

ENGLAND AND WALES / JUDGMENT

Vantage Mezzanine Fund II P & Ors v Patrick Bitature & Anor

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NCN Number [2024] EWHC 3117 (Comm) Claim No: CL-2023-000860 IN THE HIGH COURT OF JUSTICE BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES COMMERCIAL COURT (KBD) 7 Rolls Buildings Fetter Lane London Before MASTER DAGNALL IN THE MATTER OF VANTAGE MEZZANINE FUND II P & ORS (Claimants)

- v -

(1) PATRICK BITATURE

(2) CAROL NZARO BITATURE (Defendants) ADAM BOARD, instructed by Floyd Zadkovich LLP, appeared on behalf of the Claimants EDWARD BLAKENEY, instructed by Stephenson Harwood LLP, appeared on behalf of the Defendants APPROVED JUDGMENTS 4th NOVEMBER 2024

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tenancy”). 3. It is accepted by Mr Blakeney (counsel for the defendants) that the defendants are, respectively in very different amounts, judgment debtors of the claimants who are their judgment creditors. 4. The position, which is common ground as I understand it, is that the defendants are primarily resident or situate in Uganda. The first defendant - who is the husband of the second defendant - owns substantial, at least, interests in various companies (known as the “Simba Group companies,” which, again, are primarily based in Uganda). As a result of dealings where the first defendant is (or is least alleged to be) guarantor there was an arbitration, arising from various agreements which are, in one way or another, governed by the laws of Uganda, which resulted in an award on 31 July 2023 for a sum of somewhat in excess of US\$25m to be paid by the first defendant and others to the claimants. 5. The claimants made an application to the Commercial Court to be able to enforce the arbitration awards both as to the monetary elements that I have identified and also as to various non-monetary elements of the awards. 6. On 17 January, Cockerill J granted a freezing injunction in relation to the claimants’ monetary claims which included a provision that [4]: “Until further order of the court the respondents ...” who included the defendants before me “... must not deal with or dispose the leasehold title of ...” (and then the property was identified). 7. On 21 January 2024, Cockerill J made an order granting the claimants permission to enforce the arbitration award and providing that: Transcribed from the official recording by eScribers “Judgment should be entered against the fifth defendant to pay the first claimant US\$25,444,630.43, with compound interest at the rate of 13 per cent per annum, with quarterly rests from 16 February 2023 to the date of award, and built a similar interest rate from the award date until full payment was made. Further, that he and the second defendant before me, as well as other parties, should jointly and severally pay the claimants £213,523.30 and US\$36,030 as legal costs plus six per cent compound interest per annum, with quarterly rests in respect of the costs and expenses of the arbitration beginning from the date of the award.” 8. There was a further provision for the defendants before me and other parties to pay the costs of the application before Cockerill J; but those costs have either not been assessed or are subject to set-offs and form no part of the charging order applications before me. 9. The first defendant (Mr Bitature) is, thus, liable as judgment debtor for a very substantial sum of money indeed; whereas the second defendant (Miss Bitature) is liable for a much lesser sum but still well in excess of £200,000. 10. The next material event was the grant of the tenancy. Following that, the claimants made their application for the judgment debts that I have identified to become the subject matter of charging orders over the defendants’ interests in the property.

11. Master Armstrong, without notice and on the papers, granted (as is usual in these cases) an interim charging order on 12 July 2024. The terms of that interim charging order were, in one sense, incorrect; as they provided for the entire amount owed by the first defendant to be charged on the interest of not only the first defendant in the leasehold property but also the interest of second defendant in the leasehold property; but that was corrected by me when the matter came before me on an inter partes basis on 3 September 2024. 12. At that hearing (as here) Mr Board, of counsel, appeared before me for the claimants and Mr Blakeney, of counsel, for the defendants. At this hearing, as at that on 3 September 2024, I have taken into account all their submissions (both written and oral) in coming to this

judgment, even where I do not mention particular points. 13. The making of the charging order final was resisted by the defendants on various grounds set out in a witness statement of the first defendant dated 26 August 2024. One particular point which was made was that it was said that there were two substantial creditors Transcribed from the official recording by eScribers of at least the first defendant (and potentially also the second defendant) whose interests ought to be taken into consideration; although the witness evidence did not identify who those two creditors were. At first sight it seemed to me to be evident from Cockerill J's order that one of the creditors was known as KCB. 14. Having heard submissions from the parties on 3 September 2024, I decided on the basis of a particular undertaking given by the defendants with regards to the rental from the tenancy having to be used to discharge mortgage payments due to the legal mortgagees (Barclays Bank PLC, who holds a first legal mortgage over the leasehold property) to direct an adjournment. This was primarily in order to enable the two creditors to be identified and to be served with notice of the charging order proceedings and to be given an opportunity to object to them. I made orders that the two creditors were to be identified, that they be served, and that they be given a time period in which to object. 15. As far as the adjournment was concerned, I was told that there was a hearing due to take place before a Commercial Court judge with regards to the question of enforceability of the arbitration award on 11 October of this year. In order to seek to obtain an efficient use of court resources and otherwise to comply with the overriding objective (Civil Procedure Rule 1.1), I directed that the charging order applications would be put before that judge - should they have sufficient time - for them to decide as a matter of discretion as to whether or not to hear and/or to determine them, that judge then having the advantages of having heard whatever submissions had been made in relation to the arbitration award and of having a more full picture than me. 16. However, since it seemed to me both that the judge might not have enough time to deal with the matter and might also regard it as appropriate as a matter of discretion not to deal with it, I provided for this hearing to effectively be a provisional reserve date. 17. The matter did in fact come before HHJ Pelling KC (sitting as a Judge of the Commercial Court) on 11 October 2024, and he decided both that he had insufficient time to deal with the matter and that, in the circumstances of the case, it was more appropriate for the usual course of a final charging order application being determined by a Master to be adopted in this particular instance; all with the result that a final charging order question is now before me to decide. Transcribed from the official recording by eScribers 18. In the meantime, the two alleged creditors of the first defendant had been identified as being ABSA Bank and KCB Bank both in Uganda. Both banks were served - one by email and one by delivery to their registered office - and I have certificates of service which satisfy me, as is indeed it is common ground, that proper service took place within sufficient time for them to object (as provided for by my order of 3 September). Neither bank has sought to object to the charging orders being made final.

19. Mr Bitature provided a second witness statement of 16 September 2024, in which he gave more information as to the financial situation in relation to those two banks; including that: the ABSA Bank was taking proceedings to enforce debts which included a personal guarantee given by him (the first defendant); and the position in relation to KCB Bank was that there was a facility agreement in existence which had some time at least still to run, and that, as that terms of the facility were presently being met, no enforcement action was in prospect. The debts in relation to the ABSA Bank were said to be a total of in the region of US\$18m and in relation to the KCB bank in the region of US\$40m. 20. The claimants' case - at least in its initial form - is relatively simple. They contend that they have substantial judgment debts; that there is a property available in this country against which enforcement might take place which is, in any event, owned by the judgment debtors, and, accordingly they should be granted a charging order to give them: in the first place, security over the property; and, in the second place, an ability to then enforce that security in order to enable (in the case of the first defendant) part satisfaction of the judgment debt owed by him, and (in relation to the second defendant, at least potentially, there has been no suggestion before me that she has anything other than a 50 per cent beneficial interest in the property) entire satisfaction of the judgment debt owed by her. Those consequences being said to be the natural financial consequences of the fact that, as is relatively common ground before me, the leasehold property, after allowing for the first charge in favour of Barclays Bank PLC, has a residual equity in the region of £1.3m, potentially at least, to be decided between the defendants equally. 21. Both parties have taken me to the provisions of the Charging Orders Act 1979 and in particular section 1. I note, first, from the wording of the section itself that the court's ability to grant a charging order is itself a discretionary ability, as is made clear not only from the authorities but from the use of the word "may" in section 1(1). Second, I note that in subsection 1(5) it is provided that: Transcribed from the official recording by eScribers "... the court will consider all the circumstances of the case when deciding to make a charging order (including whether to make it final) but will in particular have regard to ..." the two matters there identified being "the personal circumstances of the debtor and whether any other creditor of the debtor would be likely to be unduly prejudiced by the making of the order." 22. The parties have also taken me to the White Book notes at section 73.4.5 of Volume 1 of the White Book, which read as follows: "General principles The general principles governing the exercise of the discretion to make an order may be summarised as follows.
- (1) The question whether an interim order should be made final is one for the discretion of the court.
 - (2) For the purpose of the exercise of the Court's discretion there is no material difference between third party debt orders and changing orders.
 - (3) In exercising its discretion the Court must take into account all the relevant circumstances whether they arose before or after the interim order.

- (4) The Court should exercise its discretion equitably having regard to the interests of all parties involved, including other unsecured creditors, as well as those of the judgment creditor and the judgment debtor. (The above principles, stated in *Roberts Petroleum Ltd v Bernard Kenny Ltd* [1982] 1 W. L. R. 301, CA are not affected by the reversal of the case by the House of Lords; [1983] 2 A. C. 192).
- (5) The liquidation of a company, whether by resolution or by order for compulsory winding-up brings into operation a statutory scheme for dealing with the company's assets and accordingly if a winding up occurs before the final order the Court will decline to make a final order (*Roberts Petroleum Ltd v Bernard Kenny Ltd* [1983] 2 A. C. 192, HL). The same principle would apply if an individual is made bankrupt after the interim order but before the final order.
- (6) In *Roberts Petroleum* (above) it was also held that the burden of showing cause why a final order should not be made is on the debtor. However, this point was doubted in *National Guild of Removers and Storers Ltd v Jones (t/a ATR Removals)* Transcribed from the official recording by eScribers
- [2012] EWCA Civ 216 and generally today it is not helpful to attempt to decide the issue by reference to a burden of proof.
- (7) In *Packman Lucas Ltd v Mentmore Towers Ltd* [2010] EWHC 1037 (TCC), Coulson J said at para.25: "I consider that it is potentially dangerous for a court to identify any hard and fast rules that seek to link the size of the debt with the ability to obtain a charging order or an order for sale." Neither statute nor the rules place a minimum limit on the size of the debt before a charging order can be obtained. The size of the debt is one of the factors to be taken into account in the exercise of the court's discretion. In practice the courts take a different attitude to the granting of a charging order (which, of itself, merely gives security) than to the making of an order for sale: see further the commentary to r.73.10.
- (8) The court has a discretion which will not be interfered with on appeal unless exercised on a wrong principle (*Wicks v Shanks* (1893) 67 L. T. 109).
- (9) Where execution by writ of control has been stayed on terms that the defendant pays by instalments (or similarly, where the court has ordered payment by instalments pursuant to r.40.11) and where the defendant is complying and thus is not in arrears, the Court may properly exercise discretion not to make a charging order (*Mercantile Credit Co Ltd v Ellis*). See also para.73.4.4 above.
- (10) For the considerations which arise on an application to discharge a final order upon supervening bankruptcy, see *Jelle Zwemstra Ltd v Walton and Stuart* [1997] C. L. Y 3002 (and see para.73.4.6)." 23. into this judgment. They have also taken me to the decision in *Roberts v Bernard Kenny* [1982] WLR 301, but there is no suggestion that the White Book notes do not accurately set out the principles as decided in that judgment and to the extent that the Court of Appeal's judgment was affected by it by the House of Lords' judgment in [1983] AC

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24. Mr Blakeney has also taken me to the statements of the authors of Charging Orders on Land 2nd Edition at paragraph 3.105 which has a relevant footnote 192 which contains the following: "... There is currently no minimum level set by statute or the court rules for a judgment creditor to obtain a charging order. What is more, the making of a charging order itself merely gives security, leaving any question of enforcement (as by sale) to a future occasion. Therefore it is hard to see how or why a charging order should be refused on such a basis, certainly where the debt exceeds the bankruptcy level..." 25. In his witness statements Mr Bitature has raised a number of matters which he and Ms Bitature contend are relevant circumstances to which I should have regard under the statute and which should lead to me not making the interim charging orders final. That witness evidence has been expanded upon by Mr Blakeney in his submissions, although I make clear that I am taking all of his submissions into consideration, as I have the submissions of Mr Board.
26. Mr Board submits that these are substantial judgment debts which have remained owing for a significant period, and that there is an obvious public policy in favour of judgment creditors being able to enforce against assets of the judgment debtor. He submits that this leasehold property and its equity are substantial assets of the judgment debtors; and that in those circumstances the judgment creditors should be granted final charging orders both so that they have security and that they are able to bring further proceedings under the charging orders to enable the property to be realised and the proceeds applied towards the judgment debts.
27. Mr Board further points to the fact that if - which he accepts for the purpose of this hearing although he does not accept necessarily generally - the existence of the worldwide freezing order does not prevent sub-tenancies being granted on the property, it is all the more s important that this judgment creditor should have security. But, in any event, he submits that this (the granting etc. of charging orders) is a process sanctioned by Parliament and the Civil Procedure Rules to enable the judgment debtors' assets to be used to discharge their judgment debts; and that is completely appropriate in the circumstances of this case. 28. He further points out that the court would not at this stage be ordering sale of the property or appointing a receiver or the like. That would be a matter for further proceedings Transcribed from the official recording by eScribers which, although they might be taken in this Division of the High Court, are more usually in accordance with the relevant Practice Direction - even though it has held not to be binding - to be taken in the Chancery Division.
29. Mr Blakeney reminds me that the court has a discretion and must exercise it having regard to all the circumstances, including the particular matters which are set out in section 1(5) and matters which are referred to in the authorities, being in particular the commentary which I have cited from the White Book although he also relies on the statements of the authors of the Charging Orders on Land textbook. 30. I, therefore, consider the particular circumstances which he and the defendants have raised as follows. 31. First, he refers to the existence of the debts and obligations owed to the ABSA Bank and the KCB Bank although he

accepts that they are unlikely to have much weight in my consideration. It seems to me that he is right to take that particular course. 32. I do have regard to the existence of those asserted debts because section 1(5) requires me to do so, as does the case law as made clear in paragraph (4) of the White Book notes at 73.4.5. That all seems to me to be quite correct as the effect of making a charging order final will necessarily be to the prejudice of other unsecured creditors because the final charging order creates a security interest in favour of the relevant judgment creditor which security interest will take priority over not merely a bankruptcy but also any process of enforcement conducted by those other creditors. 33. However, as Mr Blakeney accepts, section 1(5)(b) of the 1979 Act requires the court to have particular regard as to whether any other creditor would be likely to be “unduly” prejudiced by the making of the order. Such undue prejudice can arise in a number of situations, including (but not limited to) where the other creditors are seeking to actively pursue their debts but the relevant judgment creditor has simply got in first. 34. However, the situation here is that those other creditors do not seem to have any particular desire or intention to pursue in this country the obligations owed to them. They have been given express notice of these proceedings, and of their ability to object; and they appear to have taken the decision not to raise any objection. It seems to me that it is perfectly legitimate for me to, at least, infer that they have decided that whatever other routes are open to them, particularly in Uganda, are sufficient for their purposes. Transcribed from the official recording by eScribers 35. In those circumstances it seems to me that there is no undue prejudice and I should only give limited weight - albeit I should still have regard to - the interests of those creditors. 36. One particular matter which was raised by Mr Bitature that has caused me some concern is that he asserts that those other creditors have some sort of priority or rank over the claimants under Ugandan law. However, the relevant Ugandan law and the process for coming to that assertion have not been identified in Mr Bitature’s witness evidence. Notwithstanding that it seems to me that it is relatively common ground that all of the various financial instruments, including those relied on by the claimants, are governed by Ugandan law; it does not seem to me that I can give any weight to this aspect simply because I have no evidence of Ugandan law before me. It does not seem to me that it is sufficient evidence of Ugandan law for me to simply have a statement from Mr Bitature; who has provided no evidence at all of expertise in Ugandan law, and where the circumstances are that those other creditors have not sought to assert any such priority. 37. In these circumstances it seems to me that I simply have to act on the usual basis that the law of Uganda - as of any other foreign state - is presumed, in the absence of real evidence to the contrary, to be the same as the law of this country; and there is nothing in the law of this country which renders one unsecured creditor as having priority over another. In those circumstances I give no weight to that particular assertion of Mr Bitature. 38. Secondly, Mr Blakeney and Mr Bitature rely on the existence of the tenancy and of the tenant. They say that the tenancy will last for another three years - effectively freezing the position. 39. That contend that that it is inappropriate to make a final charging order at this point because that will trigger an attempt to enforce the final charging order being made by the claimants; which attempt, rather than assisting the proper use and disposal of the defendants’ assets,

will in fact have the contrary effect and outcome, and will prejudice both the defendants and their other creditors as well as simply the tenant. 40. They claim that that is the case primarily because Mr Blakeney asserts that if a sale takes place now it will result in a sale without vacant possession, and which will be at a price less than that which would be obtained if there was a sale with vacant possession. Mr Blakeney submits that I should take judicial notice of that as a general principle. Transcribed from the official recording by eScribers

41. Mr Board says that no such evidence exists and, in any event, it would be a matter for a court considering the enforcement of a final charging order.
42. Mr Blakeney responds to say that, while a court could consider this by seeking to enforce a final charging order, nonetheless it is a material circumstance to which I should have regard now. 43. It seems to me that I should place distinctly little weight on those particular arguments for four reasons. Firstly, it seems to me that there is real value to be obtained, as far as a judgment creditor is concerned, by having a final charging order now. One effect of such a grant is that there are granted security for the judgment debt. 44. That security is of use in itself in terms of protecting the judgment debt against other creditors seeking their own security over the leasehold property. However, it is also further of value to the judgment creditor in terms of protecting the judgment debt against any possible bankruptcy which might occur - either as a result of creditors who presently exist or creditors who is may come into the existence in the future. 45. Secondly, it seems to me that those arguments are primarily arguments to be deployed at the time of the possible enforcement of a final charging order. The judgment creditor may, of course, take the view that the arguments have substance (either legally in terms of what a judge might order or commercially in terms of making it desirable to postpone the enforcement proceedings in relation to the final charging order), but, even if the judgment creditor decides it is in their interests to make an application to enforce immediately or before the tenancy comes to an end, it seems to me that this sort of point is really one for the judge considering such an application at the time when it arises. 46. Thirdly, if the judgment creditor does decide to delay in enforcing the charging order, the existence of that security will have a further advantage and benefit to the judgment creditor in that it would, at least in principle, have priority over any further matter which comes into existence in relation to the leasehold property; in particular if, for any particular reason, the defendants decide to grant some further tenancy(ies). Assuming - it seems to me as I have to for the purposes of this hearing - that the granting of tenancies are not a breach of the freezing order; it seems to me that it is not wholly unreal to consider that the defendants may wish to take some further step of that nature bearing in mind that they have already Transcribed from the official recording by eScribers taken the step of granting the tenancy notwithstanding the existence of the enforcement of the arbitration award proceedings and the worldwide freezing order. 47. Fourthly, it does not seem to me that I have any real evidence to say that a sale at this point would result in a sale at some sort of undervalue owing to the existence of the tenancy. It seems to me that that would be a matter for expert evidence. The grant of a tenancy does not necessarily diminish the sale value of a

property. In some circumstances it can enhance it. The rental of the tenancy should, at least in principle, be an open market rental, and also a rental which allows for the fact that the tenancy has its term of three years but (at least under the law as it stands at present) an absence of statutory protection. In that latter regard, I am conscious that both at the time of the grant of a tenancy and now there are questions as to whether assured shorthold tenancies may lose present statutory advantages which are given to a landlord albeit with that any new legislation may enable the landlord to obtain possession if they wish to sell the property. Those legislative possibilities may have affected (by way of uplist) the level of rental dependent on all the circumstances; but I make clear that I have to consider the position in the light of the law as it is rather than what it may become. 48. Third, Mr Blakeney suggests that there may be other assets owed by the defendants against which enforcement may take place, although it seems to me to be common ground that the property is the only asset within this jurisdiction. 49. It seems to me that I should give very little weight as to that consideration for the following reasons. 50. Firstly, I am concerned with a judgment debt which exists within this jurisdiction as a result of Cockerill J's order; and it seems to me that in principle a judgment creditor who has a judgment debt enforceable in this jurisdiction should be entitled to enforce it against assets held within this jurisdiction. 51. Secondly, I have no evidence about any such other assets, and where the defendants have not, at least on any evidence before me, sought to realise or propose should be used to be realised to discharge the judgment debts. 52. There is some evidence before me that there have been without prejudice negotiations; but I have not been given any evidence as to what those negotiations are or what they are about, and it seems to me that, since they are under the veil of without prejudice privilege, I should not consider them. Transcribed from the official recording by eScribers 53. Fourth, Mr Bitature and Mr Blakeney refer to the existence of a freezing order and say that the effect of that should be enough for the claimants. 54. Again it seems to me that I should give little weight to this aspect. Firstly, the freezing order is only that: a freezing order. It does not give rise to any security interest and, for reasons which I have already given, the security interest on its own it seems to me would be of value to the claimants in terms of preserving their judgment debts and their ability to enforce. 55. Secondly, the freezing order does not give any ability to enforce in its own right. It preserves assets so that a creditor who obtains judgment - as these creditors have - will be able to enforce against those assets. It seems to me that the assertion of the existence of the freezing order as being a reason as to why enforcement should not take place is, in fact, contrary to its purpose rather than supportive of its purpose. 56. Fifth, Mr Bitature and Mr Blakeney refer to the fact that Mr Bitature's evidence is that the property is regarded by the defendants as being their English home, that they resided there with their family up to 2018, and they are said to have certain financial and medical insurance and other connections to the property. 57. Again, it seems to me that these are matters of relatively little weight. Firstly, the court very regularly grants charging orders against judgment debtors' sole residences in this country - that happens very often indeed - and, although the nature of the residence and a person's connection can very much be a relevant circumstance as to whether to make a charging order final as well as to when it

should be enforced, it seems to me that the defendants' connection with this property is substantially less than the connection which exists in the usual course of events. 58. This property, albeit it is their home in this country, is owned by them in circumstances where their situation and primary home seems very much to be elsewhere, as is evidenced by the fact that they have not resided in it since 2018. 59. Secondly, the fact they have not resided there since 2018 very much emphasises the limited degree of their connection with the leasehold property, as does the fact that they have chosen to let it out for three years from May of this year. Transcribed from the official recording by eScribers 60. Thirdly, I do not understand what is said to be the "financial and medical insurance connections" which were singularly unexplained in Mr Bitature's witness statement. 61. Sixth, Mr Blakeney and Mr Bitature refer to the existence of without prejudice discussions. It does not seem to me that I can place any weight on those. 62. Firstly, the fact that there may (itself a somewhat speculative concept) be negotiations about how a debt is to be discharged does not seem to me to be any reason why the judgment creditors should not be granted a final charging order. That fact might, in some circumstances, be a reason as to why enforcement of the charging order should be deferred or limited; but I cannot see why the existence of negotiations should stop the creditor seeking to protect themselves in relation to their judgment debt or, even at first sight, to enforce. The creditor is simply entitled to be paid. 63. Secondly, I have no detail of those negotiations at all; and in those circumstances it simply seems to me that I cannot assess whether they would have any material consequence with regards to the charging order questions. 64. Seventh, Mr Blakeney and Mr Bitature refer me to a comparison of the amounts and size of the debts, including also the debts owed to the other creditors, as against the amount of equity in the property. Mr Bitature refers me in particular to the White Book commentary in 73.4.5 paragraph (7) and to the Charging Orders book at 3.105. 65. As to see this I remind myself again that the other banks (ABSA and KCB) have decided not to make any objection. In those circumstances, where the only creditors who have been identified do not seem to wish to object, it does not seem to me that it is a situation where I should be considering to any great extent the interests of numerous other creditors who might be prejudiced by the existence of a charging order in a bankruptcy. 66. Otherwise, as far as the quantum points are concerned it seems to me that I should accept Mr Board's submission that - as would seem to be suggested in the White Book note - the question of quantum is more a question as to whether granting a charging order is a proportionate remedy in circumstances where a debt is small rather than where a debt is large. I cannot myself see any reason as to why a judgment creditor should be prejudiced simply because they are owed a lot of money rather than a lesser sum. Transcribed from the official recording by eScribers 67. It does seem to me that a question may arise as to whether it is appropriate to grant a charging order where the relevant asset is only of very limited value. There, again, questions of proportionality would arise but it does not seem to me that that is the case here. 68. The equity is suggested to be in the region of £1.3m. Even if that is to be diminished by matters relating to potential sale costs and legal costs, the equity of each debtor is, it seems to me, substantial and significant. Although it may be very small in relation to the judgment debts owed by the first defendant, it seems to me that that is neither

here nor there. This is a significant asset; and these are significant assets against which a significant judgment creditor seeks to enforce; and it seems to me that in principle they should be able to do so. 69. I have had regard to all the circumstances, but even if I was to give somewhat more weight than I have indicated in this judgment to any one or more of the particular matters which have been advanced to me, it still seems to me that the balance very firmly falls in favour of enabling these judgment creditors to both have protective security and the potential

- although it would be for another judge - ability to enforce that security; that being for all the reasons which I have given. 70. I have had regard to the circumstances. I have had particular regard to the matters in section 1(5). I have had regard to the principles set out in the White Book commentary and also the other textbook. 71. It seems to me that it is clear that I should make these charging orders final and I will do so. (Luncheon adjournment) (Following further submissions) MASTER DAGNALL: 1. 2. I am now considering an application by the defendants for permission to appeal. Mr Blakeney accepts, under Civil Procedure Rule 52.6 that in a case such as this: "Permission to appeal may be given only where—
 - (a) the court considers there is the appeal would have a real prospect of success; or Transcribed from the official recording by eScribers
 - (b) there is some other compelling reason for the appeal to be heard." 3. Mr Blakeney accepts that I have sought to exercise a discretion; and that an appeal court will only allow an appeal in relation to an exercise of a discretion in particular circumstances; being, in particular, where the court has not taken into account something it should have taken into account, or has taken into account something it should not have taken into account, or has made a specific error of law, or has come to a conclusion no reasonable court could have reached. 4. He submits that I have made an error of law in terms of failing to give sufficient weight to the relative sizes of the judgment debts and the values of the defendants' interest in the property; and he submits that in those circumstances he has a real prospect of persuading an appeal court that my exercise of discretion is tainted and, hence, flawed. 5. 6. I do not consider that an appeal would have real prospect of success. Firstly, it seems to me that I have simply applied the ordinary principles of law to this case; and as set out in my reasoned judgment. 7. Secondly, it seems to me that Mr Blakeney's attempt to describe what I have found as being or including an error of law is really an incorrect describing of what was actually an exercise of evaluative discretion in terms which could be used to seek to justify an appeal. I mean no criticism of Mr Blakeney there; that is simply the advocate's usual role and task but it does seem to me that I have simply engaged in an evaluative question of discretion. 8. Thirdly, even if, in some way or other, I did not give as much weight as I did to one or more factors, it still seems to me, for the reasons given in my judgment and as I stated in my judgment, that the balance would come down clearly in favour of making a charging order final. 9. I, therefore, do not consider that an appeal would have a real prospect of success. 10. Although in some ways the question as to the importance of the

quantum of a large debt and its proportionate relationship to the value of the asset in question might be seen to be a matter of some sort of principle, it does not seem to me that there is any other compelling reason for an appeal to be heard. It seems to me that the principles are well- settled; and, as I have said, that when applying to this case they come down in favour of a final charging order being granted. Transcribed from the official recording by eScribers 11. For all those reasons I am going to refuse permission to appeal. 12. I note, with some irony, that this potentially further justifies HHJ Pelling's decision to require the final charging order to be listed before me rather than it being determined by a Commercial Court judge. 13. As permission to appeal has been sought from me, my order has to contain various provisions as required by Civil Procedure Rule 40.2. CPR40.2(3) and (4) require it to state that "an appeal lies from the judgment order to the High Court Judge". I am then to give an indication of which would be the relevant Division of the High Court, and I will hear further from the parties in a moment as to that. 14. The order must also record that I do not give permission to appeal and also that a further application for permission may be made to the appropriate appeal court, and which again requires me to identify the Division to which any further application for permission may be made. Again, I will hear further from the parties as to that. 15. It will also be necessary for me to fill out the relevant form (being N460) giving my short reasons for refusing permission to appeal, and as to which I wish to be reminded by the parties when they submit the form of order from this hearing although I may already have prepared it by then. Approved 25.11.2025

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