Neutral Citation Number: [2024] EWHC 327 (Ch)

CR-2023-006365

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

IN THE MATTERS OF ("Companies"):
REDHILL RESIDENTIAL PARK LIMITED (IN ADMINISTRATION)
PLUM TREE COUNTRY PARK LIMITED (IN ADMINISTRATION)
DEERS LEAP LIMITED (IN ADMINISTRATION)
BUDEMEADOWS COUNTRY PARK LIMITED (IN ADMIISTRATION)
CHRISTCHURCH MARINA PARK LIMITED (IN ADMINISTRATION)
ROYALE PARKS (CHRISTCHURCH) LIMITED (IN ADMINISTRATION)
AND IN THE MATTER OF THE INSOLVENCY ACT 1986

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

Date: 19/02/2024

Before :

I.C.C. JUDGE JONES

- -

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

Applicants

- and -

SINES PARKS HOLDINGS LIMITED

Respondent

PT-2023-001055

AND BETWEEN:

(1) REDHILL RESIDENTIAL PARK LIMITED (IN ADMINISTRATION)
(2) PLUM TREE COUNTRY PARK LIMITED (IN ADMINISTRATION)
(3) DEERS LEAP LIMITED (IN ADMINISTRATION)
(4) BUDEMEADOWS COUNTRY PARK LIMITED (IN ADMIISTRATION)
(5) CHRISTCHURCH MARINA PARK LIMITED (IN ADMINISTRATION)
(6) ROYALE PARKS (CHRISTCHURCH) LIMITED (IN ADMINISTRATION)

Claimants

- and -

SINES PARKS HOLDINGS LIMITED

Defendant

- -
- -

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

Hearing date: 19 December 2023 – draft judgment circulated 28 December 2023

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Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

This judgment is handed down remotely by circulation to the parties' representatives by email and release to The National Archives. The date and time for hand-down is deemed to be 10:30am on Monday 19 February 2023

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I.C.C. Judge Jones:

A) Introduction

1. The hearing on 19 December 2023 can best be described as the third return date for the Applicants' application ("the Application") for an interim injunction for urgent relief. For reasons explained in the judgment ("the Judgment") handed down on 4 December 2023, the hearing provided the Respondent with the opportunity to raise and argue matters which had not been addressed at the first hearing on 24 November and could not be addressed at the second on 1 December 2023. I will not repeat the summarised facts within the Judgment. I will continue to use its defined terms.

2. The Judgment decided that the Application's ***s238 IA*** claim failed as pleaded and should be struck out subject to considering any application to amend. That left the alternatively argued ground for relief that had not then been pleaded, required a claim form to be issued and potentially the Application to be amended. The Respondent had agreed nevertheless at the first hearing that the alternative basis could be heard to avoid procedural points causing delay.

3. In summary, the alternative ground argued was that the Applicants and/or the Companies should be granted injunctive relief based upon the sale of the Sites by a chargee, their position as lessees and the existence of the statutory moratoriums. The Judgment accepted this case but (importantly and as explained) only subject to any further counter-arguments the Respondent wished to raise on the day of hand-down, which became today, as explained in the Judgment.

4. This hearing has also addressed a claim form with Particulars of Claim that has since been issued for the Companies to give effect to the alternative argument. It has been transferred to this List. The Applicants have also applied to amend their IA application notice and its Particulars of Claim. The Respondent, as a measure stated to be precautionary, has issued an application under ***paragraph 43 of Schedule B1 of the IA***.

5. Whilst I would prefer not to dwell on the procedural issues that have arisen, it is important to mention that there is no doubt that had the Applicants provided an appropriate time estimate at the first hearing of the Application for interim injunctive relief in the I.C.C. Judges' interim list, I would have adjourned the hearing to a special appointment, probably before a High Court Judge. The failure to do so has resulted in three substantive hearings and the need for time to be found to provide judgments. It has placed serious strain on the Court's resources and the approach has been contrary to the overriding objective. It has had the potential for unfairness to the Respondent and its lawyers are to be commended for the manner in which they have dealt with the case nevertheless, whilst appreciating that the Application needs to be dealt with as expeditiously as possible. From the Respondent's perspective, successful opposition to the Application would enable entry to the Sites for the purpose of achieving the sale of mobile homes on or to be placed on the Plots.

6. I raise this within the "Introduction" not only to emphasise my criticism but also to note that the Applicants' pursuit of the Application has been marked by failure to comply with undertakings on time, failure to provide documentation to the Respondent (I have in mind certainly the original indemnity relied upon to support the

undertaking in damages) and by the last minute production of documentation (I have in mind in particular the subsequently produced indemnity, which was not available to the Court) and arguments. It is an approach which has resulted in a wholly unsatisfactory shifting in issues, not less illustrated by the fact that the main proceeding before me is now the claim form issued by the Companies.

7. In all those circumstances I have been extremely tempted to refuse the Application for interim injunctive relief both as a mark of disapproval and because of my concerns over fairness to the Respondent. However, I have decided not to take that approach. The issues are serious, the consequences potentially very significant for both sides and a conclusion is needed to resolve the current position between the parties. I have sought to ensure that the Respondent has been able to address all disadvantages and I am satisfied this has occurred. However, in reaching this decision I will not ignore in my mind the need to take the problems outlined above into consideration as a matter of fairness when addressing the evidence and the submissions made. For example, insofar as I consider it appropriate to give the Respondent leeway for a lack of time to address a particular matter (whether in evidence and/or argument), I will do so.

B) The New Statements of Case

8. The issued claim form with the Companies as Claimants seeks relief to restrain trespass. The Companies' title is as tenant under a lease granted by the Ambassador Royale Companies. They purchased the freehold from ICG, in its capacity as chargee. The Companies therefore rely upon an interest which they assert confers the right of exclusive possession.

9. It is also pleaded that the Companies rely upon "overreaching" insofar as the Respondents rely for their proprietary rights upon the Transfer Agreement and the Settlement Agreement. It is the Companies' case that the extant registration of ICG's charge at H.M. Land Registry at the time those deeds were executed means all interests and rights the Transfer Agreement and the Settlement Agreement transferred/created were always subject to that registration. In consequence the sale of the freehold by ICG to the Ambassador Royale Companies overreached any interest and rights the Respondent had in the Plots on the Sites.

10. The Companies' landlords, the Ambassador Royale Companies, have also commenced a Part 7 CPR claim. That is not before me and nor have they participated in these hearings. Plainly it is not for me to address.

11. So far as the Application and its Particulars of Claim are concerned, the Applicants now ask for permission to claim by amendment: First, a particularised claim for ***s238 IA*** relief based on the case that the Companies received substantially less consideration than they gave for the Transfer Agreement and to the extent relevant, the Settlement Agreement. Second, that the Respondent has no right to enter the Site or to deal with the Plots in any way because of the overreaching. Third, that entry on the Sites and/or interference with the Plots and/or sale of mobile homes will breach the Companies' statutory moratoriums.

12. To obtain permission, a real prospect of success must be established and the Court must be satisfied that its discretion to grant permission should be exercised taking into consideration the overriding objective. The Respondent opposes the application taking (I write without criticism) many points. This led to time difficulties on 19 December 2023 and the grounds of opposition could only be presented in part. The application for permission to amend must be adjourned to allow full argument to the extent that it is considered the arguments still apply and/or are required after consideration of this decision.

13. It is to be noted, however, that the need to decide permission is a secondary consideration for this hearing. It will only need to be addressed for the purpose of obtaining interim relief insofar as the Companies' claim form will not be an accepted basis for the injunctions sought. Indeed the Respondent argues that the Application's ***s238 IA*** claim even as amended would/should not justify the grant of the injunction sought based upon duplication.

14. There is also an underlying point to be mentioned within this "Introduction": whether addressing interim relief and/or amendment, the hearings were not the opportunity to argue in depth the legal and factual merits of the case. It is not a mini-trial and even though three days have been used with over 1.5 days of submissions, their scope remained the hearing of an urgent application for injunctive relief made on notice.

C) This Hearing

15. This hearing has drawn attention within the disputes between the parties to the following key issues concerning overreaching ("Key Overreaching Issues"):

    15.1 Insofar as overreaching would apply in principle, whether the sale of the Sites to the Ambassador Royale Companies and/or the grant of the Leases to the Companies was/were made subject to the terms of the Transfer Agreement and the Settlement Agreement with the result that the interests and rights they transferred/created can still be relied upon by the Respondent notwithstanding prior registration of ICG's charge.

    15.2 Even if the answer is negative, whether the Respondent can avoid overreaching in reliance upon the individual "Written Statements" for (some) 200 Plots transferred to it by the Companies under the Transfer Agreement taking into consideration the protection the Respondent claims they have under the ***Mobile Homes Act 1983*** ("the MHA").

    15.3 Whether the Respondent can nevertheless rely upon personal contractual rights conferred by the Transfer Agreement and/or the Settlement Agreement on the bases that they survive overreaching and can be given effect to by the Companies by reason of their right to exclusive possession as lessees.

16. It is probably fair to observe that the importance of the second issue was not (fully) appreciated until Mr Boardman K.C.'s submissions on 19 December. I note that not

out of criticism of anyone but because they were made in the context of none of the Written Statements having been placed in evidence and without the relationship between the ***MHA*** and the ***Land Registration Act 2002*** ("the LRA") having been established. In addition, the example agreement provided during the hearing contained signatures but included a number of blank spaces which (on their face) should have but had not been filled in. This is a good example, however, of circumstances for which leeway should be given.

D) The Interim Relief Approach

17. Those and other issues were addressed in the context of the test for interim injunctive relief. The circumstances give rise to an issue whether the ***"American Cyanamid"*** tests and guide apply or the approach to be found in the decision of the Court of Appeal in ***Cayne and Another v Global Natural Resources plc*** [1984] 1 All ER 225. There was some confusion as to whether it would necessarily be the case that this decision will have the effect in practice of resolving the dispute because the Respondent could only pursue the interests and rights claimed to enable it to ultimately sell mobile homes on the Plots until the Lease terminated on (at latest) 21 March 2024. That is because (realistically) even an expedited trial would not be concluded before then.

18. Mr McGhee K.C. accepted the proposition that the decision would resolve the dispute on behalf of the Claimants based upon that end date. However, I think his agreement was offered in the context of the lack of appreciation of the second issue mentioned above. I did not understand him to reach the same conclusion (and it would be strange if he had) in a context of the Respondent claiming their proprietary interests and rights continue after 21 March 2024.

19. That being so, I still need to consider as an issue whether, and if so to what extent, the Application should be addressed by applying the ***"American Cyanamid"*** tests and guidelines and/or, as it is submitted for the Respondent, the approach established in ***Cayne and Another v Global Natural Resources plc*** (above). I need not repeat the well-known guidelines but it is convenient to deal here with the "approach in Cayne". I will apply it in any event in case my understanding should be considered incorrect elsewhere.

20. Mr Boardman K.C. emphasised the passages in the judgments of the Court of Appeal that specified the importance of an applicant satisfying an "overwhelming balance" merits test when the grant of interim relief would in practice resolve the issue and prevent the respondent from having a trial. Plainly those passages are important and binding. However, Mr Boardman K.C. accepted during his submissions that this cannot be identified as a strict test but a matter to be considered when applying the broad principle that the Court should use its best endeavours to avoid injustice when reaching its decision.

21. The Court of Appeal considered, as the Judge had, whether its case fell within the spirit of the decision of the House of Lords in ***NWL v Woods*** [1979] 3 All ER 504, making particular reference to the speech of Lord Diplock [at 626]. He identified the relevant circumstance as being where the grant of interim relief will in practice end

the action because the harm, which cannot be recompensed through compensation, will be done to the claimant by refusal or the defendant by grant of the interim relief. In that circumstance the judge should weigh the degree of likelihood of the applicant's success in establishing an entitlement to a final injunction at trial when balancing all factors relevant to *"weighing the risks of injustice that may result from his deciding the [interim] application one way rather than another"*.

22. In the case before the Court of Appeal that approach was considered appropriate to the facts where the grant of interim relief would achieve the plaintiffs' aim and would deny the defendant a final trial when there is a defence substantiated by evidence and the case for the plaintiffs is not overwhelming. In that regard it was emphasised that in this case there was no evidence to satisfy the court that the plaintiffs would be genuinely concerned to pursue their claim to trial once they had the interim relief which achieved their purpose. Indeed the decisions can be read as requiring this to be a prerequisite before the "approach in Cayne" should be applied and the court asks whether the applicant can justify such a result at the interim stage whether because the successful party would not pursue the claim and/or there was nothing left to justify the restrained party pursuing the matter (see in particular Kerr LJ at 234g-h and 235f-236d and May LJ at 238b-g).

23. Assuming that relief might be granted (whatever the test), I will need to consider the cross-undertaking in damages offered by the Applicants. Their approach to this requirement has been the subject of extensive criticism by Mr Boardman K.C. and it is convenient at this stage to identify the basic principles. "Section 15 of the White Book" addresses the general principles concerning the discretionary but normal requirement for a cross-undertaking as to damages to be offered before an interim injunction will be made. That may be with or without a condition of fortification. In this case the Applicants first offered a limited undertaking up to £300,000 but subsequently offered an unlimited undertaking.

24. Mr Boardman K.C. referred me to two decisions: ***Staines v Walsh and Howard*** [2003] EWHC 1486 (Ch) and ***Premier Motorauctions Ltd (in liquidation) and another v PricewaterhouseCoopers llp and another*** [2017] EWCA Civ 1872, [2018] 1 WLR 2955. In the former Mr Justice Laddie made clear the requirement when obtaining a freezing order for a statement indicating wealth (at least to cover the cross-undertaking) and the subsequent obligation to disclose relevant adverse changes in financial circumstances. In the latter the Court of Appeal addressed the relevance of an ATE insurance policy to the court's jurisdiction to order security for costs based upon the requirement for a belief that the claimant would be unable to pay a defendant's costs if ordered to do so. The conclusion was that the existence of the policy would not be sufficient on its own if its terms and/or any other relevant facts and matters, including for example whether the proceeds could/might be diverted, would not remove or adequately mitigate the required belief.

25. In my judgment:

a) Whilst the decision of Mr Justice Laddie provides an express requirement for a statement of wealth, outside of the context of freezing orders that it is to be viewed as a potential requirement depending upon the circumstances of the particular case. Whether the grant of interim relief should be made dependent upon evidence of means is a matter for the Court's overall discretion. For

example, the need for a statement of wealth potentially becomes less relevant if it is accepted (taking the two ends of the spectrum) that the claimant is obviously able to cover the undertaking or if it is plain that the claimant is impecunious since impecuniosity will not necessarily lead to the refusal of the relief. These are all factors to be taken into consideration when judicially exercising the Court's discretion.

b) The Court of Appeal's decision is to be viewed in the specific context of the need to address a jurisdiction that depends upon the existence of the belief described. Nevertheless the judgments identify matters that may be relevant to any challenge to a cross-undertaking in damages based upon the assertion that the cross-undertaking is inadequately fortified with the result that the Court should not grant the relief sought. Insofar as the Court addresses adequacy, the test to be applied should be whether a reasonable person in the position of the defendants could properly form the view that the proposed fortification of the cross-undertakings was satisfactory (see ***Holyoake and another v Candy and others*** [2016] EWHC 970 (Ch), [2017] EWCA Civ 92 [2018] CH 297).

E) The Key Overreaching Issues – The Submissions

26. The Transfer Agreement provides in clause 2.1 that the Companies transfer to the Respondent *"The signed dated Written Statements and the Plots, with full title guarantee free from all liens, mortgages and/or other charges and any other Encumbrances"*. Those Written Statements are defined as: *"the licences granted pursuant to the [MHA] … by the Companies in respect of the Plots and any subsequent licences granted pursuant to the [MHA] … by the [Respondent] to a third-party purchaser in respect of the Plots in the form attached at Schedule 3"*. Mr Boardman K.C.'s submissions also rely upon the TA Clause 3 Rights and the SD Clause 7 Prohibitions. They are explained in paragraphs 24-25 of the Judgment as follows:

> *The Respondent's case relies upon by clause 3 by which there were granted to the Respondent rights ("the TA Clause 3 Rights") which survive as against the Companies for the benefit of the Respondent and, indeed, the Plots that include: access and egress; development where undeveloped; the connection of services; the location of mobile homes; the right to act as agent for the Companies to transfer any Plot with mobile home in place including the right to issue the required statutory licence for occupation; and the right to sell all or any of the Plots to a third party purchaser.*
>
> *In support of this, the Settlement Deed (19 May 2023), which included the Companies as parties together with (amongst others) Mr Bull and the Respondent, is also relied upon by the Respondent; in particular clause 7 (in summary and still on a serious issue to be tried approach) on the basis that it bound the Companies (amongst others): not to challenge the validity or enforceability of the Transfer Agreement; not to interfere with or obstruct the rights granted to the Respondent; not to develop, use or occupy the Plots or to interfere with any works carried out on the Plots to date ("the SD Clause 7 Prohibitions"). Whilst the Respondent (amongst others) covenanted to stop and not carry out any further works on the Plots, this would only be down to the repayment date, 31 July 2023. On that date the Respondent would transfer the Plots to the Companies provided the settlement sum was repaid in full (which it was not). If not the Respondent's covenant not to develop, use or occupy the Plots lapsed on that date.*

27. The 16 March 2023 Transfer Agreement and the 19 May 2023 Settlement Agreement were entered into at a time when ICG's charge was registered at H.M. Land Registry. I have not been referred to its contents but neither side suggests that it is other than a binding fixed charge over the Sites and a floating charge over the Companies' business and assets. The starting point, therefore, is that, potentially, any interests and rights obtained by the Respondent were gained subject to the prior rights of ICG as chargee including its rights to take possession and sell the charged property (see ***sections 2(1)*** and ***104 of the Law of Property Act 1925*** ("the LPA")).

28. That being so, when on 21 September 2023 ICG sold the Sites, the Respondent's interests and rights were overreached. The Ambassador Royale Companies purchased the Site unfettered by the Respondent's interests and rights. The leases they granted upon completion of their purchase to the Companies were derived from their unencumbered title and, as a result, are not subject to the Respondent's claimed interests and rights.

29. That will not be so, however, if the terms of the 21 September 2023 Sale Agreement to the Ambassador Royale Companies provide otherwise. The deed describes the transaction as a sale by ICG, exercising its powers under ***section 101 LPA***. It incorporates Part 1 of the Standard Commercial Property Conditions (Third Edition – 2018 Revision) subject to any contrary provision. Clause 11 provides (in summary) that the freehold title is to be transferred but without title guarantee or covenants for title. There was no proof of title save to the extent deduced, no requisitions and no obligation to provide a title declaration. That, of course, does not in itself assist the Respondent.

30. However, clause 10 provides that the transfer will be subject to (to the extent potentially relevant): (i) *"Title Matters"*, which can be summarised as the matters registered at HM Land Registry against the title affecting the freehold title; (ii) *"all rights easements quasi-easements ... affecting the Property"*; and (iii) all *"Third Party Agreements"*. They are defined to include an agreement pursuant to which the relevant Company (i.e. according to Site):

> *(a) ... has purported to transfer or grant (or has purported to give authority to transfer or grant) any right or interest over the whole or any part of a Property to a third party (a "Third Party Recipient");*
>
> *(b) a Third Party Recipient (or any party claiming to derive or have obtained any right, interest or authority from a Third Party Recipient) has purported to transfer or grant (or has purported to give authority to transfer or grant) any right or interest over the whole or any part of a Property to a third party."*

31. The Respondent relies upon those provisions to establish that the Royale Ambassador Companies purchased their freehold title of the Sites subject to the interests and rights transferred/created by the Transfer and Settlement Agreements. These include not only the transfer of the Plots and Written Statements but also the grant of easements, such as the right to access and egress the Sites for the purpose of using the 200 Plots. That being so, it follows that the Leases granted to the Companies by the Royale Ambassador Companies are equally subject to those interests and rights.

32. Mr McGhee K.C. accepts that literal construction of *"Third Party Agreements"* but submits that it is does not apply to the Transfer and Settlement Agreements. That is

because when the Sale Agreement is read as a whole, it is apparent that for an interest or right (proprietary or personal) to fall within clause 10, it must be an interest or right binding upon the land. This does not apply to the Transfer Agreement and Settlement Agreement because all interests and rights transferred/created by them were overreached upon execution and completion of the Sale Agreement. That intention and construction is apparent, he submits, from the substance of the Sale Agreement. It was a sale of the freehold title pursuant to the ***section 101 LPA*** powers without overreached interests and rights and there is no reason, he submits, to suggest that the parties intended encumbering that title with interests and rights conferred by the Transfer Agreement and Settlement Agreement when they would not otherwise bind the land.

33. In addition, he submits, clause 6.1 of the Sale Agreement clearly establishes that this must be correct. Clause 6.1 is an additional payment provision (believed by the Applicants to have the potential to produce a further sum of as much as £28,777,285) which will be activated upon a *"Trigger Event"*. This is defined (in summary but see also paragraph 12 of the Judgment) by reference to *"any plot situated on a [Site] which is or may be subject to a Third Party Agreement as listed in Schedule 7"*. That Schedule is a list of Sites/Plots and not a list of Third Party Agreements. I have not been specifically taken to it but understand it will refer to the Plots which the Transfer Agreement and the Settlement Agreement concern. Mr McGhee K.C's submission is that this would make no sense if the Sale Agreement intended the Transfer Agreement and the Settlement Agreement to be binding as the Respondent asserts.

34. During the course of the submissions counsel referred me to the decisions of ***Lyus v Prowsa Developments Ltd*** [1982] 1 WLR 1044 and ***Duke v Robson*** [1973] 1 WLR 267. Whilst I do not suggest that these decisions may not be relevant at trial, for the purposes of the tests I am applying it is sufficient to appreciate that the issue between the parties turns upon construction of the Sale Agreement. For example, if it contains an enforceable provision to the effect that the transfer is subject to the Respondent's interests and rights under the Transfer Agreement and Settlement Agreement, there is no need to address the existence of a constructive trust. The Ambassador Royale Companies will only have received title subject to "the Third Party Agreement".

35. I should just note that neither side has suggested that the merger of the contract with the transfer will affect their submissions. Accordingly, I leave that there.

36. The Respondent also relies independently upon the 200 Written Statements executed by the Companies and the Respondent upon or soon after execution of the Transfer Agreement. Mr Boardman K.C. specifically refers me to ***section 3 of the Mobile Homes Act 1983*** ("the MHA") which provides that MHA agreements are:

> "*binding on and enure for the benefit of any successor in title of the owner and any person claiming through or under the owner or any such successor*". The definition of *"owner, in relation to a protected site, means the person who, by virtue of an estate or interest held by him, is entitled to possession of the site or would be so entitled but for the rights of any persons to station mobile homes on land forming part of the site"* (***section 5(1) MHA***).

Mr Boardman K.C. submits that the Written Statements are "Third Party Agreements" to which the Sale Agreement is subject and are in any event binding pursuant to the ***MHA***.

37. Mr McGhee K.C. submits that the definition of "Written Statements" within clause 1.1 of the Transfer Agreement limits them to those in existence prior to its execution and those granted by the Respondent afterwards. It does not on its face refer to the 200 Written Statements made by the Companies upon or after transfer under the Transfer Agreement. The definition reads as follows (my underlining for emphasis):

> *"… the licences granted pursuant to the [MHA] … by the [Companies] in respect of the Plots and any subsequent licences granted by the [MHA] … by the [Respondent] to a third-party purchaser in respect of the Plots in the form attached at Schedule 3".*

38. Therefore, Mr McGhee K.C. submits, the question whether they were capable of being "Third Party Agreements" under the Sale Agreement does not arise, although his submission as to the answer of whether they would otherwise be "Third Party Agreements" would be the same as for the Transfer Agreement itself. He also submits that the definition of Written Statements establishes that clause 2.1 of the Transfer Agreement is in any event specifically concerned with agreements protected by the ***MHA*** (with the variations of subsequent legislation). ***Section 1(2)*** provides that the statute applies:

> *"to any agreement under which a person (the occupier) is entitled – (a) to station a mobile home on land forming part of a protected site; and (b) to occupy the mobile home as his only or main residence".*

39. Mr McGhee K.C. submits, applying that provision, that the ***MHA*** makes clear that such an agreement has to be entered into by a person who will occupy the mobile homes as their residence. Whilst a person can be a company, it cannot occupy a mobile home as its main residence (although, even if it could the number of homes would be limited to one).

40. After the hearing Mr Boardman K.C. provided the Court with the following information:

    a) It has been decided that the meaning of the word *"person"* in the MHA is not restricted to a natural person (see ***Berkely Leisure Group v Scott and the Spastics Society***, HHJ Baker, 29.10.92).

    b) ***Section 27 of the Land Registration Act 2002*** provides that agreements under the ***MHA*** do not need to be registered at H.M. Land Registry.

    c) There are blanks in the executed, 200 Written Statements because the parties intended that the Respondent would place mobile homes and sell the Plots to buyers, and in the meantime would pay no pitch fees / services as provided at clause 3(d) and 5.2 of the Transfer Agreement.

41. I note, however, that the decision of ***Berkely Leisure Group v Scott and the Spastics Society*** (above) is specifically concerned with ***section 3(3) of the MHA*** and the construction of the word *"person"* in the context of a protected ***MHA*** agreement being binding upon and enuring for the benefit of those residing with the deceased at the mobile home as their only or main residence at the time of death and those claiming through or under the owner or successor in the context of the deceased having been occupying the mobile home as their only or main residence. Insofar as it concerns inheritance, it is a provision concerned to ensure that the value of the ***MHA*** agreement will not be lost to the estate of the occupier upon their death.

42. ***Subsection (3)(b) MHA*** expressly provides that should there be no widow[er] or surviving civil partner residing with the deceased at the time of their death, the ***MHA*** protected agreement will pass to the person entitled to the mobile home under the will or by intestacy (subject to ***subsection (4)***). The Judge's decision in ***Berkely Leisure Group v Scott and the Spastics Society*** (above), that the word "person" was not limited to natural persons, was made in that specific context. He decided first that that the *"person"* entitled must be the beneficiary[ies] not the executor. Second, that the executors or personal representatives could sell the mobile home and assign the ***MHA*** protected agreement when the beneficiary, the *"person"*, was "the Spastics Society", as then called. In the context of this specific provision concerning inheritance, he did not consider Parliament intended the beneficiary, the *"person"*, to be a natural person which would have to be the case if they were to reside at the mobile home.

43. I also note that ***section 27 of the Land Registration Act 2002*** is concerned with dispositions requiring registration. It would be surprising if licenses under the ***MHA*** had been included but that is not the issue. The issue is whether the transfer of the Sites to the Ambassador Royale Companies were subject to the ***MHA*** Statements without notice of them having been registered at H.M. Land Registry. The submission of Mr McGhee K.C. is that they do not require registration but will only be binding if the requirements for overriding interests within ***Schedule 3 paragraph 2 of the LRA 2002*** are met.

44. Mr McGhee K.C. and Mr Lewis responded by email to Mr Boardman K.C.'s information. I need only note that for reference without setting out the details of their response.

45. Mr Boardman K.C. presents an alternative case should the Respondent's proprietary interests and rights have been overreached. He submits that there are contractual provisions binding upon the Companies to consider, whether to be found in the Transfer Agreement, the Settlement Agreement and/or the Leases. Mr Boardman K.C. submits that the Companies remain in exclusive possession of the Sites and, therefore, can fulfil their contractual obligations under the Transfer Agreement and the Settlement Agreement without offending the terms of the Leases. For example, they can grant or assign ***MHA*** protected agreements upon the sale of mobile homes once placed upon any of the 200 Plots. They can be (in effect) required to do so because they have granted the Respondent a contractual right to do that as their agent.

46. Mr Boardman K.C. submits that the existence of the Leases does not interrupt or prevent the Companies' obligations or the agency. He relies upon the provisions within the Leases which (in summary) provide for the Companies to run *"the business of selling bungalows and operating static home sites run from [the Sites] by the Companies as at the date of the lease"*. These are summarised at paragraph 28 of the Judgment as follows:

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

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

b) The Companies shall not use the Sites for any purpose other than for the purpose of conducting the Business of selling bungalows and operating static home sites run from the Sites by the Companies as at the date of the lease. At the end of the term, the Companies shall return the Sites to the Ambassador Royale Companies in the repair and condition required by clause 8.3. (although that is an obligation not to commit waste).

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

47. Mr McGhee K.C. in response relies upon the submission that the Companies' title as lessees cannot be better than the title of the lessors. If, as he submits, overreaching has meant that the Ambassador Royale Companies have title unencumbered by any interests and/or rights of the Respondent, the same must apply to the Companies.

48. Mr Boardman K.C.'s submissions also fall to be considered in a context where the Respondent is in effect contesting that it can obtain specific performance of surviving contractual obligations. This not being a case, it must follow if the obligations can still be enforced, where the Transfer Agreement has not been terminated. That brings into play matters addressed in the Judgment: Not only is it plain that the Applicants will not permit performance of the Transfer Agreement and/or the Settlement Agreement but it was stated at the first hearing that they have terminated any such contract. Mr Boardman K.C., however, relies upon the SD Clause 7 Prohibition preventing any such termination.

49. There is, however, another potential problem for the Respondent's case for performance of these contractual obligations (i.e. assuming absence of any proprietary interests and rights) which expressly depends upon the existence of the Leases that will terminate at latest on 21 March 2024. Specific performance between now and then will require the Respondent to be willing and able to fulfil its contractual obligations. That performance pursuant to the terms of the Transfer Agreement will require some of the 200 Plots to be built upon, the mobile homes to be sold and the Respondent's title to the Plots returned to the Companies. It needs to be considered whether the latter obligation affects the ability to ask for specific performance.

50. Performance of those contractual obligations also leads to the issue of the Companies' moratoriums. Mr Boardman K.C. submits that ***paragraph 43 of Schedule B1 IA*** contains no restraint upon a party with an interest in land exercising their rights and no restriction upon them exercising their contractual rights save for specific instances such as enforcement of security, repossession of goods and forfeiture. He is plainly correct but the points that need to be addressed are whether: (i) the claim to enforce such rights has to proceed by legal process which cannot be started without permission of the Court; and (ii) an agent can act in accordance with pre-existing

contractual rights irrespective of the decisions of the administrators and their pursuit of the purpose of the administration.

51. Although not conceded, my reading of the skeleton argument for this hearing is that Mr McGhee K.C. accepts that (i) is no longer in play because the Applicants have consented to the Respondent *"instituting proceedings against the Companies for the purpose of determining their claims under the Agreements"* (letter from Mishcon de Reya to Fahri LLP dated 14 December 2023). However, he submits that any steps taken contrary to the intentions of the administrators as officers of the court should be restrained to avoid interference with their statutory functions and duties. He submits that the grant of an injunction in support of the administration is appropriate under the supervisory jurisdiction of the Insolvency and Companies Court (see ***Re London Oil & Gas Limited*** [2019] EWHC 3675 (Ch), referring to ***Barclays Mercantile Business Finance Ltd v Sibec Developments Ltd*** [1992] 1 WLR 1253 at p.1259H).

F) Merits – The Decisions

52. At this stage of the Claim I am satisfied for the purpose of deciding whether to grant interim relief that the Companies have established:

a) a serious issue to be tried;
and
b) a case with sufficiently strong merits to justify an interim injunction (subject to all other considerations) even if the decision will effectively dispose of the case (applying ***Cayne and Another v Global Natural Resources plc*** (above)).

It is emphasised for the avoidance of doubt, however, that these are not final decisions. They are based upon my assessment of the existing written evidence and submissions to the standards required by case law.

53. The bases for those decisions applying the two identified tests (without expressly repeating them within each sub-paragraph) are:

a) The principle of overreaching if it is to be applied will not only mean that the proprietary interests and rights claimed by the Respondent have detached from the land and attached to the net proceeds of sale (to the extent available for distribution to the Respondent) but also that those interests and rights cannot exist against the Companies as lessees of the purchaser, the Ambassador Royale Companies.

b) The Sale Agreement when objectively construed as a whole and taking into consideration in particular clause 6.1, does not provide that it transfers the freehold title to the Ambassador Royale Companies encumbered by the interests and rights transferred/created by the Transfer Agreement and/or the Settlement Agreement. The Sale Agreement provides that title is passed subject to "Third Party Agreements" which are not overreached. The Transfer Agreement and the Settlement Agreement having been entered into whilst the charge of ICG was registered were overreached when ICG exercised its power of sale as chargee and executed the Sale Agreement. The principle of overreaching applies.

c) The Respondent cannot rely upon the 200 Written Statements to overcome overreaching. First, because they fall outside the definition of "Written Statements" in the Transfer Agreement. Second, they are not protected by the ***MHA***. The Respondent does not fulfil the requirements of ***section 1(2) of the MHA***. It cannot be an occupier of a mobile home as its only or main residence. ***Section 3(3)(b) of the MHA*** does not assist the Respondent. Whilst for its purposes the term *"person"* is not limited to natural persons when referring to a beneficiary, that is in the specific context of a provision addressing the ability to assign ***the MHA*** agreement upon the death of the person who had fulfilled the requirements of ***section 1(2) of the MHA***. The meaning of *"person"* within ***section 1(2) of the MHA*** has to be limited to a natural person in order to occupy the mobile home as their *"only or main residence"*.

d) Personal contractual rights do not assist the Respondent. The contractual rights created by the Transfer Agreement and the Settlement Agreement exist in the context of an agreement to develop the Plots, sell the mobile homes through ***MHA*** protected agreements to third parties, and to transfer the freehold title back to the Companies who will become "the owners" for the purposes of ***the MHA*** agreements. However, the Respondent has no title to transfer when relying solely upon personal contractual rights. The Transfer Agreement must be read as a whole. It does not create a series of unconnected, independent rights and obligations for fulfilment in part only. That being so, upon an application for specific performance the Respondent cannot inform the Court that it is ready willing and able to perform its obligations under the Transfer Agreement. The Companies will not receive back the freehold as required. The Court will not grant specific performance in that circumstance, although there may be a damages claim (of which I say nothing because that is not a matter before me).

54. In reaching those decisions pursuant to those tests, I have accepted that the Applicants' consent to the Respondent's ***paragraph 43 IA*** application means the moritoriums do not prevent proceedings by the Respondent to enforce the terms of the Transfer Agreement and/or the Settlement Agreement. However for the reasons set out above, I do not consider this assists the Respondent by undermining the strength of the Applicants' case applying the above-mentioned tests. It is unnecessary to address those proceedings and the functions and duties of the Applicants as administrators and/or the purposes of the administrations further in the light of the reasoning concerning specific performance. I have also not considered it necessary to address whether specific performance would be refused in any event in the context of the Companies' standing and obligations under the terms of the Leases.

G) Granting of Interim Relief - Submissions

55. For the purpose of submitting that interim relief should be granted, Mr McGhee K.C. concentrated upon the "common sense" approach that the current position should not be altered. That the Court should exercise its discretion to prevent the Respondent from carrying out works on the Plots and/or selling purported interests in the mobile homes to third parties whilst the dispute exists and the Companies have sufficiently strong merits to justify the interim injunction. He also adds in the skeleton argument:

"… the Respondent's entry into the Sites, the construction work and the placing and selling of caravans to third parties threatens the conduct of the administration, since the Companies are in occupation of the Sites and are operating the businesses (pending the grant of licences by the local authorities to the Ambassador companies). As noted above, the threats have never been withdrawn. Mr Sines confirmed in Court at the conclusion of the first hearing on 24 November 2023 that mobile homes could be placed on 90 Plots and sold within 28 days …

The JAs are responsible for operating the Companies' businesses from the Sites until the handover to Ambassador; Some of the Plots are occupied by existing residents (whom the Respondent has previously purported to evict) …; The JAs are responsible under the Leases for returning the Sites to Ambassador in the same condition as at commencement (i.e. unencumbered by new residents and construction work).

The Respondent also argues that the work contemplated by it will "enhance the value of the Plots" … The obvious answer to this is that unless restrained by injunction the Respondent will sell the Plots to third parties, and receive the benefit of that enhanced value."

56. Mr McGhee K.C. also submits that the steps the Respondent wishes to take are for the purpose of receiving the resulting net proceeds from any future sale of mobile homes. In other words, this is a case where damages will be an adequate remedy and for which the Applicants have given an unlimited undertaking in damages supported by an indemnity from ICG.

57. Mr Boardman K.C. on the other hand submits:

"No evidence of damage to the Applicants has been adduced. The potential profit to ICG as beneficiary of additional consideration under the Sale Agreement does not qualify. It is a reason why the Court should refuse the relief sought.
Following the Sale and Business Sale agreements, the Companies only have a nominal interest in the Sites. They have an insufficient interest and no basis to seek an interim injunction "until trial or further order".
The Leases will expire on 21.3.24, which is before any trial is likely to take place. Once terminated, the Companies will not even have a nominal interest to pursue.
The decision of this Court will effectively determine the proceedings. There will be nothing for the Respondent to fight if the injunction sought is granted. The Respondent will be left with a claim on an unsubstantiated undertaking in damages.
As the recent disclosures by the Applicants' solicitors to the Court (that ICG is funding this claim and indemnifying the Applicants) and the Respondent (that they act for the Ambassador Companies, as well as for ICG, Applicants and Companies) show, these proceedings are a vehicle to pursue ICG's collateral interests.
The evidence shows that the Respondent will suffer serious harm if the injunction is granted, both in terms of the ability to conduct business and in terms of substantial lost profits (£12 million plus the £8 million paid under the Transfer Agreement) [649]. The Companies' liabilities will also increase by the amount of the Respondent's claim for damages.
It would create a real sense of injustice for the Court to reward the deception and trickery of ICG and the JCK Administrators, by granting an injunction to halt further performance of the Transfer Agreement.
The path to avoiding injustice lies in allowing the parties' contractual obligations in the Transfer Agreement to be performed, not in scuppering their operation and/or depriving the Respondents of its rights.
Granting an injunction will produce an obvious injustice to the Respondent, by denying it the right to trial and depriving it of a valuable commercial agreement …

Even if the principles in <u>American Cyanamid</u> apply, damages would be adequate for the Claimants and the unsubstantiated and belated undertaking offered by the Companies (who are unable to pay) is inadequate (and stating that the Companies have the benefit of an indemnity does not assist). The balance of convenience lies in respecting contractual obligations, not thwarting them;"

H) Granting of Interim Relief - Overview

58. Starting with an overview of the factual position: I have on each occasion raised the issue of the commercial reality of this dispute. First, from the perspective that everyone should be working together to obtain the greatest value from the Sites pending determination of all and any issues concerning who is entitled to what. After all, the Respondent should not be cast in the role of "villain". It is a substantial creditor doing its best to recover its money. For example, if the Respondent has a genuinely (in the commercial sense) good plan for development and sale, commercially the parties should be discussing its implementation and the role and reward of the Respondent. The discussions should include ICG and the Ambassador Royale Companies. My understanding is that the Respondent's willingness to pursue such a route has been met by a frosty response. However, I do not have the information and this was not the hearing at which to assess this but alternative dispute resolution should be considered.

59. What is before me, however, is an issue of who will benefit and suffer detriment from the grant or refusal of the interim relief sought. The Companies' interest is limited to the period they remain lessees except to the extent that the proof of debt from ICG will be reduced by the amount of the additional payment under the Sale Agreement should *"the Trigger Event"* occur. Their position is fundamentally that of a lessee protecting their right to exclusive possession and within that context through the Applicants ensuring the pursuit of their administrations' purposes and the approved proposals. There is extensive criticism of the Applicants' conduct and the pursuit of these proceedings to pursue ICG's interests (see the above-quoted submissions of Mr Boardman K.C.). However, that is not a view I can reach or take at this stage of the proceedings.

60. As to the Respondent, there is a serious issue whether in commercial reality it has a great deal to lose or gain. If the Respondent succeeds in establishing a proprietary interest at the end of an expedited trial, it will have lost the time which could have been spent installing foundations and saleable mobile homes and selling mobile homes. However, it is difficult to understand the basis on which it is asserted that this period will produce sales whilst the current dispute is extant even if interim relief is refused. The latest evidence on behalf of the Respondent is that it wants *"to station a show mobile home on each of the [Sites" with developed Plots, and commence marketing"*. However, there has been no evidence to answer the problem that any selling operation between now and judgment will have to disclose that the Respondent's right to build on the plots and to sell the mobile homes is the subject of heavy litigious dispute. Hardly attractive for a purchaser. The best that is said from the Respondent in response to this problem is that if marketing is allowed, *"sale can be conducted on a basis conditional upon the Applicants' claim"*. However, it has to be doubted whether that will be effective and, indeed, whether significant expenditure will be spent upon the Plots by the Respondent in this context.

61. This over-view emphasises that "working together" appears to be a far more, and arguably the only productive commercial course for the parties. I directed at the 19 December hearing that there should be alternative dispute resolution in a form to be developed by the parties.

I) Granting of Interim Relief – The Amended Application Notice

62. The application to amend the Application Notice has not been considered in any detail. It would be unfair to the Respondent to do so when the time obtained by the Applicants has been inadequate notwithstanding the generosity of the Court. In that circumstance it is right to address the Companies' claim form alone. However, it is of course to be noted that part of the amendment addresses matters covered by the claim form, the overreaching and the moratorium. Whether that means it is inappropriate to have two such sets of proceedings, as the Respondent in any event asserts, can and need not be determined now.

J) Granting of Interim Relief - Decision

63. I do not consider that this is a case such as ***Cayne and another v Global Natural Resources plc*** (above) where the grant of an interim injunction will have a practical effect of putting an end to the proceedings. For the reasons following, the grant of interim relief will not have the result that (i) the Companies achieve all they seek and will not proceed with the claim, (ii) the Respondent will suffer in any event the harm that it would as a losing party, and (iii) compensation will not be adequate recompense. This is a case where the issue of whether the Companies had the right to exclude the Respondent and the Respondent had proprietary and/or personal rights will be decided at trial. There is no reason to conclude that the Companies will not cause or allow that to happen other than by negotiated settlement. The grant of interim relief will not amount to summary judgment in practice.

64. As to those reasons: If the Companies succeed, they will have justified the exclusion and the consequential protection of their right to exclusive possession. They will not have suffered the fact and consequences of the Respondent wrongly accessing the Sites, building on the Plots and selling mobile homes. They will not be concerned with any difficulties resulting from such actions upon the termination of the Leases and they will not have to recover any sums they may be awarded as a result of the Respondent's actions had access been permitted. They will have the opportunity to ask to recover their costs. They and the Applicants will not be the subject of an application to enforce the cross-undertaking in damages.

65. If the Respondent succeeds, it will establish its proprietary interests and rights and be able to enforce them (depending upon their nature and extent) against the Ambassador Royale Companies. The fact that they, as freehold owner, have started their own proceedings will inevitably result in the claims being joined and them being bound by the decisions too. The Respondent's intended work and sales will have been delayed if interim relief is granted but nevertheless will still capable of being carried out and presumably with far greater prospect of achieving sales once their interests and rights have been established. The Respondent will be able to claim compensation and look

to the cross-undertaking as to damages if an interim injunction should not have been granted during the period up to trial.

66. The Respondent may instead only establish personal contractual rights. If they exist only for the period during which the Companies are lessees, it will not be able to enforce its contractual rights if an interim injunction is granted. However, the difficulties with enforcement by specific performance have already been addressed and in any event the resulting loss will be of net profit, avoiding the need for potentially wasted capital expenditure up to trial. It will be a loss capable of being compensated in monetary terms.

67. Overall, therefore, this is still an application to which the principles of ***American Cyanamid*** apply with the requirement to ensure that injustice is avoided (to the extent possible) when carrying out the balancing exercise and/or exercising the discretion. Even if I am wrong in that or the Applicants are bound by an acceptance that this is the wrong approach, I have decided above that the ***Cayne and another v Global Natural Resources plc*** (above) merits test has been met by the Companies, as well as the serious issue to be tried test.

68. Addressing first, therefore, the ***American Cyanamid*** test having established a serious issue to be tried/a real prospect of success for claim for the a permanent injunction: Damages are not an adequate remedy for the Companies. Their claim is to enforce their right to exclusive possession and to prevent the Respondent making decisions and carrying out actions which should be decided and carried out by or on the instructions of the Applicants whilst carrying out their statutory functions and duties to achieve the purpose of the administrations. Insofar as the Respondent acts as agent for the Companies, it should be in accordance with the instructions of the Applicants.

69. The Respondent on the other hand intends its actions based upon its own decisions and unsupervised actions to make net profits. Damages are an adequate remedy. The issue here, however, is the adequacy of the undertaking in damages and I will return to that.

70. Assuming, however, that damages are not an adequate remedy and that the the balance of convenience stage of the test should be considered: An interim injunction restraining access to and egress from the Plots will hold the ring, maintaining the current position subject to any specific permitted action which will not cause apparent harm or irremediable prejudice (as reflected in the order granted at the second hearing for the reasons appearing in the Judgment). It will mean that foundations are not poured on any of the Plots, connection to services will not be achieved (where needed), mobile homes will not be placed on currently empty Plots and mobile homes will not be sold to third parties. The benefit to the Companies is that the land they hold as lessees will be retained in its current condition subject to any decisions the Applicants as administrators may make based upon the terms of the Leases, the purpose of the administrations, the creditor accepted proposals and their statutory duties and functions. In contrast allowing the Respondent to enter the Plots unrestrained and whilst purporting to act as agents for the Companies but without instructions from the Applicants would be of obvious prejudice to the Companies and their creditors. Restraint will prevent that occurring to the prejudice of the Respondent

but in a context (as mentioned above) where sales are unlikely and where the prejudice is concerned with delay and/or loss of profit. The balance of convenience lies in favour of the Companies subject still to considering the adequacy of the cross-undertaking in damages.

71. If I should have decided that the grant of an interim injunction will have the practical effect of putting an end to the action, however, I need to recognise that this is a factor of great and potentially overwhelming weight when deciding what can be done to avoid injustice and that it is necessary to balance the risk of that injustice. However, that weight must be balanced in this case against my decision on the merits. Added to that are all the factors addressed above which lead to the conclusion that the grant of interim relief will nevertheless not be an injustice for the Respondent must be taken into consideration.

72. To summarise rather than repeat in detail those matters: The Respondent will still be able to pursue its claims to trial based upon proprietary and/or personal rights. The former will not be lost on or about 21 March 2024, whilst the loss of personal rights can be compensated in damages by a quantification based upon loss of profits or the loss of a chance of profit. The Respondent will not have had to risk its capital required for its works and sales in the period through to trial. The Respondent will not have had to try to market and sell mobile homes whilst having to disclose the existence of this litigation and the doubts over its right to do so. The Respondent will not be at risk of trespass, having interfered with the administration and the Applicants' statutory functions and powers or of liability for damages. The Respondent will be able to look to the cross-undertaking as to damages provided it is adequate. In contrast the Companies, in the context of the merits established above (as at this stage), will be able to ensure their right to exclusive possession is upheld and that the Plots will be used for the purposes of the administrations in accordance with the proposals and pursuant to the Applicants' fulfilment of their statutory duties and functions.

73. In all those circumstances, I consider it appropriate in the exercise of the Court's discretion to grant an interim injunction restraining access and egress on to the Site and the sale of any interest in the Plots and relevant mobile homes including assignment of the Written Statements provided the cross-undertaking in damages is adequate.

74. As to that, the following points arise: First, the Applicants are offering an unlimited undertaking (as individuals and not on behalf also of their firms) supported by an unlimited indemnity from ICG. They are not seeking to limit their liability to (in briefest summary of the relevant case law) the assets available from the administrations as potentially they might. Second, for reasons explained above, it is far from clear that the damages that might be incurred by the Respondent are likely to be very substantial. Third, the Applicants have not provided evidence to establish the value and/or fortification of the undertakings. As to ICG, an off-shore company, the Court has not been shown the indemnity, it was received at the very last minute by the Respondent and the best that has been done is to provide evidence of the parent's standing (which is significant) with a comment that it would not stand by and witness the undertaking not being fulfilled.

75. In my judgment the undertakings offered remain adequate for the immediate short term but require further evidence of their value addressing at least the points above. I will continue the injunction in its current form until that is resolved with the parties first discussing the position and second proposing to the Court the best mechanism for any disputes to be resolved as a matter of urgency. During discussions, the parties should consider the form of interim injunction that results from this judgment to be a straightforward restraint on access and egress to the Sites but to negotiate the final drafting on the basis that the order may potentially permit any reasonable actions that will not cause damage or interference with the land or with the administrations.

K) Settlement

76. There has been a delay between the circulation of this judgment in draft for the purpose of identifying typographical correction and its handing down today. That time has been used well by the parties. I am asked upon handing down to then make an order in the terms of their settlement, which I will do subject to any necessary modifications.

Order Accordingly