Neutral Citation Number: [2025] EWHC 1171 (Ch)

Case No: HC-2015-001324

IN THE HIGH COURT OF JUSTICE
CHANCERY DIVISION
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
COMPANIES COURT

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

Date: 14/05/2025

Before :

THE HONOURABLE MR JUSTICE HILDYARD

- -

Between :

(1) ACL NETHERLANDS B.V. (AS SUCCESSOR TO AUTONOMY CORPORATION LIMITED) **(2) HEWLETT-PACKARD THE HAGUE B.V. (AS SUCCESSOR TO HEWLETT-PACKARD VISION B.V.)** **(3) AUTONOMY SYSTEMS LIMITED** **(4) HEWLETT-PACKARD ENTERPRISE NEW JERSEY, INC**	**Claimant**
- and -	
(1) MICHAEL RICHARD LYNCH **(2) SUSHOVAN TAREQUE HUSSAIN**	**Defendant**

- -
- -

Conall Patton KC, Edward Hewitt (instructed by **Travers Smith LLP**) for the **Claimants**
Richard Hill KC, Sharif A. Shivji KC, Tom Gentleman, Zara McGlone, Karl Anderson, with Lord (David) Wolfson KC and Nehali Shah (instructed by **Clifford Chance LLP**) for the **1st Defendant**
Paul Casey (instructed by **Simmons & Simmons LLP**) for the **2nd Defendant**

- -

Approved Judgment

This judgment was handed down remotely at 10.30am on 14 May 2025 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

.....

MR JUSTICE HILDYARD

Mr Justice Hildyard:

1. My purpose in this judgment is to address and resolve the issues which have arisen concerning the constitution of these proceedings in the aftermath of the tragic death of Dr Lynch in August last year. In particular, in light of the reluctance of any of the executors appointed by his will ("the Will") to take out any form of grant whilst the solvency of Dr Lynch's estate is uncertain, the need for alternative representation of his estate in these proceedings has raised issues of some difficulty. I also explain the resulting delay since August 2024 in reconstituting and re-activating the proceedings and in providing my judgment on quantum. I use the same definitions and short forms in this judgment as in my Main Judgment dated 17 May 2022 ("the Main Judgment") in the proceedings.

Relevant Chronology

2. I had originally proposed to provide my judgment on quantum in September 2024, unless persuaded by a request in July 2024 from Clifford Chance LLP in the UK ("CCUK") on behalf of Dr Lynch, and Simmons & Simmons on behalf of Mr Hussain, to defer it until after consideration of an issue relating to certain documents disclosed in the proceedings in the USA. These were documents which the Defendants maintained should have been, but were not, disclosed in these proceedings, and which they submitted I should consider before delivering my judgment.

3. However, upon hearing of the tragedy which occurred in August 2024, I informed the parties that I would not wish to circulate a judgment at such a time. Further, Dr Lynch's death inevitably gave rise to issues as to the constitution of the proceedings and the time-table for their resolution on which I invited clarification in due course. This was readily accepted by all concerned.

4. CCUK's email to me dated 23 August 2024 made clear, however, that Clifford Chance (one of whose partners, Mr Chris Morvillo had also died in the sinking) were, as matters stood, without instructions. They asked that circulation of the draft judgment should be *"deferred for the time being while we seek to ascertain who could provide us with instructions in respect of Dr Lynch's interests".* The same email stated that CCUK would write further once the position became clearer.

5. Not knowing, at that time, of the reluctance of Dr Lynch's executors to take up their roles, I had envisaged that I would hear back from the parties in October, and I had proposed a hearing in the Michaelmas term to address any issues in relation to the re-activation of the proceedings. However, in the event, and apart from some continuing further correspondence between the parties, which was copied to me, relating to the separate issue of disclosure which had been raised before his death, I had heard nothing further from any of the parties by late November 2024.

6. In a letter to the parties' solicitors dated 25 November 2024, I made clear (in case the delay might be thought to be in relation to that issue) that I would only consider the exchanges relating to disclosure further if and when a formal application was made, and that this had not been delaying completion and circulation of my draft judgment. Of more direct relevance to this judgment, in the same letter, I also asked for

clarification whether and when it was envisaged that an application would be made to reconstitute the proceedings and what was proposed in that regard.

7. By an email dated 29 November 2024, Travers Smith LLP informed me that they had received no update from CCUK since the end of August 2024. Travers Smith invited CCUK to confirm whether any executor appointed under the Will was prepared to take up the role and to be substituted in that capacity as a party in place of Dr Lynch pursuant to CPR 19.2 and as envisaged by paragraph 2.10 of the Chancery Guide. Their email also requested a copy of the Will be provided to the Court and the parties, and notified all concerned that, failing confirmation that one or more of the executors was prepared to take up their role, the Claimants intended to issue an application under CPR 19.12 for some other suitable person to be appointed to represent Dr Lynch's estate in the proceedings as soon as possible after the Christmas vacation in 2024, with a view to it being heard in the Hilary term 2025.

8. CCUK responded to this in an email to the Court dated 6 December 2024 which was copied to all parties. In that email, CCUK informed the Court that they were *"still without instructions in these proceedings"* and that, having *"spoken with an associate of Dr Lynch's family"* their understanding was that there was *"no executor in place, and it is unclear who the executor(s) of Dr Lynch's estate will be, or when they will be appointed."* In such circumstances, they felt unable to comment on the Claimants' proposed application pursuant to CPR 19.12.

9. Thereafter, in further exchanges between Travers Smith and CCUK in December 2024 CCUK repeated that they were without instructions, had been unable to obtain any, and had not seen a copy of the Will. It also emerged in the course of these exchanges that their understanding was that of the four executors named in the Will, there remained only two who had not already renounced their executorship (whom Travers Smith understood from an email from CCUK dated 13 December 2024 to be Mr Andrew Kanter and Mr Richard Gaunt).

10. On 9 January 2025, Travers Smith updated the Court further to correspondence they had had with Messrs Gaunt and Kanter and with the solicitors for Dr Lynch's widow, Ms Angela Bacares ("Ms Bacares") who is one of the other two executors appointed by the Will. This update informed the Court that Mr Gaunt had confirmed that he and Mr Kanter had indeed been named as executors in the Will, that both of the other two named executors had each formally renounced, and that neither he nor Mr Kanter proposed to take any action of any kind as executors (or as other representatives of the estate) unless and until they could determine that the estate is *"adequately solvent"*. Plainly, they could only determine solvency after my adjudication of quantum. Moreover, Travers Smith relayed to me that Mr Gaunt had made clear that if, further to my judgment on quantum, the estate was not *"adequately solvent"*, he and Mr Kanter would immediately renounce their roles, which they had been advised they would be free to do, provided they had *"performed no action as executors."*

11. This clarification raised what Travers Smith described in their email to the Court dated 9 January 2025 as a *"circularity problem"*. This was (and remains) that CPR 19.12 (which provides a well-worn route for the appointment of a representative in proceedings in which a deceased person was a party) and the relevant complementary paragraph 2.10 in the Chancery Guide appear to apply only if either (a) no

representative is appointed by the will or (b) all executors appointed by the will have renounced or died, and the deceased person therefore "has no personal representative". CPR 19.12 thus appears on its face not to apply in the case of an estate where a personal representative has been appointed by will but has not renounced and has indicated that he or she is not currently willing to take out a grant. Travers Smith referred me to a decision of Richard Smith J in *Loudmila Bourkalova & Ors v Estate of Oleg Bourkalov & Ors,* and two previous rulings in the same matter which appeared to confirm that CPR 19.12(1)(b) is not engaged and not available in the particular circumstances which have been revealed in this case.

12. Travers Smith noted that in that case, the learned judge indicated that he might, absent any other solution, agree to the claims continuing without the estate being represented. In the circumstances of this complex case, however, where consideration will have to be given not only to the effect of my forthcoming judgment on quantum but also consequential matters relating both to that judgment and my Main Judgment, I have never been attracted by such an unusual and unsatisfactory expedient.

13. My concern about this apparent impasse, and my further research in light of that concern, prompted me to invite Travers Smith (copied to the other parties) to investigate whether an application might be made under section 116 of the Senior Courts Act 1981 ("section 116").

14. That section is presumably the basis for CPR 19.12, but it seemed to me then (and I have remained of the view) that it is not in terms so restricted. It is headed *"Power of court to pass over prior claims to grant"*, and provides as follows:

> (1) "If by reason of any special circumstances it appears to the High Court to be necessary or expedient to appoint as administrator some person other than the person who, but for this section, would in accordance with probate rules have been entitled to the grant, the court may in its discretion appoint as administrator such person as it thinks expedient.
>
> (2) Any grant of administration under this section may be limited in any way the court thinks fit."

15. Travers Smith took up this invitation and by email to the Court dated 28 January 2025 (also copied to all concerned) informed me that they agreed that under section 116 *"a grant to an appropriate person under section 116 that was limited to the constitution and conduct of these proceedings ought to be viable"* and could provide a means of *"potentially unlocking the current impasse."*

16. They also helpfully drew to my attention a recent decision (*ZS v Estate of NJ* [2024] EWHC 306 (Fam)) in which Simon Colton KC, sitting as a Deputy Judge of the High Court, had (albeit in very different factual circumstances) appointed an individual referred to as "JK" *"as administrator [under s.116], for the limited purpose of representing NJ's estate in these proceedings"* in preference to the alternative course presented to him of ordering the estate to be unrepresented which (as I do here) he considered inappropriate.

17. At the same time, Travers Smith also informed me that they were preparing an application under section 116 accordingly and that in the meantime they were, on a confidential basis, sounding out two or three potential candidates (all being partners in respected private client firms) to ascertain their suitability and willingness to accept the role of administrator and representative for the sole purpose of representing Dr Lynch's estate in the present proceedings.

18. By email dated 6 February 2025 (copied to the parties), Travers Smith informed me that one of the potential representatives they had identified had declined to act, but two others had indicated that they were willing in principle to act, though inevitably they had raised issues of due diligence and questions of funding (and in particular, their costs and remuneration) which would take some time to work through.

19. This appears to have galvanised some further activity on the part of CCUK, who by email to the Court dated 17 February 2025 proposed instead an alternative candidate, Mr Jeremy Vaughan Sandelson ("Mr Sandelson"), Mr Sandelson being the preference of Ms Bacares and who was someone known both socially and professionally to Dr Lynch and his family, with some knowledge of the proceedings, and experience in both private client matters and complex proceedings such as these. CCUK's email also noted that Mr Sandelson's appointment had the support of both Mr Gaunt and Mr Kanter and that CCUK were content with it in principle.

20. Travers Smith promptly agreed to this suggestion and, on 7 March 2025, issued an application pursuant to section 116 to appoint Mr Sandelson as administrator of Dr Lynch's estate for the limited purpose of representing the estate in these proceedings, to make provision for relevant costs, and to reserve the right of Mr Gaunt and Mr Kanter to apply for a grant in due course, if that is what they wished to do.

21. That application attached a draft order in a form agreed (as to the most part, at any rate) between the Claimants, Mr Hussain, Mr Sandelson and Ms Bacares. It was supported by the seventh witness statement of Toby Philip Robinson ("Mr Robinson"), a member of Travers Smith, and it was accompanied by an Affidavit of Mr Sandelson dated 3 March 2025. In a covering letter from Travers Smith I was requested to deal with the application on the papers (no one, I was informed, objecting to that course). However, certain aspects of the form of order then proposed caused me concern, as I explained to Travers Smith and CCUK.

The difficulties which arose and the process by which they were identified and addressed

22. There then ensued what was in effect an iterative process between the Court and the persons interested in the course of which I raised a succession of questions. This is, of course, an unusual process, but in the particular and rather unusual circumstances, and given that in this regard I consider that I am in effect exercising a supervisory jurisdiction, it seemed to me to be appropriate and preferable to the alternative of a sequence of hearings.

23. I can summarise that process, my concerns, and how they were addressed and have shaped the revised Order now sought, as follows:

(1) My initial concerns, which I shared with the parties in an email dated 11 March 2025, related to (a) the scope of the proposed Order as regards fees, costs and disbursements and (b) whether provision should be made as to what should be done if issues arose after I was '*functus officio'* (after my judgment on quantum and my determination of consequential matters) or if issues arose whilst I was still charged with the matter which concerned privileged material which I should not see.

(2) As to (a) in sub-paragraph (1) above, my particular concern was to clarify a provision in the original draft section 116 Order which appeared to extend to authorising the appointed representative (defined as "the Administrator") to pay not only fees incurred by him or in respect of his appointment, but also the costs and disbursements outstanding at the date of Dr Lynch's death both of CCUK (in the sum of £367,578.14) and Clifford Chance's US office ("CCUS") (including costs and disbursements in the US proceedings in the sum of $599,235.51).

(3) As I elaborated in a further letter to the parties, my concern was (and has remained) as to my jurisdiction to make provision for costs/expenses which are not costs/expenses of or ancillary to the administration. That concern is the greater in circumstances where there could be an issue as to the solvency of Dr Lynch's Estate, and consequently an issue as to whether such payments should have been given priority.

(4) Obviously, that concern most impacted Clifford Chance as a firm (denoting the worldwide firm including both CCUK and CCUS). However, it also seemed to me that such a broad mandate as was originally proposed could well put Mr Sandelson in a difficult position, given his long association with that firm but his primary and overriding duty to the Estate.

By letter dated 24 March 2025, Clifford Chance clarified that: (a) the outstanding costs denominated in US Dollars ($) represent fees owed to CCUS's representation of Dr Lynch in the US criminal proceedings (where both Dr Lynch and his co-defendant, Mr Stephen Chamberlain, were acquitted); (b) CCUK and CCUS operate separate client accounts; (c) they accepted that any claims CCUS might have in respect of sums credited to Dr Lynch in client accounts operated by CCUS would probably be governed by US law; and (d) CCUS was and is *"content to wait for the resolution of its claim over the monies in its client account".* Accordingly, it was agreed that this judgment and the draft Order which has ultimately been proposed should not relate to sums owed to or held by CCUS. However, this did not address my broader concerns about costs not incurred in respect of the proposed administration.

(5) It was urged on me by CCUK that the jurisdiction conferred by section 116 *"is broad and unfettered"* and although of course it must be exercised *"on proper grounds and in a proportionate way"*, it should extend to making an order for the payment of costs incurred prior to the appointment of the administrator. CCUK cited in support of this a decision of Mr David Rees KC (sitting as a Deputy Judge of the High Court) in the Family Division, namely *In the Estate*

of Eric Sydney King Deceased, Philip King v Stephen King [2023] EWHC 2822 (Fam).

However, in my view (of which I informed the parties in a formal Note dated 27 March 2025), that case concerned legal costs incurred by previous administrators in the administration of the deceased's estate (and thus costs/expenses incurred in the course of administration and enjoying preferential status in any bankruptcy/insolvency). It did not relate to the discharge of litigation costs and expenses incurred prior to the death and unconnected to the process of administration. I made clear that any order for payment would be restricted to costs in connection with the proposed administration.

(6) CCUK were, especially given that view, also anxious to protect any common law lien in respect of the amounts owed to them, and they invited me to make protective directions in this regard. In particular, they invited me to direct or at least include express recognition and approval in the proposed section 116 Order that CCUK's lien should be recognised as an entitlement *"to be paid ahead of other creditors"* on the basis that such a lien should be treated as *"a secured claim over the monies in the client account."*

In my view, however, which again I set out in my formal Note (dated 27 March 2025), a common law lien does not amount to a secured lien: and see *Addleshaw Goddard LLP v Nicholas Stewart Wood and Anor*. [2015] EWHC B12 (Costs); also *Re Born* [1902] Ch 433 and *Clifford Harris & Co v Solland International Ltd and Ors.* [2005] EWHC 141 (Ch).

It seems to me that CCUK might be entitled to seek a charge or even payment with leave of the Court under section 73 of the Solicitors Act 1974: but that would require a separate application by CCUK, supported by evidence.

I also warned that *"The proposed Administrator needs to be separate in this regard and to keep an eye on any conflict."* I was concerned that the Administrator should confine himself to the discharge of his duties arising from his role, rather than matters pre-dating the proposals for his appointment.

(7) A further concern which I mentioned in my Note dated 27 March 2025 was that it seemed to me, on reflection, that it would be usual, and perhaps more appropriate, for an application under section 116 to be made, not in existing litigation, but by Claim Form and application in the Property, Trusts and Probate List pursuant to CPR 57.2.1, in which the executors who had not renounced would be joined and would thus be bound.

Travers Smith urged me not to insist on this course and thus require fresh proceedings, given that the matter was in substance agreed. Fresh proceedings would inevitably cause delay, and also potentially run into difficulties because of Mr Gaunt and Mr Kanter's insistence that they could not participate in any way that could be interpreted as intermeddling or might be such as to prevent them renouncing their office.

Although appreciative of these difficulties, I remained concerned, in particular as to how the executors who had not renounced could be bound.

Further exchanges

24. These concerns occasioned further exchanges which I do not think it necessary to rehearse. Suffice it to say for present purposes that:

(1) A revised draft Order was provided to me by Travers Smith on 31 March 2025; this had been provided to CCUK earlier that day.

(2) Travers Smith explained, in a covering letter to me, that, in light of my continuing concerns, the objective of the revised draft was to separate out (a) the issue of Mr Sandelson's appointment, which is obviously increasingly pressing, from (b) the issue of whether the draft Order should authorise Mr Sandelson to pay fees and disbursements incurred by CCUK (and it seems its office in the US) prior to Dr Lynch's death (which they defined as "Pre-Death Fees") and, if not, how Mr Sandelson's remuneration and professional fees and expenses could be paid without compromising the lien asserted by CCUK over monies held in its client account.

(3) Travers Smith went on to explain that to that end, the draft Order they proposed had been amended to:

(a) remove any reference to the Pre-Death Fees (removing also a provision recording an undertaking offered by CCUK to repay such fees if the Court should find that they should not have been paid), so that no authority is conferred on Mr Sandelson to permit their payment; and

(b) provide that Mr Sandelson's reasonably and properly incurred remuneration and professional fees and expenses of the administration pursuant to the Order be paid out of (i) the funds held in CCUK's client account, but subject to the proviso that the balance will not be reduced below the quantum of fees and expenses incurred prior to Dr Lynch's death in respect of which CCUK assert a lien (being £367,568.14) or (ii) other assets of the Estate.

(4) Travers Smith also explained that, in deference to CCUK's concern lest that nevertheless there might be *"at least some prejudice to CCUK's rights under the lien"*, the proposed draft Order had been amended to include an express statement that nothing in it is intended to prejudice any lien that CCUK may assert.

(5) CCUK reacted constructively to these proposals, stating that the proposed draft provisions *"appear sensible to us in principle"*. However, unsurprisingly, they needed further time to consider the position as a firm, and indicated that they were seeking independent advice accordingly.

(6) Whilst CCUK were seeking independent advice, I also put forward a possible way round my concern that some mechanism was necessary to ensure that the executors nominated under the Will who had not renounced would be bound by the Order. This was for the executors who had not renounced to provide a formal undertaking to be bound.

(7) Travers Smith welcomed this proposal; but it was (correctly) considered necessary for the executors concerned to instruct solicitors both for the purpose of seeking advice and (if so advised) to convey formally their undertaking in this regard.

(8) By letter addressed to me and dated 10 April 2025, CCUK:

(a) confirmed that the costs described in the draft Order as being costs *"in relation to this litigation following Dr Lynch's death"* are *"costs incurred by CCUK solely in relation to the appointment of Mr Sandelson as Administrator and for the purpose of ensuring that there is a representative of the estate of Dr Lynch able to deal with the proceedings";*

(b) they added that *"[f]or the avoidance of doubt, we confirm that no costs have been incurred in this period by this firm in relation to any other aspects of the administration of Dr Lynch's estate or the substance of the underlying proceedings themselves",* their understanding being that the *"proposal in the Draft Order is that the Administrator be entitled to pay these fees which were preparatory to his appointment provided that he is satisfied that they were reasonably and properly incurred"*;

(c) welcomed and accepted the proposals made in that regard and with respect to the issue relating to CCUK's asserted lien, considering them to be *"a practical and pragmatic way in which CCUK's rights in respect of the funds which it holds can be maintained while allowing the balance of the funds over and above the pre-death costs to be utilised by the Administrator";*

(d) concluded their letter with the hope that the solution would commend itself to the Court as allowing *"both for the appointment of the Administrator and for any further issues in relation to CCUK's entitlement to apply the ring-fenced funds in payment of the costs incurred prior to the death of Dr Lynch to be determined separately in due course."*

(9) For their part, Travers Smith confirmed their concurrence in the approach I had floated of binding the executors appointed under the Will who had not renounced by way of an undertaking. On 16 April 2025 (the last day of the Hilary Term), I received a letter from Broadfield as solicitors for Messrs Gaunt and Kanter confirming their approval of and willingness to give an undertaking to be bound by the Order.

(10) In circumstances where Broadfield was not on the record, and neither of their clients is a party to the existing proceedings, I required formal compliance with paragraph 14.70 of the Chancery Guide, and accordingly that (a) each of Broadfield's clients should endorse with their signature a letter from Broadfield recording the undertakings, and (b) the Broadfield partner concerned should certify those signatures as being those of her clients, and confirm that she had

explained the undertaking to each of them and each appeared to understand it. On 23 April 2025, I received compliant documentation.

(11) In the meantime, on 14 April 2025 Travers Smith had provided me with a further version of the proposed draft Order. Further revisions to that draft were made subsequently, and a final version in an agreed form ("the agreed draft Order"), which was sent to me on 12 May 2025, is attached to this judgment.

Disposition and conclusion

25. I am satisfied that I have jurisdiction to make the agreed draft Order and that I should exercise that jurisdiction in the existing proceedings and on the papers without an additional hearing to enable them to be reconstituted and reactivated without further delay.

26. In my judgment:

(1) My jurisdiction under section 116 has been properly invoked, without the necessity of a separate action joining the executors appointed under the Will, provided that some mechanism is provided for any order made being binding on the relevant executors.

(2) The undertakings to be given and recited by Mr Gaunt and Mr Kanter, they both having been advised by their Solicitors as to the effect of the proposed Order and the consequences of giving such undertaking, and each of them having endorsed a letter from their Solicitors recording these matters by signatures certified to be theirs in accordance with paragraph 14.70 of the Chancery Guide, will be sufficient to bind them notwithstanding that they have not been impleaded as parties.

(3) There is no doubt that the circumstances I have described are "special" and that it is "necessary or expedient" to "appoint as administrator some person other than the person who, but for this section, would in accordance with probate rules have been entitled to the grant…" within the meaning of the quoted provisions of section 116(1).

(4) It is "expedient" to appoint Mr Sandelson as the Administrator, he being willing to act and being someone whom all persons interested have agreed is suitable, especially given his experience and familiarity to Dr Lynch and his family. I am satisfied that he is indeed a well-qualified and suitable candidate. I was concerned that he should specifically and conscientiously have addressed whether he feels or perceives there to be any conflict between his proposed role and his relationship with Clifford Chance; and I am satisfied both that he has done so and will continue to have in mind that in the discharge of his role it is the best interests of the estate that must be paramount. By way of elaboration, I have considered carefully his affidavit evidence and note especially in that regard that:

(a) he became a partner in CCUK in 1988;

(b) he was, for some years, CCUK's Global Head of Litigation;

(c) in that capacity he became familiar with this litigation. However, he never handled Dr Lynch's defence as an active day-to-day partner; and although he did remain involved in both these and the US criminal proceedings, and provided high-level strategic advice to Dr Lynch as and when required, he is not part of the current litigation team;

(d) he retired from the partnership in April 2024;

(e) he is no longer a partner at CCUK, though he has a consultancy role, for which he is remunerated. He has explained in that regard that this consultancy agreement was put in place principally to enable him to assist in long term litigation in which CCUK acts on behalf of News Group Newspapers Limited, but that there has been no substantive work arising from that consultancy arrangement since April 2024 and he does not expect there to be any significant work in the future;

(f) he has confirmed that he does not believe there could be any conflict or disruption in his ability to perform his duties if appointed as administrator even if he were to continue with the consultancy arrangement. However, he has also confirmed that he is willing to terminate his consultancy agreement if any party or the Court has any reservations about this role;

(g) he has also confirmed, for the avoidance of doubt that he has no other financial interest in CCUK and that any remuneration he receives in respect of his consultancy is not in any way dependent on the revenues or profits of CCUK.

(5) The terms on which Mr Sandelson is to be appointed, as set out in the attached agreed draft Order, are within the power of the Court to prescribe as conferred by section 116. I consider that those terms and provisions (none having been objected to) are expedient and reasonable. I draw comfort in that regard from the judgment and (comparable) orders made by Sales J (as he then was) in *Inna Gudavaze & Ors v Joseph Kay* [2012] EWHC 1683 (Ch).

(6) Mr Sandelson's duties and obligations are sufficiently adumbrated in the agreed draft Order, and I am confident are well understood by him. However, it is appropriate for Mr Sandelson's personal liability to be limited as proposed.

(7) In light of the concerns about the overall solvency of Dr Lynch's estate, it is appropriate, in order to make the provisions above described workable and reliable, to make the validation order under section 284 of the Insolvency Act 1986 provided for by paragraph 8 of the agreed draft Order.

(8) It is also expedient and necessary that Mr Sandelson should immediately be provided with a copy of the Will and any codicil or letter of wishes of Dr Lynch, and any professional advice given to Dr Lynch in connection with these proceedings (as provided for in paragraph 3 of the agreed draft Order).

(9) The agreed draft Order attached, as requested by CCUK, includes a provision authorising Mr Sandelson to act immediately on the terms of the agreed draft Order, even before a formal grant of representation is issued by the Probate Registry: and see the elaboration of the reasons for this in paragraph 30 below.

(10) Lastly, and for the avoidance of any doubt, the limited grant to Mr Sandelson being to represent the Estate in these proceedings, power should be reserved to Mr Gaunt and Mr Kanter, after considering my forthcoming judgment on quantum and according to its effect, either formally to renounce their appointment, or to apply for a full grant and power should expressly be reserved to them both accordingly.

27. I should explain one particular provision in the agreed draft Order attached, which is paragraph 7. An earlier draft contained a provision enabling payment of Clifford Chance costs prior to Dr Lynch's death. In that regard, Clifford Chance have explained that CCUK has outstanding costs and disbursements of £367,578.14 and CCUS has $599,235.51, all largely relating to the period before Dr Lynch's death; and that these figures include certain costs related to Dr Lynch's detention in Milan after his acquittal because the US Department of Justice had failed to withdraw a Red Notice for his arrest, and also include the cost of counsel and document platforms which have been retained pending the resolution of this action. Those costs do not relate to Mr Sandelson's appointment nor to his representation of the Estate in these proceedings and their payment is not authorised by the proposed Order. Thus, paragraph 7, in the form in which it now appears in the agreed draft Order attached, limits the costs Mr Sandelson can properly pay Clifford Chance to such costs as have been reasonably and properly incurred after the death of Dr Lynch in relation to his appointment and/or to services Clifford Chance thereafter provide to him as Administrator.

28. I have determined this matter on the papers. Despite some complexity, I have not required a hearing, being satisfied that the iterative process I have adopted has been sufficient to identify and enable determination of the relevant issues, and in deference to the wishes of all parties and persons concerned. It seems to me, however, that this judgment should be in public.

29. I have considered whether it is also within the power conferred by section 116 and expedient for me to include within the Order provision for the immediate substitution of Mr Sandelson as a party in his capacity as Administrator pursuant to CPR 19.2; and I am satisfied that it is, again with the comfort of Sales J's approach in *Inna Gudavaze & Ors v Joseph Kay [supra].* In that case, that order was made pending *"the formal grant of Letters of Administration by the Probate Office"* (see paragraph [48] of Sales J's judgment).

30. Lastly, and in further elaboration of my comment at paragraph 26(9) above, it had seemed to me to be implicit in section 116(2) that I would have power to make a formal grant of administration *ad litem* with power reserved to the Executors appointed under the Will who have not renounced to apply for probate in due course. Nevertheless, I consider that I should abide by what I understand to be the consensus between the parties that although the Order when sealed will appoint Mr Sandelson, direct his substitution as a party and authorise him to act, it will not of itself constitute a 'grant' and it will still be necessary for Mr Sandelson to apply to the Probate Registry for a formal limited grant *ad litem.* The provision referred to in paragraph 26(9), which I agree should be included, is to ensure that the time for processing applications in the Probate Registry (which I understand is typically some 12 weeks from submission of a formal application) does not yet further delay the reactivation of these proceedings and the circulation for correction of my draft judgment on the quantum issue (subject to the usual strict embargo).

Claim no. HC-2015-001324

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

BEFORE THE HONOURABLE MR JUSTICE HILDYARD

DATED ……

BETWEEN:

(1) ACL NETHERLANDS B.V. (AS SUCCESSOR TO AUTONOMY CORPORATION LIMITED)
(2) HEWLETT-PACKARD THE HAGUE B.V. (AS SUCCESSOR TO HEWLETT-PACKARD VISION B.V.)
(3) AUTONOMY SYSTEMS LIMITED
(4) HEWLETT-PACKARD ENTERPRISE NEW JERSEY, INC.

Claimants

and

(1) MICHAEL RICHARD LYNCH
(2) SUSHOVAN TAREQUE HUSSAIN

Defendants

ORDER

UPON the death of the First Defendant, Michael Richard Lynch ("Dr Lynch"), on 19 August 2024

AND UPON Dr Lynch having left a will by which he appointed as his executors his widow, Angela Bacares ("Ms Bacares"), Frances Smith ("Ms Smith"), Andrew Kanter ("Mr Kanter") and Richard Gaunt ("Mr Gaunt")

AND UPON Ms Bacares and Ms Smith having renounced

AND UPON Mr Kanter and Mr Gaunt not having renounced but having indicated that they are currently, pending sight of the quantum judgment in these proceedings, undecided as to whether they will renounce or take up their appointment

AND UPON the Claimants' application by application notice dated 7 March 2025 ("the Application") seeking an order:

(a) pursuant to section 116 of the Senior Courts Act 1981 appointing Jeremy Vaughan Sandelson as administrator of Dr Lynch's estate ("the Estate") for the limited purpose of representing the Estate in these proceedings; and

(b) pursuant to CPR rule 19.2 substituting the newly appointed administrator as First Defendant in place of Dr Lynch

AND UPON Mr Sandelson ("the Administrator") having consented to being so appointed and substituted

AND UPON the Second Defendant not having raised an objection to the proposed appointment

AND UPON Ms Bacares, Mr Kanter and Mr Gaunt having indicated that they support the proposed appointment

AND UPON Mr Kanter and Mr Gaunt, without prejudice to the question of whether they ultimately renounce or take up their appointment, both undertaking to be bound by this Order

AND UPON the Court being satisfied that there are special circumstances such that it is necessary and expedient to make an appointment pursuant to section 116 of the Senior Courts Act 1981

AND UPON the Court considering the Administrator to be a suitable appointee

AND UPON the Court considering the Application on the papers without a hearing

IT IS ORDERED THAT:

1. Pursuant to section 116(1) of the Senior Courts Act 1981, letters of administration be granted to the Administrator, limited for the purpose of representing the Estate in these proceedings. The Administrator shall apply for such a (limited) grant as soon as reasonably practicable. For the avoidance of doubt, the Administrator is authorised to act forthwith (and even before a grant is issued to him), and he shall have the power to retain solicitors and to incur the reasonable costs and expenses of doing so, and to have recourse to the assets comprised in the Estate for the purpose of paying such reasonable costs and expenses (subject to the provisions of this Order, and to the implicit fiduciary and other duties of an administrator appointed pursuant to section 116(1)).
2. In representing the Estate in these proceedings, the Administrator shall weigh impartially the interests of all persons potentially interested in the Estate, whether as creditors or as beneficiaries.
3. The Administrator shall be entitled to be provided with:

(a) a copy of any will, codicil and/or letter of wishes of Dr Lynch; and

(b) any professional advice given to Dr Lynch in connection with these proceedings, including any such material that is, was or would have been subject to legal professional privilege for the benefit of Dr Lynch (including but not limited to the file or files held by Clifford Chance LLP in respect of its instruction by Dr Lynch in his own right in these proceedings).

4. Pursuant to CPR rule 19.2, the Administrator is hereby substituted as First Defendant in these proceedings in the place of Dr Lynch.

5. The Administrator may charge reasonable remuneration in accordance with the rate set out in his first affidavit in respect of:

(a) Time spent in anticipation of being appointed; and

(b) His administration of the Estate pursuant to this Order.

6. The Administrator shall be at liberty to employ as his solicitors and agents in the administration of the Estate pursuant to this Order the firm Clifford Chance LLP. The Administrator shall be authorised to pay to Clifford Chance LLP out of the assets comprised in the Estate their reasonably and properly incurred costs (including any counsel fees and any expert fees and any other disbursements) for (i) services rendered following Dr Lynch's death solely in relation to the appointment of the Administrator as such and for the purpose of ensuring the representation of the Estate in these proceedings and (ii) services they provide to the Administrator, such services to be provided pursuant to a retainer which incorporates any discounts agreed with Dr Lynch to their standard hourly rates.

7. The Administrator’s reasonably and properly incurred remuneration and professional costs and expenses of the administration pursuant to this Order (including the costs of employing Clifford Chance LLP pursuant to the preceding paragraph and counsel and any necessary expert fees and any other disbursements) be paid out of:

(a) the funds held in Clifford Chance LLP's UK client account, provided:

(i) that the Administrator is satisfied that the costs and expenses are reasonable; and

(ii) that the balance of Clifford Chance LLP's client account will not be reduced below the quantum of costs and expenses incurred prior to Dr Lynch's death in respect of which Clifford Chance LLP assert a lien (being £367,578.14); or

(b) other assets of the Estate.

Nothing in this Order is intended to operate to prejudice any lien that Clifford Chance LLP may assert over monies in the client account in respect of their costs and disbursements.

8. The payments authorised at paragraphs 6 and 7 above shall not be void by virtue of the provisions of section 284 of the Insolvency Act 1986 in the event that it applies in due course in relation to Dr Lynch.

9. The Administrator shall not be personally liable in respect of any orders for costs made against the Estate.

10. The Administrator shall not be personally liable for any loss or damage to the Estate arising from his conduct of these proceedings following his appointment, save where that loss or damage is proved to have been caused by acts or omissions that were fraudulent, dishonest or in bad faith.

11. The Administrator shall have permission to apply within these proceedings for further directions as to the administration of the Estate pursuant to this Order, including to a Master or Judge other than Mr Justice Hildyard.

12. Liberty to apply (including liberty to the Administrator to apply to determine the reasonableness of any costs and expenses payable pursuant to paragraphs 6 and 7 of this Order).

13. For the avoidance of doubt:

(a) This Order shall not affect Mr Kanter or Mr Gaunt's ability to apply for a grant of probate, should they decide to do so.

(b) This Order shall not affect Mr Kanter or Mr Gaunt's ability to renounce probate, should they decide to do so.

(c) A grant of probate will not affect the Administrator's appointment unless the Court orders otherwise.

14. The appointment of the Administrator shall continue until either of:

(a) The resolution of these proceedings, whether by settlement or final judgment. Upon such resolution and written notice having been provided to the Court, to representatives of the Claimants and to the beneficiaries under Dr Lynch's will, the Administrator shall be deemed *functus officio*, and his duties and responsibilities under this Order shall cease; or

(b) The resignation of the Administrator, written notice having been provided to the Court, representatives of the Claimants and the beneficiaries under Dr

Lynch's will. Such resignation shall take effect 30 days after the date of the notice, unless the Court orders otherwise.

15. The First Defendant in this action shall be referred to as "Jeremy Vaughan Sandelson as administrator of the Estate of Dr Michael Richard Lynch deceased".
16. As between the Claimants and the First Defendant, costs in the case. As between the Claimants and the Second Defendant, no order as to costs.
17. This Order shall be served by the Claimants on the Second Defendant, the Administrator, Ms Bacares, Mr Kanter and Mr Gaunt.

Service of the Order

The Court has provided a sealed copy of this Order to the serving party:

Travers Smith LLP, 10 Snow Hill, London, EC1A 2AL