Neutral Citation Number: [2019] EWHC 1986 (QB)

Case No: HQ16X02674

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
MEDIA AND COMMUNICATIONS LIST

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 24/07/2019

Before :

THE HONOURABLE MR JUSTICE WARBY

- -

Between :

Dr Robin Rudd	**Claimant**
- and -	
(1) John Bridle **(2) J&S Bridle Limited**	**Defendants**

- -
- -

Guy Vassall-Adams QC and Tim James-Matthews (instructed by **Leigh Day**) for the **Claimant**
James Fairbairn (of **Dentons UK and Middle East LLP**) for the **Defendants**

Hearing date: 17 July 2019

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Approved Judgment

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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MR JUSTICE WARBY

MR JUSTICE WARBY:

Introduction

1. This is a data protection claim. On 10 April 2019, following a three-day trial in March, I gave judgment on the claim: see [2019] EWHC 893 (QB) ("the Judgment"). I ordered the first defendant ("Mr Bridle") to provide certain further information, pursuant to s 7(9) of the Data Protection Act 1998. I dismissed the remainder of the claim against him, and the whole of the claim against the second defendant ("the Company").

2. The orders that matter for present purposes are those relating to costs. I ordered that the claimant should pay the Company's costs, on the standard basis. But I ordered Mr Bridle to indemnify the claimant against that liability; to pay all the claimant's costs of his claim against the Company, to be assessed on the indemnity basis; and to pay half the claimant's costs of the claim against him. I ordered Mr Bridle to make an interim payment on account of his costs liability to the claimant, in the sum of £50,000. That was payable by 10 July 2019.

3. The interim payment was made six weeks early, on 22 May 2019.

4. On 24 June 2019, the claimant's solicitors served on those acting for the defendants a bill of costs in the sum of £264,176.19. That was the sum claimed in respect of the claimant's costs of the claim against the Company and half the costs of its claim against Mr Bridle. The Company's last approved costs budget for the whole proceedings was approximately £106,000. Correspondence about those costs was continuing.

5. At or about this time Mr and Mrs Bridle put their home on the market at an asking price, I am told, of £910,000.

6. On 28 June 2019, the claimant filed the application notice that is before me now. There are two applications:

   (1) The first is for disclosure by Mr Bridle and the Company of "the identity of the individuals, companies or entities who have financed or provided financial support to the defendants or either of them during and in relation to the present litigation and related documents" ("the Funding Disclosure Application").

   (2) Secondly, the claimant seeks an order for the disclosure by Mr Bridle of three documents said to be "mentioned" in a witness statement of 6 June 2019, made by Mr Robin Francis of the defendants' solicitors ("the Witness Statement Application").

7. It will be convenient to deal with these applications separately, in turn.

Funding Disclosure

Legal framework

8. The basic legal framework is not in dispute. The court has power to make orders for costs against non-parties. This is part of the general power to make orders as to the costs of proceedings which is conferred by s 51(3) of the Senior Courts Act 1981: see *Aiden Shipping Co Ltd v Interbulk Ltd* [1986] AC 965. There are many circumstances that

could in principle justify a third-party costs order, but commonly, third parties are targeted on the basis that they have funded an unmeritorious claim or defence.

9. The factors to be considered, and the relevant principles, have been the subject of consideration in a substantial number of reported and unreported cases, including *Symphony Group Plc v Hodgson* [1994] QB 179 (CA), *Hamilton v Al Fayed (No 2)* [2002] EWCA Civ 665 [2003] QB 1175, *Dymocks Franchise Systems (NSW) Pty Ltd v Todd & Others* [2004] UK PC 39 [2004] 1 WLR 2807, *Petroleo Brasileiro SA v Petromec Inc* [2005] EWHC 2430 (Comm) [2005] All ER (D) 48, and *Deutsche Bank AG v Sebastian Holdings Inc* [2016] EWCA Civ 23. The general principles that can be extracted from these authorities include the following:

(1) The power to make a costs order against a non-party is exceptional in the sense that such orders are not usually made. Such an order may only be made where there has been conduct by the non-party such as to render the order just and reasonable: see *Symphony Group* at 192H (Balcombe LJ);

(2) The power will not generally be used against "pure funders", that is to say persons who provide financial support to a litigant but who have no personal interest in the litigation, who do not stand to benefit from it, who do not fund the litigation as a matter of business, and who do not seek to control its course: *Dymocks* [25(1) – (3)] (Lord Brown).

10. The modern jurisprudence is well summarised in *Turvill v Bird* [2016] EWCA Civ 703 [2016] BLR 522, where Hamblen LJ (with whom Gross LJ agreed) said this:

> "24. A number of recent authorities have stressed that this is a jurisdiction which must be exercised in the interests of justice and that its exercise should not be overcomplicated by authority."

He was referring, among others, to these observations of Moore-Bick LJ in the *Deutsche Bank* case at [62]:

> "We think it important to emphasise that the only immutable principle is that the discretion must be exercised justly. It should also be recognised that, since the decision involves an exercise of discretion, limited assistance is likely to be gained from the citation of other decisions at first instance in which judges have or have not granted an order of this kind."

11. Hamblen LJ went on to say this:

> "27. The authorities illustrate "the variety of circumstances in which the court is likely to be called upon to exercise the discretion" and "the kind of considerations upon which the court will focus", but are not to be treated as providing "a rulebook". The kind of considerations illustrated by the authorities include the following:

> (1) Whether the non-party funds the proceedings and substantially also controls or is to benefit from them and is the "real party" to them;
> (2) Whether the non-party promotes and funds proceedings by an insolvent company solely or substantially for his own financial benefit;
> (3) Whether there is impropriety by the non-party in the pursuit of the litigation.
> (4) Whether the non-party causes costs to be incurred….
>
> 28. (1) (2) and (3) are all examples of circumstances in which non-party costs orders have been made. Generally (4), causation, is also required "to some extent" (per Morritt LJ in *Global Equities Ltd v Globe Legal Services Ltd* [1999] BLR 232) although it is not a necessary pre-condition, as held in *Total Spares & Supplies Ltd v Antares SRL* [2006] EWHC 1537 (Ch). In that case, however, there was still a causal link between the non-party's actions and the claimant's costs recovery in that he had deprived the claimant of any realistic opportunity of recovering its costs. The link was with the recovery of costs rather than the incurring of costs, but in both cases the claimant has to bear costs in circumstances where he otherwise would not have done."

12. Procedurally, a court considering whether to exercise the power to make a third-party costs order must add the third party to the proceedings for the purposes of costs only, and give the person a reasonable opportunity to attend a hearing at which the court will consider the matter further: CPR 46.2(1). There may of course be a need to identify third parties, as a preliminary step towards engaging them in this process. Funders may be covert, or anonymous. It is clear that the court has a discretionary power, ancillary to its costs jurisdiction, to require a party to disclose to the other party the names of those who have financed the litigation: *Abraham v Thompson* [1997] 4 All ER 362, 368 (CA), *Raiffeisen Zentralbank Osterreich AG v Crossseas Shipping Ltd* [2003] EWHC 1381 (Comm) [7] (Morison J). This is the power relied on by the claimant on this application.

13. There is authority that this power extends to directing the disclosure of information going beyond the mere identity of the third-party funder. The court can make whatever ancillary orders will make the section 51 remedy effective, so that in an appropriate case the court may exercise a discretion to order more against the party who has been funded than simply the disclosure of the names of those individuals who have funded the litigation: see *Automotive Latch Systems Ltd v Honeywell International Inc* [2008] EWHC 3442 (Comm) [13], [16] (Flaux J).

14. The disclosure sought and ordered in the *Automotive Latch* case extended to the identities of any funders; the amount of such funding; the terms on which it was provided; the extent of each such party's involvement in the conduct of the action; and the nature and extent of the third party's interest (financial or otherwise) in the outcome of the action: see ibid [3] and [17]. The order sought on this application tracks the form of order granted in that case.

Issues

15. The first main issue between the parties in relation to the Funding Disclosure Application is whether the claimant has made out any or any sufficient case that the defence of the claim was to any material extent funded by any third party.

16. The second main issue is whether, in any event, the claimant would have a real prospect of securing a third-party costs order. The claimant's case is that there is a real prospect that this might be sought, and granted, and the court should grant the disclosure sought, to allow the claimant to consider his position. The case for Mr Bridle is that there is no real prospect that any such order would be made. It is said that (a) the costs claimed are clearly grossly inflated, but whatever the liability turns out to be, there is no reason to suppose that Mr Bridle cannot satisfy the liability from his own resources; (b) there is in any event no basis for believing that, applying the principles I have cited, the court would exercise its discretion to make a third-party costs order.

17. The third main issue relates to the Company. It has no costs liability to the claimant; on the contrary, it is a creditor of the claimant. Clearly, no third-party costs order could be made in relation to the Company's costs. The defendants' position is that for this reason any funding of the Company is irrelevant. The claimant's case is that the Company's financial affairs are so interlinked with those of Mr Bridle that an order that forces the Company to explain its ability to pay its own costs is essential, for the claimant and the court to gain an accurate picture as to the finances of the defendants and the sources of the funds that have been made available to them.

18. The onus of proof and of persuasion must of course lie on the applicant for such an order.

The facts

19. The application is supported by a witness statement made by Harminder Bains, legal executive with the claimant's solicitors. I have read that statement, and relevant exhibits to that statement, and a witness statement in response, served by Mr Bridle shortly before this hearing. I have been referred to a substantial volume of correspondence passing between the parties, to witness statements made by Mr Bridle in the past, and to passages in his evidence at trial and to my own findings of fact.

20. Ms Bains asserts that the defendants "must have had a funder … the evidence is that the defendants simply never had the available assets or funds to pay for their own costs let alone pay any costs liability to the claimant." Mr Vassall-Adams adds that what he calls "the various inconsistent and incoherent claims made by the First Defendant as to the source of monies to be applied to his costs liability" strongly support the inference that there is a third party financing the present litigation. Mr Bridle maintains, as he has before, that there has never been any third-party funding of the defence of the claim.

21. The key points that emerge from the evidence appear to be as follows.

22. First, Mr Bridle is a man whom I have found to be a liar in several respects, whose word is not to be trusted unless corroborated by independent evidence that is judged to be reliable: see, for instance, paragraph [68] of the Judgment. Secondly, Mr Bridle has repeatedly asserted that his only income is a pension of some £26,800 a year. Thirdly,

the Company's accounts have at all material-times shown a deficit on its balance-sheet of some £200,0000. As Mr Fairbairn puts it, the company is "balance-sheet insolvent". Fourth, there are aspects of the defendants' evidence about their assets and sources of funding, and aspects of the correspondence about those topics, which are foggy and unclear. They have not been particularly forthcoming with explanations of how the defence has been or is being funded. A series of statements made in April and May 2019 about the defendants' plans for settling their costs liabilities are opaque and not easy to reconcile with one another.

23. All of this being said, I remind myself that the onus lies on the claimant to demonstrate a basis for exercising the discretion to order disclosure. It is not sufficient to point to things that could have been said, or explanations that could have been given. That would be to reverse the burden of proof. The receiving party has a right to be paid but that does not come with a right to interrogate the paying party. As Mr Fairbairn submits, the mere fact that a costs order has been made does not entitle the receiving party to full disclosure of the paying party's assets, or a full explanation of how that party proposes to meet his obligation. And there are other important points about the defendants' role, the funding of their defence, and the asset position that seem clear, or sufficiently clear for present purposes, and are unhelpful to the claimant.

24. The first, and rather obvious point is that Mr Bridle and the Company were the defendants to the claim. Neither they nor anybody funding them could have had any expectation of financial gain from the litigation. The best outcome that could have been achieved was to ward off the claim, and secure a costs order in the defendants' favour. That would, in practice, only partly recoup their outlay. I am unable to identify any other form of gain that any third party could have achieved as a result of funding the defence of the claim. This serves to distinguish the present case very sharply from a case such as *Automotive Latch,* where the disclosure application was made by the successful defendant, which had incurred costs of $17 million defending a claim for up to $3 billion which clearly had been funded by non-parties, apparently having a vested interest in the outcome.

25. Next, I have not detected any evidence, nor any proper basis for an inference, that any third party was or may have been controlling or managing or directing the conduct of the defence. It is no longer suggested, as it was at one stage, that the defence was being controlled, directed, and funded by asbestos industry interests.

26. Thirdly, it is no longer suggested that the evidence shows or suggests that the defence of the claim was or may have been funded by asbestos industry interests. The defendants have consistently maintained that there were no third- party asbestos industry funders. Although it is now clear that the defence of the claim was funded to some extent by third parties, none of them were in that category. In fact, by the end of the hearing it had become clear that only three non-parties played a part in funding the defendants: (1) insurers, (2) the Company, and (3) J&S Bridle Associates, a partnership comprising Mr Bridle and his wife Susan ("the Partnership"). Mr Vassall-Adams made clear that the claimant did not seek to suggest any other third parties had been or may have been involved. It follows that if there was ever a justification for requiring disclosure of third-party identities, there is no longer any need to do so.

27. Fourth, the evidence about third-party funding is tolerably clear, and does not reveal any impropriety, or grounds for suspecting impropriety, or any other circumstances that in my judgment could arguably justify a third-party costs order.

(1) There was significant funding pursuant to legal expenses insurance cover taken out before the event. The evidence is that the insured (the Company and its officers) compromised a dispute with the insurers in return for a lump sum, which was then used to fund the defence of the claim. The settlement was achieved in August 2018. On 10 August 2018, the defendants' solicitors wrote to report that the lump sum received was "sufficient to finance this case to the conclusion of the trial in accordance with the figures set out in the cost budget", though it did not provide a fund to cover any adverse costs. The budget approved in March 2018 was a few pounds short of £103,000. It was later increased modestly to cover additional trial costs. The evidence of Mr Bridle is that the insurance money has in fact been used to fund the defence of the claim. No complaint or criticism is or could be made of funding through insurance. (I add that it is clear that there is no question of insurers seeking to recoup through subrogation to the Company's claim against the claimant.)

(2) The Company supported Mr Bridle's defence of the claim, while the dispute with insurers was ongoing. Between 26 January 2017 and 7 April 2017, the Company paid a total of £41,722 to Dentons, who were then acting for Mr Bridle. The company was not a party at the time. On 14 March 2017, Master Fontaine made a costs order against Mr Bridle in the sum of £7,722. That was evidently discharged by the Company. The reason for these payments appears, however, to have been that the Company was able to provide ready cash which was not available to Mr Bridle in the time required. The Company also funded Dentons to carry out the process of compliance (or purported compliance) with the claimant's SARs.

(3) The Partnership funded and supported the Company. That was the inference I had drawn, on the basis of the evidence given at the trial. The Company had a deficit on its balance sheet, but Mr Bridle's evidence at trial was that the Company was not "bankrupt" because its debt was owed to the Partnership. The overall effect of the evidence I now have from Mr Bridle, including that contained in earlier statements, is corroborated by documents and is this. The Partnership ceased trading in 2004. But its accumulated assets were used to fund the Company. By 29 August 2015, the loan account reflecting that funding had reached £100,277.96. By September 2016, the Partnership had just short of £39,000 in the bank, representing the balance of "undistributed savings accumulated over many years." The entirety of that balance was paid over to the Company. It was used by the Company to provide much of the financial support I have described above.

28. The broad overall picture is, therefore, that the Partnership kept the defence of the claim going by providing interim funding to and via the Company, while the dispute with insurers was going on. But the bulk of the funding for the defence of the claim was ultimately derived from the lump sum that was eventually negotiated with insurers. The claimant is entitled to comment that Mr Bridle has not made this very clear earlier, but the comment does not take the claimant very far. He cannot and does not criticise the insurer's role. In my judgment he cannot criticise the role of the Company or that of the Partnership. There would be something very artificial about any such criticism. The funding from these sources can be said to represent, in substance, Mr Bridle's money.

(As Mr Fairbairn points out, the holder of a joint account is entitled to deal with all the monies held in that account). In any event, the arrangements I have outlined fall firmly within the scope of the principle first established in *Hamilton v Al Fayed*, that third-party costs orders are not made against "pure funders" who support a party with limited means, but have nothing to gain from and no vested interest in the litigation, or its outcome.

29. Beyond this is the common-sense point, that the Court will not be keen to allow its own scarce resources and those of the parties to be consumed in pursuit of remedies that could not be real and effective. The claimant is not interested in going after the Company, for the obvious reason that it is balance-sheet insolvent. That leaves him with a potential claim against the Partnership, which is what Mr Vassall-Adams was forced to fall back on. But the evidence is that the Partnership's resources have been entirely exhausted already. The claimant's team can, and do, say that the evidence does not expressly say that the Partnership never received any funds from any source other than the trading activities it undertook up to 2004. But I have been given no reason to suppose that it did. I see no evidence to suggest that there is some hidden resource available to the Partnership, or Mrs Bridle. Rather the contrary.

30. Mr Bridle's evidence is that he owns a half-share in a valuable residential property, and no other assets. There has been criticism of that evidence, on the basis that he did have a share in the Partnership monies. The inference that Mr Vassall-Adams invites is that is, or may be some other, undisclosed source of funds. But the criticism seems to me unfair. On Mr Bridle's account, by the time he gave that evidence the Partnership funds had been exhausted by paying them over to the Company, which is insolvent. Further, it is hard to understand why Mr and Mrs Bridle should have put their house on the market, as they undoubtedly have, if they had other resources available with which to meet the costs liability that flows from this litigation.

31. Mr Vassall-Adams has relied on the fact and circumstances of the interim payment made on 22 May 2019, to support an inference that there is an undisclosed third-party funding arrangement. I have looked carefully at what was said in correspondence and in the witness statement of Mr Francis, about this. I have heard what Mr Fairbairn has to say. The correspondence is a little confusing. But I see no good reason to doubt that the money was raised on the back of the matrimonial home. The defence explanation, that there was some misunderstanding over exactly how the funds were raised, and some changes of plan, makes sense. This aspect of the claimant's case is nothing more than speculation, in my view.

32. There is a further aspect of the case which weighs against the grant of any such order as now sought. The purpose of a third-party costs order is, in all ordinary cases, to ensure that the receiving party is compensated for the costs which the court has ordered should be paid. If those costs are going to be paid directly by the paying party in any event, the process of obtaining disclosure, considering whether to seek a third-party order, and applying for such an order is pointless. It is not apparent to me that there is any real risk of non-payment by Mr Bridle.

33. He has complied with the two orders made against him so far. The order of March 2017 was discharged, albeit slightly late. The order I made on 10 April 2019 for a payment on account by 10 July was satisfied, six weeks early. The claimant's evidence is that the matrimonial home that he co-owns with Susan is worth £800,000. Ms Bains states

that Mr Bridle "has assets of about £400,000". It is not clear where that valuation comes from, but as I have mentioned, the case for the defendants is that the property is on the market for £910,000. That is what I have been told on instructions by Mr Fairbairn. It is not verified by a witness statement but, given the relatively short notice of this application, I give some weight to that information. The house is on the market.

34. In these circumstances, I cannot accept the assertion of Ms Bains that the evidence shows that neither defendant had or has the ability to pay costs. It certainly cannot be said, as she claims, that "neither defendant has the assets or ability to pay its own costs, let alone meet the costs liability that [Mr Bridle] has to the claimant." Her further assertion that "there is no evidence at all to show that either defendant had the ability to pay its own liability from their respective available resources …" is an overstatement.

35. It is important here to distinguish between having the means to pay, and having ready cash or credit. It is clear that Mr Bridle did not have the ready cash, or sufficient income, to discharge all his liabilities to the claimant and his own solicitors as these fell due. The Company was insolvent, so far as its balance sheet is concerned. It does not follow, however, that Mr Bridle or the Company were unable to pay the debts that they were running up, or the liabilities to which they were exposing themselves, along the way. They had their insurance claim, which proved to be worth a six-figure sum. They had interim funding available from the Partnership. They evidently benefited from credit afforded them by their solicitors. And Mr Bridle had at all material times a valuable capital asset that could if necessary be realised or utilised to raise finance for those purposes.

36. How does the value of that asset compare with the liabilities Mr Bridle has to meet as a result of my Order? He has to pay the Company's recoverable costs. I do not suppose they will materially exceed the approved budget. But whatever they are, the claimant will have a roughly equal and opposite liability to the Company. As for the costs bill presented on behalf of the claimant, I have to say that I view that with great concern. Mr Fairbairn makes some points about it that have not been answered so far, and seem to me to have real force.

37. Among those points are these. The costs claimed exceed the budget by a significant margin. The bill is produced on the basis that the costs of the claim against Mr Bridle represent only 10% of the total. The 50% deduction that I made therefore translates to a 5% reduction in the overall figure. The remaining 90% of the costs are attributed to the claim against the Company, which was only added at a relatively late stage. The effect is that a claim is made for 95% of the costs, of which 90% would benefit from my decision to award costs on the indemnity basis. It appears that the rationale here is that it was the Company that ran the expensive points. That is not how I understand the case. This approach seems highly artificial, and at odds with the way the case was defended in reality. I am not engaged in costs assessment, but I will say that I very much doubt that costs on anything like this scale will be recovered in the end.

38. My conclusions in relation to the application so far as Mr Bridle is concerned can be summarised in this way:

    (1) The evidence does not establish a risk of non-payment by Mr Bridle. He has no history of default, but rather a history of compliance. He has substantial assets. The evidence suggests he has realised those assets in part, to meet the costs order I made

at the time I gave judgment. He has embarked on the process of realising the remainder. I have not been persuaded that the proceeds would be insufficient to meet his outstanding liabilities, once the claimant's costs have been properly assessed.

(2) There has been some third-party funding of Mr Bridle's defence of this case, by insurers and, to a more limited extent, by the Company and the Partnership. Otherwise, the claimant has failed to establish any basis for the proposition that there has been third-party funding of the defence of this case. He has not pressed any such contention.

(3) The third-party funding that has been established and admitted could not justify a third-party costs order. The funding was legitimate, and the contrary is not tenable.

(4) For the reason given at (1) above, there would be no practical need for a third-party costs order. Further, on the evidence, a third-party costs order against the Company or the Partnership would be pointless. There is no reason to believe or suspect that there are hidden sources of wealth. For these reasons it would be contrary to the overriding objective to make an order which would in all probability lead to a further waste of resources to no useful purpose.

39. I add, in relation to the Company, that its position as respondent to this application is still stronger. Its defence of the claim was successful. It is therefore the beneficiary of a costs order. No third-party costs order is sought against the Company itself. The application is for disclosure. It would appear that the only basis on which the claimant could seek such relief against the Company is that it is (for these purposes) a non-party in possession of information that could help the claimant identify and obtain a costs order against some other third-party. For these purposes, the Company would seem to be a mere witness, rather than a party which has facilitated any wrongdoing. I have not been shown any authority that supports the view that a third-party disclosure order is appropriate in circumstances such as these. In any event, I would not grant one as a matter of discretion.

The Witness Statement Application

40. CPR 31.14(1)(b) provides that a party may inspect a document "mentioned in … a witness statement." If that party gives notice of his wish to inspect the document, the other party must permit inspection, within 7 days: see CPR 31.15. The duty to permit inspection may be enforced by the Court, where appropriate.

41. The exercise of the power to order inspection under these rules, and the meaning of "mentioned" in this context, have been considered in a number of authorities, among them *Rubin v Expandable Ltd* [2008] EWCA Civ 59 [2008] 1 WLR 1099, relied on by both parties to this application. Rix LJ (with whom Jacob LJ and Forbes J agreed) distinguished the case in which a document is "mentioned" from one where the wording of a statement merely allowed an inference that a document existed. He held at [23-25] that that "mention" must mean "specifically mention", and approved a test of "direct allusion". He gave examples of forms of expression in which "the making of the document itself is the direct subject matter of the reference and amounts … to the document being 'mentioned'". He was referring here to statements such as "he wrote" or "I recorded and transcribed our telephone call". Statements such as these were

contrasted with assertions such as "he conveyed" or "he guaranteed", which Rix LJ characterised as references to transactions, from which it might be inferred that a document had come into existence.

42. A second strand of the reasoning in these passages is to "look upon the mention of a document in pleadings, etc as a form of disclosure". The party deploying the document should in principle be prepared to be required to permit its inspection.

43. In the course of the heated exchanges over costs post-judgment, the claimant sought and obtained an interim charging order over the Bridle matrimonial home. On 6 June 2019, Robin Andrew Francis, an associate at Dentons, made a witness statement in response to an application to make that order final, and in support of an application to discharge the interim order, and for other relief. Within that statement was a paragraph headed "The Claimant's losses". Paragraph 13 reads as follows:

> "13. The Judgment Debtor has informed Dentons:
>
> (a) Whilst some form of equity release may have been an option, he has decided to sell part of the charged property to pay the costs in the Judgement. The Judgment creditor is aware of this, given Dentons' letter dated 21 May 2019 (page 4).
>
> (b) To pay the Judgment Debt, Judgment Debtor took out a short-term loan to cover those costs whilst the sale completed.
>
> (c) Once that sale is completed, part of the proceeds will be used to satisfy the loan. At that point, loan interest would cease to be incurred. The buyer's solicitor has informed the Judgment Debtor that the sale cannot be completed due to the restrictions put on the property by Judgment Creditor in relation to the charging order.
>
> (d) This has resulted in the Judgment Debtor incurring unnecessary interest due to the Judgment Creditor's refusal to discharge the charging order."

44. The claimant seeks inspection of three documents he says are "mentioned" in that paragraph. Three documents are sought:

(1) "The short-term loan". The claimant submits that paragraph 13(b) contains a direct allusion to a document containing a loan agreement to which Mr Bridle is a party. I disagree. A loan is a transaction, which may or may not be contained in or evidenced by a document. This is a reference to a transaction, akin to "he guaranteed".

(2) "The contract of sale." The claimant contends that paragraphs 13(a) and (c) mention such a document. The submission is that "it is inconceivable that a contract for the sale of part of the First Defendant's home, negotiated by professional solicitors, would be anything other than a written agreement." This is an odd application, in some ways. It has been the claimant's own case on this application that there was no such transaction, and that I should infer that the £50,000 interim

payment did not derive from such a sale, but instead from a third-party funder. But leaving that aside, this is another case where there is no direct allusion to a document. At best, the existence of such a document might be inferred. In fact, on a fair reading, the effect of paragraphs 13(a) and (c) is that not only has no such transaction been completed, there may not even be an agreement to sell. This undermines even the inference.

(3) "The communication when the Buyer's solicitor informed the First Defendant or his Solicitors that the sale could not be completed". It is submitted that paragraph 13(c) "makes direct allusion to correspondence from the putative buyer's solicitor". It does not. The existence of correspondence might be inferred, on the footing that solicitors usually communicate on such matters in writing rather than face-to-face or by telephone. But there is no direct allusion. Indeed, the case against treating these statements as direct allusions to documents is reinforced by the fact that they are all statements about what Dentons has been told by Mr Bridle. On the face of the statement it is clear that Mr Francis is giving hearsay evidence, which may indeed be second-hand hearsay.

45. That is enough to dispose of this application. But I would also accept Mr Fairbairn's further submission, that the Court should not in the circumstances order disclosure in any event. Mr Fairbairn relies on Rix LJ's observations about the purpose of CPR 31.14, submitting that disclosure cannot now be justified for the purpose of enabling a party to see the basis of his opponent's case on a contested issue. The witness statement was made in a specific context. Its purpose has been served. The charging order has been discharged, and there is no outstanding issue about it. Here, the claimant's stated purpose is unrelated to the proceedings over the charging order. He seeks inspection of the supposed documents on the basis that they may assist in (i) ascertaining the true picture of Mr Bridle's capacity to meet his costs liability; and (ii) identifying a potential non-party funder from the source of the "short term loan". Further, in the light of my conclusions on the Funding Disclosure Application, the second of these purposes is not legitimate. The first is also mistaken as it presupposes a right to interrogate the judgment debtor about his assets and resources, in this context.

Disposal

46. For these reasons, both applications are dismissed. As agreed at the end of the hearing, I will deal with consequential matters on the basis of written submissions.