Neutral Citation Number: [2025] EWHC 870 (Ch)

Case No: CR-2024-MAN-000386
(Main claim)

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS IN MANCHESTER
INSOLVENCY AND COMPANIES LIST

Date: 10 April 2025

Before :
HHJ Halliwell sitting as a Judge of the High Court

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Between :

(1) DEAN MCGUINNESS
(2) HITCHAM HOMES LIMITED (IN ADMINISTRATION) — **Claimant**

- and –

(1) GOLDENTREE FINANCIAL SERVICES PLC
(2) EDWARD AVERY-GEE AND DANIEL RICHARDSON (as joint administrators of Hitcham Homes Limited (in administration) — **Defendants**

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Mr John-Paul Tettmar-Saleh (instructed by **Hunters Solicitors LLP**) for the **Claimant**
Mr Simon Passfield KC (instructed by **Brabners LLP**) for the **First Defendant**
Mr Michael Booth KC (instructed by **Brecher**) for the **Second Defendants**

Hearing dates: 17-18 December 2024

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JUDGMENT

This judgment was handed down remotely at 10.30am on 10 April 2025 by circulation to the parties or their representatives by e-mail and by release to the National Archives

HHJ Halliwell sitting as a Judge of the High Court :

(1) Introduction

1. These proceedings arise out of transactions in 2019 and 2021 in which Goldentree Financial Services plc ("**Goldentree**") advanced funds, by way of loan, to Mr Dean McGuinness ("**Mr McGuinness**") and Hitcham Homes Limited ("**the Company**") for the development of properties at Wooburn Green, Buckinghamshire, and Hungerford, Berkshire.

2. Mr McGuiness was the Company's sole director and shareholder. On 21 April 2023, Goldentree appointed Mr Edward Avery Gee and Mr Daniel Richardson ("**the Administrators**") as joint administrators of the Company. Although Mr McGuinness's case in relation to their appointment is not without ambiguity, he has issued an application ("**the Insolvency Application**") for relief, under the *Insolvency Act 1986*, on the footing that the Company is, indeed, in administration.

3. There are three sets of proceedings before the court. In addition to the Insolvency Application, Mr McGuinness has issued proceedings, under *CPR Part 7*, for damages and declaratory relief in relation to the 2019 and 2021 loans ("**the Composite Proceedings**"). Conversely, Goldentree has itself issued proceedings ("**the Possession Proceedings**") against Mr McGuinness for possession of a house at 17A Mayfield Road, Wooburn Green ("**the House**").

4. The Possession Proceedings were commenced first, in June 2023 or thereabouts. They are based on a mortgage dated 15 August 2019 between Mr McGuinness and Goldentree only. Mr McGuinness and Goldentree are the only parties to the Possession Proceedings.

5. The Insolvency Application was issued, next in time, on 25 September 2023. It was issued within the insolvency proceedings initiated by the Administrators' appointment. Mr McGuinness has purported to join the Company as an applicant. The Administrators have been joined as respondents, together with Goldentree itself. By the Insolvency Application, Mr McGuinness seeks a declaration that the 2021 loan and Goldentree's security are unenforceable. He also seeks an injunction restraining the Administrators or Goldentree from selling the Hungerford property.

6. The Composite Proceedings were issued on 18 October 2023. Mr McGuinness is a claimant but he has again purported to join the Company as an additional claimant.

On the Claim Form, Goldentree is sole defendant. However, the Claim Form was served with a Particulars of Claim in which the Administrators are also identified as defendants.

7. The Composite Proceedings include claims for declaratory relief in relation to Goldentree's security and a personal guarantee dated 6 September 2021 between Mr McGuinness and Goldentree under which Mr McGuinness guaranteed the Company's liabilities. Mr McGuinness contends that the 2019 loan agreement and 2021 facility are unenforceable and his own personal guarantee has been discharged by agreement.

8. Although Mr McGuinness can be taken to have instructed his solicitors to issue the Insolvency Application and the Composite Proceedings on the Company's behalf, he did so after the Company had been placed in administration and the statutory powers in *Schedule 1* to the *Insolvency Act 1986* had become vested in the Administrators under *Para 60(1)* of *Schedule B1* to the *1986 Act*. This included, by reference, the statutory power, in *Para 5* of *Schedule 1*, to bring or defend any action or other legal proceedings.

9. When the Insolvency Application and the Composite Proceedings were issued, there were latent issues as to the status of the administration and Mr McGuinness's authority to instruct his solicitors to commence proceedings on the Company's behalf. In a judgment on 20 October 2023, *[2023] EWHC 3283 (Ch) at [28],[32]-[34],* I resolved these issues in favour of the Administrators on the basis that their appointment was lawful and Mr McGuinness was not entitled to commence proceedings on the Company's behalf. My judgment has not been appealed.

10. Mr Simon Passfield KC appears on behalf of Goldentree. Mr John-Paul Tettmar-Saleh appears on behalf of Mr McGuinness. Mr Michael Booth KC appears on behalf of the Administrators. He is also lawfully instructed to appear on behalf of the Company.

(2) The Applications

11. There are three applications before the Court, namely:

    11.1. an application dated 14 March 2024 ("**the 14 March 2024 Application**") in which Goldentree seeks reverse summary judgment on the Composite Proceedings or an order striking out the same;

11.2. an application dated 17 July 2024 ("**the 17 July 2024 Application**") in which Mr McGuinness himself seeks or at least initially sought summary judgment on the Possession and Composite Proceedings together with directions in relation to the administration of the Company and an application for disclosure against the Administrators; and

11.3. an application dated 10 October 2024 ("**the 10 October 2024 Application**") in which Goldentree seeks an order striking out the Insolvency Application.

(3) Factual and procedural background

12. In June 2019, Mr McGuinness bought property at 17 Mayfield Road, Wooburn Green comprising a detached house with gardens. The property was purchased with a view to development. On 25 July 2019, Mr McGuinness was registered as sole proprietor. By a legal charge dated 15 August 2019, he mortgaged the property to Goldentree to secure funds advanced to him by way of loan in connection with the proposed development. The "secured liabilities" were defined so as to include "all moneys obligations and liabilities whatsoever whether for principal interest or otherwise which may now or at any time in the future be due owing or incurred by [Mr McGuinness] to [Goldentree] whether present or future actual or contingent and whether alone severally or jointly as principal guarantor surety or otherwise…" On 23 August 2019, the charge was registered at HM Land Registry.

13. The development involved renovating the existing house and building a new house next door. The new house was built on land originally within the curtilage of the existing house. Prior to development, the property was comprised in one registered title, BM314714. Once the works were complete, Mr McGuinness sold one of the houses and retained title to the other. A new registered title was then allocated to the property disposed of, namely title no. BM448736, and the purchaser, Ms Hickey, was registered as sole proprietor.

14. On the official copies of the registered title to the two properties, the stated address for Ms Hickey's property (BM448736) is 17 Mayfield Road and the stated address for the property retained by Mr McGuinness (BM314714) is 17A Mayfield Road. In his submissions before me, Mr Passfield surmised that the retained land, at 17A Mayfield Road, comprised the original house. Mr Tettmar-Saleh took issue with

this. Plainly, his client can be taken to know this better than anyone else and, in the absence of convincing evidence to the contrary, I am satisfied that the House at 17A Mayfield Road was newly built by Mr McGuinness as part of his redevelopment on the land he subsequently retained.

15. Following the sale of 17 Mayfield Road, Mr McGuinness used the proceeds of sale to repay the 2019 loan. No doubt, Goldentree was content to permit the registered title to be severed for this purpose with the residue of the property at 17 Mayfield Road freed from its security. The 2019 charge continued on the Charges Register in respect of the property retained by Mr McGuinness but it was not entered on the Charges Register for the newly created title (BM448736).

16. Using the Company as his vehicle, Mr McGuinness's next project was the development of a site at Hungerford Station, Berkshire. Goldentree again advanced funds, by way of loan, supported by a debenture over the Company's assets and undertaking, a first legal charge over the development site and a personal guarantee from Mr McGuinness. No doubt, Goldentree was content to rely on the 2019 charge as security for Mr McGuinness's liabilities under the guarantee notwithstanding that the facility was not provided until August 2021 and, for the most part, the security documentation was not completed until the following month.

17. The term date for the 2021 facility was repeatedly extended by agreement. In Paragraph 14 of his Particulars of Claim in the Composite Proceedings, Mr McGuinness contends that it was varied, by agreement and implicitly extended with effect from 7 September 2022, 8 December 2022, 27 January 2023 and 7 March 2023. The final extension is alleged to have come to an end on 31 March 2023. Conversely, Goldentree contends that the outstanding amount became due following a formal demand on or after 27 January 2023.

18. On 3 April 2023, the Company issued an application against Goldentree for a declaration that the debenture was unenforceable and an injunction restraining it from appointing administrators. These proceedings came before ICC Judge Prentis, who dismissed the application on 20 April 2023, *[2023] EWHC 1727 (Ch).*

19. On 21 April 2023, Goldentree appointed the Administrators.

20. Having appointed the Administrators, Goldentree sought to exercise its rights under its security in respect of the property at 17A Mayfield Road, Wooburn Green. On

24 April 2023, it formally demanded payment from Mr McGuinness under his personal guarantee and, on 28 April 2024, it demanded payment under the 2019 charge, then appointed Messrs Avery Gee and Richardson as receivers. On 22 June 2023 or thereabouts, Goldentree issued the Possession Proceedings in the County Court at High Wycombe.

21. For their part, the Administrators sought to market the Hungerford property for sale by auction. This prompted Mr McGuinness to issue the Insolvency Application. This was purportedly issued on behalf of the Company in addition to Mr McGuinness himself and included an application for an interim injunction restraining sale. On 26 September 2023, Mr McGuinness obtained an interim injunction at a hearing conducted remotely before HHJ Pearce. However, on the return date, I dismissed the interim application on the basis that the Company had not been lawfully joined as a party since it was in administration and the proceedings had been commenced without the Administrators' authority. I also determined that Mr McGuinness did not have standing to make the application alone, *[2023] EWHC 3283 (Ch)* at *[34]*.

22. By this stage, the Composite Proceedings had also been issued. They were initially issued on 18 October 2023, under Claim no. PT-2023-MAN-000131. Mr McGuinness and the Company were named as Claimants and Goldentree as Defendant. Again, the Company was not lawfully joined as Claimant since the proceedings were not commenced with the Administrators' authority.

23. On 22 December 2023, District Judge Comiskey made an order, in the County Court at High Wycombe, transferring the Possession Proceedings to the High Court at Manchester. This was accompanied by a direction that the Possession Proceedings were to "be consolidated [with the Composite Proceedings] and case managed together". The District Judge was not seised of the Composite Proceedings when he made the order and the parties to each set of proceedings were not the same. In a strict sense, the order did not take effect as an order for the consolidation of each set of proceedings. However, the Possession Proceedings were self-evidently transferred to the High Court at Manchester in anticipation that they would be case managed with the Composite Proceedings, as indeed, they have been at all times since District Judge Comiskey's order.

(4) Statutory jurisdiction

24. The statutory jurisdiction to strike out or obtain summary judgment on a claim is set out in *CPR 3.4(2)* and *24.2*. By virtue of *IR 2016 12.1*, the statutory jurisdiction to strike out a claim under CPR 3.4, includes an insolvency application, see *Sandelson v Mulville [2019] EWHC 1620 (Ch).* The statutory jurisdiction to strike out a claim under *CPR 3.4(2)*, is applicable if the statement of case (a) discloses no reasonable grounds for bringing the claim or (b) is an abuse of the court's process or otherwise likely to obstruct the fair disposal of the proceedings. It also applies where there has been a failure to comply with a rule, practice direction or court order, CPR 3.4(2)(c). *PD3A Para 1.2* provides examples of the type of case capable of falling within *CPR 3.4(2)(a).* This includes a statement of case which discloses no legally recognisable claim. CPR 3.4(2)(b) can be invoked where proceedings are being exploited for a collateral purpose or relitigating issues which ought to have been raised and disposed of before.

25. On an application for reverse summary judgment under *CPR 24.2(a)(i),* Lewison J (as he was) provided guidance, in *Easyair Ltd v Opal Telecom Ltd [2009] EWHC 339 (Ch),* at *[15],* on the principles for determining whether a claimant has a real prospect of succeeding on the claim. This guidance has been approved by the Court of Appeal in *AC Ward & Sons Ltd v Catlin (Five) Ltd [2009] EWCA Civ 1098; [2010] Lloyd's Rep. I.R. 301* at 24. It is as follows.

    i. 'The court must consider whether the claimant has a "realistic" as opposed to a "fanciful" prospect of success: *Swain v Hillman [2001] 1 All E.R. 91*;

    ii. A "realistic" claim is one that carries some degree of conviction. This means a claim or defence that is more than merely arguable: *ED & F Man Liquid Products v Patel [2003] EWCA Civ 472* at [8];

    iii. In reaching its conclusion the court must not conduct a "mini-trial": *Swain v Hillman*;

    iv. This does not mean that the court must take at face value and without analysis everything that a claimant says in his statements before the court. In some cases it may be clear that there is no real substance in factual assertions made, particularly if contradicted by

contemporaneous documents: *ED & F Man Liquid Products v Patel* at [10];

v. However, in reaching its conclusion the court must take into account not only the evidence actually placed before it on the application for summary judgment, but also the evidence that can reasonably be expected to be available at trial: *Royal Brompton Hospital NHS Trust v Hammond (No.5) [2001] EWCA Civ 550*;

vi. Although a case may turn out at trial not to be really complicated, it does not follow that it should be decided without the fuller investigation into the facts at trial than is possible or permissible on summary judgment. Thus the court should hesitate about making a final decision without a trial, even where there is no obvious conflict of fact at the time of the application, where reasonable grounds exist for believing that a fuller investigation into the facts of the case would add to or alter the evidence available to a trial judge and so affect the outcome of the case: *Doncaster Pharmaceuticals Group Ltd v Bolton Pharmaceutical Co 100 Ltd [2007] F.S.R. 3*;

vii. On the other hand it is not uncommon for an application under Pt 24 to give rise to a short point of law or construction and, if the court is satisfied that it has before it all the evidence necessary for the proper determination of the question and that the parties have had an adequate opportunity to address it in argument, it should grasp the nettle and decide it. The reason is quite simple: if the respondent's case is bad in law, he will in truth have no real prospect of succeeding on his claim or successfully defending the claim against him, as the case may be. Similarly, if the applicant's case is bad in law, the sooner that is determined, the better. If it is possible to show by evidence that although material in the form of documents or oral evidence that would put the documents in another light is not currently before the court, such material is likely to exist and can be expected to be available at trial, it would be wrong to give summary judgment because there would be a real, as opposed to a fanciful, prospect of success. However, it is not enough simply to argue that the case should be allowed to go to trial

> because something may turn up which would have a bearing on the question of construction: *ICI Chemicals & Polymers Ltd v TTE Training Ltd [2007] EWCA Civ 725*."'

(5) The 14 March 2024 Application

26. The 14 March 2024 Application was made in the Composite Proceedings.

27. By the Composite Proceedings, Mr McGuiness claims declarations that:

    27.1. the 2019 loan agreement is an unenforceable regulated mortgage contract ("***Mr McGuinness's 2019 Loan Claim***");

    27.2. the 2021 facility is an unenforceable regulated mortgage contract ("**Mr McGuinness's 2021 Loan Claim**");

    27.3. Mr McGuinness's personal guarantee "was discharged upon the 7 September 2022 variation" ("**Mr McGuinness's Guarantee Claim**"**)**; and

    27.4. "17A Mayfield Road ceased to secure the [2021] facility on 7 September 2022".

28. Mr McGuiness also seeks "an award of damages for all sums which he has paid to Goldentree pursuant to the 2019 agreement".

29. There are two obvious procedural defects in the joinder of parties to the Composite Proceedings.

30. Firstly, the Company has purportedly been joined as a claimant without the Administrators' authority. As I have already observed, in Paragraph 8 above, the statutory power to commence proceedings on the Company's behalf is vested in the Administrators, not Mr McGuinness.

31. Secondly, although they have not been joined as defendants on the Claim Form, the Administrators have been added as defendants to the Particulars of Claim. No cause of action has been pleaded against them. There is a claim for declaratory relief. It is conceivable Mr McGuinness can show the Company has an interest in some of the matters pertaining to the claim for declaratory relief. However, the basis for joining them as parties is by no means obvious. There is certainly nothing on the face of the Particulars of Claim to explain why they have been joined as Defendants.

32. Mr McGuinness's 2019 Loan Claim is based on the statutory regime in *Sections 19,22,26* and *28* of the *Financial Services and Markets Act 2000* and *Articles 61* and *61A* of the *Financial Services and Markets Act 2000 (Regulated Activities) Order 2001.*

33. *Section 19(1)* prohibits anyone from carrying on a "regulated activity in the United Kingdom" unless authorised to do so and *Section 26(1)* provides that agreements made in contravention of this general prohibition are unenforceable.

34. In Mr McGuinness's Particulars of Claim, the 2019 transaction is not pleaded with specificity. However, it is contended, in Para 6, that Goldentree provided Mr McGuinness with a loan on 31 July 2019. In Paragraph 8, it is then contended that there was an agreement between Goldentree and Mr McGuinness in his personal capacity for Goldentree to advance him a loan of £410,000 to be repaid over 12 months and secured by first legal charge over his property at Mayfield Road.

35. No doubt, this agreement ("**the 2019 Loan Agreement**") came into existence when Mr McGuinness accepted the terms of an offer letter dated 31 July 2019 from Goldentree to Mr McGuinness in which Goldentree offered to advance him the sum of £410,000, to be drawn down in stages, to fund the refurbishment of the existing house and the construction of a new three bedroom semi-detached house next door. Mr McGuinness was invited to sign and return a copy of the letter with a declaration of exemption in respect of the "Financial Services and Markets Act 2000 (Regulated Activities) Order and the Financial Service and Markets The Mortgage Credit Directive Order 2015". Mr McGuinness signed the Declaration on 9 August 2019 and returned it to Goldentree. In due course, Goldentree advanced funds to Mr McGuinness in tranches to fund the development.

36. Mr McGuinness's 2019 Loan Claim is at least implicitly based on the proposition that, by entering into the 2019 Loan Agreement, Goldentree carried on a *regulated activity* without having been statutorily authorised to do so. On this basis, he contends that the 2019 Loan Agreement was unenforceable owing to *Section 26(1)* of the *2000 Act*.

37. Goldentree accepts that if, by entering into the 2019 Loan Agreement, it carried on a regulated activity, this was done without statutory authorisation. However, it contends that the 2019 Loan Agreement was not and is not a regulated mortgage

contract and, on this basis, entering into the transaction was not a regulated activity and was not prohibited by *Article 19*. On this hypothesis, it is not unenforceable owing to *Section 26(1).*

38. To determine whether this is correct, *Articles 61* and *61A* of the *2001 Order* are applicable (see *Section 22* and *Schedule 2* to the *Act)*. By *Article 61*, "entering into a *regulated mortgage contract* as lender" qualifies as a regulated activity. This is on the basis *inter alia* that a contract is a regulated mortgage contract if (i) it involves the provision of credit to an individual as borrower; (ii) the borrower's repayment obligation is secured by a mortgage on land; and (iii) at least 40% of the land is used or intended to be used as or in connection with a dwelling, *Article 61(3)(a).*

39. Each of these requirements was *prima facie* satisfied when Goldentree and Mr McGuinness entered into the 2019 Loan Agreement. However, these provisions are expressly subject to a proviso that, where the parties enter into such a contract, the "contract is not a regulated mortgage contract if it falls within *Article 61A(1)* or *(2)"*.

40. Goldentree contends that the 2019 Loan Agreement was not and is not a regulated mortgage contract since the transaction was "an investment property loan" within the meaning of *Article 61A(1)(d)*. This is defined, in *Art 61A(6*), so as to mean "a contract that, at the time it is entered into, meets the conditions in paragraphs (i) to (iii) of *Article 61(3)(a)* and the following conditions-

    (a) less than 40% of the land subject to the mortgage is used, or intended to be used, as or in connection with a dwelling by the borrower…or by a related person; and

    (b) the agreement is entered into to by the borrower wholly or predominantly for the purpose of a business carried on, or intended to be carried on, by the borrower", *Art 61A(6).*

41. *Article 61A(3)* also provides that "if an agreement includes a declaration which -

    (a) is made by the borrower, and

    (b) includes-

(i) a statement that the agreement is entered into by the borrower wholly or predominantly for the purposes of a business carried on, or intended to be carried on, by the borrower,

(ii) a statement that the borrower understands that the borrower will not have the benefit of the protection and remedies that would be available to the borrower under the Act if the agreement were a regulated mortgage contract under the Act, and

(iii) a statement that the borrower is aware that if the borrower is in any doubt as to the consequences of the agreement not being regulated by the Act, then the borrower should seek independent legal advice,

the agreement is to be presumed to have been entered into by the borrower wholly or predominantly for the purposes specified in sub-paragraph (b)(i) unless paragraph (4) applies."

42. Paragraph (4) – ie *Art 61A(4)* of the Order - is in the following terms.

"This paragraph applies if, when the agreement is entered into –

(a) the lender (or, if there is more than one lender, any of the lenders), or

(b) any person who has acted on behalf of the lender (or, if there is more than one lender, any of the lenders) in connection with the entering into of the agreement,

knows or has reasonable cause to suspect that the agreement is not entered into by the borrower for the purposes of a business carried on, or intended to be carried on, by the borrower".

43. In the present case, Mr McGuinness signed a written declaration in the following form when accepting the terms of Goldentree's offer letter dated 31 July 2019. He appears to have signed the document on 9 August 2019 and his signature was witnessed on the same date by his solicitor, Angelo Luiz-Barrea, of Stocker and Co LLP.

"Declaration for exemption relating to businesses articles 60C and 60O of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 and the Financial Service and Markets The Mortgage Credit Directive Order 2015

I am/we are* entering this agreement wholly or predominantly for the purposes of a business carried on by me/us* or intended to be carried on by me/us*.

I/we* understand that I/we* will not have the benefit of the protection and remedies that would be available to me/us* under the Financial Services and Markets Act 2000 or the Financial Services and Markets The Mortgage Credit Directive Order 2015 or under the Consumer Credit Act 1974 if this agreement were a regulated agreement under those Acts.

I/we understand* that this declaration does not affect the powers of the court to make an order under section 140B of the Consumer Credit Act 1974 in relation to a credit agreement where it determines that the relationship between the lender and the borrower is unfair to the borrower.

I/we* are aware that, if I am/we* are in any doubt as to the consequences of the agreement not being regulated by the Financial Services and Markets Act 2000 or the Financial Services and markets The Mortgage Credit Directive Order 2015 or under the Consumer Credit Act 1974 then I/we* should seek independent advice".

44. It was a special condition of the loan offer (Special Condition 4.1(b)) that "the Borrower or any spouse or partner of the Borrower or any member of the Borrower's immediate family shall not/ and has not occupied the Property as their residence". Moreover, in a letter dated 7 August 2019 to Goldentree, Stocker and Co LLP, confirmed that "neither the Borrower nor any member of the family has ever occupied or intends to occupy the property".

45. In these circumstances, Goldentree defends Mr McGuinness's 2019 Loan Claim on the basis that the 2019 loan was an investment property loan within the meaning of *Art 61A(1)(d)* of the 2001 Order. If so, the contract under which the Mayfield Road property was first mortgaged is not a regulated mortgage contract. This is on the grounds that, when the parties entered into the loan agreement, no part of the property was intended for use as a dwelling for Mr McGuinness or related person and the agreement was wholly or predominantly for the purpose of a business to carried out by him. Goldentree also contends that, in view of Mr McGuinness's declaration, the 2019 Loan Agreement is statutorily presumed to have been entered

into by Mr McGuinness wholly or predominantly for the purposes of a business to be carried on or intended to be carried on by him.

46. Bearing in mind, Lewison J's guidance in *Easyair (supra),* I have reached the view that Mr McGuinness's 2019 Loan Claim does not have a realistic prospect of success and, on this part of his case, Goldentree is thus entitled to summary judgment. Having taken into consideration HHJ Rawlings's analysis in *Kumar v LSC Finance Limited [2023] EWHC 1439 (Ch),* affirmed by the Court of Appeal at *[2024] EWCA Civ 254,* I am persuaded it is more than arguable Mr McGuinness's written declaration was and is ineffective as a statutory declaration, under *Article 61A(3).* At least on an application for reverse summary judgment, there is no room for any *statutory presumption* that Mr McGuinness entered into the 2019 Loan Agreement for the purposes of a business to be carried on or intended to be carried on by him. However, his written declaration can be taken into consideration as part of the contemporaneous documentary evidence and it is obvious, from the evidence as a whole, that the 2019 Loan Agreement was an investment property loan within the meaning of *Article 61A* of the *2001 Order*. In my judgment, Mr McGuinness's case to the contrary does not have a realistic prospect of success. It does not carry the degree of conviction envisaged in Lewison LJ's guidance in *Easyair (supra).*

47. Contrary to Mr Tettmar-Saleh's submissions, there is no *contemporaneous* evidence that the 2019 loan was a bridging loan within the meaning of *Article 60G(2A)(ii)* of the *2001 Order.* In the absence of such evidence, Goldentree's solicitor, Nancy Ryan subsequently stated that it was a bridging loan, in Para 14 of her witness statement dated 31 August 2023. However, she later confirmed this was an error in Para 5 of her witness statement dated 10 October 2023.

48. The critical question is whether the 2019 Loan Agreement was an investment property loan or a regulated mortgage contract.

49. In *Kumar (supra*), HHJ Rawlings was ultimately satisfied that the loan agreements in issue before him were also investment property loans. However, he reached this conclusion, after determining that written declarations in similar form to Mr McGuinness's declarations did not satisfy the *Art 61A(3)* requirements since, when read together with the heading, the declarations would have led an objective reader to conclude they were concerned with the protections available to consumer credit

and consumer hire agreements, not regulated mortgage contracts. This was fatal because *Art 61A(3)(ii)* requires the declarations to contain a statement that the borrower understands he will not have the benefit and protection of under the 2000 Act if the agreement were a regulated mortgage contract. On this basis, the judge concluded that the *Art 61A(3)* presumption did not apply and it was for the defendant to prove that the loans were investment property loans not for the claimants to prove that they were regulated mortgage contracts.

50. In *Kumar (supra),* the heading to the declarations was as follows: "Declaration for exemption relating to business (if an individual) (articles 60C and 60O of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001." The critical declaration was to the effect that the borrower understood he "would not have the benefit of the protection of any remedies that would be available to me under the Financial Services and Markets Act 2000 or under the Consumer Credit Act 1974 if this agreement were a regulated agreement under those acts".

51. In the present case, there has been added, to the heading, a reference to "the Financial Services and Markets the Mortgage Credit Directive Order 2015". However, it is more than arguable this does not suffice to clarify the ambiguity identified by the judge in *Kumar.* Unlike *Kumar,* the *2015 Order* was also identified in the relevant declarations. In the present case, the relevant declaration again refers to the *2000 Act* and the *Consumer Credit Act 1974* and is thus not limited to the borrower's understanding of the benefit and protection afforded to him under the 2000 Act if the agreement were a regulated mortgage contract. Whilst the provision also refers to the *"The Mortgage Credit Directive Order 2015,* it is more than arguable this does not eliminate the ambiguity identified by HHJ Rawlings in *Kumar.*

52. Whilst the heading and declarations in the present case are not identical to the corresponding provisions in *Kumar*, it is more than arguable, for the purposes of an application under *CPR 24*, that there is no material distinction between them. This is significant because, on appeal at *[2024] EWCA Civ 254*, the Court of Appeal, at [23]-[25] endorsed the judge's analysis. At [25], Andrews LJ stated that "in the light of the express references in the heading to articles of the Regulation pertaining to two completely different types of regulated agreement, and the absence of any reference to *article 61A*, it is impossible to interpret the declaration as

demonstrating an understanding by the borrower that they will not have the benefits of the specific statutory protection afforded to a regulated mortgage contract". The appeal was dismissed. Phillips LJ and Asplin LJ agreed with Andrews LJ's analysis and conclusions.

53. Consistently with HHJ Rawlings's analysis, endorsed by the Court of Appeal, in *Kumar*, Mr McGuinness plainly has a more than arguable case that his declarations were ineffective and, for the purposes of *CPR 24*, there is thus *no* statutory *presumption* that the 2019 Loan Agreement was an investment property loan.

54. However, the essential requirements of a an investment property loan, in *Art 61A(6),* are that, at the time the parties entered into the transaction (1) less than 40% of the mortgage land was used, or intended for use by the borrower or a relative as or in connection with a dwelling and (2) the transaction was wholly or predominantly for the purpose of a business carried on, or intended to be carried on, by the borrower.

55. In my judgment, these requirements are unarguably satisfied and it is thus unnecessary for Goldentree to rely on the statutory presumption in *Art 61A(3).* The best contemporaneous evidence in relation to the use of the property as a dwelling was contained in Stocker and Co LLP's letter dated 7 August 2019 on behalf of Mr McGuinness and his written declarations, signed on 9 August 2019, to which I have already referred. Regardless of whether they gave rise to a statutory presumption, the declarations plainly constitute important contemporaneous evidence of Mr McGuinness's use and intentions at the time he signed the declaration. In signing the declaration, Mr McGuinness accepted the terms and conditions of Goldentree's offer letter dated 31 July 2019, including the provision in Clause 4.1 that neither Mr McGuinness himself nor any spouse, partner or member of his immediate family had occupied the property as a residence. He also undertook that they would not do so in the future. No where is it specifically stated in Mr McGuinness's evidence that this was contrary to his intentions at the time. Similarly, in their letter dated 7 August 2019, Stocker and Co confirmed that neither Mr McGuinness nor any member of his family had ever occupied the property and they had no intention to do so.

56. Mr McGuinness's witness statements in the current proceedings were made several years later. However, they are qualified and equivocal. They are also inconsistent.

In Para 14.3 of his third witness statement dated 17 July 2024, Mr McGuinness states that "the refurbished house (17 Mayfield) was to be sold and new build element of the loan (17A Mayfield) was to be retained as a residential dwelling" but he does not state who he intended to reside there. In Para 16.11.4 of the same witness statement, he stated that "I confirmed that I had not lived at 17 Mayfield (nor intended to in the future (which was true)) it does not dispute that I may have intended to with respect to 17A Mayfield once built". However, this falls short of an assertion that he intended to reside at 17A Mayfield once the House was built. In Para 21.5.5, he states that "17A Mayfield was being built for me to retain or sell (the contract for the build was with Hitcham Homes Ltd)". However, he does not state that it was being retained so that he could reside there himself. In Para 23.1 of the same witness statement, he states that "I had never lived at 17 Mayfield, did not intend to and wanted to sell it to pay off the loan, and that I would be using funds to build a further property 17A Mayfield which I would keep myself to either use, sell or rent once built and may refinance (once I knew)". This is, again, powerful evidence that, when he entered into the 2019 loan agreement, he had never resided at 17 Mayfield Road. However, it also significant that, in stating that he "would keep" and, implicitly, *intended* to keep it "to use, sell or rent", he does not expressly state that he intended to keep it for use as a dwelling for himself or his family.

57. There is a suggestion that Mr McGuiness subsequently resided at 17A Mayfield Road. In itself, this would not preclude the transaction from qualifying as a statutory investment property loan since the qualifying conditions are to be assessed with respect to his intentions at the date he entered into the operative agreement. It may be suggested that, if Mr McGuinness has ever resided at 17A Mayfield Road, this is consistent with an intention to do so at the time he entered into the transaction. However, the evidence on this issue is limited and equivocal and it is not deployed in support of any suggestion that he had a specific intention to reside at the property when he entered into the transaction. In Para 21(1) of his witness statement dated 1 September 2023 in the Possession Proceedings, Mr McGuinness states that "the property is my main residence and is in my personal name". However, in his witness statements, he has generally provided another address at Burnham in Buckinghamshire as his address. This includes the address in his witness statement

dated 1 September 2023. More significantly, there is no explanatory evidence as to when, why and how Mr McGuinness became resident at 17A Mayfield Road or when it became his intention to do so.

58. Conversely, Mr McGuinness has repeatedly confirmed, in his witness statements in the current proceedings, that the 2019 loan was predominantly for business purposes. This includes Para 14.3 of his third witness statement dated 17 July 2024 ("GT were always aware that the 2019 loan/charge was predominantly for business purposes…") and Para 21.5.5 of the same witness statement ("crucially the loan was only predominantly for business purposes").

59. In assessing Mr McGuinness's prospects of successfully establishing his 2019 Loan Claim, I must take into consideration the evidence which can reasonably be expected to be available at trial, *Royal Brompton Hospital NHS Trust v Hammond* and *Easyair (supra).* I should also consider whether reasonable grounds exist for believing that a fuller investigation into the facts of the case would add to or alter the evidence available to a trial judge and so affect the outcome of the case, *Doncaster Pharmaceutricals Group Ltd v Bolton Pharmaceutrical Co 100 Ltd* and *Easyair (supra*). However, these questions must be addressed with respect to the facts which Mr McGuinness has put in issue. His difficulty on this aspect of his case is that he has not done enough, in his evidence, to put in issue the essential requirements of an "investment property loan", as defined in *Article 61A(6),* with respect to the time, in August 2019, on which the 2019 loan was entered into. Nowhere has he unequivocally put in issue the statutory requirements, as at this time, for less than 40% of the land to be in use or intended for use in connection with a dwelling house for Mr McGuinness or a person related to him nor the requirement for it to be predominantly for the purposes of a business carried out by himself. The percentage is irrelevant because his evidence of intention is at best equivocal in relation to the land in its entirety. Moreover, he has effectively conceded, in evidence, that when entering into the 2019 loan agreement, he was not using the land (or implicitly any part of such land) as or in connection with a dwelling and, from his perspective, the transaction was predominantly for the purposes of his business.

60. Mr McGuinness's 2019 Loan Claim thus has no realistic prospect of success. He has failed to demonstrate that he has any realistic prospect of showing that, contrary

to the contemporaneous documentary evidence, the 2019 loan agreement was a regulated mortgage contract rather than an investment property loan. I am thus persuaded that Goldentree is entitled to summary judgment on this part of the Composite Proceedings.

61. Mr McGuinness's 2021 Loan Claim is founded on the proposition that the 2021 facility is an unenforceable regulated mortgage contract on the basis, again, that it was made in contravention of the general prohibition in *Section 26* of the 2000 Act.

62. This claim is fundamentally flawed. To qualify as a regulated mortgage contract within the meaning of *Article 61* of the *2001 Order,* the transaction must involve the provision of credit to an individual or trustees, *Art 61(3)(a)(i)*. Under the 2021 facility, credit was provided to the Company, not Mr McGuinness. The Company is plainly not an individual and there is no suggestion it purported to enter into the transaction as a trustee. This is fatal, in itself, to Mr McGuinness's 2021 Loan Claim.

63. As it happens, this is a conclusion which I have already reached in my judgment on 20 October 2023 when determining that the 2021 facility was not a regulated mortgage contract, [2023] EWHC 3238 (Ch) at *[30]-[32]*. Whilst this judgment has not been appealed, it was given on Mr McGuinness's application for interim injunctive relief pending final determination of the Insolvency Application. This was made in respect of the Company's property at Hungerford Station, not Mr McGuinness' property at Wooburn Green. It is open to Goldentree to submit this part of Mr McGuinness's case is *res judicata* but I am not persuaded it is entirely unarguable Mr McGuinness's 2021 Loan Claim partly falls outside the parameters of my earlier determination. For the purposes of an application under *CPR 24*, I am not satisfied that Mr McGuinness's 2021 Loan Claim fails on this narrow basis only.

64. More fundamentally, however, Mr McGuinness has no real prospect of establishing that the 2021 facility was a regulated mortgage contract within the meaning of *Article 61* of the *2000 Order* since he was not a party to the transaction. Whilst he was plainly a party to the 2021 guarantee and 2019 mortgage, he was not and is not a party to the 2021 facility and does not have standing to challenge the 2021 facility on the basis he is to be treated as a party. Goldentree is again entitled to summary judgment on this part of the Composite Proceedings.

65. Having determined that Goldentree is entitled to reverse summary judgment on Mr McGuinness's 2019 Loan Claim, there is no longer room for him to advance a claim for damages in respect of this part of his case.

66. More generally, having determined that Goldentree is entitled to reverse summary judgment on Mr McGuinness's 2019 and 2021 Loan Claims, I am also persuaded that the remaining parts of his case in the Composite Proceedings should now be struck out under *CPR 3.4(2)(b)*. This is on the basis that the remaining parts of his case - founded on Mr McGuinness' Guarantee Claim and the contention that 17A Mayfield Road ceased to secure the 2021 loan facility on 7 September 2022 – also form part of his case in the Possession Proceedings.

67. The Possession Proceedings were commenced prior to the Composite Proceedings. Mr McGuinness's Defence in the Possession Proceedings was also filed prior to the Composite Proceedings. Following the disposal of Mr McGuinness's 2019 and 2021 Loan Claims, I can see no good reason for Mr McGuinness to pursue the same case in both sets of proceedings. Whilst there were historically directions for both sets of proceedings to be case managed together, they were not consolidated in a strict sense since the parties to each claim were not and are not identical. I can see no good reason for the Composite Proceedings to be kept alive for the purpose only of advancing a case that is also before the Court in the Possession Proceedings. To do so would be contrary to the Overriding Objective for both sets of proceedings to be dealt with justly and at proportionate cost bearing in mind the guidance in *CPR 1.1(2)*. This includes, in particular, saving expense, ensuring that the proceedings are dealt with expeditiously and fairly and allotting to them an appropriate share of the court's resources.

(6) The 17 July 2024 Application

68. By the 17 July 2024 Application, Mr McGuinness originally sought wide ranging relief in relation to all three sets of substantive proceedings notwithstanding that the application notice bears the Claim no. of the Composite Proceedings only. At the commencement of the hearing, Mr Tettmar-Saleh indicated that he was no longer instructed to pursue several of the more obscure parts of the 17 July 2024 Application, including his application for a determination that "the LPA receivership is invalid", "permission to continue" the Insolvency Application "in

the name of [the Company]"; alternatively, an order for an assignment of an unidentified cause of action vested in the Company or an order "to continue the extant stay of the [Company's claim] pending determination of the administration, including directions as to exit or acquisition as a going concern…"; and "directions as to the conduct and in future conduct of the administration of the Company as to (a) the administration of the Company; and (b) permission to bring a negligence claim against [the Administrators]…; (c) permission to apply for the appointment of a conflict administrator, or (d) alternatively, removal of [Messrs Avery Gee and Richardson] as [administrators]".

69. However, Mr McGuinness continued to pursue his applications for summary judgment on his 2019 Loan Claim and his case in the Possession Proceedings or, alternatively, an order striking out Goldentree's claim for possession, and a declaration that his personal guarantee "is invalid".

70. The 17 July Application also contains an application for "an order for limited or specific disclosure of documents in relation to the sale of the property and breach of the injunction pursuant to CPR 31" ("**the Disclosure Application**"). Mr Tettmar-Saleh indicated that he would be content for the Disclosure Application to be adjourned. However, in opposition, Mr Booth KC submitted that there are serious conceptual difficulties with this part of the 17 July Application and, since it amounts to an application for directions pending disposal of the substantive proceedings, I should only consider it once I have fully determined the applications for summary relief and orders striking out the Composite Proceedings and the Insolvency Application. In my judgment, this is logically correct. I shall return to the Disclosure Application later.

71. Having determined that Goldentree is itself entitled to reverse summary judgment on Mr McGuinness's 2019 Loan Claim, it logically follows that Mr McGuiness's application for summary judgment on the same is dismissed.

72. Mr McGuinness's application for summary judgment on his case in the Possession Proceedings or, alternatively, an order striking out the Possession Proceedings is also dismissed.

73. Goldentree sues for possession under its legal charge dated 15 August 2019. This was first entered on the Charges Register for the property as a whole, at 17 Mayfield

Road, on 23 August 2019. Following severance, it was registered against the title to 17A Mayfield Road only. It is still registered as such.

74. On its face, the registered charge secures "all moneys obligations and liabilities" incurred by Mr McGuinness to Goldentree "whether present or future" and is wide enough to secure his liabilities as guarantor. This includes all liabilities subsequently incurred by him to Goldentree under his personal guarantee dated 6 September 2021 ("**the Guarantee**"). The Guarantee comprehended the Company's liabilities to Goldentree subject to a ceiling of £550,000. By clause 2.8 of the Guarantee, it was provided that Mr McGuinness's liability, as guarantor, would not be affected nor would the Guarantee be discharged or reduced in the event that the Company was expressly released from its liabilities to Goldentree or any variation or amendment to its security or the grant of any time, indulgence or concession in respect of its liabilities.

75. Mr McGuinness has filed a Defence in which he contends that the Guarantee is unenforceable owing to successive variations of the 2021 facility to the Company. It also contends that the charge is invalid as security for the 2021 facility on the basis that it pre-dates the facility and contends, in general terms, the charge is invalid because Goldentree was not and is not authorised to carry on "a regulated activity". On Mr McGuiness's behalf, it has also been suggested that Goldentree does not have standing to claim possession since it has already appointed Messrs Avery Gee and Richardson to act as LPA receivers.

76. Following this judgment, it will no longer be open to Mr McGuinness to advance his 2019 and 2021 Loan Claims on the basis that the 2019 loan agreement and 2021 facility are unenforceable. At this stage, I am not invited to strike out particular paragraphs of his Defence to the Possession Proceedings. However, the vague assertion, in Para 11, that Goldentree's security is unenforceable for absence of authorisation to carry on a regulated activity is incapable of sustaining his application for summary judgment. In the hypothetical event that the 2019 charge was *prima facie* unenforceable under *Section 26* of the *2000 Act*, the court would have had jurisdiction to allow the agreement to be enforced if satisfied it was just and equitable to do so under *Section 28(3)*.

77. Moreover, the appointment of receivers does not preclude Goldentree from bringing possession proceedings. By clause 14.3.1 of the legal charge, the LPA receivers were entitled to take possession of the property and commence proceedings to do so. Goldentree is contractually entitled to commence such proceedings, as mortgagee, and, by clause 19.1, all the receivers' powers are separately exercisable by the mortgagee.

78. In view of the provisions of clause 2.8 of the Guarantee, it will not be straightforward for Mr McGuinness to succeed on his case that the Guarantee is unenforceable owing to contractual variations or amendments to the 2021 facility regardless of whether he formally consented to such variations and amendments. As it happens, Mr McGuinness appears to have signed an express declaration of his consent. Again, Goldentree does not seek reverse summary judgment on this part of Mr McGuinness's case. However, in my judgment, it has at the very least an arguable answer to this part of his case.

79. In Para 1(iii) of the 17 July Application, Mr McGuinness seeks summary judgment on his claim for a declaration, in the Composite Proceedings, that the Guarantee is "invalid". This appears to be based on the proposition that the Guarantee was discharged owing to the variation of 7 September 2022. Since I have struck out his case in relation to the Composite Proceedings, there is no extant claim for such relief. However, for the reasons I have already given (including the ambit of clause 2.8 of the Guarantee), I am satisfied that Mr McGuinness never had any realistic prospect of establishing his claim for such relief on a summary basis.

(7) The 10 October 2024 Application

80. By the 10 October 2024 Application, Goldentree seeks to strike out the Insolvency Application, under *CPR 3.4(2)(a)* and *(b)* on the basis that, if it is to be treated as a statement of case, it discloses no reasonable grounds for a claim and it as abuse of the process of the court or otherwise likely to obstruct the just disposal of the proceedings. Implicitly, it also seeks an order dismissing the Insolvency Application.

81. In my judgment, the Insolvency Application is obviously unsustainable. It is procedurally misconceived and it discloses no reasonable grounds for a claim within the framework of the Insolvency Rules.

81.1. Firstly, the Insolvency Application was apparently issued, under the *Insolvency Act 1986.* This can now be taken to have been on the footing that the Company was in administration. However, it was purportedly issued on behalf of the Company, as joint Applicant, without the Administrators' authority notwithstanding that the statutory power to bring legal proceedings on behalf of the Company was vested in the Administrators, not Mr McGuinness. To compound this error, the Administrators were joined as respondents together with Goldentree. There could be no obvious reason to join Goldentree in the absence of evidence that they had somehow sought to interfere in the administration.

81.2. Secondly, while the Insolvency Application included a claim for an injunction restraining the Administrators from selling the Company's property at Hungerford station, it was founded on the provisions of *Section 19* and *26-28* of the *2000 Act* in respect of Goldentree's security, not the Administrators' statutory powers as officeholders in connection with the administration of the Company. The Administrators were joined in their capacity as administrators only. However, the relevant provisions of the *2000 Act* can have had no direct bearing on the exercise of the Administrators' statutory functions as administrators. No doubt, it was for this reason Mr McGuinness subsequently issued the Composite Proceedings in which he sought to make a claim in his capacity as mortgagor of 17A Mayfield. The Composite Proceedings have now been dismissed but there is no good reason for the Insolvency Application to continue independently. Any residual issues in connection with Mr McGuinness's personal guarantee are not concerned with the administration of the Company; they are best determined in the Possession Proceedings.

82. For the avoidance of doubt, whilst Mr McGuinness has asserted in his third witness statement dated 17 July 2024 that the Administrators have sold the property at Hungerford at an undervalue, this does not form part of the Insolvency Application. However, in the hypothetical event that he seeks to raise such a claim, he is plainly not entitled to advance such a claim on behalf of the Company.

(8) The Disclosure Application

83. The Disclosure Application is contained in Para 3 of the 17 July 2024 Application. It is for relief in obscure terms, namely "an order for limited or specific disclosure in relation to the sale of the property and breach of the injunction pursuant to *CPR 31*". It appears relief is not sought under the *Disclosure Practice Direction*, *PD 57AD*, in respect of the Composite Proceedings. It can thus be inferred that the application is for specific disclosure in respect of the Possession Proceedings or the Insolvency Application.

84. Although "the sale of the property" is otherwise undefined in the 17 July 2024 Application itself, it is apparent from Mr McGuinness's supporting witness statement, itself dated 17 July 2024, that it was intended to be a reference to the sale of the property at Hungerford Station. The reference to breach of an injunction is plainly a reference to a breach or breaches of HHJ Pearce's order dated 26 September 2023. HHJ Pearce's order was made, on an interim basis, under the Insolvency Application. It prohibited the Administrators and Goldentree from marketing or selling the property at Hungerford Station.

85. In Paragraph 80 of his witness statement dated 17 July 2024, Mr McGuinness stated as follows.

> "Contempt applications are not something which should be made lightly, hence why I am applying for specific disclosure of the relevant documents and correspondence in relation to the marketing activities and the sale of the property, to ascertain the extent of the breach and whether false statements have been knowingly or recklessly made in a statement of truth to cover up that breach, before an application for permission for a finding of contempt can be made".

86. The provisions of *CPR 31* are applicable to insolvency proceedings through Rule *12.27(1)(b)* of the *Insolvency Rules 2016.* However, the Insolvency Application has now been dismissed as, indeed, have the Composite Proceedings.

87. In any event, Mr McGuinness has not made out a good case for specific disclosure, whether in the obscure terms sought or at all. The Disclosure Application is dismissed.

88. Firstly, there can be no good reason for Mr McGuinness to be granted such relief in the Possession Proceedings. The Possession Proceedings relate to Mr McGuinness'

property at 17A Mayfield Road, Wooburn Green not the Company's property at Hungerford Station nor do they have anything to do with the interim injunction granted by HHJ Pearce under Insolvency Application. There have not yet been directions for disclosure but, if and when, such directions are given, standard disclosure would generally be limited to documents which adversely affect or support the parties' respective cases in those proceedings under *CPR 31.6.* The Administrators are not parties to the Possession Proceedings.

89. Conversely, the Insolvency Application has been dismissed. To the extent that the Insolvency Application was purportedly issued on behalf of the Company, it was entirely misconceived. Following dismissal of the Insolvency Application, there can be no room for Mr McGuinness's application for disclosure of documents, under this Application, in respect of the sale of the Hungerford Station property. Conversely, if the Administrators or, indeed, Goldentree can be shown to have committed a breach of HHJ Pearce's order dated 26 September 2023, this would not, in itself, preclude subsequent committal proceedings in respect of their putative breaches of HHJ Pearce's order. However, as Mr Booth observed in his submissions for the Administrators, there are substantial restrictions in *CPR 81* on the compulsion of evidence from respondents to an application for committal. *CPR 81.4(2)(m)* and *(n)* provide that a respondent is entitled but not obliged to give written evidence and oral evidence in his defence. Such a party also has the right to remain silent and decline to answer any question if the answer may incriminate him. *CPR 81.7(3)* provides that the court may not give any direction compelling the respondent to give evidence either orally or in writing. Of course, no committal application has yet been issued. Moreover, there is no specific restriction on disclosure in support of committal applications. In principle, it would thus be open to the court in the exercise of its discretion to make an order for specific disclosure. However, for the court to make such an order, particularly good reason would have to be shown for doing so in the overall circumstances of the case. No such reason has been shown in the present case.

90. Secondly, the Disclosure Application does not identify the relevant documentation or searches required. An order for specific disclosure is an order requiring a party to disclose documents or classes of documents or to carry out a defined search, CPR 31.12. The Disclosure Application does not identify such documents or classes of

document nor does it specify the search or searches required. No doubt, in a suitable case, these requirements can be dispensed with. However, applying the overriding objective in CPR 1, including the just disposal of cases and applications at proportionate cost, I can see no good reason in the present case to dispense with such formalities or to adjourn the Disclosure Application for future consideration.

(9) Post Hearing correspondence

91. Following the hearing, on 17-18 December 2024, of the three Applications, Hunters Solicitors LLP, for Mr McGuinness wrote to the Court to raise concerns about the submissions made at the hearing by Mr Booth KC on behalf of the Administrators. By letter dated 13 January 2025, they stated that the Administrators were not required to attend the hearing since they were not party to the listed applications and expressed serious concern about the level of costs incurred by them. They also challenged the case advanced by Mr Booth in relation to Mr McGuinness's application for specific disclosure in support of his potential case based on contempt.

92. By letter dated 15 January 2025, the Administrators, through their solicitors, Brecher, took issue with Hunters to remind them that the hearing had concluded. They stated that it was manifest that they were required to participate in the hearings on the basis that they were named as parties and they challenged Brecher's observations in relation to the contempt issue.

93. By letter dated 23 January 2025, Hunters contended that the Administrators were not parties to the application and had no standing at the hearing to make submissions or seek costs in relation to their applications. They also surmised that Brecher had now conceded their case on the law of contempt.

94. In *R (MH (Eritrea) v SSHD [2023] 1 WLR 482,* Elisabeth Laing LJ observed, at [54], as follows.

> "As a general rule, the parties should not unilaterally send submissions to the court, after the end of the argument, which raise points which should have been raised during the hearing. If, however, there is a matter which has arisen during the hearing, on which they wish to make further submissions, they should raise that with the court during the hearing. The court will then be able decide whether such submissions are necessary. If, after the hearing, counsel wish to raise a

> further point, they should tell the other party or parties, and ask the court's permission before filing anything else. If the point concerns an issue which arose for the first time at the hearing, or which has unexpectedly come to light immediately afterwards, the court may well agree to the filing of further short submissions, provided that the point is raised promptly after the hearing (and subject to a right of reply). An advocate will, however, rarely be given permission to file a document which puts forward arguments which could and should have been made during the hearing."

95. In the present case, this guidance was not followed. The points now by Hunters LLP in their letters dated 13 and 23 January 2025 were not raised at the hearing and it is not suggested they were canvassed with the other parties before they were drawn to the attention of the court. Indeed, in its letter dated 15 January 2025, Brecher stated that it was given no prior notice of Hunters' preceding letter. In any event, it ought to have been obvious from Mr Booth's Skeleton Argument, initially filed well in support of their case for a remote hearing on 21 August 2024, that the Administrators intended to participate and advance a positive case when the Applications arose for disposal at the hearing before me on 17-18 December 2024. The Administrators were parties to the Insolvency Application and Mr McGuinness specifically joined them as parties to the 17 July 2024 Application. Nevertheless, it is worthy of note that the Administrators' submissions, at the hearing on 17-18 December 2024, were focussed narrowly on one discrete aspect of the 17 July 2024 Application only, namely the Disclosure Application.

96. In all likelihood, the issue as to the Administrators' role and participation at the hearing pertains more closely to the incidence of costs than anything else. It remains open to Mr McGuinness or his legal representatives to make such submissions as they think fit in relation to this when this court deals with the costs issues once judgment has been handed down. However, when assessing the costs implications, it will obviously be necessary for the court to consider the contemporaneous correspondence as a whole including all *Calderbank* or *Part 36* offers, if any.

97. For the avoidance of doubt, whilst I was persuaded, in argument, that caution is exercisable before determining whether to make an order for specific disclosure against a potential party to a committal application, I was not and am not satisfied

that the provisions of *CPR 81.4* and *81.7* preclude an application for such an order. This is no more than one of the considerations which I have taken into account when determining whether to make such an order.

(10) Disposal

98. Pursuant to the 14 March 2024 Application, I shall thus give summary judgment in favour of Goldentree on Mr McGuinness's 2019 and 2021 Loan Claims and strike out the residue of Mr McGuinness's case in the Composite Proceedings.

99. Conversely, the 17 July 2024 Application is dismissed. This includes *inter alia* Mr McGuinness's application for summary judgment on his 2019 Loan Claim and the Possession Proceedings. It also includes the Disclosure Application.

100. Pursuant to the 10 October 2024 Application, I shall also make an order striking out the Insolvency Application.

101. Following the dismissal of Mr McGuinness's application for summary judgment on his case in the Possession Proceedings, the Possession Proceedings are extant and remain undisposed of. It will thus be necessary for the court to make further directions in the Possession Proceedings. They can then be listed for trial.