

IN THE HIGH COURT OF JUSTICE Claim Number

QUEENS' BENCH DIVISION

BETWEEN

MARK ROBERT ALEXANDER

CLAIMANT

(AS A REPRESENTATIVE OF THE PARTIES LISTED HEREIN)

-V-

WEST BROMWICH MORTGAGE COMPANY LTD

DEFENDANT

WITNESS STATEMENT OF MARK ROBERT ALEXANDER

1. I am the Claimant in this case, and I make this statement in support of my claim for declaratory relief and other orders against the defendant in this case.
2. Following an application for a loan I made to the defendant via a broker, I received an offer of mortgage directly from the defendant dated 6th June 2008. I produce a copy of that application as exhibit MRA/1, consisting of 7 pages.
3. The passage concerning the interest rates can be found at page 2, in the third, fourth and fifth boxes of paragraph 4.
 - i) 'The product description sets out that the product is 'Buy to Let 6.29% fixed until 30.6.2010 (115% cover)- a fixed rate. Any

applicable change in the Bank of England base rate will be applied to your account on the first day of the month following the change, unless the change is made after the 13th day of the month in which case it will be applied on the 1st day of the second month following the change.

ii) Rate payable 6.29%.

iii) After 30th June 2010 your loan reverts to a variable rate which is the same as the Bank of England Base Rate, currently 5%, with a premium of 1.99%, until the term end, giving a current rate payable of 6.99%. Any applicable change in the Bank of England base rate will be applied to your account on the first day of the month following the change, unless the change is made after the 13th day of the month in which case it will be applied on the 1st day of the second month following the change'.

4. I treated this set of conditions, if I accepted the offer, as committing me to paying a variable rate interest only mortgage for the 25 years after completion of the mortgage, with capital repayment at the end of the term. The interest rate would vary as the Bank of England base rate varied, with the agreed premium of 1.99%. I believed this would amount to a beneficial deal for me, as I predicted the BoE base would remain low, and I was also pleased that WB would not be able to vary the rate I paid them of their own volition. The rate would be controlled by the fluctuations of the base rate, which is far more sensitive to the whole money market and therefore would represent the fairest deal for me. The power to carry out unilateral variations of the rate was not a

power that the defendant had under the terms of this offer. I therefore accepted it.

5. Had I been happy to concede the power to the defendant to carry out unilateral variations of the rate I would have opted for a standard variable rate offer, either with the defendant or another provider, at a lower initial rate of interest, and with no arrangement fee payable. I paid a premium/arrangement fee of £1354.48 (pararaph 8 on page 4 of exhibit MRA/1)
6. On 15th July 2008 the mortgage was completed. I produce a copy of the mortgage deed and the booklet, as exhibit MRA/2, consisting of 15 A4 sized pages, although the booklet is laid out at right angles.
7. The relevant parts of the booklet are at pages numbered 14-16 in the booklet, and paginated 7 and 8 in exhibit MRA/2.
8. The first point of relevance is the final bullet point above paragraph 2 at page 14. This states that if there is any variance between the terms of the Offer of Loan (exhibit MRA/1) and the Mortgage Conditions then the former will prevail. This conditions is quite obviously necessary as several of the general conditions also contradict the offer letter, for example condition 12.3 bullet point one page 20 states that I cannot grant a tenancy. This is entirely inconsistent with a buy to let mortgage. The Mortgage Conditions booklet is generic to the defendants entire product range which includes mortgages for homeowners, buy to let landlords and commercial mortgages and products based on fixed rates, standard variable rates, tracker rates (which vary at a set

margin over the Bank of England base rate) and a variety of other hybrids.

9. The second point of relevance is paragraph 5 at pages 15 and 16 of the booklet, paginated 7 and 8 in exhibit MRA/2. This is the paragraph which the defendant relies upon to empower it to increase the interest rate it is charging me. This attempted exercise of the powers in paragraph 5 (referred to in paragraph 12 below) is at complete variance with the way the interest rate is calculated in the mortgage offer. The defendant claims a contractual right to vary the rate at a time when the Bank of England rate has not moved, as well as the right to increase the contractually agreed premium of 1.99% above this rate. Given the supremacy of the terms in the offer of mortgage, where the permitted timing and circumstances of interest rate variations are set out as described in paragraphs 3 and 4 above, the the defendant has contractually excluded itself from use of the powers under paragraph 5 of the 2006 Conditions. There is no room to read the overall picture in any other way.
10. I also produce a screenshot of advertising published by the defendant, as exhibit MRA/3. The mortgage product I contracted for was advertised as giving 'certainty that the amount you pay will move in line with bank base rates'. It also advertises the availability of a range of "variable trackers" (sic).
11. I am experienced in property investment and finance. My firm belief, based on the advertising and the contract documents was that the interest on the loan I took out would only be altered by the

defendant if there was a change in the Bank of England base rate, and be recalculated as the new base rate + a premium of 1.99%. I was quite content for that to be the case, as I believed from my reading of financial and property markets that we were in for a lengthy period of low interest rates. I had no access to any information that was not freely available to anyone.

12. In September 2013 I received a letter from the defendant advising me that they intended to increase the premium of 1.99% to one of 3.99%. I produce a copy of this letter as exhibit MRA/4, consisting of 2 pages.

13. I disagreed with many of the assertions that were contained in the letter, for the reasons I set out above, and so complained to the defendant. I received a reply on 7th October, rejecting my complaint and containing a thinly-veiled threat to call in the loan by demanding repayment in full within 28 days if I did not accept the new terms or refinance. I produce a copy of this letter as exhibit MRA/5 consisting of 2 pages.

14. I refer again to the offer of loan, and the threat to call the loan in. Paragraph 14 of the conditions referred to in the letter of 7th October can be found at page 22 of the booklet, paginated page 11 of exhibit MRA/2.

15. The defendant has also excluded its right to rely on this part of the standard terms, as it is at variance with paragraph 6 of the mortgage offer, to be found at page 3 of exhibit MRA/1. This paragraph sets out the payments that are required to be made under the contract. I have made each one. There are 299 interest

payments to be made over the period of 25 years, with a requirement that a capital sum of £91703.48 be paid at the end of that period. To allow the defendant to demand virtually instant repayment of the entire capital sum on one month's notice is inconsistent with the mortgage offer, and therefore not contractually permitted, for the same reasons that the interest increase is not permitted. There is no room for any other reading of the totality of the contract.

16.I then received a further letter in November 2013 advising me that the increase in premium would now only be 1.9% not 2%. I produce this letter as exhibit MRA/6, consisting of 1 page.

17.When I received the September 2013 letter referred to in paragraph 9 above I opened a discussion about this issue on my website property118.com, as a result of which hundreds of borrowers in the same situation contacted me. I organised a group response to the defendant, including a request for the matter to be resolved by binding arbitration, which was rejected by the defendant. As a consequence of this, having no other option, I instructed counsel on behalf of the group of borrowers to draft an application to this Honourable Court.

18.I ask that the Court orders the defendant to adhere to the terms of their contract with me, and makes the same order in respect of all other borrowers that are represented in this claim. The orders I seek are set out in draft on my formal application to the court.

19.I produce a list of all those mortgage holders that I am acting as the representative for as exhibit MRA/7.

I believe that the facts stated in this witness statement are true.

Signed

Mark Robert Alexander

Dated / /2014