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

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

Date: 01/11/2024

BEFORE:

HIS HONOUR JUDGE PELLING KC
SITTING AS A JUDGE OF THE HIGH COURT

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BETWEEN:

MICHAEL WILSON & PARTNERS, LIMITED	**Claimant**
- and –	
JOHN FORSTER EMMOTT	**Defendant**

- -
- -

Mr Michael Wilson, Solicitor for the **Claimant**
The Defendant appeared in person

Hearing date: 25 October 2024

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Approved Judgment

This judgment was handed down remotely at 9.30am on 1 November 2024 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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HIS HONOUR JUDGE PELLING KC SITTING AS A JUDGE OF THE HIGH COURT

HH Judge Pelling KC:

Introduction

1. By an Order made by me of my own motion on 10 September 2024, I recorded that

   i) the claimant ("MWP") had commenced proceedings in New South Wales claiming against the defendant ("Mr Emmott") sums that MWP quantifies at over US$70m ("NSW Claim");

   ii) this sum is in excess of all sums claimed in this jurisdiction by Mr Emmott against MWP and Mr Emmott's assets known to the Court to be located in this jurisdiction;

   iii) that the NSW claim had been listed for trial commencing on 18 November 2024 with a time estimate of 5 days

   and directed that the parties attend a hearing for the purpose of showing why these proceedings, all pending applications therein and all other proceedings and applications between the parties in this Court should not be made subject to a case manangement stay until after final judgment in the NSW Claim. This is the hearing that I directed should take place.

2. Mr Emmott submits that the English Commercial Court proceedings should be stayed until after final judgment in the NSW Claim and filed a skeleton argument to that effect running to 4 pages and 13 paragraphs. Mr Wilson opposes the imposition of the procedural stay identified in my September order and in support of that filed a skeleton argument running to 15 pages and 99 paragraphs, sub-paragraphs and sub-sub paragraphs.

3. In addition to the skeleton submissions, (a) MWP filed two witness statements by Mr Wilson in opposition to the stay; and (b) Mr Emmott also filed two witness statements essentially in answer to at least some of the points made by Mr Wilson in his evidence. The hearing bundle filed by Mr Wilson for the purpose of this hearing runs to over 300 pages, In addition he filed another bundle erroneously entitled "*Authorities Bundle*" that ran to a further 523 pages. The authorities bundle was not such a bundle because it consisted of a selection of judgments and orders made in the proceedings between MWP and Mr Emmott not merely here but in New Zeeland and Australia. In reality the bundles of material that Mr Wilson filed was a hearing bundle in two volumes numbering over 820 pages in aggregate. Following completion of the hearing, Mr Wilson submitted by email some further submissions, which I rejected on the basis that if relevant they could and should have been made and relied on at the hearing. There were some attachments to the email. If those were relevant to the hearing they should have been included in the bundles for the hearing. Admitting these materials defeats the finality principle, adds delay to the process and therefore impacts adversely of the proportionate amount of time given to these proceedings.

4. The authorities bundle contained no authorities relevant to the existence and exercise of the discretion to impose case manangement stays even though both parties are

experienced solicitors of many years standing and even though Mr Wilson's skeleton asserted that the court had no jurisdiction to impose a case manangement stay.

Applicable Principles

5. Mr Emmott submitted that the court had a discretion to impose a case manangement stay of these proceedings but as I have said Mr Wilson asserted that it did not. I accept Mr Emmott's submission and reject those of Mr Willon on this point for the following reasons.

6. The jurisdiction to impose a stay derives from this court's inherent power to control proceedings before it (preserved by operation of s.49(3) of the Senior Courts Act 1981) but in any event is one of the case management powers expressly conferred on the court by CPR r.3.1(2)(f), which provides that a court may "*stay… the whole or any part of any proceedings … either generally or until a specified date or event…"*.

7. Although the discretion is apparently unfettered, to stay a claim is one of the most draconian powers available to a court, which should generally be resorted to only in exceptional circumstances because, as is obvious, its effect is to enable a court to refuse to exercise its jurisdiction when it has been invoked by a party seeking judgment or protection from the court. Unsurprisingly therefore, the starting point is

> "… the fundamental rule that an individual (who is not under a disability, a bankrupt or a vexatious litigant) is entitled to untrammelled access to a court of first instance in respect of a bona fide claim based on a properly pleaded cause of action subject only to the sanction or consideration that he is in peril of an adverse costs order if he is unsuccessful, in respect of which the opposing party may resort to the usual remedies of execution and/or bankruptcy if such order is not complied with. This principle is of course subject to the further proviso that, if the court is satisfied that the action is not properly constituted or pleaded, or is not brought bona fide in the sense of being vexatious, oppressive or otherwise an abuse of process, then the court may dismiss the action or impose a stay whether under the specific provisions of the RSC or the inherent jurisdiction of the court.."

– see Abraham v Thompson [1997] 4 All E.R. 363, *per* Potter LJ at page 374. I would add that applying the approach identified by Potter LJ is what will make exercise of the power to stay proceedings, whether under the inherent power of the court or as conferred by CPR r.3.1(2)(f), compliant with ECHR Article 6 – see by analogy Ebert v Birch [2000] Ch. 484 *per* Lord Woolf MR at 497H.

8. In my judgment, subject to the fundamental starting point being that identified by Potter LJ in Abraham v Thompson (ibid.), a court is entitled to exercise the power for the purpose of achieving case manangement goals where no less intrusive power will assist. I also accept Mr Emmott's submission that such goals will include delivering the overriding objective – that is dealing with a case justly and at proportionate cost which includes allotting to it an appropriate share of the court's resources, while taking into account the need to allot resources to other cases – see CPR r. 1.1(2)(e).

9. Mr Emmott seeks the imposition of the stay not merely for the reasons I identified in my September order but also because he contends that MWP is prosecuting these proceedings abusively. As to that, firstly, abuse was not the basis on which I formulated my September order, secondly there is no application by Mr Emmott for a stay to be imposed by reason of the abuse he alleges and thirdly, the authorities referred to above were decided at a time when the Rules of the Supreme Court governed the conduct of civil proceedings in the High Court. When the Civil Procedure Rules took effect there was a new procedure included which enabled the court in defined circumstances to impose either limited, extended or general Civil Restraint Orders on those who routinely issued claims or applications that not merely failed but were certified as being totally without merit – see CPR rr. 3.3(9), 3.4(6) and 23.12 and Practice Direction 3C – Civil Restraint Orders. Thus, whilst there are a number of reported cases including those noted in Abraham v Thompson (ibid.) in which it is recognised that a court is entitled to stay proceedings that are being conducted abusively, many were decided before the CPR came into effect and it is improbable that a stay will be considered appropriate unless it has been demonstrated that the Civil Restraint Order regime has not controlled abusive conduct satisfactorily or in the circumstances will not do so. As I explain below, the Court of Appeal has only recently concluded in these proceedings that the CRO mechanism remains the appropriate way to control the conduct of these proceedings.

10. Aside from the use of stays to control abuse of process, it is likely that stays will be used as a means of controlling duplicative and related litigation on proportionality grounds – see by way of example Reichhold Norway A.S.A. v Goldman Sachs International [2000] 1 W.L.R. 173, where the court held and the Court of Appeal upheld the principle that a claimant's right, in the absence of abuse or oppression, to sue a defendant of their choice who was properly before the English court (the right asserted by MWP as a reason for not staying these proceedings as I explain below) was subject to the court's power to control the conduct of litigation before it, where related sets of proceedings were concurrently pursued and that on the facts of that case a stay of the English proceedings was appropriate having regard to the nature of the parties' commercial relationship and issues of cost, convenience and the interests of justice. In that case two related sets of proceedings were being pursued by the claimant concurrently – one being an arbitration against a contractual counterparty and the other in the Commercial Court against its advisors in relation to the relevant commercial transaction. It was common ground that (a) it was for the defendants in the English proceedings to establish that the ends of justice were better served by the grant of a stay and (b) the English proceedings were not in any way abusive, oppressive, vexatious or brought in bad faith. In upholding the judge's decision in that case Lord Bingham CJ emphasised that "… *stays are only granted in cases of this kind in rare and compelling, circumstances*." – a point emphasised by the Court of Appeal in the subsequent case of Amlin Corporate Member Ltd v Oriental Assurance Corporation [2012] EWCA Civ 1341.

11. Whilst the application of these principles will be highly fact sensitive, it is more likely that a stay will be granted where the stay will or may eliminate the duplication of proceedings between the same parties, where the advantages will include avoiding unnecessary costs and delays, parties being vexed more than once with the same question or claim and where a time limited stay will ensure that no more than a

proportionate share of public resources is expended on particular disputes. This last point is of particular concern in this case for the reasons I explain below.

12. Generally, where two courts are faced with substantially the same question or issue, it is desirable that the question or issue should be determined in only one of those two courts. In my judgment that one of the two courts considering such issues is a foreign court is unlikely to be material, at least where the judgment of the foreign court in such a case will be a final decision as to the relevant issue between the same parties, because such a decision by a foreign court is as a matter of English law of likely to create or at least is capable of giving rise to an issue estoppel – see Carl Zeiss Stiftung v. Raynor & Keeler Ltd [1966] 3 WLR 125. Factors likely to enhance the prospect of a case manangement stay being imposed in such circumstances will include that the foreign court will be determining the question between the parties finally whereas the English proceedings in which the same issue arises are interlocutory in nature.

The Parties' Submissions

13. I directed that Mr Emmott should make his submissions first since he was supporting the grant of a stay whereas Mr Wilson was opposing it and because the notional onus rests on those supporting the imposition of a stay as I have explained. Mr Wilson objected to that course only after Mr Emmott had made his oral submissions in reply. In my judgment that objection is without substance for the reasons I have given and was raised only in an attempt to obtain the last word on the application. That view was reinforced by Mr Wilson's attempt to make additional submissions in writing after the conclusion of the hearing.

14. Mr Emmot's submissions were essentially three in number being in summary that:

    i) There is an issue between the parties concerning what is referred to by Mr Wilson on behalf of MWP as the "*Temujin Partnership*" issue, which is relied on by MWP in many and perhaps most applications issued by MWP and submissions made by Mr Wilson on its behalf. In essence, as I explain in more detail below, MWP alleges that while an employee or director and shareholder of MWP, Mr Emmott together with two other individuals established a secret partnership for the purpose of diverting away from MWP business opportunities that ought to have accrued to the benefit of MWP. The question whether Mr Emmott was a partner in such a partnership is disputed by him in the strongest terms and is an issue that has never been resolved much less resolved finally by any court anywhere in proceedings to which Mr Emmott was a party. As I explain below, that issue was not resolved by the very lengthy arbitration proceedings that took place between MWP and Mr Emmott and was a claim that ultimately the Court of Appeal in England permitted MWP to bring in New South Wales and which led to the commencement by MWP acting by Mr Wilson of the NSW Claim. It is worth noting therefore that the commencement of proceedings in New South Wales was a voluntary act on the part of MWP. Following judgment in the NSW Claim, there will be a final judgment between MWP and Mr Emmott that establishes either that Mr Emmott is (or is not and never has been) a partner in the Temujin Partnership, which will in all probability create an issue estoppel between the parties on that issue;

ii) MWP maintains that it is entitled to recover circa US$70m from Mr Emmott in the NSW Claim. It follows that if MWP wins the NSW Claim and MWP is proved correct in is quantification, there will be a money judgment in favour of MWP, which is likely to exceed by tens of millions of US Dollars the value of Mr Emmott's judgment against MWP based on the arbitral proceedings between them and thus will end the fractious debate in the Commercial Court proceedings concerning whether and to what extent that judgment debt in favour of Mr Emmott has been eliminated by other subsequent dealings between the parties and their privies for the purpose of deciding whether and to what extent Mr Emmott is entitled to set off his judgment against MWP against sums that have become payable to MWP by Mr Emmott as a result of costs orders made in these proceedings; and

iii) This litigation is not now and never has been pursued by MWP for any legitimate purpose. On the contrary it has been pursued for years on the as part of a campaign by Mr Wilson to destroy Mr Emmott and in any event has been conducted without restraint or constraint in multiple different jurisdictions for years in a manner that has earned MWP and Mr Wilson in particular very severe criticism from judges in England and Wales up to and including Court of Appeal level. This misconduct has resulted in the grant of no less than two extended CROs against MWP, which however has not brought this litigation under control notwithstanding the many warnings given by different judges over the years concerning the manner in which Mr Wilson conducts this litigation on behalf of MWP.

15. Notwithstanding the length of Mr Wilson's evidence and submissions, MWP's case as to why a stay should not be granted distil to submissions that:

i) The English litigation "… *is much misunderstood and improperly maligned*…" since it involves only an attempt by MWP to reverse what he characterises as "*… the wrongful, acts of …*" Mr Emmott *"…from 2006 to date…"*;

ii) There is no jurisdiction for this court to impose a stay of the sort referred to in my September 2024 order – an assertion that I have rejected already for the reasons set out above; MWP is fully entitled to proceed as it has and wishes to because Mr Emmott:

> "… owes enormous sums of money to MWP in all jurisdictions, and MWP is entitled to enforce the recovery of its qua Sinclair debts[1], the judgment debts, the monies that have to be repaid to it, to enforce against assets, bank accounts, cash, commissions, shares, options, warrants, companies, trusts and foundations and to trace into whatever became of the same, its right to damages, to commit the Judgment Debtor, and to bring and make its applications, just as the Judgment Debtor did with gay abandon and when not

[1] MWP alleges that the trustee in bankruptcy of Mr Sinclair has assigned all Mr Sinclair's rights against Mr Emmott to MWP and that on a proper analysis of the dealings between Mr Sinclair and Mr Emmott there are millions of dollars including the whole of Mr Emmott's judgment debt arising out of the arbitration between MWP and Mr Emmott that are due from Mr Emmott to Mr Sinclair and now to MWP as a result of the assignment.

> only he was allowed but positively encouraged to make so many claims and applications against MWP, and to cause such enormous losses and damages to MWP, all for no good and proper reason."

iii) A stay should not be granted because to grant it "… *would deprive MWP of the recovery of the Sinclair Debts, damages, repayments and costs to which it is properly entitled, and let the Judgment Debtor off--the-hook and from his committal due to his contempts of court and breaches of his undertakings*" and that to grant a stay would be "… *manifestly and grossly unjust and unfair … at this stage when it is the clear overall winner and has proved fraud, fraudulent conspiracy to injure, theft and breaches of fiduciary duty, the utmost good faith and of full and frank disclosure throughout and is entitled to recovery of the Sinclair Debts, damages, costs, to get its moneys and guarantees back in short order."*

Discussion

Initial Considerations

16. In my judgment whether to grant a stay depends on the impact of the first two points relied on by Mr Emmott when viewed in the context of this litigation and the overriding objective of ensuring that only an appropriate share of the court's resources is allocated to particular claims (or as in this case groups of linked claims). Mr Emmott has not issued his own application for a stay based on alleged abuse grounds and as I have said that was not the basis of my September order. In those circumstances, it would be unfair to MWP to consider staying these proceedings on that ground.

17. In relation to a stay until after final judgment in the NSW Claim, Mr Wilson submits that a stay is not merited because:

i) MWP is entitled to judgment in relation to various sums that are not the subject of the NSW Claim but are and can only be claimed in the English proceedings and MWP is fully entitled to pursue these claims to the end, just as it is fully entitled to pursue the committal application against Mr Emmott it issued in 2020; that MWP is entitled to recover at least some of those sums now because the sums due to Mr Emmott from MWP have long since been extinguished as a result of various cross claims and agreed set offs with the result that he is entitled to seek Mr Emmott's bankruptcy here, which he does not hesitate to identify as one of his goals;

ii) In any event there are sums that MWP is entitled to recover that were paid into court by way of a payment on account of costs claims by Mr Emmott that Mr Emmott has never pursued and is now barred from pursuing;

iii) MWP has no less than 12 applications pending in various courts round the world against Mr Emmott including in the Eastern Caribbean Supreme Court, the Federal Court of Australia, various hearings before different state courts in Australia and no less than 7 listed hearings before me including the committal application. He submits it would be unfair and unjust if those applications were now to be stayed; and

iv) The trial of the NSW Claim will not take place as it is listed because Mr Wilson has instructed MWP's Australian lawyers to appeal from the decision of the court to list the trial on the date it has been listed and for the length of time it has been listed and is likely to be tried only in mid-2025.

18. It is worthwhile starting a consideration of whether these proceedings should be stayed for case manangement reasons by noting that neither party disputes the factual premises identified in the recitals to my September 2024 order that (a) the NSW Claim if made out will (on MWP's case) result in a final judgment in favour of MWP of circa US$70m; (b) that such a sum is manifestly massively in excess of the sums alleged by Mr Emmott to remain due to him under the arbitration Awards; and (c) that the sum claimed in the NSW Claim is in excess of the value of any assets owned by either party known to be located in this jurisdiction. It is also worth noting that neither party disputes that the NSW Claim will resolve finally between the parties the Temujin Partnership issue. I should also say that Mr Wilson's reliance on MWP's pending applications in foreign proceedings is entirely irrelevant simply because no one suggests that I have power to stay any proceedings other than those pending in the Commercial Court.

The Temujin Partnership Issue

19. The background facts relating to this issue are set out in summary in the judgment of the Court of Appeal in Michael Wilson & Partners Limited v. John Forster Emmott [2018] EWCA Civ 51 by Sir Terence Etherton MR at [3] to [26]. That appeal was concerned with whether MWP was entitled (as it contended) to bring what became the NSW Claim. It is not necessary for me to dwell further on the arguments each party relied on in that appeal. In the result MWP was successful.

20. The phrase "*Temujin Partnership*" is an expression used by Mr Wilson to describe the relationship between Mr Emmott and Messrs Slater and Nicholls as summarised by Einstein J (A Commercial Judge sitting in the Supreme Court of New South Wales) in his judgment in some earlier proceedings in New South Wales between MWP and Messrs Nicholls and Slater and two BVI registered entities called respectively Temujin International Ltd and Temujin Services Ltd. These proceedings did not include Mr Emmott as a defendant. Einstein J's orders were appealed first to the Court of Appeal of New South Wales and then to the High Court of Australia. The end result was that judgment was obtained by MWP against Messrs Nicholls and Slater and the Temujin companies for US$676,335 and €555,259.94 together with interest and costs.

21. In the NSW Claim between MWP and Mr Emmott that is due to be tried next month, MWP alleges that there was between Messrs Nicholls and Slater, the Temujin companies and Mr Emmott a secret partnership which MWP refers to as the "*Temujin Partnership*". In consequence he routinely refers to Mr Emmott in his evidence and submissions in the English proceedings as a "*Temujin Partner*". The juridical basis of the NSW Claim is that identified by Sir Terence at paragraph 25 of his judgment in these terms:

> "Between October 2015 and August 2016 MWP procured assignments ("the assignments") to itself from the liquidator of TIL, the liquidator of TSL, the trustees in bankruptcy of Mr Nicholls and the trustees in bankruptcy of Mr Slater of the rights

> of TIL, TSL, Mr Nicholls and Mr Slater respectively ("the assignors") to contribution from Mr Emmott in respect of their joint and several liability in NSW1 and in connection with the Temujin business. Each of the assignments was stated to be subject to the law of New South Wales.
>
> 26. On 2 February 2016 MWP, in reliance on the assignments, commenced NSW2 claiming "joint and several liability, contribution and indemnity on behalf of and in the name of each assignor arising out of [NSW1]" and also various heads of relief (including accounts and enquiries) relating to the assets and affairs of what is alleged to have been a partnership between Mr Emmott, Mr Nicholls and Mr Slater in Temujin, including the matters which were the subject of the diversion allegations in the arbitration."

22. I now return to the importance of this allegation to the English proceedings. In almost every application made by MWP, Mr Wilson makes two allegations on behalf of MWP being firstly that Mr Emmott is liable to account to MWP as a "*Temujin Partner*" by reason of the assignments referred to by Sir Terence and secondly that the sums that should be accounted for consist of various estimated sums totalling about US$70m. The point that matters for present purposes is that there is a hotly contested issue between Mr Emmott and MWP on the three issues I have identified – the existence of the Temujin Partnership, whether Mr Emmott was a member of the alleged partnership and if he was, whether he is liable to account to MWP as assignee of Messrs Nicholls and Slater for sums or assets said to have been received by him in his capacity as a member of the alleged partnership.

23. As I have said, these issues are routinely referred to by Mr Wilson in the English proceedings, usually either expressly or impliedly on the basis that either these issues have been resolved in favour of MWP or should be treated as having been by the English courts. Mr Emmott always responds that none of this has ever been found against him by any court anywhere. Most recently these allegations surfaced in a large number of allegations that MWP proposed to make by way of amendment to the Contempt Application it has issued against Mr Emmott. In the end I refused permission in relation to each of the allegations that featured a reference to the Temujin Partnership for other reasons explained at length in a judgment I delivered when refusing permission, other than in relation to a strictly limited number of allegations. However it is relevant to note that for example MWP sought to allege that:

> "In reality, the funder was the Temujin Partnership, as the Defendant has been a Temujin Partner, "the backbone of the plot" and the person who has "controlled each and every step of Temujin's initial and on-going activities" since early September 2005 to date, and which Temujin Partnership was formed from within MWP and at its cost by the Defendant in gross, serious and dishonest breach of fiduciary duty and contract, and over a sustained period of time."

There were a large number of similar allegations such as:

> "Of such monies, the Defendant acting together with his Temujin Partners then caused Sandwood to send US$230,467.85c to Messrs Henry Davis York on 12 July 2007, (now part of Messrs Norton Rose Fulbright, hereinafter collectively called "HDY")."

and:

> "30. In further breach of the Freezing Orders, on or about 20 July 2007, the Defendant, as a Temujin Partner, also caused HDY to further pay and transfer US$210,000 to Mr P.A. Shepherd KC, then of XX1V Old Buildings & Quadrant Chambers.
>
> 31 These monies properly belonged to the Temujin Partnership, and could not be so used or applied, given the provisions of the Freezing Orders."

I could go on – the point is an obvious one: in these proceedings these allegations are routinely made by or on behalf of MWP and equally routinely denied by Mr Emmott. Having them resolved finally as between MWP and Mr Emmott will shorten and simplify the proceedings here because whoever wins on the issue in Australia is highly likely to be estopped from asserting the contrary applying the principles identified by the House of Lords in Carl Zeiss Stiftung v. Raynor & Keeler Ltd (ibid.). It is entirely unclear how the Temujin Partnership issue could sensibly be resolved finally in the English proceedings as they are presently constituted. It will however be resolved finally and in relatively short order between MWP and Mr Emmott in the NSW Claim.

The Claimed Value of the NSW Claim

24. Aside from this point, it is highly likely that if MWP was to succeed in obtaining a money judgment in the NSW Claim of the magnitude that Mr Wilson alleges MWP is entitled to, that is likely to bring to an end all or most of the proceedings in England and Wales. I reach that conclusion for the following reasons.

25. Firstly, there is an ongoing dispute in the English proceedings that is difficult to resolve finally without a trial as to whether the whole of the sum due to Mr Emmott from MWP has been exhausted by cross claims and claimed set offs available to MWP against Mr Emmott that are either agreed or are capable of being proved to a summary judgment standard. One ongoing dispute in these proceedings between MWP and Mr Emmott concerns whether Mr Emmott is entitled to set off against costs orders made against him in these proceedings the sums notionally due to him from MWP. That issue has taken up a substantial amount of time in the SCCO, this court and the Insolvency Court, because on each occasion when MWP succeeds in obtaining a costs order against Mr Emmott, Mr Emmott asserts he is entitled to set off the sum due to him under his judgment against the costs claimed by MWP, MWP disputes this and serves a statutory demand on Mr Emmott and Mr Emmott then applies to the Insolvency Court for an order setting aside the statutory demand on the basis that he alleges he is entitled to set off his arbitration judgment against the sums claimed. That issue will take up a significant amount of court time to resolve for the following reasons.

26. Firstly, MWP disputes Mr Emmott's right to set off the costs claims against his award judgment as a matter of general legal principle. Now is not the time to set out the

arguments that arise but in essence it turns upon whether as a matter of law set off is available in the circumstances. This dispute of principle led to an order by a Costs Judge requiring that issue to be resolved by this court. In order to bring this about Mr Emmott issued an application for an order or declaration that will determine the issue of principle between the parties. That application has been the subject of yet further applications by Mr Wilson to alter the focus of that application (which have failed) and to the application being listed and then adjourned in unsatisfactory circumstances. In essence I had directed that the hearing be attended because of its length. The application was listed and Mr Emmott returned to the UK in order to appear in person in support of the application. Very shortly before the hearing Mr Wilson informed me that he was unable to travel because his passport was having a visa attached to it and he requested permission to attend remotely. This was arranged but the hearing had to be ended prematurely because (a) Mr Wilson complained that the camara was at the back of the court and he could not see Mr Emmott's face and (b) in any event the audio link was intermittent. As things stand that Application has been relisted to be determined over 2 days in February 2025.

27. Secondly, aside from the issue of principle I have so far referred to, Mr Wilson maintains that in fact nothing remains of the judgment in favour of Mr Emmott so that even if in principle set off was available to him there is nothing available to fuel a set off defence. This is strenuously opposed by Mr Emmott. I have explained to the parties on a number of occasions the availability of set off in relation to any particular costs order depends on a factual determination of the state of account between the parties at the date when the availability of set off to the particular costs claim is to be adjudicated on. Mr Wilson maintains that this should be resolved by me on the hearing of Mr Emmott's application assuming he is wrong on the issue of principle. He does so on the basis that on MWP's case, set off is not available because MWP is owed much more than MWP owes to Mr Emmott (including sums alleged to have been received by Mr Emmott in his capacity as a member of the Temujin Partnership) and because MWP alleges that the whole of the judgment that Mr Emmott recovered as a result of the arbitration had been assigned to a Mr Sinclair, whose trustee in bankruptcy has assigned all Mr Sinclair's rights to MWP. All this is heavily in dispute.

28. Apart from the Sinclair assignment issue, resolving this dispute will involve identifying the sums due to Mr Emmott and then adding to those sums interest at the judgment rate, then working out what sums it is agreed between the parties should be set off (there are some) and when and how that impacts on the continued accrual of interest on the reduced judgment sums and then attempting to decide whether there are any other sums that Mr Wilson contends should be set off which have been proved to be due to MWP from Mr Emmott to the summary judgment standard. It is difficult to see how any final conclusions on such issues could be arrived at on an interlocutory application absent admission and in any event the enforceability of the individual costs orders will not be in issue on the hearing of Mr Emmott's application, which is concerned exclusively with the principle. The factual issues can only be grappled with by the Insolvency Court which will have to decide on what date the right to set off is to be tested and then to ascertain (to the standard applicable to an application to set aside a statutory demand) the state of account in relation to the sums admitted or (perhaps) proved to the summary judgment standard and the effect of the claimed assignment by Mr Emmott to Mr Sinclair. The demands of this exercise cannot be underestimated.

29. The key point that matters for present purposes is that this will all become or is likely to become academic if MWP succeeds in the NSW Claim for the sums it claims to be entitled to because the sums claimed in the NSW Claim are so enormous that they will swamp everything alleged to be due to Mr Emmott from MWP in this jurisdiction so as to eliminate at a practical level the ability of Mr Emmott to rely on set off. It is proportionate that attempting to determine these difficult issues should be postponed until after it has become clear whether that is the position or not. That will come with final judgment in the NSW Claim.

Listing of the Trial of the NSW Claim

30. The final consideration is Mr Wilson's point that MWP has appealed the decision of the Supreme Court of New South Wales to list the trial of the NSW Claim on the date and with the time estimate it has been listed. Unsurprisingly there is a dispute as to whether MWP has appealed that decision with Mr Emmott maintaining that MWP has not and is now out of time to do so. Mr Wilson maintains exactly the opposite, although he has not produced any acknowledgement by the NSW Court of Appeal of any such appeal nor any evidence that the listing decision has been stayed. In my view the real point is that none of this matters. If the trial starts as planned then in all probability the parties will have a judgment approximately three months after the trial has ended. Mr Wilson maintains that the trial should be listed during the middle of next year. If that is what happens ultimately it has no material impact on the analysis set out above but in any event if there is some time critical point unknown to me that arises if there is an appeal against the listing direction and if it succeeds then that can be the subject of an application using the liberty to apply that will be provided in the order.

Conclusions Concerning Stay Until Final Judgment in the NSW Claim

31. In my judgment the factors I have so far considered merit staying the proceedings in this court until after final determination of the NSW Claim. Final judgment in that case will resolve once and for all the Temujin Partnership issue and whether or not Mr Emmott is or was a "*Temujin Partner*". That will be a significant benefit of itself because of the frequency with which MWP and Mr Wilson on its behalf seeks to rely on that issue and the improbability of that issue being resolved in any proceedings in England. I would add that MWP's case at all stages up to the Court of Appeal in England was that it should be permitted to litigate this issue against Mr Emmott in New South Wales. That was a submission that the Court of Appeal accepted. That is an added factor that supports the grant of a case manangement stay until after final judgment in those proceedings.

32. In addition, such a stay is justified because of the practical benefits that will follow if MWP succeeds in the NSW Claim to the level he claims. This approach is likely to save several days of Commercial Court time and a number of days of Insolvency Court time (because the statutory demand applications are all currently stayed awaiting a determination as a matter of principle as to whether set off is available to Mr Emmott) if MWP succeeds in the NSW Claim in recovering sums at the level claimed. At a practical level if MWP succeeds in obtaining a judgment for the sums it claims in the NSW Claim that will bring to an end to all of the litigation in England because there is no evidence that Mr Emmott can meet a claim at this level. It will in any event eliminate all further dispute about the availability of set off.

33. I am fully aware that a step of this sort is exceptional but the circumstances surrounding this litigation are extraordinary and unique at least in my experience. As long ago as February 2019, Peter Jackson LJ concluded his judgment in Emmot v Michael Wilson & Partners Ltd [2019] EWCA Civ 219; [2019] 4 WLR 53 in these terms:

> "Having listened to the history of the litigation between these two solicitors, I protest at the shameful waste of time and money caused by their private dispute, which has now continued for 13 years and left their reputations in tatters. We were told that Mr Emmott's global costs amount to £2·5m, and Mr Wilson's several times that. Courts in four countries have been (and in at least two cases are being, with no end in sight) plagued with their proceedings and counter-proceedings. It appears that Mr Wilson will stop at nothing to prevent Mr Emmott from receiving the award to which, for all his deceit, he is entitled. … Any court in this jurisdiction that has to consider this dispute in future would do well to remember that the overriding objective in civil proceedings includes a duty on the court to save expense, deal with the case expeditiously and fairly, and allot to it an appropriate share of the court's resources, while taking into account the need to allot resources to other cases; further, that the parties have a duty to help the court to achieve this. This pathological litigation has already consumed far too great a share of the court's resources and if it continues judges will doubtless be astute to allow the parties only an appropriate allotment of court time."

It is a matter of record that since then at least three new claims were commenced by MWP, there have been applications that have generated 37 judgments from me alone that are reported in the Westlaw database and at least that number of other judgments and rulings that have not made it to that data-base. There have been numerous applications for permission to appeal to the Court of Appeal and as I have said two extended civil restraint orders that have had little or no effect because of necessity they have been made in only some of the issued claims. I refer to this not in relation to the suggestion that these proceedings are abusive but because it shows, regrettably, that the lack of proportionality identified by Peter Jackson LJ has continued. Proportionality lies at the heart of the stay I am imposing.

Exceptions to the Stay

34. All of that said, there is some justification for carving out one of the pending application dated 20 October 2023 listed for hearing on 1 November 2024 essentially because it is self-contained, can apparently be determined without considering further either the set off or the Temujin Partnership issues, will have been prepared for by both parties and will not result in a material saving of public resource if vacated at this stage.

Mr Emmott's Submissions Concerning Abuse

35. Given the conclusions I have reached so far, it is not necessary for me to consider further the allegation made by Mr Emmott that these proceedings are being maintained

by MWP not for any legitimate purpose but as a means of vexing Mr Emmott. I should comment albeit briefly on the points made out of fairness to both parties. Plainly there is every reason to be critical of the manner in which this litigation has been conducted by MWP or by Mr Wilson on its behalf, not least because of the criticism by different judges at various times over the years. I have already referred to the comments of Peter Jackson LJ set out above. I have been critical of the manner in which this litigation has been conducted by or on behalf of MWP in the past, which led me to make an extended CRO and more recently the Court of Appeal has made yet another. In doing so, the Court of Appeal (Andrews and Baker LLJ) ordered that:

> "The Court being satisfied that MWP has persistently made and issued claims which are totally without merit and that the existing Extended Civil Restraint Order, which could not cover proceedings in the Court of Appeal, has proved to be no deterrent to the pursuit by MWP of vexatious litigation in the Court of Appeal, it is appropriate to extend the scope and duration of that Order which is due to expire on 24 April 2024. The Civil Restraint Order made by this Court, which is a separate order, will incept immediately but expire on 24 April 2026."

The Court of Appeal gave as its reasons:

> "Whilst the Court is satisfied that there is material which might justify a wasted costs order being made against Mr Wilson (at least in respect of some of the costs of the Application) setting in train the procedure under CPR 46.8 is likely to evoke the kind of response which would lead to the disproportionate use of court time and the wasting of further costs. At this juncture it is felt that the Civil Restraint Order is a better means of seeking to control this type of behaviour. It is proportionate, because it means that any applications or claims which do have merit will be permitted, and it avoids the prospect of further hearings and satellite litigation."

Notwithstanding these criticisms, MWP continues to conduct these proceedings in a manner that intermittently generates totally without merit findings, most recently by a costs judge on 11 October 2024.

36. Although sent over 9 years ago, Mr Emmot relies on an email sent to him by Mr Wilson, the relevant part of which is in these terms:

> "In 2016 we confidently expect to over-turn both the judgements and orders of Teare J and Whipple J, at the hearings listed in November and December 2016.
>
> As you know, we are now the successors of all claims and rights against you of Nicholls, and will also be so in respect of Slater, including as to the Temujin Partnership, as well ascertain of the rights of both TIL and TSL, just two of the Temujin Partnership entities.

> Accordingly, we are finally free in 2016 to focus on and properly deal with you, personally, and once and for all, given the systematic fraud you perpetrated on MWP from 2001-2006, which through deliberately false and misleading pleadings and evidence you have very much continued in the litigation, as such is your real nature and persona, behind the smiling facade.
>
> Contrary to your false assertions, I am neither a bully nor mad, but given the serial and deliberate wrongs you have committed and costs, damages, loss and expense you have caused, and for which you and your partners in crime are fully responsible and the guilty parties, despite your continued denial, the team at MWP and I will not rest and no stone will be left unturned until we have disposed of you, once and for all, just as we have successfully done now with Nicholls, Slater, TIL and TSL."

37. There is every reason to be critical of the manner in which this litigation has been conducted, particularly in recent years. That said, I do not consider that conduct yet justifies staying these proceedings generally even if I could conclude that a stay on such grounds was properly before me; and in any event alleged abusive misconduct would not justify a stay simply until after final determination of the NSW Claim but something much more general if that was thought to be the appropriate response. I respectfully agree and adopt by analogy the reasoning of the Court of Appeal when making its recent ECRO against MWP – that is that at "… *this juncture it is felt that the Civil Restraint Order is a better means of seeking to control this type of behaviour. It is proportionate, because it means that any applications or claims which do have merit will be permitted, and it avoids the prospect of further hearings and satellite litigation*." That approach is consistent with the view I expressed earlier concerning the use of a stay as a response to abusive conduct at any rate at this stage.

38. In the result, had Mr Emmott applied for a stay by reference to MWP's conduct of the litigation alone I would have refused it on the basis that the use of the CRO procedure has not yet been fully worked out and only when all steps possible using that regime have been taken and shown to have failed will it be appropriate to consider staying these proceedings generally. So far, as I have indicated, only extended CROs have been made. When I first made an extended CRO in this case, I made clear that I had considered making a general CRO but had not done so because MWP then issued proceedings from time to time in a professional capacity on behalf of its clients and a general CRO would have been disproportionate for that reason. However, if totally without merit findings continue to accumulate it may be necessary to consider that question again.

Conclusions

39. For the reasons set out above I will direct that these proceedings be stayed generally until after final judgment in the NSW Claim save and except for the application dated 20 October 2023 listed for hearing on 1 November 2024. There will be liberty to either party to apply to lift the stay if so advised. The parties are directed to draw up an order giving effect to this judgment. I will hear the parties as to costs at the hand down of this judgment.

40. Following the circulation of this judgment in draft Mr Wilson submitted on behalf of MWP that my September order made been made only in proceedings bearing the number CL-2024-000172. That is quite simply wrong as the title of that order shows. It rehearses all the numbers of the claims issued between the parties to date that remain active being "*CL-2006-000270 (formerly 2006 Folio 921) CL-2011-000610 (formerly 2011 Folio 1082) CL-2013-000625 (formerly 2013 Folio 400) CL-2014-000804 (formerly 2018 Folio 804) CL-2014-000916 (formerly 2014 Folio 1210) CL-2015-000249 and CL-2016-000116*" as well as CL-2024-000172. It is entirely unclear what the purpose of this erroneous submission was. If the purpose was to suggest that a stay could only apply to the proceedings Mr Wilson identifies then he is wrong about that – the stay is being imposed as a case manangement measure in order to deliver proportionality as I have explained and that requires that a stay apply to all the proceedings between MWP and Mr Emmott in the Commercial Court in England and Wales.