Case No: BR-2022-000130
Neutral Citation Number [2024] EWHC 1188 (Ch D)

IN THE HIGH COURT OF JUSTICE
CHANCERY DIVISION
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
COMPANIES COURT

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

Date: 17 May 2024

Before:

SAIRA SALIMI
(sitting as a Deputy High Court Judge)

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Between:

(1) Mr Adrian Hyde **(2) Mr Richard Toone** **(as Trustees in Bankruptcy of the First Respondent)**	**Applicants**
- and -	
(1) Mr Myck Djurberg **(AKA Salvad'Eor Priost, Salvador Priost and Salvador Basilio Vieira Prioste)** **(2) Lord Dovydas Silickas Djurberg** **(AKA Dovydas Djurberg and David Djurberg)** **(3) Mafu Contractors Limited** **(4) Ms Maria de los Angeles de Leon Toledo** **(5) Mr Peter Robert William Jarvis** **(6) Ans Peries** **(AKA Anselm Peries, Anslem Peries and Anselem Peries)**	**Respondents**

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Jessica Powers (instructed by **Keidan Harrison LLP**) for the **Applicants**
The Second Respondent appeared in person**. The First, Third, Fourth, Fifth and Sixth Respondents** did not appear and were unrepresented

Hearing dates: 23-24 April 2024

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Approved Judgment

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SAIRA SALIMI :

1. This is an application by the trustees in bankruptcy of the First Respondent. It concerns a payment of £217,990.71 (the "Settlement Payment") made under a Settlement Agreement and Release (the Settlement Agreement") between the First and Second Respondents and Thames Properties (Hampton) Ltd ("Thames Properties"), which the Applicants say is after-acquired property of a bankrupt and therefore became property of the trustees in bankruptcy on the date of payment. The Respondents deny that claim.

The issues

2. I gratefully adopt the essentials of the Applicants' summary of the issues in this case. They are as follows:

   i) Was the Settlement Payment property acquired by or devolving upon the First Respondent after he was made bankrupt?

      a) If not, did the First and Second Respondents enter into a transaction pursuant to which it was agreed that the Settlement Payment would be paid to and owned beneficially by the Second Respondent, and that the First Respondent would give up any interest in the Settlement Payment?

      b) If so:

         i) Did the First Respondent provide any consideration for the First Respondent relinquishing his interest in the Settlement Payment?

         ii) If so, was that consideration worth significantly less than that received by the Second Respondent?

   ii) Did the First Respondent and the Second Respondent enter into the transaction for the purpose of putting the Settlement Payment beyond the reach of the First Respondent's creditors, or otherwise prejudicing the interests of his creditors? Should the Court set aside that transaction pursuant to s. 423 IA 1986 and thereby restore the First Respondent's interest in the Settlement Payment?

iii) If so (or following the granting of any relief granted pursuant to s. 423 of the Insolvency Act 1986), have the Applicants validly claimed the Settlement Payment pursuant to s. 307 of the Insolvency Act 1986?

iv) Did any of the Respondents receive the Settlement Payment, or part thereof, in good faith, for value and without notice of the First Respondent's bankruptcy?

v) What, if any, relief should be granted by reason of the dissipation of the Settlement Payment?

Procedural matters: remote attendance at trial

3. By order dated 22 April 2024 I granted permission for the parties to attend by video link. The First Applicant was in the British Virgin Islands for professional reasons. The Second Respondent stated in correspondence with the court that he was unable to attend in person for financial and practical reasons.

4. The First Respondent is currently serving a prison sentence. He was aware of the trial dates before his imprisonment. The Applicants' solicitors located the First Respondent in HMP Wormwood Scrubs: correspondence with the Offender Management Unit there confirmed on 15 April 2024 that he had made no request to appear.

5. The trial date was fixed on 17 March 2023, by order of Chief ICC Judge Briggs. It appears that all the documents in these proceedings have been properly served on the Respondents. The Respondents did not indicate when the hearing dates were fixed that they were unavailable in April 2024, and no application was made by any party for an adjournment of the hearing.

6. The Third, Fourth, Fifth and Sixth Respondents did not attend the hearing in person or by video link and were not represented.

Procedural matters: admissibility of witness evidence

7. In the light of the failure of the First, Third, Fourth and Fifth Respondents to attend the trial, the Applicants invited me to disregard their witness statements pursuant to CPR r.32.5.

8. The Second Respondent indicated informally in correspondence with the court that he wished the witness statements to be admitted as hearsay evidence, but no formal application was made under CPR r.33 to admit them.

9. The First Respondent's credibility is fundamental to the outcome of these proceedings, and the Applicants would have wished to test the assertions in his witness statement in cross-examination. It would therefore have been inappropriate to admit his witness statement in his absence.

10. The witness statement of the Third Respondent, Mafu Contractors Limited, dated 27 January 2023, was not compliant with CPR PD 22 para 3.1. The statement of truth purported to be signed by the company itself rather than by a person holding a senior position in the company. It could not therefore be admitted as evidence.

11. The witness statements of the Fourth and Fifth Respondents were completed in the proper form. However, the Applicants submitted that the court could not be satisfied, without an opportunity for cross-examination, that the witness statements and other documents in the case had been written by the people whose documents they purported to be, and that there was at least a possibility that some or all of those documents had been written by the First Respondent. They also submitted that the statements were inconsistent with each other and with earlier documents purporting to be filed by the same witnesses, and that in the absence of any opportunity to cross-examine the witnesses on those inconsistencies the statements should not be admitted as evidence.

12. In support of the argument that the witness statements might not have been written by the Fourth and Fifth Respondents, the Applicants drew my attention to the similarities between the applications of the Fourth Respondent and the Fifth Respondent for relief from the proprietary freezing orders made against them. In each case, the application is written in the third person with some linguistic idiosyncrasies (e.g. the Fourth Respondent's application states "*A has been a client of R since 2016 with a track record that clearly define good conduct*", while the Fifth Respondent's application states "*A track record going back 28 years with the bank clearly defines the conduct of A where he used the bank for all his day to day financial needs and commitments*"). The witness statements of the Fourth and Fifth Respondents also both contain very similar, and similarly idiosyncratic, language, as does the purported witness statement of the Third Respondent. For example, the Third Respondent's Second Witness Statement says, "*Suggestions that because of Rs relation, R3 must have known the status of R1 are refuted*." The Fifth Respondent's Third Witness statement says, at paragraph 9, *"... it is easier and convenient to affirm that the respondents knowing each other by whatever means therefore they ought to have known of RI financial status, that is incorrect and refuted*." The Fourth Respondent's Third Witness Statement says, "*It is refuted that R4 UK or foreign companies and or business have any connections of any kind with R1*."

13. The overall stylistic impression is that all the statements are likely to have been written by the same fluent, but non-native, English speaker. The Applicants drew my attention to the possibility that they were all written by the First Respondent, noting that the style is similar to that of his affidavit of 8 August 2022 sworn in accordance with the terms of the Freezing Order made by Bacon J on 28 July 2022. The Applicants also noted that the Fourth Respondent's statement is in quite fluent English, but that the Order of Deputy ICC Judge Addy KC on 23 February 2023, ordering the re-listing of her application for relief against Nationwide in respect of the proprietary freezing order before a High Court Judge, and the Order of HHJ Keyser on 16 March 2023, refusing that application, record that the First Respondent acted as her interpreter in those proceedings. The Applicants accepted that written and oral fluency may differ and this was not conclusive, but drew my attention to it as a further possible indicator that the Fourth Respondent was not the author of her own witness statement.

14. The Applicants also drew attention to inconsistencies between documents which should be tested in cross-examination. For example, in the Fourth Respondent's Third Witness Statement, it is stated that the Fourth Respondent became aware of the First Respondent's bankruptcy in August 2022, whereas the Fourth Respondent's

application for relief against Nationwide dated 5 December 2022 states that she asked the bank for information about the freezing order on 22 September 2022, on her return from Chile, and it was after that that she "*was then informed by R2 and R1 that they were being victim of a conspiracy set up by others with the aim to victimise R1*". Similarly, in the Fifth Respondent's application to discharge the proprietary freezing order made against him purports to give evidence in relation to the Settlement Agreement, as follows: "*Around July 2022, R2 appointed a solicitor to help him with a proposal offer of a settlement out of court from a third party if R2 agreed to vacate the property at short notice. A sum of over £200K is alleged and agreed. Agreements were signed by the parties but only adhered by R2. The other party however was approached by A's who sought to have a go to extra the moneys from R1 under false allegations*." However, paragraph 6 of the Third Witness Statement of the Fifth Respondent states, "*I have not been privy to any discussions between RI and R2 in relation to any settlements*."

15. There are also other oddities to which my attention was drawn, such as that between 15 September 2021 and 11 October 2023 both the Fourth Respondent and the Fifth Respondent were registered as directors of the Third Respondent, yet neither of their purported witness statements makes any reference to their directorships, even though payments were made to both of them in the relevant period from an account in the name of the Third Respondent. This is another matter that the Applicants would have wished to probe in cross-examination.

16. The Sixth Respondent did not file a witness statement.

17. The Applicants noted that many of the same concerns that they had raised in relation to the witness statements of the other Respondents also applied to the witness statement of the Second Respondent, and I return to this point in considering the Second Respondent's evidence.

18. I am satisfied that there is sufficient doubt as to both the authorship and the factual accuracy of the witness statements of the Fourth and Fifth Respondents that it would be inappropriate to admit them as evidence in these proceedings without the opportunity for the Applicants to cross-examine the Fourth and Fifth Respondents.

19. It would have been open to me to admit the witness statements of the absent Respondents (other than the witness statement of the Third Respondent, which was not properly signed by an authorised officer) but treat them as hearsay evidence in accordance with CPR r.33. The Second Respondent urged this course of action on me on the ground that the views of the other Respondents would otherwise not be taken into account given their absence from the hearing. I record that, if I had done so, I would have given their witness statements virtually no weight as evidence in the light of the concerns raised by the Applicants.

Capacity of the First Respondent

20. I note that in the possession proceedings concerning his residential property the First Respondent was held to be lacking capacity to conduct litigation, and the Official Solicitor was appointed to act on his behalf in those proceedings. However, there has been no finding of lack of capacity in these proceedings. Although he did not attend

the hearing before me, he has submitted evidence and attended hearings at earlier stages in these proceedings.

Factual background

21. The essential facts in this application are not in dispute.

22. The First Respondent lived at the property known as The Chalet in Hampton Court Road, East Molesey ("The Chalet"), and was the registered proprietor of the property. The Second Respondent, who is said to be the son of the First Respondent and changed his surname by deed poll in 2021 to match that of the First Respondent, also lived at The Chalet. Receivers were appointed over The Chalet by a secured lender, and the administrators of the secured lender instituted proceedings for possession on 20 March 2020.

23. The First Respondent was adjudged bankrupt by order of the Central London County Court on 20 September 2021. The Applicants were jointly appointed as the First Respondent's trustees in bankruptcy on 30 September 2021.

24. The Chalet was sold to Thames Properties on 11 February 2022. The First and Second Respondents were in occupation at the date of sale and continued in occupation afterwards.

25. In order to obtain vacant possession of The Chalet, Thames Properties negotiated the Settlement Agreement, to which both the First Respondent and the Second Respondent were parties. The agreement was executed on 18 July 2022. Recital C of the Settlement Agreement provides as follows:

> "*The parties have settled their differences and have agreed terms for the full and final settlement of the Claim in return for the Occupiers relinquishing all rights which they purport to have over the Property and to hand over possession of the Property to Party A, and the parties wish to record those terms of settlement, on a binding basis, in this agreement.*"

26. The Settlement Agreement provides for the payment of the Settlement Payment to Laurence Stephens, the solicitors acting for the Second Respondent, on condition that the First Respondent and the Second Respondent give full vacant possession of The Chalet. The Settlement Agreement is silent as to the beneficial ownership of the payment.

27. Laurence Stephens transferred the Settlement Payment to an account held at Barclays Bank in the name of the Second Respondent ("the Barclays account") on 22 July 2022. On the same day, payments of £1 were made from the Barclays account to an account in the name of the Third Respondent and an account in the name of the Fourth Respondent. A payment of £1 was made to the Fifth Respondent on 27 July 2022.

28. Payments were made from the Barclays account to the account in the name of the Third Respondent between 22 and 27 July totalling £145,000. Payments were made to the Fourth Respondent between 22 and 27 July totalling £25,000. A payment of

£20,000 was made to the Fifth Respondent on 27 July. Other payments were made to third parties who are not party to these proceedings.

29. By 29 July 2022, virtually the whole of the Settlement Payment had been paid out of the Barclays account. The Third, Fourth and Fifth Respondents made further onward payments, including payments to the Sixth Respondent. I give more detail of those payments later in this judgment. At this point, I note merely that the Settlement Payment was almost entirely dissipated within weeks of being paid into the Barclays account.

30. The Applicants were informed on 22 July 2022, by a director of Thames Properties, that Thames Properties had entered into a settlement with the First and Second Respondents, and that Thames Properties had made the Settlement Payment to Laurence Stephens.

31. On the same day, the Applicants wrote to Laurence Stephens by email seeking an undertaking "that the funds be held to order pending determination of ownership". On 27 July 2022, Laurence Stephens wrote back to the Applicants to confirm that the funds had been paid out before receipt of their message.

32. The Applicants then acted promptly to serve a notice by email on the First Respondent under s.307 of the Insolvency Act 1986 on 27 July 2022, putting him on notice that they considered the sum of £219,100 to be "after-acquired property" for the purposes of that section, and therefore part of his bankruptcy estate. On the same day they also served a notice by email on the Second Respondent, under rule 10.126 of the Insolvency (England and Wales) Rules 2016, putting him on notice that they claimed the sum of £219,100 under s.307 of the Insolvency Act 1986 as part of the bankruptcy estate of the First Respondent. (The Applicants did not at that date have accurate information as to the precise sum, but in my view this is immaterial and has no effect on the validity of the notices, which in any event has not been challenged in these proceedings.) Service by email was authorised retrospectively by order of Bacon J on 28 July 2022.

33. On 28 July 2022, the Applicants made an urgent *ex parte* application, without notice, against the First and Second Respondents for a proprietary freezing injunction, and against Laurence Stephens for relief under s.366 of the Insolvency Act 1986. The relief sought was granted by Bacon J on that date.

34. On 29 July 2022, in compliance with the order of Bacon J, Laurence Stephens provided a copy of the Settlement Agreement to the Applicants and confirmed the details of the Barclays account.

35. On 8 August 2022, the First and Second Respondents served on the Applicants two affidavits sworn on that date, in purported compliance with para. 8 of the proprietary freezing injunction made by Bacon J. In his affidavit, the First Respondent stated that the Settlement Payment "*was used to help repay family members and relatives that have helped us financially over the past three years*", and, specifically, that part of the Settlement Payment had been paid out as follows:

    i) £130,000 to Mr Matas Saltis;

ii) £50,000 to the Fourth Respondent;

iii) £20,000 to the Fifth Respondent; and

iv) £10,000 to another account of the Second Respondent.

36. These figures were not wholly accurate, and no payments were made to Mr Matas Saltis from the Second Respondent's account: payments were made to the Third Respondent (of which Mr Saltis was at the relevant time a director and the sole shareholder). However, in the light of the information provided in the First Respondent's affidavit, the Applicants made a further application on 9 August 2022 to extend the proprietary freezing injunction to the Third, Fourth and Fifth Respondents. The relief sought was granted by Michael Green J on 11 August 2022.

37. The tracing exercise carried out by the Applicants identified that part of the Settlement Payment had been paid to the Sixth Respondent. The Applicants made a further application on 7 September 2022 for the extension of the proprietary freezing order to the Sixth Respondent. Relief was granted by Meade J on 8 September 2022.

38. By order of Miles J on 29 September 2022 the proprietary freezing injunctions against all the Respondents were continued "until further order". I note, therefore, that they continue in effect as at the date of this judgment and beyond.

39. The tracing exercise carried out by the Applicants also revealed that on 9 August 2023 the Third Respondent entered into a tenancy agreement for one year of The Old Vicarage, Queen Street, Castle Headingham, purportedly for occupation by the Fourth Respondent. Payments for the whole year's rent were made in advance from an account in the name of the Fourth Respondent. It was accepted by the Second Respondent in cross-examination that The Old Vicarage was occupied by the First and Second Respondents. The tenancy deposit of £8,769.23 was held by Savills Ltd as agents for the landlord. On 6 October 2023, Savills paid it over to the Applicants' solicitors pending determination of this application.

The Applicant's case

40. The Applicants' primary case is that the Settlement Payment was a payment of "after-acquired property" during the First Respondent's bankruptcy. Section 307 of the Insolvency Act 1986, so far as relevant, provides that:

> *"(1) Subject to this section and section 309, the trustee may by notice in writing claim for the bankrupt's estate any property which has been acquired by, or has devolved upon, the bankrupt since the commencement of the bankruptcy.*
>
> *(2) ...*
>
> *(3) Subject to subsections (4) and (4A), upon the service on the bankrupt of a notice under this section the property to which the notice relates shall vest in the trustee as part of the bankrupt's estate; and the trustee's title to that property has relation back to the time at which the property was acquired by, or devolved upon, the bankrupt.*

> *(4) Where, whether before or after service on the bankrupt of a notice under this section—*
>
> *(a) a person acquires property in good faith, for value and without notice of the bankruptcy*
>
> *the trustee is not in respect of that property entitled by virtue of this section to any remedy against that person, or any person whose title to any property derives from that person."*

41. By virtue of s.309(1) of the Insolvency Act 1986, a notice under s.307 must be served on the bankrupt within 42 days of it coming to the knowledge of the trustees in bankruptcy that the property has been acquired by, or devolved upon, the bankrupt. In this case notice was served on the First Respondent within a week of the Settlement Payment coming to the Applicants' attention. There is no submission on behalf of any of the Respondents that the notice was not validly served.

42. The effect of service of a valid s.307 notice is that property vests in the trustees in bankruptcy with effect from the date on which the property was acquired by, or devolved upon, the bankrupt.

43. If, in contravention of the requirements of rule 10.125 of the Insolvency (England and Wales) Rules 2016, the bankrupt has disposed of after-acquired property without notice to the trustees in bankruptcy, the trustees may serve a notice under rule 10.126 of those rules on the recipient of the property, claiming it as part of the bankruptcy estate. The Applicants served such a notice on the Second Respondent on the same date as the service of the s.307 notice on the First Respondent, and again, there is no suggestion that it was not validly served.

44. Further or in the alternative, the Applicants claim that the payment of the Settlement Payment to an account in the name of the Second Respondent was a transaction falling within s.423 of the Insolvency Act 1986. That section provides as follows:

(1) This section relates to transactions entered into at an undervalue; and a person enters into such a transaction with another person if—

> *a) he makes a gift to the other person or he otherwise enters into a transaction with the other on terms that provide for him to receive no consideration;*
>
> *b) he enters into a transaction with the other in consideration of marriage or the formation of a civil partnership; or*
>
> *c) he enters into a transaction with the other for a consideration the value of which, in money or money's worth, is significantly less than the value, in money or money's worth, of the consideration provided by himself.*

(2) Where a person has entered into such a transaction, the court may, if satisfied under the next subsection, make such order as it thinks fit for—

(a) restoring the position to what it would have been if the transaction had not been entered into, and

(b) protecting the interests of persons who are victims of the transaction.

45. Trustees in bankruptcy have standing to make an application for an order under s.423 by virtue of s.424(1) of the Insolvency Act 1986.

46. The Applicants' case is that the beneficial interest in the Settlement Payment belonged in its entirety to the First Respondent, and that payment was made to an account in the name of the Second Respondent for the purpose of concealing the funds from the Applicants. The Second Respondent therefore received the money as a bare trustee for the First Respondent.

47. It is for the Applicants to show that the property in question was "after-acquired property" of the bankrupt. The Applicants pointed to a number of matters which indicated that the First Respondent was the beneficial owner of the Settlement Payment. These were as follows.

Beneficial ownership of The Chalet

48. The First Respondent was the registered proprietor and sole beneficial owner of The Chalet, and the possession proceedings brought by Thames Properties were brought against him alone. The Second Respondent lived at The Chalet, but acknowledged in cross-examination that he was not registered as its proprietor and had no legal or beneficial interest in it. He was unsure how long he had lived at the property but thought that it was over three years.

Use of funds to pay First Respondent's rent

49. Part of the settlement payment – approximately £60,000 – was used to pay a year's rent in advance for a tenancy of the Old Vicarage. The tenancy agreement was made between Mr John Houghton as landlord and the Third Respondent as tenant, and names the Fourth Respondent as a permitted occupier. The First and Second Respondents are not named anywhere in it, but the Second Respondent accepted in cross-examination that both of them lived at the property during the period of the tenancy agreement. He also accepted that the Fourth Respondent, if she visited at all, did so very infrequently as she was in the United Kingdom "once or twice a year".

50. In correspondence with Laurence Stephens about the Settlement Payment, the Second Respondent initially said "*I wish the sum of £130K to remain with on client account to be used to pay for the down deposit and rent of the new property*", and asked for specified lump sums to be paid to the Third Respondent, the Fourth Respondent and his own account. The firm informed the Second Respondent that they were unable to make payments to third parties, and agreement was reached that the whole of the Settlement Payment would be paid to the Barclays account. It was therefore clear at the time of the payment that the intention was to use part of the funds to pay the rent of the Old Vicarage.

Speedy dissipation of the Settlement Payment

51. As I previously noted, the sum of £217,990.71 was paid into the Barclays account on 22 July 2022, and within a matter of days virtually the whole sum had been dissipated to other accounts. A similar pattern is observable with the payments into the accounts in the names of the Third, Fourth, Fifth and Sixth Respondents, as follows:

    i) Payments totalling £145,000 were made to the Third Respondent between 22 July and 29 July 2022. Between 29 July and 2 August 2022, the Third Respondent made payments totalling £140,000 to a Nationwide account in the name of the Fourth Respondent.

    ii) A number of payments were made from that Nationwide account very shortly after receiving the funds. Payment to Savills of a total of £66,189.23 by way of deposit and rent for the tenancy of the Old Vicarage was made from this account (not from the Third Respondent's account, even though the tenancy agreement was notionally in the Third Respondent's name). Other payments included a total of £20,500 to the Fifth Respondent and £30,000 to the Sixth Respondent, as well as a transfer of £23,000 to another Nationwide account in the name of the Fourth Respondent. A further payment of £10,000 was made to the Fifth Respondent from that other account. All of these payments were made within less than two weeks, between 23 July 2022 and 3 August 2022.

    iii) £20,000 was transferred from one NatWest account in the name of the Fifth Respondent to another NatWest account in the name of the Fifth Respondent. Sums totalling £9,650 were transferred into an account at Chase, also in the name of the Fifth Respondent. £10,000 was transferred to an account in the name of the Sixth Respondent on 10 and 11 August 2022, and a further £10,000 was transferred to the Sixth Respondent from the Chase account.

    iv) The Sixth Respondent paid a total of £24,961 to "Esker Mutalibov" or "Eskerkhan Mutalibo" between 5 August and 5 September 2022.

52. None of the Respondents have been able to provide an adequate or plausible explanation for the payments in and out of their accounts of such large sums in such a short space of time. The Sixth Respondent admitted in a telephone conversation with Mr Kit Smith, a Managing Associate at the Applicants' solicitors, that he did not know the Fourth or Fifth Respondents, and was unable to account for their payment of large sums to his account. He also provided no explanation of the payments on to Mr Mutalibov / Mutalibo. Mr Smith's evidence of the conversation with the Sixth Respondent was not challenged.

53. The Applicants state that part of the Settlement Payment, totalling approximately £53,000, is currently frozen in the Respondents' various bank accounts following the making of the proprietary freezing orders. The balance of the Settlement Payment – over £150,000 – was dissipated from the Respondents' accounts within weeks, which is very surprising for such a large sum.

Bank statements

54. The Applicants also drew my attention to some peculiarities in the Respondents' bank statements. The Second Respondent's bank account at NatWest received payments clearly meant for the First Respondent, such as a payment for "M Djurberg Car Repair" on 4 March 2021 and "M Djurberg Court Fee Refund" on 3 August 2021, which suggests that at the very least the Second Respondent was allowing his account to be used for the benefit of the First Respondent, and possibly that the First Respondent was in control of the account.

55. The Second Respondent asserted for the first time in his skeleton argument, in relation to two Halifax account opening confirmations, that "*It was I who had helped open the account for Maria [i.e. the Fourth Respondent] and indeed gave The Chalet as the customer address as when she is in the UK she stays at The Chalet.*" A similar admission was made in the skeleton argument in relation to an account in the name of Mr Matas Saltis, a director and the sole shareholder of the Third Respondent. The Second Respondent had not previously mentioned this in his evidence in these proceedings.

56. The Fourth Respondent, by her own account, was seldom in the United Kingdom, and was in South America at the time when the Settlement Payment was made, but the Nationwide bank account in her name shows a pattern of spending at that time in and around south-west London consistent with living at The Chalet. The Second Respondent asserted that she must have been in the United Kingdom but could provide no evidence to support the assertion. The Applicants argued, in my view persuasively, that the pattern of spending at a time when the Fourth Respondent was unlikely to have been in the country, combined with the account address being The Chalet, indicated that the account was not being managed by the Fourth Respondent but by either the First or Second Respondent. A further small indicator that this is the case is that on 19 November 2021 a payment was made from the account to "Deed Poll Office Warrington". The only person connected to these proceedings to have changed their name by deed poll is the Second Respondent.

57. The Applicants also drew my attention to the strange role of the Third Respondent. The Third Respondent purports to be in business to support construction contracts. It was incorporated on 7 October 2020. However, at the relevant time there was no obviously identifiable business activity in the Third Respondent's bank account, and the Third Respondent was described as "dormant" in its accounts for the year ended 31 October 2021. Apart from the payments in and out relating to the Settlement Payment, the Third Respondent's bank account appears to have been used only for small personal purchases such as lottery tickets. I have already noted that the Fourth and Fifth Respondents were directors at the relevant time but made no reference to that in these proceedings. The sole shareholder of the Third Respondent was Mr Matas Saltis, for whom a bank account was opened from the same IP address, and using the same password, as the account for the Fourth Respondent.

The conduct of the First Respondent

58. The First Respondent has a track record in the bankruptcy proceedings of failure to co-operate with the Applicants and attempts to conceal funds. The Applicants referred me to a number of previous civil cases that were critical of the First Respondent and

indicated that he was not a reliable or truthful witness. The Second Respondent urged me not to have regard to those earlier cases: in fact I did not need to do so as there was quite sufficient evidence of the First Respondent's unreliability and propensity to untruthfulness in the history of these proceedings. In particular I take note of the following:

i) Attempts to assert that property at The Chalet belonged to other people and to sell property on even after the Applicants had identified items which should not be removed from the property. There is a sequence of emails purporting to be from Mr Matas Saltis about the dog found at the property, and about works of art that are said to have been lent to the First Respondent and therefore not to be his property. That correspondence refers to the writer's bankruptcy: Mr Saltis was not bankrupt and the natural inference is that the First Respondent was the true author. The Second Respondent also listed a dining table from The Chalet on Gumtree for £10,000 after the bankruptcy order was made: he claims, implausibly, to have done so to entertain himself and see how much someone might be willing to pay. This claim was first advanced in his skeleton argument, had not been previously mentioned and is not credible in all the circumstances of this case: on the balance of probabilities I am persuaded that the Second Respondent attempted to sell it on behalf of the First Respondent.

ii) The First Respondent's lack of co-operation with the Applicants was such that the Applicants had to obtain a search and seizure order to be executed at The Chalet in May 2022. Following that order, a number of items, such as a large conifer in a pot, were removed from the property in spite of having been "tagged" for retention by the Applicants. I was referred to video evidence of the Second Respondent removing the conifer from the premises, and this must have been done at least with the knowledge of the First Respondent, if not on his instructions.

iii) It was clear from the email discussions between the First Respondent and Greg Collier, a director of Thames Properties, that at the time when the Settlement Payment was being negotiated Thames Properties were well aware of the First Respondent's bankruptcy and that matters were being arranged in order to ensure that the Applicants did not become aware of the payment. The First Respondent states in an email dated 3 June 2022 "*Also we do not wish to alert my official solicitor acting as litigant friend of our discussions, these are strictly confidential between us*." (This is a reference to the determination in the possession proceedings that he lacked capacity and therefore the Official Solicitor should be appointed to protect his interests.) Mr Collier also states expressly in an email dated 6 June 2022 "*You are bankrupt and this pre-dates our acquisition of the boatyard and chalet*". The implication is that the settlement negotiations took the form that they did in order to avoid the legal consequences of the First Respondent having been declared bankrupt.

iv) Aggressive behaviour towards the Applicants and others, including veiled and not-so-veiled threats to a number of individuals. In correspondence with the Applicants and their solicitors the First Respondent repeatedly threatened legal action in response to their lawful actions in the bankruptcy proceedings. The Sixth Respondent said that the First Respondent would "*put a gun to my head*", according to Mr Smith's uncontested evidence. The email exchanges

disclosed by the Respondents between the First Respondent and Mr Greg Collier of Thames Properties in July 2022 included a statement that "I *have security in place to address such events if this is the way you will threaten me and you do know that i know people*". Mr Collier challenged that, and the First Respondent denied that any threat was intended.

v) The First Respondent repeatedly threatened the Applicants with libel and other proceedings and was abusive in correspondence with their firm and their solicitors.

vi) The Order of ICC Judge Mullen issued on 16 September 2022 records the First Respondent's non-compliance with his obligations under the Insolvency Act 1986 and provides for his discharge from bankruptcy to be suspended indefinitely.

59. I note for completeness that the Applicants accept that many of the payments to third parties, such as the payments of rent to Mr Houghton via Savills Ltd, were received in good faith, for value, and without notice of the bankruptcy, in accordance with s.307(4) of the Insolvency Act 1986, and therefore no claim lies against those third parties for those funds.

60. In the event that I am not satisfied that the Settlement Payment is "after-acquired property" for the purposes of s.307 of the Insolvency Act 1986, the Applicants invite me to find that it was a transaction for the purposes of defrauding creditors within the meaning of s.423 of the Insolvency Act 1986. In order for that section to apply, the Applicants must show that a transaction was made at an undervalue (which would include a gift, or a transaction for significantly less consideration than the property was worth) for the purpose of putting property beyond the reach of a person who might make a claim on it. The Applicants referred me to *Lemos v Church Bay Trust Company Limited* [2023] EWHC 2384 (Ch) as authority for the proposition that putting the property out of reach of such a person, or otherwise prejudicing the interests of such a person, could be one of a number of purposes and need not be the sole purpose of the transaction.

The Second Respondent's case

61. The Second Respondent's position was that he was beneficially entitled to the whole of the Settlement Payment, and that he was entitled to it as compensation and was entitled to dispose of it to the other Respondents as he chose. No evidence was advanced in support of this proposition other than the fact that he was party to the Settlement Agreement and was living at The Chalet at the relevant time. It was common ground that he was not the registered proprietor of The Chalet and he had made no financial contribution to it. He was unable to explain convincingly why he had made any of the payments to the Third, Fourth and Fifth Respondent: as he acknowledged, there was no evidence to support his claim that the payments were in repayment of loans or by way of investment in the Third Respondent.

62. He did not make any submissions on the basis that he was entitled to part only of the Settlement Payment or that the Settlement Payment, or part of it, was a payment made to him on behalf of the First Respondent in good faith, for value and without notice. (He appeared to be arguing for the latter by implication, when he asserted that he had

no knowledge of the First Respondent's bankruptcy until after the events relating to the Settlement Payment, and I deal with this point below.)

63. He was also wholly unable to explain why the payment for the tenancy of The Old Vicarage, in which he and the First Respondent lived between August 2022 and August 2023, was made via the Third and Fourth Respondents' accounts, or why the tenancy agreement provided for the Third Respondent to be the tenant.

64. His evidence concerning the transfers to the Third, Fourth and Fifth Respondents from the Barclays account was not credible. There were references variously to repayment of loans, and to investment in the Third Respondent. However, neither loan documentation nor shares nor other evidence of investment were produced in evidence. The Second Respondent did not provide any information at all about the purported loans in his written or oral evidence.

65. There are features of the Second Respondent's witness statement that suggest that it was written by, or at least under the direction of, the First Respondent. For example, in cross-examination it was clear that the Second Respondent did not know the meaning of "calumny" or "Machiavellian", both words that appear in his written evidence and also in the First Respondent's witness statement dated 28 February 2023.

66. He claimed to be unaware of the First Respondent's bankruptcy at the time when the Settlement Payment was paid to his bank account. I do not find this credible. In particular, he accepted that he was present at The Chalet on 14 May 2022, when the warrant of search and seizure authorised by the order of ICC Judge Jones dated 6 and 9 May 2022 was executed. The order provided that Stewart Perry of Fieldfisher LLP be appointed as an independent solicitor, and for him "*to attend the premises listed in the First Schedule to this Order for the execution of the warrant and, so that prior to such execution (unless the same is impracticable), the independent solicitor shall inform those at the relevant premises of the terms of this Order, and of their rights and obligations pursuant to the terms of this Order, including the right to seek legal advice and the right to apply to the Court to set aside or vary this Order*." There was no suggestion by any of the Respondents during these proceedings that Mr Perry did not do as the Order required him to do, save for a suggestion in cross-examination that although Mr Perry attended the premises he did not speak to the Second Respondent. I reject that suggestion and find that the Second Respondent was aware of the First Respondent's bankruptcy no later than May 2022, two months before the Settlement Payment was made, and that it is likely that he was aware of it earlier than that.

67. Disclosure by the Respondents has been extremely late and selective. The material that has been disclosed, such as it is, does not support their assertions about the nature of the Settlement Payment: it tends to suggest that the payment to the Second Respondent was a ruse to avoid the Applicants becoming aware of it before the funds could be put beyond their reach.

68. I do not find it probable that the Second Respondent was ever intended to be the beneficial owner of the Settlement Payment or any part of it. It is clear from the evidence before me and from the material disclosed that the Second Respondent was not at any stage the directing mind in the negotiation of the Settlement Payment, or in the decisions that were subsequently made about the use of the money. His assertion

that he was beneficially entitled to it was wholly unsupported by any other evidence, and he was extremely vague about how his right to it was said to arise.

Conclusions on the issues

69. I find that the Applicants have demonstrated, on the balance of probabilities, that the Settlement Payment was after-acquired property of the First Respondent within the meaning of s.307 of the Insolvency Act 1986. I also find that they gave valid notice, well within the statutory time limit, of their claim under that section.

70. The Settlement Payment therefore vested in them, in accordance with that section, as the trustees in bankruptcy of the First Respondent on 22 July 2022.

71. None of the Respondents in these proceedings has shown that they were a purchaser for value in good faith and without notice and therefore protected by s.307(4) of the Insolvency Act 1986. It is highly likely that they knew of the First Respondent's bankruptcy at the relevant time, and I have found that the Second Respondent did know of it at the time when the Settlement Payment was made. However, even if they were unaware of it (and therefore received the money in good faith and without notice), there was no evidence that any of the Respondents provided value for the payment to them, and therefore s.307(4) of the Insolvency Act 1986 does not apply in relation to any of those payments.

72. In the light of those findings, I do not need to consider whether s.423 of the Insolvency Act 1986 applies to the payment to the Second Respondent.

73. As noted above, the freezing order made by Miles J continues in effect until further order. Applications relating to further relief and costs will be considered at a future hearing.