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Neutral Citation Number: [2024] EWHC 2326 (Ch)

Claim No: CH-2023-000194

ON APPEAL FROM THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS
OF ENGLAND AND WALES
PROPERTY TRUSTS AND PROBATE LIST (ChD)

TO THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS
OF ENGLAND AND WALES
PROPERTY TRUSTS AND PROBATE LIST (ChD)

Rolls Building
Fetter Lane
London, EC4A 1NL

10 September 2023

Before :

MR NICHOLAS THOMPSELL

sitting as a Deputy Judge of the High Court

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Between :

PETER RICHARD ANDREEWITCH
(A.K.A. RICHARD ANDREEWITCH) — Claimant/ Appellant

- and -

(1) MAGALI MOUTREUIL
(2) PIER INVESTMENT COMPANY LIMITED — Defendants/ Respondents

- -

The Appellant represented himself as a litigant-in-person

Mr James Weale (instructed by Branch Austin McCormick LLP)

appeared for the Respondents

Hearing date: 29 July 2024

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JUDGMENT

- -

Mr Nicholas Thompsell:

1. INTRODUCTION

1. This judgment relates to an appeal made by Mr Andreewitch pursuant to an application dated 14 September 2023 (the "**Appeal Application**").

2. Mr Andreewitch is looking to an appeal an order (the "**Jefferis Order**") made on 6 September 2023 by Deputy Master Jefferies ("**Judge Jefferis**"). The Jefferis Order was made in relation to an application (the "**Respondents' Strike-out Application**") dated 3 April 2023 made by the Respondents, Ms Moutreuil and Pier Investments Limited (the "**Company**").

3. The Respondents' Strike-out Application was for an order striking out a claim ("**Mr Andreewitch's Claim**") made by Mr Andreewitch for relief in relation to five matters which Judge Jefferis described as the "**Loan Claim**", the "**Estoppel Claim**", the "**German Property Claim**", the "**Balance Sheet Claim**" and the "**Damages Claim**".

4. By his judgment dated 12 June 2023 (the "**Jefferis Judgment**"), Deputy Master Jefferis acceded to the Respondents' Strike-out Application and accordingly he made the Jefferis Order, striking out the Appeal Application. He found that Mr Andreewitch's Claim was an abuse of process and gave other reasons why elements of the claim had no real prospect of success in any event. Judge Jefferis also concluded, and recorded in the Jefferis Order, that the Mr Andreewitch's Claim was "*totally without merit*".

5. The background to the Jefferis Judgment is explained in paragraphs 1 to 7 of that judgment and I will not repeat it here except to say that the order follows on from a long series of proceedings between these parties. These have included (amongst other things) a trial in May 2020 (the "**Contempt Proceedings**") and a trial in June 2020 (the "**Ownership Proceedings**"), which was heard together with claim by the First Respondent made pursuant to Schedule 1 to the Children Act 1989 (the "**Schedule 1 Proceedings**"). The Contempt Proceedings were the subject of a detailed judgment handed down on 22 May 2020, recorded under the neutral citation number [2020] EWHC 1301 (Fam) (the "**Contempt Judgment**"). The Ownership Proceedings and the Schedule 1 Proceedings were the subject of a detailed judgment on 29 July 2020 , recorded under the neutral citation number [2020] EWHC 2068 (Fam) (the "**Ownership and Schedule 1 Judgment**").

6. Mr Andreewitch claims there are grounds for appeal in relation to each of the matters considered by Judge Jefferis.

7. By his order dated 30 January 2023 (the "**Rajah Order**"), Rajah J granted permission to appeal, but only in relation to the principal amount (and not any interest) claimed under the Loan Claim. He did so on the grounds that the claim for repayment of such principal had more than a fanciful prospect of success. However, he denied permission to appeal in relation to interest on the alleged loan or in relation to any of the other grounds of appeal.

8. However, pursuant to paragraph 5 of the Rajah Order, the door was left open for Mr Andreewitch to renew his application for permission to appeal in respect of the other grounds of appeal, and such hearing was to be listed at the same time as the appeal hearing.

9. There have been therefore, two matters for me to consider:

   i) the appeal on the grounds relating to the principal of the Loan Claims; and

   ii) the renewed application for permission to appeal on all the other grounds.

10. I have considered these points in that order.

2. THE CIRCUMSTANCES OF THE HEARING

11. At the hearing Ms Moutrueil and the Company were represented by Mr Weale. Mr Andreewitch represented himself as a litigant in person, although he had his adult son beside him. He explained his son's presence as being because he wanted his son to witness the proceedings, and he also wanted to be able to take advice from his son. I agreed that he could treat his son as a McKenzie friend, although this proved wholly or largely unnecessary.

12. It became clear that Mr Andreewitch had not seen the skeleton argument and trial bundles that have been produced on behalf of the Respondents, although these were on the CE-file and had been sent to Mr Andreewitch in February.

13. In view of this fact, and having regard to the point that Mr Andreewitch's own skeleton argument appeared to be looking to retry the hearing before Judge Jefferis, rather than to engage with the issues applicable to an appeal, I adjourned the proceedings for approximately an hour to give Mr Andreewitch an opportunity to read the Respondents' skeleton argument and to understand better the nature of the case that he would have to make in relation to an appeal - the law on this was helpfully set out in the Respondents' skeleton argument.

14. On return from the adjournment Mr Andreewitch confirmed that he considered himself ready to continue with the proceedings.

3. THE LEGAL FRAMEWORK FOR AN APPEAL

15. It is important to note that, except in some particular circumstances, none of which are relevant to the matters before me, under CPR rule 52.21 an appeal is limited to the review of the decision of the lower court – it is not an opportunity to retry matter that the lower court considered.

16. The test applied by the court on appeal is specified in CPR rule 52.21(3). The appeal court will allow an appeal whether decision of the lower court was wrong or was unjust because of a serious procedural or other irregularity in the proceedings in the lower court.

17. In judging whether the decision of the lower court was wrong, generally an appellate court will only allow an appeal where the judge has not applied the

law correctly or has reached a decision that, on the facts and arguments before that judge, is one that no reasonable judge could have reached.

18. This point was not addressed in Mr Andreewitch's grounds for appeal or his skeleton argument, but it is fundamental as to how the court needs to deal with the points raised.

19. Mr Weale in his skeleton argument has also referred the court to a passage in paragraph 52.21.5 of the White Book, which is particularly pertinent in relation to one of the key issues here – whether to allow an appeal of Judge Jefferis' finding of an abuse of process. The passage is as follows:

> "There are some cases where the first instance judge has made a decision which involved the assessment and balancing of a large number of factors, for example determining whether an action constitutes abuse of process. Such a decision is not an exercise of discretion, because there is only one right answer to the question before the judge. The Court of Appeal is reluctant to interfere with such a decision. However, the Court of Appeal will interfere if the judge has taken into account immaterial factors, omitted to take into account material factors, erred in principle or come to a decision that was impermissible: see *Aldi Stores Ltd v WSP Group Plc* [2007] EWCA Civ 1260; [2008] 1 W.L.R. 748, CA, at [16]; [2008] 1 W.L.R. 748. The Court of Appeal will also interfere if the judge's decision was "plainly wrong": see *Stuart v Goldberg* [2008] EWCA Civ 2; [2008] 1 W.L.R. 823, CA, at [76] and [81]."

20. As regards what is meant by "plainly wrong" this was explained by the Supreme Court in *Henderson v. Foxworth Investments Ltd* [2014] 1 WLR 2600 at [62]:

> "The adverb "plainly" does not refer to the degree of confidence felt by the appellate court that it would not have reached the same conclusion as the trial judge. It does not matter, with whatever degree of certainty, that the appellate court considers that it would have reached a different conclusion. What matters is whether the decision under appeal is one that no reasonable judge could have reached."

21. Mr Weale satisfied me on the basis of dicta in *Mark v Universal Coatings & Services Ltd* [2019] 1 WLR 2376 at [42] that the same principles, used for the purposes of appeals to the Court of Appeal, should be applied in relation to appeals made to the High Court.

22. Another principle that is of extreme importance in the current case is summarised in further notes within this section of the White Book:

> "In determining whether the decision of the lower court was "wrong" for the purposes of r.52.21(3)(a), regard must be had to the way in which the parties' cases were formulated below."

23. A further point that I should mention is that a failure of the judge at first instance to give reasons for a decision may be considered a reason to allow an appeal (see the discussion at paragraph 52.21.7 of the White Book).

4. THE JEFFERIS JUDGMENT AS REGARDS THE LOAN CLAIM

24. Before turning to the basis on which Mr Andreewitch is looking to appeal the Jefferis Judgment as it relates to the Loan Claim, it is useful to set out what were Judge Jefferis' findings on this matter.

25. First he noted, at [1] in the Jefferis Judgment that the Respondents' Strike-out Application was asking for an order that the claim be struck out in whole or in part pursuant to CPR rules 3.4(2)(a) and 3.4(2)(b), or in the alternative that the Defendants (that is the Respondents in the current application) be granted summary judgment against the Claimant in whole or in part pursuant to CPR Part 24.

26. It is unfortunate that he did not spell out in terms the tests to be applied when considering such an application:

    i) the test for striking out a claim under CPR rule 3.4(2)(a) is that the statement of case discloses no reasonable grounds for bringing the claim;

    ii) the test for striking out a claim under CPR rule 3.4(2)(b) is that the statement of case is an abuse of the court's process or is otherwise likely to obstruct the just disposal of the proceedings;

    iii) the test for giving summary judgment under CPR 24.2 against a claimant on the whole of a claim or on a particular issue is whether the court considers that the claimant has no real prospect of succeeding on the claim or issue. What is meant by "no real prospect" has been the subject of judicial comment in numerous cases and the principles to be considered were summed up by Lewison J (as he then was) in *Easyair Ltd v Opal Telecom Ltd* [2009] EWHC 339 (Ch) at [15]. These principles have been widely followed and have been the subject of approval at Court of Appeal level (see the *White Book* at paragraph 24.2.3). The phrase "no real prospect" must mean that the claimant has a realistic as opposed to a fanciful prospect of success: it must be a claimant carries some degree of conviction.

27. The judge's findings as regards the Loan Claim were dealt with at [12] to [16] of the Jefferis Judgment.

28. First, he agreed with the arguments that had been put forward on behalf of Ms Moutrueil and the Company that Mr Andreewitch's failure to raise the Loan Claim in the proceedings Ownership Proceedings and Schedule 1 Proceedings before Cobb J, and in fact to have advanced a case that was incompatible with the Loan Claim, meant that raising this point in later proceedings was an abuse of process under the principle in *Henderson v Henderson* (1843) 3 Hare 100.

29. He also considered that the Loan Claim anyway did not stand any real prospect of success, although he did not spell out his reasons for this.

30. On the basis of these two arguments, he considered that he should strike out or give summary judgment for the Defendants on these elements the Loan Claim. As its transpired, he ordered that the entirety of Mr Andreewitch's Claim (including the Loan Claim) be struck out, so it may be inferred that he chose the former remedy.

5. THE APPEAL AS REGARDS THE LOAN CLAIM

31. In his opening address, Mr Andreewitch looked to place this hearing within the context that, as a result of the Ownership and Schedule 1 Judgment, he had lost everything and now is living with his son in extremely reduced circumstances. He clearly considered that he had been dealt with unjustly. He quoted various sworn statements made by Ms Moutrueil that were in his view incompatible with the decision that Cobb J had made, but which Cobb J had set aside when reaching his decision. He considered that it was unfair that Ms Moutrueil was in effect allowed to resile from sworn statements that she had made whereas he was being held to statements that he had previously made.

32. I have every sympathy for the circumstances in which Mr Andreewitch finds himself. Nevertheless, it was my duty to remind him that the matter before me was not an appeal of the Ownership and Schedule 1 Judgment: it was his appeal of the Jefferis Judgment as it relates to the principal claimed as part of the Loan Claim and I sought to bring him back to arguments that were relevant to that appeal.

33. Mr Andreewitch made his submissions in a discursive manner. This is understandable in relation to a litigant in person, but this made it something of a challenge to understand the relevance of the points that he was making to the appeal of the Loan Claim. Nevertheless, I was able to understand his central themes and I consider these below.

(i) Argument that the Loan Claim had a real prospect of success

34. Mr Andreewitch made two points which I think were designed to sustain a finding that Judge Jefferis was wrong in finding that the Loan Claim had no real prospect of success.

35. His first point was that Judge Jefferis was wrong to place reliance on the fact that Mr Andreewitch had said that there was not an agreement: he had explained (in sworn statements) that in saying this, he had merely meant that there was no written agreement and there had been a "verbal agreement" (by which he meant an oral agreement), and Judge Jefferis should have accepted this clarification.

36. His second point, which he expressed powerfully in his skeleton argument, was that Judge Jefferis ignored or placed insufficient weight on the circumstances that:

i) it was common ground that he had provided the Company (in 1993) with £264,000 which was used to buy the family home located at 62 Christchurch Street, Chelsea (the "**Chelsea property**"); and

ii) the accounts of the Company for the year 2000 and subsequent years onwards recognised a creditor in the same amount.

He considered that it was obvious putting these two facts together that the Company had recognised an indebtedness to him in this amount: there was no other explanation. Judge Jefferis was wrong in ignoring, or placing insufficient weight on, the fact that the amount of £264,000 equalled exactly the balance sheet item.

37. As regards this point taken by itself (as I must emphasise), I am disposed to agree with Mr Andreewitch. Putting aside the arguments regarding abuse of process, I consider that these facts:

i) do constitute reasonable grounds for bringing the claim (for the purposes of CPR 3.4(2)); and

ii) had a real (as opposed to a fanciful) chance of success within the meaning of the test for summary judgment under CPR 24.2.

38. It is true that there are some flaws in Mr Andreewitch's argument based on the accounts: in particular he would need to explain why the figure of £264,000 for the loan did not appear in the accounts in earlier years. Slightly higher figures appeared in the 1993 and 1994 accounts. No long-term creditor was included in the accounts for 1995 to 1999. The figure of £264,000 appears in the accounts for 2000, 2001 and 2002, and higher figures appear in the accounts for the years 2003 to 2018. Also, he would need to be put to proof as to when this alleged verbal agreement was made, having regard to the fact that in 1993 the Company had separate directors.

39. Conversely however, if the matter came to trial, Ms Moutrueil would need to explain why she had signed the accounts in 2014 and 2015 which each showed creditors in excess of £240,000.

40. These points are points that would have needed to be explored at trial and did not in my view form a basis for saying that there were no reasonable grounds for bringing the claim so as to allow a strike-out of the claim under CPR rule 3.4(2)(a).

41. Further the Jefferis Judgment did not state the grounds on which he reached his determination that the Loan Claim did not stand any real prospect of success (separate from his point regarding abuse of process).

42. If Judge Jefferis had not in addition dealt with the issue concerning abuse of process, and we were left only with his determination regarding real chance of success, I think it is likely that I would allow an appeal of his order as it relates to the striking out of the Loan Claim (as regards principal) on the bases that it appeared that there were some reasonable grounds for bringing claim and that

no explanation was given why the Judge found that there were no such reasonable grounds.

(ii) Argument based on abuse of process considerations

43. However, the most important word in the previous paragraph is the word "if". It is quite clear that Judge Jefferis made his decision principally in relation to the abuse of process question, and unless his decision in relation to abuse of process can be shown to be wrong (in the sense I have described above) his judgment, and the order made pursuant to it, must stand.

44. As regards abuse of process, to establish that Mr Andreewitch's Claims had no prospect of success (insofar as they would otherwise have had a real prospect of success) the Respondents were relying on: (i) the doctrine of res judicata; and/or (ii) the principle established in *Henderson v. Henderson*; and/or (iii) previous factual findings binding upon Mr Andreewitch.

45. These points were argued before Judge Jefferis. They were accepted by him and in my view were the chief grounds on which he made his decision as regards the Loan Claim.

46. He was aware that Mr Andreewitch had provided the money to purchase the property and that there was a matching creditor recorded in, at least some versions of the accounts, but he considered that if Mr Andreewitch had wanted to rely on this point he should have dealt with the point in his evidence during the earlier hearings, whereas in fact his case at those hearings was incompatible with there being such a loan (and certainly such a loan with interest as Mr Andreewitch was now contending). If Mr Andreewitch thought that a loan was outstanding it was an abuse of process for him to make arguments at the earlier hearings without making this point and certainly it was an abuse of process for him to make arguments that were incompatible with this point.

47. The principle in *Henderson v Henderson* was stated (at page 114) by Sir James Wigram VC as follows:

> "… where a given matter becomes the subject of litigation in, and of adjudication by, a Court of competent jurisdiction, the Court requires the parties to that litigation to bring forward their whole case, and will not (except under special circumstances) permit the same parties to open the same subject of litigation in respect of matter which might have been brought forward as part of the subject in contest, but which was not brought forward, only because they have, from negligence, inadvertence, or even accident, omitted part of their case. The plea of *res judicata* applies, except in special cases, not only to points upon which the Court was actually required by the parties to form an opinion and pronounce a judgment, but to every point which properly belonged to the subject of litigation, and which the parties, exercising reasonable diligence, might have brought forward at the time."

48. The courts have since refined the way that this principle is applied, and I was taken by Mr Whelan's skeleton argument to cases including *Virgin Atlantic Airways Ltd v. Zodiac Seats UK Ltd* [2014] A.C. 160; *Aldi Stores Ltd v. WSP Group Plc* [2008] 1 W.L.R. 748; and *Johnson v. Gore Wood & Co (No.1)* [2002] 2 A.C. 1, as well as the summary of these principles in the notes to the White Book at paragraph 3.4.

49. During the course of the hearing, I was provided with a copy of the further summary of the principles in the most recent Court of Appeal decisions touching on this question, *Outotec (USDA) Inc and others v MW High Tech Projects UK Limited* [2024] EWCA Civ 844 ("***Outotec***"). At [53] Coulson LJ has very helpfully and succinctly summarised the principles arising out the case law. I have used this summary (and the analysis of the law earlier in that judgment) as my primary compass in navigating these waters.

50. The court will strike out proceedings if they are considered to be abusive and in particular will be astute to strike out proceedings that are an attempt to re-litigate matters that have already been decided or to raise matters which were not put before the court but should have been. These principles are derived from the public policy based on the desirability, that in the general interest as well as that of the parties themselves, that litigation should not drag on for ever and that a defendant should not be oppressed by successive suits when the matter should have been dealt with in a single action.

51. As Coulson J (as he then was) put it in *Seele Austria GmbH & Co KG v Tokyo Marine Europe Insurance Ltd* [2009] EWHC 255 (at [105]):

> "… the court should be astute to prevent a claiming party from putting its case one way, thereby causing the other side to incur considerable expense, only for the claiming party to lose and then come up with a different way of putting the same case, so as to begin the process all over again. The Civil Procedure Rules are designed to avoid the litigation equivalent of death by a thousand cuts…."

52. However, whether re-litigation of a decided issue is an abuse depends upon all the circumstances. It does not follow that a matter should have been raised in earlier proceedings simply because it could have been raised in those proceedings. Rather, the court should take a broad merits-based approach in judging whether there has been abuse because the claimant failed to its claim as part of the earlier proceedings. The burden rests on the defendant to establish that it is an abuse of process for them to be subjected to the later action. Because the focus is on abuse, it will be rare for a court to find that a subsequent action is an abuse unless it involves "unjust harassment or oppression".

53. In the current context it is worth adding that an appellate court will be reluctant to interfere in the evaluation carried out by the judge at first instance, and will only do so if the judge took account of something he or she should not have done, failed to take into account something he or she should have done, erred in principle, or reached a conclusion that was so perverse as to be "plainly wrong".

54. These were the chief grounds on which the Respondents brought the Respondents' Strike-out Application bring their application: their argument was that Mr Andreewitch was seeking to reopen points that had been settled on grounds that he did not put forward at an earlier stage, and indeed on grounds that were inconsistent with the case that he had put forward.

55. Mr Andreewitch argued that the *Henderson v Henderson* principle (and the principle of *res judicata* generally did not apply for two reasons.

56. First, it was his argument that whilst his action as regards the Loan Claim was principally against the Company, in the previous proceedings the Company was a neutral party. In relation to this point, he relied heavily on an observation of Cobb J made in the course of the Contempt Judgment when he said (at [35(vi)]):

> "There is no reason why Pier [ie the Company] should incur, or have incurred, any legal costs in the substantive proceedings in any event; I would expect the company to be adopting a neutral stance in the proceedings."

57. This statement was in connection with Cobb J dismissing an argument that had been raised by Mr Andreewitch that it was not a breach of an injunction binding on him for him to use the Company's money to pay legal costs (at a time when Mr Andreewitch still controlled the Company as its director). This is clear from the next sentence where Cobb J says:

> "There is no evidence that the company sought any preliminary advice (a point tentatively volunteered by Mr Thomas) even to establish this position, and/or the potential conflict of interest with PA."
>
> (PA is, of course, Mr Andreewitch.)

58. The context of the statement, therefore, was whether the Company should have been incurring legal fees in connection with what was essentially a dispute as to who was the beneficial owner of the shares of the Company.

59. Secondly, Mr Andreewitch argues that these principles do not apply unless the same parties are involved and are involved in the same capacity. It appeared after the hearing, when he supplied the court with certain papers that he had been referring to during the course of the hearing, that he picked this point up from a PhD Thesis that he had found on the Internet relating to the doctrine of *res judicata* before international arbitral tribunals. He argues that the Company was acting in a different capacity in these proceedings than it was during the Contempt Proceedings, the Ownership Proceedings, and the Schedule 1 Proceedings.

60. I am not sure I entirely followed his argument on this latter point, but I think it was based partly on the previous point – the Company was not a real participant in the earlier proceedings, it was merely a neutral party - and partly on the grounds that the Company has effectively changed sides. During those proceedings, the Company was controlled by him, and was a co-defendant in

relation to Ms Moutreuil's claim to be recognised as the legal and beneficial owner of the shares. In relation to the Loan Claim, the Company is again a co-defendant but this time in relation to *his* claim and the Company is no longer controlled by him – Ms Moutreuil is now recognised as the owner of the Company.

61. These matters are different to what is meant by a different "capacity" – the sort of thing that is recognised as being a different capacity is where one is acting in one action in a capacity such as a trustee or agent and then in a different action on behalf of oneself or as a beneficiary.

62. As to the merits of these arguments in themselves, I do not see that they establish any bar to the principle in *Henderson v Henderson* applying in this case. It is clear that the courts apply the principle in *Henderson v Henderson* in a broad way and in circumstances where corporate vehicles are involved will look beyond the individual company that may have been concerned in the earlier action. *In Aldi Stores Ltd v WSP Group Plc* [2008] 1 W.L.R. 748 ("***Aldi***"), Thomas LJ (as he then was) quoted with approval a passage from the judgment of Clarke LJ in *Dexter Ltd v Vlieland-Boddy* [2003] EWCA Civ 14 at [49]-[53] of part of which I reproduce below:

> "49. (i) Where A has brought an action against B, a later action against B or C may be struck out where the second action is an abuse of process. (ii) A later action against B is much more likely to be held to be an abuse of process than a later action against C. (iii) The burden of establishing abuse of process is on B or C or as the case may be. (iv) It is wrong to hold that because a matter could have been raised in earlier proceedings it should have been, so as to render the raising of it in later proceedings necessarily abusive. (v) The question in every case is whether, applying a broad merits-based approach, A's conduct is in all the circumstances an abuse of process. (vi) The court will rarely find that the later action is an abuse of process unless the later action involves unjust harassment or oppression of B or C."
>
> and
>
> 52. It seems to me that the courts should be astute to ensure that it is only in a case where C can establish oppression or an abuse of process that a later action against C should be struck out…"'

63. Thomas LJ went on to reject an argument that there was any threshold requirement that there needed to be a sufficient degree of identity between the defendants to the original action and the defendants to the new action which the defendants were seeking to strike out so that without such a degree of identity, the abuse application was bound to fail and the courts would never reach the stage of making the broad merits-based judgment.

64. Applying these principles to the current case, I think it is clear that the Respondents cannot be debarred from raising any question of abuse of process merely because either the original actions were primarily against Ms Moutreuil

with the Company being a neutral party whilst the matter under appeal is primarily against the Company for return of the principal of a loan or because the Company now has a different director and his aligned with a different side of the argument. These do have some relevance to the broad merits-based approach that the court should take, but do not of themselves prevent the Respondents from establishing unjust harassment or oppression, either as regards Ms Moutreuil or the Company, and so making good their claim that the Loan Claim involves an abuse of process.

(iii) The Respondents' abuse of process arguments

65. I turn next to the detail of the arguments raised by the Respondents that Mr Andreewitch's Claim, as it relates to the principal amount claimed under the Loan Claim do amount to unjust harassment or oppression. These points need to be considered both individually and collectively. The points may be summarised as follows:

66. First, an overall point that Mr Andreewitch's Claim represents his second or third attempt to relitigate issues that have already been conclusively determined against him and/or which could and should have been raised in the earlier proceedings. It comes after he had been refused permission to appeal the Ownership/ Schedule 1 Judgment and after an injunction application issued on 11 November 2020 that was dismissed by Marcus Smith J as being "*totally without merit*" and an "*impermissible attempt to litigate the issues determined by the* [Ownership and Schedule 1 Judgment]".

67. Secondly, the factual basis for the claim has already been determined against Mr Andreewitch in the Ownership/Schedule 1 Judgment and/or the Contempt Judgment.

68. In making this latter point, I think the Respondents must be suggesting the matter is *res judicata* in the sense of there being issue estoppel or cause of action estoppel. I do not think they have necessarily established this point.

69. The Ownership/Schedule 1 Judgment was focussed on the question of the beneficial ownership of the shares of the Company. There is no direct discussion of whether there was a loan from Mr Andreewitch to the Company.

70. However, the Respondents place reliance on the point that at [42] the judge noted that the value of the Company was estimated to be in excess of £2 million, which would not be the case if the Company in fact had a liability to repay the alleged loan together with interest. This is a stronger point as regards the Respondent's' denial that interest was payable – since the loan with interest would have entirely wiped out the value of the Company, whereas it is possible that the Company could still have had a value in excess of million pounds had it had a responsibility to repay £264,000 in relation to the principal of the loan.

71. Perhaps more importantly, as regards cause of action estoppel or issue estoppel, the way this is put within the judgment - that there was an estimate - cannot be regarded as a finding of the court – it is merely a recital of a background point that had been put to the court.

72. Secondly, the Respondents place reliance on the fact that at [102] Cobb J notes that Mr Andreewitch's counsel had made an assertion that it would have been:

> "absurd for him to contemplate that, within a relatively short time of the start of their relationship, he would have effectively gifted his company (and its valuable assets) to [Ms Moutrueil]".

73. I will call this point "**Mr Andreewitch's absurdity assertion**". This point does not in my view give rise to any cause of action estoppel or issue estoppel as regards the putative loan but, as discussed below, it is highly relevant to the application of the *Henderson v Henderson* abuse.

74. The Respondents also place reliance on the point that there was an acknowledgement by the Defendant recorded at [107] to the effect that this was a case where the winner takes all. I will call this point "**Mr Andreewitch's all or nothing argument**". This is the Defendants says incompatible with Mr Andreewitch's current case that the Company owes him in respect of a loan.

75. This point, taken by itself, is, I consider a weak basis for *res judicata*, in the classic sense of cause of action estoppel or issue estoppel, since it is clear that what was being talked about was 100% or 0% of the shares in the Company. The point was not in terms dealing with the question whether the Defendant had any other type of financial interests against the Company. However, again the point does have bearing in relation to the *Henderson v Henderson* principle.

76. In relation to the Contempt Judgment, there is no discussion of, and therefore no finding in relation to, the loan now in contention. There was discussion of another loan, made by him to the Company in connection with the purchase of the German properties. Mr Andreewitch sought to justify payments he made out of the Company's account, in breach of a freezing order, as being repayments of this loan. Cobb J was robust in denying the existence of this loan and found at [30] that he had:

> "conjured up the obligation to repay a loan during the period under scrutiny."

77. This point is relevant to the *Henderson v Henderson* argument - if Mr Andreewitch was raising the possibility of a loan as regards the German properties he would have been expected at the same time to raise any other loans he considered he was owed - but it does not represent a finding in relation to the loan now being claimed.

78. The question whether there was a loan to purchase the Chelsea property was not raised or considered in the proceedings before Marcus Smith J.

79. In my view none of the points discussed above clearly amount to a finding made by the court in relation to the Loan Claim, and none of them provides a firm basis for a finding of issue estoppel or cause of action estoppel.

80. Nevertheless, these points are highly relevant to the question whether Mr Andreewitch's Loan Claim amounts to an abuse of the court's processes

following the *Henderson v Henderson* principle. Put shortly it is the Respondent's argument that:

i) it was an abuse for Mr Andreewitch to allow the court to proceed on the basis of an estimated value of the Company of £2 million if he was going to make a loan claim (particularly one involving substantial interest) that would render that value untenable;

ii) the loan now being claimed is incompatible with Mr Andreewitch's absurdity assertion;

iii) Mr Andreewitch's all or nothing argument was misleading if Mr Andreewitch in fact considered that he was owed substantial monies in relation to the loan now being claimed;

iv) if Mr Andreewitch considered that he was owed to the amounts claimed under the Loan Claim this was a pertinent point he should have put forward when arguing for a different loan in relation to the German properties.

81. There is force in these all arguments and considerable force when they are taken together. If Mr Andreewitch had agreed a loan arrangement with the Company and failed to mention this in the earlier proceedings then there is a strong inference that he was keeping the Loan Claim up his sleeve, in the knowledge that making this point during or before the Ownership Proceedings and the Schedule 1 Proceedings, would weaken his hand in those proceedings.

82. The Respondents make further points that strengthen further their arguments of *Henderson v Henderson* abuse in relation to the Loan Claim.

83. First, they note that in connection with the Schedule 1 Proceedings, Mr Andreewitch filed a Form E disclosing his assets and made no mention of the fact that he considered he was owed £264,000 principal by the Company, as well as very substantial sum in respect of interest. He argues that he did this because he thought that as he was the beneficial owner of the Company - these were not additional assets to the asset that he had disclosed being the beneficial ownership of the shares of the Company. This is not a credible rationale given that, once the Ownership Proceedings were on foot, he was acutely aware that the beneficial ownership of the shares was under dispute and he failed to correct his Form E or to qualify it in his evidence or submissions.

84. Secondly, they note that following what courts now call the *Aldi* guidelines, if a party realises he may have connected claims, he should at least raise with the court the existence of such new claims at the time. A breach of these guidelines will always be a relevant factor to be taken into account in any application to strike out (see *Outetec* at [53(4)]).

85. Taking all these points together, I consider it was entirely rational for Judge Jefferis to reach the conclusion that he did that the Loan Claim was an abuse of process under the principle in *Henderson v Henderson.* Certainly, I consider that Judge Jefferis' decision was not one that no reasonable judge could reach.

86. Judge Jefferis gave a reasonably detailed explanation of why he had reached this conclusion at [13] to [15] of the Jefferis Judgment. I consider that this provided within its context a sufficient indication of the reasons for his reaching this decision that Mr Andreewitch can be in no doubt as to the basis of this decision. Whilst he did not expressly refer to his consideration of the matter as being based on a broad, merits-based approach to the facts, the matters that he took into account were matters that would be highly relevant to such an approach.

87. I consider, therefore that there are no grounds for believing that his decision was wrong or unjust or that there was any serious procedural or other irregularity in the proceedings such that I should allow an appeal of the decision.

88. Under CPR rule 52.26 an appeal court will allow permission to appeal only where the appeal has a real prospect of success (having regard of course to the test to be applied by the appellate court which I have described at [16] and [17] above) or there is some other compelling reason for an appeal to be heard. I do not consider that the decision of the lower court was wrong on as regards the Loan Claim or that there was any procedural irregularity to justify overturning the decision. Neither do I consider that there is any other compelling reason for an appeal to be heard. I will therefore dismiss Mr Andreewitch's appeal relating to the principal claimed under the Loan Claim.

6. REOPENING THE OTHER GROUNDS FOR LEAVE TO APPEAL

89. As I have already noted, the Rajah Order denied permission to appeal in relation to interest on the alleged loan or in relation to any of the other grounds of appeal but allowed Mr Andreewitch to renew his application for permission to appeal in respect of such matters.

90. Having dealt in some detail with the Loan Claim, I can deal with the other matters more quickly.

7. THE LOAN INTEREST CLAIM

91. The Loan Claim was found by Judge Jefferis be an abuse of process under the principle in *Henderson v Henderson.* Having found myself in agreement with Judge Jefferis in relation to the loan itself, it is inevitable that I should find the same in relation to loan interest.

92. Judge Jefferis also considered that the loan interest claim did not stand any real prospect of success, and whilst again he did not give his reasons for this, I do not think I can give permission to appeal on this basis, given that in my view that the decision as regards *Henderson v Henderson* abuse was a sound one.

93. Furthermore, approaching the point from first principle, I note that the accounts which Mr Andreewitch relies upon as regards the existence of the loan in the first place provide no evidence of any loan interest.

94. Mr Andreewitch seeks to explain this by reference to a point that an accounting convention did not allow the value of the property to be revalued and he did not

want the accounts to show a liability that was greater than the value of the property.

95. This explanation is unconvincing but even if this explanation could be accepted, it remains the fact that there is no evidence whatsoever for an agreement for the Company to pay interest on a loan other than Mr Andreewitch's own statements, and these statements are in contradiction to the case he presented in the earlier proceedings and in the information that he provided to the court on his Form E. It is likely that these points were in the mind of Judge Jefferis when he found that the Loan Claim did not stand any real prospect of success.

96. Taking together my findings as regards *Henderson v Henderson* abuse and the points made in the previous two paragraphs, I agree with Rajah J that permission to appeal should be denied in this case to avoid *Henderson v Henderson* abuse and on the grounds that the claim for interest has no real prospect of success and there is no other compelling reason why an appeal should be heard.

8. THE ESTOPPEL CLAIM

97. At the hearing before Judge Jefferis Mr Andreewitch brought a claim based on what he called "promissory estoppel". Judge Jefferis quite correctly found that such claim could not help him as promissory estoppel could not be used as a "sword" to bring a claim. It can only be used as a "shield" to defend a claim. He also thought that any promise mentioned was temporary in nature, in the sense that the promisor can resile from a promise on notice. I find no fault in his reasoning on this point and consider that an appeal based on the point that this decision was wrong would have no real prospect of success.

98. Judge Jefferis went on to consider the alternative argument which had been developed by Mr Andreewitch based on proprietary estoppel. He noted that there were four elements required to be shown in relation to proprietary estoppel:

    i) "a promise of assurance" - I think his judgment might be mistyped here and he may have meant "a promise or assurance".

    ii) "reasonable reliance on the promise or assurance";

    iii) "detriment as a result of that reliance"; and

    iv) "unconscionability".

99. Judge Jefferis was correct in identifying these elements of a claim based on proprietary estoppel where this is based on a promise, although it is perhaps worth adding that as noted in the leading textbook, *Snell on Equity* (at 12-038) these three elements should not be seen as watertight compartments and the court should consider the matter in the round.

100. Judge Jefferis went on to find problems with Mr Andreewitch's case in relation to each of these elements.

(i) Assurance

101. As regards assurance, he noted that Mr Andreewitch asserts that assurances were made to him before, during and after the trial relating to the Ownership Proceedings and Schedule 1 Proceedings.

102. As regards assurances made before the trial of those proceedings, he found that it would be an abuse of process to raise an estoppel claim now on the principle in *Henderson v Henderson.* I agree and I see no prospect of his having success based on any assurance given before the trial. Applying a broad merits-based evaluation, the estoppel claim it must be abusive both in the context of the Schedule 1 Proceedings and the Property Proceedings not to have raised this point.

103. As regards assurances at trial, Cobb J considered the argument raised by Mr Andreewitch that the finding made by Cobb J that Ms Moutreuil felt she had a moral obligation to provide for him. This finding arose from her pleadings and her own evidence. Judge Jefferis considered that this was not an assurance upon which estoppel could be founded. It was not reasonable to rely upon it. I agree and I see no prospect of Mr Andreewitch having success based on this assurance.

104. As regards assurances after trial Mr Andreewitch in his Particulars of Claim relied on the following letter written after the Ownership/Schedule 1 Judgment, and these were each considered by Cobb J.

    i) A letter from Ms Moutrueil's solicitors dated 5 October 2020 in which the following is said:

    "Ms Moutrueil has more than once reassured Mr Andreewitch that there is no reason at all for him to fear that he will be left "destitute" if the judgement of Mr Justice Cobb is confirmed."

    ii) A letter from Ms Moutrueil's solicitors dated 21 March 2022 in which the following is said:

    "… it has always been her intention to provide you with some future financial support".

    iii) A letter from Ms Moutrueil dated 5 January 2022 in which the following is said:

    "there can be provision for you".

105. Mr Andreewitch argues that these promises, taken together and read in the context of earlier promises made before and during trial, amount to assurances on which it was reasonable for him to rely.

106. Judge Jefferis looked at these alleged assurances in the round and found as follows:

> "I turn to look at the question of assurances in the round. In my judgment, looking at the overall position, the Claimant made her position clear, namely that she felt a moral obligation and intended to provide for the Claimant but she never made a promise upon which it was reasonable for the Claimant to rely to found an estoppel."

107. I consider that Judge Jefferis was correct in making this assessment. The statements made by Ms Moutreuil or on her behalf were vague and at most signified general intent, rather than a promise that had sufficient specificity that it could be relied upon. Certainly, I cannot say that Judge Jefferis was wrong in the sense that I have described above. This was a matter of fact for him to determine and his determination was well within the scope allowed to a judge.

(ii) Detrimental Reliance

108. Judge Jefferis explained at [28] of his judgment that Mr Andreewitch relied on several items of alleged detriment in his Particulars of Claim. He had referred to his "appalling financial situation" but this, in the view of the judge was not a basis for showing detriment for the purposes of a proprietary estoppel claim. He had to show a detrimental change of position in reliance on the assurance. I consider that the judge was accurately describing requirements to be satisfied by someone making a claim for proprietary estoppel.

109. Judge Jefferis considered that there had been no assertion that he changed his position in reliance on assurance and

> "one cannot see anything that he says he did to his detriment, or did not do to his detriment, because of assurance. Thus, even if there were assurances, I find there was no detrimental reliance and the estoppel claim must fail."

110. I do not have a transcript to know what arguments were made before Judge Jefferis, but I can say that Mr Andreewitch's Particulars of Claim merely assert that there was reliance, they do not particularise what was the nature of this reliance, so based on Mr Andreewitch's formal claim as explained in his Particulars of Claim there was no pleading given relating to detrimental reliance on a promise.

111. I am sure that Mr Andreewitch has suffered very great detriment as a result of the orders that have been made against him in this long litigation, and through the costs of the litigation. But none of this detriment comes from any action he has taken in reliance on assurances given by Ms Moutrueil.

112. It should be noted also that detrimental reliance is not raised either in Mr Andreewitch's substantive grounds of appeal.

113. In his skeleton argument for the purposes of the hearing before me, Mr Andreewitch did make some points under headings relating to detriment.

114. There was a section under the heading "Detriment: benefit of the house". This related principally to reliance on statements that Ms Moutrueil had made before the Ownership Proceedings and the detriment that he had suffered as a result of the Ownership/Schedule 1 Judgment.

115. These points, whilst clearly of extreme importance to Mr Andreewitch, are not relevant to the question whether there was detriment as a result of reliance since, it is based on statements before the Ownership Proceedings and as I have noted above, I have accepted Judge Jefferis' point that, if these were going to be dealt with, they should have been dealt with as part of these proceedings.

116. Equally importantly there is no causal connection whatsoever between the detriment claimed under this heading and the promises made. If Mr Andreewitch had withdrawn his claims in the Ownership Proceedings in reliance on these assurances, he might have a point here. But he did not and there is no connection between the assurances mentioned under this heading and any detriment he claims under this heading.

117. Mr Andreewitch's skeleton argument also included a section under the heading "Detriment 2021". Here he asserts that:

> "as a consequence of all her promises, and stated intentions she [Ms Moutrueil] gained the property first from me, and secondly from the judge, as mentioned in his judgement.

118. Again, Mr Andreewitch is making an argument that should have been dealt with at trial. Equally importantly, there is no connection between the promises that are identified and the detriment that to which he is alluding. That detriment arose principally as a result of the Ownership/Schedule 1 Judgment and was not caused by any action that he took in reliance on any assurance given by Ms Moutrueil.

119. In oral argument before me, Mr Andreewitch did raise another point relating to detrimental reliance. He said that he decided not to look for paid employment on the basis of his reliance on the assurances that he would be looked after by Ms Moutrueil. He had expected on the basis of those assurances to be given a sufficient lump sum that would allow him to start up again in business.

120. I do not know if he made this point to Judge Jefferis. It is not referred to in the Jefferis Judgment. If he did not then, having failed to make the point in his Particulars of Claim or in his argument and the lower court, he cannot rely on a new argument to found an appeal.

121. Even if this argument was made in the lower court, it is not a good one. There is no suggestion that, and it is not credible that, the statements relied upon were intended to induce him to delay taking a job and it would not have been reasonable for him to rely on them to make such a decision. None of the statements relied upon could be seen as promising that he would be given by Ms Moutrueil enough capital to start up a business. Even if they were, this was no reason not to work in the meantime.

(iii) Unconscionability

122. Judge Jefferis, having identified unconscionability as one of the matters to be established in a claim based on proprietary estoppel did not consider this issue in reaching his conclusion as to why the proprietary estoppel claim should be dismissed. There was no reason for him to do this, having already found that there were no assurances on which it was reasonable to rely and no evidence of any reliance on any such assurances.

123. For completeness, however, I would add that the question unconscionability was not directly raised by Mr Andreewitch either in his Particulars of Claim or in his skeleton argument.

124. "Unconscionability" is a broad phrase and in the context will allow the court to take account of a significant change of circumstances that has occurred since the making of the promise, as it cannot be expected that a person should have to honour a promise in radically different circumstances than those applicable when the promise was made.

125. Mr Weale raised some points in relation to Mr Andreewitch's conduct in this regard. Mr Andreewitch has failed to comply with court orders; has obstructed Ms Moutreuil's ability to deal with the assets of the Company; has caused her to incur substantial further legal costs and conducted a vitriolic campaign against Ms Moutreuil and those assisting her. The proliferation of litigation, and Mr Andreewitch's failure to meet costs liabilities put upon him will have reduced the assets available out of which Ms Moutrueil may have met any promise.

126. Mr Weale's pointed out as an example an egregious attack on Mr Audley Sheppard, a partner at a City law firm who was the husband of one of those supporting Ms Moutreuil, in the form of an open letter sent to his colleagues including his managing partner.

127. In all the circumstances it may be understandable that Ms Moutrueil may regard the position to have changed since she made any promises to Mr Andreewitch.

128. As Judge Jefferis' decision did not rely on the question of unconscionability there is no need for me to make any positive ruling on this question, but had this point become important it is quite possible that the case would have been dismissed on these grounds also.

(iv) Conclusion as regards the proprietary estoppel claim

129. It will be apparent from the analysis above that I consider that Judge Jefferis was correct in dismissing the proprietary estoppel claim. Certainly, I cannot say that he was wrong in the sense that I have described above. This was a matter of fact for him to determine and his determination was well within the scope allowed to a judge.

130. I therefore agree with Rajah J that permission to appeal should be denied in relation to this ground of claim as the proprietary estoppel claim has no real

prospect of success and there is no other compelling reason why an appeal should be heard.

9. THE GERMAN PROPERTY CLAIM

131. Mr Andreewitch in his Particulars of Claim asks for:

> "a declaration that [he] entered into a trust agreement with [the Company] regarding the German Properties from (*sic*) [the Company] to be held in trust for me."

132. In his Particulars of Claim he sought to justify this remedy by reference to various statements made by Ms Moutreuil or solicitors on her behalf that acknowledged his ownership of the German properties. Judge Jefferis was aware of these points but did not consider them to be relevant, finding that:

> "The German properties were acquired between 2004 and 2010, long after the shares in the Company were transferred. The First Defendant knew very little about them and originally thought they were owned by the Claimant, (and said as much). That did not affect Cobb J.'s view that they were beneficially owned by the First Defendant, after the transfer of the Shares."

133. In other words, he considered that these the statements had been considered by Cobb J and had not affected a finding that Cobb J had made that the German properties were that beneficially owned by Ms Moutreuil. In finding this I think he must be taken as meaning that Cobb J had found that the German properties were *indirectly* beneficially owned by Ms Moutreuil - that is that he had found not only that did she have legal and beneficial ownership of the shares of the Company but also that the Company had legal and beneficial ownership of the German properties.

134. If Judge Jefferis was correct in his finding of *res judicata* in relation to this point, then, clearly, he was correct also in his finding that there was no need to consider these statements made by Ms Moutrueil. If he was not correct on this point (and I discuss this below), then it seems to me that these statements might be of some relevance to the German Properties Claim, although I doubt whether on proper consideration they would prove determinative of the point.

135. In his Grounds of Appeal, Mr Andreewitch takes issue at Judge Jefferis' statement in the Jefferis Judgment that there was no claim by the Claimant that there was a document in existence. Mr Andreewitch says that this ignores everything stated in his submissions.

136. To quote what Judge Jefferis said more precisely he said (at [34]):

> "… there was no claim by the Claimant that there was a document in existence recording a "trust agreement". Nor was there any reference to the Claimant entering an oral agreement with the Company for a trust."

137. In fact, Judge Jefferis is correct in that there was no actual pleading as such of an agreement (written or oral) within the Particulars of Claim. The are only two mentions of a trust agreement within the Particulars of Claim.

138. The first is in paragraph 42 where Mr Andreewitch explained that:

> "My second claim concerns a determination about the trust agreement I entered into with Pier Investment Company about these properties".

139. This pleading assumes the existence of a "trust agreement" rather than clearly stating that there was one. Certainly, it gives no indication of the circumstances (such as who agreed this on the part of the Company), or when it was agreed), or the terms of any such agreement (such as whether the Company would be paid for acting as trustee or whether it would be indemnifies for the costs of ownership).

140. The second is where he asks for a remedy as described at [131] above. Asking for a remedy is not the same as pleading that such an agreement exists.

141. In his Grounds for Appeal, Mr Andreewitch raised a different argument that a trust arose because he paid for the German properties and transferred them to the Company on the understanding that he was retaining beneficial ownership. I do not think he appreciated this, but this is different from the case that there was a trust agreement – it is an argument that the circumstances of his funding the Company to buy the properties (or giving the properties to the Company) gives rise to a presumption that there was a resulting trust.

142. In support of this argument, he quoted the decision of Eleanor King J in *M v M* [2013] EWHC 2534 (Fam) to establish a proposition that positive evidence of the source from which purchases are funded establishes the ordinary inference that the provider of the funds is the beneficial owner of the property. I do not think he had read the case, but rather had read a legal article that referred to it as authority for this proposition.

143. There is some truth in the point being made, but it is only part of the story.

144. As set out in [176] - [177] in that decision:

> "176. Over the years the courts have considered the ease or otherwise with which the presumption of a resulting trust can be rebutted. In *Westdeutsche Landesbank Girozentrale v Islington LBC [1996]* AC 669 HL Lord Browne Wilkinson said at 708A:
>
> Under existing law a resulting trust arises in two sets of circumstances: (A) where A makes a voluntary payment to B or pays (wholly or in part) for the purchase of property which is vested in B alone or in the joint names of A and B there is a presumption that A did not intend to make a gift to B: the money or property is held on trust for A (if he is the sole provider of the money) or in the case of a joint purchase by A and B in shares proportionate to their

> contributions. It is important to stress that this in only a presumption which presumption is easily rebutted either by the counter presumption of advancement or by direct evidence of A's intention to make an outright transfer."
>
> 177. The modern approach is set out succinctly in *Kyriakides v Pippas* [2004] 2 FCR 434 para 74 & 76:
>
> *...."The courts will always strive to work out the real intention of the purchaser and will only give effect to presumptions of resulting trust and advancement where the intention cannot be fathomed and a 'long stop' or 'default' solution is needed.""*

145. As far as I can tell, this point was not specifically raised in the hearing before Judge Jefferis. Certainly, he makes no mention of the point. I understand further that no copy of this case was provided to him (and indeed none was provided to me). There was, however, a reference to it in Mr Andreewitch's Reply. According to Mr Andreewitch there was also a reference to this case in his first Particulars of Claim submitted on 3 March 2023 but no copy of this has been made available to me and in any case I think that Judge Jefferis was entitled to look only at the Particulars of Claim that was actually before him and not any earlier version. There was also a mention of the case in the scandalous open letter that had been circulated by Mr Andreewitch to embarrass Mr Audley Sheppard.

146. In the absence of the argument that the circumstances regarding the presumption of a resulting trust being specifically and clearly pleaded, Judge Jefferis cannot be criticised for failing specifically to deal with it.

147. As to the merits of this point, the Respondents point out that the presumption for which Mr Andreewitch now argues applies only where there is the absence of evidence of intention and they argue that there was express evidence before Judge Jefferis (and, before, it, in the Ownership Proceedings) which directly contradicted the suggestion that the German properties were held on trust for Mr Andreewitch.

148. This, according to the Respondents included (but was not limited to):

    i) Mr Andreewitch’s own Form E (which included no indication of beneficial ownership of the German properties);

    ii) the Notes to the Declaration of Trust considered by Cobb J in the Ownership Judgment at [68].

    iii) Mr Andreewitch’s case in the Committal Trial (reflected by Cobb J at [26(ii)] and [32]) that the amounts he claimed to have provided were a loan to the Company to enable it to buy the German properties on its own behalf, rather than a payment to enable the company to purchase as trustee on his behalf.

149. I find some of these points less than convincing as a rebuttal of the argument that there was a resulting trust (although, as I will deal with later, some have bearing on the question of *Henderson v Henderson* abuse). In particular:

    i) As regards Mr Andreewitch's Form E: The Respondents do have a point, that if Mr Andreewitch thought he had retained beneficial ownership of the German properties his Form E is incompatible with this. The point is also relevant to the *Henderson v Henderson* question discussed below.

    ii) As regards the Notes to the Declaration of Trust: I cannot follow the Respondents' point on this. These Notes make no mention of the German Properties and only deal with the assets and liabilities of the Company at the date of the transfer of its shares to Ms Moutreuil (saying that the Chelsea property was the only asset and that there were no liabilities). The German properties were acquired later, and the Notes have nothing to say about them either way.

    iii) As regards Mr Andreewitch's case in the Committal Trial: as Cobb J specifically found against the proposition that there was a loan to the Company to buy the German properties, this does not count as evidence against the proposition that this was a payment to enable the company to purchase the German properties.

150. The Respondents also point out that Mr Andreewitch did not seek to run a contrary case in the Ownership Proceedings and argue therefore that it was Mr Andreewitch's case in the Ownership Proceedings that he had no other significant assets (including the German properties). This is more relevant to the question of *Henderson v Henderson* abuse than it is to the merits of the resulting trust argument.

151. Apart from his finding that Mr Andreewitch's had not claimed that there was a document in existence recording a trust agreement, and did not refer to any oral agreement, Judge Jefferis principal reason for dismissing the German Properties Claim (stated at [36] and [40] in the Jefferis Judgment) was based on his finding that:

> "Cobb J had found that "the Shares and the Company's assets, including the German Property, were owned beneficially by the First Defendant"

    and, therefore, a claim for a declaration that there was a trust agreement for him would be an abuse of process under the principle of *res judicata* on the basis that the matter has already been decided.

152. As I have mentioned, I think that in finding this I think he must be taken as meaning that Cobb J had found that the German properties were indirectly beneficially owned by Ms Moutreuil in the sense I have explained at [133] above,

153. Whilst there was no express finding to this effect in the judgment of Cobb J, Judge Jefferis he considered that this could be inferred from:

i) the terms of the judgment as a whole;

ii) the terms of the order made pursuant to that judgment which, in his view were consistent with the First Defendant's beneficial ownership and wholly inconsistent with the German Properties being held in trust for the Claimant, and he gave examples of why this was case, such as the requirement in the order to hand over keys to this property.

154. As a further justification he noted that it was Mr Andreewitch own position that whoever was found to own the shares in the Company would own the assets and he referred to what I have described above as Mr Andreewitch's all or nothing argument.

155. Having regard to the way it is expressed, Judge Jefferis' finding of *res judicata* must, in my view be deemed to finding of cause of action estoppel or issue estoppel: he said that the matter had already been decided by another court and it would be an abuse to seek to reopen that judgment.

156. In my view *Henderson v Henderson* abuse was also on his mind, as he quoted at length from paragraph 32 of the Committal Judgment which dealt with, and dismissed, the argument that Mr Andreewitch had raised in the Committal Proceedings that he had lent the Company money to purchase the German properties. Presumably he considered this relevant as that argument is, incompatible, with an argument that he had provided the purchase price of the German properties in order for them to be purchased and to be held by the Company as nominee for his account. This point is relevant to *Henderson v Henderson* abuse, and perhaps also to a conclusion that Mr Andreewitch's evidence, where not supported by other evidence, should be regarded as unreliable. However, this finding of the court it is not incompatible with the case Mr Andreewitch is now advancing: if the monies were not a loan, they must be either a gift or give rise to a resulting trust and Cobb J did not explicitly say which.

157. Nevertheless, I consider that Judge Jefferis' decision as regards the German properties must, according to the terms in which it was expressed, be said to have proceeded on the basis of the matter having been determined by another court rather than the wider question of *Henderson v Henderson* abuse, even if *Henderson v Henderson* abuse may have been on his mind.

158. In my view there is an argument that, in the absence of any *Henderson v Henderson* issues, there might be more than a fanciful prospect of an appeal succeeding, such that permission to appeal should be granted. I say this:

i) having regard to the justifications found by the Judge for finding *res judicata,* which were based more on inference rather than any clear finding by another court as to the beneficial ownership of the German properties; and

ii) noting that there was no explanation to show that that Judge Jefferis had clearly applied his mind to the possibility that the order made by Cobb J

was based on an *assumption* as to the beneficial ownership of the German properties rather than a *finding* to that effect.

159. However, for me to grant permission to appeal would in my view give rise to a further abuse of the court's process on *Henderson v Henderson* grounds, and on those grounds, I will refuse permission to appeal on this point.

160. If one looks over the entirety of the proceedings, at various different points Mr Andreewitch has made his case on the basis, or at least apparently on the basis, that the German Properties:

    i) were in the beneficial ownership of the Company, and that this fact supports his case that it was highly unlikely that he meant to provide an absolute gift of the shares of the company to Ms Moutrueil (what I have defined above as Mr Andreewitch's absurdity assertion and Mr Andreewitch's all or nothing argument);

    ii) were bought by the Company using money that had been loaned to the Company by him for that purpose (his argument at the Committal hearing);

    iii) were the subject of an express trust agreement that had been agreed orally between him and the Company (the remedy claimed in his Particulars of Claim and, most recently in his skeleton argument supporting his appeal);

    iv) and most recently that they are the subject of an implied trust arising from his giving cash to the Company to purchase the German Properties in circumstances that gave rise to an unrebutted presumption of a resulting trust.

161. I have already outlined in detail what constitutes *Henderson v Henderson* abuse and I am compelled to agree with the Respondents that Mr Andreewitch's shifting position on what happened as regards the German Properties falls squarely into that category, particularly when taken alongside his other attempt to subvert the Ownership and Schedule 1 Judgment in the form of an application to stay the sale of the Chelsea property which Marcus Smith J found to be totally without merit.

162. If Mr Andreewitch considered that he was the beneficial owner of the German properties he should have made that point in the Ownership Proceedings and Schedule 1 proceedings - the point was highly relevant to both proceedings. He should not have completed his Form E in a way that was incompatible with that assertion. Certainly, he should not have given a different and entirely incompatible explanation during the Contempt proceedings.

163. Further, if he considered that he was a beneficial owner not because of a specific agreement, but because the circumstances of his funding the Company gave rise to the presumption of a resulting trust, he should have made this case in his Particulars of Claim rather than waiting to raise this on appeal.

164. Taking, as I should, a broad merits-based approach in judging whether there has been abuse I conclude that there has been. Mr Andreewitch's shifting and inconsistent position on the ownership of the German properties has resulted in multiple and unnecessary hearings and much waste of court time. This in my view passes the threshold of "unjust harassment or oppression". For this reason, I will deny Mr Andreewitch's application for permission to appeal on this point also.

10. CONCLUSION

165. During the hearing Mr Andreewitch confirmed that the matters I have dealt with above dealt with all his outstanding grounds for appeal: the grounds which appeared under other headings were subsumed into the points dealt with above.

166. For the reasons given above I am both dismissing both Mr Andreewitch's appeal of the decision and order of Judge Jefferis as regards the question of the Loan Claim as it relates to principal and his renewed application for permission to appeal in relation to the remainder of his Grounds of Appeal.

167. As regards, the Ground of Appeal relating to the Loan Claim as it relates to principal of the alleged loan, technically Mr Andreewitch has a further right to appeal my decision on this point through an appeal to the Court of Appeal if permission is granted for such a further appeal.

168. As regards the other Grounds of Appeal, my decision in denying him permission to appeal is the end of the road.

169. In delivering this reserved judgment, which is relatively lengthy, when one considers this was a one-day hearing and dealt with matters that are routinely dealt with on a summary basis, I have sought to provide Mr Andreewitch with a very full explanation of why his various applications and appeals have not succeeded. Mr Andreewitch made no secret of his dissatisfaction with the treatment that he considers that he has had from the English courts. I expect he will be dissatisfied with this judgment also, but I hope that this judgment will give him a better idea of how he has got to where he now is in these proceedings and that he will at least see that the fullest consideration has been given to the arguments that he has raised.

170. I have considered whether I should rule Mr Andreewitch's appeal and application for permission to appeal as being wholly without merit. I have determined that I should not. This is because, as will be clear from the discussion above, there were some points within the Jefferis Judgment that were open to further examination.