



# BRIEFING NOTE

VALIDITY OF BULK ASSIGNATION OF  
ALL SUMS DUE SECURITIES IN SCOTLAND

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# Validity of Bulk Assignment of All Sums Due Securities in Scotland

As Lenders are aware the Decision in *One Savings Bank versus Burns* in May last year brought into question the matter of assignments of securities (mortgage deeds in Scotland.) This case found that an assignment of a mortgage deed required to state the sum outstanding at the date of assignment. Typically such bulk assignments did not state this amount. Therefore he found the assignment invalid.

There followed the case of *Shear v Clipper Holdings*, a Court of Session case from later the same month. In this case, an opposing judgement was delivered than to that in *One Savings*, with Lord Bannatyne finding that any breach of the Conveyancing and Feudal Reform Act which provides the form that assignments are to take could not be said to be serious so as to render the assignment invalid. He resolved that the purpose of the Act was for to allow a security (mortgage deed) to be effectively vested in a new Lender as though the security had originally been granted in that Lender's favour. Lord Bannatyne concluded that by making it necessary for an assignment to contain reference to a fixed sum would alter the nature of an all sums due security and would not fulfil the purpose of the Act.

We are pleased to advise that a recent decision in *Promontoria v The Firm of Portico Holdings and Arthur* supports the *Shear* case. This case called in Greenock Sheriff Court and similar arguments to those in both *One Savings* and *Shear* were made before the Sheriff. The Sheriff has published a detailed judgement regarding his reasons for following *Shear* and disregarding the *One Savings Bank* case. This will serve as further relief to Lenders who have used bulk assignments as an effective method of assigning multiple obligations in the past.

## Background of the Promontoria Case

A bulk assignment of a number of securities granted by the defenders were assigned from Clydesdale Bank Plc to the pursuer. The total value of the securities was £1.7million and the properties were valued at £1.4million. The securities were of an "all sums due nature", and in fact, the sums due at the date of assignment were disputed by the defenders. In the bulk assignment, the security was narrated as being as follows: *"to the extent of all obligations and liabilities due or to become due by the relevant Chargor to the Buyer"*.



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The defenders submitted that this did not conform to the exact wording used in the 1970 Act as there was no reference to the value of the securities, and stated that as a result, the assignments were invalid and the securities unenforceable. In other words they were relying on the decision in the *One Savings Bank* case.

The agents for *Promontoria* submitted that the assignment conformed to Form A as it was not appropriate to state any sum where the security was all sums due. It was considered that following *Shear* it was potentially invalid to state a sum as it may have the effect of converting an all sums due security into a fixed sum security. However, this point was not considered by the Sheriff as the parties eventually agreed that this would not be the effect. It was also submitted by the agents that should a breach of the Form have occurred, it was not so serious to render the assignment invalid as it was clear to the defenders what security had been assigned and to whom. This is the same argument as the one principally used in the case of *Shear*. It was argued that the omission of a fixed sum caused no prejudice to the defenders. The defenders did not specify any other real defence to the action of repossession.

Sheriff Hamilton found in favour of the *Promontoria* and granted decree for repossession. He found that the assignment did conform with Form A and even in the event that it hadn't, he did not consider any error to be so fatal as to render the assignment invalid.

## Expert Comment

This decision follows the decision in the Court of Session case of *Shear v Clipper Holdings* and is a welcome comfort for lenders, confirming that it is competent for an all sums due security to be assigned without reference to the sum due under the security at the time of assignment or otherwise.

In our opinion, this is a pragmatic and sensible decision from Sheriff Hamilton. His judgement upholds the pursuer's submissions that stating that a security is all sums due and omitting a figure does conform with Form A. In any event, were the omission of a sum found to be an error, we agree that this should not be so fatal as to render the assignment invalid where the terms of the assignment are clear to the debtor.

We shall continue to update if there are any further developments in this area of law.

Please do not hesitate to contact us if you have any queries :-



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