



Re Fox Street Village Ltd (in liquidation) [2020] EWHC 2541 (Ch)

- What are the security interests held by purchasers where the property they have purchased is not yet completed?
- What is the approach the Court will take to ordering the sale of property free from security?



The facts

- FSV formed for the purpose of developing land on the East side of Fox Street, Liverpool (“the Property”).
- The Property comprised 400 residential units in 5 blocks.
- In 2019, the fixed and floating chargeholder, PHI, made an out-of-court appointment of administrators.
- Most of the units in Blocks A, B, C and E sold and those blocks were completed. Many units in Block D sold also, but it was only a shell.
- The administrators wanted to sell the Property for £1.6m, with £200,000 apportioned to Block D.



Legal framework

- *Eason v Wong* [2017] EWHC 209 (Ch): purchaser's lien is limited to the interest they contracted to buy.
- Paragraph 71(1) of Schedule B1 of the Insolvency Act 1986: the Court can enable the administrator of a company to dispose of property over which there is security as if it were not subject to the security.
- Paragraph 71(3) of Schedule B1: an order is subject to the condition that there be applied towards discharging the secured sums: (a) the net proceeds and (b) any additional money required to be added to produce the net amount to be realised if sold at market value.



What was the decision?

- No real contest that the purchasers of Block D only had an interest in the airspace above the building relating to the flats they had contracted to buy.
- The Property was ordered to be sold free of their interests to the independent purchaser for £1.6m.
- Critically, the purchasers' proposal was rejected because:
 - It would have involved a sale at considerably less than market value, meaning it would be to the detriment of other creditors.
 - There was an absence of evidence about the funding of the purchasers' plan.



Where does it leave us now?

- Confirmation of the existence and approach to identification of the security as set out in *Eason v Wong* [2018] EWHC 1107 (Ch).
- But, a toothless security given the approach taken to paragraph 71?
- Still leaves opens questions from *Eason v Wong* about the approach to valuation of those interests?