



Neutral Citation Number: [2024] EWHC 1795 (Ch).

Case No: PT-2023-000670

**IN THE HIGH COURT OF JUSTICE**  
**BUSINESS AND PROPERTY COURTS**  
**PROPERTY TRUSTS AND PROBATE LIST (ChD)**

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

Date: 15 July 2024

**Before :**

**Master McQuail**

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**Between :**

**(1) NERIJUS ANTUZIS**  
**And others**

**Claimants**

**- and -**

**(1) DJ HOUGHTON CATCHING SERVICES LTD**  
**(2) JACQUELINE JUDGE**  
**(3) DARRELL HOUGHTON**  
**(4) JOANNE JUDGE**

**Defendants**

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**Peter Webster** (instructed by **Leigh Day**) for the **Claimants**  
**Beverley Lock** (granted a right of audience by the Court) for the **Second Defendant**  
The **Third Defendant** in person  
**Daniel Fox** (instructed by **Mishcon de Reya LLP**) for the **Fourth Defendant**

Hearing date: 8 March 2024  
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**Approved Judgment**

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MASTER McQUAIL

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This judgment will be handed down in Court 2, Rolls Building at 2:30pm on 15 July  
2024

**Master McQuail :**

1 This is my judgment following the disposal hearing of the claimants' application made by amended Part 8 Claim Form dated 23 February 2023 for orders for the sale of nine properties situated in the Maidstone area. Master Yoxall made charging orders over the interests of the second and third defendants in each of the nine properties in the Queen's Bench Division on 8 October 2021.

2. The following documents containing evidence were before the Court:

- (i) five witness statements of Mr Gonzalez, of Leigh Day, solicitors for the claimants, dated 4 August 2023, 13 September 2023, 6 October 2023, 20 December 2023 and 7 March 2024;
- (ii) the acknowledgment of service of the second and third defendants, Jacqueline Judge and Darrell Houghton, dated 28 August 2023;
- (iii) the witness statements of the second and third defendants dated 12 September 2023 accompanying an application for relief from sanction dated 13 September 2023;
- (iv) the witness statement of Desmond High dated 29 February 2024;
- (v) the witness statement of Beverley Lock dated 1 March 2024; and
- (vi) the witness statement of Katie Patch dated 4 March 2024.

Items (iv), (v) and (vi) were filed late and the second and third defendants have not applied for permission to rely upon them or sought any relief from sanction. The claimants have taken a practical stance and added the documents to the hearing bundle and have sought to address their content. So far as necessary I give permission for those items of evidence to be relied on.

### **Background**

3 The claimants are 11 Lithuanian individuals formerly employed by the first defendant, DJ Houghton Catching Services Ltd, as chicken catchers. The first defendant was in the business of providing labour in the poultry industry; it was dissolved in April 2022. The second defendant and the third defendant were the owners and operators of the first defendant; they are domestic partners.

4. The claimants brought claims against the first defendant for breaches of their contracts of employment and against the second and third defendants for inducing those breaches of contract. The breaches of contract date back in some cases to as early as 2008.

5. Following a summary judgment application and preliminary issue trial, Mr Justice Lane handed down a judgment reported as *Antuzis v DJ Houghton Catching Services Ltd* [2019] EWHC 843 (QB). The judge held that the claimants had been subjected to a “gruelling and exploitative work regime” by the second and third defendants who were operating the first defendant in a deliberate and systematic manner in flagrant disregard of the statutory requirements as to minimum pay. The judge ordered the first, second and third defendants to make two interim payments: (i) £106,640.09 on account of damages and (ii) £306,169.82 on account of costs, to be paid by 23 April 2019.

6. Following a quantum trial, Mr Justice Griffiths handed down a judgment reported as *Antuzis v DJ Houghton Catching Services Ltd* [2021] EWHC 971 (QB). The judge ordered the first, second and third defendants to pay damages, including aggravated damages, of £571,332.22 by 12 May 2021.

7. Apart from a sum of £80,000 obtained from an insurer, nothing has been paid towards the sums owed to the claimants.

8. Both Lane J and Griffiths J made adverse findings about the credibility of the evidence given by the second and third defendants.

9. The entire judgment debt secured by the charging orders amounted to £1,040,207.58 as at 6 March 2024 and interest runs at £174.79 per day. The calculation methodology is set out in Mr Gonzalez’s first witness statement.

10. Mr Gonzalez gives evidence in his first witness statement of the difficult circumstances of four of the claimants: (i) Mr Markevicius, has poor health and a learning disability and has been in sporadic low paid employment; (ii) Mr Urnikis has been living in a small caravan with his family, despite the accommodation being inadequate for them; (iii) Mr Necajus’s son is in the process of being diagnosed with autism and Mr Necajus has back problems, both factors restrict his ability to work extra hours and improve his financial position and; (iv) Mr

Stirblys was homeless and seriously ill for some years and, following a traffic accident, has been living in a care home.

11. The fourth defendant is the second defendant's sister. She is joined to the proceedings because she has a beneficial interest in six of the nine properties. She is in favour of orders for sale being made in respect of those properties.

12. Since the date the present application was issued, a default costs certificate was obtained in respect of the claimants' remaining costs of the main proceedings which were ordered to be assessed. The charging orders do not relate to that.

### **Representation**

13 The second and third defendants are not legally represented. The third defendant attended the hearing in person. The second defendant is undergoing treatment for breast cancer and has mental health issues and was not well enough to attend, but she had signed a letter authorising Ms Beverley Lock, who is the third defendant's sister, to represent her for the purposes of the hearing. In the circumstances, I gave permission for Ms Lock to act as the second defendant's advocate at the outset of the hearing, notwithstanding that she has no legal qualification.

14. The claimants and the fourth defendant are represented by solicitors and counsel.

### **Properties**

15 A schedule of the nine charged properties, summarising the relevant facts about each is annexed to this judgment.

16. The properties fall into three categories:

(i) the second and fourth defendants' father, George Judge, was the legal owner of five of the properties and he and his wife would appear to have shared the beneficial ownership. Since their deaths, more than 20 years ago and by a combination of George Judge's intestacy, a deed of variation entered into by his wife and the second and fourth defendants, and his wife's will the beneficial ownership of these properties is now shared equally by the second and fourth defendants. They are also the personal representatives of each of their parents' estates. The properties are mortgage

free. One of them, 54 The Quarries, is occupied by an assured shorthold tenant, the others are vacant and one has been decreed unfit for human habitation;

(ii) one property, land to the west of Old Tree Lane, was held by George Judge on trust for the second, third and fourth defendants in 10/29, 9/29 and 10/29 shares respectively. The property is mortgage free. The fourth defendant has indicated that she wishes to buy out the interests of the other defendants in this property, but will need her share of the proceeds of other properties in which she is interested to do so. In Ms Lock's statement it was suggested for the first time that the third defendant may enjoy security of tenure in respect of this property under the agricultural holdings legislation. His interest is suggested to arise because he has farmed there since 1989; no further evidence or explanation has been offered;

(iii) three properties are owned jointly, legally and beneficially, by the second and third defendants. One of these, 2 Quarry Cottage, is tenanted and is subject to a buy-to-let mortgage securing some £167,000. Another, Beresford Farm, is the second and third defendants' home. The final property is landlocked land adjacent to Beresford Farm. It is common ground that together Beresford Farm and the adjoining land are worth at least £750,000 and are subject to a mortgage that had an outstanding balance of approximately £352,000 in October 2022. Property particulars in evidence show that Beresford Farm includes a large kitchen and separate utility room, a number of reception rooms, four en-suite bedrooms, a separate office and a double garage.

17. The claimants' solicitors obtained valuations from (i) Lambert and Foster, a local estate agent and professional valuer, and (ii) Simon Miller, a local estate agent. Those valuations are in evidence. The Lambert and Foster valuation report dated 22 November 2022 is a Red Book valuation and more detailed than the Simon Miller letters of valuation dating from October and November 2022 and the values are generally lower than the Simon Miller ones. It is the Lambert & Foster values that have, in my view realistically, formed the basis of the claimants' suggested minimum prices for sale included in the draft forms of order for sale

accompanying the claim in respect of each property as well as their submissions more generally and which appear in the annexed schedule.

18 Mr Desmond High is a Fellow of the Institute of Chartered Accountants of England & Wales and an acquaintance of the second and third defendants. In his witness statement he puts forward a proposal for future dealing with the properties that he suggests would produce a fairer outcome for all parties than if sales of the properties were ordered by the court. The witness statement attaches a supporting schedule including values ascribed by Mr High to the various properties which in five cases are supported by advice recently produced by the second and third defendants from Clive Emson, Land and Property Auctioneers, as to appropriate pre-auction guide prices. In four of those five cases the valuation advice was accompanied by a statement that the price achieved at auction might be higher than the guide price. Mr High's figures are included in the annexed schedule.

19. On the basis of the Lambert and Foster valuations the total equity achievable to satisfy the sums secured by the charging orders, before sale costs, would be of the order of £1,430,000, whereas on Mr High's figures it would be of the order of £891,000.

20. The claimants say, and I agree, that the differences in values advanced by Mr High on behalf of the second and third defendants and those of Lambert and Foster should not affect the decision as a matter of principle whether to make orders for sale.

21. The original proposed draft orders for sale included minimum sale prices at the Lambert and Foster figures and provided that the minimum sale value for each property be reduced by 3% if the property had not been sold at that price within 20 weeks. Given the second and third defendant's position regarding valuations, the claimants propose revised wording allowing a further reduction of the minimum price, without the need to return to Court as follows:

“Should the property not be under an accepted offer which complies with this minimum sale price within 10 weeks from the date it is first advertised for sale, this minimum sale price shall be decreased by 3%. Should the property not be under an accepted offer which complies with the reduced minimum sale price within 10 weeks from the day of the reduction, the minimum sale price shall be decreased by a further 3%”.

So far as the properties in which she has an interest are concerned, the fourth defendant is content with that wording.

22. Mr High's witness statement explains a summary of his proposal as follows:

- “(i) the properties are transferred to a new legal entity of which [the second and fourth defendants] have a clear financial interest;
- “(ii) that entity raises a mortgage on the properties to make major inroads into the [claimants' judgment debt];
- (iii) [the second and third defendants' children] have committed to getting all the properties into good saleable condition over the next couple of years to allow settlement of the mortgage. For that they also have some financial interest.
- (iv) members of [the fourth defendant's] family may similarly be prepared to commit to that in the same way;
- (v) [the fourth defendant] receives in due course a full value for her interest in the properties rather than the current possibility of a much reduced figure;
- (vi) the process is overseen by agreed third parties (this is to make it more attractive to Leigh Day and to everyone else).”

Mr High acknowledges that it is not a perfect solution and that it relies on overcoming procedural hurdles. He also comments that the proposal puts to one side any payment to meet Leigh Day's fees.

### **Other Relevant Matters**

23. Ms Lock's evidence is that the second defendant is not fit physically or mentally to attend the hearing and is now receiving a daily visit from a mental health professional. There are also medical notes in the bundle which record mental health difficulties including references to depression from 2019 and April 2023.

24. There is evidence in the bundle dating from August 2021 of the third defendant having had mental health issues; there is no more up-to-date evidence from any health professional.

25. Ms Lock's evidence is that the two adult children of the family, Darrell, 25, and Rehannah, 23, live with the second and third defendants and that they would be “made homeless” if the application were granted. Her evidence is that Darrell junior works for a local construction company and Rehannah works in London for a charity and that she could not afford to do so if unable to live at home.

26 The tenants of 2 Quarry Cottage were informed of the claimants' application by the claimants' solicitors in order to enable them to make representations and to ensure that the Court was aware of their position. The tenants are a married couple, Simon and Katie Patch.

Ms Patch says in her witness statement that they have lived at the property since October 2019 and work in the health and social care sectors. Ms Patch explains she has suffered a number of miscarriages but at the date of the statement was 7 weeks pregnant. No supporting financial evidence is provided, but the witness evidence is that the present situation is weighing heavily upon her and her husband and that they cannot afford to move house because other rental properties in the area are beyond their budget.

27. The tenants of 54 The Quarries were served with the proceedings but have made no representations or taken any part in the proceedings.

### **The Law**

28 The charging orders were made under the Charging Orders Act 1979 and CPR 73. The Court has a discretion whether to grant an order for sale on the claimants' application. CPR 73.10C(1) provides:

“(1) Subject to the provisions of any enactment, the court may, upon a claim by a person who has obtained a charging order over an interest in property, order the sale of the property to enforce the charging order.”

29. Mr Webster made the following points derived from the notes at paragraphs 73.10C1 and 73.10C.6 - 7 of the *White Book*:

- (i) the Court has a discretion whether or not to order sale;
- (ii) ordering sale is an extreme sanction;
- (iii) all the circumstances need to be considered;
- (iv) an order for sale is likely to be ordered in a case of refusal to pay or in a case where in reality without a sale the judgment debt will not be paid;
- (v) a sale may be ordered even where the proceeds that would be recovered would amount to only a percentage of the debt; although if the sale would be unlikely to release funds which would “significantly reduce” the debt, the court might decline to make an order for sale;
- (vi) if what is charged is the debtor's beneficial interest in land (as opposed to the land itself), the creditor has standing to make an application for an order for sale under section 14 of the Trusts of Land and Appointment of Trustees Act 1996 (**TOLATA**)



which provides that the Court may make such order as it thinks fit and section 15 sets out the matters to which the Court is to have regard including these:

- (a) the intentions of the person or persons (if any) who created the trust;
- (b) the purposes for which the property subject to the trust is held;
- (c) the welfare of any minor who occupies or might reasonably be expected to occupy any land subject to the trust as his home; and
- (d) the interests of any secured creditor of any beneficiary;

(vii) there is a possible difference of view whether TOLATA applies where the debtor is the sole owner. In *Close Invoice Financing v Pile* [2008] EWHC 1580 (Ch) HHJ Purle QC held that an application can be made under CPR 73.10 without needing to rely on section 14 where the debtors are the sole owners. He said, however, that “the same considerations effectively have to be taken into account in the exercise of the undoubted discretion that the court has under Part 73.10(1)”. That approach was applied by Master Price in *Fred Perry Holdings v Genis* [2015] 1 P&CR DG5.

- (viii) different considerations apply if the property is the debtors’ home;
- (ix) even in the context of a home, a creditor’s interests will usually be given priority over a family in occupation of the property;
- (x) where sale of the debtor’s home is sought, it may be necessary to consider whether the order is compatible with Article 8 of the ECHR. Generally it will be sufficient for the Court to give due consideration to the section 15 factors. It is in the public interest to enforce charging orders given the economic importance of ensuring that there is an efficient machinery for the enforcement of debt obligations: *Close Invoicing* [12]. The Court’s discretion must be applied in a way which gives due respect to the ECHR rights of those living in the property for their family life and their home weighed against the rights of the chargee not to have to wait indefinitely for payment or to have no means of enforcing the security: *Close Invoicing* [13].

30. Mr Webster invited me to consider the decisions on the facts in three cases:

(i) In *Bank of Ireland v Bell* [2001] 2 All ER (Comm) 920 the Court of Appeal allowed an appeal against the refusal of the judge to grant an order for sale. The case contains these relevant statements of Peter Gibson LJ:

(a) at [28], the fact that a son was living in the property should only have been “a very slight consideration” as the son was almost 18 years old;

(b) at [29], poor health was a factor to which regard could be had but this “would provide a reason for postponing a sale rather than refusing sale”;

(c) at [31], “a powerful consideration is and ought to be whether the creditor is receiving proper recompense for being kept out of his money, repayment of which is overdue”;

(d) at [32], the question whether the creditor might have been able to recover from solicitors who had acted for them in the transaction was not a material consideration;

and the conclusion

(e) at [34] that it was “plain” that a sale should be ordered, subject to allowing further evidence to be filed as to health so that appropriate directions could be made regarding timing of the sale.

(ii) In *Close Invoice Finance v Pile*, HHJ Purle QC granted an application for an order for sale in respect of the defendants’ family home, at which the defendants lived as husband and wife, with an elderly parent and two children, aged 17 and older. The debt was some £150,000, the property was valued at approximately £390,000. After HHJ Purle QC had refused an adjournment, the debtors did not oppose the making of an order for sale but sought postponement for a year. The postponement was sought in the hope that the financial circumstances of one the debtors might improve, because his wife was suffering from breast cancer, tiredness, stress and depression, and because of possible disruption to the children’s schooling. An order for sale was made on terms that possession need not be given up for a year, with the usual provision that sale would not take place if payment of the debt was made first;

(iii) In *Fred Perry Holdings v Genis*, Master Price granted an order for sale in respect of the defendants' family home to enforce a judgment debt against the first defendant. Master Price deferred its operation for a year to enable arrangements to be made for new schools and accommodation where there were school age children living at the property. The Master made the following points:

(a) at [5], on the facts of that case, section 14 applied and, even if it did not, the factors in section 15 needed to be considered;

(b) at [8], as to the section 15 factors "the upshot has been to give precedence to commercial interests rather than to the residential security of the family";

(c) at [10], sections 14 and 15 have been held to be compatible with the ECHR. There may be circumstances in which the question arises whether an order for sale is a disproportionate interference with the rights of family members. However, it was difficult to see how the order for sale could be said to be disproportionate where there seemed to be no alternative but for the house to be sold if the claimant was to be repaid;

(d) at [11] – [13], even after considering the position under the Family Law Act 1996 (because the second defendant, had registered rights under section 30) an order for sale would be made as the policy of the law gives "ultimate primacy to commercial interests"; and

(e) at [14], in circumstances where there was no other source of funds and re-mortgaging was not possible, so "there is really no alternative means by which a claimant can recover, an order for sale must necessarily follow, but the court can seek to temper the effect of such an order in order to give effect to the various competing interests which have to be considered".

### **Claimants' submissions**

31 It is the claimants' position that orders for sale should be made for these reasons:

(i) they have been kept out of the compensation awarded to them for a long time already;

- (ii) the claimants were mistreated and underpaid by the second and third defendants and need the assistance of the court to enforce payment of what is due;
- (iii) the five properties jointly owned by the second and fourth defendants and inherited from their parents appear to be held simply as investment properties. The fourth defendant is in agreement that these properties be sold. The health or any other circumstances of the second and third defendants do not justify a refusal to make an order for sale of these properties. One is uninhabitable and others will require some works, but that is no reason to delay sale. The second and third defendants and other family members could have carried out works to achieve better sale prices at any time in the last five years;
- (iv) 54 The Quarries is tenanted but no evidence has been adduced to suggest that there would be any particular hardship caused by a sale with vacant possession and on a proper exercise of the Court's discretion, an order for sale with vacant possession should be made;
- (v) the land to the west of Old Tree Lane is jointly owned by the second, third and fourth defendants and is used for the third defendant's pig business. The suggestion that the third defendant has an agricultural tenancy is not supported by evidence. In any event, if the third defendant were ordered to deliver vacant possession, he could not resist giving up possession on the footing he had some form of security of tenure. That the land may be used for a business, does not justify not making an order for sale. The land has value which can be used to satisfy the overdue judgment debt;
- (vi) in relation to the six properties in which the fourth defendant has a beneficial interest, the court must consider the factors under section 15 TOLATA. Noting, in particular, that there are no minor children to be considered and that the other beneficial owner supports a sale the proper order to give effect to the interests of the claimant secured creditors is an order for sale;
- (vii) in relation to the three properties in which the second and third defendant are legal and beneficial owners the matter can be dealt with under CPR 73, although the

section 15 factors should nonetheless be considered. The following issues arise:

(a) 2 Quarry Cottage is occupied by a married couple who wish to start a family. Their Article 8 rights as a family must be considered. However, those rights have to be balanced against the rights of the claimant secured creditors and the public interest in enforcement of judgments. That balancing exercise, as in the *Fred Perry* and *Close Invoicing* cases should result in an order for sale being made. The court should either make an order to sell the property tenanted or make an order for sale now, to avoid the need for any further hearing, but defer the date for it to take effect to some point in the future bearing in mind the due date of the Patches' child;

(b) the claimants had initially proposed that the second and third defendant might vacate Beresford Farm and move into 2 Quarry Cottage but, given the circumstances of the tenants, that proposal would not appear feasible in the short term. To make no order for sale about this property would not remove the uncertainty and anxiety for the tenants, because the reality is that their landlords are substantial judgment debtors;

(c) Mr Webster produced a note following the hearing in which he explained in greater detail why any proposal for the second and third defendant to move into 2 Quarry Cottage and for that property not to be sold was no longer feasible, if it ever was bearing in mind the existence of the buy-to-let mortgage. In brief, the interest that has accrued since the date of the calculations in Mr Gonzalez's witness statement and which will accrue until any sales are likely to take place together with the costs of sale and the costs of the order for sale application, even when assessed, mean that on the Lambert and Foster valuations the prospect of sales of the other eight properties clearing all that is owed is no longer realistic. On Mr High's figures the prospect is non-existent. In addition, another creditor has a charging order over 2 Quarry Cottage;

(d) Beresford Farm (and the adjoining land) is the home of the second and third defendants. It is a valuable property, with substantial equity. The *Close Financing* and *Fred Perry* cases make plain a judgment debtor's home is not immune from execution. The Court is entitled to take account of the health of the second and third defendants but that cannot act as a permanent block on this asset being realised to pay the judgment debts (see *Bank of Ireland* and *Close Invoicing*). As in *Bank of Ireland*, the fact that adult children live in the property should carry very little weight. The countervailing factor to the second defendant's health is the nature of the judgment debt which is long overdue, arose as a result of mistreatment of the creditors several of whom have their own health and personal difficulties and was not commercial lending. An order for sale should be made now, but its effect deferred for a maximum of six months to allow the second and third defendants time to plan and to find alternative accommodation.

(viii) Mr High's recent proposal is not a fully detailed one. Essentially, he appears to say that there should be a stay for settlement discussions and to enable re-financing. That proposal is unacceptable to the claimants. The Court should not defer a decision to make orders for sale, the second and third defendants have had five years to make proposals for payment;

(ix) the proposal itself appears to involve the payment of less than the judgment sum, which is unacceptable to the claimants as a matter of principle. The proposal would appear unworkable: it is unclear how any mortgage could be raised on the security of the properties or their titles be transferred to another legal entity without endangering the claimants' security. It is also unclear how funds would be provided to pay for work on the properties and it would require the fourth defendant's agreement and cooperation and she does not agree;

(x) in addition, the claimants have a real issue with trusting the second and third defendants, which is justified by the totality of the history of this matter, the judges'

findings and the failure by the second and third defendants to take any steps to date to generate income or capital from the properties or from any other resource to pay the judgment debt;

(xi) if the Court were to place any weight on the proposal floated by Mr High despite the prejudice it would cause to the claimants, the only appropriate course would be to make orders for sale deferred for a period to allow a concrete proposal to be made.

### **Submissions on behalf of the Fourth Defendant**

32. Mr Fox on behalf of the fourth defendant made brief submissions as follows:

(i) his client has a number of medical conditions herself and any further delay in reaching a conclusion to this matter would be detrimental to her health;

(ii) his client is in a precarious financial position that would be assisted by the realisation of her interests in the relevant properties;

(iii) his client has already spent significant sums on her representation in these proceedings which she can ill-afford, any delay in ordering a sale and the prolongation of the proceedings and an ongoing need for legal representation would be prejudicial to her;

(iv) Mr High's proposal does not appear workable in terms of the prospect of a new legal entity borrowing money on the security of the properties which, on the figures advanced by Mr High lack any equity after account is taken of the sums secured by the charging orders. Neither his client nor her family members agree to it. Given the state of family relationships, recognised both by Mr High and Ms Lock's evidence, no settlement process along the lines of Mr High's proposal could possibly work. Finally, there is also no explanation of how a third party overseer would be paid.

### **Submissions on behalf of the Second Defendant**

33. In Ms Lock's submissions:

(i) she placed reliance on Mr High's proposal as a means to achieve a satisfactory outcome and payment of the claimants without any order for sale being made. She acknowledged that the second and third defendants appreciate that the claimants need

their money and said that that was what Mr High's proposal was intended to achieve. She also said that this matter has got to come to an end for reasons of the second defendant and the third defendant's health. She acknowledged also that Mr High's proposal needed further matters to be worked out but complained that Leigh Day had been unwilling to enter into discussions;

(ii) she asked me to take account of the Patches' situation;

(iii) she also asked me to take account of the fact that Lambert & Foster had not been able to fully inspect the properties, whereas Emson had and that that meant that I should look favourably on a proposal that took account of the true state of disrepair of the properties and would result in that state being improved by work being done and the properties thereby achieving higher prices;

(iv) she also pointed out that the buy-to-let mortgage on the property occupied by the Patches meant that the proposal that the second and third defendant move there was unworkable;

(v) she was not able to provide any satisfactory answer to my question about how mortgage funding of the order of £1 million could be raised. She simply said that that much would not be necessary;

(v) Ms Lock filed her own written note in answer to that filed after the hearing by Mr Webster. The note again acknowledged that the claimants should be paid, but complained about the costs of the claimants' legal representatives. It also suggested that the fourth defendant must take responsibility for being caught up in these proceedings as a result of failures jointly with the second defendant in administering George Judge's estate. She argued that because the sale of all the properties would not be likely to clear all the sums due to the claimants no order for sale should be made and the claimants should engage with Mr High's proposal or a further one which she advanced as follows:

(a) properties 8, 48, 52 and 54 The Quarries are used to raise finance to make a payment to the claimants;



- (b) remedial works are undertaken on those properties to achieve an eventual sale in good condition;
- (c) fresh valuations are obtained for the land to the west of Old Tree Lane, and the Piggeries taking account of the third defendant's claimed tenancy of the former and those properties are only put up for sale if they will realise value with the third defendant being allowed to continue to earn a living from his farming business;
- (d) any sale of 2 Quarry Cottage is deferred until 12 months after the Patches' child is born; and
- (e) Beresford Farm and the adjoining land are not sold because they are the home of the second and third defendants and their children and their base for earning a living. She added that it is a working farmhouse and not in a fit state to be sold and that if the court were to make an order for sale the second and third defendant would have no incentive to facilitate a sale.

### **Third Defendant's Submissions**

34. The third defendant was in agreement with the second defendant's submissions. He began his own submissions by questioning why the fourth defendant was so keen for the properties to be sold. He then raised an issue about rent that he claimed the fourth defendant might be under some duty to account for in relation to the properties in the joint ownership of the second and fourth defendants, which does not appear to be an issue which concerns the claimants.

### **Complaints About Leigh Day**

35. At various points and in various forms the second and third defendants themselves or through Ms Lock have made complaints about Leigh Day's conduct and the level of the costs incurred by the firm. These complaints are not fully particularised or evidenced and appear to be advanced to deflect from the real issues in the present application. I do not consider them relevant to the decisions I have to make and will not say anything further about them.

### **Analysis and Conclusions**

36. The claimants have the benefit of a substantial judgment debt representing underpaid wages dating back many years. The second and third defendants were responsible for treating the claimants poorly and not paying them in accordance with the law. This is not a situation where the claimant creditor is in the business of lending money nor one where the claimant creditor has come to be owed money in the course of their own commercial enterprise; these claimant creditors are underpaid employees to whom the second and third defendants owe debt obligations. Ms Lock on behalf of the second defendant acknowledged that matters have to come to a conclusion.

37. The second and third defendants have made no repayments to the claimants themselves. The only possible prospect of any repayment being made is by realising value from the second and third defendants' interests in the nine charged properties, whether by the parties following a course along the lines suggested by Mr High or Ms Lock or the court ordering sale of some or all of them.

38. The difficulty with both the High and Lock proposals is that they are insufficiently precisely formulated to enable me to conclude that they could actually work in practice to result in the payment of any sums due to the claimants at or before any particular point in time. The fourth defendant does not agree to the postponement of the sale of the properties in which she is interested or to collaborate in the High or Lock proposals for their repair or improvement. No lender has been identified who would be prepared to lend any particular amount to either the second or third defendants or their children or any new legal entity that might be formed either on the strength of the value of the properties or any potential borrower's covenant. There is no plan for or costing of works to be carried out on any of the properties or any projection of how the carrying out of works would raise a greater net sum than a sale now. The need for an overseer is suggested, but not who that overseer might be or how that person might be paid. It is also the case that these unrefined proposals are made very much at the eleventh hour in circumstances where, if they were workable, they could and should have been made, if not implemented, many months or years ago. In those circumstances it is not only not unreasonable but entirely understandable that the claimants'

solicitors have not engaged in discussing the proposals. Each set of proposals amounts to no more than asking for time to negotiate without any realistic prospect of the negotiation being successful and at a time long after the claimants have become entitled to say that they have no wish to negotiate with these debtors in whom they have entirely lost trust.

39. Just because a sale of even all the properties might not realise sufficient sums to discharge the full amount owed is not a reason of itself for not ordering sales. Even on the least optimistic figures a sale of all or even some of the properties should raise a substantial figure which would make a significant inroad into the sums owed to the claimants. Even if figures closer to the Emson ones than the Lambert & Foster ones are the true figures because of the actual state of repair of the properties that is not a reason either for not ordering a sale or for postponing matters while the properties are put in order, in circumstances where there is no costed or funded plan for such repairs.

40. So far as the five properties owned beneficially by the second and fourth defendants are concerned the section 15 factors must be taken into account. The properties were acquired by inheritance, there is no express or even implied purpose trust other than that the properties are shared equally between the beneficial owners one of whom wants a sale. The second defendant's health is not relevant as these properties are not her home. Any failure to date to administer these properties or otherwise deal with them is irrelevant to the question of whether an order for sale be made now. The fourth defendant wants there to be a sale as she needs the money to improve her financial situation, including by investing in the purchase of the sixth property and paying the costs of being involved in these proceedings. The desire of the fourth defendant for a sale and why, to the extent that her reasons are relevant, are factors strongly tending to support an order for sale being made, as the fourth defendant would herself, independently of the claimants' claim, be entitled to ask the court to make an order for sale. There is no minor in occupation and nothing is known of the one tenanted property to suggest a sale with vacant possession would cause any particular hardship.

41. I will make orders for sale in respect of these five properties in terms of the submitted draft orders subject to an amendment as set out in paragraph 21 above.

42. So far as the property West of Old Tree Lane co-owned by the second, third and fourth defendants is concerned, there was an express declaration of trust executed at the time of acquisition in 1989, but it did no more than declare the proportionate shares of ownership and entitlement to income and provide that, if any owner wished to sell that owner should offer first refusal to the others. The other possibly relevant factors are that the third defendant may be using this property for the purposes of a farming business and may be entitled to some form of security of tenure. There is no evidence rather than bare assertion of any basis for the existence of security of tenure and there is no evidence that the third defendant's business is generating any profit. The fact that the property is being used by the third defendant under an arrangement which might give him security of tenure does not amount to a ground for not ordering a sale if that is what is required to enable payment of the judgment debt. The draft order that is proposed provides for the sale to be of the second and third defendants' 19/29<sup>th</sup> shares to the fourth defendant at a price of £229,310.34 at a time fixed by reference to receipt of sufficient monies from the sale of the other properties jointly owned by the second and fourth defendants.

43. I will make an order for sale of the land West of Old Tree Lane in the form of the draft order enabling the fourth defendant to purchase the second and third defendant's interests.

44. The applications for the sale of the three properties owned by the second and third defendants may be made under CPR 73 but it is clear from the authorities that the TOLATA factors must also be considered:

(i) so far as 2 Quarry Cottage is concerned it is the family home of its tenants, the Patches. The Article 8 rights of the tenants must be balanced against the claimants' rights as judgment creditors. The outcome of that balancing exercise is in my judgment that an order for sale should be made, but on terms that take account of the situation of the tenants. It cannot be in the interests of the tenants to suffer ongoing uncertainty as to their position. Since the property is charged to the claimants and to another creditor ordering a sale now, without further uncertainties or postponement is in my judgment the right course. The order I propose to make will be for the sale to

be subject to the occupation of the Patches. Only if a sale so occupied has not been possible by 21 April 2025 (which I calculate to be 6 months after the due date of the Patches' child) will the claimants have the opportunity to return to court and request a variation of the order;

(ii) so far as Beresford Farm and the adjoining land are concerned they are the home of the second and third defendants and their adult children and the family's Article 8 rights are engaged. I am mindful of the health issues of the second and third defendants but they cannot operate to render their home immune from execution. The circumstances are that sale of the other seven properties will not fully satisfy the secured indebtedness and there is no other prospect than by sale of Beresford Farm and the adjoining land of further reducing the secured indebtedness to the claimants. I am mindful also of the children in occupation, but their position as adults with earning capacity is of very little weight in the overall picture and cannot operate to prevent a sale indefinitely. I will order that there be a sale of Beresford Farm and the adjoining land, but will postpone the date for the giving up of possession until 15 November 2024 to give the family four months to make alternative arrangements for their accommodation, which should be ample time;

(iii) in each case the order will be in the form of the draft submitted subject to the amendment referred to in paragraph 21 above.

### **Judgment Hand Down**

45. This judgment will be handed down in Court at 2:30pm on 15 July 2024. Any argument about consequential matters that are not capable of being agreed between the parties will be heard on that occasion.