Neutral Citation Number: [2018] EWHC 887 (Comm)

Case No: CL-2012-000656

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS
OF ENGLAND AND WALES
COMMERCIAL COURT (QBD)

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 20/04/2018

Before :

PETER MACDONALD EGGERS QC (Sitting as a Deputy High Court Judge)

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Between :

AKCINĖ BENDROVĖ BANKAS SNORAS (a company incorporated pursuant to the laws of the Republic of Lithuania)	**Claimant/ Applicant**
- and -	
(1) VLADIMIR ANTONOV	**1st Defendant/Respondent**
(2) RAIMONDAS BARANAUSKAS	**2nd Defendant/Respondent**
(3) PORTPIN LIMITED	**Third Respondent**

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Robert Amey (instructed by **Linklaters LLP**) for the **Claimant**
Leigh-Ann Mulcahy QC and Ben Lynch (instructed by **The Khan Partnership LLP**) for the **Third Respondent**
The First and Second Defendants were not represented

Hearing dates: 26th March 2018

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Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

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MR PETER MACDONALD EGGERS QC

Mr Peter MacDonald Eggers QC :

Introduction

1. Until 2011, the Claimant ("Snoras") operated as a retail bank in Lithuania. The First Defendant ("Mr Antonov") owned 68.1% of the shares in Snoras and was the chairman of the Supervisory Board of Snoras. The Second Defendant (Mr Baranauskas) owned 25.31% of the shares in Snoras and was the chairman of the board and head of administration of Snoras.

2. In December 2011, the Vilnius Regional Court made a bankruptcy order in respect of Snoras and appointed Mr Neil Cooper, of Zolfo Cooper in London, as Bankruptcy Administrator.

3. Snoras alleges that Mr Antonov and Mr Baranauskas misused or misappropriated some €492 million of Snoras's assets.

4. In late 2011, the prosecution authorities in Lithuania, Switzerland and Latvia imposed criminal provisional restraint orders in respect of Mr Antonov's assets situated in Lithuania, England, Guernsey, Austria, Latvia, Switzerland, Costa Rica and Ukraine.

5. On 24th November 2011, at the request of the Lithuanian prosecution authorities, Mr Antonov and Mr Baranauskas were arrested by the Metropolitan Police in London in connection with the alleged fraud affecting Snoras. The Lithuanian prosecution authorities sought the extradition of both men. On 20th January 2014, the Westminster Magistrates Court ordered their extradition. I have been informed that, in breach of their bail conditions, Mr Antonov and Mr Baranauskas left the jurisdiction.

6. In January 2012, the Crown Court granted a criminal restraint order against various English assets of Mr Antonov. I understand that this restraint order is no longer in effect.

7. In May 2012, Snoras commenced proceedings against Mr Antonov and Mr Baranauskas seeking relief for alleged breaches of the Defendants' duties as directors, officers or shareholders, and applied for a worldwide freezing order against Mr Antonov ("the Freezing Order"). That application was granted by Teare, J. The Freezing Order referred to a number of undertakings given by Snoras, including that Snoras "*will not without the permission of the court seek to enforce this order in any country outside England and Wales or seek an order of a similar nature including orders conferring a charge or other security against the Respondent or the Respondent's assets*".

8. The proceedings commenced by Snoras against the Defendants were stayed by consent at the end of 2013, without prejudice to the Freezing Order.

9. In 2017, Snoras commenced civil proceedings against Mr Antonov and Mr Baranauskas in Lithuania. In support of those proceedings, Snoras obtained orders against Mr Antonov in both Lithuania and Switzerland restricting the use of or attaching Mr Antonov's assets (or some of his assets) in those countries. The question which arises upon Snoras's application at this hearing is whether or not Snoras's

obtaining of those orders in Lithuania and Switzerland constituted a breach of the above-quoted undertaking.

Snoras's English Civil Claim

10. On 18th May 2012, Snoras issued a claim form against Mr Antonov and Mr Baranauskas ("the English Civil Claim") seeking relief alleging that the Defendants were guilty of breaches of their duties as directors, officers or shareholders of Snoras, under Lithuanian law, in connection with four groups of transactions which, Snoras alleges, had no commercial justification, namely:

    (1) The Julius Baer Transactions (with an approximate value of €290 million), constituted by the transfer of securities to accounts at the Swiss bank, Julius Baer & Co ("Julius Baer"), beneficially owned by Mr Antonov and/or Mr Baranauskas, and their use as collateral for loans by Julius Baer to Mr Antonov and/or Mr Baranauskas.

    (2) The HSBC Transactions (with an approximate value of €57 million), constituted by the transfer of securities and cash held in Snoras's name with HSBC Private Bank (Suisse) SA, Zurich to accounts controlled by Mr Antonov, and their use as collateral for loans to third parties controlled by Mr Antonov.

    (3) The Time Deposit Transactions (with an approximate value of €128 million), constituted by the transfer of Snoras's assets (cash and securities) to third party institutions and, though recorded as time deposits, their use as collateral for loans by those institutions to other entities, many of which were connected to Mr Antonov.

    (4) The Overvalue Transactions, whereby Snoras paid for real property from companies connected to Mr Antonov, at a price which was substantially over the market value.

11. Even though these claims were formulated as a matter of Lithuanian law, the English Court has jurisdiction because, as I understand it, the Defendants were resident or domiciled in England.

The Freezing Order

12. On 18th May 2012, the same day that the English Civil Claim was commenced against Mr Antonov and Mr Baranauskas, Snoras applied for and obtained the Freezing Order against Mr Antonov in respect of his assets up to a value of €492 million. Included within the Freezing Order was an order that Mr Antonov disclose his assets worldwide. The Freezing Order was made by Teare, J upon various standard undertakings being made by Snoras, including that it would not use any information obtained as a result of the Freezing Order for the purposes of civil or criminal proceedings in England or any other jurisdiction other than the claim (undertaking (6)). In addition, Snoras gave an undertaking to the Court in the following terms:

> "(7) The Applicant will not without the permission of the court seek to enforce this order in any country outside England and Wales or seek an order of a similar nature including orders conferring a charge or other security against the Respondent or the Respondent's assets"

13. I shall refer to undertaking (7) as "the Undertaking".

14. On 4th July 2012, Mr Antonov applied to the Court for the discharge of the Freezing Order on the grounds of material non-disclosure or misrepresentation by Snoras as to the various criminal provisional restraint orders restricting the transfer of Mr Antonov's assets, the absence of a risk of dissipation of assets, and delay in the making of the application for the Freezing Order. On 4th February 2013, in a detailed judgment ([2013] EWHC 131 (Comm)), Gloster, J dismissed the application to discharge the Freezing Order. Gloster, J found that there had been a non-disclosure of the criminal restraint order made by the Crown Court, but held that the non-disclosure had been inadvertent and that it would have had "*no material effect on the judge's decision that there was a risk of dissipation, which required the imposition of a WWFO*" (paragraph 64(ix)).

15. It was argued before Gloster, J that there was no risk of dissipation of assets, given the various provisional restraint orders which had been made, given the existence of criminal proceedings commenced against Mr Antonov in Lithuania, and given Mr Antonov's then presence within the jurisdiction. Gloster, J rejected this argument and held (at paragraph 67) that:

> "Having read the entirety of the evidence in this matter, I have no doubt that a risk of dissipation remains, notwithstanding Mr. Antonov's presence within this jurisdiction and the restraint orders which have been made. He is a sophisticated operator who remains clearly able to give instructions in relation to transactions affecting his worldwide assets."

16. Mr Antonov also applied for an order varying the Freezing Order, in particular in connection with the disclosure of assets, arising out of a concern that disclosed information might find its way into the hands of the Lithuanian prosecution authorities in breach of Mr Antonov's privilege against self-incrimination. Gloster, J refused the application to vary the Freezing Order, but included a number of safeguards to provide protection against the use of such disclosed information in any criminal proceedings against Mr Antonov (paragraphs 46 and 77(viii)). In addition, having identified the various safeguards, Gloster, J added (at paragraph 47) that:

> "The above is no more than an outline of the regime which I intend to impose. I shall hear argument from counsel as to the precise drafting of the proposed safeguards; in particular it may be appropriate to give sanction in advance to the Bank to enable it to use the relevant materials in freezing applications intended to [be] made in other jurisdictions."

17. The order made by Gloster, J provided that "*the Relevant Defence Documents*" (including Mr Antonov's defence or any document setting out the grounds of his defence) or "*Mr Antonov's Disclosed Documents*" (meaning documents disclosed by Mr Antonov) should not be disseminated beyond the persons defined in "*the*

Restricted Group" (including specified individuals who constitute Snoras's legal team and representatives of the Bankruptcy Administrator).

18. Pursuant to the order made by Gloster, J, on 18th March 2013, Mr Antonov filed an affidavit setting out all of his assets worldwide exceeding £50,000.

19. Although an application was also made by Mr Antonov to stay the English Civil Claim, which Gloster, J refused, Snoras and Mr Antonov agreed, in December 2013, to a stay of the English Civil Claim pending the outcome of the extradition proceedings, on terms that the Freezing Order would remain in force against Mr Antonov. The stay could be lifted upon six weeks' written notice by either party to the other party. At the expiry of the notice period, a case management conference should be listed. As referred to below, shortly before the hearing of Snoras's current application, Mr Antonov gave notice to lift the stay.

20. On 22nd July 2015, Snoras filed a claim in connection with the ongoing Lithuanian criminal investigation into the activities of Mr Antonov ("the Lithuanian Criminal Claim"). This was a claim made in connection with an alleged entitlement to compensation for loss suffered as a result of criminal acts in accordance with article 109 of the Criminal Procedure Code of the Republic of Lithuania. The Lithuanian Criminal Claim was in the approximate sum of €487 million.

21. In late November 2015, Snoras applied to vary the Freezing Order by substituting specified members of the Restricted Group. This application was prompted, in part, by the fact that Mr Cooper was replaced, in November 2014, as Bankruptcy Administrator of Snoras by Mr Gintaras Adomonis of Valnetas UAB. In a witness statement dated 30th November 2015, Mr Greg Reid of Linklaters LLP, Snoras's solicitors, in support of that application, referred to the Lithuanian Criminal Claim and also stated (at paragraph 13) that "*For the avoidance of doubt, the BA* [Bankruptcy Administrator] *has not sought an order of a similar nature to the WWFO in connection with the Criminal Claim, including any order conferring a charge or other security against Mr Antonov or Mr Antonov's assets*". In December 2015, His Honour Judge Waksman QC ordered a variation of the Freezing Order accordingly.

22. Shortly before the hearing of Snoras's current applications, by an email dated 23rd March 2018 to Snoras's solicitors, Linklaters LLP, Mr Antonov gave notice to lift the stay of the English Civil Claim, stating that:

> "The stay was agreed in 2013 the case hasn't move forward since then. The agreement was for either party to give a 6 weeks notice to remove the say. I want to get a fair trial which I will, in the UK and not in Lithuania. Snoras has made many allegations against me and I want to finish the UK case to clear my name and now is time to give the 6 weeks notice to remove the stay. This hearing is the time to move forward correctly with UK case. I do not understand why did 6 years!! after starting the case in the UK Snoras took another case in Lithuania using the same facts. Snoras is trying avoid it's own UK case and to take an unfair case against me in Lithuania which it knows it will guarantee to win."

The Lithuanian Civil Claim

23. On 3rd April 2017, Snoras issued proceedings before the Lithuanian Court against Mr Antonov and Mr Baranauskas ("the Lithuanian Civil Claim"). In a witness statement dated 7th September 2017, at paragraphs 25-29, Mr Marius Matonis, a Lithuanian lawyer retained by the Bankruptcy Administrator of Snoras, explained the nature of Snoras's Lithuanian Civil Claim. Mr Matonis identified four alleged "*episodes*" or transactions to which the Lithuanian Civil Claim relates, namely:

    (1) The Spyker Episode involving an alleged loss of approximately €70 million: it is alleged that Mr Antonov and Mr Baranauskas caused Snoras to invest in Spyker, a company controlled by Mr Antonov, in circumstances where they knew Spyker was not in a position to give any return on that investment.

    (2) The Syz Episode involving a claim for approximately €20 million: it is alleged that Mr Antonov and Mr Baranauskas caused Snoras to transfer €159.2 million of bank funds to the personal accounts of Mr Antonov and his trustee with Bank Syz. Although the moneys were repaid, Snoras claims unpaid interest.

    (3) The HSBC Episode involving an alleged loss of approximately €57 million: it is alleged that Mr Antonov and Mr Baranauskas transferred funds to Mr Antonov's personal accounts; the alleged facts underlying this claim are substantially the same as those facts underlying the HSBC Transactions relied on in support of the English Civil Claim made by Snoras against Mr Antonov and Mr Baranauskas.

    (4) The BJB Episode involving an alleged loss of €247 million: it is alleged that Mr Antonov and Mr Baranauskas caused Snoras to transfer securities and cash held at Snoras's accounts with RZB and Commerzbank to Mr Antonov's and Mr Baranauskas's personal accounts at Bank Julius Baer; the alleged facts underlying this claim are substantially the same as those facts underlying the Julius Baer Transactions relied on in support of the English Civil Claim made by Snoras against Mr Antonov and Mr Baranauskas.

24. Mr Matonis went on to explain that there is an overlap between the Lithuanian Civil Claim and the English Civil Claim: although no claim has been made in England in respect of the Spyker Episode and Syz Episode (and I would add no claim has been made in Lithuania in respect of the Time Deposit Transactions and the Overvalue Transactions), there is considerable overlap (to use the words of Mr Robert Amey, who appeared on behalf of Snoras) between the HSBC Episode and BJB Episode in the Lithuanian Civil Claim and the HSBC Transactions and the Julius Baer Transactions in the English Civil Claim.

25. Mr Matonis also explained in his first witness statement (at para. 28-29) that the legal bases of the English Civil Claim and the Lithuanian Civil Claim are different. The English Civil Claim is for the *in personam* remedy of compensation against Mr Antonov and Mr Baranauskas arising out of an alleged breach of their duties as directors, officers or shareholders of Snoras. By contrast, the Lithuanian Civil Claim is not based on alleged breaches of directors' duties. Instead, there are two bases of claim in the Lithuanian Civil Claim, namely (1) a claim for *in personam* relief under the law of unjust enrichment because there was no commercial justification for the

various transactions, seeking the reversal of that unjust enrichment; and (2) a claim for a declaration that the various transfer instructions were null and void and that Snoras remains the beneficial owner of the relevant assets; this is said to be a claim for an *in rem* (or proprietorial) remedy. Mr Matonis added that neither of these claims feature in the English Civil Claim. Portpin Ltd ("Portpin"), the Third Respondent to Snoras's application, adduced the evidence of Mr Ruslanas Černiauskas, a Lithuanian lawyer, in his first witness statement, who stated at paragraphs 16-18 that the claims relating to the Julius Baer Transactions/BJB Episode and the HSBC Transactions/Episode could well be argued to be the same, even though the causes of action are expressed differently.

26. In connection with the Lithuanian Civil Claim, Snoras applied for an order seizing certain assets of Mr Antonov and Mr Baranauskas. That order was granted by the Lithuanian Court on 6th April 2017 ("the Lithuanian Arrest"). In addition, between May and July 2017, Snoras obtained various orders from the Zurich District Court seizing funds held in certain, named bank accounts ("the Swiss Arrest").

27. It has also been brought to my attention that other proceedings have been instituted by Snoras against Mr Antonov and others in Lithuania, Russia, Switzerland and England, but there is no suggestion that there is any overlap between those proceedings and the English Civil Claim (Mr Matonis' first witness statement at para. 35-37).

Snoras's application

28. Snoras applies for a declaration that Snoras's obtaining of certain orders from foreign courts, namely the Lithuanian Arrest and the Swiss Arrest, does not constitute a breach of the Undertaking; alternatively, an order giving retrospective permission to Snoras to obtain any such orders which constitute a breach of the Undertaking.

29. The application was issued on 6th October 2017. A hearing of that application was fixed to take place on 8th December 2017. The day before that hearing, a judgment creditor of Mr Antonov, Portpin Ltd, became aware of Snoras's application.

30. At the hearing on 8th December 2017, which took place before Patricia Robertson QC (sitting as a Deputy High Court Judge), Portpin made it clear that it was interested in the application and wished to make submissions in connection with Snoras's application. As a result, the Court ordered that Portpin be joined as the Third Respondent to the application (the first two Respondents being Mr Antonov and Mr Baranauskas), that Portpin be permitted to serve evidence in connection with the application, and that a hearing be fixed after 16th March 2018.

31. The adjourned hearing took place on 26th March 2018. Mr Antonov and Mr Baranauskas were not represented at this hearing. Portpin however was represented by Ms Leigh-Ann Mulcahy QC and Mr Ben Lynch.

32. It is necessary to consider the nature of Portpin's interest in Snoras's current application.

Portpin Ltd

33. Portpin is a company incorporated in the British Virgin Islands. Its shareholders are Mr Balram Chainrai and Mr Levi Kushnir. Portpin commenced proceedings against Mr Antonov before the English Court by a claim form dated 19th June 2012. According to the Particulars of Claim served by Portpin, its claim against Mr Antonov arose in the following way:

    (1) Portpin had been the owner of Portsmouth City Football Club Limited ("PCFC"). In 2009, Portpin advanced various loans to PCFC subject to various security interests granted to Portpin. Between 26th February 2010 and 22nd October 2010, PCFC was in administration.

    (2) On around 22nd October 2010, Portsmouth Football Club (2010) Ltd ("PFC (2010)") acquired the assets and liabilities of PCFC. PFC (2010) was a wholly owned subsidiary of Sports Holdings (Asia) Ltd, a BVI company the shares in which were owned by Mr Balram Chainrai, Mr Levi Kushnir and Mr Deepak Chainrai.

    (3) On 7th January 2011, a novation agreement was entered into by which PCFC novated to PFC (2010) its liabilities and obligations under the loans advanced by Portpin.

    (4) In late 2010 and early 2011, negotiations took place for the sale of PFC (2010) to Convers Sports Initiatives PLC ("CSI"), an English company in which Mr Antonov was the major shareholder. On about 1st June 2011, a sale was concluded of PFC (2010) to CSI, which included an assignment by Portpin to CSI of its interests in respect of the loans advanced by Portpin.

    (5) As part of the consideration for this assignment, on 1st June 2011, CSI issued to Portpin a promissory note dated 19th May 2011 in the sum of £17,188,014.95. On 26th May 2011, Mr Antonov emailed to Mr Deepak Chainrai and Mr Balram Chainrai a copy of a guarantee provided by Snoras as security for the promissory note. Portpin stipulated that the guarantee had to be authenticated.

    (6) On 1st June 2011, Mr Antonov wrote to Portpin referring to the Snoras guarantee in the sum of £19,938,097.34 and providing a personal guarantee of the sums set out in the Snoras guarantee, if the latter were not authenticated. On the same date, Mr Antonov agreed to pay to Portpin £4,000,000 in respect of various sums incurred by Portpin in relation to the funding of PFC (2010) between October 2010 and June 2011, by issuing a personal cheque in that sum and guaranteeing the payment of the cheque. Mr Antonov drew the cheque on 1st June 2011, but it was post-dated to 1st January 2012.

    (7) In the event, the Snoras guarantee was not authenticated. Portpin claimed under the guarantee provided by Mr Antonov and under the cheque drawn by Mr Antonov. Portpin's claims were not paid.

34. On 16th July 2012, Mr Antonov filed an acknowledgement of service form admitting Portpin's claim. On 24th July 2012, upon Mr Antonov's admission of Portpin's claim

in full, Portpin entered judgment against Mr Antonov in the sum of £24,206,451.38, including interest, plus costs of £1,835.00.

35. Ms Leigh-Ann Mulcahy QC, appearing on behalf of Portpin, explained the nature of Portpin's interest in Snoras's application in connection with the Freezing Order, by reference to the first and second witness statements of Mr Levi Kushnir, who stated that Portpin had been making every effort to identify Mr Antonov's assets located worldwide and to seek to enforce its judgment against those assets. At paragraphs 31-36 of his first witness statement, Mr Kushnir detailed the measures taken by Portpin in the United Kingdom, including the obtaining of a number of charging orders. At paragraphs 37-48, Mr Kushnir explained the enforcement measures taken by Portpin in Switzerland, namely the obtaining of civil attachment orders from the Swiss Courts in respect of bank accounts held with HSBC and Julius Baer, which assets were provisionally attached in September 2012. These orders became final and binding in favour of Portpin alone in February 2013 and February 2014 respectively. Approximately €45 million are held by way of cash balances in Julius Baer and HSBC under final and binding civil attachment orders in Switzerland.

36. Mr Amey for Snoras submitted that the Freezing Order has not interfered with Portpin's attempts to enforce its judgment against Mr Antonov and in fact assists Mr Antonov's creditors generally. Ms Mulcahy QC explained Portpin's interest in Snoras's application because Portpin is competing for the same pool of assets as Snoras. I am not certain that I fully understand why that competition remains relevant given the extent of the final civil attachments orders obtained by Portpin in Switzerland and the enforcement measures undertaken in the United Kingdom, but I am prepared to assume that Portpin has an interest in Snoras's application at least until Portpin has successfully enforced its judgment against Mr Antonov. I have therefore heard and considered Portpin's submissions on this basis.

37. I should point out that Mr Amey, on behalf of Snoras, questioned whether Portpin is a "*normal, arms-length creditor of Mr Antonov*", contending that there is likely to be some undisclosed connection between Portpin and Mr Antonov and that they appear to have been involved with a number of convicted criminals. In this respect, Mr Matonis, in his third witness statement, at paragraphs 7-14, refers to a number of press reports and rumours. I am not in a position to determine whether any of these allegations are true, especially at an interlocutory hearing where there is no live testimony. I indicated to Mr Amey that, unless a good arguable case of such a connection or involvement is relevant, assuming (without deciding) that there is such a good arguable case, I would need convincing that this was a relevant consideration for the hearing of Snoras's application.

38. It seems to me that these allegations, as Ms Mulcahy QC indicated, are not relevant to the questions whether or not Snoras has complied with the Undertaking or should be provided with retrospective permission to obtain the Lithuanian Arrest or the Swiss Arrest. At best, these considerations - even if proved - go to Portpin's interest in Snoras's application. However, in circumstances where Portpin is a judgment creditor, there is no evidence undermining the validity of that judgment, and there is no evidencing contradicting the measures adopted by Portpin in connection with the enforcement of that judgment, as I indicated above, I am prepared to assume that Portpin has an interest in Snoras's application.

Has Snoras failed to comply with the Undertaking?

39. The relevant Undertaking in the Freezing Order provides that:

> "(7) The Applicant will not without the permission of the court seek to enforce this order in any country outside England and Wales or seek an order of a similar nature including orders conferring a charge or other security against the Respondent or the Respondent's assets"

(1) The meaning of the Undertaking

40. Mr Amey, for Snoras, submits that the Undertaking is intended to require Snoras to obtain the Court's permission before taking any steps abroad which actually or substantially amount to the enforcement of the Freezing Order overseas; it does not require Snoras to obtain such permission if the application to the foreign court "*does not in any way rely upon the existence of the English freezing order*". Ms Mulcahy QC, for Portpin, submits that the Undertaking requires Snoras to obtain the Court's permission before taking any steps abroad which amount to the enforcement of the Freezing Order or to the obtaining of any order, independently of the Freezing Order, which is similar in nature or effect to the Freezing Order.

41. The Undertaking quoted above appears to have its origin in the early days of the development of the jurisdiction to grant world-wide freezing orders (formerly, *Mareva* injunctions). In *Derby & Co Ltd v Weldon* [1990] Ch 48, the Court of Appeal explained the purpose of the Undertaking. At pages 55-56, May, LJ said:

> "such a wide order can be severely oppressive if the defendants, while preparing for a very complicated trial in England, at the same time find themselves engaged in courts overseas in further applications of a Mareva nature, bearing in mind that plaintiffs with substantial resources may not be slow to engage the defendants in as many courts throughout the world as possible. Further, the judge … also pointed out that if a worldwide disclosure order is made simultaneously with a Mareva injunction, this may enable a plaintiff to obtain security in some foreign jurisdictions. It is in addition, as Lord Roskill has pointed out, a substantial invasion of privacy. To obviate these very real difficulties, Mr. Lyndon-Stanford on behalf of the plaintiffs undertook in the course of the argument in the instant case to leave any decision whether action should be taken by his clients in any foreign jurisdiction in respect of any of the assets of the two defendants to the English court. In my judgment such a term or undertaking should generally be part of any worldwide pre-judgment Mareva obtained in circumstances not dissimilar from those in this or the Duvalier case. It is worth making the point that if a worldwide Mareva is not obtained and the plaintiffs do from time to time discover the whereabouts of assets of the defendants, they may well be minded to take those steps in foreign jurisdictions which in totality might well be oppressive, whereas if a worldwide Mareva does contain a term giving the English court the general control over the litigation this would clearly obviate this potential difficulty."

42. In the same case, Nicholls, LJ said (at page 59):

> "The jurisdiction is established, but what is still being worked out, in this fast developing area of law, is the manner in which, in practice, the court should exercise its discretionary power under this wide jurisdiction. One important matter in this regard concerns the limitations and safeguards normally appropriate to be built into restraint and disclosure orders regarding overseas assets … In the present case the plaintiffs propose that this point should be dealt with by the plaintiffs giving to the English court an undertaking in terms which will preclude them from making any application to a foreign court to enforce the order without first obtaining leave from the English court. This seems to me to be a convenient course. If this undertaking is accepted, and an order is made, it would then be for the judge of the English court to whom any application for such leave might be made to consider, amongst other matters, whether the enforcement of the order in the country or countries for which leave is sought will, under the law of that country, result in the order having a substantially similar effect there to a Mareva restraint order in this country, as distinct from the order having there a more far-reaching effect (such as the assets in the country being attached as a form of security for the plaintiffs' claims, which is not the object of a Mareva restraint order). On any application for such leave, which normally would be inter partes, the judge can be expected to have before him what we do not have, namely, evidence of the law and practice in the country or countries in which the order is sought to be enforced … So the undertaking is a worthwhile one."

43. At this stage, according to Nicholls, LJ, the undertaking was a promise not to take steps to enforce the freezing order in a foreign jurisdiction without the sanction of the English Court. It is fair to say, however, that May, LJ did not appear explicitly to limit the relevant undertaking to such enforcement measures. The third member of the Court, Parker, LJ, referred to the need for a proviso or undertaking designed to avoid "*oppression of the defendants by way of exposure to a multiplicity of proceedings*" (page 57). Nevertheless, as the undertaking was introduced at the plaintiffs' suggestion and was recorded by Nicholls, LJ as being limited to the enforcement of the *Mareva* relief, as acknowledged in subsequent decisions (such as in *Dadourian Group International v Simms* [2006] EWCA Civ 399; [2006] 1 WLR 2499, at para. 24), it is likely that it was the enforcement of the English order abroad which merited the Court's concern.

44. Thus, the twin concerns which appear to underpin the origin of the Undertaking were (1) the avoidance of the oppression of the defendant by the institution of multiple proceedings for the enforcement of the English freezing order in several countries at the expense of the ability of the defendant to defend the English proceedings and (2) the prevention of the enforcement of the freezing order in a foreign jurisdiction having a more far-reaching effect in that jurisdiction than in England, for example by creating a security interest in favour of the claimant. The Court also expressed concern about the potential invasion of the defendant's privacy, principally by reason of the asset disclosure order, but that concern, it seems to me, is one which is associated with the English order, not any order of a foreign court which might be made.

45. Subsequently, the Undertaking developed so that it was not limited to the direct enforcement of the freezing order in foreign jurisdictions, but extended to an

undertaking not to "*seek an order of a similar nature including orders conferring a charge or other security against the Respondent or the Respondent's assets*", without the English Court's permission.

46. In this case, there is no suggestion that the Lithuanian Arrest and the Swiss Arrest were direct means of enforcing the Freezing Order. The question is whether the Lithuanian Arrest and the Swiss Arrest were each an "*order of a similar nature*".

47. This form of the Undertaking was considered by Hamblen, J in *In the matter of an LMAA Arbitration E, F, G v M (F v M)* [2013] EWHC 895 (Comm). In that case, the claimant chartered its vessel to the defendant. The defendant failed to pay hire under the charterparty. The claimant commenced arbitration proceedings against the defendant. The claimant then sought to terminate the charterparty in reliance on an alleged repudiatory breach of the charterparty by the defendant. The claimant claimed damages and applied for and obtained a worldwide freezing order on the basis of an Undertaking of the type which was given in the present case. Later, in another jurisdiction, the claimant arrested a vessel belonging to another company, but one presumably associated with the defendant, as security for the claim in the arbitration proceedings. The provision of security was required to procure the vessel's release, but this security was not provided, and the vessel remained under arrest. The defendant argued that this ship arrest constituted a breach of the Undertaking, because the arrest of the vessel was obtained for the same purpose as that of the worldwide freezing order, namely to seek to ensure that there would be assets against which an arbitral award could be enforced. Thus, the defendant argued, the claimant did what the Undertaking was designed to prevent: subjecting the defendant to a separate strand of proceedings in another jurisdiction which effectively duplicated the English proceedings. The claimant contended that the arrest did not breach the undertaking as an arrest is not "*similar*" to a freezing order, because it did not purport to charge or freeze the defendant's assets generally, and that a worldwide freezing order is not intended to restrict a claimant's free-standing right to seek to secure its claim against a specific asset in a specific jurisdiction. The claimant submitted that it is commonplace for a creditor to seek to protect its position by means other than a worldwide freezing order (WFO), such as by arrest of a vessel; a creditor is and should be permitted to do so without the need to obtain the Court's permission first, particularly as there is often a need to act with urgency in the foreign jurisdiction. The claimant argued that the Undertaking prevented the claimant, without the permission of the Court, from seeking to enforce a worldwide freezing order abroad or to obtain a similar general attachment or freezing order abroad, thereby adding to the burden of the English court order or duplicating the relief thereby conferred.

48. The Court held that the ship arrest did not breach the Undertaking. Hamblen, J observed that there was no authority on the issue and, after referring to the Court of Appeal's decision in *Derby & Co Ltd v Weldon*, said (at paragraph 50) that:

> "The focus of concern there expressed is that leave to enforce a WFO abroad should not be given if it is to have a more far reaching effect than the order made here and that information pertaining to that issue should be provided to the Court. That is understandable in the context of an application for leave to enforce a WFO. The English court would not want its order to be used to wider and different effect than it considers appropriate in making such orders. Those concerns do not, however, arise where what is sought to be done is to obtain an

> order abroad of a different nature. Whilst the foreign court may well wish to have regard to the fact that there is a WFO in deciding whether to make its own order, whether or not it is appropriate for it to exercise its own independent jurisdiction to make such an order is a matter for it rather than the English court. That jurisdiction does not depend upon or derive from the making by the English court of the WFO."

49. Hamblen, J added that the guidelines enunciated by the Court of Appeal in *Dadourian Group International v Simms* [2006] EWCA Civ 399; [2006] 1 WLR 2499, at paragraph 25, which are taken into account by the Court in deciding whether or not to permit proceedings abroad to enforce a worldwide freezing order as required by the Undertaking. At paragraphs 51-52, the judge said that these considerations are "*essentially directed at enforcement abroad of the English court WFO*". Thus Guideline 1 states the governing principle to be what is just and convenient "*for the purpose of ensuring the effectiveness of the WFO*". Some of those guidelines are "*clearly premised on the fact that the foundation of the relief for which permission is sought is the English WFO, not some independent and different right*". At paragraph 53, Hamblen, J concluded that:

> "The fact that many of the *Dadourian* guidelines are inapt to the pursuit of an independent right to security abroad lends some support to the Claimant's case that the permission requirement is focused on the seeking of permission to enforce a WFO abroad or obtaining similar relief abroad. The main concern underlying the undertaking is an inappropriate or oppressive extension of the WFO through its enforcement abroad or its duplication. It is not directed at precluding the pursuit of different and independent rights to security that may be available abroad."

50. Hamblen, J appeared to consider that the Undertaking is designed to require the Court's permission where the English freezing order is enforced or duplicated abroad with oppressive effect. By contrast, if an order of the foreign court is made based on different and independent rights, the English Court's permission is not required. It is true that Hamblen, J referred to different and independent rights to <u>security</u>, but it seems to me likely that the importance of Hamblen, J's distinction resides in the independence of the rights to the foreign interim relief, rather than the fact that it might amount to security. As such security is more far-reaching than the English freezing order in its effect, which itself was a concern which prompted the introduction of the Undertaking, it would be odd if, on this analysis, the Undertaking would be breached if the foreign interim relief were based on different and independent rights, but operated merely as a freezing order rather than as more far-reaching security. Accordingly, on my reading of this decision, it is not the mere obtaining of similar freezing relief abroad which falls foul of the Undertaking. I read the reference to the "*duplication*" of the English freezing order as an amplification of the direct enforcement of the English freezing order to encompass foreign interim relief which in effect or in substance amounts to enforcement of the English freezing order, *i.e.* where the jurisdiction to make the foreign order effectively depends upon or derives from the making by the English Court of the freezing order.

51. As to the scope of the Undertaking, with these authorities in mind, Mr Amey argues that the purpose of the Undertaking in connection with "*similar*" orders is to prevent

an applicant from framing an application before a foreign court for fresh relief, when in substance all that the applicant is doing is seeking to enforce the English freezing order. Ms Mulcahy QC pointed out that the words "*including orders conferring a charge or other security against the Respondent or the Respondent's assets*" suggest that the Undertaking must proscribe more than mere enforcement of the Freezing Order (see also Gee, *Commercial Injunctions*, (6th ed., 2016), para. 23-019). However, it seems to me that those words are apt to deal with foreign court orders which directly or in substance enforce the Freezing Order.

52. The Undertaking imposes an obligation on Snoras, as the applicant for the Freezing Order. Indeed, a breach of the Undertaking may well be a contempt of court (*In the matter of an LMAA Arbitration E, F, G v M (F v M)* [2013] EWHC 895 (Comm), para. 41). As such, it is an undertaking which should be clear in its meaning and application so that the applicant is in a position to know, without unnecessary argument, what is and what is not permitted. There appears to be a potential ambiguity in the Undertaking in that the phrase "*order of a similar nature*" could refer to an order which is similar in nature or effect to the Freezing Order (the wider interpretation) or to an order which is similar to an order enforcing the Freezing Order (the narrower interpretation). It is difficult to conceive why the English Court should be concerned if the applicant, in this case Snoras, were able to obtain a freezing order or other interim relief before a foreign court irrespective of the applicant having obtained a freezing order in England and Wales. This narrower interpretation is consistent with the analysis adopted by Hamblen, J. Of the principal concerns underlying the Undertaking, the avoidance of the oppressive nature of a multiplicity of proceedings supports either interpretation of the Undertaking, whereas the concern about the prevention of endowing the Freezing Order with a more far-reaching effect abroad supports the narrower interpretation.

53. From the language of the Undertaking and from the decision of Hamblen, J, I consider that the Undertaking requires the Court's permission before Snoras applies for foreign interim relief which directly or effectively (or in substance) enforces the Freezing Order (the narrower interpretation). In this respect, I make the following observations:

    (1) The principal concern underlying the Undertaking is to prevent the enforcement of the Freezing Order in another jurisdiction having a more far-reaching, or a wider and different effect, than the Freezing Order does in England. This concern extends to the situation where the order of the foreign court is not the direct enforcement of the Freezing Order, but amounts in substance to the enforcement of the Freezing Order (as explained above, this is what I understand by the reference to the "*duplication*" of the Freezing Order referred to by Hamblen, J).

    (2) Insofar as the concern underlying the Undertaking relating to the avoidance of the oppressive nature of a multiplicity of proceedings, the English Court's immediate concern would be to prevent its own orders being used to contribute to such oppression. That is not to say that the existence of a multitude of proceedings abroad, which does not depend on or derive from the English Freezing Order, might not be used as a ground for applying to the English Court for an order for the variation or discharge of the Freezing Order in the exercise of the Court's discretion.

(3) The English Court would wish to police the circumstances in which the applicant sought to use the English Freezing Order as a means to obtain further or greater or oppressive relief abroad. It is this concern which gave rise to the Undertaking.

(4) The Undertaking is not concerned with the situation where the order sought abroad does not amount to the direct or effective enforcement of the Freezing Order. The Undertaking is not concerned with the situation where the foreign court in making the relevant order is exercising its own independent jurisdiction, irrespective of the English Freezing Order, even if the existence of the Freezing Order granted in England is referred to in support of the application abroad for that order and even if the order of the foreign court is of a similar nature or effect as the English Freezing Order. Therefore, if the jurisdiction of the foreign court to grant the order does not depend upon or derive from the making by the English Court of the Freezing Order for the purpose of the direct or effective enforcement of the Freezing Order, but arises from a different and independent right or jurisdiction, the Undertaking is not engaged.

54. I would add that if the wider interpretation of the Undertaking were correct, issues of compliance with the Undertaking would very often depend on comparing the various features of the English and foreign orders which in most cases would concentrate on what might well be meaningless similarities and differences and would contribute little to the protection which the Undertaking was designed to provide. By contrast, the narrower interpretation which focuses on whether and the extent to which the foreign order enforces the English freezing order, whether directly or in substance, has regard to the concerns underlying the Undertaking and is a relatively easy matter to review.

<u>(2) Has Snoras failed to comply with the Undertaking on the facts?</u>

55. The question arises whether Snoras did or did not comply with it by reason of having obtained the Lithuanian Arrest or the Swiss Arrest.

56. Mr Amey submits that Snoras obtaining orders for the Lithuanian Arrest and the Swiss Arrest did not constitute a breach of the Undertaking. Ms Mulcahy QC asserted the contrary.

57. As to the Lithuanian Arrest, Snoras adduced the evidence of Mr Matonis (to whose evidence I have already referred) in his first and third witness statements and Portpin adduced the evidence of Mr Černiauskas. My understanding of the Lithuanian Arrest is as follows:

(1) The Lithuanian Arrest was obtained in support of the Lithuanian Civil Claim, not the English Civil Claim (although reference may have been made to the English Civil Claim when the application was made).

(2) A public officer or bailiff is responsible for the seizure of the assets subject to the Lithuanian Arrest. The public officer or bailiff becomes entitled to exercise the rights of control of the seized assets. Accordingly, it is not simply a matter of requiring the respondent not to transfer or deal with the assets which are the

subject of the Lithuanian Arrest. See Mr Matonis' first witness statement, at para. 30(1); Mr Černiauskas' first witness statement, at para. 22-23, 27-28; Mr Černiauskas' second witness statement, at para. 20.

(3) The assets seized are those which are known to the bailiff and which are recorded in the Lithuanian Register of Seizures, but the Lithuanian Arrest is capable of attaching to any of the respondent's property. See Mr Matonis' first witness statement, at para. 30(2); Mr Matonis' third witness statement, at para. 65-67; Mr Černiauskas' second witness statement, at para. 20, 22.

(4) There is no automatic obligation on the part of the respondent to give asset disclosure, but the bailiff can require the respondent to give asset disclosure. Mr Matonis' first witness statement, at para. 30(2); Mr Černiauskas' first witness statement, at para. 23-25; Mr Matonis' third witness statement, at para. 66, 67(1).

(5) The Lithuanian Arrest restricts the transfer of assets potentially in favour of all creditors, although secured creditors will benefit before unsecured creditors. The Lithuanian Arrest is gazetted so that such creditors can come forward to register their interest. However, there will come a point in time where the class of creditors to benefit will close so that those creditors who have not registered their interest will not benefit from the Lithuanian Arrest. See Mr Černiauskas' first witness statement, at para. 33-38; Mr Matonis' third witness statement, at para. 68(2).

(6) The Lithuanian Arrest does not have extraterritorial effect. See Mr Matonis' third witness statement, at para. 69(2); Mr Černiauskas' second witness statement, at para. 23, 25.

58. As to the Swiss Arrest, Portpin adduced the evidence of a Swiss lawyer, Mr Rodolphe Gautier, and Snoras adduced the evidence of another Swiss lawyer, Mr Roberto Dallafior. My understanding of the Swiss Arrest is as follows:

(1) The Swiss Arrest was obtained in support of the Lithuanian Civil Claim, not the English Civil Claim.

(2) The Swiss Arrest was obtained pursuant to the Swiss Federal Debt Enforcement and Bankruptcy Law. It is limited to specific assets in named bank accounts; it does not apply to the general assets of the respondent. It has the effect of preventing the respondent from transferring ownership of specific assets to the detriment of its creditors. See Mr Gautier's first witness statement, at para. 12-13, 16, 19-20, 69, 74; Mr Dallafior's first witness statement, at para. 14; Mr Gautier's second witness statement, at para. 20.

(3) The Swiss Arrest is administered by a bailiff or public official. However, the respondent remains in possession of the relevant assets, subject to certain exceptions. At least insofar as the assets concerned are bank accounts, the bailiff has custody of the respondent's rights against the bank. The rights exercised by the bailiff or public official in respect of bank accounts do not require the physical seizure of funds, but restrict the respondent's rights of

access to those funds. See Mr Gautier's first witness statement, at para. 18-20, 23, 75(a); Mr Dallafior's first witness statement, at para. 8, 15, 23-24.

(4) There is no general duty of asset disclosure, although there is a more limited duty of disclosure. There was a dispute between the witnesses about whether the duty of disclosure was "*very limited*". See Mr Gautier's first witness statement, at para. 70; Mr Dallafior's first witness statement, at para. 14, 26, 28; Mr Gautier's second witness statement, at para. 23-25.

(5) The Swiss Arrest does not endow any secured or privileged rights on the applicant. As I understand it, it operates similarly in effect to the Lithuanian Arrest, although the procedure appears to be different requiring the validation of a civil attachment order. See Mr Gautier's first witness statement, at para. 25, 29-38, 42-43, 72, 76; Mr Dallafior's witness statement, at para. 9, 13, 31-33, 41; Mr Gautier's second witness statement, at para. 15, 18, 29, 34-39.

(6) The Swiss Arrest does not have extra-territorial effect. See Mr Gautier's first witness statement, at para. 78, Mr Dallafior's first witness statement, at para. 14; Mr Gautier's second witness statement, at para. 39, 52.

59. As I understand it, neither the Lithuanian Arrest itself nor the Swiss Arrest itself endowed the applicant with security or privileged rights in respect of the relevant assets. Insofar as the interest which the applicant seeks to protect is itself a proprietary right (such as that Snoras claims in the Lithuanian Civil Claim) the Lithuanian Arrest and the Swiss Arrest protect those rights, but the Lithuanian Arrest and the Swiss Arrest do not of themselves endow the applicant with a secured interest where that interest did not previously exist (Mr Matonis' first witness statement, at para. 30(3); Mr Černiauskas' second witness statement, at para. 28, 30, 31, 38(1); Mr Matonis' third witness statement, at para. 68(1); Mr Gautier's first witness statement, at para. 71-72; Mr Dallafior's witness statement, at para. 41; Mr Gautier's second witness statement, at para. 34). Importantly, the Lithuanian Arrest and the Swiss Arrest restrict the transfer of assets potentially in favour of all creditors provided that they come forward to register their interest.

60. The witness statements adduced by the parties explain in some detail the operation and effect of the Lithuanian Arrest and the Swiss Arrest. It is apparent from this review that there are similarities and differences between the Freezing Order on the one hand and the Lithuanian Arrest or the Swiss Arrest on the other hand. Insofar as there was any dispute on the evidence, it was not very significant and it was not possible for me to judge which of the witnesses' evidence was to be preferred. That said, there was much common ground in the evidence.

61. However, the important consideration for the purposes of this application is that the Lithuanian Arrest and the Swiss Arrest are orders - even if similar in effect, in whole or in part, to the Freezing Order - which were obtained pursuant to rights engrafted in Lithuanian and Swiss law in support of the Lithuanian Civil Claim independently of the existence of the Freezing Order granted in England and were not obtained for the purpose of enforcing the Freezing Order (see Mr Adomonis' first witness statement, at para. 12; Mr Matonis' first witness statement, at para. 25-30; Mr Dallafior's first witness statement, at para. 12, 45).

62. In my judgment, based on the interpretation of the Undertaking I have adopted, therefore, the Lithuanian Arrest and the Swiss Arrest stand apart from the Freezing Order and cannot be regarded as orders enforcing the Freezing Order or "*an order of a similar nature*".

63. In the present case, there are plainly differences between the Freezing Order on the one hand and the Lithuanian or Swiss Arrests such that the Freezing Order is different in nature or effect from the Lithuanian or Swiss Arrests. However, I do not see how focussing on such differences, such as the involvement of a bailiff, the extent of the assets which are the subject of such foreign relief, the existence or absence of a disclosure obligation, assist in determining whether the Undertaking has been breached, other than underlining the independent nature of the jurisdiction being exercised by the Lithuanian and Swiss Courts. The important difference between the respective orders is that the Lithuanian and Swiss Arrests were obtained independently of the English Freezing Order in support of the Lithuanian Civil Claim, and not in support of the English Civil Claim.

64. I would add that I do not consider that either of the twin concerns which motivated the introduction of the Undertaking - namely oppression of the defendant (Mr Antonov) by reason of a multitude of proceedings and the obtaining of more far-reaching relief than the Freezing Order contemplated - are engaged in the circumstances of the present case. Whether or not the Freezing Order existed, Mr Antonov would remain exposed to the Lithuanian Civil Claim and the English Civil Claim, not to mention other claims arising from the fall of Snoras, including Portpin's claim (judgment) against him. Further, the Freezing Order was not relied on in Lithuania or Switzerland to obtain the interim relief in those countries and to gain greater or more privileged rights by means of enforcing the Freezing Order in respect of Mr Antonov's assets than the Freezing Order allows or contemplates.

65. I am mindful of the fact that there is a considerable overlap between the Lithuanian Civil Claim and the English Civil Claim. It is notable that the Lithuanian Arrest and the Swiss Arrest each operate in support of the Lithuanian Civil Claim, both in respect of those aspects which overlap with the English Civil Claim (namely, in respect of the Julius Baer Transactions and the HSBC Transactions) and in respect of those aspects which do not (the Spyker Episode and the Syz Episode). Ms Mulcahy QC makes the compelling point that the formulation of the Lithuanian Civil Claim differs from the formulation of the English Civil Claim in order to avoid objections to jurisdiction based on *lis alibi pendens*. Ms Mulcahy QC adds that given the extent of overlap between the two claims and given the fact that the same *in personam* relief is sought for similar amounts in both claims, "*it does not really matter which Claim the Arrests were in support of*" (paragraph 31 of Ms Mulcahy QC's skeleton argument). Nevertheless, the fact remains that there are separate proceedings in Lithuania and England and there are differences in the formulation of the causes of action underlying the two sets of proceedings and, in addition, the Lithuanian Civil Claim seeks proprietary relief, as well as *in personam* relief. It may well be that the factual bases of the claims which are common to the Lithuanian Civil Claim and the English Civil Claim are the same, but this consideration does not mean that the Undertaking has been breached, because even though there is considerable overlap between the English Civil Claim and the Lithuanian Civil Claim, it cannot be said, on the evidence, that the Lithuanian Arrest and the Swiss Arrest in support of the Lithuanian

Civil Claim were obtained by means of direct or effective enforcement of the English Freezing Order made in support of the English Civil Claim. It is not the overlap between the civil claims in Lithuania and England which matters for the purposes of the Undertaking, but the steps taken in Lithuania and Switzerland to enforce the Freezing Order. I do not consider that the Lithuanian and Swiss Arrests amount to the effective enforcement of the English Freezing Order merely because of the overlap between the two civil claims.

66. Accordingly, I am satisfied that there has been no breach of the Undertaking and that Snoras is entitled to the declaration it seeks.

The alternative application for retrospective permission

67. If I am wrong and, by reason of the Lithuanian Arrest and the Swiss Arrest, there is a breach of the Undertaking by Snoras, the question arises as to whether the Court should grant retrospective permission for these steps and/or whether the Freezing Order should be discharged.

68. There are three possible consequences flowing from any breach of the Undertaking: (1) the Freezing Order should be discharged (*Gill v Flightwise Travel Service Ltd* [2003] EWHC 3082 (Ch), para. 28; *In the matter of an LMAA Arbitration E, F, G v M (F v M)* [2013] EWHC 895 (Comm), para. 41); (2) the Freezing Order is maintained, but Snoras should be required to withdraw the Lithuanian Arrest and the Swiss Arrest; or (3) the Freezing Order is maintained, and the English Court should permit the continuance of the Lithuanian Arrest and the Swiss Arrest. There is, I suppose, a fourth possibility that the Freezing Order is maintained and Snoras should withdraw the Lithuanian Arrest and the Swiss Arrest, but is permitted to re-apply for such interim relief. However, that fourth possibility would seem pointless and a waste of time and money. As to which of these consequences follows, this is a matter for the Court’s discretion, as both parties accept.

69. Portpin submits that the first, alternatively the second, consequence referred to above should follow if Snoras breached the Undertaking.

70. I have no doubt that, even if there has been a breach of the Undertaking by Snoras, the Freezing Order should be maintained and that the Court should permit the Lithuanian Arrest and the Swiss Arrest to continue. I reach this conclusion taking into account the following considerations (and bearing in mind the guidelines in *Dadourian Group International v Simms*):

    (1) I am satisfied that any breach of the Undertaking was inadvertent or unintended. Moreover, Snoras has apologised for any such breach. Portpin argues that no explanation has been given for the breach of the Undertaking in circumstances where the Bankruptcy Administrator was being advised by Linklaters LLP, who were familiar with the Freezing Order and the English proceedings. At paragraphs 12-13 of his first witness statement, the Bankruptcy Administrator, Mr Adomonis, refers to his belief that the Undertaking had not been breached, but if there had been a breach, it was inadvertent. Given the uncertainty of the Undertaking’s meaning, I am satisfied that any breach of the Undertaking was inadvertent.

(2) When Snoras was alerted to the potential breach of the Undertaking (as it happened, by Portpin), it made an application to the Court. I understand that Portpin alerted Snoras to the potential breach in June 2017. Ms Mulcahy QC emphasises the delay on the part of Snoras in bringing any breach of the Undertaking to the attention of the Court. In the circumstances, I do not consider that any such delay - assuming it were unreasonable - would outweigh the factors in favour of continuing the Freezing Order.

(3) Mr Antonov (or Mr Baranauskas) has not objected to the Lithuanian Arrest or the Swiss Arrest as constituting a breach of the Undertaking. Mr Antonov was the person best placed to explain the oppressive impact of the Lithuanian Arrest and the Swiss Arrest, together with the Freezing Order. Portpin refers (at para. 39(e) of its skeleton argument) to the fact that the Lithuanian Arrest, and the Swiss Arrest in connection with the HSBC accounts, have not yet been served on Mr Antonov. Nevertheless, I understand that Mr Antonov is aware of the current application and has communicated with Snoras prior to the hearing of this application, but registered no objection to the application, although he did express discontent with the Lithuanian Civil Claim.

(4) There is no evidence that the Lithuanian Arrest and/or the Swiss Arrest have or will have an oppressive or prejudicial impact on Mr Antonov, for example on his ability to defend the English Civil Claim. In fact, Mr Antonov has lifted the stay of the English Civil Claim and has expressed his wish "*to move forward*" with the action. In doing so, Mr Antonov expressed no disquiet concerning the impact of the Lithuanian Arrest or the Swiss Arrest on his ability to defend the English Civil Claim.

(5) When the Freezing Order was granted and when the application for discharge of the Freezing Order was rejected, the Court was satisfied that there was a risk of dissipation of assets, even with the various orders in place restraining Mr Antonov from transferring or dealing with assets in a number of jurisdictions. As Gloster, J concluded (at paragraph 67): "*Having read the entirety of the evidence in this matter, I have no doubt that a risk of dissipation remains, notwithstanding Mr. Antonov's presence within this jurisdiction and the restraint orders which have been made. He is a sophisticated operator who remains clearly able to give instructions in relation to transactions affecting his worldwide assets*". There is no evidence before the Court to suggest that the risk of dissipation of assets has diminished.

(6) When the Freezing Order was granted and when the discharge application was heard, the Court was aware that there were a number of criminal restraint orders in place and moreover that there might well be applications to obtain freezing orders abroad (see paragraph 47 of Gloster, J's judgment). Notwithstanding, Gloster, J dismissed the application to discharge the Freezing Order.

(7) The allegations which underpin Snoras's claims against Mr Antonov involve allegations of serious wrongdoing. (This consideration may be compounded by other matters referred to by Snoras, including findings of fraud in connection with another claim brought by a Latvian subsidiary of Snoras made by Leggatt, J in *As Latvijas Krajbanka (in liquidation) v Antonov* [2016]

EWHC 1262 (Comm), and Mr Antonov having, apparently, fled the jurisdiction in breach of court orders relating to extradition. I would add that after the oral hearing of Snoras's application, Snoras served the fourth witness statement of Mr Matonis dated 13th April 2018, which refers to press reports that Mr Antonov had been arrested by the Russian authorities in connection with an alleged fraud on another bank, Sovetsy Bank. However, I have seen little evidence in these respects, and I would have reached the same conclusion even without taking these additional matters into account.)

(8) I am aware of no concrete reason why the interests of Portpin should predominate in the exercise of the Court's discretion. As I said above, it is not clear to me that Portpin itself has been prejudiced by the Lithuanian Arrest and the Swiss Arrest. Even if there were such prejudice, for example because the Swiss Arrest negatively impacts on the relief obtained by Portpin in Switzerland, I do not regard that as a matter which outweighs the considerations referred to above.

71. Accordingly, if (contrary to my earlier ruling) there has been a breach of the Undertaking, I would not have discharged the Freezing Order and I would have permitted the continuance of the Lithuanian Arrest and the Swiss Arrest.

Conclusion

72. I therefore allow Snoras's application for a declaration that there has been no breach of the Undertaking.

73. I am conscious that the Freezing Order has now been in place for more than five years and the English Civil Claim has been stayed, by consent, for more than four years. Mr Antonov has sought to lift that stay and a case management conference is to be held to provide further directions for the conduct of the English Civil Claim.

74. I would like to thank counsel for both parties for their very helpful submissions. I await to hear from counsel as to the form of order required.