Neutral Citation Number: [2020] EWHC 694 (Ch)

Case No: F00YE885 and Nos 186 and 187 0f 2015

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS IN BRISTOL
INSOLVENCY AND COMPANIES LIST (ChD)

Bristol Civil Justice Centre
2 Redcliff Street, Bristol, BS1 6GR

Date: 23 March 2020

Before :

HHJ PAUL MATTHEWS
(sitting as a Judge of the High Court)

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Between :

In the Eviction Proceedings:

(1) NIHAL MOHAMMED KAMAL BRAKE
(2) ANDREW YOUNG BRAKE
(3) TOM CONYERS D'ARCY

Applicants

And

THE CHEDINGTON COURT ESTATE LIMITED

Respondent

In the Bankruptcy Application:

(1) NIHAL MOHAMMED KAMAL BRAKE
(2) ANDREW YOUNG BRAKE
(as trustees of the Brake Family Settlement)
(3) NIHAL MOHAMMED KAMAL BRAKE
(4) ANDREW YOUNG BRAKE

Applicants

and

(1) DUNCAN KENRIC SWIFT
(as trustee of the estates in bankruptcy of Nihal Brake and Andrew Brake)
(2) THE CHEDINGTON COURT ESTATE LIMITED

Respondents

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Stephen Davies QC (instructed by **Seddon Solicitors LLP**) for the **Applicants in each case**
Andrew Sutcliffe QC and William Day (instructed by **Stewarts Law LLP**) for the **Respondents in each case**

Applications dealt with on the papers

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Approved Judgment

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

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HHJ Paul Matthews :

Introduction

1. On 2 and 3 March 2020 I heard and decided a number of interlocutory matters arising in this long-running insolvency litigation. Two of those matters were known as the Bankruptcy Application and the Liquidation Application. I will refer to them together as the Insolvency Applications. With the exception of one issue, those applications, which were listed for trial before me to take place in May 2020, were struck out. The parties were unable to agree a form of order to give effect to my various rulings given on those days. I therefore had to rule further on the matter and did so in writing on 18 March 2020. However, that was only one of three matters arising out of the rulings of 2 and 3 March which I have had to deal with. This judgment deals with the other two matters.

2. These are (i) an informal application by the Brakes for (a) the lifting of the stay of the proceedings known as the Eviction Proceedings and (b) the listing in May 2020 of a preliminary issue concerning the validity of the licence granted by Duncan Swift (the Brakes' former trustee in bankruptcy) to Chedington of the property known as West Axnoller Cottage, Beaminster, Dorset and dated 15 January 2019 ("the Licence"), and (ii) an application in Form N244 dated 13 March 2020 by the Brakes for a stay generally or alternatively an adjournment of the trial (currently fixed for May 2020) of the remaining issues in the Bankruptcy Application, in substance the Brakes' claim to revesting of property rights in the cottage under section 283A of the Insolvency Act 1986.

3. These further applications just bear out my comments in the earlier ruling on the form of the order, that this matter is consuming far more of scarce judicial resources than is appropriate or proportionate, and that every point that can possibly be taken on each side is being taken. This state of affairs cannot continue. Apart from anything else. it is not fair to other court users, amongst others. I ask the parties to reflect before raising yet further interlocutory matters, and to satisfy themselves that they are really necessary. That said, I turn to consider the two further matters summarised above. I refer to the first of them as the Informal Application, and to the second as the Notice Application.

The Informal Application

4. On 10 March 2020 Mr Stephen Davies QC for the Brakes submitted a skeleton argument in order to make and support an application (as foreseen at the hearing on 2 and 3 March 2020) to lift the stay imposed by Mr John Jarvis QC on 12 December 2019 on the Eviction Proceedings, pending trial of the Bankruptcy Application and the Liquidation Application, then listed for seven days from 11 May 2020. So far as I am aware, no formal application notice has ever been issued, or any fee paid. As agreed at the hearing of 3 March, but especially in the circumstances of the present health emergency, where the courts are being urged to deal with cases so far as possible without a physical court hearing, I have dealt with the matter on paper. Chedington submitted a skeleton argument on 13 March, to which the Brakes replied in writing on 16 March.

5. The Eviction Proceedings were commenced by claim form issued by the Brakes and their son on 3 April 2019 in the County Court at Yeovil. In those proceedings, the claimants claim to be collectively entitled to exclusive possession of the cottage. They allege that the defendant forcibly excluded the claimants from that property on 18 January 2019, thereby preventing them from recovering their personal chattels which were then present there. They further allege that, as a result of Chedington's trespass and/or the eviction, they "have suffered loss and damage", and "will serve a full schedule of loss", to include damages for distress and inconvenience, personal injury sustained by Mrs Brake (in error referred to as the "First Defendant") and legal costs associated with their inability to obtain access to the cottage.

6. The prayer in the claim asks for delivery up of possession of the property and the claimants' personal chattels (which are, however, not particularised in the Particulars of Claim), and various declaratory relief and an injunction, as well as an "Enquiry as to damages". The claim form states that the value of the claim is "Non-money claim", which does not sit well with the claim in the particulars of claim to have suffered loss and damage, with the intention to serve a schedule of loss, and with the prayer for an "Enquiry as to damages". The amount claimed on the claim form is stated to be "TBC" (which I take to mean "to be confirmed"), as are the legal representatives' costs, and therefore also the total amount claimed. The court fee paid was £308, *ie* the fee for a claim which does not claim damages.

7. The Brakes also indicated at the hearing in March that the application "would include a request to list the issue of the validity/enforceability of the licence [*ie* the Licence] as a preliminary issue/for summary determination, to occupy that part of the trial in May 2020 that has been freed up by the dismissal" of the relevant parts of the Insolvency Applications. That request is included in Mr Davies QC's skeleton argument.

Lifting the stay

8. Because the Insolvency Applications as they were originally presented overlapped to some extent with the Eviction Proceedings, a case management decision had to be taken as to whether to manage and try both proceedings together or whether to prioritise one over the other. The Brakes applied in July 2019 an order expediting the Eviction Proceedings, so that they would be tried first. On 18 July 2019, District Judge Field refused the application for expedition, considering that this claim should be case managed *together* with the Insolvency Applications. The judge transferred the proceedings to the High Court, Business and Property Courts in Bristol.

9. However, subsequently, at a hearing on 12 December 2019 before Mr John Jarvis QC, sitting as a deputy judge, the issue arose again, when the trial of the Insolvency Applications was being fixed. Chedington submitted that it would be better to try *both* sets of proceedings together in May 2020. On the other hand, the Brakes in their skeleton argument for that hearing (at [51]) submitted that in the events that had happened it would be better to stay the Eviction Proceedings, and try only the Insolvency Applications then. On this occasion, the judge preferred the approach of the Brakes, and imposed a stay on the Eviction Proceedings pending trial of the Insolvency Applications.

10. As I have said, Mr Davies QC's skeleton argument seeks to lift that stay. So the Brakes, having sought to prioritise the Eviction Proceedings over the Insolvency Applications, and failed, and then having sought to prioritise the Insolvency Applications over the Eviction Proceedings, and succeeded, now seek to lift the stay on the Eviction Proceedings, so that in theory at least both sets of proceedings can be dealt with at the same time.

11. But in fact the Brakes do not now seek the trial of the *whole* of the Eviction Proceedings in May. Instead, in their skeleton argument, they ask for what they call a "preliminary issue" in those proceedings to be tried in the trial fixture in May 2020, only part of which will now be needed for the remaining part of the Bankruptcy Application. Despite the fact that it is supposed to be a preliminary issue, it appears that the issue which they wish to be tried will take five days of court time (I deal further with this below). Secondly, and as I have said, on 13 March 2020 the Brakes issued a formal application notice for the adjournment of the trial of the remaining part of the Bankruptcy Application. So, if the Brakes are successful in their applications, the only matter that will be tried *at all* in May will be the "preliminary issue" in the Eviction Proceedings.

12. Chedington does not object to the lifting of the stay on the Eviction Proceedings. But it says that it should be subject to the condition that the Brakes pay the proper fee in respect of the claim. In the claim form the claim is stated to be a "non-money claim". It is for possession of the cottage and the delivery up of chattels. But allegations are made of loss and damage suffered and the intention is stated to serve a schedule of loss. Part of the prayer for relief is an "enquiry as to damages". Moreover, in the box to state the "amount claimed", the response given is "TBC", *ie* "to be confirmed". If this really were a nonmoney claim, there would be no enquiry as to damages, and the amount claimed would be zero.

13. There is a further point, which is that this application has not been made by form N244, and neither has the appropriate application fee being paid. I do not insist on a formal application notice (and neither has Chedington taken the point), but I see no reason why the appropriate fee should not be paid. I do not need to decide whether the Brakes' behaviour was deliberate. All I need to decide is that I am prepared to lift the stay on the Eviction Proceedings, but only conditionally on both (i) the Brakes *either* (a) paying the appropriate fee for a claim form seeking unlimited damages, *or* (b) limiting any claim as to damages and paying the appropriate fee for such a claim, *or* (c) abandoning any claim as to damages, and (ii) the Brakes paying the appropriate fee for this application.

Preliminary issue

14. I turn now to consider that part of the Informal Application which seeks a summary determination of the issue of the validity/enforceability of the Licence, in advance of the rest of the trial of the Eviction Proceedings. Mr Davies QC says that there are good legal grounds for determining that the Licence is invalid, or at least unenforceable. He summarises these in paragraph 6 of his skeleton argument. He also says that the overriding objective, set out in CPR Part 1, operates in favour of

directing the trial for such a preliminary issue. He points to the length of time that this issue has been outstanding and submits that the

> "melancholy fact of the licence remains in place, causing misery to the Brakes in circumstances where, if they are correct, there is no legal basis for it."

15. The preliminary issue proposed by Mr Davies QC is:

> "whether the licence is invalid and/or enforceable on the grounds that:
>
> (i) There is no licensor.
> (ii) Its purpose has been frustrated/terminated.
> (iii) As a matter of interpretation of the three contracts dated 15 January 2019, there was no right in Mr Swift to grant the licence.
> (iv) It was granted by Mr Swift in performance of his private contract with Dr Guy/CCEL, such that he had no power to grant it".

16. An initial point to note is that these issues are not in fact pleaded at all in the Eviction Proceedings. So at present the pleadings do not support this preliminary issue. It is not clear from the skeleton argument of Mr Davies QC whether it is proposed that the Brakes would apply to amend their statements of case to bring in these matters. If it is not so proposed, it is difficult to understand how the court could direct such an issue to be tried. The following discussion proceeds on the basis that the court could nevertheless direct such an issue.

17. The court undoubtedly has power (under CPR rule 3.1(2)(e), (i), (j) and (m)) to direct the trial of a preliminary issue, and will do so in appropriate circumstances. But the case law contains ample warnings against doing so in inappropriate cases. As Lord Scarman said in *Tilling v Whiteman* [1980] AC 1, 17,

> "Preliminary points of law are too often treacherous shortcuts. Their price can be, as here, delay, anxiety and expense".

This was recently quoted with approval by Hildyard J in *Wentworth Sons Sub-Debt SARL v Lomas* [2017] EWHC 3158 (Ch), [30]-[31].

18. I was also referred to *McLoughlin v Jones* [2002] QB 1312, CA, where David Steel J said:

> "[66] In my judgment, the right approach to preliminary issues should be as follows. (a) Only issues which are decisive or potentially decisive should be identified. (b) The questions should usually be questions of law. (c) They should be decided on the basis of a schedule of agreed or assumed facts. (d) They should be triable without significant delay, making full allowance for the implications of a possible appeal. (e) Any order should be made by the court following a case management conference."

19. In *Wentworth Sons Sub-Debt SARL v Lomas* [2017] EWHC 3158 (Ch), [32], Hildyard J summarised the approach taken by Neuberger J (as he then was) in *Steele v Steele* [2001] CP Rep 106, in setting out "questions which arise in considering whether the

determination of the preliminary issue is appropriate". These were (in the summary of Hildyard J at [32]):

> "(1) First, would the determination of the preliminary issue dispose of the case or at least one aspect of it?
> (2) Second, would the determination of the preliminary issue significantly cut down the cost and time involved in pre-trial preparation or in connection with the trial itself?
> (3) Third, where as here the preliminary issue was one of law the Court should ask itself how much effort would be involved in identifying the relevant facts.
> (4) Fourth, if the preliminary issue was one of law to what extent was it to be determined on agreed facts?
> (5) Fifth, where the facts were not agreed the Court should ask itself to what extent that impinged on the value of a preliminary issue.
> (6) Sixth, would determination of the preliminary issue unreasonably fetter the parties or the Court in achieving a just result?
> (7) Seventh, was there a risk of the determination of the preliminary issue increasing costs and/or delaying the trial?
> (8) Eighth, the Court should ask itself to what extent the determination of the preliminary issue may turn out to be irrelevant.
> (9) Ninth, was there a risk that the determination of the preliminary issue could lead to an application for the pleadings to be amended so as to avoid the consequences of the determination?
> (10) Tenth, taking into account the previous points, was it just to order a preliminary issue?"

20. In the present case, the Brakes and their son seek to show that they have exclusive rights to possession of the cottage which have been infringed by the actions of the respondent Chedington. The existence of such rights has not been conceded by Chedington, much less their infringement, and therefore these issues must be proved by evidence. The proposed preliminary issue will not however resolve this question. The invalidity of the Licence, if demonstrated, will not show that the Brakes and their son have rights to possession of the cottage which been infringed. Nor will the validity of the Licence, if demonstrated, show that the Brakes and their son have no such rights. Whether or not this issue is decided as a preliminary issue will not relieve the claimants of the need to prove their rights, and the breach of them, as against Chedington. This engages Neuberger J's first and eighth points in *Steele*.

21. Moreover, as Chedington submits, it is clear that at least part of the proposed preliminary issue is to be based on facts which are not only not agreed, but in fact highly contentious. I do not accept Mr Davies QC's submission that there are "no highly contentious [f]acts". Whether the Licence's "purpose has been frustrated/terminated" must be highly fact sensitive as well as dependent on an issue of law, and whether the Licence "was granted by Mr Swift in performance of his private contract with Dr Guy/CCEL" is hotly disputed. Cross-examination of Mr Swift, as well as of Dr Guy, will surely be necessary before the court can reach a view on this point. This engages Neuberger J's third, fourth and perhaps fifth points in *Steele*.

22. The Brakes in their written reply of 16 March 2020 say that Chedington's submissions proceed on an erroneous basis. This is that Chedington has a right to question the Brakes' right to occupy the cottage. The Brakes claim that Chedington entered the cottage on 18 January 2019 as a trespasser, in reliance on the Licence "which is the subject matter of the Eviction Proceedings". They further claim that they were in exclusive possession of the cottage under the terms of the partnership agreement dated 19 February 2010.

23. Yet the burden is not on Chedington to show that *it* had a better right to possession than the claimants (*ie* the Brakes and their son). Chedington is the defendant in the Eviction Proceedings. It does not have to prove anything. It is *the claimants* who are bringing their claim against Chedington, and therefore it is *they* who have to show that they have a right to possession which has been infringed by Chedington. That is what they must prove. As I have already said, the validity or not of the Licence does not determine these questions.

24. The Brakes do not in their written submissions indicate directly how long they consider that this preliminary issue will take to try. However, in paragraph 2 of his skeleton argument of 10 March, Mr Davies QC referred to the indication given at the hearing of 3 March, on behalf of his clients, that the preliminary issue should "occupy that part of the trial in May 2020 that has been freed up by the dismissal" of the major part of the Insolvency Applications. And in paragraph 12(b) he refers to listing the preliminary issue "together with the Insolvency Applications for trial on Monday 11 May 2020 (time estimate 7 days)…"

25. It is clear that the section 283A issue (which is all that is now left of the Insolvency Applications) will take no more than two days to try. That is indeed the trial estimate included at paragraph 4 of the draft order submitted by Chedington, to which (as I understand it) no objection has been so far taken by the Brakes. If that is right, that leaves five days. Therefore, the only reasonable implication from Mr Davies QC's statements that the section 283A issue and the proposed preliminary issue will take the seven days allotted to try, is that Mr Davies QC's estimate for his preliminary issue is five days.

26. Frankly, I do not understand Mr Davies QC's statement in paragraph 15 of his reply dated 16 March that "The Brakes are not estimating 5 days and Chedington cannot reasonably believe this to be the case". On the contrary, that is exactly what I thought they were doing after reading his skeleton of 10 March and before reading Chedington's of 13 March. It is notable that, although Mr Davies QC denies that his clients' estimate is five days, he does not say what it actually is. At best, this is not helpful.

27. This contrasts with the statement in the Brakes' own Directions Questionnaire for the Eviction Proceedings, which envisaged a *one day* hearing for the *whole* claim (not just the preliminary issue). Since the Chedington Questionnaire estimated a 2-3 day trial, I suspect that the Brakes' estimate was unduly optimistic, perhaps simply inadequate. Certainly I do not see how Mr Swift and Dr Guy, as well as the Brakes, could be cross-examined, and adequate legal submissions made on the issues that arise, in fewer than, say, 3 or even 4 days. Since the matters proposed for the preliminary issue are not currently issues on the pleadings, this seems to me highly likely to increase

costs. I reject Mr Davies QC's submission that this view is somehow perverse. This engages Neuberger J's second and seventh points in *Steele*.

28. Mr Davies QC says that the points made by Chedington objecting to a preliminary issue fall away once it is appreciated that it "does not address the fact that it has no defence to the Eviction Proceedings because it has no reasonably arguable case to the effect that the Licence is valid/enforceable". I do not agree. As I have already said, the invalidity of the Licence, if demonstrated, will not show that the Brakes and their son have rights to possession of the cottage which been infringed.

29. My conclusion is that I should not direct this "preliminary issue". It will not resolve the litigation, but will simply deal with an aspect of it which might or might not in any event have to be decided. It will not save time to deal with it before the main trial, and the full trial of the legal issues will be all the better for being informed by the fact-finding which takes place at the same time. There is also the fact that it may be necessary to amend the pleadings before the so-called preliminary issue can be dealt with in any event. I therefore refuse the Brakes' application for the trial of the preliminary issue in May.

The Notice Application

30. I turn therefore to the application by the Brakes by notice dated 13 March 2020 for a stay generally, or alternatively an adjournment, of the trial of the remaining issues in the Bankruptcy Application. This is the Brakes' claim to the revesting of property rights in the cottage in them under section 283A of the Insolvency Act 1986. The application notice asks for alternative relief, that is, either

> "(i) An order under CPR 3.1(1)(f) that the Bankruptcy Application be stay generally or pending final determination of the appeal of the decisions of HHJ Paul Matthews dated 3 March 2020 (the Appeal) and the trial of the Bankruptcy Application listed in the w/c 11 May 2020 (the Trial) be vacated; or in the alternative: –
> (ii) An order under CPR 3.1(1)(b) that the Trial be adjourned generally or pending final determination of the Appeal."

31. The references in the notice to CPR 3.1(1)(f) and CPR 3.1(1)(b) are clearly intended to be references to CPR rule 3.1(2)(f) and CPR rule 3.1(2)(b). CPR rule 3.1(2) reads, so far as material:

> "Except where these Rules provide otherwise, the court may –
> […]
> (b) adjourn or bring forward a hearing;
> […]
> (f) stay the whole or part of any proceedings or judgment either generally or until a specified date or event…"

The notice also asks that this application be determined without a hearing. Chedington does not object to this course. For the same reasons as in relation to the Informal Application, I will do so.

32. The application is supported by the third witness statement of the Brakes' solicitor, Christian Smith. He confirms that the Brakes have now lodged an appellants' notice against my order of 3 March 2020, pursuant to the permission to appeal which I gave on 3 March 2020, which was sealed by the Court of Appeal on 12 March 2020. He says that the result of my order of 3 March 2020 is that the only issue left for determination at the trial fixed for May is the question whether the cottage was the Brakes' "sole or principal residence" as at 15 May 2015 (the date of their bankruptcy) within the meaning of section 283A of the Insolvency Act 1986.

33. Mr Smith goes on to submit that Chedington has no legitimate interest in the issue under section 283A. I will come back to that. He asks that the court stay or postpone the trial of that issue until after final determination of the Brakes' appeal. This is put on three grounds. First, if Chedington has no legitimate interest in the issue to be tried in May, the Brakes should not be put to the time and cost of preparing for and conducting that trial. Second, if the Brakes' appeal is allowed, the summary judgment application which was struck out will be restored and determined. The Brakes say that Chedington has no real prospect of defending that application on its merits. Third, if the issue under section 283A is tried in May and goes against Chedington, "there is every prospect" that Chedington would seek to appeal that decision. Any such appeal would be pending at the same time as the Brakes' own appeal, which "would be procedurally undesirable and contrary to the overriding objective".

Abuse of process?

34. Chedington's junior counsel, Mr Day, has made written submissions in an email to the court dated 16 March 2020. He says that Chedington was served with the application for a stay only on that day. (In fact, that is the next business day after issue.) He submits that this application is abusive and should not be entertained. He points out that, at the hearing before me on 3 March 2020, Mr Davies QC for the Brakes referred to the hearing in May as going ahead, but dealing *only* with the section 283A issue, and that that direction at least was agreed between the parties afterwards, even though other parts were disputed. Moreover, he also points out, in their informal application for lifting the stay on the Eviction Proceedings and for a preliminary issue to be tried, the Brakes asked for that preliminary issue to be listed *together with* the remaining aspects of the Bankruptcy Application in May.

35. Mr Day says it is abusive for the Brakes to change their mind on the matter of what should be tried in May when Chedington provided its submissions on the first, informal application on 13 March 2020 without knowing of the formal application notice being issued that same day, but only served on it on 16 March 2020. The Brakes must have known, in putting forward their informal application on 10 March, that they were preparing an application to be issued on 13 March, which went back on their earlier stated position.

36. I accept that this behaviour on behalf of the Brakes is unhelpful, and wasteful of judicial and other resources. It is indeed unfortunately symptomatic of the unnecessarily aggressive approach taken hitherto by both sides in this litigation, and is much to be deprecated. If this behaviour had caused serious prejudice to Chedington,

I would have been inclined to say that the Brakes were not now entitled to change their mind and ask for something different to what they previously sought. However, since I have now dismissed the application for a preliminary issue, in fact Chedington has lost nothing of substance.

Merits

37. On the merits of the application, Mr Day deals with each of the three grounds put forward by the Brakes (in summary) as follows. First, whether Chedington has a legitimate interest in the section 283A issue is a question which cannot be dealt with summarily in the way desired by the Brakes. It must be tried, and therefore the May trial (at which it will be dealt with) should not be stayed. Second, the Brakes assume both that their appeal will succeed and that then their summary judgment application will also succeed. But this is not self-evident, not even after reading the Brakes' skeleton arguments. Chedington unsurprisingly disputes the Brakes' analysis. Third, the prediction (if it be correct) that a party will appeal a decision that goes against it is not a good reason to adjourn the hearing of that issue before the decision can be made.

38. On each of these three points, I think Chedington is right. Having re-read the Chedington skeleton dealing with the matter, I consider that the question whether Chedington has a legitimate interest in the section 283A issue is a matter of some importance, which cannot be dealt with by a brief side-wind (and especially not just on the papers) on the way to deciding to stay or adjourn the determination of that issue. It needs a full trial.

39. Second, I cannot possibly decide here and now that the Brakes' appeal and their summary judgment application will both succeed. I have given permission to appeal, but that does not mean that I must proceed for the future on the basis that my decisions subject to appeal were wrong. On the contrary, I think they were right, even though the Court of Appeal may hereafter take a different view. Nor can I assume that any summary judgment application must succeed. I am not hearing such an application now. The best that can be said is that it is possible.

40. Thirdly, I do not understand why it "would be procedurally undesirable and contrary to the overriding objective" for two appeals (one by each side) to be outstanding at the same time. On the contrary, as Chedington points out, this may well be more efficient. And I respectfully do not consider that the mere fact that a party may appeal a future decision should make a difference as to whether a stay or adjournment should be granted of the hearing at which that decision may be made. I remind myself that CPR rule 52.16 puts the burden on the applicant for a stay to show that one should be granted. The fact of an appeal is not enough by itself. Usually, the successful applicant shows irreparable harm flowing from the failure to grant a stay. But there is nothing of that kind here.

Decision

41. It seems to me that, in essence, what the Brakes are seeking to do by these two applications is to subvert the substantive decisions which I made on 2 and 3 March 2020. What I then decided was that the only matter of substance to be determined in

May was the section 283A issue. The Brakes would have me sweep that aside, and replace it with an entirely new issue, not disclosed on the pleadings as they stand, dealing instead with the validity of the Licence. In my judgment, this is quite wrong, and I have no hesitation, for the reasons given above, in refusing the Notice Application.

Trial of the Eviction Proceedings

42. There is a final point. In its written submissions of 13 May 2020, Chedington asks that the whole Eviction Proceedings be tried in the May 2020 trial window, now that the major part of the Insolvency Applications has gone, and only the section 283A issue remains. It therefore asks for appropriate directions to such a trial, and makes a proposal for this in paragraph 29 of its skeleton of 13 March. Whilst I accept that the judicial time has now become available, in my judgment there are a number of objections to my taking this course.

43. The first is that I have lifted the stay on the Eviction Proceedings only conditionally. The Brakes would need to take certain action before the stay is definitively lifted, and it is up to them whether they do so. If they do not do so, the stay will remain in place. The second is that there may not be sufficient time for all the necessary preparatory steps to be taken for a trial in early May. The timetable suggested by Chedington would certainly be tight.

44. As to the directions that might be necessary, I may say that as at present advised I do not agree with the submission of Mr Davies QC that there would be no need for disclosure or witness statements. Presumably this is based on his submission (which I have already rejected) that resolution of his proposed "preliminary issue" would determine the Eviction Proceedings. Certainly, care would be needed to ensure that preparation for trial imposed no greater burden than necessary, but on the issues pleaded in those proceedings I see no basis for dispensing with disclosure and witness statements altogether. Our system of civil justice runs on the basis that the cards will be played face up on the table.

45. The third objection is that, as I have already said, this litigation has already had more than its fair share of judicial resources so far. In circumstances where only Chedington asks for the Eviction Proceedings to be tried in May, I would rather give other litigants an opportunity to have their matters dealt with, and list the trial of the Eviction Proceedings later in the year, with directions generally of the kind set out in paragraph 30 of Chedington's skeleton argument. But I emphasise that I have not heard any argument on the question of directions, and it may be that more or less than this would be required, once it is known that the lifting of the stay has actually taken effect.

46. That said, I bear in mind Mr Davies QC's stress, in his skeleton argument on behalf of the Brakes, on the "melancholy fact of the licence … causing misery to the Brakes", and on their desire to get before the court as soon as possible. Accordingly, *if* the Brakes were to act so as to activate the conditional lifting of the stay, *and* to join in Chedington's request for the trial of those proceedings in the May window, *and* the parties agreed, or at least attempted in good faith to agree, directions leading to that

trial, I would reconsider this part of my decision. But if the Brakes do not wish to do so, then I am not minded to devote more judicial resources to this litigation in May than the limited issue remaining from the Bankruptcy Application, already listed.

Costs

47. I will invite the parties (by the terms of the order which I shall make) to make written submissions to me on the costs of these two applications.