Neutral Citation Number: [2023] EWCA Civ 881

Case No: **CA–2021–000325** and **CA–2021–003325**

IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION
ADMINISTRATIVE COURT
Mr Justice Supperstone and Mr Justice Swift

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 25/07/2023

Before :
SIR GEOFFREY VOS, MASTER OF THE ROLLS
LADY JUSTICE NICOLA DAVIES
and
LORD JUSTICE BIRSS

- -

Between:

Dharam Prakash Gopee	**Claimant/ Appellant**
- and -	
The Crown Court at Southwark	**Defendant/ Respondent**
- and -	
The Financial Conduct Authority	**Interested Party**

- -

Dharam Prakash Gopee appeared in person (Mr Gopee)
The respondent did not appear and was not represented (Southwark Crown Court)
Martin Evans KC and Craig Ulyatt (instructed by **Legal Division, Financial Conduct Authority**) for the **Interested Party** (the FCA)

Hearing date: 12 July 2023

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JUDGMENT

Sir Geoffrey Vos, Master of the Rolls, Lady Justice Nicola Davies, and Lord Justice Birss:

Introduction

1. The main question in this appeal is whether and in what circumstances a civil restraint order (CRO) can be made or set aside without a hearing.

2. Mr Gopee is appealing two orders. The first is a general civil restraint order (the GCRO) made by Supperstone J on 1 October 2019 without notice to Mr Gopee. The second is the order of Swift J made on paper on 28 January 2019, refusing Mr Gopee's application to set aside the GCRO (the set aside order) (together "the two orders").

3. Mr Gopee submitted that the GCRO ought not to have been made without notice and without an oral hearing, and that the set aside order ought not to have been made without a hearing and without any notice to Mr Gopee of the matters that might be relied on. Warby LJ granted Mr Gopee permission to appeal on these points only. One of Mr Gopee's main points before us, however, was that the GCRO was wrongly made on the basis of certain written materials that have never, even now, been supplied to him.

4. The FCA submitted that there is no requirement that there be an oral hearing of either an application for a GCRO or of an application to set a GCRO aside. The materials not shown to Mr Gopee were internal court summaries of the case and were not significant to the outcome. Accordingly, the two orders were properly made.

5. We have decided that the two orders were indeed properly made for the reasons we shall now give. We will first set out the essential factual background including the relevant terms of the two orders, then we will deal with Civil Restraint Orders and the parties' main submissions, before giving the reasons for our decision, and considering whether a fresh GCRO ought to be made against Mr Gopee.

The factual background

6. For many years, Mr Gopee has been involved in litigation arising from his money-lending activity. He often lent to extremely vulnerable people, secured by charges on the property of the borrowers. There were over 1,000 such charges. He would use the civil courts to obtain possession of the properties and then rent them back to the borrowers. There were over 400 such properties. Mr Gopee conducted this business through a variety of companies. Although one company held a consumer credit licence until it lapsed due to regulatory action by the Office of Fair Trading (in 2012), none of the others did. The loans were almost invariably made by companies which did not hold a licence. As a result the loans and charges were unenforceable. Mr Gopee has repeatedly argued that these companies were acting as agents for the licensed company, but that argument has been rejected. The pattern of applications by Mr Gopee and the companies that he controls has been held to demonstrate "a determination to misuse the court's processes by seeking repeatedly to advance similar arguments in different guises" (*R v. Gopee* [2022] EWCA Crim 955, Johnson J at [20]).

7. In 2015, the FCA obtained a restraint order under section 41 of the Proceeds of Crime Act 2002 against Mr Gopee and various companies under his control, preventing disposal of their assets. The FCA subsequently commenced committal proceedings

against him for breach of the order. On 11 April 2016 HHJ Gledhill QC found Mr Gopee in contempt and sentenced him to 18 months' imprisonment.

8. In the course of the proceedings before Judge Gledhill, a victim surcharge fee of £100 (the VSF) was imposed on Mr Gopee and bailiffs attended his home to enforce it and the ancillary costs. The bailiffs were paid by Mr Gopee's son. In November 2017, Mr Gopee brought judicial review proceedings against Southwark Crown Court seeking to quash the VSF. Southwark Crown Court took no part, and the FCA was ordered to be joined as an interested party. The FCA later conceded in writing that the VSF should not have been imposed but also submitted that the judicial review should be dismissed as an alternative remedy existed, namely an appeal to the Court of Appeal (Criminal Division) (the CACD). The matter came on to be heard in the Divisional Court before Haddon-Cave LJ and William Davis J on 24 January 2019.

9. In the meantime, in early 2018, the FCA had prosecuted Mr Gopee for unlicensed/unauthorised trading, and he was convicted of 4 charges. On 9 February 2018, Mr Gopee was sentenced by HHJ Beddoe to 42 months' imprisonment. A Serious Crime Prevention Order was made against him. His appeal against conviction and sentence was dismissed: *R v. Gopee* [2019] EWCA Crim 601. It appears that between 2015 and 2019 Mr Gopee sought to commence at least 12 judicial review claims, and also repeatedly sought to intervene in claims brought by consumers to escape from his unenforceable loans.

10. At the 24 January 2019 hearing in the Divisional Court, the court reconstituted itself as the CACD, quashed the VSF and directed that the VSF and costs (£410) be paid back to Mr Gopee (the CACD's order). Counsel for the FCA drew the court's attention to Mr Gopee's history of making unmeritorious claims and applications. The CACD's order included the following:

> 7. The following documents are to be referred to the Judge-in-charge of the Administrative List, the Hon. Mr Justice Supperstone, **to consider whether [Mr Gopee] should show cause as to why a General Civil Restraint Order or other Restraint Order should not be issued against him**:
>
> i. A transcript of the judgment of the Court today;
>
> ii. The case summaries prepared by the Administrative Court office and the Court of Appeal office;
>
> iii. The FCA's letter to the Court dated 20 December 2018;
>
> iv. The relevant papers in this case and [Mr Gopee's] extant judicial review claims. [Emphasis added].

11. Haddon-Cave LJ said this at [13]-[14] (and William Davis J agreed):

> 13. Finally, we turn to the broader aspects of this case. As we said in opening, Mr Gopee has become a serial litigator. Since his incarceration in prison in the last few years, and now during his current lengthy sentence, it appears that Mr Gopee has

> occupied himself in his cell by issuing as many sets of legal proceedings as possible, most of these being directed to what appears to be something of a vendetta against the FCA. This must stop. In these circumstances, we order that a transcript of these remarks, together with the Administrative Office and the helpful Court of Appeal Office summaries, and the FCA summary letter of 20 December 2018, together with the relevant papers, **are referred to the judge in charge of the Administrative Court, Supperstone J, to consider whether Mr Gopee should show cause why a General Restraint Order should not be issued against him**, the purpose being to stop Mr Gopee further wasting the Court's time, the FCA's time and his own time, which might more fruitfully be used in rehabilitation in prison. Accordingly, we so order. [Emphasis added].
>
> 14. Let me add this before I invite Davis J to give his judgment. We would give this advice and warning to Mr Gopee. Mr Gopee, if the Administrative Court does decide to issue a GRO against you and you choose to ignore that order, as you appear to have ignored previous restraint orders in the past, you could find yourself in serious trouble again.

12. Mr Gopee contended, as we have said, that he was never provided with "[t]he case summaries prepared by the Administrative Court office and the Court of Appeal office" referred to in [7(ii)] of the CACD's order and considered by Supperstone J when he made the GCRO against him.

13. Supperstone J made the GCRO on 1 October 2019 without notice to Mr Gopee. It was not a direction requiring Mr Gopee to show cause why a GCRO should not be made. The recitals to the GCRO recorded that Supperstone J had perused the case file regarding the judicial review claim against the VSF, considered the CACD's order of 24 January 2019, an order refusing Mr Gopee permission to appeal to the Supreme Court, the transcript of the Divisional Court's judgment of 24 January 2019, and had regard to Mr Gopee's "history of unmeritorious applications". The final recital provided that it appeared to the court that "unless restrained, [Mr Gopee] is likely to issue further applications and/or appeals which are without merit".

14. The GCRO also contained two further distinct provisions relevant to this appeal. First, at [4], the order contained a provision about applications to amend, discharge or vary the order. Such an application first needed permission of Supperstone J and then would be dealt with in writing by the current lead judge of the Administrative Court. Secondly, [8] of the GCRO contained exceptions to the requirement for prior permission, in these terms:

> 8. **THIS ORDER does NOT** prevent you [Mr Gopee] from taking any one or more of the steps set out below without the prior permission of Mr Justice Supperstone or the then current lead judge of the Administrative Court. **YOU MAY**:
>
> (i) Apply, without obtaining prior permission, to set aside all or any part of this Order. Any such application should be made to

> the Administrative Court Office …, quoting the case reference number at the head of this Order and your application will be heard by a High Court Judge.
>
> (ii) Apply, without obtaining prior permission, for permission to appeal against this Order by filing an Appellant's Notice in the Court of Appeal … You should not take this step until you have made application under 8(i) hereof. [Emphasis in original].

15. On 15 October 2019, Mr Gopee issued an application notice seeking to set aside the GCRO (the set aside application). Mr Gopee answered question 5 in that notice which asked "How do you want to have this application dealt with?", by ticking the box marked "without a hearing", leaving unticked the boxes marked "at a hearing" and "at a telephone hearing".

16. The set aside application was supported by Mr Gopee's witness statement setting out his main grounds: (a) the order was made in his absence, without notice, and without giving him the chance to make representations, (b) the order overlapped with an earlier CRO made by HH Judge Mackie QC in 2013 and varied in 2018 and still in force, (c) a transcript of the hearing on 24 January 2019 was required but the court was said to have elected to suppress it, and (d) the judgment of the Divisional Court which prompted consideration of the GCRO was one sided and outside the court's jurisdiction.

17. Swift J (the current judge in charge of the Administrative Court) refused the set aside application to set aside the GCRO on paper on 28 January 2020. The reasons erroneously referred to the application as one brought under [4] of the GCRO, when it was actually brought under [8]. Swift J's reasons addressed and rejected all the grounds advanced by Mr Gopee.

18. Both of Mr Gopee's appellant's notices were well out of time when filed in November 2021. In December 2022, Warby LJ extended time for both appellant's notices. He granted permission only on the grounds that we have set out at [3] above. We observe at once that the case for making the GCRO against Mr Gopee in 2019 was a strong one. The appeals do not include a review of the merits of the GCRO itself. They concern specific aspects of the procedure which was adopted.

19. Mr Gopee also applied at the hearing before us to set aside a case management order, made without a hearing shortly before the substantive appeal, permitting the FCA to file a supplementary bundle containing the orders and judicial statements determining applications made by Mr Gopee to be totally without merit. We have, in the result, been much assisted by that bundle which was referred to by Mr Gopee himself in his oral submissions. There is no good reason to set aside that order, and we decline to do so.

Civil Restraint Orders

20. A GCRO is one of the three forms of civil restraint order provided for in CPR Part 3.11 and Practice Direction 3C (PD3C). The powers to grant civil restraint orders are exercised when a person has issued claims or made applications which are totally without merit ([1] of PD3C). The narrowest form is a Limited CRO which restrains the person from issuing applications in the proceedings in which the order is made without the permission of a judge ([2.1]-[2.9] of PD3C). An Extended CRO restrains a person

from issuing claims or making applications relating to the proceedings in which the order is made, again without the permission of a judge ([3.1]-[3.11] of PD3C). The widest form is a GCRO ([4.1]-[4.11]), which prevents a person from issuing any new proceedings against any defendant in the courts of England and Wales or from issuing any application, appeal or other process in the action in which the GCRO is made or any other action, without the permission of a judge.

21. Orders for a Limited CRO run for the duration of the proceedings ([2.9] of PD3C) while Extended CROs and GCROs are for a fixed period, which may now be for up to 3 years ([3.9] and [4.9] of PD3C). The court may later extend the order or make another if appropriate. The CRO should identify a named judge to whom any application for the permission required by the order should be made and make provision for what to do if the named judge is unavailable. Applications for permission from the named judge are themselves to be made in writing.

The parties' main submissions

22. Mr Gopee submits, as we have said, that Supperstone J was wrong to make the GCRO without a hearing. That was a breach of article 6 of the European Convention on Human Rights (article 6) and is contrary to the public interest. He also submits that the fact that the order referring the matter to Supperstone J invited the court to consider whether Mr Gopee should be ordered to show cause why a GCRO should not be made against him strongly indicates that he ought to have been heard. Mr Gopee also refers to the fact that the CACD's order referred the case summaries to Supperstone J, without providing for them to be provided to Mr Gopee.

23. In relation to the set aside order, Mr Gopee refers to the provision in CPR Part 3 and to *Deeds v. Various Respondents* [2013] EWCA Civ 1678 (*Deeds*), which he contended suggested that there was an automatic right to attend a hearing of an application to set aside a GCRO. Mr Gopee submitted that, when Swift J considered the papers, he ought either to have made an order setting aside the GCRO (which could have been done without a hearing) or directed that a hearing take place. Mr Gopee also drew attention to the error by Swift J in treating the application to set aside as one under [4], rather than [8], of the GCRO.

24. The FCA submits that there is no unfettered right to an oral hearing and the challenge to the GCRO must fail for that reason. Mr Gopee may have had the right to ask for, even insist on, an application to set aside being dealt with at an oral hearing, but he did not do so. His application was clearly made on the basis that he was asking for it to be determined without a hearing. Swift J cannot, therefore, be faulted for dealing with it on that basis. The slip about treating the application made under [4] rather than [8] of the GCRO is of no significance.

25. The FCA also contended that both appeals should be dismissed as academic, since the GCRO has now expired. The FCA realistically accepted in argument before us that permission to appeal was given on the basis that there was a compelling reason to consider the procedures which had been followed in this case because they raised issues of wider significance. In those circumstances, it is difficult to see why the appeals should now be dismissed as academic. There is no need to consider this point any further.

26. In addition, the FCA submitted that the court should take this opportunity to consider whether to make a fresh GCRO against Mr Gopee. The FCA contended that, since the GCRO expired on 1 October 2021, Mr Gopee had restarted making applications which were totally without merit. The supplementary bundle filed by the FCA included copies of orders refusing or striking out applications by Mr Gopee as totally without merit stretching back to 2016 and including seven such orders since October 2021.

27. Shortly before we handed down this judgment, Mr Gopee sent in some further submissions in writing. We have read them and taken them into account, but we do not consider that they affect any of our reasoning in this judgment.

The first appeal against the GCRO itself

28. The starting point is that neither at common law, nor pursuant to article 6, does a litigant have an unfettered right to an oral hearing. In *R (Ewing) v. Department for Constitutional Affairs* [2006] EWHC 504 (Admin), [2006] 2 All ER 993 Sullivan J reviewed a number of authorities on the issue. At [27] he put it succinctly in the following way: "[a]t common law, one is entitled to an oral hearing where fairness requires that there should be such a hearing, but fairness does not require that there should be an oral hearing in every case". We agree.

29. CPR Part 3.3(4) provides expressly that "[t]he court may make an order of its own initiative, without hearing the parties or giving them an opportunity to make representations". CPR Part 3.3(5) provides that, where such an order is made "(a) a party affected by the order may apply to have it set aside, varied or stayed; and (b) the order must contain a statement of the right to make such an application".

30. In *Deeds*, Lewison LJ drew attention at [10]-[11] to the distinction between the use of the word "hearing" to mean "oral hearing" and the possibility of a "hearing" taking place when the judge considers the parties' written representations without hearing oral argument.

31. When Supperstone J came to consider the matter referred to him by the CACD's order of 24 January 2019, one course open to him would have been to direct an oral hearing to take place at which Mr Gopee should show cause why a GCRO should not be made against him. That would not have been an order made by the court of its own initiative and would not have engaged CPR Part 3.3(4) and (5). It was also, however, open to Supperstone J, pursuant to CPR Part 3.3(4) to make a different order of his own initiative, as he did, and make a GCRO then and there, without a hearing. In taking this course, CPR Part 3.3(5) had to be complied with, which it was. The GCRO expressly provided at [8] that Mr Gopee had the right to apply to set it aside. In our judgment, Supperstone J plainly had the power to make the GCRO in the manner he did, namely without an oral hearing and without notice.

32. As the Court of Appeal explained in *Chief Constable of Avon and Somerset Constabulary v. Gray* [2019] EWCA Civ 1675 (*Gray*) at [14] (approving what Stuart-Smith J had said below), the purpose of the civil restraint order regime is to protect other litigants from vexatious proceedings against them and the finite resources of the Court from vexatious waste. It is worth adding that the regime is not aimed at, and does not in practice prevent, the person subject to a CRO from bringing or making properly arguable claims and applications. The only fetter it places on that person's access to the

court is the requirement to start by putting the application or claim to a judge. If the application or claim in question was not properly arguable it would (or should) have been struck out after it was brought in any event. This scheme simply changes the order in which these processes occur and the likelihood that unarguable and vexatious matters are caught early. The fact that CROs are procedural in nature rather than being orders which determine a person's substantive legal rights, supports the principle that in appropriate circumstances they can be made without notice and without a hearing.

33. It is clear that the CPR itself contemplates that the court's powers include the ability to make a civil restraint order on its own initiative, without notice and without a hearing. There are a number of express provisions in the rules which provide that where a statement of case or application is struck out or dismissed and is totally without merit, the court order must specify that fact and the court must also consider whether to make a civil restraint order. We refer to CPR Part 3.4(6) (striking out in general), CPR Part 3.3(7) (striking out on the court's own initiative), and CPR Part 23.12 (dismissing applications). Similar provisions apply on appeal, at CPR Part 52.20(6) (where the appeal court refuses an application for permission to appeal, strikes out an appellant's notice or dismisses an appeal). These rules all apply equally to occasions when a judge is dealing with a matter in an oral hearing and also to decisions made without an oral hearing. They do not, for example, require that if a judge were deciding without a hearing to strike out an application as totally without merit, and then turned to consider whether to make a CRO, that judge would be required to direct a hearing. The CPR clearly envisages that the full range of options is available to a judge in that case. Those options include making no CRO at all, directing a hearing to take place for a respondent to show cause why a CRO ought not to be made, and making a CRO there and then on the court's own initiative, without notice and without a hearing, provided it includes a right to apply to set the CRO aside (CPR Part 3.3(5)).

34. In *R (Kumar) v. Secretary of State for Constitutional Affairs* [2006] EWCA Civ 990, [2007] 1 WLR 536 (*Kumar*) at [74]-[75] the court also drew attention to these rules requiring consideration of a CRO when a totally without merit order was made, as demonstrating the appropriateness in a proper case of making a CRO without notice or a hearing. Although in *Deeds* at [26] the court characterised [74] of *Kumar* as holding that the power was exceptional, that is not what was actually said in *Kumar*. The order under appeal in *Deeds* was an order dismissing an application to set aside a CRO rather than the CRO itself, so we return to it in dealing with the appeal against the set aside order. Perhaps not surprisingly, given what *Deeds* was concerned with, the CPR provisions requiring a court to consider a CRO do not appear to have been drawn to the court's attention.

35. *Deeds* also refers at [26] to a second case, *Connah v. Plymouth Hospitals NHS Trust* [2006] EWCA Civ 1616 (*Connah*). The appeal in *Connah* did concern a CRO made on the court's own initiative without notice. The problem there was that the evidence before the court at the time the order was made did not justify a civil restraint order at all (see [21]-[23]). At [21], the court recognised that CROs could be made under CPR Part 3.3 but described that approach as being only for exceptional cases where the situation really warranted it. Again, the CPR provisions requiring a court to consider a CRO do not appear to have been cited in *Connah*.

36. No order should be made without an oral hearing unless the situation warrants it. However the label "exceptional" can be misunderstood. Regrettably, in our experience

the circumstances in which it is right to make a CRO under CPR Part 3.3 are not usual, but not as uncommon as one might hope. The pattern of behaviour of litigants against whom CROs are needed, particularly a GCRO, very often includes a propensity to respond to being given notice that a CRO may be made in future by making further unmeritorious applications in the meantime, which is the very thing the order is designed to prevent. The safeguard of a right to apply to set aside which is not fettered by the prior permission regime of the CRO itself was another aspect where things had gone awry in *Deeds*. That safeguard is important and effective, particularly when one bears in mind that a CRO, while of course putting a party in a different position from that of a normal litigant, does not stop them having access to the court to bring properly arguable applications. The regrettable frequency of bad behaviour by litigants against whom CROs are contemplated should not deter judges from acting on their own initiative when the situation warrants it.

37. The only question which remains on this first aspect of the appeal is whether on the particular facts of this case fairness demanded that when he considered the matter in October 2019 Supperstone J, rather than acting on his own initiative as he did, ought to have made an order for a hearing to take place for Mr Gopee to show cause why no CRO should be made. The two most important features of the circumstances at the time, which pull in opposite directions, were the terms of the CACD's order to consider whether to make an order to show cause, and the fact that there was in truth a very strong case for making a GCRO against Mr Gopee. It is to be noted that the recital to Supperstone J's order recorded that it appeared to the court that, unless restrained, Mr Gopee was likely to issue further unmeritorious applications. There is no ground of appeal entitling Mr Gopee to challenge the view expressed by Supperstone J. In our judgment, Supperstone J was entitled, in all the circumstances of this unusual case, to decide not to direct submissions in writing or an oral hearing at which Mr Gopee could show cause why a GCRO should not be made. The course he took was neither unfair nor contrary to law or natural justice. He was entitled to make a GCRO then and there without notice, with the built-in safeguard of an unfettered right to apply to set aside.

38. Finally there is the point about the reference to the case summaries in the CACD's order referring the matter to Supperstone J. Mr Gopee has never seen them, nor has the FCA. The case summaries are internal court working papers, prepared in a neutral way to assist the judges' preparation of a case. They are not available to the parties and the fact they were not made available in this case is of no consequence to the fairness of the process. They would simply have summarised what was shown in other court documents. That said, it was, in our judgment unnecessary and probably inappropriate to refer to them in a court order of the kind made by the CACD. Case summaries may be treated differently in criminal proceedings, but the CACD in this case might preferably have confined itself to the documents that had been presented to it by the parties.

39. We dismiss the appeal against the GCRO.

<u>The second appeal against the set aside order</u>

40. The main issue on the second appeal is whether Swift J was justified in deciding the set aside application without a hearing. The simple answer is that Mr Gopee had asked the court to determine it without a hearing, and that is what happened. Having asked for it to be handled like that, it is very hard to see how he can now complain that the matter

was determined that way. The fact that the decision was not in his favour is irrelevant. Mr Gopee suggested that what he meant by ticking the box on the set aside application was that he was happy for the matter to be determined without a hearing if he succeeded, but he wanted a hearing if he lost. That is simply not the effect of the way he completed the application form.

41. We would reach this conclusion even if the matter were free from authority, but there is in fact clear authority in support in *R (Thompson) v. Law Society* [2004] EWCA Civ 167, [2004] 1 WLR 2522 at [47] and *Re a Solicitor (No. 13 of 2007)* [2008] EWCA Civ 411 at [26].

42. Needless to say, a judge faced with an application of this kind made in this way is not bound to determine it without an oral hearing. The judge might take the view that it would be better decided at an oral hearing and give suitable directions. There is, however, nothing about the facts of this case which required Swift J to order an oral hearing in this case. Mr Gopee effectively relies on two matters: (i) the terms of [8(i)] of the GCRO which state expressly that the application to set aside "will be heard by a High Court Judge" and (ii) the judgment in *Deeds*.

43. The situation in *Deeds* was that a GCRO had been made on the court's initiative and therefore CPR Part 3.3 applied to it. Rightly, the order contained a paragraph making provision for an application to set it aside. The terms were the same as [8(i)] of the GCRO in this case. They included the same wording that any such application would "be heard by a High Court judge". Mr Deeds applied to set it aside. The application notice was not available to the Court of Appeal. The different judge dealing with that application wrongly regarded it as an application which required prior permission in writing by the judge supervising the CRO (which it was not), and dismissed it without a hearing. Mr Deeds applied to set that order aside and requested an oral hearing. A third judge dealt with that application and treated it as an attempt to question the prior permission decision, which it was not, and rejected it without a hearing. As Lewison LJ put it, that was a procedural tangle. Mr Deeds' original set aside application never was supposed to be subject to the prior permission in writing and the two later judges had both been mistaken to treat it that way.

44. It is true that in the course of untangling all that had happened in *Deeds*, Lewison LJ referred at [15] to a "presumption in favour of an oral hearing" on an application to set aside, under CPR Part 3.3(5), a civil restraint order made under CPR Part 3.3. A party making any application may ask for an oral hearing. If that is done, it will, in normal circumstances, be so directed. But the fact that a hearing would most likely have taken place if it had been asked for, does not support a conclusion that Swift J, on receiving Mr Gopee's application which was clearly marked as asking to be determined without a hearing, should have nevertheless ordered one.

45. Moreover, [8(i)] of the GCRO did not prevent Mr Gopee from asking for the matter to be determined without a hearing. Swift J had Mr Gopee's submissions and evidence about why the GCRO should be set aside and was entitled to approach the matter in the way he did, without an oral hearing or further notice to Mr Gopee.

46. The final questions are (i) the reference in Swift J's order to [4], instead of [8], of the GCRO, and (ii) what notice Mr Gopee was given of the matters which might be relied on.

47. The starting point is that [4] of the GCRO was a provision permitting an application to amend or discharge the GCRO itself, subject to obtaining prior permission from the judge identified in the order (reflecting [4.2(2)] of PD3C applicable to GCROs, which is equivalent to [3.2(2)] for Extended CROs and [2.2(2)] for Limited CROs). The ambit of this power was considered by the then Chancellor (Sir Geoffrey Vos C) in *Earth Energy Investments LLP (in liquidation) v. Middlesborough Football and Athletic Co (1986) Ltd* [2019] EWHC 226 (Ch), [2019] 1 WLR 3709 (*Earth Energy*). It was not necessary then (or now) to consider the limits of its scope but at [91] the Chancellor held that it included cases where there has been either a material change of circumstances since the order was made, or where the facts on which the original decision was made were mis-stated. We agree and we observe that this illustrates that applications invoking this power to amend or discharge the CRO are different in character from the power to set aside an order under CPR Part 3.3(5), as provided for at [8(i)] of the GCRO in this case. The latter requires no change of circumstances. It is an opportunity for the party to say why the order should not have been made in the first place, without relying on any change of circumstances, and in that sense reflects the character of orders made under CPR Part 3.3. They are not interim in the sense of being made for a limited time, but they are provisional or interim in character because they are subject to being set aside on what is in effect a reconsideration, without a change of circumstances.

48. [1] of the set aside order in this case describes the GCRO itself and includes the sentence: "[t]he [GCRO] provided (at [4]) that any application to discharge or vary the Order would be considered on the basis of written representations only". This raises two difficulties. First, it is a misreading of [4] of the GCRO because it elides the requirement for prior permission to make an application to discharge or vary (which is dealt with in writing) with the application itself. [4] says nothing about how the application itself must be considered. It may be that that is why Swift J decided to deal with this matter without a hearing, which would have been wrong, but as explained above he was in fact entitled to deal with the matter in that way. The second difficulty is that the application was not made under [4], but under [8(i)] as an application to set aside, which did not involve a threshold such as a change of circumstances (as in *Earth Energy*).

49. Looking at the set aside order as a whole, it is clear to us that he approached the matter correctly, as an application to set aside, asking whether there had been a proper basis for the GCRO to have been made in the first place. It was not approached by applying any sort of threshold requirement such as a change of circumstances.

50. Despite the language of [1] of the set aside order, the recital refers accurately to the claimant's application as being one to set aside the GCRO. The order actually made is that "the application to set aside … is refused". Apart from this, [2], [3], and [6] in the detailed reasons all identify the task as being to decide whether to set aside the order. [2] sets out an appropriate summary of Mr Gopee's grounds for his application to set aside, which include that the order was made in his absence and without notice or the opportunity to make representations. This point is then addressed directly at [4] where Swift J concludes that there was a proper basis for the GCRO which was made. He identifies four claims from the Administrative Court's records, prior to the GCRO, which were held to be totally without merit.

51. Notably one of the four totally without merit orders listed by Swift J as having been made before the GCRO was an order by Karen Steyn QC, sitting as a deputy High Court judge, made on 21 June 2019. That was, of course, after the CACD's order of 24 January 2019. Although it seems likely, it is not now possible to tell whether Ms Steyn's order in particular was before Supperstone J in October 2019. If it had been it would have been relevant to that judge's decision to make a GCRO on his own initiative rather than make an order to show cause. It is good practice for CROs to identify expressly the totally without merit orders which have been taken into account (as Swift J's order does) and it would have been helpful in this case if Supperstone J's order had done so. We cannot tell if the June order was before Supperstone J and therefore we have not considered it on the first appeal.

52. At [5] of the set aside order, Swift J addressed and rejected Mr Gopee's argument on overlap with an earlier more limited CRO made by Judge Mackie. He then concluded that Mr Gopee's "conduct in respect of claims issued in the Administrative Court between 2017 – 2019 (including but not limited to the claims listed in [4]) [provided] a proper basis for a general restraint such as the Order, in addition to the order already made by [Judge] Mackie".

53. Mr Gopee also argued before Swift J that the CACD's judgment had been "one sided". Swift J rejected this and concluded at the end of his reasoning at [6] that:

> This decision to refuse to set aside the [GCRO] has been made, not because of the [CACD's] judgment but because of [Mr Gopee's] persistent pursuit of unmeritorious claims.

54. We conclude that the mistaken reference to [4] of the GCRO was irrelevant.

55. The final aspect of the second appeal is whether Mr Gopee had adequate notice of the materials relied on. The starting point is that this was an application to set aside brought by Mr Gopee, supported by a full witness statement containing his grounds and which he indicated he wished to be decided without a hearing. Those points were considered fully by Swift J and rejected for good reasons. Mr Gopee does not complain about the reference to the four orders dismissing his claims as totally without merit, no doubt because he was well aware of them. He does repeat the point about case summaries, but that has been addressed at [38] above. Mr Gopee raised points about the FCA failing to send letters to him (including a letter of 20 December 2018 and earlier examples) but these have nothing to do with the GCRO, which is the subject of this appeal. There is no other basis for this aspect of the second appeal and we dismiss it.

Should a fresh GCRO be made against Mr Gopee?

56. The FCA submitted that, since the GCRO expired in 2021, Mr Gopee has again started to make unmeritorious and vexatious claims, applications and appeals and that this court should make a fresh GCRO. The FCA provided a schedule of 16 totally without merit orders dismissing claims, applications and appeals brought by Mr Gopee over the years since 2016, include a number made since the GCRO expired. Copies of the orders (save one) were in the supplementary bundle. The schedule included two totally without merit orders which the FCA did not press after Mr Gopee's submissions to this court in addressing them. Those two were orders in which Mr Gopee himself was not the

applicant. We do not take these two into account. The FCA also submitted that this list was unlikely to be exhaustive.

57. Seven of the orders were made after the GCRO expired in October 2021. They are:

i) 10 May 2022, *Barons Finance Ltd v. Pathak*, Case 2PA74125, County Court at Central London, HH Judge Hellman;

ii) 15 July 2022, *FCA v. Barons Finance Ltd*, FS-2020-000006, Business and Property Courts (Business List ChD), Simon Gleeson (Deputy HCJ);

iii) 27 July 2022, *Gopee v. Pangold Investments Ltd (in liquidation)*, CR-2022-002324, Business and Property Courts (Insolvency and Companies List ChD), ICC Judge Barber;

iv) 29 Nov 2022, *Gopee v. Pangold Investments Ltd (in liquidation)*, CH-2022-000159, Business and Property Courts (Appeals ChD), Miles J;

v) 14 Dec 2022, *Pangold Investments Ltd (in liquidation) v. Persons Unknown*, E01BR349, County Court at Bromley, DDJ Paul;

vi) 28 March 2023, *FCA v. Barons Finance Ltd*, CA-2022-001492, Court of Appeal, Newey LJ; and

vii) 21 April 2023, *FCA v. Barons Finance Ltd*, FS-2020-000006, Business and Property Courts (Business List ChD), Chief Master Shuman.

58. Although in some of these cases Mr Gopee is not named as a party in the action, in all cases Mr Gopee was the person bringing the claim, application or appeal which was totally without merit.

59. The test for making a GCRO set out in [4.1] of PD3C has two parts. The power to make a GCRO arises when the party persists in issuing claims or making applications which are totally without merit, in circumstances where an extended civil restraint order would not be sufficient or appropriate ([4.1] of PD3C, and see *Gray*). This test is amply satisfied by Mr Gopee. Mr Gopee has not simply been making vexatious unmeritorious applications in one case or in one court. The 7 orders above have been made in at least four distinct proceedings (making an allowance for appeals), in two county courts, three different lists in the Business and Property Courts and in the Court of Appeal. Even without consideration of the matters before October 2021, this would be a plain case for a GCRO. When looked at in the light of all Mr Gopee's conduct, the case is overwhelming. For example, the evidence is clear that Mr Gopee persistently repeats the argument, in a variety of courts, that the unlicensed money lending companies acted as agents for the one of his companies which was licensed for a period. That has been rejected repeatedly. We repeat the reference at [6] above to what was said recently in the CACD about Mr Gopee's determination to misuse the court's processes.

60. The order should include a copy of the FCA's complete schedule of totally without merit orders. The duration of the GCRO will be three years. It will nominate a judge of the High Court and a judge of the Court of Appeal. Applications under it concerning appeals to the Court of Appeal will be dealt with by a judge of the Court of Appeal. All other applications under the GCRO will be dealt with by a High Court Judge.

Conclusions

61. For the reasons we have given, we will dismiss Mr Gopee's appeals against the two orders and make a fresh GCRO for three years against Mr Gopee.