

Statement on behalf of Claimant  
Statement of V H Sweeney  
Statement Number 3  
Exhibit VHS3-6  
14 September 2021

**IN THE COUNTY COURT AT LIVERPOOL**

**CLAIM NO: G30LV134**

**BETWEEN:**

**BASIL GRANGE MANAGEMENT COMPANY LIMITED**

**Claimant**

**and**

**CAROLINE PERRY**

**Defendant**

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**THIRD WITNESS STATEMENT OF VICTORIA HELEN SWEENEY**

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I, Victoria Helen Sweeney of Trident House, 31 – 33 Dale Street, Liverpool L2 2HF will say as follows:-

1. I am a solicitor at Dallas & Richardson Solicitors and have daily conduct of this matter on behalf of the Claimant.
2. I am authorised by the Claimant to make this witness statement in response to the Defendant's application for suspension of the eviction scheduled to take place on 15 September 2021.
3. The facts and matters set out in this statement are within my own knowledge unless otherwise stated and I believe them to be true. Where I refer to information supplied by

others, the source of the information is identified; facts and matters derived from other sources are true to the best of my knowledge and belief. The statements I make are based on my knowledge and from documents I refer to in the exhibits VHS3 – VHS6.

### **Pre-Reading**

4. I am filing with this witness statement a copy of the hearing bundle which was before the Court on 16 March 2021. In particular, I draw the Court's attention to the following:-
  - 4.1. The Defendant's application notice dated 27 February 2021 (pages 177-122);
  - 4.2. My second witness statement in response to that application (pages 123-176).

### **Background**

5. I set out the background to these proceedings within my second witness statement and the Court is referred specifically to paragraphs 4-8 of my second witness statement (at pages 123-125 of the hearing bundle).

### **The hearing on 16 March 2021**

6. On 16 March 2021, the Defendant's application dated 27 February 2021 was heard before District Judge Johnson. That application, on the face of the application notice, was for the suspension of the enforcement of the Order for Sale.
7. I exhibit at VHS3 a copy of the Order for Sale dated 1 September 2021 made by District Judge Lampkin.
8. I exhibit at VHS4 a copy of the approved judgment of District Judge Johnson of 16 March 2021 ('the Approved Judgment').

9. I exhibit at VHS5 a copy of the transcript of the hearing on 16 March 2021.
10. I exhibit at VHS6 a copy of the order of District Judge Johnson dated 16 March 2021.
11. I draw the Court's attention to paragraphs 4 and 5 of the Approved Judgment, which confirms the basis of the Defendant's application that was heard on 16 March 2021. The basis of the application was twofold:-
  - 11.1. a suspension of enforcement of the order dated 1 September 2020 but really the application was for the Court to set aside the order dated 1 September 2020.
  - 11.2. Disclosure of information from the management company as to the basis upon which service charges were being charged.
12. The application was dismissed and I ask the Court to consider the Judge's reasons for dismissing the application on the last occasion.

**The Defendant's application to suspend the eviction**

13. The Defendant applies, at the eleventh hour, to suspend the eviction due to take place at 11:30am on 15 September 2021.
14. At 12:01 on 14 September 2021, I received the notice of hearing of this application from the court. The copy of the application notice attached to the notice of application dated 25 August 2021, it was unsigned and it did not contain any evidence in support of the application.
15. At 12:19, I received a further email from the Court attaching an updated application notice dated 25 August 2021 but signed on 14 September 2021.
16. The Defendant applies to the court to:

- 16.1. Suspend the bailiff's warrant indefinitely;
- 16.2. Set aside the possession order and cancel the order for sale;
- 16.3. Alternatively vary the order for sale by suspending the order for sale for 2 years.

i. Indefinite suspension of the warrant for possession

17. The Defendant has made no attempt to make any payment in respect of the outstanding debt. The Defendant has continued to make no payments in respect of service charges that have accrued since the judgments in these proceedings were obtained.
18. I note the Defendant states in her application notice that she has plans in place to clear service charge element as priority, however, I have received no communication from the Defendant in that respect and I also note there is no proposal or evidence contained within her application notice as to what that proposal is and what her plans are.
19. There is no evidence before the court to justify the suspension of this eviction. From the evidence before the court, the only way the Claimant is going to receive payment of the debt is by way of sale.
20. In respect of the occupants, that issue was considered by District Judge Lampkin when the order of 1 September 2020 was made. District Judge Lampkin refused the Claimant's request for a possession order within 28 days and ordered that possession be suspended for 6 months to allow the Defendant time to pay the debt or sell the property herself.
21. I am informed by the Claimant that there is a further £5,400 owing by the Defendant in respect of services for the period 31 December 2018 – 30 June 2021.

22. I am instructed by the Claimant that the Defendant has continued to fail to pay service charges when demanded and further debt has accrued since the Claimant secured the judgments that these proceedings relate to.
23. The Defendant has not adduced any new evidence as to why the eviction should not proceed.
24. This is the first occasion on which the Defendant has alleged her Mother resides at the property, which is not accepted by the Claimant.

ii. Set aside the possession order and order for sale

25. The Defendant's application before DJ Johnson on 16 March 2021 sought the same order. All of the Defendant's submissions were rejected and the Judge dismissed that application.
26. The court does not have the jurisdiction to set aside the order of 1 September 2021 and that element of the Defendant's application is doomed for failure.

iii. Alternatively to ii above, vary the order of 1 September 2020

27. Again, this application is doomed for failure. The Court does not have the discretion to vary the order and again, that issue was considered by DJ Johnson on 16 March 2021.

**Conclusion**

28. The application that was filed with the Court on 14 September 2021 is a repetition of the application she made in February 2021, which was dismissed on 16 March 2021.
29. There is no basis upon which the Defendant would be entitled to the orders sought and there is no evidence before the Court as to why the eviction should be suspended. The Defendant effectively seeks a suspension on the grounds that the order for sale should be

set aside or varied. The Defendant has no hope of achieving this outcome and her application is, again, totally without merit.

30. The application should be dismissed and the Defendant should be ordered to pay the Claimant's further wasted costs for dealing with this application.

#### **Application for civil restraint order**

31. It was recorded upon the order of 16 March 2021 that the Defendant's previous application dated 22 February 2021 was totally without merit.
32. This is now the second occasion within these proceedings (there have been other instances within prior proceedings) where the Defendant has made an application that is totally without merit.
33. The Defendant's actions of continuing to make applications in an attempt to prevent the Claimant taking the legal action it is legitimately entitled to take, whilst at the same time making no effort to pay the secured debt and continuing to accrue additional service charges, is an abuse of the court process. It is unfair that the Claimant has to continue incurring costs responding to the Defendant's groundless applications, particularly when there is no prospect of the Claimant recovering those costs until the Property is sold.
34. The Defendant has fought, unsuccessfully, every claim and application the Claimant has made in the various sets of proceedings culminating in the order of 1 September 2020, causing the Claimant to incur costs in the process.
35. This latest attempt to prevent the Claimant from exercising its right to enforce the order for sale is again an abuse of process. The Defendant's actions are causing severe prejudice to the Claimant and the other leaseholders of the properties, and cannot be permitted to continue.

36. It is clear that the only way in which the Defendant will be refrained from continuing to waste court time and resources, and cause the Claimant to have to respond to applications that are entirely without any merit, is by the making of a civil restraint order.

37. I therefore invite the court to dismiss the Defendant's application and make an order in the terms attached to this witness statement.

**Statement of Truth**

I believe the facts stated in this witness statement are true. I understand that proceedings for contempt of court may be brought against anyone who makes, or causes to be made, a false statement in a document verified by a statement of truth without an honest belief in its truth.

Signed: 

Name: Victoria Sweeney

Dated: 14 September 2021

**IN THE COUNTY COURT AT LIVERPOOL**

**CLAIM NO: G30LV134**

**BETWEEN:**

**BASIL GRANGE MANAGEMENT COMPANY LIMITED**

**Claimant**

**and**

**CAROLINE PERRY**

**Defendant**

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**EXHIBIT VHS3**

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# General Form of Judgment or Order

In the County Court at Liverpool	
Claim Number	G30LV134
Date	3 September 2020

Order amended pursuant  
to Rule 40.12 of the CPR

this 1st June 2021.

Management



BASIL GRANGE <del>MANAGEMENT</del> COMPANY LIMITED	1 <sup>st</sup> Claimant Ref VB:00105.01
MISS CAROLINE PERRY	1 <sup>st</sup> Defendant Ref

Before District Judge Lampkin sitting at the County Court at Liverpool, Liverpool, Civil And Family Courts, 35 Vernon Street, Liverpool, L2 2BX.

The Claimant is entitled to an equitable charge upon the Defendant's interest in the property Apartment 1, Basil Grange, North Drive, Sandfield Park, Liverpool, L12 1LG and registered at HM Land Registry under Title No. MS519064 ("the Property") under a charging order made on the 5th August 2019 in the County Court at Liverpool under Claim number A1QZ7444 and a further charging order made on 27th January 2020 in the County Court at Liverpool in claim number F8QZ1Y74.

## IT IS ORDERED THAT:

1. The remainder of this order will not take effect if the Defendant by 4pm on the 1st March 2021 pays the Claimant the Judgement Debt of £14,724.30 secured by the charge and its costs to date of this application assessed at £5,408.00, making together £20,132.30, together with continuing interest at the rate of £2.29 per day from the date of this order until payment is received by the Claimant.

2. The property shall be sold without further reference to the court at a price not less than £160,000,00m unless that figure is changed by further order of the court.

3. The Solicitors nominated by the Claimant shall have conduct of the sale.

4. To enable the Claimant to carry out the same, there be created and vested in the Claimant pursuant to Section 90 of the Law of Property Act 1925 a legal term in the Property of one day less than the remaining period of the term created by the lease under which the Defendant holds in the property.

5. The Defendant must deliver possession of the property to the Claimant on or before 29th March 2021.

6. The Claimant shall first apply the proceeds of sale of the Property:

(i) To pay the costs and expenses of effecting the sale; and

The court office at the County Court at Liverpool, Liverpool, Civil And Family Courts, 35 Vernon Street, Liverpool, L2 2BX. When corresponding with the court, please address forms or letters to the Court Manager and quote the claim number. Tel: 0151 296 2200 Fax: 01264 785 132. Check if you can issue your claim online. It will save you time and money. Go to [www.moneyclaim.gov.uk](http://www.moneyclaim.gov.uk) to find out more.

(ii) To discharge any charges or other securities over the Property which have priority over the charging orders.

7. Out of the remaining proceeds of the sale, the Claimant shall:

(i) Retain the amount due to is as stated in Paragraph ; and

(ii) Pay the balance (if any) to the Defendant.

8. Either party may apply to the court to vary the terms of this order, or for further directions about the sale or the application of the proceeds of sale, or otherwise.

Dated 1 September 2020

**IN THE COUNTY COURT AT LIVERPOOL**

**CLAIM NO: G30LV134**

**BETWEEN:**

**BASIL GRANGE MANAGEMENT COMPANY LIMITED**

**Claimant**

**and**

**CAROLINE PERRY**

**Defendant**

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**EXHIBIT VHS4**

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**IN THE COUNTY COURT AT LIVERPOOL**

35 Vernon Street  
Liverpool  
L2 2BX

Date: Tuesday 16<sup>th</sup> March 2021

Page Count: 7  
Word Count: 3092  
Number of Folios: 43

**Before:**

**DISTRICT JUDGE JOHNSON**

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**Between:**

**BASIL GRANGE MANAGEMENT LIMITED**

**Claimant**

**- and -**

**CAROLINE PERRY**

**Defendant**

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**MS VICTORIA SWEENEY for the Claimant.**  
**THE DEFENDANT appeared in Person.**

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**Approved Judgment**

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**JUDGE JOHNSON:**

1. This is an application dated 22 February 2021. The application is made by Caroline Perry in proceedings which are brought against her by the Basil Grange Management Company Limited. The claim itself was a claim for an order for sale by way of enforcing two charging orders which the claimant had obtained over the defendant's interest in Apartment 1, Basil Grange, North Drive, Sandfield Park in Liverpool.
2. The first charging order is dated 5 August 2019, securing a figure of £8,507.83. That is a figure which was due to the claimant under a judgment dated 5 June 2017 which was entered by District Judge Wright following a contested hearing and also under the terms of an order dated 4 December 2017, which was an order entered by consent in the context of an appeal which took place before his Honour Judge Pearce against that decision of District Judge Wright.
3. The second charging order is dated 27 January 2020 and secured the sum of £5,342.05. That related to a judgment dated 24 July 2019 in a different set of proceedings in which the claimant had obtained judgment in default of defence.
4. The basis of the application is twofold. First of all, the defendant says within the application that she would like the court to suspend enforcement of an order entered into by District Judge Lampkin, but I think that what she really wants is for the court to set aside that order of District Judge Lampkin which is dated 1 September 2020 on the basis that there has been a fraudulent misrepresentation made earlier in the court proceedings against her.
5. **The second strand of the application is that the management company has not provided its tenants, including the defendant, with full information about the basis upon which it is calculating the service charges which are being charged.**
6. The basis of the allegation that there has been a misrepresentation largely relates to an element of the order of District Judge Wright which dealt with the costs of those proceedings. The defendant has supplied the court with a transcript of the exchanges between the parties on that occasion where she represented herself and the claimant was represented by a Mr Sweeney of counsel. It is clear from the exchanges in the transcript that Ms Perry was making a number of points with regard to the amount that the claimant said was outstanding by way of service charges and also in relation to the ability of the claimant to charge her their legal costs associated with the proceedings.
7. The order which was ultimately made had a series of recordings on it about the way in which payments or credits to which the defendant was entitled were applied against various years of service charge. The backdrop to that particular claim was that there had been proceedings before the First-Tier Property Tribunal in which that tribunal made a determination that £5,151.15 was due for the years ending 2012, 2013 and 2014.
8. Within the hearing before District Judge Wright, the claimant conceded that the defendant had paid a large part of those service charges and that there was a balance due of approximately £970. The defendant feels strongly that the greater part of the judgment dated 5 June 2017 does not relate to outstanding service charges but relates

to costs. She has also mentioned a credit which she says is due to her in relation to an insurance payment.

9. That appears also to have been considered by District Judge Wright and I am not going to go behind that. There is mention of a sum paid by a building society and that relating to another set of proceedings entirely.

DEFENDANT: Sorry, ma'am, the insurance claim was a year later.

JUDGE JOHNSON: Right.

10. In any event, the transcript of the proceedings before District Judge Wright includes consideration of a sum paid by the Skipton Building Society and a finding that that does not relate to the years 2012, 2013 and 2014.

DEFENDANT: It did though --

JUDGE JOHNSON: Can you please not interrupt me, I am giving my decision now.

DEFENDANT: I am sorry.

**JUDGE JOHNSON:**

11. What seems to be central to the defendant's allegation in this application is that the claimant in some way has held itself out to be the landlord of the flat. In the bundle before the court, there is a copy of the relevant lease to which there were three parties: The landlord, being Warriston Developments Limited; a management company, being the claimant in the current proceedings; and, at that point, a tenant called Wesley John King.
12. It is clearly a three-way contract and under its terms there are various obligations imposed upon the landlord, the management company and the tenant. **The defendant alleges that the claimant has previously threatened to forfeit the lease for non-payment of the service charge.**
13. **I am not going to make any findings as to whether or not threats were made but, to the extent that any threat of that nature was made, it must be right to say that that threat was wrongfully made because, quite clearly, the management company does not have an entitlement under the lease to forfeit the lease.**
14. **The management company has a contractual entitlement to be paid the amounts which are due in respect of the service charge.** It is said that before District Judge Lampkin the claimant conceded that it was not the landlord and that it was a management company with a contractual entitlement. I think that that is right. If the claimant was entitled to forfeit the lease, the claimant would have brought proceedings for forfeiture and that is not what has happened here.
15. What has happened is that the claimant has brought two sets of proceedings to recover unpaid service charges by way of a debt and is now seeking to enforce payment of those sums. First of all, it obtained final charging orders and it now seeks to enforce those charging orders by sale. That is an entirely separate procedure to the forfeiture procedure.

16. It cannot be said that District Judge Lampkin was misled in any way with respect to that particular issue because he knew what the status of the management company was and he knew that this money was being pursued as a debt and that it was not a claim for forfeiture.
17. The defendant also feels strongly that District Judge Wright's decision in relation to what she found to be an obligation upon the defendant to pay contractual costs was wrong. I can see from the transcript that I have been provided with that points were made to District Judge Wright about this. Although I do not have a transcript of her actual judgment, it seems to me to be clear that she found the defendant to be liable to the claimant for contractual costs, essentially, on an indemnity basis.
18. She was read the wording of clause 6.1.7 of the lease, which reads as follows:

“To pay all expenses, including solicitors' costs and disbursements and surveyors' fees, reasonably and properly incurred by the management company and the landlord incidental to the preparation and service of a notice under section 146 of the Law of Property Act 1925, or incurred in or in contemplation of proceedings under section 146 or 147 of that Act, or of proceedings on account of arrears of rent and/or service charge for forfeiture of this lease, or for the recovery or attempted recovery of those arrears, notwithstanding forfeiture is avoided, otherwise done by relief granted by the court and to pay all expenses, including solicitors' costs and disbursements and surveyors' fees, reasonably and properly incurred by the management company and the landlord of and incidental to the service of notices and schedules relating to defects ...”
19. What the defendant says is that District Judge Wright was wrong to find that she was liable under this clause because the management company alone is not entitled to seek recovery of costs and that the landlord has in some way to be involved. She also says that it has to be in relation to forfeiture of the lease. She has referred to what appeared to be ongoing consultations with regard to contractual costs. I know nothing about those, I am afraid.
20. To the extent that I need to interpret this particular clause, it is one which is commonly seen in residential leases of this nature. It is a clause which I am asked to enforce regularly in this court. It is not a clause of the type that I am unfamiliar with. It is a very familiar form of wording and I do not agree with the defendant's interpretation of it. Perhaps what is unfortunate when these documents are drafted is that there is very little punctuation adopted and I think that the defendant is reading some of these words as including forfeiture when, in reality, they do not.
21. This clause allows the management company and the landlord to recover its costs for the recovery or attempted recovery of those arrears. That is talking about arrears of rent and/or service charge and it is not necessary, in my view, for the landlord to make an application for forfeiture of the lease in order for the landlord to recover its contractual costs. I do not think that District Judge Wright was incorrect in her finding. Even if she was incorrect in her finding, then the correct route for the defendant to challenge that finding was by way of an appeal.

22. The defendant did bring an appeal, which was dismissed by consent. It seems to me that, in agreeing for that appeal to be dismissed, the defendant has completely lost her opportunity to challenge the decision of District Judge Wright and there is no further opportunity to challenge that decision and it stands and cannot be interfered with.
23. With respect to the other charging order, the defendant tells me that the chronology leading to the entry of that judgment was unfortunate in that she was dealing with other serious matters around the time that those proceedings were issued. She tells me that she had been told that she had missed the deadline for filing her defence, but I am unable to understand why no application was made to set aside the judgment. It is clear to me that, other than failing to defend that particular judgment, the defendant has objected to all of the court orders and has raised her points against the making of orders at every stage of these proceedings.
24. In the more recent proceedings, the ones with which I am concerned today, at the hearing before District Judge Lampkin on 1 September 2020 the defendant was legally represented. I do not know what representations were made to District Judge Lampkin, but I have seen the evidence which was served on behalf of the defendant and it seems to me that, to the extent that legal representatives may not have made to District Judge Lampkin the points that the defendant makes to me today, that is a matter between the defendant and her legal representatives and not something I should be concerned with.
25. The reason that I say that is as follows. The power of the court to vary or revoke an order is contained in CPR 3.1(7). There are a range of case authorities which consider that particular power. There is a Court of Appeal case called *Collier v Williams* in which the court found that the applicant, when seeking to set aside a previous court order, must show that the judge who made the earlier order was misled in some way, whether innocently or otherwise, as to the correct factual position before him and that the jurisdiction should not be exercised unless the applicant is able to place material before the court which was not placed before the court on the earlier occasion.
26. It might be right to say that the points which have been made to me today were not made to District Judge Lampkin, but I cannot find that District Judge Lampkin was misled because the position he had before him was correct. It is factually correct that there are two charging orders. It is factually correct that there are judgments leading to those charging orders. It is factually correct that the defendant attempted to repeal one of those orders, albeit unsuccessfully. I cannot find that there has been any way in which District Judge Lampkin was misled.
27. There is also a case called *Tibbles v SIG Plc*. In that case, the court said that there needs to have been a material change in circumstances since the order was made - I cannot find that there has been one of those - or the facts on which the original decision was made were innocently or otherwise misstated. Again, I cannot make a finding to that effect.
28. The last authority which I will mention is that of *Roult v North West Strategic Health Authority*, which says that, in relation to a final order, which of course this is - District Judge Lampkin's order is a final order in the current set of proceedings - the applicant has to show that the original order was made on the basis of erroneous information, or



that there have been subsequent events, unforeseen at the time that the order was made, which have destroyed the basis upon which it was made.

29. The events of which the defendant speaks are not subsequent events. They are matters which are well-known to both of the parties in these proceedings because they are points which have been argued in the context of previous proceedings. Clearly, the defendant is very unhappy with the previous decisions which have been made by the court.
30. As I said earlier, the opportunity to appeal previous decisions of the court has gone. This is not the right forum in which to ask the court to revisit the previous decisions which have been made. None of the grounds which I have set out from the relevant case authorities have been made out to me today and I cannot find that District Judge Lampkin's order was made on the basis of a misrepresentation.
31. Dealing with the other matter, which is the application for disclosure, again I can see that the defendant is most unhappy with the way in which she thinks she has been treated by the claimant, particularly in relation to what she says is a lack of information. This is not the right forum in which to try and obtain information. I do not have any power under the Civil Procedure Rules to enter into any kind of an enquiry into the actions of the management company.
32. If the defendant is unhappy with the management company, she has other avenues available to her. She could issue other separate proceedings to try and force the management company to comply with its own obligations under the lease, or she could go to the First-Tier Property Tribunal and, indeed, there may be other avenues also available to her.
33. But, in these proceedings, I find I do not find have any power to make the order which the defendant seeks. For all those reasons, I am going to dismiss the application.

*(Proceedings continued – please see separate transcript)*

**JUDGE JOHNSON:**

34. I am going to order you to pay the costs of the application because your application has been unsuccessful. Without wishing to go over the ground which we have been over already many times during this hearing, these are costs which are liable to be paid under the contractual provision in your lease. I shall assess them on the indemnity basis.

JUDGE JOHNSON: You have made your point about Mr Sweeney's fee and that is coming out. Is there anything else you want to say about the amount of costs being sought by the claimant?

DEFENDANT: No, I am only interested in the costs and deferring this order for sale, ma'am, because my son has to go to (inaudible) this afternoon. He has like very severe anxiety. If I have to move him from our home ---

JUDGE JOHNSON: I will come back to that in a moment.

**JUDGE JOHNSON:**

35. I am going to say that the costs are assessed as drawn, save for Mr Sweeney's fee. It is £1,991 to be added to the amount to be paid by the defendant under paragraph 1 of the order of District Judge Lampkin dated 1 September.

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*This Judgment has been approved by the Judge.*