[2019] EWHC 1515 (Ch)

IN THE HIGH COURT OF JUSTICE **BR-2005-000002**
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
INSOLVENCY AND COMPANIES LIST (ChD)

IN THE MATTER OF SHEIDA ORAKI
AND IN THE MATTER OF ARDESHIR ORAKI
AND IN THE MATTER OF THE INSOLVENCY ACT 1986

BETWEEN

(1) SHEIDA ORAKI
(2) ARDESHIR ORAKI **Applicants**
-and-
MICHAELA JOY HALL
(Trustee in Bankruptcy of Sheida Oraki and Ardeshir Oraki) **Respondent**

AND BETWEEN

MICHAELA JOY HALL
(Trustee in Bankruptcy of Sheida Oraki and Ardeshir Oraki) **Applicant**
-and-
(1) SHEIDA ORAKI
(2) ARDESHIR ORAKI **Respondents**

AND BETWEEN

(1) SHEIDA ORAKI
(2) ARDESHIR ORAKI
(3) MR PARAST **Applicants**
-and-
MICHAELA JOY HALL
(Trustee in Bankruptcy of Sheida Oraki and Ardeshir Oraki) **Respondent**

Representation :
Dr Sheida Oraki a litigant in person was present on 15 May 2019 but did not attend on 17 May 2019
Mr Timothy Becker (directly instructed) represented Mr Ardeshir Oraki
Mr John Briggs (instructed by DAC BeachcroftLLP) represented Ms Michaela Hall

Application hearing dates : 15 and 17 May 2019 and 28 June 2019

JUDGMENT[1]

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[1] Revised on 19.7.19 at post judgment hearing : at [100] reference to 20.10.18 order corrected to 20.10.08 order

I direct that pursuant to CPR 39APD6 paragraph 6.1 no tape recording shall be made of this judgment and that copies of this version shall stand as authentic and be treated as the official transcript.

HHJ SIMON BARKER QC :

1 This judgment concerns :

(1) the effective return hearing of an application by Dr Sheida Oraki ('DrO') and her husband, Mr Ardeshir Oraki ('MrO', collectively 'theOs'), originally heard by Barling J on 24.12.18 as an urgent without notice application, for orders :

(a) suspending a writ of possession dated 17.12.18 relating to the freehold property at 68 Gladstone Avenue, Twickenham, which is theOs' home, (respectively 'the writ of possession' and '68GA'), which had been executed on 19.12.18, pending determination of an application to assess theOs' trustee in bankruptcy's remuneration and costs and/or an application for recovery of damages from the Solicitors Regulation Authority Compensation Fund ('SRACF')[2] regarding the actions of Dean & Dean, solicitors, ('D&D'), and

(b) that the High Court bailiffs be directed to permit theOs and family members to re-enter 68GA and stay in occupation until further order;

(2) the effective hearing of Ms Michaela Hall's ('MsH') application, issued on 9.1.19, for an order that :

(a) the suspension of the writ of possession be lifted,

(b) the order of Barling J be discharged on the grounds of material non-disclosure, and

(c) theOs and any occupiers be prohibited from going to or within 50 metres of 68GA, save by pre-arranged appointment to remove their possessions;

(3) the effective hearing of theOs' application which was before Hildyard J on 15.1.19 in draft, was issued on 29.1.19, and was listed for hearing at this hearing with the permission of Hildyard J given on 15.1.19. The applicants are identified as theOs and a Mr Parast ('MrP'), who is identified by DrO as her father. The order sought is that :
the possession order made in relation to 68GA on 10.11.17 as varied on 20.12.17 ('the 10.11.17 order') and the writ of possession

[2] Referred to by theOs as the Law Society Compensation Fund which is now operated by the Solicitors Regulation Authority.

(a) be reviewed, rescinded and/or varied under s.375(1) of the Insolvency Act 1986 ('IA1986') or

(b) set aside on behalf of MrP under CPR 40.8 (intended to be a reference to CPR 40.8A) and on behalf of theOs

on the grounds of being (i) statute barred under s.283A(2)(a) and (b) IA1986, and/or (ii) there was before the court no application to extend time for the enforcement of the original possession order relating to 68GA dated 20.10.08 ('the 20.10.08 order') as required by CPR 83.2(3)(a) and (b) and no compliance with CPR 83.2(4)(a)-(f). The detailed grounds in this application include an express allegation that MsH's solicitors and counsel, that is DAC Beachcroft LLP and Mr Briggs, deliberately concealed from the court that the right to enforce the possession order in respect of 68GA was statute barred and that there had not been and was not before the court an application to extend time for enforcement of the 20.10.08 Order; and,

(4) an application issued by theOs on 10.5.19 against D&D (although no relief is sought against D&D) and MsH for an order :

revoking and/or rescinding the "original Possession Order" and the writ of possession under s.303(1) and/or s.375(1) IA1986.

The grounds include : (i) that no Form PF92 has ever been issued regarding the "[order] purportedly granting possession"; (ii) the appointment of MsH, and her two predecessors Mr Timothy Bramston ('MrTB') and Mr Ian Defty ('MrID') were all invalid; (iii) the discharge of the Os from both their respective "purported bankruptcies" (in 2006/2007 and again in 2019) automatically relieved each of them from alleged bankruptcy debts (as to which none are admitted to have existed in the first place), see s.282(1) IA1986, and wiped the slate clean[3]; (iii) theOs have no beneficial interest in 68GA or other property in, or purportedly in, their bankruptcy estates; (iv) even if MsH and her predecessors were lawfully appointed (which is disputed) there was no application within six years of the 20.10.08 order to proceed with the possession orders and the conditions for extension of time under CPR 83.2(3)(a) and (4)(a)-(f) have not been satisfied; (v) the application for permission to issue the writ of possession should have been, but was not, made or combined with an application to extend the six year time limit; (vi) no notice of the application to issue the writ of possession was given; (vii) no application to issue the writ of possession was given to theOs and CPR 83.13(8)(a) was not satisfied; (viii) execution of the writ of possession was unlawful because the

[3] DrO's submission in writing and, on 15,5,19, orally.

agents who attended to execute it were not High Court Enforcement Officers; and, (ix) the Os' bankruptcies were obtained by fraud and perversion of the course of justice and there was never any valid debt on which to found a bankruptcy petition.

2 On 24.12.18, Barling J made an order on theOs' ex parte application suspending the writ of possession and permitting theOs to have immediate and continuing access to 68GA until the return date, which Barling J fixed for 15.1.19, or further order. Applications (1) and (2) came before Hildyard J, as applications judge, on 15.1.19 with a time allowance of one hour. There was insufficient time to consider the applications on their merits. Hildyard J continued Barling J's order and fixed the effective return hearing as an application by order. Also on 15.1.19, Hildyard J directed that application (3), then in draft only, be heard together with applications (1) and (2) as an application by order and gave directions for its issue, the completion of evidence, and its hearing. Application (4), a yet further application notice issued by theOs on 10.5.19, was not given a return date on issue but Mr Briggs, on instructions, was content for it to be dealt with in the course of the hearing before me because for the most part the grounds travelled a familiar and oft trodden path.

3 There is a yet further, fifth, application by which theOs seek an order against D&D for the costs (if there are any such legitimate costs) of their bankruptcies. That application has been issued without a return date and it has not been served on anyone. Accordingly, I declined to treat it as before me for effective hearing or directions.

4 It is convenient to consider applications (1) and (2) together, and then applications (3) and (4) in turn.

5 By way of preface, I note, as have almost all judges in the several judgments in litigation commenced by theOs to which I have been referred, that the judgment upon which the first bankruptcies of MrO (on 1.9.05) and DrO (on 10.1.06) were based was itself obtained fraudulently and the underlying 'debt' was not a valid or enforceable debt, but was an abuse of the court's process. The judgment was based on the professional fees of D&D for the work done by a fellow Iranian citizen, Shahrokh Mireshkandari ('ShaM'), whom theOs understood to be a qualified and practising solicitor and partner in D&D, which firm they retained on that understanding, whereas in fact ShaM had no such qualification and was a convicted fraudster.

6 Mr Becker, who appeared for theOs on the application to Barling J on 24.12.18 and for MrO on applications (1), (2) and (3) before me but was without instructions on application (4) (notwithstanding that MrO signed that application notice for theOs as applicants), submitted that everything that has happened to theOs is the consequence and fault of the fraudulent judgment and abusive bankruptcy orders obtained by D&D and theOs are wholly innocent

victims. For reasons already explained by other courts, including the Court of Appeal twice, and which I endeavoured to explain during the hearing before me and shall explain briefly again, that goes too far.

7 The reality is that to an ever increasing extent theOs are the authors of their own misfortune. They have embarked upon, and persist in embarking upon, challenges to the appointment, conduct and dealing of their successive trustees in bankruptcy which have failed at first instance and on appeal. Over time they have given their successive trustees and the court different and conflicting accounts of the extent to which, if at all, they have beneficial interests in 68GA and other properties in their names comprised in their bankruptcy estates (they first claimed full beneficial interests and asserted that they were solvent, they now claim to have no beneficial interests). On the applications before me they have sought to influence the court by enlisting misguided support from third parties (Anthony Stansfield, the Police and Crime Commissioner for Thames Valley, who sent the court an inappropriate email about misuse of the courts by white collar criminal activity ~ apparently a reference to "recklessly negligent / crooked solicitors, barristers, accountants and many unethical judicial office holders" and connected all of that to the situation of DrO; and, Paul Millinder, who describes himself as director of Litigio LLP and is subject to a CRO, who sent an email to the court and MsH's solicitors asserting that theOs' trustees have been and are "using the court as a cash cow", that there is a malicious collusion to keep theOs in bankruptcy, and that DrO's medical certificate obliges the court to adjourn the hearing on medical grounds until after 14.6.19). Save when and to the extent that the court finds in their favour theOs, or at least DrO, refuse to recognise the court's decisions and orders. They persist, including before me, in raising matters already finally determined against them on appeal or which could and should have been brought within the scope of earlier litigation now definitively determined. By repeatedly making unsuccessful applications and by their other conduct theOs have caused and continue to cause MsH and her representatives to spend time reading and addressing bad points. Someone has to pay the costs arising from this. Costs orders against theOs have now been assessed in very material sums but are entirely unpaid.

8 At the root of what has befallen theOs, in particular since 2013 if not before, is a failure or refusal on their part to understand and accept that neither discharge nor annulment of bankruptcy automatically or necessarily "wipe the slate clean". This has been explained by first instance judges and twice by the Court of Appeal : first, in proceedings by the Os against D&D and MrID, neutral citation [2013] EWCA Civ 1629, see the judgment of Floyd LJ at [29], with which Davis LJ agreed at [56], and the judgment of Arden LJ at [63] with which Floyd LJ agreed at [55] and Davis LJ indirectly agreed at [56]; secondly, in

proceedings by theOs against MrTB and MrID, neutral citation [2017] EWCA Civ 403, see the judgment of David Richards LJ at [26] with which McCombe LJ agreed at [224] and Sir Terence Etherton MR agreed at [225]. For present purposes it suffices to recite [26] of David Rchards LJ's judgment :

> "… the bankruptcy orders were made in the High Court against Mr Oraki on 1 September 2005 and against Dr Oraki on 10 January 2006. The official receiver became the trustee of their bankruptcy estates by virtue of section 293 of the [Insolvency] Act [1986]. They were automatically discharged from their bankruptcy one year after the orders made against them respectively, but of course the administration of their bankruptcy estates continued".

The final 10 words of that paragraph encapsulate the legal position, a position which theOs fail or refuse to accept.

9 The relevant background starts with the judgment debt, which gave rise to theOs' first bankruptcies, obtained by D&D in 2004. TheOs had instructed ShaM as a partner in D&D, were dissatisfied with the service provided and were sued, successfully at the time, for unpaid fees. The consequential judgment debt formed the basis for theOs' first bankrupcties on 1.9.05 and 10.1.06 respectively. In 2008 ShaM was publicly exposed as not having any qualification entitling him to be a solicitor and also having a conviction for fraud in the USA, in respect of which he had served a term of imprisonment. TheOs' evidence is that they had sought to expose ShaM since 2004 and provided information which led to the 2008 newspaper exposé. In 2012 ShaM was struck off as a solicitor and was the subject of many findings of dishonesty in relation to client funds. It follows that, because ShaM was not ever a solicitor, D&D's judgment debt was not a debt at all but was a fraudulently obtained judgment.

10 Before the exposure of ShaM, theOs had, with considerable fortitude, persisted in challenging their bankruptcies – including by maintaining that they owned several properties, including 68GA, beneficially and were solvent. Eventually, by an order dated 21.1.13, Mr Robert Ham QC, sitting as a Deputy High Court Judge, ordered that theOs' bankruptcies be conditionally annulled. The terms upon which the annulment was conditional included that theOs should pay the costs and expenses of the bankruptcies and that any challenge to the conduct of the insolvency practitioners who had been their trustees in bankruptcy, i.e. MrTB and MrID, should be made within a specified time. Such a challenge was made. TheOs challenged Mr Ham QC's decision in the Court of Appeal.

11 The Court of Appeal (Arden, Davis and Floyd LJJ, [2013] EWCA Civ 1629) agreed with Mr Ham QC. That court expressly held that the bankruptcy proceedings were an abuse of the court's process and that, as between theOs and D&D, theOs were "wholly innocent".

However, as between theOs and their trustee in bankruptcy (MrTB and then MrID) there were untested allegations by each side that the conduct of the other "ha[d] been other than reasonable". Floyd LJ explained, and expressly rejected, the unqualified proposition that theOs were "wholly innocent" and were entitled to full exoneration and exculpation from the consequences of their bankruptcy, see [2013] EWCA Civ 1629 at [35]-[42], with which Davis LJ agreed at [56], and Arden LJ reached a concurring conclusion [62]-[70].

12 The Court of Appeal acknowledged that bankruptcy carries with it a stigma which annulment wipes away. The Court of Appeal upheld the imposition of preconditions upon theOs' bankruptcies' annulment for the following reasons : (1) Mr Ham QC could not determine any disputes over the trustee's expenses on the evidence before him; (2) there were no grounds for holding that the trustee should not have any right to recover his property; (3) there was no evidence of any special prejudice to theOs caused by deferment (they had been automatically discharged after one year); (4) notwithstanding that the bankruptcy estates were said to be solvent, there was insufficient cash available to meet outstanding debts and the trustee's expenses (which had apparently increased considerably in meeting claims by theOs); and, (5) the trustee was likely to incur considerable further expense to complete payment of debts and expenses (Floyd LJ [52], Davis LJ [56], and Arden LJ [60]). At [63] Arden LJ drew express attention to the "guiding principle" that "the proper expenses of the trustee should normally be paid or provided for before the assets are removed from him by an annulment order". Floyd LJ made a similar observation at [38] and at [55] expressly agreed with Arden LJ, and Davis LJ effectively agreed with Arden LJ (by agreeing with Floyd LJ) at [56]. The Court of Appeal gave a unanimous judgment with detailed reasoning rejecting theOs appeal but, to this day, DrO remains of the view that the Court of Appeal decision was unjust and erroneous because it did not wipe their slate clean.

13 TheOs then turned their attention to MrTB and MrID. TheOs challenged the conduct of MrTB and MrID and alleged that they had been negligent as insolvency practitioners causing theOs to suffer loss personally. This allegation was made in litigation which progressed to an eight day trial before Proudman J. TheOs were unsuccessful. Their appeal to the Court of Appeal was also unsuccessful. Both Proudman J and the Court of Appeal drew attention to conduct on theOs' part which inevitably increased the costs of their trustee and which were bound to fall on theOs[4]. On 6.11.17, theOs were refused permission to appeal to the Supreme Court.

[4] Eg [2017] EWCA Civ 403 at [49], [72] and [84], [95], [141], [172].

14 Over the course of the satellite litigation against their trustee, numerous costs orders have been made against theOs (e.g. on 31.7.15 by Proudman J in the sum of £50k, to be paid within 14 days, as a payment on account, and on 20.2.18 by Mr Ham QC in the sum of £36,158.40 as summarily assessed costs to be recoverable as an expense of the bankruptcy estate if unpaid), including for costs to be assessed on the indemnity basis. Non-payment of the costs ordered by Proudman J led to theOs' second bankruptcies on 9.3.18 from which they were automatically discharged on 9.3.19. The costs of MsH's predecessors in theOs' unsuccessful proceedings tried by Proudman J have now been assessed, including interest to October 2017, in a sum exceeding £800,000. A default assessment of theOs' unsuccessful appeal of Proudman J's decision to the Court of Appeal has taken theOs' costs liability of that litigation to in excess of £1million.

15 Most recently theOs have applied twice to the Court of Appeal for permission to appeal the order of Mr Ham QC dated 20.2.18 by which he dismissed an application dated 27.7.16 to rescind theOs' bankruptcies and refused oral applications for a review by Mr Ham QC of his judgment of 11.1.17 in which he maintained, expressly by reference to s.282(4)(a) IA1986, that acts done in the interim between the making and annulling of a bankruptcy order were valid. On 29.8.18 Floyd LJ refused permission to appeal on paper and referred to theOs' application as a collateral attack on Mr Ham QC's judgment which had been upheld by the Court of Appeal in 2013. Later, on 8.11.18, Floyd LJ refused to re-open the appeal and rejected the six points put forward in the grounds of appeal (which included that Mr Ham QC had not referred to s.282(4)(a) IA1986) and the further point raised in written argument about re-opening appeals under CPR 52.30 and concluded that the application was a very long way from satisfying the conditions for re-opening an appeal. A further, and inevitable, feature of Floyd LJs on paper decisions was to refuse theOs' application for a stay of possession orders affecting various properties including 68GA.

16 The above brief outline to some of theOs' litigation resulting from their challenges to the consequences of their being made bankrupt by D&D provides a credible context for the submission by Mr Briggs that MsH is looking to recover a sum in excess of £1.8million for costs, expenses and trustees' remuneration arising from theOs' bankruptcies. The trustee is a professional person charging fees and representation by specialist solicitors and counsel is entirely appropriate.

17 Before turning to the four applications before me I should also note in this judgment that DrO made applications on 15.5.19 and again on 17.5.19 for an order adjourning the hearing of the applications by order to a date after 11.6.19.

18 On 15.5.19, at the beginning of the hearing, DrO sought an adjournment on the grounds (1) of a statement of fitness for work from a doctor at the Royal Hospital NHS Trust that DrO was not fit to attend a court hearing in the period 14.5.19 to 11.6.19 because she had sustained an undisplaced scaphoid wrist fracture (which DrO said she had suffered when being ejected from the Rolls Building a day or two earlier); (2) the applications issued on 10.5.19 had not been listed for hearing and all applications listed for hearing on 15.5.19 should be adjourned so that they could be heard together with theOs' most recently issued applications; (3) MsH had to prove that she had been properly appointed; and, (4) Irwin Mitchell LLP had been instructed to make a claim to or against the SRACF in relation to the conduct of D&D on behalf of theOs, and also a claim against Leon Hines and Hines & Co, solicitors, following their unsuccessful representation of theOs in the litigation challenging the conduct of MrTB and MrID[5] and these claims would yield what was required to meet any indebtedness or liability (such being denied) of theOs; moreover, there was evidence from the partner at Irwin Mitchell LLP to confirm their instructions, so the court could be confident that these claims would be progressed. In addition, DrO requested an adjournment so that the applications could be listed before Hildyard J, who had expressed an interest in and willingness to hear them, when he next became available. For reasons given at the time addressing all points raised by DrO, including in relation to the medical certificate by reference to the judgment of Norris J in Levy v Ellis-Carr [2012] EWHC 63 and Court of Appeal authorities noted in the White Book at paragraph 3.1.3, I refused the adjournment application.

19 DrO then began her submissions. By 2.45pm it was clear that the hearing would not conclude on 15.5.19 but would have to continue over to a further day. I asked for time estimates for submissions. DrO said she required a further 2½ hours but was not feeling well, was not prepared (notwithstanding that she had filed detailed written submissions) and had been expecting, or at least hoping for, an adjournment if I was not willing to "be a revolutionary judge and bring an end to the invalid hearing". Mr Becker, counsel for MrO, who had been counsel for theOs on their initial ex parte application to suspend a writ of possession heard by Barling J on 24.12.18 and continued by Hildyard J, said he required ½ hour; and, Mr Briggs said he required 1½ hours. On that basis the hearing was adjourned to 17.5.19 so that DrO could prepare further and sufficient time allowed for completing the submissions.

20 On 17.5.19 DrO did not attend court. She sought to be represented by a Mr Paul Gregory, identified as her McKenzie friend, which I refused. By filing, via email to the court, a GP's

[5] Tried by Proudman J and heard on appeal by The Master of The Rolls and McCombe and David Richards LJJ [2017] EWCA Civ 403.

letter dated 16.5.19, DrO again sought an adjournment on medical grounds. I refused that application for reasons given at the time which included that (1) the position of DrO and MrO on the first three applications was identical and Mr Becker, counsel of more than 25 years standing, was present to represent MrO and therefore DrO's position could be fully covered by experienced counsel already very familiar with the relevant circumstances; (2) on the application issued on 10.5.19 the points raised were not novel and DrO had filed detailed written submissions (which included abandoning some points in the application issued on 29.1.19); and, (3) the GP's letter fell some way short of the evidence to be expected in support of an application for an adjournment on medical grounds. The hearing then continued and occupied a full day.

21 I now turn to the applications. It is convenient to consider applications (1) and (2) together.

TheOs' application dated 24.12.18 and MsH's application dated 9.1.19

22 There is no attendance note of the ex parte hearing before Barling J on 24.12.18. There is a note of the judgment, produced by Mr Becker on or about 14.1.19 or, if produced earlier, not provided to MsH until 14.1.19, from which it appears that (1) the court had before it a draft application notice and draft order, a witness statement of DrO, and a skeleton argument of Mr Becker; (2) Barling J was referred to and relied on DrO's evidence that no proper notice was given prior to execution of the writ of possession, not even informally – DrO's evidence states expressly "At no time was any notice given of any intention to evict us which would permit us time to make an application to stop it bearing in mind there is already an application before the court to stay possession of [68GA] (and others)"; (3) notwithstanding that the matter had been going on for "a scandalous amount of time"[6] the writ of possession was obtained on 17.12.18 and executed on 19.12.18 when it was difficult for theOs to get before the court; (4) when considering the balance of convenience, it was relevant to take into account that there were small children and a pregnant woman present at the property; but, (5) no view was expressed as to the relevance of proposed applications for suspension or revocation of the writ of possession pending assessment of the trustee's remuneration and/or theOs proposed SRACF claim. The lack of notice was expressly referred to in the recitals to Barling J's order which "not[ed] from [DrO's] evidence that the writ of possession was executed on the early morning of [19.12.18] without any prior notice to [theOs] and in circumstances that the family of [theOs] includes their adult sons, their pregnant daughter in law and infant grandchild".

[6] Noted as an observation by Barling J

23 The grounds of theOs' application for suspension of the writ of possession at the time of the initial ex parte application are stated in the application itself to be set out in DrO's 2nd witness statement. DrO's evidence includes (1) admitting a costs liability arising from the trial before Proudman J and subsequent appeal, including interest, at "at least £1million"; (2) asserting an unquantified possible claim to the SRACF; (3) acknowledging the 10.11.17 order as a possession order; (4) asserting unspecified third party beneficial interests in all properties, including 68GA; (5) referring to a stay application issued in May 2108 and adjourned by Registrar Barber and said to be still pending; (6) asserting that "At no time was any notice given of any intention to evict us which would permit us time to make an application to stop it bearing in mind there is already an application before the court to stay possession of [68GA] (and others)"; (7) asserting vindictiveness on the part of MsH in seeking to make theOs and their family homeless at Christmas "right before the courts close"; and, (8) asking for a stay of the writ of possession until after the stay application is properly heard or the costs of theOs' first bankruptcy have been assessed and/or the SRACF have paid out on theOs' proposed claim.

24 DrO exhibited to her witness statement theOs' instructions of 21.12.18 to Mr Becker as a means of putting their view of the relevant factual background before the court. The instructions include at [22]-[23] reference to having received a letter from MsH's solicitors after 20.11.18 which was not described or expanded upon other than by a comment that it caused DrO to make a crime report to the police and a statement that DrO had, on a weekly basis through to 17.12.18, attended at the High Court to check the file for any applications etc. It appears that Mr Becker was not provided with a copy of, and made no enquiry as to the content of, the letter from MsH's solicitors. In his skeleton argument provided to Barling J, Mr Becker drew attention to and relied on CPR 83.13(8)(a) and Gupta v Partridge [2018] 1 WLR 1 to support the submission that failure to give notice of an intention to obtain a writ of possession, and thereby depriving the occupants of an opportunity to apply for its suspension, sufficed for an order to stay or quash the writ of possession.

25 In his skeleton argument for the hearing before me, and in his oral submissions to me, Mr Becker's submissions included that (1) given the passage of time since 24.12.18, the issue of whether or not any or sufficient notice was given of the intention to apply for a writ of possession is no longer a live issue and should not take up the court's time unduly, and (2) the 20.11.18 letter was not adequate to satisfy the CPR requirements. These submissions are put forward in answer to MsH's application for an order discharging Barling J's order on grounds of material non-disclosure. The import of Mr Becker's first submission is that the passage of almost five months is of itself of sufficient significance or weight to more than

counterbalance any material non-disclosure. Mr Becker's explanation of the second submission was that, even accepting that theOs and any other occupants at 68GA had received a letter dated 20.11.18 giving notice of MsH's intention to apply for the writ of possession, such notice by letter rather than service of an application notice did not comply with CPR 83.13(8) and, further, Gupta v Partridge was wrongly decided when viewed in the light of the decision in Secretary of State for Defence v Nicholas [2015] EWHC 4064 (Ch).

26 DrO made a similar point to Mr Becker by submitting that theOs had not received any notice of intention to issue a writ of possession compliant with the requirements of CPR83.13(8)(a)[7]. In addition, in her written submissions she argued that Gupta v Partridge and (1) Brooker (2) Wilson v St Paul [2017] EWHC 3510 (QB) were both wrongly decided being inconsistent with the decision of Rose J in Secretary of State for Defence v Nicholas and the decision in Fleet Mortgage and Investment Co Ltd v Lower Maisonette 46 Eaton Place Ltd [1972] 1 WLR 765 (natural justice requires that notice of an application for leave to issue a writ of possession should have been given to tenants), and that the failure to give proper notice was an infringement of theOs' convention rights to a fair and public hearing for the determination of their civil rights and obligations.

27 MsH exhibited to her witness statement three letters dated 20.11.18 (one addressed to DrO at 68GA, one addressed to MrO at 68GA, and one addressed to the Occupiers at 68GA). Save as to the addressee, the letters are in common form. They refer to the 10.11.17 order and the order dated 20.12.17 as entitling MsH to enforce possession of 68GA and requiring delivery up with vacant possession by a date which had then passed. The letters were expressed to be formal notice for the purposes of CPR 83.13 and referred to Gupta v Partridge. The letters concluded by referring to the "impending eviction".

28 It appears from DrO's 3rd (first) witness statement that the letters dated 20.11.18 were received on 21.11.18. DrO's evidence is that she attempted to contact the solicitor instructed by MsH in relation to the writ of possession, Nikesh Patel ('NP'), on the next day, and that she spoke to NP on 23.11.18. DrO's evidence also includes the statement that she instructed counsel (Mr Becker) on 21.12.18. TheOs' suspension application was prepared over the weekend 22-23.12.18 (as Mr Becker confirmed during his submissions) and was to be made on an emergency basis by telephone on 24.12.18. DrO refers to attempting on 24.12.18 to let the bailiffs and their security contractors know that an order would be applied for. It also emerged during the hearing before me that, on 21.12.18, Mr Becker had advised that notice of the application should be given to MsH before the application to

[7] Skeleton argument of 7.5.19 [21]

Barling J was made. In fact, and strikingly, no attempt was made to alert MsH's solicitors or MsH before the urgent application was made.

29 Other potentially relevant evidence is given by NP, who exhibited to a witness statement dated 10.1.19 a telephone attendance note of a call at 2.30pm on 19.12.18 from Abtin Oraki, who identified himself as theOs' son and is said to be a solicitor. NP's attendance note records that theOs' son stated to NP that he, his pregnant wife, Christina, and their infant child also lived at 68GA, and that he wanted to know why no notice had been given prior to the eviction and, on being told of the 20.11.18 letter, asked for a copy. There is evidence before me of a copy of the 20.11.18 letter then being emailed to the email address given by theOs' son.

30 On MsH's application to discharge Barling J's order, Mr Briggs submitted that (1) the 20.11.18 letter was clearly compliant with CPR83.13(8), and indeed contained more information than that approved by Foskett J in Gupta v Partridge; (2) failure to disclose the 20.11.18 letter to Barling J was a serious material non-disclosure; (3) failure to give notice to MsH and failure to explain in evidence why notice was not given (see CPR 25.3(3)) were aggravating factors which compounded the seriousness and materiality of the non-disclosure; (4) the reason why notice was not given to MsH was to suppress, and prevent the judge from being made aware of the 20.11.18 letter and the fact that, because more than a month had passed before the writ of possession was granted and executed, there had been ample time for an on notice suspension application; (5) notwithstanding that theOs maintain that there were other family members living with them at 68GA and the telephone call from theOs' son to NP, no person has applied as an occupant of 68GA for suspension of the writ of possession; (6) Rose J was incorrect at [14] in Secretary of State for Defence v Nicholas to hold that the effect of CPR83.13(8)(a) was to render it mandatory to give every occupant of the property actual notice of an application for permission to issue a writ of possession, and this is apparent from the current notes to the White Book at 83.13.9; and, (6) DrO's further submissions referring to the Fleet Mortgage case and to the human rights right to a fair trial add nothing (the Fleet Mortgage case was referred to in argument before Foskett J but clearly not considered relevant).

31 As I see it, MsH's application is aimed at pulling the rug out from underneath the feet of theOs in relation to the current suspension of the writ of possession, and, because it relates back to the original grant of a suspension order, should be considered first. However, if successful, I may nevertheless go on to consider theOs' application afresh on its proper merits.

32 I start by referring to DrO's evidence that there is an application before the court to stay possession of 68GA. This is a reference to theOs' application to the bankruptcy court dated 30.4.18 which sought a stay of the 10.11.17 order pending a final decision on the appeal in respect of the order of Mr Ham QC and which Registrar Barber adjourned at a hearing on 4.5.18. An application for a stay on the same grounds was at that time also before the Court of Appeal. That application for a stay was rejected by Floyd LJ on paper on 29.8.18 as part of the refusal of permission to appeal, and Floyd LJ subsequently refused an application to re-open theOs' appeal on 8.11.18[8]. Thus, the proposition that there was or is a live adjourned application for a stay which has anything approaching a realistic prospect of success, and should therefore be taken into account, is itself unrealistic. If and to the extent that the application adjourned by Registrar Barber is understood by theOs to be capable of being relisted and the subject matter of a substantive hearing, that is a fundamental misunderstanding of the effect of Floyd LJ's on paper orders.

33 Next, Mr Becker's attendance note of Barling J's judgment records that Mr Becker drew Gupta v Partridge to his attention and records the judge's observations as to "the importance of giving notice (not necessarily formal) to the occupiers", that theOs were taken by surprise, and that "proper notice was not given to [theOs] even informally". Barling J was clearly misled. TheOs had each received the 20.11.18 letter and knew of the notice on 21.11.18; and, they at least knew that a similar envelope addressed to The Occupiers had been delivered at the same time; but, it appears from their instructions to Mr Becker, they kept that fact and the content of the 20.11.18 letters from him and, thereby, induced him to mislead Barling J[9].

34 As to theOs and Mr Becker's submission that the notice given by letters dated 20.11.18 was not compliant with CPR 83.13(8), this is misconceived. CPR 83.13(8) does not specify the form in which notice is to be given and does not require service of an application notice as the trigger for an application to suspend a writ of possession. CPR 83.13(8) requires that "every person in actual possession of the whole or any part of the land ("the occupant") has received such notice of the proceedings as appears to the court sufficient to enable the occupant to apply to the court for any relief to which the occupant may be entitled". In Gupta v Partridge, Foskett J considered and distinguished, including on the facts, the

[8] See [15] above.

[9] At paragraph 22 of a lengthy written note dated 25.6.19 from DrO seeking significant revision and different conclusions to the draft judgment as circulated on 17.6.19, DrO states "Paragraph 33 is factually incorrect a copy of the letter was provided to Mr Becker. There was never any intention to mislead anyone". This is an important matter for clarification by Mr Becker and DrO not later than at the post judgment hearing on 19.7.19. However, either way it does not alter the finding that Barling J was misled on 24.12.18.

decision in Secretary of State for Defence v Nicholas. In that case Mrs Nicholas had not received any form of written warning of impending eviction. Further, and as Mr Briggs submitted, the terms of the 20.11.18 letter to theOs and any and everyone else in occupation at 68GA included and went beyond the terms of the letter held to be sufficient notice by Foskett J. I also note that at the hearing before Barling J Mr Becker referred to and relied on Foskett J's decision in Gupta v Partridge as a correct statement of the law as to the requirements for proper notice. There was no argument then that formal notice of an application was required and Barling J expressly noted that notice need not be formal.

35 In my judgment, the letters dated 20.11.18 sent to theOs and any other occupants at 68GA gave sufficient notice of MsH's intention to apply for the writ of possession and are fully compliant with the requirements of CPR 83.13(8). Further, there is no basis on which to question whether or doubt that the provisions of CPR 83.13(8) are natural justice and human rights compliant, and none has been advanced. I regard the failure to disclose the 20.11.18 letters to Barling J as serious and material at the time and as a serious and material non-disclosure.

36 As to the passage of time rendering non-disclosure irrelevant, no subsequent event has been drawn to my attention by Mr Becker which renders non-disclosure anything less than material and serious. The submission that the passage of some five months is in itself an answer to non-disclosure is a surprising submission for counsel to make.

37 Also significant is the complete failure to give any prior notice of the ex parte application to MsH or her solicitor. Once direct access instructions had been given to Mr Becker on 21.12.18 to make an application for suspension of the writ of possession it was, as Mr Becker had advised them on 21.12.18, incumbent on theOs to notify MsH's solicitor or MsH that an application would be made to a judge on an urgent basis so that MsH could participate if she so wished. There is considerable force in Mr Briggs's submissions that, having failed so to do, it was incumbent on theOs to explain in their evidence put before Barling J why notice had not been given to MsH (see CPR 25.3(3)), which they did not do, and that the reason why notice was not given to MsH is because the judge would have been made aware of the 20.11.18 letter and the fact that more than a month had passed before the writ of possession was granted and executed. I accept Mr Briggs submission that the failure to give prior notice and the failure to explain that and why such notice had not been given are aggravating factors.

38 Mr Becker's note of Barling J's judgment records the judge observing that the matter had been going on for a "scandalous" amount of time "but" the writ of possession was obtained on 17.12.18 and executed on 19.12.18 by which time it had become difficult to get before

the court. Of course, and because it was not disclosed to Barling J, this observation inevitably fails to factor in the actual notice given. Unlike Barling J, I have had the benefit of evidence and argument which has been both extensive and from both sides. On the material before me, any observation that theOs' bankruptcies have been occupying their successive trustees and the court for a "scandalous" amount of time is not to be understood as an adverse reflection on or criticism of MsH or her predecessors or their legal advisers. Certainly the original fault lies with D&D, whom theOs chose to instruct. In addition, theOs had the right, of course, to seek to have the costs of their first bankruptcies borne by ShaM and/or D&D, but that was at their own risk as to costs and, once the court's contrary decision had become final, the maintenance of litigation against the trustee is not a matter warranting express or implied criticism of the trustee. Responsibility for that and the time taken rests with theOs themselves.

39 As to the precise timing of the application for the writ of possession, it was not until Floyd LJ refused a stay of execution, first on 29.8.18 and then, on refusing to reopen the appeal, on 8.11.18, that MsH could be confident that there were no live or pending grounds for an order staying the possession order or the right to enforce possession. Perhaps she could have waited until January 2019 to apply for the writ of possession, but she was not in any way at fault for acting with expedition.

40 Next, I note that Barling J took into account as part of the balance of convenience, or in looking for a result that would do least injustice as between the parties, that there were other family occupants including a pregnant woman and an infant child. This circumstance was taken into account on the false basis that no notice at all had been given of the intention to execute a writ of possession and that the first theOs and their family knew of their eviction was when locksmiths drilled out the front door lock to 68GA on the morning of 19.12.18. As to other occupants, no occupant other than theOs has come forward as a party or a witness to say that notice was not given; on this point, I draw no such inference from theOs' son's telephone call to MsH's solicitor and his request for a copy of the 20.11.18 letter to be sent to him by email. The truth is that for a month theOs and any and every other occupant at 68GA had been on notice of MsH's intention to obtain and execute a writ of possession.

41 My conclusion is that Barling J was presented with a materially misleading factual context, primarily as a result of the suppression of the fact that proper notice had been given. The failure to disclose the 20.11.18 letters was aggravated by both the failure to give prior notice of the application to MsH's solicitor or MsH in the period from the afternoon of 21.12.18 to the morning of 24.12.18 and the failure to explain in evidence why no notice was given. These three failures, which are inter-connected, are sufficiently material and

serious to undermine Barling J's order and to compel me to now discharge it. It follows from this that MsH's application issued on 9.1.19 for an order lifting the suspension of the writ of possession and discharging the order of Barling J succeeds. During the hearing before me Mr Briggs, for MsH, accepted that, if the suspension order is lifted and the writ of possession active and operative, a not-before date and time could be set so as to afford theOs and any other occupants a reasonable opportunity to vacate with their possessions.

42 By her skeleton argument for this hearing and further evidence, and by the further skeleton argument and submissions of Mr Becker, for MrO, relying on DrO's witness statements, a number of additional matters are now raised (many being re-raised) as reasons why the injunction granted by Barling J should be continued. I shall treat them as part of theOs case for the granting afresh of an order suspending the writ of possession.

43 On considering afresh theOs' application for an order suspending the writ of possession I start with the matters raised by theOs on 24.12.18 but not expressly taken into account by Barling J. They were (1) an unquantified possible claim to SRACF; (2) unspecified third party beneficial interests in all properties (including 68GA); and (3) a request for a stay of the writ of possession until after (a) the stay application is properly heard or (b) the costs of theOs' first bankruptcy have been assessed and/or (c) the SRACF have paid out on theOs' proposed claim.

44 The possible claim to the SRACF envisaged at 24.12.18 is theOs' claim against D&D. This had been raised by theOs' MP with the Law Society more than six years earlier, by a letter of 29.6.12, and had been acknowledged as potentially complex by the Law Society when referring theOs to the SRA in a reply letter dated 14.8.12. It is unclear whether the claim had been progressed by theOs in any way at all over the intervening six and a half years. Be that as it may, by 24.12 18 theOs had it in mind to pursue both D&D and Leon Hines and his firm, Hines & Co (they had been retained for theOs in their unsuccessful litigation against MrTB and MrID). On 14.5.19 theOs filed a one page witness statement from Jonathan Sachs of Irwin Mitchell LLP stating that, on 13.5.19, he had been instructed by DrO in respect of a claim to the SRACF about the affairs of D&D and in respect of a professional negligence claim against "Leon Hines and Co" relating to theOs' litigation against MrTB and MrID. Thus, by the time the application came before me the scope of the theOs' intended claims had expanded and been progressed.

45 Mr Becker submitted that this shows that things are now happening and that the passage of time should not be interpreted as wilful delay on theOs' part but should be accounted for on the basis that they had difficulties accessing funds (for this point or any other explanation of delay Mr Becker did not draw attention to any relevant evidence). Mr Becker further

submitted that theOs' strongest point for suspending the writ of possession is that it makes equitable and commercial sense to do so given that claims are now on foot through Irwin Mitchell LLP. In his skeleton argument submitted for the hearing before Barling J, Mr Becker submitted that the claim to the SRACF is likely to be successful and that it is doubtful if any limitation restrictions apply.

46 In response, and in relation to the SRACF claim concerning D&D, Mr Briggs referred to the SRA Handbook Compensation Fund Rules at rule 11 which sets a deadline for making claims for compensation at 12 months after the loss first came, or reasonably should have come, to the knowledge of the applicant. Mr Briggs submitted that theOs appear to face an obvious, and certainly not doubtful, limitation barrier and, at its highest, this claim should be regarded as extremely speculative. As to the claim against Hines & Co, Mr Briggs submitted that this is strictly an asset of theOs' second bankruptcy and not theirs to pursue without an assignment. Mr Briggs further submitted that, assuming that an assignment is sought and granted, the claim is also speculative and, anyway, should be disregarded in the context of realisations to meet the obligations of the first bankruptcies.

47 I also bear in mind that, in the proceedings in which Hines & Co were retained, theOs were represented before Proudman J by counsel, albeit instructed by Hines & Co, and there has been no criticism of that representation (and David Richards LJ acknowledged the assistance derived by the Court of Appeal from his skeleton argument). Further, on appeal, where Leon Hines appeared as an advocate with the permission of the court as he does not have higher court advocacy rights, he was instructed by DrO only for the purpose of applying for an adjournment and substantively she was a litigant in person. Mr Hines informed the Court of Appeal that there was no difference between the cases of DrO and MrO, and, presumably on instructions, he stressed DrO's desire to attend and make submissions for her own case[10]. I note that David Richards LJ observed that "Mr Hines presented the appeal [for MrO] fluently and forcefully"[11].

48 In my judgment the prospective claims to or against the SRACF re D&D and against Leon Hines and/or Hines & Co in professional negligence are of no significance or weight to a decision whether or not to suspend the writ of possession. On the material before me, they appear to be highly speculative. Moreover, it does not follow, and cannot be assumed, from the mere fact that solicitors have now been instructed that there will be expeditious progress of either or both claims; and, even if progressed expeditiously they each face very significant obstacles.

[10] [2017] EWCA Civ 403 David Richards LJ at [2]

[11] Also at [2].

49 As to beneficial interests in 68GA and other properties, it is not unfair to note that theOs position has changed over time. At the time of their first bankruptcies, it was their evidence and case that they were the beneficial owners of 68GA and a number of other properties and that they were solvent. Then, in her witness statement of 23.12.18 DrO refers to the beneficial interest in 68GA and all other properties the subject of the 10.11.17 order being vested in third parties who are veterans and victims of the Iranian revolution and fear that their properties could be traced by the Iranian regime and to having made that clear at the 10.11.17 hearing. In DrO's skeleton argument for the hearing on 15.1.19 before Hildyard J, DrO refers to her son holding an interest in 68GA as well as being an occupant. In her 3rd (second) witness statement DrO states that, although she is the sole proprietor of assets (including 68GA), she has always maintained that the assets were subject to a trust and that she is reluctant to provide any documentation to MsH because she is an agent for D&Ds and has at all times sought to fulfil D&D's goal to make her lose everything. DrO went on to imply that her siblings were beneficiaries by citing other evidence she had given that "There is no way that I will give the information of my brothers and sisters to the criminals who are assisting, aiding and abetting fraud" and, scurrilously, DrO went on to link MsH as an aider and abetter of ShaM. DrO also said that MsH is fully aware that MrP has been paying the mortgage. Finally, on 15.5.19 DrO filed and handed up during the hearing a 4th statement dated 15.5.19 in which she repeats that MrP has been paying the mortgage and to which she exhibits a redacted trust deed dated 14.4.98 declaring that DrO holds 68GA on trust for MrP (whose forename is redacted and whose signature is also redacted, as are any signatures and the details of the witnesses). In that deed DrO's address is given as 95 High Street Whitton and MrP's as 68GA. So, over time the beneficial owners of 68GA have been said or implied to be or include DrO, theOs, their son, DrO's siblings, and DrO's father.

50 Mr Becker sought to support the contention that MrP, DrO's father, is the sole beneficial owner of 68GA by handing up copies of two bank statements in the name of MrP sent to 68GA. Each is materially redacted and of no value whatsoever as evidence on this contention. Mr Becker submitted that at the very least there should be a period of continued suspension of the writ of possession so that MrP has an opportunity to come forward. Mr Becker did not respond to my observation that I might take the view that such an opportunity had existed for some five months if not for years.

51 Mr Briggs submitted that there is nothing to stop any person(s) claiming a beneficial interest from coming forward either before or after execution of the writ of possession.

52 I agree with Mr Briggs. The writ of possession is aimed at occupants of a property, 68GA in the present application. The fact that DrO's father and/or siblings and/or son may have the

or a beneficial interest in the property is not a relevant consideration on the applications before me. If it was relevant, the plain fact is that he/she/they have had months, if not years, to come forward. Fear of persecution is neither a good reason nor an adequate excuse for not coming forward. The court is well able to make arrangements for disclosure and consideration of material and evidence on terms which impose confidentiality and are just as between all interested parties.

53 The final point raised by theOs at the time of their application on 24.12.18 but left open by Barling J is that the writ of possession should be suspended or revoked pending assessment of the trustee's remuneration (alternatively referred to as the costs of the first bankruptcy).

54 Mr Becker submitted that MsH's approach that theOs should pay now and ask questions or challenge the costs and remuneration later made no commercial sense. The commercially sensible course would be to assess the costs and remuneration first and then look to the relevant bankruptcy estate's assets. Mr Becker also submitted that theOs do not have assets in the order of £2million.

55 Following the permission given by Mr Ham QC, theOs, or DrO, had issued an application in 2012 challenging the trustee's remuneration as excessive. On 10.11.17 this was raised by DrO at the hearing of MsH's application for the enforcement of possession orders and realisation of nine properties, including 68GA, in the bankruptcy estates of theOs' first bankruptcies. As already noted, after hearing argument, which included an adjournment application by DrO, the Chief Registrar made orders in respect of each property (including 68GA).

56 Mr Briggs first submission was that by raising again an argument that possession should be suspended theOs were, in practical terms, seeking to appeal out of time. As to the actual estimate of costs, put at more than £1.8million, Mr Briggs drew attention to the fact that significant costs have already been assessed (and, as noted above in this judgment, DrO has admitted in her evidence that the total of the assessed costs and interest to October 2017 exceeds £1million). In addition, and by reference to MsH's evidence, Mr Briggs submitted that MsH has paid, in the sense of funded, legal costs in relation to the administration of theOs' bankruptcy estates as disbursements by her firm exceeding £370k. Thirdly, Mr Briggs observed that as an inevitable consequence of there having been no realisations, there have been no drawings and, therefore, at present there is nothing to assess by way of remuneration.

57 Next, Mr Briggs referred to rule 18.35 of the Insolvency Rules 2016 ('IR2016') which specifies the basis upon which the court may grant a bankrupt permission to challenge a

trustee's remuneration or expenses. The court must not grant permission to challenge remuneration or expenses as excessive unless the bankrupt shows that it is, or is likely to be, the case that (but for the remuneration or expense in question) there is or is likely to be a surplus of assets to which the bankrupt would be entitled. Mr Briggs submitted that it follows from this that the order of events is realisation of assets before assessment of remuneration and expenses. Moreover, theOs' position has undergone a complete volte-face and instead of asserting solvency they are now asserting that they have no real property assets.

58 Far from being a compelling reason for suspending the writ of possession, in my view it is important that that MsH should obtain possession of the properties, including 68GA, so that she may, at last, establish the true beneficial ownership of these properties and progress and conclude the outstanding dealings with theOs' bankruptcy estates.

59 MsH taking actual possession of 68GA will not operate as a bar to any third party claiming to have a beneficial interest in that property from coming forward and making good such claim, if valid, nor will it disadvantage theOs in obtaining permission to challenge their trustee's remuneration and expenses as excessive.

60 Thus, on a consideration afresh of the points raised by theOs at the time their application was heard by Barling J, and for this purpose putting aside the material non-disclosure and aggravating factors, and taking into account theOs' supplementary evidence, there is no proper basis on which to suspend the writ of possession.

61 Mr Briggs noted as a final point that MsH is described as "Purported" trustee in bankruptcy of theOs in the heading to DrO's witness statement of 23.12.18. In her second witness statement DrO refers to the trustees as "purported trustees" and to theOs' bankruptcies as "bogus". There is nothing in the note of Barling J's judgment raising any doubt as to, or referring to any point taken challenging, the validity of MsH's appointment. Had that occurred, it would have been incumbent on theOs to draw attention to the previous litigation challenging the status of MrTB and MrID.

62 Apart from the exclusion zone order sought by MsH, to which I shall return, that is my judgment on applications (1) and (2). TheOs' application fails and MsH's application succeeds.

TheOs' and Mr Parast's application issued on 29.1.19

63 DrO signed the application notice on behalf of herself and MrO. DrO has made three witness statements which have a bearing on this application (her two 3rd witness statements and her 4th witness statement). She has also filed a detailed 27 page skeleton

argument and a further eight page “bullet points” note. DRO has also filed a fully indexed and thoroughly compiled authorities bundle. Mr Becker, on behalf of MrO, adopted DrO’s evidence and submissions. He handed in a three page skeleton argument on 15.5.19 and made additional oral submissions on both 15.5.19 and 17.5.19. MrP was neither represented nor present and, on the material before me, has not participated at all in this application beyond, if it is right to so infer, authorising the use of his name as an applicant.

64 The thrust of this application is to challenge the 10.11.17 order of the Chief Registrar in relation to 68GA and the writ of possession.

65 TheOs challenge to the execution of the writ of possession (based on an assertion that those enforcing the writ of possession had no authority so to do and also asserting that DrO was assaulted by bailiffs) was expressly abandoned, after being answered in comprehensive detail by Mr Briggs’s supplemental written submissions, by DrO’s bullet points note. The first assertion was thoroughly misconceived. The second assertion is not properly justiciable as part of an application in insolvency proceedings, even one challenging a writ of possession or its execution; see, as was referred to by Mr Briggs, the judgment of Lewison LJ in Deutsche Bank Suisse SA v Khan & Ors [2013] EWCA Civ 1149 at [6].

66 The express legal bases for the relief sought by theOs on this application are s.375(1) IA1986, s.283A(2)(a) and (b) IA1986, and CPR83.2(3)(a) and CPR 83.2(4)(a)-(f). In addition, MrP is said to rely on CPR 40.8 (presumably CPR 40.8A, pursuant to which the court may stay execution of an order or grant other relief, but the basis is confined to matters which have occurred since the order).

67 Mr Briggs has analysed this application and the supporting material as advancing the following points : (1) the trustee is not a valid trustee in bankruptcy; (2) the possession order should be reviewed, varied or rescinded under s.375(1) IA1986 because theOs have no beneficial interest in 68GA; (3) the possession order is invalid under s.283A(2)(a) and (b) IA1986; (4) the possession order is invalid for non-compliance with CPR 83.2(3)(a) and CPR 83.2(4)(a)-(f); (5) the full picture of proceedings was not before the court; and, (6) there is no debt and theOs were not insolvent. That is a fair summary of the points made.

(1) the trustee is not a valid trustee in bankruptcy

68 DrO’s evidence and submissions are to the effect that, notwithstanding that MsH was appointed on 10.4.14 in succession to MrID, who was himself successor to MrTB, the underlying debt and first bankruptcies of theOs were procured by fraud and have been set aside, and, consequently, MrTB’s appointment was invalid. Further, and even more

importantly, MrTB was not appointed until after theOs had been discharged from their invalid bankruptcies. Yet further, neither of MsH nor her predecessors have produced a comprehensive audit trail of applications, orders and/or certificates as appropriate and necessary to establish an unbroken chain of succession; and, even if they had or could, every step on the trail is tainted and invalidated by D&D's fraud and/or invalidated by the automatic discharge of theOs from their bankruptcies.

69 In her bullet points, DrO develops arguments that there was no power under s.296(1) IA1986 for the Secretary of State to appoint MrTB on 19.4.07 because theOs had already been automatically discharged and there is nothing in the IA1986 (see ss.278(b), 296(1) and 299) which preserves the official receiver's position as trustee after discharge. Moreover, the purported appointment of both MrID and MsH, which was as part of block transfer orders, was no more than a rubber stamping exercise and there is no evidence that – even if they could have been, which is not the case - the proper procedures were followed.

70 Further or alternatively, even if theOs' bankruptcy debts were not all discharged by the 2006/2007 discharges, they are now all discharged by the second bankruptcy discharges on 9.3.19 which, as no trustee has been appointed, unquestionably "had the effect of wiping the slate clean of all accrued debts prior to that date under s.281(1) IA1986". Thus there are no debts at all to underpin a possession order or writ of possession.

71 Mr Becker adopted these submissions and did not make additional submissions on behalf of MrO.

72 MsH exhibited to her witness statement dated 29.1.19 a copy of the order of Chief Registrar Baister dated 10.4.14 by which she was appointed trustee. Mr Briggs drew attention to rule 10.73 of IR2016 which provides in effect that, where a trustee has been appointed by creditors or the court or the Secretary of State, a sealed copy of the relevant order or certificate may be adduced in any proceedings as proof of due authority. Mr Briggs also drew attention to the judgment of Proudman J in theOs' litigation against MrTB and MrID at [166] where theOs' challenge to the validity of the appointment of theOs' trustees was rejected. Proudman J refused theOs' permission to challenge the validity of the appointment of MsH's predecessors on appeal. Mr Briggs submitted that challenge to the validity of the appointment of MsH's predecessors is now beyond question and beyond reopening and, in the light of Chief Registrar Baister's order of 10.4.14, the same applies to MsH.

73 Moreover, I note that the appointments of both MrTB and MrID were expressly addressed and recognised by the Court of Appeal in theOs' litigation against MrTB and MrID (see the

judgment of David Richards LJ at [28] (Mr TB appointed as trustee on 19.4.07) and [33] (MrID appointed on 8.12.08). David Richards LJ had reviewed the background to theOs' bankruptcies, including the judgment of Mr Ham QC (by which D&D's judgment was set aside as fraudulently obtained and a miscarriage of justice and the 2005/2006 bankruptcies were conditionally annulled) and had noted at [26] that the official receiver became trustee of theOs' bankruptcy estates by virtue of s.293 IA1986 and that the Os' had been automatically discharged from bankruptcy one year after the orders made against them in 2005/2006.

74 TheOs' further attempt to attack the validity of the appointment of their successive trustees is misconceived. Given the established facts as to the circumstances of the respective appointments of MrTB, MrID and MsH, the attempted revival of this line of challenge is not only hopeless and bound to fail, it is nothing short of an abuse of the court's process.

(2) the possession order should be reviewed, varied or rescinded under s.375(1) IA1986 because theOs have no beneficial interest in 68GA

75 As to theOs' reliance on s.375 IA1986, DrO and Mr Becker submitted that DrO's 4th witness statement exhibiting the redacted copy trust deed dated 14.4.98 is new evidence. That presumably explains the reference to CPR 40.8A (expressed as CPR 40.8) in the 29.1.19 application. The evidence is new in the sense that it is deployed for the first time at this very late stage, but it is not new in the relevant sense of not existing or being available before the order was made.

76 Certainly DrO has filed evidence asserting that she and MrO have no beneficial interest in 68GA and other properties. However, and as already noted, DrO has also filed evidence inconsistent with that statement. I have already explained and held that I do not accept that it has not been and is not possible for any true beneficial owner to come forward and assert a claim to be beneficial owner of 68GA without exposing himself/herself/themselves to the wrath of the Iranian regime.

77 Mr Briggs drew attention to the judgment of Laddie J in Papanicola v Humphreys & Ors [2005] EWCH 335 (Ch) at [25]. Laddie J formulated six propositions in relation to s.375 IA1986. In summary they are : (1) s.375 confers a wide discretion to review, vary or rescind any order made in the exercise of the bankruptcy jurisdiction; (2) the onus is on the applicant to demonstrate the existence of circumstances justifying the exercise of the discretion; (3) those circumstances must be exceptional; (4) the circumstances must involve a material difference to what was before the court previously in order to justify overturning the original order; (5) there are no prescribed limits to what may constitute such circumstances; and, (6) where new circumstances are relied on which are or include new

evidence that could have been made available at the earlier hearing that fact and any explanation for the failure to produce the evidence earlier may be taken into account.

78 Mr Briggs submitted that no circumstances have been raised which justify the exercise of the discretion and no credible explanation has been given for the failure to produce realistically credible evidence as to the beneficial interests in 68GA.

79 At [26], Laddie J made clear that the s.375 jurisdiction is not to be used as an opportunity to repackage or represent the same facts or arguments more attractively or more forcefully. If the circumstances are unchanged, the only route of challenging an existing order is by an appeal.

80 Having regard to the terms of s.375(1) IA1986 and the judgment of Laddie J in Papanicola v Humphreys & Ors, there is nothing before me (including the redacted copy 14.4.98 deed of trust) which is exceptional or of sufficient materiality or merit or novelty to justify the exercise of the s.375(1) IA1986 discretion in relation to the 10.11.17 order and/or the order made on 20.12.17 or the writ of possession.

(3) the possession order is invalid under s.283A(2)(a) and (b) IA1986

81 S.283A IA1986 provides, so far as relevant, that the interest of the bankrupt in a dwelling house which is the bankrupt's or the bankrupt's spouse's principal residence shall cease to be part of the bankrupt's estate and shall automatically revest in the bankrupt unless, within three years of the date of the bankruptcy, the trustee does any of a number of specified acts, which include applying for an order for sale or an order for possession of the property. S.283A(4) provides that where an application is made within time and is dismissed the property shall, unless the court orders otherwise, cease to be comprised in the bankrupt's estate and revest in the bankrupt.

82 TheOs' case is direct and straightforward. The 10.11.17 order was a possession order made on MsH's application of 1.9.17; theOs were discharged from bankruptcy in 2006/2007; thus, the application was far too late given the time limit stated in s.283A IA1986.

83 However, as Mr Briggs pointed out, this is not the complete picture. TheOs' trustee, then MrTB, made an application on 19.6.08, which was in time, and, on 20.10.08, the court made the 20.10.08 order for theOs to give vacant possession of 68GA by 4.00pm on 20.11.08. This order was not enforced as a result of a succession of applications by theOs for stays and adjournments pending their attempts to obtain annulments, sue the former trustees for professional negligence, rescind their bankruptcy orders, and appeal orders

including the conditional annulment order. MsH has set out a detailed chronology of the key events in her 2nd witness statement, dated 29.1.19, at [16].

84 Mr Briggs submitted that an application for possession was made in time and it has not been dismissed. Moreover, the application of 1.9.17 and the resultant 10.11.17 order are not for possession but for the trustee to be entitled to enforce possession. The application for possession made in time on 19.6.08 was not dismissed, rather possession was granted on 20.10.08. It is that order, i.e. the 20.10.08 order, that MsH sought and obtained an order to enforce on 10.11.17.

85 Following through Mr Briggs's analysis, theOs' contention that the 10.11.17 order is statute barred by s.283A IA1986 is misconceived.

(4) the possession order is invalid for non-compliance with CPR 83.2(3) and CPR 83.2(4)(a)-(f)

86 TheOs case on this point is that there has been no application to extend time for enforcement of the original possession orders dated 20.10.08, which lapsed after six years, and no application under CPR 83.2(3) to extend time has been or is before the court. Further, the application of 1.9.17 does not comply with CPR 83.2(4)(a)-(f). This point is made in DrO's evidence (3rd (first) witness statement dated 15.1.19 at [57]) and developed in her skeleton argument (where DrO also explains why the point was not taken at the hearing on 10.11.17). Mr Becker made a short oral submission adopting this argument.

87 So far as relevant, CPR 83.2(3) provides that a writ of execution or a warrant of possession must not be issued more that six years after the date of the judgment or order unless the court so permits. CPR 83.2(4)(a)-(f) specifies mandatory conditions for any application for an extension of time.

88 In her bullet points submission filed on 15.5.19, DrO accepted that CPR83.2(4)(a)-(f) did not apply to the application before the court on 10.11.17. She also modified her argument by contending that MsH's application put the cart before the horse in seeking an order permitting marketing and selling of properties including 68GA before obtaining vacant possession. However, the submission that CPR 83.2 applied to the validity of the possession order dated 20.10.08 was maintained and repeated.

89 Mr Briggs's short submission was that the trustee's application before the court on 10.11.17 was not for permission to issue a writ of execution or a warrant of possession, but was for

entitlement to enforce possession orders and directions, including for the sale of properties including 68GA, and that that application was properly made for appropriate orders. The 10.11.17 order for possession was expressed to be, and was, an order reviewing an earlier order (Registrar Jones of 16.3.17) in the light of the outcome (adverse to theOs) of theOs' appeal to the Court of Appeal of their professional negligence action against MrTB and MrID. Chief Registrar Briggs made the 10.11.17 order in the light of the full background to theOs' first bankruptcies.

90 Mr Briggs submitted that far from having lapsed, the 20.10.08 order for possession has not been dismissed but has been held in abeyance by theOs own conduct.

91 I accept Mr Briggs's submissions as the correct analysis. In my judgment, CPR 83.2 has no bearing on or relevance to the 10.11.17 order. Further, CPR 83.2(4)(a)-(f) has no bearing on MsH's application of 1.9.17.

(5) the full picture of proceedings was not before the court

92 This assertion features in theOs' 29.1.19 application notice and in DrO's 3rd (second) witness statement dated 11.2.19. MsH is accused of having committed crimes in seeking to realise assets that far exceed a fraudulent debt that never existed.

93 In the 29.1.19 application notice the complaint is of deliberate concealment by MsH's solicitors and counsel when before the court on 10.11.17 which thereby misled the court into not appreciating that the 20.10.08 order had lapsed and there was no extant possession order affecting 68GA. MsH has provided a bundle containing Mr Briggs's skeleton argument for the 10.11.17 hearing (I was referred, in particular, to [27] and [28] of the skeleton argument by Mr Briggs in the course of his submissions) and a transcript of the hearing on 10.11.17.

94 TheOs' complaint in their application notice is entirely unfounded, is itself plainly false, and is scurrilous.

95 DrO's 11.2.19 witness statement is an attempt to draw attention again to certain matters through a lens distorted by the refusal to accept court judgments and orders, including the consequences of Mr Ham QC's conditional annulment order and Proudman J's judgment, both of which were upheld on appeal.

96 These allegations are entirely unfounded and are themselves abuses of the court's process.

(6) there is no debt and theOs were not insolvent

97 In written and oral submissions theOs persist in asserting that the effect of discharge, as provided for at s.281(1) releases a bankrupt from liability for debts and wipes the slate clean. This is a misreading of s.281(1). The concluding words of s.281(1) are "… in particular, discharge does not affect the right of any creditor of the bankrupt to prove in the bankruptcy for any debt from which the bankrupt is released". Although not directly relevant, s.281(2)-(7) go on to specify other debts and obligations which are not released.

98 TheOs' repeated assertions that their slates have been wiped clean are misconceived.

99 As to theOs' solvency, having originally asserted solvency, by DrO's later evidence they have put their own solvency in doubt.

TheOs' application dated 10.5.19

100 By this application theOs seek an order revoking or rescinding the "original Possession Order" (presumably the 20.10.08 order but also possibly embracing the 10.11.17 order, if not out of time) and the grant of permission to issue the writ of possession issued on 23.11.18 and sealed on 17.12.18 under s.303(1) and/or s.375(1) IA1986. Their case is that no actual sealed court order has ever been issued by the court in Form PF92 regarding Deputy Registrar Prentis' direction purportedly granting such permission.

101 S.303(1) IA1986 entitles a bankrupt dissatisfied by any act, omission or decision of a trustee to apply to the court for an order reversing or modifying the act or decision or making such other order as the court thinks fit. For the purposes of this section, a discharged bankrupt falls within its scope. As already noted, s.375(1) IA1986 confers a discretion on the court to review, vary or rescind any order made in the exercise of the court's bankruptcy jurisdiction.

102 The steps taken to apply for and obtain the writ of possession are explained in the witness statement of NP dated 10.1.19. The exhibits include copies of the formal request for a writ of possession dated 23.11.18 and the writ of possession itself with the court seal on 17.12.18.

103 The other eight grounds advanced under this application in 32 paragraphs repeat and add nothing to the matters raised under the other three applications before me.

104 On behalf of MrO, Mr Becker said that, notwithstanding that it was signed by his client, he had nothing to say about the 10.5.19 application.

105 There is nothing of merit in this application and I dismiss it.

MsH's application issued on 9.1.19

106 Finally, I return to MsH's application for an order excluding theOs and any occupiers from going to or within 50 metres of 68GA, save by pre-arranged appointment to remove their possessions.

107 I shall set a future (not before) date for execution of the writ of possession which will allow theOs and any other family members who are occupiers a reasonable period of time to vacate 68GA. Provisionally, I have in mind 21 days from the date on which this judgment is handed down; that is provisional only and the parties are invited to serve and file short submissions and any relevant evidence justifying any shorter or longer period they may wish to suggest[12].

108 Unless there is some independent reason why theOs have cause to go within 50 metres of that property, the imposition of such an order would be reasonable. This matter has a very long history of refusal to accept court orders and MsH should be entitled to progress the realisation of 68GA unhindered by theOs.

109 As to other occupants of 68GA, there would have to be evidence to establish clearly who they are and that they have some intention or reason to go back to 68GA. Consideration would also have to be given to whether they have any independent cause to go within 50 metres of 68GA.

Conclusion

110 For the reasons given in this judgment the applications issued by theOs dated 24.12.18 and 10.5.19 and the application issued by theOs and MrP dated 29.1.19 fail and are dismissed. The application issued by MsH dated 9.1.19 succeeds and I shall make an order to give effect to it.

[12] This judgment is to be circulated in draft on a confidential basis on 17.6.19 and handed down on 28.6.19. Any submissions addressing the execution date for the writ of possession referred to at [107] together with any relevant supporting evidence are to be served and filed by 12noon on 25 June 2019.