Neutral Citation Number: [2022] EWHC 1498 (Ch)

Case Number **CR-2017-003729**

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
INSOLVENCY AND COMPANIES LIST (Ch D)
IN THE MATTER OF PARAGON OFFSHORE PLC (IN LIQUIDATION)
AND IN THE MATTER OF THE INSOLVENCY ACT 1986

Royal Courts of Justice
7 The Rolls Building
Fetter Lane
London
EC4A 1NL

Date: 16 June 2022

Before :

DEPUTY INSOLVENCY AND COMPANIES COURT JUDGE AGNELLO QC

B E T W E E N :

(1) IAN COLIN WORMLEIGHTON
(the Joint Liquidators of Paragon Offshore plc (in liquidation))

Applicants

and

(1) MICHAEL R. HAMMERSLEY

First Respondent

(2) PARAGON OFFSHORE LIMITED

Second Respondent

Mr Mark Arnold QC (instructed by Weil, Gotshal & Manges (London) LLP) for the First and Second Applicants
Mr Henry Phillips (instructed by Skadden, Arps, Meagher & Flom (UK) LLP**)** for the Third Applicant
Mr Michael Hammersley, acting in person

Hearing date: 7 February 2022

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JUDGMENT

Introduction

1. On 7 February 2022, I handed down judgment (the 'February Judgment') in relation to various consequential matters arising from hearings on 10 and 12 September 2021. The February Judgment dealt with the following additional matters following my summary dismissal of the Insolvency Rule 14.11 revised application which had been made by Mr Hammersley ('the Revised Rule 14.11 Application') and dealt with the following:-

(1) that the Revised Rule 14.11 Application was totally without merit;

(2) an order dismissing the application made by Mr Hammersley dated 15 July 2021 for permission to rely upon further evidence in relation to the Revised Rule 14.11 Application ('the Late Evidence Application')

(3) a limited civil restraint order against Mr Hammersley, and

(4) an order refusing Mr Hammersley permission to appeal the order dated 13 August 2021.

2. On 6 September 2021, Mr Hammersley issued an application seeking what he called consequential orders ('the Consequentials Application') arising under the judgment which was due to be handed down on 10 September 2021. I directed that the Consequentials Application be listed to be heard at the time when I handed down judgment on the other matters referred to above. This current judgment deals with the Consequentials Application, where Mr Hammersley sought the following declarations and orders for the distribution to him and other persons by the Joint Liquidators:-

(1) US $192 million (or US$422.4 million) said to be reserved on account of what has been called, 'the Securities Fraud Claim';

(2) US$309 million, said to be reserved on account of what Mr Hammersley refers to as the 'Merger Claim'.

3. On 25 October 2021, Mr Hammersley issued an application seeking an order authorising court-to-court communication with The Honourable Judge Christopher Sontchi of the Delaware Bankruptcy Court and an order under Insolvency Rule 12.59 of IR 2016 granting a review of the Dismissal Judgment and Order ('the Coordinated Review Application'). I also have before me an application issued by Mr Hammersley

on 25 January 2022 seeking an order to cross examine David Soden and Joseph Tobing. Mr Soden is one of the Joint Liquidators, previously one of the Joint Administrators of Paragon Offshore plc (in liquidation)('Paragon Parent'). Mr Tobing is Legal Counsel for the group of companies which includes Borr Drilling Limited ('Borr') and Paragon Offshore Limited ('New Paragon').

4. On 24 January 2022, the Joint Liquidators issued an application seeking orders that the Consequentials Application and the Coordinated Review Application be struck out and/or summarily dismissed. In so far as I acceded to that application, then the application seeking orders for cross-examination would fall away and therefore also be dismissed. This is the judgment relating to the Joint Liquidators' strike out/summary judgment application. The principles for granting summary judgment are well known and were set out in my judgment dated 13 August 2021. In summary, they relate to me being satisfied that the application has no real prospect of success and should therefore be summarily dismissed pursuant to CPR 24.2.

5. Reference in this judgment needs to be made to earlier judgements which I have handed down in the long running proceedings as between Mr Hammersley and the Joint Liquidators of Paragon Parent. On 20 July 2020, I handed down my judgment on the discharge application which had been made by the Former Joint Administrators, now the Joint Liquidators. I acceded to their application for discharge pursuant to paragraph 98 of Schedule B1 of the Insolvency Act 1986, rejecting the opposition of Mr Hammersley. Thereafter, Mr Hammersley issued an application seeking to review, vary or discharge the order made on the discharge application pursuant to Rule 12.59 of the Insolvency Rules 2016. The Former Joint Administrators issued an application seeking the summary dismissal of the review application. I acceded to this application and dismissed the review application by my judgment dated 19 October 2020. On 5 August 2020, Mr Hammersley issued his rule 14.11 application. This related to his challenge to the validity of a loan note instrument ('the Loan Note Instrument') which was issued as part of the US Chapter 11 bankruptcy proceedings and the plan which had been sanctioned and approved by the Court, being what is referred to in all my judgments as the Fifth Plan. The Fifth Plan itself referred to the UK Implementation Agreement. I listed the rule 14.11 application for directions and eventually heard the application which is now, after I

granted permission to Mr Hammersley to amend, the Revised Rule 14.11 Application. On 13 August 2021, I handed down the judgment dismissing the Revised Rule 14.11 Application. As is set out above, by judgment handed down on 7 February 2022, I dealt with the issues relating to whether the Revised Rule 14.11 Application was totally without merit, dismissed the Late Evidence Application of Mr Hammersley, made a limited civil restraint order and refused permission to appeal. Further reference can be made to my earlier judgments for details of the background in so far as necessary. In particular, paragraphs 4 – 9 inclusive of the 13 August 2021 judgment provides a summary of the issues which needs to be read alongside this judgment.

The Consequentials Application

6. It is against the background summarised above that Mr Hammersley invites me to make one or more of the declarations and/or orders in his Consequentials Application. As submitted by both Mr Arnold QC and Mr Phillips, the declarations/orders sought are not consequential from the judgment in relation to the Revised Rule 14.11 Application. I dismissed the appeal against the proof of debt. There is nothing save for issues relating to costs, permission to appeal as well as the issue relating to whether the application was totally without merit. Accordingly, the Joint Liquidators seek an order dismissing and/or striking out the Consequentials Application.

7. In paragraph 1 of the Consequentials Application, Mr Hammersley seeks the following:-

‘1. An order, under Rule 40.20, Civil Procedure Rules and/or section 112 of the Insolvency Act 1986, making declarations and/or issuing directions for the Joint Liquidators to distribute the $192 million reserved [or $422.4 million (38.4 % of the claim value)] on account of the Securities Fraud Claim to Mr Michael R Hammersley and the Shareholder pari passu.’

2. US $309 million, said to be reserved on account of what is referred by Mr Hammersley as the ‘Merger Claim’.

Mr Phillips dealt with the second ground whilst Mr Arnold dealt with the first ground. Mr Arnold also dealt with the Coordinated Review Application. I am grateful to both Counsel in dividing up their submissions so as to avoid repetition before me.

The Securities Fraud Claim

8. The grounds of the Revised Rule 14.11 Application sought an order rejecting the Loan Note Instrument executed by Paragon Parent. The Loan Note Instrument transferred to New Paragon intercompany liabilities which remained, under the terms of the Fifth Plan, owing to the subsidiaries of Paragon Parent. Mr Hammersley sought to challenge the liabilities of Paragon Parent on the grounds that under the terms of certain finance documents, those liabilities, he asserted, were restricted to the value of the security held by those lenders. Mr Hammersley sought to argue that the Loan Note Instrument dealt with what he called 'deficiency claims' owed by Paragon Parent to its financial creditors. He argued that these claims were non-recourse meaning that they are not liabilities for which Paragon Parent is personally liable. On the premise that the points raised by Mr Hammersley were accepted as being valid by the Court, he then sought, in the exercise of the Court's discretion, orders to place Paragon's shareholder creditors back on an equal footing, by (1) excluding the Loan Note Instrument and order the return of all amounts distributed under that agreement, (2) enter an order requiring the liquidators to issue the guaranteed 30% payment on the Shareholders Creditors' Securities Fraud Claim (with any shortfall and interest to be applied rateably by New Paragon, the Paragon 1 creditors (being creditors under the Fifth Plan) and Borr (set out in paragraph 41(2)). As is set out in my judgment of 13 August 2021, I dismissed the Revised Rule 14.11 Application and subsequently declared it to be totally without merit.

9. Mr Arnold submits that the arguments raised by Mr Hammersley in relation to the Securities Fraud Claim were dealt with by me in the Revised Rule 14.11 Application and therefore are res judicata. Reliance is placed upon the fact that I dismissed the relief and directions/declarations sought in paragraph 41(2) of the Revised Rule 14.11 Application, as well as paragraphs 1 and 2 of his summary judgment application. I have set out what was sought by Mr Hammersley in his Revised Rule 14.11 Application above. Mr Arnold also referred me to paragraph 30 of my judgment dated 13 August 2021 which stated as follows

'Mr Hammersley also sought to persuade me that his 'securities fraud' claim gave him standing as a creditor. According to the proof of claim forms filed in the Chapter 11 proceedings, this claim related to the alleged violations under United States law. However, this assertion by Mr Hammersley runs against the fact that his

claim was submitted and dealt with the US Bankruptcy proceedings (as set out in paragraph 26 of Mr Soden's sixth witness statement). The claim was subordinated to the holders of general unsecured claims by the order dated 30 May 2017 of the Honourable Judge Sontchi and discharged by section 10.3 of the Fifth Plan. Mr Hammersley asserts that the Judge did not have jurisdiction to deal with his claim. However the difficulty for Mr Hammersley in this argument is that the claim was submitted in the US bankruptcy proceedings and dealt with in that jurisdiction. In any event, this claim of Mr Hammersley as an alleged creditor rather than a holder of equity takes the matter no further in relation to what I need to determine. I have held on a question of construction that his non recourse argument fails. His attempt to seek to assert that he was in some way a creditor despite the treatment of his claim in the US Bankruptcy proceedings does not alter the determination I have made above in rejecting his non-recourse argument.'

10. In so far as the Consequentials Application was a review, Mr Arnold reminded me of the parameters in relation to a review application. I have set these out extensively in my judgment dated 19 October 2020. Mr Arnold submitted that there was no change in circumstances and essentially, submitted Mr Arnold, Mr Hammersley was seeking a re-run of his arguments. Mr Arnold submitted that effectively Mr Hammersley wanted another go at seeking to exclude the Loan Note Instrument and obtain in some way a distribution to himself and other shareholders of Paragon Parent, whether as shareholders, or as creditors, under the Securities Fraud Claim.

11. As set out in my judgment of 13 August 2021, the Securities Fraud Claim was first subordinated to the claims of the general unsecured creditors and then discharged by section 10.3 of the Fifth Plan. Accordingly, there is no entitlement on the part of Mr Hammersley to any distribution in respect of the same. I dealt with this matter and considered the terms of section 10.3 in my judgment. As submitted by Mr Arnold, unless those determinations which go against Mr Hammersley are the subject of a successful appeal and/or review, Mr Hammersley has no realistic prospect of success in relation to his application seeking the proposed distributions.

12. Mr Arnold also took me to the evidence which demonstrates that the Joint Liquidators do not have and indeed did not have as the Joint Administrators, access to cash reserves other than to the UK Administration Reserve. In my discharge judgment dated 20 July 2020, I stated at paragraph 38, *'in my judgment, there is simply no evidence which demonstrates that there are further sums available by way of assets of Paragon such that there would be a surplus available to shareholders.*'. The UK Administration Reserve which Mr Arnold referred to constitutes the operating fund and contingency fund over which the Joint Administrators had signing rights. This is set out in the witness statement of Mr David Soden dated 24 January 2022. Mr Soden also confirms that the amounts held in the bank accounts of Paragon Parent were dealt with in accordance with the Fifth Plan. Accordingly, as submitted by Mr Arnold, there is no reserve held by the Joint Liquidators (or held by them when Former Joint Administrators) capable of providing any distribution as sought by Mr Hammersley.

13. In reply, Mr Hammersley submits that due to the history of this matter, he was not certain as to when he could make an application seeking to review or vary the order made on his Revised Rule 14.11 Application. He therefore made the application seeking essentially the securities fraud declarations as being consequential upon the judgment I handed down on 13 August 2021. He submitted that his entitlement to payment arises from his financial interests as an unsecured creditor of Paragon Parent under the securities fraud claim and therefore not as an equity holder. However, this submission of Mr Hammersley fails to address the points raised by Mr Arnold, namely that this claim was first subordinated to the claims of the unsecured creditors and then discharged by the terms of the Fifth Plan. I agree with the submission made by Mr Arnold in this respect. The issue as to the Securities Fraud Claim was dealt with in the Fifth Plan. I dealt with this issue in my judgment of 13 August 2021. Accordingly, the issues relating to the Securities Fraud Claim have already been dealt with by me.

14. Mr Hammersley presented no real evidence relating to the well known principles relating to being able to seek a review. There is no evidence as to any change in circumstances relating to the Securities Fraud Claim. The issue was clearly, in my judgment, before me and was a direction sought by Mr Hammersley in the event he was successful on setting aside the Loan Note Instrument. In my

judgment, no change of circumstances exists which would enable the review jurisdiction to be utilised by Mr Hammersley in relation to this claim. Mr Hammersley attempts to raise some further arguments, such as a triangular set-off argument, in order to justify his application, but in my judgment, the arguments raised by him do not justify any review. Some of these arguments (for example his double dipping argument relied upon) were indeed raised before me at the earlier hearings and in any event, none of these arguments were incapable of being raised before me at the earlier hearing. Arguments which were overlooked or not thought of at the time of the original hearing provide no justification for the exercise of the review jurisdiction. That is clear from the principles I have set out in my earlier judgment. I will deal below with the change of circumstances argument relied upon by Mr Hammersley in relation to his Coordinated Review Application. Mr Hamersley cannot succeed in this current application by reason of the judgments which I have already handed down as well as the terms of the Fifth Plan. There is no evidence of any change in circumstances in relation to this part of the Consequential Application.

15. Mr Hamersley seeks to rely on what he calls the Court's inherent jurisdiction over trust property, but, in my judgment, that does not assist Mr Hammersley. The Securities Fraud Claim which he relies upon in the Consequential Application was part of his Revised Rule 14.11 Application. It was the relief he sought in the event that he was successful in his Revised Rule 14.11 Application. I dismissed that application. The judgment of 13 August 2021 sets out my reasons. In my judgment, Mr Arnold is correct that this matter was dealt by me and is therefore res judicata. The existence of any inherent jurisdiction does not enable the Court, in my judgment, to re-open a matter which has been before the Court and determined by the Court. In any event, it would be an inappropriate exercise of any existing inherent jurisdiction to allow a party to seek to re-run an argument which he has lost and has been dealt with by the Court, in fact on more than one occasion.

16. Mr Hammersley also referred to the transcript of the hearing before the US Bankruptcy Court in Delaware on 10 June 2021. In my judgment, this transcript provides no evidence in support of Mr Hammersley's application. The case before the US Bankruptcy Court related to a motion filed by the Office of the United States Trustee and provides no evidence of there being any reservation made in the Fifth

Plan in relation to the Securities Fraud Claim which stands extinguished under the terms of the Fifth Plan. The transcript demonstrates that the case before the Judge concerned an argument raised by the Trustee as to the meaning of 'disbursements' and whether further sums were due to the Trustee. The judgement referred to the releases contained in the terms of the Fifth Plan including the release of the Senior Note Claims. Those releases were only part of the Fifth Plan. Reference needs to be made to the entirety of the Fifth Plan and in particular the debt for equity swap and the UK Implementation Agreement alongside the Loan Note Instrument. None of this, in my judgment, assists Mr Hammersley. The issues raised in this Trustee judgment do not relate to the issues before me. The judgment does not provide any basis for Mr Hammersley to successfully seek a review. It does not provide any change of circumstance because the arguments raised relate again to the terms of the Fifth Plan, the UK Implementation Agreement and the Loan Note Instrument itself. These issues were before me and dealt by me in my judgment.

17. Many of the arguments raised by Mr Hammersley related to terms of the UK Implementation Agreement, the Loan Note Instrument and seeking to demonstrate that essentially, that my determinations in the 13 August 2021 judgment were incorrect. These are, in reality, appeal points. I refused permission to appeal and their merit or otherwise is now in the hands of the appellate court. However, such points do not entitle Mr Hammersley to re-run the arguments before me or to seek a review. I accept Mr Arnold's submissions which I have summarised above in this respect.

18. In a somewhat circular argument, Mr Hammersley relies upon a reference in the skeleton argument filed on behalf of the Joint Liquidators for the hearing on 18 January 2021. That skeleton referred to US$192 million of the Loan Note Instrument which was discharged by the transfer of Prospector from Paragon Parent to New Paragon in accordance with the Fifth Plan. Mr Hammersley relies upon this as being in some way a return of the US$192 million on the basis that the loan note is excluded/rescinded. However, Mr Hammersley's Revised Rule 14.11 Application was dismissed and therefore the loan note instrument has not been rejected and/or set aside. On that basis, it is not possible, in my judgment, for an application to seek the relief originally sought in the previous application which was dismissed. As the Loan Note Instrument was held by me to be valid and part of the Fifth Plan, then the

Consequentials Application lacks merit in seeking relief on the basis that the loan note instrument was in some way invalid or merited some further consideration. It does not, in my judgment, assist Mr Hammersley to argue that the relief and the declarations he is seeking are in some way stand alone relief and accordingly he can seek the same despite the dismissal of his Revised Rule 14.11 Application. This is because the judgement dealt with precisely the issues he now seeks to re-run, being whether the Securities Fraud Claim can be dealt with despite the terms of the Fifth Plan. Additionally, in so far as Mr Hammersley has failed to establish that the Loan Note Instrument is invalid or in some way should be rejected, he has no basis upon which to attack its validity further and therefore no basis to seek to provide that sums, which he believes are available, should be distributed to him either as a shareholder or a creditor. I should add, for the avoidance of doubt, that there is, on the evidence before me, no evidence that any such funds exist for the purpose of any such distribution. I accept the evidence of Mr Soden which is based upon the contemporaneous documents and which Mr Hammersley has failed to rebut. In conclusion, as I have effectively dismissed any review from my judgment on the evidence before me and to date there is no successful appeal from my judgment, then there are no real prospects of the Securities Fraud Claim application succeeding.

The Merger Claim

19. Mr Phillips dealt with the grounds for the strike out/dismissal of this part of the Consequentials Application. Mr Hammersley asserts that he and others in his position (holders of equity in Paragon Parent) are entitled to shares in New Paragon. Mr Hammersley asserts that effectively New Paragon (being the wholly owned subsidiary of Paragon Parent) was acquired at an undervalue by Borr. In summary, this is what Mr Hammersley means by his Merger Claim. It is not, in my judgment, entirely clear how a claim that shares were acquired at an undervalue entitles someone in the position of Mr Hammersley to some form of compensation. Paragon Parent was, at the time of the US Bankruptcy proceedings as well as the English administration order, hopelessly insolvent. However, I do not need to analyse how that claim can possibly arise, because, as I set out below, the evidence which Mr Phillips went through in some detail before me demonstrates that no such undervalue claim exists.

20. Mr Phillips explains with reference to the evidence before me that essentially the facts do not demonstrate any such acquisition at an undervalue. Under the terms of the Fifth Plan, the shares in New Paragon were distributed to holders of secured lending and the holders of the senior notes, who received shares in exchange for the indebtedness. There was a small dilution by provision for a management incentive plan. This was a debt for equity swap plan. Paragon Parent did not retain any shares in its subsidiary, New Paragon. No such provision allowing any retention of shares by Paragon Parent appears in the Fifth Plan. In his evidence, Mr Soden also confirms that no shares in New Paragon were retained by Paragon Parent. Under the terms of the Fifth Plan, holders of General Unsecured Claims and holders of subordinated claims were not entitled to receive any new equity interests. This is set out in paragraphs 4.5 and 4.7 of the Fifth Plan.

21. Mr Phillips took me to the report filed by Paragon Parent with the United States Securities and Exchange Commission ('US SEC') which states, *'[New] Paragon issued, at the direction of the Company [Paragon Parent] all of [New] Paragon's equity interests to specified holders of allowed claims under the Plan'*. There is no evidence before me which contradicted the witness statement of Mr Soden which is supported by the filing, the terms of the Fifth Plan and other contemporaneous documents which I will now turn to consider.

22. New Paragon relied upon the witness statement of Mr Joseph Amudi Lumban Tobing dated 25 January 2022. Mr Tobing, legal counsel for New Paragon and its parent, Borr Drilling Limited. Mr Tobing has exhibited the contemporaneous documents to demonstrate that Borr's offer to acquire New Paragon shares was an offer to all shareholders. There is, in short, no evidence that *'Borr expressly excluded Paragon Parent'*. There is no evidence that Paragon Parent retained any shares in New Paragon. The price and terms of the tender offer to all shareholders is set out in the tender offer agreement dated 21 February 2018 which states in multiple places that the tender offer extended to 'any and all' shares in New Paragon. Mr Hammersley sought to rely upon a statement in the press release circulated by Borr which communicated to shareholders that the period for accepting the tender offer had been extended. Mr Phillips points to the release expressly stating that apart from the extension of time, all other terms and conditions in the offer remain unchanged. The

statement relied upon by Mr Hammersley states, *'The Offer referred to in this press release is for the purchase of shares of Paragon Offshore Limited and is not an offer with respect to any securities of Paragon Offshore PLC (in administration) ('Old Paragon') [Paragon Parent]'.*

23. Mr Hammersley sought to argue that this statement meant that the tender offer was not for any securities owned by Paragon Parent. In my judgment, as submitted by Mr Phillips, this is not what the statement says. The offer document is clear. It is a tender offer for all the shares in New Paragon made by Borr. The press release statement relied upon by Mr Hammersley does not say anything different. It merely makes the point that the offer relates to the shares in New Paragon and not to the shares of Paragon Parent. Accordingly, it provides no evidence that Paragon Parent retained any shares in New Paragon. That would in any event have been surprising bearing in mind the express terms of the Fifth Plan. In my judgment, the contemporaneous documents support clearly that the tender offer was for all the shares in New Paragon and that no shares were retained by Paragon Parent. I should add that Mr Hammersley sought to make something of a reference to unissued shares. These are, as is clearly stated, unissued. Accordingly, they are irrelevant. The terms of the Fifth Plan are clear in that the lenders will obtain shares in New Paragon. No shares in New Paragon are retained by Paragon Parent under the plan.

24. Mr Hammersley then sought to argue that the steps taken by Borr to raise the funds necessary for the acquisition of New Paragon in some way demonstrated that Borr also thereafter sought to acquire the Paragon Parent alleged shares in New Paragon. There is no evidence which supports Mr Hammersley's statement that the private placement carried out by Borr as part of its funding for the share acquisition was not completed for cash but instead was by way of a share exchange with Paragon Parent. I do not need to go through the detail of the funding steps because this statement of Mr Hammersley flies against the evidence set out in the contemporaneous documents which I have already referred to above. The statement also lacks any evidential support. Mr Hammersley also relies upon a filing made by Borr with the US SEC which states as follows:-

"*Paragon Offshore Limited ("Paragon") was incorporated on July 18, 2017 as part of the financial restructuring of its predecessor, Paragon Offshore plc, which commenced*

proceedings under chapter 11 of the U.S. Bankruptcy Code on February 14, 2016. On March 29, 2018, we concluded the acquisition of 99.41% of the shares of Paragon for a total consideration of $240 million (the "Paragon Transaction"), subsequently acquiring the majority of the remaining shares in July 2018.

We were not able to contact certain minority shareholders of Paragon in connection with our acquisition of all remaining shares in July 2018. In order to complete our subsequent acquisition of minority shares, we performed a squeeze out of the shareholders of 7,188 shares as we were not able to contact them upon closing of the Paragon Transaction. Although these shares were [cancelled], we may be subject to future claims of approximately $0.3 million in connection with the squeeze-out."

25. In my judgment, this does not support Mr Hammersley's case on the Merger Claims. The statement merely sets out that the small percentage of those shares which Borr was unable to acquire were the subject of a squeeze out. There is simply no evidence that Boor paid some US$300 m or indeed any amount to Paragon Parent to settle any alleged liability on a merger claim. There is no evidence that Borr was indebted to Paragon Parent for such a sum. No such liability is in evidence. Mr Hammerlsey seeks to question the filed accounts of Borr in an attempt to say that they cannot be relied upon. There is no evidence that what Mr Hammersley argues is correct. Again, in all the circumstances, he cannot be an expert in his own case, something which I have stated to him in earlier hearings. In my judgment, there is no realistic prospect of success in relation to the Merger Claim. Accordingly, I accede to the application made in support of the summary judgment claim on this ground as well.

The Coordinated Review Application

26. This application issued by Mr Hammersley on 25 October 2021 seeks a review such that a joint hearing is convened before this Court and the Honourable Judge Sontchi sitting in the US Bankruptcy Court of Delaware and an order under Rule 12.59 of IR 2016 granting a review of the Dismissal Judgment and Order. Mr Hammersley seeks such a direction so that a joint hearing can consider the meaning of section 4.6 of the Fifth Plan (which is governed by US Law) and the UK Implementation Agreement (which is governed by English law), in order to determine if the Loan Note Instrument forms part of the Fifth Plan.

27. In my earlier judgments, I have already determined the validity of the Loan Note Instrument which forms part of the UK Implementation Agreement. I also determined that Mr Hamersley's Revised Rule 14.11 Application was totally without merit. That application invited me to reject the Loan Note Instrument and thereafter direct certain distributions to shareholders of Paragon Parent. I dismissed that application after a careful consideration of the Fifth Plan (which I had also carried out in earlier judgments) as well as considering the Loan Note Instrument itself. With that background, in my judgment, the Coordinated Review Application is a further attempt by Mr Hamersley to re-run arguments which were rejected by this Court.

28. In my judgment, there are no grounds for a review to be carried out. I have already set out above just why the Consequentials Application, in so far as it could be viewed as being an application to review the 21 August 2021 order, fails. The same reasons are equally applicable here. Mr Hammersley seeks to argue that there are circumstances which allow for a review and importantly allow for the joint review that he is seeking.

29. Mr Hammersley asserts that he could not have applied for an inter-court communication until now because of the existence of a filing injunction against him. However, the terms of that injunction allow him to apply back to that court for prior authorisation. No such application was made by him. I reject that the existence of the filing injunction in the US in some way constitutes a change of circumstances for a review. Even if Mr Hammersley was in some way prevented from applying in the US for prior authorisation under the terms of the filing injunction, I would not, even in those circumstances, exercise my discretion to direct a review. This is because, as is set out above, of the lack of merit in the arguments raised by Mr Hammersley and which have been frequently before this Court.

30. Mr Hammersley relies upon the fact that such a Coordinated Review will be of assistance. I disagree. This court has delivered many detailed judgments relating to the issues raised by Mr Hammersley. None of them have necessitated a joint review despite many of the submissions made by Mr Hammersley relating to the terms of documents such as the Fifth Plan which is not governed by English law. In so far as reference had to be made to terms of the Fifth Plan or to other documents which were

governed by New York law, there was no suggestion that they were to be construed otherwise than by reference to their clear language or by applying principles of construction which differ materially from those applicable under English law. Mr Hammersley did not refer me to any case which contradicted the principles or the approach to this issue taken by me. I refer in this regard to paragraphs 15 of my judgement dated 13 August 2021. Mr Hammersley disagreed with my construction and in so far as he is able, he can appeal my judgment. I refused permission and, again, the matter is now in the hands of the appellate court. Mr Hammersley's arguments relating to double dipping and set-off arguments were before me. I determined them in so far as necessary. Ultimately, in my judgment, what Mr Hammersley is really seeking is a re-run of arguments he ran and lost. That is not, as I have explained in earlier judgments, grounds for a review, let alone directing a joint review. Submissions that a joint review enables both parties to have an equal chance to put their case, is simply not the way the review jurisdiction is to be approached, let alone directing a joint review. Accordingly, I dismiss the Coordinated Review Application as being one where there is no realistic prospect of success. There is no merit in the proposed review because there is no justification for ordering such a review on the facts before me. It is simply another attempt to re-run arguments before me which were lost. That is no basis for the exercise of the review application as I have set out in some detail in my earlier judgments.

The application to cross-examine

31. As I have determined that both the Consequentials Application as well as the Coordinated Review Application are to be dismissed on the grounds that they disclose no grounds and/or no realistic prospects of success, then the application to cross examine must be dismissed as well. Such an application serves no purpose when the main applications stand to be dismissed for the reasons set out above. In any event I should add that there were no grounds to have directed such cross-examination in any event.

Are the applications totally without merit?

32. Mr Arnold submitted that in so far as I granted his application and dismissed the two applications, I should declare that the applications were totally without merit. I

have set out above what is really a lack of merit in both applications. This arises because as I set out above, Mr Hammersley is seeking to obtain a review because he wants a re-run of the arguments he lost. In some cases, he seeks to raise new issues but produces no genuine reason as to why those issues/arguments were not presented at the hearing itself. In my judgment, the two applications made by Mr Hammersley are totally without merit. This is because neither of them are capable of approaching the hurdles which need to be cleared in order for the court, in the exercise of its discretion, to direct a review, let alone a joint review. As I set out above, Mr Hammersley ultimately does not want to accept that the judgment went against him. His remedy is to seek permission to appeal and, if granted, to argue the matter on appeal. I should add here, for the avoidance of doubt that a reference in this judgment to Mr Hammersley seeking to appeal from any of my judgments is not to be taken as in any way demonstrating any merit in any such appeal or application for permission to appeal. I have refused permission to appeal from all my judgments. That in itself demonstrates my view on the lack of merit in any appeal.

33. As Mr Arnold observed during his submissions, the review jurisdiction is jealously protected by the Court. Mr Hammersley failed to demonstrate that the review jurisdiction was capable of being exercised in relation to his two applications. In fact, he failed to establish that his review applications had any merit. Equally, I did not accept his submission that in some way, despite my judgment, he was entitled to argue his Securities Fraud Claim, for the reasons I have set out above. His Merger Claim was completely contradicted by the clear contemporaneous documents. Both applications were, hopeless applications. Consequently, I declare that both applications were totally without merit. I shall hear the parties in relation to the issues as to costs at the hearing of the hand down of this judgment. However, in order to seek to save further costs, I should add, without finally determining the issue, that subject to any submissions, I can see no reason as to why costs should not follow the event. It is hoped the parties can reach agreement rather than a further hearing being necessitated before me.