Neutral Citation Number: [2024] EWHC 671 (Ch)

Case No: FS-2019-000004

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

7 Rolls Building
Fetter Lane
London
EC4A 1NL

Date: 23 February 2024

Before:

MASTER BRIGHTWELL

- -

Between:

ANDREW JONATHAN MILNE

Claimant

- and -

(1) OPEN ACCESS FINANCE LIMITED
(2) MR MAREK SZYMANSKI as representative of those lenders who lent to the claimant under the loans listed in Annex A to the particulars of claim

Defendants

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- -

Richard Roberts (instructed by **Andrew Milne & Co**) for the **Claimant**
Iain MacDonald (instructed by **Fieldfisher LLP**) for the **Defendants**

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APPROVED JUDGMENT

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MASTER BRIGHTWELL:

1. In this application, issued on 4 May 2023, the first defendant seeks an order for security for costs against the claimant, Mr Andrew Milne. The claim has a long history, having been issued in 2019. Case management directions to trial were given only at the costs and case management conference held before me on 4 October 2023.

2. So far as the underlying claim is concerned, the claimant, himself a practising solicitor who describes himself as semi-retired, seeks orders about the enforceability and terms of loans made to him through peer-to-peer lending. The first defendant operates a peer-to-peer lending platform. To put the lending into perspective and as described by Mr MacDonald, who appeared for the first defendant, paragraph 5 of his skeleton argument says:

> "The claimant is, and has been since 2016, a customer of the first defendant and has outstanding borrowing now in excess of £300,000, comprising capital advanced of £148,000 odd plus interest. He has repaid a number of loans over the duration of his relationship with the first defendant. He has also exercised his option to renew certain loans."

3. The second defendant, who is not the party pursuing the application for security for costs, is one of the corporate lenders who have lent to the claimant through the first defendant's platform. His name, amongst others, was identified following an application by the claimant in 2019 for disclosure of the names of the relevant lenders and a subsequent appeal to Fancourt J on that issue. There was also a hearing to determine a preliminary issue in connection with the corporate lenders, following which Deputy Master Glover handed down a judgment declining to determine that preliminary issue.

4. The present application first came on for hearing before me on 4 October 2023 together with the costs and case management conference. I adjourned the security for

costs application for reasons which I gave on that occasion. An issue had arisen as to whether the claimant should be required to re-file his fifteenth witness statement in this claim in order to comply with CPR Practice Direction 32, paragraph 18.1(2), which requires the witness statement of a claimant suing in their personal capacity to contain their residential address.

5. Mr MacDonald indicated on that occasion that the defendants, or the first defendant, would wish to carry out further enquiries following the filing of such a witness statement and he also indicated that the application may as a result not be pursued. That has certainly not been the case and the evidence on both sides in relation to the application has proliferated since the hearing last October.

6. There are two bases on which the application for security for costs has been pursued. CPR r 25.13(1)(b) provides that, in order for the court to have jurisdiction to make an order for security for costs, one or more of the conditions in paragraph (2) must apply or alternatively an enactment must permit the court to require security for costs. The two conditions relied on are those at 25.13(2)(e), that the claimant failed to give his address in the claim form, or gave an incorrect address in that form and (g), that the claimant has taken steps in relation to his assets that would make it difficult to enforce an order for costs against him.

7. At the hearing in October 2023, or in the skeleton arguments before that hearing, the first defendant's submissions focused primarily on ground (e). There is quite a lot of evidence on this point but Mr MacDonald realistically accepted that falling within ground (e) alone would be unlikely to justify an order for security for costs. As Master Pester said in *Lyndou v Lazarichev* [2023] EWHC 1487 (Ch) at [62], there does not appear to be any authority where an applicant establishing ground (e) alone has been

entitled to an order for security for costs. Further, where there has been a minor mistake in an address given on a claim form, that has been held not to justify an order for security for costs as a matter of discretion (see *Beriwala v Woodstone Properties* [2021] EWHC 6 at [48]–[49]).

8. The evidence suggests that the address given on the claim form, being the address of his solicitors' practice in the City of London at Tower 42 on Old Broad Street, is serviced offices in the Regus Business Centre which operates such offices on three floors within the building. A dispute arose on the evidence about whether the office was, from the claimant's perspective, a virtual office which he did not attend in person, or a co-working arrangement where he did attend in order to practise at least some of the time.

9. In view of the first defendant' position I will not deal with this point in detail but as the evidence was traversed in some detail, at least in writing, I will state that I am satisfied on the balance of probabilities that the Tower 42 address is an address at which the claimant does carry on business. All that is required is that it is *an* address at which he so carries on business. That was made clear by reference to the Civil Procedure Rules in *Rajabieslami v Tariverdi* [2023] EWHC 455 (Comm) at [33].

10. Despite the first defendant's complaint that the claimant has not produced records from Regus evidencing his presence at the building, the claimant's evidence does support his claim that he carries on practice there. The first defendant relies heavily on a process server's note which indicates that the process server either was told or formed the view that the offices were virtual offices but there is no evidence to substantiate this or an explanation of why that was so. Despite the note saying that a witness statement was to follow, none has been produced.

11. Mr Milne has also given evidence that he is an elector for the Corporation of London on the basis that he occupies the Tower 42 address and there is no suggestion that there is any other basis on which he could have been entitled to become an elector. The first defendant objected to that evidence partly on the footing that it was irrelevant. That may be said of some of Mr Milne's evidence but it cannot be said of that evidence. I have also seen a renewal agreement, which on its face is currently valid, which shows Mr Milne having the right to occupy as a licensee on a co-working basis, not on the basis of a virtual office arrangement.

12. Even if I am wrong in my conclusion on that, the Tower 42 address is an address at which the claimant has successfully been served throughout these proceedings. It is his professional address and the address at which his practice is registered with the Solicitors Regulatory Authority. The defendants have managed, albeit on occasion with difficulty, to enforce costs orders against the claimant. Even if the Tower 42 address were not the claimant's business address, I do not consider this would be a sufficient basis for the making of an order for security for costs. Mr MacDonald did say that he would ask me to take into account the evidence on this question if jurisdiction on the other ground is satisfied and the question of discretion arises.

13. I have commented briefly on Mr Milne's evidence so far. I think I should comment further on the tenor of his evidence more generally before I proceed to consider the second ground because it is a factor that the first defendant relies on. Mr Milne had before the last hearing filed a very long witness statement which, as I have said, I directed be re-filed with his residential address and with certain wholly irrelevant allegations about a non-party having been removed.

14. I consider that a good part of the claimant's correspondence and evidence is written in a tone which has the, no doubt intended, effect of causing antagonism and not always directly addressing the points which are made against him. It may suffice for present purposes if I mention two singularly facetious examples. First, in the final paragraph of the re-filed witness statement of Mr Milne dated 8 November 2023, he says this:

> "143 I believe that the real reason that the first defendant has kept me under very close observation, apart from to intimidate me, is that they believe that I have more than one Mansion and, if they follow me around long enough, I will lead them to a series of fine stone built Mansions, each with a ball room with triple ceiling height. They presumably imagine that I own several such properties and move between my Mansions on a whim. I can inform the court that I do not own any other Mansions and I am content with having a single ball room with triple ceiling height."

Secondly, I was referred at the hearing to a letter written by Mr Milne on his firm's notepaper dated 28 November 2023 in which he responded to a letter from Fieldfisher, solicitors for the first defendant, concerning his residential address. He said this:

> "No one can dispute that the claimant lives in a fine stone built mansion. Indeed, we formally invite you and your clients for Christmas carol singing in the car park of the mansion at 12 noon on Thursday 30 November 2023. Please advise us promptly how many from your firm and your clients will be attending."

15. It is clear to me that the littering of documents prepared by the claimant with statements such as this has undoubtedly antagonised the defendants and provoked lengthy responses from them and may, indeed, be in large part responsible for the proliferation of the evidence and the fact that this application is pursued.

16. At the hearing, I was also referred to two letters written by Mr Milne in 2019, both of which were relied on heavily in the skeleton arguments for the October 2023 hearing. In the first letter dated 15 October 2019 Mr Milne writes:

> "You threaten to take enforcement action. Please explain what assets you're planning to execute on because your threats appear completely hollow and just make you look ridiculous."

17. And then shortly afterwards on 31 October 2019 after a hearing before Mann J, to which I will return, Mr Milne wrote this:

> "We wish to record that if you execute on the claimant's bank accounts they are all overdrawn and will remain so until the conclusion of this litigation due to the expense involved and we will produce this letter to the court and seek that your client pays all the costs of unsuccessful execution. We also wish to record that any mortgaged property the claimant owns is not worth more than the amount of the mortgage on a forced sale basis and if you execute on any mortgaged property we will produce this letter to the court and seek that your client pays all the costs of unsuccessful execution."

18. I would note that these letters post-date the hearing of Mr Milne's application for disclosure orders which had at first instance been dismissed entirely by Chief Master Marsh together with a costs order. Those letters alone were relied on at the October 2023 hearing in support of the proposition that Mr Milne had dealt with his assets so as to make them difficult to enforce against. The scope of the arguments had moved on somewhat by the time of the current hearing and it is those more substantial arguments to which this judgment is addressed.

19. The evidence now relied on by the first defendant for the purposes of CPR r 25.13(2)(g) is set out primarily in the evidence contained in the sixth and seventh witness statements of Mr Ritosubhro Haldar, director of the first defendant, dated 29 November and 28 December 2023 respectively. I note, and it is a point made forcibly by Mr Roberts on behalf of Mr Milne, that the second of those statements in particular came very shortly before the hearing of the application on 5 January 2024 and contained detailed allegations, at least some of which could certainly have been made much sooner.

20. Before turning to the specific points, I have already referred to the fact that there was a hearing before Mann J at which Mr Milne sought a stay of execution of the costs order made by Chief Master Marsh. At the hearing, it appears that Mr Milne made oral representations as to his means and as to the illiquid nature of his assets in support of his application for a stay and Mann J directed that a witness statement be filed after the hearing confirming what had been said at the hearing.

21. In that witness statement, which is dated 7 October 2019, Mr Milne confirms that he makes the witness statement to confirm his oral submissions at the hearing on 4 October 2019. He says at paragraph 5, "I explained that I am the owner of a 13.65 acre property known as Land adjacent to Crown Cottage at Trelogan, Llanasa in the County of Flintshire", which he said was being sold for £205,000 with an existing loan facility of approximately £38,000. He also said as follows:

> "6 I confirmed that I have no bank accounts [which may be a number of bank accounts] with a credit balance of £42,500.
>
> 7 I confirm that I own two other properties.
>
> 8 I confirmed that I was in possession of antiques worth in excess of £500,000 but they were typically antiques bought at Sotheby's or Christie's and would have to be returned to such auction houses for sale which would take several months."

22. The principal points relied on by the defendants are, as I have said, contained in the sixth and seventh witness statements of Mr Haldar. One factor which features in both is the fact that Mr Milne has now given a residential address as 9 Marine Road in Pensarn. This is the property which Mr Milne refers to in his correspondence and evidence as a fine stone built mansion. The first defendant suggests that the property appears derelict and that it has not been approved for planning purposes for residential use. It suggests that the claimant does not live there.

23. There may in due course be an issue as to whether the property in Pensarn is in fact the claimant's residential address. That is a separate matter from whether it is relevant to the question whether he has dealt with his assets so as to make it difficult to enforce an order for costs against him. In response to this issue, the claimant says in some quite extensive evidence that he is carrying out significant works to the property. He denies that it is derelict and he indicates that he is well known in the local area.

24. The first defendant also refers to another property where the claimant indicates that he spends some time, 46 Glenavon Road, which I believe is in Birkenhead. The first defendant's evidence suggests that the name of an unrelated third party appeared on the electoral register. The claimant says that this was a mistake and that that name has now been removed.

25. Mr Haldar's sixth witness statement also referred to property in Onslow Road, London SW7, where the claimant used to live and which was the address that he gave when he first dealt with the first defendant and at which he was served on one occasion (by appointment) with documents early in the course of these proceedings in 2019. The claimant says that he sold that property in around 2013 on terms that he could continue to live there for some time, terms which the defendants say have not been adequately explained. Mr Haldar goes on to refer to the fact that the claimant appears to have been involved in a number of other pieces of litigation, including in relation to other lenders and to pawn brokers, and they refer to recent press coverage, suggesting that Mr Milne has brought a claim against the supermarket, Sainsbury's, after (it appears) he was accused of shoplifting.

26. The main points relied on from Mr Haldar's seventh witness statement for present purposes are set out in paragraphs 12 to 16 of that statement. Paragraph 12 says this:

> "12 The claimant generated income/funds in excess of £500,000 by his own admission, between 2017 and 2019. The claimant in his email of 27 November 2018 to the defendants… had stated the following:
>
> (a) he received a settlement payment of £230,000 in 2017 in a litigation he pursued;
>
> (b) he received a refund of £56,760 from John Carlton Smith in the same year; and
>
> (c) he received a substantial settlement from an antique furniture restorer on another litigation.
>
> Through this period, he also obtained £148,000 in capital advanced from the defendants and admitted to receiving £40,000 from selling silver antiques through Chiswick Auctions in 2019 in his deposition to Mr Justice Mann."

27. The witness statement then goes on to say that the claimant has apparently generated profits of £350,000 from property trading, and reference is made to a plot of land purchased in Hyde in Greater Manchester for £2,250 in October 2020 and subsequently sold in two parcels in May and August 2022 for a combined sum of £200,000 after claims had been issued against neighbouring owners. Reference is then also made to the Trelogan property which was mentioned in the claimant's October 2019 witness statement. It is said that the claimant made a profit in excess of £150,000 from the sale of that property.

28. There is mention also of the claimant obtaining additional funds by releasing equity in the property at 46 Glenavon Road and Mr Haldar says he has recently discovered that the claimant has also invested in another property at 48 Glenavon Road in which he said the claimant had failed to date to disclose his interest. He also points out that the mortgagor in relation to the acquisition of 48 Glenavon Road had also taken a charge over 46 Glenavon Road.

29. The final matter relied on, discussion of which took up a significant amount of time at the hearing, is at paragraph 16 of Mr Haldar's seventh witness statement. He says this:

> "16 I have also discovered from research I carried out, that the claimant has made substantial investments in the relatively recent past. In 2010, he invested a total of £1.2 million in shares in a corporation then known as Equatorial Palm Oil Plc (now known as Capital Metals Plc), which is listed on the Alternative Investment Market… I do not know whether the claimant still retains this shareholding:…"

30. Mr Milne responded to that witness statement in short order on 2 January 2024 in his sixteenth witness statement. In relation to paragraph 12(a) of the seventh witness statement of Mr Haldar, he says:

> "60 …the sum recovered included a large refund of fees which I have paid which had never been due and a refund of the £10,000 Court issue fee and substantial Counsel's fees."

As to the third sum referred to in paragraph 12, he said that the restorer ceased trading and suddenly sent him a large bill for work which they had not done which was cancelled and he therefore got a refund. As to the capital from the first defendant, he says the capital advanced was not £148,000, as a significant part of the figure was simply advanced to pay interest. He says the actual true advance was smaller and may well have been less than £100,000.

31. As far as the Hyde property is concerned, and in brief summary, the claimant accepts he bought the property for a very small sum and then litigated against two neighbouring landowners who, he claimed, threatened the physical support required in order that the claimant's property and the other neighbouring properties would not be susceptible to landslips as the land seemed to be eroding. Mr Milne says that, after he had obtained a benefit from pursuing this litigation, other neighbours agreed to buy his land from him. The claimant says that the land was worth several million pounds

but out of good neighbourliness he agreed to accept a pro rata sum of just £60,000 and then the other neighbours immediately paid him a further £140,000. He says, 'It is only because I am a Good Person that I did not insist on payment of over £4 million and accepted the token sum of 5% of that figure as a Good Neighbour'.

32. Mr Milne accepts that the land at Trelogan was sold but does not accept that the profit was £150,000. He refers to work that needed to be done on the land in order to make it safe. As far as 46 and 48 Glenavon Road are concerned, he says that he paid for 46 Glenavon Road and that it was not a gratuitous transfer from Sonia Milne pursuant to a court order, as Mr Haldar suggests, and he explains again in some detail that 48 Glenavon Road was in a state of some disrepair and that the owner had to move out in forced circumstances. Mr Milne's evidence is that he used bridging loan finance to obtain both properties.

33. As far as the investments or involvement with Equatorial Palm Oil plc is concerned, the claimant's evidence suggests that he underwrote the issue of shares and that he had been informed and probably misinformed that there was no risk at all in this endeavour. His sixteenth witness statement is not clear on how many shares he eventually subscribed for but he says that he received a fee for £10,000 for subscribing and not the £50,000 that had initially been promised because that would only be paid to him in shares. The claimant's evidence is that he ceased to own any shares as soon as the subscription was complete. He says he was misled, only discovered by chance after the event that he had been misled and that he had underwritten the entire subscription without realising and without having provided any evidence of his means.

34. I would note at this point and I would accept the point made by the first defendant that the explanations given by Mr Milne in relation to the Hyde property and in relation to Equatorial Palm Oil in particular do seem in some respects improbable and far-fetched. In particular, it would be odd if the claimant had agreed to sell land worth £4 million for £200,000 as he suggests in relation to the Hyde property and it is also improbable that a practising solicitor would enter into an agreement whereby he underwrote a subscription of shares in a listed company without being required to provide any evidence of his ability to do so. The question is what weight to place on that sort of matter and whether it is evidence of conduct falling within CPR r 25.13(2)(g) or instead further evidence of Mr Milne's rather singular way of expressing himself.

35. Finally, as if that were not enough to take into account, on 8 January 2024 HHJ Keyser KC, sitting in the county court at Wrexham, handed down judgment in a case involving the claimant and called *Goulden v Milne* [2024] EW Misc 1 (CC) which became known to the first defendant very quickly. The first defendant has filed an eighth witness statement from Mr Haldar and further submissions in relation to it and the claimant has responded with a further lengthy witness statement and further submissions himself.

36. As far as the claim before Judge Keyser is concerned, it concerned freehold premises at 24-28 Bodfor Street in Rhyl. The claimant in that claim was a long leaseholder and Mr Milne was the defendant and it is apparent from the judgment that he is the freeholder of that property. I would note that one of the points that Mr Haldar relies on is that the existence of this property was not previously known to him or revealed by Mr Milne in his witness statements. The claimant has said in response on that

point that the property was purchased for around £40,000 in 2022 and he, in his witness statement, rather colourfully describes how the property has been used for drug dealing.

37. Returning to the judgment of Judge Keyser, the claimant in that case sought an order that she was entitled to obtain the freehold to the property. Her ability to do so depended in part on the date on which the defendant (that is Mr Milne) had served on her a notice under sections 3 and 3A of the Landlord and Tenant Act 1985. He contended that the notice had been served on 25 May 2022 by first class post, which would have meant that the claimant's claim had not been brought in time.

38. The first defendant places particular reliance on Judge Keyser's conclusion that Mr Milne's evidence on this issue was not honest, in his finding that Mr Milne had not served a notice on 25 May 2022. At paragraph 45 he said this:

> "45 Having considered the totality of the evidence, I do not believe the defendant's claim that he sent the letter dated 25 May 2022. First, I do not consider him to be an honest or credible man. His counter-notice, which I have discussed at some length, is redolent of bad faith. For his own ends, he is willing to resort to intimidatory and threatening language, advancing allegations that he cannot possibly believe to be justified. I have mentioned, also, his claim to have received advice from an expert regarding disciplinary infractions by the claimant's solicitors. I regard that claim to have been untrue, both because the defendant has failed to identify anything that would have led a competent expert to give such advice and because of his refusal to name the expert after I had ruled that he could not assert privilege in the name. In short, on a contested issue on which the defendant's interests turn, I should be reluctant to accept his evidence unless it were supported by documentary or other evidence."

The judge then went on to cite other factors in support of his conclusion that the notice had not been served.

39. I asked Mr MacDonald to address in his submissions on this point the effect of the decision in *Hollington v Hewthorn* [1943] KB 587, to the effect that findings of

dishonesty are not generally admissible in later proceedings in which the parties are not the same. I would note Mr MacDonald did not deal in his submissions with the decision of Sir Ross Cranston in *Al Jaber v Ibrahim* [2019] EWHC 1136 (Comm) where this point arose in an application under CPR r 25.13 and where the same gateway was relied upon.

40. The applicant in that case relied on findings by a Deputy Judge in an application for a freezing injunction that the respondent had been guilty of a serious, substantial and culpable material non-disclosure. Sir Ross Cranston said this at [15]–[16] in relation to the rule in *Hollington v Hewthorn*:

> "15 To my mind, that rule, while it applies to fact-finding by judges during the course of trial, would not apply in this sort of situation, at an interim stage, where one is making decisions about the application of rules of court. In any event, however lamentable the behaviour of the claimant in some of those cases, and however much he may have pushed the boundaries, in some cases exceeded them, this does not assist in the application of CPR 25.13(2)(g).
>
> 16 The fact that, in the past, enforcement proceedings have been difficult does not assist with the issue as to whether the claimant has taken the steps in relation to his assets and whether those steps would make it difficult to enforce an order of costs against him. As the authorities establish, this is a backward looking provision."

I note at this point that the allegation with which Judge Keyser was concerned, whether a notice had been served, is of a quite different order from that in the present case.

41. Mr MacDonald, in his written submissions, submitted that I cannot take into account the actual finding of fact made by Judge Keyser which is, of course, irrelevant here but I can take into account his comments on credibility because they would be capable of being put to Mr Milne in cross-examination at a trial. Sir Ross appears to have taken the view that the rule in *Hollington v Hewthorn* was not applicable, but that

findings of dishonesty would not assist in determining whether the CPR r 25.13(2)(g) threshold was satisfied.

42. The application of CPR r 25.13(2)(g) is the subject of settled authority. The principles were comprehensively set out in the decision of Roth J in *Ackerman v Ackerman* [2011] EWHC 2183 (Ch) at [16]. The first four criteria are concerned with whether the court can be satisfied that the gateway is satisfied:

> "16. The general principles that govern the making of an order for security and the application of CPR 25.13(2)(g) are well-recognised. They include the following:
>
> i) The requirement is that the claimant has taken in relation to his assets steps which, if he loses the case and a costs order is made against him, will make that order difficult to enforce. It is not sufficient that the claimant has engaged in other conduct that may be dishonest or reprehensible: *Chandler v Brown* [2001] CP Rep 103 at [19]-[20];
>
> ii) The test in that regard is objective: it is not concerned with the claimant's motivation but with the effect of steps which he has taken in relation to his assets: *Aoun v Bahri* [2002] CLC 776 at [25]-[26];
>
> iii) If it is reasonable to infer on all the evidence that a claimant has undisclosed assets, then his failure to disclose them could itself, although it might not necessarily, lead to the inference that he had put them out of reach of his creditors, including a potential creditor for costs: *Dubai Islamic Bank v PSI Energy Holding Co* [2011] EWCA Civ 761 at [26];
>
> iv) There is no temporal limitation as to when the steps were taken: they may have been taken before proceedings had been commenced or were in contemplation: *Harris v Wallis* [2006] EWHC 630 (Ch) at [24]-[25]."

And, going on from there, the later considerations deal with the exercise of discretion where the court is satisfied that the jurisdictional gateway has been satisfied.

43. The third of those factors is that, if the court is able to infer that the claimant has undisclosed assets, then his failure to disclose them might lead to a second (and thus

double) inference that he had taken steps to put those assets out of reach of his creditors.

44. The case relied on for that is *Dubai Islamic Bank v PSI Energy Holding Company* [2011] EWCA Civ 761. That concerned an application for security for costs in which the respondent to the application had been subject to freezing injunctions which had contained the usual asset disclosure obligations. The respondent had an expensive lifestyle which he said required him to have £6,000 per week in order to meet his expenses. The applicant relied on the earlier decision in *Compagnie Noga D'Importation et D'Exportation SA* [2004] EWHC 2601 (Comm) in which at [117] and [188] Langley J had discussed the possibility of drawing the double inference but had not been prepared to draw it in the circumstances of that case.

45. Mr MacDonald relied on the judgment of Tomlinson LJ in the *DIB* case, at [31], where he said this with reference to the failure of the respondent to give details of how he had been funding the lifestyle which required £6,000 a week of income provision:

> "31 When no such details are given and when the evidence is at such a high level of generality as to say that the source of living expenses and legal expenses is mostly loans from family and family affiliated companies and third parties without any further details volunteered, it is in my judgment possible, and in many cases appropriate, for the court to draw the double inference on which Langley J spoke in the *Noga* case which is to the effect both that there are undisclosed assets and also that the failure to disclose them leads to the inference that they have been put out of reach of creditors, including of course a potential creditor for costs".

He was satisfied on the circumstances and facts of that case that the double inference could be drawn.

46. Mr MacDonald referred also to the decision of Warby J in *Stunt v Associated Newspapers Ltd* [2019] EWHC 511 (QB), which was a similar application. That was perhaps more similar to this case in one respect, which is that as the Judge said at [36]:

> "36 …there is really no room for dispute that *some* at least of the matters relied on amount to or involve steps being taken by Mr Stunt in relation to *his* assets."

And he referred to a list of the matters relied on, including the liquidation of a wine portfolio and the failure to pay a debt resulting in the presentation of a bankruptcy petition but he said at [38]:

> "38 More complex, perhaps, is the question of whether the steps identified and relied on by the defendant make it difficult to enforce a costs order."

47. Warby J referred at [43] to the steps which had been taken by the respondent of cashing in his assets in order to meet current revenue spending or liabilities incurred as a result of current revenue spending, together with evidence that the applicant had enjoyed a lavish and high-spending lifestyle. This was, he said, on the face of it what looked like distress selling by a man under pressure to satisfy his creditors, who is unable to satisfy his debts from his readily available means. For those reasons Warby J was prepared to draw the double inference in that case. He considered, at [44], that the steps taken by the respondent 'were likely to dissipate his assets in a number of ways relied on by the defendant'.

48. I accept in principle that the court can make the double inference from a finding that there are undisclosed assets even in a case where there has been no obligation on the respondent to give disclosure but the question whether a respondent has failed to give disclosure of his assets most naturally arises in a case where that party has failed to

comply with a disclosure obligation such as that which was involved in the *Dubai Islamic Bank* case.

49. I would also note that it is not suggested by the defendants that the steps that they have referred to in evidence, in particular the buying of real property, the buying of antiques, or the conducting of litigation is, without more, a sufficient basis for the court to conclude as a primary fact that steps have been taken to make a costs order more difficult to enforce. By that, I mean that the first defendant does not submit that the transactions identified themselves constitute, without more, the taking of such steps.

50. It was clear from Mr MacDonald's submissions that the first defendant's position relies on the court being able to draw an inference that Mr Milne has taken such steps. I also bear in mind that in order to do so I would have to be satisfied that the claimant has taken steps that would make it more difficult to enforce, not steps that might do. I am not concerned at the threshold stage with the risk of what might happen in the future but with what has happened in the past.

51. As I have already indicated, the point primarily relied on by the first defendant is that the explanations relied on by the claimant are problematic and, on the first defendant's submission, so improbable that the court should be prepared to draw the double inference that there are undisclosed assets and that the claimant has taken steps that would (not might) make them difficult to enforce against.

52. The first defendant relies on the tone of Mr Milne's correspondence and the content of it, such as what it characterises as threats in 2019 that there will be no assets against which to enforce, together with the generally obfuscatory nature of some of the claimant's evidence. Mr MacDonald made particular reference, as I have said, to

what is said about the Hyde property and about Equatorial Palm Oil plc, submitting that Mr Milne's explanations lack a ring of truth.

53. I agree to an extent that what the claimant says on these issues does raise a good deal of questions and is not entirely credible as a complete explanation of those transactions. For the following cumulative reasons, however, when I look at all of the points raised by the defendants and the evidence given by the claimant and, in particular, the disclosure given by the claimant in October 2019 and his admitted dealings with his assets since then, I, like Langley J in the *Noga* case, am not able to come to the conclusion that the claimant has hidden assets which he has dealt with in order to make them difficult to enforce against or, as was said in that case, to put them out of reach.

54. The first reason is that the amounts paid for, or apparently paid for, properties appear realistic given the value of the assets stated in 2019 and given the other transactions referred to by Mr Haldar, even though there will be scope for discussion about whether all of Mr Milne's explanations about those transactions are correct and full. By that, I mean that the purchase prices seem broadly consistent with the claimant's evidence of his means and his evidence that he used bridging finance in relation to the Birkenhead properties.

55. Secondly, it was disclosed in October 2019 that there were other properties. Mr Milne did not submit then that he had given a complete balance sheet of his assets and the first defendant has always been on notice that there will be other assets. When a new property has come to light (such as the Rhyl property), it does not appear to have been dealt with in such a way as to make it difficult to enforce against.

56. Thirdly, and connected to this, the defendants have been able to identify properties which are owned by Mr Milne from publically available information. There appears to have been no attempt to hide their beneficial ownership and I have not been referred to any charges or encumbrances other than charges to commercial lenders.

57. Fourthly, the issue about whether 9 Marine Road is the claimant's residential address, which as I have said is discussed in detail in the evidence, may be relevant in the litigation going forwards but I do not consider that it is relevant to the question of whether there are hidden assets dealt with in a way which would invoke the gateway for security for costs. It itself cannot be described as an asset which is hidden, whatever is said about the tenor of Mr Milne's evidence about his conduct in relation to it.

58. Fifthly, the correspondence from 2019 which was the main factor relied on at the hearing in October 2019 before the adjournment undoubtedly shows an aggressive and antagonistic form of communication but does not, in my view, support the interpretation that it was suggesting that Mr Milne had taken steps to put his assets out of reach or make them difficult to enforce against. I consider that he was saying to the first defendant in a rather provocative way that, if it went against assets with no value, it would not be able to enforce anything against them.

59. Sixthly, what is seen in the evidence is a pattern of buying and selling real property in England and Wales, possibly in unconventional circumstances but where the property is held in a conventional way. The fact the property is so conventionally held directly by Mr Milne means that the pattern of dealing does not itself suggest that there will be any undue difficulty in enforcing against his assets as a result of what has happened in the past.

60. Seventhly, the litigation in which the claimant has been involved and is involved, not only this litigation but other litigation, will also have been a drain on his resources, both to pay lawyers and adverse costs orders, although it does seem that he has enjoyed some measure of success in some of the proceedings in which he has been involved. The litigation itself does not point, unlike in cases such as the *Dubai Islamic Bank* case and the *Stunt* case, to significant expenditure with an unexplained source. The claimant seems often to represent himself.

61. Eighthly, without deciding whether the rule in *Hollington v Hewthorn* applies but in favour of the first defendant, I have taken into account HHJ Keyser KC's comments about the claimant's honesty, including his comment that on a contested issue he would be reluctant to accept the claimant's evidence unless supported by documentary evidence. Unsurprisingly, this perhaps more than any other feature has given me some pause for thought.

62. The burden on this application of showing that the claimant has dealt with his assets in the way described in gateway (g) is on the first defendant. The first defendant seeks to do that through inference. As I have already indicated, I consider that care must be taken in applying Judge Keyser's comments concerning the unrelated question whether a notice had been served to the present case. Even without his observation, it was apparent to me that some of what the claimant has said in evidence may be less than transparent and straightforward and he does not come across in his witness statements as such an individual. He comes across as obfuscatory, tendentious and facetious. Nonetheless, in light of the factors already discussed, I am not able to come to the conclusion on a balance of probabilities that he has dealt with his assets so as objectively to make it difficult to enforce against them.

63. This seems to me a case where the first of the points made by Roth J in the *Ackerman* case is of some relevance. It is not sufficient that the claimant has engaged in other conduct that may be dishonest or reprehensible, or made statements that could be similarly described. I consider that it is not sufficient here that the claimant may well have made statements in his witness statements that are not completely honest. In a case where the claimant's known assets have not been dealt with so as to make them difficult to enforce against, and where the first defendant has plainly gone to great lengths to uncover relevant evidence, I do not detect a basis to find that there are other assets which have been so dealt with.

64. Standing back, the evidence suggests that the claimant has used his funds to buy and sell property and to litigate, both in quite extensive fashion. As I said, Mr Milne has certainly dealt with his assets, but I do not consider that this justifies the double inference. In all of those circumstances, the jurisdictional gateway is not satisfied and the question of discretion does not arise.

65. I will accordingly dismiss the application.