Neutral Citation Number: [2020] EWHC 2729 (QB)

Claim Nos: (1) QB-2020-002055 & (2) QB-2019-004248

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL
Date: 16/10/2020

Before :
THE HONOURABLE MRS JUSTICE TIPPLES

- -

Claim No: QB-2020-002055

Between:

Mr Mark Howell	**Claimant/ Respondent**
- and -	
(1) David Evans **(2) Lord Iain McNicol** **(sued as a representative of all members of the Labour Party except the Claimant)**	**Defendants/ Applicants**

Claim No: QB-2019-004248

And Between:

Mr Mark Howell **(as trustee for Adam Howell (dob 5.12/03)**	**Claimant/ Respondent**
- and -	
Ian Stewart	**Defendant/ Respondent**

- -

Mr Mark Howell appeared in person
Ms Rachel Crasnow QC & Mr Tom Gillie (instructed by **Greenwoods GRM LLP**) for **Mr David Evans and Lord McNicol**
Ms Roisin Swords-Kieley (instructed by **McHale & Co. Solicitors**) for **Mr Ian Stewart**
Hearing dates: 7th and 11th September 2020

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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.

Covid-19 Protocol: This judgment was handed down by the judge remotely by circulation to the parties' representatives by email and release to Bailii. The date and time for hand-down is deemed to be 10.30am on Friday 16th October 2020.

The Honourable Mrs Justice Tipples DBE:

Introduction

1. On 30 July 2020 I struck out Mr Mark Howell's claim in *Mark Howell v (1) David Evans (2) Lord Iain McNicol* [2020] EWHC 2303 (QB) ("***Howell v Evans***") and certified the claim as totally without merit. Mr Howell was ordered to pay the defendants' costs of the claim on the indemnity basis, with a payment on account. I adjourned the issue as to whether it was appropriate to make a civil restraint order against Mr Howell until 7 September 2020. I did so because in January 2020, in another case, I had struck out an appellant's notice issued by Mr Howell, which I had found to be an abuse of process, and had certified as totally without merit. In addition to that, on 16 July 2020 Mr Howell informed the court by email that he had been the "the respondent to five strike out applications in the last twenty years, all of which were refused". In these circumstances I wanted to review the court file, the CE-file and *Bailii* in order to understand what had happened in relation to the other proceedings involving Mr Howell, in case there were any other orders or decisions that might be relevant.

2. In the process of reviewing the CE-file I considered Mr Howell's claim in *Mark Howell v Ian Stewart*, claim number QB-2020-004248 ("***Howell v Stewart***"). I concluded that Mr Howell had no reasonable ground for bringing the claim and, of my own initiative, on 10 August 2020 I made an order striking out the claim form and particulars of claim. I also certified the claim as totally without merit. The order provided that any party had a right to set aside or vary all or any part of the order returnable before me on 7 September 2020, and that the issue as to whether it was appropriate to make a civil restraint order against Mr Howell be adjourned for hearing before me on 7 September 2020 at the same time as that issue was being considered in *Howell v Evans*.

3. On 13 August 2020 I provided the parties with a note identifying the outcome of my review of the court file, the CE-file and *Bailii*. I provided the parties with a chronology in relation to the various sets of proceedings, together with an indexed bundle of documents referred to in that chronology (which ran to 102 pages). I explained to the parties that, based on my review, it appeared that:

    a. Mr Howell had issued two claims that had been struck out and certified as totally without merit;

    b. Mr Howell had made at least three applications in different proceedings which had been certified as totally without merit;

    c. Mr Howell's claim issued against Sarah Alamoudi in 2018 had been struck out by Master Davison on 11 March 2019 as an abuse of process;

    d. there were other applications Mr Howell had made to the High Court and the Court of Appeal which were totally without merit, even though they had not been certified as such at the time; and

    e. Mr Howell had been adjudged bankrupt on 25 March 2019.

4. On 17 August 2020 Mr Howell served a detailed written response to my note, which he described as "fundamentally unfair and misleading". Mr Howell also produced an indexed bundle of documents referred to in his response (which ran to 35 pages), including orders in which he had made successful applications.

5. In the meantime, Mr Howell sought permission from the Court of Appeal to appeal the order I made on 30 July 2020 striking out his claim in *Howell v Evans*. He has also sought permission to appeal an order made by Eady J in the same case on 22 June 2020. On 2 September 2020 Henderson LJ stayed the order for the payment of costs, pending determination of the application for permission to appeal. However, Mr Howell's application for a stay of the hearing on 7 September 2020 to consider whether to make a civil restraint order was refused. The reason for this was explained by Henderson LJ as follows:

> "I am not persuaded that there should be an interim stay of … paragraph 9 of the Tipples Order (which adjourned the issue of whether it would be appropriate to make a CRO against Mr Howell to a hearing fixed for 7 September 2020). If the circumstances justify the making of a CRO, it is in the public interest that it should be made at the earliest convenient opportunity. Directions have been given for the hearing, most recently by Tipples J on 1 September 2020, and she will be well aware of the fact that Mr Howell's applications for permission to appeal the Eady and Tipples Orders have not yet been determined. If a CRO is made, its operation will be prospective only, and the pending applications for permission to appeal will still be determined on their merits."

6. On 2 September 2020 Ms Crasnow QC and Mr Gillie, on behalf of the defendants in *Howell v Evans*, served a skeleton argument seeking a general civil restraint order against Mr Howell. That application should in fact have been made by a separate application notice, rather than in a skeleton argument. However, Mr Howell took no point in relation to this.

7. On 3 September 2020 Mr Howell sent an email to the defendants' solicitors in *Howell v Evans* stating that:

> "should the hearing go ahead despite the order of Henderson LJ, I will rely on the facts contained in the document bundle, in particular my Tipples J reply note and bundle, but including also the following documents, which should be added please (as attached hereto [eight documents were attached]). The facts will demonstrate that the 'no rational argument' test for TWM [totally without merit] and 'succession of claims with the same cause of action' test for persistence have not been met".

8. On 7 September 2020 Ms Swords-Kieley, on behalf of the defendant in *Howell v Stewart*, served a skeleton argument supporting the application for a general civil restraint order against Mr Howell. Ms Swords-Kieley was only instructed on 4 September 2020.

9. The hearing as to whether to make a civil restraint order against Mr Howell took place on 7 September 2020 and Mr Howell attended in person and represented himself at the hearing. The hearing lasted all day. On 11 September 2020 I informed the parties of my decision, namely that I had decided to make a general civil restraint order against Mr Howell and in a brief *ex tempore* judgment I identified my reasons for doing so. I explained that I would

provide a written judgment in October 2020 setting out my reasons, together with the background to this matter more fully. This is my judgment.

Relevant law

10. The court's jurisdiction for making a civil restraint order is well established. A judge of the High Court can only make a general civil restraint order in circumstances where "the party against whom the order is made persists in issuing claims or making applications which are totally without merit, in circumstances where an extended civil restraint order would not be sufficient or appropriate" (paragraph 4.2, Practice Direction 3C of the Civil Procedure Rules). The court's power to make a general civil restraint order is to cover a situation "in which one of these litigants adopts a scattergun approach to litigation on a number of different grievances without necessarily exhibiting such an obsessive approach to a single topic that an extended civil restraint order can appropriately be made against him/her": *R (Kumar) v Secretary of State for Constitutional Affairs* [2007] 1 WLR 536 ("*Kumar*") at [60].

11. In considering whether to make a civil restraint order and, if so, what form of order to make, there are three questions for the court:

    a. whether the litigant has persistently issued claims or made applications which are totally without merit ('the threshold issue');

    b. whether an objective assessment of the risk which the litigant poses demonstrates that he will, if unrestrained, issue further claims or make further applications which are an abuse of the court's process ('exercise of discretion');

    c. what order, if any, it is just and proportionate to make to address the risk identified ('the appropriate order').

    (see *Philcox v Wilson* [2018] EWHC 3138 (QB), O'Farrell J ("***Philcox***") at [21]; *Nowak v The Nursing and Midwifery Council* [2013] EWHC 1932 (QB), Leggatt J ("***Nowak***") at [63] to [70]).

12. In relation to these three questions, the following points are material.

13. First, the term "totally without merit" in the context of a civil restraint order refers to an application or claim in which there is no rational basis on which the claim or application could succeed. That application or claim is "hopeless" or "bound to fail": see, for example, *R (Wasif) v Secretary of State for the Home Department* [2016] 1 WLR 2793, CA. The certification of an application or claim as totally without merit is effectively conclusive of that status and subsequent courts should not permit argument as to whether an application or claim was in fact totally without merit: *Nowak* at [67]. However, the court is not limited to considering claims or applications that were certified as totally without merit, albeit that in such cases the court will need to ensure that it knows sufficient about the previous claim or application in question (ie by examining the earlier litigation history) before making a determination that it was totally without merit: *Kumar* at [60]; *Philcox* at [24].

14. Second, Lord Bingham explained the characteristics of persistent litigation in *Attorney-General v Paul Barker* [2000] 1 FLR 759, Div Ct ("***Barker***") as follows:

> "From extensive experience of dealing with applications under section 42[(1)(a) of the Supreme Court Act] the court has been become familiar with the hallmark of persistent and habitual litigious activity. The hallmark usually is that the plaintiff sues the same party repeatedly in reliance on essentially the same cause of action, perhaps with minor variations after it has been ruled upon, thereby imposing on defendants the burden of resisting claim after claim; that the claimant relies on essentially the same cause of action perhaps with minor variations after it has been ruled upon in actions against successive parties who if they were to be sued at all should have been joined in the same action; that the claimant automatically challenges every adverse decision on appeal; and that the claimant refuses to take any notice of or give any effect to orders of the court. The essential advice of habitual and persistent litigation is keeping on and on litigating when earlier litigation has been unsuccessful and when on any rational and objective assessment the time has come to stop.'

15. However, the word "habitual" is not used among the necessary criteria for an extended or general civil restraint order. There must be "an element of persistence in the irrational refusal to take "no" for an answer before any order of this type can be made": see *Bhamjee v Forsdick (Practice Note)* [2004] 1 WLR 88, CA ("***Bhamjee***") at [42].

16. Third, a limited civil restraint order and an extended civil restraint order can only restrain a litigant in the context of the litigation he is currently conducting and other related litigation. Where a litigant's vexatious activities are proving to be such a drain on the resources of the court it may be necessary for a judge to impose a general civil restraint order, which has wider effect than the particular proceedings in which the litigant is engaged: see *Bhamjee* at [43] and [44]. The imposition of a general civil restraint order does not amount to an unlawful interference with a litigant's rights under the ECHR. A court is entitled to regulate its affairs to protect its process and the interests of other parties against whom vexatious litigation is persistently brought, as long as the right of access to the court is not extinguished: see *R (Mahajan) v Department for Constitutional Affairs* [2004] EWCA Civ 946 at [41].

Conclusion

17. The position in this case is that I found that Mr Howell issued seven claims or applications which were totally without merit and he had done so in five different sets of proceedings (each relating to different defendants and different factual circumstances) which were either in the High Court or the County Court.

18. They are as follows:

    a. in claim number HQ15X02128 *Mark Howell v Sarah Alamoudi* ("***Howell v Alamoudi***") on 21 December 2015 May J made an order dismissing as totally without merit Mr Howell's application for permission to appeal against the order of Deputy Master Partridge dated 1 October 2015;

    b. in *Howell v Alamoudi* on 30 March 2016 Sharp LJ made an order dismissing as vexatious and totally without merit Mr Howell's further application for permission to appeal against the order of May J;

c. in Appeal Ref: QB/2016/0192 (County Court Case Number: AO2CL258) *Mark Howell v (1) Michael Hughes (2) Helen Hughes* on 6 October 2016 Spencer J made an order refusing Mr Howell's application for permission to appeal on the merits the order of Judge Luba QC dated 23 August 2016. The order recorded that Mr Howell's appeal was wholly without merit;

d. in Appeal Ref: QA-2019-000300 (County Court Case Number: B10CL361) *Mark Howell v (1) Richard L Hayward (2) Karen Athay ("**Howell v Hayward**")* on 21 January 2020 I made an order refusing Mr Howell's application for an extension of time for seeking permission to appeal the order of Judge Gerald made on 16 March 2016 and struck out Mr Howell's appellant's notice sealed on 29 October 2019 as an abuse of process. The order recorded that Mr Howell's appellant's notice sealed on 29 October 2019 was totally without merit;

e. in *Howell v Stewart* on 24 March 2020 Griffiths J made an order refusing Mr Howell's applications made by application notice dated 17 March 2020. The order recorded that Mr Howell's applications were totally without merit;

f. in *Howell v Evans* on 30 July 2020 I made an order striking out Mr Howell's claim form, particulars of claim dated 8 June 2020, further particulars of claim dated 10 July 2020 as disclosing no reasonable grounds for bringing the claims and as abuse of the court's process. The order recorded that Mr Howell's claim was totally without merit; and

g. in *Howell v Stewart* on 10 August 2020 I made an order striking out Mr Howell's claim form and particulars of claim as disclosing no reasonable grounds for bringing the claims. The order recorded that Mr Howell's claim was totally without merit.

19. Further, I also found that, having reviewed litigation history, Mr Howell had issued three applications which I am also satisfied were totally without merit.

20. They are as follows:

a. in *Howell v Hughes* that Mr Howell's oral application for permission to appeal the order of Judge Luba QC dated 23 August 2016, and which was refused at an oral hearing by Ouseley J on 26 October 2016 (having been refused on paper by Spencer J on 6 October 2016 and certified as wholly without merit) was an application that was totally without merit;

b. in *Howell v Hayward* (Appeal Ref B2/2016/1190/A/B) that Mr Howell's second application to re-open an application or appeal, previously refused or dismissed which was refused on paper by Leggatt LJ on 13 September 2019 (having been previously refused on paper by Leggatt LJ on 21 February 2019) was an application that was totally without merit; and

c. in *Howell v Stewart* Mr Howell's second application for an *ex parte* interim injunction which was refused by Lewis J on 3 December 2019 (having been previously refused by Martin Spencer J) was an application that was totally without merit.

21. Mr Howell has sought permission from the Court of Appeal to appeal the orders I made in *Howell v Evans* on 30 July 2020 and in *Howell v Stewart* on 10 August 2020. However, those orders have not been set aside. In these circumstances, it seems to me that I should take them into account in determining whether to make a civil restraint order against Mr Howell. However, even if I am wrong about this, there are still five claims or applications that have been certified as totally without merit, together with a finding that three further applications were totally without merit.

22. I have considered in detail the procedural history of the various cases set out in the note I provided to the parties on 13 August 2020, together with the further orders and information that came to light during the hearing on 7 September 2020. This history is set out at paragraphs 28 to 97 below. Having done so, I am quite satisfied that an objective assessment of the cases *Howell v Stewart*, *Howell v Hayward*, *Howell v Alamoudi*, *Howell v Hughes*, in particular, make it very clear that Mr Howell is a litigant who is simply unable to take no for an answer. Rather, he will keep on and on litigating when earlier litigation has been unsuccessful and, on any rational or objective assessment, the time has come to stop.

23. In these circumstances I am also quite satisfied that Mr Howell will, unless restrained, issue further claims or applications which will be hopeless, an abuse of the court's process and, as a result, a drain on the court's resources. This is because, apart from anything else, there is no financial disincentive which might prevent him from doing so. He is, it appears, entitled to remission from court fees and, as a recently discharged bankrupt, it is doubtful that he has any assets to meet any adverse costs orders or that that is of any concern to him. Further, in the context of *Howell v Hayward* (and unaware of any other proceedings concerning Mr Howell) I pointed out to Mr Howell on 21 January 2020 the prospect of a civil restraint order in the context of any further applications in that case that were totally without merit. Notwithstanding that, on 17 March 2020 Mr Howell issued an application in *Howell v Stewart* which Griffiths J certified as totally without merit and on 12 June 2020 he issued the claim form in *Howell v Evans* which I certified as totally without merit.

24. Further, the risk presented by Mr Howell is that he is a litigant with a number of different grievances against different people. He does not have one complaint or grievance against a particular defendant. Rather, Mr Howell has pursued hopeless litigation or appeals against different defendants in a number of different circumstances. For example, in *Howell v Evans* he was seeking to expel the defendants from the Labour Party, in *Howell v Stewart* he was seeking a mandatory injunction to force the defendant to sell a property in London to him and in *Howell v Hayward* he was repeatedly seeking permission to appeal the order of Judge Gerald in the context of a property dispute where orders had been made against him.

25. As a result, this is a case where it is clear that an extended civil restraint order would not be sufficient or appropriate to meet the risk presented by Mr Howell. The only order which meets that risk is a general civil restraint order. This order will not preclude Mr Howell from access to the court. Rather, it will impose a filter on any claims he wishes to issue and any applications for the requisite permission must be made to me (alternatively another High Court Judge in the Queen's Bench Division if I am not available). Further, on 11 September 2020, when I informed the parties of my decision, I directed that the general civil restraint order will last until 10 September 2022, which was a period of two years from the date it was made.

26. In *Howell v Stewart* Mr Howell purported to act as the trustee of his son Adam Howell, who was born on 5 December 2003. However, the claim form and particulars of claim failed to identify any basis on which Mr Howell was acting as a trustee for Adam Howell. Ms Swords-Kieley pointed out that, at times, Mr Howell has asserted that his son was in fact the claimant and that Mr Howell was merely representing him as "his father and litigation friend". In my view, Mr Howell described his capacity as a "trustee" or "litigation friend" for Adam Howell, as he had been adjudged bankrupt on 25 March 2019 and he was still subject to the terms of his bankruptcy order when the claim in *Howell v Stewart* was issued on 2 December 2019. Ms Swords-Kieley submitted that in these circumstances, Mr Stewart was concerned that any civil restraint order granted by the court should be drafted so as to ensure that Mr Howell is prevented from acting or purporting to act as a litigation friend, McKenzie friend or as a "trustee" and she referred to *Attorney-General v Purvis* [2003] EWHC 3190 (QB) at [30]-[31] and the notes in *Civil Procedure* (2020) Vol 1 at paragraph 3.11.3. There was no evidence before me to show that Mr Howell had been acting as a McKenzie friend, or was likely to do so. However, in the light of Mr Howell's bankruptcy and the way in which he had presented himself as the claimant in *Howell v Stewart* it seemed to me that it was appropriate that the civil restraint order should also prevent Mr Howell from issuing any claim or application as the litigation friend or trustee of Adam Howell or otherwise on behalf of Adam Howell.

27. I now turn to the various claims and applications issued by Mr Howell which have given rise to this conclusion. These claims and applications were set out in my note dated 13 August 2020. However, some further orders came to light during the course of the hearing on 7 September 2020, which I have also included.

Various claims and applications issued by Mr Howell

(1) *Mark Howell v Sackville Street Limited*: Central London County Court (CL00161)

28. On 25 January 2013 District Judge Price struck out Mr Howell's application for an injunction dated 23 January 2013. Mr Howell attended before him in person and the recital to the order records "and upon it appearing to the court that the Claimant has no course (sic) of action against the Defendant in the terms of the injunction sought". The District Judge did not certify the application as being totally without merit and I do not have a copy of any judgment. Mr Howell's note dated 17 August 2020 explains "As to Sackville, my claim was wrongly constituted on its issue as by me rather than the company. There was no application as such, and the matter could have been dealt with by the court in correspondence rather than *ex parte* (25/1/13 – hence the rather strange order). It was re-issued correctly and Sackville later settled out of court". The information I have in relation to this injunction application by Mr Howell is very limited and, as it was not certified totally without merit by the District Judge, I do not regard it as relevant for the purposes of the application for a civil restraint order.

(2) *Mark Howell v Sarah Alamoudi*: High Court of Justice, Queen's Bench Division (HQ15X02128)

29. On 10 April 2015 Mr Howell issued a claim form against Ms Sarah Alamoudi claiming £796,500 in respect of "sums due pursuant to the contract by which the defendant engaged

the claimant to perform a range of specific duties under the informal heading 'property manager', the properties being a number of luxury flats in Central London and two houses in the country, including the following and other tasks: -" seven of which were then listed in the claim form. The particulars of claim were also dated 10 April 2015.

30. On 31 March 2016 the defendant applied to strike out five paragraphs of the particulars of claim as disclosing no reasonable cause of action. This included Mr Howell's claim for "14.3 refinance commission on £8m at 3%: £240,000; 14.4 sales commission on "£20m at 2.5% - £500,000". That application was heard by Master Cook on 10 June 2016.

31. The Master accepted the submissions made by counsel for the defendant that "the current particulars of claim do not set out a contractual entitlement to receive refinance commission or indeed sales commission on a particular sum of money" (paragraph 22 of the Master's judgment). Further, the Master was not prepared to allow Mr Howell's claim to proceed on the basis of his proposed amendments to the particulars of claim (paragraphs 27 to 30 of the Master's judgment). The defendant's application to strike out part of the claim was successful, and the Master then transferred the rest of the claim to the Central London County Court. The parts of the claim struck out by Master Cook were not certified as being totally without merit. However, Master Cook had the certification of applications as totally without merit well in mind, as I shall set out below. Nevertheless, in the context of the strike out application before him, there was no reason for Master Cook to consider this point as the defendant had only applied to strike out part of the claimant's statement of case, and not strike out the whole claim. In these circumstances, I do not consider that this order is relevant to the application before me for a civil restraint order. However, there are other aspects of Master Cook's judgment that are relevant.

32. First. at paragraph 3 of his judgment Master Cook said this about Mr Howell:

> "Before proceeding further with this judgment it is necessary for me to record that the claimant, Mr Howell, acts as a litigant in person and has been responsible for drafting the claim form, particulars of claim, notices of application and witness statements in this action. It is clear, both by reasons of the background facts which give rise to this claim and to me having heard Mr Howell's submissions, that Mr Howell is an intelligent and experienced man in the field of property and property management. He is experienced not only in managing properties but in relation to the legal aspects relating thereto and has conducted litigation in relation to properties as well as conducting this litigation. In other words, he is not a stranger to the courts or to court procedure."

33. Mr Howell, in his note to me dated 17 August 2020, has described what happened in these proceedings in these terms:

> "Shortly after the issue of the claim in 2015, Thirlwall J (as she then was), on my application, froze £0.25m in Ms Alamoudi's HSBC accounts to ensure funds were available should payment of damages to me be ordered at trial or sooner (page 16). The injunction was lifted by Christopher Clarke LJ nearly three months later for reason of falling risk of flight. I resisted this but nevertheless it seemed to be a quite finely balanced decision and I was ordered to pay only a token £1000, just a small fraction of the defendant's estimate costs for the hearing. HSBC released the funds to the defendant in January 2016. In 2018, Ms Alamoudi became a protected person."

34. The chronology between the issue of the claim in April 2015, and the strike out application in June 2016, is much more fully set out at paragraphs 8 to 11 of Master Cook's judgment. Master Cook explained the position as follows:

> "[8.] On 11th May 2015 the claimant obtained a default judgment. On 12th June 2015 he obtained an interim third-party debt order and an interim charging order. On 10th August 2015 the defendant was put on notice of proceedings as a result of those steps. On 14th August 2015 the defendant obtained a copy of the claim form and particulars of claim and on 25th August 2015 made an application to set aside the default judgment. On 25th August 2015 the defendant served a Part 18 request. On 28th September 2015 a hearing to make the final interim charging order was adjourned pending the hearing of the defendant's application to set aside judgment. On 1st October 2015, both parties having put in evidence, Deputy Master Partridge set aside the default judgment and discharged the interim charging order and third-party debt order. He awarded costs against the claimant in the sum of £11,177. I understand those costs have not been paid.
>
> [9.] On 13th November 2015, in circumstances which remain pretty much a mystery to me, the claimant persuaded Thirlwall J to grant a freezing order. On 16th November 2015, the Part 18 response was served. On the same date the claimant lodged an application to appeal the order of Deputy Master Partridge. On 20th November 2015 the freezing order that had been obtained from Thirlwall J was discharged by Singh J. I have read a copy of Singh J's judgment. He awarded costs against the claimant in the sum of £6,000. As I understand it, those costs remain unpaid. On 27th November 2015 the claimant made an application for permission to appeal against the order of Singh J. The application was refused by Longmore LJ on 21st December 2015. Again, costs were awarded against the claimant in the sum of £1,500. Those costs have not been paid. On 21st December 2015 an order was made by May J dismissing as "totally without merit" the claimant's application for permission to appeal the order of Deputy Master Partridge.
>
> [10.] On 4th January 2016 the claimant made an application for permission to appeal against the order of May J. On 8th January 2016 notice of proposed allocation to the multi-track was issued. Directions questionnaires were filed on 18th February 2016 and on 30th March 2016 Sharp LJ dismissed as "vexatious and totally without merit" the claimant's further application for permission to appeal against the order of May J. The remaining steps are the issue of the defendant's application on 1st April and the issue of the claimant's application on the 27th May.
>
> [11.] I recite that background partly to illuminate the claimant's experience in litigation and partly to illuminate the fact there have been a number of opportunities for the claimant to set out in detail the nature of his claim, particularly in the context of the application to set aside default judgment and in the context of the application to appeal that judgment…"

35. This chronology also shows that on 21 December 2015 Mr Howell's application for permission to appeal the Deputy Master's order was certified totally without merit by May J and on 30 March 2016 Mr Howell's renewed application for permission to appeal to the

Court of Appeal was certified as totally without merit by Sharp LJ. These two orders are relevant to the application for a civil restraint order.

(3) *Mark Howell v (1) Michael Colin Hughes, (2) Helen Francis Hughes*: Central London County Court; Appeal Ref: QB/2016/0192 – High Court of Justice, Queen Bench Division (A02CL258)

36. On 6 October 2016 Spencer J refused Mr Howell permission to appeal the order of Judge Luba QC made in the Central London County Court. He certified the appeal as being "wholly without merit". The judge's reasons for this conclusion were set out in his order in the following terms:

> "[2.] Your application notice dated 11th August 2016 sought to amend the order of Mr Recorder Lavender QC dated 8th June 2016 to indicate the order he has made was "permission to appeal granted, appeal dismissed", whereas the order stated, "permission to appeal refused".
>
> [3.] Mr Recorder Lavender QC's reserved judgment makes it crystal clear, at paragraphs 1 and 3, that the application before him was for permission to appeal, and his decision was that permission was refused. You cannot go behind that. The fact that the hearing was lengthy, and that judgment was reserved, does not affect the position.
>
> [4.] Accordingly, HH Judge Luba QC was correct to strike out your application notice."

37. CPR Part 52.4(3) provides that "where in the appeal court a judge of the High Court … refuses permission to appeal without an oral hearing and considers that the application is totally without merit, the judge may make an order that the person seeking permission may not request the decision to be reconsidered at an oral hearing". Nevertheless, paragraph 5 of the order made by Spencer J provided that Mr Howell could renew his application for permission to appeal to the High Court. Mr Howell did this and his application came before Ouseley J on 26 October 2016. Ouseley J refused permission to appeal and his judgment is reported at [2016] EWHC 3740 (QB). The chronology of these proceedings was set out in the judgment which explained that Mr Howell commenced proceedings against the two defendants in the Central London County Court. On 10 September 2015 Deputy District Judge Revere rejected the various claims but, as Ouseley J understood it, the Deputy District Judge granted the defendants possession on their counterclaim and refused Mr Howell permission to appeal. Mr Howell then sought permission to appeal from a County Court Judge, which came before Mr Recorder Lavender QC (as he then was). The hearing was listed for 90 minutes, and there was a bundle of some 500 pages. Mr Howell's submissions took 100 minutes, and judgment was reserved. Mr Recorder Lavender QC refused Mr Howell permission to appeal, and set out his reasons in a written judgment. The order dated 8 June 2016 provided that "permission to appeal against the order of Deputy District Judge Revere made on 10 September 2015 refused".

38. What then happened was explained by Ouseley J in paragraph 7 of his judgment:

> "[7.] … Mr Howell sought to take issue with that order, not on the basis that the appeal ought to have been allowed, but that he order ought to have read: "Permission granted, appeal dismissed." He sought to advance that proposition in a number of

> quarters, but was told by the Queen's Bench lawyer, in a letter of 2 August, that the order was clear that permission had been refused. He could not now seek permission to appeal against that order because of the Access to Justice Act 1999 section 54(4) and if he wished to contend that the order was incorrect, he had to go back to the County Court. He did endeavour to go back to the County Court seeking an order that the order of Mr Recorder Lavender was incorrect. He intended, as he tells me and I accept, that that should come on before Mr Recorder Lavender as would have been obviously correct, or the senior judge at the Central London County Court were Mr Lavender unavailable. It came on before Judge Luba, perhaps because he had made an order that all cases relating to Mr Howell, or perhaps all cases relating to the litigation surrounding this matter should come before him, but in all events it came before him."

39. Judge Luba QC struck out Mr Howell's application to amend the order of Mr Recorder Lavender QC and the judgment of Ouseley J records that he did so in these terms:

> "[8.] His Honour Judge Luba's paper order dealt with an application for an order to amend the order dated 8 June 2016 by Recorder Lavender to substitute "permission to appeal granted, appeal dismissed," for "permission to appeal refused," and for permission to appeal to be recorded against its dismissal. His Honour Judge Luba ordered as follows: "…that the application made be struck out as the court did not have jurisdiction to entertain it," and he made further orders in relation to costs. He recorded, in an appendix to his order by way of reasons, that Mr Howell's further application for permission to appeal against District Judge Revere's order had been dismissed. There was no further appeal. That was the end of the jurisdiction. The only remedy was to go by way of judicial review, which he rightly points out would have been a very exceptional application."

40. Judge Luba QC struck the application notice out and said that:

> "An amendment (or rectification) of the order of 8 June 2016 to indicate that the application for permission to appeal be recorded as granted rather than refused. However, the copy of the judgment of Recorder Lavender held by the court plainly shows that the order accurately records his conclusion that permission to appeal should be refused. This aspect of the application is an attempt to abuse the process of this court."

41. The application before Ouseley J was a renewed application by Mr Howell for permission to appeal the decision of Judge Luba QC striking out Mr Howell's application to amend the order of Mr Recorder Lavender QC to say permission to appeal granted, rather than permission to appeal refused. The point Mr Howell argued before Ouseley J is set out at paragraph 10 of the judgment in these terms:

> "What Mr Howell says is not so much that Mr Recorder Lavender made a slip, but that once Mr Recorder Lavender had heard the extent of argument that he did, the submissions, the time taken for them, the materials read and the time taken in consideration, he had in fact heard the appeal. If, in fact he had heard the appeal, he had no alternative but to reflect the realities of what had happened by granting permission (because he had heard the appeal) and then dismissing it."

42. Ouseley J decided that that argument was hopeless. He gave the following reasons:

> "[10.] … First of all, it is perfectly clear that the order properly reflects what the judge did. That is to say he refused permission. He makes it perfectly clear in the judgment not just at the preamble, but later on in the body of the judgment that there is no reasonably arguable point and he explains why that is so. What in reality is contended is not that in fact Mr Recorder Lavender granted permission, but that he failed to record it. What is said is that, in law, the way he conducted the appeal means that he must be taken to have granted permission whatever he said about it. With respect to Mr Howell, that is not tenable.
>
> [11.] I accept what Mr Howell says about the extent of which material was considered at the hearing, but that does not mean that the judge is then not able to find that the case, it having been deployed fully, is not realistically arguable. Every judge knows that some cases require more argument than others. Some cases take longer because of courtesy towards a litigant, particularly a litigant in person, to make sure that there really is not anything in any of the points they wish to raise. Accordingly, the length of time it took for the consideration given to it by the judge, who was a part-time judge, cannot show that in fact or in law he was really granting permission. The position of the judge in relation to the conduct of the hearing and the judgment does not in any way undermine the fact that he decided to refuse permission, applying the right test for the reasons given."

43. Then, at paragraph 12, he said this:

> "[12.] Accordingly, there is no basis upon which an application, even if heard by Mr Recorder Lavender, would have succeeded and although His Honour Judge Luba did not deal with one aspect of the argument put forward by Mr Howell, namely that the conduct of the hearing shows that he must be taken to have granted permission, nonetheless that argument is without merit and accordingly this application is dismissed."

44. Mr Howell has provided me with the transcript of the proceedings after judgment, and referred to this at paragraph 7 of his note dated 17 August 2020. Counsel for the defendants, Mr Brown, invited Ouseley J to certify the application as totally without merit, as Spencer J had done. The transcript shows that, in response to that request, the judge said this:

> "I hesitated about that. It is totally without merit in the sense that it has no prospect of success at all on any reasonable view. The reason I hesitated was simply this. I am not sure that His Honour Judge Luba or Spencer J really dealt with the gravamen of Mr Howell's point; which is not that the order was wrong compared to the judgment and in some ways, it is not that the judgment did not convey what the Judge meant to say. His point was a rather more legal one, that by the time you have heard the amount you have heard, you must be taken – however you couch what you say – to have heard the appeal and therefore to have granted permission. I know there is some background, but I just think that bearing in mind, I am sure, that the foundation for an ECRO [extended civil restraint order] may be being laid, I am just a little hesitant where he could point, possible that the judges – maybe in a small way – were not quite getting hold of something. I am just a little hesitant about using that language myself. It is hopeless but is not the sort of hopelessness that, in my view, merits it being ticked off

> as an ECRO. But you have heard the argument now. That is really what I was trying to convey in my last words at the end: this is really the end of the matter."

45. The judge then said that he did not think Mr Howell's argument was a "sound one in law" and that it was "hopeless", and concluded by saying "I am not going to mark it myself as totally without merit". Mr Howell points to the fact that the judge did not certify the application as totally without merit, and then says that in the transcript the judge said "in terms, that HHJ Luba [QC] and Spencer J had misunderstood my application, which plainly was not an appeal, and that, although it could not succeed, nevertheless, in the particular circumstances of the rolled up appeal hearing before Recorder Lavender (as he then was), it was not entirely unreasonable." I do not agree that Ouseley J said that either Spencer J or Judge Luba QC had "misunderstood" Mr Howell's application. In any event in this context, the term "totally without merit" refers to an application in which no rational argument was or could have been raised and is bound to fail. The word "hopeless" is another way of saying "bound to fail". Ouseley J described Mr Howell's application as hopeless in his judgment, and also in the proceedings after judgment. However, he was concerned about whether an application would be made for an extended civil restraint order and, in that context, was not prepared to certify the application as totally without merit. If an application is certified as totally without merit, then consideration of whether a civil restraint order should be made is the next step in the process. The fact an application has been certified as totally without merit does not make it inevitable that such an order will be made, rather the issue as to whether it is appropriate to make an order will depend on the answer to the various questions I have set out in paragraph 11 above.

46. In these circumstances, and having examined the litigation history in relation to Mr Howell's oral application for permission to appeal I am satisfied that, although Ouseley J did not certify it as totally without merit, it was in fact totally without merit, and that it is an order which I should take into account in deciding whether to make a civil restraint order.

47. On 6 August 2018 Mr Howell issued another application against the defendants in this case. The application came before Recorder Rosen QC on 22 August 2018 who dismissed it and ordered Mr Howell to pay the defendants' costs summarily assessed in the sum of £1,750. Paragraph 3 of the order provided that "the Applicant's oral application for permission to appeal is refused as being wholly without merit. Any further application for permission to appeal must be made to a High Court Judge". I do not know what this case is about, or what Mr Howell's application concerned. However, I note that Recorder Rosen QC did not certify the application itself to be totally without merit. Rather, he gave this certification to the oral application for permission to appeal.

48. On 23 August 2018 Mr Howell applied for permission to appeal the order of Recorder Rosen QC. On 29 August 2018 Morris J directed that that application be dealt with at an oral hearing with the full appeal to follow as necessary, with the respondent to attend and a time estimate of two hours. Mr Howell's application was heard by Murray J on 21 November 2018 and he refused Mr Howell permission to appeal on all grounds, and ordered him to pay the respondents' costs of the application in the sum of £3,696.

49. In these circumstances, it seems to me that I need to adopt a rather cautious approach to whether the certification by Recorder Rosen QC of the oral application for permission to appeal is an order which is relevant to the jurisdiction to make a civil restraint order. There

are two reasons for this. First, Murray J did not certify Mr Howell's application for permission to appeal as totally without merit following a hearing at which all parties appeared. Second, if an application is dismissed, there are two separate issues. First, whether the application should, if appropriate, be certified as totally without merit, and second whether permission to appeal should be granted (see, for example, *R (Wasif) v Secretary of State for the Home Department* [2016] 1 WLR 2793, CA at [17(5)]). The Recorder did not certify the application before him as totally without merit and, in any event, Mr Howell was entitled to seek permission to appeal that order from a High Court Judge. In these circumstances, it seemed to me that the order made by Recorder Rosen QC was not one that I should take into account in deciding whether to make a civil restraint order.

(4) *Mark Howell v (1) Richard Leighton Hayward (2) Karen Maxine Athay*: Central London County Court (B10CL361)

50. Judge Gerald heard the trial in this action. By an order sealed on 16 March 2016 the judge ordered, first, there be judgment for Mr Howell in the sum of £2,958.54 plus interest of £1,439.60 being the sum overpaid by Mr Howell when completing the purchase of 38 John Street, Penarth ("**the Building Plot Issue**"), and directed that that sum be set off against the sum Mr Howell was ordered to pay the defendants. Second, the judge dismissed the balance of the claim. Third, he ordered Mr Howell to pay the costs of the action (save for those relating to the Building Plot Issue) to be subject to detailed assessment, if not agreed, with a payment on account of £7,500. The defendants were ordered to pay Mr Howell's costs of the Building Plot Issue to be subject to detailed assessment, if not agreed. The judge refused Mr Howell's application for permission to appeal.

51. On 22 December 2016 Christopher Clarke LJ refused Mr Howell permission to appeal on paper. On 18 April 2018 Leggatt LJ refused Mr Howell's application for permission to appeal at an oral hearing, and ordered Mr Howell to pay the defendants' costs of £2,100. Leggatt LJ's judgment has neutral citation number [2018] EWCA 2967 (Civ) and he concluded his judgment by saying:

> "having given the fullest consideration that I can in the time available to all the points which Mr Howell has sought to make, I am not persuaded that there is any legal merit in them and his application must therefore be dismissed".

52. In late 2018 or early 2019 Mr Howell made an application to the Court of Appeal to re-open his application for permission to appeal, which had been previously refused. That application was refused by Leggatt LJ on 21 February 2019. In his reasons Leggatt LJ first of all explained the Court of Appeal's jurisdiction to re-open an application for permission to appeal and said this:

> "CPR 52.30 (formerly 52.17) the court has power to reopen an application for permission to appeal only if: (a) it is necessary to do so in order to avoid real injustice; (b) the circumstances are exceptional and make it appropriate to reopen the application; and (c) there is no alternative effective remedy. Although the third condition is met in the present case, the first and second conditions are not. There are no exceptional circumstances, and nothing said in support of the application to reopen identifies any potential injustice."

53. Leggatt LJ then explained what had happened in relation to Mr Howell's application for permission to appeal to the Court of Appeal and concluded by saying that Mr Howell's application for permission to appeal:

> "has been considered in depth on several occasions by judges of the Court of Appeal and not found to satisfy the test for granting permission. There is no proper basis for seeking to re-open this decision."

54. Undeterred a few months later Mr Howell made a second application to the Court of Appeal to re-open his application for permission to appeal, which had been previously refused. That application was refused by Leggatt LJ on 13 September 2019 who gave the following reasons:

> "[1.] An application for permission to appeal is not an opportunity for ongoing dialogue such that, if the result is unfavourable, the appellant is free to try again, advancing more detailed arguments on a ground of appeal that was previously not developed. The fact that, for the purpose of dealing with the proprietary estoppel claim put at the forefront of the appellant's case at the oral permission hearing, certain factual assumptions were made in his favour, does not mean that there would be a real prospect of successfully challenging the factual findings made by the trial judge on those points on an appeal. The short answer in any event to the claim for damages for breach of contract is that (as indicated in rejecting the previous application to re-open) no loss resulting from the allegedly wrongful failure of the defendant to complete on 15 and 13 Maughan Terrace was ever particularised or proved at the trial.
>
> [2.] There is no exceptional circumstance in this case capable of justifying the re-opening of an appeal which the court has already declined to re-open. Nor is it necessary to do so to avoid injustice. To the contrary, there would be real injustice if the appeal were to be re-opened now, which would defeat the defendant's right to rely on the principle of finality in litigation.
>
> [3.] It is time for the appellant to recognise that this litigation is at an end. No further application will be entertained."

55. In my view, this second application was bound to fail. As Leggatt LJ explained there was "no exceptional circumstance in this case justifying the re-opening of an appeal which the court has already declined to re-open". Therefore, although Leggatt LJ did not certify the application as totally without merit, I am satisfied that, based on the decision in *Kumar*, this second application by Mr Howell to re-open his application for permission to appeal to the Court of Appeal was totally without merit, and is therefore relevant to the application for a civil restraint order.

56. On 11 October 2019 Mr Howell tried to file a further appellant's notice with the Court of Appeal seeking permission to appeal the order of Judge Gerald made in the Central London County Court on 16 March 2016. The court wrote to him on 23 October 2019 and informed him that the Court of Appeal lacked the necessary jurisdiction and, as a result of the Access to Justice Act 1999 (Destination of Appeals) Order 2016, an appeal from a Circuit Judge in the County Court lay to a High Court Judge and not to the Court of Appeal. He was told that the Court of Appeal did not have any jurisdiction to entertain his appellant's notice and the papers had been forwarded to the High Court Appeals Office, who would be in touch

with him. Mr Howell's appellant's notice was issued on 29 October 2019 and, on 30 October 2019, an order was made directing that Mr Howell's application for permission to bring the appeal out of time and (subject to such permission) permission to appeal, be listed to be heard before a High Court Judge with a time estimate of one hour.

57. That application came before me on 21 January 2020. Mr Howell accepted that his grounds of appeal were contained in his original appellant's notice dated 17 March 2016, which had already been determined by the Court of Appeal (see paragraphs 9 and 18 of the judgment at [2020] EWHC 510 (QB)).

58. I made an order refusing Mr Howell an extension of time for seeking permission to appeal the order of Judge Gerald made on 16 March 2016, and I struck out the appellant's notice on the ground it was an abuse of process. The order recorded that the appellant's notice was totally without merit. Then at paragraphs 22 and 23 of my judgment I said this:

> "[22.] In this case the order will record that the appellant's notice was totally without merit. The next thing the court must consider is whether it is appropriate to make a civil restraint order. It seems to me that under the provisions relating to civil restraint order a limited civil restraint order may be made by a judge of any court where an applicant has made two or more applications which are totally without merit. There is only one application before this court and in those circumstances I am unable to make a limited civil restraint order.
>
> [23.] However, if Mr Howell seeks to pursue any further applications in relation to this appeal it is likely that the court will make a further order identifying that it is totally without merit and he may find himself subject to a limited civil restraint order. However, that is not a matter for me. It is a matter for another judge who has to consider this case."

59. However, for the reasons I have explained above, I have now concluded that Mr Howell's second application to the Court of Appeal to re-open his application for permission to appeal was also totally without merit.

(5) *Mark Howell v Sarah Alamoudi*: High Court of Justice, Queen's Bench Division (HQ18X00906)

60. On 9 March 2018 Mr Howell made a second claim against Sarah Alamoudi. The claim form identified that the claim was for "damages in lieu of fulfilment of the defendant's promise to accept the best available terms for either the sale of the entirety of her property portfolio or the refinancing of it or alternatively for a combination of the two". The value of the claim was stated to be at least £250,000 but no more than £500,000. The claim form does not show that any court fee was paid by Mr Howell, and I understand the fee was remitted.

61. The defendant lacks capacity and, as a result, the proceedings were initially stayed until a deputy and litigation friend had been appointed by the court. The court appointed David Wedgwood to these roles and, on 5 December 2018, he was authorised by the Court of Protection to conduct the proceedings on behalf of the defendant. On 11 December 2018 the defendant applied to strike out the claim as an abuse of process and/or disclosing no reasonable grounds for having been brought because:

> "the allegations made by [Mr Howell] in the claim are allegations that he has previously sought to bring in existing proceedings between the parties concerning the same factual background (with claim number HQ15X02128) and Master Cook has previously held in those proceedings that the allegations were inconsistent with [Mr Howell's] existing case, had no reasonable prospects of success and it would be contrary to the overriding objective for the Claimant to be permitted to raise them. [Mr Howell] therefore seeks: (i) to bring a second action against the same party in respect of the same facts; (ii) raising allegations and seeking relief which have been previously held to have no reasonable prospects of success; and (iii) is thereby mounting a collateral attack on the decision of Master Cook".

62. The defendant's application was heard by Master Davison on 11 March 2019 and he struck out Mr Howell's claim pursuant to CPR r.3.4(2)(b) as an abuse of process. He ordered Mr Howell to pay the defendant's costs on the standard basis summarily assessed in the sum of £8,949 (including VAT). The Master refused Mr Howell permission to appeal. The Master did not certify the claim as totally without merit, and I do not have a copy of the Master's judgment. In these circumstances, it does not seem to me that I have sufficient information to conclude that this claim was totally without merit, even though it appears likely that it was.

63. Then, on 25 March 2019 Mr Howell was adjudged bankrupt in the High Court. The bankruptcy order was made on the petition of Michael and Helen Hughes, creditors of Mr Howell, which had been presented on 2 May 2017 in the Insolvency and Companies List of the Business and Property Courts of England and Wales. The official receiver was appointed as Mr Howell's trustee in bankruptcy. On 28 March 2019 Mr Howell applied to annul the bankruptcy order, and he also sought to appeal it.

64. On 11 April 2020 Master Davison ordered that no further steps be taken in these proceedings until after whichever (in summary) is the latest of the following to occur: (a) the refusal of Mr Howell's application for permission to appeal the bankruptcy order; (b) if permission to appeal is granted, the conclusion of the appeal; (c) the conclusion of Mr Howell's annulment application; (d) a decision of the official receiver or Mr Howell's trustee in bankruptcy whether or not to pursue the proceedings; (e) the completion of the assignment to Mr Howell of the cause of action on which the proceedings were based. It appears from the Court file that no further steps have been taken in these proceedings.

(6) *Mark Howell (as trustee of Adam Howell (DoB 5/12/03)) v Ian Stewart*: High Court of Justice, Queen's Bench Division (QB-2019-0004248)

65. This claim was issued on 2 December 2019 by Mr Howell "as trustee of Adam Howell (DoB 5/12/03)". The court fee of £10,000 was remitted. The brief details of claim (amended under CPR part 17.1(1)) state:

> "Order for sale of 132A Brook Drive, Kennington, SE11 4TE in accordance with the unsigned contract which the defendant's solicitors sent to the claimant's solicitors on 15 November 2019 because its equitable to do so in accordance with the doctrine of proprietary estoppel or alternatively because the defendant's representation to the claimant constituted an enforceable common intention constructive trust. Additionally or alternatively, damages occasioned by the defendants' breach of trust or

promise/false representation at 10.28 on 28/11/19 despite at 20.15 on 26/11/19 denied his intention to do so. Interest. Costs. Value: in excess of £50,000 to be assessed."

66. The particulars of claim were attached to the claim form and the prayer for relief the claimant claims: "(i) The signed contract upon receipt of which the claimant will pay the defendant the deposit; (ii) damages to be assessed; (iii) interest; (iv) costs."

67. On 10 August 2020 I made an order striking out the claim form and particulars of claim as disclosing no reasonable grounds for bringing the claim. This was for the following reasons:

> "[25.] First, the claim form and the particulars of claim form do not identify any basis on which it is said that the claimant is alleged to be acting "as trustee of Adam Howell (DoB 5/12/3)".
>
> [26.] Second, it is plain from the allegations contained in the claim form and the particulars of claim that the claimant is complaining about the proposed purchase of land, namely a freehold house at 132A Brook Drive, Kennington, London, SE11 4TE ("**the Property**"), in respect of which there is no signed contract. The claimant does not have any rights whatsoever in respect of the Property, and cannot seek an order for sale or claim relief from the defendant that he should be forced to provide "the signed contract". This is because section 2 of the Law of Property (Miscellaneous Provisions) Act 1989 ("**the 1989 Act**") provides: "a contract for the sale or other disposition of an interest in land can only be made in writing and only be incorporating all the terms which the parties have expressly agreed in one document or, where contracts are exchanged, in each". There are no documents alleged in the particulars of claim which comply with section 2 of the 1989 Act.
>
> [28.] Third, it is plain from the particulars of claim that the claimant was expecting a signed contract from the defendant in relation to the purchase of the property. In these circumstances, the claimant cannot utilise the doctrine of proprietary estoppel of constructive trust to make any agreement (which does not comply with section 2(1) of the 1989 Act) binding on the other party by virtue of section 2(5) of the 1989 Act. This is because it is established as a matter of law that there is no room for a common intention constructive trust or the doctrine of proprietary estoppel in such circumstances: see *Herbert v Doyle* [2015] WTLR 1573, per Arden LJ at para [57]; cited with approval in *Matchmove v Dowding* [2017] 1 WLR 749, per Arnold J at para [30]. This point was also made by Lewis J in his reasons on 3 December 2019 (see paragraph [71 below]).
>
> [29.] Fourth, and in any event, the particulars of claim do not contain any allegations which could form the basis for a common intention constructive trust: see *Matchmove Limited v Dowding* [2017] 1 WLR 749, CA at para [29]. It is well established that the ingredients necessary to give rise to a common intention constructive trust are: (i) there needs to be an express agreement between the parties as to the ownership of property; (ii) which was relied upon by the claimant; (iii) to his or her detriment such that (iv) it would be unreasonable for the defendant to deny the claimant's ownership of the property. Those ingredients are not pleaded in the particulars of claim and, in any event, there is no basis for a common intention constructive trust if the claimant is

expecting to receive a signed contract, which was the position here (see paragraph 28 above).

[30.] Fifth, there is no basis whatsoever for a claim in damages for "either breach of trust, or breach of promise". Further, it is wholly unclear on what basis the claimant maintains he has a claim to damages based on "deceit by deliberate false representation" and the claimant has failed to set out any allegations of fraud and/or any details of any misrepresentations he wishes to rely on in support of his claim. Such allegations must be specifically set out in the particulars of claim if a claimant wishes to rely on them in support of his claim: see Practice Direction 16 to CPR Part 16, at paragraphs 8.2(1) & (3). Paragraph 7 of the particulars of claim contain a mere assertion of "deceit by deliberate false representation" but without any supporting allegations. This assertion does not provide reasonable grounds for bringing a claim in deceit or fraudulent misrepresentation, and any such claim is hopeless."

68. I ordered Mr Howell to pay the defendant's costs to be subject to detailed assessment on the indemnity basis, if not agreed. The order recorded that the court considered the claim was totally without merit. This order was made without notice and of the court's own initiative under CPR Part 3.4(2) (power to strike out a statement of case). Paragraphs 4 and 5 of the order provided that:

"[4.] The Court will consider whether it is appropriate to make a civil restraint order against the Claimant at 10.30am on 7 September 2020 in open court at the Royal Courts of Justice, Strand, London, WC2A 2LL when the same issue in Claim No. QB-2020-002055 between *Mark Howell v (1) David Evans (2) Lord McNicol* has been adjourned for further hearing before Tipples J.

[5.] This order is made without notice and of the court's own initiative under CPR Part 3.3(4), and the parties or either of them may apply within 7 days of service of this order upon them, to set aside or vary all or any part of this order. Any such application must be served on all other parties and will be heard by Mrs Justice Tipples at 10.30am on 7 September 2020 in open court at the Royal Courts of Justice, Strand, London, WC2A 2LL."

69. Mr Howell has not applied to set the order aside under paragraph 5. Rather, he has made an application to the Court of Appeal seeking permission to appeal the order. The reasons are set out in the opening three paragraphs of his skeleton argument dated 31 August 2020, which I understand has been filed with the Court of Appeal. Mr Howell has said this:

"[1.] The order appealed against was made without notice on the court's initiative. In the absence of special circumstances it should ordinarily be challenged by an application to set it aside on notice to the defendant.

[2.] The special circumstances are that the order steps from paragraph 8b of another strike out order dated 31 July 2020 in *Howell v Evans & Anr*, also appealed against (A2-2020-1223), made by the same judge. The surprising management of the defendants' application in the latter case in turn stems from C's complaint of the judge in the face of the court on 21 January 2020 in *Howell v Hayward* (QB-2019-004248), recorded in the transcript of judgment at the end.

> [3.] It will be apparent from the appellant's notice in relation to the order dated 31 July 2020 (together with the grounds and counsel's skeleton argument) that C has reason to believe that he cannot receive justice from this particular judge. Furthermore, even if the judge agreed to allow it, another judge would not be able to go behind the order, and so there is no alternative other than to appeal it on the merits."

70. Therefore, the position at the hearing on 7 September 2020 was that the order of 10 August 2020 had not been set aside and, as provided in the order, it was necessary to consider whether to make a civil restraint order against Mr Howell at that hearing.

71. I should also say something about the procedural history of this claim.

72. By an unissued application notice dated 28 November 2019 the claimant sought an interim *ex parte* injunction that:

> "the defendant shall sign the draft contract referred to in the claim form and exchange it with the copy of the said contract on behalf of the claimant. Alternatively, the defendant shall not deal with 132A Brook Drive, SE11 4TE until further order".

That application was dismissed by Martin Spencer J on 29 November 2019.

73. The claimant renewed his application before Lewis J on 3 December 2019. The defendant was not present or represented at the hearing. Lewis J refused the application with the following reasons:

> "[1.] The application notice dated 29 November 2019 has already come before the Court before Martin Spencer J and it has been ordered that the application for an interim injunction is dismissed. I cannot see any basis for one High Court Judge to go behind another when there has been no material difference in circumstances.
>
> [2.] There is no realistic basis for this claim succeeding. The legal title of the property is with Mr Stewart and, free of any legal restrictions, he is free to deal with it as he so wishes.
>
> [3.] The arrangement for sale was expressed to be subject to contract. The claim for deception would not seem to affect title to the property. There is no basis for saying Mr Stewart holds the property on trust. Claims for estoppel have no realistic basis given the context of an agreement subject to contract."

74. In the light of these reasons, it seems to me that this second application by Mr Howell for an injunction against the defendant, on what appears to have been an *ex parte* basis, was bound to fail. This is because Lewis J held that he could not "see any basis for one High Court Judge to go behind another when there has been no material difference in circumstances." I am satisfied that this application for an *ex parte* mandatory injunction against the defendant that he do sign a draft contract for the sale of land, and exchange it, was totally without merit.

75. There was then a further hearing of Mr Howell's application for an injunction on 6 December 2019 before Mr Charles Bourne QC, then sitting as a Deputy High Court Judge. The defendant was represented by counsel. Mr Howell's application was dismissed and he was ordered to pay the defendant's costs summarily assessed in the sum of £6,000 within

14 days. Further, the recitals to the order recorded that the judge indicated that "any application by the defendant to strike out should be made on notice". Ms Swords-Kieley provided me with a transcript of the judgment of Mr Bourne QC which concluded as follows:

> "[22.] The application for an injunction is therefore dismissed. The defendant asks me to strike out the claim, or give summary judgment to the defendant on it. There is no formal application on notice to the claimant. In those circumstances, I will not make either of those orders. However, my refusal to do so is not necessarily to the claimant's benefit. He should consider his position. As Martin Spencer J warned him last week, continuing this claim may well expose him to considerable costs for little or no likely benefit. He would do well to take legal advice."

76. Mr Howell then sought permission from the Court of Appeal to appeal the decision of Mr Bourne QC, which was refused by Flaux LJ. The order was dated 29 January 2020 and permission to appeal was refused by Flaux LJ for the following reasons:

> "[1.] The judge evaluated the evidence before him including the applicant's witness evidence and concluded that there was no substantial question of the alleged exclusivity agreement having been made. This Court would not interfere with that evaluation of the evidence unless it could be said that it was clearly wrong or one no reasonable judge could have made. Far from that being the position, on the basis of the material before the Court, the judge's evaluation was correct.
>
> [2.] Further, the judge correctly concluded that the doctrine of proprietary estoppel could not convert a non-binding "agreement" into a binding contract to sell the property even if the evidence had shown an arguable case for such a non-binding agreement.
>
> [3.] The alternative case of constructive trust is not only not supported by the evidence but wrong in law. There is no question of it being inequitable for the respondent to assert full beneficial ownership of his own property.
>
> [4.] Any case of deceit or misrepresentation was and is unsustainable.
>
> [5.] Whether or not to grant an injunction was an exercise of evaluation and discretion by the judge, with which there is no basis for this court to interfere.
>
> [6.] The proposed appeal has no prospect of success."

77. The notes to the order made by Flaux LJ explained "Where permission to appeal has been refused on the papers, that decision is final and cannot be further reviewed or appealed. See rule 52.5 and section 54(4) of the Access to Justice Act 1999". However, notwithstanding that, Mr Howell then applied to the Court of Appeal to re-open his application for permission to appeal, which had been refused by Flaux LJ. That application was refused by Flaux LJ on 26 February 2020 and, in his reasons, he explained that Mr Howell "[did] not begin to satisfy" the very narrow test under CPR Part 52.30 to re-open a refusal of permission to appeal. I was only informed of Mr Howell's applications to the Court of Appeal at the hearing 7 September 2020, and the order of 26 February 2020 was only provided after the hearing.

78. In the meantime, on 17 December 2019 the defendant filed an acknowledgment of service indicating that he intended to defend all the claim. On 2 February 2020 Mr Howell filed a request for judgment by default. On 14 February 2020 the form was returned to Mr Howell as the form had been completed incorrectly. Mr Howell then filed a further request for default judgment dated 15 February 2020. On 3 March 2020 the defendant applied for an order that "unless the sum of £6,000 is paid within 7 days, the claim is struck out and the claimant is ordered to pay the Defendant's costs, without further order". On 11 March 2020 Foster J ordered that, unless Mr Howell paid the costs of £6,000 by 4pm on 4 April 2020, the claim would be struck out and judgment entered for the defendant and Mr Howell would be ordered to pay the costs of the defendant, to be subject to detailed assessment if not agreed.

79. In her skeleton argument, Ms Swords-Kieley explained that Mr Howell applied to have the order of Foster J set aside. The parties did not have a copy of this order and it was not on the CE-file. However, I was able to obtain it from Griffiths J. The recitals to the order show that Mr Howell provided the Court with an application notice dated 17 March 2020, a third witness statement dated 16 March 2020 and a skeleton argument dated 23 March 2020. The application was made by Mr Howell *ex parte* on 24 March 2020 in Court 37. Griffiths J ordered that: "(1) The Applications in the Application Notice dated 17 March 2020 be dismissed; (2) The Applications are totally without merit." The fact these applications were certified as totally without merit by Griffiths J means that this is an order that is relevant to the application for a civil restraint order. The defendant was only made aware of this application when Mr Howell informed him that the application had been unsuccessful.

80. On 4 April 2020 Mr Howell informed the court that he had paid the sum of £6,000 to the defendant. On 11 June 2020 the claim was allocated to the multi-track and a case management conference was directed on 10 November 2020 at 11.30am before Master McCloud for 90 minutes. There was no defence on the CE-File. On 15 July 2020 the defendant applied to strike out Mr Howell's claim as disclosing no reasonable grounds for bringing the claim alternatively for summary judgment, together with an order that Mr Howell do pay the costs on the indemnity basis. I was not aware of that application from my review of the CE-file, and that application was drawn to my attention by the defendant after my order of 10 August 2020 had been sealed and served.

81. Mr Howell complains in his note of 17 August 2020 that my reasons contained in the order dated 10 August 2020 ignored "the evidence, including the discrepancy between the defendant's evidence, which is self-contradictory, and that of his solicitors, it recognises the potential cause of action but says that misrepresentation has not been pleaded, despite paragraphs 1 to 4 of the particulars of claim doing precisely that". However, as I have explained, Mr Howell did not make any application returnable on 7 September 2020 to set the order aside, although on 28 August 2020 he applied to the Court of Appeal for permission to appeal the entire order.

82. Ms Swords-Kieley submitted that, based on the procedural history in *Howell v Stewart*, it is clear that Mr Howell is a persistent litigant who "automatically challenges every adverse decision on appeal; and that the claimant refuses to take any notice of or give any effect to orders of the court …" (see *Barker* at [22], per Lord Bingham). I agree. This is an entirely

accurate analysis of Mr Howell's approach to the decisions and orders of the court in *Howell v Stewart*.

(7) *Howell v Evans*

83. This claim was issued on 12 June 2020. The court fee was remitted. The brief details of claim identified that Mr Howell sought "a declaration that the Defendants, or any of them, have breached rule I3, and an order that the NEC expel such Defendant or Defendants subject to proper consideration of mitigating circumstances. Damages. Costs."

84. Also on 12 June 2020 Mr Howell made an urgent *ex parte* application to Murray J for injunctive relief and specific disclosure against the defendants. The application was adjourned to a hearing on notice, to be listed before a High Court Judge hearing interim applications in Court 37 on 19 June 2020. The application came before Eady J at which point Mr Howell withdrew his application, and it was dismissed by Eady J. Mr Howell was ordered to pay the first defendant's costs of the application within 14 days, which Eady J summarily assessed in the sum of £23,334.12.

85. The judge's observations in her order dated 22 June 2020 stated that:

> "[9.] [Mr Howell] explained to the court that, having received what he considered to be further relevant information in the defendants' skeleton argument and witness statement for this hearing, he wished to withdraw the application for urgent injunctive relief and specific disclosure….
>
> [11.] In awarding the defendants' costs of the application (summarily assessed at the hearing), the court noted that the need for an urgent application had not been demonstrated and that the explanation for the withdrawal of the application had not addressed the specific injunction relief sought by [Mr Howell] (for the suspension of the second defendant (and other potential defendants))".

86. On 1 July 2020 Mr Howell applied to vary the order made by Eady J. On 7 July 2020 Linden J gave directions so that this application could be dealt with on paper. On 10 July 2020 Linden J extended the time for Mr Howell to pay the first defendant's assessed costs until 30 July 2020, but otherwise dismissed the application. Ms Crasnow invited me to determine that Mr Howell's application dated 1 July 2020 was totally without merit. Mr Howell obtained relief in relation to his application dated 1 July 2020, namely an extension of time to pay the first defendant's costs. The application therefore succeeded in part and, as a result, I do not consider it relevant to the defendants' application for a civil restraint order and there is no basis to classify it as "totally without merit".

87. In the meantime, Mr Howell has sought permission from the Court of Appeal to appeal the costs order made by Eady J dated 22 June 2020. That costs order is at present stayed as a result of the decision of Henderson LJ dated 2 September 2020 (see paragraph 5 above).

(8) *Other proceedings*

88. In response to my note of 13 August 2020, Mr Howell has said this at paragraph 5 of his note in response:

> "[5.] … To produce the note I now respond to, the substance of which, on examination discloses nothing of what it purports to portray, must have entailed going through, and discarding a very much larger number of claims, applications and appeals, which, with all the will in the world, could not possibly be portrayed as anything other than entirely meritorious and successful. It is only reasonable for me to document with this just a tiny fraction of these other, more typical instances. They are referenced below within their context. As a result of considering even just the sample referred to in his response, it may be accepted that I have won dozens of claims and succeeded in dozens of appeals and hundreds of applications (including numerous injunctions) but lost only very few. To identify only these few, selectively and inaccurately, does not lead to a reasonable conclusion. The full list of orders over the years to which I have been a party will be assembled in due course, should this matter proceed further".

89. Then in conclusion, at paragraph 21 of his note, Mr Howell said this:

> "[21.] A full account of the persistently unmeritorious pursuit of and resistance to applicants, appeals and claims by parties litigating against me will be submitted to the court in due course if this matter proceeds further. Logically, the present judge should switch her attention to such parties. However, I imagine the Lord Chief Justice and Secretary of State might think that not the best use of public funds either, so long as their record of failure, like mine, is far shorter than their record of success, but even if this were not the case, that it should be done only by a judge action impartially."

90. Further, at paragraphs 16 to 20 of his note Mr Howell referred to a number of orders which have been made in his favour. Mr Howell produced copies of the following orders, which I shall refer to in chronological order.

91. First, on 11 April 2013 in the case of *Mark Howell v Anthony Bandak* the Court of Appeal granted Mr Howell permission to appeal the order of Judge Horowitz QC dated 14 December 2012.

92. Second, in the case of *Mark Howell v Richard Hayward* on 21 November 2014 Judge Seymour QC (sitting as a Judge of the High Court) allowed Mr Howell's appeal against an order of Master Eastman dated 9 May 2014, and the writ fieri facias issued on 17 December 2013 was set aside.

93. Third, on 21 October 2015 Foskett J allowed Mr Howell's appeal against the order of Judge Baucher dated 1 June 2015 and set the order aside.

94. Fourth, in the case of *Mark Howell v (1) In-time Watch Services Limited, and (2) Debenhams Plc* on 16 June 2016 Edis J granted Mr Howell an extension of time, and permission to appeal, against the order of Judge Gerald at the Central London County Court on 4 March 2016. Edis J allowed Mr Howell's appeal, and referred the claim for trial at the Lambeth County Court.

95. Fifth, on 21 April 2017 District Judge Alan Johns QC made an order restoring UCMC Limited to the Register of Companies on the application of Mr Howell, a creditor the company.

96. Sixth, on 27 September 2019 in the case of *Mark Howell v Guys and St Thomas' NHS Foundation Trust* Pepperall J ordered that "in the event Mark Howell files with the Court and serves on the Respondent a Certificate of Suitability in accordance with CPR 21.4 and 21.5 thereby appointing himself as Adam Howell's litigation friend, the respondent shall within 7 days of service on it of the Certificate of suitability give pre-action disclosure to Adam Howell of the following documentation concerned with the care of his mother: [and then five categories of documents are identified]".

97. Seventh, on 11 April 2013 in the case of *Mark Howell v Anthony Bandak* the Court of Appeal granted Mr Howell permission to appeal the order of Judge Horowitz QC dated 14 December 2012.

Submissions

98. Ms Crasnow submitted that the court must assess what order it is just to make in order to address the risk identified. It must make the least restrictive form of order shown to be required: see *Nowak* at [70]. Her submission was that it was proportionate and appropriate to make a general civil restraint order against Mr Howell. She made five points in support of this submission.

99. First, a limited civil restraint order would clearly be insufficient. Mr Howell has made repeated claims or applications, totally without merit, against various unrelated individuals about unrelated grievances. His wide-ranging allegations indicate that a limited civil restraint order would not be sufficient to protect the court system from abuse as that would only bind Mr Howell in relation to the instant proceedings and those relating to it.

100. Second, given that para.4.1 of the Practice Direction provides: *"*... An extended Civil Restraint Order is one that prohibits the making of claims or applications in relation to matters connected with those already under examination", an extended civil restraint order would be unsuitable in the circumstances under consideration here. Mr Howell has also been pursuing wholly unmeritorious and unrelated legal proceedings in parallel to these proceedings and such conduct means an extended civil restraint order is also insufficient. Such conduct means an extended civil restraint order is also insufficient given he has exhibited "… a scattergun approach to litigation on a number of different grievances without necessarily exhibiting such an obsessive approach to a single topic that an extended [civil restraint order] can appropriately be made against him/her …" (see *Kumar* at [60]). An extended civil restraint order would only stop Mr Howell from making applications and claims that have some connection with his case against the defendants in this case (ie the Labour Party). This would not, therefore, adequately protect the court from Mr Howell draining its resources or subjecting other parties to vexatious litigation. Ms Crasnow submitted that a reasonable inference can be drawn from Mr Howell's conduct over the last five years is that he is highly likely to pursue fresh litigation in the future that is likely to be totally without merit. An extended civil restraint order would not prevent him from doing so.

101. Third, Mr Howell has demonstrated that there is a high risk that he will continue to waste the court's time and resources by repeatedly refusing to take no for an answer. Ms Crasnow submitted that Mr Howell had made at least 15 claims or applications over the last five years, all of which have failed. Mr Howell continues not to take 'no' for an answer and has

declared an intent to continue to challenge the judgments of the court when, in her submission, he has no basis to do so. She referred, for example, to what Mr Howell had said following judgment in the instant case, "Obviously I will be going straight to the Court of Appeal on costs". Ms Crasnow submitted that this is precisely the sort of behaviour, amounting to repeated appellate challenges, that merits the imposition of a general civil restraint order as a "permission filter": see *Chief Constable of Avon and Somerset v Gray* [2016] EWHC Civ 2998 at [47]. Fourth, the imposition of a general civil restraint order would not amount to a disproportionate interference with Mr Howell's Article 6 ECHR right, because he will still have access to the court. Fifth, and closely associated with the submission above, the imposition of a general civil restraint order is necessary to protect the interests of the defendants and others against whom vexatious litigation has been persistently brought as set out above.

102. These submissions were all adopted by Ms Swords-Kieley, who also made a few other brief points limited to the particular facts of *Howell v Stewart*, and which I have set out above.

103. Mr Howell submitted that I should not make a civil restraint order against him. He set out his position clearly in his note dated 17 August 2020, provided in response to my note. I considered Mr Howell's note carefully, together with the documents attached, in advance of the hearing on 7 September 2020. Further, at the hearing he submitted that his approach to litigation was not one that could be described as "scattergun" and that his conduct of litigation was not "irrational". Mr Howell also reminded me that he had made a number of successful applications over the years and referred me to the orders set out at paragraphs 88 to 98 above.

Outcome: general civil restraint order

104. There are two claims, four applications, and one appellant's notice issued by Mr Howell which the court has certified as totally without merit, and there are three further applications that I have found to be totally without merit. These claims, applications and the appellant's notice have been issued in five different sets of proceedings, which concern different defendants and different facts and circumstances.

105. In this judgment I have set out the information I have in relation to the procedural history of these claims and, having done so, the narrative in relation to these claims which stretch back over the last five years make it obvious that Mr Howell is a very experienced and persistent litigator who, when an application has failed, either automatically seeks to appeal, or renews the application in front of a different judge.

106. This persistence is clear from Mr Howell's conduct in issuing totally without merit applications to try and obtain:

a. permission to appeal the decision of Judge Gerald in *Howell v Hayward.* On 13 September 2019 Leggatt LJ told Mr Howell that "it was time for the appellant to recognise that his litigation is at an end. No further application will be entertained". Mr Howell simply ignored this. He issued a further appellant's notice on the very same grounds in the High Court (having first tried to issue in the Court of Appeal),

which was struck out on 21 January 2020 as an abuse of process and certified as totally without merit.

b. a mandatory interim injunction against the defendant in *Howell v Stewart*, in the context of proceedings that were themselves totally without merit. Martin Spencer J refused to grant Mr Howell and *ex parte* mandatory injunction on 29 November 2019. Mr Howell did not accept that result and made the very same application, again *ex parte*, in front of Lewis J four days later, who also dismissed it stating "I cannot see any basis for one High Court judge to go behind another when there has been no material change in circumstances".

c. an order setting aside Foster J's unless order giving effect to the order in *Howell v Stewart* that Mr Howell pay the defendant costs of £6,000 ordered by Mr Bourne QC or his claim be struck out. Here Mr Howell was refusing to accept that his applications for permission to appeal the decision of Mr Bourne QC had been refused by the Court of Appeal, and that the Court of Appeal had refused to re-open his application for permission to appeal against that decision. On 24 March 2020 Griffiths J dismissed Mr Howell's application seeking to set aside the order of Foster J and certified it as totally without merit.

d. permission to appeal the order of Recorder Lavender QC in *Howell v Hughes.* Spencer J dismissed his application on 6 October 2016 and certified it as totally without merit, but Mr Howell renewed the same application for permission to appeal orally which Ouseley J dismissed on 26 October 2016 as hopeless, and I have found was also totally without merit.

e. permission to appeal the order of Deputy Master Partridge in *Howell v Alamoudi* in which the Deputy Master had set aside a default judgment and discharged an interim charging order and third party debt order. On 21 December 2015 May J dismissed Mr Howell's application for permission to appeal as totally without merit. Mr Howell did not accept that, and renewed his application to the Court of Appeal, which Sharp LJ also dismissed on 30 March 2016 as "vexatious and totally without merit".

107. In these circumstances it is clear to me that, viewed objectively, Mr Howell will, if unrestrained, issue further claims or make further applications which are an abuse of the court's process and it is impossible to draft an extended civil restraint order that meets the risk presented by Mr Howell. I agree with the submissions made by Ms Crasnow and Ms Swords-Kieley and, for the reasons identified in my conclusion at the start of this judgment, this is a case in which an extended civil restraint order is not sufficient or appropriate. Rather, a general civil restraint order against Mr Howell is and was entirely justified.
