NCN: [2023] EWHC 3183 (Ch)

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

CASE NUMBER – PT-2022-001093
THE ROLLS BUILDING
7 ROLLS BUILDINGS
EC4A 1NL
5 DECEMBER 2023

Before
DEPUTY MASTER LINWOOD
BETWEEN:

HRH PRINCESS DEEMA BINT SULTAN BIN ABDULAZIZ AL SAUD

Claimant

-v-

(1) RONALD WILLIAM GIBBS

(2) SANDRA DAWN GIBBS

(3) FRANCESCA DANIELLE GIBBS

(4) ALEXANDER JAMES GIBBS

(5) SASKIA CORALIE GIBBS

Defendants

SIMON ATRILL KC & SAMUEL RABINOWITZ (Instructed by **Quinn Emanuel Urquhart & Sullivan UK LLP**) appeared on behalf of the Claimant
MR RONALD WILLIAM GIBBS AND MRS SANDRA DAWN GIBBS appeared as litigants in person
The Third – Fifth Defendants neither appeared nor were represented

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JUDGMENT

Hearing: 28th and 29th November 2023

DEPUTY MASTER LINWOOD:

1. This is my judgment following the trial of the claimant's application for an order for sale of a property at 36 Kings Road, Richmond, Surrey ("the Property"). This Part 8 claim has been unusual in that I heard oral evidence from the first and second defendants and disclosure was given by them.

2. The evidence and documentation before me is substantial, far more than what is usual on an order for sale reflecting how hard fought this application has been. I have before me five witness statements of Mr Khatoun, a solicitor at Quinn Emanuel, solicitors for the claimant, five witness statements of Mr Gibbs plus one affidavit and two witness statements from Mrs Gibbs plus two affidavits from her. The trial bundles fill six boxes of lever arch files. The skeleton arguments are substantial, some 45 pages from the claimant and a total of 31 pages from the defendants.

Background.

3. The claimant is a member of the royal family of the Kingdom of Saudi Arabia. The first and second defendants are husband and wife albeit they separated in 2006. Mr Gibbs also has another partner with whom he has children, but he also separated from her in 2006. The third, fourth and fifth defendants are the adult children of Mr and Mrs Gibbs whom I refer to as the defendants unless the context indicates

otherwise. The third, fourth and fifth defendants have not filed acknowledgements of service nor evidence. They have not played any part in these proceedings. Mrs Gibbs says they have no evidence to assist the court. I consider their nonengagement means they do not oppose this claim.

4. This application follows a final charging order made by Master Cook in the King's Bench Division on 10 October 2022 after a contested hearing. The debt is roughly £582,000 plus US$2,076,000. The underlying proceedings which gave rise to the final charging order come to trial in January 2024. In essence, the claimant seeks return of US$25 million which she says Mr Gibbs invested on her behalf approximately 10 years ago. By settlement agreement in 2018, Mr Gibbs agreed to repay the claimant by selling assets which he said he held for her. Nothing has been repaid.

5. The debt I am concerned with represents interim payments on account of damages to be determined and for costs orders. Mr Gibbs is subject to a worldwide freezing order granted by Mr Justice Butcher in February 2021. He was also disbarred by order of Mrs Justice Dais on 14 July 2023 from defending the underlying proceedings. That arose due to his nonpayment of costs orders and a failure to comply with his disclosure obligations in those underlying proceedings.

The Property and Mr Gibbs' ownership.

6. The Property was purchased by Mr Gibbs in 2012 in his sole name. There are no

charges registered against it. It has been and continues to be rented, currently for £6,500 per month to a couple with three school age children. In the underlying proceedings, as I will now turn to, it appeared that the Property was beneficially and legally owned by Mr Gibbs only.

7. Mr Gibbs made the following representations as to the ownership or control of the Property:

(1) He registered it in his sole name from the date of purchase at HM Land Registry.

(2) When QE threatened a worldwide freezing order, Mr Gibbs first solicitor's, Keystone Law, whilst opposing that offered, in their letter of 31 January 2021, undertakings that he would not dispose of, deal with or diminish the value of a number of assets including the Property, representing therefore that he owned it.

(3) Further confirmation was provided by Keystone in their letter to QE of 2 February 2021. After valuing the property at £3,250,000, they said it and another property at 16 Duke Shaw Wharf "...are wholly legally and beneficially owned by Mr Gibbs" and that he had not instructed them that there were any mortgages, charges or other encumbrances on the Property.

(4) Mr Justice Butcher, in granting the worldwide freezing order on 3 February 2021, ordered Mr Gibbs to inform QE of all his assets, including for

real property, his "full ownership interest in each property". Keystone wrote in compliance on 16 February 2021. As to the Property they said in Mr Gibbs' Asset Disclosure Schedule that he owned "100 per cent of the freehold value of £3,250,000". I note that for certain disclosed assets he disclosed a lesser interest, for example, a 20 per cent beneficial interest for 99 Drury Road, Harrow, and as to the next-door property, 34 Kings Road, 50 per cent subject to a mortgage with HSBC.

(5) On 22 February 2021 Mr Gibbs swore an affidavit verifying the Asset Disclosure Schedule I mention in (4) above.

(6) Mr Gibbs then instructed Clyde & Co. On enquiry by QE as to sole ownership of unencumbered assets, including the Property, QE asked if any other interested investors, which included Mrs Gibbs, had an interest. Clyde & Co, at paragraph 3.2 of their reply of 12 April 2021, said no such investor:
"...has any legal or equitable interest in any of the assets held by Mr Gibbs".

(7) By order of Mr Richard Salter KC, sitting as a judge of the High Court, Mr Gibbs was to provide further information about his assets, as to interested parties and the nature of their interest. Mr Gibbs lists HSBC as mortgagee but states the mortgage is secured against number 34 but that the Property ie number 36 is to be sold to discharge the mortgage on number 34 if it is not otherwise discharged. He then refers to his wife having a 50 per cent so-called "notional interest"-,- with him having with his three children a 25 per cent notional interest

and the claimant likewise, but the latter, somehow without further information, was discharged. -The answer states: "Mr Gibbs was and is the owner". Other notional interests appear in the answer. Mr Matthew Parker KC, on behalf of Mr Gibbs, on 11 March 2022, explained this novel concept to the court as:

"...a right to a proportion on a debt basis [but no] proprietary interest in the asset itself".

(8)(a) In 2018, Mr Gibbs was seeking to mortgage number 34. He approached HSBC and dealt with a mortgage manager, Ms Nimesh Shukla. On 28 February 2018, she emailed Mr Gibbs as to the underwriting of his application and said:

"With regards to the property next door to your residence that we are using as a repayment vehicle, the underwriter needs to see proof of ownership as there is no mortgage on the property to show you are both the owners of the property".

Mr Gibbs replied:

"The property is in my sole name, not in joint names."

No mention is made of any other interest.

(8)(b) The process culminated with Mr and Mrs Gibbs physically attending Ms Shukla at her office on 30th March 2018 to sign the charge. Mr and Mrs Gibbs now say they took the Deed of Trust I refer to below, to that meeting and showed it to Ms Shukla who was satisfied with it. There is no evidence from Ms Shukla.

(9) On 24 June 2022, QE wrote to Clyde & Co. At paragraph 3 they said:

"In particular we are instructed to seek a charging order against the property owned by the first defendant at 36 Kings Road, Richmond, Surrey. If your client is aware of any reason as to why the second claimant should not be granted such an order or any compelling basis for opposing such an order, we ask he articulate that reason by response before close of business on 29 June 2022."

They received no reply.

On 15 July 2022, Clyde & Co said they no longer acted for Mr Gibbs.

8. On 19 July 2022, Master Cook made an interim charging order and a further one on 3 October 2022. On 6 October 2022, Mrs Gibbs emailed the claimant's solicitors and said:

"36 Kings Road is registered in the name of my husband, but we entered into a trust deed on the date he purchased the property granting a 50 per cent beneficial interest to me and a 25 per cent joint beneficial interest to our three children."

9. Three days later, 9 October 2022, Mrs Gibbs provided a photograph of a Declaration of Trust dated 12 July 2012 (“the Deed”). The claimant does not accept this Deed is genuine. Mr Gibbs then changed his position at the hearing the next day, 10 October 2022, as he asserted then that:

"The claimant fully understands that at best I have a 25 per cent beneficial interest in this property following the discharge of the mortgage".

10. The Deed is simple in its terms. It recites that Mr Gibbs, as trustee, owns the

Property and that he wishes to declare a bare trust in favour of the beneficiaries in certain proportions, namely Mrs Gibbs as to 50 per cent, himself 25 per cent and their three children at 8.33 per cent each. It is signed by Mr and Mrs Gibbs on their own behalf hand on behalf of their children. It is witnessed by one "DM Burgess". Then QE wrote to Mr Gibbs regarding two other properties which the claimant wished to enforce her debt against. Mr Gibbs made the same response that he beneficially owned part or none of the property concerned as he had transferred it to a former partner and/or their children and a declaration of trust in like form would be produced.

11. On 18 July 2023, a directions hearing in this claim took place before Deputy Master Arkush. The defendants were ordered to give extended disclosure by list by 1 September 2023. The list of issues for disclosure at paragraph 4 of his order were:

(1) Is there a trust of the Property, whether by declaration or otherwise? If so, how and in what circumstances was such a trust created and what are the purposes, terms and effects of the trust? Is the purported written declaration of trust dated 12 July 2012 an authentic document?

(2) Is there a tenancy in respect of the Property? If so: (a) who are the tenants and what are the terms of the tenancy; (b) how is rental applied?

(3) What costs, fees and/or taxes are associated with acquiring ensuring, maintaining, repairing, refurbishing and selling the property and who pays such

cost/fees and taxes?

(4) What, if any, interest does HSBC have in relation to the property?

The defendants were also ordered to attend this trial for cross-examination. On 1 September 2023, Mrs Gibbs produced a copy of the Deed together with similar ones for two other properties. QE had written on 25 August 2023 setting out what was expected and required.

12. As Mr Atrill put it in his skeleton at paragraph 66:

"On 25 August 2023, prior to the defendants' deadline for disclosure, QE sent them a letter setting out what was expected and required from them both in terms of the mechanics of disclosure and examples of the sorts of documents they should be searching for and producing. These included documentation and correspondence in relation to the preparation and/or purpose of the purported trust deed and documents relating to tenancy of the property including all bank statements dating back to 2012 containing information showing how rental income is and has been applied and expenditure on and or relating to the property and any transactions/transfers of money between Mr and Mrs Gibbs."

Then on 29 September 2023, QE complained:

(a) Mr Gibbs had, in fact, declined to produce anything at all on the basis he claimed to have no responsive documents beyond those produced by Mrs Gibbs,

which QE pointed out was not credible, referring to certain particulars of categories that he must have.

(b) as for Mrs Gibbs, the claimants set out a detailed section entitled "Missing documents" commenting on the wholesale lack of 1), contemporaneous correspondence relating to trust deed or preparation of its terms; 2), correspondence with other beneficiaries; 3) drafts of the purported declaration trust; 4), correspondence with HSBC bank; 5), correspondence with all the tenants; and then 6), all bank statements previously sought.

13. Mr Gibbs' response on 7 October was that he had led a long and busy life living and working in multiple jurisdictions around the world and that he did not trail around with him a truck load of documents on the off chance one day he would be asked for a piece of paper. Mrs Gibbs replied in a detailed four page letter two days later. She said 1) there was no contemporaneous correspondence regarding the Deed, 2) she and her husband had simply discussed it, 3) he typed and printed it, 4) it was signed, dated and witnessed, 5) the laptop and printer used no longer existed and there were no drafts, 6) they needed no assistance with the preparation of the Deed as Mr Gibbs was an experienced solicitor and drafted it himself, 7) that it was unnecessary to correspond with a witness who had died and 8) their children were unaware of it until this claim.

14. On 15 September 2023, QE requested Mrs Gibbs to make the original Deed available for inspection and analysis as they wished to instruct Dr Aginski, an expert in document authentication. Mrs Gibbs, by email dated 28 September 2023,

agreed to hand over the original deed by Monday, 2 October, but that morning she emailed and said she had been intending to deliver the original that day, but:

"I regret to inform you that this will unfortunately not now be possible as I realised yesterday evening when I came to prepare the document that I no longer have original in my possession. Two weeks ago I took all original trust deeds in my possession to a local solicitor to have certified copies made. I also took copies of the documents with me, but the solicitor concerned preferred to make his own copies which he then certified. When I returned home I destroyed the unnecessary copies and I realise now I must have destroyed the originals by mistake. I have been so careful with the original documents as they could easily be mistaken for copies, so I am devastated that I have made such an error and as a result have lost all of the original trust deeds."

15. Mrs Gibbs then on 10 November 2023 swore an affidavit confirming the above at QE's request. As to the witness, RM Burgess, QE on 20 October 2023 asked for their full name and address. Mr Gibbs on 30 October did not provide those or any other details but said that she was "checking the address of the witness to the trust deed at the date it was executed". Nothing more has been provided by Mrs Gibbs so QE have been unable to investigate the witnessing.

The change of landlord.

16. As I have said above, the Property has always been rented. On 16 July 2023,

Mr Gibbs spoke to Savills who managed the letting who emailed both Mr and Mrs Gibbs and said:

"As discussed, if you could please send us over the proof of change of ownership so we can set up the renewal tenancy under Sandra/the trust's name as the Land Registry is stated to be in your name".

17. This had been preceded by Savills emailing the tenants on 16 May 2023 and asking if they wished to stay on at expiry of their lease in August 2023. They confirmed they would and later on 5 June the tenants asked if Mrs Gibbs could sign or cosign the lease. The same day Savills said: "The lease will be transferred and signed by Sandra as the new landlord".

18. Whilst allowing for some loose legal language by Savills, it appears that Savills were unaware of the Deed until the change of landlord in August 2023. Prior to then it is not disputed - and Mr Gibbs accepted in his oral evidence - that he had received all the rental income. Most importantly, the correspondence shows Savills regarded the production of the Deed as a change of ownership compared to the position beforehand. They requested the Deed to be certified.

Factfinding.

19. My approach to the burden and standard of proof, failure to call evidence, my reasons and generally accord with what His Honour Judge Paul Matthews sitting as

a judge of the High Court in De Sena v Joseph Nataro and others [2020] EWHC 1031 Chancery said at paragraphs 23 to 32. I especially emphasise, as I mentioned at the start of trial, that notwithstanding thousands of pages of evidence, detailed cross-examination and substantial skeleton arguments and closing submissions, I will not deal with every point raised. I say that for these reasons; first, I do not need to do so to address the issues and the law and procedure relating to this order for sale. Secondly, it would not accord with the overriding objective as it would not be proportionate and would expend unnecessary judicial and court resources and costs for the parties.

20. His Honour Judge Paul Matthews said at paragraph 27:

"Express findings are always surrounded by penumbra of imprecision which may still play an important part in the judge's overall evaluation."

At paragraph 28:

"Whilst judges give their reasons for their decisions, they cannot and do not explain every little detail or respond to every point made."

Then His Honour Judge Paul Matthews cited the well-known decision of Mr Justice Leggatt, as he then was, in Gestmin pointing out how, in his paragraph 29, that: "The problems of memory over the years mean that the documentary evidence to the court becomes even more important." His Honour Judge Paul Matthews says Gestmin's main application was in commercial cases as it itself was a commercial one and therefore with a substantial number of contemporaneous documents. "De Sena", he said: "was a commercial case with significant domestic or family overtones, but there were sufficient written records

to make the Gestmin approach relevant."

21. I also have in mind the 13 axioms of factfinding set out by Dexter Dias KC, sitting as a Deputy High Court Judge, at paragraph 25 in Powell v University Hospitals Sussex NHS Foundation Trust [2023] EWHC 736 AB.

The Issues.

22. These have been agreed by the parties. Mr Gibbs added to counsel's original draft in paragraph 1(b) the second sentence, in 1(c) the reference to Cook v Head and section 17, the second part of 2(a) and all of 2f), (g) and (h).

The Issues are:

(1) Did Mr Gibbs own 36 Kings Road, the Property, wholly legally and beneficially? If not how is the beneficial interest held?

(a) Is the Deed, dated 12 July 2012, an authentic document?

(b) If yes: was it ever intended to take effect or was it a sham? Is the claimant entitled to run this “sham” argument?

(c) If no, is the constructive trust to be imposed in any event on the basis of *Cook v Head* [1972] 1 WLR 518 and/or section 17 of the Married Women's Property Act 1882, giving Mrs Gibbs the beneficial interest (and, if so, what is the extent of such interest)?

(2) Should the court, in exercise of its discretion, grant the Order for Sale ? Factors include:

(a)The size of the debt charge relative to the value of Mr Gibbs' interest in the Property;

(b) The nature of the failure to pay the debt charged.

(c) The availability of any other sources of the payment if an Order for Sale is not made.

(d) The position of relevant third parties.

(e) (If a trust has been found to exist) the intentions in creating the trust and purposes for which the property is held.

(f) Whether an equitable charge is the same as a mortgage.

(g) Whether the creditor is a commercial creditor.

(h) Whether these proceedings are fair, just and proportionate in view of costs.

The Law.

23. I will deal with the law quite briefly avoiding much citation as there is little or no dispute between the parties in the main. If Mr Gibbs is the sole beneficial as well as legal owner of the Property, then CPR 73.10C applies which states:

"Subject to the provisions of any enactment, the court may, upon a claim by a person who has obtained a charging order over an interest in property, order the sale of the property to enforce the charging order."

24. Of especial assistance are the detailed notes, especially at 73.10(c): that in exercising my discretion this is "an extreme sanction and all circumstances would have to be considered" and that ordering a sale "is a draconian step to satisfy a simple debt". But, importantly, as is the position here, "different considerations apply if it were not the debtor's home and they held it as a second home or as an investment". The factors I should take into account include conduct, which is relevant if the debtor is in "serious and contumelious default" and/or "appears to have set their face against honouring their debts or complying with numerous orders of this court" - see *Packman v Mentmore* [2010] EWHC 1037 TCC at paragraph 8, and paragraph 27 as to the other factors to be taken into account to include other potential methods of repayment and the size of the debt relative to the value of the property.

25. A common-sense approach is to be applied, so a debtor with a substantial property would not avoid a forced sale as opposed to one with a less valuable property. Accordingly, a sale can be ordered even if the proceeds amount to just 20 per cent of the debt; see *Barclays Bank v Hendricks* [1996] 1 FLR 258.

26. The note at CPR 73.10C(7) refers to the conflict of first instance authority as to whether the interests of existing occupiers should be taken into account. In *Wells v Pickering* [2022] 2 P&CR DG 23 it was held the court should consider proprietary interests but not the welfare needs of those in occupation. His Honour Judge Purle KC sitting as a Deputy Judge of the High Court in *Close Invoice Financing v Pile* [2008] EWHC 1570 (Ch) thought otherwise in that whilst

section 14 of the Trusts of Land and Appointment of Trustees Act 1996 ("TLATA") was strictly not relevant, the same considerations have to be taken into account in the exercise of the court's discretion.

27. The claimant has standing to make an application under section 14 of TLATA due to the final charging order if Mr Gibbs is holding the property on trust for himself, Mrs Gibbs and their children. Section 15 sets out the matters I must have regard to which can be summarised as:

1) the intentions of those who created the trust;
2) the purpose for which the property is to be held, including as a home which can change if the property changes from being a home to an investment;
3) the welfare of any minor in or expected to occupy the property;
4) interests of any secured creditor of any beneficiary, which include the charge holder;
5) the circumstances and wishes of beneficiaries of full age which here must exclude the third, fourth and fifth defendants as they have been given a chance to make representations but have declined to do so, but the position for Mrs Gibbs is moot.

28. The rights of a joint owner in occupation with joint beneficial interest who is not also a debtor will, notwithstanding the sympathy of the court, come second to the charge holder's right to seek sale - see *Putnam v Taylor & anor* [2009] EWHC 317 (Ch), where it was observed such immunity would mean a large number of debts

would never be paid. Likewise, the note at 73.10C(7), referring to sections 14 and 15, states concerning a family home that: "A commercial creditor's interests will usually be given priority over a family in occupation of the property".
A creditor being kept out of their money is a "powerful consideration" - see *Bank of Ireland Mortgages v Bell* [2001] 2 FLR 809 at paragraph 39.

29. Those opposing the creditor must provide adequate evidence which will be scrutinised by the court and weighed against the interests of the creditor. The Court of Appeal in *First National Bank v Achampong* [2004] 2 P&CR had to consider the position of infant grandchildren and an adult with a mental disability, but said the weight to be attached to their respective positions was difficult in the absence of evidence as to what the adverse effects of sale would be, so in the absence of cogent evidence a sale was ordered.

30. Mr Gibbs submits an order for sale was refused in *Packman*, notwithstanding the evidence on the potential sale being "very light on detail", namely confirmation a draft sale contract had been sent to a proposed purchaser and a bald assertion of the sale progressing - see paragraphs 28 and 29. However, Mr Justice Coulson, as he then was, did not make the order for sale due not only to the light detail, but also the disparity in debt/value. Further, the position is very different to here in that Mr Gibbs is proposing, for example, waiting for the sale of Elysium, his super yacht, to which I will turn to later, rather than the Property. In *Packman*, the only asset was the property and the application was not dismissed but adjourned for further evidence on the sale to the proposed purchaser. In summary, Mr Gibbs'

submissions missed the point.

31. The enforcement of a charging order by sale is compatible with the ECHR Articles 1 and 8 – see again *Close Invoice Financing* at paragraph 12, it being: "In the public interest to enforce charging orders generally because of the economic importance of ensuring that there is an efficient machinery for enforcement of debt obligations". Also in *Close Invoice*, the power to enforce a charging order under section 14 was found compatible. In *National Westminster Bank v Rushmore* [2010] EWHC 55 (CH) at paragraph 50, Mr Justice Arnold agreed with His Honour Judge Pearl in *Close Invoice Financing* that the section 15 discretion had to be exercised compatibly with Convention rights, but ordinarily it would suffice for that purpose to give due consideration to the section 15 factors rather than carry out a separate consideration of whether the order was a proportionate interference with Convention rights.

32. But in any event, the important and distinguishing point here is that, unlike in the above authorities, the Property is not the home of any of the defendants. Accordingly, I do not think they can avail of their Convention rights.

33. The claimant maintains if the Deed was created in 2012, it is void as a sham in that the defendants did not intend to create a trust but maintain that impression to others - Lewin *on Trusts* 20th edition, paragraph 5-020. Mr Atrill submits that reckless indifference is sufficient to constitute a common intention, so that here I could find a different level of intention to mislead on the part of Mrs Gibbs compared to her

husband.

34. Mr Atrill also cited *Snell's Equity* 34th edition at paragraph 22-069 in that the court may rely upon a wide range of evidence, such as the seller's motives and honesty and conduct after the creation of the deed, the latter including evidence of acting as if the deed did not exist, relying also on *Hitch v Stone* [2001] EWCA (Civ) 63.

Mr Gibbs submitted that Mr Atrill had omitted to mention three further points from previous authorities as set out by Lady Justice Arden, namely the subjective nature of the test of intention, the fact that the deed is artificial or uncommercial does not mean it is a sham and the fact that parties have departed from it does not necessarily mean they never intended it to be effective and binding.

35. Mrs Gibbs submits that the Property was purchased by her husband to provide security for her, to benefit their children and provide income to facilitate his maintenance payments. Further, as Mr Gibbs in effect left the UK in 2006, she has managed and maintained the Property, worked upon it extensively and spent many hours on its management and maintenance. Consequently, aside from the Deed, she claimed a 50 per cent share of the beneficial interest by virtue of a common intention constructive trust due to her financial and nonfinancial contributions citing *Cooke v Head* [1972] 1 WLR 518.

Mr Atrill submits a common intention by both parties is necessary at the date of acquisition or later and that the person asserting the same must have acted to their detriment in the belief that by so acting they were acquiring a beneficial interest -

see Lewin at paragraphs 10-062 and 067.

36. Mr Gibbs also referred me to *Jones v Kernott* [2012] 1 AC 776 in support of Mrs Gibbs' claim to be a constructive trustee. Mr Atrill submitted that authority establishes that common intention is deduced objectively from the parties' conduct, emphasising paragraphs 51 to 52.

37. Mrs Gibbs, in her skeleton argument and also her written closing submissions, maintains that the claimant should be deemed to accept the authenticity of the Deed as the N268 notice served by the claimant was served out of time - CPR 32.19(2). That submission is, in my judgment, wrong for these reasons:

(1) There is no challenge to the authenticity of the copy documents as they are self-evidently copies. The challenge is to the original, therefore there is no need for the claimant to serve an N268 notice.

(2) The N268 notice, if it was necessary, should or could not be served before analysis of the original Deed. That, all parties recognise, is not possible, therefore service was not possible until after the alleged loss.

(3) Both Mr and Mrs Gibbs have known at all times that the authenticity of the original Deed is challenged. See, for example, paragraph 4.1 of the order of Deputy Master Arkush of 18 July 2023 which, for the purpose of model D disclosure asks:

"Is the purported written declaration of trust dated 12 July 2012 an authentic document".

Therefore, the defendants are put to proof of the authenticity of the Deed.

38. Mrs Gibbs also maintains in her skeleton argument and written closing submissions that service of the form N268 is insufficient if a party alleges forgery as the claimant, as she says, does in its skeleton argument, referring to *Redstone Mortgages v B Legal Limited* [2014] EWHC 398 (Ch). However, she did not indicate the paragraph in that judgment she relies upon, but Mr Atrill submits it is 56 and 58. I cannot see the basis for this submission. First, no positive case was advanced that the document in that claim was forged, nor was any evidence led to establish falsity. The position is therefore very different to that which obtains here where authenticity has been in issue and indeed at the centre of this case since the Deed was allegedly destroyed accidentally.

39. The only reference in the claimant's skeleton to forgery is at paragraph 80 which states if the deed was:

"created at a later date and backdated in this way, it is a forgery and not a valid and binding deed".

Mrs Gibbs, in my judgment, is attempting to allege forgery in the sense of signatures. That is not the case. The authenticity of the Deed is and has always been in issue on the basis of the date from when it was created and entered into. *Redstone* does not support her submissions.

The evidence and conduct of Mr Gibbs.

40. Mr Gibbs gave his evidence with bluster, swagger and confidence. However, I could not believe much of what he told me was true. He was also at times evasive and prone to exaggeration or manipulation. I set out some examples below.

41. In his fourth witness statement, dated 12 July 2023, at paragraph 4, he says:

"I make this witness statement in response to the fourth witness statement of Khaled Khatoun dated 27 April 2023 and in response to the claimant's application for an order for sale of 36 Kings Road, Richmond (the Property). In making this statement, I have not been able to access the documents relied on by Mr Khatoun as these have been sent to a Gmail account which Mr Khatoun knows has been closed because of his actions in writing to UK banks to freeze my bank accounts and cards."

42. Under cross-examination Mr Gibbs admitted corresponding with third parties via his Gmail account. He tried to excuse this by saying he managed it occasionally by deleting large amounts of data to free up space to enable it to be usable again. His witness statement, in which he confirmed is true on oath, was therefore untrue.

43. Mr Gibbs was shown an email dated 28 February 2019 from him to a Mr Kholaifi and others who represent the claimant in which Mr Gibbs said:
"The real estate investments in London, Northern Ireland and Montenegro are all

proving impossible to sell."

Mr Atrill put to him that he was implying he was trying to sell assets but could not. Mr Gibbs replied that was the case. Mr Atrill said Mr Gibbs has sold a property at 1 Park Road, Richmond, on 30 January 2019 for just over £1.3 million, so property was not impossible to sell. Mr Gibbs tried to explain that away by saying he: "...sold one small piece of real estate ... and the funds were taken up with servicing everything else".

44. Mr Atrill said the statement in his email that he just confirmed was a lie. Mr Gibbs responded that the sale of 1 Park Road "was a one-off exception otherwise it could not sell and no, I am not lying". In my judgment it was just not true that that property generally was impossible to sell. Throughout his written and oral evidence, Mr Gibbs consistently blames others and the international markets as preventing him from being able to realise any assets. That was untrue.

45. Mr Gibbs was also evasive. By way of example, a letter from his solicitors of 31 January 2021 setting out his assets "to hold the ring", which I set out in [7.2] above was put to him. Mr Atrill asked why did he not say for the Property that his interest was limited to 25 per cent of the value of 3.25 million? Mr Gibbs' response was first he should have listed the value of his Sunseeker yacht Elysium first with a value of Euro 16.895 million. The question was repeated. Mr Gibbs' second response was to refer to number 34 Kings Road next door to the Property.
Mr Gibbs therefore deliberately avoided the point. This occurred numerous times during his cross-examination.

46. In his third witness statement, dated 13 April 2023, Mr Gibbs said rent from the Property was paid directly to his wife and " I am unable to make this payment directly to Mrs Gibbs because Mr Khatoun has done his utmost to ensure I am unable to open and the use a UK bank account".

Later in the same statement he said:

"Mr Khatoun now complains I do not make payments. I could not do so even if I wanted to because of this malicious and spiteful behaviour of Mr Khatoun which prevents me from even making use of my bank accounts."

47. Unfortunately for Mr Gibbs, his wife's attempts to redact certain transactions in her bank statements was unsuccessful in that it was possible to see through the attempted blocking out by felt pen or similar. Statements for June and July 2023 were put to Mr Gibbs and he was asked about four payments he made to his wife's account of £25,000 each and then those sums were paid out by him with the reference "Gibbs RW". Mr Gibbs was asked where he had transferred the money from and his response was:

"I have opened a bank account. I won't tell you where as QE will shut it down."

The inescapable conclusion I reach is that the statements I quote from his witness statement are simply untrue.

48. Mr Gibbs would also tailor his evidence especially as to his recollections to avoid committing himself or else would deny he had seen something. By way of example, Mr Atrill put to him QE's letter of 18 July 2022 sent to him at his Gmail

account. Twice he unambiguously denied receipt. When Mr Atrill identified the email that Mr Gibbs wrote in response, he interrupted and said he had no recollection of the letter.

49. Mr Atrill also put to Mr Gibbs Keystone's letter of confirmation of his assets of 2 February 2021 that I referred to in [7.3] above which states the Property and another one are:

"Wholly and legally and beneficially owned by Mr Gibbs".

Mr Gibbs was asked if that was true or untrue. His response was to say he assumed, "they", meaning his lawyers, took it from HM Land Registry records:

"But beneficially, no, that's not true".

When asked:

"Are you suggesting that this letter was written without having taken any instructions from you as to the legal and beneficial ownership of Kings Road?" his response was "Yes".

50. Mr Gibbs then asserted he had no recollection of seeing the letter before it was sent out as he thought he was then working overseas. I find this fanciful in that:

(1) This was the second assertion of outright ownership of the Property. It was of the utmost importance to be accurate especially in view of the threat of the worldwide freezing order. Mr Gibbs was a practising solicitor for some 26 or more years and knew the importance of accuracy as demonstrated in the correspondence and his evidence at times by his pedantry and attention to detail.

(2) Such an important letter would have been poured over by his solicitor and counsel and instructions taken. Lack of bona fides and accuracy would have severe consequences. He and his lawyers, later including leading counsel, were well aware of that at all times.

(3) Again Mr Gibbs tries to blame others, here saying that his legal team took their lead from Mr Khatoun listing the Property as an asset and describing its legal title. But what he does not do is waive privilege in his correspondence with Keystone which would, I expect, show drafts of letters, notes of telephone instructions, emails and so on.

(4) Further and in any event, Mr Gibbs has had numerous opportunities over the one and a half years before his wife disclosed the Deed to correct the position but he has made a deliberate choice not to do so.

51. Of especial importance in his attempts to mislead the court is over the movement of cash and assets. I have mentioned the payments to and from Mrs Gibbs' account, but substantial funds were received by him following the JPR investment share sale, the purchase of shares in Hub Flow, albeit he says for a third party he did not wish to name, the sale for Euros 675,000 of a property in Montenegro, which I am satisfied he attempted conceal from the claimant, and also his failure to disclose further receipt of £700,000 following his sale of his shares in Gibbs Gillespie.

52. I now turn to exaggeration by Mr Gibbs. Whilst this was not sworn evidence, in both his skeleton argument and closing submissions he referred to the tenants and their children aged six, nine and 13 and said:

"The children all attend local schools and it would be deeply upsetting and cause immeasurable upset, distress and inconvenience to the children and the family if they were to be forced to leave the house".

As to the youngest child, he submits, that it is "The only home she can ever recall".

53. First there is no evidence that he or anyone on his behalf has spoken to the parents and that they disclosed this immeasurable upset, distress and so on caused to their children. I do not believe there is any such evidence available.

Secondly, in his email, which I note was sent from his Gmail account to Savills on 9 July 2023, he asked:

"How many equivalent properties to number 36 Kings Road are available for renting on Richmond Hill and the rents being asked?"

Savills replied that 40 equivalent properties were available at rents between £5-10,000 per month. Therefore, relocation to a similar property at a similar rent clearly would not present the obstacles or problems Mr Gibbs refers to is unsubstantiated exaggeration.

54. As to conduct, Mr Gibbs has made various inaccurate and untrue allegations. One example is in his fifth witness statement, paragraph 5, where he says Mr Khatoun:

"...having been found to have been lying extensively to the court in his first

affidavit, which matter is now under investigation by the SRA (report dated 31 October 2023)."

QE, in their letter of 22 November 2023, put Mr Gibbs proof of this and asked him to disclose the report under CPR PD 57 AED at paragraph 21.1.2. No such disclosure has been made by him, nor has this reckless allegation been evidenced. That leads me to the inescapable conclusion that both allegations are untrue.

55. Further, in the underlying proceedings, Mr Gibbs made certain scurrilous allegations again a member of the claimant's family and their associates. These allegations were struck out by Mrs Justice Cockerill who in so doing described his allegation as being "a blatant attempt at character assassination. The facts bear no relation to the allegations which are in issue" and that the offending material "is an abuse of process".

56. Mr Gibbs then, in effect, slipped the same struck out material into these proceedings. QE objected, but Mr Gibbs maintained he relied on that material at this trial. At the start of trial, Mr Atrill commenced his submissions for removal of that material. Mr Gibbs intervened and explained he would no longer rely upon it, so his fifth witness statement was admitted redacted appropriately. I find his conduct up to that point reprehensible and a wholesale abuse of process. The material concerned has absolutely nothing to do with this application. It was, in my judgment, an attempt to embarrass the claimant which is in itself an abuse of process especially in view of the ruling of Mrs Justice Cockerill.

The evidence and conduct of Mrs Gibbs.

57. Mrs Gibbs was more considered and thoughtful when she gave evidence. At one point she was asked about the provision of the Deed to HSBC in 2018 which I refer to at above. She had seen Mr Gibbs cross-examined on this point and said she could not recall it actually being shown to HSBC by Mr Gibbs, but assumed they, HSBC, must have seen it.

58. However in my judgment she did collude with Mr Gibbs in an attempt to mislead the court as to the beneficial ownership of the property. That involved, for example, redacting on her bank statements payments from Mr Gibbs when in her first witness statement of 26 March 2023 she said:
"The monthly allowance I used to receive directly from my husband is compromised because Mr Khatoun has taken steps to freeze his bank accounts and made it impossible to open new ones".
In her second affidavit sworn on 10 November 2023, she said to her husband:
"...found it increasingly difficult to fund the maintenance payments on which I totally rely, partly due to his assets and bank accounts being frozen."
As I have mentioned in my ex tempore judgment concerning the claimant's application for unredacted copies of her bank statements on 28 November 2023, QE had set out in detail what they expected to see by way of disclosure. Mrs Gibbs supplied those redacted statements and said she met QE's requirements.

59. However, examination of the statement showed, underneath the inadequate

redactions, regular payments as I have set out above. Clearly, as the sender was indicated on her statements, she could not have thought some other person was sending those monies. References included 4 July 2023, the words "Faster payments receipt re RWG from Gibbs RW". The only possible conclusion I can draw is that she dishonestly said she had received no such payments and then compounded that deceit by attempting to cover them up.

60. Her provision of her bank statements in an unredacted form, pursuant to my order of 28 November 2023, by 10 o'clock on the morning of 29 November, also evidenced her further deceit. She printed, she said, the full set of statements as she had not retained unredacted copies.

She explained she had printed out all until 7 July (actually 6 June) 2023, but then at 4 o'clock in the morning the ink had run out. But the last statement chronologically for May/June to 6 June did not show any fading. She then said, when this was put to her, the coloured ink failed first and then eventually the black, but that last statement printed had Santander in large red letters upon it. No fading of any colour could be seen.

61. Then she altered her story again and said she and her daughter had not printed out the statements chronologically so the faded, ie last copies, were elsewhere in the chronological run. That, of course, contradicted what she had said about obtaining all the statements to June (actually July) 2023. I do not accept her account of how the damaging statements were not provided in unredacted form for these reasons:

(1) If printing non-chronologically it would be almost impossible to ensure she had all statements for all years and months up to June 2023, ie a straight run, if she took batches from here and there in time.

(2) It would also be difficult, if not impossible, to select certain groups of months to print off from her online bank account and put them into perfect unbroken order. As she said she worked through the early hours of the morning on 29 November, it would only make her task harder to do so. I cannot accept that.

(3) When Mrs Gibbs heard her husband being cross-examined on the poorly redacted statements, this concerned payments of about £3,500 at first in early 2021 just as the freezing order was about to be made. It was only as cross-examination continued the next day, 29 November, that the transfers of large sums of £25,000 in June and July 2023 were put to him. Mrs Gibbs did not know those payments had been seen by the claimant's legal team, so she endeavoured to keep these damaging entries or those damaging entries hidden by not disclosing the unredacted versions not knowing that her attempt, as Mr Atrill put it, to keep the cat in the bag was doomed to fail.

62. I have made due allowance for Mr and Mrs Gibbs being under extreme pressure as litigants in person faced with a mass of evidence spanning just over 10 years, in particularly hard-fought litigation and facing a substantial legal team of leading and junior counsel plus about four lawyers. I did not feel, however and this is a tribute

to their steadfastness, intelligence and sheer legal ability of them both the need to intervene to ensure the trial was fair to them in the way, for example, I did intervene to restrict sight of Mrs Gibbs' unredacted statements to both counsel and one named solicitor as they contained her private financial information.
I find Mrs Gibbs did not tell the truth and her conduct fell well below what was expected with regard to the provision of the bank statements.

Findings of fact and the issues.

63. Mr Gibbs' evidence as to the creation of the Deed was not set out in the detail I would have expected to see in his various witness statements and affidavit. Notwithstanding the importance of the Deed as, on his case, he in effect gave 50 per cent of a £3 million property to his wife and 25 per cent to his three children, his oral evidence was vague. He accepted he "presumably" produced it on a computer and that he "probably" saved a copy. He did not email it to Mrs Gibbs as he said he could have made it when in the UK or overseas but then physically took a copy to her. This was, he said, "about four laptops ago". That, for someone travelling a lot, in my judgment is quite possible. They signed it, he said, and he did not keep an electronic copy as his wife kept the original. In summary, he had no soft or hard copy.

64. Mrs Gibbs' recollection varies. She, in her letter of 9 September 2023, said they discussed the proposed Deed. He typed it, it was printed, signed, dated and witnessed, but that variation in recollection could be quite possibly due to the

passage of time and the vagaries of memory when not supported by documentary evidence. Having said that, in view of the substantial value and the importance to its family for, as he put it, the point of the Deed was for inheritance tax planning and financial support for his wife, it is, in my judgment, wholly implausible that he would not have retained a soft and/or hard copy somewhere in a safe place.

65. This contrasts with Mrs Gibbs who kept the Deed safe for 10 years before producing it. The first time the Gibbs say it was disclosed was to HSBC in 2018 as I have set out above. In summary, HSBC asked for proof of ownership "to show you are both owners of the property" and Mr Gibbs replied: "It is in my sole name, not in joint names". That is all as to be expected. HSBC did not require anything else. They were not told in writing nor, it seems, orally of any other form of ownership.

66. If HSBC had been shown the Deed, I have no doubt they would have had to have provided it to underwriters due to the nature of the beneficial interests, but there is no reference to or evidence of that at all. Underwriters then, I believe, would have raised further queries but no such evidence exists.

67. Further, I have set out at paragraph 7 above Mr Gibbs' representations to the court and others as to his sole ownership of the Property. Mr Gibbs attempted to sidestep his solicitor's unequivocal statements in his oral evidence as I have mentioned, or else says they were not written on his instructions, or that he did not see such letters before they were sent. I do not accept any of that especially as for certain assets he

set up beneficial interests - for example, 34 Kings Road. The questions and his answers as to ownership were repeated on various occasions. His response never varied; it was in his sole ownership. He also knew the serious context in that breach of the worldwide freezing order by failing to make full disclosure of assets could result in a fine and or imprisonment.

68. What contemporaneous documentation which does exist concerns the payments made for the maintenance, repair and management of the property. Almost all the receipts and invoices are made out to Mr Gibbs, notwithstanding he was in the main living overseas even though his wife lived next door. He managed the Property and, as he accepted, received the entirety of the rent, and never, until July 2023, recognised any of the alleged beneficial interests. Only in July 2023 with the shift from Mr to Mrs Gibbs as landlord did that change.

69. Mrs Gibbs several times in cross-examination rhetorically asked why she would deliberately destroy the original Deed as it would have assisted her case. The simple and obvious answer is concern on her part that the imminent testing was likely to disprove the authenticity of the Deed. Mrs Gibbs also accepted the original Deed felt different to the copy she had certified, and it is important that there were, she said, three such originals, the Deed of the Property plus two others, so it was several documents that she says she destroyed.

70. I have no hesitation in finding that the Deed is not an authentic document in that it was not created in 2012 and that Mr Gibbs owns the Property legally and

beneficially for these reasons:

(1) I do not accept Mr Gibbs' evidence as to the Deed's creation and his failure to keep a soft or hard copy. It is implausible and illogical in all the circumstances. I have indicated above my reasons why I in general do not accept his evidence.

(2) Likewise, I do not accept Mrs Gibbs' evidence as to the creation of the Deed in 2012 and that she safely kept the original and only version until 2022. As with Mr Gibbs, I have indicated above why I do not accept her evidence in large part.

(3) The Property was registered in Mr Gibbs' sole name. The usual presumption is that the beneficial ownership follows legal ownership. There is nothing in the evidence before me to displace that. The burden is on Mr and Mrs Gibbs and they have failed to prove the same.

(4) There is a complete absence of any contemporaneous documentation to support the existence of the Deed from 2012, whether by way of hard or soft copy including meta data.

(5) Of especial importance are Mr Gibbs' representations in the underlying proceedings that he held the Property absolutely in his sole name. These representations were unequivocal and his attempts to circumvent them are an abuse of process. As I have set out above, I find Mr Gibbs made four representations within the underlying proceedings that he owned the Property

absolutely.

(6) I also find he represented to HSBC that he owned the Property absolutely in 2018 and further, likewise, to Savills as otherwise they would not have asked to see the Deed in 2023 to evidence, as they put it, "the change of ownership". If the Deed had been produced to HSBC, as I have said above, the underwriting process would have continued. It did not.

(7) I also do not accept that Mr and Mrs Gibbs would have kept the existence of this and, as I understand it, the other substantial valuable interest in various properties which arose due to the three declarations of trust concealed from their children once they were of age. They would or could have affected their children's own tax and wealth planning.

(8) Mr Gibbs received the income from the Property for some 11 years before the change in 2023. His excuse that he took on the tax burden for his children and wife does not hold water especially as it is quite possible he, in effect, paid more tax.

(9) Likewise, he paid most of the outgoings and no doubt claimed such tax relief as was available. Mrs Gibbs appears to have played little or no part in the maintenance and management of the Property.

(10) Mrs Gibbs' account of the creation of the Deed is unconvincing and again

there is no other evidence to support any of it.

(11) I find that, faced with the imminent prospect of scientific analysis of the paper and ink on the Deed and thereby ending any possibility of her 50 per cent beneficial interest, Mrs Gibbs knew the game was up and endeavoured to mislead the claimant and the court. I cannot determine whether the Deed and, for that matter, the other declarations of trust were destroyed in the document equivalent of a mobile telephone going down to Davey Jones' locker, but her deliberate actions prevented that all important analysis and it matters not whether the Deed was destroyed or still somewhere exists.

(12) My final reason is that the absence of any evidence from the supposed witness to the signatures on the Deed, one RM Burgess. QE asked for their contact details, but nothing was heard save that Mrs Gibbs said the person had died. Mr Gibbs, in his written closing submissions on 1 December 2023, referred to their signatures being witnessed by "Mrs DM Burgess". That was the only indication of gender and the only further information provided by the defendants. The failure by either Mr or Mrs Gibbs to provide details of the witness, including where she lived, how the arrangements were made for her to be a witness, when and how she died all point to the person not existing or if they did that they did not witness the Deed.

71. My answer to Issue 1(a) is, therefore, that Mr Gibbs owns the Property legally and beneficially and the Declaration of Trust of 12 July 2012 is not an authentic

document. I therefore do not need to answer Issue 1(b) but now turn to Issue 1(c) - Is a constructive trust to be imposed in any event in favour of Mrs Gibbs and/or does she have an interest by reason of section 17 of the Married Women's Property Act 1882?

72. Mrs Gibbs submits if I find there is no declaration of trust then a constructive trust arises due to the substantial work she has put into the Property and money she has invested in it in accordance with the decision in *Cooke*. First, I accept Mr Atrill's submissions as to the law I have summarised at [35] above.
In my judgment, Mrs Gibbs' position is wholly different to that of the claimant in *Cooke* and that authority can be easily distinguished as I find she had nothing like the involvement of the claimant in the property concerne and in particular there was no joint enterprise between Mr and Mrs Gibbs.

73. Further, there is no evidence before me to meet the questions to be considered as appears in *Lewin* at [10-063]. As is also stated in that paragraph, much of the reasoning in the old authorities from the 1970s such as *Cooke* must be approached with caution. I must consider - *Lewin* at [10-067] - the whole of the parties' conduct in relation to the property, including why it was purchased in the way it was, the purpose, the nature of the relationship and whether there was provision for children and how payment was made of the outgoings, especially from a joint account.
Therefore, even if Mrs Gibbs' position was equivalent to the claimant in *Cooke*, the position in law has changed.

74. Here the Property was purchased in the sole name of Mr Gibbs. For ten years he maintained, as I have found above, it was his sole property. Mrs Gibbs lived next door. They separated six years before the purchase. There was no question of it being bought for her or their children. Mr Gibbs paid the purchase price and received the rent for some 11 years. It was said it was purchased to protect the value of number 34 in which Mrs Gibbs actually lived. There is no basis, therefore, on which it can be inferred there was a common intention to have a joint beneficial ownership.

75. In addition in the evidence there is a schedule of numerous invoices, bills and receipts from 6 June 2012 to 15 August 2023. The vast majority of these in value and number point one way; to Mr Gibbs. This shows Mrs Gibbs had little input into the maintenance and management and she did not pay much towards it. As for the hours she alleges she spent maintaining and managing the Property, there is again no evidence of this and I reject it. Finally, the payments post August 2023 are minimal in the context of the whole and postdated the claimant's charge.

76. As to a claim under section 17 of the Married Women's Property Act, this is a purely procedural matter and does not give the court the discretion to vary the beneficial interests - *Stack v Dowden* [2007] 2 WLR at paragraph 16.

77. The answer to Issue 1(c) is that a constructive trust to give Mrs Gibbs a beneficial interest is not to be imposed.

78. I now turn to Issue 2, namely whether I should exercise my discretion to grant an Order for Sale. I accept, as Mr Atrill submits, this is a weighing process in respect of each factor in that if I find in the defendant's favour on one factor, that does not necessarily mean I should refuse to exercise my discretion in the claimant's favour or vice versa.

(a) Size of debt charged relative to Mr Gibbs' interest in the Property.

79. The starting point in the authorities is that substantial regard must be had to the fact that judgment creditor is being kept out of their money, but the debtor has an absolute interest in an asset which could satisfy the debt or at least a part of it. The total debt, as of the last day of trial, 29 November 2023, amounted to £582,077.49 plus US$2,076,117, a total in sterling of pounds £2,242,971.09. That is exclusive of any costs order in this application. The Property is worth approximately £3 million. The debt has been outstanding for over one year.

80. Mr Gibbs was criticised by Mrs Justice Dias when she granted the Unless Order due to his failure to meet those payments, saying that there was:
"No explanation as to where monies have gone that have apparently been received in recent months".
The claimant says these were substantial amounts and include continuing earn outs from his sale of his part interest in the Gibbs Gillespie companies, which I have mentioned above. There is also the sale of one of the Montenegrin properties for €675,000 in June 2022.

81. In the summary judgment application in the Underlying Proceedings, the Commercial Court has found Mr Gibbs was in breach of the settlement agreement he entered into with the claimant in 2018. Mr Gibbs says he wishes to pay but provides a litany of excuses as to why he has not been able to. It is remarkable that, notwithstanding all the assets listed in his disclosure at the time of the worldwide freezing order and disposal of certain assets, not a penny has been paid.

82. This, therefore, is a simple refusal to pay the claimant. It is a serious and contumacious default which is over one year old. These matters wholly favour the making of an Order for Sale, especially as this is an investment property. The debt is capable of satisfaction in full from the sale of the Property.

(b) The nature of the failure to pay the debt charged.

83. I have set out above my criticisms of Mr Gibbs' conduct. They are serious matters. He is in breach of various orders of this court hence he was disbarred from defending. Those orders all arose in the course of the Underlying, ie recovery Proceedings. Nothing in this factor favours Mr Gibbs.

(c) The availability of any other sources of repayment if an order for sale is not made.

84. Mr Gibbs in his third statement at paragraph 25 says it is inappropriate to order

a sale when he has an order for an interim payment and that should be determined or set off first. That application, it is not an order, was dismissed by Mr Justice Andrew Baker on 1 December 2023 when Mr Gibbs' application for security for costs was also dismissed.

85. Then at paragraph 25.2 of that statement, Mr Gibbs asserts:
"There are three very valuable assets owned by me which are for sale: a yacht, a company and an apartment with an aggregate asking price of €50 million., full details of which have been disclosed to QE, so why force the sale of the Property with all the costs, damage and distress it will cause?"

86. But there is no evidence before me showing on the balance of probabilities an immediate sale of any asset let alone those mentioned. The evidence that would be substantive and convincing could, for example, include heads of terms to sell the real property prior to actual exchange of contracts. There was no such evidence and in particular none of the sale of a readily realisable asset in this jurisdiction which can easily be monitored or administered by the creditors' professional advisers. In my judgment, this factor ends there and in favour of sale.

87. However, if I am wrong as to that, I note the claimant has, in respect of the Montenegrin property currently for sale, applied for an interim injunction after Mr Gibbs failed to agree to QE's proposal and that the claimant would consent to sale of it as long as it was for proper value and proceeds put towards settlement of the judgment debt. Mr Gibbs did not reply. Further and of particular importance is

that the court proceedings in Montenegro would take a very long time. For example, there is evidence from the claimant's Montenegrin lawyer that it could take a year to effect service of process.

88. As to the sale of the yacht Elysium, the company which owns it is a Cayman company. The claimant submits the Cayman courts will not recognise the interim payment order as a final enforceable order of this jurisdiction. I think I can take judicial notice that this is the approach adopted in many other jurisdictions around the world. Therefore it is not capable of enforcement if contested, and in my judgment based on Mr Gibbs's conduct there is a risk of successful contest. Nor do I accept Mr Gibbs' suggestion of payment out of monies that may arise. The yacht has been arrested by its mortgagor and there is apparently an offer of €12,225,000. The mortgagor, with consent of the claimant, suggested any remaining equity could be paid to the claimant or into a joint account. Mr Gibbs has failed to respond.

89. Mr Gibbs' company, Sunnydale, his co-defendant in the underlying proceedings, is a BVI registered company which owns two properties in London worth approximately £1.65 million, but the BVI courts will not, like the Cayman courts, recognise the interim payment order as a final enforceable order of this court. The judgment is therefore, absent the consent of Mr Gibbs, not capable at this time of enforcement.

90. In summary, there is no evidence of any other property or asset which can be realised in this jurisdiction without the problems or issues I have indicated above

which would raise the same or greater sum of money in similar timescale under the control or supervision of the claimant and the court. I can see no advantage to the creditor, only disadvantages. These facts wholly favour an Order for Sale.

(d) The position of relevant third parties.

91. It appears HSBC in 2018 regarded the Property as potential security for their charge over number 34, but in an informal manner. They have been served with the order for the interim charge prior to making that interim charging order final but chose not to appear and object. I need take no notice, therefore, of their position.

92. There is no evidence from the tenants. They were notified of this application by being provided with the claim form and supporting evidence at some point after issue. Then QE wrote to them on 10 July 2023 warning them of the hearing on 18 July 2023 and offering to assist their attendance. They did not reply, but on 6 July 2023, one of the tenants emailed Mrs Gibbs and said he was "sorry to hear that the legal process is still rumbling on" and that they all wished to remain in the property "for the foreseeable future because our children are at local schools and we are all settled in the house".

93. There is however, no direct objection from them even though they have been given timely opportunity in which to do so. The only protestations which are repeated throughout their evidence are by Mr and Mrs Gibbs and I have described how he

has apparently exaggerated the impact on the children. But in any event, the presence of the tenants and the children in the Property does not provide any reason, let alone a good one, why this Order for Sale should not be made.

94. A commercial creditor's interest is, as appears in the note to CPR 73.10C(7), usually given priority over a family occupation. Even if it were not, it would not prevent the order from sale but go to its terms.

95. Further the Property is realisable in the short term as possession can be obtained before the tenancy expires in August 2025 for these reasons:

(1) CPR 40.17 provides where an order is made under CPR 40.16 for sale of land it may order "any party" to deliver up possession to "the purchaser or any other person".

(2) The claimant is not bound by the tenancy as the interim charging order was made on 19 July 2022 and the lease extension in about July 2023. Therefore, the claimant's charge takes priority.

96. None of the above considerations militate against an order for sale. Factor 2(e) does not apply as I have found no trust exists.

(f) Whether an equitable charge is the same as a mortgage.

97. This was, like 2(g) and 2(h), added to the list of issues by Mr Gibbs. He submits that the authorities cited to me are mainly by claimant lenders seeking to recover

property against impecunious borrowers, but here the position is very different and therefore those authorities can be distinguished. I disagree; the principles as to assessment of the factors on Order for Sale are the same whether the creditor has an equitable charge or a mortgage. No authority was put to me to suggest otherwise. Therefore, the fact an equitable charge is different from a mortgage where the lender can negotiate terms, assess risk and take a commercial view is, in my judgment, of no consequence is determining whether I should exercise my discretion in favour of an Order for Sale. This factor does not assist Mr Gibbs.

(g) Whether the creditor is a commercial creditor.

98. Again this is put forward by Mr Gibbs to distinguish the position of the creditor here from a commercial creditor as most of the authorities concern commerical lenders. I do not consider it is relevant in determining whether I should, in my discretion, favour an Order for Sale as I do not see any reason for it to make a difference to the exercise of my discretion.

(h) Whether these proceedings are fair, just and proportionate in view of costs.

99. I am solely concerned with this application for an Order for Sale and not the Underlying Proceedings and their costs. Mr Gibbs has made many complaints over lawfare as a form of warfare in that he says, in his fifth witness statement, QE have: "done their utmost to destroy my name, reputation, income and the value of every asset I hold" and all at extortionate cost. I have just received a schedule of the

claimant's costs for this application. They total £498,129.43. That is far, far above the costs usually claimed on an Order for Sale or, for that matter, a two day High Court trial. As I remarked in [2] above, the evidence and documentation are far in excess of what is usual in these applications reflecting how hard fought this has been. The total debt is now approximately £2.42 million. The costs are roughly 20 per cent. The asset is worth approximately £3 million. I therefore do not think that, whilst the costs are substantially more than the norm, that the proceedings are not fair, just and proportionate. This factor does not assist Mr Gibbs.

100. I have stated above that as the Property is not the personal home of Mr Gibbs but an investment property, I did not consider that he could avail himself of his rights under Article 8 which would otherwise obtain. If I am wrong as to that, I need to consider that right which is a qualified right. The factors I must apply are: (a) is there another option instead of the sale of property? My answer is no for the reasons above. (b) is it fair on balance to force the sale? Again, my answer is yes in view of my determination that the factors in my discretion favour the creditor and a sale. (c) is it a proportionate interference with his Article 8 rights? I think it has to be and again for the reasons I have mentioned at (a) and (b), the sale is in accordance with the law and the procedure in CPR 73. Mr Gibbs' proposals to pay the debt go nowhere near meeting what I consider is required.

101. I will therefore make an Order for Sale of the Property and I will now hear the parties as to the form of the order and costs.

Deputy Master Linwood 5th December 2023

Approved Judgment Deputy Master Linwood