



Neutral Citation Number: [2025] EWHC 29 (Ch)

Case No: CR-2024-006112

**IN THE HIGH COURT OF JUSTICE**  
**BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES**  
**INSOLVENCY & COMPANIES LIST (ChD)**

Rolls Building  
Fetter Lane  
London, EC4A 1NL

Date: 13 January 2025

Before :

**HHJ CAWSON KC**  
**SITTING AS A JUDGE OF THE HIGH COURT**

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Between :

**ENFIELD HIGHWAY DEVELOPMENT LIMITED**

**Applicant**

- and -

**PARK ESTATE HOLDINGS LIMITED**

**Respondent**

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**Thomas Ames** (instructed by **Churchills Solicitors Ltd**) for the **Applicant**  
**Thomas West**, Solicitor Advocate (**Richard Slade & Partners LLP**) for the **Respondent**

Hearing date: 12 December 2024

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**Approved Judgment**

This judgment was handed down remotely at 10.30am on 13 January 2025 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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**HHJ CAWSON KC:**

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**A. Introduction**

1. By an application dated 16 October 2024 (“**the Application**”), the Applicant, Enfield Highway Development Ltd (“**Enfield**”), applies to restrain the Respondent, Park Estate Holdings Limited (“**Park Estate**”) from presenting a winding up petition against it.
2. Park Estate, a company incorporated in Hong Kong, threatens to present a winding up petition against Enfield, based upon a debt of £54,180 alleged to be due as commission in respect the introduction of a purchaser for the sale of a property formerly known as Plot 1, Enfield Mews, and now known as 97b Albion, Ordinance Road, Enfield (“**the Property**”). It is Enfield’s case that the debt is disputed in good faith and on substantial grounds and/or that it is subject to a cross-claim or counterclaim that exceeds the debt, and, therefore, that Park Estate is not entitled to present a winding up petition and ought to be restrained by injunction from doing so. Park Estate responds that there is no substance to the dispute that is sought to be raised and no substance in any cross-claim or counterclaim, and thus that the Application ought to be dismissed.
3. The Application is supported by the witness statements of Enfield’s director, Mohammed Faraz (“**Mr Faraz**”) dated 5 October 2024 (“**Faraz 1**”) and 4 December 2024 (“**Faraz 2**”). The Application is responded to on behalf of Park Estate by the witness statement of its director, Derek Smith, dated 14 November 2024 (“**Smith**”).
4. At the hearing before me on 12 December 2024, Enfield was represented by Thomas Ames of Counsel, and Park Estate by Thomas West, Solicitor Advocate. I am grateful to them both for their written and oral submissions.
5. For the reasons set out below, I have concluded that the Application should be dismissed.

**B. Correct approach to a disputed debt**

6. There is a helpful summary of principles to be applied, where a company against whom winding up proceedings are threatened maintains that the relevant debt is disputed in

good faith and on substantial grounds, in the judgment of Norris J in *Angel Group v British Gas Trading Ltd* [2012] EWHC 2702 (Ch), [2013] B.C.C 265, at [22], where Norris J said as follows:

“The principles to be applied in the exercise of this jurisdiction are familiar and may be summarised as follows:

a) A creditor's petition can only be presented by a creditor, and until a prospective petitioner is established as a creditor, he is not entitled to present the petition and has no standing in the Companies Court: *Mann v Goldstein* [1968] 1 W.L.R. 1091;

b) The company may challenge the petitioner's standing as a creditor by advancing in good faith a substantial dispute as to the entirety of the petition debt (or at least so much as will bring the indisputable part below £750);

c) A dispute will not be "substantial" if it has really no rational prospect of success: in *Re A Company No.0012209* [1992] 1WLR 351 at 354B;

d) A dispute will not be put forward in good faith if the company is merely seeking to take for itself credit which it is not allowed under the contract: *ibid.* at 354F;

e) There is thus no rule of practice that the petition will be struck out merely because the company alleges that the debt is disputed. The true rule is that it is not the practice of the Companies Court to allow a winding up petition to be used for the purpose of deciding a substantial dispute raised on bona fide grounds, because the effect of presenting a winding up petition and advertising that petition is to put upon the company a pressure to pay (rather than to litigate) which is quite different in nature from the effect of an ordinary action: in *Re A Company No.006685* [1997] BCC 830 at 832F;

f) But the court will not allow this rule of practice itself to work injustice and will be alert to the risk that an unwilling debtor is raising a cloud of objections on affidavit in order to claim that a dispute exists which cannot be determined without cross-examination (*ibid.* at 841C);

g) The court will therefore be prepared to consider the evidence in detail even if, in performing that task, the court may be engaged in much the same exercise as would be required of a court facing an application for summary judgment: (*ibid* at 837B).”

7. It is clear from other cases that the threshold for demonstrating that the debt is disputed on substantial grounds is not a particularly high one: see, for example, *Tallington Lakes*

*Ltd v South Kesteven District Council* [2012] EWCA Civ 430 at [22], per Etherton J. It follows from this that if, having considered the evidence in detail, and having concluded that there is a bona fide defence, albeit one that might only be regarded as shadowy in an application for summary judgment, an injunction to restrain the presentation of a petition may be justified. Nevertheless, in an appropriate case, the Court may be required to consider the evidence in detail, and be alert to the fact that the applicant company may simply be raising, in its evidence, a cloud of objections which lack credibility and/or have no substance, such that the dispute sought to be raised has no real or rational prospect of success - see *Angel Group v British Gas Trading Ltd* (supra) at [22(c), (f) and (g)].

### **C. Background**

8. Enfield is a property development company that, in October 2021, engaged Park Estate, an Estate Agent based in Hong Kong, to market for sale 6 plots or units that it had developed on the site of the former Enfield Working Men's Club, Ordinance Road, Enfield, which included the Property.
9. The contractual relationship between the parties was governed by the terms of a Sales Agency Agreement dated 21 October 2021 and made between Enfield (1) and Park Estate (2), referred to respectively therein as "the Principal" and "the Agent" ("**the Agreement**").
10. Clause 6 of the Agreement, headed "COMMISSION", provided as follows:
  - "6.1 The Principal shall (subject to the Agent performing its obligations under this agreement) pay to the Agent the Commission Payment on each Unit and Parking, as may apply, for which the Agent introduces a Buyer to the Principal during the Agency Period, and where the Principal legally completes a sale contract in respect of a Unit and Parking, as may apply, in respect of such introduced Buyer.
  - 6.2 The Agent shall become entitled to Commission Payment where a Buyer of a Unit and Parking, as may apply, introduced by the Agent during the Agency Period proceeds to an exchange of contracts and legal completion and such Commission Payment shall be payable in accordance for the provisions of this clause 6.3."

#### **Due date for payment of the commission**

- 6.3 The Commission Payment shall be paid as follows:
  - (a) on account of the Commission Payment or a Unit and/or Parking the Initial Payment shall be payable 5 working days following exchange of contracts of a Unit and Parking and receipt by the Seller's Solicitor of the Initial Deposit from the Buyer of that Unit;
  - (b) on account of the Commission Payment for a Unit and/or Parking the Initial Payment shall be payable 5 working days following exchange of contracts of a Unit and Parking

and receipt by the Seller's solicitor of the Further Deposit from the Buyer of that Unit;

- (c) the Final Payment balance of the Commission Payment shall be paid on the later of;
  - (i) 5 working days after legal completion of the contract for the sale of the Unit and Parking, as may be, to the respective buyer.

AND for the avoidance of doubt in the event of a Unit and parking, as may be, not legally completing no further sum over and above (a) and (where relevant) (b) shall be payable to the Agent.

- 6.4 No Commission Payments shall be due for any Unit and/or Parking which remains unsold at the expiry of the Agency Period."

11. Clause 1 of the Agreement included the following relevant definitions:

- i) "Agency Period" – "the period commencing on 01 October 2021 and expiring midnight (UK time) on 01 January 2022".
- ii) "Buyer" - "third-party purchaser of a Unit and Parking during the Agency Period ..."
- iii) "Commission Payment" - "the sum calculated in accordance with the following formula", reference then being made to a formula which provided for a Commission Payment ("A") as being the "Price for the unit and Parking, as may apply" ("B"), less "the strike price for the Unit and Parking, as may apply, as set out in Schedule 2" ("C"), i.e.  $A = B - C$ .
- iv) "Final Payment" - "the balance of Commission Payment due to the Agent upon legal completion of a sale of a Unit and Parking, as may apply, to a Buyer effected by the Agent."
- v) "Further Deposit" - "a second deposit (over and above the Initial Deposit) of 10% of the price payable by a Buyer of a Unit and Parking, as may apply, and will be noted as a Construction Payment, as the Agent may negotiate with a Buyer."
- vi) "Further Payment" - "40% of the Further Deposit."
- vii) "Initial Deposit" - "a deposit of 10% of the price payable by a Buyer of a Unit and Parking, as may apply."
- viii) "Initial Payment" - "40% of the Initial Deposit."
- ix) "Schedule 2" - the schedule of Strike Prices that apply from the commencement Date to and including 01 January 2022."
- x) "Units" - "the mix of six (6) Units as set out within Schedule 2".

12. Schedule 2, described as “Price List”, comprised a table of 6 Units, including the Property as Unit 1, describing the Units as mews houses, and providing details in relation thereto, including the “Strike Price”, which was referred to as being £636,000 in the case of the Property/Unit 1.
13. The Agreement also contains the following provisions of potential relevance for present purposes, namely:
  - i) Clause 3.2.1 provided for Park Estate:

“To comply with all reasonable and lawful instructions of the Principal from time to time concerning the marketing and sale of the Units, and generally to carry out his agency in such manner as it thinks best to promote the interests of the Principal.”
  - ii) Clause 4.8 provided that Park Estate should “provide sales and marketing consultancy advice and introduce Buyers to Units and Parking to the Principal; either directly through their own office, or through sub- agents, associates, third-party contacts and international connections, and, pursuant to clause 4.8.32:

“Actively monitor and manage sales from the point of view of a reservation through to exchange and completion, including working in conjunction with the Principal’s solicitors and the Principal’s in-house team.”
  - iii) Clause 11.4 contained an entire agreement provision that provided that the Agreement ... “Constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.”
14. It is common ground between the parties that Park Estate did introduce a buyer for the Property to Enfield, that a sale was agreed in principle in July 2022, that contracts were exchanged on 5 December 2022, and that the sale of the Property completed on 19 January 2024 at a price of £716,300. It is further common ground between the parties that, in February 2023, Enfield made a payment to Park Estate of £26,120.
15. However, it is Enfield’s case that nothing further is due over and above this payment, and that what was paid in February 2023 was all that was due to Park Estate. On the other hand, It is Park Estate’s case that a balance of £54,180 is due, representing the net price paid (£716,300) less the relevant Strike Price (£636,000), namely £80,300 less the £26,120 already paid. Further, it is Park Estate’s case that the relevant Buyer who ultimately purchased the Property was introduced by Park Estate in November 2021, i.e. within the Agency Period (see Smith, paragraph 13).

#### **D. Dispute sought to be raised by Enfield**

16. In the course of submissions, Mr Ames, on behalf of Enfield, advanced three lines of argument in support of Enfield’s contention that Park Estate’s debt is disputed in good faith and on substantial grounds, namely:
  - i) Firstly, an argument that the commission payable to Park Estates is not payable as contended for by Part Estate as the difference between the net sale price and a

Strike Price as provided for by the Agreement, it being Enfield's case that the sale in question fell outside the "Agency Period" provided for by the Agreement, and was covered by a separate arrangement distinct from the Agreement, the terms of which are said to have been set out in a message dated 30 June 2022, under which the relevant commission payable has already been paid in full ("**the Agency Period Issue**");

- ii) Secondly it is disputed that the "Strike Prices" provided for by the Agreement were, in any event, in fact agreed, it being contended that there was a separate agreement and/or that Mr Faraz was assured that Strike Prices would be agreed as and when sales were going to happen ("**the Strike Prices Issue**");
  - iii) Thirdly, it is contended that Park Estate acted in breach of clauses 3.2.1 and 4.8.3 of the Agreement, with the consequence that, as provided for by clause 6.1 of the Agreement, as Park Estate had not performed its obligations under the Agreement, and/or on the basis that Enfield has a cross-claim or counterclaim that exceeds the amount claimed by Park Estate, it is not open to Park Estate to present a winding up petition as a creditor ("**the Cross Claim Issue**").
17. It is necessary to set out these contentions in rather more detail, and to consider the sequence in which they have been advanced.
18. As to the Agency Period Issue, at paragraphs 62-63 of Faraz 1, it was contended that as the Property remained unsold at the end of the Agency Period on 1 January 2022 (contracts not having been exchanged at that time, and not until July 2022, and the sale not having completed at that time, and until January 2024), the effect of clause 6.4 of the Agreement was that no commission payments were due.
19. Further, in paragraph 22 et seq. of Faraz 1, reference was made to Park Estate having sent an invoice dated 12 December 2022 referring to commission due of £65,300, and to their having been an exchange of correspondence thereafter with Tim Reinardy ("**Mr Reinardy**") on behalf of Park Estate in which Mr Faraz, in an email dated 8 February 2023, offered that Enfield would pay 40% of the commission claimed in settlement of a dispute that existed in relation thereto at the time. He then referred to an email in reply from Mr Reinardy dated 9 February 2023 (10:22 GMT), which Mr Faraz relied upon as demonstrating an agreement on the part of Park Estate to accept 40% of the sale commission by way of compromise. Mr Faraz then said that on 17 February 2023, Enfield paid the £21,120 which, when added to a sum of £5,000 already held, amounted to a total of £26,120 which, according to Faraz 1, represented the total sum paid by Enfield in compromise of Park Estate's claim to commission.
20. However, the case as put forward at the hearing and in Faraz 2 is rather different. Reliance is now placed upon a text message or WhatsApp message dated 30 June 2022 which is said to have been forwarded on behalf of Park Estate to Mr Faraz in which there is reference to an offer of £717,600 for "plot 2 Enfield Mews", and wherein reference is made to "Agency fee: 3% plus bonus £5,000". The case now sought to be advanced by reference to this message is that it was only at this time that the purchaser for the Property was introduced, i.e. well outside the Agency Period, which ended on 1 January 2022, and that the message reflects some new arrangement so far as the payment of commission or agency fee is concerned, in the terms set out therein, namely 3% of £717,600, plus a bonus of £5,000, which amounts to £26,510.

21. It was Enfield’s case, as advanced at the hearing, that the correspondence in February 2023 leading to the payment of the £21,120, related to the agency fee or commission agreed in June 2022, and that the reference to 40% was only used by Mr Faraz because Mr Reinardy had mentioned 40% at that time – see Faraz 2 at paragraph 29.
22. Thus, in short, it is Enfield’s case that pursuant to what was agreed in June 2022 and/or February 2023 as between Enfield and Park Estate (acting by Mr Reinardy), Enfield has paid all that is due to be paid to Park Estate, and that it is not open to Park Estate to rely upon the Agreement because the relevant Buyer was only introduced after the Agency Period provided for by the Agreement had come to an end.
23. As to Enfield’s second line of argument, namely that the Strike Price Issue, and the argument that Strike Prices were never agreed, Enfield’s case has again somewhat shifted.
24. In paragraph 11 of Faraz 1, it was alleged that there was no agreement regarding Strike Prices, or a minimum price at which Park Estate might sell, and that Mr Faraz did not see Schedule 2 until after he had signed the Agreement as it was not part of the Agreement that he “initially signed”. In paragraph 19 of Faraz 2, Mr Faraz went on to allege that he never signed any document which contained Strike Prices, and that the Agreement that he signed did not contain the same. However, in the course of submissions at the hearing, it was explained that Mr Faraz now accepted that he may have signed a copy of the Agreement containing Schedule 2 and the table therein described above, including Strike Prices, but he now says that whilst the Agreement that he signed may have included a Schedule 2 including Strike Prices, at the time that he signed the Agreement, he was assured by Mr Reinardy that once sales were going to happen, then the Strike Prices and Commission would be discussed at that point. As understood, it is Enfield’s case as there was never any subsequent discussion with regard to Strike Prices, and so Enfield never became bound to pay commission at the rate provided for by the Agreement.
25. As to the Cross Claim Issue, and the argument that Park Estate failed to perform its obligations under the Agreement, this is most fully dealt with in paragraph 33 et seq. of Faraz 2, where it is alleged that Park Estate failed to manage the process with the relevant Buyer in the manner provided for by the Agreement, and that this led to the significant delays that resulted in the sale not being completed until January 2024. It is alleged that the delay caused Enfield “considerable expense”, most significantly because, so it is alleged, Enfield was unable to renew its loan borrowings on much more favourable terms. The effect of this is said to be that Enfield continued to have to pay interest at a default rate of 2.75% per month from October 2022 onwards. Mr Faraz asserts that if matters had completed when they should have done if Park Estate/Mr Reinardy had properly managed the process, then the transaction would have completed some 11 months earlier, resulting in a saving of interest of about £69,000, i.e. considerably more than the balance of the commission now being sought by Park Estate. There is thus, it is said, a cross-claim or counterclaim in at least this amount.

**E. Has Enfield raised a substantial dispute as to the debt?**

26. I consider each of the lines of argument advanced by Enfield in turn.

**i. Agency Period issue**



27. As I have identified, the case as advanced at the hearing was that commission became payable not as provided for the Agreement, but as provided for by the message dated 30 June 2022 referring to an agency fee of 3% plus bonus £5,000, that the exchange of correspondence in February 2023 related thereto, and that all that was due to be paid has been paid pursuant thereto, namely the £21,120 paid on 17 February 2023 and the £5,000 already held by Park Estate.
28. I consider that, in order to consider whether there is any credibility in or substance to this argument, it is necessary to consider with some care the full run of the correspondence of which the correspondence relied upon by Mr Faraz, namely his email of 8 February 2023 and Mr Reinardy's response of 9 February 2023, formed part.
29. The email correspondence in February 2023 ran as follows, including some internal emails between representatives of Park Estates and its associates, including Regency Property:
- i) The email dated 8 February 2023 from Mr Faraz to Mr Reinardy read as follows:
- “Hi,
- Further to our conversation as explained and noted Andrew has left the company, who was the contact in relation to our last agreement. Please note contract dated from Oct21 to jan22. As you (sic) well aware my understanding and appointment was purely through yourself, nevertheless throughout this period are working is based on trust.
- Having said this and as per our conversation we agreed to pay 40% of your commission which will be funded personally as the deposit from the buyers was held till completion and the rest should be released on completion.”
- ii) At 18:42 on 8 February 2023, Mr Reinardy internally emailed Derek Smith of Park Estate in the following terms:
- “Hi Derek,
- Please see Faraz email below, after having spoken to him again this morning.
- He is on the verge of terminating the deal and handing back the buyers exchange monies, he will honour what he believed to be the terms of sale at 40% of commission and balance on completion only if legal proceedings are ceased.
- His advice from his solicitor is that our contract is null and void and that he would win any case based on this alone but Faraz has no appetite for this and wants resolution asap.
- I believe he will terminate the sale if we cannot come to agreement on the above. Please let me know if and how you would like me to respond?”

- iii) By an email sent at 02:32 on 9 February 2023, Derek Smith of Park Estate responded to Mr Reinardy as follows:

“I have spoken to [Mike Smith] this morning.

We are prepared to accept 40% of the sale commissions as per the calculation below.

Enfield #1

Sale 716,300

Strike 651,000

Differential/comm 65,300

40% of 65,300 = 26,120

Our legal fee for this has been 850 we also expect to be reimbursed that amount.

If this is acceptable to Faraz, we would like to be paid immediately and have confirmation from his lawyers that he will honour the final commission of Gbp 39,180.00 within 5 working days from completion of the unit.

Please confirm with me as soon as he has agreed to this.”

I would note that the reference to a Strike of £651,000 would appear to be a reference to the Strike Price of £636,000 referred to in Schedule 2 to the Agreement plus £15,000 in respect of “Car park”, as referred to in an invoice from Park Estate to Enfield dated 12 December 2022 that has been exhibited by Mr Faraz.

- iv) It is in this context that Mr Reinardy sent his email dated 9 February 2023 (10:22) that is relied upon by Mr Faraz, that said as follows:

“Park Estates are prepared to accept 40% of the sale commissions as per the calculations below.

97b Albion (Enfield Mews House #1) Ordinance Road, Enfield

Sale 716,300

Strike 651,000

Diff/comm 65,300

40% of 65,300 = 26,120

Our legal fee for this has been £850 which they also expect to be reimbursed that amount.

Please can you confirm once the above has been transferred to the following account : [details of a Hong Kong bank account were provided]”

v) On 9 February 2023 at 23:24, Mr Reinardy emailed Derek Smith as follows:

“Faraz wants confirmation from you, that the legal proceedings will be ceased as soon as agreed fees have been received before transferring funds.”

vi) On 10 February 2023 at 02:05, Derek Smith responded to Mr Reinardy as follows:

“Sorry I did not read that correctly.

Faraz has said he will only pay us if he gets the money released by the buyer. This is not what I have agreed to and is not acceptable to us.

Unless we have 40% of the commission fee in our account by Wednesday, 15 February Mike has instructed me to proceed with a bankruptcy petition and to instruct a lien on the development.

If Faraz continues to move the posts we will instruct lawyers to get on with it without further notice.”

vii) At 20:14 (this may be Hong Kong time) on 10 February 2023, Mr Reinardy responded to Derek Smith as follows:

“Faraz says he will transfer monies to land in account for Thursday 16<sup>th</sup>, but does not want to transfer to HK account, he will do it to UK account, is that okay to run through Regent account and forward on? Also he needs revised invoice showing agreed 40% of commission minus 5K reservation deposit. This will come direct from him not buyers exchange monies.”

viii) On 10 February 2023 at 15:24, Mr Reinardy emailed Mr Faraz as follows:

“Please can you transfer 40% sales commission of 21,122 the following account: [details of UK bank account were provided].

Please also confirm by return that balance of 60% commission monies due totalling 39,180 will be paid on completion of the transaction.

Legal proceedings will be stopped upon confirmation of received first stage commission no later than Thursday, 16 February 2023 and confirmation of balance to be paid on completion.”

ix) On 15 February 2023 at 22:17, Mr Faraz emailed Mr Reinardy in the following terms:

Hi,

As discussed earlier I am still waiting for your reply confirming where buyers failed to proceed to completion and has find (sic) any legal reason to abort the purchase of the said property your company undertake to return the 40% of the commission amount they received from my personal account.”

- x) At 08:23 (Hong Kong time) on 16 February 2023, Mr Reinardy emailed Mike Smith in relation to the email that he had received from Mr Faraz saying that:

“Faraz wants assurances on below before do the transfer tomorrow as per below.”

- xi) This led to Mr Reinardy emailing Mr Faraz on 16 February 2023 at 07:23 stating that:

As per your request, Park Estates (New London Ltd) undertake to repay the commission paid on #1 enfield if the buyer fails to complete and the purchaser is repaid his deposit in full.”

30. It was following these exchanges that Mr Faraz caused the sum of £21,120 to be paid to Regent Property, to be forwarded to Park Estate, on 17 February 2023.

31. It is against this background that I consider whether Enfield advances a realistic case that the message dated 30 June 2022 provides credible evidence of some new arrangement concerning an introduction made by Park Estate after the end of the Agency Period providing for an agency fee of 3% plus £5,000 bonus to be paid as specified therein, and that it is this arrangement to which the correspondence in February 2023 that Mr Faraz relies upon relates, and pursuant to which the payment of £26,120 was made in February 2023.

32. I do not consider that Enfield does advance a remotely credible case as to the commission or agency fee payable consequential upon the introduction of a buyer for the Property being governed by some new arrangement based upon the message dated 30 June 2022 for, essentially, the following reasons:

- i) The message dated 30 June 2022 refers to “plot 2”, and not Unit 1 or Plot 1, i.e. not, prima facie, the Property. It also refers to a consideration of £717,800 rather than the £716,300 obtained for the Property, albeit that it would appear to refer to the same purchaser by name.
- ii) In his email dated 8 February 2023, Mr Faraz asked Mr Reinardy to note “contract dated from Oct21 to jan22”. This is, as I see it, significant for two reasons. Firstly, if Mr Faraz had believed that the Agreement had no application, and that the sale of the Property was governed by some new agreement reflected in the message dated 30 June 2022, then one would have expected him to have mentioned this rather than specifically identifying dates that tie in with the Agency Period under the Agreement. Secondly, if the introduction had been after January 2022, i.e. outside the Agency Period, then one would have expected Mr Faraz to have mentioned this in the February 2023 correspondence.
- iii) To the contrary, as I read it, the February 2023 correspondence proceeded on the basis that the relevant introduction had been during the Agency Period, and that the terms of the Agreement related to it, hence the reference in this

correspondence to Strike Prices, and 40% of the deposit paid being payable to Park Estate. I note in particular the contents of Mr Reinardy's emails to Mr Faraz dated 9 February 2023 (10:22) and 10 February 2023 (15:24).

- iv) In paragraph 29 of Faraz 2, Mr Faraz said that he use the term 40% commission in correspondence simply because it was referred to as terminology in the email from Mr Reinardy dated 9 February 2023. However, this is demonstrably incorrect because Mr Faraz , in his email sent the preceding day (8 February 2023) himself referred to 40% of the commission in the context of referring to a conversation in which Enfield had agreed to pay "40% of your commission which will be funded personally as the deposit from the buyers was held till completion and the rest would be released on completion."
  - v) As to the last few words of this quote from the email dated 8 February 2023, in Faraz 1, at paragraph 28, Mr Faraz maintains that this reference to "the rest being released on completion" is "about the rest of the deposit being released to the Company, because the deposit was currently being held by the Respondent. It does not refer to the rest of the commission being paid." However, this is inconsistent with the February 2023 correspondence taken as a whole, where the clear premise, as reflected in, for example, Mr Reinardy's email dated 10 February 2023 (15:24), was that a balance would be paid to Park Estate on completion of the sale. Certainly, the correspondence in February 2023 is entirely inconsistent with Park Estate agreeing to accept either 40% of the commission or what may have been specified in the message dated 30 June 2022, as being the total amount that Enfield was obliged to pay so far as commission was concerned.
  - vi) At Smith, paragraph 13, it is clearly asserted that, in November 2021, Park Estate introduced a purchaser for the Property. Nowhere in Faraz 2 is this specifically denied as such, the message dated 30 June 2022 being put forward to explain a later introduction. However, as referred to above, this message referred to "plot 2" and a different sale price, and does not otherwise provide a credible explanation as to what was agreed so far as commission payable for the introduction of the Property is concerned.
  - vii) Further, so far as reliance on clause 6.4 of the Agreement is concerned, it is certainly the case that the Property remained "unsold" as at 1 January 2022 in the sense that no contract had been entered into, and there had been no completion. However, read together with clause 6.2, it is in my view clear that clause 6.4 is referring to introductions when it refers to "unsold", and what is key is that there should be an introduction before 1 January 2022 that is subsequently completed.
33. In these circumstances, I do not consider that this particular line of argument based upon an argument that the relevant introduction post-dated the Agency Period and was governed by some arrangement distinct from the Agreement discloses a substantial dispute advanced in good faith in relation to the debt in respect of which Park Estate proposes to present a winding up petition.
34. There is, however, one caveat as to this. I consider that the evidence does, prima facie, disclose a substantial dispute as to whether the amount due is £54,180, or £39,180. The invoice dated 12 December 2022 referred to above identified the total commission due

as being £65,300, based upon a sale price of £716,300, the deduction of a Strike Price of £636,000, but also deducting £15,000 for “Car park”. An invoice dated 22 January 2024 referred to the same figure of £65,300 being due by way of commission calculated in the same way. This latter invoice then gave credit for the £26,120 already paid, leaving a balance of £39,180. However, a revised invoice dated 22 January 2024 removes the reference to “Car park”, thus increasing the amount due to £54,180. I note that the agreement reached in the course of the February 2023 correspondence was reached on the basis of the figures in the invoice dated 12 December 2022, and that correspondence referred to a balance of £39,180. In the circumstances, and subject to hearing further argument on the point if required, it does seem to me that there is a substantial dispute as to whether Park Estate is entitled to the balance over and above £39,180. However, that still leaves a debt of well over £750 that might be the proper subject matter of a winding up petition, subject to Enfield’s further arguments.

## **ii. Strike Price Issue**

35. The dispute sought to be raised by Enfield in this second line of argument is that the Strike Price of £636,000 was never agreed, and so Park Estate is not entitled to the commission that it seeks.
36. However, again, I do not consider there to be any real substance to this alleged dispute, which I consider lacks any real credibility or substance for, essentially, the following reasons:
  - i) Mr Faraz’s change of story is not attractive or convincing. In Faraz 1 and Faraz 2, Mr Faraz boldly asserted that he did not sign any document that contained reference to the Strike Prices, which could only have been the case if the document that he signed did not include Schedule 2 thereto. However, at the hearing before me it was accepted that he had signed a copy of the Agreement which included Schedule 2, but it was asserted that Mr Reinardy had assured Mr Faraz that “once sales were going to happen”, then the Strike Prices and Commission would be discussed, i.e. that there was some form of representation by Mr Reinardy or collateral agreement in relation thereto. The other way that it had been put in paragraph 17 of Faraz 2 was that there was never any discussion with regard to Strike Prices, and that Mr Reinardy had adopted the stance that once he found a buyer he would then discuss actual prices with Mr Faraz, the point being made that by Mr Faraz that was unaware of the prices at which the relevant properties were being marketed in Hong Kong by Park Estate.
  - ii) In Faraz 1, Mr Faraz maintained that his position was supported by contemporaneous emails, there being exhibited to Faraz 1 emails from Andrew Cameron to Mr Faraz dated 28 September 2021 and 18 October 2021, the latter email being copied into Mr Reinardy. However, the latter email referred to “complete agreements” being attached for Mr Faraz’s final approval, and it also contained an explanation that “the Strike Price is the total sum to you and are commission is the sale price less the Strike Price (the sum made on top of the Strike Price).” This, when taken together with the contents of Schedule 2 to the Agreement, is, as I see it, entirely inconsistent with any contemporaneous discussion or agreement of the kind contended for by Mr Faraz, and, in reality,

excludes the possibility that Schedule 2 was not part of the Agreement when Mr Faraz signed it.

- iii) A discussion with regard to Strike Prices “once sales were going to happen” would, as I see it, make little commercial sense. Presumably, the mechanism for the payment of commission by reference to a difference between sale price and Strike Price was designed to incentivise Park Estate to achieve sales, but if agreement with regard to Strike Prices were to await a sale being “about to happen”, this would be liable to defeat the object of structuring the commission in this way.
  - iv) The representations on the part of Mr Reinardy and/or collateral agreement that Enfield seeks to rely upon with regard to Strike Prices being subsequently agreed does not rest easily with the entire agreement provision in clause 11.4 of the Agreement.
  - v) If Strike Prices were yet to be agreed, then Mr Faraz would, as I see it, inevitably have raised the point in the course of the February 2023 correspondence. As Mr Reinardy’s email dated 9 February 2023 (10:22) relied upon by Mr Faraz himself makes clear, Mr Reinardy’s calculations were based upon a differential between sale price and Strike Price, a figure of 651,000 in respect of the Strike Price being consistent with the invoice dated 12 December 2022 which had included the £15,000 in respect of “Car park”. There is no contemporaneous evidence to suggest that Mr Faraz challenged this, and he does not suggest that he did. To the contrary, he positively relies upon the email dated 9 February 2023.
  - vi) Park Estate’s revised invoice dated 22 January 2024 was first challenged by Enfield’s Solicitors in an email dated 19 March 2024. Significantly, this email did not maintain that no strike price been agreed. To the contrary, it maintained that the Strike Price should be £651,000, reliance being placed upon the inconsistency between the initial invoice dated 22 January 2024 and the revised invoice of the same date discussed in paragraph 34 above. Again, if the position were as Mr Faraz now maintains that it was, I consider it almost inevitable that it would have been raised in this correspondence.
37. In short, I do not consider that Enfield’s case that there was no agreement with regard to the Strike Price to be applied discloses a substantial dispute in respect of the debt upon which Park Estate proposes to base a winding up petition, save that it does serve to highlight the dispute regarding the £15,000 referred to in paragraph 34 above.

### **iii Cross Claim Issue**

38. As I have identified, the key argument is that Park Estate failed properly to engage with the purchaser that had been introduced, that this amounted to a breach of the terms of clauses 3.2.1 and 4.8.3 of the Agreement and caused loss to Enfield as a result of the delay occasioned thereby, the principal element of loss being interest at an additional default rate that Enfield continued to be required to pay as a result of being unable to refinance prior to the completion of the sale of the Property.
39. It is not in dispute that the existence of a cross-claim that exceeds the amount of the debt, and which is advanced in good faith and on substantial grounds, can provide the basis for restraining the presentation of a winding up petition – see *Re Bayoil SA* [1999]

1 WLR 147. However, I am not satisfied that the evidence discloses the existence of such a cross-claim or counterclaim.

40. There are, as I see it, the following difficulties with Enfield's claim that Park Estates acted in breach of contract as alleged so as to give rise to a substantial cross-claim or counterclaim that exceeds the relevant debt:
- i) I consider that the evidence advanced by Enfield in Faraz 1 and Faraz 2 fails to go significantly beyond bald assertion as to failures on the part of Park Estates to act as required by the Agreement. It is not, for example, alleged that Park Estates or its agents were requested to carry out any specified task in respect of the buyer, and failed to do so, at least so as to cause any particular period of delay referable to the particular breach. There is simply a generalised assertion that Park Estates was expected to have all relevant dealings with the buyer, and that it failed to do that which it ought to have done. Further, many of the dealings that Enfield appears to be suggesting that Park Estates or its agents ought to have been engaged in with the purchaser are tasks that one would ordinarily have expected to be dealt with by Solicitors in the ordinary course in any event.
  - ii) In so far as Enfield appears to suggest that there was a total failure of consideration on the part of Park Estate, this cannot be correct. Park Estates clearly did carry out at least some valuable work so far as marketing the Property for sale is concerned, and identifying a buyer. As Mr West points out, in *Stream Healthcare (London) Ltd v Pitman Education and Training Ltd* [2010] EWHC 216 (Ch) at [73], Mann J held that the provision of a decor pack with a value of around £500 in the context of a claim worth over £100,000 was "a complete and short answer to the total failure of consideration point".
  - iii) No contemporaneous documentation has been produced that provides any cogent evidence of delay, or of contemporaneous complaints in relation to delay, caused by the conduct of Park Estates or its agents.
  - iv) Mr Faraz's own evidence, at paragraph 37 et seq of Faraz 2, identifies that a significant problem was caused by the buyer having initially instructed Axiom, Solicitors, a firm which suffered "significant professional problems", that necessitated the buyer instructing new Solicitors to act. I understand that Axiom was the subject matter of an SRA intervention in 2023. This plainly caused a significant element of delay both in respect of the necessity for the buyer to find new Solicitors, and a loss of documentation.
  - v) Even if Park Estate did act in breach of the Agreement in some way, there is no real evidence to show that any delay that may have been caused by the actions of Park Estates was causative of any particular loss, in a particular loss in an amount exceeding the debt of £54,118 relied upon by Park Estate, or even the lesser amount of £39,180.
  - vi) Thus, for example, Enfield's evidence provides no evidence explaining Enfield's lending arrangements with any particularly, and no contemporaneous documentary evidence is exhibited to support its case in relation thereto, and the alleged requirement to renew on favourable terms.
  - vii) Whilst clause 6.1 of the Agreement provides that the obligation to pay commission is subject to Park Estates performing its obligations under the



Agreement, I consider that, for this pre-condition to take effect, the onus must be upon Enfield to show that there has been a substantial breach of the Agreement that has caused it some significant loss. The evidence, in my judgment, falls well short of doing so in the present case.

**F. Overall conclusion**

41. On the basis of the above findings, and even having regard to the fact that the threshold for demonstrating that a debt is disputed on substantial grounds in this context is not a particularly high one, I consider that the evidence in support of the Application lacks credibility and substance, and fails to disclose any defence or cross-claim that has any realistic prospect of success so as to provide an answer to the debt that Park Estates proposes should form the basis of a winding up petition against Enfield, apart from in respect of the difference between the sum of £54,180 and the sum of £39,180 as referred to in paragraph 34 above.
42. In the circumstances, I consider that the Application should be dismissed.