Neutral Citation Number: [2024] EWHC 1876 (Comm)

Case No: CL-2023- 00152

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
COMMERCIAL COURT

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

Date: 22/07/2024

Before :

Mr. Nigel Cooper KC sitting as a High Court Judge

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Between :

CANCRIE INVESTMENTS LIMITED	**Claimant**
- and -	
MR. ZULFIQUR AL TANVEER HAIDER	**Defendant**

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- -

George Hayman KC and Duncan McCombe (instructed by **Lewis Silkin LLP**) for the **Claimant**
Sa'ad Hossain KC and Matthew Barry (instructed by **Richard Slade & Partners**) for the **Defendant**

Hearing dates: 08 and 09 May 2024

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JUDGMENT

This judgment was handed down by the Judge remotely by circulation to the parties' representatives by email and release to The National Archives. The date and time for hand-down is deemed to be 10:30 on Monday 22 July 2024.

Nigel Cooper KC:

Introduction

1. In this action, the Claimant is the assignee of the benefit of a judgment debt arising from a judgment in the United Arab Emirates ("the UAE"). The Claimant now seeks to enforce that judgment debt against the Defendant in this jurisdiction. The Defendant is an individual formerly resident in the UAE but now resident in London.

2. I have before me:

   i) An application made by the Claimant by a notice dated 19 July 2023 to continue a Worldwide Freezing Order made against the Defendant by HHJ Pelling KC on 18 July 2023 ("the Continuation Application");

   ii) An application made by the Defendant by a notice dated 20 July 2023 to strike out the Claim ("the Strike Out Application"); and

   iii) An application for reverse summary judgment made by the Defendant by a notice dated 30 April 2024 ("the Summary Judgment Application").

3. The Defendant opposes the Continuation Application on the basis that the Claimant has no good arguable case. He also contends that the Claim should either be struck out or dismissed on the basis that there are no reasonable grounds for the claim against the Defendant or that the Claim has no real prospects of success.

4. The Claimant maintains its application for continuation of the Worldwide Freezing Order noting that the Defendant has now conceded that there is a real risk of dissipation and only opposes the application on the basis of no good arguable case. The Claimant opposes both the Strike Out Application and the Summary Judgment Application on grounds of procedural irregularity and on the merits.

Factual Background

The UAE Proceedings

5. The UAE judgment ("the UAE Judgment") dates from 30 May 2021 and was handed down in proceedings between the Abu Dhabi Commercial Bank ("ADCB") and a number of defendants, including the Defendant. The UAE Judgment found the Defendant to be liable to ADCB in the sum of United Arab Emirates Dirham ("AED") 362,000,000 (approximately £81,760,000) plus interest at a rate of 6.25% per annum on the amount awarded from 01 November 2020 ("the UAE Judgment Sum"). ADCB assigned the benefit of the Judgment to the Claimant by an assignment agreement dated 19 August 2022 ("the Assignment").

6. So far as the background to the Judgment is concerned, a company, Mabani Delma General Contracting Co. LLC ("Delma Contracting") entered into a facility agreement with Al Hilal Bank PJSC on 26 July 2009 and amended from time to time thereafter

("the Facility Agreement"). ADCB subsequently acquired Al Hilal Bank on 04 April 2019.

7. The Defendant provided security for the Facility Agreement by providing a series of personal guarantees. The Claimant says that the final such guarantee is dated 20 March 2013 and guaranteed debts under the Facility Agreement in the total amount of AED 362,000,000 ("the Defendant Guarantee"). The Defendant acknowledges that he signed earlier guarantees but says that his signature on the Defendant Guarantee is forged.

8. Delma Contracting and its Abu Dhabi branch ("Delma Contracting AD") defaulted under the Facility Agreement and ADCB brought proceedings against it in the UAE. In the same proceedings, ADCB also sued the Defendant and other alleged guarantors of the debt under the Facility Agreement. The proceedings were issued on 07 July 2020. The Defendant did not appear in the proceedings. The method adopted by the UAE Court for service on the Defendant was by SMS text message. It was common ground that this is a permissible method of service in the UAE.

9. The Court originally sought to serve the Defendant by sending an SMS message to a mobile number, which the Claimant accepts was a number for Delma Engineering Projects Company LLC ("Delma Engineering", a UAE company, not the Defendant. The Court then obtained a different number ("the Second Number") for the Defendant from the UAE's Federal Authority for Identity, Citizenship, Customs & Port Security ("FAICCPS"). This was a UAE registered number which the Defendant provided to FAICCPS in 2013 when he applied to renew his UAE residency permit. On 11 August 2020, an attempt was made to serve the Defendant by sending an SMS to that number.

10. The Defendant says that the Second Number was not his mobile number at the time of service. The Defendant says that he fled the UAE in May 2019 more than a year before the commencement of the UAE Proceedings. He also says that his UAE residency permit expired with the consequence that his mobile phone provider, Etisalat, was obliged under UAE law to disconnect the Defendant's phone number more than four months before the commencement of the UAE Proceedings. The Defendant says that the Second Number was disconnected on 27 February 2020. He also says Etisalat reassigned the Second Number to a local delivery company in Dubai with whom the Defendant has no association. The Claimant does not accept that the Second Number was not the Defendant's number and says that the circumstances relating to the Defendant's use of the number and what connection he has to the number are questions of fact to be resolved at trial as is the question of whether Etisalat were obliged to disconnect the number.

11. The Defendant says that he fled the UAE as a consequence of events relating to a letter of credit fraud perpetrated on companies within the Delma group, which he established during the 2000s. He says the fraud was established by individuals within the company. He also says that his attempts to investigate the fraud were thwarted by the circulation of large cheques bearing the Defendant's forged signature, which when later dishonoured, leading to his criminal prosecution in the UAE. A police forensic report confirmed that the cheques were forgeries but after the Defendant was released on bail, further forged cheques were put into circulation, leading to the Defendant's continued detention in prisons and police stations from December 2016. The

Defendant says that he escaped from prison in September 2017 and went into hiding until he was able to flee the UAE. He arrived in Oman on 02 May 2019 before travelling to Bangladesh and then on to Thailand for medical treatment. He arrived in London on 28 July 2019 and has not returned to the UAE since. The Claimant says again that the matters set out in this paragraph are questions of fact to be determined at trial.

12. The Defendant did not appear in the UAE Proceedings. As appears in more detail below, the Defendant denies receiving the SMS text messages serving the proceedings and subsequently the Judgment or any notice of the appellate proceedings. He says that he only became aware of the proceedings and the Judgment when he received a letter from the Claimant's then solicitors on 06 January 2023. All the other defendants in the UAE Proceedings appeared and were represented by the same law firm. The UAE Judgment was handed down on 30 May 2021 and the following orders were made:

    i) Delma Contracting and Delma Contracting AD were ordered to pay the total of AED 487,105,109 (approximately £101,000,000).

    ii) The Defendant was ordered to pay AED 362,000,000 being the limit of the Defendant Guarantee.

    iii) Delma Engineering which had also guaranteed the debt under the Facility Agreement was ordered to pay AED 113,858,000, the limit of its guarantee.

    iv) The above parties were ordered to pay interest at a rate of 6.25% per annum from 01 November 2020 until repayment.

13. The other individual defendants to the UAE Proceedings were found not to be liable because the UAE Court, having appointed a handwriting expert, found that the signatures on their guarantees had been forged. Because the Defendant did not appear, the expert did not investigate whether the Defendant's signature was forged.

14. The Court tried to notify the Defendant of the UAE Judgment by sending an SMS to the Second Number.

15. Delma Contracting, Delma Contracting AD and Delma Engineering filed an appeal against the UAE Judgment on 22 June 2021. ADCB filed a cross appeal on 24 June on the findings of forgery. The Court of Appeal rejected both appeals in a judgment dated 24 August 2021. Further Cassation appeals by ADCB, Delma Contracting, Delma Contracting AD and Delma Engineering were dismissed by the Court of Cassation in a judgment dated 14 December 2021.

16. On 01 July 2021, an attempt was made to notify the Defendant of the appeal proceedings by sending an SMS message to the Second Number. Then on 21 November 2021, an attempt was made to notify the Defendant of the Court of Cassation proceedings again by sending an SMS message to the Second Number. The Defendant says that he did not get either text message.

17. The UAE Proceedings have proceeded to the enforcement stage and the UAE Court has taken various steps to enforce against the Defendant but none have yet realised any assets.

18. On about 19 August 2022, the Claimant acquired the rights to a portfolio of assets from ADCB including an assignment of the rights arising under the UAE Judgment ("the UAE Assignment"). The Claimant says that notice of the assignment was given to the Defendant on 06 January and 02 February 2023.

The English Proceedings

19. The Claimant issued this claim on 16 March 2023 and it was served on the Defendant on 22 March 2023. The Defendant served an Acknowledgement of Service on 31 March 2023 indicating an intention to defend the claim. The Defendant was granted extensions of time to 19 June 2023 to file his Defence. Robin Knowles J. granted a further extension until 19 July 2023.

20. HHJ Pelling KC (sitting as a Judge of the High Court) granted a worldwide freezing injunction and ancillary asset disclosure orders against the Defendant at a without notice hearing on 18 July 2023. The Worldwide Freezing Order was continued in the form of undertakings given by the Defendant to the Court at a return date before Mrs. Justice Dias on 25 July 2023 ("the Continuation Order"). Between the two hearings, the Defendant served his Defence and issued the Strike Out Application. Mrs. Justice Dias also gave directions for the service of expert evidence on UAE law for both the Strike Out Application and the Continuation Application. For the purposes of timetabling the expert evidence, the Defendant has the right to serve reply evidence in respect of the Strike Out Application but the right to serve reply evidence for the Continuation Application was with the Claimant.

21. The Defendant filed his Defence on 19 July 2023. He denies the claim on grounds which include:

    i) That the Guarantee was forged.

    ii) That he was not served with or otherwise notified of the UAE Proceedings.

22. The Claimant served its Reply on 06 September 2023. The Claimant has not pleaded any positive case back to the Defendant's forgery defence and has averred that it was unable to admit or deny that the Defendant was notified of the UAE Proceedings.

23. No further directions to trial have yet been given.

24. On 26 December 2023, Butcher J. extended time by consent for the Claimant to file and serve its evidence in response to the Strike Out Application and in Reply to the Continuation Application to 27 October 2023. Following the Defendant's refusal to consent to a further extension of time, the Claimant applied for a further extension of time to 15 December 2023 ("the Extension Application"). The Claimant served its evidence in accordance with this deadline.

25. On 18 October 2023, the Claimant also applied to amend its Statements of Case to take into account the migration of its place of incorporation from Guernsey to

Luxembourg ("the Amendment Application"). The Defendant did not consent to this application.

26. The Extension Application and the Amendment Application were heard by Mr. Stephen Hofmeyr KC (sitting as a Judge of the High Court) on 23 April 2024. He allowed both applications. The Defendant applied at the hearing for permission to serve further evidence and was given permission to serve evidence limited to reply evidence on the Strike Out Application, to be served by midnight on Friday, 26 April 2024. One of the issues before me was whether in light of the Order of Mr Hofmeyr KC, the Defendant was entitled to rely on the evidence in the second report of their expert on UAE law, Mr. Mahmood Abuwasel, on the Continuation Application or only in relation to the Strike Out Application.

27. On 02 February 2024, Foxton J. heard an application by the Defendant to vary the freezing relief in the Continuation Order to allow him to sell a residential property in London, which was subject to the Worldwide Freezing Order. That application was refused.

Other proceedings in England

28. Separately to the present claim, the Defendant has issued his own proceedings in England involving the affairs of Delma Engineering ("the Derivative Proceedings"). By a judgment made on 07 February 2023, the Court gave the Defendant permission to pursue derivative proceedings on behalf of Delma Engineering against various corporate and individual defendants ("the Derivative Proceedings") but refused permission in respect of other defendants. The defendants for which permission has been granted include the First and Third Defendants to the UAE Proceedings that led to the UAE Judgment. In the Derivative Proceedings, the Defendant seeks damages on behalf of Delma Engineering for two alleged frauds making various allegations in relation to the forging of his signature. The judgment also records that he is seeking damages in his individual capacity against certain defendants.

The Evidence on the Applications

29. For the purposes of the applications before me, the parties relied principally on the following evidence:

    i) For the original without notice application, the Claimant relied on the first witness statement of Mr. Patel ("Patel 1"). His second witness statement ("Patel 2") was served to confirm the truth of what was said by the Claimant's Counsel at the without notice hearing. The Claimant relies on Patel 1 for the Continuation Application.

    ii) The Defendant's asset disclosure is found in his First Affidavit. His evidence in response to the Continuation Application and in support of the Strike Out Application is found in the first witness statement of Mr. Richard Slade ("Slade 1"), the Defendant's first witness statement ("Haider 1") and the first report of Mr. Mahmood Abuwasel ("Abuwasel 1").

    iii) The Claimant's evidence in reply on the Continuation Application and in response to the Strike Out Application is found in the third witness statement

of Mr. Patel ("Patel 3"), the first Affidavit of Mr. Fraser Mitchell ("Mitchell Aff 1") and the first report of Mr. Amr Bajamal ("Bajamal 1").

iv) The Defendant's reply evidence on the Strike Out Application is in the sixth witness statement of Mr. Slade ("Slade 6") and the second report of Mr. Mahmood Abuwasel ("Abuwasel 2).

30. For the purposes of deciding the applications before me I have considered carefully the evidence described above and the arguments made very persuasively by Mr. Hayman KC and Mr. Hossain KC in reliance on it even if I do not refer below to all the arguments made or all the documents and passages of evidence to which I was referred.

31. So far as the expert evidence of Mr. Bajamal and Mr. Abuwasel is concerned, both individuals seemed to me to be qualified and competent to give evidence on the relevant aspects of UAE law. This was not therefore a case in which I should obviously prefer the evidence of one expert over the other based on their credibility as an expert.

Procedural Challenges

32. Before considering the substance of the applications, there were three procedural challenges made by the Claimant in relation to the three applications before me.

i) In relation to the Strike Out Application, the Claimant submitted that the Application should be dismissed because the Defendant had on 26 April 2024 abandoned the original grounds relied on in support of the application and advanced the application on a completely new basis.

ii) Further, the Claimant submitted that the Defendant should not be allowed to rely on Abuwasel 2 for the purposes of the Strike Out Application because it was not responsive evidence for which the Defendant had permission but new evidence.

iii) In relation to the Summary Judgment Application, the Claimant submitted that the Defendant should not be entitled to pursue the application at this hearing because it was only issued on 30 April 2024 and unless I was satisfied that the Application should be dismissed on its merits now then I should not abridge time for service and should give the Claimant the opportunity to serve evidence in reply.

iv) In relation to the Continuation Application, the Claimant submits that the Defendant should not be allowed to rely on Abuwasel 2 to oppose the application because the Defendant was refused permission by Mr. Stephen Hofmeyr KC to serve expert evidence in reply for the purposes of the Continuation Application.

The Strike Out Application

33. The Defendant applies to strike out the Claim under CPR 3.4(2)(a) on the basis that the Statement of Case discloses no reasonable grounds for bringing or defending the claim.

34. The Defendant's Application Notice dated 20 July 2023 relies generally on the facts and matters set out in the Defendant's Defence in this matter. But, in his first witness statement in support of the application, Mr. Slade identified two matters as being the basis on which the Defendant was advancing his strike out application, namely two points of UAE law relating to the UAE Assignment: (i) whether an exclusive jurisdiction clause in the UAE Assignment is a bar to the Claimant bringing enforcement proceedings in England by way of this claim and (ii) whether the Assignment properly assigned the benefit of the UAE Judgment. Those points were discussed at paragraphs 30 to 36 of the first witness statement of Mr. Slade. In paragraphs 37 and 38, Mr. Slade outlined the other points which would be taken by the Defendant in support of his wider case that the UAE judgment was not enforceable in England under the common law and was obtained in breach of natural justice. At paragraph 40 of his witness statement, Mr. Slade went on to say that the Defendant was not asking the Court to make a summary determination of any matters raised by the Defendant in defence of the claim against him except the points discussed at paragraphs 30 to 36 of his witness statement.

35. In his sixth witness statement dated 26 April 2024, Mr. Slade confirmed that the Defendant was no longer advancing the Strike Out Application on the basis of the points identified in paragraphs 30 to 36. Instead, the Defendant advanced the application on the basis that the UAE judgment was obtained in proceedings that were contrary to natural justice because the Defendant was not served with or otherwise notified of the UAE Proceedings. Mr. Slade said in his witness statement and Mr. Hossain submitted that because this line of defence was pleaded in paragraph 6.4 of the Defence, it fell within the formal scope of the Strike Out Application as set out in the Application Notice.

36. As well as challenging the Strike Out Application on the merits, the Claimant submits that the Defendant changed the basis of the application at short notice, abandoning the two original grounds of challenge and relying on a new ground of challenge based on the evidence in Mr. Abuwasel 2. This evidence, the Claimant says, is not evidence for which the Defendant was given permission. The order of Mr. Hofmeyr KC did not permit the Defendant to serve evidence in relation to what is a new application but only evidence in reply on the strike out application as originally formulated. The Claimant also says that there is no pleaded case based on natural justice alleged in the Defence. If this case is being made, the Claimant submits, it must be distinctly pleaded and proved.

37. I accept that there has been a change in the basis of the Defendant's Strike Out Application. Although the Application Notice refers generally to the Defence as grounds for the application, Mr. Slade's first witness statement confirmed that the application was made only on the two original grounds identified in paragraphs 30 to 36 of his First Witness Statement.

38. I would add that I do not consider it satisfactory for an application notice to be drafted in the general terms adopted by the Defendant. A respondent to an application is entitled to know precisely the basis on which the application will be made and the nature of the evidence which will be relied on in support of the application. This is information, which the standard form of application notice requires an applicant to provide.

39. I also accept the Claimant's criticism of the Defence. It is correct that the Defence pleads in paragraph 6 that the UAE Judgment is not capable of enforcement or recognition as against the Defendant in England and then sets out a number of grounds including:

    i) At sub-paragraph 6.2, that the Defendant was never served with or otherwise notified of the proceedings whether by the UAE Court or any of the other parties to the proceedings.

    ii) At sub-paragraph 6.4 that the Defendant did not submit to the jurisdiction of the Abu Dhabi Courts by voluntarily appearing in the proceedings or by taking any action in relation to them.

40. The Defendant says that it is at least implicit from the above passages of the Defence that the Defendant was relying on breach of the principles of natural justice to defend the claim in this action. It may be that this is the position as a matter of inference. However, it is a valid criticism of the Defence in its current form that it does not expressly state that the Defendant is relying on breach of natural justice in his Defence. Further, the Defence does not specifically identify which facts are relied on in support of the alleged breach or give particulars of the UAE law, which is relied on by the Defendant in support of its case for breach of natural justice. In this regard, Paragraph C1.3(f) of the Commercial Court Guide, 11th edition requires that any principle of foreign law or foreign legislative provision upon which a party's case is based must be clearly identified and the basis of its application explained.

41. Despite the concerns expressed above, I do not consider that the failure of the Application Notice to refer expressly to reliance on breach of the principles of natural justice or the Defendant's late change of the grounds on which he makes his application to be grounds on which to refuse to permit the Defendant to pursue his Strike Out Application. However, if I had considered that the Claimant was disadvantaged by the change in the basis of the Defendant's application, then I would have adjourned the hearing of the Strike Out Application to require (i) the Application Notice to be amended to set out the specific grounds on which the application is made, (ii) the Defence to be amended to plead the Defendant's case on breach of natural justice clearly and (iii) to permit the Claimant to serve evidence in response to Abuwasel 2. However, for reasons discussed below, I do not consider that the Claimant is so disadvantaged in dealing with the Strike Out Application that it is appropriate to dismiss the Strike Out Application on procedural grounds.

42. So far as the evidence in Abuwasel 2 is concerned, Mr. Hossain KC took me through the report to demonstrate how the report is responsive to the evidence given by Mr. Bajamal in Bajamal 1 and in the letter from Nassar, Hammad and Bajamal Legal dated 14 July 2023 including in relation to the issue of service and whether the Defendant was validly served under UAE law. I accept that Mr. Bajamal addresses the question of service in his report and in the letter of 14 July 2023. However, the question of whether the Defendant was validly served with the UAE Proceedings was not an issue which arose on the Strike Out Application as originally formulated. Further, it is clear that Abuwasel 2 addresses the question of service at length in order to support the Defendant's new ground on which to strike out the claim based on breach of natural justice. In this regard, I accept the Claimant's submission that Abuwasel 2 introduces new lines of inquiry including the duty on the telecoms

providers to disconnect the telephone of someone who has left the UAE, the link between an individual's residency permit and the ability to have a mobile phone number, the interplay of the obligations phone providers with the status of residence, that publication is the only exception to certainty of service and a revision to his initial translation of one of the cases relied on in his initial report.

43. It follows that I do not accept that Abuwasel 2 is purely responsive evidence, at least in relation to the issue of service. But in circumstances where I have permitted the Defendant to pursue the Strike Out Application on his new ground, it would not be right to then prevent him relying on the expert evidence he wished to put forward in support of that application.

44. As stated above, if I had considered that the Claimant would be disadvantaged by permitting the Defendant to make his Strike Out Application on the new ground at this hearing, I would have adjourned the application and given directions permitting the Claimant to serve evidence in response to Abuwasel 2.

The Summary Judgment Application

45. The Defendant says that the grounds for this application are the same as the grounds for the Strike Out Application. The Defendant explains the reason for the late issue of this application as being to avoid:

    i) Any dispute over whether the legal test for a strike out application based on CPR 3.4(2)(a) and the legal test for a summary judgment application under CPR 24 are different; and

    ii) Any dispute over the extent to which the Court was constrained to look only at the pleadings for the purpose of the Strike Out Application and could not have regard to the expert and factual evidence relied on by the Defendant in support of the application.

46. I discuss below the extent to which the legal test for a strike out application and the legal test for summary judgment are different.

47. I accept the Defendant's reason for deciding to issue the Summary Judgment Application but that reason still does not explain the issue of the application so shortly before the hearing fixed for the Strike Out Application and the Continuation Application. Nor does it explain the failure to include the Claimant in the correspondence with the Court asking for the application to be listed for hearing at the same time as the Strike Out Application and the Continuation Application.

48. However, for the reasons set out below, I am satisfied that I can properly deal with the Summary Judgment Application on the merits now without unfairly disadvantaging the Claimant. Accordingly, I abridge time for service of the Summary Judgment Application and will hear the application. If I had not been so satisfied, then I would have adjourned the application with directions for the service of any further evidence on the Summary Judgment Application.

Admissibility of Abuwasel 2 in relation to the Continuation Application?

49. At the hearing before Mr. Hofmeyr KC on 23 April 2024, the Defendant sought permission to put in evidence in reply in respect of both the Strike Out Application and the Continuation Application. The judge granted the Defendant permission to put in reply evidence in respect of the Strike Out Application but refused permission for rejoinder evidence in respect of the Continuation Application. He held that the Defendant was not previously given permission to serve rejoinder evidence in relation to the Continuation Application and accordingly the question of whether he should be permitted to serve such evidence simply does not arise. The judge's reference to the Defendant not having been previously given permission to serve rejoinder evidence was a reference to the Order of Dias J. made on 25 July 2023 in which the judge gave directions for evidence in relation to both the Strike Out Application and the Continuation Application. The applicant for each application was given permission for reply evidence but no permission was given for rejoinder evidence.

50. Mr. Hofmeyr KC recognised that an issue could arise at this hearing as to the extent to which the Defendant was entitled to rely on evidence served in reply for the Strike Out Application for the purposes of the Continuation Application and whether by doing so the Defendant had strayed beyond what was permitted by the order of Dias J. at paragraph 8(d).

51. It is clear to me that the Defendant has strayed beyond what is permitted by the order of Dias J and by the order of Mr. Hofmeyr KC because the Defendant does seek to rely on the evidence in Abuwasel 2 going to service for the purposes of the Continuation Application and his submissions that the Claimant has no good arguable case.

52. However, it would be entirely artificial for me to determine the Strike Out Application and the Summary Judgment Application having in mind the evidence in Abuwasel 2 but then to exclude that evidence from my mind for the purposes of the Continuation Application. Further, bearing in mind the exceptional nature of the relief provided by a worldwide freezing injunction, I consider that it would be wrong for me to determine the question of whether the Claimant had a good arguable case ignoring evidence that was or might be material to that issue. Of course, the weight I give to that evidence is a matter on which I take into account that the Claimant has not had the opportunity to respond to that evidence.

53. Accordingly, notwithstanding the fact that the Defendant did not have permission to adduce the evidence in Abuwasel 2 for the purposes of the Continuation Application, I am prepared to take that evidence into account on the Continuation Application. For reasons which are set out below, I do not consider it necessary to give the Claimant an opportunity to put in further evidence in response to Abuwasel 2 for the purposes of the Continuation Application. If I had thought it necessary, then the Continuation Application would have had to be adjourned with the Defendant bearing the costs of the adjournment, if any.

The Law

The Inter-relationship between the Strike Out Application and Summary Judgment Applications and the test to be applied for each

54. As indicated above, the Defendant issued the Summary Judgment Application in case there was any dispute as to whether I could have regard to evidence for the purposes of determining a Strike Out Application under CPR Rule 3.4(2)(a). There was a separate issue between the parties as to whether the legal test under CPR Rule 3.4(2)(a) and CPR Part 24 was the same.

55. CPR Rule 3.4(2)(a) provides that the Court may strike out a statement of case if it appears to the Court that the statement of case discloses no reasonable grounds for bringing or defending the claim.

56. Note 3.4.1 in volume 1 of the Supreme Court Practice appears to accept that evidence can be filed in support of applications under Rule 3.4.(2) including under sub-paragraph (a). It notes that while many applications under R.3.4(2) can be made without evidence in support (usually if the statement of case discloses no reasonable grounds for bringing or defending the claim), the applicant should consider whether facts need to be proved and, if so, whether evidence in support should be filed and served. The note reflects the guidance in CPRPD 3A at paragraph 5.2. The Practice Direction gives examples at paragraph 1.2 of the types of cases in which the Court may conclude that Particulars of Claim fall within Rule 3.4(2)(a), namely:

    i) Those which set out no facts indicating what the claim is about;

    ii) Those which are incoherent and make no sense; and

    iii) Those which contain a coherent set of facts but those facts, even if true, do not disclose any legally recognisable claim against the Defendant.

57. Paragraph 1.5 of the Practice Direction goes on to say that a party may believe they can show without a trial that an opponent's case has no real prospect of success on the facts or that the case is bound to succeed or fail, as the case may be, because of a point of law (including the interpretation of a document). In such a case, the party concerned may make an application under rule 3.4 or apply for summary judgment under Part 24 (or both) as they think appropriate.

58. As is well known, the Court has power under CPR Rule 24.3 to give summary judgment against a claimant or defendant on the whole of a claim or on an issue if (a) it considers that the party has no real prospect of success on the claim, defence or issue and (b) there is no other compelling reason why the case or issue should be disposed of at a trial.

59. Notwithstanding the terms of paragraph 1.5 of CPRPD 3A, there is a distinction between the appropriate test under Rule 3.4(2)(a) and the test under Rule 24.2. Under Rule 3.4(2)(a), the focus is on a party's statement of case and whether, assuming the facts stated to be true, there are reasonable grounds for bringing or defending the claim. In contrast, if there are factual issues apparently in dispute but which can be

addressed on a summary basis, the more appropriate application is an application under Rule 24.3.

60. The distinction between the two rules was succinctly put by Hale LJ (as she then was) in Bridgeman v McAlpine Brown (unreported, 19 January 2000) at [21] and [22]. Referring to rule 3.4(2), Hale LJ stated:

"The Judge would not have been able to strike this claim out on those grounds whether under the old rules or under the new. The essence of a strike out is that one does not look at the evidence on the claim. It is odd that the defendant's solicitors should have suggested this to the claimant. It is also odd that they should have put into their application that the claimant knew the identity of the driver – which might of course – have made it an abuse of process – when the only evidence for that assertion came from the Browns and does not appear in any communication or disclosure to the other side.

Hence the learned judge could only dispose of the claim after a decision had been taken on the factual issue. It was, of course, open to him to decide that this was an issue which could be disposed of. He would be doing so, technically not under a strike out application but under Part 24 of the Civil Procedure Rules which deals with summary judgment. …"

61. Similarly in Swain v Hillman [2001] C.P. Rep. 16, Lord Woolf MR distinguished the two rules in the following terms:

"There is a note to Part 24.2 referring to rule 3.4. Rule 3.4 makes provision for the court to strike out a statement of case, or part of a statement of case, if it appears that it discloses no reasonable grounds for bringing or defending a claim.

Clearly there is a relationship between rule 3.4 and Part 24.2. However, the power of the court under Part 24, the grounds are set out in 24.2 [now 24.3] are wider than those contained in rule 3.4. The reason for the contrast in language between rule 3.4 and rule 24.2 is because under rule 3.4, unlike rule 24.2, the court generally is only concerned with the statement of case which it is alleged discloses no reasonable grounds for bringing or defending the claim."

62. More recently, the distinction between striking out under Rule 3.4(2)(a) and Rule 24.3 was discussed in Libyan Investment Authority v King [2021] 1 WLR 2659. Arnold LJ, giving a majority judgment, dealt with the distinction between the tests under the two rules in the following terms at [96]:

"The judge then went on to consider the second to seventh defendants' applications. At para 41 he noted that, under CPR r.3.4(2)(a), "a court may only strike out a statement of case if satisfied that it is bound to fail". At paras 42 – 47 he discussed the tests applicable under CPR r.24.2: did the claim have a real prospect of success, and if not was there some other compelling reason for trial? The judge was correct to distinguish between the two tests in that way. As is well established, under rule 3.4(2)(a) the facts pleaded must be assumed to be true and (unlike under rule 3.4(2)(b) and (c)) evidence is inadmissible, whereas under rule 24.2 no such assumption is required and evidence is admissible to show that the pleaded allegations are fanciful. Furthermore, as can be seen from 1.7 of CPR PD 3A (quoted by Nugee LJ in para

57(5) [sic (4)] above), "bound to fail" in rule 3.4(2)(a) means bound to fail "because of a point of law" even if it has a real prospect of success on the facts."

63. However, in his dissenting judgment, Nugee LJ put the position as between the two rules rather differently at [57]:

"(4) The question was raised in argument whether it was appropriate for the judge to use the power in CPR Pt 3 to strike out the claims rather than the power in CPR Pt 24 to grant summary judgment on them, given that the basis for his October 2018 Judgment was that the claims then pleaded had no reasonable prospect of success. I do not myself see that anything significant turns on this (and Mr. Onslow for his part frankly accepted that the distinction between striking out and summary judgment was not something that one would see reflected in any of his thinking) but for what it is worth I think he was probably entitled to do that. As Mr. Green pointed out the wording of CPR r.3.4 which confers the power to strike out is not in the same terms as the former RSC Ord. 18, r.19. CPR 3.4(2)(a) provides that the court may strike out a statement of case if it "discloses no reasonable grounds for bringing or defending the claim"; RSC Ord. 18, r.19(1)(a) by contrast provided that the court might order to be struck out any pleading on the grounds that it "discloses no reasonable cause of action or defence as the case may be" and significantly Ord 18, r.19(2) provided that on an application under para (1)(a) no evidence should be admissible. That illustrates that the practice on such an application was to consider, without evidence, whether what was pleaded, assuming it could be proved, disclosed a cause of action. It is not obvious, at any rate to me, that the same is true under the CPR where the words "no reasonable grounds for bringing the claim" are rather looser than the former Ord 18 r 19(1)(a), and the former Ord 18 r 19(2) has not been reproduced. Instead Practice Direction 3A , which supplements CPR r 3.4 , provides at paragraph 5.2 that while many applications under r 3.4(2) can be made without evidence, it is for the applicant to consider whether facts need to be proved and evidence should be filed and served; and at paragraph 1.7 that:

> *"A party may believe that he can show without a trial that an opponent's case has no real prospect of success on the facts, or that the case is bound to succeed or fail, as the case may be, because of a point of law (including the construction of a document). In such a case the party concerned may make an application under rule 3.4 or Part 24 (or both) as he thinks appropriate."*

Since, as I have said, nothing in my view turns on it, I do not think we have to reach any concluded view on the point, but this certainly suggests that there is nothing wrong in the practice of bringing an application under both Part 3 and Part 24 on the basis that the claim is factually hopeless (something that Mr Green suggested happens every day up and down the country), and that HHJ Barker was entitled to strike out the RAPOC under the powers in Part 3 of the CPR rather than grant summary judgment under Part 24 . Indeed, for my part I think that if he had granted summary judgment against the Claimants, the logical consequence would have been that he should have then dismissed the action entirely as final judgment would have been granted on all the Claimants' claims, and it is difficult to see that it could properly have been kept alive at all."

64. Both the reasoning of Nugee LJ and of Arnold LJ were dicta and reveal a potentially conflicting approach to the tests to be applied under rule 3.4(2(a) and under Part 24.

That conflict was addressed by HHJ Keyser QC (as he then was) sitting as a Judge of the High Court in Maranello Rosso Ltd v. Lohomij BV & Ors [2021] EWHC 2452 (Ch). In that case, the Judge referred to the decision of the Court of Appeal in Begum v. Maran (UK) Ltd [2021] EWCA Civ 326 in the following terms at [23]:

"Although little if anything turns on the point for present purposes, I am proceeding on the basis that even if a statement of case contains all the factual averments necessary to establish a claim, yet it may be struck out under r. 3.4(2)(a). This is shown by paragraph 1.7 of Practice Direction 3A and has been confirmed by the Court of Appeal in Begum v Maran (UK) Ltd [2021] EWCA Civ 326 where Coulson LJ said at [21]:

> *"In a case of this kind, the rules [that is r.24.2 and r.3.4(2)(a)] should be taken together and a common test applied. If a defendant is entitled to summary judgment because the claimant has no realistic prospects of success, then the statement of claim discloses no reasonable grounds for bringing the claim and should be struck out.""*

65. The Judge went on to consider the different approaches of Arnold LJ and Nugee LJ and said in relation to the passage from the judgment of Arnold LJ cited above, at [24] to [25]:

"24. ...

With respect the reasoning in that dictum does not seem (to me) entirely convincing. The test under r.3.4(2)(a) is not "bound to fail" but "no reasonable grounds". The words "bound to fail" come from paragraph 1.7 of PD3A; and, although they are there used with reference to a point of law, they come after a reference to an application grounded on the facts: "A party may believe he can show without a trial that an opponent's case has no real prospect of success on the facts, ***or*** *that the case is bound to succeed or fail, as the case may be, because of a point of law" (my emphasis). This provides alternatives: (i) that the opponent's case has no real prospects on the facts; (ii) that the opponent's case is bound to fail on a point of law. This distinction was noted by Nugee LJ in his judgment in the Libyan Investment Authority case at [57(4)].*
...

25. The important point is that, if a defendant seeks to defeat a claim on grounds that the matters pleaded by the claimant are not sufficient on their face to demonstrate a case that could succeed; it is neither necessary nor appropriate to rely on evidence in support of that ground: the application should be advanced on the basis of analysis of the text of the statement of case itself. On the current state of the Rules and the authorities, however, a party who wishes to contend that the opponent's case has no real prospect of success on the facts may, in my view, apply under both rules – and may adduce appropriate evidence in support of the contention whichever rule is relied on. From time to time in this judgment, I shall use Marcus Smith J's useful terminology of "reasonable arguability" to cover the test under either rule."

66. I agree with the approach adopted by HHJ Keyser in light of the wording of both rule 3.4(2)(a) and Part 24 and the authorities. As indicated by Nugee LJ in the Libyan Investment Authority case, it provides the court with the flexibility to either dismiss a

claim under CPR Part 24 or to strike out a claim under rule 3.4(2)(a) depending on which course is the most appropriate in the particular case.

67. It is, accordingly, open to the Defendant in the present case to apply under rule 3.4(2)(a) to strike out the Particulars of Claim on the basis that assuming the facts stated therein are true, then the claim cannot succeed. It is also open to the Defendant to adduce appropriate evidence to show that the Claimant has no real prospect of success and to apply under both rule 3.4(2)(a) and Part 24. In this latter eventuality, the Judge described the test to be applied under either rule as being one of 'reasonable arguability'. This description, I understand to be shorthand for the test ordinarily applied under Part 24, namely that summary judgment will only be given or the claim will only be struck out if the court is satisfied that the claim or issue has no real, as opposed to fanciful, prospect of success; see EasyAir Ltd v. Opal Telecom Ltd [2009] EWHC 339 (Ch) at [15] per Lewison LJ.

68. In Maranello Ross Ltd at [19], HHJ Keyzer QC explained the task of the court in determining whether to grant summary judgment in the following terms:

"... Summary judgment will be given against a claimant on a claim or issue only if the court is satisfied that the claim or issue has no real, as opposed, to fanciful, prospect of success; a claim or issue that is merely arguable but carries no degree of conviction will not have a real prospect of success. The court will not conduct a mini-trial, and, in circumstances such as the present, will be mindful that full disclosure has not yet taken place and that there might be more evidence to come. Accordingly, where there are disputed questions of fact, it will not generally attempt to determine where the probabilities lie. However, and importantly, the court ought to carry out a critical examination of the available material and is not bound to accept the mere say-so of anybody; where it is clear that a factual case is self-contradictory or inherently incredible or where it is contradicted by the contemporaneous documents, the court, after careful consideration of the evidence that is currently before it and having regard to the nature of such further evidence as might reasonably be expected to be available at trial is entitled to reject that case even on a summary basis. ..."

69. Although the Judge was dealing expressly with the application of the test for summary judgment, logically the same approach must apply equally in circumstances where the Court is considering whether to strike out a claim under rule 3.4(2)(a) or under CPR Part 24. To similar affect is the decision of Picken J. in ArcelorMittal North America Holdings LLC v Ravi Ruia [2022] EWHC 1378 at [26]. This is accordingly the approach I adopt when considering further the evidence below.

The Continuation Application

70. The test to be applied on an application to continue a worldwide freezing order was recently summarised by Edwin Johnson J in Harrington v Mehta [2022] EWHC 2960 (Ch) at [239]. The applicant, the Claimant, must establish (i) a good arguable case on the merits, (ii) a real risk of dissipation of assets, (iii) that there is reason to believe that the respondent, in this case the Defendant, has assets within or without the jurisdiction and (iv) that it is, in all the circumstances, just and convenient to grant the order.

71. The Defendant accepts that limbs (ii) and (iii) of the test are satisfied but challenges continuation on the basis that the Claimant fails on limbs (i) and (iv). The Defendant also says that there was a failure by the Claimant to give full and frank disclosure.

Good arguable case – the test

72. There is a divergence of authority as to the meaning of the *'good arguable case*' test for the purposes of applications for freezing injunctions.

73. The test for good arguable case which has generally been adopted for the purposes of freezing injunctions is that adopted by Mustill J in Ninemia Marine Corporation v Trave Schiffahrtgesellschaft m.b.H u. Co. K.G. ("The Niedersachsen") [1983] 2 Lloyd's Rep. 600 (upheld on appeal [1983] 1 WLR 1412): *"I consider that the right course is to adopt the test of a good arguable case, in the sense of a case which is more than barely capable of serious argument, and yet not necessarily one which the judge believes to have a better than 50% chance of success."*

74. More recently, however, there has been some controversy as to whether in Lakatamia Shipping Co. Ltd v Morimoto [2020] 2 All ER(Comm) 359 at §§35 – 37, Haddon-Cave LJ has aligned the test for good arguable case in freezing injunctions with the test for good arguable case used in relation to jurisdictional gateways. That test as formulated by Lord Sumption in Brownlie v Four Seasons Holdings Inc [2018] 1 WLR 192 requires:

(i) that the claimant must supply a plausible evidential basis for the application;

(ii) that if there is an issue of fact about it, or some other reason for doubting whether it applies, the court must take a view on the material available if it can reliably do so; but

(iii) if the nature of the issue and the limitations of the material available at the interlocutory stage are such that no reliable assessment can be made, then the court may conclude that there is a good arguable case if there is a plausible (albeit contested) evidential basis.

75. The Court of Appeal observed in Kaefer v AMS Drilling Mexico [2019] 1 WLR 3514 at [73] and [119], the reference in limb (i) to *'a plausible evidential basis'* is a reference to an evidential basis showing that the claimant has the better of the argument. But I note that limb (iii) of the test, which is to be applied when a judge is unable to determine on the evidence available which party has the better of the argument, still requires *'a plausible (albeit contested) evidential basis'*.

76. The passage from the judgment of Haddon-Cave LJ in the Lakatamia case, which has caused the controversy is at [37] to [38]. However, his Lordship's discussion of the test begins at [35].

> *"[35]The test for 'good' arguable case in the context of freezing injunctions is not a particularly onerous one (Gee on Commercial Injunctions (6th edn, 2016 at [12-026]).*
>
> ...
> *[37] There has been much discussion of the meaning of the 'good arguable*

case' test since Mustill J.'s well-known observation in Ninemia Maritime Corp v. Trave Schiffahrtsgesellschaft mbH & Co KG, The Niedersachsen [1984] 1 All ER 398 at 404, namely that a good arguable case is a case which is more than barely capable of serious argument and yet not necessarily one which the judge believes to have a better than 50% chance of success.

[38] The 'good arguable case' test was the subject of a comprehensive review by the Court of Appeal recently in Kaefer v. AMS [2019] 3 All ER 979 in the context of jurisdictional gateways. Green LJ (who gave the leading judgment, Davis and Asplin LJ concurring) conducted a magisterial analysis of the recent authorities, including Brownlie v. Four Seasons Holdings [2017] UKSC 80 and Goldman Sachs International v. Novo Banco SA [2018] UKSC 34 . He observed at [59] that a test intended to be straightforward "had become befuddled by 'glosses', glosses upon gloss, 'explications' and 'reformulations'". The central concept at the heart of the test was "a plausible evidential basis" (see paragraphs [73]-[80]).”

77. It is not immediately obvious from this passage that Haddon-Cave LJ was intending to harmonise the test for good arguable case in the context of freezing injunctions with the test in the context of jurisdictional challenges. He does not say that this is his intention. On the contrary, the discussion in paragraphs 35 and 37 of the judgment appears to suggest that the test which the judge intends to apply is the traditional test as laid down in The Niedersachsen. It is, therefore, possible to read the discussion of Kaefer, Brownlie and Goldman Sachs as doing no more than emphasising that for the purposes of establishing a good arguable case on the basis that the case is one which is more than barely capable of serious argument and yet not necessarily one which the judge believes to have a more than 50% chance of success, a claimant must support his case with plausible evidence (such evidence being the standard of evidence which is required under both limbs (i) and (iii) of the Brownlie test). This conclusion would also be consistent with earlier authorities which distinguish the good arguable case test used for jurisdictional gateways from that used for freezing injunctions such as:

i) Holyoake v Candy [2016] EWHC 970 (Ch) (which was cited to the Court of Appeal in Lakatamia) in which Nugee J. considered whether the test of the better of the argument should apply to freezing injunctions and rejected the argument, stating at [13]:

“… Where however the merits of the case turn on questions of fact it would impose a severe limitation on the court's ability to grant effective relief if had to be satisfied that the claimant had much the better of the factual case. That is very often impossible to say at the interlocutory stage where the issues are pure factual issues, particularly in the question turns on the credibility of witnesses'

ii) Kazakhstan Kagazy plc v. Arip [2014] EWCA Civ 381 at [25], in which Longmore LJ stated:

“…Much the better of the argument has recently emerged as a test on applications for service out of the jurisdiction. But I see no reason why that test should apply to freezing injunctions where ex hypothesi (or subject to any jurisdictional challenge) the defendant is properly before the court. …”

78. While both the above authorities refer to the test in the context of a jurisdiction challenge as being 'much the better of the argument' and the test is now the 'better of the argument', it does not seem to me that this change alters the force of the distinction the courts in the last two cases mentioned were drawing between the test for the purposes of a jurisdiction challenge and the test for the purposes of a freezing injunction.

79. However, in the Harrington case, Edwin Johnson J. accepted at [255] a submission that the law had moved on from the test in The Niedersachsen such that when applying the good arguable case test in the context of freezing injunctions, one should apply the three-limb test as formulated by Lord Sumption in Brownlie and Goldman Sachs.

80. More recently in Chowgule & Co. Pte Ltd & Ors. v. Shirke & Ors [2023] EWHC 2815 (Comm), Dias J. also adopted the Brownlie test when considering whether or not to grant a freezing injunction. The Judge expressed the view at [49] that given the serious consequences of a freezing order, she had some doubts as to whether it would ever be appropriate to grant a freezing order, particularly in a claim asserting fraud, unless the court was satisfied that the claimant had the better of the argument as compared with the defendant.

81. In Magomedov v. TPG Group Holdings [2023] EWHC 3134 (Comm), Butcher J reviewed the authorities including Harrington and Chowgule and did not accept that the three-limbed test in Brownlie was intended to apply in the context of freezing injunctions at [14] to [39]. To the extent that Harrington and Chowgule take a different approach, he considered that both decisions were wrong.

82. In reaching this conclusion, Butcher J. pointed to the following matters amongst others:

    i) The Niedersachsen test is long-established and has been applied very frequently [22].

    ii) The fact that there have been developments in the law on the test to be applied to jurisdictional gateways does not mean that there has or should have been a change in the law in relation to the test to be applied for freezing injunctions [23].

    iii) The test of 'a good arguable case' in relation to jurisdiction relates to the issue of whether there is an available gateway. It is not the merits test. In other words, the tests are directed to a different end [25].

    iv) In none of Brownlie, Goldman Sachs or Kaefer was there any suggestion that the approach to the jurisdictional gateway question also applied or should apply in the context of freezing orders [26].

    v) There are good reasons not to apply the three-limb test in the context of freezing orders. In particular, it increases the risk of 'mini-trials', widens the gap between the merits test to be applied in the context of applications for other forms of injunctive relief and potentially puts the merits bar too high to serve the interests of justice [27] and [28].

vi) What was said in Lakatamia v. Morimoto does not establish that the Brownlie test is applicable in relation to freezing order application. Rather Haddon-Cave LJ was recognising that a case will not be more than barely arguable if there is no plausible evidential basis for it [34].

vii) There are recent authorities which rely on the test for good arguable case set out in The Niedersachsen. In particular, he referred to the decision of Jacobs J. in Omni Bridgeway (Fund 5) Cayman Investment Ltd v. Bugsby Property LLC [2023] EWHC 2755 (Comm) at [8], where the judge put the test in the following terms:

"... It is not enough to show an arguable case, namely one which a competent advocate can get on its feet. Something markedly better than that is required, even if it cannot be said with confidence that the plaintiff is more likely to be right than wrong. It is not therefore necessary for the applicant to have a case with a better than 50% chance of success."

83. Butcher J. considered that the test as described by Jacobs J. was the test which he should apply (at [39]). I respectfully agree. I would add that what was said by Haddon-Cave LJ. in Lakatamia is not necessarily at odds with the test as described by Jacobs J. In other words, it may be that the court is not able to say on an interlocutory application whether or not the plaintiff is more likely to be right than wrong, but the plaintiff's case must still be supported by plausible evidence (albeit contested evidence) even under the Niedersachsen test.

84. Bright J. also considered the principles applicable to the test for good arguable case in the freezing injunction context in Unitel S.A. v Unitel International Holdings B.V. [2023] EWHC 3231 (Comm). He concluded that the question of whether the test for good arguable case for freezing injunctions is or should be the same as the test in the context of jurisdictional gateways is a question ripe for consideration by the Court of Appeal and from first principles. The judge concluded, however, that he preferred the reasoning of Butcher J. in Magomedov both for the reasons the judge gave and because Haddon-Cave LJ's reference to Gee on Commercial Injunctions in his judgment at [35] cannot be easily reconciled with an intention to approve a test different from the one espoused in that text. I agree with this last point as well. If Haddon-Cave LJ was intending to alter the test for good arguable case as to align it with the test applicable in the context of whether jurisdictional gateways have been met, it is unlikely that he would have stated that the test for good arguable case is not an onerous one; a statement which implies both that he is applying an established test and that the test is the one laid down by Mustill J.

85. Bright J. finished his discussion of the good arguable case test at [43] with the following passage:

"It follows that under the three-limb Brownlie test, the court must not merely decide who has the better of the argument. If it can decide who has the better of the argument, it must also try to gauge the reliability of its conclusion on that point. This is a feature of the three-limb test that (in my view) makes it difficult to apply satisfactorily to the merits of the claim, as opposed to a question going to the merits of the claim, as opposed to a question that will not arise at trial. This

has been my experience in this case, hence the observations at the end of this judgment."

86. At the end of his judgment ([111 to [116]), Bright J. made a number of final observations about the point of Angolan law he was asked to decide and the concerns that would arise when applying the three-limb test to that point. A number of those concerns resonate with the issues, which I have to decide in relation to UAE law.

    i) If I were to express a settled view as to the reliability of the evidence I have received and particularly if I were to say that it is so reliable that the strength of the Claimant's case is above 50%, I would be *'trampling on turf that should be left pristine for the trial judge'*.

    ii) If applicants for freezing orders are told that they must provide evidence that reliably demonstrates that their prospects are above 50%, they will feel obliged to give the court as much evidence as they can muster and may say with some justification that where the issue is one of foreign law, the court should hear oral evidence from the rival experts. In other words trespassing into the territory of a 'mini-trial'.

    iii) The overall effect will be to lengthen hearings of this kind.

    iv) There is a risk that limb (iii) would in effect become the default test rather than being the exceptional safety net, which Lord Sumption JSC had in mind.

87. I have set out my views at some length above to explain why I prefer the reasoning of Butcher J. and Bright J. as to the applicable test for good arguable case in the context of this Continuation Application. It follows that I should answer the question of whether the Claimant has a good arguable case applying the test laid down in The Niedersachsen. However, given the divergent state of the authorities. I have also considered the evidence against the three-limb test set out in Brownlie. Like Bright J., while recognising that limb (iii) is intended to be a safety net rather than a default position, where I find myself unable to reach a reliable conclusion applying the test in limb (i) I am pushed back to limb (iii).

88. Finally, given that I have before me the Continuation Application, the Strike Out Application and the Summary Judgment Application, I note also that the test for good arguable case differs from the test of realistic prospects of success in two respects, Metropolitan Housing Trust Ltd v. Taylor [2015] EWHC 2897 (Ch) at [19] to [21]:

    i) For the purposes of deciding whether there is a good arguable case sufficient to justify continuing the worldwide freezing injunction, I am required to decide that question on the evidence before me. For the purposes of deciding whether there is a realistic prospect of success, I am entitled to take into account the fact that further evidence may come to light which may make the Claimant's case stronger.

    ii) There is a suggestion that the test for good arguable case may be more stringent than that of realistic prospects of success but neither test is rigid or well-defined and both depend on the judgment of the court in assessing the evidence before it.

Full and Frank Disclosure

89. The relevant principles for assessing whether an applicant has complied with their duty of full and frank disclosure were summarised by Carr J (as she then was) in Tugushev v. Orlov [2019] EWHC 2031 (Comm) at [7] and described as being non-contentious. They are the principles I apply when considering below whether the Claimant has complied with its duty of full and frank disclosure.

"i) The duty of an applicant for a without notice injunction is to make full and accurate disclosure of all material facts and to draw the court's attention to significant factual, legal and procedural aspects of the case;

ii) It is a high duty and of the first importance to ensure the integrity of the court's process. It is the necessary corollary of the court being prepared to depart from the principle that it will hear both sides before reaching a decision, a basic principle of fairness. Derogation from that principle is an exceptional course adopted in cases of extreme urgency or the need for secrecy. The court must be able to rely on the party who appears alone to present the argument in a way which is not merely designed to promote its own interests but in a fair and even-handed manner, drawing attention to evidence and arguments which it can reasonably anticipate the absent party would wish to make;

iii) Full disclosure must be linked with fair presentation. The judge must be able to have complete confidence in the thoroughness and objectivity of those presenting the case for the applicant. Thus, for example, it is not sufficient merely to exhibit numerous documents;

iv) An applicant must make proper enquiries before making the application. He must investigate the cause of action asserted and the facts relied on before identifying and addressing any likely defences. The duty to disclose extends to matters of which the applicant would have been aware had reasonable enquiries been made. The urgency of a particular case may make it necessary for evidence to be in a less tidy or complete form than is desirable. But no amount of urgency or practical difficulty can justify a failure to identify the relevant cause of action and principal facts to be relied on;

v) Material facts are those which it is material for the judge to know in dealing with the application as made. The duty requires an applicant to make the court aware of the issues likely to arise and the possible difficulties in the claim, but need not extend to a detailed analysis of every possible point which may arise. ...

vi) Where facts are material in the broad sense, there will be degrees of relevance and a due sense of proportion must be kept. Sensible limits have to be drawn, particularly in more complex and heavy commercial cases where the opportunity to raise arguments about non-disclosure will be all the greater. The question is not whether the evidence in support could have been improved (or one to be approached with the benefit of hindsight). The primary question is whether in all the circumstances its effect was such as to mislead the court in any material respect;

ix) If material non-disclosure is established, the court will be astute to ensure that a claimant who obtains injunctive relief without full disclosure is deprived of any

advantage he may thereby have derived;

90. *x) Whether or not the non-disclosure was innocent is an important consideration, but not necessarily decisive. Immediate discharge (without renewal) is likely to be the court's starting point, at least when the failure is substantial or deliberate. It has been said on more than one occasion that it will only be in exceptional circumstances in cases of deliberate non-disclosure or misrepresentation that an order would not be discharged;*

91. *xi) The court will discharge the order even if the order would still have been made had the relevant matter(s) been brought to its attention at the without notice hearing. This is a penal approach and intentionally so, by way of deterrent to ensure that applicants in future abide by their duties;*

92. *xii) The court nevertheless has a discretion to continue the injunction (or impose a fresh injunction) despite a failure to disclose. Although the discretion should be exercised sparingly, the overriding consideration will always be the interests of justice. Such consideration will include examination of i) the importance of the facts not disclosed to the issues before the judge ii) the need to encourage proper compliance with the duty of full and frank disclosure and to deter non-compliance iii) whether or not and to what extent the failure was culpable iv) the injustice to a claimant which may occur if an order is discharged leaving a defendant free to dissipate assets, although a strong case on the merits will never be a good excuse for a failure to disclose material facts."*

Enforcement of a UAE Judgment – the legal principles

93. The relevant principles for the enforcement of a UAE Judgment were not in dispute.

94. There is no statute providing for the enforcement of a UAE judgment in England. The only process by which the UAE Judgment may be enforced is at common law, *Dicey, Morris and Collins on the Conflicts of Law* (16th ed, 2023) at [14-011].

95. As set out in Rule 46 of *Dicey*, a foreign judgment *in personam* may be enforced at common law if:

    i) The court of the foreign country had jurisdiction to give the judgment;

    ii) The judgment is final and conclusive;

    iii) The judgment is for a debt, or definite sum of money; and

    iv) The judgment is not impeachable on the ground (among others) that the proceedings in which the judgment was obtained were opposed to natural justice.

96. The Defendant did not dispute that the Claimant has a good arguable case on (ii) and (iii) but submitted that the Claimant did not have a good arguable case on (i) and (iv).

97. So far as jurisdiction is concerned, Rule 47 of *Dicey* confirms that a foreign court has jurisdiction if the person against whom judgment was given:

i) was physically present in the foreign country at the time the proceedings were instituted;

ii) was the claimant or counterclaimed in the proceedings in the foreign court;

iii) submitted to the jurisdiction of the foreign court by voluntarily appearing in the proceedings; or

iv) had, before the commencement of proceedings, agreed, in respect of the subject matter of the proceedings, to submit to the jurisdiction of that court or the courts of the foreign country.

98. It was common ground that the only basis on which the Claimant relies on to establish the jurisdiction of the UAE court is that the Defendant agreed to submit to the jurisdiction of the UAE court before the commencement of proceedings.

99. So far as natural justice is concerned, the authorities establish the following principles:

i) Natural justice encompasses two key requirements: "first of all that the court being a court of competent jurisdiction, has given notice to the litigant that they are about to proceed to determine the rights between him and the other litigant; the other is that having given him that notice, it does afford him an opportunity of substantially presenting his case before the court": Jacobson v Frachon (1927) 138 LT 386, 392 per Atkin LJ.

ii) Notice of the proceedings is therefore a fundamental requirement of natural justice: "if a defendant has not been served with the writ, or has not been notified that a moribund case has been revived, or has not been notified that there is to be an appeal against a judgment in his favour, it is likely to be contrary to natural or substantial justice to recognise the judgment obtained as a result": *Briggs on Civil Jurisdiction and Judgments* (7th ed, 2021), p.816. For example, in Maronier v Larmer [2003] QB 620, the Court of Appeal held that the defendant had been denied a fair trial because he was unaware that stayed proceedings against him had been reactivated, and so the Court refused to enforce the judgment against him: at [37]-[38].

iii) "Served", for the purposes of a defence based on natural justice, "means given proper notice of the commencement of proceedings". If the defendant is given proper notice of the proceedings, then "a technical irregularity in the mode or manner of service" will be irrelevant: *Briggs*, p.816.

iv) If the defendant agrees to a particular method of service (such as service at an address in the foreign country) and service is effected according to that agreed method, then it is immaterial that the defendant did not receive actual notice of the proceedings: Vallée v Dumergue (1849) 154 ER 1221, 1227 per Alderson B. If, however, there is no agreement as to the method of service, then *"actual notice will be required"* in accordance with the principles of natural justice: *Dicey* at [14-085].

v) Where the defendant has agreed to submit to the jurisdiction of the foreign court and service has been effected in accordance with the foreign law, but actual notice has not been given, "*then the question will be whether substantial injustice has been caused by the lack of notice, including consideration of whether the defendant had a remedy in the foreign court*": *Dicey* at [14-162]; OJSC Bank of Moscow v Chernyakov [2016] EWHC 2583 (Comm) at [9].

100. The Defendant submitted that it is not incumbent on a defendant to take advantage of procedures in the foreign court to correct a breach of natural justice, where the breach of natural justice is of the two primary kinds identified by Atkins LJ in *Jacobson*, i.e. absence of notice of the proceedings, or a failure to afford the defendant an opportunity of substantially presenting his case: Adams v Cape Industries [1990] 1 Ch 433, 568-569. The Defendant further submitted that where a party is unjustly prevented from presenting their case, it ought not to be necessary for domestic remedies to be exhausted: Agbara v Shell Petroleum Development Company of Nigeria Ltd [2019] EWHC 3340 (QB) at [42]. However, as the Court of Appeal made clear in Cape v. Adams at 570C - E the nature of the procedural defect and the existence of a remedy in the foreign court are both factors which need to be considered when answering the ultimate question of whether there has been proof of substantial injustice caused by the proceedings. The Court of Appeal put the position in the following terms:

The Court must in our judgment have regard to the availability of a remedy in deciding whether in the circumstances of any particular case substantial injustice has been proved. However the relevance of the existence of the remedy and the weight to be attached to it must depend upon factors which include the nature of the procedural defect itself, the point in the proceedings at which it occurred and the knowledge and means of knowledge of the defendants of the defect and the reasonableness in the circumstances of requiring or expecting that they made use of the remedy in the particular circumstances.

101. Although the judge in the Agbara case urged caution when dealing with cases of the most serious breach of natural justice including where one party is unjustly prevented from presenting their case, I do not understand him to be suggesting that one should not still adopt the factoral approach described in Cape v Adams but only that in such a case the availability of a domestic remedy will be of much less significance.

Realistic Prospects of Success/No Good Arguable Case

102. This is not a case where the Defendant urges that the court should strike out the Claim Form and Particulars of Claim on the basis that even if the facts stated therein are true, the claim must fail as a matter of law. Rather, the Defendant says that whether under CPR 3.4(2)(a) or under Part 24, the Claimant's case has no real prospect of success.

103. In considering this issue, it is helpful to look first at the factual evidence and expert evidence before me relevant to the issue of natural justice before determining whether the Claimant's case has a realistic prospect of success and whether for the purposes of the Worldwide Freezing Injunction, the Claimant has a good arguable case. In this regard, I keep in mind that the two tests, realistic prospect of success and good

arguable case, are different notwithstanding the overlap in evidence which is relevant to both. As discussed above, for the purposes of considering whether the Claimant's case has a realistic prospect of success, I am entitled to consider the possibility that evidence to support the Claimant's case may come available at later stage in the timetable to trial, for example following disclosure, witness statements or expert evidence. For the purposes of considering whether the Claimant has a good arguable case, I must assess the evidence as it is before me. However, as will appear from my conclusions on the evidence below, this distinction between the two tests does not lead to any material difference in my findings on the Claimant's realistic prospects of success and whether they have a good arguable case.

104. I have also separately considered whether my conclusions on the issues subject to the good arguable case test would be different depending on whether I was applying the three-limb test laid down in Brownlie or whether I was applying the more traditional Niedersachsen case. In the end I am satisfied that they would not. As will appear further below, the factual matters in dispute and the questions of UAE law which I am asked to consider are such that either I am satisfied that the Claimant has provided a plausible evidential basis in support of its case in the sense that the Claimant has the better of the argument or where I am unable to make a reliable assessment at this stage on the material before me, then I am satisfied that the Claimant has shown a plausible, if contested, evidential basis for their case. In particular, to the extent that the Defendant relies on matters of UAE law raised for the first time in Abuwasel 2 in support of their case on both jurisdiction and breach of natural justice, I am not satisfied that I could rely on Mr. Abuwasel's evidence over that of Mr. Bajamal without knowing to what extent the matters he raises are agreed by Mr. Bajamal and, to the extent they are not, hearing the expert evidence tested in cross-examination. Accordingly, the conclusions I reach below on the application of the good arguable case test are the ones I would reach applying either the Niedersachsen test or the Brownlie three-limb test.

105. Finally, while the focus of the arguments before me was on the questions of whether service of the proceedings had been validly effected on the Defendant and whether the principles of natural justice have been met, one should not lose sight of the fact that the tests for realistic prospect of success and good arguable case are directed more generally to the question of whether the Claimant has a judgment of the UAE court against the Defendant, which it is entitled to enforce here.

Factual Evidence Service

106. The Defendant submitted that the evidence shows that:

i) Five attempts were made to notify Mr. Haider of UAE Proceedings, one to the First Number and four to the Second Number. The Claimant accepts that the First Number was a number for Delma Engineering. The Second Number was a number given to FAICPPS as part of his application to renew his UAE resident permit. The Second Number was registered to a company, which was part owned by Mr. Haider's wife, Icon International Construction LLC ("Icon").

ii) Mr. Haider's resident permit and identity card expired on 18 July 2019.

iii) Icon ceased to trade on 06 November 2019 and its account was cancelled by Etisalat, the mobile phone provider, on 27 February 2020. Etisalat subsequently re-assigned the number to Zone Delivery Services LLC ("Zone"), a courier company unconnected with the Defendant.

iv) On 19 July 2023, Mr. Haider's son, Mr. Masroor Haider, called the 5205 number and spoke to an employee of Zone who confirmed that the number had been assigned to him by Zone, that he had the number for about a year and that he received numerous calls from people seeking Mr. Haider.

107. The Claimant does not accept that the evidence does establish that the Second Number was registered to Icon or that the evidence properly establishes what happened to the Second Number or the phone to which it belonged following the Defendant's departure from the UAE. The Claimant says that these are matters of fact, which will need to be established at trial and that there are good grounds to challenge the evidence relied on by the Defendant on these matters. This is a submission I accept.

108. It is common ground that, apart from SMS notification, no attempt was made to serve Mr. Haider using any other method.

Factual Evidence: Mr. Haider's knowledge

109. The Defendant's evidence is that he did not receive the SMS messages described in paragraph 100 above and was wholly unaware of the existence of the UAE Proceedings until 06 January 2023 when the Claimant's solicitors wrote to the Defendant's solicitors to inform them of the UAE judgment.

110. The Claimant's pleaded case is that it cannot admit or deny that the Defendant was unaware of the UAE Proceedings but asserts that it is a plausible inference from the available evidence that Mr. Haider knew of the UAE Proceedings and was given notice of them:

i) The Defendant was a 49% shareholder and the managing director of Delma Engineering and may well have been notified at least informally, of the UAE Proceedings given that Delma Engineering was a party to the UAE Proceedings.

ii) Reyami Advocates & Legal Consultants ("RLC") acted for the other defendants in the UAE Proceedings and it is "conceivable" that they would have contacted the Defendant to inform him of the action and offer their services.

iii) By the time of the appeal proceedings, Delma Engineering was in some form of receivership or administrative process and it is a reasonable inference that the administrator kept the Defendant up to date with the progress of the UAE Proceedings.

111. In response to the above, the Defendant notes that the Claimant has not adduced any documentary evidence that Delma Engineering, its office holders, or RLC notified the Defendant of the UAE Proceedings and submits that there is evidence to suggest that

the Defendant did not receive notice of the UAE Proceedings notwithstanding his involvement with Delma Engineering.

Expert evidence: UAE law on service

112. The following propositions of UAE law appear to be common ground between the experts:

i) The Civil Procedure Law ("CPL") governs the service of proceedings in the UAE.

ii) Under Article 6(1) of the CPL (as in force at the time of the UAE Proceedings) service by SMS is a permissible method of service.

iii) The following provisions of Article 6 are relevant:

a) Article 6(1), which provides that a person may be served by (among other methods) "voice or video recorded calls, SMS, e-mail or fax, or any other means of modern technology".

b) Article 6(2), which provides: "In the event that the notice is served by means of modern technology as provided for in paragraph (a) of clause (1) of this article, the Process Server shall, in addition to the foregoing, ensure that such means, regardless of the type thereof, is directed to the addressee".

c) Article 6(3), which provides: "Should it be impossible to serve the notice upon the addressee in accordance with clause (1) of this article, the matter shall be referred to the concerned case management office, the competent judge or the chief judge of the circuit, as the case may be, so as to investigate his domicile from at least one of the concerned parties and then notify him by publication in a daily newspaper widely circulated and issued in the State in Arabic, and in another newspaper issued in a foreign language if necessary and where the addressee is a foreigner."

d) Article 14(2), which provides that "Save in cases relating to nullity by reason of public order ... A party who has been instrumental in causing the nullity may not rely on it."

iv) Article 6 distinguishes between 'primary' methods of service, set out in Article 6(1), and the 'alternative' method of service of publication, set out in Article 6(3). Service under Article 6(3) cannot take place unless the server had made a genuine attempt to serve under Article 6(1): Bajamal 1 §16(c) and Abuwasel 2 §6.

113. The Defendant summarised the relevant areas of disagreement between Mr. Bajamal and Mr. Abuwasel as follows:

i) Mr Bajamal opines that the validity of service by SMS depends on whether the mobile number "*belongs*" to the intended recipient at the time of service; it is not a requirement that the mobile number must be "*in use*": Bajamal 1 §16(f).

Mr Abuwasel's view, in contrast, is that the mobile number must be "*actively associated or linked back*" to the intended recipient at the time of service, because (see §§8-28 of Abuwasel 2):

a) Article 6(2) states that the notice must be "*directed*" to the addressee, which implies that the number is actively associated with or in use by the intended recipient;

b) The Arabic language used in the UAE jurisprudence, properly translated, does not require a relationship of "*belonging*" but rather one of "*association or linkage*"; and

c) UAE jurisprudence on service by SMS on a company makes clear that, where the mobile number used for service is identified in a government document, that government document must be valid at the time of service, in order for the service to be valid.

ii) Mr Bajamal opines that UAE law "*merely requires that the chosen method of service be reasonable under the circumstances*": Bajamal 1 §16(h). Mr Abuwasel's view, in contrast, is that UAE law requires evidence that the intended recipient has "*certain knowledge*" of the proceedings: Abuwasel 2 §29.

iii) Mr Bajamal opines that there is an "*onus*" on the intended recipient to ensure that they are reachable at the contact details provided to FAICCPS: Bajamal 1 §18. Mr Abuwasel agrees that residents are required to update their contact details with FAICCPS, but disagrees that there is any legal obligation upon a non-resident to update their contact details with FAICCPS: Abuwasel 2 §§44-45.

iv) Mr Bajamal opines that a person is precluded by Article 14(2) from asserting that they were not validly served if they "*played a role in causing service to be defective*": Bajamal 1 §§18-19. Mr Abuwasel agrees that Article 14(2) prevents a party from asserting that a procedural step is a nullity if they are instrumental in causing it but disagrees that a non-resident is under an obligation to ensure that the details FAICCPS retains about them are correct: Abuwasel 2 §14. He refers to the following provisions:

a) Article 5 of the Regulatory Procedures: Mobile Phone Subscriber Registration Requirements (the "**Regulatory Procedures**"), which provides that a mobile phone operator must, before registering a mobile phone subscriber, obtain their full name as shown on an identity card issued by FAICCPS. Mr Abuwasel explains that "*possession of a valid residence visa precedes and enables the registration of a mobile phone number*": Abuwasel 2 §§66-69.

b) Federal Decree Law No 29/2021 and its implementing regulations, which require residents to update their entry, residence and work data with FAICCPS. A User Guide issued by FAICCPS describes mobile phone number data as "*non-essential data*". None of these requirements applies to non-residents: Abuwasel 2 §§50-56.

c) Article 10 of the Regulatory Procedures, which provides that mobile phone providers must suspend a customer's mobile phone service for 24 hours if they do not provide registration information within 60 days of the expiry of their residency; and that providers must disconnect the customer's mobile phone service if the customer does not provide the registration information within 30 days from the date of suspension. Mr Abuwasel explains that: "*This provision establishes a legal obligation on the service providers to disconnect a mobile number within about 90 days of the respective residency expiring*": Abuwasel 2 §72.

114. As already noted above, both of the experts have provided credible evidence at this interlocutory stage. On the question of the degree of connection that there must be between the Defendant and the Second Number, it is not possible for me to determine now which expert's evidence I prefer. Both experts have given credible and plausible evidence. On the question of whether a defendant is required to have certain knowledge of the attempted service or if it is enough that a Claimant has taken reasonable steps, I prefer the evidence of Mr. Bajamal, not least given that UAE law permits other forms of service for which there can be no certainty that a defendant receives notice of the service of the claim. So far as the matters addressed in sub-paragraph iv) are concerned, these are matters on which Mr. Bajamal has not yet had an opportunity to express an opinion but in any event the evidence of Mr. Abuwasel does not persuade me that at this interlocutory stage I can necessarily conclude that the Defendant did not receive notice of the UAE Proceedings.

Good Arguable Case: Natural Justice

115. The Defendant submitted that the Claimant does not have a good arguable case that the UAE judgment was obtained in proceedings which complied with natural justice. His position is that the Claimant has to prove that he was given actual notice of the UAE Proceedings. But, even if this is not correct, the Claimant cannot rely on the principle in Vallée both because the Defendant was not validly served and also because the principle does not apply in any event.

116. The Defendant submitted that the evidence was overwhelming that he was not given actual notice of the UAE Proceedings. The difficulty with this submission for the purposes of the applications before me, is that it requires me to accept that the Defendant's evidence as to the circumstances in which he came to leave the UAE and as to what happened to his mobile phone cannot be properly challenged.

117. In this regard, the Claimant says, and I accept, that no proper explanation has been given as to what happened to the Defendant's mobile phone or as to whether it was in fact registered to Icon. In particular, notwithstanding that the Defendant says he left the UAE in 2019, there is no sufficient explanation of what happened to the phone in 2020 and 2021 and what access, if any, the Defendant had to the phone. I was taken to the evidence which shows that the mobile phone was registered to a company called Zone Delivery Services LLC in July 2023, including a bill from the telecoms provider. But, in some respects, that evidence raises more questions than it answers, not least as to how the Defendant was able to obtain a copy of a bill apparently relating to a company unconnected with the Defendant. It is not, in my view, probative as to the question of what access to the phone the Defendant had at relevant times. Likewise, I was taken to e-mails, which appear to confirm that the mobile

phone number ceased to be registered to Icon on 27 February 2020. However, questions arise as to the circumstances in which those e-mails were sent and as to the identity of the individuals to whom the e-mails were sent and their factual connection to the case. The only evidence relied on for saying that the number had been registered to Icon is an undated photograph of a computer screen being used by an unnamed employee of the telecoms provider.

118. Although the Defendant submitted that no weight could be given to the matters relied on by the Claimant as justifying an inference that the Defendant did have notice of the UAE Proceedings, I disagree. For the purposes of the present applications, I find that one can plausibly rely on the following matters as being ways in which the Defendant could have had notice of the UAE Proceedings:

    i) The Defendant being a 49% shareholder and Managing Director of the Tenth Defendant to the UAE Proceedings, Delma Engineering, who actively defended the proceedings.

    ii) The fact that Delma Engineering was in a form of receivership or administration process such that it is likely that the Defendant as a 49% shareholder in the company would have been kept up to date on the proceedings.

    iii) Less likely, but nevertheless plausible, that RLC who represented the active defendants in the UAE Proceedings would have contacted the Defendant.

    iv) The Defendant's continuing activity in pursuing and defending other proceedings in the UAE. This is not a case where the Defendant having left the UAE ceased to have any business interests there or to have any contact with parties involved with the other defendants to the UAE Proceedings.

119. The Defendant submits that for any weight to be attached to the plausible inferences suggested by the Claimant, one would have expected further evidence to have been provided by the Claimant, for example, as to communications from Delma Engineering to shareholders regarding the UAE Proceedings. The Defendant also submits that the lack of further evidence from the Claimant is to be contrasted with the evidence of Mr. Slade that he had met with the lawyer for Delma Engineering and the controller of that company in 2019 and 2020 and no mention had been made of the UAE Proceedings and that it would have made no sense for the Defendant not to have participated in the UAE Proceedings had he known of them. Inevitably, there is a question as to how the Claimant would have access to communications passing between Delma Engineering and its shareholders but more generally, the points made by the Defendant serve to highlight the factual disputes arising around the question of whether the Defendant had actual knowledge of the UAE Proceedings. They do not persuade me that there is no plausible case that the Defendant had actual notice of the UAE Proceedings.

120. Likewise, on the question of whether the Defendant was validly served under UAE law, the Defendant submits that the Claimant cannot have a good arguable case for three reasons:

i) The Defendant submits that it is clear that for service by SMS to be valid, the mobile phone number must be actively associated with or linked back to the intended recipient and the evidence is that this requirement is plainly not satisfied in this case.

ii) The Defendant submits that even it is sufficient for valid service by SMS that the mobile number belongs to the intended recipient, then the Claimant still has no good arguable case on the facts.

iii) Even if it was sufficient for valid service that the chosen method was reasonable to adopt, then the Claimant's decision to use the Second Number was plainly unreasonable in circumstances where the Defendant's residency had expired on 18 July 2019, the Defendant was not obliged to update his contact details with FAICCPS and the telecoms provider, Etisalat, was obliged to disconnect the Second Number within 90 days of the expiry of the Defendant's residency.

121. Relying on the evidence in Abuwasel 2, the Defendant says that a reasonable person in the Claimant's position would have realised that the Second Number was associated with an expired residency permit and, given that UAE law does not impose any obligations on non-residents to update their mobile phone number and requires mobile phone providers to disconnect a mobile telephone number following the expiry of their residency, would have appreciated that the Second Mobile Number was unlikely to have been the Defendant's mobile phone number and would have made further inquiries as to the correct number or attempted to serve the Defendant by another number.

122. Accordingly, the Defendant submits that even if I were to adopt Mr. Bajamal's view of UAE law, there is no plausible evidential basis for the Claimant's assertion that the Defendant was served in accordance with UAE law.

123. I am unable to accept the Defendant's submission that the Claimant has no good arguable case that the Defendant was not validly served in accordance with UAE law.

124. Taking each of the matters relied on by the Defendant in turn.

125. I do not accept that the position as to the test to be applied under UAE law for determining whether there is a sufficient connection between a person and a mobile telephone number is clear. This is a matter of disputed evidence between Mr. Abuwasel and Mr. Bajamal in circumstances where (i) the Claimant has not had the opportunity to put in evidence in response to Abuwasel 2, (ii) resolution of the differences between Mr. Abuwasel and Mr. Bajamal cannot be done simply on the basis of their written evidence so far but seems to me would require their evidence to be tested in cross-examination and (iii) I consider that the evidence from Mr. Bajamal as to the level of connection required for service to be valid is plausible.

126. In any event, even if Mr. Abuwasel is correct that there must be an active association or link back between the person being served and the telephone number, the facts relating to the Defendant's connection to the Second Number are in dispute and there are plausible reasons to believe that the Defendant was or could have been using the Second Number at the times when service was attempted such that it is not

appropriate for me to seek to resolve that dispute on these applications. I would otherwise be conducting an impermissible mini-trial.

127. So far as the Defendant challenges whether there is evidence that the Second Number belonged to the Defendant, I accept the Claimant's submission that the FAICCPS records do not assist the Defendant. Although the records show that the Defendant's residency permit had expired, they also appear to show that the Defendant was still in the UAE and had not left the Country. Further, the evidence as to whether Etisalat had disconnected the Second Number and then assigned it to another company with no connection to the Defendant is disputed and disputed on what I consider to be plausible grounds. These are issues which are clearly appropriate for determination at trial.

128. On the question of whether it was unreasonable for the Claimant not to have realised that the Second Number was associated with an expired residency permit, again I do not accept the Defendant's submissions. First, one has to keep in mind that service was effected not by the Claimant but by the Court, who used the Second Number having reviewed the information available in the FAICCPS records. The UAE Court did not apparently see any reason to question whether service could be effected using the Second Number. Second, as already noted above, the FAICCPS records are inconclusive as to the status of the Defendant's residency in the UAE at the times when service was effected. Although, the records show that his residence permit had expired, they also apparently show him still in the UAE. Finally, the Defendant's case that the Claimant behaved unreasonably also turns on my accepting the evidence in Abuwasel 2 as to when and in what circumstances Etisalat was obliged to disconnect the Second Number. As indicated above, this is not something I am prepared to do in circumstances where (i) the Claimant has not had a proper opportunity to respond to the evidence in Abuwasel 2 on this issue and (ii) there are clearly disputed questions of fact as to the circumstances in which it appears that Etisalat disconnected the Second Number.

129. For all the above reasons, I find that the Claimant does have a good arguable case that the Defendant was validly served with the UAE Proceedings.

130. In relation to the Vallée principle, the Defendant submits that this does not assist the Claimant because, even if the Defendant did sign the Guarantee, the only method of service to which he agreed was service by post at a particular P.O. box number in Abu Dhabi and the Defendant was not served there.

131. On this issue, I accept the Claimant's submissions that the Defendant is seeking to apply the Vallée principle too restrictively and that the principle has a wider ambit. If a person has agreed to the jurisdiction of a foreign court and service is effected in accordance with the relevant foreign law then where actual notice of the proceeding was not given, the question will be whether substantial injustice was caused by the lack of notice, including whether the Defendant has a remedy in the foreign court; see OJSC Bank of Moscow v. Chernyakov [2016] EWHC 2583 (Comm) at [9] and *Dicey & Morris*, 16th ed at §14-162.

132. This leads on to the question of whether, if the Defendant was not given actual notice of the proceedings, substantial injustice would be done by allowing enforcement of the UAE Judgment. In this respect, Mr. Abuwasel appears to suggest in his second

report at §86 and following that the Defendant still has a right of appeal in the UAE (although Mr. Bajamal appears to take a different view). The Claimant submits that in this circumstance there can be no breach of natural justice because the Defendant could have sought to appeal the UAE Judgment following receipt of the letter from the Claimant's former solicitors putting him on notice of the UAE Judgment. In this regard, I note that notwithstanding the Defendant's evidence as to how he came to leave the UAE, he has still been able to conduct other litigation within the UAE and that the Defendant has not suggested that he could not have defended the UAE Proceedings. On the contrary, one of his submissions in support of his case that he did not have actual knowledge of the proceedings was that he would have defended them had he known of them. I accept that a failure to give the Defendant actual notice of the UAE Proceedings would be a serious procedural defect of the type which might mean that it is not appropriate to give any or much weight to the existence of a remedy in the UAE and to the Defendant's failure to exercise that remedy when considering whether there has been a breach of natural justice. But this is an issue which can only be properly determined against the background of all the facts, including the relevant provisions of UAE law. I do not accept the Defendant's submission that a failure to give the Defendant actual notice of the proceedings is such a fundamental procedural defect that the possible existence of a domestic remedy cannot be a factor in deciding whether or not there has been a breach of natural justice.

133. For all the above reasons, I consider that the Claimant does have a good arguable case that there has been no breach of natural justice which prevents the Claimant enforcing the UAE Judgment.

Realistic Prospect of Success: Natural Justice

134. The evidence discussed above which has satisfied me that the Claimant has a good arguable case that there has been no breach of natural justice preventing the enforcement of the UAE Judgment also satisfies me that the Claimant has reasonable prospects of succeeding in establishing that there has been no breach of natural justice which would prevent enforcement of the claim. The evidence before me does establish that the Claimant has reasonable prospects of establishing either that the Defendant was actually notified of the UAE Proceedings or that he was validly served and there will be no substantial injustice caused by the lack of notice.

Jurisdiction: Good Arguable Case and Realistic Prospects of Success

135. The Claimant accepts that if the Guarantee is a forgery then that is a complete defence to the Claimant's claim.

136. The Defendant submits that in circumstances where the guarantees given by all the individual defendants other than the Defendant were found by the Court to be forgeries and this finding was upheld on appeal and by the Court of Cassation, then I should find that there is no good arguable case that the Defendant signed the Guarantee. There was no finding that the Defendant's signature on the Guarantee was forged only because he did not appear.

137. The Defendant says that there is no evidence that the Defendant's signature was not forged. He submits that if the Guarantee were genuine, then the Claimant would have

produced the original for inspection and would have provided evidence opining on its authenticity.

138. I do not accept that there is no evidence supporting the case that the Defendant's signature was not forged. The Court has before it copies of the Guarantee apparently bearing the Defendant's signature. The Defendant does not dispute signing three previous personal guarantees nor does he dispute signing the corporate guarantee given by the Tenth Defendant, Delma Engineering. While the fact that the personal guarantees signed by the other individual Defendants may have been found to be forgeries is evidence, possibly strong evidence, that the Defendant's signature on the Guarantee was a forgery, this is not an inevitable conclusion nor does it render the Claimant's case to the contrary implausible even if the original of the Guarantee is not presently available.

139. As to the suggestion that the Claimant should have provided handwriting evidence at this time opining on the authenticity of the Guarantee, this seems to me to be a submission which ignores the interlocutory nature of the present application and the pragmatic nature of the exercise which I am being asked to undertake at this stage. No doubt, if the Claimant had provided such evidence, then the Defendant would have put in rebuttal evidence and sought to persuade the Court to prefer the evidence of his expert.

140. Accordingly, I find that the Claimant has a good arguable case that the Defendant signed the Guarantee and has accordingly submitted to the jurisdiction of the UAE Court.

141. The Defendant did not separately address the question of whether the Claimant has realistic prospects of success of establishing that the Guarantee was not a forgery. However, for reasons already given above in paragraphs 133 to 138, I consider that the Claimant does have such realistic prospects of success.

Full and Frank Disclosure

142. The Defendant relies on the following matters to establish that the Claimant failed to comply with its duty of full and frank disclosure.

    i) The failure of the Claimant to disclose that the Defendant's residency in the UAE (and his associated permit and identity card) had expired before the UAE Proceedings were commenced.

    ii) That as a non-resident, the Defendant was not required as a matter of UAE law to update his contact details with the FAICCPS.

    iii) Following the expiry of the Defendant's residency permit, his mobile provider was obliged under UAE law to disconnect his mobile, SIM card and mobile phone services and was at liberty to reassign the Defendant's number to a third party.

    iv) That by reason of the above matters, it appears that the Second Number, which the Claimant had obtained from FAICCPS was not the Defendant's number at the time of service or at least there was a real possibility that it was not.

143. The Defendant says that not only were these matters not disclosed but the Claimant asserted to the Court that the SMS notifications were sent to the Defendant's personal mobile phone and it was implausible that the Defendant would not have checked his UAE mobile phone number after he left the UAE. The Claimant therefore impliedly represented to the Court that the Defendant was entitled to have and did have a UAE mobile phone number notwithstanding that the Defendant's resident permit had expired and that under UAE law mobile phone operators were obliged to disconnect mobile phone numbers following the expiry of a person's residency.

144. The Claimant points out that the grounds relied on by the Defendant in their skeleton argument as set out above were not the grounds originally relied on by the Defendant as set out in the witness evidence of Mr. Slade and that what one sees from the evidence and the Defendant's approach to the issue of full and frank disclosure is a scatter gun approach of the type deprecated by Carr J. (as she then was) in the Tugushev case.

145. As the Claimant submitted, it did tell the Court at the without notice hearing that the Defendant had already left the UAE in 2019 and that the Defendant denied being aware of the proceedings. The Claimant drew the Court's attention to the correspondence from Mr. Slade in which the Defendant stated that service was made to a telephone number in the UAE to which the Defendant said it did not have access in 2020, 2021 and 2022.

146. The Claimant also rightly submits that the reasonable inquiries which the Defendant says the Claimant should have made go to points of UAE law, which the Defendant only raised in Abuwasel 2, namely that non-residents were not obliged to update the Federal Authority records and as to the obligations of telecom providers to disconnect telephone numbers when a resident permit expires. The points were not made in any pre-action correspondence, in Mr. Slade's first witness statement challenging the continuation of the freezing order and were not made in Abuswasel 1.

147. As Carr J. said in the Tugushev case, sensible limits have to be drawn particularly in the more complex and heavy commercial cases.

148. Looking at the matters now raised by the Defendant as constituting a breach of the Claimant's obligation of full and frank disclosure, the matters which were put before the Court at the without notice hearing, the change in the Defendant's case on full and frank disclosure and the fact that the inquiries which the Defendant now says the Claimant should have made arise in a large part from the evidence in Abuwasel 2 (a report for which there was no permission in the context of the Continuation Application), I am satisfied that the Claimant complied with their obligations of full and frank disclosure and that there has been no breach of those obligations.

Just and Convenient

149. The Defendant did not rely on any additional grounds to those relied on in relation to good arguable case and full and frank disclosure in support of his submission that it would not be just and convenient to continue the Worldwide Freezing Injunction. Given that I have rejected the Defendant's arguments on both good arguable case and full and frank disclosure, it follows that there is no good challenge to the injunction on the basis that is would not be just and convenient to continue the injunction.

Conclusion

The Reverse Summary Judgment and Strike Out Applications

150. For the reasons given above, I consider that the Claimant does have realistic prospects of success in establishing its claim to enforce the UAE Judgment. This is not a claim, which is bound to fail. Accordingly, I dismiss both the Defendant's reverse summary judgment application and the strike out application.

The Continuation Application

151. For the reasons given above, I consider that the Claimant does have a good arguable case on its claim to enforce the UAE Judgment, including in relation to both the issue of jurisdiction and the question of whether there has been a breach of natural justice. Further the Claimant complied with its obligations of full and frank disclosure when seeking the Worldwide Freezing Order on a without notice basis. It is further just and convenient to continue that Order. For the purposes of the Continuation Application, there is no dispute that the Defendant has assets which will be the subject of the injunction and that there is a risk of dissipation. Accordingly, the Claimant's Continuation Application succeeds.

Consequential Matters

152. I anticipate the parties will be able to agree a final form of order for approval following this judgment but if that is not the case, then I will hear the parties either on paper or at a short hearing to deal with consequential matters on a date to be fixed in conjunction with the Commercial Court listing office. I am grateful to counsel, their instructing solicitors and clients for their work in the preparation for and presentation of the applications.