Neutral Citation Number: [2021] EWHC 3306 (Ch)

Claim No: FL-2021-000017
And in several other claims

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

Royal Courts of Justice
The Rolls Building, 7 Rolls Building,
London, EC2A 1NL

Date: 19 November 2021

Before:

MR JUSTICE MILES

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Between:

(1) BMF ASSETS NO. 1 LIMITED
(2) BMF HOLDINGS LIMITED
(3) BUSINESS MORTGAGE FINANCE 3 PLC
(4) BUSINESS MORTGAGE FINANCE 4 PLC
(5) BUSINESS MORTGAGE FINANCE 5 PLC
(6) BUSINESS MORTGAGE FINANCE 6 PLC
(7) BUSINESS MORTGAGE FINANCE 7 PLC
(8) KIPLING FIRS LIMITED
(9) TILMAN HOLDINGS LIMITED — **Applicants/ Claimants**

- and -

(1) SANNE GROUP PLC
(2) SANNE GROUP (UK) LIMITED
(3) SANNE GROUP SECRETARIES (UK) LIMITED
(4) SANNE TRUSTEE COMPANY (UK) LIMITED
(5) MARTIN CHARLES SCHNAIER
(6) JASON CHRISTOPHER BINGHAM
(7) BEEJADHURSINGH SURNAM
(8) CORAL SUZANNE BIDEL
(9) MARC SPEIGHT
(10) SIMMONS & SIMMONS LLP
(11) CAROLINE HUNTER-YEATS
(12) ALEXANDER PAUL RIDDIFORD — **Respondents/ Defendants**

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APPROVED JUDGMENT

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Ms Dilnot QC and **Mr Riddiford** (instructed by **Simmons & Simmons LLP**) for certain of the **respondents** (and also claiming to act for the second to seventh applicants)
Mr Sharp (instructed by **Cameron McKenna Nabarro Olswang LLP**) for the **tenth to twelfth respondents and for Ms Dilnot QC**
Mr Artemiou (a director of the first applicant) claiming to act for the **applicants**

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Mr Justice Miles :

1. This is an application relating to several public limited companies sharing the name "Business Mortgage Finance," followed by a number. There are five such companies, Business Mortgage Finance 3 plc to Business Mortgage Finance 7 plc. Their holding company is BMF Holdings Limited ("Holdings"). The Business Mortgage Finance companies numbered 4 to 7 are the Issuers of Notes under securitisations of commercial loans. As is commonplace for such structures, they are special purpose vehicles. The shares of their holding company, Holdings, are in turn held on charitable trusts. The Notes issued by the Issuers, ranked in various series, are subject to a Trust Deed and to the terms and conditions of the Notes.

2. There is also contractual security under which the underlying loans are mortgaged or otherwise secured in favour of the Note Trustee which holds the same for the Noteholders and the various other parties involved in the securitisation structure. Those other parties, as is also normal, include mortgage administrators, servicers and many others.

3. There is a long and convoluted background to the current application, which was summarised in a judgment I gave after a trial in February 2021 ([2021] EWHC 171 (Ch) – "the February judgment") in which I explained that steps had been taken by strangers to the securitisations to seek to intervene or interfere with the business of the Issuers and other parts of the structures. Any interested reader is referred to that judgment for a full account of the history up to then. The events in it included attempts to replace the directors of the Issuers, to change the registered office of the Issuers, and to sell the assets of the Issuers. The mode of operation of the strangers to the securitisations was to assert that various parties had beneficial interests in classes of Notes and that these gave them the ability to change the management and control of the Issuers.

4. The February judgment was given after a number of other judgments in the High Court which had rejected the various assaults on the Issuers' business. I granted extensive declaratory and injunctive relief aimed at halting the corporate onslaught. In the course of that judgment I declared that the true directors of the Issuers and Holdings were Mr Surnam, Ms Bidel and Mr Speight, who are employed by or officers of Sanne group, which provides corporate services. Independently of the events to which I am going to refer below, Mr Surnam has since ceased to be a director. In July 2021 in further proceedings concerning the rectification of the registers at Companies House ICC Judge Jones declared that Ms Bidel and Mr Speight are the true directors of Business Mortgage Finance 3 plc and Holdings.

5. The February judgment explained that the main protagonist in the assault on the securitisation vehicles was Mr Rizwan Hussain. At the time of my judgment he was in prison for a separate contempt of court. Shortly after I gave judgment he was released from prison and not long after that a series of further steps occurred (to which I shall refer in a moment). These were similar in character to the steps that had been taken in respect of the structures over the previous two or three years.

6. The current application is made in proceedings which were originally issued in the Commercial Court but were transferred to the Financial List in the Chancery Division. The number of the proceedings is FL-2021-000017. According to the heading of the

action the first claimant is a company called BMF Assets No. 1 Limited; the second is Holdings, which I have already mentioned; the third to seventh are Issuers; the eighth is a company called Kipling Firs Limited; and the ninth is a company called Tilman Holdings Limited, which appears from the evidence to be incorporated in the Marshall Islands.

7. The defendants named in the title to the proceedings are certain Sanne group entities; a number of corporate entities of individuals involved with the Sanne Group, including the three directors I have already mentioned, namely, Mr Surnam, Ms Bidel and Mr Speight; as the tenth defendant, Simmons & Simmons LLP; as the eleventh defendant, Ms Hunter-Yeats, who is a partner in Simmons & Simmons LLP; and as the twelfth defendant, Mr Riddiford, a barrister.

8. Simmons & Simmons and Mr Riddiford have been instructed by the directors of the Issuers and Holdings to defend the various attempts to interfere with their business. They appeared before me in the proceedings against Mr Hussain and others which culminated in the February judgment.

9. To give an idea of the volume of litigation there have been some 26 separate sets of litigation concerning these structures. They have caused the Issuers to have to spend millions of pounds and have taken much judicial time.

10. The various proceedings include, most recently, two main sets of proceedings. The first is an application by and in the name of the Issuers and Holdings against Mr Hussain for an order that he be committed for contempt of court. Those proceedings are listed to be heard at a five day trial early in 2022. Simmons & Simmons are the solicitors on the record for the Issuers and Holdings and they are instructing Ms Dilnot QC and Mr Riddiford.

11. The second group of recent proceedings is six further actions, including the current action, which were commenced in the Commercial Court but were transferred by an order of Cockerill J in August 2021 into the Financial List in the Chancery Division. The various parties instructing Simmons & Simmons have applied to strike them out. There is a hearing listed for January 2022.

12. I have been appointed as the docketed judge in respect of all these cases.

13. Before me today is an application by BMF Assets No. 1 Limited ("the applicant") for an injunction in the following terms:

> "The respondents (including in the case of those respondents which are corporate persons rather than natural persons, whether acting by their directors, servants, employees or agents) shall not (whether acting alone or in combination with any other individual or entity) take or purport to take or to have taken (or cause, procure or permit) any other person to hold them out as if they are taking or have taken (or cause or procure anyone else to take) any step or action whatsoever to obstruct, prevent, impede or otherwise frustrate the discharge of any of the securities issued by the fourth to seventh claimants through the release, utilisation or application of the funds

> held by the applicant on behalf of the fourth to seventh claimants or otherwise until trial or further order of this court."

14. The applicant also seeks the joinder of Ms Dilnot QC, as a party to the current proceedings "for the purposes of the injunction".

15. The basis of the injunction is this. The applicant's supporting evidence says, in summary, that the directors of the Issuers were changed at the end of March 2021 and that a few days after that, on 5 April 2021, the Issuers entered into a "trade sale" with Tilman, the ninth claimant, under which Tilman agreed to buy all of the assets of the Issuers for a total sum of some £550 million and that that sum is currently held by or to the order of the applicant. The witness statements say that the applicant wishes to utilise that sum in paying the full amount outstanding under the various series of Notes issued by the Issuers on the next interest payment date and that it wants to prevent the named directors of those Issuers from taking any steps to prevent that happening.

16. However, the injunction sought goes well beyond that. It is clear from the evidence filed on behalf of the applicant and in particular paras 73 and 74 of their first witness statement that the applicant also wishes to prevent the directors of the Issuers from causing the Issuers to spend funds on legal fees, including the fees for the contempt application against Mr Hussain and various strike out applications and related relief which they have brought in relation to the six sets of proceeding I have mentioned.

17. The expenditure by the Issuers on lawyers for these purposes is described in the evidence as a dissipation of assets. The evidence also suggests that the various proceedings to strike out the claims and to seek the committal of Mr Hussain are unreasonable, vexatious or wrongful. In my view it is plain from the nature of the injunction that is sought and the supporting evidence that at least one of its purposes is to prevent the directors of the Issuers from pursuing or defending those various sets of proceedings. That of course, if granted, would mean that the strike-out and related applications for the six sets of proceedings would not be possible and that the contempt application would halt.

18. There are many remarkable aspects to this application and to the long history which was related in my February judgment. One of the more arresting features is that this application has been brought on the basis of witness statements and a skeleton argument signed by a person calling himself "Andreou Artemiou". The Companies House register for the applicant lists Andreou Artemiou as a director. The person who attended before me introduced himself as Andreou Artemiou. It emerged during the hearing, when counsel produced a copy, that he is in fact shown in his passport as Mr Artemakis Artemiou. He then contended that he was sometimes known as "Andreou Artemiou" and/or that Andreou was his middle name (though it does not appear in his passport). This was all deeply concerning.

19. His true name is significant. His identify has been put squarely in issue in the evidence served by the respondents to this application, and he has chosen not to answer that evidence. There is also uncontroverted evidence that Mr Artemakis Artemiou met Mr Hussain in prison when Mr Hussain was in prison for contempt of court. The person who appeared before me today was given an opportunity to comment on that allegation and declined to do so. Indeed, he almost immediately invoked a right of silence and the privilege against self-incrimination. This was notwithstanding that Mr Artemiou

claims to have caused the application to have been brought, or at least was one of the people who allowed it to be brought, and he was the person who appeared in court today to present it.

20. The name "Andreou Artemiou" is, as I say, given for a director of the applicant at Companies House. It is also used for a director of Kipling Firs Limited, the eighth claimant. But nobody of that name is listed at Companies House as a director of the second to seventh claimants. Mr Artemakis Artemiou was unable, although asserting that he was a director of those companies, to provide any intelligible basis for seeking to appear for those companies. He accepts that he is not a director of Tilman Holdings Limited.

21. Notwithstanding the concerns I have about his identity I decided pragmatically to allow Mr Artemiou to address the court on behalf of the applicant and to make submissions. He is not properly appointed as a legal representative of any of the other claimants. I should also record that it was entirely apparent that he lacked even the faintest understanding of the contents of the skeleton argument served in the name of "Andreou Artemiou". He read out a prepared statement and then said he was unwilling to answer any questions about the skeleton argument and resorted to saying that he did not wish to offer any comments. It need hardly be said that that is not a proper or satisfactory way to present an application. Anyone who signs a skeleton argument must be prepared to do their best to respond to the court's queries.

22. It will be apparent from what I have already said that there is a fundamental issue as to the identity of the directors of the Issuers and Holdings. I have already mentioned briefly that it is the applicant's case that the directors of those companies were changed by events occurring on or about 30 March 2021.

23. Two entirely different versions of the basis on which that change in the directors occurred have been advanced by the applicant. Its original position was contained in a letter of 30 March 2021 signed by "Andreou Artemiou", which it was stated that a company incorporated in the Marshall Islands called Lark Holdings Limited was a Noteholder in respect of each of the Issuers and that, in that purported capacity, it had executed a written resolution which was stated to have the effect of removing the various directors of the company and transferring the entire share capital of BMF Holdings to Lark.

24. It was then alleged that Lark had passed various ordinary resolutions of BMF Holdings to remove Ms Bidel, Mr Speight and Mr Surnam as directors of that company. It was then stated that Lark and BMF Holdings had in turn passed various written ordinary resolutions of each of the Issuers to remove Ms Bidel, Mr Speight and Mr Surnam as directors of the Issuers. Notice was also purportedly given to Sanne Group Secretaries of its removal and termination as secretary of the Issuers and BMF Holdings. In the same letter "Andreou Artemiou" stated that he had been appointed as a director of the Issuers and Holdings.

25. This letter was sent to the Issuers and Holdings and their directors responded to it. They pointed out that there was no legal basis whatsoever for the various steps that had purported to have been taken. Notwithstanding this "Andreou Artemiou", and it appears various others, then took steps to change the filings for the various companies at Companies House. Their attempts to change the registers of BMF 4 to BMF 7 were

rejected by Companies House since those entities were named in the injunction I had granted in February 2021. However, Companies House did process the filings made in respect of BMF 3, BMF Holdings and Kipling Firs.

26. That then necessitated the issuing by BMF Holdings and BMF 3 of an application for relief under the Companies Act to rectify the register and on 2 July 2021 ICC Judge Jones found that the persons who had made the unauthorised filings had no right to do so, that this was unauthorised and misleading, and arguably fraudulent. There was an application to set aside that decision but that failed on 9 August 2021 before Chief ICC Judge Briggs. There has been no application for permission to appeal that order. The declarations made by the court in July included that Ms Bidel, Mr Speight and Mr Surnam were the true directors of BMF 3 and Holdings.

27. Shortly after the attempts to appoint new directors to the companies, the six sets of proceedings I have mentioned, including the present one, were issued in the Commercial Court. They were issued in May, June and July 2021. As I have already said, by an order made in August these were transferred to the Financial List in the Chancery Division.

28. On the current application "Andreou Artemiou" has signed witness statements and skeleton arguments putting forward an entirely different sequence of events. It is now alleged that on 30 March 2021 four so-called *de facto* directors were appointed as directors of Holdings and the Issuers. Those so-called *de facto* directors have been named in the evidence served on this application as a "Mr Usman Ahmad" and three Marshall Island entities called "Blue Services SA", "Cherry Services Limited" and "Corelli Capital". It is said that those three Marshall Island entities are the holders of an Ultimate Beneficial Interest in some of the Notes. It is then said that they each provided a document to each of the Issuers and Holdings whereby they undertook to "assume" the position of a director of each of the Issuers and Holdings. That was then followed by various documents signed by the same Marshall Island entities, purporting to direct Mr Speight and Ms Bidel to take various steps, including accepting the position of the self-proclaimed *de facto* directors and ceasing themselves to act in respect of the Issuers and Holdings.

29. The witness statements then say that a few days after that, on 5 April 2021, there was a trade sale by the Issuers to Tilman under which all of the assets of the Issuers were sold for a total consideration of over £550 million.

30. I have a number of very serious concerns about the way that this application has been brought before the court. I have already mentioned the serious doubts I have about the identity of the person who has presented himself to the court as "Andreou Artemiou".

31. I am also deeply concerned about the way the evidence has been presented to the court. There is a requirement under the rules of the court to state sources of information where the person making a witness statement does not have that information at first hand. This requirement is clearly set out in the rules and indeed the witness statements prepared in the name "Andreou Artemiou" purport to recognise the obligation to state sources. The evidence which is then given does not begin to meet this requirement. There is a whole series of assertions which are made about the relevant events for which no source has been given. It seems to me that much of the evidence should in the circumstances be given very little weight. This includes the evidence about the alleged trade sale. It also

includes a further assertion that shortly after the trade sale there was an assignment of all causes of action and an agreement with Tilman that the Issuers would cease the existing proceedings. There is a complete lack of any source for the information about the alleged payment of the proceeds of the trade sale to the Issuers or the first claimant.

32. The problems go beyond the failure to provide sources of information; the two versions of events that I have described are entirely inconsistent with one another. In the first version Lark was asserting that it was the beneficial owner of more than 50 per cent of the Notes issued by the Issuers. That was based on letters signed by "Andreou Artemiou". But now the documents which have recently been provided (under statements signed by "Andreou Artemiou") allege that the three Marshall Islands entities that I have mentioned themselves assert to be the beneficial owner of more than 50 per cent of the interest in the Notes. The two sets of documents relied on for these two different versions of events are dated on their face at about the same time, possibly a matter of one or two days apart. The people responsible for making the current application have not even attempted to explain this and the other glaring inconsistencies in the two stories.

33. I have other serious misgivings about the evidence. In the documents that were actually received by the companies on about 30 March 2021 (setting out the Lark version of events) "Andreou Artemiou" contended that he and various other people had been made directors of the companies. But in the documents which have now been provided to the court in support of the application it is asserted that an entirely different group of people, namely, the four *de facto* directors, became directors on the same date, namely, 30 March 2021. No explanation has been offered for this conflicting story. This is not the whole problem. I have major doubts about the authenticity of the documents that have now been put before the court. Not only are the people who are said to be directors different but the route by which they are said to have been made directors is entirely different. And there is no record of the companies receiving the letters and enclosures now being deployed on this application. There is uncontroverted evidence that they were never received.

34. I also have grave concerns that the purpose of this injunction is to interfere with proceedings which are already before the court. It seems to me that, although dressed up as an application concerning the use of the monies allegedly held by the applicant, in reality it is an attempt to prevent the directors of the Issuers from expending money on the costs of proceedings against Mr Hussain and others.

35. As to the underlying merits and whether there is a serious issue to be tried I have reached the following conclusions.

36. As to the allegation that there was a sale to Tilman, the first point to note is that there is simply no admissible evidence before the court about the sale. Mr Artemiou does not claim to be a director of Tilman and the witness statement in that name does not provide any sources of information. At paras 59 and 60 he makes statements about the sale by Tilman but he has offered no sources of information. I am not prepared to give this "evidence" any weight at all. There is no copy of any sale agreement to Tilman and the reasons given for its absence are wholly inadequate and unconvincing. If a party expects a court to accept an agreement of this remarkable kind it must come forward with documents. The appeals to confidentiality get nowhere and the suggestion that Tilman has not authorised the release of the contract is hopeless given that Tilman is a

party to these proceedings. In any event, Mr Artemiou claims to be able to make assertions on behalf of the Issuers and Holdings and (if it existed) they must have a copy of the agreement. It seems to me that the reasons given for not providing it are wholly unpersuasive.

37. The next point is that there is no evidence at all of the receipt of any sale proceedings. The Artemiou witness statement says is that there is "little merit" in providing bank or fund statements to evidence the receipt of the proceeds. It is said that this is because the relevant funds are ultimately held across more than one custodian and bank and through a descending chain of relationships. It is also said that disclosure would be commercially sensitive and might lead to the funds being frozen. This is unpersuasive verbiage. There is no justification for seeking to put evidence of this kind before the court without providing the underlying documents. There are well known mechanisms for providing information which would be confidential, but in any event there is no basis given for thinking that this information is confidential. It is part of the applicants' case that the money is there and is being held and there should be no difficulty in evidencing it.

38. The next remarkable element of the story is that the assets alleged to have been sold to Tilman are in any event subject to a deed of charge in favour of the Note Trustee. This would therefore make it difficult if not impossible for any sale to have taken place. Any buyer would have acquired the assets subject to a charge and would therefore have been obliged to pay all amounts payable to the Noteholders and to the other parties to the securitisation. That would have been in addition to the supposed sale consideration. That makes very little sense. There is no explanation at all offered as to why a party would ever buy assets of this kind subject to such a charge. There is also a covenant in the terms and conditions of the Notes prohibiting the sale of any of the assets of the Issuers without the consent of the Note Trustee. It is not suggested that has ever been obtained.

39. There is no evidence at all about Tilman. Such evidence as there is suggests that its registration has been "annulled" under the laws of the Marshall Islands. There is no evidence about the source of the funds it is said to have already paid to the Issuers, though these amount (on its story) to over half a billion pounds.

40. There is no evidence of negotiations or due diligence. Before making such a huge purchase any buyer would need to investigate the portfolio of assets being acquired. These are commercial loans and mortgages. Any buyer would need to understand the details of the loans, their terms and their performance history and prospects. Tilman does not suggest it has had any access to information about the underlying assets.

41. For all these reasons, the court cannot properly conclude that there is a serious issue that there was an agreement with Tilman or any payment by it. There is therefore no serious basis for thinking that the applicant has funds of over half a billion pounds at its disposal.

42. The second major concern about the seriousness of the issues to be tried is that it appears that the basis of the application (so far as it is comprehensible) is clause 5(d) of the terms and conditions of the Notes. This clause provides the procedure for early redemption of the Notes in certain specified circumstances. But there is no evidence that the processes or procedures set out in that clause have been followed. It provides

for an auction process; there has been no such process. Accordingly there appears to me to be no arguable legal foundation for the case now being brought.

43. A third major set of questions going to the question of whether there is a serious issue to be tried is that of standing. The only applicant able to bring this application (and indeed the only applicant which seeks to bring it) is the first claimant. The person who appeared before me today is clearly not able to bring the application on behalf of any of the other claimants and indeed in the application notice the application is said to be brought by the first claimant. But there is no evidence as to it having any standing to bring any claim in respect of clause 5(d) of the Notes. There is no evidence that it has any relevant enforceable interest against any party. It is not a Noteholder and in any case noteholders act collectively and have no right to bring individual suit.

44. The next feature of the case is that it appears to have been brought on the legally erroneous footing that the individual beneficial owners of Notes issued by the Issuers are able to assert fiduciary duties against the directors of the Issuers and Holdings. That is not seriously arguable. The way that securitisations of this kind are set up involves very careful structuring of both the corporate structures and the contractual relations between the various parties. I have already touched on the securitisation structure in this case. Essentially the Issuers are special purpose vehicles. They acquired assets (loans and mortgages) and issued debt instruments (the Notes). The debt instruments are subject to the terms of a Trust Deed and the terms and conditions of those instruments. There are carefully calibrated contractual terms setting out the rights and duties of the parties, including regarding the enforcement of those duties. There is a Deed of Security by which the assets owned by the Issuers (the loans and mortgages) have been charged to the Note Trustee. There are numerous other agreements involving administrators, loan servicers, bank custodians etc. This is all quite standard for a securitisation. The overall structure is carefully formulated to set out the various rights and obligations of the parties – indeed this is done with painstaking detail.

45. I also note that the Notes issued in this case were divided into various classes and the classes of Noteholders have rights of priority both in relation to the receipt of monies and the taking of action as between themselves. Under this structure, the Noteholders are prohibited from bring individual actions. This is stipulated in the Trust Deed and the terms and conditions of the Notes. They have to bring any claims or complaints through the Trustee; this is to avoid a litigation free for all. There are also strict conditions to identify the parties who count as "Noteholders" or "Instrumentholders" for the purposes of the securitisation structure; this is to ensure commercial certainty.

46. The documentation as a package fits together carefully and is intended to set out the parties' rights and obligations. The argument of the applicant seeks to sweep aside or ignore the details of these contractual arrangements and corporate structures and suggest instead that the defendants somehow owe direct duties to persons who claim to have beneficial interests in Notes, without actually being Instrumentholders or Noteholders. I do not think that is seriously arguable in point of law.

47. The next set of points I should touch on under the heading of serious issue to be tried concerns the status of the persons who have claimed to be directors of the Issuers and Holdings.

48. As I have said, two entirely different stories have been advanced, though said to have occurred on the same date, 30 March 2021. Even leaving aside the conspicuous tensions between the two positions and looking only at the version now advanced, it seems to me that there is no serious issue that the four persons or entities who describe themselves as *de facto* directors in fact became directors of the Issuers or Holdings.

49. The concept of a *de facto* director is one that is used in law for a person who actually acts as a director and participates at the relevant level in the governing structure of a company. It is a label used when seeking to establish the liability against such a person, notwithstanding that that person has not, strictly speaking and formally, been appointed as a director. Although some of the case law talks of persons assuming the position of a director, that is only part of a multifactorial test which requires the court to look at what has actually happened, whether that person has been allowed access to information, whether he or she has been allowed to take part in meetings or decision making in relation to the company, how that person has been presented by the company, and so forth. The aim is to determine whether in substance and reality the person is to be regarded as a director.

50. What is entirely clear is that people cannot make themselves directors of a company simply by saying that they are prepared to assume that position. It is legally nonsensical to think that a stranger to a company could – by a unilateral act of saying they are prepared to assume the position - become a director of a company. It would mean that anyone could become a director of any company simply by saying so, regardless of the constitutional, regulatory and corporate governance requirements. That is legally absurd. What it seems to me has happened here is that the four *de facto* directors, as they call themselves, are corporate cuckoos, trying to push themselves into the Issuers and Holdings and forcing out the true directors. There is no basis in law for that.

51. Moreover, as I have already mentioned, there are real doubts about whether the relevant notices were even sent to the companies at the time. The actual correspondence which was sent put the appointment of new directors on an entirely different basis (i.e. the Lark story). But at any rate I am fully satisfied that the steps taken at the end of March and thereafter have not led to the replacement of the Sanne directors as the directors of the Issuers or Holdings and I am also satisfied that the *de facto* directors, so-called, have not become directors of the companies.

52. This leads to a further reason why I do not think that there is a serious issue to be tried: there was never an effective trade sale to Tilman Holdings as that sale was only purportedly carried out by the so-called *de facto* directors and not by the Sanne directors.

53. For this series of reasons I do not think there is a serious issue to be tried. That is enough to dispose of the application. But I would not anyway have granted an injunction for further reasons.

54. First, as already explained this is a disguised attempt to try to stymie legitimate litigation in which the Issuers and Holdings are engaged, including the committal proceedings against Mr Hussain. It seems to me that in assessing the question of potential damage to the various parties of granting or refusing an injunction the court must look beyond the damage just to the named defendants to the action and should take account of the potential damage to the Issuers. as they, it seems to me, are the

parties who are in substance being affected by the proposed injunction. It seems to me that it would be very difficult to assess any damages to be suffered by those Issuers if they were not able to conduct the proceedings which I have already mentioned properly: they would be effectively prevented from taking steps in relation to the six sets of proceedings which have been brought against them or against those who act for them; and would also be prevented from pursuing the committal proceedings, one of the objects of which is to try to put an end to the various assaults apparently being made on the securitisation structure.

55. I also consider that even if there had been any basis for an injunction there is no reality to the cross-undertaking in damages which has been offered in this case. I have no evidence about the assets of the first claimant or its ability to meet any cross-undertaking in damages. It was very recently incorporated and there is no evidence about its assets or liabilities. There was a suggestion that one of the three Marshall Island entities, Corelli, which claims to be a beneficial owner of some of the Notes, would be prepared to put up fortification for the cross-undertaking. However, that company is not represented before me today and there is no explanation of how the Mr Artemiou who appeared in court could offer an undertaking on behalf of that company. The is no evidence in any case about its assets and liabilities.

56. For all of these various reasons this application is dismissed. I also consider that the application was totally without merit for all of the reasons which I have already given.

(Hearing continued)

57. I will order that the costs be paid on the indemnity basis, essentially for the reasons I have already given. It was a hopeless application and I have certified that it was totally without merit - I also explained that I had very serious concerns about the state of the evidence. It seems to me that the application falls well outside the norm for litigation of this kind and therefore it is appropriate that they be assessed on the indemnity basis. I also think that it is right that the first claimant should pay the costs of the Issuers and BMF Holdings.

(Hearing continued)

58. I turn to the application to join Ms Dilnot QC as a party to the proceedings. I will dismiss that part of the application too as it was expressed to be contingent on it being for the purposes of the injunction, which I have not granted. No other basis for joinder was advanced.

(Hearing continued)

59. I turn to an application by the parties represented by Simmons & Simmons for directions in relation to the striking out application concerning the six sets of proceedings I mentioned in the main judgment. There is a hearing listed before me in January 2022 and the applicants in those applications seek directions for the service of evidence. It seems to me important that the applications proceed in an orderly and efficient way. Various strike out applications were served a number of months ago and, despite promptings in correspondence, there has been no response to them. I am concerned so far as possible to avoid a situation where things happen at the last minute. I agree that it is appropriate to make the proposed directions. It also seems to me that

if the respondents fail to provide their evidence within the time suggested, which is 10 December 2021, they shall be required to apply for the court's permission. I also think it is appropriate to make directions for the service of skeleton arguments. So I will make those directions.

(Hearing continued)

60. I turn now to the application by the parties represented by Simmons & Simmons for certain restrictions to be placed in relation to any further applications or proceedings that may be taken in respect of a list of named defendants or respondents. The list consists essentially of the Issuers and the Holding Company, the Sanne entities and their employees and officers and the lawyers acting from time to time for the Issuers and Holdings and various other entities relating in one way or another to the securitisation structure.

61. What is sought is an order relating to applications or proceedings brought either in the names of the Issuers and Holdings or in the names of various entities or individuals whose names have appeared in the various attempts that have been made to date either to assume roles in relation to the securitisations or to take steps in relation to other unrelated securitisations which have featured in court proceedings.

62. The application is made against the quite remarkable background to this case, where a plethora of applications and proceedings and steps have been taken in relation to the securitisation vehicles in this case and in other cases. Legally absurd or unmeritorious steps have been taken to seek to assert that various entities or individuals have become in some way capable of being involved in the management of the affairs of the securitisation vehicles or otherwise have legal rights in respect of them. The application I dealt with earlier on today is but one example of this. I concluded that the application was totally without merit.

63. The applicants for this order are concerned that unless the court makes a special order various individuals or entities will continue to come forward and seek in one way or another to contend (without any proper legal foundation) that they are able to act on behalf of the Issuers or Holdings or have rights arising out of the securitisation. I am satisfied that there is ample evidence to suggest that names are being abused in this saga; names of individuals who either do not exist or who are acting as fronts or nominees for others who are not prepared raise their heads above the parapet. I am also concerned that this is leading to a multiplicity of cases which not only effect the Issuers but also uses scarce judicial resources; I have already mentioned that six sets of proceedings have recently been issued leading to ten applications which are to be heard in January, quite apart from the committal proceedings against Mr Hussain.

64. I do not think it is possible on this application to conclude that all the various entities are simply fronts or nominees for Mr Hussain. That is a matter that needs to be determined on full evidence at the trial of the committal application. But I do think that there is at least a plausible evidential basis for supposing that one or more of the entities listed in the schedule to the proposed order may not even exist or are allowing themselves to be used as nominal parties.

65. The court has a broad discretion under its inherent jurisdiction to protect itself against abusive conduct which leads to a proliferation of proceedings and a waste of judicial

resources. The inherent jurisdiction was fully described in the case of *Bhamjee v Forsdick & Ors* [2003] EWCA Civ 1113 at [11] to [15]. The Court of Appeal in that case also discussed the Strasbourg jurisprudence about Article 6 of the European Convention on Human Rights. The court concluded in relation to the inherent jurisdiction that it has power to take appropriate action whenever it sees that its functions as a court of justice are being abused and in doing so should properly take into account that dealing with cases under the overriding objective includes allotting to them an appropriate share of the resources of the court; and that this objective is thwarted and the process of the court abused if litigants bombard the court with hopeless applications.

66. As to Article 6 the court concluded that as long as the inherent power is exercised only where it is appropriate for it to be exercised no contravention of Article 6 or common law principle is involved. Any limitations which are placed on the ability of individuals to apply to the court must not restrict or reduce the access they have in such a way or to such an extent that the very essence of a right is impaired and that any restriction must pursue a legitimate aim; and there must be a reasonable relationship, or proportionality, between the means employed and the aim sought to be achieved.

67. I am satisfied that it is appropriate in the present circumstances to make an order relating to further proceedings or applications by the individuals named in the first column to the schedule to the proposed order. It seems to me that they should be required at the time of issuing any proceedings or applying in an application notice where they sign the application at the same time to file at court and serve on the respondents evidence given by way of witness statement attesting to their identity.

68. The applicants propose that before being allowed to pursue such proceedings or make such applications, such persons should first attend the court in person at a hearing to be fixed by the court once a witness statement has been duly filed and that the court should then have a short hearing at which the identity of the person would be determined to the court's satisfaction. I am not willing to take that further step or impose such a requirement for two main reasons.

69. First, it is important not to restrict the access of people to justice more than is necessary as the case law shows. It seems to me that to require a hearing to take place before an application is made is to place (on the present facts) an unnecessary and undue obstacle in the way of parties seeking access to justice. I assume for the purposes of this order that there may be genuine applications that are made by the people named in the schedule and I cannot determine on the evidence before the court that that is not a realistic possibility.

70. The second reason concerns the court's own resources. I do not think at least at this stage I should stipulate that before any application is made I should first be required to hold a hearing; that may lead to an unnecessary use of judicial time.

71. It seems to me that a better course is to require the provision of the specified information about the applicant's identity and then allow the Simmons & Simmons parties on short notice, if they consider it appropriate in the light of all of the other evidence and information available to them, to apply to the court for an order dismissing the application. It was suggested that this might be lead to problems in a case where what is sought is, for example, an urgent injunction of the kind that was in issue today. That

is something that will have to be determined on any such application but I do note that what is being provided for by this order is a threshold requirement that the person is indeed the person who they purport to be and is not concerned with any of the merits of the application, so it may be possible for there to be a short, preliminary hearing if needed. That will depend on the particular circumstances on any such application.

72. Mr Artemiou suggested that there may be problems with GDPR. I do not accept that. It is commonplace in legal proceedings for information to be required to be disclosed which would otherwise constitute data which would be covered by GDPR. Moreover, if the information is provided it should be provided under the usual protection that applies to disclosure, that it may only be used for the purposes of the proceedings, and it would be appropriate to add in some express words to that effect. It was also suggested that there may be human rights issues but the only human rights issue that has been identified is that under Article 6 which I have already addressed.

73. Therefore, with certain changes, I will make the order I have described.

Conclusions

74. I have dismissed the application for an injunction as being totally without merit. The first claimant shall pay the costs, including those of the Issuer and Holdings, on an indemnity basis. I have given directions for the strike out applications in the six sets of proceedings. I have also directed that any proceedings application by the specific named entities or individuals shall be accompanied by evidence of the claimant's or applicant's identity.

This judgment has been approved by Miles J.