EASTERN CARIBBEAN SUPREME COURT
BRITISH VIRGIN ISLANDS

IN THE HIGH COURT OF JUSTICE
COMMERCIAL DIVISION

CLAIM NO. BVIHCM 2017/0118

BETWEEN:

[1] TETIANA IEREMEIEVA
[2] ROMAN YEREMEIEV

Respondents/Claimants

-and-

[1] ESTERA CORPORATE SERVICES (BVI) LIMITED
Respondent/Defendant

[2] SERGII LAGUR
[3] STEPAN IVAKHIV
Applicants/Defendants

[4] SOFIIA YEREMEIEVA (a minor)

Defendant

Appearances:

Mr. John Wardell, QC, with him Mr. Timothy Collingwood and Mr. Matthew Brown for the Claimants/Respondents
Mr. David Mumford, QC, with him Mr. David Welford for the Second and Third Defendants/Applicants
Ms. Claire Goldstein, with her Mr. Mark Rowlands for the First Defendant
Mr. Robert Nader for the Fourth Defendant

2018: October 15
December 5
2019: April 4

JUDGMENT

[1] WALLBANK, J. (Ag.): The Second and Third Defendants (respectively, Mr. Lagur and Mr. Ivakhiv), as applicants, applied on 26th April 2018 for the following relief:

(1) Security for costs of the claim pursuant to the Eastern Caribbean Supreme Court Civil Procedure Rules 2000 ('CPR') Part 24.2 in the sum of US$1,442,958; and

(2) An order that the claimants produce for inspection any documents evidencing a funding agreement (the 'Funding Agreement'), pursuant to which a third-party funder (the 'Funder') has agreed to provide the claimants with funding in connection with these proceedings, under CPR 28.16.

[2] On 5th December 2018 I delivered the order upon judgment for these applications. The result was that the application for security for costs was refused and the application for inspection of the Funding Agreement was granted. I ordered that costs follow the event in each of these applications, with the quantum to be assessed if not agreed within twenty-one days. All parties were granted liberty to apply in respect of costs. These are the reasons for these decisions.

Background

[3] Mrs. Ieremeieva is the widow of the late Mr. Igor Yeremeiev and Roman is their son. Sofiia is her daughter. She is a minor. Mrs. Ieremeieva, as mother, is her legal guardian. I will refer to the late Mr. Yeremeiev as Igor. Mrs. Ieremeieva and Roman are the claimants. Roman is in his early twenties. Igor died suddenly on 13th August 2015, following a riding accident. He was in his forties. During his lifetime Igor was a successful businessman. He was a business partner with the applicants (and a Mr. Dyminsky, who is not a party to these proceedings), who had interests in an array of businesses in Ukraine, including in wholesale oil trading, petrol stations, banking, telecommunications, hotels, dairy produce, convenience stores and construction. Igor appears to have played a significant part in the creation of this

group. These businesses are together referred to under the brand name "Continuum", although they are not strictly part of a single corporate group; nor were the individuals (who can be referred to as the 'Principals') partners in the strict sense. Igor was also a politician, being an active member of the Ukrainian parliament. He spoke Russian and Ukrainian but, the claimants' evidence is, significantly, not English; nor did he understand English. At the time of his death Igor was largely living apart from Mrs. Ieremeieva, with another woman. Igor and Mrs. Ieremeieva were not divorced although over the years they had discussed it. The claimants say that Igor spent weekends and holidays with Mrs. Ieremeieva and their children and that he had a close relationship with Roman. Igor's passion was horses. He owned a set of stables through a corporate holding structure.

[4] Igor (like the other Principals) had shareholdings in holding companies that directly or indirectly hold interests in the various Ukrainian operating subsidiaries. Igor's shareholdings were, the applicants contend, settled by him on a discretionary trust (the 'Trust') for the benefit of Roman and Sofiia by an instrument dated 21st August 2014 (the 'Trust Instrument'). The validity of the Trust is one of the central issues in these proceedings. Under the terms of the Trust Instrument, Igor was the initial trustee; Mr. Lagur was to become the trustee in his stead upon Igor's death or incapacity, but it was provided that within six months of that event Mr. Lagur was to appoint a 'competent, qualified and reputable' professional trustee to succeed him; and upon the appointment of such professional trustee, Mr. Ivakhiv was to become the Protector.

[5] Following Igor's death and as envisaged by the Trust Instrument, the First Defendant, a professional trust company, 'Estera', was appointed trustee by deed dated 31st May 2016 (the 'DORA'); and on the same day Estera amended the Trust to become a BVI VISTA trust, by a deed to which Mr. Ivakhiv was also a party (the 'Amendment Deed').

[6] In March 2017, the claimants, through their legal representatives in the Territory, Messrs. Conyers Dill & Pearman, wrote to Estera raising questions as to the authenticity and validity of the Trust Instrument and requesting certain information about it. Correspondence ensued, in the course of which (by letter dated 29th April 2017) Estera identified a concern that the claimants' requests for information were in fact being motivated by an agreement made between Mrs. Ieremeieva and a Mr. Palytsia, by which Mr. Palytsia was funding Mrs.

Ieremeieva's legal costs in return for a right to acquire shares in Continuum from her. This correspondence culminated in a letter from Messrs. Conyers Dill & Pearman dated 18th July 2017, in which the existence of the agreement with a company associated with Mr. Palytsia was confirmed, but it was asserted that 'our clients are unaware of Mr. Palytsia's business affairs' and the claimants' requests for the provision of information were pressed.

[7] Without further reference to Estera (or the applicants), on 19th and 20th July 2017 the claimants successfully applied *ex parte* for a proprietary injunction and the appointment of a receiver, that order being made on 20th July 2017 and continued (without opposition, but on the basis that the defendants reserved their rights to apply to set aside or vary the orders) on 26th July 2017 (the 'Injunction and Receivership Order'). When the order was continued, an order was also made (at the suggestion of Estera, but with the concurrence of the claimants at that time) sealing the court file.

[8] The claim form and statement of claim were served on the applicants on 4th August 2017. In short, claims are brought by Mrs. Ieremeieva in her capacity as Igor's widow, administrator of Igor's estate and heir and by Roman in his capacity as Igor's heir and administrator of Igor's estate, but also (in the alternative) as a beneficiary of the Trust. By these claims the claimants:

(1) contend that the Trust is void as either a fabrication or a sham; and

(2) allege that there has been 'value shifting' and dissipation of assets within the corporate structure in which the Trust is interested to the detriment of the claimants, and

(3) seek orders for declarations, accounts, inquiries and compensation.

[9] These claims are vigorously contested by the applicants, who served a lengthy defence on 8th December 2017. Estera put in a short defence to the claims on 29th November 2018 and on 10th January 2018 it applied for directions concerning the steps which it should take in these proceedings. That application was heard on 2nd May 2018 by Adderley J, who (among other things) ordered that the Amendment Deed be set aside. The present applications

were made before that hearing, on 26th April 2018. At the same time, the applicants also applied for:

(1) An order staying the claimants' claims on the grounds of abuse of process, including on grounds that the claimants' third-party funding arrangements are champertous;

(2) Orders restricting provision of documents disclosed in the proceedings by the claimants to the Funder; and

(3) Discharge or variation of parts of the Injunction and Receivership Order.

[10] These other applications are not presently before the court.

[11] It is the Funding Agreement apparently entered into by the claimants and Mr. Palytsia (or a company associated with him) that is at the crux of the present applications. In the claimants' affidavit evidence sworn in support of the injunction and receivership applications, it was stated:

> "Mrs. Ieremeieva and Roman have entered a funding agreement with a company connected with Mr. Palytsia, because they are otherwise unable to fund this litigation as a result of the control exercised by Mr. Lagur and Mr. Ivakhiv. That agreement is private and privileged and privilege is not waived. However, as is normal in such agreements, that company has rights to information concerning the litigation."

[12] It is Mr. Ivakhiv's evidence that:

(1) Mr. Palytsia is one of the closest associates of a Mr. Igor Kolomoisky.

(2) Mr. Kolomoisky is a prominent Ukrainian businessman and politician, who is notorious for his 'corporate raiding' activities. The Privat Group with which he is associated is a long-standing competitor to the WOG Group, one of the businesses in which the Trust and the applicants are interested. In 2005/6 Mr. Kolomoisky sought to exploit his minority interest in an oil refinery in which the Principals were also interested to take control of the refinery, allegedly using various means of doubtful legitimacy. His campaign against the WOG Group has continued since. He also sought to acquire Mr. Dyminsky'sstake in WOG Holding Ltd. He is reported to have said, publicly, in

relation to any company, 'give me a 1 percent stake and I will take over the entire company'.

(3) Mr. Palytsia informed Mr. Ivakhiv in a conversation in March 2017 that he had reached an arrangement with Mrs. Ieremeieva pursuant to which he would pay her legal fees, in return for which he would be entitled to buy any shares that she recovered at a discount of 25% to market price. This discount is estimated by the applicants to be worth around US$50million, if the claimants' case as to value is correct. Mr. Palytsia led Mr. Ivakhiv to understand that his decision whether to finance Mrs. Ieremeieva's legal fees was dependent on Mr. Ivakhiv's political activities in the Volyn region. Whilst the claimants have identified certain difficulties that Mr. Palytsia might face in acquiring shares from them, they have not in terms denied that it is indeed their agreement that Mr. Palytsia should have a right to do so at a discount in return for funding these proceedings; and Mr. Palytsia appears to have confirmed as much in a recorded conversation.

(4) In a conversation on 22nd August 2015, Roman revealed that on 10th August 2015 (whilst Igor was still in a coma) an associate of Mr. Palytsia had spoken to Mrs. Ieremeieva about some kind of 'assignment' involving 'protecting' Mrs. Ieremeieva, which Roman described as 'their typical tactics', and that this individual had told Mrs. Ieremeieva to 'go and consult with Kolomoisky and two Jewish men will sort it out between themselves'.

(5) The applicants apprehend that Mr. Kolomoisky and Mr. Palytsia are funding these proceedings to further their political and business 'war' with the applicants, and that if they secure commercially sensitive information about the companies in which the Trust and the applicants are interested (such as information about the companies' ownership structures and shareholder agreements, their business plans and their financing arrangements), and/or a shareholding in those companies, they will exploit that to secure control, to the considerable detriment of the Trust and the applicants alike.

[13] By letter dated 15th December 2017, the applicants indicated that they intended to apply for disclosure of the Funding Agreement. The claimants have asserted that the Funding Agreement is irrelevant to the issues in the proceedings and privileged. The claimants asserted that

> "the funding agreement attracts legal advice privilege in that it tends to reveal the legal advice received by our clients regarding the merits of the case, regarding strategy and tactics and regarding the funding itself. As an additional ground, the funding agreement is covered by litigation privilege, having come into existence for the dominant purpose of getting legal advice with regard to the litigation or to obtain legal advice or conduct litigation".

[14] The applicants rejected the suggestion that the Funding Agreement could be the subject of litigation privilege at all and contended that legal advice privilege could only properly be asserted over those parts of the agreement that reproduced or betrayed the trend of legal advice. The applicants argued that the Funding Agreement was relevant to the concerns which the applicants had as to whether the proceedings were being supported champertously and brought abusively, to the question of security for the Applicants' costs and to the maintenance of confidentiality in documents disclosed in the proceedings. On 15th March 2018 the applicants invited the claimants to provide security for the applicants' costs of the proceedings. The claimants declined to do so. These applications were issued shortly thereafter.

[15] The claimants assert that these applications are a 'transparent attempt, and part of an ongoing tactic, by the applicants to divert attention and resources from the real issues in dispute in this claim and to prevent the claimants from prosecuting the claim effectively'.

[16] The applicants on the other hand say the Court must be astute not to allow itself to be diverted from determining these applications on their merits. The applicants contend that these applications are brought because of a genuine concern that: (a) should the applicants succeed in obtaining an award for costs in their favour, there is at least a real risk that they will not be able to enforce such an award (either against such assets as the claimants have said they have available, or against the Funder); and (b) these proceedings are being supported by a commercial and political rival for ulterior purposes, and the question of

whether that is so, and whether the Funding Agreement is enforceable, needs to be determined. The applicants say it is not credible that the provision of security will prevent the claimants from pursuing their claims; nor is there any reason why disclosure of the Funding Agreement *per se* should do so. The claimants have asserted that it is 'the applicants' own actions in preventing the claimants from accessing their inheritance which have resulted in a situation where they have required third party funding and therefore that the applications can even arise'. The applicants say this is simply wrong.

The security for costs application

Relevant legal principles

[17] The applicants apply for an order that the claimants provide security for their costs of these proceedings pursuant to CPR 24.2, relying on the grounds set out in sub-paragraphs (a) and (g) of CPR 24.3. These rules provide, so far as relevant, as follows:

> **"24.2**
>
> 1. A defendant in any proceedings may apply for an order requiring the claimant to give security for the defendant's costs of the proceedings.
>
> 2. Where practicable such an application must be made at a case management conference or pre-trial review.
>
> 3. An application for security for costs must be supported by evidence on affidavit.
>
> 4. The amount and nature of the security shall be such as the court thinks fit.
>
> 24.3
>
> 1. The court may make an order for security for costs under rule 24.2 against a claimant only if it is satisfied, having regard to all the circumstances of the case, that it is just to make such an order, and that –
>
> (a) some person other than the claimant has contributed or agreed to contribute to the claimant's costs in return for a share of any money or property which the claimant may recover;
>
> …
>
> (g) the claimant is ordinarily resident out of the jurisdiction."

[18] In Hualon Corporation (M) SDH BHD v Marty Ltd[1] this Court adopted as relevant to the exercise of its discretion under CPR 24.3 the guidance set out in the English Court of Appeal case of Keary Developments Ltd v Tarmac Construction Ltd,[2] which is as follows:

> "1. As was established by this court in Parkinson (Sir Lindsay) & Co. Ltd.v Triplan Ltd. [1973] QB 609 the court has a complete discretion whether to order security, and accordingly it will act in the light of all the relevant circumstances.
>
> 2. The possibility or probability that the plaintiff company will be deterred from pursuing its claim by an order for security is not without more a sufficient reason for not ordering security: see Okotcha v Voest Alpine [1993] B.C.L.C. 474, at 479 per Bingham L.J., with whom Steyn LJ agreed. By making the exercise of discretion under section 726(1) conditional on it being shown that the company is one likely to be unable to pay costs awarded against it, Parliament must have envisaged that the order might be made in respect of a plaintiff company that would find difficulty in providing security (Pearson v Naydler [1977] 1 WLR 899 , 906 per Sir Robert Megarry V-C).
>
> 3. The court must carry out a balancing exercise. On the one hand it must weigh the injustice to the plaintiff, if prevented from pursuing a proper claim by an order for security. Against that, it must weigh the injustice to the defendant, if no security is ordered and at the trial the plaintiff's claim fails and the defendant finds himself unable to recover from the plaintiff the costs which have been incurred by him in his defence of the claim. The court will properly be concerned not to allow the power to order security to be used as an instrument of oppression, such as by stifling a genuine claim by an indigent company against a more prosperous company, particularly when the failure to meet that claim might in itself have been a material cause of the plaintiff's impecuniosity (Farrer v Lacy Hartland & Co. (1885) 28 Ch. D. 482 , 485 per Bowen LJ). But it will also be concerned not to be so reluctant to order security that it becomes a weapon whereby the impecunious company can use its inability to pay costs as a means of putting unfair pressure on the more prosperous company (Pearson v Naydler supra at p.906).
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> 4. In considering all the circumstances, the court will have regard to the plaintiff company's prospects of success. But it should not go into the merits in detail unless it can clearly be demonstrated that there is a high degree of probability of success or failure (Porzelack KG v Porzelack (UK) Ltd [1987] 1 WLR 420 , 423 per Sir Nicolas Browne-Wilkinson V-C). In this context it is relevant to take account of the conduct of the litigation thus far, including any open offer or payment into court, indicative as it may be of the plaintiff's prospects of success. But the court will also be aware of the possibility that an offer or payment may be made in acknowledgment not so much of the prospects of success but of the nuisance value of a claim.

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[1] BVIHC (COM) 2014/0090 (delivered 20th January 2016) and (2016) ECSC J0120-1, at paragraph [18] (Farara J (Ag)).

[2] [1995] 3 All ER 534, at 539h-540j.

5. The court in considering the amount of security that might be ordered will bear in mind that it can order any amount up to the full amount claimed by way of security, provided that it is more than a simply nominal amount; it is not bound to make an order of a substantial amount (see Roburn Construction Ltd. v William Irwin (South) & Co. Ltd [1991] BCC 726).

6. Before the court refuses to order security on the ground that it would unfairly stifle a valid claim, the court must be satisfied that, in all the circumstances, it is probable that the claim would be stifled. There may be cases where this can properly be inferred without direct evidence (Trident International v Manchester Ship Canal [1990] BCLC 263). In the Trident case there was evidence to show that the company was no longer trading, that there had been evidence that it had previously received support from another company, which was a creditor of the plaintiff company and therefore had an interest in the plaintiff's claim continuing; but the Judge in that case did not think, on the evidence, that that company could be relied upon to provide further assistance to the plaintiff, and that was a finding which, this court held, could not be challenged on appeal.

However, the Court should consider not only whether the plaintiff company can provide security out of its own resources to continue the litigation, but also whether it can raise the amount needed from its directors, shareholders or other backers or interested persons."

[19] Where ground (g) is invoked, this Court has expressed the view (per Bannister J, in Wang Zhongyong v Union Zone Management Ltd) 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." [3]

[20] In the English Court of Appeal it has been held that the relevant question for these purposes is not whether there are *likely* to be substantial obstacles to (or an additional burden of) enforcement, but whether there is a *real risk* that there would be: Bestfort Developments LLP v Ras Al Khaimah Investment Authority:

> "In my judgment, it is sufficient for an applicant for security for costs simply to adduce evidence to show that 'on objectively justified grounds relating to obstacles to or the burden of enforcement' there is a real risk that it will not be in a position to enforce an order for costs against the claimant/appellant and that, in all the circumstances, it is just to make an order for security. Obviously there must be 'a proper basis for

[3] Claim No. BVIHC (Com) 0126 of 2011, at [11].

considering that such obstacles may exist or that enforcement may be encumbered by some extra burden' but whether the evidence is sufficient in any particular case to satisfy the judge that there is a real risk of serious obstacles to enforcement, will depend on the circumstances of the case. In other words, I consider that the judge was wrong to uphold the Master's approach that the appropriate test was one of 'likelihood', which involved demonstrating that it was 'more likely than not' (i.e. an over 50% likelihood), or 'likely on the balance of probabilities', that there would be substantial obstacles to enforcement, rather than some lower standard based on risk or possibility. A test of real risk of enforceability provides rational and objective justification for discrimination against non-Convention state residents (. . .)."[4]

[21] Moreover, once that risk is established, it is not appropriate for the court to discount the security ordered to reflect the fact that the risk is not high on the scale of probabilities: Chernukhin v Danilina.[5] In that case, the principles applicable to the corresponding English rule were stated as follows:

> "(1) For jurisdiction under CPR 25.13(2)(a) to be established it is necessary to satisfy two conditions, namely that the claimant is resident (i) out of the jurisdiction and (ii) in a non-Convention state.
>
> (2) Once these jurisdictional conditions are satisfied the court has a discretion to make an order for security for costs under CPR 25.13(1) if "it is satisfied, having regard to all the circumstances of the case, that it is just to make such an order".
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> (3) In order for the court to be so satisfied the court has to ensure that its discretion is being exercised in a non-discriminatory manner for the purposes of Articles 6 and 14 ECHR – see Bestfort at [50]-[51].
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> (4) This requires "objectively justified grounds relating to obstacles to or the burden of enforcement in the context of the particular foreign claimant or country concerned" – see Nasser at [61] and Bestfort at [51].
>
> (5) Such grounds exist where there is a real risk of "substantial obstacles to enforcement" or of an additional burden in terms of cost or delay – see Bestfort at [77].
>
> (6) The order for security should generally be tailored to cater for the relevant risk – see Nasser at [64].
>
> (7) Where the risk is of non-enforcement, security should usually be ordered by reference to the costs of the proceedings – see, for example, the orders in De Beer and Bestfort.

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[4] [2016] EWCA Civ 1099 at paragraph [77] (Gloster LJ).

[5] [2018] EWCA Civ 1802 at [64].

(8) Where the risk is limited to additional costs or delay, security should usually be ordered by reference to that extra burden of enforcement – see, for example, the order in Nasser."

[22] The claimants submit that in a case based on residency compelling reasons for security are required where the defendants have effectively played a part in the selection of BVI as a jurisdiction, e.g. by accepting office in respect of a BVI trust:

(1) In the case of parties who set up a company in BVI and enjoy the advantages from that:

"… as a matter of general principle … the Courts of the BVI will need to be given compelling persuasive reasons why in cases of [that] sort security for costs should be ordered on the grounds only that the claimant is ordinarily resident out of the jurisdiction."[6]

(2) The claimants submit that such general principle applies equally to parties who agree to accept office in respect of a trust sited in the BVI in respect of which BVI is the applicable law.

[23] It is not in dispute that both of the grounds in CPR 24.3 relied upon by the applicants are engaged. The issue is whether it is just in all the circumstances of the case to make the order for security sought.

[24] In the applicants' submission, it is in all the relevant circumstances just to do so. In short:

(1) The claimants are, on their own account, in difficulty funding their own costs of these proceedings and have had to resort to external funding. Whilst the applicants have their doubts about how reliable the assertion of a lack of liquid resources is, there is, at the very least a real risk that the applicants will be unable to enforce any order for costs in their favour against the claimants at the conclusion of these proceedings.

(2) The external funding obtained by the claimants is apparently on terms that absolve the funder of any obligation to meet an adverse costs order.

[6] Wang Zhongyong v Union Zone Management Ltd Claim No. BVIHC (Com) 0126 of 2011 (unreported, delivered 21st March 2013), at paragraph [16] (Bannister J).

(3) Further, the applicants do not know who the external funder is, only that it is a company in some way connected with Mr. Palytsia, nor do they know where it is incorporated, or what assets it might have amenable to the execution of any order for costs that might be made against it as a third party to these proceedings.

(4) Thus, argue the applicants, the applicants face the obvious injustice of having to defend proceedings which the party bringing them is not able or prepared to fund; and from which the party funding them stands to make a very substantial financial gain should the proceedings prove successful, whilst insulating itself from any recourse against it in the event that they are not.

[25] The applicants seek to address four broad categories of points the claimants raise in response to this application. These are that:

(1) The applicants already have effective security due to their control over the assets of the Trust;

(2) The applicants can enforce a costs award against assets of the claimants in Ukraine;

(3) Granting security would stifle the claim; and

(4) The application is based on matters that have been caused by the applicants' own actions.

Security for costs - the a**pplicants' position**

[26] The applicants submit the following.

[27] The claimants contend that 'there are already very significant assets within the jurisdiction which are held by the purported Trust and which may be enforced within the jurisdiction, were the claimants' claim to fail', making the points that (a) a receiver has been appointed and would not distribute the assets in such a way that an adverse costs order could not be met and (b) that the assets are in any event effectively controlled by the applicants, 'so the applicants themselves can ensure that the Trust assets are available to meet any adverse costs order'.

[28] The applicants maintain that the first contention proceeds on a false premise. Mrs. Ieremeieva has no rights under the Trust, and Roman's rights are only those of a discretionary beneficiary. The latter does not confer on Roman any proprietary interests in the trust assets, nor any personal right to call upon the trustee (or receiver) to distribute those assets to him in satisfaction of an obligation owed by him. It is merely a right to be considered as a potential recipient of benefit by the trustee, following the English Court of Appeal decision in JSC Mezhdunarodniy Promyshlenniy Bank v Pugachev.[7]

[29] That is not a right that is amenable to execution, or one which (absent some unusual circumstance) the applicants could enforce by way of equitable execution. So, in the case of In the matter of Y v R the Grand Court of the Cayman Islands declined to appoint a receiver of the interest of a beneficiary of a discretionary trust:

> "(. . .) there is nothing in the circumstances of an ordinary discretionary trust that could lead to the conclusion that a beneficiary has a legal or beneficial interest in the Trust Fund. It is clear that where there are no available assets to be viewed as the Judgment Debtor's assets in equity, then there can be no question of appointing a receiver over them.
>
> The Judgment Debtor's only right is to require the Trustee to consider from time to time whether or not to apply the whole or some part of the trust fund for his benefit.
>
> To grant the relief sought by the Plaintiff in this case would amount to a radical, impermissible extension of the law.
>
> (. . .)
>
> [T]here are, on the evidence, no assets which can be regarded as the assets of the Defendant, in equity or otherwise. There is also nothing that, in any event, can be identified as a future debt from a defined asset, as discussed in Masri (No. 2)." [8]

[30] The applicants contend that on the facts of the present case, there is no basis on which the applicants – or even Roman – could compel the application of assets held under the terms of the Trust in satisfaction of a costs award in the applicants' favour.

[31] The applicants say that neither Mr. Lagur nor Mr. Ivakhiv 'controls' the Trust assets: they are under the control of the trustee, and now the receiver. So far as concerns the applicants'

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[7] [2016] 1 WLR 160, 167, at paragraph [13] (Lewison LJ).

[8] Unreported; at paras [66]-[68] and [73].

alleged 'control' over the operating companies in which the Trust is indirectly interested, there is a dispute between the parties as to what the extent and nature of that control is; but for present purposes the important point is that, on any view, say the applicants, they could not properly exercise such control as they might have so as to divert to themselves monies that would otherwise be distributable to the Trust in satisfaction for a costs award in their favour. That award would be payable by the claimants, not by the companies in which the Trust and the applicants are interested as shareholders.

[32] The applicants say the most that the claimants can contend for is that it is possible that, in the event that the validity of the Trust is upheld and the claimants are ordered to pay the applicants' costs, the trustee would in its discretion make a distribution of any funds available to it in favour of Roman. But there can be no guarantee that the trustee would do so, nor is there any way that the applicants could 'intervene and take steps themselves to ensure that any adverse costs order would be met'.

[33] Moreover, say the applicants, it simply cannot be predicted whether there will be any funds available to the trustee at the relevant point in the future with which to make such a distribution. Mr. Ivakhiv gives evidence that:

(1) In the current economic and business climate the operating companies in which the Trust is indirectly interested do not have the distributable reserves available to them to make a distribution, nor have they since Igor's death (save for a dividend of $300,000 paid in 2017 and a further $300,000);

(2) No reliable prediction can be made as to whether this will have changed by the time that any costs order at the conclusion of these proceedings would be payable; and

(3) The Trust assets (being shares in unlisted holding companies) are not ones for which there is a ready market.

[34] The applicants thus say the assets held under the Trust therefore do not provide the applicants with any security or assurance that a costs award in their favour will be met.

[35] The claimants state that they have assets in Ukraine, which, whilst illiquid, could nevertheless be the subject of enforcement of a costs order in the applicants' favour. The applicants however point out that:

(1) The court has been given no information with which to assess the value of the assets in question or whether they would in fact be available to meet an adverse costs order. Reference is merely made to Flat 94, an eye surgery business, 'shares in other businesses' and 'other land'. Nothing is said, for example, about what those assets are worth, whether they are subject to any security and if so what, in whose name they are registered, and where they are located; and in the case of the unidentified other shares and land, one is told even less. Further, Flat 94 has apparently been made the subject of a judicial arrest in support of a claim brought by Igor's brother, Yevgen, to recover a payment he made in discharge of indebtedness secured on the flat. The applicants say that this claim has been upheld at first instance.

(2) There is a further difficulty that an order for costs made by the BVI court would have to be recognised and enforced in Ukraine. There are no treaties in place for the reciprocal enforcement of orders between the BVI and Ukraine, nor (so far as the applicants' BVI lawyers are aware) are there precedents for the enforcement of Ukrainian orders in the BVI, such that reciprocity of enforcement in fact might be established.

(3) There are two letters of advice from Ukrainian lawyers, Messrs Sayenko Kharenko, on which the applicants rely on this application, and a letter in response to the first of these from Messrs Ilyashev and Partners, on which the claimants rely. The applicants say the following points of relevance can be extracted from this evidence:

(a) There is under Ukrainian law a 'presumption of existence of reciprocity' in relation to foreign judgments; but it can be rebutted by evidence of a lack of reciprocity, and the law on what this involves is not settled.

(b) The cases relied upon by Messrs Ilyashev and Partners to show an 'established court practice' of recognising and enforcing foreign Court

judgments do no such thing. Most of the cases were uncontested, four of the five cases relate only to recognition and not enforcement, and two of the five relate to marital law.

(c) Even if recognition and enforcement were ultimately to be granted, a realistic estimate for the time to secure that is between one and three years (depending on whether the proceedings were contested at both appellate levels), and the costs can (according to the applicants' lawyer's expressed opinion) be estimated at over €100,000. Messrs Ilyashev and Partners' more modest estimates are belied by the very cases they rely on, say the applicants, and in any event assume that the proceedings would not be contested.

(d) It would be possible for the judgment debtors to take steps to make their assets judgment proof, which would then necessitate proceedings for injunctive relief (assuming it was not too late), at additional time and cost.

(4) The applicants say there is, therefore, at least a real risk that there would be substantial obstacles to effective enforcement of a costs order in Ukraine; and, in any event, no evidence before the Court on which it can be satisfied that enforcement would realise sufficient amounts to cover the applicants' costs.

[36] The onus is on the claimants to satisfy the court that it is probable that their claim would be stifled if security were to be ordered. The applicants submit that they have failed to discharge that burden.

[37] The applicants point out that the claimants have given extremely limited evidence as to their present means. They have asserted that there are assets available to meet a costs order in due course but contend that these assets are not available to meet a payment for security now; but there is no explanation as to why that is so. If, for example, there is in fact sufficient equity in Flat 94 to meet an order for costs at the end of proceedings, it is not clear why funds could not be raised now on the security of it. Secondly, the assertion that the Funder is unwilling to pay security is no more than a bare assertion, and a hearsay one at that. No evidence has been forthcoming from the Funder itself (or anyone authorised to give

evidence on its behalf) on the question. On its face, the assertion is an incredible one, say the applicants, because:

(1) Mr. Palytsia is reputedly a man of very considerable wealth (although nothing is known about the financial position of the company associated with him that is actually party to the Funding Agreement);

(2) These proceedings have been funded by or at the instigation of Mr. Palytsia to a high level of expense: a distinguished London city firm and senior counsel are retained, along with BVI lawyers;

(3) On the evidence before the court, Mr. Palytsia is being offered a very considerable financial advantage in return for funding these proceedings – one which, on the claimants' case as to value at least, is many multiples larger than the likely total costs exposure;

(4) Mr. Palytsia is also, the applicants say they have good reason to believe, funding these proceedings with a view to securing information that will be of utility to him and Mr. Kolomoisky, if possible securing an ownership foothold in a rival business, and also furthering Mr. Palytsia's political ends. There is every reason to believe that he will not forgo these perceived benefits for the sake of a payment by way of security.

[38] Related to their stance on stifling, the claimants urge that they have a 'very strong case'. The focus of the claimants' case in this regard is the contention that the Trust is a fabrication or sham. The applicants argue that these are quintessentially matters which call for the testing of the parties' evidence at trial and the court simply cannot form the view, at this interlocutory stage, that the claimants' case has the high probability of success that would be required for the merits to become a relevant consideration on this application.

[39] Furthermore, the applicants contend the following:

(1) Mr. Ivakhiv gives what is on its face credible evidence that the relationship between him, Igor and Mr. Lagur in 2015 was one of close friendship and trust; that, conversely, Igor and Mrs. Ieremeieva had separated and that she had threatened to side with his rival, Mr. Kolomoisky, should a divorce on terms acceptable to her not be

agreed; and that Igor cared deeply for his children and wished for Roman to join the businesses in which he was involved. The applicants also adduce evidence of Mr. Ivakhiv that there was much marital tension between Igor and Mrs. Ieremeieva, and that he returned to the family unit in order to spend time with Sofiia, as Mrs. Ieremeieva had refused to allow Sofiia to spend vacations with him. When Igor did so, he slept in a separate room from Mrs. Ieremeieva. In those circumstances, say the applicants, it would not be surprising that Igor should declare a trust of his shares in certain holding companies in favour of his children (but not Mrs. Ieremeieva), nor that he should appoint Mr. Lagur, whom Igor had got to know many years ago, to succeed him as trustee.

(2) The execution of the Trust was witnessed by a lawyer acting for a reputable Ukrainian law firm. Contrary to the claimants' contentions, there is no lack of clarity in the applicants' case in this regard: a lawyer, Ms. Slipachuk, witnessed the execution by Igor of the Trust in late August 2014 say the applicants. The original trust instrument was also inspected and the copy of it which was provided to Estera was certified by an English solicitor on 8th April 2016.

(3) The settlement upon trust of the ultimate shareholdings in the companies that indirectly held some of Igor's wealth would not be inconsistent with his continued enjoyment of assets such as the stables, it being a matter for the directors of the company controlling the assets who should enjoy use of them.

[40] The applicants ask the court to note that the authenticity and validity of the Trust is not the only issue in the proceedings, and that there are a number of respects in which the claims advanced by the claimants against the applicants are tenuous. For example:

(1) It is a central part of the claimants' case that 'the applicants have taken steps to procure the adoption of a trust structure which is wholly inimical to the interests of Roman and Sofiia as beneficiaries', and that they have thereby secured complete control over Igor's interest. The applicants say this is a hopeless contention: the DORA and the Amendment Deed delivered control of the Trust assets to a professional trust company. Further, the Trust assets are shares in holding

companies, which represent (and always have represented) indirect minority interests in the Ukrainian operating companies. The companies are under the control of their directors; and to the extent that shareholders who together form a majority are capable of exercising control over their affairs, that has always been the case and has nothing to do with any steps taken by the applicants in connection with the Trust.

(2) The applicants are alleged wrongfully to have procured changes to the corporate structure of the companies in which the Trust is interested with a view to consolidating their own control of those companies; but this too is demonstrably wrong. Mr. Lagur has transferred the shareholdings in various subsidiary companies, which were formerly held by nominees, to the BVI holding companies that are directly owned by the trustee, precisely so that the trustee has control over them; certain corporate agents have been changed to other professional agents (because of dissatisfaction with the services of their predecessors); and certain limited (and entirely unobjectionable) changes have been made to the articles of association. The applicants say the allegation that these steps are nefarious is far-fetched.

(3) A substantial part of the alleged 'value shifting' case advanced against the applicants is that the Trust's interests in the unprofitable dairy arm of the Continuum businesses was increased at the expense of more profitable businesses; but that is simply wrong, the allegation that further shares in those businesses were acquired apparently being premised on a misreading of certain decisions of the Anti-Monopoly Commission of Ukraine.

[41] The applicants submit that this is not a case where the court can be satisfied that an order for security would stifle the claim, or that the claim is of sufficiently strong merits that this is a consideration to which significant weight should be given. Finally, the applicants submit that even if the court were to be persuaded that an order for security in the sum sought by the applicants would stifle the claim, the court should still go on to consider whether some alternative or lesser order would not.[9]

[9] Cf. Keary Developments Ltd v Tarmac Construction Ltd, [1995] 3 All ER 534, at 544b.

[42] It is said by the claimants that there is a causal link between 'the fraudulent behaviour of the Applicants (. . .) which has prevented the Claimants from obtaining their rightful inheritance; and the inability of the Claimants to pay security for costs (or fund the claim)', such that it would be unjust to order the payment of security.

[43] The applicants submit there are three problems with this contention:

(1) It assumes that which the claimants seek to establish by these proceedings, namely that the applicants have behaved fraudulently. That is not an assumption that can justifiably be made at this stage of the proceedings and without the evidence being heard and tested.

(2) Whilst the Trust and the question of its validity may affect the extent of Mrs. Ieremeieva's inheritance, it does not deprive Roman and Sofiia of theirs: they are the only beneficiaries and will be entitled to call for the trust property once both are of full age.

(3) The apparent suggestion that the applicants have wrongfully deprived the claimants of cashflow of course presupposes that, but for the facts and matters complained of against the applicants, there would have been distributable funds paid up the corporate structure to the claimants. But there is no evidence supporting that assumption and it is in fact wholly unwarranted: as Mr. Ivakhiv explains, the businesses in which the Trust is invested as a minority shareholder are, and have for the last few years been, short of the distributable reserves needed to make significant distributions to the ultimate shareholders. Moreover, the allegedly fraudulent interposition of the Trust, or its amendment, cannot have made any difference to this: the same would have been true had the claimants been minority shareholders in their own right throughout.

[44] The applications say that this is not, therefore, a case in which the wrong allegedly done by the applicants can be said to be the cause of the claimants' asserted inability to pay security or fund these proceedings.

[45] The applicants therefore ask the court to order security for the applicants' costs.

Security for costs - t**he Claimants' position**

[46] The claimants open their submissions by saying that these proceedings concern the brazen hijacking of their inheritance by Igor's former business partners for their mutual exploitation.

[47] The claimants say the key factor is the strong probability that Mr. Lagur and Mr. Ivakhiv fabricated the Trust after Igor suffered his riding accident, which caused him to enter a coma from which he never recovered. Extraordinarily, Mr. Lagur and Mr. Ivakhiv did not disclose the existence of the Trust (purportedly executed on 21st August 2014) to Roman and Mrs. Ieremeieva (as Sofiia's guardian) until a meeting on 16th February 2016. The Trust Instrument itself was only disclosed to the claimants in March 2016. Until 2017 Mrs. Ieremeieva and Roman had no knowledge of (still less approved of) the purported appointment of Estera as trustee in place of Mr. Lagur by the DORA dated 31st May 2016 and the simultaneous conversion of the Trust by the Deed of Amendment into a VISTA trust, on terms contrary to the best interests of Roman and his sister.

[48] The claimants explain that in these proceedings they seek to secure, protect and restore their inheritance, which has been put beyond their reach by the device of the Trust and left at the mercy of Mr. Ivakhiv and Mr. Lagur. The claimants say that at every stage Mr. Ivakhiv and Mr. Lagur have sought to obstruct and delay the claimants in achieving those aims through denial or delay of information and exercise of collateral financial pressure. Each of the current applications constitutes a transparent attempt to cut off the provision of funding to the claimants and prevent the action from progressing further.

[49] The claimants explain that it was through a complex corporate structure comprising companies incorporated in various jurisdictions with nominee directors and agents that Igor controlled and owned Continuum with his three partners: (Mr. Lagur, Mr. Ivakhiv and Mr. Dyminsky). As between themselves the interests of the partners were in the main equal. However, the nature of the structure gives ample opportunity for asset manipulation and asset shifting and the claimants say this has been done. During Igor's lifetime there were certain protections in place: for example, in the oil business each of the four partners had a director on the board of WOG Holding Ltd to represent and protect his interests (in Igor's

case a Mr. Ioannou). When Igor passed away, he left four heirs. These are Mrs. Ieremeieva, Roman, and Sofiia and Igor's mother. Mrs. Ieremeieva and Roman obtained a grant of letters of administration in this jurisdiction in July 2017.

[50] At a meeting with Mrs. Ieremeieva and Roman on 16th February 2016 (around seven months after Igor suffered his accident) Mr. Lagur and Mr. Ivakhiv asserted for the first time that in August 2014 Igor had executed a trust settling his interest in Continuum on irrevocable discretionary trusts for the benefit of Roman and Sofiia. Igor was 46 years old at the time, in good health and with a statistical life expectancy of over 25 – 30 years remaining. His interest in Continuum comprised a very substantial part of his worldly wealth including his stables and equestrian facilities. The terms of the trust oddly precluded him from using that wealth for his own benefit or for the benefit of others whom he might want to provide in the remaining 25 – 30 plus years of his life expectancy. He was living with another woman at the time, after a number of other affairs with women other than his wife, and, quite apart from any possible desire on Igor's part to assist his paramour(s) financially, the possibility that he might have further children or grandchildren that he might want to provide for was not excluded.

[51] The initial trustee of the alleged Trust was Igor. Again, oddly, no powers were reserved to Igor to appoint any person as trustee or protector. Although no sufficient property was reserved to Igor to maintain himself in the event of incapacity, with 'remarkable prescience' the Trust provided that in the event of incapacity or death the trustee was to become Mr. Lagur. Under the terms of the Trust Mr. Lagur and Mr. Ivakhiv were obliged to appoint a trust company to act as trustee in place of Mr. Lagur (with Mr. Ivakhiv to become protector having continuing powers to appoint and remove trustees). It is the claimants' case that the draftsman, when fabricating the Trust, would have been conscious that Mr. Lagur was not a credible choice as long-term trustee, because he was a Ukrainian businessman with personal interests in conflict with those of the beneficiaries.

[52] On 31st May 2016, Estera, with the consent of Mr Ivakhiv as protector, executed the Deed of Amendment. This purported to convert the Trust into a VISTA trust. The claimants make

the point that the power used to execute this deed could only be exercised in the interests of Roman and Sofiia. The execution of this deed delivered control of trust assets (shares in BVI companies) into the hands of Mr. Ivakhiv as protector (and Mr. Lagur as First Successor Protector) and made it impossible for Estera to make any provision for Roman or Sofiia unless Mr Ivakhiv (when protector) or Mr Lagur (when First Successor Protector) consented to provision being made. Among other matters, the Deed of Amendment removed the ability of Roman and Sofiia to terminate the Trust when Sofiia came of age: hardly a provision that would be in their interests, at least arguably. As explained above, the Court set the Deed of Amendment aside in its order dated 2nd May 2018. Nevertheless, whilst it stood it prevented Estera from taking, or severely restricted its ability to take, proper steps to protect trust assets from Mr. Ivakhiv and Mr. Lagur. That is part of the claimants' reasoning as to why originally an application was made for a receiver to be appointed.

[53] The claimants' case is that the Trust is invalid as a fabrication or a sham. By sham, they mean that if Igor did declare it, he continued to conduct himself in every respect as if it did not exist.

[54] The claimants say the circumstances surrounding the disclosure of the Trust are highly suspicious:

(1) the disclosure was roughly seven months after Igor suffered his accident;

(2) no explanation has ever been given as to why it took seven months to reveal the existence of the Trust;

(3) during that period there were discussions involving Mr. Ivakhiv and Mr. Lagur in which the Trust should/would have been disclosed if it existed and those discussions were wholly inconsistent with a trust existing;

(4) no explanation has ever been given as to why no reference to the Trust was made in discussions between Mrs. Ieremeieva, Roman, Mr. Lagur and /or Mr. Ivakhiv in the seven-month period;

(5) the claimants say Mr. Ivakhiv made it clear to the claimants at a meeting on or about 28th April 2016 that if a shareholders' agreement was drawn up the Trust could be ignored and that it was not real, but that everything could be agreed if Igor's heirs promised that they would not sell Igor's shares.

[55] The claimants submit that if the Trust was in existence in July 2015 there appears to be no sense in not disclosing its existence and in conducting conversations on the basis that no trust existed.

[56] Mr. Lagur and Mr. Ivakhiv have not taken a position of neutrality in relation to the issue whether the Trust was a sham. They have vigorously defended its authenticity. It is hard to escape the inference that Mr. Lagur and Mr. Ivakhiv have a strong personal interest in doing so.

[57] They stoutly deny the Trust is a fabrication. Unlike with a sham, that is more understandable, in that the claimants accuse them of the serious matter of having fabricated it. They have placed significant emphasis on their allegation that an English solicitor copied the original Trust Instrument and certified it as a true copy. The claimants argue this is of no probative value. It is not inconsistent with fabrication. An English solicitor is not a handwriting expert. In inspecting a deed and certifying it as a true copy of an original document he is not certifying that the original document has not been fabricated.

[58] Mr. Ivakhiv and Mr. Lagur also place significant reliance on the purported witnessing of the Trust Instrument by Ms. Slipachuk, who is the lawyer for Mr. Lagur and Mr. Ivakhiv. The circumstances in which she was purportedly asked to witness Igor's signature on various documents are extremely odd, say the claimants. It is simply alleged that Igor produced the Trust Instrument (which is in English, a language he did not speak) without warning and asked Ms. Slipachuk to witness his signature without asking for her legal advice on it; and that she stated that she was not providing any advice in relation to it. In fact, the form of page 12 of the alleged Trust Instrument is consistent with the taking of a blank sheet of paper bearing Igor's signature and the printing of the deed on top of it: there is an

unnecessarily large gap between the end of the schedule and the signature, leaving insufficient room for witness particulars to be included in the normal way.

[59] The claimants further say that Igor was an intelligent man and a successful businessman. He would have known from the Schedule that the Trust Instrument dealt with the bulk of his fortune. He would never have executed the Trust Instrument without full legal advice and without ensuring that the deed was properly drafted to protect the interests of his family. Igor loved Roman, Sofiia and Mrs. Ieremeieva. They were his family and he would not have damaged their financial interests. If Igor was producing a sham trust (using a precedent) one would have expected him to produce a draft which addressed and furthered the interests of himself and his family rather than the interests of Mr. Lagur and Mr. Ivakhiv. Roman lived with Igor and they had a close relationship of love and respect. Roman is well educated and Igor would not have put the bulk of his fortune in a trust without talking to Roman and explaining what he had done and his reasons for doing it. He never mentioned the Trust to Roman. There is no reference to the Trust in Igor's papers possessed by the claimants. There is no paper or email trail of which Roman is aware of the type one would expect in relation to the preparation and execution of an important document controlling a substantial fortune. Mr. Lagur and Mr. Ivakhiv kept the existence of the Trust a secret from Roman and his mother (Sofiia's guardian) until six months after Igor's death, the point of time when under Ukrainian law they should have come into their inheritance. The claimants say that Mr. Lagur and Mr. Ivakhiv have been unable to produce any original documents in support of the Trust. As a result, those documents cannot be inspected. Moreover, it is Mr. Lagur and Mr. Ivakhiv who have access to Igor's information technology, including a mobile telephone Igor used, which could be analyzed to investigate the provenance of the Trust Instrument. Mrs. Ieremeieva and Roman do not have access to these.

[60] The claimants say the explanation provided for the loss of the original documents is utterly incredible. Mr. Lagur and Mr. Ivakhiv claim that they sent the documents for archiving at precisely the moment that Roman and his mother were challenging the trust and that when the documents were left in a car on the way to Lutsk they were stolen. Other important documents Mr. Lagur and Mr. Ivakhiv rely on were also allegedly stolen on the same occasion, preventing inspection of originals.

[61] The claimants also say that after 21st August 2014 (the date of alleged execution of the Trust) nothing changed in the real world in the way Igor dealt with his assets.

[62] The claimants explain that despite the alleged terms of the Trust Igor continued to enjoy his equestrian facilities and other financial resources. He also expressly asserted his own beneficial ownership over some of the assets Mr. Ivakhiv and Mr. Lagur say had been settled in the Trust. Igor opened no trust bank account. Mr. Lagur never had a trust bank account. Neither Igor nor Mr. Lagur ever produced trust accounts.

[63] Importantly, there was also no change in the maintenance provided by Igor for Roman and Sofia. The claimants' evidence is that this was made by regular monthly payments of up to approximately US$10,000 per month, as well as other payments, such as Roman's tuition fees and rent, as would be agreed between them depending upon their financial needs. These payments would be arranged by Igor through one of his assistants at the Continuum group. Cash payments would be receipted under a heading of 'Personal finances of Igor Ieremeieva' and any foreign payments to the claimants would be made by one of three corporate vehicles.

[64] After the incapacity and death of Igor, Mr. Lagur honoured a promise the claimants say he made in a conversation on 6th August 2015 while Igor was in hospital that maintenance payments would continue as before. Maintenance was provided for Roman and Sofiia. Payments continued after the appointment of Estera. When they were paid, nothing was said to indicate that the sums were being paid out by Mr. Lagur or Estera as trustee.

[65] The claimants say the disparity between the Trust and the real world appears from the fact that in September 2016 Continuum (purportedly on behalf of Mr. Ivakhiv as protector) asked Roman and Mrs. Ieremeieva (as legal representative for Sofiia) each to sign a receipt to confirm the receipt of cash from the Trust for the period from 14th August 2015 to 1st September 2016 in the total sum of US$3,151,912. This amount bore no relation, they say, to the modest sums paid for the benefit of Roman and Sofiia in this period. When Mrs

Ieremeieva and Roman refused to sign, all maintenance was cut off. The claimants say that Roman met with Mr. Ivakhiv shortly before mid-September 2016 to understand why the financial provision had stopped. The claimants say Mr. Ivakhiv said that if Roman did not sign then he would not get any finances anymore. The claimants say no satisfactory explanation has been provided for the receipt documents. Mr. Lagur and Mr. Ivakhiv simply state that this arose from a 'misunderstanding' on the part of the Continuum staff member, Ms. Gavryliuk, who arranged this. Ms. Gavryliuk is described by the receiver as 'a person through whom the partners [in Continuum] communicate to third parties'. She is an in-house lawyer with Continuum. Whatever the 'misunderstanding' may have been, no maintenance has since been paid.

[66] According to the claimants, during discussions between the claimants and the applicants in the immediate aftermath of Igor's accident, Mr. Lagur and Mr. Ivakhiv represented that they would pay Igor's medical expenses and take care of Roman and Sofiia. Mr. Lagur is said to have assured Mrs. Ieremeieva that her life would not change in any way and that all the arrangements that she had with Igor would be maintained. Such representations are not congruent with portrayal of monies having been paid from a Trust, as the receipts presented to the claimants for signature allegedly memorialized.

[67] Mr. Ivakhiv says that 'as a gesture of goodwill' towards Igor's family, Mr. Lagur made substantial payments to Roman and Sofiia out of his personal finances after Igor's death. The claimants contend, if I understand them correctly, that this is a story merely designed to fit with the applicants' portrayal of the Continuum group as suffering cash constraints and insufficient profits for distribution as dividends. The claimants also give evidence that Mr. Ivakhiv informed them that a written will had been found for Igor. The claimants say they told Mr. Ivakhiv that this was not true, and after this no will document was produced, nor mentioned again, and none was registered in Ukraine. The inference to be drawn from this (if correct) is that Mr. Ivakhiv was not telling the truth. Obviously, this can only be ascertained at trial, but at this point I cannot discount that Mr. Ivakhiv may indeed have said this, and that at best he may have been mistaken, and at worst, lying.

[68] Mr. Ivakhiv goes to some lengths to deny that he and Mr. Lagur exercise control over the Continuum group or have any active role in managing the businesses or the operating companies. Such denial is unreal in the extreme, say the claimants. It flies in the face of public perception in Ukraine and is also contradicted by the *de facto* situation experienced by the Receiver in his enquiries concerning the Continuum group.

[69] The claimants say it is clear that Mr. Ivakhiv and Mr. Lagur are heavily involved in the business and are responsible for shaping its future direction; they have adjacent offices next to Igor's former office (which they say they have invited Roman to take) and Mr. Ivakhiv claims that they wanted to involve Roman and "*show him the ropes*". This itself is commensurate with their having a senior and effective level of influence and decision-making power. Mr. Ivakhiv also refers to the intense loyalty of management; while he does so in the context of loyalty to Igor, the claimants say it is clearly to be inferred that such intense loyalty applies also to Mr. Ivakhiv and Mr. Lagur.

[70] One of the matters of complaint raised by the claimants is 'value shifting', meaning steps whereby the interests of Mr. Lagur and Mr. Ivakhiv in Continuum are enhanced relative to the interests of Igor and his beneficiaries. The claimants say an important example of this conduct concerns pre-emption rights with respect to the shares in WOG Holding Ltd . They say WOG Holding Ltd is the most valuable part of the trust assets. Igor's share of WOG HoldingLtd was held through his company Yudelle (which was purportedly settled into the Trust) and he had a representative director (Mr. Ioannou) on the board of WOG Holding Ltd (as did each of the four Continuum business partners).

[71] In brief, the following appear to be the material events as alleged by the claimants:

[72] At some point in 2016 one of the four business partners (Mr. Dyminsky) started negotiations with Mr. Ivakhiv and Mr. Lagur to sell them his 25% interest in WOG Holding Ltd.

[73] Immediately prior to Estera's appointment as trustee (and it is to be inferred incidental to that appointment) Mr Ioannou's appointment as director of each of Yudelle and WOG Holding Ltd was terminated (on 30th May 2016) thereby taking away the protection Igor had put in place during his lifetime. A Mr. Potamitis was appointed as a director of Yudelle on 30th May

2016, but he was not appointed as a director of WOG Holding Ltd. Accordingly, the Trust lost its nominee director on the board of WOG Holding Ltd.

[74] Yudelle/Estera was served with a notice, but this appears to have been after the negotiations between Mr. Dyminsky, Mr. Ivakhiv and Mr. Lagur had concluded. Yudelle had pre-emption rights under the Articles of Association and/or a shareholders' agreement in respect of WOG Holding Ltd with respect to the proposed transfer of Mr. Dyminsky's shares.

[75] Estera did not consider it appropriate to consult with the beneficiaries concerning this significant decision. Instead, Estera sought the advice of Mr. Ivakhiv as protector, which he gave in circumstances where he was clearly in a position of conflict.

[76] Yudelle, through Estera, thereafter decided not to exercise its pre-emption rights and Estera permitted Mr. Ivakhiv and Mr. Lagur to increase their shareholdings by 12.5% each through the acquisition of Mr. Dyminsky's 25% share – without so much as having canvassed the views of the alleged Trust beneficiaries. It is, upon its face, difficult to understand how that could have been in the beneficiaries' interests.

[77] Mr. Potamitis was appointed as a director of WOG Holding Ltd on 13th November 2017 as Yudelle's nominee, some four months after the issue of the current proceedings. The claimants say this appears to have been an *ex post facto* attempt by Mr. Lagur and Mr. Ivakhiv to regularize the situation (after they had achieved their aim of taking Mr. Dyminsky's shares, to the exclusion of Igor's heirs).

[78] In the circumstances, the claimants submit it is clear that Mr. Ivakhiv and Mr. Lagur exploited their position at the expense of the Trust and Igor's beneficiaries.

[79] The claimants say the defendants' conduct of the dispute has been punctuated by tactical manoeuvrings designed to inhibit, delay or extinguish the claimants' ability to prosecute the proceedings. In particular, such conduct has been designed to deprive the claimants of funding and information and cause distraction from the progression of the claims.

[80] The claimants say a key aim of the fabrication of the Trust Instrument was to deprive Roman and Mrs. Ieremeieva of control of their inheritance (with the additional purpose that the applicants could then exploit that lack of control for their own benefit). The defendants have squeezed the claimants' access to funds through depriving Roman and Sofiia entirely from receiving any benefit from the Continuum group. As soon as Mrs. Ieremeieva and Roman challenged the Trust, payments for the benefit of Roman and Sofiia stopped. They have received nothing in over two years (since September 2016) and this in circumstances where the Trust was supposedly created for their benefit. The claimants contend that the assertions of Mr. Ivakhiv that he and Mr. Lagur seek to act in the best interests of Roman and Sofiia ring hollow.

[81] The claimants challenge Mr. Ivakhiv's and Mr. Lagur's version of events that the companies in the Continuum group have not been able to generate cash for shareholders. The claimants treat this as self-serving cynical hand-wringing on the part of Mr. Ivakhiv and Mr. Lagur. The claimants give evidence that Mr. Ivakhiv had spoken of a previous attempt by Mr. Dyminsky to sell his 25% interest in the Continuum group and that on that occasion the other partners shut down all cash flow to Mr. Dyminsky to make him negotiate with them. The claimants say this is the same tactic that Mr. Lagur and Mr. Ivakhiv have adopted against the claimants and Sofiia. Moreover, the claimants observe that Mr. Ivakhiv and Mr. Lagur were sufficiently confident in the strength of the business to buy out Mr. Dyminsky.

[82] The claimants say Mr. Ivakhiv and Mr. Lagur from the outset used Estera as a mouthpiece for aggressive defence of the integrity and validity of the Trust. This included launching an attack on Mrs. Ieremeieva personally (and the nature of her relationship with Igor) and making broad unparticularised assertions of the alleged involvement of Mr. Kolomoiskyas part of a conspiracy (what the claimants call "the Corporate Conspiracy Fiction").

[83] The claimants remark that not only did Mr. Ivakhiv and Mr. Lagur instruct Estera and its lawyers in exactly what to say and what tactical approach to adopt, but they also gave specific instructions and wording as to the text of correspondence from Estera and its lawyers. This interference with the trustee even went to the length of controlling the

information and documentation provided to the claimants in the course of correspondence prior to issue.

[84] The claimants say examples of the effect of this control include a misleading statement in a letter from Messrs. Appleby dated 29th April 2017, on behalf of Estera, concerning the whereabouts of the Trust Instrument, that 'the original R&S Trust Instrument will be retained in the trustee's safe custody in the BVI upon receipt' (emphasis added), when it was known (on the defendants' case) that it had been stolen and that there was no prospect of it being provided to Estera.

[85] The claimants allege that the defendants have been obstructive in failing to reply to requests for further information and in refusing and delaying the provision of disclosure.

[86] The claimants say that Roman and Mrs. Ieremeieva need to obtain documents to protect their assets. In order to frustrate their efforts Mr. Lagur, Mr. Ivakhiv and their lawyers invoke the Corporate Conspiracy Fiction. Estera and its lawyers, taking their lead from Mr. Lagur and Mr. Ivakhiv, have followed suit. Mr. Kolomoisky depiction and demonisation by Mr. Lagur and Mr. Ivakhiv is, say the claimants, a gross exaggeration devised by Mr. Lagur and Mr. Ivakhiv after Igor's death for tactical purposes. It in no way reflects the true relationship between Igor and Mr. Kolomoisky: evidence at trial will show that whilst their relationship had its ups and downs it was in general not unfriendly. The claimants say the Corporate Conspiracy Fiction is a tactical distortion intended to fetter the ability of Mrs. Ieremeieva and Roman to take effective action to obtain documents and protect assets. The claimants say further that the defendants have evaded and delayed providing documents and answers to reasonable questions for no good reason.

[87] The claimants say another way in which the defendants have caused distraction and diversion of resources is through a number of proceedings brought against the claimants (or at least Mrs. Ieremeieva) in Ukraine.

[88] The most significant of the Ukrainian claims is a claim by Igor's brother Yevgen against the claimants and Sofiia for over US$1.25million relating to Flat 94, which is a residential

property in Kiev. It had been owned by Igor. Roman lives there, and Mrs. Ieremeieva and Sofiia as Igor's heirs also have an interest in it. According to Mr. Ivakhiv, Flat 94 was subject to a charge in favour of PJSC Ukrsotsbank. Also according to Mr. Ivakhiv, Ukrsotsbank would have enforced its collateral following Igor's death. Mr. Lagur was worried about Igor's family and particularly Sofiia's registered place of residence, so he sought to find a way to ensure PJSC Ukrsotsbank did not enforce against Flat 94. Ukrsotsbank insisted that the debt could only be repaid by Igor's heirs. To circumvent the problem, Mr. Lagur arranged for the debt to be assigned to a different bank, and Yevgen then entered into a guarantee to repay the debt. Mr. Lagur then personally provided funds to Yevgen to pay off the mortgage. Mr. Lagur would have been content to let his debt lie with Yevgen, but when Mrs. Ieremeieva began consorting with Mr. Palytsia and Mr. Kolomoisky, Mr. Lagur sought to recover the debt from Yevgen and Yevgen in turn brought a claim against Igor's heirs to recover the money paid.

[89] The claimants do not accept this version of events, nor that any of these steps were proper. They point out that on 31st March 2016, without the knowledge or consent of Igor's heirs, PJSC Ukrsotsbank assigned the loan secured on Flat 94 to a bank called BIS bank and BIS bank opened an account in the deceased Igor's name. BIS bank is part of the Continuum group. Then, all on the same day, again all without the knowledge and consent of Igor's heirs, Yevgen claims to have entered into a guarantee in respect of the loan in favour of BIS bank, monies were then transferred from Yevgen's account at BIS bank to Igor's account and BIS bank then withdrew the funds to settle the loan. Yevgen is not one of Igor's heirs, is not independently wealthy, and he had no authority from any of his heirs to act in this way. On 9th November 2017, that is four months after the claimants commenced these proceedings, Yevgen filed a claim against the claimants and Sofiia to recover the money. He has obtained a first instance judgment in his favour (which the claimants and Sofiia say they intend to appeal) and a form of legal arrest over the flat which prevents the heirs from alienating it.

[90] The claimants submit that it is apparent from an explanation given by Mr. Ivakhiv that it was Mr. Lagur who ultimately caused the issue of those proceedings.

[91] The circumstances and timing of the other claims also support a clear inference, say the claimants, that they are part of a concerted effort to deprive the claimants of the ability to fight the claim in BVI:

(1) Mr. Ivakhiv's wife has brought a claim to set aside the transfer to Mrs. Ieremeieva of the company through which she operates her medical clinic. The claimants say this is a direct assault on her livelihood. The transfer was made 10 years ago, whereas the claim was issued on 21st November 2017.

(2) Ms. Gavryliuk has brought a claim against Mrs. Iermeieva concerning Igor's car. It had been registered in Ms. Gavryliuk's name. Mrs. Ieremeieva had sold the car with, say the claimants, Ms. Gavryliuk's cooperation. It was sold 16 months prior to issue of the claim, which was done a mere two days after Mrs. Ivakhiv filed her claim, on 23rd November 2017.

(3) A further claim was brought against Mrs. Iermeieva's company for an alleged debt by a company connected to the Continuum group. This was issued a mere four days later, on 27th November 2017.

[92] Mr. Ivakhiv has complained that the claimants have provided a one-sided picture of the Ukrainian proceedings. The claimants acknowledge that Mrs. Ieremeieva has issued various claims concerning matters such as the seizure of Igor's personal belongings, business records and electronic devices by Continuum personnel while he was in hospital in a coma. The claimants say such proceedings were necessitated by the actions taken by the defendants and those acting on their behalf.

[93] The claimants do not dispute that the conditions of CPR 24.3(a) and (g) are met. But they argue that it would not be just in all of the circumstances of the case for the Court to make an order for security.

[94] The claimants submit that the Court needs to consider the context of the case, which is highly unusual for two reasons:

(1) Win or lose, Roman will have very significant assets available to him which are the subject of the proceedings. The claimants estimate that Igor's ultimate interest in the Continuum group was worth around US$150million to US$200million, the total group value being estimated at between US$600million to US$800million. Even if Roman loses the action he will be found to be one of two of the beneficiaries of a very valuable trust (assuming that the defendants have not completely denuded it of value).

(2) The claimants' issue is liquidity and access to money, not that they have no assets. They will ultimately be able to meet an adverse costs order if one is made but cannot provide security at present. There is no risk of a lack of assets.

[95] The claimants also submit that there is already effective security in place. On the defendants' case Roman and Sofiia are the only beneficiaries of an irrevocable discretionary trust. Accordingly, there are already very significant assets held within the Trust which (if Mr. Ivakhiv and Mr. Lagur were successful in their defence) would be within the jurisdiction.

[96] There is no serious suggestion that the assets of the Trust would be insufficient to satisfy any award of costs. Mr. Ivakhiv makes some sweeping statements about the state of the economy in Ukraine and the effect on companies within the Continuum group. The defendants seek to use that to challenge the value of the trust assets and the ability to realise them. However, the group of companies own very substantial businesses in Ukraine. Mr. Lagur and Mr. Ivakhiv recently bought out Mr. Dyminsky and are (they say) interested in buying out Roman and Sofiia. They would only have done so if the companies had substantial value. In addition, they have recently agreed in principle to buy out Igor's 25% interest in the Continuum group and the parties are corresponding as to the process that should be adopted to allow that to happen. Set against this, any lack of dividends is immaterial, particularly when it is within their power to pay dividends.

[97] Further, there is no risk of a dissipation of the assets in favour of the claimants. A receiver has been appointed over the trust assets. However, in reality the defendants continue to

exercise control over the underlying corporate entities which operate the relevant businesses.

[98] The defendants seek to make technical points as to the lack of absolute certainty of Roman receiving sums from the Trust. However:

(1) From the claimants' perspective such arguments sit ill in the defendants' mouths, because they reflect the very motivation of keeping the claimants out of their inheritance through the fabrication of the Trust.

(2) There is a self-serving unreality about the defendants' points. They pay scant regard to the fact that Roman and his sister are the only beneficiaries of the Trust and they fly in the face of Mr. Ivakhiv and Mr. Lagur's insistence as to Igor's wishes to benefit Roman and Sofiia.

(3) In any event, it is a matter of justice. The fact is that there are very substantial interests in very substantial businesses in which Roman unquestionably has a beneficial interest. The defendants' attempts to manufacture every conceivable hurdle to prevent Roman benefitting from that interest does not detract from that.

[99] The claimants submit that there is no material difficulty with enforcement in Ukraine. Even apart from the existence of the trust assets within the jurisdiction, there are further assets against which a costs order could be enforced. The claimants own substantial assets within Ukraine, albeit that they cannot be applied to fund the proceedings, since they are illiquid and/or necessary for the claimants' livelihood.

[100] The most significant assets are Mrs. Ieremeieva's eye surgery business and the claimants' interests in real property (in particular in their property at Flat 94). The defendants complain that there is insufficient evidence of these assets, but the key consideration in this respect is whether there is any material difficulty or cost occasioned by enforcement in Ukraine.

[101] The claimants submit that there would not be any particular difficulty or expense in enforcing a costs award in Ukraine. Both parties have adduced Ukrainian law opinions. It appears

from those opinions that recognition and enforcement of a BVI costs order depends on the principle of reciprocity. The principle of reciprocity is assumed unless proven to the contrary by the defendant in Ukraine. There are certain grounds upon which a Ukrainian court may refuse to allow the recognition and enforcement of a foreign court decision but none seem likely to apply here. Insofar as there is a divergence between the Ukrainian opinions, the court is asked to bear in mind the fairly bald and high-level nature of the defendants' first opinion. It is only now (with the consequential difficulty for the claimants of obtaining any further substantive response from Ukrainian lawyers) that the defendants' Ukrainian lawyer condescends to detail on the principle of reciprocity, timing and costs. Further, the court should approach the evidence of Ukrainian law with caution, in that both sides are relying upon their own Ukrainian lawyers, not independent experts. The claimants submit it is clear that there is a recognition and enforcement procedure to which a BVI costs order would be amenable. As to the alleged risk of rebuttal of the principle of reciprocity, it is submitted that this is an artificial concern. The claimant's Ukrainian lawyers say they have been unable to find such a ruling in the Ukrainian register of court decisions, whereas the defendants' lawyers claim to have found one case.

[102] In terms of the time enforcement could take, the claimants' lawyers speak of a total of five to six months including appeals. The claimants say the defendants' lawyers rely on particular extreme cases, but even then, some of their examples are not too different from a period of six months.

[103] The claimants submit that the timing of any recognition and enforcement proceedings is not materially worse than the time-scale of enforcement proceedings in BVI.

[104] In terms of the cost, the claimants' lawyers postulate modest costs and fees of about US$10,000 for recognition and enforcement proceedings, including appeals. The claimants say the defendants' lawyers adopt an extreme figure of up to or over US$100,000 for all fees including appeals in a 'high-stakes' case lasting years. However, the claimants point out that the defendants' lawyers do not attempt to break this figure down in any way.

[105] The claimants argue that furthermore, all parties are resident in Ukraine, so Mr. Ivakhiv and Mr. Lagur will not have to litigate in a foreign country to recover their costs if they win. There would be no particular difficulty for the defendants to enforce in Ukraine.

[106] The claimants urge that an order for security would stifle the claim.

[107] The claimants say they do not have access to assets or any form of funding to meet an order for security. If an order for security for costs is made they will be unable to continue with a genuine claim.

[108] The claimants say the defendants complain that the claimants have not given enough information about their assets and that they are misleading the court and misrepresenting their poor financial position. The claimants say there is little information to give, since the family wealth is and was principally tied up in the Continuum group.

[109] The claimants say allegations of misrepresentation on their part are baseless and illustrative of the defendants' approach to the claimants and the proceedings. The claimants say the defendants make wild allegations that Igor held millions of United States Dollars in cash and that Roman driving a 2016 registered Toyota RAV 4 motor-car is evidence of a luxurious lifestyle. The claimants say there is no significant wealth upon which the claimants can call and they did not receive any such cash. On the contrary, say the claimants, Mr. Ivakhiv's assertions beg the question as to where any such cash has been diverted instead of being passed to Igor's heirs.

[110] The claimants argue that if the defendants are right and the claimants in fact do have very substantial cash at their disposal, then it is unclear why the claimants have had to resort to seeking funding from third parties for the litigation.

[111] So far as funding from third parties is concerned, the claimants say the Funder is not willing to provide the security and the claimants cannot compel it to do so. The claimants submit that there is nothing unusual or unjust in that position.

[112] The claimants submit that they have a demonstrably strong case. They have already obtained the appointment of a receiver, the continuation of the injunction, the setting aside of the conversion to VISTA and orders for production of information by Estera.

[113] The claimants say it is the defendants' conduct which has deprived the claimants of the ability to fund the proceedings or make a payment by way of security. The claimants have been denied control of their assets. This is a clear case of an application for security being used as an instrument of oppression, in tandem with the proceedings in Ukraine.

[114] The claimants argue that if the claim were to be stifled by an order for security then the defendants would profit from their own misconduct and a demonstrably strong claim would be killed off. That would be a wholly unjust result, in particular where, win or lose, Roman has very substantial interests in the Continuum Group and the value therein is under the control of Mr. Ivakhiv and Mr. Lagur and (so far as he is able to fulfil his function) the receiver.

[115] The claimants say Mr. Ivakhiv and Mr. Lagur are conducting the dispute in an obstructive, oppressive and overbearing manner. The parties are on a vastly unequal footing. Mr. Ivakhiv and Mr. Lagur have the considerable financial backing of the Continuum group, control of the assets and substantial political influence in Ukraine. The security application is a further assault on the ability of the claimants to fight these proceedings. The playing field does not need to be tipped any further in the defendants' favour.

[116] The claimants contend that even apart from the lack of difficulty in enforcing a costs order, there is no injustice to Mr. Ivakhiv and Mr. Lagur in the absence of security. Mr. Ivakhiv and Mr. Lagur agreed to accept office in relation to a trust created under BVI law. The Territory of the Virgin Islands is the appropriate and only forum for the current dispute. In the circumstances it is a transparent and cynical ploy for Mr. Ivakhiv and Mr. Lagur to seek an order that the claimants should provide security in respect of their costs.

Discussion as to security for costs

[117] In accordance with the principles set out in Keary Developments Ltd v Tarmac Construction Ltd,[10] the court has a complete discretion whether to order security, and accordingly it will act in the light of all the relevant circumstances.

[118] On the facts of this case I am satisfied that it is probable the claimants will be deterred from pursuing their claim by an order for security. The fact that they have resorted to a third-party funder itself indicates that the claimants do not have the liquid resources available to pursue their claim. That indication is strengthened by the apparent fact (which the claimants do not deny) that the claimants would be required to give up 25% of the value of their shareholding in favour of the Funder, should the claim be successful. It appears to be uncontroversial that this 'price' for the funding is worth considerably more than the defendant's estimated costs of these proceedings. It is reasonable to infer that the claimants have a genuine need for third-party funding before accepting such a high price. The claimants' costs of these proceedings are likely to be similar to the defendants' costs.

[119] I am not persuaded by the applicants' argument that the third-party funder is likely to contribute an amount for security for costs. That is pure speculation on the defendants' part, in circumstances where they acknowledge that they do not know much about the Funder. It is not uncommon for third-party funders to make it a condition of providing funds that, as a matter of contract, they do not agree to bear the risk of adverse costs orders. The applicants ask the Court to assume the Funder's motives and that the Funder has sufficient funds also to cover the defendants' costs, but there is insufficient evidence for me to do so. There is no evidence before the Court as to the Funder's means. I am not in a position to decide that the Funder is likely to come up with the money to post security for costs as the applicants submit. I would stress that I make no rulings now, nor assumptions, whether or not the Funding Agreement is champertous. That is an issue for another day.

[10] [1995] 3 All ER 534, at 539h-540j.

[120] There is also the matter of risk to the Funder. If the applicants are right that the claim is unmeritorious, the Funder would stand to lose all the money he has invested in the proceedings on behalf of the claimants. That will probably be a considerable sum. There is no evidence that the Funder is prepared to risk more than this. Indeed, there is an inference to the contrary: if, as seems plausible, the claimants' evidence is correct that the Funder does not agree to bear the other side's costs, that itself indicates that the Funder is not prepared to risk more than the claimants' own costs of the proceedings.

[121] However, that the claim is likely to be stifled is not of itself a sufficient reason for declining to order security. The Court must carry out a balancing exercise. It must weigh the injustice to the claimants, if prevented from pursuing a proper claim by an order for security, against the injustice to the defendants, if no security is ordered and at the trial the claimants' claim fails and the defendants find themselves unable to recover from the claimants the costs which have been incurred by them in their defence of the claim. As part of this balancing exercise, the court will be concerned not to allow the power to order security to be used as an instrument of oppression, particularly when the failure to meet that claim might in itself have been a material cause of the claimants' impecuniosity. But it will also be concerned not to be so reluctant to order security that it becomes a weapon whereby the impecunious claimant can use its inability to pay costs as a means of putting unfair pressure on the more prosperous defendant.

[122] Addressing this last criterion first, there is no evidence before the court that the claimants are trying to use their alleged inability to pay costs as a means of putting unfair pressure upon the defendants.

[123] It is squarely in issue whether the applicants are seeking to use their application for security for costs as an instrument of oppression. In my judgment they probably are. There is, in my view, a likelihood of considerably more than 50% that the applicants are doing so. A number of factors, taken together, contribute to this conclusion:

(1) It is curious that Mr. Ivakhiv and Mr. Lagur should take a defensive rather than a neutral position on the issue whether the Trust is a sham, and an aggressively defensive position at that. They do so both substantively and on procedural grounds. The latter include applying for the claim to be struck out as an alleged abuse of process. I do not suggest that Mr. Ivakhiv and Mr. Lagur are not entitled to take these positions. They clearly are. But to all appearance at this stage they have some personal interest in defending the Trust from the allegations that it is a sham. This is in contrast to a neutral position, in which Mr. Ivakhiv and Mr. Lagur could work with (as opposed to against) the claimants to have the authenticity of the Trust investigated, with a self-evident substantial saving in costs all round. This aspect of the manner in which Mr. Ivakhiv and Mr. Lagur have conducted the litigation raises concerns that they are using this application as an instrument of oppression.

(2) There is clearly an animus between the applicants and Mrs. Ieremeieva, and this appears to have started almost immediately following Igor's accident, if it did not exist before. To all appearance Mr. Ivakhiv and Mr. Lagur seem intent upon preventing Mrs. Ieremeieva from introducing perceived enemies to their dealings. The claimants' funder appears to be such a person.

(3) It is also curious that despite Mr. Ivakhiv and Mr. Lagur apparently having Igor's key information technology devices at their disposal they appear to have made little or no effort to investigate who prepared the Trust Instrument for Igor and his reasons for doing so (if he indeed produced it). I accept the claimants' contention that it appears reasonably certain that Igor himself did not prepare it. If he did, it must be very probable that he left a communication trail.

(4) It is highly unlikely that the timing of all the legal proceedings commenced in Ukraine against Mrs. Ieremeieva, within a period of a single week in November 2017, was coincidental. All those proceedings were brought by persons connected with, or who had dealings with, Mr. Ivakhiv and Mr. Lagur. Irrespective of the merits of the individual claims, and whether or not they have been upheld at first instance, the

timing suggests a strategy of legal pressure against Mrs. Ieremeieva on the part of Mr. Ivakhiv, Mr. Lagur, and the Continuum group under their ultimate control. That also applies to the matter of Flat 94, where Igor's brother appears to have taken it upon himself, at Mr. Lagur's instigation, to pay off the mortgage on the property, without Igor's heirs' authorization or consent, in order to claim reimbursement from them. The funding for the brother's payment appears to have been provided by Mr. Lagur, adding further to the impression that this was part of a pressure strategy.

(5) Mr. Ivakhiv's and Mr. Lagur's own theory that the claimants are consorting with rival businessmen whose interest is in taking over the Continuum group discloses a plausible motive for wanting to stifle the claim.

(6) The claimants make a credible allegation that Mr. Ivakhiv and Mr. Lagur were prepared to ignore the Trust if the claimants would agree to terms of a shareholders' agreement. On Mr. Ivakhiv's and Mr. Lagur's own case they simply had no standing to take such a position. This suggests that Mr. Ivakhiv and Mr. Lagur were using the Trust as a bargaining chip in circumstances where they, as shareholders in the Continuum group, had a personal interest in the result of the negotiation. This smacks of manipulation to further their own interests. Stifling the claim would serve precisely the same interests.

(7) This is also a case where the defendants' failure to meet the claimants' claim is in itself a material cause of the claimants' impecuniosity. The claimants' case is that well before now they would have inherited Igor's shares in the Continuum group as his heirs and these are worth many millions of United States Dollars. It is the defendants' allegations as to the existence and authenticity of the Trust that have blocked that. Also, the abrupt cessation of maintenance payments following the claimants' refusal to sign acknowledgments of receipt has, on the claimants' case, also deprived Roman and Mrs. Ieremeieva (as Sofiia's legal guardian) of money.

[124] I am satisfied that, in all the circumstances, it is probable that the claim would be stifled if the order for security sought by the defendants is granted.

[125] I must also have regard to the claimants' prospects of success, but without going into the merits in detail unless it can clearly be demonstrated that there is a high degree of probability of success or failure. Upon the evidence before me, the claimants have at least a good arguable case. On the evidence they have presented, I agree that there are many distinctly odd features about the circumstances of the alleged Trust. It seems unlikely that Igor should have produced an English language Trust instrument without discussing it with Roman, or without leaving any apparent communication trail. It also seems strange that Igor should have made no provision for himself in the Trust Instrument, if the Trust was real. Its reality is further called into question by the fact that, apparently, Igor conducted himself as if it did not exist. It is curious also that Mr. Ivakhiv and Mr. Lagur conducted discussions with the claimants after Igor's riding accident on the basis that there was no Trust, even though they must have known of their ostensible role in connection with it. It is also, upon its face, extraordinary that Estera, which purports to be an experienced professional trust company, should not have kept the beneficiaries informed about conversion of the Trust to a VISTA and further, did not consult the beneficiaries concerning the rights of pre-emption over Mr. Dyminsky's shares. When consulting only the protector, Estera, must or should have known that Mr. Ivakhiv was personally conflicted. Without going into the merits in detail, the least that can be said is that there are many factors which call for investigation in this case such that, all things being equal, the Court should be concerned not to allow it to be stifled by an order as to security for costs.

[126] I accept that the claimants would suffer injustice if their claim is stifled by an order for security for costs.

[127] I must consider not only whether the claimants can provide security out of their own resources to continue the litigation, but also whether they can raise the amount needed from other backers or interested persons.

[128] On the claimants' evidence, the answer is in the negative in both respects. Mr. Ivakhiv and Mr. Lagur complain that the claimants do not give sufficient details about their means and

details about their assets. I note however that the claimants have, to all appearance, subjected themselves to a funding agreement with a price for the funding which is likely to exceed their legal costs many times over. Crucially, that suggests a lack of options available to the claimants. The claimants' evidence that their difficulty is with liquidity is consistent, understandable and plausible. This is supported by the fact that they no longer have Igor providing for their day-to-day financial needs, that the maintenance payments have ended, that the mortgagee's forbearance over repayment of the loan secured on Flat 94 has been exchanged for a claim for immediate payment by Igor's brother, and that Mrs. Ieremeieva is embroiled in a multiplicity of legal proceedings, which inevitably entail legal costs.

[129] Concerning the degree to which enforcement by Mr. Ivakhiv and Mr. Lagur of a costs order in their favour might be problematic, on the evidence before me, I am not satisfied that it would be 'so problematic' that an order for security should be made. Although there is a risk that the applicants will not be in a position to enforce an order for costs against the claimants in Ukraine, I am not satisfied that it is 'real'. I am not satisfied that there would be 'serious obstacles' to enforcement, nor that such enforcement would entail any significant costs burden. On principle such enforcement should be possible on grounds of reciprocity. There is no cogent evidence that suggests it would not be possible, nor that there is any degree of likelihood or probability that enforcement would be refused, beyond the fact that the outcome of litigation and the amount of time it takes always carries an element of uncertainty.

[130] I accept Mr. Ivakhiv's and Mr. Lagur's contentions that costs and complications, and thereby delay, can be raised exponentially. That goes for enforcement proceedings in this jurisdiction too. There is no evidence of any particular difficulties in enforcing in Ukraine, nor anything about enforcement procedures in Ukraine which make them financially burdensome or prone to delay. I accept the claimants' submission that the applicants' lawyers do not explain their high estimate, thus, without more, it is no more than a bare assertion. Had they provided a list of anticipated tasks and/or steps, with an indication of the time and cost each requires, then there would have been some material on which the Court could take something of an informed view.

[131] In terms of the parties' respective evidence of Ukrainian law, the most helpful aspect which emerged from it was that there are relatively few, if any significant, cases where enforcement has been refused where reciprocity is established. Beyond that, the fact that both sides seek to rely upon legal opinions of their own legal representatives entails that this Court cannot be reasonably sure which side's evidence is to be preferred. I am thus not persuaded by Mr. Lagur and Mr. Ivakhiv that enforcement would be so problematic in Ukraine that, on balance, an order for security for costs ought to be made.

[132] A related consideration is that I am not persuaded that Mr. Ivakhiv and Mr. Lagur would, in practice, need to enforce a costs order in Ukraine. That weighs against making any order as to security for costs, even in a reduced amount. I accept their legal analysis that Mrs. Ieremeieva is not a beneficiary of the Trust and that Roman is only a discretionary beneficiary. I also accept that the trustee is under no obligation to make a distribution to Roman to enable him to discharge a costs order. Mr. Ivakhiv's and Mr. Lagur's reasoning is impeccable in this regard. The flaw in this analysis is that it ignores the reality (upon the claimants' evidence, which I find plausible) of

(1) Igor's conduct as if the Trust never existed; and
(2) Mr. Ivakhiv and Mr. Lagur having conducted themselves also as if there was no Trust before they produced the Trust Instrument; and
(3) Maintenance payments being made, before they were stopped, with no reference to the Trust; and
(4) Mr. Ivakhiv and Mr. Lagur being prepared to ignore the Trust if the claimants would enter into a shareholders' agreement with them; and thereby
(5) Mr. Ivakhiv's and Mr. Lagur's implicit representation that they have effective power to disregard or insist upon strict compliance with the Trust; and
(6) Estera's apparent subservience to the will and interests of Mr. Ivakhiv and Mr. Lagur.

[133] The claimants' evidence is such that they raise serious doubts about Mr. Ivakhiv's and Mr. Lagur's good faith. These are credible allegations on the material before me.

[134] In the same light it is difficult to treat as convincing Mr. Ivakhiv and Mr. Lagur's tales of economic stringency within the Continuum group. It is clearly a very diverse and valuable business group. The evidence is that until Igor's incapacity and death pay-outs had been regular and frequent. Such pay-outs did not necessarily come solely from dividends. There is no evidence that that was the case. There is no evidence that Mr. Ivakhiv and Mr. Lagur themselves are suffering financially. Indeed, they wanted to and did increase their respective shareholdings in the group by buying out Mr. Dyminsky. Had they had any difficulty in doing so, and in order to keep any alleged hostile competitors from acquiring a share, it is reasonable to suppose that they would have suggested to the trustee that perhaps the Trust could acquire a share. But no. That apparently was not necessary. They wanted to, could, and did buy those shares for themselves. As the claimants have submitted, clearly the group had value for them and they wanted a greater share of it. I am satisfied for present purposes, taking into consideration both sides' evidence in this application, that the reality of the matter is that if Mr. Ivakhiv and Mr. Lagur were to be so inclined, they would have no genuine difficulty raising sufficient cash from the assets held through the Trust on behalf of Roman to liquidate adverse costs orders. The evidence discloses no good reason why the trustee should decline to exercise its discretion to do so, particularly since it must have due regard to the interests of Roman as one of only two beneficiaries. Furthermore, there appears to be no reason why the receiver should object to this either.

[135] Concerning the claimants' argument that in a case based on residency compelling reasons for security are required where the defendants have effectively played a part in the selection of BVI as a jurisdiction, e.g. by accepting office in respect of a BVI trust, I am not persuaded that this is a significant factor in this case. If the applicants are right that it was Igor who created the Trust, it could be that their involvement was only peripheral, and they may have had nothing to do with selection of the BVI as a jurisdiction.

[136] This does appear to be a case where the parties are not on an even footing. I accept the claimants' submission in this regard. This is a factor which weighs against making any order for security as to costs in this case.

The application to inspect the funding agreement

[137] The applicants have asked and the claimants have refused to permit the applicants to inspect the Funding Agreement. The claimants made reference to it in their affidavit filed in support of an application for *ex parte* interlocutory relief. They did so in the context of their duty to give full and frank disclosure. They disclosed that agreement, apparently for completeness, without apparently relying upon its contents to support the application. The learned judge did not require to see it before granting the relief sought.

[138] The claimants also refer to the Funding Agreement in their Reply to the applicants' Defence, at paragraph 7 of their Reply. The context in which the claimants do so is by way of admissions to allegations made by the applicants in their Defence as to the existence and circumstances of the Funding Agreement, under reserve as to its relevance. In other words, the claimants here too do not rely upon it, although the applicants purport to do so. Where the applicants mention it, it appears to be in a peripheral context, raising the prospect that the applicants are artificially mentioning it to create and trigger a disclosure obligation on the part of their opponent.

[139] The Funding Agreement is also, of necessity, referred to in the claimants' witness statements in response to these applications.

[140] The claimants maintain their refusal in response to this application, but they no longer maintain that the entire document should be treated as privileged.

CPR 28.16

[141] CPR 28.16 provides as follows:

> "1. A party may inspect and copy a document mentioned in –
>
> a. an affidavit;
>
> b. an expert's report;
>
> c. a statement of case;
>
> d. a witness statement or summary; or

e. the claim form.

2. A party who wishes to inspect and copy such a document must give written notice to the party who, or whose witness, mentioned the document.

3. The party to whom the notice is given must comply with the notice not more than 7 days after the date on which the notice is served."

[142] The application of CPR 28.16 was considered by the Court of Appeal in Renaissance Ventures Ltd v Comodo Holdings Ltd. The Court stated:

> "(. . .) rule 28.16 of the CPR provides that documents that are referred to in a statement of case, affidavit, witness statement or summary must be disclosed. The logic of this rule cannot be doubted. If a party refers to a document in his pleadings or written evidence, he must be taken to be relying on that document and must produce it if requested by any other party in the case. The requesting party under this rule does not have to prove that the document is directly relevant to the case."[11]

The Court of Appeal explained that even a single reference to a document, even indirect, such as 'he wrote to me' renders it liable to be disclosed.[12] By disclosure, it is clear that the Court of Appeal was referring to a person's right to inspect and copy a document, as stated in CPR 28.16, not disclosure in the sense of confirming the document exists.

[143] The Court of Appeal recognized that the right to inspect and copy is not absolute. Valid objections could be raised, for example on grounds of privilege or lack of control.[13] But the Court of Appeal did not otherwise explore the limits to this rule.

[144] Learned Queen's Counsel for the applicants submits that in England too the corresponding provision of the English CPR (31.14(1)) does not confer an unqualified right of inspection. The English provision is in materially the same terms.

[145] In National Crime Agency v Abacha, the English Court of Appeal held that:

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[11] Renaissance Ventures Ltd & Anor. v Comodo Holdings Ltd. BVIHCMAP2018/0005 and 0008 (delivered 13th July 2018, unreported) at paragraph [27] (Webster JA [Ag.]).

[12] Renaissance Ventures Ltd & Anor. v Comodo Holdings Ltd. BVIHCMAP2018/0005 and 0008 (delivered 13th July 2018, unreported) at paragraph [28] to [30] (Webster JA [Ag.]).

[13] Renaissance Ventures Ltd & Anor. v Comodo Holdings Ltd. BVIHCMAP2018/0005 and 0008 (delivered 13th July 2018, unreported) at paragraph [31] (Webster JA [Ag.]).

> "... the right to inspect under CPR r.31.14 is not, however, unqualified; it is instead subject to CPR rules based limits, which may be invoked by the party resisting inspection — the burden resting on that party to justify displacing the general rule. Thus, 'proportionality' is part of the overriding objective CPR r.1.1(2)(c) and, in an appropriate case, it would be open to a party to oppose inspection on the ground that it would be 'disproportionate to the issues in the case': CPR r.31(3)(2). In determining any such issue of proportionality, a Court would very likely have regard to whether inspection of the documents was necessary for the fair disposal of the application or action."[14]

[146] Learned Queen's Counsel for the applicants submits that this reasoning – which was put in terms of 'CPR rules-based limits' – does not appear to be applicable to the BVI rule, since our CPR does not contain a general provision entitling a party to refuse inspection on the grounds of disproportionality to the issues (in contrast to the English CPR 31.3(2)). Our CPR does provide for the refusal of inspection on the grounds of privilege at CPR 28.11(1). In any event, even if (contrary to this) 'proportionality to the issues in the case' is a relevant consideration in an application under CPR.28.16, it is clear on the authority of Abacha that:

(1) The 'general rule' is that inspection of a document referred to should be given. This 'reflects basic fairness and principle in an adversarial system';[15] and

(2) There is no threshold requirement to show that inspection is 'necessary to dispose fairly' of the issues in the case. At most, the relevance of the document to the issues in the case is a factor to be taken into account in striking a just balance.[16]

[147] The claimants do not disagree that this represents the legal position in this jurisdiction.

[148] In my view, however, 'proportionality to the issues in the case' is not a relevant consideration for the application of CPR 28.16, or at least not generally so. It is true that proportionality is one of the factors that are important in furthering the overriding objective of our CPR. This is expressed in CPR 1.1 in terms that 'dealing justly with the case' includes 'dealing with cases

[14] [2016] 1 WLR 4375 (Gross LJ).

[15] National Crime Agency v Abacha, [2016] 1 WLR 4375 at [30].

[16] National Crime Agency v Abacha, [2016] 1 WLR 4375 at [32].

in ways which are proportionate to, amongst other factors, the complexity of the issues'.[17] Put simply, this generally means care should be taken, for example, not to over-work simple cases, and vice-versa. This provision of the CPR is more general than a notion of 'proportional to the issues in the case', if that phrase is to be taken as referring only to the questions of law or fact to be determined in a claim. I can see that as a matter of logical reasoning if a document, mentioned in an affidavit or statement of case, is irrelevant to the substantive issues to be tried then it should in principle be disproportionate to require its inspection if the criterion is that the disclosure should be 'proportional to the issues in the case'. But the wider formulation in our CPR 1.1 requires the judge to have regard to broader considerations, such as the degree of weight and reliance that should be placed upon the parties' oral testimony in light of documentary evidence.

[149] In other words, CPR 1.1 does not introduce a 'proportionate to the issues' exception to CPR 28.16 which allows a party who mentions a document to claim a right to withhold inspection as a matter of normal course. The normal course, or general rule, clearly intended by CPR 28.16 is that regardless of relevance in fact, if a party mentions or refers to a document, he must permit inspection and copies to be taken unless some other exception applies.[18]

[150] The normal course or general rule can be displaced. Our CPR provides that the court must seek to give effect to the overriding objective when it –

(1) exercises any discretion given to it by the Rules; or

(2) interprets any rule.[19]

[151] The application of CPR 28.16 does not depend upon any exercise of discretion by the Court. Yet there may be cases where CPR 28.19 should be interpreted, pursuant to CPR 1.2(b), as permitting the Court to use its discretion to disallow disclosure, or to limit it in order to

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[17] CPR 1.1(2)(3)(iii).

[18] Renaissance Ventures Ltd & Anor. v Comodo Holdings Ltd. BVIHCMAP2018/0005 and 0008 (delivered 13th July 2018, unreported) at paragraphs [27] to [31] (Webster JA [Ag.]).

[19] CPR 1.2.

prevent an injustice or unfairness. An example might be where a party seeks to rely upon the rule in order to seek an unduly wide range of disclosure on a peripheral issue. That is not this case. The inspection sought is of a narrow and quite specific document or set of documents.

[152] The claimants submit that the starting point for the Court's consideration is that a funding agreement has no relevance to the substantive proceedings and is therefore not a disclosable document, relying upon the English Court of Appeal case of Hodgson & Ors. v Imperial Tobacco Ltd & Ors.[20] The claimants then submit that if a document is irrelevant then the provisions of CPR 28.16 do not apply. It should immediately be apparent that these submissions directly contradict the Court of Appeal's interpretation of CPR 28.16 in Renaissance Ventures Ltd. which considered that the relevance or otherwise of a document is immaterial. These submissions therefore do not find favour with this Court. The right starting point, in my judgment, is to see if the party has mentioned a particular document. If so, he must allow inspection and copying unless he can persuade the court that some exception absolves him from doing so, or if there is some circumstance which should trigger the Court's powers in furtherance of the overriding objective of the CPR to disallow inspection.

[153] Even if lack of relevance to the factual or legal issues for determination is indeed a possible ground for resisting inspection (which I do not think it is), in this case the applicants say they are concerned that the Funding Agreement might be champertous. The Court is concerned to uphold the very long-standing public policy behind the disapproval of champerty, namely that third parties (typically solicitors who might be seeking to create work for themselves) should not be permitted to encourage lawsuits. There is a difference between that mischief, and the entirely laudable practice of encouraging access to justice for those with good claims who would otherwise be shut-out from the court system. Naturally, a third-party funder cannot be expected to provide funding upon a gratuitous basis. The issue for the court is whether a funding agreement has a tendency to corrupt public justice.

[20] [1998] 1WLR 1056 (CA) at 1067F.

[154] The Court is also concerned to avoid another mischief traditionally associated with champerty, that the third-party funder may improperly seek to influence the outcome of proceedings. While each case will turn on its own facts, tell-tale signs which may reasonably prompt further inquiry include that the funding agreement is said to offer the funder a significant financial advantage conditional upon the outcome of the proceedings, a considerable degree of control over the proceedings and that the funder appears not to be a professional funder or regulated financial institution.[21] Some such tell-tale signs are present here.

[155] Furthermore, a considerable feature of this case is the claimants' reliance upon oral conversations. The credibility of oral testimony will be an important question at trial. If there is any balancing exercise which needs to be carried out, investigating the extent to which the Funding Agreement tends to enable improper influence over the outcome of these proceedings in my view outweighs its privacy and confidentiality and such other personal motives as the claimants may have for resisting inspection. The credibility of the claimants' evidence and their statements of case will be crucial to the substantive outcome of these proceedings.

[156] The claimants' legal representatives have taken a position in correspondence with their opponents that the Funding Agreement does not depart from what is normal for funding agreements, and further, that the claimants retain control over the conduct of the litigation. The claimants' legal representatives have also stated in evidence that the Funding Agreement contains 'normal provisions' for the sharing of information with the Funder. The fundamental difficulty with such statements is that the claimants' legal representatives cannot be the judge in their own cause. Such statements inherently raise the issue whether they are right. That question can only be answered through inspection. The claimants' learned Queen's Counsel suggests that it is wishful thinking that the document will demonstrate improper interference, and that an order for inspection would only give rise to disproportionate and costly satellite litigation. I ask myself rhetorically, however, how else

[21] A Company v A Funder Cause No. FSD 68 of 2017 (Cayman Islands).

can the tendency and effect of the Funding Agreement be ascertained, otherwise than by requiring its inspection.

[157] Thus, other objections apart, for these reasons I am of the view that the Funding Agreement ought to be made available for inspection and copying by the applicants.

Privilege

[158] In this case the only potentially appropriate objection to inspection and copying is that the Funding Agreement, or parts of it, are subject to legal professional privilege. Where such privilege truly applies, the court has no power or discretion to override the privilege.[22] At the hearing the claimants intimated that they are no longer asserting that the whole Funding Agreement is privileged, but that they are seeking to retain the right to redact privileged parts. It is uncontroversial that the Court can permit privileged parts of a document to be redacted, with the unredacted parts then being inspected.[23]

[159] In this case we are concerned with two sub-heads of legal professional privilege: litigation privilege and legal advice privilege.[24]

Litigation Privilege

[160] In relation to litigation privilege, the claimants submit that a funding agreement may be privileged on the ground of litigation privilege on the basis that it has been brought into existence for the purpose of supporting litigation and its purpose is to obtain legal advice or conduct or aid in the conduct of litigation (Arroyo[25]). The Funding Agreement is not any document which comes into existence for this purpose, but a document which is inextricably intertwined with the advice on the merits and the conduct of the case itself, in particular in a

[22] In re Edwardian Group Limited [2017] EWHC 2805 (Ch) at paragraph [41] (Morgan J).

[23] See e.g. In re Edwardian Group Limited [2017] EWHC 2805 (Ch) at paragraph [51] (Morgan J).

[24] As categorized in Three Rivers DC v Bank of England (No. 6) [2005] 1 AC 610 at paragraph 105 (Lord Carswell).

[25] Arroyo v BP Exploration Company (Columbia) Ltd [2010] EWHC 1643 at paragraph [59].

case where the agreement is bespoke. Although Arroyo was distinguished and not followed in Excalibur, the court in the latter case did not state that it was wrongly decided, but doubted it (as a matter of general application) and limited it to its facts.[26]

[161] The applicants submit that the claimants are 'plainly wrong'. The applicants submit that in Excalibur[27] the English High Court rejected a contention that documents were privileged on the basis that they had been 'brought into existence for the purposes of actual or contemplated litigation' (emphasis added). The court there considered that such a characterisation of litigation privilege was too broad: 'it is the use of the document or its contents in the conduct of the litigation which is what attracts the privilege',[28] (emphasis added) such that privilege extends only to documents 'brought into existence for the dominant purpose of being used in the litigation …'.[29] (emphasis added).

[162] In Excalibur the English High Court rejected the notion that all documents brought into existence for the purposes of actual or contemplated litigation were covered by litigation privilege. The court observed that if that argument is right, then litigation privilege would cover the case of a litigant who buys a new suit in order to appear as a witness and would make all information and documents in relation to that purchase privileged because its dominant purpose would be the conduct of the litigation. The court observed that this illustrates the fallacy in the width of this formulation.[30]

[163] In contrast, the court preferred a formulation that litigation privilege applies to material obtained for use, or potential use, in, or prepared for, litigation, whether actual or contemplated, or for the purposes of seeking legal advice for such proceedings, in either case, the purpose being a dominant purpose. The court recognized a limit to this

[26] Excalibur Ventures LLC v Texas Keystone Inc [2012] EWHC 2176 (QB) at paragraph [19].

[27] [2012] EWHC 2176 (QB).

[28] [2012] EWHC 2176 (QB) at paragraph [17] (underlining added).

[29] [2012] EWHC 2176 (QB) at paragraph [18] (underlining added).

[30] [2012] EWHC 2176 (QB) at paragraph [22].

formulation in that litigation privilege does not cover pre-existing original documents which are acquired for the purposes of litigation, following Ventouris v Mountain.[31]

[164] At paragraph 17 in Excalibur the court cited support for its view from the following test propounded by Chief Justice Barwick in Grant v Downs[32] quoted by the House of Lords in Waugh v British Railways Board:[33]

> "(. . .) a document which was produced or brought into existence either with the dominant purpose of its author , or of the person or authority under whose direction, whether particular or general, it was produced or brought into existence, of using it or its contents in order to obtain legal advice or to conduct or to aid in the conduct of litigation, at the time of its production in reasonable prospect, should be privileged and excluded from inspection."

[165] The court in Excalibur[34] also relied upon the English High Court decision in Winterthur Swiss Insurance Company & Ors v AG (Manchester) Limited & Ors,[35] which considered, at paragraph 71, that litigation privilege

> "extends to communications between the lawyer and his client and the lawyer and third parties, provided that those communications are made for the sole or predominant purpose of obtaining legal advice or conducting that litigation."

[166] The court in Winterthur cited the House of Lords decision in Three Rivers DC v Bank of England (No. 6) at paragraphs 100 to 102 per Lord Carswell as the authority for this proposition.

[167] In Excalibur, the applicant had applied for disclosure of all documents evidencing Excalibur's attempts to obtain litigation funding and all documents evidencing the ultimate litigation funding terms agreed. Excalibur claimed both litigation and legal advice privilege. The English High Court upheld the claim to legal advice privilege but not to litigation

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[31] Excalibur Ventures LLC v Texas Keystone Inc [2012] EWHC 2176 (QB) at paragraphs [14] and [15].

[32] 135 CLR 674.

[33] [1980] AC 521 at 544 A – B (Edmund-Davies LJ).

[34] Excalibur Ventures LLC v Texas Keystone Inc [2012] EWHC 2176 (QB) at paragraph [18].

[35] [2006] EWCH 839 (Comm) (Aikens J).

privilege. In relation to litigation privilege the court accepted that litigation privilege should be confined to material which is 'for use or for potential use in the litigation'.[36]

[168] The conclusion the applicants draw from this is that the Funding Agreement is not subject to litigation privilege, because the Funding Agreement does not constitute material 'for use or for potential use in the litigation'.

[169] With the greatest of respect, I believe I am forced to disagree. The confines of 'use' adopted by the English High Court in Excalibur appear to be too narrow, when subsequent and higher authority is considered. In The Director of the Serious Fraud Office v Eurasian Natural Resources Corporation Limited[37] the English Court of Appeal adopted the test for litigation privilege enunciated by Lord Carswell in the House of Lords in Three Rivers DC v Bank of England (No. 6):[38]

> "64.The requirements for litigation privilege were as stated by Lord Carswell in *Three Rivers (No. 6)* at paragraph 102 as follows:-
>
> > "communications between parties or their solicitors and third parties for the purpose of obtaining information or advice in connection with existing or contemplated litigation are privileged, but only when the following conditions are satisfied:
> > (a) litigation must be in progress or in contemplation;
> > (b) the communications must have been made for the sole or dominant purpose of conducting that litigation;
> > (c) the litigation must be adversarial, not investigative or inquisitorial."

[170] Applying these requirements, even without seeing the Funding Agreement, we can safely say that:

(1) It constitutes a communication between a party and a third party;

(2) It concerns litigation that is in progress or was in contemplation when it was entered into;

(3) The litigation is adversarial.

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[36] Excalibur Ventures LLC v Texas Keystone Inc [2012] EWHC 2176 (QB) at paragraph 15, by implication.

[37] [2018] EWCA Civ 2006.

[38] [2004] UKHL 48 (Lord Carswell).

[171] The question whether a funding agreement has been made for the purpose of obtaining information or advice in connection with litigation is more difficult. A funding agreement generally is not a communication directly designed to gather evidence or seek advice. Nor, in many cases, will the funding agreement be a document that will be used in the litigation. Its effect is more indirect. In order to gather evidence and obtain advice and eventually to conduct litigation the litigant needs money. In that indirect sense a funding agreement is made for the purpose of obtaining information or advice in connection with the litigation. The second proviso in Lord Carswell's formulation is expressed more broadly than contemplating direct use of a document in the litigation. The purpose must be for 'conducting the litigation', which is broader than for 'using it in the litigation'. In principle, a funding agreement precisely meets this requirement. We can ask ourselves, what other purpose, apart from conducting the litigation, did or could the litigant or prospective litigant have had in entering into the funding agreement? We would be hard-pressed to find one.

[172] The sense of this can be illustrated by a practical example. Where a litigant approaches a funder, such as a bank, or a 'before the event' insurer or an 'after the event' insurer, typically the litigant will need to make full and frank disclosure of the facts pertinent to the dispute, including his intentions concerning a potential settlement. The ensuing contracts are typically contracts of utmost good faith. The contracts, or conditions of funding to be provided, may expressly or impliedly refer to the factors disclosed by the litigant. Such factors may go beyond merely disclosing the tendency of any advice. They may, for example, highlight a concern about the reliability of the litigant's record keeping. Or they may stipulate that funding will be provided up to a stage in the litigation, such as a court-ordered mediation, or disclosure, with the position then to be reviewed further. If these factors are disclosed to his opponent it would be no different from a situation where litigation privilege were not to exist at all.

[173] The example used by the English High Court in Excalibur of documents generated in the purchase of a new suit for the purpose of appearing in court can also be addressed by applying the sole or dominant purpose proviso. There is a difference between attaching

privilege to 'all documents brought into existence for the purposes of actual or contemplated litigation'[39] and documents made for the sole or dominant purpose of conducting that litigation. The information and documents in relation to purchase of the new suit would not normally be generated for the sole or dominant purpose of conducting litigation. Their dominant purpose is typically to document the sale and purchase of the suit. Conduct of the litigation would be a secondary or subsidiary purpose. One can readily imagine that the clothes shop would (absent express sale and return conditions or some other latitude) give the purchaser short shrift if the purchaser were to return the suit for a refund if the trial were to collapse before he could make his appearance.

[174] There is no evidence in this case that the Funding Agreement was concluded for any other purpose than for enabling the claimants to conduct this litigation. Such conduct includes enabling the claimants to obtain information and advice for conducting the litigation. It is a reasonable inference that this litigation was reasonably in contemplation when the Funding Agreement was concluded. It is adversarial litigation. Consequently, I am of the view that Lord Carswell's test is satisfied and that litigation privilege extends to the Funding Agreement, or at least those parts of it that have been made for the sole or dominant purpose of conducting the litigation.

Legal advice privilege

[175] The claimants submit that this Court should adopt the following approach in relation to legal advice privilege:

(1) There is no general blanket rule as to whether privilege attaches to a funding agreement (or similar document), but the Court must consider the particular facts (following Arroyo v BP Exploration Company (Columbia) Ltd[40]).

[39] Excalibur Ventures LLC v Texas Keystone Inc [2012] EWHC 2176 (QB) at paragraph [13].

[40] [2010] EWHC 1643 at paragraphs [64]-[65].

(2) If and insofar as a funding agreement gives an indication of the advice sought or the advice given it is covered by legal advice privilege (following Excalibur Ventures LLC v Texas Keystone Inc[41]).

(3) The relevant test for legal advice privilege is whether the document gives a clue as to the legal advice given or betrays the trend of the legal advice (Re Edwardian[42]).

[176] The applicants submit that that there might be parts of the Funding Agreement that evidence or reveal legal advice given to the claimants and that those parts (but only those parts) could properly be redacted on the grounds of legal advice privilege (subject to any waiver). The applicants contend there is a question as to whether, where (as here) one is not concerned with a lawyer-client communication, only material that actually reproduces, summarises or paraphrases such a communication will be privileged; or whether material that supports an inference as to the terms of such a communication will also be privileged. The applicants submit that the English case of Financial Services Compensation Scheme Ltd v Abbey National Treasury Services plc[43] favours the former view; but it is right to note that in Re Edwardian Group Ltd the English High Court favoured a broader view.[44] In doing so the court drew an important distinction:

> "between a case where there is a definite and reasonable foundation in the contents of the document for the suggested inference as to the substance of the legal advice given and merely something which would allow one to wonder or speculate whether legal advice had been obtained and as to the substance of that advice."[45]

[177] Having considered both those cases, I am persuaded that the approach taken in Re Edwardian Group Ltd provides safer guidance. As the learned judge there remarked, it is the broader view that was applied in the English Court of Appeal case of Lyell v Kennedy (No.3)[46] and more recently in Ventouris v Mountain. Whilst the distinction highlighted in

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[41] [2012] EWHC 2176 (QB) at paragraph [23].

[42] [2017] EWHC 2805 (Ch) at paragraph [39].

[43] [2007] EWHC 2868 (Ch).

[44] [2017] EWHC 2805 (Ch).

[45] [2017] EWHC 2805 (Ch) at paragraph [37].

[46] (1884) 27 Ch D 1.

Re Edwardian Group Ltd does not remove dangers of a subjective assessment of whether an inference can be drawn from the content of a document, as was considered desirable in Financial Services Compensation Scheme Ltd v Abbey National Treasury Services plc,[47] this distinction does recognize the more objective elements of the need for a 'definite' foundation as well as a 'reasonable' one. The approach in Re Edwardian and Lyell v Kennedy (No.3) is clearly intended to cover with privilege those indications of legal advice which a reasonable man, reading the document, would recognize. That is clearly sensible. It would destroy the confidence of potential litigants if they were vulnerable to having their legal advice revealed through inferences which in many cases are only too easy to deduce. With the refinement highlighted in Re Edwardian Group Ltd, I agree that the claimants' position accurately reflects the law applicable to this case.

[178] Consequently, the test that it seems this Court should apply in respect of legal advice privilege is to treat those parts of a document as privileged which reveal the substance of legal advice given to the claimants by their legal practitioner. Equally, material which would allow the reader to work out what legal advice had been given, or which would give the reader a clue or indication as to the content of the legal advice, is privileged. The touchstone in identifying such material is whether the contents of the document show a definite and reasonable foundation for the suggested inference, as opposed to merely something which would allow one to wonder or speculate as to the nature of such advice.

[179] In respect of the latter, it is in my respectful view not good enough for the claimants' legal representatives to say, as they do, that '[b]y its very nature a funding agreement gives an indication of the solicitors' advice on the merits of the claim and its strategy'. That is too general an inference. In the same way, the mere fact that a legally represented litigant continues with an action indicates that he has advice that his doing so has some merit. What is required is something more objectively solid: material that meets the description of a 'definite and reasonable foundation' as well as the 'substance' of the legal advice.

[47] [2007] EWHC 2868 (Ch) at paragraph 31.

[180] Concerning the substance of legal advice, it seems appropriate to distinguish the conclusion of possible advice (e.g. 'you have a strong case with good prospects of success') from the advice itself (e.g. 'you have a strong case with good prospects of success because it is settled law that such and such a presumption applies and your opponent has not adduced evidence to rebut it'). It is the advice itself that must be indicated before legal advice privilege attaches to exclude the communication from disclosure.

[181] I am satisfied that the claimants are in principle entitled to redact and withhold from inspection those parts of the Funding Agreement which satisfy this test (subject to any waiver of privilege).

Waiver of privilege

[182] The applicants contend that the claimants have waived such privilege as might otherwise have attached to the Funding Agreement, and such waiver applies to the Funding Agreement as a whole.

[183] The applicants argue that:

(1) The claimants have gone beyond mere reference to the existence of a Funding Agreement but have referred to and relied on the contents of the agreement.

(2) In particular, the claimants have stated in correspondence that 'in relation to influence and control the Funding Agreement does not depart from what is normal for funding agreements' and 'our clients retain control over the conduct of the litigation'.

(3) The claimants have also stated in evidence, in a witness statement of one of their TVI legal practitioners, that:

(a) 'the funder chose as part of the terms of the agreement to advance funding to provide that it would not be obliged to meet an adverse costs order' (paragraph [56]);

(b) 'this firm has confirmed the funder is a company connected to Mr. Palytsia, the agreement contains a right for the funder to view documents, as is common in funding agreements, and that the Claimants retain control over the conduct of the litigation ….' (paragraph [75]);

(c) 'The Applicants' lawyers have already been informed that the Funding Agreement contains normal provisions for the sharing of information with the funder…' (paragraph [83]);

[184] The applicants submit that these assertions have been made in support of the claimants' contention that the Funding Agreement is not champertous or otherwise objectionable. That, say the applicants, amounts to deployment of the contents of the agreement sufficient to waive privilege (or confidentiality) in it: it is not fair or conscionable for the claimants on the one hand to state the substance of certain provisions of the Funding Agreement in support of their case on the issue whilst on the other hand maintaining that it is privileged and confidential. The applicants rely in this respect upon the English Court of Appeal decision in Great Atlantic Insurance Co v Home Insurance Co,[48] adopting the following quotation from Mustill J in Nea Karteria Maritime Co Ltd v Atlantic and Great Lakes Steamship Corporation:[49]

> "I believe that the principle underlying the rule of practice exemplified by Burnell v British Transport Commission is that where a party is deploying in court material which would otherwise be privileged, the opposite party and the court must have an opportunity of satisfying themselves that what the party has chosen to release from privilege represents the whole of the material relevant to the issue in question. To allow an individual item to be plucked out of context would be to risk injustice through its real weight or meaning being misunderstood. In my view, the same principle can be seen at work in Doland v Blackburn, in a rather different context."[50]

[185] The claimants have purported to preserve their assertion of privilege when stating the above matters. Their legal practitioner stated that '[n]o specific references to the content of the

[48] [1981] 1 WLR 529.

[49] (Unreported, 11 December 1978).

[50] At 538EG (emphasis added). See also the principles summarised by Aikenhead J in ACD (Landscape Architects) Ltd v Overall [2011] EWHC 3362 (TCC), at paragraph [22].

terms of the agreement have been made and in providing this information the fact that privilege is not waived has been made clear'; and 'I do not comment on the specific terms of the Funding Agreement out of an abundance of caution to avoid being accused of waiving privilege …'. The applicants argue that such a reservation of privilege cannot alter what would otherwise amount to a waiver, relying upon the English decision in ACD (Landscape Architects) Ltd v Overall:[51]

> "The fact that [the solicitor] sought expressly to maintain privilege is immaterial if, as here, the otherwise privileged document or all or part of its contents is in fact being deployed. Indeed, Counsel for the Defendant did not seek to argue that the express maintenance of privilege by [the solicitor] made any difference."[52]

[186] The applicants contend that the claimants cannot, therefore, defeat the applicants' prima facie right of inspection by reliance on privilege.

[187] The claimants argue the following against this.

[188] They contend the test as to whether privilege has been waived is as follows:

> "In our view the fundamental question is whether, in the light of what has been disclosed and the context in which disclosure has occurred, it would be unfair to allow the party making disclosure not to reveal the whole of the relevant information because it would risk the court and the other party only having a partial and potentially misleading understanding of the material. The court must not allow cherrypicking, but the question is when has a cherry been relevantly placed before the court." (Brennan v Sunderland City Council [2009] ICR 479, at [63])."

[189] The claimants urge that waiver is not easily established and a degree of reliance is required, applying dicta in Brennan at paragraphs [66] to[67]. For example, the mere mention of a document does not entail the automatic and absolute loss of any privilege in the document, following Expandable Ltd v Rubin.[53]

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[51] [2011] EWHC 3362 (TCC) (Aikenhead J).

[52] [2011] EWHC 3362 (TCC), at paragraph 23(f).

[53] [2008] 1 WLR 59, at paragraph [39].

Discussion on waiver

[190] The following propositions of law can be distilled from the authorities.

[191] Generally, if privilege is waived as to part of a document, the privilege is waived as to the whole.[54]

[192] Where a party is deploying in court material which would otherwise be privileged, the opposite party and the court must have an opportunity of satisfying themselves that what the party has chosen to release from privilege represents the whole of the material relevant to the issue in question.[55]

[193] Once disclosure has taken place by introducing part of the document into evidence or using it in court it cannot be erased.[56] The court has no discretion in this regard.[57]

[194] The key word is 'deploying'. A mere reference to a privileged document in evidence does not of itself amount to a waiver of privilege. Instead, the test is whether the contents of the document are being relied upon, rather than the effect or impact of the document.[58] Provided that the maker does not quote the contents or summarize them, but simply refers to the document's effect, there is no waiver of privilege.[59]

[195] The reliance upon the document must be by the party who seeks to claim privilege over it.[60]

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[54] Great Atlantic Insurance Co v Home Insurance Co [1981] 1 WLR 529 at 538 citing with approval dicta of Denning LJ in Burnell v British Transport Commission [1956] 1 QB 187 at page 190 and ACD (Landscape Architects) Limited v Overall & Anor [2011] EWHC 3362 (TCC) at paragraph 22(d) (Akenhead J).

[55] Great Atlantic Insurance Co v Home Insurance Co [1981] 1 WLR 529 at 538.

[56] Great Atlantic Insurance Co v Home Insurance Co [1981] 1 WLR 529 at 539.

[57] Great Atlantic Insurance Co v Home Insurance Co [1981] 1 WLR 529 at 541.

[58] ACD (Landscape Architects) Limited v Overall & Anor [2011] EWHC 3362 (TCC) at paragraph 22(e) (Akenhead J).

[59] ACD (Landscape Architects) Limited v Overall & Anor [2011] EWHC 3362 (TCC) at paragraph 19 (Akenhead J) citing Dunlop Slazenger International Ltd v Joe Bloggs Sports Ltd [2003] EWCA 901.

[60] Brennan v Sunderland City Council (EAT) [2009] ICR 479 at 494, paragraph 69 (Elias J).

[196] The question is what is the nature of what has been revealed; is it the substance, the gist, or content? Or, on the other hand, is it merely the effect of the document? Revealing the former waives privilege, but not the latter.[61]

[197] It does not matter whether the contents of the document are being relied upon in interlocutory proceedings as opposed to trial.[62]

[198] It is immaterial that the maker of the document has expressly sought to maintain privilege if the otherwise privileged document, or all or part of its contents, is in fact being deployed.[63]

[199] Waiver is not easily established.[64] The answer to the question whether waiver has occurred or not depends upon considering together both what has been disclosed and the circumstances in which disclosure has occurred.[65] Ultimately the question comes down to whether fairness requires that the full document contents be made available, as this is the principle which underlies the doctrine.[66]

[200] In this case the claimants, through their legal practitioners, took care expressly to maintain privilege over communications, including the Funding Agreement. It is clear from their witness statement evidence, as well as their correspondence which was admitted into evidence as exhibits, that the claimants' legal practitioners were familiar with the principles summarized above. It is against this background that their acts which the applicants say constituted waiver of privilege must be assessed.

[201] We shall consider each of the claimants' legal practitioners' statements in turn.

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[61] Brennan v Sunderland City Council (EAT) [2009] ICR 479 at 494, paragraph 64 to 68 (Elias J).

[62] ACD (Landscape Architects) Limited v Overall & Anor [2011] EWHC 3362 (TCC) at paragraph 22(c) (Akenhead J).

[63] ACD (Landscape Architects) Limited v Overall & Anor [2011] EWHC 3362 (TCC) at paragraph 23 (Akenhead J).

[64] Brennan v Sunderland City Council (EAT) [2009] ICR 479 at 494, paragraph 66 (Elias J).

[65] Brennan v Sunderland City Council (EAT) [2009] ICR 479 at 494, paragraph 67 (Elias J).

[66] Brennan v Sunderland City Council (EAT) [2009] ICR 479 at 494, paragraph 67 (Elias J).

(1) '[I]n relation to influence and control the Funding Agreement does not depart from what is normal for funding agreements'

This statement does not disclose any substance, gist or content of the Funding Agreement. It merely asserts a negative. What constitutes a 'normal' funding agreement is an open question. The most this statement does is explain the effect of the Funding Agreement. I am satisfied this does not amount to a waiver of privilege.

(2) '[O]ur clients retain control over the conduct of the litigation'.

Whilst this statement is a positive assertion, this statement does not disclose any substance, gist or content of the Funding Agreement. The statement leaves open the possibility that the Funding Agreement is completely silent about control of the litigation. The most this statement does is explain the effect of the Funding Agreement. I am satisfied this does not amount to a waiver of privilege.

(3) '[T]he funder chose as part of the terms of the agreement to advance funding to provide that it would not be obliged to meet an adverse costs order';

This statement discloses the substance, gist or content of the Funding Agreement. The claimants were clearly being extremely careful not to disclose more than the absolute minimum they felt they needed to present a strong case. We must ask ourselves what, if anything, was the claimants' purpose in revealing this? A close look at the evidence shows that the claimants were citing this as part of their arguments why an order for security for costs should not be made against them. The claimants were deploying – that is, relying upon – this term of the Funding Agreement to bolster their arguments in opposition to the application for security for costs. There is an additional factor, in that the applicants' complaint is that the claimants' statements which are said to have caused privilege to be waived 'have obviously been made in support of the claimants' contention that the Funding Agreement is not champertous or otherwise objectionable'. That submission, in my respectful judgment, is factually wrong. This statement was not made for that purpose, but in the context of the security for costs application. Had the applicants argued that fairness demanded that the completeness of the claimants' statement be tested by inspection of the Funding Agreement as part of the security for costs application, that submission would have

been hard to resist. But the applicants did not. They were content not to press the point and to proceed with their application for security for costs without inspection of the Funding Agreement. I am satisfied that there would be no actual unfairness if the applicants should not receive a copy of the Funding Agreement on account of this statement. However, the law, as I apprehend it, is that once disclosure has taken place by introducing part of the document into evidence or using it in court it cannot be erased.[67] The court has no discretion in this regard.[68] Thus, the claimants have waived privilege over the Funding Agreement by this statement.

(4) '[t]his firm has confirmed the funder is a company connected to Mr Palytsia';

This statement does not, on its face, disclose any substance, gist or content of the Funding Agreement. At most it speaks to the effect of the agreement. It is also a vague statement (as the applicants' legal practitioners observed in correspondence). I am satisfied that this statement does not waive privilege.

(5) '[T]he agreement contains a right for the funder to view documents, as is common in funding agreements…'

This statement does, in my view, disclose the substance, gist or content of the Funding Agreement. The statement identifies a 'content' of the Funding Agreement, as suggested by the word 'contain', which derives from the same root as 'content'. Furthermore, it specifically identifies 'a right', and specifically identifies the person in whom it subsists. There is sometimes a fine dividing line between disclosing the substance, gist or content of a document and stating what its effect is. The specific choice of words used by the claimants here, to my mind, states the contents and gist. We must also again ask ourselves what, if anything, was the claimants' purpose in revealing this? A close look at the evidence shows that the claimants were citing this in support of their arguments that it was entirely proper for them to receive, and pass on to the funder, documents and information concerning Continuum which the applicants alleged were confidential and should be withheld from the funder and his associates. The claimants were deploying – that is, relying upon – this

[67] Great Atlantic Insurance Co v Home Insurance Co [1981] 1 WLR 529 at 539.

[68] Great Atlantic Insurance Co v Home Insurance Co [1981] 1 WLR 529 at 541.

provision of the Funding Agreement to support their arguments on this issue. Restrictions on provision of information continue to be an unresolved and disputed matter in these proceedings. The statement was not made in the context of champerty, but of confidentiality issues. Nor was it made in support of any contention by the claimants that the Funding Agreement was not otherwise objectionable, although the words 'as is common in funding agreements' might be taken to suggest that. Nonetheless, the claimants crossed the dividing line between speaking only to the effect of the document and disclosing the substance, gist or content of it. They did so to bolster their arguments in respect of issues, albeit interlocutory issues, concerning confidentiality in these proceedings, and those issues remain live. In respect of this statement, the applicants are, in my judgment, correct that the claimants waived privilege. In terms of fairness, given that confidentially and restrictions on provision of documents remain a live issue, it is only fair that the claimants' assertions about the content of the Funding Agreement be tested. This requires disclosure. The claimants have urged that the applicants are pressing for a copy of the Funding Agreement as a tactical ploy to disrupt the claim. That may be so, but I have no discretion to override a waiver of privilege.

[202] The claimants must therefore allow the applicants to inspect and take copies of the whole of the Funding Agreement.

Costs

[203] In relation to costs, since each of the security for costs application and the application for inspection of the Funding Agreement was distinct, and as they each clearly entailed their own discrete deployment of resources, it is appropriate that costs should be treated as following the event in each. Which side, if any, will end by being the net beneficiary of a costs payment will stand to be determined at an assessment, if the parties cannot agree the quantum.

[204] I take this opportunity to thank both sides' learned counsel for their assistance during this matter.

Gerhard Wallbank
High Court Judge (Ag.)

By the Court

Registrar