



Neutral Citation Number: [2022] EWFC 86

Case No: FD05D04818

**IN THE FAMILY COURT**  
**SITTING IN THE ROYAL COURTS OF JUSTICE**

Royal Courts of Justice  
Strand, London, WC2A 2LL

Date: 13 June 2022

**Before :**

**THE HONOURABLE MRS JUSTICE ROBERTS**

**Between :**

**GRAHAM STUART WOLLOFF and**  
**LIAM ALEXANDER SHORT**  
**(as Joint Receivers of the shares in Setubal 97 SL held**  
**by Viveca Limited and Areish Enterprises Limited)**

**Applicants**

**- and -**

**(1) DARREN EDWARDS**  
**(2) FERESHTEH HABIBOLLAZADEH BEHBEHANI**  
**(3) GARY THOMPSON**

**Respondents**

**Adam Chichester-Clark** (instructed by Summit Law LLP) for the Applicants  
**Simon Hunter** (instructed by HA Law) for the Second Respondent

The First and Third Respondents did not appear and/or take any part in the proceedings

Hearing dates: 25 November 2021 and 7 March 2022

**JUDGMENT**

**Mrs Justice Roberts :**

1. This is my written ruling in respect of the form of an order made in relation to a number of applications which were before the court at hearings on 25 November 2021 and 7 March 2022. On both occasions I heard oral submissions from counsel and, in addition to several iterations of the draft order, I have detailed written submissions from each of Mr Chichester-Clark (who has appeared throughout for the applicants), Mr Hunter (who appeared on 7 March 2022 for Ms Behbehani) and Ms Bianca Venkata (his predecessor, who appeared on 25 November 2021).
2. Whilst counsel have been able to agree much of the drafting, there remain a number of points in contention. Time did not permit me to deliver a full judgment in related to all disputed matters at the last directions hearing and thus I agreed to prepare and hand down a written ruling on the substantive matters which continue to separate the parties.

*The genesis of these proceedings*

3. Some eighteen years ago, Ms Behbehani (the second respondent in these proceedings) issued financial claims against her former husband in the context of ongoing divorce proceedings in this jurisdiction. Those claims were resolved as the result of a judgment delivered by Parker J in November 2008 in the Family Division of the High Court following a contested hearing. The judge found that Mr Behbehani (who has taken no part in these proceedings) had failed to make full and frank disclosure of his financial resources. His assets were found to be in the order of £44 million including a 99.14% holding through ownership of two Irish companies in a Spanish company called Setubal 97 SL (“Setubal”). That company owned a valuable property portfolio including a golf course which was known as the Santa Clara Development.
4. By her order at the conclusion of the financial proceedings, Parker J awarded Ms Behbehani a sum of £20 million together with interim periodical payments pending payment in full and her costs. She made a freezing order over up to £20 million of Mr Behbehani’s assets to assist in enforcement. Nine years later, in July 2017, and in the absence of any payments and/or compliance with the order by Mr Behbehani, Parker J made further orders which were designed to assist Ms Behbehani in her attempts to enforce payment. One of those orders was a receivership order with a view to realising value in the Setubal shares which Ms Behbehani claimed then to be worth some €70 million. The matter was not without complication since one of the judge’s original findings had been that Mr Behbehani’s interest in Setubal lay in his beneficial ownership of the shares but not the underlying assets.
5. The applicants are professional receivers who were appointed by the court in July 2017 under the terms of a receivership order in relation to the shares in Setubal. Following their appointment they immediately secured registration and recognition of the receivership order in Ireland in respect of a sum of up to £6.219 million. For a period of about eighteen months in 2018/2019, the receivership order was discharged pending a challenge in the Court of Appeal by an individual who claimed that it was he, and not Mr Behbehani, who was the ultimate beneficial owner of the Setubal shares. That challenge

was unsuccessful. The appeal was dismissed and the receivership order reinstated in December 2019. However, the issue and resolution of the appeal created a significant hiatus in the receivership. For a period of over a year, the professional role of the applicants was put ‘on ice’; the receivership was effectively discharged whilst a decision was awaited from the Court of Appeal.

6. The uncontradicted evidence of Mr Short, one of the Former Receivers, is that the appointment was accepted by the applicants on the clear basis that the potentially significant costs and disbursements which were likely to be incurred in several jurisdictions during the period of the receivership would be underwritten in full as ongoing disbursements by Mrs Bebehani and/or Mr Barroso, the partner with whom she was then living. Whilst it is not accepted to be a “family office” as such, it is acknowledged within these proceedings that Mr Barroso, whilst not a practising lawyer himself, owns or operates HA Law, the firm through which Ms Behbehani has been pursuing her enforcement proceedings against her former husband and, as a consequence, the current proceedings involving the applicants.
7. Mr Short has filed a number of witness statements in these proceedings explaining that, despite protracted correspondence passing between them, neither Mr Barroso nor Ms Behbehani provided the promised funds to discharge, or reimburse, the costs which were incurred in the early stages of the receivership. As a result, the applicants faced what was described as a real threat of debt recovery actions against them in their personal capacities.
8. During the early part of 2020, at a time when the original receivership order had been discharged to await the outcome of the decision in the Court of Appeal, it appears that six of the offshore properties were sold for c. €5.569 million. They were heavily mortgaged to a local bank and produced just under €786,000 in terms of available equity. It appears to have been agreed at the time that this had no effect on the underlying value of the shares in Setubal as the equity reflected in the company’s balance sheet was converted into cash. Since then Ms Behbehani has filed a sworn witness statement in these proceedings in which she claims to have acquired property formerly belonging to Mr Behbehani which is worth in the order of £10 million. There is no reliable up-to-date evidence before this court in relation to (i) the extent of her recovery through the enforcement mechanisms available to her in various jurisdictions, and/or (ii) the extent of her own financial position save that, as I shall explain, she claims to be in a position of substantial illiquidity at the present time. She has not provided any evidence as to how she has applied funds already recovered in partial satisfaction of the 2008 order.

**The application dated 11 December 2020 seeking transfer of the Setubal shares for nil consideration**

9. With the receivership order reinstated by the Court of Appeal in December 2019 and with the process of realising Setubal's assets apparently underway, on 11 December 2020 Ms Behbehani issued a claim against the applicants by which she sought an order that the Former Receivers transfer to her the Setubal shares for nil consideration. By this time, the costs incurred by the applicants in relation to their time in office were estimated to be approaching £400,000. It appears to be accepted without challenge that, subject only to the assessment of the quantum of those costs, nothing had been paid on account in what the Former Receivers allege to be a clear breach of the terms of their appointment and retainer.
  
10. That application came before me on 20 May 2021. By that stage Ms Behbehani had advertised an intention to sue the applicants in respect of their alleged professional negligence. The claim was then unparticularised. She was represented on that occasion by experienced counsel, Mr Charles, instructed by HA Law. Following discussion between the parties, I was told by Mr Charles that his client no longer intended to pursue her application for a formal transfer of the Setubal shares. That position was reflected by a formal recital in the order which I approved at the conclusion of that hearing. With no clear formulation of how the advertised claim in negligence was being formulated, I acceded to the request advanced by Mr Chichester-Clark on behalf of the applicants that I should make an 'unless' order so as to crystallise all outstanding matters and issues between them. I provided in my order that the Former Receivers would be released from all liability regarding their conduct of the Receivership unless Ms Behbehani filed and served particulars or points of claim against them within three months, i.e. by 20 August 2021. At the same time I granted Ms Behbehani's application to appoint a new Receiver, Mr Darren Edwards, in place of the applicants since it was clear that the professional relationship between the parties had become unworkable. Since it was agreed that the Former Receivers should be entitled to exercise a formal lien over the Setubal shares in respect of their outstanding costs and expenses, I ordered that, prior to any formal transfer of the shares, Mr Edwards in his capacity as the New Receiver must provide his professional predecessors with a charge over the shares up to a maximum value of £400,000. He was also required to give 28 days' formal notice of any intention on his part, or instruction from Ms Behbehani, to transfer the shares. On that occasion I accepted Ms Behbehani's undertaking to the court to pay forthwith a sum equivalent to the value of any assets she received or derived from the transfer of the shares up to a value of £400,000.
  
11. I made a costs order against Ms Behbehani by which she was to pay the costs of the Former Receivers on an indemnity basis with an immediate payment of £40,000 on account of those costs by 4 June 2021.

### **The Former Receivers' application for an injunction: 25 June 2021**

12. Having become aware that, in breach of my order, the New Receiver was proposing to transfer the Setubal shares to Ms Behbehani for nil consideration, the applicants issued a formal application for an injunction preventing the transfer. After correspondence between the solicitors, that application was compromised on the basis of a formal undertaking given by Mr Edwards that he would not transfer the shares to Ms Behbehani without a further order from the court. On the basis of that undertaking, I adjourned the injunction application with liberty to restore.

**Ms Behbehani's renewed share transfer application (5 July 2021) and application for further extension of time (9 July 2021)**

13. On 5 July 2021 Ms Behbehani applied again for the transfer of the Setubal shares into her name for nil consideration. She acknowledged that this would involve the court's approval and the setting aside of the undertaking given by Mr Edwards.

14. For these purposes, she relied on a Preliminary Notice of Claim served on the applicant's solicitors some four days later on 9 July 2021. In that notice she claimed to have suffered losses of between £5 million and £10 million as a result of action, or inaction, on the part of the Former Receivers in their conduct of the Receivership. On the same day she issued a further application seeking an extension of time for filing any points or particulars of claim against them so as to avoid the operation of the 'unless' order which I had made on 20 May 2021. She claimed in an accompanying witness statement that she required formal control of Setubal in order to further investigate its financial status in order to discover whether there had been a dissipation of assets so as to enable her to 'contemplate [a] proper claim against [the Former Receivers] in order to prove their negligence and liability to me for allowing the dissipation of the assets from Setubal 97 SL during their appointment'.

15. I notified the parties and their advisers through an email sent by my clerk on 16 July 2021 that I was prepared to list Ms Behbehani's latest application for consideration at the next hearing on 28 July but that my provisional view in relation to the extension of time sought was that any further consideration of the matter might need to be by way of an appeal. Following further legal argument on 28 July, I was told by Ms Behbehani's counsel that, having made enquiries, his client would require a further "two or three months" properly to plead her claim in relation to quantum. This was apparently on the basis that matters were being actively pursued in Spain and advice sought in that jurisdiction as to the potential merits of any claim.

16. In terms of her renewed application for the transfer of the shares, Ms Behbehani's counsel submitted that the existing charge on the shares held by the Former Receivers constituted effective security for their outstanding costs of the receivership then capped at £400,000. It was submitted on her behalf that the court could not fairly dispose of the renewed application without expert evidence from a Spanish lawyer. Because I was conscious, as I have been throughout, that these issues arise in the context of this former wife's endeavours to enforce an English matrimonial order which remains extant, I

ordered that she should have permission to file and serve expert evidence in relation to Spanish law and the adequacy of the charge as sufficient security for the Former Receivers' outstanding claim. In order to hold the balance in terms of fairness to both parties, I allowed her a short extension to the original three-month period of the 'unless' order until the next hearing which was listed on 25 November 2021.

17. On 6 September 2021 HA Law served a report from a Spanish lawyer which described the process for registering a charge in that jurisdiction but which failed to address the issue of the extent to which it constituted good and sufficient security for the outstanding claims of the Former Receivers. The following month, on 6 October 2021, HA Law sent a further 'Letter before Claim' to the applicants' solicitors repeating her unparticularised allegations in broad terms that they had been professionally negligent in discharging their duties as Receivers. As to quantum, she relied on her earlier estimate that her total losses were in the region of £10 million. There was no indication as to how that estimate had been reached.

**The Former Receivers' debarring application: 18 November 2021**

18. On 18 November 2021 the Former Receivers issued their debarring application seeking an order that Ms Behbehani should be prevented from bringing any further claims against them in their professional capacity as Receivers.

*The hearing on 25 November 2021*

19. Thus, for the purposes of the hearing on 25 November 2021, there were three substantive applications before the court:-

- (i) Ms Behbehani's renewed application (5 July 2021) for the transfer to her of the shares in Setubal for nil consideration and free from any charge or lien exercised by the Former Receivers' as security for their costs;
- (ii) her application (9 July 2021) for an extension of time for filing her detailed Particulars of Claim as a defence to the Former Respondents' debarring application and by way of variation to my original 'unless' order made on 20 May 2021; and
- (iii) the Former Respondents' application (18 November 2021) for a debarring order.

20. On the eve of that hearing, Ms Behbehani's solicitors made an offer to provide security for the share transfer. Whilst Mr Chichester-Clark told me that this development was welcome, albeit very late in the day, there remained an issue about the adequacy of the security which was being offered. That was to take the form of a formal charge over a particular Spanish property which had been identified by Ms Behbehani. There was then no formal evidence before the court of the value of that property and it was not clear whether she was the registered owner of the property, it being her case that registration of ownership should have been completed by December 2021. Further, it appeared that

this would be a second charge ranking behind a first charge in favour of a Spanish bank. As Mr Chichester-Clark made clear in his oral submissions on that occasion, the Former Receivers had always accepted that they would ‘drop out’ of the picture once proper security was provided in respect of the outstanding costs of their Receivership.

21. Ms Venkata appeared on behalf of Ms Behbehani at that hearing. She invited the court to make a conditional order on the basis that, whilst discussions continued, the undertaking given by Mr Edwards (the current Receiver) in relation to the Setubal shares would remain and would not be discharged unless or until an appropriate, and agreed, charge over the Spanish property had been put in place.
22. The evidence before the court at that stage from Ms Behbehani was that Mr Edwards had already transferred to her properties worth £4.65 million.
23. In order to provide the parties with an opportunity to explore the security proposal then being advanced by Ms Behbehani, and because time in the hearing had run out on 25 November, I agreed to allow them a short adjournment to carry forward their discussions. I indicated that I would rule on any matters which remained in issue between them in terms of the drafting and any extant issues which remain unresolved, including the debarring application which I indicated I was minded to make.
24. It is important at this juncture to note that the position adopted in these proceedings by the Former Receivers is not simply one of seeking security for an unpaid debt. Their role as court-appointed Receivers brought with it certain legal duties and obligations not only in relation to Ms Behbehani but to other third parties as well. The two Irish companies have rights in relation to the Setubal shares. In principle, it is those corporate entities which are entitled to any proceeds of sale following satisfaction of whatever debt is found to be due to the Former Receivers. As matters stand, the Former Receivers have a lien over those shares to protect their position. Ms Behbehani is now the beneficial owner of the Irish companies and it is she who will be entitled to those surplus proceeds once the debt is paid. But that entitlement will be quantified once the debts and expenses of the consequent liquidations and any claims of their respective creditors have been ascertained.
25. There is even now no evidence before this court as to what, if any, steps have been taken to advance the Receivership since the New Receiver’s appointment on 20 May 2021. The court now has Ms Behbehani’s evidence in her sworn statement of 11 December 2020 that she has acquired property worth £10 million which formerly belonged to Mr Behbehani.
26. Whilst a draft order appears to have been in circulation over the course of the next few weeks following the conclusion of the hearing on 25 November 2021, little substantive progress was made. On behalf of the Former Receivers, Mr Chichester-Clark submits that this process was significantly hindered by the fact that there was a wholesale change of personnel at HA Law with four separate fee-earners leaving the employ of that firm

during 2021. I accept that the lack of continuity in Ms Behbehani's representation has not helped the smooth transition of this litigation. Not only have there been frequent changes in terms of the individual solicitor(s) dealing with the matter internally at various stages of the litigation; there have also been frequent changes of counsel instructed at the previous hearings. None of this has helped matters. There have been instances when it has been plain to me that counsel instructed on Ms Behbehani's behalf has not had full and complete instructions about what has transpired on a previous occasion. These inconsistencies have been remedied both by the written transcripts of the hearings which have been made available for subsequent hearings and by reference to my own judicial notes.

27. By the beginning of 2022 with no apparent resolution in sight, I listed the matter for further directions.

### **The hearing on 7 March 2022**

28. Mr Chichester-Clark appeared at this hearing to represent the Former Receivers. Mr Simon Hunter was instructed to appear for Ms Behbehani. I had a travelling draft of the proposed order but aspects of that draft remained in contention. The issues then remaining between the parties were these:-

- (i) the outstanding costs of the First Receivers in respect of their receivership duties; whether they were owed the full sum of £400,000 claimed; and who should pay those costs;
- (ii) what should be done about Ms Behbehani's potential claim against the Former Receivers given the unfulfilled conditions of my previous 'unless' order and my previous indication that they should be entitled to the debarring order which was sought; and
- (iii) what order should be made on the costs of the various applications which had been put before the court.

29. By this stage, Mr Edwards appeared to have relinquished his role as Receiver of the Setubal shares. I had been told at a previous hearing that he had left the jurisdiction to take up residence in Brazil. Mr Gary Thompson, the Third Respondent, was appointed in his place. The scheme envisaged by the draft order which was before the court on 7 March 2022 was that the newly appointed Third Receiver would adopt his predecessor's undertaking to the effect that the Setubal shares, and their underlying value, would be preserved until further order of the court. There would be no transfer of those shares to Ms Behbehani at this stage. For her part, Ms Behbehani agreed to pay the costs, remuneration and expenses of the Former Receivers once the quantum of those costs had been agreed or determined pursuant to CPR Part 69. In the meantime she agreed to provide sufficient security to protect their interest through a charge, or charges, on properties which she owned in Spain, or by some other agreed means, up to a limit of



£400,000. On that basis, I was invited to make an injunction preventing either Ms Behbehani and/or Mr Thompson from transferring or otherwise dealing with the shares. The share transfer application was to be adjourned on this basis with liberty to apply.

30. Thereafter, and prior to any application to lift the injunction, Ms Behbehani was to ensure that reasonable security remained in place for so long as the debt to the Former Receivers, or any part of it, remained unpaid. There was provision for evidence to be provided to the Former Receivers in relation to the value, prior encumbrances and title to any real property offered as alternative security for the debt. Once the debt had been discharged, the Former Receivers would be required to sign a certificate confirming that the costs of the receivership had been paid in full (the Schedule 2 certificate). Once lodged with the court, Ms Behbehani was to be entitled to apply on the papers for the discharge of the injunction preventing any dealings with the shares. A draft order was to be appended to the order (the Schedule 1 order). She would thereafter be entitled to require the Receiver to transfer to her the Setubal shares.
31. That scheme represents an entirely sensible compromise of the Share Transfer Application. The formal concession that the Former Receivers should have security for their professional costs may have come very late in the day (on the eve of the hearing on 25 November 2021) but it has come nonetheless, and no doubt on good advice. For my part, I would not have left the Former Receivers exposed in terms of their outstanding costs whilst quantum was either agreed or adjudicated. It is right to note that Ms Behbehani said as long ago as December 2020 when she issued her first application for the transfer of the shares that she was willing to consider providing security subject to assessment of those costs. That position did not find reflection in any clear open proposals until 24 November 2021 on the eve of the November hearing when there was plainly insufficient time to identify the sufficiency or nature of the security offered. It was nevertheless progress.
32. In terms of what are essentially drafting points on the order which now reflects this scheme, my rulings are now reflected in the approved draft which comes to the parties with this written ruling.
33. One of those issues concerns what Mr Hunter has referred to in his skeleton argument as 'Main Issue A'. It relates to how the Former Receivers' costs (up to £400,000, subject to formal assessment) are to be paid. It is Ms Behbehani's case that payment must be deferred until she is in a position to liquidate the shares or, alternatively, declare a substantial dividend or similar payment from Setubal. Mr Chichester-Clark has drafted the order on the basis that the costs of the Receivership shall be paid to the Former Receivers within 14 days after the conclusion of the CPR r 69.7(5) assessment or, if later, within 14 days after the date on which they are able to certify that all outstanding costs have been paid and thus Ms Behbehani is entitled, under the scheme of the order, to apply to the court on paper for the lifting of the injunction preventing transfer to her of the Setubal shares.

34. The issue in this context is whether the substitution of a different security asset changes the identity of the fund from which payment to the Former Receivers is to be made. It has always been an integral part of the Former Receivers' case that their agreement to accept the appointment was predicated on the basis that Mr Barroso (who made the original approach to Messrs Wolloff and Short in respect of their professional involvement) and/or Ms Behbehani would assume personal liability for their fees and disbursements incurred during the Receivership. As far as I am aware, that position has never been the subject of formal challenge in these proceedings.
35. The position which appeared to have been agreed following the hearing on 25 November 2021 was this :-
- (i) the underlying obligation for which Ms Behbehani had agreed to provide appropriate security is the payment to the Former Receivers of their costs of the Receivership (defined as the sum ascertained following a determination under CPR 65);
  - (ii) Ms Behbehani's concern as outlined by Ms Venkata on her client's behalf at that hearing was that she should not become liable to make any payment to the Former Receivers before she had acquired good title to the Spanish properties over which she intended to provide the Former Receivers with a charge. As matters stand, the current wording of the draft proposed by the Former Receivers reflects their position that she should not be required to meet those costs, once assessed, until fourteen days after agreement or assessment of those costs.
36. It seems to me that it would not be right to deprive Ms Behbehani of the ability to apply to the court following a CPR 65 determination or assessment of the Former Receivers' costs. Whilst I propose to leave the drafting of the order as an obligation on Ms Behbehani to pay the Former Receivers' costs without any corresponding stipulation as to the provenance of such payment, I am not going to preclude an application to extend the time for payment. She needs to be aware, however, that the court is unlikely to entertain such an application without the clearest evidence in relation to the sum, or sums, she has recovered from Setubal and the up-to-date position of her own financial circumstances. As I shall explain, the evidence which she has filed to date in these proceedings has been wholly unsatisfactory and I can only repeat that I have placed no reliance upon it. She is not a litigant in person and I can only assume that what she has put before the court has been designed to obfuscate rather than clarify.
37. That then leaves the issue of the debarring application and costs. I turn now to deal with each of those issues in turn.

### **The Debarring Application**

38. I stated earlier in this ruling that I have borne very much in mind throughout that Ms Behbehani has become involved in this third party litigation because she is the beneficiary of a matrimonial award which has remained unpaid for several years. The Former Receivers have played their role in relation to the ongoing efforts which have been made in relation to enforcement but it is important to state that they have no part in, or liability for, the substantive default which is the responsibility of her former husband, the respondent in the matrimonial proceedings.
39. In essence, Ms Behbehani seeks the further indulgence of this court in relation to her ability to pursue her proposed claim against the First Receivers. She has not paid anything to the Former Receivers in satisfaction of the costs order I made over a year ago. It appears she is also technically in breach of the court's last deadline for filing her particulars of claim. In this context the court will be seeking an outcome which is fair to all parties and proportionate to the issues engaged. For these purposes, the three-stage test endorsed by the Court of Appeal in *Denton v TH White* [2014] EWCA Civ 906 ("the *Denton* test") is engaged.
40. I take as my starting point the litigation history of this application as it has developed.
41. Ms Behbehani first raised the existence of a potential claim against the Former Receivers almost two years ago in July 2020. She quantified that claim at between £5 million and £10 million. In terms of developing that claim, little progress was made despite the fact that the Former Receivers were obliged to put their indemnity insurers on notice of its existence. The basis of the claim was initially put in this way:-
- (i) the Former Receivers had not made progress in obtaining control of the Setubal shares with the consequence that various properties had been disposed of with a consequent reduction in the underlying share value; and
  - (ii) the costs and expenses incurred by the Former Receivers in the period of their appointment were excessive.
42. I pause there to observe that it is difficult to see how that second limb can be said to found a cause of action in negligence. It is in terms a complaint about quantum. The essence of the complaint appears to be that delay in progressing the Receivership led directly to a loss in the value of the shares.
43. The Former Receivers' response to the claim is to be collected from the various witness statements filed by Mr Short. Had Ms Behbehani not defaulted on her own obligations to fund the expenses and other disbursements incurred by the Former Receivers (relied on as a clear term of their Receivership), Mr Short expressed his belief that the shares could, and would, have been realised. Further, for a significant period of time between 2017 and 2019, there had been a hiatus in their status as Receivers because of the appeal from the order of Parker J in July 2017. The application to set aside the Receivership

order was made in September 2017, their appointment was discharged, and it was not reinstated by the Court of Appeal until 20 December 2019.

44. It is clear from the material before the court from Setubal's own solicitors that the sale of six of the properties owned by the company had been agreed prior to the date when the Receivership was reinstated and without the involvement of the Former Receivers. Further, whilst the completion of those sales took place as scheduled in February 2020, there was no evidence that the company had suffered any loss or that the sales had any impact on the company's balance sheet. That much has been confirmed by both Mr Short and the company's solicitor.
45. Ms Behbehani elected not to challenge that evidence. She did not file any evidence to contradict Mr Short's sworn evidence or the evidence from the company's solicitor. That was the position when the matter returned to court at the hearing before me on 20 May 2021. She was represented by counsel at that hearing. He conveyed to the court Ms Behbehani's instructions that, at that point in time, she did not intend to pursue a claim against the Former Receivers. That position was reflected in the recital to the order which I made on that date. Nevertheless, despite what was in effect a concession that she was not intending to proceed with a formal claim at that point in time, her counsel sought a final extension in order to allow his client further time to make her enquiries and take advice on the position.
46. I declined to allow her the further six months which was sought. I did allow her a *final* opportunity to investigate whether share value had been affected as a result of the sales or for any other reason but I determined that the Former Receivers should be released from any further exposure to claims after three months (i.e. by 20 August 2021) unless she had by then filed and served particulars or points of claim.
47. Ms Behbehani then instructed an individual called Robert Donald of Hellas Commerce to compile a report in relation to these matters. It is that report which appears to inform the base line of her claim that there were "missing assets" with a value of c.£5 million or more. On 9 July 2021 HA Law sent to Summit Law a preliminary notice of claim pursuant to the pre-action protocol together with a copy of Mr Donald's report. On the same date she issued a further application for a second extension of time to prepare her pleaded case. With a hearing already listed to consider Ms Behbehani's second Share Transfer application on 28 July 2021, I indicated through my clerk that I would list the application for further time to be considered at that hearing but that my provisional view was that any challenge to the earlier three month limit which I imposed was more properly the subject of an appeal rather than a second application for more time.
48. I have already dealt in paragraph 16 above with the outcome of that hearing. Conscious of Ms Behbehani's status as a former wife seeking to enforce a matrimonial order, and in the teeth of opposition from Mr Chichester-Clark, I agreed to allow her one further and final indulgence. I listed a substantive directions hearing on 25 November 2021 in order to consider her pleaded case which I made clear must be available by that date. I took

that course notwithstanding the discontinuance of her first claim against the Former Receivers on 20 May 2021.

49. As at 25 November 2021, Ms Behbehani had not filed a pleaded case. She had not paid the sum of £40,000 on account of the Former Receiver's indemnity costs which I directed must be paid as long ago as 20 May 2021. Somewhat surprisingly, her new counsel, Ms Venkata, was instructed on that occasion to seek yet a further extension until 25 March 2022 to pay the £40,000 on account of costs and until 25 May 2022 to file her particulars of claim. In support of that further extension, her counsel submitted that she still did not have sufficient information as a shareholder to identify the answers to the following questions:

- (i) whether the sale of the six properties was agreed prior to the Former Receivers resuming office and whether there was anything they could have done to prevent a sale. *"This will assist her in identifying the specific breaches of duty"*; and
- (ii) whether there was any loss incurred as a result of the sales<sup>1</sup>.

50. In a final gesture of clemency, I gave her a further 7 days to comply with my original 'unless' order but made it absolutely plain that I would not countenance *any* further delay and that the debarring order would become fully operational if both defaults were not fully remedied.

51. As Mr Hunter on her behalf accepts, the claim form which his client finally produced was not issued until 3 December 2021, more than seven days after the November hearing. He relies on the fact that the documents were filed with the court on 1 December. He accepts that service on the Former Receivers on 2 December 2021 may not have been in strict compliance with the CPR. Mr Hunter seeks to argue that in either case (failure of issuance in time, or failure to serve in time) does not represent a serious or significant breach and the court should not debar his client from proceeding with the claim. He seeks relief from sanction.

52. The payment on account of the indemnity costs award in favour of the Former Receivers remains unpaid and outstanding. Ms Behbehani has paid nothing on account of their costs notwithstanding that my order was made over a year ago. Despite the fact that she continues to seek the court's indulgence in terms of relief from sanction, she offers nothing and, as far as I am aware, no approach has been made to the solicitors acting for the Former Receivers with a view to making good that ongoing default since the last hearing on 7 March this year. Mr Hunter is sufficiently realistic to concede in his written submissions that *"the payment of the £40,000 is perhaps more of a sticking point"* (see para 13 of his skeleton argument dated 2 March 2022). Nonetheless, he argues that the

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<sup>1</sup> See para 43 of the skeleton argument dated 24 November 2021 filed by Ms Venkata on behalf of Ms Behbehani for the purposes of the hearing on 25 November 2021.

court should not impose this condition if to do so would stifle the claim. He relies on Ms Behbehani's assertion that she is not in a position to pay at this time.

53. Mr Hunter may or may not be aware but I have on previous occasions made it quite plain to Ms Behbehani and her legal team what would be required to satisfy the court that she was without the means to meet that payment on account. I accept entirely that the hearing on 7 March this year was the first occasion on which he had appeared on her behalf. By her own account, she has recovered at least £10 million worth of property in Spain as well as shares in two offshore companies. Her financial disclosure in terms of an ability to meet the order which the court has made is limited to a single sheet of paper with 12 lines presented as bullet points without any narrative explanation. There is no accompanying statement of truth as to the contents. It has not been signed. She gives no explanation whatsoever about her current domestic arrangements or how she is funding her domestic economy given that she claims to have no income and cash of less than £500<sup>2</sup> in the single bank account she has identified. Even that bank statement has been redacted to remove any information about cashflow or the source of monies coming into the account. She does not provide any information about attempts which she might have made to raise a sum of £40,000 against a property portfolio with a gross value of c. £10 million. I am driven to the clear conclusion that I can have little confidence in the accuracy of the financial disclosure which Ms Behbehani has put before this court in support of her application for relief from sanction.
54. In the context of the *Denton* test, I regard the failure to make that payment on account of costs as a significant consideration. I am also conscious of the fact that she is also arguably in breach of the time limit I stipulated as the very final concession for the filing and service of her pleaded case. Whilst it might be argued on her behalf that she had taken all steps necessary to file her document with the court at the eleventh hour and that the default is merely technical, that has to be seen in the context of the successive indulgences which she has already been granted by the court. My order from 20 May last year was quite clear: she knew what had to be done and we are now more than a year further down the road in this litigation. The Former Receivers are still without the contribution to their increasing costs which I directed they should have received many months ago. Far from this being a case where unreasonable deadlines have been imposed, Ms Behbehani has been extended a very significant degree of latitude in terms of her compliance with court orders and deadlines. It is unfortunate that there has been a lack of consistency in terms of her legal representation and what appears to have been a revolving door in terms of the lawyers employed by HA Law to deal with her case. But that is not something which should operate to prejudice the legitimate interests of the Former Receivers. It is a curious feature of this case that I have no information as to how Ms Behbehani is funding her own legal costs at the present time given her current financial presentation. It seems to me not unreasonable to infer that her legal costs are being defrayed one way or another by her current partner, Mr Barosso, who appears to be

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<sup>2</sup> as at February 2022

playing a significant role in pursuing, or assisting in the pursuance of, the enforcement of her matrimonial award.

55. At the third, and final, stage of the *Denton* exercise, these matters must all be considered against the wider factual matrix of this case. For these purposes I bear well in mind the two criteria set out in CPR 3.9 and the overriding objective reflected in FPR 2010 r.1(1). Alongside the need for litigation to be conducted efficiently and at proportionate cost is the equally important principle that orders and time limits require strict and timely compliance if that efficiency is to be maintained.
56. In terms of “all the circumstances of this particular case” including the manner in which Ms Behbehani and those instructed by her have conducted this litigation, I have borne well in mind the following submissions made by Mr Chichester-Clark on behalf of the Former Receivers. In my judgment, they are all well made. The following matters are all relevant in this context.
- (i) Ms Behbehani gave instructions to her legal representative as long ago as 20 May 2021 that she was not intending to pursue a claim against the Former Receivers. At that stage she had already recovered, or was in the process of recovering, the net value represented by six properties and two companies which represented corporate assets formerly belonging to Mr Behbehani. Her claim was formally abandoned in May 2021 and she was given a closed window of three months to make any further claims after which that avenue of litigation was expressly closed to her by reason of a debarring order.
  - (ii) I reject entirely her suggestion, and am on the record as doing so, that her position on 20 May 2021 was informed or underpinned by some form of agreement, approved by the court, to the effect that she would discontinue her December 2020 application in return for the court permitting the New Receiver to transfer to her the Setubal shares for nil consideration. The contemporaneous court transcript makes it abundantly clear that there was no such agreement presented to the court and no quid pro quo for the abandonment of that claim.
  - (iii) Despite the fact that she has, on her own account, recovered property in the liquidation with a potential value of £10 million, she has provided no proper excuse or explanation for her failure to comply with the court’s order. Even if part of that value has yet to be realised (and she has not provided the court with the assistance or information it is entitled to expect in this regard), the New Receiver, Mr Edwards, has confirmed that, prior to his departure to Brazil, he had transferred to her properties worth €4.6 million. Not only has she repeatedly sought extensions of time to comply with her obligations, she has consistently neglected to meet the indemnity costs order in terms of the payment on account which remains due and unpaid.

- (iv) During the course of the hearing on 1 July 2021 when she was attempting to lift the injunction in relation to the transfer of shares, she advanced through her solicitors allegations of professional dishonesty against the Former Receivers which were not only untrue but demonstrably so. Specifically, by letter dated 1 July 2021 sent to the court, but not copied to the solicitors acting for the Former Receivers, HA Law represented on her behalf that:-
- a. there had been a specific agreement to abandon her original claim against the Former Receivers in return for the transfer of the shares. I have dealt with this above;
  - b. the New Receiver had been put under inappropriate pressure by the Former Receivers and his willingness to give the court an undertaking that he would not transfer the shares without further order was extracted under duress. That this allegation of litigation misconduct was plainly false was confirmed by Mr Edwards' legal team who confirmed in response to a direct question from me that it was not true;
  - c. there had been deliberate concealment by the Former Receivers of the report prepared on Ms Behbehani's instructions by Hellas Commerce. In fact a copy of that report had been exhibited to a witness statement sworn by one of the Former Receivers, Mr Short, and its contents addressed in detail in the body of his statement. Its contents were also addressed by Mr Chichester-Clark in his skeleton prepared for the hearing on 1 July 2021. Each of those documents had been served on HA Law on 25 June 2020.

57. I bear in mind that Ms Behbehani's advertised claim against the Former Receivers is by no means negligible in terms of the sums sought. The potential merits of that claim are not matters before this court. However, the protracted delays in formulating her claim against the Former Receivers and her repeated requests for more time have to be seen against the background whereby, as at 9 July last year, HA Law had articulated the basis of her claims in their letter before action. Ms Behbehani's own witness statement prepared at about the same time confirmed that she had all the information she needed to formulate her claims. In addition, her failure to meet a costs order in respect of which default has now been ongoing for over a year in circumstances where the applicants are already owed up to £400,000 and the absence of any proper or reliable explanation for her failure to comply with her obligations leads me to a clear conclusion that the applicants are entitled to the relief which they seek.

58. For completeness I record that on 30 March 2022 Mr Hunter sent an email to the court which he has had the courtesy to acknowledge as being outside the process of what was agreed at court on 7 March as to the way forward. In that email, on his client's specific instructions, he has proposed that the court should refuse to make the debarring order if



his client makes a payment of £40,000 (the long overdue payment on account of the Former Receivers' costs) within a further 30 days. The basis of that proposal appears to be her recovery of possession of one of the Spanish properties. Given that I had already determined in principle on 7 March 2022 that Ms Behbehani was not entitled to further relief from sanction, I do not propose to defer delivery of this written ruling and I decline to adjourn matters further. Ms Behbehani has had a significant measure of indulgence from this court for more than a year.

59. For these reasons, I have included within the approved order at paragraph 18 the debarring order which the Former Receivers seek. Having carefully weighed all these matters, including the requirements of CPR 3.9, this is the only fair outcome given the latitude already extended to Ms Behbehani.

### **Costs**

60. I turn now to consider the outstanding dispute in relation to costs.

#### *The Share Transfer and Injunction Applications*

61. In relation to the Share Transfer Application, Ms Behbehani is not seeking her costs of that application. Her case is that there should be no order in relation to costs.
62. The Former Receivers seek their costs of both the Share Transfer and the Injunction Applications. I have decided that they are entitled to an order for costs. I take into account that Ms Behbehani recognised that there would need to be some form of security for the Former Receivers' costs of the Receivership when she launched her application. The lien over the Setubal shares arose in their favour by operation of law and, if the shares were to be transferred, it was always obvious that their interests would require protection in one form or another pending the resolution of their outstanding claims. However, the fact remains that there was no offer forthcoming in relation to the provision of alternative security until the evening before the hearing on 25 November last year. This was a crucial element of her application. It could and should have been the subject of careful thought and the formulation of an offer which would have allowed time in advance of that hearing for detailed consideration of the form and adequacy of the proposed security. The Former Receivers were not afforded that opportunity. The costs of the hearing were incurred. I understand that matters have not moved on significantly, if at all, in the intervening months save for the proposals which are now reflected in the draft order submitted to the court (see paras 24 and 25).
63. However, whatever the alleged shortcomings in Ms Behbehani's approach to the conduct of this litigation, I see no proper basis on which to order indemnity costs in relation to the Share Transfer Application. I am satisfied that there was a proper basis for her application although it was unfortunate that its progress was not managed more efficiently by HA Law. The fact is that a proposal has now been made to secure the interests of the Former Receivers. Ms Behbehani must pay the costs but I am not going

to penalise her further by requiring her to pay those costs on an indemnity basis. Ms Behbehani will pay the Former Receiver's costs of these applications to be assessed on a standard basis, if not agreed.

*The Debarring Application*

64. In this case and for all the reasons set out earlier in this ruling, costs should follow the event. The Former Receivers have been successful in their application and they should be entitled to their costs. These, too, will be assessed on the standard basis if not agreed.

*Matters arising since 7 March 2022*

65. Since the last hearing on 7 March 2022, there has been further correspondence with the court in relation to the assessment of costs.

66. On 9 May 2022 Mr Kelmanson of Summit Law wrote to the court in relation to the ongoing assessment of the costs which were ordered to be paid pursuant to the order I made on 20 May 2021. Ms Behbehani has failed to date to pay those costs and is thereby in ongoing default of my order. In the circumstances, I am asked to consider making what would in effect be a free-standing debarring order preventing her from participating in that costs assessment process. The concern in relation to her apparent disengagement arises also in relation to the further substantial payment on account which is included in the order which I have now approved. Whilst she has apparently indicated through her counsel that she does not seek to resist such a further payment on account in principle, there is concern on the part of those acting for the Former Receivers that there may be further default on her part. In these circumstances I am asked to consider the inclusion in my order of two further provisions:-

- (i) that Ms Behbehani shall be debarred from participating further in the costs assessment proceedings commenced on 18 March 2022 until such time as she shall have paid, in full, the sum of £40,000 being the payment on account of costs contained in the order of the court dated 20 May 2021; and
- (ii) she shall further be debarred from participating in any cost assessment proceedings relating to costs payable under the present order until such time as she shall have paid in full the sum set out in para 22 of the order representing two-thirds of the Former Receivers' costs incurred to date.

67. I have considered carefully whether to accede to that request. If included, these provisions would necessarily need to be qualified by a liberty to apply. These are essentially 'without notice' debarring applications although Mr Kelmanson quite properly included HA Law in the distribution of his email of 9 May 2022. Whilst I am keenly aware of the overriding objective and the need to limit appropriately and proportionately the time which the court can allocate to this case, I suspect that the inclusion of these additional orders would prompt just such an application by Ms

Behbehani. It could take many weeks to list a hearing and we would simply build further delay and expense into the litigation which now requires a swift resolution.

68. What I am prepared to say is this. Court orders and time limits must be complied with. The court's decisions as reflected in its orders are not 'invitations to treat'. I expect Ms Behbehani to comply with the precise terms of my order. I expect her to engage in a timely way with the ongoing process of the costs assessment in accordance with the requirements of CPR. If she fails to do so, I will entertain a further application on the papers and, in these circumstances, she should expect the court to consider granting costs on an indemnity basis.

69. That is my decision.