



Neutral Citation Number: [2022] EWHC 2895 (Ch)

CLAIM NO.BR-2017-001525

IN THE HIGH COURT OF JUSTICE

BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES

INSOLVENCY & COMPANIES LIST (ChD)

The Rolls Building
7 Rolls Buildings
Fetter Lane, London
EC4A 1NL

Date: Tuesday 15th November 2022

Before:

MR JUSTICE MELLOR

**IN THE MATTER OF THE EXTENDED CIVIL RESTRAINT ORDER DATED 28TH
MAY 2021 MADE AGAINST MR ROBERT HURST**

**AND IN THE MATTER OF MR HURST'S RENEWED APPLICATION FOR
PERMISSION TO MAKE A SERIES OF APPLICATIONS**

Between:

MR ROBERT HURST

Applicant

- and -

(1) MRS EVELYN GREEN

Respondents

(2) MR DAVID GREEN

(3) MR IAN MABLIN

Dealt with on the papers

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.

COVID-19: This judgment was handed down remotely by circulation to the parties' representatives by email. It will also be released for publication on the National Archive website. The date and time for hand-down is deemed to be Tuesday 15th November 2022 at 2pm.

Mr Justice Mellor:

Introduction

1. This judgment concerns another series of attempts by the Applicant, Mr Robert Alfred Hurst ('Mr Hurst'), for permission to make the following series of applications:
 - i) To review, pursuant to s.375(1) of the Insolvency Act 1986, the decisions of Fancourt J. dated 5 February 2020 and 28 May 2021;
 - ii) Annulment, pursuant to s.282(1)(a) of the Insolvency Act 1986, of the Bankruptcy Order made against the Applicant dated 15 February 2018;
 - iii) Rescission of the Order of Master Price dated 3 August 2016 in action HC-2016-001002;
 - iv) An Order requiring the repayment of the sum of £200,497.59 paid pursuant to the Order of Master Price on 3 August and 19 December 2016, plus interest thereon
2. In essence, Mr Hurst is trying to annul his bankruptcy (for the fifth time) and, by setting aside the Orders of Master Price, to set aside the grant of summary judgment against him in the sum of £200,497.59, and thereby to take to trial his assertions that undue influence led his mother to enter into a 'double trust' arrangement in 2003 in an attempt to avoid inheritance tax.
3. I dealt with a previous series of attempts to make the same applications in my previous judgment, the neutral citation for which is [2022] EWHC 796 (Ch), and which is essential background for this judgment. Leading up to that judgment, I had made an Order refusing permission on 20 December 2021, setting out brief reasons for my refusal. I repeated my conclusions in that judgment at [4]:
 6. This is yet another attempt by Mr Hurst to undo the whole sequence of judicial decisions made against him based on essentially the same arguments which have now been considered and rejected numerous times.
 7. I am satisfied that if I were to grant Mr Hurst the permission he seeks, the steps that he contemplates in:
 - a. Reviewing the decisions of Fancourt J. dated 5 February 2020 and 28 May 2021;
 - b. Annulling the Bankruptcy Order made against the Applicant dated 15 February 2018;
 - c. Rescinding the Order of Master Price dated 3 August 2016 in action HC-2016-001002, and thereby securing an Order requiring the repayment of the sum of £200,497.59 paid pursuant to the Order of Master Price on 3 August and 19 December 2016, plus interest thereon;would each amount to an abuse of the process of the Court.

4. That same day, Mr Hurst requested that I either review my decision or grant permission to appeal from it, on the basis of a detailed set of points set out in his letter of that date. I was unable to consider his points for some time, since I started a complex trial at the start of January 2022. For that reason, I decided to address his points in a written judgment (the neutral citation for which is set out above), which I concluded with these paragraphs:

‘35. It can be seen therefore, that there is essentially nothing new in Mr Hurst’s latest application. It rests on the same regurgitated points, from which Mr Hurst seeks to draw what Fancourt J. characterised (correctly in my view) ‘inferences of a highly speculative nature’.

36. Therefore, I remain of the view which I expressed in my Order dated 20th December 2021 (see paragraph **Error! Reference source not found.**) Accordingly I refuse the permission which Mr Hurst seeks, to apply for a fourth time seeking to annul his bankruptcy. In my view, this application was totally without merit.

37. Finally, in the alternative to his application for reconsideration, Mr Hurst sought permission to appeal, which I refuse.

38. A review of the original judgment of Master Price reveals a very long-running and bitter dispute between Mr Hurst and Mr and Mrs Green. It also reveals that Mr Hurst was ready, even at that point, to engage in unsupported surmise to try to establish a case of undue influence being exerted over his late mother. As Fancourt J. observed at [26] of his Second Judgment, Mr Hurst is unable to be objective and can only see a conspiracy involving his brother-in-law and sister and others. His obsession has consumed more than his fair share of judicial resources already.’

5. All my decisions regarding Mr Hurst have been made in my capacity as the (or one of the) designated Judges of an Extended Civil Restraint Order made against Mr Hurst by Fancourt J. in his Order dated 28th May 2021.
6. The relevant recent history is as follows:
- i) Mr Hurst made an informal application for permission to make the applications set out above in a witness statement dated 27 October 2022 which he sent that day.
 - ii) I considered his witness statement and its exhibit against the background of the Judgments (a) of Fancourt J. dated 5 February 2020 (the neutral citation for which is [2020] EWHC 344 (Ch)) (‘the First Judgment’) (b) 28 May 2021 (the neutral citation for which is [2021] EWHC 1767 (Ch)) (‘the Second Judgment’) and (c) my own judgment dated 19th April 2022 (the neutral citation for which I set out above).

- iii) Having considered his application, by my Order dated 28 October 2022, I refused Mr Hurst the permission(s) he sought, for the reasons set out in that Order and which I reproduce below.

The reasons given in my Order dated 28th October 2022

7. I gave the following reasonably detailed reasons in my Order dated 28th October 2022 for refusing Mr Hurst permission to bring the series of applications set out above.
2. Mr Hurst's application is founded upon a payment ('the Payment') made by Berwin Leighton Paisner (BLP) of £200,000 to Greenbrook Industries Limited (GIL) on 29 June 2016, a company he says was controlled by David Green (the Second Respondent) and his brother, Richard Green.
 3. Having made his allegations concerning the Payment, Mr Hurst seeks to mix them into support for his long-standing view that undue influence was exerted over his mother in 2003 – see, in his latest witness statement, [19]-[23].
 4. I have previously rejected Mr Hurst's application for the same relief, made on different grounds, albeit ones which overlap with Mr Hurst's allegations of undue influence: see my judgment dated 19th April 2022 under neutral citation [2022] EWHC 796 (Ch).
 5. At the time of the Payment, BLP were the solicitors acting for the Claimants in Claim No. HC-2016-001002, being Evelyn Green, David Green (her husband) and Ian Mablin (the long-standing accountant who had acted for many years for Hanna Hurst and her husband until his death in 1985, and was executor of his estate), against Mr Hurst as Defendant. The claim form in that action was issued on 23 March 2016. The claimants brought the claim in their capacity as trustees of the Hanna Hurst Life Interest Trust, Hanna (sometimes referred to as Hannah) Hurst being the mother of Evelyn and Robert Hurst, and who passed away in August 2014. Mr Hurst was the sole executor of her will.
 6. As executor, and with the agreement of the claimants, Mr Hurst arranged the sale of the property in which Mrs Hanna Hurst had lived for many years, for some £2.38m. At her death, she retained the legal title to that property, but that was subject to two trusts she created in 2003, the first being the Life Interest Trust and the second, the Children's Trust. These trusts were set up as part of an attempted tax mitigation scheme, designed to avoid inheritance tax.
 7. The claimants were beneficially entitled to the proceeds of sale of the property, after deduction of monies due to mortgagees and the costs of sale. After those deductions, some £1.9m remained.

8. BLP made a proposal as how that balance should be dealt with by Mr Hurst but he did not accept those proposals and proceeded to deal with the monies as he thought fit.
9. That resulted in the claim being issued by the claimants against Mr Hurst, seeking, initially, some £405,071.81 which they said should be the sum available to the beneficiaries of the trusts, namely, the first claimant, Mr Hurst's wife (Stephanie) and their respective children.
10. The claimants sought summary judgment against Mr Hurst and it was this application which came before Master Price on 3rd August 2016. Mr Hurst resisted summary judgment on various grounds, each of which Master Price considered. He concluded that none gave rise to any triable issue which had any realistic prospect of success and so granted summary judgment against Mr Hurst. Mr Hurst did not appeal.
11. Mr Hurst's grounds included allegations of undue influence and breach of fiduciary duty, described in the judgment of Master Price. Mr Hurst's principal assertion of undue influence concerned events in 2003 when Mrs Hanna Hurst established the 'double trust' arrangement. The alleged breaches of fiduciary duty were levelled at the second claimant for failing to consult with the other trustees regarding the possibility of unwinding the trust arrangements in 2005 after the passing of the Finance Act 2004, which contained provisions which removed the efficacy of the double trust arrangement. The third limb of the alleged undue influence concerned a gift made by Mrs Hanna Hurst in 2011 in the sum of £100,000 to pay for the wedding of the daughter of the first and second claimants. This sum was raised by Mrs Hurst taking out an equity release mortgage, with the consent of the trustees, to raise a sum of nearly £200,000. Mr Hurst was seeking to recoup those monies back into Mrs Hurst's estate.
12. Against that background, Mr Hurst alleges the Payment was a clear breach of trust and he accuses BLP of allowing use of its client account as a banking facility in order to enable a clear breach of trust by its clients, contrary to paragraph 14.5 of the Code of Conduct of the Solicitors Regulation Authority.
13. Mr Hurst points out that the Payment was made some five weeks before the hearing before Master Price, at which summary judgment was granted against him. He says that neither he nor Master Price was aware of this payment. He alleges that, had Master Price been aware of this payment, he would not have granted summary judgment and would have ordered a trial, at which (so Mr Hurst alleges) Mr Green and Mr Whitehead would have had to justify the payment of £200,000 to Greenbrook.

14. Having considered Master Price's judgment (once again), I am unable to understand how evidence that the Payment had been made some five weeks earlier could possibly have persuaded him against granting summary judgment.
15. In the exhibit to his latest witness statement, Mr Hurst exhibited a two-page print out from what appears to be the client account maintained by BLP in respect of the claimants' instruction. The print-outs were made on 2nd March 2017. They evidence the Payment being made. However, I have no doubt that BLP made the Payment on the instructions of their clients.
16. If the Payment was made in breach of trust and that breach caused loss to the beneficiaries, I have no doubt whatsoever that any such breach would have been challenged and if not remedied, would have been the subject of proceedings brought by or at the instigation of Mr Hurst, a serial litigant, who has also been the driving force behind actions brought by his wife, Stephanie. Mr Hurst does not mention that any proceedings for breach of trust have ever been brought and I am sure he would have mentioned them, had they existed and more so, had they been successful.
17. On receipt of Mr Hurst's latest application and witness statement, I enquired as to when Mr Hurst have first received copies of the print-outs from the BLP client account. He responded promptly, acknowledging that he received those print-outs in March 2017 and accepting that he could have drawn it to the Court's attention at an earlier date.
18. In fact, he had done so. As I recorded in my April 2022 judgment at 39(i), Mr Hurst sent me the print-out on 1st April 2022, just as I was completing that judgment.
19. However, having considered the matter in more detail on the basis of Mr Hurst's latest witness statement, I have reached the same conclusion as I stated in paragraph 39(i) of my earlier judgment that the Payment 'changes nothing, apart from confirming Mr Hurst's obsession and lack of objectivity'.
20. In determining this application, I have assumed what Mr Hurst alleges regarding the Payment is true. However, even if the Payment was made in breach of trust, that would not have provided the slightest support for any of the grounds on which Mr Hurst was resisting the grant of summary judgment before Master Price. Just in terms of timing, the Payment was made some 13 years after Mrs Hurst made the trusts, some 11 years after the alleged breach of fiduciary duty and some 5 years after the third limb of alleged undue influence. The Payment had nothing whatsoever to do with any of the grounds considered by Master Price and would not, as I have already said, have altered the

outcome.

21. However, standing back from the detail, I should consider whether there is any substance in the more general allegation underlying Mr Hurst's application. In the same email in which he responded to my enquiry, Mr Hurst was at pains to remind me of various dicta concerning Judgments obtained by fraud e.g. 'Once a judgment is tainted by deceit, it is fatally flawed'. Thus, Mr Hurst's underlying allegation appears to be that the summary judgment granted by Master Price was obtained by fraud: that there was some sort of long-standing conspiracy involving the claimants in the 2016 action and BLP, which had endured from 2003. I am entirely satisfied there is no substance in that notion.
 22. There is a further consideration. There must be finality in litigation. Mr Hurst could have made his point about the Payment in any of his numerous previous attempts to undo the Order of Master Price, the Bankruptcy Order and the decisions of Fancourt J. It is reasonable to infer that the reason he did not do so was because he understood the Payment, even if a breach of trust, was an entirely separate matter.
 23. Thus, this is yet another attempt by Mr Hurst to undo the whole sequence of judicial decisions made against him. His previous attempts were based on essentially the same arguments which have now been considered and rejected numerous times. This new attempt relies on a new allegation, but one which Mr Hurst attempts to use to resurrect all his previous arguments.
 24. Overall, I am satisfied that if I were to grant Mr Hurst the permission he seeks, the steps that he contemplates in:
 - a. Reviewing the decisions of Fancourt J. dated 5 February 2020 and 28 May 2021;
 - b. Annuling the Bankruptcy Order made against the Applicant dated 15 February 2018;
 - c. Rescinding the Order of Master Price dated 3 August 2016 in action HC-2016-001002, and thereby securing an Order requiring the repayment of the sum of £200,497.59 paid pursuant to the Order of Master Price on 3 August and 19 December 2016, plus interest thereon;would each amount to an abuse of the process of the Court.
 25. Accordingly, for these reasons I refuse the permission Mr Hurst seeks. For what it is worth, I also certify that this latest Application was totally without merit.
8. Ordinarily, that would have been that. One might have thought that those reasons were sufficient to signify that further pursuit on these grounds was hopeless and there was no justification for taking up further judicial resources. As will be seen from the subsequent missives from Mr Hurst, he had other ideas.

Subsequent events

9. On 1st November 2022, Mr Hurst sent a further witness statement (and accompanying materials) requesting that I review my ‘Decision dated 28 October 2022’. This request was based on the (mistaken) notion that Mr Hurst might not have explained with sufficient particularity the significance of the payment of £200,000 to Greenbrook on 29 June 2016.
10. Mr Hurst’s 1st November 2022 witness statement contained three sections of submissions on (a) the ‘Importance of Rule 14.5 of the Solicitors Accounts Rules’; (b) the alleged relevance of Mr Whitehead’s alleged breach of rule 14.5 to the judgment of Master Price dated 3rd August 2016; and (c) paragraphs 52-54 of Kerr JSC in *Takhar v Gracefield Developments Ltd* [2019] UKSC 13.
11. In essence, Mr Hurst’s submission was that:
 - i) If Master Price had been aware of Mr Whitehead’s breach of rule 14.5, he would not have granted summary judgment against Mr Hurst;
 - ii) If ICC Judge Prentis and Fancourt J. had been aware of Mr Whitehead’s breach of rule 14.5, they would have decided differently.
12. Furthermore, Mr Hurst submitted that ‘*the professional propriety of the firm of BLP is now an important issue*’.
13. Mr Hurst’s submissions then proceeded to resurrect a whole series of allegations made in his previous witness statements which have already been considered numerous times and rejected, ultimately leading to his concluding submission that all these allegations (and his alleged disputes) can only be resolved by means of Mr Green and Mr Mablin giving evidence in the witness box.
14. Before I was able to consider (let alone issue any response to) his 1st November 2022 witness statement, on 2nd November Mr Hurst sent a further witness statement dated 2nd November 2022. This witness statement sought to draw my attention to paragraph 24 of the Judgment of Morgan J. in *ACLBDD Holdings Limited v Staechelin, Paisner and McCaffrey* [2018] EWHC 44. Mr Hurst’s point was that Mr Martin Paisner had been the partner with overall responsibility for his late mother’s affairs and for the trusts in suit from 2003 until 2020 and had been the second defendant in that action. In paragraph 24, Morgan J. said this of Mr Paisner’s evidence in that case, that it ‘*was not wholly consistent with his pleaded Defence and with some hesitation I consider that it is likely that he has, probably unwittingly, yielded to the temptation of professing to recall matters of detail and specific expressions which is he is not genuinely able to recall.*’ Mr Hurst referred to paragraphs 29-45 of his 1st November 2022 witness statement saying he drew the Court’s attention to the likelihood that some of the important witnesses were hiding behind documents skilfully prepared by their Solicitors and Counsel and, for that reason, he submitted a trial was required. Mr Hurst submitted that it was apparent from paragraph 24 of Morgan J.’s judgment that ‘a similar situation arose in that case’. Although Mr Hurst did not spell this out in terms, it was clear that the alleged relevance of this reference to the judgment of Morgan J. was, as he submitted in his 1st November 2022 witness statement ‘*the professional propriety of the firm of BLP is now an important issue*’

15. On 8th November 2022, Mr Hurst sent a further email to my clerk, asking for an explanation for the lack of a response to his witness statements. This was followed by a further email to Chancery Listing on 9th November 2022 and a further email to my clerk on 10th November 2022. Due to other commitments which I undertook abroad in the week of 7-11th November, I was unable to consider Mr Hurst's additional materials until 14th November.

My conclusions

16. I have considered Mr Hurst's new submissions afresh. However, in view of the history of his applications, I can state my conclusions relatively succinctly. Notwithstanding Mr Hurst's remarkable persistence, I am satisfied that he is unable to see anything but an ever-growing conspiracy. His alleged conspiracy starts in 2003 and persists through to 2016 and beyond. It now involves not just Mr and Mrs Green, Mr Mablin (Mrs Hurst's very long-standing accountant) and not just Mr Whitehead the solicitor at BLP but now, apparently, Mr Martin Paisner and possibly the entire partnership of BLP from 2003-2016 and beyond.
17. The latest allegations in his witness statements of 1st and 2nd November 2022 are attempts to throw some tiny specks of mud in the expectation they form substantial foundations of a house: the house being his dream that undue influence was exerted over his mother in 2003, and the foundations of which he believes would be sufficient to set aside the summary judgment granted against him by Master Price. Both the foundations and the house are a mirage which can only be seen by Mr Hurst. As both Fancourt J. and I have previously observed, he is unable to take an objective view of events. Indeed, in his witness statements of 1st and 2nd November 2022, I find he has lost all objectivity.
18. By agreeing to review the decision contained in my Order dated 20th December 2021 and by considering his further contentions, I can see I have encouraged Mr Hurst's latest attempts to challenge my Order dated 28th October 2022, but Mr Hurst must understand that this will not be repeated. Indeed, his repeated groundless applications are precisely what an ECRO is designed to prevent.
19. In short, my Order dated 28th October 2022 stands. For what it is worth, I will also certify that his attempts in his witness statements of 1st and 2nd November 2022 to persuade me to grant permission also constituted an application which was totally without merit.

Should the ECRO be extended?

20. It will be observed that since the ECRO was made by Fancourt J. in May 2021 (for a period of 2 years from 28th May 2021), Mr Hurst has made a series of applications for permission to seek to overturn all the decisions made against him as summarised in paragraph 1 above. I have certified that the following applications made by him were totally without merit:
 - i) The application to reconsider made via his letter dated 20th December 2021, dealt with in my judgment [2022] EWHC 796.

- ii) The application made via his witness statement dated 27th October 2022, dealt with in my Order dated 28th October 2022.
 - iii) The further application made via his witness statements of 1st and 2nd November 2022, dealt with in this judgment.
21. In these circumstances, I have considered of my own motion whether the terms of Mr Hurst's ECRO should be extended. I am satisfied that the Court has jurisdiction to make a CRO or an ECRO of its own motion, even though it has been said this will be rare. I am also satisfied that the Court has jurisdiction to extend an ECRO 'if it considers it appropriate to do so' CPR PD 3C, para 3.10, 'but it must not be extended for a period greater than 2 years'.
22. I am assisted by the analysis of HHJ Paul Matthews (sitting as a Judge of the High Court) in *Ashcroft v Webster* [2017] EWHC 887 (Ch). Having reviewed the relevant authorities, the Judge concluded as follows:
- '38. From these authorities it is clear that, in considering whether it is appropriate to *extend* the ECRO, I cannot go back to the beginning and ask whether the court would now be justified in *imposing* a further ECRO. For one thing, that would be to give double credit for the applications or claims held to be "totally without merit" that justified the order in the first place. For another, the filter mechanism means that there are not inherently likely to be many further applications anyway, much less many which are "totally without merit". Third, the test for an extension is simply whether *the court considers* that it is "*appropriate*" to do so. It is quite different from the test for the first ECRO.
39. On the other hand, in considering whether it is "*appropriate*", *all* the circumstances must be taken into account. Here, the Defendant's conduct leading to the ECRO is still relevant, not least as setting the scene: *cf Noel v Society of Lloyd's* [2010] EWHC 360, [38]-[46]. Normal people do not behave in this way. They eventually accept that they have lost, and move on. For such persons, not subject to an ECRO, the subsequent conduct on its own might be more susceptible of an innocent, non-vexatious explanation. But where an ECRO has properly been made, what comes afterwards is seen through the prism of the earlier conduct. In such a case it is easier to see the likelihood of further vexatious conduct. This is not double-counting, but rather better understanding a person's motivation in acting in a particular way.'
23. In *Ashcroft*, the Judge noted that the Defendant who was the subject of the ECRO had shown 'at least some self-awareness in relation to his own difficulties in moving on from' the principal judgment against him in that case, albeit that the Judge recorded the Defendant still believed the judgment was wrong and was still looking for a way to get round or over it. The Judge said: '[The Defendant] persists in an irrational refusal to take 'no' for an answer.' In those circumstances, the Judge concluded that there remained a clear and serious risk to the Claimants and others which was simply too

great to allow the first ECRO not to be continued. In that case, the Judge concluded it was appropriate to extend the ECRO by a period of a further 2 years from the date the application was heard.

24. Reverting to this case, Mr Hurst has shown no sign of moving on. He persists in an irrational refusal to take 'no' for an answer. Indeed, the three applications which he has made to me for permission which I have certified as totally without merit demonstrate that his persistence has continued. He has demonstrated no self-awareness that his quest is, from the point of view of any reasonable litigant, without any merit. Indeed, his latest contentions, set out in his witness statements dated 1st and 2nd November 2022, demonstrate just how out of touch with reality his contentions have become.
25. The ECRO made by Fancourt J. lasts until 28 May 2023, now only around 6 ½ months away. I see no sign that in that period the risk of Mr Hurst's vexatious behaviour will diminish, nor do I believe it will diminish over the period until 28 May 2024. In all the circumstances I conclude it is appropriate to extend the duration of the ECRO for a period of 2 years, so the ECRO against Mr Hurst will expire on 15 November 2024.
26. Finally, pursuant to paragraph 5 of the Order of Fancourt J. dated 28th May 2021, I direct that if the Applicant makes any further application for permission which is totally without merit, the decision to dismiss the application will be final and there will be no right of appeal unless the judge who refused permission grants permission to appeal.