



Covid-19 Protocol: This judgment was handed down by the judge remotely by circulation to the parties' representatives by email and release to Bailii. The date and time for hand down is deemed to be 6 January 2021 at 10.15 am

Neutral Citation Number: [2021] EWHC 6 (Ch)

Case No: BL-2019-001745

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

Rolls Building
Fetter Lane, London, EC4A 1NL

Date: 06/01/2021

Before :

MASTER KAYE

Between :

MRS NEHA BERIWALA

Claimant

- and -

**(1) WOODSTONE PROPERTIES (BIRMINGHAM)
LIMITED**

Defendants

(2) MR JOGA KHANGURE

Shail Patel (instructed by **Grovesnor Law**) for the **Claimant**
John Randall QC (instructed by **Aspect Law Limited**) for the **Defendants**

Hearing dates: 10 September 2020

Approved Judgment

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

.....

MASTER KAYE

Master Kaye :

1. This was a remote hearing of the Defendants’ application for security for costs dated 30 June 2020 (“**the Defendants’ application**”). The application was supported by two witness statements from Mr Kharron-Deep S Phagura (“**KDP**”), of Aspect Law Limited, dated 30 June 2020 and 4 September 2020.
2. In response to the application the Claimant, Mrs Neha Beriwal (“**NB**”) relied on three witness statements from herself, Mr Ganesh Nanwani of Grosvenor Law (“**GN**”), and her husband Mr Vipul Beriwal (“**VB**”).
3. This is a dispute over the ownership of an Indian restaurant in Chelsea, London, called Kutir.
4. The Claim Form is dated 20 September 2019 and the Defence and Counterclaim 30 October 2019. The Reply to Defence and Defence to Counterclaim is dated 22 November 2019. Pleadings therefore closed before the end of 2019. The Case Management Conference took place on 18 March 2020 when directions were given through to a trial which is now listed in January 2021. Disclosure had been completed in June 2020 prior to the issue of the Defendants’ application. Witness statements were exchanged in August 2020 prior to this hearing. Since there was no requirement for expert evidence, all the procedural steps other than the trial preparation have been completed. The trial witness statements were included in the bundle for the hearing and referred to and relied upon as part of the evidence in support and opposition to the application.
5. It seems to me on any objective basis the application for security for costs issued on 30 June 2020 was a late application. The explanation for the lateness and the effect of the lateness are matters I consider as part of the exercise of discretion generally in relation to the Defendants’ application. However, Covid-19 is not and should not be used as a catch all explanation and justification for delay.
6. The Defendants’ application is made pursuant to CPR25.12. CPR25.13 sets out the threshold conditions to be satisfied before an order or security for costs is made. It provides so far as is relevant to this application as follows:

25.13

(1) The court may make an order for security for costs under rule 25.12 if –

(a) it is satisfied, having regard to all the circumstances of the case, that it is just to make such an order; and

(b)

(i) one or more of the conditions in paragraph (2) applies,

...

(2) The conditions are –

...

(e) the claimant failed to give his address in the claim form, or gave an incorrect address in that form;

(f) the claimant is acting as a nominal claimant, other than as a representative claimant under Part 19, and there is reason to believe that he will be unable to pay the defendant's costs if ordered to do so;

(g) the claimant has taken steps in relation to his assets that would make it difficult to enforce an order for costs against him.

7. For the Defendants to be successful they must first satisfy the court that one of the threshold conditions applies. If they do the court should then consider as an exercise of its discretion having regard to all the circumstances of the case whether it is just to make an order for security for costs. It is thus a two-stage test.
8. Although the Defendants' application was issued relying on conditions (e), (f) and (g) the Defendants did not pursue the application on ground (f) acknowledging that to do so would require them to ask the court to make a finding on a matter which would be a central issue in the trial.
9. I have carefully considered the evidence and the skeleton arguments and taken into account counsels' oral submissions even if I do not set out every part of the evidence relied on, argument or submission raised in this judgment.

Background

10. NB and VB are Indian, both come from wealthy and successful Indian families. They married in 2007 and moved to the UK. VB was involved in a property investment business. NB did not work after they arrived in the UK until the events in 2018 giving rise to this claim. They had a son who is now 7 years old.
11. VB got to know Mr Joga Khangure, the Second Defendant ("**JK**") in about 2013. JK and his brother Avtar Khangure QC ("**AK**") are the directors of the First Defendant, Woodstone Properties (Birmingham) limited ("**Woodstone**"). JK was and is a successful businessman.
12. From about 2014 VB started to borrow money from JK. Initially he was able to repay the borrowing as it fell due however, VB seems to have got into financial difficulty and this did not continue. In 2017 the financial arrangements between JK and VB became more complicated. In order to borrow additional monies security arrangements were entered into in relation to a property known as Wellington Road. Woodstone became involved in the security arrangements. VB borrowed £184,000 between February and May 2017 from JK and Woodstone. VB, JK and Woodstone's differing explanations of these arrangements are set out in the trial evidence. It is not suggested that NB was involved.

13. The Defendants now say that the sum of £184,000 (and an earlier loan) fall to be repaid by NB as part of the arrangements set out below in relation to Kutir and do not form part of the Wellington Road arrangements (the “**VB Loans**”).
14. VB’s financial difficulties came to a head when he was served with a statutory demand in the summer of 2017 and his subsequent application to set it aside was unsuccessful. JK and AK provided VB with guidance and assistance in the background and were aware of his continuing financial difficulties. VB was eventually declared bankrupt on 2 July 2018. VB says that JK and AK met with his father in September 2018 to discuss whether the Bankruptcy could be annulled.
15. In the meantime, in about late 2017 NB discussed with VB the possibility of her working with a Michelin starred chef Mr Ghai, and an experienced front-of-house manager, Mr Sangwan (“**the Team**”). The Team were known to both VB and NB and had approached VB with a business opportunity. NB’s evidence is that she wanted to pursue this business opportunity herself. After university and prior to her marriage to VB she had worked in and run a fashion business in India. She saw the restaurant business as a new opportunity for her.
16. NB explains that she had by this time known JK for about 8 years through VB although she did not get to know him well until about 2016 or 2017 when she became friends with him and his family, in particular his wife and daughter. She says she trusted and respected JK. She knew that JK was known to and in contact with her father.
17. NB explains that in Indian culture one is taught to respect one’s elders, (JK fell into this category), and it was considered usual for men to discuss business and business opportunities rather than women.
18. Consequently, it was natural that VB carried out the negotiations with the Team in relation what eventually became Kutir. This included contacting JK and AK to ask them to assist with short term finance when NB’s father was unable to assist with the short-term finance needed to secure the lease for Kutir.
19. NB borrowed £249,111 from Woodstone pursuant to a written Loan Agreement dated 22 August 2018 and (a variation) dated 20 December 2018. The monies were used to fund the lease obligations and outgoings of Kutir. There is a dispute about who was involved in the later negotiations about any extension of the repayment date. However, it is clear that at some point between November 2018 and March 2019 there were discussions between AK on behalf of Woodstone and VB’s father on behalf of NB. It is also clear that the Defendants were aware that the intention was that family money would be used to repay the Loans.
20. NB says she invested £192,000 from her own savings in the business. This money she says was derived from family money given to her over a period of time which she had saved, rather than it being any undisclosed source of income or assets.
21. In relation to the underlying dispute NB further relies on what she calls the “Security Agreement”. The Defendants contend that a different arrangement was entered, namely what they call the “Share Transfer Agreement” which they say was separate to the Loan Agreements.

22. NB says that the Security Agreement was an oral agreement entered at the time of the Loan Agreements pursuant to which the shares in TLL, the company owning the lease for Kutir, were registered upon incorporation of TLL in the name of JK. JK was appointed a director of TLL.
23. NB says that JK's shareholding and directorship were agreed as a form of security for her obligations under the Loan Agreements, and that on repaying those sums (or tendering repayment), she was entitled to the shares, and to be appointed a director. NB's case is that the restaurant was at all times intended to be her business, owned 50/50 with the Team. NB does not accept that there was any additional term which included repayment of the VB Loans as alleged by the Defendants.
24. Woodstone and JK allege that a 'Share Transfer Agreement' was reached, whereby the shares in TLL would be transferred to NB (or her husband VB) but upon repayment not only of the advances under the Loan Agreements, but also repayment of VB's Loans. The Defendants say that this agreement was made with VB and the reality was that the underlying source of any funds was expected to be his family. They therefore say that NB is in reality a nominal claimant.
25. NB says she fulfilled the requirements of the Security Agreement by paying £292,000 to the account of Kutir (controlled by JK) and tendering to pay the balance on about 26 March 2019. NB alleges that Woodstone and JK wrongfully rejected the tender by demanding another c.£300,000 in respect of the VB Loans. The Defendants say that the monies used to pay the £292,000 came from VB's father and that the VB Loans were due for repayment as part of the Share Transfer Agreement.
26. In this claim NB seeks declaratory relief, and an order for the transfer of the shares, with a view to settling them in accordance with an agreement she reached with the Team in 2018. She further alleges the Security Agreement was unfair and stands to be set aside.
27. Woodstone and JK defend the claim for declaratory relief and counterclaim for declaratory relief alleging that NB did not comply with the Share Transfer Agreement because the VB Loans were not repaid, and in any event because there was allegedly no tender in the requisite sum.
28. Neither the Security Agreement nor the Share Transfer Agreement are properly documented and appear to have been oral. At trial, the court will need to consider the evidence and make findings based on that evidence as to the nature and consequences of the agreement reached between NB, JK and Woodstone.
29. The relationship between the parties broke down and solicitors correspondence was entered into. Woodstone and JK allege that in April 2019 the dispute was compromised by NB agreeing to pay them (a) the £292,000 already paid, (b) permitting them to retain Kutir and (c) permitting them to retain the NB's personal financial contribution of c.£190,000. NB denies any such agreement was entered into. She says that whilst there were without prejudice discussions in April 2019 no agreement was reached. Again, these are matters which will have to be considered by the trial judge.

30. Mr Patel noted that Kutir had been required to shut due to the COVID-19 pandemic and had not yet recommenced trading at the time of the hearing.

Security for Costs:

31. The Defendants' starting point is that NB is the wife of a bankrupt VB, who is apparently devoid of assets, yet she maintains an expensive lifestyle in London and is funding expensive litigation. Mr Randall's overarching submission was therefore that whilst NB appears able to raise funds to fund the litigation for so long as she wishes to there is a real risk that if the Defendants are successful and obtain a costs order they will not be able to enforce it. The Defendants therefore pursue their application to provide them with security to avoid this risk.

CPR 25.13(2)(e) - Address on Claim Form

32. The Claim Form issued in September 2019 does not include NB's apartment number only the address of the apartment block she lives in. CPR 16.2(1)(d) and PD16.2.2 requires the claimant to provide an address at which she resided even if her address for service was that of her solicitor.
33. KDP sets out why he says the omission was deliberate including relying on evidence from prior to the issue of the proceedings to demonstrate that NB had been using her former address after she had moved. He relies on evidence of her previous address being used in relation to another creditor.
34. NB acknowledges that the omission of the apartment number was deliberate. She says this was due to concerns about her safety and security following threats made to her and her family when they were at the previous address in 2017. She provides details of the nature of those threats.
35. On 16 June 2020, 9-months after the issue of the claim, KDP wrote to GN raising concerns about NB's incomplete address. NB instructed GN to provide the full address to KDP but on condition that it would remain confidential to the Defendants.
36. KDP suggests that the address provided on that basis cannot be used for enforcement purposes and consequently NB was still in breach of CPR16. NB says that was not what was intended. Rather than seek to resolve this concern with GN or NB, the Defendants' application was issued.
37. In *Stunt v Associated Newspapers*[2019] EWHC 511 (QB) ("*Stunt*") at [17] Mr Justice Warby having reviewed the requirements of CPR16 and the factual position in *Stunt* set out the position as follows:

“...I am not at all sure that it is fair to say that the defendant's lawyers have known the right addresses throughout given the state of the evidence about what the residential address was. In any event, the requirement of the rule is not that the opponent's lawyers should know the right addresses but that they should be stated in the claim form. On a proper analysis, I believe that Mr Higginson's real argument is not that the rule was complied with but rather that there has been nothing but a technical

breach, of which Associated is making far too much of a meal. I shall have to consider that issue when it comes to discretion, but the fact remains – and in reality it is undeniable – that when it was issued the claim form did not include any residential or business address of Mr Stunt. That is a contravention of Part 16 and its Practice Direction.

38. Mr Patel accepted that in light of CPR16 and *Stunt* that the argument in relation to this threshold condition was about discretion. He argued that the nature, extent and reasons for the omission would be highly relevant to the exercise of discretion.
39. It is clear from the authorities and as a matter of principle that the question of discretion should be considered in relation to each threshold condition separately.
40. In *Stunt* [47] Mr Justice Warby sets out difficulties that had arisen or might arise in relation to the absence of the provision of an address for service. In *Stunt* for example it had proved difficult to contact or serve the Claimant. No such difficulties arose in this case. Nonetheless he concluded at [47]

“All this said, I do not believe that I would have granted an order for security as a matter of discretion on the basis of this sub-rule.”

41. Here the position is far less stark than the position in *Stunt*. The address provided on the particulars of claim includes the apartment number although Mr Randall submits that that does not resolve the technical breach of CPR25.13(2)(e) or CPR16. However, from September 2019 when the claim form and particulars of claim were served the Defendants had the full address including the apartment number. When NB was asked for the full address in June 2020 it was provided at the first time of asking. I do not accept the argument that the condition of confidentiality in relation to third parties that NB sought to impose was one that negated the provision of the address. And in any event the full address was in the particulars of claim. There were, on NB’s case, good reasons for not putting the full address on the claim form, albeit that the redaction of the address against third parties might have been approached in a different way from the outset. The approach adopted of simply not including the apartment number did not seem to me to particularly assist NB.
42. There is a factual dispute, which I cannot resolve on this application, about whether in fact JK or the Defendants or their solicitors may have in fact known NB’s current address from other sources. That does not seem to me to resolve the CPR16 issue but would be considered as part of the exercise of discretion.
43. The Defendants argue that NB was deliberately being evasive about her current address after moving in February 2019, but the evidence does not suggest that was as against these Defendants in any event. As I note the Claim Form issued on 20 September 2019 included the current address of NB other than the apartment number and the full address was included in the particulars of claim.
44. KDP’s evidence that NB continued to use her previous address appears to primarily relate to a period in about February 2019 – the month in which she moved. The other evidence relied of evasiveness in relation to NB’s address is focussed on her use of

what appears to be the registered office address of a company of which she was a director. NB provides an explanation for this in her evidence. However, the events in February 2019 on which the Defendants rely were not directed at the Defendants and appear to substantially pre-date the service of these proceedings. NB's use of her previous address in February 2019 does not to my mind support any argument that she was deliberately concealing her address or being evasive about her address as against these Defendants in the circumstances of this case.

45. The parties were both represented throughout the pre-action phase and there was no confusion or complication about service as a result of the missing apartment number which as I say was on the particulars of claim in any event.
46. The Defendants did not raise their concern about the technical breach for 9-months and it presented no difficulties in the conduct of the claim and counterclaim.
47. In *Ruprah v Ruprah* [2007] EWHC 3308 (Ch) at [19] Nicholas Strauss QC sitting as a Deputy Judge again on the facts of that case did not exercise his discretion to grant security for costs based on the failure to provide the correct address.

“The requirement to state the claimant’s address in the claim form is a requirement of the rules, and not a mere practice direction. In any event, the claimants’ request for Sohan’s address was not put on the basis of the practice direction. The claimants’ solicitors merely asked for his address, to which Sohan’s solicitors replied that the claimants already knew it. There is some material in the evidence that suggests that this may have been so, and in any event the address has now been given in Sohan’s witness statement, backed up by supporting documentation. In these circumstances, even if I had taken a different view on the construction of the rules, I would not have exercised my discretion to order security on this ground.

48. It would be rare for the court to make an order for security for costs against an individual based in England and Wales without more. For the court to make an order for security for costs it must be satisfied that it is just in all the circumstances which is the exercise of a broad discretion. I have considered all the circumstances in relation to the breach of CPR16. Whilst the omission of the apartment number on the Claim Form amounts to a technical breach of CPR16 it is a minor breach in the context of this case. Even on the Claim Form the entire address other than the apartment number was given and the full address was on the particulars of claim. It took 9-months for KDP to ask for the address. It did not preclude the Defendants from fully participating in the proceedings or pursuing their defence. The Defendants’ evidence is not compelling. I simply do not accept that as against the Defendants there was any prejudice caused by the missing apartment number on the claim form.
49. To my mind although there was a breach of CPR 16 this is not a case in which as a matter of discretion it would be just to order security for costs on this ground and I do not do so.

CPR 25.13(2)(g)- Steps to Put Assets Put of Reach of Creditors

50. The Defendants seek to argue that NB can be brought within the threshold condition CPR25.13.(2)(g). The threshold condition anticipates that there will be evidence that the respondent to such an application has taken steps in relation to their assets that would make it difficult to enforce a costs order. So, for example it is anticipated that there will be evidence of actual steps taken by the respondent to dissipate assets by transferring them away.
51. However, Mr Randall relies on the more nuanced double inference approach. He seeks to persuade me that the evidence demonstrates that I can infer that NB must have undisclosed assets and that her failure to disclose them is such that I should infer that she has put them out of reach of her creditors and consequently should make an order that she provide security for the Defendants' costs.
52. He points to the fact that VB has been bankrupt since 2018 and yet NB continues to live a lavish lifestyle and spend considerable sums on this dispute whilst apparently having no assets of any significant value. The Defendants therefore conclude that I can infer that she must have undisclosed assets which she has taken steps in relation to, to make it difficult to enforce an order for costs against.
53. However, in *Compagnie Noga d'Importation et d'Exportation* [2004] EWHC 2601 (Comm) ("*Noga*") Langley J concluded that some vague inference of impropriety was insufficient. In *Noga* Langley J said that where the defendant knew nothing about the claimant's assets and therefore could not show that the claimant had taken any steps in relation to them that would make enforcement of a costs order difficult that would be insufficient. Despite evidence that aroused suspicion, he did not feel able to conclude that the double inference of (i) the existence of assets and (ii) relevant steps taken in relation to them had been established by the defendants. It was not enough to show propensity that he might take such steps in the future. There had to be evidence of "*actual 'steps' already taken.*" The rule is not aimed at the impecunious or the dishonest as such but at the illegitimate hiding of assets ([117]). In that case it was "*sufficiently possible that [the] assets...remain where they have in effect always been*". It follows that there is also no jurisdiction to order him to provide security under this rule([118]).
54. Mr Randall relies on *Dubai Islamic Bank v PSI Energy* [2011] EWCA Civ 761 ("*Dubai*") in which Tomlinson LJ said at [26]
- It is true that in that case Langley J [*Noga*] did not feel it appropriate to make the double inference of the existence of assets and relevant steps taken in relation to them, but for my part I think it clear that the judge did regard it as a permissible line of reasoning that, if there is a reasonable inference on all the evidence before the court that a party does have 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. The judge simply did not feel that the double inference was justified in the circumstances of that case.
55. And further Tomlinson LJ at [30]

Where a party seeks to suggest that he is devoid of assets and yet able to maintain an expensive lifestyle and to fund litigation on the basis of loans from his family or other third parties, it is incumbent upon him in my judgment to provide details of the nature of those loans, the terms upon which they are granted and in particular to condescend to some further detail in relation to the efforts he has made in order to obtain further funds from the same sources.

56. Further at [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.

57. More recently in *Stunt* Mr Justice Warby summarised the position in respect of CPR25.13(2)(g) as follows:

20 It is common ground that the applicant must show two things if this provision is to be relied on: (i) that the claimant has taken steps in relation to his assets; and (ii) that those steps would make it difficult to enforce an order for costs against him.

21 It is to be observed that this is not a provision which, on its face, is concerned with proof of risk. The applicant is required to satisfy the court that steps have, in fact, been taken and that those steps would (not might) make it difficult to enforce a costs order. The authorities make clear that that is an objective test.

58. It is against that background that I come to consider the application under CPR25.13(2) (g).

59. Although Mr Randall accepts that it is the Defendants who bear the evidential burden to show the threshold condition is satisfied, he notes that Mr Justice Warby commented in *Stunt* at [50] “*There must, of course, be an evidential burden on the applicant to show that the threshold condition is satisfied, and a persuasive burden in relation to the issue of discretion. ...[NB] is in by far the best position to provide evidence of [her] overall assets and [her] net asset position.*” He argued that if NB wanted to refute the double inference or negate the applicability of (g) “*it was for [her] to do this and, in my judgment, to condescend to some detail in the process.*” He says that NB’s evidence which was only provided relatively recently simply did not

go far enough and that the evidence she has provided raised more questions about the source of her lavish lifestyle than it answers.

60. Mr Randall set out in considerable detail in his submissions and skeleton what the Defendants knew about NB's spending. He teased through her evidence to identify expenditure for which he suggests there is no proper evidence for the source of the funds used to pay for that expenditure. He argues that this supports his argument that the approach in *Dubai* and the double inference can be applied in this case. He notes that despite NB's evidence she does not identify that she has any material assets to maintain her lifestyle or meet her legal costs. He suggests this was evidence of itself that there must be undisclosed assets and that the failure to disclose them supported the inference that they are being kept out of the reach of creditors.
61. NB's evidence was that in addition to loans and gifts from the wider family and VB providing a contribution towards the family income from property related work despite still being Bankrupt, her current income was derived from two recently set up companies: Arrow Ventures Limited ("Arrow") and SPB International Limited ("SPB").
62. Arrow is new company incorporated in January 2020. NB is shareholder and director. It was intended to be a property management company. At the time it was set up no one could have predicted the effect of Covid-19. Her evidence is that Arrow manages properties belonging to another company called Indiabulls Ltd. She provided a letter from a director of Indiabulls Ltd (which pre-dated the Lockdown) confirming the existence of the contract with Arrow which was said to be worth £375,000 over an 18 or 20-month period of which £105,000 had been advanced already. NB says that Arrow manages luxury properties in central London for Indiabulls Ltd listed on online platforms such as Airbnb.
63. Mr Randall identified various inadequacies, apparent inconsistencies and shortcomings in the evidence produced by NB in respect of Arrow. Many of those points had some merit in terms of whether the arrangements with Arrow were likely to be producing substantial income for NB.
64. He noted that as a newly incorporated company Arrow was not due to file accounts until after the trial and that NB's evidence was that they would be filed on the last day possible being October 2021. Although describing it as a new business, he notes that NB says she has received £105,000 from it between February and August 2020. She describes this as advances of "directors' loans". He suggests that this means that either Arrow is NB's creditor or that it is disguised dividends or remuneration. In either case he suggests this is alarming for the Defendants as it suggests that any money that NB has is probably all loans. Mr Randall notes that despite the sums of money referred to Arrow it is not registered for VAT. NB says it is going to be. He queries the position of Indiabulls Ltd, also a recently incorporated company which is also is not registered for VAT and which is said to be the source of the properties which Arrow manages. He notes that neither Indiabulls Ltd nor Arrow have corporate websites or email addresses.
65. It was common ground that SPB was initially set up to repay NB's loan to Woodstone and was a subsidiary of a company owned by VB's family in India. NB says that it was then used as a vehicle through which advice was provided to companies on

investment opportunities in the real estate and restaurant trade until the intervention of Covid-19. NB admits that SPB's business came from referrals from family. Given the family background as explained in the evidence and as known by the Defendants this is not surprising. NB is a director but not a shareholder again given the corporate structure this is not surprising – it appears, on the evidence available, to be part of the wider family business and originally set up for a specific purpose.

66. It is said on NB's behalf that SPB generated cash of c£250,000 between April 2019 and August 2020 from sales and borrowing. NB is said to have taken directors loans from SPB between April 2019 and January 2020 of c£200,000.
67. Mr Randall is very critical of the SPB arrangements and noted that its current use as a trading company is a fundamental departure from its original purpose. He notes that it is not registered for VAT, does not intend to file accounts until the last day on which it must do so, it has no office premises or corporate website, email etc and is carrying out activities for which he says NB appears to have no relevant qualifications. He notes that NB admits it is not currently carrying on any business. This would appear to me to be consistent with NB having received monies from it only up to early 2020 and not beyond.
68. Thus, Mr Randall relies on what he says is unsatisfactory evidence from Arrow and SPB - he suggests that the monies received from Arrow and SPB are either disguised remuneration or dividends or they are loans that NB is obliged to repay.
69. He criticises the absence of any documentation to evidence the family loans and assistance with legal expenses.
70. Yet, JK was a friend of VB and NB. He had through Woodstone and directly loaned sums of money to VB. He was aware of VB's family background and financial difficulties. Indeed, he discussed VB's bankruptcy with VB's father and his brother AK was in direct contact with VB's father at one stage.
71. The variation to the Loan Agreements in December 2018 appears to have been made following assurances that VB's father would repay them. Indeed, as Mr Patel notes it is part of the Defendant's defence that the £292,000 used to repay the Loans came from VB's father.
72. NB details the monies provided by her family to support her and makes clear that she has no entitlement to the monies that are given to her, they are not her assets. Her evidence is that the combination of the monies received from her family and from SPB and Arrow are the source of the cash for her living expenses. She makes it clear that the family assist her with her legal expenses as well. That does not appear to be disputed on any credible grounds in the evidence relied on by the Defendants.
73. Mr Patel argues that none of this is either surprising or evidence that NB has undisclosed assets – to the contrary her sources or income are entirely clear.
74. The Defendants made a choice to invest in a business run by NB. It will be for the trial judge to determine what the precise terms of those agreements were and who is right in relation to the underlying dispute. However, it is clear that the Defendants knew that both VB and NB came from wealthy Indian families. They knew that

notwithstanding VB's bankruptcy that NB's and VB's lifestyle was unaffected. They invested in NB's business venture knowing that VB was bankrupt. They had provided financial support by way of loans to VB prior to his bankruptcy and knew he was in financial difficulties. They knew that the support for the new business and indeed later that repayment of the Loans was to come from VB's family not NB. It is hardly therefore a case in which it can be said that they were misled into believing that NB had substantial personal assets hidden or undisclosed which she has subsequently take steps to dissipate. It is not a case where they had no idea at all about how the lavish lifestyle was maintained.

75. They seek to suggest that VB's property business was structured in a way to avoid enforcement, but they are not being pursued by VB and there is no suggestion that NB is responsible for those arrangements or had taken any steps to encourage VB to put assets out of the reach of the Defendants. This is a dispute with NB as an individual. This allegation was really that her bankrupt husband was using her as a nominal claimant to pursue his own claim. Mr Randall has quite rightly accepted that that is a matter for trial.
76. Nonetheless the burden still rests with the Defendants, as Mr Justice Warby made clear in *Stunt*. Mr Randall still has to persuade me that I can infer that NB has undisclosed assets and that I can infer that her failure to disclose them can be said to be evidence that she has taken steps in relation to her assets to put them beyond the reach of her creditors. Although Mr Randall has taken some time to highlight the shortcomings in NB's evidence in relation to SPB and Arrow that of itself does not seem to me to get anywhere close to demonstrating that I can infer that there are undisclosed or hidden assets which support the lifestyle she lives.
77. Indeed, it seems to me that all he has demonstrated is the point that Mr Patel makes. NB did not have and still does not appear to have personal assets. Her lifestyle is maintained through the generosity of her and VB's family including it would appear through SPB and potentially Arrow. The lack of formality in family arrangements is not at all unusual and does not without more suggest that such arrangements are not genuine in the sense of a mechanism by which a wealthy family supports its family members.
78. One of the key issues for the trial judge to determine in this case is going to be the informal and not fully documented arrangements between NB and JK and Woodstone. JK and Woodstone rely on an informal and not fully documented Share Transfer Agreement whilst NB relies on an informal and not documented Security Agreement. The evidence available appears to therefore suggest that informality and lack of documentation was not particularly unusual for the parties to this dispute. Indeed, it seems entirely consistent with the way in which the Defendants, NB, VB, and VB's family appear to have conducted their business affairs in relation to the underlying dispute.
79. It is as plain as it can be from the Defendants' own evidence that they know that NB's money and the support for her lifestyle comes from her and her husband's family. The focus on the two recently incorporated companies, SPB and Arrow really does not assist and in any event to the Defendants' knowledge SPB is a family company. I am not persuaded that there is any basis on which I can infer that NB has undisclosed personal assets let alone undisclosed personal assets she has failed to disclose.

80. There is no evidence at all to persuade me that NB has herself taken any steps to put her assets beyond the reach of creditors and nothing in Mr Randall's analysis of the evidence persuaded me that this was a case where such an inference could be made.
81. The starting point is as I have said that NB is an individual based in England and Wales and it is rare for the court to make an order for security against an individual without more. As Langley LJ made clear in *Noga*, threshold condition (g) is not aimed at the impecunious. It is not intended to put the Defendants in a better position than they would have otherwise been in, but to provide security only if they can persuade the court that the threshold conditions are met and that it is just for the court to exercise its discretion in their favour.
82. I have already rejected threshold condition (e) and it seems to me that the Defendants' arguments in relation threshold condition (g) are over engineered and contrived. It is not seriously contended that NB ever had her own assets, and the Defendants appear to have known since before they entered into the business arrangements which give rise to this dispute, that she had no assets of her own.
83. She and VB (now bankrupt) rely on family money – it is not her money and she has not hidden it or take steps to hide it – there is nothing surprising about the position nor is it one that the Defendants were not aware of from the outset. As Langley J concluded in *Noga* some vague inference of impropriety is not enough.
84. I echo Warby J in *Stunt*, here there is no evidence at all that NB has taken any steps in relation to any assets. There is no evidence that she has hidden any assets and indeed that does not appear to be seriously suggested by the Defendants. Further they rely on the support she would receive from her family as a ground for arguing as a matter of discretion that security would not stifle the claim.
85. The difficulties, if any, with enforcement are risks which fall within a range of risks that the Defendants took when entering into a business arrangement with NB as an individual. Security for costs is not intended to fortify or protect Defendants from the business risks they took relating to the underlying dispute.
86. Unlike *Noga* the Defendants in fact know that NB relied on her father-in-law and her and VB's wider family to assist with the maintenance of their lifestyle. But as in *Noga* I do not feel able to conclude either that NB has or had personal assets or that she has taken any steps in relation to assets to hide them from the Defendants. It seems to me therefore that the argument fails at the first hurdle.
87. In seeking to portray NB as an unsophisticated, inexperienced businesswoman who had not previously worked in the UK and was a front for her bankrupt husband in Kutir the Defendants' themselves make it clear that this is not a case in which the double inference can be made. As Langley J put it in *Noga* at [117] the rule is aimed at the illegitimate hiding of assets and I am not satisfied there is any evidence of that here.
88. I am not satisfied that threshold condition (g) is met, and I refuse the application for security for costs at the threshold condition stage.

89. However, if I am wrong, and the Defendants are able to overcome the threshold condition I would nonetheless refuse to make an order for security for costs as an exercise of discretion for the reasons set out below.
90. Although when considering the exercise of discretion, it is necessary to consider all the circumstances in this case it appears to me there are two particular factors, delay, and the counterclaim, which tip the balance of the exercise of discretion against the Defendants.
91. There can be no suggestion in this case that the claim and counterclaim lack bona fides nor that the merits of either the claim or counterclaim are so weak that any significant weight should weigh on either side of the balancing exercise for those purposes. To my mind in this case bona fides and merits in so far as relevant to the consideration of discretion are neutral factors.
92. Further, it is not suggested by NB that an order for security for costs would stifle the claim only that it might not be easy to meet such an order as money would have to come from India and that Covid-19 this has affected her families' business. If NB wanted to rely on stifling it was for her to put forward credible evidence that she cannot provide security and she cannot obtain assistance to do so. She does not go that far merely saying it may be more difficult or take time.

Delay

93. The claim was preceded by pre-action correspondence including the alleged settlement in April 2019 and KDP says that settlement negotiations continued from April to August 2019. The Defendants knew a considerable amount about NB's financial position including that VB was bankrupt and that VB's father had given assurances in relation to the Loans and was the source of the repayment in 2019. Pleadings closed in November 2019 prior to the issue of proceedings. Costs budgets were provided in late February 2020 and cost budgeting took place at the CCMC in March 2020. No request or application for security was made in advance of the CCMC.
94. The Defendants' application was first intimated on 16 June 2020. This was 3-months after the CCMC. It was issued on 30 June 2020. It was originally listed in October 2020 but at the request of the Defendant it was relisted in a slot that became available on 29 July 2020. Unfortunately, there was then a dispute between the parties about time estimate and the Claimant's counsel was not available, so the hearing was relisted again eventually taking place on 9 September 2020.
95. Even by 30 June when the application was belatedly issued all steps up to and including disclosure had been completed. Witness statements were due in August. On any objective basis the application was very late when made.
96. Lateness has to be viewed in the context of the particular case and the impact it has on not only the preparation of the case but on the parties themselves.
97. As explained in *Re Bennett Invest Ltd* [2015] EWHC 1582 (Ch) at [36] the later an application for security is made, the smaller the opportunity for the Claimant to

consider whether to put up security in order to continue the claim or withdraw it in order to avoid further expense.

98. The Defendants seek to justify the delay by reference to Covid-19 and also by reference to a review of documents undertaken after disclosure which allowed the Defendants to review the documents in context. These are not persuasive justifications for the delay in this case. Although the national lockdown took effect on 24 March 2020 that was after the CCMC.
99. KDP had been representing the Defendants before the claim commenced and had knowledge of NB's and VB's financial position. He seeks to suggest that it was only when he put all the documents together after disclosure in June that the grounds for making the application became apparent. It seems clear from his evidence that he is not suggesting that any new material evidence came to light that was not available earlier. Yet KDP's evidence is that, to the Defendants' knowledge, NB has lived a lavish lifestyle with no assets in her name.
100. Whilst I accept that the lockdown may have caused some aspects of the preparation of the case to take longer the information relied on in support of the Defendants' application was information already known to the Defendants and for the most part it appears KDP. There does not appear to be any good reason for the question of security not to have been raised earlier. Indeed, the entitlement to rely on threshold condition (e) must have been evident from the day the claim form was served.
101. There does not appear to be any good reason for not acting earlier and certainly in advance of the CCMC in March 2020. Given their knowledge of NB and VB's financial situation including VB's father's assurances in relation to the Loans and his repayment of them long before the claim was issued, the Defendants must have known, or at least strongly suspected, that NB was wholly reliant on family money. The fact that NB served a costs budget envisaging incurring substantial costs could not genuinely be considered to be an indication that NB herself had substantial assets given the Defendants' knowledge of her circumstances.
102. It seems to me that the lateness of the application without any good reason is a significant factor in the exercise of discretion and in this case, it weighs strongly against the granting of security. Here the application, although issued some 6-months before trial was issued at a time when all the steps in the claim had been completed other than witness evidence and trial preparation. By the time it was actually heard the trial evidence had been exchanged. NB is left with no opportunity to consider whether and how she wants to go forward in relation to the claim - she had already incurred the majority of the costs she would incur for trial.

Counterclaim

103. In this claim there is both a claim and a counterclaim. The purpose of the security for costs jurisdiction is to give a defendant a measure of protection where the defendant is put to the cost of defending a claim: *B.J. Crabtree (Insulations) Limited v GPT Communication Systems Limited* (1990) 59 B.L.R.43 (CA) ("*Crabtree*"). In *Crabtree*, the CA held that it was wrong to award security because "*the costs that these defendants are incurring to defend themselves may equally, and perhaps preferably, be regarded as costs necessary to prosecute their counterclaim*", particularly where

(on the facts of that case) “*The fact that the plaintiffs are plaintiffs and the defendants are counterclaiming defendants instead of the other way round appears on the facts here to be very largely a matter of chance*”. This is what is known as the *Crabtree* principle.

104. The court will not normally grant security against a claimant where the counterclaim is in effect the mirror of the claim or merely a defence to the claim and does not have an independent vitality. There are good policy reasons for this. In such circumstances a defendant would then have the benefit of pursuing its “claim” without financial risk or at least with security for its costs and have the potential that the claimant’s claim would be struck out for want of security. It is undesirable to create one-sided litigation.

105. Park J in *Anglo Petroleum Ltd v TFB Mortgages Ltd* [2003] EWHC 1177 (Ch) at [33] (citations omitted) said:

“In general, the courts recognise that, where there are cross-proceedings, the position is as I have described, and the courts do not order a person in the position of A to provide security for costs of the claim which he is making himself. . . . Another application of the same underlying policy is the proposition that, if the defendant advances a counterclaim but the counterclaim is in substance a defence to the original claim, the counter-claimant will not normally be ordered to provide security for the costs of his counterclaim. . . .”

106. In *Hutchison Telephone (UK) v Ultimate Response Ltd* [1993] BCLC 308 Lord Bingham said:

“The trend of authority makes it plain that, even though a counterclaiming defendant may technically be ordered to give security for the costs of a plaintiff against whom he counterclaims, such an order should not ordinarily be made if all the defendant is doing, in substance, is to defend himself. Such an approach is consistent with the general rule that security may not be ordered against a defendant. So the question may arise, as a question of substance, not formality or pleading: is the defendant simply defending himself, or is he going beyond mere self-defence and launching a cross-claim with an independent vitality of its own?”

107. The general principle is modified if the claim raises factual inquiries which are not the subject of the counterclaim: in such a case an order for security will be made but probably will be limited to the additional issues raised only by the claim: *Dumrul v Standard Chartered Bank* [2020] EWHC 2625 at 8(1). Furthermore, in that case (which involved monetary cross claims) the Court would have been prepared to grant security if the Defendant had agreed that the counterclaim be dismissed “for good” [2020] EWHC 2625 at [17, 20].

108. Mr Randall sought to persuade me that the Defendants' counterclaim both had its own independent vitality and that it was not simply a matter of chance that NB was Claimant. I was not persuaded on either basis.
109. Here it seems to me that the claim and counterclaim are simply the mirror or counter of each other. As identified earlier in this judgment both parties rely primarily on the same facts and matters concerning the nature and extent of the agreements reached between them. Both rely on undocumented agreements concerning the shareholdings in TLL and the ownership of Kutir. They have different views about what they agreed and the consequences. They are also in dispute in respect of whether they reached a settlement in April 2019 and the terms of that settlement. There is no substantial difference between the claim and counterclaim. I do not accept against that background that it can be fairly said in this case that the counterclaim has an independent vitality.
110. I do not accept that it is realistic to suggest that because the Defendants hold the shares in TLL they would not have needed to have resolved this dispute at some point. I am prepared to accept that they may not have issued any claim as soon as NB did because they hold the shares. However, the existence of the dispute over the shares was one that would have had to have been resolved at some point. The question is not whether the Defendants would have issued a claim in September 2019 but a broader question, looking at the circumstances of the case to determine, whether it is a matter of chance which party is claimant, and which is defendant. Whilst NB is the claimant pursuing declaratory relief the counterclaim also seeks declaratory relief which is plainly the mirror or other half of the dispute. This is a case in which both parties need a resolution of the dispute as without it neither one can move forward in relation to Kutir. They are tied into a dispute that relates to the shareholdings of TLL. It is not realistic to suggest, as Mr Randall seeks to do, that the Defendants did not need to and would not have done anything to resolve the impasse as they were holding the shares. At some point it was a dispute that had to be resolved and whether it was NB or the Defendants who commenced the process was simply a matter of chance.
111. To my mind it is an obvious case in which the Crabtree principle applies and the Claim and Counterclaim for all practical purposes raise identical issues.
112. Finally, it is always necessary when considering the exercise of discretion to have regard to the overriding objective and the need to consider the overall justice of the case. This includes the need to consider the prejudice to the Defendants who if they are successful may not be able to enforce any costs order. They are concerned that they may not be able to recover the VB loans in respect of which they say VB has already defaulted. I balance that against the matters identified above including the knowledge the Defendants had of NB's financial position before even entering into the underlying business arrangements with her. They made a choice and took a risk. I also note in particular the lateness of the application and the impact that has on NB's opportunity to consider what steps to take in relation to this dispute and the prejudice to her in those circumstances.
113. Here it seems to me that the balance of the exercise of discretion is clearly against making an order for security against NB. The delay and the nature of the counterclaim seem to me to firmly tip the balance against the Defendants on this application. It would not therefore as a matter of discretion be just to order security

for costs on threshold condition (g) even if the threshold condition were met and I do not do so.

114. I therefore dismiss the Defendants' application for security for costs on both grounds.
115. This judgment will be handed down remotely and I invite the parties to agree a form of order. If a consequential hearing is necessary, it will be listed on a separate occasion.