Neutral Citation Number: [2024] EWHC 1938 (Ch)

Case No: BR-2022-000130

IN THE HIGH COURT OF JUSTICE
CHANCERY DIVISION
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
INSOLVENCY AND COMPANIES LIST

Royal Courts of Justice, Rolls Building
Fetter Lane, London, EC4A 1NL

Date: 29/07/2024

Before:

CHIEF INSOLVENCY AND COMPANIES COURT JUDGE BRIGGS

- -

Between:

THE OFFICIAL RECEIVER **Applicant**

- and –

MYCK DJURBERG **Respondent**

- -
- -

Lucy Wilson-Barnes (instructed by **TLT Solicitors LLP**) for the **OFFICIAL RECEIVER**
Myck Djurberg not appearing

Hearing date: 19 July 2024

- -

Approved Judgment

This judgment was handed down remotely at 10am on 29 July 2024 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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CHIEF INSOLVENCY AND COMPANIES COURT JUDGE

Chief ICC Judge Briggs:

Introduction

1. This is the hearing of three applications made by Myck Djurberg, the Respondent. The applications are as follows:

    1.1. An application dated 21 February 2023- the Capacity Application or **Application 1**.

    1.2. An application dated 19 June 2023- the Disclosure Application or **Application 2.**

    1.3. An application dated 30 October 2023- the Stay Application or **Application 3**.

2. Mr Djurberg was adjudicated bankrupt at 13:45 on 20 September 2021 on a creditors' petition. The petition was presented on 19 February 2021. The petition debt of £462,840.96 is based on a court order and followed an unchallenged statutory demand that had been served personally.

The hearing

3. The hearing of the three applications was heard remotely to accommodate the attendance of Mr Djurberg. The reason was that he had been sentenced on 27 March 2024 to 12 years of imprisonment. He had purchased a boatyard on the River Thames in 2011 and built a series of expensive houseboats, with the hope of developing the boatyard into a leisure marina resort. He failed to obtain the appropriate planning permission. Due to the failure the boats were without residential mooring licences. He was convicted of three counts of fraud by false representation, for fraudulently selling houseboats without appropriate planning permission, and one count of fraud on 19 March 2024 in Kingston Crown Court. Mr Djurberg has sent the court a copy of an appeal notice.

4. The hearing was listed to have a start time at 11:30am. At 11:01 the court clerks received an e-mail from Dovydas Silickas Djurberg, the son of the Respondent:

> "My father has just informed me that the prison service has failed to provide my father with any correspondence regarding todays hearing, despite my dad having kept them informed for the past 3 weeks. My fathers court attendance today (subject that the prison office do not fail on their duty to make the necessary arrangements). [H]e will be attending but he asks me to convey that the Judge makes a decision based on the evidence provided to date as he feels at present mentally incapable to address these matters as he would like."

5. It is not clear from the e-mail how the bankrupt knew that he was not receiving correspondence but in any event Ms Wilson-Barnes for the Official Receiver informed the court that the only relevant document that Mr Djuberg may not have received is the fifth statement (report) of Karen Baldock, the Official Receiver. The fifth statement is primarily a consolidation of earlier statements. Although I had pre-read the fifth statement, to further the overriding objective by ensuring that the parties were on an equal footing and could participate fully, I excluded the evidence.

6. The e-mail sent at 11:01 continued:

> "Should the prison service fail to make the facilities available in time my father asks for the court to proceed based on the information provided or then to adjourn the case to some time in october (sic) where by then he hopes to be in possession of the correspondence and perhaps in a better state of mental health to address these matters."

7. Mr Djuberg did not join the remote hearing at 11:30. Following the decision to exclude the fifth witness statement, Ms Wilson-Barnes brought to my attention a further e-mail sent at 11:44. This e-mail was also from the son of Mr Djurberg. It reads:

> "I have just recieved (sic) a call from my father who confirms that the Prison Service have failed in their duty and that they have not moved him to the location where he would be able to join by video link."

8. Mr Djuberg (through his son) did not seek an adjournment.

9. The following factors are relevant to the exercise of discretion to adjourn:

   9.1. The hearing of the applications required no cross-examination;

   9.2. The parties were on an evidential equal footing. There had been several rounds of evidence with orders stretching back to February 2023;

   9.3. The court bundle has been prepared by the Official Receiver but Mr Djurberg had submitted his own supplementary bundle which contained documents he thought relevant to the determination of the application, including the appeal notice mentioned above;

   9.4. Mr Djurberg had produced three witness statements and introduced supporting statements from Mr Matas Saltis, Maria De Leon Toledo, his son and a psychiatric report of Dr Ewa Okon-Rocha dated 24.2.23;

   9.5. Mr Djurberg had not been able to join the hearing for reasons that were beyond his control;

   9.6. He was not able to make oral submissions due to his non-attendance;

   9.7. Events had overtaken the utility of the Stay Application, and the other two applications are capable of resolution on the material before the court;

   9.8. The e-mail at 11:01 consented to the hearing continuing in his absence.

10. Weighing these factors and applying CPR 1.1. I formed the view that there was no inconsistency between ensuring fairness, expedition, allotting the appropriate share of the court's resources and proceeding with the hearing.

The background to the three Applications

11. The Official Receiver issued an application for a bankruptcy restriction order on 14 September 2022. The September 2022 application (the "**BRO Application**"), is supported by a report dated 23 August 2022 produced by the Deputy Official Receiver, Daniel Curthoys. The allegation made against Mr Djurberg reads:

> "On 2 June 2020 Myck Djurberg provided inaccurate financial information in an application for a Government Backed Bounce Back Loan ("BBL") and subsequently breached the conditions of the BBL by failing to use all of it for the economic benefit of his business."

12. Mr Djurberg applied for a Covid-19 financial support scheme loan (commonly known as a Bounce Back Loan or BBL) from Lloyds Bank to support his boat building business. Mr Djurberg received the bounce back loan of £50,000 on 5 May 2020. He received a second £50,000 BBL from NatWest on 11 June 2020.

13. Section 3 of the loan applications ask: "What is your annual turnover, or if your business was established after 1 January 2019, what is your estimated annual turnover? The importance of the turnover question is that it acted as a base line to calculate a ratio that would provide the upper limit of a BBL subject to a maximum of £50,000.

14. As regards the Lloyds BBL, Mr Djurberg certified that his business, the Hampton Riviera Boatyard, had an annual turnover of £205,000. Lloyds are said to have discovered that the sums advanced were not to be used for the Hampton Riviera Boatyard, but for the personal use of Mr Djurberg. Lloyds took early action and withdrew the loan from the business bank account, set up for the purpose of making the BBL, on 9 July 2020.

15. In June 2020 Mr Djurberg made an application to the NatWest and certified that the Hampton Riviera Boatyard had a turnover of £350,000. This was a 70.7% increase in the certified annual turnover provided by Mr Djurberg when applying for the Lloyds BBL loan in May 2020. The discrepancy has given rise to a concern that the NatWest BBL was obtained by fraud.

16. In short, the Official Receiver claims that Mr Djurberg falsely obtained the funds borrowed under the NatWest BBL by falsely inflating the turnover of the Hampton Riviera Boatyard; falsely stated that the BBL would be used to provide economic benefit for the Hampton Riviera boatyard; and made a false declaration that the business had been adversely affected by coronavirus.

Application 1. - the Capacity Application

17. On 21 February 2023 Mr Djurberg issued an application seeking:

> "the appointment of an Advocate to the Court on the grounds of Respondent lacking Legal Capacity to conduct these proceedings."

18. Supporting evidence for Application 1. is provided in box 10 of the application notice. Mr Djurberg makes many allegations against the Insolvency Service and "how it operates as

a lawless gang of private criminals with entrusted powers". Besides the allegations made against the Insolvency Service Mr Djurberg makes the following points:

> "The Respondent refers to previous court hearings concerning the Respondent Capacity to represent himself…the Respondent is at present vulnerable and needs to take a step back to address other more urgent issues such as his health and urgent family matters…The expert medical report attached with this application, was produced by a expert Doctor that has treated the Respondent over 5 years now. Dr Rocha has provided the Respondent with medical assistance and diagnosis throughout these years and can draw the Court attention for the recent years of difficulty the respondent has enured". (sic)

19. A statement of Mr Djurberg, dated 19 October 2022, is titled "Rebut Statement" and includes (as Applicant) Mr A Hyde, who I understand to be one of the appointed trustees-in-bankruptcy. The relevance of the statement is made clear in the introduction:

> "This statement is made in rebut of an application by an officer of the Insolvency Service, a man going by the name of Daniel Curthoys, seeking a restriction order under schedule 4A of the insolvency act." (sic)

20. Application 1 came before ICC Judge Greenwood for directions on 23 February 2023. The recitals record that he had read the application, first statement (report) of Mr Curthoys, and the Psychiatric Report of Dr Okon-Rocha dated 20 February 2023. The directions ordered at the hearing gave Mr Djurberg an opportunity to provide further evidence in support of the Capacity Application and provided guidance:

> "The Respondent has permission to file and serve evidence in support of the capacity application by 4:00 pm on Friday 24 March 2023. Such evidence to address specifically, so far as possible, whether the Respondent is unable to make a decision for himself in relation to the proceedings on the BRO Application, because of an impairment of, or disturbance in the functioning of, his mind or brain, and in particular (as set out at section 3 of the Mental Capacity Act 2005) whether:
>
> a. he is able to understand the information relevant to making such decisions;
>
> b. retain that information;
>
> c. use or weigh that information as part of the decision making process; and
>
> d. communicate his decision.

21. Mr Djurberg provided further evidence in a statement dated 17 March 2023. He says:

> "Numerous false statements were written by these two individuals [the petitioning creditors] and the OR (Daniel

> Curthoys) felt elated, enjoyed such sick conduct and took upon himself to join in by writing himself a number of false statements. Sadly, Judges continue to fail at their peril to grasp that there are corrupt officials in public office. Quite often Judges tend to take at face value allegations and false statements by these officials as fact with severe consequences for the victims. Obviously most individuals and legal professionals fear to speak what they know about officials, the likes of Daniel curhtoys. Judges chose to take for grant that the "official receiver" and that, private insolvency agents, awarded government licences "multimillion pound private PLCs insolvency agents "trustees"" are whiter than white. The truth is quite the contrary as they are the most Machiavelli experts in deceiving tax payer, HMRC." (sic)

22. Evidence relevant to the issue of capacity as ordered by Judge Greenwood comes later in the statement [36]:

> "R is unwell and undergoing a number of medical treatments. This combined with the ordeal of having lost his entre property and belongings and his business. R has lost everything, has nothing nor work and relies at present on the good will of friends for his existence and that of his family and children. If the court was to entertain the evil conduct of OR it would only serve to feed the OR that they are allowed to conduct themselves outside the Law and send the message that there is no Justice in this Country. The Court is invited to dismiss the application instead of placing R at risk of losing any hope R left, perhaps with tragic consequences. R is vulnerable the Court is aware." (sic)

23. On 6 November 2023 Deputy ICC Judge Parfitt made a further order:

> "The Respondent do file and serve a witness statement(s) by 4pm on 4 December 2023 dealing with [among other things]:
>
> (1) The capacity issues as referred to in the order made on 23 February 2023 including:
>
> a. Setting out why the Respondent considers he is incapable of supporting the appointment of a litigation friend and dealing with his capacity issues.
>
> b. A witness statement from whomever he wishes to appoint as a litigation friend and their consent to take the role;
>
> c. The provision of an up-to-date report from an expert psychiatrist regarding his capacity and dealing with matters in accordance with the guidance in AMDC v AG [2020] EWCOP 58"

24. Mr Djurberg failed to provide further evidence as ordered or at all. Karen Baldock, the Deputy Official Receiver, filed and served a fourth witness statement (report) on 18 December 2023. She says [7, 9 and 10]:

> "Mr Djurberg has provided the Official Receiver (as part of his application for a stay of proceedings…) with the Psychiatric Report of Dr Ewa OkonRocha dated 24 February 2023 ('the Medical Report'). The Official Receiver has not been provided with an up-to-date report which addresses the current capacity of Mr Djurberg. The Official Receiver, through their appointed representative, TLT LLP, made requests for such evidence but it was not forthcoming from Mr Djurberg…[9] Following the making of the order TLT LLP wrote to Mr Djurberg on 07 November 2023 to explain the further information that was required from him to deal with his Capacity Application…[10] Mr Djurberg has failed to file a further witness statement, or an up-to-date report from an expert psychiatrist as required under the Parfitt Order. The Official Receiver considers that they and the Court require that information so that the Capacity Application can be considered appropriately."

25. No further evidence is included in Mr Djurberg's supplemental bundle. No relevant evidence has been filed since 18 December 2023.

26. The case was listed to come back to court on 13 February 2024 when all three applications made by Mr Djurberg would be determined. At that time the court received correspondence from solicitors acting for Mr Djurberg in the Kingston Crown Court. It was apparent that Mr Djurberg would be unavailable in February and March, the duration of the Crown Court trial. The hearing was adjourned and relisted for today.

Discussion

27. It can be readily inferred from the evidence I have set out, and the orders made by Judge Greenwood and Deputy Judge Parfitt, that the court was unlikely to be satisfied that the evidence advanced by Mr Djurberg before November 2023 was sufficient to establish mental incapacity.

28. The Mental Health Act 2005 provides three (relevant for today's purposes) practical principles that assist the court when making a capacity decision:

    28.1. A person must be assumed to have capacity unless it is established that they lack capacity.

    28.2. A person is not to be treated as unable to make a decision unless all practicable steps to help them to do so have been taken without success.

    28.3. A person is not to be treated as unable to make a decision merely because they make an unwise decision.

29. The statutory presumption is a useful and practical evidential tool, but it may not be safe to rely on a lack of evidence alone. A person who displays mental health issues maybe

incapable of representing themselves, or producing evidence to support the contention that they lack capacity. In *A Local Authority v JB* [2021] UKSC 52 Lord Stephens explained [49]:

> "This principle requires all dealings with persons who have an impairment of, or a disturbance in the functioning of, the mind or brain to be based on the premise that every individual is competent until the contrary is proved. The burden of proof lies on the party asserting that a person does not have capacity. The standard of proof is the balance of probabilities: see section 2(4). Competence is decision-specific so that capacity is judged in relation to the particular decision, transaction or activity involved. P may be capable of making some decisions, but not others. The presumption of competence operates alongside a clear system for determining incapacity, for which see sections 2-3 MCA."

30. It is useful to set out the statutory test provided by section 2(1) of the MCA 2005 even though it is referred to by Lord Stephens:

> "(1) For the purposes of this Act, a person lacks capacity in relation to a matter if at the material time he is unable to make a decision for himself in relation to the matter because of an impairment of, or a disturbance in the functioning of, the mind or brain."

31. There are three main approaches to capacity. The first is the "outcome" approach, which deals with the content of a person's decision; the second the "status" approach, which categorises the personal ability of an individual to make decisions; the third is the "function" approach. The "function" approach is adopted by the MCA. The order of Judge Greenwood provided guidance for evidence consistent with the function approach and section 3 of the MCA.

32. Section 3 MCA provides:

> "(1) For the purposes of section 2, a person is unable to make a decision for himself if he is unable –
>
> (a) to understand the information relevant to the decision,
>
> (b) to retain that information,
>
> (c) to use or weigh that information as part of the process of making the decision, or
>
> (d) to communicate his decision (whether by talking, using sign language or any other means).
>
> (2) A person is not to be regarded as unable to understand the information relevant to a decision if he is able to understand an explanation of it given to him in a way that is appropriate to

> his circumstances (using simple language, visual aids or any other means).
>
> (3) The fact that a person is able to retain the information relevant to a decision for a short period only does not prevent him from being regarded as able to make the decision.
>
> (4) The information relevant to a decision includes information about the reasonably foreseeable consequences of -
>
> (a) deciding one way or another, or
>
> (b) failing to make the decision."

33. The inability to make a decision is functional and the first of two questions for determining capacity.

34. The second question is explained by Lord Stephens [78]:

> "If the court concludes that P is unable to make a decision for himself in relation to the matter, then the second question that the court is required to address under section 2(1) is whether that inability is "because of" an impairment of, or a disturbance in the functioning of, the mind or brain. The second question looks to whether there is a clear causative nexus between P's inability to make a decision for himself in relation to the matter and an impairment of, or a disturbance in the functioning of, P's mind or brain."

35. The second question investigates the causative nature of any impairment or disturbance and has been described as a "diagnostic test": *White Book vol 1, 608*

36. Mr Djurberg has produced two witness statements that touch upon his capacity and an expert report.

37. He has appeared in the High Court since the Capacity Application was made, and gave evidence at the Kingston Crown Court in the criminal trial that led to his incarceration.

38. The witness evidence of Mr Djurberg fails to provide evidence that he is unable to make a decision for himself in relation to the BRO Application. His evidence is that he strongly resists the making of a BRO order and (among other allegations) that the Official Receiver has been put up to the making of the BRO Application by the petitioning creditors (among others).

39. The evidence demonstrates that he has formed the view that the first report of Daniel Curthoys is so inaccurate that it can only have been produced with malice or that a conspiracy, which includes a range of actors such as the insolvency service, the trustees in bankruptcy, the banks, the petitioning creditor and other creditors operating against him. He is clearly able to communicate his thought processes. Although an objective observer may disagree with his view or think his decision to resist the making of a BRO unwise, that is not sufficient to satisfy the function test, to demonstrate that he has an impairment of, or a disturbance in the functioning of his mind or brain.

40. Ms Wilson-Barnes brought to my attention a recent decision of Deputy High Court Judge Salimi when, in February 2024, he commented [141]:

> "I note that in the possession proceedings concerning his residential property [Mr Djerberg] was held to be lacking capacity to conduct litigation…Although he did not attend the hearing before me, he has submitted evidence and attended hearings at earlier stages in these proceedings."

41. Mr Djurberg has also attended hearings that concern his bankruptcy and represented himself.

42. The psychiatric report of Dr Ewa Okon-Rocha is now over a year old. The report was commissioned by the solicitors acting for Mr Djurberg in the criminal trial at Kingston. Dr Okon-Rocha explains [2, 4]:

> "I have been asked to examine and prepare a psychiatric report of Mr Myck Djurberg, in connection to his criminal charge…I have been asked to prepare a psychiatric report to consider the following: Fitness to stand trial."

43. It is apparent from the report that Dr Okon-Rocha had seen Mr Djurberg before and had seen his medical records between January 2003 and January 2023. The interview was conducted remotely and lasted 90 minutes. Her conclusion was that Mr Djurberg had "active symptoms" of depression, panic disorder and post-traumatic stress disorder. She records [13] what she was told by Mr Djurberg during the remote interview:

> "In May 2022, the court bailiffs came without prior notice to his house and removed everything they could carry, including his reading glasses, his family memorabilia, and his dog and pet birds. He was told by the Bankruptcy Trustee that "you belong to nobody". The pets were returned after one and a half months following the order made by a judge. He was made bankrupt in September 2021. Yet, in my understanding, the Bankruptcy Order was successfully challenged. However, as a part of the process of securing the evidence, the bank accounts of 13 family members were frozen."

44. If this is an accurate record of what she was told, she was not told the truth. The bankruptcy had not been successfully challenged. Other parts of this narrative are challenged. Nevertheless, not all his disclosure to Dr Ewa Okon-Rocha can be dismissed as untrue.

45. Dr Okon-Rocha conducted a "trauma rating", and having considered his medical record she reported [43, 47]:

> [43] "When discussing Mr Djurberg's mental state in more detail, his core symptoms of depression consist of low mood, anhedonia (inability to enjoy life), and mental and physical fatiguability. He additionally presents with a number of symptoms, which make the degree of his depressive illness

> more severe. These are ongoing suicidal ideation, lack of ability to initiate and sustain sleep, poor energy and motivation, compromised attention and concentration, ideas of hopelessness, helplessness, worthlessness, and changes in appetite."
>
> [47] "Furthermore, Mr Djurberg's ability to focus, sustain and shift attention as well to concentrate for a certain time is compromised. For example, I had to re-directed him many times on the right topic during our assessments as his mind wandered. His brief cognitive test performed during the assessment also confirmed that."

46. Although at the time she held the opinion that he should not stand trial, she also found that he was able to make decisions, communicate those decisions and understand the consequences [51]:

> "In relation to fitness to plead, I believe that Mr Djurberg has entered the Not Guilty plea. He is able to understand the nature and the consequences of charges, the notion of pleading Guilty or Not Guilty, is able to instruct Counsel, and is capable to challenge a juror."

47. It is known that Mr Djurberg did not stand trial in 2023 when the report was written. He stood trial in February/March 2024. It is reasonable to infer that his mental health had recovered sufficiently for him to be able to fairly stand trial in 2024.

48. On the day of this hearing Mr Djurberg wrote to the court, via his son, anticipating that he may not be in a position to represent himself, not because he was incapable, because of alleged failures of the prison service. In anticipation of his non-participation he was able to make a decision (i) that this hearing is to continue, (ii) to challenge the admissibility of evidence recently served (but not received) and (iii) to communicate his decision via a third party.

Conclusion on Application 1

49. The expert evidence of Dr Okon-Rocha is not current. It would be unsafe to rely on the totality of it now. It can be read as a historic document and helpfully sets out some of Mr Djurberg's mental health history.

50. It is important to recognise the purpose of the report. It focused on Mr Djurberg's cognitive functions in 2023 and whether it was fair for him to stand trial and be cross-examined. It assists with understanding of his ability in 2023 to process and retain information. The report recommended he not stand trial due to his inability to concentrate and an unquantified increase of risk of suicide caused by the trial process and depression:

> "Based on my current and past assessments, I am of the opinion that Mr Djurberg is at increased risk of self-harm and suicide, which I judge to be moderately high. The suicide risk is more likely than not to escalate during the trial."

51. At paragraph [53] of her report she opined:

> "I base my opinion on Mr Djurberg's mental state, in particular, his depressive symptomatology with suicidal ideation and cognitive deficit as well as the nature of the trial, which is bound to be complex, lengthy, and ultimately unnerving for Mr Djurberg. I believe that it is more likely than not that Mr Djurberg will not be able to sustain his active and meaningful participation in the trial for a long time even with the special measures and intermediary in place."

52. As regards the functional question, Dr Okon-Rocha assessed Mr Djurberg as able to understand the nature and the consequences of charges, the notion of pleading Guilty or Not Guilty. She found he had capacity to instruct Counsel, and the ability to challenge a juror.

53. The evidence is that Mr Djurberg did not have (in 2023) an impairment of or disturbance to the functioning of his mind or brain. He was capable of making decisions for himself in relation to the litigation.

54. The current state of the evidence has not changed dramatically. There is no evidence that Mr Djurberg is unable to make a decision for himself in relation to this matter namely, the loans he applied for and the loan he received during the Covid-19 pandemic.

55. There is no current evidence or any evidence that Mr Djurberg has lost his ability to understand, remember and process relevant information, to "use or weigh information" as part of the process of making decisions in this litigation.

56. Mr Djurberg has been able to communicate with the court expressing both opinion and his decisions. There is no evidence that he cannot reasonably foresee the consequences of making a decision one way or another.

57. There is no evidence that he does not understand the nature of the BRO Application, the consequences of a BRO order, his ability to challenge the Official Receiver or instruct counsel. The evidence is to the contrary. He has produced written evidence that he is opposed to the BRO Application, that he did not mislead Lloyds or NatWest when making applications for a BBL, that he did not use the loan to pay "friends and family".

58. Overall, there is no evidence to rebut the presumption of capacity.

59. In my judgment for the reasons I have given, Capacity Application should stand dismissed.

Application 2- disclosure, requests for further information and retraction of statements

60. Application 2 seeks the following orders:

    60.1. The OR to retract false written statements by a corrupt officer in various proceedings;

60.2. The OR to comply with Part 18 and Part 31 in light of the findings by the OR Investigation Department of wrong doing by a corrupt official (later named as Daniel Curthoys).

61. Mr Djurberg supports Application 2. by providing information in box 10 of the application notice. Mr Djurberg had ticked a box that stated a witness statement was attached to Application 2. but no such statement was filed or served. In box 10 he states (where relevant):

> "I shall rely on findings from OR of wrongdoing by a corrupt officer, Daniel Curthoys. I shall rely on findings from OR investigation officers, the evidence of the malicious statements produced by the OR officer to aid third parties to gain advantage in Court… Unknown to D at the time was a number of abuses of entrusted powers by the OR officer bribed and groomed by third parties. It was later found by no less than 4 investigative departments of the Or that this officer had misconducted himself. Private trustees appointed lured and groomed the Or to produce false statements to aid the trustees in a number of very disturbing and stressful acts and actions, most of them I breach let alone by breach of Court Orders. After exhausting the complaint stages, D was directed to the Parliamentary Health Service Ombudsman, who direct D to meet with the local MP, Mr James Cleverwell, Secretary of State for Foreign Office. Mr Cleverwell MP, asked if D has requested the OR to retract the serious deformation's, wrong accusations. D contacted the OR to enquire and request if the OR would take the urgent steps to remediate their false allegations but the OR refuses to take constructive steps. The trustees and others have relied and continue to rely in these false statements to gain advantage in Court and they continue to do, more concerning when are aware that these are untrue… On late August the trustees and the OR officer concocted to deprive D from being released from his bankruptcy with applications of false allegations. D sadly was absent to a loss in his family and was unable to attend. It is plain obvious that the OR and the trustees seek revenge and they know the court is on their side as historic evidence demonstrates Judge to take at face value the lies and deceit statements of authorities and others with such powers." (sic)

62. In his second witness statement (produced prior to Application 2) Mr Djurberg states:

> "It was later found that the same individuals would engage in writing false statements with the aim to aid and abet OR (Daniel curthoys) and the trustees with this wave of written lies and deceits to assist the trustees in their lies and deceits in Court."(sic)

63. In his third witness statement (produced prior to Application 2) Mr Djurberg says:

> "… The Judge must conclude that the allegations simply do not sit-in with the contrast that (a) Curthoys was found in no less than three occasions to have produced false statements for third parties to use and reply in Court in evidence, (b) the fact that all the third parties relied on the false and malicious statements to gain advantage in Court and commit perjury, (c) the fact that the OR themselves admitted that in all of those occasions Curthoys have acted incorrectly, in short wrong, and OR sought to cover up to suggest that Curthoys is dyslexic and as a result he writes false statements for the court??? (this is a deputy official receiver that has serious responsibility to act with utmost integrity and goes about committing false statements with the sole aim to aid and abet perjury), (d) the fact that OR having been told the Judges in those 3 court hearings were referred to Curthoys documents in evidence but OR besides apologising for the wrong doing have refused to set the record straight and alert the court for their wrong doing, with that causing R severe hardship and damages, (e) the fact that OR to date refuses to provide disclose of Curthoys correspondence with the named individuals with whom Curthoys engaged in fabricating false documents and correspondence BECAUSE OR knows that by providing disclosure greater evidence of serious misfeasance will be exposed by the OR and they cannot afford to be exposed as a corrupt government organisation. " (sic)

64. The wrongdoing is not particularised. In any event, there is no evidence that:

64.1. investigations were conducted by the Official Receiver or any other person at the office of the Official Receiver where there has been any finding of wrongdoing as alleged by Mr Djurberg;

64.2. investigations continue;

64.3. Mr Curthoys has been found guilty of wrongdoing;

64.4. Mr Curthoys was working with the trustees in bankruptcy with the aim of producing false evidence to the court;

64.5. Mr Cleverwell had any part to play in an internal inquiry at the Official Receiver's office into wrongdoing;

64.6. Mr Curthoys produced false statements;

64.7. Mr Curthoys has acted or acts with malice;

64.8. the report of Mr Curthoys produced to support the application for a bankruptcy restriction order is inaccurate or false (it is accurate to say that it's content is contested).

64.9. the Official Receiver, and in particular Mr Curthoys, covered-up any wrong doing.

65. The request for further information pursuant to Part 31 is as follows:

> "In relation to Myck Djurberg in Bankruptcy please provide all communication exchanged between Daniel Curthoys and:
>
> (a) –the Trustees
>
> (b) –Christopher Pearson
>
> (c) –Luke Harrison
>
> (d) – Daniel John Becheltlet
>
> (e) –Bivonas law
>
> (f) –Oliver and Jennifer Small
>
> (g) –John Kiffin
>
> (h) –Fiona Johnston
>
> (i) – Daniel Curthoys
>
> (j) – David Maxwell H-Hoskinson
>
> (k) – Karen Baldock
>
> (l) – Katie Hudson"

66. He further states:

> "In light of the continued serious misconduct by OR, it is imperative that [Mr Djurberg] demands access to his entire file"

Discussion

67. No disclosure has been ordered in this case. I have in mind that CPR 31 was replaced by CPR 57AD in October 2022. There was no initial disclosure nor DRD. There can be no relation back in terms of a request under paragraphs 17 and 18 of CPR 57 AD.

68. Nevertheless, the Insolvency Rules (England & Wales) 2016 does provide the court with a discretion to order disclosure. Rule 12.27 of the Rules states:

> "(1) A party to insolvency proceedings in court may apply to court for an order—"
>
> (a) that in accordance with CPR Part 18 (further information) another party—

> (i) clarify a matter that is in dispute in the proceedings, or
>
> (ii) give additional information in relation to such a matter; or
>
> (b) for disclosure from any person in accordance with CPR Part 31 (disclosure and inspection of documents)
>
> (2) An application under this rule may be made without notice to any other party."

69. The commentary in *Doyle, Keay and Curl, Annotated Insolvency Legislation 2023* states [1238]:

> "An order for disclosure in bankruptcy proceedings is unusual and there was no good reason on the facts to make such an order: see generally on disclosure in insolvency proceedings *Highbury Ltd v Colt Telecom Group* [2003] BPIR 311. The proper course, on the facts, was for the respondent to write to the petitioner asking for documents relating to his work. If such documents were not provided it was open to the court to draw appropriate inferences: *Re Angel Group Ltd* [2015 EWHC 2372. "

70. In *Highbury*, Lawrence Collins J said [33]:

> "Whether such an order will be made will depend upon the nature of the proceedings and the nature of the disputed questions. Any application for such an order must be viewed in the light of the overriding objective laid down by the CPR, which is not, of course, not inconsistent with the 1986 Rules and is incorporated by reference through 7.51(1)."

71. Accordingly, determination of disclosure turns on the court's discretion having regard to the issues in dispute and CPR 1.1.

72. The issues in dispute are those arising from BRO Application. I have outlined the allegations and explained that they relate to two bounce back loan applications and the receipt of a bounce back loan. The fourth report of Karen Baldock summarises the grounds for making a bankruptcy restriction order:

73. The fourth report of Karen Baldock summarises

> "On 2 June 2020 Myck Djurberg ("Mr Djurberg") provided inaccurate financial information in an application for a Government Backed Bounce Back Loan ("BBL") and subsequently breached the conditions of the BBL by failing to use all of it for the economic benefit of his business."

74. The allegations are supported by the turnover of Mr Djurberg's business, bank statements and documentation from Lloyds Bank and NatWest.

75. Although Mr Djurberg was ordered by Judge Barber on 17 October 2023 to file and serve a witness statement to clarify the purpose of the disclosure and its relevance to the BRO Application, he has failed to do so. Deputy Judge Parfitt on 6 November 2023 ordered that Mr Djurberg file and serve a witness statement particularising:

    75.1. What false or malicious statements in respect of the BRO Application he relied upon; and

    75.2. Specific documents in the possession of the Official Receiver that relate to the BRO Application.

76. Mr Djurberg has failed to do so.

77. In these circumstances there must be grave doubt that disclosure of the "entire file" and/or "all communication exchanged between Daniel Curthoys" and any of the parties listed in Application 2. is necessary for the purpose of determining the BRO Application.

Conclusion of Application 2- disclosure pursuant to CPR 31

78. I agree with the commentary in *Doyle, Keay and Curl, Annotated Insolvency Legislation*, that an order for disclosure in bankruptcy proceedings is unusual and when exercising its discretion, the court should ensure that there is a good reason to make such an order. There would be good reason if the disclosure requested is necessary to determine a pleaded issue between the parties. No good reason has been provided.

79. The disclosure sought by Mr Djurberg relates to unpleaded allegations that there has been some form of wrongdoing. The wrongdoing mainly relates to the witness statement/report in support of, and the reasons for making the BRO Application. The allegations are not particularised save that "false statements" about Mr Djurberg have been made. The aggressive exception taken to the BRO Application does not, of itself, justify disclosure.

80. Mr Djurberg is entitled to contest the basis of the BRO Application, any assumptions made by the Official Receiver and any conclusions drawn at the hearing of the BRO Application. This is not a revelation to Mr Djurberg. He says in his second witness statement [19] that he provided his bank details and his business files to the OR on his bankruptcy. He says that revenues from mooring exceeded £200,000 per annum and when combined with a turnover from restoring, designing and building houseboats his turnover was "in excess of £600k", which he says "was in fact very conservative". This is an argument that Mr Djurberg is able to advance and support with documentary evidence. Similarly, Mr Djurberg denies [21-24] that monies received from NatWest under the Covid-19 BBL scheme were used for purposes other than what they were intended (to benefit the business). It will be for the Official Receiver to prove the case for a bankruptcy restriction order and Mr Djurberg to demonstrate that the evidence does not support the BRO Application.

81. There is no basis to conclude that any communications between the Official Receiver and those listed in Application 2 is going to assist with any defence to the BRO Application.

82. The disclosure requested by Mr Djurberg is aimed at [26]: "the reasoning behind the application." As Ms Wilson-Barnes says, the allegations made against the Official

Receiver's office are, in any event, without merit: "none of those allegations is evidenced".

83. In my judgment the Part 31 request fails to align with the principles of the overriding objective as to accede to Application 2:

    83.1. would increase expense unnecessarily;

    83.2. fail to provide a proportionate response to the BRO Application; and

    83.3. fail to provide fair dealing between the parties as the disclosure of "the entire file" or communications between the parties listed is not based on an issue pleaded and identified in the BRO Application.

84. This conclusion is consistent with long-standing authority in insolvency cases, that disclosure should only be made if it is necessary for the disposal of the issues before the court: *Re Primlaks (UK) Ltd (No.2)* [1990] BCLC 234 at 239G.

Part 18 Request

85. On a similar theme Mr Djurberg requests information pursuant to CPR 18. CPR 18 is a tool used by litigants who find that the opponent has not provided sufficient information in the pleading to understand the case properly. It enables the requesting party to seek clarifying information. Practice Direction Part 18 provides [1.2]:

> "A Request should be concise and strictly confined to matters which are reasonably necessary and proportionate to enable the first party to prepare his own case or to understand the case he has to meet."

86. In his request Mr Djurberg states:

> "the case as it stands does not provide a genuine motif for the OR to seek a BRO against A, beyond the true evidence that the Or seeks revenge as result of A's complaint, and exposure of a corrupt official." (sic)

87. The Official Receiver does not need to provide a motive to apply for a bankruptcy restriction order. The Official Receiver is required to prove in law and on the facts that such an order should be made.

88. It may be helpful if I provide a short account of the jurisdiction to make a BRO.

89. By paragraph 11.2 of the Insolvency Rules the Official Receiver may apply for a bankruptcy restriction order under paragraph 1 of schedule 4A. By schedule 4A the court "shall grant an application for a bankruptcy restriction order if it thinks it appropriate having regard to the conduct of the bankrupt".

90. Paragraph 2 of the schedule provides a list of the "kinds of behaviour" that the court will take into account when deciding whether to make an order.

91. Fraud and failing to cooperate with the Official Receiver are included in paragraphs 2(l) and (m).

92. In this case the Official Receiver relies on fraud.

93. As to the timing, the rules provide that the Official Receiver must make an application for a restriction order before discharge under section 279 of the Insolvency Act 1986. The BRO Application was made in time, albeit close to the time limit.

94. The Part 18 request seeks clarification of when the trustees in bankruptcy contacted the Official Receiver requesting the office to make an application for a BRO. I set the requests out in full for the sake of completeness:

> "a) Clarify when was this contact made, by what form; (1) on what evidence (2) what information was provided (3) why was the OR interested in making such an application proper investigation of the allegations and obtaining satisfactory evidence (4) what evidence did the OR had to assured themselves that the names mentioned were/are actually A friends? (5) What evidence did OR had to satisfy themselves that moneys paid to the named individuals were gifts?
>
> b) What evidence did OR received from the bank with expression of concerns over the use of the BBL by A that gave rise to the application for a BRO?
>
> c) Provide information as to what disclosure information the trustees shared with the OR that the OR did not already had in their possession at the time of their investigation in September 2021
>
> d) Please Clarify who at the OR was involved with the discussions and dialogue with the trustees in relation to their request for the OR to seek a BRTO against A.
>
> e) Please explain what correspondence and or communication have exchanged between the trustees and the OR between September 2021 and August 2022, in that the allegations of BBL impropriety were first mentioned.
>
> f) Please explain as to why the OR sought to allow Daniel Curthoys to continue to handle A's case despite the fact and evidence by no less than three different investigative departments of wrong doing misconduct by this officer?
>
> g) Please explain on what basis, considering the written statements by no less than four investigating officers within the OR having found that Daniel Curthoys had acted improperly, allowed him to continue to work in such very high and responsible position when stating that his statements were made in error due to his dyslexia? (2) On what basis do you allow for

someone with such a disability to acted unsupervised? (3) Allow for a person with "allegedly" severe dyslexia as it is claim to make and release statements knowing that an incorrect statement can have, will have severe repercussions for the victim, knowing that the Courts and Judges tend not to qualify the correspondence and or evidence from authorities such as the OR?

h) Please explain and provide evidence as to what steps has the OR taken to rectify and or remediate, retract the statements made by Daniel Curthoys in various proceedings, including but not limited to unrelated, third party proceedings, and especially the malicious statement made by Daniel Curthoys for the trustees to aid the trustees to obtain a warrant against A endorsed by the Or with a false allegation?

i) Please explain as to why the OR, Daniel Curthoys, having attended A's property on the 21st and 23rd September 2021,with a team of bailiffs, did not provided for the trustees copies of that CCTV, videos made by the bailiffs on the 23rd September 2021, (1) why Daniel Curthoys, did not told the trustees that he had already attended the premises and carried out such a detail investigation and video reconnaissance by his bailiffs, which the trustees could rely upon to verify if any items and or belongings as maliciously allege to have been dissipated could actually been proved not to be the case?

j) Please explain if the detailed reports signed and provided by A, was shared with the trustees, together with the 347 files sent to Daniel Curthoys between September and November 2021?

k) Please confirm if it was the OR that appointed the trustees and if negative, if the trustees informed the OR as to whom appointed them?

l) Please explain by providing evidence as to whom from the creditors list the OR has contacted and by what means, (1) whom form the creditors list, Daniel Curthoys maintained a regular communication and in what format,

m) Please explain as to why was Daniel Curthoys only interested in maintaining regular contact with Oliver and Jennifer Small, Fiona Johnston and John Betchellet of Bivonas?

n) Please explain and confirm if you have shared the communication between the above mentioned names with the trustees, (1) why have you not shared and or question the allegations and statements by these little group before m to verify the veracity of the claims?

> o) Please explain as to on what reasons, Daniel Curthoys to engage with in communication and or providing false statements to now suspended detective John Keffin,
>
> p) Please explain as to why was Daniel Curthoys engaged in detail and in-depth dialogue with John Betchellet of Bivonas, and assisted this creditor by providing false information to aid him winning a petition against A?
>
> q) Please confirm that you have provided copies of the interviews recorded between A and Daniel Curthoys to the trustees?
>
> r) Please confirm if Daniel Curthoys was called to attention and or reprimanded by having made such false statements?
>
> s) Please explain why the OR, knowing that such serious misleading statements would cause A severe harm, why the OR chose not to take any steps to prevent such damages?
>
> t) Please confirm that you will be prepared to provide full and detailed disclosure of the correspondence between Oliver Small, Jennifer Small, John Keffin, Fiona Johnston, Craig Raybould, and Christopher Pearson in relation to A.
>
> u) Please provide the names and details of all creditors contacted by the Or in relation to A bankruptcy.
>
> v) On the basis that Daniel Curthoys is dyslexic as stated, please confirm that the Or will take steps to ensure that he will not be allowed a position of responsibility where already vulnerably individuals, especially individuals will not fall victims of his actions, by ensuring that all his future work is supervised by others to prevent future errors or misdemeanours.
>
> w) Please confirm who was acting as supervisor of Daniel Curthoys at the time of his conduct of the investigating of my bankruptcy."

95. Ms Wilson-Barnes argues that the application is misconceived as it is based:

> "on a fundamentally incorrect and scandalous premise that Deputy Official Receiver Daniel Curthoys has acted in a false and dishonest manner and has conspired with the trustees in bankruptcy. These assertions, which are extremely serious and equally offensive, are wholly un-evidenced. Although the application and supporting witness statement are littered with references to such assertions, these assertions are themselves simply false."

96. A considerable number of the requests relate to the actions or inactions of Mr Curthoys. I accept these requests do not relate to the substantive matters in the BRO Application. As I

have stated. The BRO Application was made within the statutory time limit.

97. Nevertheless, Mr Djurberg does ask the Official Receiver to provide the evidence relied upon to claim that he used part of the bounce back loan to gift money to third parties such as Mr Saltis and Ms Toledo.

Conclusion of the Part 18 request

98. The sharing of information between the trustees in bankruptcy and the Official Receiver or the banks and the Official Receiver or information received by the Official Receiver and any creditor is unlikely to touch upon the issue of fraud said to have been perpetrated by Mr Djurberg. At least, despite being provided with an opportunity, Mr Djurberg has not explained the connection or explained why the information he seeks is necessary to determine the BRO Application.

99. The allegations raised by Mr Djurberg against Mr Curthoys are unfounded and subsequent questions in respect of him irrelevant to the disposal of the BRO Application.

100. As regards the requests relating to the use of the bounce back loan, the evidence is Mr Saltis is that he received £12,500 for work he undertook in connection with the Hampton Riviera business. Maria De Los Angeles De Leon Toledo accepts in her evidence that she received £15,450. She says:

> "I have known Mr Djurberg as the owner of Hampton Riviera for some eight years now. The payment made related to an aborted building contract by Mr Djurberg. A contract for the design and build of a houseboat known as HRB11 agreed in 2014 was placed on hold due to other commitments on my part but it was due to begin in late 2019. Mr Djurberg was unable to perform at the time for some reason. It was agreed to call of the contract and the deposit to be refunded. In addition, between 2018 and 2020, I assisted Mr Djurberg with legal advice on a myriad of matters for which payment was long overdue. It was agreed at the time that credit would be given to the building contract but since this was no longer the case, payments any payments made were therefore genuine payments contrary to what Mr Curthoys seeks to suggest. Suggestions that Mr Djurberg would indebt himself to give to friends deserve no reply." (sic)

101. The provision of the statements of Mr Saltis and Ms Toledo demonstrates that Mr Djurberg understands the allegations and has obtained evidence to counter part of the allegations made by the Official Receiver. The Official Receiver is a stranger to the affairs of Mr Djurberg and as such will not have first-hand knowledge of events that took place. This is clear from Mr Curthoys' report [35]:

> [35] "The Official Receiver has been unable to confirm whether the payments received into Mr Djurberg's NatWest Reward Platinum Bank during the 2019 calendar year were for the benefit of Hampton Riviera and is therefore, unable to confirm the actual turnover of the business for this period. Even

> if the total funds received of £166,215 were all to be treated as turnover, the figure would still have been insufficient to support a BBL application of £50,000. The business would have required a turnover of £200,000 to attract the maximum loan of £50,000, being 25% of turnover."

102. However, the allegation that some of the loan was paid to "friends and family" is a matter that needs to be determined by the court [36]:

> [36] "There is also evidence that the £50,000 BBL was not used for the economic benefit of the business. At least £45,950 received from the BBL was transferred to Mr Djurberg and his friends and family."

103. The evidence in support of the "family and friends" allegation is set out at paragraph 23 of Mr Cuthoys' report. He refers to a table that sets out the transactions made from Mr Djurberg's NatWest business account (Mr Myck Djurberg t/a Hampton Riviera).

104. In my judgment the Part 18 request fails to align with the principles of the overriding objective for the same reasons I have set out above in respect of the application under CPR Part 31. There is no obvious further information in respect of the "friends and family" allegation that can be provided by the Official Receiver. The request is aimed more at satisfying the thirst of Mr Djurberg to confirm a conspiracy than to understand the case against him.

105. The request for further information will not promote the disposal of the BRO Application and the requests are not together or individually necessary for the disposal of the issues before the court.

Retraction

106. Lastly under Application 2. Mr Djurberg seeks an order that the Official Receiver:

> "retract the malicious written statements made by the OR with the aim to cause harm to D."

107. The BRO Application is made in accordance with the Insolvency Rules and provides the grounds for the making of an order. If made out, and I make clear that this is not a judgment about whether the grounds will be made out, a bankruptcy restriction order "shall" be made. There is nothing in the supporting grounds that appears "malicious". The allegations are just that. They need to be proved in court.

108. In any event, there are practical difficulties with determining which "written statements made by the OR" fall within the class of "malice" with the intent to harm. No evidence has been provided to the court of the offending statements.

109. In any event I am not convinced this court has jurisdiction to order "retraction" although conceivably Application 2 could be construed as an application to strike out. However, as there is no particularisation or evidence to support Application 2.

110. Even if Application 2 could be construed as an application to strike out there is no basis for saying that the BRO Application discloses no reasonable grounds for making a

bankruptcy restriction order, or that there is an abuse of process. It is clear from authority that strike out is only appropriate in 'plain and obvious' cases. The allegations in the case relate to fraud. The court will be slow to make any findings of fact on a summary basis, particularly where fraud is claimed.

111. In my judgment there is no basis to order "retraction".

112. I shall dismiss Application 2.

113. Application 2 is totally without merit.

Application 3.

114. I can deal with Application 3. shortly.

115. Application 3 seeks a stay of a hearing listed on 16 November 2023, and:

> "any other pending hearings/applications in this case in light of the live court action currently at Kingston Crown Court…".

116. The court has a power to stay proceedings under its case management powers provided by CPR 3.1(2)(f), and its inherent jurisdiction. In this case criminal proceedings were ongoing and related to the boatyard business of Mr Djurberg. It may well have been the case that Mr Djurberg could demonstrate that the continuation of the BRO Application was likely to cause a real risk of prejudice to the criminal proceedings and the prejudice could lead to injustice: see *R v Panel on Takeovers and Mergers, ex p Fayed* [1992] BCC 524. However, it was not necessary to stay the BRO Application or Applications 1-3 since an adjournment was granted at the invitation of the solicitors acting for Mr Djurberg.

117. The Kingston Crown Court case has now concluded. There no longer remains a reason for a stay. Application 3 is otiose.

118. I shall dismiss Application 3.

Conclusion

119. Application 1. which concerned to Mr Djurberg's mental capacity, is dismissed.

120. Application 2 for Part 31 disclosure, Part 18 request for information and retraction of statements made in the BRO Application shall stand dismissed. Application 2 is totally without merit.

121. Application 3 for a stay of proceedings pending the outcome of a criminal trial in which Mr Djurberg was a defendant is no longer relevant since the trial has concluded. I shall dismiss Application 3.

122. I shall provide direction for the hearing of the BRO Application after this judgment has been handed down. I shall have regard to Mr Djurberg's predicament and order that he may attend remotely but if he has representation, his counsel or solicitor should attend in person. Other parties are to attend in person.