Neutral Citation Number: [2024] EWHC 1866 (Ch)

Case No: CR-2024-003737

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

Date: 19 July 2024

Before :

JOANNE WICKS KC

- -

Between :

PHIL RYAN	**Respondent/ Claimant**
- and -	
LVR CAPITAL LIMITED (In Administration)	**Applicant/ Defendant**

- -
- -

JAMES BAILEY KC and THEO DIXON (instructed by **BRECHER LLP**) for the **Applicant**
The **Respondent** not appearing

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APPROVED JUDGMENT

JOANNE WICKS KC sitting as a Deputy Judge of the High Court:

Introduction

1. I have before me four applications, each brought by the Defendant ("**the Company**") against the Claimant ("**Phil Ryan**"). I do not refer to the Claimant as "Mr Ryan" as he has previously objected to the use of this name. Phil Ryan is the sole director of the Company, which is in administration. Edward Avery Gee and Daniel Mark Richardson ("**the Administrators**") were appointed joint administrators on 4 August 2023 by order of HHJ Hodge KC, sitting as a Judge of the High Court.

2. Three of the applications are to strike out Part 7 claims issued by Phil Ryan, originally in the Commercial Court but subsequently transferred to the Chancery Division and given Claim Numbers CR-2024-003737, CR-2024-003733 and CR-2024-003733 ("**the Part 7 Claims**"). The fourth application is brought by the Company, with the support of Brecher LLP ("**Brecher**"), MS Lending Group Limited and CG Recovery Limited, for the making of an Extended Civil Restraint Order ("**ECRO**") against Phil Ryan, alternatively an order pursuant to the Court's inherent jurisdiction to restrain Phil Ryan from bringing further proceedings in relation to the administration of the Company (or entities or persons associated with the same) (a "**Grepe v Loam order**"). The applications are supported by an affidavit of Bryn Robertson of Brecher dated 13 June 2024 and witness statements of Edward Avery Gee and Michael Stratton.

3. It is apparent from the evidence that Phil Ryan (who had chosen not to attend court for the hearing of these applications) is influenced by the "freeman on the land" ideology. This pseudo-legal movement holds that individuals are bound by statutes only to the extent that they have consented to them; there is also a belief that people

can divide their identities. Those who subscribe to this philosophy may believe, wrongly, that they can avoid legal liabilities by executing transactions or making statements which appear, superficially, to be based on legal principles and language but which have in fact no basis in law. In Stamp v Capital Home Loans Limited [2024] EWHC 1092 (KB), Master Giddens, striking out three claims which also drew on freeman on the land thinking, described the building blocks on which the claims had been erected as:

"a nonsensical and harmful mix of legal words, terms, maxims, extracts and statutes which are designed to look and sound good, at least to some. But they stand only as an approximation of a claim in law, a parody of the real thing."

The same can be said here of many of Phil Ryan's contentions and communications. They comprise legal gobbledegook, a stitching-together of legal-sounding phrases, quotes from cases and names of statutes without any solid basis in legal principle. Phil Ryan's pseudolaw is drawn in part from the USA and contains references to both English and American statutory and other legal texts, particularly the Uniform Commercial Code, which is a set of laws governing commercial transactions in the USA, uniformly adopted into the law of each state.

Context for the Part 7 Claims

4. Under a facility agreement dated 19 August 2021, MS Lending Group Limited advanced £455,000 to the Company by way of loan for a 12-month term ("**Loan 1**"). Loan 1 was secured by a debenture dated 19 August 2021 and a legal charge of the same date over Barnsdale House, Halifax, HX4 8NP and land at Barnsdale House ("**Barnsdale House**"), which is understood to be Phil Ryan's home.

5. Under a facility agreement dated 31 January 2022, MS Lending Group Limited advanced a further sum of £84,000 to the Company for a nine-month term ("**Loan 2**"). Loan 2 was secured by a debenture dated 31 January 2022 ("**Debenture 2**") and a legal charge of the same date ("**Charge 2**") over 47 Church Street, Huddersfield, HD3 4TQ ("**Church Street**").

6. In September 2022, Loan 1 was refinanced. Under a facility agreement dated 13 September 2022, MS Lending SPV1 Limited (a company in the same group as MS Lending Group Limited: I shall refer to the two companies together as "**the Secured Lenders**") advanced a sum of £595,000 to the Company for a six-month term ("**Loan 3**"). Loan 3 was secured by a debenture dated 13 September 2022 ("**Debenture 3**") and a legal charge of the same date over Barnsdale House ("**Charge 3**"). By mistake, Debenture 3 was registered twice at Companies House, but Charge 3 was not registered.

7. By letters dated 1 May 2023, Phil Ryan wrote to the Secured Lenders, each letter enclosing a promissory note, in purported redemption of Loans 2 and 3. By the first promissory note, Phil Ryan, on behalf of the Company, promised to pay the bearer the sum of £660,108.76 on 1 May 2028. By the second, he (again on behalf of the Company), promised to pay the bearer the sum of £93,785.00 by 1 May 2028. Each covering letter said:

   "You may not wish to accept this however under Bills of Exchange Act 1882, you lawfully must and the delivery notification is deemed acceptance".

   This statement was legally wrong: the Secured Lenders were not obliged to accept the promissory notes in reduction or satisfaction of the lending.

8. On 10 May 2023, letters of demand were sent to the Company requiring repayment of Loans 2 and 3. The Company did not repay the loans.

9. In the period 19 to 23 May 2023, Phil Ryan caused the Company to file a series of MR04 Statement of Satisfaction forms with Companies House. These wrongly claimed that the charges had been satisfied and as a consequence Companies House treated them as discharged.

10. In filing the forms, Phil Ryan described himself either as "promissory note issuer" or "secured part creditor" (or "secured party crediroe").

11. The reference to Phil Ryan as "promissory note issuer" is explained by the letters to the Secured Lenders dated 1 May 2023. The reference to being a "secured part(y) creditor" is probably to an "Omniversal Security Agreement" dated 16 March 2023 and purportedly entered into between "Phil Ryan Government Franchise Bailor" as "Debtor" and "Phil Ryan Non-Adverse, Non-Belligerent, Non-Combatant Party Bailee" as "Omniversal Secure Party" ("**the OSA**"). Although the OSA is somewhat redolent of a legal document by which one party grants a security interest over their property in favour of another, the language is little more than a meaningless jumble of words closer in nature to a magical incantation than a legal document. For example, it opens with a description of the OSA as being for:

> "the full facilitation by any conveyance through all communications for translation as assimilation of true value and worth in all facets of interstate, global, metaphysical, planetary, spiritual, dimensional, intrastate, domestic, and foreign commerce relations with full protection of God's Light, Truth and Love, Safe Harbour and Sinking Funds Provisions for all accounts, proceeds, property fixtures, product, goods, fixtures, things, signatures written, printed or typed, and services in account science correction techniques as they apply to commercial utility transmitters [commercial transmitting

utility] in the modern adversarial opposing and inquisitorial systems" (square brackets in original).

12. Phil Ryan sometimes describes himself as trustee of, or acting for, the Phil Ryan Trust. This description appears to derive from a set of documents signed by Phil Ryan and dated 31 May 2023 headed "Phil Ryan Trust AN INTERNATIONAL IRREVOCABLE PURE COMMON LAW TRUST Pursuant to The Hague Convention on the Law Applicable to Trusts and on their Recognition (Hague Conference on Private International Law) and Section 105 of the Uniform Trust Code". This is stated to be governed both by the "law of the state of WEST YORKSHIRE UNITED KINGDOM" and "governed under Article 1, Second 10 of the Constitution of the United States of America." Again, whilst these documents bear some similarities to a declaration of trust and associated documents, in parts the language is incomprehensible and, taken together, their meaning and effect is wholly unclear. Some documents executed by Phil Ryan (including an "affidavit of truth" dated 12 March 2024 in relation to a threatened private prosecution which I refer to below) claim that Barnsdale House and Church Street were settled into the Phil Ryan Trust on 5 May 2023.

13. On 25 May 2023, the Administrators were appointed receivers of Barnsdale House and Church Street, but took the view that their appointment over Barnsdale House was invalid. The Secured Lenders instructed Brecher to file a Part 8 claim both (a) to rectify the register at Companies House, so as to restore the charges which had been treated as satisfied and (b) to appoint the Administrators as administrators of the Company ("**the Rectification and Appointment Application**").

14. Phil Ryan responded to service of the Rectification and Appointment Application by sending Brecher a series of curious documents including a "Cease and Desist Order", a "Notice of Fault and Opportunity to Cure and Contest Acceptance", the promissory notes, an attachment to the OSA, a "Notice of Statement, Affidavit of Truth", a "Certificate of Trust" and a "Power of Attorney General & Hold Harmless/Indemnity Identity's" document. The documents follow the same pseudo-legal style of the OSA and trust documents. Their overall gist was that no money was owed to the Secured Lenders and that the Administrators were acting unlawfully, but the contentions made also included the odd concept of Phil Ryan claiming to be the executor of his own estate.

15. On 31 July 2023, Phil Ryan sent further documents by email to Brecher, including:

i) a copy of the application notice for the Rectification and Appointment Application with the words "offer to contract declined" added in red;

ii) a copy of Brecher's letter serving the application with the same addition;

iii) a document entitled "legal notice and demand", apparently addressed to "all City, County, State, Federal and International Public Officials, by and through UNITED KINGDOM STATE" which, though unclear, appears to suggest that the officials may be liable for large sums (payable in gold) for various violations of its provisions; and

iv) invoices addressed to the firm and various solicitors in it, each in the sum of £24 million, payment of which was demanded in "physical gold", presumably issued pursuant to the "legal notice and demand" document.

16. By order of 4 August 2023, His Honour Judge Hodge KC granted the Secured Lenders the relief sought on the Rectification and Administration Application. In his judgment, he said that the description of the various documents sent by Phil Ryan to Brechers before the hearing as "nonsensical legal notices" was a "restrained way of characterising the documents sent by Mr Ryan". Following service of the order upon him, Phil Ryan emailed the court and Brecher with a copy of the letter of service and sealed order with the words "offer to contract declined" added in red.

17. Phil Ryan sought to appeal the administration order, but permission to appeal and permission to rely on fresh evidence was refused by Lewison LJ on 3 May 2024.

18. In the meantime, on 20 October 2023 Phil Ryan emailed the Administrators contending that Church Street had been "repossessed pursuant to Common Law" and attaching an unissued claim form contesting the appointment of the adminstrators on various nonsensical grounds, including that it breached the Uniform Commercial Code, Magna Carta, the European Union (Withdrawal) Act 2018, the Bill of Rights and Act of Settlement. A few days later, Phil Ryan sent Brecher an unissued claim form in similar terms which named the firm as defendant. Both claim forms stated the value of the claim to be £2,214,000.

19. By email of 30 October 2023 to Bhavika Gorsia of Brecher, Phil Ryan suggested that he would file a discrimination case against Ms Gorsia unless she refrained from addressing him as Mr Ryan.

20. Following the appointment of the Administrators, an order for possession of Barnsdale House was made in the County Court at Huddersfield on 15 January 2024. Phil Ryan sought to appeal the possession order, but permission to appeal was refused by His Honour Judge Pema of 3 April. Following that refusal of permission to appeal,

Phil Ryan made an application to set aside the possession order. That application is listed to be heard by the Huddersfield Court on 28 August 2024. On 21 May 2024, Phil Ryan (on behalf of the Phil Ryan Trust) also issued possession proceedings in respect of Barnsdale House against the Company in the Huddersfield Court.

21. Notwithstanding the application to set aside the possession order, an eviction was scheduled for 23 May 2024. However, the High Court Enforcement Officer was unable to execute the writ of possession, despite the attendance of two police officers, as four men prevented him gaining access. His report records that Phil Ryan refused to accept the lawfulness of the writ of possession, citing Magna Carta, amongst other defences. The view of the enforcement agent was that Phil Ryan and his associates "were clearly prepared to offer substantial physical resistance if enforcement were to go ahead with notice" and advice from the police is that multiple officers will be required to take possession on a future occasion as a breach of the peace is likely.

22. In the meantime, by emails of 14 March 2024, Phil Ryan, as trustee of the Phil Ryan Trust, purported to serve statutory demands, each for £24 million, on the Administrators' company (CG Recovery Limited), MS Lending Group Limited and Brecher and indicated that he was bringing private prosecutions against the Administrators, the directors of MS Lending Group Limited and Ms Gorsia of Brecher.

23. In light of the statutory demands, CG Recovery Limited, MS Lending Group Limited and Brecher each applied for injunctions restraining the presentation of winding-up petitions against these companies. ICC Judge Mullen granted interim injunctions on 28 March 2024. In his *ex tempore* judgment (of which I have an unapproved note compiled by Brecher) ICC Judge Mullen said that the "strong flavour of the matter

[was] that Phil Ryan is deeply aggrieved as to a placing of a company he is associated into administration and these statutory demands are made to those who have had a distinct role in putting it into administration…it is abundantly clear, Mr Ryan whether out of malice or being misguided has decided to inflict damage on entities connected to the administration". He also counselled Phil Ryan to think extremely hard as to whether he should continue his actions as there was a concern that he would disappear down a "legal rabbit hole". On 5 April 2024, notwithstanding the interim injunctions, Phil Ryan emailed Mr Robertson saying that winding up petitions had been issued against Brecher, MS Lending Group Limited and CG Recovery Limited and copies were in the post, although no such petitions were in fact received. The injunctions were made final on 11 April 2024 with an order for costs against Phil Ryan.

24. Although Phil Ryan did not attend the interim injunction hearing, on the same day he served an application on Mr Robertson seeking to commit him for contempt of court for two statements made in his witness statement in support of the injunction applications ("**the Contempt Application**"). The Contempt Application was dismissed, and declared to be wholly without merit, by order of Mr Nicholas Thompsell sitting as a Deputy Judge of the High Court on 25 June 2024. In his *ex tempore* judgment (of which again I have a note compiled by Brecher), Mr Thompsell said that "the contempt application is wholly without merit, vindictive, unmeritorious". He noted the considerable expense generated by the Contempt Application.

The Part 7 Claims

25. Phil Ryan has not served particulars of claim in respect of any of the Part 7 Claims, so one is reliant on the brief details of claim in each claim form to understand what

causes of action might be sued upon.

26. The first Part 7 Claim ("**Claim A**") was issued on 14 May 2024 and originally given claim number CL-2024-000269 in the Commercial Court. It now has claim number CR-2024-003737. The claimant is Phil Ryan, with an address "c/o Phil Ryan Trust" in Switzerland. The defendant is shown as "Phil Ryan (Director)" at the Company. I take this to be an attempt to make the Company a defendant without conceding that it is in administration. The front sheet of the claim form describes the claim as being "for property Value of £950,000 plus 8%". Mr Robertson infers this to be a reference to the value of Barnsdale House. In the brief details of claim, it is said:

> "Claimant raises claim petinent to a Commerciel Lien filed under the Articel 9 Unifrom Commercial Code (UCC) and registered internationally with the Maryland Department of Assessments and Taxation" (spelling as in original).

There follows an assertion that the Uniform Commercial Code has priority under English law, by reference to a passage in a Law Commission Report, and that a "UCC lien" takes priority over a charge. It is said:

> "Claimant raises claim to prevent unlawfull possession attempts by the administrators of LVR Capital Ltd which is currently under appeal application to the Supreme Court." (Spelling as in original).

There is then what appears to be a quote from a textbook about liens in liqudations. The brief details conclude:

> "The UUC financing statements corroborates that Phil Ryan is the ultimate priority creditor".

27. The second Part 7 Claim ("**Claim B**") was issued on 15 May 2024, originally under claim number CL-20204-000270 and now has claim number CR-2024-003733. The claimant is again shown as Phil Ryan c/o Phil Ryan Trust, which is said to be registered in the USA but having the same Swiss address. The Company is shown as

defendant (though without reference to it being in administration). The amount claimed in Claim B is £5 million. The contents of the brief details of Claim to some extent overlap with those in Claim A, as there is reference to a "commercial lien" registered "under Uniform Commercial Code". There is also a claim that the Company is wholly owned by the Phil Ryan Trust and a reference to the OSA. The brief details conclude with:

> "In order to complete the administration the Administrators should first satisfy the Lien while HM Land Registry records should be ammended to represent true ownership of the Phil Ryan Trust plus the Commercial Lien and OSA collateral agreement" (spelling as in original).

28. The third Part 7 Claim ("**Claim C**") was issued on 17 May 2024 under claim number CL-2024-000276 and is now claim number CR-2024-003736. This time the claimant is named as "Phil Ryan Trust", with the Company as defendant. The total amount of the claim is stated to be "non-monetary". The brief details of claim for Claim C commence with

> "CLAIM OF TRUST PROPERTY/TITLE OWNERSHIP by order of the Recognition of Trusts Act 1987, Chapter 14, the Grantees/Trustees raise claim of ownership of the below titles/properties: [Barndale House, Church Street]".

It is asserted that the properties were settled into "a non-domestic, International irrevocable Pure Common Law Trust (Spendthrift Trust) on 5th May 2023 pursuant to the Hague Convention on the Law Applicable to Trusts and on their recognition (Hague Conference on Private International Law) and Section 105 of the Uniform Trust Code; The Hague Convention being ratified by the United Kingdom on July 2, 2019".

The brief details continue with:

i) an assertion that the trust is registered with the (US) Inland Revenue Service and Washington DC Copyright Office;

ii) a reference to the OSA;

iii) an assertion that the properties were transferred from a UK domestic trust known as Blacksun Trust, but that HM Land Registry's records were not updated;

iv) an assertion that the Company (in administration) is subject to a commercial lien, which takes priority over a charge in law, as per Law Commission guidance; and finish with

v) the claim that "Phil Ryan Trust is the rightful/lawful/legal owner of the disclosed titles/properties".

Applications to Strike Out Part 7 Claims

29. Under CPR 3.4(2), the court may strike out a statement of case (which includes a claim form) if it appears to the court (a) that the statement of case discloses no reasonable grounds for bringing or defending the claim; (b) that the statement of case is an abuse of the court's process or is otherwise likely to obstruct the just disposal of the proceedings; or (c) that there has been a failure to comply with a rule, practice direction or court order.

30. PD 3A para. 1.2 gives as examples of cases where they court may conclude that particulars of claim fall within CPR 3.4(2)(b) those which are incoherent and make no sense and those which contain a coherent set of facts but those facts, even if true, do not disclose any legally recognisable claim against the defendant. In the present case

there are no particulars of claim but the same approach in my judgment may be taken to the brief details of claim in a claim form.

31. By CPR 3.4(6), if the court strikes out a claimant's statement of case and it considers that the claim is totally without merit, the court's order must reflect that fact and the court must at the same time consider whether it is appropriate to make a civil restraint order. A claim or application is totally without merit if it is bound to fail in the sense that there is no rational basis on which it could succeed. It need not be abusive, made in bad faith or supported by false evidence or documents in order to be totally without merit, but if it is, that will reinforce the case for a civil restraint order: Sartipy v Tigris Industries Inc [2019] EWCA Civ 225 at [27].

32. In my judgment, Claim A should be struck out, for the following reasons.

i) First, the claim is brought against the Company in administration without the consent of the Administrators or the permission of the court, as required by paragraph 43(6) of Schedule B1 of the Insolvency Act 1986. Because the claim form does not aver the giving of such consent or permission, it discloses no reasonable grounds for bringing the claim and because there is no such consent or permission and no intention to seek it, the claim is an abuse of the court's process.

ii) Secondly, the claim as formulated in the claim form is incoherent and makes no sense. The claim is to a lien in favour of the claimant (who is either Phil Ryan personally or Phil Ryan as trustee of the Phil Ryan trust) but the brief details of claim give no information about how or when such a lien was created, what it secures, the property over which the security was taken or why a finding that such a lien exists would entitle Phil Ryan to £950,000 plus 8%

or make the Administrators' claim to possession unlawful. Thus for this additional reason the claim form discloses no reasonable grounds for bringing the claim.

iii) Thirdly, in so far as Phil Ryan's case is that he has a lien (either personally or as trustee) arising from the OSA which takes priority over Debentures 2 and 3 and/or Charges 2 and 3 (which case is not pleaded but is likely to be the basis of Phil Ryan's contentions, given what he has said elsewhere), the claim is wrong in law. It seems highly unlikely that the OSA gives rise to enforceable rights and liabilities but even if it did, it was executed in March 2023 and does not take priority over the earlier Debentures 2 and 3 or Charges 2 and 3. Consequently, on this ground the claim form discloses no reasonable ground for bringing the claim.

iv) Fourthly, in so far as Phil Ryan is asserting that the Administrators have no right to possession of Barnsdale House, that claim has been conclusively determined against him in the possession proceedings, and permission to appeal the possession order has been refused. The Administrators' right to possession is *res judicata*, and it is an abuse of the court's process to seek in Claim A to mount a collateral challenge to the Huddersfield court's order.

33. I therefore strike out Claim A, which in my judgment is totally without merit.

34. In my judgment, Claim B should be struck out, for the following reasons:

i) First, again, the claim is brought without the consent of the Administrators or the permission of the court, contrary to paragraph 43(6) of Schedule B1 of the Insolvency Act 1986.

ii) Secondly, the claim as formulated in the claim form is incoherent and makes no sense and for that reason discloses no reasonable grounds for bringing a claim. The claim is to a lien and/or to alter the Land Register. As regards the claim to a lien, there is in Claim B (unlike Claim A), reference to the OSA. But there remains no information as to what the lien is said to secure, the property over which security was taken or why a finding that such a lien exists would entitle Phil Ryan to £5 million. There are references to the Bills of Exchange Act 1882 and the Trading with the Enemy Act 1917 but the reader is left wholly unclear as to why these statutes might be relevant to the claim. There are no facts set out to support the contention that any Land Registry entries should be changed.

iii) Thirdly, in relation to the case for priority of the lien over the Secured Lenders' debentures and charges, Claim B suffers from the same deficiency as Claim A, as set out in paragraph 32(iii) above.

iv) Fourthly, it is an abuse of process for Phil Ryan to have brought Claim B as a separate claim rather than claiming the whole of the relief he seeks in Claim A, particularly given that the (apparently) same claim of lien is said to give rise to a liability of £950,000 plus 8% in Claim A but £5 million in Claim B.

35. I therefore strike out Claim B, which in my judgment is totally without merit.

36. In my judgment, Claim C should be struck out, for the following reasons:

i) First, again, the claim is brought without the consent of the Administrators or the permission of the court, contrary to paragraph 43(6) of Schedule B1 of the Insolvency Act 1986.

ii) Secondly, in so far as Claim C refers to the existence of a lien and the OSA, the claim suffers from the same issues of incoherence and unsound legal basis as Claims A and B and is therefore liable to be struck out as disclosing no reasonable ground for bringing the claim.

iii) Thirdly, in so far as Claim C is a claim that Barnsdale House and Church Street are property of the Phil Ryan Trust, the claim is also incoherent and contradictory. In one place the brief details contend that the properties were settled into the Phil Ryan Trust on 5 May 2023 (which is consistent with other documents) but in another place, at least on one reading, they appear to contend that they were transferred to the Phil Ryan Trust from another trust known as the Blacksun Trust in July 2021. If it is intended to claim that this transfer gives the Phil Ryan Trust some form of priority over the Secured Lenders' debentures and charges, that claim is not set out, nor can I see any good ground on which a claim to such priority could be made out. On this basis, too, the claim form discloses no reasonable ground of claim.

iv) Fourthly, it is an abuse of process for Phil Ryan to have brought Claim C as a separate claim rather than claiming the whole of the relief he seeks in Claim A.

37. I therefore strike out Claim C, which in my judgment is totally without merit.

Extended Civil Restraint Order

38. I now turn to the application by the Company for an ECRO. I am also obliged by CPR 3.4(6)(b) to consider whether it is appropriate to make a civil restraint order.

39. CPR 3.11(2) provides that a practice direction may set out (a) the circumstances in which the court has the power to make a civil restraint order against a party to

proceedings; (b) the procedure where a party applies for a civil restraint order against another party; and (c) the consequences of the court making a civil restraint order.

40. Practice Direction 3C sets out the bases on which the court may make a limited, extended or general civil restraint order. If an ECRO is made by a High Court judge it has the effect that, unless otherwise ordered, the party against whom the order is made is restrained from issuing claims or making applications in the High Court or the County Court "concerning any matter involving or relating to or touching upon or leading to the proceedings in which the order is made" without first obtaining the court's permission. Pursuant to para. 3.1 a judge of the High Court may make an ECRO:

"where a party has persistently issued claims or made applications which are totally without merit".

41. In Sartipy, above, at [28]-[32] Males LJ (with whom Bean LJ agreed) said:

"28. In CFC 26 Ltd v Brown Shipley & Co Ltd [2017] 1 WLR 4589 Newey J considered what was meant by "persistently" in the phrase "a party has persistently issued claims or made applications which are totally without merit" in paragraph 3.1 of CPR Practice Direction 3C. He held, in agreement with previous first instance authority, that "persistence" in this context requires at least three such claims or applications. I respectfully agree. I would add some further points by way of clarification.

29. First, "claim" refers to the proceedings begun by the issue of a claim form. In the course of those proceedings one or more applications may be issued. If the claim itself is totally without merit and if individual applications are also totally without merit, there is no reason why both the claim and individual applications should not be counted for the purpose of considering whether to make an ECRO.

30. Second, although at least three claims or applications are the minimum required for the making of an ECRO, the question remains whether the party concerned is acting "persistently". That will require an evaluation of the party's overall conduct. It may be easier to conclude that a party is persistently issuing claims or applications which are totally without merit if it seeks repeatedly to re-litigate issues which have been decided than if there are three or more unrelated applications many years apart. The latter situation would not necessarily constitute persistence.

31. Third, only claims or applications where the party in question is the claimant (or counterclaimant) or applicant can be counted (although this includes a totally without merit application by the defendant in the proceedings). A defendant or respondent may behave badly, for example by telling lies in his or her evidence, producing fraudulent documents or putting forward defences in bad faith. However, that does not constitute issuing claims or making applications for the purpose of considering whether to make an ECRO. Nevertheless such conduct is not irrelevant as it is likely to cast light on the party's overall conduct and to demonstrate, provided that the necessary persistence can be demonstrated by reference to other claims or applications, that an ECRO or even a general civil restraint order, is necessary.

32. Fourth, as Newey J also held in CFC 26 Ltd v Brown Shipley & Co Ltd, the term "a party who has issued" such claims or applications refers not only to the named party but also to someone who is not a named party but is nevertheless the "real" party who has issued a claim or made an application. Again, I respectfully agree. Although "the real party" is not a concept expressly found in the Civil Procedure Rules, it is a concept which has been deployed from time to time, for example in the context of funding proceedings (cf Dymocks Franchise Systems (NSW) Pty Ltd v Todd (Associated Industrial Finance Pty Ltd, Third Party) [2004] 1 WLR 2807, para 25), while security for costs may be ordered against a claimant who "is acting as a nominal claimant" (CPR r 25.13(1)(f)). It is unnecessary to explore in this appeal the limits of the "real party" concept, but it must extend to a person who is controlling the conduct of the proceedings and who has a significant interest in their outcome."

42. If the pre-conditions for making an ECRO are met, the court has a discretion whether to make the order. In Re Ludlam [2009] EWHC 2067 (Ch), Mr Edward Bartley Jones QC, sitting as a Deputy High Court Judge said at [13]:

"To my mind the most important factor in the exercise of the discretion is the "threat level" of continued issue of wholly unmeritorious claims or applications. No litigant has the substantive right to trouble the court with litigation which represents an abuse of the court's process (see, for example, Bhamjee at para 33(iii)). The mischief of such unmeritorious litigation is not merely the unnecessary troubling of the opponents (frequently in circumstances where the opponents cannot enforce costs orders against the party bringing the unmeritorious litigation). Over and above this such unmeritorious litigation drains the resources of the court itself, which of necessity are not infinite. Hence, limited resources which should be devoted to those who have genuine grievances are squandered on those who do not (see paras 8 and 9 of Bhamjee). It is no defence for the party bringing the unmeritorious litigation to say that he genuinely, and honestly, believed that he had a viable grievance. As the Court of Appeal said in Bhamjee (para 4) in many, if not most, cases the litigant in question has been seriously hurt by something which has happened in the past. The litigant feels that he was unfairly treated and cannot understand it when the courts are unwilling to give him the redress he seeks. To my mind the only relevance of an honest belief in the validity of the unmeritorious claims which are being brought is that it may go to increase the "threat level" of future unmeritorious litigation. The question to be asked, quite simply, is will the litigant, now, continue with an irrational refusal to take "no" for an answer

(cp. para 4 of the judgment of Lewison J. in Thakerar –v- Lynch Hall and Hornby [2006] 1 WLR 1511).

43. In the case of Phil Ryan, the threshold requirement, namely that he should have made at least three claims or applications which are totally without merit is satisfied: the Contempt Application and the three Part 7 Claims have all been determined to be totally without merit.

44. I also consider, having regard to the guidance in Sartipy, that Phil Ryan's conduct, in making the Contempt Application and in bringing the Part 7 claims, is properly described as "persistent". Even if one concentrates solely on the four applications which have been determined to be totally without merit, there is a clear pattern of repeated court applications, over a short period of time, brought on the basis of essentially the same (or very similar) arguments.

45. Looking at Phil Ryan's conduct and use of the court's processes to mount his pseudolegal arguments, I am in no doubt whatsoever that it would be an appropriate exercise of my discretion to make an ECRO. The four applications which have been held to be totally without merit are part of a wider picture which demonstrates that Phil Ryan is aggrieved by the fact that the Company is in administration, refuses to accept the legitimacy of the Secured Lenders' security or the Administrators' appointment and is determined to use, and indeed abuse, legal procedures and the processes of the court to seek to disrupt the administration as far as he possibly can, by attacking those who are associated with it. I refer in particular to Phil Ryan's:

i) attempt to appeal against the order made by HHJ Hodge KC;

ii) service of statutory demands making unfounded and wholly nonsensical demands for millions of pounds-worth of gold;

iii) sending of unissued claims;

iv) commencement of, or threat to commence, private prosecutions; and

v) repeated attempts to overturn the possession order (by way of appeal, application to set aside the order and the bringing of his own competing possession proceedings) and his refusal to allow the writ of possession to be executed, necessitating a substantial police presence.

46. Overall, I agree with the submission of Mr Bailey KC on behalf of the Company that there is overwhelming evidence that Phil Ryan is an individual who is inclined to disregard the jurisdiction of the court when it suits him, but take advantage of it when he perceives it will further his interest, costing the Company many thousands of pounds (to the detriment of its creditors) and wasting the court's time and resources. Previous warnings, for example from ICC Judge Mullen about the risk of disappearing down a "legal rabbit hole", have been ignored. Orders for costs against Phil Ryan have not served to make him more cautious. Unless Phil Ryan is restrained, the threat level of continued issue of wholly unmeritorious claims and applications is, in my judgment, very high.

47. Consequently, I will make an ECRO in the terms applied for (which reflect the provisions of PD 3C para. 3.2). I have considered the appropriate duration of the ECRO and decided that it should last for the maximum period of three years (PD 3C para. 3.9(1)). This is on the basis that (a) Phil Ryan's conduct might be described, not merely as persistent but relentless; (b) some of the applications made or threatened, such as the Contempt Application and the private prosecutions, have potentially very serious consequences; and (c) the ECRO should be long enough to cover the whole period of the administration of the Company. I consider it appropriate to specify that

applications for permission to make applications/bring claims under PD 3C paras. 3.2(1), to amend or discharge the ECRO under 3.2(2) or for permission to appeal under para. 3.8 may be made to any High Court Judge, which will enable the most efficient use of the court's resources.

48. Given that decision, I need not consider the Company's alternative application for a Grepe v Loam order, which does not arise.

49. In light of CPR 3.4(6), however, I have considered whether I should go beyond the ECRO asked for and make a general civil restraint order. A judge of the High Court may make such an order:

> "where the party against whom the order is made persists in issuing claims or making applications which are totally without merit, in circumstances where an extended civil restraint order would not be sufficient or appropriate." (PD 3C para. 4.1).

50. I do not consider that the evidence suggests that an ECRO would not be sufficient or appropriate. Phil Ryan's vexatious conduct has been confined to bringing claims or making applications related in some way to the administration of the Company or the claims of the Secured Creditors and there is nothing at present to indicate that an ECRO will not appropriately restrain this conduct.

Costs

51. I heard submissions on costs (contingent on my decision on the merits of the applications before me) at the hearing. Given my orders on the four applications, there is no doubt that the Company is the successful party and, having regard to CPR 44.2, it would be right to require Phil Ryan to pay its costs of the applications. Moreover, this is, in my judgment, an appropriate case for those costs to be assessed on the indemnity basis, given that I have found that Phil Ryan has abused the process of the

court and made multiple applications which are totally without merit, both of which factors take this case out of the normal run of litigation.

52. I therefore approach the summary assessment of costs on the basis that, whilst proportionality is not an issue, I will not allow costs which have been unreasonably incurred or are unreasonable in amount (CPR 44.3(1)) and I will resolve any doubt in favour of the Company as the receiving party (CPR 44.3(3)).

53. The total costs shown on the Company's Statement of Costs are £56,254, which comprises £24,542 of solicitors' fees, £30,500 of fees for leading and junior counsel and £1,212 for court fees. As regards the solicitors' fees, the hourly rates charged are reasonable, in the context of these cases and applications. The time spent is in my judgment reasonable, save that (a) rather more time than was reasonable was spent considering the Part 7 Claims and the potential application for an ECRO and filing notice of acting and acknowledgement of service initially and (b) I bear in mind that Mr Robertson's affidavit was also sworn in relation to the Contempt Application, in respect of which an order for costs was made by Mr Thompsell. In the circumstances I reduce the solicitors' fees by £1,000. I have considered whether it is reasonable to charge for the attendance of both Mr Robertson and Ms Gorsia at the hearing and have concluded that, as both have been the target of Phil Ryan's harassing conduct, the attendance of both is reasonable. As regards Counsel's fees, these are substantial but, resolving any doubt in the Company's favour, not unreasonable. It was reasonable to instruct leading and junior Counsel for these applications and I anticipate that they will have had substantial input into the evidence for them, as well as having prepared the skeleton argument. Consequently, I summarily assess the Company's costs at £55,254.

54. On the basis that it is clear from his past behaviour and attitude to court orders that Phil Ryan is unlikely to treat the confidentiality requirements of PD 40E para. 2.4 as binding on him, I direct pursuant to PD 40E para. 2.2 that the provisions of the Practice Direction relating to circulation of a draft judgment do not apply. Consequently, this judgment is handed down without such prior circulation.

55. I ask Counsel for the Company to prepare draft orders, revising the drafts attached to the applications to reflect the terms of this judgment.