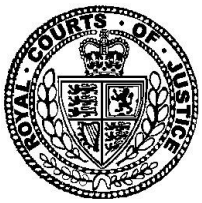

Neutral Citation Number: [2023] EWHC 3104 (Ch)
CR-2023-006365

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

IN THE MATTERS OF REDHILL RESIDENTIAL PARK LIMITED (IN ADMINISTRATION) PLUM TREE COUNTRY PARK LIMITED (IN ADMINISTRATION) DEERS LEAP LIMITED (IN ADMINISTRATION) BUDEMEADOWS COUNTRY PARK LIMITED (IN ADMIISTRATION) CHRISTCHURCH MARINA PARK LIMITED (IN ADMINISTRATION) ROYALE PARKS (CHRISTCHURCH) LIMITED (IN ADMINISTRATION)

AND IN THE MATTER OF THE INSOLVENCY ACT 1986

Royal Courts of Justice, Rolls Building
Fetter Lane, London, EC4A 1NL
Date: 04/12/2023

Before :
I.C.C. JUDGE JONES

- -

Between :
(1) PAUL ALLEN
(2) GEOFFREY ROWLEY
(as Joint Administrators of the above-named Companies)
Applicants

- and -

SINES PARKS HOLDINGS LIMITED
Respondent

- -

Mr Daniel Lewis (instructed by **Mishcon de Reya LLP**) for the **Applicants**
Mr Christopher Boardman K.C. (instructed by **Fahri LLP**) for the **Respondent**

Hearing date: 24 November and 1 December 2023

- -

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.

This judgment is handed down remotely by circulation to the parties' representatives by email and release to The National Archives. The date and time for hand-down is deemed to be 10:30am on Monday 4 December 2023

.....04/12/23.....

I.C.C. JUDGE JONES

I.C.C. Judge Jones:

A) Introduction to the Application for an Interim Injunction and its Oppositon

1. The originating "Application" notice before me issued on 14 November 2023 does not seek injunctive relief but asks for an order under ***s.238 of the Insolvency Act 1986*** ("***s.238"***). It applies to a "Transfer Agreement" between six companies for which the Applicants are administrators, ("the Companies") and the Respondent.

2. An N244 Application Notice ("the Interim Application") seeks urgent, interim injunctive relief to prevent (in essence) the Respondent: entering the Companies' 6 mobile home sites ("the Sites"); accessing any of 200 plots on the Sites ("the Plots") to which the Respondent claims rights pursuant to the Transfer Agreement; developing the Plots to enable mobile homes to be placed there; and/or selling mobile homes.

3. There are two grounds relied upon for the interim relief:

    a) The need to protect the position anticipating the setting aside of the Transfer Agreement upon the conclusion of the trial of the Application.

    b) The need to protect the Companies' position as tenants of the Sites following a sale by the chargee in possession, ICG Longbow Investment No.5 S.a.r.l. ("ICG") to six third party companies ("the Ambassador Royale Companies") and the grant to the Companies of tenancies ("the Tenancies") by the Ambassador Royale Companies which will only last for as long as it takes Ambassador Royale Companies to obtain their respective licences under the ***Caravan Sites and Control of Development Act 1980*** from the local authority. The agreement is dated 21 September 2023.

4. The second ground is addressed in the evidence and at the hearing but did not feature in the skeleton arguments (a factor I will refer to further below).

5. Insofar as there was issue and doubt before the 24 November 2023 hearing, it is plain from what the Court was told (having enquired to avoid a potentially academic outcome) what was in fact intended, that the Respondent wishes as soon as possible to take some or all of the steps which the Interim Application seeks to prevent including selling mobile homes. It was stated that the Respondent is intending a £35 million investment, although obviously that sum will be spread over an unspecified (no criticism intended) but substantial period compared with the period of urgency which caused the Interim Application to be listed in the I.C.C. Judges' Interim List on Friday 24 November 2023.

6. The applications are opposed on numerous grounds but key points are:

a) The ***s238*** claim should be struck out because it discloses no reasonable grounds and/or should be dismissed by reverse summary judgment. There is a recently issued application (21 November 2023) seeking that relief, although obviously the procedural requirements of ***CPR Part 24*** are not yet met.

b) The existence of the Tenancies enables the Respondent to continue to rely as against the Companies and therefore, the Applicants as their agents, upon the rights the Respondent has under the Transfer Agreement notwithstanding the above-mentioned sale of the Sites. No actual damage will be suffered by the Companies as tenants if the steps to be injuncted are undertaken in any event.

7. The second ground was identifiable from the evidence but the Court at the beginning of the 24 November hearing drew attention to the absence from the Application of a prayer for injunctive relief and the absence of any claim form relying upon the existence of the Tenancies granted to the Companies without which there appeared to be no basis for the Interim Application to be heard. The Applicants agreed with the deficiencies and offered an undertaking that: (i) the Application Notice should be amended to claim injunctive relief; and (ii) there should be a claim form to support the claim for an injunction as tenant. The Respondent did not wish to take procedural points. The matter proceeded accordingly by agreement, assuming a claim form had been issued.

8. The fact that the Application was heard in a busy Interim List, the length of time in fact required for the hearing (approximately just under 4 hourts, contrasting with the 1.5 hours' time estimate**)** and the numerous issues raised caused judgment to be reserved. As a result, the parties agreed (in summary and on the basis that the judgment was expected by the middle of the next week at latest) that no steps would be taken by either side adverse to the other without notice being given to each other and the Court. The draft judgment was provided on Monday 27 November and neither side required a hearing before the intended hand-down on 1 December 2023.

B) Factual Summary

9. The bundle before me consists of 2286 pages and the evidence, particularly that filed and served on behalf of the Respondent (again without intending criticism) is lengthy setting out a very detailed background. As explained at the hearing, to provide a speedy judgment it must be succinct and will not include a detailed rehearsal of the evidence. In fact there is relatively little between the parties concerning the facts and a more detailed description of the background can be found in the skeleton argument of Mr Lewis for the Applicants and Mr Boardman K.C. for the Respondent.

10. It is sufficient in those circumstances to summarise (without making findings of fact, this judgment addressing the interim position) that: The Respondent lent Mr Bull £11,500,00 on or about 26 August 2022. It was not repaid by the due date. Variation was agreed on 11 November 2022 extending time and four companies, parents/ultimate parents of the Companies, became guarantors and provided security through debentures. Repayment on 30 November 2022 did not occur, and only £1.5 million was paid on 28 February 2023. During this period Mr Bull had been seeking but had been unable to achieve very substantial refinancing for the group including the existing funding from ICG.

11. He continued his search and in the meantime still needed to extend time for repayment of the Respondent's lending. The Transfer Agreement was made on 16 March 2023 as part of that process and a second loan amendment agreement signed.

The extended repayment date of 28 April 2023 passed, litigation followed and a "Settlement Deed" was entered into dated 19 May 2023. However, the aim of achieving group refinancing and repayment of the Respondent's loan was not achieved. Joint administrators were appointed over the Companies on 15 August 2023, although the Applicants' appointment dates from 22 September 2023 when they were made additional, investigatory administrators.

12. The Sale Agreement between ICG and the Ambassador Royale Companies includes by clause 6 a provision that further consideration (believed by the Applicants to be as much as £28,777,285) will be paid to ICG following notice of satisfaction of a trigger event which is defined as (it being emphasised for the avoidance of doubt that this judgment is not to be read as addressing the position between ICG and the Ambassador Royale Companies who are not parties to this matter and who have taken no part whether to provide evidence or otherwise):

> *"in respect of each Affected Plot, the earliest to occur of the date:*
>
> *(c) of a Court Order [defined as a judgement which has been finally determined that confirms that any Third Party Agreement [defined below] is either invalid or ineffective so that the relevant Affected Plot is no longer bound by any claim or right arising from such Third Party Agreement. ;*
>
> *(d) on which a Settlement Agreement [defined as a binding agreement pursuant to which the terms of any Third Party Agreement are released and which fully releases any claim to an interest or right over an Affected Plot] is completed; or*
>
> *(e) on which ICG can definitively prove to the Royale Ambassador Companies that all Third Party Agreements have been determined or otherwise rendered ineffective.*
>
> A Third Party Agreement being defined as: *"an agreement pursuant to which:*
>
> *(a) the Borrower has purported to transfer or grant (or has purported to give authority to transfer or grant) any right or interest over the whole or any part of a Property to a third party (a "Third Party Recipient");*
>
> *(b) a Third Party Recipient (or any party claiming to derive or have obtained any right, interest or authority from a Third Party Recipient) has purported to transfer or grant (or has purported to give authority to transfer or grant) any right or interest over the whole or any part of a Property to a third party."*

C) The s.238 Claim

13. The ***s238*** claim asserts within its Particulars of Claim that the Companies received no consideration for the Transfer Agreement. Whilst the Respondent in return for the transfer of 200 mobile home Plots at the Sites, including their respective licences, and for specified rights (for example the right to place mobile homes on the Plots) agreed to pay £8 million, that payment did not provide consideration for the Companies. As expressly stated in clause 2.1 of the Transfer Agreement, there is no dispute that the £8 million was and was intended to be "paid" as a reduction of Mr Bull's outstanding debt. That, the Applicants claim, was no consideration for the Companies who (which is not

in dispute) did not owe that debt and had not guaranteed or undertaken any liability or provided any security for its repayment.

14. There is a fundamental difficulty with that pleading. Even assuming that the assertion of no consideration for that summarised reason is correct, there are further provisions. Whilst they start in clause 3 with the rights granted to the Respondent in terms of (in summary) developing and selling the Plots, clause 4 provides for the transfer back of the Plots to the Companies once the Plots have been developed and sold. It also expressly provides that the Companies will be entitled to all income produced following the works carried out by the Respondent to the Plots (for example, the construction of foundations, placing for and supply connecting to mobile homes), by each mobile homes from the date of their sale by the Respondent. It cannot be seriously argued that this is not consideration provided to the Companies.

15. ***S238*** offers the alternative opportunity to plead that the value of the consideration received by the Companies was considerably less than the consideration they provided. However, there are no particulars to identify such a case within the Particulars of Claim and in reality it is not part of this ***s238*** Application. There is no valuation (estimated or otherwise) or proposed amendment before the Court. (Noting that presumably consideration will be given before doing so to whether there has in fact been loss to compensate in the light of the sale of the Sites to the Ambassador
Royale Companies, the consequential reduction of the secured creditor's debt and its effect upon the Transfer Agreement as accepted by the Respondent.)

16. There was in submission on behalf of the Applicants (without mentioning the term sham) suggestions to the effect that the Transfer Agreement could not be relied upon as truly reflecting what was agreed but effectively challenging its validity. However, that is certainly not the claim made upon the Application Notice and cannot be relied upon for the purposes of the Interim Application.

17. This produces the conclusion that the ***s238*** Application does not establish a serious issue to be tried for the purpose of the Interim Application and, indeed, that it should be struck out for disclosing no reasonable grounds subject to any application to amend.

18. As a result it is unnecessary to address the other issues and submissions concerning the Application. However, there are a number of matters which can and should be addressed for completeness (subject to that conclusion) before moving to the second ground for interim relief, the Tenancies. They are:

    a) It was submitted for the Respondent that the same conclusion should be reached also because of the £8 million "payment". That is based on the proposition that the consideration required need not be received by the company now in administration or liquidation. That is correct in itself but **s238** is expressly concerned with the consideration the relevant company receives. If, as on the face of the Transfer Agreement the £8 million payment was purely to achieve a reduction in debt of a third party which has no relevance to any of the Companies, there is a serious issue to be tried that ***s238*** will apply subject to its other requirements being met. The wording of ***s.238(2)*** to that effect is plain.

    b) In response to that possibility, it was submitted that there was relevance and, in consequence consideration for each of the Companies because (in the briefest summary) the Transfer Agreement was part of an overall arrangement required

to ensure that each member of the Companies' group, including the Companies, survived. That they would not do so if the debt owed to the Respondent by Mr Bull was not resolved taking into consideration the liabilities for it of other members of the group. The Transfer Agreement was part of that resolution. That in my judgment can only be properly addressed at trial and does not prevent the existence of a serious issue to be tried for the purpose of the Interim Application.

c) Obviously that decision is unnecessary in the light of my conclusion at paragraph 17 above. However, if it had been applied, it would have meant that ***"American Cyanamid"*** principles would need to be addressed starting with the adequacy of damages as a remedy. That too would have led to a problem for the Applicants. The Sites have been sold. Subject to the short-term Tenancies granted to the Companies, solely pending the transfer to the purchaser of the relevant mobile home licences, the Companies have no interest in the land. That means an arguable ***s238*** claim would only address compensation not the setting aside of the Transfer Agreement. Compensation would be measured at the date of the Transfer. The future events which the Interim Application seeks to restrain would not affect the decision quantifying that compensation.

d) It is submitted for the Applicants in response that: (i) for the purposes of quantification the Court would need to consider the fact that the sale agreement to the Ambassador Royale Companies includes terms which will lead to a vastly increased consideration for ICG should (in summary) the Respondent not have any interest in the Plots and not carry out any works as intended; (ii) the fact that the consideration will be received by ICG not the Companies does not alter its relevance to them because the Companies' deficit will reduce accordingly; and (iii) the reason why damages would not be adequate in that circumstance is that there is a good arguable case that the Respondent will not be able pay the resulting loss or damage to the Company of potentially over £28 million.

e) If a decision had been needed, I would not have considered it raised raise a serious issue to be tried for the purposes of the Interim Application because of the remoteness of such a claim to the ***s.238*** compensation that might be awarded. As an alternative that remoteness would have prevented the exercise of my discretion in favour of the Interim Application. In addition, the conclusion to be drawn is that this issue should be raised by ICG should it wish to protect its position concerning the receipt of the further consideration and conclude there was merit in so doing. Alternatively by the Ambassador Royal Companies should they reach such a conclusion looking at the matter from their side of the fence.

f) The Respondent also drew issue with the contention that the ***s238*** test for insolvency was met when applying a serious issue to be tried test. The point being (in briefest summary) a lack of evidence of the financial position at the time of the Transfer Agreement combined with the fact that reliance upon the financial position at the time of the administrations did not provide evidence of the past. However, bearing in mind the extent of the deficiency and the financial context of the Transfer Agreement relied upon by the Respondent, I

would have concluded on this matter that the serious issue to be tried test was met on this point.

g) Finally, insofar as matters should be mentioned, there is the question whether the undertaking in damages, recently changed to an unlimited undertaking in the usual terms, is adequately supported. I appreciate that this is given by the Applicants personally and presumably supported by their firms and I am fully aware of the Court's previous approaches to such matters concerning office holders, for example in cases such as "the RBG litigation", but I would have enquired further into adequacy had that stage of the Interim Application been reached for the purposes of an interim order continuing until trial. This will remain relevant for the purposes of the second ground.

D) The Tenancies Ground

D1) Introductory Observations

19. I therefore turn to the second ground relied upon for the Interim Application. I observe: first that as at 24 November there was as no statement of case, whether within the Application Notice or (of course) the yet to be issued claim form; second, that it did not feature in the skeleton arguments for the purposes of the 24 November hearing; and third that there is an air of unreality surrounding the dispute presented orally on both sides.

20. The first two observations may explain why I had understood from oral submissions that the Respondent accepted that the exercise by ICG of its power of sale overreached their rights under the Transfer Agreement as asserted by the Applicants. This was corrected within email correspondence before the Friday 1 December hearing for hand-down. Mr Boardman K.C. has informed me that overreaching is not accepted but it is accepted that the Companies will be unable to grant any licences to purchasers of mobile homes once their tenancies end. I add, that they will no longer be the occupier for the purposes of the *Caravan Sites and Control of Development Act 1960 or the* owner for the purposes of *the Mobile Homes Act 1983*. This issue of overreaching will feature later in the judgment, however.

21. I make the third observation for the purpose of establishing the practical parameters of this dispute:

a) As accepted, the Respondent's at best will only be able (at least against the Companies) to pursue its plans to develop the site and sell mobile homes before the Tenancies are terminated. The Companies will not have possession and the Respondent will need to address its intentions to the Ambassador Royale Companies.

b) It is also accepted that the Tenancies are only temporary pending the Ambassador Royale Companies obtaining the necessary licences under the ***Caravan Sites and Control of Development Act 1960***.

c) It therefore appears surprising that the Respondent is intending to incur expenditure of up to £35 million carrying out works to achieve future sales at least until the difficulties created by the matters set out in the first two subparagraphs are resolved.

d) It is also surprising that it is thought that in practice sales of mobile homes will occur, at least in any substantial number, in circumstances of the necessary disclosure of these events to the potential purchasers before sale is concluded. Noting also in this regard, as I understand it, that a sale cannot be concluded without notice being given to the site owner. Notice will lead to a period for objection and whilst the statutory grounds of objection would not appear to apply, it will give time to challenge any sale through the Courts.

e) On the other side of the coin, on the bases, as accepted by the Companies, that the Tenancies have only been granted as a holding exercise pending the purchaser obtaining the mobile home licences and the Companies will lose all rights to and concerning the sites on their termination, it is surprising the Applicants are sufficiently concerned about this issue to give an unlimited undertaking in damages. Whilst the Applicants refer to the potential loss of the above mentioned additional consideration, the persons who will be the most directly affected, ICG and the Royale Ambassador Companies have no direct involvement in this case.

22. Nevertheless the application has proceeded on the undisputed basis that the Respondent intends as soon as able and imminently to enter the sites, develop the plots requiring work, place mobile homes on the plots without them and sell the homes. In addition that the Applicants as administrators consider it right to stop this in the exercise of rights belonging to the Companies. I must address the Interim Application accordingly.

D2) Details

23. Clause 1 of the Transfer Agreement provides that the land *"comprising sites where the Plots are located"* is transferred to the Respondent with *"full title guarantee free from all liens, mortgages and/or other charges and any other Encumbrance"* together with all mobile home licences. This arose in circumstances of (as I understand it) the registration at Her Majesty's Land Registry and at Companies House of the security granted to ICG to secure its lending to the Companies**.**

24. The Respondent's case relies upon by clause 3 by which there were granted to the Respondent rights ("the TA Clause 3 Rights") which survive as against the Companies for the benefit of the Respondent and, indeed, the Plots that include: access and egress; development where undeveloped; the connection of services; the location of mobile homes; the right to act as agent for the Companies to transfer any Plot with mobile home in place including the right to issue the required statutory licence for occupation; and the right to sell all or any of the Plots to a third party purchaser.

25. In support of this, the Settlement Deed (19 May 2023), which included the Companies as parties together with (amongst others) Mr Bull and the Respondent, is also relied upon by the Respondent; in particular clause 7 (in summary and still on a serious issue to be tried approach) on the basis that it bound the Companies (amongst others): not to challenge the validity or enforceability of the Transfer Agreement; not to interfere with or obstruct the rights granted to the Respondent; not to develop, use or occupy the Plots or to interfere with any works carried out on the Plots to date ("the SD Clause 7 Prohibitions"). Whilst the Respondent (amongst others) covenanted to stop and not carry out any further works on the Plots, this would only be down to the repayment

date, 31 July 2023. On that date the Respondent would transfer the Plots to the Companies provided the settlement sum was repaid in full (which it was not). If not the Respondent's covenant not to develop, use or occupy the Plots lapsed on that date.

26. As mentioned, ICG has taken possession and sold the Sites including the Plots to the Ambassador Royale Companies, relying upon its registered title. The Respondent relies, however or in any event (noting for the avoidance of doubt that I do not intend to set parameters here for the future hearing required to address such issues further), upon the Tenancies which confer exclusive possession over the Sites including the Plots upon the Companies. It is submitted that this right to exclusive possession means the Companies are still subject to the contractual obligations agreed by the Transfer Deed and the Settlement Agreement.

27. A potentially fundamental problem for the Respondent is that its title and rights were gained subject to the registered rights of ICG and, as a result, the sale of the Sites to the Ambassador Royale Companies. Further, the Companies no longer have their previous title but only their title as Tenants resulting from the grant of a new lease from the Ambassador Royale Companies. That demise is derived from (I assume) the now registered title of the Ambassador Royale Companies which was derived from the sale of the prior registered chargee, ICG. I have not yet heard argument as to why this is not so and plainly there is a serious issue to be tried for the purposes of the Interim Application.

28. The Tenancies (using the specimen form lease included in the bundle) are granted by a demise until the transfer of the Site Licences to the Respective Ambassador Royale Companies. The leases expressly record that they have been granted to allow the Companies to continue to run *"the business of selling bungalows and operating static home sites run from [the Sites] by the Companies as at the date of the lease"*. They also provide:

    a) The Sites are to remain at all time under the *"occupation"* (as such term is understood under the Caravan Sites and Control of Development Act 1960) of the Companies during the term of 6 months beginning on, and including the date of the lease subject to rights of earlier termination by notice at any time on or after the respective Ambassador Royale Company holds the relevant Site Licence.

    b) The Companies shall not use the Sites for any purpose other than for the purpose of conducting the Business of selling bungalows and operating static home sites run from the Sites by the Companies as at the date of the lease. At the end of the term, the Companies shall return the Sites to the Ambassador

       Royale Companies in the repair and condition required by clause 8.3. (although that is an obligation not to commit waste).

    c) Dealings are prohibited as follows: not to assign, underlet, charge, part with or share possession or share occupation of the lease or the Sites or to hold the lease on trust for any person (except by reason only of joint legal ownership), or (except for the grant or renewal of any Plot Licences or other tenancy granted or renewed in the ordinary course and in connection with the permitted business at market value) to grant any right or licence over the Sites in favour of any third party.

D3) The Decision and the Procedural Concerns and Issues

29. The draft judgment was disseminated on Monday 27 November with the expressed concern that although the alternative case of the second ground is identifiable from the evidence, it had not been pleaded and was not addressed in the skeleton arguments at or before the 24 November 2023 hearing. There was potential for unfairness.

30. Whilst it is correct that the Respondent took no objection to the second ground being raised, the hearing morphed from an interim list no more than 1.5 hours plus judgment to a "full blown" interim hearing. That would not have occurred but for the Applicants' 1.5 hour time estimate. Had the length of the hearing been appreciated, it would not have started but would have been adjourned on 24 November 2023 to a special expedited appointment or potentially to a High Court Judge. The reasoning for that being that there should have been set aside adequate time for pre-reading, the hearing and judgment and the overriding objective requires other Court users to be borne in mind when allocating resources.

31. So far as the relief remained urgent, the application would have proceeded as an application without notice. However, it would also have meant that the Respondent would have had more time to prepare for the alternative case.

32. A further consequence of the procedure was that the facts and circumstances underlying the submissions concerning the Tenancies and the second ground for the interim relief led me to reasons for my decision which the Respondent had not necessarily had the opportunity to address. In particular concerning statutory provisions which could not be ignored for want of reference at the hearing.

33. The draft judgment made clear, therefore, that judgment would not be handed down in the form disseminated without hearing further from Mr Boardman K.C. upon such matters to the extent that he wished to make further submissions ("the Further Submissions"). The Court was notified that he wished to do so.

34. Unfortunately the procedural position did not improve for the purposes of the hearing on Friday 1 December. The Undertakings were given on 24 November, whether expressly or impliedly (I have not seen a transcript but point out that the draft Judgment disseminated the following Monday, 27 November, provided: "the issuing and/or amendment (as appropriate) must be undertaken forthwith"), on the undoubted basis that they were be performed as soon as practical. Yet there was no amendment

    to the Application Notice placed before me at the hearing on Friday 1 December, although there were draft amended Particulars of Claim. Particularly importantly the claim form was not presented for issuing until the afternoon that day. Insofar as the Applicants considered they no longer needed a claim form, which I do not consider to be the case bearing in mind its presentation that afternoon, they nevertheless needed an application to be released from the undertaking to issue the claim form. No such application was made.

35. This caused Mr Boardman K.C. to submit on the Friday that the Application should be dismissed or struck out. Alternatively that it should only remain extant to the extent that amendment of the Application was being considered for the purposes of the first ground

of appeal as mentioned in my decision above. His submission was that should the Applicants wish to pursue the second ground, a ground not yet before the Court within issued proceedings, they should start from scratch.

36. I have no doubt that the Court should consider penalising the Applicants in costs, although I will not go further than that because costs have been reserved. I also have no doubt that my discretion allows me to accede to Mr Boardman K.C.'s submissions. However, I concluded at the hearing that pragmatism is required in particular because: (i) starting again would simply delay matters (although Mr Lewis indicated on instructions that there would be renewal that evening); (ii) whether with delay or not, the Court would be placed once again in the unsatisfactory position of an urgent application requiring a special appointment and with the question of without notice relief being sought in the meantime; (iii) that would be unsatisfactory because of the amount of work already listed for I.C.C. Judges and a hearing before a High Court Judge would be faced not only with the same factual context but also require the application to be addressed afresh; and (iv) there still needs to be a hearing for the Further Submissions and it would be better for them not to be similarly delayed.

37. As a result, I considered the judicial, pragmatic course to be to ascertain as precisely as possible what the Respondent wanted to do on the Sites over the next few weeks. The answer was that the Respondent wanted access to inspect the Plots and to allow surveyors to survey them. The Applicants raised no issue with those actions provided it was also clear that the Respondent would not purport to grant any rights over the Plots including mobile home occupation rights to third parties. It was agreed that this would not occur.

38. In those circumstances (but subject to the further matters in paragraph 41 below) I have decided that I should maintain the decision reached in the draft judgment, namely that interim relief should be granted, pending the Further Submissions.

39. The underlying reasons remain the same but have been developed following the above-mentioned email correspondence from Mr Boardman K.C. and the further submissions heard on 1 December 2023:

    a) There is a serious issue to be tried based upon the facts and matters above and the submissions heard to date that the Respondent's rights under the Transfer Agreement and the Settlement Deed did not survive the sale of the Sites to the Royale Ambassador Companies and would not be revived by or in any event apply because of the Tenancies.

    b) That issue will turn upon the nature of the security granted and registered to ICG, the express terms of the Transfer Agreement, the legal consequences of the transfer of title upon the sale and the fact that the Tenancies are derived from the title of the Royale Ambassador Companies.

    c) At this stage on the matters before me, there is a serious issue to be tried that the rights granted by the Transfer Agreement were subject to the security. They cannot survive the taking of possession and sale of the Sites.

    d) There is also, at this stage, a serious issue to be tried that the rights relied upon were in any event intended by the Transfer Agreement and later (so far as relevant) by the Settlement Deed to apply only during and in connection with

the period the Respondent had to carry out the development of the Plots and sell the mobile homes before returning title to the Companies. That being so, the rights cannot in any event exist on their own once title to the Sites has been transferred by the prior chargee. The fact that the Companies gain new title as tenants does not assist because their title is derived from the Ambassador Royale Companies whose freehold title is not encumbered by any such rights.

e) There is also a serious issue to be tried that the Respondent, as a creditor of the Companies or otherwise, cannot interfere with the statutory functions and duties of the Applicants by seeking to enforce the TA Clause 3 Rights (whether also relying upon the SD Clause 7 Prohibitions or not) or otherwise seek to inspect and carry out works to or sell mobile homes on the Plots absent the Administrators' consent or a successful application for permission to lift the statutory moratorium.

f) There is no question of consent. It is clear and was stated in Court that the Applicants refuse access to the Respondent (subject to the order of the Court). Even assuming the Respondent has existing rights to inspect, carry out works and/or sell mobile homes, there is a serious argument that legal process would need to be started when met with refusal by the Applicants and the other Administrators before they can be enforced The Court would then need to apply the principles set out in ***Re Atlantic Computer Systems plc*** [1992] Ch 505 as also addressed in later cases. It cannot be right for the Respondent to seek to avoid that statutory requirement by forcing entry and/or by relying upon the fact that proceedings have been started by the Applicants to restrain entry. The fact of these proceedings offers the opportunity to cross-claim for permission but no more.

g) It may be in those circumstances that the relief identified within the undertaking to issue a claim form might be appropriately sought in an ***Insolvency Act 1986*** Application Notice. That was not addressed at the hearing on 24 November and the undertakings were given as explained requiring a release if that course was considered appropriate.

h) Whether by way of claim form or amended Application Notice, however, the serious issue to be tried justifies an interim injunction to restrain what would be a breach of the statutory moratorium conferred by ***Schedule B1 to the Insolvency Act 1986***.

i) As a result for the purposes of this decision it is unnecessary to spend time addressing the remaining American Cyanamid tests when a simple point is that the purpose of the administration, the statutory functions and duties of the Applicants and the other administrators, and the statutory moratorium must be upheld.

j) However, insofar as it is necessary to do so as a result of the other serious issues to be tried set out above, and bearing in mind the flexible approach emphasised by Lord Brown in ***Fellowes & Son v Fisher*** [1976] 1 QB 122 at [139E to 140B], and the need to bear in mind the consequences if the injunction will have the effect of a final order (for example, because the Sites will return to the Ambassador Royale Companies imminently) as addressed in ***Cayne v Global***

Natural Resources plc [1984] 1 All ER 225 at [232g to 233e] and [234e to 235e]:

i) Plainly damages are not an adequate remedy when there would be interference with the administration as addressed above and in addition when that interference (on the basis of the serious issues identified) would in any event involve actionable trespass.

ii) The balance of convenience is in favour of protecting the Company's position within the administration according to implementation of its purpose which is a matter for the Administrators subject to the Court's supervisory role. It also favours maintaining the Plots in their current form based upon the Companies through their agents deciding how to perform their obligations under the leases and the administrators having expressed their intent to prevent access etcetera to the Respondent. It does not favour the carrying out of works, for example laying concrete bases, the placing of mobile homes and/or their sale to third parties.

iii) The Court's discretion should be exercised accordingly pending any application for permission under ***paragraph 43 of Schedule B1 to the Insolvency Act 1986*** and/or final hearing of the Application.

40. In reaching that decision (pending the Further Submissions) I have noted the allegations made by the Respondent through the evidence of Mr Doe (aka Mr Synes) in his first witness statement at paragraphs 88-98. In essence his concern is that ICG is behind the Ambassador Royale Companies. However, whether there is any basis for this or not, the reality is (based on the serious issue to be tried case identified) that ICG had a registered security and has exercised its rights as chargee. It has sold the Sites and the Companies rights as tenants will come to an end when the Tenancies terminate which is potentially relatively imminent.

41. It is right, however, in the circumstances addressed in paragraphs 29-37 above, including the mentioned agreement of the Applicants, that the interim relief to be granted pending the Further Submissions should allow the Respondent and its surveyors (presumably no more than two) to enter the Sites to inspect and survey the Plots but no more. As stated in Court on 1 December 2023, I will grant an order restraining entry to the Sites subject to that exception but also grant the abovementioned order that the Respondent shall not purport to grant any rights over the Plots including mobile home occupation rights to third parties. The order will continue until the expedited hearing for the Further Submissions or further order in the meantime. It is made on the basis of the cross-undertaking as to damages currently offered and upon the other undertakings offered in correspondence mentioned by counsel.

42. That hearing is to be fixed before me for 1 day (hoping that the whole day will not be required) before the end of term subject to any further directions should logistics be an issue. At that hearing the Respondent will be entitled to raise arguments to the effect that there is no serious issue to be tried for the second ground relied upon or that different interim relief should be granted.

43. Although there is to be a further hearing, I encourage the parties to consider the observations within paragraph 21 above should be addressed. Without making any finding of fact, it is apparent that the Respondent feels aggrieved by the events that have

occurred. Mr Boardman K.C. identified good reasons for that during his submissions. However, it is also right for the Court to consider whether there really is any prospect that further expenditure will be incurred on and for the benefit of land to be returned to the Ambassador Royale Companies in the (apparently) near future. That issue has not been a reason for or factor in reaching my decisions above (indeed I have proceeded on the basis of the instructions given to Mr Boardman K.C. as mentioned above) but it may well be something to be further addressed.

44. I ought to note for completeness in case this may be relevant later, that it is not necessarily the case that the Respondent came to the hearing on Friday 24 November on the basis that it intended to deal with the Plots. The skeleton argument of Mr Boardman at paragraph 17 appeared to address the more limited relief sought (access, stationing mobile homes and interfering with possession) as intended action and asserted that the *"R[espondent] cannot deal with the Sites and has made no threat to deal with the Plots"*. However, even if (I make no finding at this stage) that assertion is justified from events and correspondence that occurred before the hearing, it was made plain at the hearing that dealing with the Plots was in issue.

45. I also note that it has not been suggested that there are any other public or other rights which would be infringed by such an order. Therefore, the order can be drafted accordingly.

46. I further note that criticisms of the undertaking in damages do not apply to the short period between now and the next hearing.

E) Conclusion

47. Counsel will need to agree the final form of the interim injunction and, as discussed, the aim is to email a draft to me on Monday. There also needs to be a draft order for the hearing of 24 November at which the Applicants' undertakings were given. There should be draft orders for approval for both hearings.

48. I will also leave it in the first instance to the parties to decide whether the Application should be struck out but for amendment because it discloses no reasonable grounds.

    That will presumably depend in the first instance upon the Applicants' intentions with regard to the claim.

49. The Court urges the parties, as it does with all litigation, to seek to resolve the outcome by agreement.

Order Accordingly