Appeal Nos: QB-2018-0187, CH-2018-000174, CH-2018-000233, CH-2018-000235, CH-2019-000070 & CH-2019-000067

Neutral Citation Number: [2019] EWHC 1457 (Ch)
IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
CHANCERY APPEALS (ChD)
ON APPEAL FROM THE COUNTY COURT IN CENTRAL LONDON

Royal Courts of Justice
Rolls Building,
Fetter Lane,
EC4A 1NL

Date: 10/06/2019

Before:

MR JUSTICE ROTH

- -

Between:

HARVIL CONNOLLY	**Claimant/ Applicant**
- and -	
(1) GEORGIA OPAL LANDY	**Defendant/ Applicant**
(2) JORDAN OKENO CONNOLLY	
(3) BRIAN LEWIS	
(4) DAVID LEWIS	
(5) CROWN PROSECUTION SERVICE	**Defendants/ Respondents**

And between:

(1) BRIAN FREDERICK LEWIS	
(2) DAVID JOHN LEWIS	
	Claimants/Respondents
-and-	
GEORGIA OPAL LANDY (FORTEATH)	
	Defendant/Applicant

HARVIL CONNOLLY

Defendant/Applicant

- -
- -

The Applicants appeared in person.
The Respondents neither appeared nor were represented.

Hearing date: 17 May 2019

- -

Approved Judgment: Permission to Appeal

Mr Justice Roth:

Introduction

1. There are no less than six applications for permission to appeal before the court. All are renewals of applications which have been refused on the papers. In five of them, the refusal was by Arnold J in the Chancery Division, and in one the refusal was by Ouseley J in the Queen's Bench Division and the oral renewal application was then transferred to the Chancery Division by order of Dove J to be heard along with the other applications.

2. The Applicants both appear in person and are husband and wife, but Ms Landy prefers to go by her maiden name. Their applications concern three orders, some of them comprising several provisions, made in the County Court at Central London. They are:

   (1) the order of HH Judge Monty QC at a pre-trial review on 28 June 2018 ("the PTR Order");

   (2) the order of Mr Recorder Thomas of 11 July 2018, amended on 11 August 2018, following trial ("the Trial Order");

   (3) the further order of HH Judge Monty of 22 February 2019 ("the 2019 Order").

3. Each of those orders is challenged by a separate application issued by each Applicant. However, the grounds of challenge which Mr Connolly and Ms Landy pursue are essentially the same. It was Ms Landy who made the overwhelming part of the submissions before me, and while she stressed that her case was distinct from that of Mr Connolly, when he briefly addressed me, he adopted his wife's submissions and said that he was content that she had put his points across. Ms Landy is an articulate and intelligent woman who conducted herself before me with courtesy and respect. She showed an impressive grasp of the papers, which comprised seven lever arch-files. Two of those files were the Appeal Bundles which she had helpfully prepared and indexed. I had in addition the three trial bundles which were before Mr Recorder Thomas for the

trial, and the two further bundles that were before Judge Monty for the hearing on 22 February 2019. Inevitably, there was therefore overlap between the various bundles, which could be confusing, and when a document in one set of bundles was incomplete a complete copy could sometimes be found in one of the other bundles.

4. Ms Landy had also produced a skeleton argument of some 30 pages and Mr Connolly had produced a 12 page skeleton argument.

5. There is no doubt that these were complex matters to pursue as litigants in person, even if the multiplicity of orders below are to a large extent of their own making. I therefore gave the Applicants very considerably more time to explain and develop the points they wished to raise than the court would have afforded to solicitors or counsel. So that the Applicants can understand the decisions to which I have come, I am delivering a much fuller judgment than would be usual on applications for permission to appeal.

Background

6. It is unnecessary to set out all the background but the issues on these applications essentially flow from what happened regarding the will of Mr Frederick Joseph Lewis, who died on or shortly before 1 January 2008. He had two sons, Brian and David, who lived at the time of their father's death in Australia. I shall refer to them for convenience as "B & D Lewis".

7. On coming to the UK after learning of his father's death, Mr Brian Lewis says that he found at their father's home a will dated 9 November 1981 ("the 1981 Will") by which their father bequeathed his estate to his two sons in equal shares.

8. When the solicitor who had been appointed by Mr Brian Lewis started to deal with the estate, it emerged that what purported to be a later will of Mr F. Lewis dated 15 December 2003 ("the 2003 Will") had been presented for probate. That will named Ms Landy as executor along with a Ms Doreen Kimber and bequeathed the estate as to 20% to Brian Lewis, 40% to a woman described as Mr Lewis's daughter, 30% to the first child of that alleged daughter and 10% to a Ms Shelley Gordon, who Ms Landy tells me is her sister. It appears that Ms Kimber died on 27 December 2008 and on 12 May 2010 Ms Landy was granted probate as the sole surviving executor. The estate of Mr F. Lewis having thus vested in her, Ms Landy proceeded to transfer £233,952.61 from the late Mr Lewis's bank account to accounts in her name, and then to make transfers of substantial sums of money from those accounts to an account in Jamaica which she held jointly with Mr Connolly.

9. To cut a long story short, after trial before a jury in the Inner London Crown Court in September 2011, Ms Landy was convicted on 24 counts and sentenced to a total of eight years and three months in prison. Many of those convictions related to the forged 2003 Will and to a second forged will of Ms Doreen Kimber. Mr Connolly was sentenced to three years imprisonment for two offences in connection with the forged will of Ms Kimber.

The Proceedings

10. To understand how the present applications arise, it is necessary to summarise the various relevant proceedings. I do so in the order in which those proceedings were commenced.

"The Revocation Proceedings": Claim HC 2011-C00439

11. This was a claim by B&D Lewis in the High Court against Ms Landy. It was commenced on 28 February 2011 and thus while the criminal proceedings against Ms Landy were pending.

12. The claim sought orders revoking the grant of probate to Ms Landy; a declaration against the validity of the 2003 Will; a declaration that the 1981 Will was the true last will of Mr F Lewis; and a grant of probate to the claimants pursuant to the 1981 Will.

13. On 4 March 2013, Ms Landy applied to adjourn the trial but that application was refused. On 18 March 2013, Mr John Baldwin QC (sitting as a deputy High Court Judge) following a trial made the orders sought and further ordered Ms Landy to pay costs on the indemnity basis assessed at £16,638.40 ("the 2013 Order").

"The Proceeds of Crime Act Proceedings"

14. On 1 August 2013, a confiscation order was made in the Isleworth Crown Court against Ms Landy in the sum of £77,917.78 under the Proceeds of Crime Act 2002. A document in the Applicants' appeal bundle from the London Regional Confiscation Unit dated 11 March 2019 states that £5,521.59 of that total had by then been paid, but that with accumulated interest the amount outstanding pursuant to the Confiscation Order was £103,061.32, with daily interest accruing thereon.

15. On 28 May 2015, Ms Landy consented to return to the Lewis estate all money held in the Jamaican account. £142,434.16 was duly returned on 12 June 2015. That left a balance owing to the estate out of the principal sum transferred (see para 8 above) of £91,518.45.

"The Restitution Claim": Claim HC-2015-002824

16. This was a claim by B & D Lewis against Ms Landy. It was commenced on 7 July 2015 while Ms Landy was still in custody and her address on the claim form is given as HMP Bronzefield. The claim was for restitution of the sum of £91,518.45 outstanding to the estate. Judgment in default was entered on 29 June 2016 and on 24 October 2016 Deputy Master Rhys determined the damages and ordered Ms Lewis to pay the principal sum plus interest and costs amounting to £130,952.72. Ms Landy told me that she had sought to set aside the default judgment but her application had been unsuccessful.

17. On 13 September 2017, after a hearing at which Ms Landy was represented by counsel, Deputy Master Lloyd made a final charging order on the property of which Ms Lewis was the registered legal owner, 202 Drakefell Road, London SE4 2DR ("the Property") in favour of B & D Lewis in the sum of £112,210.82 as the amount owing under the judgment debt plus any further interest and costs.

"The First Connolly Claim": Claim C51YJ155

18. This was a claim by Mr Connolly against Ms Landy. Mr Connolly says that it was filed in the County Court in June 2015 but then returned to him requesting further information to support his application for fee remission and so formally issued only in March 2016. By this claim Mr Connolly sought as against his wife:

(1) a declaration of a beneficial interest in the Property; and

(2) the sum of £2,610 as due from her to be paid on the sale of the Property.

That sum was in respect of work carried out and expenditure incurred by Mr Connolly on the Property which he said they had agreed would be paid to him when the Property was sold. On 14 March 2016, Mr Connolly applied for judgment on the basis of an admission by Ms Landy that the sum was owing, with an order for enforcement by a charge on the Property. On 26 April 2016, judgment was entered simply ordering Ms Landy to pay Mr Connolly sum of £2,610 "forthwith". That sum has not been paid.

"The Second Connolly Claim": Claim D03CL314

19. This was a Part 8 claim by Mr Connolly, initially naming Ms Landy and their eldest son Jordan as the only defendants. It was commenced on 1 March 2017 in the Family Division of the High Court under the Trusts of Land and Appointment of Trustees Act 1996 ("TOLATA") and section 37 of the Matrimonial and Property Proceedings Act 1970 ("MPPA"). Mr Connolly sought in essence declarations that he, together with their two sons, was entitled to beneficial ownership of the Property, that Ms Landy had no share in the Property, and an order that the Property be transferred to him. This claim was based on what was alleged to be a trust constituted by Ms Landy by a declaration of trust dated 6 September 2006 ("the trust document") which was exhibited to Mr Connolly's witness statement served with the claim form. The claim was transferred from the Family Division to the County Court at Central London and on 28 November 2017, HH Judge Luba QC granted the application of B & D Lewis and the Crown Prosecution Service to be joined as defendants to the claim.

20. On 3 January 2018, Judge Luba gave direction for disclosure and a service of witness evidence.

21. On 14 March 2018, the trial was listed to take place on 11-12 July 2018.

22. At a hearing before Judge Monty on 4 May 2018, at which Mr Connolly was represented, his counsel confirmed (a) that the judgment in the First Connolly claim did not declare a beneficial interest but was an unsecured judgment debt, and (b) that he was not in the Second Connolly Claim pursuing a claim for a beneficial interest for himself but only for his and Ms Landy's children. Judge Monty accordingly ordered that Mr Connolly could not proceed with the claim under TOLATA or the MPPA but only for declarations that the second defendant (Jordon Connolly) and their younger child are entitled to a 100% beneficial share of the Property and that the Property be transferred to Mr Connolly or Jordan Connolly as trustee. The Judge further ordered

that disclosure should be provided by 13 May 2018 and witness statements should be exchanged by 6 June 2018. This order effectively directed that the First Connolly Claim, insofar as it still subsisted, and the Second Connelly Claim should be managed and heard together.

The Applications

(1) The PTR Order

23. The PTR was heard before Judge Monty on 28 June 2018 and gives rise to the first order which the Applicants seek permission to appeal. The learned judge:

(a) refused applications made by both Mr Connolly and Ms Landy to adjourn the trial;

(b) refused Mr Connolly's application for permission to serve expert evidence and further evidence;

(c) refused Ms Landy's application to strike out the witness statements served by B & D Lewis (the third and fourth defendants); and

(d) granted the application by B & D Lewis for an extension of time and relief from sanctions to serve their evidence, which had been served late.

24. At the hearing of the PTR, Mr Connolly was represented by counsel, instructed by direct access, and Ms Landy appeared in person. Judge Monty gave a reasoned judgment explaining his decision, of which I have a transcript.

25. The Applicants first seek to challenge the learned judge's refusal to adjourn the trial. That application was made only on the day of the PTR. Before me, the Applicants argued that the judge was wrong to refuse an adjournment since the witness statements for B & D Lewis, which were served in the 20 June (and which Ms Landy said she did not receive until 24 June) introduced an entirely new argument under s. 423 of the Insolvency Act 1986: i.e., that if the trust was valid, it was a transaction made by Ms Landy for no value or at an undervalue with the intention of, in effect, defrauding her creditors. Ms Landy said that as a litigant in person she needed time to get advice on this new cause of action.

26. However, although Ms Landy placed great emphasis on the Insolvency Act point in the argument before me, it is clear from the judgment of Judge Monty that this was not the basis on which an adjournment was sought at the PTR. Mr Connolly was represented by counsel, as I have said, and the adjournment was sought on the following bases: (i) that expert evidence was needed as to the genuineness of the trust document; (ii) to get bank statements corroborating the expenditure for the work Mr Connolly had carried out at the Property; (iii) to get receipts in respect of that work; (iv) to call evidence from Mrs Morgan who lent money to Ms Landy and from Ms Gordon, the witness to the trust document; and (v) the late service of the evidence from B & D Lewis. The learned judge records that Ms Landy sought an adjournment also to get additional documentation relating to the Kimber estate.

27. Point (v) above was essentially considered by the learned judge together with the application on behalf of B & D Lewis to excuse late service of their evidence. The judge

considered that carefully and held that they were in serious breach of the order requiring service by 6 June, for which no proper explanation had been given. He directed himself as to the application of CPR r. 3.9 in accordance with the test set out by the Court of Appeal in *Denton* v *White*. He noted that the statements were of moderate length, that there was nothing in the exhibits that Mr Connolly and Ms Landy had not seen before, and noted: "There is no suggestion that the delay of two weeks in serving the statements… has caused any prejudice to the recipients."

28. As in the reasons expressed by Arnold J in his Order of 19 February 2019 dismissing Mr Connolly's application on the papers, I see no realistic chance of an appeal succeeding against the judge's exercises of his discretion on these matters. Even if the Insolvency Act point had been taken in argument before him, that was raised at para 65 of the two, almost identical, 67 paragraph witness statements of each of B & D Lewis and did not involve any new facts. The period between 20 June (or 24 June) and 11 July was sufficient time for the Applicants to seek legal advice; indeed, Mr Connolly had counsel representing him at the PTR who could explain the position to him.

29. As for the other points relied on to seek an adjournment, there is no basis to call in question the decision of the learned judge on what was a matter of case management, as explained in his judgment. The documents and evidence referred to were either irrelevant or should have been obtained much earlier.

30. Ms Landy submitted that the judge's order was wrong in excluding the witness statement of Ms Gordon, which had been served on 10 January 2018. But in fact his order did not exclude that witness statement and indeed it seems that the judge was not made aware that a witness statement from Ms Gordon had already been served. His order refused permission to adduce <u>further</u> evidence. The issue of Ms Gordon's statement falls to be considered in the context of the separate application for permission to appeal against the Trial Order, which I consider below.

31. Accordingly, I refuse permission to appeal against the PTR Order.

(2) <u>The Trial Order</u>

32. Following the PTR Order, Mr Connolly, Ms Landy and Mr Jordan Connolly (the second defendant) served on 2 and 3 July 2018 witness statements in virtually identical terms purporting to be under CPR r. 27.9, stating that they would not be attending the trial because they had no opportunity to get advice on the Insolvency Act point raised in the late evidence of B & D Lewis. Each of those statements said: "I ask the court to take into account all of my evidence throughout the proceedings."

33. The trial came on before Mr Recorder Thomas on 11 July 2018. In the absence of Mr Connolly, Ms Landy and their son, it was concluded in one day. The Recorder dismissed Mr Connolly's claim and made a declaration that the purported trust deed is void and unenforceable on the basis that it is a sham document.

34. In his judgment, the Recorder noted that CPR r. 27.9 applies only to cases on the Small Claims Track, and decided to proceed in the absence of these three parties pursuant to CPR r 39.3(1). The Recorder noted that he was taken to the evidence submitted by Mr Connolly, Ms Landy and Mr Jordan Connolly. In his judgment, he said this:

"25. In my judgment the Trust is a sham that came into being not in September 2006 when it was purportedly dated but in September or October 2016.

26. In coming to this conclusion based upon the documents I bear in mind the following:

(a) The fact that the extensive documentation generated by the Restraint Order, committal and confiscation proceedings and Counsels' notes does not at any point refer to the Trust prior to October 2016. In September 2016 the claimant had become aware of the enforcement proceedings arising out of the Kimber Final Charging Order.

(b) If the Trust had truly existed before 2016, then the First defendant would in my judgment have said so. As it is she would have perjured herself by representing that she did own the Property beneficially in the various matters to which I have referred had the Trust existed.

(c) Ms Nye submitted that I am entitled in considering the transaction to rely on a wider range of evidence than just the terms of the Trust including the parties' conduct after they purport to create the trust, see *Hitch* v *Stone* [2001] EWCA Civ 63. I accept this submission and therefore I find the fact that as [*sic*] the Claimant was convicted of fraud and coming into possession of criminal property in relation to the Kimber estate and the First Defendant was convicted of misleading the probate office, HM Land Registry and miscellaneous third parties as well as the other offences to which I have referred demonstrates a history of seeking to mislead third parties and the Court as well as dishonesty.

(d) The terms of the Trust namely its revocability and the fact that the Claimant is entitled to a charge over the Property demonstrates that the First Defendant with the Claimant wished to control the Property and not to part with it beneficially.

(e) I find that the Claimant was a party to the sham as demonstrated by the fact that he was the first to mention it in October 2016, and also because he was entitled to a charge over the Property and that he had made claims accordingly. Upon the evidence of the documents it seems to me that it was a collusive act. On the other hand no evidence was produced to show any involvement of the Second Defendant but in my judgment that does not prevent me making the declaration bearing in mind the fact that he has no secure interest in the Property."

35 The Recorder also accepted the alternative ground relied on by counsel for B & D Lewis, namely that the Trust was in any event unenforceable as it was not properly constituted because the legal estate has not been transferred to Ms Landy.

36. In those circumstances, the Recorder did not consider the alternative claim under s. 423 of the Insolvency Act.

37. The Applicants seek permission to appeal against the order of the Recorder on the basis that there was evidence that the trust document existed before September 2016. Further, although it is not clearly put this way in their Grounds of Appeal, it is clear that they also seek to rely on the witness statement of Ms Gordon which had been excluded from the trial bundle.

38. On the documents that were before the Recorder at trial, I think it was inevitable that he would come to the view that he reached. However, some of the material documents were not before the Recorder when it seems to me well arguable that they should have been. First, the Recorder had in the trial bundle prepared by the solicitors to B & D Lewis, Mr Connolly's claim form, and part of the claim in the First Connolly Claim. But so far as I can establish, there was omitted from the bundle the exhibits to what Mr Connolly calls his "Witness Statement and Particulars of Claim" in those proceedings. Included in that exhibit was a copy of the trust document.

39. Mr Connolly and Ms Landy also referred to another document, being an application which Mr Connolly had made by letter dated 28 May 2014 to the Isleworth Crown Court seeking a variation of the Confiscation Order, in which he referred to and attached a copy of the trust document. That letter was acknowledged by the court clerk on 7 July 2014, so there is no doubt it was sent. Ms Landy says this was included among the documents which Mr Connolly sent to the solicitors for B & D Lewis on 10 January 2018 by way of disclosure, pursuant to the direction of Judge Luba.

40. I shall assume for the purposes of their applications that this last point is correct. And it is clear that in the light of these documents, the finding that the trust document came into existence only in September or October 2016 cannot stand. But in my view, that is an insufficient basis to support an appeal against the Trial Order. These documents show that the trust document existed by May 2014. However, the critical question was whether the trust document was created, as it states on its face, in 2006 and thus well before the fraud on the Lewis estate and the criminal conviction of Ms Landy, and indeed the commencement of the confiscation proceedings against her. In my view, evidence that the trust document existed in 2014 rather than September or October 2016 takes that matter no further.

41. Of more significance, in my view, is the omission from the trial bundle of the witness statement of Ms Gordon. It seems clear this was included in the documents sent to the solicitors for B & D Lewis as it is expressly referred to in Mr Connolly's letter of 10 January 2018. And indeed, when Ms Landy received from those solicitors the index to the trial bundle, she sent them an email dated 9 July 2018 asking where that statement was to be found in the bundle as it did not appear in the index. The reply email from the trainee at the solicitors to B & D Lewis states as follows:

> "The judge at the Pre Trial Review refused permission for the Claimant to rely on further statements, including the statement of Shelley Gordon. This is why it is not in the bundle."

42 That was incorrect and reflects a misunderstanding of Judge Monty's order. As I have already observed, he refused to allow Mr Connolly and Ms Landy to adduce any <u>further</u>

evidence. But Ms Gordon's statement was not further evidence: it had been served back in January. It seems that the confusion arose because counsel for Mr Connolly at the PTR had apparently failed to appreciate this, perhaps because he had only recently been instructed, and so had relied, as one of the grounds for seeking an adjournment, on the desire to put in evidence from Ms Gordon.

43. Neither Ms Landy or Mr Connolly (who told me he had not attended the PTR) could explain why that mistake was made by counsel and Ms Landy said that she had not appreciated it at the time. In any event, I can understand why, as a litigant in person, she accepted the email response from the solicitors to B & D Lewis and did not seek to insist that Ms Gordon's witness statement be placed before the trial judge. Obviously, this matter was not helped by her decision, along with that of her husband, not to attend the trial.

44. Following the hearing before me, I discovered that there are in fact two versions of Ms Gordon's witness statement. The first is dated 7 October 2016 and this is clearly the version sent under cover of the letter of 10 January 2018. It seems that it was made in connection with an application in the Proceeds of Crime Act Proceedings in the Crown Court. The second version is dated 6 April 2018 and it seems that it was made in connection with the Second Connolly Claim. Whether it was sent to the solicitors to B & D Lewis is not entirely clear, but it does not matter since in material terms the second statement of Ms Gordon is no different from her first statement. It is the first statement on which Ms Landy relied in addressing me.

45. The statement asserts that Ms Gordon witnessed her sister's signature to the trust document at her request "many years ago". Ms Gordon continues: "I believe my son was about two or three years old at the time". Since she says that her son is thirteen years old, that supports Mr Connolly and Ms Landy's case that the trust document was entered into in 2006. It was clearly a relevant statement to the issues at trial.

46. Since I consider that Ms Gordon's witness statement should have been included in the trial bundle, and then would have been seen by the trial judge, I have given careful consideration as to whether its omission gives rise to an arguable ground of appeal. In the end, I conclude that it does not. This is for several reasons.

47. First, the Recorder found that there are clear statements from Ms Landy in the Proceeds of Crime Act proceedings in 2013 that are wholly inconsistent with there being a document creating a valid trust over the Property. In those proceedings, Ms Landy was fully advised by solicitors and counsel, and she had disclosed correspondence from her solicitors in those proceedings and her counsel's attendance note of the Crown Court hearing. It is clear from those documents, especially her then solicitors' letter to her of 5 August 2013 and her counsel's attendance note of the hearing of 1 August 2013, that she accepted in those proceedings that she had full beneficial ownership of the Property. In particular, her solicitor's letter states:

> "It was explained to you by Mr Chadwick that the monies transferred by way of consent order from your bank accounts would <u>not</u> form part of the confiscation order. The order would only comprise the net equity from the sale of 202 Drakefell Road.

> Given that those funds would not essentially be confiscated by the state but would be transferred back to the Lewis family, then once the sale has been effected and the transfer of monies made we would invite the Court to vary the confiscation order to a nominal sum of £1.
>
> You signed the consent forms in relation to the bank accounts and also signed the endorsement as to the confiscation order. I enclose copies of the consent forms and the endorsement for your records.
>
> The order was agreed as follows:
>
> 1. Benefit figure of £639,327.00
>
> 2. Available amount £77,917.38 with confiscation order made in that amount
>
> 3. Order to be settled within 6 months.
>
> 4. Default term of 21 months imprisonment, to run consecutively.
>
> The Restraint Order will have to be further amended once a buyer for 202 Drakefell Road has been identified so as to permit the sale of the property and for the funds to be transferred to the Lewis estate. I have contacted PC Khan and asked him to expedite matters regarding varying the Restraint Order for the sale of Drakefell Road.
>
> If you have any problems in selling the property then we will need to make an application to extend time for payment before the expiry of the 6 month period."

48. Moreover, the long Response dated 17 July 2013 prepared by her solicitors in the Proceeds of Crime Act proceedings and signed by Ms Landy sets out the available property from which any confiscation order made by the court can be satisfied. That response includes the following:

> - at para 1.2: "The Defendant's response has been prepared on the bases of information and documentation received as at 10 July 2013 and is designed to show the Defendant's true financial position at that date."
>
> - at para 4.4:
>
> "202 Drakefell Road, London SE4 2DR
>
> It is accepted that the Defendant is the registered proprietor of this property which she has owned since 2 September 2003, before the relevant periods. The property was purchased in her sole name but with the aid of a mortgage from Kensington

> Mortgage Company Limited. This was a joint mortgage in the name of the Defendant and Stephen Forteath."
>
> It is accepted that the net equity in this property is an amount which is an available asset to be realised in these confiscation proceedings."

I appreciate that these are statements on behalf of Ms Landy and not Mr Connolly, but throughout this period they have been married and they have been making common cause, as in the applications before this court.

49. Secondly, even if the trust document had been signed in 2006, it would fail on other grounds to create a beneficial interest in Ms Landy's children, as the Recorder found. His judgment states at paras 23-24:

> "The first point I note is that it is a revocable settlement. The second point I note is that the Claimant as trustee is entitled to be "compensated for any and all expenditure…" and can secure this compensation by a charge over the Property. As noted above the Claimant claims that his expenditure together with interest amounts to over £261,000 or £288,000 as put in the Second Claim, and there is simply insufficient equity in the Property to meet this claim. I do not know what the value of the equity is but I was told it was nothing like this sum.
>
> In my judgment the terms of the Trust give no security to the purported beneficiaries at all for the two reasons mentioned above. Their beneficial interests are illusory as by making it revocable the First Defendant can terminate it at will. Likewise any equity, if matters came to this, could notionally be claimed by the Claimant in pursuance of his purported charge given him by the terms of the Trust, subject of course to the rules governing trustees' duties not to profit from their trust."

50. Finally, as the Recorder also held, the trust was not properly constituted since the legal estate was never transferred to Mr Connolly. When I put this point to the Applicants, Ms Landy said that she would have made such a transfer during the trial. But aside from the fact that she did not attend the trial, that would obviously be much too late.

51. I should add that I have read all the evidence of Mr Connolly and Ms Landy that was before the Recorder at trial and they give no adequate explanation of the circumstances of the creation of the alleged trust. Nor did either Ms Landy or Mr Connolly provide a skeleton argument for the trial as directed by Judge Monty at para 4(e) of the PTR Order. Although the Applicants are litigants in person, the skeleton arguments which they have prepared for the hearing in this court show that they are well able to set out a case in writing if they choose to do so.

52. Accordingly, in the unusual circumstances of this case, and having regard to the entire background, I am satisfied that even if the witness statement of Ms Gordon been in the trial bundle, and assuming that she would have then attended trial to be cross-examined,

there is no realistic prospect that this would have led to a different conclusion. The court would still have found on abundant evidence that the trust was a sham, albeit that it was created a few years earlier than 2016.

53. The application for permission to appeal Trial Order is accordingly refused.

(3) The 2019 Order

54. Finally, I turn to the 2019 Order. To understand that order, it is necessary to refer to a yet further set of proceedings: Claim E10CL900 ("the OFS Claim"). This is a Part 8 claim by B & D Lewis against Ms Landy commenced on 24 September 2018, after the judgment in the trial. By the OFS claim, B & D Lewis seek an order for sale of the Property, pursuant to the final charging order, with the net proceeds applied to discharge the various prior securities over the Property and then to pay the claimants the amount secured by their charge. According to evidence from their solicitor, by the date of the hearing the amount owed to B & D Lewis under the final charging order totalled £146,982.57, comprising the principal of £91,518.45, accrued interest thereon, and four costs orders made on various dates in 2017, none of which had been paid.

55 On 11 December 2018, Ms Landy had issued an application in the Revocation Claim seeking to set aside the 2013 Order of Mr Baldwin concerning the two wills. She and Mr Connolly also applied for a stay of the application by B & D Lewis for an order for sale in the OFS Claim.

56. The OFS Claim was commenced in the High Court but then transferred, together with Ms Landy's application in the Revocation Claim, to the County Court at Central London.

57. B & D Lewis also then issued applications for Extended Civil Restraint Orders ("ECROs") against Ms Landy and Mr Connolly.

58. On 18 January 2019, Judge Monty directed that all the cases were to be managed together and heard before him. His order stated:

> "3. Mr Connolly and Ms Landy are strongly encouraged to obtain legal advice in connection with the Applications …., representation for the adjourned hearing, and the terms of this Order"

59. All these matters came on for hearing before Judge Monty on 22 February 2019. At that hearing, Mr Connolly and Ms Landy were separately represented by counsel, and Ms Landy's counsel submitted a skeleton argument which is included in the appeal bundle that she has prepared for the hearing before me.

60. By the 2019 Order made at the conclusion of that hearing, Judge Monty:

(a) dismissed Ms Landy's application for an adjournment;

(b) dismissed the application to set aside the 2013 Order as totally without merit;

(c) dismissed Ms Landy's application for third party disclosure as totally without merit;

(d) ordered that the Property is to be sold and that Ms Landy must deliver possession of the property to B & D Lewis by 22 March 2019, but stayed the sale of the Property pending the outcome of the Applicants' pending appeals and an appeal against the order itself, if made;

(e) made an ECRO against both Ms Landy and Mr Connolly.

61. Both Mr Connolly and Ms Landy seek permission to appeal against this 2019 Order. In particular, Ms Landy challenges the refusal to set aside the 2013 Order and the order for sale of the Property; and both Ms Landy and Mr Connelly seek permission to appeal against the ECRO's.

The Application to set aside the 2013 order

62. As Ms Landy explained it to me, she has done a lot of work which she says gives her ground to argue that the 1981 Will was a forgery and that the 2013 Order should be set aside as it was procured by fraud. However, I pointed out to her that even if that were correct, the result would be that Mr F. Lewis had died intestate, in which case the estate would pass to his two sons. Accordingly, the practical result would be no different. But Ms Landy appeared to consider that if the 1981 Will was invalid, this somehow restored the 2003 Will. If that is indeed what Ms Landy believes (and I may have misunderstood her), then it is completely wrong. But in the alternative, Ms Landy said she could challenge the evidence of the handwriting expert on which the prosecution had relied at her trial and that the jury had no standing to find that the 2003 Will was invalid.

63. The verdict of the jury and Ms Landy's conviction of course did not of itself have the legal effect of invalidating 2003 Will. But it was fundamental to the jury's guilty verdict on several counts that they found that the 2003 Will was a forgery. That is crystal clear from the summing up of the judge at the criminal trial. For example, the judge directed the jury on count 3, which was fraud:

> "The Crown's central allegation is that the 2003 Will was not valid and that [Ms Landy] knew full well that it was not….Therefore first decide whether or not the 2003 Will is or may be valid. If you decide that it is or may be valid than you will find Ms Landy not guilty of this offence…"

The judge's direction to the jury was in similar terms for count 4, perjury. Ms Landy was convicted on both counts.

64. A criminal conviction is binding on the civil court unless Ms Landy was able to discharge what is inevitably a high burden of showing that it was incorrect: Civil Evidence Act 1968, s 11. Ms Landy appealed against her conviction and her appeal was dismissed by the Court of Appeal. Further, from the papers before me it appears that an application by Ms Landy to reopen the final determination of her appeal was refused by the Registrar.

65. Ms Landy said that the points she wished to argue were not advanced on her appeal. That may be so, but it does not entitle her to advance them in this court. She told me

that she has an application pending before the Criminal Cases Review Commission. That is a matter for them and does not affect these proceedings.

66. Moreover, this was an application to set aside the 2013 Order, not an application for permission to appeal out of time. Ms Landy was released from custody on about 27 November 2015. There is no good explanation why it took a further three years before she applied to set aside the 2013 Order. As Judge Monty rightly held, the requirements of CPR r.39.3 are clearly not satisfied. But for the reasons explained above, an application for permission to appeal out of time would similarly have failed.

67. Accordingly, this point is hopeless and the learned judge was entirely right to dismiss the application to set aside the 2013 Order as totally without merit.

68. The application for third party disclosure was tied to the application to set aside the 2013 Order and accordingly falls with it.

The Order for sale of the Property

69. In argument before the judge, as set out in his judgment, that order was resisted on the basis of Ms Landy and Mr Connolly's pending application for permission to appeal the Trial Order. However, the judge protected Ms Landy and Mr Connolly's position in that regard by the provision that the sale of the Property is stayed pending the outcome of those applications and any subsequent appeal if the applications for permission were granted.

70. Before me, Ms Landy sought to argue that no sale should be ordered because, as I understood it, there was already a confiscation order against her, in respect of which she is paying £100 per month, so that if B & D Lewis were paid out of the net proceeds of sale, they would be paid twice. She also suggested that the net proceeds had to be used first to discharge her debt of £261,000 to Mr Connolly, so that after discharge of the mortgage debts and that further debt there will be no remaining equity in the Property.

71. However, this confuses the position. B & D Lewis were seeking to enforce the final charging order on the Property that was made in respect of the outstanding amount due to them under the judgment in the Restitution Claim and pursuant to further costs orders. The confiscation order under the Proceeds of Crime Act is a separate matter. The seven bundles filed on these applications do not include all the papers from the confiscation proceedings. However, I note that on 11 June 2015 a consent order was made in Isleworth Crown Court, signed by the counsel representing Ms Landy, whereby Ms Landy agreed to the sale of the Property, with the net proceeds of sale after discharging mortgage debts, professional fees and costs of the sale to be held in her solicitors' client account "until further order of this court". That appears consistent with the note of counsel who had acted for Ms Landy in the original confiscation hearing in Isleworth Crown Court on 1 August 2013 that states (at para 5):

> "the defence proposal was to transfer money in the bank accounts by way of a consent order and through the equity in [the Property] to be subject of a confiscation order. Once the property was sold, the money would be transferred to the Lewis's and the confiscation order would be varied by agreement to a

> nominal order. Once explained in open court HHJ agreed this course."

Further, Ms Landy was advised by her then solicitors in their letter dated 5 August 2013 that once the sale of the Property had been effected the transfer of money made, "we would invite the court to vary the confiscation order to a nominal sum of £1": see para 47 above. Of course, that may depend on how much remains for B & D Lewis out of the net proceeds of sale once prior charges are paid. But there is no prospect of them being paid twice.

72. Mr Connolly, in his skeleton argument, advanced a wholly different ground for an appeal, asserting that by reason of the judgment debt he has an outstanding equitable interest in the Property which, although subservient to the interests of the mortgagees, takes priority over the final charging order in favour of B & D Lewis. Mr Connolly clearly has had some legal assistance in preparing his skeleton which refers to various decided cases. The argument seeks to rely in particular on a decision of the West Australia Supreme Court (of which I was not given a copy) and the judgment of Briggs J (as he then was) in *Hughmans Solicitors v Central Stream Services Ltd* [2012] EWHC 1222 (Ch) (which was in fact upheld by the Court of Appeal: [2012] EWCA Civ 1720). I note that Mr Connolly's witness statement for the hearing on 22 February 2019 also relied on the judgment debt and asserted that the judgment debt takes priority over the registered charge in favour of B & D Lewis.

73. However, it is evident from the judgment of Judge Monty that neither counsel for Mr Connolly nor for Ms Landy sought to develop orally this line of argument at the hearing below. I consider that they were clearly right not to do so. In the first place, this argument is a ground which was expressly disavowed by counsel then appearing for Mr Connolly on 16 March 2018 as regards the Second Connolly Claim: para 22 above. In my view, it would clearly be an abuse if Mr Connolly were to resurrect that argument now in seeking to resist the OFS Claim. Secondly and in any event, I consider that the argument is wholly misconceived. Ms Landy and Mr Connolly's attempt in April 2015 to register the judgment debt in the First Connolly Claim as a charge was unsurprisingly rejected by the Land Registry on 3 June 2015. A monetary debt in itself does not give rise to an equitable interest in the debtor's property, even if it arises due to work done by the creditor on the property. *Hughmans* is of no assistance to Mr Connolly and indeed is authority against him. There, the judge found that the agreed obligation to pay a specific sum to the defendant company would not of itself give rise to an equitable charge (rejecting the company's argument to that effect). That view was expressly upheld by the Court of Appeal: see at [24]- [25]. In *Hughmans,* the company succeeded on the different ground that the contract which it had made with its former director (Mr Davidson) which formed the schedule to a Tomlin Order, when read as a whole, disclosed a sufficient intention on the part of the parties to create a trust in Mr Davidson's property: (see the judgment of Briggs J at [13]–[15]. There is nothing like that here.

74. Accordingly, there is no basis to challenge the making of the order for sale.

The ECROs

75. The grounds for making the ECROs against Ms Landy and Mr Connolly are fully set out in the judgment of the learned Judge. He noted that four orders dismissing

applications by Ms Landy had declared her applications as being totally without merit. The final two of those four orders were those made by Judge Monty on the applications then before him. By her present application, Ms Landy essentially challenged the ECRO on the basis that the Judge had been wrong to dismiss her application to set aside the 2013 Order. But as I have found, the Judge's decision in that regard is unimpeachable. Therefore, there is no effective ground to appeal the ECRO which, in my view, the learned Judge was entirely justified in making.

76. As regards the ECRO against Mr Connolly, the Judge proceeded on the basis that he found that Mr Connolly was associated with the various 'totally without merit' applications made by his wife, relying on the decision of Newey J in *CFC 26 LTD v Brown Shipley Co Ltd* [2017] EWHC 1594 (Ch). Mr Connolly has not sought to argue against that finding in his 12 page skeleton argument. I might add that the way the present applications have been conducted before me wholly confirms the view that Mr Connolly is so associated with the applications made by his wife that it would be entirely artificial to hold otherwise.

Conclusion

77. Accordingly, all six applications for permission to appeal are dismissed and I declare that the two applications for permission to appeal, one by Ms Landy and the other by Mr Connolly, against the 2019 Order are totally without merit. I do not make similar declarations as regards the four other applications concerning the PTR Order and the Trial Order because of the confusion over Ms Gordon's witness statement.