**IN THE HIGH COURT OF JUSTICE**

**CHANCERY DIVISION** Claim No:

Between:

**MRS FLAVIA FATIMA FERNANDES** Claimant

-and-

**BANK OF SCOTLAND**

**t/a BIRMINGHAM MIDSHIRES** Defendants

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**PARTICULARS OF CLAIM**

1. At all relevant times the Claimant was the mortgagor and the Defendants were the mortgagee in respect of the purchase and sale of the property known as Flat 520, Omega Building, Smuggler’s Way, Wandsworth, London SW10 (hereinafter “the property”).

2. On or around the 12/03/2004 the Claimant purchased the property on a “buy-to-let” mortgage advanced to the Claimant by the Defendant in the sum of £397,800. The property was purchased by the Claimant on the basis of the Defendants’ surveyor’s report which report valued the property at £468,000 at the time.

3. In truth the said surveyor’s report overvalued the property by the margin of around 35% and resulted in a lower rental income stream at the property than expected. In or around 2006 and by reasons of the same the Claimant defaulted on her mortgage covenants by becoming in arrears of her mortgage repayments and on or around the same time the Defendants commenced possession proceedings in the Edmonton County Court.

4. In or around the October 2007 the Defendants obtained a possession order in respect of the property, whereupon the Defendants re-entered the property as mortgagee in possession for the purpose of selling the property.

5. At all relevant times the Defendants owed the Claimant the following fiduciary duties:

1. To act in good faith;
2. As a mortgagee in possession to take reasonable precautions to obtain the best or proper price for the property at the date of sale.

6. The true nature of the transaction as particularized above was such as to cast doubt upon the value of the property and/or the bona fides of the Defendants as the Claimant’s mortgagee.

**PARTICULARS OF BREACH OF DUTY**

1. The Defendants well-knew or ought to have known that the property was purchased at an overvalued price;
2. The Defendants well-knew or ought to have known that the property was resold (as set out at paragraph 7 below) by the Defendants at an under-value.

7. Further or alternatively, the Defendants acted in breach of their fiduciary duties to the Claimant.

**PARTICULARS OF BREACH OF DUTY**

The Defendants wrongfully

1. Instructed, relied upon and/or caused the Claimant to rely upon the Defendant’s surveyor’s which report over-valued the property by margin in the region of 35% of the property’s true market value at the time of the mortgage advance;
2. Valued the property at the price of £468,000 at the time of purchase;
3. Repossessed the property and resold the same in March 2009 at the sale price of £310,000;
4. Repossessed and resold the property at an under-value.
5. Caused a shortfall of £155,250.63 at the property in respect of the Claimant’s account as at the date of the said sale.
6. Failed to raise any or any adequate rental income from the property for the period October 2007 to March 2009 when the Claimant occupied the same as a mortgagee in possession and/or to credit the Claimant’s account with any or any such income;
7. Failed to advertise and or properly market the property with a view to obtaining the best or proper sale price for the property;
8. Advertised the property as a property based in the Tooting area as opposed the Wandsworth area;
9. Declined to accept prospective buyers proposed by the Claimant on the 05/02/2008 and the 24/03/2008 which buyers sought to buy the property at the prices of £390,000 and £410,000 respectively;
10. Applied exorbitant and excessive administrative and/or service charges totaling 27026.98 to the Claimant’s account;
11. Failed to recover the said shortfall from either their surveyor and/or their solicitor who acted on the purchase of the property in 2004 when the Defendants brought proceedings to recover the same said loss as against the latter third parties in 2009.

8. As a result of the matters set out above the Claimant has been put to trouble and expense and has suffered loss and damage.

**PARTICULARS OF SPECIAL DAMAGE**

1. The sale of the property by the Defendant resulted in a shortfall on the Claimant’s account in the sum of £155,250.63.
2. The Claimant incurred out-of-pocket expenses including legal fees in her failed attempt to resist the Defendants’ repossession and sale of the property amounting to £…..

9. Further, the Claimant claims interest under Section 69 of County Courts Act 1984 on the amount found to be due to the Claimant at such rate and for such period as the Court thinks fit.

10. The parties have complied with the requirements of the Practice Direction-Pre-Action Conduct.

And the Claimant claims:

1. The said shortfall on her mortgage account of £155,250.63;
2. Damages;
3. Interest under Section 69 of County Courts Act 1984 to be assessed;
4. An account of all monies in respect of her mortgage;
5. Further or other relief.

Dated this …day February 2015.

**STATEMENT OF TRUTH**

I believe the facts stated in this Particulars of Claim are true.

Name:

Position:

Signed: