Neutral Citation Number: [2026] EWHC 2269 (Ch)

Claim No: CH-2025-000195

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
INSOLVENCY AND COMPANIES LIST (ChD) and BUSINESS LIST (ChD

7 Rolls Buildings,
Fetter Lane, London,
EC4A 1NL

Date: 2 September 2026

Before:

THE HONOURABLE MR JUSTICE THOMPSELL

- -

SIMON HALABI

Claimant

MICHAEL GAYMER

Defendant

Mr Robert Amey instructed by Payne Hicks Beach for the **Appellant**
Ms Joanne Wicks KC and **Mr Alex Hill-Smith** instructed by Knights for the **Respondent**

Hearing date: 28 July 2026

- -

Approved Judgment

Mr Justice Thompsell:

1. INTRODUCTION

1. The Appellant (whom I will also refer to as "**Mr Halabi**") appeals against a decision of HHJ Murch ("**Judge Murch**" or "**the Judge**") sitting at the County Court at Luton on 9 July 2025. The Judge made a non-party costs order against Mr Halabi pursuant to s.51 Senior Courts Act 1982 ("**s.51**") and CPR r.46.2 for reasons explained in a detailed *ex tempore* judgement ("**the Judgment**") handed down the same day.

2. Mr Halabi, through his single ground of appeal submits that:

> "HHJ Murch erred in fact and in law in concluding that Mr Halabi was the "real party to the litigation", and that the Judge's consequent decision to fix Mr Halabi with liability for non-party costs therefore cannot stand.

3. Permission to appeal on this ground was given by Adam Johnson J on 6 October 2025. In his reasons for granting that permission he noted that this appeal "raises a short but potentially important point" which he pithily summarises as follows:

> "The Appellant at all material times was a director of Mentmore Greenland Limited (MGL). The issue was whether to fix him with liability for costs orders made against MGL. The Judge determined that he would, because the Appellant was the real party to the litigation. The issue is that in *Goknur v. Aytacli* [2021] 4 WLR, the Court of Appeal said that costs orders against directors would usually only be made where the director was seeking to benefit personally from the litigation, or where there was evidence or impropriety or bad faith. In this case, there was no finding of impropriety or bad faith, and there is a question whether the Judge was justified in concluding at [55] that, 'I find it more likely than not that he will benefit personally', when the evidence was that MGL was ultimately owned by a trust of which the Appellant was not a beneficiary. This begs a further question about what is meant by personal benefit in this context, and whether, even though not a beneficiary of the trust, the Appellant's wider interests were sufficient to trigger his liability."

4. By way of a Respondent's Notice the Respondent also seeks to put before the court certain points alleging that Mr Halabi conducted proceedings in an abusive and improper manner.

5. This appeal was heard over a period of one day. Both sides were ably represented, in the case of Mr Halabi by Mr Robert Amey and in the case of the Respondent, by Ms Joanne Wicks KC and Mr Alexander Hill-Smith. The court is obliged to counsel on both sides for their learned and thoughtful contributions.

6. At the hearing, the vast majority of the argument was directed towards the single ground of appeal, however Mr Amey did take some time to argue against the points made in the Respondent's Notice and Ms Wicks took rather less time in advancing those points.

2. BACKGROUND

7. This appeal comes at the end of a long and bitterly fought series of hearings and trials.

8. The Respondent, Mr Gaymer, is the freehold owner of two golf courses, a club house and ancillary buildings originally known as the Mentmore Golf Course and Country Club ("**the Land**"), although no golf club is now operated on the land. The Land is adjacent to a Grade 1 listed stately home, Mentmore Towers that is held ultimately for the benefit of Mr Halabi's family. Mr Halabi lived at Mentmore Towers for a time and his eldest son is buried there.

9. In 1995, Mr Gaymer granted a reversionary lease of the golf courses for 99 years commencing in June 2012 ("**the Lease**") to a company by the name of Mentmore Golf and Country Club Limited ("**Mentmore Golf**") . The Lease was at a substantial rent and contained a lessee's repairing covenant.

10. In 2006 the shares of Mentmore Golf were acquired by a trust for the benefit of Mr Halabi's family. In 2012, the Lease was assigned to another Halabi entity, Mentmore Leisure Golf and Country Club Ltd ("**Mentmore Leisure**"), which was a 100% subsidiary of Mentmore Golf Investments Ltd ("**MGIL**" or "**Mentmore Investments**"). Mentmore Investments loaned money to Mentmore Leisure in relation to the acquisition and took a charge over the Lease.

11. The golf club closed in 2015 and has not re-opened since. That year, Mentmore Leisure went into administration and on the same day through a "pre-pack" sale, the Lease was assigned to another wholly-owned subsidiary of Investments, Mentmore Golf Corporate Ltd ("**Mentmore Corporate**"). Again Mentmore Investments provided a loan and the Lease was again charged to Mentmore Investments.

12. Mr Gaymer served a notice under s.146 Law of Property Act 1925 on Mentmore Corporate on 4 January 2017 alleging disrepair. Mentmore Corporate then served a counter-notice under the Leasehold Property (Repairs) Act 1938 ("**the 1938 Act**") and proceedings ensued.

13. Mentmore Corporate subsequently entered liquidation, and the lease was assigned to another company within the ownership of the Halabi family trusts, Mentmore Greenland Limited ("**Mentmore Greenland**"). The litigation continued as against Mentmore Greenland. Eventually, judgment was given for Mr Gaymer, with costs.

14. In fact there have been four sets of proceedings between Mr Gaymer and entities associated with the Halabi family relating to the Lease:

    i) Case number F00LU216: proceedings brought by Mr Gaymer under the 1938 Act ("**the 1938 Act proceedings**") for permission to bring forfeiture proceedings on the grounds of disrepair. These were commenced against

Mentmore Corporate as the then lessee, with Mentmore Greenland being substituted as defendant when the Lease was assigned to it.

ii) Case number J00LU584: possession proceedings brought by Mr Gaymer against Mentmore Greenland by way of forfeiture of the Lease ("**the forfeiture proceedings**"). Mentmore Greenland defended the claim and counterclaimed for relief from forfeiture. Notice of the proceedings was given to Mentmore Investments as chargee of the Lease. The forfeiture proceedings resulted in a possession order dated 29 November 2023, which was enforced by the High Court Enforcement Officer on 2 February 2024.

iii) Case number K01LU731: after the possession order had been made but before it had been executed, Mentmore Greenland issued another set of proceedings for relief from forfeiture ("**Mentmore Greenland's relief proceedings**"). On 31 May 2024, these proceedings were struck out by HHJ Murch as an abuse of process and summary judgment was given against Mentmore Greenland.

iv) Case number K01LU762: at the same time as Mentmore Greenland's relief proceedings, Mr Halabi caused Investments to bring proceedings for relief from forfeiture ("**Mentmore Investment's relief proceedings**"). On the same date, 31 May 2024, these were also struck out by HHJ Murch as an abuse of process and summary judgment was given against Mentmore Investments. Mentmore Investments appealed the decision: on 13 October 2025, Sir Anthony Mann allowed the appeal against summary judgment but upheld the strike-out on the grounds of abuse of process. Mentmore Investments has been given permission to appeal on a point of law, but the facts are not challenged. That second appeal is listed for hearing in October 2026.

15. As a result of this litigation various court orders have been made against Mentmore Greenland in the 1938 Act proceedings, the forfeiture proceedings and Mentmore Leisure's relief proceedings which remain unpaid. These were the subject of the non-party costs order sought by the Respondent and obtained from Judge Murch. Costs in Mentmore Investment's relief proceedings will be addressed after the appeal in that case has been determined.

3. THE JOB OF THE APPELLATE COURT

16. This appeal is at its heart a challenge specifically to the Judge's conclusion (at [55] in the Judgment) that Mr Halabi was:

> "the real party, or at any rate a party in very important and critical respects"

17. Ms Wicks has reminded me that s.51 confers a broad discretion on the court to determine who should bear the costs of litigation and that this conclusion was an evaluative decision, based expressly, not only on the primary facts but also upon the proper inferences to be drawn from the information before the court and the way in which Mr Halabi had conducted himself throughout the litigation. This clearly was how Judge Murch approached the matter as is apparent from the Judgment, in particular at [50], [52], [54], and [55]).

18. Ms Wicks reminds me further (by reference to *Re Sprintroom Ltd* [2019] EWCA Civ 932, [2019] BCC 1031 at [76] that on such a challenge:

> "the appeal court does not carry out a balancing task afresh but must ask whether the decision of the judge was wrong by reason of some identifiable flaw in the judge's treatment of the question to be decided, such as a gap in logic, a lack of consistency or a failure to take account of some material factor, which undermines the cogency of the conclusion"

and that appellate courts have repeatedly warned of the need for caution given the first instance judge's better understanding of nuance and ability to have regard to the whole of the evidence presented to him or her (see *Re Sprintroom* also at [77] and [78]).

19. Ms Wicks argues that. HHJ Murch was particularly well-placed to decide whether Mr Halabi was the or a "real party to the litigation" as he had dealt with many of the applications in the litigation, including:

   i) the hearing on 1 June 2023 of Mentmore Greenland's oral application for permission to appeal from an unless order made by DJ Willink;

   ii) the hearing on 14 August 2023 of that appeal;

   iii) an assessment of costs on 11 October 2023 (without a hearing);

   iv) an order for directions on 13 October 2023 (without a hearing);

   v) the hearing on 29 November 2023 of Mentmore Greenland's application for relief from sanctions and Mr Gaymer's application for a possession order;

   vi) the hearing on 4 January 2024 of Mentmore Greenland's application for a stay of execution and Mr Gaymer's application for transfer of enforcement to the High Court and assessment of costs;

   vii) a subsequent hearing on 1 March 2024;

   viii) the hearing on 31 May 2024 of Mr Gaymer's application for strike out of/summary judgment in Mentmore Greenland's relief proceedings and Mentmore Investments' relief proceedings, during which he was addressed by Mr Halabi personally; and

   ix) the hearing of Mr Gaymer's application for disclosure prior to the non-party costs application.

20. It is fair to conclude that, whilst none of the four sets of proceedings concluded in a trial, HHJ Murch was in just as good position as a trial judge to take a view on an appropriate costs order and that he had a perspective which this court lacks. Certainly, he was in a much better position than I am in considering this appeal to draw appropriate inferences and consider the conduct of the litigation in the round.

21. That is not to say however, that he must be right. As enjoined by *Re Sprintroom* I need to review the Judgment carefully and need to be astute to detect any insupportable

findings of fact or errors of law.

22. With that in mind, it is appropriate to consider the main elements of the Judgment.

4. THE JUDGE'S REASONING

23. The Judge considered carefully his powers under s.51, as applied to the County Courts by virtue of s.51(1)(c) of the 1984 County Courts Act.

24. In reviewing the history of this matter, he referred (at [5]) back to Mr Halabi's witness statement on 21 March 2019 where Mr Halabi explained how both he and what was described as "the trust" had invested very significant amounts to maintain the property and support the golf club business. He referred also to an earlier passage in this witness statement where Mr Halabi had stated

> "The fact that the estate has such personal significance for my family and by extension the family trust, is just one reason why we would not be willing to relinquish any part of it and will continue to provide support for Mentmore Golf *[i.e. the company I have defined as "Mentmore Leisure"]* to ensure the continuance of the lease as necessary."

25. In fact although the Judge did not mention this but would have known, that this witness statement (that of Mr Halabi dated 21 March 2019) went much further in explaining the "personal significance" of the Land, including the following:

> "Mentmore Towers was originally purchased in 1998 by the Family Trust with a view to converting it into a luxury hotel. Significant work was done in relation to this proposal, however, following a family tragedy in 2003 which resulted in the loss of my eldest son, who has been laid to rest in the grounds of Mentmore Towers, a subsequent decision was made to protect the grounds of the Estate including the golf courses and to keep Mentmore Towers as a family home".

26. The Judge noted another passage in Mr Halabi's earlier witness statement which included the following:

> "… In the unlikely event that Mentmore was unable to fund the development of the site or was unable to meet the ongoing financial obligation to make future rental payments, I would not allow the lease to be forfeit."

27. The Judge at [7] explained that the reference in this earlier witness statement to a Family Trust was later clarified:

> "It has become apparent that the family trust to which reference has been made throughout the many proceedings which have come before the court, has a number of different entities. They are numbered: "The Ironzar Trusts" numbered through from I through to VIII. It seems that the company which was initially the lessee under the lease was a company which was held by the

> Ironzar III trust. That is not apparent from the witness statement but it has become apparent from a series of witness statements which have been made since those proceedings were commenced."

28. The Judge noted (at [9]) the substitution of Mentmore Greenland as the holder of the lease (and defendant to the 1938 Act proceedings).

29. He noted at [10] to [12] that in a further witness statement on 7 February 2023 Mr Halabi continued to refer to the fact that

> "Both I and my family trust invested very significant amounts to maintain the premises and support the operating business"

30. He noted at [14] that in a further witness statement on 25 July 2023Mr Halabi referred to an ability to draw down funds "from my family trusts" to meet costs liabilities,

31. At [16] he noted that Mr Halabi had personally met a costs liability to avoid consequences under an unless order requiring the payment of £14,887.

32. At [21] onwards he considered Mr Halabi's latest witness statement including the following passages:

> "The application proceeds on the basis that the above proceedings have been funded, controlled and conducted for the benefit of and under the direction of Mr Simon Halabi and he had a personal interest in the litigation. This is not true. As one of the directors of MGL I had a fiduciary obligation under the Companies Act to participate in its defence against litigation commenced by Mr Gaymer. However, I have no beneficial interest in MGL and no personal interest in the litigation. I did not stand to benefit from the litigation personally".

and

> "Mr Gaymer includes a quotation from one of my previous witness statements where I say both I and my family trust invested very significant amounts to maintain the premises and to support the operating business". He went on to say: "This is a broad summarising statement that should not be taken out of context. It refers to the fact that the ultimate beneficial owner of the trust, a trust of which I am a trustee but not a beneficiary, had been supporting MGL to cover operating expenses in the golf club. It is normal for a parent to support this subsidiary with day-to-day operating expenses. If I did invest any money, it would have been minimal, but I did of course invest my time as a director of MGL".

33. He noted the explanations that had been given in that witness statement by Mr Halabi as to why payment obligations of Mentmore Greenland had been met by other bodies within the ownership of one or other of the Halabi Family Trusts, including

i) some £31,477 paid by him personally, where the explanation was that these amounts were required urgently and as protector (but not the beneficiary of any family trusts) he had a duty to safeguard and protect assets;

ii) some £117,909 paid by Buckingham Estates Management Limited ("**BEML**") (a company of which Mr Halabi had said he was sole director and beneficial owner), where the explanation was that this company existed to provide services to his family trusts and any action taken by it was to protect the interests of the trusts;

iii) some £14,250 paid by Buckingham Securities Limited ("**BSL**"), the predecessor service company to BEML (and it is to be assumed similarly owned) before BSL went into insolvent administration; and

iv) some £20,000 paid by Grand Crus Holdings Sarl, said to be a company owned by the Ironzar VII trust and which was said to provide funding to the other family trusts.

34. The Judge noted that the Ironzar VII trust is the beneficial owner of Mentmore Estates (Jersey) Company limited, the holding company of Mentmore Greenland.

35. At [30] the Judge noted that "Mr Halabi has been the common thread through these proceedings" – the only director of Greenland who has played any part in the proceedings; the person who swore all relevant witness statements and furthermore that:

> "It is also apparent that Mr Halabi has the ability to require the family trusts, as he has generically referred to them, to make payments of costs orders when he has chosen to do so"

He noted further that Mr Halabi had made payments for rent and had made payments towards his own solicitors' costs.

36. The Judge then went on to consider the legal test applicable and correctly referred to the leading cases which had set out the nature of the discretion which he was to exercise, referring to:

i) the decision of the Privy Council in *Dymocks Franchise Systems (New South Wales) Pty Limited v Todd & Ors*, [2004] 1 WLR 2807 ("***Dymocks***"), including the guidance given at [25] in that judgment;

ii) the Court of Appeal in *Deutsche Bank AG v Sebastian Holdings Inc* [2016] 4 WLR 17 ("***Sebastian Holdings***"); and

iii) *Threlfall v ECD Insight (Costs)* [2014] [2013] EWCA Civ 14444, 2 Costs LO 129.

37. At [38] he noted that he needed to grapple with the question whether Mr Halabi was simply a director exercising his judgment in the best interests of his company or whether he has gone further, such that he is really the real party looking at the economic reality of the situation.

38. Importantly in relation to the current appeal, he referred to, and considered in detail, the decision in *Goknur Gida Maddeleri Enerji Imalet Ithalat Ihracat Ticaret ve Sanayi As v Aytacli* reported at [2021] 4 WLR 101 ("***Goknur***") quoting from the headnote the ratio that:

> "In order to persuade a court to make a non-party costs order under section 1 of the Senior Courts Act 1981 against a director or a shareholder of an insolvent company who controlled and funded the company's unsuccessful litigation, the applicant will usually need to establish either the director was seeking to benefit personally from the company's pursuit of or stance in the litigation or that the director was guilty of impropriety or bad faith. Where the bad faith or impropriety even if established would have had no significant effect on the incurring of costs by the applicant, it is unlikely on its own to justify such an order."

and went on to consider also paragraphs [26] and [41] of that decision.

39. At [49] he accepted the ratio saying:

> "Standing back, then, I am mindful of the fact that Mr Halabi is a director of Mentmore Greenland Limited. That brings special considerations as are clearly set out in the authorities and highlighted in particular in the *Goknur Gida* case to which I have referred. The search is on for either personal benefit or bad faith/impropriety on the part of Mr Halabi."

40. At [49] he noted the unsatisfactory evidence concerning the structure of the family trusts and considered that the court had to "draw inferences from the information which is before it".

41. His findings at [51] to [53] set out the nub of his reasoning:

> It is an important consideration, as Mr Hill-Smith pointed out, that Mr Halabi is the only director from whom I have heard during the course of the various sets of proceedings which have exercised the court's time. Mr Halabi is always the director who has signed the witness statements. Mr Halabi has spoken of he himself not allowing the lease to be forfeit. He has spoken of having made payments personally, such it seems was the importance of the lease to him. That was a telling observation, in my judgment, made at a time when he did not necessarily foresee this application subsequently being made. In my judgment, it was a telling way of putting the matters. At that early stage he made clear that he, along with the trusts, had invested very significant amounts of money. In my judgment that indicates that he was going to receive a personal benefit. In other contexts he made clear that the defendant company had no other assets.
>
> 52. The fact that Mr Halabi was able subsequently to swear witness statements setting out the extent to which the family

trusts could be used to meet the various costs orders is also a telling point, in my judgment. Also the fact that he paid an element of Michelmores' costs, albeit not a great amount in the greater scheme of things, is important, particularly when he says it was when no other entity could do so. Something perhaps of a last resort as he put it, but nonetheless he, importantly, in my judgment, regarded himself as that last resort. The fact he was also able to require other companies to make payments and indeed did so is in my judgment an important fact which allows this court to draw certain inferences.

53. I think it is important I do not suspend my critical faculties, as Mr Hill-Smith pointed out, and to stand back and look at the economic reality here. I am satisfied, applying the test I need to apply, that Mr Halabi was essentially the real party here, applying the wording of the Privy Council in the *Dymocks* case, as subsequently interpreted by the courts of this jurisdiction. Indeed as I mentioned above, it suffices if he was a real party provided that it was in very important and critical respects. I do so reminding myself once again that Mr Halabi is a director and had certain obligations in respect of Mentmore Greenland's obligations. Also, of course, a company acts through its directors. These are important factors as far as it goes, and I have regard to what was said in the *Goknur* case in this context."

42. In relation to *Goknur* the Judge said at [55] to [57]:

"55. This has not been an entirely straightforward application, as I think both parties acknowledge, because the important factor in this case is Mr Halabi was a director with certain obligations. However, in my judgment, his conduct, when one reviews this matter from the start of the first proceedings before HH Judge Bloom through to today, it is clear that he was the real party, or at any rate a party in very important and critical respects. He was the controlling factor, in my judgment, the constant presence, the thread, as it were, that runs through each of the sets of litigation which have come before this court. I conclude that this was because he stood to gain the benefit which is the hallmark of the reasoning in *Goknur*.

56. I do not see the fact that Mr Gaymer entered into a lease with a company without the benefit of a director giving a guarantee is a factor which requires me not to make an order in this case when exercising my discretion. I see the analogy made by Mr Hill-Smith as to the existence or otherwise of security for costs applications in this context. The court has a freestanding jurisdiction. In the same way as it might be said that Mr Gaymer has entered into a lease without the benefit of a director's guarantee, Mr Halabi, the director of that company has clearly, in my judgment, exercised control of the various sets of proceedings and has been, to adopt the wording of the Privy

Council in the Dymocks case, been the real party as far as these proceedings are concerned. He has done so unencumbered by a personal guarantee. He is the real party in a very important and critical respect, to adopt the words of the Privy Council. Being that person and gaining a benefit in circumstances where the first defendant has run up substantial costs orders still unpaid, is a heavy factor I weigh when exercising my discretion.

57. In my judgment, therefore, in the exercise of my discretion, the gateway having been opened, him being that real party in that very important and critical respect, I make an order that Mr Halabi pay the costs of Mr Gaymer."

5. THE GROUND OF APPEAL

43. As I have mentioned, there is a single ground of appeal based on the contention that the Judge's finding that Mr Halabi was a "real party to the litigation" amounted to an error in fact and in law.

44. In response to my question as to what was the error of fact, and what was the error of law, Mr Amey explained that the error of fact was a finding that Mr Halabi was a beneficiary of the trust that was the ultimate holder of the shares in Mentmore Greenland, or otherwise sought to benefit financially.

45. He identified two matters which he argued were errors of law:

i) that it was an error for the Judge not to accept Mr Halabi's witness statement, made with a statement of truth to the effect that Mr Halabi had no beneficial interest in Mentmore Greenland; no personal interest in the litigation and did not stand to benefit from the litigation personally; and

ii) that it was an error for the Judge to think that Mr Halabi might be recognised as being the "real party to the litigation" even if he did not stand to benefit financially.

46. I consider these points in the next two sections of this judgment.

6. THE ALLEGED ERROR IN FAILING TO ACCEPT MR HALABI'S WITNESS EVIDENCE

47. Dealing with the first point, this argument is based on applying *Griffiths v TUI (UK) Ltd* [2025] A.C. 374 ("***Griffiths***") as explained by *Phipson on Evidence* (21st ed) at [12.12]. The argument is that in general a party is required to challenge in cross-examination the evidence of any (factual or expert) witness of the opposing party if he wishes to submit to the court that the evidence should not be accepted on that point. It is not open to a party to elect not to cross-examine a witness on a statement and then challenge that evidence. The rule is not confined to cases where the witness is accused of dishonesty, although where the witness is accused of dishonesty (or, it is submitted, some other form of bad faith), it is particularly important that the witness is given an opportunity to explain or clarify their evidence in cross-examination.

48. It is apparent from *Griffiths* itself that there are circumstances where this rule may not apply. These include:

i) where the matter under challenge is collateral or insignificant and fairness to the witness does not require there to be an opportunity to answer it (*Griffiths* at [61]);

ii) secondly, where the evidence is manifestly incredible (*Griffiths* at [62])

49. Other exceptions mentioned in *Griffiths* relate to expert reports (which was the issue with which *Griffiths* was concerned); however some of those principles I consider do translate into principles potentially relevant to the evidence of a witness of fact, in particular:

i) that at [63], where there is a bold assertion of opinion without any reasoning to support it; and

ii) that at [64] where something is said that is inconsistent with the rest of the witness's evidence.

50. The rule is formally stated in *Griffiths* at [70] and it is explained that the purpose of the rule is to preserve the fairness of a trial in our adversarial system and enabling the judge to make a proper assessment of all the evidence to achieve justice in the case. However, the rule is not to be applied rigidly. The criterion is the overall fairness of the trial.

51. The Respondent argues that *Griffiths* and the passage in *Phipson* is concerned with evidence given at a trial and has no application to the jurisdiction which the court was exercising under s.51. It is correct that *Griffiths* was concerned with evidence at trial and the guidelines set out at [70] do specifically refer to evidence at trial.

52. In *Deutsche Bank v Sebastian Holdings* [2016] 4 WLR 17 at [17], the Court of Appeal found (at [22] that an application under s.51 does not involve the assertion of a cause of action; it is a request for the court to exercise a statutory discretion in relation to the costs of proceedings before it. Where the court makes an order for costs at the conclusion of the trial, including one against a non-party, the ordinary rules of evidence do not apply.

53. On this basis, I do not think that the Judge can be criticised for failing to order cross-examination of Mr Halabi. It is important that "satellite" litigation does not get out of hand and the overriding objective in CPR 1.1 (to deal with cases justly and at proportionate cost) needs always to be considered.

54. That is not to say that the reasoning for the rule in *Griffiths* which I summarise at [50] above has no place outside the strict confines of a trial. There may be issues to be considered at a hearing that are of such vital importance to the hearing that it would be just and proportionate for the witness evidence on that point to be tested by cross-examination before it is disbelieved. However, I do not think that this is one of those occasions.

55. Mr Amey makes the argument that the particular elements of Mr Halabi's witness statement which I refer to at [45(i)] above was so crucial to the issues under s.51 that Judge Murch should have ordered cross-examination on this point, and that would not

have been disproportionate in the context of the hearing as a whole. I am not satisfied that this is correct.

56. It is necessary to look critically at precisely what is the evidence of Mr Halabi that Mr Amey argues that the Judge did not accept. This appears to be limited to the following witness evidence of Mr Halabi:

i) his evidence that he had no beneficial interest in Mentmore Greenland;

ii) his evidence that he had no personal interest in the litigation;

iii) his evidence that he did not stand to benefit from the litigation personally; and

iv) (possibly) his evidence as to who were the beneficiaries of the various family trusts.

57. In fact the only point in the Judge's findings that might be regarded as contrary to Mr Halabi's witness evidence is the second point: that he had no personal interest in the litigation.

58. The Judge did not reject the evidence that Mr Halabi had no beneficial interest in Mentmore Greenland, and did not positively dismiss the evidence as to who were beneficiaries in the various family trusts – he noted only that this matter remained murky because of a lack of evidence. This was a finding that clearly was open to him, given that Mr Halabi's evidence across all his witness statements was not entirely consistent. The Judge did consider that Mr Halabi appeared to be able to obtain funding from the various family trusts whenever needed, which again seems a fair conclusion having regard to the facts.

59. In fact, the question whether Mr Halabi stood to benefit economically from success in the litigation as someone beneficially interested in Mentmore Greenland, or as a possible beneficiary of the trust that was the ultimate beneficial owner of Greenland, was not a matter that should have had much if any bearing anyway. The case law, and in particular *Goknur,* which the Judge clearly understood and to which the Judge gave proper consideration, did not deem a director to be the real party to litigation merely because it had a beneficial interest in the company conducting litigation. This also was my finding in *Trafalgar Multi Asset Trading Co Ltd (in liquidation) v Hadley* [2023] EWHC 2670. The Judge could never have made a finding that Mr Halabi was the real party to the litigation on the basis, or merely on the basis, of his having a beneficial interest either directly or via a family trust in Greenland's success in the litigation. As I will explain below, I do not think that this was the basis on which the Judge made the finding that he did.

60. In relation to the second point, whether Mr Halabi had a personal interest in the litigation, this was an, if not the, key element of the evaluation which the Judge needed to make, and a bare assertion in a witness statement that did not deal with the various ways in which Mr Halabi might be considered to have a personal interest in the litigation was, in my view, similar to an assertion in an expert report that is not backed up by any analysis, being one of the exceptions to the rule in Griffiths as I have explained at 49(i)] above. These are circumstances where the Judge is entitled and indeed required to rely on his own evaluation of all of the evidence and is not bound by

a bare assertion to the contrary in a witness statement, even if that witness statement has not been challenged in cross examination.

61. Moreover, clearly that evaluation was being challenged by the Respondent and the Appellant knew that that was the case that he was facing, so there is no unfairness – the Appellant had every opportunity to bring evidence to back up his assertion. The Appellant seeks to counter this point by saying that he was bound by the terms of the family trusts not to divulge those terms without a court order, and he offered during the course of the hearing an opportunity for the Respondent to obtain such a court order, which the Respondent refused (I think understandably given the lateness of this offer). That in my view does not answer the point, since it was not only the terms of the trust deeds that were in issue, and anyway, for the reasons I have given, the question whether Mr Halabi stood to benefit personally from the family trust's indirect investment in Mentmore Greenland was not of any great relevance.

62. Accordingly, in relation to the first legal issue: that the Judge erred in law in making a finding that contradicted Mr Halabi's unchallenged witness evidence, I dismiss the Appellant's argument on this point.

7. THE ALLEGED ERROR IN FINDING MR HALABI TO BE THE REAL PARTY

63. It is not entirely clear whether the Appellant's assertion that the Judge committed an error by finding Mr Halabi to be the real party to the proceedings, is said to be an error of law or an error of fact, but I think the argument goes something like this.

64. *Goknur* set out clearly the principles applicable where consideration is being made to making a non-party costs order against the person who was involved in the litigation as a director of the party against which costs has been or is to be awarded. The principles may be summarised as follows:

   i) Non-party costs orders are "*exceptional*": [26].

   ii) A director does not incur potential liability for costs merely because he funds and controls litigation on behalf of an insolvent company: [50].

   iii) A director may be liable if he has "strayed outside his duty to the company to act in good faith", in such a case he "may no longer be able to rely on the rules of corporate limited liability": [36].

   iv) In order to persuade a court to make a non-party costs order against a controlling/funding director, it is usually necessary to establish [41]:

   > "either that the director was seeking to benefit personally from the company's pursuit of or stance in the litigation, or that he or she was guilty of impropriety or bad faith."

   v) A director who is controlling and funding the litigation to help preserve the company or advance its legitimate interests cannot usually be said to be seeking to gain personally from the litigation. He or she is merely doing what their duties as a director require them to do: [46].

vi) If impropriety is relied upon, then it must be "*serious*" before a non-party costs order can be made. The fact that parts of Mr Aytacli's evidence had been rejected did not amount to serious impropriety sufficient to justify a non-party costs order: [60]-[61].

65. Putting to one side for the moment the question of serious impropriety, it is necessary to show that the director was seeking to benefit personally. The Appellant's argument that this did not apply to Mr Halabi essentially must rest on the following propositions:

i) Mr Halabi did not stand to make any financial gain in relation to the proceedings (as demonstrated by his witness evidence), and even if he did, any such gain would have derived from Mentmore Greenland's gain and that type of gain is not sufficient to cause a director to be the real party; and

ii) only some element of financial gain not deriving from Mentmore Greenland being successful in the proceedings would count as personal benefit for these purposes.

66. The problem with this argument is that it is clear that the type of personal interest in the proceedings that the court will recognise to satisfy the "personal benefit" test in *Goknur* is wider than the test of obtaining a collateral financial benefit. This is clear from *Goknur* itself at [40(d)]:

> "if the company's stance was dictated by the real or perceived benefit to the individual director (**whether financial, reputational or otherwise**), then it might be said that the director, not the company, was the 'real party' and could justly be made the subject of a section 51 order" (Emphasis added)

67. Similarly in *Sebastian Holdings* at [25], it is stated:

> "whether it is appropriate to exercise the jurisdiction to make an order for costs against a third party depends on the particular facts of the case, but in a case where the court is satisfied that the third party is effectively controlling the litigation, supporting it, **whether financially or by giving evidence**, and is doing so with a view to obtaining **a personal benefit of some kind** if it is successful, it will usually be entitled to regard him as the real party to the action." (Emphasis added)

68. Again in *Re North West Holdings plc* (in liq.) [2001] EWCA Civ 441, [2002] BCC 441 at [21], [35], [36], [50], cited in *Goknur*, it was enough that the director had used the company as his *alter ego* in order to maintain his reputation, avoid criminal proceedings and pursue a political career. The director was found to be at [36] acting "in his or her own self-interest".

69. It was not, therefore, the mistake of law for the Judge to take account of non-financial benefit.

70. To the extent that the ground of appeal is stated as being based on a mistake of fact, I do not think that this is a conclusion that I can reach. The Judge had many reasons for considering that Mr Halabi was acting for reasons other than to further the interests of Mentmore Greenland. In particular:

i) the evidence that Mr Halabi had given earlier that Mr Halabi, as well as the (at that point unidentified) family trust had invested very significant amounts to maintain the property;

ii) the personal significance for Mr Halabi's family for maintaining the Land (which formed part of a larger estate in which what was intended to be the family home) was situated;

iii) the fact that Mentmore Greenland was a mere SPV holding company, only the latest in a series of companies owned by one or other of the family trusts to be holding the Lease - whenever such a holding company fell into difficulties Mr Halabi had arranged for another company to take it over;

iv) Mr Halabi's prior witness statement that he would not allow the Lease to be forfeit, even if the company holding the Lease proved unable to meet its financial obligations;

v) Mr Halabi's personal contributions to costs and rents and those made through his own companies BSL and BEML;

vi) Mr Halabi's apparent ability to obtain money from one or other of the family trusts whenever needed;

vii) a whole series of transactions that were difficult to justify as arm's length transactions made in the interests of the companies involved, including Mentmore Greenland choosing to take on a lease that was already the subject of forfeiture proceedings, using borrowed money to do so; Mentmore Investment's decisions to lend money to companies (Mentmore Leisure and then Mentmore Greenland) that had a single asset (the Lease) that was subject to forfeiture proceedings; and BSL and BEML making payments on behalf of Mentmore Greenland.

71. All these factors pointed towards the suggestion that Mr Halabi was acting in his own interests, or at least in the interests of his own family, to avoid for as long as possible the loss of the Lease as an asset of the family for personal reasons connected with the family.

72. Therefore I cannot find Judge Murch to have been wrong in deciding that that Mr Halabi had a personal interest in the litigation – it was perfectly justifiable to consider that Mr Halabi fell within the category explained at [25(3)] in *Dymocks* as ""not so much facilitating access to justice by the party funded as himself gaining access to justice for his own purposes" and as such to use the phrase hallowed by *Dymocks* at [25], and found by Judge Murch to apply in this case, "a real party in very important and critical respect".

73. Accordingly, I must find that the ground of appeal is not made out. The Judge did not err in law or in fact so as to allow his exercise of discretion under s.51 to be impugned. The appeal will therefore fail.

8. THE ARGUMENTS MADE IN THE RESPONDENT'S NOTICE

74. By way of a Respondent's Notice the Respondent's also seeks to put before the court the following points alleging that Mr Halabi conducted proceedings in an abusive and improper manner:

i) The learned Judge should, as an additional ground for his decision, have found that the proceedings were conducted by Mr Halabi in an abusive fashion, with deliberate non-compliance with court orders, in particular costs orders, and that Mr Halabi had personally resolved not to comply with costs orders or arrange compliance therewith, and that this was personal conduct and not conduct attributable to Mr Halabi in his capacity as director.

ii) The learned Judge should, as an additional ground for his decision, have found that Mr Halabi conducted the proceedings in an improper fashion in making repeated applications and appeals, stringing along the litigation, with no intention of arranging the payment of any costs orders that may have resulted, and that this was personal conduct not attributable to the proper conduct of a director.

iii) The learned Judge should, as a further ground of his decision, have found that the relief from sanctions application made in Claim No J00LU584 was improper, with no prospect of success, in that Mr Halabi had no intention of arranging the payment of the costs orders that underlay the sanction, and that the application was in these circumstances hopeless and that this was personal conduct and not the proper conduct of a director.

iv) The learned Judge should have found as a further basis of his decision that the issue of proceedings K01LU731 was improper and from the outset an abuse of process of the Court, with no prospect of success, in that no attempt was made to apply to set aside the existing order for possession, which attempt would have been hopeless in any event, and with no intention of paying the costs orders that underlay the possession order, and that in all the circumstances this was personal conduct and not the proper conduct of a director.

v) The learned Judge should have found as a further basis of his decision that the personal investment of Mr Halabi in the Golf Course was over and above any investment made by the Family Trusts and that no distinction was to be drawn between Ironzar VII and Ironzar III in this respect, Mr Halabi in his fifth witness statement disclaiming any personal entitlement under any Family Trust.

75. In view of my decision to dismiss the appeal anyway, and having regard to the small amount of time that was directed at the hearing in addressing these issues, I think it is best that I remain silent on these points. If they needed to be aired, they deserve greater attention than was available to them within the scope of this hearing (which was originally timetabled to last for half a day, but in fact anyway took up the whole of the court day).

9. CONCLUSION

76. Judge Murch was exercising a broad discretion under s.51 and it is not appropriate for an appellate court to overturn that discretion unless the court was persuaded that it was based on an error of law, some failure in logic, or a decision on the facts that no reasonable judge could make. In fact Judge Murch gave an admirably comprehensive and thoughtful judgment (all the more admirable when one considers that it was given *ex tempore*). I have not been able to discern any error in law, any failure in logic or any reason why the Judge could not find as he did find. Accordingly, the appeal must fail.