

RBS held to account for failed residential project

Breach of loan agreement claim embroils controversial GRG unit, reports Doug Morrison

Royal Bank of Scotland (RBS) is being sued in the UK High Court for an alleged breach of a loan agreement involving a high-profile residential development that fell victim to the downturn.

John Morris, the developer of luxury scheme Charters, near Sunningdale in south-west London, is suing RBS for reneging on an agreed facility to finance final construction work in September 2008. The writ claims the development could not be completed without the facility and, as a direct result, at least two purchasers refused to complete transactions.

Two special-purpose vehicles set up by Morris for the development – Charters Development (CDL) and Castleleigh Holdings – were placed in administration by RBS in May 2009. The administrators sold Charters to RBS's property subsidiary, West Register, at what Morris claims was a knock-down price of £15.8m. The bank is understood to still own Charters.

Morris's legal action puts West Register back in the spotlight. It is part of RBS's controversial Global Restructuring Group (GRG), which is being wound down amid allegations that it profited from the financial distress of companies it was meant to help. The Financial Conduct Authority (FCA) is investigating the allegations, denied by RBS.

SEEKING £11M IN DAMAGES

Morris lodged his High Court writ in December, seeking damages of more than £11m, representing the profit he claims CDL would have made on Charters but for RBS's alleged breach.



The case centres on a withdrawn £2.54m RBS facility to complete the Charters development

Morris tells *Real Estate Capital*: "We scrupulously honoured all our commitments to the bank and this was acknowledged in the minutes of their credit committee. However, the bank reneged on its agreement with us and, as a result, we were unable to complete the sales we were on track to deliver."

An RBS spokesperson says: "The bank intends to defend this claim. Given the ongoing litigation, it would not be appropriate to make further comment on this matter."

RBS was Charters' principal creditor and placed the scheme into the hands of administrators at PricewaterhouseCoopers (PwC) in May 2009, when only 15 of the 34 flats were sold and it was owed over £30m.

However, the legal action relates solely to negotiations between Morris and RBS in mid 2008, when Charters was near completion and the bank's loan facility stood at £60.6m – of which a substantial amount had been repaid.

In the writ seen by *Real Estate Capital*, Morris's claim centres on the £2.54m of bank funding that RBS's credit committee agreed on 8 September 2008 was "essential" and would be made available to pay main contractor, Trant, to complete construction. Morris alleges that the money was to be made available through a "blocked account".

RBS WITHDRAWS SUPPORT

Over £30m was placed in the account from deposits and proceeds of sales at Charters, to be held in escrow until practical completion. Morris alleges that RBS gave express and implied assurances that the £2.54m would be made available to complete the project.

Unknown to Morris, RBS had emptied the account before the cheques were drawn and he claims the bank offered no explanation of its abrupt withdrawal of support.

Though the legal action hinges on a relatively straightforward, albeit disputed, issue – RBS's alleged breach of its loan agreement – the consequences go to the heart of the controversy over the bank's treatment of business customers whose assets ended up with West Register.

A 2013 report into GRG by Lawrence Tomlinson, an adviser to business secretary Vince Cable, claimed the unit had put companies out of business to acquire their assets cheaply. RBS's own investigation, by law firm Clifford Chance, exonerated the

unit, but the controversy erupted again at a Treasury Select Committee last summer.

RBS executives denied to MPs on the committee that GRG was run as a profit centre, a claim committee chairman Andrew Tyrie later described as "wilfully obtuse". RBS's mauling at the hands of the committee paved the way for the bank's decision to close the unit and for the FCA investigation.

In Charters' case, the development was in limbo for months following RBS's alleged breach of contract, until it was placed into administration in May 2009.

Morris, who was also a creditor, protested against administration from the outset. Market conditions were clearly difficult, but Morris insists that until RBS withdrew its support, the bank's credit control committee had agreed in writing as late as September 2008 that as developer, he was best positioned to achieve sales, complete construction and maintain high standards of management to the benefit of all creditors and residents.

Morris also says that the bank went down the administration route after turning down an offer from him, backed by Investec, of more than £30m. At the time, DTZ had valued Charters for RBS at £34m.

By December 2009, PwC had launched a marketing campaign for the freehold of Charters with "a minimum sales price of £27.5m", a letter from the administrators to creditors shows. However, barely six months later, in June 2010, PwC assisted RBS as mortgagee in possession and completed the sale of Charters to West Register for just £15.8m.

The bank appeared to crystallise, or write down, a big loss with the West Register deal, despite signs of a recovery in the residential market. Morris says most of the 15 flat sales that were agreed off-plan near the 2005/06 market peak were at up to £1,250/sq ft, giving Charters a £96m gross development value at the time. The West Register deal equated to £400/sq ft – well below even the £500/sq ft construction costs.

Even before RBS placed Charters into

administration, Morris says he suspected the development would end up in West Register. RBS, meanwhile, refuses to comment on the freehold ownership of Charters following the decision to close West Register. Nor will the bank comment on sales of flats in Charters during the period under West Register's ownership.

Land Registry figures reveal that West Register generated a total profit of £3.74m from the sales of 12 flats between March 2013 and August 2014. For instance, 10 Charters Garden House was sold in August 2014 for £1.45m, compared with its £997,396 valuation as part of the collective £15.8m acquisition in June 2010.

RESIDENTIAL RECOVERY

As the residential market has recovered, the post-Tomlinson controversy over GRG and West Register has played out and Morris has waited patiently for his day in court, which is only possible through some legal manoeuvres around the time his two

companies were placed in administration.

Morris acquired from the companies the so-called "chase in action", which gave him the right as owner to pursue a claim against RBS. Normally the chase in action is vested in the directors of special-purpose vehicles such as CDL and Castleleigh and if the SPVs go bust, any legal rights go down with them.

There have been legal hurdles along the way, including RBS changing its solicitors on this dispute three times, delaying proceedings. Morris also had to seek a High Court order to get RBS to release bank statements relating to Charters, as well as credit committee minutes. "This is the normal stuff any bank would be pleased to give you but we had to take them to court," he says.

Morris says he has spent "the thick end of £1m" in legal fees to get to the point of serving the writ, but has no intention of backing down. He adds: "I've been dealing with this bank for 40 years, with ups and downs. I've never sued my bank before but what they did was patently wrong." ■

Chequered history of the Charters case

2001: Developer John Morris buys the art deco Charters mansion and surrounding land in Sunningdale.

2004: Morris wins planning permission for a luxury residential development and starts construction with RBS as lender.

September 2008: Much of the scheme is complete and 15 of the 34 flats sold. But with the residential downturn it is a year since Morris has sold a flat at Charters. RBS refuses to release funds for final construction work.

April 2009: DTZ values Charters for RBS at £34m. RBS is owed £37m but rejects Morris's and Investec's offer of £30m-plus for freehold.

May 2009: Principal creditor RBS places two Morris companies involved with Charters into hands of PricewaterhouseCoopers administrators.

December 2009: PwC places Charters on the market at "a minimum sales price of £27.5m".



John Morris presided over a luxury residential conversion of the art deco Charters mansion

June 2010: PwC sells Charters to RBS subsidiary West Register for £15.8m.

September 2014: Morris registers legal proceedings against RBS in High Court.

December 2014: Formal particulars of claim, or writ, is served on RBS.

March 2016: Likely hearing date for court case.