Neutral Citation Number: [2019] EWHC 3576 (Ch)

Case No: 2990 of 2018
Appeal No. CH-2019-000073

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS IN MANCHESTER
INSOLVENCY AND COMPANIES LIST (ChD)
On appeal from the Order of District Judge Obodai dated 22 February 2019

Sitting at the Royal Courts of Justice
Rolls Building, London EC4A 1NL
Friday 20 December 2019

Before :

MR JUSTICE SNOWDEN

(VICE-CHANCELLOR OF THE COUNTY PALATINE OF LANCASTER)

- -

IN THE MATTER OF SAINT BENEDICT'S LAND TRUST LIMITED
AND IN THE MATTER OF THE INSOLVENCY ACT 1986

Between :

(1) LONDON BOROUGH OF CAMDEN COUNCIL
(2) PRESTON CITY COUNCIL

Creditors / Respondents

- and –

SAINT BENEDICT'S LAND TRUST LIMITED

Debtor/ Appellant

- -

Zander Goss (instructed by **Harrison Carter**) for the **Appellant**
(solely in relation to an application to adjourn the hearing)
Tom Gosling (instructed by **Greenhalgh Kerr Solicitors Ltd**) for the **Respondents**

Hearing date: 18 December 2019

- -

Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

.....
MR JUSTICE SNOWDEN

MR JUSTICE SNOWDEN :

1. On Friday 6 December 2019 I handed down a judgment dismissing an appeal by Saint Benedict's Land Trust Limited ("SBLT") against a decision of District Judge Obodai given on 22 February 2019: see [2019] EWHC 3370 (Ch). DJ Obodai had dismissed, with an order for costs to be paid by SBLT, the winding-up petition which had been presented against SBLT by London Borough of Camden Council ("LBC"). I also dismissed SBLT's appeal against DJ Obodai's determination that two applications (the "First Application" and the "Second Application") which had been made in the course of the winding-up proceedings by SBLT were totally without merit.

2. After making her determination that the First and Second Applications had been totally without merit, DJ Obodai exercised her power under CPR 23.13(2) and CPR 3.11 PD 3C paras 3.11 and 4.11 to transfer the proceedings to a High Court Judge for consideration of whether an extended or general civil restraint order should be made against SBLT. This is my judgment on that aspect of the case together with matters consequential on the dismissal of the appeal.

The Factual Background to the Proceedings

3. In addition to her own findings that the First and Second Applications were totally without merit, DJ Obodai ordered consideration of whether there should be a civil restraint order made against SBLT against the background of a number of similar findings by other judges. I mentioned some of these in my earlier judgment, but I should now set out the history of these matters in greater detail.

4. SBLT was incorporated under the Co-operative and Community Benefit Societies Act 2014. It claims to carry on business for charitable purposes providing storage space for residents of Camden, including those who are in hostels. It is not, however, a charity registered with the Charity Commission under the Charities Act 2011.

5. SBLT's registered office is at 36-37 Chagford Street, London NW1 6EB. This is a similar address to that of a company operating under the name Harrison Carter which purports to carry on reserved legal activities under one of the exemptions in section 23 of the Legal Services Act 2007. Harrison Carter has acted for SBLT throughout these proceedings.

6. The story starts in April 2014 with liability orders for unpaid business rates being made by the Preston Magistrates Court against a company limited by guarantee called Augustine Housing Trust ("Augustine"). The relationship between Augustine and SBLT is unclear: it would seem that they may have shared common directors and they have been described in some documents as "sister" companies. SBLT was also originally known as Augustine Land Trust Limited before it changed its name to St Benedict's Land Trust Limited.

7. A winding up order in respect of Augustine was made in October 2014 on the application of Preston City Council ("PCC"), based upon the liability orders. An unsuccessful attempt was made by Augustine and SBLT to appeal that order: permission to appeal was refused by Charles Hollander QC sitting as a Deputy High Court Judge on 29 April 2015. An application was then made on 17 June 2015 to the Court of Appeal for permission to appeal that refusal. Augustine was named as the

appellant at the head of the appellant's notice, but the notice was signed by a Martin Evans on behalf of SBLT (under its then name of the Augustine Land Trust Limited). After much delay in progression of the appeal, the application was eventually refused and declared to be totally without merit by Patten LJ on 8 February 2019.

8. After initially failing to obtain permission to appeal the winding up order in relation to Augustine, in 2017, SBLT made an application to the Preston Magistrates Court to set aside the 2014 liability orders against Augustine. A preliminary hearing was fixed for 21 March 2018 for a determination by the Preston Magistrates Court of whether SBLT had standing to make such application.

9. SBLT made a last-minute attempt to adjourn or vacate that hearing, and when it failed, made an application to the Administrative Court for judicial review of the decision not to adjourn or vacate. On 21 March 2018, Nicklin J refused SBLT's application for judicial review and stated that the application was totally without merit.

10. The hearing on 21 March 2018 then went ahead and SBLT's application was dismissed with costs. SBLT then applied for judicial review of an alleged refusal by the Magistrates Court to provide it with an order stating the reasons for the decision made on 21 March 2018. That application was dismissed on 15 October 2018 by Andrew Thomas QC, sitting as a Deputy High Court Judge, who also stated that SBLT's application was totally without merit.

11. Notwithstanding that Andrew Thomas QC's order had stated in express terms that SBLT could not request that the decision be reconsidered at a hearing, SBLT did precisely that. On 4 December 2018 Martin Spencer J refused that application and stated it to be "frivolous and vexatious and an abuse of the process of the court" and to be totally without merit. His written ruling of 4 December 2018 also indicated that as three applications had been made that were totally without merit, he would make a civil restraint order against SBLT.

12. By a letter dated 10 December 2018 from Harrison Carter, SBLT sought permission for a "leap-frog" appeal to the Supreme Court, and for the decision of 4 December 2018 to be reviewed. On 17 December 2018, Martin Spencer J refused the request for permission for an appeal to the Supreme Court and refused to vary his order of 4 December 2018, reiterating that SBLT's application had been totally without merit. However, he decided not to make a civil restraint order and indicated that he was prepared to give SBLT "a further chance". He commented, however,

> "…it is very likely that the court will make such an order if [SBLT] is deemed to have made any further applications which are totally without merit."

13. Not deterred, SBLT then applied to the Court of Appeal for permission to appeal Martin Spencer J's refusal to review his earlier order. That application was dismissed for failure to file an appeal bundle by Master Meacher on 29 May 2019, and an application to review that decision was then refused and declared to be totally without merit by Hickinbottom LJ on 12 August 2019. Hickinbottom LJ indicated that the only reason why he was not proceeding to consider a civil restraint order was that he

treated the matter as a deemed application for review and not an application for review expressly made. He concluded,

> "However, if any further meritless applications are made by [SBLT] to any court, this order can be prayed in aid of [a civil restraint] order."

14. In the meantime, as I described in my earlier judgment, on 22 February 2019, DJ Obodai dismissed SBLT's First and Second Applications as being totally without merit and transferred the winding up proceedings to a High Court Judge for consideration of whether to make a civil restraint order.

15. SBLT did not seek permission to appeal from DJ Obodai herself in Manchester, but instead lodged an application at the High Court in London seeking permission to appeal on 15 March 2019. SBLT's application included an application for a stay of the orders for payment of costs, and a "suspension" of the orders declaring the First and Second Applications to have been totally without merit and ordering the matter to be transferred to a High Court Judge to consider the making of a civil restraint order.

16. The application for a stay and suspension was dismissed by Zacaroli J sitting in London on 19 March 2019. Zacaroli J stated that there was no evidence that payment of the costs would cause prejudice to SBLT or render its appeal nugatory, and that there was no basis upon which the court should "suspend" the other parts of the order.

17. On 26 March 2019, O'Farrell J, sitting in Manchester, made an order setting a hearing date of 21 May 2019 in Manchester for the consideration of the issue of whether a civil restraint order should be made. SBLT then applied on 30 April 2019, without notice to LBC or PCC, for that order to be varied or set aside.

18. On 17 May 2019, Martin Spencer J, sitting in Manchester, made an order vacating the hearing fixed for 21 May 2019 on the basis that if the orders made by DJ Obodai were set aside on appeal, there would be no basis for consideration of whether to make a civil restraint order. Martin Spencer J ordered that the hearing in relation to a civil restraint order should be relisted once the outcome of the appeal against the order of DJ Obodai was known.

19. LBC and PCC themselves then applied on 24 May 2019 on notice to SBLT for the order of Martin Spencer J to be set aside on the basis that, in effect, SBLT had sought the same relief that it had previously been refused by Zacaroli J when he refused to suspend the paragraphs of DJ Obodai's order relating to consideration of the making of a civil restraint order, and that SBLT had not brought Zacaroli J's order to the attention of Martin Spencer J.

20. On 12 June 2019, having considered written representations from both sides, Barling J (the then Vice-Chancellor sitting in Manchester) made an order transferring the appeal to Manchester, and varying the order of Martin Spencer J in part, so as to order the hearing of the issue of whether to make a civil restraint order to take place immediately after the determination of the application for permission to appeal. In explaining that order, having noted that the decision of Zacaroli J had probably not been brought to the attention of Martin Spencer J, Barling J stated,

> "It is consistent with the overriding objective and in the interest of the efficient and fair administration of justice for the Appellant's application for permission to appeal to be heard and determined at the same hearing immediately prior to the Respondents' application for a civil restraint order. If and in so far as the outcome of the application for permission to appeal may have a bearing on the Respondents' application, the court will be in a position to take account of it. Further, there appears to be no good reason for the application for permission to appeal (and, if permission is granted) for the appeal itself to be dealt with in London, when the matter in respect of which the appeal is brought has been proceeding in Manchester."

21. SBLT then took advantage of an express liberty to apply which had been included in Barling J's order, and applied to the High Court in London for Barling J's order to be varied or set aside. That application was rejected by Mann J on 31 July 2019 who ordered that the appeal should take place in Manchester in accordance with the order of Barling J.

22. SBLT did not appeal that order, but instead applied on 2 August 2019 seeking to set aside, vary or stay Mann J's order. SBLT's application expressly asked that it be determined without a hearing. On 3 September 2019, sitting in Manchester, I dismissed that application. I gave directions for both a "rolled-up" hearing of the application for permission to appeal with the appeal to follow if permission was granted, followed by consideration of whether to make a civil restraint order, to come on at a hearing in Manchester to be fixed in a window from 8-25 October 2019. I gave the following reasons,

> "The order of Mr. Justice Mann refusing to vary or discharge the order of Mr. Justice Barling was fully reasoned and well within the scope of the reasonable exercise of his case management powers. In particular, for the reasons set out in the last paragraph of Mr. Justice Barling's reasons for his order of 12 June 2019, it is plainly appropriate that the application for permission to appeal and the consideration of whether to make a Civil Restraint Order should take place at the same hearing in Manchester which is where the underlying winding-up proceedings were heard and the order of District Judge Obodai was made."

23. On receipt of my order of 3 September 2019, SBLT applied on paper on 9 September 2019 for it to be varied or set aside, asking again that the appeal be transferred to London and that it be heard by Zacaroli J. Regrettably, that application was not put before me by the court office until 16 October 2019, on which date I dismissed the application and declared it to be totally without merit, on the basis that it was a repeated attempt to relitigate the venue for the appeal.

24. The hearing of the appeal was then fixed to take place in Manchester on the last day of the window that I had previously identified, namely 25 October 2019. Due to an oversight in the court office, notice of the date was not given to SBLT in a timely manner. Accordingly, after considering written representations from the parties, on

24 October 2019 I made an order adjourning the hearing of the appeal to take place on a date when I was sitting in Leeds, which the court was informed by both sides was convenient for them.

25. By an Appellant's notice dated 29 October 2019, SBLT then applied to the Court of Appeal for permission to appeal my orders of 16 October 2019 and 24 October 2019 (notwithstanding that the order of 24 October 2019 had granted the adjournment which SBLT had itself sought). That application was refused by Arnold LJ on paper on 22 November 2019. In a detailed ruling, Arnold LJ explained why none of SBLT's grounds of appeal had any prospect of success, and refused SBLT's request that the hearing in Leeds should be stayed or adjourned. He stated,

> "This application for permission to appeal is one of a number of meritless and abusive attempts by the Appellant to derail or at least delay the hearing of its application for permission to appeal, and if permission is granted the appeal … and consideration of whether a civil restraint order should be made against the Appellant…"

26. Not daunted by Arnold LJ's ruling, on 26 November 2019, Harrison Carter wrote a lengthy letter to me asking me to extend time and to vacate the hearing fixed for 29 November 2019. The letter also indicated that SBLT intended to make a further application to the Court of Appeal to set aside Arnold LJ's decision. By a further email dated 28 November 2019 from Harrison Carter I was then sent what was described as the substantive part of SBLT's further application to the Court of Appeal. This comprised an unsigned 26-page submission accusing PCC and LBC of fraud in relation to pursuit of the non-domestic rates liabilities of Augustine and SBLT, and complaining variously of breaches of Augustine's and SBLT's alleged rights under the Human Rights Act 1998.

27. Notwithstanding Harrison Carter's letter, I declined to vacate the hearing on 29 November 2019 and proceeded to hear the appeal against DJ Obodai's order in relation to the winding-up petition and the First and Second Applications. SBLT was represented by counsel, Mr. Clive Wolman.

28. As matters transpired, there was insufficient time on 29 November 2019 for me to give a judgment on the appeal and to hear the civil restraint issue. Moreover, Mr. Wolman indicated that he had not been instructed by SBLT in relation to the civil restraint issue. I nonetheless pointed out to Mr. Wolman, for transmission to SBLT, that since I had in any event made a totally without merit finding against SBLT, if it wished to file any evidence or make submissions in relation to the making of a civil restraint order against it, it should do so before the adjourned hearing.

29. The following week, I sent a draft judgment to the parties in accordance with the normal procedure, and indicated that I would hand down the final version of the judgment on 6 December 2019. In addition to receiving suggested corrections to the judgment from counsel, I also received a letter directly from SBLT asking that I defer handing down the judgment until 18 December 2019, questioning my decision, seeking to raise nine new grounds of appeal, making references to the history of the matter concerning SBLT and Augustine, and making a series of allegations of impropriety against LBC, PCC and their solicitors. SBLT also sent me what

purported to be an expert witness report in relation to the question of whether Augustine could have been held liable for non-domestic rates.

30. None of the matters raised by SBLT appeared to me to have any substance or relevance to my decision on the appeal, and I therefore handed down my judgment on the appeal on 6 December 2019. In the last paragraph of that judgment I stated,

> "It remains for me to deal with questions of the costs of the applications for permission to appeal and the issue of whether to make a civil restraint order against SBLT. I shall do so at an adjourned hearing on 18 December 2019 at which I will also deal with any other consequential matters. I shall extend any relevant time periods until after that hearing."

31. On Monday this week, 16 December 2019, a Master of the Civil Appeals Office rejected SBLT's attempt to seek a review of Arnold LJ's decision of 22 November 2019, pointing out that CPR 52.5(1) and section 54(4) of the Access to Justice Act 1999 meant that Arnold LJ's decision was final. That merely prompted SBLT to write to the Civil Appeals Office asking for the papers to be retained pending SBLT filing a request for a review of the Master's decision.

The Hearing on 18 December 2019

32. On Monday 16 December 2019, in preparation for the hearing fixed for 18 December 2019, I received a letter from Harrison Carter. That letter asked me to issue a certificate under section 12 of the Administration of Justice Act 1969 for a leap-frog appeal to the Supreme Court and to stay the proceedings until after a final decision from the Supreme Court. The letter purported to identify the following three points of law of general public importance,

> "1. What is injustice?
>
> 2. Whether a local authority's winding up petition for the proceeds of crime is ultra vires?
>
> 3. Whether totally without merit findings and civil restraint orders are unlawful?"

33. That was followed by a further letter from Harrison Carter on Tuesday 17 December 2019, enclosing a lengthy document from SBLT making a request for a detailed assessment of LBC's and PCC's costs. The document from SBLT also made a number of criticisms of the statement of costs that had been filed and alleged some form of impropriety in relation to the fee arrangements between LBC, PCC and their solicitors.

Attempt to adjourn the hearing on 18 December 2019

34. Twenty minutes before the start of the hearing on Wednesday 18 December 2019, my clerk was sent an email from Harrison Carter notifying me that a new barrister had been instructed to attend court in place of Mr. Wolman in order to ask for a 21-day adjournment. The email stated,

> "It seems there has been a terrible mix up on instructions being finalised and Mr. Wolman was not aware that he was also instructed to deal with requesting,
>
> 1. Detailed assessment of costs
>
> 2. Permission to appeal to the Supreme Court
>
> 3. Why it is not appropriate to make a civil restraint order against the charity as all the matters that are totally without merit are either historic between Camden and the charity or are in the attached document of Matters Outstanding on appeal or review and to make a restraint order would be to deprive the charity access to the courts to defendant itself and its benefices [sic.]"

35. The "attached document of Matters Outstanding" was in the following terms,

> "MATTERS OUTSTANDING BETWEEN SAINT BENEDICT'S LAND TRUST LTD AND CAMDEN COUNCIL
>
> 1. CO.4788.2019 - Judicial Review Claim Saint Benedict's Land Trust Ltd v Highbury Magistrates - Camden Council & SoS Justice and SoS Housing. Judicial review claim filed on 28 November 2019 - refusal of Highbury to issue applications filed 15 October 2018 to set aside liability orders.
>
> 2. Investigatory Powers Tribunal - Human Rights Claim - Saint Benedict's Land Trust Ltd (and its trustees and beneficiaries) v The London Borough of Camden - a claim has been brought for breach of Regulation Investigatory Powers Act 2000 – trespass by rating officers Mr Quick and Mr Drennan – criminal matters.
>
> 3. CO/1156/2018 - Saint Benedicts Land Trust Ltd v Preston Magistrates Court Mr Justice Nicklin (TWM) – reopen closed case on new evidence from expert rating witness.
>
> 4. Claim Form & PoC - Trespass and Damage Saint Benedicts Land Trust Ltd v - Camden Council – Central London County Court – filed 13 December 2019.
>
> 5. C1/2019/0110 - 2019/PI/11650- 28 August 2019 application to set aside Hickenbottom LJ decision 12 August 2019 (TWM) and to consider reopening Patten LJ 8 February 2019 (TWM) on Patel v Mussa [2015] EWCA Civ 434 - refiled 16 December 2019.

> 6. A2/2019/2739 - 2019/P1/12386 - Arnold LJ - 28 November 2019 - reconsideration request 17 December 2019."

36. Having heard submissions from counsel who appeared, Mr. Zander Goss, I rose to give Mr. Wolman, who I was told was in chambers, the opportunity to attend in person to explain the position in light of Harrison Carter's email. When I returned to court, I was given an email from Mr. Wolman which stated as follows,

> "Dear Judge:
>
> SBLT: application for a civil restraint order
>
> I understand that you have requested me to attend court this morning to explain why my colleague Mr Goss is requesting an adjournment on grounds of a mix-up over instructions.
>
> I apologise profusely and sincerely. But I am dressed in a wholly inappropriate way for attendance at court as counsel and I am having to deal with the urgent affairs of another client who is facing the threat of an ex parte application to restrain him from presenting a winding-up petition.
>
> As far as the matter that I understand is before you this morning. I can say the following for what it is worth, and recognising that SBLT may well take a different view. I believe that this is simply a case of poor administration and management on the part of SBLT, specifically its failure to get its ducks lined up for the purpose of giving me any, let alone any proper, instructions or making any arrangements to negotiate, agree and pay fees.
>
> From all the emails I have now seen, I can confidently say, recognising my duty not to mislead the court, that this is not a case in which the applicant for an adjournment has made a conscious or cynical attempt to de-rail a hearing for its own purposes."

37. Having heard further submissions, I refused the application for an adjournment. In short, it appeared to me that SBLT had had ample notice of the need to prepare and arrange representation for the hearing in relation to the matters consequential upon the appeal judgment and in relation to a civil restraint order. Whether or not deliberate, it was clear from the voluminous correspondence which I had received directly from SBLT and Harrison Carter, that they were well aware of the hearing and the matters to be dealt with at it. They had, however, not provided any adequate explanation of the "mix up" which they contended had occurred, still less had they been prepared to verify that explanation in a witness statement. Instead, from Mr. Wolman's email it seemed clear that SBLT and Harrison Carter had simply failed to take the necessary steps to instruct him or agree his fees.

38. Against the background of what Arnold LJ had called "a number of meritless and abusive attempts by the Appellant to derail or at least delay" the hearing on earlier occasions, I considered this latest application for an adjournment to be without any merit. Whether the actions of SBLT and Harrison Carter were deliberate or simply incompetent, it would have been wholly unjust to LBC and PCC (as well as wasteful of the resources of the court and detrimental to other court users) for there to be any further adjournment and yet more wasted costs.

Permission to appeal

39. After refusing to adjourn the hearing, I also refused SBLT a certificate for an appeal to the Supreme Court. It is perfectly plain that none of the necessary criteria for such an appeal set out in section 12 of the Administration of Justice Act 1969 are satisfied, and the supposed points of law of general public importance identified by SBLT are manifestly inappropriate for consideration by the Supreme Court. It is also the case that my refusal of permission to appeal from DJ Obodai's order is final and not itself open to appeal to the Court of Appeal: see section 54(4) of the Access to Justice Act 1999.

Civil Restraint

40. CPR r.3.11 provides that a practice direction may set out the circumstances in which the court has power to make a civil restraint order against a party to proceedings, the procedure for such applications, and the consequences of the court making a civil restraint order. Such matters are set out in CPR 3CPD.

41. CPR 3CPD paragraph 3.1 provides;

> "An extended civil restraint order may be made … where a party has persistently issued claims or made applications which are totally without merit."

The effect of an extended civil restraint order is set out in CPR 3CPD paragraph 3.2, which so far as relevant provides,

> "Unless the court otherwise orders, where the court makes an extended civil restraint order, the party against whom the order is made –
>
> (1) will be restrained from issuing claims or making applications in –
>
> …(b) the High Court or the County Court if the order has been made by a judge of the High Court…
>
> concerning any matter involving or relating to or touching upon or leading to the proceedings in which the order is made without first obtaining the permission of a judge identified in the order"

42. CPR 3CPD paragraph 4.1 provides;

> "A general civil restraint order may be made … where the party against whom the order is made persists in issuing claims or making applications which are totally without merit, in circumstances where an extended civil restraint order would not be sufficient or appropriate."

The effect of a general civil restraint order is set out in CPR 3CPD paragraph 4.2, which so far as relevant provides,

> "Unless the court otherwise orders, where the court makes a general civil restraint order, the party against whom the order is made –
>
> (1) will be restrained from issuing any claim or making any application in –
>
> … (b) the High Court or the County Court if the order has been made by a judge of the High Court; …
>
> without first obtaining the permission of a judge identified in the order."

43. The rationale for such civil restraint orders was explained by Leggatt J in Nowak v The Nursing and Midwifery Council and another [2013] EWHC 1932 (QB) at [58]-[59]:

> "[58] As explained by the Court of Appeal in the leading case of Bhamjee v Forsdick [2004] 1 WLR 88, the rationale for the regime of civil restraint orders is that a litigant who makes claims or applications which have absolutely no merit harms the administration of justice by wasting the limited time and resources of the courts. Such claims and applications consume public funds and divert the courts from dealing with cases which have real merit. Litigants who repeatedly make hopeless claims or applications impose costs on others for no good purpose and usually at little or no cost to themselves. Typically such litigants have time on their hands and no means of paying any costs of litigation – so they are entitled to remission of court fees and the prospect of an order for costs against them is no deterrent. In these circumstances there is a strong public interest in protecting the court system from abuse by imposing an additional restraint on the use of the court's resources.
>
> [59] It is important to note that a civil restraint order does not prohibit access to the courts. It merely requires a person who has repeatedly made wholly unmeritorious claims or applications to have any new claim or application which falls within the scope of the order reviewed by a judge at the outset to determine whether it should be permitted to proceed. The purpose of a civil restraint order is simply to protect the court's

> process from abuse, and not to shut out claims or applications which are properly arguable."

44. In considering whether to make a civil restraint order and, if so, what form of order to make, there are essentially three questions for the court (see Nowak at [63]-[70]):

    i) whether the litigant has persistently issued claims or made applications which are totally without merit;

    ii) whether an objective assessment of the risk which the litigant poses demonstrates that he will, if unrestrained, issue further claims or make further applications which are an abuse of the court's process; and

    iii) what order, if any, it is just and proportionate to make to address the risk identified?

45. In answering these questions, the court is entitled to have regard to the history of all claims and applications made which have been declared to be totally without merit. The court is not limited to unmeritorious claims or applications made within a particular time frame, for example in the period since expiry of any previous civil restraint order: see Society of Lloyd's v Noel [2015] 1 WLR 4393 per Lewis J at [38]-[42].

46. The court may also take into account previous claims or applications which it concludes were totally without merit, and is not limited to claims or applications so certified at the time, albeit that in such cases the court will need to ensure that it has sufficient information about the previous claim or application in question: see Sartipy v Tigris Industries [2019] EWCA Civ 225 at [37] referring to R (Kumar) v Secretary of State for Constitutional Affairs [2007] 1 WLR 536 at [67]-[68].

47. So far as the first question is concerned, it has been held that the requirement that someone should "persistently" have made unmeritorious applications requires at least three claims or applications which are totally without merit: see Sartipy v Tigris Industries at [28]. In the latter case, however, the Court of Appeal emphasised at [30] that,

> "…although at least three claims or applications are the minimum required for the making of an ECRO, the question remains whether the party concerned is acting "persistently". That will require an evaluation of the party's overall conduct. It may be easier to conclude that a party is persistently issuing claims or applications which are totally without merit if it seeks repeatedly to re-litigate issues which have been decided than if there are three or more unrelated applications many years apart. The latter situation would not necessarily constitute persistence."

48. So far as the second and third questions are concerned, it is also worth reiterating the points made by Leggatt J in Nowak at [69]-[70], namely,

> "69. The fact that the litigant has repeatedly issued claims or made applications which are totally without merit will itself almost inevitably demonstrate the existence of [a risk of further such claims or applications]. But in considering the extent of the risk it may also be relevant to consider other factors, such as any statements of the litigant's future intentions, other aspects of the litigant's conduct and whether the circumstances which have generated the hopeless claims or applications are continuing or likely to continue.
>
> 70. The third question which the court needs to ask is what order, if any, it is just to make to address the risk identified. As I have indicated, because a civil restraint order represents a restriction on the right of access to the courts, any such order should be no wider than is necessary and proportionate to the aim of protecting the court's process from abuse. In accordance with this principle, the court should therefore approach this question by asking "what is the least restrictive form of order shown to be required"."

49. Applying those principles, it is clear, that the first, threshold, question of whether SBLT has "persistently" made applications which are totally without merit must be answered in the affirmative. SBLT has made a total of at least seven claims or applications that have expressly been declared to be totally without merit in the space of less than two years. It has also made other applications which, although not expressly declared to be totally without merit, have been dismissed in ringing terms as unmeritorious and abusive: see e.g. the decision of Arnold LJ on 22 November 2019.

50. There has, moreover, been a common theme to many of the applications, namely repeatedly seeking a review (whether by way of judicial review or otherwise) of decisions with which SBLT does not agree: see e.g. the early applications which were dismissed by Nicklin J, Andrew Thomas QC and Martin Spencer J; and the repeated applications concerning the venue for the hearing of the appeal against DJ Obodai's decision which I dismissed as totally without merit on 16 October 2019. Those meritless applications undoubtedly exhibit the element of persistence in irrationally refusing to take "no" for an answer which was referred to in Bhamjee v Forsdick [2004] 1 WLR 88 at [42].

51. Another common theme has been unmeritorious applications seeking to adjourn hearings at the last minute: see e.g. the attempts to derail the hearing before Preston Magistrates Court on 21 March 2018, the Second Application attempting to adjourn the hearing before DJ Obodai fixed for 22 February 2019, and the attempts to persuade first Arnold LJ and then me to adjourn the hearing in Leeds on 29 November 2019.

52. I should add that many of SBLT's applications have been accompanied by voluminous emails or other documents seeking, in an unfocussed manner, to argue and reargue SBLT's and Augustine's case relating to non-domestic rates from the outset. The documents are also generally unsigned and unaccompanied by any witness statement verified by a statement of truth. Attempting to read and digest such

documents adds considerably to the burden of dealing with the applications that have been made.

53. Secondly, I also have no doubt whatever, that unless restrained, SBLT will continue to present a very real risk of further claims and applications being made which are without merit and an abuse of the court's process.

54. In that regard, it is notable that notwithstanding the warning in the clearest possible terms by Martin Spencer J on 17 December 2018 that SBLT would face a civil restraint order if its conduct continued, it then carried on regardless, making further applications that were totally without merit. Indeed, SBLT's reaction to the ruling of Arnold LJ and the Master of the Court of Appeal who rightly rejected its attempt to reopen that appeal earlier this week, together with the long list of other "Matters Outstanding" provided by Harrison Carter on Wednesday graphically illustrate the continuing campaign which SBLT intends to pursue.

55. As Mr. Gosling observed in submissions, it is also of significance that even after 6 December 2019, when SBLT knew its appeal against the order of DJ Obodai had been dismissed, it chose not to put in any evidence to explain its conduct or give any assurances as to its future conduct which the court might take into account: see Nowak at [68]. The force of that point is not in any way reduced by any supposed "mix-up" over the instruction of Mr. Wolman for the hearing earlier this week: the responsibility for adducing such evidence in good time prior to the hearing cannot be laid at Mr. Wolman's door, but was the responsibility of SBLT and Harrison Carter.

56. Consideration of the risk of abuse of the court system that SBLT poses in the future also gives rise to a further point that has particularly troubled me in this case. As is apparent from the history that I have given, SBLT is not a typical candidate for a civil restraint order of the type identified by Leggatt J in Nowak at [58] – namely an individual with time on their hands and no means of paying the costs of litigation. Instead, as I have indicated, SBLT portrays itself as a charity, which is advised and represented by a company providing legal services (Harrison Carter).

57. In fact, SBLT is not a registered charity. If it were, I should have the gravest concerns over the propriety of the conduct of the trustees of a charity in conducting its affairs in a manner which amounts to a repeated abuse of the court's process, and thereby exposing the charity and its funds to adverse costs orders in the manner which those conducting the affairs of SBLT have done.

58. Moreover, the typical subject of a civil restraint order is a person who does not have the benefit of legal advice. The court would ordinarily expect any competent firm of lawyers to provide advice which would serve to deter or restrict the tendency of a litigant to make abusive claims or applications. But far from acting as such a restraint, Harrison Carter have actively supported the many meritless and abusive applications made by SBLT, and communications of a very similar nature have often been received in parallel from both organisations, which appear to be closely connected and to operate from the same address.

59. If SBLT had been a registered charity regulated by the Charity Commission, and if Harrison Carter had been a firm of solicitors regulated by the Solicitors Regulation Authority, I would have sent a copy of this judgment to both those regulators for them

to consider what further inquiries ought to be made and action taken. As it is, I can do neither. I do, however, propose to send a copy of this judgment to the Financial Conduct Authority which I understand to have some form of regulatory oversight of societies formed under the Co-operative and Community Benefit Societies Act 2014.

60. That leaves the third question identified in Nowak, namely whether it is necessary, just and proportionate to make a civil restraint order, and if so, in what terms?

61. Again, I have no doubt that it is necessary and just to make such an order. For the reasons that I have given, there is no indication that SBLT's abuse of the court system, the consequent waste of public resources, and the cost to parties such as LBC and PCC can be prevented in any other way. The only real question is what is the least restrictive order necessary to address the risk that I have identified – i.e. whether an extended civil restraint order would be sufficient, or whether it is necessary to go further and to make a general civil restraint order.

62. From a consideration of the provisions of CPR 3CPD that I have set out above, it can be seen that the essential difference between the two orders is that an extended civil restraint order limits the requirement to seek prior permission of the nominated judge to claims or applications "concerning any matter involving or relating to or touching upon or leading to the proceedings in which the order is made"; whereas a general civil restraint order imposes a wider restriction on any litigation being commenced without permission.

63. In the instant case, the first difficulty with an extended civil restraint order is that the proceedings in which the order will be made are the winding up proceedings concerning rates liabilities from 2016 and 2017. Those proceedings have now, for all other purposes, come to an end. But as pointed out by Mr. Gosling, SBLT's liability for non-domestic rates for its premises in Camden is an on-going liability which will give rise to the potential for a repetition of SBLT's dispute with LBC in relation to subsequent assessments from 2018 onwards. The formulation of an extended civil restraint order would give rise to the real possibility that SBLT would claim that such order does not apply to claims or applications concerning liabilities other than the historic liabilities from 2016 and 2017 which founded the petition.

64. The second difficulty is that many of the applications which have been launched by SBLT and which have been found to be totally without merit have been in proceedings other than insolvency proceedings, e.g. judicial review proceedings concerning non-domestic rates liability orders made by the Magistrates Court. Again, the wording of the extended civil restraint order referring to the winding up proceedings brought by LBC might be argued by SBLT to be limited to such insolvency proceedings, and hence not to apply to claims and applications of a different nature.

65. In that regard it is significant that, as is apparent from the list of "Matters Outstanding" between SBLT and LBC to which I have referred, SBLT plainly intends to continue its campaign of litigation against LBC and its officers and staff in a variety of courts and tribunals and by a variety of claims. Whilst any civil restraint order that I make can only apply to proceedings in the High Court and County Court, it is nonetheless apparent that the more limited formulation of an extended civil restraint order made by reference to the winding up proceedings brought by LBC and

supported by PCC is likely to be capable of being evaded, or at least arguably evaded, by SBLT.

66. For those reasons I consider that an extended civil restraint order would not be sufficient or appropriate to meet the threat of abuse posed by SBLT. Put another way, no order in less restrictive terms than a general civil restraint order would suffice.

67. Further, and in answer to the point made by Harrison Carter in paragraph 3 of its email to me of Wednesday, urging me not to make a civil restraint order because its effect would be "to deprive the charity access to the courts to defendant itself and its benefices" [sic], I would make the following observations.

68. First, as Leggatt J pointed out in Nowak at [59], a civil restraint order does not prohibit access to the courts. It merely requires a person who has repeatedly made wholly unmeritorious claims or applications to have any new claim or application which falls within the scope of the order, reviewed by a judge at the outset to determine whether it should be permitted to proceed.

69. Secondly, Harrison Carter are of course wrong to suggest that a civil restraint order would prevent SBLT from defending itself in the courts. A civil restraint order does not prevent a person from defending themselves in court proceedings by, for example, filing a defence, or evidence seeking to resist an order being made against them: c.f. Sartipy v Tigris at [31] in relation to what constitutes a claim or application for the purposes of determining whether the jurisdiction to make a civil restraint order is made out. A civil restraint order does, however, seek to prevent a defendant from making improper and meritless applications with a view to derailing or disrupting proceedings brought against it.

70. Accordingly, I will make a general civil restraint order against SBLT. The order shall last for two years in the first instance.

71. Picking up a point made in submission by Mr. Gosling, I shall, with the consent of Supperstone J, who is the Judge in Charge of the Administrative Court, nominate him as the lead judge to consider any applications for permission by SBLT. I do so because it seems to me that on the basis of the history to which I have referred, the type of claims or applications which SBLT is most likely to make in the future are ones which would fall within the expertise of a judge of the Administrative Court rather than a judge of the Business and Property Courts.

Costs

72. Mr. Gosling asks me to award LBC and PCC their costs of the appeal and the hearing in relation to the civil restraint order, and summarily to assess those costs. As I have indicated, LBC and PCC have filed and served a Statement of Costs for summary assessment, to which Harrison Carter and SBLT responded at some length in an email to me of 17 December 2019. LBC and PCC claim a total of £23,300, which comprises solicitors' fees of £16,800 and counsel's fees of £6,500.

73. SBLT does not, in terms, object to an order that it pays the costs of LBC and PCC: nor could it sensibly do so given the outcome. It is clear that LBC and PCC are entitled to their costs.

74. However, SBLT objects to the costs being summarily assessed and indicated that it wishes to engage in a far-reaching challenge to the relationship between LBC and its solicitors, including, for example, suggesting that LBC's solicitors are operating on an improper no-win no-fee basis, citing materials taken from the internet and freedom of information requests. I reject the application for a detailed assessment. The statement of costs is signed by a partner at the solicitor's firm, verifying that the costs do not exceed the costs that LBC and PCC are liable to pay, and I have no clear evidence supported by a statement of truth from SBLT which might indicate that there is anything unlawful or improper in the engagement by LBC and PCC of their solicitors.

75. Moreover, the statement of costs is not long or complicated, and given that the hearing of the appeal and the application for a civil restraint order was originally listed for a day, I consider that it would be entirely disproportionate to put the matter off to a detailed assessment rather than summarily to assess the costs claimed. I also have no doubt, given the nature of the objections filed by SBLT, that it would seek to use such detailed assessment as a vehicle for a collateral attack on LBC, PCC and its lawyers, thus wasting further time and costs.

76. SBLT's main challenge to the level of costs claimed is directed at the level of costs claimed by LBC's and PCC's solicitors. All but two hours of such costs are for work done on the case by a grade D fee-earner from the solicitors' office in Wigan. This has been charged at the same rate £250 per hour, which is the same rate as has been charged for the time of the grade A fee-earners who have worked on the case. SBLT points out that the Guideline Rate in Appendix 2 of the Guide to Summary Assessment of Costs for a grade D fee-earner in Wigan is £111 per hour. Realistically recognising that such guideline rates are now well out of date, SBLT accepts that this figure should be increased, but contends that it should simply be indexed using RPI to between £140 and £150 per hour.

77. Mr. Gosling told me that the explanation for the fact that the grade D fee-earner has been charged at the same rate as grade A fee-earners is that LBC and PCC have agreed a flat rate with their solicitors for all lawyers working on a case of £250 per hour, irrespective of the seniority of the lawyer. That may be so as between LBC, PCC and their solicitors, but that explanation does not meet the point that a paying party should only have to pay a reasonable and proportionate amount for the services of the specific lawyer who works on a case.

78. As SBLT accepts, the Guideline rate of £111 per hour for a grade D fee earner is patently not a reliable guide in terms of current market rates. Nor is it directly applicable to a case such as the present which, although not concerning a subject matter which is inherently very complex, has been made considerably more demanding by the inappropriate actions of SBLT. In my judgment a reasonable charging rate for the grade D fee-earner in this case would be £200 per hour. This would reduce the solicitors' bill from £16,800 to £13,540.

79. SBLT accepts that £5,000 of counsel's fees relating to the hearings before me were reasonable, but disputes that it should also pay £1,500 in relation to Mr. Gosling's preparation for the hearing ordered by O'Farrell J on 21 May 2019 which was vacated. I do not accept that point. The hearing in May was to consider making a civil restraint order. Mr. Gosling told me that his work for that hearing was largely reused in preparation of the skeleton argument for the hearings before me, and that his

fee for those later hearings was reduced accordingly. I accept that explanation from counsel, whose overall fees I consider were entirely reasonable for a matter of this nature.

80. Accordingly, I will summarily assess the costs to be paid by SBLT in the sum of £20,040.