Neutral Citation Number: [2026] EWHC 1732 (Comm)

Claim No: CC-2026-LDS-000014

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS IN LEEDS
CIRCUIT COMMERCIAL COURT (KBD)

Fourth Floor,
West Gate,
6 Grace Street,
Leeds, LS1 2RP.

Date: 17/07/2026

Before:

HH JUDGE KLEIN SITTING AS A HIGH COURT JUDGE

- -

Between:

(1) TOGETHER COMMERCIAL FINANCE LIMITED **(2) ANDREW DAVID FOSTER** **(3) CHRIS WALKER**	**Claimants**
- and -	
(1) MATTHEW STUART SLACK **(2) TOYNBEE HALL**	**Defendants**

- -
- -

Roger Laville (instructed by **Walker Morris LLP**) for the **Claimants**
The First Defendant appeared in person

Hearing date: 7 July 2026

- -

Approved Judgment

This judgment was handed down remotely at 10.30 am on 17 July 2026 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

....

HH JUDGE KLEIN

HH Judge Klein:

1. In August 2023, Together Commercial Finance Ltd ("Together"), the first claimant, lent Ameycroft Leisure Ltd ("the company") £2.4 million under a commercial term loan agreement ("the loan agreement"). Stuart Slack, the first defendant's father, was the company's director. By the loan agreement, the company agreed to pay loan interest monthly and to repay the principal loan at the end of the loan's ten year term. Together took security for the company's obligations; a debenture over the company's assets, a legal charge over the company's property known as Bent Farm, a personal guarantee from Stuart Slack and a legal charge ("the Charge") over Farley Meadow View, Matlock ("the property") which is owned by the first defendant ("Mr Slack"). The company defaulted on its obligations under the loan agreement, so that, under it, Together was then entitled to demand immediate payment of the principal loan, unpaid interest and costs. Together sent the company a demand letter on 4 June 2024 by which it demanded immediate payment of £2,433,636.18 ("the outstanding balance"). Together also sent a demand letter to Mr Slack on the same day demanding that he pay the outstanding balance. On 7 June 2024, Together appointed the second and third claimants ("the receivers") as Law of Property Act receivers of the property. The company went into compulsory liquidation on 23 July 2024 without paying the outstanding balance. Mr Slack has also not paid the outstanding balance. The receivers took possession of the property by a writ of possession in December 2024. Mr Slack wrongly took possession of the property in July 2025, but the receivers re-took possession in about December 2025 under a writ of restitution. Since then, they have continued to be in possession of the property. The property is being marketed for offers over £450,000. Bent Farm has been sold for £890,000. In the circumstances of this case, it is likely that Together will suffer a substantial loss on its loan. On 17 April 2026, Mr Slack entered into a mental health crisis moratorium ("the moratorium") under the Debt Respite Scheme (Breathing Space Moratorium and Mental Health Crisis Moratorium) (England and Wales) Regulations 2020 ("the regulations").[1] Toynbee Hall, the second defendant, is Mr Slack's debt advice provider under the moratorium. The Insolvency Service's notification of the moratorium to Together says that "a debt owed to [it] by Matthew Slack went into Breathing Space". The notification identified the debt by reference "1031520". That is the number of the company's account with Together under the loan agreement. The notification asserts that while "Matthew Slack is in Breathing Space, you cannot take any action against them for any listed Breathing Space debts they owe you." The receivers wish to sell the property. The claimants contend that the moratorium is no obstacle. The defendants dispute that the receivers can sell the property whilst the moratorium continues, contending effectively that that would be enforcement action in respect of a moratorium debt which is prevented by regulation 7 and, thereby, any sale would be null and void (see regulation 7(12)). The question I have to determine is: do the regulations prevent the receivers from selling the property whilst the moratorium continues?

2. The claimants began a Part 8 claim on 22 May 2026 and, at the same time, they applied for summary judgment. The claim form, the summary judgment application and related paperwork, including a notice of hearing on 26 June 2026 of the summary judgment application, were served by post on the defendants on 3 June 2026, with a deemed date of service of 5 June 2026, so that the defendants had to file acknowledgments of service

[1] All references, in this judgment, to numbered regulations are to specific provisions of the regulations.

by 19 June 2026. Mr Slack has not filed an acknowledgement of service. Toynbee Hall has done so. I adjourned the hearing of the summary judgment application on my own initiative to 7 July 2026, for the reasons I gave at the 26 June 2026 hearing.

3. By CPR 24.4(1), the claimants need permission to apply for summary judgment against Mr Slack, because he has not filed an acknowledgment of service. I give the claimants permission. For the reasons I gave when I adjourned the hearing of the summary judgment application on 26 June 2026 and also for the reasons I gave when I refused Mr Slack a further adjournment at the 7 July hearing, I am satisfied that Mr Slack has had sufficient opportunity to fully participate in the claim in circumstances where (i) I am also satisfied that Mr Slack has been validly served and that the court can determine the claim and (ii) the claimants cannot obtain default judgment.

4. The claimants were represented by Roger Laville at the hearing, at which Mr Slack was a litigant in person. Toynbee Hall indicated, in a letter to the court dated 23 June 2026, that it did not intend to participate in the claim. I would have expected Toynbee Hall to remain neutral in the claim in any event, because any dispute is really between the claimants and Mr Slack.

5. The time for the defendants to file acknowledgments of service having passed, in the circumstances of this case there is no reason why a final hearing (a trial) of the Part 8 claim could not have been listed on 7 July 2026. Strictly, at a final hearing, but not at the hearing of a summary judgment application, Mr Slack would not have been able to take part in the hearing without obtaining relief from the sanction imposed by CPR 8.4. However, I would not have applied that rule, or would have given Mr Slack permission to participate in a final hearing, in this case because there is a question, which I do not need to resolve, about whether the claim as formulated should have been made as a CPR Part 23 application (see CPR PD70B; para.2.1), in which case Mr Slack would not have needed permission to take part in the hearing.

6. Moore-Bick LJ said in *ICI Chemicals & Polymers Ltd v. TTE Training Ltd* [2007] EWCA Civ 725, at [12]-[14]:

> "…It is not uncommon for an application under Part 24 to give rise to a short point of law or construction and, if the court is satisfied that it has before it all the evidence necessary for the proper determination of the question and that the parties have had an adequate opportunity to address it in argument, it should grasp the nettle and decide it. The reason is quite simple: if the respondent's case is bad in law, he will in truth have no real prospect of succeeding on his claim or successfully defending the claim against him, as the case may be. Similarly, if the applicant's case is bad in law, the sooner that is determined, the better.
>
> In cases where the issue is one of construction the respondent often seeks to persuade the court that the case should go to trial by arguing that in due course evidence may be called that will shed a different light on the document in question. In my view, however, any such submission should be approached with a degree of caution. It is the responsibility of the respondent to an

> application of this kind to place before the court, in the form of a witness statement, whatever evidence he thinks necessary to support his case. Where it is said that the circumstances in which a document came to be written are relevant to its construction, particularly if they are said to point to a construction which is not that which the document would naturally bear, the respondent must provide sufficient evidence of those circumstances to enable the court to see that if the relevant facts are established at trial they may have a bearing on the outcome.
>
> Sometimes it is possible to show by evidence that although material in the form of documents or oral evidence that would put the documents in another light is not currently before the court, such material is likely to exist and can be expected to be available at the trial. In such a case it would be wrong to give summary judgment because there would be a real, as opposed to a fanciful, prospect of success. However, it is not enough simply to argue that the case should be allowed to go to trial because something may turn up which would have a bearing on the question of construction."

7. Based on the submissions I have received, the question I have to determine requires me, on reflection, to determine only a short point of law, as I will explain. The relevant facts in this claim are not in dispute. As it happens, I cannot conceive of how they might be in dispute. All the evidence necessary for me to determine the question is available. As I have said, Mr Slack has had sufficient opportunity to fully participate in the claim. It is therefore appropriate for me to determine the question.

8. Strictly, to obtain summary judgment the claimants need to satisfy me that the defendants (Mr Slack in particular) have no real prospect of defending the claim (see *ED&F Man Liquid Products Ltd v. Patel* [2003] EWCA Civ 472). To do that in this claim, the claimants have to satisfy me, in the first instance, that the moratorium does not prevent the receivers from selling the property. That is what they would have had to do at a final hearing of the claim. Most favourably to Mr Slack, I determine the summary judgment application as if the hearing had been the final hearing of the claim. I have not conducted a mini-trial doing so; mini-trials not being permitted on the hearing of summary judgment applications. I have not conducted a mini-trial because I have not had to determine, nor have I determined, any factual matters in dispute.

<u>The Charge</u>

9. The Charge was executed by Mr Slack on 31 August 2023. The relevant provisions of the Charge are as follows:

> "2. CREATION OF SECURITY
>
> 2.1.
>
> a. The Chargor [(Mr Slack)] shall pay or discharge the Secured Liabilities in the manner provided for in the Finance Documents.

b. Where no guarantee has been requested or entered into by the Chargor in favour of the Lender in connection with the Facility Agreements then, notwithstanding any other provision of the Finance Documents, it is expressly agreed that the sole recourse of the Lender to the Chargor in respect of its obligations under paragraph (a) is limited to the Security Assets.

c. All the security created under this Deed is:

(i) created in favour of the Lender;

(ii) security for the payment of all the Secured Liabilities;…

2.2.

a. The Chargor charges:

(i) by way of legal mortgage all estates or interests in the Property [(Farley Meadow View)];

…

5. WHEN SECURITY BECOMES ENFORCEABLE

5.1. This Security shall become immediately enforceable if an Event of Default occurs and is continuing.

…

5.3. The power of sale and other powers conferred by section 101 of the [Law of Property Act 1925], as amended by this Deed, shall be immediately exercisable at any time after this Security has become enforceable.

6. ENFORCEMENT OF SECURITY

6.1.

a. For the purposes of all powers implied by statute, the Secured Liabilities are deemed to have become due and payable on the date of this Deed.

b. Section 103 of the Act (restricting the power of sale) and section 93 of the Act (restricting the right of consolidation) do not apply to this Security.

…

6.3. The Lender and each Receiver is entitled to all the rights, powers, privileges and immunities conferred by the Act on mortgagees and receivers duly appointed under the Act, except that section 103 of the Act does not apply.

…

7. RECEIVER

7.1.

a. Except as provided below, the Lender may appoint any one or more persons to be a Receiver of all or any part of the Security Assets if:

(i) this Security has become enforceable;…

…

7.3 The Lender may fix the remuneration of any Receiver appointed by it…

7.4.

a. A Receiver will be deemed to be the agent of the Chargor for all purposes and accordingly will be deemed to be in the same position as a Receiver duly appointed by a mortgagee under the Act. The Chargor shall be responsible for any contracts, engagements, acts, omissions, defaults and losses of a Receiver and for any liabilities incurred by a Receiver.

…

8. POWERS OF RECEIVER

8.2 A Receiver may:

…

f. sell…any Security Asset

…

9. APPLICATION OF PROCEEDS

All amounts from time to time received or recovered by the Lender or any Receiver pursuant to the terms of this Deed or in connection with the realisation or enforcement of all or any part of this Security shall be held by the Lender and applied in the following order of priority:

n. in or towards payment of or provision for the Secured Liabilities in the following order:

(i) in payment of any sums owing to any Receiver or any Delegate;

(ii) in payment of all costs and expenses incurred by any Secured Party (as agreed by the Lender) in connection with any realisation or enforcement of the Lender's Security; and

(iii) in payment to the Lender in accordance with the Facility Agreements; and

o. in payment of the surplus (if any) to the Chargor or other person entitled to it.

This Clause 9 is subject to the payment of any claims having priority over this Security. This Clause 9 does not prejudice the right of the Lender to recover any shortfall from the Chargor.

Schedule

Definitions and Interpretation

1. Definitions

In this deed

…

Borrower means AMEYCROFT LEISURE LTD (company number 08428549) whose registered office is at Ameycroft Farm, Farley, MATLOCK, DE4 5LR.

…

Event of Default means any event or circumstance specified in any Facility Agreement which would entitle the Lender to demand payment of the balance outstanding under that Facility Agreement or to take enforcement action against the Borrower

Facility Agreements means all the agreements and arrangements under which the Lender advances funds to the Borrower

Finance Document means any Facility Agreement and any Lender's Security Document.

…

Secured Liabilities means all present and future obligations and liabilities (whether actual or contingent and whether owed jointly or severally or in any other capacity whatsoever) of the Borrower to any Secured Party under or in connection with the Finance Documents including, without limitation, any costs incurred by the Lender in enforcing the Lender's Security.

Secured Parties means the Lender or any Receiver or Delegate.

> …
>
> Security Asset means any asset of the Borrower or Chargor which is, or is expressed to be, subject to any Security created by this Deed."

The receivers' appointment

10. As the Charge did, the receivers' appointment also dealt with the receivers' status. The appointment provided:

> "By a legal charge made on 31 August 2023 ("the Legal Charge") between Matthew Slack ("the Mortgagor") and the Lender the Mortgagor charged in favour of the Lender, as security for repayment of the monies and liabilities as set out in the Legal Charge, inter alia, the (freehold or leasehold) property known as Farley Meadow View, Farley Hill, Farley, Matlock, Derbyshire, DE4 5LT registered at HM Land Registry under Title Number(s) DY471561 ("the Property").
>
> The Lender having made demand for immediate repayment of the secured liabilities on 4 June 2024 is entitled to exercise its powers under the Legal Charge by appointing fixed-charge receivers over the Property on the terms set out in this appointment.
>
> 1. Pursuant to the statutory powers conferred on it by sections 101 and 109 of the Law of Property Act 1925 (the "Act") and the powers contained in the Legal Charge and of every power enabling the Lender to do so, the Lender hereby appoints the Receivers to be receivers and managers of the Property with all the powers conferred on the Receivers by the Legal Charge and by the Act…
>
> …
>
> 4. In accordance with section 109(2) of the Act, the Receivers shall be agent of the Mortgagor and the Mortgagor is therefore solely responsible for all liabilities, contractual or otherwise incurred by the Receivers in the exercise of their duties.
>
> …
>
> 6. The Lender hereby directs that the Receivers shall unless otherwise directed in writing apply monies received by them in accordance with section 109(8) of the Act as varied by the Legal Charge with the balance to be applied in or towards discharge of the monies and liabilities secured by the Legal Charge."

The regulations

11. I need to set out the provisions of the regulations which are relevant to my decision:

"Interpretation

2. (1) In these Regulations -

…

"agent" is to be construed in accordance with regulation 12(6);

…

"arrears" means any sum other than capitalised mortgage arrears payable to a creditor by a debtor which has fallen due and which the debtor has not paid at the date of the application for a moratorium in breach of the agreement between the creditor and debtor or in breach of the legislation or rules under which the debtor incurred the debt or liability;

…

"capitalised mortgage arrears" means any arrears in relation to a mortgage that have been added to the outstanding balance to be paid over the duration of the mortgage;

…

"debtor" means -

(a) in relation to a mental health crisis moratorium, the applicant or the person in relation to whom an application for a moratorium has been made,

…

"enforcement action" is to be construed in accordance with regulation 7(7);

…

"moratorium debt" is to be construed in accordance with regulation 6;

…

"qualifying debt" is to be construed in accordance with regulation 5;

…

"secured credit agreement" means an agreement under which a creditor provides credit to a debtor and the agreement provides for the obligation of the debtor to repay to be secured -

(a) by a mortgage on land,

…

“secured debt” means -

(a) a secured credit agreement,

…

Qualifying debt

5. (1) A “qualifying debt” means any debt or liability other than non-eligible debt.

…

(4) In these Regulations “non-eligible debt” means -

(a) secured debt which does not amount to arrears in respect of secured debt,

…

Moratorium debt

6. A “moratorium debt” is any qualifying debt -

(a) that was incurred by a debtor in relation to whom a moratorium is in place,

(b) that was owed by the debtor at the point at which the application for the moratorium was made, and

(c) about which information has been provided to the Secretary of State by a debt advice provider under these Regulations.

Effect of a moratorium

7. (1) A moratorium has the effect specified in this regulation in relation to moratorium debt during a moratorium period.

(2) Subject to paragraph (3), during a moratorium period a creditor may not, in relation to any moratorium debt, take any of the steps specified in paragraph (6) in respect of the debt unless -

…

(b) the county court or any other court or tribunal where legal proceedings concerning the debt have been or could be issued or started has given permission for the creditor to take the step.

(3) A court or tribunal may not give permission for a creditor or agent to take any of the steps specified in paragraph (6)(a) or (b).

(4) Subject to paragraph (5), for the purposes of paragraph (2)(b), a court or tribunal may -

(a) determine an application for permission to take a step specified in paragraph (6)(c) or (d) in any way that it thinks fit,

(b) give permission subject to such conditions as it thinks fit, and

(c) make such orders as may be necessary to give effect to the determination of the application.

(5) A court or tribunal may only grant permission under paragraph 2(b) for a creditor or agent to take a step specified in paragraph (6)(c) or for a creditor to instruct an agent to take a step specified in paragraph (6)(c) where the court considers that -

(a) it is reasonable to allow the creditor or their agent to take the step, and

(b) the step will not -

(i) be detrimental to the debtor to whom the moratorium relates, or

(ii) significantly undermine the protections of the moratorium.

(6) The steps mentioned in paragraph (2) that a creditor is prevented from taking are any steps to -

(a) require a debtor to pay interest that accrues on a moratorium debt during a moratorium period,

(b) require a debtor to pay fees, penalties or charges in relation to a moratorium debt that accrue during a moratorium period,

(c) take any enforcement action in respect of a moratorium debt (whether the right to take such action arises under a contract, by virtue of an enactment or otherwise), or

(d) instruct an agent to take any of the actions mentioned in sub-paragraphs (a) to (c).

(7) A creditor or agent takes enforcement action if they take any of the following steps in relation to a moratorium debt -

…

(c) enforce security held in respect of a moratorium debt,

…

(e) subject to regulation 12(4)(d), sell or take control of a debtor's property or goods,

(f) start any action or legal proceedings against a debtor relating to or as a consequence of non-payment of a moratorium debt,

…

(12) Any action taken contrary to this regulation shall be null and void.

…

Agent appointed by creditor

12 …(6) For the purpose of these Regulations, "agent" includes -

…

(c) a person appointed to collect a moratorium debt on behalf of a creditor.

…

Creditor's request for review of a moratorium

17. (1) Subject to paragraph (4), a creditor who receives notification of a moratorium under these Regulations may request that the debt advice provider who initiated the moratorium or (as the case may be) the debt advice provider to whom the debtor has been referred since the start of the moratorium reviews the moratorium to determine whether it should continue or be cancelled in respect of some or all of the moratorium debts on one or both of the following grounds, namely that -

(a) the moratorium unfairly prejudices the interests of the creditor, or

(b) there has been some material irregularity in relation to any of the matters specified in paragraph (2).

(2) The matters in relation to which a creditor may request a review on the ground of material irregularity are that -

(a) the debtor did not meet the relevant eligibility criteria when the application for the moratorium was made,

(b) a moratorium debt is not a qualifying debt, or

(c) the debtor has sufficient funds to discharge or liquidate their debt as it falls due.

…

Court application by creditor for cancellation of a moratorium

19. (1) If a debt advice provider has carried out a review of a moratorium following a request made by a creditor under regulation 17 and the moratorium has not been cancelled under regulation 18 in respect of some or all of the moratorium debts as a result, then the creditor may make an application to the county court on one or both of the grounds in regulation 17(1).

…

(3) Where on an application under this regulation the court is satisfied as to either of the grounds in regulation 17(1), it may do either or both of the following, namely -

(a) cancel the moratorium in relation to a moratorium debt owed to the creditor who made the application to the court,

(b) cancel the moratorium in respect of any other moratorium debt.

…

(5) In any case where a court cancels a moratorium in relation to a moratorium debt under paragraph (3) or requires a debtor to pay interest, fees or charges under paragraph (4), the court -

(a) may give such supplemental directions as it thinks fit, and

(b) must notify the creditor, the debtor and the Secretary of State that the moratorium has been cancelled in relation to the moratorium debt.

…

Provision of updated information to the Secretary of State to correct mistakes and inaccuracies

20. (1) If a debt advice provider becomes aware that the information in paragraph (2) contains a mistake or inaccuracy the debt advice provider must provide updated information to the Secretary of State.

(2) A debt advice provider must provide updated information to the Secretary of State in accordance with paragraph (1) in relation to information -

(a) provided by a debt advice provider to the Secretary of State in accordance with these Regulations, or

(b) on the register."

Discussion

12. There are obvious problems with the regulations' drafting (such that Sir Anthony Mann said, in *Seculink Ltd v. Forbes* [2025] EWHC 524 (Ch) at [21], that the drafting "is impossible to admire"), as will become apparent. Some are obvious grammatical errors which can be resolved straightforwardly in circumstances where it is not necessary to know the context in which the regulations were made and where reference to material other than the regulations themselves would not be appropriate. There are other obvious problems with the drafting, however, where that might not be so. Had I had to interpret the regulations in that second case to decide the question I have to determine, most favourably to Mr Slack I would not have given the claimants summary judgment in any event, because I could not be confident that all the material necessary for me to interpret the regulations was available and because the interpretation exercise would not be a short one in the sense Moore-Bick LJ had in mind in *ICI*.

13. I also need to say that I have reached my decision in circumstances where the summary judgment application has not been actively contested on legal points by the defendants. Mr Laville presented the application very fairly, but I did not receive competing legal submissions. That is not a reason for me not to determine now the question I have to decide; particularly because I am not persuaded that there would be any different legal submissions at a later hearing, and because I have no reason to think that there may be further material available at that later hearing.

The Charge

14. I consider, first, to what Mr Slack agreed when he executed the Charge.

15. By clause 2.1.a.,[2] Mr Slack covenanted to pay or discharge the company's liabilities under the loan agreement, because "Secured Liabilities" are defined, in the Charge, as "the obligations…of the Borrower…under or in connection with the Finance Documents", the "Borrower" being defined as the company and the "Finance Documents" meaning the loan agreement taking into account the definitions of "Finance Document" and "Facility Agreement". Because Mr Slack so covenanted, a debtor-creditor relationship between him and Together arose. If any support is needed for this conclusion, it may be got from *Evans v. Jones* (1839) 5 M & W 296, where the judge held that the making of an absolute payment covenant gives rise to such a relationship. The ordinary meaning of clause 2.1.a. is not affected by the agreement, in clause 2.1.b., that Together would only have recourse, in respect of Mr Slack's covenant to pay, to the property. Any limitation on how Together might recover any sum on Mr Slack's default of his payment obligation does not, in my view, affect the nature of the relationship between Together and Mr Slack.

[2] All references in this judgment to numbered clauses are to provisions of the Charge.

16. I consider below how that debtor-creditor relationship might be affected by the moratorium.

17. By clause 2.2., Mr Slack charged the property. What liabilities does that charge secure?

18. Clause 2.1.c. provides that the charge is "security for payment of all the Secured Liabilities". As I have said, "Secured Liabilities" are defined as the company's liabilities under the loan agreement. On the natural and ordinary meaning of clauses 2.2 and 2.1.c. when read together, by the Charge Mr Slack did not charge the property as security for his own indebtedness arising under clause 2.1.a. He only charged the property as security for the company's indebtedness to Together.

19. I acknowledge that clause 2.1.b. provides that "it is expressly agreed that the sole recourse of [Together] to [Mr Slack] in respect of [his] obligations under [clause 2.1.a.] is limited to [the property]" but, in my view, it does not follow that, on the proper interpretation of the Charge, Mr Slack can thereby be taken to have charged the property as security for his own indebtedness, for the following reasons.

20. Clause 9 deals with how any proceeds of a sale of the property are to be applied. They are to be applied in discharge of the Secured Liabilities, which, as I have explained, are the company's liabilities under the loan agreement; particularly "in payment to [Together] in accordance with [the loan agreement]" (see clause 9.n.(iii)) with any surplus being returned to Mr Slack in the first instance. Clause 9 does not (expressly) provide that any sale proceeds can be applied to discharge Mr Slack's own indebtedness under clause 2.1.a., which would not make sense if the charge was intended also to secure that indebtedness.

21. The definition of "Security Asset" suggests that the Charge document may have been suitable for use in a case where a chargor is, or is defined to be, a borrower (which is not this case), because it allows for the property of "the Borrower" to be secured by the Charge document. In such a case, the chargor's charge, by clause 2.2. would, by clause 2.1.c., extend to the chargor's own indebtedness in any event. In such a case, clause 2.1.b. would not extend the ambit of the security given by the charge beyond the security given by clause 2.2. when read with clause 2.1.c.

22. Further, clause 2.1.b. does not say that Together's only recourse for Mr Slack's own indebtedness is the Charge. Rather, it says that Together's only recourse is the property. It would be possible for Together to have recourse to the property otherwise than under the charge; for example, by way of a charging order following a money judgment against Mr Slack.

23. In considering the extent of the charge given by Mr Slack, I have also borne in mind that the final sentence of clause 9 of the Charge assumes that Together has, or may have, the right to recover any shortfall from Mr Slack. However, it does not give Together the right to recover any shortfall. It is necessary to look elsewhere for any such right. Nor does it mean that any liability Mr Slack has to pay the shortfall to Together is secured by the Charge. What the Charge secures is specified, if anywhere, in clause 2.1.c.(ii).

24. I am also entitled to bear in mind the context in which the Charge was executed, as I have done. There is apparently no dispute that the Charge was intended to be security

for Together's loan to the company (see, for example, the definition of "Security" in the loan agreement).

25. For all these reasons, I have concluded that Mr Slack only charged the property to secure the company's, and not his own, indebtedness to Together. I consider below how, if at all, the moratorium affects that security.

The regulations

26. Mr Slack's own indebtedness to Together, under clause 2.1.a., is a qualifying debt under regulation 5, because it is not a non-eligible debt. It is not a non-eligible debt because it is not a secured debt. A "secured debt" is defined, in the regulations, as a "secured credit agreement". That does not make sense grammatically. A secured debt must be indebtedness arising under "an agreement under which a creditor provides credit to a debtor [where] the agreement provides for the obligation of the debtor to repay to be secured…by a mortgage on land". Mr Slack's own indebtedness is not a secured debt because Together did not provide him with credit under the Charge and, as I have explained, Mr Slack did not provide security for his indebtedness by the Charge.

27. Mr Laville suggested that the "debtor" referred to in the regulations' definition of a "secured credit agreement" does not have to be the moratorium debtor (Mr Slack). "Debtor", he suggested, could include some other, principal, debtor (the company). There is no reason, on the natural and ordinary language of the regulations, to adopt an extended definition of who is a debtor when determining whether an agreement is a secured credit agreement (and I am not satisfied, on the submissions I received, that there is any basis for adopting an extended definition of who is a debtor for that purpose). In any event, Mr Laville's suggestion does not assist the claimants. Mr Slack's own indebtedness to Together has arisen under the Charge, but, as I have said, Mr Slack was not given credit by Together under the Charge and, under the Charge, Mr Slack's own indebtedness is not secured, nor is there provision, in the Charge, for security for that indebtedness. It is true that the loan agreement could be a secured credit agreement, on Mr Laville's extended definition of who is a debtor, but that does not take matters any further because Mr Slack's own indebtedness does not arise under the loan agreement.

28. It follows, in the circumstances of this case, that, assuming Toynbee Hall has provided the necessary information to the Secretary of State about Mr Slack's own indebtedness, it is a moratorium debt.

29. The reference to debt "1031520" in the Insolvency Service's notification and statements, in the notification, to Mr Slack owing a debt to Together indicates that Toynbee Hall did provide the necessary information to the Secretary of State about Mr Slack's own indebtedness to Together.

30. Unless Mr Laville's extended definition of who is the debtor under a secured credit agreement is correct, the company's indebtedness to Together is also a qualifying debt because it is not a secured debt. In this case, it is not a secured debt because, although Together provided credit to the company, and although the loan agreement provided for the company's indebtedness to be secured by a mortgage on land, the company is not a debtor for the purposes of the regulations applying the regulations' definition of

who is a "debtor"; a debtor effectively being the person who is to benefit from a moratorium (a moratorium debtor).

31. Mr Laville suggested that the company's indebtedness to Together is not a qualifying debt because regulation 5(1) should be read as if it limited qualifying debts to the debts and liabilities, other than non-eligible debts, of a moratorium debtor. Otherwise, he suggested, absurdly qualifying debts would include any debt, other than non-qualifying debts, whoever has incurred the debt. The limitation Mr Laville has in mind is already covered by regulation 6 which limits moratorium debts to qualifying debts incurred by a moratorium debtor. The limitation on regulation 5(1) suggested by Mr Laville is therefore not justified on the basis of absurdity.

32. Although it seems that the company's indebtedness to Together is a qualifying debt, the company's indebtedness cannot be a moratorium debt because it was not "incurred by" (i) "a debtor" (as defined in the regulations) (ii) "in relation to whom a moratorium is in place" (see regulation 6).[3]

33. Regulations 7(2), (6), (7) specify the protective effect of a moratorium. A moratorium prevents enforcement action being taken, which includes enforcing a security (see regulation 7(7)(c)). On the natural and ordinary meaning of regulation 7, the protective effect of a moratorium only operates "in relation to a moratorium debt" (see regulation 7(2)), so that, under regulation 7(6)(c), "enforcement action" is only prevented "in respect of a moratorium debt" and, under regulation 7(7), enforcement action is only taken if a step is taken "in relation to a moratorium debt". Under regulation 7(7)(c), it is the enforcing of security "held in respect of a moratorium debt" which is enforcement action. I acknowledge that, under regulation 7(7)(e), the sale of a debtor's property can be enforcement action, but only if it is a step taken "in relation to a moratorium debt".

34. I have already concluded that the Charge only secures the company's indebtedness to Together. I have also already concluded that the company's indebtedness to Together cannot be a moratorium debt. It follows, therefore, that a sale of the property by the receivers under the Charge is not enforcement action prevented by regulation 7, because the Charge is not held in respect of a moratorium debt and because the sale would not be made in relation to, or in respect of, a moratorium debt.

35. Mr Laville also argued that the regulations cannot prevent the receivers from selling the property, in any event, because (i) regulation 7 only prevents a creditor from taking enforcement action and (ii) the receivers are not Together's agents.

36. Regulation 7 contains a number of the drafting problems to which I have referred. It is true that regulation 7(2) prevents "a creditor" from taking enforcement action and that the regulation does not expressly prevent an agent from taking such action. It is also true that, generally, a Law of Property Act receiver is not a mortgagee's agent. Section 109(2) of the Law of Property Act 1925 provides:

> "A receiver appointed under the powers conferred by this Act, or any enactment replaced by this Act, shall be deemed to be the agent of the mortgagor; and the mortgagor shall be solely

[3] If the company's indebtedness might otherwise have been a moratorium debt, it is not apparently one in this case because, it seems, Toynbee Hall has not informed the Secretary of State about it (see regulation 6(3)).

> responsible for the receiver's acts or defaults unless the mortgage deed otherwise provides."

Clause 7.4 reinforces the statutory provision.

37. It is well arguable, even putting to one side the other provisions of regulation 7, that, even though regulation 7(2) does not expressly refer to a creditor's agent, it covers an agent's activities. If, in that context, who is an agent is to be determined by applying the general law (without reference to any other provisions of the regulations), it is also well arguable, however, that the receivers are not prevented from selling the property, because, under the general law, they are not Together's agents.

38. The position is not so straightforward, however.

39. Regulation 7(5) provides that a court may grant "a creditor or agent" permission to take enforcement action and may also grant permission "for a creditor to instruct an agent" to take enforcement action. It is well arguable that, because the court apparently has the power to give an agent themselves permission to take enforcement action, on the proper interpretation of regulation 7(2) agents are also prevented from taking enforcement action, even though they are not expressly referred to there.

40. Mr Laville suggested that, when regulation 7(5) provides that the court may grant "a creditor or agent" permission to take enforcement action, the regulation is doing no more, in the case of an agent, than covering a situation where a creditor has instructed their agent to take enforcement action before a moratorium but the agent has not taken the action before that moratorium begins. I do not think that can be right unless the agent is prevented from taking the action, and that can only be so, it seems to me, if regulation 7(2), properly interpreted, prevents enforcement action by a creditor or their agent, so supporting the broader interpretation of the regulation that I have suggested may be its proper interpretation.

41. Because that interpretation of regulation 7(2) would be based, in part at least, on the express references, in regulation 7(5), to a creditor's "agent", it may be that who is an agent is to be established by applying the regulation's definition of an agent, rather than by applying the general law.

42. The regulations specify, in regulation 2(1), that an "agent" "is to be construed in accordance with regulation 12(6)". The regulations do not say that regulation 12(6) defines who is an agent. The language used in regulation 2(1) may allow for a broader definition of agency than as expressly specified in regulation 12(6). In any event, regulation 12(6) only non-exhaustively specifies who are a creditor's agents for the regulations' purposes. They include those "appointed to collect a moratorium debt on behalf of a creditor".

43. Assuming, for present purposes, that the company's indebtedness to Together is a moratorium debt (which it is not, as I have explained), it is well arguable that the receivers were appointed by Together to collect that debt on Together's behalf. Clause 7.1.a. provides that Together can appoint receivers, clause 7.3 provides that Together can fix receivers' remuneration, the receivers' appointment records that Together has appointed them, and, by clause 6 of the receivers' appointment, Together directed that the receivers were to pay the net sale proceeds to Together in discharge of the

company's indebtedness. If, therefore, who is an agent for the purposes of the regulations is to be determined, not by reference to the general law, but by reference to the provisions of the regulations, it is well arguable that the receivers are Together's "agents".[4] If, on the proper interpretation of regulation 7 a creditor's agents, as so determined, are prevented from taking enforcement action, it is well arguable that the receivers would be prevented from selling the property had the company's indebtedness been a moratorium debt.

44. If the company's indebtedness to Together had been a moratorium debt, whether or not the receivers would not have been prevented from selling the property by regulation 7 because they are not Mr Slack's creditor and they are not Together's agent under the general law is not straightforward, because of the regulations' drafting. On any issues dependent on those matters, I would not have given the claimants summary judgment because I am not confident that all the material necessary for me to interpret the regulations on those matters is available and because the interpretation exercise is not a short one in the sense Moore-Bick LJ had in mind in *ICI*.

45. The claimants have applied for an order, under regulation 7, permitting a sale of the property ("a regulation 7 order") in the event that I had decided that the regulation otherwise prevented the property's sale, including because the company's indebtedness to Together was a moratorium debt.

46. I would not have given the claimants summary judgment on that application in those circumstances, for the following reasons.

47. Mr Laville submitted powerfully that a sale of the property will not be detrimental to Mr Slack, because any income from it is payable to the receivers, who are in possession of the property in any event. However, regulation 7(5)(b)(ii) requires me also to be satisfied that a sale would not significantly undermine the protections of the moratorium (assuming, as I have said, that the company's indebtedness to Together was a moratorium debt). Mr Laville effectively argued that, assuming Mr Slack will suffer no detriment from a sale of the property, a sale would not significantly undermine the protections of the moratorium. Mr Laville's argument was effectively that, if a step is not detrimental to a debtor, it cannot significantly undermine the protections of a moratorium. If that is so, regulation 7(5)(b)(ii) would serve no purpose at all. In this instance, I am not confident that I have all the material necessary to be satisfied about the proper meaning of the provision, so that it would not be appropriate for me to make a regulation 7 order on the claimants' summary judgment application, as I have explained. Giving the provision its natural and ordinary meaning, a sale of the property where one was otherwise prevented by regulation 7 (because the company's indebtedness, in the scenario I am considering, would be a moratorium debt), might very well significantly undermine the protective effect of the moratorium. The company's indebtedness, in this scenario, might in fact have been the only indebtedness caught by the moratorium, in which case, if a sale was permitted, the moratorium itself, and the moratorium regime more generally, would have offered no protection at all.

[4] It may be that Mr Slack is estopped, by clause 7.4, from asserting, for any purpose, that the Receivers are Together's agents, but I received no submissions on estoppel by deed, or, particularly, how that doctrine might interact with the regulations.

48. Together have also applied, under regulation 19, for an order cancelling the moratorium in relation to the debt with the reference "1031520" notified to it by the Insolvency Service, which, as I have said, the Insolvency Service asserted is owed by Mr Slack to Together. Together has made that application on the ground that there has been a material irregularity because "a moratorium debt is not a qualifying debt" (see regulation 17(2)(b)).

49. I am doubtful that the High Court has jurisdiction to cancel, wholly or partially, a moratorium. That jurisdiction has been conferred on the County Court (see regulation 19(1)). If, however, it was otherwise appropriate to cancel the moratorium in this case, in whole or in part, I would have sat as a County Court judge to do so.

50. Regulation 17(2)(b) demonstrates another of the drafting problems to which I have referred. For a debt to be a moratorium debt, it must be a qualifying debt. There can never be a moratorium debt which is not a qualifying debt. On the inevitably limited submissions I received, regulation 17(2)(b) is likely to be intended to cover the situation when the Secretary of State has been notified that a debt meets the criteria in regulations 6(a), (b) when, in fact, it does not because it is not a qualifying debt.

51. An order under regulation 19 is not appropriate in this case because the Secretary of State has apparently correctly not been informed about the company's indebtedness to Together but has been informed about Mr Slack's indebtedness to Together, in circumstances where Mr Slack's indebtedness is a qualifying debt, as I have demonstrated, so that there has not been the material irregularity Together has contended for.

<u>Disposal</u>

52. As I have said, I give the claimants permission to apply for summary judgment against Mr Slack although he has not filed an acknowledgment of service.

53. On the conclusions I have reached, the defendants have no real prospect of resisting a decision that a sale of the property by the receivers is not prevented by the regulations and that such a sale would not be null and void (see regulation 7(12)) because of the moratorium. Nor is there any reason why that issue should be disposed of at trial. It is therefore appropriate to give summary judgment to the claimants on the issue.

54. The only way effect can be given to my decision is to grant the claimants a declaration that a sale of the property by the receivers is not prevented by the regulations and that such a sale would not be null and void because of the moratorium. I will therefore make a such a declaration.

55. This outcome may mean that Toynbee Hall has to update the Secretary of State under regulation 20.

56. Together's claims for a regulation 7 order and for a remedy under regulation 19 cannot succeed, because, in the first case, the company's indebtedness to Together is not a moratorium debt, and, in the second case, Mr Slack's indebtedness is a qualifying debt. Those claims must be dismissed. Because I am making a declaration in the claimants' favour, I am very doubtful that there would have been any utility in the further pursuit of a regulation 7 order or for a remedy under regulation 19.

57. I need to hear further from the parties on all costs and consequential matters. A timetable has been settled for those matters to be determined without further hearings.