

# Legal Alert

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## Mortgage Express v Lambert [2016] EWCA Civ 555

In this case, Laura Lambert sold her leasehold flat in Maidstone to two fraudsters. They had bamboozled Ms Lambert into selling the flat for £30,000 when, in fact, it was worth in the region of £120,000.

Following completion, Ms Lambert remained in occupation as a tenant of the fraudsters. The fraudsters then mortgaged the flat to Mortgage Express and disappeared with the proceeds.

Mortgage Express sought a possession order against Ms Lambert, who claimed that she was entitled to unravel her entire dealings with the fraudsters and receive her flat back free from the mortgage.

No-one disagreed that Ms Lambert had an equitable right to set aside the sale to the fraudsters on the ground that it had been an unconscionable bargain. But was such a right binding on the mortgagee?

No, held Lord Justice Lewison in the Court of Appeal. Ms Lambert's right was overreached because the mortgage had been entered into by two trustees (i.e. the fraudsters) to whom capital money (i.e. the mortgage loan) had been paid. In other words, her right had been shifted from being an interest in the land itself to being an interest in the loan proceeds.

There was therefore no need to consider whether Ms Lambert had, by virtue of her occupation of the flat, an overriding interest (i.e. an unregistered interest that nevertheless binds registered land) that took priority over the mortgage. In other words, overriding interests can be overreached. If an interest is overreached it can't override.

This case shows us that overreaching can affect a wide category of rights, not just interests under trusts. Some rights (such as an unregistered equitable easement) cannot sensibly be detached from the land itself and attached to the proceeds of sale or mortgage. However, a right in the nature of Ms Lambert's could be shifted (i.e. overreached) to the proceeds of sale or mortgage (which she could use to buy herself another home).

The case also serves as a reminder that, as a general rule, the doctrine of notice plays no part in registered land transactions. Mortgage Express had been told that the flat had been bought for only £30,000 and was therefore aware that something fishy had happened. But such notice was irrelevant to the question of which of the lender and seller should prevail over the other.