

SUPREME COURT OF QUEENSLAND

CITATION: *A & T Promotions Pty Ltd v Ikin & AG (CQ) Pty Ltd* [2009] QSC 119

PARTIES: **A & T PROMOTIONS PTY LTD ACN 103 910 854 as trustee for TOOWOOMBA UNIT TRUST**
(applicant)
v
IKIN as trustee for THE MACKAY TRUST
(first respondent)
AG (CQ) PTY LTD ACN 121 034 893 as trustee for the AG (CQ) FAMILY TRUST
(second respondent)

FILE NO/S: 9586/08

DIVISION: Trial Division

PROCEEDING: Trial

ORIGINATING COURT: Supreme Court of Brisbane

DELIVERED ON: 18 May 2009

DELIVERED AT: Brisbane

HEARING DATE: 23 March 2009

JUDGE: Wilson J

ORDER: **It is declared that -**
1. the Plaintiff has an interest as equitable mortgagee in Lot 1 on SP 209449, in the County of Carisle, Parish of Howard, being all of the land contained in title reference 50753455 ("the Land");
2. the Second Defendant has an interest as equitable mortgagee in the Land;
3. the Plaintiff's interest in the Land as equitable mortgagee takes priority over the Second Defendant's interest in the Land.
And it is ordered that -
4. the First Defendant, whether by its himself, his employees or his agents or otherwise howsoever, be restrained from dealing with the Land in a manner which is contrary to the Plaintiff's and/or the Second Defendant's interest set out in Orders 1 to 3 above;
5. the Second Defendant, whether by its officers, employees or agents or otherwise howsoever, be restrained from dealing with the Land in a manner which is contrary to the Plaintiff's interests in Orders 1 and 3 above;

6. Caveat Number 711881562 be forthwith removed from the Land;

7. the Second Defendant pay the Plaintiff's costs of and incidental to these proceedings, including reserved costs, to be agreed or assessed on the standard basis.

It is directed that –

8. the Second Defendant, whether by itself, its employees or agents, or otherwise howsoever, do all things reasonable and necessary to deliver to the Plaintiff the signed Transfer dated 17 March 2008 from the Second Defendant to the First Defendant in respect of the Land in an unencumbered form, within a reasonable time from the date of this Order.

CATCHWORDS: MORTGAGES – MORTGAGES AND CHARGES GENERALLY – PRIORITY OF ESTATES, DEBTS AND ENCUMBRANCES – BETWEEN EQUITABLE INTERESTS – where first defendant is the registered owner of land – where plaintiff and second defendant both have equitable mortgages over the land – where plaintiff's equitable mortgage is first in time – whether plaintiff should be accorded priority as the first in time

Land Sales Act 1984 (Qld)

Land Title Act 1994 (Qld), s 122(3)

Property Law Act 1974 (Qld), s 199

Australian Guarantee Corporation (NZ) Ltd v CFC [1995] 1 NZLR 129, cited

Commercial Finance Ltd Cash Resources Australia Pty Ltd v BT Securities Ltd [1990] VR 576, cited

Dixon v Muckleston (1872) L.R. 8 Ch App 155, cited

Heid v Reliance Finance Corporation Pty Ltd (1983) 154 CLR 326, considered

Latec Investments Limited v Hotel Terrigal Pty Ltd (in liq) (1965) 113 CLR 265, cited

Lapin v Abigail (1930) 44 CLR 166, considered

Rice v Rice (1853) 2 Drew 73; 61 ER 646, considered

Scottsdale Homes Pty Ltd v Gemkip Pty Ltd [2008] QSC 326, cited

Shropshire Union Railways and Canal Co v The Queen (1875) LR 7 HL 496, cited

COUNSEL:

DJ Campbell SC and G Handran for the plaintiff

P Dunning SC and S McLeod for the second defendant

SOLICITORS:

Hemming & Hart Lawyers for the plaintiff

Bernays Lawyers for the second defendant

[1] **Wilson J:** The first defendant is the registered owner of land described as lot 1 on SP 209449 in the County of Carlisle Parish of Howard. The plaintiff and the second defendant each has an equitable mortgage over the land, the plaintiff's being the

first in time. In this proceeding the Court must determine which of those equitable interests has priority.

- [2] Alan Leslie Ikin, who was the pivotal figure in relevant dealings, did not appear at the trial. He was the trustee of the Mackay Trust. He also controlled the companies Maccaral Developments Pty Ltd and Store Group Pty Ltd.
- [3] Pursuant to a Loan Facility Agreement dated 26 July 2005 the plaintiff lent Maccaral Developments Pty Ltd \$3 million. Mr Ikin guaranteed repayment of the loan.
- [4] In early 1997 the second defendant wished to acquire a large tract of industrial land in Mackay, described as lots 5 and 6 on SP 175679, and owned by Paolo and Michael Deguara. Mr Ikin facilitated the purchase. The second defendant agreed to pay Mr Ikin as trustee of the Mackay Trust a success fee of \$3.8 million when the Deguaras sold the land to it. By a Deed of Payment of Success Fee ("the Success Fee Deed") dated 26 March 2007, they agreed –

"3.1 When Deguara sells the land to AGCQ then payment of the success fee to Ikin will be made as follows: -

- (a) on the settlement of the sale of the land to AGCQ, payment of a sum of \$2,000,000.00 by bank cheque or bank cheques as directed by Ikin;
- (b) payment of the balance of the success fee will be made by the transfer by AGCQ to Ikin of the allotment within fourteen (14) days of the registration of the Survey Plan of the land creating the allotment.

3.2 In fulfilment of its obligations and under the provisions of Clause 3.1 (b) of this Deed, all that is required of the AGCQ is;

- i. AGCQ must use its best endeavours to obtain registration of the allotment pursuant to the provisions of this Deed; and
- ii. To deliver Ikin a properly executed Transfer for the allotment on favour of Ikin capable of immediate registration (after stamping) in the appropriate office, free from encumbrances and title to the allotment free from encumbrances as well as vacant possession of the allotment and any instrument of title to the allotment required to register the Transfer.

3.3 Ikin will accept title to the allotment in full satisfaction of the balance of the success fee due and owing to him if that fee becomes payable pursuant to the terms of this Deed."

The "allotment" was defined as:

"an allotment of 12,000sqm to be subdivided from the land with a frontage to Farrellys Lane, Mackay and located in accordance with the Sketch Plan attached hereto and marked 'A'."

At the time the Success Fee Deed was executed it had not been created: this necessitated an application for an exemption under the *Land Sales Act 1984* (Qld), which was granted.

- [5] The second defendant completed the purchase of lots 5 and 6 on 31 May 2007, and in accordance with the Success Fee Deed \$2 million was paid to Mr Ikin or at his direction. The transfer of lots 5 and 6 to the second defendant was registered on 5 July 2007.
- [6] Maccaral Developments Pty Ltd defaulted in the repayment of the moneys advanced by the plaintiff. This led to the execution of the first Deed of Variation between the plaintiff, Maccaral Developments Pty Ltd and Mr Ikin.
- [7] On 6 September 2007 Mr Ikin gave copies of the Success Fee Deed and a letter from the second defendant's solicitors (Bernays Lawyers) to him dated 2 May 2007 to a director of the plaintiff. The letter was in these terms –

"We refer to the writer's telephone conversation with your Solicitor, Mr Jason Hall this morning.

We confirm on behalf of our client AG (CG) Pty Ltd as trustee or the AC (CQ) Family Trust that pursuant to a Deed entered into between that Company as trustee and yourself as trustee for the Mackay Trust on the 26 March, 2007, that a Success Fee of \$3,800,000.00 is to be paid by you as trustee for the Mackay Trust as follows: -

- (1) on the settlement of the purchase by our client of land situated at Farrellys Lane, West Mackay from P & ML Deguara on 31st May, 2007 - \$2,000,000.00;
- (2) within fourteen (14) days of the registration of a Survey Plan for that land and the issuing of a new Title for an allotment of 12,000 sqm of that land – the transfer of that allotment to you as trustee which transfer will be accepted by you in full satisfaction of the balance of the success fee.

We confirm that out of the payment of \$2,000,000.00 you are given authority to AG Rigging & Steel Pty Ltd to make payment to that company of a loan of \$500,000.00 together with the balance of interest at 8% per annum on that sum which interest commenced from the 23 August, 2006.

In addition, we are instructed by our client that it would also seek payment from you at that time of your one-half share of monies paid by our client on account of Mackay Business Park Pty Ltd which our client estimates at approximately \$30,000.00."

- [8] Maccaral Developments Pty Ltd defaulted again in its obligations to the plaintiff. A Second Deed of Variation was executed on 18 September 2007. This time there were four parties to the deed - the plaintiff, Maccaral Developments Pty Ltd, Mr Ikin in his personal capacity and Mr Ikin in his capacity as trustee for the Mackay Trust (described as "the New Guarantor"). The company agreed to repay the

moneys then owing (over \$5 million) and interest, and to provide additional security. Clause 5 was in these terms -

"5. NEW GUARANTEE

5.1 **Provision of New Guarantee**

- (a) The New Guarantor agrees to enter into the Deed of Guarantee and Indemnity with the Lender contemporaneously with the execution of this Deed.
- (b) The New Guarantor confirms there is a commercial benefit for the New Guarantor to enter into this Deed and the Deed of Guarantee and Indemnity.
- (c) In consideration of the Lender entering into and complying with the terms of this Deed, the new Guarantor agrees to:
 - (i) provide the Lender with a first mortgage over certain property the subject of a Deed of Payment of Success Fee between the New Guarantor and AG(CQ) Pty Ltd ACN 121 034 893 as trustee (**AGCQ**) dated 26 March 2007 (**Success Fee Deed**) which mortgage will be on the terms and conditions acceptable to the Lender (**New Mortgage**);
 - (ii) upon request, and where the New Mortgage has not registered with the Queensland Department of Natural Resources and Water, assign the Success Fee Deed to the Lender on terms acceptable to the Lender.
 - (iii) pay any amount received pursuant to the Success fee Deed to the Lender without set off;
 - (iv) not vary otherwise deal with the terms of the Success Fee Deed without first obtaining the written consent of the Lender;
 - (v) immediately notify the Lender that the lot the subject of the mortgage in clause 5.1(c)(i) is created and provide the lot, plan and title reference details and the New Guarantor irrevocably authorises the Lender to complete the mortgage and lodge it for registration at the Department of Natural Resources and Mines.

5.2 **New Guarantor's Covenants**

- (a) The New Guarantor covenants with the Lender that: -
 - (i) the Success Fee Deed is a valid and subsisting document;

- (ii) the New Guarantor has full power to assign its rights under the Success Fee Deed and has complied in all respects with its obligations prerequisite to an assignment of the Success Fee Deed;
 - (iii) there are no outstanding mortgages, charges or other encumbrances whatever relating to the Success Fee Deed;
 - (iv) no event has occurred, and there is no past or subsisting breach of the Success Fee Deed by the New Guarantor that would entitle the AGCQ to terminate the Success Fee Deed or to refuse any right in favour of the New Guarantor under the Lease;
 - (v) the New Guarantor is not aware of any past or pending dispute, litigation or arbitration between AGCQ (or any predecessor in title) and the New Guarantor relating to the meaning or validity of the Success Fee Deed, the performance of obligations under the Success Fee Deed or any other matter;
 - (vi) the Success Fee Deed in the form produced by the New Guarantor to the Lender comprises the whole agreement between AGCQ and the New Guarantor, and there are no collateral or related agreements; and
- (b) The New Guarantor shall on or before the assignment date advise AGCQ of the assignment of the Success Fee Deed from the New Guarantor to the Lender.

5.3 Lender's Covenants

The Lender covenants with the New Guarantor to execute all documents and do all acts for further assuring the assignment of the Success Fee Deed from the New Guarantor from the assignment date as are reasonably required."

- [9] Pursuant to his obligation in clause 5(c)(i) of the Second Deed of Variation Mr Ikin as trustee granted the plaintiff a mortgage over the still to be created lot 1 on SP 209449, also on 18 September 2007.
- [10] Six months later, on 17 March 2008, Mr Ikin as trustee granted the second defendant a mortgage over the proposed lot to secure an advance of \$627,000.00 to be made by the second defendant to Mr Ikin as trustee as well as a further sum of \$700,000.00 representing headworks charges payable to the Mackay City Council in respect of the delivery of the proposed lot to Mr Ikin as a developed lot.
- [11] At the same time Mr Ikin and the second defendant executed –

- (a) a transfer of the proposed lot from the second defendant to Mr Ikin as trustee;
- (b) a settlement notice in relation to that transfer;
- (c) an authority to complete, by which Mr Ikin as trustee requested the second defendant or its solicitors to date and fill in any blanks in the mortgage or any other document he signed in relation to the mortgage or the transfer of the proposed lot to him "to ensure that [he gave] to [the second defendant] the security interest it require[d] in that land."

The second defendant's solicitor kept the originals of the bill of mortgage, the transfer, the settlement notice and the authority to complete from the time of their execution on 17 March 2008.

- [12] The second defendant obtained the money for the advance by borrowing it from the Commonwealth Bank of Australia. The amount of the advance was equal to the debt and interest owing by Store Group Pty Ltd to a company called Ican George Pty Ltd. Once the advance was made, it was on-lent/transferred in a round robin of transactions by which (inter alia) Store Group Pty Ltd discharged its liability to Ican George Pty Ltd and the bank was repaid on the same day. The round robin of transactions was not fully explained in the present proceeding, but it was not suggested that there was anything untoward about it.
- [13] There is no evidence that the second defendant undertook any search or made any inquiries about the extent of Mr Ikin's interest in the proposed lot.
- [14] Subsequently Mr Ikin further mortgaged the proposed lot to Equititrust Limited in April 2008 and to GS Investment Services Pty Ltd in May 2008. Those mortgagees have both conceded that they rank in priority behind the plaintiff and the second defendant.
- [15] On 10 December 2008 the proposed lot came into existence as lot 1 on SP 209449 Title Reference 50753455.

Applicable principles

- [16] In *Rice v Rice*¹ Kindersley VC said -

"In examining into the relative merits (or equities) of two parties having adverse equitable interests, the points to which the court must direct its attention are obviously these: the nature and condition of their respective equitable interests, the circumstances and manner of their acquisition, and the whole conduct of each party with respect thereto."²

- [17] In a contest between competing equitable interests in property, the Court must examine the conduct of the parties and all the circumstances to determine whose is the better equity. In doing so it must apply broad principles of right and justice, not

¹ *Rice v Rice* (1853) 2 Drew 73; 61 ER 646.

² *Rice v Rice* (1853) 2 Drew 73 at 78; 61 ER 646 at 648.

rigid principles or technical rules. Where the merits of the competing interests are equal, the first in time prevails.³

[18] In *Heid v Reliance Finance Corporation Pty Ltd*⁴ Mason and Deane JJ said -

"To say that the question involves general considerations of fairness and justice acknowledges that, in whatever form the relevant test be stated, the overriding question is '... whose is the better equity, bearing in mind the conduct of both parties, the question of any negligence on the part of the prior claimant, the effect of any representation as possibly raising an estoppel and whether it can be said that the conduct of the first or prior owner has enabled such a representation to be made ...': Sykes, *Law of Securities*,⁵ see also *Dixon v Muckleston*,⁶ *Latec Investments*.⁷ Thus elements of both negligence and estoppel will often be found in the statements of general principle: see, for example *Lapin v Abigail*,⁸ per Dixon J.

It may be that an equitable interest will not be postponed to an equitable interest created later in time merely because there is a casual nexus between an act or omission on the part of the prior equitable owner and an assumption on the part of the later equitable owner as to the non-existence of the prior equity. Fairness and justice demand that we be primarily concerned with acts of a certain kind – those acts during the carrying out of which it is reasonably foreseeable that a later equitable interest will be created and that the holder of that later interest will assume the non-existence of the earlier interest."⁹

[19] The Court has to consider whether by reason of some act or omission by the plaintiff it would be inequitable for it to have priority over the second defendant. In *Lapin v Abigail*¹⁰ Knox CJ said –

"... the possessor of the prior equity is not to be postponed to the possessor of a subsequent equity unless the act or omission proved against him has conduced or contributed to a belief on the part of the holder of the subsequent equity, at the time when he acquired it, that the prior equity was not in existence."¹¹

And Dixon J said –

³ *Rice v Rice* (1853) 2 Drew 73; 61 ER 646; *Latec Investments Limited v Hotel Terrigal Pty Ltd (in liq)* (1965) 113 CLR 265 at 276 per Kitto J; *Heid v Reliance Finance Corporation Pty Ltd* (1983) 154 CLR 326 at 339 per Mason and Deane JJ; *Cash Resources Australia Pty Ltd v BT Securities Ltd* [1990] VR 576 at 586.

⁴ (1983) 154 CLR 326.

⁵ 3rd ed. (1978) p. 336.

⁶ (1872) L.R. 8 Ch. App. 155 at 160.

⁷ (1965) 113 CLR 265 at 276.

⁸ (1930) 44 CLR 166 at 204.

⁹ (1983) 154 CLR 326 at 341 – 342.

¹⁰ (1930) 44 CLR 166.

¹¹ (1930) 44 CLR 166 at 183 – 184.

"In general an earlier equity is not to be postponed to a later one unless because of some act or neglect of the prior equitable owner. 'In order to take away any pre-existing admitted equitable title, that which is relied upon for such a purpose must be shown and proved by those upon whom the burden to show and prove it lies, and ... it must amount to something tangible and distinct, something which can have the grave and strong effect to accomplish the purpose for which it is said to have been produced' (per Lord Cairns LC, *Shropshire Union Railways and Canal Co. v. The Queen*¹²). The act or default of the prior equitable owner must be such as to make it inequitable as between him and the subsequent equitable owner that he should retain his initial priority. This, in effect, generally means that his act or default must in some way have contributed to the assumption upon which the subsequent legal owner acted when acquiring his equity."¹³

The decision of the High Court in that case was reversed by the Privy Council not because the High Court had erred in principle, but on the application of these principles to the facts.¹⁴

- [20] A prior equity holder who allows evidence of title to remain in the possession of the borrower, thus enabling the borrower to lead a second lender to believe that a security it obtains will be a first charge on the borrower's property, may be postponed to the second equity holder.¹⁵ In *Cash Resources Australia Pty Ltd v BT Securities Ltd*¹⁶ Brooking J said –

"I should have thought that the first concern of any prudent man, lending money on the security of property, would be to obtain written evidence of the loan and to possess himself of the documents of title to the property offered as security. Possession of the documents of title is important for two reasons: to prevent the borrower from fraudulently disposing of or encumbering the property on the footing that it is unencumbered and to facilitate realisation of the security in the event of default. The first of these reasons is at least as important as the second. I should have thought that preservation of the security interest against subsequent fraudulent dispositions was a more fundamental consideration than the mechanics of realisation."¹⁷

Priority

- [21] Both the plaintiff and the second defendant were willing to lend money against the risk that for some reason title to the proposed lot would never issue. Because the

¹² (1875) LR 7 HL 496 at 507.

¹³ (1930) 44 CLR 166 at 204.

¹⁴ *Abigail v Lapin* (1934) 51 CLR 58.

¹⁵ *Dixon v Muckleston* (1872) LR 8 Ch App 155 at 160; *Australian Guarantee Corporation (NZ) Ltd v CFC Commercial Finance Ltd* [1995] 1 NZLR 129 at 138.

¹⁶ [1990] VR 576.

¹⁷ [1990] VR 576 at 586.

proposed lot had not yet been created by subdivision of the larger parcel, neither of them could caveat to protect its interest.¹⁸

[22] When the plaintiff took its mortgage –

- (a) the proposed lot was not yet in existence;
- (b) the second defendant was the registered proprietor of lots 5 and 6, from part of which the proposed lot was to be created;
- (c) the first defendant was the mortgagor: in other words, the mortgage was predicated upon the proposed lot being transferred from the second defendant to the first defendant;
- (d) it knew that the proposed lot was the subject of the Success Fee Deed between the first defendant and the second defendant, and that the second defendant was required to transfer it to the first defendant within 14 days of registration of the plan of survey;
- (e) it knew that part of the \$2 million component of the success fee had been paid to a third party AG Rigging & Steel Pty Ltd;
- (f) it agreed to a confidentiality clause.

[23] When the second defendant took its mortgage –

- (a) the proposed lot was not yet in existence;
- (b) it was the registered proprietor of lots 5 and 6, from part of which the proposed lot was to be created;
- (c) under the Success Fee Deed it was obliged to transfer the proposed lot to the first defendant within 14 days of its creation;
- (d) it also took –
 - (i) a transfer from itself to the first defendant signed by it and the first defendant;
 - (ii) an authority from the first defendant to complete the bill of mortgage or "any other document I sign in relation to that Mortgage or the transfer of the land to me";
 - (iii) a settlement notice¹⁹ relating to the transfer, signed by the first defendant as transferee.

¹⁸ *Land Title Act 1994* (Qld), s 122(3); *Scottsdale Homes Pty Ltd v Gemkip Pty Ltd* [2008] QSC 326 at [87] – [88].

¹⁹ See *Land Title Act 1994* (Qld), Part 7A.

- [24] Senior counsel for the second defendant submitted that the plaintiff ought to have taken possession of an executed transfer of the proposed lot from the second defendant to the first defendant, an authority to complete it, and a settlement notice when it took its mortgage, or at least at a time before the second defendant took its mortgage. He submitted that these documents were in the nature of indicia of title, and that by quarantining the transfer the plaintiff would thereby have impaired the first defendant's ability to grant further security. Further, he submitted that in the circumstances of this case it was reasonably foreseeable that the first defendant would grant a mortgage to the second defendant.
- [25] Under the Success Fee Deed the second defendant was obliged to deliver a properly executed transfer capable of immediate registration to Mr Ikin. That presupposed registration of the relevant plan of survey and creation of the proposed lot. Even if a completed transfer having those qualities could properly be described as an indicium of title, albeit inferior in quality to a certificate of title, a transfer that was incomplete because it did not bear the title reference number and incapable of immediate registration for that reason and because it was not stamped, could hardly be so described. Of course the fact that the second defendant held the incomplete transfer and an authority to complete it did not prevent Mr Ikin from granting two further equitable mortgages.
- [26] The plaintiff knew that the second defendant was obliged to transfer the proposed lot to the first defendant within 14 days of registration of the plan of survey in part payment of a substantial success fee for facilitating its purchase of lots 5 and 6 from the Deguaras. It did not know, and it was not reasonably foreseeable, that the second defendant would advance moneys to Mr Ikin against the security of the proposed lot.
- [27] In the circumstances I am unpersuaded that a prudent lender in the position of the plaintiff would have taken possession of an executed transfer of the proposed lot from the second defendant to the first defendant, an authority to complete it, and a settlement notice. Any restraint on the plaintiff arising out of the confidentiality clause is thus irrelevant to the determination of priority between it and the second defendant.
- [28] Senior counsel for the second defendant submitted also that the plaintiff could have exercised its right pursuant to clause 5.1(c)(ii) of the Second Deed of Variation to have Mr Ikin "assign the Success Fee Deed" to it and then have given notice to the second defendant pursuant to s 199 of the *Property Law Act 1974 (Qld)* (which is concerned with assignment of a debt or other *chose in action*). Assuming that to be so in principle, I am unpersuaded that a prudent lender in the plaintiff's position would have done so in all the circumstances.

Conclusion

- [29] In this case the merits of the competing interests are *prima facie* equal. There was no act or omission by the plaintiff which would make it unfair or unjust to accord it priority as the first in time.
- [30] There should be a declaration that the plaintiff's interest as equitable mortgagee has priority over the second defendant's interest. I will hear counsel on the precise form of the order and on costs.

Addendum

[31] The parties having agreed on the terms of a draft order:-

IT IS DECLARED THAT -

1. the Plaintiff has an interest as equitable mortgagee in Lot 1 on SP 209449, in the County of Carisle, Parish of Howard, being all of the land contained in title reference 50753455 ("the Land");
2. the Second Defendant has an interest as equitable mortgagee in the Land;
3. the Plaintiff's interest in the Land as equitable mortgagee takes priority over the Second Defendant's interest in the Land.

AND IT IS ORDERED THAT -

4. the First Defendant, whether by its himself, his employees or his agents or otherwise howsoever, be restrained from dealing with the Land in a manner which is contrary to the Plaintiff's and/or the Second Defendant's interest set out in Orders 1 to 3 above;
5. the Second Defendant, whether by its officers, employees or agents or otherwise howsoever, be restrained from dealing with the Land in a manner which is contrary to the Plaintiff's interests in Orders 1 and 3 above;
6. Caveat Number 711881562 be forthwith removed from the Land;
7. the Second Defendant pay the Plaintiff's costs of and incidental to these proceedings, including reserved costs, to be agreed or assessed on the standard basis.

IT IS DIRECTED THAT -

8. the Second Defendant, whether by itself, its employees or agents, or otherwise howsoever, do all things reasonable and necessary to deliver to the Plaintiff the signed Transfer dated 17 March 2008 from the Second Defendant to the First Defendant in respect of the Land in an unencumbered form, within a reasonable time from the date of this Order.