EASTERN CARIBBEAN SUPREME COURT
IN THE COURT OF APPEAL

TERRITORY OF THE VIRGIN ISLANDS

BVIHCMAP2015/0010

BETWEEN:

[1] DIMITRY VLADIMIROVICH GARKUSHA

and

Appellant

[1] ASHOT YEGIAZARYAN

Applicant/Respondent

[1] VITALY GOGOKHIYA
[2] HAMFAST INVESTMENT LIMITED
[3] HACKHAM INVEST AND TRADE INC
[4] LIMERICK BUSINESS HOLDINGS LIMITED

Defendants

BEFORE:

The Hon. Dame Janice M. Pereira, DBE	Chief Justice
The Hon. Mr. Paul Webster	Justice of Appeal [Ag.]
The Hon. Mde. Joyce Kentish-Egan, QC	Justice of Appeal [Ag.]

APPEARANCES:

Mr. Brian Doctor, QC for the Appellant
Mr. Joe Smouha, QC, Mr. Andrew Wanambwa, Mr. Nicholas Brookes
and Mr. Drew Holiner for the Applicant/Respondent

2016: January 13;
(Written reasons for decision delivered on 6th June 2016)

Civil appeal – Interlocutory appeal – Whether security for costs of appeal should be granted – Whether fees paid to foreign attorneys not on the Roll of Attorneys and practising BVI law are recoverable in the BVI

The appellant, Dmitry Vladimirovich Garkusha ("Mr. Garkusha") commenced proceedings against the respondent, Ashot Yegiazaryan ("Mr. Yegiazaryan") seeking various reliefs. Mr. Garkusha also applied ex parte for and was granted a freezing order against Mr.

Yegiazaryan. Mr. Garkusha was ordered to pay $1 million into court to fortify his undertakings supporting the freezing order. The claim was dismissed and Mr. Garkusha was granted leave to appeal that decision on the condition that the $1 million paid into court is to continue to be held by the court pending further order of the Court of Appeal.

Following the grant of an adjournment of the appeal, Mr. Yegiazaryan applied for security for the costs of the appeal on the basis that negative allegations relating to Mr. Garkusha's financial affairs were made against Mr. Garkusha in separate proceedings in the BVI. Mr. Garkusha resisted the application using local attorneys and foreign attorneys from the firm Berwin Leighton Paisner whose names are not entered on the Roll of Attorneys licensed to practise law in the BVI.

Held: dismissing the application for security for the costs of the appeal and awarding limited costs of the application to Mr. Garkusha, that:

1. The evidence does not suggest that Mr. Garkusha is impecunious nor that he does not have funds to satisfy a costs order. There is evidence to show that orders for payment made against him have been satisfied. Additionally, he has within the jurisdiction the sum of $1 million which was paid into court.

2. In relation to the suggestion that Mr. Garkusha will not satisfy a BVI costs order because of the non-payment of the outstanding fees of a firm of solicitors in London in related proceedings, the evidence shows that there is a genuine dispute regarding the quantum of the fees that he owes to the firm. In view of the conflicting state of the evidence on this issue this Court will not draw an adverse inference against Mr. Garkusha.

3. A person whose name is not registered on the Roll of Attorneys established under the provisions of the Legal Profession Act, 2015 ("the Act") commits an offence under the Act if he or she engages in the practise of BVI law which includes practising as a legal practitioner or undertaking or performing the functions of a legal practitioner. A foreign attorney who assists local lawyers with the advice and conduct in a BVI matter must be regarded, as a matter of BVI law, as practising BVI law, albeit from outside the BVI. The Berwin Leighton Paisner lawyers are not registered on the Roll; consequently, they were engaged in an unlawful practise of BVI law when they were assisting Mr. Garkusha.

   Section 2 and 18 of the Legal Profession Act, 2015, No. 13 of 2015, Laws of the Virgin Islands applied; Mccullie v Butler [1962] 2 QB 309 distinguished.

4. The court will not lightly conclude that Parliament has ousted common law and equitable rights, but such rights may be abrogated expressly or by necessary implication. The statute having created an illegality in the work done by Berwin Leighton Paisner in advising and assisting Mr. Garkusha and his local lawyers, it must be presumed that the lawmakers intended to abrogate the practice of recovering the fees of overseas lawyers for such work as a disbursement. Such

persons are no longer merely agents of the local practitioner, they are persons practising BVI law without being registered as legal practitioners on the Roll.
Section 2 and 18 of the Legal Profession Act, 2015, No. 13 of 2015, Laws of the Virgin Islands applied; Islington London Borough Council v Uckac and another 2006 EWCA Civ 340 applied.

JUDGMENT ON SECURITY FOR COSTS

[1] WEBSTER JA [AG.]: The appellant, Dmitry Vladimirovich Garkusha ("Mr. Garkusha" or "the appellant"), and the respondent, Ashot Yegiazaryan ("Mr. Yegiazaryan" or "the respondent"), are former business associates who parted company in unpleasant circumstances. On 21st January 2014 Mr. Garkusha started proceedings against Mr. Yegiazaryan and others in the Commercial Court seeking a variety of reliefs including claims in tort and rescission of contracts, declarations of ownership of shares in three BVI companies, and rectification of the share registers of the said companies to reflect his ownership of shares in the companies. The claim was dismissed on 12th March 2015 and on 2nd April 2015 Mr. Garkusha appealed against the judgment. On 14th December 2015 Mr. Yegiazaryan applied for security for the costs of the appeal. We heard and dismissed the application on 13th January 2016 and proceeded to hear the appeal. We promised to give reasons for dismissing the application and we now do so.

Proceedings in the Commercial Court

[2] On 24th July 2014 the learned judge gave Mr. Garkusha permission to serve the claim on Mr. Yegiazaryan and the second defendant, Vitaly Gogokhiya, outside the jurisdiction ("the Service Order"). Both defendants were served but only Mr. Yegiazaryan responded to the claim.

[3] Mr. Garkusha also applied ex parte for a freezing order against the defendants. The order was granted on 24th November 2014 ("the Freezing Order"). Mr. Garkusha was ordered to pay $1 million into court to fortify his undertakings

supporting the Freezing Order. The $1 million was paid and plays a central role in the application for security for costs.

[4] On 28th November 2014 Mr. Yegiazaryan applied to set aside the order granting permission to serve the foreign defendants outside the jurisdiction, and on 12th December 2014 he applied to set aside the Freezing Order. Following two days of oral submissions on 25th and 26th January 2015, preceded by full written submissions, the learned judge made orders on 12th March 2015:

(a) setting aside the Service Order, discharging the Freezing Order and dismissing the claim against Mr. Yegiazaryan;

(b) awarding the costs of the applications to Mr. Yegiazaryan to be assessed if not agreed with an interim payment of $75,000.00 by 26th March 2015 on account of the costs; and

(c) giving Mr. Garkusha leave to appeal to the Court of Appeal on condition that "the sum of $1 million paid into court as fortification of the cross-undertaking in damages in connection with the Freezing Order is to continue to be held by the court pending further order of the Court of Appeal".

("the Discharge Order**")**

[5] On 2nd April 2015 Mr. Garkusha appealed against the Discharge Order. The appeal was set down for the hearing by the Court of Appeal in the BVI during the week commencing 28th September 2015. On 19th August 2015 Mr. Yegiazaryan applied for an adjournment of the scheduled hearing of the appeal on account of the unavailability of his lead counsel, Lord Falconer, QC, during that week. Following a contested hearing before a single judge of the Court of Appeal the judge granted the application and adjourned the hearing of the appeal to the sitting of the Court of Appeal in the BVI during the week commencing 11th January 2016.

He also awarded the costs of the application to Mr. Yegiazaryan to be assessed and paid by Mr. Garkusha ("the Adjournment Costs").

The Application for Security for Costs

[7] On 14th December 2015 Mr. Yegiazaryan applied for security for the costs of the appeal. Two things are immediately apparent from the timing of the application:

(a) but for the unavailability of his lead counsel in September 2015 Mr. Yegiazaryan was prepared to proceed with the hearing of the appeal without the benefit of an order for security for costs; and

(b) it is a late application for security for costs.

Mr. Yegiazaryan's explanation for the delay in applying is that in September 2015 his legal team became aware of certain allegations made against Mr. Garkusha by Eversheds, a firm of Solicitors in London, in separate proceedings in the BVI. The allegations go to Mr. Garkusha's financial affairs and suggest that he is the kind of person who does not always honour his financial obligations and will take steps to avoid paying his debts. Based on this new evidence Mr. Yegiazaryan thought that Mr. Garkusha was unlikely to satisfy an adverse costs order and therefore applied for the security for the costs of the appeal. Since this evidence has become the centrepiece of Mr. Yegiazaryan's application I will outline it briefly and expand it as necessary when I deal with the grounds of the application.

The Eversheds Evidence

[8] The evidence of Mr. Nicholas Brookes, a barrister at Ogier, BVI solicitors for Mr. Yegiazaryan, in support of the application is that on 25th September 2015 he became aware of an application filed by Eversheds in the Commercial Court for a freezing injunction against Mr. Garkusha. On 20th November 2015 a judge of the High Court made an order allowing Mr. Yegiazaryan's lawyers to inspect and take copies of the documents on the court's file and to use them in the appeal brought by Mr. Garkusha The new evidence discloses that Eversheds has a claim against

Mr. Garkusha for outstanding fees of $1,648,044.00 and that they applied ex parte for a freezing injunction against Mr. Garkusha. The evidence in support of the application was provided by Dr. Stuart Dutson, a partner in the firm. His evidence is summarised by Mr. Brookes at paragraph 26 of his affidavit as follows:

> "26. It will be seen from the Eversheds court file, at pages 911 to 1291, that:
>
> 26.1 Mr. Garkusha has, despite repeated requests and numerous meetings, failed to pay Eversheds' outstanding legal fees of $1,648,044 …;
>
> 26.2 On 20 July 2015 Mr. Garkusha told Eversheds that "*he did not have funds to pay the Eversheds' invoices and would not and could not pay them …";*
>
> 26.3 Mr. Garkusha also stated in meetings with Eversheds on 9, 20 and 28 July 2015 that he does not have sufficient funds to pay Eversheds' fees and expenses …;
>
> 26.4 Eversheds have alleged that Mr. Garkusha is "intent on not paying" them and that Mr. Garkusha "will do what he can" to avoid paying his debt to them …;
>
> 26.5 Eversheds alleged that, unless restrained by a freezing injunction, there was a risk that Mr. Garkusha would rearrange his assets to protect them from enforcement …;
>
> 26.6 There is a reasonable prospect that Mr. Garkusha would withdraw the USD 1m [paid into court pursuant to the Discharge Order] … in order to avoid paying the debt owed to Eversheds …"

Mr. Brookes also deposed that the ex parte application for the freezing injunction was refused by the judge but he does not know the reason for the refusal because the judge did not produce a written judgment. There is no evidence that Mr. Garkusha was served with the dismissed application and the evidence in support of the application. It follows that Mr. Garkusha was not aware of the evidence and was not required to respond to it until he was served with the security for costs application in December 2015.

[9] On 11th January 2016 Mr. Garkusha filed evidence in reply to the application. In summary, he said that:

(a) He did not admit to Eversheds that he was impecunious and he did not say that "I could not and I would not pay". Further, that he does not speak English and the person who interpreted for him at the meetings was an Eversheds solicitor who spoke Russian and English.

(b) He has so far paid Eversheds more than £4 million on account of their fees.

(c) He disputed Eversheds' bills as being excessive and said that he would pay the bills as soon as Eversheds takes account of his comments.

(d) The costs claimed by Mr. Yegiazaryan for the hearing before Bannister J [Ag.] and the Adjournment Costs are excessive and he has asked that they be assessed by the court.

(e) He listed his assets as including an interest in a shopping complex in Moscow which was recently valued at $20 million, and the $1 million paid into court in the BVI.

(f) Finally, he confirmed that he has sufficient funds and assets to pay Mr. Yegiazaryan's reasonable costs of the appeal, the first instance costs and the Adjournment Costs.

Discussion

[10] Applications for security for costs of an appeal are dealt with under rule 62.17 of the Civil Procedure Rules 2000 ("CPR") which reads –

"62.17 (1) The court may order –
(a) an appellant; or
(b) a respondent who files a counter notice asking the court to vary or set aside an order of a lower court;

to give security for the costs of the appeal.

(2) An application for security may not be made unless the applicant has made a prior written request for such security.

(3) In deciding whether to order a party to give security for the costs of the appeal, the court must consider –
   (a) the likely ability of that party to pay the costs of the appeal if ordered to do so; and
   (b) whether in all the circumstances it is just to make the order.

(4) On making an order for security for costs the court must order that the appeal be dismissed with costs if the security is not provided in the amount, in the manner and by the time ordered.

(5) Any costs to be paid under paragraph (4) must be assessed by the court."

[11] The grounds of the application that were pursued by Mr. Yegiazaryan are:

(a) Mr. Garkusha is unlikely to pay the costs of the appeal if ordered to do so and is likely to re-arrange his affairs so as to make enforcement impossible.

(b) Mr. Garkusha is ordinarily resident in Russia and the enforcement of any costs award will be impossible or face substantial obstacles.

(c) It is just and appropriate that Mr. Garkusha be ordered to pay security for the costs of the appeal.

[12] I will deal with these grounds incorporating as I proceed the issues under each ground and the parties' respective positions on the issues.

Mr. Garkusha unlikely to pay and will re-arrange his assets

[13] Lead counsel for Mr. Yegiazaryan, Mr. Joe Smouha, QC, submitted that Mr. Garkusha is unlikely to satisfy an order for the costs of the appeal because:

(a) He is impecunious.

(b) Even if he is not impecunious, he does not have the funds to satisfy a costs order.

(c) Even if he has the funds to satisfy a costs order, he will not do so.

(d) He is likely to re-arrange his assets so as to make enforcement of any costs order difficult if not impossible.

[14] The evidence does not suggest that Mr. Garkusha is impecunious or that he does not have funds to satisfy a costs order. The orders for payment that have been made against him so far were satisfied promptly, namely $75,000.00 as an interim payment of Mr. Yegiazaryan's first instance costs and the $1 million to fortify the cross-undertaking in damages. The $1 million is his money and he also has a substantial interest in the shopping complex in Moscow. These are not the indicia of an impecunious person or a person who cannot satisfy a reasonable costs order.

[15] The suggestion that Mr. Garkusha will not satisfy a costs order, even if he has the funds to do so, stems from the allegation in the Eversheds evidence that he refused to pay the balance of Eversheds' fees. He denies this and explains that there is a genuine dispute regarding the quantum of the fees that he owes. In view of the conflicting state of the evidence on this issue I am not prepared to draw an adverse inference against Mr. Garkusha that he is likely to deliberately avoid paying an adverse costs order of this appeal and will take steps to put his assets beyond the reach of enforcement proceedings.

[16] The evidence that a company in which Mr. Garkusha has an interest has not satisfied an outstanding costs order in the Cayman Islands is not evidence that Mr. Garkusha has refused to satisfy the order. It is the company's responsibility to satisfy the order.

[17] Mr. Garkusha did not specifically dispute Dr. Dutson's evidence that he (Dr. Dutson) believes that there is a risk that Mr. Garkusha will take steps to rearrange his assets on an urgent basis to avoid enforcement proceedings. Dr. Dutson did

not support his belief with any supporting evidence or examples, and it would have been difficult for Mr. Garkusha to dispute what Dr. Dutson believes. However, it would have been better if Mr. Garkusha had put in at least a bare denial.

[18] The evidence does not satisfy me that Mr. Garkusha is impecunious; that he will not pay fees that are not disputed or costs orders that have been agreed or assessed by the court; or that he will rearrange his assets on an urgent basis to avoid enforcement proceedings.

Residence abroad and enforceability

[19] It is common ground between the parties that residence abroad by itself is not sufficient to make a claimant liable to put up security for the defendants' costs. A claimant's residence abroad is important when he does not have assets in the jurisdiction and enforcement of a BVI costs order will be problematic because the claimant, and more importantly, his assets, are outside the court's jurisdiction. His residence abroad is less important when he has assets in the jurisdiction or where enforcement in his country of residence is not problematic. The position is summed by Baptiste J in Richard Rowe et al v Administrative Services Limited.[1] The learned judge reviewed the relevant authorities and concluded:

> "Where the condition relied on is that the claimant is ordinarily resident out of the jurisdiction the authorities establish the following:
>
> 1. The fact of the claimant being ordinarily resident abroad engages the court's jurisdiction but is not in and of itself a ground for making an order for security for costs.
>
> 2. Ordinarily resident outside the jurisdiction assumes moment in the context of the grounds relating to the difficulties of enforcement. The court has to consider the relevance of the foreign residence in terms of the ability of a successful defendant to enforce an award against the foreign claimant.
>
> 3. The discretion to award costs against a claimant ordinarily resident out of the jurisdiction is to be exercised on objectively justified grounds relating to obstacles to or the burden of enforcement in the context of the particular individual or

[1] SKBHCV2003/0222 (delivered 5th March, 2005, unreported).

country concerned. The absence of reciprocal arrangements or legislation providing for enforcement of foreign judgments does not by itself justify an inference that enforcement would not be possible.

4. It behoves an applicant to show some basis for concluding that enforcement would be impossible, or would face substantial obstacles or extra burden."[2]

[20] Bannister J [Ag.] made similar comments in the Commercial Court In Wang Zhongyong et al v Union Zone Management Limited et al:[3]

> "The English Court of Appeal explains that the underlying risk against which an order for security is made in such circumstances is that enforcement in the jurisdiction where the non-resident claimant is to be found (or, perhaps, where his assets are to be found) will be so problematic that the only just course is to protect the defendant by making an order for payment of security for the costs of the proceedings in question."

[21] There being no dispute about the rule that the appellant's residence in Russia plays in this application I turn next to consider firstly whether it will be necessary to enforce a costs order of the appeal in Russia, and then (if necessary) the obstacles to enforcement against him or his assets in that country.

Necessity for enforcement in Russia

[22] The considerations for the enforcement of a costs order in Russia will be necessary only if the court finds that Mr. Garkusha does not have assets in the BVI sufficient to meet a reasonable order for the costs of the appeal, and the court thinks that in all the circumstances it is just to make an order against him.

[23] There is no challenge to the fact that the $1 million that is now in the court belongs to Mr. Garkusha. He disclosed it in paragraph 94 of his second affidavit sworn on 21st November 2014 in support of his application for the Freezing Order. The money was then in an account at LGT Bank in Zurich. When the judge granted

[2] At para. 12.

[3] BVICH(COM)2011/0126 (delivered 21st March 2013, unreported) at para 11. Judgment on security for costs.

the Freezing Order on 24th November 2014 on terms that Mr. Garkusha pay $1 million into court by 28th November 2014 to fortify the cross-undertaking in damages he complied with the order by transferring the $1 million in the LGT account into the court's account. Later when the judge granted Mr. Garkusha's application for leave to appeal against the Discharge Order he ordered that the $1 million remain in court pending any further order by the Court of Appeal.

[24] The Freezing Order was discharged on 12th March 2015 and up to the time of the hearing of this application in January Mr. Yegiazaryan had not alleged that he had suffered any loss as a result of the Freezing Order, nor had he applied for compensation for any such loss. Mr. Brian Doctor, QC invited this Court to infer that Mr. Yegiazaryan will not claim compensation under the cross-undertaking in damages. It is unnecessary for us to draw any inferences. The fact is that Mr. Yegiazaryan has not applied for compensation and we can proceed on that state of the facts.

[25] Mr. Doctor submitted further that an adverse costs order can, if necessary, be paid out of the money in court. We will not go as far as to make an order along the lines suggested by Mr. Doctor. Suffice it to say that Mr. Garkusha has $1 million in the jurisdiction. This money is not earmarked for any specific purpose other than as a condition for being given leave to appeal. He is, for the purposes of this application, a person who has a substantial liquid asset in the jurisdiction which is under the control of the court. As a result his residence outside the BVI assumes very little importance in the application.

[26] Mr. Smouha's position on the $1 million is that it is not being held by the court as security for costs and it should not be used for that purpose. In any event Mr. Yegiazaryan's costs in the lower court and this Court will exceed the $1 million and therefore Mr. Garkusha should put up separate security for Mr. Yegiazaryan's costs. This submission misses one very important point. This application is for security for the costs of the appeal which, on Mr. Smouha's submissions, will not

exceed $800,000.00.[4] The application is not to provide security for the costs of the proceedings in the court below. Therefore, the fact that Mr. Yegiazaryan's combined costs could exceed the value of Mr. Garkusha's assets in the jurisdiction is of no moment in this application.

Quantification

[27] Out of deference to the very full submissions by Mr. Smouha that the combined costs will exceed $1million I will address the issue of quantification of Mr. Yegiazaryan's estimated combined costs. In doing so I am mindful that what I am required to do is to determine a reasonable amount that is likely to be awarded to the respondent if he is successful on the appeal.[5]

[28] Mr. Yegiazaryan frames his application for security for the costs of the appeal as follows: The judge awarded costs of the hearing in the court below to him to be assessed. He has submitted a claim for costs of $1,540,248.00. This claim has not been assessed. Allowing for a reasonable reduction of 20% following the assessment he should be awarded costs in the lower court of say $1.2 million. Applying the practice of the Court of Appeal to award two-thirds of the costs awarded in the lower court, a reasonable estimate of the costs that should be awarded for the appeal is about $800,000. The total costs award should therefore be about $2 million.

[29] The usual procedure for determining the amount that should be ordered for the security for the costs of an appeal is for the respondent to present the court with the schedule of costs which the court assesses, especially when the costs of the lower court have not been assessed. The respondent did not produce a schedule because he is relying on CPR 65.13(1) and the practice of the Court of Appeal to award the costs of an appeal at the rate of two-thirds of the amount that was awarded in the lower court. This puts the Court in a position where we have to

[4] See para. 29 below.

[5] Per Vos J in United Airlines Inc v United Airways Limited et al [2011] EWHC 2411 under the heading "Costs".

estimate the amount of costs that could be awarded to the respondent based on the unassessed bill of costs of $1,540,248.00 that he has submitted in the court below.

[30] The proceedings in the court below were to set aside the judge's order to serve the foreign defendants outside the jurisdiction, discharge the Freezing Order and dismiss the claim against Mr. Yegiazaryan. The hearing lasted two days. When the judge made his decision and awarded costs to the respondent, to be assessed if not agreed, the respondent applied for an interim payment. This required the judge to estimate the reasonable amount of costs that the respondent would receive on assessment, as we are required to do, albeit for a different purpose. The judge, who heard the application and was in a good position to estimate the reasonable costs of the application, thought that the claim for just over $1.5 million was excessive. When he was presented with the schedule of costs on 12th March 2015 he commented, "They're enormous, $1.5 million… You should be applying on the 1st of April, not during March."[6] The judge then went on to find that the respondent would receive no less than $75,000.00 on assessment and awarded that amount as an interim payment. Bannister J's [Ag.] comments on the amount of the respondent's claim for costs in the court below and the amount that he eventually awarded for interim costs betray the learned judge's very serious concern with the size of the claim.

[31] The test that the judge used was what Vos J described in the United Airlines Inc. case as "…the irreducible minimum that is likely to be ordered..",[7] with the result that he arrived at an amount that is low compared to what I consider to be a reasonable estimate of what is likely to be awarded on the assessment. In the United Airlines Inc. case Vos J thought that the successful party's bill of costs of £117,482 was not disproportionate or unreasonable[8] and went on to find that a reasonable estimate of the likely amount to be awarded, taking a fairly

[6] Transcript of Chamber Proceedings, 12th March 2015, p.4 or see Bundle for Application for Security for Costs, p. 1216.
[7] United Airlines Inc v United Airways Limited et al [2011] EWHC 2411 under the heading "Costs".
[8] Ibid under the heading "Costs".

conservative view, would be £50,000, and awarded that amount as an interim payment. This is approximately 42% of the amount claimed in the bill of costs. I am conscious of the fact that this is an English case where the considerations in an assessment may be different from local considerations. But we were not provided with any local authorities or practices to guide us apart from Bannister J's views gleaned from the transcript.

[32] The difference between the approaches of Vos J and Bannister J. is that the latter made his award on the lowest amount that he thought could be awarded (the irreducible minimum), while Vos J made his award on the amount that he thought was likely to be awarded. The approach of Vos J is more suited to an estimate for security for costs, and as stated above I will adopt his approach.[9]

[33] In the end the court is making an estimate without the benefit of a full analysis of the schedule of costs and estimates will vary depending on the facts of each case. In this case I have taken into consideration the general guidelines for assessing costs in CPR 64.6 and the nature and duration of the proceedings that were before the judge. I have also reviewed the judge's comments about the amount of the costs claimed in the court below and compared them to Vos J's view that the bill that was before him was not disproportionate or unreasonable.[10] I estimate a reasonable amount of costs that is likely to be awarded to the respondent to be 40% of the amount claimed, or $616,100.00. Two thirds of this amount is approximately $410,733.33. The latter is the amount that I consider to be a reasonable estimate of Mr. Yegiazyran's costs of the appeal for the purposes of a security for costs application. This amount is significantly lower than the value of Mr. Garkusha's assets in the BVI.

[34] Taking the analysis that Mr. Smouha urged on the Court to its conclusion, Mr. Yegiazaryan's combined estimated costs amount to just over one million dollars. This amount barely exceeds the value of the appellant's assets in the jurisdiction

[9] See para. 28 above.
[10] See para. 34 above.

with the result that there is no basis for ordering security because the combined costs will exceed the $1 million in court by a significant amount.

Enforcement in Russia

[35] Based on my findings above that the appellant has $1 million in liquid assets in the jurisdiction that is under the court's control, and that the estimated costs of the appeal should be in the region of $417,000.00 based on an estimate of the lower court proceedings of approximately $616,000.00, it is unlikely that the issue of enforcement of a costs order against Mr. Garkusha in Russia will be necessary. But in the event that the issue does arise I prefer the evidence of the respondent's expert, Dr. Vladimir Gladyshev, over the evidence of the appellant's expert, Mr. Roman Khodykin who in any event is a part of the appellant's legal team and not an independent expert.

[36] I accept Dr. Gladyshev's evidence that there is no treaty between the BVI and Russia for the enforcement of judgments of the BVI court in Russia, and that a costs judgment would be otherwise unenforceable unless it forms part of a final, merits based judgment. This is an interlocutory appeal and the Court's decision will not result in a final judgment on the merits of the disputes between the parties as a matter of BVI law. Therefore, I do not think a costs judgment from this appeal will be considered a final judgment by the Russian courts. And even if it is considered to be an enforceable judgment by the Russian courts it appears from Mr. Khodykin's evidence that enforcement would be a matter of discretion.

[38] In the circumstances I am satisfied that a costs order of this Court would not be enforceable in Russia, and even if it is enforceable, the enforcement procedure, if opposed, would be attended with substantial obstacles and extra burdens. If this was a case where Mr. Garkusha did not have assets in the BVI and enforcement in Russia was likely to be necessary, a different view could be taken of the application.

Exercise of discretion

[39] Having satisfied myself that Mr. Garshuska has the ability to satisfy a costs order and also has $1 million in the BVI, it now remains for me to deal with the second part of rule 62.17(3) and decide "whether in all the circumstances it is just to make the order".

[40] In addition to the detailed analysis above regarding the appellant's assets in the BVI, I have also considered that:

(a) the appellant has assets in Russia now worth approximately $20 million;

(b) he has complied with the court's orders regarding payment of the $1 million and the interim costs of $75,000.00;

(c) the respondent was prepared to deal with the appeal in September 2015 without security but applied for an adjournment on account of the unavailability of lead counsel. The new fear that Mr. Garkusha will take steps to secrete his assets is more than counterbalanced by the presence of a substantial asset in the jurisdiction over which he has no control; and

(d) one of the main issues in the substantive appeal is that Mr. Garkusha entered into two share purchase agreements with a Mr. Gogokhiya who is alleged to be the nominee of Mr. Yegiazaryan, and that Mr. Yegiazaryan took significant benefits under those agreements. Both agreements have exclusive jurisdiction clauses in favour of the BVI which means that Mr. Yegiazaryan, through his nominee, chose the BVI to resolve disputes under the agreements. A party who chooses a jurisdiction to resolve his disputes should not expect his adversary who is also a party to the agreements to provide security for costs in the chosen jurisdiction.

Decision

[41] In all the circumstances I confirm the Court's decision made on 13th January 2016 to dismiss the application for the appellant to put up security for the respondent's costs of the appeal. The appellant will have his costs of the application.

[42] At the conclusion of the hearing of the main appeal on 13th January we invited the parties to file written submissions on the assessment of the costs of the adjournment order made on 23rd September 2015 and the costs order on the application for security for costs. We have received very helpful submissions from Ogier for Mr. Yegiazaryan and Mr. Simon Hall of Maples and Calder for Mr. Garkusha. We have assessed the costs of the adjournment order and that decision will be in a separate order. The decision in respect of the costs of the security for costs application, based on the written submissions, is set out below.

Costs

[43] It is apparent from the facts outlined in the first section of this judgment that the appellant was called upon to resist a complex application for security for costs on relatively short notice. The application was filed on 14th December 2015 in respect of an appeal scheduled to be heard during the week commencing 11th January 2016. Costs were awarded to Mr. Garkusha and his local solicitors, Maples & Calder, submitted a bill of costs for $42,631.90 made up as follows:

i. Maples and Calder

$12,557.50

ii. Berwin Leight on Paisner

$30,074.40

TOTAL

$42,631.90

[44] Mr. Yegiazaryan objects to the bill on three grounds:

(1) Any costs incurred by Berwin Leighton Paisner in respect of the expert evidence of Mr. Ramon Khodykin should not be allowed because that evidence is inadmissible.

(2) Any fees incurred by Berwin Leighton Paisner are not recoverable because they are foreign lawyers and are not entitled to practise BVI law.

(3) Certain items in the bill of costs of Maples and Calder should be reduced or not allowed.

Mr. Khodykin's evidence

[45] The objection to the fees incurred in respect of Mr. Khodykin's evidence is that his expert reports do not comply with the requirements of CPR 32 and the evidence is therefore inadmissible. As such the fees associated with preparing and presenting the reports should not be allowed. The respondent relies on the following passage from the judgment of Lord Phillips MR in R. (on the application of Factortame Ltd) v Secretary of State for Transport, Local Government and the Regions (Costs: Champertous Agreement):[11]

> "It is always desirable that an expert should have no actual or apparent interest in the outcome of the proceedings in which he gives evidence, but such disinterest is not automatically a precondition to the admissibility of his evidence. Where an expert has an interest of one kind or another in the outcome of the case, this fact should be made known to the court as soon as possible. The question of whether the proposed expert should be permitted to give evidence should then be determined in the course of the case management."

[46] Counsel for Mr. Garkusha also cited this passage and submitted that it did not assist the respondent because while the Master of the Rolls emphasised the importance of expert witnesses being independent, he went on to say that such independence is not a precondition to the admission of their evidence. It is still a matter of case management for the judge whether the evidence is admitted. In this case there was no formal case management of the security for costs

[11] [2002] EWCA Civ 932 at para. 70.

application, nor did the respondent take any steps to exclude the evidence prior to the hearing. Mr. Khodykin's evidence was before the court and both sides made submissions on the weight to be attached to it. It is clear from paragraph 36 above that the court had in mind the concerns raised by the respondent and "attached little weight" to the evidence. The fact that Mr. Khodykin's evidence, with all its imperfections, was not preferred is not a basis for refusing the fees associated with its preparation.

[47] I would allow the fees for preparing and presenting Mr. Khodykin's evidence as a disbursement of the Maples and Calder fees.

Other fees of Berwin Leighton Paisner

[48] The second objection to the fees of Berwin Leighton Paisner is that they were incurred by lawyers working in a foreign firm who are not licensed under the provisions of the Legal Profession Act, 2015 ("the Act")[12] to practise BVI law and as such those fees cannot be recovered in an assessment of costs in BVI proceedings.

[49] Berwin Leighton Paisner has offices in Moscow where Mr. Garkusha lives, and in London. Mr. Khodykin is a partner in the firm. Apart from arranging and obtaining the expert evidence of Mr. Khodykin the lawyers at Berwin Leighton Paisner assisted Mr. Garkusha generally with his defence of the application for security for costs. The respondent objected to the fees for this additional work on the ground that the lawyers at Berwin Leighton Paisner are not licensed under the Act to practise Virgin Islands law and the recovery of such fees in the BVI is unlawful.

[50] The appellant's responses to this objection are on factual and legal grounds.

[51] Factually, the appellant submitted that he was faced with a complex application for security for costs involving elements of Russian law and expert evidence of

[12] No. 13 of 2015, Laws of the Virgin Islands.

Russian law. He had to instruct his lawyers in Russia and the BVI, on short notice, to assist him in putting together a proper defence to the application. Therefore, it was necessary and proper for him to instruct the lawyers at Berwin Leighton Paisner.

[52] The appellant further submitted that as a matter of law the court in the BVI has the power, outside of the Act, to allow litigants in a case before the courts of the BVI to recover fees paid to lawyers in foreign firms working on the case. The fees are treated as a disbursement of the local firm and awarded as such. The Act has not changed this position nor taken away this right. Put another way the court has the power to order a paying party in an assessment of costs to pay the fees incurred by the receiving party in retaining foreign lawyers to assist him or her generally in the proceedings before the BVI court.

Pre-Act Position

[53] The first step is to determine the common law position regarding the fees of overseas lawyers firstly in England and then in the BVI. The English position regarding the recovery of fees of foreign lawyers was considered in several cases. Slingsby v Attorney General[13] is a 1918 decision of the Court of Appeal. The receiving party's bill of costs included a claim for £3,890 in respect of the fees of lawyers working in America for obtaining evidence in the United States for use in the English proceedings. The taxing master allowed a claim for the fees of the American lawyers observing that the paying party had not produced evidence to show that the charges were excessive. The Court of Appeal reversed this finding and remitted the bill to the taxing master, noting that the taxing master was wrong to put the burden of proof on the paying party to show that the charges were excessive. It is for the receiving party to show that the charges are reasonable. Neither the taxing master nor the Court of Appeal had any difficulty in principle with the recovery of the fees for the American lawyers. The difference between the two courts was as to the burden of proof and the details of the charges.

[13] [1918] P 236.

[54] Slingsby v Attorney General was cited with approval in Mccullie v Butler,[14] a decision of Diplock J sitting in the Queen's Bench Division. The infant plaintiff was injured on the defendant's farm in England. She filed a claim in the High Court but her family moved to Scotland with her before the case proceeded to trial. It became necessary to take instructions from her in Scotland and a firm of Scottish solicitors was engaged for this purpose. The plaintiff was legally-aided. Her claim was dismissed by the High Court and the Court of Appeal and it became necessary to tax her solicitors' bill of costs for legal aid purposes. The taxing master refused the charges of the Scottish solicitors but that decision was reversed by Diplock J. He found as a fact that it was necessary to instruct the Scottish solicitors "..to assist in taking instructions and the like"[15] and held that:

> "Scottish solicitors are, for the purposes of the Legal Aid and Advice Act, 1949, in no different position from other foreign lawyers or from other foreign professional or ordinary agents who are employed for the purpose of preparing litigation in this country. They are not solicitors within the meaning of that expression in the Act of 1949, which relates only to legal aid and advice in England and Wales… It follows, therefore, that a Scottish solicitor, employed in the circumstances in which the Scottish solicitors were employed in this case, must be treated, for purposes of taxation, simply as a foreign agent, and the charges incurred by him and paid to him are charges properly taxable as disbursements in the ordinary course."[16]

[55] Both Slingsby v Attorney General and Mccullie v Butler were cited with approval by Master Gordon-Saker in Societa Finanziaria Industrie Turistiche SpA **v Manfredi Lefebvre D'Ovidio De Cluni**eres Di Balsorano et al.[17] The case involved related proceedings in England and Italy with a substantial amount of the work in the English case being done by the Italian lawyers in Italy. There was no dispute that the fees of the Italian lawyers were recoverable as a disbursement of the English lawyers. The case was concerned with the system of law that should govern the quantification of those fees. On this issue the learned master found that:

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[14] [1962] 2 QB 309.
[15] At p. 312.
[16] At p. 312.
[17] [2006] EWHC 90068; Case No: AGS/0508384.

> "In my judgment the answer to the first issue is that the amount of the Italian lawyers' fees must be assessed according to the rules and in the way in which they would have been assessed in Italy. But that does not prevent the paying party from contending on detailed assessment that the fees are disproportionate and unnecessary or were unreasonably incurred and so should not be allowed at all."[18]

[56] These cases adequately and accurately set out the English position on the recovery of the fees of foreign lawyers – they are recoverable as a disbursement of the local solicitors and not as the fees of solicitors entitled to practise in England.

The BVI position

[57] The BVI position, though not as clear in the past, is now settled along the lines of the English cases. In Finecroft Limited v Lamane Trading Corporation[19] Madam Justice Hariprashad-Charles followed the decision in Mccullie v Butler and allowed the fees of foreign lawyers as a disbursement of the local firm subject to reductions on issues of quantum. However, the judge took a different position in Michael Wilson & Partners Limited v Temujin International Limited et al[20] where she found that because foreign lawyers were not admitted to practise in the BVI their fees were not recoverable as fees for acting in the matter. Their fees were recoverable as disbursements and only for acting as experts on particular areas of foreign law. The portion of the fees relating to general care and conduct was disallowed.

[58] Bannister J [Ag.] came to the opposite conclusion in Grand Pacific Holdings Limited v Pacific China Holdings Limited.[21] The learned judge found that:

> "The fees of instructed foreign lawyers are themselves treated as a disbursement in a BVI assessment. In other words, they have to be justified as a reasonable expense incurred by the BVI lawyers in and about the conduct of the case in the BVI. I accept Mr Forte's submission that in a case involving foreign clients where English is not the first

[18] At para. 42.
[19] BVIHCV2005/0264 (delivered 31st August, 2006, unreported).
[20] BVIHCV2006/0307 (delivered 11th August 2011, unreported).
[21] BVIHCV 2009/0399 (delivered 3rd December 2010, unreported).

> language and where the clients will need to have matters explained to them by local lawyers and to give instructions through local lawyers, the retention of local solicitors is appropriate and proper."[22]

He did not refer to the English cases mentioned above but his conclusion is in line with the decisions in those cases. He also made the point that the fees of foreign lawyers are subject to the same scrutiny as those of local practitioners. He said at paragraph 20:

> "I should say that in the Commercial Division I regard CPR 69B.11(3) as applying as much to the fees of foreign lawyers as to those of lawyers practising within the jurisdiction."

Rule 69B.11(3) sets out the details that must be included in a bill of costs.

[59] The following principles relating to the fees of foreign lawyers in an assessment of costs under CPR are derived from the cases:

(i) The fees of overseas lawyers are generally recoverable as a disbursement of the local legal practitioners.

(ii) The fees must be justified and reasonable.

(iii) The bill of costs must give full details of the charges incurred by the foreign lawyers, and in the case of matters in the Commercial Court, the bill must comply with the requirements for details in rule 69B.11(3).

(iv) The fees should be calculated at the appropriate rates of charge in the foreign country, but, as with all disbursements, must be proportionate and necessary judged by local standards.

[60] I have set out my findings on the relevant principles in detail because they form the basis of my opinion that there is an established common law principle in the BVI that the fees of foreign lawyers are recoverable as a disbursement of the local practitioner, and there are clearly defined principles, practices and procedures for recovering such fees. This is important in the context of this case and the respondent's submission that the passage of the Act has the effect of making

[22] At para. 22.

these fees irrecoverable on an assessment. In other words, the Act has taken away an established right of the appellant and other persons wishing to recover fees paid to overseas lawyers. To do this the respondent has to show that the Act, either expressly or by necessary implication, abrogated this right. This is to comport with the ancient principle of law, going back to Coke's Institutes in the 19th century, that:

> "The court will not lightly conclude that Parliament has ousted common law and equitable rights, but such rights may be excluded expressly or by necessary implication. Coke's, Institutes (2 Co Inst 200) includes this statement: "it is a maxim in the common law, that a statute made in the affirmative, without any negative expressed or implied, does not take away the common law..."[23]

The Legal Profession Act

[61] For the purpose of resolving the issue of whether the Act abrogated the right to recover the fees of foreign lawyers as disbursements in BVI assessment proceedings I need to refer to only a few sections of the Act.

[62] The preamble to the Act reads:

> "An Act to provide for the admission of legal practitioners to practise law, for the legal education and discipline of legal practitioners and connected purposes."

[63] Section 2(1) contains definitions of the following relevant terms:

> ""costs" includes fees for any legal business done by a legal practitioner;
>
> …
>
> "fees" includes … disbursements…;
>
> …
>
> "legal practitioner" … means a person whose name is entered on the Roll…;

[23] Per Dyson LJ in Islington London Borough Council v Uckac and another 2006 EWCA Civ 340 at para. 28.

> "practise law" means to practise as a legal practitioner or to undertake or perform the functions of a legal practitioner, as recognised by any law whether before or after the commencement of this Act;
>
> "Roll" means the register of legal practitioners kept by the Registrar…"

[64] Sub-section (2) of section 2 states that any reference in the Act to "practising law" includes a reference to "practising Virgin Islands law outside the Virgin Islands".

[65] Sections 10 to 15 deal with issues relating to the admission of persons to practise BVI law and section 16 permits the issue of practising certificates to persons resident outside the BVI but working in an overseas affiliate of a local firm.

[66] There is no suggestion by counsel for Mr. Garkusha that the lawyers at Berwin Leighton Paisner are entitled to charge fees as legal practitioners for providing advice and assistance to local lawyers in a BVI matter. They rely on the common law right to recover such fees as a disbursement payable to a foreign professional or agent as set out above, and submit that the Act has not abrogated this right.

[67] Counsel for Mr. Yegiazaryan submitted that the Berwin Leighton and Paisner lawyers are not on the Roll and are practising BVI law by assisting the BVI lawyers for Mr. Garkusha. This is contrary to section 18 of the Act and therefore their fees for doing work that is contrary to the Act should not be recoverable, even as a disbursement of the local legal practitioners.

Discussion

[68] It is therefore important to consider section 18 to see if it has the effect of abrogating the right of a litigant before the courts of the BVI to recover fees paid to overseas lawyers as a disbursement of the local practitioner's costs. Section 18 reads:

> "18. (1) Subject to this Act, where a person whose name is not registered on the Roll
>
> (a) practises law;
>
> (b) wilfully pretends to be a legal practitioner; or

(c) makes use of any name, title or description implying that he or she is entitled to be registered or to act as a legal practitioner,

he or she commits an offence and is liable on summary conviction to a fine of not less than fifteen thousand dollars or to imprisonment for a term of not less than three years, or both.

(2) A person who, not being entitled to act as a legal practitioner, acts in any respect as a legal practitioner in any action or matter or in any court in the name or through the agency of a legal practitioner entitled so to act, commits an offence and is liable on summary conviction to a fine of not less than ten thousand dollars or to a term of imprisonment of not less than two years, or both.

(3) No fee in respect of anything done by a person whose name is not registered on the Roll or to whom subsection (2) relates, acting as a legal practitioner, is recoverable in any action, suit or matter by any person." (My emphasis).

[69] The first step is to determine whether the Berwin Leighton and Paisner lawyers were practising BVI law when they assisted Mr. Garkusha from their offices in Moscow. A person whose name is not on the Roll commits an offence under sub-paragraph (b) of sub-section (1) if he "practises law". That expression is defined in two ways in section 2, both of which are relevant to this case:

(i) Sub-section 2(1) defines "practising law" as practising as a legal practitioner or undertaking or performing the functions of a legal practitioner. This would cover the work that the overseas lawyers were doing because they are not legal practitioners within the meaning of the Act and they are performing the functions of a legal practitioner.

(ii) Sub-section 2(2) states that "practising law" includes a reference to "practising Virgin Islands law outside the Virgin Islands".

[70] On a plain reading of the sections 2 and 18 I am satisfied that an overseas lawyer who assists local lawyers with the advice and conduct in a BVI matter must be

regarded, as a matter of BVI law, as practising BVI law, albeit from outside the BVI. Such practice is contrary to section 18 of the Act and is unlawful unless he or she is registered on the Roll. The Berwin Leighton Paisner lawyers are not registered on the Roll and so they were engaged in an unlawful practice of BVI law when they were assisting Mr. Garkusha.

[71] The next step in the interpretive process is to decide if the prohibition in section 18 of the Act against practising BVI law by persons who are not on the Roll and recovering the fees for such practice is sufficiently wide to have the effect of abrogating the common law right to recover such fees.

[72] The relevant rule of interpretation is set out in detail above.[24] It is that Parliament is presumed not to take away an established common law right except by clear words or by necessary implication. There is nothing in the Act that amounts to an express abrogation of the right of a litigant to recover the fees of overseas lawyers as a disbursement of the local practitioner. However, the Act has provisions that show a clear intention to regulate the persons who can practise BVI law in the BVI and overseas, and charge fees for such practice. The analysis above shows that overseas lawyers assisting in a BVI matter are performing the functions of a legal practitioner and therefore are practising BVI law for the purposes of the Act. The Act, and in particular section 18, make the practice unlawful.

[73] In the circumstances I find that the Act, by necessary implication, intended to do away with the practice of litigants being able to recover the fees of overseas lawyers in costs recovery proceedings. The right could not survive the passing of sections 2 and 18 which have the effect of making the practice of BVI law by overseas lawyers without being on the Roll unlawful, and still allow the recovery of the fees of those lawyers in assessment proceedings in the BVI. The two things cannot stand together.

[24] Para. 60 above.

[74] The situation in the BVI is different from what obtained in the McCullie v Butler[25] case. In that case the fees of the Scottish solicitors were allowed because the court found that they were simply the agents of the local solicitors and their fees were a disbursement of the local solicitors. There was no suggestion that what the Scottish solicitors did was contrary to English law or that any fees paid to them would be in breach of an English statute. It was an agency relationship and nothing more. In our case the statute has created an illegality in the work done by Berwin Leighton Paisner in advising and assisting Mr. Garkusha and his local lawyers. By creating the illegality the lawmakers must be presumed to have intended to abrogate the practice of recovering the fees of overseas lawyers for such work as a disbursement. They are no longer merely agents of the local practitioner, they are persons practising BVI law without being registered as legal practitioners on the Roll.

[75] Based on the foregoing analysis I would disallow the fees of Berwin Leighton Paisner.

Quantification

[76] Mr. Garkusha's costs are divided into two categories: fees incurred by Maples and Calder of $12,557.50 and fees incurred by Berwin Leighton Paisner of $30,074.40. The latter's fees comprise the fees for the expert evidence of Mr. Khodykin and the fees for general assistance in the preparing Mr. Garkusha's defence to the security for costs application. The fees for the last item have been disallowed and so we are left with quantifying the fees for Maples and Calder and the fees for the expert evidence of Mr. Khodykin.

[78] Maples and Calder submitted a bill of costs for $12,557.50. The respondent objected to five items on the bill. I agree with the first four objections totaling $964.00. The fifth item is $120 for electronic service of documents on Ogier. I

[25] Para. 54 above.

would reduce this amount to $50.00 making the total amount disallowed $1,014.00. The balance of the bill amounting to $11,543.50 is allowed.

[79] The following items relating to the work of Berwin Leighton Paisner for preparing the expert evidence of Mr. Khogykin are allowed:

DATE	NARRATIVE	FEE EARNER	TIME (Hrs)	VALUE (GBP)	COMMENT
17/12/2015	Reviewing and analyzing the Security for Costs application; writing points to consider to counsel and Maples	Roman Khodykin	1.8	1,044.00	Approved
21/12/2015	Communications with the client (by email and phone) regarding security for costs application	Roman Khodykin	1.1	638.00	Approved
24/12/2015	Review of the expert opinion of Mr. Gladyshev and court practice he referred to; research of the case he claimed irrelevant	Rimma Malinskaya	1.5	450.00	Approved
24/12/2015	Drafted research notes for Mr. Khodykin	Rimma Malinskaya	1.7	510.00	Approved - assisting Mr. Khodykin
24/12/2015	Review of the case	Rimma	1.6	480.00	Approved -

	law in re: reciprocity as basis for recognition an enforcement of the foreign judgments including ECHR cases	Malinskaya			assisting Mr. Khodykin
25/12/2015	Finalised research notes; proof read translation of article 244(1) of the RF Arbitrazh Procedure Code; checked recent case law on the obligatory force of ECHR judgements for Russian courts and legal system; sent the research notes	Rimma Malinskaya	1.7	510.00	Approved - assisting Mr. Khodykin
29/12/2015	Reviewing and considering Russian law opinion; writing an email to the team with comments	Roman Khodykin	1.1	638.00	Approved
04/01/2016	Security for costs; drafting my affidavit; amending DG'S affidavit; corresponding with counsel and BVI	Roman Khodykin	4.6	~~2,668.00~~ 2,000.00	Reduced to 2,000.00

	lawyers re contents of the affidavits				
04/01/2016	Review and amend Roman's affidavit for security for costs; review Ashot's expert report	Robin Ganguly	1.5	727.50	Approved - assisting Mr. Khodykin
05/01/2016	Finalising Dmitry's draft affidavit; finalising my affidavit; discussing the drafts with Dmitry and Natalia; reviewing and considering draft skeleton; swearing my affidavit	Roman Khodykin	4.1	~~2,378.00~~ 1,800.00	Reduced to 1,800.00
05/01/2016	Collating exhibit to Roman's affidavit; inserting page numbers and statement about translations into affidavit; amending translation; discussing page numbering with Robin and James; going to get the affidavit sworn with Roman and scanning the documents onto	Jessica Veitch	3.0	630.00	Approved - assisting Mr. Khodykin

	the system				
11/01/2016	Correspondence re swearing an affidavit; forwarding it to BVI lawyer	Roman Khodykin	0.6	348.00	Approved
12/01/2016	Bill of costs	Robin Ganguly	2.0	~~970.00~~ 485.00	Reduced to 485.00
	TOTAL (GBP)			8,128.50	
	TOTAL (USD – 1.44)			US$11,705.04	

[80] All other fees on the Berwin Leighton Paisner bill are disallowed because they relate to work by the firm for general assistance of the appellant and not the expert evidence of Mr. Khodykin.

Order

(1) The respondent's application for security for the costs of the appeal is dismissed.

(2). Costs of the application to the appellant limited to the assessed costs of Maples and Calder and fees of Berwin Leighton Paisner for the expert evidence of Roman Khodykin.

(3) The fees of Maples and Calder are assessed at $11,543.50 and of Berwin Leighton Paisner at $11,705.04 as fees for providing expert evidence.

(4) The total assessed costs of $23,284.54 is to be paid to the appellant within 21 days.

Paul Webster
Justice of Appeal [Ag.]

I concur.

Dame Janice M. Pereira, DBE
Chief Justice

I concur.

Joyce Kentish-Egan, QC
Justice of Appeal [Ag.]