



Neutral Citation Number: [2026] EWCA Civ 978

Case No: CA-2026-000393

IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE HIGH COURT OF JUSTICE
Mr Justice Ritchie

Royal Courts of Justice
Strand, London
WC2A 2LL

Date: 28 July 2026

Before:

LORD JUSTICE ZACAROLI
LORD JUSTICE MILES
and
LORD JUSTICE DOVE

Between:

(1) PAUL MORGAN EVANS
(2) SUSANNAH EVANS

Appellants

- and -

SWANSEA BUILDING SOCIETY

Respondent

Harry Stratton (instructed pro bono) for the **Appellants**
Rory Forsyth (instructed by **Morgan la Roche solicitors**) for the **Respondent**

Hearing date: 16 July 2026

Approved Judgment

This judgment was handed down remotely at 10.30am on 28 July 2026 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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Lord Justice Dove:**Introduction**

1. The appellants appeal the order of Ritchie J dated 24 February 2026 in which, following an email requesting an oral hearing to reconsider the order that he had made striking out the appellants' appeal on 20 February 2026, Ritchie J ordered that the "email request is not an application by notice of application and is struck out and is marked totally without merit". It was wrong to strike out the request on that basis. When making his order on 20 February 2026 Ritchie J did not make an order under CPR 52.4(3) preventing the appellants from requesting the reconsideration of his decision at an oral hearing. They were, therefore, entitled to request the decision to be reconsidered at an oral hearing. Such a request may be made by email without the need for a formal application.
2. Ritchie J also held that the request should be struck out for the additional reason that the appellants were required to obtain permission, pursuant to a limited civil restraint order to which they were subject, in order to request an oral hearing to reconsider the decision to refuse permission to appeal.
3. The respondent is content to accept that that the appeal be allowed on the narrow basis the judge was wrong to refuse the appellants the opportunity to have his decision reconsidered at an oral hearing, without having to incur yet further expense in arguing the opposite. It considers there is no practical justification for doing so since a successful appeal leads only to an oral reconsideration of the application for permission to appeal, which it contends is anyway doomed to fail.
4. The respondent sought a consent order resolving the appeal and sending the matter back to the High Court for it to be redetermined. It appears that that course did not commend itself to the appellants and, in addition to continuing to pursue the appeal, the appellants have submitted three further applications. The first application is to add an additional ground four to the appeal, contending that there is fresh evidence bearing upon the validity of the execution of the charge which is relied upon by the respondent in their claim for possession. The second application, which is related to it, is an application for the admission of fresh evidence bearing upon whether there were inaccuracies in the execution of the documentation related to the charge. The third application is, in effect, an application for a "stay and/or injunction" preventing the sale of the property which is the subject matter of the litigation pending a hearing in relation to the fourth set of proceedings which have been issued in this case.
5. We announced our conclusions in relation to the matters before us at the end of the hearing and these are my reasons for joining in the decisions which are set out below. I am grateful to counsel in this case for their endeavours in seeking to disentangle the procedural complexities which this dispute has given rise to and clarify the issues for the court to determine. I am particularly grateful to Mr Stratton who, acting pro bono, assimilated the case swiftly and made very cogent and effective submissions on behalf of the appellants, albeit ultimately the merits were against him.
6. I propose to briefly describe the nature of the underlying dispute which has given rise to the extensive litigation between the appellants and the respondent prior to focussing on the order which is directly the subject matter of this appeal. I shall then deal with the

applications made in the course of the proceedings in this court before finally turning to the ultimate disposal of this appeal.

The underlying dispute

7. On 7 December 2018 the appellants purchased 71 Mumbles Road, West Cross, Swansea, SA3 5AA, a residential property, for £570,000 with the assistance of a mortgage from the respondent in the sum of £484,500 which was repayable over a term of 30 years. The mortgage was issued to facilitate the purchase of the property. Subsequently, the appellants sought further funding from the respondent by way of a loan facility secured by a legal charge on the property in the total sum of £770,000. This mortgage was entered into on 14 October 2020 and it released a further £300,000 to the appellants and was made on an interest-only basis for a term of three years. The purpose was to replace the mortgage entered into in 2018 and to permit the completion of the renovation and extension works with the expectation that those works would be completed within the three year term of the mortgage and the property thereafter refinanced.
8. On 28 October 2023 the term of the 2020 mortgage expired and, thereafter, on 20 March 2024 the respondent made a formal demand of the appellants for repayment of the total borrowings under the mortgage. On 3 April 2024 the appellants applied to the High Court seeking various declarations and an injunction prohibiting the appointment of a receiver in relation to the 2020 mortgage but on 9 April 2024 His Honour Judge Keyser KC, sitting as a Judge of the High Court, refused the application for an injunction and dismissed the claim.
9. On 16 April 2024 the respondent issued Part 55 proceedings seeking a possession order in relation to the property at 71 Mumbles Road. The appellants embarked on various interlocutory skirmishes which it is unnecessary to detail here. Suffice to say that the possession claim came on for hearing before Deputy District Judge Wilson on 29 July 2024. The Deputy District Judge, in a comprehensive and lucid judgment, identified that the respondent sought possession on the basis of breaches of clauses 12(a), (b) and (c) of the 2020 mortgage. These clauses defined “enforcement events” enabling the respondent to seek possession. The breach of clause 12(a) was that the term of the mortgage had expired and the borrowings remained outstanding in full without the appellants being able or willing to repay them. The breach of clause 12(b) was constituted by the appellants’ demolition of the property without the prior written consent of the respondent which amounted to a breach of clause 9 of the 2020 mortgage, a breach which was not capable of remedy due to the property having been demolished. Finally, the breach of clause 12(c) arose because of the failure of the appellants to disclose the full details of their credit history in either the 2018 mortgage application or the 2020 mortgage application. In fact, in earlier proceedings in this court, the following facts were identified. Firstly, that the first appellant had entered into an involuntary arrangement on 6 March 2006. Secondly, the appellants had fallen into arrears on an earlier mortgage account in April 2006. Thirdly, that in February 2007 a final charging order was made against the property related to that earlier mortgage account. Lastly, that both of the appellants had previously been declared bankrupt. They had therefore given false information in response to the question posed about previous indebtedness in the application.

10. The appellants resisted the claim on the basis that the respondent's entitlement to possession of the property had been waived by estoppel and acquiescence. Further, it was denied by the appellants that they had signed the credit history section of the applications or that they had given any representations or warranties. The appellants contended that the respondent had always been aware that it was their intention to demolish and reconstruct the property and that by taking no action prior to 28 October 2023 the respondent had acquiesced to that demolition. Having considered the evidence available in the application, and the various applications which had been made by the appellants to be determined at the hearing, the Deputy District Judge rejected all of the appellants' applications and made clear findings of fact, concluding that the appellants were in breach of the terms and conditions of the 2020 mortgage as alleged by the respondent and ordering that the appellants give up possession of the property within 21 days of the judgment being handed down. It appears that there was some administrative confusion surrounding the handing down of the judgment and the preparation of the order giving effect to it. The final version of the order was issued on 2 January 2025 under the slip rule.
11. On 23 June 2025 HHJ Kember heard a rolled-up hearing in relation to the appellants' application for permission to appeal the order of Deputy District Judge Wilson alongside various other applications which had been made by the appellants in relation to the possession proceedings connected with 71 Mumbles Road. Judgment was reserved and handed down in writing on 28 October 2025. It appears from paragraph 60 of the judgment that (following the dismissal of an oral application to reamend the grounds of appeal) it was accepted that six of the seven grounds of appeal were not to be pursued and were abandoned. The abandoned grounds included submissions related to an allegation of fraud. The sole ground which remained, ground three, was a submission that the order made under the slip rule on 2 January 2025 contained substantive changes which prejudiced the appellants. The judge rejected those submissions and concluded that permission to appeal on ground three had to be refused. This conclusion also led to the dismissal of other outstanding applications made by the appellants which were before the court at that time.
12. The appellants applied for permission to appeal the order of HHJ Kember and this application was dealt with on the papers by Michael Green J on 11 December 2025 (he having refused an application for a stay on 3 December 2025). The application for permission to appeal was refused and Michael Green J observed that the application was totally without merit and that the appellants could not request the decision to be reconsidered as an oral hearing. The judge concluded that the appeal sought to attack case management decisions well within the discretion of the judge alongside seeking to resurrect, under the guise of other proceedings which had been brought by the appellants, the fraud allegations which had been specifically dropped by them at the hearing of 23 June 2025.
13. On 29 August 2025 the appellants commenced a third set of proceedings seeking to challenge the validity of the charge and claiming declaratory relief in that respect. The claim was brought both against the respondent and also the firm of solicitors who acted for the appellants and the respondent in the original transaction. It appears that, to cut a long story short, these proceedings were struck out by HHJ Beard sitting in the Swansea County Court on 30 June 2026.

The subject matter of the appeal and other proceedings

14. On 12 December 2025 HHJ Kember conducted a hearing to deal with two applications made by the appellants. The first application dated 11 November 2025 sought a stay of possession orders which had been made on 20 September 2024 (as amended under the slip rule on 2 January 2025), at the hearing on 23 June 2025, the judgment of HHJ Kember dated 16 September 2025 and the order which he made on 23 October 2025 when he handed down that reserved judgment along with an immediate interim stay. The second application was dated 3 December 2025. By virtue of this second application the appellant sought the setting aside of the order made by HHJ Kember dated 23 October 2025; an order permitting them to cross examine the respondent's witness; an order for no action or further steps in relation to a letter from the respondent's solicitors dated 1 December 2025; and finally further relief to the appellants "as requested and/or necessary/desirable".
15. On 16 December 2025 HHJ Kember gave an oral judgment refusing both of these applications and certifying them both as being totally without merit. HHJ Kember went on to make limited civil restraint orders against each of the appellants during the course of the hearing, restraining them from making any further application in those proceedings without first obtaining the permission of either HHJ Beard or, if he was unavailable, HHJ Kember.
16. On 5 January 2026 the appellants made an application for permission to appeal against the order made by HHJ Kember on 16 December 2025. They also applied for a stay of the order made on 23 October 2025. The applications were considered by Ritchie J on 20 February 2026. Ritchie J concluded that the application should be struck out and marked totally without merit. In his reasons, he explained that the appellants had been required to file and serve a bundle including the transcript of the judgment within 35 days of filing the notice of appeal but that no appeal bundle had been filed within the relevant time limit. Nor had a certificate of service on the respondent been filed. In his reasons, Ritchie J notes that the appellants had made clear that they did not challenge the original possession order but sought a stay of the appealed order. Since that order dismissed their application, there was nothing to stay. The judge also noted that permission should have been sought by the appellants to make the applications and that they had failed to obtain it. Although they had sought to argue that the limited civil restraint orders did not bind them in relation to the appeals because they were separate proceedings to the proceedings to which those orders pertained, that submission was rejected by Ritchie J who considered that the appeals were also part of the proceedings.
17. Later on 20 February 2026 the appellants wrote to the court pursuant to CPR 52.4(2) and CPR 52.4(6) to formally request an oral reconsideration of the refusal of permission to appeal contained in the order made by Ritchie J on 20 February 2026. In a subsequent email on 24 February 2026, the appellants pointed out that Ritchie J had not refused the right to request oral reconsideration and they sought such reconsideration via CVP.
18. Ritchie J considered the matter on 24 February 2026. The order which Ritchie J made, and which is the subject matter of this appeal, was in the following terms:

“NOW IT IS ORDERED THAT:

1. The email request is not an application by notice of application and is struck out and is marked totally without merit.
2. No costs.

Reasons

1. My reasons for striking out the appeal were given in the order date 20.2.2026.
 2. This email application is not made in a proper notice of application, was not made with permission under the LOCROs and has no standing.
 3. The Appellants have no right to renew his applications for permission to appeal because: (1) they failed to apply for permission under the LCRO before making the appeal in the first place; and (2) the application for permission was totally without merit and (3) the Appellants did not request permission under the LCRO to make this application either.”
19. Permission to appeal this order was granted by Nugee LJ on 10 March 2026. Nugee LJ refused the appellants’ application for a stay at the time of granting permission to appeal, and then again in response to further applications from the appellants for a stay on 19 March 2026 and 27 March 2026. The possession order was ultimately enforced on 30 March 2026, leading to the appellants no longer being in possession of the property at 71 Mumbles Road.
20. Shortly prior to the enforcement of the possession order the appellants issued the fourth claim in these proceedings in the High Court against the respondent. A further application for an injunction was made, which was then refused and certified as totally without merit by HHJ Keyser KC on 27 March 2026. The judge made extended civil restraint orders against both of the appellants in those proceedings. On 1 April 2026 the respondent applied to strike out the fourth claim but that application has yet to be determined and is likely to be heard in August or September 2026.
21. At the hearing the court was advised that the appellants intend to issue an application under CPR 52.30 seeking reconsideration of the decision reached in the appeal against the possession order made by DDJ Wilson on 20 September 2024. That application had not been issued at the time of our hearing.

The appellants’ applications

22. As described above, the appellants have made three further applications in the context of this appeal. By their application dated 23 April 2026 the appellants seek permission to rely upon new evidence together with consequential relief setting aside the possession order and providing restoration of possession and urgent directions. The second application dated 30 April 2026 seeks permission to rely upon a new fourth

ground of appeal which pleads further bases upon which to overturn the possession order. A further application to rely upon further evidence and seek consequential relief was made on 26 June 2026. The fourth application is for interim relief in the form of a stay or injunction to prevent the sale of the property pending the outcome of the application in the fourth set of proceedings.

23. The new evidence upon which the appellants propose to rely addresses the fact that the underlying charge was witnessed by Ms Vickie Henshaw on 16 November 2018 at a time when she was the receptionist for the appellants' then solicitors. The address recorded on the document was her professional address rather than her private residential address. The appellants suggest in their witness statement that they telephoned Ms Henshaw on 13 April 2026 to ask if she had signed the charge in 2018 and Ms Henshaw denied this.
24. The witness statements also raise a point in relation to crossed out signatures from the appellants as also bearing upon the validity of the documents. It appears that when the appellants' solicitors sought to register the charge with the Land Registry they would not register it as the identification of the signatures was not clear. The signature of both of the appellants appeared in each of the locations on the document where they were required to sign. It seems the solicitor corrected the deed by adding the identity of each appellant and then deleting the surplus signature so that each appellant's signature remained only once and in the space adjacent to their name.
25. The additional ground draws attention to the evidence of the conversation said to have taken place with Ms Henshaw and the crossed out signatures and contends that this goes directly to the "validity, execution, attestation, alteration and enforceability of the legal charge on which the possession order was founded". They are irregularities which are said to establish the appellants' primary case that they did not sign or authorise the deed and their alternative case that any signatures attributed to them were not made in the presence of Ms Henshaw or attested by her, and that the deed is unenforceable.
26. The reality of the fourth application is that it is in substance an application for an injunction seeking to prevent the sale of the property. As set out above, the possession order has been enforced and the appellants are no longer in possession of the property. There is, in truth, no order to be stayed as the relevant order is already in effect. In support of the application for an injunction the appellants contend that there is a strong arguable case that the charge is not valid, and further that the respondent is in breach of its duty to achieve best value for the property. This submission is based on the evidence provided by the respondent from their employee Mr Mark Hughes whose witness statement describes that having obtained possession and cleared the site the respondent obtained marketing advice and were told to offer the property (which is now a building plot) to the market at £880,000. The respondent has accepted a cash offer of £900,000 and is proceeding to sell. The appellants observe that the advice they received was that the property was worth £1.2m and that therefore the respondent is selling the property in a hurry and at an undervalue. Furthermore it is contended that any injunction would be a short-term measure pending the further hearing in the fourth set of proceedings.
27. Mr Hughes' evidence is presented to support the respondent's opposition to the application for the injunction. In his evidence he points out that the current outstanding balance on the mortgage account is over £1m, excluding the legal costs incurred after 8 May 2026 as well as the costs of marketing and selling the property. Mr Hughes

estimates that ultimately the appellants will owe the respondent over £200,000 on an unsecured basis and that, given they are currently living on Universal Credit and have significant other debts (including charges on the property arising from other litigation in which the appellants were involved), there is no reason to suppose that there is any chance that the appellants will be able to make payment in relation to this shortfall.

Disposal of the appeal

28. Central to the merits of this appeal are the provisions of CPR 52.4(1) to (3). In essence, these provisions make clear that an application for permission to appeal will be determined on paper without an oral hearing unless otherwise directed by the court or as provided for under CPR 52.4(2). CPR 52.4(2) provides that, subject to paragraph (3), where permission is refused without a hearing the person seeking permission may request the decision to be reconsidered at an oral hearing. CPR 52.4(3) provides that where permission to appeal is refused without an oral hearing and the judge considers that the application is totally without merit, the judge may make an order that the person seeking permission may not request reconsideration of the decision at an oral hearing.
29. The effect of the order made by Ritchie J on 24 February 2026 was to strike out the email request on the basis that it was not made with permission under the limited civil restraint orders and had no standing. As I have noted already, the respondent does not oppose the appeal being allowed on the narrow basis that the judge was wrong to refuse the appellants the opportunity to request reconsideration at an oral hearing, and we did not hear argument on the impact of the limited civil restraint order. It is therefore unnecessary to decide whether the judge was correct in deciding that the appellants were required to obtain permission under the limited civil restraint order to make the request, or to apply for permission to appeal.
30. This being the case, the question then arises as to whether the court should refer the matter back to a High Court Judge for redetermination or alternatively exercise the powers of the High Court in order to determine the outcome of the request for an oral hearing reconsidering the decision for itself. I have concluded that in the particular circumstances of this case, and having heard the submissions which we did, there are good reasons for this court to determine the matter rather than sending it back. Although Mr Stratton was concerned that the appellants should be afforded more time to prepare their case, in reality there has been more than ample time for the appellants to address the issues in this case and they have done so, making further applications in the course of the proceedings. In my view the overriding objective is obviously best served by this court determining the merits rather than further court resources being absorbed by deferring the matter.
31. I have concluded that the request for oral reconsideration should lead to the same conclusion as Ritchie J reached on 20 February 2026, namely that the application for permission to appeal is entirely without merit. As a start, as Ritchie J observed, it appears that the essential procedural requirements of an application for permission to appeal in the form of the submission of a bundle containing the judgment appealed against and the service of such material on the respondent had not been undertaken. On enquiry at the hearing, Mr Stratton said on instructions that Mr Evans believed that the transcript had been requested, but there was nothing to evidence that this had been done, or when it had been done, or what efforts had been made to follow up on any such request.

32. Moving to the substance of the oral reconsideration much emphasis was placed by Mr Stratton on the new evidence which was included in the application before the court and the new grounds which were the subject of the application to amend. I am unconvinced that this evidence is of any material assistance to the appellants. Firstly, the appellants made clear in their application to appeal the order of HHJ Kember, as Ritchie J observes, that they were not putting the substance of the possession order in dispute but the purpose of the application was to have that order stayed. It follows that the new applications seek to introduce new contentions which were not the subject matter of the appeal to Ritchie J and relate to the validity of the charge and therefore the possession order itself.
33. Secondly, addressing the evidence and the amended grounds head on, I do not consider that they provide a basis for allowing an appeal against HHJ Kember's order. In so far as the appellants rely upon their evidence about Ms Henshaw this is not, in reality, a new issue since they have known of the existence of her signature and the address she gave throughout and did not question it. The fact that she provided her professional or employers' address is of no substance. The conversations the appellants record are not supported by any witness statement from Ms Henshaw and, as the respondent observes, her response is perhaps understandable when faced out of the blue with questioning about a mundane event many years ago. This evidence is inchoate and of little if any weight as currently presented to the court. So far as the alterations to the deed which were made to ensure that it was capable of registration by the Land Registry are concerned I am unable to detect anything inappropriate in what occurred based on the material presented in this appeal. As Mr Forsyth on behalf of the respondent observes, taking the steps which the solicitor did to ensure that the deed was registered were simply by way of clarification and obviously accorded both with the intentions of the appellants and the terms of the solicitor's retainer in the matter.
34. On the basis that they are of no merit I would refuse the applications for the fresh evidence and the amendments to the appellants' grounds. There is a further point to be observed which was pointed out in the course of argument. It appears that when the appellants entered into the 2020 mortgage it was a condition of the mortgage offer which they signed on 16 October 2020, as part of the conditions within section 19 of the documentation, that there was to be a "First legal charge over 71 Mumbles Road ... (Already held by the Society)". It follows that in any event, even if the legal mortgage was invalid as a result of a defect in its execution as a deed, the property was subject to an equitable mortgage as a result of this documentation and the advance of the funds to the appellants which was capable of founding the application for possession in any event.
35. For all of these reasons I would reject the application to reconsider the decision on the appeal reached by Ritchie J. There remains the application for an injunction to prevent the sale of the property prior to the hearing of the application in the fourth set of proceedings. For the reasons which have already been given in the context of the reconsideration of the appeal against the order of HHJ Kember I am unpersuaded on the basis of the material which is before us that there is a serious issue to be tried. The material which has been placed before the court in the form of evidence relates to matters in terms of the charge which they have been aware of for many years and they have only recently been raised. The evidence does not, in any event, establish a basis

to disturb the binding effect of the charge even before consideration is given to the arguments about the existence of an equitable charge.

36. There are, however, further formidable difficulties in the way of granting an injunction in this case. It is clear to me that the balance of convenience in this case is heavily weighted against the grant of interim relief. Firstly, for the reasons given in Mr Hughes' evidence, the reality is that the appellants are not able to offer any meaningful cross-undertaking in damages in this case. It was said that because of the alleged sale at an undervalue there may be equity in the property which could provide support for the cross-undertaking but in my view that suggestion is illusory given the scale of the indebtedness of the appellants and their conspicuous impecuniosity. Secondly, there is clear and obvious prejudice to the respondent in not being able to realise their security after these protracted proceedings, in particular given the growth in the deficit on the mortgage account that has accrued as a consequence of the delays in this matter. Thirdly, in relation to the complaint that the sale is being undertaken at an undervalue, this is an issue which can be explored in any proceedings relating to the ultimate balance of the mortgage account. Although it was submitted that damages could not be an adequate remedy in this case on the basis that the property was the appellants' family home that is a submission that I am unable to accept. Fourthly, I have sympathy with the submission made by the respondent that this application for an injunction should in fact have been made in the fourth claim's proceedings (although an application would have required the permission of the court to be made).
37. In the light of these considerations I am not persuaded that there is a basis for the granting of the injunction which is sought in this case. In summary, therefore, in relation to the matters which are before the court, I have reached the conclusion that the appeal should be allowed on the narrow basis for which permission to appeal was granted; the application for the admission of fresh evidence and amendment of the grounds of appeal dismissed; this court should consider and dismiss the application for reconsideration of the appeal against the order made by HHJ Kember on 16 December 2025; and that the application for an injunction to prevent the sale of the property should be dismissed.

Lord Justice Miles:

38. I agree.

Lord Justice Zacaroli:

39. I also agree.