

**IN THE HIGH COURT OF JUSTICE**  
**BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES**  
**Business List (ChD)**

7 Rolls Buildings  
Fetter Lane  
London  
EC4A 1NL

Monday, 6 June 2022

BEFORE:  
**MASTER PESTER**

BETWEEN:

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**CHRISTDEENA ELLIS**

Claimant

- and -

**DAVID BURRIN**  
**(sued as Stephens & Sons Solicitors)**

Defendant

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The Claimant appeared in person.

Mr Joe Docherty (instructed by **Reynolds Porter Chamberlain LLP**) appeared for the Defendant.

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**APPROVED JUDGMENT**  
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1. MASTER PESTER: There are two applications before me today. The first is the defendant's application dated 6 January 2022 for an order striking out the claimant's claim. That application was made under CPR rule 3.4(2). It expressly relies on CPR rule 3.4(2)(a) and/or 3.4(2)(b) and/or 3.4(2)(c). In the alternative, it is an application for summary judgment under CPR Part 24. The evidence in support is a witness statement from the defendant, Mr David Burrin. In response, the claimant made an application dated 10 January 2022 for an order striking out the defendant's application. The claimant's application is ostensibly made pursuant to CPR rule 17.6(1). There is no such thing as CPR rule 17.6(1). The claimant's complaint in her application notice is that the defendant's witness statement is a "False Statement of Fact".
2. The parties are, on the one side, the claimant, who I will refer to as Ms Ellis. She appears before me as a litigant in person. The defendant, Mr Burrin, is a solicitor who has been in practice since 1998. Up to 2011, he worked at a firm known as Stephens & Sons Solicitors. Ms Ellis's claim form is dated 3 November 2021 (sealed on 6 November 2021). It is supplemented by very lengthy Particulars of Claim, which run to about 92 pages, and is headed "Particulars of Claim -- Civil fraud/Dishonesty". The claim form indicates that Ms Ellis expects to recover more than £160,000. The claim form makes three points:
  - (1) First, Ms Ellis complains that the defendant's work "which he conducted within the Claimant's own Property Law only case no: 5ME01455" was "all procured by fraud".
  - (2) Second, Ms Ellis alleges that the defendant "re-litigated" and "enforced" his client's criminal "Defence to counterclaim" at the final two-day trial knowing that Recorder C. Gibson had dismissed it.
  - (3) Third, Ms Ellis alleges that the defendant "... enforced the Claimant's ownership of 72 Queensway against the Claimants (sic) "Will" "Consent" over to his client Miss King, thus, defrauding the Claimant from her own mortgage".
3. The Particulars of Claim do not make for easy reading. I have taken into account the fact that Ms Ellis is a litigant in person, and so the court does give some leeway when it

comes to setting out a cause of action. What the defendant says is that the claims are an abuse of process, they are incoherent and they make no sense and, in any event, insofar as the claim can be understood at all, it is clearly barred by the operation of the Limitation Act 1980.

4. There is a list of issues, prepared by Ms Ellis, which sets out what were, she says, the issues that this court needs to determine: issue (1), "The defendant is continuing to bring a misleading application to the High Court under a fake case name - "the King proceedings"; (2) "Case number 5ME01455, the claimant's proceedings, the only real and live case proceedings, was the only properly brought proceedings under case number 5ME01455"; (3) "Mrs King did not leave said property"; (4) "The claimant was always the purchaser of 72 Queensway"; and finally, (5) "corruption in the case of the Medway County Court".
5. I have heard from Ms Ellis today, and I now have a much better idea of Ms Ellis' complaints. I should add at this stage that this case was originally set down before me on 7 February 2022, and I took the decision to adjourn it because I took the view that the hour and a half that had been set aside for it was insufficient for me to hear the parties and give them a fair opportunity to make their submissions, and then for me to give a judgment. My fears over the original time estimate have indeed turned out to be correct. I also was concerned that there simply was not enough reading time to allow me sufficient time to work through the documents, which as I set out below go back over many years.

### **Background**

6. I have now worked my way through the documents filed before me. The chronology is, in broad terms, as follows. I have derived this from looking at the actual documents in the two bundles of documents which have been filed before me.
7. In February 2005, Ms Ellis brought proceedings against her mother (although I should add here that Ms Ellis very much indicated to me in strong terms that I should not refer to her in those terms), a Mrs King, in the Medway County Court. Out of deference to her I will continue to refer to Mrs King simply as Mrs King, but she is the defendant in

the Medway proceedings. Those proceedings related to a property known as 72 Queensway, Sheerness, Sheppey, Kent ME121LH ("the Property"). The Property was registered in Ms Ellis' name. Ms Ellis brought possession proceedings against Mrs King. Mrs King filed a defence (I have also been taken to the actual amended defence), where Mrs King maintained that she owned the Property beneficially, contrary to what was shown on the Title Registry, where Ms Ellis was the registered owner. Those proceedings in Medway County Court were given the number 5ME01455.

8. On 7 July 2008 Mr Recorder Gibson QC found that Ms Ellis held the property on trust for herself and Mrs King in shares to be determined. It was at that point that Mrs King then proceeded to instruct Stephens & Son and Mr Burrin became involved. I should say I have not just looked at the order of the Recorder. I have read his judgment, which was given following several days in court (at least, I believe, three days in court) so there was obviously a considerable amount of court time given to this. What he says, and I feel it is important to set it out, is that both Ms Ellis and Mrs King gave evidence, they were both extensively cross-examined (that is at paragraph 19 of his judgment). He then indicated, at paragraph 20, that:

"In my judgment neither party was a reliable witness. Where matters were contested I had to look to the documentation to determine what was likely to have happened, or I had to draw inferences from the surrounding facts and circumstances. I did not feel that I could rely on the truth of what either party was saying unless it was corroborated by contemporaneous documents or events. I believed that each party was quite capable of telling lies if they believed that it would help their case."

I interpose there that I understand that Ms Ellis was at that time represented by solicitors.

9. The Recorder then set out his findings. He says at paragraph 47:

"I did not believe the Claimant's account that she was buying this property exclusively for herself and her husband to move into. I have no doubt that if this was the case, she would have attempted to move into it sooner than she did and sought an explanation from her mother if she was not prepared to permit it. I also do not believe that the Claimant would have said "*I only want this house. I only wanted this house*" (referring to 2 Regina Cottages) as she did in the course of the recorded conversation in September 1999 if she had bought 72 Queensway for herself and her husband, and to move into it

immediately. In my judgment her reference in that conversation to 72 Queensway being hers was no more than a reference to the fact that she was the legal owner."

10. He then says at paragraph 49:

"Both parties were unsatisfactory witnesses and were quite prepared to tell lies to achieve their ends both when applying for a mortgage and in giving evidence in court. Mr Wicks was quite justified in accusing the Defendant of being cavalier in her approach to the truth. I could not rely on the account of either party in the witness box: the conclusion that I have reached is on the basis of the documents in the bundle, the objective facts of what happened, and my assessment of the responses of the parties when cross-examined."

11. At paragraph 52 he says:

"It follows that I reject the Claimant's claim for possession on the ground that she is the absolute beneficial owner as well as the legal owner."

12. He then goes on to say at paragraph 53, a paragraph to which Ms Ellis particularly referred me in her submissions, both written and oral:

"But I also reject the Defendant's counterclaim to the effect that she is entitled to an order simply transferring the whole of the legal title to her on the grounds that she is the absolute beneficial owner of the property. For the reasons that I have given I do not feel able to determine from the evidence that was given the exact basis that was agreed between the parties for this transaction to go ahead, but from the outset the Claimant has alone been liable under the terms of the mortgage, and from September of 1999 she has been paying the mortgage and dealing with any claims for arrears. I am not satisfied that, from September 1999, the Defendant made any real effort to pay the mortgage, or indemnify the Claimant against her liabilities under the mortgage."

13. He then says, at paragraph 55:

"It is a matter of considerable regret that I am not able to give a final answer to this litigation without further consideration by the Court, but it does not seem to me that I have the necessary material before me to arrive at a final conclusion as to the value of the contributions of the parties to the purchase of the property. The issue has not been adequately explored, and in my judgment it will be necessary to have

an enquiry into the value of the parties' contributions to the purchase and (in the absence of agreement between the parties) an order for sale with the net proceeds of sale to be distributed in accordance with the contribution of each to the purchase."

14. He concludes, at paragraph 60: "The outcome is that there will be an enquiry as to the contribution of each of the parties to the acquisition of the property". That is the Recorder's judgment, given as long ago now as 7 July 2008.
15. On 12 to 13 January 2009 an enquiry was held before District Judge Liston. Again, the District Judge prepared a written judgment. She says at paragraph 3:

"The case has been before the Court on more than one occasion and I consider it important to set out precisely the matters which have been adjudicated upon previously and identify the findings of fact which are binding on me."

16. The District Judge sets out her conclusions, having heard the parties, in a long and, in my view, careful written judgment. I just want to emphasise again to the parties I have read this judgment in full. I have seen how the judge approached the merits. It may be worth quoting several paragraphs from that judgment. At paragraph 34 of her judgment, she says this:

"In my judgment - and in the judgment of Mr Recorder Gibson - the Claimant is the legal owner of 72 Queensway in name only. There is no doubt in my mind that, at acquisition, the intention of the parties was that the Defendant was to live in the property. She got the mortgage through the Claimant because she could not get it in her own name. Mr Recorder Gibson did not believe the Claimant was buying property for herself and her husband - and neither do I. The Defendant was the real purchaser and, had the Claimant not closed the Halifax account, the rent due for 2 Regina Cottages and owing to the Defendant would have paid the mortgage. Therefore in my judgment the Defendant is the beneficial owner of the property subject to accounting to the Claimant for the excess over £200 per month up to October 2007 and for the total mortgage payments following the sale of 2 Regina Cottages to date."

17. Following the judgment of District Judge Liston, an order of 18 February 2009 was made by District Judge Liston. It is a detailed order. Looking at the evidence filed by Mr

Burrin, the defendant, in support of his application for a strike-out, at paragraph 15 he says this about how he came to draw up the draft minute of that order,:

"Judgment having been delivered, I agreed to file a draft order to give effect to the decision and for the parties and the Judge to consider. I can recall attending a hearing during which I spoke to the Judge about the draft order but I cannot recall the details of the hearing [I interpose here to say that may not be surprising given that this hearing was on 18 February 2009, now over 14 years ago]. I am pretty sure that the Claimant attended because I have a faint recollection of her conveying that she did not like my draft order. I believe that I also recall a reference by the Claimant to a complaint about District Judge Liston that she had made and which District Judge Liston said was in the process of being responded to."

18. Mr Burrin then exhibits the approved sealed order. The minute of order recites that the district judge heard the claimant, Ms Ellis, in person and the solicitor for the defendant, Mr Burrin. The order then recites an undertaking given by Mrs King to the court that she would use *"her best endeavours to procure the release of the Claimant [that is, Ms Ellis] on or before completion of the transfer provided for by clause [1] from any liability under the mortgage secured on [the Property] ... by re-mortgaging the said property"*. I will come back to the significance or otherwise of that undertaking in a moment. Then, at paragraph 1 of the order, it says this:

"The Claimant shall transfer to the Defendant all of her legal estate and beneficial interest with full title guarantee in the freehold property to 72 Queensway, Sheerness, Kent registered at HM Land Registered under title no. K673693 ("the Property"), and unless the same shall be settled by the Defendant prior, subject to the mortgage secured thereon on and recited above, but subject to no other charge or encumbrance [and the Defendant shall pay the sum of £3,499.97 to the claimant on the terms set out below]."

19. For the avoidance of doubt, paragraph 2 of the order provides that "the legal estate in the Property shall be vested in the Defendant with full title guarantee". There is also a provision for Ms Ellis (the claimant) to pay Mrs King (the defendant) the costs of the action, subject to detailed assessment if not agreed.
20. Ms Ellis tells me, and I have absolutely no reason to doubt this, that she disagreed with this order. She says it is wrong. She says it does not accord with the findings of the

Recorder. On 1 March 2009, that is, almost immediately following the order of the district judge, Ms Ellis began writing to the Solicitors' Regulatory Authority complaining of the conduct of Mr Burrin. I have seen those letters. She refers in that letter of 1 March 2009 to her distressing concerns of Mr Burrin, of Stephens & Sons. She also refers to an earlier letter of her "alarming complaints letter" which had been sent directly to Mr Burrin. She writes that "I could loose (sic) monies worth of well over £100.000 and this is as a direct result from Mr D. Burrin's unforgivable and unjust actions".

21. She writes to say that she now has no other option but to send everything directly to the Solicitors' Regulatory Authority, so she encloses copies of all the major evidence to show that Mr David Burrin "has clearly twisted the truth", whereby he has "now taken sole control over all directions to own my civil case regardless of me being a third party". She writes that "It is very clear that I have not given Mr D Burrin any instruction to deal with my own civil case in such a way and manner which evidence clearly shows is now being carried out all one sided and clearly for the benefit of Mr D Burrin and for his own client Mrs Linda Mary King." She goes on to say how deeply stressed she is and how ill with worry. At the bottom of the letter, in manuscript, Ms Ellis has written "P.S. More info: Will be sent within the next few days."
22. What is clear from this letter of 1 March 2009 (and there are other examples of this, of complaints being made to the SRA in 2009 and 2010) is that all, or nearly all, of the key elements of what Ms Ellis now complains about Mr Burrin's alleged conduct in her Particulars of Claim were known to her on 1 March 2009. I will return to that when I explain the reasons for the decision I am making.
23. On 6 October 2009, HHJ Simpkins in the Maidstone County Court, dismissed an application for permission to appeal by Ms Ellis on the ground that any appeal needed to be made to the Court of Appeal. Ms Ellis in the hearing before me referred me to a transcript of the hearing before HHJ Simpkins. I have looked at that. It is true that in one paragraph of that transcript, as part of the back and forth between the parties, HHJ Simpkins expressed the view that the decision of the district judge was in some form and some way inconsistent with paragraph 53 of Recorder Gibson's judgment. What the transcript shows the following interchange:



The Judge says: "So she seems to have overridden Recorder Gibson, which she is not entitled to do. Maybe Recorder Gibson got it wrong, but the remedy there is to appeal. It may be that because of his judgment she was put in a rather difficult position. Recorder Gibson did not conclude that she was the legal owner in name only. He concluded that both of them had a beneficial interest in the property, didn't he?"

Mr Burrin then replies "He did, but what the District Judge has done is he has still given the claimant credit for her contributions that the claimant has made. So it is a matter that in substance would bring about the same result."

24. And then Judge Simpkiss indicates "that may be right." So, despite how Ms Ellis now invites me to read this exchange regarding a failed permission to appeal application from 2009, it does not seem to me that there is in any way a clear finding by HHJ Simpkiss that there was some sort of departure by the district judge from the decision of the Recorder. I just do not read it in that way. In any event, it seems to me one has to be quite careful about departing from decisions made carefully following a fully-contested hearing.
25. There was then an application by Ms Ellis to stay the order of District Judge Liston, which was dismissed on 23 November 2009.
26. Ms Ellis eventually filed an appeal direct to the Court of Appeal. By two orders, both dated 17 August 2010, Jacob LJ refused both the application for permission to appeal the decision of Mr Recorder Gibson of 7 July 2008 and the order and judgment of District Judge Liston of 29 January 2009 "as being totally without merit and the applicant may not request the decision to be reconsidered at an oral hearing". In dismissing the applications to appeal, Jacob LJ indicated that the applications were well out of time, there was no proper excuse and still less an adequate excuse, particularly in circumstances where HHJ Simpkiss had told Ms Ellis to "get to the Court office straight away". Jacob LJ said:

"Whilst one could overlook that part of the delay caused by the technicalities which led to the application being made to the wrong court initially, the delay caused by that was only just over 2 months in the near 11 month period between the decision of HHJ Liston and the application to this Court, that leaves 9 months wholly unexplained still less justified.

In these circumstances there is no prospect whatever of this Court extending time for appeal, even if (which I will assume for present purposes) that an appeal, if permission for it had been sought, would have stood a prospect of success."

27. Ms Ellis did not transfer the property to Mrs King, as she had been ordered to do. On 27 September 2010 the court executed that transfer without her consent.
28. Ms Ellis continued making various applications to court, which resulted I understand in a three year civil restraint order being imposed upon her. I do not have the exact dates for when this occurred.
29. Once the civil restraint order expired, Ms Ellis returned to court. These resulted in further proceedings by Ms Ellis against Mrs King. These came on before HHJ Venn at a hearing on 15 January 2020 in the County Court at Canterbury. Again, I have looked at that judgment of HHJ Venn. Both parties are referred to there as being litigants in person. I have also been referred to the transcript of the hearing. To the extent that Ms Ellis seeks to rely on what was said by HHJ Venn, I do not find that there is anything in there that actually assists her in the slightest. As HHJ Venn repeatedly pointed out to Ms Ellis, no judgment has found there to have been any civil fraud. What Ms Ellis appears to have been complaining about before HHJ Venn was that Mrs King had not complied with the order of DJ Liston because Mrs King has failed to obtain her own mortgage and released Ms Ellis from her mortgage covenants. What HHJ Venn was focused on was whether the undertaking given by Mrs King as recorded in the order of 18 February 2009 was made by consent, in which case it could be analysed as a contract, or whether it was simply imposed upon the parties. Ms Ellis certainly made very clear before HHJ Venn that she, Ms Ellis, never consented to it. HHJ Venn concluded therefore that the undertaking could only take effect as an order of the court, rather than a contractual obligation. According to HHJ Venn, the undertaking was something that could be enforced, if at all, against Mrs King in contempt proceedings.
30. The judgment of HHJ Venn records that Ms Ellis' Part 20 claim and her application of 29 June 2018 was struck out as being totally without merit. There is nothing in the judgment of HHJ Venn that actually assists for the purposes of the decision I have to make.

### **Legal principles**

31. The legal rules I am applying are found in the Civil Procedure Rules, rule 3.4, which gives the court the power to strike out the statements of case if it appears to the court (a) that the statement of case discloses no reasonable grounds for bringing or defending the claim, (b) that the statement of case is an abuse of the court process or is otherwise likely to obstruct the just disposal of the proceedings, or (c) that there has been a failure to comply with a rule, practice direction or court order.

### **Analysis**

32. Ms Ellis is coming to court now many years, 13 or 14 years, after the underlying events of 2008 and 2009. She wants to bring a claim against Mr Burrin, not Mrs King. Mr Burrin by way of his counsel makes, it seems to me, four key points. First, it is said the claim is simply statute-barred, because any cause of action in tort that might exist is subject to the six-year period under section 2 of the Limitation Act 1980. Insofar as there is any kind of tort, the limitation period has clearly expired, given that more than six years have passed since the period of time started to run, at the latest, from September 2010 when the order transferring the Property was actually made. Therefore, on any view, any claim against Mr Burrin is statute-barred. Secondly, it is said that there are no reasonable grounds for bringing the claim, that the claim is unintelligible. The notes to the White Book explain that CPR rule 3.4(2), grounds (a) and (b), cover statements of case which are unreasonably vague, incoherent, vexatious, scurrilous or obviously ill-founded and other cases which do not amount to a legally recognisable claim or defence. Thirdly, it is submitted that these proceedings are an abuse of process. Underlying all this is Ms Ellis's wish to relitigate the Property proceeding claim, claim 5ME01455 in the Medway proceeding. It is said it is an abuse for her now to be seeking to effectively have a further bite at the cherry and simply re-argue a case that was fully argued before the Recorder and District Judge. Fourthly, it is said that the claim is vexatious, in so far as it seeks to bring a claim against Mr Burrin, the solicitor for Mrs King, whom Ms Ellis sued in the Medway County Court proceedings.
33. I have listened carefully to what Ms Ellis has said. Her submissions are founded on a misunderstanding of what has gone on in this litigation. As I said, the Particulars of Claim are not easy to follow. I made a note of what Ms Ellis says to me in oral

submissions which she agreed was in broad terms an accurate summary of her case. Ms Ellis case relies on a number of propositions. First, there was the judgment of the Recorder that Mrs King did not like, the findings in that judgment. Second, Mrs King then went and “blighted” Ms Ellis's legal aid, thereby forcing Ms Ellis to go to court on her own. Third, Mr Burrin was instructed by Mrs King two weeks later and Mr Burrin wrongfully sought to relitigate the amended defence of Ms King, which Ms Ellis says had been struck out (I have seen nothing indicating that the amended defence was ever formally struck out). Ms Ellis complains that Mr Burrin was also running Mrs King's defence and counterclaim. Fourth, Mr Burrin then said he would type up the order of 18 February 2009. This was not done by consent, says Ms Ellis. I have no reason to doubt that it was not done by consent. Equally, the TR1 transferring the Property to Mrs King was not by consent, and Mr Burrin then went off and enforced the order he had obtained through the Medway County Court. When it came before District Judge Liston, Ms Ellis says the Judge simply looked at her and rubber-stamped the order, and that thereby prevented justice being done.

34. It was also said that there is some sort of admission in Mr Burrin's witness statement in support of his application for strike-out. Ms Ellis says to me that if she had had that witness statement earlier, arguably, she says to me, she would have been able to go to the Court of Appeal with all the facts at her disposal and obtain the striking-out or the reversal of the judgments that had been wrongly entered against her.
35. As I say, it seems to me most of this proceeds on a number of factual mis-readings and legal misunderstandings of what has gone on. Mr Burrin did not “take over” Ms Ellis’ proceedings. The judgment of the Recorder certainly is not in favour of Ms Ellis. He was critical of both parties' evidence. There was then the account and enquiry before District Judge Liston, and this was fully argued. It is very hard to see what cause of action is asserted against Mr Burrin. It is a usual occurrence in proceedings, where one party is represented and the other is not, that the solicitor or counsel for the represented party will prepare a draft minute of order for a judge to approve. There is nothing improper in that. Nor does it found any claim for fraud.
36. If what is really being sought in substance is the setting aside of the earlier orders in the Medway County Court which Ms Ellis does not like, any challenge to those order is

grossly out of time. The right way to challenge those judgments was by way of appeal. Ms Ellis did appeal, to the Court of Appeal, but her appeal was out of time, and was dismissed. I do not now have jurisdiction simply to set aside judgments given earlier without the most cogent evidence. Having set out the earlier chronology in full, there is no basis to set aside the earlier judgments from 2008 / 2009. Ms Ellis knew broadly the facts that are now set out in Mr Burrin's witness statement. She was writing letters of complaint about his conduct, as we have seen, from 1 March 2009 onwards, and I do not detect anything in Mr Burrin's Particulars of Claim which Ms Ellis did not actually know back in 2009. She is very fixated on Mr Burrin's reference to proceedings in the Medway County Court as "the King proceedings". Ms Ellis says there are no King proceedings. On one level she is right. There are no King proceedings. It is just those proceedings in the Medway County Court under the Medway County Court number. It is just a label that Mr Burrin has given to them by way of explanation in his witness statement.

37. But this does not evidence fraud. I do not consider that there is any basis properly to allege any kind of fraud whatsoever against Mr Burrin. That conclusion also justifies the Particulars of Claim being struck out. They are vexatious. They are abusive. They do not set out a proper cause of action.

### **Conclusion**

38. So, for the reasons that I have sought to set out in this ex tempore judgment, Ms Ellis does not set out any proper cause of action against Mr Burrin. There is no proper claim. This is effectively an attempt to relitigate proceedings that go back as long ago as 2008 and 2009, where multiple applications for permission to appeal were brought, which were dismissed.
39. On this basis, it seems to me that I can strike out the claim either under rule 3.4(2)(a) and (b), as Ms Ellis' statement of case is rightly described as being unreasonably vague, incoherent, vexatious or simply ill-founded. She has no cause of action at all against Mr Burrin. Even if there were a claim against Mr Burrin (and, for the record, there is no material to make any claim for fraud against Mr Burrin) such a claim would be statute-barred. Further, Ms Ellis' claim is an abuse, in that in substance, if not in form, it seeks to challenge the judgments made in the Medway County Court in 2008 and 2009. It also

seems to me that rule 3.4(2)(c) is engaged, in that there is a breach of CPR r. 16.4(1) and Practice Direction 16, para. 8.2, which provides that particulars of claim “must” contain a concise statement of the facts on which the claimant relies and the specific requirement, under the Practice Direction, specifically to set out any allegation of fraud.

40. The right decision for the court is to strike out the claim, so that is what I am going to do. I therefore grant the defendant’s application to strike out the claim, and dismiss the claim. I also dismiss Ms Ellis’ application to strike out Mr Burrin’s application.

**Epiq Europe Ltd** hereby certify that the above is an accurate and complete record of the proceedings or part thereof.

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**This transcript has been approved by the Judge**