Neutral Citation Number: **[2023] EWHC 1778 (Ch)**

Case No: CR-2022-002211

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

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

Date: 18 July 2023

Before:

INSOLVENCY AND COMPANIES COURT JUDGE GREENWOOD

- -

IN THE MATTER OF PROPERTY SERVICES LDN LIMITED
AND IN THE MATTER OF THE INSOLVENCY ACT 1986

Between:

LENDINVEST BTL LIMTED	**Petitioner**
- and -	
PROPERTY SERVICES LDN LIMITED	**Respondent**

- -

Ms Camilla Whitehouse (instructed by **Brightstone Law**) for the **Petitioner**
Mr Matthew Feldman (instructed by **Treon Law**) for the **Respondent**

Hearing date: 27 April 2023

- -

JUDGMENT

This judgment was handed down remotely at 10.30am on 18 July 2023 by circulation to the parties or their representatives by e-mail.

ICC JUDGE GREENWOOD:

Introduction and Background

1. This is the final hearing of a winding up petition presented on 19 July 2022 by Lendinvest BTL Ltd ("**the Petitioner**") against Property Services LDN Ltd ("**the Company**"). The petition is founded on the Company's failure to pay a costs order of £20,000 made against it by Spencer J on 23 June 2022 in proceedings in which it is the claimant in the Queen's Bench Division (**QB-2021-002969**). The Petitioner was represented by Ms Camilla Whitehouse of Counsel.

2. The Company, represented by Mr Matthew Feldman of Counsel, argues that the petition should be dismissed: (i) because it has a genuine and serious pending cross-claim against the Petitioner in a sum greater than the petition debt; and (ii) because the costs order on which it is based is invalid and unenforceable.

3. In support of the petition, the Petitioner served three witness statements, each made by Mr Adem Essen, an associate solicitor of Brightstone Law LLP, the Petitioner's solicitors, made on 19 July 2022, 28 September 2022 and 26 October 2022.

4. Whilst the broad background to the dispute is convoluted, the evidence and facts ultimately material to the petition and to the Company's opposition are of comparatively limited scope.

5. The Petitioner is a commercial lender which on 29 March 2018 provided short-term bridging finance to a company called Laverstock Management Corporation Ltd ("**Laverstock**"), secured by charges against four properties owned by Laverstock, and by a personal guarantee given by a Mr Charles Roberts, who is sometimes also known as and referred to as Mr Charles Gordon ("**Mr Roberts**"). Since 21 July 2021, Laverstock has been in administration. Its joint administrators are Mr Daniel Richardson and Mr Edward Gee, both of CG & Co, 1 Booth St, Manchester ("**the Administrators**"). Until 8 May 2018, when he resigned as a result of a disqualification order made against him under the Company Directors Disqualification Act 1986 on 17 April 2018, Mr Roberts was a director of Laverstock.

6. The four properties (together, "**the Properties**") against which the Petitioner was given security were:

6.1. 17 Bassant Road, Plumstead, London SE18 2NP ("**Bassant Rd**");

6.2. 2 Westmoreland House, 249 Southlands Road, Bromley, Kent BR1 2EG ("**Westmoreland**");

6.3. 307 Whitehorse Lane, South Norwood, London SE25 6UG ("**Whitehorse Lane**"); and,

6.4. Flat 1, 138 Benares Road, Plumstead, London SE18 1HT ("**Benares Rd**").

7. On 22 March 2021, following Laverstock's failure to repay the sums due to the Petitioner, it appointed Ms Victoria Liddell and Ms Annika Kisby of Allsop LLP ("**the Receivers**") as joint receivers under the Law of Property Act 1925 in respect of Westmoreland, Whitehorse Lane and Benares Rd. On 19 April 2021, it appointed them as joint receivers in respect of Bassant Rd.

8. The Receivers decided that the Properties, or some of them, should be sold at auction. Laverstock however, and the Company, both objected, on the basis that the Properties had, so they said, already been sold by Laverstock to the Company pursuant to written contracts made on 18 March 2021, albeit subject to the registered charges in favour of the Petitioner. In respect of each of the Properties, the agreed price was said to be as follows:

8.1. Bassant Rd: £225,000;

8.2. Westmoreland: £250,000;

8.3. Whitehorse Lane: £500,000; and,

8.4. Benares Rd: £220,000.

9. The aggregate agreed sale price was therefore £1,195,000. At the same time, deposits were paid by the Company in the aggregate sum of £12,000, being about 1% of the total sale price.

10. The Company's director is Ms Tanya Minhas (sometimes referred to and known as Ms Tanya Gordon) ("**Ms Minhas**"). She is Mr Roberts' wife. The Company's evidence in

opposition to the petition is contained in her three witness statements made on 31 August 2022, 3 October 2022 and 14 November 2022. Attached to her first statement are nine "appendices" comprising some 1,045 pages. It was served on 6 September 2022, the day before the first hearing of the petition.

11. On 12 May 2021, Laverstock applied for an injunction (in advance of what became proceedings with claim number **QB2021-001926**) to prevent the sale of the Properties. Its application was heard by Moulder J, and at the hearing, it was represented by Mr Roberts, who was recorded on the face of the Order as having "*identified as*" a director of Laverstock, which as explained above, he was not. The application was made against Allsop LLP and against the Petitioner, who were both represented by Ms Whitehouse (having been "*put on informal notice*", as was also recorded on the face of the Order). Moulder J ordered the withdrawal from auction of the Properties and prohibited their sale pending the return date, which was 20 May 2021. Following hearings on 20 May and (before HHJ Lickley QC) on 28 May 2021, the injunction was discharged.

12. The Company's evidence is that on or about 10 June 2021, it agreed with Laverstock to delay completion of the sale of the Properties from 11 June to 25 June 2021, because certain local authority searches had not been completed. Also, at about the same time, it claims to have agreed with Laverstock to a reduction in the price of each of the Properties, as follows:

    12.1. Bassant Rd: £200,000;

    12.2. Westmoreland: £220,000;

    12.3. Whitehorse Lane: £400,000; and,

    12.4. Benares Rd: £180,000.

13. The aggregate agreed sale price therefore became £1,000.000.

14. On 26 June 2021, the Company served on Laverstock a notice to complete the sales.

15. On 9 July 2021, the Receivers again placed the Properties into an auction due to take place on 5 August 2021. As mentioned above, on 21 July 2021, Laverstock went into

administration (the Administrators having been appointed by the Petitioner). One consequence of the administration, pursuant to paragraph 43 of Schedule B1 to the Insolvency Act 1986, was the imposition of an automatic moratorium on various legal processes without the permission of the court or the consent of the Administrators.

16. On 23 July 2021, the Company applied for another injunction to prevent the sale of the Properties. Its application was made against Laverstock alone, and also sought an order that the sales to the Company be completed. Proceedings were commenced by Part 8 Claim Form and given claim number QB-2021-002969 – in other words, they were the proceedings in the course of which the costs order upon which the petition proceeds was subsequently made. In those proceedings, the Company sought an injunction preventing sale; specific performance of the contracts of sale to the Company; and damages. I shall refer to them as "**the Part 8 Proceedings**".

17. On 3 August 2021, in the course of the Part 8 Proceedings, on an application made without notice to the Administrators, or to the Receivers, and without the court's permission to pursue proceedings against Laverstock notwithstanding its administration, Kerr J granted an injunction prohibiting the sale or marketing of the Properties until trial or further order.

18. On 5 August 2021, the Administrators' solicitors wrote to the Company's solicitors stating that the proceedings had been commenced and the injunction sought in breach of the moratorium, and without notice to the Administrators.

19. On 30 March 2022, in the Part 8 Proceedings, an application was made by the Petitioner and by the Receivers seeking an order, amongst other things, discharging the order made by Kerr J on 3 August 2021, and seeking a "*declaration that the contracts for sale between* [Laverstock] *and* [the Company] *are void. Alternatively, a declaration that the contracts for sale dated 18th March 2021 are rescinded*."

20. That application came before Kerr J on 24 May 2022. The Company was represented by Mr Feldman, and the "*interested parties*" by Ms Whitehouse (who the order recites as having appeared for the Petitioner and Allsop LLP). The judge discharged the injunction and adjourned the remainder of the application to be heard not before 3 October 2022 with a time estimate of 3 days. In his *ex tempore* judgment (of which

there is a transcript) the judge said that he had not been told about the administration, and had instead been told that Laverstock had not intended to defend the Company's action. On that footing, having been significantly misled, he discharged his order of 3 August 2021.

21. Subsequently, on 7 June 2022, the Company applied, in the Part 8 Proceedings, for the "*dismissal*" of the application made on 30 March 2022, "*as they* [which seems to have been a reference to Brightstone Law, the solicitors to the Petitioner and the Joint Receivers/Allsop LLP] *have acted dishonestly in not serving the*" application and supporting evidence; also relied on was an alleged failure to comply with CPR rules 6.7 and 23.7. The purpose of the application seems to have been to bring about the reinstatement of the injunction originally granted by Kerr J on 3 August 2021.

22. That application came before Spencer J on 23 June 2022. The Company appeared by counsel, Mr Janaka Siriwardena, and the interested parties by Ms Whitehouse. The judge dismissed the application and marked it as having been totally without merit. He ordered the Company to pay costs in the sum of £20,000. That sum remained unpaid, and is the foundation of the petition presented shortly afterwards, on 19 July 2022.

23. Also on 23 June 2022, the Properties were apparently sold at auction, for the following prices:

    23.1. Bassant Rd: £185,000;

    23.2. Westmoreland: £201,000;

    23.3. Whitehorse Lane: £452,000; and,

    23.4. Benares Rd: £150,000.

24. The aggregate sale price achieved was therefore £988,000.

25. On 26 October 2022, in the Part 8 Proceedings, Jacobs J. considered (without a hearing) applications by the Company to extend the time for service of evidence pursuant to the order of Kerr J made on 24 May 2022, and for the formal joinder to the proceedings of the Petitioner and the Receivers. He made no order in respect of either application, but

reserved the joinder application for determination by the court at the final 3 day hearing directed by Kerr J on 24 May 2022. His stated reasons in respect of joinder were that, "*it is also not clear what purpose is served by the joinder application, or why this needs to be determined in advance of the 3 day hearing. The Claimant 's evidence in support of the application is unenlightening. The Interested Parties have made an application. That application is to be determined at a 3 day hearing. The Interested Parties are necessarily parties to that application. If some further order for joinder is required, it can be determined by the judge who hears the application*."

The Company's Opposition to the Petition, and the Relevant Principles

26. At the hearing, the Company opposed the petition on two grounds, the second of which comprised its primary case.

    26.1. first, that the costs order made by Spencer J is "*flawed*" and "*invalid*", because the interested parties (relevantly, the Petitioner) had not been joined to the proceedings, as they ought to have been, under CPR 46.2(1)(a); and,

    26.2. second, that it has a serious and genuine cross-claim for damages in tort against the Petitioner, based on the allegation that it induced or procured Laverstock to breach its contracts to sell the Properties to the Company. It claims (or rather, says that it will at some future point claim) damages in the sum of £450,000, being the difference between the agreed sale price (£1,000,000) and the value of the Properties (said to have been £1,450,000) – in other words, it seeks compensation for the loss of its bargain.

27. As to the relevant legal principles in respect of winding up petitions, there was no dispute:

    27.1. first, that a winding-up order will not be made on the basis of a debt that is genuinely disputed on substantial grounds. As was said by Hildyard J in Colicolour Ltd v Camtrex Ltd [2015] EWHC 3202 (Ch), at [32]: "*The Companies Court has repeatedly made clear that where the standing of the petitioner, and thus its right to invoke what is a class remedy on behalf of all creditors, is in doubt, it is the Court's settled practice to dismiss the petition.*"

27.2. second, that if to the same end, the debtor company asserts a cross-claim, it must be "*genuine and serious .... one of substance*": Re Bayoil SA [1999] 1 WLR 147, per Nourse J.

28. The principles were summarised by Norris J in Angel Group v. British Gas [2012] EWHC 2702 (in a passage which was not cited, but is not controversial) at [22]:

> "*The principles to be applied.... are familiar and may be summarised as follows:-*
>
> *a) A creditor's petition can only be presented by a creditor, and until a prospective petitioner is established as a creditor he is not entitled to present the petition and has no standing in the Companies Court: Mann v Goldstein [1968] 1WLR 1091;*
>
> *b) The company may challenge the petitioner's standing as a creditor by advancing in good faith a substantial dispute as to the entirety of the petition debt (or at least so much as will bring the indisputable part below £750);*
>
> *c) A dispute will not be "substantial" if it has really no rational prospect of success: in Re A Company No.0012209 [1992] 1WLR 351 at 354B.*
>
> *d) A dispute will not be put forward in good faith if the company is merely seeking to take for itself credit which it is not allowed under the contract: ibid. at 354F.*
>
> *e) There is thus no rule of practice that the petition will be struck out merely because the company alleges that the debt is disputed. The true rule is that it is not the practice of the Companies Court to allow a winding up petition to be used for the purpose of deciding a substantial dispute raised on bona fide grounds, because the effect of presenting a winding up petition and advertising that petition is to put upon the company a pressure to pay (rather than to litigate) which is quite different in nature from the effect of an ordinary action: in Re A Company No.006685 [1997] BCC 830 at 832F.*

f) But the court will not allow this rule of practice itself to work injustice and will be alert to the risk that an unwilling debtor is raising a cloud of objections on affidavit in order to claim that a dispute exists which cannot be determined without cross-examination (ibid. at 841C).

g) The court will therefore be prepared to consider the evidence in detail even if, in performing that task, the court may be engaged in much the same exercise as would be required of a court facing an application for summary judgment: (ibid at 837B)."

29. Similarly, in LDX International Group LLP v Misra Ventures Limited [2018] EWHC 275 (Ch) David Stone (sitting as a Deputy HCJ) stated at [22]: "*It seems to me that a number of uncontroversial propositions can be drawn from these cases. Given the clarity of the language of the Court of Appeal and judges of this court, it is appropriate, where possible, for me simply and respectfully to repeat their remarks:… a. In the absence of special circumstances, it will be appropriate to issue an injunction to prevent the presentation and advertisement of a winding up order where there is a genuine and serious cross-claim in an amount exceeding the petitioner's debt. The cross-claim must be genuine and serious, or, in other words, one of substance…. c. It is incumbent on the recipient of the statutory demand to demonstrate, with evidence, that the cross-claim is genuine and serious: Orion Media, at paragraph 31. Bare assertions will not suffice: there is a minimum evidential threshold: Re a Company, at paragraph 33*".

30. Finally, in Winnington Networks Communications Ltd v HM Revenue & Customs [2015] B.C.C. 554, Nicholas le Poidevin QC (sitting as a Deputy HCJ) at [11] quoted Rimer LJ in Revenue and Customs Commissioners v Rochdale Drinks Distributors Ltd [2011] EWCA Civ 1116: "*It perhaps hardly needs to be said that the rule does not, however, entitle a company to do no more than assert that it disputes the debt and then expect the petition to be struck out or, if the hearing is the substantive one, dismissed. It is not sufficient for the company merely to raise a cloud of objections. It has, in the old-fashioned phrase, to condescend to particulars by properly explaining the basis of the claimed dispute and showing that it is a substantial one. If, despite the company's protestations, the alleged dispute can be seen on the papers to be no dispute at all, or*

to be no dispute as to part of the debt, the petition will ordinarily be allowed to proceed".

31. Again, I should record that neither of the passages set out in the two preceding paragraphs were cited to me, but again, their content is uncontroversial.

The Costs Order

32. There is nothing at all in this point, which was not greatly pressed on me by Mr Feldman. In short, it was suggested that because the Petitioner was not (and is still not) party to the Part 8 Proceedings, there was a failure to comply with CPR 46.2(1)(a), such that the costs order made by Spencer J is "*invalid*". For the following reasons, the suggestion is wrong and/or in the present context irrelevant.

    32.1. First, the order was made, and has not been challenged or appealed. It is therefore an extant (*ex hypothesi* valid) court order to pay a sum of money, currently unpaid. It is not for this court to treat that order as "*invalid*".

    32.2. Second, in any event, the order was made on the Company's application to set aside or discharge the order made by Kerr J on 24 May 2022 on the application of the "Interested Parties", including the Petitioner. As Jacobs J said subsequently, the Petitioner was necessarily party to its own application. The Company's application was made against those who had obtained the order which it attempted, unsuccessfully, to set aside. Again, necessarily, the Petitioner was party to that application, and as such, having succeeded in its opposition, was entitled to the benefit of a costs order in its favour. There was no need for any further joinder – it was a successful respondent to the Company's own application.

The Alleged Cross-Claim in Tort

33. In the Part 8 Proceedings, amongst other things, the Company seeks damages (albeit unparticularised in its pleading) against Laverstock for breach of the alleged contracts of sale of the Properties. That claim is to be determined at a hearing yet to be fixed, as is the application to join the Petitioner and the Joint Receivers.

34. In addition, Mr Feldman submitted that the Company has - in principle at any rate - a claim against the Petitioner. He relied on the economic tort of inducing breach of contract. As to that, in respect of the law, he referred me to the relevant ingredients of the tort as they were set out by Popplewell LJ in Kawasaki Kisen Kaisha Ltd v James Kemball Ltd [2021] EWCA Civ 33 at [21], as follows:

> "*(1) there must be a breach of contract by B;*
>
> *(2) A must induce B to break his contract with C by persuading, encouraging or assisting him to do so;*
>
> *(3) A must know of the contract and know his conduct will have that effect;*
>
> *(4) A must intend to procure the breach of contract either as an end in itself or as the means by which he achieves some further end;*
>
> *(5) if A has a lawful justification for inducing B to break his contract with C, that may provide a defence against liability.*"

35. In addition to that passage, I would also refer to the same judgment at [23]-[28] and [31]-[34], concerning the second of the five ingredients, "*inducement*". At [31], Popplewell LJ said, amongst other things:

> *"... conduct cannot qualify as inducement if it constitutes no more than preventing B from performing the contract with C as one of its consequences. There must be some conduct by A amounting to persuasion, encouragement or assistance of B to break the contract with C.*"

And at [33]:

> "*… this participation by A in B's breach, must, in Lord Hoffmann's words, have "a sufficient causal connection with the breach by the contracting party to attract accessory liability" or, in Lord Nicholls' words, so as to amount to "causative participation". It is because of the causative requirement that "inducement requires the defendant's conduct to have operated on the will of the contracting party" …*"

36. In his Skeleton Argument, Mr Feldman put the submission in the following way:

"*By selling the Properties on Laverstock's behalf despite the existing signed contracts of sale with the Company, purportedly on the basis that the contracts are a sham,* [the Petitioner] *induced Laverstock to breach its contracts with the Company. To follow the sequence of elements as put by Popplewell LJ in Kawasaki Kisen Kaisha:*

a. Laverstock breached its contracts with the Company by failing to complete the sales.

b. [the Petitioner] *induced Laverstock to do so by selling the Properties on its behalf. There is a manifest causal connection between its actions and the breaches of the contracts;*

c. [the Petitioner] *knew of the contracts and knew that selling the Properties would constitute breaches of them, which was obvious;*

d. [the Petitioner] *procured the breaches of contract in order to achieve the end of selling the Properties at auction, in purported furtherance of its duties as an administrator;*

e. There was no lawful justification for [the Petitioner's] *inducement of Laverstock to breach its contracts with the Company*"

37. This allegation was not explicitly articulated or even referred to in the Company's evidence served in opposition to the petition. In fact, it seems only to have been raised with the Petitioner very shortly before the hearing of the petition before me. As a result, it was not explicitly answered or considered in either the Petitioner's evidence or Ms Whitehouse's skeleton argument. As Ms Whitehouse said, "*the* [Company] *has failed to issue a claim against the Petitioners and indeed failed to engage in pre-action correspondence setting out the factual and legal basis of any such claim.*" She added, "*The Receivers who sold the Properties acted as agents of Laverstock, not the Petitioner. As such, it is wholly unclear as to how the* [Company] *proposes to hold the Petitioner liable for the actions of a third party (the Receivers) appointed on behalf of Laverstock. The court can be satisfied that the* [Company] *has no claim against the*

Petitioner ..” There was no dispute about the duties of the Receivers, or that they were not the Petitioner’s agents.

38. As mentioned above, in opposition to the petition, Ms Minhas has made three witness statements.

39. In the first, made on 31 August 2022, she stated that the petition was opposed on “*three separate grounds*”, the first two of which concerned the enforceability of the costs order, and the third of which was that “*the matter is subject to ongoing litigation and there is a claim for damages, which far exceeds the value of the Winding Up Petition*”. As to that third ground, she said that:

    39.1. the Part 8 Proceedings are yet to be concluded;

    39.2. therefore the court has yet to determine whether the sale contracts are void or rescinded, or were shams;

    39.3. the Receivers sold the Properties at an undervalue;

    39.4. she believed the purpose of the petition was to avoid “*a potential damages claim being made by the Debtor, due to their unreasonable behaviour*”; and,

    39.5. there is an outstanding application to join the Petitioner and Joint Receivers to the Part 8 Claim.

40. In respect of the alleged sale of the Properties at an undervalue, Ms Minhas also referred to her ninth witness statement (attached, with its exhibits, to her first statement in the petition proceedings) made on 11 July 2022 in the Part 8 Proceedings and stated to be in opposition to the application of 30 March 2022 made by the Petitioner and the Receivers (referred to above). In particular, Mr Feldman referred me to paragraph 82 of that statement, in which Ms Minhas said that the Petitioner, Receivers and Administrators are using the same solicitors and that there is a “*conflict of interest, as all these parties are supposed to be independent and not working in cahoots to effectively steal the* [Properties] *from the* [Company] *in refusing to allow the mortgages to be redeemed*.”

41. In the circumstances, in Mr Essen's second witness statement, served in response to the first of Ms Minhas, he said that the "*exact details of* [the Company's] *cross-claim/counterclaim against the Petitioners/its receivers is unknown save the indication given by the* [Company's] *Counsel at the hearing on 7 September 2022 appeared to be that the sales had been at an undervalue*." He dealt with the issue of undervalue by referring to the sales at auction "*as the best indicator of market value for property*", and explained that in any event, no claim for damages against the Petitioner had yet been made, pleaded or particularised, whether in the Part 8 Proceedings, or otherwise.

42. In response, the Company served the second statement of Ms Minhas made on 3 October 2022. Essentially, insofar as relevant to this aspect of the dispute, it repeated what had been said in her first statement. Whilst it made no particular mention of the tort now alleged, Mr Feldman referred me to passages in which, again, Ms Minhas complained that "*Brightstone Law's clients refused to allow the sales to complete*", that the Properties were sold "*at an undervalue due to the interference of the* [Petitioner] *and the* [Receivers]" and her view that the purpose of the petition is to avoid the counterclaim, and "*avoid exposing the fact that the* [Petitioner] *and the* [Receivers] *have been working in cahoots to sell the* [Properties] *at an undervalue*."

43. Although not made or served as such in the petition proceedings, Ms Whitehouse also referred me to three statements made in Claim No: QB-2021-001933 (each of which was exhibited by Ms Minhas to her first witness statement) by: (i) Mr Roy Armitage, Head of Loan Servicing with responsibility for managing loan facilities at the Petitioner, on 17 March 2022; (ii) Mr Richardson, one of the Administrators, made on 17 March 2022; and (iii) Ms Liddell, one of the Receivers, made on 24 March 2022. Those statements were made, as I understand it, in support of the application of 30 March 2022, referred to above at paragraph 19, the purpose (and ultimate effect) of which was, amongst other things, to bring about the discharge of the injunction granted by Kerr J on 3 August 2021. As I have explained, the balance of that application is yet to be decided, but I note:

    43.1. that in Ms Liddell's statement, having explained the background at some length, she concludes, "*I do not consider the purported sales are genuine arms-length transactions by two unconnected parties. Completion was due to*

take place on 11th June 2021 and has still not occurred with no proposed date in sight. Both the [Company's] *solicitors and K&K Solicitors* [who purported to act for Laverstock] *are continuing to ignore lawful requests by the Administrators to deliver up documents and deposit monies*." She concluded, "*I am deeply concerned that the application for injunctive relief … is yet another attempt to frustrate the Receivers' power of sale and* [the Petitioner's] *recovery of the debt*." In addition, it was her evidence that at the hearing before HHJ Lickley QC on 30 May 2021, he too had expressed concerns about the genuineness of the sales.

43.2. that in Mr Richardson's statement, he too concluded, having set out the Administrators' (unsuccessful) attempts to obtain information regarding the "*purported property sales that I have repeatedly requested*" that he was "*gravely concerned that the purported sales* [of the Properties] *are not genuine arms length transactions but rather a device engineered by Mr Roberts using a non-trading company operated by his wife, Tanya Minhas to thwart* [the Petitioner's] *efforts to enforce the sums it is owed*."

44. Finally, in Mr Essen's second witness statement, he refers to the judgment of HHJ Rajeev Shetty given on 26 May 2022 in (unrelated) proceedings (QB-2022-001586) between the Company and Miss Sue Elise Nash, Mr Steven Williams and Mr Gary Hargreaves (at [2022] EWHC 1330 (QB)). In that case, in circumstances not dissimilar to those of the present case, Mr Williams and Mr Hargreaves had been appointed as fixed charge receivers in respect of various properties, but had been prevented from selling those properties by virtue of an *ex parte* injunction granted in favour of the Company (represented before HHJ Shetty by Mr Feldman) on the basis (set out in witness statements made by Ms Minhas) that it had previously contracted to purchase the properties in question from the mortgagor defendant. The judge found that there had been a breach of the Company's duty to make full and frank disclosure at the previous hearing, and discharged the injunction. He also said, amongst other things, "*there is a high level of suspicion about the genuineness of the transaction between the* [Company] *and the Defendant*", and that in his view, "*the entire purchase and exchange of contracts appears to some kind of ruse or sham to prevent the Receivers from selling the properties …*".

45. As I have said, the circumstances and features of that case were not dissimilar to those of the case before me. For example, in both cases the amount of the agreed deposit was notably smaller than is usual (as HHJ Shetty said, "*far less than the common 10% in transactions*") and in both cases the same solicitors were involved on behalf of the Company and the property owners, each with connections to the other's firm - the purchaser's solicitor in each case being Mr Gabriel Awosika of Astute Dynamic (who is a consultant at K&K Solicitors) and the seller's being Mr Kieran Phull of K&K Solicitors (who is a consultant at Astute Dynamic).

The Alleged Cross-Claim: Conclusions

46. For the following reasons, in my judgment, the Company has failed to raise a cross-claim which is genuine and substantial, alleged by reference to sufficient evidence and properly particularised: ultimately, its case in this respect comprises no more than bare assertion.

47. First, as I have said, until very shortly before the hearing on 27 April 2023, the Company's alleged claim was not advanced or articulated, it was not identified, and no notice of it was given to the Petitioner, despite the Part 8 Proceedings having been commenced in July 2021, the Properties having been sold on 23 June 2022, the Petition having been presented on 19 July 2022, and Ms Minhas' first witness statement having made on 31 August 2022.

48. In consequence, quite understandably, it was not explicitly considered or answered either in the Petitioner's evidence or Ms Whitehouse's skeleton argument. Not only is the Company's failure to raise the allegation more promptly unfair to the Petitioner, but it is a relevant factor in assessing the substance and genuineness of the asserted claim. As was said by Mummery LJ in Dennis Rye Limited v Bolsover District Council [20009[EWCA Civ 372 at [19]:

> "*A company is not prevented from raising a cross-claim in winding up proceedings simply because it could have raised or litigated the claim before the presentation of the petition or it has delayed in bringing proceedings on the cross-claim. The failure to litigate the cross-claim is not necessarily fatal to a genuine and serious cross-claim defeating a winding up petition. However, in deciding whether it is satisfied that the cross-claim is genuine*

and serious, the court is entitled to take into account all the relevant circumstances, such as the fact that a company has not even attempted to litigate the cross-claim, or that there are reasons why it has not done so."

49. Although the Company has applied to join the Petitioner to the Part 8 Proceedings, and as explained above at paragraph 25, its application has been adjourned to the final hearing directed by Kerr J on 24 May 2022, the purpose of its application was "*not clear*" to Jacobs J, who described its evidence in this respect as "*unenlightening*". The application to join states, in response to the question, "*What order are you asking the court to make and why?*", "*To add Lendinvest BTL Limited (the Lenders) and Allsop LLP (the Receivers) to these proceedings, as they have expressed an interest in all of the properties, involved in this matter. The above will need to be added as parties to these proceedings, to make an order for specific performance for parties to be bound by any order of the court.*" There was however no suggestion that a claim for damages in tort was to be advanced against the Petitioner on the grounds now asserted. In any event, had the Company genuinely wished to assert a claim against the Petitioner, it could at any time before now have done so, simply by starting proceedings and setting out its case.

50. Second, in further consequence, and perhaps unsurprisingly, the evidence advanced by the Company, as referred to by Mr Feldman, was simply not directed at the establishment of the ingredients of the claim alleged in argument at the hearing; the alleged claim was not addressed by the Company's evidence. All that Mr Feldman could do was to show me the various passages in which Ms Minhas said that other parties were "*in cahoots*", had "*refused to allow the sales to complete*", and had retained the same solicitors. However, none of that is enough to raise a claim that the Petitioner "*induced"* the Receivers (or the Administrators for that matter) to cause Laverstock to break the alleged sale contracts, by means of persuasion or encouragement or assistance. I also bear in mind that (as was said at paragraph 35 above) a person's conduct preventing contractual performance by another, is not in itself "*inducement*" – so that in the present case, if and insofar as it might be suggested, the Company cannot complain that the appointment of the Receivers and/or Administrators somehow prevented or interfered with the sales such as to comprise the tort.

51. Accordingly, the alleged counterclaim is not properly articulated, and is not properly evidenced. In particular, there is no evidence to suggest that the Petitioner acted in some wrongful manner operating on the will of the Receivers (or in some other way, of Laverstock) and not even a statement of the means by which it is said to have done so.

52. Those two reasons alone are enough to conclude that the Petition succeeds, but in addition, I would note that the evidence of both the Receivers (both of whom are at Allsop LLP, professional, independent receivership specialists) and the Administrators (officers of the court by virtue of paragraph 5 of Schedule B1 to the Insolvency Act 1986) is that they acted as they did, and held the views stated in their evidence, not because they were subjected to any illicit persuasion or inducement by the Petitioner, but because they themselves investigated and considered the matter, and reached their own conclusions, as ordinarily would be expected. Moreover, that they themselves genuinely reached, held and acted upon those views independently of the Petitioner, is not inherently unlikely in the circumstances which they describe, circumstances which are enough to cast genuine doubt on the contracts alleged by the Company, and on its willingness and ability to fulfil them. On the contrary, they present rational and substantial justification for their conduct, and there is nothing at all in their evidence to suggest or support the notion that they were persuaded or induced by the Petitioner to cause Laverstock to act in breach of its alleged contracts with the Company.

53. Finally, the argument as set out in Mr Feldman's Skeleton Argument, and at paragraph 36 above, itself reflects the flaws in the Company's position:

    53.1. first, fundamentally, the Petitioner did not "*sell the Properties on Laverstock's behalf*": they were sold by Laverstock, acting by the Receivers, and whilst in administration; and,

    53.2. second, the Petitioner did not "*procure the breaches of contract in order to achieve the selling of the Properties at auction, in purported furtherance of its duties as administrator*": it did nothing of the sort; the Administrators were and are independent office holders.

54. In those circumstances, for the reasons explained, the Petition succeeds.

Dated 18 July 2023