Neutral Citation Number: [2022] EWHC 714 (Ch)

Case No: BL-2022-000179

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

Royal Courts of Justice
Rolls Building, 7 Rolls Buildings
Fetter Lane, London, EC4A 1NL

Date: 18 March 2022

Before:

MR JUSTICE MILES

- -

Between:

(1) BLUE SIDE SERVICES SA
(2) CHERRY SERVICES LIMITED
(3) CORELLI CAPITAL AG

Claimants

- and -

BMF HOLDINGS LIMITED

Defendant

- -
- -

The **Claimants** did not appear and were not represented
Mr Alex Riddiford (instructed by **Simmons & Simmons LLP**) for the **Defendant**

- -

APPROVED JUDGMENT

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2nd Floor, Quality House, 6-9 Quality Court, Chancery Lane, London WC2A 1HP.
Telephone No: 020 7067 2900. DX 410 LDE
Email: info@martenwalshcherer.com
Web: www.martenwalshcherer.com

MR JUSTICE MILES :

1. The Defendant applies to strike out a Part 8 claim brought by the Claimants, three Marshall Islands companies.

2. Some history is helpful. The Defendant is part of a number of securitisation structures. The securities were issued by a series of issuing companies sharing the common name, BMF ("the Issuers"). The securitisations have been the subject of some twenty-five or so sets of proceedings in the Business and Property Courts (BPC) since 2019. These cases have arisen from steps taken by a number of parties claiming to have become directors, corporate secretaries, receivers or other officers of the Issuers or Note Trustees or special servicers or some other form of service providers to the Issuers.

3. These steps have included attempting to remove as directors a Ms Bidel and a Mr Speight ("the Sanne Directors"), purporting to remove the note trustees and other parties I have mentioned, changing the registered offices of the companies and making various public announcements over the RNS system.

4. In February 2021 I heard a trial after which I granted an injunction ("the Injunction") and various declarations. The parties included a Mr Rizwan Hussain and a company called Highbury Investments Limited ("Highbury"), another Marshall Islands company. I shall come back to the terms of the order I made in February 2021 in due course.

5. Since that order further steps have been taken against or in respect of the Issuers and the Defendant, including various parties claiming to have become directors of those companies, purporting to have changed their registered offices and having purported to give instructions to banks and other parties in the securitisations. Those parties have also caused various other proceedings to have been brought in the BPC the names of the Issuers without their authority.

6. There have been a number of further legal proceedings since February 2021 as well. These include the following.

7. First, the Issuers brought committal proceedings against Mr Hussain. These proceedings led to judgments of 2 and 11 March 2022 in which I found that Mr Hussain had committed numerous breaches of the injunction and sentenced him to 24 months' imprisonment. The steps which constituted the breaches were not taken in his name but were orchestrated by him. Many of the steps were ostensibly taken by a Mr Artemiou. He has called himself "Mr Andreou Artemiou" more recently including in the present case, but earlier public records show him using the names Artemakis or Akis Artemiou.

8. Second, an application was brought by a company called BMF Assets for an interim injunction seeking to stop the Issuers spending monies, including on the committal proceedings. BMF Assets, of which Mr Artemiou is a director, claimed that the directors of the Issuers had been changed in 2021 and that the Sanne Directors were no longer able to give instructions on behalf of the Issuers.

The application was supported by evidence in the name of Mr Artemiou. Among other things he contended that the present Claimants had become directors of the Issuers in 2021 by agreeing to act as *de facto* directors. One of the present Claimants was also said to offer a cross-undertaking in damages in support of the application for an injunction and Mr Artemiou told the court that he had instructions to offer that undertaking.

9. I heard BMF Assets' application and found that there was no serious issue to be tried. I concluded that there was no realistic argument that the three Claimants had become directors of the Issuers. I dismissed the application for an injunction as totally without merit. I also made an order on the same date in the following terms:

> "7. If any further proceedings are commenced by or on behalf of any of the individuals or entities identified in the first column of the schedule hereto (titled "Claimants/Applicants") against any one or more of the individuals or entities identified in the second column of the schedule hereto (titled "Defendants/Respondents") the individual who has purported to sign the statement of truth on the claim form on behalf of the named Claimants shall at the same time as filing the claim form also file at court (and serve on each Defendant in the manner specified in paragraphs 2 and 5 above) evidence given by way of witness statement attesting to his or her identity. Where evidence of the kind specified above is not duly filed and served or is considered by a Defendant to be inadequate, that Defendant may apply with an application to be determined by Mr Justice Miles, if possible, for the proceedings to be struck out."

10. Third, as already mentioned, in 2021 various proceedings were taken in the names of the Issuers in the BPC. The Sanne Directors applied to strike out those claims on the basis that they had not been brought with proper authority and that in any case the proceedings were hopeless. That application succeeded and I made an order on 26 January 2022.

11. Fourth, the Defendant and another BMF company applied to the Insolvency & Companies Court for orders rectifying the Companies House register. That was necessary because the registered office of the companies and various other filings had been made without proper authority of the relevant companies. That application was successful and the court made an order for the rectification of the register.

12. There are various connections between the current proceedings and persons associated with Mr Hussain. The current proceedings were filed in the name of a Mr Godfrey Hicks using a digitalassetpartnerslimited.com email address. Accompanying these proceedings and filed at about the same time on CE File were various purported notices of discontinuance, filed using the andreouartemiou@businessmortgagefinance.com address. Mr Artemiou is someone with whom Mr Hussain has had substantial links in the past and Mr Hicks and Digital Asset Partners are also names which are associated with Mr Hussain. The documents for this claim were also filed using an email of a Mr Peter Morrow. His name has been used in proceedings against Mansard

Mortgages, another securitisation vehicle. The same name has also been used in an attempt to assume control of a company called Symphony Holdings, together with Mr Hussain. Mr Hicks has also been involved in the attempt to take control of Symphony Holdings. Moreover, there are a number of similarities in the format of the email sign-offs and footers in the emails under which the various documents were filed at court at the beginning of February 2022. I set out the details of these various connections in the committal judgment of 2 March 2022.

13. The present application was issued by the Defendant on 18 February 2022, supported by the first and second witness statements of Ms Hunter-Yeats.

14. The Part 8 proceedings were supported by a witness statement in the name "Rahshi Dhaliwal" and a second statement in the same name was served in response to the application.

15. The court made arrangements for this matter to be listed before me and the parties were notified of this date.

16. On 16 March 2022 an application for an adjournment was filed in the names of the Claimants. It was supported by a witness statement of Mr Artemiou. He claims in that statement to have become a director of the Claimants on 15 March 2022. The application for an adjournment was also accompanied by written submissions. The application was not served on the Defendant until 17 March 2022.

17. The application notice seeking an adjournment asked for the application to be dealt with on paper. Given its timing and the obvious interest of the Defendant in the application and the fact that the hearing had been fixed for today, I directed that it should be heard at the outset of the hearing.

18. That direction led to an email in the name of Mr Morrow saying that there would be no attendance on the part of the Claimants. I shall come back to the application for an adjournment in a moment but I shall first explain a bit more about the nature of the proceedings.

The Part 8 claim

19. The Part 8 claim form was issued on 31 January 2022. It was signed in the name "Rahshi Dhaliwal" as a "director/secretary" of each of the Claimants, although it did not say which position Rahshi Dhaliwal occupied in relation to any of the Claimants. The address given in the claim form was 1 St Katherine's Way, London, E1W 1UN. The evidence shows that that is a shared accommodation address and not a proper place for service of documents. The use of a shared accommodation address (essentially a hot-desking facility) has happened repeatedly in earlier proceedings relating to the BMF Securitisations. It is unacceptable because it is impossible for documents to be served at such addresses.

20. The claim form contains the following details of the claim:

> "1. The Claimants seek declarations that:

(a) the Claimants have, and have had at all material times, a majority and ultimate beneficial interest in the notes issued by Business Mortgage Finance 4 plc ("BMF4"), Business Mortgage Finance 5 plc ("BMF5"), Business Mortgage Finance 6 Plc ("BMF6"), and Business Mortgage Finance 7 plc ("BMF7") (each an "Issuer" and together the "Issuers");

(b) the Claimants collectively hold a majority of the total shares issued by and the voting capital in each Issuer;

(c) the Defendant holds 1 ordinary share representing a minority of the total shares issued by and the voting capital in each Issuer;

(d) the Claimants and Defendant hold on trust the voting rights attached to the ordinary shares they hold in each Issuer on trust for the benefit and protection of the holders of the ultimate beneficial interest in the notes outstanding in each respective Issuer;

(e) the Defendant is bound to follow the direction issued by the Claimants on 28 January 2022 (the "28 January Direction") seeking, inter alia: (i) the removal, without prejudice to any earlier removal or resignation, by any lawful means necessary of Coral Suzanne Bidel and Marc Speight (together the "Nominee Directors") as directors of the Issuers; and (ii) the appointment and/or ratification or confirmation, by any lawful means necessary of Usman Ahmad, Rahshi Dhaliwal and the Claimants (together the "Additional Directors") as de jure directors of the Issuers, effective from 27 January 2021, without prejudice to any earlier appointment or assumption; and

(f) the Defendant is not indemnified out of or permitted to use any of the funds, assets, interests and benefits (either directly or indirectly) of the Issuers against any liability, including any and all costs, losses, charges, and expenses, incurred by or attaching to it in connection with or relating to these proceedings.

2. The Claimants also seeks orders and injunctions that the Defendant whether by itself, its directors, servants, employees or agents or otherwise, shall not (whether acting alone, or in combination with any other individual or entity):

(a) hold itself out or act as if it is a controlling shareholder in the Issuers, or cause, procure or permit any other person to hold them out as such;

(b) take or purport to take or have taken (or cause, procure or permit any other person to hold them out as if they are taking or have taken) any step or action, whatsoever, or cause of procure any other person to take any step or action, whatsoever as a controlling shareholder in the Issuers;

(c) 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) any step or action, whatsoever, or cause or procure

any other person to take any step or action, whatsoever contrary or in opposition to the 28 January Direction; and

(d) use or cause or procure any other person to use or utilise the funds, assets, interests and benefits of the Insurers to discharge any actual or purported liability, including any and all costs, charges, losses, and expenses, incurred by or attaching to the Defendants in connection with or relating to these proceedings.

3. The Claimants also seek costs.

4. The Claimants also seek further or other orders, injunctions or enquiries or other relief as the Court considers appropriate."

21. The claim form was supported by the first statement of Rahshi Dhaliwal dated 31 January 2022. This refers at para 13 to the Claimants as "Ultimate Account Holders" (this being the Claimants' own coinage and not a term contained in the securitisation documentation):

> "The Clearing Systems facilitate trading in the Instruments, by crediting interests in the global note to account holders, or "participants" in the Clearing Systems. Each participant holds such interests on behalf of a person in the market who has ultimately acquired the beneficial interests in the global note (the "**Ultimate Account Holder**").

22. Dhaliwal 1 contains the following passages at paragraphs 19 to 37:

> "19. Since at least 1 April 2021, and at all material times thereafter, the Claimants were and are Ultimate Account Holders, and collectively:
>
> (a) held and hold a controlling (representing in aggregate, over 50% of the Principal Outstanding Amount of the Notes) ultimate beneficial (or equitable) interest in the Notes issued by the Issuers and, as such, have absolute and uncontrolled discretion and control as to the exercise or non-exercise of all the rights (including, voting rights) attaching to the Issuers held by the Instrumentholder; fixed by reference to the face value of the Notes comprising of their controlling ultimate beneficial interests; and
>
> (b) were and are accordingly contingent creditors in light of their entitlement subject to the fulfilment or satisfaction of one or more of the conditions and circumstances related to the issuance of Definitive Notes and as stipulated in Condition 13 of the Notes Terms and Conditions - to an equivalent number of Notes (and thereof to be treated as their absolute owner for all purposes).
>
> 20. Customer evidence in the standard form is provided **[RD1.2.30]**.
>
> 21. On or around 10 July 2020, the Defendant forfeited 49,998 partly paid (25% paid) shares in each Issuer to Highbury Investments Limited ("**Highbury**") for a total price of approx. £20 million.
>
> 22. Whilst it is or may be alleged by certain parties that the forfeiture is invalid, I note the following in each Issuer's articles of association "the **"Articles"**):

(a) Articles 13(B) in respect of the Issuer's first and paramount lien on all partly paid shares: "*…the title of the transferee is not affected by an irregularity in or invalidity of the proceedings connected with the sale*" **[RD1.74]**; and

(b) Articles 23(C) in respect of a disposal of forfeited shares: "*…the person to whom the share is sold, re-allotted or disposed of is not bound to see to the application of the consideration (if any). His title to the share is not affected by an irregularity in or invalidity of the proceedings connected with the forfeiture or disposal"* **[RD1.75]**.

23. The wording and construction of the Articles of each Issuer is fairly standard. The relevant wording is also replicated in the wider market and used, for example, in the model articles.

24. The Defendant retains, and has done so at all material times, 1 fully-paid share in each Issuer.

25. The Defendant holds on trust the voting rights attached to the ordinary shares it holds in each Issuer on trust for the benefit and protection of the Ultimate Account Holders of each respective Issuer.

26. On:

(a) 28 August 2020, Highbury sold 15,000, 10,000 and 7,500 shares in BMF4 to the Third, First and Second Claimant, respectively, for a price of £132 per share **[RD1.31-33]**;

(b) 04 September 2020, Highbury sold 15,000, 10,000 and 7,500 shares in BMF5 to the Third, First and Second Claimant, respectively, for a price of £83 per share **[RD1.34-36]**;

(c) 04 September 2020, Highbury sold 15,000, 10,000 and 7,500 shares in BMF6 to the Third, First and Second Claimant, respectively, for a price of £107 per share **[RD1.37-79]**; and

(d) 28 August 2020, Highbury sold 15,000, 10,000 and 7,500 shares in BMF7 to the Third, First and Second Claimant, respectively, for a price of £82 per share **[RD1.40-42]**.

27. The Claimants retain the aforementioned shares, and, as such, collectively, hold 32,500 shares (out of a total of £50,000) in each Issuer, representing 65% of the total share capital and, consequently, the majority of the voting rights as members of each Issuer.

28. The Claimants (just like the Defendant) hold on trust the voting rights attached to the ordinary shares they hold in each Issuer on trust for the benefit and protection of the Ultimate Account Holders of each respective Issuer.

<u>The Extraordinary General Meeting held on 27 January 2022</u>

29. On 19 November 2021, in their capacity as shareholders and members, the Claimants served the Board of directors of each Issuer with a notice (in accordance with the Companies Act 1985 and all statutes and subordinary

legislation made thereunder for the lime being in force concerning the Issuers and affecting the Issuers, the "**Acts**") requisitioning an extraordinary general meeting (the "**EGM**") for each Issuer to be held on 27 January 2022 between 10.00am - 11.00am (GMT) (the "**Members Notice**").

30. The purpose of the EGM's was to consider and if thought fit pass ordinary resolutions (without prejudice to any prior removal, resignation, appointment or assumption): (i) removing the Nominee Directors as directors of each Issuer with immediate effect, and (ii) ratifying, confirming, and appointing the Additional Directors as *de jure* directors of each Issuer, with immediate effect, and the approval, ratification, and confirmation, to the fullest extent possible, of all actions taken in their capacity or purported capacity thereof.

31. The Members Notice, amongst other things, reminded the Board of directors of each Issuer of their obligations and duties, under the Acts and the Articles of each Issuer, to call the EGM for each Issuer and to do so within a necessary timeframe.

32. However, no response was proffered and the EGM was not called within the necessary timeframe, in default of the Acts, as well as the Articles of each Issuer.

33. Therefore, after the failure, the Claimants called the EGM for each Issuer for the same dates and times.

34. The EGM's for each Issuer were duly convened and held on 27 January 2022 between 10.00am - 11.00am (GMT), with a necessary quorum of members present, and all resolutions were unanimously carried and passed **[RD1.63-66]**.

35. Notice of the results of the EGM were served shortly after upon the Nominee Directors **[RD1.67-69]**.

The 28 January Direction

36. On 28 January 2022, the Claimants in their capacity as controlling Ultimate Account Holders served the 28 January Direction on the Defendant **RD1.70-73]**.

37. At the time of writing, it is not clear if the Defendant has complied or is willing to comply with the 28 January Direction."

The Claimants' application to adjourn

23. The Claimants have applied to adjourn the application pending an appeal by Mr Hussain in the committal proceedings.

24. The application notice, supporting evidence and submissions rely on two main points. First, it is said that I covered some of the same matter as is raised by this application in the course of the committal proceedings and there is an appeal against that part of my ruling. Second, it is said that I should have recused myself from the committal proceedings and that, for similar reasons, I should be recused from the current proceedings. It is said that the Court of Appeal will rule on both matters and that this application should therefore await the outcome

of that appeal. I note that there is no recusal application in respect of the present case, although it has been threatened in various emails.

25. The Claimants' written submissions refer to a number of well-known authorities concerning adjournments. I need not set them out in any detail. They show that the court has a broad discretion and needs to ensure a fair hearing. An adjournment may be justified if a party or witness is unable to attend through no fault of their own or they require further time to arrange legal representation. But there is nothing of that sort here. There is no suggestion that the Claimants were unable to attend or that they needed more time or were seeking legal representation; indeed they have put in evidence in response to the Defendant's application. The Claimants have not given any good reason for their failure to attend.

26. The appeal by Mr Hussain does not to my mind justify an adjournment. The first point relied on is the overlap between the current application and some of the issues that I had to decide during the committal proceedings. In a little more detail, Mr Hussain contended that various notices of discontinuance had been signed and issued by an allegedly new board of directors which was said to have been constituted on 27 January 2022 and that the court therefore had no jurisdiction to continue with the committal proceedings. I rejected that submission and in the course of doing so I expressed my views about the legal cogency or reality of the case being advanced that the directors of the Issuers had changed. It was necessary for me to express those views because Mr Hussain had raised what he called a jurisdictional issue in relation to them so I had to rule on them.

27. However, I did not by doing so preclude the Claimants from advancing further arguments in the present proceedings or to seek to persuade the court to a different view. It seems to me that if the Defendant is right in saying that these proceedings have no arguable basis it would be wrong for them to remain on foot pending an appeal to the Court of Appeal. I will come back to this point in a moment.

28. The second reason advanced for the adjournment is that I should have recused myself and it is suggested that for similar reasons I should be recused from the current proceedings. I have already noted that there is in fact no recusal application here and the Claimants' own case is that they are distinct from Mr Hussain. Hence there is no actual application for recusal before me. In any event I rejected Mr Hussain's recusal application and I regard his appeal on that point as having no merit at all.

29. It is also important to bear in mind that fairness requires fairness for both parties. Proper notice has been given of this application. To my mind it would be unfair to the Defendant to allow this case to proceed further if it is legally hopeless. It will result in further unnecessary costs and the Defendant is entitled to certainty.

30. The court must also consider its own resources. This hearing has been in the diary for some time, the application to adjourn was made very much at the last minute, an adjournment would mean a waste of judicial resources and the need for a further hearing.

31. In all the circumstances I refuse the application to adjourn. I consider it to have been totally without merit – it was just a last gasp attempt to delay consideration of the strike out application.

32. The Claimants have not justified their non-attendance and I shall proceed in their absence.

The Defendant's strike out application

33. This was advanced on two bases. First, that the claim lacks any realistic legal basis and, secondly, that the Claimants have failed to comply with the order of 19 November 2021 set out above so that the proceedings are abusive.

34. As to the first of these bases, the Defendant relies on CPR 3.4(2). The Defendant contends that the claim is legally incoherent, ill-founded and does not advance a legally viable claim. It recognises that a court will not strike out a claim where there is a serious live issue of fact which can only be tried at trial and that the court must be clear that the case is bound to fail before it will strike out a claim. It says that this test is amply met.

35. I also mention at this point that the court has a power to strike out a claim of its own motion. I raise this because in advance of the hearing (while pre-reading) I raised with the parties the desirability of considering the case of *Mansard Mortgages 2007-2 Plc & Anor v Beyat Holdings Limited & Ors* [2021] EWHC 3355 (Ch) and also considering the terms of the trust deeds. In the past it has been suggested by various parties that for the court to raise points of this kind amounts to it entering the arena and acting improperly. That is based on a misunderstanding. The court of course must not enter the arena but it is perfectly proper for it to raise with the parties points which are potentially be relevant to the outcome. And, as noted,, the court has power in any case to strike out a claim of its own motion. It is plainly contrary to the interests of justice for a court to allow a legally incoherent or hopeless claim to continue.

36. I turn then to the substance of the application. I have set out the essential facts relied on by the Claimants. I agree with the submission of the Defendant that the case depends on three essential pillars:

    i) First, that the Claimants are Ultimate Account Holders and as such are able to direct the Defendant as the shareholder in the Issuers how it should act, including in voting in its shares in the Issuers.

    ii) Second, that on or around 10 July 2020 the Defendant forfeited 49,998 partly paid shares in each Issuer and sold them to Highbury for c. £20 million and that in August and September 2020 Highbury then sold some of those shares to the Claimants.

    iii) Third, that at extraordinary general meetings from each Issuer on 27 January 2022 resolutions were passed which terminated the appointments of Ms Bidel and Mr Speight as directors of the Issuers and replaced them with Mr Usman Ahmed, Ms Dhaliwal and each of the Claimants. (This was followed by an investor notice and direction from

> the Claimants in their capacity as "Controlling Ultimate Account Holders" to the Defendant on 28 January 2022 requiring the Defendant to remove Ms Bidel and Mr Speight from office and appoint the purported directors.)

37. I agree with the submission of the Defendant that if these points are not arguable the case should be struck out. I shall address them in turn.

38. As to the first pillar, the Defendant says there is no credible evidence that the Claimants have any interest in the Notes, and that all they have done is exhibit screenshots from an unidentified source.

39. These are in fact the same as screenshots provided in the interim injunction application which was decided in November 2021. At that time, on receipt of the screenshots, the Issuers provided them to the solicitors for the Note Trustee which confirmed the Trustee's views that they do not establish that the Claimants are Noteholders in the Notes as defined in the securitisation documentation.

40. The Defendant says, second, that the rights of Noteholders are defined and circumscribed by the securitisation documentation, including the trust deeds for each of the securitisations, and that even Noteholders do not have the right to instruct the Issuers how to act or to control the board of directors of the Issuers, nor does the Trustee of the Notes in fact have any such rights.

41. The Defendant says, thirdly, that this case is *a fortiori* because the Defendant is not even a party to the trust deed. It is no more than a shareholder in the Issuers. Again the Noteholders have no rights at all in relation to the Defendant.

42. The response in Dhaliwal 2 is that the Claimants do not contend that they are Noteholders. The Claimants' case rests rather on the assertion in paragraph 25 of Dhaliwal 1 that:

> "The Defendant holds on trust the voting rights attached to the ordinary shares it holds in each Issuer on trust for the benefit and protection of the Ultimate Account Holders of each perspective Issuer."

43. I accept the Defendant's submissions that, even assuming that the Claimants are able to establish some kind of beneficial interest in Notes issued by the Issuers, there is no legally intelligible case that they are in a position to direct the Defendant how to act as a shareholder of the Issuers or that the Defendant somehow holds its shares in the Issuer on trust for them. My reasons follow:

    i) The Claimants do not point to any express trusts as the basis of the proposition in paragraph 25 of Dhaliwal 1. So any trust must be implied or said to arise by operation of law. I do not regard this as realistically arguable. Securitisation structures of this kind are carefully calibrated, and the parties' rights and obligations are set out with great care. The Noteholders are creditors of the Issuers, they have rights under the terms and conditions set out in the Notes. The rights of the Noteholders are also subject to trust deeds which include collective action clauses.

Subject to any unusual contractual rights Issuers do not owe fiduciary duties to Noteholders and nor do the Issuers' directors (see the analysis in the *Mansard* case).

ii) However, the position is *a fortiori* as regards the shareholders in the Issuers. The shareholder does not owe any contractual obligations at all to the Noteholders or the trustees. It seems to me that there is no even arguable basis against this contractual and structural landscape to imply fiduciary or trust duties to be placed on the shareholder of the Issuers. To do so would potentially cut across or disturb the carefully constructed bundle of rights and obligations created by the contractual structure. Therefore, I consider that Noteholders do not have a right to control the affairs of a party in the position of the Defendant or to change its board.

iii) So far I have been speaking about the rights of Noteholders. The Claimants here do not even claim to be Noteholders. They claim to be Ultimate Account Holders i.e. as claiming a beneficial or contractual entitlement through Noteholders. To enable them to control the affairs of a party in the position of the Defendant would be even further removed from the carefully designed contractual structure; indeed it could potentially cut across that structure and give them rights which were inconsistent with or different to those given to the Noteholders and Trustee. Therefore, the claim that there is a trust in favour of the Claimants as Ultimate Account Holders is still less arguable.

44. For these reasons I consider that the proposition in paragraph 25 of Dhaliwal 1 is unsustainable in law and it is not necessary to express any further view on whether the Claimants have produced any credible evidence that they have any interest in the Notes at all.

45. I therefore consider that the first pillar of the Claimants' case cannot be sustained. It follows that (even assuming them arguably to be Ultimate Account Holders) the Claimants had and have no right to instruct or direct the Defendant how to vote in their position as shareholders in the Issuers.

46. I turn to the second pillar, which concerns the forfeiture and sale of the shares in each of the Issuers to Highbury in July 2020 and the alleged onward sale of some part of those shares to the Claimants in August and September 2020. This part of the Claimants' case depends on Highbury having obtained title to the shares on or about 10 July 2020.

47. The relevant steps were these. On 10 July 2020 Mr Hussain signed purported notices of forfeiture of the shares to the Defendant. Then, under cover of a letter dated 12 July 2020 to the Defendant, again sent in his own name, Mr Hussain enclosed purported registers of members and directors, unstamped stock transfer forms and purported statutory declarations regarding an alleged sale of the shares to Highbury.

48. In order to have any legal validity or effect these steps depended on Mr Hussain and others being directors of the Defendant at the relevant times.

49. In my judgment of 3 February 2021 I concluded that Mr Hussain and the others had never become directors at all, that the basis on which they pretended to have become directors were spurious, and that in legal terms they were complete strangers to the Defendant. At paragraph 158 of that judgment I said this:

> "Since the Defendants were never validly or effectively appointed as directors of the Issuers, none of the notices of unpaid members' calls, share forfeitures or the purported sale of the Issuers' shares to Highbury can have been valid or effective either. The last of these steps, the sale to Highbury, was carried out by the Defendants as purported directors. But because the purported call and forfeiture were invalid the shares remained in the ownership of BMFH. The Issuers (for whom the Defendants purported to act) had no property in the shares and therefore had nothing to sell to Highbury. Any purported sale was therefore a nullity."

50. I declared that none of the Defendants to the proceedings had ever been a director or chairman of any of the Issuers, that Highbury had never been a shareholder of any of the Issuers, that any act done by Mr Hussain or his associates in their purported capacity as directors of the Issuers was done without authority and was invalid and of no effect, that any act done by Highbury in its purported capacity of shareholder of the Issuers was done without authority and was invalid and of no effect.

51. The witness statements served in the name of Rahshi Dhaliwal in the present case make two points: first, that the Claimants were not parties to the judgment or order of February 2021 and, second, that the February 2021 decision was wrong because of Articles 13(B) and 23(C) of the Articles of Association of the Issuers.

52. The first of these points ignores the fact that it is an essential step in the Claimants' case that Highbury obtained title to the shares. If Highbury did not obtain title from the Defendant it then had no title to pass on to the Claimants. Highbury and the Defendant were of course parties to the proceedings in February 2021 and the declaration I granted followed a trial of the claims against them. There is no realistic prospect of the Claimants establishing that Highbury obtained title to the shares.

53. As to the Claimants' second point, Articles 13 and 23 provide as follows:

> "13 <u>Enforcement of Lien by Sale</u>
>
> (A) For the purpose of enforcing the lien referred to in article 12, the board may sell shares subject to the lien in such manner as it may decide provided that:
>
> (i) the due date for payment of the relevant amounts has arrived; and
>
> (ii) the board has served a written notice on the member concerned (or on any person who is entitled to the

> shares by transmission or by operation of law) stating the amounts due, demanding payment thereof and giving notice that if payment has not been made within 14 clear days after the service of the notice that the Company intends to sell the shares.
>
> (B) To give effect to a sale, the board may authorise a person to transfer the shares in the name and on behalf of the holder (or any person who is automatically entitled to the shares by transmission or by law), or to cause the transfer of each shares, to the purchaser or his nominee. The purchaser is not bound to see to the application of the purchase money and the title of transferee is not affected by an irregularity in or invalidity of the proceedings connected with the sale.
>
> 23 Disposal of Forfeited Shares
>
> (A) A forfeited share and all rights attaching to it shall become the property of the Company and may be sold, re-allotted or otherwise disposed of, either to the person who was before such forfeiture the holder thereof or to another person, on such terms and in such manner as the board may decide. The board may, if necessary, authorise a person to transfer a forfeited share to a new holder. The Company may receive the consideration (if any) for the share on its disposal and may register the transferee as the holder of the share.
>
> (B) The board may before a forfeited share has been sold, re-allotted or otherwise disposed of annul the forfeiture on such conditions as it thinks fit.
>
> (C) A statutory declaration that the declarant is a director or the secretary and that a share has been forfeited or sold to satisfy a lien of the Company on the date stated in the declaration is conclusive evidence of the facts stated in the declaration against all persons claiming to be entitled to the share. The declaration (subject if necessary to the transfer of the share) constitutes good title to the share and the person to whom the share is sold, re-allotted or disposed of is not bound to see to the application of the consideration (if any). His title to the share is not affected by an irregularity in or invalidity of the proceedings connected with the forfeiture or disposal."

54. The Claimants' argument is that the decision of February 2021 was wrong because it did not address these Articles, which give both Highbury and the Claimants title to shares on the basis that any defect in position of Mr Hussain and others as directors of the companies amounted to an irregularity or invalidity of the proceedings connected with the forfeiture or sale as the case may be.

55. The first answer to this point is a procedural one. Highbury was a party to the proceedings, as I have just said. It was bound by the judgment. It did not appeal the decision. It has sought to appeal the decision out of time but that application was refused by Newey LJ.

56. The second answer is that the Claimants' reliance on the Articles is in any case based on a misconception and is without foundation. My reasons follow:

    i) In my judgment, the Articles have no application at all to the present situation. The hypothesis is that the persons purporting to carry out forfeiture and sale of the shares were complete strangers to the Defendant and the Issuers. None of the valid organs of those companies had attempted to appoint Mr Hussain or the others as directors. There was no error or defect in the appointment process. On the contrary, they were simply interlopers. The true directors of the companies indeed immediately protested that Mr Hussain and the others had no rights or status and that they were acting unlawfully.

    ii) The purported forfeitures and sales were therefore not acts of the board of the company at all, but were taken by corporate outsiders.

    iii) Moreover, the company through its true directors did nothing to clothe the interlopers with any authority or appearance of authority.

    iv) Furthermore, these two Articles concern irregularities and invalidities in the proceedings connected with the sale and forfeiture by the directors. They do not apply where the purported forfeiture and sale were not acts of anyone having any legal status or authority for the company at all. The absence of any such authority rendered the steps taken by those corporate interlopers a complete nullity.

    v) What happened cannot naturally or reasonably be described as an irregularity or invalidity with the proceedings leading to the forfeiture or sale.

    vi) This becomes yet clearer when one reads Articles 13 and 23 as a whole. Article 13(A) makes it clear that the board may sell shares subject to the lien in such manner as it may decide, Article 13(B) refers to the board authorising a person to transfer the shares in the name and on behalf of the holder. The last sentence of 13(B) refers to a sale which has been carried out by the board. This cannot possibly apply to a case where individuals who have nothing to do with the company pretended to forfeit and sell the shares of the company.

    vii) A similar point may be made about Article 23, which again talks about the board forfeiting the shares and then disposing of them. This is clear in Articles 23(A) and (B). Article 23(C) concerns a case of a director or a secretary of the company making a statutory declaration, but that cannot sensibly apply in a case where the forfeiture and sale have been carried out by interlopers, rather than by an organ of the company.

57. For these reasons I conclude that the second pillar also fails. There is no arguable claim that the Claimants became members of the Issuers.

58. I turn to the third pillar, which concerns the steps taken at the purported extraordinary general meeting on 27 January 2022 and the investor notice and direction of 28 January 2022. These points can be taken shortly in light of my earlier conclusions. The basis on which the Claimants purported to call the extraordinary general meeting and pass resolutions was that they were members of the Issuers. For all the reasons I have already given they were not members of the Issuers and had no power to convene or vote at EGMs of the company.

59. As to reliance on the 28 January 2022 notice, I have already explained that the Claimants did not have any power or right as "Controlling Ultimate Account Holders" to direct or instruct the Defendant how to vote or exercise its rights as shareholders in the Issuers. To my mind that notice amounted to a legal nullity.

60. I also consider it to be clear that the only lawful ways for directors to be appointed to the boards of the Issuers are under Articles 70 and 71 of the Issuers' Articles of Association, that is to say either by shareholder ordinary resolutions or by the directors themselves. There is no realistic case that the directors who were purportedly directed to be appointed by 28 January notice could have been properly and lawfully appointed.

61. For all of these reasons I have come to the clear conclusion that the claim set out in the claim form as supported by Dhaliwal 1 and Dhaliwal 2 is legally unintelligible and/or hopeless and I will strike out the claim.

Non-compliance with the order of 19 November 2021 and abuse of process

62. The Claimants also say in the alternative that the claim should be struck out for want of compliance with the order of 19 November 2021. In the light of my decision on the first point it is not necessary to reach a conclusion on this but I will address it briefly. I have set out the terms of paragraph 7 of that order. That order was made under the inherent jurisdiction of the court. There were concerns in the evidence before the court in November 2021 that Mr Hussain and others had used the names of other individuals or had used the corporate vehicles in seeking secretive jurisdictions to make various claims.

63. As I have already said, there have been over twenty five sets of proceedings relating to these securitisations. They have already used and are continuing to take an inordinate amount of judicial resources as well as imposing very heavy costs on the Issuers which will ultimately fall on bond holders.

64. There are also examples of the use of the names of others in the way this case has been brought before the court; I have already mentioned Mr Morrow and Mr Hicks. The name of Mr Morrow has been used in emails to the court, but when the matter was called on before the court today nobody actually appeared in court to advance the Claimants' claim on the merits. This raises real concerns about the way the present claim has been pursued.

65. The order of 19 November 2021 was intended to seek to impose discipline on the multiple claims which have been brought in respect of these securitisations.

66. As regards these particular Claimants, their names had heavily featured in the case then being advanced. As I have already said, it was alleged that they had already become directors of the company earlier in 2021 on the basis that they had assumed the position of *de facto* directors and one of them had indeed allegedly offered a cross-undertaking in damages.

67. There were other features of the way that off-shore companies have been used during various steps taken against the Issuers. As already mentioned, Highbury is a Marshall Islands company and other Marshall Islands companies' names have appeared in this matter. The Claimants are Marshall Islands companies and the address given for them is the same Trust Complex as that given for Highbury. The Marshall Islands is a jurisdiction where it is very difficult to obtain useful corporate information about the directors and shareholders of companies.

68. Against that background the order in paragraph 7 of the 19 November order was intended as a way of allowing the court some control over the multiplicity of proceedings.

69. The Claimants took the position that they were not obliged to comply with that order because they were not parties to the proceedings. That was based on a misapprehension; the court has a power under the inherent jurisdiction to make orders against non-parties to protect its own processes. Those non-parties are bound by the order and they did not apply to set it aside.

70. In the event, despite protesting about the scope of the order, the Claimants did provide some information.

71. All that has been provided is a heavily redacted photocopy of part of a passport for someone with the surname "Dhaliwal".

72. The limited information that has been given is troubling for a number of reasons.

    i) The passport is a British passport; this is not consistent with the purported register of directors provided alongside the claim form which stated that Rahshi Dhaliwal was a Pakistani national and resident.

    ii) Dhaliwal 1 and Dhaliwal 2 give the same address for Rahshi Dhaliwal in the Marshall Islands as the various companies. This is not a residential address but is simply a location which matches a Trust Complex in the Marshall Islands.

    iii) Although the name "Dhaliwal" is not redacted in the passport, the full names have been redacted, other than a part that reads "Rash", but the name given for Rahshi Dhaliwal in the witness statements and on the face of the claim form is "Rahshi" (with an h and an i). No explanation has been given for redacting part of the full name in the passport and it

gives rise to the concern that the passport is not a match for the name of the person who has signed the claim form.

iv) The photograph in the passport has been redacted, as has the date and place of birth.

v) In other words, the information given is extremely exiguous. It really amounts to no more than a copy of the passport containing the surname "Dhaliwal" and a name similar to (but different from) that used in the claim form.

vi) The court can have no confidence that the person called "Rash… Dhaliwal" in the passport is even the Rahshi Dhaliwal who has signed the claim form.

vii) I have also noted that the address given on the claim form for the service of documents is not a proper address, it is a shared office.

73. The Defendant says that this amounts to such unusual conduct, particularly in the light of the order of 19 November 2021, as to be an abuse of process.

74. As I have already said, the Claimants did not appear at this hearing to advance their case and to my mind this also is consistent with the view I formed during the committal trial that these proceedings were an attempt to derail the committal trial. In all the circumstances I would have struck out the claim in any event as an abuse of process.

Costs

75. The Defendant seeks the costs of the proceedings, including the application, and I will order those.

76. The Defendant seeks them on the indemnity basis. It is well known that the court may order costs on the indemnity basis where the conduct of the matter are sufficiently out of the norm to justify indemnity costs. I have already concluded that the claim is hopeless and indeed is totally without merit. I have also explained why I consider that the conduct of the proceedings is so unusual as to amount to an abuse of process. The Claimants have not attended to seek to defend the claim that is brought on the merits and I also regard the application that was made at the very last minute to adjourn the hearing as having been made totally without merit. This is a case which amply justifies an award of indemnity costs.

Outcome

77. I dismiss the Part 8 claim. The Claimants shall pay the Defendant's costs on the indemnity basis. I certify that the claim itself and the application to adjourn were totally without merit.

This judgment has been approved by Miles J.