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Neutral Citation Number: [2022] EWHC (Ch) 2245

No. G30MA108

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS IN MANCHESTER
BUSINESS LIST (ChD)

Manchester Civil Justice Centre
1 Bridge Street West
Manchester
M60 9DJ

Monday, 20 June 2022

Before:

HIS HONOUR JUDGE CAWSON QC
(Sitting as a Judge of the High Court)

B E T W E E N :

CLOSE BROTHERS LIMITED
(t/a Close Brothers Asset Finance)

Claimant

- and -

(1) ROOSTER TRUCKING COMPANY LIMITED
(2) DAVID WILLIAM TAYLOR
(3) LUKE HUDSON TAYLOR

Defendants

MR DARREN FINLAY (instructed by Addleshaw Goddard LLP) appeared on behalf of the Claimant.

SECONDANT DEFENDANT appeared In Person and also on behalf of the First Defendant.

J U D G M E N T

HIS HONOUR JUDGE CAWSON QC:

1 I have before me this morning an application, dated 3 March 2022, supported by a witness statement of the same date made by the Second Defendant, Mr David William Taylor (“**Mr Taylor**”), for a stay of the enforcement of a final charging order made by DDJ Manley on 18 February 2022, the effect of which was to grant security over Mr Taylor’s residential property in respect of a judgment debt of £396,504.26, plus £266 costs, arising from a default judgment dated 25 November 2019 granted against Mr Taylor in proceedings with the short title BL-2019-MAN-000096 (“**the Main Proceedings**”).

2 Whilst the judgment was obtained in the Main Proceedings, the application seeking a charging order in respect thereof was given a separate claim number, G30MA108, and it was under this claim number that the charging order was made, and it is under this claim number that the present application has been made. Claim number G30MA108 is maintained by way of a paper file in the Court Office. The Original Proceedings are maintained on CE-file.

3 The application dated 3 March seeks:

“An order varying the terms of a final charging order dated 18 February 2022 over property with title number GM653355 by imposing a stay of enforcement action by the Claimant pending resolution [of] an outstanding application brought by the Defendant in claim no. BL-2019-MAN-0000096 and a new claim against the Claimant for forgery of personal guarantees.”

4 The “*outstanding application*” referred to in the present application dated 3 March 2022 was dealt with by me by way of an order dated 9 May 2022 that I will return to. At the time that I made the order dated 9 May 2022, I was unaware of the present application because I did not have the paper file in Claim number G30MA108 before me. So far as the suggested new claim is concerned, “*for forgery of personal guarantees*”, no new claim has been issued as such in relation to forgery of personal guarantees, but, as I shall refer to below, further evidence has been put forward recently by the Defendants in relation to that issue.

5 Mr Taylor’s witness statement in support of the application dated 3 March 2022 contained an assertion by him, in paragraph 8 thereof, as follows:

“Furthermore, I and D3 have always maintained that we did not sign personal guarantees in respect of the liabilities of D1. The judgment in default against me has always been regrettable and was a result of my acting as a litigant in person at the time of the judgment in default and predominantly thereafter and I lacked sufficient knowledge of necessary CPR and Court procedures. I have, however, worked hard to educate myself as to the necessary protocols and procedures.”

6 It is necessary to go into the procedural history of this matter in some detail, recognising the seriousness of the application so far as Mr Taylor is concerned.

- 7 The Main Proceedings concerned arrangements whereby the Claimant, Close Brothers Limited, refinanced certain assets, the subject matter of hire purchase agreements between the Claimant and another company, TT Express (Oldham) Limited (“**TTX**”), such that the assets became the subject matter of hire purchase agreements between the Claimant and the First Defendant, Rooster Trucking Company Limited (“**Rooster**”), with Mr Taylor and the Third Defendant, his son Luke Taylor (“**Luke**”), acting as guarantors in respect thereof, these arrangements being entered into at a time when TTX was in financial difficulties.
- 8 The present proceedings were commenced in October 2019, after Rooster had fallen into default under the hire purchase agreements between the Claimant and Rooster. The Claimant sought an order for delivery up of the relevant assets against Rooster and, as well as pursuing a monetary claim against Rooster in respect of outstanding amounts, and also sought to enforce guarantees given by Mr Taylor and Luke in respect of the liabilities of Rooster to the Claimant under the relevant hire purchase agreements.
- 9 The Claimant obtained judgment in default against Mr Taylor on 25 November 2019 in an amount of £306,740.24, and on 13 December 2019 obtained judgment against Rooster for delivery up of the assets the subject matter of the relevant hire purchase agreements, and also a monetary judgment for £305,724 plus £20,247.20 costs.
- 10 Rooster and Mr Taylor applied to set aside the default judgment dated 25 November 2019 and the order dated 13 December 2019. That application was heard and determined by DJ Richmond on 15 July 2020, when he dismissed the application at a contested hearing, at which the Rooster and Mr Taylor were represented by a solicitor advocate.
- 11 At that hearing, Rooster and Mr Taylor raised arguments regarding TTX not having title to the assets and as to TTX’s invoices not having been produced by TTX and, therefore, that TTX did not pass title to the Claimant and that the invoices had been forged, arguments that Rooster and Mr Taylor have raised on a number of subsequent occasions. These arguments were rejected by DJ Richmond, as were other arguments in relation to an allegedly false Hahn Racing invoice, certain VAT points and as to the outstanding liability to the Claimant.
- 12 There was one further issue which was ventilated at the hearing before DJ Richmond on 15 July 2020. Prior to the hearing on 15 July 2020, in March 2020, the Defendants to the Main Proceedings had provided a composite draft Defence. In that draft Defence, various matters were pleaded in relation to the personal guarantees that had been sued upon by the Claimant and default judgment obtained against Mr Taylor. At paragraphs 48 and 50 of the Defence, the stand taken was that Mr Taylor had no recollection of any guarantees having been provided, and the Claimant was put to strict proof that the guarantees had been executed. Later in the Defence, reference was made to the circumstances in which the guarantees came to be signed and, in short, it was said that Mr Taylor had no recollection of having contracted to provide a guarantee and suggested, in effect, that as Luke was the Managing Director of Rooster, it was more likely that he had signed a personal guarantees than had Mr Taylor – see paragraphs 65 and 66 of the draft Defence.
- 13 In response to this, the Claimant put in a witness statement from its employee, Mr David Derbyshire, in which evidence was given in relation to the circumstances in which it was

contended on behalf of the Claimant that guarantees had been executed by both Mr Taylor and by Luke on the dates that they purported to have been executed. There was also reference in the witness statement to a letter of 13 June 2017 that had been signed by Mr Taylor, purportedly on 29 June 2017, confirming the basis on which he had signed the guarantee.

- 14 At the hearing before DJ Richmond, the question of execution of the guarantees was ventilated, and at paragraph 11 of the transcript of his judgment, DJ Richmond said this in refusing to set aside the default judgment:

‘The final point I have under the heading of “bad points” (if I can put it that way) is the question of whether the guarantee was signed or not. Really I have nothing more than a bald assertion that Mr Taylor is not very sure whether he signed it. It is an unevicenced point. It is not fleshed out in the statements, it is hardly fleshed out in the skeleton arguments, and it is not something really that gets me very far in deciding whether there is a real prospect of successfully defending the claim in the face of the perfectly logical submission that Mr Finlay made, which was that when one looks at the background to this who on earth would have provided finance for this company given what had happened to its predecessor without seeking personal guarantees in return.’

- 15 I pause there to make two observations at this point. The first is that, as I have indicated, Rooster and Mr Taylor were represented by a solicitor advocate at the hearing before DJ Richmond on 15 July 2020, and the draft Defence had been settled with the benefit of legal advice. Rooster and Mr Taylor have subsequently been unrepresented, and the Defendants have essentially acted through Mr Taylor, but up to that point they had had legal representation.

- 16 The second point is that, so far as the submission of Mr Finlay referred to by DJ Richmond is concerned, this is briefly touched upon by Mr Finlay in his Skeleton Argument prepared for the purposes of today’s hearing, where he says this:

“In any event, if the defendants had to sign personal guarantees for TTX and TTX went bust and they were asking for Close to give new finance to the new company, Rooster, almost night follows day they would be expecting to give personal guarantees given the even greater risk Close would be under of the same thing happening again [reference being made to the evidence of Martin Cross]. The most likely explanation is that they knew they had to give personal guarantees and did and that if they did not there would not be the refinancing that they asked for and the assets would have to be repossessed and they would have been sued on their personal guarantees.”

- 17 Rooster and Mr Taylor subsequently applied for permission to appeal against the decision of DJ Richmond dated 15 June 2020 dismissing their application to set aside the 25 November 2019 and 13 December 2019 orders. This application for permission to appeal was refused on paper by Snowden J on 22 March 2021, for the reasons set out in his order of that date.

- 18 Rooster and Mr Taylor renewed their application for permission to appeal, which was then determined at an oral hearing before Fancourt J on 13 October 2021, when permission to appeal was again refused.
- 19 The question of the execution of the personal guarantees was again ventilated at the hearing before Fancourt J on 13 October 2021, but perhaps the major focus of the hearing was in relation to TTX not having title, and the TTX invoices which were contended to be fictitious. Fancourt J's held that the proper analysis was that TTX did not have title, and that title had remained with the Claimant, but that being the case the Claimant was able to enter into the hire agreements in any event, and he refused to grant permission to Rooster in respect of the refusal to set aside the 13 December 2019 order.
- 20 So far as execution of the guarantees is concerned, Mr Taylor had made a witness statement dated 10 October 2021. In this he now positively asserted that were no guarantees signed by himself, and that he had robustly told Mr Derbyshire that he would not sign any more personal guarantees. He added: "*Mr Derbyshire has therefore falsely stated in his witness statement that myself or Luke, signed a personal guarantee at our office or our home*". He was thus seeking to argue that his signature on the guarantees must have been forged.
- 21 In his judgment dismissing the application for permission to appeal, Fancourt J dealt with the execution of the guarantees. He identified that in adopting the position that they did at the hearing before DJ Richmond and in putting forward a case of having no recollection of having signed personal guarantees and nothing more than that, Rooster and My Taylor had been represented, and had the benefit of lawyers acting on their behalf.
- 22 Fancourt J referred to the fact that Mr Taylor had, essentially, changed his story to now say that the guarantee had been forged, not previously having done so. Fancourt J considered the circumstances in which the point as to forgery had been raised, the contrary position adopted before DJ Richmond, and the commercial realities of the position and the point taken by Mr Finlay in respect thereof that I have already referred to. Fancourt J was not persuaded that there was any merit in Mr Taylor's case, and described it as being a belated attempt to raise a case of forgery that was inherently unreliable and therefore did not provide a proper basis for challenging the default judgment.
- 23 On 13 February 2022, Rooster and Mr Taylor issued a further application to set aside the orders dated 25 November 2019 and 13 December 2019. That was an application that took a technical point in relation to the initial service of the proceedings that was said to invalidate the judgments. On 4 March 2022, the Rooster and Mr Taylor issued an application seeking disclosure of documentation that it was said would "*prove that the claimant is deceiving the Court with intent to interfere in the proper administration of justice*". On 7 March 2022 Rooster and Mr Taylor issued a yet further application to set aside the 13 December 2019 order "*on the grounds that the claimant should be in contempt of court by submitting false instruments, forging documents and making false statements pursuant to CPR 81.6 and CPR 17.6*". The latter application was supported by a witness statement of Mr Taylor dated 7 March 2022. That witness statement contained allegations of forgery in relation to the relevant invoices, the relevant hire purchase agreements and the personal guarantees.

- 24 I dealt with the three applications I have just referred to on paper, and without a hearing, dismissing the same as being totally without merit by my order dated 9 March 2022. My reasons for doing so are set out in the body of the order. Prior to that, I had, in relation to the first of the applications, given directions which had led to written submissions being made by the Claimant in response to Mr Taylor's evidence, which had then been responded to by Mr Taylor. In making my Order dated 9 March 2022, I was unaware of Mr Taylor's application dated 3 March 2022 that is before me today, because, rather than being issued within the Main Proceedings, it was issued under the new case number G30MA108 and therefore was not included in the CE-file records being included within the separate paper file, as I have already described, which I was unaware of.
- 25 My order dated 9 March 2022 having been made without a hearing, it contained a note, in bold, at the end thereof that provided that by virtue of CPR 23APD.11, para 11.2, it was to be treated as if made by the Court of its own motion such that CPR 3.3(5) applied, and consequently, any party affected thereby had the right to apply to have this Order set aside, varied or stayed. Seven days from service of the order was specified as the time for so applying. No application was made to set aside or vary the order, and it was not appealed.
- 26 So far as the paper file is concerned, and claim number G30MA108, the final charging order was, as I have mentioned, made by DDJ Manley on 18 February 2022. It was the making of the charging order on 18 February that prompted the application dated 3 March 2022 that is before me today.
- 27 There was a yet further application issued by Rooster and Mr Taylor in the Main Proceedings on 21 March 2022. This application sought an order somewhat similar in effect to that which I am being asked to make today, namely an order to:
- “Stay of execution of enforcement of any Charging Order/Penal Notice as per CPR 3.1(2)(f) - CPR 1.1(2) (b) (c) (j) (ii) (iii) (iv) [and] (d) on the grounds that the assets yet unaccounted for to which there is a purported debt are insured. Therefore there must be an insurance claim prior to any enforcement. As the quantum will be greatly reduced if not extinguished.”*
- 28 Essentially, the point made by the application was that the items in respect of which delivery up had been ordered had gone missing or been stolen, there was an insurance claim and that the Claimant should pursue that route, rather than seeking to enforce the charging order or seeking committal for breach of the order dated 13 December 2019.
- 29 This application came before me on 4 April 2022, when, from my recollection, the question of title to the to the items the subject matter of the relevant hire purchase agreements, and Rooster's and Mr Taylor's arguments in respect thereof were further ventilated. I dismissed the application. I also made a limited civil restraint orders against Rooster and Mr Taylor, because I was of the view that the application before me was totally without merit, and given that several previous application brought by Rooster and Mr Taylor had been held to be totally without merit, I was persuaded that it was appropriate to make such an order.

- 30 By the time that I came to deal with the application dated 21 March 2022 on 4 April 2022, and made the limited civil restraint orders, Mr Taylor already had caused to be issued applications seeking permission pursuant to CPR 81.3(5)(b) to bring contempt of court proceedings against two people: firstly, Sally Emerton, a solicitor and partner of Addleshaw Goddard LLP, who has acted for the Claimant throughout; and, secondly, Mr Martin Cross, an employee of the Claimant. The essential allegation in each case was that the Claimant had advanced a false and knowingly false case in relation to the title to the relevant assets that had originally been hired to TTX, and Sally Emerton and Martin Cross had made false witness statements dealing therewith.
- 31 I dealt with these applications for permission to bring contempt proceedings on paper, without a hearing. On 5 April 2022, I made an order that stated that I had reached the provisional view that I should deal with the applications on paper, but gave direction enabling the Claimant to respond to the applications and enabling Mr Taylor to reply thereto, and for me to then decide whether I would deal with the applications on paper or direct a hearing. In the event, having considered the further representations made by the Claimant and Mr Taylor, on 13 May 2022, I did deal with the applications on paper, making an order dismissing them. I dismissed the applications, essentially, because it seemed to me that Mr Taylor was, thereby, seeking to reargue the arguments that had been ventilated in front of Fancourt J in relation to title, in respect Fancourt J had reached a decision, and that to find that there was any merit in the proposed contempt proceedings would have required me to have reached the conclusion that Fancourt J had been wrong in the decision that he had reached in refusing to grant permission to appeal the decision of DJ Richmond to dismiss the application to set aside the orders dated 25 November 2019 and 13 December 2019, and I did not consider there to be any proper basis for acceding to this collateral attack on Fancourt J's decision.
- 32 Again, my order dated 13 May 2022, having dealt with the relevant applications without a hearing, contained a notice stating that it was open to any party affected by the order to apply, within seven days of service of it on them, to have the order discharged or varied. Again, no such application was brought, and there was no appeal brought in respect thereof.
- 33 Following my order of 13 May 2022, which was sealed on 7 June 2022, two further applications of potential relevance dated 10 June 2022 have been issued, on this occasion by Luke. The first application seeks to "*Set aside a default judgment against D2, and a penal notice against D1, D2 and D3 on the grounds the judgment and order are predicated on the Claimant forging personal guarantees*". I understand that the reference to penal notice is a reference to that subsequently attached to the order dated 13 December 2019, which does refer to Luke as a director of Rooster. Luke was not, on any view, a party to the default judgment obtained against Mr Taylor on 25 November 2019. The second application seeks permission to bring contempt of court proceedings against Mr David Derbyshire, who had made a witness statement on behalf of the Claimant in respect of the execution of the relevant guarantees.¹

¹ Note by HHJ Cawson QC made when approving this draft judgment: The applications dated 10 June 2019 were dealt with on paper by my orders dated 24 June 2022 in the Main Proceedings, The applications were dismissed as totally without merit. No application was made to vary or discharge either order, and they were not appealed. It is to be noted that Luke issued a further application dated 25 July 2022 seeking an order to: "*set aside under CPR 3.1(7) on the*

34 The Defendants have served a significant amount of further evidence, not strictly in relation to the application of 3 March 2022 brought under the claim G30MA108, but within the Main Proceedings in support of the further applications that I have referred to.

35 To summarise the evidence that has been served, there are:

- (i) Two affidavits (one by Mr Taylor and one by Luke), both sworn on 10 June 2022;
- (ii) Two forensic handwriting reports, dated 2 June 2022, one in relation to various signatures of Mr Taylor and the other in relation to various signatures of Luke.
- (iii) A forensic accountant's expert witness report of 29 March 2022, relied upon in support of the further applications, and which has been before the court on previous applications.
- (iv) What is described as a barrister's legal opinion of Dr John Brown, dated 7 June 2022, concerning the letter of 13 June 2017 that I have mentioned in the context of the execution of the relevant guarantees;
- (v) Witness statements of Mr Neil Fox, dated 10 January 2022, Mr Doru Vlad Costache, dated 22 January 2022, and Mrs Amy Louise Bradsell-Alty dated 10 January 2022, all of whom are ex-employees of TTX; and
- (vi) A witness statement made by Luke dated 12 June 2022.

36 So far as the witness statements from the ex-employees of TTX are concerned, I was informed this morning by Mr Taylor that he did deploy those witness statements at the hearing before DDJ Manley on 18 February 2022 in seeking, unsuccessfully, to persuade DDJ Manley to decline to make a final charging order. He complains that the Deputy District Judge failed to have regard to these witness statements.

37 This further evidence does provide further, and potentially better evidence than that previously adduced and before Fancourt J on 13 October 2021, that Mr Taylor and Luke did not sign the relevant guarantees.

38 In respect of the expert handwriting reports, in the case of Mr Taylor, the conclusion of the handwriting report is that there is a "*high probability*" that the signature on his guarantee and the letter dated 13 June 2017 was not that of Mr Taylor. In the case of Luke, it is simply put in terms of being more probable that he did not sign the guarantees and also certain documentation concerning the relevant hire purchase agreements.

grounds of a fundamental defect (fraud) which deems the order in default dated 25.11.19 and judgement for claimant dated 13.11.20 void as both are based on the false representations by the claimant upon Court, and using articles for the use in fraud to deceive the judiciary: If an act is void then it is in law a nullity. It is not only bad but incurably bad". I dealt with this application on paper on 1 August 2022, dismissing it as totally without merits for the reasons set out in my order. There has been some delay in sealing this order, and so the time for applying for it to be varied or discharged had not expired when this judgment was approved on 15.08.22.

- 39 So far as Dr John Brown’s legal opinion is concerned, this concerned the letter of 13 June 2017, that purported to have been signed by Mr Taylor on 29 June 2017. In this opinion Dr Brown comments about some unusual features of the letter, including not being addressed to Mr Taylor and so forth, but it is clear from the opinion that Dr Brown had not been informed about the full context in which this letter had come into existence, nor indeed that there had already been a judicial determination of the Main Proceedings. Therefore, I consider that this opinion must carry, in itself, very limited weight.
- 40 The other witness statements I have referred to, from the ex-employees of TTX, do lend support to a case that Mr Taylor, when asked to provide a guarantee in relation to the lending by the Claimant to Rooster, declined to do so in forceful terms. As I have said, Mr Taylor himself describes in his own evidence how he told Mr Derbyshire to “f*** off”, as he put it, a point that is supported by at least one of the witness statements of the ex-employees.
- 41 So it is against this background that I turn to consider the present application.
- 42 I begin by saying that this is not the application to set aside the judgment in default against Mr Taylor (i.e. the order dated 25 November 2019) on the basis of which the final charging order was made. That application was made and was determined by DJ Richmond, following which there was an unsuccessful application for permission to appeal on paper to Snowden J and then as renewed at an oral hearing as determined by Fancourt J after Rooster and Mr Taylor had advanced an argument, rejected by Fancourt J, to the effect that the relevant guarantees had been forged. I am informed by Mr Finlay that at the end of that hearing Fancourt J made it clear to Mr Taylor that that was, so far seeking to set aside the default judgment was concerned, the end of the road.
- 43 So far as the present application for a stay of execution of the final charging order is concerned, I consider it necessary to carefully consider what jurisdiction, if any, there might be, at this late stage, to challenge the default judgment dated 25 November 2019 and the final charging order, after an unsuccessful application to set-aside the default judgment against Mr Taylor in respect of which all routes of appeal have been exhausted,. As I see it, it is only if there is are (at the very least) reasonable grounds for now applying to set aside the 25 November 2019 default judgment, that it could be right to stay execution of any charging order that is based upon it.
- 44 Of course, it is a important principle of litigation in this country that there should be finality to litigation. Parties go to court to have matters determined, and when matters have been determined through a proper court process, and once all avenues of appeal have been exhausted, parties are not, save in very exceptional circumstances, permitted to simply come back to court with better evidence to have the matter re-litigated in the hope of achieving a different result.
- 45 There is a jurisdiction under CPR 3.1(7) for the court to vary or revoke its orders. However, the notes in the *White Book 2022* at paragraph 3.1.17.2 are fairly clear to the effect that it can only be in exceptional circumstances that court might invoke CPR 3.17(7) to interfere with a final judgment. It is said as follows:

“There has not yet been any definitive determination as to whether rule 3.1(7) does or does not give the court jurisdiction to vary or revoke a final order. However, most of the authorities state that the court does have such jurisdiction (whether from rule 3.1(7) or from elsewhere) but that jurisdiction is so constrained as to render it exercisable only in exceptional circumstances. Current case law identifies three sets of circumstances which may be exceptional enough to justify the variation or revocation of a final order:”

These exceptional circumstances are then dealt with under three bullet points:

- *“ Cases in which the order was obtained by fraud ... ”;*
- *“Orders made in the absence of the party now seeking to set it aside [making reference to CPR 39.3] ”;* and
- *“Final orders on admissions obtained pursuant to Pt 14 on request...”*

46 In the present case there has been the judicial determination that I have referred to. Rooster and Mr Taylor have had the opportunity to, and did place evidence before the Court dealing with the relevant issues at the hearing before DJ Richmond on 15 July 2020. Before Fancourt J, they were permitted to rely upon further evidence including Mr Taylor’s witness statement dated 10 October 2021. On the basis of this evidence, it has been determined that the default judgment dated 25 November 2019 (and the judgment dated 13 December 2019) should not be set aside, and all avenues of appeal have been exhausted following Fancourt J’s determination.

47 The only possible exceptional circumstance identified above that might be available to challenge the order dated 25 November 2019 order is, as I see it, that relating to obtaining orders by fraud.

48 Before I consider this jurisdiction in more detail, I consider it important to identify certain features of the evidence as it stands at the moment, and how it has come before the Court. I observe that the draft Defence, settled with the benefit of legal advice, as considered by DJ Richmond on 15 July 2020, simply put the Claimant to strict proof regarding the execution of the guarantee. There was no allegation or assertion at that point that Mr Taylor’s signature had been forged, and Mr Taylor did not go so far as to deny that the relevant guarantee had been signed by him. This was the basis on which DJ Richmond, on 15 June 2020, was asked to and did deal with the matter.

49 The matter was then further ventilated on the applications for permission to appeal, in particular at the hearing before Fancourt J on 13 October 2021. Mr Taylor then went further, as I have said, by denying, in his witness statement dated 10 October 2021, having executed the guarantee, but the case was not advanced with the particularity that Mr Taylor now introduces with the evidence subsequently produced. I note, for example, the graphic evidence that Mr Taylor now seeks to give to the effect that he recalls having told Mr Derbyshire to “*f*** off*”. If true, one might have expected him to have mentioned this detail

in his witness statement dated 18 October 2019 when he said that he told Mr Derbyshire “robustly” that he would not sign any more guarantees. More fundamentally, this is inconsistent with the position that had been adopted in front of DJ Richmond, where it was being suggested he could not recollect having signed the guarantee at all. As Fancourt J held, this new case as to forgery lacked any credibility. Surely, if true, Mr Taylor would have recalled his robust response to Mr Derbyshire and referred to it, particularly after Mr Derbyshire made his witness statement evidencing execution of the guarantees.

50 So far as the expert evidence is concerned, what is said by Mr Taylor in relation to that is that the expert evidence was obtained only after he had read a judgment of Chief Insolvency and Companies Court Judge Briggs in the case of *Lynch v Cadwallader & Aldermore Bank Plc.* [2021] EWHC 328 (Ch), a decision dated 23 February 2021 (not 2022), in which he read of the requirement of a bank to prove execution of a guarantee and where, on the facts of that case, the judge did not find the case to have been proved where expert evidence had been advanced.

51 So far as the expert’s evidence itself is concerned, I have already noted what it says, but I do note that in relation to Luke, it is the expert’s evidence that it is not his signature not only on the guarantees that he signed, but also certain hire purchase documentation, whereas it is Luke’s own evidence in his witness statements that he did actually sign the HP agreements, albeit that he now denies having signed the personal guarantees.

52 I also remind myself of the commercial realities of the position, as identified by Mr Finlay in the course of his submissions and as commented upon by Fancourt J in the course of his judgment refusing permission to appeal. If Mr Taylor had robustly informed Mr Derbyshire that no further guarantees would be given, it is difficult to see why the Claimant would have been prepared to proceed with the re-financing.

53 It is conceivable that Mr Taylor might have persuaded himself now that he did not, in fact sign his guarantee, having heard that it might be necessary to show that a judgment was obtained by fraud, or at least that the advancement of a positive case in relation to the non-execution of the guarantees is a requirement of his case. However, having regard to the evidence as a whole, I do not consider that the position has moved on significantly, so far as the credibility of the evidence before the Court as to forgery of Mr Taylor’s signature on his guarantee is concerned, from that as considered by Fancourt J when he gave judgment refusing permission to appeal.

54 However, on proper analysis, whether or not the evidence of forgery is stronger now than it was when Fancourt J considered the position is, as I see it, beside the point, and not the relevant test given that, as I have said, it is only in exceptional circumstances that a court, otherwise than by way of an appeal, can set aside a final judgment, and the only potentially relevant circumstance is if it could be shown that a relevant judgment was obtained by fraud.

55 As to the circumstances in which a judgment might be set aside as obtained by fraud, *Halsbury’s Laws of England, Vol. 11 (2020 Ed.)* at paragraph 1213 says this:

“A judgment which has been obtained by fraud, either in the court or by one of the parties, may be set aside if challenged in fresh proceedings alleging and proving the fraud. In such proceedings, it is not sufficient merely to allege fraud without giving any particulars and the fraud must relate to matters which prima facie would be a reason for setting the judgment aside if they were established by proof and not matters which are merely collateral. The court requires a strong case to be established before it will set aside a judgment on this ground and the proceedings will be stayed or dismissed as vexatious unless the fraud alleged raises a reasonable prospect of success and was discovered since the judgment.”

56 The requirements of a case to set aside a judgment on the grounds of fraud was considered by the Supreme Court in *Takhar v Gracefield Developments Limited & Ors* [2020] AC 450, where Lord Kerr, with whom Lord Hodge, Lord Lloyd-Jones and Lord Kitchin agreed, accepted that the relevant principles were set out in the judgment of Aikens LJ in *Royal Bank of Scotland Plc. v Highland Financial Partners LP* [2013] EWCA Civ 328 at 106, where it was said:

“The principles are, briefly: first, there has to be a “conscious and deliberate dishonesty” in relation to the relevant evidence given, or action taken, statement made or matter concealed, which is relevant to the judgment now sought to be impugned. Secondly, the relevant evidence, action, statement or concealment (performed with conscious and deliberate dishonesty) must be “material”. “Material” means that the fresh evidence that is adduced after the first judgment has been given is such that it demonstrates that the previous relevant evidence, action, statement or concealment was an operative cause of the court’s decision to give judgment in the way it did. Put another way, it must be shown that the fresh evidence would have entirely changed the way in which the first court approached and came to its decision. Thus the relevant conscious and deliberate dishonesty must be causative of the impugned judgment being obtained in the terms it was. Thirdly, the question of materiality of the fresh evidence is to be assessed by reference to its impact on the evidence supporting the original decision, not by reference to its impact on what decision might be made if the claim were to be retried on honest evidence.”

57 In the more recent decision of Leech J in *Tinkler v Esken Limited* [2022] EWHC 1375 (Ch), Leech J at paragraph 12 did identify that:

“In Takhar the Supreme Court ... did not require the party applying to set aside a judgment to prove that he or she could not have discovered the fraud even with the exercise of reasonable diligence.”

58 There are, in my judgment, a number of real difficulties in any case that Mr Taylor might seek to advance in seeking to persuade the Court that there is some real prospect of the 25

November 2019 judgment, the judgment of DJ Richmond declining to set aside that judgment, or the judgment of Fancourt J refusing permission to appeal being successfully challenged on the basis of having been obtained by fraud.

- 59 Firstly, the alleged fraud, i.e. the alleged forgery of the guarantees and the alleged false evidence of Mr Derbyshire regarding the execution of the guarantees, was not based upon, and nor was it revealed by evidence as to any fraud on the part of the Claimant in obtaining any judgment, and in particular any evidence discovered since when the 2019 Default Judgment was obtained, or the merits thereof were reviewed by DJ Richmond on 15 June 2020 and then by Fancourt J on 13 October 2021. Rather, Mr Taylor changed his position. Having said prior to 10 October 2021 that he could not recollect signing his guarantee, he then said in his witness statement that he could recall informing the Claimant's David Derbyshire in robust terms that he would not make any further guarantee, and alleged that his signature on his guarantee was forged. That was the position before Fancourt J, when Fancourt J determined the matter against Mr Taylor. Mr Taylor has simply now come up with further evidence in support of his position to that then deployed, but that does not provide, as I see it, any basis for re-opening the matter on the grounds of any judgment having been obtained by fraud.
- 60 Secondly, as I have indicated by reference to the commentary in *Halsbury* (supra) at paragraph 1213, apart from showing that the fraud was discovered since the judgment, a strong case of fraud must exist, and any new claim alleging fraud is liable to be stayed or dismissed unless the fraud alleged has a reasonable prospect of success. In light of the considerations that I have identified, I do not consider that a strong case, or one demonstrating a reasonable prospect of success has been demonstrated on the evidence before the Court.
- 61 The third consideration is a final discretionary consideration so far as the application to grant a stay today is concerned. Although the application is prefaced on the basis that there will be a new claim to challenge the judgment, there is no such new claim and therefore no properly particularised and pleaded case for the Court to consider. As a matter of discretion, I would not, in any event, have been prepared to grant a stay of enforcement of the charging order without seeing at least a draft pleading.
- 62 However, the first of the above considerations is the most fundamental and important. The final charging order is based on a regular judgment that has been fully reviewed by the Court, before DJ Richmond on 15 June 2020, and again before Fancourt J on 13 October 2021, when he fully reviewed the defences being advanced and rejected them as having no real prospect of success. The case of fraud being advanced by Mr Taylor is not, on proper analysis, to the effect that any judgment has been obtained by fraud. The case of fraud is not based not upon the discovery of evidence after the event that impugns any decision. Rather the alleged fraud was a matter very much in issue before the Court when it finally determined the matter, it is just that Mr Taylor has come up with what he says is better evidence after the event. That does not in my judgment provide a proper basis for impugning the process that has led to the making of the final charging order.

63 In these circumstances, and whilst recognising the seriousness of the matter to Mr Taylor, the state of the evidence and the state of the authorities is such that I have no option but to dismiss the application to stay execution of the final charging order.

CERTIFICATE

Opus 2 International Limited hereby certifies that the above is an accurate and complete record of the Judgment or part thereof.

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Official Court Reporters and Audio Transcribers
5 New Street Square, London, EC4A 3BF
Tel: 020 7831 5627 Fax: 020 7831 7737
civil@opus2.digital*

This transcript had been approved by the Judge.