Neutral Citation Number: [2021] EWHC 2059 (Ch)

Case No: BL-2019-LDS-000004

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS IN LEEDS
BUSINESS LIST (ChD)

Leeds Combined Court |Centre
1 Oxford Row
Leeds LS1 3BY
Date: 22/07/2021

Before :

HH JUDGE DAVIS-WHITE QC
(SITTING AS A JUDGE OF THE HIGH COURT)

- -

Between :

(1) MR WILFRED THACKRAY	**Claimant**
(2) MRS RITA THACKRAY	
- and -	
MR KENNETH WISE	**Defendant**

- -
- -

Mr Kenneth Wise in person
Mr Douglas Cochran (instructed by Lyons Davidson) for the Claimants

Hearing dates: 15 July 2021

- -

Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

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HH JUDFGE DAVIS-WHITE QC (SITTING AS A JUDGE OF THE HIGH COURT)

Covid-19 Protocol: This judgment is to be handed down by the judge remotely by circulation to the parties' representatives by email and release to Bailii. The date and time for hand-down is deemed to be 22 July 2021 at 10am.

HH Judge Davis-White QC :

1. On 16 July 2021 I had before me the application of Mr Kenneth Wise (the "Applicant" or "Mr Wise") to re-hear his application dated 8 April 2021 whereby, in the box on the Application Notice under the question "What order are you asking the Court to make and why" he had inserted:

> "*A Order of a CHARGING ORDER that I am told is not issued ON MY Freehold Property and an official stamped letter confirming that there is no charging order on my freehold property from the Court and my eviction was ILLEGAL."*

2. That application had been considered on the papers by DJ Geddes who by Order dated 28 April 2021 had struck out the same as "disclosing no reasonable grounds for bringing the Application and being an abuse of process and is marked as totally without merit". The recitals to that order were four in number as follows:

> (1) It [the Application of 8 April 2021] appears to be a further challenge to a Charging Order and Order for Sale obtained by the [Respondents] over a property formerly belonging to Mr Wise;
>
> (2) The issues raised have been put before the Court on several occasions and dismissed on each occasion;
>
> (3) The Application is incoherent but does not appear to raise any new issue that requires a hearing;
>
> (4) Mr Wise has no remaining interest or standing in relation to the Property in question.

3. By the same Order, DJ Geddes directed that the matter be referred to a Judge with jurisdiction to consider the making of a General or Extended Civil Restraint Order.

4. As DJ Geddes' order was made on the papers without a hearing, Mr Wise had the right, which he exercised, to have the matter reconsidered at an oral hearing.

5. Meanwhile, the question of the making of a civil restraint order ("CRO") was referred to me and I decided that it should await the outcome of any requested reconsideration.

6. Rather than have two hearings, DJ Geddes decided that it was appropriate for the oral hearing of the renewed application and the question of the making of a CRO should be sensibly heard at the same time before the same Judge. That is how Mr Wise's application of 8 April comes before me. The hearing proceeded by video link through the cloud video platform of HMCTS. Mr Wise attended that hearing on the platform by telephone. He did not raise any point that the mode of hearing was in any way unfair to him or inadequate.

7. In renewing his 8 April 2021 application, Mr Wise issued a further application dated 5 May 2021. Under the caption "What order are you asking the court to make and why?" he inserted the following:

> "For the Order of sale to be removed on the property that is freehold and cannot be evicted by law because the land and property law is stated that eviction cannot be carried out if the freehold/title absolute/title by registration is on the land registry report that is part of the conveyance deeds and I wish the order of 28 April to be set aside".

8. On 16 April 2021, I made an order dismissing the applications of Mr Wise that I have referred to and I also made an extended CRO against him. I said that I would provide my reasons in writing later. This judgment contains those reasons.

9. On the application I heard Mr Wise in person and for the Thackrays I heard from Mr Douglas Cochran of counsel. I am grateful to Mr Cochran for his helpful submissions, both oral and written. I am also grateful to Mr Wise so far as he attempted to keep his anger and frustration in check.

10. The applications and the making of a CRO arise against a long legal history that I will have to go into in some detail. Before I do so, by way of quick route map, I explain that:

    i) Matters originated in a boundary dispute between Mr Wise and the Thackrays, the then owners of adjoining properties.

    ii) Mr Wise brought proceedings against the Thackrays complaining that they had encroached upon the boundary of his property at 40, Deanshurst Gardens, Gildersome Leeds ("No 40"). The Thackrays lived at and owned next door, No 42 Deanshurst Gardens ("No 42"). Those proceedings were county court proceedings at the county court at Leeds with the number B35YM271 (the "Leeds Boundary Proceedings").

    iii) In April 2017, I gave a judgment on a preliminary issue holding that Mr Wise was wrong in his contentions and that there had been no encroachment upon his boundary. Following that, an order for costs was made in favour of the Thackrays, to be paid by Mr Wise.

    iv) The costs were subject to a detailed assessment. Mr Wise not having raised any disputes on the Thackrays' bill of costs, the costs of the claim were allowed and a total sum of over £115,000 fell due.

    v) Mr Wise did not pay this sum. The Thackrays obtained charging orders in respect of the sums owed. As various further costs were awarded against Mr Wise, those costs were also added to and secured by the relevant charging orders.

    vi) In the current proceedings, and in reliance upon the charging orders, the Thackrays sought an order for sale and an order for vacant possession. Such order was granted by DJ Jackson in April 2019.

    vii) Later in these proceedings, permission was given to the issue of a writ of possession. The writ was enforced. The order for sale was also given effect to and No. 40 was sold. The sale completed in about December 2020. The sale

price was £110,000 and so the debts owed by Mr Wise to the Thackrays under the various court orders were not discharged in full.

viii) Various applications have been made by Mr Wise in the current proceedings and in the original county court proceedings seeking, in effect, to challenge my judgment and/or the charging orders and/or the orders for sale and vacant possession. The relevant applications have all been dismissed. Further, at various times, Mr Wise has been subjected to different CROs.

11. With that general chronological overview, I descend to some more detail. I also take some of the following from my judgment in the Leeds Boundary Proceedings dated 13 April 2017 (the "Leeds Judgment"). I should add that in the applications before me on this occasion, Mr Wise apparently sought to revisit points already dealt with by the court in the Leeds Judgment.

12. In about June 2015, a white line was painted showing, as it happens, what Mr Wise said in the Leeds Boundary Proceedings, was the boundary between No. 40 and No. 42 (Leeds Judgment paragraph [21]). The result of this was a report to the police by Mr Thackray and Mr Wise was charged with criminal damage (Leeds Judgment paragraph [22]).

13. In the meantime, the Leeds Boundary Proceedings were commenced in July 2015. By the time of the trial before me in February 2017, Mr Wise asserted that the Thackrays had encroached onto his land and onto land publicly owned by the local authority. This encroachment took the form primarily of the building of pillars and gates (hung from the pillars) at locations that he said were outside the property which formed No 42 (Leeds Judgment paragraph [8]). These gates essentially purported to extend the boundary of No 42 westward and also involved, Mr Wise asserted, the Thackrays demolishing a former wall which lay behind the new gates and which had formed the boundary of no 42 (Leeds Judgment paragraph [8]). As regards the works that he complained of, he also asserted that the relevant works were effected in breach of planning law (though not, as I recall, as part of his pleaded case).

14. On 9 October 2015, in the Leeds Boundary Proceedings, DJ Geddes made an order (among other things) that unless the Thackrays filed and served a fully particularised defence within 14 days their defence would stand struck out and the claimant would be entitled to a judgment on his claim. She also ordered that if they failed to attend the next hearing (an allocation hearing) or to serve the fully particularised defence as ordered then the court would make an order in favour of the claimant in such terms as it thinks just. The recitals to the order include one that Mr Wise had clarified that his claim was for the following relief: an order that the defendants remove any structure encroaching on his land or over which he had a right and for damages of £10,000.

15. This seems to be the origins of Mr Wise's belief and submission to me on the current applications, that the boundary dispute had been determined in his favour by DJ Geddes who had ordered the Thackrays to pay £10,000. I have not spent time trying to research the voluminous court file to determine precisely what followed on. My recollection (which may be faulty) is that no judgment was entered, a defence being lodged as required. However, even if I am wrong, by the time of the trial before me in February 2017, if there had been a judgment in default it had clearly been set aside. Had there

been a judgment which survived, the trial before me would have been unnecessary and would not have taken place.

16. On 13 November 2015, the criminal charges came before Leeds Magistrates Court. In the Leeds Judgment I said the following at paragraphs [22] to [24]:[1]

> " [22]……The court record shows clearly that there were two charges of criminal damage. One charge related to alleged damage to some of Mr Thackray' s paving slabs. The other related to alleged damage to the public highway. Both charges were dismissed on no evidence being offered. The circumstances in which this occurred are set out clearly in a letter from the CPS to Mr Thackray dated 16 November 2015. Having referred to a review of the case, conducted by the writer, the letter goes on to say:
>
> > *"I have taken the decision that the charge cannot proceed in the criminal court as I understand that there are on-going matters in the civil courts. The damage to the pacing slabs would thus involve the criminal court resolving issues outside its remit and in view of this the charge was stopped.*
> > *Any decision by the CPS does not imply any finding concerning guilt or criminal conduct; the CPS makes decisions only according to the test set out in the Code for Crown Prosecutors and it is applied in all decision on whether or not to prosecute."*
>
> The latter point is elaborated upon under the heading *"Information for victims'*. After repeating the point that a CPS assessment is not a finding of or implication of any guilt or criminal conduct, it goes on to say: *"It is not a finding of fact, which can only be made by a court..."*
>
> [23] The position is also confirmed by a letter from Mr Wise's then solicitors, Graham Stowe Bateson dated 17 November 2015. The letter makes clear that the Judge considered that she was not prepared to fix the matter for trial as she considered that it was a civil dispute as opposed to a criminal matter. Eventually the prosecution indicated that they would withdraw both matters.
>
> [24] The result is that the Magistrates Court did not examine the merits of the boundary dispute. It dismissed the criminal charges, no evidence in support of them being proffered. Mr Wise however has taken it that the criminal courts have decided not just that the criminal charges against him are dismissed but that the disputed boundary issue was determined in his favour. I take but two examples. First, in a letter relied upon by **him** dated 19 October 2016 he asserted, apparently in relation to the criminal charge relating to the adopted road, that "the Judge clearly stated that Mr Wise cannot be prosecuted for damage to his own land!". Similarly in a letter dated 9 December 2015 (I think to this court) he said of the criminal proceedings that "the Judge said in open court that the land in question was my Land! l ! So if the Defendants' buildings are on my land it is illegal." I do not have a transcript of what was said by the Magistrate but it is clear to me that the Magistrate cannot have reached any view as to whether Mr Wise or the local authority owned the land in dispute as opposed to the Thackrays. This is another example why I have to take care in accepting Mr Wise's evidence unreservedly."

[1] I have corrected some typos.

17. On 21 July 2016, Mr Wise was made the subject of a limited CRO within the Leeds Boundary Proceedings. The order recites, amongst other things, that Mr Wise had made two or more applications in the proceedings which were totally without merit.

18. My judgment on the preliminary issue was handed down on 13 April 2017. One of the complications at this time was that Mr Wise had, during the course of the proceedings, transferred title to no 40 to a third party, his son.

19. On 20 July 2017, the court granted an injunction against Mr Wise requiring him to remove items of his property from the paved area that had been found to fall within the title to No. 42.

20. On 16 April 2018, a 2 year extended CRO was made against Mr Wise by HH Judge Saffman, sitting as a High Court Judge. The order was made in proceedings in the Queen's Bench Division, Leeds District Registry with number D94LS826. This followed the claim in those proceedings being struck out as totally without merit. The proceeding were brought by Mr Wise against the Treasury Solicitor. In them he complained about the refusal of permission to appeal by the Vice Chancellor and in what I think can fairly be described as a general rant, complained about the court system (in relation to the Boundary Dispute and especially the Leeds Boundary Proceedings and the decision(s) of the then Vice Chancellor, Sir Alistair Norris, an "unelected civil servant" in relation to appeals in relation thereto) as being what one would expect in a "Banana republic" and necessitating those proceedings to "fight injustice".

21. By order dated 12 June 2018, an order of mine, by declaration, identified what the boundary was between No 40 and 42. The order recites (among other things) that title to No 40 had by this stage been transferred back to Mr Wise, that the Thackrays were not pursuing their counterclaim for damages for harassment as the matter was the subject of an injunction in criminal proceedings and that Mr Wise had not complied with the earlier injunction granted on 20 July 2017. The order includes a further injunction against Mr Wise requiring him, among other matters, to remove his property from No 42, restraining him from entering, keeping anything on, demolishing damaging, altering and doing various other things to any part of No 42 or its boundaries. It also ordered that Mr Wise pay costs of the proceedings (including the costs of the counterclaim) on the indemnity basis, to the extent that costs had not already been dealt with, but with certain itemised exceptions.

22. Mr Wise made at least one application for permission to appeal my orders to the High Court and permission was refused by then then Vice-Chancellor, Sir Alistair Norris.

23. The Thackrays then commenced the process for detailed assessment of the costs awarded in their favour in the Leeds Boundary Proceedings. On 10 October 2018, a default costs certificate was issued requiring payment by Mr Wise of the Thackrays' costs in the sum of £115,309.40, Mr Wise having failed to raise any points of dispute on the Thackrays' submitted bill of costs.

24. On 18 May 2018 and 17 January 2019 the Thackrays obtained final charging orders over Mr Wise's interest in No 40, securing the costs orders that they had obtained against him (the "Charging Orders"). That of May 2018 secured a sum of over £58,000 under a costs order in the Leeds Boundary Proceedings from May 2016 and that of January 2019 secured a sum of over £71,000 under a costs order in the Leeds Boundary

Proceedings from October 2018. The interim charging order relating to the final charging order in January 2019 was protected by unilateral notice on the register of title to No 40 entered on 20 December 2017.

25. In February 2019, the current CPR Part 8 High Court proceedings, in which I am now giving judgment, were commenced by the Thackrays. Their claim form sought (among other things) an order for sale and vacant possession of No 40.

26. By Order of DJ Jackson (as she then was) dated 12 April 2019, orders for sale and for vacant possession were made, following a hearing at which Mr Wise was neither present nor represented. Such orders only took effect if Mr Wise did not pay the sums then secured by the Charging Orders by 10 May 2019. The sums then secured exceeded £137,000.

27. On 21 October 2019, DJ Jackson made an order granting permission for issue of a writ of possession. A write of possession was duly issued.

28. On 1 November 2019, Mr Wise issued an application notice apparently seeking suspension of the writ of possession. The box in question identifying the order sought and reasons for the application state:

> "Notice of Eviction because the High Court has cancelled the charging order and the Land Registry has cancelled the unilateral notice"

29. The matter was listed as a suspension hearing on 4 November 2019. On that occasion DJ Shepherd dismissed the application with costs, such costs to be added to the judgment debt. The order recites that she heard from solicitors for both the Thackrays and solicitors for Mr Wise.

30. Correspondence was subsequently received by the court from Mr Wise complaining about his eviction in November 2019 and making various points about the matters the subject of the Leeds Boundary Proceedings and also asserting that charging orders could not be made over freehold property. Mr Wise was informed (among other things) that the court could not give him advice and that it dealt with applications and did not engage in correspondence about the merits of cases.

31. By order dated 26 March 2020, DJ Jackson made an order reducing the minimum sale price of No 40 from £175,000 to £110,000 pursuant to an application, backed with evidence, of the Thackrays.

32. By application notice dated 20 April 2020 (but sealed by the Court on 3 June 2020) Mr Wise sought the setting aside of the order for sale made earlier. The earlier Extended CRO had expired days before this. Among other points, he asserted that:

(1) The order for sale was said to be an enforcement of costs orders made in the Leeds Boundary Proceedings but in fact he had won those proceedings as determined by DJ Geddes who had ordered £10,000 damages in his favour;

(2) The Magistrates court in 2015 had determined that he was correct on the position of the boundaries between No 40 and 42.

(3) His title was freehold and it was not possible to charge it. Further it had been conveyed to him free of charges.

(4) S3A of the Charging Orders Act 1979, prevented the order for sale being made.

(5) Orders were being obtained that were illegal and the Thackrays' solicitors were guilty of (among other things) lies, embezzlement and criminal activity and Mr Thackray was an agent provocateur and carpet bagger (among other things).

33. By Order dated 4 June 2020, DJ Jackson dismissed the application of 20 April 2020 on the papers on the basis that a challenge to the order for sale was way out of time, no application from relief from sanctions had been made and there was no explanation for the delay in making the application. She certified the application as being totally without merit.

34. By application notice dated 8 June 2020, Mr Wise applied for an order setting aside DJ Jackson's order dated 4 June 2020. Further evidence was provided with the application notice. Various pieces of correspondence were thereafter sent by Mr Wise to the Court.

35. By Order dated 31 July 2020, DJ Jackson refused an adjournment and dismissed the application dated 9 June 2020 as being totally without merit. The relevant parts of the Order so far as the application is concerned are as follows:

"1. The Application to adjourn the hearing is refused as an adjournment would not be in accordance with the overriding objective.

2. The Application dated 8 June 2020 is struck out as it is totally without merit as:

a) The Application dated 17 April 2020 was totally without merit. This Application seeks to rely on the same grounds as that Application. Nothing substantively new is stated on this Application.

b) The Application, and the Application dated 17 April 2020, purports to be made in relation to a Claim against the High Court of Justice, Business and Property Court. There is however no such Claim in these proceedings. The Application of 17 April 2020 was not of itself a Claim, it was an Application. In any event claims cannot be brought against the High Court of Justice, Business and Property Court. The Application is therefore wrong in law.

c) To the extent the Application therefore relates to these proceedings, the Application, and the Application dated 17 April 2020, rely on a wholly inaccurate reading of the Charging Orders Act 1979. The Application seeks to rely on regulations which the Act permits the Lord Chancellor to make but which have not been made or which have been made but do not apply to this case. The Application is therefore totally without merit as a matter of law.

d) The Application, and the Application dated 17 April 2020, are Applications to challenge the Order dated 31 March 2020 reducing the sale price of property under an Order for Sale. No valuation or substantive evidence has been filed in relation to that challenge. Rather the Applications seek to go behind Orders made by the Court on previous occasions in these and related proceedings, which have not been set aside or successfully challenged on appeal. The Court has no jurisdiction to go behind such orders on these Applications and therefore the Application is totally without merit as it seeks to challenge valid court orders invoking the law of the United States of America in support. The law of the United States of America is irrelevant to the Application.

e) The Defendant continues to fail to make an application for relief from sanction."

36. On 2 December 2020, the sale of No 40 completed. The new registered proprietor was YB Property Management Limited. The sale price was £110,000.

37. By application notice dated 18 January 2021, Mr Wise issued a further application notice claiming that the Order for sale of No 40 was illegal. The grounds again mirror those previously put forward by him including that her had won the Leeds Boundary Proceedings (by virtue of DJ Geddes' order of 2015), referring to the 2015 magistrates court position, asserting that it was illegal to make an order for sale of freehold property and generally setting out abusive descriptions of the Thackrays and their solicitors.

38. On 1 February 2021, Mr Wise made an application in the Leeds Boundary Proceedings.

39. By Order dated 2 February 2021, DJ Geddes on the papers struck out the application of 18 January 2021 as being totally without merit noting, in a recital, that the grounds then put forward were ones which had previously been argued and rejected.

40. By Order dated 3 February 2021, DJ Goldberg struck out Mr Wise's application dated 1 February 2021 in the Leeds Boundary Proceedings as being totally without merit. The application again appears to have challenged the decision made by me in those proceedings.

41. Mr Wise's applications of 8 April 2021 and 5 May 2021, as described by me above, and being the applications now before me, followed on.

Discussion

42. I heard extensive argument, and abuse directed at the Thackrays, their solicitors and myself, from Mr Wise. He raised a number of points. These points are all thoroughly bad. In addition they have been canvassed in earlier applications that he has made and which have been dismissed as being totally without merit. I deal with points raised by Mr Wise but in a different order to that which he raised them with me orally at the hearing.

Alleged Bias

43. Mr Wise's first point was that I should not hear the matters before me because I was actually biased. He asserted that it was my endeavour to protect "my friends" at all costs and not to act in accordance with my judicial oath. It is somewhat difficult to counter this allegation other than by denial. The short evidential point is that all he could pray in aid in support of this position was that he had previously lost in front of me and expected to do so again. If, as I consider, his case is (and has been in the past) a bad one that does not succeed then it is my duty to dismiss it. More is needed to make out such an allegation than the mere fact that a Judge has decided applications against a party previously (see reference in the White Book to *Zuma's Choice Pet Products Limited v Azumi Ltd* [2017] EWCA Civ 2133 referred to in the White Book paragraph 1.1.2).

44. Part of his complaint seemed to be that I had pre-determined the matter. That was because, with a view to assisting him, I attempted to explain the difficulties as I saw them with his case so that (a) he could understand the same and/or (b) persuade me that the difficulties were not true ones. I do not regard this approach as demonstrating either actual or apparent bias.

45. I have considered the question of apparent bias but do not consider that that is made out on the facts.

46. As regards bias generally, I have had in mind the notes in the White Book at paragraph 1.1.2 and the cases there cited.

47. Accordingly, I refused to recuse myself from hearing the case.

The result of the Leeds Boundary Case

48. Mr Wise continues to assert that the Leeds Boundary Dispute was not decided against him, that there are no costs orders against him and that his position on the boundary has been vindicated by the Order of DJ Geddes in those proceedings in 2015 that I have referred to and the dismissal of the charges against him in the Magistrates court in 2015 as dealt with by me in the Judgment in the Leeds Boundary Proceedings. On that basis, he asserts that there is nothing by reference to which charging orders could have been made, and therefore orders for sale and possession of No 40 could have been made. These issues were put to bed by my Judgment and subsequently by refusal of permission to appeal. They have been raised time and time again by MR Wise in his applications. They have no merit as a matter of substance and procedurally there is no merit in raising them again when they have already been ruled upon by the Court.

49. Mr Wise also suggests that in some way the matter is open because in my Judgment I did not deal with the substance of his case regarding alleged breach of planning permission and/or the issue of whether publicly owned land had been "grabbed" by the Thackrays. Mr Wise has been told time and time again by the relevant authorities that there has been no relevant breach of planning permission nor any unauthorised land grab of publicly owned land. The points lack merit for that reason. More significantly, these two points lack merit in the context that I am dealing with because the question is what was decided in the Leeds Boundary Dispute and what costs orders were made in the course of them. Any challenges to those matters should have been made by appeal shortly after the relevant orders were made. To the extent challenges were made in time, permission to appeal was refused.

Charging orders

50. The next challenge is to the Charging Orders. Various points have been made by Mr Wise. All of them are totally without merit.

51. First, he suggested that there are no charging orders: he has been told that the registered title to No 40 discloses no protection of such notices. I am unclear who is said to have told him this or when. Undoubtedly the sale having completed the register now does not show protection of such charging orders. However, I have seen sealed copies of the same. I have also seen the sealed copy of the order for sale and vacant possession effectively enforcing the charging orders. There is nothing in this point.

52. Secondly, he suggest that the charging orders are illegal and should be set aside. Again this is a point that he has argued in the past and the court has already ruled against him. As a matter of procedure, his application to repeat his earlier applications is without merit, the court already having dealt with the matter. On the merits the point is also without any merit.

    i) The regulations that he relies upon as being made under s3A Charging Orders Act 1979 do not prevent orders for sale or charging orders being made in respect of the costs orders to which he was subject.

    ii) When he received title to No 40 by conveyance free of charges and encumbrances, that dealt with the then position and says nothing about whether subsequent encumbrances were created (as they were).

    iii) Interests in freehold land can be charged under the Charging Orders Act 1979. In this respect there is no distinction (as submitted by Mr Wise) between interests in freehold and leasehold land.

    iv) Although there is power to vary or discharge charging orders, grounds for doing so have to be identified. On the merits there are no grounds. Further, it is now too late. The charging orders have in effect been enforced by completion of the sale of No 40 pursuant to the order for sale.

Order for sale/possession

53. There are no separate grounds to those that I have considered for impugning the orders for sale and possession. These orders were clearly made. They have been given effect to. Previous challenges, which raised the same grounds as are now raised, have already been dealt with and dismissed by the courts.

Conclusion regarding the applications of 8 April and 5 May 2021

54. On the basis that the applications before me are totally without merit (a) regarding the underlying grounds put forward and (b) as a matter of procedural law, the court already having ruled upon them and dismissed prior applications by Mr Wise asking for the same relief on the same grounds, I dismissed them and certified them as being totally without merit.

Civil Restraint Order

55. On dismissal of the applications by me, the Thackrays orally applied by counsel (but as foreshadowed by their counsel's skeleton argument) for the making of a CRO. In any event, the court must consider making the same when it dismissed an application as being totally without merit.

56. Mr Cochran referred me to the notes in the White Book to CPR 3.11and to the provisions of that rule and the accompanying practice direction (CPR PD 3C). The key requirement before an Extended CRO may be made is that the person against whom the order is made has "persistently issued claims or made applications which are totally without merit". In this connection he specifically referred me to the guidance given by the Court of Appeal in *Sartipy v Tigris Industries Inc* [2019] EWCA Civ 225; [2019] 1 WLR 5892.

57. I was (and am) satisfied that it is necessary to make an extended civil restraint order against Mr Wise for the maximum permitted period. In this respect I also take into account applications marked as totally without merit before earlier CROs (see Society of Lloyds v Noel [2015] EWHC 734 (QB); [2015] 1 WLR 4393), though an extended CRO is justified even without doing so. I am also satisfied that the matter should be reviewed by the court, not least to see whether the order should be extended prior to its expiry.

58. Mr Wise asserted that the making of CRO against him was against his human rights. As I understood it, that was as a matter of principle even if the order was otherwise properly made under the CPR. As I pointed out to him (but he refused to accept), restricting access to the courts by vexatious litigants has been held to be compatible with a litigant's article 6 rights under the European Convention on Human Rights see: *Przemyslaw Nowak v The Nursing and Midwifery Council and Guy's and St Thomas' NHS Foundation Trust* [2013] EWHC 1932 (QB) paragraph [61] and *Richards v Investigatory Powers* Tribunal [2017] EWHC 560 (QB) paragraph [77].

59. The above sad history speaks for itself. It is clear that Mr Wise will accept no explanations of the legal position that do not endorse his position. Further, he has been wholly unable or unwilling to take up the invitation set out in the Leeds Judgment in the passage set out below:

> "*This case concerns a boundary dispute. As with many boundary disputes relations between the protagonists have become entrenched and bitter. However, perhaps unusually, the bitterness and entrenchment is, in my assessment, almost all on one side….*
>
> *These proceedings have resulted in a number of applications by Mr. Wise which have been found to be totally without merit. He is subject to a limited civil restraint order preventing him from making applications in these proceedings without permission of the Court. I suspect that nothing that I say will persuade Mr. Wise that the outcome of the trial in this case, being this judgment, is one that he should now accept, even though he disagrees with it. However, I do invite him to consider whether, he having 'had his day in court', the time has come to accept my judgment, move on, and seek to re-establish civil relations with this neighbours so that he and they can live their lives with the necessary give and take that neighbours frequently have to accept if their lives are to be tolerable."*

60. Mr Wise no longer owns and lives at No 40. Living next to the Thackrays is no longer an issue. However, he told me that he is fighting on for justice so that he can salvage something financially for his daughter. If he continues to make applications which he loses, he is simply likely to place himself into more debt. He has, as I understand it, already gone to prison over his conduct relating to the boundary dispute. Such further fighting is not likely to assist his daughter. It will only cause more upset and financial grief. Further, if he persists in making unfounded applications for permission to bring claims or make applications under the extended CRO that I have made, he may find that his rights to appeal are restricted (see CPR PD3C paragraph 3.3(2).

61. I have also refused Mr Wise permission to appeal the orders that I made dismissing his applications and making an extended CRO. There is, in my assessment, no real prospect of any such appeals succeeding and no other good reason requiring such appeals to proceed. I should add that the route of appeal from my orders is to the Court of Appeal (Civil Division) and not, as Mr Wise asserted he would prefer and will bring his application to appeal, the Crown Court.