Neutral Citation Number: [2021] EWHC 1311 (Ch)

Case Number CR-2014-010913

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
INSOLVENCY AND COMPANIES LIST (Ch D)

IN THE MATTER OF JEB RECOVERIES LLP

AND IN THE MATTER OF THE INSOLVENCY ACT 1986

Royal Courts of Justice
7 The Rolls Building
Fetter Lane
London
EC4A 1NL

Date: 21st May 2021

Before :

DEPUTY ICC JUDGE BARNETT

- -

Between :

NICHOLAS WILLIAM NICHOLSON **Applicant**

- and –

MARK GREGORY HARDY **Respondent**

- -

Christopher Brockman (instructed by **Gateley PLC**) for the Applicant
The Respondent appeared in person

Hearing date: 27 April 2021

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JUDGMENT

DEPUTY ICC JUDGE BARNETT

1. By an application dated 25 August 2020 (the "s.212 Application") Mr Mark Hardy ("Mr Hardy") has sought relief pursuant to section 212 of the Insolvency Act 1986 against Mr Nicholas Nicholson "(Mr Nicholson" or "the Liquidator") who was previously the liquidator of JEB Recoveries LLP ("JEB"). The relief sought is that:

"The court examine into the conduct of the Respondent and compel him to contribute such sum to the company's assets by way of compensation in respect of his misfeasance, breach of fiduciary duty and/or other statutory and common law duty is as the court thinks just".

2. The principal grounds stated in the s.212 Application are:

"(e)… The Respondent has stated to the Applicant at a meeting of creditors, that the commencement of any proceedings to collect the assets would be vexatious notwithstanding the finding of HH Judge Simon Barker QC – [2015] EWHC 1063 (Ch) – at para 49 that one of the claims is "realistically arguable… entirely logical and inherently credible"

(f) The claim of the Petitioning Creditor is for an amount of legal costs that the Respondent has refused all requests to value or have subject to detailed assessment by the Court

(g) The Respondent has also refused all requests to apply mandatory set off of assets and rights vested in JEB Recoveries LLP against the value (if any) of the claim of the Petitioning Creditor, and has at all relevant times valued it in full for voting purposes including in his failed attempt to achieve a fee sanction based on hourly rates for his own enrichment…

(i) The Respondent has refused all requests and demands to collect simple debts evidenced in writing and due to JEB Recoveries LLP from a Spanish company with significant assets, but which debts are expressly stated to be subject to the exclusive jurisdiction of England and of this court. Such debts have a value in excess of €1,000,000 and have likely become statute barred as a result of the Respondents misfeasance and/or breach of duty and should be the subject of a compensation order against the Respondent."

3. By the present application issued on 6 November 2020 Mr Nicholson seeks the following orders:

1. An order pursuant to CPR rule 3.4(2) striking out the entirety of the s.212 Application on the grounds that (i) it discloses no reasonable grounds for bringing the claim and/or (ii) it is an abuse of the process of the court or otherwise likely to obstruct the just disposal of the proceedings

2. Alternatively an order giving summary judgment in favour of Mr Nicholson on the grounds that pursuant to CPR rule 24.2 (i) the applicant has no real prospect of succeeding on the claim and (ii) there is no other compelling reason why the case should be disposed of at trial.

4. Mr Nicholson is represented by Mr Christopher Brockman of counsel. Mr Hardy has appeared in person. Although Mr Hardy is a litigant in person, he does have substantial experience of litigation before the English courts.

Background

5. JEB was incorporated on 21 March 2014 by Mr Hardy and others. Its purpose was to acquire and pursue claims against Mr Judah Binstock, a wealthy businessman, and parties connected with him. Mr Binstock has subsequently died.

6. The pursuit of some claims by JEB appears to have been unsuccessful and has led to adverse costs orders being made against JEB and in favour of Mr Binstock. Relying on those costs orders, Mr Binstock petitioned for, and secured, the winding up of JEB.

7. The only creditors in the estate are the estate of Mr Binstock for a sum of £260,858.80, Mr Hardy for £100,513 and a third party whose claim has yet to be quantified.

8. On 29th November 2017 Mr Nicholson and Mr Dumville of Haslers were appointed as joint liquidators of JEB. Mr Dumville ceased office on 16 January 2020 and Mr Nicholson continued as sole liquidator until 27 November 2020.

9. At the outset of the appointment of the liquidators there were no funds in the insolvent estate. The only assets were alleged potential claims against parties connected with Mr Binstock. Notwithstanding the lack of funds, the liquidators undertook work on a speculative basis to investigate the viability of the potential claims. They also engaged the law firm, Gateley PLC, on a conditional fee basis to assist them.

10. Ultimately, Mr Nicholson in consultation with his legal advisers concluded that the potential claims were not worth pursuing. Accordingly, there have been no realisations in the liquidation and neither Mr Nicholson nor his legal advisers have received any payment for their labours.

11. Mr Hardy does not accept Mr Nicholson's conclusions with regard to the viability of the potential claims and thus issued the s.212 Application which Mr Nicholson now seeks to strike out.

12. The potential claims identified by Mr Hardy are summarised in his sixth witness statement. They are:

    1. Unpaid invoices originally due to Michael Stannard from Mr Binstock.

    2. Unpaid invoices originally due to Peter Wilson from Mr Binstock.

    3. A Bentley motor car in the possession of Mr Binstock at the date of his death and the value derived from its use by Mr Binstock and subsequently by Mrs Binstock.

    4. A liability of Mr Binstock, Mrs Binstock and their daughter for a "£320,000 debt due by Indus investments Ltd (a Northern Ireland company that was

dissolved in 2013) that was prima facie to be included in the assets assigned to JEB Recoveries by Michael Stannard".

5. Two unpaid promissory notes for monies due to Isdell Rudich by Corporacion de Nueva Andalucia ("CNM").

6. Mr Hardy's claim for the value of shares in CNM said to be improperly transferred to Mrs Binstock and/or her daughter as a result of fraud and misrepresentation.

7. An accounting and damages for assets stolen by Mr and Mrs Binstock from a Costa Rican company owned by Mr Hardy.

13. With regard to the invoice claim of Mr Wilson, Mr Hardy referred me to a decision of His Honour Judge Simon Barker QC, sitting as a judge of the High Court, in JEB Recoveries LLP v Judah Eleazar Binstock [2015] EWHC 1063 (Ch). That case concerned an application by Mr Binstock to strike out the claim of JEB in respect of the debt assigned to it by Mr Wilson (which I infer is the second claim referred to above).

Mr Hardy referred me to paragraph 49 of the judgment which states with regard to the claim of Mr Wilson:

> "… Agreement as to consideration in the form of a monthly retainer plus reimbursement of expenses payable over the duration of the alleged contract is entirely logical and inherently credible."

Mr Hardy relies upon that comment as judicial endorsement of the validity of the claim although that reliance is somewhat undermined by the balance of the paragraph which states:

> "Revival by acknowledgement of an alleged debt of £10 million which, on the material previously before me, seemed arguably to be both long since time-barred under English law and a high price for the services allegedly rendered, is less logical and less inherently likely. However, on an application such as this, I am not in a position or entitled to reject that element of the claim as unarguable or take it into account other than at face value."

14. Save for the above, I was not taken by Mr Hardy to any underlying documentary material which might cast further light on the above potential claims. In his fifth witness statement, Mr Nicholson offers some explanation of the promissory note claim derived from his interview of Mr Hardy. Rather than being a simple debt claim, Mr Nicholson summarises the claim as being an illegal scheme to launder money for a casino owned by Mr Binstock for the purposes of defrauding the Spanish tax authorities. That explanation is strongly refuted by Mr Hardy

15. I observe that claims 6 and 7 appear to be personal claims of Mr Hardy and not claims vested in JEB. I should also record one further point. Mr Hardy does not

accept that Mrs Binstock is the lawful representative of Mr Binstock's estate. At paragraph 13 onwards of his sixth witness statement, he records that there is no grant of probate in any UK probate registry in respect of Mr Binstock's estate. Mr Hardy considers the point to be significant because, he asserts, Spanish law does not recognise the concept of the estate of the deceased. He asserts that if there is a valid Will registered in Spain, then the debts of the deceased attach to the assets passed to the beneficiaries and are to be recovered directly from those beneficiaries.

16. In addition to the above alleged potential claims, Mr Hardy claims that a separate identifiable claim would have arisen had the liquidators applied mandatory set off at the outset of the liquidation. I comment further on that claim when addressing Mr Hardy's submissions.

Strike Out Applications: Legal Principles.

17. Mr Christopher Brockman has helpfully set out the relevant legal principles in his skeleton argument.

CPR 3.4(2) (so far as material) provides that the court may strike out a statement of case if it appears to the court:

> "(a) that the statement of case discloses no reasonable grounds for bringing or defending the claim;
>
> (b) that the statement of case is an abuse of the court process or is otherwise likely to obstruct the just disposal of the proceedings..."

Grounds (a) and (b) cover statements of case which are unreasonably vague, incoherent, vexatious, scurrilous or obviously ill founded and other cases which do not amount to a legally recognisable claim or defence.

CPR 3.4(2)(a): no reasonable grounds

18. In Oysterware Ltd v Intentor Ltd and Others [2018] EWHC 611 Ms Joanna Smith QC, sitting as a Deputy Judge of the High Court, at [40] said:

> "It is clear from the authorities (which are well established and need not be cited in detail) that I can only strike out a statement of case or part of a statement of case under CPR 3.4(2)(a) where I am satisfied that it discloses on its face no reasonable grounds for bringing the claim… and that it is only a remedy to which the court should resort in plain and obvious cases where the court can be certain that the claim is bound to fail (Hughes v Colin Richards & Co [2004] EWCA Civ 266 per Peter Gibson LJ at [22]). In considering this question I must have regard to the overriding objective of dealing with the case justly (Three Rivers District Council v Bank of England (No 3) [2001] UKHL 16, per Lord Hope at [94])".

19. Paragraph 1.4 of the Practice Direction 3A – Striking Out a Statement of Case gives examples of cases where the court may conclude that particulars of claim disclose no reasonable grounds for bringing the claim. Claims include those which set out no facts indicating what the claim is about, those claims which are incoherent and make no sense; and those claims which contain a coherent set of facts but those facts, even if true, do not disclose any legally recognisable claim against the defendant.

20. Statements of case which are suitable for striking out on ground (a) include those which raise an unwinnable case where continuance of the proceedings is without any possible benefit and would waste resources on both sides: Harris v Bolt Burden [2000] C.P. Rep 70 [2000] CPLR 9.

21. A statement of case is generally not suitable for striking out if it raises a serious live issue of fact which can only be properly determined by hearing oral evidence.

22. Where a statement of case is found to be defective, the court should consider whether that defect might be cured by amendment and, if it might be, the court should refrain from striking it out without first giving the party concerned an opportunity to amend: in Soo Kim v Young [2011] EWHC 1781.

CPR 3.4(2)(b): abuse of process or otherwise likely to obstruct the just disposal of the proceedings

23. In a strike out application, the proportionality of the sanction is very much in issue: Walsham Chalet Park Ltd v Tallington Lakes Ltd [2014] EWCA CIv 1607. The striking out of a valid claim should be the last option. If the abuse can be addressed by a less draconian course, it should be.

24. It is an abuse of process to pursue a claim for an improper collateral purpose: Hall v Mohammed Naseem & 62 Ors [2021] EWHC 142 (CH)[30]. It is also an abuse of process to issue a claim form in the absence of knowledge of any valid basis for a claim and an ability to formulate the claim at the time of issue: Hall [32]

25. The court may also strike out, as an abuse of process, particulars of claim which are unreasonably vague or incoherent (Towler v Wills [2010] EWHC 1209 (Comm]; Oysterware (above) at [43]), or which are so badly drafted that they fail to reveal to the defendant, or to the court, the case the defendant can expect to meet at trial: Hall [32].

Submissions- CPR 3.4(2)(a)

26. Before seeking to summarise the parties respective cases, I should make one general observation. The witness statements generated by the strike out application have been relatively short. However, at the hearing before me I had not only the hearing bundle that ran to approximately 180 pages but a

further bundle from a previous hearing that amounted to more than 800 pages. I understand that the earlier bundle was included at the insistence of Mr Hardy. In the event, I was taken to very little material contained within that bundle. Indeed, I should record that, during the course of the hearing, Mr Brockman was very critical of Mr Hardy. He emphasised to me that many of Mr Hardy's submissions were mere assertion and that I was taken to little or no documentary material to support those assertions. Those criticisms were fairly made.

27. In support of the submission that the S.212 application disclosed no reasonable grounds for bringing a claim, Mr Brockman's primary submission was that the s.212 Application is unsustainable, inadequately put and unsupported by any evidence.

28. Mr Brockman referred me to the provisions of section 212 of the Insolvency Act 1986 which provide (insofar as relevant):

> "(1) This section applies if in the course of the winding up of the company it appears that a person who –
>
> (a) is or has been an officer of the company,
>
> (b) has acted as liquidator… Or administrative receiver of the company, or
>
> (c) not being a person falling within paragraph (a) or (b), is or has been concerned, or has taken part in the promotion, formation or management of the company,
>
> has misapplied or retained, or become accountable for, any money or other property of the company, or been guilty of any misfeasance or breach of any fiduciary or other duty in relation to the company.
>
> (2) The reference in subsection (1) to any misfeasance or breach of any fiduciary or other duty in relation to the company includes, in the case of a person who has acted as liquidator… of the company, any misfeasance or breach of any fiduciary or other duty in connection with the carrying out of his functions as liquidator… of the company.
>
> (3) The court may, on the application of the official receiver or the liquidator, or of any creditor or contributory, examine into the conduct of the person falling within subsection (1) and compel him –
>
> (a) to repay, restore or account for the money or property or any part of it, with interest at such rate as the court thinks just, or
>
> (b) to contribute such sum to the company's assets by way of compensation in respect of the misfeasance or breach of fiduciary or other duty as the court thinks just".

29. In contrast, Mr Brockman submits, the s.212 Application seeks an order for an examination into the conduct of Mr Nicholson – see paragraph 19 of Mr Hardy's sixth witness statement where Mr Hardy says:

> "The claim is for an enquiry into the value of the assets that R should have, but has not, recovered as clearly stated including the asset that arises from the surplus when mandatory set off is applied to the petitioning debt".

30. Mr Brockman submits that, in a properly formulated s. 212 application, one would expect to see the pleading of a duty, its breach and the loss suffered by that breach. However, Mr Hardy's application is for the court to carry out an investigation to ascertain whether a claim might exist. That, Mr Brockman submits, is incoherent and is simply a fishing expedition.

31. In answer to these criticisms, Mr Hardy submits in his skeleton argument:

> "NN alleges that the application for an enquiry does not show any demonstrable case to answer because MGH has not quantified the losses suffered. It is for the court to quantify losses".

Mr Hardy does not address directly the criticism that the application fails to plead a legally identifiable duty or its breach. However, he submits that the Insolvency Act, the Rules, Statements of Insolvency Practice and Codes of Ethics do not provide a wall of secrecy behind which a liquidator may hide. He submits that the liquidator has a duty to be open and informative. He criticises the liquidators unwillingness to explain his decision not to pursue any potential claims. He submits that his application has been prompted by a desire to test the basis, reasonableness and bona fides of the liquidators decision.

32. In support of his submission that Mr Nicholson has a duty to share his legal advice, Mr Hardy referred me to the decision of His Honour Judge Simon Barker QC, sitting as a judge of the High Court in Top Brands Ltd and another v Sharma and another [2014] EWHC 2753 (Ch).

33. In that case misfeasance proceedings had been brought against Mrs Sharma, the former liquidator of Mama Milla Ltd alleging that certain payments had been made negligently and/or in breach of fiduciary duty. Mrs Sharma's defence was that her actions had been based on legal advice from an experienced insolvency lawyer at (what was then) Gateley LLP. The judge said:

> "30. This is a case in which legal advice was obtained and that advice is relied upon by GS as providing a defence to the claim. It is also a case in which directions were not sought from the court. It may be presumed, therefore, that GS did not consider there to be serious doubt or difficulty in the performance of her duties.

31. In this context, Mr Hanson refers to McPherson's Law of Company Liquidation (3rd Edn) to a footnote under paragraph 8–037. The relevant text at 8–037 is:

> "This [a liquidators fiduciary position in relation to the company, its creditors and contributories] imposes certain obligations, which are strictly enforced by the courts, identical with those resting upon trustees, agents, and directors, one of which is that the liquidator is bound to act honestly and to exercise powers bona fide for the purpose for which they are conferred…"
>
> The added footnote is:
>
> "A liquidator who exercises powers in good faith after taking proper advice is not open to challenge: Burnells Pty Ltd (in liq) Ex p. Brown and Burns, Re (1979) 4 A.C.L.R. 213".

32. Mr Morgan refers to a passage in the judgment of Lord Walker in Pitt v Holt [2013] UKSC 26 with which the other six justices of that constitution of the Supreme Court agreed, at paragraph 40, citing as a correct statement of the law a passage from the judgment of Lightman J in Abacus Trust Co (Isle of Man) v Barr [2003] Ch 409 at paragraph 23:

> "What has to be established is that the trustee in making his decision has, in the language of Warner J in Mettoy Pension Trustees limited v Evans [1990] 1 WLR 1587, 165, failed to consider what he was under a duty to consider. If the trustee has in accordance with his duty identified the relevant considerations and used all proper care and diligence in obtaining the relevant information and advice relating to those considerations, the trustee can be no breach of duty and its decision cannot be impugned merely because in fact that information turns out to be partial or incorrect."

33. Applying the above proposition from Pitt v Holt to the footnote in MacPherson citing Burnell's Pty in liquidation, a liquidator will not have taken proper advice where the instructions to the adviser were flawed (partial or incorrect) by reason of a failure on the part of the liquidator to identify relevant considerations, or a failure to use all proper care and diligence in obtaining information relevant to the instructions given, or a failure to use all proper care and diligence in obtaining information relevant to the advice obtained.

"34 in this case A's challenge is to the quality of GS's instructions and to the care and diligence used in obtaining information relevant to the advice sought and given."

34. Mr Hardy seeks to draw a comparison to this case. He submits that he has no knowledge of the instructions that were given by Mr Nicholson to his legal

advisers. He submits that there needs to be some enquiry before any adjudication can be made as to whether Mr Nicholson was correct in determining that the potential claims were not worth pursuing.

35. In answer, Mr Brockman submits that Mr Hardy has been given an explanation, namely, that the liquidator having investigated the position with the benefit of legal advice has concluded that the claims are not viable. Mr Brockman submits that the claims are clearly not straightforward and that, in any event, there is no funding available which would permit further work to be undertaken.

36. Mr Brockman submits that it is noteworthy that Mr Hardy has not sought to exhibit any legal advice that might support his assertion that there are claims worthy of pursuing further nor does he offer any evidence that funding would be available other than a general assertion that there are litigation funders in the market who will fund litigation claims.

37. Mr Brockman rejects the submission that Mr Nicholson has a duty to share his legal advice with Mr Hardy. He submits that Top Brands was dealing with a different scenario. In that case an allegation of misfeasance had been made against the liquidator. She had raised, as a defence, that she had relied on legal advice. Having "put into play" the quality of her legal advice she had no alternative but to disclose it.

38. Mr Brockman also referred me to rule 17.23 of the Insolvency Rules 2016 which addresses the obligations of a liquidator to supply information to a creditors committee. It provides for a liquidator to report to the committee not less than once in every period of six months and that the report should set out:

> "(a) the position generally in relation to the progress of the proceedings; and
>
> (b) any matters arising in connection with them to which the officeholder considers the committee's attention should be drawn."

Tellingly, Mr Brockman submits, it does not require a liquidator to share legal advice with a creditors committee. That being so, he submits, supports the proposition that there cannot be any duty owed to an individual creditor to do so.

39. I turn next to Mr Hardy's claim that a separate claim arises, or should have arisen, through the operation of mandatory set off. Put simply, Mr Hardy's complaint as summarised in his skeleton argument is:

> "The root of NN's problem is that he refuses to recognise that after gathering in any cash or other real assets, the very first step all liquidators must take is to evaluate whether mandatory set off is to be applied against any of the creditor claims, and if so to evaluate, adjudicate and claim/recover the resulting asset.

40. Mr Nicholson's answer is that he has not adjudicated on the Binstock proof of debt for dividend purposes because there are no realisations in the JEB liquidation. That being so, he concludes, adjudicating on the proof would have been a pointless exercise and would achieve nothing.

41. Mr Hardy does not accept Mr Nicholson's conclusion. He contends that if set off had been applied it would have given rise to a net balance due to the estate because Mr Nicholson would have concluded that the claims against Mr Binstock would have exceeded the Binstock proof.

42. Mr Hardy's submission is misconceived. Certainly, it is true that the operation of insolvency set off creates either a net balance due to, or from, the estate. However, that exercise is dependent upon an evaluation of the outbound and inbound claims. In circumstances where a liquidator has concluded that the merits of an outbound claim are uncertain or otherwise uncommercial to pursue, it is both circular and incorrect to assert that the problem is somehow overcome through the operation of insolvency set off. In practice, it takes you back to the starting point, namely the assessment of the merits of the outbound and inbound claims. It is not a shortcut which avoids that exercise.

Conclusion

43. I consider that the s.212 Application should be struck out pursuant to CPR 3.4(2)(a) for the reasons below.

44. First, I agree with Mr Brockman that the application fails to disclose reasonable grounds for bringing a claim pursuant to section 212 of the Insolvency Act 1986. The application does not pursue a claim for misfeasance. Rather, it seeks an order that the court undertake an examination to discover whether a misfeasance claim is maintainable. Alternatively, it is no more than an attempt by Mr Hardy to force Mr Nicholson to disclose his legal advice.

45. Mr Brockman is correct that one would expect a properly pleaded claim to plead the relevant duties which Mr Hardy claims are owed by Mr Nicholson, the breaches of those duties that are alleged and the loss which Mr Hardy claims to flow from those breaches. It does not.

46. Secondly, I have considered whether the defects in the s.212 application are capable of being cured by amendment. However, I have concluded that they are not. The Liquidator does not owe a duty to Mr Hardy to share his advice with him nor does he owe a duty to pursue claims where he has no funds available to him to pursue those claims and in circumstances where his legal advisers have concluded that the claims are not worth pursuing.

47. Therefore, I conclude that the s.212 Application should be struck out in its entirety on the ground that it discloses no reasonable grounds for bringing the claim.

Submissions: CPR 3.4(2)(b)

48. Mr Brockman submits that Mr Hardy is a serial and experienced litigator who will deploy burnt earth tactics to secure victory. He submits that the evidence, both in respect of these proceedings and in other prior litigation, demonstrates that Mr Hardy is abusing the court system and taking up court time on personal vendettas.

49. Mr Brockman referred me to an earlier decision of His Honour Judge Paul Matthew, sitting as a judge of the High Court, in Sir Henry Royce Memorial Foundation("SHRMF") v Mark Gregory Hardy [2021] EWHC 714 (Ch) where the judge commenting on evidence put before the court to show Mr Hardy as being a serial vexatious litigant said:

> "56.… I accept that it (some of which was accepted by the defendant, or accepted with amendments or qualifications) shows that the defendant is willing to employ all means, including civil litigation, criminal prosecutions, regulatory and disciplinary jurisdictions, in order to attack those with whom he is in dispute, and also those who advise and represent them. I do not know if any of these complaints is justified. I will only observe that, if they are, then the defendant is a singularly unfortunate person to have come into contact, in his business life, with so many persons committing criminal, regulatory and disciplinary wrongs in matters in which he has interested himself."

50. In dismissing an application by Mr Hardy to issue a summons against SHRMF and against Vote Leave on 29 March 2021, District Judge Dodds sitting at High Wycombe Magistrates Court said:

> "I am satisfied that there is a history of MH conducting campaigns of vexatious litigation and pursuing poor points to pursue personal vendettas for financial gain or revenge."

District Judge Dodds went on in his judgment to identify 14 separate instances supporting that conclusion including a Privy Council judgment dismissing an application of Mr Hardy with costs and describing his application:

> "as without substance and referring to his continued disobedience, non-appearance and lack of cooperation in previous court proceedings"

51. Mr Brockman also referred me to In New Screen Media Group plc (in liquidation) [2009] EWHC 944 (Ch) where Mr Hardy pursued a claim against insolvency officeholders reporting them to the police, the Serious Fraud Office and the Financial Services Authority. Bernard Livesey QC, sitting as a Deputy Judge of the High Court recorded at paragraph 21:

> "Mr Hardy's present application appears to be a further attempt to pursue what is essentially the same campaign. The tactic arises from the fact that, at

a hearing before Sir John Lindsay on 15 January 2009, in the face of an application by the joint administrators of EDI for a civil restraint order against him, Mr Hardy accepted an undertaking not without the permission of the court to make any application in any civil court in England and Wales in relation to all connection with the administration of EDI."

52. In the present dispute, Mr Brockman submits, there has been a similar pattern of behaviour.

53. First, in 2019, Mr Hardy sought to initiate a private prosecution before the Essex Magistrate's Court against Haslers, in respect of a minor Companies Act breach. Those proceedings were ultimately dismissed on 10 December 2020, the District Judge having concluded that the summons should never have been issued.

54. Secondly, Mr Hardy attended at the offices of Haslers to secure details of companies maintaining their registered offices with Haslers and wrote to at least two of Haslers clients.

55. Thirdly, Mr Hardy reported Mr Nicholson and some of his partners to their regulatory bodies and, upon those investigations being concluded, then sought to pursue a review of the decisions by way of judicial review.

56. Fourthly, Mr Hardy has made written defamatory allegations about Mr Nicholson to the Crown Prosecution Service alleging collusion with Mrs Binstock.

57. Fifthly, Mr Hardy has breached the collateral undertaking contained at CPR 32.12 by uploading documents relating to this application to his publicly available blog.

58. Sixthly, Mr Brockman tells me that, in the course of the last year, Mr Hardy has had costs orders made against him totalling approximately £200,000 which remain unpaid. He tells me that Mr Hardy has placed his property into the names of his children and has effectively made himself "bomb proof" from any adverse costs orders that might be made against him.

59. In answer, Mr Hardy told me that, in a number of instances referred to above, he was later proved vindicated in his actions although he was unable to take me to any evidence to substantiate that rebuttal of the claims made against him.

60. Mr Hardy does not dispute that there are outstanding costs orders but says that none of the parties are presently seeking to enforce their orders against him as the claims are subject to appeals. There was no evidence before me in that respect.

61. He accepts that the property in which he resides is not owed by him but he claims that the property is held by a Lichtenstein trust as part of a settlement

entered into with HMRC. His explanation was difficult to follow and he did not take me to any evidence which supported his claims.

62. Mr Brockman referred me to paragraph 3.4.15 of the White Book 2020:

> "The cases suggest two distinct categories of such misuse of process: [1] the achievement of a collateral advantage beyond the scope of the action; and [2] the conduct of the proceedings themselves (including the initiation of the claim itself) is not so as to vindicate a right but rather in a manner designed to cause the defendant problems of expense, harassment, commercial prejudice or the like beyond those ordinarily encountered in the course of properly conducted litigation. Only in the most clear and obvious case would it be appropriate upon preliminary application to strike out proceedings as an abuse of process so as to prevent a plaintiff from bringing an apparently proper cause of action to trial. At the interlocutory stage, the test is an objective one."

63. Mr Brockman also referred me to the decision in Michael Wilson & Partners Ltd v Sinclair [2017] EWCA Civ 3 whether court held that, in deciding whether it should exercise its discretion to strike out a claim the court will:

> "… take into account the private and public interests involved, and will focus on the crucial question: whether in all the circumstances a party is abusing or misusing the courts process"

Conclusion

64. I consider that the s.212 Application should also be struck out pursuant to CPR 3.4(2)(b) on the basis that the pursuit of the claim is an abuse of the court process for the following reasons.

65. First, it is clear from the above litigation summary that, over many years, Mr Hardy has been willing to litigate on many fronts against those who cross him whether or not his position is justified.

66. Secondly, in his dispute with Mr Nicholson he has proved himself willing to take whatever steps may be necessary to damage the reputation of Mr Nicholson and his partners.

67. Thirdly, Mr Hardy has shown scant regard to the court process in these proceedings. Notwithstanding that he is a litigant in person he has substantial experience of the court process. However, his approach before me has been to include hundreds of pages of material to which he has not then referred. His submissions before me comprised principally of assertions without any supporting evidence, or at least evidence which he has considered fit to show me.

68. Fourthly, whilst I cannot determine whether, as Mr Brockman submits, Mr Hardy has made himself bombproof, it is not disputed that he has engaged in

substantial litigation, had adverse costs orders made against him and which remain outstanding. Mr Brockman's submission that he has played the system is a fair criticism.

69. Fifthly, for the reasons given above, it is clear that the s.212 Application is totally without merit.

70. Having regard to the above points, I am satisfied that the s.212 Application is yet another step in his campaign and that it is an abuse of the court process.

Summary judgment

71. Strictly, I do not need to consider the application for summary judgment given my conclusions above. However, I set out my conclusions briefly.

72. Mr Brockman referred me to the applicable principles set out by Lewison J in Easyair Ltd v Opal Telecom Ltd [2009] EWHC 339 (Ch) and approved by the Court of Appeal in AC Ward & Sons Ltd v Catlin (Five) Ltd [2010] Lloyds Rep IR 301. For brevity I do not propose to set out those principles in detail but simply emphasise that the court must consider whether a party has a "realistic" as opposed to a "fanciful" prospect of success.

73. Had I not considered that the s.212 Application should be struck out as indicated above I would have granted summary judgment on the basis that the application did not have a realistic prospect of success for the following reasons.

74. First, the Liquidator has no duty to share his legal advice with Mr Hardy.

75. Secondly, his decision not to pursue the alleged potential claims further was a commercial decision that he was entitled to take. It would only amount to a breach of duty if it could be asserted that the Liquidator had:

> "…made an error which a reasonably skilled and careful insolvency practitioner would not have made" – see re-Charnley Davies Ltd (No 2) [1999] BCC 605

76. The evidence before me fell well short of making good such a case. From the very limited material to which I was taken, it seemed clear that the claims were anything but "simple".

77. Thirdly, in circumstances where a liquidator has no funding to pursue further investigations, he is under no obligation or duty to commit further resources to a claim in which neither he nor his legal advisers have any confidence.

Outcome

78. The s. 212 Application is struck out pursuant to CPR 3.4(2)(a) and (b). Were it necessary, I would alternatively have granted summary judgment in favour of

Mr Nicholson on the basis that the s.212 Application had no realistic prospect of success.