lender – where the occupier has furnished an agent with the means of holding himself out to a purchaser or lender as the owner of the property without bringing to the attention of the purchaser or lender any limitation on the extent of his authority. Since Mr & Mrs A knowingly put S in a position where he was able to represent himself as the owner of the property and left him to make the arrangements with the bank (whether or not Mr & Mrs A knew precisely what S was doing) it meant they were precluded from asserting an overriding interest. (2) There was no merger. The point was argued on the basis that by entering judgment against S the principal sum and interest became owned by S under the judgment and not the mortgage contract. This was wrong, and would mean that a mortgagee would have to elect whether to sue for a money judgment or enforce the security by seeking an order for possession, but not both. This is wrong as a matter of principle because it would defeat the purpose of a mortgage being a form of security. It was also inconsistent with *Cheltenham & Gloucester Building Society v Grattidge* (1993) 25 HLR 434 in which Hoffmann LJ said that a mortgagee is entitled to exercise all his remedies concurrently. (3) Mr & Mrs A were not 'mortgagors' for the purpose of s 36 Administration of Justice Act 1970. It was common ground that they were the joint beneficial owners, but this did not mean they were persons '*deriving title under*' S having regard to the definition of 'mortgagor' in s 39 AJA 1970. They were precluded under the *Brocklesby* principle from asserting they had any beneficial interest which had priority over the bank, so they had no relevant title, and nothing derived from S. Nor were they entitled to redeem the mortgage (having regard to the extended definition of 'mortgagor' in s 205(1)(xvi) Law of Property Act 1925). In any event, even if Mr & Mrs A could avail themselves of s 36, they could not remedy the breach which involved also occupation by them in breach of the terms of the buy-to-let mortgage. (4) It was not unconscionable of the bank to seek possession. What was contended was that it had refused to accept monthly payments directly from Mr & Mrs A, and had then relied on the fact of arrears as a ground for possession; and that it had moved from a fixed rate to a variable rate, thereby increasing the monthly payments. It was not clear whether the generic submission of unconscionability provided any basis for resisting an order for possession (including where the powers under s 36 AJA 1970 are not exercisable). In any event, it was S who remained liable under the mortgage (with Mr & Mrs A entitled to indemnify him). It was up to them to work out how the indemnity would operate, but it was not a matter of concern for the bank. The bank was not obliged to deal with Mr & Mrs A and the court could not force it to do so.

Comment	Counsel deployed some ingenuity in coming up with a number of novel arguments, but the overwhelming point was that if you deliberately engage someone else to obtain a mortgage on your property – essentially a mortgager fraud - you take what's coming, and it is no use, afterwards coming up with spurious arguments. The case is perhaps significant for three main points: 1. The application of the *Brocklesby* principle as a means of defeating an overriding interest claim. There is a concise summary of the principles in *Atkin's Court Forms, Vol 28(1) Mortgages, para [112] at (4).* 2. The entitlement to possession does not merge in, and is not lost by, a money judgment. 3. The extent of the definition of 'mortgagor' in s 36 AJA 1970 – it does not apply to an occupier who does not derive any interest from the mortgagor.