Neutral Citation Number: 2024] EWHC 1364 (Comm)

Case No: LM-2020-000182 and LM-2021-000265

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
LONDON CIRCUIT COMMERCIAL COURT (KBD)

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

Date: 4 June 2024

Before :

ANDREW MITCHELL KC
SITTING AS A DEPUTY JUDGE OF THE HIGH COURT

- -

Between :

(1) NAFTIRAN INTERTRADE COMPANY (NICO) LIMITED
(2) NAFTIRAN INTERTRADE COMPANY (NICO) SARL

Claimants

- and -

(1) G.L. GREENLAND LIMITED
(2) VITALY SOKOLENKO

Defendants

- - - - - - - - - - --- - - - - - - - - -
- -

Mr Andrew Onslow KC and Mr Dominic Kennelly (instructed by **Eversheds Sutherland**) for the Claimants
Mr Sokolenko (in person) and on behalf of the First Defendant

Hearing dates: 25 and 26 March 2024; further written submissions 17 April 2024

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APPROVED JUDGMENT

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

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ANDREW MITCHELL KC SITTING AS A DEPUTY JUDGE OF THE HIGH COURT

Andrew Mitchell KC :

A. Introduction

1. This is an application by the Defendants to challenge the jurisdiction of the Court on the basis that orders made without notice, extending the time for service of the Claim Form, should be set aside.

   The Claims

2. The Claimants (together "**NICO**") are subsidiaries of the National Iranian Oil Company. They seek to recover monies allegedly due for crude oil supplied to the First Defendant (formerly known as Ferland Company Limited) ("**Ferland**"). The claim is for some €31m plus interest.

3. NICO also bring related claims against the Second Defendant ("**Mr Sokolenko**"), who on NICO's case controls Ferland, based on his alleged failure to honour promises that certain assets would be applied exclusively to meet Ferland's debts to NICO. It is alleged that a trust (or charge) was declared (or granted) over the assets, and Mr Sokolenko breached that trust (or charge), or dishonestly assisted a breach of trust (or charge), by applying the assets for other purposes. For ease of expression, I will refer to these claims as the trust claims.

4. Ferland is a Cypriot company. Mr Sokolenko is a Ukrainian national who resides in Switzerland.

5. There are two actions. The claims in both actions are substantially the same or are at least largely overlapping. Claim No. LM-2020-000182 ("**Claim 1**") was issued on 1 October 2020. Claim 1 was amended (to add the trust claims) on 15 December 2021, and later re-amended in March 2022, prior to service of the Claim Form. Claim No. LM-2020-000265 ("**Claim 2**") was issued on 15 December 2021, it is said to protect NICO's position on limitation in case the amendments to Claim 1 were successfully challenged. In the event, the Defendants have not challenged those amendments. Where I refer to a Claim Form in this judgment, this is to Claim 1, unless otherwise indicated.

6. There was for a time a Third Defendant to Claim 1, Mr Igor Lisovets. He was the sole registered director of Ferland and also a Ukrainian national. All claims against him were deleted from the Claim Form (prior to service) in March 2022, and he is not a defendant to Claim 2. At the time of NICO's first and second applications for extensions of time, referred to below, he was a Defendant, and some of the evidence relied upon by NICO therefore referred to him.

7. The Defendants deny liability on a number of grounds, including on certain grounds of limitation, which is an important aspect of their Application.

The Application

8. This judgment concerns an application by the Defendants dated 14 April 2023 pursuant to CPR 11 and/or CPR 23.10 to challenge the court's jurisdiction in Claim 1 ("**the Application**"). There is no such application in respect of Claim 2. The Application was heard over two days on 25 and 26 March 2024, along with CMC business in both actions. At my request, I was provided with further hard copy documents by NICO at the end of the hearing, and both parties submitted further written submissions/materials on 17 April 2024.

9. I gave my rulings on the various aspects of CMC business on the second day of the hearing and reserved judgment on the Application, on the basis that the case management directions ordered would stand in both actions, if Claim 1 was allowed to proceed, but otherwise would apply to Claim 2 only.

Representation

10. The Application was issued at a time when the Defendants were represented by Kennedys Law LLP, solicitors, and it is supported by a witness statement of Mr Andrew Purssell dated 14 April 2023, a partner in that firm. However, Kennedys came off the record on 26 September 2023. Mr Sokolenko appeared in person before me at the hearing of the Application and the CMC and sought permission to represent Ferland. This was not opposed by NICO, although it was said that Mr Sokolenko should explain to the Court the basis on which he was able to and should be allowed to act for Ferland. Mr Sokolenko said he had sought but had not been able to find alternative legal representation; he knew the case well because he had been party to a number of communications with NICO; and he had a power of attorney entitling him to act for Ferland in this litigation, which he had also mentioned to HHJ Pelling KC at an earlier hearing on 16 February 2024 (at which he had been granted permission to represent Ferland). I granted Mr Sokolenko the permission sought. The power of attorney was provided to the Court and NICO on the morning of the second day. Mr Sokolenko was content in the main to adopt the arguments identified in the Application, prepared for the Defendants by Kennedys, as he said in his skeleton argument; but he amplified the points through oral submissions, which were clearly articulated.

11. Although it was the Defendants' Application, Mr Sokolenko was content and indeed grateful to Mr Onslow KC, who appeared for NICO, for offering first to summarise the factual background to the Application, the relevant evidential material and the legal principles. He did so with suitable neutrality; to the extent that he argued NICO's case at this point it was in response to the Court putting to him arguments or possible arguments which might be relied upon by the Defendants for him to consider and address. Mr Sokolenko addressed the Court at the end of the first day and into the second day. Mr Onslow then made his submissions in response.

Relief from Sanctions

12. The Defendants made a second application, by Application Notice dated 25 May 2023, supported by Mr Purssell's second witness statement, for relief from sanctions. This had arisen because NICO had taken a number of procedural points, essentially to the effect that the Application (i.e. the jurisdiction challenge in Claim 1 with which this judgment is concerned) had been issued out of time. I need not say any more about this application, because Mr Onslow confirmed that NICO was not pursuing any of the procedural objections raised in correspondence and evidence, with the consequence that the application for relief from sanctions did not arise.

B. Background

13. Considerably more detail about the dispute and its genesis can helpfully be found in Deputy Judge Dias KC's judgment dated 13 April 2022. However, a shorter exposition of the facts is sufficient for current purposes:

The Invoices

14. NICO entered into two contracts with Ferland for the sale and purchase of crude oil, on 7 December 2012 and 6 November 2013 respectively. They are governed by English law. The detailed terms are not relevant for present purposes, but the contractual due date for payment by Ferland was 30 days after the bill of lading date.

15. NICO also alleges that Ferland signed Letters of Payment Undertakings in March and December 2013 by which it undertook to pay the full amount of NICO's invoices under these contracts. Those undertakings are subject to English law and exclusive jurisdiction.

16. NICO sues on four invoices, each representing a cargo allegedly delivered, which are said to be unpaid in part. Adopting the numbering referred to in the Claim Form, they are as follows:

    i) Invoice 1, stated to be due for payment on 8 August 2013.

    ii) Invoice 2, due on 17 April 2014.

    iii) Invoice 3, due on 6 October 2014.

    iv) Invoice 4, due on 17 April 2015.

17. There was no suggestion before me that (if, which is denied, the invoices were due at all) the stated due dates were incorrect, or that English law did not apply to the contractual obligations. Indeed, as appears below, the Defendants have sought to rely on the English law of limitation, in the form of the Limitation Act 1980, in response to the claims. I have in any event reviewed the contractual documentation concerning Invoice 4, which as appears below is of particular relevance, and I can see no basis for doubting the due date relied upon.

Limitation

18. It can be seen from the due dates that limitation issues arise. On the face of it, the claims on Invoices 1 and 2 were time-barred when Claim 1 was issued, since more than 6 years had elapsed from the due date before issue on 1 October 2020. However, in the Defence served in Claim 2, the Defendants admit (subject to other defences there set out) that the alleged debts under Invoices 1, 2 and 3 would not be time-barred on the basis that minutes of a meeting dated 22 January 2016 would constitute an acknowledgment of the debts (within the meaning of section 29(5) of the Limitation Act 1980). This has the consequence that the claims are treated as having accrued on 22 January 2016, and therefore were in time.

19. A limitation defence is however pleaded for Invoice 4, in reliance on section 5 of the Act (the 6 year period for actions for breach of contract). No limitation defence has been taken in the Defence to Claim 2, or otherwise suggested, to the trust claims.

20. The basis of the limitation defence to Invoice 4 is that (a) more than 6 years elapsed from the due date until the date of the Claim Form in Claim 2 (December 2021); and (b) the "*minutes do not acknowledge the alleged debt under Invoice 4. Neither those minutes nor any other document relied on make any specific reference to that alleged debt*" (paragraph 30(3) of the Defence).

21. Formally, these admissions and contentions are currently made only in Claim 2. Understandably, because of the jurisdiction challenge, there has been no Defence in Claim 1. However, there is no basis for assuming the position will be any different, and this has not been suggested. The Defence in Claim 2 was settled by Counsel and includes a statement of truth from Mr Purssell in the usual form, stating that both Defendants believed that the facts stated were true.

22. (I should record that NICO also rely on earlier alleged acknowledgments of debt in 2015, but it is sufficient for the purposes of this judgment to take the later acknowledgment of 2016 which the Defendants themselves admit).

C. The Application

Extensions of time

23. The Application arises in circumstances where NICO has obtained, without notice, a number of extensions of time from the Court in which to serve the Claim Form. The relevant procedural history is as follows:

    i) As mentioned above, the Claim Form was issued on 1 October 2020. It was valid until 1 April 2021.

    ii) On 11 March 2021, NICO applied without notice pursuant to CPR 7.6 for an extension of time in which to serve the Claim Form. That application was supported by the first witness statement of its solicitor, Mr Richard Little, a partner in Eversheds Sutherland of that date.

iii) On 15 March 2021, HHJ Pelling KC made an order extending time for service of the Claim Form, until 1 October 2021 ("**the First Order**").

iv) On 27 September 2021, a further without notice application to extend time was made, supported by a second witness statement from Mr Little of that date.

v) On 28 September 2021, HHJ Pelling KC extended time until 1 April 2022 ("**the Second Order**").

vi) On 15 December 2021, the Claim Form was amended (prior to service) to add the trust claims. Claim 2 was also issued to protect NICO's position on limitation in case the amendments to Claim 1 should be disallowed.

vii) On 19 March 2022, NICO issued a number of applications, including for a further extension of time for service of the Claim Form.

viii) On 25 March 2022, Julia Dias KC (sitting as a Deputy Judge), as she then was, granted a holding extension of time (until 1 May 2022) for service of the Claim Form ("**the Third Order**"). By her judgment dated 13 April 2022, and order dated 27 April 2022, the Deputy Judge extended time for service until 1 October 2022 ("**the Fourth Order**").

ix) Following an application dated 15 September 2002, on 21 September 2022, HHJ Pelling KC extended time for service until 1 April 2023 ("**the Fifth Order**").

x) Following various unsuccessful attempts at service, on 5 January 2023, NICO applied for an order dispensing with service of Claim 1 (and Claim 2). An order to that effect was made by HHJ Pelling KC on 10 February 2023 ("**the Sixth Order**").

Basis and Scope of Application

24. By the Application, the Defendants formally seek to challenge all six of the above orders. However, in substance, the Application principally turns on the Defendants' contention that the First Order and the Second Order should not have been made, because there was no good reason at those stages for NICO's failure to serve the Claim Form in time. This was particularly so in circumstances where it is said that extending time may have deprived the Defendants of a limitation defence.

25. The Defendants say that, absent these two orders, there would have been no valid Claim Form when the Third Order and subsequent orders were made, meaning that Claim 1 would have been at an end. There would have been no action in which the Court could have made any of those later orders. As Mr Purssell puts it:

> *"The application is made, in essence, because at least the first two extensions of time to serve the Claim Form should not have been granted. Once either of those orders is set aside, it follows that the remaining orders should also be set aside because the Claim Form would have 'expired' when the applications were made".*

26. It is also said that the Third Order and Fourth Order, made by Deputy Judge Dias KC, should be set aside on the ground of non-disclosure. However, the alleged non-disclosure is that it was not adequately drawn to the Deputy Judge's attention that there had been no good reason for the extensions made by the First Order and Second Order. In truth, the non-disclosure allegation adds very little if anything. If there was no good reason for the extensions of time made by the First Order and/or the Second Order, such that they are to be set aside, NICO accepts the other extensions/orders will fall away. If those extensions were validly granted, however, there cannot have been the alleged non-disclosure to the Deputy Judge on the third or fourth occasions.

27. There is therefore in substance no independent or freestanding challenge to the Third Order and subsequent orders. For example, there is no challenge to HHJ Pelling KC's decision that, by February 2023, there were grounds which justified the dispensation of the need to serve the Claim Form altogether. Or to Deputy Judge Dias KC's Order dated 27 April 2022, granting permission to serve the Claim Form out of the jurisdiction and by alternative means.

D. The Law

28. CPR 7.5(2) provides that where a claim form is served out of the jurisdiction, it must be served within six months of issue.

29. Extensions of time for service of a Claim Form are dealt with in CPR 7.6 which provides (in relevant part):

> *"(1) The claimant may apply for an order extending the period for compliance with rule 7.5.*
>
> *(2) The general rule is that an application to extend the time for compliance with rule 7.5 must be made— (a) within the period specified by rule 7.5; or (b) where an order has been made under this rule, within the period for service specified by that order.*
>
> *(3) If the claimant applies for an order to extend the time for compliance after the end of the period specified by rule 7.5 or by an order made under this rule, the court may make such an order only if— (a) the court has failed to serve the claim form; or (b) the claimant has taken all reasonable steps to comply with rule 7.5 but has been unable to do so; and (c) in either case, the claimant has acted promptly in making the application".*

30. The applications for the First Order and Second Order (and indeed the subsequent orders too) were 'in-time' applications made within the periods of time under CPR 7.6(2)(a) and (b) respectively.

31. As explained in Collier v Williams [2006] EWCA Civ 20 at [85] – [88], the principles relevant to such applications include:

i) The threshold conditions in CPR 7.6(3) do not apply to applications under CPR 7.6(2), which are therefore to be determined in accordance with the overriding objective. It is therefore not fatal to an 'in-time' application that the claimant may not have taken all reasonable steps to serve the Claim Form or that it was able to do so or that it did not act promptly in making the application.

ii) It is nonetheless always relevant for the court to determine and evaluate the reason why the claim form was not served within the specified period. If there is a good reason for the delay (such as difficulties in effecting service), then an extension is more likely to be granted. Conversely the absence of good reason (including where there has been unjustified delay by the claimant or its legal representatives) may be a strong reason for refusing an extension, having regard to the increased importance of time limits in the CPR.

iii) Limitation is also relevant, because the effect of an extension after limitation has expired is to disturb a defendant who would otherwise be entitled to assume that his rights can no longer be disputed. On this latter point, it is therefore important to have regard to whether, at the time of the application for an extension of time, the limitation period may have expired since the issue of the Claim Form.

32. The general approach to "in-time" applications was recently summarised as follows in ST v BAI (SA) (t/a Brittany Ferries) [2022] EWCA Civ 1037 per Carr LJ (as she then was) (with whom Simler and Popplewell LJJ agreed) at [62]:

> "*i) The defendant has a right to be sued (if at all) by means of originating process issued within the statutory period of limitation and served within the period of its initial validity of service. It follows that a departure from this starting point needs to be justified;*
>
> *ii) The reason for the inability to serve within time is a highly material factor. The better the reason, the more likely it is that an extension will be granted. Incompetence or oversight by the claimant or waiting some other development (such as funding) may not amount to a good reason. Further, what may be a sufficient reason for an extension of time for service of particulars of claim is not necessarily a sufficient reason for an extension for service of the claim form;*
>
> *iii) Where there is no good reason for the need for an extension, the court still retains a discretion to grant an extension of time but is not likely to do so;*
>
> *iv) Whether the limitation period has or may have expired since the commencement of proceedings is an important consideration. If a limitation defence will or may be prejudiced by the granting of an extension of time, the claimant should have to show at the very least that they have taken reasonable steps (but not all reasonable steps) to serve within time;*
>
> *v) The discretionary power to extend time prospectively must be exercised in accordance with the overriding objective*".

33. At [69] of Brittany Ferries, Carr LJ endorsed the summary of "*the exercise to be carried out in practice*" provided by Admiralty Registrar Davison at first instance, namely: "*the exercise is essentially first to evaluate the reason* [for non-service of the claim form within the period allowed by CPR 7.5], *and then to put that reason into a wider context, which requires consideration of the overriding objective and the balance of hardship to the parties*".

34. It is not therefore possible to deal with an application for an extension of time "justly" without knowing why the claimant has failed to serve the claim form within the specified period. A "calibrated approach" may be adopted, so that where a very good reason is shown for the failure to serve within the specified period, an extension will usually be granted; but generally, the weaker the reason, the more likely the court will refuse to grant the extension. See also Qatar Investments & Projects Holding Co. v Phoenix Ancient Art SA [2022] EWCA Civ 422 [2022] 3 WLUK 323 at [17-18].

35. Since the showing of a "good reason" is not a jurisdictional threshold (but rather a factor in the Court's evaluation and exercise of discretion, albeit a weighty one), Mr Onslow submitted that, even without a good reason, the Court was entitled to look at later developments in the case, and in that regard he relied on the judgments of Deputy Judge Dias KC in April 2022 and HHJ Pelling KC in February 2023. It was submitted that the Court had considered that, by those occasions at least, there had or may have been a degree of evasion or game playing on the part of the Defendants in avoiding service, or at least evidence to suggest that the Defendants knew of the proceedings, even if they had not been formally served. The essential suggestion was that if service had been attempted earlier, the same obfuscations and difficulties would have arisen, with the same outcome that service would not have been achieved and the Court would have in the end dispensed with service altogether, as HHJ Pelling KC did in February 2023. In his submissions, Mr Sokolenko strongly resisted any suggestion of game playing or evasion. For reasons which will be apparent from this judgment, I need not address NICO's submission to this effect. I have therefore had no regard to this aspect of the later judgments and would have had reservations about doing so. That is because ultimately the issue is whether, based on the facts as they were at the time of the applications, there was a good reason for the extension and that it was in the interests of justice to order the extensions. Further, there is in my judgment no evidence of evasion in relation to service in 2021. Indeed, as I understand the evidence, there was no contact between NICO and the Defendants in the period following the letters before action in September 2020 and early 2022.

36. It is worth emphasising that, in relation to possible limitation defences, the fact that limitation has or may have expired since issue of the Claim Form is "an important consideration", as Carr LJ said in Brittany Ferries, but it is not determinative. In Imperial Cancer Research Fund v Ove Arup [2009] EWHC 1453 (TCC), Ramsay J had summarised the then appellate guidance on this point in these terms: "*where there is doubt as to whether a claim has become time-barred since the date on which the claim form was issued, it is not appropriate to seek to resolve the issue on an application to extend the time for service or an application to set aside an extension of time for service. In such a case, the approach of the court should be to regard the fact that an extension of time might 'disturb a defendant who is by now entitled to assume that his rights can no longer be disputed' as a matter of 'considerable importance' when deciding whether or not to grant an extension of time*" (paragraph

[9(5)]). To similar effect, in Qatar, Whipple LJ approved of a statement of principle that in a limitation case, a claimant must show a (provisionally) good reason for an extension of time which properly takes on board the significance of limitation, and if he does not do so, his reason cannot be described as a good reason.

37. I will now examine the Orders challenged in turn.

E. The First Order

38. In his first witness statement dated 11 March 2021, Mr Little sought an extension on the following basis. First, it was explained that NICO had issued Claim 1 when it did (following letters before action to which there was no response) because of a potential limitation event. Although Mr Purssell said this had never been satisfactorily identified, it was presumably the expiry of 6 years from the due date of Invoice 3. Then it was said:

> ...
> *16. At the time of issuing the claim, the Claimants were in the process of conducting enquiries and seeking advice to determine the financial position and standing of the Defendants. This included seeking advice from Cypriot lawyers (Ferland is registered as an entity in Cyprus) and instructing enquiry agents to provide details of the location of the Defendants.*
>
> *17. As a result of enquiries by Cypriot lawyers, the Claimants were advised that Ferland had been operating as a dormant company and was at risk of being struck off the Cypriot Company Registry on 31 December 2020. The Claimants have been and continue to liaise with their Cypriot lawyers in relation to this situation as Ferland remains at risk of but has not yet been struck off.*
>
> *18. Enquiry agents were instructed by the Claimants once the claim form was issued to conduct further investigations into Mr Sokolenko and Mr Lisovets. These enquiries are ongoing and are not straight forward due to the manner in which the Second and Third Defendants have structured their affairs, the multi-jurisdictional nature of this case and current global situation.*
>
> *19. The Outstanding Debt is due and owing under both Contracts and various meetings were held with Mr Sokolenko and the Claimant's and correspondence was exchanged relating to the Outstanding Debt between 2015 and 2019.*
>
> *20. The period of 6 months requested is appropriate because it is a reasonable time for the Claimants to finalise the Particulars of Claim and make arrangements through the Foreign Process Service for service in the Ukraine.*

> *21. In all the circumstances, the Claimants respectfully ask for an extension of 6 months for the service of the Claim Form together with the Particulars of Claim and accompanying documents.*

39. In the Application Notice itself, it was said that NICO had been conducting various searches, which were ongoing, and enquiries to inform the Particulars of Claim and to prepare for service. NICO said it needed extra time to finalise, translate and serve the proceedings on the Defendants (including at the time Mr Lisovets, the Third Defendant) who were based in Cyprus (Ferland), Switzerland and Ukraine.

40. In due course (March 2022), the claims were somewhat simplified but at the time of the First Order (and Second Order), the Claim Form advanced claims for breach of contract, deceit, unjust enrichment and conspiracy against Ferland; similar and other personal claims against Mr Sokolenko; and claims for conspiracy against Mr Lisovets.

41. By their Application, the Defendants submit that:

    i) Mr Little's witness statement did not contain a full explanation as to why the claim had not been served on any party, contrary to PD 7A paragraph 11.2(4).

    ii) No attempt had been made to serve the Claim Form.

    iii) Had proceedings been served before 31 December 2020, no permission would have been needed to serve Ferland in Cyprus, or Mr Sokolenko in Switzerland; further, at the time of the applications in 2021, NICO did not consider any such permission was required. In other words, as I understand the submission, the Defendants suggest that service should have been straightforward and/or that the Claimants considered it would be, which makes their failure to serve the more unreasonable.

    iv) The fact that Ferland was known to be a dormant company and at risk of being struck off on 31 December 2020 (but had not in fact been struck off), being matters relied upon by Mr Little in his first witness statement, did not amount to an explanation why no attempt had been made to serve the Claim Form.

    v) NICO had the contact details for Mr Sokolenko in Switzerland, since it had sent him by registered post a letter before action (on 29 September 2020) to an address in Cologny and had also used three email addresses for him.

    vi) It is to be inferred (e.g. from paragraph 18 of Mr Little's statement) that the real reason for not serving the Claim Form was that NICO was trying to find out if Mr Sokolenko had any assets.

    vii) In relation to the Third Defendant, NICO had identified addresses at which he might be served in Ukraine, and there was no explanation for why permission to serve out of the jurisdiction against him was sought only weeks before the end of the Claim Form's validity.

viii) Insofar as the reason for delay was the need to finalise Particulars of Claim, this was not a good reason.

ix) Informal notice should have been given to the Defendants of the application.

x) Inadequate and only vague attention was given to the fact that an extension could deprive the Defendants of a limitation defence.

42. In response to the Application, Mr Little served his seventh witness statement, making essentially the following points (whilst also relying on the evidence served at the time of the application):

i) At the time of the first application, NICO were still conducting enquiries and investigating the Defendants and their financial position. This was a complex exercise, given the number of jurisdictions involved and the way in which the Defendants' affairs were structured.

ii) Having issued Claim 1 immediately before a potential limitation event, NICO were still refining the claims, including analysing whether or not Mr Lisovets should be included as a third defendant, so that he was not involved unnecessarily.

iii) The Defendants had not identified any prejudice or disadvantage as a result of NICO taking time to refine the claims.

iv) In relation to the criticism that NICO should have attempted service at Mr Sokolenko's Swiss address and by email, Mr Little points out that later events showed that the address was said not to be his (but his wife's) and that emails were not read.

v) As to the suggestion that informal notice should have been given of the application, in circumstances where there had been repeated contact between NICO and Mr Sokolenko over the years, Mr Little says that the contact was historical, and that following the acknowledgements of the debts and failures to pay, contact from the Defendants had ceased, and there was no channel of communication by the time of the first application.

vi) Mr Little says that the limitation issue (and the acknowledgment) was drawn to the Court's attention in his first witness statement (see paragraph 41).

F. The Second Order

43. The application for the second extension was supported by Mr Little's second witness statement dated 27 September 2021. It was said that NICO needed a second extension "to finalise their particulars of claim and, potentially, as a result of their ongoing enquiries potentially add further claims against the Defendants". Specifically:

12. At the time of issuing the claim, the Claimants were in the process of conducting enquiries and seeking advice to determine the financial position and standing of

the Defendants. This included seeking advice from Cypriot lawyers (Ferland is registered as an entity in Cyprus) and instructing enquiry agents to provide details of the location of the Defendants. Since the time of the first application, these efforts have continued. Further information has been received from Cypriot lawyers and Cypriot lawyers have taken steps with the Cypriot company registry in relation to a possible striking off from the Cypriot Company register of the First Defendant on the basis that it has been a dormant company for a number of years.

13. Further investigations into certain assets and transaction have also been carried out by the Claimants and consideration is being given to whether there are additional claims that should now be brought against the Defendants. That work is ongoing but should be completed with the period of the extension sought so that service of the proceedings can take place.

14. The period of 6 months requested is appropriate because it is a reasonable time for the Claimants to finalise the Particulars of Claim.

44. The Defendants repeat a number of the general points mentioned above in connection with the First Order and submit that:

i) Mr Little's statement says nothing at all about why the Claim had not been served.

ii) The statement said nothing about how an extension might deprive the Defendants of a potential limitation defence.

iii) The taking of some (unspecified) steps in relation to the possible striking off of Ferland, perhaps in order to prevent striking off, was no explanation as to why Ferland had not been served.

iv) As regards Mr Sokolenko (and the Third Defendant), Mr Little's statement repeated what appeared to be historic detail about enquiries being made to determine their financial position, including instructing enquiry agents to provide details of the Defendants' location (even though NICO had physical and email addresses for them).

v) Although it was said that consideration was being given to whether there were additional claims that should be brought, there was no indication what these claims might be, and or why this meant that it was not possible to serve the Claim Form as issued.

vi) Generally, the statement identified and relied upon on no new facts from Mr Little's first statement.

45. In response to the Application, by Mr Little's seventh witness statement, NICO submitted (in particular) that, as set out in the evidence relied upon for the application, NICO needed further time to finalise the Claim Form (and Particulars of Claim) and potentially add additional claims as a result of enquiries and further ongoing work. It would have made no sense to serve the Claim Form if it was shortly to be amended.

G. The Third/Fourth Orders

46. As I mentioned above, these orders are not independently challenged, save as regards the allegation of non-disclosure. However, I have reviewed them in any event.

47. Unlike in respect of the Orders of HHJ Pelling KC in 2021, which were made on paper in the usual way, the Court has the benefit of a detailed written judgment from the Deputy Judge.

48. Deputy Judge Dias KC was principally dealing with an application to serve out of the jurisdiction, and various ancillary applications for permission to serve by alternative means. There is no challenge to the Orders made in those respects. She also approved two further extensions of time for the service of the Claim Form (being the Third Order and the Fourth Order).

49. As part of the background and context for the application before her for a further extension of time beyond 1 April 2022, the Deputy Judge considered the applications which led to the First and Second Order. In that connection, she said this:

> *"…*
>
> *128. As indicated above, time for service of Claim 1 has already been extended twice for a total period of 12 months. Although the previous applications were not included in the court papers, I asked to see them and they were promptly provided to me.*
>
> *129. The first application was made on 11 March 2021 supported by the First Witness Statement of Mr Little. This made clear that Claim 1 had been issued shortly before a potential limitation event at a time when the Claimants were still conducting enquiries and attempting to ascertain the financial position and standing of the Defendants. They had been advised by Cypriot lawyers that Ferland had been operating as a dormant company and was at risk of being struck off the Cypriot company register on 31 December 2020, although this had not actually occurred. In addition, the Claimants were trying to investigate the position of Mr Sokolenko and Mr Lisovets (who at that stage was included as a Third Defendant) but were encountering difficulties, not only because of the way in which their affairs were structured but also because of the global pandemic.*
>
> *130. By the time of the second application on 27 September 2021, the Claimants had taken steps in Cyprus to prevent Ferland being struck off the register. They had also received further information as a result of which they wished to consider whether additional claims could or should be asserted. In the event, of course, additional claims were included in Claim 2, and Claim 1 was refined and narrowed. The claim against Mr Lisovets was abandoned.*
>
> *131. The current position as deposed to by Mr Little is that the Claimants are now ready to proceed with both Claim 1 and Claim 2. They have already attempted to serve Claim 1 on Ferland as described above and now require a short extension to permit service by the alternative method referred to above,*

namely service on Mr Sokolenko in Switzerland through the Foreign Process Section.

132. Applications for an extension of time to serve a claim form are governed by CPR Part 7.6. The application has been made before the expiry of the most recent extension and there is therefore no need for the Claimants to demonstrate compliance with the requirements of Part 7.6(5). Nonetheless, I must be satisfied that there is a valid reason for granting an extension and that to do so would be in accordance with the overriding objective: Hashtroodi v Hancock, [2004] EWCA Civ 652.

133. In this case, it is inevitable that the Claimants' enquiries into the status and asset position of Ferland and Mr Sokolenko will have been hampered by the pandemic. It also seems to me that the position is likely to have been opaque and relatively complex to investigate. The evidence before me suggests that service in Switzerland through the Foreign Process Section is likely to take some 2 months. Having authorised service to take place in this manner, it would be perverse not to extend time to allow that to happen. I am therefore satisfied that there is valid reason to extend service as requested for a total period of 6 months".

50. Mr Onslow submits that the Deputy Judge considered and agreed (albeit that this is more implicit than explicit) with the appropriateness of the First Order and Second Order. It is significant that she specifically requested the materials relating to the previous applications and can be taken to have considered them. I agree that it is a fair observation that she approached the application for a third/fourth extension on the basis that there was a proper justification for the earlier extensions. I also agree that it is implicit in her reasoning that she saw nothing in the explanations and materials provided on the previous occasions to doubt the existence of good reasons. Otherwise, she would have said so, and approached the application for a third/fourth extensions in a different context. I therefore do not accept the submission made by the Defendants that the Deputy Judge simply summarised the prior evidence without comment one way or the other or without consideration. For one thing, I do consider it is significant that she called for the underlying materials relating to the First and Second Orders, and it is apparent from her judgment that she considered them.

51. However, I do consider some caution is required because there was no challenge to those Orders at that stage, and the Deputy Judge did not (obviously) have in mind the criticisms about them made in the subsequent Application (or NICO's response to it). Accordingly, in my judgment, it is incumbent on me to review the First and Second Orders myself from the ground up. That is the task which I have undertaken.

52. In relation to the application for a further extension beyond 1 April 2022, Mr Little's third witness statement (which mainly concerned the applications for service out and alternative service) stated:

91. As set out in those previous applications [a reference to the applications which led to the First Order and Second Order], the Claimants issued Claim 1 against the Defendants immediately before a

potential limitation event. Since then, and in the time which has elapsed since the Order of 30 September 2021, the Claimants have continued their efforts to obtain advice from Cypriot lawyers, they have renewed their objection to Ferland being struck off the Cypriot companies register and have continued to work on finalising the Particulars of Claim. In developing the Particulars of Claim, the Claimants have further considered the claims (which are factually and legally complex) and the position on jurisdiction. As a result, the Claimants deemed it necessary to amend the claim and issue Claim 2, and subsequently to further amend Claim 1. Having done all of this, the Claimants are now ready to proceed with both Claim 1 and Claim 2.

92. As detailed above at paragraphs 70 to 74, the Claimants have taken steps to serve Claim 1 on Ferland in Cyprus.

93. Further, the Claimants have taken steps to prepare for service of Claim 1 on Mr Sokolenko (including translating documents for service).

94. The Claimants now seek a further, short extension in order to effect service of Claim 1 on Ferland and Mr Sokolenko.

95. The period of 6 months requested for an extension is appropriate because it will enable the Claimants to complete the service of Claim 1 by (i) serving the claim on Ferland as set out at paragraph 84 above; and (ii) serving the claim on Mr Sokolenko in Switzerland through the Foreign Process Section. Nicola Thompson, a solicitor working under my supervision, has made enquiries of the Foreign Process Section, who informed her that service in Switzerland is likely to take approximately 2 months. An extension of 6 months is requested to allow time for the necessary documents to be submitted to the Foreign Process Section following the hearing of these applications (including preparing any remaining translations), and in case service takes longer than expected."

53. As explained in paragraph 91 of Mr Little's statement, one of the tasks undertaken since the Second Order was to amend the Claim Form (and issue Claim 2) which took place in December 2021. The amended Claim Form was then further amended in March 2022. Mr Little explained that part of the purpose of the amendments was to narrow the claims to those over which NICO considered this Court would have jurisdiction (paragraph 44). These amendments were substantial: various claims including for deceit, and conspiracy and other intentional torts were removed; and significant new claims (the trust claims) were pleaded (by amendment in Claim 1 and in Claim 2).

54. As explained in his paragraph 92, by this time NICO had taken steps to serve the Claim Form on Ferland in Cyprus. In brief summary, those efforts included the use of the Hague Convention to provide the Claim Form and other documents to the Foreign Process Section, and unsuccessful attempts to effect service directly in Cyprus at

Ferland's registered office by a process server. Finding that office address vacant, NICO also sought to serve the Claim Form at the address of a Cypriot law firm, where service was declined but the documents nonetheless retained.

55. The Defendants submit that Mr Little's third statement (and NICO's skeleton argument) added almost nothing to the previous evidence served and, in breach of the duty to be full and frank, failed to say anything about the alleged paucity of material relied upon for the previous orders. They repeat the point that taking time to finalise Particulars of Claim is not a good reason for an extension of time.

56. In his seventh witness statement in response to the Application:

    i) Mr Little addressed the work carried out by NICO following the Second Order, and confirmed that the amendments/refinements to the Claim (and the issue of Claim 2) were the product of work which followed the previous extensions.

    ii) That work also included the further pursuit of investigations into the Defendants, the obtaining of advice from Cypriot lawyers as to the standing and financial position of the Defendants, all in the context of the then global situation caused by the pandemic.

    iii) Mr Little also set out the attempts made to serve the Claim Form on Ferland in March 2022, the difficulties in which were relied upon before the Deputy Judge.

    iv) Mr Little also explained that in oral submissions before the Deputy Judge, counsel had highlighted the possibility that the Defendants might contend that there had been a delay in serving the Claim Form.

57. Mr Purssell served a third witness statement in response to Mr Little's seventh witness statement. Amongst other points, he criticised NICO for advancing the causes of action which were later abandoned in March 2022, on the basis that NICO cannot have had any proper basis for them, and their deletion was not a mere 'refinement'. Mr Purssell also disputed that the amendments can have been the product of work carried out following the first and second extensions, since the trust claims depend on contemporary documents that would have been available to NICO before the Claim Form was issued. Mr Purssell also said that the Defendants had been prejudiced by the delay in service, since they were now being required to investigate matters alleged to have taken place many years ago, in response to a Claim Form itself issued outside the primary limitation period.

H. Discussion and Decision

58. I should start by saying that I have summarised above the main points which arise from the evidence relevant to this Application, but in light of Mr Sokolenko being in person I have reviewed all the evidence in detail, hence requiring NICO to provide exhibits initially not in the bundle, and reviewing the transcript of the hearing before the Deputy Judge.

59. In my judgment, applying the legal principles which I have set out, and considering the circumstances as part of the Court's discretionary power to extend time, NICO did have sufficiently good reasons for not serving the Claim Form at the time of the First Order and Second Order; and standing back it was in the interests of justice and the overriding objective for the extensions sought to be ordered. As part of that evaluation, I do not consider, for the reasons explained below, that there was any or any realistic limitation defence at the time of these Orders.

60. It is true that no attempt was made to serve the Claim Form as such either within its initial validity or during the first extension, and this is therefore not one of those cases which relies on the practical or legal difficulties on the ground of effecting physical service.

61. However, I accept that these were reasonably complex proceedings to investigate and prepare, and in particular that in the circumstances (including because the claim was issued when it was because of a forthcoming limitation issue) it was reasonable (and in accordance with the overriding objective) to conduct enquiries and seek advice post issue and before service to determine the financial position and standing of the Defendants. It may be said that the reasons given by Mr Little were concisely stated, but they were sufficiently so, and it is right to remember that a claimant is not required to waive legal professional privilege in relation to investigations conducted for the purpose of litigation on an application of this sort. I generally accept Mr Little's evidence and explanations.

62. Mr Little's evidence included that the enquiries were not straightforward for the reasons he gave. There was uncertainty about the status of Ferland, given the risk of it being struck off the register and the need to investigate that, and whether it was worth powder and shot. I do not accept the Defendants' contention that this aspect was irrelevant, i.e. could not reasonably be part of an explanation as to why the Claim Form was not served. Nor do I accept the apparent submission that investigation as to the location of a defendant's assets, to see whether and where they could effectively be sued, is irrelevant and not part of the relevant circumstances. The weight to be given to such points as with all points is of course a different matter, and I am not saying that in all cases investigation as to whether a defendant is worth suing or as to the merits of the case will suffice as being an adequate explanation or good reason for an extension.

63. It could be said that NICO might have moved more quickly, and it may be that more could have been done sooner. However, it is difficult on the evidence to gainsay Mr Little's explanations, however concisely they are expressed; and this is not a CPR 7.6(3) case which requires a claimant to have taken *all* reasonable steps. I accept that the steps taken by NICO were reasonable in the circumstances. In this case, I can see why investigations post-issue to determine whether and which claims (and against whom) had reasonable prospects of success, both in the sense of the substantive merits and as to whether there would be jurisdiction, were reasonable. This is particularly so given the seriousness of some of the causes of action, e.g. in deceit and conspiracy. It was reasonable to bottom these out properly before serving proceedings; that is a different and more demanding task than the initial one of being satisfied that claims are sufficiently arguable to be included in a claim form.

64. Delaying service to investigate the merits is not by itself, I apprehend, likely to amount to a good reason in most cases, and it is not the strongest strand of Mr Little's evidence in this case either. But in this case, the enquiries went beyond merely assessing legal merit.

65. I am wholly unpersuaded about the point that NICO should have given informal notice of its application to the Defendants. There was no requirement to do so, and I accept the evidence that there was by this stage no or no reliable channel of communication between the parties, and I am quite sure any informal notice would have made no difference.

66. In my judgment, the Defendants' strongest points are as follows.

67. First, as mentioned above, this is not a case where NICO attempted service in time. However, the jurisdiction to extend time for 'in-time' applications under CPR 7.6(2) is not restricted to such situations, and each case must be considered on its own facts and circumstances. In this case, I am satisfied that there were good reasons for NICO to have undertaken pre-service enquiries and work, as Mr Little says were carried out.

68. Second, the Defendants are right in my judgment to say that needing time to finalise Particulars of Claim is not generally, if ever, a good reason for an extension of time for service of a Claim Form: Sodastream v Coates [2009] EWHC 1936 (Ch). Particulars of Claim can be served later, and amended reasonably easily in due course, and a separate extension of time could be sought for them if necessary. Mr Onslow accepted this. However, in my judgment, the process of 'finalising Particulars' as Mr Little sometimes put it, was in truth not so much a question of finalising the *detail* of Particulars, which can certainly be done later, but rather the more substantial task of deciding which causes of action could be advanced against whom in this jurisdiction (see paragraph 44 of Mr Little's statement referred to above). As NICO submitted, its claims are factually and legally complex, as are the jurisdiction issues, and substantial work was required to formulate and refine the claims.

69. Thirdly, limitation. First of all, I do not accept the argument that the potential application of limitation was not properly addressed or foreshadowed in any of the applications made to the Court by NICO, including those to the Deputy Judge in 2022.

70. As to the substance of any limitation defence, as discussed above, the Defendants do take (in Claim 2) a limitation defence to Invoice 4 but otherwise admit that there was an acknowledgment of the debts comprised in the earlier invoices.

71. The minutes are in evidence. They are signed by representatives of NICO and Mr Sokolenko on behalf of Ferland. They state as follows:

> "*Bearing in mind the unpaid debts of [Ferland] to NICO Ltd. and following various previous meetings and discussions between NICO and Mr. Vitaly Sokolenko, Managing Director of [Ferland] (most recently in Dubai on*

> *30/11/2025), a further meeting was held in the offices [of] NICO, Lausanne on the 22nd January 2016 attended by Mr. Vitaly Sokolenko of [Ferland] and from NICO's side [individuals identified] to further discuss the situation and once again attempt to find a solution for the repayment of such debts. The following topics were discussed and agreed….*"

72. The Defendants are therefore right to say that the minutes do not make any specific reference to Invoice 4. But they do not make a specific reference to *any* particular invoice. The "unpaid debts" are referred to generically, and the minutes draw no distinction between any of them or carve out any from the acknowledgment. At the time of the meetings in Dubai in November 2015 and in Lausanne on 22 January 2016, to which the minutes refer, Invoice 4 had been issued and was "unpaid". This has not been denied in any evidence served as part of the Application or otherwise.

73. As Mr Onslow submitted, it is difficult to see how the minutes of January 2016, and their admitted acknowledgment of Invoices 1, 2 and 3, are not acknowledgments of all unpaid debts at this time, including Invoice 4. As I have explained, the minutes did not make any distinction between unpaid debts.

74. NICO also rely on the terms of an audit letter dated 5 April 2016, said to be sealed/signed by Ferland, which was exhibited by Mr Little to his first witness statement (and pleaded in the Reply in Claim 2). This suggests that the Defendants were aware of Invoice 4 at the time of the January 2016 meeting. The Reply was served whilst Kennedys were on the record, and no objection to the admissibility of this document was taken by Mr Purssell in his evidence or otherwise. Subsequent to the hearing, however, in submissions made in April 2024, Mr Sokolenko has sought to suggest that this document is covered by without prejudice privilege and that it is a "questionable" document, and not signed by persons properly authorised by Ferland. NICO disputes the claim to privilege on the basis that the purpose of the audit letters was to provide confirmation of the debts to NICO's auditors and were not communications that formed part of an attempt to settle the parties' disputes (which they would need to be to attract privilege). On the basis of the materials I have reviewed, the claim to privilege appears misconceived, but I cannot resolve these issues on this occasion. I have not relied upon the audit letter in reaching my views. Even if the audit letter were ignored, it is plain at this stage from other circumstances that the Defendants were aware of the invoice by 2016 (and they would have known it had not been paid): it is not in fact contended that the invoice had not been received; or did not stand unpaid in 2016; and there is no explanation from the Defendants as to why the admitted acknowledgment of 2016 did not apply to all unpaid invoices.

75. It is possible that there is some context or background to the meetings, so far unexplained, which may show that the discussions only concerned Invoice 1, 2 and 3. But that has not been suggested on this Application, or at all.

76. On current material, therefore, in my judgment there does not appear to be any arguable or at least realistic limitation defence to Invoice 4, either as at the date of issue of Claim 1 or at the time of the applications for the extensions in March 2021 and September 2021. The acknowledgment of January 2016 was seemingly in respect of all unpaid debts, with the consequence that time would not have expired for the claims in Claim 1 until January 2022.

77. That said, it is not for the Court on this occasion to make a determination of whether a claim is time-barred or not, and I do not do so. I accept that it is possible that there may be some argument in due course, not hitherto advanced or supported by evidence, that by the time of the applications leading to the First Order and the Second Order in 2021 Invoice 4 had become time-barred. But the Court is entitled on the Application to take account of the likely strength or otherwise of any limitation defence that might have accrued by the time of the extensions sought, and which might be defeated were the extensions granted. In my judgment, any limitation defence is at best entirely speculative and unexplained. In those circumstances, it attracts little if any weight, and the interests of justice and the overriding objective overall support the maintenance of the orders extending time in this case.

78. In terms of other alleged prejudice to the Defendants, I am not persuaded there is any material prejudice from any delay in serving the proceedings in circumstances where, as they accept, the parties had been discussing these alleged debts for some very considerable time up to at least 2019, so these proceedings were not out of the blue; there was then apparently a pause but the Defendants were validly served with Claim 2 issued in December 2021; pleadings have already been served in that action and directions have now been made for trial. I take the point that delay and lapse of time might make the investigation of a claim and defence more difficult. However, in this case I see no or no material or specific prejudice caused by any alleged delay in serving the Claim Form; and I do not read the Defendants' evidence to suggest any particular difficulty caused by any such delay. Claim 2 will have to be defended in any event, and indeed has been by way of a Defence; and in truth it is difficult to see what extra limitation protection Claim 1 will give to NICO in light of the acknowledgment regarding limitation which is admitted in the Defence to Claim 2. To the extent that there is prejudice or potential prejudice, it is in my judgment outweighed by the considerations in favour of the extensions.

Later orders

79. My comments so far are focused on the First and Second Orders. Insofar as the Third Order is independently challenged, on the basis that there was then no good reason for an extension, I do not accept that. In my judgment, the matters relied upon by Mr Little in his third statement were good reasons for a further extension being required at that stage, as the Deputy Judge also considered. I have referred to the relevant material above.

80. More generally I reject any suggestion that there was a breach of the duty to make full and frank disclosure of potentially adverse matters. It is said that the paucity of the basis for the First and Second Orders was not disclosed, but any such paucity (and as I have found the material was sufficient in my judgment to justify the orders) was apparent from the materials themselves, which the Deputy Judge considered. The potential limitation issues were flagged in Mr Little's evidence, and were pretty obvious anyway on the face of the old invoices; there was no breach of the full and frank duty.

81. I was also urged by Mr Onslow to take account of HHJ Pelling KC's judgment dated 10 February 2023. In February 2023, HHJ Pelling KC was satisfied that the

proceedings had already come to the attention of the Defendants. He accepted NICO's essential contention that, as they put it, they had been messed about by the Defendants in relation to service; and that Mr Sokolenko had been playing technical games in seeking to avoid or evade service, whilst at the same time having had more than adequate notice of the proceedings and the basis of them. HHJ Pelling KC acknowledged that a limitation defence may have accrued between the date when the Claim Form was issued (October 2020) while attempts had been made to serve it but considered that was of a significantly lower degree of importance when NICO could show, as they had, that they were not culpable for the delay leading to the accrual of such a limitation defence. There is no challenge to this conclusion or the Sixth Order.

82. That all being said, the question whether the First and Second Orders should have been granted depends on whether there was a good reason for NICO not having served the Claim Form in 2021. No attempts had been made to serve the proceedings in 2021. By February 2023, attempts had been made, as set out in the evidence accepted by HHJ Pelling KC, which had been technically unsuccessful but otherwise had come to the attention of the Defendants, hence justifying the exceptional order he made then. But this evidence struck me as being more prejudicial than probative on *this* Application, and I have therefore based my decision on the circumstances as they were at the time of the two relevant extensions in 2021 and for completeness the extensions approved by the Deputy Judge in 2022.

I. Conclusion and Disposition

83. For the reasons I have given, I dismiss the Application with the consequence that the extensions of time for service of the Claim Form in Claim 1 stand.

84. The procedural directions made at the hearing, as part of the CMC discussions, shall apply in the circumstances to both Claim 1 and Claim 2.

85. Following the CMC, NICO prepared a draft order for directions (in Claim 2, pending this judgment) reflecting those discussions. I approve that draft, subject to any amendments that might be proposed following this Judgment.

86. Mr Sokolenko has submitted, both at the hearing and in written submissions following the circulation of this judgment in draft, that NICO should make an election as to which of Claim 1 and Claim 2 it wishes to pursue and should pay the costs of whichever claim it discontinues. I reject that submission. This is not a situation where NICO is required to elect between two claims, let alone two inconsistent ones. In principle, it is entitled to pursue both. As I explained at the CMC, however, I am sympathetic to the concern that having two claims might lead to extra cost or duplication. But, as discussed at the CMC, this risk is ameliorated by having a single set of case management decisions and the two claims being heard together. In all practical senses, this should be tantamount to there being one claim going forward from this point.

87. In that connection, subject to any submissions that either party wishes to make, I propose to order that:

i) Claim 1 and Claim 2 are to be heard together. I suggest this is preferable to formal consolidation, and may assist if it should turn out that it matters whether allegations were made, or originally made, in one action rather than the other, and when they were made;

ii) Either a Defence should be served in Claim 1 or (as I understand they would prefer) the Defendants may simply choose to have the Defence served in Claim 2 as also the Defence in Claim 1;

iii) Insofar as there is a separate Defence served in Claim 1, which requires a Reply, provision should be made for that; or for the Reply in Claim 2 to stand in both actions;

iv) Generally, the procedural directions ordered at the CMC (as set out in NICO's draft order for directions) shall apply to both actions.

88. I also approve the draft single List of Issues, and the DRD to the extent envisaged by paragraph 6 of the draft Order for directions.

89. There is one outstanding dispute concerning the terms of an Order which I made in connection with the need for the Defendants to provide further information pursuant to CPR Part 18. As to this:

i) The Defendants have raised an objection to the drafting of paragraph 12.3 in the Annex to the Order. This part of the Order requires the Defendants to explain why Mr Sokolenko made the proposals to settle Ferland's indebtedness to NICO via the Alexandra 1 (as identified in request 12.1) in circumstances in which it is said that Mr Sokolenko had no authority to do so.

ii) Mr Sokolenko (by his letter of 9 April 2024, paragraphs 5 – 8) objects to this, on the basis that the relevant statements were "*a wrong interpretation and a wrong account of what was said which might have been careless put into non-binding documents*", and this is not reflected in the Claimant's draft.

iii) HHJ Pelling KC had already made an order that the Defendants answer these requests, by way of formal CPR Part 18 response, and I made a further order to this effect at the CMC. It may be that the content of Mr Sokolenko's 9 April email is the answer or part of the answer which it is proposed to provide in response to the Order (and I make no comment as to its adequacy, if so), but a proper response should be given with a statement of truth. I therefore approve the Claimant's proposed draft order without adjustment.

90. I invite the parties to agree an order reflecting this judgment, and the matters covered in paragraph 87. above.