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Royal Courts of Justice,

Rolls Building, Fetter Lane,
London EC4A 1NL
Date: 2 March 2023

CLAIM NO. PT-2021-000746

IN THE HIGH COURT OF JUSTICE

IN THE BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES

PROPERTY TRUSTS AND PROBATE LIST (ChD)

BEFORE MR PETER KNOX K.C.

B E T W E E N

(1) KEHINDE AOTUNDE ODUKOYA
(2) MS OLUFEMI ABIOLA POPOOLA

Claimants

AND

TOPAZ FINANCE LIMITED T/A/MALANITE MORTGAGES

Defendant

Mr James Tipler for the Defendant, instructed by TLT LLP

The Claimants did not appear and were not represented

Hearing date: 23 February 2023

Approved Judgment

This judgment was handed down remotely by circulation to the Claimants and to the Defendant's representatives by email and by release to the National Archive for publication. The date and time for hand down is deemed to be 10.30 am on 2 March 2023.

1. On 23 February 2023, I made an extended civil restraint order against the First Claimant, Mr Kehinde Odukoya. I also granted a retrospective extension of time for the making of the application for that order. This judgment contains my reasons for doing so.

The background

2. Mr Odukoya has at all material times been the owner of a long lease of flat 3, 57 Christchurch Hill, London NW3 1JJ. As I understand it, until recently it was his home where he lived with his family. The Second Claimant, Ms Olufemi Abiola Popoola is, as I understand it, his wife.

3. The facts I set out below are taken from the second witness statement of Jordan Elliott Smithers, for the Defendant ("Topaz Finance") made on 9 February 2023, which have not been materially contradicted by any evidence given by Mr Odukoya.

The County Court proceedings

4. On 28 March 2007, Mr Odukoya granted a legal charge over the flat to Beacon Homeloans International ("Beacon"). He fell into arrears, and by order in the Central London County Court on 22 August 2012, District Judge Silverman granted Beacon possession of the property, suspended as long as Mr Odukoya paid the continuing mortgage instalments, and in addition paid off the arrears, which by then were £3,665, at £125 a month.

5. Unfortunately, Mr Odukoya breached the terms of the suspended order, and so on 18 January 2018 Beacon requested from the County Court a warrant of possession. This prompted Mr Odukoya, supported by an organisation called "Mortgages Five Zero" (MFZ"), to apply to set aside the order, but his application was dismissed by His Honour Judge Luba Q.C. on 14 June 2018 upon his indicating to the court that he did not wish to proceed with it. By the same order, Topaz Finance was substituted for Beacon as claimant to the County Court claim, as in the meantime it had taken an assignment of the legal charge on 11 May 2018.

6. On 16 July 2018, District Judge Brooks gave Topaz Finance permission to enforce the suspended order (permission was needed as more than six years had passed since the making of it), but for the next two and a half years thereafter Mr Odukoya managed to frustrate enforcement in the County Court by a series of applications to that court, all of which were dismissed. Thus:
   (1) On 25 September 2018, he applied for permission to appeal against the making of the original suspended order, on the basis that the legal charge was void by reason of s.2(3) of the Law of Property Reform (Miscellaneous Provisions) Act 1989 ("the

1989 Act"), because it had not been countersigned by Beacon. The argument, as I understand it, was that the legal charge, although expressed to be by way of deed, was a *"contract for the sale or other disposition of an interest in land"* within s.2(1) of the Act, and that s.2(3) required it to be *"signed by or on behalf of each party to the contract"*. As it was not so signed, it was therefore void, and liable to be set aside. However, on 16 October 2018, His Honour Judge Saggerson dismissed the application on paper on the basis that it was out of time, and there were no grounds of appeal capable of suggesting that there was any error of law in the making of the suspended order.

(2) On 28 January 2019, Mr Odukoya applied to stay execution of the suspended order, on the basis that he and MFZ had sought an oral hearing of the application for permission to appeal after it had been dismissed on paper. But at the oral hearing on 17 May 2019, His Honour Judge Bailey dismissed the application. A new warrant for possession was therefore granted.

(3) On 18 November 2019, Mr Odukoya and MFZ sought a stay of the new warrant, again on the basis that the legal charge was void for non-compliance with s.2(3) of the 1989 Act. This application was dismissed by District Judge Avent on 25 November 2019, but the proposed eviction date had to be re-scheduled. In dismissing it, the District Judge noted on the order that the *"The Court considers the application to be totally without merit".*

(4) By now, I note, in a judgment handed down on 30 September 2019 in the Property Chamber, Registration Division, First-Tier Tribunal, Judge Michell had struck out a challenge by Mr Odukoya, and by nine other similarly placed chargors to other banks, to the validity of charges which had been made by legal deed that had not been countersigned by the lender. Judge Michell held, relying on the Court of Appeal's judgments in *Eagle Star Insurance Company Ltd. v. Green* [2001] EWCA Civ 1398 and *Helden v. Strathmore Ltd* [2011] EWCA Civ 542, that the argument had no reasonable prospect of success, because s.2 of the 1989 Act is concerned with "contracts" for the dispositions of an interest in land, not with deeds such as a legal charge which of itself effects a transfer of such an interest and is covered by s.1 of the Act.

(5) Mr Odukoya persisted, and two days later, on 27 November 2019, he made a further application to set aside the suspended order, which District Judge Avent dismissed on 10 January 2020, again noting in his order that the application was *"totally without merit"*. In the same order he made a limited civil restraint order, by which he ordered that Mr Odukoya, in the standard wording, be restrained from making *"any further application in these proceedings"* without first obtaining his (District Judge Avent's) permission, or, if he was not available, that of a resident circuit judge.

(6) Mr Odukoya applied for permission to appeal against this order out of time (the application was received by the court only on 28 February 2020), but on 2 April 2020 it was struck out by His Honour Judge Gerald on paper both because it had been made without District Judge Avent's permission (contrary to the limited civil

restraint order), and because the application gave no reason for seeking his permission or for being out of time.

(7) On 8 April 2020, a further application, which appears to have been made on 28 January 2020 to extend time for filing the appeal notice (i.e. before His Honour Judge Gerald's order), was refused by His Honour Judge Parfitt, on the basis that the time for appealing ran from the making of the order (presumably referring to District Judge Avent's order), not from the date of sealing, and the request for an extension of time should have been made in the appeal notice.

The institution of the High Court proceedings

7. On 23 August 2021, Mr Odukoya, no doubt mindful of the limited civil restraint order which prevented him from issuing further applications in the County Court proceedings, issued a claim, together with his wife, in the High Court, which in effect sought to re-argue the point that the legal charge was void, and therefore should be set aside. However, on 19 January 2022, Deputy Master Hansen struck out the claim, and (as District Judge Avent had in the case of the County Court applications) dismissed and certified it as being *"totally without merit"*, essentially adopting the Court of Appeal's and Judge Michell's analysis of the relevant law. The hearing was attended by counsel for Topaz Finance, but not by Mr Odukoya or Ms Popoola, and the Deputy Master found that Mr Odukoya's absence was deliberate. Importantly, the preamble to the order noted that *"it may be appropriate to make an extended civil restraint order"*, and paragraph 2 ordered that *"The proceedings shall be transferred to a High Court Judge to consider whether to make an extended civil restraint order"*.

8. On 9 February 2022, Mr Odukoya, with the support of MFZ, applied to appeal against the Deputy Master's order, but on 12 April 2022 Mrs Justice Joanna Smith refused permission on paper, and ordered in paragraph 2 that the appeal was *"totally without merit and the Appellants may not request the decision to be reconsidered at an oral hearing"*. Paragraph 3 directed that the matter was to be listed for hearing on the first convenient date for the court to consider whether to make an extended civil restraint order, as indicated by the Deputy Master.

9. In her reasons, she noted, as Judge Michell and the Deputy Master had before her, that Mr Odukoya's analysis *"entirely misunderstands the fact that [s.2(3) of the 1989 Act] simply does not apply to a charge which effected a disposition"*. She also addressed and rejected other arguments the Appellants were seeking to raise, and noted that their case had already been determined, according to the Deputy Master's judgment, on six separate occasions. She concluded that it would be appropriate that the matter be listed for a hearing with a time estimate of one hour at which the Court could consider whether to make an extended civil restraint order.

10. On 19 April, Mr Odukoya and MFZ applied to revoke Mrs Justice Smith's order under CPR rule 3.1(7), but a hearing was not listed.

The continuation of the County Court proceedings

11. In the meantime, Mr Odukoya continued in his attempts to resist possession in the County Court proceedings.
    (1) By applications made on 7 and 22 March 2022, Mr Odukoya and MFZ applied to set aside a further warrant for possession that had now been issued, but this application was dismissed by District Judge Avent on 29 April 2022. On 26 July 2022 his Honour Judge Luba Q.C. refused permission to appeal against this order on paper, as it had been filed without the District Judge's or a resident circuit judge's permission (contrary to s.2 of the limited restraint order), and without explanation as to why this was so. Mr Odukoya and MFZ sought an oral reconsideration of this order, but the notice was struck out, so no such hearing took place.
    (2) By without notice application made on 5 August 2022, Mr Odukoya and MFZ sought to discharge the limited restraint order, but this was dismissed by District Judge Avent on 9 September 2022. He noted: *"The grounds in support seek to re-open issues which have all previously been decided and have no prospect of success. The Defendant [Mr Odukoya] is perpetuating the reasons for a Limited Civil Restraint Order to be imposed in the first place"*.

The transfer to the High Court for enforcement purposes

12. By order made on the same day, 9 September 2022, District Judge Avent granted Topaz Finance's application (made on 27 June 2022) to transfer the County Court proceedings to the High Court for the purposes of enforcement only. On 24 November 2022, His Honour Judge Luba Q.C. struck out Mr Odukoya's appeal against this order, again because it had been filed without permission, contrary to the limited civil restraint order, and without an explanation for this. He added, for the avoidance of doubt, that there was no stay of the order or of any order for possession or execution thereof.

13. On 29 November 2022, Topaz Finance, having obtained a writ of possession from the High Court on 9 November 2022, executed it, took possession of the property and evicted Mr Odukoya and his family. On the same day, Mr Odukoya attended the County Court to seek a suspension or stay of execution, but His Honour Judge Saggerson refused the application.

14. However, Mr Odukoya on 30 November 2022 applied to consolidate his High Court claim (although it had been struck out) with the County Court proceedings, and on 2 December 2022 he re-entered the property, as he accepted before me at the hearing on 7 February 2023. However, on 8 December 2022 Topaz Finance obtained a writ of

restitution, which it executed on 16 December 2022, thereby again evicting Mr Odukoya and his family.

15. In response, Mr Odukoya on 20 December 2022 made an application to transfer proceedings to the High Court, and on 23 December 2022 he applied in the High Court for an injunction to restore possession to him, again on the basis that the charge was void under s.2(3) of the 1989 Act, but this latter application was dismissed on paper by Mrs Justice Smith on 3 January 2023.

16. As she had done in April 2022 in relation to the application to appeal against Deputy Master Hansen's order in February 2022, Mrs Justice Smith certified this further application as being *"totally without merit"*. In her reasons she repeated that s.2 of the 1989 Act was concerned not with actual transfers of an interest in land, such as legal charges, but with contracts for the creation of the same. She also noted that on 5 December 2022, Deputy Master Rhys had sent out an email giving directions, which noted that the claim (i.e. the High Court claim) had been struck out, dismissed and certified as *"totally without merit. In the circumstances the application made on 1st December 2022 cannot be entertained"*. (Whether this application was the one issued on 30 November 2022 is not clear, but nothing turns on the point.)

17. She went on to note that she was required by CPR rule 52.20(6)(b) to consider whether to make a civil restraint order, but decided on balance not to do so, primarily because there appeared to be a hearing already listed in the matter for 6 February 2023. But she concluded:

> "However, if the Applicant [Mr Odukoya] seeks to resurrect this application for interim relief he should be aware that there is a strong chance that the court will consider it appropriate to make a Civil Restraint Order."

The hearing of Mr Odukoya's applications on 7 February 2023

18. On the same day, that is 3 January 2023, Mr Odukoya applied to set aside Mrs Justice Smith's order, and he sought to reinstate the injunction application. This application was listed to be heard by me on 7 February 2023, along with Mr Odukoya's still outstanding application issued on 30 November 2022 to consolidate the High Court and the County Court claims.

19. At that hearing, Mr Odukoya attended in person, and presented his case with courtesy and moderation. It was clear to me that he felt strongly that the law had been misunderstood, and that his arguments on s.2(3) of the 1989 Act were correct. However, there was no basis for an injunction, as it was not open to Mr Odukoya to re-run these arguments which had already been decided against him, and further, it was clear that the High Court proceedings had been struck out (so there was nothing to

consolidate with the County Court proceedings). Accordingly, I dismissed both applications as being *"totally without merit"*.

20. At that hearing, Mr Tipler, who appeared for Topaz Finance, asked me to make an extended civil restraint order, as envisaged by Mrs Justice Smith in her reasons for her order made on 3 January 2023. However, I decided not to do so on that occasion, because CPR rule 3.11, as supplemented by paragraph 5.1 of Practice Direction 3C, provides that an application for a civil restraint order *"must be made using the Part 23 procedure unless the court otherwise directs"*, but no application notice had been issued, and Mr Tipler's skeleton for that occasion, which sought the order, had not been served three clear days before the hearing, as required for an application, if it could be treated as such, by the CPR rule 23.7(1)(b). I should add that Mr Tipler did not invite me to exercise the power under CPR rule 52.20(6)(b), which would appear to apply only to orders made on the dismissal of an appeal.

The order made on 7 February 2023

21. Accordingly, I indicated that a further hearing should take place before me as soon as possible to consider the making of an extended civil restraint order, and with the consent of the parties it was agreed that this should take place on Wednesday 22 February 2023 at 10 am. I ordered Topaz Finance to file and serve on Mr Odukoya a formal application with supporting evidence by 4 pm on Thursday 9 February 2023 (allowing for service by email), and I ordered that that if the date was not convenient to Mr Odukoya he was to provide written reasons by email to my clerk by 10 am on 13 February 2023. I also provided for him to serve evidence in reply to the application by no later than 4 pm on Tuesday 21 February 2023

The hearing on 22 February 2023

22. Topaz Finance issued its application notice with supporting evidence on 9 February 2023, but, as I was informed by Mr Tipler at the hearing on 22 February 2023, it was by oversight not served on Mr Odukoya until Monday 13 February 2023. (I accept that it was served on that morning, as appeared from an email chain produced to me at the 22 February hearing.) Mr Odukoya did not, however, write to my clerk on that day or subsequently, to object that for this reason the hearing date was inconvenient to him, nor did he serve any evidence in reply. Nor was he present when the hearing was due to begin at 10 am on 22 February, nor (as Mr Tipler then informed me) did he send any message to Topaz Finance's solicitors to say that he was delayed. Nor, so far as I am aware, was any such message sent to the Court. Nonetheless, I waited until 11 am to start the hearing, by when he had still not appeared or sent any such message. I accordingly went ahead with the hearing in his absence, at which Mr Tipler orally

sought a retrospective extension of time, and set out his arguments for the making of an extended civil restraint order.

23. Despite his non-attendance, Mr Odukoya did provide to Topaz Finance's solicitors a skeleton argument dated 21 February 2023, which sought an adjournment of the hearing on two grounds, namely (1) he had applied for permission to appeal to the Court of Appeal against my order of 7 February 2023 dismissing his applications, and for the grant of a stay in the meantime, and (2) Topaz Finance had failed to comply with the order that it serve its application by 9 February 2023.

24. I considered these points at the hearing, and ordered that time should be extended retrospectively for the service of the application notice and evidence, and that the extended civil restraint order should be made. I said I would give a reserved judgment setting out my reasons for doing so.

Reasons for judgment

Preliminary issue

25. A preliminary point which I raised with Mr Tipler at the hearing on 7 February 2023 was whether I, sitting as a deputy High Court Judge appointed under s.9(4) of the Senior Courts Act 1981, had power to make a civil restraint order. For the reasons given by Mr Tipler in his skeleton for the 23 February hearing, and from my own consideration of the matter, I am satisfied that I do.

26. CPR rule 3.11 provides that the procedure for making restraint orders is set out in Pracctice Direction 3C, paragraph 3.1(2) of which provides that:

> "An extended civil restating order may be made by –
>
> …
>
> (2) a judge of the High Court ….
>
> where a party has persistently issued claims or made applications which are totally without merit."

27. In my judgment, the phrase "a judge of the High Court" in paragraph 3.1(2) includes a deputy High Court Judge appointed under s.9(4) of the 1981 Act, because:

(1) S.9(5) of the Act provides:

> "Every person while acting under this section [i.e. under section 9] shall, subject to subsections (6) and (6A), be treated for all purposes as, and <u>accordingly may perform any of the functions of, a judge of the court in which he is acting</u>" (underlining in emphasis added). (Subsections (6) and (6A) are of no relevance to this matter.)

(2) CPR rule 2.3(1) provides that *"judge"* means *"unless the context otherwise requires, a judge, Master or District Judge or a person authorised to act as such"* (emphasis in underlining added);
(3) Although there are exceptions to the rule (for example, Practice Direction 2B paragraph 7A provides that a deputy High Court Judge may not try a claim in respect of a judicial act), no exception is applied for civil restraint orders.

The issues raised by Mr Odukoya's skeleton

Late service of the application

28. As Mr Odukoya says, the application notice and evidence were served out of time, but it is clear that they were then served on 13 February 2023, and therefore two business days after the date of 9 February 2023 which I had fixed for service in my 9 February order. This was therefore a breach of my order.

29. However, I was prepared retrospectively to extend time for service under CPR rule 3.1(2)(a), which allows for such even if *"an application for extension is made after the time for compliance has expired"*. This was because there was good reason for doing so in accordance with the principles set out in *Denton v. T.H. White Ltd* [2014] 1 W.L.R. 3926, because the breach was insignificant, as it did not affect Mr Odukoya's ability to prepare for the hearing (see points (1) to (3) below), nor, given points (4) and (5), would it have been just to refuse an extension in all the circumstances. I say this for the following reasons.
(1) The delay was just two business days, and he did not allege in his skeleton served on 21 February that he had been prejudiced by reason of the late service of the application, nor, although he had an opportunity to do so, did he put in any evidence to suggest that he had been.
(2) The evidence on which Topaz Finance relied is incontrovertible, as it appears from court orders and judgments. Further, it is in practically all respects the same as the (uncontradicted) evidence on which Topaz Finance relied at the hearing on 7 February 2023 in opposition to his applications of 30 November 2022 and 3 January 2023, which evidence had been served on or about 2 February 2023.
(3) The application could not have come as a surprise to him, such as to make it appropriate to give him more time to consider the law on the matter. Thus, he was warned, long before the hearing on 7 February 2023, that he was at risk of being subjected to an extended civil restraint order because of his repeated attempts to re-run the point that the legal charge was void for non-compliance with s.2(3) of the 1989 Act (see Deputy Master Hansen's order on 19 January 2022 and Mrs Justice Smith's orders of 12 April 2022 and 3 January 2023). Further, he knows well what a civil restraint order is, having been subject to a limited civil restraint order since 27 November 2019 in the County Court proceedings, and having been reminded by the court orders over the years of his repeated breaches thereof.
(4) He must have known by 10 am on Monday 13 February 2023 that Topaz Finance had not served an application on him, contrary to my order of 7 February 2023, but

he did not, either then or subsequently, indicate to my clerk that the date of 22 February 2023 was inconvenient to him by reason of the late service of the application and evidence in the morning of 13 February 2023, so as to allow for another date to be fixed.

(5) Instead, he allowed that date to remain in everyone's diary, but he then did not attend it or provide any excuse for not doing so. This followed a pattern of previous non-attendances, on 14 June 2018 before His Honour Judge Luba Q.C., on 17 May 2019 before His Honour Judge Bailey, and on 19 January 2022 before Deputy Master Hansen. Like Deputy Master Hansen, I draw the inference that this non-attendance was deliberate, because he knew it was going ahead, and he did not provide any reason to explain his non-attendance (nor has he done so subsequently). I add that even without this consideration, I would still have extended time for service of the application.

Mr Odukoya's application for permission to appeal and for a stay

30. Mr Odukoya's skeleton argument also relied on his applications to the Court of Appeal for permission to appeal and for a stay pending its determination. However, these are immaterial for three reasons.

31. First, the extended civil restraint order sought by Topaz Finance, and which I made, does not prevent Mr Odukoya from pursuing his application for permission to appeal against my 7 February 2023 order to the Court of Appeal, because his application had already been made before the order.

32. Second, it is trite that an appeal (and an application for a stay) against an order does not of itself operate as a stay on it, and so the order I made on 7 February 2023, and the ruling that the 30 November 2022 and 3 January 2023 applications are totally without merit, still continue to stand.

33. Third, if it is otherwise appropriate to make an extended civil restraint order, I cannot see any reason which would make it just to stay the proceedings, or adjourn the making of it, pending the application to the Court of Appeal for permission to appeal against my 7 February 2023 order. I say this in particular because there is real potential prejudice if the order is deferred any further, because given the history of the matter there is a real risk that, unless now restrained, Mr Odukoya will continue to make hopeless applications or claims and thus not only put Topaz Finance to further wasted cost, which it can recover only later under the legal charge, but also impose a further burden on the court's resources. Conversely, if his appeal were to succeed, it is difficult to see what irremediable prejudice he would suffer as a result of the extended civil restraint order being made now but later reversed.

The application for an extended civil restraint order

34. The regime for civil restraint orders is set out in Practice Direction 3C, made pursuant to CPR rule 3.11.

35. By paragraph 2.1 of the Practice Direction, a limited civil restraint order may be made by a judge of any court against a party who has made two or more applications which are totally without merit, and by paragraph 2.2(1) the effect of such a limited order is to restrain that party from *"making any further applications in the proceedings in which the order is made without first obtaining the permission of a judge identified in the order"*.

36. If a party against whom such an order is made issues an application without the court's permission, then it will be dismissed automatically, without the need for a further order or for the other party to respond to it. (See paragraph 2.3(1).) Further, if a party repeatedly makes applications for permission which are totally without merit, the court can direct that if he makes any further such application, the decision to dismiss it will be final without a right of appeal unless otherwise provided for (see paragraph 2.3(2)).

37. Extended civil restraint orders are governed by paragraph 3.1, which, as recited above, provides that they can be made *"where a party has persistently issued claims or made applications which are totally without merit"*.

38. Their effect, in the case of such an order granted by the High Court, is to restrain a person subject to them *"from issuing claims or making applications"* in the High Court or the County Court *"concerning any matter involving or relating to or touching upon or leading to the proceedings in which the order is made without first obtaining the permission of a judge identified in the order"*. So the extended order goes further than the limited order, both because it restrains a party from issuing new claims, and because it restrains him from doing so on any matter *"involving or relating to or touching upon or leading to"* the proceedings in which it was made. Paragraphs 3.3(1) and (2), corresponding to paragraphs 2.3(1) and (2), provide for the automatic striking out or dismissal of new claims or applications made in breach of the order, and for a power to direct that a decision to dismiss a further application for permission which is totally without merit will be final without a right of appeal (unless otherwise stated).

39. Although the word *"persistently"* in paragraph 3.1(3) is not defined, it is established that it requires at least three totally with merit claims or applications to be made before an extended order can be made (i.e. more than just the two applications required for a limited order under paragraph 2.1). See the Court of Appeal's decision in *Ghassemian Hamila Sartipy (aka Hamily Sartipy) v. Tigris Industries Inc.* [2019] EWCA Civ 225 at paragraph 28. Further, in calculating the number of such applications, one is entitled to add the claim form itself to any totally without merit applications made pursuant to that claim (see paragraph 29); but even if there are three or more, one still has to

consider whether the party concerned is acting *"persistently"*. This requires an evaluation of the party's overall conduct, but it may be easier to conclude that it is *"if it seeks repeatedly to re-litigate issues which have been decided than if there are three or more unrelated applications many years apart"* (see paragraph 30).

40. Two other points made in the *Sartipy* case (that the rule does not apply to defendants who misbehave, but it does apply to catch the "real" party to the claims or applications behind the nominal claimant) do not apply here. There is no doubt that, whatever MFZ's role, Mr Odukoya is the real party to the various claims and applications.

41. Applying these principles, my conclusion was that Mr Odukoya has persistently issued claims that are totally without merit.

42. First, since the limited civil restraint order imposed by District Judge Avent on 10 January 2019, Mr Odukoya has issued a further five applications which have been marked as *"totally without merit"* (by Deputy Master Hansen on 19 January 2022, Mrs Justice Smith on 12 April 2022 and again on 3 January 2023, and by myself, on two applications, on 7 February 2023). The requirement, therefore, for at least three such applications, even if one excludes the first two applications which District Judge Avent marked as such (on 25 November 2019 and 10 January 2020) and which led to the limited civil restraint order, is met. (I should emphasise, I have not been addressed on whether I should include those two initial applications, and so I make no finding as to whether or not they would be relevant to the question I now have to consider.)

43. Second, on any sensible evaluation of Mr Odukoya's overall conduct, he has "persistently" issued applications that are totally without merit since District Judge's Avent's limited order. This is because all five applications turned on the same argument (that is, the charge was void for non-compliance with s.2(3) of the 1989 Act) and were made with substantially the same objective, namely to avoid having to give up possession, or latterly, to regain possession of the premises. Further, none of them was prompted by any relevant change in circumstances which might arguably have justified trying to re-run the argument.

44. Further, I was satisfied that in consequence it would be appropriate to impose an extended civil restraint order, rather than a limited one, so as to restrain Mr Odukoya from issuing applications or new claims *"which concern any matter involving or relating to or touching upon or leading to"* these High Court proceedings. Notwithstanding District Judge Avent's limited civil restraint order, he has shown over the last three years that he is determined to prevent the enforcement of the possession order not only by making numerous hopeless applications and attempted appeals in the County Court proceedings, but also by issuing new proceedings in the High Court which were also hopeless in an attempt to get round the limited order. Further, Mr Odukoya has not put forward any evidence or argument as to why I should not make such an order.

45. Accordingly, I have made an extended civil restraint order against Mr Odukoya.