Neutral Citation Number: [2022] EWHC 796 (Ch) CLAIM NO.BR-2017-001525

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

The Rolls Building
7 Rolls Buildings
Fetter Lane, London
EC4A 1NL

Date: Monday, 4th April 2022

Before:
MR JUSTICE MELLOR

- -

IN THE MATTER OF THE EXTENDED CIVIL RESTRAINT ORDER DATED 28TH MAY 2021 MADE AGAINST MR ROBERT HURST

AND IN THE MATTER OF MR HURST'S RENEWED APPLICATION FOR PERMISSION TO MAKE A SERIES OF APPLICATIONS

Between:

MR ROBERT HURST **Applicant**

- and –

(1) MRS EVELYN GREEN **Respondents**
(2) MR DAVID GREEN
(3) MR IAN MABLIN

- -

Dealt with on the papers

- -

Approved Judgment

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

COVID-19: This judgment was handed down remotely by circulation to the parties' representatives by email. It will also be released for publication on BAILII and other websites. The date and time for hand-down is deemed to be Monday 4th April 2022 at 12 noon.

Mr Justice Mellor:

Introduction

1. On 20 December 2021 I made an Order refusing an application made by the Applicant, Mr Robert Alfred Hurst ('Mr Hurst'), for permission to make the following series of applications:

   i) To review, pursuant to s.375(1) of the Insolvency Act 1986, the decisions of Fancourt J. dated 5 February 2020 and 28 May 2021;

   ii) Annulment, pursuant to s.282(1)(a) of the Insolvency Act 1986, of the Bankruptcy Order made against the Applicant dated 15 February 2018;

   iii) Recission of the Order of Master Price dated 3 August 2016 in action HC-2016-001002;

   iv) An Order requiring the repayment of the sum of £200,497.59 paid pursuant to the Order of Master Price on 3 August and 19 December 2016, plus interest thereon

2. I made that Order in my capacity as the (or one of the) designated Judges of an Extended Civil Restraint Order made against Mr Hurst by Fancourt J. in his Order dated 28th May 2021.

3. The two judgments of Fancourt J. are important. The first, dated 5 February 2020 (the neutral citation for which is [2020] EWHC 344 (Ch)), I will refer to as 'the First Judgment' and the second, dated 28 May 2021 (the neutral citation for which is [2021] EWHC 1767 (Ch)) I will refer to as 'the Second Judgment'.

4. In my Order of 20 December 2021, I set out brief reasons for my refusal. My conclusions were:

> 6. This is yet another attempt by Mr Hurst to undo the whole sequence of judicial decisions made against him based on essentially the same arguments which have now been considered and rejected numerous times.
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> 7. I am satisfied that if I were to grant Mr Hurst the permission he seeks, the steps that he contemplates in:
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> a. Reviewing the decisions of Fancourt J. dated 5 February 2020 and 28 May 2021;
> b. Annulling the Bankruptcy Order made against the Applicant dated 15 February 2018;
> c. Rescinding the Order of Master Price dated 3 August 2016 in action HC-2016-001002, and thereby securing an Order requiring the repayment of the sum of £200,497.59 paid pursuant to the Order of Master Price on 3 August and 19 December 2016, plus interest thereon;
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> would each amount to an abuse of the process of the Court.

8. Accordingly, I must refuse the permission Mr Hurst seeks.'

5. Later that day, Mr Hurst sent a letter to my clerk in which he requested that I either reconsider my decision or grant permission to appeal from it. In that letter he set out a detailed set of points in which he alleged my reasons contained errors. By the time I came to consider his letter, I was already engaged in pre-reading for a long and complex trial so I made an Order dated 5th January 2022 which extended the time within which Mr Hurst would have to file any application for permission to appeal, pending my reconsideration and/or consideration of his application for permission to appeal. Due to the passage of time, I have taken the somewhat unusual step of setting out my reconsideration in this Judgment.

6. Some of the points raised by Mr Hurst in his letter of 20th December 2021 are trivial:

   i) He seeks to dispute the date when I first received his application for permission. He contends he emailed it to my clerk on 27th July 2021, but the email forwarded to me of that date contained copies of Mr Hurst's application for permission to appeal against the ECRO Order. Once I realised this was not something which required my permission, by my Order dated 11th October 2021 I made 'no Order' pursuant to the terms of the ECRO, whereupon Mr Hurst emailed a copy of his application for permission pursuant to the ECRO and supporting materials, which I received on 12th October 2021, as stated in my Order dated 20th December 2021. If I had received the present application on 27th July 2021, I would not have wasted time on discerning the true purpose of his application for permission to appeal. I do not intend to waste any more time on this point. I received Mr Hurst's application on 12th October 2021.

   ii) In relation to paragraph 2 of my reasons, he alleges I 'falsely stated' the date of Mr Mablin's witness statement. I acknowledge that Mr Mablin made two witness statements, the first dated 23 March 2016 and the second dated 18 June 2016. I also acknowledge that the witness statement which contains the relevant passage is dated 18 June 2016. However, both in his Skeleton Argument dated 27th July 2021 (see [38(b)] and in his Witness Statement of the same date (see [14], [26(a)] & [30(c)]), Mr Hurst referred to Mr Mablin's witness statement as dated 23 March 2016, and that was the source of my error. It was an error of no consequence at all, not least because the relevant passage from Mr Mablin's witness statement was, as I stated, quoted at [16] of the First Judgment.

7. Mr Hurst's letter gathers his more substantive points under three headings, which I consider in turn below. Before doing so, it is necessary for any reader of this judgment to understand some of the extensive history of this matter. Important parts of it are set out in the First Judgment of Fancourt J. dated 5 February 2020, when dealing with Mr Hurst's appeal from the decision of ICC Judge Prentis on 22 July 2019 to dismiss Mr Hurst's first application to annul his bankruptcy. I proceed on the basis that the whole of that judgment is incorporated here.

8. Fancourt J. continues the history at [10]-[14] of his Second Judgment when the Judge was dealing with Mr Hurst's third attempt to annul his bankruptcy. On that occasion, Mr Hurst deployed the two SRA letters (dated 24 September and 20 December 2019) which he had not previously deployed on the hearing of his appeal before Fancourt J. in February 2020.

9. So, to summarise, Mr Hurst has already tried three times to annul his bankruptcy. All three previous attempts were founded on allegations that Master Price was misled into granting summary judgment against Mr Hurst:

   i) His first attempt was based on what the First Respondent, the Applicant's sister, Mrs Green, is alleged to have to told Mr Hurst at a meeting (alleged by Mrs Green to have been without prejudice) to attempt to settle differences, held on 15 August 2018. Mr Hurst's evidence was to the effect that Mrs Green confirmed that their mother did not attend a meeting at BLP's offices at any time. This evidence was inconsistent with parts of the Respondents' evidence before Master Price, namely the passages from the witness statements of the Second and Third Respondents. ICC Judge Prentis was dealing with a preliminary issue ordered by ICC Judge Barber directed to the question of whether the factual discrepancy alleged by Mr Hurst was of such materiality as to give rise to arguable grounds for setting aside Master Price's order granting summary judgment against Mr Hurst, on an application of the principles in *Dawodu.*

   ii) ICC Judge Prentis ruled against Mr Hurst, and, as related above, his appeal against that was dismissed by Fancourt J. in the First Judgment. Mr Hurst's application for permission to appeal against Fancourt J.'s dismissal of his appeal was refused by Newey LJ as being totally without merit.

   iii) Only 5 days after Fancourt J. had dismissed Mr Hurst's appeal, Mr Hurst issued his second application to annul his bankruptcy, this time on the basis that the Respondents (as petitioning creditors) had been in contempt of court and could not present a petition to the Bankruptcy Court. This application was dismissed by ICC Judge Jones on the basis that he did not have jurisdiction to consider the particular allegations of contempt advanced. This led Mr Hurst to issue a contempt application against the Respondents on the basis of what he alleged was their false evidence in their witness statements before Master Price. On 21st April 2020, Zacaroli J. refused permission to bring those contempt proceedings, holding the application was an abuse of process as it was made for a personal collateral reason, not in the public interest, namely to provide ammunition with which Mr Hurst could make a further application to seek to annul his bankruptcy. As Fancourt J. recorded at [12] of his second judgment: (1) before Zacaroli J. the two SRA letters formed the primary basis of the case advanced by Mr Hurst that there had been misleading, dishonest evidence put before Master Price by the Respondents and (2) Zacaroli J. made a finding of fact as to the significance and potential relevance of the letters written by the SRA, namely that those letters provided no support at all for the allegation that the evidence before Master Price was false.

   iv) Mr Hurst's application for permission to appeal the Order made by Zacaroli J. was refused as being totally without merit. Four weeks later, Mr Hurst issued an application for pre-action disclosure against BLP, seeking to uncover the information that was given to Mr Whitehead which led him to write his letter of 16 September 2014. BLP responded by asserting that the communications in question were privileged. Mr Hurst withdrew his application by consent, but he explained to Fancourt J. that he had reached the conclusion there were no documents and therefore there was no point in pursuing the application.

v) Some five days after the withdrawal, Mr Hurst issued his third attempt to annul his bankruptcy, again on the ground that Master Price was deceived by the untruthful evidence of the Respondents and the untruthfulness of Mr Whitehead's letter. This was dealt with by Fancourt J. in his second judgment, to which I have already referred. Having considered all of Mr Hurst's various arguments, Fancourt J. concluded as follows:

> "25. There is accordingly, in my judgment, nothing new at all on the basis of which Mr Hurst can today apply for a third time seeking to annul his bankruptcy. The material relied upon is exactly the same as it was in previous applications, namely the inaccuracy of the Whitehead letter of September 2014, what Mrs Green told Mr Hurst about the involvement of BLP in August 2018, the two SRA letters (for what they are worth), inferences of a highly speculative nature Mr Hurst seeks to draw from all that material, and the conduct of the respondents and their solicitors in opposing his applications. This third application to annul the bankruptcy is therefore the clearest possible abuse of process seeking to re-litigate issues that have already been determined. There is no new material of any cogency or materiality and Mr Hurst's case seeks to advance arguments that have previously been rejected as being totally without merit and involve a collateral attack on previous decisions of judges of this court. Even if it were not an abuse of process falling to be dismissed on that basis, the merits of the application are, in my judgment, very weak, for the reasons previously given in previous judgments, and they do not nearly amount to a credible case of fraud or collusion. There is no evidence of fraudulent misleading of the court or collusion, or objectively any serious miscarriage of the proceedings, which would be necessary before Mr Hurst could seek to go behind the judgment debt on which the bankruptcy petition was presented.
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> 26. I entirely accept that Mr Hurst honestly and genuinely believes that there has been such a miscarriage, but I fear that he is not able to be objective about it and can only see a conspiracy involving his brother-in-law and sister, and possibly others. I gave detailed reasons in my judgment of 5 February 2020 why these were not transactions that were tainted by undue influence. I refer, if necessary, to paragraphs 58-63 of my judgment. It is not necessary to rehearse them again in this judgment.
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> 27. For the reasons that I have given therefore, principally because the application is an abuse of process, I dismiss it and record that the application was totally without merit."

10. On the same day as he delivered the Second Judgment, Fancourt J. also made the ECRO against Mr Hurst.

The basis of this application

11. Mr Hurst brings this application on the basis of his account of a telephone call he had with the Second Respondent on the afternoon of Friday 9th July 2021. In his witness

statement dated 12 July 2021, Mr Hurst described the conversation in the following terms (in which HH is the mother of Mr Hurst and Mrs Green):

> "27. I have for the past few months been endeavouring to speak to my sister (Mrs Green) with a view to restoring our relationship.
>
> 28. When I called her mobile phone on Friday afternoon, 9 July 2021, it was answered by Mr Green. When I requested Mr Green to pass the phone on to Mrs Green, he refused to do so.
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> 29. Mr Green proceeded to making various emotive remarks, and shouted at me in the manner to which HH and I had become accustomed. See paragraphs 16, 19, 23, 30 – 35, 40, 47 – 52 of my Witness Statement dated 21 April 2016 [110 – 115].
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> 30. In the course of our discussion, Mr Green informed me that:-
>
> a) HH had never travelled to BLP's offices.
>
> b) HH only attended two meetings with BLP (i.e. on 7 and 8 July 2003).
>
> c) He was unable to recall whether Mr Mablin attended the meeting on 7 July 2003 (as averred in paragraph 6 of Mr Mablin's Witness Statement dated 23 March 2016 [40], in paragraph 6 of that dated 18 June 2016 [122], and in paragraph 12 of that of Mr Green dated 18 June 2016 [126].
>
> d) Even if Mr Mablin did not attend the meeting with HH on 7 July 2003, he was certainly aware of the proposed arrangements.
>
> 31. Mr Green attempted to justify Mr Whitehead's representation as to HH's attendance at a "number of meetings" on the basis that she did attend two meetings (i.e. those on 7 and 8 July 2003)."

12. One curiosity is that in Mr Hurst's skeleton argument of the same date as his witness statement, he summarises what Mr Green told him as follows:

> "9. On 09/07/2021, Mr Green informed me that:-
>
> a) There was definitely no meeting at BLP's offices on 07/07/2003.
>
> b) He was unable to recall whether Mr Mablin attended whatever meeting might have taken place on 07/07/2003. [That inability to recall on the part of Mr Green should be compared to his averment in paragraph 12 of his Witness Statement dated 18/06/2016 [126] to the effect that Mr Mablin definitely attended the meeting on 07/07/2003.]

> c) HH definitely attended no meetings with BLP prior to 07/07/2003. [That admission perhaps explains the absence of documents substantiating BLP's assurance dated 16/09/2014 as to "a number of meetings" apparently attended by HH [29] and its subsequent representation to the Solicitors Regulation Authority (SRA) that that assurance was based on "instructions from its client" [208]]."

13. Mr Hurst exhibited an email timed at 19.04 on 9th July 2021 headed 'OUR TELEPHONE CONVERSATION THIS AFTERNOON' and I quote the key passages here:

> 'Although you raised many irrelevant matters, the only point of relevance is the number and location of the many meetings which, according to Paul Whitehead's letter dated 16 September 2014, had been attended by my mother with BLP prior to her execution of the trust documents on 8 July 2003.
>
> You told me that my mother had only attended two meetings with BLP, both at her house. You were unable to recall whether the first meeting (i.e. that at 4.30 p.m. on Monday 7 July 2003) was also attended by Ian Mablin. There was definitely no meeting at BLP's offices, as is alleged by Ian Mablin in paragraph 6 of his Witness Statement dated 18 June 2016.
>
> The representations contained in Ian Mablin's Witness Statement dated 18 June 2016 and in Paul Whitehead's letter dated 16 September 2014 were therefore false.'

14. On 12 July 2021, Mr Hurst sent a draft of his witness statement to the solicitors for the Respondents and invited them to respond within 7 days. They did so, contending (after quoting from the first Judgment of Fancourt J.) that his intended application was totally without merit for three reasons, the first of which was that the accuracy of his summary of the call with Mr Green, as set out in [30] was 'not admitted'. Mr Hurst draws attention to that, and to the fact that Mr Green has not made or filed any witness statement responding to his account of the telephone call.

The principles on which I proceed

15. In his Skeleton Argument in support of this application, Mr Hurst submitted (1) that when deciding to whether to grant permission, I should be guided by the principles enunciated by Etherton J (as he then was) in *Dawodu*; but also (2) that I should not endeavour to decide whether his mother was in fact subject to undue influence; and (3) that I should determine whether 'if there had been a properly conducted judicial process', Master Price would have granted summary judgment or ordered a trial.

16. The relevant test from the *Dawodu* case was stated by Etherton J. as follows:

> "My only qualification to the summary by Warner J is that the case law has established that what is required before the court is prepared to investigate a judgment debt in the absence of an outstanding appeal, or an application to set it aside, is some

> fraud, collusion or miscarriage. The latter phrase is, of course, capable of wide application, according to the particular circumstances of the case. What, in my judgment, is required is that the court be shown something from which it can conclude that had there been a properly conducted judicial process, it would have been found, or very likely would have been found, that nothing was, in fact, due to the Claimant. It is clear that in those circumstances, the court can enquire into the judgment and the judgment debt, even though the debtor himself has previously applied to have the judgment set aside, and even though that application has been refused and that refusal has been affirmed by the Court of Appeal – see in *Re Fraser, ex-parte Central Bank of London)* [1892] 2 Q.B. 633."

17. In addition to citing that passage from *Dawodu*, in his judgment in this case ICC Judge Prentis also referred to the case of *Royal Bank of Scotland v Highland Financial Partners LP* [2013] EWCA Civ 328, which sets out the high test that applies to similar effect, where a judgment is sought to be set aside on the basis that it was secured by fraud. The relevant part of the judgment of the Court of Appeal is as follows:

> "First, there has to be a "conscious and deliberate dishonesty" in relation to the relevant evidence given, or action taken, statement made, or matter concealed, which is relevant to the judgment now sought to be impugned. Secondly, the relevant evidence, action, statement or concealment performed with conscious and deliberate dishonesty must be "material". "Material" means that the fresh evidence that is adduced after the first judgment has been given is such that it demonstrates that the previous relevant evidence, action, statement or concealment was an operative cause of the court's decision to give judgment in the way that it did. Put another way, it has to be shown that the fresh evidence would have entirely changed the way in which the first court approached and came to its decision. Thus, the relevant conscious and deliberate dishonesty must be causative of the impugned judgment being obtained in the terms that it was. Thirdly, the question of materiality of the fresh evidence is to be assessed by reference to its impact on the evidence supporting the original decision, not by reference to its impact on what decision might be made if the claim were to be retried on honest evidence."

Decision

18. Applying *Dawodu*, the question is (as Fancourt J. formulated it at [25] of his first judgment) whether it is realistically arguable that the different factual account relied on would have caused or would very likely have caused Master Price to reach the opposite conclusion, namely that undue influence was proved and no debt was due.

19. I propose also to consider an alternative test which is easier for the Applicant to satisfy, namely whether the different factual account relied on would have caused or would

very likely have caused Master Price to refuse summary judgment and to have sent Mr Hurst's claim of undue influence to a trial.

20. In approaching the tests I have set out, I am struck by certain facts to which Fancourt J. referred in his First Judgment as being taken into account by ICC Judge Prentis namely that before Mrs Hurst entered into the scheme:

i) Mr Hurst knew and was involved in open discussion about the proposed scheme;

ii) Mr Hurst was invited to become be a trustee and attend a meeting with BLP;

iii) Mr Mablin (who was Mrs Hurst's accountant) was involved in assisting her and her children to set up the scheme;

iv) Mr Hurst gave his mother advice not to enter into the scheme.

21. Fancourt J. also relied on those facts in [59]-[61] of his first Judgment, and they naturally form part of his conclusions in that judgment:

> 59. There is no dispute that the basis of the scheme and the involvement of BLP was being talked about openly and that the Appellant was invited to attend a meeting and become a trustee, but declined to do so. The purpose of the scheme was to benefit family members generally by avoiding a tax liability on the death of Mrs Hurst. Mrs Hurst would be protected by having a life interest in the property. That is the kind of tax planning that routinely takes place between family members. There is no dispute that a meeting with a lawyer at BLP took place on 7 July 2003, at which Mrs Hurst's accountant, Mr Mablin, was present. A letter of advice to Mrs Hurst was prepared by BLP that day, but there is no evidence one way or the other whether Mrs Hurst received it the next day, or at all. The solicitor from BLP attended a meeting with Mrs Hurst the next day, at which the Greens were present. The scheme documents were signed later that day by Mr Mablin.
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> 60. This was not a case of presumed undue influence, where independent legal advice was required to rebut the presumption. The onus of proof was on the Appellant to prove that undue influence in some form was actually used, or must have been used, to cause Mrs Hurst to execute the scheme documents. Availability of legal advice may be a relevant factor among others, but there is no requirement for independent legal advice, or any legal advice.
>
> 61. The Judge's conclusion was that the Appellant's gloss on the evidence, as he called it, was incorrect. He held that the totality of the evidence established that: there were discussions about the scheme; there was legal advice; there was a meeting with the lawyer and accountancy advice for Mrs Hurst specifically; and there was evidence of a particular motive for Mrs Hurst to enter

> into the scheme. Although the final conclusion in the judgment is perhaps not as clearly expressed as it might be, the Judge reaches the conclusion that there is no evidence or inference of any actual undue influence and, therefore, no arguable case.
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> 62. I cannot find any fault in the Judge's evaluation of the evidence. The Appellant contends that the circumstances of a solicitor attending on an elderly lady at her home without a prior meeting, with documents to be signed, in the presence of beneficiaries of the transaction, is itself undue influence. It may well be in a particular case, but not on the facts of this case, as they were summarised by the Judge. This was a family tax-planning transaction, of the kind that many families enter into in order to try to mitigate tax liability, even if the particular scheme in this case was more complex and at greater risk of being struck down. Its advantage for Mrs Hurst, compared with a potentially exempt transfer, was that Mrs Hurst retained a life interest in her property. To echo the words of Lord Nicholls in the *Etridge (No 2)* case, the transaction could readily be accounted for by the ordinary motives of ordinary persons in the relationship of parent and child and so was not such as to excite the protective interests of equity.
>
> 63. There is no evidence that Mrs Hurst was unfairly coerced, or misled, or taken advantage of by the Respondents, or that any other kind of undue influence was used on her, and the Judge's conclusion is sound. I must, therefore, dismiss the appeal for the reasons that I have given.'

22. I also take into account and address specifically the three topics which are the subject of Mr Hurst's invitation to me to reconsider, namely 1) the '*Alleged Meeting at BLP on 07/07/2003'*; 2) *BLP's letter dated 16/09/2004* and 3) *'Previous Judicial Decisions'.*

23. On the first topic, Mr Hurst's key submission is that, as a consequence of what Mr Green said on 9th July 2021, as to the attendance or otherwise of Mr Mablin at the meeting on 7 July 2003, there is now 'a dispute' and that therefore, paragraph [59] in the first judgment of Fancourt J. 'must therefore be reviewed'.

24. On the second topic, Mr Hurst's arguments appear to me to be based on his misunderstanding of the First Judgment. Mr Hurst alleges that paragraph 4 of the reasons given in my Order dated 20th December was 'factually incorrect' because 'Paragraph 45 of Fancourt J.'s first Judgment did not address the letter dated 16 September 2014'. However, when giving his First Judgment, Fancourt J. clearly had BLP's letter dated 16 September 2014. He plainly considered it because, in paragraph 46 of his judgment he said 'to the extent it is inconsistent with the Appellant's new evidence, it falls to be disregarded.' So Fancourt J. was dealing with the matter before him on the basis of the Appellant's evidence and disregarding the letter to the extent that it was inconsistent.

25. Mr Hurst also makes a series of submissions (incorporating expressly a number of paragraphs from his Skeleton Argument dated 27th July 2021), but in essence what he

submits is that if what Mr Green told him on 9th July 2021 is correct then he alleges (and I quote here Paragraphs 40(a) to (d) in his Skeleton Argument dated 27th July 2021):

a) 'Mr and Mrs Green met Ms Tolhurst on 07/07/2003 in order to supply the names and addresses to be inserted into the boilerplate drafts which were already on BLP's computer;

b) Ms Tolhurst and Mr and Mrs Green came to the late Mrs Hurst's house on 08/07/2003 in order to enable execution of the documents which had been engrossed overnight pursuant to the instructions given by Mr and Mrs Green on the 7th;

c) The late Mrs Hurst received no legal or accountancy advice prior to execution of the documents;

d) The late Mrs Hurst simply executed the documents on the dotted line in accordance with the practice adopted by Mr Green since my father's death in 1985.'

26. At this point in his Skeleton Argument dated 27 July 2021, Mr Hurst refers to paragraphs 4(a) to (p) of his Skeleton dated 22nd March 2021. This set of sub-paragraphs read as follows:

"4. RELEVANT HISTORY

a) Since the death of my father (John Hurst) on 06/07/1985, Mr Green insisted on assuming total control over the late Mrs Hurst's affairs. See paras 13 – 54 of my W/S dated 21/04/2016 [110 – 115] and paras 2 – 3 of my letter to Mr Green dated 03/09/2014 [25].

b) As part of that control, Mr Green required Mrs Hurst to commit perjury in an Inland Revenue Affidavit. See para 18 of my W/S dated 21/04/2016 [110].

c) Mr and Mrs Green had frequent and ferocious arguments with Mrs Hurst and myself.

d) According to the evidence, Mr and Mrs Green (and possibly Mr Mablin) met Ms Tolhurst of BLP on 07/07/2003. See para 6 of I Mablin's W/S dated 18/06/2016 [122] and para 12 of that of Mr Green of the same date [126].

e) They instructed her at that meeting to engross the documents in suit. See manuscript note headed "4.30 Monday 7th". [102]

f) There is no evidence of any substantive advice having been given at that meeting. See para 18 of my W/S dated 30/09/2020 [11].

g) There is a conflict of evidence as to the location of the meeting and as to whether it was attended by Mrs Green. See paras 19 – 24 of my W/S dated 30/09/2020 [11 – 12].

h) According to what Mrs Green told me on 15/08/2018, that meeting was not attended by Mrs Hurst. See paras 18 – 25 of my W/S dated 21/05/2019 [162 – 164] and paras 25 and 52-53 of that dated 30/09/2020 [12 and 16].

i) No witness statement has since 21/05/2019 been signed by any of the Respondents or Ms Tolhurst evidencing the alleged attendance of Mrs Hurst at that meeting on 07/07/2003.

j) On 08/07/2003, Mr and Mrs Green and Ms Tolhurst appeared at my mother's house, and requested her to execute the documents in suit. [49 – 101]

k) In para 31 of his Judgment dated 22/07/2019, ICC Judge Prentis expressed the view that it "seems inherently implausible and is inconsistent with the evidence that I have already identified to think that a solicitor would simply turn up and request execution without more of these documents." [181]

l) In para 42 of his Judgment dated 05/02/2020, Fancourt J referred to the "improbability that a solicitor from a well-respected City firm would act in that way." [196]

m) Although I share the surprise expressed by ICC Judge Prentis and Fancourt J to the effect that a Solicitor would simply turn up at the door of a vulnerable 81-year old lady and request her to sign a series of complicated documents on the dotted line, that is, according to the evidence now in the Court's possession, what probably happened.

n) It is consistent with the habitual practice of Mr Green in requesting Mrs Hurst to sign documents on the dotted line. See paras 13 – 19 of my W/S dated 21/04/2016. [110]

o) It should be noted that Ms Tolhurst (whose surname is now Dunlop) was in 2003 a relatively junior solicitor who left BLP in approximately 2005. Although the SRA website indicated in 2019 that she was employed by a Kent firm, she does not now appear to be in practice.

p) Master Price, ICC Judge Prentis and Fancourt J were all acting on the basis of an unqualified assurance from a Partner of a well-respected City firm to the effect that Mrs Hurst had been "present at a number of meetings" with BLP prior to 08/07/2003. They did not question the veracity of that assurance. See para 4(3) of Counsel's Skeleton dated 28/07/2016. [133]"'

27. In his third topic, Mr Hurst seeks to dismiss the significance of all the previous judgments in which his allegations have been considered. He attempts to do so by highlighting three points which he says were admitted by Mr Green during the telephone conversation on 9 July 2021 namely:

i) The late Mrs Hurst attended no meetings with BLP prior to 7 July 2003.

ii) There was no meeting at BLP's offices on 7 July 2003.

iii) Whether or not Mr Mablin attended the alleged meeting on 7 July 2003 was uncertain.

28. Mr Hurst's point is that Mr Green has not made any witness statement disputing Mr Hurst's version of that conversation.

29. Having explained each of the three topics which Mr Hurst seeks to raise in his letter of 20 December 2021, I now draw my conclusions on those topics, individually and collectively.

30. On the first topic, in my view, there is no requirement for a review of [59] to take place. The principal reason is that the content of the conversation on 9th July 2021 does not provide any foundation for getting an argument of undue influence on its feet. Nor does it establish any deceit.

31. Having considered all of Mr Hurst's very detailed points, I can take this second and third topics together. Despite the tortuous detail which Mr Hurst seeks to invoke, there is nothing in his allegations to persuade me that Master Price would have reached any different conclusion. Furthermore, it seems to me that the latest allegations are just a very slight variation on what other Judges have considered before, at various levels. The allegation that Mrs Hurst did not attend a meeting at BLP's offices at any time was considered in his first attempt to annul his bankruptcy.

32. Overall, however, Mr Hurst seeks to advance a case that an associate solicitor from BLP turned up unannounced at Mrs Hurst's door on 8th July 2003 with Mr and Mrs Green and requested her to sign a series of complicated documents, without Mr Mablin having advised her. This basic case seems to me (a) to be one which has been considered before, numerous times and at various levels: at the very least, it was expressly considered by Fancourt J. in his First Judgment; (b) it is a case which is, in my view, completely inconsistent with the facts I identified in paragraph 20 above, which bear repetition at this point:

i) Mr Hurst knew and was involved in open discussion about the proposed scheme;

ii) Mr Hurst was invited to become be a trustee and attend a meeting with BLP;

iii) Mr Mablin (who was Mrs Hurst's accountant) was involved in assisting her and her children to set up the scheme;

iv) Mr Hurst gave his mother advice not to enter into the scheme.

33. Furthermore, (c) it seems clear that Mr Mablin, as the long-standing accountant to Mrs Hurst (and her husband before he died), was involved throughout. It does not seem credible that the first he knew of the scheme was when he signed off the documents later on the 8th July 2003, which is what Mr Hurst's basic case seems to entail.

34. Bearing in mind the long campaign which Mr Hurst has waged against Mr and Mrs Green, it is not entirely surprising that Mr Green would not want to spend yet more money making a witness statement about that conversation. However, the three points which Mr Hurst highlights namely:

i) The late Mrs Hurst attended no meetings with BLP prior to 7 July 2003.

ii) There was no meeting at BLP's offices on 7 July 2003.

iii) Whether or not Mr Mablin attended the alleged meeting on 7 July 2003 was uncertain;

do not begin, in the circumstances, to get an arguable case of undue influence off the ground. Furthermore, the discrepancies between the witness statements considered by Master Price and the latest set of allegations put forward by Mr Hurst based on his telephone call with Mr Green do not, in my view, taint Master Price's judgment with deceit, for the reasons I have explained concerning Mr Hurst's basic case.

35. It can be seen therefore, that there is essentially nothing new in Mr Hurst's latest application. It rests on the same regurgitated points, from which Mr Hurst seeks to draw what Fancourt J. characterised (correctly in my view) 'inferences of a highly speculative nature'.

36. Therefore, I remain of the view which I expressed in my Order dated 20th December 2021 (see paragraph 4 above). Accordingly I refuse the permission which Mr Hurst seeks, to apply for a fourth time seeking to annul his bankruptcy. In my view, this application was totally without merit.

37. Finally, in the alternative to his application for reconsideration, Mr Hurst sought permission to appeal, which I refuse.

38. A review of the original judgment of Master Price reveals a very long-running and bitter dispute between Mr Hurst and Mr and Mrs Green. It also reveals that Mr Hurst was ready, even at that point, to engage in unsupported surmise to try to establish a case of undue influence being exerted over his late mother. As Fancourt J. observed at [26] of his Second Judgment, Mr Hurst is unable to be objective and can only see a conspiracy involving his brother-in-law and sister and others. His obsession has consumed more than his fair share of judicial resources already.

Postcript

39. After I had written all but the last three paragraphs of the above, on 1st April 2022 Mr Hurst sent me two further documents:

i) The first comprised a scan of two pages of a 'Client Accounts Detail' for the Trustees of the Hanna Hurst Life Interest Trust. Mr Hurst tells me the two pages are taken from the Client Account ledger of BLP. He draws attention to a particular transfer of £200,000 to Mrs Green in about June 2016 'to hold as Nominee for the Trustees'. He asserts the sum was in fact transferred to Greenbrook Industries Limited, a company controlled by Mr Green and his brother. He says he cannot find any evidence in the Greenbrook accounts of the alleged 'Nomineeship'. This changes nothing, apart from confirming Mr Hurst's obsession and lack of objectivity.

ii) The second was a copy of the Order made by Newey LJ which was stamped on 31st March 2022, refusing Mr Hurst permission to appeal against the Order made

by Fancourt J. for the reasons he set out in the Second Judgment. Although I did not take any of the reasons set out by Newey LJ into account in reaching my decision above, I am comforted by his conclusion that various points relied upon by Mr Hurst show an *absence* of evidence of impropriety in connection with either the hearing before Master Price or the execution of the trust in 2003. The same conclusion applies to the points raised in Mr Hurst's latest application, for the reasons I explained above.

40. Since I have refused Mr Hurst permission to appeal, he has a period of 21 days from the date of this judgment to file any application for permission to appeal with the Court of Appeal.