Neutral Citation Number [2023] EWHC 714 (Ch)

CR 2021 000886

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
INSOLVENCY AND COMPANIES LIST (ChD)
IN THE MATTER OF COPLEXIA COLLABORATIVE LLP (Company Registration Number OC399458)
AND IN THE MATTER OF THE INSOLVENCY ACT 1986

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

Date: 31/03/2023

Before :

ICC JUDGE BARBER

- -

Between :

PETER MARK ARNSTEIN

Petitioner

- and –

(1) COPLEXIA COLLABORATIVE LLP
(2) AMIR KHODAPARAST

Respondents

- -

Paul Emerson (instructed by **Ince Gordon Dadds LLP)** for the **Petitioner**
The Second Respondent appeared in person

Hearing dates: 6 and 15 February 2023

- -

Approved Judgment

This judgment was handed down remotely by MS Teams and email. It will also be sent to The National Archives for publication. The date and time for hand-down is 9.30 a.m. on 31 March 2023.

ICC Judge Barber

1. This is the Petitioner's application for an order that the Second Respondent, Mr Khodaparast, pay the Petitioner's costs of and occasioned by consideration of the coronavirus test under Schedule 10 to the Corporate Insolvency and Governance Act 2020 ('CIGA'), including the costs of a 'preliminary hearing' ('Preliminary Hearing') directed to be heard on 7 June 2022 under the CIGA Practice Direction ('CIGA PD'), in the context of a winding up petition presented by the Petitioner against the First Respondent on 20 May 2021.

Background

2. The following summary is largely drawn from my earlier judgment dated 1 July 2022 on the coronavirus issue following the Preliminary Hearing, reported at [2022] EWHC 1654 (Ch).

3. The First Respondent, Coplexia Collaborative LLP (the 'LLP') was incorporated as a limited liability partnership on 18 April 2015. It is a non-profit structure. According to Companies House filings, its current members are Coplexia Corporation Ltd and Mr Duncan Neil Halliday (a Mr Bluett was also formerly a member). The LLP was registered as a licensed body (ABS) on 28 September 2017 with licence, effective from 1 October 2017, to carry out certain reserved legal activities. That licence was revoked by the SRA on 16 February 2022, following the issue of a notice of intent to revoke on 23 July 2021.

4. The corporate designated member of the LLP is Coplexia Corporation Ltd. The managing director of Coplexia Corporation Ltd is Mr Khodaparast. Mr Khodaparast was at all material times sole director and sole shareholder of Coplexia Corporation Ltd.

5. The Petitioner is a solicitor currently working at Baron Grey Limited. From July 2017 until May 2019, the Petitioner was a member of the LLP. In May 2019, his membership of the LLP was terminated in acrimonious circumstances. The LLP was the successor practice to a firm of solicitors for whom the Petitioner previously worked, known as Forman Welch & Bellamys (FWB). Following the merger, the affairs of FWB were the subject of extensive investigation by the Solicitors Regulation Authority (SRA). As the successor practice to FWB, the LLP was involved in these investigations until, by letter of 6 December 2019, the SRA confirmed that no formal regulatory action would be taken against it, the relevant breaches identified having pre-dated the LLP's involvement. Regulatory action was however taken against the Petitioner. Proceedings were brought against him in the Solicitors Disciplinary Tribunal in which (in broad terms) it was alleged that (1) between 1995 and 2018, whilst working as a solicitor at FWB, he failed to progress probate matters, resulting in legacies due to beneficiaries remaining unpaid and, (2) in relation to one estate, he failed to submit tax returns by the requisite deadlines, thereby incurring penalties and interest due from the estate.

6. There has been litigation between the parties since the Petitioner's departure from the LLP. The Petitioner and the LLP have been engaged in proceedings commenced by the Petitioner on 21 November 2019 in the County Court at Central London (CLCC) under claim number F03CL762 ('the Claim'). By the Claim, the Petitioner sought

damages against the LLP for breach of two agreements he had with the LLP and other related relief. The Claim Form stated that the Petitioner expected to recover damages in the sum of £40,000. The LLP denied the claim and brought a counterclaim. The counterclaim started in a modest sum of approximately £45,000, but by amendment, the counterclaim rose to a sum of in excess of £2.6m. By the time of the LLP's draft Re-Amended Defence and Counterclaim (permission for which was refused by order of 29 July 2021) the amount sought was said to be in excess of £11m.

7. The winding up petition was based upon costs orders totalling £24,680.50 arising in the Claim. These costs were required to be paid by the LLP to the Petitioner by 6 May 2021, by order of HHJ Monty QC dated 8 April 2021 (sealed on 14 April 2021). The order was served on the LLP by email on 16 April 2021 and the LLP failed to make any payment.

8. All routes of challenge to the costs orders made on 8 April 2021 have now been exhausted. The time for appealing the order of 8 April 2021 has long since expired. The LLP's applications dated 5 May 2021 and 17 June 2021 to vary and stay the April 2021 order respectively were dismissed as totally without merit by Order of HHJ Monty QC dated 29 July 2021 (sealed on 2 August 2021). An application for a stay of the order of 29 July 2021 was refused by Mrs Justice Farbey on 27 August 2021. A renewed application for a stay of the order of 29 July 2021 and an application for permission to appeal that order were each refused as totally without merit by Mr Justice Kerr on 19 October 2021. The LLP's defence and counterclaim in the Claim were struck out by order of HHJ Monty QC dated 28 October 2021 (sealed on 5 November 2021) and the LLP's fourth application for a stay was dismissed as wholly without merit. A limited civil restraint order was granted against the LLP on the same day and Mr Khodaparast was joined as second defendant to the Claim on the issue of costs. Numerous further costs orders, over and above those relied upon in the petition, have been ordered in favour of the Petitioner against the LLP in the Claim, including under orders of 2 August 2021 and 5 November 2021. There are no stays in place in respect of those orders. They too remain unpaid.

The Petition

9. The petition was presented on 20 May 2021. It is based upon s.123(1)(e) IA 1986 (inability to pay debts).

10. Given the date of its presentation, the petition was governed by the 'old' Schedule 10 to CIGA 2020. It was listed for a non-attendance pre-trial review (CIGA NAPTR) on 7 July 2021 in accordance with the CIGA PD.

CIGA 2020

11. Paragraph 2 of the 'old' Schedule 10, so far as material, provides:

> '(3) A creditor may not during the relevant period present a petition under Section 124 of the 1986 Act for the winding up of a registered company on a ground specified in section 123(1)(e) or (2) of that Act ('the relevant ground') unless the condition in sub-paragraph (4) is met.

> (4) The condition referred to in sub-paragraph (3) is that the creditor has reasonable grounds for believing that –
>
> (a) coronavirus has not had a financial effect on the company, or
>
> (b) the relevant ground would apply even if coronavirus had not had a financial effect on the company.'

12. Paragraph 5 of the 'old' Schedule 10 provided:

> 'Restrictions on winding up orders: registered companies
>
> 5(1) This paragraph applies where –
>
> (a) a creditor presents a petition for the winding up of a registered company under section 124 of the 1986 Act in the relevant period,
>
> (b) the company is deemed unable to pay its debts on a ground specified in section 123(1) or (2) of that Act, and
>
> (c) it appears to the court that coronavirus had a financial effect on the company before the presentation of the petition.
>
> …
>
> (3) The court may wind the company up under section 122(1)(f) of the 1986 Act on the ground specified in section 123(1)(e) or (2) of the Act only if the court is satisfied that the ground would apply even if coronavirus had not had a financial effect on the company…'

13. The meaning of a 'financial effect' for the purposes of paragraph 5 is prescribed by paragraph 21(3), the material parts of which provide:

> 'coronavirus has a "financial effect" on a company if (and only if) the company's financial position worsens in consequence of, or for reasons relating to, coronavirus'.

14. For the purposes of paragraph 5(1), the Company must demonstrate a prima facie case that coronavirus had a 'financial effect', as defined by paragraph 21(3), before the presentation of the petition: paras 5(1) and 21(3). It is only if the Company demonstrates a prima facie case that coronavirus had a 'financial effect' (as defined) that the court then moves on to consider whether the Petitioner can establish, on the balance of probabilities, that the ground for winding up relied upon would apply even absent that effect: see In re A Company (A v B) [2020] EWHC 1551 at [40] and [43].

The CIGA PD

15. The CIGA PD at the time allowed for a preliminary hearing to be listed, at which any issues arising in relation to (inter alia) paragraphs 5(1) and 5(3) of Schedule 10 could be considered.

16. Paragraph 8.1 of the CIGA-PD set out how the court should proceed if a preliminary hearing was listed. It provided as follows:

> '8.1 At the preliminary hearing:
>
> (1) if the court is not satisfied that it is likely that it will be able to make an order under section 122(1)(f) … of the 1986 Act having regard to the coronavirus test, it shall dismiss the petition; or
>
> (2) if the court is satisfied on the evidence before it that it is likely that it will be able to make an order under section 122(1)(f) .. of the 1986 Act having regard to the coronavirus test it shall list the petition for a hearing in the winding-up list'

Evidence on the coronavirus issue

Paragraph 2

17. The Petitioner maintained that he had reasonable grounds for believing that (a) coronavirus had not had a financial effect on the LLP and/or that (b) the relevant ground would have applied if coronavirus had not had a financial effect on the LLP: Schedule 10, paragraph 2.

18. These grounds were addressed at paragraph 5 of the petition and paragraph 5 of the witness statement dated 5 July 2021 of the Petitioner's solicitor, Mr Atkin.

19. Paragraph 5 of the petition provided:

> 'The [LLP] is a non-profit making business entity that has always had limited funds. Coronavirus has not had a financial effect on the company/the facts by reference to which the relevant ground applies would have arisen even if coronavirus had not had a relevant effect on the company and therefore …paragraph 2(4) of Schedule 10 .. is met..'

20. At paragraph 5 of his witness statement dated 5 July 2021, Mr Atkin gave evidence that the LLP had

> 'repeatedly stated in hearings before His Honour Judge Monty …in .. the Claim … that it is a non-profit structure that has no capital, is not generating revenue and has not been for many years. [Mr Khodaparast] has stated in correspondence and to the court that he has not received an income since 1 October 2018 as the LLP cannot afford to pay him. Counsel for the LLP

> also stated at a Court hearing on 28 July 2020 that the [LLP] has 'no money'.

21. At paragraph 6 Mr Atkin continued:

> 'The LLP has also repeatedly stated that the Petitioner is responsible for its financial difficulties. Whilst that assertion is entirely denied, it evidences that the LLP was struggling financially long before coronavirus could have been a factor. The LLP has never suggested that the Covid crisis has had any meaningful impact on its income or finances.'

22. The evidence given by Mr Atkin addressed at paragraphs 20 and 21 above was uncontroverted. Exhibited to Mr Atkin's statement was a letter dated 22 January 2020 from the LLP to the Petitioner's solicitors, in which the LLP stated (with emphasis added):

> 'As successor to Forman Welch & Bellamys we have had to manage countless clients complaints and insurance claims against your client…
>
> Your client has prevented this firm from growing *and eventually rendered it unable to practice…*'

23. Mr Atkin also confirmed at paragraph 4 of his statement that he had written to the LLP to ask for its accounts on several occasions since January 2020 (given that it had not complied with its statutory requirements to file the same) and that his requests had always been either 'ignored or rebuffed'.

24. In short, by the date of presentation (20 May 2021), the LLP had claimed on more than one occasion that it had no money and had been unable to trade since 2018, long before the effects of covid began to be felt. At all material times prior to presentation of the petition on 20 May 2021, the LLP had maintained that its lack of funds and inability to trade since 2018 were as a result of the conduct of the Petitioner. There had been no mention of covid as the (or even a) cause of the LLP's misfortunes, whether in any of court hearings in the Claim or in correspondence. The LLP had also refused to provide the Petitioner with accounting information and was late with filing its statutory accounts. Taking all such factors into account, I concluded that the Petitioner had more than discharged his burden of establishing reasonable grounds for holding the belief required for the purposes of paragraph 2.

Paragraph 5(1)

25. The next issue for determination at the Preliminary Hearing was whether it appeared to the court that coronavirus had a financial effect on the company before presentation of the petition. The burden was on the LLP to make out a prima facie case.

The LLP's evidence

26. Shortly before the first CIGA NAPTR, Mr Khodaparast had filed a witness statement dated 7 July 2021 disputing the petition debt and raising a number of allegations about

the Petitioner, most if not all of which had formed the basis of the defence and counterclaim struck out in the Claim.

27. At paragraph 18 of his witness statement dated 7 July 2021, Mr Khodaparast referred to the problems encountered by the LLP following its acquisition of the Petitioner's old firm, FWB, in 2017. He stated (with emphasis added) that the

> 'costs of complaints management and claims against professional indemnity insurance including excesses payable on settlements and insurance premium increases because of no less than 11 attempts to claim against the policy from former clients of the Petitioner' had '*rendered the [LLP] almost uninsurable and unable to trade since 2018*'.

28. I pause here to note that Mr Khodaparast's evidence, as set out at paragraph 18 of his first witness statement, was consistent with the assertions made by the LLP in the letter dated 22 January 2020 to the Petitioner's solicitors quoted at paragraph 22 above. It was also consistent with Mr Atkin's evidence (which in this regard was uncontroverted) of Mr Khodaparast having informed HHJ Monty QC at a hearing in the Claim on 10 November 2020 that the LLP had been unable to pay him a salary since 1 October 2018 (Atkin (1) para 5). It was also consistent with assertions made by Mr Halliday, one of the LLP's two members, by email dated 12 August 2021 to the Petitioner's solicitors, in which Mr Halliday stated (with emphasis added):

> 'the LLP is not trading and has not traded *for the last two years due to the conduct of your client'*

29. Following the first CIGA NAPTR, however, the LLP, acting by Mr Khodaparast, changed tack. At the first CIGA NAPTR on 7 July 2021, ICC Judge Mullen had made an order granting permission to amend the petition to comply with rule 7.5 IR 2016, with attendant directions for re-verification and re-service. Those directions were complied with. Judge Mullen's order had also made reference to the CIGA PD and contained a helpful hyperlink to it. Directions were given for the Company to file any evidence upon which it may wish to rely in relation to the coronavirus test by 29 July 2021 and for any evidence in reply to be filed by 12 August 2021. The petition was listed for a further CIGA NAPTR on 3 September 2021.

30. Following the order of 7 July 2021, Mr Khodaparast filed a second witness statement, dated 28 July 2021. Having stated by his first witness statement that the LLP had been 'unable to trade since 2018', by his second witness statement, Mr Khodaparast asserted (at paragraph 9) that the LLP 'has been affected by the Coronavirus pandemic'. Whilst continuing to maintain that the LLP had 'suffered financial losses as a direct result of the Petitioner's acts, inactions and omissions from late 2016 to date', he went on to assert that the LLP had 'also been affected by the Coronavirus, particularly since January 2020.'

31. Mr Khodaparast also filed a third witness statement, less than an hour before the Preliminary Hearing before me, to which objection was taken by the Petitioner. After some exchanges in submissions, Mr Khodaparast confirmed that for the purposes of the Preliminary Hearing, the LLP relied simply upon his second witness statement.

32. At paragraphs 10 to 23 of his second witness statement, Mr Khodaparast put the matter thus:

> (10) In September 2018, the SRA commenced a forensic investigation into the Petitioner who maliciously insisted that the investigation should be in the name of the LLP as the successor practice to his former firm of Forman Welch & Bellamys (FWB). He also tried to imply the LLP was an ordinary business (as opposed to a non-profit structure for collaborative programmes), and to implicate innocent members as being "equally responsible" for the thefts.
>
> (11) It was not until December 2019 that the SRA wrote the LLP releasing it from their investigation which they continued with focus entirely on the Petitioner.
>
> (12) On 1 January 2020, an Assignment of Goodwill was signed and witnessed to enable the LLP to revert to practising as an ABS, but this time not as a temporary collaboration structure but an ongoing concern trading as Fairfield Greig Solicitors, which is a firm first established in 1884.
>
> (13) On 16 January 2020, the LLP executed a collaboration contract with, inter alia, will writing companies and estate planning experts to commence a "Wills Cleansing Pilot Project" through which to stimulate demand and generate £300,000 of revenues from Will writing, Lasting Power of Attorney, Estate Planning, Probate projects and Trust and Estate Administration work within the private client practice of the company to underpin growth plans to reopen other categories of work under the name of Fairfield Grieg Solicitors.
>
> (14) At the same time, a young team of non-lawyers were to be hired on a cost share basis with three University employability departments to help the LLP respond to invitations to tender for public sector contracts, as a former Crown Commercial Service Supplier.
>
> (15) Money was invested in the preparation of project works and facilities including the launch of a new website and the renting of serviced offices close to the former offices of Fairfield Grieg Solicitors with a 12 month prepaid contract.
>
> (16) A communication campaign was commenced with correspondence sent in batches to 2500 clients inviting them to request a two-hour pre-estate planning consultation at the company's premises for the cost of updating their Wills.
>
> Impact

(17) There are regulatory requirements to meet testators in person. While the early batches of the communication campaign resulted in a high response rate, generating more demand than could easily be met, the coronavirus outbreaks slowed and eventually ended all such activities. The campaign ceased prematurely after only 600 letters were sent out.

(18) Our new serviced office at "the Bower" building of Stockley Park for which we had paid for a year in advance could no longer be used; neither could our office space at 30 St Mary Axe in the City of London for which we remained in the last year of a 3-year contract without the option to terminate early.

(19) The pandemic gave clients cause to think about updating their Wills, and sadly, there was also a noticeable rise in the number of client deaths, but most of this increase in demand for services had to be referred to other firms who were better placed to meet client needs than the LLP because of their entitlement to state help such as furlough schemes, none of which were applicable to the LLP. The LLP operated under a project-based collaboration contract executed with independent partners rather than employees, each of whom were also negatively impacted by the coronavirus.

(20) With universities under lockdown, the planned bid work also ceased, as did the public sector contract opportunity notifications. The LLP was unable to employ the graduates under full-time permanent contacts as intended. Their work with the company terminated after six weeks.

(21) Two team members tested positive for coronavirus, and others had to self isolate because of being exposed to those carrying the virus and Mr Andrew Smith, director of London Will Writers Ltd who was a signatory to the Fairchild Greig relaunch project sadly lost his wife during the relevant period.

(22) It is estimated that the LLP worked to less than 10% of its capacity in 2020/21 and at certain periods this was down to nil as a direct consequence of the coronavirus.

(23) Notwithstanding that the Petitioner is NOT an unpaid creditor of the LLP, pursuant to paragraph 4.1 of the [CIGA IPD], the LLP believe the petition should be rejected for filing under paragraph 3 of the said IDP and the non-attended pre-trial review which has been relisted for third September should be cancelled.'

33. Exhibited to Mr Khodaparast's second witness statement was a copy of an assignment of goodwill dated 1 January 2020 made between Duncan Halliday (as assignor) of the one part and Mr Khodaparast, the LLP and Coplexia Corporation Ltd (as assignees) of the other part. This assigned 'the goodwill of the Assignor of and in the business of a solicitor carried on by the Assignor under the name of Fairchild Grieg' and attendant rights including related internet domain names to the Assignees, to be enjoyed and exercised *by any one or more of the Assignees.*

34. Also exhibited to Mr Khodaparast's second witness statement for the Preliminary Hearing was part of a document headed 'Collaboration Contract – v1.1' and bearing the 'contract short name' of 'Wills Cleansing Pilot Project'. The Collaboration Contract was dated 16 January 2020. From the pagination it was clear that it is a 14-page document but only the first 7 pages of the document were exhibited. It was signed by Mr Khodaparast and Mr Halliday on behalf of the LLP, Jeffery Meers on behalf of Meers Legal Services Ltd and Andrew Smith on behalf of London Will Writers Ltd, described collectively as the 'Collaborators'.

35. The extract of the Collaboration Contract exhibited to Mr Khodaparast's second witness statement is addressed more fully in my earlier judgment. It was a fairly 'high level' document. None of the 'working documents' referred to in it were in evidence.

36. In broad summary, what appears to have been envisaged was a targeted mail shot of the clients of a firm of solicitors which had closed in March 2018, in the hope of drumming up some business from those clients (referred to in the Collaboration Contract as the 'Wills Cleansing Pilot Project'), together with an exploration of various other lines of work. From the documents in evidence, it was not possible to ascertain who would ultimately benefit from such business, even if it had materialised; the pages of the Collaboration Contract governing entitlement to given shares of the gross fees earned were not included in the exhibit to Mr Khodaparast's second witness statement. I would add that at the Preliminary Hearing I was taken to no documentary evidence to support the 'other income streams' referred to in the Collaboration Contract or to suggest that the LLP (rather than Coplexia Corporation Limited) stood to benefit from any of the same.

37. Whilst Mr Khodaparast stated in his second witness statement that a first batch of client communications ('project take-off') went out and met with a positive response, I was taken to no documentary evidence at the Preliminary Hearing, contemporaneous or otherwise, to support such assertions, or to support his assertion that the onset of covid stopped the LLP in its tracks on this project.

38. The only other documentary evidence relating to the project exhibited to Mr Khodaparast's second witness statement comprised a 'Linked-In' message dated 4 March 2020 from Mr Khodaparast to a student volunteer named 'Isabella' responding to an expression of interest in an advertisement and a further 'Linked-In' message dated 16 January (I assume 2021 or 2022, given the reference to government guidelines to self-isolate, which were not in place by 16 January 2020), stating that Ranju, whom Mr Khodaparast and Isabella were said to have 'met last Monday', had tested positive for covid.

39. I was taken to no meaningful documentary evidence at the Preliminary Hearing of trading on the part of the LLP at any material time, be it 2020 or thereafter. The LLP adduced no accounting information, notwithstanding repeated requests from the Petitioner that it do so. Even if, as Mr Khodaparast sought to suggest in submissions, the LLP had encountered difficulties in preparing its statutory accounts as a result of the problems inherited from FWB, that of itself would not prevent the LLP from adducing cashflow and profit forecasts in respect of the work which it hoped to generate over 2020/21, whether from the assignment of goodwill of Mr Halliday's old firm or otherwise, or management accounts demonstrating the actual figures achieved. It would not prevent the LLP from adducing in evidence contemporaneous correspondence, transactional documents, or tax returns to demonstrate some form of trading. It would not prevent the LLP from adducing in evidence its bank statements to demonstrate any trading or downturn in trading either.

40. I also considered that Mr Khodaparast's assertions on the coronavirus issue in his second witness statement fell to be considered in the context of paragraph 18 of his first witness statement (quoted at paragraph 27 above), paragraphs 5 and 6 of Mr Atkin's second witness statement (quoted at paragraphs 20 and 21 above), the LLP's letter to the Petitioner's solicitors dated 22 January 2020 (quoted at paragraph 22 above), and Mr Halliday's email dated 12 August 2021 (quoted at paragraph 28 above).

41. Mr Khodaparast placed great store by the assignment of goodwill dated 1 January 2020 and the Collaboration Agreement, an extract of which was in evidence before me.

42. The assignment of goodwill dated 1 January 2020, however, named *three* assignees (Mr Khodaparast, the LLP and Coplexia Corporation Ltd), *any* of whom could make use of the goodwill. The reason for this was not expressly addressed in Mr Khodaparast's second witness statement. Under the terms of the assignment, the assignees 'or any one of them and their assigns' were granted the right to use the name Fairfield Greig. On the evidence as a whole, I considered it legitimate to conclude that the parties to the assignment wished to preserve a degree of flexibility as to what happened next, in the light of the Claim, which had been issued against the LLP in November 2019.

43. This conclusion was supported by a number of comments made by Mr Khodaparast at the Preliminary Hearing. Mr Khodaparast represented the LLP at that hearing and, during the course of his submissions, referred to a 'transition away from the LLP to the Corporation', which he explained was 'not caused by covid' but 'by the Petitioner's claim against the LLP' (which was issued in late 2019, before covid). He said that in the circumstances, with the LLP about to be 'pulled into litigation', it was 'very difficult to bring in new solicitors' as the LLP would be under a duty to warn people about the Claim. At other stages in his submissions he stated that 'the pivot' (ie the switch from the LLP to the Corporation) was 'forced by the Petitioner not coronavirus' and that 'the claim in the civil court caused us to pivot'. It was only at a later stage of the Preliminary Hearing, when he realised the potential impact of what he was saying, that Mr Khodaparast sought to 'row back' from these comments, claiming that the 'pivot' happened later and was caused by Mr Halliday saying that he did not wish to renew his licence again. On the evidence overall, I considered Mr

Khodaparast's earlier comments on this issue to be a more accurate summary of the situation.

44. For reasons more fully addressed in my judgment dated 1 July 2022, on the evidence before me at the Preliminary Hearing, I concluded that the LLP had failed to demonstrate a prima facie case that its financial position worsened in consequence of, or for reasons related to, coronavirus in the period prior to presentation of the petition. I considered the LLP's 'opportunistic attempts to jump on the covid bandwagon' to be 'entirely unpersuasive'.

45. In light of that conclusion, it was unnecessary for me, for the purposes of the Preliminary Hearing, to address paragraph 5(3) of Schedule 10 (ie whether the court was satisfied that s.123(1)(e) would apply even if coronavirus had not had a financial effect on the LLP). For the sake of completeness, however, I confirm that even if the LLP had cleared the 5(1) prima facie threshold (with the result that the 5(3) threshold fell to be considered), on the evidence before the Court at the time of the Preliminary Hearing, I would have concluded that s.123(1)(e) would apply to the LLP at all material times up to presentation of the petition and thereafter, even if coronavirus had not had a financial effect. The LLP had not traded for some time in the run-up to presentation and was plainly insolvent. The reason that it did not take up or pursue to fruition any business opportunities that may have arisen in 2020 was not covid, but the Claim: see paragraph 43 above.

46. As put by Mr Khodaparast in submissions, the 'transition away from the LLP to the Corporation' was 'not caused by covid' but 'by the Petitioner's claim against the LLP': see paragraph 43 above. In light of the Claim, Mr Khodaparast simply channelled any business opportunities to his company, Coplexia Corporation Ltd, one of the assignees under the Assignment of Goodwill dated 1 January 2020. Since that time, Mr Khodaparast has set up Fairchild Grieg & Company LLP, on 13 January 2022, the designated members of which are Fairchild Grieg Operations Ltd and Fairchild Grieg Will Trusts Ltd (also both set up in January 2022). Mr Khodaparast is sole director of the latter. His mother is a director of the former.

47. Mr Khodaparast's admissions in submissions at the Preliminary Hearing in June 2022 (summarised at paragraph 43) were entirely consistent with the documents referred to paragraph 40 above.

48. They were also consistent with Mr Khodaparast's professionally prepared points of defence dated 4 February 2022 filed in CLCC in answer to the non-party costs application made against him in the Claim ('CLCC PoD'), which, I note, he also relies upon for the purposes of the present non-party costs application. The CLCC PoD, which bear a statement of truth signed by Mr Khodaparast, stated at paragraph 2(d), with emphasis added:

> 'Once the SRA in December 2019 confirmed it did not have concerns with [the LLP] (see exhibit page 2) there was an intention to begin to trade as Fairfield Grieg Solicitors *but because of this litigation that could not proceed*.'

49. Mr Halliday (at para 13d of his third witness statement dated 8 July 2022 in connection with the CLCC non-party costs application) comments specifically on para

2d of the CLCC PoD and notably does not distance himself from or disagree with the reason stated at para 2(d) for the LLP not having begun to trade as Fairchild Greig solicitors.

50. In short, the stance adopted by the LLP on the coronavirus issue at the Preliminary Hearing was untenable. On the evidence before me at the Preliminary Hearing, I was satisfied that the court would be able to make an order under section 122(1)(f) of the 1986 Act having regard to the coronavirus test. On the evidence now before me, I remain of that view.

Order dated 1 July 2022

51. On the handing down of judgment on the coronavirus issue on 1 July 2022, I directed that the petition be advertised and adjourned into the usual winding up list. I also ordered that Mr Khodaparast be joined as a respondent on the issue of costs. Mr Khodaparast had been put on notice that this order would be sought on 9 June 2022.

52. By the order of 1 July 2022, directions were given for the Petitioner to file and serve points of claim on the non-party costs issue by 15 July 2022 and for Mr Khodaparast to file and serve points of defence on that issue by 5 August 2022. I also directed that the non-party costs issue be listed for hearing on the first available date after 12 August 2022 with a time estimate of half a day. Provision was made for parties to lodge dates to avoid.

53. A listing order, giving notice of the non-party costs hearing on 6 February 2023, was sent out to parties on 1 August 2022; over 7 months ahead of the hearing.

Winding up order: 17 August 2022

54. The LLP has since been wound up by order of this court dated 17 August 2022.

Non-Party Costs Application: procedural history since 1 July 2022

55. The Petitioner filed and served points of claim on the costs issue in accordance with the timetabling laid down by the order of 1 July 2022.

56. Mr Khodaparast's points of defence were due by 5 August 2022. He asked the Petitioner to agree an extension to 30 September 2022. In the event, an extension to 2 September was agreed.

57. On 2 September 2022, Mr Khodaparast filed and served a two-page document entitled 'Interim Points of Reply' dated 2 September 2022 bearing a statement of truth. These provide as follows:

> '1. In response to the Point of Claim (PoC) filed 4th July 2022, I have asked the Petitioner for an extension of time to file a reply until 30 September 2022, a full five months prior to the date of hearing listed for February 202[3].
>
> 2. The request was denied, but the deadline of 4pm 2 September 2022 agreed to instead.

> 3. It has not been possible to prepare a full and comprehensive reply [by] this date, and the Petitioner has made clear an application for an expansion would be objected to. No justifiable reason has been offered as to why.
>
> 4. I have been unable to attend to the PoC as I am fully engaged with a range of other matters arising from the Petitioner's misconduct, which while the court may claim to be "irrelevant" is in practice very much relevant and causes much distress and damage that the court should, ordinarily, frown on.
>
> 5. In reviewing the PoC today I see the entire document is false in its assertions and can be grouped under two parts: the false assertions which had been made in the County Court on the one part, and quotes from the recent Judgement of the Judge.
>
> 6. The latter part needs much time and evidence to set straight. This will need to be done in any event under separate cover but cannot have been done in time for the agreed deadline of 3 September arbitrarily set by the Petitioner. As to the former part, much (but not all) of the false assertions were addressed in the County Court earlier this year.
>
> 7. I wish to rely on submissions that were made to the County Court again, which I now attach [this was a reference to the Points of Defence filed in CLCC on the costs issue]. Additionally, the specifics of the assertions made under the application to the ICC Court will need to rely on other evidence to be included in the court bundle when ready.
>
> 8. The Court Order of 1st July 2022 does NOT require the Petitioner to respond/reply to these Points of Reply (PoR), only that it creates a bundle of evidence no later than three days prior to the hearing (which is listed for 6 February 2023).
>
> 9. It is therefore no longer necessary for the Petitioner to respond (incurring costs), nor is it appropriate for him to object on further evidence being exhibited for inclusion in the bundle on the basis that this would incur additional cost.
>
> 10. I thank the court for its kind understanding of the circumstances and the practical realities of life due to the misconduct of the Petitioner and the dishonesty which they hide.'

58. Annexed to the Interim Points of Reply (as filed) were a number of documents, comprising:

(1) the points of claim of the Petitioner (on the non-party costs application made in CLCC in respect of the Claim) dated 25 November 2021 ('CLCC PoC');

(2) the CLCC PoD;

(3) the 288-page Exhibit to the CLCC PoD;

(4) a letter from Haines Watts Accts dated 16 August 2022;

(6) an SRA Forensic Investigation Report dated 7 August 2019;

(7) the Financial Reports for the LLP for the years ending 2018 and 2019;

(8) a 'Change Agreement' (which related to arrangements between the Petitioner and the LLP before they parted company in 2019);

(9) an email from Vassos Vassou dated 16 August 2022.

Informal adjournment request: 17 January 2023

59. On 17 January 2023, Mr Khodaparast emailed the court, seeking an adjournment of the hearing of 6 February 2023. His email was addressed to one of the ICC clerks and provided:

> 'I have no legal representation for this hearing as yet, and now have been forced into fending off attacks by the Petitioner on numerous fronts. These include but are not limited to –
>
> 1. An Insolvency Service Creditors' meeting scheduled for 31 January 2023 [this related to the LLP];
>
> 2. Deadline for filing a substantive permission to appeal application by 4pm 3 Feb … [this related to the non-party costs order dated 6 January 2023 in CLCC];
>
> 3. Delivery of evidence to the SRA awaited in respect to the Petitioner that were originally expected before Christmas and now much delayed/chased;
>
> 4. Delivery of evidence to insurers in respect to 2 new claims from aggrieved clients of the Petitioner;
>
> 5. Engagement with a new firm of solicitors appointed by several charities who have been deprived of inheritance by the Petitioner (a meeting with which is due to start 2pm today);
>
> 6. I am in the midst of a long and complicated application process for Legal Aid and support through the charity "Advocate", as I am entitled due to my means tested state benefits.
>
> It has not been possible to request an adjournment formally and informal requests to the Petitioner have been refused. In accordance to CPR it would therefore be not cost-effective to file a formal application for a short adjournment or stay

> pending appeal. I do so now, informally, and would ask that you kindly refer this email to the judge for directions.
>
> I would ask to judge to consider the relevant CPR 1.1(2)(a), as well as (c) (ii)(iii)(iv) in particular. I also ask that she considers my Right to a fair trial under Article 6 of the ECHR.
>
> I await your reply with thanks.'

60. Mr Khodaparast's email of 17 January 2023 was placed before an ICC Judge, who via a clerk responded by email dated 19 January 2023:

> 'Litigation is not to be conducted by correspondence. Insofar as applications for matters which are in dispute between the parties [are] concerned, they are either to be the subject of an issued notice of application or are to be made orally at a hearing subject to the Judge at the hearing being willing to hear an oral application'.

61. Under the terms of the order of 1 July 2022, the bundle for the hearing on 6 February 2023 had to be lodged not less than 3 business days ahead of the hearing date. In the run up to the hearing of (Monday) 6 February 2023, the Petitioner's solicitors sent a draft bundle index to Mr Khodaparast.

62. Mr Khodaparast did not provide any further documents to the Petitioner's solicitors, Ince, by the deadline for filing. He later complained that Ince had required any additional documents for inclusion in the bundle ahead of the deadline for filing. From the correspondence before me however it is clear that Ince simply requested any additional documents in sufficient time to allow for the preparation and delivery of a hard copy bundle to court.

63. Instead of providing Ince with any documents for the bundle ahead of the filing deadline, by email dated (Friday) 3 February 2023 (timed at 17.23), Mr Khodaparast sent to this court a copy of an Appellant's Notice and 38-page Grounds of Appeal dated 3 February 2023 which he had that day filed in the Claim (FO3CC762). This was an application by which Mr Khodaparast (on behalf of himself and purportedly on behalf of the LLP) sought permission to appeal the non-party costs order dated 6 January 2023 made against him in the CLCC and a variety of stays, including stays of earlier orders which had already been the subject of one or more unsuccessful stay applications and a stay of the non-party costs application before me. The covering email of 3 February 2023 stated:

> 'Further to your email below of 19 January 2023, please note a N161 was filed today in which an application for a stay of proceedings pending appeal was made, a copy of which is attached by way of filing and service.
>
> As you can see, the request includes a stay of the hearing listed 6th Feb 2023 before ICCJ Barber, for mainly the same reasons as those given in my email of 17 January 2023 a copy of which is in the email thread below.

> I would be grateful if you could seek urgent clarification from the ICC Judge if the request can now be considered. I have been unable to prepare for the hearing and the other side arbitrarily closed the window on submissions for the bundle sooner than the Order stipulated. I cannot use this weekend to deal with yet more litigation matters having done so non-stop 24/7 in respect [of] other issues relating to the conduct of the Petitioner. I have pressing family matters that need my urgent and dedicated attention. I look forward to hearing from you'.

64. That email was placed before an ICC Judge on Monday morning (6 February). Mr Khodaparast was again informed by email (at 10.18) that in the absence of agreement between the parties, any application for an adjournment of the hearing, listed for 2pm that day, would have to be made at the hearing itself.

65. By email dated 6 February 2023 (11.09), Mr Khodaparast again wrote to the court, attaching a number of documents for filing ahead of the hearing at 2pm that day. These comprised or included

(1) the 4th witness statement of Mr Halliday, filed in connection with the proposed appeal against the CLCC non-party costs order dated 6 January 2023, in which Mr Halliday stated that Mr Khodaparast had not to his knowledge funded the Claim;

(2) an 11-page informal recusal request dated 5 January 2023, lodged with HHJ Monty after he had circulated his draft judgment on the CLCC non-party costs application, on the day before hand-down;

(3) a further copy of the Appellant's Notice/Grounds of Appeal dated 3 March 2023 in FO3CC762;

(4) a letter from a Mr Scott to the Official Receiver dated 26 January 2023;

(5) a letter from Haines Watts to the Official Receiver dated 29 November 2022;

(6) a letter from a Mr N Phillips t/a Phillips Financial Services to the Official Receiver dated 30 January 2023.

66. The covering email of 6 February 2023 (at 11.09) made reference to 'internet connection issues' and stated that it was uncertain if Mr Khodaparast would be able to join the Teams hearing.

Hearing on 6 February 2023

67. In the event, Mr Khodaparast was able to join the hearing at 2pm.

68. At the hearing, Mr Khodaparast asked for an adjournment. As he referenced medical or health concerns on more than one occasion during the course of his his submissions, (saying by way of example that 'the medical side of things' was now 'a worry', hinting that some medical evidence may have been filed in the context of the Claim in CLCC but that he wasn't sure whether it had been included in the bundle; and stating that his 'doctor' was telling him to 'stop'), I asked him whether he was relying on any medical condition as one of his grounds for an adjournment. After

some prevarication he confirmed that he was. Accordingly, I granted a short adjournment and gave directions permitting Mr Khodaparast to file a witness statement exhibiting a letter from his GP. Mr Khodaparast had mentioned that he had last seen his doctor approximately two weeks prior, which suggested that his doctor should be fairly up to speed on how he was. He was given until 4pm on 10th February to file a witness statement. The matter was adjourned to 15 February for a further half day.

69. Mr Khodaparast has since suggested (by his witness statement dated 10 February 2023 and in submissions) that the court advised him to seek an adjournment on medical grounds. This is incorrect: see paragraph 68. The purpose of the adjournment from 6 to 15 February 2023 and the direction for evidence was simply to ensure that the court had before it relevant evidence on any ground that Mr Khodaparast wished to advance in support of his application for an adjournment.

Hearing of 15 February 2023

70. In the run-up to the hearing on 15 February 2023, Mr Khodaparast lodged a number of further documents including:

(1) a legal article entitled 'Fairness and Adjournments';

(2) a 9- page letter dated 10 February 2023 from Mr Khodaparast to the High Court Appeal Centre, Kings Bench Division, regarding his application (on his own behalf and purportedly on behalf of the LLP) for permission to appeal the CLCC non-party costs order of 6 January 2023 and for a selection of stays;

(3) a letter dated 5 September 2022 from the Official Receiver to Mr Khodaparast, explaining the procedure for rescission applications;

(4) a letter dated 8 February 2023 from the Petitioner's solicitors, Ince, to the High Court Appeal Centre, Kings Bench Division, regarding the application for permission to appeal the CLCC non-party costs order of 6 January 2023 (in which Ince inter alia observed that Mr Khodaparast does not have authority to bring an appeal on behalf of the LLP as it is in liquidation);

(5) a 30-page bundle of documents;

(6) a 4-page document headed 'List of files included in attachment 2 of 2 for the Hearing of 15th Feb 2023' ('the February Schedule'), which contained comments on certain of the documents filed;

(7) a further 33-page bundle of documents; and

(8) the 4th witness statement of Mr Khodaparast dated 10 February 2023.

The adjournment application: 15 February 2023

71. At the hearing on 15 February 2023, Mr Khodaparast renewed his application for an adjournment, relying (in summary) on the following grounds:

(1) health

(2) CPR 1.6 (vulnerable witness/party);

(3) prejudice caused by having to deal with multiple tasks/fight on several fronts at once: CPR 1.1(2)(a);

(4) the pending application for permission to appeal the non-party costs order of 6 January 2023 and the various stay applications made within the context of the application for permission to appeal; and

(5) costs efficiency (relating to (4)).

72. I shall deal with each in turn and also consider the cumulative impact. In doing so I remind myself that when determining whether to exercise the discretionary case management power to adjourn, the court must have regard to the overriding objective.

(1) health

73. Following the hearing of 6 Febuary 2023, Mr Khodaparast was able to secure a 15-minute appointment with Dr Browning of his GP surgery on 8 February 2023.

74. Whilst neither Dr Browning, nor his usual GP, Dr Adhikari, were able to provide a letter within the timeframe set, Mr Khodaparast was able to adduce in evidence printouts of his medical records from the GP surgery (which he partially redacted), some correspondence from and to his GP surgery, including a letter 'to whom it may concern' from Dr Adhikari dated 9 July 2021 and a journal of symptoms dated 10 July 2021.

75. Mr Khodaparast's witness statement dated 10 February 2023 did not suggest that he was now suffering from any new conditions (over and above those reflected in the medical evidence adduced) which would impact materially on his ability to prepare for and participate at a court hearing. In the absence of any such suggestion (whether in his witness statement or in submissions) I consider it legitimate to conclude that he is not. For that reason, in my judgment no purpose would be served by granting a further adjournment to allow more time for a GP letter. The range of medical conditions that Mr Khodaparast suffers from is readily apparent from the evidence already filed.

76. The medical evidence confirms that Mr Khodaparast is considered by his GP to be mentally stable but that he suffers intermittent episodes of gastritis. During these episodes, which are triggered and/or exacerbated by stress, he has severe abdominal pain, vomiting which can last for hours, and painful teeth and gums. On approximately three or four occasions the abdominal pain has been so intense that Mr Khodaparast has been treated in A & E. He told me that he was last 'ambulanced in' to A & E in 2021. He also attended A & E once in 2022, but on that occasion managed to drive himself there.

77. The condition which Mr Khodaparast suffers from is intermittent. In an email to Harry Hodgkin (a direct access barrister instructed by the LLP at one stage in the Claim) dated 25 March 2020, Mr Khodaparast when describing his condition, referred to 10 episodes of stomach pain since 2017 lasting between 3 to 5 hours; roughly 3-4 a year. His medical notes record at 18 January 2021 'in the last year he has had 2 major

bouts and 2 minor bouts'. In a journal of abdominal pain dated 10 July 2021 prepared by Mr Khodaparast, he recorded '4 or 5' episodes over the period September 2019 to December 2020. Mr Halliday by his third witness statement dated 8 July 2022 (filed in connection with the non-party costs application against Mr Khodaparast in CLCC) stated at paragraph 12 that Mr Khodaparast had suffered 'some bouts' of ill health over the past two years, which he blamed on the litigation. At the hearing before me on 6 February 2023, Mr Khodaparast told me that the condition had 'peaked in 2021' but was thankfully getting far less frequent. The last bout mentioned in his medical records was on 23 January 2023. His medical notes for that date state 'patient complaining of severe epigastric pain. Denies any pain now'. From these notes it would appear that the pain had subsided by the time that medical assistance was at hand.

78. Mr Khodaparast did not complain of any epigastric symptoms at the time of either hearing (of 6 and 15 February) before me and did not mention any episodes of stomach pain in the run up to the hearings (of which he had had over 6 months' notice) save for the recorded incident on 23 January 2023. He had been well enough to prepare lengthy (175-paragraph) grounds of appeal against the order of HHJ Monty KC dated 6 January 2023 in late January/early February 2023. He mentioned fatigue through lack of sleep (and his medical records do reference insomnia) but appeared alert at both hearings and made ready reference to documents in the various bundles which he had lodged. He was physically robust and tenacious in oral delivery.

79. In my judgment the evidence adduced by Mr Khodaparast does not justify an adjournment of the hearings of 6 and 15 February on medical grounds.

80. I am fortified in that conclusion by the grounds of adjournment set out in Mr Khodaparast's informal adjournment request made by email of 17 January 2023. This listed a number of factors but made no mention of any medical or health condition said materially and adversely to affect his ability to prepare for or participate at the hearing. I also note that his Interim Points of Reply made no such reference either.

(2) CPR 1.6: vulnerable witness/party

81. Considered as a whole, the evidence before me does not support a conclusion that Mr Khodaparast should be treated as a vulnerable party for the purposes of CPR 1.6. Accordingly I reject Mr Khodaparast's submission that he should be treated as a vulnerable party.

(3) CPR 1.1(2)(a): multiple tasks/fighting on several fronts

82. Naturally I take into account the need to ensure, so far as practicable, that parties are on an equal footing and can participate fully in proceedings and that parties can give their best evidence. In this case however, in my judgment Mr Khodaparast (i) has had ample opportunity to arrange legal representation had he wished to do so, and (ii) has had ample time in which to prepare for the non-party costs application as a litigant in person, even allowing for his other commitments.

83. Mr Khodaparast has been on notice since June 2022 (8 months prior to the hearing) that a non-party costs order would be sought against him in these proceedings. He has

known of his joinder on the issue of costs since July 2022 (7 months prior to the hearing).

84. Mr Khodaparast stated that he was only one individual, facing an entire team 'in three or four different courts at once'. When asked to identify which other hearings in close proximity to the present he wished the court to take into account, however, he could not point to any. The hearing of 6 January 2023 in CLCC was simply a hand-down hearing; the hearing of the CLCC non-party costs application had taken place in July 2022.

85. Mr Khodaparast then stated that it was not just a matter of hearings, it was 'other commitments' and meetings. I repeat paragraphs 82 and 83 above.

86. I also take into account that a number of Mr Khodaparast's timetabling challenges are self-inflicted. It was Mr Khodaparast's choice to respond to the circulation of HHJ Monty's draft judgment in December 2022/January 2023 with an 11-page informal recusal request, which was rejected. It was his choice to respond to the order of 6 January 2023 with a 175-paragraph notice of appeal, on behalf of not only himself but also the LLP, which was the subject of a limited civil restraint order and was also in liquidation; a notice of appeal which, insofar as it related to the LLP, was later summarily struck out as totally without merit.

87. The timings for some of the activity streams/commitments listed at paragraphs 3, 4 and 5 of his email of 17 January 2023 were not expressly stated and no persuasive explanation was given in submissions as to how such commitments precluded or materially impeded Mr Khodaparast in preparing for the hearing before me. Moreover whilst Mr Khodaparast had no control over the timing of some of the other commitments referenced in his email of 17 January 2023, such as the creditors' meeting scheduled for 31 January 2023 or the time limit for appeal following the CLCC non-party costs order of 6 January 2023, by January 2023, Mr Khodaparast had already had 7 months' notice that the present application was to be made, 6 months' notice of the application itself, and his points of defence, by the extended deadline, were 4 months overdue. The appeal deadline and the creditors' meeting in January do not excuse or explain his past delays.

88. I also take into account that Mr Khodaparast has been permitted to file and rely on further bundles of documents filed after the deadline for bundles and was granted a short adjournment for medical evidence. He was also permitted to advance any argument he wished to advance on the non-party costs application, even though he had not filed proper points of defence. In my judgment these matters are relevant when considering CPR 1.1(2)(a).

(4) the pending applications for permission to appeal the order of 6 January 2023 and connected stay applications and (5) costs efficiencies relating to (4)

89. At the hearing on 6 February 2023, Mr Khodaparast submitted that if the application recently lodged by him (on behalf of himself and the LLP) in the Kings Bench Division was successful, there would be a 'ripple' or 'chain' effect which would render the present application 'superfluous'. He repeated that argument at the hearing on 15 February, submitting that if he was given permission to appeal and the appeal

was successful, that would deal with the 'root costs' for which the LLP was wound up and for which he was now being pursued.

90. In my judgment this argument is misconceived. The application referred to is for permission to appeal a non-party costs order dated 6 January 2023 made in CLCC in the context of the Claim. The proposed appeal does not relate to the 'root costs' for which the LLP was wound up, but to the non-party costs order. All avenues of appeal against the original costs orders on which the petition was based have been exhausted: see paragraph 8 above.

91. The application before me is for a non-party costs order relating to the petition. This is distinct from the non-party costs order already made in relation to the Claim.

92. Mr Khodaparast also reminded me that the notice of appeal sought stays of certain matters, including the application before me. In my judgment this does not of itself justify an adjournment of the hearing before me. Mr Khodaparast also relied (as grounds for his proposed adjournment) upon the grounds upon which he sought a stay by the notice of appeal. In my judgment the notice of appeal demonstrated no good grounds for a stay or adjournment of the matter before me. I note that since the hearings of 6 and 15 February 2023 before me, the stay applications sought in the Kings Bench Division have been dismissed by order of Ritchie J dated 16 February 2023.

93. Mr Khodaparast urged that it would be more cost effective to await the outcome of the proposed appeal. I disagree. In this regard I refer to the matters addressed in paragraphs 89 to 91 above.

94. I also remind myself that this court must have regard to CPR 1.1(2)(d) (ensuring that matters are dealt with 'expeditiously and fairly') and CPR 1.1(2)(e) (allotting to the case an appropriate share of the court's resources, taking into account the needs of other cases).

95. Mr Khodaparast has demonstrated a pattern of late adjournment requests over the course of the CLCC proceedings and these proceedings. He applied for an adjournment of the CLCC non party costs application, for example, which was refused. He emailed this court on 26 May 2022, shortly ahead of the Preliminary Hearing listed for 7 June 2022, seeking to prompt an adjournment by representing that the LLP would wish to rely voluminous evidence, said to run to 16 files, which there would not be time to prepare. He later denied doing so but the email in question was included in the bundle before me. He applied again for an adjournment at the beginning of the Preliminary Hearing, which was refused.

96. The current non-party costs application now before me relates to a relatively modest sum sought in respect of the costs of and occasioned by the coronavirus issue. The hearing set to take place on 6 February 2023 has already been adjourned once, to 15 February 2023, to allow Mr Khodaparast a brief opportunity to adduce medical evidence; which in the event did not support an adjournment on medical grounds. In my judgment it would be wholly disproportionate and ultimately would serve no good purpose to adjourn the matter again, taking up yet more of the court's resources and running up further costs.

97. In my judgment, whether the grounds relied upon are viewed independently or cumulatively, Mr Khodaparast has not made out a persuasive case for an adjournment.

98. For all these reasons, in the exercise of my discretionary case management powers, I reject Mr Khodaparast's oral application to adjourn.

99. I turn next to consider the substantive application before me.

Non-Party Costs Orders: Principles

100. Under s.51(1) and (3) of the Senior Courts Act, the court has a discretionary power to order a non-party to pay the costs of proceedings. The procedure for that process is governed by CPR 46.2.

101. As helpfully observed by Zacaroli J in Turner v Thomas & Ors [2022] EWHC 1944 (Ch), the principles relevant to costs orders against third parties were summarised by the Court of Appeal in Grizzly Business Ltd v Stena Drilling Ltd [2017] EWCA Civ 94 at [51], as follows:

> '51. The power to make a non-party costs order under section 51 of the Senior Courts Act 1981 has been considered in a number of recent decisions of this Court. Furthermore, it has been extended by analogy in Threlfall to cases of a co-defendant. We derive the following propositions from these recent cases:
>
> 1) "Where a non-party Director can be described as the "real party", seeking his own benefit, controlling and/or funding the litigation, then even where he has acted in good faith or without any impropriety, justice may well demand that he be liable in costs on a fact-sensitive and objective assessment of the circumstances." (Goodwood Recoveries Ltd v Breen [2005] EWCA Civ 414; [2006] 1 WLR 2723 per Rix LJ at [59])
>
> 2) It is not the case that both control and funding of the litigation must be present. (Systemcare UK Ltd v Services Designed Technology Ltd [2011] EWCA Civ 546…
>
> 3) "The very fact that the making of such an order is discretionary demonstrates that the question is not one of rights and obligations of a non-party, for no obligations exist unless and until the court exercises its discretion. Moreover the fact that the discretion, if exercised, is exercised against a non-party underlines the proposition that the non-party has no substantive liability in respect of the cause of action in question.. [T]he court is not fettered by the legal realities. It is entitled to look to the economic realities. It is in this sense that many of the cases pose the question whether the non-party is "the real party" in the case." (Threlfall v ECD Insight Ltd per Lewison LJ at [13])

> 4) Each case turns on its own facts. Since the decision involves an exercise of discretion, limited assistance is likely to be gained from the citation of other decisions at first instance in which judges have or have not granted an order of this kind. (Deutsche Bank v Sebastian Holdings Inc [2016] EWCA Civ 23 per Moore-Bick LJ at [61], [62])
>
> 5) An order of this kind is "exceptional" only in the sense that it is outside the ordinary run of cases where parties pursue or defend claims for their own benefit and at their own expense. (Deutsche Bank per Moore-Bick LJ at [62].
>
> 6) "… The only immutable principle is that the discretion must be exercised justly." (Deutsche Bank per Moore-Bick LJ at [62])
>
> 7) "By funding, the funder takes a risk, a risk as to the nature of which he has the opportunity to inform himself both before offering funding and during the course of the litigation which he funds." (Excalibur Ventures LLC v Texas Keystone Inc [2016] EWCA Civ 1144 per Tomlinson LJ at [29])
>
> 8) "The single question is whether in the circumstances it is just to make a discretionary order requiring the non-party to pay costs because of the nature of its involvement in the litigation." (Excalibur Ventures LLC per Tomlinson LJ at [51])".

102. The position as regards company directors was summarised by Coulson LJ (Lewison and Dingemans LJJ concurring) in Goknur v Aytacli [2021] EWCA Civ 1037 at [40]-[41]:

> '(a) An order against a non-party is exceptional and it will only be made if it is just to do so in all the circumstances of the case (Gardiner, Dymocks, Threlfall).
>
> (b) The touchstone is whether, despite not being a party to the litigation, the director can fairly be described as "the real party to the litigation" (Dymocks, Goodwood, Threlfall).
>
> (c) In the case of an insolvent company involved in litigation which has resulted in a costs liability that the company cannot pay, a director of that company may be made the subject of such an order. Although such instances will necessarily be rare (Taylor v Pace), section 51 orders may be made to avoid the injustice of an individual director hiding behind a corporate identity, so as to engage in risk-free litigation for his own purposes (North West Holdings). Such an order does not impinge on the principle of limited liability (Dymocks, Goodwood, Threlfall).

(d) In order to assess whether the director was the real party to the litigation, the court may look to see if the director controlled or funded the company's pursuit or defence of the litigation. But what will probably matter most in such a situation is whether it can be said that the individual director was seeking to benefit personally from the litigation. If the proceedings were pursued for the benefit of the company, then usually the company is the real party (Metalloy). But if the company's stance was dictated by the real or perceived benefit to the individual director (whether financial, reputational or otherwise), then it might be said that the director, not the company, was the "real party" and could justly be made the subject of a section 51 order (North West Holdings, Dymocks, Goodwood).

(e) In this way, matters such as the control and/or funding of the litigation, and particularly the alleged personal benefit to the director of so doing, are helpful indicia as to whether or not a section 51 order would be just. But they remain merely elements of the guidance given by the authorities, not a checklist that needs to be completed in every case (SystemCare).

(f) If the litigation was pursued or maintained for the benefit of the company, then commonsense dictates that a party seeking a non-party costs order against the director will need to show some other reason why it is just to make such an order. That will commonly be some form of impropriety or bad faith on the part of the director in connection with the litigation (Symphony, Gardiner, Goodwood, Threlfall).

(g) Such impropriety or bad faith will need to be of a serious nature (Gardiner, Threlfall) and, I would suggest, would ordinarily have to be causatively linked to the applicant unnecessarily incurring costs in the litigation.

41. Therefore, without being in anyway prescriptive, the reality in practice is that, in order to persuade a court to make a non-party costs order against a controlling/funding director, the applicant will usually need to establish, either that the director was seeking to benefit personally from the company's pursuit of or stance in litigation, or that he or she was guilty of impropriety or bad faith. Without one or the other in a case involving a director, it will be very difficult to persuade the court that a section 51 order is just.'

The Petitioner's submissions

103. The Petitioner contends that

(1) The LLP does not exist other than when it is used by Mr Khodaparast as a vehicle to do what Mr Khodaparast directs that it does for his own benefit. He alone controls what happens to its activities and any assets;

(2) Mr Khodaparast was the true and real party for all purposes on the petition and was a party in all but name;

(3) Mr Khodaparast controlled the LLP's response to the petition and made decisions as to the response throughout, usually without reference to others;

(4) Mr Khodaparast acted inappropriately in a number of respects in the way that the petition was responded to and the approach of the LLP to the coronavirus test, advancing positions which were totally devoid of merit;

(5) Mr Khodaparast has deliberately used the LLP as a vehicle for his own ulterior motives, including to seek revenge against the Petitioner and to cause the Petitioner to incur unnecessary costs;

(6) Mr Khodaparast's conduct has caused the Petitioner needlessly to incur the costs of and occasioned by the Preliminary Hearing when he knew that the LLP does not have the means to pay any adverse costs order is made against it;

(7) the LLP would not have acted in this way unless Mr Khodaparast had caused it to;

(8) this has all been about Mr Khodaparast's interests, not the interests of the LLP.

104. In relation to the issue of control, the Petitioner contends that whilst Mr Khodaparast has not been a member of the LLP since 1 November 2020, he is nonetheless in full control of it. The fact that he was in control of the conduct of defending the petition, the Petitioner contends, can be seen from the content of his witness statements, the many emails he has sent in which he communicates on behalf of the LLP and the way that he acted as its advocate at the hearing on 7 June 2022. He was the author of the three witness statements filed in relation to the petition and he alone has represented the LLP at hearings, save for the 1 July 2022 handing down hearing, when Mr Halliday attended simply to collect the judgment of the court when Mr Khodaparast was committed elsewhere.

105. The Petitioner maintains that Mr Khodaparast filed a witness statement on behalf of the LLP dated 28 July 2021 which wrongly asserted that it had been affected by the pandemic and that it met the coronavirus test. In addition, it raised further irrelevancies and contentious assertions, for example taking a point on service of the petition, alleging that process server of the petition had lied in a signed certificate of service.

106. The Petitioner maintains that the position adopted by the LLP in relation to the coronavirus test was untenable and was never going to result in the petition being dismissed as

(1) before the petition it was always alleged that the Petitioner, and the Petitioner alone, was the cause of the LLP's financial problems; (in this regard reference was made to the LLP's letter dated 22 January 2020, quoted at paragraph 22 above);

(2) the first witness statement of Mr Khodaparast produced no evidence about the impact of covid;

(3) the LLP had not been trading in the relevant period, as confirmed by Mr Halliday by email dated 12 August 2021 (quoted at paragraph 28 above);

(4) by July 2021, the LLP knew that the SRA wanted to revoke its licence;

(5) the LLP has a history of filing accounts late and as at the date of the Preliminary Hearing, no accounts had been filed for the years ending 30 September 2020 or 2021;

(6) the LLP was and is a non-profit structure, with no capital and had not generated any revenue for years;

(7) the filed accounts for the year ending 30 September 2019 show the extent of the financial problems that the LLP had before covid made its arrival known in the UK in March 2020;

(8) Mr Khodaparast had told the court in the Claim that he had not had any income from 1 October 2018 as the LLP could not afford to pay him;

(9) Counsel for the LLP at a hearing in July 2020 said that the LLP had no money to pay security or other sums;

(10) the SRA had revoked the LLP's licence with effect from 16 February 2022;

(11) by then, Mr Khodaparast had transferred any assets or business opportunities of the LLP to either Coplexia Corporation Ltd, a company that he controlled, or a new LLP, Fairchild Grieg & Company LLP. The transfer had nothing to do with Covid and was simply Mr Khodaparast controlling what he regarded as his own assets.

107. The Petitioner was also critical of the manner in which Mr Khodaparast presented and conducted the LLP's case on its behalf at the Preliminary Hearing on 7 June 2022, contending that he

(1) sought an adjournment of the hearing at the last-minute without any basis;

(2) attempted to submit a lengthy third witness statement of 19 pages, seven minutes before the hearing was due to begin in an attempt to secure an adjournment and cause further delay. In the event, neither the court nor the parties were able to access the supporting exhibit and Mr Khodaparast ultimately confirmed that he would rely on the second witness statement for the purposes of the coronavirus test;

(3) had spoken for nearly all of the three hour duration of the hearing, interrupting both Mr Emerson of counsel and the judge, and was repeatedly asked to stop;

(4) had lied to the court,

(a) denying that he /the LLP had ever said that 16 lever arch files would be supplied to the court in an attempt to get the June hearing vacated in advance, when it was clear from the LLP's email dated 26 May 2022 and timed at 3:03pm that this had been said on behalf of the LLP, in an attempt to get the June hearing vacated in advance;

(b) suggesting that Mr Emerson was wrong to say that the LLP had not filed accounts for 2019/20, when a Companies House search showed that Mr Emerson was correct on this issue;

(c) suggesting that he thought that the test had been decided in favour of the LLP (when if it had the petition would already have been dismissed); and

(d) submitting that he had not had an opportunity to submit evidence in relation to the coronavirus test, when he had, in July 2021.

108. Mr Emerson also observed that, after the Preliminary Hearing in June 2022, Mr Khodaparast had wrongly sent many emails to the court and the Petitioner about the hearing and about what he wanted to happen in relation to the conduct of petition. I pause here to confirm that, in between circulation of the draft judgment in confidence to the parties and hand down of approved judgment on 1 July 2022, Mr Khodaparast had written to the court, disagreeing with the conclusions set out in the draft judgment and seeking to introduce new material by email. He also sought to delay hand-down of judgment on the grounds of his own availability.

109. The Petitioner went on to remind the court of certain events since joinder of Mr Khodaparast to these proceedings on the issue of costs. Since that time:

(1) the CLCC non-party costs order dated 6 January 2023 had been made by HHJ Monty KC against Mr Khodaparast in respect of the costs of and occasioned by the Claim;

(2) in between circulation HHJ Monty's draft judgment on the non-party costs order and hand-down on 6 January 2023, Mr Khodaparast had written into CLCC, asking HHJ Monty KC to recuse himself. The learned judge had declined;

(3) Mr Khodaparast had made further unsuccessful attempts to stay the relevant County Court orders; and

(4) Mr Khodaparast had asserted at a meeting of creditors of the LLP at 31 January 2023 that the LLP had liabilities of in excess of £7 million.

110. Mr Emerson maintained that such matters are relevant as they show that Mr Khodaparast still persists in litigating in inappropriate ways, making misconceived applications, ignoring the obligations imposed by the CPR, sending repeated (and at times utterly discourteous) emails to judges with whom he disagrees, attempting to relitigate points already decided, paying no regard to the costs he runs up and the judicial time that is wasted by his behaviour.

111. Mr Emerson maintained that the LLP's resistance to the petition and to the coronavirus test have been driven and controlled by Mr Khodaparast and that he has acted inappropriately at a number of stages. In all the circumstances, Mr Emerson

submitted that it is only right that Mr Khodaparast should pay the costs that have been incurred by the Petitioner with regard to the litigation concerning the coronavirus test together with costs of this application.

Mr Khodaparast's submissions

112. Mr Khodaparast relied upon the CLCC PoD and its exhibit, together with Mr Halliday's third witness statement (filed in the CLCC proceedings) and the additional documents referred to at paragraphs 59, 63, 65 and 70 above. I confirm that I have read and considered them all.

113. Mr Khodaparast also addressed me in oral submissions. In summary, he submitted that:

(1) he did not control the litigation;

(2) he had not funded the litigation;

(3) he had acted for the benefit of the LLP, not for his own benefit;

(4) he had acted in good faith and without impropriety;

(5) he was not the real party, the LLP was;

(6) the court should look at the 'full facts', in 'the interests of justice'.

114. I shall summarise his submissions on each of these points more fully below.

Control

115. On the issue of control, Mr Khodaparast referred me to the third witness statement of Mr Halliday, filed in the CLCC non-party costs application.

116. At paragraph 18 of his third witness statement, Mr Halliday referred to the Claim having been instigated by the Petitioner and continued:

> '19. Having first determined from Mr Bluett and myself that we did not wish to settle the claim, [Mr Khodaparast] then responded to the claim to the best of his abilities to avoid a default judgment against the [LLP].
>
> 20. It is therefore not true that [Mr Khodaparast] commenced defending litigation on his own initiative and I do not imagine it was done for his own benefit'

117. Mr Khodaparast argued that this evidence made clear that when the Petitioner filed the Claim, Mr Khodaparast's response was to ask Mr Bluett and Mr Halliday whether they wanted to settle it. Their choice was not to settle it but to file a defence.

118. Mr Khodaparast maintained that the Preliminary Hearing was conducted in the same way. He said that there had been no change in how the proceedings were conducted from the beginning to date. He contended that the reason other parties have not

stepped forward was because of health and other factors. He said that he had stepped forward because he was conscientious.

119. Mr Khodaparast also referred to a selection of emails passing between himself, Mr Halliday and a direct access barrister called Harry Hodgkin in 2020. Harry Hodgkin was instructed at one stage in relation to the Claim. Mr Khodaparast maintains that these emails (the 'Hodgkin emails') are evidence that he was not the controlling mind of the LLP.

120. The Hodgkin emails include the following:

(1) an email from Mr Khodaparast to Mr Hodgkin dated 7 February 2020, cc'd to Mr Halliday:

> 'Dear Harry,
>
> Further to our call on Thu when we looked at what clauses of the LSC PP Agreement Peter has breached, can you please advise us on how and when "evidence" of breaches are to be submitted. I have, for instance, found the email below which gives evidence to several of the breaches we discussed - I would like to know how best to prepare and present these.
>
> Perhaps you could kindly advise Duncan and me with a short line or two by email, or perhaps point us to a useful resource to learn from. Happy to discuss by phone if you prefer.
>
> With much thanks in advance,
>
> Amir.'

(2) an email from Harry Hodgkin to Mr Khodaparast dated 4 March 2020 (not cc-ing Mr Halliday), headed 'latest drafts':

> 'Dear Amir,
>
> Please find attached latest versions of the attached documents.
>
> I should be very grateful if you could confine your reply to one single email if at all possible once you have had a chance to go through everything at your leisure. Once you have done that I will need to go through the document again to ensure it all flows correctly.
>
> Please divide the schedule into the six categories I have identified…'

(3) a chaser email from Harry Hodgkin to Mr Khodaparast (not cc-ing Mr Halliday) dated 10 March 2020;

(4) a reply from Mr Khodaparast to Mr Hodgkin (not cc-ing Mr Halliday) dated 10 March 2020, stating:

> 'I appreciate you checking Harry.
>
> Truth is we have yet to make a start - I intend to start tomorrow morning for an hour or so and then full time from Thursday with the view to getting something over to you by Friday.
>
> Duncan will be away all of next week and we wondered if you're away for 10 working days or back soon?
>
> Best regards
>
> Amir'

(5) an email dated 17 March 2020 from Mr Hodgkin to Mr Khodaparast, which was 'cc'd' to Mr Halliday. This provided:

> 'Dear Amir,
>
> I trust you are both coping okay at this difficult time.
>
> I am now back and keen to complete the Amended D & C.
>
> Do you have a marked up version for me to look at please?
>
> Kind regards
>
> Harry'

(6) a reply from Mr Khodaparast by email dated 25 March 2020 to Mr Hodgkin, not cc-ing Mr Halliday. The email states (with emphasis added):

> 'I will be working late tonight to clear off other tasks so as to allow *me* to make a start on the D & C tomorrow and hopefully deliver something to you on Friday'

(7) an exchange of emails on 6 July 2020 between Mr Khodaparast and Mr Hodgkin, in which Mr Khodaparast explains that he is unwell and would have to reschedule a meeting. Mr Halliday is not cc'd.

(8) a later email dated 6 July 2020 from Harry Hodgkin to Mr Khodaparast, not cc'd to Mr Halliday, stating:

> 'Dear Amir
>
> I am sorry to hear that you're not well.
>
> In your absence I have done further work on the documents.
>
> The Replies now simply needs you to insert information where coloured yellow. The task is significantly reduced. Please complete this ASAP.

> I have updated the draft Amended Defence and Counterclaim to reflect all the points we discussed. This includes changing "business plan" to "growth plan". There is also a date for you to insert in para 16.
>
> Once completed, you will need to sign both documents and file them with the application, witness statement and the draft order…
>
> Please complete your sections of the witness statement.
>
> Please email me all these documents once you have completed them and I shall conduct a final review.
>
> It is essential that you issue the application today/tomorrow at the very latest.
>
> Kind Regards
>
> Harry'

Funding

121. Mr Khodaparast maintained that he had not personally funded the litigation. In this regard he relied upon the third witness statement of Mr Halliday dated 8 July 2022 (filed in the CLCC non-party costs application) in which Mr Halliday had stated at para 13f:

> '… neither I nor as far as I am aware [Mr Khodaparast] funded any part of the litigation which was paid for by [the LLP] from its own resources'

122. Mr Halliday's fourth witness statement dated 3 February 2023 (prepared in support of Mr Khodaparast's application for permission to appeal the CLCC non-party costs order dated 6 January 2023) stated that the LLP had paid for the Claim from its own resources, 'in particular the Bounce Back Loan of £50,000 plus a small sum paid in from Thomas Bluett that he owed' and added that some legal fees had been paid for by insurers.

Benefit

123. Mr Khodaparast submitted that he had not been acting selfishly for dishonest needs.

124. In this regard he again referred me to the third witness statement of Mr Halliday dated 8 July 2022 filed in the CLCC non-party costs application. At paragraph 11, Mr Halliday states that he first met Mr Khodaparast in late 2016 and 'found him to be collaborative in his working methods', adding 'he is not someone who I would describe as selfish'. He continues:

'He has told me that he does not litigate to spite the [Petitioner].'

125. At paragraph 13a, Mr Halliday states that the LLP is 'the real party' to the Claim.

126. Mr Khodaparast also relied on correspondence from creditors of the LLP to the Official Receiver following the winding up of the LLP to demonstrate that defending and counterclaiming in the Claim was not for his benefit but for other members, creditors, and clients. He maintained that he had defended the petition for the same reasons.

127. The correspondence included

(1) a letter dated 28 November 2022 from Mr Halliday to the OR in which Mr Halliday claimed to be a creditor of the LLP in a sum totalling £224,000. These included premiums for insurance cover, the excess payable to insurers for three claims, payment for work undertaken and loss of earnings;

(2) a letter from Haines Watts, the LLP's accountants, to the OR dated 29 November 2022 in which Haines Watts (a) claim to be a creditor of the LLP in respect of an outstanding 2020 invoice of £3600 and also unbilled time of more than £10,000 for extra work on the 2019 and 2020 accounts, SRA reports and various tax matters; and (b) state that Coplexia Corporation Ltd is a creditor in the sum of approximately £47,888;

(3) a letter from Mr Scott to the OR dated 26 January 2023 in which Mr Scott claimed to be owed sums including £6000 per annum 'from 2021 onwards';

(4) a letter from Ms C Cox to the OR dated 30 January 2023 in which Ms Cox claimed to be owed sums including a net 'income shortfall' of £16,534.37 referable to the period March 2020 to March 2021, together with sums said to be due for later periods; and

(5) a letter from Mr Phillips to the OR dated 30 January 2023 in which Mr Phillips claimed to be owed sums including a net 'income shortfall' of £15,535.60 referable to the period January 2021-January 2022,together with sums said to be due for later periods.

128. This correspondence, Mr Khodaparast maintained, showed that the counterclaim in the CLCC and his defence of the petition was for the benefit of the LLP and not him.

Good faith/impropriety

129. Mr Khodaparast submitted that he had acted in good faith and without impropriety in litigating the coronavirus issue. He maintained that the letters from Mr Scott, Ms Cox and Mr Phillips referred to at paragraph 127 above demonstrated that this court had been wrong in its conclusion on the coronavirus issue and that he had been right.

130. The letters in question had been written to the OR in the run-up to the creditors' meeting relating to the LLP then due to take place on the 31st of January 2023. Each of the letters expresses a wish that the OR should continue to act as liquidator of the LLP, rather than an independently appointed liquidator; a matter about which Mr Khodaparast appeared to have been very exercised, having written into court on the subject in January 2023.

131. Mr Scott's letter dated 26 January 2023 to the OR stated that he was the proprietor of an Internet mail-order business which had traded as 'Just In Case' since 2004. His letter made reference to the fact that in January 2020, he had started to explore the Wills Pilot Project with Mr Khodaparast. His letter states:

> 'I am aware that Covid put the pilot project on-hold, but it was because of litigation against Coplexia that meant we could not relaunch the business as Fairfield Greig Solicitors because it undermined the confidence of solicitors who had expressed an interest to join.
>
> As a result of this, Amir's own company (Coplexia Corporation Ltd) started to trade under the name of Fairchild Greig & Co until a new legal entity was set up at the start of 2022 in which company I have a 5% share.'

132. Mr Scott's letter concludes by confirming that he wishes the liquidation to be handled by the OR.

133. By her letter to the OR dated 30 January 2023, Ms Cox of C Cox Legal confirmed that she had made contact with Mr Khodaparast in March 2020 to see if he had any work opportunities for her. The letter makes reference to the Wills Pilot Project and states:

> 'I decided to join the firm as a self-employed Consultant (Non-Lawyer) Fee Earner billing the firm through my business C.Cox Legal for a 40% share of the fees earned by the firm for work I carried out for them.
>
> Unfortunately Covid stalled the pilot project, this combined with litigation against Coplexia meant we could not relaunch the business as Fairchild Greig Solicitors, hence, a significant amount of work has likely been lost.
>
> As a result of this, Amir Khodaparast's own company (Coplexia Corporation Ltd) started to trade under the name of Fairchild Greig & Co which to date I am a consultant to. However, due to the above circumstances the workload I anticipated I would be assisting with/dealing with has not materialised. I have been left with no choice but to look for alternative employment…'

134. The letter then sets out the sums claimed to be owed to Ms Cox and again concludes by confirming that Ms Cox wishes the liquidation to be handled by the OR.

135. By his letter dated 30 January 2023 to the OR, Mr Phillips t/as Phillips Financial Services confirmed that Mr Phillips had responded to a 'Linkedin' advertisement and had first started speaking with Mr Khodaparast in October 2020. The letter states:

> 'The role advertised was for an Estate Planning Consultant, which was required in connection with a project the company

> was embarking on to contact existing Will clients. The firm either acted as custodian of their documents or had been appointed by succession as 'executors' to the estate. A re-branding of the firm was also taking place with the launch of Fairchild Greig Solicitors'

136. Again, Mr Phillips stated that he had decided to join the firm as a self-employed Fee Earning Consultant (Non-Lawyer). The letter continues:

> 'The impact of the Covid pandemic unfortunately stalled the 'Will' project as the majority of the client bank were elderly people who were naturally not keen on meeting people in person as well as not being 'au fait' when it came to online meetings, this combined with the litigation case against Coplexia meant that we could not relaunch the business as Fairchild Greig Solicitors, leading I fear to a significant amount of work having been lost.
>
> However, due to the above, Mr Khodaparast's own company (Coplexia Corporation Ltd) started to trade under the name of Fairchild Greig & Co within which I am a consultant.
>
> Disappointingly and due to the above circumstances, the anticipated workload has been reduced and I find myself needing to look for alternative positions in order to 'stay afloat' during what are difficult times.'

137. The letter then sets out details of the sums said to be owed to Mr Phillips and again concludes by confirming that Mr Phillips wishes the liquidation process to be handled by the OR.

138. Mr Khodaparast submits that these letters all 'reinforce' the position that he had adopted in respect of the coronavirus issue.

Real Party

139. Mr Khodaparast submitted that at all material times, the 'real party' to the Claim and latterly the petition had been the LLP, not him.

Full facts/interest of justice

140. Mr Khodaparast invited the court to take into account the 'full facts', alleging, among other things, (1) that counsel representing the Petitioner at the hearing in August 2022 at which the LLP had been wound up had been named in 'independent testimony' as 'an accomplice' of the Petitioner, who had previously been 'brought in to train [the Petitioner] in fiddles' and that (2) the costs schedules presented by the Petitioner for the purposes of this application were 'fake' as the Petitioner's solicitors weren't charging for their services.

141. He also maintained that, in addition to being a carer for his father, he had had to deal with multiple hearings, aggrieved client complaints, the police, regulators, insurers

and the insolvency service. This, he said, was the burden he had been left with as an individual.

Discussion and conclusions

Control

142. Whilst the focus of this court, when considering the issue of control, is on who controlled the LLP's response to the coronavirus issue in the winding up proceedings, Mr Khodaparast has invited the court to look beyond that and also to consider the issue of control in relation to the Claim.

143. HHJ Monty KC has, however, by his judgment dated 6 January 2023, already ruled on this issue. To the extent that Mr Khodaparast is inviting this court to revisit that issue, I decline the invitation.

144. For the sake of completeness, however, I confirm that I respectfully concur with the learned judge's conclusions on the issue of who controlled the manner in which the LLP responded to the Claim. Whilst Mr Khodaparast may initially have consulted Mr Bluett and Mr Halliday at the outset of the CLCC proceedings on whether they wished to settle the Claim or defend it, it is clear from HHJ Monty's judgment and from the evidence before me that it was Mr Khodaparast who controlled the manner in which the LLP conducted its defence of and counterclaim in the Claim thereafter.

145. The Hodgkin emails relied upon by Mr Khodaparast arise in the context of the Claim and not the petition. They are therefore not directly relevant to the question of who controlled the LLP's response to the petition. Nonetheless, since Mr Khodaparast has raised the Hodgkin emails, I should briefly address them.

146. The Hodgkin emails represent an extremely small proportion of overall correspondence relating to the Claim. Of the sample Hodgkin email correspondence which Mr Khodaparast has chosen to include in his supplemental bundles for the purposes of this application, only a small proportion of the emails exchanged between Mr Khodaparast and Mr Hodgkin actually 'cc' Mr Halliday or anyone else at the LLP. None are addressed directly to anyone else at the LLP and copied to Mr Khodaparast; they are all addressed directly to him. Even when Mr Khodaparast was ill, Mr Hodgkin did not 'cc' Mr Halliday in relation to urgent drafts which had to be completed by the following day: see paragraphs 120(7)(8) above. Whilst there is the occasional cosmetic reference to 'we' or 'us' in the emails, it is quite clear that it is Mr Khodaparast working on the drafts in the Claim together with the barrister. At no point does he mention having to run his suggested drafts past anyone else before returning them to the barrister. Overall, these emails do not serve the purpose which Mr Khodaparast intended them to serve, namely, to demonstrate that he was not controlling the LLP's decisions in the Claim.

147. Nor do they have direct relevance to the issue of whether he was controlling the LLP's decisions in the context of the petition.

148. According to Companies House filings, the only two members of the LLP are Mr Halliday and Mr Khodaparast's solely owned company, Coplexia Corporation Ltd, the latter of which is the 'designated member' of the LLP.

149. In Mr Khodaparast's 12th witness statement dated 16 July 2021 in the Claim, Mr Khodaparast complained that the Petitioner had not served the petition using the LLP's 'official service email address' (which was his *own* email address). He continued:

> '[The Petitioner] emailed Mr Halliday instead, knowing he does not access his emails regularly and his email address is not always monitored by Mr Khodaparast either.'

150. A similar complaint was raised at paragraph 34 of Mr Khodaparast's second witness statement filed in the winding up proceedings.

151. Mr Khodaparast's claims to be simply 'the nominee', acting on behalf of members of the LLP and to be 'the mouthpiece' of the board in relation to the petition are in my judgment entirely unpersuasive. There is no evidence before me of Mr Khodaparast reporting to, updating, consulting, or taking instructions from, any such board in relation to the petition.

152. On the evidence before me, it is clear that Mr Khodaparast controls all aspects of the LLP. Included in the bundles before me were emails from Haines Watts, the LLP's accountants, regarding the LLP's 2019 accounts, addressed to Mr Khodaparast and only 'cc'd' to Mr Halliday (see email dated 30 April 2021). Similarly, the bundles contained emails from the LLP's insurance brokers, such as that dated 15 July 2021, addressed to Mr Khodaparast and only 'cc'd' to Mr Halliday.

153. In relation to the winding up proceedings, Mr Halliday's role was made clear by his email dated 12 August 2021 to the Petitioner's solicitors, sent in response to a letter dated 5 August 2021 relating to the petition (with emphasis added):

> 'Dear Sirs,
>
> I acknowledge receipt of your letter of fifth August.
>
> You [have] already been informed that I am not and have never been a designated member of [the LLP] *and have no control over it whatsoever*. Your remarks therefore should be addressed to those who have.'

154. On the evidence overall, I am satisfied that Mr Khodaparast has controlled the LLP in all respects in relation to the petition, making all material decisions in the litigation, acting as the LLP's advocate and drafting applications, witness statements and correspondence on its behalf. In my judgment there is no doubt that he has been the controlling mind behind the LLP in the context of the winding up proceedings. None of the costs incurred in relation to the coronavirus issue would have been incurred if he had not been controlling the LLP at the time.

Funding

155. There is no evidence before me that Mr Khodaparast directly funded the LLP's defence to the petition. In this regard, however, I remind myself that this of itself does not preclude the making of a non-party costs order: Grizzly Business Ltd v Stena

Drilling Ltd [2017] EWCA Civ 94 at [51(2)]; Systemcare UK Ltd v Services Designed Technology Ltd [2011] EWCA Civ 546.

Benefit

156. In relation to benefit, Mr Khodaparast argued that he had not conducted the LLP's defence and counterclaim in the CLCC proceedings for his own benefit but for the benefit of other members, creditors and clients.

157. Again, however, HHJ Monty KC has by his judgment dated 6 January 2023, already ruled on this issue. To the extent that Mr Khodaparast is inviting this court to revisit that issue, I decline the invitation.

158. Moreover, as made clear by HHJ Monty KC in his judgment dated 6 January 2023, the amended counterclaim in the Claim included substantial sums said to be owed by the LLP to Mr Khodaparast; see too the CLCC PoD (which bear a statement of truth) at paras 2(b) and 23.

159. In any event, whether the LLP's defence of and counterclaim in the Claim were for the benefit of Mr Khodaparast (or Mr Khodaparast and others) is not directly relevant to the matter before me. The matter before me is whether Mr Khodaparast should be made personally liable to pay the Petitioner's costs of and occasioned by the coronavirus issue, in the context of the petition, not the Claim.

160. For reasons already explored in this judgment, contesting the coronavirus issue was plainly not in the interests of the LLP; see paragraphs 40 and 43-50 above. It was an utterly hopeless stance for the LLP to adopt.

161. At the hearing of the non-party costs application before me on 15 February 2023, Mr Khodaparast sought to rely upon the letters of Ms Cox, Mr Phillips and Mr Scott (referred to at paragraphs 131 to 137 above), arguing that these letters prove that he was right to contest the coronavirus issue. In my judgment this argument is misconceived.

162. Mr Scott's letter states in terms (with emphasis added):

> 'I am aware that Covid put the pilot project on-hold, *but it was because of litigation against Coplexia that meant we could not relaunch the business'*

163. Moreover even putting to one side the similar phrasing ('this combined with') employed in the letters of Ms Cox and Mr Phillips and assuming that they each would have been prepared to provide CPR compliant witness statements bearing a statement of truth in the run-up to the Preliminary Hearing, confirming the matters addressed in their subsequent letters to the OR, the LLP was still bound to fail on the coronavirus issue. The reality was that even if the LLP had cleared the 5(1) prima facie threshold, it would have simply lost at the 5(3) stage rather than the 5(1) stage, for the reasons explored at paragraph 45 above.

164. On the evidence before me, I am satisfied that Mr Khodaparast's decision to contest the coronavirus issue was not a decision made for the benefit of the LLP. As Mr

Khodaparast well knew, by the time of presentation of the winding up petition on 20 May 2021, the LLP was an insolvent shell which had not traded for many years: see paragraph 40 above. He also knew by the time of presentation that any potential business opportunities arising from the assignment of goodwill dated 1 January 2020 had long since been 'pivoted' to Coplexia Corporation Ltd as a result of the Claim: see paragraphs 43 to 50 above. Moreover, shortly after presentation, on 23 July 2021, the SRA had given notice of intention to revoke the LLP's licence. The LLP, as the Petitioner put it, was simply a shell to be discarded at Mr Khodaparast's whim.

165. Notwithstanding these developments (and others), Mr Khodaparast continued to contest the corononavirus issue whilst stalling its ultimate determination, thereby putting off the date on which the petition could be advertised and the LLP wound up. The LLP's defence and counterclaim in the Claim were struck out in October 2021. The Preliminary Hearing was originally listed for hearing in November 2021, but as a result of Mr Khodaparast's correspondence with the court objecting to it going ahead at that time, was vacated and relisted for June 2022. In the meantime, in January 2022, Mr Khodaparast set up Fairchild Grieg & Company LLP: see paragraph 46 above.

166. By February 2022, the SRA had revoked the LLP's licence.

167. In all these circumstances, Mr Khodaparast was plainly not acting in the interests of the LLP or for its benefit in contesting the coronavirus issue.

168. On the evidence before me, I am satisfied that, by the time of filing his second witness statement in the petition in July 2021 and causing the LLP to contest the coronavirus issue, Mr Khodaparast was 'the real party', engaging in pointless litigation, at no risk to himself, hiding behind the LLP for his own purposes, which included seeking revenge against the Petitioner and causing the Petitioner to incur needless costs knowing that the LLP would be unable to pay them.

169. There was clearly a personal element to the stance which he adopted. By his letter dated 10 February 2023 to the High Court Appeal Centre, Kings Bench Division, for example, Mr Khodaparast at [41] spoke of

'betrayal that I have experienced at the hands of the [Petitioner] who I first met when I was a schoolboy and had looked up to growing up.'

170. By way of further example, in the February Schedule (referred to at paragraph 70 above), Mr Khodaparast refers to the Petitioner as 'a virus that knows he must destroy me because I am the antidote to his poison'.

171. As in the CLCC, Mr Khodaparast has used the proceedings in this court on the coronavirus issue as a platform from which to 'vent' against the Petitioner, making baseless and time-consuming allegations of dishonesty against not only the Petitioner but also his solicitors and counsel, in witness statements, in emails and orally in court. I have mentioned two such allegations at paragraph 140 above. There were others.

172. Ultimately, in litigating the coronavirus issue, Mr Khodaparast weaponised the LLP, by then an insolvent, non-trading, empty shell, against the Petitioner for no good reason. In doing so he acted not for the benefit of the LLP but in pursuit of his own

personal agenda. In my judgment, in the context of the coronavirus issue, Mr Khodaparast was undoubtedly the 'real party'.

Impropriety/bad faith

173. On the evidence before me, I am also satisfied that Mr Khodaparast filed misleading evidence in bad faith.

174. By his first witness statement dated 7 July 2021 in these proceedings, Mr Khodaparast maintained (at [14]) that save for the sums claimed by the Petitioner, which were said to be disputed, the LLP had 'no unpaid creditors'. This was untrue. Mr Khodaparast must have known this to be untrue, as his reaction to the winding up of the LLP has been to identify and coordinate numerous creditors, including himself, claimed to be owed several hundred thousand pounds. Whilst I accept that some debts may have been incurred after 7 July 2021 (the date of the first witness statement), several were incurred prior to that date and were ongoing: see by way of example the correspondence referred to at paragraph 127 of this judgment. Mr Khodaparast's first witness statement was misleading in this respect.

175. In my judgment, Mr Khodaparast's second witness statement was also misleading. It suggested that the LLP was unable to pursue the potential business opportunities arising from the goodwill assignment dated 1 January 2020 as a result of covid, when in reality it was the dispute with the Petitioner and the existence of the Claim that rendered it unable to do so. In this regard I refer to paragraphs 40 and 43-50 above.

176. Both these matters in my judgment demonstrate serious bad faith on the part of Mr Khodaparast. The latter is causatively linked to the Petitioner unnecessarily incurring costs in connection with the coronavirus issue.

The full facts

177. Mr Khodaparast undoubtedly feels wronged by the Petitioner. This court however is not concerned with the merits or otherwise of the CLCC proceedings, or the background events which led to those proceedings, but rather, with the costs incurred on the coronavirus issue in the context of the winding up proceedings.

178. For the sake of completeness I should add that Mr Khodaparast did not adduce any evidence to support the allegations referred to at paragraph 140(1) and (2) of this judgment.

Conclusion

179. For reasons explored in this judgment, I am satisfied that Mr Khodaparast controlled the LLP's response to the coronavirus issue. I am further satisfied that in causing the LLP to contest the coronavirus issue, he acted in his own interests and not for the benefit of the LLP. He was the 'real party' on the coronavirus issue, hiding behind the LLP in order to engage in risk-free litigation for his own purposes, which included seeking revenge against the Petitioner and causing the Petitioner to incur unnecessary costs. I am also satisfied that he filed materially misleading evidence on the coronavirus issue in bad faith.

180. In my judgment Mr Khodaparast's conduct in relation to the coronavirus issue is causatively linked to costs incurred by the Petitioner in relation to that issue. The LLP would not have contested the coronavirus issue unless Mr Khodaparast had caused it to do so. On the evidence before me I am satisfied that at all material times, Mr Khodaparast knew that the LLP did not have the funds to pay any adverse costs order made against it on that issue.

181. For the reasons given in this judgment, I conclude that it is just to order that Mr Khodaparast pay the Petitioner's costs of and occasioned by the coronavirus issue.

182. I shall therefore order that Mr Khodaparast pay the Petitioner's costs of and occasioned by the coronavirus issue. I shall also order that he pay the Petitioner's costs of and occasioned by the non-party costs application. All such costs shall be the subject of detailed assessment if not agreed.

183. I will hear any application for interim costs on the handing down of this judgment.

ICC Judge Barber