Neutral Citation Number: [2019] EWHC 2260 (Ch)

Case No: BL-2019-000992

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

Royal Courts of Justice
The Rolls Building, London, EC4A 1NL

Date: 23 August 2019

Before :

MASTER KAYE

- -

Between :

Mrs SHAMILLA CHELLAPERMAL	**Claimant**
- and -	
(1) THE FINANCIAL CONDUCT AUTHORITY	**Defendants**
(2) Mr DHARAM PRAKASH GOPEE	
(3) Miss CAMILLA CHELLAPERMAL	

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- -

The **Claimant appeared in person and was unrepresented**
Mr Evans QC instructed by and for the **First Defendant**
The Second and Third Defendant did not appear and were not represented.

Hearing dates: 29 July 2019

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Approved Judgment

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

.....

MASTER KAYE

Master Kaye **:**

1. This is the First Defendant's application to strike out the Claimant's claim as an abuse of process of the court pursuant to CPR 3.4 (2).

2. The application was issued on 24 June 2019 and is supported by two witness statements from Mr Wilson dated 24 June 2019 and 17 July 2019 respectively. The Claimant opposes the application. In addition to the witness statement she served with the claim form dated 24 April 2019, the Claimant relies on her witness statement of 19 July 2019 and the Second Defendant's witness statement of 8 July 2019. After the hearing, I received the Second Defendant's letter correcting some typographical errors in his witness statement.

3. The Claimant issued a Part 8 Claim Form supported by a witness statement dated 24 April 2019. The Claim Form was sealed by the court on 22 May 2019. The Claimant seeks the following:

    i) An order that the court direct that the First Defendant, the Financial Conduct Authority ("FCA") remove a Restraint Order over a bank account held in the name of the Third Defendant at NatWest. (I note that this claim would not fall within the jurisdiction of the Chancery Division).

    ii) A declaration that the funds in the restrained bank account amounting to £130,343.83 ("the Fund") in fact belong to the Claimant as being the proceeds of sale of a property known as 14 Stanbury Avenue Watford WD17 3HW ("the Property"), and,

    iii) A declaration that the funds were paid to the Claimant by the Second Defendant as surplus funds belonging to the Claimant pursuant to a letter or statement of account dated 7 January 2016.

4. The FCA acknowledged service of the claim form indicating an intention to contest the claim and an intention to seek to have the claim struck out or dismissed.

5. The Second Defendant acknowledged service and served a witness statement, not in opposition to the application to strike out, but to support the Claimant's claim to the Fund and, he says, to assist the court.

6. The Third Defendant is the Claimant's adult daughter. She has taken no part in these proceedings. I am advised that in the related Crown Court proceedings she submitted a letter to the court supporting her mother's application.

7. I have been provided with a bundle of documents that includes amongst other documents:

    i) Transcripts of hearings before HHJ Gledhill QC in Southwark Crown Court (SCC) in February 2016;

    ii) HHJ Gledhill QC's ruling of 17 February 2016 in respect of Claimant's proprietary claim to the Fund;

    iii) HHJ Gledhill QC's ruling in relation to the Second Defendant in April 2016;

iv) The Claimant's application for permission to appeal HHJ Gledhill QC's ruling in respect of her claim to the Fund to the Court of Appeal Criminal Division (CACD);

v) The Claimant's application for permission to seek Judicial Review in relation to HHJ Gledhill QC's ruling in respect of the Fund and its refusal.

8. CPR 3.4 provides:

> **3.4**
>
> (1) In this rule and rule 3.5, reference to a statement of case includes reference to part of a statement of case.
>
> (2) The court may strike out a statement of case if it appears to the court –
>
> (a) that the statement of case discloses no reasonable grounds for bringing or defending the claim;
>
> (b) that the statement of case is an abuse of the court's process or is otherwise likely to obstruct the just disposal of the proceedings; or
>
> (c) that there has been a failure to comply with a rule, practice direction or court order.
>
> (3) When the court strikes out a statement of case it may make any consequential order it considers appropriate.
>
> …
>
> (5) Paragraph (2) does not limit any other power of the court to strike out a statement of case.

9. The FCA say that the claim is an abuse of process for four primary reasons:

i) It represents an attempt by the Claimant to re-litigate an issue already decided against her,

ii) It represents an attempt by the Claimant to bypass the statutory scheme which has been enacted to deal with the issues she raises (Part 2 Proceeds of Crime Act 2002 ("POCA")),

iii) The Claimant has a collateral objective in bringing the claim, and,

iv) Although ostensibly in the name of the Claimant, the Second Defendant is driving the application.

10. The Claimant says:

a) That the Chancery Division has jurisdiction to determine her claim to the Fund.

b) That she is entitled to bring her claim in a court of equity and have it determined by a court of equity.

c) That new evidence uncovered the night before the hearing (but not before the court) will demonstrate that she has been treated differently to other victims of the Second Defendant.

d) That she wants an adjournment to enable her family to raise money to enable her to obtain legal advice in relation to the new evidence.

11. It will be apparent from that summary of the Claimant and FCA's positions that there is a considerable history to these proceedings and this application.

Background

12. In 2015 the Second Defendant was the subject of a criminal investigation by the FCA into his activities as an unauthorised moneylender in breach of both the Consumer Credit Act 1974 ("the CCA") and the Financial Services and Markets Act 2000 ("FSMA").

13. On 25 June 2015 HHJ Pegden QC sitting at SCC made a Restraint Order under the Proceeds of Crime Act 2002 against the Second Defendant and a number of corporate and trust entities which the court was satisfied were controlled by the Second Defendant. The Restraint Order included a penal notice in relation to all the named parties. This was extended to any other person who knew of the order and did anything to help or permit all the named parties to breach the order.

14. After the date of the Restraint Order and in breach of it, the Second Defendant had opened several new accounts and directed his customers/clients to pay sums into those accounts. The accounts therefore contained intermingled funds. The Second Defendant transferred substantial sums from the new accounts to, and directed other parties to transfer sums from elsewhere to, the Third Defendant's bank account eventually amounting to the sum of monies constituting the Fund.

15. The FCA discovered the breaches and applied to vary and extend the Restraint Order. On 4 December 2015, the Restraint Order was varied. The extended Restraint Order included the NatWest bank account held in the name of the Third Defendant in which the Fund was held.

16. By letter dated 14 December 2015, the Claimant sought the release of the Third Defendant's bank account from the Restraint Order. The Claimant asserted a proprietary claim to the Fund, which she said, represented the surplus proceeds of sale of the Property.

17. Section 42 (3) (b) of POCA provides that a person "affected by" a Restraint Order may apply for its discharge or variation. The Claimant's letter of 14 December 2015 was treated as an application to discharge or vary the Restraint Order in respect of the Fund. Following an exchange of evidence, it was heard by HHJ Gledhill QC on 16

and 17 February 2016 together with a number of other applications arising from the Restraint Order.

18. The Second Defendant gave evidence intended to support the Claimant's application to vary or discharge the Restraint Order over the Fund. The Claimant's daughter, the Third Defendant, provided a letter to the SCC supporting her mother's application

19. The Claimant's proprietary claim was said to arise from an agreement she entered into with the Second Defendant in 2014.

20. The Claimant appears to have acquired the Property as long ago as 2002 with the benefit of a mortgage. The Claimant was herself the subject of a Restraint Order following criminal proceedings in about 2009. A Confiscation order had been obtained against her and was protected by a restriction registered against the Property.

21. By 2014, the Claimant was in significant financial difficulty. The mortgage over the Property was in substantial arrears. The Claimant says the restriction to protect the Confiscation order limited her ability to raise any monies against the Property.

22. In 2014, the Claimant approached the Second Defendant who was prepared to advance her money on terms. The terms and basis of that arrangement were considered in proceedings before HHJ Mackie in the Mercantile Court in 2014 when the Second Defendant was seeking to register a restriction against the Property. They were also considered on the Claimant's application to vary the Restraint Order by HHJ Gledhill QC in SCC in February 2016.

23. The Property was put on the market for sale in 2014 and sold in February 2015. The Second Defendant arranged settlement of the Claimant's debts, including the balance of a Confiscation order and the mortgage, from the proceeds of sale.

24. Mr Evans explained in his note for the SCC hearing in February 2016 that the Claimant's explanation for the transaction before HHJ Mackie QC in the London Mercantile Court on 29 July 2014 records that the Claimant said to the judge that it was her idea to sell the Property to the Second Defendant "because it's no use to me now as I haven't got any equity on it"; she was happy to sell it to the Second Defendant/ his company because: "there is no equity in it whatsoever"; "I'm very happy [to have sold it with all the burdens]".

25. Mr Evans records in that note that the Second Defendant's account to HHJ Mackie is that he paid the Claimant £4250 for a property believed to be in negative equity. When it was sold only a few months later, it turned out to yield a very substantial profit and Second Defendant agreed on a without prejudice basis to return a certain amount of money to the Claimant. This is a reference to the Fund.

26. Both the Claimant and the Second Defendant had the opportunity to and made submissions and gave evidence and were cross-examined before HHJ Gledhill QC at the hearing.

27. HHJ Gledhill had the benefit of a transcript of the hearing before HHJ Mackie during which HHJ Mackie had also explored the evidence about the nature of the transaction

between the Claimant and Second Defendant/his company. HHJ Gledhill also had documents relating to the sale of the Property.

28. In his ruling HHJ Gledhill QC records that he has read the statements and documents provided to him with care. HHJ Gledhill QC concludes:

> "the important factual dispute between the [Claimant] and [the Second Defendant] is apparent on the face of the papers, which is ironic because of course she has called [the Second Defendant] as a witness in support of her application. As Mr Evans has pointed out, the burden of proof on the civil scale is on her to show that the Restraint Order should be varied, which she can only do of course by demonstrating that she had a proprietary claim in the monies that have been paid into her daughter's account after the imposition of this Restraint Order."
>
> I am satisfied that [the Claimant] did not have such proprietary claim on the evidence I have heard for the reasons set out in the note of Mr Evans. I have come to the conclusion that this application is not made out to the civil standard that I refuse to vary the Restraint Order.
>
> I am well aware that that will be very disappointing for [the Claimant], but I am afraid that I have to apply the law as it is, and the evidential burden being on her, even to the lower civil standard, has simply not been made out."

29. Mr Evans' note is included in the bundle before this court and I have been referred to it.

30. Since the hearing in February 2016, the Fund has remained in the Third Defendant's NatWest bank account and subject to the Restraint Order.

31. On 14 March 2016, the Claimant filed an application for permission to appeal that decision in the Court of Appeal Criminal Division ("CACD"). The application raised a number of matters but the decisions to be appealed and the grounds of appeal included the refusal to vary the Restraint Order to release the Fund.

32. On 31 March 2016, the FCA was contacted by the CACD who informed them that the application for permission to appeal had been returned to the Claimant due to deficiencies in the application. No revised/amended application was ever submitted to the CACD.

33. In the Claimant's witness evidence, she says that she did not pursue her appeal because she could not obtain legal aid and was not assisted by the Second Defendant. In her submissions, she said that the reason she did not pursue the appeal was that she had not received the application back from the CACD. I note that the address provided to the CACD is the same address Claimant has used in these proceedings and on the application for judicial review made in March 2016. There is no suggestion that she did not receive any of the documents in relation to any of the other proceedings sent to that address.

34. On 14 March 2016 the Claimant and the Second Defendant, as a director of two of his companies, applied for permission to pursue a judicial review of:

    i) The decision to grant the Restraint Order in June 2015,

    ii) The decision to vary the Restraint Order in December 2015 (which included an extension to cover both the Fund in, and, the Third Defendant's account), and

    iii) The decision of HHJ Gledhill QC of 17 February 2016 including in respect of the Claimant's proprietary claim to the Fund.

35. Mr Justice Langstaff refused the application for permission on 7 June 2016. It was found to be "totally without merit". The reasons given made it clear that the Claimant had a right of appeal in relation to the Order of HHJ Gledhill QC to the CACD and that the Claimant had to exhaust that right first before seeking to pursue a judicial review.

36. Despite the prompt from Mr Justice Langstaff, the Claimant did not pursue or renew the application to the CACD in 2016 or at all. Even if the Claimant had not received the returned application from the CACD, there is no evidence that she took any steps to establish the position in relation to the application for permission to appeal in the three years between March 2016 and April 2019, even after the clear steer from Mr Justice Langstaff in his refusal of permission for Judicial Review in June 2016.

37. I note that the statutory right to appeal to the CACD has not been exhausted, and remains, subject to any issues in respect of an out of time application about which the Claimant would need to seek advice.

38. In the meantime, following the hearings in February 2016, in April 2016 the Second Defendant was convicted of contempt of court for various breaches of the Restraint Order and given a custodial sentence of 15 months. Those breaches included the transfer of the Fund to the Third Defendant's bank account.

39. In February 2018, the Second Defendant was convicted, after trial, of two counts contrary to s.39 CCA 1974 and two counts of breaching the general prohibition in s.19 of FSMA 2000. He was sentenced to 3 years and six months' imprisonment to run consecutively to the 15-month term of imprisonment he was already serving for contempt of court.

40. The Restraint Order following the Second Defendant's conviction remains in place as an adjunct to the Confiscation proceedings that have been commenced.

41. The final hearing in the Confiscation proceedings under Part 2 of POCA has been listed for 2 weeks commencing on 9 December 2019. I note that the Crown Court will determine the Confiscation proceedings based on the civil standard of proof not the criminal standard of proof.

42. In the Confiscation proceedings, it is contended by the FCA that the Fund comprises part of the realisable property of the Second Defendant.

43. Section 10A POCA relates to Confiscation orders and provides a mechanism for the determination of the extent of the Second Defendant's interest in property. Where it appears that another party (here the Claimant) may have an interest in the property (here the Fund) those parties can make representations. Before making any determination in relation to the Fund, the court must give any affected party an opportunity to make such representations.

44. POCA therefore recognises and provides for potential third-party claims beyond the Restraint Order itself and within the statutory framework of the Confiscation Proceedings.

Application to Strike Out pursuant to CPR 3.4(2)

45. This court has the power to strike out a claim either pursuant to CPR3.4 or under the court's inherent jurisdiction either on application or of its own initiative. The court uses its power to strike out sparingly and only in a clear an obvious case, but will use it where a party is pursuing a claim which has no reasonable basis or is an abuse of process or where there would be a waste of resources to all parties if the claim continued.

46. It is for the applicant to persuade the court that there are grounds for striking out. Once that is established it is for the respondent to persuade the court that it would be inappropriate or unjust to make the order to strike out.

47. The court has to have in mind the overriding objective. This includes considering the overall effect of the order to strike out if made.

48. Claims may be struck out on the basis that they are a collateral attack on a previous decision even if that decision is in a different tribunal/court. Equally, claims can be struck out where they represent in substance an attempt to re-litigate issues that have already been decided in other proceedings.

49. On a strike out application the court's focus is on the claim itself and it should not be considering contested factual disputes or conducting a mini trial.

The Claimant's submissions

50. The Claimant is unrepresented. She expanded on the points identified at paragraph 10 above in her submissions. Her submissions were that

    i) she could not afford to pay for legal representation;

    ii) that she was battling to pay the mortgage on her husband's property (this is not the Property);

    iii) she did not know that the Second Defendant was under investigation when she asked him to lend her money;

    iv) she believes that she has been treated unequally and unfairly as against other victims of the Second Defendant. She said that she had uncovered evidence, the day before the hearing, that other victims of the Second Defendant who had, she said, the same agreements as she had had with the Second Defendant

or his companies, had got their homes back. She did not understand why she was being punished;

v) she maintains that the Fund is her money derived from the net proceeds of sale of the Property which was held on trust for her by the Second Defendant;

vi) she is entitled to bring her claim in a court of equity and have it determined there. This submission had two parts: a) that Mr Evans had told her that she should and b) that the postscript to *SFO v Lexi Holdings* (referred to at paragraph 57 below) entitles her to.

51. Save for paragraph 50 (iv) neither the Claimant's evidence, the Second Defendant's evidence nor the Claimant's submissions addressed the FCA's grounds for seeking to strike out the claim on the basis that it was an attempt to re-litigate a claim that had already been determined. The evidence and submissions were focussed on the underlying merits of the Claimant's claim to the Fund and her entitlement to go to a court of equity.

FCA Submissions

52. Mr Evans submits that the Claimant has sought to vary the Restraint Order to permit the release of the Fund in the SCC and the essential factual issues before the SCC were precisely the same as the matter now raised in this court and, as a consequence, an issue estoppel arises. The claim should therefore be struck out as an abuse of process as the Claimant seeks to pursue the same issue as already determined on a civil basis by HHJ Gledhill QC.

53. In support of that submission, he submitted that although restraint proceedings under POCA are dealt with in the Crown Court they are civil in character. He referred me to the decisions in the Court of Appeal in *Re O (Restraint Order: Disclosure of Assets)* [1991] 2 QB 520 at paragraphs 527 – 528 which held that the relevant provisions of the Criminal Justice Act 1988 (the precursor to POCA) established a regime in relation to restraint orders which was both civil in character and collateral to the criminal regime. He further referred to *SFO v O'Brien* [2012] EWCA Crim 67 in which the Court of Appeal concluded that Restraint Orders in the context of Confiscation proceedings were closely analogous to freezing injunctions.

54. Mr Evans further argues that the claim is an attempt to bypass the statutory scheme set down by Parliament in POCA. He relies on the decision of Lewison J in *Capper v Chaney* [2010] EWHC 1704 (Ch) ("*Capper*") at paragraphs 16-19. He submits that where a statutory scheme has been enacted to deal with a particular question or issue, the High Court should decline to grant declaratory relief in respect of an issue, which is capable of resolution within the statutory scheme, or should treat such proceedings as an abuse of process.

55. The Claimant has already made an application to the Crown Court under s.42 (3) POCA to vary the Restraint Order. POCA provides that any appeal arising from the determination of such an application to vary is to be brought in the CACD. The Claimant made an application for permission to appeal to the CACD in March 2016.

56. The essential factual issue before the SCC is precisely the same as the matter raised in these proceedings. It is therefore an abuse of process to seek to raise the same matter again before this court.

57. The Claimant has sought to rely on *SFO v Lexi Holdings Plc* [2008] EWCA Crim 1443, [2009] QB 376 ("*SFO v Lexi Holdings*") as providing her with an absolute right to pursue her claim to the Fund in the Chancery Division. This is a misunderstanding of the decision. At paragraph 92 Keene LJ said

> "Sometimes issues may arise in Restraint Order proceedings about equitable interests which are not unduly complicated and can readily be dealt with in the Crown Court. In other cases, the sums involved may not warrant any unusual steps. But there may be times when the complexities are such that it may not be wise for a Crown Court Judge to embark on seeking to decide those issues. In such a case where a relaxation of the Restraint Order is sought, consideration should be given to adjourning those variation proceedings to enable the issues to be determined in proceedings before a Specialist Chancery Circuit Judge or High Court Judge of the Chancery Division. Alternatively, those arranging the listing of such cases in the Crown Court should seek to ensure they are heard by a judge with the relevant experience or expertise."

58. The issues were not unduly complicated and HHJ Gledhill QC decided them in the SCC under the Statutory Scheme.

59. Mr Evans further submitted that POCA did not oust the jurisdiction of this Court where a Restraint Order had been made. Section 58 (5) and (6) POCA provide that any court in which proceedings are pending in respect of any property when a restraint is applied for or made in relation to that property may either stay the proceedings or allow them to continue on the terms it thinks fit but must give the prosecutor an opportunity to be heard.

60. Here I note, of course, that this claim was issued nearly 4 years after the Restraint Order was made and over 3 years after the application to vary in respect of the Fund had been determined by HHJ Gledhill QC.

61. Mr Evans argues that the reason that the Claimant's claim is an abuse of process is not that the court has no jurisdiction but that other circumstances arise.

62. Mr Evans further raises the issue of the claim being an abuse of process as it is intended to try to obtain and use a decision of the High Court to create an issue estoppel, which the Claimant can use in the Confiscation Proceedings in December. He argues that the Claimant's objective is to seek to pre-empt a decision of the Crown Court in those proceedings.

63. He refers to Lewison J in *Capper* who observed that bringing a claim for a collateral objective was itself an abuse of process and that bringing a claim following a failure in another tribunal was undesirable forum shopping.

64. In *Capper* Mr Capper failed to persuade the Magistrates' court that he was owner of a cash fund. Rather than pursuing his statutory appeal in relation to his claim to a cash fund, he sought declarations in the Chancery Division. The Master at first instance had concluded that he was not being asked to determine an issue that another court was seized of or might be called upon to decide.

65. On appeal, Lewison J at paragraph 21 concluded that the issue raised in the High Court was precisely the same as that raised in the Magistrates' Court and that as a matter of discretion the High Court should decline jurisdiction. He continued that the court should consider how closely the issue in the High Court proceedings approximated to the issue before the Magistrates in its substantial effect. In *Capper*, there were no equivalent of ongoing Confiscation proceedings at the time Mr Capper issued his proceedings.

66. Mr Evans submits that here the position is that there are Confiscation proceedings on foot listed for hearing in December at which the ownership of the Fund will again be in issue. The SCC has determined precisely the same issue as is now raised in this claim already. It is not simply a close approximation.

67. Lewison J considered Mr Capper's real objective in bringing the proceedings was to obtain a result in the High Court that he could then use in another court and that such a motive could be characterised as a collateral objective. He concluded that to bring an action for a collateral purpose was itself an abuse of process. Mr Evans argues the position is the same in this case.

68. Finally, Mr Evans makes submissions that it is as plain as it can be that in fact the driving force behind this claim is the Second Defendant. He explained that the Second Defendant had become a serial litigator since his incarceration and had something of a vendetta against the FCA and referred me to the decision in *Dharam Prakash Gopee v Southwark Crown Court* [2019] EWHC 568 (Admin). He identified that various documents including the Claimant's evidence have been written in, what he describes as, the Second Defendant's distinctive handwriting. He argues that this is a further example of the Second Defendant issuing abusive applications or claims against the FCA.

Discussion

69. This is an application to strike out for abuse of process under CPR 3(4) (2) primarily on the basis that the Claimant is seeking to re-litigate a matter that has already been determined. As I have indicated at paragraph 51 above the Claimant has not addressed this point directly but has asserted her right to bring the Claim in a court of equity and to have it determined there.

70. The Claimant made an application to vary the Restraint Order to assert her proprietary claim to the Fund to SCC. It was heard and determined by HHJ Gledhill QC in the SCC in February 2016.

71. The postscript to *SFO v Lexi Holdings* is only authority for the proposition that in some complex cases it <u>may</u> be appropriate for applications asserting an equitable interest to be considered in the civil courts.

72. No application was made to adjourn the consideration of the Claimant's proprietary claim in the Fund to a Specialist Judge or the Chancery Division.

73. Here the proprietary claim to the Fund was not and is not complex or complicated or of significant value and was considered and determined by HHJ Gledhill QC on the civil basis.

74. As set out at paragraph 28, he ruled that the Claimant did not have a proprietary claim in the Fund. He had the benefit of hearing the Claimant and the Second Defendant give evidence, make submissions, and be cross-examined. He had documents in relation to the sale of the Property and the transcript of the proceedings before HHJ Mackie. He had the evidence filed by the Claimant. I note that his decision was made in advance of the Second Defendant being convicted of offences under the CCA and FSMA.

75. This court's jurisdiction to determine the Claimant's proprietary claim is not ousted by POCA as is made clear in S58 (5) and (6). In principle, this court would have been able to stay or allow the claim to continue on such terms as it saw fit subject to permitting the FCA to make representations. However, the Claimant's assertion that she has an absolute right to bring her claim to the Fund in a court of equity and have it determined there is misplaced.

76. This claim should be struck out as an abuse of process not because this court would have lacked jurisdiction to determine the proprietary claim but because on the facts of this case it would be an abuse of process for it to do so as the claim has already been determined in SCC in February 2016. It is clearly an attempt to re-litigate the same claim as the one determined by HHJ Gledhill QC in February 2016.

77. In any event, POCA provides a statutory scheme for appealing decisions such as the decision of HHJ Gledhill QC to the CACD. I refer to paragraphs 33 – 37 above. The Claimant was not only aware of that process but made an application to the CACD in March 2016.

78. Following the decision in *Capper* in which Lewison J referred to the decision of *Autologic Holdings plc v Inland Revenue Commissioners* [2006] 1 AC 118 it is plainly an abuse of process to seek to circumvent a statutory scheme laid down by Parliament by issuing proceedings in a different type of tribunal or court. Mr Justice Langstaff gave the Claimant clear direction as to the appropriate course when he refused permission for Judicial Review in June 2016. She did not follow it but instead issued this claim three years later in the Chancery Division.

79. The proprietary claim having been determined in the SCC the decision should have been challenged by way of a statutory appeal to the CACD using the statutory scheme. This claim is plainly an attempt to circumvent that statutory scheme and is an abuse of process.

80. This claim not only seeks to ask this court to determine the same issue as was determined in February 2016 but is also, in substance, the same question the Crown Court will have to determine as part of the Confiscation Proceedings in December 2019. In the Confiscation Proceedings, the Crown Court will have to determine whether the Fund is available as part of the Second Defendant's realisable assets.

81. As set out at paragraph 43 and 44 above this may provide a further opportunity for the Claimant, if so advised, to seek to persuade a court of her claim to the Fund and allow her an opportunity to deploy the new evidence she says she has recently uncovered.

82. Mr Evans submitted that the claim was clearly issued for a collateral objective and to create an issue estoppel in relation to the Confiscation proceedings listed for hearing in December 2019. I am not persuaded that the Claimant, herself, had such an ulterior motive in issuing the claim in the Chancery Division. However, were the claim to proceed there is a risk that it would have such an effect. As a consequence, and following Lewison J in *Capper*, this court ought to decline jurisdiction as a matter of discretion in any event even if the claim were not plainly an abuse of process for the reasons set out above.

83. Mr Evans argued that the decision in SCC also created an issue estoppel in relation to this claim. I accept his submissions that the application to vary before the SCC was civil in character and determined to the civil standard. It was therefore determined on the same basis as it would be in the Chancery Division. To paraphrase Lewison J at paragraph 27 of *Capper,* either that creates an issue estoppel or it does not. If it does, then that would be an additional reason why this claim is an abuse of process. However, to bring proceedings in the Chancery Division having failed in the SCC, and having not followed the statutory appeals process, is at a minimum, as Lewison J says in *Capper*, undesirable forum shopping.

84. However, using the procedural machinery of this court to have a second bite of the cherry or to seek to bolster or enhance the opportunity to obtain a favourable outcome in the Crown Court (or the CACD) is not, merely, as suggested by Lewison J in *Capper*, an attempt to bring an action for a collateral purpose (which itself is an abuse of process) but is a collateral challenge to the decision of HHJ Gledhill QC and is therefore an abuse of process, in any event.

85. The FCA has made a number of submissions about the role that the Second Defendant has taken in these proceedings and more generally. This is a procedural hearing addressing an application to strike out the Claimant's claim. The FCA point to evidence to support its contention that the Second Defendant is the driving force behind the Claimant's application even to the extent of being responsible for having written her statements. The Claimant has not addressed these matters at all in her submissions or evidence beyond acknowledging that the Second Defendant has been assisting her – indeed his lack of availability is one of her reasons for not progressing the application to the CACD.

86. This is the FCA's application to strike out the Claimant's claim as an abuse of process pursuant to CPR 3.4 (2). I am not in a position to, and it would not be appropriate for this court to, make any factual findings about the role of the Second Defendant in this claim. In so far as those matters are relevant to the Confiscation proceedings or any renewed application by the Claimant in those proceedings, they can be dealt with in that forum.

87. The Claimant in her submissions raised the possibility of new evidence, which she said needed to be investigated by the court. Those matters related to information she said she had just discovered which demonstrated that other victims of the Second Defendant had managed to get their properties released from the Restraint Order. She

believes those victims had the same agreement as she had with the Second Defendant. She also says that she was not aware that the Second Defendant was under investigation when she entered into her arrangement with him in 2014. There is no evidence before this court to suggest he was under investigation in 2014 and the Property was sold in February 2015 sometime before the Restraint Order but that would not assist the Claimant on this application in any event.

88. Striking out this claim as an abuse of process for the reasons set out in this Judgment does not preclude the Claimant from seeking to deploy that evidence, if so advised, in the Crown Court in the Confiscation Proceedings or, if so advised, on any out of time application for permission to appeal.

89. The Claimant submitted that she had issued the claim in the Chancery Division not only because of her understanding of *SFO v Lexi Holdings* but also because Mr Evans told her she could. It is not for this court, on this application, to determine disputes of fact. Even if Mr Evans were to have said that, which he denies, and which is not recorded in the transcript, that would not change the legal position that this claim is an abuse of process and should be struck out for the reasons set out in this Judgment.

90. I have considered the overriding objective and the need to deal with matters justly and at proportionate cost. This includes considering the impact on the unrepresented Claimant and balancing that against the prejudice to the FCA if the claim were to continue. As set out in this Judgment, the Claimant has already had the opportunity to make representations and give evidence in relation to the issues raised in this claim and it was determined in the SCC. She could and should have (and may still be able to) pursue her claim to the Fund by way of an appeal to the CACD. She will still have the opportunity of making representations in the Confiscation Proceedings in December 2019.

91. It is a waste of resources for all parties concerned to allow this claim to continue. It is therefore neither inappropriate nor unjust to make the order to strike out.

92. For the reasons set out in this Judgment, I find that this claim is an abuse of process and should be struck out.

Application to Adjourn

93. The Claimant made an application to adjourn the hearing over an hour into the hearing as part of her submissions. She did not raise it at the outset. Mr Evans said that she had not raised it with him before the hearing commenced when he spoke to her about what would happen at the hearing. She sought to persuade me that I should grant her an adjournment to allow her to seek legal advice in relation to the new information/evidence, which she had uncovered.

94. The application to adjourn was refused. The application to adjourn, made well over an hour into a one and half hour hearing, was too late. Given the basis of the application even if made at the outset of the hearing it would have been refused for the following reasons:

    i) The application to strike out for abuse of process had been issued on 24 June 2019. The Claimant filed evidence in opposition on 19 July 2019. There is no

explanation as to why the new evidence she had identified the night before the hearing was not obtained earlier and was not already before the court;

ii) The matters about which the Claimant wished to adduce new/further evidence and seek legal advice upon were not matters which would go to the substance of the abuse of process application, which this court was to determine on this application. The grounds for saying that the claim was an abuse of process were not based on the merits of the claim but on it being an abuse because it was seeking to re-litigate the same claim that the SCC had determined in February 2016.

iii) The evidence did not in any event even appear to go to the merits of whether the Claimant had a proprietary claim in the Fund. The evidence appeared to go to a broader question of whether the Claimant had been treated fairly or equally with other victims of the Second Defendant.

iv) The Claimant would not be precluded from deploying that evidence, if so advised, during the Confiscation proceedings listed to take place in December 2019.

v) There was no evidence to support the submission that the Claimant's family would now seek to raise funds to enable her to seek advice in relation to the new evidence nor that they were in a position to do so. The matters to which these proceedings relate date back to 2015 the Claimant has represented herself throughout. The suggestion that funding would now be become available in relatively short order, possibly as soon as 3 weeks, seemed improbable in the absence of any supporting evidence.

vi) Although these proceedings were only issued in May 2019, given the basis of the application for an adjournment, which did not go to the grounds of the application to strike out there was no merit in prolonging the proceedings and causing both parties to incur further costs.

vii) I have taken into account the need for the court to further the overriding objective to deal with cases justly and at proportionate cost, including consideration of the allocation of court time and resources and balancing the question of prejudice between the Claimant and FCA and taking into account that the Claimant is unrepresented.