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Claim No. BR-2021-000116

IN THE HIGH COURT OF JUSTICE

BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES

INSOLVENCY AND COMPANIES LIST (Ch D)

IN THE MATTER OF CHRISTOPHER JAMES HATTON

AND IN THE MATTER OF THE INSOLVENCY ACT 1986

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

Date: 29/11/2022

Before :

I.C.C. JUDGE JONES

- -

Between :

THE OFFICIAL RECEIVER

Applicant

And

CHRISTOPHER JAMES HATTON

Respondent

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- -

Ms Lucy Wilson-Barnes (instructed by **TLT LLP**) for the **Applicant**
Mr Hatton appeared in person

Hearing dates: 15-17 November 2022

- -

Approved Judgment

"Remote hand-down: This judgment was handed down remotely at 10.30am on 6 December 2022 by circulation to the parties or their representatives by email and by release to The National Archives."

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

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I.C.C. JUDGE JONES

I.C.C. Judge Jones:

A) Introduction

1. The Official Receiver ("**the OR**") applies by notice dated 12 December 2019 for a bankruptcy restrictions order ("**BRO**") against Mr Hatton. The bases for the application are set out in the report of Mr Draycott, an Assistant Official Receiver dated 12 December as follows:

> *"Between 1 April 2017 and 22 November 2018, [Mr Hatton] at a time when he was aware he had outstanding liabilities dissipated or attempted to dissipate his assets in an attempt to keep them out of the reach of his creditors in that:*
>
> *(1) At a time when he had received a demand for payment for at least £192,761, [he] gifted his shareholding in a company which owned a villa in Portugal (through its ownership of a connected company) worth approximately €860,000 to two close family members.*
>
> *(2) In July 2018 [he] disposed of £372,896 from the sale of a solely owned property by transferring the proceeds to a connected company. He stated that this was in repayment of a loan.*
>
> *(3) Following a High Court Injunction on 26 October 2018 prohibiting him from disposing of any of his assets, [he], on 22 November 2018 attempted to have a deceased relative's will changed to disinherit himself from £25,000 he was due to receive in favour of family members.*

2. Underlying those grounds, as relied upon in the OR's evidence, are claims and consequential litigation by Mr and Mrs Watson against Mr Hatton and his wife in their capacity as guarantors, and against their accountancy company, Danton Partners Limited ("**DPL**") as the principal debtor. It is alleged Mr Hatton sought to place the shares in Danton Estates Limited ("**DEL**"), the net proceeds of sale from his house and/or his rights of inheritance (together to be called "**the Transactions**") beyond the reach of Mr and Mrs Watson should their claims succeed. Mr and Mrs Watson obtained judgment from Mr Justice Hildyard on 6 January 2019. Mr Hatton was made bankrupt on 13 February 2019 having presented his own petition.

3. The grounds are relied upon subject to two concessions made at trial. First, it is accepted Mr Hatton believed there was a defence to Mr and Mrs Watson's claims, at least until the judgment which was delivered after the Transactions. Second, it is not alleged that Mr Hatton was or became insolvent as a result of the Transactions. The claim is in effect brought on the basis that the Transactions defrauded creditors, as that term is understood within ***s.423 of the Insolvency Act 1986*** (***"s.423"***).

4. A BRO is made under ***paragraph 2(1) of Schedule 4A to the Insolvency Act 1986***. It provides that: *"The court shall grant an application for a bankruptcy restrictions order if it thinks it appropriate having regard to the conduct of the bankrupt (whether before or after the making of the bankruptcy order)."* In deciding whether it is appropriate, account shall be taken of the kinds of behaviour listed in ***paragraph 2(2)***.

5. That list does not include ***s.423*** but it does include transfers at an undervalue and in any event is not exclusive. It is plain that conduct which puts assets beyond the reach of creditors who are making a claim or who may do so in the future or which otherwise prejudice their interests may constitute conduct which causes the court to think it appropriate to grant a BRO. Such conduct is likely to be misconduct indicating want of probity, which is one of the traits that case law has identified as guidance for the operation of ***paragraph 2(1) of Schedule 4A to the Insolvency Act 1986***. In addition, there is likely to be a need to protect the public which is one of the purposes of a BRO.

6. In reaching a decision the court may take into account extenuating circumstances accompanying the conduct in issue. However, if the court concludes that conduct makes the BRO appropriate, the BRO *"shall"* be made.

B) Summary of the Background and Substantive Matter Alleged by the OR

7. The OR's case is presented against the background of DPL's purchase of Bridgeson & Co (Accountants) Limited ("**Bridgeson**") upon the sale of its shares by Mr and Mrs Watson on 4 March 2016. The purchase consideration to be paid by DPL included three deferred payments to be made on 4 March 2017, 2018 and 2019. Put simply, £192,761 was to be paid on each occasion, subject to potential adjustment by reference to gross recurring fee percentage calculations and current net assets with completion accounts and a statement required for that purpose. Mr and Mrs Hatton were required to guarantee those DPL payments.

8. A solicitor's letter dated 6 March 2017 made formal demand for payment of the first deferred consideration instalment by Mr and Mrs Hatton as guarantors. On 9 January 2019 judgment was awarded against DPL and Mr and Mrs Hatton in the sum of £356,448 plus costs with declaratory relief establishing the further liability to pay £192,761 when the third deferred consideration fell due.

9. The OR alleges that each of the Transactions occurred when Mr Hatton had knowledge of this potential, personal liability and were intended to put the assets concerned beyond the reach of Mr and Mrs Watson. In particular (as taken from Mr Draycott's first report):

    a) On 10 January 2018 filings at Companies House record that Mr and Mrs Hatton transferred their shares in DEL to Mrs Hatton's children, Mr Hatton's step-children ("**the DEL Share Transfer**"). DEL owned Sanwest Holdings Limited, a Maltese company, which owned a property in Portugal, "**Periquita**", that had been purchased by DEL on 16 October 2014 for €750,000 (£593,100) with money provided by Mr and Mrs Hatton.

    b) On 12 July 2018 Mr Hatton received £372,896 from the net proceeds of sale of "**Appletree House**" in Aylesbury, registered in his sole name. This was after discharge of the first charge of Nationwide Building Society. He used the money: (i) to pay £104,000 to "**The Appletree Trust**", Mr Hatton's pension scheme; (ii) to purchase a DPL company car which Mr Hatton used; (iii) to discharge his DPL director's loan account; and (iv) to lend £171,000 to his

brother-in-law, Mr Brown, who invested in and lent the money to Coningsby Estates Limited.

c) Coningsby Estates Limited was ultimately owned by The Appletree Trust via Hughenden Estates Ltd and was the purchaser of "16 Manor Court Yard" ("**16 Manor Court**") for £570,000 in October 2018. The purchase price was provided by loans: as to 40% (£228,000) by The Appletree Trust; 30% by (£171,000) from Mr Brown; and the balance from Lloyd's Bank (£179,000). The OR in his report referred to Mr Hatton having stated that The Appletree Trust and Mr Brown had equity in Coningsby Estates Limited equal to their percentage loan contributions. The OR expressly observed in his report that none of the net proceeds were used to pay DPL's liabilities to Mr and Mrs Watson or, it follows, Mr Hatton's liabilities as a guarantor. Instead his pension fund, the Appletree Trust, achieved indirect ownership of 16 Manor Court.

d) Despite a world-wide freezing order obtained on 26 October 2018 by Mr and Mrs Watson against the assets of DPL, Mr Hatton and his wife, valued up to £670,000, Mr Hatton sought to procure a variation of his late father's will to exclude his £25,000 inheritance in favour of his step-children. This is evidenced by an email sent on 19 November 2018 to the estate's solicitors. Further, he misled the court on 22 November 2018 by stating there was a deed of variation knowing that not to be so.

C) The Defence

10. Mr Hatton's defence within his first witness statement raises the following summarised matters:

a) The background to the unpaid, deferred consideration relating to DPL's purchase of Bridgeson was the failure of Mr Watson: first, to prepare the required completion accounts and statement; and second, to provide supporting documentation with the inadequate, purported completion statement presented approximately one year after completion of the purchase (circa March 2017). An independent forensic report (not before this court) obtained by DPL (which had changed its name to Applegarth Dene Ltd) concluded that it had been fraudulently and negligently misled as to Bridgeson's financial position. The report established that as at 3 March 2017 Mr Watson owed DPL £242,759 less £93,454 for the deferred consideration as properly calculated, namely £149,305. In addition, there were creditors undisclosed when Bridgeson was sold totalling £114,368 together with an undisclosed tax liability of £84,163. Further, the Bridgeson business suffered from staff departures, their subsequent competition and a significant loss of the client base. All this caused the decision not to pay the deferred consideration.

b) A background to the Transactions was the fact and effect of their eldest son, Edd's suicide on 3 March 2017. A consequence was that Mr Hatton and his wife decided to accelerate their ten year retirement plan, previously intended to take effect in 2023. It had been formed pursuant to advice received from

pension advisers, Mattioli Woods. The retirement plan included establishing **"The Appletree Trust"**, and the intention of selling/transferring assets for Inheritance Tax planning purposes. As at March 2017 they had net assets in the region of £2-2.2 million (their liabilities being a £160,000 mortgage and a £30,000 bank loan), more than sufficient to pay Mr and Mrs Watson should their claim succeed.

c) The acceleration involved: the gifting of Periquita (leaving assets worth over £1.5 million); the sale of **"Appletree House"**; and the sale of DPL's goodwill through a management buyout ("**the MBO**"). The intention was that the Appletree Dene Limited would end up having gross cash reserves of around £1,400,000 (or around £1,000,000 after paying tax) which it would use to finance retirement.

d) The MBO was thwarted by the freezing order obtained by Mr and Mrs Watson 26 October 2018. That was despite it being an arms' length transaction with: a purchase price of £695,983 to be paid over 6 years; payments during each of those years attributable to gross recurring fees and without claw back totalling £304,825 in year 1, £103,641 in years 2-3, £60,985 in years 4-5; and £61,947 in year 6; and salaries of £24,000 for both Mr Hatton and his wife. The £695,983 received for the goodwill was 46% more than the £474,448 value for the goodwill shown in the latest accounts. Adding the £207,504 owed by Mr Brown and assuming £300,000 was paid by trade debtors (which DPL would have retained) that would have provided a total of £1,203,487 to settle creditors. Instead, on 25 January 2019 DPL was placed into administration.

e) The mental effect upon Mr Hatton of his son's suicide had been considerable. It had also adversely affected the keeping of accounting records that had previously been meticulous. In addition, the litigation itself was a drain on resources. Mr Hatton's very serious health difficulties had also exacerbated the problems in the context of trying to resolve the financial position.

f) As to the DEL Share Transfer, this occurred on 1 April 2017 but from his recollection no demand under the guarantee had been made at that time. The explanation for this lack of recollection may be that the solicitor's letter of demand was presumably sent around 3 March 2017, being not only the date for the first deferred payment but also the day of Edd's suicide which has affected his memory of events in March.

g) In any event there was a good defence to Mr and Mrs Watson's claims against DPL. Even if that proved not to be so, there were more than adequate net assets to cover the claims in any event, circa £2-2.2 million. A position changed by the freezing order not by the Transactions. The DEL Share Transfer, as with the other Transactions, was not entered into to hide assets. The gift was part of long term inheritance tax planning which in 2013 had produced a 10 year plan.

h) The decision to sell Appletree House had first been made in 2014. The sale would enable repayment of Mr Hatton's DPL director's loan account and thereby avoid a tax charge of about £100,000. The attempts to sell during 2014/15 fell through. By 2016 Lloyds Bank had a second charge over the

property to secure the £300,000 loan made to DPL to assist the purchase of Bridgeson.

i) A further attempt to sell the property, this time privately, during 2017 also failed and led to it being marketed during late 2017. A sale was completed on 12 July 2018 for £530,000 with £149,480.76 repaying the first charge holder, Nationwide Building Society. £320,000 was understood to be secured by the second charge (although later it was found to be £303,000) and was required by Lloyds Bank to be paid into a segregated account. The balance of the net proceeds was £52,986.24. £370,000 was paid into the Lloyds Bank account, of which £50,000 was used to repay Mr Hatton's director's loan account.

j) Out of the £320,000 DPL paid its solicitors, Horwood & James, £44,175.80 and Lookers £22,500 for a DPL company car (sold by the administrators for £19,000). The balance was used to finance the purchase of 16 Manor Court with Lloyds Bank receiving a charge over that property also to secure its £190,000 lending. The charge and a guarantee from Coningsby Estates Ltd replaced the charge Lloyds Bank had held over Appletree House.

k) As to the will, Mr Hatton had always made clear he had not wished to inherit from his father because of his strong financial position. He had not anticipated he would be a beneficiary but was told by his father on 22 August 2018 at the hospice, during his last visit, that the will left him a one eighth share. His father, who died on 25 August 2018, also stated that he now wanted Mr Hatton's step-children to inherit instead. Mr Hatton believed that the executors had given effect to that wish, which he had passed on, by deed of variation. In fact that did not occur because it could be achieved without a deed. The emails relied upon by the OR do not evidence an attempt to have the will changed to achieve disinheritance. This was nothing to do with the claims of Mr and Mrs Watson. There was no intention to deceive the court. This all occurred at a very stressful time.

l) Mr and Mrs Watson's judgment was obtained without the merits being addressed. It resulted from non-compliance with unless orders in the context of Mr Hatton having insufficient funds, in part due to the loss of the MBO caused by the freezing order. There are no binding findings of fact within the judgment as a result.

11. There are further witness statements from Mr Hatton in response to further reports from Mr Draycott. The reports consist of a mixture of argument and additional evidence, and the same applies to Mr Hatton's further evidence. Whilst this judgment will bear in mind their content to the extent relevant and appropriate, they do not require the summaries above of the claim and defence to be altered except to add:

a) As to the DEL Share Transfer: in his third witness statement Mr Hatton states that DEL borrowed from DPL for the money required to purchase Sanwest Holdings Ltd: £59,310 for the purchase deposit lent on 22 October 2014; and on 28 November 2014 £533,790. He exhibits a loan agreement. It provides for 600 regular monthly payments of £80 starting 28 December 2014 with a final payment of £545,100 on 28 November 2064, and a roll up provision in the

event of non-payment. There is also an anti-deprivation rule offending, write-off provision in the event of DPL's insolvency.

b) The OR does not accept there was a loan by DPL and relies upon evidence concerning matters said or written by Mr Hatton to the effect that he and Mrs Hatton provided the purchase money for DEL's purchase of Sanwest Holdings Ltd. The loan agreement is considered a document created for the purposes of the litigation.

c) Mr Hatton has also asked the court to consider his written "statement under caution" provided to the OR at his request including reference to the statutory accounts of and accountant's reports for Hughenden Estates Ltd and Coningsby Estates Ltd

D) The Trial

12. There might have been an issue at trial as to whether and, if so, to what extent Mr Hatton is bound by the judgment of Mr Justice Hildyard dated 6 January 2019 [2019] EWHC 349 (Ch) in the claim by Mr and Mrs Watson against himself, his wife and DPL. However, Ms Wilson-Barnes, counsel for the OR, made clear that the proceedings and the judgment were only being relied upon by the OR to establish that during the relevant periods of the Transactions Mr Hatton was aware of Mr and Mrs Watson's claim and, therefore, that he had either an actual or a prospective or contingent liability. Whilst the judgment is only evidence of the opinion of the learned Judge, it includes reference to factual evidence which I accept can be used for that purpose insofar as it is necessary to do so.

13. The OR's case also accepts that Mr Hatton believed he had a defence based upon two matters: first the absence of the completion accounts, completion statement and supporting documentation mentioned in paragraph 10 above; and second because of the fraud and/or negligence he alleged concerning Bridgeson's financial position as also referred to in paragraph 10 above. The rider to this acceptance is that it is not to be taken to mean that the OR has concluded that this believed defence means the transactions had nothing to do with avoiding payment of Mr and Mrs Watson. However, it was accepted that it meant that Mr Hatton did not have to prove those defences.

14. As a result of this approach it is unnecessary to dwell upon Mr Hatton's assertion that the judgment was not a decision on the merits. Although, in fact it was:

a) The Judge accepted that Mr Hatton was debarred from defending the claim by reason of non-compliance with unless orders but concluded that Mr and Mrs Watson needed to prove their claim to be entitled to the relief sought because the inclusion of declaratory relief meant ***CPR Part 3, Rule 3.5(5)*** (judgment without trial after striking out) did not apply.

b) Based on counsel's references to the CPR, he decided the appropriate approach was to determine the claim without a trial but relying upon ***CPR Part 24***. That produced a decision on the facts.

c) It may be noted he was not referred to the approach that would have led to a decision upon an uncontested trial, as opposed to the summary judgment approach which placed a higher, no reasonable defence burden upon Mr and Watson. The striking out of the defence meant an application under ***CPR Part 23*** in accordance with ***CPR Part 12, Rule 12.4(3)*** was more appropriate. However, since Mr and Mrs Watson by their counsel accepted the more rigorous position of proving summary judgment, nothing turns upon that.

15. At trial it was effectively agreed that it was unnecessary for Mr Draycott to be tendered for cross-examination. That flowed from the fact that he had no personal knowledge of the Transactions and any cross-examination would amount, in practice, to argument. This decision was subject to Mr Draycott being called if cause or need was discovered during the trial but it was not. I was also of the view that it was unnecessary to cross-examine Mr Watson because his evidence could not go to the issue of Mr Hatton's mind-set concerning the Transactions. Ms Wilson-Barnes, counsel for the Official Receiver, drew attention to potential passages of relevance but Mr Hatton decided that cross-examination by him would also result in argument, potentially acrimonious. Although, as with the Official Receiver, I left it open to Mr Hatton whether to request the opportunity to cross-examine, I am satisfied he made the correct decision for both witnesses.

16. Mr Hatton gave evidence and any analysis of his evidence has the potential for considerable complexity based not only upon his presentation in the witness box but also taking into consideration all the surrounding elements which must have affected his mind over the period relevant to this claim. Nevertheless, the approach I have taken for the purpose of reaching my decision is a simple one:

a) First, it is plain that I must in effect give a "bad character" direction to myself. Namely, that a propensity to be deceitful has been established by an unconnected matter, which means that appropriate resulting caution must be adopted but without meaning that it establishes that he has been deceitful in the context of these matters.

b) Second, his evidence should be treated with caution because of the effect the surrounding elements will have had upon him, the fact that parts of his defence were not identified until after his first witness statement, and because of the general manner in which he gave his evidence.

17. I must obviously explain the reasoning but should start with the observation that Mr Hatton has shown remarkable fortitude in dealing with a variety of adverse events from 2017, some tragic and others undermining his economic position . I refer to: the suicide of his son; the death of his father; the stress of litigation including a world-wide freezing order; the loss of an accountant's practising certificate; the loss of an MBO for DPL and its consequential replacement by an administration and subsequent liquidation; his bankruptcy; the break-down of his marriage; and this claim. A natural reaction in the context of this claim is to suggest that compassion has been jettisoned but, whilst it would be charitable to wipe the slate clean on the basis that he deserves a break from what life has been throwing at him, the Official Receiver is plainly right to take the approach that if Mr Hatton's conduct means that the public protection provided by a BRO is nevertheless still required, then it should be sought and granted.

18. Those events will plainly have affected Mr Hatton mentally. Concentrating upon the most serious, his son's death, it is unfortunate because of its inherent relevance to Mr Hatton's mind-set that the effect at the relevant times cannot be assessed. Indeed, but for tentative soundings by me it was a topic which would have been avoided in court. Understandably because, as I fear my soundings demonstrated, absent medical evidence the adversarial court room is not the most suitable forum for such an assessment since reference to a son's death causes inevitable stress. However, it means that a key element within his mind-set from 3 March 2017 is largely avoided despite the fact that subjective intention is at the heart of the claim. The answer to this potential conundrum is that this is litigation. It is for each side to decide what evidence to put before the court and for a decision to be reached on that basis. After all, the effect on Mr Hatton's mind may have been beneficial, adverse or neutral to either side's case and that is why it is for each side to decide what evidence to adduce and challenge (subject of course to not misleading the court).

19. The approach I will take, therefore, is to keep in mind the fact of Edd's suicide, take judicial notice that this will inevitably have impacted upon the mind-set, actions and decisions of Mr Hatton but apply the evidence before me to the extent that it assists the making of a decision. The same approach will apply to the death of Mr Hatton's father, appreciating that whilst this was part of the natural progression of age, it came on top of the fall-out from Edd's death.

20. When assessing Mr Hatton's evidence during cross-examination I also need to bear in mind the other difficulties he has endured, whilst also appreciating that his evidence was given within a pressured environment. They are difficulties which are likely to have affected his memory, and in any event his evidence must be viewed with caution insofar as reliability of memory is concerned, as with all witnesses. However, whatever the specific cause, it was the case that his evidence was often confused. He frequently did not answer the question and his answers often drifted tangentially. It was not always easy to identify the core of his evidence but the fact the task was difficult does not mean it could not be achieved using the usual judicial tools. I am satisfied that the matters I have relied upon when reaching this judgment that are derived from his evidence were sufficiently clearly established to be relied upon, even if digging was required to unearth the evidence on occasions.

21. That conclusion is reached having approached his evidence with considerable caution. As mentioned, there is evidence before me of deceit concerning a separate matter. It involved a manipulation of accounting records. True the circumstances were different and difficult, the motive appearing to be to protect a step-son with family pressure to do so. However, the "confession" within the email I have been shown, whilst producing credit in itself, causes the inevitable need for a bad character direction to be applied.

22. There is also the feature that Mr Hatton did not mention apparently key facts until after his first witness statement. For example, his evidence when addressing the DEL Share Transfer did not mention until after his first witness statement that the purchase price had been provided by a loan from DPL which was equal to or more than the value of the property at the time of the gift. This does not necessarily mean he should be disbelieved but it does mean that his evidence needed to be addressed with great care. Bearing in mind this and all the other matters addressed above, there is no other

conclusion to be drawn than that his evidence must be approached with the utmost caution. I have of course assessed his evidence against any relevant documentation.

E) The Evidence and Findings of Fact

23. Although it is right, as Ms Wilson-Barnes has emphasised, to look at the Transactions within the context of the Watson Litigation to ascertain the mind-set of Mr Hatton, the Transactions themselves need first to be identified and understood within the context of the original dealings which led to them. It is only after that analysis that the mind-set can be viewed. I will adopt that approach when addressing each of the Transactions in turn.

E1) The Transactions - The DEL Share Transfer

24. A written agreement made on 16 October 2014, and completed on 5 December 2014 evidences the facts that: DEL purchased the shares of Sanwest Holdings Limited from Roseau International Limited; the price was £593,100 including the deposit of £59,310.00; and Sanwest Holdings Limited was the owner of "Periquita" in Montinho, Monchique. Bank statements evidence that funds from DPL paid the deposit and the balance of £533,790 by transfer from its bank account. The money was sent on 22 October 2014 and 28 November 2014.

25. The source of that money is unclear from the bank account statements: At the time the £59,310 was paid DPL's account was in credit in the sum of £291,167.47, and there is no obvious specific payment into the account to match that payment out within the limited bank statements before me. The statements show the account was in credit in similar amounts from 1 October 2014 when the balance carried forward was £277,257.91. On the face of it, the deposit was paid from DPL's ordinary trading funds. As to the £533,790, the only obvious contributing payment in was a sum of £325,000. This was from a numbered but otherwise unidentified account. Mr Hatton was adamant that he did not provide the money.

26. The obvious route to solve this issue would have been to investigate DPL's bank account both by a wider sweep of bank statements pre-dating the payment of the deposit and by identifying the source of the £325,000 payment. This information could have been sought via DPL's liquidator. Its absence means it is necessary to consider the matters the OR relies on to sustain his case that the money was derived from Mr and Mrs Hatton.

27. Obviously the evidence for and against must be considered both as to its individual merit and as a whole. Having done so, I have reached the conclusion for the reasons set out below that: (i) the evidential burden of establishing the loan shifted to Mr Hatton; and (ii) that burden has been satisfied because the evidence relied upon by the OR is outweighed by two key pieces of evidence: The first that the purchase price was paid from funds derived from DPL, which, there being no alternative explanation, establishes a loan. The second is that in my judgment DPL's accounts include the loan as a debt within the balance sheets for its abbreviated and abridged accounts.

28. As to (i) above, the burden shifted because of the facts and matters relied upon by the OR within the context of the assessment of Mr Hatton's reliability as a witness and the need for a bad character direction. Those facts and matters as presented included (albeit some being in reply) in particular: the assertion that the loan was not included in DPL's accounts and the fact that it was not included in DEL's accounts until later amendment; the fact that Mr Hatton did not disclose the existence of the debt in the statement of affairs for DPL's administration; that he stated within a sworn statement to the Insolvency Service that he and his wife provided the funds; his failure to mention the loan until an email in August 2020 including the absence of reference to it in his 30 April 2020 evidence in answer; the failure to produce the purported loan agreement until the evidence in rejoinder; a comment in the witness box that this was a "now you see it, now you don't loan"; and two emails which admit or imply that DEL's shares were worth a value which could only be reached if there was no DPL loan.

29. That is a substantial body of evidence but the starting point for the shifted evidential burden of proof must be the fact that the payments were made from DPL funds. The only conclusion that can be drawn from this is that the money was lent to DEL. That is because there is no evidence of any other arrangement. That conclusion is substantiated by DPL's accounts. I reject, as put to Mr Hatton in cross-examination and as submitted, that they do not record the loan. The DPL abbreviated accounts for the year ended 31 March 2015 record debtors totalling £720,621, increased from £148,531 in the previous financial year. No break-down is provided. Nor is there any reference to related party transactions, although DEL was then owned by Mr and Mrs Hatton. However, these are abbreviated accounts (to be followed by abridged from the 2017 financial year end), and in any event their notes identify the aggregate total debtors falling due after more than one year as £595,379 compared with £2,026 the previous year. The similarity with the purchase price of £593,100 is self-evident. There is no other explanation to set against it.

30. It was also put to Mr Hatton that there is evidence of another connected company, potentially others, owing money to DPL. Express reference was made to the 2016 accounts and to an email from Mr Hatton sent on 8 October 2018 to Mr Mason concerning the Appletree Trust. However, this was in realty more of a fishing exercise and was not presented with any underlying evidence addressing the financial position referred to in the email. At best for the OR's case, the email reveals that DPL had lent £165,840 to Hughenden Estates prior to 31 March 2016 and £109,000 prior to 31 March 2017 making a total loan of £274,840. However, there is no evidence to suggest that this formed part of the £595,379 owed as at 31 March 2015 and it appears improbable because of the similarity to the sum paid to enable the purchase of Periquita as previously stated. In addition, the 31 March 2016 year end accounts record that debtors had increased from £720,621 to £896,469. The notes identified an increase in debts falling due after more than one year from £595,379 to £725,630. There has been no research into that increase and no evidence before the court to suggest that the increase does not include the majority of the loan of £165,840.

31. In the light of those accounts, the fact that the purchase of "Periquita" and the loan were not recorded in DEL's original 2015 year end accounts does not alter the conclusion that the shifted evidential burden has been met and not rebutted. The explanation of administrative shortfall for the fact that DEL's accounts remained as

dormant accounts until belatedly amended need not be accepted to reach that conclusion. The point is that it does not undermine the facts derived from the bank statements and the contents of DPL's accounts.

32. The OR also relied upon the liquidator having written that no record of the loan had been found in DPL's books and records. Conversely, however, there is a question whether the liquidator has the electronic accounts, and it would be surprising if the figures were inserted in the 2015 accounts without having been in the day to day books and records. However, even if they were not, the accounts still reflect the bank statements and the absence of any other explanation for DPL's payment of the total sum required for the purchase of Sanwest Holdings Limited.

33. These facts also outweigh the non-disclosure by Mr Hatton of the liability in DLP's administration statement of affairs. His explanation that he did not check the document before he signed is possible (although reprehensible) but still does not avoid the conclusion that he may not have disclosed the existence of the debt. On the other hand, one would have expected the identity of the debtors recorded in the latest abridged accounts for the 2018 year end to have been raised with him by the administrators. In any event there are obviously other potential explanations for this (albeit not alleged) based upon a desire to hide the debt from the administrator, which would not be to Mr Hatton's credit if true. Whatever the truth, however, it will not alter the fact that DPL paid DEL the total purchase price.

34. That means it is unnecessary to address the written loan agreement. I cannot decide on the balance of probability that it is a falsely created document, bearing in mind the seriousness of that allegation, but I can decide to discard it as unreliable evidence in the circumstances of its belated production. Although I do so, taking into consideration the assessment of Mr Hatton as a witness, that too does not affect the existence of the loan identified from the bank statements and the accounts.

35. Rejection of the written loan agreement potentially has the negative effect for the OR that I should not take into consideration Mr Hatton's description of the loan as being a "now you see it, now you don't" loan. My understanding of this remark was that it referred to the balloon payment structure of the loan agreement, which required small repayments until one final payment many years hence. However, I have still borne in mind the potential for this to be evidence of a loan which in truth did not exist. I have rejected that possibility because the monies were provided by DPL to DEL as explained above.

36. The OR also relies upon two emails from Mr Hatton sent to him on 3 and 20 October 2019. In summary, the point can be made from the content that Mr Hatton was trying to establish that the DEL Share Transfer still left him with more than sufficient net assets with which to pay Mr and Mrs Watson. He treated their value as being about £500,000 at the time which, as Ms Wilson-Barnes submits, would only be relevant if it was his personal asset. Mr Hatton's response for both emails accepted they were badly written but suggested the cause was that he was specifically addressing a different point, namely that he had more than sufficient assets to cover his debts without the DEL shares.

37. Mr Hatton's evidence concerning those emails is unsatisfactory bearing in mind their content. He plainly treats the shares as having had a value in the region of £500,000 at

the date of transfer. Bearing in mind that this is the value of Periquita as asserted by him (see further below), that valuation must ignore the existence of the loan or there was no loan. However unsatisfactory his evidence, however, it cannot be concluded from the later emails that DPL did not provide the purchase money or that there was a different arrangement between DPL and DEL than a loan.

38. The OR is left, therefore, with the case that the existence of the loan is contradicted by statements which will constitute perjury if they are untrue, and that such evidence is not to be believed when the loan was first mentioned in August 2020. The problem for that case is still the fact that DPL's accounts reflect the bank statements. Together they satisfy the evidential burden which shifted to Mr Hatton and there is no evidence to rebut the conclusion that there was a loan between DPL and DEL. The evidence relied upon by the OR does not present an alternative explanation for the DPL payments. For example, there is no evidence that the money DPL paid was received from Mr and Mrs Hatton and no evidence of any agreement or arrangement of whatever nature to the effect that DEL would not have to repay or account for the sums received from DPL.

39. I note there was reference from Mr Hatton during cross-examination to the DPL loan having been repaid by the net proceeds from the sale of Appletree House and an additional £250,000 from a transaction with "Apex Partners". This was one of the confusing parts of Mr Hatton's evidence. Whilst I sought explanations for what he had told me, none were provided and the OR's case does not assert that there was subsequent repayment of the £595,379 DPL loan. It is not evidence that can affect the decision to be made in this claim, namely that the purchase price for Periquita was lent to DEL by DPL.

40. As a result of the conclusion at paragraph 27 above for the reasons in paragraphs 28-39, the OR's case depends upon the claim that Periquita was *"worth approximately €860,000 [when transferred] to two close family members"*. That being so, the DEL Share Transfer still gifted value away from Mr Hatton's estate. Therefore, it can still be alleged that his motive was to hide that value from Mr and Mrs Watson.

41. There is no expert valuation evidence either formally permitted by the court or within informally adduced contemporary or subsequent evidence. For completeness, I mention that neither side has sought to argue that the terms of the loan agreement affected the valuation. The only potentially relevant evidence is the fact that Periquita was placed on the market in August 2018 for €860,000, which was approximately €100,000 more than its purchase price by DEL. The sale particulars describe it as a "Luxury villa with superb sea views" but it was not sold. Mr Hatton's evidence was that the sale price was expected to be considerably less reflecting the fact that house prices had fallen or stagnated in the area but he is not an expert and he had no documentary evidence to support his statements, which had not been set out in his witness statements.

42. It is clear the particulars do not evidence the market price in particular when it did not sell. There is no evidence to explain why it did not sell or as to the valuation approach or the property market. For example, whether the price agreed was usually less than the price marketed or whether property prices had increased, fallen or remained stagnant in that area. The only conclusion to be drawn is that the market would not achieve a sale at that price at that time.

43. Returning in that context to the burden of proof: The quote from the first report at paragraph 41 indicates that the burden falls upon the OR. True the OR's main case for misconduct required proof of Mr Hatton's motive for the DEL Share Transfer rather than proof of value. However, that original case was based upon an assumption of value purely taking into account the fact that Periquita obviously had significant value. This alters when the OR has to accept there was a loan to set off against the value of Periquita. The OR's case of misconduct has now to be based on the claim that the gift was an act of misconduct because the shares had value in the circumstance of Periquita being valued at more than the loan. That burden of proof is not satisfied by marketing particulars of a property which did not sell.

44. Even if that decision is wrong, Mr Hatton has established that the value is relatively negligible in context. Bearing in mind Mr Hatton indirectly owned 50% of the shares (as conceded), that the marketed sale price would probably have to be reduced to achieve a sale (judicial notice and logic applied), and that there would be costs and expenses, the reality is that the value is probably no more than €35,000 at the very best (although it is recognised that this in itself inherently involves speculation).

45. That is the background against which to examine the evidence of motive. First, I do not accept the OR's approach that Mr Hatton's "no value" assertion is contradictory to his evidence that the DEL Share Transfer was for inheritance tax planning purposes. Tax planning takes into consideration the future value of an asset and in this case it is reasonable to conclude that Mr Hatton would have assumed that DEL would increase in value over the years. Second, I do not accept that the absence of contemporaneous expert valuation evidence is determinative. In circumstances where future value is more important, it is not in practice surprising that there was no contemporaneous valuation evidence. Third, although the absence of documentation evidencing a retirement plan does not assist Mr Hatton, I do not accept that it is so surprising that its absence should lead to the conclusion that in truth it was never given. I reach that decision notwithstanding the bad character and unreliability assessments.

46. Nevertheless, plainly the timing of the DEL Share Transfer is notable. The date is subject to issue because the OR points to the date of filings at Companies House, whereas Mr Hatton says it would have been 1 April 2017 to fit in with decisions made following the death of Edd and the next financial year of DEL. I have not found this difference changes the emphasis of the point, namely that the DEL Share Transfer followed notification by demand of the guarantee liability.

47. As to that, there is Mr Hatton's defence that he did not know any such liability was being relied upon. That would have to be rejected based upon the clear terms of the letter of demand but for the underlying issue of Mr Hatton's mental state at the time. It would not be surprising if letters were not opened or not properly read or their content mentally ignored in those circumstances. However, Mr Hatton was still able around that time of inevitably heightened grief to address the issue of the DEL Share Transfer, whether in the context of inheritance tax planning or not. As a result, I cannot conclude that he did not understand there was a demand at the time, whatever his recollection subsequently.

48. That leads to his denial of an intention to put assets beyond the reach of Mr and Mrs Watson based upon the facts that: he believed there was a defence, which he

subsequently pursued for as long as funding allowed; he did not need to put the assets beyond reach because he had sufficient assets in any event; and Edd's death prompted implementation of the DEL Share Transfer as part of the original ten year plan. In addition, account should be taken of the fact that whilst the low value of the shares (€35,000 at the very best) did not contradict the purpose of tax planning, it is potentially inconsistent with the concept of taking such steps to hide assets. In addition, insofar as Mr Hatton's state of mind is concerned, he appears to have consistently treated the value as being in the region of £500,000 without taking into consideration the loan.

49. Based on those matters and despite my decisions concerning Mr Hatton's bad character and lack of reliability, I still find there is sufficient evidence to prevent me from finding on the balance of probability that the purpose of the DEL Share Transfer was to put Mr Hatton's share beyond the reach of Mr and Mrs Watson.

50. The trial has left me with the picture of Mr Hatton as someone who genuinely (at least at this stage) thought there was no merit in the claim of Mr and Mrs Watson. Taking into consideration that mind set, it seems particularly unlikely during a very early stage of grief that he would devise a transaction to defraud Mr and Mrs Watson. That is particularly so when he believed he was solvent and when his share of DEL was (at best) of little relative value. The admission of solvency plainly sustains that view but so too does his evidence of the MBO. Whilst the facts concerning the MBO and its value are not to be taken as existing at the time of the DEL Share Transfer, this evidence of a later, far more difficult financial period corroborates the evidence from Mr Hatton that he previously saw himself as someone who had more than sufficient assets to address this claim should things go wrong.

51. Based upon the findings and analyses above, I conclude that the value of the shares would essentially depend upon the net sale proceeds of Periquita less the sum then owed to DPL for its loan to DEL. That share value would be relatively nominal and probably not more than €35,000. The OR has not proved that the DEL Share Transfer was a transaction of real value and/or that it was achieved by Mr Hatton to put this asset beyond the reach of Mr and Mrs Watson.

E2) The Transactions – The Sale of "Appletree House"

52. Although the sale of Appletree House was maintained as a second ground for the BRO claim, it became apparent it was misconceived. The proposition that the net proceeds of sale less the sum that redeemed the Nationwide Building Society's first charge was put beyond the reach of Mr and Mrs Watson must fail because that money became subject to the overreaching of the second charge secured against Appletree House to secure DPL's liabilities to Lloyds Bank.

53. There is no dispute that Appletree House was registered in the sole name of Mr Hatton. There is no suggestion of any shared beneficial interest. Equally there is no dispute that there was a first charge registered against its title in favour of the Nationwide Building Society and a second charge in favour of Lloyds Bank to secure DPL's lending. The security is not evidenced and nor is the secured liability at the time of the sale but this has not been challenged.

54. That means that on completion of the sale: (i) the costs and expenses were deducted; (ii) the Nationwide Building Society was paid; and (iii) the equitable property right of Lloyds Bank created by the charge to secure DPL's liabilities was dissolved, detached from the property and reattached to the remaining proceeds of sale. Lloyds Bank was entitled to be paid and to retain those funds to the extent of the sum required to redeem its charge.

55. What occurred appears unusual but can be explained by the fact that Lloyds Bank were entitled to retain control over the funds to which they were entitled as overreached, secured creditors. Accordingly, Lloyds Bank at all times retained control of the balance of the overreached, net proceeds until they were re-lent to DPL. That involved Mr Hatton receiving £372,896 into his personal Lloyds Bank account on 12 July 2018 and the transferring of circa £370,000 to DPL's specifically segregated Lloyds Bank account by £25,000 tranches between 11 and 30 July 2018.

56. There is no dispute that Lloyds Bank was owed some £370,000 and, therefore, that this sum represented the overreached monies to which Lloyds Bank was entitled. Lloyds Bank "re-lent" the money to DPL, which used it for its purposes whilst remaining a debtor borrower. Mr Hatton was never entitled to those monies and could never have used them to pay Mr and Mrs Watson. If they had not been re-lent, they would have been used by Lloyds Bank to reduce or extinguish DPL's liabilities. The "re-lending" enabled DPL to make the payments it did in respect of crediting Mr Hatton's loan account, paying its solicitors, purchasing a motor vehicle and using the balance for the finance of 16 Manor Court whether by contributing towards Mr Hatton's pension fund of the Appletree Trust or lending money to Mr A. Brown or otherwise.

57. The terms of the further lending must have included the grant of a new charge over 16 Manor Court because that is what happened, the charge securing (presumably all liabilities now and in the future of DPL but in any event) the £370,000 re-lent. As a result the only "real" change of position was that the liabilities secured on Appletree House were secured on 16 Manor Court.

58. The OR observes that this arrangement enabled the Appletree Trust and Mr Hatton's children to obtain an indirect interest in 16 Manor Court. That is true and it arose through a convoluted process but it does not alter the analysis above.

59. The process was complicated by Mr Hatton's evidence that the decision to sell Appletree House was generated (at least in part) by a desire to prevent a tax bill arising for DPL and, presumably, potentially for himself. Based upon the approach taken by both sides to this evidence, it appears to be irrelevant because it does not alter the conclusion above that the use of the net proceeds of sale did not result in any real change of position. However, it should be addressed for completeness.

60. The loan by DPL to DEL for the purchase of Sanwest Holdings Limited and, therefore, "Periquita" gave rise to a potential corporation tax liability pursuant to ***sections 455 and 459 of the Corporation Tax Act 2010***. A loan to an associate of a director of a company, which DEL was, is (in summary) treated as a loan to the director for corporation tax purposes. If that results in the director's loan account being in debit, not only may a director have to pay personal tax but the company will pay tax on a loan at the rate of 25% if the loan was made before 6 April 2016. That

tax can be avoided or reclaimed if the loan is repaid provided the claim for repayment is made within 4 years.

61. The advantage of the £370,000 payment to DPL from the overreached net proceeds of sale was that although Mr Hatton could not touch "Lloyds Bank's money", he could stand in their shoes with the result that his director's loan account liability could be reduced by that amount because Lloyd's Bank had in effect used the net proceeds of sale of his house to repay the original loan secured upon Appletree House. As I understand it, this resulted for tax purposes in his director's account being credited by the amount of the net proceeds and to the tax charge being extinguished.

62. I should stress, however, that the director's loan account has not been produced and it is not the task of this court to decide whether that was the correct taxation outcome. The conclusion in the paragraph above is based upon the fact that this assertion by Mr Hatton was not challenged and nor was it the OR's case that this assertion may be relevant to the claim that the sale of Appletree House was for the purpose of putting assets beyond the reach of Mr and Mrs Watson. Mr Hatton relied upon it to evidence his case that the opposite was true, namely that the purpose of the sale was tax efficiency, but it is an unnecessary to reach a finding of fact upon that case either when the OR's case is misconceived for the reasons set out above.

63. It is also unnecessary in those circumstances to address the involvement of Mr Brown. The simple position is that he was lent by DPL the money he required (£171,000) to invest in the 16 Manor Court purchase by lending that sum to Coningsby Estates Limited in return for capital and interest repayment and the opportunity to acquire a 30% shareholding. It is also unnecessary to address the fact that the children received the opportunity to have a 30% interest in Coningsby Estates Limited. No point arises from the claim as presented in the OR's report or in submissions.

64. It follows from the matters above that this ground for a BRO also fails.

E3) The Transactions – The Will Variation

65. This ground relies upon an alleged misstatement to the court and, in any event, upon an attempt to ensure that Mr Hatton lost his inheritance rights by having his late father's will varied. I do not consider it appropriate to address in the context of this claim a statement made to a Judge within a hearing which has not led to any consequence for Mr Hatton's bankruptcy or estate. In any event, I have not been addressed upon the doctrine of immunity from suit. At the heart of that doctrine is the implementation of the public policy that a party or witness should have immunity in respect of what they say or do in court (see the judgment of Asplin LJ setting out the principles and case law in ***Re MBI International & Partners Inc*** [2022] Ch at 232, [47-59]). Reliance upon what Mr Hatton said in court would offend that principle. It cannot be a basis for a BRO. I should also add, albeit unnecessarily, that the heat and pressure of litigation would otherwise have caused me not to treat the statement alleged as conduct to be assessed for the purpose of deciding whether to grant a BRO.

66. That leaves the underlying issues: (i) whether on 22 November 2018 Mr Hatton attempted to have a deceased relative's will changed to disinherit himself and to pass

the £25,000 he was otherwise due to receive in favour of family members instead; and (ii) did so to ensure this asset was put beyond the reach of Mr and Mrs Watson.

67. The evidence establishes that Mr Hatton on 22 August 2018 was told at the hospice by his dying father that although he had left one eighth of his estate to him by will, he wanted Mr Hatton's step-children to inherit instead of his son. That is not in dispute and there is no dispute that Mr Hatton considered himself (at least) morally bound to give effect to that dying wish.

68. I have not been addressed on the law concerning the creation of secret trusts. These will arise if a named legatee has been informed orally by the testator that they wish the legatee to hold the property on trust for another. It must be an obligation binding on the conscience of the legatee which has been communicated and accepted whether expressly or by acquiescence. It does not matter whether the will was made before or after this occurred. The standard of proof of the existence of a secret trust is analogous to rectification.

69. The parties have not asked the court to decide whether the essential elements identified from the case law by Mr Justice Brightman, as he then was, in ***Ottaway v Norman*** [1972] 1 Ch 698 existed: (i) the intention of Mr Hatton's father to subject Mr Hatton, as the primary donee, to an obligation in favour of his children, the secondary donees; (ii) communication of that intention by his father to Mr Hatton; and (iii) acceptance of that obligation by Mr Hatton either expressly or by acquiescence. Nor, it follows, can there be any findings of fact or submissions upon the law relating to what was said during the visit shortly before his father's death. In those circumstances the position is that it cannot be concluded that any attempt by Mr Hatton to implement the dying wish can be found to be conduct making it appropriate to make a BRO. There is certainly a good prospect that he would have been doing no more than implementing a secret trust and the OR's claim has not been proved on the balance of probability as a result.

F) Conclusion

70. For the reasons set out above, I dismiss the application.

Order Accordingly