

Legal Mortgage Monthly Update

September 2025

Contents	<p>UBS AG v Kei (Unrep Central London County Court, 12 September 2025)</p> <p>Publication: HM Land Registry Practice Guide 30: Approval of mortgage documentation</p>
Case name Neutral citation	<p>UBS AG v Kei (Unrep Central London County Court, 12 September 2025)</p>
Legal points	<p>Term loan facility – whether representations to extend term gave rise to collateral agreement, variation or estoppel – s 36 Administration of Justice Act 1970</p>
Facts	<p>UBS (described in the judgment as an investment bank and wealth management organisation) claimed possession of a substantial London property and a money judgment for over £57M, following the expiry of a 5-year term loan facility.</p> <p>The principal line of defence/counterclaim was that UBS made representations that the term of the loan could be extended – that provided interest was paid, the defendants could remain in occupation of the property – amounting to a collateral agreement, or a variation, or alternatively giving rise to a promissory estoppel.</p> <p>There was a consequential issue which followed, namely whether, if UBS was entitled to an order for possession, it should be suspended on terms, pursuant to s 36 Administration of Justice Act 1970.</p>
Held	<p>(HHJ Bloom) Following a lengthy assessment of the witness evidence (7 witnesses) and contemporaneous documentary evidence (including large volumes of emails and call logs), held: none of the representations were proved and the defence/counterclaim was dismissed.</p> <p>As to the application of s 36 Administration of Justice Act 1970, the contractual term had expired with a balance due of over £57M (with interest accruing at over £7k per day) with no clear means of repayment other than by the sale of the property, but this was hampered by the existence of two Freezing Orders which prevented any ‘dealing with’ the property. The court concluded there was no reasonable prospect of the defendants paying the sums due within a reasonable period and that the threshold in relation to s 36 had not been passed, but that even if it was, the court would not exercise its discretion (the defendants were not going to be made homeless, they had other properties).</p>

	Order for possession in 28 days (money judgment adjourned with liberty to restore – the borrower had been made bankrupt).
Comment	<p>You may be wondering (as I was) why a £46.8M term loan facility did not have the term nailed down and why the lender was left exposed to a substantial defence based on subsequent representations alleged to have been made by officers of the bank. Regrettably, with determined litigants, and a substantial volume of communications between the parties, the merest of indications can grow legs and become fixed and firm representations over time. The principal issue invariably turned on an assessment of the evidence, and the case contains some useful commentary on the court's approach to the assessment of evidence (Gestmin etc down to Rajah J in <i>South Tees Development Corp v PD Transport Ltd</i> [2024] EWHC 214 (Ch) plus commentary in <i>Phipson on Evidence</i> with (at para [40] a long list of 'indicators' of a witness who is not credible and unreliable).</p> <p>On the s 36 point, at the end of the term, in the absence of re-finance, the only other viable option is to seek terms for a voluntary sale (in this case the defendants asked for six months to market themselves), but quite apart from the fact they were hampered by the freezing orders, they would have needed reliable valuation and marketing evidence to be able to persuade a court, on a balance of probabilities, that it was likely a sale would be achieved within a relatively short time, with the net proceeds being sufficient to pay off the balance due (or if there was any shortfall, reliable financial proposals to make up the balance).</p> <p>The judge's reference to the 'threshold' in s 36 AJA 1970 comes from <i>Bank of Scotland Plc v Zinda</i> [2012] 1 WLR 728 in which Munby LJ said the effect of the statutory provisions is to create a jurisdictional gateway or condition, namely whether the mortgagor can demonstrate that they are <i>likely to be able within a reasonable period to pay</i> any sums due under the mortgage. Absent such proof, the court has no jurisdiction to stay or suspend the order for possession.</p> <p>For further commentary on s 36, see the website, and <i>Atkin's Court Forms, Vol 28(1) Mortgages, para 64</i>.</p> <p>Note, finally, how a relatively complex and high value (£50M +) claim was retained in the county court for determination by a circuit judge, which is, of course, the default position with CPR 55 claims allocated to the multi-track.</p>

Publication	<p>On 1st September 2025 HM Land Registry updated Practice Guide 30: Approval of mortgage documentation.</p> <p>Change made: Section 3 has been amended as you now only need to send one copy of a mortgage deed to our Commercial Arrangements Section for approval.</p>
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