Neutral Citation Number: [2023] EWHC 2654 (Ch)

Case No: CH-2023-000093/PT-2023-000650

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND & WALES

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

Date: 25/10/2023

Before:

MR JUSTICE ADAM JOHNSON

- -

CHANCERY APPEALS
ON APPEAL FROM DEPUTY INSOLVENCY AND COMPANIES COURT JUDGE AGNELLO KC
Appeal CH-2023-000093

Between:

MORTGAGE FIVE ZERO LIMITED — **Appellant**

- and -

THE SECRETARY OF STATE FOR BUSINESS AND TRADE — **Respondent**

And between:

(1) THE SECRETARY OF STATE FOR BUSINESS AND TRADE
(2) THE OFFICIAL RECEIVER — **Applicants**

- and -

(1) MORTGAGE FIVE ZERO LIMITED
(2) JASON CAMPBELL — **Respondents**

PROPERTY TRUSTS AND PROBATE LIST (ChD)
Case PT-2023-000650

Between:

MORTGAGE FIVE ZERO LIMITED

Claimant

- and -

THE SECRETARY OF STATE FOR BUSINESS AND TRADE

Defendant

- -

Matthew Parfitt (instructed by **Howes Percival LLP**) for the **Secretary of State for Business and Trade and the Official Receiver**
Mortgage Five Zero Limited and Mr Jason Campbell did not attend and were not represented

Hearing dates: 20 October 2023
- -

Approved Judgment

This judgment was handed down remotely at 10.30am on Wednesday 25 October 2023 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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MR JUSTICE ADAM JOHNSON

Mr Justice Adam Johnson:

Introduction

1. This Judgment concerns a number of matters relevant to Mortgage Five Zero Limited ("*Mortgage Five Zero*" or "*the Company*"). The matters include resolving applications made in the name of the Company by its sole director and 50% shareholder, Mr Jason Campbell, as well as resolving other applications made against the Company and against Mr Campbell personally by the Secretary of State for Business and Trade ("*the SoS*") and the Official Receiver ("*the OR*").

The Winding-Up Order

2. On 4 April 2023, Deputy ICCJ Agnello made an Order winding-up Mortgage Five Zero on public interest grounds, on a Petition by the SoS (Case CR-2023-000613). Up until that time, Mortgage Five Zero operated a business providing non-regulated legal services to members of the public with mortgage problems. These services offered the tantalising prospect that mortgagors could escape their repayment obligations and moreover might have claims against mortgagee banks and building societies, on the basis that many mortgage deeds were routinely deficient and ineffective, for failure to comply with the requirements of s.2 of the Law of Property (Miscellaneous Provisions) Act 1989 ("*the 1989 Act*"). The deficiency was said to be that under s.2, a mortgage deed was required to be executed both by the mortgagor and the mortgagee, and not by the mortgagor customer alone.

The s.2 Argument

3. This unmeritorious argument is misconceived, because s.2 applies only to contracts for the future sale or disposition of interests in land, and not to documents such as deeds which actually create or transfer such interests. This point was authoritatively stated over 10 years ago by the then Master of the Rolls, Lord Neuberger (with whom Smith LJ and Elias LJ agreed), in Helden v. Strathmore Limited [2011] EWCA Civ. 542, [2011] 2 BCLC 665 at [27]-[28]. Lord Neuberger MR was clear and emphatic in Helden. He said:

> "*27. Mr Helden's case on section 2 is hopeless. It proceeds on a fundamental misunderstanding of the reach and purpose of that section, a misunderstanding, it is fair to say, which appears to be not uncommon. Section 2 is concerned with contracts for the creation or sale of legal estates or interests in land, not with documents which actually create or transfer such estates or interests. So a contract to transfer a freehold or a lease in the future, a contract to grant a lease in the future, or a contract for a mortgage in the future, are all within the reach of the section, provided, of course, the ultimate subject matter is land. However, an actual transfer, conveyance or assignment, an actual lease, or an actual mortgage are not within the scope of section 2 at all.*
>
> *28. As is spelt out in its opening words, section 2 is concerned with 'a contract for the sale or other disposition of an interest in*

> *land'. Its purpose is also clear from the fact that it replaced section 40 of the Law of Property Act 1925, and from the contents (and indeed the title) of the interesting and full Law Commission report which initiated it - Transfer of Land: Formalities for Contracts for sale etc. of Land (Law Com. No. 364). The section was directed to tightening up the formalities required for contracts for the creation or transfer of interests or estates in land and it was not concerned with documents which actually create or transfer legal estates or interests in land …*".

4. This unambiguous guidance has been followed in later cases including, most importantly for present purposes, the decision of HHJ Hodge QC (Sitting as a Judge of the High Court) in Shaun Campbell & Ors v. Chief Land Registrar [2022] EWHC 200 (Ch), in which claims made by several parties who appear to have been associated with Mortgage Five Zero, and who relied on its view of s.2, were summarily dismissed. The parties included Shaun Campbell, understood to be the brother of Jason Campbell.

5. The claims were all claims for rectification and indemnity, based on the proposition that registered charges on the claimants' properties were void, given the failure of the relevant mortgage deeds to comply with s. 2. HHJ Hodge QC described the claimants' basic submission i.e., that all mortgage deeds must effectively incorporate a contract or agreement to create a mortgage and therefore must be signed both by mortgagor and mortgagee, as "*simply a nonsense*" (see at [38]). This is essentially the proposition at the heart of the Company's business model. The problem is, as HHJ Hodge QC made clear, that it confuses the idea of an agreement to create a mortgage with the question of the creation of a mortgage. That is the very point made in the Helden case. Thus, said HHJ Hodge QC at [39], the "*claimants' case is founded on a hopeless misunderstanding of the applicable law*." HHJ Hodge QC struck the claims out and certified that they were all totally without merit (see at [40]). He made an ECRO against Shaun Campbell.

The Judgment of Deputy ICCJ Agnello KC

6. The SoS took the view that it was contrary to the public interest for Mortgage Five Zero to be offering services to the public based on the misconceived argument rejected so emphatically in the Helden case. Deputy ICCJ Agnello KC agreed and made the winding-up Order proposed by the SOS. The OR is now acting as liquidator.

7. At [6] of her Judgment, Deputy ICCJ Agnello KC said that stepping back, she could not think of a more extraordinary thing for a company to be doing, and that it was contrary to the public interest to allow it to continue in a manner likely to be a temptation to vulnerable members of the public who were probably already in financial difficulties. The Judge thought it particularly concerning that the Company continued to trade even in light of the comprehensive judgment of HHJ Hodge QC. She considered this demonstrated a lack of commercial probity (see at [23]-[24]), because the services offered relied on a legal argument which was hopeless.

The Chancery Appeal (CH-2023-000093) and related Applications

8. The winding-up Order made by Deputy ICCJ Agnello KC spawned an appeal to the Chancery Division (Appeal CH-2023-000093). The Appellant's Notice was filed on

behalf of the Company, but like the other applications referred to in this Judgment, the human actor who caused it to be issued was Mr Jason Campbell. As to this, Mr Parfitt in his submissions for the SoS and OR pointed to the received wisdom that a company director has continuing authority after the making of a winding-up Order to issue an application on the company's behalf to appeal that Order, but not otherwise (there is little authority on the point, but the practice is analysed in the recent decision of the Singapore Court of Appeal in Sun Electric Power Pte Ltd v. RCMA Asia Pte Ltd [2021] SGCA 60).

9. The Company's application for permission to appeal is still pending and needs to be dealt with. In addition, the Appellant's Notice as filed in the High Court included (i) an application for a stay of execution of the winding-up Order pending determination of the appeal, and (ii) an application " *... to add the Insolvency Service to proceedings*". (For completeness I should mention that the Company initially – and mistakenly - sought to file an Appellant's Notice in the Court of Appeal. This earlier version of the Appellant's Notice included other applications, among which was an application by Mr Campbell to be joined as a party, but these further applications were not included in the Appellant's Notice filed in the High Court. I will therefore treat them as having been abandoned).

10. The Company's application for a stay of execution of the winding-up Order was refused on the papers on 5 May 2023, but the Company sought an oral renewal. The present hearing on 20 October 2023 was originally fixed as the hearing of that application. The Company's other application to join the Insolvency Service was undeveloped in the Appellant's Notice, and it seems to me has now been overtaken by events, given that the OR is participating in the appeal as liquidator. I will treat that application as having been superseded and will say no more about it.

11. In addition to the applications made in the Appellant's Notice, the Company has now made yet further applications in the context of the present appeal which remain to be dealt with. These are as follows:

    i) An application dated 15 July 2023 to refer a matter of general importance to the Court of Appeal (i.e., the question whether the Helden decision should be reconsidered), under the leapfrog procedure in CPR, rule 52.23.

    ii) An application dated 10 September 2023 to extend time for filing the Appeal Bundle.

    iii) An application dated 28 September 2023, again seeking a referral to the Court of Appeal under the leapfrog procedure in CPR, rule 52.23, plus (i) a stay in the meantime both of the present appeal and of other proceedings now initiated by the Company in the Chancery Division under Claim No. PT-2023-000650 (as to which see further below), and (ii) an adjournment of the present hearing accordingly.

12. That is not all. Mr Jason Campbell is an energetic litigant. There are two other relevant streams of activity. I will summarise them briefly as follows.

The Winding-up/Order for Public Examination of Mr Campbell

13. Following the making of Deputy ICCJ Agnello KC's Order, on 26 May 2023, Chief ICCJ Briggs made an Order in the ongoing winding-up (Case CR-2023-000613) requiring Mr Campbell to attend for a public examination on 4 July 2023.

14. The making of this Order by Chief ICCJ Briggs prompted another raft of applications made in the name of the Company, but acting by Mr Campbell, including two applications dated 8 and 10 June 2023 seeking to suspend the operation of the winding-up Order and adjourn the intended public examination of Mr Campbell pending the outcome of the intended appeal against the winding-up Order (i.e., Appeal CH-2023-000093). That was despite the fact that by then, as mentioned at [10] above, the Company's application to stay execution of the winding-up Order had already been refused on the papers, on 5 May 2023.

15. Both the 8 and 10 June 2023 applications were dismissed by Deputy ICCJ Frith on 30 June. He considered them totally without merit and directed the public examination of Mr Campbell to take place on 29 August.

16. Despite not having attended the hearing before Deputy ICCJ Frith, the Company (again acting via Mr Campbell) made an application for permission to appeal that part of Deputy ICCJ Frith's Order which dismissed its application dated 8 June. This gave rise to a further Chancery appeal - reference CH-2023-000145. In the context of that appeal the Company sought a stay of execution of the direction for Mr Campbell's public examination.

17. On 13 July 2023, Leech J dismissed the stay application brought in appeal CH-2023-000145 and certified it as totally without merit.

18. On 9 August, Edwin Johnson J refused both the Company's application for reconsideration of Leech J's decision, and its request for permission to appeal the Order of Deputy ICCJ Frith (i.e., he dismissed the application for permission to appeal in Appeal CH-2023-000145). Edwin Johnson J certified both applications as totally without merit.

19. In the event Mr Campbell did not appear for his public examination and a bench warrant was issued for his arrest on 29 August. He later surrendered and although his examination has not yet taken place, I am told he is co-operating with a view to that happening at some point in the future.

New Part 8 Claim

20. The further stream of activity concerns a new claim initiated by the Company on 31 July 2023 against the SoS, the Company again acting (or purporting to act) via Mr Jason Campbell. This is a Part 8 Claim in the Chancery Division (Claim No. PT-2023-000650), seeking a declaration as to the validity of the argument based on s.2 of the 1989 Act. It is worth setting out the terms of the proposed declaration since it is a useful statement in summary form of the Company's submission on s.2. It is as follows:

> "*A mortgage deed that expresses a charge by way of legal mortgage that incorporates terms such as mortgage or charge*

> *conditions for the other disposition of an interest in land, either by being set out in it or by reference to some other document, is one document as a contract under section 2 of the Law of Property (Miscellaneous Provisions) Act 1989 to create a legal interest in land, therefore required to be signed in accordance with section 2(3) to validate the document by both mortgagor and mortgagee*."

21. On 29 August 2023 the claim was dismissed on the papers by Master Clark. She found it to be totally without merit, both because Mr Campbell had no authority to issue it in light of the winding-up Order (issuing a new claim was not within the scope of his limited ongoing authority – see [8] above), but also because the argument on s.2 was intrinsically unmeritorious. Since she treated the claim as made by Mr Campbell, Master Clark's Order said that he should personally be regarded as having made an application that was totally without merit.

22. On 5 September 2023, a further application was issued by Mr Campbell (ostensibly in the name of the Company) seeking to set aside the Order of Master Clark.

Chronology

23. I pause there. That only an overview, but it will give a sufficient picture of activity orchestrated by Mr Jason Campbell on a number of fronts on behalf of the Company. More detail is given in the chronology of events since the date of the winding-up Order, taken very largely from Mr Parfitt's Skeleton Argument, which I set out in the Annex to this Judgment. I should express my thanks to Mr Parfitt and those instructing him for their work in putting this chronology together, and helping guide me through the otherwise dense and confusing thicket of applications the Court has been presented with since April this year.

The Present Hearing/Further Applications

24. I have mentioned above that the present hearing was originally scheduled as the hearing of the Company's renewed application for a stay of execution of the winding-up order made by Deputy ICCJ Agnello KC. On 5 September 2023, however, the SoS and the OR issued their own application to be listed at the same time. By this they sought to bring the various outstanding matters to a head, and in particular sought an Order that all extant applications by the Company in Appeal CH-2023-000093 (including the application for permission to appeal) be dismissed, together with any other extant applications in other proceedings issued by the Company in the meantime.

25. The application issued by the SoS and the OR also sought the making of an Extended Civil Restraint Order ("*ECRO*") against Mr Jason Campbell.

26. Presumably prompted by this, on 28 September the Company, acting again by Mr Jason Campbell, issued the application already referenced above at [11(iii)], seeking referral of the correctness of the Helden decision to the Court of Appeal, and corresponding stays and an adjournment of the present hearing in the meantime.

27. On 17 October Roth J directed that two applications which had been referred to him on paper (the Company's 10 September application to extend time for filing the Appeal

Bundle, and its application dated 28 September mentioned immediately above), should instead be listed to be dealt with at the present hearing.

The Outstanding Applications

28. Turning then to the outstanding applications, a number are ancillary to Appeal CH-2023-000093, and so will naturally fall away in the event that permission to appeal is refused. I think it appropriate, however, to consider them on their own terms before determining the Company's permission application.

29. I will deal in a separate section below with the application of the SoS and the OR for an ECRO against Mr Jason Campbell.

30. Application by the SoS and OR for resolution of all extant applications: This is part of the relief sought by the SoS and OR by means of their 5 September 2023 Application Notice.

31. It seems to me that this suggestion of seeking to resolve all outstanding matters at a single hearing is very sensible in case management terms and I readily accede to it. The alternative would be for the Court to have to deal piecemeal with the various pending applications I have described, in some cases on paper without any overview of the full context and without the benefit of access to anyone in person, to whom questions can be directed for the purpose of clarifying relevant details and filling in the inevitable gaps in understanding. As experience shows, that would likely be inefficient and potentially problematic, because often an overview is what is needed in order to see the significance of individual applications and in order to achieve practical justice. Mr Campbell has been on notice since early September of the intention of the SoS and the OR to seek resolution of all outstanding matters at a single hearing, and so no unfairness arises in doing so. Indeed Mr Campbell has filed a Skeleton Argument for the hearing, although he has chosen not to attend. The overall approach is in any event consistent with the direction already given by Roth J on 17 October, listing two of the Company's outstanding applications to be dealt with at the present hearing rather than on paper.

32. Applications for consolidation/leapfrog to the Court of Appeal and stay/adjournment (Applications in Appeal CH-2023-000093 and Claim No. PT-2023-000650): It seems to me logical to deal next with two applications by the Company which raise essentially the same point, which is that the present Appeal and/or Claim No. PT-2023-000650 should be stayed or suspended in order to allow matters to be considered by the Court of Appeal. It is logical to deal with this point at this stage because it is used to justify the Company's application for an adjournment.

33. The two applications in question are:

    i) The Company's application dated 15 July 2023 to invoke the leapfrog procedure in CPR rule 52.23 (see above at [11(i)]). (This originally incorporated an application to consolidate Appeal CH-2023-00093 with Appeal CH-2023-000145, but that aspect has fallen away since the latter appeal has been dismissed).

    ii) The Company's application made essentially on the same basis dated 28 September 2023 (see above at [11(iii)] and [26]).

34. Although the High Court certainly has the power, when dealing with an appeal, to transfer the case to the Court of Appeal where there is an important point of principle or practice in issue or where there is some other compelling reason to do so (see CPR rule 52.23(1)(a)-(b)), nothing said by the Company casts doubt on the conclusion expressed in Helden.

35. The Company's submissions on the point are not easy to follow, although the overall gist seems to be summarised in Mr Campbell's Witness Statement of 28 September at para. 7 where he says, *"[l]egal issue is that the mortgage deed ... incorporates a contract to create a legal mortgage ..."*, and at para. 8 where he says, *"[m]erit on the point is Bank of Scotland Plc v. Waugh & Ors [2014] EWHC 2117 (Ch)."*

36. Neither point is anything new, however. The first is essentially the same submission dismissed in Helden itself (see above). The second point was considered and dismissed by HHJ Hodge in his decision in the Campbell case, and again rests on a misconception: in Bank of Scotland Plc v. Waugh the problem was that the mortgagor's signature on what was intended to be the mortgage deed had not been witnessed. Consequently that document could not take effect as a deed and thus there could be no legal mortgage of the property in question. Nonetheless, as it happened the mortgagee bank had signed the document as well. Since both the mortgagor customer and mortgagee bank had signed, and since the document contained all the necessary terms to be enforceable as a contract, HHJ Behrens considered that it could be regarded as a binding contract to enter into a mortgage (the signature requirements of s. 2 being complied with); and since the contract was specifically enforceable, it gave rise to an equitable mortgage.

37. Be all that as it may, however, nothing in the Waugh case is inconsistent with the idea that where a document *is* signed by the mortgagor customer and the signature properly witnessed, then it *will* be effective *as a deed* (see s. 1(3) of the 1989 Act). That is all that is needed to create a legal charge (see Law of Property Act 1925, s.53), whether or not the document is signed by the mortgagee/lender as well. The requirements for the existence of a valid *contract* in s.2 of the 1989 Act are simply not relevant, because the question is whether there is a validly executed *deed* and if there is then that is an end of it: the document cannot be invalidated and its effect in creating a legal charge ignored because the formalities for creation of a *contract* in s.2 have not been complied with. They do not need to be for an interest in land to be created or transferred. HHJ Hodge QC summarised the point as follows at [35] of his Judgment in Campbell, referring to the submissions made by counsel for the Land Registry, Ms Yates:

> "*As Ms Yates points out, that case [i.e., Waugh] concerned the creation of an equitable mortgage through a defectively executed legal mortgage. It is no authority for the proposition that both the mortgagor and the mortgagee must execute a charge by deed by way of legal mortgage.*"

38. In light of the above, in my opinion there is no basis for staying either Appeal CH-2023-000093 or Claim No. PT-2023-000650, and no basis for an adjournment of the present hearing. On the contrary, there is every justification for now dealing with the outstanding applications the Company has made, all of which, whether directly or indirectly, rest on its misguided argument that Helden is incorrect or of limited importance and that as a general proposition, all mortgage deeds need to be executed by the mortgagee as well as the mortgagor in order to be valid. The Court should seek

to provide certainty both to the present parties and to members of the public who may be interested in or affected by the outcome of the Company's efforts to challenge the winding-up.

39. I therefore dismiss (i) the application dated 15 July 2023, and (ii) the Company's application dated 28 September 2023. I certify each as totally without merit.

40. Application to extend time for filing an Appeal Bundle (in Appeal CH-2023-000093): The Court made an unless Order on 26 July, requiring the Company to file an Appeal Bundle or failing that make an application to extend time further by 11 September 2023. This was to allow an approved transcript of the Judgment under appeal (i.e., of the Judgment of Deputy ICC Judge Agnello KC) to be supplied.

41. It seems that no transcript was available by mid-September. On 10 September the Company accordingly applied to extend time further. In the event a Bundle – described as a "*Core Bundle*", but in any event containing a copy of the required transcript - was filed on 15 September.

42. I will grant the application and treat the Bundle filed on 15 September as filed in time. There was good reason for the approved transcript of the Judgment below not being available before then.

43. Renewed Application for Stay pending Appeal (in Appeal CH-2023-000093): I have no hesitation in dismissing this application. I consider it totally without merit.

44. In my Order made on the papers refusing a stay, I made the point that no good reason had been given for a stay. My reasoning was that although the winding-up Order would unquestionably have an effect on the operations of the Company which would be impossible to unwind in the event of the appeal being successful, on the other hand there was a serious risk the other way if the winding-up were to be suspended and the appeal then to fail. The risk of harm is particularly acute in the case of a company wound up on public interest grounds.

45. No argument has been put forward which challenges this basic reasoning or which would justify saying that the Court should have balanced the competing factors differently. The renewed stay application therefore fails.

46. Application for permission to appeal (in Appeal CH-2023-000093): I refuse permission to appeal the winding-up Order of Deputy ICC Judge Agnello.

47. According to the Skeleton Argument of Mr Jason Campbell, filed with the Bundle lodged at Court on 15 September, the essential point relied on is again that the decision in the Helden case is wrong or can in some way be distinguished and marginalised. The point seems to be that the Company should not have been forced out of business by an incorrect decision of the Court of Appeal which will be shown to be wrong if it can only be revisited. Thus at para. 9 of his Skeleton Argument, Mr Campbell says: "*Delays in receiving justice is not down to the Company, instead a judgment in the Court of Appeal that misinterprets the law*."

48. This submission is misconceived and must be rejected. To put it bluntly, the law on the point is what the Court of Appeal has said it is. The Company's continued operation

cannot be justified on the basis that a decision of the Court of Appeal is wrong. There is no reason whatever to doubt the decision in Helden and it must be accepted as correct, and a business whose function is to exploit the contrary proposition, and to provide false hope to vulnerable consumers who are already likely to be in financial difficulty, is plainly not in the public interest. That is what Deputy ICC Judge Agnello thought and she was obviously correct in her assessment.

49. I conclude that the proposed appeal has no real prospect of success and that there is no other compelling reason why the appeal should proceed. The Company's application for permission to appeal is therefore dismissed. I certify it as totally without merit.

50. Application dated 5 September 2023 to set aside Order of Master Clark (in Claim No. PT-2023-000650): I have mentioned above that there were two strands to the Master's reasoning. There can be no possible doubt about the first, i.e., her conclusion that Mr Campbell had no continuing authority to bring a new claim on the Company's behalf, in light of the winding-up Order. However wide the scope of the continuing authority of a director in light of a winding-up Order (see above at [8]), I agree with Mr Parfitt that it is not wide enough to include authority to institute a new claim, in particular one premised on the same legal argument whose misconceived nature was the basis of the winding-up Order in question.

51. Master Clark's second reason was that the declaratory relief sought in the Company's Details of Claim raised a legal issue – i.e., the s.2 point – which has repeatedly been dismissed and found to be totally without merit. Again, I see no proper basis for doubting that conclusion, for the reasons already given above, in particular at [36]-[37]. The declaration sought by the Company (see at [20] above) is misguided, and not justified by its reliance on the decision in Bank of Scotland Plc v. Waugh.

52. I therefore refuse to set aside the Order of Master Clark, which I consider was entered correctly. She was correct in my view also to conclude (at para. 5 of her reasons) that in the circumstances, it was Mr Campbell himself (not the Company) who had issued a claim that was totally without merit.

53. Accordingly, the application issued on 5 September 2023 is dismissed. I find it totally without merit. Since Mr Campbell had no authority to issue that application, I also think it right to say that he must be treated as having issued it personally.

ECRO

54. The next question is whether an ECRO should be made against Mr Jason Campbell.

55. An ECRO may be made by the High Court where "*a party has persistently issued claims or made applications which are totally without merit*" (see Practice Direction 3C, para. 3.1). "*Persistently*" has been held to mean at least three applications, but also requires an evaluation of the party's overall conduct: see Re Ludlam (a bankrupt) [2009] EWHC 2067 (Ch) and Sartipy v. Tigris Industries Inc [2019] EWCA Civ. 225.

56. In my judgment, Mr Campbell has been personally responsible for three claims or applications which have been dismissed as totally without merit. These are:

i) Claim PT-2023-000650, which Master Clark dismissed as totally without merit (see above at [21]).

ii) The 5 September 2023 application to set aside the Order of Master Clark, which I have now dismissed as totally without merit (see above at [53]).

iii) That part of the 28 September 2023 application (see above at [39]), which involved an application purportedly by the Company as claimant in Claim PT-2023-000650 to stay that Claim, pending the proposed referral to the Court of Appeal under CPR 52.23.

57. I think Mr Jason Campbell must be treated as having *personally* made these three claims or applications, because although he purported to instigate them on the Company's behalf, he had no relevant authority to act for the Company. The claim and the applications must therefore be treated as having been made by Mr Campbell himself.

58. What though of the other applications referenced above which have been dismissed on the basis that they were totally without merit? These fall into two groups -

i) Group 1: The two applications dismissed by Deputy ICCJ Frith on 30 June 2023, together with the application dismissed by Leech J on 13 July, and the two applications dismissed by Edwin Johnson J on 9 August (5 in all: see [15]-[18] above).

ii) Group 2: The further applications (4 in total) now dismissed in this Judgment (see above at [39] (2 applications), [43] and [49]).

59. I will assume that these applications were properly issued in the name of the Company, by Mr Campbell acting within the scope of his limited authority post the winding-up Order. Even so, should any or all of them count towards the tally of failed applications attributable to Mr Campbell, for the purpose of the Court determining to make an ECRO against him? The language of the Practice Direction is engaged as against "*a party [who] has persistently ... made applications which are totally without merit*" (emphasis added). Here, is the party which made the failed Group 1 and Group 2 applications the Company, or is the concept wide enough to include Mr Campbell?

60. Newey J (as he then was) dealt with just this question in CFC 26 Ltd v. Brown Shipley & Co Ltd [2017] 1 WLR 4589. He observed that although the party who made an application would ordinarily be considered to be the named party in the action (see at [15]), that would not be so invariably, and indeed taking such a narrow view would seriously undermine the effectiveness of the power to make Civil Restraint Orders (see at [17]). At [19] Newey J referred to the practice in the costs context of the Court making orders for costs against parties who are not the named litigants, but who nonetheless are to be regarded as the "*real*" parties in the case. At [20] he then summarised his overall view as follows:

> "*On balance, it seems to me that, in a comparable way, references in Practice Direction 3C to a 'party' who has issued claims or made applications, or to a 'party' issuing claims or making applications, should be read as extending, not only to the named claimant or applicant but, where different, to the 'real'*

> *claimant or applicant. Where the person against whom a CRO is sought has been the 'real' party behind totally without merit claims or applications, it must, I think, be possible to take them into account ... .*"

61. As to when someone is to be regarded as the "*real*" party behind an application, plainly the idea of separate corporate personality cannot simply be ignored (see per Newey J at [16] in CF26 Ltd), but a useful touchstone is to ask who was actually responsible for the application or applications in question (see again per Newey J at [16]), an inquiry which will often be illuminated by asking who was intended to benefit from them. The upshot in the proceedings before Newey J was that although a Mr Yaganeh had never been a named claimant in what was referred to as the "*2016 Claim*", he was to be regarded as the "*real*" party because he had been effectively controlling the litigation and supporting it and had been doing so with a view to obtaining a personal benefit if it was successful (see at [22]-[23]).

62. In a later decision dealing with the analogous question of when a costs order can be made against a director and shareholder of an insolvent company who has controlled and funded the conduct of litigation on the company's behalf, relevant factors included (i) whether the company's stance was dictated by the real or perceived benefit to the director, or if not then (ii) whether pursuit of the litigation for the benefit of the company was nonetheless tainted by impropriety or bad faith on the part of the director: see Goknur Gida Maddeleri Enerji Imalet Ithalat Ihracat Ticaret ve Sanayi As v. Cengiz Aytacli [2020] EWHC 2542 (QB) at [40], esp. [40(d)] and [40(f)].

63. Applying the same approach in this case, I reach the following conclusions.

64. First, I consider it clear that Mr Jason Campbell is to be regarded as the "*real*" party behind the five Group 1 applications mentioned at [58(i)] above. Even assuming they were duly issued in the name of the Company, I think it clear both from the timing and form of those applications that their real purpose was to procure a personal benefit for Mr Campbell, namely the deferment of, or possibly abandonment of, his intended public examination. The original applications of 8 and 10 June were plainly prompted by Chief ICCJ Briggs' Order for Mr Campbell's public examination made on 26 May. The stream of activity which followed and resulted in the Orders made by Leech J and Edwin Johnson J was obviously directed at the same end. There is no doubt at all that Mr Jason Campbell was the instigator in practical terms, since he is identified on the various applications as the human actor authorising them. He cannot therefore say that he knew nothing about them or had only marginal input into them. In such circumstances it seems to be correct and consistent with principle to regard Mr Campbell as the "*real*" applicant: he caused the applications to be made because he wanted to get something out of them for himself.

65. Second, and although I think the picture less obviously compelling, I also think it correct to regard Mr Jason Campbell as the "*real*" party to what I have called the Group 2 applications as well. I say the picture is less compelling because the Group 2 applications were not so obviously intended to procure a direct personal benefit for Mr Campbell (i.e., deferment of his public examination). But having considered the matter, it seems to me that the same basic logic nonetheless applies.

66. I say that because underpinning each of the Group 2 applications is an entirely irrational and misplaced conviction in the argument based on s.2 of the 1989 Act. As Mr Parfitt pointed out in his submissions, it is very difficult to see that there could be any possible benefit to the Company in continuing to pursue a hopeless argument which was dismissed by HHJ Hodge QC as totally without merit and which in any event is admittedly at variance with settled law stated by the Court of Appeal in the Helden case now over 10 years ago. If (as I conclude) the applications were therefore not advanced in the Company's interests, it seems to me right to regard them as having been advanced by Mr Jason Campbell in his own interests and for his own benefit, perhaps in the sense of him wishing to vindicate his own personal conviction in the s. 2 point, or perhaps in order to try recover his personal reputation so as to be able to re-engage with what he seems to have regarded as an attractive business operation. In such circumstances, it seems to me right that Mr Jason Campbell should take personal responsibility for the failed applications, and should be regarded as the "*real*" party having made them.

67. The upshot is that I have no doubt that an ECRO should be made against Mr Jason Campbell. The overall pattern could not be clearer: the many applications referenced above and in the attached Annex all show that he is incapable of taking no for an answer, when it comes to the Company's misguided argument based on s. 2 of the 1989 Act. I will impose an ECRO on him for the maximum period of three years. To the extent necessary I will join Mr Campbell as a party to Appeal CH-2023-000093 for the purpose of doing so.

Costs

68. Finally I must deal with the question of costs. The SoS and the OR seek Orders against Mr Jason Campbell for their costs of the application for an ECRO (their other costs will be recoverable in the liquidation of the Company).

69. Since the SoS and the OR have been successful in their joint application, it seems to me the usual result should follow and that they should be entitled to their costs. I am asked to undertake summary assessment. Two costs schedules have been filed and served. The amounts sought are modest given the work undertaken, much of which reflects the complex procedural background which Mr Campbell is himself responsible for. I will therefore summarily assess the costs of the SoS and OR as sought: i.e., in the amount of £3,011.50 each.

ANNEX: CHRONOLOGY OF APPEALS, APPLICATIONS AND CLAIMS SINCE APRIL 2023

4 April 2023: the Winding Up Order in case number CR-2023-000613. DICCJ Agnello KC wound the Company up in the public interest on the petition of the SoS and the OR was appointed liquidator. The Company did not attend the hearing.

6 April 2023: the Company appealed the Winding Up Order. On 2 May 2023 a revised appellant's notice was filed in the High Court and given Chancery Appeals reference CH-2023-000093. The Company additional applications to extend time and for a stay of the Winding Up Order pending the appeal

5 May 2023: order of Adam Johnson J on paper without a hearing of two of the applications within CH-2023-000093:

(a) The extension of time application was granted; but
(b) The stay application was refused.

8 May 2023: the Company made a request to set aside or vary the 5 May 2023 refusal of the stay application. This is referred to in an order of Adam Johnson J dated 14 June 2023, and it is this request which was the first matter to be listed for the hearing on 20 October 2023.

19 May 2023: Paul Campbell (believed to be a brother of Jason Campbell) applied to reopen an appeal (it seems) and have the reopened appeal consolidated with the appeal against the Winding Up Order. The Court of Appeal reference is CA-2022-002153. It is not known what became of this application. A claim issued by Paul Campbell was struck out in January 2022 by HHJ Hodge KC and a general civil restraint order was made against him.

26 May 2023: Chief ICC Judge Briggs ordered Jason Campbell to attend for a public examination on 4 July 2023.

6 June 2023: the Company applied to adjourn the public examination and/or postpone any enforcement of the Winding Up Order pending the outcome of the appeal (viz. CH-2023-000093). It appears that this application caused the original date for the public examination to be vacated (without the OR being notified).

8 June 2023: the Company filed an Insolvency Act application notice within CR-2023-000613 (i.e. the winding up proceedings) seeking to adjourn the public examination and/or postpone the enforcement of the Winding Up Order pending the outcome of the appeal (i.e. the same as the 6 June 2023 application).

10 June 2023: the Company filed an application within CR-2023-000613 to stay the proceedings including the orders of 4 April 2023 and 26 May 2023 (i.e. essentially the same as the 6 June and 8 June 2023 applications).

26 June 2023: the Company applied to extend time for serving the Appellant's Notice and appeal bundle in the appeal against the Winding Up Order (CH-2023-000093).

30 June 2023: Deputy ICC Judge Frith heard the Company's 8 June 2023 application and dismissed it. Upon the Company indicating in its skeleton that it no longer intended to proceed with the 10 June 2023 application, DICCJ Frith dismissed that too. He certified both applications as totally without merit. The Company did not attend the hearing. DICCJ Frith relisted Jason Campbell's public examination for 29 August 2023.

Later on **30 June 2023**: the Company filed an Appellant's Notice (CH-2023-000145) seeking permission to appeal the order of 30 June 2023 insofar as it dismissed the 8 June 2023 application, recorded that application as without merit, and relisted the public examination.

13 July 2023: order on that appeal (CH-2023-000145) by Leech J. Leech J dismissed the Company's appeal against the relisting of the public examination. Liberty was given to apply for an oral hearing as the decision was made on the papers. The court declined to make a civil restraint order (of the court's own motion) on the basis that existing civil restraint orders may be engaged; the Judge requires any application for an oral hearing to be accompanied by evidence explaining the existing civil restraint orders.

15 July 2023: the Company filed an application to consolidate the appeal against the Winding Up Order (CH-2023-000093) with the appeal against the 30 June 2023 order (CH-2023-000145), to leapfrog both appeals to the Court of Appeal, and for declarations concerning the argument based on s.2 of the Law of Property (Miscellaneous Provisions) Act 1989 ("*the 1989 Act*"). The accompanying witness statement of Jason Campbell explained that the existing civil restraint orders prohibit claims or applications by *Shaun* Campbell personally and through any servant or agent expressly including the Company. On the basis that the Company's application was not made by Shaun Campbell, the existing civil restraint orders were not engaged.

17 July 2023: the Company filed an application in appeal CH-2023-000093 to extend time for filing the appeal bundle including the transcript. On 27 July 2023, time to file the appeal bundle was extended to 4pm on 11 September 2023.

31 July 2023: The Company issued a Part 8 Claim in the Property, Trusts and Probate List against the SoS seeking declarations as to the validity of the argument on s.2 of the 1989 Act (Claim No. PT-2023-000650). The SoS filed an acknowledgement of service on 18 August 2023, inter alia objecting to Jason Campbell's authority to issue the claim on the Company's behalf.

5 August 2023: the Company wrote to the court to withdraw "its application for permission to appeal dated 30 June 2023" – i.e. appeal ref CH-2023-000145. A notice of discontinuance was filed on 8 August 2023.

9 August 2023: Edwin Johnson J dismissed the appeal against DICCJ Frith's 30 June 2023 order and the request to reconsider the decision of Leech J dated 13 July 2023, certifying both applications as totally without merit.

29 August 2023: Master Clark dismissed Claim No. PT-2023-000650 on the papers and ordered Jason Campbell to pay the costs. She found that Jason Campbell had issued a claim which was totally without merit (since he lacked authority to issue the claim on

behalf of the Company, and since the underlying legal issues have repeatedly been dismissed as being totally without merit).

Also on **29 August 2023:** Jason Campbell failed to attend court for his public examination. ICC Judge Greenwood issued a warrant for his arrest.

4 September 2023: Jason Campbell surrendered to the court and undertook to attend on the OR for interview on 18 September 2023. ICC Judge Burton discharged the warrant for Jason Campbell's arrest.

5 September 2023: the Company applied to set aside Master Clark's order dismissing Claim No. PT-2023-000650.

5 September 2023: application by the SoS and the OR seeking to bring matters to a head at a single hearing by resolving all outstanding appeals and applications and making an extended civil restraint order against Jason Campbell.

10 September 2023: the Company filed an application to extend time for filing an Appeal Bundle in Appeal CH-2023-000093

11 September 2023: the Company filed an application seeking an interim injunction against the OR. (This application was later withdrawn, apparently without being issued).

18 September 2023: the Company and Selwyn Campbell (another brother of Jason) filed an application in proceedings against Barclays Bank UK plc (Claim No.: QB-2021-2430) seeking to have those proceedings consolidated with several other sets of proceedings including the application to set aside Master Clark's order and the 5 September application by the SoS and the OR, and for everything to be dealt with by the Court of Appeal.

28 September 2023: the Company filed an application seeking to adjourn the present hearing on 20 October 2023, and send all its outstanding appeals and applications to be dealt with by the Court of Appeal.

17 October 2023: Mr Justice Roth directs that the Company's applications of 10 and 28 September 2023 are listed for hearing together with the other applications at today's hearing on 20 October 2023.