Neutral Citation Number: [2021] EWHC 828 (Ch)

Claim Nos: E00YE350,

BL-2019-BRS-000028,

F00YE085

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

31 March 2021

BEFORE: MR JUSTICE MARCUS SMITH

BETWEEN:

Claim No E00YE350

AXNOLLER EVENTS LIMITED

Claimant

and

(1) NIHAL MOHAMMED KAMAL BRAKE
(2) ANDREW YOUNG BRAKE

Defendants

Claim No F00YE085

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

Claimants

and

THE CHEDINGTON COURT ESTATE LIMITED

Defendant

Claim No BL-2019-BRS-000028

(1) MRS NIHAL MOHAMMED KAMAL BRAKE
(2) MR ANDREW YOUNG BRAKE

Claimants

and

(1) DR GEOFFREY WILLIAM GUY
(2) THE CHEDINGTON COURT ESTATE LIMITED
(3) AXNOLLER EVENTS LIMITED

Defendants

HEATHER ROGERS, QC (instructed by **Ashfords LLP**) appeared on behalf of the Claimants in Claim No BL-2019-000028 (the **Brake Parties**)

ANDREW SUTCLIFFE QC and **WILLIAM DAY** (instructed by **Stewarts LLP)** and **EDWIN JOHNSON QC** and **NIRAJ MODHA** (instructed by **Stewarts LLP)** appeared on behalf of the Defendants in Claim No BL-2019-000028, the Claimants in Claim No E00YE350 and the Defendant in Claim No F00YE085 (the **Guy Parties**)

Approved Judgment

Wednesday, 31 March 2021

MR JUSTICE MARCUS SMITH:

1. Between 23 and 27 November 2020, His Honour Judge Matthews (sitting as a judge of the High Court) heard a dispute between the following parties in Claim No BL-2019-BRS-000028:

   a. The claimants in those proceedings were a Mr Nihal Mohammed Kamal Brake and Mr Andrew Young Brake.

   b. The defendants were Mr Geoffrey William Guy, the Chedington Court Estate Limited and Axnoller Events Limited.

   I am going to refer to the claimants as the "**Brake Parties**" and to the defendants as the "**Guy Parties**". I do so conscious of the fact that the precise constitution of who are Brake Parties and who are Guy Parties varies from action to action, for (as will become clear) there are three sets of relevant proceedings before me today. I shall refer to the proceedings under Claim No BL-2019-BRS-000028 as the "**Current Proceedings**". I shall refer to His Honour Judge Matthews as the "**Judge**".

2. In the Current Proceedings, the Brake Parties were represented by Ms Daisy Brown, instructed then by Porter Dodson LLP. The Guy Parties were represented by Mr Andrew Sutcliffe, QC and Mr William Day, instructed by Stewarts Law LLP.

3. This was a substantial trial and the Judge reserved his judgment. His judgment was formally handed down on Thursday, 25 March 2021. As is usual, a draft judgment was circulated, on a confidential basis, before that date. I understand that this was on Friday, 19 March 2021. I shall, for reasons that will become clear, refer to this judgment as the "**Main Judgment**". It bears a neutral citation number [2021] EWHC 671 (Ch).

4. As I understand it, there were already intimations that all was not well with the Brake Parties' counsel team <u>before</u> 29 March 2021. I do not know enough about these matters to say anything about these circumstances and I am going to base myself, in this ruling, on the communications the court has received from the parties, rather than on matters which may or may not have been going on, as it

were, behind the scenes.

5. I should note, however, that the Brake Parties replaced their solicitors at trial, Porter Dodson LLP, with their present solicitors, Ashfords LLP ("**Ashfords**"). Again, I say nothing more than to note this change of solicitor for the record. I can say nothing more about this for the very good reason that I know nothing more.

6. The hearing consequential on judgment was fixed by the Judge for 10.30am on 31 March 2021, which is the last day of this term. It is trite that an order consequential on judgment ought to be made as soon as is practically possible after the handing down of judgment. It is self-evidently right that the terms of the judgment be swiftly embodied in an order that sets out what the judge has found and directed. That is a matter of basic justice.

7. In this case, however, the consequentials hearing is of particular importance and it is particularly important, at least to the Guy Parties, that it take place quickly. That is for a number of reasons, which I am going to come to. Before I do so, however, it is necessary that I give some insight into the complexity of the proceedings between the Brake Parties and the Guy Parties.

8. For the purposes of this exposition, which is necessarily brief and which omits a great deal, I go back to 2019. In 2019, the Brake Parties obtained an interim injunction. They obtained it from Mr John Jarvis, QC sitting as a judge of the High Court. Mr Jarvis' judgment bears the neutral citation number [2019] EWHC 3332 (Ch). The order that Mr Jarvis made consequential on his judgment prevented the Guy Parties from using certain documents in an email account (the "**Documents**"). I am not going to say anything more about the precise detail of the injunction that was granted, save to say that I will refer to it as the "**Interim Injunction**", and to note that the Interim Injunction, as obtained by the Brake Parties, appears, and certainly that is the Guy Parties' position, to be no longer sustainable as a result of the Judge's recent conclusions as set out in the Main Judgment.

9. In May 2020, the Brake Parties applied, acting by way of Mr Stephen Davies, QC, instructed by Seddons LLP, to the Judge, requesting that the Judge recuse himself. The Judge considered the application carefully – it is reported at [2020] EWHC 1156 (Ch) – and he refused the application. Permission to appeal that decision was refused by Patten LJ, when the Brake Parties sought permission to appeal on the papers.

10. The recusal application took place prior to insolvency proceedings under section 283A of the Insolvency Act 1986, heard before and determined by the

Judge in a decision under neutral citation number [2020] EWHC 1810 (Ch). This was a claim of the Brake Parties, which was dismissed by the Judge. Permission to appeal was again refused, on this occasion by Andrews LJ.

11. Moving on, the Main Judgment was accompanied by a second judgment, also dated 25 March 2021, which I shall refer to as the "**Preliminary Issue Judgment**". The preliminary issue to which that judgment relates was argued at the end of the trial of the Current Proceedings that resulted in the Main Judgment, on 27 November 2020. Counsel on that occasion were Mr Davies, QC and Ms Brown, again instructed by Porter Dodson LLP. The Preliminary Issue Judgment, bearing the same date as the Main Judgment, is reported under neutral citation [2021] EWHC 670 (Ch).

12. It is, I trust, already very clear, without getting into the substance or the detail, that these are hard fought and complex proceedings. But the Main Judgment and the Preliminary Issue Judgment recently handed down are not the end of the story. Two related sets of proceedings have already been listed before the Judge. They are as follows.

13. First, there are what are termed before me as the "**Possession Proceedings**". This is a seven-day trial listed for 26 to 30 April and 4 to 5 May 2021. Secondly, there are what are termed the "**Eviction Proceedings**", a five-day trial listed for 10 to 14 May 2021. I do not think it particularly matters, but for the record I note that in the Possession Proceedings the Guy Parties are the claimants, whereas in all the other proceedings, including the Eviction Proceedings, they are the defendants.

14. The matters which arise for determination at a hearing consequential on the Main Judgment and the Preliminary Issue Judgment (the "**Consequentials Hearing**") involve, self-evidently, given the chronology I have articulated, questions which relate also to the Possession Proceedings and the Eviction Proceedings. In effect, the hearing that I am invited to adjourn today, what I call the Consequentials Hearing, is a combination of a hearing of matter consequential on the Main Judgment and the Preliminary Issue Judgment as well as a pre-trial review for the Possession Proceedings and the Eviction Proceedings.

15. The matters which arise for consideration are, in essence, these.

    a. First, directions are urgently required for the Possession Proceedings and the Eviction Proceedings. Unless directions are given, there is a real risk that both of these proceedings, which (as I say) are listed to be heard imminently, will be derailed and may not, purely by an absence of direction, take place unless they are properly "looked after".

b. Secondly, there is the question of the discharge of the Interim Injunction. As a matter of course, any interim restraint on a party that has been proved at trial not to be justified ought to be reviewed by the court as a matter of urgency. That, again, I trust, goes without saying.

c. Thirdly, there is the question of the damages inquiry consequent upon the arguable discharge of the Interim Injunction. This is perhaps on the less urgent end of the scale of the matters that are before me.

d. Fourthly, the Guy Parties seek an order permitted the use of certain of the Documents – to the extent they are relevant – in the Possession Proceedings and in the Eviction Proceedings. Their deployment was previously enjoined by the Interim Injunction. There is a degree of urgency here, because of imminence of the Possession Proceedings and the Eviction Proceedings.

e. Fifthly, there are the more usual consequential matters, costs, permission to appeal and other matters.

16. I am going to refer generically to all of these matters as "**Consequential Matters**", although (as I have indicated) it is quite clear that some matters are backward looking, that is to say they are genuinely consequential upon the outcome of the Main Judgment and the Preliminary Issue Judgment, and some matters are forward looking, because they relate in essence to directions in relation to the Possession Proceedings and the Eviction Proceedings.

17. This is a flavour of the matters that the Judge would have been considering today, 31 March 2021. It is from, what I have said, pretty self-evident that he is the proper person to deal with these consequential matters. Not only are these matters consequential to the Main Judgment and the Preliminary Issue Judgment, both judgments of the Judge, but the Judge is the judge who is master of the entire history, having been the only judge substantially to be involved in these proceedings. So, I ask rhetorically: why is this matter before me today?

18. On Monday, 29 March 2021, Ashfords sent the following letter to the Judge by way of his clerk. It is appropriate and necessary that I read the entire letter into the record. After addressing the clerk to the Judge, Ms Amy Smallcombe, and identifying all of the actions that are before the court, the letter reads as follows:

"We are writing to ask the court to vacate the hearing in the above matters presently fixed for 31 March 2021, in the circumstances outlined below.

This morning, we have received confirmation that counsel who have been instructed on behalf of our clients (referred to for ease as "the Brakes") have found it necessary to withdraw from these matters. We do not intend to waive privilege in respect of any communication or advice which would otherwise be privileged. We inform you that:

1. Ms Brown, having consulted with the Bar Council and senior colleagues, has concluded that it is her duty to withdraw. This is as a result of the Judge's conduct of the trial and the contents of the Judgment, [2021] EWHC 671 (Ch) ("the Judgment), which have made it impossible for Ms Brown to appear before the Judge again.

2. Mr Davies, QC, having considered his position with the benefit of advice from the Bar Council and senior colleagues, has concluded that there is a real possibility that he would be unable to fulfil his overriding duty of independence to the court, if he were to continue to represent the Brakes. Accordingly, he has withdrawn as counsel for the Brakes in relation to those matters for which he is instructed. Mr Davies, QC, having reviewed the Judgment in detail, in light of the proceedings at pre-trial hearings and at the trial, has concluded that the Brakes (in particular, Mrs Brake) are unlikely to receive a fair trial in the ongoing proceedings if presided over by the Judge. This includes the proceedings [the Eviction Proceedings], in which Mr Davies, QC was instructed and in relation to which he remains of the view that the Brakes' case has strong legal merits.

In conveying the position to us counsel have indicated the usual reasons for withdrawal such as personal conflict or funding do not apply.

In these circumstances, there is an obvious (and in our view insurmountable) problem in relation to the hearing fixed for this Wednesday. In the light of the withdrawal of Ms Brown and Mr Davies, QC, we do not have counsel for the two matters in relation to which Judgments were handed down on 25 March 2021 or for [the Eviction Proceedings or the Possession Proceedings]. In relation to the last we have been informed Ms Taskis, QC (who was intended to lead Ms Brown in that matter) is unable to accept instructions to act for the Brakes, in light of the withdrawal of Ms Brown.

We are writing, simultaneously, to the court and to solicitors representing the other parties (for ease of reference, "the Guy Parties"), given the timing.

We are urgently exploring with our clients the instruction of new counsel to advise and represent them. As the court and the advisers to the Guy Parties will appreciate, it will be necessary to consider the question of permission to appeal in relation to two matters which have been tried (in particular, the Judgment); and any outstanding arrangements and directions for the trial in the two other matters…In the light of all the circumstances, this must include whether it is appropriate for those further matters to be tried by the Judge. It is, of course, open to the court (the Judge) to take the view that another judge should take over the future conduct of those matters. Should that approach not be taken,

our clients will need to have the opportunity to consider, with the benefit of advice from new counsel, an application for recusal. This cannot be done given the need for careful and detailed consideration required between now and Wednesday.

We would be grateful if, given the circumstances which we have outlined above, the court would consider this request and vacate the hearing on 31 March 2021.

We can confirm Mr Davies, QC, has had sight of this letter and approved its contents."

19. It goes without saying, but I say it nonetheless, that this is an extremely concerning letter. It makes, although the points are attributed to counsel, a number of extremely serious complaints against the Judge. Those complaints are entirely unparticular and are made in light of a previous failed application by the Brake Parties to have the Judge recuse himself.

20. I should say at once that I am certainly not closing my mind to the suggestion that the Judge's conduct has been such as to justify recusal, as the letter suggests. These things happen, although thankfully they happen rarely. The problem is that absolutely no particularity is provided in this letter to substantiate these very serious allegations, nor in subsequent correspondence has the point been made any clearer. Although Mr Davies, QC and Ms Brown might consider themselves under no obligation to represent the Brake Parties, a point about which I say nothing but which I am certainly not endorsing, they are obliged to assist the court in relation to the very serious allegations that they have chosen to advance.

21. In this regard, it is appropriate to have regard to what is said at page 2 of the Guy Parties' written submissions. In the third unnumbered paragraph on that page, Mr Sutcliffe, QC and Mr Day, his junior, say this:

"The court is invited to proceed tomorrow [that is to say, at the hearing today on 31 March] and direct that (consistent with their overriding duties to the court and the administration of justice), Mr Davies, QC and Ms Brown attend the hearing independently to assist the Court with references to particular paragraphs of the [Main Judgment] and passages of the transcript in relation to the recusal issue. Mr Davies, QC and Ms Brown should already have done this exercise in order to reach the conclusion that they were under a duty to withdraw."

22. Pausing there, it seems to me that the letter of 29 March 2021 from Ashfords could and should have been much more specific, and that it appears quite deliberately not to have been. I make the point that the trial was about 4 months ago. If and to the extent that there were complaints of the Judge's conduct at the trial, then there was ample time for these to be framed and framed in some detail.

Equally, although I appreciate that the Main Judgment itself was only circulated in draft on 19 March 2021, that is over 10 days ago, and it seems to me there was again ample opportunity to identify the issues which have caused or provoked the withdrawal of counsel.

23. Much more to the point, the application to recuse should, no matter how serious and no matter how well-founded, have been made by either or both of Mr Davies, QC and/or Ms Brown before the Judge. It goes without saying, but again it is important to say it nonetheless, that the refusal of these counsel even to appear before the Judge to explain why he should hand the case over to another judge is a deeply unhelpful and disruptive thing to do. I could say more on this point, but I think it is appropriate to stop there.

24. I move on to the more important question, which is this: what is the court to do in the light of this communication? It is right to say that the Judge quite properly raised the problem that this letter gave rise to with me, the Business and Property Courts Supervising Judge for this jurisdiction. There were three options and none of them palatable. Just to list them:

    a. The first option was that the Judge could proceed to hear the Consequentials Hearing. The problem with this course was that Ashfords' letter made absolutely clear that Ms Brown's (and Mr Davies') issues were *ad hominem*, that is to say they were directly and personally related to the Judge hearing the matter. It is appropriate that I re-quote from the relevant part of Ashfords' letter (with my emphasis added):

    > "Ms Brown, having consulted with the Bar Council and senior colleagues, has concluded it is her duty to withdraw. This is as a result of the Judge's conduct of the trial and the contents of the Judgment, which have made it impossible for Ms Brown to appear before the Judge."

    I emphasise the very specific references to the Judge. I consider that this statement in effect put a gun to the head of the judge. Basically, he was being told, if you, as opposed to some other judge, hear this matter on 31 March 2021, the Brake Parties will not be represented by their chosen counsel at that hearing.

    So that is option one, as I call it, and that is why option one was not a particularly attractive option to pursue.

    b. The second option was that the Judge could adjourn the Consequentials Hearing to a later date, either before himself or before some other judge.

That would enable the Brake Parties to instruct fresh counsel, who might consider themselves able to appear before the Judge or before a different judge. The problem with this course is that, for no readily apparent reason, Ms Brown and Mr Davies' withdrawal being in substance unexplained, the Brake Parties would get an automatic and on the face of it unjustifiable adjournment of the Consequential Matters to the prejudice of the Guy Parties and running a coach and horses through the orderly conduct of the Possession Proceedings and the Eviction Proceedings. In effect, to adjourn the Consequentials Hearing would be to adjourn, certainly, the Possession Proceedings and, most likely, the Eviction Proceedings.

Although, entirely understandably, Ms Rogers, QC, who appears on the adjournment application today for the Brake Parties, suggested that there was in effect no disguised adjournment application before me today of the Possession Proceedings and the Eviction Proceedings, she did accept (after consulting with her solicitors) that the Possession Proceedings would, if the application to adjourn this hearing were to succeed, have to be adjourned also.

Again, it goes without saying that this second option, the option to adjourn, has a number of unpalatable features attached to it which I have described.

c. The third option was that another judge could deal with the Consequentials Hearing, so as to overcome Ms Brown and Mr Davies, QC's stated difficulties with the Judge, whilst leaving open the possibility of the Judge continuing the overall management of these proceedings, using that term to embrace all issues in all proceedings between the Brake Parties and the Guy Parties. This, too, is not a particularly satisfactory course. The new judge would know very little about the proceedings and would be required to make consequential orders or to adjourn matters in singularly difficult circumstances.

25. At the end of the day, the third option, which seems the least worst, was selected, and the following email was sent to the parties at 6.45pm on 29 March 2021:

"Following correspondence received today, the matters previously listed before His Honour Judge Paul Matthews on 31 March 2021 will now be listed before Mr Justice Marcus Smith at 2pm the same day remotely by Teams.

The judge has not dealt with this litigation before, so will need full skeleton arguments please. He would also need to know why His Honour Judge Matthews should recuse himself from future matters.

I will send out a link tomorrow to avoid any confusion. I have copied in Gwilym Morris, the judge's clerk, in case there is anything he wishes to add. He will also require an electronic bundle."

Sending this email out at 6.45 pm was regrettably late in the day, but it was at least the same day that Ashfords' letter was received.

26. The response of the Brake Parties was to seek an adjournment of the Consequentials Hearing, that application initially being made on the papers, on the basis that no hearing was necessary. I refused that application on the papers, and made clear that if such an application was to be made, it would need to be made before me today, on 31 March 2021. My reasons for requiring an oral application are self-evident: to simply accede to the application to adjourn, without hearing from the Guy Parties. would not have been right.

27. It is in these circumstances that the application today to adjourn the Consequentials Hearing is made. It is made by Ms Heather Rogers, QC, who I have referred to once already, and who, as will be clear, is at least as new to the proceedings as I am. I want to pay tribute to the care with which she has made this application in what can only be described as extraordinarily difficult circumstances for her.

28. The adjournment application is made on three related bases. I will briefly articulate them.

29. First, it is said that, given the volume of material, including the length and complexity of the Preliminary Issue Judgment and the Main Judgment, new counsel will require time to get up to speed. It would be unjust to the Brake Parties to hear the Consequential Matters now. In particular, the Brake Parties would wish to frame and put forward a detailed application for permission to appeal the Main Judgment and, it may be, the Preliminary Issue Judgment. Such an application for permission to appeal would include (in particular) the question of the Judge's judicial conduct in the conduct of the proceedings before him and in the framing of his judgments.

30. I pressed Ms Rogers on when such a document might be produced. Entirely understandably, Ms Rogers could not be completely clear, but suggested that such a document might be capable of being served by around 12 April 2021, and I will proceed on the basis that that is the end stop date for the production or service of a fully framed permission to appeal application, including in particular dealing with matters relating to the Judge's conduct of the trial before him.

31. It will not go unnoticed that 12 April 2021 is about a fortnight before the scheduled commencement date of the Possession Proceedings.

32. Secondly, and relatedly, it is said that given that an application for recusal is a very serious matter, particularly when such an application is being contemplated after a first application has been refused. New counsel will require time to consider and prepare such an application and, as I have said, entirely understandably, 12 April 2021 is mooted as a date by which such an application could, at the latest, be put forward.

33. Next, thirdly, it is said that Ms Brown and Mr Davies, QC, whose withdrawal from the proceedings has brought about the problems I have articulated, will only have withdrawn for good reason. I quote from Ms Rogers QC's written submissions at paragraph 4:

> "The fact is that following the trial both counsel instructed in the [Current Proceedings], Ms Brown and Mr Davies, QC, have found it necessary to withdraw from these proceedings."

Then there is reference to Ashfords' letter of 29 March that I have read into the record.

> "This is not a step that any counsel would take lightly. Both Ms Brown and Mr Davies, QC, are established practitioners. Mr Davies, QC, who has long experience of litigation as a junior from 1983 and as QC from 2000, is widely held in high regard. They have each taken advice from senior colleagues and the Bar Council as to their professional position and duty, being driven to the decision to withdraw."

34. I have listened with great care to Ms Rogers, and I have considered her written submissions with equally great care. I have no doubt that the application to adjourn should be refused. In reality the application is not just to adjourn the Consequentials Hearing, that is to say today's hearing, but also the two trials that have been listed for hearing in the near future before the Judge.

35. Of course, Ms Rogers was explicitly seeking the adjournment of this hearing: that was the substance of the application made by the Brake Parties. The hidden and unexpressed consequence of that application, if successful, was the adjournment of the Possession Proceedings was conceded by Ms Rogers. Ms Rogers was a little more equivocal as to whether the Eviction Proceedings might survive an adjournment of this hearing. I must say that it is my view that unless directions are given in relation to both proceedings, I can see no real prospect of them taking place when they have been listed to take place. So it seems to me that it is

important that I acknowledge that the limited application to adjourn today's hearing has profound implications on two other substantial matters. That is because, as I have described, the PTR elements of the Consequentials Matters, namely certain directions which are being sought today in relation to the Possession Proceedings and the Eviction Proceedings, are necessary for the proper conduct of these two imminent trials.

36. I say nothing, at this stage, about what directions should be made. The application to adjourn involves my explicitly <u>not dealing with these matters</u>, which either leaves the Possession Proceedings and the Eviction Proceedings pilotless and drifting (and so liable to be adjourned by inaction) or else forces their adjournment by order without proper consideration, and purely because this hearing has been adjourned.

37. It seems to me that it would be wrong, entirely wrong, for me to abdicate control of these imminent trials and that, to some extent at least, I have to deal with the consequential matters today, if only to adjourn two trials that are presently listed.

38. I must recognise that over and above this prejudice to the orderly conduct of the Possession Proceedings and the Eviction Proceedings there is further prejudice to the Guy Parties in not dealing with the Consequential Matters now. I do not say that such prejudice to the Guy Parties prevents an adjournment: but it does require me to look closely into why an adjournment is sought.

39. In short, an adjournment, even if only of a pure consequentials hearing, which this is not, must be justified. I have indicated that of course this is not a pure consequentials hearing. It is rather more than that.

40. To take just one point that was raised by counsel in the Possession Proceedings, Mr Edwin Johnson, QC, who appears in those proceedings but not in the Current Proceedings, made clear that the subject matter of the possession proceedings, Axnoller House, is presently occupied by the Brake Parties. The Guy Parties want rid of their occupation and want possession of Axnoller House. I say nothing, I can say nothing, about the merits of these matters. The point that Mr Johnson makes, entirely neutrally, is that these matters, the subject matter of the Possession Proceedings, need in the interests of the Guy Parties to be resolved swiftly. It may, of course, be that the Guy Parties lose at trial. The point is they want the matter resolved, and an adjournment of the present hearing would in my judgment irretrievably prejudice the swift hearing of the Possession Proceedings for the reasons I have given.

41. So it seems to me an adjournment must be closely justified, and I turn to those

justifications. It is logical to begin with the question of recusal, which appears to be the basis upon which previous counsel, Ms Brown and Mr Davies, QC, have withdrawn. Ms Rogers says quite rightly that an application for recusal is a serious matter for all concerned and should only be made after a careful assessment. I agree. But that careful assessment must already have been made, otherwise previous counsel have acted improperly in withdrawing from the case for no proper justification. To put the same point in other words, previous counsel have withdrawn because of the (unspecified and unspecific) conduct of the Judge. In order to justify that withdrawal, previous counsel must be able to say what that conduct is. If they cannot do so, and cannot do so with specificity, how can they withdraw? And yet no basis for recusal or withdrawal has been articulated. I am completely in the dark as to why previous counsel has withdrawn.

42. I should say that I have reviewed the Main Judgment and the Preliminary Issue Judgment. I can see nothing on the face of these judgments that would justify a recusal application. Of course that says very little: I have had something of a baptism of fire into this case, and there is much, I am sure, that I could be told. But this is not a case where the issue of recusal is self-evidently staring me in the face – and everyone else in the face as well – and the question is how to handle an obvious problem. This is a case where I, and indeed the Guy Parties, represented by Mr Sutcliffe, QC and Mr Day, are at a loss to understand the withdrawal of previous counsel and the complaints that they make about the conduct of the Judge.

43. For the purposes of today, I cannot proceed on the basis that there is even an arguable basis for recusal of the Judge and the withdrawal of counsel. That is because the argument has simply not been framed. I have no idea what it is. It follows that I cannot simply proceed on the basis that previous counsel have proceeded properly or even professionally. It is bad enough to make very serious allegations in relation to the conduct of a trial judge entirely without particularisation. That is compounded, however, by the unusual and difficult to justify course of refusing to assist either the parties or the court in understanding the reasons underlying the withdrawal of previous counsel.

44. It seems to me that I cannot proceed on the basis that previous counsel have withdrawn in a manner consistent with their professional obligations, either to their own clients or to the court. I do not go so far as to say that previous counsel have behaved unprofessionally. That is not merely a matter not for me, it is simply not a matter on which I can express any concluded view. But I cannot use counsels' withdrawal, for reasons that are not understood by me and which are on the face of it not good, as a reason for adjourning a trial to the prejudice of Guy Parties and into to the good order of the court lists. Adjourning significant hearings is a matter of last resort, that must be closely justified.

45. I accept – I have to, as the point is self-evident – that the conduct of Ms Brown and Mr Davies, QC, leaves their clients, the Brake Parties, horribly exposed. I entirely accept that Ms Rogers, QC, has been placed in the most difficult position, and that would be the position of any counsel assuming the reins at this point and in these circumstances on behalf of the Brake Parties.

46. Naturally I can say nothing about the circumstances that have brought about this regrettable state of affairs: but it seems to me I must proceed on the basis that the Brake Parties are entirely uninvolved in the withdrawal of their counsel and that they have been left high and dry by their counsel through no fault of their own. In his submissions to me, Mr Johnson, QC, sought to suggest that the Brake Parties were in some way manipulating the process and that they were complicit in an attempt illegitimately to adjourn this hearing and the other trial proceedings that I have described.

47. I cannot base any decision today on that submission. It seems to me that I cannot assume or base my decision on any involvement by the Brake Parties in the withdrawal of their counsel and, as I say, I must proceed on the basis that they, the lay clients, have been left high and dry by their counsel through no fault of their own.

48. This, in my judgment, is the most powerful argument in Ms Rogers' armoury in favour of an adjournment. It would, so she says, be unfair to the Brake Parties not to adjourn. It seems to me, therefore, that I must consider whether, to protect the Brake Parties from a situation that I am going to assume is not of their own making, I must adjourn on the explicit basis that they have been left exposed by the conduct of their counsel, of which they are entirely innocent and entirely uninvolved.

49. The question is whether an adjournment is required and justified in these circumstances. Even making the assumption that the Brake Parties are entirely uninvolved in the withdrawal of their counsel, it is my considered view that it would be wrong to adjourn the hearing today. That is for a number of reasons.

50. First, the implications of adjournment on other court business cannot be disregarded and it would be irresponsible of me to disregard those implications. I have in particular in mind the importance of only derailing the Possession Proceedings and the Eviction Proceedings for good and justified reasons. It seems to me to allow those hearings to descend into chaos by default and without making directions is absolutely the wrong thing to do.

51. I also must take account of the prejudice to the Guy Parties that an adjournment of

this hearing would cause. That is the second point.

52. Thirdly, I do bear in mind that the Brake Parties do continue to be represented by solicitors who are on the record. Those solicitors have had a reasonable amount of time to deal with the fallout of the withdrawal of their previous counsel. Although the letter from Ashfords, explaining the issues to the extent it does explain the issues, is dated 29 March 2021, it is clear that Ashfords must have known for some days about the issues that have caused previous counsels' withdrawal. I have not, I should stress, been made aware of what has gone on in the days preceding 29 March 2021, and so I must tread carefully. But I do not consider that I can place undue weight on the fact that, through no fault of their own, the Brake Parties are now inadequately represented. There has been about a week in which the problem could have been addressed.

53. Accordingly, I refuse the adjournment. However, I want to make clear that I refuse it in light of the following points. First, I intend to deal with the Consequential Matters with as light a touch as possible. Put another way, I propose to do the minimum consistent with doing justice to the interests of the Guy Parties and to preserving (without prejudice to any future adjournment application) the Possession Proceedings and Eviction Proceedings already listed.

54. It seems to me that I must set out today the directions which lead to the regular hearing of both those proceedings. That includes dealing with the question of the varying of the Interim Injunction and the use of the Documents in the Possession Proceedings and the Eviction Proceedings. In the ordinary course, and I will of course hear the parties on this, I would be minded to discharge the Interim Injunction without more. But it seems to me that if the Interim Injunction can appropriately be left in place, but subject to an explicit provision entitling the use of relevant Documents in the Possession and Eviction proceedings, then that is the course I should take. In other words, in favour of the Brake Parties, and because I can see no particular harm to the Guy Parties, I propose maintaining, contrary to what would normally happen, the Interim Injunction in some form, but making explicitly clear that Documents that are relevant in the pool of documents subject to the Interim Injunction can be deployed and disclosed and used in the trials that are forthcoming.

55. Equally, it seems to me that questions of costs need to be addressed, but must be addressed in a light touch way. Let me explain what I mean by that. Mr Sutcliffe made clear that his clients would be seeking costs on an indemnity basis, and Ms Rogers made clear that she was in no position to say anything about this. It seems to me that I cannot be sure that an issues based costs order would or would not be appropriate and I am in no real position to ascertain the general costs order that should be made in light of the Main Judgment and the Preliminary Issue Judgment. However, I do consider that I am well able to make an order for the

interim payment of costs on account and it seems to me that that is an order, subject again to what Ms Rogers has to say, that I can and should make and the real debate, again subject to what Ms Rogers has to say, is as to the amount.

56. I should stress that I will need to hear from the all of the parties when making any consequential orders and I recognise, as I have already said, that the Brake Parties are effectively without counsel. I am not clear on the extent to which Ms Rogers, being instructed only on the adjournment application, can actually assist, but if Ms Rogers cannot assist, given the limits on her brief, then I note that there are solicitors on the record from Ashfords and I will hear from someone from Ashfords on behalf of the Brake Parties or I will hear from the Brake Parties themselves. Furthermore, I am going to impose on Mr Sutcliffe the not inconsiderable obligation to make points against himself and to press matters only so far as I have indicated that I want to go, that is to say to deal with matters with as light a touch as possible.

57. That, unfortunately, means that it will be necessary to arrange for a further hearing, at which the Brake Parties will have counsel properly up to speed, to deal with the matters that I am not going to deal with today. It seems to me that the parties need to put in the diary a hearing in the week commencing 12 13 April 2021, at which such further matters can, insofar as is necessary, be considered and resolved.

58. That hearing should ideally be before the Judge. I make it clear that I regard this intervention on my part today as exceptional. These matters are, until a recusal application has been made and determined, primarily for the Judge, and I make clear now that I am, to the extent that they have not already been, docketing these matters to the Judge. That, of course, is without prejudice to any recusal application that may be made in the future – which should be made to the Judge and which, if successful, would entail the identification of a different judge.

59. But, for the moment, I see no reason for the Judge not to continue as the judge in these proceedings (meaning all the proceedings). The only rider that I would add is as to the question of the Judge's availability. I have no insight into his diary in the week commencing 12 April 2021, and it seems to me that if his diary cannot accommodate a further hearing to ensure that a proper grip is maintained of the various matters I have described, then the matter should, if I am available, be listed before me. It seems to me, whatever the case, imperative that there be a hearing date fixed in that week so that matters can further be dealt with.

60. With those broad indications as to how I intend to deal with the Consequential Matters, I refuse the application to adjourn.