Neutral Citation Number: [2021] EWHC 1907 (Comm)

Case No: CL-2019-000141

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

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

Date: 8 July 2021

Before :

THE HON. MR JUSTICE BRYAN

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Between :

LAKATAMIA SHIPPING CO LIMITED	**Claimant**
- and –	
(1) (1) NOBU SU (aka SU HSIN CHI; aka NOBU MORIMOTO) **(2) (2) TOSHIKO MORIMOTO** **(3) (3) PORTVIEW HOLDINGS LIMITED** **(4) (4) CRESTA OVERSEAS LIMITED** **(5) (5) UP SHIPPING CORPORATION** **(6) (6) BLUE DIAMOND SEA TRANSPORT LLC**	**Defendants**

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S.J. Phillips QC, N.G. Casey, Stephen Du and **James Goudkamp**
(instructed by **Hill Dickinson LLP**) for the **Claimant**
David Head QC and **Georges Chalfoun** (instructed by **Baker & McKenzie LLP**) for the **Second Defendant**

Hearing dates: 1, 2, 8, 9, 10, 11, 15, 16, 17, 18, 22, 23, 24, 25, 29, 30 and 31 March 2021
Judgment supplied to the parties in draft on 2 July 2021

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Judgment Approved

The Hon. Mr Justice Bryan:

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A. INTRODUCTION

1. In this action Lakatamia Shipping Co Ltd ("Lakatamia") advances two claims against the Defendants, the first an alleged cause of action in unlawful means conspiracy as to whether the Defendants including the Second Defendant Toshiko Morimoto ("Madam Su") conspired together to injure Lakatamia by unlawful means, namely by the dissipation of two assets of Madam Su's son, the First Defendant Nobu Su (aka Su Hsin Chi; aka Nobu Morimoto) ("Nobu" Su or "Mr Su"), namely the net sale proceeds of two Monegasque villas (the "Monaco Sale Proceeds") and a private jet (the "Aeroplane Sale Proceeds") in breach of a World Wide Freezing Order ("WFO") which was made against Mr Su by Blair J on 19 August 2011 in related Commercial Court proceedings (Claim 2011 Folio No. 357) (the "Underlying Proceedings") to which Mr Su is still subject (the "Blair Freezing Order"), and secondly an alleged cause of action premised on the intentional violation of rights in a judgment debt (i.e. the so-called *Marex* tort, see *Marex Financial Limited v Sevilleja* [2017] EWHC 918 (Comm)).

2. In relation to each cause of action the Court is essentially concerned with two principal questions:-

   (1) Did Madam Su and the corporate Defendants know that Mr Su was subject to the Blair Freezing Order (for the purposes of the tort of conspiracy) or owed the Judgment Debt (for the purpose of the *Marex* tort)?

   (2) Did Mr Su, Madam Su and the corporate Defendants (and possibly others) combine to dissipate the Monaco Sale Proceeds and Aeroplane Sale Proceeds in breach of the Blair Freezing Order?

3. If the answer to these two questions is in the affirmative, Lakatamia says that the essential elements of an unlawful conspiracy to injure Lakatamia between Madam Su, Mr Su and the corporate Defendants are made out and, additionally, Madam Su and the corporate Defendants knowingly procured Mr Su's failure to discharge the Judgment Debt (the *Marex* tort).

4. In order even to introduce the background to the action it is necessary to say something at a very high level about the history of matters and how this action has come about. What follows is not understood to be controversial in terms of the facts that are set out. Where facts relate to matters in issue they are, in any event, addressed in due course below.

5. In relation to the Underlying Proceedings (and as part of the backdrop to events leading up to the present action), the entity Taiwan Maritime Transport Co Ltd ("TMT") was established by Mr Su Ching Wun, Madam Su's late husband ("Mr Su Senior") in 1958. The evidence before me is that TMT became a very successful company and was very lucrative for the Su family. Mr Su Senior and Madam Su had one son (the First Defendant Nobu/Mr Su), and 5 daughters.

6. Mr Su Senior died in 2001. By then the family business had expanded to become a substantial group of companies and Mr Su had become its Chief Executive Officer. Madam Su's role in the TMT group companies and the family business before her husband's death is (but only to an extent) in issue before me. Her role (if any) after her

husband's death is very much in issue before me, and is at the very heart of Lakatamia's allegations against her.

7. What is not in issue is that, after Mr Su succeeded his father, he made sweeping changes to the business, and embarked on massive speculation in the market in forward freight rates, trading in derivative instruments through various companies in the TMT group, including TMT Co Ltd, Liberia ("TMT Liberia"). Since the financial crisis in 2008 (and as a result of his abject mismanagement of the successful business inherited from his father) he brought that business to its knees.

8. More specifically, in the context of the Underlying Proceedings and this action, in the summer of 2008, he had a desperate need for liquidity, and TMT Liberia was unable to meet the margin calls being made by the Royal Bank of Scotland ("RBS"), the bank through which it held its substantial open positions. Mr Su therefore sought, through the offices of Mr Vassilis Karakoulakis of Clarksons, to obtain assistance from various wealthy ship-owning interests in Greece, including Mr Polys Haji-Ioannou, who is the principal of Lakatamia.

9. Over the weekend of 5/6 July 2008, Mr Haji-Ioannou and Mr Su agreed that Lakatamia would buy FFAs corresponding to 600,000 metric tonnes per calendar month in 2009 on Route TD3 (the equivalent of three VLCCs trading constantly over a year) at a price of 100.65 worldscale points; and that a month later Mr Su would buy the position back at a fixed price of 101.65 worldscale points ("the FFA Contract"). This was an enormous trade representing 1.7% of the total volume of FFAs traded through the London Clearing House in 2008. Lakatamia would earn a guaranteed profit on the transaction of 1 worldscale point per metric tonne, and so, had the FFA Contract been performed in accordance with its terms, the profit to Lakatamia would have been US$1.8m.

10. Lakatamia purchased this massive position on 8 July 2008. By 8 August 2008, the market had, however, fallen and Mr Su did not buy the position back. Over the following weeks and months, he bought back part of the position; but not at the agreed price. Lakatamia was thus left with a massive unwanted exposure and faced ever mounting margin calls from RBS. The total loss suffered by Lakatamia on the unwanted FFA positions (net of the positions that Mr Su had bought back) was US$79,633,538.25, and whilst Mr Su initially made some payments against this liability between 8th October 2008 and 9th October 2009 (cash payments of US$32,303,195 through two companies in the TMT group) and caused companies within the TMT group to charter vessels to Lakatamia at reduced rates, (giving discounts equating to US$11,276,033.01), eventually these payments and discounts dried up.

11. On 24 March 2011, Lakatamia issued the Underlying Proceedings. On 22 August 2011, Lakatamia applied ex parte for the Blair Freezing Order due to concerns Lakatamia had that Mr Su and the other defendants in that action would dissipate their assets to frustrate any judgment. Blair J granted the freezing order sought. On the return date it was contended by Mr Su that he had no personal liability on the FFA Contract. Beatson J rejected that argument and continued the Blair Freezing Order on 6 October 2011. An appeal by Mr Su against that order was dismissed on 18 July 2012.

12. On 5 November 2014, following a trial of the substantive issues, Cooke J found Mr Su personally liable for breach of the FFA Contract and awarded Lakatamia the sum of

US$37,854,310.24 (reported at [2015] 1 Lloyd's Rep. 216). On 16 January 2015, Cooke J entered a further judgment against Mr Su in the sum of US$9,852,200.50 (collectively the "Judgments"). Mr Su pursued an appeal. At a hearing on 19 March 2015, the Court of Appeal granted Mr Su permission to appeal on the condition that Mr Su provide security in respect of the Judgment Debt in the sum of US$22m by 19 May 2015 (although the amount that needed to be provided was ultimately US$15.8m because Lakatamia claimed an entitlement to certain monies held in the Court Funds Office). In the event the security was not forthcoming in circumstances which will need to be addressed in detail in due course below, as Lakatamia says (and Madam Su denies) that they shed light on Madam Su's alleged knowledge of the Blair Freezing Order and the Judgments. No security having been put up, the appeal did not proceed.

13. Lakatamia says that, with interest and costs the judgment debt now exceeds US$60 million (the "Judgment Debt"). Mr Su has not discharged any part of the Judgment Debt voluntarily. He now says that he is bankrupt (albeit that Lakatamia says he plainly does still have significant assets albeit hidden). He filed for bankruptcy in this jurisdiction on 8 July 2020 (albeit Lakatamia has applied to have that bankruptcy set aside, amongst other matters on the ground that there was no jurisdiction). As appears below, at the Pre-Trial Review, I stayed the action against Mr Su under section 285(2) of the Insolvency Act 1986 in the context of his bankruptcy. He accordingly played no part in the trial.

14. On 26 January 2018, Lakatamia had applied for and was granted a Passport Order against Mr Su by Popplewell J ("the Passport Order"). Following an episode when Mr Su managed to abscond from the Gare du Nord in Paris, he arrived in the jurisdiction at Heathrow on 10 January 2019 and was met by police officers who served the Passport Order upon him and confiscated his passports. Mr Su proceeded to lie to those officers about his intended address, falsely stating that he was going to The Dorchester hotel in London. According to Madam Su, it was at this point, in a telephone call from her son on 12 January 2019, that she first learned of the Blair Freezing Order. Lakatamia's case is that this is simply untrue, and that Madam Su had long known of the Blair Freezing Order and the Judgments.

15. On 14 January 2019, Madam Su transferred 100,000 New Taiwanese Dollars ("NTD") to Mr Su's credit card. The following morning, Mr Su took a taxi to Liverpool with a view to fleeing the jurisdiction by ferry to Belfast, demanding a free ticket on a Stena Line ferry on the asserted basis that he was good friends with the owner of the company. The staff were suspicious and called the police. He was arrested and spent the night in HMP Liverpool. In prison, Mr Su wrote several letters addressed variously to Madam Su and his estranged wife, Ms Rika Morimoto; Ms Chizuru Tsunoda, his partner; and to his daughters, Airi and Eri.

16. On 16 January 2019, Mr Su was brought before the Commercial Court and appeared before me. At that hearing I placed additional restrictions on him but otherwise substantially renewed the orders made in the Passport Order. On the same day, Lakatamia served Mr Su with a committal application notice.

17. On 27 February 2019, Mr Su was cross-examined as to his assets under CPR Pt 71. He was represented by the public access counsel paid for by Madam Su, who also paid for Baker McKenzie to attend court to monitor developments (why they were instructed was itself explored in evidence before me).

18. When asked about the whereabouts of the Monaco Sale Proceeds, Mr Su implicated Madam Su alleging (in essence) that they had been transferred to Madam Su or to lawyers acting on her behalf. That was not, on any view, literally true, at least in a direct sense, as the monies were transferred in the first instance to the Fifth Defendant, UP Shipping Corporation ("UP Shipping"). However, Lakatamia says, and Madam Su, denies, that UP Shipping is ultimately beneficially owned by Madam Su. Mr Su also said (paraphrasing matters simply by way of overview) that his mother *"want[ed] to control everything"* and referred to her as performing a *"treasury function"*. Mr Su also told the Court that Madam Su knew about the Blair Freezing Order. I note in passing that Sir Michael Burton observed that *"She must plainly have known about the order"*. It is, however, a matter for me to determine, and on the evidence now before me, as to what Madam Su did or did not in fact know.

19. Whatever the truth or otherwise of Mr Su's evidence (and the question of Madam Su's knowledge is at the very heart of this trial), in the wake of Mr Su's evidence, on 27 February 2019 Sir Michael Burton made an ex parte worldwide freezing order (the "Burton Freezing Order") against Madam Su, the Third Defendant, Portview Holdings Limited ("Portview") and the Fourth Defendant, Cresta Overseas Limited ("Cresta"), freezing Madam Su's worldwide assets up to the value of €27,127,855.01. On 6 March 2019, Lakatamia issued the instant proceedings against Mr Su, Madam Su, Cresta and Portview.

20. On 29 March 2019, Sir Michael Burton committed Mr Su to prison for contempt of court. The contempts that Lakatamia proved (*ex hypothesi* to the criminal law standard) included his failure to disclose his interest in the Monaco Villas and dissipating the Monaco Sale Proceeds in breach of the Blair Freezing Order.

21. In his judgment (having seen and heard Mr Su giving evidence at both the CPR Pt 71 hearing and the committal hearing), Sir Michael remarked that the net proceeds of sale of the Monegasque properties were *"plainly revealed to have been sent to [Madam Su]"* (Judgment of 29 March 2019 at [8], reported at [2019] EWHC 898 (Comm) at [8]). He added *"Most significantly, from the point of view of dissipation of the [Monaco Sale Proceeds], Mr Su gave evidence that they were passed to his mother, or to family advisers at his mother's instructions, and that he said that he had last month asked her to 'give him the money back' so that he could settle with the Claimant. I am entirely satisfied that giving him the money back was a clear picture that he had given her the money to start with"* (paragraph 12).

22. Again none of that is binding upon Madam Su, or of any evidential value before me. It is also based on the oral testimony of Mr Su who, it is common ground, is an inveterate liar and condemnor (having been committed to prison twice), though such facts do not mean, of course, that everything he has said is a lie. Indeed Lakatamia says, whilst Madam Su denies, that Mr Su's evidence before Sir Michael Burton does reflect the truth on the entirety of the evidence that is now before me, including documentary evidence that was not then before the Court.

23. On 27 March 2019, Madam Su served her first witness statement, denying that she had received the Monaco Sale Proceeds; and saying that she understood that they had been transferred to UP Shipping. On 5 April 2019, Madam Su served Lakatamia with a second witness statement attaching certain UP Shipping bank statements (showing the money arriving into the account on 1 March 2017). Not all UP Shipping bank accounts

have, however, been disclosed by Madam Su (and Lakatamia invites the drawing of adverse inferences in that regard as addressed in due course below).

24. On 2 May 2019 Sir Michael Burton concluded, on the return date, that there was a serious issue to be tried and good arguable case that Madam Su had conspired with Mr Su to defeat the Blair Freezing Order (reported at [2019] EWHC 1145 (Comm)). He granted Lakatamia permission to serve Madam Su, Cresta and Portview out of the jurisdiction. He maintained the Burton Freezing Order against Cresta and Portview but discharged it against Madam Su on the narrow ground that there was no real risk of dissipation (essentially in the light of Madam Su's age).

25. Lakatamia appealed, essentially on the basis that the fact that there was a good arguable case to the effect that Madam Su had conspired to defeat a freezing order against Mr Su was more than adequate to establish that there was a real risk that she would take steps to render herself judgment proof. On 23 July 2019 Males LJ granted Lakatamia permission to appeal against the order discharging the Burton Freezing Order against Madam Su, and refused Madam Su permission to appeal against the grant of permission to serve her out of the jurisdiction.

26. On 5 October 2019 Mr Su swore an affidavit in support of an application in the Underlying Proceedings that he be permitted to purge his contempt, that application being rejected on 4 November 2019 by Jacobs J who also certified it to have been totally without merit.

27. On 19 November 2019 the Court of Appeal heard Lakatamia's appeal, and on 16 December 2019 restored the Burton Freezing Order against Madam Su (reported at [2019] EWCA Civ 2203). Both Lakatamia and Madam Su rely on matters stated by the Court of Appeal in the judgment, albeit that they each accept that such matters have no evidential status at trial, and it is a matter for me what I make of the evidence that is now before the Court both documentary, and oral.

28. In the interregnum between the discharge and reinstatement of the Burton Freezing Order in relation to Madam Su, Madam Su sold her share of a Tokyo house (there being no bar to her doing so).

29. On 25 December 2019 Madam Su swore an affidavit of her assets. She said that she had no assets worth more than US$10,000 (see Madam Su's Affidavit of Assets at paragraph 11). The veracity of that statement has since been challenged by Lakatamia (including in the course of her cross-examination before me), as addressed in due course below.

30. On 11 February 2020 Sir Michael Burton committed Mr Su to prison for four months for additional contempts of court.

31. On 14 February 2020 Cockerill J made a worldwide freezing order ex parte against UP Shipping and Blue Diamond and ordered that they be added to this action as Fifth and Sixth Defendants.

32. The same day the Case Management Conference ("CMC") took place. Madam Su had acknowledged service and served a Defence denying the allegations made against her. She has maintained her denial of Lakatamia's claim throughout.

33. Prior to the CMC Mr Su served a manuscript document purporting to be a Defence on his behalf, and on behalf of Portview and Cresta, which was struck out by Cockerill J who directed that CPR compliant defences be served by 15 May 2020. No such defences were ever served, and further orders in this regard were made at the Pre-Trial Review (the "PTR") which took place before me on 12 February 2021, as addressed below.

34. In the meantime, and in circumstances where Mr Su had long failed to comply with a series of orders made against him that he disclose his assets, on 17 June 2020 Andrew Baker J made a search order against Mr Su for the purposes of facilitating enforcement of the Judgment Debt ("the Search Order"). The Search Order was served on Mr Su the next day at a London apartment in which he has stayed following his release from prison in April 2020. On 2 July 2020, Foxton J continued the Search Order.

35. The Search Order captured some 800,000 mostly electronic documents which were reviewed by independent reviewing lawyers appointed to protect Mr Su's legitimate privileges, with the result that in due course some documentation was provided to Lakatamia upon which Lakatamia relies against Madam Su. Lakatamia says, however, that the Search Order falls very far short of providing the Court with the documents that would be before it had Madam Su complied with her own disclosure obligations, which Lakatamia contends she has not (a contention that Madam Su takes serious issue with on the asserted basis that she has complied with her disclosure obligations).

36. Immediately prior to the PTR which, as already noted, took place before me on 12 February 2021, a further document entitled "Defence and Counterclaim" was served by Mr Su, purportedly on behalf of Portview and Cresta. That document was not CPR compliant either. No defences have ever been served on behalf of UP Shipping and Blue Diamond. At the PTR I struck out that document and ordered that unless by 4.30pm on 23 February 2021 each of Portview, Cresta, UP Shipping and Blue Diamond served a CPR compliant Defence, they be debarred from defending the proceedings.

37. Nothing was served on behalf of Blue Diamond by the deadline (it appears that Blue Diamond had been struck off previously though its precise status remains unclear). Documents purporting to be Defences on behalf of each of Portview, Cresta and UP Shipping were respectively emailed by Mr Su to the Court and Lakatamia on 22 February 2021 (Cresta) and on 23 February 2021 (Portview and UP Shipping). However, these purported Defences were not CPR compliant in numerous respects (and none were signed or verified by a statement of truth by the respective defendant, or anyone stated to have, still less demonstrated to have, authority to act on behalf of the respective defendant). Accordingly, on 24 February 2021, I ordered that each of Portview, Cresta, UP Shipping and Blue Diamond be debarred from defending the proceedings. Each of these entities took no part in the trial against them.

38. Lakatamia maintains its claim against all the Defendants at trial. Whilst the action is stayed against Mr Su, I will inevitably need to make findings that relate to Mr Su's involvement in matters in the context of the alleged conspiracies relied upon by Lakatamia, and the case against the other defendants, including Madam Su (albeit that such findings will not be binding against Mr Su).

B.APPLICABLE LEGAL PRINCIPLES

B.1 ENGLISH LAW PRINCIPLES PLEADING AND PROVING FRAUD

39. The approach to pleading and proving fraud claims, and associated principles, has been the subject of a number of recent authorities. Both parties were content to adopt my summary of the principles that I set out at paragraphs [41]-[92] in *JSC BM Bank v Kekhman* [2018] EWHC 791 (Comm), in particular in relation to pleading and proving fraud ([41]-[44]), the burden and standard of proof in relation to fraud ([46] to [50]), inherent probabilities ([51]-[66]), the relevance of documentary evidence ([67]-[69]) and circumstantial evidence ([78]-[80]) as well as the principles summarised by me, in particular in relation to pleading and proving fraud, in *National Bank Trust v Yurov* [2020] EWHC 100 (Comm) at [247]-[253].

40. Although most of the authorities address the applicable principles in the context of pleading and proving fraud and associated dishonesty, aspects of the applicable principles will be of relevance when allegations of serious wrongdoing are made more generally, even if there is no requirement to plead or prove fraud or dishonesty, as such, as an element of the cause of action (such as in unlawful means conspiracy), and even though the strictures applicable to a plea of fraud or dishonesty are not automatically triggered.

41. In this regard I was referred to the case of *Ivy Technology v Mr Barry Martin & Others* [2019] EWHC 2510 (Comm), and what was said by Andrew Henshaw QC (as he then was), in that case (a case of conspiracy to injure) at [12]:-

> "12. Conspiracy to injure must be **pleaded to a high standard**, particularly where the allegations include dishonesty:
>
> i) Allegations of conspiracy to injure " must be **clearly pleaded and clearly proved by convincing evidence** " (*Jarman & Platt Ltd v I Barget Ltd* [1977] FSR 260 , 267).
>
> ii) **The more serious the allegations made, the more important it is for the case to be set out clearly and with adequate particularity**: *Secretary of State for Trade and Industry v. Swan* [2003] EWHC 1780 (Ch) §§ 22-24; CPR PD 16 § 8.2 in respect of the obligations on a party pleading dishonesty; *Mullarkey v. Broad* [2007] EWHC 3400 (Ch), [2008] 1 BCLC 638 §§ 40-47 on the burden and standard of proof for such claims and reiterating the well-established principle that an allegation of dishonesty must be pleaded clearly and with particularity (citing *Belmont Finance Corp v Williams Furniture* [1979] Ch 250, 268).
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> iii) **Unlawful means conspiracy is a grave allegation, which ought not to be lightly made, and like fraud must be clearly pleaded and requires a high standard of proof**: *CEF Holdings v. Mundey* [2012] EWHC 1534 (QB), [2012] IRLR 912 § 74.
>
> iv) **Where a conspiracy claim alleges dishonesty, then "all the strictures that apply to pleading fraud" are directly engaged."** i.e. it is necessary to plead all the specific facts and circumstances supporting the inference of dishonesty by the defendants: *ED&F Man Sugar v. T&L Sugars* [2016] EWHC 272 (Comm)." (emphasis added)

42. In the present case, Lakatamia alleges two unlawful means conspiracies (the Monaco Conspiracy and Aeroplane Conspiracy). Neither of these requires, or involves, any specific plea of dishonesty as such (nor are fraud claims such as in deceit or the like pleaded) as part of any element of the causes of action. They involve, however, allegations of serious wrongdoing, and as such they must be clearly pleaded (not least so the Defendants know the case they have to face, on the applicable principles), and convincingly proved by cogent evidence (as the passages identified above rightly emphasise). Allegations of participation in an unlawful means conspiracy, whilst not necessarily requiring dishonesty or a fraud to be committed, undoubtably involve what can properly be characterised as "discreditable" conduct. In this regard, and as stated by Moore-Bick LJ in *Jafari-Fini v Skillglass Ltd* [2007] EWCA Civ 261 at [73] (in a passage cited with approval by Andrew Smith J in *Fiona Trust v Privalov* [2010] EWHC 3199 (Comm) at [1438] and by me in *Bank of Moscow v Kekhman*, supra, at [52]), *"It is well established that "cogent evidence" is required to justify a finding of fraud or other discreditable conduct".*

43. I also bear in mind that whilst Lakatamia is neither required to plead, nor prove, fraud or dishonesty in order to make out its claims for unlawful means conspiracy (and make no such pleaded averments) it has said (for example in oral submissions before the Court of Appeal) that conspiring to breach a worldwide freezing order "was more than vanilla dishonesty", and it does not shy away from asserting dishonesty in a different sense, in alleging that Madam Sue has repeatedly lied on oath and given dishonest evidence in the context of the claims made against her (albeit that such dishonest conduct can occur in relation to any cause of action). This latter point is of most relevance when considering whether such serious allegations have been convincingly proved.

44. Given the difference between the parties, not as to the applicable principles, but the parties' respective emphasis on the principles and as to how they are to be applied, I consider it worth reiterating aspects of the applicable principles, albeit that what follows is not intended to be a substitute for the more detailed consideration given in *JSC BM Bank v Kekhman* and *National Bank Trust v Yurov*, and the cases there cited and quoted, upon which both parties rely, and which I bear well in mind. It would, however, unduly lengthen this judgment if such matters were repeated verbatim given that what is there stated is not regarded as controversial by either party.

45. Turning first to applicable principles in relation to pleading of statements of case generally, Lakatamia, in particular, rely upon what I stated in *Zeus Investors v HSBC Bank Plc* [2021] EWHC 3273 (Comm) in the context of an application for *Norwich Pharmacal* relief which was supported by a witness statement that provided (as quoted at [11]) that,

> "Whilst the documents that are available indicate a breach has occurred and may well be sufficient in their own right to support the claimant's prospective claims, disclosure of the categories of the documents set out in schedule 1 will, it is believed, provide a more complete picture of the nature and scope of the breach, such that claims for breach may be fully considered with investors, then particularised in detail."
>
> (emphasis added)

46. In this regard I stated, by reference to the Commercial Court Guide, as follows at [9]:-

> "It is also to be borne in mind, when contemplating an action being pleaded out in the Commercial Court, that paragraph C1.1 of the Commercial Court Guide provides that statements of case must be *"… as brief and concise as possible"* and *"Particular care should be taken to set out only those factual allegations which are necessary to enable the other party to know what case it has to meet"*, and "*evidence should not be included."* There is a 25 page limit for a statement of case, and it is also noted that the courts *"... will only exceptionally give permission for a longer statement of case to be served."*

47. Amongst other matters, the fact that only factual allegations which are necessary to enable the other party to know what case it has to meet should be set out highlights that an important aspect of the role of statements of case is to enable the other party to know what case it has to meet. In this regard whether particulars of claim do so, can often be tested by examining what a defendant pleads back to the particulars of claim and what that reveals as to the defendant's understanding of the case being advanced against it, and what it considers it needs to plead (again within such strictures) to respond to the same.

48. Thus, a party pleading its claim must include a *"concise statement of the facts"* (CPR 16.4(1)(a)), but not (in general), the evidence which it intends to produce to prove those facts (Commercial Court Guide paragraph C1.1(e), *National Bank Trust v Yurov*, supra at [251(1 (a)]).

49. In HMRC *v Begum et al.* [2010] EWHC 1799 (Ch) at [89]-[91] David Richards J made the important point that pleading is not a game and it is about fairness and fairly understanding the case that has to be met, and points about whether a case has been adequately pleaded are to be looked at in that context:-

> "89 In approaching criticism of the very detailed nature put forward by the defendants in this case, it is as well to bear in mind the following passage in the judgment of Saville LJ in *British Airways Pension Trustees Ltd v Sir Robert McAlpine & Sons Ltd* (1994) 45 Con LR 1 at [4-5]:
>
> > The basic purpose of pleadings is to enable the opposing party to know what case is being made in sufficient detail to enable that party properly to prepare to answer it. To my mind it seems that in recent years there has been a tendency to forget this basic purpose and to seek particularisation even when it is not really required. This is not only costly in itself, but is calculated to lead to delay and to interlocutory battles in which the parties and the Court pore over endless pages of pleadings to see whether or not some particular point has or has not been raised or answered, when in truth each party knows perfectly well what case is made by the other and is able properly to prepare to deal with it. Pleadings are not a game to be played at the expense of the litigants, nor an end in themselves, but a means to the end, and that end is to give each party a fair hearing. Each case must of course be looked at in the light of its own subject matter and circumstances. Thus general statements to the effect that global or

composite claims are embarrassing and justify striking out, to be found for example in Hudson 11th Ed. paragraph 8–204 are not automatically applicable to every case. With regard to the particular pleadings in question, I remain unpersuaded that either McAlpines or PDP were put to any sort of material unfair disadvantage by the way the matter had been set out by the Plaintiffs.

90 To like effect, after the introduction of the CPR, was Lord Woolf MR in *McPhilemy v Times Newspapers* Ltd [1999] 3 All ER 775 at [792–3]:

> The need for extensive pleadings including particulars should be reduced by the requirement that witness statements are now exchanged. In the majority of proceedings identification of the documents upon which a party relies, together with copies of that party's witness statements, will make the detail of the nature of the case the other side has to meet obvious. This reduces the need for particulars in order to avoid being taken by surprise. This does not mean that pleadings are now superfluous. Pleadings are still required to mark out the parameters of the case that is being advanced by each party. In particular they are still critical to identify the issues and the extent of the dispute between the parties. What is important is that the pleadings should make clear the general nature of the case of the pleader. This is true both under the old rules and the new rules. The Practice Direction to CPR, paragraph 9.3 requires, in defamation proceedings, the facts on which a defendant relies to be given. No more than a concise statement of those facts is required.
>
> As well as their expense, excessive particulars can achieve directly the opposite result from that which is intended. They can obscure the issues rather than providing clarification. In addition, after disclosure and the exchange of witness statements pleadings frequently become of only historic interest. Although in this case it would be wrong to interfere with the decision of Eady J, the case is overburdened with particulars and simpler and shorter statements of case would have been sufficient. Unless there is some obvious purpose to be served by fighting over the precise terms of a pleading, contests over their terms are to be discouraged.

91 As against those principles, Miss Newman relied on the requirement for proper particulars of allegations of dishonesty. I am satisfied that the case of dishonesty is sufficiently pleaded. It is to a significant extent based on what are alleged to have been Mr Uddin's statements in the taped conversations and on inference from facts which are pleaded in paragraph 3.2.2, the alleged transactions and the consistent failure by the importers to account for VAT. There are not general and vague allegations of fraud such as were addressed in *Re Rica Gold Washing Co* (1879) 11 Ch D 36 and *Wallingford v Mutual Society (1880) 5 App Cas 685."*

50. For his part, Mr Head does not demur on behalf of Madam Su as to the applicability of the sentiments as expressed in the Commercial Court Guide and in *Zeus* as to the contents of statements of case in the Commercial Court (or indeed as to the role of

statements of case generally), but he also relies upon paragraph C1.3(c) of the Commercial Court Guide which provides:-

> "(i) full and specific details should be given of any allegation of fraud, dishonesty, malice or illegality; and
>
> (ii) where an inference of fraud or dishonesty is alleged, the facts on the basis of which the inference is alleged must be fully set out."

51. In this regard (i) itself tracks paragraphs 8.2 of Practice Direction 16, whilst (ii) reflects the second of two distinct principles identified by Lord Millett in *Three Rivers DC v Bank of England (No 3)* [2001] UKHL 16, [2003] 2 AC 1 at [185]-[186]:-

> "[185] The first is a matter of pleading. The function of pleadings is to give the party opposite sufficient notice of the case which is being made against him. If the pleader means 'dishonestly' or 'fraudulently', it may not be enough to say 'wilfully' or 'recklessly'. Such language is equivocal. ...
>
> [186] The second principle, which is quite distinct, is that an allegation of fraud or dishonesty must be sufficiently particularised, and that particulars of facts which are consistent with honesty are not sufficient. This is only partly a matter of pleading. It is also a matter of substance. As I have said, the defendant is entitled to know the case he has to meet. But since dishonesty is usually a matter of inference from primary facts, this involves knowing not only that he is alleged to have acted dishonestly, but also the primary facts which will be relied upon at trial to justify the inference. At trial the court will not normally allow proof of primary facts which have not been pleaded, and will not do so in a case of fraud. It is not open to the court to infer dishonesty from facts which have not been pleaded, or from facts which have been pleaded but are consistent with honesty. There must be some fact which tilts the balance and justifies an inference of dishonesty, and this fact must be both pleaded and proved."

In relation to pleading and proving fraud more generally - see also what was said by Lord Hope at [55] = [56], Lord Hobhouse at [160] and by Lord Millett in the preceding paragraph ([184]).

52. However, even where the strict strictures apply in relation to a specific plea of fraud or dishonesty, they do not extend to the pleading of evidence, which is not the role of a statement of case.

53. I address in Section C Lakatamia's pleaded conspiracy cases, and Lakatamia's submissions in relation to those pleadings and what is and is not pleaded.

B.2 DOCUMENTARY EVIDENCE

54. In the context of the serious allegations made in the present case, and the written and oral evidence of Madam Su (and what Mr Su said in the past to Sir Michael Burton which was itself the origins of this very action), documentary evidence is of particular importance when assessing veracity of the witness evidence and what the facts actually

are. In this context what I said in *Bank of Moscow v Kekhman*, supra at [67] to [69], has particular resonance:-

> "67. … it is now widely accepted that memories are fallible, people can convince themselves of the veracity of false recollections of events and retain confidence in their false recollection, and a judge's ability to evaluate honesty and reliability merely from a witness's demeanour is also fallible, and therefore where possible a court should rely on documentary evidence and any other objectively provable facts: see for example the comments of Lord Pearce in *Onassis v Vergottis* [1968] 2 Lloyd's Rep (HL) at 432 column 2, Robert Goff LJ in *The Ocean Frost* [1985] 1 Lloyds Rep 1 (CA) at 57, and Leggatt J in *Gestmin SGPS SA v Credit Suisse (UK) Ltd* [2013] EWHC 3560 (Comm) at paras 15-22.
>
> 68. In such circumstances, as Robert Goff LJ stated in *The Ocean Frost* (at page 57):
>
> > "Speaking from my own experience, I have found it essential in cases of fraud, when considering the credibility of witnesses, always to test their veracity by reference to the objective facts proved independently of their testimony, in particular by reference to the documents in the case, and also to pay particular regard to their motives and to the overall probabilities. It is frequently very difficult to tell whether a witness is telling the truth or not; and where there is a conflict of evidence such as there was in the present case, reference to the objective facts and documents, to the witnesses' motives, and to the overall probabilities, can be of very great assistance to a judge in ascertaining the truth."

55. In *Grace Shipping v. Sharp & Co* [1987] 1 Lloyd's Rep. 207, 215-216 the Privy Council approved the approach that Robert Goff LJ] had endorsed in *The Ocean Frost*:

> "And it is not to be forgotten that, in the present case, the Judge was faced with the task of assessing the evidence of witnesses about telephone conversations which had taken place over five years before. In such a case, memories may very well be unreliable; and it is of crucial importance for the Judge to have regard to the contemporary documents and to the overall probabilities.
> …
>
> That observation [i.e., of Robert Goff LJ] is, in their Lordships' opinion, equally apposite in a case where the evidence of the witnesses is likely to be unreliable; and it is to be remembered that in commercial cases, such as the present, there is usually a substantial body of contemporary documentary evidence".

56. Equally, where there is a lack of contemporaneous documentation it is necessary to have regard to the inherent plausibility or implausibility of witnesses' accounts. As Moore-Bick LJ stated in *Jafari-Fini v Skillglass Ltd* [2007] EWCA Civ 261 at [76] and [80]:

> "76 …Whenever an allegation of fraud or similar misconduct is made it is particularly important to consider the whole of the evidence before reaching a final conclusion, to test the oral evidence by reference to any contemporaneous documents and to consider the inherent probabilities. Having said that, however, it must be recognised that since the final conclusion must be capable of accommodating any facts which are admitted or which are established by evidence which is not capable of being seriously challenged, such facts provide a useful starting point for the assessment of the more controversial parts of the evidence.
>
> …
>
> 80 … It is necessary to bear in mind, however, that this is not one of those cases in which the accounts given by the witnesses can be tested by reference to a body of contemporaneous documents. As a result the judge was forced to rely heavily on his assessment of the witnesses and the inherent plausibility or implausibility of their accounts. In these circumstances considerable weight must be given to the fact that the judge had the great advantage of seeing most of the principal actors give evidence. We have not had that advantage and in my judgment are not well-placed to differ from his assessment of the truthfulness and reliability of Mr. Rowland or any of the other witnesses, particularly in relation to matters that are not reflected in any of the documents…"

57. There can be no dispute that, in the present case where (save for the limited relevant evidence that Lakatamia's witnesses have given) the only oral factual evidence that the Court has heard during the course of trial itself comes from Madam Su herself (a witness described in Madam Su's own Written Closing Submissions, as a lady with *"relatively imprecise recollection")* the documentary evidence, so far as its exists, is likely to be of particular importance – not only when testing the veracity of Madam Su's evidence but also when considering the allegations of conspiracy that are made.

58. In this regard, it is also necessary to bear in mind the documentary imbalance between the parties given that most relevant documentation will be in the possession and control of the Defendants, and on Lakatamia's case (if demonstrated) Madam Su's failure to give proper disclosure and to call particular witnesses (as addressed in Section K below) with the result that there may be a less than complete evidential picture before the court.

B.3 CIRCUMSTANTIAL EVIDENCE AND INFERENTIAL CASES

59. It is also the case that, just as in cases alleging civil fraud and questions of knowledge, so too in cases alleging that entities and individuals participated in a conspiracy, much of the evidence is likely to be circumstantial evidence given that conspirators are very unlikely to have entered into a conspiracy in an open and documented manner, and the case is likely to be an inferential one based on the cumulative evidential picture, much of which is likely to consist of circumstantial evidence.

60. In this regard, as O'Connor L.J. stated in the criminal law case of *R. v. Siracusa* (1990) 90 Cr. App. R. 340, 349:

> "the origins of all conspiracies are concealed and it is usually quite impossible to establish when or where the initial agreement was made or when or where other conspirators were recruited. The very existence of the agreement can only be inferred from overt acts. Participation in a conspiracy is infinitely variable: it can be active or passive. If the majority shareholder and director of a company consents to the company being used for drug smuggling carried out in the company's name by a fellow director and minority shareholder, he is guilty of conspiracy. Consent, that is agreement or adherence to the agreement, can be inferred if it is proved that he knew what was going on and the intention to participate in the furtherance of the criminal purpose is also established by his failure to stop the unlawful activity".

61. In *Kuwait Oil Tanker Co SAK v Al Bader (No. 3)* [2000] 2 All E.R. (Comm) ("*Kuwait Oil Tanker")* at [111], Nourse LJ stated that this passage was fully applicable to the tort of unlawful means conspiracy, and added at [112], that *"It will be the rare case in which there will be evidence of the agreement itself".*

62. In similar vein, in the present case, when granting Lakatamia's application to amend the Particulars of Claim to add the Aeroplane Conspiracy on 25 January 2021, Waksman J said this (reported as *Lakatamia v. Su* [2021] EWHC 203 at [37]):-

> "The final point I make in relation to the Aeroplane Conspiracy, and it is true of much of the rest of it, is that this is an inferential case, as claims in conspiracy often are. There is an asymmetric relationship because by definition the claimant is not likely to have much by way of documents itself or direct evidence, quite often all it can do is raise inferences from the documents which it has. It is really, so far as the Aeroplane Conspiracy is concerned, when I say "more of the same" I mean more of the same kind of allegation that is already in the existing action."

63. The nature of circumstantial evidence is that its effect is cumulative, and the essence of a successful case based on circumstantial evidence is that the whole is stronger than individual parts. In relation to circumstantial evidence, and the drawing of inferences, in *JSC BTA Bank v Ablyazov & Others* [2013] EWHC 510 (Comm) Teare J stated at [197] – [198]:-

> "197. So far as Mr Zharimbetov's own liability for the Bank's losses is concerned it is necessary to determine whether, when he signed the "minutes", he knew that Mr Ablyazov was, by means of the Original Loans, misappropriating the Bank's money for his own purposes.
>
> 198. Mr Zharimbetov said that he did not know this. He is not a reliable witness but I have to decide whether the Bank has established that he did not know. The bank must do so on the balance of probabilities but the allegation is extremely serious and exposes Mr Zharimbetov to a personal liability of over US$1 billion. The evidence must therefore be of a cogency commensurate with the seriousness of the allegation. The Bank's case is based upon inference from circumstantial evidence. In this regard it is helpful to recall what Rix LJ said about circumstantial evidence in his judgment on the occasion of Mr Ablyazov's appeal against the finding of contempt at [2012] EWCA Civ 1411 at para 52:

> "It is, however, the essence of a successful case of circumstantial evidence that the whole is stronger than individual parts. It becomes a net from which there is no escape. That is why a jury is often directed to avoid piecemeal consideration of a circumstantial case: *R v Hillier* (2007) 233 ALR 63 (HCA), cited in Archbold 2012 at para 10-3. Or, as Lord Simon of Glaisdale put it in *R v Kilbourne* [1973] AC 729 at 758, 'Circumstantial evidence . . . works by cumulatively, in geometrical progression, eliminating other possibilities'. The matter is well put in *Shepherd v R* (1990) 170 CLR 573 (HCA) at 579/580 (but also passim):
>
> > '. . . the prosecution bears the burden of proving all the elements of the crime beyond reasonable doubt. That means that the essential ingredients of each element must be so proved. It does not mean that every fact - every piece of evidence - relied upon to prove an element by inference must itself be proved beyond reasonable doubt. Intent, for example, is, save for statutory exceptions, an element of every crime. It is something which, apart from admissions, must be proved by inference. But the jury may quite properly draw the necessary inference having regard to the whole of the evidence, whether or not each individual piece of evidence relied upon is proved beyond reasonable doubt, provided they reach their conclusion upon the criminal standard of proof. Indeed, the probative force of a mass of evidence may be cumulative, making it pointless to consider the degree of probability of each item of evidence separately.'"
>
> (emphasis added)

64. Rix LJ's observations are of general application (see, for example, *Kazakhstan Kagazy Plc v. Zhunus* [2017] EWHC 3374 (Comm) at [159] per Picken J). Of course, what Rix LJ stated in *Ablyazov* (including as to *"a net from which there was no escape"*) was stated in the context of contempt where the standard of proof is to the criminal standard namely "*beyond reasonable doub*t" / "*satisfied so that you are sure*" (in terms of a direction to a jury) where the "*net*" metaphor is particularly apt. However, care needs to be taken in utilising a similar metaphor where the standard is that of balance of probabilities. Something can be proved on balance of probabilities even if all other possibilities have not been excluded, which is why Lord Millett in *Three Rivers* referred to *some* fact which tilts the balance and justifies (for example) an inference of dishonesty in a particular case. Nevertheless, the points that are made that it is the essence of a successful circumstantial case that the whole is stronger than the individual parts, and that circumstantial evidence works cumulatively, are equally apt in a context such as the present, and allegations of unlawful means conspiracy against various individuals and entities.

65. In this regard, and consistently with Rix LJ's observations, in evaluating the evidence it is best to avoid compartmentalising particular points relied upon, or treating points in "silos", or adopting a piecemeal approach to evidence relied upon; rather it is appropriate to take account of *"previous findings in considering the likelihood of the later facts having occurred"* or, in other words, to *"stand … back and consider … the*

effects of the implications of the facts … found in the round" (see *Bank St Petersburg PJSC v Arkhangelsky* [2020] EWHC Civ 408; [2020 4 W.L.R. 55 at [70] per Sir Geoffrey Vos C).

66. Equally, in deciding whether a serious allegation is established on the balance of probabilities, regard may be had to the fact that a party has lied or otherwise engaged in misconduct in other respects - see *Fiona Trust & Holding Corp v. Privalov*, supra at [1440]-[1446] per Andrew Smith J; *Otkritie International Investment Management Ltd v Uromov*]2014] EWHC 191 (Comm) at [89] per Eder J; *Kazakhstan Kagazy Plc v. Zhunus*, supra at [158] per Picken J; and as I addressed in *Bank of Moscow v. Kekhman*, supra, at [57]-[66].

B.4 CULTURAL DIFFERENCES AND THE ASSESSMENT OF THE FACTS

67. On behalf of Madam Su it is urged that I should not lose sight of the potential cultural differences between Taiwan and the United Kingdom, and I confirm that I have borne such matters well in mind. Ultimately, however, it is a matter for me to identify and determine where the power lines lay within the Su family and the Su corporate entities. In *Gorgeous Beauty Limited v Irene Liu* [2014] EWHC 2952 (Ch), Arnold J heard evidence of Taiwanese culture which led him to observe that *"the patriarch of a family has considerable authority over the other members of the family"*, and that it was *"not implausible"* that a daughter *"should have carried out instructions from her father without questioning them"* (at [274]). Reference is made in this regard to the fact that Madam Su explained the inevitability that her son would be expected to take over her husband's business upon passing away, and there is evidence that Mr Su appointed his daughters to act as directors and shareholders of corporate assets (including in the context of the Monaco villas which he owned). Mr Su was indeed the patriarch of his family upon his father's passing. However, in acknowledging such fact, sight should not be lost of the fact that Madam Su was herself of high status as Mr Su Senior's wife and then widow and was, I am satisfied, rightly referred to by Haddon-Cave LJ as the "matriarch", with Mr Su himself describing her as holding "the purse strings" (albeit in a particular context as addressed in due course below).

68. It is also said, in the context of Madam Su's evidence concerning what has been referred to as the "Reminders Email" (as addressed in due course below) and her use of fortune tellers, that this may sound unusual to the Court's ears, but these are part and parcel of Mrs Morimoto's beliefs.

69. It is also said that I should not apply the standards of a substantial UK company to a traditional Taiwanese family business, in the context of Lakatamia's submission that it is implausible that Mrs Morimoto lent tens of millions of dollars to her son's businesses without documenting the same fully with loan agreements – and that in that context there is nothing unusual about some US$ 40 million of loans by Madam Su to her son's companies being recorded (at some point) in a single simple fax. I bear the family context of lending well in mind, but as Lakatamia points out, there must have been more documentation in existence in relation to such loans than has been disclosed, not least banking documentation which would, amongst other matters, have evidenced the precise sources and destinations of all such loans as were made.

70. Madam Su's submission about not applying the standards of a substantial UK company to a Taiwanese company (whatever that in fact is intended to mean) also has to be

approached with some caution. Any such cultural differences would not explain, still less justify, any conduct that would amount to tortious or civil wrongdoing, whether under English or Monaco law, or a lax or inappropriate approach to corporate structures and governance whatever the law applicable to those companies. Further, there is no evidence before me of any applicable law justifying what would otherwise be wrongdoing.

71. In the context of Mr Su's approach to corporate governance, Lakatamia also refer to evidence that was before Steel J in *TMT Asia v. Marine Trade* [2011] EWHC 1327 (Comm) at [11(e)] to the effect that there was within the TMT group *"[a] practice of diverting receivables to other TMT group outfits, a policy described by a former director of a TMT group company as reflecting a policy of siphoning money off so that the relevant FFA trading company could be allowed to fail if it suffered unsustainable losses"* (addressed in the context of any risk of Mr Su dissipating his assets). It is difficult to conceive that such practices would be appropriate under any applicable law.

72. In the present case there are numerous examples of Mr Su treating companies, and their assets, as his own, in many cases in circumstances where he was, indeed, the ultimate beneficial owner of those companies. Two cases in point being Portview (the Third Defendant) and Cresta (the Fourth Defendant), as pleaded by Lakatamia in its Particulars of Claim. Portview is a bearer share nominee company domiciled in the BVI. It held the legal title to the share capital in Cresta. In committing Mr Su for contempt (for the first time), Sir Michael Burton concluded, necessarily to the criminal standard of proof, that Portview's ultimate beneficial owner was Mr Su (Judgment (29.3.2019) at [14] and [16] (a pleaded allegation - see para 30.3 of the Particulars of Claim). Cresta is, itself, another bearer share nominee company domiciled in the BVI. Until October 2015, Cresta was the registered owner of the Monaco Villas. Again, Sir Michael Burton concluded, to the criminal standard of proof, that Cresta's ultimate beneficial owner was Mr Su (Judgment (29.3.2019) at [14] and [16]). Equally there can be no doubt that Mr Su controlled the disposal of assets by those companies (Cresta and the Monaco Villas being a case in point).

B.5 THE CORPORATE VEIL

73. This leads on to another point made on behalf of Madam Su that where allegations are made that the court should pierce the corporate veil or that assets held by certain companies were held (for example) on bare trust, such allegations need to be pleaded and proved, relying on cases such as *VTB Capital Plc v Nutritek International [2013] UKSC 5* and *Petrodel Resources v Prest* [2013] UKSC 34.

74. I bear in mind the principles in such cases, but equally Lakatamia are not alleging that the corporate veil be pierced so as to render (for example) Mr Su liable for the acts of Cresta or Portview. On the contrary, Lakatamia is alleging that Mr Su (as an individual) conspired with (amongst others) Cresta and Portview to conceal the Monaco Sale Proceeds from Lakatamia and/or render it more difficult for Lakatamia to enforce the Judgment Debt - with Cresta and Portview being separate corporate entities to Mr Su, and being relied upon as such, for such purposes and in such context. Equally for other purposes, and in other contexts, it is Lakatamia's case that Mr Su was the ultimate beneficial owner of those entities and controlled the disposal of assets by Cresta and Portview (as he clearly did) for the purpose of, for example, Mr Su breaching the Blair

Freezing Order and its terms (in relation to which see, for example, *FM Capital Partner v Marino* [EWHC] 2889 (Comm) and the cases there cited).

B.6 APPLICABLE LAW (INTRODUCTION)

75. It is common ground that as Lakatamia's claims before the English courts relate to events after 11 January 2009, but before 1 January 2021, the Rome II Regulation (Regulation (EC) No 864/2007) ("Rome II"), will apply to determine the proper law of the torts. This is addressed at Section J.3.1 below. It suffices, at this point, to note that Lakatamia's case is that English law applies to the claims regarding both conspiracies, whilst Madam Su's case is that Monaco law applies to the claim regarding the Monaco Sale Proceeds and that an unspecified law (but not English law) applies to the Aeroplane Conspiracy. In the sections that follow I identify the principles applicable under English law and Monaco law. Ultimately it may not matter if, as Lakatamia submits (but Madam Su denies), Madam Su's and others' conduct is equally actionable under English law, and Monaco law.

B.7 UNLAWFUL MEANS CONSPIRACY

76. The tort of conspiracy has two branches. They were defined in *Kuwait Oil Tanker v Al Bader*, supra, (an authority on which both parties rely) at 311, as follows:

> "A conspiracy to injure by lawful means is actionable where the claimant proves that he has suffered loss or damage as a result of action taken pursuant to a combination or agreement between the defendant and another person or persons to injure him, where the predominant purpose of the defendant is to injure the claimant. (2) A conspiracy to injure by unlawful means is actionable where the claimant proves that he has suffered loss or damage as a result of unlawful action taken pursuant to a combination or agreement between the defendant and another person or persons to injure him by unlawful means, whether or not it is the predominant purpose of the defendant to do so."

77. In the present case, the conspiracies alleged by Lakatamia are unlawful means conspiracies. The parties were in broad agreement as to the elements of that cause of action, and indeed both Lakatamia and Madam Su rely upon the above general description of the tort of unlawful means conspiracy in *Kuwait Oli Tanker* (which itself is to a similar effect to the dictum of Lord Neuberger in *HMRC v Total Network* [2008] UKHL 19; [2008] 1 AC 1174 at [213]). There were, however, differences of emphasis between them, and also a dispute between them (of relatively narrow compass) as a result of one aspect of what was said by Cockerill J in *FM Capital Partners Ltd v Marino* [2018] EWHC 1768 (Com) at [94] which I will address in due course below.

78. Lakatamia, for its part relies upon Morgan J's articulation of the elements of the tort of unlawful means conspiracy in *Digicel (St Lucia) Ltd v. Cable & Wireless Plc* [2010] EWHC 774 (Ch) Annex I at [2]) as follows:-

> "[t]he necessary ingredients of the conspiracy alleged are: (1) there must be a combination; (2) the combination must be to use unlawful means; (3) there must be an intention to injure a claimant by the use of those unlawful means; and (4) the

use of the unlawful means must cause a claimant to suffer loss or damage as a result".

79. For her part Madam Su was content to adopt Cockerill J's summary of the key elements of the cause of action in *FM Capital Partners Ltd v Marino,* supra at [94] (which was adopted by Butcher J in *Iranian Offshore Engineering and Construction Co v Dean Investment Holdings SA* [2019] EWHC 472 (Comm)):-

> "The elements of the cause of action are as follows:
>
> i) A combination, arrangement or understanding between two or more people. It is not necessary for the conspirators all to join the conspiracy at the same time, but the parties to it must be sufficiently aware of the surrounding circumstances and share the same object for it properly to be said that they were acting in concert at the time of the acts complained of: *Kuwait Oil Tanker* at [111].
>
> ii) An intention to injure another individual or separate legal entity, albeit with no need for that to be the sole or predominant intention: *Kuwait Oil Tanker* at [108]. Moreover:
>
> a) The necessary intent can be inferred, and often will need to be inferred, from the primary facts – see *Kuwait Oil Tanker* at [120-121], citing *Bourgoin SA v Minister of Agriculture* [1986] 1 QB : "[i]f an act is done deliberately and with knowledge of the consequences, I do not think that the actor can say that he did not 'intend' the consequences or that the act was not 'aimed' at the person who, it is known, will suffer them".
>
> b) Where conspirators intentionally injure the claimant and use unlawful means to do so, it is no defence for them to show that their primary purpose was to further or protect their own interests: *Lonrho Plc v Fayed* [1992] 1 AC 448 , 465-466; see also *OBG v Allan* [2008] 1 AC 1 at [164-165].
>
> c) Foresight that his unlawful conduct may or will probably damage the claimant cannot be equated with intention: *OBG* at [166].
>
> iii) In some cases, there may be no specific intent but intention to injure results from the inevitability of loss: see Lord Nicholls at [167] in *OBG v Allan* , referring to cases where:
>
> "The defendant's gain and the claimant's loss are, to the defendant's knowledge, inseparably linked. The defendant cannot obtain the one without bringing about the other. If the

> defendant goes ahead in such a case in order to obtain the gain he seeks, his state of mind will satisfy the mental ingredient of the unlawful interference tort."
>
> iv) Concerted action (in the sense of active participation) consequent upon the combination or understanding: McGrath at [7.57].
>
> v) Use of unlawful means as part of the concerted action. There is no requirement that the unlawful means themselves are independently actionable: *Revenue and Customs Commissioners v Total Network* [2008] 1 AC 1174 at [104].
>
> vi) Loss being caused to the target of the conspiracy."

80. These track the elements of the cause of action as identified in *Digicell* (with some elaboration), albeit in a different order, and elaborating upon intention to injure (at (iii)), and making the comment at (iv) (which is the subject matter of a difference between Lakatamia and Madam Su, to which I will return).

81. Before addressing the elements in more detail, two more general preliminary points to make are that dishonesty is not itself an element of the tort – see, for example, *Arcelormittal USA LLC v. Ruia* [2020] EWHC 3349 (Comm) at [27(3)] per Butcher J, and that, in contrast with the tort of lawful means conspiracy, justification is not a defence to the tort of unlawful means conspiracy - see *Palmer Birch v. Lloyd* [2018] EWHC 2316 (TCC); [2018] 4 W.L.R. 164, at 192-193 per Judge Russen QC.

82. The elements of the cause of action in unlawful means conspiracy are addressed by Lakatamia in its Written Closing Submissions in terms which I do not understand to be controversial.

B.7.1 A combination

83. Turning first to the element that there must be a combination. The combination must be to the effect that "*at least one of*" the conspirators will use unlawful means, see *Revenue and Customs Commissioners v. Total Network SL* [2008] UKHL 19; [2008] 1 A.C. 1174, at [213] (described as "*common ground*" per Lord Neuberger). Thus, there is no requirement that all of the conspirators will use unlawful means. It is also unnecessary, in order for a combination to exist, that it be, for example, contractual in nature, or that it be an express or formal agreement. As Nourse LJ explained in *Kuwait Oil Tanker Co*, at [111]: "*it is not necessary to show that there is anything in the nature of an express agreement, whether formal or informal. It is sufficient if two or more persons combine with a common intention, or, in other words, that they deliberately combine, albeit tacitly, to achieve a common end*".

84. Equally, it is not a requirement in order for a conspirator to be liable that he or she entered into the agreement at the same time as the other parties thereto - see *Kuwait Oil Tanker,* at [111] per Nourse LJ.

85. It is enough for liability to arise that a defendant "*be sufficiently aware of the surrounding circumstances and share the same object for it properly to be said that they were acting in concert at the time of the acts complained of*" - see *Kuwait Oil Tanker*, at [111] per Nourse LJ. However, although there must be sufficient identity of object, the conspirators do not need to "*have exactly the same aim in mind*" - see *Clerk & Lindsell on Torts*, at para 23.104. Further, "*the advantage to be derived from that same object may not be the same*"- see *Crofter Hand Woven Harris Tweed Co Ltd v. Veitch* [1942] A.C. 435, 479 per Lord Wright.

86. Direct evidence of the combination is inessential, and it is also unnecessary for the claimant to pinpoint precisely when or where it was formed. In this regard I have already quoted what was said by O'Connor LJ in the criminal law case of *R. v. Siracusa* (1990) 90 Cr. App. R. 340, 349 in the context of circumstantial evidence above, but it bears repeating at this point:

> "the origins of all conspiracies are concealed and it is usually quite impossible to establish when or where the initial agreement was made or when or where other conspirators were recruited. The very existence of the agreement can only be inferred from overt acts. Participation in a conspiracy is infinitely variable: it can be active or passive. If the majority shareholder and director of a company consents to the company being used for drug smuggling carried out in the company's name by a fellow director and minority shareholder, he is guilty of conspiracy. Consent, that is agreement or adherence to the agreement, can be inferred if it is proved that he knew what was going on and the intention to participate in the furtherance of the criminal purpose is also established by his failure to stop the unlawful activity".

87. As I have also already noted, in *Kuwait Oil Tanker*, at [111], Nourse LJ said that this passage was fully applicable to the tort of unlawful means conspiracy. He added, at [112], that "*It will be the rare case in which there will be evidence of the agreement itself*". In this regard I also agree with the observations of Waksman J in *Lakatamia v. Su* at [37], which I have already referred to, that in a conspiracy case "*by definition the claimant is not likely to have much by way of documents itself or direct evidence*" and that "*quite often all it can do is raise inferences from the documents which it has*".

B.7.2 Unlawful Means

88. In relation to the unlawful means element, in *JSC BTA Bank v. Ablyazoz (No.14)* [2018] UKSC 19; [2020] A.C. 727 at [10] Lord Sumption and Lord Lloyd-Jones held that conduct constitutes unlawful means where it lacks "*just cause or excuse*". They confirmed that contempt of court, which was the conduct in issue, amounted to unlawful means, see [16]:

> "The unlawful means relied upon in this case are criminal contempt of court albeit that the offence is punishable in civil proceedings. … The freezing order and the receivership order had been made on the application of the bank for the purpose of protecting its right of recovery in the event of the claims succeeding. The object of the conspiracy and the overt acts done pursuant to it was to prevent the bank from enforcing its judgments against Mr Ablyazov … In principle, therefore, we conclude the cause of action in conspiracy to injure the bank by unlawful means is made out".

89. Although the defendant "*must know the facts*" that render the means unlawful, there is no requirement that they appreciate the "*legal effects*" of those means - see *Forse v. Seccarma Ltd* [2019] EWCA Civ 215; [2019] I.R.L.R. 587 at [37] per Sir Terence Etherton M.R., and *The Racing Partnership Ltd v. Done Brothers (Cash Betting) Ltd* [2020] EWCA Civ 1300; [2021] F.S.R. 2 at [144] per Arnold LJ, and at [177] per Phillips LJ.

90. Nor is there any requirement that the unlawful means be independently actionable at the suit of the claimant, see *The Racing Partnership*, at [155] per Arnold LJ.

B.7.3 Intention to Injure

91. As to intention to injure, in the case of conspiracy to injure by unlawful means (in contrast with lawful means conspiracy), the intention to injure the claimant need not have been the defendant's main or only purpose in order for liability to arise. It is sufficient for the claimant "*to establish an intention to injure the claimant*" without also showing "*a predominant intention or purpose to do so*", see *Kuwait Oil Tanker*, at [118] per Nourse LJ. The intention to injure element will be satisfied simply where the "*gain to the conspirators is necessarily at the expense of loss to the victim*"- see *Palmer* at [219], and at [220]-[222] per Judge Russen QC. It is "*no defence for [a defendant] to show that their primary purpose was to further or protect their own interests …*" - see *Lonrho Plc v. Al-Fayed (No.1)* [1992] 1 A.C. 448, 466A per Lord Bridge. Whether a defendant had the requisite intention to injure "*and therefore had joined the combination turns on whether they knew about the alleged conspiracy. Knowledge includes "blind eye" or "Nelsonian" knowledge as well as actual knowledge*", see *Manek v. Wirecard AG* [2020] EWHC 1904 (Comm), at [45] per Sir Ross Cranston.

B.7.4 Damage

92. The tort of unlawful means conspiracy requires that the unlawful means caused the claimant to suffer damage. As Judge Russen QC explained in *Palmer*, at [239]:

> "*The fourth component of an unlawful means conspiracy is damage caused by the conspiracy. The claimant must prove that each unlawful act relied upon was causative of loss and that each such act was carried out pursuant to the alleged conspiracy*".

93. Provided that the unlawful means used pursuant to the combination caused the claimant to suffer damage, a given conspirator need not have personally taken steps to give effect to the conspiracy in order to be liable. Thus, in *Kuwait Oil Tanker*, at [110], Nourse LJ observed that, "*[t]he essence of the unlawful means conspiracy is injury to the claimant as a result of an unlawful act or acts where two or more people have combined to cause the injury. It is not necessary that every overt act is done by every conspirator, but the act must be done pursuant to the conspiracy or combination*" (see also at [133]), and *Barclays Pharmaceuticals Ltd v. Waypharm LP* [2012] EWHC 306 (Comm), at [222] per Gloster J).

B.7.5 Concerted Action and Active versus Passive Participation

94. An issue has arisen between the parties as to the question of "concerted action" and what was said by Cockerill J in *FM Capital Partners Ltd v. Marino* [2018] EWHC 1768

(Comm), at 94(iv) that an element of the tort of unlawful means conspiracy is "*Concerted action (in the sense of active participation) consequent upon the combination or understanding*". I understand what is there stated to be directed at the combination element (addressed in Section B.7.1 above) – that a person will only incur liability in conspiracy where they have combined with another person, as is reflected in the fact that Cockerill J. cited *McGrath on Commercial Fraud in Civil Practice,* at para 7.57 and the ultimate conclusion that the author reaches in that paragraph is that: "*The fact that an individual's actions may be viewed as facilitating a particular conspiracy will not, without more, suffice to establish that that individual is a member of the conspiracy*".

95. It would not, however, be correct to say that participation must be "active". It may be passive. As was expressly stated by Connor LJ in *R v Siracusa,* supra at 349, *"Participation in a conspiracy is infinitely variable: it can be active* ***or passive****"*(emphasis added). Nourse LJ confirmed in *Kuwait Oil Tanker* that this passage was "*fully applicable to the tort of unlawful means conspiracy".* By the same token it is also clear that, *"it is not necessary that every overt act is done by every conspirator"* (Nourse LJ at [110]).

96. The difference between Lakatamia and Madam Su in relation to "concerted action" may not, however, be as great as it seems. What is clear from the authorities is that it is necessary to look at all the particular facts of the case to establish whether there was a combination and whether someone participated, actively or passively in the conspiracy – being aware that someone was committing a potentially unlawful act, but (simply) not taking steps to stop it, may not suffice to demonstrate a combination, but it all depends on the circumstances, and in particular the position of the individual concerned.

97. This is, indeed, illustrated by the very example given by Connor LJ *R v Siracusa*, which was, it will be recalled, as follows:-

> "If the majority shareholder and director of a company consents to the company being used for drug smuggling carried out in the company's name by a fellow director and minority shareholder, he is guilty of conspiracy. Consent, that is agreement or adherence to the agreement, can be inferred if it is proved that he knew what was going on and the intention to participate in the furtherance of the criminal purpose is also established by his failure to stop the unlawful activity".

98. Thus there will be passive participation where a majority shareholder and director "consents" (which can be inferred) to a minority shareholder using a company to smuggle drugs. In that scenario the majority shareholder and director has the legal control over the day-to-day operations of the company (through a directorship), and also benefits economically from the same (through a shareholding). As Madam Su acknowledges, in that context it is quite obvious that by knowingly allowing his company to be used, he can be inferred to be a participant by his failure to stop the unlawful activity.

99. In this example the majority shareholder and director and the fellow director and minority shareholder are acting in concert, and are both parties to the combination, even though the overt acts are all done by the fellow director and minority shareholder with the majority shareholder and director's involvement being passive.

100. The factual position of the person alleged to be party to the combination, is of importance, and it is necessary to look at all the facts. To take a contrasting example at the other extreme, a mere bystander, and stranger to the other person, who is aware that the other person is committing an unlawful act will not, by that knowledge alone, combine with the other person, and be party to a conspiracy. In this regard, as was said by Nourse LJ in *Kuwait Oil Tanker* at [113], *"In most cases it will be necessary to scrutinise the acts relied upon in order to see what inferences can be drawn as to the existence or otherwise of the alleged conspiracy or combination."*

101. As Nourse LJ had also stated in *Kuwait Oli Tankers* (in the immediately preceding paragraph):-

> "it is not necessary for the conspirators all to join the conspiracy at the same time, but we agree with the judge that **the parties to it must be sufficiently aware of the surrounding circumstances and share the same object for it properly to be said that they were acting in concert at the time of the acts complained of**. In a criminal case juries are often asked to decide whether the alleged conspirators were 'in it together'. That may be a helpful question to ask, but we agree with Mr Brodie **that it should not be used as a method of avoiding detailed consideration of the acts which are said to have been done in pursuance of the conspiracy**."
>
> (emphasis added)

102. The distinction between a party to a combination and mere bystander was recognised by Morgan J in *Digicell* at [74] of Annex A:-

> "In my judgment **before a court can determine whether a defendant has been a party to a combination, it is necessary to identify what the combination is said to be and what part the defendant played in that combination**. I can see that if a defendant is in a position of authority over other persons and those other persons want to feel that they have the defendant's authority to proceed before they do proceed, then the defendant's omission to stop their activity might be regarded as a sufficient signal to them that they have the defendant's backing in what they are doing. Such a defendant could be held to be participating in the combination. However, I do not think that the passage quoted above [that from *R v Siracusa*] is authority for saying that every person who knows unlawful acts are being committed and who does nothing to stop those acts, is a party to a combination to carry out those acts."
>
> (emphasis added)

103. He continued at [75] and [76] making the important distinction between whether someone is party to a combination, and what acts are done pursuant to that combination:-

> "75. It is clear from the passage quoted above, that the court is able to make a finding that a combination existed and that a particular defendant participated in the combination by drawing inferences to that effect from all the evidence before it.

76. It is also clear that the issue in relation to an alleged combination is whether a defendant was a party to the combination. That is a different question from whether a defendant participated in all or some of the acts done pursuant to a combination. In principle, it is possible for a defendant to be a party to a combination but not himself carry out any of the acts done pursuant to that combination."

104. He then expressed his views in relation to the specific context of a parent/subsidiary relationship in terms which again emphasises the need to look at the detailed facts to determine whether a combination has taken place (at [77]):

> "77. In a group of companies, all of the individual companies have separate legal personality. If an enterprise organises itself so as to operate its business through a group of companies, taking the benefits of limited liability and perhaps the tax advantages involved, it cannot complain if a court holds it to an analysis based on the separate legal personality of the individual companies. Thus, in principle, a parent company can combine with a subsidiary and two subsidiaries can combine with each other. Further a director can combine with the company he directs and a shareholder (whether a corporate body or a natural person) can combine with the company in which the shares are held. **Whether such a combination has taken place will depend upon the detailed facts**. If an unlawful act is carried out by a subsidiary, it will be a question of fact whether that act was done pursuant to a combination between the subsidiary and its parent and, as stated above, it would normally not be sufficient proof of such a combination merely to show that the parent knew or suspected that an unlawful act was being committed and did nothing to stop it. Similarly, if it is suggested that one subsidiary did an unlawful act pursuant to a combination with another subsidiary (which did not have the ability to direct or prohibit the actions of the first subsidiary) it will not be enough to show that the second subsidiary knew or suspected that an unlawful act was being committed and did nothing to stop it."
>
> (emphasis added)

(see also what he said, having referred to *MCA Records Inc v Charly Records Ltd* [2003] 1 BCLC 93, at [78] in relation directors and controlling shareholders)

105. Thus, what is clear from the authorities is that it is necessary to look at all the evidence when considering whether there was a conspiracy or combination and what inferences can properly be drawn as to the existence or otherwise thereof. In most cases, as Nourse LJ stated in *Kuwait Oil Tanker* at [113], *"it will be necessary to scrutiny the acts relied upon in order to see what inferences can be drawn as to the existence or otherwise of the alleged conspiracy or combination"*, whilst recognising that there can be a combination with passive participation, and without a party thereto having had to carry out any of the acts themselves.

106. The debate between Lakatamia and Madam Su in the context of concerted action and passive versus active participation is, of course, academic if (as Lakatamia alleges) Madam Su was an active, as opposed to passive, participant in one or other of the two alleged conspiracies (if such conspiracies are found to exist).

B.7.6 The Babanaft proviso

107. In Madam Su's Opening Submissions it was asserted that *"in circumstances where the [Blair Freezing Order] expressly directs third parties outside England and Wales to ignore it (per Babanaft), this must preclude claims against the same foreign third parties for assisting a breach of a freezing order via claims in unlawful means conspiracy"*. Such an argument was made before the Supreme Court in *JSC BTA Bank v. Ablyazov (No.14)* [2018] UKSC 19; [2020] A.C. 727 and expressly rejected – see [23]-[24]. It was also rejected by the Court of Appeal. As Sales LJ stated [2017] Q.B. 853 at [51]: *"Although it might not be right to subject a person located abroad who benefits from the Babanaft proviso to personal penal sanctions equivalent to those involved in enforcement of the criminal law, they should not be permitted to participate in deliberate unlawful action to undermine the court's order and defeat the rights of a claimant without being exposed to civil liability to pay compensation."*

108. I would also note that even if a person having the benefit of the Babanaft proviso may not be liable for contempt if they assist a person bound by a freezing order to breach it *"if [they] are shown to have deliberately assisted [the person bound] to defeat … the injunction by the production of false documents that would seem to me to be unlawful means without any reliance on a contempt having been committed"* per Waller LJ in *Surzur Overseas Ltd v. Koros* [1999] 2 Lloyd's Rep. 611 (CA) at 620.

109. I have no hesitation in accepting that the above principles accurately reflect English law and have been definitively so decided. In the event, Madam Su in her Written Closing Submissions acknowledged that I may consider myself bound by *JSC BTA Bank* (as I do, and as I am). Whilst Madam Su reserved her position in this regard, I note that the point has already been determined at the highest appellate level.

B.7.7 The ordinary and proper course of business proviso

110. In oral opening, and whilst denying receipt of any of the Aeroplane Sale Proceeds or Monaco Sale Proceeds, it was also suggested on behalf of Madam Su that if she did receive any monies then this was irrelevant it being submitted that Mr Su would merely be repaying debts due to her, relying on paragraph 10(2) of the Blair Freezing Order that *"This Order does not prohibit the Defendants from dealing with or disposing of any of their assets in the ordinary and proper course of business".*

111. Whilst it appears the point is still maintained, if somewhat half-heartedly (it only appears as an assertion at paragraphs 377.3 and 380.2 of Madam Su's Written Closing Submissions), I am satisfied that it would be a bad point for any number of reasons.

112. First, any payments by Mr Su to Madam via the (convoluted) routes that any monies travelled (given the more obvious route of a payment direct to Madam Su) would not have been made in the "ordinary" course of Mr Su's business, the purpose of this exception being *"routine business transactions to be conducted without reference to the court. But dealings or disposals which are not part of the ordinary business of the defendant in that sense do not necessarily fall foul of the purpose of the freezing order. They merely require the approval of the court or the claimant before they are carried out and so enable the court to scrutinise what, on its face, may not appear to be a routine or regular transaction*" (*JSC BTA Bank v Ablyazov (No.3)* [2010] EWCA Civ

1141 at [74]). Even had a payment been contemplated to be paid directly, it would clearly have required the scrutiny of the court before it could have been effected.

113. Secondly, it ignores the fact that Mr Su was committed for contempt (proved to the criminal standard) for breaches of the Blair Freezing Order associated with the transfer (dissipation) of the Monaco Villa proceeds which, by the very nature of the transfers, made it harder to enforce against such assets, so any such transfers were not permitted transfers.

114. Thirdly, it assumes that any payments were in fact intended to be made, and were made, as repayment of debt to Madam Su (despite, on any view, not being made to Madam Su herself).

115. Fourthly, if the existence, and purpose, of the Monaco Conspiracy or the Aeroplane Conspiracy is made out by Lakatamia, the purpose of the transfer(s) was not the repayment of debt but the furtherance of the conspiracy or conspiracies.

B.8 THE MAREX TORT

116. Lakatamia advances a claim against the Defendants under the so-called "Marex tort" (after the judgment of Robin Knowles J in *Marex Financial Ltd v Sevilleja* [2017] EWHC 918 (Comm); [2017] 4 W.L.R. 105).

117. The facts of that case were that Marex had entered into a contract with two BVI companies, Creative Finance Ltd and Cosmorex Ltd. Following a breach of contract by the latter, Marex commenced proceedings and on 19 July 2013, a draft judgment was sent to the parties by Field J, upholding the claimants' claim. Between that date, and the date that the judgment was finally handed down on 26 July 2013, the owner of the two defendant companies, Mr Sevilleja, stripped the companies of all assets. When it realised this, Marex commenced proceedings against Mr Sevilleja, alleging, amongst other matters, that Mr Sevilleja's actions made good a tort of *"knowingly inducing and procuring the Companies to act in wrongful violation of Marex's rights under the judgment".*

118. In the context of an application for permission to serve a claim form out of the jurisdiction, Robin Knowles J held that there was (at least) a good arguable case that English law recognised a tort of inducing or procuring a violation of rights under a judgment. He essentially did so on the basis that, given that inducing a breach of contractual rights is actionable, it would be counterintuitive if it were not also tortious to procure a violation of rights in a judgment debt that was founded upon a contract, a fortiori given that non-payment of a judgment debt is itself an actionable wrong (see his reasoning at [19]-[21] and 26]-[28] of the judgment).

119. English law has long recognised a tort of procuring a breach of contract (since *Lumley v Gye* (1853) 2 El. & Bl). In *Marex*, Robin Knowles J took the view that where a contractual right to payment is merged into a judgment, then a third party procuring a breach of contract must necessarily also be committing a tort. Whilst aspects of the case have something of an appellate history, the Court of Appeal refused permission to appeal against that part of the judgment that related to the Marex tort's existence – see [2018] EWCA Civ 1468; [2019] Q.B. 173 at [6], and the appeal had no bearing on the conclusions expressed by Robin Knowles J in relation to the Marex tort itself (as noted

in *Palmer*, supra at [171]). Equally, whilst the decision in *Marex* was appealed to the Supreme Court, the appeal concerned separate issues, principally the reflective loss doctrine, and no adverse comment was made in the Court of Appeal or the Supreme Court in relation to Robin Knowles J's conclusions regarding the Marex tort.

120. The Marex tort finds a close, and I consider compelling, analogy with the tort of inducing a breach of contract. There would seem to be no compelling reason why, in circumstances where the law protects against intentional interference by third parties with contractual rights it should not equally protect against intentional interference with rights established by judgments.

121. I consider that the position is *a fortiori* in relation to judgments vindicating contractual rights (which is the case here given that it is the judgments of Cooke J that are in issue in this litigation). When judgment is given for a claim for breach of contract, the contractual right merges in, and is novated by, the judgment, see *Zavarco plc v. Nasir* [2020] EWHC 629 (Ch); [2020] Ch. 651, at [12], and I can see no reason why the law should protect against third-party interference with contractual rights but not against such interference with contractual rights that have been novated by judgment. Absent such protection, the law would perversely diminish the protection that it affords to a victim of a breach of contract where the victim has had those rights vindicated by the courts.

122. In *Palmer* at [172], Judge Russen QC endorsed the analogy that Robin Knowles J had made and considered that it was consistent with Court of Appeal authority regarding the tort of inducing a breach of contract:

> "It seems to me that the first instance decision in Marex can be analysed as falling within the broader proposition that liability for the inducement tort may arise in circumstances where the contract breaker is a willing party to the breach, without the need for persuasion by the defendant, but the defendant (with knowledge of the contract) has dealings with the contract breaker which he knows to be inconsistent with the contract: see *DC Thomson & Co Ltd v Deakin* [1952] Ch. 646 (CA)] at p 694."

123. Whilst Madam Su describes the Marex tort as a "novel" tort, it is only novel in the sense of being newly recognised as a form of tortious wrongdoing. The English courts continue to recognise and acknowledge further types of tortious wrongdoing – a recent example being the recognition of the tort of malicious prosecution of civil proceedings (see *Willers v Joyce* [2016] UKSC 43; [2018] AC 779).

124. In any event, the existence of the Marex tort is not disputed on behalf of Madam Su, and it is expressly confirmed at paragraph 374 of Madam Su's Written Closing Submissions that Madam Su is content to adopt the analysis of Robin Knowles J, on the basis that where a contractual right has been merged into a judgment right, then a tort of procuring a breach of a right under a judgment may be established.

125. It is also common ground that given that the Marex tort is a development of the tort of inducing a breach of contract, its elements stand to be identified by analogy with that

tort. The elements of such tort were summarised by Morgan J in *Aerostar Maintenance International Ltd v. Wilson* [2010] EWHC 2032 (Ch) at [163], as follows:

> "The ingredients of the tort of inducing or procuring a breach of contract are, first, there must be a contract, second, there must be a breach of that contract, thirdly, the conduct of the relevant defendant must have been such as to procure or induce that breach, fourthly, the relevant defendant must have known of the existence of the relevant term in the contract or turned a blind eye to the existence of such a term and, fifthly, the relevant defendant must have actually realised that the conduct, which was being induced or procured, would result in a breach of the term".

126. I agree with Lakatamia's submission that, applying such matters *mutatis mutandis* to the Marex tort, the elements of the Marex tort are:

(1) The entry of a judgment in the claimant's favour,

(2) Breach of the rights existing under that judgment,

(3) The procurement or inducement of that breach by the defendant,

(4) Knowledge of the judgment on the part of the defendant, and

(5) Realisation on the part of the defendant that the conduct being induced or procured would breach the rights owed under the judgment.

127. I am also satisfied, again by analogy with the tort of inducing a breach of contract, that the following further principles apply to the Marex tort:-

(1) It suffices that the defendant intended to violate the claimant's rights under the judgment. The defendant does not need also to intend thereby to damage the claimant. As Judge Russen QC stated in *Palmer* at [174]:

> "In order for liability to be established under the inducement tort, the result intended by the defendant must be a breach of contract. But that is both necessary and sufficient and there is no need for the claimant to go further by establishing an intention to cause damage …"

See also, in this regard, *OBG Ltd v. Allan* [2007] UKHL 21; [2008] 1 A.C. 1 per Lord Hoffmann at [8].

(2) Just as it is unnecessary for a defendant in a claim for inducing a breach of contract to know the details of the contract provided that they had "the means of knowledge" (*Emerald Construction Co Ltd v. Lowthian* [1966] 1 W.L.R. 691, 700 per Lord Denning M.R.), it is inessential that the defendant to a claim for the Marex tort has actual knowledge of the contents of the judgment.

(3) In this regard blind-eye knowledge is sufficient. Thus, as was said by Lord Denning in *Emerald Construction* at page 700, *"it is unlawful for a third person*

to procure a breach of contract knowing, or recklessly, indifferent whether it is a breach or not".

(4) *"[A]ny active step taken by the defendant having knowledge of the covenant by which he facilitates a breach of that covenant"* falls within the ambit of the tort: see *British Motor Trade Association v. Salvadori* [1949] Ch. 556, 565 per Roxburgh J.

(5) There is no need to establish "*spite, desire to injure or ill will"* on the part of the defendant, see Clerk & Lindsell on Torts, at para 23.57.

128. As both parties recognise, an important element (item (3) above) is that there be procurement or inducement by the defendant of the breach of the rights existing under the judgment by persuading, encouraging or assisting the other to do so, and in this regard it is essential that *"the defendant's acts of encouragement, threats, persuasion and so forth have a sufficient causal connection with the breach …"* (see *OBG Ltd v. Allan* at [36] per Lord Hoffmann).

129. In this regard:

> "[T]his participation by A in B's breach, must, in Lord Hoffmann's words, have "a sufficient causal connection with the breach by the contracting party to attract accessory liability" or, in Lord Nicholls' words, so as to amount to "causative participation". It is because of the causative requirement that "inducement requires the defendant's conduct to have operated on the will of the contracting party" in the words of Toulson LJ. If A's conduct is not capable of influencing a choice by B whether or not to breach the contract, it is not capable of amounting to inducement; it cannot operate on the mind or will of B so as qualify as causative participation as an accessory to his breach."

(Popplewell LJ at [33] of *Kawasaki Kishen Kaisha Ltd v James Kemball Limited,* referring to Lord Hoffman's and Lord Nicholls' judgments in *OBG Ltd v Allan,* supra and Toulson LJ's in *Meretz Investments NV v ACP Ltd* [2008] Ch 244).

130. However, I consider that there is one difference between the tort of inducing a breach of contract and the *Marex* tort. In relation to the former, and whilst intentionally procuring a breach of contract is actionable independently of the motive or reason for so doing since the action depends upon breach of the claimant's right and is not based on the spite, desire to injure or ill will of the defendant (as already noted), some exception has been made on the ground of justification, albeit it has been recognised that *"it would be extremely difficult, even if it were possible, to give a complete and satisfactory definition of what is 'sufficient justification'"* (*Glamorgan Coal Co v South Wales Miners Federation* [1903] 2 K.B. 545 at 573 CA, per Romer LJ). The defence of justification in relation to inducing a breach of contract has itself been recognised as being of *"fairly restricted ambit"* and *"narrow scope"* (see Clerk & Lindsell on Torts, at paras 23.59-23.60).

131. However, I do not consider that there is any scope for an equivalent defence in relation to the Marex tort. Whilst there may be limited circumstances in which it is reasonable to induce a breach of a contractual right (a right which by its very nature is a right

created by contract) in the furtherance of, by way of example, a moral obligation, I cannot see any room for an equivalent defence in relation to rights established by due process and enshrined in a judgment. Whether that is so or not is academic in the present case, as it is not suggested that Madam Su would have any lawful justification if she (for example) encouraged or assisted Mr Su to violate Lakatamia's judgment rights.

B.9 MONACO LAW

B.9.1 INTRODUCTION – THE EXPERTS

132. I had the benefit of hearing evidence from two experts in relation to Monaco law. On behalf of Lakatamia I had the benefit of a report from Maître Donald Manasse (the "Manasse Report") together with his oral evidence, whilst on behalf of Madam Su I had the benefit of a report from Maître Stephane Pastor (the "Pastor Report"), together with his oral evidence.

133. Save as to one point, the experts agree on the relevant principles as a matter of Monaco law and their Joint Memorandum, (the "Joint Memorandum"), records their agreement on all but one issue.

134. In such circumstances, and the agreement between the experts on almost all issues, it is, perhaps, surprising that Madam Su saw fit, in her Written Closing Submissions, to embark upon what can only be described as a root and branch attack on the independence of Maître Manasse and his compliance with his obligations to the Court, culminating in a submission that *"the Court must approach the evidence of Maître Manasse with real caution".*

135. I disagree. I am satisfied that such attack (which in Madam Su's written closing included criticisms not even put to Maître Manasse in cross-examination, and which were rightly withdrawn in oral closing) was unfounded, and that each of the experts was independent and doing their best to assist the court as to the applicable principles of Monaco law in relation to which there was very substantial agreement. Perhaps somewhat ironically (given the ferocity of the attack launched upon the independence of Maître Manasse), and as will appear, it is in relation to an aspect of Maître Pastor's evidence that I will need to comment on in due course, albeit that I am satisfied that he too was an independent expert witness doing his best to assist the Court.

136. The challenge to the expert evidence of Maître Manasse relates not to any alleged lack of expertise in Monaco law, but on the basis of an assertion that he lacked independence. Maître Manasse is a practitioner, rather than someone who regularly gives expert evidence on foreign law, and indeed it was the first occasion on which he had given live expert evidence. That is not, however, something to be held against an expert witness, whose evidence, I am satisfied, was not only independent, but entirely consistent with the applicable principles of Monaco law that stand to be applied.

137. It is said that Maître Manasse lacks independence as he is currently a trustee of the Monaco and UK branches of the Stelios Philanthropic Foundation, a not-for-profit organisation created by Mr Stelios Haji-Ioannou, the brother of the principal of Lakatamia, Maître Manasse being a founding member of the Monaco foundation who was personally appointed by Mr Stelios Haji-Ioannou, remunerated for his work as a trustee, and who has acted a "*general adviser*" to Mr Stelios Haji-Ioannou in Monaco

who he also sees socially on a regular basis. It is submitted that he should have made disclosure of these links to the brother of the principal of Lakatamia.

138. I agree that it would have been appropriate, and wiser, for him to have done so (see in this context the White Book para 35.3.6 and *EXP v Barker* [2017] EWCA *Civ 63)* albeit that the links in the present case are not with Lakatamia itself or its principal as such, and there is no actual conflict interest. However I do not consider that Maître Manasse's omission to disclose the matters relied upon leads to the conclusion, on the facts, that he was not an independent expert witness, or that the weight of his evidence is adversely affected in the present case.

139. Quite apart from the fact that the experts were in agreement as to the applicable principles as to Monaco law on all issues bar one, Maître Manasse answered all questions in cross-examination in an open manner demonstrating a positive desire to assist the Court and at no stage, in his oral or written evidence, did he appear to be, or was he, partisan. A far surer guide to test the respective opinions of Maître Manasse and Maître Pastor is, I am satisfied, to have regard to the applicable principles of Monaco law on which they did agree, and consider the application of such principles in relation to the issue on which they did not agree.

B.9.2 ARTICLE 1229 OF THE MONACO CIVIL CODE

B.9.2.1 THE NECESSARY ELEMENTS

140. Article 1229 of the Monaco Civil Code provides that *"if one person causes damage to another by fault, the former must compensate the loss",* which the experts describe as "classic" tortious liability (Joint Memorandum issue 1).

141. The experts agree, amongst other matters, that in order to establish liability under Article 1229, it is necessary to prove three elements: *"(i) a fault, (ii) a causal link (the loss would not have occurred if the fault had not been committed), and (iii) a loss"* (Joint Memorandum issue 1).

142. A "*fault*" is defined as the transgression of a duty or an obligation. It could be the violation of a contractual obligation, a legal requirement (law, statutes, regulations) or "*any abnormal act in comparison to the standard of behaviour that is expected of a reasonable person*" (Joint Memorandum issue 1).

143. In assessing "*fault*" two questions are to be asked, first, *"what is the standard of behaviour that could be expected from a reasonable person",* and second "*is the defendant's behaviour abnormal compared to the standard of behaviour that could be expected of a reasonable person."* In this regard a defendant's age and/or infirmity at the time of an alleged wrong is relevant when the court determines the standard of behaviour that could be expected of a reasonable person (Joint Memorandum issue 1.2). Maître Pastor confirmed, when cross-examined, that all people are expected to be honest, regardless of their age, and age is no defence to acting without probity (i.e. if they understand what they are doing and are doing it wilfully as Maître Pastor put it).

144. Where there are two alleged tortfeasors, Monaco law, and court practices, distinguish between "major" and "minor" faults when the court assesses the causal link condition of the classic tortious liability, with the court comparing the faults committed by various

defendants and determining whether one of them substantially contributed more to the loss (Joint Memorandum issue 1.1). The effect of such distinction is two-fold.

145. First, it could exonerate the perpetrator of the slightest fault. As Professor Jourdain Patrice Jourdain explains in Jurisclasseur Causalité (as quoted by Maître Pastor (Pastor Report at [18(a)]) and referred to at issue 1.1 of the Joint Memorandum), *"when several faults of very unequal seriousness had contributed to the damage, case law tends to consider that the slightest fault is "absorbed" by the most serious fault*" , with the result that where there are two alleged tortfeasors, a *"minor fault"* may be subsumed by a *"major fault"* such that the individual responsible for the *"minor fault"* is not liable at all. Thus it is directed at a situation where the competing faults are of *"very unequal seriousness"*, as Maître Pastor agreed, and he gave the example of where one fault is intentional and the other is only negligent. It does not apply where the faults equally contributed to the damage (Joint Memorandum issue 1.1), and it has no application to situations where two tortfeasors have participated in the same fault. In that circumstance, they are held jointly and severally liable (there is *"condemnation in 'solidum'"*, per Manasse Report at [11]). That was accepted by Maître Pastor during cross-examination, although he said that he did not know whether the principle of *"major"* and *"minor"* fault would have any application to a claim in conspiracy. On the basis of the principles I have just identified it is clear it would not, as a conspiracy involves two (or more) tortfeasors who have participated in the same fault, and as such they are to be held jointly and severally liable.

146. The second effect of the distinction is that when the court evaluates the compensation for the loss, it necessarily addresses the severity level of the fault in order to determine the appropriate damages between the defendants. The court may therefor incur (impose) different levels of liability according to the severity and degree of the faults or may hold defendants jointly and severally liable without distinction (Joint Memorandum issue 1.1). I am satisfied on the evidence of both experts, that the latter would be the case where they are joint tortfeasors such as in the case of a conspiracy.

147. In terms of causation, litigants cannot absolve themselves from the consequences of their own wrongdoing by relying on another person's wrongdoing. Where there is multiple wrongdoing the court looks to determine which fault between the two directly caused the suffering of a loss. Liability is subject to the fact that the fault must have *"caused"* a claimant to have suffered loss (the *"causal link*" element). It means that the fault must be the *"necessary antecedent"* of the damage. In other words, the event giving rise to the damage shall *"explain"* the loss, and only the loss directly caused by the *"fault"* must be compensated (Joint Memorandum issue 1.3).

148. In terms of loss, loss may be compensated if it is personal, direct, and certain, and the judge has a discretionary power in determining the existence and amount of the loss. In the application of such definition, the loss of a chance may also be compensated, a *"loss of a chance"* being defined as *"the actual and certain disappearance of a favourable event"*. It is the loss of a chance that is generally indemnified rather than the full occurred damages (Joint Memorandum issue 1.4). A fault causing a delay in enforcing a judgment debt can be an actionable loss under Monaco law, and the claimant would have to demonstrate that the delay was directly caused by the alleged fault, in other words that this specific fault caused the delay. The claimant must substantiate the loss incurred by the delay and, in that context, the incurred damages could be considered a loss of chance (Joint Memorandum issue 1.6).

149. In relation to the measure of damages, damages are assessed based on the effectively suffered and evidenced damages in relation to which the claimant bears the burden of proof. Loss which is directly and personally caused by the fault is compensable, with awarded damages being compensatory in nature. They include financial loss (Joint Memorandum issue 1.7).

B.9.2.2 FAULT

150. The experts disagreed, in their reports, and at the time of their joint meeting, on one point (Joint Memorandum Issue 1.5) namely whether a defendant would commit a "fault" for the purposes of a claim under Article 1229 if he or she knowingly assisted a third party to avoid honouring a foreign judgment or to breach a foreign freezing order by the payment away of funds in Monaco. It was common ground between the experts that there is no Monegasque or French precedent directly on this point. Accordingly, it needs to be resolved by reference to general principles.

151. Madam Su notes in her Written Closing Submissions (somewhat *in terrorem*) that the concept of a "faute" has existed in French law since at least the Code of Napoleon of 1807 yet, it is said, in that time no commentator and no judgment has provided that to assist a third party in avoiding an unrecognised foreign judgment or a foreign freezing order amounts to a "fault" within Article 1229. Even if that is true (and, as will be seen, there is a Monaco Court of Appeal case of some relevance to the issue), I do not consider this assists. The only sure guide as to Monaco law and the position of the Monaco courts is to identify the relevant principles as to "fault" in Monaco law and then apply them to the factual situation before the court, as would be done in Monaco.

152. Maître Manasse's evidence is that it is a fault for anyone to participate in an action to pay away funds in Monaco in breach of a foreign judgment or order whether or not the judgment or order has been recognised in Monaco. In contrast, Maître Pastor's evidence, at the time of his report and the joint meeting of experts, was that in order for there to be a "fault" within Article 1229 the foreign judgment or order must first be recognised in Monaco (in a relevant way). However, as will become apparent, the differences between the experts narrowed considerably in the light of the matters accepted by Maître Pastor during the course of his cross-examination.

153. Before turning to the disputed issue itself, there are a number of principles and propositions identified by Lakatamia that I do not understand to be controversial. First, there is a general duty in Monaco law to *"behave responsibly"* (see Pastor Report at [16(c)]). Secondly, a fault could accordingly *"be any abnormal act or behaviour, in comparison to the standard of behaviour that is expected from a reasonable person"* and *"this could relate to the failure to fulfil a duty of care, or to behave with loyalty,* ***or probity****"* (see Pastor Report at [16(c)] (emphasis added)). Thirdly, as Maître Pastor accepted when cross-examined, acting with "probity" means acting not only "faithfully" but also "honestly".

154. As Maître Pastor also accepted, the standard of behaviour is set by reference to "the reasonable person". The reasonable person is *"l'homme prudent, raisonnable et soucieux de ses devoirs"* (i.e. *"a man prudent, reasonable and careful about his duties"*) or "*le bon père du famille*" (i.e. *"the good father of the family"*, and as Maître Pastor acknowledged, he is not a qualified lawyer, and does not have a master's degree in conflicts of law. In this regard the reasonable person honours his or her obligations

rather than breaches them, and he or she does not encourage others to breach their obligations (as Maître Pastor accepted when cross-examined).

155. Notwithstanding the import of such principles and propositions, Maître Pastor suggested (in his report) that it would not constitute a "fault" for the purposes of Article 1229 for an individual to assist a third party to avoid honouring a foreign judgment. He did not address, in his report the question of whether it would constitute a "fault" to assist a third party to breach a freezing order, albeit that he did so (in his view in the negative) in the Joint Memorandum (in contra-distinction to the view expressed by Maître Manasse on both points).

156. In support of his view that it would not constitute a "fault" to assist a third party to avoid honouring a foreign judgment Maître Pastor opined as follows:-

(1) Until a foreign judgment had been recognised in Monaco through a process of exequatur, *"there cannot be any pre-existing duty to behave according to this judgment, and subsequently no breach of this alleged pre-existing duty"* (see Pastor Report at [44(a)]).

(2) Applying the principle of res judicata, an individual who is not a party to a case is not bound by the judgment. Consequently, *"where there is no binding judgment there cannot be any requirement to act or not act, and any action or non-action cannot be a fault"* (see Pastor Report at [44(b)]).

(3) Unless the foreign judgment had been served on the individual, that individual would not have been *"legally informed"* of it (see Pastor Report, at [44(c)] [F1/3/23]) - i.e. until then there would be no obligation "to behave according to this judgment".

157. I consider each of these shares the same fundamental flaw. They focus not on whether there is "fault" on the applicable principles of Monaco law, but rather on the foreign judgment and its direct enforcement in Monaco. This is simply not in point. They confuse the direct enforcement of foreign judgments with the question of whether or not an individual commits a fault by acting to frustrate foreign judgments. Thus, in the context of the first question, it matters not that a foreign judgment would not be directly enforceable against an individual in the Monaco courts until such time as it had achieved recognition, and it is a *non sequitur* that the fact that the judgment has yet to be recognised means that the private law rights established by any foreign judgment would be ignored by the Monegasque courts.

158. The experts are agreed that the assessment of fault depends on the standard of behaviour that could be expected from a reasonable person (Joint Memorandum Issue 1.2). As this is focussed on <u>conduct</u>, the standard of the behaviour that could be expected from a reasonable person, rather than the geographical origin of the judgment, it is difficult to see why that conduct would stand to be viewed differently depending on whether the judgment had (yet) been recognised in Monaco. In this regard, I note Maître Manasse's evidence under Issue 5 of the Joint Memorandum that the standard of conduct expected of the reasonable person *"cannot be different depending on whether a foreign decision is judicially recognized as enforceable in Monaco".* That would, at least at first blush, appear to be intuitively correct given the meaning of "fault" in Monaco law.

159. However, in support of a contrary approach, Maître Pastor referred to a passage from a judgment of the Court of Appeal of Monaco dated 7 July 2015, in paragraph 44(a) of his report which was in these terms:-

> "A foreign judgment that has not been recognised in Monaco further to an exequatur procedure only has the effect of a mere fact under Monegasque law. Consequently, one cannot enforce a foreign judgment in Monaco without a prior Monegasque judgment of exequatur officially recognising it, which is subjected to a dedicated proceeding. See for illustration, the judgment issued by the Court of Appeal dated 7 July 2015:
>
> "Since none of these foreign court decisions have so far been recognised through a judgment of exequatur in the Principality of Monaco, the first judges have rightly noted that these foreign judgments have no legal significance in Monaco's internal judicial system **[…]**. The foreign judgment may constitute a means of proof whose value is reduced to that of a simple document whose scope will be assessed by the court".

As long as the foreign judgment has no legal effect in the Monegasque internal judicial system, there cannot be any pre-existing duty to behave according to this judgment, and subsequently no breach of this alleged pre-existing duty".

(my emphasis)

160. The translated quotation from the judgment of the Monaco Court of Appeal is not identical to the translation in the trial bundle, which is, in of itself, unremarkable, given that translations will vary; but more fundamentally, and as Maître Manasse pointed out when giving his evidence, Maître Pastor has omitted (in the ellipsis between the two sentences) a further sentence in the judgment of the Court of Appeal. I consider that sentence to be highly material to the issue under consideration. I set out below all three sentences (in the translation in the bundle) given that all three sentences stand to be read together and in context (highlighting the omitted sentence for ease of reference):-

> "Whereas none of these foreign court decisions have to date been the subject of an exequatur judgment in the Principality of Monaco, the first judges have righty noted that they remain devoid of any legal significance in the Monegasque internal judicial order.
>
> **Whereas a foreign judgment can nevertheless, like any legal act or fact, create a new situation that it would not be realistic to ignore and whose analysis gives the measure of the effectiveness of this decision taken in another legal order.**
>
> Whereas indeed, even if it remains to this day devoid of the authority of res judicata on Monegasque territory, the foreign judgment can constitute a means of proof whose value is reduced to that of a simple document the scope of which the court judge will verify".

161. It is clear, therefore, that even before a foreign judgment is formally recognised in the principality, a foreign judgment can create a new situation that it would not be realistic for the Monaco court to ignore – i.e. it will take into account a foreign judgment as a fact in the context of fault.

162. I consider that this undermines fundamentally Maître Pastor's analysis. Whilst I do not consider the omission to have been deliberate, and I was satisfied that Maître Pastor was acting as an independent expert witness doing his best to assist the Court, I consider it regrettable that Maître Pastor did not bring the Court's attention to, and seek to grapple with, this passage in the judgment of the Court of Appeal of Monaco.

163. When the passage was put to Maître Pastor in cross-examination he conceded that a foreign judgment *"will be assessed and considered as a fact"* and he went on to say *"So obviously the court will not ignore it because, as I quoted, it will be – it could be used by a party as a proof, as an evidence. A judge will not ignore it"*. Shortly thereafter there was then this exchange in which Maître Pastor accepted that evidence of private law rights will be taken into account when assessing whether someone has acted with probity, although he then sought to qualify that in a particular respect:-

> "Q. But what you are talking about, Maître Pastor, is the direct enforcement of the judgment in Monaco, and what I am suggesting to you is that we are talking about something quite different, which is whether or not that judgment and that evidence of private law rights will be taken into account when assessing whether someone has acted with probity. On that second question, the court will take that into account, won't it?
>
> A. Yes, but if you want, if you have to assess if someone acted in probity, it will depend on the -- it will exactly depend on the judgment. If, for example, I won't take any country, but if we have a shady jurisdiction issuing a judgment and we have a defendant that is not wilfully complying with this judgment, he will not act -- he will act with probity. We could not reproach him with not acting with probity if he did not respect this judgment that was not made according to the Monaco standard, according to -- that was not taken and made according to the Monaco standards."

164. It is clear, therefore, that the Monegasque court would have regard to a foreign judgment (as a fact) when assessing probity, even if consideration would be given as to whether it was a judgment of a "shady jurisdiction" in assessing whether non-compliance reflected a lack of probity. In any event, Maître Pastor expressly confirmed that he was not suggesting that a judgment of the English Commercial Court was a judgment of a "shady jurisdiction", so such qualification would not appear apposite on the facts of the present case.

165. Ultimately, in answer to questions from the Court, Maître Pastor confirmed that (1) a Monegasque court would look at a foreign judgment as a matter of evidence, (2) a

Monegasque court would look at that evidence for the purposes of determining whether or not there is tort liability under Monegasque law; and the question to which that evidence would be relevant was *"whether the behaviour [of the defendant to a claim under Article 1229] amounts to a fault in Monegasque law".* I am satisfied that this evidence from Maître Pastor represents the position under Monaco law.

166. This evidence is entirely consistent with the evidence of Maître Manasse, in his initial report, in the Joint Memorandum and when he was cross-examined. Maître Manasse's evidence in cross-examination was that a Monegasque court would look at the behaviour of a person alleged to have committed a "fault" for the purposes of Article 1229 and that it would take into account the decision of a foreign court if it were relevant to that question. In this regard he stated during his cross-examination that:

> "My… position is that a Monaco judge would look to the behaviour itself. It would also then look and would take notice of any foreign decision that had been rendered and would also take notice if that decision were inappropriate or not. But that would not be dispositive of the issue of whether the behaviour was such as to create a fault, a prejudice, a damage and requirement to repair".

167. It is notable that in Madam Su's Written Closing Submissions, Madam Su felt the need to fall back on what Maître Pastor had said in his initial report (quoting passages from that report) but Maître Pastor clearly accepted in cross-examination that the existence of a foreign judgment would be taken into consideration as a fact when determining whether or not there had been "fault".

168. In Madam Su's Written Closing Submissions, Madam Su also relies on a particular passage in the evidence of Maître Pastor during the course of his cross-examination in support of a submission that although the existence of a foreign judgment would be a fact that would be taken into account by the Monaco court in considering whether there was "fault" it could not be the foundation of a finding of "fault" in Monaco of assisting the breach of the foreign judgment (a proposition, I would add, which would appear to be a self-evident *non-sequitur*).

169. To put the passage in context I will quote the entirety of the question and answer:-

> "Q. Well, do you agree, therefore that the paragraph that we have just been looking at, which isn't quoted in the joint memorandum and isn't quoted at subparagraph 44(a) of your report, is a statement by the Court of Appeal in Monaco that even before a foreign judgment is formally recognised in the principality, it creates a new situation that it would be unrealistic to ignore?
>
> A. Yes, it's right, but it has to be understood with exactly, and this is why I believe that it is very important to understand that it will be assessed and considered as a fact. So obviously the court will not ignore it because, as I quoted, it will be -- it could be used by a party as a proof, as an evidence. A judge will not ignore it. So I agree on that. But then what the question is, though, what the

judge will do with that. He will not ignore it, he will not set aside, refuse, he will accept this evidence and will consider it and he will not ignore it, for sure. You are right when you say that and you are right, according to the quote that I didn't quote, but also on the basis on the part that I quoted as well. He will not ignore it. I agree with that.

But then, once he considers this evidence, what I believe is that he will consider that when it comes to create a legal obligation in Monaco, the judge will not give a legal -- will not make a decision or take a decision or give, will enforce indirectly a judgment, despite the fact that he can consider it. So apart from the reasoning I made before arrives after that, I don't disagree when you say that he will consider it, he will look at it. He will not refuse as it can be for other evidence to look at it. But if what he is asked is to, I would say, found a fault on this judgment and I would say specifically on this judgment, because that is what the question you asked, it is my opinion, because there is no -- he will not circumvent the procedure of exequatur to ensure that the judgement respected the rights of every party, that it is compatible with the Monegasque public order. That is for me absolutely compulsory for a judge, in my opinion.

So I don't think what we both say is incompatible. I think I agree with you, but when the judge will consider the judgment, I believe that he will have to go through what I just explained, the exequatur procedure, he needs to ensure that he will not enforce indirectly, for example, a judgment or an order from a jurisdiction that is not recommendable, I would say -- sorry I am not a native speaker. In my opinion the only way to do so, the only procedure we have in Monaco is the exequatur procedure. This is my reasoning and this is my opinion."

(emphasis added)

170. The first passage emphasised above is entirely consistent with the judgment of the Court of Appeal and with the evidence of Maître Manasse, but the second passage emphasised (which is relied upon by Madam Su) is simply not consistent with the first, or with the concept of "fault" under Article 1229, which is directed at behaviour and evidence in relation to which the Monaco court will take into account a foreign judgment as a fact when considering whether there is "fault" within Article 1229. In the second passage Maître Pastor is, I am satisfied, confusing the enforcement of foreign judgments and the exequatur procedure, with the separate question of whether an

individual commits a fault by acting to frustrate a foreign judgment in which context the court will take the foreign judgment into account as a fact. To the extent that Maître Pastor's evidence is to the contrary I reject it, preferring that which is stated by the Monaco Court of Appeal itself, by Maître Manasse, and indeed by Maître Pastor in the first of the passages above, as well as in the other evidence that I have already referred to.

171. Equally, I am satisfied that Maître Pastor's suggestion that until a foreign judgment has been served on an individual, that individual would not have been "legally informed" of it, is not in point. First, and fundamentally, by reference to the sentence from the judgment of the Monaco Court of Appeal of 7 July 2015, the court would consider a foreign judgment as a fact when considering whether there was fault, and this has nothing to do with whether an individual has been legally informed of it. As was put to Maître Pastor, *"So the courts would take into account the foreign judgment even if it had not been served, wouldn't they"* to which Maître Pastor agreed – *"We agreed on the fact that they would take the decision into account"*.

172. For his part Maître Manasse, when cross-examined, was clear that issues of service were not relevant to the question of "fault" under Article 1229:-

> "I think what I have been saying is that it is a participation in an act of – that is inhabitual in the sense that it prevents somebody from enforcing a judgment that is the fault. It is not the knowledge of the foreign restriction that is – creates the obligation under Monaco law and, therefore, the service issue is not an issue that is entirely, if you allow me, entirely relevant".

173. For completeness, I note that Maître Pastor had relied (in his report) on a decision of the French Court of Cassation dated 1st July 1997 to suggest that until a judgment was formally served a person was not "legally informed" of its effect (see Pastor Report at [44(c)]). Quite apart from the fact that such a distinction is not in point (as already noted), I am satisfied that the case is not of any relevance in any event. Maître Pastor accepted that it was *"a case about whether or not an individual's rights can be forfeited at a hearing at which she is not represented"* and it did not follow from it that *"the reasonable person who knows about a judgment but who has not been formally served is entitled to help someone to avoid meeting it."*.

B.9.2.3 FAULT AND FREEZING ORDERS

174. As I have already noted, Maître Pastor did not address the status of foreign freezing orders at all in his report. In the Joint Memorandum, he dealt with them on the basis that exactly the same principles that he considered governed the status of foreign judgments governed foreign freezing orders. The short answer is that I am satisfied that the same principles do indeed apply to both, but that this means that the existence of a foreign freezing order is a relevant consideration when assessing whether or not an individual has committed a fault for the same reasons why the existence of a foreign judgment will be taken into account. Ultimately Maître Pastor accepted that, *"the freezing order is part of the background, the factual background to a claim under article 1229 that the Monegasque court will take into account."*

175. I would only add that it would have been surprising had Madam Su's stance as to the position under Monaco law been correct. It would have meant that notwithstanding the

definition of "fault" under Article 1229 under Monaco law, there would, nonetheless, be no actionable fault were it to be demonstrated that Madam Su had connived with her son to evade a foreign judgment or dissipate his assets in breach of a foreign freezing order. I am satisfied that that is not the case, and there would be liability under Monaco law on such facts.

176. I address the question of any liability under Monaco law (if applicable) in due course in Section J.3.3.1 in the context of the evidence I have heard and the findings I have made. Suffice it to note at this point that if (as alleged by Lakatamia) Madam Su assisted Mr Su to avoid honouring the Judgment Debt and to breach the Blair Freezing Order by transferring the Monaco Sale Proceeds out of Monaco via UP Shipping I am satisfied that this would constitute fault for the purpose of Article 1229 of the Monegasque Civil Code.

B.9.3 ARTICLE 1022 – the Action Paulienne

177. I am satisfied that Lakatamia's claim as a matter of Monegasque law would also potentially fall within Article 1022 of the Civil Code (the Action Paulienne). This affords a creditor the right to recover assets paid away by a debtor to a third party in order to defeat a claim. The experts were agreed on the applicable principles - see Joint Memorandum, Issue 2.

178. They say that *"an Action Paulienne must be directed against the third-party recipient(s) of the alleged fraudulent act".* In this case, Mr Su paid money away to UP Shipping. UP Shipping would, accordingly, be liable on that basis if the monies were paid away to UP Shipping in order to defeat Lakatamia's claim to such monies. The experts also agree that *"an Action Paulienne would be properly founded against…shareholders and/or beneficial owners where the claimant manages to demonstrate that the company is fictitious or that the assets (patrimonie) of the shareholders and/or beneficial owners and the assets of the company are intermingled"* - see Joint Memorandum, Issue 2.4.

179. Thus if UP Shipping was a company that was used by Madam Su to funnel money, which was hers, to wherever it was required, and through which she received money paid to her by (*inter alios*) her son (as Lakatamia alleged, but Madam Su very much denies), Madam Su would be liable on the Action Paulienne.

C. THE PLEADED CONSPIRACIES

180. I have already addressed the applicable principles, both in relation to the ingredients of a cause of action in unlawful means conspiracy (Section B.7 above) and in relation to pleading claims alleging fraud and/or dishonesty, or otherwise raising allegations of serious wrongdoing such as unlawful means conspiracy (Section B.1), and I bear those principles well in mind.

181. Before turning to the pleaded conspiracies, there are a number of preliminary points to note. Firstly, whilst the Monaco Conspiracy was pleaded first, and permission to amend the Particulars of Claim was granted relatively shortly before trial to plead the Aeroplane Conspiracy, the Aeroplane Conspiracy chronologically occurred first, and accordingly, if established, the fact of such conspiracy is part of the factual backdrop to the Monaco Conspiracy. In such circumstances it is logical to address the Aeroplane

Conspiracy first, as it comes first in time, and is part of the backdrop to the Monaco Conspiracy.

182. Secondly, when looking at what the pleaded issues are, it is necessary to look not only at what is set out in the Particulars of Claim but also the riposte thereto in the Defence.

183. Thirdly, an important role of pleadings is to ensure that the opposing party knows the case that is made against them, and so is in a position to rebut the same. If the opposing party pleads certain matters back these are likely to reflect the opposing party's understanding of the case being advanced against and the matters relevant thereto.

184. Fourthly, and connected with the previous point, as the witness statements address, and should only address, evidence relevant to the pleaded issues, the witness evidence is itself a window to what the parties understand the pleaded issues to be, and what they consider is relevant thereto.

C.1 THE AEROPLANE CONSPIRACY

185. Lakatamia pleads as follows in relation to the Aeroplane Conspiracy:-

(1) At all material times Mr Su was the ultimate beneficial owner of a Bombardier BD-700-1A10 Global Express – 9057 aeroplane bearing the registration VP-BDU (the "Aeroplane"), represented as of March 2013 in a statement made by Mr Su as to his asset position to be worth approximately US$23million (RRAPOC para 52L).

(2) In or around November 2014 (and hence after the Freezing Order was made) the plane was sold for an unknown price (RRAPOC para 52M).

(3) On or about 4 May 2015 some US$857,329.73 (the "Aeroplane Sale Proceeds") was paid into the bank account of UP Shipping from the sale of the Aeroplane, the narrative against this credit being "INSURED AIRCRAFT TITLE SERVICE". At the point of transfer into the UP Shipping bank account, the Aeroplane Sale Proceeds were beneficially owned by Mr Su (RRAPOC para 52N).

(4) As pleaded at RRAPOC para 43A, UP Shipping and/or its bank account were owned and/or controlled by Madam Su (either alone or together with Mr Su) (RRAPOC para 52N).

(5) Later the same day 4 payments were made from the UP Shipping bank account: US$440,045.00 to Sparkle Wood Limited ("Sparkle Wood") (RRAPOC para 52O.1); US$251,050.00 to Ms Tseng Yu Hsia, it being pleaded that "*Ms Tseng is the Owner of Sparkle Wood and is a friend and business associate of [Madam Su]"* (RRAPOC para 52O.2); US$95,050.00 was paid to Terraceview Holdings Limited (RRAPOC para 52O.3) and US$50,050 was paid to a M. Ali Kheloui (RRAPOC para 52O.4).

(6) On or about 28 May 2015, Mr Su sent two emails to Ms Lesley Huang in which he wrote: *"**Send mdm su** I need **800k back** from airplane money's [sic]*" and

then *"Otherwise I need commit suicide soon"* (RRAPOC para 52P) (emphasis added).

(7) On the same day, Ms Huang wrote to Mr Su apropos these two emails on behalf of Madam Su stating that:

"Below messages **refered [sic] to Mdn [sic] Su** this morning.
Here is outcome!
Ms Tseng will lend you USD 800K but
The premises are that
A. Purely, this is private financing between 'Nobu san' and 'Ms Tseng…'
B. After receiving July repayment from Wisco in early of July 2015, Nobu san must immediately repay back plus interest to Ms Tseng…
C. Nobu San, please confirm your acceptance immediately so that Ms. Tseng … can arrange payment." (RRAPOC para 52Q) (emphasis added)

(8) On the same day, Mr Su responded saying *"confirm"* (RRAPOC para 52R.

(9) By this arrangement, Madam Su and Mr Su *"agreed that Madam Su would **retain** the Aeroplane Sale Proceeds"*. It was further agreed that a corresponding sum would be advanced to Mr Su by Ms Tseng. (RRAPOC 52S) (emphasis added).

(10) "At all material times the Aeroplane Sale Proceeds were an "asset" of Mr Su within the meaning of paragraph 5 of the Freezing Order (RRAPOC para 52T).

(11) "Mr Su, Mrs Morimoto and UP Shipping:

"at all material times knew of the Freezing Order in circumstances where (without limitation):

(a) in the case of Mr Su, he was a party to the Original Proceedings;

(b) in the case of [Madam Su], for the reasons given in paragraphs 23

and 23A above; and

(c) in the case of UP Shipping, for the reasons given in paragraph 47.1(d) above;

entered into a combination ("the Aeroplane Combination") inter se to conceal the Aeroplane Sale Proceeds from Lakatamia and/or render it more difficult for Lakatamia to enforce any judgment in its favour;

intended, by entering into the Aeroplane Combination, to cause Lakatamia to suffer damage and/or loss; and

implemented and/or carried out the purpose for which they entered into the Aeroplane Combination by causing or procuring the transfer of the Aeroplane Sale Proceeds to UP Shipping and hence to [Madam Su's] control in breach of paragraph 4 of the Freezing Order (in the case of Mr Su) and paragraph 14 of the Freezing Order (in the case of [Madam Su])." (RRAPOC para 52U)

(12) As result of the implementation of the Aeroplane Combination and the transfer referred to above, Lakatamia has suffered loss and damage in that (without limitation) the Judgment Debt is less valuable than it would otherwise have been.

186. Lakatamia had also pleaded as follows in relation to the Aeroplane Conspiracy at paragraph 1.3A of the RRAPOC which included the pleas that:-

> "(a) [Mr Su], [Madam Su] and [UP Shipping] conspired inter se as regards monies realised from the sale of an aeroplane of which [Mr Su] had been the ultimate beneficial owner ("the Aeroplane Conspiracy") with the intention of injuring [Lakatamia] by unlawful means with the said unlawful means being committing a breach and/or breaches of a freezing order to which the First Defendant was (and remains) subject.
>
> (b) [Mr Su], [Madam Su] and [UP Shipping] implemented the Aeroplane Conspiracy, and thereby breached the freezing order, by transferring at least US$800,000 of which [Mr Su] was the 100% ultimate beneficial owner to or to the control of [Madam Su]."

187. Lakatamia also pleaded (in relation to the Marex tort) that *"Further, and in any event, in the abovementioned premises, [Madam Su] and/or UP Shipping knowingly induced and/or procured [Mr Su] to fail to discharge the debt owing to [Lakatamia] under the FFA Contract and/or the Judgment Debt by assisting, authorising, facilitating, permitting and/or procuring the Aeroplane Transfer"* (RRAPOC para 52W).

188. In her Re-Amended Defence ("RAD") Madam Su largely "not admitted" all the matters pleaded at paragraphs 52L to 52O of the RRAPOC (thereby putting them in issue, and Lakatamia to proof) save as set out at para 25M to 25Q of RAD which were in the following terms:-

> "25M. Paragraphs 52L to 52O are not admitted, save that:
>
> 25M.1 [Madam Su] was aware that, in or around 2012, Mr Su appeared to own, or have the use of, an aeroplane. At a time when Mr Su was repeatedly asking her for significant loans, [Madam Su] encouraged Mr Su (and his employees) to sell the aeroplane to reduce his and his companies' indebtedness. [Madam Su] understood that the aeroplane was subsequently sold, albeit she does not remember when precisely the sale occurred. **[Madam Su] did not receive the proceeds of sale of the aeroplane**.
>
> 25M.2 In or around May 2015, [Madam Su] learned that Mr Su had received a payment relating to the aeroplane. Mr Su received such payment through his company UP Shipping. *[Madam Su] became aware that these proceeds were used in part or in full to repay Mrs Tseng, a close family friend of [Madam Su] who had lent money to Mr Su.*

> 25N. Paragraphs 52P to 52R [the messages on 28 May] are admitted. Mrs Morimoto did not receive the email directly, but it was brought to her attention by an employee of Mr Su, Ms Lesley Huang, indicating that Mr Su had threatened suicide **if the funds he had repaid to Ms Tseng and others** were not returned to him. When made aware of this correspondence, [Madam Su] requested Ms Tseng to re-lend funds to Mr Su, on a short-term basis.
>
> 25O. As to paragraph 52S, **Mrs Morimoto denies** reaching an agreement with Mr Su **or receiving any money that she could retain**. **It is admitted that that Mrs Morimoto requested that a loan be made by Ms Tseng to Mr Su**.
>
> 25P. Paragraph 52T is not admitted.
>
> 25Q. Paragraphs 52U to 52W are denied, for the reasons set out above at paragraphs 3A, 25L, 25M and 25N." (emphasis added).

189. In relation to the third sentence of paragraph 25M.2 of the RAD (italicised above for ease of reference), Lakatamia pleaded in the Re-Amended Reply ("RAR") at para 33, *"the third sentence of paragraph 25M.2 is denied, but without prejudice to the generality of the foregoing denial, **Lakatamia will say that the Aeroplane Sale Proceeds went to [Madam Su]**"* (emphasis added) whilst also pleading at para 35 of the RAR, *"As to paragraph 25O, it is noted that Mrs Morimoto does not deny receiving the Aeroplane Sale Proceeds and only denies that she received any money that she could retain".*

190. It will be seen, therefore, that the statements of case in relation to the Aeroplane Conspiracy raised positive pleaded cases that Madam Su received the Aeroplane Sale Proceeds and retained the Aeroplane Sale Proceeds (Lakatamia) and that Madam Su did not receive the Aeroplane Sale Proceeds and that Ms Tseng had received the Aeroplane Sale Proceeds and then re-lent such monies to Mr Su (Madam Su). Clearly such matters are pleaded issues, and such matters could (and were) explored in cross-examination, and factual findings will need to be made in relation thereto in the context of whether the Aeroplane Conspiracy is made out.

191. That such pleaded issues arise (and are within the scope of the statements of case) is also reflected in the fact that they are addressed in Madam Su's fifth witness statement, evidencing the understanding of Madam Su and her legal advisers as to the pleaded issues that arise. Amongst other matters Madam Su's evidence in her fifth witness statement dated 23 February 2021 includes that *"I did not receive **any** of the aeroplane money myself" (para 33) and "I never received **any** of this money in the first place"* (para 36) (emphasis added) - evidence which Lakatamia says is untrue.

192. Whether these are lies or not (and I will need to address that in due course below), it is indisputable that it was, and is, in issue between the parties in the context of whether Mr Su and Madam Su conspired together in relation to the Aeroplane Sale Proceeds as to whether Madam Su received **any** of the Aeroplane Sale Proceeds. In such

circumstances it is not correct (as submitted by Madam Su at paragraph 304 of her Written Closing Submissions) that *"the only issue in dispute between the parties was whether Lakatamia's allegations in relation to the transfer of the Aeroplane Sale Proceeds to UP Shipping were well founded"*. The pleas were not limited to receipt by UP Shipping, and were not understood as such as is clear from the express terms of the Defence and Madam Su's fifth witness statement. They extended to whether Madam Su had received **any** of the Aeroplane Sale Proceeds. This is also clear from Lakatamia's pleaded reliance on the contemporary documentation and in particular Mr Su's email to Ms Huang, *"**Send mdm su** I need 800K **back**"* (emphasis added) which (contemporaneously) suggests that **Madam Su** had received the US$800,000 in the first place (not Ms Tseng), and is relied upon for such purpose at para 52P of the RRAPOC (consistent also with paragraph 1.3A (b) of the RRAPOC).

193. Such pleaded issues also included the pleaded case at para 52O of the RRAPOC that US$440,045 went to Sparkle Wood and US$251,050 went to Ms Tseng - each of which is "not admitted" by Madam Su (and so issue is joined).

194. In this regard Madam Su's evidence is also to be read together with what she says in the context of the Monaco Conspiracy and the Monaco Villas proceeds which were paid to UP Shipping and then on to various third parties including Sparkle Wood, as addressed at paragraph 56(c) of her third witness statement, and which Lakatamia says also contains lies (including as to the ownership of Sparkle Wood). It is as follows,:-

> "In particular, I hoped that Nobu would repay a loan of USD 1,100,000 that had been made to him, on my request by my dear friend Ms Tseng Yu Hsia. When I heard from Ms J Hsieh that the TMT business had come into money, I asked Nobu to repay Ms Tseng. On 3 March 2017, UP Shipping made a payment to Sparkle Wood Limited, a company owned by Ms Tseng, in the sum of USD1,100,055."

195. In his oral closing Mr Head himself (rightly) accepted that "*Of course when one is looking at whether a party participated in a conspiracy, one is entitled to look at events surrounding that from which it may be inferred that a party has participated"*, and that *"of course somebody's receipt of money can be relevant to the court's consideration as to whether an individual was involved in a conspiracy"*. In this regard he also did not "*demur from the fact that [the Court] will need to make a finding"* of fact as to whether Madam Su received monies (said in the context of the Aeroplane Conspiracy but equally applicable to both alleged conspiracies), and if I considered that the evidence of Madam Su was *"false or misleading, of course … [I am] entitled to consider that in the context of the pleaded allegation"* (said in the context of the Monaco Conspiracy but again equally applicable to both alleged conspiracies).

196. I also note that there can be no suggestion of any prejudice to Madam Su from Lakatamia's approach at trial in relation to the Aeroplane Conspiracy. From the time the Aeroplane Conspiracy was pleaded Madam Su was aware (1) that it was in issue as to whether Madam Su had received **any** of the Aeroplane Sale Proceeds (and she had positively pleaded she had not) and (2) that Ms Tseng was a relevant witness (Madam Su had pleaded her own positive case as to Ms Tseng's role, and Madam Su could call her as a witness in person or by video link).

197. It perhaps goes without saying (though sight could easily be lost of the fact) that Madam Su herself has always known perfectly well whether or not she received any of the Aeroplane Sale Proceeds and was party to the Aeroplane Conspiracy (just as she knows perfectly well whether or not she received any of the Monaco Sale Proceeds and was party to the Monaco Conspiracy). Be that as it may, it cannot be suggested that Madam Su was not given fair warning of the case that would be put to her in that regard – indeed Lakatamia went so far in opening as to draw attention to a document supporting a conclusion that Sparkle Wood was Madam Su's company (of relevance to receipts by her in relation to both the Monaco Conspiracy and the Aeroplane Conspiracy), and which was directly inconsistent with Madam Su's pleaded Defence, and the evidence in her witness statements – namely the document at H4.2/617/215 which next to an *"immediate outstanding need to pay"* entry contains 2 entries referring to **Madam Su** adjacent to amounts totalling US$1,100,000 which equate to the figure transferred by UP Shipping to **Sparkle Wood** on 3 March 2017 per the UP Shipping bank statements.

198. I would only add that Lakatamia's submissions in relation to the role of Ms Tseng (to which Madam Su takes particular objection), whilst highly relevant to Madam Su's credibility and indeed the veracity of aspects of her evidence, do not in fact relate directly to any element of the torts that Lakatamia alleges Madam Su committed (nor do they involve advancing any further or separate cause of action). Lakatamia's case that Madam Su conspired with Mr Su and the corporate Defendants unlawfully to injure Lakatamia by assisting Mr Su to dissipate his assets in breach of the Blair Freezing Order is not dependent upon Lakatamia's submissions as to the role of Ms Tseng.

C.2 THE MONACO CONSPIRACY

199. In relation to the Monaco Villas and their sale at auction and associated sale proceeds Lakatamia pleads as follows in the RRAPOC:-

(1) At all material times prior to 21 October 2015, Mr Su was the 100% ultimate beneficial owner (or at least partial beneficial owner) of two villas in the Principality of Monaco known as Villa Rignon and Villa du Royan (collectively, "the Villas") (RRAPOC para 30).

(2) The legal interest in the Villas was held by Cresta, the legal interest in the share capital in Cresta was held by Portview and Mr Su was (and is) the legal owner of at least part of the share capital of Portview, and is Portview's 100% ultimate beneficial owner (RRAPOC para 30).

(3) In 2010 and 2012, Barclays Bank Plc ("Barclays Bank") was granted various security interests in the Villas in connection with loans that it had made. On or about 30 January 2015, Barclays Bank issued Cresta with an order that it make payment under the loans in question. On or about 16 March 2015, Barclays Bank had the Villas attached (RRAPOC paras 31-33).

(4) In or around August 2015, Mr Su made contact, and had dealings, with M Jean Philippe Flament, a Monegasque businessman. Mr Su spoke with M Flament with a view to refinancing the loans in respect of which Villa Rignon stood as security. During the said meeting and/or the due diligence process that followed it, Mr Su said words to M Flament to the effect that he was the ultimate beneficial owner of Villa Rignon, that the legal ownership of Villa Rignon was

vested in Cresta, that he was the ultimate beneficial owner of Cresta, that Cresta's directors included Mr Chang, that until recently, Mr Su's daughter Ms Airi Morimoto had been a director of Cresta, and that the legal ownership of Cresta was vested in another company that was also incorporated in the British Virgin Islands (i.e. Portview), it being averred that Mr Chang was a director of both Portview and/or Cresta (RRAPOC paras 34 and 35).

(5) The Villas were due to be sold at auction (at Barclays Bank's instigation), and on or about 21 October 2015, Lakatamia made an application to a Monaco court with a view to delaying the auction. However, Lakatamia's efforts were in vain and, later on the same day, the auction took place at which the Villas were sold for a combined sale price of €65.1m ("the Purchase Price") (RRAPOC para 37).

(6) On or about 6 November 2015, the buyer of the Villas paid the Purchase Price to Barclays Bank, and on or about 20 November 2015, Barclays Bank transferred the Purchase Price to the Caisse des Dépôts et Consignations in Monaco (i.e., the Bank for Official Deposits, which is a government service that forms part of the Finance General Treasury of Monaco) (RRAPOC paras 38-39).

(7) On or about 1 February 2017, Barclays Bank and Cresta entered into a settlement agreement in respect of the Purchase Monies ("the Settlement Agreement"). Pursuant to the Settlement Agreement, which was incorporated within and approved by an order of the Court of First Instance of Monaco that was also dated 1 February 2017, the sum of: €35,557,140.82 was to be paid to Barclays Bank; €27,127,855.01 ("the Monaco Net Proceeds of Sale") was to be paid to Maître Zabaldano, a lawyer retained on behalf of Cresta; and €3m was to remain on deposit with the Caisse des Dépôts et Consignations in respect of a residual point in respect of which Barclays Bank and Cresta remained in dispute (RRAPOC paras 40-41).

(8) The Monaco Net Proceeds of Sale constituted an "asset" of Mr Su within the meaning of paragraph 5 of the Freezing Order (RRAPOC para 42).

(9) On an unknown date or dates after 1 February 2017, the Monaco Net Proceeds of Sale were paid into an account and/or accounts controlled by Maître Zabaldano (RRAPOC para 43).

200. So far as the onward transfer of the Monaco Net Proceeds of Sale it is pleaded at para 43A of the RRAPOC:

> "On or about 1 March 2017, US$26,712,815.68, which sum represented nearly all or almost all of the Monaco Net Proceeds of Sale, was transferred from an account controlled by Maître Zabaldano to an account in the name of UP Shipping Corporation ("UP Shipping") held with Citibank Taiwan Limited ("the Monaco Transfer") identified by the account number 5/810129/508. The Monaco Transfer was effected by Mr Chang (pursuant to an authority signed by him on 21 February 2017) in his capacity as a director of Cresta. It is averred that Mr Chang was acting on the instructions of [Madam Su] and/or Mr Su and that at all material times [Madam Su] (either alone or together with Mr Su) owned and/or controlled UP Shipping and/or its said account."

201. Paragraph 43B of RRAPOC pleads various transfers out of UP Shipping, including US$8,000,000 the same day to Blue Diamond which it was alleged was owned and/or controlled by Mr Su and/or Madam Su. It is said that it is to be inferred that the transfer was effected by Mr Chang (who was the sole director of UP Shipping). Paragraph 45 pleads, amongst other matters, that *"according to bank statements for UP Shipping selectively disclosed to Lakatamia by [Madam Su] in her Second Witness Statement dated 5 April 2019 covering the period 1 March 2017 to 27 February 2018, most of the Monaco Net Proceeds of Sale were transferred from UP Shipping's said accounts to accounts held by various companies and individuals".* As is apparent from those bank statements, and as already noted, they included the payment on 3 March 2017 of US$1,100,055 to Sparkle Wood on 3 March 2017.

202. Paragraph 44 of RRAPOC contains particulars of how it is said that the various Defendants knew about the Freezing Order.

203. Paragraphs 47 to 49 of RRAPOC pleads the Monaco Conspiracy in these terms:

> "47.1 It is averred that the Defendants (or, alternatively, some of them):
>
> 47.1. at all material times knew of the Judgment Debt (or, alternatively, the debt owing pursuant to the judgment of Mr Justice Cooke dated 5 November 2014) in circumstances where (without limitation):
>
> (a) in the case of Mr Su, he was a party to the Original Proceedings; (b) in the case of Mrs Morimoto, for the reasons given in paragraphs 23 and 23A above
>
> (c) in the case of Cresta and/or Portview, Mr Chang (inter alia) wrote the letter of 19 May 2015 that is referred to in paragraph 20.1, above, addressed to the Court of Appeal in support of Mr Su and the Su Companies' application regarding the provision of security in connection with the grant of permission to appeal against the Cooke Orders;
>
> (d) in the case of UP Shipping, that company is owned and/or controlled by Mrs Morimoto (either alone or together with Mr Su); and
>
> (e) in the case of Blue Diamond, that company is owned and/or controlled by Mr Su and/or Mrs Morimoto.
>
> 47.2. entered into a combination (or, alternatively, combinations) ("the Monaco Combination") inter se to conceal the Monaco Net Proceeds of Sale from Lakatamia and/or render it more difficult for Lakatamia to enforce the Judgment Debt;
>
> 47.3. intended, by entering into the Monaco Combination, to cause Lakatamia to suffer damage and/or loss; and
>
> 47.4. implemented and/or carried out the purpose for which they entered into the Monaco Combination by assisting, authorising, facilitating, permitting, and/or procuring the Monaco Transfer (and the onward transfers to and from Blue Diamond as set out in Schedule A) in breach of paragraph 4 of the

Freezing Order (in the case of Mr Su as pleaded in paragraph 44.2, above) and paragraph 14 of the Freezing Order (in the case of Mrs Morimoto, Portview and/or Cresta as pleaded in paragraph 44.6 above).

48. The said breach of paragraph 4 by Mr Su and/or the said breach of paragraph 14 by Mrs Morimoto, Portview, Cresta, UP Shipping and/or Blue Diamond of the Freezing Order comprise unlawful means.

49. As result of the implementation of the Monaco Combination and the Monaco Transfer Lakatamia has suffered loss and damage in that (without limitation):

49.1. the Judgment Debt has been rendered less valuable and;

49.2. Lakatamia has incurred costs and expenses in three sets of committal proceedings that were brought against Mr Su in the High Court of England and Wales pursuant to committal application notices dated 21 January 2019 (as amended on 18 March 2019) dated 6 January 2020 (as amended on 30 January 2020) and dated 27 March 2020 (as amended on 12 June 2020)."

204. Paragraphs 50 to 52 of the RRAPOC pleads the Marex tort against the Second to Sixth Defendants in inducing and/or facilitating a breach of the Judgment Debt in respect of the Monaco Conspiracy.

205. In her Defence at para 3 of RAD Madam Su pleaded as follows:-

"…it is denied that [Madam Su] is liable to [Lakatamia] in the manner alleged in the Re-Re-Amended Particulars of Claim or at all. In summary:

3.1. [Madam Su] is the mother of [Mr Su]. Prior to early 2019 she was from time to time aware that Mr Su and/or companies controlled by Mr Su were embroiled in litigation around the world. From time to time she provided funding to her son in order to enable him to meet his living and legal expenses. However, it was not until January 2019 that she became aware of the terms of the Freezing Order, i.e. the order granted by Blair J in favour of Lakatamia against Mr Su on 19 August 2011.

3.2. [Madam Su] had no involvement in i) the sale of the Villas in around 2015; ii) the Settlement Agreement apparently concluded between Barclays Bank and Cresta on or around 1 February 2017 in relation to the proceeds of sale of the Villas; and/or iii) the transfer and/or alleged wrongful dissipation of the Monaco Net Proceeds of Sale of the Villas shortly thereafter, whether to [UP Shipping] (the "Monaco Transfer") or subsequently to [Blue Diamond] (together, the "Alleged Monaco Conspiracy"). Insofar as the Monaco Net Proceeds of Sale were in fact dissipated in around 2017 in breach of the Freezing Order, [Madam Su] was unaware of the same.

> 3.3. [Madam Su] did not give instructions to Mr Zabaldano or any other lawyer as to the transfer and/or receipt of the Monaco Net Proceeds of Sale in 2017. It appears (although no admissions are made) that the Monaco Net Proceeds of Sale were in fact transferred to the account of UP Shipping Corporation, a company which was not (and whose bank accounts were not) owned by and/or under the control of [Madam Su]. It appears that a proportion of such Monaco Net Proceeds of Sale were subsequently transferred to Blue Diamond, a company which was not (and whose bank accounts were not) owned by and/or under the control of Mrs Morimoto.
>
> 3.4. In the circumstances and in any event, [Madam Su] did not act wrongfully in relation to Lakatamia in the manner alleged or at all. She did not conspire with Mr Su or any other party to injure Lakatamia by committing a breach of the Freezing Order. Neither did [Madam Su] induce and/or procure Mr Su's failure to discharge the Judgement Debt.
>
> 3.5. In addition, the claims as articulated in the Re-Re-Amended Particulars of Claim are not maintainable as a matter of the law applicable to the relevant allegations, namely Monegasque law".

206. In relation to Madam Su's knowledge of the Monaco Villas and their sale Madam Su pleaded at para 14 RAD as follows (thereby putting in issue the state of her knowledge about the Monaco Villas, and their sale):

> "For the avoidance of doubt [Madam Su] became aware of Mr Su's plan to purchase the Villas in around 2006 or 2007. She was not involved in the subsequent sale of the Villas in around 2015 or the transfer or receipt of the Monaco Net Proceeds of Sale in around February or March 2017. Paragraph 3 above is repeated. In or around March 2017, [Madam Su] was informed by Ms Judy Hsieh, the head of the accounting department of the TMT group of companies, that the Villas had been sold and the Monaco Net Proceeds of Sale sent to UP Shipping, a company which, so far as [Madam Su] is aware, is beneficially owned by and under the control of Mr Su. [Madam Su] does not own and does not control UP Shipping or its bank accounts."

207. So far as transfers out from UP Shipping in relation to the Monaco Net Proceeds of Sale are concerned, Madam Su advanced a positive case as to such transfers out in the following terms at para 18.2 of the RAD:

> "It is admitted and averred that transfers appear to have been made by UP Shipping to a variety of companies and individuals. Insofar as can be gleaned from UP Shipping's bank statements, the transfers appear to have been made to creditors of Mr Su and/or companies and/or individuals linked to Mr Su and/or for Mr Su's purposes."

208. So far as the Monaco Conspiracy is concerned, Madam Su joined issue with paragraphs 47 to 49 of RRAPOC in circumstances where it was averred that the law applicable to

any tort in relation to the Monaco Net Proceeds of Sale was Monaco Law (RAD para 19).

209. Madam Su thereafter made various pleas as to Monaco law including in relation to an action paulienne, in the context of which she pleaded (at RAD para 25I.5):-

> "Even if (which is denied) Mrs Morimoto held a legal or beneficial interest in UP Shipping, that does not make her personally a recipient of funds received by UP Shipping. **No funds were transferred by UP Shipping to Mrs Morimoto.** As a consequence, and on the basis of Lakatamia's own case, no action paulienne can be brought against Mrs Morimoto. Even if, contrary to the above, Mrs Morimoto had been the recipient of the Monaco Net Proceeds of Sale (or part of), Mrs Morimoto was a creditor of Mr Su at all material times, and no action paulienne would therefore be available against her." (emphasis added)

210. In her third witness statement under a heading "No involvement in the Monaco Villas or the companies to which the proceeds of sale were transferred" (Section H) (which Lakatamia says is a lie), Madam Su asserted that she knew *"very little about the Monaco Villas"* and that she had *"never been to Monaco at all and So…would plainly never have had any interest in buying property there"* (para 51). Madam Su's evidence was that she learned from Ms Judy Hsieh in early March 2017 that a very large amount of money had just been transferred to UP Shipping (which she described as "one of Nobu's businesses" from the sale of the Monaco Vilas (para 56(b)). As already noted, she also stated at paragraph 56(c) (which Lakatamia says is a lie) that:

> "In particular, I hoped that Nobu would repay a loan of USD 1,100,000 that had been made to him, on my request, by my dear friend Ms Tseng Yu Hsia. When I heard from Ms J Hsieh that the TMT business had come into money, I asked Nobu to repay Ms Tseng. On 3 March 2017, UP Shipping made a payment to Sparkle Wood Limited, a company owned by Ms Tseng, in the sum of USD1,100,055.00"

211. At para 56(d) Madam Su stated that before her conversation with Judy Hsieh she *"did not know that the Monaco Villas had been sold"* (a lie says Lakatamia), and at para 57 (contrary to Lakatamia's pleaded case) that she did not *"own or control UP Shipping".* At para 71 she stated, *"I also did not receive the funds from the Monaco Villas, which I understand were used by Nobu for his own personal and business escapades"* – this is clearly directed at payments out by UP Shipping from the Monaco Sale Proceeds, and as such is a statement that she did not receive any such payments out herself (a lie says Lakatamia in the context of the payment of US$1,100,100 to Sparkle Wood).

212. Thus, as with the Aeroplane Conspiracy, whether or not Madam Su received any of the monies is very much in issue in the statements of case (both in the context of ownership and/or control of UP Shipping and/or personally (para 25I.5 of RAD)), and in her witness evidence (paras 56(c) and 71 of her third witness statement), which is of relevance in relation to whether or not Madam Su participated in the Monaco Conspiracy (as is her denial of any knowledge of, and any involvement in relation to, the Monaco Villas). Equally the role of Ms Tseng is again very much in issue (as further addressed in Madam Su's fifth witness statement).

D.THE FACTUAL WITNESSES

D.1 LAKATAMIA'S FACTUAL WITNESSES

213. By the very nature of the conspiracy allegations made in the present case, the focus of any witness evidence will inevitably be upon the contemporary events that occurred, and the involvement of the Su family companies and their employees and associates (about which Madam Su speaks). I address in due course below what other witnesses could have been called by Madam Su, but the short point here is that the scope of the witness evidence called by Lakatamia was inevitably of limited compass.

214. Lakatamia called two factual witnesses, Mr Russell Gardner a partner at Hill Dickinson with conduct of this action (and the Underlying Proceedings) on behalf of Lakatamia and Mr Panikos Panayiodou, the managing director of London Chartering Limited (the London agents of Lakatamia).

215. The scope of their relevant evidence was inevitably limited and most obviously related to a meeting they had on 11 May 2011 with Mr Vassilis Karakoulakis of Clarksons after Lakatamia had commenced the Underlying Proceedings after payments and discounts in relation to the losses suffered by Lakatamia had tried up. They each made a note about that meeting and gave evidence about what was said. Paragraph 3 of Mr Gardner's note read, amongst other matters, *"The reason why payment has not been made was presumably cash flow, that [Mr Su] had a number of other claims to deal with (although our was the largest), **his mother was holding the purse strings**"* (emphasis added). Paragraph 1 of Mr Panayiodou's note addressed Mr Karakoulakis explaining how the deal with Lakatamia had been set up by him in order to help Mr Su, and the note recorded that the deal itself was more of a finance deal rather than an FFA deal "*but [Mr Su's] mother **who is holding the purse strings** won't release money from the shipping portfolio"* (emphasis added)

216. It is not in dispute that Mr Karakoulakis must have said something along these lines, and it is, of course, consistent with Lakatamia's case that Madam Su did indeed *"hold the purse strings"* as family matriarch (it being common ground that Madam Su was a *"well-respected…matriarch"* per Madam Su's Written Closing Submissions), but it does not appear that the comment was regarded as particularly significant at the time (back in 2011) or in the ensuing years, as no action was taken against Madam Su in the interim. It also reflected what Mr Su had told Mr Karakoulakis - which might or might not reflect the truth (in particular given that it was said in the context of excusing non-performance). I bear all such matters well in mind.

217. More generally. I was satisfied that each of Mr Gardner and Mr Panayioudou were witnesses doing their best to assist the court. I address their evidence, where relevant, in due course below. So far as Mr Gardner's evidence is concerned, there were passages in Mr Gardner's evidence which commented on the documentation or strayed into submission. As is common ground, such content has no place in a factual witness statement. However their inclusion is set against the backdrop of Mr Gardner having been steeped in litigation on behalf of Lakatamia against Mr Su for over a decade, and in all the circumstances I make no criticism of Mr Gardner for including such matters, which were promptly, and properly, removed from his written evidence prior to his giving evidence.

D.2 MADAM SU

218. Madam Su, as already noted, is Mr Su's mother. She is also known as Mrs Morimoto, her Japanese name, but it is common ground that within the Su family and its various businesses, she is accorded the honorific "Madam Su" as the wife (and since 2001 widow) of Mr Su Senior. I refer to her as "Madam Su" simply for convenience and in circumstances where she was so referred to in much of the contemporary documentation.

219. Madam Su is now 87 years of age. By reason of her age she was treated as a vulnerable witness, and appropriate measures were put in place to ensure that her cross-examination (which took place by video-link from Tokyo with the assistance of interpreters as she gave evidence in Mandarin) was fair. Her cross-examination was spread over five days, regular breaks were taken, and the Court also sat from 08.15am to 12.45pm each day to accommodate the time-difference with Japan. No ground rules hearing was deemed necessary but the manner of questioning was discussed in advance with counsel, and Mr Philips QC abided by what had been discussed. I am satisfied that Madam Su's cross-examination was fair, and at no point during, or after, Madam Su's evidence was the contrary suggested by Mr Head QC.

220. Whilst such cross-examination was not undertaken chronologically throughout (often being thematic), and topics and key issues were returned to frequently (as analysed, and emphasised, on her behalf, in Madam Su's Written Closing Submissions, which I bear well in mind), I am satisfied that such an approach was not inherently objectionable, and did not result in any unfairness (nor was any unfairness suggested).

221. As I was urged to do by Mr Head in closing, I also make full allowances for Madam Su's age, and the fact that an elderly person's retention and recollection of information may not be as good as a younger person's, but overall I consider that Madam Su had a very sound grasp of relevant events and the allegations made against her and what mattered in that regard.

222. Madam Su was also very consistent in her denials on issues that mattered. Repetition does not, of course, necessarily mean that what is stated is true. Equally, and to state the obvious, to state the same thing repeatedly does not thereby make what is stated any more true (if true it be).

223. Mr Head submitted in closing that the cross-examination of Madam Su imposed upon her a *"very difficult ordeal"* whilst stating that she *"bore that ordeal with remarkable fortitude"*. I certainly agree that she demonstrated fortitude during the course of a proper and fair cross-examination that would, of course, have been an ordeal for any witness all the more so if (as Lakatamia alleges) Madam Su had lied repeatedly in her witness evidence, and had lied and lied again in the course of her oral evidence.

224. I agree with the sentiment (in Madam Su's Closing Submissions) that unlike many witnesses who might have been overwhelmed or exhausted by a (perfectly proper) lengthy cross-examination, that was not the case with Madam Su. Indeed at times she became particularly animated and expressed herself as *"angry"*. I formed the impression that this had much more to do with the line of questioning and the answers she had given than anything else.

225. The overall impression I gained of Madam Su was that she was very much *compos mentis* and was in very full control of her faculties throughout, well up to the task of

defending her position, and advancing evidence that she considered to be in her best interest, being neither suggestible, nor unable to give relevant evidence, and answers, if she had wished to do so.

226. Whilst I have, as I have already noted, made full allowance for her age, ultimately she presented as a factual witness whose written and oral evidence has to stand or fall on its own merits.

227. I have considered the content of Madam Su's five witness statements (and affidavit of assets) with considerable care, and have also had the benefit of hearing from her over a period of five days, measured against such contemporary documentation as exists (and as addressed in due course below it is clear that there must have been far more relevant documentation than has been disclosed by Madam Su).

228. Before turning to the substance of her evidence, and whether Madam Su is a witness of truth, and the question of what weight can be given to her written and oral evidence in the light of my findings as to the veracity of her evidence, it is necessary to say something about other aspects of Madam Su's witness statements which in and of themselves are inherently unsatisfactory and which, in and of themselves, impact upon the weight that can be given to what she says in those witness statements.

229. Madam Su's five witness statements (and her Affidavit of Assets) were made and signed in Chinese being accompanied by a rubric in terms similar to that set out in her first statement, *"I can read and speak some English, but not proficiently. Therefore, my instructions have been given through lawyers in Baker McKenzie's Taipei office. I have read and signed the version of this witness statement in Chinese. An English translation accompanies it."*

230. It is clearly appropriate, indeed necessary, for a witness to give their written evidence in their own language, if the witness is not sufficiently fluent in English (see Section H1.4 of the Commercial Court Guide), not least so that such evidence accurately represents, and reflects, their evidence, and can properly be supported by a statement of truth. That pre-supposes, of course, that the evidence given in the language used in the witness statement is that of the witness and that they have carefully read that which they represent as their evidence, and in relation to which they can (and do) make a statement of truth.

231. It perhaps goes without saying, but sight should not be lost of the fact, that in the Commercial Court, a witness' written statement stands as their evidence in chief (Commercial Court Guide Section H1.6(a)) unless the Court orders otherwise, so that it is all the more important that the witness statement does, indeed, represent the evidence of the witness.

232. That Madam Su had some knowledge of English was confirmed when she gave evidence (occasionally she would provide a short answer in English before elaborating in Mandarin), but she was clearly more comfortable giving evidence in Chinese, and it was therefore entirely appropriate, indeed necessary, that her witness statements be in Chinese.

233. Each witness statement contained a statement of truth in the terms *("I believe the facts set out in this witness statement are true"*), and her trial statements (her third and fifth

statements) continued, *"I understand that proceedings for contempt of court may be brought against anyone who makes, or causes to be made, a false statement in a document verified by a statement of truth without an honest belief in its truth".* Madam Su confirmed, in her evidence in chief, that the contents of her trial witness statements, in their totality, were *"true and…correct"*.

234. I formed the clear impression, from an early stage of her oral evidence, that was corroborated and re-affirmed from answers she gave throughout her evidence, that Madam Su in fact had very limited knowledge, or recollection, of the content of her own witness statements, and at times it appeared that she did not even recognise the document she was being taken to as being her own witness statement. This went far beyond any lack of familiarity consequent upon not having read her statements recently (which itself would have been a surprising omission on her part when facing a multi-million dollar claim and an impending lengthy cross-examination), and in any event her third witness statement was made as recently as 19 January 2021 (just over 7 weeks before she gave evidence) and her fifth witness statement was made on 23 February 2021 (just over two weeks before she gave her evidence).

235. Thus, on the first day of her cross-examination (day 4 of the trial) she was being asked about alleged loans from Ms Tseng to Mr Su, and Mr Phillips referred her expressly to *"paragraph 32 of your fifth witness statement"* (using those words to make clear he was directing her to her own witness statement) and after asking her to read that very paragraph he asked her if she had *"ever read that paragraph before, or is it new to you?"* – and she replied, *"This was true, and* ***I read it today for the first time***. ***I didn't look at this closely before****"* (emphasis added). This is a separate point to whether what was said in paragraph 32 was true, and whether her evidence in relation to the matters addressed was consistent (be it true or false).

236. Later the same day Madam Su was being asked about an entity, Daruma Shipping, and was referred to paragraph 24 of her fifth witness statement where she stated that she has been shown a document that had reminded her that Daruma Shipping was used by Mr Su to demonstrate that he had an income in Japan for tax reporting purposes. Mr Phillips put to Madam Su that she was reading paragraph 24 for the first time, and she replied, *"I do not know what this is talking about"*. The question was repeated, and it appeared from her answer that she had misunderstood the question (when repeated) so the question was (properly) put for a third time, with the following exchange taking place:-

"Q. Madam Su, let me be clear. Look, will you, please, at paragraph 24 of your witness statement.

A. I know this.

Q. I understand your evidence -- I understand you say this is correct, Madam Su, I understand that. But you are reading this paragraph, aren't you, it is not a criticism, but you are reading it for the first time?

A. **I have read it. I have read it but I might have forgotten about it**. This is part of the natural

business. It's been like this for a long time."
(emphasis added)

237. From this series of exchanges I formed the impression that Madam Su simply did not recognise what this document was (i.e. her fifth witness statement made only just over two weeks earlier). This led me to ask her the following questions, and her replies did little to reassure me that she was familiar with her own witness statements:-

"MR. JUSTICE BRYAN: Could I just ask a quick question? Madam Su, when did you read this paragraph 24?
A. Not long ago. I have read it. I have read a lot of things. I don't quite remember. I've read it. Why haven't I read it?

MR. JUSTICE BRYAN: Could I ask a follow-up question. Do you know what this document is that you are being shown which contains paragraph 24.
A. What document? Right. I know this document. It's something that I talked about, or I have written about. I cannot put everything in my mind. I am very old and I am not that smart."

238. In Madam Su's Written Closing Submissions it was candidly acknowledged that, *"[Madam Su] was even confused as to the precise nature of the witness statement before her",* but I cannot accept the accompanying submission that, *"It is not surprising that an individual of Madam Su's age should forget the detail [sic] of a document [sic] drafted and signed several weeks or months earlier"*.

239. If the words in the statements were in truth Madam Su's, and she had read carefully that which she had signed as representing her evidence only just over two weeks before, it would not only been surprising, but astonishing, if she could not recognise her own statement, or its contents, just over two weeks later. Whilst Madam Su is certainly very old, the impression I formed of her is that whatever else she is, she is very smart (as indeed any reading of her five days of evidence would reveal to the reader), and that there was nothing wrong with her intellect or general powers of recollection (nor was it suggested that she was suffering from any defect or degenerative impairment of the mind).

240. What I considered her answers were indicative of, however, was that she had very little recollection of her own witness statement which is very much more consistent with, and indicative of, her not having read carefully a witness statement that had been prepared for her (no doubt, perfectly properly, after conversations with her, by her lawyers), so as to ensure that the product, i.e. what was said, represented **her** evidence – not least given that she was representing that it was her evidence by serving it as her statement, accompanied by a statement as to the truth of what was stated.

241. The suggestion that her witness statement was *a "lawyer-prepared document rather than one properly prepared by her such that it can carry little weight and/or impact negatively on her evidence"* (as in fact eloquently expressed per paragraph 17 of Madam's Su's own Closing Submissions in anticipation of Lakatamia's submissions in closing) is not, in such circumstances *"an unfair and unrealistic proposition"* – if a

witness cannot even recognise what they have said as being their own words by way of evidence, this inevitably impacts on the worth of their written evidence (standing as it does as their evidence in chief).

242. Madam Su herself candidly accepted (if she read her statements at all) that she *"... read them, but not very carefully"* and *"there was a lot of content in here too"*, in this exchange on day 5:

> Q. The witness statements that you have made in these proceedings were written in English and then translated into Chinese. Do you agree?
> A. I'm not quite sure. The type -- the fonts here are quite small. I can't really see them clearly.
> Q. And you did not, before you signed the witness statements that have been before the court, read those witness statements carefully. Do you agree?
> A. I read them but -- **I read them, but not very carefully**. The text is quite small and my mind isn't that sharp now, approaching 90 years of age; **and there was a lot of content in here, too**."
>
> (emphasis added)

243. I return to her comment about the text being quite small, which is addressed as a separate point in its own right, below, but this is the clearest of admissions that if she read her statements at all she did not read them very carefully, and that is a damning admission. There is validity in her point about the size of the text, as I address separately below (and it is a point against her interest), but I cannot accept her assertion that *"my mind isn't that sharp now approaching 90 years of age"*. I regard that as a rye, and untrue, deflection that is simply inconsistent with the manner and content of her evidence over 5 days cross-examination (a point I have already referred to) - a more accurate description of her evidence would be that her mind was as sharp as a tack – that was certainly my impression.

244. In a similar vein (and with a similar deflection) on day 6 (in the context of her evidence about Great Vision – which is addressed for an additional reason in due course below), when asked to read paragraphs 25 and 26 of her third witness statement, there were the following exchanges:-

> "A. **I don't know what's been written there.**
> (English): I don't know.
> Q. Who wrote your witness statements, Madam Su?
> A. I had discussion with my lawyers and that's how it was written.
> Q. Did you read these two paragraphs when you signed this witness statement?
> A. **I think I did read it** but there's so many things that I have to remember. My brain is not as good as before." (emphasis added)

245. To give a further example of Madam Su's lack of familiarity with her own witness statements, when cross-examined in relation to the Loan Fax (one of the few documents

Madam Su had disclosed that it is said sets out amounts she had lent to Mr Su), Madam Su was taken to that Loan Fax and was referred to the fact that the Court ordered disclosure of documents by 24 July 2020 but the Loan Fax was only given to Lakatamia on 1 December, and she was asked why that was so and she replied:-

" A. I don't know what this is.
(English): I don't know.

Q. Have you seen this document before, Madam Su?

A. (English): I don't know.
(Interpreted): No. No, I haven't seen this before. It's probably those things that the company sent and stored there. I didn't look at those things.
(English): I don't know what this is.

Q. This document is discussed in your witness statements, Madam Su. How do you explain that?

A. Mentioning this document? I haven't seen it. I didn't -- **I didn't look at it word by word. I looked at things generally**." (emphasis added)

This is a less than satisfactory answer, whether Madam Su was referring to her witness statement (as I understand her evidence) or the Loan Fax itself.

246. Equally, when she was being referred to her Affidavit of Assets and questioned as to whether her Affidavit of Assets was untrue, Madam Su replied, *"I don't know. There are too many words there, so I don't really know what you are trying to say. I can't read these words clearly"*. This is a document sworn by her, and yet it appears that she is saying she could not read the words clearly, and her statement that there are *"too many words there"* again suggests she did not read the affidavit with care before swearing such affidavit. There are more fundamental problems with that Affidavit of Assets, as addressed in due course in the context of her lies - as she did indeed lie in that Affidavit in terms of what she did say (i.e. by commission), as well as also creating a misleading impression as a result of what she did not say (i.e. by omission). Her oral evidence on this subject was no more impressive offering, as she did, an implausible (and new) explanation for her untruth as addressed in due course below.

247. As Lakatamia points out, there are also elementary mistakes in the Chinese versions of Madam Su's witness statements, which would be inexplicable if the witness statements had been prepared in Chinese and read, with any care, by Madam Su or indeed anyone with knowledge of the action and the events with which it is concerned.

248. The evidence before me, which I accept, is that TMT's Chinese name (i.e., the name of the Su family business) should be written as "臺灣海陸運輸" (as appears from the contemporary documents). However, it was misspelt in the witness statements as "臺灣海運" on a number of occasions (see for example paragraph 8 of Madam Su's first

witness statement and paragraph 7 of Madam Su's third witness statement). Madam Su's evidence before me was that this name was important to her, and she said in her third witness statement that she was angry that Mr Su had changed it. When confronted with this error in her witness statements in cross-examination, she admitted that the name of the company had not been written correctly in her statements.

249. Equally, Madam Su's Chinese honorific is "蘇媽媽" (as reflected in contemporary documentation) or "Su mama" (as she agreed during cross-examination). As Lakatamia notes in its Closing Submissions, the significance of this honorific is explained by Madam Su's translators: - Addressing an acquaintance's mother as "Mother + the acquaintance's surname" is a common practice in Taiwan to show "respect and affinity". However, the Chinese version of Madam Su's first witness statements refer to her as "蘇太太" or Mrs Su – with the result that the Chinese version of Madam Su's first witness statement at paragraph 7 effectively reads "My name is Toshiko Morimoto, but I am known as Mrs Su" (when she is not so known).

250. If her statements had originated in Chinese it is difficult to imagine that these errors would have been there in the first place, but even if that was the position, they are obvious errors that Madam Su would have recognised, and corrected, had she read her statements with care. In such a scenario, the conclusion I would reach is that Madam Su simply did not do so, which inevitably impacts on the worth of the contents of the statements.

251. However, I consider the far more likely scenario, and the inference to be drawn (given the inclusion of such obvious errors in the first place), is that Madam Su's witness statements were originally prepared in English and then translated into Chinese, and that Madam Su then did not read the Chinese version with any, or any sufficient, care (or listen with any, or any sufficient care, to what was being read to her), which equally impacts on the worth of the contents of her statements.

252. I make clear that there is nothing, in principle, improper in a witness statement being prepared in English based on discussions with the witness (one assumes in Chinese or through a Chinese interpreter), and then that statement being translated into Chinese before being provided (or read) to Madam Su in Chinese, but such an approach is fraught with danger, and it might have been wiser (if that was what occurred) for any drafting to be done from the outset in Chinese, not least given that the witness is giving evidence in Chinese, and there may be important differences between English and Chinese.

253. Such an approach also relies heavily on the witness giving proper and careful consideration to the drafts of her witness statements and their precise contents (something that is inherently difficult if a statement is lengthy, or is read to the witness). However her witness statements were composed, it is clear that Madam Su did not give proper and careful consideration to her finalized witness statements and their precise contents, given her lack of familiarity (or at times recognition) with her own witness statements (in the case of her fifth witness statement given only just over two weeks earlier), and the obvious errors that existed in her witness statements which went uncorrected by her.

254. Madam Su's Written Closing Submissions contained the following offer, *"Baker McKenzie have taken a rigorous approach to the preparation of her witness statements,*

in full compliance with their professional responsibilities and, while not waiving privilege, are prepared to provide a witness statement summarising the process adopted if that would be helpful to the Court". During the course of closing I indicated that I did not consider that further evidence would be appropriate – I did so as I consider that there must be finality, and the matter should be determined on the evidence that the parties had chosen to give, and based on the witnesses' evidence at trial, avoiding satellite issues that might arise if the course here proposed was pursued.

255. During the course of his closing Mr Head stated that the Chinese versions of Madam Su's statements were read to her before she signed them. This led to email correspondence between Lakatamia's solicitors (Hill Dickinson) and Madam Su's solicitors (Baker McKenzie), which concluded in an email from Baker McKenzie on 7 April 2021 (i.e. after the trial at ended) which has been provided to me subsequently. Amongst other matters it was stated that, *"Joanna Ouyang, a partner in our firm's Taipei office, read Madam Su's third and fifth witness statements and her affidavit of assets to her **by phone** on the dates that they were signed. Sean Shih, an associate partner in our firm's Taipei office, read Madam Su's first, second and fourth witness statements to her **by phone** on the dates that they were signed."* (my emphasis)

256. Based on that evidence, I conclude that Madam Su simply did not listen with any, or any sufficient, care to what was read to her, given the matters I have identified above. I also consider that such an approach was a very great ask for any witness to be able to assimilate the detail of witness statements running to very many paragraphs, and referring to very many documents, in such a call, set against the backdrop, and knowledge, that what was said by way of Madam Su's evidence would be cross-examined on, in detail, and over a sustained period. If (as Madam Su said in cross-examination) she also read her statements before signing, it is equally clear that she did not do so with any, or any sufficient, care, given the matters I have identified above and as, in fact, she candidly admitted, as already noted, *"I read them but not very carefully".*

257. It is also notable that Madam Su's witness statements also included details which Madam Su was unable to explain. For example, Madam Su's written evidence states the date on which various companies within the family business entered into Chapter 11 bankruptcy in the United States (21 June 2013) (see paragraph 16 of Madam Su's first statement). But as Lakatamia pointed out in closing, Madam Su had said in the course of her cross-examination that *"I don't know the details or the dates"*. I agree that this suggests that someone else authored this evidence even if Madam Su was willing to adopt it – but if Madam Su did not herself know the details or the dates (at the time when she made particular statements), then such evidence should not have been in her statements.

258. Another example related to Henry Udomsakdi, who was a director of the company 2010 Shipping PTE Limited (and who Madam Su asked to resign as a director of that company). Whilst he was sometimes referred to simply as "Henry" Madam Su gave evidence in relation to him in the following terms in paragraph 20(c) of her fifth witness statement (signed by her only just over two weeks before she started her evidence) in the context of the sale of Mr Su's aeroplane *"I have been shown certain documents relating to this, which have reminded me that I spoke about this proposed sale with Nobu's employee, **Mr Henry Udomsakdi** , who I thought was a nice man and who I understood to be a director of the company that owned the jet on Nobu's behalf"* (my

emphasis). Yet on day 5, when it was put to her that Mr Udomsakdi no longer wanted to be a director of the company 2010 Ship Pte Limited there was this exchange:

"A. Who is Udomsakdi?
Q. I thought he was a friend, or someone you knew quite well, Madam Su. Is that wrong?
A. Who is Udomsakdi? This is the first time I heard this name"

259. Madam Su was then taken to paragraph 20(c) of her fifth witness and she replied (consistent with the answer I have just quoted) *"This is the first time I have heard about this name Udomsakdi. Are you referring to Henry?"* The point is that if she knew him as Henry, and had never heard the name "Udomsakdi" (as, indeed, was her clear evidence) it cannot, in truth, be Madam Su, who authored paragraph 20(c), and this is a clear evidence, if it was needed, that her statements were prepared by others by reference to documents, rather than containing her own recollection. That inevitably damages the weight to be attached to the statements in circumstances where, as here, it is clear that she cannot have read her statements with any proper care given that her evidence is that she had never heard the name "Udomsakdi", and would not therefore have used that name in her witness statement.

260. Lakatamia also point out that when Madam Su was asked in cross-examination about her assertion in her fourth witness statement that Ms Sherry Chang (a woman who Lakatamia says works for Madam Su) had provided some documents that Madam Su had disclosed, she said *"I'm not sure. I think you need to ask Sherry"* (Madam Su was prone to deflecting questions asked of her onto individuals who had not been called as witnesses). However when Madam Su was asked who had written that statement (given her apparent unfamiliarity with the content of that statement as well) she said *"We wrote it. Yes, Sherry was doing it"* which appeared to be a suggestion that Sherry has been involved in the production of her witness statement. That is certainly how I understood her answer although I note Mr Head's suggestion that Madam Su may have answered two questions at the same time, one being the previous question (albeit, as noted above, she had already answered that *"I am not sure. I think you need to ask Sherry"*).

261. At least one of her statements also appeared to contain a suggestion that did not appear to be her own, and which she disowned as being her suggestion when cross examined despite that suggestion appearing in her witness statement (and so being her written evidence). Thus paragraphs 24 and 25 of Madam Su's third statement (her main trial statement) were in these terms:-

> "I am now aware that Mr Chang gave a witness statement in litigation in which I was not involved in which he suggests that (a) he did not hold the shares in Great Vision on Nobu's behalf and (b) rather he held the shares in Great Vision on behalf of one of Nobu's family members. I am not that family member [I interject which Lakatamia says is a lie]. Nobu's other family members include his daughters and his (I believe now estranged) wife, Rika"

262. Thus, by this evidence, Madam Su was insinuating that Mr Su's daughters may have owned Great Vision. When asked about this evidence in cross-examination, Madam Su

replied *"It's the first time I've heard this suggestion"* which suggests (1) (yet again) that she was unfamiliar with her own statements given the implication of paragraph 25, and (2) that the suggestion being advanced originated with someone other than Madam Su. The ownership of Great Vision (and Madam Su's associated evidence) is addressed in due course below.

263. There is another point that Lakatamia relied upon in closing which relates to Madam Su's ability, at least easily, even to read her witness statements, as Madam Su's witness statements are in a very small font size which, if nothing else, would be a disincentive for careful consideration and assimilation if the witness was struggling to read them. As was clear when she was asked to identify her third and fifth statements when examined in chief, she did struggle to read them due to the small size of the font, stating by reference to her third statement, *"I can't see it, it's very small"* and *"It's very small"* (when taken to the signature page) (even in circumstances where she had a magnifying glass to hand). In cross-examination, on day 5, Madam Su also said that *"the fonts here are quite small"* and "*the text is quite small".* No doubt in the light of these answers, at the start of her cross-examination, Madam Su was asked whether when she signed those statements she was able to read them before she signed, and she replied "Yes, I did". If she did so (and I also note the contents of the Baker McKenzie email as to her statements being read **to her**, as recounted above) it is clear they were not read by her with care (given her lack of familiarity with those statements and the obvious errors of the Chinese language identified above).

264. As will become apparent, there were also matters not dealt with by Madam Su in her statements that, on the entirety of the evidence (specifically documentary evidence), it is surprising (to put it at its lowest for present purposes) she did not deal with in her statements - the €5million loan that she knew she had made, in the context of Monaco, being a prime example. Madam Su's witness statements make no mention whatsoever of the €5m loan that she made to Mr Su, and which Lakatamia says was in connection with the Monaco Villas (and, as will become apparent, there is documentary support for that). The detail will be addressed in due course, but by way of overview at this point, Madam Su admitted that Mr Su borrowed this money for something "in Monaco" (albeit the explanation, as will become apparent, defies belief - that it was a loan to Mr Su for a week to open a bank account in Monaco). Her riposte in relation to her omission was that she "forgot" to mention the loan in her witness statements, which lies (at best) uneasily with her repeated evidence that Mr Su's failure to discharge his indebtedness to her made her very angry. It is more convenient to pick up the detail of such matters, however, when dealing with the issues concerned.

265. On behalf of Madam Su it is said that the contents of her witness statements were consistent with her oral evidence, and this was not a case of a witness not coming up to proof and giving a substantially different account from the witness box revealing the artificiality of the witness statement preparation process. However consistency (in particular in the form of repetition) of an account is not necessarily evidence of truth, particularly on central issues where the witness is alive to what is important – for example to say in a statement that Madam Su was unaware of the Blair Freezing Order and the Judgments, and to then recount the same (repeatedly) in cross-examination (as Madam Su most certainly did) tells one little about the truth or otherwise of what is said. A far more reliable guide to the truth is the entirety of the evidence, including the documentary evidence, and what inferences may properly be drawn from the entirety

of the evidence. Further, consistency with the documentation (if consistency there be – and again, as will become apparent crucial aspects of Madam Su's evidence were in fact contradicted by particular documents, most obviously in relation to receipt of monies by her) is most often the product of the skill of the drafter of the statement in addressing the documentation (to the extent that it can be addressed), rather than the veracity of the evidence of the witness when adopting what has been (perfectly properly) prepared for the witness to consider adopting.

266. It is also not right to say that Madam Su's oral evidence was necessarily consistent with her witness evidence, as on a number of occasions it was not, and in contexts which were material. The detail of her evidence is considered in due course in relation to the issues that arise, but to give but one example, paragraph 56(b) of her third witness statement provided as follows, *"...Ms J [Judy] Hsieh told me not to worry and explained that a very large amount of money had just been transferred to one of Nobu's businesses, UP Shipping,* ***from the sale of the Monaco villas****"* (emphasis added), yet when cross-examined on day 7 and asked about whether that evidence was true she stated, *"It is true and I heard about money coming into UP Shipping ,* ***but I didn't know*** *what this money –* ***where this money came from*** *and what he was doing"* (emphasis added). Not only is this an inconsistency (no doubt as another example of a lack of familiarity with her own evidence based on what had been drafted for her approval), it is also an example of her seeking to downplay her knowledge and involvement in relation to the Monaco villas. It also follows that her answer was untrue, as she undoubtably did know the money came from the sale of the Monaco villas (as she had stated in her third witness statement).

267. Whilst on the topic of consistency, it is not even the case that Madam Su's oral evidence was consistent within itself, regardless of what was stated in her witness statements. By way of one short example, on day 7 Madam Su was being asked about Mr Chang and why she had not called him as a witness, and she said, *"I don't know the relationship between him and Nobu* ***and I didn't know that he was working for Nobu****"* (emphasis added), agreeing, soon thereafter to the question, *"When Mr Su needed money, the approach was made through Mr Chang to you. Do you agree?"* with the answer *"That is often the case",* and Madam Su then said the following later the same day (in the context of the resignation of Mr Chang), *"This has nothing to do with me* ***because Mr Chang worked for him [Mr Su]*** *and they had an argument. That is what I heard"* (in blatant contradiction of what she had said as to her lack of knowledge of Mr Chang working for Mr Su, earlier the very same day).

268. In the light of the matters I have identified above, including, but not limited to Madam Su's lack of familiarity with (and on occasions lack of recognition) of her own statements, her failure even to read her own statements carefully (which she admitted), and her failure to correct obvious errors in the Chinese used, I have little confidence that such statements can be taken as reflecting Madam Su's actual evidence (even before considering questions of the truth or otherwise of what is said) and in such circumstances I consider that her witness statements have limited evidential value. On the basis of these matters alone I would have considered that very little weight could be attached to such statements unless corroborated by documentation or amounting to admissions against interest.

269. However all of this, unsatisfactory though it is, rather pales into insignificance (though it is entirely consistent with) my findings as to Madam Su, and the substance and

veracity of her evidence. I am satisfied from a careful consideration of her witness statements, and of her oral evidence over the course of five days, when measured against the entirety of the evidence before me, including such documentation as has been disclosed (in relation to which I am also invited to draw adverse inferences against Madam Su as addressed in due course below), that Madam Su is, quite simply, not a witness of truth, but rather a dishonest witness and consummate liar, who has lied, and lied again, and in important respects, in her written and oral evidence. As such her evidence cannot be taken at face value or given any weight save where it is corroborated by credible evidence or is contrary to her interest.

270. The lies are, I am satisfied, legion. Some are on the critical path in relation to the alleged conspiracies, some are not. They are all indicative of Madam Su's willingness to give untruthful evidence where it is, or is perceived to be, in her interests to do so. Inevitably (given her denial of participation in the conspiracies) some of the greatest lies relate to matters of immediate relevance to the allegations of conspiracy against her.

271. Lakatamia, in closing, identified what they characterised as "three big lies" on Madam Su's part, quite apart from numerous other lies which they alleged had been told. The "three big lies" alleged are as follows:-

(1) That Madam Su knew nothing about the Monaco villas or what was going on in Monaco.

(2) That Madam Su did not receive any of the sale proceeds of the sale of the aeroplane or of the Monaco villas.

(3) That Madam Su did not know about the freezing order against Mr Su and the Judgments to which he was subject.

272. Of course, to deal with these three alleged lies in detail at this stage might be regarded as something of a spoiler for the reader in advance of a consideration of the allegations as a whole in relation to the alleged conspiracies, and the issues arising. In particular, if (2) was a lie and Madam Su did receive some of the sale proceeds of the aeroplane or of the Monaco villas, quite apart from her evidence in this regard being a monumental lie impacting on her evidence as a whole, this would be of obvious relevance when considering whether Madam Su was a party to the conspiracies alleged, as was acknowledged by Mr Head in oral closings, and was no doubt why Madam Su's witness statements addressed such matters in the first place. Equally if Madam Su did receive monies, the manner in which she received monies may well tell one something about (3) and whether or not Madam Su knew about the freezing injunction.

273. Lakatamia submit that if (1)-(3) were dishonest untruths, then they demonstrate that Madam Su participated in the conspiracies that Lakatamia alleges, as Madam Su knew that the means that were being used to get the money back to the family coffers were unlawful and she knew that if that happened Lakatamia would be damaged, which is at the core of the principal tort alleged, by not being able to enforce its judgments against either the proceeds of sale of the aeroplane or the proceeds of sale of the Monaco villas.

274. In such circumstances I have considered whether, at this point, I should confine myself to lies that I am satisfied Madam Su has told which are not potentially on the critical path, addressing those which are when the conspiracy allegations are addressed in due

course. However, on balance, I have concluded that I should address (1) and (2) at this point in detail, because they are perhaps the very best illustrations of Madam Su's lies in important respects, and how she has been caught out by documentation that is now available, and which I consider to be the best indication of the truth. The implications of such findings upon the conspiracy allegations is not a reason to defer consideration of the lies themselves at this stage. My conclusions on (3) are, however, best left to when that issue is addressed in due course.

275. The constant refrain (and thrust) of Madam Su's written evidence is that she never had any interest in the Monaco Villas, that she knew very little about them and had no involvement in them. In her oral evidence she initially doubled down, on day 5, going so far as to say *"I don't know anything about the Monaco villas".* This was all, I am satisfied, a pack of lies from start to finish and a smokescreen designed to keep her as far away as possible from the Monaco villas in the period prior to their sale, and in relation to the subsequent sale proceeds (and her receipt of monies in that regard).

276. Madam Su could not have been clearer, or less unequivocal, in her (repeated) evidence in this regard. From the outset, she denied any interest in the villas and any receipt of their proceeds, in paragraphs 39 to 47 of her first witness statements (which, I am satisfied contain many untruths on a variety subjects, those of immediate relevance being picked up at this point). She said that, she knew *"very little about the Villas"* (para 41), she said she never had any interest in the Villas (para 42), she said it was not true that she had received the proceeds from the sale of the Villas (paras 39-40), that she only learnt of the sale from Ms Hsieh (para 43), that the transfer to UP Shipping, *"did not attract my attention at the time"* (para 45) and that Sparkle Wood Ltd, which received part of the proceedings, was owned by Mrs Tseng that company having lent money to Mr Su (para 46).

277. In the same vein in her trial statement (her third statement), in a section of her statement headed "**No involvement in the Monaco villas or the companies to which the proceeds were transferred"** (bold and underlined in the witness statement itself) she denied receipt of (any) of the proceeds of the sale of the Monaco Villas, and stated at paragraph 53 that:

> "I know very little about the Monaco Villas. In about 2006 or 2007, Nobu told me of his plans to purchase property in Monaco, because he thought it would be a wise investment. However, thereafter, I heard very little of the Monaco Villas at all. By the time that Nobu bought the Monaco villas, I was already in my seventies. I had little interest in visiting them, not least because they were halfway across the world and indeed, Nobu never invited me. In fact, I have never been to Monaco at all and so I would plainly never have had any interest in buying property there."

278. After continuing in the same theme to her first statement in paragraph 56 (including allegedly learning of the sale from Ms Hsieh, and recounting what Ms Hsieh allegedly told her, viz the transfer of money from the Monaco Villas), she said this at paragraphs 56(c) and (d).

> "(c) I remember this conversation because I too was pleased to hear that Nobu was finally taking responsibility for the financial status of his business, and was using his own assets to settle TMT's many debts (although of course I did not know at the time that he was doing so in breach of the 2011 Freezing Order). In particular,

I hoped that Nobu would repay a loan of USD 1,100,000.00 that had been made to him - on my request - by my dear friend Ms Tseng Yu Hsia. When I heard from Ms J Hsieh that the TMT business had come into money, I asked Nobu to repay Ms Tseng. On 3 March 2017, UP Shipping made a payment to Sparkle Wood Limited, a company owned by Ms Tseng, in the sum of USD1,100,055.00.

(d) Before my conversation with Ms J Hsieh, I did not know that the Monaco Villas had been sold."

279. Coupled with such assertions as to denial of involvement in the Monaco Villas or the companies to which the proceeds of sale were transferred, Madam Su made no reference whatsoever in her witness statements to the fact that she had in fact made a €5 million loan to Mr Su in the context of Monaco despite the fact that two days after the transfer of such monies to UP Shipping she had sent an email on 3 March 2017 to Mr Su via Mr Chang (which has been referred to as the "Reminders Email" and which is considered further in due course below). However for present purposes it is to be noted that it begins, *"the following reminders are given by madam su who wishes you to do everything carefully from now on so that our company would maintain normal operation and make money to avoid huge loss in the future"* and as the last reminder it is stated *"you can pay madam su* ***euro 5 million*** *after you make money"* (emphasis added).

280. When asked about the Reminders Email Madam Su said that it has "nothing to do with anything" and that it was prompted by her having received information regarding Mr Su from a fortune teller (about which more in due course).

281. The reference to "euro 5 million", in of itself does not link Madam Su to the Monaco Villas there being nothing in the statement, about a sum of "euro 5 million", to do so. It may be that is why Madam Su chose not to deal with the loan in her witness statements, but rather created the misleading impression she did as to her lack of involvement in all matters Monaco. Alternatively, it may be that whoever drafted her statement missed the connection (given the matters already noted above as to how her statements appear to have been drafted), but there can be no doubt whatsoever that Madam Su herself knew perfectly well that she had made such a loan and that such a loan was connected to Monaco, and yet she gave the disingenuous impression that she had no involvement in, and knew nothing about, all matters Monaco and the Monaco Villas.

282. Her oral evidence on day 7 (which was simply incredible) was that she had forgotten about the Monaco loan because she was very angry that she had not been repaid, stating that, *"I really forgot about this because I was very angry"* – which is, of course a complete *non sequitur*, for if one is angry about something you would be likely to remember it. I am equally quite satisfied that she lied when she then said, *"I only remembered this very recently about this EUR 5 million and now that you are talking about, you know, Monaco, so I remember it".* The reality I am satisfied, is that Madam Su always knew about the loan, and hoped that the truth about the Monaco loan, and about the Monaco villas more generally, would never see the light of day.

283. At the PTR before me Madam Su's legal team raised the possibility that certain documents provided in relation to the search order (through the independent reviewing lawyers) might be privileged. This was reiterated in a letter from Baker McKenzie, on behalf of Madam Su, on 19 February 2021 in which it was stated, amongst other matters, *"as you are aware, our client is concerned that a number of documents disclosed by your client, obtained from a search order against Mr Su, appear to be privileged in favour of Mr Su"*. In compliance with an order I made at the PTR, Baker McKenzie thereafter identified such documents in a letter dated 23 February 2021.

284. Clearly, if there were privileged documents in the trial bundle they needed to be removed, and any decision as to whether they were privileged needed to be made by a judge other than myself as the trial judge. It may be that Madam Su thought that such documentation would not, in the event, be available against which to measure the veracity of her evidence (albeit the privilege, if privilege there was, was not Madam Su's and she also *"expressed no concern for her own part as to whether … the documents … remain in the trial bundle*") per Baker McKenzie's letter of 23 February 2021.

285. In the event, at a hearing in the separate proceedings between Lakatamia and Mr Su that came before Cockerill J at the time of the start of the present trial, Cockerill J ruled that the documentation was not privileged and had been properly released by the independent reviewing lawyers, and that even if such documentation had been privileged then privilege had been waived.

286. One such document is an email of 20 February 2019 and attached spreadsheet. The email is from Mr Su to a Mr John McDonald (who I understand was a ghost writer for books in relation to Mr Su) and Ms Eri Morimoto (who was his younger daughter) with the subject line "Monaco Su family", and the attachment being referred to as "Su Family Monaco Investment 2019.xlsx", and attached to the email was a spreadsheet entitled "Su Family Monaco Investment 2019".

287. The spreadsheet is headed "MONACO SU Family property investment [sic] (CRESTA), Port View Holding. (PORTV)". The first entry in the spreadsheet under "**Major Events"** records "Oct-01" (i.e. in October 2001) *"father died mother control family"*. This is a more general point but I am satisfied that this reflected Mr Su's perception (otherwise it is difficult to see why he would say that) – I was not impressed by Madam Su's answer when asked about this which was, *"What can I - - what can I control? Whatever he writes, what has it to do with me? I wanted to protect the company, rather than control it. Whatever he writes has nothing to do with me*" – more relevant, in my view, is how others, including Mr Su, viewed the dynamics within the family.

288. However more importantly, for present purposes, on the second page of the spreadsheet, it stated, adjacent to a date of "13/07/2012", *"Euro 5mill was given* ***with Euro 5mill Capital inection [sic] from Mother****"* (my emphasis). I am satisfied that this evidences that Madam Su had indeed injected €5 million into the Monaco Villas seemingly by way of loan - although it could have been by way of (co) investment (given the headings in the spreadsheet). A timing of 13/07/2012 for such an injection would also be consistent with the fact that it appears that in 2012 Mr Su was seemingly in some financial difficulties in making payments to builders concerning what appears to be works to demolish and rebuild villa Rignon.

289. No mention was made of any such investment or loan in any of Madam Su's witness statements and I am satisfied that this document evidences the lie of much of the evidence of Madam Su in this regard such as that she *"never had any interest in the villas"*, *"No involvement in the Monaco villas"* and (orally, and initially) *"I don't know anything about the Monaco villas".* It is also difficult to see such lies as anything other than an attempt to distance herself from the Monaco Villas and the proceeds of their sale (on which more below). Interestingly a further entry on the same page records, *"Euro 3mill in court"* and "*Euro27 mill back to Family"* (which appears to reflect a view on Mr Su's part that the monies were "family monies" (and such family would, of course, include Madam Su)).

290. In cross-examination, Madam Su did not deny having made such a loan of €5 million (despite the notable absence of any such evidence in any of her statements), but on day 7, in the context of questioning in relation to the payment of the sale proceeds to UP Shipping, she said (thereby making yet another series of lies I am satisfied) *"No money was paid back to me and I knew nothing about the Monaco villas. <u>At the time, he said he wanted to open an account, or something like that, in Monaco. So he wanted to borrow 5 million from me and then he said he was going to pay me back in a week's time</u>. That didn't happen. I never received any money back. The money hasn't been repaid to me at all"* (emphasis added) - evidence Madam Su also repeated on day 8. All of this is untrue, and as appears below, I am satisfied Madam Su did receive (indirectly) part of the Monaco sale proceeds, but for present purposes the explanation for the €5 million loan (either to open an account or to provide a guarantee for a week, as she also alleged) is an absurd one that defies belief – such a loan for one week would not be needed to open a bank account or as a guarantee for a week, and if it was to be deployed for only a week one would have expected an immediate protest from Madam Su – but of that there is nothing before the court.

291. Madam Su's evidence in this regard was that she is *"very angry about this"* but forgot about it (an answer she repeated the following day, *"Yes, he didn't repay me. I was very angry, but I have forgotten about it. Now that you are mentioning it again, I am becoming angry again"*) – an unlikely juxtaposition and state of affairs (to forget something you are angry about) which I am satisfied was again untrue. More fully she said the following on day 7 (answers which I consider to be neither credible nor true):

> "Q. Why is none of this evidence that you are giving about this loan of EUR 5 million dealt with anywhere in any of your witness statements, Madam Su?
> A. I'm very angry about this. It happened many years ago and I forgot about it. It was just -- it just happened for a short period and now, later on, I remember this. I was very angry about this.
> Q. When do you say you remembered this?
> A. I really forgot about this because I was very angry. I only remembered this very recently, about this EUR 5 million and now that you are talking about, you know, Monaco, so I remember it.

292. It does not begin to explain the alleged recollection to say that in 2012 the TMT group was in the process of collapsing and Madam Su was lending tens of millions of US$ to her son – those were US$ loans. This was something entirely different, a 5 million monetary injection denominated in Euros and for a specific purpose. What is more, Madam Su had, of course, been talking about the Monaco Villas herself in her first and third witness statements – and it defies belief that when opining on her lack of knowledge about the Monaco Villas in such statements she would not have remembered the loan. The truth, I am satisfied, is that she at all times knew perfectly well that she had loaned (or invested) €5 million in relation to the Monaco Villas but chose not to reveal the existence of this loan/investment which not only links her to the Monaco Villas but also provides a real motive and incentive to obtain at least partial repayment/return from the sale proceeds.

293. Her very next, and I am satisfied unguarded, answer, to that quoted above is, I consider, itself of particular significance when considering the conspiracy allegations themselves:-

> "Q. … Madam Su, you were ordered to give disclosure of documents by Mrs. Justice Cockerill. The documents which you were supposed to give included documents that were relevant to the following issue. The amount of financial support given by Madam Su to Mr. Su, the mechanisms by which such support was provided, the entities that were used to provide such support and the purposes for which such support was provided. Where are the documents relating to this EUR 5 million loan to your son, Mr. Su?
>
> A. Now -- what documents? No documents. **I just wanted my money back**" (emphasis added)

294. This is indeed an unguided, but I am satisfied truthful answer. How Madam Su obtained payment is another aspect of Madam Su's lies, and an aspect of her second big lie, as Lakatamia characterises it, and to which I will shortly turn. These answers are also of relevance in the context of disclosure. Madam Su's evidence was that this was her money that she had loaned – yet Madam Su has disclosed only the Loan Fax – the monies must have come from a bank account of Madam Su, and there must be documentation in that regard – yet nothing is before me in that regard - Lakatamia says that that is because the associated documents have been deliberately suppressed, on this and other matters (an allegation I address in Section K.2 below).

295. Such evidence as she did give in this regard, on day 8, was vague in the extreme and inherently unsatisfactory:-

> "Q. Where did this sum of money, 5 million denominated in Euro, come from? Where did you loan it to him from?
>
> A. It was my money…
>
> Q. Listen to my question, Madam Su. Where did it come from; where was it paid from?
>
> A. From a bank abroad, but my friend helped me. I

didn't know the details. My friend helped me transfer that money to my son. I forgot the details. After my husband died, everyone helped me, my friends helped me.

Q. Which bank account abroad, Madam Su?

A. It was in Singapore. It was such a long time ago, how could I remember.

Q. Which friend helped you make this transfer of EUR 5 million, Madam Su?

A. Several friends. I forgot. Some of them have passed away. They just helped me to transfer this money. Why is that not right?

Q. Why do you need friends to help you transfer money from a bank account which is maintained in Singapore, Madam Su?

A. I didn't know how to do it. I only speak a little English. At the time my husband died, everyone helped me. Why would you say that?"

296. Another aspect to the lies about the Monaco Villas is the timing of Madam's Su's knowledge of monies coming from the sale of the Monaco villas, and her evidence in her first and third witness statements that she only learned about the money coming in from Monaco when she had a conversation with Judy Hsieh after the monies had been received. I am satisfied that that is not right, and that she knew about the monies coming in, and most fundamentally of all, and as is addressed below, she knew that she was to receive part of the proceeds, and did receive part of the proceeds – there now being documentation available evidencing such receipt (and contemplated receipt). This is central relevance to Lakatamia's case that she had in fact come together with her son to ensure that the monies returned to the family coffers and were not available to pay the judgments. There was also this exchange during Madam Su's cross-examination on day 8:-

"Q. You agreed with your son, Mr. Su, that this loan of EUR 5 million would be repaid once the sale proceeds of the Monaco villas had been paid into UP Shipping's bank account. Do you agree?

A. **I was hoping that he would pay back, of course**. There was no discussion about that, but he has not repaid me, not now. I'm quite angry about this."

(emphasis added)

297. I am satisfied that the real purpose of the lies and omissions of Madam Su in her witness statement was to distance herself from the Monaco Villas, and associated loan/investment, and the monies coming back to the family from the proceeds of sale. That leads on to what Lakatamia characterises as, and I am satisfied is, Madam Su's second big lie, that she did not receive any of the proceeds of sale from the Monaco

Villas, which is associated with a further crucial lie – her denial of ownership and control of Sparkle Wood Ltd (as addressed below).

298. It will be recalled that in Madam Su's statements her evidence could not have been any clearer or any more unequivocal in its terms, Madam Su stating in her first statement at paragraph 40 that, *"I did not receive any proceeds from the sale of the Villas"* just as it could not have been any clearer or any more unequivocal in relation to the Aeroplane Sale Proceeds (as addressed in due course below as the other limb of the "second big lie"), Madam Su stating in her fifth witness statement at paragraph 33 that, "*I did not receive any of the aeroplane money myself"*.

299. Given that certain documentation was known to exist showing payments to Sparkle Wood (as addressed below) it was necessary to make the following associate lies in the context of the proceeds of the Monaco Villa monies, and the Aeroplane Sale Proceeds, namely:-

(1) In Madam Su's first witness statement at paragraph 44 (in the context of the Monaco Villas proceeds),

> "I understand that the proceeds may then have been transferred by UPSC [UP Shipping] to a number of recipients including Sparkle Wood Ltd. I was told this on a phone call with Mrs Tseng Yu Haja, the owner and sole director of Sparkle Wood Ltd. Sparkle Wood Ltd had lent Nobu money to pay his company's expenses. I do not have the details of any of the other recipients, or where the money is now" (emphasis added).

(2) In Madam Su's third witness statement at paragraph 56(c), in the context of an alleged conversation with Judy Hsieh about a large sum of money transferred into UP Shipping from the sale of the Monaco Villas,

> > "I remember this conversation because I too was pleased to hear that Nobu was finally taking responsibility for the financial status of his business, and was using his own assets to settle TMT's many debts (although of course I did not know at the time that he was doing so in breach of the 2011 Freezing Order). In particular, I hoped that Nobu would repay a loan of USD 1,100,000.00 that had been made to him - on my request - by my dear friend Ms Tseng Yu Hsia. When I heard from Ms J Hsieh that the TMT business had come into money, I asked Nobu to repay Ms Tseng. On 3 March 2017, UP Shipping made a payment to Sparkle Wood Limited, a company owned by Ms Tseng, in the sum of USD1,100,055.00" (emphasis added)

(3) In Madam Su's fifth witness statement at paragraph 33 and 35 in the context of receipt of the Aeroplane Sale Proceeds:-

> "33. I did not receive any of the Aeroplane Sale Proceeds myself but I was pleased that some money had become available to repay some of TMT's many creditors, including Ms Tseng.
>
> …

> 35. As explained above, I knew that Ms Tseng had been repaid using some of the aeroplane money and so I asked whether she would be willing to re-lend this money (and a bit more) back to Nobu. She agreed to do so."

300. Dealing first with what I am satisfied are her lies in relation to the Monaco Villas and their proceeds, the documentary evidence that is now available is (as is invariably the case), the best possible corroboration of the true position, which is, I am satisfied, that Madam Su received some US$1,100,000 of the Monaco Villa monies that had been transferred to UP Shipping (I address the position of Madam Su in relation to UP Shipping itself in due course below in Section H).

301. On 3 March 2017 (the very same day that Madam Su sent her Reminders Email to Mr Su via Mr Chang), US$1,100,000 (net of a bank charge of US$55) was paid from UP Shipping's Citibank account to Sparkle Wood by Swift transfer as shown by the associated bank statements disclosed by Madam Su showing the various payments out from UP Shipping's account following the receipt of US$26,712,851.68 from the Monaco lawyers on 1 March.

302. It may well be that Madam Su gave disclosure of such UP Shipping bank statements (but not, I note, all UP Shipping bank statements, a fact addressed in due course in the context of the adverse inferences that Lakatamia invites me to draw), as she considered it was in her interest to do so - given Mr Su's evidence before Sir Michael Burton that she or her lawyers had received the proceeds of the Monaco Villas whereas these bank statements show that the proceeds were transferred, at least in the first instance, to UP Shipping (a company she denies, but Lakatamia asserts, was ultimately under her control).

303. The monies paid out were in very many instances in relation to items connected with Mr Su and his creditors - which I assume was perceived to be supportive of Madam Su's case, albeit that it is also consistent with Lakatamia's case that Madam Su paid for Mr Su's business expenses, lawyers' fees and living costs (at least for a considerable period of time).

304. However, the payment of US$1,100,000 to Sparkle Wood clearly needed to be addressed – hence Madam Su's evidence (which I am satisfied was an untrue contrivance) that Sparkle Wood was owned by Ms Tseng and that the payment was a repayment of loans made by Ms Tseng (as opposed to loans made by Madam Su directly or via Ms Tseng).

305. However, such evidence of Madam Su's is, I am satisfied, holed below the water line, and is demonstrably false, as a result of documentation that has emerged from Mr Su's computer as a result of the search order, and to which Madam Su and her lawyers (in closing) have, I am satisfied, no answer.

306. There are two documents in particular, which I consider to be of particular importance. It appears that they are two tabs in a spreadsheet, and they were found on Mr Su's computer. The first (to which I have already referred in Section C) is entitled, *"Money for payment outstanding payment and restructuring TMT business from 2017"* and appears to be a schedule/lined table of envisaged payments before they have been paid

(at least when the table was created even if amended subsequently) (the "Payment Schedule"). At the top, and to the left of the table the document provides, "*immediate outstanding need to pay".* The first two items in the table are as follows:-

		Amount (USD)	Paid (USD)	Remark	Note
	Madam Su	0	1,000,000	old loans	
	Madam Su	0	100,000	for Wisco case paid	

307. It is clear that this US$1,100,000 is the US$1,100,000 payment from UP Shipping to Sparkle Wood shown on the UP Shipping bank statements, as the other items on this same table/payment schedule correlate with other items also on those banks statements. It is equally clear from the face of the table that these two payments are stated to be to **Madam Su** – i.e. that the beneficiary of these payments is Madam Su herself, contrary to Madam Su's evidence, which I am satisfied is a lie. It also evidences (as reinforced by the second document to which I will shortly refer) that Sparkle Wood Ltd is Madam Su's, not Ms Tseng's vehicle (i.e. that Madam Su is its ultimate beneficial owner/controller regardless of Ms Tseng's directorship) again contrary to Madam Su's evidence in this regard, which is also a lie.

308. This table/payment schedule on its second page contains the following further entries:-

Snp	Blue Diamond invests RM Dynasty	4,500,000	278,000	Purchase price amended to USD 3.7 million, paid USD278,000 plus USD 92,271 for each vessel on 2/27 and 3/1	From UP Shipping and Zabaldano accounts
	Blue Diamond invests RM Power	4,500,000	278,000		

309. Thus, it is proposed that there will be two payments of US$4.5 million to Blue Diamond to invest in two vessels, the Dynasty and the Power (totalling US$9 million), but in fact (in the event) the payment to Blue Diamond was for US$8 million, as shown on the UP Shipping bank statement. It appears, therefore, that this document pre-dates the actual payments even if it has been amended subsequently. Lakatamia submits, by reference to its timing, that this document is evidence of, and supports, its conspiracy case, with

the payment out to UP Shipping and intended subsequent payments on of the Monaco Sale Proceeds (caught by the freezing injunction) to, as one of the recipients, Madam Su herself, evidencing the envisaged implementation of such conspiracy (through the transfer to UP Shipping and on to recipients (it is said) who are party to the conspiracy including Madam Su).

310. The second tab, or second document, is what appears to be a payment ledger (i.e. reflecting that which was paid) (the "Payment Ledger"). It is again in the form of a table (or at least a document with columns and entries in those columns). At the very top left it states "UP Shipping Corporation". Directly below that it is stated "Date" and there are dates of payments including on 1, 2 and 3 March 2017. The next column to the right is headed (importantly in my view), "Beneficiary" thereby representing, on its face, who the beneficiary is. The next column is the amount.

311. In this regard it provides (and represents):-

"UP Shipping Corporation

Date	Beneficiary	Amount
…	…	…
3/3/2017	Mdm Su	$1,100,000"

312. This document (the Payment Ledger) expressly states, and represents, on its face that the recipient of the US$1,100,000 is Madam Su reinforcing what was stated (and represented) in the first document. Read together with the UP Shipping bank statements (and the associated correlation of payment) such documentation is the best possible evidence that Sparkle Wood is Madam Su's, not Ms Tseng's vehicle (i.e. that Madam Su is its ultimate beneficial owner/controller regardless of Ms Tseng's directorship) again contrary to Madam Su's evidence in this regard which is a lie.

313. What then is said by way of riposte to such documentary evidence and what such documentation states on its face? Madam Su's Written Closing Submissions run to some 215 pages plus appendices. Remarkably, and I am satisfied tellingly, nothing at all is said in relation to the second tab and its contents, and just this is said in relation to the first tab (the Payment Schedule) (itself relegated to a footnote):-

> "A spreadsheet…discovered among Mr Su's documents, of unknown authorship and provenance, but which appears to indicate that one of Mr Su's employees conflated [Madam Su] with her friend and relative Ms Tseng".

314. This is thin gruel indeed by way of riposte, and is followed by a submission directed not at the truth or otherwise of what is stated (when measured against Madam Su's evidence) but, by way of deflection, as to whether a case based on whether Ms Tseng had made advances on behalf of Madam Su had been pleaded and advanced. It suffices

to point out at this point that ultimate receipt of part of the Monaco Sale Proceeds by Madam Su, via UP Shipping, a vehicle that Lakatamia pleads is Madam Su's company, and onwards to Madam Su (if that be the case) is of relevance when considering the pleaded Monaco Conspiracy (as Mr Head acknowledged), quite apart from the severe impact on her credibility and worth of her evidence as a witness as a whole, and whether she is a witness of truth or, as I have found her to be, someone who has lied repeatedly, and is not a witness of truth.

315. As to the former I have already noted that Mr Head himself (rightly) accepted, in his oral closing, that, *"Of course when one is looking at whether a party participated in a conspiracy, one is entitled to look at events surrounding that from which it may be inferred that a party has participated"*, and that *"of course somebody's receipt of money can be relevant to the court's consideration as to whether an individual was involved in a conspiracy"*, and that he did not *"demur from the fact that [I] will need to make a finding"* of fact as to whether Madam Su received monies (said in the context of the Aeroplane Conspiracy), and if I considered that evidence Madam Su was *"false or misleading, of course …* [I am] *"entitled to consider that in the context of the pleaded allegation"* (the Monaco Conspiracy). It is also clear that Madam Su, and her legal advisers knew perfectly well that whether or not Madam Su received any part of the Monaco Sale Proceeds or the Aeroplane Sale Proceeds was relevant to the Monaco Conspiracy and the Aeroplane Conspiracy as Madam Su asserted a positive case in that regard in her witness statements for trial that she did not receive any proceeds (third witness statement paragraph 40 (Monaco Sale Proceeds) and fifth witness statement para 35 (Aeroplane Sale Proceeds).

316. The footnote in Madam Su's Written Closing Submissions stated that the first of the two documents (the Payment Schedule) was *"of unknown authorship and provenance".* When asked as to precisely what was being said on behalf of Madam Su about these two documents (the Payment Schedule and the Payment Ledger), in his oral closing Mr Head repeated by way of response that *"we don't know what the provenance of this document or document is",* but when pressed as to whether he was suggesting that "*it was something that it doesn't appear to be"* he confirmed *"No, I am simply saying…that we don't know who created it when they created it"* and asserted that someone had elided Madam Su with Ms Teng and had mistakenly referred to Madam Su when they mean a loan procured by Madam Su with Ms Tseng.

317. As to the last assertion, it is clear that these documents, found on Mr Su's computer came from within TMT and in the context of companies run as family companies with principals and employees who had a great deal to do with one another (that, indeed was Madam Su's evidence), so it would seem unlikely that such a mistake would be made, and (importantly) these documents are largely accurate and do reflect the payments actually made from UP Shipping to various entities thereby corroborating the contents in such respects.

318. The submissions as to authorship and provenance were no doubt made with a view to submitting that they should be given less weight in consequence, notwithstanding what they stated on their face. In this context I asked Mr Phillips whether any metadata existed in relation to such documentation. This led Lakatamia to investigate this question, and the product of that investigation is of some relevance when considering the weight to be attached to this evidence.

319. I was provided with a print-out of the metadata associated with the document. This recorded that it was "Created By" an unknown Microsoft Office User on 13 November 2016, and that it was "Last Modified By" Sara Chao. Madam Su's evidence (at least at the time of her first statement) was that Sara Chao was the only in-house legal staff of Mr Su's companies, and it was Sara Chao that Madam Su says assisted her in searching Mr Su's old office on 12 January 2019, and (as she says at paragraph 41 of her third statement) to whom she had spoken who had reminded her of the events of January 2019 which she went on to record in her statement.

320. In her fourth statement she referred to the fact that Sara Chao (described as an employee in the legal department of Mr Su's businesses), together with Judy Hsieh (described as Mr Su's former head of accounting), had "voluntarily provided" a small number of documents that they held relevant to Madam Su's attempt to discharge the freezing order against her (Lakatamia's case being that Madam Su had, in fact, "cherry-picked" documents from Ms Chao and Ms Hsieh that were perceived to be of assistance to the case she advanced on that occasion). In Mr Lyons' eighth witness statement he stated that Ms Chao had on occasions assisted Madam Su with regard to this litigation.

321. The evidence, therefore, is that Ms Chao was in-house legal staff within the family companies and I am satisfied that there is therefore every reason to believe that such an individual would have taken care to ensure the accuracy of a document to which she had had involvement, whatever her involvement in its creation, and its contents are corroborated by the correlation with the UP Shipping payments, as already noted. As for its creation on 13 November 2016 it appears that Mr Su was almost certainly not in Taiwan at this point but Madam Su was.

322. I see no reason to disregard the contents of the two tabs of these documents, and every reason to take them at their face value, and give them considerable weight given their provenance and their content which correlates with other contemporary documentation (the UP Shipping bank statements) – in short they speak for themselves.

323. Madam Su has, in truth, adduced no evidence to rebut the truth of what is stated in these documents (other than what are, I am satisfied, her own self-serving lies). She has never grappled with these documents (and indeed ignoring them entirely in her statements despite their contents contradicting what she did say in evidence), nor did she offer an explanation when giving evidence.

324. I am satisfied, that these documents are, indeed, "the smoking gun" so far as the proceeds of the Monaco Villas are concerned and they also result in Madam Su being caught, in the very act of wrongdoing, in receiving part of the Monaco Villas monies, that she had lied so repeatedly about to distance herself from. The well-known words of Robert Goff LJ in *The Ocean Frost* [1985] 1 Lloyd's Rep. at page 57 as to the worth of documentary evidence that I have already quoted are particularly apt in this context. Not only is this a prime example of Madam Su's lies, and why she is not a witness of truth, it is also of obvious relevance to the alleged Monaco Conspiracy, as will be addressed in due course.

325. In the circumstances I have identified I am satisfied, and find, that the beneficiary of the US$1,100,000 that was paid from UP Shipping's bank account was Madam Su, and in this regard Sparkle Wood is Madam Su's, not Ms Tseng's vehicle, and that Madam

Su is its ultimate beneficial owner/controller (regardless of Ms Tseng's directorship) again contrary to Madam Su's evidence in this regard which is also a lie.

326. The other aspect of the "second big lie" relates to the Aeroplane Conspiracy, and Madam Su's denial of receipt of any of the Aeroplane Sale Proceeds. I deal with the alleged Aeroplane Conspiracy in due course in detail in Section J.2. However in the context of giving examples of her lies I can be more brief at this point. Madam Su's pleaded defence to the Aeroplane Conspiracy includes at paragraph 25M.1 that, *"[Madam Su] did not receive the proceeds of sale of the aeroplanes*", and so whether Madam Su received the proceeds of sale of the aeroplane is itself a pleaded issue. That pleaded case was maintained in her evidence. At paragraph 33 of her fifth statement Madam Su's evidence was that "*I did not receive any of the Aeroplane Sale Proceeds myself"* and at paragraph 36 her evidence was that *"I never received any of this money in the first place."*.

327. I am satisfied that these too were big lies on the part of Madam Su, and lies integral to the alleged Aeroplane Conspiracies.

328. On 4 May 2015, the Aeroplane Sale Proceeds (US$857,329.73) were paid into the bank account of UP Shipping by an entity called "*INSURED AIRCRAFT TITLE SERVICE*" which, per Mr Gardner's unchallenged evidence, is an escrow service for those buying and selling private jets. Upon receipt, the Aeroplane Sale Proceeds were immediately distributed as set out in the table below.

Recipient	**US$**
Sparkle Wood	440,045
Tseng Yu Hsia	251,050
Terrace View	95,050
Monsieur Ali Kheloui	50,050

329. For the reasons I have already given (by reference to the documentation I have identified in the context of the payment of US$1,100,000 out of the Monaco Sale Proceeds to Madam Su) I am satisfied that Sparkle Wood is beneficially owned/controlled by Madam Su – accordingly she undoubtably received US$440,045 via Sparkle Wood, telling the lie to her pleaded case and her witness evidence. I am equally satisfied (for the reasons addressed in due course in the context of the alleged Aeroplane Conspiracy in Section J.2 that she also received a further US$251,050 via Ms Tseng on her behalf (a total receipt of US$691,095), there having been no loan by Ms Tseng to Mr Su on her own behalf or loan repayment to Ms Tseng (another of Madam Su's lies). I am also satisfied that the payment of US$95,050 to Terraceview was also received by Madam Su, in circumstances where Terraceview, was itself clearly Madam Su's company as it was used to repay the Aeroplane Sale Proceeds to Mr Su via Ms Tseng.

330. That Madam Su did in fact receive the Aeroplane Sale Proceeds, or the substantial part thereof is also evidenced and corroborated by Mr Su's two contemporary messages to

Ms Lesley Huang of TMT on 28 May 2015, in the first of which he expressly stated, *"Send mdm su* ***I need 800k back from airplane money's****"* (emphasis added), whilst in the second message he stated, *"Otherwise I need commit suicide soon".*

331. This is all addressed to Madam Su, **not** Ms Tseng – on the very face of the first of these messages it is being contemplated what Madam Su is going to be told. Crucially, Mr Su is telling Madam Su – not Ms Tseng – that he needed the Aeroplane Sale Proceeds **back** – this is the clearest of contemporary corroboration from Mr Su (who would know) that Madam Su had received the Aeroplane Sale Proceeds **in the first place** (cross-corroborating, in the context of Sparkle Wood, what was later to be stated in due course, in the context of the Monaco Villa proceeds, in the spreadsheet tabs to which reference has already been made). The language used is simply inconsistent with the monies having gone beneficially to Ms Tseng.

332. It will be necessary to address the events that follow these messages, and what can be derived from them, as well as the reason why Mr Su needed the money back (and Madam Su's alleged knowledge of the reason – namely so that he could pursue his appeal to the Court of Appeal in the Underlying Proceedings in relation to which he had to put up security by 29 May 2015), in detail in due course when dealing with events, and the alleged Aeroplane Conspiracy. However for present purposes the conclusion is inescapable that Madam Su had received the Aeroplane Sale Proceeds in the first place, and so her evidence in this regard is another lie, and a big lie in an area relevant to the Aeroplane Conspiracy.

333. The first two big lies have been explored in some detail as they not only clearly show that Madam Su is a liar but I am satisfied, that she has lied in order to distance herself from the underlying facts, and receipt of proceeds, in relation to the subject matter of the Monaco Conspiracy and the Aeroplane Conspiracy.

334. I am satisfied that her "big lies" (of which I have addressed two of the three at this point) show that she is not a witness of truth and that this destroys her credibility - to adopt the phrase used by Ramsey J in *BskyB Limited v HP Enterprise Services UK Limited* [2010] EWHC 86 (TCC) at [195]-[196] (after he had first identified relevant principles in this regard at [189]-[191], by reference to what was said by Flaux J in *Grosvenor Casinos v National Bank of Abu Dhabi* [2008] EWHC 511 (Com) at [113] and [126] and by Peter Smith J in *Massod and others v Mohammad Zahoor and others* [2008] EWHC 1034 (Ch) at [130] - principles that I bear well in mind).

335. I also bear in mind, as Ramsey J did in *BskyB* at [191], the familiar Lucas direction given in criminal cases and what Lord Taylor said in *R v Goodway* [1993] 4 All ER 894 that a jury *"must be satisfied that there is no innocent motive for the lie and [they] should be reminded that people sometimes lie, for example, in an attempt to bolster up a just cause, or out of shame, or out of a wish to conceal disgraceful behaviour.*" I am satisfied, however, that this is not a case where Madam Su has lied for some innocent motive, or in an attempt to bolster a just cause, or out of shame, or out of a wish to conceal disgraceful behaviour, but rather in an attempt to avoid the truth coming out in relation to the allegations against her, and her connections to the facts underlying the Monaco Conspiracy and the Aeroplane Conspiracy.

336. Her other lies are legion and show a propensity to lie, and reinforce the fact that she is not a witness of truth, and her evidence cannot be given any weight unless it is

corroborated by documentation or is adverse to her interests. Many of her lies, as one would expect, relate to issues that arise for determination, and as such are dealt with throughout the judgment. I will, however, give some further examples at this point, as such lies reinforce that Madam Su is not a witness of truth.

337. Madam Su lied about her knowledge of the UAE company Blue Diamond (now accepted to be a Mr Su company set up by him after the Chapter 11 proceedings). In her third witness statement at paragraph 3 (supported by a statement of truth and confirmed on oath), she stated, *"I had not heard of Blue Diamond prior to the commencement of these proceedings",* yet when cross-examined about when she learned about Blue Diamond and Mr Baneriji and Tonic Lin trying to cheat her son (which had been her evidence), she said, *"So Mr Banerji is from Blue Diamond, but Mr Tonic is actually from Oceannet . Both of them cheated my son".*

338. She gave answers which were plainly untrue even on the basis of her own evidence. For example, *"Q. Now, the case in London went against Mr. Su and he lost his defence of the proceedings against Lakatamia. When do you say you found that out? A. I don't know. Did he lose? I only know that now that you are telling me";* and this example, despite the document (the Reminders Email) being dealt with in her witness statements and being a matter she plainly did know about, *"Q. Where was this document found Madam Su? A. I don't know. I have discovered it now."*

339. Madam Su also lied on oath in her Affidavit of Assets that the Court of Appeal had ordered her to make in relation to any assets worth more than US$10,000 she had anywhere in the world – as she did not disclose that she had a bank account with the Taiwan Cooperative Bank with a balance in excess of the equivalent of US$61,000, rendering untrue that which she did say. The backdrop to this is that Madam Su was obliged by the disclosure order to which she was subject to give disclosure by 24 July 2020, but she failed to do so and only disclosed her bank book for this account on 1 December 2020 when a specific disclosure application was made.

340. Whilst the immediate explanation given by Baker & McKenzie on 1 December 2020 was that she had sworn her Affidavit in Japan without access to her bank books located in Taiwan, and that it was subsequently discovered upon Baker McKenzie collecting such bank books for disclosure from her Taipei flat in late 2020 that the balance had, it was said unknown to her, exceeded US$10,000 by reason of a credit received in November 2019 a few weeks before her affidavit of means was sworn, not only was a corrective affidavit never made by Madam Su but Madam Su, when cross-examined, advanced an entirely <u>different</u> explanation for not disclosing such balance.

341. In this regard she repeatedly said that the money was from her daughters and was earmarked for her lawyers and therefore she did not consider this money to be hers. That is not consistent with the explanation proffered by her through Baker McKenzie, and is both implausible (money in her account should self-evidently have been disclosed) and implicitly amounts to an acknowledgement that she knew about the money and (seemingly) made a conscious decision not to disclose it, which also lies uneasily with her further evidence, which is itself incredible and defies belief, that she did not know how to convert New Taiwanese dollars into US dollars (after a lifetime in shipping and dealing with TMT group's treasury bank accounts). Yet further, at that time her legal fees were not even being paid by her daughters but by Ms Tseng (in the context of the loan notes which are addressed in due course) This all smacks of a lack

of candour and honesty, as well as a willingness to say the first thing that comes into Madam Su's head when cross-examined.

342. Of course, the most obvious reason why her affidavit of assets was false is that (as addressed in due course below in Section I) Madam Su did not disclose that Ms Tseng held assets on her behalf. It is also clear that Madam Su must have access to other funds. Her (volunteered) oral evidence was that she had a driver in Taipei – yet there is a complete absence of any evidence of any payments to such a driver in her bank books.

343. Her Affidavit of Assets was also misleading in relation to what it did and did not say about "succession planning", and Madam Su has made associated lies in this regard about the Tokyo property. It is common ground that Madam Su disposed of her interest in a valuable Tokyo property on 23 August 2019 during the interregnum in the Burton Freezing Order. It appears that this property was the family home in Japan and was originally owned by Madam Su's husband. When Madam Su was asked in January 2019 whether she had used the interregnum in the Burton Freezing Order (i.e., in the period between 2 May 2019 and 11 December 2019) to dispose of her assets (which she was not prevented from doing and was entitled to do) she denied that she had done so through her solicitors (in a Baker McKenzie letter of 22 January 2020) – yet that was untrue as that is precisely what she had done, as publicly available documents confirmed.

344. When confronted by these records, Madam Su said that she had transferred the sale proceeds to one of her daughters. Yet in her Affidavit of Assets (sworn by her on 25 December 2019), she gave two illustrations of "succession planning" from 2006 and 2015 but failed to disclose that she had (by way of supposed succession planning) disposed of her interest in relation to the Tokyo property just four months earlier. Incredibly, when cross-examined about this, she said that she had "forgot" that she had just sold the family home (for a sum in excess of US$2.2m), stating, *"I forgot. I didn't know how to write it and I don't remember now."* It is clear that Madam Su had also told her own solicitors that she had completed her "succession planning" in 2015 (as that is what they told Lakatamia's solicitors, and they would not have done that unless they held such belief as a result of what Madam Su had told them) – so she had even failed to tell the truth to her own solicitors.

345. This is not an abstract point - the existence of this property, and her sale of it, undermine the assertion in her Affidavit of Assets (at paragraph 30) that *"The reason why I resisted the 2019 Freezing Order is not because it would hamper my freedom to deal with or manage my assets. As explained above, 1 do not now own any assets exceeding US$10,000"*. This was untrue, and I am satisfied that Madam Su knew at the time that she swore the affidavit that it was untrue. The fact is, as I am satisfied Madam Su knew, that had it not been wrongly discharged the Burton Freezing Order would have prohibited Madam Su from disposing of her interest in the Tokyo property. I am satisfied that it is because the Burton Freezing Order would have prevented her from selling, amongst other assets, the Tokyo property, that she opposed its continuation, and that she had not opposed the Burton Freezing Order for the stated reason at all. When this was put to Madam Su in cross-examination, she had no convincing answer. She said only: *"I don't know. There are too many words there, so I don't really know what you are trying to say. I can't read these words clearly."*

346. Another aspect of her lies related to her involvement in the family business (which I address in due course in Section G.2 and following), but her evidence was a lie even at the level of generality in her witness statements for trial. Thus, she said in her third witness statement that *"I continued to assist around the business – for a number of years after Nobu took control* ***until 2010****"* (emphasis added). It is indisputable (and undeniable) that she continued to assist for years after that. But one illustration of that is that she had the test key and made all the (numerous and substantial) payments out of the DNB accounts through to 2015. On the same topic she (incredibly) said she had never heard of "Lakatamia", despite authorising with the test key very substantial payments to Lakatamia on a number of occasions.

347. Moving on from the question of lies, and quite apart from the points made earlier about unsatisfactory aspects of her witness statements, she was also an unsatisfactory witness in other respects.

348. In this regard she would volunteer evidence that was not an answer to the question but which she clearly considered was relevant to her defence and "she wanted to get out" whenever "trigger" words were so much as mentioned. For example, when taken to bank statements of UP Shipping (bank statements she had disclosed from her search of the Taipei office), and before Mr Phillips could even ask her a question, she volunteered, *"I don't know about this company. This company belongs to my child. UP shipping is his company"* (a prominent feature, of course, of her case, and Lakatamia's contrasting case against her). Repeated similar answers were given whenever she was asked further questions about UP Shipping. A similar approach was adopted when "Oceannet" was mentioned in a question, provoking volunteered answers such as *"Oceannet doesn't have anything to do with me. They are using my name. I don't have anything to do with Oceannet".*

349. Equally, a constant theme throughout her evidence was that she would not give "yes or no" answers when such an answer was appropriate despite being reminded of the appropriateness of doing so where a question demanded it. I do not accept that this was simply her style of answering (given the reminders she was given). I am satisfied that it showed a lack of openness and unwillingness to accept the obvious, and on occasion a willingness to obfuscate, that hindered, and prolonged, her cross-examination. For example when asked "*You hold the test keys for all the accounts – sorry you held the test key for the accounts of all the companies that banked with DNB in Singapore. Do you agree?"* she replied, *"There was only one bank. I don't know about the others. There were other banks",* and this egregious example:-

"Q. Madam Su, for the purposes of giving disclosure in this case, you have searched the offices that were occupied by TMT in Taiwan. Do you agree?
A. What do you mean by "search"?
Q. You tell me. The documents of which you have given disclosure largely come from TMT's offices in Taiwan, so what was done to obtain those documents?
A. What documents? I don't know."

350. Madam Su also repeatedly employed deflection when responding to questions. She had a habit of saying that Mr Phillips should ask someone else a question when she knew perfectly well that that person was not giving evidence (and Lakatamia's case was that she had chosen not to call that witness in support of her defence, an issue I address in due course below). To take another example, there was this exchange in the context of the Reminders Email and the reference therein to *"everything you involved in is nothing to do with madam su and it is your responsibility for everything you did"*:-

> "Q. The only judgment against Mr. Su personally was the judgment that Lakatamia had obtained, so far as we are aware, and this reference here to "every thing you did" is a reference to the judgment that Lakatamia had obtained against your son, Mr. Su. Do you agree?
> A. I don't quite understand what you are saying. What Lakatamia judgment? What are you talking about?
> Q. The two judgments that Lakatamia had obtained against your son, Mr. Su, were the only judgments against him personally at this stage, so far as we are aware. And what Mr. Chang is referring to here on your behalf is the shame that was associated with those judgments against your son, Mr. Su. Do you agree?
> A. What are you talking about? What has this to do with fortune telling?"

351. She also had a habit of inventing (false) evidence on the spot. I have already given examples of this (for example where she gave answers that were false even on her own evidence such as denying she even knew Mr Su had lost his action against Lakatamia), and another example is her answer as to why she gave the false evidence as to not having any assets in excess of US$10,000 and responding that her daughter had provided it to her for her legal fees.

352. She was also inconsistent in her answers, sometimes even within a very short space of time and sometimes where both answers were either lies or were disingenuous once one knew the true position. Take this example (which relates to the "second big lie" and the "Madam Su" entries in the spreadsheet document that I have already addressed at some length which contains a multitude of lies but is referred to here on the consistency point):-

> "Q. … "Madam Su $1.1 million".
> What that is recording again is that the payment of $1.1 million to Sparkle Wood on 3 March 2017 was a payment to you. Do you agree?
> A. I can't remember. It has been such a long time, **but I don't think I've ever borrowed money from Sparkle Wood and I can't remember whether they have borrowed money from me.** It has been such a long time.
> Q. When you tell the judge in your witness statements that you did not receive any money from the sale of

the Monaco villas, that was a lie. Do you agree?

A. I did not receive one single cent. As I mentioned earlier, the money was paid to Ocean Net.

Q. The evidence that you give in your witness statement that this payment on 3 March of $1.1 million to Sparkle Wood was a payment for loans to Ms. Tseng is a lie, isn't it?

A. You mean loan? I can't remember. **Between me and Sparkle Wood, I borrowed from them, I paid back** and I had nothing to do with Ocean Net. I don't know anything about Ocean Net. You also mentioned about the Monaco villas, which I know nothing either."

(emphasis added)

353. Even had Madam Su been a witness of truth (which she is not), the various unsatisfactory aspects of her evidence themselves mean that very little weight can be given to her evidence even on topics not on the critical path (though this lie is, clearly, on the critical path relating, as it does, to receipt of monies by Madam Su).

E. THE CHRONOLOGY OF EVENTS

354. It was readily apparent from the differences between the parties in opening that it would be necessary by the time of closing to ensure that each of Lakatamia and Madam Su addressed the issues in the same order and by reference to the same topics, something they agreed to do at my instigation, and which they have largely honoured, if only in terms of headings, in their Written Closing Submissions. However, the words of Henry Wadsworth Longfellow remain apposite when considering the respective Written Closing Submissions (and for that matter the respective oral closing submissions) when measured one against the other, "*Ships that pass in the night, and speak each other in passing, only a signal shown, and a distant voice in the darkness; So on the ocean of life, we pass and speak one another, only a look and a voice, then darkness again and a silence"*.

355. I bear well in mind Madam Su's exhortation at the start of her Written Closing Submissions that the oral evidence has been focussed on that of Madam Su, that those acting on her behalf have not had the opportunity to cross-examine other witnesses as to events (albeit, I consider that it was within Madam Su's gift to call other witnesses who would have been able to speak to events) and that there is much underlying documentation (albeit, as I shall have to address, it is very much in issue as to whether Madam Su has complied with her disclosure obligations, and the relevance of much of the documentation that does exist is also in issue). I confirm I have given careful consideration to all the matters set out in Madam Su's oral and written Closing Submissions (the latter running to some 215 pages together with 6 Appendices) whether or not they are expressly referred to herein.

356. However, I consider that there is much force in Lakatamia's submission that the reason why Lakatamia and Madam Su are as ships passing in the night in their submissions is very much to do with a failure on Madam's Su part to grapple with matters which are on the critical path as to whether the Aeroplane and Monaco Conspiracies occurred, and whether Madam Su was a party thereto. This involves, crucially, addressing contemporary documentation that is on such path (such as the Payment Schedule and

the Payment Ledger), engaging with the chronology of events (such as the email chain on 28 May 2015 and the correlation in time with Mr Su's need to put up security to the Court of Appeal and what this may tell one as to Madam's Su's knowledge of such events) and grappling with the lies told by Madam Su in evidence and the implications thereof in the context of the claims advanced against her. In contrast much of what is addressed in great detail in Madam Su's Written Closing Submissions is not on the critical path (to take but one example whether Mr Su owned one or two aeroplanes and precisely when any sale took place).

357. Out of courtesy to the endeavours of those acting on behalf of Madam Su, the chronology of events that follows is perhaps longer and more detailed than it really needs to be. However, it provides the backdrop to the issues that arise and the subsequent sections which address particular issues for determination. Inevitably it will be necessary to make a number of findings in the course of my consideration of the chronology of events.

E.1 THE ORIGINS OF THE TMT GROUP OF COMPANIES

358. In 1958, Mr Su Ching Wun, Madam Su's late husband (and Mr Su's father) established Taiwan Maritime Transportation. It appears that it was a traditional freight shipping business initially focused on shipping bananas but later diversifying. According to Madam Su's evidence, this company "*became a very successful business, which was lucrative for our family*" (Madam Su's 3rd witness statement at para 7).

359. As the wife of the founder she helped in the business, worked closely with her husband, describing herself as effectively her late husband's "assistant", and although she says that she "*never had an official position*" she was a director and treasurer of various companies within the family group. Madam Su accepts that her role was in line with that of a family business matriarch in traditional Taiwanese culture including helping with bookkeeping (including making payments on behalf of companies in the TMT group), and discussing business decisions including the setting up of new companies with her husband.

360. It is clear that, certainly at this time, she was actively involved in the business, and she went into the office every day. Her evidence (which I accept) is that she knew all of TMT's employees very well, and she built close relationships of mutual affection and loyalty with many of her husband's employees. She was referred to as "Madam Su" by the employees. There is a minor issue as to the precise significance of it. Such usage is, on any view, an *"honorific used in [Taiwanese] culture for a married woman combined with her husband's surname"* (per Madam Su's evidence at paragraph 18 of her fifth witness statement) and it is common ground that it is commonly used in Taiwan to show respect and affinity, which suffices for present purposes.

361. Mrs Morimoto and her husband had six children. Her five daughters were never involved in the shipping business. It appears that it was always anticipated that her son, Mr Su, would take over her husband's role after his passing, albeit that whilst he worked with his father in his twenties he disengaged from the business in his thirties and went off to establish his own business, and also seemingly married without his parent's approval which it is submitted was an assertion of his independence. I do not know enough about the circumstances to pass any view on this submission.

E.2 THE DEATH OF MR SU SENIOR AND THE RETURN OF MR SU

362. In 2001, Mr Su Ching Wun (Mr Su Senior) died. It appears that Mr Su had in fact returned to work for the family business shortly before that. Mr Su's evidence when cross-examined before Sir Michael Burton was that:-

> "My father passed away in October 31, 2001 and my mum ask me to come back all -- because she has cancer for two years. My father told me few thing, I went to the hospital and he said "Son, you have to take over the family --"

363. Whilst the precise characterisation of his role in the business is in dispute between the parties, there does not seem to be any dispute that he took over the day to day running of the business and he became Chief Executive Officer of what had become a substantial group of companies, and he was understood to be also involved in the long-term strategy of the business (an understanding reflected in an intelligence report prepared by Infospectrum, commissioned by Reed Smith in 2013 at a time when it was acting for TMT's creditors). Madam Su says that Mr Su was the group's "*owner*" although he seemingly held only 51% of it. Whatever the precise position, and ultimately I do not consider that matters given the greater relevance of the extent of Madam Su's continued involvement in and knowledge of that business, Mr Su was undoubtably heavily involved in the business and was responsible for making sweeping changes to it, including changing the name of at least some of the companies in the group to "*Today Makes Tomorrow*".

364. To the extent that Mr Su stepped into his father's shoes in the business, this does not mean, of course, that Madam Su did not have, and continue to have, an active role in the business as she had had during the lifetime of her husband. Indeed Madam Su's own evidence is that her relationship with her son initially improved, and she continued to assist him in the business (just as she had assisted her husband). Part of her role, at that time included dealing with payments by the group, and I will need to return to that aspect of her role in due course in Section G.3. Madam Su's own evidence is that in the years after 2001 she continued to be considered an important figure in the TMT business, whose voice was trusted and respected. However her wider assertion that she had no actual authority in the business, and could not overrule Mr Su, the owner and CEO of the business is not one that I can accept at face value (given not only the findings I have made in relation to Madam Su but also the other evidence before me, including contemporary documentary evidence). I address Madam Su's role and involvement in, and knowledge of, the business in the period under consideration in Section G.

365. What is clear is that Mr Su adopted a far more aggressive and risky business strategy following his father's death. It appears that he moved into the tanker market in 2004, and diversified into many sectors of the marine industry. Under his steerage he began heavily leveraging the business by taking on business loans (in contradistinction to his father's approach), and it appears he entered into contracts potentially worth hundreds of millions of dollars with Hyundai for the design and build of a fleet of new vessels. It appears that aside from the shipping business, Mr Su entered into a number of other ventures, including a very large investment in Vantage Drilling, an offshore drilling contractor, and certain "Floating Liquid Natural Gas" projects.

366. He was also involved in other more frivolous ventures including plans to buy a private island and rent it out to high-net worth individuals and to enter the business of books, e-books and digital content distribution in the Middle-East, whilst spending significant sums of money acquiring luxury assets including a private jet in 2006, and the Monaco villas in 2007 and 2010 (the realisation of monies in respect of which, led to these proceedings).

E.3 MR SU'S INVOLVEMENT IN DERIVATIVES AND THE FFA CONTRACT

367. Mr Su also became an extremely active participant in the market in forward freight rates (as addressed in the judgment of Cooke J of 4 November 2013). He traded in these derivative instruments through various companies in the family group, including TMT Liberia. I have already introduced the events that followed, by way of overview, in Section A, but it is necessary, at this point, to go through the chronology of events in more detail – they lead both to the Underlying Proceedings, and the subject matter of this action.

368. In the summer of 2008, Mr Su had a desperate need for liquidity. TMT Liberia was unable to meet the margin calls that were being made of it by the Royal Bank of Scotland (RBS) (i.e., the bank through which it held its substantial open positions). Mr Su therefore sought, through the offices of Mr Vassilis Karakoulakis of Clarksons, to obtain assistance from various wealthy ship-owning interests in Greece, including Mr Polys Haji-Ioannou, who is the principal of Lakatamia.

369. Over the weekend of 5/6 July 2008, Mr Haji-Ioannou and Mr Su agreed that Lakatamia would buy FFAs corresponding to 600,000 metric tonnes per calendar month in 2009 on Route TD3 (the equivalent of three VLCCs trading constantly over a year) at a price of 100.65 worldscale points; and that a month later Mr Su would buy the position back at a fixed price of 101.65 worldscale points ("the FFA Contract"). This was an enormous trade representing 1.7% of the total volume of FFAs traded through the London Clearing House in 2008. Lakatamia would earn a guaranteed profit on the transaction of 1 worldscale point per metric tonne, and so, had the FFA Contract been performed in accordance with its terms, the profit to Lakatamia would have been US$1.8m.

370. The FFA Contract was not itself reduced to a written instrument. But Mr Karakoulakis drew up a guarantee, issued by a company in the Su family group, Iron Monger 1 Limited, which set out the terms of the principal agreement (in the briefest of terms – covering only one side of a sheet of A4 paper).

371. Mr Haji-Ioannou honoured his side of the bargain and Lakatamia purchased this massive position on 8 July 2008. However, by 8 August 2008, the market had fallen and Mr Su did not buy the position back. Over the following weeks and months, he bought back part of the position but not at the agreed price. Lakatamia was thus left with a massive unwanted exposure and faced ever mounting margin calls from RBS.

372. The total loss suffered by Lakatamia on the unwanted FFA positions (net of the positions that Mr Su had repurchased) was US$79,633,538.25. Mr Su initially made some payments against this liability. Between 8 October 2008 and 9 October 2009, he made cash payments of US$32,303,195 (through two companies in the family group). He also caused companies within the group to charter vessels to Lakatamia at reduced

rates, giving discounts equating to US$11,276,033.01. Some of these payments and concessions were made from bank accounts held with DNB. They were all processed and authorised by Madam Su (as addressed further, in due course, below).

373. Eventually, however, these payments and discounts dried up. There was a balance due to Lakatamia of US$37,854,200.24 and it became clear that Mr Su would not comply with his obligations.

E.4 THE UNDERLYING PROCEEDINGS AND THE BLAIR FREEZING ORDER

374. On 24 March 2011, Lakatamia commenced the Underlying Proceedings. As has already been recounted in Section D.1 on 11 May 2011, Mr Gardner and Mr Panayiodou met with Mr Karakoulakis to discuss the position. Mr Karakoulakis told them that Mr Su had not paid his (undisputed) liability because *"his mother was holding the shipping purse strings".* It does not appear to be in dispute that this was said. I bear well in mind that this was, of course, recounting what was said by Mr Su in the context of his seeking to excuse non-payment and its potential significance seemingly passed unnoticed at the time, but, as addressed in Section G.2, it is consistent with other evidence as to the continued role and involvement of Madam Su.

375. Lakatamia was concerned that Mr Su would dissipate his assets, based on comments that he had made to the press, and in view of evidence before Steel J in *TMT Asia v. Marine Trade* [2011] EWHC 1327 (Comm) at [11(e)] to the effect that there was within the TMT group "*[a] practice of diverting receivables to other TMT group outfits, a policy described by a former director of a TMT group company as reflecting a policy of siphoning money off so that the relevant FFA trading company could be allowed to fail if it suffered unsustainable losses.*"

376. Accordingly, on 22 August 2011, Lakatamia applied *ex parte* for and was granted the Blair Freezing Order. On the return date, Mr Su (and the other Defendants) were represented by Ince & Co LLP ("Ince & Co") and by Leading and Junior Counsel, who contended that Mr Su had no personal liability on the FFA Contract. On 6 October 2011, Beatson J rejected that argument and continued the Blair Freezing Order. An appeal by Mr Su against that order was dismissed on 18 July 2012.

377. This triggered an obligation on Mr Su to disclose his assets. He failed to do so. On 21 January 2013, Lakatamia issued a committal application notice against him. Soon thereafter, on 28 January 2013, Cooke Young & Keidan LLP ("CYK") notified Hill Dickinson that they had been instructed to represent Mr Su and the other defendants in place of Ince & Co.

378. CYK stated (it is to be inferred after proper "Know Your Client" ("KYC")/anti-money laundering checks given that CYK are English solicitors with partners who are solicitors of the Senior Courts) that their legal fees were being met by Great Vision, and that that company "*is not related to any of the companies within the TMT Group and/or Nobu Su*". The evidence is that CYK had, in fact, been receiving funds from Great Vision from not later than May 2012 although the precise scope of their role is not clear – it is possible, as Lakatamia suggests, that they held a watching brief over Ince & Co, though the evidence does not suffice to allow any conclusion to be reached.

379. On 19 February 2013, Great Vision paid CYK the sum of £270,000. This was the first payment that Great Vision made to CYK after CYK had been instructed to act for Mr Su personally.

380. I am satisfied that this sum originated from Madam Su. This is evidenced by a document (referred to in the litigation as the "Loan Fax") which is one of only a limited number of documents disclosed by Madam Su. It purports to record various sums originating from Madam Su that are said to be owed by Mr Su to Madam Su. It contains an entry dated 18 February 2013 with the narrative, "*CYK-GBP270,000*".

381. In circumstances where the Loan Fax refers to Madam Su being owed £270,000 by Mr Su (and not Great Vision) Lakatamia rely on this evidence in support of their submission (addressed in Section G.4 below) that Madam Su owns and controls Great Vision. Madam Su's case is that Great Vision was Mr Su's company. However, if that were true, then the money to fund this substantial payment must have come from another bank account of Madam Su or a company associated with her, and Madam Su was under a disclosure obligation in that regard (see Issue 17 in the Agreed List of Issues for Disclosure). When cross-examined about the source of the money she replied, "*I can't remember. I might have borrowed the money from somewhere but I cannot remember*".

382. A notable feature of Madam Su's disclosure is the limited number of bank accounts that she has identified and which she has given disclosure in respect of. I accordingly enquired of her in relation to details of the banks that she had held accounts with. Her answer, which was less than satisfactory, was "*These could have been my friends' accounts and things happened a decade or more ago. If you ask something that happened even two years ago, I couldn't remember either*". Whatever memories may fade with the passage of time I have considerable difficulty in accepting that a memory of who a person, or their companies, banks with, will do so, whilst Madam Su's actual answer was, I am satisfied, a clear deflection of my enquiry.

383. Pursuant to the Blair Freezing Order, and its standard policing provisions, Mr Su was obliged to disclose his assets, which he purported to do in his Seventh Affidavit dated 3 April 2013. In that Affidavit he stated, amongst other matters, at paragraph 9 as follows:-

> "I am currently being paid a salary of US$4,000 per month from TMT Limited (a company incorporated in Taiwan)…which is used to meet some of my day to day needs.
>
> The salary I am able to draw from TMT Taiwan is not enough to pay all of my day to day needs therefore **my family** provides me with an allowance which is paid to me by way of the use of a credit card. The card has no limit and I am allowed to spend whatever sum I need to pay my day to day living expenses."

I address this evidence in Section G.5 below. Lakatamia submits that this was (transparently) an arrangement designed to circumvent the Blair Freezing Order, an arrangement to which Madam Su was party (and therefore, it is said, to be inferred that Madam Su had knowledge of the Blair Freezing Order).

384. On 9 April 2013, the Defendants to the Underlying Proceedings applied for permission to use some £325,366.32 held by CYK to fund their defence. That money had been used as security for costs in unrelated proceedings between TMT Liberia, which was the Sixth Defendant to the Underlying Proceedings, and RBS. It was said that the money belonged to Great Vision and that Great Vision had nothing to do with Mr Su.

385. In this regard on 26 March 2013, an English solicitor of the Senior Courts and partner of CYK sent an email to Hill Dickinson in which he wrote: "*I am told that the true owner of Great Vision Management (the family member) has made it clear that the person concerned does not wish to become embroiled in the litigation and disputes of Mr Su and will not sign anything. That poses a dilemma for us and, evidently, Nobu Su is trying to persuade that person to be co-operative and to provide us with the requisite information.*" Put at its very lowest, this is a representation that Mr Su does not own Great Vision, but another family member does, and that Mr Su is trying to persuade that family member (which Lakatamia says is clearly Madam Su) to cooperate. This email is consistent with, and supports Lakatamia's submission, that the ultimate beneficial owner of Great Vision is not Mr Su (and is, in fact, Madam Su).

386. That this is the position is also supported by a further contemporaneous email the previous day (25 March 2013), with Ms Yvonne Chen of TMT sending an email to Mr Su in these terms: "*Nobu San, I and albert would like to call you to discuss… 2) Great Vision letter to be signed by Madam Su issue*". At the very least this shows that steps were being taken in the TMT group to try to persuade Madam Su to tell CYK that she was the owner of Great Vision for the purposes of CYK's KYC/anti-money laundering checks. Unless she was being asked to lie (which inevitably has to be Madam Su's position now), this very much suggests that she was, indeed, the owner of Great Vision. I consider that the most plausible explanation for her failing to sign the letter is that she did not wish to disclose her ownership of Great Vision (which is entirely consistent with Madam Su's approach generally to avoid being associated with companies she beneficially owned).

387. When cross-examined about this message she obfuscated, albeit a kernel of acceptance, that she had been asked to sign such a document, is discernible, "*I don't remember. I don't agree. I think they asked me to sign a document. I don't know what it was. It was a long time ago. I cannot remember*."

388. The skeleton of counsel instructed on behalf of Mr Su stated that the money concerned fell outside the scope of the Blair Freezing Order because "*Great Vision is not owned or controlled by any of the Defendants*".

389. On 4 April 2013, Mr Chang made a witness statement in support of the application in which he stated that he was the director and sole shareholder of Great Vision. Mr Chang then stated:

> "*4. … I hold these shares as nominee. I cannot disclose the identity of the beneficial owner of Great Vision but I can assure the Court that it is not Mr Nobu Su or any of the other Defendants in this litigation.*
>
> *5. I can confirm that none of the Defendants in this litigation exercise any control over the business affairs of Great Vision or its assets and neither do they have any right or ability to do so.*"

390. On 4 June 2013, Mr Chang made a further witness statement in support of an application made by Mr Su for an order that he be permitted to use other monies held on the account of TMT Liberia in the Court Funds Office. Mr Chang stated that he made the witness statement "*for the purpose of explaining the ownership of Great Vision*" (first statement of Mr Chang para 2).

391. The context was whether Great Vision would continue to meet Mr Su's legal expenses. Mr Chang explained that Great Vision had supported Mr Su hitherto because of the "*personal (family) relationship*" between Mr Su and the owner of Great Vision, but that it was not prepared to do so anymore (second statement of Mr Chang para 6).

392. I address the ownership of Great Vision in detail in Section G.4 below. Suffice it to note at this point that Haddon-Cave LJ in these proceedings, when restoring the Burton Freezing Order against Madam Su, noted that Lakatamia had put forward evidence before Sir Michael Burton suggesting that (having regard to the evidence of Mr Chang in relation to Mr Su) Madam Su was the only other *"credible candidate as beneficial owner of Great Vision… given Madam Su's own evidence that he was a widower and that none of her other children was involved in Mr Su's business"* ([2019] EWCA Civ 2203 at [67]).

E.5 JUDGMENT AGAINST MR SU AND THE ATTEMPTED APPEAL

393. On 5 November 2014, following a trial of the substantive issues, Cooke J found Mr Su personally liable for breach of the FFA Contract and awarded Lakatamia the sum of US$37,854,310.24 (reported at [2015] 1 Lloyd's Rep. 216). On 16 January 2015, Cooke J entered a further judgment against Mr Su in the sum of US$9,852,200.50 (collectively the Judgments). Mr Su pursued an appeal. In this regard Mr Su dis-instructed CYK and instructed W Legal Ltd ("W Legal") to pursue an appeal. Like CYK, W Legal was (at least initially) funded by Great Vision.

394. At a hearing on 19 March 2015, the Court of Appeal granted Mr Su permission to appeal on the condition that Mr Su provide security in respect of the Judgment Debt in the sum of US$22m by 19 May 2015 (although the amount that needed to be provided was ultimately US$15.8m because Lakatamia claimed an entitlement to certain monies held in the Court Funds Office).

395. Mr Su offered a number of forms of security to Lakatamia, all of which were rejected by Lakatamia. In such circumstances he applied to the Court of Appeal for a declaration that the security that was offered was adequate or for an extension of the deadline. That application was supported by a witness statement from Ms Jodi Tierney, an associate (and solicitor of the Senior Courts) at W Legal. She stated that, "*as a last resort, the Appellants have obtained a firm promise of payment of the full amount of US$15,820,795.72. The source of the funds will be members of the Su family and the payment will be effected by Great Vision Management Ltd*".

396. Attached to her statement were two letters. The first letter was from Mr Chang and was dated 19 May 2015. He wrote:

> "I confirm that if the application to provide security by granting a first mortgage charge over the other assets fail, Great Vision Management Limited can pay the sum of $15,820,795.72 on behalf of the Defendants/Appellants in the above matter within 14 days of today's date if I receive adequate security from Mr. Nobu Su"

397. The second letter was an unsigned letter from an unnamed accountant. It was stated:

> "I am the accountant of Great Vision Management Limited. I confirm that if the application to provide security by granting a first mortgage/charge over the other assets fail, Great Vision Management Limited will have sufficient funds to be able to pay the sum of $15,820,795.72 on behalf of the Defendants/Appellants in the above matter within 14 days of today's date"

398. By an order dated 21 May 2015, Jackson L.J. extended the deadline for the provision of security to 29 May 2015 (failing which the application for a declaration that the security that Mr Su had offered was adequate was to be determined on the papers). It became immediately clear, however, that whichever family member was behind Great Vision (Lakatamia says Madam Su as the only viable candidate) had refused to support Mr Su's proposed appeal.

399. On 22 May 2015, the day after Mr Su had been granted an extension by Jackson LJ, Mr Su filed a witness statement in which he stated that, on 19 May 2015, shortly before he had boarded a flight to the USA, he "*was informed by Great Vision that its accountants would be prepared to sign the letter (as set out in draft) confirming that it would be able to provide US$15.2 million should the alternative security not be accepted. I believed the letter would be forthcoming almost immediately and on that basis I instructed Ms Tierney to sign the statement*".

400. Mr Su further stated that when business opened in Taipei the following day:-

> "… it transpired that Great Vision's accountant could only immediately confirm that an amount of between $5-7 million would be available within the time limit stated. As the source of the funds that Great Vision would pay was to come from my family, a number of other accountants needed to be contacted (as the Su family have more than one accountant to manage their affairs). As the information was going to be placed before the court, Great Vision's accountants, understandably, insisted on detailed due diligence being undertaken before providing a signed letter.
>
> Today, I have been informed that Great Vision's accountants prefer not to provide any confirmations despite me being advised previously that they were willing to do so. I do not know the precise reasons why but I have been told that there is a general reluctance to provide confidential information. I exercise no control over Great Vision but continue to request that due diligence be completed and the letter provided."
>
> (emphasis added)

401. This is an important point in the chronology of events and also when considering whether Madam Su was aware of the Judgments and the Blair Freezing Order. It seems clear enough from what the Court of Appeal was being told by Mr Chang, and what Mr Su was stating, that it was envisaged that the security would be put up by Great Vision,

and that the source of the funds was a member of the family (the only viable candidate being Madam Su). However it also appears that either Madam Su (or Mr Chang advising Madam Su) required security from Mr Su (otherwise why else mention that) and that Mr Su could not provide adequate or acceptable security or Madam Su had changed her mind and was no longer willing to put up the security given Mr Su's prospects of successfully appealing against the judgments of Cooke J. Either way it defies belief that Madam Su did not know why Mr Su needed the money – she surely did, and so equally surely knew (at the very least) about the Judgments in favour of Lakatamia against her son and under appeal.

402. When she was asked about this in cross-examination, Madam Su said that US$15.8m was a "*horrifying number*". She then said (when it was suggested to her that Mr Chang had advised her not to put up the money) that "*It's been such a long time and I always get angry when he wanted money and I couldn't really hear what was said. I didn't pay much attention*". This is typical obfuscation on Madam Su's part and is an answer that defies belief. It is also internally inconsistent – Madam Su cannot both be horrified and angry, and not paying attention in one and the same breath. Furthermore if (as seems clear) she had indicated she would provide the security and changed her mind (or the conditions she had imposed could not be met), Mr Su, via Mr Chang (or directly), would no doubt have pressed the point, and Madam Su could not but have paid attention – after all Mr Su was clearly desperate for the money (as his plea days later for the Aeroplane Sale Proceeds back speaks volumes) – the reason being that without the money the appeal could not proceed.

403. It is at this point that it is convenient to address the Aeroplane and the Aeroplane Sale Proceeds, for it is only days later (and I am satisfied obviously in the context of the appeal) that Mr Su wants the Aeroplane Sale Proceeds back and threatens to commit suicide if Madam Su does not give them back. Madam Su's lack of any expressed surprise at such threat speaks, I am satisfied, volumes about Madam Su's knowledge of the appeal, and of the Judgments. I cannot help but note that despite being pressed on this point during oral closings, Madam Su's legal team never really engaged in this apparent correlation or offer any credible explanation for this correlation or Madam Su's expressed lack of surprise about the request for the monies "back".

E.6 THE AEROPLANE

E.6.1 THE AEROPLANE'S HISTORY AND OWNERSHIP STRUCTURE

404. The history and the ownership structure of the Aeroplane (and indeed a further contemplated aeroplane that came into the picture in 2011) is addressed at length in Madam Su's Written Opening and Closing Submissions. Whilst I bear in mind what is there stated, I am satisfied that such history in relation to the Aeroplane and the lengthy negotiations for its sale over an extended period of time, are of no particular relevance (and are most certainly not on the critical path), in circumstances where it is common ground that Mr Su owned the Aeroplane (a Bombardier BD-700-1A10 Global Express aeroplane that bore the registration VP-BDU), and in relation to which a time came when monies (a sum of US$857,329.73) were paid into the bank account of UP Shipping on 4 May 2015 by an entity called "INSURED AIRCRAFT TITLE SERVICE", the evidence being that this is an escrow service for buyers and sellers of aircraft.

405. This seems to be a remarkably small sum for an Aeroplane that appears to have had significant value at one stage, with Mr Su valuing it at US$23m and it having had an insured value of US$14m. Whether the sum represents all the sale proceeds or merely a part payment in respect of the sale (or intended sale) of the Aeroplane matters not. What is clear, and not in dispute, is that the monies were in respect of the Aeroplane and that the Aeroplane was an asset ultimately owned by Mr Su. In such circumstances the transfer of monies in respect of it to UP Shipping was, I am satisfied, on any view, a clear breach by Mr Su of the Blair Freezing Order.

406. Dealing with the history as briefly as possible (and in terms which are not understood to be controversial), Mr Su held his interest in the Aeroplane through a Bermudian company called Bonidea Co Ltd ("Bonidea"). Bonidea's directors included a Mr Henry Udomsakdi who has already been mentioned in the context of Madam Su's evidence in Section D.2. Bonidea, was incorporated on 27 April 2006. Upon incorporation, the sole shareholder of Bonidea was Today Makes Tomorrow Corporation and the directors were Mr Udomsakdi and a Stephen J Rossiter. However, Rika Morimoto was subsequently appointed as one of the directors.

407. The Aeroplane (with manufacturer's serial number 9057 and registration number VP-BDU) appears to have been purchased in around May 2006. A loan agreement dated 29th May 2006 was entered into between Bonidea and Credit Suisse, with Taiwan Maritime Transportation Co Ltd acting as guarantor. For a period between July 2009 and May 2012, the Aeroplane was operated by Comlux Exclusive AG (whose successor seems to have been Matrix Aviation Limited, who signed an Operating Agreement on 12th October).

E.6.2 THE SALE OF THE AEROPLANE

408. It appears that Mr Su started to make arrangements to sell the Aeroplane in July 2012, through the brokers Aviation Resource Group LLC. In November 2012, Mr Su set an asking price of US$21.5m, and a buyer appeared to have been found for US$21m. However, this contemplated sale did not appear to complete. Instead, in January 2013, Mr Su was setting an asking price of US$24m (Bombardier, for its part, was valuing the Aeroplane at US$20m). Within a very short period of time, namely by March 2013, and for whatever reason, its value had fallen, and an offer was made for US$16.35m, whereas Mr Su was asking for US$17m.

409. By July 2013, Mr Su was having discussions about leasing the aircraft instead, although in October 2013, the sale of the Aeroplane was the topic of further email exchanges. At this stage, Mr Su was being advised that the aircraft, in the condition it was in, had a value of around US$13m.

410. On 24 January 2014, Bonidea signed an Exclusive Marketing Agreement with Jetcraft for the sale of the Aeroplane, which appears to have led to the signing of an Aircraft Purchase Agreement dated 22 March 2014 between Bonidea and Big Skyy Aviation LLC with a purchase price of US$12.7m, with a Closing Date of 15 May 2014. There is a post-it note on the document stating *"cancel of the agreement",* and a reference to a Notice of Termination by Big Skyy Aviation LLC sent on 1 July 2014 (which suggests the transaction was not completed).

411. There was then a second Aircraft Purchase Agreement dated 19th July 2014 between Bonidea and Aizab Oil & Gas for US$10.5m, which was amended so that the Closing would occur on or about 15 August 2014, albeit that it appears that that sale was cancelled as well (there is a post-it note that provides, *"delivery BoD Resolution & POA (CANCEL)")*.

412. There appears to have then been a third Aircraft Purchase Agreement signed by Mercury Management Group Limited ("MMG") in October 2014, this time for the price of US$6m with a closing date of 5 November 2014, although what happened next is unclear.

413. Meanwhile a separate company named Bonidea Duo Co Ltd ("Bonidea 2") was incorporated on around 6 December 2006, and this company initially seemed to be concerned with a separate Bombardier Global Express XRS with manufacturer's serial number 9393, and a related loan agreement dated 26 July 2010. Bonidea 2 then appears to have contracted on 27 March 2011 with Bombardier to buy a Global 6000 aircraft, but then amended this to a Challenger 350 aircraft. It appears that there were difficulties in making payment for this aircraft, which resulted in Bombardier issuing a Notice to Cure Default Progress Payment on 27 March 2014. The fate of this aircraft is unknown. It appears that Aeroplane itself sat on the ground before (it would seem) it was finally sold around November 2014.

414. None of this history is of any particular significance. What is of more significance, is that Madam Su wanted the Aeroplane sold. It is clear that Madam Su was actively interested in, and actively involved in, the sale of the Aeroplane, through Mr Udomsakdi, who badgered Mr Su to sell the Aeroplane. On 9 July 2012, Mr Udomsakdi sought instructions from Mr Su: "*Can I authorize to place VP on worldwide data base? Your mother call me everyday & ask any news abut* [sic] *sale of VP?*" (emphasis added)

415. On 10 July 2012, Mr Udomsakdi reminded Mr Su that he was helping "*because your mother call me EVERYDAY*".

416. That Madam Su wanted the Aeroplane sold is uncontroversial (and she readily agreed that when cross-examined) which was entirely consistent with what she said in her fifth witness statement that she was *"quite forceful in my insistence on this"*. It is also equally uncontroversial that Madam Su was lending Mr Su and his companies very substantial sums of money around this time (it appears that in June and July 2012 she advanced over US$13.7m to Mr Su's companies, followed by a further US$17.4m in September and October 2012).

417. She was also clearly annoyed about the Aeroplane and its running costs, stating during her cross-examination that, "*The aeroplane really wasted a lot of money".* Madam was rather more coy, however as to why she wanted the Aeroplane sold. It was put to her a number of times on Day 7 (and also on Day 8) that the reason she was angry and wanted the Aeroplane sold was because she wanted to get some of the money back that she had lent to Mr Su. Her answers were along the lines of *"The aeroplane is a waste of money. It wastes a lot of money to run"*.

418. She did candidly agree, however, to a question that concerned both repayment of her and cash for the business:-

"Q. It had to be sold because it was one of the few assets still available **to generate cash to repay you**, and cash for the continuation of the business. Do you agree?

A. **Of course I agree**, but if it couldn't be sold, then nothing could be done. I don't know" (emphasis added)

419. This actually has echoes of paragraph 30 of her fifth witness statement, where she stated *"I knew that [Mr Su] owned the private jet VP-BDU. Given the financial difficulties of the TMT business **and as a major creditor of the business,** I encouraged [Mr Su] to sell the jet in around 2012. I was quite forceful in my insistence on this. A private jet is a huge luxury for a person to have and I thought it was an obvious way of generating cash that could be used by [Mr Su] to help his business"* (emphasis added).

420. At other times she stated (in a passage on which particular reliance was placed in Madam Su's Written Closing Submissions) that, *"I wanted him to sell the aeroplane so that the company costs could be paid."*

421. I am satisfied that the reality is that Madam Su wanted the Aeroplane sold for more than one reason; first as she regarded it as an extravagance; secondly (and importantly for present purposes) so that she could receive the Aeroplane Proceeds (or are very large part of them) herself, and in circumstances where she knew perfectly well of the Judgments (and for reasons I address in due course in Sections G.2 to G.7 the Blair Freezing Order), and thirdly (to the extent that any remained) to generate cash for the family business (though this latter point is more applicable in relation to the Monaco Sale Proceeds).

422. In this regard it might also be thought that the proof is somewhat in the pudding, by looking at who received the Aeroplane Sale Proceeds. Upon receipt the Aeroplane Sale Proceeds were immediately distributed as set out in the table below.

Recipient	**US$**
Sparkle Wood	440,045
Tseng Yu Hsia	251,050
Terrace View	95,050
Monsieur Ali Kheloui	50,050
Total	**836,195**

423. For the reasons that I have already given, I am satisfied that Sparkle Wood is Madam Su's, not Ms Tseng's vehicle i.e. that Madam Su is its ultimate beneficial owner/controller regardless of Ms Tseng's directorship, contrary to Madam Su's evidence in this regard (which is a lie) with the result that Madam Su received at least US$440,045 of the Aeroplane Sale Proceeds (and she accordingly also lied when she said that she did not receive any of the Aeroplane Sale Proceeds).

424. However, as addressed in Section I, I am also satisfied that Ms Tseng was not, herself, being repaid for any loans made by her using her own money (another lie of Madam Su's), and any such loans as were notionally made by Ms Tseng were made on behalf of Madam Su and with Madam Su's money, and any monies received by Ms Tseng were being received on behalf of Madam Su. Accordingly I am satisfied that some US$691,095 of the Aeroplane Sale Proceeds were received by Madam Su even before considering the monies paid to Terraceview - which was itself a company owned by Madam Su as it was used to repay the Aeroplane Sale Proceeds to Mr Su via Ms Tseng.

425. This is all, of course, entirely consistent with, and further corroborated by, Mr Su's emails to Ms Lesley Huang of TMT on 28 May 2015 and his need for the money **back** from **Madam Su**. Furthermore, this episode, and Madam Su's reaction (and lack of surprise at the request), further cements the conclusion that Madam Su knew of the Judgments and why Mr Su was so desperate for the money back at this time with the pending need to put up security to the Court of Appeal to pursue the appeal from the Judgments.

E.6.3 EVENTS ON 28 MAY 2015

426. It is clear that, on 28 May 2015, Mr Su wanted the Aeroplane Sale Proceeds back. He sent two messages in quick succession to Ms Lesley Huang of TMT. The first read: "*Send **mdm su** I need 800k **back** from airplane money's*" (emphasis added). In the second, he wrote: "*Otherwise **I need commit suicide soon***" (emphasis added). The first and obvious, but important, point to note is that Mr Su emailed Ms Huang to contact **Madam Su** rather than emailing Ms Tseng (or asking Ms Huang to contact Ms Tseng) – as he would surely have done had Ms Tseng been the ultimate recipient and beneficiary of the monies. What this shows is that Mr Su knew perfectly well (as did Madam Su) that (1) the ultimate recipient of the monies had been Madam Su, and (2) regardless of the routing of the monies inward, the decision maker as to their return was Madam Su, and not Ms Tseng.

427. Secondly, it is obvious why he needed the money, namely he had until 29 May 2015 to put up security for his appeal to the Court of Appeal in the Underlying Proceedings, and he needed the Aeroplane Sale Proceeds back to facilitate a loan to enable him to do so.

428. That Mr Su was asking Madam Su to give him back the Aeroplane Sale Proceeds so that he could pursue his appeal in the Underlying Proceedings is also clear from other documents. On 28 May 2015, Mr Su received an email from Ms Sara Chao of TMT concerning a possible finance package from Colony Capital Acquisitions LLC ("Colony"). The amount of the proposed loan (€49.3m) roughly approximates what was required to discharge the existing loans to Barclays Bank secured by the Monaco Villas and to enable Mr Su to pay the security that the Court of Appeal had ordered. The obvious inference, which I draw, is that Mr Su needed Madam Su to return the Aeroplane Sale Proceeds to him so that he could pay the arrangement and other necessary professional fees associated with the loan's provision - were this not the case it is difficult to see why the return of the Aeroplane Sale Proceeds was so urgent and why if they were not received he would commit suicide (clearly the Aeroplane Sale Proceeds themselves were nowhere near the amount of money needed to put up the security).

429. When it was put to Madam Su in cross-examination that "*he needed money so that he could refinance the Monaco villas to find the money for that appeal*" this was not met with a response to the question but rather the denial, "*I didn't do anything.*"

430. There is a debate between Lakatamia and Madam Su as to how Madam Su received these emails and whether they had been forwarded to her, or to someone on her behalf by email. I set out below what I consider to be the most likely explanation. Ultimately, however, I do not consider a great deal turns on the debate because, when cross-examined, Madam Su admitted receiving the forwarded messages from Ms Huang, albeit that she said she could not remember how she received them.

431. It appears that what happened is that upon receiving Mr Su's messages of 28 May 2015, Ms Huang highlighted them (probably on a mobile device), and forwarded them to herself. This generated the characters (轉) (寄) in the subject field of her email of 09:50, which translate as "*forward*". She then clicked reply to the forwarded messages which generated the "*RE*" in the subject field, before deleting the intermediate email recording that she had forwarded the messages to herself and typing the following message into the body of the new email: "*Dear [Madam Su], Nobu san [asked me to forward to you the following brief message]*. Finally, she sent the email to herself at 09:50. By including "*Dear [Madam Su]*" she was clearly addressing Madam Su, and so sending the message to Madam Su (by one route or another).

432. Whilst I do not consider anything ultimately turns on it, I consider it more likely than not that Ms Huang also blind copied the message to an email account to which Madam Su, or someone acting on her behalf had access. That is consistent with Mr Su having asked Ms Huang to "*send*" his messages to Madam Su, the fact that Ms Huang typed the salutation "*Dear Madam Su*" into the email, and the fact that Ms Huang said that she was "*forwarding*" the message to Madam Su.

433. Notwithstanding Madam Su's denial that she had an email account, I consider that receipt via someone's email is more plausible than Baker McKenzie's previous suggestions that Ms Huang must have printed the email and given it to Madam Su or faxed it to her. As to the former it appears that Madam Su was in Japan at the time, and the rapid response is inconsistent in any event with any hand delivery. As for faxing (and though she did communicate by fax), no disclosure has been given of any such fax or cover sheet, and Madam Su could have, but did not, call Ms Huang to give evidence.

434. In any event it is clear that, by whatever means, Madam Su did receive Mr Su's messages and in short order. Tellingly, and whilst Madam Su in her fifth witness statement stated that Mr Su's suicide threat was *"very distressing"* and whilst she agreed when cross-examined that it was a memorable thing for her son to tell her that he needed money otherwise he was going to commit suicide, and this has stuck in her mind, there is no suggestion that she did not know why he needed the money or what had driven him to threaten to commit suicide, nor any response from her expressing surprise or seeking an explanation as to what was wrong, as she, and any mother, would surely have done had she not known what it was all about. The reason for that, I am satisfied, is that she knew perfectly well that the context was his need to put up security for his appeal to the Court of Appeal from the Judgments – a subject that they must have been in discussion about in the preceding days give what Mr Chang was telling the Court of Appeal.

435. It is notable that Ms Huang, having clearly had a response from Madam Su herself within two hours (though that has not been disclosed), replied to Mr Su stating: "*below messages refered* [sic] *to Mdn Su this morning. Here is outcome!*". Then, set out within tram lines (and so probably copied and pasted as Lakatamia submits) is a proposal involving Ms Tseng.

436. Given the language of referral to Madam Su, such proposal (and associated decision) clearly originates with Madam Su, not Ms Tseng. In her fifth witness statement Madam Su said this: "*I asked whether she [Ms Tseng] would be willing to re-lend this money (and a bit more) back to Nobu*". However when cross-examined and shown the proposal, Madam Su asserted "*This is something his employee did. It has nothing to do with me. I don't understand*" – which is counter to the express terms of the email itself. No better is the suggestion, unsupported by any documentation that "*He may have talked to her [Ms Tseng]. I couldn't do anything about it*" and "*I didn't organise it. She [Ms Tseng] asked me if it's okay to lend money to him. What can I do? It was very urgent. We had to say okay but I was very worried*". Such answers were, I am satisfied, an attempt to deflect matters away from the fact that it is Madam Su who is being contacted and it is Madam Su's money that is coming back (via Ms Tseng), but in a way to avoid any direct involvement of Madam Su.

437. What was proposed was as follows:-

"*Ms. Tseng* (曾代書) *will lend you USD 800K but*

The premises are that

A. Purely, this is private financing between "Nobu san" & "Ms. Tseng (曾代書)*"*

B. After receiving July repayment from Wisco in early of July 2015, Nobu san must immediately repay back plus interest to Ms. Tseng (曾代書).

C. Nobu san, please confirm your acceptance immediately so that Ms. Tseng (曾代書) *can arrange payment.*"

438. There is therefore no expressed surprise about the fact that she is being asked for "*800k back*" from the Aeroplane Sale Proceeds, and no expressed surprise that her son is threatening to commit suicide. I am satisfied that the reason for both of these points is that she knew that she had received money from the sale of the Aeroplane and knew that Mr Su needed to put up security for his appeal to the Court of Appeal, the deadline to do so being imminent.

439. Equally, the "*premises*" for the loan are explained to Mr Su as being "*[p]urely private financing between [Mr Su] and [Ms Tseng]*" – which is odd phraseology if Madam Su was an intermediary brokering a deal with Ms Tseng, as it would self-evidently be "private financing". Far more likely, I consider, is that Madam Su is distancing herself with the imposition of Ms Tseng in the money chain removing any direct link to her.

440. The reference to "Wisco" also provides a window into Madam Su's knowledge of the family business well after 2010 such that she is aware that TMT had a claim against Wisco (a Chinese state entity based in Wuhan) and that it was due to pay funds to the TMT group in July 2015 – which also tells the lie to her assertion that she never knew

the details of litigation in which Mr Su was involved (something that she had asserted from the time of her first statement). Such claim against Wisco also rather pales into insignificance when compared to Lakatamia's litigation, and Mr Su's liability under the Judgments under appeal (hence the need for the repayment in the context of putting up security).

441. The suggested explanation that the message is recording an agreement with Ms Tseng who had received the repayment of certain unspecified loans made to Mr Su by means of the receipt of part of the Aeroplane Sale Proceeds and was now prepared to extend a further line of credit, jars with the messages from Mr Su addressed to Madam Su, and is simply not credible. I address Ms Tseng's role in Section I. Suffice it to note at this point that I am satisfied that Ms Tseng is used as a conduit for Madam Su's own monies to distance Madam Su from payments. Were it otherwise the speed of payment would be simply inexplicable.

442. Mr Su sent two separate messages agreeing to the terms, one at 14:22 in Taipei from an email account linked to his iPhone stating "*confirm*" and one at 14:23 in Taipei from his Blackberry stating "*ok confirm*". Ms Huang then sent Mr Su a message at 14:50 in Taipei stating, "*Dear Nobu san[,] As per Nobu san's text message below, we will refer it to* ***Ms Tseng* (曾代書) *that Nobu san accepted the terms***". (original emphasis)

443. This message makes little sense based on Mr Su as addressee, with him being addressed in the third person, reiterating his own message accepting the offer shortly before – the obvious inference, which I draw, is that this message is for third party consumption, being blind copied to someone – in all likelihood someone passing the message on to Madam Su (whether that be her daughter who was living with her or someone else).

444. The actual money transfer, of US$800,000, was made from an account in Ms Tseng's name at Hwatai Bank in Taipei to an account in the name of Terrace View. Madam Su's evidence, which I have no reason to doubt on this point of detail, is that Taipei banks close at 3pm with the result that the transfer was made in a very short period which is not consistent with a large (independent) third party loan, but very much consistent with Ms Tseng acting on Madam Su's instructions in relation to Madam Su's own money.

445. Why the security was not put up is not clear given a lack of any associated disclosure from (amongst others) Mr Su. It could be as a result of legal advice on the merits (cloaked with privilege) or, for whatever reason, the funding with Colony was not forthcoming, though whether that was from the Colony side or the Mr Su side is equally obscured.

446. It was around this time that the funding of W Legal changed from Great Vision to UP Shipping (Mr Chang being the sole director of both companies). The immediate cause of this change seemingly being that DNB, with whom Great Vision banked, had made it clear in mid-2015 that it no longer wanted Great Vision's business and intended to close its account. On 12 June 2015, W Legal received the first payment from UP Shipping.

447. Madam Su had thus received part of the Aeroplane Sale Proceeds only to have returned them to Mr Su as a result of Mr Su's emotional blackmail of her. That left the Monaco Villas as an available significant asset to pay, amongst others, Madam Su. It is

convenient to pick up the story in relation to the Monaco Villas at this point – much, in terms of Madam Su's lies in relation thereto, has already been addressed in Section D.2.

E.7 THE MONACO VILLAS

E.7.1 THE ACQUISITION OF THE MONACO VILLAS

448. The Monaco Villas were the Villa Rignon and the Villa Royan. There is no dispute that Mr Su owned them - as acknowledged by Madam Su in her Written Opening Submissions and in her witness evidence, and as found by Sir Michael Burton (to the criminal standard), when committing Mr Su for contempt in March 2019. In relation to the alleged Monaco Conspiracy it is important to place the Third and Fourth Defendants (Portview and Cresta), in context. On established legal principles, and as has already been addressed, Portview and Cresta are treated as separate legal entities to each other and to Mr Su in the context of any alleged conspiracy between them (and/or with others).

449. On 10 August 2006, the Fourth Defendant, Cresta, was incorporated in the BVI and Cresta became the owner of Villa Rignon, which it bought for €10m. Until Mr Su became involved, Cresta had been owned by M1 Real Estate Ltd (which was represented by a Mr Mustapha El-Solh).

450. On 13 March 2007, Mr Su incorporated the Third Defendant, Portview. Based on the corporate documents of the company, Mr Su was the sole initial shareholder in Portview. He was also a director of Portview, along with Mr Chang.

451. On 19 April 2007, Portview concluded a Sale and Purchase Agreement with M1 Real Estate Ltd concerning the purchase of Cresta (the owner of Villa Rignon), for €16m. Following the completion of the sale, on 12 June 2007, Mr Su became Cresta's sole director.

452. On 22 December 2010, Cresta additionally bought a second villa, Villa Royan, for €24m. Cresta paid €10.5m in cash, and the remainder €13.5m was borrowed from Barclays Bank.

E.7.2 MADAM SU's INVOLVEMENT IN THE MONACO VILLAS

453. It appears that building works were under way in 2012, the purpose of the works seemingly being a project to demolish and rebuild Villa Rignon. In this context there appears to have been financial difficulties on Mr Su's part in making payments to builders in connection with the villas. It appears that it was around this time that Madam Su undoubtably made (as is now admitted) her €5 million injection or loan into the Monaco Vilas that she failed to mention in any of her statements and (incredibly) was to say she did not remember, despite the sums involved and being (as she put it) *"angry about it"*.

454. I have already addressed this at length in Section D.2 above, and will not repeat my findings made therein at this point. Madam Su's evidence in this regard was a pack of lies from start to finish. It will be recalled that in her trial statement one of the headings provided "*no involvement in the Monaco villas or the companies to which the proceeds were transferred"* (a double lie as she did have involvement in the Monaco Villas

through her €5 million injection and she did have involvement in the companies to which proceeds were transferred (as addressed in Section H, UP Shipping, and as already addressed in Section D.2, Sparkle Wood)).

455. The lie as to *"no involvement in the Monaco villas"* was unmasked (only) by reason of one of the documents, which was the product of the Search Order against Mr Su, that Cockerill J ruled, at the start of the present trial, was not privileged or in respect of which privileged had been waived - namely, the spreadsheet attached to the email of 20 February 2019 from Mr Su to Mr John McDonald (the ghost-writer for books in relation to Mr Su) that expressly referred, adjacent to a date of 13/07/2012, to *"Euro 5mill was given with Euro 5 mill Capital inection [sic] from Mother"*.

456. The lie as to involvement in the companies to which the proceeds were transferred (so far as Sparkle Wood is concerned) was unmasked by the Payment Schedule and the Payment Ledger, which revealed that the payment of US$1,100,000 to Sparkle Wood was, in fact, a payment to Madam Su.

457. The €5 million injection by Madam Su in 2012 makes sense given the renovation works, and the apparent financial difficulties that Mr Su was facing in relation to paying builders at the time.

E.7.3 SUBSEQUENT EVENTS RELATING TO THE MONACO VILLAS

458. In November 2012 Mr Su signed, as representative for Cresta, an amended agreement to the existing loan between Cresta and Barclays, it would appear to re-finance the Monaco villas.

459. In early 2013, Mr Su, represented by Ms Chen, appears to have been in further discussions with Barclays Bank, with Barclays apparently keen to improve its security on the Monaco Villas and/or to deal with potential non-payments. In the course of these conversations, Mr Su intimated an intent to transfer part of his shareholding in Cresta to his daughter, Airi Morimoto, (purportedly) for a "succession purpose".

460. On 13 May 2013, Mr Su resigned as a director of Cresta, replacing himself with his daughter Ms Airi Morimoto. Until at least 12 June 2014, Airi Morimoto was the sole director of Cresta.

461. In June there were some changes to the formal ownership of Portview as recorded in the share register. It appears that as at 7 June 2013, Mr Su held one share in Portview (under certificate no.1). On 7 June 2013 there are entries regarding the 999 shares under certificate no.2 (which it appears can be ignored as those shares were apparently issued and then immediately cancelled - the register records they were transferred but does not identify a transferee). The result was that Mr Su was the legal owner of 750 shares (1 share under certificate no.1, and 749 shares under certificate no.4), and Airi Morimoto was the legal owner of 250 shares (under certificate no.3).

462. One matter on which Lakatamia and Madam Su are agreed is as to what this was all about:*"it is clear that Mr Su was using his daughter in an effort to defeat the interests of his creditors"* (Lakatamia) and *"Mr Su [was] transferring control and/or ownership of assets to his daughter, as part of an apparently deliberate strategy to elude his*

creditors" (Madam Su). The reality of the matters is that the Monaco villas always were, and at all times remained, ultimately beneficially owned by Mr Su.

463. It appears that the original intention behind Mr Su's purchase of the Monaco Villas (which adjoin each other) was some form of redevelopment to enhance the value of the overall project. In a dilapidated condition their open market value was seemingly in the order of €82m, although in 2014 it was contemplated that they should be marketed for a higher price of €125m-€150m. However it appears that the project to redevelop the Monaco Villas did not come to fruition, presumably because it required substantial ongoing cash injections to service the mortgages and fund the construction work, additional monies that Mr Su did not have, and Madam Su was presumably unwilling to provide.

464. By the end of 2013, there were four substantial loans on the Monaco Villas worth €6.5m, €13.5m, €5m, and €6.5m respectively. The maturity date was 30 June 2014. It appears, from a later email, that Barclays Bank no longer wanted the relationship, and an amendment was signed, seemingly to allow Cresta time to refinance or sell the properties.

465. In May 2014, Barclays was reminding Cresta that it wanted to terminate the relationship and would be seeking repayment on the maturity date. In this regard, at that time, Mr Su was informed by one of his employees, Sara Chao, that Barclays might take legal action in relation to the Monaco Villas unless Mr Su signed a sale mandate. Mr Su procured that his daughter Airi (then the sole director of Cresta) sign a mandate which was forwarded to Barclays.

466. Mr Su apparently resolved to sell the Monaco Villas for a price of €125m excluding tax (notwithstanding the fact that the properties had been valued at €82m). No sale was concluded.

467. In order to assist in finding a potential buyer (or a refinancing) for the Monaco Villas, Mr Su procured that Airi give a power of attorney to a certain James Garrett, an employee of Fortus Properties (a London-based property development company), who subsequently assisted in dealing with Barclays, and with trying to find a buyer for the Monaco Villas. In the course of those discussions, it appears to have been suggested to Mr Garrett that Airi (as above, now supposedly an owner of at least part of Portview) was the beneficial owner of the Monaco Villas - despite the fact that that she was then only 19 years old and a student with no apparent assets or income.

468. In July 2014, there was apparently a proposal for a joint venture with a Kuwaiti entity, who would take a 65% stake in the project. However, Mr Su was not keen to relinquish majority control over the project. There was apparently another proposal being put forward in September 2014.

469. On 11 July 2014, Barclays formally demanded the repayment of its loans. At the time, and in the following months, Mr Su and Mr Garrett pursued either a refinancing of Cresta (and/or the Monaco Villas), or the sale of the Monaco Villas.

470. On 30 January 2015, Barclays Bank served a formal summons on Cresta to pay the sum of €33,085,599.29, which started the process which eventually led to the Monaco Sale Proceeds being paid to Maître Zabaldano.

471. A few months later, Mr Su - in his capacity as "director of Portview" - granted Mr Garrett a power of attorney to retain Maître Zabaldano, on behalf of Cresta to represent its interest.

472. In March 2015, Mr Garrett appeared to be in charge of dealing with the consequences of Barclays' attempt to seize the Monaco Villas. Airi was the sole director of Cresta at this time, and Mr Garrett was expressing his frustration to Mr Su: *"Airi is not responding. Cresta needs a director I can work with".* On 9 April 2015 Airi was replaced by Mr Chang as director of Cresta.

473. Meanwhile, by the summer of 2015, no security having been provided in the manner ordered by the Court of Appeal, the appeal in the Underlying Proceedings had automatically lapsed, and the stay of execution on the Judgments of Cooke J ceased to have effect. This was recorded in an Order made by Longmore LJ on 12 June 2015, which provided that, *"It is noteworthy that the difficulties experienced by the appellants were not foreshadowed in the appellants' application for permission to appeal…They ought to have been."*

474. The evidence before me is that Lakatamia thereafter began to take steps to enforce the Judgment Debt, and during the course of these enforcement efforts, Lakatamia learned of the existence of the Monaco Villas.

475. In the meantime Cresta was trying to block the sale of the Monaco Villas through legal challenge - presumably because Mr Su (perhaps rightly), did not feel a forced sale at auction would be in the interests of anyone other than Barclays and/or because Mr Garrett was still trying to arrange a refinancing of the Monaco Villas.

476. It may well be that Mr Su wanted (if he could) to retain ownership of the Monaco Villas (as Madam Su points out). However, as already noted, the alleged Monaco Conspiracy relates not to a combination concerning selling the Monaco Villas, but rather one concerning the Monaco Sale Proceeds.

477. Mr Su himself made a last-ditch attempt to refinance the mortgages. Those attempts are recounted in the affidavit of M. Jean-Phillippe Flament, a Monegasque businessman. M. Flament explains that when the potential financier found out about the Blair Freezing Order and that Mr Su had recently purported to transfer his beneficial ownership in the Monaco Villas to one of his daughters, he refused to have anything further to do with Mr Su. Accordingly, on 20 October 2015, the negotiations in this regard collapsed.

478. On the very next day (21 October 2015) the Monaco Villas were sold at auction at the suit of Barclays for €65.1m. Airi Morimoto, who was at the time 20 years old, was named as the director of Cresta in the notice of auction. Hill Dickinson found out about the auction shortly before it took place and wrote to W Legal, but was unable to stop the auction from going ahead.

479. It is, perhaps, an obvious point but Mr Su could have been under no illusions from this point onwards that the Monaco Sale Proceeds were caught by the Blair Freezing Injunction and he would have been aware from this point in time (and in reality long before) that he could not deal with, or dissipate the same.

E.7.4 THE MONACO SALE PROCEEDS

480. Thereafter, the Monaco Sale Proceeds were held in the *Caisse des Dépôts et Consignations* in Monaco (the equivalent of the Court Funds Office) pending the resolution of the dispute between Barclays and Cresta as to their respective entitlements.

481. In the meantime, Mr Su continued to challenge the actions of Barclays in Monaco and the associated sale of the villas – again this was presumably because he considered that a better outcome could be achieved for himself if the Monaco Villas could remain in his ownership. In this regard on 23 November 2015, Cresta filed an appeal before the Monaco Court of Appeal, seeking to annul the seizure of the Monaco Villas, and seek damages against Barclays. Then on 15 January 2016, Barclays filed a submission to the "Cour de Revision" in Monaco, the content of which suggests that Cresta was trying to overturn the order for sale of 21 October 2015 (i.e. the auction of the Monaco Villas), whilst on 22 January 2016, Cresta filed a further submission, again seemingly trying judicially to obtain an annulment of the sale of the Monaco Villas.

482. In the event, it appears that nothing came of any of this, and on 1 February 2017, the parties agreed a partial settlement of that dispute, which allowed for the bulk of the funds to be released. Pursuant to this agreement, €27,127,855.01 thus went to Maître Zabaldano.

483. It appears that before the Monaco Sale Proceeds left Maître Zabaldano's account, the Payment Schedule, that has already been referred to, was drawn up. It will be recalled that it is entitled: "*Money for payment outstanding payment and restructuring TMT business from 2017*" and records, in the top left "*immediate outstanding need to pay*". I have already set the table out, the first two entries of which provide for two payments to be made to Madam Su. The first is for US$1m and is said to be in respect of "*old loans*". The second is for US$100,000 and is said to be "*for Wisco Case paid*". As already addressed, and as is clear from the Payment Ledger, in due course, following the receipt of the Monaco Sale Proceeds, such payments were made to Madam Su (by the payment to Sparkle Wood).

484. On 18 December 2016, Madam Su sent Mr Su a message via Ms Hsieh. The message reads: "*Madam Su said that you must back Taipei*". This sounds to be in the nature of a summons, and I consider that it is more likely than not, given its timing and tone, and against the backdrop of the impending receipt of substantial monies from the Monaco Villas, that Madam Su was summoning Mr Su back to Taipei to discuss such pending receipt, which is entirely consistent with the fact, as is now known, that in due course, and as envisaged in the Payment Schedule, some of the Monaco Sale Proceeds (via UP Shipping and Sparkle Wood) were received by Madam Su herself (quite apart from the issue as to the ownership of UP Shipping itself, addressed in Section H below).

485. In the meantime, Mr Su was seemingly already making plans for what could be done with at least some of the Monaco Sale Proceeds. For example on 10 February 2017 he was messaging someone telling them, *"we will pay you 10pct each for 2 super max"* – it appears he had not learned his lesson from his previous disastrous conduct in putting down deposits on multiple supermax vessels from Hyundai that he could not then pay for, and that he was intending to embark on yet another spending spree.

486. On 15 February 2017, Mr Su was told by Sara Chao that there was a delay to the 10 per cent down payment he wanted to make for the ships due to "*AML*" (presumably, Anti Money Laundering). Mr Su immediately responded: "*We got stuck in AML because fund came from different place. It is 100pct stuck. I think it needs few days. What to do?*".

487. On 17 February 2017, Mr Su was asked "*what has happened today? Why do you think early next week? What has bank said?*". Mr Su responded: "*We change payment route. I will explain by phone*". It is not clear what the original payment route was that was contemplated (to the extent that it was not, as transpired, via UP Shipping) and I do not consider that it would be appropriate to speculate (as Madam Su does in her Written Closing Submissions).

488. On 20 February 2017, Mr Su was asked whether "*all settled*", and responded "*call me*". The next day, there was the following WhatsApp exchange:

> *Sender: What news? Any Progress?*
> *Mr Su: With this am*
> *Sender: ?? What do you mean ?*
> *Mr Su: Sara is handling well*
> *Sender: When will be paid? Nobu I can't just tell the bank 'Sara is handling well' - I need to be able to update them latest - when will money be paid*

489. On 23 February 2017, the sum of US$26,712,851.68 – the Monaco Sale Proceeds – was transferred by Maître Zabaldano to UP Shipping's bank account at Citibank in Taipei. It arrived on 1 March 2017. From a contemporary WhatsApp message on 25 February 2017 that records *"I had asked madam but it is a holiday in Taiwan on Monday so we cannot have bank open"* it appears that Mr Su spoke with Madam Su during the period of time whilst the money was in transit.

490. Maître Zabaldano was authorised to transfer the Monaco Sale Proceeds by Mr Chang at a time when he was Cresta's sole director. On 21 February 2017, Cresta's other director (Mr Garrett) had resigned, stating in an email to Ms Chao, *"I understand that my resignation is necessary"*, Ms Chao stating to Mr Garrett, *"We understand your intention…Please can we process the unanimous agreement to transfer funds from lawyer between you and Mr Chang of directors of Cresta…, then we will process the resignation procedure…"* to which he replied, *"I am no longer a Director of Cresta…so this is not within my authority"*. It seems clear enough that Mr Garrett resigned as he was not willing to approve the transfer (no doubt because of concerns as to the propriety of doing so not least given the existence of the Blair Freezing Order, and involvement of Hill Dickinson, of which he was surely aware).

491. It is common ground that Mr Chang is a nominee. Lakatamia says that he acted first and foremost for Madam Su, whereas Madam Su says that he acted exclusively for Mr Su. I address the issue in Sections G.4 and H below. It suffices to note, at this point, that as Lakatamia point out, there is no document before the Court showing Mr Su communicating with Mr Chang about this transfer or instructing him to make it.

E.7.5 MADAM SU'S KNOWLEDGE OF THE MONACO SALE PROCEEDS

492. As I have already addressed in Section D.2**,** an aspect to the lies about the Monaco Villas told by Madam Su is the timing of Madam's Su's knowledge of monies coming from the sale of the Monaco Villas, and her evidence in her first and third witness statements that she only learned about the money coming in from Monaco when she had a conversation with Judy Hsieh after the monies had been received. As already addressed, I am satisfied that that is not right, and that Madam Su knew about the monies coming in, and most fundamentally of all, she knew that she was to receive part of the proceeds, and did receive part of the proceeds – there now being documentation available evidencing such contemplated receipt (and actual receipt), namely the Payment Schedule and the Payment Ledger, the former recording *"immediate outstanding need to pay"* with the 2 entries expressly stated to be to *"Madam Su"* for US$1,000,000 (*"old loans")* and US$100,000 ("*for Wisco case paid"*), whilst the latter recording *"Beneficiary", "Mdm Su", "Amount" "$1,100,000"*.

493. This is, of course, of central relevance to Lakatamia's case that Madam Su had in fact come together with her son to ensure that the monies returned to the family coffers and were not available to pay the judgments. It is clear that it was contemplated that she would be repaid monies if the Monaco Villas were sold. In this regard I have already referred to the fact that she at one point stated in cross-examination that, *"I was hoping he would pay back, of course"*, but rather more tellingly (in an unguarded answer), she stated *"I just wanted my money back"*.

494. Madam Su's evidence in her first witness statement that she only learned of the sale of the Monaco Villas in February or March 2017 when she had a conversation with Ms Judy Hsieh, who happened to mention the transfer of the Monaco Sale Proceeds is, I am satisfied, untrue, as is her evidence that, "*[t]his transfer did not attract my attention at the time*". Leaving aside the rather fundamental point that she in fact received part of the Monaco Sale Proceeds (as evidenced by the Payment Schedule and the Payment Ledger), and so could not but be aware of the transfer, it is clear that receipt of the Monaco Sale Proceeds did attract her attention at the time even on the basis of the contemporary documentation that was disclosed.

E.7.6 THE REMINDERS EMAIL

495. On 3 March 2017 (i.e. two days after UP Shipping received the Monaco Sale Proceeds and the very day that the US$1,100,000 was paid by UP Shipping to Sparkle Wood), Mr Chang sent Mr Su an email on Madam Su's behalf ("the Reminders Email"), to which I have already referred. It is convenient to set out its contents at this point. It provides:

> "**the following reminders are given by madam su** who wishes you to do every thing carefully from now on so that **our company** could maintain normal operation and make money to avoid huge loss in the future
>
> - **do not** borrow from any bank or financial institution so as to avoid paying huge interest or non-performing debt you created.
>
> - **do not** buy lots of vessels within short time to avoid huge repairing fees/management fees/operation fees/insurance fees

incurred and eventually liquidity issue shall happen ad consequential losses created again.

- what you are going to do should be managed by your good control with the way step by step to do carefully.

- **do not** fail to pay employee salary timely so that you can retain capable employee as you wish

- everything you involved in is nothing to do with madam su and it is your responsibility for everything you did.

- ocean net people and equipment **are not allowed to be** in 12f fushing road

- you can pay madam su euro 5 million after you make money".

(emphasis added)

496. A number of points can be made about this email. First, it is sent by Mr Chang on behalf of Madam Su – so he is acting on her behalf in sending the email. Secondly, it is sent very soon after receipt of the Monaco Sale proceeds, and is clearly directed at those proceeds – hence the reference to *"do not buy lots of vessels within a short time"* (which pre-supposes a cash injection). Thirdly, it is clear, therefore, that the Monaco Sale Proceeds have attracted Madam Su's attention. Fourthly, it refers to *"our company"* which is entirely consistent with the residual business of TMT (including UP Shipping) remaining a family business and Madam Su continuing to be involved, and considering herself to be involved, in that family business. Fifthly, it contains a number of negatives – things that Mr Su is told not to do, and those *include "ocean net people and equipment are not allowed to be in 12f fushing road"* – so she considers that she is in a position to give such negative commands. Sixthly it refers in terms to paying Madam Su Euro 5 million *"after you make money"* which can only be a reference to the €5m loan/investment by Madam Su made in connection with the Monaco Villas (and involvement that Madam Su repeatedly denied in her witness evidence, only to be revealed through disclosure).

497. There can be no doubt that Madam Su was wanting 5 million Euros out of the Monaco Sale Proceeds, and that the same was discussed contemporaneously by Madam Su or on Madam Su's behalf with Mr Su as is clear from the WhatsApp messages on 1 March 2017 which include entries, from Mr Su to Ms Hsieh at 13.33 and 13.35 UTC respectively on 1 March 2017, "*We cannot pay madam su 5 mill Euro"* and "*We cannot pay madam su*" which are only consistent with Madam Su (or someone acting on her behalf) making clear to Mr Su that she wanted 5 million Euros out of the Monaco Sale Proceeds in respect of her loan/investment – which ties in with the content of the Remainders Email which post-dates these WhatsApp messages, and is consistent with further communications involving or on behalf of Madam Su with Mr Su leading to Madam Su indicating, in the Remainders Email, that she would wait in respect of the Euro 5 million (otherwise the WhatsApp messages and this part of the Reminders Email would be "out of the blue" and make no sense).

498. When asked about the Reminders Email Madam Su deliberately sought to downplay its relevance stating that it has "*nothing to do with anything*" - a ridiculous answer given that it is addressing substantive matters including actual factual matters (e.g. the Euro 5 million loan/investment) and stating that it was prompted by her having received information regarding Mr Su from a fortune teller. Whilst Madam Su undoubtably used fortune tellers (as is evidenced in the documentation before me) it cannot be suggested, and is not suggested, that the words used are drafted by a fortune teller or that a fortune teller was addressing the individual points she makes (which are directed at particular aspects of the business).

E.7.7 PAYMENTS OUT FROM UP SHIPPING

499. Even before the Monaco Sale Proceeds reached UP Shipping's account with Citibank there is correspondence which evidences that Mr Su was already considering purchasing a number of vessels, with Mr Su corresponding in this regard with Ms Chao, Ms Hsieh, "Toby" (a broker) and Mr Subroto Banerji at Blue Diamond. It is equally clear (from the contents of the Reminders Email) that Madam Su was aware of Mr Su's plans in this regard (at least in general terms, whether or not she knew the precise details).

500. Upon receipt of the Monaco Sale Proceeds into UP Shipping's account, a series of payments were made to various companies and law firms pursuant to the Payment Schedule. In this regard on 1 March 2017, the sum of US$8,000,000 (net of a bank charge of US$55) was paid to Blue Diamond. The evidence suggests that this was the entity through which Mr Su was seeking to continue to trade. As already noted, the Payment Schedule refers to payments totalling US$9 million to enable Blue Diamond to purchase two ships (with in the event a transfer of US$8 million). This, in and of itself, further corroborates that the Payment Schedule pre-dates the receipt and distribution of the Monaco Sale Proceeds.

501. The content of the Reminders Email is itself consistent with Madam Su knowing that money was going to be injected into tonnage, and that what was going to be done was with a view to making money (with it being contemplated that Madam Su would be paid in respect of her Euro 5 million loan/investment when Mr Su made money – i.e. out of future contemplated profits).

502. What is clear is that (contrary to Madam Su's evidence) in the meantime, and no doubt set against the backdrop of the numerous previous very substantial dollar advances of Madam Su to Mr Su, Madam Su received US$1,100,000 herself out of the Monaco Sale Proceeds via the transfer to Sparkle Wood on 3 March 2017 (the very same day as her Reminders Email), as contemplated by the Payment Schedule, and as evidenced by the Payment Ledger.

503. Many other payments were made out of the UP Shipping bank account to lawyers, and others, with such payments being clearly linked to Mr Su (and directed by Mr Su) as Madam Su points out. Whilst Madam Su relies upon this in her witness evidence as evidence that the money was treated as Mr Su's, this is equally consistent with the perpetuation of the situation that had pertained previously – i.e. payments made with the agreement or acquiescence of Madam Su of Mr Su's business expenses, lawyers' fees and living costs.

504. In any event what is, I am satisfied, clear, is that contrary to Madam Su's evidence, Madam Su did receive monies out of the Monaco Sale Proceeds in the form of the US$1,100,000 to Sparkle Wood, just as she had received monies out of the Aeroplane Sale Proceeds, as already addressed.

F. SUBSEQUENT EVENTS

F.1 THE PASSPORT ORDER AND TRANSFER OF FUNDS

505. I have already recounted, in Section A, a summary of subsequent events, but will now address matters in further detail, as appropriate, in the context of the genesis of this action. As already noted on 26 January 2018, Lakatamia had applied for and was granted a Passport Order against Mr Su by Popplewell J. Following an episode when Mr Su managed to abscond from the Gare du Nord in Paris, he arrived in the jurisdiction at Heathrow on 10 January 2019 and was met by police officers who served the Passport Order upon him and confiscated his passports. Mr Su proceeded to lie to those officers about his intended address, falsely stating that he was going to The Dorchester Hotel in London. According to Madam Su, it was at this point, in a telephone call from her son on 12 January 2019, that she first learned of the Blair Freezing Order. Lakatamia's case is that this is simply untrue, and that Madam Su had long known of the Blair Freezing Order and the Judgments (I address this aspect of matters at Sections G.2 to G.7 below).

506. On 14 January 2019, Madam Su transferred 100,000 NTD to Mr Su's credit card. The following morning, Mr Su took a taxi to Liverpool with a view to fleeing the jurisdiction by ferry to Belfast, demanding a free ticket on a Stena Line ferry on the asserted basis that he was good friends with the owner of the company. The staff were suspicious and called the police. He was arrested and spent the night in HMP Liverpool.

507. In prison, Mr Su wrote several letters addressed variously to Madam Su and his estranged wife, Ms Rika Morimoto; Ms Chizuru Tsunoda, his partner; and to his daughters, Airi and Eri.

508. It is not clear whether Madam Su in fact received the letters that were written to her (she does not refer to them in any of her witness statements). However it is the content of the letters themselves that are of relevance in terms of what they show in relation to Madam Su's pre-existing knowledge.

509. In particular Mr Su wrote the following letter to Madam Su which provided, amongst other matters (in translation), as follows:-

> "*…For this time, the trick was that the judgment (the order) was not informed to Nobu individually and the company in the complaint from Hill Dickinson LLP (Law Firm) to the courts in England.*
>
> *In summer 2018 when I had to wait for an hour at the Customs in Paris, I went back to the French side and was not arrested.*
>
> *I asked the Lawyer Nigel and many people to investigate at that time, but nothing was found.*

There was an appeal on 9 January 2018 and I was on the wanted list for a year on 26 January.

That is, when I … London on 10 [January] with an EVA's airplane, I was surrounded by 5-6 policemen in plainclothes, I was given a wanted document after passing the Immigration.

The lawyer (£50,000) took a long time, and also Nigel was on a business trip to America. I was given a thick set of documents on Monday at Nigel's office in W Legal.

In other words, (Crime of) contempt of court was there first inside the documents. (it was hidden)

There was the 1st tribunal at the end of 2014 and the 2nd tribunal was in 2015, and I lost both of these. (Starting with the increased and padded amount in 2011)

But this warrant was issued under the provisional 'Freezing (illegible) order' in 2011, and the lawyer for the defendant did not know the content of this warrant on 26 January 2018 until 10 January 2019.

However, the court put the date in with 'Liberty to Subject' (illegible) and it is possible to appeal to the court if I am dissatisfied with the content.

Money is required to do so. As this was probably fabricated/hoaxed, I will go through judgement on 16 January at the High Court in London followed by judgement at Liverpool detentions centre for this time.

And they are intending/plotting to give me a guilty verdict at the end of January."

510. The letter accordingly contains a detailed explanation about the Passport Order (presumably because this had only been served on Mr Su on 10 January 2019 on his arrival at Heathrow and this needed to be explained in detail to Madam Su), however there is no explanation given regarding the *"Freezing…order in 2011"* or the judgment, I infer because Madam Su already knew about them - otherwise what Mr Su was saying would make no sense, and Mr Su clearly was seeking to make sense in his letter, elaborating when he needed to do so in that regard.

511. When cross-examined, Madam Su asserted that Mr Su did not divulge the details of his legal disputes to her because he believed she would not understand them and her brain was not working. But that is contrary to what Mr Su is doing – he is writing a letter to Madam Su in which he uses technical language such as *"freezing…injunction"* and *"contempt of court",* but he does not feel the need to explain the circumstances surrounding the freezing injunction and the judgments that had been obtained against him. This is consistent with Madam Su already knowing of such matters – if that were not the case his letter would not make any sense to the reader.

512. As already noted, Mr Su's letter is not dealt with by Madam Su in her witness statements. In the oral opening on Madam Su's behalf it was suggested that the letter should be understood as Mr Su explaining to Madam Su <u>for the first time</u> the steps that Lakatamia had taken against him. However the letter clearly includes matters that

Madam Su does already know about – such as Mr Su's arrival at Heathrow on 10 January 2019 and being served with the Popplewell Order – Mr Su having rung her on 12 January 2019 to explain that to her, and the content of the letter is consistent with Madam Su already knowing about other matters, including by reference to the lack of detail, or explanation, in relation to the *"freezing … injunction*".

513. Another matter that Madam Su did know about was the "£50,000" that "took a long time" to get to W Legal – it being clear from the contemporaneous documentation that Mr Su had asked Madam Su for the £50,000 before his letter from prison had been written.

514. In this regard, on 16 January 2019, Mr Su was brought before me, and I placed additional restrictions on him but otherwise substantially renewed the orders made in the Passport Order. On the same day, Lakatamia served Mr Su with a committal application notice.

515. On 17 January 2019, Mr Su received an email from "*Sherry*" who told him that "*Madam Su said without worry and without changing hotel. Just take it easy*". Mr Su responded: "*I need cash 100,000 to pay to survive*". As Lakatamia points out, this shows that Sherry is a conduit between Mr Su and Madam Su, and secondly that Mr Su considered that Madam Su had cash resources to provide to Mr Su.

516. In this regard on 31 January 2019, Madam Su paid £50,000 to W Legal in respect of Mr Su's legal fees. The routing of this money was, on any view, convoluted, and I am satisfied that the only realistic explanation is that Madam Su wished to disguise that she was the origin of the money.

517. Baker McKenzie in their letter of 15 January 2021 at paragraph 17 identified that the manner in which the money was paid was as follows. First, one of Madam Su's daughters withdrew NTD2,100,000 in cash from her account and handed it to Madam Su. Secondly Madam Su passed that cash to Sherry (her oral evidence was that Sherry probably came to collect it). Thirdly, Sherry paid that money into the New Taiwanese Dollar account of Ocean Net Ltd ("Ocean Net") (a company through which it appears that Mr Su managed his residual business interests), which transferred the money to its US Dollar account. Fourthly, Ocean Net transferred the money to Platform Shipping LLC ("Platform Shipping") (a company incorporated in the UAE partially owned by Mr Su). Fifthly, Platform Shipping transferred the money to W Legal.

518. When asked for an explanation as to why this elaborate method of transferring money was adopted, Madam Su replied "*It was so urgent I didn't know what else to do*". Whatever else one might do this convoluted method of transferring money was hardly something that would spring to one's mind as a way of making an urgent payment – very much the reverse. The obvious way to make an urgent payment would have been by a direct (and simple) bank transfer from Madam Su or her daughter to W Legal. Yet further, such an explanation required (amongst other matters) Sherry having to carry a bag containing NTD2,100,000 in cash across Taipei – such a convoluted approach is only really consistent with a desire on Madam Su's part not to have the payment associated with her. Incredibly, when cross-examined, Madam Su suggested that she did not know who to transfer the money to (something that she or her daughter could easily have established), and it was no answer to the question of why the monies could not simply have been transferred from her daughter's or her own bank account (she

was, after all, very familiar with the process of transferring money from bank accounts having managed the transfer of monies from bank accounts that the family business held with DNB until 2015).

519. Perhaps unsurprisingly the lengths that were gone to themselves raised concerns for Mr Kushner of W Legal who was concerned about the source of the funds and wanted more information about Platform Shipping. On 3 February 2019, Mr Su wrote to Ms Eva Chu of Ocean Net: "*This money has to return because [i]t is not my mother[.] Please return money n remit again by my mother friend*" (presumably a reference to Ms Tseng). In the event it appears that the problem was solved by getting an employee of Mr Su, Mr Wang Chien-Wei, to represent himself as the "*principal member*" of Platform Shipping and to having loaned the money to Mr Su. Such lies can only be to the benefit of Madam Su - W Legal's interest was to ensure that there was no breach of the Blair Freezing Order, and they could have been told the money was from Madam Su or her daughter – the pretence that the money was coming from Platform Shipping can only have been for Madam Su's benefit.

520. Indeed it appears that Platform Shipping was introduced as a "firewall", and was even described as such in a seemingly contemporary document. In this regard on 1 February 2019, Mr Wang sent an email to Sherry headed "*Madam Su's Account Balance*" and referring to an attachment which he asked Sherry to check. Accompanying the version of the email before me is an extract from a spreadsheet or ledger which shows four transactions, and which appears to show the route of the NTD2,100,000 from Ocean Net's NTD account to Ocean Net's US dollar account (in the form of US$68,270.48); and then to Platform Shipping's US dollar account; from where US$66,000 (or £55,000) was paid to W Legal. In this ledger Platform Shipping is described as a "*Firewall*".

521. On 21 February 2019, Mr Wang sent a revised version of "*Madam Su's Account Balance*" to Sherry, asking her to check it. This version suggested that £66,000 had been paid to W Legal on 1 February 2019, which was incorrect as only £50,000 had been paid on 1 February 2019 had been £50,000. A further £66,000, was, however, paid to W Legal on 23 February 2019. That money again originated from Madam Su (or her daughter) and followed the same convoluted route, including the imposition of Platform Shipping as a "firewall" (and described as such in each iteration of the ledger". The description of the imposition of Platform Shipping as a "firewall" was entirely apt. It concealed that the monies had originated with Madam Su or her daughter.

F.2 MR SU'S CROSS-EXAMNATION AS TO HIS MEANS

522. On 27 February 2019, Mr Su was cross-examined as to his assets under CPR Pt 71. He was represented by the public access counsel paid for by Madam Su. Madam Su also instructed Baker McKenzie Taipei's office for assistance (she says on 14 January 2019) and (per her first statement) at her request, *"Baker McKenzie contacted Nobu's lawyers to get a better understanding of the situation"* and *"Baker McKenzie's London office also attended Court to observe proceedings".* Given that Mr Su has his own lawyers, paid for by Madam Su to protect his interests, the obvious inference (and one that I draw) is that Baker McKenzie were there to protect Madam Su's interests which were perceived to be in need of protection. When cross-examined Madam Su said that she was a mother and was naturally worried and did not know much about what was going on in London. However (as was pointed out to her) she could have asked Mr Kushner

of W Legal, for whose services she was paying on behalf of her son. Although denied by her, I am satisfied that the reason she wanted her own lawyers was that she was concerned that her own role would emerge during the course of her son's cross-examination, and she perceived that she had interests that were in need of protection. If she had such perception, she was to be proved right, as Mr Su's evidence before Sir Michael Burton was contrary to her interests.

523. When Mr Su was asked about the whereabouts of the Monaco Sale Proceeds, there were the following exchanges (relied upon by both Lakatamia and Madam Su):-

> ***"Mr Phillips**: Now Mr Su, there we are, 27 million goes to Mr Zabaldano. Where is it? What happened to it afterwards?*
> ***A**. I already resigned of Cresta. TC Chang handle the case.*
> ***Q**. No, Mr Su, that won't do. TC Chang acts on your instructions. Your daughter is a director of Cresta. You are seriously telling his Lordship you have not asked where that money is now?*
> ***A**. It was sent -- my understanding, honestly, it was sent from court office and James Garrett also took him -- his -- involved with TC Chang. That's what I know.*
> ***Q**. Where is the money now, Mr Su?*
> ***A**. I believe it went to family's.*
> ***SIR MICHAEL BURTON**: Went to?*
> ***A**. Family's money.*
> ***SIR MICHAEL BURTON**: Back to your family?*
> ***A**. Yes.*
> ***MR PHILLIPS**: Do you mean to your mother or to one of your daughters, to one of your sisters? Where did it go?*
> ***A**. In my father's investment, my mother controlled, so it go back to my -- TC Chang's instruction to go to. My mother's handled the estate.*
> ***SIR MICHAEL BURTON**: In Japan or in Taiwan?*
> ***A**. This, my mother has to answer this questions.*
> ***SIR MICHAEL BURTON**: No, no. You say that money from the sale of this house went, on your instructions, through the lawyers to your family?*
> ***A**. No, no.*
> ***SIR MICHAEL BURTON**: Where did it go?*
> ***A**. It went to Zabaldano, the lawyer in Monaco.*
> ***SIR MICHAEL BURTON**: Yes?*
> ***A**. And it went to instruction of my mother's to go to the mother's lawyers.*
> ***SIR MICHAEL BURTON**: To the mother's?*
> ***A**. The family's lawyers, I think.*
> ***SIR MICHAEL BURTON**: Where does she keep the money?*
> ***A**. I have to ask my mother because I have problem with my mother last one month, to try to ask her to give me money back so I can settle with Mr Polys Haji-Ioannou.*
> ***SIR MICHAEL BURTON**: Right. That's good news.*
> ***A**. I had -- meantime there is 3 million euro still in the court under family name. This is the real situations.*
> ***SIR MICHAEL BURTON**: Sorry, 3 million euro is still in the court in France, in Monaco?*
> ***A**. Yes, sir.*
> ***SIR MICHAEL BURTON**: 29 million has gone to your mother. You haven't asked her where it is?*

A. *I asked my mum to give back and want to settle discussion with Mr Polys Haji-Ioannou to reconcile the debt, so that we can finish this case."*

524. So, in summary, Mr Su told the Court that the Monaco Sale Proceeds had been transferred to Madam Su or to lawyers acting on her behalf, and that he had asked Madam Su to "*give*" the Monaco Sale Proceeds "*back*" to him. Earlier in his evidence he had also said that Madam Su "*want[ed] to control everything*", and referred to her as performing a "*treasury function*". He also told the Court that Madam Su knew about the Blair Freezing Order (albeit, as Madam Su points out, the question was asked of Mr Su in the present tense). Sir Michael Burton himself observed, *"She must have plainly known about the order*".

525. Lakatamia says that all this evidence of Mr Su was true – that the money went to UP Shipping (a company Lakatamia says Madam Su had control of), that Madam Su did indeed "hold the purse strings" and Madam Su also personally received part of the Monaco Sale Proceeds (as is now demonstrable from the Payment Schedule and Payment Ledger), and that Madam Su knew about the Blair Freezing Order (as addressed in Sections G.2 to G.7 below). In contrast Madam Su says Mr Su told the Court a brazen pack of lies in circumstances where he knew what happened to the proceeds of sale, most or all of which (it is said) went for his benefit, and at his direction.

526. I deal with the position of UP Shipping and the role of Madam Su in Section H below. Suffice it to note at this point (as is also addressed in Section D.2) that I am satisfied that Madam Su did receive US$1,100,000 of the Monaco Sale Proceeds via Sparkle Wood, and also did have control over UP Shipping where all the Monaco Sale Proceeds were transferred in the first place. I address the issues as to her knowledge of the Blair Freezing Order and the Judgments in Sections G.2 to G.7 below.

527. Ultimately, what matters is what the factual position is on the basis of the evidence (including the documentary evidence) that is now before the Court, as addressed herein, not what Mr Su may have said (on oath) in the past, or what other judges may have concluded based on the (limited) documentary material before them at the time. However, I am satisfied that the thrust of what Mr Su told Sir Michael Burton as to the transfer to Madam Su was correct given the position in relation to UP Shipping (as addressed in Section H and given the personal receipt of some of the proceeds by Madam Su herself (through Sparkle Wood), as already addressed. I address in Section G the issues that arise as to Madam Su's position in relation to the business and in relation to her alleged knowledge of the Blair Freezing Order and the Judgments.

528. Equally it also matters not what was said by the Court of Appeal when considering Mr Su's evidence regarding the Monaco Sale Proceeds in the context of the appeal from the discharge of the Burton Freezing Order. In this regard Lakatamia relies upon what was said by Haddon-Cave LJ at [69] referring to the matters set out at [65] to [68]:-

> "Furthermore, whilst there was reason for regarding Mr Su's evidence with a degree of circumspection, his admissions in cross-examination about his mother's role in helping him dissipate the Net Sale Proceeds deserved weight as potential admissions against interest and because they were supported by other evidence (outlined above). It is noteworthy that the Judge had previously expressed himself in his judgment in the Committal Proceedings entirely satisfied that Mr Su

admitting that his mother had given the money back to him "was a clear picture that he had given her the money to start with…"

529. I consider the relevant part of this observation is the reference to the other evidence before the Court – of which there is now more than was available to the Court of Appeal, the contemporary documentation being of particular assistance where witnesses have been found (as in the present case) not to be witnesses of truth.

530. For her part Madam Su has referred to what was said, at the start of Lakatamia's appeal by McCombe LJ in relation to Mr Su's evidence given before Sir Michael Burton under CPR Part 71 that, *"if that is the principal evidence, you wouldn't hang a dog on it."* Again, I consider the relevant observation to be *"if that is the principal evidence"*, for Lakatamia's case against Madam Su was never solely dependent upon Mr Su's evidence (even for the purposes in respect of which it was previously deployed), and the evidential position has, in any event, moved on significantly, as addressed herein. I would only add that it might be thought that Sir Michael Burton was well placed to judge the veracity of this aspect of Mr Su's evidence given that he had the distinct advantage of seeing Mr Su give evidence in person over several days. Be that as it may, I have focussed, and focussed solely, on the evidence that is now before me.

F. 3 THE BURTON FREEZING ORDER AND SUBSEQUENT EVENTS

531. I have already addressed subsequent events in Section A. As already recounted, in the wake of Mr Su's evidence, on 27 February 2019 Sir Michael Burton made an ex parte worldwide freezing order (the Burton Freezing Order) against Madam Su, Portview and Cresta freezing Madam Su's worldwide assets up to the value of €27,127,855.01, whilst on 6 March 2019, Lakatamia issued the instant proceedings against Mr Su, Madam Su, Cresta and Portview.

532. On 29 March 2019, Sir Michael Burton committed Mr Su to prison for contempt of court. The contempts that Lakatamia proved (ex hypothesi to the criminal law standard) included his failure to disclose his interest in the Monaco Villas and dissipating the Monaco Sale Proceeds in breach of the Blair Freezing Order.

533. In his judgment (having seen and heard Mr Su giving evidence at both the CPR Pt 71 hearing and the committal hearing), Sir Michael remarked that the net proceeds of sale of the Monegasque properties were *"plainly revealed to have been sent to [Madam Su]"* (Judgment of 29 March 2019 paragraph 8, reported at [2019] EWHC 898 (Comm) at [8]). He added *"Most significantly, from the point of view of dissipation of the [Monaco Sale Proceeds], Mr Su gave evidence that they were passed to his mother, or to family advisers at his mother's instructions, and that he said that he had last month asked her to 'give him the money back' so that he could settle with the Claimant. I am entirely satisfied that giving him the money back was a clear picture that he had given her the money to start with"* (paragraph 12).

534. I repeat what I said in the Introduction in Section A that none of this is binding upon Madam Su, or of any evidential value before me. I note in passing, however, that it is entirely consistent with Lakatamia's case and contrary to that of Madam Su. It is also consistent, in material respects, with evidence that is now before me (for example the contents of the Payment Schedule and Payment Ledger).

535. On 27 March 2019, Madam Su served her first witness statement, denying that she had received the Monaco Sale Proceeds (which I am satisfied was a lie); and saying that she understood that they had been transferred to UP Shipping (which is true). On 5 April 2019, Madam Su served Lakatamia with a second witness statement attaching certain UP Shipping bank statements (showing the money arriving into the account on 1 March 2017). Not all UP Shipping bank accounts have, however, been disclosed by Madam Su (and Lakatamia invites the drawing of adverse inferences in that regard as addressed in Section K.2 below).

536. On 2 May 2019 Sir Michael Burton concluded, on the return date, that there was a serious issue to be tried and good arguable case that Madam Su had conspired with Mr Su to defeat the Blair Freezing Order (reported at [2019] EWHC 1145 (Comm)). He granted Lakatamia permission to serve Madam Su, Cresta and Portview out of the jurisdiction. He maintained the Burton Freezing Order against Cresta and Portview but discharged it against Madam Su on the narrow ground that there was no real risk of dissipation (essentially in the light of Madam Su's age).

537. Lakatamia appealed, essentially on the basis that the fact that there was a good arguable case to the effect that Madam Su had conspired to defeat a freezing order against Mr Su was more than adequate to establish that there was a real risk that she would take steps to render herself judgment proof. On 23 July 2019 Males LJ granted Lakatamia permission to appeal against the order discharging the Burton Freezing Order against Madam Su, and refused Madam Su permission to appeal against the grant of permission to serve her out of the jurisdiction.

538. On 19 November 2019 the Court of Appeal heard Lakatamia's appeal, and on 16 December 2019 restored the Burton Freezing Order against Madam Su (reported at [2019] EWCA Civ 2203). The fact that there was a good arguable case to the effect that Madam Su had conspired with Mr Su to defeat the Blair Freezing Order was more than adequate to establish that there was a real risk that she would take steps to render herself judgment proof. Delivering the principal judgment, Haddon-Cave L.J. said that the risk that Madam Su would unjustifiably dissipate her assets was "plain and obvious".

539. In the interregnum between the discharge and reinstatement of the Burton Freezing Order in relation to Madam Su, Madam Su sold her share of a Tokyo flat in the circumstances that I have already addressed. On 25 December 2019, Madam Su swore an affidavit of her assets. She said that she had no assets worth more than US$10,000 (which was itself a lie). Quite apart from such matters, such evidence was hardly credible in circumstances where she was spending substantial sums on Mr Su's legal representation, as well as Baker McKenzie's costs of representing her (Baker McKenzie's cost on the return date of the freezing order alone had exceeded £200,000).

540. On 11 February 2020 Sir Michael Burton committed Mr Su to prison for four months for additional contempts of court.

541. On 14 February 2020 Cockerill J made a worldwide freezing order ex parte against UP Shipping and Blue Diamond and ordered that they be added to this action as Fifth and Sixth Defendants. The same day the CMC took place. I have addressed the procedural aspects of the action in Section A, and will not repeat the procedural chronology of

events at and following the CMC and the subsequent PTR, that have already been addressed.

542. In circumstances where Mr Su had long failed to comply with a series of orders made against him that he disclose his assets, on 17 June 2020 Andrew Baker J made the Search Order against Mr Su for the purposes of facilitating enforcement of the Judgment Debt. The Search Order was served on Mr Su the next day at a London apartment in which he has stayed following his release from prison in April 2020. On 2 July 2020, Foxton J continued the Search Order.

543. The Search Order captured some 800,000 mostly electronic documents which were reviewed by independent reviewing lawyers appointed to protect Mr Su's legitimate privileges, with the result that in due course some documentation was provided to Lakatamia upon which Lakatamia relies against Madam Su.

544. However, it is important to note the limitations of the disclosure resulting from the Search Order. First, the Search Order documents are not, and do not purport to be, Madam Su's documents. Lakatamia says (whilst Madam Su strongly denies) that Madam Su has failed to comply with her own disclosure obligations (addressed in Section K.2 below). Secondly, upon his being served with the Search Order, Mr Su refused for two hours to allow the Supervising Solicitor to enter his premises (Report of the Supervising Solicitor, paragraph 3(g)-(i)) and it is possible that data was deleted during this time period. Certainly, it appears that during the search itself, Mr Su engaged in behaviour that suggested that he was deleting emails from one of his iPads (Report para 3(p)). Thirdly, the Search Order documents are disclosed to Lakatamia only if they are relevant to Mr Su's assets and are not privileged (Order of Foxton J paragraph 4). Accordingly, there is no necessary identity between the Search Order documents and those that would have been disclosed in this case had Mr Su complied with his obligation to give disclosure in this action (which he undoubtably did not). Fourthly, the Search Order did not give Lakatamia access to documents held by Mr Su's document custodians. Fifthly, the Search Order captured only documents stored on Mr Su's devices that he had with him in London in June 2020. It did not give Lakatamia access to documents stored on Mr Su's computers elsewhere (although shortly before trial, three computers in Mr Su's old office were imaged but, at least in so far as disclosable documents are concerned, they almost exclusively contained documents that pre-date 2011). Sixthly, Mr Su had additional email accounts the contents of which were not caught by the Search Order. The Supervising Solicitor reported to the Court that during the search "*Various other email and social media accounts were identified but Mr Madden [the independent computer expert] was not able to access them*" (Report of the Supervising Solicitor paragraph 3(k)).

545. On 31 July 2020, Lakatamia applied *ex parte* for a freezing order against Mr Chang, Airi Morimoto and Eri Morimoto.

546. As regards Mr Chang, Lakatamia's application was premised on his involvement in the transfer of the Monaco Sale Proceeds. Lakatamia alleged that Mr Chang was a party to the conspiracy to deal with the Monaco Sale Proceeds contrary to the Blair Freezing Order. In relation to Airi Morimoto, Lakatamia alleged that she too was a party to the conspiracy regarding the Monaco Sale Proceeds by virtue, in summary, of her involvement with the Monaco Villas and the fact that Mr Su appeared to have used her as a device to defeat the interests of his creditors. With respect to Eri Morimoto,

Lakatamia alleged that she had conspired with Mr Su to dissipate other of his assets in breach of the Blair Freezing Order, specifically, that they had combined to expend money (whilst Mr Su was facing committal proceedings) in connection with the production of J-pop music videos in which Eri Morimoto was to star.

547. Jacobs J rejected Lakatamia's application. In the case of Mr Chang, he did so because he was not satisfied that Mr Chang had any assets. The Judge indicated that Lakatamia could restore its application if and when it provided better evidence in this regard. Jacobs J rejected Lakatamia's application as regards Mr Su's daughters either on the basis that there was no good arguable case or on the ground that he was not satisfied that he should exercise his discretion so as to grant the relief sought.

G. MADAM SU'S KNOWLEDGE

G.1 INTRODUCTION

548. Madam Su denies that she knew of either the Blair Freezing Order or the Judgment Debt until January 2019. Thus she stated at paragraph 19 and 20 of her first witness statement that:

> "It was not until January 2019 that I knew that Nobu was involved in litigation with Lakatamia. Nobu was involved in a number of cases, including the Chapter 11 Bankruptcy cases. I did not know (and did not want to know) the detail of these cases. Neither Nobu nor anyone else told me about the Lakatamia case.
>
> Likewise, I did not know until January 2019 that the English Court had made a freezing order against Nobu … Nobu did not tell me about it and Lakatamia's lawyers did not send me a copy of it …".

549. That was her stance on the return date on the Burton Freezing Order, asserting that there was no evidence to link her to the conspiracy, or to establish that she had the requisite degree of knowledge. On the basis of the material before him (albeit only by reference to "serious issue to be tried") Sir Michael Burton concluded that *"I am entirely satisfied that there is sufficient evidence for me to establish a serious issue to be tried in respect of both torts alleged, by reference to her knowledge of the judgment and the Blair Order, and her assistance by reference to the receipt and disposition of the Monaco proceeds to evade them" (*Judgment 2 May 2019 at [19]).

550. Madam Su maintained her denial throughout her evidence at trial when the point was repeatedly put to her (per Madam Su's Written Closing Submissions and Appendix 5 thereto, on 31 occasions). However, and as I have already noted in Section D.2, repetition does not, of course, necessarily mean that what is stated is true. Equally, and to state the obvious, to state the same thing repeatedly does not thereby make what is stated any more true (if true it be).

551. In the light of my findings as to the veracity of Madam Su's evidence, and the obvious reasons for Madam Su seeking to deny knowledge of the Judgment Debt and the Blair Freezing Order, I do not consider that any real weight could be given to her evidence in relation to her knowledge.

552. Lakatamia submits that this is, in fact, Madam Su's third big lie (the first two being, as I have found, that Madam Su knew nothing about the Monaco Villas or what was going on in Monaco and that she did not receive any of the Aeroplane Sale Proceeds or Monaco Sale Proceeds). I will express my finding in relation to this at the conclusion of this section, after all the evidence has been considered.

553. Lakatamia submits that even as a matter of pure likelihood, it is inconceivable that Madam Su was not aware of (and understood) the Blair Freezing Order and the Judgment Debt prior to the time of the alleged Aeroplane and Monaco Sale Proceeds Conspiracies in circumstances where the Blair Freezing Order was made as long ago as 2011 and the Judgment Debt accrued under judgments dating from 2014 and 2015, when set against the backdrop of subsequent events, and Madam Su's involvement in the family business.

554. Whilst I bear in mind the question of inherent probabilities, the surest guide, as addressed herein, is to have regard to the factual material before me and to consider what light it sheds on the question of Madam Su's knowledge. Inevitably (to the extent that there is no direct evidence of knowledge), questions arise as to what inferences, if any, it is appropriate to draw. Certain points have already been foreshadowed in the context of other matters, but are in sharper focus at this point – for example the circumstances in which Mr Su failed to put up security for his appeal to the Court of Appeal and also Mr Su's correspondence with Madam Su in January 2019 following his arrest, and in each case what light such matters shed upon what knowledge Madam Su had.

555. Lakatamia submits that for at least five reasons, Madam Su obviously knew about the Blair Freezing Order and Judgment Debt before the Aeroplane Sale Proceeds and Monaco Sale Proceeds were dissipated (the proceeds were transferred to UP Shipping on 4 May 2015 and 1 March 2017 respectively):-

(1) Madam Su was heavily involved in Mr Su's business, the operation of which would inevitably have been greatly disrupted by (in particular) the Blair Freezing Order. In particular, it is said that Madam Su was intimate with employees of Mr Su who did know about the Blair Freezing Order and Judgment Debt, and they must have discussed the Blair Freezing Order and Judgment Debt with her.

(2) Madam Su handled various banking transactions on behalf of the family business via DNB, which had been put on notice of the Blair Freezing Order in 2011.

(3) Madam Su owned and controlled the funds of Great Vision, and it is common ground that Great Vision knew, through its sole director and nominee shareholder, Mr Chang, of both the Blair Freezing Order and the Judgment Debt. This point is in sharpest focus in the context of the appeal to the Court of Appeal and the need for security, in close proximity to the return of the Aeroplane Sale Proceeds back from Madam Su.

(4) Madam Su funded Mr Su's lifestyle through an unlimited credit card, an arrangement that can only have been designed to circumvent the Blair Freezing Order of which she plainly thus knew.

(5) Mr Su wrote a letter to Madam Su while he was detained in Liverpool in January 2019 that refer to the litigation with Lakatamia in terms that Lakatamia says shows that Madam Su already knew about them.

556. It is convenient to consider each of these points in the same order as considered by Lakatamia, and to consider the extent to which they shed any light on the question of Madam Su's alleged knowledge.

G.2 MADAM SU'S INVOLVEMENT IN THE FAMILY BUSINESS

557. On the evidence before me it is clear that Madam Su was involved in the family business after the death of her husband and in the period up to receipt of the Aeroplane Sale Proceeds and the Monaco Sale Proceeds (albeit she very much sought to downplay such involvement, and the precise extent of her involvement) and she denied that her involvement sheds light on what she knew.

558. I note, however, that in her third witness statement at paragraph 17 she stated that, *"I was close with a number of TMT's employees and so, even after my involvement in the TMT business had diminished, I remained in contact with a number of them and sometimes spoke to them about the state of the TMT business. As a result of these conversations I continued to have some high-level knowledge of the goings on of the business*" and at paragraph 56(a)*" I remained close to a number of [Mr Su's] employees and I spoke to some of them regularly. In early March 2017, on one such call with Judy Hsieh, the head of accounting for the TMT group, I asked how the business was doing… In this instance, Ms J Hsieh told me not to worry and explained that a very large amount of money had just been transferred to the [sic] one of [Mr Su's] businesses, Up Shipping from the Sale of the Villas".*

559. In relation to this alleged conversation with Ms Hsieh, this leads on to Madam Su's evidence that I have already addressed in Section D.2, and that I am satisfied is a lie about ownership of Sparkle Wood, and the circumstances surrounding the associated payment of US$1,100,000 (as revealed by the Payment Schedule and the Payment Ledger), as part of her lies concerning alleged lack of knowledge about, and involvement in, the Monaco Villas and Monaco Sale Proceeds.

560. However, for present purposes, when asked about having spoken to Ms Hsieh regularly in 2014 and 2015 (which she confirmed they did, although she said they talked about pets but not really other things – evidence I do not regard as credible) she was referred to paragraph 56(a) of her third witness statement (albeit addressing the position in 2017), and Madam Su confirmed that she did talk with Ms Hsieh about how things were going with the business:-

"Q. …This is in 2017 and what I am.
suggesting to you is that you had frequent conversations with Ms. Hsieh about the business. Do you agree?
A. Yes, because at the time employees were often not paid on time and we talked about that.
Q. And you talked about more than that. You talked about how things were going in the business. Do you agree?

A. Yes. Sometimes we would talk about that and talk about how things are going in the business, whether it's going well. **We talked about everything**."

(emphasis added)

561. Even taking para 17 of Madam Su's third written statement at its lowest, i.e. that she was close with a number of TMT employees, and remained in contact with a number of them, and spoke to them about the state of TMT's business, and as a result continued to have some high-level knowledge of the goings on of the business, it would be very surprising indeed if, in consequence she had not become aware of the Blair Freezing Order and the Judgment Debt which are (on any view) important aspects of the "goings on of the business".

562. The riposte in Madam Su's Written Closing Submissions is to submit that *"no one in Mr Su's entourage appears to have paid much attention to these English court orders"* and that *"Mr Su and his employees were not remotely as worried about the freezing order as Lakatamia would suggest".* I have considerable difficulty with such submissions even at this high level of assertion, not least in circumstances where the Blair Freezing Order bit against Mr Su personally (and DNB, with whom the TNT companies banked, had notice of the Freezing Order) whilst the Judgement Debt was for around US$46 million and was owed by Mr Su personally as well as by various companies within the family business.

563. Mr Su issued a press release on the subject. It is, perhaps, an obvious point, but the very fact that there was a press release shows the perceived importance of the contents (i.e. the Blair Freezing Order and the Judgment Debt) to the business - which rather highlights the unrealism of the suggestion in Madam Su's Written Closing Submissions that *"Mr Su and his employees were not remotely worried about the freezing order"* and *"no one in Mr Su's entourage appears to have paid much attention to these English Court orders"*.

564. Contrast that with the opening paragraph of the press release itself:-

> "Nobu Su has spoken out about the latest UK court ruling against his company in the case between TMT and Lakatamia, and has vowed to appeal the judgment. The world-wide freezing injunction obtained by Polys-Hajijanou over Nobu Su personal assets since August 2011 has damaged Mr. Su personally and professionally and he is keen to gain back wrongful acts."

The reality is that Mr Su, in issuing the press release, was worried about the freezing injunction, and was paying rather a lot of attention to the English court orders.

565. However, quite apart from such high level points, Madam Su's submission simply flounders in the context of the appeal to the Court of Appeal which was, after all, an appeal in relation to the Judgment Debt, and in relation to which security had to be put up leading to the events concerning Great Vision, and the associated knowledge that Madam Su thereby acquired (had she not already acquired such knowledge).

566. Even in the abstract it is, I consider, inherently unlikely, that employees did not make Madam Su aware of the Blair Freezing Order and of the Judgment Debt. However matters can be considered, and tested, more substantively by reference to the matters to

which I will turn during the course of this section, including (by way of example only) why it was that Mr Su's expenses were being funded by Madam Su on an unlimited credit card; the circumstances in which Mr Su failed to put up security for the appeal, and why it was that he was in such need for the return of Aeroplane Sale Proceeds, and why it was that Madam Su did not express surprise at his threat to commit suicide if she did not give monies back.

G.2.1 MADAM SU'S TREASURY FUNCTION

567. There are various strands to Lakatamia's submission that Madam Su had extensive participation in the family business, and in consequence was well aware of both the Blair Freezing Order and the Judgment Debt. The first is what Lakatamia described as Madam Su's "treasury function". Whilst Madam Su asserts that it is not clear what is meant by this, it originates with Mr Su's evidence in the CPR Part 71 hearing in the Underlying Proceedings, and what is being suggested is clear enough.

568. During the CPR Part 71 hearing in the Underlying Proceedings, Mr Su described Madam Su's interest as having a "treasury function". When asked about this his evidence was as follows:-

> "Q. You referred to your mother...as having a treasury function in relation to Excel. What did you mean by that?
>
> A. In my family business **my mother controlled the treasury side of the money** and **she give the final approval**"
>
> …
>
> Q. You give money to your mother so that Lakatamia in this case cannot get their hands on it; that's right isn't it?
>
> …
>
> A. **My mother controlled money** and I don't have signatures on many account."

569. This evidence of Mr Su is, at least in terms of control out of payments from bank accounts, corroborated by Madam Su's own evidence that she controlled the bank accounts for several of the family companies (albeit she says on Mr Su's behalf) – for example in her first witness statement she said that she *"managed payments from certain companies under [Mr Su's] control, including Great Vision, Excel Express and Modesta*" and she *kept "an eye on the balances of these companies"*. Baker McKenzie have also explained that Madam Su faxed payment instructions to the bank, DNB, for companies that banked with DNB (although I note that there has been a lack of disclosure of the documentation that would have been generated in this regard – save for some bank statements concerning Great Vision). I address Madam Su's involvement in relation to company accounts held at DNB in Section G.3 below.

570. Mr Su's oral evidence is also consistent with what had been said in the meeting on 11 May 2011 that Mr Gardner and Mr Panayiodou attended on behalf of Lakatamia with Mr Karakoulakis of Clarksons. It will be recalled that the notes of Mr Gardner recorded that Mr Karakoulakis said that "[*Mr Su's] mother was holding the shipping purse*

strings", Mr Panayiodou similarly recording that "*…[Mr Su's] mother who is holding the purse strings won't release money from the shipping portfolio*". Whilst I bear in mind the context in which such matters are being said (i.e. seeking to explain non-payment), it is entirely consistent with what Mr Su himself said to Sir Michael Burton.

571. One contemporary document of interest, in terms of Madam Su's alleged control of the money, is an email that Mr Wayne Chin of TMT sent to Mr Su on 2 May 2015 in which he stated that "*Working capital still been stop by Madam Su until today, we have no money to keep office anymore, We had better to find a cheap warehouse and keep all office assets there*".

572. It is, I am satisfied, clear from such matters that Madam Su was involved in transferring monies from the accounts of family companies (and as addressed below that included making payments to Lakatamia). It would be surprising if she had no knowledge of the Blair Freezing Order in such context or (even more surprising) if (as she was to assert) she had never even heard of Lakatamia (a matter I consider further below). It is also clear that Madam Su undoubtably showed an interest in monetary matters (and expressed views in that regard), and that there was a perception that she controlled *"the purse strings"*, a perception I consider that was well-founded, and evidenced by such correspondence (i.e. that she did, indeed, control the money and have the final say). In such context it would be very surprising if she was not aware of the reason why particular monies were being paid. Equally (as addressed below) it would also be very surprising if as a substantial lender to Mr Su and the family companies, Madam Su would not be aware as to why money was needed.

573. It is clear from the evidence (as identified in Madam Su's Written Closing Submissions at paragraph 261 and following) that Mr Su was nevertheless involved in the day to day control of borrowings, payments and the financing of the business, and it appears that this extended to his being able to open and close bank accounts. However that is a rather different point and it does not mean that Madam Su was not consulted or that she did not have a "say" in what happened, or indeed did not ultimately control the money and have the final say (when she wanted it). Nor does it detract from the fact that Madam Su was involved in the making of payments and it does not mean that Madam Su was not expressing her views as to the deployment of monies (she clearly was – see, for example, the Reminders Email) – that context is part of the overall picture as to what knowledge Madam Su had and would have acquired over a number of years. I do not consider that the points made under the heading of "treasury function" in of themselves provide an answer as to the knowledge of Madam Su, but her involvement in the respects identified are part of the overall picture as to her involvement in the family business when considering the knowledge she is likely to have acquired.

G.2.2 MADAM SU'S FUNDING OF THE FAMILY BUSINESS

574. Madam Su's funding of the family business is a short point, but is one that I consider to be a powerful point. On the basis of what is stated in the Loan Fax Madam Su lent more than US$44 million to Mr Su and the family business during the period from 30 April 2012 to 30 August 2013. Even making every allowance for the fact that this was family lending in the context of a family business, Madam Su would not, I am satisfied, have advanced such substantial sums without a good understanding of the business' finances, the business' liabilities (including the Judgment Debt), why monies were required, what restrictions there were on the business (and its ability to borrow) and

what the prospects were for the future, not least in circumstances where she was still involved in the business, and was expressing views as to the running of the business (as addressed further in Section G.2.4).

575. I consider it inherently improbable that in such circumstances Madam Su would not be aware of both the Judgment Debt (and the payments to Lakatamia preceding it), and the Blair Freezing Order itself – these were major matters impacting upon the business and its liabilities, and imposing restrictions in the context of its trading – they are of obvious relevance to any lender, including a family lender. However whether or not determinative in its own right, this point strongly fortifies the overall picture as to Madam Su's knowledge.

G.2.3 MADAM SU AND THE FAMILY OFFICE

576. It is clear that Madam Su at all material times owned (until a disposal for "succession planning") the building from which the family business was run (and it would appear even now has control over it). As disclosed in Madam Su's Affidavit of Assets she owned the office from which the family business was run, namely Mr Su's old office on the 12th floor of a building on North Fuxing Road, Taipei. It is equally clear that she has always controlled the use of that building for family businesses. Thus, 17 September 2014, Mr Danny Wang of TMT sent an email to Mr Su which provides:

> "*Good day CEO*
>
> *Madam SU had call us this morning, She didn't agree that SMC should moving to Fuxing N. Rd at this moment.*
>
> *Maybe she has a different idea or cost considerations, so please consult with Madam SU first, and then we will follow you and Madam SU's decision to continue operations.*"

577. When asked about this in cross-examination, she responded using the language of "we" associating herself with the family business "*We couldn't really let them move in. We have only very limited space ourselves. If he wants to move his company in, we can't really fit them into our existing space. We don't have enough chairs. And it was another Japanese company that has already moved in. We don't have any more space*".

578. Even after Madam Su had notionally disposed of her interest in the office to one of her daughters in 2015 (for a nominal consideration), she continued to exercise control over it. It will be recalled that in the Reminders Email that she sent on 3 March 2017 to Mr Su via Mr Chang she stated (as a statement of fact) *ocean net people equipment are not allowed to be in 12 fushing road*". In the same vein, on 9 July 2017, Mr Su exchanged text messages with Ms Judy Hsieh of TMT. Mr Su wrote: "*Ask ray come from august*". Ms Hsieh replied: "*But he can not work on 12F. Madam Su doesn't allow him to come to our office*".

579. Entirely consistent with Madam Su's stance as to her dominion over the office, is the fact that it is Madam Su who has taken the contents of Mr Su's office and disclosed them in this action. She still has a key and in oral evidence she stated "*I help maintain it*". When cross-examined she also expressed displeasure that the office still contains Mr Su's documents. None of these matters are the actions of someone who no longer

has any interest in the family business. I am satisfied she did. This point, in of itself, is only part of the picture, but it is consistent with Madam Su's continued involvement in the family business and the knowledge she is likely to have acquired as a result.

580. A document which at times, has featured more prominently than it merits (save possibly in the separate context of disclosure and custodians) is the so-called "Thank you Letter". Madam Su's evidence is that she received this letter in 2013. It is addressed to her and is signed by 21 employees of the family business. Somewhat regrettably there is even a dispute about its translation.

581. For its part Lakatamia contends that it records, amongst other matters, the employees referring to Madam Su having done "*her personal utmost best to take care of all our staff and their families*" and remarking that "*[t]his has gone beyond what an employer should do for their employees*". The translation relied upon by Madam Su is to the effect that the employees were remarking that "*[t]his type of kindness has gone beyond the care given to the employees by the employer*" The former amounts to praise of Madam Su for going beyond what an employee would expect of their employer, whilst the latter (arguably) draws a distinction between Madam Su and the employer (Mr Su).

582. As to the dispute as to the accuracy of the translation, Lakatamia says that Madam Su's suggested translation of the Thank You Letter is wrong as a matter of basic Chinese. The relevant characters in dispute are "此等恩惠早已**超越**雇主對員工的照顧", which are found starting in the middle of the fourth line, with "*gone beyond*" in bold and "*employer*" underlined. I am told that there is no "*their*" before "*employer*", and that there is no "*the*" before "*employer*", because there are no definite (or indefinite) articles in Chinese (as acknowledged in Baker McKenzie's email of 23 February 2021.

583. On that basis it would appear that Lakatamia's translation is more apt. I am reassured in this regard by the fact that this would appear a more natural meaning, and also a more plausible one as it seems unlikely that their intention was to denigrate Mr Su, as their employer, in a letter to his mother Madam Su.

584. In relation to the staff who signed the Thank You letter, Madam Su said that *"I wanted to protect them"*, and it is clear that she had a close relationship with members of staff, stating, for example, when cross-examined that *"[w]hen employees left, they would give us their telephone numbers because we were still intimate"* (an answer consistent with what she had said in her first statement that, *"I was close to several members of Nobu's staff and it was common for me to have informal conversations with them about issues including their children and families, and whether they were being paid their salaries on time"*).

585. Whilst I would not place as much worth in the Thank You Letter as Lakatamia has at times, I do consider that it shows that the employees in the family business associated Madam Su with being their employer (as part of what was a family business) and that they were well-placed to give such a characterisation. It reinforces the other evidence that Madam Su did take an active part in the family business and did interact with the staff in that business throughout the material time period. It therefore reinforces and corroborates the impression given by other matters as to her involvement in the family business and her relationship with employees in the business.

G.2.4 MADAM SU'S INSTRUCTIONS IN RELATION TO THE FAMILY BUSINESS

586. An associated point, but one of potentially greater importance is the actual extent of Madam Su's involvement with employees, and the instructions that she gave them - in contrast to her alleged lack of involvement in the business from around 2010 as propounded in her third witness statement where she went as far as to say that *"In short, there was really no longer any place for me in the business"* evidence which I am satisfied was simply untrue evidence designed to distance herself from the business (and so the Blair Freezing Order and the Judgment Debt).

587. A small, but not insignificant, point is how Madam Su was referred to by employees. TMT staff referred to Madam Su as "蘇媽媽", the literal translation of which is "*Su Mama*" or "*Mother Su*", which I am satisfied reflected how she was see by employees – she was not referred to as "蘇太太" or Mrs Su (a phrase which I have already noted appears (erroneously) in the Chinese version of her first witness statement). Even Madam Su refers to herself in her fifth witness statement as the "*matriarch*" and to her "*status*". As I have already noted, Madam Su was of high status as Mr Su senior's wife and then widow and was rightly referred to by Haddon-Cave LJ as the "matriarch".

588. If this was purely an honorific, then it would be of limited assistance when considering the state of Madam Su's knowledge. However it is clear that it was not a mere honorific and also reflected the fact that Madam Su was involved in the business, and did interact directly with its employees (again a very different picture to that sought to be portrayed in Madam Su's third witness statement).

589. There are numerous examples of such involvement in the business and interaction with employees (I refer below, by way of illustration, to the specific instances highlighted by Lakatamia in their Written Closing Submissions):-

(1) On 30 August 2012, Ms Etsuko Miyabe wrote to Mr Su: "*Dose* [sic] *madam Su agree that my work again*". In her oral evidence, Madam Su explained that Ms Miyabe had worked for Mr Su in Japan and that she had "*transferred to Taiwan and worked in one of the Taiwanese companies*".

(2) On 30 April 2013, Mr Toshio Gomi, an employee of Ro Line Limited ("Ro Line"), wrote to Mr Su reporting that "*Judy Hsieh said Madam Su would like to close RoRo Tokyo. It means TMT will pull out of RoRo business. Is this your intention too?*. In her oral evidence Madam Su denied being "*involved*" but did not offer any explanation for what was there stated which shows active involvement on her part on the business.

(3) On 23 May 2013, Ms Jewel Chang of TMT wrote to Mr Su saying "*Madam Su called informed that Ocean Net must be closed due to finance issue and their actual working situation*". Whilst Madam Su said, in her oral evidence, that this "*decision*" was taken by Mr Su and that she did not "*know anything about Ocean Net, who is in that company and what the company was doing. I was only making a suggestion*", this is not consistent with Ms Chang's email, and it even emerged that she was "*paying the salaries*" of Ocean Net employees. This was a typical attempt at Madam Su seeking to downplay her involvement.

(4) On 13 June 2013, Mr Gomi of Ro Line wrote to Mr Su about a debt that the TMT group owed to "*EU brokers*" in the sum of US$2.6m. He warned Mr Su that "*I suggest to solve the problem ASAP. Otherwise you may have another*

problem on immigration to EU shortly". He stated "*Please make fund to Tokyo to enable me to stay in motion*" and wrote "*Pls discuss with Madam Su*" – reflecting, I am satisfied, his understanding as to the continuing role of Madam Su, and her involvement in decision making in relation to payments.

(5) On 4 May 2014, Mr Robert Tsai of TMT sent an email to Ms Lesley Huang of TMT in which he wrote:

> "*Kindly pass on to Boss.*
> *Madam Su was worry about ASM, and said:*
> *1. She Cannot handle The ASM company staffs monthly payroll;*
> *2. Must separate the legal entity between ASM and TMT;*
> *3. Don't give written instruction to wayne to avoid he use as Written evidence;*
> *4. Some complain about Jay.*
> *I think both side should sit down and discuss*".

Aside from showing Madam Su's involvement it is not clear what this was about. In cross-examination Madam Su was asked about ASM and she said that she "*suggested closing it down*". However when this email was passed to Mr Su he replied "*this is standing block mdm SU*".

(6) On 17 September 2014, Ms Jewel Chang emailed Mr Su stating: "*Instruction from Madam Su, confirmed Tina will be back to work on 1st Oct. to take over Sara bank job. During this time, Vicky is the person in charge*". When she was asked about this email, Madam Su simply denied having taken decisions about employees in the family business – yet that is simply inconsistent with the language and contents of this email.

(7) On 8 October 2014, Ms Jewel Chang wrote to Mr Su saying that "*Under instruction from Madam SU, we will lay off two engineers of SMC today to structure our manpower*". When cross-examined she sought, once again, to downplay her evident involvement saying, "*I wasn't really providing instructions*" but this email speaks for itself – she clearly was.

(8) On 27 October 2014, Ms Jewel Chang sent Mr Su an email with the subject line "*Lay off announcement …*": "*Confirmed back from Madam Su. Today we will announce it to 4 staffs. … Therefore SMC will be 7 left, Accounting will be 10 left*" When this email was put to her Madam Su denied having taken business decisions on behalf of the family business, but again this email speaks for itself.

(9) On 1 December 2014, Mr Danny Wang of TMT sent an email to Mr Su in which he wrote: "*Oceannet team has been ordered to disband by Madam Su over one years ago*". When cross-examined about this email, Madam Su said "*I don't know what this Oceannet is, what this Oceannet is all about. It is another company that Nobu has created and he would ask me to pay their staff salaries".* Quite apart from the fact that the second sentence rather contradicts the first, it is clear from Mr Wang's email that Madam Su does know what Ocean Net is. This is also evidenced by the fact that over Days 5 to 8, on multiple occasions, Madam Su expressed herself to be "angry" about Ocean Net evidence which is simply incompatible with a lack of knowledge about Ocean Net.

(10) On 22 June 2015, Mr Henry Udomsakdi sent an email to Mr Marco Wu of TMT in which he wrote "*pls ask Mr. Tai Chow Chang to replace me! He should have no problem, tell him than* [sic] *Madam Su agree!*" I have already referred to Madam Su's evidence about "Henry" in Section D.2**.** He is referring here to his directorship of the company 2010 Shipping Pte Ltd (a company within the TMT group). The following day, Mr Wu replied to Mr Udomsakdi: "*I have emailed Mr. Chang but he doesn't get madam Su instruction until now*". There can be little doubt therefore that Mr Udomsakdi was in touch with Madam Su on the matter of his resignation of a directorship, and when cross-examined about this she said (implausibly given this contemporary documentation), that she knew nothing about the matter. Her evidence is even more implausible given that 2010 Shipping Pte Ltd was one of the companies with a bank account held with DNB operated by Madam Su herself.

(11) On 21 August 2018, Ms Linda Chou of Ocean Net sent Mr Su an email in which she wrote: "*1. DARUMA SHIPPING INC 1805-08 CHG USD10,220 → Mother Su ask to pay soon, it will affect your Japan Tax. 2. ASIAN FREIGHT for TMT Singapore container Ocean Freight USD12,500 → Mother Su ask to pay soon*". When asked about this Madam Su replied that "*They probably used my name*" although she accepted that she knew that a company known as Daruma Shipping Inc sent Mr Su money in Japan for the purposes of his taxes. Whilst I agree with the submission in Madam Su's Written Closing Submissions that this email hardly shows that Madam Su was the "treasurer" of the business, and that it relates to a relatively small sum – but what it clearly does show is her continuing involvement in aspects of the family business not only in relation to major matters, but also the minutiae, again contrary to the impression that Madam Su sought to portray.

590. Stepping back from the detail of such emails I am satisfied that they do evidence that Madam Su had a continued involvement in the business, was giving instructions in relation to the business, and was understood by employees within the business as having the status to give instructions on matters concerning the business (albeit it is clear that employees often considered it appropriate to inform Mr Su of such instructions or decisions). It seems that Mr Su himself may well have found her involvement irritating – in this regard on 21 November 2017 he sent a text message to Ms Judy Hsieh stating in relation to Madam Su, *"she wants to control my cimoany [sic]"* which, if nothing else, would appear to reflect his own contemporary view that Madam Su was involving herself in the family companies (which Mr Su may well have perceived as "his" companies). I address this point further in due course when considering who Mr Chang was ultimately taking instructions from.

591. The question arises therefore, as to why Madam Su was so keen to distance herself from such matters and from the family business. I am satisfied that it is because Madam Su recognised that the greater her ongoing involvement with the business, the greater the likelihood that she acquired knowledge of the Blair Freezing Order, and the Judgment Debt (and the less plausible it is that she did not). I am satisfied that Madam Su had a greater involvement in the family business in the period after 2010, and up to the time of the transfers of the Aeroplane Sale Proceeds and Monaco Sale Proceeds than she was prepared to admit which greatly increases the likelihood of her acquiring the requisite knowledge (the picture being a cumulative one).

592. In this regard there were candid, no-doubt unintended, corroborative moments in Madam Su's evidence, which reflected her own view as to her ongoing involvement in the family business and her associating herself with that business. In the context of Great Vision she said, *"**we** really don't use the company very often*" (emphasis added), whilst regarding the family business generally she said *"I am still helping now".* In similar vein when it was put to her that she and her son saw the money in the bank accounts of the family companies as money she could simply use as she saw fit, she replied*, "in this family there is only Nobu because he is the only son, **I was trying to protect the family business***." (emphasis added). She commonly referred to the companies in a possessive (and plural) sense. Thus she said in relation to the DNB bank accounts for which she held the test keys, that "*those are just several of the bank accounts that **we** use on a daily basis*"(emphasis added) and when talking about Ms Tseng, and the four references to her in the email of 28 May 2015 as Tseng Tai-Shu, she stated "*[I]n **our** company everyone called her Tseng Tai-Shu*" (emphasis added). It will also be recalled that in the Reminders Email itself she referred to "**our** company".

593. I also consider it telling that whilst I am satisfied Madam Su knew about the impending receipt of the Sale Proceeds before speaking to Ms Hsieh, Ms Hsieh saw fit (on Madam Su's own evidence) to report to her that UP Shipping had received the Monaco Sale Proceeds (and to do so soon after receipt given that this was shortly followed by Madam Su's Reminders Email).

594. That Madam Su had continuing access to employees in the family business is also evidenced by the fact that when Mr Su called Madam Su from London to tell her about the Passport Order she was able to contact Ms Sara Chao of TMT the same day to search Mr Su's "old office" for documents, and it appears that Ms Chao now assists Madam Su in relation to these proceedings (per Mr Lyons' eighth statement at paragraph 32(b)).

G.2.5 MADAM SU'S KNOWLEDGE OF LITIGATION

595. In her first witness statement Madam Su distanced herself from any knowledge of litigation that Mr Su was involved in, and the specific context was an alleged lack of knowledge of litigation with Lakatamia. However it was a lie that Madam Su was not aware of litigation involving Mr Su and the family companies, and again the motive for such lie is clear – to distance herself from the associated knowledge that would inevitably arise.

596. There is contemporary evidence that Madam Su was kept appraised of litigation in which TMT was involved. That being the case it would be bizarre if that did not extend to the Underlying Proceedings, the Blair Freezing Order and the Judgment Debt, there being no rational for Madam Su being appraised of other litigation, but not that involving Lakatamia (not least given the sums involved and the associated existence of the Blair Freezing Order and the implications of the same for the business).

597. Yet further there is a link between other litigation, and the need for money back from Madam Su in the very context of the appeal to the Court of Appeal in the Underlying Proceedings. Thus, in the very context of obtaining part of the Aeroplane Sale Proceeds back from Madam Su, the proposal following referral to Madam Su included that "*after receiving July repayment from Wisco in early July 2015 , Nobu san must immediately repay back plus interest to Ms Tseng".* Madam Su was therefore clearly aware that

TMT had a claim against Wisco (a Chinese state entity based in Wuhan) and that it was due to pay funds to the TMT group in July 2015. As has already been noted, such claim against Wisco rather pales into insignificance when compared to Lakatamia's litigation, and Mr Su's liability in the Underlying Proceedings which was under appeal and in relation to which security was needed, and in the context of which Mr Su needed money back from Madam Su. I address the issue of security in the context of Great Vision in Section G.4.

598. Ironically there is also a link between Wisco and the Monaco Sale Proceeds as well. It will be recalled that the Payment Schedule provided in relation to US$100,000 of the US$1,100,000 paid to Madam Su that against the entry *"Madam Su"* it is stated *"for Wisco case paid"* – so it appears in fact that Madam Su may have paid money in relation to Wisco as well.

599. Madam Su was also kept informed about the Valin litigation. In this regard in the context of remission of US$500,000 security to the arbitrators in that case there was a chain of emails between Tony Shih and Mr Su in December 2014. On 18 December 2014 Tony Shih emailed Mr Su saying, *"We informed Madam Su about security USD 500,000 this AM and deadline 31/Dec…A) Madam Su is aware of the deadline but not confirming to pay at early conversation"* which Mr Su "noted" by way of reply. In a further email on 29 December Tony Shih told Mr Su that USD 500,000 needed to be remitted that day, and also referred to a further USD 306,000 that was needed (it seems to pay for counsel and experts), to which Mr Su replied "*Ask mdm su call me*". Thereafter on 21 January 2015 Tony Shih emailed Mr Su (copying in, amongst others Judy Hsieh) under the subject line , *"Valin case – further USD 150,000"* in relation to a further USD 150,000 needed in relation to an impending hearing, stating amongst other matters, *"I have also asked Madam Su's assistance but Madam Su has denied."*

600. It is absolutely plain from this contemporary correspondence that not only was Madam Su being kept appraised of this litigation, she was being asked to provide funds and was seemingly both in direct contact with Mr Su in that regard, and also indirectly via Tony Shih and Judy Hsieh. There are, it might be thought, striking parallels between the Valin litigation (security being needed in the context of a forthcoming arbitration) and the need for security on the appeal in the Underlying Proceedings – once again security was needed, and once again (as addressed in due course below), Mr Su turned to Madam Su (on this occasion for repayment of the Aeroplane Sale Proceeds to facilitate the putting up of security).

601. When Madam Su was asked about the email of 21 January 2015 and the Valin case her answer was evasive: *"I don't know what the US$150,000 relates to. What is it about"* and *"What is Valin".* I am satisfied that just as she knew about the Wisco litigation so she knew about the Valin litigation.

602. It is clear that Madam Su was being kept appraised of litigation involving Mr Su and the TMT companies, and it defies belief that such appraisal will not have extended to the Underlying Proceedings and key features of that litigation (i.e. the Blair Freezing Order and the Judgment Debt") *a fortiori,* as I will come on to, in the context of the need for security in the context of the appeal to the Court of Appeal, and the associated need to get back the Aeroplane Sale Proceeds from Madam Su.

603. Whilst this is but part of the overall cumulative picture as to Madam Su's knowledge, it is a telling aspect, which itself leads to the conclusion that Madam Su will have acquired the requisite knowledge (had she not already had it) in the context of being appraised of litigation involving Mr Su and the TMT companies.

G.2.6 MADAM SU'S DEALINGS WITH COMPANY EMPLOYEES

604. It is clear that Madam Su had continuing, and close, contact with employees in the family business, in particular Ms Chao and Mr Chang, throughout the period of time in question. Madam Su's own evidence was that she was "*close to everyone*" within the family business and spoke with "*everyone frequently*". It really defies belief that she would not have been told by employees in the family business about both the Blair Freezing Order and the Judgment within short order.

605. Ms Chao was copied into the press release that Mr Su published in the wake of the judgments being entered against him in the Underlying Proceedings. As already noted the press release refers prominently to both the Blair Freezing Order and the Judgment Debt. Accordingly Ms Chao would have been aware from then, at the latest, of both the Blair Freezing Order and the Judgments Debt from reading the Press Release (which she would surely have done). The reality is no doubt that Ms Chao would already be aware of the Underlying Proceedings and the Judgment Debt.

606. In cross-examination Madam Su said that Ms Chao was someone she would have spoken to frequently (as she said she spoke to "everyone frequently"). As already noted it was, of course, Ms Chao to whom Madam Su turned when Mr Su called Madam Su from London to tell her about the Passport Order, and Ms Chao the same day searched Mr Su's "old office" for documents. It has also emerged that Ms Chao now assists Madam Su in relation to these proceedings.

607. I consider that it is inherently improbable that Ms Chao never mentioned either the Blair Freezing Order or the Judgment Debt to Madam Su prior to the transfer of the Aeroplane Sale Proceeds or Monaco Sale Proceeds to UP Shipping, and had Madam Su maintained a complete denial of that I consider that such denial would hardly have been credible in all the circumstances identified herein.

608. However, and perhaps in recognition of this, Madam Su ultimately accepted that it was "possible" that Ms Chao had told her about both the Blair Freezing Order and the Judgment Debt:-

> Q. A freezing order was granted against your child, Mr. Su, in 2011 and Ms. Chao would have told you about that. Do you agree?
> A. That's really not in my memory and I don't really understand what a freezing order is. I don't really know.
> Q. And judgments were obtained against your son, Mr. Su, in the Commercial Court in London in 2014 and 2015, and Ms. Chao would have told you about that. Do you agree?
> A. **It is possible, but I don't remember and particularly I really don't understand what a**

freezing order is. I have never heard this concept or other legal things.

Q. **It is inconceivable that you would not have been told about the freezing order against your son, Mr. Su, and about the judgments obtained against him by Ms. Chao. Do you agree?**

A. It is possible that she has told me about it but I really don't understand what a freezing order is and I don't understand those legal matters. There's been too many things and I can't really remember all." (emphasis added)

609. I am satisfied that these answers, that "it was possible" that Madam Su was told about the Blair Freeing Order and the Judgment Debt reflect the reality that she was told of these by Ms Chao, and that Madam Su's answers are the closest that Madam Su is prepared to go to admit the same. I do not find it credible that Madam Su would not remember being told of such matters given their importance to the family business, the implications of the Blair Freezing Order, and the very size of the Judgment Debt.

610. Nor can I accept that Madam Su did not understand what a freezing order is, or would not have established what it was on finding out about it if she was in any doubt (whether from Ms Chao or elsewhere). A freezing injunction is hardly a difficult concept to understand and, as Lakatamia point out, there is no necessity that Madam Su understood the precise legal consequences of such an injunction as opposed to its practical effect and what was forbidden by it. Of course this point is not to be considered in the abstract – there is also the fact that Madam Su was funding an unlimited credit card for Mr Su in the circumstances addressed in Section G.5 below. Suffice it to note at this point that I am satisfied that the obvious purpose of this arrangement was to circumvent the restrictions of the freezing injunction which presupposes an awareness of the need to do so (on the part of the payer as much as the receiver). .

611. Madam Su also accepted that she was "close" with Mr Chang, and indeed is still in touch with him. Mr Chang had worked in the family business for many years before his resignation at the end of 2017. There is no dispute that he knew about the Blair Freezing Order and Judgment Debt (indeed he swore an affidavit pursuant to the former and wrote a letter to the Court of Appeal in relation to the latter). It again defies belief that he would not have told Madam Su about them both.

612. Equally Ms Hsieh (identified by Madam Su as the head of accounting for the family business) knew about both the Blair Freezing Order and the Judgment Debt. Whilst Madam Su was to say when cross-examined that she did not speak frequently with her this is hardly consistent with her evidence that she was "close to everyone", and rather more tellingly (given its contemporary nature) on 13 March 2018, Ms Tiffany Chu of TMT sent a text message to Mr Su in which she wrote: "*I heard that Judy is close with Mrs. Su*". Ms Hsieh generated remittances on behalf of UP Shipping, and was, of course, the person who (per Madam Su) notified Madam Su about the receipt of the Monaco Sale Proceeds. Madam Su had her phone number and accepted that she *"could speak to her".* Ms Hsieh is, I am satisfied, a yet further source for knowledge of the Blair Freezing Order and Judgment Debt (and as head of accounting such matters were,

no doubt, close to her heart). She is another witness that Madam Su could have called, but did not call.

613. Of course a further source of knowledge of the Blair Freezing Order and the Judgment itself would have been Mr Su himself in conversations between Mr Su and Madam Su (and, as already noted, there is evidence that they did speak to each other - for example the "ask Madam Su to call" email in the context of the Valin litigation). The actual evidence obtained in the cross-examination of Mr Su before Sir Michael Burton was, as already noted asked in the present tense *"Q,. She knows that these orders have been made freeing your assets and the orders of these companies, doesn't she A.Yes"* However, coupled with the lack of a detailed explanation in Mr Su's letter to Madam Su in January 2019 (as addressed further in Section G.6 below) it defies belief that one source of Madam Su's knowledge of the Blair Freezing Order and Judgment Debt was not Mr Su himself.

G.3 MADAM SU's MANAGEMENT OF COMPANY ACCOUNTS HELD WITH DNB

614. In her third witness statement (at paragraph 34) Madam Su stated that:

"*Until 2015, I helped to execute payments on behalf of Nobu for a small number of his companies including Great Vision, as I explained in my first witness statement dated 27 March 2019. I held the test keys for the TMT companies that banked with DnB Bank, which included Great Vision, Excel Express Limited, and Modesta Shipping SA*"

615. When cross-examined she also confirmed that she held the test keys and that, accordingly, no payments could be made from the accounts concerned without her approval:

> ***A.*** "*Q. No payment could be made out of any of these accounts held in DNB in Singapore without your approval. Do you agree?*
>
> *A. Right, because test keys are required*".

616. It is also clear, as Madam Su confirmed, that the accounts held with DNB were the treasury bank accounts for the family business:

> "*Q: Madam Su I am looking at an e-mail. The e-mail is from your son, Mr. Su, to a gentleman called Rolf Wikborg. The first line of the e-mail reads as follows: "The DNB nor" – – which we think is Norway – – "Singapore was centre of tmt money treasury." And it is right, isn't it, that all the money of the TMT Group was held in treasury bank accounts in Singapore. Do you agree?*
>
> *A. Right*".

617. The significance of Madam Su's handling of payments from DNB is, however, much more than further evidence of her (active) involvement in the family business including handling money matters. This is because the TMT group companies that banked with

DNB made various payments in partial discharge of Mr Su's liability under the FFA Contract – i.e. Madam Su handled the payments that were made in partial discharge of Mr Su's liabilities to Lakatamia before the Underlying Proceeds were even commenced. There were no less than seven such payments. First, on 8 September 2008, TMT Co Ltd Panama SA paid US$603,644.40 to Lakatamia. Secondly, on 12 November 2008, TMT Co Ltd Panama SA paid the sum of US$7,999,973.95 to Cyclops Ships Ltd (which is part of the same group of companies as Lakatamia). Thirdly, on 27th October 2010, Great Elephant Corporation paid US$274,025.00 to Lakatamia. Fourthly on 19 November 2010, Great Elephant Corporation paid US$265,185.00 to Lakatamia. Fifthly, on 20 December 2010, Great Elephant Corporation paid US$269,149.58 to Lakatamia. Sixthly, on 20 January 2011, Great Elephant Corporation paid US$274,025.00 to Lakatamia, and seventhly on 3 June 2011, Great Elephant Corporation paid US$274,025.00 to Lakatamia.

618. These were, individually and cumulatively, substantial sums all to Lakatamia itself. Some of these payments were rebates on hire which to anyone who had experience in the shipping business (such as Madam Su) would have been recognised as being unusual and would have led them to ask questions as to why rebates were being made.

619. As it was Madam Su who managed payments for TMT companies that banked with DNB it would have been Madam Su who would have made these payments/approved them by use of the test key (something that she accepted when cross-examined). Set against that backdrop I cannot accept her evidence, at paragraph 26 of her first witness statement that the first she had heard of Lakatamia was on 12 January 2019 when she received the call from Mr Su in London. I am satisfied that that was a lie designed to distance herself from Lakatamia. Nor was Madam Su's denial of having seen the remittances and knowing anything about the payments credible in circumstances where it was Madam Su who would have approved them (and would surely have asked what they were for given the state of the family business' finances).

620. Her answers in cross-examination were, I am satisfied, a conscious attempt on Madam Su's part to downplay her role from the person giving the "approval" to the performance of a purely mechanical function: Thus there was this exchange:

> "*Q. You were in charge of the family company monies until well after 2010. Do you agree?*
>
> *A. I didn't control anything. They would send me faxes and based on their instructions, I helped with the payments. I didn't control anything*".

621. This is hardly consistent with Madam Su's acceptance that she approved the payments, nor with the respect with which she was treated within the family business. In any event it is no answer to the fact that, on any view, Madam Su must have been conscious as to the payments she was making, and to whom she was making them, and the suggestion that she was performing a supine role, is not consistent with the overall weight of evidence as to her involvement in the family business.

622. It is also notable that Madam Su has failed to disclose any documents regarding the mechanics by which she made the payments from the DNB accounts or even any

documents evidencing such payments. Her explanation was that instructions were by fax and "*It was many years ago and even the paper has fallen apart. The text can no longer be recognised and have faded away and these faxes have been discarded*" and that "*they have moved several times over the decades and the paper have fallen apart*". Even if that be true (and it is surprising that no such faxes remain) it would be even more surprising if there are no documents evidencing the payments.

623. I am satisfied that when approving payments to Lakatamia she would have become aware of Lakatamia, and given the sums being paid, and the nature of the payments, she would have asked what these payments were about, and would have learnt of Lakatamia's claims (knowledge that would then be subsequently overlaid by knowledge of subsequent events i.e. the Blair Freezing Order and Judgment Debt, in the circumstances I have already addressed and also address below).

G.4 MADAM SU'S OWNERSHIP OF GREAT VISION

624. Who had ownership and control of Great Vision is very much in issue between Lakatamia and Madam Su. Lakatamia says that the evidence, including numerous statements by individuals, and solicitors of the Senior Courts (in the context of "Know Your Client"/anti-money laundering) as well as individuals well placed to identify the same, coupled with Madam Su's holding of the payment keys for Great Vision and admitted injections of her own funds in Great Vision and (crucially) events surrounding security to be provided by Great Vision for the appeal in the Underlying Proceedings overwhelmingly points to Great Vison being owned and controlled by Madam Su, and Madam Su accordingly having knowledge of the Blair Freezing Order and the Judgment Debt.

625. In contrast, Madam Su submits that a *"complex series of lies was presented to the Court and third party lawyers"* amounting to a *"comprehensive web of deception put in place by Mr Su and his associates to hide the fact that he, and he alone, was the principal of Great Vision"* and that *"He did so to evade the freezing order, and was obviously assisted by several third parties".*

626. Great Vision was incorporated on 8 December 2004. At the time of incorporation Mr Su was the sole shareholder of Great Vision. However on 1 June 2005 he transferred all of his shares to Mr Chang (as recorded in Great Vision's Register of Shares). Mr Chang was, from this date onwards, Great Vision's sole shareholder. I address the loyalties of Mr Chang in due course I detail in Section H (when addressing UP Shipping). However suffice it to note at this point that whilst Mr Chang undertook work for Mr Su and in that context actioned instructions from Mr Chang ultimately his loyalty was, I am satisfied, to Madam Su. As Mr Su himself put it in a note that it appears Mr Su prepared for himself in early 2019 (and which I am satisfied captures the true position), *"Most company had TC Chang so he follow my mother instruction"*).

627. Mr Su was at the time of incorporation the sole director of Great Vision, but he ceased to be a director on 30 September 2005 from which time it appears Mr Chang has been the company's sole director (as recorded in Great Vision's Register of Directors). There may, in fact, be an issue as to precisely when Mr Su was a director of Great Vision given that Madam Su's Written Closing Submissions refer to Mr Su resigning as a director of Great Vision in "January-March 2013" seemingly based on what Mr Su said in his Second Affidavit in the Underlying Proceedings, sworn on 23 May 2013, that

"The beneficial owner of [Great Vision is a member of my family. At present, Mr Chang is the sole director of [Great Vision]. I was previously a director but I resigned during the first quarter of 2013. I do not control [Great Vision]."

628. Ultimately, I do not consider that who was a director of Great Vision or when is at the heart of the issue under consideration, given that the issue is not about directorships but rather ownership and control of what was a BVI company. Madam Su submits, as she must given her assertion in closing that *"there is overwhelming documentary evidence showing that Mr Su owned and controlled Great Vision"* that Mr Su was lying when he affirmed that the beneficial owner of Great Vision was *"a member of [his] family"* and when affirming *"I do not control Great Vision*", although Madam Su presumably says he is telling the truth about when he ceased to be a director (as these dates are relied upon by Madam Su).

629. Mr Su has undoubtably lied about a number of matters, but that does not mean, of course that everything he says is untrue. Be that as it may, a more reliable guide to the truth, is, I am satisfied the matters addressed in due course below, and that evidence is, as shall be seen, consistent with Mr Su having on this occasion told the truth when he affirmed that the beneficial owner of Great Vision was *"a member of [his] family"* and when affirming *"I do not control Great Vision*".

630. Mr Chang knew at all relevant times about the Blair Freezing Order and Judgment Debt. As already noted, he swore an affidavit pursuant to the former and wrote a letter to the Court of Appeal in relation to the latter. It is clear that Mr Chang is a nominee, as he has, himself, state in prior statements. What is in issue is whose interests he represents.

631. Lakatamia says that Mr Chang clearly acts for Madam Su, at least in so far as Great Vision (and UP Shipping) is concerned, whereas Madam Su denies this and says that Great Vision is a company "*under Nobu's control*" (per Madam Su's first statement paragraph 17) and that he is its "*owner*" (per Madam Su's third statement paragraph 22). In the light of my findings as to the veracity of Madam Su's evidence, and the obvious reason for Madam Su seeking to distance herself for Great Vision, I do not consider that any real weight can be given to her evidence in this regard. As in other areas, contemporary documentation (and contemporary events) are of far greater assistance.

632. I note in passing that on the initial evidence before Sir Michael Burton, Haddon-Cave LJ, in the judgment restoring the Burton Freezing Order against Madam Su, expressed the view (at [64]) that Lakatamia had put evidence before Sir Michael Burton suggesting that Madam Su was the only "*credible candidate as beneficial owner of Great Vision",* also noting that none of Madam Su's children (other than Mr Su) was involved in Mr Su's business. Of course I have the distinct advantage of a far greater evidential picture than was available at that time, and I have reached my findings on the basis of the entirety of the evidence before me.

633. Each party has taken me through the chronology of documents in this regard (including a table that appears at paragraph 252 of Madam Su's Written Closing Submissions). I have born all such documents well in mind. I have already referred to much of it in Section E.4 as part of the chronology of events. There are various strands to the evidence which needs to be considered both individually, and cumulatively.

634. The first is the position, and evidence, of Mr Chang. It will be recalled that the Defendants to the Underlying Proceedings applied to the Court in April 2013 for permission to use some £325,366.62 held by the solicitors Cooke, Young & Keidan LLP (CYK) to fund their defence. On 4 April 2013, Mr Chang made a witness statement in support of the application in which he stated that he was the director and sole shareholder of Great Vision (as was the case). Mr Chang then stated:

> "4. … I hold these shares as nominee. I cannot disclose the identity of the beneficial owner of Great Vision but I can assure the Court that it is not Mr Nobu Su or any of the other Defendants in this litigation.
>
> 5. I can confirm that none of the Defendants in this litigation exercise any control over the business affairs of Great Vision or its assets and neither do they have any right or ability to do so."

635. On 4 June 2013, Mr Chang made a further witness statement in support of an application made by Mr Su for an order that he be permitted to use other monies held on the account of TMT Liberia in the Court Funds Office. Mr Chang stated that he made the witness statement *"for the purpose of explaining the ownership of Great Vision"* (first statement of Mr Chang para 2). The context was whether Great Vision would continue to meet Mr Su's legal expenses. Mr Chang explained that Great Vision had supported Mr Su hitherto because of the *"personal (family) relationship"* between Mr Su and the owner of Great Vision, but that it was not prepared to do so anymore (second statement of Mr Chang para 6).

636. Mr Chang accordingly gave clear, and unequivocal evidence in the Underlying Proceedings that Mr Su does not own Great Vision and that its owner has a "*personal (family) relationship*" with Mr Su. I have not had the benefit of hearing from Mr Chang. Madam Su has stated that she is still in touch with him. Madam Su's evidence in her witness statement for trial in relation to Mr Chang is that, "*I know him to be a good man and a loyal employee to my husband*". Given Mr Chang's evidence, this is, if anything, a statement contrary to her interests given that Madam Su is the only plausible candidate other than Mr Su for being behind Great Vision, and if she is behind Great Vision she cannot but have known about the Blair Freezing Order and Judgment Debt.

637. Coupled with other evidence (as addressed below), which is entirely consistent with Mr Chang's evidence, I can see no basis for concluding that Mr Chang was lying to the Court (as he would have to be on Madam Su's case given his clear and unequivocal assurance to the Court that the beneficial owner of Great Vision was not Mr Su or any of the other defendants in the Underlying Proceedings).

638. I also note that Mr Chang's evidence is also consistent with Mr Su's internal note made in, it appears, 2019, which I have already referred to, and in which Mr Su stated "*Most company had TC Chang so he followed my mother instruction*". That is entirely consistent with Mr Chang telling the truth as to the ownership of Great Vision (and indeed UP Shipping as addressed in due course below), and entirely inconsistent with Great Vison being owned or controlled by Mr Su – and this evidence comes from Mr Su himself and in a document which was presumably never intended to be seen publicly and only saw the light of day as a result of the Search Order.

639. As is common ground, Madam Su is a widow, and her evidence (which on this point seems entirely consistent with the entirety of the evidence before me) in both her first and third witness statements is that none of her children, save for Mr Su, had participated in the family business. Although there is a suggestion in Madam Su's third statement that Great Vision might have been owned by Mr Su's estranged wife (Rika Morimoto), or by his daughters (Airi or Eri), I am satisfied that this is pure deflection that does not bear examination.

640. As to Rika Morimoto, at the same time that Great Vision was making very substantial payments in respect of Mr Su's legal fees Mr Su's (estranged) wife was seeking money from him, which is simply inconsistent with her owning Great Vision. It does not assist Madam Su to refer to the fact that Rika Morimoto was (for example) appointed a director of Blue Diamond. There is nothing whatsoever to connect Rika Morimoto with Great Vision, and the fact that Great Vision was paying Mr Su's legal fees at a time when Rika Morimoto was demanding money from her estranged husband simply cannot be reconciled with a submission that she was the owner and controller of Great Vision. Nor was there any need for her to be involved at all to conceal any ownership – Great Visio was already a BVI company with a nominee.

641. As to his daughters, at the time of Mr Chang's statements, Airi (the eldest daughter born on 12th January 1995) was 17 years old, and his younger daughter, Eri, was even younger than that. I do not consider that it is realistic to suggest that either of them was behind Great Vision at this time, or had ownership or control of Great Vision, given the role and importance of Great Vision. In saying that I bear in mind what was asserted in Mr Gardner's affidavit when (unsuccessfully) applying for a freezing injunction against Airi Morimoto concerning Mr Su entrusting management of his business interests to Airi Morimoto and holding assets for Mr Su, but there is no evidence that Airi did manage Mr Su's business interests or hold assets of the nature of Great Vision for Mr Su and, again, Great Vision is already a BVI company with a nominee so there was no need for any involvement of Airi Morimoto. What is relevant is who had ultimate ownership or control of Great Vision, and Madam Su is the only other candidate to Mr Su for that.

642. In fact in her oral evidence, Madam Su effectively back-tracked from any suggestion that Great Vision was owned by either of Mr Su's daughters. When she was asked whether she said that Airi or Eri owned Great Vision she said: "*No, I don't think so. I've never – – not I do not think so. It's the first time I've heard this suggestion*". Equally when asked whether she was contending that Rika owned Great Vision, she said "*I didn't pay attention to the company. I don't know*".

643. I am satisfied that when Mr Chang was talking about the owner of Great Vision having a "personal (family) relationship" with Mr Su he was referring to Madam Su – and no one could be better placed than the nominee himself to identify on whose behalf he was the nominee. If he was not the nominee of Madam Su, and in circumstances where Madam Su is still in contact with him, Mr Chang could, of course, have said so. No such evidence is before me.

644. The reference to personal (family) relationship being a reference to Madam Su, is, of course, entirely consistent with the fact that Madam Su admits to funding Mr Su's legal expenses, which is precisely what Great Vision did. As has already been addressed in Section E.4 it will be recalled that on 19 February 2013, Great Vision paid CYK the

sum of £270,000. This was the first payment that Great Vision made to CYK after CYK had been instructed to act for Mr Su personally. I am satisfied that this sum originated from Madam Su. It is evidenced by the Loan Fax which purports to record various sums originating from Madam Su that are said to be owed by Mr Su to Madam Su. It contains an entry dated 18 February 2013 with the narrative, "*CYK-GBP270,000*", in circumstances where the Loan Fax refers to Madam Su being owed £270,000 by Mr Su (and not Great Vision).

645. I consider that this is further support for the conclusion that Madam Su owns and controls Great Vision. If Great Vision were Mr Su's company, then the money to fund this substantial payment would have had to come from another bank account of Madam Su or a company associated with her, and Madam Su was under a disclosure obligation in that regard (see Issue 17 in the Agreed List of Issues for Disclosure). When cross-examined about the source of the money she replied, "*I can't remember. I might have borrowed the money from somewhere but I cannot remember*".

646. The next strand of evidence relates to statements made by Solicitors of the Senior Courts of England and Wales as to the source of monies used to fund Mr Su's defences. Before turning to the contemporary documentation, and the statements made by such solicitors, and Madam Su's submission by way of riposte that I should effectively conclude that these solicitors were "duped" by Mr Su and others as to the ownership and control of Great Vision, it is appropriate to bear in mind the underlying legal and regulatory backdrop (as it is perceived) as well as the factual backdrop of Mr Su being subject to the Blair Freezing Order, and Great Vision being a BVI company. I heard evidence from Mr Gardner in this regard, and the matter was also dealt with in Lakatamia's Written Closing Submissions.

647. In this regard it was put to Mr Gardner (a solicitor of the Senior Courts and the partner at Hill Dickinson with conduct of this action and the underlying proceedings on Lakatamia's behalf) that one is left with speculation as to what KYC (Know Your Client) or other investigations the law firms CYK and W Legal made before making representations that certain companies, including Great Vision and UP Shipping, were not owned or connected with Mr Su. His answers provide, I am satisfied, a clear insight into how seriously, as one would expect, English law firms take their responsibilities, in particular in the context of an existing freezing injunction when considering sources of funds:-

> Q. Now, have you asked them what KYC or other investigations they have carried out in making those representations to you or to the court?
> A. No.
> Q. So really, all we are left with is speculation as to what they might have done?
> A. Educated speculation. One knows exactly what the requirements of KYC are for any respectable firm of solicitors. Both those firms are respectable firms. We are subject to, for example, very, very stringent anti-money laundering regulations. There are procedures. We have compliance teams, we have compliance departments who ensure that everything meets the requirements, specifically the anti-money

laundering. The SRA is very strict, and in this case I think that the representations that I obtained from both of those law firms could be relied upon, both against the background of the fact that they were aware of the freezing injunction, they are aware that they are dealing with Mr. Su, who has a certain notoriety, and they are being asked to accept funds from BVI entities. Now, in solicitors anti-money laundering compliance parlance, any reference to a trust, a BVI company, even a foreign individual raises a red flag, a serious red flag. So here we have a freezing injunction, we have Mr. Su and we have a BVI entity providing the funding. Now, a lawyer will do some very, very serious due diligence to confirm that it can act in those circumstances. And I think we were totally reasonable to infer from what we have been told that they conducted that due diligence.

Q. We can all speculate and make submissions about relevant regulations --

A. I am not speculating. I'm telling you what the situation is. It is the one thing that is drummed into us, it is the only continuing education lesson I have attended in recent years, it is the one we have to attend. It is something we are very alive to and it goes back to the proceeds of crime. It's big stuff and, therefore, I say again, it was reasonable for us to infer that they had done some very, very serious due diligence, given the freezing injunction, given Mr. Su's involvement and given the fact that money was being put up by a BVI trust. And I do a lot of super yacht work. We act for some fairly exotic entities. This is very serious stuff."

648. Ultimately what really matters is solicitors' perception of the regulatory regime (which I am satisfied accords with the evidence of Mr Gardner) rather than the chapter and verse of its precise details. However, Lakatamia also addressed the regulatory framework in its Written Closing Submissions.

649. In this regard, the Proceeds of Crime Act 2002 creates various offences relating to money laundering in sections 327 to 340. That, was, no doubt, part of what Mr Gardner was referring to. At the material time, the Money Laundering Regulations 2007 (now superseded by the Money Laundering, Terrorist, Financing and Transfer of Funds (Information on the Payer) Regulations 2017) imposed further requirements. These regulations were not directly applicable to firms of solicitors conducting litigation, but according to the Solicitors Regulation Authority ("SRA") it is good practice for litigators nevertheless to carry out the client due diligence set out in the Regulations.

650. Guidance published by the Legal Sector Affinity Group (available on the Law Society's website) states at para 6.17.1 that "*A fundamental element of client due diligence is understanding the nature, background and circumstances of the client, including their financial position*", whilst also identifying numerous "*Red Flags and Warning Signs*" in paragraph 18.2.3 including "*third party funding either for the transaction or for fees/taxes involved with no apparent connection or legitimate explanation*" and "*loans are received from private third parties without any supporting loan agreements, collateral, or regular interest payments*".

651. In the present case two highly significant considerations for the law firms were no doubt (as identified by Mr Gardner in his evidence) the fact that Mr Su was subject to the Blair Freezing Order and Great Vision's status as a BVI company. I consider it inherently improbable (set against the backdrop of the regulatory regime and such considerations) that CYK or W Legal would simply accept Mr Su's word at face value rather than undertake extensive due diligence - and as will be seen CYK were (as one would expect) pressing Mr Su for provision of third-party confirmation about the ownership of Great Vision. There is also another aspect to this which is that Mr Gardner himself (as an experienced solicitor) considered it appropriate to infer that serious due diligence had taken place, and this is set against the backdrop of a freezing injunction being in place against Mr Su for the benefit of his client Lakatamia (thereby, no doubt, putting in sharp focus anything that he might be told as to the source of funds).

652. I was not impressed with the suggestion that Lakatamia could have embarked on satellite enquires with the law firms to interrogate them as to the basis on which they had made the representations they had. Whether or not material might exist that was not cloaked with privilege, if such firms had been approached they would have had no obligation to provide such documentation, and would no doubt have exercised appropriate professional circumspection in relation to the provision of any information when set against the implicit backdrop of whether or not they had complied with their professional obligations. I do not consider Lakatamia or its solicitors can be criticised for not making such satellite enquiries, or that their failure to do so impacts on the weight to be given to statements made by Solicitors of the Senior Courts in contemporaneous correspondence set against the factual and regulatory background that I have identified.

653. Having set out the regulatory and factual backdrop against which such statements were made, I will now turn to consider what was said, and the associated surrounding circumstances.

654. On 26 November 2012 Ince & Co Singapore LLP wrote to Mr Gardner under the heading of the Underlying Proceedings, stating that they were, until recently, the solicitors for TMT Bulk and other companies in the TMT Group in connection with various matters unrelated to Lakatamia, and had received monies from Great Vision (which they described as an entity in the TMT Group) in payment of outstanding invoices, and stating that, *"as a matter of prudence we have been authorised to tell you of the application of these monies in payment of outstanding invoices pursuant to paragraphs 10(1) and/or 10(2) of the Order"*. I do not consider that Ince & Co Singapore LLP would have made such a statement (given the express context of the Blair Freezing Order) without first satisfying itself that Great Vision was not owned or controlled by Mr Su (who was a subject of the Blair Freezing Order and party to the Underlying Proceedings).

655. On 21 January 2013, Lakatamia issued a committal application notice against him. Soon thereafter, on 29 January 2013, CYK notified Hill Dickinson that they had been instructed to represent Mr Su and the other defendants in the Underlying Proceedings in place of Ince & Co LLP (this had been foreshadowed in CYK's earlier letter of 11 January 2013).

656. In CYK's letter CYK stated:-

> "We have now finalised the formal terms of our mandate with our clients and filed the necessary notice of acting with the Court (a copy of which was sent to you yesterday).**We have also concluded our investigations** into the source of the funds provided to us by our clients. **The funds have been remitted to us by a third party company Great Vision Management Limited. This company is not related to any of the companies within the TMT Group and/or Nobu Su"** (emphasis added)

657. This letter expressly represents that CYK have "concluded [their] investigations into the source of the funds" which is an express representation that they have carried out investigations as to the source of the funds (no doubt including proper KYC/anti-money laundering checks (given that CYK are English solicitors with partners who are solicitors of the Senior Courts). On any view "investigations" cannot simply have involved accepting Mr Su's (or anyone else's "word" as to something). CYK had sufficient confidence then to make the express representation that Great Vision was a third party not related to any companies within the TMT Group and/or Mr Su.

658. The evidence is that CYK had, in fact, been receiving funds from Great Vision from not later than May 2012 although the precise scope of their role is not clear – it is possible, as Lakatamia suggests, that they held a watching brief over Ince & Co, though the evidence does not suffice to allow any conclusion to be reached.

659. On 19 February 2013, Great Vision paid CYK the sum of £270,000 that I am satisfied originated from Madam Su, as addressed above.

660. On 19 March 2013 CYK received £146,439.48 from Great Vision. In CYK's letter of the same date notifying Hill Dickinson of the same, CYK note that paragraph 6(1) of the Freezing Order states that the defendants to the Underlying Proceedings are entitled to spend a reasonable sum on legal advice and representation *"but that they are required to notify your client of where such money has come from"* (in reality, therefore, expressly requiring the solicitors to investigate and then state the same – which would reinforce to them the importance of establishing the source of funds). CYK expressly then stated (and represented) that the sum had been received from Great Vision, *"a third party company not connected to the Defendants"*.

661. On 26 March 2013 Mr Cooke of *CYK* emailed Mr Gardner of Hill Dickinson stating, amongst other matters: *"I am told **that the true owner of Great Vision Management (the family member)** has made it clear that the person concerned **does not wish to become embroiled in the litigation and disputes of Mr Su and will not sign anything**. That poses a dilemma for us and, evidently, Nobu Su is trying to persuade that person to be co-operative and to provide us with the requisite information"* (emphasis added).

This is making clear CTK's belief that the true owner of Great Vision is a "family member" and one who did *"not wish to become embroiled in the litigation and disputes of Mr Su and will not sign anything"* (which has all the hallmarks of Madam Su who has shown herself to be singularly unkeen to be associated with direct payments to Mr Su even up to recent times).

662. Interestingly, there is an email from Yvonne Chan to Mr Su (cc'd to Albert Luoh) the previous day (25 March 2013) which provides as follows:-

> "[Mr Su]
> I and albert would like to call you to discuss
> 1) Asset disclosure for ship loan outstanding in UK proceeding
> **2) <u>Great Vision letter to be signed by Madam Su issue.</u>**
> Does 0700 am EST suits you?"
>
> (emphasis added)

663. This was another document that Cockerill J ruled, at the start of the trial, was not privileged (or in respect of which privileged had been waived). It seems clear enough that Madam Su was being asked to stated that she was the owner of Great Vision (as Lakatamia says she was). When asked about this in cross-examination Madam Su seemed to accept that she was asked to sign this document, although she qualified what she was saying with statements that she did not remember (a recurrent feature of her evidence being to accept something only to say she did not remember which I am satisfied was a deflection technique). Her evidence was as follows:-

> "Q. The reason why there was an issue about you signing a letter is that you were refusing to sign a letter saying that you were the ultimate beneficial owner of Great Vision. Do you agree? Do you remember that?
> A. I don't remember. I don't agree. **<u>I think they asked me to sign a document. I don't know what it was</u>**. It was a long time ago. I cannot remember.
> Q. It was -- does this help you? It was a document, or it would have been a document, that recorded that you were the ultimate beneficial owner of Great Vision. Is that right?
> A. I really, really don't remember. I don't recognise this matter." (emphasis added)

664. Reading Yvonne Chen's email of 25 March 2013 together with CYK's email of 26 March 2013 it is clear (beyond peradventure in my view), that the "family member" being referred to who is stated to be the "true owner of Great Vision" is Madam Su. Furthermore, I consider that Madam Su was indeed asked to sign a document to that effect and that she declined to do so. That, of course, leaves the question whether she refused to do so because she did not want her identity to be revealed and to be associated with Great Vision, or whether she declined to do it because it was untrue. Lakatamia submits the former, Madam Su the latter - submitting that the *"obvious inference is that [Madam Su] did not understand the document or, more likely, did not agree to sign a document saying that she owned and controlled Great Vision, a statement which to her*

would have been obviously false" (based on her evidence that she was not the UBO of Great Vision).

665. The former, I am satisfied reflects the reality. First, (and foremost) it is consistent with all the other material addressed herein that I am satisfied leads to the conclusion that Madam Su was the owner and controller of Great Vision. Secondly, it is consistent with what both CYK and W Legal were stating in contemporary correspondence (no doubt after appropriate KYC/anti-money laundering due diligence). Thirdly, it is consistent with Madam Su's attitude generally that she really did not want to be embroiled in the litigation and disputes of Mr Su and would not sign anything, and took active steps to disassociate herself from making payments to Mr Su (as typified by the circuitous route by which monies from her reached Mr Su after his arrest).

666. There is an interesting echo in relation to this last point and the reference in the 26 March email to the family person not wishing to become embroiled in the litigation and disputes of Mr Su, and what was said in a letter dated 6th April 2020, in which Baker McKenzie explained on behalf of Madam Su that she had sold her interest in her Tokyo property "[*i]n order to avoid becoming embroiled in yet further litigation relating to Mr Su's debts*". Madam Su in her third witness statement also stated, "*I learned from Nobu in or around 2011 that he and several of his companies were embroiled in legal disputes in various countries; he started to ask me to provide him with money to meet his legal fees, and I agreed. I did not always want to do so and sometimes I did refuse …*".

667. Continuing with correspondence from CYK, on 5 December 2013 CYK wrote to Hill Dickinson: *"We have also received £35,000.00 from Great Vision Management of Singapore. As you are aware, our firm instructions are that the company is not owned by any of the parties to the abovementioned case".*

668. There is then perhaps the clearest and most unequivocal statement to date from CYK when on 15 September 2014 CYK wrote in these terms to Hill Dickinson:

> "In accordance with our clients' obligations under the freezing injunction we are writing to notify you that we have received the sum of £346,322.63 from Great Vision Management Limited ("GVM") for the Defendants legal fees and representation in the above matter. GVM as you are aware is a third party company not owned and/or controlled by Nobu Su and or any of the TMT companies".

669. It may be that there was prior correspondence between CYK and Mr Chang (on behalf of Great Vision) before this. Certainly there was the following email from Mr Albert Luoh to Mr Su, copied to Ms Chen and Mr Chang on 5 September 2014:

> "Dear [Mr Su]
>
> Please confirm the below is true:
>
> 1. That Great Vision Management is not owned and controlled by you or TMT but is controlled by a family member not involved with TMT;

2. That Great Vision is advancing money to the Defendants to assist in the Lakatamia litigation as a result of the company being owned by a member of your family.

3. That Great Vision Management does not receive any funds or benefits from the TMT companies or yourself, and is not the recipient of any loans from the TMT companies or yourself and that the money comes from its own sources.

4. That Great Vision Management is not under the Chapter 11 proceedings.

Once you have confirmed the above, I will coordinate with TC to send the confirmation to CYK."

Mr Su replied by email the same day "true".

670. It may well be that CYK was making further investigations around this time in relation to Great Vision. However I reject the submission that this was the only source of information (assuming it was provided to CYK) to satisfy CYK that Great Vision was not owed by Mr Su, as the timing simply does not work. CYK had been on the record on behalf of the defendants since January 2013 (and it appears involved behind the scenes from an even earlier date). It can be assumed that CYK will have done appropriate KYC/anti-money laundering due diligence before accepting instructions in the circumstances I have already identified. Nor is there any basis to conclude that Mr Su was lying in the answer he gave – his answer is entirely consistent with the other evidence addressed in this section (and indeed with what Mr Su himself wrote in 2019 in his internal note "*Most company had TC Chang so he follow my mother instruction"*).

671. On 9 October 2015 CYK wrote to Hill Dickinson in similar terms once again, referring back to their earlier letters:

> "… on 8 October 2014 we received the sum of approximately US$100,000 from Great Vision Management Limited ("GVM") for the purposes of covering the Defendants' legal fees and representation in this matter. As mentioned in our previous letters, GVM is a third party company not owned and/or controlled by Nobu Su or any of the TMT companies".

672. I am satisfied that the solicitor correspondence, set against the backdrop of the Blair Freezing Order, the regulatory regime, and the KYC/anti-money laundering due diligence that would have done, also leads to the conclusion that Madam Su owned and controlled Great Vision.

673. The next strand of evidence is, I am satisfied, of particular importance, and that relates to events concerning the necessity for security to be put up in relation to the appeal to the Court of Appeal which involved Great Vision. I have already addressed this at some length in Section E.4.

674. It will be recalled that at a hearing on 19 March 2015, the Court of Appeal granted Mr Su permission to appeal on the condition that Mr Su provide security in respect of the Judgment Debt in the sum of US$22m by 19 May 2015 (although the amount that

needed to be provided was ultimately US$15.8m because Lakatamia claimed an entitlement to certain monies held in the Court Funds Office).

675. Mr Su offered a number of forms of security to Lakatamia, all of which were rejected by Lakatamia. In such circumstances he applied to the Court of Appeal for a declaration that the security that was offered was adequate or for an extension of the deadline. That application was supported by a witness statement from Ms Jodi Tierney, an associate (and solicitor of the Senior Courts) at W Legal. She stated that, "as a last resort, the Appellants have obtained a firm promise of payment of the full amount of US$15,820,795.72. **The source of the funds will be members of the Su family and the payment will be effected by Great Vision Management Ltd**" (emphasis added)

676. It will be recalled that attached to her statement were two letters. The first letter was from Mr Chang and was dated 19 May 2015. He wrote:

> "I confirm that if the application to provide security by granting a first mortgage charge over the other assets fail, **Great Vision Management Limited can pay** the sum of $15,820,795.72 on behalf of the Defendants/Appellants in the above matter within 14 days of today's date **if I receive adequate security from Mr. Nobu Su**" (emphasis added)

This letter is drawing a clear distinction between Great Vision and Mr Su, and it suggests that someone (logically Madam Su) was requiring something from Mr Su in that regard.

677. The second letter was an unsigned letter from an unnamed accountant. It was stated:

> "I am the accountant of Great Vision Management Limited. I confirm that if the application to provide security by granting a first mortgage/charge over the other assets fail, Great Vision Management Limited will have sufficient funds to be able to pay the sum of $15,820,795.72 on behalf of the Defendants/Appellants in the above matter within 14 days of today's date"

It was therefore being represented that Great Vision would have sufficient funds (which would have to come from somewhere – potentially from Madam Su).

678. By an order dated 21 May 2015, Jackson LJ extended the deadline for the provision of security to 29 May 2015 (failing which the application for a declaration that the security that Mr Su had offered was adequate was to be determined on the papers). It became immediately clear, however, that whichever family member was behind Great Vision (and I consider that Lakatamia is right that Madam Su was the only viable candidate) had refused to support Mr Su's proposed appeal.

679. On 22 May 2015, the day after Mr Su had been granted an extension by Jackson LJ, Mr Su filed a witness statement in which he stated that, on 19 May 2015, shortly before he had boarded a flight to the USA, he *"was informed by Great Vision that its accountants would be prepared to sign the letter (as set out in draft) confirming that it would be able to provide US$15.2 million should the alternative security not be accepted. I believed the letter would be forthcoming almost immediately and on that basis I instructed Ms Tierney to sign the statement*".

680. Mr Su further stated that when business opened in Taipei the following day:-

> "… it transpired that Great Vision's accountant could only immediately confirm that an amount of between $5-7 million would be available within the time limit stated. **As the source of the funds that Great Vision would pay was to come from my family**, a number of other accountants needed to be contacted (as the Su family have more than one accountant to manage their affairs). As the information was going to be placed before the court, Great Vision's accountants, understandably, insisted on detailed due diligence being undertaken before providing a signed letter.
>
> Today, I have been informed that Great Vision's accountants prefer not to provide any confirmations despite me being advised previously that they were willing to do so. I do not know the precise reasons why but I have been told that there is a general reluctance to provide confidential information. **I exercise no control over Great Vision** but continue to request that due diligence be completed and the letter provided." (emphasis added)

681. As I have already noted it seems clear enough from what the Court of Appeal was being told by Mr Chang, and what Mr Su was stating, that it was envisaged that the security would be put up by Great Vision, and that the source of the funds was a member of the family (the only viable candidate being Madam Su). Accordingly, the overwhelming likelihood is that Mr Chang discussed matters with Madam Su. That must inevitably have included why security was needed (i.e. the appeal which would have revealed the Judgment Debt, and in all probability the Blair Freezing Order).

682. However it also appears that either Madam Su (or Mr Chang advising Madam Su) required security from Mr Su (otherwise why else mention that) and that Mr Su could not provide adequate or acceptable security or Madam Su had changed her mind and was no longer willing to put up the security given Mr Su's prospects of successfully appealing against the judgments of Cooke J. Either way not only does this tie in Madam Su as the owner and controller of Great Vision (for that is the vehicle to be used to put up security using Madam Su's money) but it also defies belief that Madam Su did not know (through discussions with Mr Chang and/or Mr Su) why Mr Su needed the money – she surely did, and so equally surely knew about the Judgments in favour of Lakatamia against her son and under appeal (and in all probability also the Blair Freezing Order) if she did not already know.

683. In this regard, in the context of her ownership and control of Great Vision, and in any event in the context of her relationship with Mr Chang (her evidence was that she spoke with him every few months and she believed that he had cared and protected her interests), she would already surely also have known not only about the Judgment Debt but also about the Blair Freezing Order from him (quite apart from also being evidenced by other matters including, as addressed below, her funding of Mr Su's unlimited credit card).

684. It will be recalled that when she was asked about such security in cross-examination, Madam Su said that US$15.8m was a "horrifying number". She then said (when it was suggested to her that Mr Chang had advised her not to put up the money) that *"It's been such a long time and I always get angry when he wanted money and I couldn't really hear what was said. I didn't pay much attention"*. As I have already observed, this is

typical obfuscation on Madam Su's part and is an answer that defies belief. It is also internally inconsistent – Madam Su cannot both be horrified and angry, and not paying attention in one and the same breath. Furthermore if (as seems clear) she had indicated she would provide the security and changed her mind (or the conditions she had imposed could not be met), Mr Su, via Mr Chang (or directly), would no doubt have pressed the point, and Madam Su could not but have paid attention – after all Mr Su was clearly desperate for the money (as his plea days later for the Aeroplane Sale Proceeds back speaks volumes) – the reason being that without the money the appeal could not proceed.

685. Hence matters do not stop there, for days later Mr Su was asking for the Aeroplane Sale Proceeds back from Madam Su (seemingly to facilitate the refinancing of the Monaco Vilas to allow security to be put up) otherwise he would commit suicide – and Madam Su would have known why he was wanting the money back (in the context of seeking security for the appeal in relation to the Judgment Debt) – so this whole episode not only reinforces the conclusion that Madam Su owned and controlled Great Vision (that being the vehicle to be used), but also that she knew of the Judgment Debt (both via the abortive attempts to put up security via Great Vision and when Mr Su demanded the Aeroplane Sale Proceeds back from Madam Su).

686. Turning to such evidence as is relied upon by Madam Su to suggest that Mr Su is the owner and controller of Great Vision, I consider that such evidence is thin gruel indeed when weighed against the preponderance of the evidence already identified. Madam Su relies upon certain payments from Segura (on the basis that Mr Su owned Segura) into Great Vision (S$42,000 on 14 November 2013, US$15,500 on 5 December 2013 and US$60,000 on 26th December 2013). However the sole shareholder and director of Segura is Mr Chang and it is not clear on the evidence before me that Mr Su owned Segura, but even if he did, such sums are significantly less than the sums paid by Madam Su to Great Vision (£270,000 on 18 February 2013), which would make Madam Su the stronger candidate for being the owner/controller of Great Vision.

687. It appears that Great Vision may have had a bank account not only with DNB but also with Citigroup Singapore, and that Mr Su may have sought to open that account, Mr Su signing client forms in thar regard on 26 December 2013. The bare fact that Mr Su may have tried to open an account in Great Vision's name with Citibank is not inconsistent with Madam Su being Great Vision's owner. It is perfectly possible, as with other companies, that Great Vision was used by both Madam Su and Mr Su which itself does not detract from Madam Su being its owner.

688. Madam Su also suggests that in April 2015 Mr Su was personally involved in dealing with a notice that DNB issued to close Great Vision's bank account (amongst others). Ms Hsieh had been dealing with DNB in relation to such closures and she had asked if it was possible to keep the accounts of Terraceview and Great Vision open. As part of the email correspondence there is one email from Ms Hsieh to Mr Su on 2 April 2015 in which she says "*After communicated with DNB Bank, Maybe we can request closure extension of Terraceview Holding account . But we need to wait for their head office to make decision*". There is nothing to suggest that Ms Hsieh was doing other than making Mr Su aware of events, or that Mr Su himself was involved at all. The company referred to, Terraceview, was clearly Madam Su's company as it was used to repay the Aeroplane Sale Proceeds to Mr Su via Ms Tseng.

689. Madam Su also refers to an email from Ms Chao to Mr Su concerning a loan and a sentence that reads, "*Besides, please can you confirm if the payment to be paid from TerraceView or Great Vision*?". I do not consider this takes matters any further given that the former is Madam Su's company, and the weight of the evidence is that so is the latter. It does not follow that Mr Su was the ultimate decision maker in relation to either company simply because he was involved in a payment from a company. In similar vein is an email on 1 October 2015 from Ms Chao to Mr Su about a payment of £15,894.17 noting *"that this is for Lakatamia case you need to pay from Great Vision".*

690. There is also reliance on the fact of Mr Chang offering his resignation to Mr Su on 5 December 2017 (which I address further in the context of UP Shipping). However the context appears to be that this was because Mr Su was outraged that Mr Chang had deferred to Madam Su, and it is clear that Mr Chang was loyal to Madam Su, as is apparent from the Reminders Email, and cared and protected her interests (as was Madam Su's evidence). In that email, Mr Chang identified companies of which he was a director in respect of which he considered that Mr Su needed to appoint a replacement. Great Vision was not among the list of companies.

691. Perhaps most tangentially of all, reliance was placed on the Panama papers leak and a suggestion that Mr Su was a shareholder of Great Vision – that is contradicted by Great Vision's own share register. In any event what matters is ownership and control of a BVI company with a nominee, not who is listed as a shareholder.

692. Drawing the various threads of evidence together that I have identified, such evidence overwhelmingly supports the conclusion that Madam Su owned and controlled Great Vision. Such conclusion is further buttressed by the fact that (as admitted by Madam Su) she injected substantial sums into Great Vision and the fact that she held the test keys for Great Vision's account with DNB, and so had control of the money.

693. In the circumstances that I have identified, I am satisfied that Madam Su owned and controlled Great Vision, and I so find. Furthermore in circumstances where Madam Su owned and controlled Great Vision it defies belief that she was not also aware of the Judgment Debt given Great Vision's involvement in the abortive attempt to put up security, which it appears Madam Su herself scuppered. It also defies belief that she was not also aware of the Blair Freezing Order, given her relationship with Mr Chang and her control of Great Vision's bank account with DNB (DNB having itself been notified of the Blair Freezing Order), quite apart from her paying Mr Su's unlimited credit card, to which I turn next.

G.5 MADAM SU'S FUNDING OF MR SU'S LIFESTYLE

694. It is common ground that Madam Su was funding Mr Su's lavish lifestyle over an extended period of time. At a high level it is inherently improbable that in that context, including his apparent constant shortage of money, she was not aware of the litigation he was facing as she would no doubt have appraised herself of why he was in such need of money. In this regard I have already addressed her knowledge of litigation, such as Wisco and Valin, and why I consider she would also have been aware of the Lakatamia's litigation, and I have already addressed in Sections G.1 to G.4 above various reasons why I consider she would have knowledge of the Blair Freezing Order and the Judgment Debt.

695. One aspect of Madam Su funding Mr Su's lavish lifestyle, was her payment of an unlimited credit card that he could seemingly use for whatever he liked. It was described in these terms by Mr Su in an affidavit made on 3 April 2013 in which he purported to disclose his assets in the Underlying Proceedings:

"The salary that I am able to draw from TMT Taiwan is not enough to pay all of my day to day needs therefore my family provides me with an allowance which is paid to me by way of use of a credit card. The card has no limit and I am allowed to spend whatever sum I need to pay my day to day living expenses ..." (Mr Su seventh affidavit paragraph 13)

696. Interestingly (but consistent with his general approach e.g. viz legal funding of legal fees through Great Vision) Mr Su is coy about who is paying this credit card bill (he does not say it is Madam Su although it was, indeed, Madam Su) referring instead to "my family". In addition, although he characterises it as an "allowance", it is clearly not an "allowance" as he can spend whatever sums he needs (in reality likes) not simply on "day to day living expenses" (at least how such expenses would normally be understood) but on whatever he wants.

697. The obvious question to be asked is why was Madam Su doing this in relation a man in his 50s who was the Chief Executive Officer of the TMT group, and why were Mr Su and Madam Su going about it using such a bizarre method of putting Mr Su in funds?

698. Lakatamia says that the reason is obvious. Mr Su was subject to the Blair Freezing Order and facing Lakatamia's claim, and by 2013 he was being forced (against the backdrop of a committal application) to disclose his assets, but he did not want to tell Lakatamia or the Court his true asset position. He therefore agreed with Madam Su that she would fund his living expenses by way of an unlimited credit card. That would allow Mr Su to tell the Court that he had no free cash of his own while enabling him to continue living at a high rate. It is said that Madam Su must have known that the reason for the use of an unlimited credit card was to circumvent the freezing order - *a fortiori* given the massive scale of the funding, so that Madam Su was aware, for this further reason, of the Blair Freezing Order, if she was not already aware for the other reasons already addressed.

699. Madam Su denied that this was the position. Her evidence when cross-examined was as follows:

"Q. Why were you giving a 55-year-old man, the chief executive of the family companies, an unlimited credit card in 2013?

A. In 2013 he used the credit card for his living expenses and I had no other -- I had no other way but to pay for that. He used it for living expenses.

Q. And Mr. Su told you that he needed this credit card to pay his living expenses so that he could show the court in London that he had no liquid assets. Do you agree?

A. I don't remember what he said a few years ago. I forgot what he said. I only know that he used a credit card for living expenses or for other purposes.

Q. You are not going to give him this mechanism of paying his living expenses by a credit card unless you know the reason why he needs it. Do you agree?

A. Right, **because he wasn't drawing a salary from the company**. **He didn't have money, even to pay for food**. **This is a credit card that his father left for him**. This is the only credit card that he could use to pay for things because he didn't have money. His company didn't pay his salary. What else can he do?

Q. Mr. Su came to you in 2013 and asked for this unlimited credit card and he explained that he needed to show to the court in London that he had no liquid assets. Do you agree?

A. No, I have never heard such things.

Q. By this point, if not earlier, you became aware that Mr. Su was subject to an order from the court in London preventing him from dealing with his assets. Do you agree?

A. I don't agree. What do you mean by "if not earlier", when was that? I don't know"

(emphasis added)

700. It is acknowledged by those acting on behalf of Madam Su that Madam Su's spontaneous evidence as to why she paid Mr Su's credit card in early 2013 (that she had to do so because "*he didn't have money, even to pay for food")*, if taken without context, *"might be surprising".* This is, perhaps, something of an understatement. First, it requires buy in that Mr Su, notwithstanding his position, and his trappings of luxury (including his jet) did not have money "even to buy food" (i.e. that he would otherwise starve). Secondly, it requires buy in that Madam Su *"had no other way but to pay for that"* (rather than, for example, the payment of a salary to Mr Su by the TMT companies, modest or otherwise – which, it might be thought, would be a more usual way). Third, it requires buy in that it was necessary to use the rather bizarre method of an unlimited credit card rather than (for example), paying money direct from Madam Su's bank account into Mr Su's bank account which it might be thought would be a more conventional way of going about things (albeit, of course, with the downside that such transparency would mean that the receipts would be identifiable liquid assets, which would have to be identified, to Lakatamia). Fourth, it is explained on the basis that this was *"a credit card that his father left for him",* which quite apart from the fact that that is not really how credit cards work, does not appear to square with the complete lack of any documentary evidence of the use of the card before Madam Su started to pay for it in 2013. Fifth it assumes (which may or may not be the case) that he was not paid any salary at all.

701. As for the alleged "context" it is submitted that *"once one understands that in early 2013 the TMT group and Mr Su's companies were in complete collapse with massive cash flow difficulties which would result in a Chapter 11 filing a few months later, it made compete sense that Mr Su would call upon his mother to help with his living*

expenses" This does not grapple with the methodology used to help Mr Su, nor with the difficulties incumbent in Madam Su's evidence identified above. I also consider that it is getting into dangerous waters for Madam Su as it presupposes such knowledge on Madam Su's behalf, and if she had such knowledge it defies belief that that Madam Su did not know of Lakatamia's claims (and indeed how those claims had come about) as they were an important part of the difficulties facing the TMT group.

702. Warming to the same theme, but getting into even more dangerous waters for Madam Su in the context of the wider picture, the following is submitted in the following paragraph of Madam Su's Written Closing Submissions:

> "73. The idea that at that time, in early 2013, Mrs Morimoto was turning her mind to a freezing order granted against her son two years earlier by a court in England, a country on the other side of the world, is absurd. **She would have, instead, been focused on the disaster unfolding at her feet, with hundreds of millions of dollars due by the TMT group to various banks in Taiwan**, the country where TMT was headquartered, **with ships being arrested around the world**, **with employees' wages not being paid** and **with hundreds of millions of dollars being thrown down the drain** because Mr Su could not keep up payments for new ships he had ordered. **She would have been solely concerned with the well-being of the company** her husband had built, of the employees that she had known for decades, and the well-being of her errant son, who ran out of money to pay for his living expenses."
>
> (emphasis added)

703. Madam Su's *"focus on the disaster unfolding at her feet",* knowledge of "*hundreds of millions of dollars due", "ships being arrested around the world" and "employees' wages not being paid"* with Madam Su being *"solely concerned with the well-being of the company"* lies very uneasily both with Madam Su's evidence that she *"only had limited knowledge of [the companies] operations and financial affairs"* and that though she knew that *"the business under [Mr Su]'s direction got into very serious financial difficulty" "she did not know the details of all the financial issues"* (as she put matters on her first statement), and with Madam Su's (unconvincing) denials as to involvement in the family business and knowledge that would be acquired thereby (as has already been addressed).

704. The reality, I am satisfied, is that Madam Su did indeed know the dire financial straits that the TMT group was in including the litigation it faced (which would have included the claims of Lakatamia as already addressed), and was very much more involved in the family business (as I have found) than she was prepared to admit (and so would have acquired far more knowledge than she has been prepared to admit). But such knowledge, and any associated concerns as she had, do not explain her funding an unlimited credit card for Mr Su in 2013 absent a reason for using that particular methodology to pay Mr Su's living expenses.

705. I consider that timing is particularly important in this regard, and that Madam Su's explanation can be tested by reference to timing. In 2013 Mr Su was facing proceedings from Lakatamia, he was subject to the Blair Freezing Order since 2011, he was constrained by its terms but, crucially, he had to date failed to disclose his assets (in breach of the Blair Freezing Order). This led to Lakatamia issuing a committal

application against him in January 2013 as has already been noted. The Affidavit of Assets, with the explanation of the use of the unlimited credit card was in April 2013.

706. The Loan Fax suggests that Mr Su was indeed funded by the unlimited credit card being paid by Madam Su but, highly significantly, only from April 2013. The entry on the Loan Fax for 2 July 2013 records a transfer of US$1,201,053. The narrative against that payment reads "*PAYMENT FROM 5/7 TO 7/2 (Inc. Taipei April wage, NOBU card)*". In circumstances where the payment for 16 July 2013 is said to include the "*Taipei July wage*" but is only US$71,798, that suggest that the monthly payroll is less than US$71,000. This implies that of the payment of US$1,201,053 against "*Taipei April wage, Nobu card*", no more than US$71,000 is attributable to payroll, and that more than US$1m of the sum paid by Madam Su covered Mr Su's credit card debt.

707. The key point is, I am satisfied, that this is the first record of Madam Su paying Mr Su's credit card – one of the agreed Issues for Disclosure in this case being the amount of financial support given by Madam Su to Mr Su - see Issue 17 in the Agreed List of Issues for Disclosure. There is no evidence of any earlier use, or payment of such a card. The timing is entirely consistent with the use and payment of the unlimited credit card as a methodology, as Lakatamia alleges, to be able to show the Court that Mr Su had no liquid assets whilst at the same time continuing to enjoy his lavish lifestyle. Yet further, and for the reasons I have given, there are far more orthodox, and far more transparent, methods by which Madam Su could have paid, or funded, Mr Su's living expenses (most obviously by a bank transfer into his account from Madam Su's account) than the bizarre approach adopted. It is a reasonable inference, which I draw, that Madam Su agreed to such a methodology in circumstances where she either already knew of the existence of the Blair Freezing Order (for the reasons I have already addressed) or acquired such knowledge in the specific context of Mr Su explaining why such methodology needed to be adopted.

G.6 MR SU'S LETTERS WRITTEN WHILST DETAINED IN LIVERPOOL

708. I have already addressed this aspect of matters in Section F.1 above. It will be recalled that on 15 January 2019, while Mr Su was detained overnight in Liverpool (after attempting to leave the country on a Stella Line ferry), he wrote several letters including to Madam Su (although it is not clear that she received them and they are not addressed at all in Madam Su's witness statements). In any event, I am satisfied that their content supports Lakatamia's case on knowledge, and that they are corroborative of the fact that that Madam Su had already acquired knowledge of the Blair Freezing Order and Judgment Debt.

709. Reference is made to Blair Freezing Order and Judgment Debt in them. In particular in one of the letters, there is a detailed explanation about the Passport Order (presumably because this had only been served on Mr Su on 10 January 2019 on his arrival at Heathrow and this needed to be explained in detail to Madam Su), however there is no explanation given regarding the *"Freezing…order in 2011"* or the judgment and, as already addressed, I infer that this is because Madam Su already knew about them - otherwise what Mr Su was saying would make no sense, and Mr Su clearly was seeking to make sense in his letter, elaborating when he needed to do so in that regard. Equally Mr Su was using technical language such as "freezing…injunction" and "contempt of court", without feeling the need to explain the circumstances surrounding the freezing injunction and the judgments that had been obtained against him. This is consistent with

Madam Su already knowing of such matters – if that were not the case his letter would not make any sense to the reader.

G.7 FINDING RE: MADAM SU'S KNOWLEDGE

710. In the above circumstances I am satisfied, and find, that Madam Su knew about the Blair Freezing Order and Judgment Debt before the Aeroplane Sale Proceeds and Monaco Sale Proceeds were dissipated to UP Shipping (on 4 May 2015 and 1 March 2017 respectively), for each of the five reasons relied upon by Lakatamia as addressed in Sections G.2 to G.6 above, and by reference to my findings in relation thereto in those sections. The position is, of course, cumulative but whether those sections are taken individually or cumulatively I am satisfied that Madam Su had such knowledge. It follows that Madam Su's denial of such knowledge was itself a lie (her "third big lie" as characterised by Lakatamia).

H. MADAM SU AND UP SHIPPING

711. Mr Su was neither a director nor a shareholder of UP Shipping (another BVI company). UP Shipping's sole director, at all material times was Mr Chang. As I have already found in the context of Great Vision, but as is addressed in further detail below, Mr Chang's ultimate loyalty was to Madam Su, and he followed her instruction.

712. UP Shipping received both the Aeroplane Sale Proceeds and the Monaco Sale Proceeds. Whilst is not necessary for Lakatamia to establish that Madam Su owned and/or controlled UP Shipping given that the combinations alleged are a combination (between, amongst others, Mr Su and Madam Su) to (amongst other matters) assist, authorise, facilitate, permit and/or procure the Monaco Transfer (the transfer of the US$27,712,815.68 to the account of UP Shipping) and a combination (between, amongst others, Mr Su and Madam Su) by causing or procuring the transfer of the Aeroplane Sale Proceeds to UP Shipping, it is Lakatamia's pleaded case that UP Shipping was owned and/or controlled by Madam Su (either alone or together with Mr Su) and Lakatamia contends that Madam Su's power over UP Shipping serves to demonstrate that the necessary elements of the conspiracy claims are established.

713. For her part Madam Su denies she owns or controls UP Shipping, and asserts that Mr Su owns and/or controls UP Shipping. Madam Su then submits that if she does not own or control UP Shipping then Lakatamia's claims against her fail in consequence. However, it will be apparent that whilst the question of the ownership and/or control of UP Shipping is undoubtably at the heart of Lakatamia's claims, it does not follow that Lakatamia's claims would necessarily fail if Madam Su did not own and/or control UP Shipping (or if Lakatamia could not satisfy the Court that Madam Su owns and/or controls UP Shipping) given that the transfer to a third party (UP Shipping) itself is said to be made with the intention of concealing the Monaco Sale Proceeds and Aeroplane Sale Proceeds from Lakatamia and/or rendering it more difficult for Lakatamia to enforce the Judgment Debt (RRAPOC paras 47.2 and 52U.2). The premise for this is the transfer of monies of Mr Su to a third party BVI company, and that is so whoever it is that owns and/or controls UP Shipping be it Madam Su, Mr Su or (conceptually) anyone else – such companies being potentially opaque (for enforcement purposes) as to ultimate ownership and/or control.

714. In the event this point is academic as I am satisfied, for the reasons set out below, that UP Shipping is owned and controlled by Madam Su.

715. First, it is clear that Madam Su controlled the inflow of capital into UP Shipping. UP Shipping's bank statements show that throughout 2015 and 2016 Ms Tseng transferred very large sums of money into UP Shipping. In this regard, between 10 November 2015 and 8 February 2017, Ms Tseng made 35 separate payments totalling US$1,868,197 to UP Shipping and this was the principal funding of UP Shipping. As addressed in Section I below, I am satisfied that the payments being made by Ms Tseng were payments of Madam Su's monies, Ms Tseng acting on behalf of Madam Su and being (to adopt Lakatamia's words which I consider to be apt), no more than a cypher for Madam Su. I also agree with Lakatamia's submission that one would expect that the person who provides the vast majority of a company's working capital would also be the owner of the company (certainly absent a professional lender relationship). Madam Su suggests (by reference to Appendix 2 to her Written Closing Submissions) that it was only when UP Shipping's bank accounts were depleted that Mr Su asked for funding from Madam Su and that this suggests that UP Shipping was Mr Su's vehicle. However this is simply Madam Su funding Mr Su through the vehicle of UP Shipping which (as appears below) was ultimately controlled by her through her nominee and sole director of UP Shipping, Mr Chang, as addressed below.

716. Secondly, as addressed below, Madam Su also had ultimate control of the outflow of funds from UP Shipping's bank accounts through Mr Chang (notwithstanding Madam Su's denial of that).

717. In support of her case that Mr Su had control of UP Shipping and its bank accounts Madam Su refers to WhatsApp messages, and Appendix 3 to Madam Su's Written Closing Submissions, and what is said to be a correlation between Mr Su's WhatsApp messages and payments from UP Shipping's account. It is pointed out that payments were made out to companies associated with Mr Su, and for expenses of Mr Su (e.g. his golf memberships). Reference is also made to Mr Su instructing third parties to make payments to UP Shipping's accounts. However none of this is indicative, or of any real assistance, in relation to the question of who had ultimate control over the making of payments from (or to) UP Shipping, still less who had ultimate control over UP Shipping, particularly as Madam Su was funding Mr Su through the vehicle of UP Shipping.

718. On the evidence before me, I am satisfied that the signature of Mr Chang (UP Shipping's sole director) was required on all remittances from UP Shipping's bank account. In this regard Mr Chang signed each and every one of UP Shipping's remittance certificates that have been disclosed by Madam Su. This, in of itself, strongly suggests that his signature was required. However the evidence goes further than that as in a text message to Mr Su on 6 September 2017, Judy Hsieh stated *"Up Shipping* ***need TC*** [i.e.. Mr Chang] ***signature****"* (emphasis added).

719. It is common ground that Mr Chang was a nominee. The question therefore arises (as with Great Vision) as to on whose behalf Mr Chang was acting in the context of UP Shipping (and other companies). Again, I am satisfied that the evidence leads to the conclusion that Mr Chang was ultimately acting on behalf of Madam Su.

720. A particularly important document in this regard, to which reference has already been made, is the document prepared by Mr Su himself in, it appears 2019, which appears to be an internal note prepared by Mr Su himself and which it would not appear was ever intended to see the light of day, but which emerged as a result of the Search Order.

721. Reference has already been made to the entry "Most company had TC Chang **so he follow my mother instruction**" (emphasis added). This is not specific to any particular company, but two lines down in the same document it is stated, "**UP Shipping TC Chang 100pct**. Had account in Citi Bank Taiwan but closed" (emphasis added). The first statement is to be read together with the second, and it is clear, therefore, that the statement that Mr Chang follows Madam Su's instruction is being said in the context of (amongst other companies) UP Shipping. These are important statements in this document, all the more so as they are in a document prepared by Mr Su himself (who knows whose instructions Mr Chang ultimately follows and so is able to say what he says with actual knowledge of the position) and because the document was apparently an internal document not intended to see the light of day, and so is particularly likely to reflect the truth of the position (there being no reason for Mr Su to lie to himself).

722. When Mr Su's internal email was put to Madam Su her response was to say *"I don't understand what this is or what this means. I don't get involved in their business. I don't interfere"*. This was typical obfuscation/deflection on Madam Su's behalf as what Mr Su was saying is clear enough - Mr Su was following Madam Su's instruction.

723. Another example of Madam Su's obfuscation/deflection in this area was as follows:-

> "Q. Mr TC Chang was the nominee director and/or shareholder of the companies which you held the test keys for, for the bank accounts. Do you agree?
>
> A. I don't agree. Which companies are - - which companies are his, is he being a nominee for?"

It is common ground (and Madam Su would have known perfectly well) that the factually correct answer is "yes", as Mr TC Chang was a nominee director, and Madam Su did hold the test keys.

724. The factually correct answer to this is "yes", as Madam Su did hold the test keys for the companies that Mr Chang was a nominee director and/or shareholder, and it defies that Madam Su was not aware that Mr Chang was a nominee.

725. Rather more credible evidence from Madam Su, and consistent with Mr Chang ultimately acting on her instruction, was her evidence that Mr Chang was *"very loyal"* and that he *"cared"*. This is entirely consistent with him ultimately acting upon Madam Su's instruction.

726. There is also clear contemporary documentary evidence of Madam Su's instructions "trumping" anything that Mr Su might say (or wish), and further corroborating that Mr Chang was acting, in this regard, on behalf of Madam Su. Thus on 21 March 2017 Mr Tonic Lin sent a text message to Mr Su stating, "*Dear nobu San, TC* [i.e. Mr Chang] *tell me ca not* [sic] *to use 7 floor"* – this was Mr Chang telling Mr Tonic Lin that he could not work in the office of the 7th floor of the building on North Fuxing Road, Taipei (which Madam Su confirmed, during the course of her cross-examination, was

her property). Mr Su replied to Mr Tonic Lin, *"I know we need to find office"*. Given that reply, it is clear that it was not Mr Su who had told Mr Chang to tell Tonic Lin not to use the office, but Madam Su who was instructing Mr Chang, and it is also clear that Mr Su was deferring to such decision on Madam Su's part.

727. A contemporary exchange of emails on 22 and 23 June 2015 between Mr Marco Wu of TMT and Mr Henry Udomsakdi is also telling. In one email to Marco on 22 June 2015 Henry says (seemingly in relation to the company 2010 Ship Pte Ltd), *"...pls ask Mr Tai Chow Chang to replace me! He should have no problem tell him than* [i.e. that] ***Madam Su agree!****"* (emphasis added), to which Marco replies, *"I will tell Mr Chang about this".* In a further email on 23 June 2015 Marco emails Henry stating that "*I have emailed to Mr Chang but* ***he does not get Madam Su instruction until now***" (emphasis added). Again this corroborates that Mr Chang was getting his instructions from Madam Su (rather than Mr Su), and that Madam Su was the decision maker giving instructions.

728. I have already touched upon the circumstances in which Mr Chang ceased to be a director of UP Shipping which is referenced in an email to Mr Su on 5 December 2017 and in which Mr Chang states, *"at your request and by your order on November 30 2017 I shall resign my job in the end of December 2017, accordingly please assign the right person to be the successor director/supervisor for each company currently i acted"* (a list of companies followed, including UP Shipping).

729. It is clear enough that the very context for this was that Mr Su was angry that Mr Chang had deferred to Madam Su in relation to Madam Su's refusal to provide funds and/or authorise payments. Thus, on 21 November 2017, Mr Su sent a message to Ms Judy Hsieh asking for funds from Madam Su *("Ask masamsu* [sic] *give us 60000"*). The same day Ms Hsieh came back, *"TC already talked to Madam Su"* (itself further corroboration that Mr Chang was a point of contact for Madam Su when decisions needed to be made by Madam Su). Mr Su replied, "*She wants to control my cimoany* [sic] *And no"*. Mr Su was clearly angry. It is also clear that there were payments that needed to be paid that could not be paid. Only minutes later Ms Hsieh replied: *"Now Up Shipping can not make payment, because cut off banking time"*. It seems clear enough that Mr Chang had deferred to Madam Su who had denied Mr Su's request for funds - presumably to "top up" UP Shipping (all the Monaco Sale Proceeds now seemingly having been disbursed).

730. It appears that in the context of such anger on Mr Su's part, Mr Su and Mr Chang had an argument, and that it is these events that led to Mr Su demanding Mr Chang's resignation, which he did just a few days later on 30 November 2017. When cross-examined, Madam Su stated that Mr Su and Mr Chang *"had an argument. That's what I heard. So Mr Chang resigned"* (which is consistent with this being the context) - although in typical Madam Su fashion she prefaced this with the assertion that *"This has nothing to do with me because Mr Chang worked for him"* which, at least in terms of whose instructions Mr Chang ultimately acted on, is contrary to the weight of the evidence (and indeed Mr Su's own contemporary belief) to the effect that Mr Chang deferred to Madam Su's instruction (which is, of course, what so inflamed Mr Su).

731. I am satisfied that Mr Chang, as nominee director of UP Shipping did ultimately defer to Madam Su (whatever his day-to-day working relationship was with Mr Su in the TMT business), and that Madam Su was ultimately in control of UP Shipping as UP

Shipping's nominee, Mr Chang, following her instruction (as Mr Su had himself recorded in his internal note which post- dates these events).

732. The third strand of evidence as to the ownership of UP Shipping arises out of the due diligence conducted by the English law firm W Legal who in 2015 were on the record for Mr Su in the Underlying Proceedings. In an email on 12 June 2015 from Mr Kushner of W Legal to Mr Gardner of Hill Dickinson following Mr Su's failure to put up security in support of his proposed appeal in the Underlying Proceedings, Mr Kushner stated:

"Yesterday we received $43,000 from UP Shipping Corporation. We have received KYC in relation to such entity which we are advised is not subject to your client's WFO".

733. This was nothing less than a statement, made by a Solicitor of the Senior Courts, to the effect that, having undertaken "Know Your Client" procedures (set against the backdrop of the perceived regulatory regime that I have already addressed in the context of Great Vision) that Mr Su did not own UP Shipping, with such statement being given by W Legal in circumstances where W Legal were acting on behalf of Mr Su in the Underlying Proceedings, and would have been very much alive to the Blair Freezing Order. The only other credible candidate for ownership of UP Shipping is Madam Su.

734. To the extent that it is suggested that Mr Su "duped" W Legal as it is alleged he duped other lawyers such suggestion defies belief in the context of the fact that W Legal were acting for Mr Su in the Underlying Proceedings. They clearly were not going to accept Mr Su's bare word, or those acting on his behalf, as to ownership. Given the existence of the Blair Freezing Order they would have been very careful to establish that Mr Su did not own UP Shipping. Yet further, in all likelihood, that would have involved them requiring proof as to UP Shipping's ultimate ownership.

735. The fourth strand of evidence relates to a letter that Mr Chang wrote to a solicitor Mr KM Liew of the law firm KT Lawyers in Hong Kong. On 15 April 2016, Mr Liew's firm entered into an engagement letter to act personally for Mr Su, in the context of his dispute with Wisco. The contact identified in the engagement letter was Sara Chao (the in-house lawyer to whom I have already referred in various contexts including in the context of involvement in the Payment Schedule and Payment Ledger, and assisting Madam Su in this litigation).

736. The same day Mr Chang (described by Madam Su as *"an honest and upright person"*) signed a letter as *"Sole Director UP Shipping Corporation",* addressed to KT Lawyers stating that:

> "This letter is to confirm that UP Shipping Corporation, having no connection to the TMT group of companies or to Mr Su, has a legitimate interest in supporting TMT's proposed claim against Wisco America Company Limited/Wisco Shipping Company Limited and its affiliated companies (Claim).
>
> To this end, UP Shipping Corporation, having the capacity to remit funds to LT LAWYERS and hereby authorizes LT LAWYERS to use these sums to pay legal fees and expenses arising out of the work performed for the Claim.

> UP Shipping Corporation further confirms that these funds are not subject to any claims or liabilities arising from any freezing injunctions obtained in the UK or elsewhere, or the US Chapter 11 proceedings."

737. That answer is entirely consistent with Madam Su being UP Shipping's owner (Madam Su being the only credible candidate), and also with Mr Chang acting on Madam Su's instructions and on Madam Su's behalf (as per the other evidence addressed in this section).

738. For her part, Madam Su relies upon subsequent correspondence with KT Lawyers in May 2018, after Mr Chang had ceased to be the director of UP Shipping, and at a time when there were outstanding fees owed to KT Lawyers of some US$170,000 odd, concerning a payment made by a different company namely, Blue Diamond (which was Mr Su's company). It appears from an email from Mr KM Liew to Vicky Liu (at an Ocean Net email address), copying in amongst others, Mr Su, on 3 May 2018 that the previous day (2 May 2018) a sum of US$10,000 had been paid into KT Lawyers bank account by the entity Blue Diamond whereas the authorized payee was UP Shipping.

739. Mr Liew explained that, in order to accept the payment, KT Lawyers needed an authorization letter from Blue Diamond in the same form as the UP Shipping authorization letter (and a letter was attached which was probably the original UP Shipping Letter). Mr Liew explained that he had sent a draft letter to Vicky Liu the previous day. It appears that there was no response, and on 4 May 2018 Mr Liew emailed Mr Su stating, *"I refer to my previous emails, to which you have not responded. Consequentially, in compliance with the KYC and AML laws and regulations of Hong Kong, I have returned the US$10,000 to Blue Diamond".*

740. Meanwhile on 3 May 2018 Tiffany Chu at Oceannet had been emailing Mr Su seemingly attaching the documents that Mr Liew was referring to (it appears the original 15 April 2016 UP Shipping letter and the draft letter sent by Mr Liew in relation to Blue Diamond), and stating that *"For Tonic to sign these two letters on your behalf we need to know his titles at"* (and reference is then made to UP Shipping and Blue Diamond). It appears "Tonic" was a Tonic Lin. No response from Mr Su is available. Ms Chu herself emailed Mr Su on 4 May 2018 stating that *"Due to personal reasons, I have decided to depart from Oceannet, and May 4th (Fri) is my last day".*

741. Someone (with the email address illy99111@gmail.com) the following day (5 May 2018) sent an email without any accompanying message to Mr Liew (but it appears attaching two documents) which led Mr Liew to email back and asking for clarification *"(1) the purpose of you sending these documents to me and (2) who signed them"*. A response from the same email address on 6 May 2018 (copied to amongst others Tonic Lin and Mr Su) stated as follows:

> "(1) For you asking me to get the proof of the remittance for you.
> **(2) Tonic Lin, who is on behalf of Nobu Su, signed it.**
> (3) Nobu San want me to ask you if everytime in which case we remit money to you need to perform like this*?"* (emphasis added)

742. Mr Liew replied the same day:

> "*Re your (2), please clarify (a)* ***why Mr Tony Lin re-signed (reportedly on Mr Nobu Su's behalf) the April 15, 2016 Up Shipping authorisation letter in lieu of Up Shipping's then sole director, namely Tai Chou Chang*** *(b) in what capacity did Mr Tony Lin sign (reportedly on behalf of Mr Nobu Su) the Blue Diamond authorisation letter (c) whether Mr Nobu Su or Mr Tony Lin is a director of Blue Diamond, if not, who is*." (emphasis added)

743. Mr Su responded on 7 May 2018 *"this was mistakes as Blue Diamond and your company has no relationships at all. It was supposed to send to other place"* to which Mr Liew replied, *"Thank you, Mr Su for the clarification. Am I correct that the Up Shipping letter dated April 15, 2016, which was re-signed by Mr Tony Lin (in place of Up Shipping's then sole director, namely Mr Tai Cho CHANG) and sent by Ms Vicky Liu to me was also a mistake? Please confirm"* Mr Su responded *"All mistakes, I assume"*. There was also a response from the "illy99111" email address to Mr Liew, *"Yes, these are all mistakes. Sorry for that, as I said we are travelling, as a result we didn't very clear about your request and also because of inconvenience. Sorry again."* Mr Liew replied stating *"I appreciate your clarifications"* and stating that on a separate note he could not allow Mr Su not to pay the outstanding balance of his bill and he enclosed a draft statutory demand.

744. What was said about Blue Diamond in the letter signed by Mr Tonic Lin was untrue. Mr Su was the owner of Blue Diamond. In this regard he was a director of Blue Diamond and its bank accounts were controlled by him (he held its banking security token as shown by a letter dated 28 March 2018 from Abu Dhabi Commercial Bank to him). Blue Diamond was established for Mr Su to enable him to continue trading in the family's traditional shipping business to try to recoup some of the wealth that his speculations had lost. There were regular transfers between UP Shipping and Blue Diamond (and as already noted US$8,000,000 of the Monaco Sale Proceeds were transferred from UP Shipping to Blue Diamond).

745. However, the fact that what was being said about Blue Diamond (a company indisputably owned by Mr Su) was untrue does not mean that what Mr Chang had stated in the letter signed by him on 15 April 2016 in relation to UP Shipping was untrue (supported as it is by all the matters I have already addressed and further address below) nor, for that matter, that what Tonic Lin said about UP Shipping in 2018 was untrue either. What is clear is that in 2018 Mr Su was keen to continue to distance himself from UP Shipping which is, perhaps, understandable given that UP Shipping had previously been making payments (amongst other matters) in respect of his legal fees. It is, perhaps, stating the obvious, but the fact that Mr Su had connections with UP Shipping does not mean that he was its ultimate owner.

746. Fifthly, it is apparent that from 12 June 2015 (when the first payment from UP Shipping to W Legal was made) UP Shipping fulfilled the same role that Great Vision had performed prior to the closure of its bank account in mid-2015 (when DNB made clear it did not want Great Vision's business anymore), and Great Vision, for the reasons that I addressed in Section G.4 above, was owned and controlled by Madam Su. In circumstances where UP Shipping performed the very same role, with Mr Chang

performing the same nominee role acting on Madam Su's instructions, this further evidences that UP Shipping was owned and controlled by Madam Su.

747. Sixthly, UP Shipping's bank statements record the receipt of money from Doris Finance. Doris Finance is another BVI entity which Madam Su admits she owned. Why Madam Su set up Doris Finance is obscure. I doubt the veracity of Madam Su's evidence that she set it up *"on a whim"*. One does not incorporate a BVI company (and fund it in due course) for no reason. It was set up through a corporate registration agent Portcullis. Portcullis also incorporated UP Shipping. In cross-examination, Madam Su said *"We started Doris Finance as an experiment, but UP Shipping was something that happened later on. It is the company staff members that started it. I didn't* ***really*** *get involved"* (emphasis added). This has all the hallmarks of Madam Su's typical obfuscation, but there is, perhaps, a scintilla of acknowledgment in her involvement by reference to the word "really". Once again it is perhaps the contemporary documentation that gives the best window to the truth – the bank statements identify the payments as "Internal" – which, of course, they are if both companies are owned and controlled by Madam Su, but are not if UP Shipping is owned and controlled by Mr Su.

748. Throughout her cross-examination Madam Su maintained her denial that Mr Chang was a nominee director taking his instructions from her, and she maintained her line that UP Shipping was Nobu's company. The following answers give the flavour of her evidence:-

> "Q. Mr. TC Chang was the nominee director of UP Shipping and he took his instructions from you. Do you agree?
> A. (English): No.
> (Interpreted): I don't agree. I don't get involved or interfere with the running of UP Shipping. It has to do with Oceannet and it has nothing to do with me.
> Q. And Mr. Chang held the share in UP Shipping on your behalf. Do you agree?
> A. I really don't know. I think you should go and look into Oceannet and what it's doing with UP Shipping. I really don't get involved after my husband passed away. Mr. Chang and Nobu were working together on Oceannet and UP Shipping and I really don't know what they did."

749. This is yet more obfuscation (including her repeated deflection of matters by reference to Oceannet) coupled with lies (typified by *"I really don't get involved after my husband passed away"*) running throughout her answers like letters in a stick of Blackpool rock, and all in the context of a company that Madam Su knows is at the heart of the conspiracy allegations (hence her animated answer (in English) "no"). Madam Su is not a witness of truth and I can give no weight to such evidence. Not only is it contrary to the weight of the evidence I have identified above but it is contradicted by the contemporaneous documentation I have identified, and by Mr Su's own internal note which was never intended to see the light of day, but having been brought out into

the open as a result of the Search Order sheds true light on the subject – Mr Chang acted on Madam Su's instructions and Madam Su owns and controls UP Shipping.

750. In the above circumstances I am satisfied that the evidence overwhelmingly supports the conclusion that Madam Su owned and controlled UP Shipping, and I so find.

751. Whilst it is not necessary in order to make the above finding, I would also add that, as addressed in Section K.2, I am satisfied that Madam Su also failed to give appropriate disclosure in relation to UP Shipping and that such disclosure would not only have supported the conclusion that Madam Su owned and controlled UP Shipping, but would have further evidenced the same.

I. MS TSENG

752. The role of Ms Tseng in events is in dispute. She features in three particular areas of importance in relation to the dispute. First, she is held out as the owner of Sparkle Wood which received part of the Aeroplane Monies on 4 May 2015 and part of the Monaco Sale Proceeds on 3 March 2017 (Ms Tseng also received part of the Aeroplane Monies direct from UP Shipping). Secondly, Ms Tseng made substantial payments to UP Shipping (in 2015 and 20-16 in particular) and it is in issue whether in doing so she was making loans on her own behalf or rather was acting on behalf of Madam Su utilising Madam Su's money. Thirdly, she has been making payments to Baker McKenzie in respect of Madam Su's legal costs since March 2020, the source of such funding, and circumstances of such funding being in issue.

753. Each of these matters is addressed below. However by way of summary, and for the reasons identified in this judgment:--

(1) Ms Tseng received part of the Aeroplane Sale Proceeds on behalf of Madam Su (as evidenced by Mr Su's email, *"Send mdm su I need 800k back from airplane money's"*), and Sparkle Wood is owned and controlled by Madam Su (as already addressed, and as is evidenced by the Payment Schedule and the Payment Ledger), with the result that the payments to Sparke Wood were payments to Madam Su. As already addressed Madam Su's lies in this area undermine the veracity of her evidence. Ms Tseng's role in receipt of parts of the Aeroplane Sale Proceeds and of the Monaco Sale Proceeds is also consistent with her acting on behalf of Madam Su.

(2) When making payments to UP Shipping Ms Tseng was acting on behalf of Madam Su and was utilising Madam Su's own monies.

(3) Whilst nothing ultimately turns on this, the likelihood is that when Ms Tseng has been making payments to Baker McKenzie in respect of Madam Su's legal costs, she has in fact been utilising either (undeclared) funds of Madam Su (such payments being set against the backdrop of an unsatisfactory history in relation to what the Court has been told concerning the funding of Madam Su's legal costs) or funds of Madam Su's daughter.

754. Notwithstanding the fact that Ms Tseng could give evidence on important aspects of the matters in issue, and is clearly in touch with Madam Su (and provided three

remittances on day 3 of the trial), she was not called by Madam Su (I address this aspect in Section K.1 below).

755. I am satisfied that Madam Su has not been honest and truthful about her relationship with Ms Tseng or the events under consideration that involve Ms Tseng. The impression that Madam Su sought to create in her witness statements was that Ms Tseng was her "*dear friend*" (Madam Su's third witness statement paragraph 56(c)), and that she was "*a very dear and long-standing friend of mine, because Ms Tseng's husband was a relative of my late husband*" (Madam Su's fifth witness statement paragraph 32).

756. Such a close relationship was needed to render even vaguely plausible the suggestion that Ms Tseng was willing to lend very large sums of money to Mr Su (or Madam Su) without, for much of the time, any loan documentation, or indeed any evidential documentation whatsoever. Coupled with this was a need to identify a source for the necessary wealth that Ms Tseng would need to have to go with such largesse. Hence, I am satisfied, the alleged backstory that Mr Su senior "*provided her with several large loans, which helped her to establish and grow*" what was said to be her "*real estate business*" (paragraph 32 of Madam Su's fifth witness statement) neither of which is documented in any evidential way (despite Madam Su being in touch with Ms Tseng as evidenced by the fact that Ms Tseng has provided (limited) documentation even during the course of this trial).

757. The suggestion that Ms Tseng was a dear and long-standing friend who was willing (and able) to lend millions of US Dollars without documentation or any certainty of repayment (or any guarantee in relation to the same), does not bear examination, and did not survive cross-examination.

758. As to the former (the alleged friendship and the alleged backdrop to Ms Tseng's alleged assistance), when cross-examined, Madam Su was not even very sure of Ms Tseng's age (stating that she was in her 40s or 50s) which, on any view, placed Madam Su and Ms Tseng as generations apart (Madam Su is currently aged 87). Amongst the other myriad aspects of Ms Tseng's life that you would expect a person to know, as a dear and long standing friend, but that Madam Su seemingly did not know, was where Ms Tseng now lives, what children she has ("maybe two boys"), what their names are, what her business was called and where her current office was. Madam Su could not even identify what the exact relationship was between her late husband and Ms Tseng's husband.

759. Equally surprisingly, were Ms Tseng to be a dear and long standing friend, is the fact that Madam Su has not spoken to Ms Tseng on the telephone for more than a year, and she also initially said, when cross-examined, that since moving to Japan in November 2019 she had not received any post from Ms Tseng (which would render the loan slips inexplicable, and would undermine what was said about the loan slips being chopped by Madam Su and her daughter, albeit that she later said that she did receive the loan slips by post).

760. I am satisfied that Madam Su was not as personally close to Ms Tseng as she pretended to be, as any close friend would have known far more about Ms Tseng than Madam Su appeared to know about her.

761. That leads on to a consideration of what Ms Tseng actually does for a living. This proved to be a highly controversial topic, albeit ultimately it appears that Ms Tseng's occupation is clear enough.

762. According to Madam Su, Ms Tseng's full name is Tseng Yu Hsia which, rendered in Chinese characters (曾玉霞). On the evidence before me, the first of these *Hanzi* (曾) is the character representing Tseng; the second (玉) Yu; the third (霞) Hsia.

763. In the email of 28 May 2015 to Mr Su from Ms Huang in relation to his *"Send madm su I need 800K back from airplane money's"* and the statement that Ms Tseng will lend Mr Su US$800K, Ms Tseng's name is four times rendered (曾代書): the first *Hanzi* is this same, the second two, are different. Lakatamia says that the two *Hanzi*, "*tai*" (代) and "*shu*" (書), on their own mean "*on behalf of*" or "*substitute*" (代) and "*book*" or "*write*" (書) respectively. When written together, depending upon context, they mean "*notary*", "*scrivener*" or "*land administration agent*" (a scrivener is, of course, a person who writes formal legal documents on behalf of another).

764. When this was all submitted in Lakatamia's Written Opening Submissions, Madam Su responded in her Written Opening Submissions that these submissions were "*remarkable*" and were an impermissible attempt to adduce expert evidence. Attempts to agree matters in correspondence as to the meaning of the characters did not bear fruit.

765. However, when cross-examined, Madam Su herself confirmed that Ms Tseng is, indeed, a "tai-shu". It appears that in Taiwan, it is common for individuals to be referred to by their surname and occupation, and Madam Su, when cross-examined said that Ms Tseng is referred to by "*everyone*" as "*tai-shu*", and that "*In Taiwan everyone calls her Tseng Tai-shu*".

766. A translation has now been disclosed on behalf of Madam Su that "*tai-shu*" is "*a traditional and informal term. The formal title recognised by the government is 'Land administration Agent'*". It is now clear enough, and I find, that Ms Tseng's occupation is, indeed, that of "Land administration agent". So far as Ms Tseng's role for Madam Su is concerned Madam Su's evidence is that *"Ms Tseng, she writes things on people's behalf, so we often ask her to help us".*

767. Beyond this Madam Su was remarkably vague as Ms Tseng's business, as this series of exchanges shows:-

> "Q. Does Ms. Tseng have a real estate business, Madam Su?
> A. Yes, she does.
> Q. What is the name of her business?
> A. I don't really know. I only know that she does Tai-shu, but what she does with her friends I don't really know.
> Q. Does her business have an office?
> A. Yes. Yes, she does. That's where she does Tai-shu.
> Q. Does her business own property, real estate?
> A. I don't know. I don't know what actually -- what she does actually.

Q. You see, in your witness statement you refer to her as your "very dear friend". Can you interpret that, please? And you also say, or have said today, that you speak to her on the telephone. Dear friends would know quite a lot about one another's occupations and businesses because they would discuss them. So how is it that you seem not to know very much about Ms. Tseng's business?
A. She works with Japanese people who are in Taiwan, but that is her business and I don't know very much about it."

768. Thus Madam Su does not seem to know very much of Ms Tseng's alleged "real estate investment business", and does not even know if her business owns real estate. This is to be contrasted with Madam Su who does invest in real estate albeit that she says she does this with her "*friends*" as a "*hobby*" (and it appears she has purchased land as recently as 2017). A "tai-shu" (a land administration agent) would most obviously be of use to an investor in land such as Madam Su.

769. There is, in fact, no independent evidence that Ms Tseng is wealthy still less extremely wealthy (as she would need to be to lend large sums of money), and the evidence in support of any alleged motivation for lending money is itself thin in the extreme, as can be seen from this exchange:-

"Q. How much were these loans for, Madam Su?
A. I can't quite remember. My husband lent those money to her. I don't quite know.
Q. What were the loans for?
A. I don't know.
Q. In your witness statement you say that they were to help her establish and grow her real estate business.
A. Yes, that's what she said at the time but how she actually used the money, I don't really know."

770. And this (vague) evidence is given only weeks after Madam Su's fifth witness statement in which she had felt able to say that her late husband *"provided [Ms Tseng]with several large loans, which helped her to establish and grow",* yet was unable to substantiate the same (even in general terms) when cross-examined.

771. Equally if Ms Tseng was extremely wealthy (and there is no evidence that would justify such a finding) it seems inherently unlikely that she would pursue an occupation as a "tai-shu" acting as a land administration agent for others, rather than pursuing her own investment business. Whereas Ms Tseng's occupation as a "tai-shu" is entirely consistent with her acting on behalf of Madam Su, and transferring Madam Su's own money pursuant to Madam Su's instructions.

772. In the above circumstances not only was Madam Su not as personally close to Ms Tseng as she pretended to be, but also the evidence does not support a finding that Ms Tseng even had the wherewithal to make the loans that are alleged.

773. There is also some evidence, unconnected with the present proceedings, which suggests that Ms Tseng has held (or has been alleged to have held) land on behalf of a company in the Su family group allegedly so as to evade creditors. In this regard it appears that TMT had taken out loans from several Taiwanese banks. One of those loans taken out by TMT was a facility agreement entered between New Flagship Investment Co Ltd ("New Flagship", a TMT group company) and a consortium of lenders led by Cathay United Bank, dated 27 June 2011. New Flagship owned a plot of land in Bei-Tou District of Taipei.

774. Subsequently, on 21 June 2013, TMT entered into Chapter 11 proceedings. During those proceedings, on 2 December 2013, Baker McKenzie USA filed a motion on behalf of Cathay United Bank seeking relief from an automatic stay to pursue a "fraudulent transfer action" ("the First Bankruptcy Motion") which was supported by a declaration made by a Ms Melanie Ho, a partner in Baker McKenzie Taipei. It appears on 7 December 2012, New Flagship transferred to Ms Tseng real estate ("the Property") consisting of approximately 6,143 square metres of real estate in the Bei-Tou District, Taipei, valued at US$2,711,692, into a trust administered by Ms Tseng. According to Ms Ho, Ms Tseng *"is a registration agent for real estate and is not believed to be a third party, bona fide purchaser of the Property"*.

775. In February 2013, prior to the bankruptcy, Cathay United Bank successfully applied before the Taiwanese court for a provisional measure preventing the transfer or disposal of the Property. Cathay United Bank commenced substantive proceedings in Taiwan against New Flagship and, on 29 May 2013, obtained a judgment in the sum of NTD1,481,344,420.

776. On 2 December 2013, Cathay United Bank filed a motion before the US Bankruptcy Court seeking permission in the Chapter 11 proceedings to bring proceedings in Taiwan in order to avoid the transfer of the Property from New Flagship to Ms Tseng. In those proceedings, Baker McKenzie USA described the transfer as a "fraudulent transfer". The motion was duly granted.

777. On 9 December 2013, Cathay United Bank commenced proceedings in Taiwan against New Flagship and Ms Tseng, albeit that it appears that these proceedings were probably settled subsequently. On 17 June 2014, Baker McKenzie USA filed a further motion on behalf of Cathay United Bank ("the Second Bankruptcy Motion") which stated that Cathay United Bank *"acting on behalf of the estate of New Flagship, has carefully evaluated the unsecured claims asserted against New Flagship's estate and determined that the holders of those claims are almost exclusively insiders affiliated with the Debtors and/or Hsin Chi (Nobu Su)."*

778. Madam Su said in cross-examination that "*I really don't know what this New Flagship is all about"* but also said *"I don't know**. I know that Ms. Tseng did help**, but I really knew nothing about this bank or anything that's on here"* (emphasis added) although she also said, *"I don't really know. I don't really interfere very much in matters in Taiwan. I don't know what they were doing"* and finally *"I don't know about Ms. Tseng's land"*.

779. I do not consider that it would be appropriate for me to express any view on the merit or otherwise of these satellite allegations against someone not before the court and who has not given evidence in this action. It suffices to note that allegations have been made against Ms Tseng in the proceedings I have identified from which it has emerged that Ms Tseng has held (or is at least alleged to have held) real estate assets on behalf of the Su family. That is certainly consistent with Ms Tseng acting as Madam Su's tai-shu, and is also consistent with holding assets on Madam Su's behalf more generally, and somewhat less consistent with Ms Tseng carrying on her own real estate investment business (at least to the exclusion of acting on behalf of the Su family interests).

780. Turning to the rather more central question of whether Ms Tseng made loans to Mr Su (or Madam Su), I consider that it defies belief that if Ms Tseng had been making substantial (and repeated) loans to Mr Su or Madam Su that would not have been documented, *a fortiori* in circumstances where, as I am satisfied is the case, Madam Su is not as personally close to Ms Tseng as she contended, and there is a dearth of any documentation even purporting to evidence a loan until very late in the day (there are no loan notes whatsoever for any loans between 2014 and 2018).

781. Initially, at least, Madam Su acknowledged that loans should be evidenced: *"If you borrow money from someone, if it's just an oral, just a verbal agreement, it's not good. you need to put your chop on it"* albeit that she later somewhat back-tracked stating that loans should be documented at least if the borrower is abroad (as Mr Su frequently was on the evidence before me) – yet no loan documentation signed by Mr Su has been disclosed. There was this, wholly unconvincing, series of answers for the lack of corroborative documentation given by Madam Su during the course of her cross-examination:-

> "Q. So Mr. Su would ask you for money; correct?
> A. Yes. Yes, otherwise I wouldn't know where to pay the money to.
> Q. And you would contact by telephone your friend, Ms. Tseng. Is that right?
> A. Yes.
> Q. And she would agree to provide the money in cash?
> A. Yes, she always helped.
> Q. And did she ask for loan notes to be signed by Mr. Su?
> A. No. She trusted me and she knows that she would be repaid.
> Q. Well why does she now ask for loan notes, the ones we have seen in connection with the payment of your legal fees in this case, when she trusted you previously?
> A. She -- it's because I'm abroad at the current moment and I offered to write this loan slip for her. I think this would be the right way to do things. I don't want her to be worried.
> Q. Your son was almost always abroad, outside Taiwan, wasn't he, Madam Su; that's correct?
> A. Right. Sometimes he would be in Taiwan; sometimes

he would be abroad.

Q. And if the explanation that Ms. Tseng required a note from you because you are abroad were correct, she would also require notes from your son, Mr. Su, in connection with the loans you say she made to him. Do you agree?

A. Right, but previously I was in Taiwan but now I'm abroad and I offered to have this loan slip with her. She didn't require that from me but I think -- I feel embarrassed not to give her that. I want her to feel assured."

782. I am satisfied that had Ms Tseng been giving loans to Ms Su out of her own money she would have required at least some form of loan documentation (or at the very least some documentation evidencing the loan), but there is none, and that is because, I am satisfied, she was not transferring her own money, but rather that of Madam Su (consistent with her acting as a "tai-shu" and on behalf of Madam Su).

783. In this regard there are a number of features of the payments themselves which I consider strongly support the conclusion that these were not loans at all, or at least not loans by Ms Tseng herself and utilising her own money. There is the fact that (at one extreme) Ms Tseng would be providing "loans" in trivial amounts and that could on any view be afforded by Madam Su so that there was no need for Ms Tseng to make such loans – thus on 14 and 26 January 2016, Ms Tseng paid the sums of US$2,485 and US$4,172 at a time when Madam Su's bank balance at Cooperative Bank during that period was over NTD18m (approximately US$600,000). There is the fact that at the other extreme multiple (large) separate payments were, on occasions, made within a very short period of time, consistent with these being specific payments for something rather than a loan for multiple items that were contemplated (a more common reason for/feature of a loan) - thus Ms Tseng made two payments of US$218,835 and US$13,985 on the same day (Christmas Eve 2015), whilst over the Christmas period, she made payments totalling US$415,275. This is a pattern more consistent with payments than with loans.

784. Had these (or other payments) been loans one might expect evidence of Ms Tseng either refusing to make a loan on occasions (of which there is no evidence) or at least demanding explanations, and when this was explored with Madam Su the best she could offer was that Ms Tseng would say *"Why would there be so much legal fees? And I would say, What can I do about it? I don't know the details about it"*. This is hardly credible, and hardly a basis for someone else continuing to advancing multiple large loans over an extended period of time. It does, however, have all the hallmarks of an indulgent mother indulging her son utilising her tai-shu to make the payments on her behalf. When this sentiment was put to Madam Su she barely denied it, and suggested she paid back some of the money to Ms Tseng (of which there is no evidence either):-

"Q. … These payments into UP Shipping's bank account from your friend, Ms. Tseng, look very like payments of financial support given by an indulgent mother to her son. Do you agree?

A. It wasn't really love. **<u>There was a lot of trouble.</u>**

It was troublesome and it was embarrassing to ask people. That was in the end -- that was why in the end, I actually paid back some for him. What could I do? However, when he set up Oceannet, he did pay some back through the company. I'm not sure.

Q. **These payments that we see made here by Ms. Tseng are payments made from your funds, aren't they, Madam Su?**

A. Initially, I was quite embarrassed. I paid some back. But in the end, I wasn't able to pay back, but I'm aware that he also paid back some of it through his company Oceannet.

Q. These payments that we see on the UP Shipping bank statements, these credits from Ms. Tseng, are credits from your funds. That is correct?

A. But my fund was not paid into his account. I paid some back to Ms. Tseng. Not all of it, but partially."

785. Even more tellingly, in my view, are the circumstances surrounding the repayment of the Aeroplane Sale Proceeds/Ms Tseng's alleged loan to Mr Su. Quite apart from the fact that Ms Tseng received party of the Aeroplane Sale Proceeds on behalf of Madam Su (as evidenced by Mr Su's email, "*Send mdm su I need 800k back from airplane money's*"), and Sparkle Wood is owned and controlled by Madam Su (as already addressed, and as is evidenced by the Payment Schedule and the Payment Ledger), with the result that the payments to Sparkle Wood were payments to Madam Su (telling the lie to Madam Su's evidence), the timing of the payment (back) by Ms Tseng within an incredibly short time (in banking terms) after Mr Su had allegedly agreed to such "private financing", is really only consistent with Madam Su telling Ms Tseng to make the payment, and Ms Tseng acting on such instruction and using Madam Su's own money.

786. In short, the timing of the payment is really only consistent with someone (Ms Tseng) acting on the instruction of someone else (Madam Su) and using someone else's money (Madam Su's) rather than Ms Tseng making an independent decision to lend her own money in the context of the incredibly short time period, and the lack of evidence as to any apparent enquiries on Ms Tseng's part (which would inevitably have taken time had they occurred). Interestingly, Madam Su came very close to admitting that when being cross-examined about the US$800,000 being demanded back by Mr Su from Madam Su, *"She [Ms Tseng] asked me if it's okay to lend money to him. What can I do? It was very urgent.* ***We*** *had to say okay but I was very worried"* (emphasis added). This has all the hallmarks of Madam Su being the ultimate decision maker in relation to what was her own money.

787. However, perhaps most importantly of all, the lack of veracity of Madam Su's evidence in this area, with her denial of ever receiving any part of the Monaco Sale Proceeds or the Aeroplane Sale Proceeds, also undermines her associated evidence that Ms Tseng was making loans to Mr Su, and advancing her own money and this was payment back to Ms Tseng. It was Madam Su's evidence that the payment of US$1,100,055 made on 3 March 2017 to Sparkle Wood from the Monaco Sale Proceeds (via UP Shipping) was

repayment by Mr Su of loans that Ms Tseng had made to him (first witness statement of Madam Su paragraph 46, second witness statement of Madam Su paragraph 12(b) and third witness statement of Madam Su paragraph 56(c)). Similarly it was Madam Su's evidence that the payments made on 4 May 2015 to Ms Tseng and Sparkle Wood from the Aeroplane Sale Proceeds were also repayments by Mr Su of money that he owed to Ms Tseng (fifth witness statement paragraph 32) yet, for the reasons I have already given, this was untrue – repayments were to Madam Su (as shown by the Payment Schedule and Payment Ledger) and Sparkle Wood is owned and controlled by Madam Su. Thus, these payments were to Madam Su not Ms Tseng which means that these cannot be repayments of loans made by Ms Tseng (certainly not of her own money), which fundamentally undermines Madam Su's evidence that Ms Tseng had lent such money to Mr Su in the first place, coupled as such evidence is with the lie as to the destination of the repayment. The reality, I am satisfied, is that Madam Su was also lying about Ms Tseng (on her own behalf) making any such loans in the first place.

788. Yet further, and so far as (alleged) loans **to** Madam Su are concerned, it was Madam Su's evidence, when cross-examined, that she had not taken out loans in the past with Ms Tseng, and had only had to do so recently because she had to pay lawyers' fees. But Madam Su's Taiwan Co-operative Bank deposit account bank book shows two payments into her account on 18 January 2011 of New Taiwanese Dollars 15 million and 10 million (approximately US$800,000) from Ms Tseng. Given that Madam Su's evidence was that she did not borrow money from Ms Tseng until recently (to pay her lawyers' fees) this is, I am satisfied, a contemporaneous open window into the reality, which is that this was simply money belonging to Madam Su (sitting in accounts that she allowed Ms Tseng to make transfers from on her behalf) being transferred into Madam Su's own personal account. Tellingly Madam Su did not even expressly deny that assertion when it was put to her, responding instead, *"I can't remember, I need to check. I need go back and check."*

789. I am satisfied, and find that Ms Tseng did not, at least prior to her alleged funding of Madam Su's legal fees in 2019 onwards (the position in relation to which is addressed separately below), lend money to either Mr Su or Madam Su, and that Madam Su's evidence to the contrary is untrue. In the circumstances I have identified I am also satisfied, and find, that Ms Tseng, when making payments to Mr Su, was acting on behalf of Madam Su, and was utilising monies of Madam Su.

790. The question also arises as to whether Ms Tseng was, as Madam Su alleges, lending her money to fund her defence. The circumstances in which the revelation that this was allegedly occurring are themselves less than satisfactory. As at 9 November 2020 the Court was told that Madam Su was *"willing to confirm the names of her daughter who is meeting the costs of her defence in this litigation, as well as the details of the bank account from which such funding is provided"* although in fact Baker McKenzie had not received any money from that daughter for over a year (the last payment by the daughter being made in October 2019).

791. Then in a letter on 15 January 2021 Baker McKenzie informed Lakatamia that *"from 2 March 2020, our invoices have been paid by way of transfer from two accounts held by [Ms Tseng]… [Ms Tseng] is a friend of our client."* In this regard the letter stated that Madam Su does not hold sufficient assets to meet her fees of defending this litigation, and her daughter had *"not been able, without significant administrative burden, to arrange a transfer of…sums from a Japanese bank account because of tax concerns"*

and that *"as a way around these administrative difficulties, our client sought a number of bridging loans from Ms Tseng, who is based in Taipei. Enclosed are copies of the loan slips recording this arrangement between Ms Tseng , our client and [the daughter]".* It was also stated that Madam Su was the borrower as she is the defendant in the litigation but that the slips make clear that the daughter will repay the sums advanced. It was further stated that *"these loan slips are not dated as they record an informal financial arrangement between friends, and have therefore been put in place after the money in question was advanced."* The loan slips cover the period December 2019 to September 2020.

792. In subsequent correspondence Baker McKenzie stated in a letter dated 3 March 2021 that, "*Ms Tseng drafted the loan slips and asked both [Madam Su] and [Madam Su's] daughter to sign them. We understand that Ms Tseng did so because she wanted to protect her rights of recovery, in light of the significant value of each loan".* It was also stated that Madam Su *"recalls that Ms Tseng posted the signed loan slips to her in Japan in mid-December 2020, to enable [Madam Su] and her daughter to chop them. [Madam Su] sent them back to Ms Tseng in Taiwan at around the end of December 2020."*

793. This alleged chain of events lies uneasily with the previous (alleged) loans from Ms Tseng which, of course, had gone wholly undocumented, and which I have found were in fact payments by Ms Tseng on Madam Su's own behalf using Madam Su's monies. More fundamentally, however, when it came to her oral evidence, Madam Su was simply not singing from the same hymn sheet and there are numerous inconsistencies between the explanation that had been given and Madam Su's oral evidence.

794. First, a different reason was given as to why the loans were taken out – in cross-examination Madam Su said that Ms Tseng made the payments because *"I was in a hurry. I needed money"* whereas, as noted above, in correspondence it was stated, in relation to her daughter, that she had *"not been able, without significant administrative burden, to arrange a transfer of…sums from a Japanese bank account because of tax concerns"* and that *"as a way around these administrative difficulties"* Madam Su sought a number of bridging loans from Ms Tseng.

795. Secondly, a different reason had been given as to why loan notes were created – in cross-examination Madam Su said that Ms Tseng did not require any loan slips from Madam Su; instead, Madam Su insisted on loan slips because she is abroad in Japan and she felt embarrassed not to give such loan slips. Contrast that with the explanation in correspondence that Ms Tseng asked both Madam Su and her daughter to sign the loan slips, because Ms Tseng *"wanted to protect her rights of recovery, in light of the significant value of each loan."*

796. Thirdly, different explanations were given in relation to the alleged timings of the loan notes. In cross-examination, Madam Su said that she provided the loan slips, the earliest of which is for a December 2019 payment, because she was abroad in Japan (having been in Japan since November 2019) and so logically the loan slips should have been provided and executed at the same time as the alleged loans, yet in correspondence it was stated that the loan slips were *"put in place after the money in question was advanced".*

797. Fourthly, there are potential inconsistencies and uncertainties in relation to the logistics of signing and returning the loan slips. Initially in cross-examination Madam Su that she had received no mail from Ms Tseng whilst Madam Su had been in Japan during the pandemic (although later Madam Su said that she had received loan slips from Ms Tseng through the post). Coupled with this Madam Su said she posted the loan slips to Ms Tseng, but also stated that she did not know Ms Tseng's home address or current office address. When asked how she sent the chopped document back to Ms Tseng in such circumstances she replied, "I know her old address" (i.e. ex hypothesi, an address that she was no longer at, and so Ms Tseng either would not, or might not, receive the document).

798. Such inconsistencies have arisen, I am satisfied, because Madam Su's account that Ms Tseng has lent her money for her legal fees is simply not true, and the loan slips are themselves a contrivance in an attempt to evidence that which has not occurred. Whilst nothing ultimately turns on this, the likelihood is that when Ms Tseng has been making payments to Baker McKenzie in respect of Madam Su's legal costs, she has in fact been utilising either (undeclared) funds of Madam Su (such payments being set against the backdrop of an unsatisfactory history in relation to what the Court has been told concerning the funding of Madam Su's legal costs) or funds of Madam Su's daughter. Either way (as in other areas) Madam Su has been keen to distance herself from her own funds, and her own bank accounts.

J. LIABILITY

J.1 OVERVIEW

799. I have already addressed in Section B.3, by reference to the authorities, that the origins of all conspiracies are concealed and it is usually quite impossible to establish when or where the initial agreement was made or when or where other conspirators were recruited, with the very existence of the agreement only being inferred from overt acts, and participation in a conspiracy being infinitely variable (*R. v. Siracusa*, supra at p. 349 per O'Connor LJ), such sentiments being fully applicable to the tort of unlawful means conspiracy, with it being the rare case in which there will be evidence of the agreement itself (*Kuwait Oil Tanker* , supra, at [111]-[112]).

800. What matters is the cumulative picture, and never have the words of Rix LJ in *JSC BTA Bank v Ablyazov,* supra at [52] been more apposite than in the present case namely that it is the essence of a successful case of circumstantial evidence that the whole is stronger than individual parts. As Lord Simon of Glaisdale put it in *R v Kilbourne,* supra at 758, "*circumstantial evidence works by cumulatively, in geometrical progression, eliminating other possibilities"* and as was also said in *Shepherd v R*, supra at 579/580 (quoted with approval by Rix LJ in *Ablyazov*), the probative force of a mass of evidence may be cumulative, making it pointless to consider the degree of probability of each item of evidence separately.

801. It is thus best to avoid compartmentalising particular points relied upon, or treating points in "silos", or adopting a piecemeal approach to evidence relied upon; rather it is appropriate to take account of *"previous findings in considering the likelihood of the later facts having occurred"* or, in other words, to *"stand … back and consider … the effects of the implications of the facts … found in the round"* (see *Bank St Petersburg*

PJSC v Arkhangelsky [2020] EWHC Civ 408; [2020 4 W.L.R. 55 at [70] per Sir Geoffrey Vos C).

802. In the present case the largest part of the factual evidence comes from Madam Su, and in that context it is relevant to bear in mind that in deciding whether a serious allegation is established on the balance of probabilities, regard may be had to the fact that a party has lied or otherwise engaged in misconduct in other respects - see *Fiona Trust & Holding Corp v. Privalov*, supra at [1440]-[1446] per Andrew Smith J; *Otkritie International Investment Management Ltd v Uromov*]2014] EWHC 191 (Comm) at [89] per Eder J; *Kazakhstan Kagazy Plc v. Zhunus*, supra at [158] per Picken J; and as I addressed in *Bank of Moscow v. Kekhman*, supra, [at] [57]-[66].

803. Madam Su has undoubtably lied to this court in the respects identified in Section D.2 above (and elsewhere throughout this judgment including in relation her knowledge of the Blair Freezing Order and the Judgment Debt as addressed in Section E.4 above), and many of those lies are on the operative path in relation to the allegations that Lakatamia make. At one level, and before even considering the veracity of Madam Su's evidence, in the light of the matters I have identified in relation to the shortcomings in her witness statements I have little confidence that such statements can be taken as reflecting Madam Su's actual evidence and in such circumstances I consider that her witness statements have limited evidential value. On the basis of these matters alone I would have considered that very little weight could be attached to such statements unless corroborated by documentation or amounting to admissions against interest.

804. However all of that, unsatisfactory though it is, rather pales into insignificance (though it is entirely consistent with) my findings as to Madam Su, and the substance and veracity of her evidence. As I have addressed in Section D.2, I am satisfied from a careful consideration of her witness statements, and of her oral evidence over the course of five days, when measured against the entirety of the evidence before me, including such documentation as has been disclosed (in relation to which I am also invited to draw adverse inferences against Madam Su as addressed in due course below), that Madam Su is, quite simply, not a witness of truth, but rather a dishonest witness and consummate liar, who has lied, and lied again, and in important respects, in her written and oral evidence. As such her evidence cannot be taken at face value or given any weight save where it is corroborated by credible evidence or is contrary to her interest.

805. The lies are, I am satisfied, legion. Some are on the critical path in relation to the alleged conspiracies, some are not. They are all indicative of Madam Su's willingness to give untruthful evidence where it is, or is perceived to be, in her interests to do so. Inevitably (given her denial of participation in the conspiracies) some of the greatest lies relate to matters of immediate relevance to the allegations of conspiracy against her, including what I am satisfied were, indeed the three big lies (based on my findings herein) i.e. Madam Su's evidence (1) that she knew nothing about the Monaco Villas or what was going on in Monaco (2) that she did not receive any of the Aeroplane Sale Proceeds and Monaco Sale Proceeds and (3) that she did not know about the Blair Freezing Order against Mr Su and the Judgment Debt to which he was subject.

806. In such context I make no apology for referring once again to what I said in *Bank of Moscow v Kekhman*, supra, at [67] to [69], and in particular emphasising the words that I quoted of Robert Goff LJ in *The Ocean Frost*, supra at p. 57:-

> "Speaking from my own experience, I have found it essential in cases of fraud, when considering the credibility of witnesses, always to test their veracity by reference to the objective facts proved independently of their testimony, in particular by reference to the documents in the case, and also to pay particular regard to their motives and to the overall probabilities. It is frequently very difficult to tell whether a witness is telling the truth or not; and where there is a conflict of evidence such as there was in the present case, reference to the objective facts and documents, to the witnesses' motives, and to the overall probabilities, can be of very great assistance to a judge in ascertaining the truth."

807. These words have particular resonance in this case as particular documents (not available at the time to Sir Michael Burton or the Court of Appeal though supportive of their interlocutory conclusions) do, I am satisfied, shed light on important matters including (by way of example only), the Monaco Spreadsheet revealing Madam Su's Euro 5 million capital injection into the Monaco Villas, the Payment Schedule and Payment Ledger that shed light on Madam Su's receipt of both Aeroplane Sale Proceeds and Monaco Sale Proceeds, the Mr Su email *"Send mdm su I need 800k back from airplane money's"* which sheds light on Madam Su's receipt of Aeroplane Sale Proceeds (and viewed in context of the appeal and the need for security Madam Su's knowledge of the Judgment Debt) and Mr Su's internal note corroborating that Mr Chang follows Madam Su's instructions (and the implications of that in the context of Great Vison, UP Shipping and knowledge of the Blair Freezing Order and Judgment Debt).

808. In addition to such documentation a consideration of the inherent implausibility of Madam Su's evidence (see *Jafari-Fini v Slikkglass Ltd*, supra, at [76] and [80] - for example that she knew nothing of the Blair Freezing Order and the Judgment Debt, as addressed in Section E.4- coupled with a consideration of Madam Su's motives (as addressed below) and the overall probabilities (see *The Ocean Frost*, supra at p. 57), has been invaluable.

809. I have already made my factual findings in relation to the various items of evidence that are of potential relevance to the allegations that are raised in the preceding sections of this judgment and the cumulative picture is, I am satisfied, a powerful and compelling one, notwithstanding that Madam Su has not complied with her disclosure obligations (about which more in Section K.2 below) and has not called any witnesses whose evidence would have been of relevance (about which more in Section K.1 below).

810. Amongst those findings are the following:-

(1) Madam Su is not a witness of truth, but rather a dishonest witness and consummate liar, who has lied, and lied again, and in important respects, in her written and oral evidence. As such her evidence cannot be taken at face value or given any weight save where it is corroborated by credible evidence or is contrary to her interest (see Section D.2).

(2) Madam Su was involved in the family business after the death of her husband and in the period up to receipt of the Aeroplane Sale Proceeds and Monaco Sale Proceeds (see Sections G.2 and G.3), including involvement in transferring

monies from the accounts of family companies (see Section G.2.1), funding the family business (see Section G.2.3), owning the family office (see Section G.2.3), giving instructions in relation to the family business (see Section G.2.4), being appraised of litigation involving Mr Su and TMT companies (see Section G.2.5), dealing with company employees (see Section G.2.6) and managing company accounts held with DNB (see Section G.3).

(3) Mr Chang acted upon Madam Su's instructions (see Section H and also Section G.4).

(4) Madam Su owned and controlled Great Vision (see Section G.4).

(5) Madam Su owned and controlled UP Shipping (see Section H).

(6) When making payments to UP Shipping Ms Tseng was acting on behalf of Madam Su and was utilising Madam Su's own monies (see Section I).

(7) Madam Su made numerous loans to Mr Su (see Section I) and funded his lavish lifestyle including payment of his unlimited credit card (see Section G.5).

(8) Madam Su knew about the Blair Freezing Order and Judgment Debt before the Aeroplane Sale Proceeds and Monaco Sale Proceeds were dissipated to UP Shipping for each of the five reasons relied upon by Lakatamia as addressed in Section G.2 to G.6 above, and by reference to my findings in relation thereto in those sections (see Section G.7 and also Sections E.6.2 and F.1).

(9) Madam Su wanted the Aeroplane sold for a number of reasons, first as she regarded it as an extravagance; secondly so that she could receive the Aeroplane Sale Proceeds (or are very large part of them) herself, and thirdly (to the extent that any remained) to generate cash for the family business (though this latter point is more applicable in relation to the Monaco Sale Proceeds).

(10) Madam Su did know about the Monaco Villas and what was going on in Monaco and Madam Su had injected Euro 5 million into the Monaco Villas either by way of loan or co-investment but chose not to reveal the existence of this loan/investment which not only links her to the Monaco Villas but also provides a real motive and incentive to obtain at least partial repayment/return from the Monaco Sale Proceeds (see the Monaco Spreadsheet and Sections D.2, E.7.2 and E.7.5) with the remainder going to generate cash for the family business (and being paid out in that regard e.g. to Blue Diamond).

(11) Madam Su wanted her money back from the Monaco Sale Proceeds, and she did know that she was to receive (at least part of) the Monaco Sale Proceeds in advance of their receipt by UP Shipping (see the Payment Schedule and Section D.2).

(12) Madam Su owns and controls Sparkle Wood (see the Payment Schedule and the Payment Ledger and Section D.2).

(13) Madam Su was the beneficiary of the payments by UP Shipping to Sparkle Wood, Ms Tseng and Terraceview out of the Aeroplane Sale Proceeds (see Section D.2).

(14) Madam Su was the beneficiary of the payment of US$1,100,000 paid by UP Shipping to Sparkle Wood out of the Monaco Sale Proceeds (see Section D.2).

(15) In any event (and quite apart from the position viz Sparkle Wood) in circumstances where Madam Su owns and controls UP Shipping (see Section H), she received (in the first instance) all the Aeroplane Sale Proceeds and the Monaco Sale Proceeds upon the payment of the same to UP Shipping.

811. The Aeroplane Conspiracy and the Monaco Conspiracy stand to be viewed against the backdrop of the factual findings I have made and all the surrounding circumstances. It is clear that Madam Su had the motive, the means, and the opportunity to combine with Mr Su and the other Defendants, that is to bring their minds together, in all probability overtly (although tacitly would suffice) to conceal the Aeroplane Sale Proceeds and the Monaco Sale Proceeds from Lakatamia in breach of the Blair Freezing Order of which Madam Su, Mr Su and the other Defendants were well aware, and to render it more difficult for Lakatamia to enforce the Judgment Debt, and I am satisfied, as addressed below that she did and the other Defendants did so.

812. As has already been addressed in Section B.7. as a matter of law, the participants need not have the same aim in mind, although in the present case money was undoubtably at the heart of the matter, with the Defendants combining to conceal the Aeroplane Sale Proceeds and the Monaco Sale Proceeds from Lakatamia and to render it more difficult for Lakatamia to enforce the Judgment, and with the intention to cause Lakatamia loss and damage (which was inevitable given their actions), each for their own ends.

813. As for Madam Su and her motive and ends, they are all money related. Madam Su was owed truly enormous sums of money. Even taking the Loan Fax at face value the sums would be around US$44million but when cross-examined she said *"he owed me much more than*" and *"when he asked me for money, it was always on very urgent terms and I was very angry about that because he never repaid"*. It is clear that she wanted her money back, indeed she went so far as to say that candidly, and expressly, in relation to her Euro 5million investment/loan in relation to the Monaco Villas *"I just wanted my money back"* and the same was true of the Aeroplane as addressed in Section E.6.2, hence this question and answer in relation to the aeroplane *"Q. It had to be sold because it was one of the few assets still available to generate cash to repay you, and cash for the continuation of the business. Do you agree? A. Of course I agree".*

814. It is clear, however, that it was not just about money being paid to her (as the substantial part of the Aeroplane Sale Proceeds were through Ms Tseng, Sparkle Wood and Terraceview, and as US$1,100,000 of the Monaco Sale Proceeds were through Sparkle Wood), but also receipt and dissemination of all the Monaco Sale Proceeds through UP Shipping that she owns and controlled (the Aeroplane Sale Proceeds were also paid to UP Shipping) in order to shore up the family company finances, and re-start the family business (with payments on from UP Shipping in that context including to Blue Diamond) – the Reminders Email is clear evidence of her intentions in that regard. It is also clear that Madam Su wanted to provide her daughters with a "*secure and stable future*", as she herself said in her first witness statement.

815. All this is against the backdrop of the Blair Freezing Order and Judgment Debt, and the inevitable consequence of selling assets of Mr Su and washing the proceeds through offshore BVI companies of the likes of UP Shipping and Sparkle Wood thereby concealing the Aeroplane Sale Proceeds and Monaco Sale Proceeds from Lakatamia and (self-evidently) rendering it more difficult for Lakatamia to enforce the Judgment Debt. I am satisfied that these acts were done deliberately and with knowledge of the consequences from which it is obvious (and is to be inferred) that the Defendants intended to injure Lakatamia by so doing, as indeed they did – the gain to the Defendant conspirators was necessarily at the expense of loss to Lakatamia.

816. There is no need, of course, for Madam Su to be the one who actually actioned the transfers (though that seems more likely than not given her ownership and control of UP Shipping), and participation can be passive as well as active, but on any view knowingly allowing the use of her company UP Shipping to receive monies, amounts to participation in the conspiracies as does her involvement in agreeing to a number of onward transfers ultimately to herself. Madam Su undoubtably had the means of actioning such matters being experienced in the use of offshore entities with closed corporate structures (such as Doris Finance a BVI entity she agrees she set up, allegedly "on a whim" and, of course, UP Shipping itself, as well as the likes of Sparkle Wood and Terraceview). In this regard she was skilled in the use of nominee shareholders to conceal ownership (Mr Chang being a classic example in relation to Great Vision and UP Shipping) and Madam Su also used others and other entities to conceal her own involvement (Ms Tseng and Sparkle Wood being classic examples). She also used "firewalls" as typified by the use of Platform Shipping and the convoluted route by which monies were transferred to W Legal (see Section 7.8.1). She was also involved in many aspects of the family business as addressed in Section G, including transferring large sums of money internationally.

817. As to opportunity, and as with all conspiracies, it is the rare case in the extreme where the actual point of agreement can be identified, but in the present case, and as Madam Su confirmed when cross-examined, Mr Su lived together with her when he was in Tokyo, which provided the perfect opportunity for their coming together (although they could, of course, have spoken at any time, and wherever they were), in either event before any transfer of monies:-

> "*Q. … So when your son, Mr. Su was in Tokyo, whilst you still owned the house that is where he lived. Is that correct.*
>
> *A. Yes, because he had no other place to live in. That house is mine and I provided to him for him to stay there*".

818. It will also be recalled that on 18 December 2016, Madam Su sent Mr Su a message via Ms Hsieh which read "*Madam Su said that you must back Taipei*", and which sounds to be in the nature of a summons. As already noted, I consider that it is more likely than not, given its timing and tone, and against the backdrop of the impending receipt of substantial monies from the Monaco Villas, that Madam Su was summoning Mr Su back to Taipei to discuss such pending receipt and what was to be done with the monies.

819. The irresistible inference, which I draw, is that in relation to both the Aeroplane Sale Proceeds and the Monaco Sale Proceeds there was a combination / arrangement / understanding between Mr Su, Madam Su and the other Defendants to achieve a common end to conceal such Proceeds from Lakatamia and render it more difficult for Lakatamia to enforce the Judgment Debt and that the parties implemented the same by transferring such assets to UP Shipping (and then transferring them onwards for the benefit both of Madam Su and for the wider family business), in circumstances where I am satisfied that such transfer was done deliberately and with knowledge of the Blair Freezing Order (and so without just cause or excuse and amounting to unlawful means) and with awareness of the consequences for Lakatamia, the parties thereby intending to injure Lakatamia, and Lakatamia suffering damage caused by such unlawful means. In such circumstances, and as further addressed below, I find that the Aeroplane Conspiracy and the Monaco Conspiracy are established.

820. Madam Su, of course, denied the existence of the Aeroplane Conspiracy and the Monaco Conspiracy (and for that matter the Marex tort), but she is not a witness of truth, and the facts ultimately speak for themselves and paint a compelling picture of conduct amounting to tortious wrongdoing.

821. Standing back for a moment, and returning to the two principal questions identified in Section A in relation to the two causes of action advanced:

(1) Did Madam Su and the corporate Defendants know that Mr Su was subject to the Blair Freezing Order (for the purposes of the tort of conspiracy) or owed the Judgment Debt (for the purpose of the *Marex* tort)?

(2) Did Mr Su, Madam Su and the corporate Defendants (and possibly others) combine to dissipate the Monaco Sale Proceeds and Aeroplane Sale Proceeds in breach of the Blair Freezing Order?

822. In the circumstances identified in this judgment I am satisfied that Madam Su and the corporate Defendants did know that Mr Su was subject to the Blair Freezing Order (for the purposes of the tort of conspiracy) and did know that Mr Su owed the Judgment Debt (for the purpose of the *Marex* tort), and am also satisfied that Mr Su, Madam Su and the corporate Defendants (and possibly others) combine to dissipate the Monaco Sale Proceeds and Aeroplane Sale Proceeds in breach of the Blair Freezing Order. In such circumstances the essential elements of an unlawful conspiracy to injure Lakatamia between Madam Su, Mr Su and the corporate Defendants are indeed made out and, additionally, Madam Su and the corporate Defendants knowingly procured Mr Su's failure to discharge the Judgment Debt (the *Marex* tort).

823. I address the applicable causes of action, and my detailed findings in relation to the same, in the sections that follow, including the issue of applicable law (and in the case of the Monaco Conspiracy the position as a matter of English law and Monaco law).

J.2 THE AEROPLANE CONSPIRACY

J.2.1 APPLICABLE LAW

824. In Madam Su's Written Opening and Closing Submissions Madam Su submitted that English law cannot be the law applicable to torts alleged in connection with the

Aeroplane Conspiracy because *"it is impossible for the Court to identify where the asset(s) have been wrongfully dealt with, so as to identify the relevant applicable law"*, although Madam Su ultimately conceded that, *"[Madam Su] may have no choice but to address the alleged conspiracy under English law*".

825. I am satisfied that the position, as a matter of English law is clear. Where (as here) a claimant has not pleaded that foreign law applies, the defendant, if he contends otherwise, must plead and prove foreign law failing which it will be presumed that English law applies.

826. As Underhill LJ stated in *FS Cairo (Nile Plaza) LLC v. Brownlie* [2020] EWCA Civ 996, at 177:-

> "177. I take first the position where the claimant's position is that their claim is governed by English law, even if they appreciate that the defendant will argue otherwise. In such a case they will simply plead their case without reference to foreign law, and the burden will be on the defendant to plead that foreign law applies and the relevant content of that law. That is straightforward, and I state it only as a jumping-off point for what follows."

827. See also what is said in Dicey, as quoted by Underhill LJ in *Fs Cairo* at [180]:

> "The general rule is that if a party wishes to rely on as foreign law he must plead it in the same way as any other fact. Unless this is done, the court will in principle decide a case containing foreign elements as though it were a purely domestic English case."

828. In circumstances where Lakatamia has not pleaded foreign law in relation to the Aeroplane Conspiracy and Madam Su has not done so either, I am satisfied that English law applies to Lakatamia's claim in respect of the Aeroplane Conspiracy. I note in this regard that Lakatamia required (and was granted) permission by Waksman J to plead the Aeroplane Conspiracy. Waksman J was therefore satisfied, as am I, as to the adequacy of Lakatamia's pleaded case.

829. For completeness, I do not consider that it was open to Madam Su simply to deny (as she does in her Re-Amended Defence at paragraph 25L.2) that English law can or does apply to the alleged tort or that it is inappropriate to apply English law. Nor do I consider that there is anything in the judgment of Andrew Baker J in *Iranian Offshore Engineering and Construction Co v Dean Investment Holdings SA* [2018] EWHC 2759 (Comm) that assists Madam Su in her stance. In that case the claimant had pleaded claims against the relevant defendants for knowing receipt, dishonest assistance and unlawful means conspiracy, without reference to any foreign law. The defence averred that the claims were based on acts done in Iran and the UAE and were governed by Iranian law, but it did not plead the content of Iranian law or, therefore, that it was to any different effect from English law (with the result that the default rule in Article 25(2) of Dicey was in play). The claimant conceded that the claims were governed by Iranian law but contended that it was entitled to rely on the default rule unless and until the defendant pleaded a substantive case based on Iranian law. The Judge upheld that contention, and what was stated at [11] including at [11[v]] was stated in that context.

J.2.2 UNLAWFUL MEANS CONSPIRACY

830. In the light of the finding that I have made, the position is clear and I am satisfied that the Aeroplane Conspiracy (as pleaded at paragraphs 52L to 52W of the RRAPOC) is made out.

831. Madam Su wanted the Aeroplane sold for a number of reasons, first as she regarded it as an extravagance; secondly, and importantly for present purposes, so that she could receive the Aeroplane Sale Proceeds (or a very large part of them) herself, and in circumstances where she knew perfectly well of the Judgment Debt and the Blair Freezing Order, and thirdly (to the extent that any remained to be distributed) to generate cash for the family business (though this latter point is more applicable in relation to the Monaco Sale Proceeds).

832. Her own evidence was that she *"encouraged [Mr Su] to sell the jet"* and that she *"was quite forceful in [her] insistence on this"* (fifth witness statement paragraph 30). The aeroplane was an asset ultimately beneficially owned by Mr Su and, as such, it was caught by the Blair Freezing Order. Madam Su knew of the Blair Freezing Order and cannot but have been aware that as an asset of Mr Su the aeroplane was caught by the Blair Freezing Order. But she wanted the Aeroplane Sale Proceeds and, I am satisfied combined with Mr Su that the Aeroplane Sale Proceeds be paid to her company UP Shipping (and then on to her via Sparkle Wood, Ms Tseng and Terraceview). She candidly admitted that that is what she wanted during the course of her cross-examination in the passage I have already quoted but repeat here for ease of reference - *"Q. It had to be sold because it was one of the few assets still available to generate cash to repay you, and cash for the continuation of the business. Do you agree? A. Of course I agree".*

833. The Aeroplane Sale Proceeds were paid into UP Shipping's bank account, which was controlled by Madam Su as Madam Su owned and controlled UP Shipping. Those monies were largely then sent on to Madam Su (via Sparkle Wood, Ms Tseng and Terraceview), the first and last of which were owned and controlled by Madam Su and Ms Tseng herself acted on behalf of Madam Su. Madam Su may have been acting in her interests and that of the other members of the Su family, but I am satisfied that she proceeded knowing that her conduct would injure Lakatamia which suffices for a claim in unlawful means conspiracy.

834. The receipt of the Aeroplane Monies by Madam Su in the first place is further corroborated by Mr Su wanting the money "back" from Madam Su, it appears, as Madam Su was aware, in the context of his last chance to raise security to allow his proposed appeal in the Underlying Proceedings to proceed – see Section E.6.3 above. Strictly speaking Mr Su did not get the money back. Rather there was a "loan" from Ms Tseng (albeit acting on behalf of Madam Su and utilising Madam Su's own money) with a further liability being created on Mr Su's part towards Madam Su (i.e. this "loan" arrangement did not unravel the dissipation that had taken place in the first place and in fact furthered the conspiracy). On the strength of the email chain of 28 May 2015 circulated by Ms Huang, the cash that was passed "back" to Mr Su generated a corresponding liability. Thus, it did not increase Mr Su's net assets. This whole episode concealed Madam Su's involvement and also had the effect of converting an asset of Mr Su's (the Aeroplane Proceeds), subject to the Blair Freezing Order, into a liability of Mr Su (notionally to Ms Tseng but in reality to Madam Su) thereby concealing the Aeroplane Sale Proceeds and making it more difficult for Lakatamia to enforce the Judgment Debt.

835. Set against the findings that I have made, and the backdrop of Madam Su wanting to be paid the Aeroplane Sale Proceeds and receiving such monies via her company UP Shipping (and on through Sparkle Wood, Ms Tseng and Terraceview), and in circumstances where she knew of the Blair Freezing Order and Judgment Debt, the irresistible inference, which I draw, is that in relation to the Aeroplane Sale Proceeds there was a combination / arrangement / understanding between Mr Su, Madam Su and UP Shipping to conceal the Aeroplane Sale Proceeds from Lakatamia and render it more difficult for Lakatamia to enforce the Judgment Debt and that the parties implemented the same by transferring the Aeroplane Sale Proceeds to UP Shipping (and then transferring them onwards) for the benefit both of Madam Su and for the wider family business in circumstances where I am satisfied that such transfer was done deliberately and with knowledge of the Blair Freezing Order (and so without just cause or excuse and amounting to unlawful means) and with awareness of the consequences for Lakatamia, the parties thereby intending to injure Lakatamia, and Lakatamia suffering damage caused by such unlawful means. In such circumstances I find that the Aeroplane Conspiracy is established.

836. I do not consider that any of the points raised on behalf of Madam Su militate against such inference and such finding (most of which are predicated on the false basis that, contrary to my findings, Madam Su did not know about the Blair Freezing Order and the Judgment Debt and did not own or control UP Shipping). It is said that there is no evidence of the active involvement of Madam Su prior to the receipt of the funds by UP Shipping, but, as already addressed by reference to the authorities, the origins of all conspiracies are concealed, with the very existence of an agreement being inferred from overt acts, and allowing UP Shipping bank accounts to be used in this regard is active participation *a fortiori* when the monies are then immediately paid out via opaque routes (Sparkle Wood, Ms Tseng and Terraceview) ultimately to Madam Su herself. Nor is there any merit in the submission that payments to Madam Su were within the "ordinary and proper course of business" exception of the Blair Freezing Order for the reasons already addressed in Section C7.7.

837. I am satisfied there was such a combination / arrangement / understanding between Mr Su, Madam Su and UP Shipping from the start (i.e. before the transfer to UP Shipping) and that Madam Su was "up to her neck" in the conspiracy from it coming into being, it being part of the common design to evade the Blair Freezing Order by concealing the Aeroplane Sale Proceeds from Lakatamia and rendering it more difficult for Lakatamia to enforce the Judgment Debt as evidenced by the use of an (opaque) BVI company (UP Shipping) which concealed the Aeroplane Monies from Lakatamia and rendered it more difficult for Lakatamia to enforce the Judgment Debt (again *a fortiori* given the onward transfers to Sparkle Wood, Ms Tseng and Terraceview rendering the money trail still more opaque).

J.2.3 THE MAREX TORT

838. The requirements of the Marex tort have already been addressed in detail in Section B.8. I am satisfied that Lakatamia's cause of action against Madam Su and UP Shipping in inducing and/or facilitating a breach of the Judgment Debt in relation to the Aeroplane Sale Proceeds is made out, and that the Marex tort claim succeeds.

839. In this regard, and on the basis of the findings that I have made, there has been the entry of a judgment in Lakatamia's favour (the Judgment Debt) that Madam Su and UP

Shipping know about, Madam Su and UP Shipping have procured and/or induced Mr Su to make the transfer of the Aeroplane Proceeds to UP Shipping (and hence to Madam Su's control) and/or have facilitated its making, such conduct has breached the rights of Lakatamia under the Judgment Debt and Madam Su and UP Shipping knew that such conduct would breach the rights owed under the Judgment Debt.

J.3 THE MONACO CONSPIRACY

J.3.1 APPLICABLE LAW

840. There is a debate between the parties as to the law applicable to the torts alleged by Lakatamia with Lakatamia contending that English law applies and Madam Su contending that Monaco law applies. It is, ultimately, a sterile debate, because the torts that have been committed are actionable as a matter of English law and as a matter of Monaco law (the applicable principles being addressed at Section B.7 and Section B.9 above respectively). Academic though the issue is, it is addressed below given that the matter was fully argued before me.

841. It is common ground that as Lakatamia's claims before the English courts relate to events after 11 January 2009, but before 1 January 2021, the Rome II Regulation (Regulation (EC) No 864/2007) ("Rome II"), will apply to determine the proper law of the torts.

842. Article 4 of Rome II provides in relevant respects:

> "1. Unless otherwise provided for in this Regulation, the law applicable to a non-contractual obligation arising out of a tort/delict shall be **the law of the country in which the damage occurs** irrespective of the country in which the event giving rise to the damage occurred and irrespective of the country or countries in which the indirect consequences of that event occur.
>
> …
>
> 3. Where it is clear from all the circumstances of the case that the tort/delict is manifestly more closely connected with a country other than that indicated in paragraphs 1 or 2, the law of that other country shall apply. A manifestly closer connection with another country might be based in particular on a pre-existing relationship between the parties, such as a contract, that is closely connected with the tort/delict in question".
>
> (emphasis added)

843. In relation to Article 4(1), and before turning to the respective authorities relied upon by Lakatamia and Madam Su, as a matter of language, I consider that where there is an existing judgment debt in England (as there is here in the form of the Judgment Debt) with the benefit of a post judgment freezing injunction (as there is here with the continued Blair Freezing Order) one would, as a matter of language, naturally consider that the damage occurred in England as the unlawful means conspiracy would involve *"a common design to evade a freezing order or [and] judgment in favour of*

Lakatamia" (to adopt, for this purpose, what Madam Su says at paragraph 378 of her Written Closing Submissions), the focus being on the freezing order and judgment, with the damage to Lakatamia being suffered in England as that is the situs of the Judgment Debt arising out of the Underlying Proceeding in England, policed by the Blair Freezing Order, and that is where the Judgment Debt stands to be paid, and where Lakatamia suffers damage if it is not paid or the ability for it to be paid is impaired – put another way England is the country where the Judgment Debt should have been paid, and the damage has accordingly occurred here. It would be artificial in the extreme (and contrary to the natural language of Article 4(1) itself) to regard where the tort was committed (foreign jurisdictions including Monaco) i.e. *"the country in which the event giving rise to the damage occurred"* (which is expressly distinguished in Article 4(1), or the country or countries in which the indirect consequences of the event occurred (which is expressly distinguished in Article 4(1) – for example where a wronged party happened to be incorporated, as the country where the damage occurred. It might be thought that the position would be *a fortiori* where the wrong actually consists of inducing or procuring a violation of rights under an English judgment (here the Marex tort and the English judgments giving rise to the Judgment Debt).

844. I consider that, without reference to authority, the ordinary and natural meaning of Article 4(1) is, as identified above, and that in consequence the applicable law would be English law.

845. Lakatamia submits that the above interpretation is, indeed, the correct interpretation of Article 4(1) and that the law applicable to the torts is English law not only be reference to the language of Article 4(1) but also by reference to authority. In this regard Lakatamia submits that as to the case law on Article 4(1) of the Rome II, the most relevant decision is *Pan Oceanic Chartering Inc v. UNIPEC UK Co Limited* [2016] EWHC 2774 (Comm) at [200] ("*Pan Oceanic"*), in turn applying *Dolphin Maritime & Aviation Services Ltd v. Sveriges Angfartygs Assurans Forening (The Swedish Club)* [2009] EWHC 716 (Comm); [2010] 1 All E.R. (Comm) 473 ("*Dolphin Maritime*") (specifically at [57]-[59], which concerns Article 5(3) of the Brussels I Regulation (which is now Article 7(2) of the Brussels I Recast Regulation). *Dolphin Maritime* was also followed by the Court of Appeal in *Actial Farmaceutica LDA v. De Simone* [2016] EWCA Civ 1311 at [33]-[41] which again concerned Article 5(3) of the Brussels I Regulation. Authorities on the Brussels Regulation are "*likely to be useful*" but are not of direct application - see *FM Capital Partners Ltd v. Marino* [2018] EWHC 1768 (Comm) at [485] per Cockerill J.

846. There is a useful summary (and application) of the principles under Article 5(3) of the Brussels Regulation in *Pan Oceanic*, supra, at [196]-[200] per Carr J (as she then was):

> "196. In *AMT Futures v Marzillier [2014] EWHC 1085 (Comm)* , Popplewell J conducted a comprehensive review of the cases relating to Article 5(3) of the Brussels Regulation . This decision has since been examined by the Court of Appeal [2015 QB 699] (and at the time of this judgment is currently under consideration by the Supreme Court). The Court of Appeal overturned Popplewell J's decision, but did not criticise his analysis of the relevant legal principles. Popplewell J's decision provides some useful guidance as to where POC suffered its damage in this case (at page 361):
>
> "(4) In cases of economic loss, the search is for the place where the harmful

event directly had its effect on the immediate victim and where the original damage is manifested: the *Dumez case [1990] ECR I-49* , paras 20-21. The damage occurs where the direct harmful consequences are suffered, not at the place where indirect or more remote damage occurs or consequential financial damage is felt which has arisen out of an event which has already caused initial and actual damage elsewhere: the *Marinari case [1996] QB 217* , paras 14-15 (and Advocate General's opinion, at paras 26-27); the *Kronhofer case [2004] All ER (EC) 939* , paras 19, 21 and the *Réunion Européenne case [2000] QB 690* , Advocate General's opinion, at para 48.

(5) These formulations give effect to two important aspects of the search: (a) the task is so far as possible to identify a single place for the occurrence of damage. The search is for the place where the damage occurred. This reflects the fundamental objective of certainty. (b) The search will be for the element of damage which is closest in causal proximity to the harmful event. This is because it is this causal connection which justifies attribution of jurisdiction to the courts of the place where damage occurs: see the *Bier case [1978] QB 708* , paras 16-17 and the *Dumez case [1990] ECR I-49* , para 20.

(6) There is a difference between a case in which the claimant complains that he has lost his money or goods (as in the *Marinari case [1996] QB 217* or the *Domicrest case [1999] QB 548*) **and a case in which the claimant complains that he has not received money or goods which he should have received.** In the former case the harm may be regarded as occurring in the place where the money or goods were lost, although the loss may be said to have been consequentially felt in the claimant's domicile. **In the latter case the harm lies in the non-receipt of the money or goods at the place where they ought to have been received, and the damage to him is likely to have occurred in the place where he should have received them**: the *Dolphin case [2010] 1 All ER (Comm) 473* , para 60 and the *Réunion Européenne case [2000] QB 690* , paras 35-36.

(7) **It may assist in identifying the place where damage occurred to ask what would have happened if the tort or delict had not been committed: the *Domicrest case [1999] QB 548* , 568E-F and the *Dolphin case [2010] 1 All ER (Comm) 473* , para 59. That is not, however, always an answer to where the damage has occurred. That question engages the issues of which damage is direct, immediate and initial and which merely indirect or consequential**."

197. *Kronhofer v Maier (Case C-168/02) [2004] All ER (EC) 939* , referred to by both Popplewell J at first instance and Christopher Clarke LJ in the Court of Appeal in AMT , is authority for the proposition that (at paragraph 21) " article 5(3) *of the Convention must be interpreted as meaning that the expression 'place where the harmful event occurred' does not refer to the place where the claimant is domiciled or where 'his assets are concentrated' by reason only of the fact that he has suffered financial damage there resulting from the loss of part of his assets which arose and was incurred in another contracting state.* " In Kronhofer the claimant investor argued that Article 5(3) of the Brussels Regulation was engaged because he had suffered a diminution of value in his assets in Austria by reason of having made

investments in Germany under the advice of the German investment company. The court held that the place where the damages occurred and the place of the event giving rise to it were both in Germany.

198. In *Dolphin Maritime & Aviation Services Ltd v Sveriges Angfartygs Assurans Forening [2010] 1 All ER (Comm) 473* , also considered in AMT , the failure to pay in England, which the defendants were said to have induced, was the sole, direct and immediate cause of the loss which the claimant had suffered, namely the non receipt of the money. Christopher Clarke J (as he then was) observed:

> "60. I do not ignore the danger of conflating the place where the damage occurred with the place where the loss was suffered. There is, however, a difference between a case in which the claimant complains that he has lost his money or goods (as in the Domicrest case or the Sunderland Marine case [*Sunderland Mutual Insurance Co Ltd v Wiseman [2007] 2 All ER Comm 937*]) and a case in which the claimant complains that he has not received a sum which he should have received. In the former case the harm may be regarded as occurring in the place where the goods were lost (see the Domicrest case) or the place from or to which the moneys were paid (see the Sunderland Marine case), although the loss may be said to have been suffered in the claimant's domicile. In the latter case the harm lies in the non-receipt of the moneys at the place where they ought to have been received, and the damage to him is likely to have occurred in the place where he should have received it. That place may well be the place of his domicile and, therefore, also the place where he has suffered loss. An analogy may be drawn with the non-delivery of cargo at the destination port: see the *Réunion Européene* case."

199. In the Court of Appeal in AMT , Christopher Clarke LJ formulated a test to ensure that the decision was congruous with the key decisions of the ECJ as follows:

> "54. Such a conclusion is consistent with the authorities of the Court of Justice. If I ask myself (i) what is "the place where the event giving rise to the damage … directly produced its harmful effects upon" AMTF (the *Dumez France case [1990] ECRI-49*); or (ii) where was the " actual damage" which "elsewhere can be felt" or the "initial damage" suffered (the *Marinari case [1996] QB 217*); or (iii) what was the place where the damage which can be attributed to the harmful event (commencement of proceedings) by "a direct and causal link" (the *Réunion Européenne case [2000] QB 690*) was sustained, the answer is, in my judgment, Germany."

200. The case before me is not, as POC contends, one where there is both direct and indirect damage as a result of the alleged unlawful act, as was the case in Dumez . **Rather it is a case where, as in Dolphin Maritime , there was a sole, direct and immediate loss, namely the non-receipt of money. There is a single victim of the breach of the non-contractual obligation: POC. This is a case where POC complains that it has not received money which it should have received.** As identified in AMT at first instance (see paragraph 34(6)), the harm lies in the non-receipt of money at the place where it ought to have been received, and the damage

occurred where POC should have received it. Such a conclusion is not in any way inconsistent with the principle in Kronhofer : it is not a question of where the *"ultimate"* loss is felt, but where the direct and only loss is felt."

(emphasis added)

847. In similar vein in *Dolphin Maritime*, supra, at [57]-[60] Christopher Clarke J (as he then was) stated as follows:-

"57. In those circumstances, the arguments on behalf of Dolphin are, in my judgment, to be preferred. Dolphin's essential complaint is that it suffered harm because it did not receive the $ 8.5 million into its bank account which it should have done because, despite knowledge that this would involve a breach of the underwriters' contract with Dolphin, the Club paid it to their accounts in Turkey. I recognise that the matter must be looked at through European spectacles. But there is nothing insular in recognising that the contract (which is governed and must be interpreted by English law) calls in terms for " Recoveries " and quasi-Recoveries (i.e. sums which would otherwise comprise " Recoveries ") to be received direct by Dolphin and that the complaint in tort is that the Club wrongfully brought about a breach of that obligation.

58. When, in those circumstances, I ask myself " where the damage to the direct victim occurred" , (*Dumez* : Advocate General para 52) or "where the event giving rise to the damage, and entailing tortious liability, directly produced its harmful effects upon the person who is the immediate victim of that event", (*Dumez* : ECJ para 20) or "where the event giving rise to the damage caused injury", (*Reunion*) **, the answer appears to me that it is in this country, where Dolphin did not receive the money which, if the contract had been performed, it should have received.**

59. **Further, if I ask myself what would have been the position if the tort complained of had not taken place, the answer is that payment would have been made to Dolphin in England; and the essence of Dolphin's complaint is that that did not occur**. Mr Thomas submitted that an inquiry as to what would have happened if the tort was not committed was no guide to the question – where did the damage occur? If there was no tort, there would have been no damage. In some cases, e.g. in cases of damage to goods or persons, the question may have no great utility. **But in others where the claimant has failed to obtain some property or money which he would otherwise have received the answer to the question may be a guide to identifying where the harm in the particular case occurred**.

60. I do not ignore the danger of conflating the place where the damage occurred with the place where the loss was suffered. There is, however, a difference between a case in which the claimant complains that he has lost his money or goods (as in *Domicrest* or *The "Seaward Quest"*) **and a case in which the claimant complains that he has not received a sum which he should have received.** In the former case the harm may be regarded as occurring in the place where the goods were lost (*Domicrest*) or the place from or to which the monies were paid (*The "Seaward Quest"*), although the loss may be said to have been suffered in the claimant's domicile. **In the latter case the harm lies in the non receipt of the money at the**

> **place where they ought to have been received, and the damage to him is likely to have occurred in the place where he should have received it**. That place may well be the place of his domicile and, therefore, also the place where he has suffered loss. An analogy may be drawn with the non delivery of cargo at the destination port: see *Reunion Europeenne*." (emphasis added)

848. I consider that the principles identified in *Pan Oceanic* and *Dolphin Maritime*, and the passages I have highlighted above, are apposite in the present case and support Lakatamia's submission that the damage occurred in England where the Judgment Debt should have been (but was not) paid. It is well established that an English judgment is payable in England: see *In re A Debtor (No.1838 of 1911)* [1912] 1 K.B. 53 (*per* Cozens-Hardy M.R. at 56: "*The creditors must come within the realm, and if they are within the realm, then no doubt the debtor must search them out.*").

849. For her part Madam Su submits that the country in which the "direct" damage arising out of the alleged torts occurred was Monaco, and refers to the European case law on the identification of the location of direct damage (much of that law has already been quoted above being cited and addressed in *Pan Oceanic* and *Dolphin Maritime*). Particular reliance is placed upon what was said by Sales LJ at [70] of *JSC BTA Bank v Ablyazov (No 14)* [2017] QB 853 ("*Ablyazov (No.14))* (a Lugano Convention case), that the question is to identify the place "*where damage was suffered first or most immediately*" (relying on the ECJ decision in *Marinari v Lloyds Bank plc (Zubaidi Trading Co, intervener*) (Case C-364/93) [1996] QB 217). It is said that where damage has been suffered in multiple jurisdictions, the Court can either "*fragment*" the applicable law between the jurisdictions, or alternatively identify the country where "*the damage predominantly occurred*" (at [37] of *Hillside (New Media) Limited v Bjarte Baasland* [2010] EWHC 3336; [2010] 12 WLUK 638 (Comm) and see *Dicey & Morris* at [35-027]).

850. *Ablyazov (No.14)* was itself a case in conspiracy relating to a breach of a worldwide freezing order (albeit in the context of the application of Article 5(3) of the Lugano Convention). At first instance Teare J had concluded that the claimant bank suffered its primary damage *"in the place where the asset was wrongly dealt with in breach of the WFO"* (at [41]) holding that any reduction in value in a judgment in England was consequential damage which was first felt where the assets are located (at [42]). In the Court of Appeal Sales LJ stated at [70] as follows:

> "70. In my view, the judge's application of limb (a) of Article 5(3) cannot be faulted. I agree with it. In my judgment it is particularly strongly supported by the judgment of the ECJ in the *Marinari case [1996] QB 217* , at paras. [12]-[15]. At para. [14] the ECJ was concerned to limit the element of jurisdictional choice imported into Article 5(3) under limb (a), and did so by focusing its application on the place where damage was suffered first or most immediately (limb (b) "cannot …be construed so extensively as to encompass any place where the adverse consequences of an event that *that has already caused actual damage elsewhere* can be felt" – my emphasis); and hence at para. [15] the ECJ again emphasised a distinction between the state where the "initial damage" arises (which will on that ground, if it is a contracting state, have jurisdiction under limb (a)) and the contracting state where "financial damage consequential" on that initial damage

> arises (which will not have jurisdiction under limb (a)). In the present case, the steps allegedly taken to hide assets in other jurisdictions disabled the Bank from getting its hands on those assets in those jurisdictions and using them to satisfy its judgments against Mr Ablyazov, and accordingly it is in those jurisdictions that actual damage was suffered first or most immediately by the Bank, even though it was reflected consequentially as damage in the form of a diminution in the financial value of the judgments and orders in its favour."

851. Whilst this passage supports Madam Su's approach (though it is not binding precedent as it concerns a different Convention and it does not address in which foreign jurisdiction the damage occurs) it relies heavily upon the reasoning in the *Marinari* case. However, as the authorities already addressed show, there is a difference between a case in which the claimant complains that he has lost his money or goods (as in the *Marinari* case, supra) and a case in which the claimant complains that he has not received money or goods which he should have received (as in *Pan Oceanic* and *Dolphin Maritime*) as recognised by Popplewell J in *AMT Futures* at p. 361. In the latter case the harm lies in the non-receipt of the money or goods at the place where they ought to have been received, and the damage to him is likely to have occurred in the place where he should have received them – see *Dolphin Maritime*, at [60] (as quoted above), and the *Réunion Européenne case* [2000] QB 690 at [35]-[36].

852. Equally I do not consider that the approach in *Ablyazov (No.14)* is apposite in the context of the Marex tort. Where the wrong actually consists of inducing or procuring a violation of rights under an English judgment (here the Judgment Debt) I consider that the direct damage is suffered in England – all that occurs in Monaco is the event giving rise to the damage.

853. I consider that the principles identified in *Pan Oceanic* and *Dolphin Maritime*, and the passages I have highlighted above, are apposite in the present case in relation to the torts alleged by Lakatamia and that the direct damage occurred in England where the Judgment Debt should have been (but was not) paid.

854. In this regard I also consider that when identifying the place where damage occurred it assists to ask what would have happened if the tort or delict had not been committed (see the *Domicrest* case [1999] QB 548, 568E-F and *Dolphin Maritime)* - the answer is clear the Judgment Debt would have been payable (and paid) in England.

855. In such circumstances I would conclude that under Article 4(1) of Rome II the damage occurred in England and so English law would apply by reference to Article 4(1).

856. However if, as Madam Su submits, by reference to *Ablyazov (No.14)*, the damage occurred in a foreign jurisdiction (and assuming that was in Monaco, which does not necessarily follow) then Monaco law would apply by reference to Article 4(1).

857. In the event, it really does not matter whether English law or Monaco law would apply by reference to Article 4(1), as it is common ground that Article 4(1) is subject to Article 4(3), and it is clear from all the circumstances of the case, as addressed below, that the torts are manifestly more connected with England, and accordingly English law applies by virtue of Article 4(3).

858. It will be recalled that Article 4(3) provides:

> "3. Where it is clear from all the circumstances of the case that the tort/delict is manifestly more closely connected with a country other than that indicated in paragraphs 1 or 2, the law of that other country shall apply. A manifestly closer connection with another country might be based in particular on a pre-existing relationship between the parties, such as a contract, that is closely connected with the tort/delict in question".

859. In relation to the applicable principles concerning Article 4(3) Lakatamia made the following points, which I did not understand Madam Su to take issue with:-

(1) The fact that Article 4(3) is an exception to the general rule in Article 4(1) does not mean that it should be given an overly restrictive construction. As Cranston J stated in *Pickard v. Motor Insurers' Bureau* [2017] EWCA Civ 17; [2017] R.T.R. 20 at [16], "*art.4(3) is an escape clause but in my view that does not mean that its ambit should be unduly narrowed*". He also added (also at [16], that Article 4(3) exists to "*enabl*[e] *the court to adapt the rigid rule* [in Article 4(1)] *to an individual case so as to apply the law that reflect[s] the centre of gravity of the situation*".

(2) Before Article 4(3) applies, it is not required that the tort not be connected at all with the jurisdiction identified by Article 4(1). As stated by the authors of *Dicey & Morris* state at paragraph 30-032: "*it should not be necessary to demonstrate the absence of any "real" or "genuine" connection with the country whose law is otherwise applicable, and that a clear preponderance of factors point to a country other than that whose law applies under Art.4(1) … is all that is required*".

(3) The words "*all the circumstances of the case*" in Article 4(3) encompass the country in which any proceedings have been commenced. In *Stylianou v. Toyoshima* [2013] EWHC 2188 (QB) the claimant had prosecuted proceedings in Western Australia for around two-and-a-half years prior to commencing a claim in England. A dispute arose as to the law that was applicable to the English claim. Sir Robert Nelson, finding that that the applicable law was that of Western Australia in the course of deciding an application for permission to serve the English claim form out of the jurisdiction, said, ¶79: "*One of the matters to take into account … under Article 4(3) … is the issue and pursuit of proceedings in Western Australia by the claimant*".

(4) The location of the damage is an irrelevant consideration under Article 4(3). As Burton J stated in *Alliance Bank JSC v. Aquanta Corporation* [2011] EWHC 3281 (Comm), at [38]:

> "The fall back provision under Article 4(3) "where it is clear from all the circumstances of the case that the tort/delict is manifestly more closely connected with a country other than that indicated in paragraphs 1 or 2" , is that the law of that other country is to apply, and there is no mention there of the relevance of the place of the occurrence of the

> damage – indeed, it would appear to be excluded from consideration by the very nature of the issue."

860. I am satisfied that the clear preponderance of factors leads to the conclusion that the torts are manifestly more closely connected with England than Monaco:-

(1) The claims are intimately connected with England given that the very allegations of Lakatamia are that Madam Su conspired to defeat the Blair Freezing Order and intentionally violated its rights in the Judgment Debt which were respectively an English freezing injunction and the product of English judgments in each case made and entered in England and Wales.

(2) Events in England are of relevance to the very existence of the causes of action, as reflected in the Chronology of Events in Section E, including the instruction of various English solicitors (and correspondence in relation thereto), the appeal to the Court of Appeal, and what the English Court has been told (and found), Mr Su's arrest, detention and committals in England (and custodial sentences served in England), the various English judgments, and what knowledge Madam Su has acquired in the context of those events, all of which occurred in England.

(3) The instant proceedings, which have been ongoing in this jurisdiction since 2019, are themselves an extension of, or are ancillary to, the Underlying Proceedings, which were issued in England in 2011 and to which Mr Su has been a party for over a decade.

(4) The Underlying Proceedings arose out of the FFA Contract. That was a contract for the performance of a sequence of derivatives trades through the London Clearing House which has always been addressed on the basis that English law was the applicable law of the contract.

(5) Mr Su is still in England and Wales, and is still also a defendant in those associated Underlying Proceedings (with extant committal proceedings in England).

(6) In contrast, the claims have truly minimal connections with Monaco. It is no more than a historical fortuity that the origin of the monies was property in Monaco transferred from Monaco by a Monaco lawyer out of that jurisdiction to a BVI company UP Shipping (the dissipated monies could have originated in any jurisdiction in the world and that can hardly found a close connection with the fortuitous country concerned). No party is resident or incorporated in Monaco (where Lakatamia's principal lives is an irrelevance), and neither Mr Su nor any of the Defendants has any ongoing connection there. Indeed, Madam Su is keen to stress that she has never even been there. Lakatamia (incorporated in Liberia) has a base of operations in Monaco but that has nothing whatsoever to do with events or the dispute itself. The lack of any relevant connection with Monaco is also reflected in the fact that in this very trial no party has thought it necessary to call any factual witnesses from Monaco, and any documentation originating from Monaco is a miniscule part of documentary material before the Court.

(7) Any other territorial connections are weak in the extreme and fortuitous (such as where Madam Su resides or where corporate defendants happen to be incorporated) and it hardly lies in the mouth of Madam Su to pray in aid where other potential witnesses might live (who she has studiously chosen not to call and who could in any event have been called by video-link).

861. It is, I am satisfied, clear from all the circumstances of the case that the alleged torts are manifestly more closely connected with England than with Monaco. Accordingly English law is the proper law of the torts under Article 4(3), and I so find.

862. My finding is, however, academic to the outcome of this action, as the Defendants' conduct is equally actionable as a matter of Monaco law as addressed in Section B.9 above, and applied in Section J.3.3 below.

863. In the sections that follow I address the question of liability both as a matter of English law and as a matter of Monaco law.

J.3.2 LIABILITY UNDER ENGLISH LAW

J.3.2.1 UNLAWFUL MEANS CONSPIRACY

864. There are, as Lakatamia point out, striking similarities between the Aeroplane Conspiracy and the Monaco Conspiracy. They each involve the sale of a remaining asset of Mr Su, the sales occur around the same time (that in relation to the aeroplane first). They each involve transfers to UP Shipping (owned and controlled by Madam Su) and they both involve, within short order transfers out to Madam Su (via Sparkle Wood owned and controlled by Madam Su and/or Ms Tseng acting on behalf of Madam Su).

865. It is said that the facts established in relation to each conspiracy reinforces Lakatamia's case in relation to the other. Conceptually I can see that if there was any doubt in relation to the Aeroplane Conspiracy subsequent events (in the form of the Monaco Conspiracy) could bolster the former. However in circumstances where I am in any event satisfied that the Aeroplane Conspiracy is made out, for the reasons already given, I consider it of greater relevance to bear in mind when considering the alleged Monaco Conspiracy, that as a matter of chronological fact the Aeroplane Conspiracy has already occurred – and as such the Monaco Conspiracy is "more of the same" and the allegations are to be viewed against the backdrop that Mr Su, Madam Su and UP Shipping have already conspired together in the past, albeit that the Monaco Conspiracy involves additional participants Portview, Cresta and Blue Diamond in circumstances where, in addition to monies going to Madam Su, very large sums are dissipated to third parties including, in particular, Blue Diamond.

866. As I have found Madam Su knew about the Monaco Villas and what was going on in Monaco and Madam Su had injected Euro 5 million into the Monaco Villas either by way of loan or co-investment but chose not to reveal the existence of this loan/investment which not only links her to the Monaco Villas but also provides a real motive and incentive to obtain at least partial repayment/return from the Monaco Sale Proceeds (see the Monaco Spreadsheet and Sections D.2, E.7.2 and E.7.5) with the remainder going to generate cash for the family business (and being paid out in that regard e.g. to Blue Diamond).

867. It is clear that Madam Su wanted her money back from the Monaco Sale Proceeds indeed, as already noted, she went so far as to say that candidly, and expressly, in relation to the Monaco Villas *"I just wanted my money back"* and she did know that she was to receive (at least part of) the Monaco Sale Proceeds in advance of their receipt by UP Shipping (see the Payment Schedule and Section D.2).

868. It was Mr Chang who instructed Maître Zabaldano to send the Monaco Sale Proceeds to UP Shipping. There is no evidence that in doing so, he acted on Mr Su's instructions, and as I have found Mr Chang ultimately follows Madam Su's instructions, as Mr Su himself noted in his internal note. As I have found, UP Shipping is a company which Madam Su owns and controls. Madam Su was also the beneficiary of the payment of US$1,100,000 paid by UP Shipping to Sparkle Wood out of the Monaco Sale Proceeds (see Section D.2), Sparkle Wood itself being a company owned and controlled by Madam Su (as evidenced by the Purchase Schedule and Purchase Ledger).

869. Further as also already noted, on 18 December 2016, Madam Su had sent her message to Mr Su via Ms Hsieh *"Madam Su said that you must back Taipei",* and I consider that it is more likely than not, given its timing and tone, and against the backdrop of the impending receipt of substantial monies from the Monaco Villas, that Madam Su was summoning Mr Su back to Taipei to discuss such pending receipt and what was to be done with the monies (all set against the backdrop that Madam Su knew about the Blair Freezing Order and the Judgment Debt). The Reminders Email itself shows that Madam Su was keenly aware of the arrival of the Monaco Sale Proceeds in UP Shipping's bank account and she gave Mr Su detailed advice as to how the funds were to be used with a view to restoring the "family business" (such transfers, such as to Blue Diamond inevitably further dissipating the Monaco Sale Proceeds).

870. Set against the findings that I have made, and the backdrop of the above matters, the irresistible inference, which I draw, is that in relation to the Monaco Sale Proceeds there was a combination / arrangement / understanding between Mr Su, Madam Su and the other Defendants to conceal the Monaco Sale Proceeds from Lakatamia and render it more difficult for Lakatamia to enforce the Judgment Debt and that the parties implemented the same by transferring the Monaco Sale Proceeds to UP Shipping (and then transferring them onwards) for the benefit both of Madam Su and for the wider family business in circumstances where I am satisfied that such transfer was done deliberately and with knowledge of the Blair Freezing Order (and so without just cause or excuse and amounting to unlawful means) and with awareness of the consequences for Lakatamia, the parties thereby intending to injure Lakatamia, and Lakatamia suffering damage caused by such unlawful means. In such circumstances I find that the Monaco Conspiracy is established.

871. Once again I do not consider that any of the points raised on behalf of Madam Su militate against such inference and such finding, most of which are again predicated on the false basis that, contrary to my findings, Madam Su did not know about the Blair Freezing Order and the Judgment Debt and did not own or control UP Shipping. The same points I made in relation to the Aeroplane Conspiracy, apply with equal force, in relation to the Monaco Conspiracy, concerning the involvement of Madam Su, and the origins of all conspiracies, with the very existence of an agreement being inferred from overt acts, and allowing UP Shipping bank accounts to be used in this regard is active participation on Madam Su's behalf *a fortiori* when the monies are then immediately paid out via opaque routes (including, in part to Sparkle Wood and ultimately to Madam

Su herself) as well as companies associated with the family business including Blue Diamond. Nor, again, is there any merit in the submission that payments to Madam Su were within the "ordinary and proper course of business" exception of the Blair Freezing Order for the reasons already addressed in Section C7.7.

872. I am satisfied there was such a combination / arrangement / understanding between Mr Su, Madam Su and UP Shipping from the start (i.e. before the transfer to UP Shipping) and that Madam Su was once again "up to her neck" in the conspiracy from it coming into being, it being part of the common design to evade the Blair Freezing Order by concealing the Monaco Sale Proceeds from Lakatamia and rendering it more difficult for Lakatamia to enforce the Judgment Debt as evidenced by the use of an (opaque) BVI company (UP Shipping) which concealed the Aeroplane Sale Proceeds from Lakatamia and rendered it more difficult for Lakatamia to enforce the Judgment Debt (again *a fortiori* given the onward transfers to third party BVI companies including Blue Diamond, as well as to Sparkle Wood, rendering the money trail still more opaque).

J.3.2.2 THE MAREX TORT

873. The requirements of the Marex tort have already been addressed in detail in Section B.8. I am satisfied that Lakatamia's cause of action against Madam Su and UP Shipping in inducing and/or facilitating a breach of the Judgment Debt in relation to the Monaco Sale Proceeds is made out, and that the Marex tort claim succeeds.

874. In this regard, and on the basis of the findings that I have made, there has been the entry of a judgment in Lakatamia's favour (the Judgment Debt) that Madam Su and the other Defendants knew about, Madam Su and the other Defendants have procured and/or induced Mr Su to make the transfer of the Monaco Sale Proceeds to UP Shipping (and hence to Madam Su's control) and/or have facilitated its making, such conduct has breached the rights of Lakatamia under the Judgment Debt and Madam Su and the Defendants knew that such conduct would breach the rights owed under the Judgment Debt.

875. Indeed the position in relation to the *Marex* tort as regards the Monaco Sale Proceeds is *a fortiori* in circumstances where Lakatamia was actually attempting to have the Cooke J judgments recognised in Monaco, and the clear purpose of transferring the Monaco Sale Proceeds out of that jurisdiction was to defeat that effort. I am satisfied that Madam Su facilitated the transfer of the Monaco Sale Proceeds out of Monaco in the full knowledge that Mr Su owed the Judgment Debt. In the event, the judgments of Cooke J were recognised in Monaco on 6 July 2017.

J.3.3 LIABILITY UNDER MONACO LAW

876. If the law applicable to the torts alleged by Lakatamia is Monaco law, then I am equally satisfied that the Defendants are liable to Lakatamia under Monaco law. In this regard I have already addressed the applicable principles of Monaco law in Section B.9 and will not repeat them at this point.

J.3.3.1 LIABILITY UNDER ARTICLE 1229

877. It will be recalled that Article 1229 of the Monaco Civil Code provides that *"if one person causes damage to another by fault, the former must compensate the loss"*, which the experts describe as "classic" tortious liability (Joint Memorandum issue 1), and that the experts agree, amongst other matters, that in order to establish liability under Article 1229, it is necessary to prove three elements: "(i) a fault, (ii) a causal link (the loss would not have occurred if the fault had not been committed), and (iii) a loss" (Joint Memorandum issue 1).

878. Applying the principles set out in Section B.9 to the findings that I have made, I am satisfied that Madam Su (and the other Defendants) assisted Mr Su to avoid honouring the Judgment Debt and to breach the Blair Freezing Order by the transfer of the Monaco Sale Proceeds out of Monaco via UP Shipping, and that this constitutes fault for the purpose of Article 1229 of the Monaco Civil Code (such fault being "major fault" for which I find each of the Defendants jointly and severally liable). I reject the suggestion that Madam Su's age affected her actions or reduced her fault. I am satisfied that Madam Su at all times knew perfectly well what she was doing, and her age did not play any part.

879. The requisite causal link is established as the loss would not have occurred had the fault not been committed, and in terms of loss the experts are in agreement as to the principles of Monaco law that govern the measure of damages caused by the fault (Joint Memorandum Issue 1.7). I address the damages recoverable in Section L.2 below. Suffice it to note at this point, that I am satisfied that the same sums as are recoverable by way of compensatory damages under English law are recoverable under Article 1229.

J.3.3.2 LIABILITY UNDER ARTICLE 1022 (action paulienne)

880. I have already addressed the applicable principles in relation to Article 1022 in Section B.2.3 above.

881. It will be recalled that Article 1022 of the Civil Code (the Action Paulienne) affords a creditor the right to recover assets paid away by a debtor to a third party in order to defeat a claim and that the experts were agreed on the applicable principles - see Joint Memorandum, Issue 2.

882. The experts identify that *"an Action Paulienne must be directed against the third-party recipient(s) of the alleged fraudulent act".* In this case, the Monaco Sale Proceeds were paid away to UP Shipping. In circumstances where I am satisfied that the Monaco Sale Proceeds were paid away to UP Shipping in order to defeat Lakatamia's claim to such monies, UP Shipping is liable under Article 1022 on the Action Paulienne, and I so find.

883. The experts also agree that *"an Action Paulienne would be properly founded against…shareholders and/or beneficial owners where the claimant manages to demonstrate that the company is fictitious or that the assets (patrimonie) of the shareholders and/or beneficial owners and the assets of the company are intermingled"* (see Joint Memorandum, Issue 2.4).

884. I am satisfied that UP Shipping was a company that was used by Madam Su to funnel money, which was hers (by virtue of her ownership of UP Shipping and its bank

accounts), to wherever it was required, and through which she received money paid to her by (amongst others) Mr Su, and in such circumstances Madam Su is also liable under Article 1022 on the Action Paulienne, and I so find.

J.4 THE OTHER DEFENDANTS

J.4.1 MR SU

885. I have made factual findings above as to Mr Su's involvement in both the Aeroplane Conspiracy and the Monaco Conspiracy above, as is necessary in the context of the allegations of conspiracy that are made. However in circumstances where the action is currently stayed against Mr Su, it is accepted by Lakatamia that no relief can presently be sought or ordered against Mr Su,

J.4.2 PORTVIEW AND CRESTA

886. Portview and Cresta were ordered to serve CPR-compliant Defences by 23 February 2021 on an unless basis. They failed to do so, and in consequence I ordered that they be debarred from defending the claim. Therefore, no positive defence could be, or was, advanced by Portview and Cresta.

887. I am satisfied Portview and Cresta undoubtedly knew about the Blair Freezing Order and the Judgment Debt. Mr Chang and Mr Su were directors of Portview. Mr Chang was also a director of Cresta from May 2015 onwards. As I have found above both Portview and Cresta were parties to the Monaco Conspiracy regarding the Monaco Sale Proceeds and also committed the Marex tort.

J.4.3 UP SHIPPING

888. UP Shipping was also ordered to serve a CPR-compliant defence at the PTR, and also failed to do so, and in consequence I ordered that UP Shipping also be debarred from defending the claim. Therefore, no positive defence could be, or was, advanced by UP Shipping.

889. I am satisfied that UP Shipping knew about the Blair Freezing Order and the Judgment Debt through its director Mr Chang. As I found above UP Shipping was a party to the Aeroplane Conspiracy and the Monaco Conspiracy, and also committed the Marex tort in circumstances where it received both the Aeroplane Sale Proceeds and the Monaco Sale Proceeds and acted at the direction of Madam Su.

J.4.4 BLUE DIAMOND

890. I made a similar unless order in relation to Blue Diamond to serve a CPR-compliant defence at the PTR, and Blue Diamond failed to do so, and in consequence I ordered that Blue Diamond was also debarred from defending the claim. Therefore, no positive defence could be, or was, advanced by UP Shipping.

891. Mr Su was a director of Blue Diamond and its bank accounts were controlled by him. In such circumstances I am satisfied that Blue Diamond knew about the Blair Freezing Order and the Judgment Debt. In circumstances where Blue Diamond had transferred to it part of the Monaco Sale Proceeds while being managed by or on behalf of Mr Su,

I am satisfied that Blue Diamond was a party to the Monaco Conspiracy and also committed the Marex tort.

892. I have been referred to a set of minutes of a Meeting of Extraordinary General Assembly dated 12 February 2020 during which Blue Diamond's partners resolved to dissolve and liquidate the company. However it is not clear whether the company has in fact been dissolved. In such circumstances Lakatamia has maintained its claim against Blue Diamond, and is entitled to relief sought against it.

K. ADVERSE INFERENCES

K.1.FAILURE TO CALL WITNESSES

893. In *Wisniewski v Central Manchester Health Authority* [1998] PIQR 324 ("*Wisniewski"*) Brooks LJ stated:

> "(1) In certain circumstances a court may be entitled to draw adverse inferences from the absence or silence of a witness who might be expected to have material evidence to give on an issue in an action.
>
> (2) If a court is willing to draw such inferences they may go to strengthen the evidence adduced on that issue by the other party or to weaken the evidence, if any, adduced by the party who might reasonably have been expected to call the witness.
>
> (3) There must, however, have been some evidence, however weak, adduced by the former on the matter in question before the court is entitled to draw the desired inference: in other words, there must be a case to answer on that issue.
>
> (4) If the reason for the witness's absence or silence satisfies the court then no such adverse inference may be drawn. If, on the other hand, there is some credible explanation given, even if it is not wholly satisfactory, the potentially detrimental effect of his/her absence or silence may be reduced or nullified".

894. The principles in *Wisniewski* have recently been considered by Cockerill J in *Magdeev v Tsvetkov* [2020] EWHC 887 (Comm). After commenting that parties were increasingly relying on *Wisniewski*, and inviting the Court to draw negative inferences where particular witnesses were not called, Cockerill J then stated as follows:-

> "150. This is not the place to deal with this issue at length but the tendency to rely on this principle in increasing numbers of cases is to be deprecated. It is one which is likely to genuinely arise in relatively small numbers of cases; and even within those cases the number of times when it will be appropriate to exercise the discretion is likely to be still smaller.
>
> 151. In this connection I note that it was suggested for Mr Magdeev in reliance upon *Jaffray v Society of Lloyd's [2002] EWCA Civ 1101* that I was effectively bound to draw such inferences, at the risk of perpetrating a legal wrong.

152. As I noted in the course of legal submissions, this line of argument neglects to take account of the recent Court of Appeal decision in *Manzi v King's College Hospital NHS Foundation Trust [2018] EWCA Civ 1882* , where Sir Ernest Ryder SPT said:

> " *Wisniewski* is not authority for the proposition that there is an obligation to draw an adverse inference where the four principles are engaged. As the first principle adequately makes plain, there is a discretion i.e. "the court is entitled [emphasis added] to draw adverse inferences"

153. He also made clear that such matters as proportionality may give rise to a valid reason for a witness's absence.

154. In my judgment the point can be dealt with relatively briefly thus:

> i) This evidential "rule" is, as I have indicated above, a fairly narrow one. As I have noted previously ([2018] EWHC 1768 (Comm) at [115]), the drawing of such inferences is not something to be lightly undertaken.
>
> ii) Where a party relies on it, it is necessary for it to set out clearly (i) the point on which the inference is sought (ii) the reason why it is said that the "missing" witness would have material evidence to give on that issue and (iii) why it is said that the party seeking to have the inference drawn has itself adduced relevant evidence on that issue.
>
> iii) The Court then has a discretion and will exercise it not just in the light of those principles, but also in the light of:
>
> a) the overriding objective; and
>
> b) an understanding that it arises against the background of an evidential world which shifts - both as to burden and as to the development of the case - during trial.
>
> iv) In this case, save as to one very narrow issue with which I will deal at the appropriate point below, the exercise required of the parties relying on this principle has not really been done."

895. Lakatamia submits that, *"there has been a wholesale failure by Madam Su to provide the evidence that would assist the Court in determining the dispute".* It is said that Madam Su's failure to call witnesses is underscored by her Case Management Information Sheet in which she said that she would call between 1 and 3 witnesses. Lakatamia then submits, *"it can safely be inferred that those witnesses have not been called because they would irremediably damage her case".*

896. The potential witnesses concerned (who did not give evidence) are the following:

(1) Ms Sara Chao who helped Madam Su to search Mr Su's "old office" in January 2019, who liaises on Madam Su's behalf, and who assisted Madam Su in preparing (at least) her third witness statement. She arranged for the Monaco Sale Proceeds to be transferred from Cresta to UP Shipping. It is said that Madam Su appears to have taken a deliberate strategic decision not to call Ms

Chao as a witness. Her Taipei lawyers wrote a note (in which privilege has been lost and which Madam Su agreed that the Court could see that reads: *"1. Barclays Cresta's account is handled by Nobu. Madam Su has not participated. 2. Sara knows the fact above and can be a witness"*.

(2) Ms Sherry Chang who received the cash from Madam Su in January and February 2019 to pass on to Ocean Net, and who also appears to have been a conduit through which requests for funds were passed by Mr Su to Madam Su. It appears that she is in contact with Baker McKenzie.

(3) Mr Chang authorised the transfer of the Monaco Sale Proceeds and was a director of both Great Vision and UP Shipping. Madam Su is still in touch with him.

(4) Ms Judy Hsieh generated remittances on behalf of UP Shipping and notified Madam Su of the receipt of the Monaco Sale Proceeds. Madam Su confirmed that she has her telephone number and accepted that she "could speak to her".

(5) Ms Tseng who was the conduit for funding UP Shipping throughout 2015 and 2016. She received directly or via her alleged company Sparkle Wood the bulk of the Aeroplane Sale Proceeds and (through Sparkle Wood) some US$1,100,000 of the Monaco Sale Proceeds.

897. A relevant consideration when considering whether or not to draw an adverse inference and the weight to be placed on any inference that is drawn, will be as to the centrality or otherwise of the witness – see in this regard the case of *Djibouti v Boreh* [2016] RWHC 405(Comm) at [57] per Flaux LJ. As was stated in *Property Alliance Group Ltd v. Royal Bank of Scotland Plc* [2018] EWCA Civ 355; [2018] 1 W.L.R. 3529 at [154] (Sir Terence Etherton M.R., Longmore and Newey LJJ):-

> "No litigant is obliged to call witnesses to satisfy the curiosity or enthusiasm of his opponent. It was always open to PAG to subpoena any witness it thought would be helpful to the court. The fact that a party who might be expected to produce witnesses does not do so may sometimes speak volumes but it is a matter for the judge to decide whether it does so in a particular case."

898. I do not consider Ms Chang, Ms Chao, and Ms Hsieh to be central witnesses. I consider it likely that Madam Su could have called them, and they could have given evidence of relevance, but I do not consider it would be appropriate to draw any adverse inference from Madam Su not calling them. I also bear in mind that there are other defendants in the action including Mr Su, and though the claim against Mr Su is stayed, the interests of Mr Su and Madam Su are not necessarily aligned, and at various times such individuals have been employed by Su family companies. The position as to whether they would have been willing to give evidence, and how that evidence would have inter-related as between Madam Su and Mr Su is, I consider, a complicating factor.

899. To the extent that such witnesses were available to Madam Su, Madam Su has, no doubt, made a tactical decision not to call them and has to live with the consequences of that. In fact Madam Su's failure to call them has only damaged Madam Su's defence, and without the need for the drawing of adverse inferences. For example, Ms Chao could have opined as to the accuracy of otherwise of the Purchase Schedule and Purchase Ledger (with which she was involved per the metadata), but absent her evidence I have concluded based on the evidence that I have heard about her that there is every reason to believe that she is an individual who would have taken care to ensure the accuracy of a document to which she had had involvement. Equally there can be no doubt that she was aware of the Blair Freezing Order and the Judgment Debt, and given the evidence that I have as to her relationship with Madam Su I am satisfied that she would have told Madam Su about them. She could also have given evidence about the transfer of the Monaco Sale Proceeds from Cresta to UP Shipping, but I have been able to reach conclusions on the issues without the benefit of her evidence.

900. Ms Chang was a witness of limited relevance and I have only made limited reference to her. Ms Hsieh features in the contemporary correspondence more prominently most obviously in the context of whether or not Madam Su first learned of the receipt of the Monaco Sale proceeds from her (which I have concluded she did not), and again she would have known about the Blair Freezing Order and the Judgment and would have been another source of Madam Su's knowledge in that area. Her absence has only damaged Madam Su as she did not give evidence to rebut that which appears from the documentation and which speaks for itself - for example her stating *"Up Shipping need TC [i.e.. Mr Chang] signature"*). Once again a further complicating factor is her involvement in the Su family companies and the fact that the interests of Mr Su and Madam Su are not necessarily aligned.

901. Mr Chang is in a different category. He would have been an important witness. However he would also have faced allegations that he was up to his neck in the conspiracies as a co-conspirator. Lakatamia themselves sought a freezing injunction against him in 2020 and contemplated joining him as a defendant. In such circumstances (and whilst I have not received positive evidence on the point from those acting on behalf of Madam Su) I have no doubt whatsoever that he would have wished to remain silent and as such would not have been an available witness to Madam Su. In such circumstances it would be inappropriate to draw any adverse inference from the fact that he was not called as a witness.

902. Ms Tseng would also have been an important witness and could have shed light on the Aeroplane Sale Proceeds and the Monaco Sale Proceeds viz Sparkle Wood, and the funding of UP Shipping throughout 2015 and 2016, as well as the payment of Madam Su's legal fees. However the result of her absence has again been to damage Madam Su's defence (as well as the veracity of Madam Su's evidence). The Payment Schedule and the Payment Ledger tell the lie to Madam Su's evidence – without rebuttal evidence from Ms Tseng (if rebuttal evidence she could give) the documents speak for themselves. In such circumstances I do not consider it appropriate to draw any adverse inference – there is no "evidential gap" that fairness dictates requires filling by the drawing of an adverse inference. In addition and whilst her involvement has always been "live" on the pleaded issues, her involvement has undoubtably come into sharper focus at the time of trial.

903. I would only add one point, building on the observations of Cockerill J in *Magdeev*. Not only is it necessary to set out clearly (i) the point on which the inference is sought (ii) the reason why it is said that the "missing" witness would have material evidence to give on that issue and (iii) why it is said that the party seeking to have the inference drawn has itself adduced relevant evidence on that issue, I consider that it of particular importance to define with precision exactly what adverse inference(s) are sought so that the same can be considered by the court where its discretion arises. I consider that an inference that *"witnesses have not been called because they would irremediably damage"* a party's case to be too generic.

K.2 ADEQUACY OF MADAM SU'S DISCLOSURE

904. Lakatamia submits that Madam Su has failed to comply with her disclosure obligations in this case and invites the Court to drawn adverse inferences in that regard. In relation to the relevant principles, Lakatamia refer to the following authorities.

905. In *Prest v. Petrodel Resources Ltd* [2013] UKSC 34; [2013] 2 A.C. 415, at [85] Lady Hale stated that:

> "… the court is entitled to draw such inferences as can properly be drawn from all the available material, including what has been disclosed, judicial experience of what is likely to be being concealed and the inherent probabilities, in deciding what the facts are."

906. In *Miah v. Miah* [2020] EWHC 3374 (Ch), at [41] HHJ Mithani QC stated:

> "The obligation to give proper disclosure can never be understated. It is incumbent upon a party to supply all the material in that party's possession or control that may be relevant to a claim – whether that material advances or undermines the party's claim. … The court can, of course, draw an adverse inference in relation to any failure to provide disclosure and take it into account, in its overall evaluation of the evidence, any such failure as not supporting a premise contended for on behalf of a party".

907. In *Earles v. Barclays Bank Plc* [2009] EWHC 2500 (Mercantile); [2010] Bus. L.R. 566, Judge Simon Brown QC stated by reference to a failure to disclose documents at [37]:

> "In cases where there is a deliberate void of evidence, such negativity can be used as a weapon in adversarial litigation to fill the evidential gap and so establish a positive case".

908. In *Yuchai Dongte Special Purpose Automobile Co Ltd v. Suisse Credit Capital (2009) Ltd* [2018] EWHC 2580 (Comm); [2019] 1 Lloyd's Rep. 457 at [17] Christopher Hancock QC (sitting as a Deputy Judge of the High Court) applied, by analogy, the principles governing the drawing of inferences from the absence of a witness, in relation

to the drawing of appropriate inferences from a want of disclosure if satisfied that relevant documents had not been provided.

909. Lakatamia also referred to the case of *Active Media Services Inc v. Burmester, Duncker & Joly Gmbh & Co KG* [2021] EWHC 232 (Comm). That was a striking case in which Calver J found that an individual had *"deliberately destroyed documents in his personal Gmail account just prior to the commencement of trial"* (at [70]). After addressing the relevant principles as to whether a fair trial is possible after the deliberate destruction of documents (at [302] to [309], having first addressed the principles in relation to adverse inferences where relevant witnesses are not called, by reference to what was said in *Wisniewski, Manzi* and *Magdeev v Tsvetkov* as quoted above), he stated (obiter) as follows at [310]-311]:

> "310. It follows that if there is no evidence on a particular point, the Court could rely on the inferences drawn from the destruction of documents or the failure to call relevant witnesses to provide evidence which is otherwise absent.
>
> 311. Indeed, in my judgment, the fact that in the present case both (i) documents have been deliberately destroyed and (ii) witnesses have not been called by the guilty party whose evidence would likely bear upon the (presumed) contents of the destroyed documents, takes this case a step further forward than in the case of drawing inferences from the mere absence of witnesses. Although it might rarely arise in practice (and it does not arise in this case as there is other material to support the adverse inferences to be drawn), I consider that the court is entitled in such a case, depending upon the particular facts, to draw adverse inferences as to (i) what the destroyed documents are likely to have shown on the issue on question, and (ii) the evidence that the witnesses are likely to have given on the issue in question but which was withheld, without the need for some other supporting evidence being adduced by the innocent party on that issue. The two factors combined make the case for the drawing of an adverse inference without other supporting evidence an extremely strong one, at least so far as establishing a defence to a claim is concerned".

910. It is not necessary for me to address whether or not what is said about the drawing of an adverse inference from a failure to call a witness even absent evidence prima facie establishing a given fact where this is coupled with the deliberate destruction of documents is correct, given that I have not considered it appropriate to draw adverse inferences in relation to Madam Su not calling any particular witness (although I would, for my part, associate myself with such sentiments of Calver J). I agree, however, that the deliberately suppression of documentation is analogous to the destruction of documents as either way the Court is deliberately deprived of documents that should be before it.

911. The question of the adequacy of Madam Su's disclosure, and whether any adverse inferences should be drawn from any failure to give such disclosure is very much in play.

912. For her part Madam Su accepts that where, as a matter of fact, the Court finds that a party failed to disclose documents within its control, then adverse inferences can be drawn. However Madam Su also rightly points out that the Court should not, and

cannot simply "*convert open-ended speculation into findings of facts*" (*Prest v. Petrodel Resources Ltd* supra, at [44]).

913. Madam Su submits that the proper approach, where documents are said to be missing, is not to speculate as to whether an adverse document exists, but rather, where an evidential question arises, to place the benefit of the doubt in favour of the opposing party referring to what was said by Moulder J in *PJSC Tatneft v Gennady Bogolyubov* [2021] EWHC 411 at [448]:

> 448. In relation to the other documents, for the reasons set out above, I do not accept the evidence of Mr Aleksashin that there would have been no notes of meetings or advice kept at SK. However, it seems to me that the position that this court finds itself in relation to such documents is as set out by Adrian Beltrami QC sitting as a Judge of the High Court in *Aegean Baltic Bank SA v Renzlor Shipping Limited* [2020] EWHC [2851] (Comm) at [34]:
>
> > "…It is one thing to draw an inference that the evidence of a missing witness would or might be adverse. It is another to speculate that there exists a document which is adverse. **Absent at least a reason to believe that such a document does exist**, this would be going too far. Nonetheless, in considering the documentary record in the trial bundle, I must always remember that that record is incomplete, that the Defendants have not furnished their disclosure and that the Bank and the Court have been prevented, by the Defendants' conduct, from finding out whether documents do exist which might be adverse to the Defendants' case. **At the very least, I would expect the benefit of any doubt to be firmly in the Bank's favour**."
>
> 449. It seems to me that I would be speculating as to whether SK had notes of meetings or advice which would have been adverse to Tatneft. **However, the explanation for the absence of such documents is one which I do not accept. Accordingly, in relation to such documents I bear in mind that the court has not seen such documents and the benefit of the doubt is in favour of the defendants.**"
>
> (emphasis added)

914. As is apparent from the above, there is a distinction between speculation about whether a particular document or documents exist and a situation where there is reason to believe that particular documents exist and have been suppressed. In the latter case it may be appropriate, in the exercise of the Court's discretion, not simply to give the benefit of the doubt to the other party, but to draw an adverse inference as to what the other documentation would have shown.

915. Madam Su gave her disclosure on 24 July 2020 (on the same date as Lakatamia). In her disclosure certificate (supported by a signed statement of truth), Madam Su stated that she did not have any custodians or electronic documents, that the majority of the documents that she disclosed comprised documents that "*have been collected from [Mr Su's] Office"* and a *"number of other documents within my control, that have been provided to Baker McKenzie during the course of the proceedings which are relevant to the litigation, are also included in my disclosure"*. She also stated that her disclosure was incomplete because it did not include documents stored in her Taipei apartment,

which she said she could not access because the Covid-19 pandemic prevented her from travelling to Taipei (she had been in Japan since November 2019).

916. In a supplementary witness statement that she was ordered to make to clarify her disclosure certificate, Madam Su stated that the *"other documents"* that were provided to Baker McKenzie were also drawn from Mr Su's office and had been provided to her by *"former senior employees of [Mr Su]"* (Madam Su's fourth witness statement at paragraph 16). In her disclosure certificate she said that the documents taken from Mr Su's office were *"collected"* by Baker McKenzie. Exactly how that occurred and how documents were selected or collated for disclosure on the basis of relevance is quite unclear. When asked in cross-examination about whether someone had selected the documents that were collected she gave the following vague evidence, *"I don't know about the selection. I provided the key to perhaps one of **our** employees so that the doors could be opened for them to get the documents. I actually forgot, or anything about selection, and **those are not my documents**"* (emphasis added).

917. Even leaving aside the internal inconsistency within that answer (between *"our employees"* and *"they are not my documents"*), it is clear that Madam Su did, and does, have control of all documentation within that office, and so should have disclosed the same so far as relevant, albeit that the reality is that (at best) Madam Su has simply been giving disclosure of some of the documentation that Mr Su should have given in any event.

918. The position in relation to documents stored in Madam Su's Taipei apartment was itself less than satisfactory. Madam Su did not apply to the Court for an extension of the deadline by which she was required to disclose such documentation and she rebuffed Lakatamia's suggestion (made as long ago as May 2020) that Madam Su should authorise a member of Baker McKenzie's Taipei office to attend her Taipei apartment to collect the documents concerned it being stated that she *"was a woman who has lived much of her life in wealth"* (and so, it was said, should not therefore be expected to allow third parties to review documents unsupervised by her). Lakatamia accordingly applied for specific disclosure, which should not have been necessary, which provoked the production of a limited number of documents on 1 December 2020, with a few further documents subsequently provided that were stated to have been *"found by [Madam Su's] cleaner"*.

919. I am in no doubt whatsoever that there are documents within Madam Su's control that she has failed to disclose in breach of her disclosure obligations.

920. By way of opening observation, I find it incredible that Madam Su had no custodians at all. I have already noted that she commonly referred to *"our employees"*, and this is, of course, consistent with the language of the Thank You Letter, addressed to Madam Su and is signed by 21 employees of the family business. On the basis of her involvement in the family business (as addressed in Section G.2 above, I am satisfied that she in practice had free access to all documents in the family business (see, in this regard, *Ardila Investments NV v ENRC NV v Zamin Ferrous Metals* [2015] EWHC 3761 (Comm).

921. In any event, and leaving aside the generalities as to whether Madam Su had control over documentation in the hands of these various individuals, there are individuals that I am satisfied on any view did act on behalf of Madam Su (for the reasons that I have

already addressed), and Madam Su would have had control over any documents in their hands – most obviously Mr Chang, Ms Tseng, Ms Chang and Ms Chao yet no disclosure has been forthcoming by reference to them (or indeed any custodians).

922. However I do not consider it appropriate to draw adverse inferences from any disclosure failures at this high level of generality. There are, however, categories of disclosure failure where it is appropriate to consider the drawing of adverse inferences.

923. First, I am satisfied, and find, that Madam Su has suppressed UP Shipping's bank statements. The relevance of such bank statements is obvious. UP Shipping is at the heart of the conspiracies, and a central issue is as to who owns and controls UP Shipping and the source of funds entering and leaving those bank accounts is of obvious relevance.

924. Incredibly, not a single UP Shipping bank statement has been disclosed for the period covered by the Loan Fax. I do not consider this to be a fortuity of what UP Shipping bank statements happened to remain in Mr Su's office. On the contrary I am satisfied that such documentation has been deliberately suppressed, and in circumstances where Madam Sus is clearly in control of the documents in that office, such suppression has been caried out by Madam Su, or on her behalf. Perhaps unusually, there is actual (seemingly contemporaneous) evidence of what statements existed by reference to the text written on the spines of folders in which UP Shipping's bank statements were (in an orderly manner) kept.

925. The photographs of the spines in the bundle before me show that there are folders containing UP Shipping's bank statements for March 2010 to December 2015, January 2016 to May 2017 and June 2017 onwards. The obvious conclusion (which I draw) was that a complete run of UP Shipping's bank statements for the periods stated not only existed (as one would expect), but more importantly was preserved in an orderly way, and yet have been deliberately suppressed, it being an incredible coincidence if statements for the relevant period simply happened to have been removed (and equally incredibly lost), for the relevant period.

926. The position is reinforced by (and consistent with) the fact that not even a single remittance for UP Shipping during this period has been disclosed either. Of the 212 remittances for UP Shipping that Madam Su has disclosed, not one is from the period to which the Loan Fax relates. When Madam Su was asked about this in cross-examination she obfuscated saying "*I don't know anything about UP Shipping"* and *"I don't know. I'm not in charge of UP Shipping"* which was a lie, for the reasons I have addressed at length, but was also a failure to grapple with the fact that she had disclosed bank statements for other periods, and even the spines of the folders for the periods in question. Madam Su clearly had unrestricted access to the documents in the office (as evidenced by the disclosure she has given), and she in any event owned and controlled UP Shipping whose documents they were. Mr Su has either been in HMP Pentonville, or at least in England at all times since 27 February 2019 when Sir Michael Burton made the first freezing order against Madam Su. The obvious inference, which I draw, is that the documents have been removed by Madam Su or by someone on her behalf because they would have been damaging to her defence, and I am satisfied that Madam Su has chosen what bank statements to disclose and not disclose.

927. For the reasons addressed in Section H Madam Su owned and controlled UP Shipping. It has been possible to make findings in that regard without the (missing) UP Shipping bank statements or (missing) UP Shipping remittances. However I have no doubt whatsoever that such conclusions would have been reinforced, and corroborated still further by such documentation (which is why such documentation was no doubt suppressed). Accordingly, and whilst I bear in mind that the Court has not had the benefit of seeing such documents, I am satisfied they exist and have been suppressed by Madam Su and would have been adverse to Madam Su. In such circumstances I consider it is appropriate not only to give Lakatamia the benefit of the doubt, but also to draw the adverse inference that such documents would have further bolstered my conclusion that Madam Su owns and controls UP Shipping. I have put matters in this way because I am satisfied that my findings in relation to UP Shipping are justified on the evidence, whether or not it is bolstered by the drawing of such (appropriate) adverse inference. I would only add that such documentation might also have shed light on the wider issue of the conspiracies alleged – however it would be to speculate as to what they might have shown in that regard, and so I do not do so.

928. The second such area of disclosure failure on Madam Su's part relates to the loans to Mr Su, and the question of Madam Su's bank accounts. The Loan Fax is a document disclosed by Madam Su which records money advanced to Mr Su in excess of US$44m in 2012 and 2013 (although Madam Su stated orally that the Loan Fax recorded only part of the support that she had given to Mr Su and the family business, stating that, *"he owed me much more than"* that). However informal such loans might have been, I am satisfied that they would have generated a very large amount of documentation that Madam Su must have access to, yet no documentation beyond the Loan Fax has been disclosed by Madam Su.

929. A related aspect of this is that such documentation would be likely to reveal the source of the loans. Madam Su's evidence in this regard was vague in the extreme and was simply not credible. Madam Su says that she does not know where this money came from save that she suggested that it came from unnamed "friends" in Hong Kong and transferred via unidentified accounts. This is linked to the related point as to the very limited number of bank accounts that Madam Su has identified and which she has given disclosure in respect of. I have already addressed this in Section E.4. I enquired of Madam Su in relation to details of the banks that she had held accounts with. Her answer, which was less than satisfactory, was "*I don't have those accounts now. I'm already very old. How can I have more accounts? I'm just afraid that one day, when I die, how can money be retrieved from the bank accounts?"* coupled with *"These could have been my friends' accounts and things happened a decade or more ago. If you ask something that happened even two years ago, I couldn't remember either*". Whatever memories may fade with the passage of time I have considerable difficulty in accepting that a memory of who a person, or their companies, banks with, will do so, whilst Madam Su's actual answer was, I am satisfied, a clear deflection of my enquiry.

930. I am satisfied that Madam Su has not given disclosure of all documentation that must exist within her control in relation to the loans she provided, and in relation to what bank accounts she has, or has access to. This also links in with the position in relation to Ms Tseng and my findings that Ms Tseng was transferring monies belonging to Madam Su (for example in relation to the "loan" to Mr Su for US$800,000). This further

links into my findings that Ms Tseng acted on behalf of Madam Su (so that Madam Su has control of such documents as Ms Tseng herself has in this regard).

931. As a result of Madam Su's disclosure failures in these areas (both in relation to her own documentation and documentation within her control in the hands of Ms Tseng), I consider that it would be appropriate to draw an adverse inference that the documentation in relation to the loans and Madam Su's bank accounts would have revealed that Madam Su herself made the loans (and from what bank accounts) and further reinforced that Ms Tseng was acting on her behalf, as would Ms Tseng's documentation. I am satisfied that the matters I have identified support the findings I have made without the need for any such adverse inference, however such adverse inference does bolster the other evidence that I have identified. Of course what is not known (but is likely) is that disclosure of such bank accounts and associated statements would also have revealed evidence relevant to various other matters in play in the action, but that will never be known, and so I do not take that into account. It is also likely that such documentation would also have revealed (further) shortcomings in Madam Su's Affidavit of Assets, but ultimately nothing turns on this (given the wealth of evidence that Madam Su has lied and lied again, and further evidence is hardly needed to reach such a conclusion).

932. There are numerous other disclosure failings on Madam Su's part that I bear in mind but do not consider it appropriate to draw any adverse inference in relation to. These include the documentation surrounding the Euro 5 million investment/loan concerning the Monaco villas (there being a dearth of disclosure of the surrounding documentation that must exist), documentation concerning the operation of Great Vision's accounts with DNB and with the closure of Great Vision's bank account (Madam Su must have had sight of a closure statement to state that which she states in her first witness statement), documentation in relation to the payment of rent for the office on the 7th floor of the building at North Fuxing Road, Taipei (the documentary evidence and oral evidence of Madam Su being that she paid that rent though no disclosure has been given), and documentation in relation to her paying salaries and associated expenses (no such disclosure having been given despite contemporaneous evidence that she was doing so). The evidence as it stands on all such matters does not assist Madam Su's defence. I see no need to seek to draw any adverse inference as to what further evidence would have revealed.

933. Finally, by way of postscript in relation to disclosure, certain documents said to have originated from Ms Tseng were provided by Madam Su during the course of the trial (specifically three documents in relation to the transfer of monies concerning the alleged US$800,000 "loan" to Mr Su from Ms Tseng and a monetary transfer in that context to Terraceview). I was concerned in closing as to whether "cherry-picking" was going on (i.e. that Ms Tseng had relevant documentation, but only provided to Madam Su those documents which might be perceived to assist her case – assuming, of course, contrary to my findings, that Madam Su did not have control over documents possessed by Ms Tseng). I was told that Baker McKenzie had satisfied themselves that Ms Tseng was not a custodian and not a party over which Madam Su had control. Correspondence followed between the solicitors after the hearing in which Hill Dickinson asked for disclosure of all documents relating to those assertions on the basis that privilege had been waived. In an email on 7 April 2021 Baker McKenzie maintained that all such communications with Ms Tseng remained privileged. I do not consider it appropriate

to go behind that claim for privilege, but in consequence I do not know how Baker McKenzie reached the conclusion that they did concerning the relationship between Madam Su and Ms Tseng. In the event, and for the reasons that I have given, I am satisfied that Ms Tseng at all times did act on behalf of Madam Su.

L. QUANTUM

934. Lakatamia seeks compensatory damages in the amount of the monies dissipated pursuant to the Aeroplane and Monaco Conspiracies and punitive damages. Issues arise in relation to causation, in relation to the quantum of compensatory damages, and as to whether punitive damages are appropriate and of so in what amount.

L.1 ENGLISH LAW – CAUSATION AND COMPENSATORY DAMAGES

935. As a matter of English law, establishing whether the alleged conspiracy caused loss requires *"the court to decide the counter factual question of what on the balance of probabilities would have happened had there been no conspiracy" Capital for Enterprise Fund a LP, Maven Capital Partners UK LLP v Bibby Financial Services Limited* [2015] EWHC 2593 (Ch) – i.e. in the present case the relevant question is what would have happened but for the breach of the Blair Freezing Order.

936. Whilst Madam Su has no positive pleaded case on quantum, Madam Su submits that Mr Su would have breached the Blair Freezing Order anyway by dissipating his assets in some other way with the result (so it is said) that the Defendants' tortious conduct has not caused any loss. That such an argument is wrong in law is well established on the authorities, including binding appellate authority, as addressed below.

937. In relation to the Marex tort, the issue is what loss has been suffered by the violation of Lakatamia's interest in the Judgment Debt, by analogy with the tort of inducing a breach of contract, which requires the claimant to prove that "*he has been damaged by the breach of contract"* (see Clerk & Lindsell on Torts at paragraph 23-53). Lakatamia has suffered loss as a result of non-payment of the Judgment Debt as addressed in due course below.

938. So far as causation is concerned, as a general principle of tort law, it is no answer for the defendant to say that, but for the defendant's wrongdoing which has in fact resulted in loss, the same loss would have been suffered because some other tort or legal wrong was or would have been committed at a later point in time whether by the defendant or someone else. The principle is summarised in *McGregor on Damages*, 21st ed., at paragraph 8-007 as follows:

> "the "but for" test is usually applied by asking whether but for the wrongdoing the loss would have been <u>lawfully</u> suffered. This qualification ensures that a victim is not made worse off by further wrongdoing" (original emphasis).

939. *Baker v. Willoughby* [1970] A.C. 467 illustrates the principle. The claimant was: (i) hit by a car and sustained injuries to his left leg; and (ii) two years later shot during a robbery and had his left leg amputated. The House of Lords held that the claimant could recover damages from the negligent driver, even for the period after his leg was

amputated. The robbery is ignored and *"cannot diminish the damages":* at 494 per Lord Reid. See also, in this regard, the discussion in *Burrows, Remedies for Torts, Breach of Contract and Equitable Wrongs* (4th Edn.) at pp 51-54.

940. Another illustration of this principle is the House of Lords decision of *Bolitho v. City and Hackney Health Authority* [1998] A.C. 232, where the claimant during a hospital stay suddenly suffered breathing difficulties, and the defendant doctor negligently failed to attend. It was suggested that even if the doctor had attended, she would have (it was argued, negligently) refused to intubate, and therefore the same injury would have been suffered. Lord Browne-Wilkinson said at p. 240:

> "A defendant cannot escape liability by saying that the damage would have occurred in any event because he would have committed some other breach of duty thereafter."

941. The same approach can be seen in the speech of Lord Nicholls in *Kuwait Airways Corpn v Iraqi Airways Co (Nos 4 and 5)* [2002] 2 AC 883, 1094 at [82]-[83] (said in the context of damages for conversion, but of general application in tort law):

> "82 … Nor, for a different reason, is it anything to the point that, absent the defendant's conversion, someone else would wrongfully have converted the goods. The likelihood that, had the defendant not wronged the plaintiff, somebody would have done so is no reason for diminishing the defendant's liability and responsibility for the loss he brought upon the plaintiff."

942. Accordingly, it does not assist Madam Su to submit that *"Mr Su as he in fact appears to have done through his vehicles Blue Diamond and Platform Shipping, would have directly used the funds, as he was permitted to do, either to repay other creditors in the course of business, or to acquire assets (e.g. ships as he appears to have done"* (emphasis added). First, and foremost, the transferring of Mr Su's assets to the likes of the offshore vehicles Blue Diamond and Platform Shipping (or other similar offshore entities) is itself wrongful conduct in the form of dissipation of assets and is, itself, (in relation to Blue Diamond and Platform Shipping) undoubtably in breach of the Blair Freezing Order (and indeed forms part of the very factual circumstances surrounding the Monaco Conspiracy).

943. Secondly, the reality is that the likes of any similar transactions in the context of an attempted purchase of vessels (or any other substantial asset) would almost certainly not be regarded as within the *"dealing with or disposing of any of their assets ordinary and proper course of business"* exception in paragraph 10 of the Blair Freezing Order, and any attempt to expend monies would inevitably have required either consent of Lakatamia (which would hardly be forthcoming given that Lakatamia already had a crystalised Judgment Debt awaiting payment) or a (no doubt) fiercely contested application to Court for a variation/permission to do so - and again it is difficult to conceive of the Commercial Court permitting such expenditure in what by this stage was an execution phase post judgment with an outstanding Judgment Debt and assets that could respond to that Judgment Debt (also set against the backdrop that Lakatamia

were seeking to obtain, and subsequently obtained, recognition in Monaco in the context of the Monaco Sale Proceeds).

944. It is clear that Lakatamia (and its solicitors) would do everything possible to prevent any dissipation (or distribution) of assets, and would also move with extreme expedition to protect Lakatamia's position and preserve assets (and obtain execution wherever that remedy was available, with the protection of the Blair Freezing Order in the meantime).

945. In this regard variations to allow substantial payments out are far from straight forward and injunctions often remain in place (either because an attempt at variation is too costly or uncertain or because the application fails) with the result that if freezing injunctions are subsequently found to be wrongly obtained there are often claims for damages on the cross-undertaking.

946. In this regard and as was said by McCombe LJ in *Abbey Forwarding Ltd (in liquidation) v Hone* [2014] EWCA Civ 711, [2015] Ch 309 about the position of a person who is subject to a freezing order, at [65]:

> "[T]he court must be realistic as to the dilemma facing a defendant when served, out of the blue, with a freezing order, Some claimants are far from reasonable in practice – the present case provides a very clear example … Applications for variation are not that simple. They take time to prepare and are not without cost … Approaches to claimants who agree variations, or even to provide suitable written indications to banks and other third parties that particular payments are not caught by the order, are often far from straightforward. If, in such circumstances, a defendant is shown to have suffered an unusual loss, then in my judgment the claimant should not be surprised if the court orders him to pay for it."

See also in this regard *SCF Tankers Limited (formerly known as Fiona Trust & Holding Corporation) and Others v Yuri Privalov and Others* [2016] EWHC 2163 (Comm) (Males J), [2017] EWCA Civ 1877 (CA) (a case where there was an express prohibition of the purchase of vessels and subsequent claim under the cross-undertaking).

947. Madam Su also suggests that there were other creditors out there with whom Lakatamia would have to compete. The matters referred to (at paragraph 422 of Madam Su's Written Closing) are at a high level of generality, are in some instances from second-hand sources, and in certain (though not all) cases it is also not clear whether any alleged liability is that of Mr Su personally rather than TMT companies. What is clear is that Lakatamia knew of the sale of the Monaco Villas (by far the largest part of sums claimed). There is no evidence that any other creditor did, and Lakatamia and its solicitors were taking active steps in Monaco. In contrast there is no evidence that any other creditor was doing so, still less that such creditor would be able to enforce any claim it might have, in Monaco. It is, I am satisfied, pure speculation to hypothesise that some other creditor might trump Lakatamia in relation to any part of the Monaco Sale Proceeds. It is, I am satisfied, also pure speculation (and inherently unlikely) that Mr Su would have been declared bankrupt before Lakatamia would have obtained recovery.

948. In all the circumstances I am satisfied, and find, that causation is established and what would have happened but for the deployment of unlawful means and breach of the Blair Freezing Order is that Lakatamia would have recovered both the net proceeds of sale

of the Aeroplane (US$857,329.73) and the sum taken out of Monaco in order to prevent Lakatamia from enforcing against it (€27,127,855.01), as addressed in the evidence of Mr Gardner in his eleventh statement (and not challenged in cross-examination).

949. In terms of the quantum of compensatory damages, in *Lonrho Plc v. Fayed (No.5)* [1993] 1 W.L.R. 1489, 1494B, Dillon L.J. said: "*A plaintiff in a civil action for conspiracy must prove actual pecuniary loss, though if he proves actual pecuniary loss the damages are at large, in the sense that they are not limited to a precise calculation of the amount of the actual pecuniary loss actually proved …".* Equally, the principles governing the award of damages for the Marex tort are the same as for the tort of inducing a breach of contract. Damages for the latter tort are, as in the case of unlawful means conspiracy, at large (see *Palmer*, supra, at [242]-[244] per Judge Russen QC).

950. I am satisfied that in terms of compensatory damages, Lakatamia's loss is represented by such sums of US$857,329.73 (in relation to the Aeroplane Conspiracy) and €27,127,855.01 (in relation to the Monaco Conspiracy) and that Lakatamia is entitled to damages in those amounts against the respective Defendants in relation to the unlawful means conspiracy, and also to damages in like amount in relation to the Marex tort.

951. Lakatamia also claims damages in respect of enforcement costs in relation to the Judgment Debt in the sum of "at least £400,0000" which Mr Gardner confirms have been incurred (see paragraph 36 of his eleventh witness statement supported by a statement). Mr Gardner also confirms that paragraphs 25 to 29 of the RRAPOC are accurate in relation to the associated proceedings (in the Courts of the Cayman Islands, Monaco and New York). I understand Lakatamia to be saying that these enforcement costs would not have been incurred but for the breach by the Defendants of their obligations (Lakatamia Written Closing Submissions paragraph 311.3).

952. In Madam Su's Written Closing Submissions it is submitted that such additional losses are not recoverable on the basis that it is said that Lakatamia would have incurred these costs in any event, relying upon the following evidence from Mr Gardner in cross-examination:

> **"**Q. Just dealing with the arithmetic if I can, if you had recovered 27 million from the villas, plus $850,000 from the aeroplane, there would still be a shortfall of around $30 million owed by Mr. Su?
> A. A bit more than that, yes.
> Q. So it would remain the case, would it not, that you and your client, via you, would be trying to enforce against his apartments in New York, just as you are already?
> A. Yes.
> Q. So those costs that you are incurring would be incurred in any event, wouldn't they?
> A. I don't know. I think you are making a somewhat artificial point but I understand what you are saying.
> Q. All right. It is very likely, isn't it, and maybe this is a matter of argument, but I will put it to you anyway, Mr. Su has developed an obvious pattern of lying to you and the court and you would have incurred expense in pursuing him via committal proceedings come what may, would you not?
> A. Yes.*"*

953. This is, essentially, a causation point (leaving aside whether or not Lakatamia has actually proved the losses concerned). In the light of all that I know about this case from the evidence before me and the Chronology of Events, and Lakatamia's actions to date, (i.e. not simply in the light of Mr Gardner's spontaneous answer in the course of cross-examination which nevertheless has the ring of truth about it) I do not consider that these enforcement costs would not have been incurred but for the breach by the Defendants of their obligations. I would also note that whilst Lakatamia's Written Closing Submissions assert that, Mr Gardner does not actually say that at paragraphs 36 and 97 of his eleventh statement. That is unsurprising, in circumstances where the Judgment Debt is for the best part of US$30 million more than the Aeroplane Sale Proceeds and Monaco Sale Proceeds. In such circumstances I have no doubt that such costs would have been incurred in any event (and I so find), and as such Lakatamia is not entitled to recover the same as damages, such claim failing as a matter of causation. In any event, little or no attempt has been made to prove the losses concerned, and whilst damages are not limited to a precise calculation of the amount of actual pecuniary loss, the level of generality would have been too great to make any reliable, or appropriate, award of damages had the claim not failed as a matter of causation.

L.2 MONACO LAW

954. If Monaco law applies, and as already addressed at Section J.3.3.1, I am satisfied that Madam Su (and the other Defendants) assisted Mr Su to avoid honouring the Judgment Debt and to breach the Blair Freezing Order by the transfer of the Monaco Sale Proceeds out of Monaco via UP Shipping, and that this constitutes fault for the purpose of Article 1229 of the Monaco Civil Code (such fault being "major fault" for which I find each of the Defendants jointly and severally liable). I reject the suggestion that Madam Su's age affected her actions or reduced her fault. I am satisfied that Madam Su at all times knew perfectly well what she was doing and her age did not play any part.

955. The requisite causal link is established as the loss would not have occurred had the fault not been committed. In terms of loss the experts are in agreement as to the principles of Monaco law that govern the measure of damages caused by the fault (Joint Memorandum Issue 1.7). I am satisfied and find that the same sums as are recoverable by way of compensatory damages under English law are recoverable under Article 1229 in respect of the Monaco Conspiracy (i.e. €27,127,855.01) exercising my discretionary power to determine the existence and amount of the loss (see Joint Memorandum Issue 1.4). I do not understand myself to be circumscribed to indemnify on a loss of a chance basis under Monaco law, but if I was required to do so, I am, in any event satisfied (for these purposes so that I am sure), that what would have happened but the Defendants' fault is that Lakatamia would indeed have recovered the Monaco Sale Proceeds (€27,127,855.01), and so no discount stands to be made. Equally Mr Su and Madam Su are liable under Article 1022 on the Action Paulienne, and Lakatamia are entitled to damages against them in the same amount.

L.3 PUNITIVE DAMAGES

956. Lakatamia also claim punitive (exemplary) damages in English law (the point does not arise in relation to Monaco law as it is common ground that damages under Monaco law are solely compensatory in nature (Joint Memorandum at Issue 1.7).

957. Punitive damages, the purposes of which are punishment and deterrence (*Rookes v. Barnard* [1964] A.C. 1129, 1221 per Lord Devlin), are available in three categories of case. The second of these categories, and the only category relied upon by Lakatamia, is where *"the defendant's conduct has been calculated by him to make a profit for himself which may well exceed the compensation payable to the plaintiff. ...": Rookes*, 1126 per Lord Devlin. In order for a case to come within this category it is unnecessary that the defendant engaged in any sort of precise mathematical or accounting process in this regard: *Riches v. News Group Newspapers Ltd* [1986] Q.B. 256, 269-270 per Stephenson LJ. Nor is it necessary for the defendant actually to have realised a profit: *Archer v. Brown* [1985] Q.B. 401, 423. It suffices that they were aware that the expected benefits of their wrongdoing might outweigh the possible detriments (including, of being caught): *Riches v News Group Newspapers Ltd* (1986) Q.B. 256, 269–270.

958. In addition to satisfying the "categories test", the court, before awarding punitive damages, must be satisfied that the defendant's conduct is sufficiently *"high-handed"* (*Muuse v. Secretary of State for the Home Department* [2010] EWCA Civ 453, [74] per Thomas L.J.) or *"egregious"* (*R. (ex parte Lamari) v. Secretary of State for the Home Department* [2013] EWHC 3130 (QB), at [85] per HHJ Cotter QC to justify a punitive response, and the award of compensatory damages would be "*inadequate to punish [the defendant] for his outrageous conduct, to mark their disapproval of such conduct and to deter him from repeating it*": *Rookes*, p. 1228 per Lord Devlin.

959. As regards the assessment of punitive damages, *"[e]verything which aggravates or mitigates the defendant's conduct is relevant":* Rookes, 1128 per Lord Devlin. Thus, the more reprehensible the defendant's conduct the greater the award should be and vice versa: *Loudon v. Ryder (No.1)* [1953] 2 Q.B. 202, 207 per Devlin J. Further, the quantum of an award should depend upon the defendant's means, since a larger award is necessary to achieve the aims of punitive damages where the defendant is wealthy. As Lord Devlin stated in *Rookes*, p. 1228, *"the means of the parties ... are material in the assessment of exemplary damages".*

960. In the recent case of *Tuke v Hood* [2020] EWHC 2843 (Comm) Jacobs J summarised the applicable principles at [186]—[189] including, in particular at [187]-[189]:

> "187. The availability of the remedy was discussed by the Court of Appeal in *Axa Insurance UK PLC v Financial Claims Solutions Ltd.* [2018] EWCA Civ 1330. The claimant insurer successfully recovered exemplary damages in respect of "cash for crash" fraud, which had become far too prevalent and which adversely affected all those in society who are policyholders who face increased insurance premiums. The conduct in that case involved a series of frauds and production of false documentation, and the Court of Appeal referred to the need to deter the respondents and others from engaging in that form of fraud. Exemplary damages in that case came within the 'second category' of case which had been identified by Lord Devlin in *Rookes v Barnard No 1* [1964] AC 1129 at 1226- 8: i.e. where the defendant's conduct had been calculated by him to make a profit for himself which may well exceed the compensation payable to the plaintiff.
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> 188. In his judgment, Lord Devlin had said:
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> > "In a case in which exemplary damages are appropriate, a jury should be directed that if, but only if, the sum which they have in mind to award as

compensation (which may. Of course, be a sum aggravated by the way in which the defendant has behaved to the plaintiff) is inadequate to punish him for his outrageous conduct, to mark their disapproval of such conduct and to deter him from repeating it".

189. The Court of Appeal in *Axa* indicated, in agreement with the trial judge, that Lord Devlin's remarks are not to be read as though they were an Act of Parliament, and also that the word 'calculated' does not mean that there has to be a careful mathematical calculation. In his analysis and conclusions, Flaux LJ (delivering the judgment of the Court of Appeal) said (at paragraph [25]) that it was important to keep in mind that exemplary damages remain anomalous and the exception to the general rule. It was therefore inappropriate to extend the circumstances in which they could be awarded beyond the three categories of case identified by Lord Devlin. But if the defendant's conduct has been calculated to make a profit for himself which may well exceed the compensation payable to the claimant, then exemplary damages may be awarded to deter and punish such cynical and outrageous conduct."

961. The *"far too prevalent", "cash for crash"* cases such as in Axa are, I am satisfied, classic examples of where exemplary damages may be appropriate *"to deter the respondents and others from engaging it that form of fraud".*

962. In the present case I am satisfied that the "categories" test is at least arguably satisfied in circumstances where Madam Su received at least part (if not all via the UP Shipping) of the Monaco Sale Proceeds and the Aeroplane Sale Proceeds and in relation to which it can be said, with some force, that she was seeking to enrich herself and the family business.

963. However, I do not consider that Madam Su's wrongful conduct, and that of the other Defendants, was sufficiently high-handed or egregious as to justify a punitive response, nor do I consider that the award of compensatory damages that I have made would be inadequate to punish the Defendants for their conduct or to deter them from repeating it.

964. Wrongful though the Defendants' conduct was, it is not of such a type, nor is it different in type and extent to the many fraud cases coming before the Commercial Court in relation to which compensatory damages are usually judged to be appropriate and adequate, even where (as here) there have been underlying breaches of English court orders including a freezing injunction. In this regard I would associate myself with the sentiments expressed by Jacobs J in *Tuke v Hood*, supra, at [193] which I consider are also apt to the facts of the present case:

"193. There is in my view nothing so significant in the present case which distinguishes this case from many cases of fraud which come before the Commercial Court and indeed other courts. In all or nearly all such cases, there has been conduct which could properly be described as outrageous or brazen, and yet it is important to bear in mind that exemplary damages remain anomalous and an exception to the general rule. If such damages were to be awarded in this case, it would in my view be tantamount to

saying that exemplary damages are the norm in fraud cases, and this would clearly not be right. Given that a very substantial award of damages has been awarded against Mr. Hood – a figure which it appears likely to be well beyond his resources – this is not a case where the sums awarded as compensation are inadequate to punish him for his conduct. I consider that justice in the present case is well served by an award of very substantial compensation in favour of Mr. Tuke".

965. As Flaux LJ stated in *Axa*, exemplary damages remain anomalous and the exception to the general rule. I do not consider that the Defendants' conduct in this case was such as to justify a punitive response still less that the award of compensatory damages would be inadequate to punish the Defendants for their conduct, or to mark the Court's disapproval of their conduct or to deter the Defendants from any repetition. I am satisfied that justice in the present case is itself well served by an award of very substantial compensatory damages in favour of Lakatamia, and I do not consider that an award of exemplary damages would be appropriate.

M. CONCLUSION

966. Accordingly, Lakatamia's claims against the various Defendants succeed in the respects I have found. I trust the parties will be able to agree an Order consequential upon this judgment including as to principal, interest and costs, failing which I will hear further argument at or following the hand-down of judgment on any issues that remain.