Neutral Citation Number: [2024] EWHC 3075 (Comm)

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: 29/11/2024

Before :

THE HON. MR JUSTICE BRYAN

- -

Between :

Case No: CL-2023-000044

Hotel Portfolio II UK Limited (In Liquidation)

Claimant

- and –

(1) Marlborough Developments Limited
(2) Ozturk 2 Recoveries Limited
(3) Dr Gerald Martin Smith

Defendants

AND

Between :

Case No: CL-2023-000138

(1) Ozturk 2 Recoveries Limited
(2) Marlborough Developments Limited
(3) Chepstow Property Co. Limited
(4) Bryanna Property Co. Limited
(5) Llanharan Property Co. Limited
(6) SCDS Corporation Inc
(7) Dunedin Holdings Limited
(8) SCDS London Limited (previously Coegi Properties Limited)
(9) Burtonwood Dev. Limited

Claimants/ Respondents

- and –

Mr Andrew Joseph Ruhan

Defendant/ Respondent

- and -

Hotel Portfolio II UK Limited (In Liquidation)

Applicant

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James Pickering KC and Samuel Hodge (instructed by **Spring Law**) for **Hotel Portfolio II UK Limited (in Liquidation)**
Marlborough Developments Limited, Ozturk 2 Recoveries Limited, and Dr Gerald Martin Smith did not appear, being debarred from defending the claim
Claimants/Respondents 3 – 9 in CL-2023-000138 (the NCADs) did not appear, being debarred from defending the claim
Mr Ruhan was not represented and did not attend the trial

Hearing dates: 22, 23, and 24 October 2024

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Approved Judgment

This judgment was handed down remotely at 2.30pm on 29 November 2024 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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MR JUSTICE BRYAN:

A. INTRODUCTION

1. This trial, and the associated claims brought by the Claimant, Hotel Portfolio II UK Limited ("HPII"), involves the consideration of a very long and complex underlying factual history, which relates to activities of multiple persons in relation to which there have been lengthy proceedings involving numerous parties across many years in many jurisdictions, beginning in around 2012 and continuing to date. The procedural history itself is convoluted and has seen many interim applications.

2. As will become apparent, it is hard to overstate the serious dishonesty that has been found in the underlying litigation going back over 20 years. The main characters in the present claim are Dr Gerald Smith ("Dr Smith") and Mr Andrew Ruhan ("Mr Ruhan"), who, as archenemies, were involved in heavy attritional and bitter-fought litigation against one another over many years, but whom HPII submits have now formed a union to join, what is characterised to me as, the "unholiest of unholy alliances" to thwart HPII in the recovery of the fruits of its litigation against Mr Ruhan.

3. This judgment deals with HPII's claims in two proceedings: HPII's claim in the proceedings with claim number CL-2023-000044 (the "HPII Proceedings"), and HPII's application in claim number CL-2023-000138 (the "Ozturk Proceedings"). The Ozturk Proceedings were first in time (issued in June 2022 under claim number BL-2022-000963), and resulted in what HPII submits is a (sham) default judgment (the "Default Judgment") entered against Mr Ruhan on 5 July 2022 for circa £0.85 billion. In the Ozturk Proceedings, the Claimants are collectively referred to as the "Ozturk Claimants", and claimants 3-9 only are referred to as the Non-Cause of Action Defendants (the "NCADs").

4. The HPII Proceedings follow on the heels of proceedings issued by HPII and its liquidator against Mr Ruhan and Mr Anthony Stevens ("Mr Stevens") in CL-2018-000226 (the "Ruhan Proceedings"), which resulted in HPII obtaining a money judgment against Mr Ruhan in a sum of at least £102.26 million plus very substantial interest and costs ([2022] EWHC 383 (Comm)), (the "Ruhan Trial Judgment").

5. In short, HPII contends that upon finding out, through supply of the draft Ruhan Trial Judgment (the "Draft Ruhan Trial Judgment"), that HPII had succeeded in a major victory in the Ruhan Proceedings, Mr Ruhan and Dr Smith together engaged in devising, and thereafter carrying out, a dishonest scheme ("the Scheme"). That Scheme was designed to undermine and prejudice HPII's judgment rights against Mr Ruhan, by way of the Ozturk Proceedings.

6. HPII contends that the Scheme involved a dishonest and abusive claim being made (by way of the Ozturk Proceedings) against Mr Ruhan by companies controlled by Dr Smith (including Marlborough Developments Limited ("MDL"), Ozturk 2 Recoveries Limited ("Ozturk") and the 7 NCADs), which would not be contested by Mr Ruhan and thus lead to the Default Judgment. Even before the Default Judgment was entered, a (dishonest) "settlement" was, in the event, reached (the June Settlement, to which I will refer in due course) so as to provide an avenue for Mr Ruhan to move his assets to Dr Smith (and/or the companies under his control), thus out of the reach of creditors such

as HPII, whilst at the same time dwarfing HPII's Ruhan Trial Judgment (making HPII a minority creditor) and thereby thwarting HPII's recovery efforts against Mr Ruhan.

7. Arising out of the above, two sets of claims arise for determination before me:-

   i) First, HPII's claim in the HPII Proceedings for (a) relief against MDL and Ozturk under s.423 of the Insolvency Act 1986 on the basis that the transaction resulting from June Settlement was made at an undervalue, which, if proven, would provide the court with wide discretionary powers in granting relief to HPII to protect its interests; and (b) final injunctions against the three defendants, including Dr Smith, based on the *Marex* tort, restraining them from interfering with HPII's rights against Mr Ruhan under the Ruhan Trial Judgment.

   ii) Second, HPII's application in the Ozturk Proceedings which seeks orders (a) setting aside the Default Judgment against Mr Ruhan and (b) striking out the Ozturk Proceedings as abusive (the "Set Aside/SO Application"), such application being brought by HPII on the basis that although HPII was not a party to the Ozturk Proceedings, it was directly affected by the Default Judgment and is entitled to apply to have it set aside or varied under CPR 40.9.

The Parties

8. The Claimant (HPII) is a private limited company presently in liquidation. It was incorporated on 21 February 2002, and went into creditors' voluntary liquidation on 30 April 2008. It was dissolved on 26 May 2010. On 13 July 2015, it was restored to the register. Its current liquidator is Ms Elizabeth Aird-Brown.

9. The First Defendant (MDL) is a private limited, which was incorporated on 14 May 1996. Its current de jure directors are Mr Charles Bryce ("Mr Bryce"), Mr David Almond ("Mr Almond"), and Mr Christopher Burt. HPII contends that, at all material times for the purposes of this claim, the Third Defendant, Dr Smith, was in effective control of, and instructed, the actions of MDL/its de jure directors.

10. The Second Defendant ("Ozturk") is a private limited company, which was incorporated on 17 May 2022. Its sole de jure director is "Mr Anthony Smith", who is the brother of Dr Smith. HPII contends that, at all material times for the purposes of this claim, Dr Smith was in effective control of, and instructed, the actions of Ozturk/its de jure director.

11. The Third Defendant, Dr Smith, is a businessman and a thrice convicted fraudster, who is said to be a "highly persuasive individual" who often uses others to do his bidding. In 1993, Dr Smith was convicted and sentenced to 2 years' imprisonment in connection with the theft of £2 million from a corporate group of which he was the chief executive. In 2006, Dr Smith was convicted and sentenced to 8 years' imprisonment in connection with the theft of £35 million from a company called Izodia Plc ("Izodia") ("the Izodia Theft"). In 2024, Dr Smith was convicted and sentenced to 18 months' imprisonment for bounce back loan related fraud.

12. Dr Smith has a track record of serious and sustained dishonesty, and has been recently described by Foxton J (in [2023] EWHC 179 (Comm) at [4]) as "a serially dishonest

individual, who has been twice convicted of offences of dishonesty by criminal courts and who has continued to act in a dishonest manner thereafter."

13. It is important to note at the outset, that many of the main protagonists of the events that are before me have been debarred from defending HPII's claims, and as such took no part in the trial before me:-

    i) MDL, Ozturk, and Dr Smith have been debarred from defending the claims against them in the HPII Proceedings.

    ii) The Ozturk Claimants (i.e., MDL, Ozturk, and the NCADs) have been debarred from defending the Set Aside/SO Application in the Ozturk Proceedings.

14. Mr Ruhan is a businessman and entrepreneur, against whom HPII has obtained judgment for fraudulent breach of fiduciary duties. He has been described by Foxton J (in the Ruhan Trial Judgment, at [218]) as having "told … lies … with considerable tactical acuity and, at times, controlled aggression", and, during an application for a worldwide freezing order before Foxton J, as "one of the more tactically aware and, in a controlled way, front foot litigants [the judge has] come across in 30 years at the Bar and three on the Bench".

15. Mr Ruhan was given an opportunity to file a statement of case but he chose not to do so, nor did he file any evidence. He knows about the proceedings and this trial, and he attended and participated at interlocutory stages (before each of Dias J and Calver J).

16. A week before the start of this trial, Mr Ruhan informed the Court that he no longer wished to attend the trial:

> "Dear Judge,
>
> I have been repeatedly made aware of the above matters that are set to be heard on 22-23 October 2024. I am not a party to CL-2023-000044, but was the defendant in CL-2023-000138, a claim that concluded with a judgment against me because I no longer wanted to fight litigation which I could not defend. I decided to accept the claim against me and proceeded to the settle that claim [sic].
>
> As I understand matters, Hotel Portfolio II – who separately have a significant judgment against me – have sought to set that judgment aside. I am not party to that claim and have not been involved in it at all. **However, I wish to notify the Court that I will accept without argument the application of Hotel Portfolio II to set aside the judgment obtained against me if that is their objective**.
>
> I am not legally represented in this case and without any disrespect to the Court I see no need or purpose in attending a hearing of the above matter, **but simply wish to be put on record that I make no representations against the remedy sought by Hotel Portfolio II**." (emphasis added)

17. The trial before me, and associated applications of HPII, was accordingly only attended by HPII and its counsel James Pickering KC and Samuel Hodge.

18. Even where proceedings are undefended, the court "still ha[s] to be satisfied on the balance of probabilities that the claim is made out" (per HHJ Waksman QC in *CMOC Sales & Marketing Ltd* [2018] EWHC 2230 (Comm) at [12]). The allegations in the present case are, on any view, serious allegations of fabricated claims and a contrived default judgment and settlement, and involve serious allegations against various individuals including Mr Ruhan and Dr Smith. As such, although the standard of proof remains the balance of probabilities, cogent evidence is required in order to meet that standard (see *Lakatamia v Su and Zabaldano* [2024] EWHC 1749 (Comm) at [12]). I have borne that well in mind throughout the trial and in making the findings I make below in due course.

Overview of submissions in the HPII Proceedings

19. In the HPII Proceedings, and as already foreshadowed, HPII's case is that, following HPII obtaining the Draft Ruhan Trial Judgment, Mr Ruhan has been active, now with Dr Smith (having been on opposing sides previously), in seeking to thwart HPII's judgment rights and obstruct enforcement. HPII alleges that the Scheme amounts to a transaction that defrauds creditors, such that (a) fabricated claims from false creditors inflate Mr Ruhan's creditors and dwarf HPII's unsecured position as his judgment creditor, and (b) collusive proceedings against Mr Ruhan were brought, thereby abusing the Court's process, to obtain the Default Judgment.

20. HPII claims that certain operative agreements under the dishonest settlement of the dishonest claim and attendant transfers of assets, which affect and/or undermine and/or prejudice HPII's judgment rights and ability to enforce its judgment, are liable to be set aside on the basis that they amount to a transaction (or transactions) defrauding creditors under s.423 of the Insolvency Act 1986. Further, HPII claims that the Defendants have (under the *Marex* tort) tortiously interfered with, and procured breaches by Mr Ruhan of, HPII's judgment rights under the Ruhan Trial Judgment and should be further restrained from doing so by injunctions.

21. In support of that case, HPII alleges that Dr Smith, with Mr Ruhan's assistance and involvement and under the alleged Scheme, took over a company owned by Mr Ruhan named Minardi Investments Limited ("Minardi") so they could, inter alia, apply improper pressure on others and orchestrate abusive proceedings by which Minardi sought to undermine the judgment of *The Serious Fraud Office and ors v Litigation Capital Limited* [2021] EWHC 1272 (Comm) (the "Directed Trial Judgment").

22. HPII alleges that it is the combination of (1) Mr Ruhan's dissatisfaction with the outcome of HPII's claim against him and his wish never to satisfy his liabilities, and (2) Dr Smith's eye for an opportunity and his incorrigible, if not fanatical, belief that the fruits of HPII's judgment should be his, which have resulted in (a) Dr Smith's and Mr Ruhan's alliance in the wake of the Ruhan Trial Judgment, and (b) the Scheme which tainted the Ozturk Proceedings as abusive and collusive.

23. HPII's liquidator has no first-hand knowledge or experience of the events underpinning the alleged fraud in this case, which first came to light during the CPR 71 judgment debtor examination procedure against Mr Ruhan ("the CPR 71 Examination") (as

addressed in due course). HPII's case relies upon the contemporaneous documents and the inferences which it says can properly be drawn in light thereof, set against the background of contemporary and previous events.

B. LEGAL PRINCIPLES

B.1 Introduction

24. It is convenient to identify, at an early stage, the applicable legal principles that apply in relation to HPII's claims (in particular in relation to section 423 of the Insolvency Act 1986), so that they can be borne well in mind when considering the chronology of events and what emerges therefrom in terms of the inferences, and findings of fact, that HPII invites the Court to make in relation thereto.

25. With respect to the HPII Proceedings, HPII submits that the alleged collusive activities of Dr Smith and Mr Ruhan which amount to the Scheme (to which I will return in detail in due course) meet the requirements of section 423 of the Insolvency Act, in that they encompassed a transaction, or a number of transactions, which was or were "at an undervalue" (being a gift or provided for no consideration), and which was entered for the purpose of putting assets beyond HPII's reach or of prejudicing its rights, making HPII a victim of the transaction(s). In order to restrain the three defendants and Dr Smith from interfering with HPII's rights through final injunctions, HPII also relies on the *Marex* tort.

B.2 Section 423 of the Insolvency Act 1986

Introduction to the Act

26. HPII identifies four aspects of the application of section 423 that require consideration, namely:

    i) What is comprised within a "transaction at an undervalue" for the purpose of section 423(1)(a) and (c), in particular in the context of charges, and also what is comprised within "no consideration".

    ii) What is a relevant "purpose" in section 423(3).

    iii) Who is a relevant person ("victim of the transaction") for the purposes of section 424(1)(c).

    iv) What relief is available under section 423(2) and section 425.

Transaction at an undervalue

27. Section 423(1) of the Insolvency Act 1986 provides as follows:-

> "(1) This section relates to transactions entered into at an undervalue; and a person enters into such a transaction with another person if –

> (a) he makes a gift to the other person or he otherwise enters into a transaction with the other **on terms that provide for him to receive no consideration**;
>
> …
>
> (c) he enters into a transaction with the other **for a consideration the value of which, in money or money's worth, is significantly less than the value, in money or money's worth, of the consideration provided by himself**."
>
> (emphasis added)

28. Section 436 provides that a "transaction", "includes a gift, agreement or arrangement, and references to entering into a transaction shall be construed accordingly".

29. An issue that has arisen on the authorities is whether the granting of security (such as the MDL charges in the present case) can constitute a "transaction at an undervalue" for the purposes of section 423(1)(a) and/or 423(1)(c), or any other equivalent section, such as section 238(4)(a) and/or section 238(4)(b) respectively. There is also a sub-issue as to whether the position is the same, or different, as between section 423(1)(a) and section 423(1)(c) (and equivalents).

30. In the present case, HPII originally relied upon section 423(1)(a) as its primary case, with an alternative case (if necessary) under section 423(1)(c). However, in the course of honing HPII's case during the course of oral submissions, Mr Pickering KC confirmed that HPII would pursue its case only under section 423(1)(a). Nevertheless, as I have heard full argument on the point, I will address the legal position in relation to each of sections 423(1)(a) and (c).

31. In *In re MC Bacon Ltd* [1990] BCC 78, there was an application by the liquidator of MC Bacon Limited to have a debenture set aside under section 239 of the Insolvency Axt 1986 as a preference or under section 238 as a transaction at an undervalue. At page 92B, Millett J stated that,

> "The granting of the debenture was not a gift nor was it without consideration. The consideration consisted of the bank's forbearance from calling in the overdraft and its continuance of the facility. The applicant relies therefore on paragraph (b)".

32. It is clear from this that the application was based on section 238(4)(b) (the equivalent of section 423(1)(c)) rather than section 238(4)(a) (the equivalent of section 423(1)(a)).

33. At page 92E-F Millett J stated:

> "In my judgment. the applicant's claim to characterise the granting of the bank's debenture as a transaction at an undervalue is misconceived. The mere creation of a security over a company's assets **does not deplete them** and does not come

> within the paragraph. By charging its assets the company appropriates them to meet the liabilities due to the secured creditor and adversely affects the rights of other creditors in the event of insolvency. But it **does not deplete its assets or diminish their value**. It retains the right to redeem and the right to sell or remortgage the charged assets. All it loses is the ability to apply the proceeds otherwise than in satisfaction of the secured debt That is not something capable of valuation in monetary terms and is not customarily disposed of for value."
>
> (emphasis added)

34. The words emphasised above do not track the language of section 423 (or that of section 238(4)). The statute, at both s.423(1)(c) and s.238(4)(b), simply requires a comparison of the value of the consideration given and obtained by each side. An issue arises as to whether Millett J was there intending to make a statement that the grant of security cannot ever constitute a "transaction at an undervalue" for the purposes of section 423. To the extent that he was, and for the reasons which I will identify below, I do not consider that such an approach reflects the statutory language or properly recognises the consequences of the granting of security such as a charge.

35. In *Hill v Spread Trustee Ltd* [2007] 1 WLR 2404 ("Hill"), claims were brought by a trustee in bankruptcy under section 423 and the judge found that certain assignments were given for the purpose of putting assets beyond the reach of the revenue. On appeal, counsel for the appellant (Ms Newman) submitted by reference to the observations of Millett J in *In Re Bacon*, that the grant of security cannot constitute a transaction at an undervalue, on the basis that a charge does not deplete the debtor's assets. This argument was rejected by Arden LJ (Waller LJ and Sir Martin Nourse agreeing on this aspect of the appeal).

36. In this regard, Arden LJ stated as follows at [92] to [93]:-

> "92 The judge found that the later charges and the assignment were given for the purpose of putting assets beyond the reach of the revenue. He took the view that there was no consideration for these transactions for the purposes of section 423(1)(a). It has not been suggested that for a transaction to be on terms that provide for . . . no consideration within that paragraph the terms of the transaction must expressly provide for there to be no consideration. The claim as originally pleaded was under section 423(1)(c), i.e. that the charges were transactions at an undervalue, but in the end the respondent succeeded on section 423(1)(a).
>
> 93 Miss Newman submits that a transaction which grants security cannot be for no consideration because a charge does not deplete the debtors assets. **In my judgment this argument must be rejected**. Miss Newmans argument relies on the holding of Millett J in *In re M C Bacon Ltd* [1990] BCLC 324,

> 340—341 that the grant of security cannot constitute a transaction at an undervalue. It does not follow from this that a transaction involving the grant of security can never amount to a transaction for no consideration. In my judgment, it is no different from any other transaction in that respect. This in my judgment was also the view of Millett J who was careful to point out, at p 340f, that the security in the case before him was not given without consideration because it was given in exchange for forbearance by the creditor."
>
> (emphasis added)

37. This conclusion (in relation to section 423(1)(a)) is one with which I agree. Whilst it is always necessary to consider the facts in the particular case, I consider that a transaction granting security does deplete the debtor's assets, and can be one for no consideration.

38. Arden LJ went on to consider section 423(1)(c) at [138] of the judgment, and (in obiter observations) doubted what had been said by Millett J in *In re Bacon* in that regard in the context of the granting of security:-

> "138 The trustee in bankruptcy initially relied on section 423(1)(c) as the basis for invoking section 423 in relation to the later charges and the assignment. The question of the application of section 423(1)(c) to these transactions does not arise in the light of my rejection of the appeal against the judge's finding that the trustees gave Mr Nurkowski no consideration for these transactions. It would be difficult on the judge's findings to consider the appeal on the alternative basis that section 423(1)(c) applies because that paragraph requires a comparison to be made between the consideration provided by the parties, for which there is no factual basis which could be reviewed on appeal. Miss Newman, however, sought to argue that as a matter of law the grant of security involved no diminution in the value of Mr Nurkowskis assets. Therefore the fact that the consideration provided by the trustees was negligible did not bring the transactions within this paragraph. As to that, **I would observe that section 423(1)(c) did not refer to a diminution in assets and does not depend on the grant of proprietary rights**. The grant of other rights can constitute consideration; this approach is supported by section 425 which refers to obligations and benefits as well as to property. If it had been necessary to find the grant of a proprietary right, **I would provisionally not have accepted the argument that the grant of security in this case did not involve the disposition of any property right in favour of the trustees**. Obviously there is no change in the physical assets of the debtor when the security is given but there seems to be no reason why the value of the right to have recourse to the security and to take priority over other creditors, which the

> debtor creates by granting the security, should be left out of account. In the circumstances, **I would respectfully doubt whether the holding in *In re M C Bacon Ltd* [1990] BCLC 324 on which Miss Newman relied could apply to the later charges**, which were in fact charges by way of legal mortgage, especially in the light of what was said by Lord Hoffmann and Lord Millett in *Buchler v Talbot* [2004] 2 AC 298, paras 29 and 51 respectively. I would have the same doubts in relation to the assignment, under which (even though section 136 of the Law of Property Act 1925 was not satisfied) title to the debt was transferred to the trustees. The holding in I*n re M C Bacon Ltd* was applied by this court in *National Bank of Kuwait SAK v Menzies* [1994] 2 BCLC 306, where a further assignment was made of a debt that had already been assigned by way of charge, and if this point had to be decided we would have to consider whether that case was distinguishable or was now binding on this point in the light of the *Buchler* case. However it is not necessary for me to express a final view on these points on this appeal."
>
> (emphasis added)

39. In this regard, the passages in *Buchler*, from the speeches of Lord Hoffman (at [29]) and Lord Millett (at [51]) to which Arden LJ referred, are as follows:-

> "29. When a floating charge crystallises, it becomes a fixed charge attaching to all the assets of the company which fall within its terms. Thereafter, the assets subject to the floating charge form a separate fund in which the debenture holder has a proprietary interest. For the purposes of paying off the secured debt, it is his fund. The company has only an equity of redemption; the right to retransfer of the assets when the debt secured by the floating charge has been paid off. It is this equity of redemption which forms part of the fund held on trust for the company's creditors which arises upon a winding up.
>
> …
>
> "51. Bankruptcy and companies' liquidation are concerned with the realisation and distribution of the insolvent's free assets among the unsecured creditors. They are not concerned with assets which have been charged to creditors as security, whether by way of fixed or floating charge. Secured creditors can resort to their security for the discharge of their debts outside the bankruptcy or winding up. Assets subject to a charge belong to the charge holder to the extent of the amounts secured by them; only the equity of redemption remains the property of the chargor and falls within the scope of the chargor's bankruptcy or winding up. As James LJ observed in *In re Regent's Canal Ironworks* Co (1877) 3 Ch D 411, 427 chargeholders are

> creditors "to whom the [charged] property [belongs]…with a specific right to the property for the purpose of paying their debts". Such a creditor is a person who "is to be considered as entirely outside the company, who is merely seeking to enforce a claim, not against the company, but to his own property" per James LJ in *In re David Lloyd & Co* (1877) 6 Ch D 399, 344."

40. The editors of *The Law of Personal Property* (3rd Ed) at 37-022 argue, with respect to section 423(1)(c)/section 238(4)(b)), that the *Hill* approach:

> "is to be preferred. If a creditor acquires a charge for no additional consideration, so as to have a right it did not have before, it appears undeniable that this amounts to a gift…so as to be caught by the plain language of the section. It would therefore be odd for a transaction involving insufficient new consideration rather than no consideration at all to escape the section. Moreover, although the grant of security removes a claim on the company's unencumbered assets to the extent of the security, the value of that claim will usually be worth significantly less than the assets made subject to the security. This is because the true value of that claim is not its face value but its value in terms of the dividend that the creditor would otherwise have received. The creditor receiving security does so at the expense of other creditors during a period when the application of the pari passu rule is in sight. Finally, the proceeds of a successful action under s.238 go to the company's unsecured creditors and not to any other creditor who might have a proprietary claim to the assets alienated, which suggests a concern in s.238 to protect the unsecured creditors of the company whose interests are aligned with those of the company itself in the run up to insolvency proceedings."

See also *Lightman & Moss* at 15-026-15-027.

41. The language of section 426 is extremely broad in terms of what is a "transaction" and it includes a "gift, agreement or arrangement". The giving of security (or indeed a promissory note) can amount to a gift, agreement or arrangement (or be a part of the same). As such, I am satisfied that it can be captured by any limb of s.423(1).

42. I agree with the views expressed by Arden LJ in *Hill* both in relation to section 423(1)(a) and 423(1)(c), as also supported in relevant works, as quoted above. In that regard I disagree that a charge that grants security cannot be for no consideration (for the purposes of section 423(1)(a)), or that such a charge cannot amount to the disposition of property rights in the context of section 423(1)(c), in each case for the reasons given by Arden LJ.

43. If one looks at matters from the perspective of the chargee, the person that gets the benefit of the charge, they acquire proprietary rights, something of value, whilst from the perspective of the chargor they have less. All the company has is the equity of redemption. So, for example, if a property is worth £1 million and the company grants a charge for £999,000, all it has is the equity of redemption. In contrast, the chargee can look to the charge (whether in an insolvent situation or not), whilst in case of insolvency the creditors are left to look at what is left and, put simply, following a charge, there is less left.

No consideration

44. In the present case, HPII submits that the giving of the promissory notes and charges by Mr Ruhan and transfers of assets are to be analysed as a gift (or gifts), or were done on terms under which Mr Ruhan received no consideration (for the purposes of s.423(1)(a)). HPII's case is that in return for doing what he did, Mr Ruhan on the face of it obtained a settlement of the Ozturk Proceedings' claims against him and related claims arising out of the facts. That was premised on there having been genuine litigation and claims against Mr Ruhan, and a real dispute. However, it is submitted that Mr Ruhan obtained no consideration at all from entering this transaction (for the reasons advanced by HPII, as addressed in due course below). HPII's case is that, in short, what he obtained was nothing, in circumstances where it is said that the claims against him, and the settlement, were collusive and so any consideration he was to receive was illusory.

45. In the context of such submissions, it is necessary to bear in mind the applicable principles in relation to what does and does not amount to consideration in the context of the compromise of a claim.

46. It is, perhaps, counter-intuitive, but there must first be a dispute before there can be a compromise. As the editors of *Foskett on Compromise* note at 2-01:-

> "An "actual" dispute will not exist until a claim is asserted by one party which is "disputed" by the other. Where no such dispute about an issue can be discerned, no subsequent agreement between the parties will be found to have compromised that issue."

47. The claim must itself be (believed to be) bona fide. As is stated in *Foskett on Compromise* at 2-19:-

> "Lack of good faith in the assertion of a claim or the maintenance of a denial, in circumstances where there is no foundation in fact or law to support them, may operate to invalidate a compromise founded thereon."

48. In this regard, there is a distinction between the making of a claim that a party believes it has a right to make, and a situation where it knows the claim to be unfounded but seeks to derive an advantage therefrom. As identified in F*oskett on Compromise* (also at 2-19):-

> "It would seem that, provided a claimant believes that he has a right to make the claim he asserts, even if he has little confidence in its ultimate success, a compromise of it is valid. If, on the other hand, he makes a claim which he knows to be unfounded and derives an advantage from the compromise of the claim, his conduct will be considered fraudulent and the compromise liable to be set aside. In the former case the compromise will be upheld even if the party against whom the claim is made believes that it has no foundation. By compromising it, he puts an end to troublesome litigation. In the latter case, however, if the claim's lack of foundation is known by the other party, any agreement purporting to be based upon it cannot truly be said to be a compromise since no real dispute as such exists."

49. See also, in this regard, what is stated by the editors of *Chitty* at 6-050::-

> "A compromise of a claim which is legally invalid and which is either known by the party asserting it to be invalid or not believed by that party to be valid is not contractually binding. This rule can be explained either on the ground that merely making or performing a promise to give up a worthless claim cannot constitute consideration for the counter-promise, or (preferably) on grounds of public policy. As Tindal CJ said in *Wade v Simeon* [(1846) 2 CB 548 at 564]: "It is almost contra bonos mores and certainly contrary to all the principles of natural justice that a man should institute proceedings against another when he is conscious that he has no good cause of action".

50. The case law in this area, upon which the editors of *Foskett* and *Chitty* rely, is of some antiquity, but that is no more than a reflection of the fact that the applicable principles in this regard have long been established. The distinction is between a claim where the claimant has a bona fide belief in its prospects and one made where a person makes a claim that he knows to be unfounded.

51. Thus, in *Cook v Wright* (1861) 1 B&S 559, Blackburn J, delivering the judgment of the court, stated at p. 569 – 570:-

> "… We agree that unless there was a reasonable claim on the one side, which it was bona fide intended to pursue, there would be no ground for compromise … The real consideration therefore depends, not on the actual commencement of a suit, but on the reality of the claim made and the bona fides of the compromise".

52. Equally in *Callisher v Bischoffsheim* (1869-1870) LR 5 QB 499, Cockburn C.J. stated as follows (at p. 452):-

> "Every day a compromise is effected on the ground that the party making it has a chance of succeeding in it, and if he bona fide believes he has a fair chance of success, he has a reasonable

> ground for suing, and his forbearance to sue will constitute a good consideration. When such a person forbears to sue he gives up what he believes to be a right of action, and the other party gets an advantage, and, instead of being annoyed with an action, he escapes from the vexations incident to it. … It would be another matter if a person made a claim which he knew to be unfounded, and, by a compromise, derived an advantage under it: in that case his conduct would be fraudulent".

And see what was said by Blackburn J in the same case (at p. 452):-

> "The plea, however, alleges that at the time of making the agreement no money was due. If we are to infer that the plaintiff believed that some money was due to him, his claim was honest, and the compromise of that claim would be binding, and would form a good consideration, although the plaintiff, if he had prosecuted his original claim, would have been defeated."

53. In *Miles v New Zealand Alford Estate Company* (1886) 32 Ch D 266, Bowen LJ, considered the question of bona fides and noted (at p. 291) that, "forbearance of a non-existing claim would not be forbearance at all", whilst Fry LJ stated, at p. 298 that, "Of course if neither party believes in the reality of the claim, it is obvious it is a sham. I do not desire to say anything more than that in my judgment when a real claim is made and is bona fide compromised, that is ample consideration".

54. The consideration must be real, and there are circumstances in which the court will decline to uphold the existence of a consideration that apparently exists. I am satisfied, in this regard, that the editors of *Foskett*, accurately state the position at 3-11, when they conclude that it would seem that:-

> "a forbearance from pursuing a claim (a) known by the claimant to be baseless or (b) which is vexatious or frivolous would constitute no consideration for a compromise based upon it."

Equally illusory consideration is no consideration (see *Foskett* at 3-20).

55. HPII submits that the present case is, in fact, stronger than the situation contemplated in the authorities cited above where the claimant knew the claim was bad, as on HPII's case both the claimant and the defendant in the present case knew that the claim was bad, and both parties were involved in the abusiveness, in contriving the commencement of the action, and the entering of the Default Judgment.

56. In this regard, I am satisfied that if Party A to a supposed compromise is in reality on the other side of it and knows that the claims against him or her are meritless, and knows that the other side, Party B (whose function is to disguise Party A's dual involvement), never had any intention of litigating against Party A other than to obtain an abusive default judgment from the court which Party A wanted to obtain for his own schemes, there is in reality no dispute between the parties and no consideration is received by Party A for the purported compromise with Party B. It is fake litigation with the consideration received for the supposed compromise of it being illusory or non-existent.

Purpose

57. Section 423(3) of the Insolvency Act 1986 provides as follows:-

> "(3) In a case of a person entering into such a transaction, an order shall only be made if the court is satisfied that it was entered into by him for the purpose –
>
> (a) of putting assets beyond the reach of a person who is making, or may at some time make, a claim against him, or
>
> (b) of otherwise prejudicing the interests of such a person in relation to a claim which he is making or may make."

58. In the present case, HPII's case is that the transaction(s) was/were entered into by Mr Ruhan for the purpose of putting assets beyond HPII's reach (and possibly others' reach) and/or prejudicing HPII's rights (and possibly others' rights), HPII being a person who had very recently obtained a judgment against Mr Ruhan and would be able to lay claim to Mr Ruhan's assets via enforcement.

59. In terms of the applicable principles in relation to the purpose requirement in section 423(3), it is the purpose of the debtor that is to be addressed (not the person who received the benefit), and the question of whether the transaction was entered into for a prohibited purpose must be judged as a decision of fact based on an evaluation of all relevant facts.

60. The law on this was summarised in *Integral Petroleum SA v Petrograt* FZE [2023] BPIR 1122 by David Edwards KC (sitting as a Deputy Judge of the High Court) at [53]-[54], quoting from *Re Dormco SICA Ltd* [2021] EWHC 3209 (Ch) (per ICC Judge Jones):-

> **"**[53] The principles applicable to s 423 cases were recently summarised by ICC Judge Jones, drawing on earlier appellate and other authority, in *Re Dormco SICA Ltd (in liquidation)* [2021] EWHC 3209 (Ch), [2022] BCC 360 at [116], a case which concerned the sale of the goodwill component of an accountancy business, SICA, to a related company, SBL, for a value of £1.
>
> **[**54] The summary is lengthy, and I will not set it out in full, but it included the following:
>
> > 116. The following are the key legal tests/principles to be applied for the s. 423 case:
> >
> > …
> >
> > (c) When deciding whether SICA, acting by Mr Munn and/or Mr Rees, entered into the Asset Sale Agreement for the Prohibited Purpose:

> (i) It is the purpose of SICA [the debtor] which is to be addressed not that of the person who received the benefit (see *Moon v Franklin* [1996] B.P.I.R. 196).
>
> (ii) The question of whether the transaction was entered into by SICA for the Prohibited Purpose must be judged as a decision of fact based on an evaluation of all relevant facts. There may be more than one purpose. It is sufficient to prove that the Prohibited Purpose was a (not the) purpose positively intended rather than a consequence (see *Inland Revenue Commissioners v Hashmi* [2002] EWCA Civ 981; [2002] B.C.C. 943 and *JSC BTA Bank v Ablyazov* [2018] EWCA Civ 1176; [2019] B.C.C. 96 at [8–16]).
>
> (iii) Insolvency is not a prerequisite, although the financial position may be evidence relevant to the decision of purpose and (depending on the facts) the absence of insolvency may make a Prohibited Purpose unlikely (see *Moon v Franklin* (same) at 198 and *BTI 2014 LLC v Sequana SA* [2016] EWHC 1686 (Ch); [2017] B.C.L.C. 453 at [494], upheld [2019] EWCA Civ 112; [2019] 1 B.C.L.C.347)."

61. It will be seen that at [54], the fact that there may be more than one purpose was addressed. Historically, at least, issues have arisen as to whether the prohibited purpose must be the purpose, or a substantial purpose, or simply a purpose. It is now clear that it is sufficient to prove that the prohibited purpose was a (not the) purpose positively intended rather than a consequence.

62. In *Inland Revenue Commissioners v Hashmi* [2002] EWCA Civ 981 each member of the Court of Appeal explained the relevant test in slightly different terms. Arden LJ (giving the lead judgment of the court) stated as follows at [23]:-

> "23. The question arising on this appeal is whether on the true construction of s. 423 the purpose shown must be a dominant purpose. In my judgment the answer to that question must be arrived at taking into account the role, as explained above, of s. 423 in insolvency legislation. Accordingly it is not necessarily helpful to apply the construction placed on similar words in different provisions and none was suggested. In my judgment there is no warrant for excluding the situation where purposes of equal potency are concerned. That was pointed out by HHJ Moseley QC in the *Starelm Properties* case and is in my judgment correct. Thus one purpose can co-exist with another. Moreover, as Jonathan Parker J said in *Re Brabon*, there is no epithet in the section and thus no warrant for reading one in. Accordingly, in my judgment, the section does not require the

> inquiry to be made whether the purpose was a dominant purpose. **It is sufficient if the statutory purpose can properly be described as a purpose and not merely as a consequence, rather than something which was indeed positively intended**. Moreover, I agree with the observation of the judge that it will often be the case that the motive to defeat creditors and the motive to secure family protection will co-exist in such a way that even the transferor himself may be unable to say what was uppermost in his mind." (emphasis added)

63. Arden LJ went on to give some examples involving a person who goes on a walk with her dog during which she also posts a letter to illustrate the distinction between "a real substantial purpose" and "something which is a by-product of the transaction under consideration … or an element which made no contribution of importance to the debtor's purpose of carrying out the transaction" (see at [25]). She also expressed her agreement with a point made by Laws LJ in argument that "trivial purposes must be excluded".

64. Laws LJ agreed with the judgment of Arden LJ. He also said (at [33]):

> "There may be cases in which, even absent the statutory purpose, the transaction would or might have been entered into anyway. That would not necessarily negate the section's application; but the fact-finding judge on an application made to him under section 423 must be alert to see that he is satisfied that the statutory purpose has in truth substantially motivated the donor if he is to find that the section bites."

65. Simon Brown LJ rejected as the "wrong approach" a test whereby a transaction could not properly be said to have been made for the prohibited purpose unless the transaction would not have been entered into but for the debtor's wish to put his assets beyond reach. He concluded (at [39]):

> "The test cannot be refined beyond saying that in each case the question to be asked is: can the court be satisfied that a substantial purpose of the debtor's transaction was (putting it in shorthand) to escape his liabilities?"

66. He continued (at [40]):

> "I would, however, add this. If in fact the judge were to find in any given case that the transaction is one which the debtor might well have entered into in any event, he should not then too readily infer that the debtor also had the substantial purpose of escaping his liabilities."

67. The various formulations of the Court of Appeal in *Hashmi* were considered by Leggatt LJ (as he then was) in *JSC BTA Bank v Ablyazov* [2018] EWCA Civ 1176; [2019] B.C.C. 96 at [8][[12]. After quoting from them, he continued at [13]-[15] as follows:-

> "13. As mentioned, the *Hashmi* case establishes that, where the transaction was entered into by the debtor for more than one purpose, the court does not have to be satisfied that the prohibited purpose was the dominant purpose, let alone the sole purpose, of the transaction. In a passage quoted above Arden LJ (with whom Laws LJ agreed) held that it is sufficient if the statutory purpose can properly be described as " a purpose" (my emphasis) of the transaction; but she later referred to "a real substantial purpose" and the term "substantial" was also used by the other members of the court. The significance of this epithet is not immediately clear. The word "substantial" is capable of bearing a wide range of meanings. In *Re Brabon [2000] BCC 1171* Jonathan Parker J confessed to finding it difficult to distinguish between a "substantial" purpose and a "dominant"' purpose. If on the other hand the contrast is between a "substantial" purpose and a "trivial" purpose, it is not easy to understand when it would make sense to regard putting assets beyond the reach of creditors as a "trivial" purpose for entering into a transaction at an undervalue.
>
> 14. The description of the requisite purpose as a "substantial" purpose was not necessary to the decision of the Court of Appeal in the *Hashmi* case and to my mind it risks causing confusion. The word "substantial" is not used in section 423 and I can see no necessity or warrant for reading this (or any other) adjective into the wording of the section. At best it introduces unnecessary complication and at worst introduces an additional requirement which makes the test stricter than Parliament intended. I agree with the point made in McPherson's *Law of Company Liquidation* (4th Edn, 2017), para 11-116, that there is no need to put a potentially confusing gloss on the statutory language. It is sufficient simply to ask whether the transaction was entered into by the debtor for the prohibited purpose. If it was, then the transaction falls within section 423(3) , even if it was also entered into for one or more other purposes. The test is no more complicated than that.
>
> 15. Arden LJ made this very point in the *Hashmi* case when she said (at para 23) that "there is no epithet in the section and thus no warrant for reading one in". When later in her judgment she referred (at para 25) to a "real substantial" purpose, it is apparent from the context that the reason for using those adjectives at that point was to underline the distinction between a purpose and a consequence of the relevant transaction. …"

68. In the context of judging a person's intentions, Leggatt LJ continued, at [16], as follows:-

> "… a consequence is more likely to be perceived as positively intended if there is reason to think that it is something which the actor desired. Thus, evidence that a person who has entered into

> a transaction at an undervalue foresaw that the result would be to put assets out of reach of creditors and desired that result might lead the court to infer that the transaction was entered into for that purpose. But such a conclusion is not a logical or legal necessity. It is a judgment which has to be based on an evaluation of all the relevant facts of the particular case."

Victim of transaction

69. Section 424(1) provides as follows:-

> "**424 Those who may apply for an order under s. 423.**
>
> (1)An application for an order under section 423 shall not be made in relation to a transaction except—
>
> (a)in a case where the debtor has been made bankrupt or is a body corporate which is being wound up or is in administration, by the official receiver, by the trustee of the bankrupt's estate or the liquidator or administrator of the body corporate or (with the leave of the court) by a victim of the transaction;
>
> (b)in a case where a victim of the transaction is bound by a voluntary arrangement approved under Part I or Part VIII of this Act, by the supervisor of the voluntary arrangement or by any person who (whether or not so bound) is such a victim; or
>
> (c) **in any other case, by a victim of the transaction."**
>
> (emphasis added)

70. In relation to the words "victim of the transaction", section 423(5) of the Insolvency Act 1986 provides as follows:-

> "(5) In relation to a transaction at an undervalue, references here and below to a victim of the transaction are to **a person who is, or is capable of being, prejudiced by it**; and in the following two sections the person entering into the transaction is referred to as "the debtor".
>
> (emphasis added)

Relief

71. Section 423(2) provides:-

> "(2) Where a person has entered into such a transaction, the court may, if satisfied under the next subsection, make such order as it thinks fit for –

> (a) restoring the position to what it would have been if the transaction had not been entered into, and
>
> (b) protecting the interests of persons who are victims of the transaction."

72. Section 425 gives a non-exhaustive list of examples of the kinds of orders the court may make, and sets out certain limits to orders insofar as third parties may be affected. The court has very wide discretionary powers with regard to relief, and has a wide margin of judgment when deciding what order is appropriate, having regard to the non-exhaustive list in section 425. The aim is to restore the position to what it would have been had the transaction not been entered into, and to protect the interests of victims of the transaction. It is to be exercised to achieve restoration to the extent appropriate to protect creditors' interests. That can involve "substantial", as opposed to specific, restoration (e.g. the payment of money). Victims cannot be put in a better position than they otherwise would have been had the transaction not been carried out. Nor should the relief punish or prejudice those involved more than necessary in terms of the inevitable consequences of restoring the position and protecting victims. Relief should be carefully tailored to the justice of the particular case.

B.3 The *Marex* Tort

Introduction

73. HPII claims that Dr Smith, and (through their control by Dr Smith and Mr Ruhan and participation in the scheme) MDL and Ozturk, have each committed the "*Marex* tort" (addressed by me in *Lakatamia Shipping Co Ltd v Su* [2021] EWHC 1907 (Comm) ("*Lakatamia"*), following recognition by Robin Knowles J in interlocutory proceedings in *Marex Financial Ltd v Sevilleja* [2017] 4 WLR 105 ("*Marex*")).

74. The *Marex* tort has been recognised, and applied, in subsequent cases, including *Lakatamia v Tseng Yu* [2023] EWHC 3024 (Comm) (Foxton J) (where the claim succeeded on the facts) and *Lakatamia v Su,Chang and Zabaldano* [2024] EWHC 1749 (Comm) (Simon Colton KC sitting as a Deputy Judge of the High Court) (where the claim failed on the facts). The *Marex* tort is also identified in leading works including *Clerk & Lindsell* on Torts 24th Ed. at 23-09 and *Civil Fraud* 1st Ed. at 3-022 (Supplement).

Marex Tort Liability

75. In *Lakatamia* I addressed the origins and elements of the *Marex* tort at [116] to [131]. At [120] I stated that:-

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

76. I identified the essential elements of the *Marex* tort at [126] as:-

> "(1) The entry of a judgment in the claimant's favour,
>
> (2) Breach of the rights existing under that judgment,
>
> (3) The procurement or inducement of that breach by the defendant,
>
> (4) Knowledge of the judgment on the part of the defendant, and
>
> (5) Realisation on the part of the defendant that the conduct being induced or procured would breach the rights owed under the judgment."

77. At [127] I identified further principles applicable to the *Marex* tort (again by analogy with the tort of inducing a breach of contract):-

> "(1) It suffices that the defendant intended to violate the claimant's rights under the judgment. The defendant does not need also to intend thereby to damage the claimant.
>
> As Judge Russen QC stated in *Palmer* at [174]:
>
> > "In order for liability to be established under the inducement tort, the result intended by the defendant must be a breach of contract. But that is both necessary and sufficient and there is no need for the claimant to go further by establishing an intention to cause damage …""
>
> See also, in this regard, *OBG Ltd v. Allan [2007] UKHL 21; [2008] 1 A.C. 1* per Lord Hoffmann at [8].
>
> (2) Just as it is unnecessary for a defendant in a claim for inducing a breach of contract to know the details of the contract provided that they had "the means of knowledge" (*Emerald Construction Co Ltd v. Lowthian [1966] 1 W.L.R. 691, 700* per Lord Denning M.R.), it is inessential that the defendant to a claim for the Marex tort has actual knowledge of the contents of the judgment.
>
> (3) In this regard blind-eye knowledge is sufficient. Thus, as was said by Lord Denning in *Emerald Construction at page 700 , "*it is unlawful for a third person to procure a breach of contract knowing, or recklessly, indifferent whether it is a breach or not*".*
>
> (4) "[A]ny active step taken by the defendant having knowledge of the covenant by which he facilitates a breach of that covenant" falls within the ambit of the tort: see *British Motor Trade Association v. Salvadori [1949] Ch. 556, 565* per Roxburgh J.

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

78. At [128] I noted that an important part of the third element of the tort (identified at [126(3)]) is that "there be procurement or inducement by the defendant of the breach of the rights existing under the judgment by persuading, encouraging or assisting the other to do so, and in this regard it is essential that "the defendant's acts of encouragement, threats, persuasion and so forth have a sufficient causal connection with the breach …*"* (see *OBG Ltd v. Allan* at [36] per Lord Hoffmann)".

79. In this regard at [130], I quoted what was said by Popplewell LJ at [33] of *Kawasaki Kishen Kaisha Ltd v James Kemball Limited,* (referring to Lord Hoffman's and Lord Nicholls' judgments in *OBG Ltd v Allan, supra* and Toulson LJ's in *Meretz Investments NV v ACP Ltd [2008] Ch 244*):-

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

80. I went on at [130-[131] to express obiter comments as to whether there could be any scope for a defence of justification in *Marex* tort cases. I note, in passing, that in *Lakatamia v Su,Chang and Zabaldano* [2024] EWHC 1749 (Comm) Simon Colton KC sitting as a Deputy Judge of the High Court took a different view as to whether there was scope for a justification defence in the context of the *Marex* tort. I say no more about that in circumstances where there is no suggestion, in the present case, that Dr Smith, MDL or Ozturk would have any lawful justification for their actions in relation to the scheme which HPII says was designed to assist and enable Mr Ruhan to breach HPII's judgment rights.

B.4 Set aside of the Default Judgment and strike-out

Introduction

81. With respect to the Ozturk Proceedings, HPII applies (1) to have the Default Judgment set aside on the basis that it was fraudulently obtained as part of the Scheme and amounted to a serious abuse of the court's process, designed to directly affect and prejudice HPII's rights, and (2) for the Ozturk Proceedings to be struck out.

Set aside: *Locus Standi*

82. Under CPR 40.9, a person who is not a party but who is directly affected by a judgment or order may apply to have it set aside or varied.

83. In *Abdelmamoud v The Egyptian Association in Great Britain Ltd* [2015] Bus LR 928 (upheld by the Court of Appeal, [2018] EWCA Civ 879) Edward Murray (sitting as a Deputy Judge of the High Court) stated, at [57], that:

> "despite the breadth of the words "directly affected", the circumstances in which a person claims to be directly affected by a judgment or order need to be carefully scrutinised in light of the general policy that a judgment or order should not easily be set aside."

84. He continued at [58] by saying that previous cases:

> "support the proposition that in order for a non-party to be "directly affected" by a judgment or order for the purpose of CPR r 40.9, it is necessary that some interest capable of recognition by the law is materially and adversely affected by the judgment or order or would be materially and adversely affected by the enforcement of the judgment or order."

85. As he also rightly recognised at [59]:-

> "Since the "directly affected" test is for the purpose of establishing locus standi, it is sufficient that the relevant judgment or order would prima facie be capable of materially and adversely affecting a legal interest. It is not necessary to show that it would, in fact, do so, for that would be the subject of the application itself."

86. In the present case, HPII says that purpose of the Scheme was to prejudice HPII's judgment rights under the Ruhan Trial Judgment and that the Default Judgment was improperly and irregularly obtained under the Scheme which allowed the Ozturk Claimants the benefit of a court order so as to be judgment creditors of Mr Ruhan, with a judgment debt that would dwarf HPII's (regularly-obtained) judgment debt, be harder to impugn given its judgment status, and less likely to be subjected to scrutiny. HPII submits that this meant that the Ruhan Trial Judgment is "materially and adversely affected" by the Default Judgment and the enforcement thereof.

Strike out

87. CPR 3.4(2), provides, amongst other matters, as follows:-

> (2) The court may strike out a statement of case if it appears to the court –
>
> …
>
> (b) that the statement of case is an abuse of the court's process or is otherwise likely to obstruct the just disposal of the proceedings".

88. Aside from the power to strike out a claim for abuse of process under CPR 3.4(2)(b), the court has an inherent jurisdiction to strike out proceedings (see *Summers v Fairclough Homes Ltd* [2012] 1 WLR 2004), and to take such steps as are necessary to protect, and prevent abuse of, its own procedure (including strike out and setting aside irregularly obtained orders).

89. In relation to abuse of process, reference is often made to the following passage from the judgment of Lord Diplock, in *Hunter v Chief Constable of the West Midlands Police* [1982] AC 529, 536 in which Lord Diplock described the court's power to deal with abuse of process:

> "This is a case about abuse of the process of the High Court. It concerns the inherent power which any court of justice must possess to prevent misuse of its procedure in a way which, although not inconsistent with the literal application of its procedural rules, would nevertheless be manifestly unfair to a party to litigation before it, or would otherwise bring the administration of justice into disrepute among right-thinking people. The circumstances in which abuse of process can arise are very varied. … It would, in my view, be most unwise if this House were to use this occasion to say anything that might be taken as limiting to fixed categories the kinds of circumstances in which the court has a duty (I disavow the word discretion) to exercise this salutary power."

90. In *AG v Barker* [2000] 1 FLR 759, Lord Bingham said, at [764], that abuse of process is "a use of the court process for a purpose or in a way which is significantly different from the ordinary and proper use of the court process."

91. In *Land Securities PLC v Fladgate Fielder (A Firm)* [2010] Ch 467, Moore-Bick LJ referred, at [89], to Simon Brown LJ's judgment in *Broxton v McLelland* (CA) (unreported, 30th January 1995), and went on to say:

> "Simon Brown LJ identified as the essential element in abuse of process the misuse of the court's process to achieve something not available in the course of (or, I would say, by means of) properly conducted proceedings. I respectfully agree…".

92. See also what is said, in this regard, in *Zuckerman on Civil Procedure: Principles of Practice* (4th Ed) at 11.217-11.218:-

> "… the court has a wide discretionary power at common law to prevent its processes from being abused. The power is said to arise from the court's inherent jurisdiction to safeguard its authority and processes from being undermined by disruptive, oppressive or otherwise inappropriate use of court procedures. CPR 3.4(2) … exemplifies one aspect of this general jurisdiction… The jurisdiction is very wide and it is therefore neither possible nor desirable to force it into categories or reduce it to hard and-fast rules. While the case law provides no ready-made solution to every problem, it offers helpful illustrations of how the jurisdiction may be usefully employed. The court may therefore draw assistance from past decisions, but it is incumbent on it to consider all the

> circumstances of the case in light of current judicial policies regarding the conduct of litigation. Whether particular conduct amounts to abuse of process must now be considered by reference to the overriding objective".

C. FACTUAL BACKGROUND

93. As prefaced in the Introduction, the present proceedings arise in the context of long-running litigation, often running in parallel, and in relation to which there have been many previous judicial findings (including a number of judgments given by Foxton J), as addressed below. It is necessary to set out much of the historical background as it sets in context the events which are the subject matter of HPII's claims and the relief HPII seeks in this trial.

C.1 Previous Findings

94. On 28 February 2023, Foxton J handed down the "February 2023 Judgment" ([2023] EWHC 428 (Comm)), in which he made various findings that are relevant to the underlying factual matrix of these proceedings. Foxton J stated at [7]:

> "There are a number of reasons why the extensive judicial resources already devoted to the resolution of these disputes has not led to any abatement in the demands they continue to make on the court's time. To some extent it reflects the inherent complexity of the underlying facts, which themselves reflect the **propensity of some of the leading players for dishonest and opaque dealings**. However, I am satisfied it is to a very significant extent the result of the refusal of a number of the key protagonists to accept the court's decisions. This has led to a number of strange alliances:
>
> i) At the Directed Trial, Minardi was said to be owned by Mr Anthony Stevens (who I later found to be acting as a nominee for Mr Ruhan pursuant to a dishonest arrangement they had put in place and operated over many years). Minardi's claims were opposed by Messrs Thomas and Taylor, who were represented by Mr Crossley of St Paul's Solicitors. At the hearing, it was Minardi's case that Messrs Cooper and McNally had acted in dishonest breach of trust in transferring assets to SMA. It was Mr Crossley's submission that Dr Smith had been and was continuing to be thoroughly dishonest in his dealings.
>
> …
>
> iii) In 2022, a company called Marlborough Developments Ltd (MDL) commenced proceedings in the Chancery Division against Mr Ruhan claiming some £800m. The statement of truth for MDL was signed by Mr Anthony Smith, Dr Smith's brother and another individual whose evidence on oath I have been unable to accept (*Milsom and Standish v Gerald Martin*

> *Smith and the Estate of Phyllis Smith* [2023] EWHC 255 (Comm)). The basis on which Mr Anthony Smith could have personal knowledge of the matters asserted in the Particulars of Claim is not immediately apparent, although I was told that that was the reason why he has signed the statement of truth. However, it is not necessary to get into the issue of whether or not the statement of truth was appropriately made at this stage.
>
> iv) At the Directed Trial, Mr Crossley said "there are many strange bedfellows in this case. We all seem to be swapping alliances as we go". That was certainly true of Mr Crossley, who now acts for MDL. Mr Crossley has confirmed that Dr Smith is providing "consultancy services" in respect of the MDL litigation. **Somewhat surprisingly, for very many reasons, Mr Ruhan consented to judgment in the full amount of MDL's claim. I have since granted a worldwide freezing order against MDL and Dr Smith, on the basis that there is a real risk that these proceedings and the resulting judgment are collusive in nature, reflecting co-ordinated activity between those behind MDL (including Dr Smith) and Mr Ruhan to frustrate the judgment obtained by HPII**." (emphasis added)

95. At [18] of the February 2023 Judgment, Foxton J stated:

> "It would be possible to stop there. However, we are past the time in this litigation in which it is appropriate to pull punches. **It is clear that co-ordinated activity has been undertaken as part of a rear-guard action by individuals who are dissatisfied with the outcome of the litigation** in some or other respects, which at various stages has involved at least Dr Smith, associates of Mr McNally, and Mr Thomas." (emphasis added)

96. At [83] of the February 2023 Judgment, he stated:

> "It is immediately apparent, without scope for serious argument, that Minardi's claims represent the clearest and most obvious attempt to relitigate the issues raised at the Directed Trial, and the clearest abuse of process for that reason."

97. At [90]-[92] of the February 2023 Judgment, he stated:

> "90. The extent to which Minardi is simply seeking to-argue the matters raised at the Directed Trial Judgment could not be clearer.
>
> 91. For these reasons, I am satisfied that Minardi should not be granted an adjournment, for the purpose of advancing arguments which would be an abuse of the process of the court.

> 92. My conclusion that it would be an abuse of process for Minardi to raise these arguments now is sufficient to dispose of them …".

98. At [103] of the February 2023 Judgment, he stated:

> "103. As will be apparent from the foregoing, there is a real risk in this case that individuals who are bound by, but unhappy with, the outcome of the Directed Trial have been and are continuing to instigate proceedings and applications in these proceedings and elsewhere to challenge the outcome of the Directed Trial or by way of a collateral attack on its conclusions. The scale of these activities and the legal costs and court time they are consuming, mean that considerable vigilance will be required on the court's part to ensure that its judgments are respected and its processes are not abused.
>
> 104. If activities of this kind continue, there will need to be careful consideration of a number of matters, including:
>
> i) whether there are any individuals who may have breached court orders and undertakings and, if so, whether the court's committal jurisdiction should be engaged;
>
> ii) whether officers of the court should be given control of any companies which have changed hands in questionable circumstances, and which are being used in this process;
>
> iii) whether further injunctions could or should be granted against individuals where there is a sufficiently arguable case that they are engaged in activities intended to challenge a judgment which is binding upon them;
>
> iv) the consequences of undischarged costs orders in the litigation to date; and
>
> v) who has been funding these various applications and whether any orders against the funding parties or those controlling them would be appropriate."

99. HPII submits that such extracts evidence Foxton J's concerns in relation to the subjects which are at the heart of HPII's present claim, and the backdrop to the subject matter of the present trial, in relation to which it is submitted that the former archenemies (Dr Smith and Mr Ruhan) colluded in the Scheme to fabricate litigation by way of a forced claim that would be brought against Mr Ruhan, with an issue fee that Mr Ruhan paid for himself, and a judgment that Mr Ruhan would submit to without a fight. HPII submits that, upon examination of the facts, set against the backdrop of the chronology of events, it is hardly surprising that Mr Ruhan is not opposing the application for strike out of the Default Judgment entered against him.

C.2 The historical background to the present claims

100. In the context of the claims brought by HPII it is necessary to examine the historical background going back over many years, to put in context subsequent claims and litigation, and events leading up to the subject matter of the present claim.

The Izodia Theft and May 2003 Agreement

101. As at 2002, Dr Smith was the CEO of a company called Orb a.r.l. ("Orb"), a Jersey private limited company incorporated in September 2001, which later became the ultimate holding company of a group ("the Orb Group"). In March 2002, the Orb Group acquired a portfolio of 37 hotels with the benefit of a £598 million loan made by Morgan Stanley ("the Morgan Stanley Loan"). As a consequence, Orb's assets included:-

    i) about 30% of the shares in an information technology company, Izodia ("Izodia");

    ii) The portfolio of 37 hotels ("the Hotel Portfolio") held through the Claimant HPII and an associated Jersey company called Hotel Portfolio II (Jersey) Ltd ("HPIIJ"); and

    iii) A portfolio of development, commercial and warehouse businesses ("the Orb Securities Portfolio").

102. The facts are set out at [53]-[57] of the Directed Trial Judgment. In short, a large proportion of the hotels within the Hotel Portfolio were Thistle-branded, among which were the three, collectively named, "Hyde Park Hotels": the Lancaster Gate Hotel, the Kensington Palace Hotel, and the Kensington Park Hotel.

103. The Morgan Stanley loan, which enabled the purchase of the Hotel Portfolio, was securitised through a loan note issue ("the HPII Notes") and required servicing, but very quickly Dr Smith and Orb were struggling to do so (see also the Ruhan Trial Judgment, at [38]).

104. As a result, in the summer of 2002, Smith defrauded the Izodia company (the "Izodia Theft"), which lead to the "Directed Trial", stealing £35m from the company, for which he was convicted and sentenced to imprisonment in 2006.

105. Being alerted to the Izodia Theft, the Serious Fraud Office ("SFO") in December 2002 raided Orb's offices in London and Jersey and Dr Smith's home in Jersey, and events of default were declared on the HPII Notes. Financial pressure built on Dr Smith to repay the money he stole from Izodia. In March 2003, Dr Smith was introduced to Mr Ruhan. Looking for ways to raise money to repay the stolen amount, in May 2003, he sold several assets to Mr Ruhan (the "May 2003 Agreement"), including the three Hyde Park Hotels; see also the Directed Trial Judgment, at [55].

The Arena Settlement

106. The facts in relation to the Arena Settlement are set out at [58]-[62] of the Directed Trial Judgment. In short, in March 2004, a Manx law discretionary trust ("the Arena Settlement") was established on Mr Ruhan's instructions. The settlor was Mr Simon Cooper ("Mr Cooper"), a retired solicitor based in Switzerland, who was, with Mr

Simon McNally ("Mr McNally") (another solicitor), named as members of the class of beneficiaries, with the trustee (a Jersey trust company, Atticus Trust Company Limited) having the power to add further individuals or charities as beneficiaries.

107. It was held by Foxton J in the Directed Trial Judgment at [59]:

i) that Mr Ruhan was the source of the assets settled into the Arena Settlement, with Messrs Cooper and McNally effectively acting as service-providers in setting up and operating the Arena Settlement; and

ii) to the extent that Messrs Cooper and McNally were named as eligible beneficiaries from time-to-time, that Messrs Cooper and McNally were acting as nominees for Mr Ruhan.

The Cambulo Transaction

108. With Dr Smith arrested for the Izodia Theft, and restraining orders imposed by the SFO on him as well as his (then) wife Dr Cochrane and others, in the meantime HPII had exchanged contracts for the sale of the Hyde Park Hotels to companies owned by a Madeiran company named Cambulo-Comércio Internacional e Serviços Sociedade Unipessoal Lda ("Cambulo") ("the Cambulo Transaction") (as to which see also the Directed Trial Judgment, at [63]). Cambulo was presented by Mr Ruhan to HPII and the noteholders as being independently owned by Mr Stevens. Morgan Stanley's position was that they believed it to be independent from Mr Ruhan.

109. However, as found by Foxton J in the Ruhan Proceedings, Mr Stevens was secretly acting as Mr Ruhan's nominee during this transaction. As Foxton J found at [214] of the Ruhan Trial Judgment:-

> "[…H]aving in mind the seriousness of the allegations made against the Defendants, I am amply satisfied that HPII's nominee case is made out, and that in acquiring the Hyde Park Hotels through Cambulo Madeira, in the subsequent sale of those hotels, and in the investment of the profits, Mr Stevens was acting at all times as Mr Ruhan's nominee in the sense defined [by Professor (now His Honour Judge) Matthews' article "All About Bare Trusts: Part 1" (2005), 266, 273 as an arrangement in which the nominee "holds on trust for the beneficiary absolutely, but also agrees to do whatever the settlor/principal asks, or at least whatever is asked within a certain range of possibilities"]."

110. The successful sale of the Hyde Park Hotels occurred in six tranches: the Lancaster Gate Hotel was sold to Minerva Plc and Northacre Plc for some £7.76 million; the Kensington Park and Kensington Palace Hotels were sold on to De Vere Estates Ltd, following a joint venture between Cambulo and the Candy brothers (Mr Nicholas Candy and Mr Christian Candy), with planning permission for residential redevelopment, for approximately £250 million. The Cambulo group's share of that profit was approximately £125 million, of which 80% was payable to Euro Estates Holdings Limited. Combined, Cambulo (and thus Mr Ruhan) made a profit from the

on-sales of the Hyde Park Hotels of some £102.26 million (as to which see also Directed Trial Judgment, at [63]).

The Orb Proceedings based on the Alleged Oral Agreement

111. Dr Smith having been convicted for the Izodia Theft to 8 years' imprisonment in 2006, in 2007 the SFO obtained a confiscation order against Dr Smith in the sum of £40,856,911, to be paid within 12 months (the "Confiscation Order"), and enforcement receivers were appointed to enforce the Confiscation Order against Dr Smith's realisable property.

112. In the meantime, from mid-2007, Mr Ruhan had started to invest in property development projects in Qatar, including by using the proceeds from the sale of the Hyde Park Hotels which ended up in the Qatar property developments through companies within the Arena Settlement trust structure, Mr Ruhan's interest being held via two Manx holding companies (see the Directed Trial Judgment, at [66]).

113. In 2010, Dr Smith was released from prison. In a supposed attempt to obtain money to satisfy the Confiscation Order, Dr Smith orchestrated a claim against Mr Ruhan alleging a breach of (an allegedly oral element of) the May 2003 Agreement (the "Alleged Oral Agreement"). In 2012, Dr Smith initiated the "Orb Proceedings" through the use of his associates Mr Thomas, Mr Taylor, and Orb (together, the "Orb Claimants") rather than in Dr Smith's own name. As HPII puts it, having seen the vast profits made from the sale of the Hyde Park Hotels, Dr Smith wanted a share of the pie. In fact, Dr Smith had previously attempted to rely on the Alleged Oral Agreement by seeking to persuade the enforcement receivers to bring claims against Mr Ruhan on that same basis (see *Phoenix Group Foundation v Harbour Fund II LP* [2023] EWCA Civ 36 (*Phoenix Group)*, at [14], and the Directed Trial Judgment, at [69]).

114. In short, by way of the Orb Proceedings, Dr Smith (through the Orb Claimants) alleged that in addition to the May 2003 Agreement, a further oral agreement was struck between Mr Ruhan and the Orb Claimants (the Alleged Oral Agreement). This Alleged Oral Agreement allegedly entailed that: (1) 40% of any profit from the development of the Hotel Portfolio would be paid to Orb (25%), Mr Thomas (7.5%), and Mr Taylor (7.5%); (2) 50% of the profits generated on the restructuring, development and disposal of the Orb Securities Portfolio would be paid by Mr Ruhan to Orb and 7.5% to Mr Thomas, with Orb and Mr Taylor being entitled to 50% and 7.5% respectively of any retained businesses; and (3) 40% of the profits realised on the disposal of shares in Izodia would be paid to Orb (25%), Mr Thomas (7.5%), and Mr Taylor (7.5%). The Orb Claimants also alleged that Mr Ruhan was beneficially interested in the Arena Settlement.

115. Therefore, the Orb Proceedings largely focused on the alleged breach and (importantly) made a tracing claim into assets allegedly beneficially owned by Mr Ruhan located in the Arena Settlement.

116. In Mr Ruhan's initial Defence in the Orb Proceedings, Mr Ruhan denied the existence of the Alleged Oral Agreement and also denied ownership of the Arena Settlement assets. Foxton J found that he did so dishonestly—see the Ruhan Trial Judgment, at [166]:

> "As outlined in the Directed Trial Judgment, Mr Ruhan had initially served a defence denying that he held any beneficial interest in the Arena Settlement. Mr Ruhan gave evidence that he had advanced this plea on the basis of advice from Mr Cooper and Mr McNally, and that he believed "beneficial interest" was a legal term of art (Day 7 pages 90 to 92). He denied that he was attempting to mislead anyone through this defence, although he accepted it was "potentially misleading", and apologised for it in his witness statement served in the action**. Based on my assessment of Mr Ruhan, who is a shrewd, knowledgeable and tactically aware individual, I am satisfied that he fully appreciated that this defence gave a misleading impression of his relationship to the Arena Settlement, and that he was content to do so for strategic purposes. In short, that part of the Defence in the Orb Proceedings was advanced on what Mr Ruhan knew to be a dishonest basis.**" (emphasis added)

117. Foxton J added that "his [Mr Ruhan's] readiness to proceed on that [dishonest] basis demonstrates the need for caution in approaching his evidence" (at [188(i)]).

118. At the time, the Arena Settlement was on its face held by Mr Cooper and Mr McNally, Mr Ruhan's solicitors (and friends). On 21 March 2012, Mr Ruhan was formally removed as a discretionary beneficiary of the Arena Settlement. This was ostensibly done to avoid the risk of adverse revenue action arising from his UK residence. Mr Cooper and McNally were then named in the class of discretionary beneficiaries.

119. However, in truth, they were Mr Ruhan's nominees, as Foxton J held at [59]-[62] of the Directed Trial Judgment (see also *Phoenix Group*, at [15]):

> "59. It is clear that it was Mr Ruhan who was the source of the assets settled into the Arena Settlement, with Messrs Cooper and McNally effectively acting as service-providers in setting up and operating the Arena Settlement. To the extent that Messrs Cooper and McNally were named as eligible beneficiaries from time-to-time, I am satisfied that they were acting as nominees for Mr Ruhan. By way of summary:
>
> i) Mr Ruhan began dealing with Mr Cooper and Mr McNally as professional service providers who assisted him in establishing structures to hold (and hide) his assets. That involved establishing Isle of Man companies to hold shares as Mr Ruhan's nominee (as acknowledged in a letter from Mr Cooper's then firm, Cooper Chan, to AIB of 13 August 2014).
>
> ii) Mr Ruhan was added as a discretionary beneficiary of the Arena Settlement on 3 November 2004.
>
> iii) From November 2004 until 21 March 2012, the *only* eligible beneficiary under the Arena Settlement was Mr Ruhan. Mr Cooper was excluded as a potential beneficiary from 22 November 2005, but re-appointed on 17 July 2012.

During that period, a number of very valuable assets were settled into the Arena Settlement, including those operating the Sentrum data centre business. No sensible explanation has been offered as to why Mr Ruhan should have been the sole eligible beneficiary for nearly 8 years if Mr Ruhan was not the intended beneficiary of the Arena Settlement.

iv) By contrast, the stated purpose of the removal of Mr Ruhan from the list of beneficiaries on 21 March 2012 was to reduce the risk of adverse revenue action (on the basis that his apparent involvement "presented a risk to the structure given his UK residence"), not to deprive Mr Ruhan of any interest he might have.

v) The businesses placed into the Arena Settlement were those established or acquired by Mr Ruhan – for example the Atlantic hotels business and the Orb Securities Portfolio – rather than any businesses of Messrs Cooper and McNally.

vi) A sum of £150m taken out of the Arena Settlement in 2012 was distributed in accordance with Mr Ruhan's instructions, not so as to benefit Messrs Cooper and McNally.

vii) No explanation has ever been offered (including by Messrs Cooper and McNally themselves in the FS Arbitration to which I refer at [61] below) as to how Mr Cooper and Mr McNally could have accumulated a beneficial entitlement to the very significant assets held within the Arena Settlement, or why they would have been the gratuitous beneficiaries of Mr Ruhan's businesses.

60. For similar reasons, I am satisfied that the other assets which Messrs Cooper and McNally transferred under the IOM Settlement – shares in companies which were never held within the Arena Settlement ("the Cooper and McNally Companies") and that part of the cash held by Messrs Cooper and McNally and transferred under the IOM Settlement – were held by them on bare trust for Mr Ruhan:

i) The findings in [59] as to Messrs Cooper and McNally's backgrounds, and the nature of their relationship with Mr Ruhan apply with equal force in this context.

ii) It is highly improbable that Messrs Cooper and McNally were acting as Mr Ruhan's nominees so far as any interest in the Arena Settlement is concerned, but held the other Transferred Assets – the Cooper and McNally Companies and cash - in their own interest.

iii) Messrs Cooper and McNally's willingness to hand over the Cooper and McNally Companies and cash alongside the

> other companies in the IOM Settlement, and the absence of any attempt in that process to distinguish between the two, strongly suggests that Messrs Cooper and McNally's relationship with all three groups of assets handed over was essentially of the same kind.
>
> 61. I have reached this conclusion on the basis of the materials before me. I note that the same conclusion was reached by Mr Stuart Isaacs QC when sitting as arbitrator in an arbitration brought by Mr Sodzawiczny against Dr Smith, Ms Stickler and Messrs Cooper and McNally ("the FS Arbitration") in an award made on 9 December 2020. With the possible exception of Messrs Thomas and Taylor, none of the parties to the Directed Trial contended that Messrs Cooper and McNally held a beneficial interest in the Arena Settlement or the other assets transferred under the IOM Settlement. On the basis of my findings, any interest which Mr Cooper and/or McNally appeared to have in those assets at any time was held as nominee for Mr Ruhan."

120. Besides alleging a breach of the Alleged Oral Agreement, the Orb Claimants stated within their particulars of claim that they had a deal with Dr Smith in relation to the Orb Proceedings whereby, in return for his cooperation and assistance with the proposed action, they would transfer to Dr Smith 50% of the sums recovered in the proceedings after deduction of their costs and expenses in the claim up to the amount owed by Dr Smith under the confiscation order. Foxton J noted within the Directed Trial Judgment at [212] that "Mr Upson [the Orb Claimants' solicitor] accepted that Dr Smith could be fairly described as the "driving force" behind the 2012 Proceedings [the Orb Claim], and that he was "the source of the knowledge, the ideas" and that "Dr Smith's evidence in the FS Arbitration [arbitration involving Mr Franek Sodzawiczny] was essentially to the same effect".

121. A key moment in the Orb Proceedings occurred when, in between Autumn 2013 and Spring 2014, Dr Smith, taking calculated advantage of Mr Ruhan's denial of beneficial ownership, procured (through threats, intimidation and by providing financial incentives) Messrs Cooper and McNally to betray Mr Ruhan and secretly transfer, in real terms, virtually all of the wealth held by Mr Ruhan (albeit indirectly, via Messrs Cooper and McNally) in the Arena Settlement and in certain other companies held by Messrs Cooper and McNally for Mr Ruhan's benefit, to companies nominated by Dr Smith (including one called SMA Investment Holdings Ltd ("SMA"), a Marshall Islands company). This later became known as the "IOM Settlement", and took place behind Mr Ruhan's back. Foxton J later held, at [191] of the Directed Trial Judgment, that SMA was acting, together with Dr Cochrane, as nominee for the Orb Claimants at the time of the IOM Settlement.

122. As Foxton J found, this was a fraudulent breach of trust against Mr Ruhan by Messrs Cooper and McNally, which Dr Smith appreciated (as Foxton J found in the Directed Trial Judgment at [208]-[220]). Pertinent excerpts include the following:-

> "208. I am quite satisfied that in entering into the IOM Settlement, Messrs Cooper and McNally were acting in

> fraudulent breach of trust. I have already explained in [59]-[60] the reasons for my conclusion that Messrs Cooper and McNally were not the beneficiaries of the Arena Settlement, and that any apparent interests they had were held as nominees for Mr Ruhan. It follows that Messrs Cooper and McNally owed trust obligations in relation to any rights or interests they appeared to have in the Arena Settlement or the Cooper and McNally Companies.
>
> 209. However, they transferred almost the entirety of those assets to Dr Cochrane and SMA without any evident or apparent benefit to Mr Ruhan (who did not even secure a release of the claims against him in the 2012 Proceedings). I find that they did so without Mr Ruhan's approval. Not only is it difficult to conceive of any basis on which Mr Ruhan would have consented to such an arrangement, but when Mr Ruhan counterclaimed against Messrs Cooper and McNally accusing them of breach of trust in entering into the IOM Settlement, neither responded with what would have been the obvious riposte that they had been acting with Mr Ruhan's informed consent.
>
> …
>
> 212. It is clear on the evidence that the IOM Settlement was negotiated, on the Orb Claimants' side, by Dr Smith, and that it was Dr Smith who was the moving force behind the tactics used to obtain the IOM Settlement. Mr Upson accepted that Dr Smith could be fairly described as the "driving force" behind the 2012 Proceedings, and that he was "the source of the knowledge, the ideas". Dr Smith's evidence in the FS Arbitration was essentially to the same effect. In these circumstances, there can be no serious challenge to the conclusion that the knowledge of Dr Smith in relation to the transaction he negotiated on the Orb Claimants' behalf is attributable to the Orb Claimants. Any contrary conclusion would allow the Orb Claimants to benefit from the transaction, freed from any limitations arising from the means by which Dr Smith obtained it. I am also satisfied that Dr Smith's knowledge is attributable to Dr Cochrane, who was acting in relation to the IOM Settlement at his direction (for the reasons set out at [606] below).
>
> 213. It is clear that Dr Smith knew that Messrs Cooper and McNally were acting in breach of trust in entering into the IOM Settlement."

123. Mr Ruhan was going through a divorce at the time of these events. In his matrimonial proceedings, Mostyn J described Mr Ruhan's account of these events as follows, *Richardson-Ruhan v Ruhan* [2017] EWHC 2739 (Fam) at [4]:

> "The question that I must decide is whether he [Mr Ruhan] still is very rich. [Mr Ruhan] says that he is not; indeed, he says he is

> insolvent to the tune of £2m. This, he says, is as a result of virtually his entire fortune, some £200m, being stolen from him in March 2014 by a convicted fraudster Dr Gerald Smith with the assistance of his ([Mr Ruhan's]) treacherous former "front-men" Simon Cooper and Simon McNally."

124. Foxton J found, at [210] of the Directed Trial Judgment, that the value of the assets transferred under the IOM Settlement (i.e., 100% of the Arena Settlement and certain other companies held by Messrs Cooper and McNally):-

> "substantially exceeded any entitlement which the Orb Claimant might conceivably had had arising from the [Alleged Oral Agreement] (which is said to have given them a 40% share in profits made from the assets transferred under that agreement, and of which profits made from the re-sale of two of the Hyde Park Hotels [the Kensington Park Hotel and Kensington Palace Hotel] were the only identified example."

125. Contrary to the apparent intended purpose of recouping the money (i.e., to obtain money to satisfy a large confiscation order obtained by the SFO), the assets Dr Smith took from Mr Ruhan were not in fact used to discharge the SFO's confiscation order. Rather, they, and associated assets, disappeared in various directions, triggering complex multi-party High Court litigation in CL-2017-000323 (the "SFO Proceedings").

126. When Mr Ruhan discovered the IOM Settlement, he changed his Defence in the Orb Proceedings to admit ownership in respect of the Arena Settlement assets and counterclaimed for their return, see Directed Trial Judgment at [93] and Ruhan Trial Judgment at [167].

127. Between June and August 2014, the Orb Claimants applied to amend the Orb Proceedings Particulars of Claim to add Mr Stevens, Phoenix Group Foundation ("Phoenix"), a Panamanian company ostensibly associated with Mr Stevens, Grenda Investments Limited ("Grenda"), a BVI company ostensibly associated with Mr Stevens, and Bluestone Securities Limited ("Bluestone"), a BVI company ostensibly associated with Mr Stevens, as defendants (on the basis that they had received assets which the Orb Claimants claimed they were entitled to trace). They also sought proprietary freezing orders against the new proposed defendants in England.

128. On 24 June 2014, Mr Ruhan's lawyers sent a letter before action to Messrs Cooper and McNally accusing them of gross breach of trust and fiduciary duty, and attached a draft Amended Defence and Counterclaim in the Orb Proceedings. This document withdrew Mr Ruhan's previous denial of any beneficial interest in the Arena Settlement, and sought to join Messrs Cooper and McNally to the Orb Proceedings. On 15 September 2014, Mr Ruhan issued an application in the Orb Proceedings seeking permission to make the draft amendments. He also sought disclosure, proprietary freezing order relief, and to join Dr Cochrane and SMA to the Orb Proceedings.

129. There followed a bitter period of litigation in the Orb Proceedings where Dr Smith and the Orb Claimants faced invasive disclosure orders in respect of the IOM Settlement, and where Mr Ruhan faced allegations of serious litigation misconduct (the "unclean

hands" allegations). The most convenient summary of this appears at [92]-[103] of the Directed Trial Judgment of Foxton J, which merits quoting in full:-

> "92. On 7 May 2014, the Orb Claimants applied to vary the directions in the 2012 Proceedings to allow for the fact that they had "obtained control of substantial assets which represent Orb Assets or the proceeds thereof". On 4 June 2014, the Orb Claimants applied to amend the 2012 Proceedings to add Mr Stevens, Phoenix and another company connected to Mr Stevens, Grenda Investments Ltd ("Grenda"), as defendants, on the basis that they had received assets into which the Orb Claimants were entitled to trace, namely the proceeds of the £92m payment which had purportedly been made under the [Termination and Settlement Agreement]. A proprietary freezing order was sought against the proposed new defendants in May 2014. In her affidavit in support of the application, Dr Cochrane referred to "the steps taken by the [Orb] Claimants to obtain relief in support of the English Proceedings in the Isle of Man", describing the Isle of Man applications as "ancillary disclosure proceedings".
>
> 93. On 24 June 2014, Memery Crystal (for Mr Ruhan) sent a letter before action to Messrs Cooper and McNally accusing them of gross breach of trust and fiduciary duty, and attaching a draft Amended Defence and Counterclaim in the 2012 Proceedings. This document withdrew Mr Ruhan's previous denial of any interest in the Arena Settlement, and sought to join Messrs Cooper and McNally to the 2012 Proceedings. On 15 September 2014, Mr Ruhan issued an application seeking permission to make the draft amendments. He also sought disclosure, proprietary freezing order relief, and to join Dr Cochrane and SMA to the 2012 Proceedings. In his witness statement, Mr Ruhan claimed that he had thought he could truthfully sign the statement of truth to his Defence which denied having a beneficial interest in the Arena Settlement or other assets because he did not understand that an arrangement whereby Messrs Cooper and McNally held such an interest as his nominees constituted a beneficial interest "in a strict legal sense" (an understanding said to have been formed on the basis of advice from Messrs Cooper and McNally).
>
> 94. In addition to the applications issued in the 2012 Proceedings, the Orb Claimants pursued their dispute against Mr Ruhan across a wider front. This included issuing bankruptcy petitions against Mr Ruhan in respect of debts said to be due to companies which had been transferred under the IOM Settlement. Registrar Barber dismissed these petitions on 19 December 2014, in terms which were highly critical of the Orb Claimants and their legal representatives for pursuing the petitions, which she held were "being used as instruments of

oppression". The Registrar observed that some demands "should never have seen the light of day, still less be pursued through to a hearing".

95. Between 2 and 5 February 2015, Cooke J heard the various applications which had been issued in the 2012 Proceedings. With characteristic expedition, he handed down judgment on 11 February 2015. In summary:

i) While holding that the Orb Claimants had real prospects of success in tracing into the £92m on the basis of the 2003 Oral Agreement, he concluded that it would not be just to permit the amendment to bring claims against Mr Stevens and the associated companies because the Orb Claimants had already over-recovered through the IOM Settlement, and because of their behaviour in failing to inform the court of the effect of the IOM Settlement.

ii) He held that Mr Ruhan would be permitted to contend that he had an interest in the Arena Settlement and to pursue a counterclaim on the basis that the IOM Settlement involved a misappropriation of assets in which he was interested, his *volte face* being a matter for cross-examination in due course.

iii) He ordered the Orb Claimants to provide disclosure of the location and value of the assets received as a result of the IOM Settlement.

iv) He accepted undertakings from all parties in relation to assets within their control.

96. In the course of the hearing, Cooke J had asked the Orb Claimants to produce the IOM Settlement documentation. Some of that documentation was produced on the third day of the hearing. Cooke J described the documents provided to him as "extraordinary" ([2015] EWHC 262 (Comm), [50]) and he held that in failing to be open about the terms of the IOM Settlement, the Orb Claimants had not adopted a "clean hands" approach, which reflected badly on Orb, Dr Cochrane, SMA, Messrs Cooper and McNally "and Dr Smith who was doubtless the architect of it all".

97. On 5 March 2015, Dr Cochrane placed Unicorn into creditors' voluntary liquidation, leading to the appointment of the JLs. On 13 March 2015 they were appointed over the other Arena Holdcos, which were similarly placed into liquidation.

98. Following a further hearing on 19-20 March 2015, Cooke J granted Mr Ruhan a worldwide freezing order against the Orb Claimants, Dr Cochrane and SMA up to a value of £67,323,000. He also made a number of criticisms of the Orb Claimants for

not disclosing information to the court, observing that "Mr Ruhan's complaint that the Orb parties cannot be trusted is well-founded".

99. There were settlement discussions between the two sides in April and August 2015. On 30 July 2015, following an enquiry from HMRC, Stewarts explained that the Orb Claimants were holding settlement discussions with Mr Ruhan, that Mr Stevens was involved in those discussions, and that the Orb Claimants believed Mr Stevens was acting as Mr Ruhan's nominee. Stewarts filed a Suspicious Activity Report ("SAR") in relation to the proposed settlement which explained:

> "Mr Ruhan has indicated to our clients that a condition of the settlement is that the great majority of the settlement payments be made to Mr Stevens (or companies nominally controlled by him). Most recently he has insisted that the payment should be split with £5m paid to Mr Ruhan directly and the remaining £25m paid to Mr Stevens. Mr Ruhan asserts that it is a condition of settlement that there are completely separate arrangements with him and with Mr Stevens … We are concerned that under the proposed settlement funds would be paid to Mr Stevens as nominee for Mr Ruhan. Our concerns are exacerbated by the fact that we are aware that Mr Ruhan is the subject of an investigation by HM Revenue and Customs, and also that he is involved in divorce proceedings in which the value of his assets is an issue … In this report we request consent for the entering into of the settlement agreement between our clients and Mr Stevens (or companies nominally controlled by him ….)".

100. On 4 August 2015, Stewarts wrote to Mr Ruhan's solicitors explaining that the Orb Claimants had been advised that a settlement under which Mr Stevens would receive a significantly greater sum than Mr Ruhan was "potentially criminal". Two days later, HMRC wrote to Stewarts advising the Orb Claimants against entering "into a settlement deal with Andrew Ruhan/Anthony Stevens" for the reasons set out in Stewarts' SAR.

101. In the absence of a settlement, the interlocutory disputes, including those arising from the orders previously made by Cooke J, continued. These included an application by the Orb Claimants that the freezing order which Cooke J had granted should be discharged, among other reasons because they had provided sufficient security for Mr Ruhan's claims, Mr Ruhan had provided inadequate fortification and/or Mr Ruhan had unclean hands. This latter issue concerned allegations that Mr Ruhan had:

i) procured the hacking of Pro Vinci's computers;

ii) harassed and intimidated the Orb Claimants and those associated with them;

iii) set out to blackmail the Orb Claimants;

iv) sought to suborn the Orb Claimants' security advisers and obtain confidential information from them;

v) misled the Court as to his interest in the Arena Settlement;

vi) taken steps to prejudice his creditors; and

vii) engaged in oppressive litigation tactics.

102. On 15 January 2016, the Orb Claimants and Pro Vinci obtained without notice Norwich Pharmacal relief in this jurisdiction against Mr Fiddler and Mr Anciano, two individuals alleged to have been involved in Mr Ruhan's "black ops" campaign, with a view to revealing what were said to be attempts by Mr Ruhan to compromise or blackmail Dr Smith, and to obtain confidential and/or privileged information relating to the 2012 Proceedings by hacking computers and bribing security guards. That order succeeded at the "without notice" stage. However, on 26 February 2016 Popplewell J set the order he had made aside for what he found to be "very serious failures of the duty to make full and frank disclosure", and because the application was an abuse of process, its purpose not being to ascertain the identity of a wrongdoer but to obtain evidence with a view to discrediting Mr Ruhan ([2016] EWHC 361 (Comm)). He concluded (at [105]);

> "This is yet another example of Orb and Dr Smith's abusing the court's process for improper purposes in the hope of using the results to harass Mr Ruhan in relation to the main action"."

130. At [394] of the Directed Trial Judgment, Foxton J concluded that:

> "The result of the applications heard by Popplewell J from 14-17 March 2016 was to place both sides under considerable pressure, and in the case of Mr Ruhan, a significant source of that pressure was the expedited trial of the unclean hands issue, which was set down to be tried between 28 November and 12 December 2016 with a time estimate of 5-7 days, and with tight deadlines for pleadings, disclosure and factual and expert evidence. It is no coincidence that a week after those orders were made, Dr Smith and Mr Ruhan were in contact about a possible further round of settlement negotiations. In these circumstances, it is clear that the legal team's strategy of pursuing material to support the unclean hands argument did play a part in bringing the Geneva Settlement into being, and the fact that not every application undertaken in pursuit of that strategy succeeded on

> its own terms does not take Stewarts' costs of those applications outside the scope of their lien."

The Geneva Settlement

131. On 24 March 2016, about a week after the hearing before Popplewell J, Dr Smith and Mr Ruhan exchanged messages for the purpose of settlement discussions. As held by Foxton J in the Directed Trial Judgment, at [104]: "There is limited evidence as to the content of the discussions, but matters progressed sufficiently quickly for draft agreements to be served by Akin Gump LLP […], who were acting for Mr Stevens, on 21 April 2016."

132. In April 2016, Dr Smith and Mr Ruhan met in Geneva to settle the Orb Proceedings and agreed a carve up of assets ("the Geneva Settlement"). The Geneva Settlement was executed on 29 April 2016. See also the Directed Trial Judgment, at [105]:

> "A signed consent order dismissing the 2012 Proceedings with no order as to costs was sealed on 6 May 2016. At around the same time:
>
> i) On 5 May 2016, LCL, Orb and Dr Cochrane signed an agreement which provided that LCL would release its rights said to have arisen from funding the Orb Claimants' litigation in return for (i) the assignment to LCL of all claims Orb had against the JLs and (ii) the transfer to LCL of the "Settlement Property" received under the IOM Confidential Deed.
>
> ii) On 6 May 2016, Dr Cochrane executed stock transfer forms for the purpose of transferring shares in a number of companies, including 25 of the 27 Non-Arena Companies, to LCL ("the LCL Transfers").
>
> iii) On 6 May 2016, Dr Cochrane and Dr Imogen Smith executed declarations of trust in favour of LCL over the Jersey Properties and Flat 1 Hamilton House."

133. Broadly, the structure was that there was to be (if carried through) a carve up between Mr Ruhan/his nominees, and the Dr Smith/Orb Claimant side. Foxton J described the overall effect of the Geneva Settlement at [302] of the Directed Trial Judgment as follows:

> "i) Mr Ruhan surrendered the equitable interest which he had in the [assets misappropriated under the Isle of Man Settlement] as part of a negotiated settlement under which Phoenix acquired rights under the LICSA [defined below]3 (whatever they were); and
>
> ii) those representing the Orb Claimants were willing to undertake commitments in the LICSA4 as part of the price for Mr Ruhan surrendering his asserted equitable interest, such that

> Dr Cochrane and SMA would no longer hold the shares in the Arena Holdcos subject to such rights."

134. There were 6 separate documents executed (see also Ruhan Trial Judgment, at [180]):

i) A "Confidential Settlement Deed" between the Orb Claimants, Dr Cochrane, SMA, Dr Smith, Mr Stevens, Grenda, Phoenix, Bluestone, and GAC Holdings Limited ("GAC"). It contained (inter alia) wide-ranging releases in relation to the claims that had been litigated in the Orb Proceedings (and in the BVI).

ii) A "Confidential Deed" between Mr Ruhan, Dr Cochrane, Dr Smith, Messrs Thomas and Taylor, and Messrs Cooper and McNally. This is an agreement involving all the principal individuals in the Orb Proceedings and recites that the parties had compromised a number of sets of legal proceedings between them and their affiliates (defined widely under clause 1 as including, in the case of individuals, their principals, agents, advisors and (in)directly majority owned companies). Further clause 2 provided a wide agreement not to sue.

iii) An agreement for the sale of shares in Minardi Investments Limited (Minardi), between GAC, Mr Alan Rankin (an associate of Dr Smith, "Mr Rankin"), Dr Cochrane, Phoenix, and SMA (together, the "Minardi SPA"). Under this agreement, GAC and Mr Rankin – who between them held 100% of the shares in Minardi – agreed to sell those shares to Phoenix, for certain specified consideration.

iv) A "Deed of Release and Waiver" between Minardi and SMA. This was executed in connection with the above transaction; SMA agreed to release, discharge, and waive any rights in connection with a £2.5 million loan made to it by Minardi on 20 May 2015.

v) A "£73,750,000 Unsecured Loan Note Due 2018" (the "Phoenix Loan Note") granted by Dr Cochrane to Phoenix. Dr Cochrane agreed to pay £73.75 million to Phoenix by 31 December 2017.

vi) A "Liquidation Inter-Creditor Settlement Agreement" (the "LICSA") between SMA, Minardi, Phoenix and Dr Cochrane. In the SFO Proceedings, Phoenix contended that this agreement gave it an equitable assignment in its favour of any distributions from surpluses in certain Arena company liquidations. This contention was ultimately rejected by Foxton J in the Directed Trial Judgment and more recently by the Court of Appeal: [2023] EWCA Civ 36 (the "Phoenix Judgment").

135. All benefits obtained by Phoenix under the Geneva Settlement were held by Foxton J to have been obtained by Phoenix as Mr Ruhan's corporate nominee for his benefit: see [19] and [21] of the "Ruhan Consequentials Judgment" ([2022] EWHC 1695 (Comm), which addressed consequential issues arising from the Ruhan Trial Judgment):-

> "19. With the benefit of hindsight, and given the matters in [17] above, it would have been helpful if I had been clearer in my findings so far as the Geneva Settlement is concerned in the Judgment. In summary, I was satisfied on the evidence:

i) That the rights and assets acquired under the Geneva Settlement – the shares in Minardi, the Loan Note and the rights under the LICSA - were acquired for Mr Ruhan's benefit, in settlement of the proceedings in which Mr Ruhan faced claims and was bringing his own counterclaims.

ii) Both to continue the nominee scheme already in place, and given that he was involved in proceedings in the Family Division in which the extent of his assets was a very live issue, Mr Ruhan wanted it to appear that the benefits derived from the settlement of the litigation were being acquired by Mr Stevens or entities connected with Mr Stevens rather than by himself.

iii) However, the reality was that this was simply a continuation of the same nominee scheme in which the recipients of the assets and rights under the Geneva Settlement were acting as Mr Ruhan's nominees (cf [15]-[16] of the Judgment). In particular, Mr Ruhan was using Mr Stevens and corporate entities ostensibly linked to Mr Stevens (in this case Phoenix) to hide the fact that he was the beneficiary of the rights acquired under the Geneva Settlement transactions which he had obtained as part of the settlement of the litigation to which he was a party.

iv) The conclusion that Phoenix and Mr Stevens were not intended themselves to acquire any beneficial interest in any assets and rights acquired under the Geneva Settlement is consistent with the fact that they gave Mr Ruhan nothing in return for such a benefit. I rejected the evidence that there had been such a quid pro quo ([168]-[175] and [188]).

v) Equally, there could be no commercial rationale for Mr Ruhan having an economic interest in assets owned by Phoenix which did not derive from his own assets or the settlement of his own litigation.

vi) In these circumstances, I am satisfied that Mr Stevens and Phoenix were acting as Mr Ruhan's nominee in acquiring rights and assets under the Geneva Settlement.

…

21. In these circumstances, I am satisfied that it would be appropriate to make a further declaration to the following effect:

> "In negotiating and entering into the agreements which comprises the Geneva Settlement, Mr Stevens and Phoenix were acting as Mr Ruhan's nominees such that any assets and rights acquired by Phoenix under those

> agreements were to be received and held for Mr Ruhan.""

136. It is important to note that the claim instigated by Dr Smith whereby Orb claimed the 40% share of the proceeds of the sales was finally settled by signed consent order dismissing the Orb Proceedings with no order as to costs, which was sent to the Court on 5 May 2016 and sealed on 6 May 2016 (the "Geneva Consent Order"). More particularly: it provided for the consensual dismissal of the Orb Claimants' claims, Mr Ruhan's counterclaims, and all extant applications; for the discharge of all extant injunctions and disclosure orders; and for no orders as to costs and that the parties would take no action to enforce extant costs orders.

137. It is, I am satisfied, clear that Dr Smith and Mr Ruhan knew that Orb's claim against Mr Ruhan in the Orb Proceedings was settled at Geneva (and as such that it could not be brought again by Ozturk purportedly claiming reflectively via Orb in the Ozturk Proceedings, to which I will refer in due course).

The Aftermath to the Geneva Settlement

138. Dr Smith's side immediately reneged on the Geneva Settlement. As also stated by Foxton J in the Directed Trial Judgment at [108]-[109], on 6 May 2016, Mr Nicholas Greenstone – a long-term associate of Dr Smith and solicitor who acted for a company named Pro Vinci Limited ("Pro Vinci"), which is linked with the Orb Claimants and controlled by Ms Dawna Stickler (a close associate of Dr Smith) – submitted a "Suspicious Activity Report" (SAR) to the National Crime Agency ("NCA") in relation to the imminent payment of a £73.75m loan note by Dr Smith's former wife, Dr Cochrane, to Mr Ruhan's nominee, Phoenix ("the Phoenix Loan Note"), stating that Mr Stevens was believed to act as a nominee for Mr Ruhan, the payment to Phoenix appeared to have been directed by Mr Ruhan, and that the Phoenix Loan Note was a sham and structured so as to evade liabilities he may have to HMRC and others.

139. The NCA refused permission for Dr Cochrane to make the first payment due under the Phoenix Loan Note (for £3m), suggesting that the payment might involve an offence under the Proceeds of Crime Act 2002. Dr Cochrane relied on this, and the force majeure provisions in the Phoenix Loan Note, as a reason for not making payment (see also Ruhan Trial Judgment, at [184]-[185]).

140. As a consequence, various parties (including Phoenix and Minardi) who had made claims to assets subject to the Geneva Settlement and otherwise, sought to protect their interests by way of applications in May and June 2016 (the "2016 Applications") (see also Directed Trial Judgment, at [110]). That culminated in the SFO Proceedings, which were largely determined by Foxton J in 2021 in the Directed Trial Judgment.

141. On 8 June 2017 and 12 June 2017, Phoenix and Minardi (together "P&M") obtained freezing orders against the NCADs (Chepstow Property Co Limited, Brynna Property Co Limited, Llanharan Property Co Limited, SCDS Corporation Inc, Dunedin Holdings Limited, Coegi Properties Limited and Burtonwood Dev Limited) on the basis that there was a serious case that assets had been moved to the NCADs as part of a conspiracy to defraud P&M in the aftermath of the Geneva Settlement, and a real risk that, if not restrained, the NCADs would deal with frozen assets.

The SFO Proceedings

142. The SFO Proceedings dealt with the fallout of the Geneva Settlement. In March 2017, Popplewell J directed that any party claiming to have an interest in the assets in issue in the various 2016 Applications should file position papers setting out which assets they asserted a claim to, and the bases of their claims. Some 23 parties filed position papers (see also the Directed Trial Judgment, at [117]).

143. At this stage, various assets were recovered in the BVI, which survived enforcement proceedings and for which there were competing claims.

144. This leads on to HPII's involvement and the Ruhan Trial Judgment, which constitutes the immediate backdrop to the current claims.

145. HPII was the company which owned the Hyde Park Hotels, first via Dr Smith and later via Mr Ruhan, who had sold these hotels to Cambulo. On the face of it, as far as HPII had been aware of it, the sale was to a third party. However, as the Orb Proceedings came about, allegations arose that Mr Ruhan was behind Cambulo. If that were correct, it would have meant that Mr Ruhan had been on both sides of the bargain, in flagrant breach of the various fiduciary duties owned to HPII, and that Mr Stevens had been assisting him in that. This led to, and was determined in, the subsequent Ruhan Proceedings.

C.3 Key Facts and Relevant Procedural History of Current Claims

The Ruhan Proceedings

146. The current proceedings (dealing with both the Ozturk and HPII Proceedings) are direct consequences of the Ruhan Proceedings which were issued by HPII and its liquidator against Mr Ruhan and Mr Stevens on 6 April 2018, and which resulted in the Ruhan Trial Judgment.

147. In those proceedings, Mr Ruhan was alleged to have fraudulently breached his fiduciary duties to HPII in secretly purchasing HPII's property, the Hyde Park Hotels, via nominees (including Mr Stevens). HPII alleged that Mr Ruhan made massive profits from the on-sale of the hotels of £102.26m, for which he should account. Mr Stevens was alleged to have dishonestly assisted in the purchase, and later disbursal of the profits. Mr Ruhan and Mr Steven defended the claims. The trial was held between November 2021 to January 2022.

148. On 14 February 2022, Foxton J circulated the Draft Ruhan Trial Judgment under which HPII succeeded. The Ruhan Trial Judgment was formally handed down on 23 February 2022. Serious findings of dishonesty were made against the defendants, Mr Ruhan and Mr Steven, at [217]-[218]:

> "217. It follows from these conclusions (and I am fully satisfied) that Mr Ruhan and Mr Stevens have consistently lied about this issue:
>
> i) So far as Mr Ruhan is concerned, in addition to the lies told to HPII's shareholders and the noteholders in 2004/2005, he

> lied in his evidence before Mr Justice Cooke in the Orb Proceedings, in his evidence before Mr Justice Mostyn in the Family Division proceedings and in his evidence before me.
>
> ii) So far as Mr Stevens is concerned, he too lied in his witness statements in the Orb Proceedings, as well as before me in the Directed Trial, and in these proceedings.
>
> 218. Mr Ruhan told those lies before me with considerable tactical acuity and, at times, controlled aggression. Mr Stevens' dishonest evidence involved rather more in the way of bluster, but also rather more in the way of affability. Any observer of their evidence in this case would have been left in little doubt that it was Mr Ruhan who had at all times been the dominant figure and decision-maker in their relationship, with Mr Stevens playing an essentially supporting role."
>
> In favour of HPII, Foxton J found at [241] of the Ruhan Trial Judgment "that Mr Ruhan is liable to account for any gain he has made from the Cambulo Madeira Transaction".".

Suspicions about the Scheme arise

149. Following the Ruhan Proceedings and the Ruhan Trial Judgment in favour of HPII, which HPII alleges Mr Ruhan and Dr Smith sought to undermine by way of the Scheme, in June 2022 and unbeknownst to HPII, the Ozturk Proceedings were issued (by Ozturk, MDL and the NCADs against Mr Ruhan). Before describing the substance of the Ozturk Proceedings which amount to the alleged Scheme and to which I will turn in detail in due course, it is first convenient to set out how the suspicions about the Scheme arose.

150. Following the Ruhan Trial Judgment in the Ruhan Proceedings, in September 2022 HPII issued the CPR 71 Examination. During the CPR 71 Examination, which took place on 17 January 2023, matters came to light, including the existence of the Ozturk Proceedings/Default Judgment, which suggested an anti-enforcement scheme had been put in place by Mr Ruhan and Dr Smith.

151. On 26 January 2023, HPII made an urgent without notice application for a post-judgment WFO against Mr Ruhan in the Ruhan Proceedings. This was granted by Foxton J ([2023] EWHC 179 (Comm)) with him expressing his views as follows at [5]-[6]:

> ""5. […] On its face, the claim [in the Ozturk Proceedings] is the most extraordinary document and, as matters stand, it is difficult to believe that any competent lawyer looking at the claim would not have readily identified a number of points worth challenging. Mr Ruhan, however, did not challenge any of those points, but allowed default judgment to be entered against him in that amount. Then, following that default judgment, he entered into an agreement which transferred shares that he was holding in a

> company called Minardi to Marlborough and, more recently still, gave a charge over his assets to Marlborough.
>
> 6. This is a complicated case and **it may be that, with the benefit of a full explanation, all of this can be explained away, but at the moment I am satisfied that it gives rise to a real risk that this is a collusive action undertaken by Mr Ruhan, with the involvement of Dr Smith, with a view to creating artificial charges or rival claims to Mr Ruhan's assets so as to prevent HPII enforcing against them**. I should say that the explanations that Mr Ruhan has had an opportunity to give in his CPR 71 examination and in a document provided last night are, in my view, nowhere near sufficient on their own to take a real risk of dissipation off the table." (emphasis added)

152. On 1 February 2023, HPII obtained an urgent ex parte WFO against MDL, and an interim injunction against Dr Smith. During the hearing, Foxton J commented:-

> "I am satisfied to the requisite degree of arguability that this is contrived litigation in which Dr Smith and Mr Ruhan are cooperating with a view to obstructing the enforcement of the judgment. As I say, it's a complex case and it may well be with the benefit of a fuller explanation matters appear different, but the material you have taken me to, and of course which I looked at last Thursday and made some observations on then, certainly identifies a number of red flags which require convincing answers before they would cease to be points of concern. To my mind, they are more than sufficient to get you to the relatively low threshold of arguability that you require today. I think the next step is back to identify the causes of action."

Procedural history of the current HPII and Ozturk Proceedings

153. With suspicions about the alleged Scheme realised, on 2 February 2023, the HPII Proceedings were issued (the first of the two sets of claims at issue in this trial). On 6 February 2023, MDL/Ozturk acknowledged service.

154. On 10 February 2023, the WFOs and interim injunction were continued by Dias J.

155. On 20 February 2023, HPII issued the Set Aside/SO Application in the Ozturk Proceedings (which is the second of the two sets of claims I am asked to determine). On 2 March 2023 the Ozturk Proceedings were transferred into the Commercial Court by order of Master Clark to be case managed alongside the HPII Proceedings.

156. On 6 March 2023, HPII filed its Particulars of Claim ("POC") (with permission for a longer POC).

157. On 13 April 2023, MDL/Ozturk filed a Defence. Dr Smith also filed a Defence.

158. On 8 August 2023, HPII issued an application for RFI responses to be given, disclosure, to strike out part of Dr Smith's defence, and for permission to amend its POC .

159. On 26 September 2023, Mr Crossley (MDL/Ozturk's solicitor) filed a response.

160. On 13 October 2023, there was a CMC before Dias J. HPII was successful in its application (as reflected in the order made by Dias J (the "Dias Order")). In this regard the Ozturk Claimants and Dr Smith were required to provide disclosure, evidence, and RFI responses by certain dates. HPII was given permission to rely on its amended POC ("APOC") in the HPII Proceedings as its factual basis for the Set Aside/SO Application. The CMC was adjourned.

161. Thereafter, no amended Defences were filed. No statement of case was filed by Mr Ruhan. On 2 November 2023, HPII applied for unless orders against MDL/Ozturk/Dr Smith arising out of unpaid costs orders in the Dias Order. On 7 November 2023, HPII applied to amend that above application, seeking debarring relief for other failures to comply with the Dias Order. HPII also separately applied for the Ozturk Claimants to be debarred in the Set Aside/SO Application for failures to comply.

162. On 8 November 2023, Mr Bryce (an MDL de jure director) filed a witness statement for MDL/Ozturk in purported compliance with the Dias Order ("Bryce 1"). HPII did not accept this as compliant and filed reply evidence on 14 December 2023.

163. On 24 November 2023, Dr Smith was automatically debarred by operation of para 6 of the Dias Order as he failed to provide any RFI responses as ordered.

164. On 9 January 2024, HPII applied to re-amend its APOC.

165. On 19 January 2024, the CMC continued before Calver J. HPII was allowed to re-amend (the "Calver Order"), which also noted the automatic debarring of Dr Smith.

166. HPII's debarring applications were listed for 14 February 2024. On 13 February 2024, the Ozturk Claimants confirmed that they consented to the debarring order sought by HPII. Revised directions were given for a shorter trial.

167. None of the costs orders made against MDL/Ozturk/Dr Smith have been paid. HPII issued a statutory demand against MDL and Ozturk.

168. On 27 March 2024, MDL/Ozturk applied to injunct HPII from presenting winding-up petitions.

169. On 19 June 2024, Dr Smith (formally) became a de jure director of Ozturk so as to represent Ozturk at the hearing (and MDL adopted his submissions). On 24 June 2024, CICCJ Briggs dismissed MDL/Ozturk's applications as being entirely without merit. The indemnity costs ordered to be paid by MDL/Ozturk have not been paid.

170. Dr Smith was recently convicted of a (bounce back loan related) fraud and of concealing criminal property or the use of it. On 20 September 2024, he was sentenced to 18 months' (immediate) imprisonment at Southwark Crown Court. He also faces contempt proceedings in the Commercial Court.

D. THE SCHEME

171. It is HPII's case that the Scheme was set in motion by Dr Smith and Mr Ruhan following the circulation of the Draft Ruhan Trial Judgment on 14 February 2022, which is said to constitute the "trigger event" for the Scheme.

172. On 25 January 2023, Mr Ruhan gave a written account in the CPR 71 Examination that he was contacted by Dr Smith shortly after the draft judgment was circulated, and that meetings ensued between them in March and April 2022:

> "In February 2002 [sic; 2022], and **within a couple of days of the HP2 decision being issued, I was contacted by Mr Gerald Smith requesting a meeting**. I have been in serious litigation with Mr Smith since 2005, as a result of which my commercial life has been totally destroyed, with an inevitable impact on my private life. I was also aware that he had worked closely with both Mr McDonald and Mr Campbell (which was reconfirmed and very evident in the evidence disclosed in HP2 trial by Mr McDonald) who I believe to be the driving force behind the HP2 Claim. I believed he would have known of the outcome of the trial from either Mr Campbell or Mr McDonald as it had yet to be handed down and was not public. I had not met with Mr Smith for several years and had hoped it would remain that way so refused to meet.
>
> Mr Smith **rang several times during the next couple of weeks and then suddenly appeared without warning at my home in Mallorca seeking a meeting which I eventually agreed to have**. He explained that as a result of the HP2 judgement, he was going to recommence litigation against me from several parties, and introduce yet another claimant in Marlborough Developments Ltd, relating to my role in Sentrum dating back to March 2005.
>
> In an attempt to avoid yet more litigation **I met with Mr Smith on several occasions in March and April 2022**, primarily near my home in Palma." (emphasis added)

173. I reject Mr Ruhan's account as to the reasons for the meeting, or why Mr Ruhan met with Dr Smith, having regard to the events that followed as addressed below. I am satisfied that the reasons given for the meeting and the reasons for their meeting together, in this account, were untruths designed to justify the Scheme that was being hatched, and events that were to follow.

174. I am, however, satisfied that Mr Ruhan was telling the truth when he said that he did meet with Dr Smith on several occasions around this time, and in the context of subsequent events, and for the reasons addressed below, I am satisfied that the true reason for such meetings between Mr Ruhan and Dr Smith was to hatch, and in due course carry into effect, the Scheme (i.e., that they planned to collude together to undermine HPII's judgment rights and to act for their mutual advantage) from this point.

175. I also reject the suggestion that Mr Ruhan was attempting "to avoid yet more litigation" in circumstances in which, in October of the same year, Mr Ruhan was himself threatening Mr Stevens with litigation in what has been referred to as the "Personal Email" (as defined in due course below).

176. On 11 March 2022 (i.e., well before the consequentials hearing), a draft order was circulated via email by HPII's lawyers. It included provision for Mr Ruhan to pay principal of £102.26m plus compound interest and costs. It was readily apparent therefore that HPII was holding Mr Ruhan to account, and that he would be under a liability to pay over £100m plus interest and costs to HPII.

177. On 8 April 2022, Mr Ruhan's lawyers responded with tracked changes to the draft order. However, no issue was, or indeed could be, taken with the principal sum (save for making a purely contingent point that HPII should give credit for any recoveries it made in the SFO Proceedings – of which there were none). Mr Ruhan was therefore well aware that he was under such a liability which, together with interest, would be a sum very much larger than £100 million owed by him to HPII.

178. On 27 May 2022, Mr Ruhan's lawyer, Mr Goodwin, informed Mr Ruhan that "the likely quantum of the judgment in the HP2 proceedings at the June hearing [was to be] around £187m*"*.

179. On 29 April 2022, Mr Ruhan paid Wynndel Property Management Ltd ("Wynndel") £120,000 with the reference "Consultancy Fee" ("the Consultancy Fee"). The de jure director and person with significant control of Wynndel listed at Companies House is Mr Anthony Smith – Dr Smith's brother. Mr A Smith has previously been held to have acted as Dr Smith's nominee in relation to a different company – see Directed Trial Judgment by Foxton J, at [610]. Equally, Mr A Smith's evidence under oath has previously been rejected by Foxton J: see February 2023 Judgment at [7(iii)] (referring back to another judgment in this long-standing litigation: [2023] EWHC 255 (Comm)): "The statement of truth for MDL was signed by Mr Anthony Smith, Dr Smith's brother and another individual whose evidence on oath I have been unable to accept …".

180. I am satisfied that no proper or substantiated explanation has ever been given for this payment by Mr Ruhan. Whilst the reference "Consultancy Fee" was vague, it was made to Wynndel which has obvious connections to Dr Smith. It is a reasonable inference that this was paid for reasons connected with the Ozturk Proceedings, and either in connection with the moving of Mr Ruhan's assets to them under the Scheme and/or to pay for it.

181. On 17 May 2022, Ozturk was incorporated. A Letter before Action ("LBA") followed 2 days later. I am satisfied that there is no way that Ozturk could have become a shareholder in Orb before intimating the claim made in the LBA, based on such a shareholding, only two days later.

182. It has since emerged in these proceedings (through Mr Bryce's witness statement; Bryce 1) that Ozturk was **not** in fact a shareholder of Orb at all. This means that the stated basis for the Ozturk claims in the LBA and subsequent Particulars of Claim was, I am satisfied, knowingly false.

183. There is, in fact, no evidence of Ozturk having acquired any claims to sue Mr Ruhan. That was in any event not its stated basis of claim. In any event, Orb Arl was *en désastre* (i.e., bankrupt), and the Viscount of the Royal Court of Jersey (who acted as administrator of Orb; "the Viscount") has confirmed that Orb Arl has not assigned or sold any rights against Mr Ruhan to Ozturk.

184. In any event, the claims of Orb were settled at the Geneva Settlement stage, as Dr Smith and Mr Ruhan well knew (such that there was nothing even capable of being acquired from Orb, with respect to these so-called claims against Mr Ruhan).

185. On 19 May 2022, the Ozturk Claimants sent the LBA to Mr Ruhan, by email via St Paul's Solicitors. The Ozturk Claimants' instructed solicitor was Mr Crossley. Mr Crossley previously acted for Mr Thomas and Mr Taylor in the SFO Proceedings (who in the SFO Proceedings took a strong stance against Dr Smith but have since allied with him). Foxton J commented on this in the February 2023 Judgment, at [7(iv)]:

> "At the Directed Trial, Mr Crossley said "there are many strange bedfellows in this case. We all seem to be swapping alliances as we go". That was certainly true of Mr Crossley, who now acts for MDL. Mr Crossley has confirmed that Dr Smith is providing "consultancy services" in respect of the MDL litigation. Somewhat surprisingly, for very many reasons, Mr Ruhan consented to judgment in the full amount of MDL's claim. I have since granted a worldwide freezing order against MDL and Dr Smith, on the basis that there is a real risk that these proceedings and the resulting judgment are collusive in nature, reflecting co-ordinated activity between those behind MDL (including Dr Smith) and Mr Ruhan to frustrate the judgment obtained by HPII."

186. These are, of course, the very issues before me for final determination at trial. It is clear that the claims set out in the LBA were obviously bad claims, and I agree that that would have been appreciated as such by any remotely competent solicitor. I am also in no doubt that Mr Ruhan, steeped as he was in knowledge of all the historic events, knew perfectly well that they were bad claims.

187. I am satisfied that the sending of the LBA was the first stage of what HPII has described, rightly in my view, as the necessary "legal choreography" intended by Dr Smith and Mr Ruhan to set a pretext for what would on paper be intended to be a genuine claim between parties at arm's length.

188. The various references in the LBA to Foxton J's February 2022 Ruhan Trial Judgment show that Dr Smith/MDL/Ozturk had full knowledge of its terms, and the consequences it would have for Mr Ruhan and HPII. The LBA therefore had embedded within it, the very reason why the Scheme was necessary, so as to thwart the Ruhan Trial Judgment.

189. On 23 May 2022, Ozturk emailed (from a Proton email account) Mr Ruhan a "working draft settlement agreement". There are no records anywhere of Mr Ruhan engaging in <u>any</u> negotiations about settlement, or about any of the terms of any settlement documents prior to this, as one would expect if the claim was genuine, and there was to be any genuine exploration of the settlement of the same (followed thereafter by

settlement documentation). The indecently swift timing of such settlement documents following the LBA is entirely consistent with this being part of the Scheme already hatched between Dr Smith and Mr Ruhan, and now being carried into effect.

190. I consider that it is inconceivable that, if this was at arms' length, there would be no contemporaneous records or evidence of negotiations at the time, especially given the extremely onerous nature of the June Settlement for Mr Ruhan that was to follow (as addressed below).

191. It is also notable that this email occurred not on the "legal choreography" chain but as part of a private chain of emails (thereby separated from the lawyers' files), something that was to become a characteristic of much of the correspondence that ensued.

192. I also consider that if this was a genuine case of Mr Ruhan being pursued by third parties, Mr Ruhan would have forwarded this draft to his lawyers seeking advice, but he did not do so.

193. Yet further, the draft settlement deed refers in clause 3.1.4 to the Ruhan Trial Judgment, which sheds light on what I am satisfied was the true reason for the (sham) litigation that was to follow and its (sham) settlement – namely to thwart HPII's judgment rights thereunder against Mr Ruhan.

194. On 25 May 2022, Mr Ruhan forwarded the LBA to Mr Goodwin by email at 14:32 saying "**As if matters couldn't get more bizarre**, I attach a copy of a Letter Before Action which I would be grateful if you could read and then give me a call" (emphasis added).

195. I am satisfied that this is faux surprise to give the false impression that Mr Ruhan was surprised by the LBA, not least in circumstances in which (per Mr Ruhan's own account) he had been meeting with Dr Smith in March and April 2022 and (per Mr Ruhan's account were it to be taken at face value) Dr Smith had referred to further proceedings against Mr Ruhan. I am satisfied that the forwarding of the LBA to Mr Goodwin was all part of the "legal choreography".

196. What is, I am satisfied, telling, is that Mr Ruhan did not send Mr Goodwin the draft settlement chain (which he already had) or ask for any advice on settlement. Indeed, he made no reference to this development at all. It beggars belief that he would not have done so if there had been a genuine claim in the LBA that Mr Ruhan was proposing to settle and matters had already reached the stage whereby he had been provided with a draft settlement agreement (at which point the obvious thing to do would have been to consult Mr Goodwin about it – yet he does not mention it at all).

197. Also on 25 May 2022, at 15:10, Mr Ruhan responded to Mr Crossley saying he had forwarded the LBA to his lawyers but adding "however I do not have the requisite resources to contest this claim". Again I am in no doubt that this was no more than another part of the legal choreography, introducing into the mix the suggestion that the reason he was settling the (obviously spurious) claim was because he did not have the resources to contest it.

198. In this regard, I consider that Mr Ruhan is somewhat caught out by the timing of an important strand in the web (of deceit) that he was seeking to spin. Mr Ruhan is

confirming to Mr Crossley that he did not have the requisite resources to contest the claim, yet this is **before** he had even received a quote from Mr Goodwin as to what the costs of defending the proceedings would be.

199. I am satisfied that the clear inference to be drawn is that he was always going to do what he did, because he knew the claim was never going to be fought, and (as shall be seen) he was behind the bringing of the claim against himself, as part of the Scheme. The spurious reason as to his resources is simply being added into the mix to provide what he seems to have believed would be a (superficially credible) reason to settle such litigation.

200. Mr Ruhan has not even got his sequencing correct or consistent. In his written account in the CPR 71 Examination (at paragraph 5) he says "I forwarded the claim to my lawyers and their advice was that it would cost in excess of 2.5m GBP to fight the case, which I clearly did not have. I confirmed the same in response to St Paul's Solicitors*"*. That statement is, I am satisfied, demonstrably false. Mr Ruhan made the confirmation before he received any quote or received any advice. As will appear, the quote only came on 27 May 2022, and itself made no difference to Mr Ruhan's actions, as it is evident he had already resolved not to fight any claim (which was an integral part of the Scheme) before receiving such quote.

201. On 26 May 2022, Mr Goodwin emailed Mr Ruhan saying (inter alia):

> "I attach the Claimants' skeleton and supporting documents for the consequentials hearing . I have asked George to update your draft skeleton for the hearing and then will forward to you for final review. I then suggest you file a notice of acting in person to avoid any further costs. If you wish to attend the hearing remotely then you will need to seek permission from the Judge before the hearing. Separately I will review the letter of claim received from St Paul's solicitors and then give you a call – please let me know when would be convenient".

202. On 27 May 2022, Mr Goodwin emailed Mr Ruhan saying:

> "Following our call, we would expect the cost of defending the claim set out in the letter of claim from St Paul's solicitors to be no less than £2.5m and we would require a payment on account of £100,000 to investigate and respond to the letter of claim given we have no knowledge of the background to the claim except for the matters concerning the HP2 proceedings. Given the value of the claim stated at £852m and the likely quantum of the judgment in the HP2 proceedings at the June hearing of around £187m we would recommend you take advice from an insolvency practitioner before incurring any legal costs in responding to the claim. I will forward the final draft of the skeleton for the June hearing and a notice of acting in person that I suggest you file and serve at court next week to avoid any further legal costs. If you are attending the June hearing remotely then you will need to seek permission from the court and provide an address from which you will be attending".

203. The letter further evidences the fact that Mr Ruhan knew perfectly well that he would soon be facing a very substantial liability (of some £187m odd) under the Ruhan Consequentials Judgment.

204. Mr Goodwin's quote of £2.5 million with £100,000 on account is, on the facts, nothing less than surreal. I agree with the view previously expressed by Foxton J (in [2023] EWHC 179 (Comm) at [5]), that any reasonably competent solicitor would have taken one look at the LBA and appreciated it was littered with serious problems which would justify strike out or summary judgment in short order.

205. It is, of course, possible that Mr Goodwin did not give the content of the LBA much thought, and instead focussed on the sums stated to be at stake. I am satisfied that, from Mr Ruhan's perspective, the obtaining of such a quote was mere "window dressing" to buttress the suggestion that Mr Ruhan had a basis for this expressed conclusion that he did not have the requisite resources to contest this claim. This is to be contrasted with the reality of the matter which is that the proceedings (if issued) could have been despatched in short order by strike out or summary judgment (and at very much less cost). The irony, as will be seen, is that Mr Ruhan was to go on and himself pay for the proceedings to be brought against him (if matters could not get more surreal or more bizarre – to borrow from Mr Ruhan's own description).

206. So far as Mr Ruhan's knowledge is concerned, it will be appreciated (as already addressed above), that all issues regarding Orb Arl and the Orb Proceedings formed part of the history of the Ruhan Proceedings, including the Geneva Settlement (which was addressed in the Ruhan Trial) and so it would have been blindingly obvious to Mr Ruhan that Ozturk's indicated claims were hopeless, and totally without merit.

207. On 7 June 2022, Mr Ruhan paid £25,000 to a firm of insolvency practitioners named Kirker & Co, reference "(legal fees)". In his CPR 71 Examination, Mr Ruhan's evidence was that this was paid in relation to his taking advice about bankruptcy. HPII submits, with some force, that this sheds further light on the Scheme and Mr Ruhan's intentions – to inflate his creditors in the context of an intended insolvency so as to dwarf HPII's claim as creditor against him.

208. On 7 June 2022**,** Mr Ruhan paid £15,000 to Wynndel, with the reference "(MDL)". According to Mr Crossley's affidavit of 13 February 2023, given in other proceedings on the direction of Foxton J (before the February 2023 Judgment), Mr Crossley was instructed by MDL in relation to three matters, set out at paragraph 8 of the affidavit. One matter included the issuing of a letter of claim and proceedings against Mr Ruhan: the Ozturk Proceedings. Mr Crossley deposed that this payment was made to his firm in respect of litigation against Mr Ruhan, to pay legal fees and the claim form issue fee, and that he had received money in respect of that matter from Wynndel. Exhibited to his affidavit was a screenshot of a payment made by Wynndel to Mr Crossley's firm (St Paul's) on 7 June 2022 at 17:23 for £15,000.

209. I am in no doubt that this represents Mr Ruhan paying St Paul's legal fees and the claim form fee for the Ozturk Proceedings claim form to be issued against himself, as is made clear by the use of the reference "MDL". This is, perhaps the clearest example of the sham nature of the proceedings, and the overall Scheme - no one pays another to sue them, still less for hundreds of millions of pounds.

210. Mr Ruhan had no obligation to pay MDL (or Wynndel) at this time – it was intended to be paid so that MDL could use it to pay for the claim against Mr Ruhan. The circuitous route to Wynndel was merely to avoid Mr Ruhan paying MDL (or indeed Mr Crossley's firm) directly.

211. On 9 June 2022, Ozturk (from a Proton email account) emailed Mr Ruhan a draft POC for the Ozturk Proceedings, and a proposed voting undertaking, saying "Please find attached a draft POC that we intend to seal and serve shortly. In addition, please also see our proposed voting undertaking*"*. The voting undertaking said:

> "We write to confirm, subject to the conclusion of the proposed settlement agreement, that we will support and vote in favour of your intended Individual Voluntary Arrangement. In particular we confirm that we will vote our entire unsecured creditor vote in favour of your proposed IVA which we understand you are currently seeking to organise with your proposed IVA supervisor, Kroll's. […] In addition, should, for some reason, the IVA not be successful, we will, nevertheless, vote to bring any insolvency proceedings that ensure, to an end in the shortest possible period, and will in these circumstances work closely with you to achieve that end".

212. This was on the "private chain" and kept off the St Paul's Solicitors' (i.e., the Ozturk Claimants' solicitors') file. It clearly demonstrates motivation for the Scheme (to dwarf HPII and control any potential insolvency process) and a close working relationship between Mr Ruhan and the Ozturk Claimants (the undertaking even goes so far to say that Ozturk will "work closely" with Mr Ruhan to bring any insolvency to an end as soon as possible). I am satisfied that this is not the communication of a genuine creditor claiming hundreds of millions from a debtor but rather is a communication of someone whose interests are aligned with those of Mr Ruhan.

213. On 10 June 2022, the Ozturk Proceedings were issued, claiming £852,170,110 plus interest and costs from Mr Ruhan. The same day, Ozturk sent Mr Ruhan an email (again from a Proton email account) attaching "the filed claim form, **the fee receipt,** and filed POC" (emphasis added). There is no reason to send the person being sued the fee receipt. I am satisfied that Mr Ruhan was sent the fee receipt as he paid the fee, it also providing confirmation that his money was used by Dr Smith/the Ozturk Claimants to duly issue the claim against himself, as part of the Scheme.

214. On 17 June 2022, Ozturk then emailed (from a Proton email account) Mr Ruhan regarding an impending settlement, stating the following (the "Assistance with Recovery Email"):-

> "Our intention is to end the litigation upon an agreed judgement and settlement. Our settlement proposal advances to you the judgment sum on terms (to be finalised) that will allow you to enter into an [IVA] with your creditors. This consideration is intended to give you sufficient time to negotiate an IVA with a Supervisor you and we approve of. The Judgement Debt advances are intended to settle two discrete elements of the Judgment Debt…".

215. Under the heading "Assistance with Recovery", they also said:

> "We understand a number of assets held by Mr A Stevens may require litigation and or the threat of litigation to enable recovery. You have indicated that repayment of the secured advance may require litigation and as such may require substantial litigation funding from appropriate commercial litigation funders. We have arranged (subject to contract) such funding. However, we are open to other third party funders at your suggestion."

216. Drafts were attached to the email, and the draft Confidential Global Settlement Deed (which included Dr Cochrane as a party) included reference at clause 3.1.5 (under "Judicial History") to "In the High Court Justice Business and Property Courts, Oztruk [sic] 2 Recoveries and others V Andrew Joseph Ruhan Sealed Judgement", and in Sch 2 ("The Judgments") to "E. In the High Court of Justice Business and Property Courts in case BL-2022-000963".

217. The "Judicial History" section provided further:-

> "In summary, the Judgments describe a number of transactions and events involving assets that Mr Ruhan and others caused to be taken from Orb. The Judgments set out how money was moved through trusts and offshore structures by or at the direction of Mr Ruhan. The Judgments describe Mr Ruhan as the driving force behind the transactions and the large commercial frauds in which Mr A Stevens provided dishonest [sic] as his nominee and that both were responsible for a number of dishonest acts that damaged the Claimants Group and their associates and that both had repetitively lied in various High Court trials and proceedings."

218. Once again the timing does not work. The reference to the Ozturk Proceedings "Sealed Judgment" in the draft Deed is premature because at that time there was no judgment (that only came on 5 July 2022), nor had Mr Ruhan made any admission by that point.

219. The point is, however, not merely a timing one, but a substantive one. There would be no need for Mr Ruhan to concede to a judgment if a full compromise was in sight. The email's language is staged as a formal record of a supposed understanding, with the reference to the IVA supporting HPII's case that Mr Ruhan was actively looking at an insolvency process and that manufacturing creditors was intended.

220. What this shows, I am satisfied, is that Mr Ruhan and Dr Smith **pre-agreed** that there would be a default judgment entered against Mr Ruhan regardless (which would make no sense in the context of a genuine settlement).

221. It is also noteworthy that none of this discussion is ever relayed or mentioned in correspondence with Mr Crossley on the "legal choreography" chain. I consider that this was because it suited Mr Ruhan and Dr Smith that the settlement of the supposed claims was not discussed there, so that the Ozturk Claimants could go on and seek a default judgment from the court.

222. The consequentials hearing in the Ruhan Proceedings took place on 21-22 June 2022. Mr Ruhan appeared in person.

223. On 23 June 2022, Ozturk emailed Mr Ruhan (from a Proton email account) saying, "Please find attached a final draft of the Settlement Deed and MDL charge for your approval", and attaching further drafts of certain settlement documents. The words "for your approval" are noteworthy; this is evidently Dr Smith (as Ozturk) drafting something that Mr Ruhan was being asked to approve, rather than any negotiation from a serious group of creditors claiming to be owed £0.85bn.

224. On 24 June 2022, Ozturk emailed Mr Ruhan (from a Proton email account), stating:

> "Please find attached a scanned pdf of the completed form. The original has been sent to our solicitors. It would assist the process of concluding the judgment if your solicitors would kindly confirm they have lodged the form in the usual way. Additionally may we ask you to send an email copy of this document directly to our solicitors".

225. A scanned pdf of a signed admission form was attached. Mr Ruhan then sent it to Mr Crossley stating: "Further to the receipt of the Letter before Action and the Particulars of Claim I am returning the Admission Form accepting the claim duly signed. It is my understanding that this is to be returned to you and you can lodge with the courts". Other than the name, address, DOB, and phone number, none of the other details were filled in. Mr Crossley replied he would be seeking judgment on Mr Ruhan's admission "of the debt".

226. It is, on any view, strange that Ozturk would be emailing Mr Ruhan a filled in admission form at all, let alone one signed by Mr Ruhan. The inevitable inference is that Mr Ruhan was with Dr Smith and handed him a hard copy, or otherwise sent a hard copy to Dr Smith, without going via solicitors.

227. Mr Ruhan was sent a blank form with the Ozturk Proceedings itself, with the response pack, and with a letter from St Paul's on 14 June 2022. Ozturk says, in the email of 24 June 2022, that Mr Ruhan's solicitors confirming lodging it would "assist the process of concluding the judgment", making clear that it was agreed prior to this that a judgment could be obtained under the Ozturk Proceedings, and that both Mr Ruhan and Dr Smith had an interest in "assisting the process of concluding the judgment".

228. By this time, the admission has not been sent back to Mr Crossley and the Ozturk Claimants had not sought a judgment. Further, Mr Ruhan's email to Mr Crossley makes no reference to Ozturk having sent Mr Ruhan the filled-in form via email, or having been asked to send it to Mr Crossley. Mr Ruhan simply refers to returning the admission "further to receipt of the LBA and POC". That gives the impression that Mr Ruhan was responding with an admission form as a litigant usually would. Again, I am satisfied that this was for the legal choreography chain.

229. There is no mention whatsoever of any so-called settlement in this correspondence, which was at an advanced state of drafting by this time, such that Mr Ruhan (if he had genuinely been at arm's length) could simply have settled the claim without assisting the Ozturk Claimants in obtaining a default judgment from the court. As someone who

Foxton J has described as "tactically aware", I consider that it was totally out of character for Mr Ruhan to fall on his sword and admit the claims without any form of fight whatsoever (quite apart from the fact that he, of all people, knew that the claims were demonstrably bad).

230. As is clear from all that has gone before, and the findings that have been made in respect of him, Mr Ruhan is a highly intelligent individual and he has, from his very considerable history of litigation, good legal understanding. He aggressively and robustly fought all litigation against him for years. But when it came to these claims, he immediately fell on his sword.

231. It would have been obvious to him that the Ozturk Proceedings against him were hopeless both from a reading of the LBA and from a consideration of the POC, which, I am satisfied, they were. It is convenient at this juncture to set out the reasons why, with respect to each of the Ozturk Claimants' claims.

232. So far as Ozturk's claims were concerned, and as already noted, all of Ozturk's claims in the Ozturk Proceedings were said to be brought as a shareholder of Orb Arl bringing the "equivalent" of a reflective loss claim. But that claim was on a knowingly false basis as Ozturk was not a shareholder of Orb Arl. In any event, the claims were not the "equivalent" of reflective loss claims (whatever was meant by that). They were claims for reflective loss and were self-evidently bad for that reason. Yet further Orb Arl is *en désastre* and under Viscount control, and so Ozturk had no business, authorisation or ability to purport to bring such claims (reflectively or otherwise). In any event the claims Ozturk made were advanced by Orb Arl against Mr Ruhan in the Orb Proceedings (as Mr Ruhan knew). As Mr Ruhan also knew, those claims were settled at the Geneva Settlement, whereupon the Orb Claimants' claims were settled and dismissed with no order as to costs (see the Geneva Consent Order). As such, Orb Arl's claim was compromised. Yet further, Ozturk's claims in the Ozturk Proceedings were hopelessly time-barred, not least seeing as Dr Smith already litigated them via Orb Arl itself in the Orb Proceedings.

233. As for MDL's claim, this was based on an alleged conspiracy between Mr Ruhan and Mr Sodzawiczny (who was not joined as a defendant to the Ozturk Proceedings, doubtless because his joinder would have slowed down the Scheme's swift operation) resulting in an alleged diversion of a corporate opportunity. It was said that Mr Ruhan and Mr Sodzawiczny were working in a secret partnership, and that Mr Sodzawiczny "manoeuvred" the transfer of a data centre opportunity in Camberley (the "Camberley Project") from MarlboroughTech Limited ("MTech", a 50% subsidiary of MDL) in "flagrant breach of his fiduciary duties" to MTech, with Mr Ruhan dishonestly assisting him to do so. It was said that the Camberley Project profits were then "folded into" the Sentrum date centre business which Mr Ruhan developed with Mr Sodzawiczny.

234. It was said that the subsequent sale of certain Sentrum businesses to Digital Realty generated £236m of profit for Mr Ruhan and Mr Sodzawiczny. MDL claimed all of that as "the loss to MDL and MTech". Moreover, it was said that, of the net Sentrum profits, some £160m was transferred to Mr Cooper on Mr Ruhan's instructions, and some £92m was paid to LMC. MDL additionally claimed the £92m.

235. There are a myriad of reasons why this claim was hopeless. First, and fatally, the only claim specified was MTech's. MDL was its 50% shareholder. Therefore, MDL's claim

was bad for reflective loss. Any alleged loss was MTech's, not MDL's. Secondly, no particulars of dishonesty were given against Mr Ruhan or Mr Sodzawiczny, and it was only pleaded that Mr Sodzawiczny was an MTech director (not an MDL director). No particulars of dishonest assistance were given against Mr Ruhan either. Thirdly, MDL claimed the £236m *twice* (having effectively claimed for the same alleged fraud two times) and the £92m, which came from the 236m, in addition to that (which was an impermissible attempt at cumulative triple recovery). Fourthly, there was not even a statement of truth signed on behalf of MDL (only, apparently, by Mr A Smith on behalf of Ozturk). To the extent Mr A Smith purported to sign for MDL (which it does not appear he did), it is impossible to see how he could properly have done so (as to which see Foxton J's comment at [7(iii)] of the February 2023 Judgment: "The basis on which Mr Anthony Smith could have personal knowledge of the matters asserted in the Particulars of Claim is not immediately apparent, although I was told that that was the reason why he has signed the statement of truth.").

236. Fifthly, and again fatally, the claims were obviously time-barred. The evidence before me is that MDL/MTech were on notice since at least mid-2005 of the circumstances surrounding the movement of the Camberley Project, and alleged breaches of duty by Mr Sodzawiczny to MTech. Mr Oakes (a director and shareholder of MDL until his death in 2017) instructed MTech's solicitors to send a letter before action to Mr Sodzawiczny in June 2005, arising out of the relevant events in 2003-2005. That claim was never issued. Mr Almond put in a statement in support of Dr Smith in the arbitration proceedings which makes it clear that he and Mr Oakes knew about a potential claim against Mr Sodzawiczny but decided not to pursue it as they thought him not worth suing.

237. Mr Ruhan knew perfectly well the history of the matter and yet, after the Default Judgment was entered, he gave an RFI reply and witness statement to the Ozturk Claimants in support of a claim against Mr Sodzawiczny, further evidencing the collusive nature of his conduct.

238. As for the NCADs' claims, they claimed that freezing orders obtained against them by P&M in "December 2016" (whereas, in fact, it was mid-2017) were obtained through "knowingly false testimony" caused to be deployed by Mr Ruhan and Mr Stevens. They said the freezing order relief was dismissed by consent on 3 November 2021, before the Ruhan Trial Judgment was delivered. The NCADs claimed £25m from Mr Ruhan as "compensation".

239. As Mr Ruhan would have known, the NCAD's claim was also hopeless. The freezing orders were discharged consensually following an agreement between P&M and the NCADs (and others) in a Tomlin Order approved by Foxton J on 3 November 2021. Further, the NCADs had no cause of action. Indeed, this was observed by Foxton J on 1 February 2023 at a WFO hearing: "It's not a cause of action, at least, as it seems to me. You apply under the undertaking against those who issued them to get the order, or not at all". To the extent the NCADs could have claimed under the cross-undertakings, that was as against P&M and again was settled under the Tomlin Order whereby the NCADs agreed to release the cross-undertakings and not to make any claim against P&M under the cross-undertaking.

240. In this regard, there was nothing new in the Ruhan Trial Judgment, so far as Dr Smith/the NCADs were concerned, which might have justified going behind the Tomlin

Order (and that was not suggested in any event), and Dr Smith had alleged Mr Stevens' nomineeship long ago. There are no particulars of the alleged knowingly false testimony, or indeed setting out anything to justify the £25m of alleged losses claimed under this head. Finally, there is no statement of truth on behalf of the NCADs either.

241. I am satisfied that Mr Ruhan knew perfectly well that the Ozturk claims, the MDL claims and the NCAD's claims were hopeless.

242. Moving along in the chronology of the alleged Scheme, on 25 June 2022, Ozturk emailed (from a Proton email account) Mr Ruhan attaching copies (all intended to be dated 26 June 2022) of the settlement documents. On 26 June 2022, there was an email about amendment from MDL, and Ozturk later emailed (from a Proton email account) Mr Ruhan the finalised merged and executed versions of the:

i) Global Settlement Deed;

ii) Two promissory notes (the "Two Promissory Notes"):

a) MDL Note (£100m; secured) (incorrectly dated 26 June 2020);

b) Ozturk Note (£900m; unsecured) (incorrectly dated 26 June 2020);

iii) MDL June Charge (one of the two "MDL Charges", the second one being the MDL January Charge, to which I will refer in due course):

iv) Interest & Costs Schedule

(all together, the "June Settlement").

243. On 27 June 2022, Foxton J circulated his draft consequentials judgment (the "Draft Consequentials Judgment").

244. On 1 July 2022, MDL emailed (from a Proton email account) Mr Ruhan saying, "Please find attach a self explanatory letter" - a letter entitled "Urgent Notice of Default", stating Mr Ruhan failed to deliver a deed pursuant to clause 4.5 of the MDL June Charge. They gave Mr Ruhan "notice that pursuant to clause 4.6 of the Charge we have instructed our lawyers to protect our security and interests without further notice to you". This smacks, once again, of being a necessary part of the legal choreography, being part of the pretext for the inevitable transfer of assets that followed.

245. On 4 July 2022, Foxton J handed down his consequentials judgment (the "Consequentials Judgment") ([2022] EWHC 1695 (Comm)). It set out the specifics of the relief to be ordered. It noted at [29] that the defendants accepted the principal of quantum to be ordered against each of them (£102.26m).

246. On 5 July 2022, the Default Judgment was entered against Mr Ruhan in the Ozturk Proceedings, ordering Mr Ruhan to pay £852,000,165 exclusive of interest.

247. On 7 July 2022, Mr Ruhan forwarded a copy of the Default Judgment to Mr Stevens saying "FYI". This was an email, sent to Mr Ruhan's nominee, and co-defendant, shortly after the seriously damning judgment had been entered against the two of them in the Ruhan Proceedings. I consider that there is considerable force in HPII's

submission that Mr Ruhan emailed the Default Judgment to Mr Stevens so that Mr Stevens was aware of the steps Mr Ruhan was taking to protect himself and his assets from enforcement.

248. As will be seen below, Mr Ruhan later encourages Mr Stevens to meet with him and Dr Smith (in the "Personal Email"), and advises Mr Stevens about what he (Mr Ruhan) and Dr Smith have been up to with Minardi (in the "Feeding From The Trough Email", which I refer to in due course).

249. On 7 July 2022, Dr Smith re-sent the settlement documents to Mr Ruhan by email (from a Proton email account).

250. On 7 July 2022, Foxton J's order was sealed (the "Consequentials Order"). It required Mr Ruhan to pay £102.26m principal, plus £59.9m compound interest, plus costs on account of £2.108m. Payment was required by 1 August 2022. HPII has never been paid.

251. On 2 August 2022, Mr Ruhan emailed HPII's lawyers stating he had recently appointed bankruptcy advisers.

252. On 8 August 2022, Dr Smith sent Mr Ruhan a draft witness statement (this time using his own email address, but again via Proton Mail) in respect of activities regarding data centres and with Mr Sodzawiczny. It referred to Mr Ruhan's admission in the Ozturk Proceedings that he dishonestly assisted Mr Sodzawiczny. It would be remarkable that Dr Smith would have written a witness statement on behalf of Mr Ruhan, for the latter to sign, if it were not for Mr Ruhan to assist Dr Smith.

253. The possibility of Mr Ruhan providing a witness statement to assist Dr Smith would have been unthinkable given the pair's history, absent the two of them now colluding to enter into the Scheme. I consider that the focus on Mr Sodzawiczny suggests the pair contemplated that one of the purposes of the Scheme would be to use MDL's supposed claims to pressure and seek to extract value from Mr Sodzawiczny in due course. This in fact happened through a claim later issued by MDL against Mr Sodzawiczny on 2 June 2023 ("the MDL FS Litigation"), albeit that it was subsequently struck out by Foxton J on 24 May 2024 because of MDL's failure to provide security for costs.

254. There was no logic in Mr Sodzawiczny not being joined as a co-defendant to the Ozturk Proceedings (given that the MDL claim involved him). The obvious reason why he was not joined is that to do so would have obstructed the swiftness of the Scheme, which was key to engineering a judgment that would dwarf HPII's, making it a minority creditor in the envisaged insolvency proceedings to follow.

255. On 17 August 2022, St Paul's Solicitors (the Ozturk Claimants' solicitors) sent an RFI to Mr Ruhan in the Ozturk Proceedings, seeking responses by 31 August 2022, saying:

> "Your admission of the claim and subsequent judgment has raised the consideration by the Second Claimant, [MDL], of adding Mr Franek Sodzawiczny as an additional defendant in the action, and to this end, we are instructed to make enquiry of you in relation to your recollection, clarification and any further information that you may be able to provide to supply

> consequence upon your express admissions of the above claim, having particular regard to paragraphs 35-49 as they relate to Mr Franek Sodzawiczny".

256. This would be a remarkable development in genuine litigation – to make a RFI of a defendant against whom judgment had already been entered. It appears that the purpose of the RFI was to seek to bolster a claim against Mr Sodzawiczny. It is not easy to see why Mr Ruhan would be willing (still less obliged) to engage with the RFI after the Default Judgment and after the June Settlement. That Mr Ruhan was willing to engage with this again smacks of a collusive relationship between Mr Ruhan and Dr Smith and his companies.

257. On 24 August 2022, MDL emailed (from a Proton email account) Mr Ruhan saying "Thank you for your assistance. Please find encloses [sic] a pdf signature version of the PT 18 response WS you dictated, a paginated PDF of the referenced AJR1 exhibits and a final signature page, for your signatures. Please kindly send the [documents] electronically to [St Paul's Solicitors]."

258. The document properties of the RFI document containing the response names the author as "**GS**" (i.e., Dr Smith). Mr Ruhan emailed Mr Crossley the responses and signature page, saying "I attach my response to the Pt 18 Request together with the signature page duly signed".

259. The MDL email was in the private chain, whilst the email from Mr Ruhan to Mr Crossley was in the legal choreography chain. It was not accompanied by any reference to the contents of the MDL email or to any discussions as between Mr Ruhan and Dr Smith/MDL about the RFI response. The clear impression that was being (publicly) portrayed was that this was an independent response to the RFI made by Mr Ruhan without discussion with MDL, when that would appear to be far from reality (with a view to such evidence being used against Mr Sodzawiczny).

260. On 25 August 2022, Dr Smith signed a letter of engagement for assisting MDL in a claim against Mr Sodzawiczny. It provided:

> "We have agreed that I will provide my services as a litigation coordinator in the above Proceedings. We have also agreed that I will not charge on a time basis for my services. However in consideration of the services and subject to there being "Success in Proceedings", which we have agreed will be a judgment, or settlement, in favour of the Company [MDL] that confirms its claim, the Company will hold me harmless, pay and or discharge, the award FS obtained against me in LCIA arbitration 183969."

261. For context, on 9 December 2020, Mr Sodzawiczny obtained, from Mr Isaacs KC, an arbitration award against Dr Smith, and Messrs Cooper and McNally, based on their fraudulently misappropriating assets due to Mr Sodzawiczny. Dr Smith was required to pay Mr Sodzawiczny approximately £18.3m. This is further evidence of Dr Smith being in control of MDL, and MDL acting for his benefit (and of the MDL claim against Mr Sodzawiczny being a device to seek to avoid or reduce Dr Smith's arbitration liability and to pressure Mr Sodzawiczny).

262. On 9 September 2022, Mr Slade (Mr Stevens' solicitor) emailed Mr Ruhan about a proposed transfer of Minardi's shares from Phoenix to Mr Ruhan. In particular, it provided, amongst other matters:-

> "The above is a summary of the contents of the letter [from the Joint Liquidators to Minardi]. The main question is to decide what to do about it. Minardi has 28 days from the date of the letter (or longer by agreement) in which to issue an application in the BVI High Court challenging the liquidator's rejection of the proof. Minardi has on funds with which to pay my firm to undertake that work. That, of course, puts Anthony Stevens in a difficult position as the sole director of Minardi. He is acutely conscious that, by his judgment in the claim brought by HP2, Foxton J found that Phoenix holds the shares in Minardi (and the other benefits under the Geneva Settlement) on trust for you. Bearing that in mind, Anthony does not wish to be put in the position of having to decide whether or not to challenge the rejection of the proof or of having to try and find the money to pay for the legal work involved. He wishes to resign as a director and, on behalf Phoenix, wishes to transfer the shares in Minardi to you. That would, of course, also enable you to conclude the litigation between yourself and Minardi since you would, then, be on both sides of that particular case."

263. It is clear that this was part of a coordinated plan to move the Minardi shares to Mr Ruhan for Mr Ruhan then to transfer them to MDL (following MDL's calls for the same). This was, I am satisfied, all part of the Scheme to transfer Mr Ruhan's assets to third parties to thwart HPII in its enforcement efforts.

264. It is also notable that Mr Slade states that Mr Ruhan, once he had Minardi, would be able to conclude the litigation between himself and Minardi because he would be on both sides of that particular case. That is exactly what occurred, even though at the time it happened, Minardi was, on the face of it, in MDL's control and being operated by Dr Smith. This thus suggests that even after Minardi was passed to MDL by Mr Ruhan, Mr Ruhan retained an involvement (as shall be seen he did).

265. On 13 September 2022, Mr Ruhan paid £12,500 to Begbies Traynor (a firm of Insolvency Practitioners). Mr Ruhan said, during a CPR 71 Examination hearing, that he saw them for the same reason he saw Kirker & Co (in relation to taking advice about bankruptcy). This is consistent with the implementation of the Scheme (including fabrication of large creditors to ensure control over the insolvency).

266. On 20 September 2022, at 11:39, Mr Ruhan replied to Mr Slade, saying he was on vacation the week before. He also stated:

> "On reflection I can understand that given the various judgments that Anthony is in a difficult position and accordingly I would accept your suggestion and ask that you make immediate arrangements for Anthony to resign from the board of Minardi and for myself to replace him. Simultaneously I would like for the appropriate Stock Transfer Forms be executed to transfer the

> shares to me together with the Share Certificates. Please confirm when this can be done conscious that in circumstances where I seek to challenge the rejection by Quantuma, I have a limited amount of time in which to do so. I would also anticipate that there will need to be progress with Zubair [*sic Mr Zoubir, a lawyer for the Settlement Parties in the SFO Proceedings*] if the Appeal is to be settled and would be grateful for any update".

267. Later on 20 September 2022, at 18:41, MDL emailed Mr Ruhan (from a Proton email account) a "Notice of Intended Enforcement of Security", saying "Please find attached our letter for your urgent attention". The Notice of Intended Enforcement of Security provided:

> "We note that you have not cured the default, nor contacted us to offer any proposals. In the circumstance, as a courtesy, we write to inform you that we will appoint a receiver pursuant to the terms of our charge, without further notice, should you fail to repay the above Note in full on its repayment date. Please arrange to credit £100,000,000.00 to the following account on or before 16:00 hrs on Monday 26 September 2021".

268. I do not consider that it is a coincidence that only hours after Mr Ruhan agreed to the transfer to himself of Minardi, MDL sent him the "Notice of Intended Enforcement of Security" on an urgent basis, stating that receivers will be appointed over shares subject to the MDL June Charge. I am satisfied that the inference to be drawn is that Mr Ruhan informed Dr Smith about the position with Minardi and procured that the notice of enforcement be sent to provide the legal choreography/pretext for the immediate onward transfer by Mr Ruhan to MDL as soon as he had received the Minardi shares from Phoenix.

269. I am satisfied that the transfer of Minardi to Mr Ruhan, and the calls and transfer from Mr Ruhan to MDL, all in short order, were a coordinated part of the Scheme with Dr Smith and Mr Ruhan using MDL to transfer assets away from HPII's clutches. The urgency noted by MDL mirrors the urgency of Mr Ruhan in seeking to have Mr Slade deal with the transfer to him.

270. On 22 September 2022, Mr Bryce on behalf of MDL emailed Mr Ruhan a letter headed "Without Prejudice and Subject to Contract" regarding the MDL Note and MDL June Charge. In it, he invites Mr Ruhan to a Zoom meeting "to discuss the art of the possible" (the "Art of the Possible Letter"). It provided:-

> "Dear Mr Ruhan,
>
> £100 million Secured Promissory Note and a Charge of 26 June 2022 (the Charge)
>
> We refer to our recent letter.
>
> In the interests of both parties, we would like to propose a WOP Zoom meeting to discuss the above.

> It is our belief **that a pragmatic solution may be available to you and us that could bring to a conclusion the current litigation between us**.
>
> May we suggest an initial Zoom or similar video conference with you on Monday 26 September 2022, **to discuss the art of the possible**, at a time to suit you?
>
> We look forward to hearing from you." (emphasis added)

271. This communication shows that, even after the Default Judgment and June Settlement, Dr Smith (through MDL) and Mr Ruhan were working together "in the interests of both parties" to seek a "pragmatic solution". At this point, of course, there was no litigation between the two (although HPII says they were clearly planning to use Minardi in litigation). It appears that what was envisaged was Dr Smith suggesting they meet to discuss plans to their mutual advantage.

272. It is likely that it was at this meeting that plans were fleshed out in more detail regarding the use of Minardi to put pressure on the Joint Liquidators ("JLs"), and to bring proceedings abroad and in the UK which would have the effect of seeking to challenge the Directed Trial Judgment. That is exactly what happened from October 2022 onwards when Minardi was utilised for such purposes after the transfer to MDL.

273. On 28 September 2022, Mr Slade circulated Messrs Ruhan and Stevens a first draft agreement as between them, with the cover email stating:

> "Anthony and Andy
>
> I attach a first draft of the document as between the two of you. I stress that it has been prepared pretty quickly and may therefore need some further work. I am available today to discuss.
>
> I am working on the draft settlement of the appeal and will have a respectable document in circulation in a few hours. I really need to be able to get that over to Zoubir and Jerrum by the end of today.
>
> Best
>
> Richard"

274. Later that day, Mr Slade sent a revised version, and Mr Stevens responded, stating, amongst other matters: "Richard, … Please prepare my letter of resignation…".

275. Also later that day, Mr Ruhan, Mr Stevens, and Phoenix and Minardi, executed an "Agreement Relating to Trust Assets" under which Phoenix was to transfer Minardi's shares to Mr Ruhan, making reference to the judgment entered in favour of HPII in the Ruhan Proceedings:

> "By his judgments in proceedings in the Commercial Court, London, brought by Hotel Portfolio II UK Limited (in liquidation) and another against Mr Ruhan and Mr Stevens under

> Claim No. CL-2018-000226 handed down on, respectively, 23 February 2022 and 4 July 2022 and binding on Phoenix ("the Judgments"), Mr Justice Foxton decided that "any assets and rights acquired by Phoenix under [the Geneva Settlements] were to be received and held for Mr Ruhan". By entering into this Deed, the Parties have sought to give practical effect to the terms of the Judgments insofar as it relates to the shares in Minardi but not, for the avoidance of doubt, other assets and rights acquired by Phoenix under the Geneva Settlement.
>
> …
>
> Phoenix will, immediately on completion of this Deed, transfer to Mr Ruhan the entire issued share capital in Minardi and provide copies of the memorandum and articles of association of Minardi and its shareholder and director registers. Phoenix will procure that Minardi's books and records are transferred, so far as it lies within its power to do so."

276. Mr Stevens then resigned as Minardi's director and Mr Ruhan (openly) assumed the role as Minardi's director.

277. On 29 September 2022, MDL emailed Mr Ruhan (from a Proton email account, with cc to Mr Bryce and Mr Almond) a "Call Notice" with respect to the security under the MDL Note (the "MDL Call Notice"), declaring it enforceable:

> "Dear Sir
>
> We refer to the promissory note for £100,000,000 executed by you in our favour on 26 June 2022 (Note) and the charge over shares granted by you to us on 26 June 2022 as security for payment of the Note (the Charge).
>
> The Note was due for payment on 24 September 2022 and no payment has been received by us, which constitutes an event of details under clause 6.1 of the Charge.
>
> Therefore, in exercise of our rights under clauses 7.1.2 and 7.1.3 of the Charge, we declare that all the Secured Liability, as defined in the Charge, to be due and payable and demand its immediate payment and declare the security constituted by this Charge to be enforceable."

278. I am in no doubt that the transfer to Mr Ruhan by Phoenix (on 28 September 2022), and the MDL Call Notice the very next day (on 29 September 2022), are coordinated. In this regard, the inference to be drawn is that Mr Ruhan had MDL make the call, having informed it of the transfer from Phoenix under the "Agreement Relating to Trust Assets". Soon after this, Minardi was emailing from a Proton email account copying in Mr Ruhan.

279. On 11 October 2022, Minardi emailed Mr Jackson (one of the JLs in the SFO Proceedings, again from a Proton email account and copying Mr Ruhan) a letter regarding a funding agreement entered into between Minardi and a company named Unicorn in 2015. It sought repayment of sums advanced by Minardi (approximately £1.58m), and purported to be signed by Mr Ruhan electronically "For and on behalf of" Minardi.

280. I consider this was an example of the Scheme in action through the use of Minardi. By this point, a Minardi email address (using Proton) had been set up and was being operated, I am satisfied, by Dr Smith on the understanding that he was able to do so. Mr Ruhan was copied in to this, keeping him in the loop. This activity was to be described by Mr Ruhan himself in "The Feeding From The Trough Email" (referred to below).

281. On 13 October 2022, Mr Ruhan emailed Mr Stevens under the subject line "Personal" ("the Personal Email"), in which Mr Ruhan urged Mr Stevens to meet with him, and subsequently with him and Mr Smith "to explore what can be done", threatening Mr Stevens with litigation with respect to certain assets if they were not returned:

> "Dear Anthony
>
> I am sad that after 17 years it would appear that we have reached the point where you believe our respective interests are no longer aligned. Clearly none of us would want to start from this point, but I still believe that there is a path which can protect my interests whilst also offering protection to you. However this requires dialogue with both myself and my creditors in which you are unwilling to participate. **I urge you again to meet with me and subsequently myself and Gerald to explore what can be done**.
>
> **Absent this meeting and your assistance then I fear we will have to embark on yet another set of damaging litigation**. As you are aware, you hold the entire share capital of Bluestone, Grenda and Giotto in trust for me as my nominee, a role that Foxton J determined you have undertaken since 2005. Whilst you suggest there is no legal judgement requiring them to be returned to me, **we both know that if I, or my creditors are forced to seek their return then it will happen**. In the meantime any action you take with these companies you remain liable for as my trustee.
>
> On our last occasion you responded that if any monies flowed from these companies then you would rather it be used to repay your creditors. You cannot use my assets for this purpose. I have tried to protect you from third party creditors, including trying to negotiate with QS to release you from your loan but can only do so if you engage with me and do not retain these companies as a ransom.

> I remain willing to work to protect you but only in circumstances where you do not work against me or my commercial interests. **If I do not hear from you by the end of the week I will assume you have decided that there is no requirement for further meetings and I will instigate my asset recovery through other means**. I respect that both sides have to protect their interests but remain convinced that you are making a huge mistake in this endeavor." (emphasis added)

282. The suggestion that Mr Stevens "meet with me and subsequently myself and Gerald" further evidences that Mr Ruhan, far from being under siege from Dr Smith, is working in concert with him. Also the threats of litigation here correlate with the offer apparently made by Ozturk on 17 June 2022 to assist Mr Ruhan with litigation against Mr Stevens to recover assets if needed (the Assistance with Recovery Email). The willingness to make threats of litigation also belies the suggestion, in Mr Ruhan's written account in the CPR 71 Examination, that Mr Ruhan wanted to avoid any litigation.

283. On 17 October 2022, Minardi wrote to the Joint Liquidators intimating various claims and seeking to constitute a creditors committee of various Arena Companies. Minardi proposed that a Mr Ticehurst should be a member of the creditors committee. This was addressed in a judgment given by Foxton J ([2022] EWHC 3053 (Ch)) ("the November 2022 Judgment") at [72]:

> "On 17 October 2022, Minardi (an entity which I have previously found to be under the control of Mr Ruhan, who has also been found to have committed serious and sustained acts of dishonesty in my judgment in HPII & Anr v Ruhan & Stevens [2022] EWHC 383 (Comm)) wrote to the JLs intimating various claims, and seeking to constitute a creditors committee of various of the Arena Companies. Minardi proposed that Mr Ticehurst should be a member of the creditors committee. On the basis of my findings, Mr Ruhan is the ultimate beneficial owner of both Phoenix and Minardi, who advanced competing claims against those of the parties interested in the Harbour Trust at the Directed Trial. A letter sent by Minardi on 11 October 2022 was signed electronically by Mr Ruhan and copied to Mr Ruhan's email address. In a letter to the Enforcement Receivers of 21 October 2022, Minardi asserted that Mr Thomas and BKV were SMA's only lawful directors (to that extent, at least, making common cause with Mr Thomas and with Messrs Cooper and McNally)."

This is a clear continuation of the strategic action with Dr Smith's allies, using Minardi.

284. On 18 October 2022, Dr Smith (from a Proton email account) emailed Mr Stevens and Mr Ruhan: "Anthony [i.e. Mr Stevens], May I ask you to kindly pass the details of Minardi's BVI agents to Andy [i.e. Mr Ruhan] please. Their most recent invoice would suffice." I consider that this is further evidence of coordinated activity involving both Dr Smith and Mr Ruhan in relation to Minardi's affairs (as part of an attempt to establish full control over Minardi's BVI agents) and in correspondence that Mr Ruhan has full visibility of.

285. On 19 October 2022, Minardi emailed Mr Ruhan (from a Proton email account) enclosing "copies of the board meeting you attended on the 14 October 2022. In addition, and for completeness, we also attach a copy of the shareholders resolution of that date". Mr Bryce was copied. The board minute reads as follows:

> " **1. Quorum and Chairman**
>
> It was noted that a quorum was present for the purposes of the Company's articles of association (the "**Articles**") and **IT WAS RESOLVED THAT** Mr Andrew Ruhan be appointed to chair the meeting as (the "**Chairman**"), whereupon he took the chair.
>
> 2. **APPOINTMENT AND RESIGNATION OF DIRECTORS**
>
> It was noted that Mr Ruhan had been appointed by Mr Anthony Stevens the former sole director pursuant to the terms of a Deed (the **Deed**) executed by its parties on 28 September 2022.
>
> The Chairman proposed to appoint Marlborough Developments Limited (**MDL**), MDL having indicated its willingness to be so appointed, as a corporate director of the Company with immediate effect
>
> The Chairman welcomed Mr Charles Bryce, by telephone, to the meeting as the representative of Marlborough Developments Limited.
>
> Having welcomed MDL to the board, the Chairman tendered his resignation as a director of the Company, on the basis that it would take effect upon the meetings close.
>
> 3 **TRANFER OF SHARES IN THE COMPANY**
>
> The Chairman noted that MDL had exercised its rights to take possession of the entire share capital of the Company under the terms of a charge dated 26 June 2022
>
> MDL informed the directors that it required the Company to register its ownership of the entire share capital forthwith, pursuant to the Charges terms, and the Company's articles.
>
> The Board having carefully considered the proposals before it, and having confirmed that the proposed actions were all permitted by the Companies Mem and Articles,
>
> **THE BOARD RESOLVED TO**:
>
> **1 Approve the in-meeting appointment of MDL as a corporate director with immediate effect;**

> **2 Approve the transfer of the Company's entire share capital to MDL**;
>
> **3 Approve the registration of MDL as the Company's sole shareholder with immediate effect;**
>
> **4 Authorise the Board or its agents to file any and all fillings that are necessary to put these Resolutions into effect with the Registered Agents forthwith.**
>
> **5 Approve the resignation of Andrew Ruhan.**"
>
> (emphasis added)

286. The written shareholder resolution, purportedly signed by Mr Bryce for MDL as sole shareholder of Minardi, stated it ratified and confirmed Minardi's recent actions, including the transfer of legal title in Minardi's shares from Mr Stevens to Mr Ruhan, "and contemporaneously thereupon, pursuant to an exercise of a charge dated 26 June 2022 the registration of the entire share capital of the Company into the name of MDL". This was, I am satisfied, the necessary "legal choreography" to effect the transfers of Minardi to MDL from Mr Ruhan on paper.

287. On 20 October 2022, Minardi emailed Mr Pease (a colleague of Mr Slade, again using a Proton email account), Mr Ruhan and Mr Barton. The email said: "Gentlemen, We anticipate concluding a settlement on this matter before close of business on Monday. At which point the case will be dismissed." This was a reference to certain litigation between Mr Ruhan and Minardi (in CL-2015-000874 (the "Minardi Litigation")). I am satisfied that this shows Dr Smith assisting Mr Ruhan in putting Mr Slade's email advice to Mr Ruhan into action, regarding the settling of the Minardi Litigation, after Minardi has been transferred to MDL. It is notable that Mr Ruhan is copied in (Richard Slade and Company were still on the record for Minardi at this point).

288. On 21 October 2022, Minardi wrote to the Enforcement Receivers ("ERs") in the SFO Proceedings, asserting that Mr Thomas and BKV Limited ("BKV") were SMA's only lawful directors (see the November 2022 Judgment, at [58] and [72]).

289. BKV was a company which LCL purported to appoint in August 2021 to be a director of SMA, ostensibly controlled by an associate of Mr Cooper and Mr McNally, one Mr Atik Miah ("Mr Miah"). LCL (a Dr Smith company) had also purported to assign BKV, in August 2021, rights under a LCL funding agreement. BKV had been involved, in 2021 and 2022 (allied with Mr Thomas and Mr Taylor, and Mr Cooper and Mr McNally), in entrenched conflict against the ERs and other parties in the SFO Proceedings, including Harbour and the Viscount *qua* Orb - see [66(i)] of the November 2022 Judgment:

> "There was clearly an entrenched conflict between the Enforcement Receivers, and Harbour and Orb as beneficiaries under the Harbour Trust, on the one hand, and, in various respects, Messrs Thomas and Taylor, Messrs Cooper and McNally and BKV on the other, in relation to (i) the status of the assets held by SMA; (ii) who had the right to act on SMA's

> behalf and (iii) how to deal with the claims advanced by Messrs Cooper and McNally against SMA brought with a view to enforcing against assets held by SMA."

290. I am satisfied that this shows Minardi acting in ways which reflect that it is under the control of Dr Smith working to pressurise the JLs. This activity is contextualised in the "Feeding From The Trough Email" (as addressed below) as having been done with Mr Ruhan's knowledge and assistance (and may well have been the activity discussed in more detail at the "art of the possible" meeting).

291. On 24 October 2022, with respect to the Minardi Litigation settlement, Minardi (through a Minardi Proton email account) emailed Mr Ruhan at 09:19 saying "Further to our discussions please find enclosed the proposed settlement. If you are content with this we will arrange for its execution". The draft consent order at the foot of the document named St Paul's Solicitors as solicitors for Minardi. The document properties to the draft settlement agreement state that it was last modified on 24 October 2022 at 09:15 by "Gerald Smith". It is clear that Dr Smith was in control of the Minardi email account, drafting/editing agreements just 4 minutes before sending them to Mr Ruhan, and asking whether Mr Ruhan is content with the terms of the proposed settlement.

292. One day later, on 25 October 2022, Minardi (through a Minardi Proton email account) emailed Mr Ruhan and Mr Bryce saying: "Gentlemen, Attached for execution today please". Attached was an updated copy of the settlement agreement circulated on 24 October 2022, and consent order. The draft consent order at the foot of the document had been altered to include Mr Bryce as director of MDL signing on behalf of Minardi, in place of St Paul's Solicitors.

293. On 26 October 2022, Minardi (through a Minardi Proton mail account) asked Mr Crossley: "Andrew, Can you kindly arrange for the attached order to be sealed by the court please". As paper applications judge I approved that consent order on 27 October 2022. This is further evidence of Dr Smith running Minardi and providing material for Mr Ruhan to sign, then issuing instructions to Mr Crossley.

294. When Mr Crossley was notified, he emailed MDL Litigation on a Proton Mail account, Mr Almond, and Mr Bryce. Thereafter, MDL, through the same MDL Proton email account forwarded the chain to Mr Ruhan saying: "Minardi consent order sealed".

295. On 31 October 2022, MDL emailed Mr Ruhan (from a Proton email account) a draft deed of assignment, asking him to sign and return it, together with MDL's consent letter. The deed of assignment purports to transfer Mr Ruhan's rights in the IOM Settlement assets defined in the Directed Trial Judgment to Minardi. It appears that it was considered that this transfer of rights by Mr Ruhan would, for some reason, be of tactical advantage to Minardi, and so to the advantage of Mr Ruhan and Dr Smith to effect under the Scheme.

296. On 31 October 2022, Minardi (stating the Minardi admin Proton email at the top of the letter) sent a letter to Mr Jackson (one of the JLs) asserting certain facts and alleged rights of Minardi:

> "Dear Mr Jackson,

> The Geneva Settlement, the Liquidation Inter-Creditor Settlement Agreement dated 22 April 2016 (the LICSA), and Bridge Properties (Arena Central) limited.
>
> 1. As you are aware, the entire share capital of Bridge House Properties (Arena Central) Limited (BPAC) is our property by operation of the LICSA. We await the stock transfer and its shares.
>
> 2. …".

297. On 3 November 2022, Minardi issued an application in the Marshall Islands seeking to require SMA specifically to perform the terms of the LICSA (a document forming part of the 2016 Geneva Settlement) and transfer shares to Minardi. This is, I am satisfied, another example of Minardi, with the involvement of Mr Ruhan and Dr Smith, seeking tactically to put pressure on the JLs.

298. On 4 November 2022, Mr Ruhan sent an email to Mr Stevens under the subject line "Minardi" (the "Feeding From The Trough Email"), attaching the letter referred to above, and saying:

> "This is the letter that was sent from Minardi to Jackson. **We are trying to put maximum pressure on him to stop feeding from the trough and bring the litigation to an end**. **We will be writing to him personally as well as it is clear that he has strayed outside his authority on several instances. Clearly Smith is providing the information as he originally appointed him**.
>
> **When Bluestone is transferred,** hopefully as a result of a mutually acceptable agreement, **I will be also using this company to go after him.**
>
> As regards the repayment of the loans from Minardi, can you confirm that this was the only payment received from Quantuma? I am trying to determine whether the loans have been used legitimately by Quantuma?" (emphasis added)

299. This is another email that shows Mr Ruhan and Dr Smith working in concert with regard to Minardi after it was transferred by Mr Ruhan to MDL. Mr Ruhan says: "We are trying to put maximum pressure on [Mr Jackson]…". The "we" can only be Mr Ruhan and Dr Smith. Mr Ruhan says: "We will be writing to [Mr Jackson] personally…". Again, the "we" can only be Mr Ruhan and Dr Smith.

300. Mr Ruhan says: "Clearly Smith is providing the information as he originally appointed him", which clearly confirms the above "we", and shows Mr Ruhan and Dr Smith were working together to pressurise Mr Jackson for their mutual advantage. Mr Ruhan says: "When Bluestone is transferred, hopefully as a result of a mutually acceptable agreement, I will be also using this company to go after him".

301. As to this, Bluestone was a company charged to MDL under the MDL June Charge of 26 June 2022. The Feeding From The Trough Email is essentially Mr Ruhan saying: "I am using Minardi now (notwithstanding that MDL have it), and I will similarly use Bluestone once that is transferred (despite the fact it is charged to MDL)". In other words, this email demonstrates that despite the apparent transfer of Minardi and, importantly, despite the required transfer of Bluestone to MDL under the enforceable MDL June Charge, Mr Ruhan was confident enough to say he personally "will*"* also be using Bluestone to go after Mr Jackson. As such, I am satisfied that the transfers to MDL were in reality devices to put the assets (shares) at supposed arm's length from Mr Ruhan, whilst he was behind the scenes still able to use them for his benefit thereafter, together with Dr Smith.

302. On 22 November 2022, Minardi served a notice of change in the SFO Proceedings. It stated Richard Slade and Company no longer acted for Minardi, that Minardi was acting in person, and that Mr Ruhan was Minardi's director. The notice of change was signed by Mr Ruhan.

303. It will be apparent, therefore, that Mr Ruhan signed a document as Minardi's director at a time after which he had supposedly resigned and had been replaced by MDL. This was well after the transfer of shares to MDL. I am satisfied that this shows the reality which was that Mr Ruhan remained in control of Minardi at the relevant time, despite the on-paper transfer to MDL.

304. On 26 November 2022, Minardi emailed Mr Ruhan (again from a Proton email account): "May we ask you to please sign the attached letter of notice. Please then scan and return it to us. We will arrange for its delivery." Attached was a notice of assignment dated 26 November 2022, addressed to the directors of "Orb arl (en *désastre*)" saying Mr Ruhan had assigned Minardi certain rights:

> "Dear Madam and Sir's,
>
> This letter constitutes notice to you, the Orb Claimants, that on 5 October 2022, I assigned to **Minardi Investments Limited,** of PO Box 3159, Road Town, Tortola, British Virgin Islands. the full benefit of all my rights, title and interest (legal, equitable or otherwise) as I have in the Isle of Man Settlement assets and cash as defined in the English Judgement [2021] EWHC 1272 (Comm) and or any other assets or interests of whatever nature (legal, equitable or otherwise) that originate from the terms of the discretionary settlement known as the Arena Settlement dated 24 March 2004, free from all claims, liens, equities, charges and encumbrances.
>
> Yours faithfully
>
> Andrew J Ruhan".

305. I am satisfied that this is Dr Smith drafting this letter for Mr Ruhan, with cooperation between them continuing.

306. On 27 November 2022, MDL emailed (from a Proton email account) Mr Ruhan saying it was attaching a "self explanatory letter" dated 26 November 2022, purportedly electronically signed by Mr Almond, asking (inter alia) Mr Ruhan to provide the deed of assignment "which you kindly executed on the 5th of October 2022":

> "Dear Mr Ruhan,
>
> [2021] EWHC 1272 (Comm) the Judgement: the Charge dated 26 June 2022 (the Charge).
>
> For ease we adopt the terms and definitions within the Judgement and the Charge.
>
> As you are aware, under the terms of the Charge we required you to deliver to us a deed of assignment in approved form which you kindly executed on the 5th October 2022.
>
> Pursuant to the statutory regime set out in section 136 of the Law of Property Act 1925, we are required to give notice of the execution of the assignment to the affected parties and therefore require you to provide us with an approved notice.
>
> For clarity, the assigned claims currently can have no value because all such claims were compromised by you under the terms of the Geneva Settlements, subject to the awaited judgment of the Court of Appeal."

307. On 28 November 2022, Minardi sent an email (from a Proton email account) stating "Dear Madam and Sir, Please find attached a self explanatory letter and the notice of assignment to which it refers", with the letter of notice attached, now containing the signature of Mr Ruhan. That email was then forwarded by Minardi to Mr Ruhan with the comment "Andy, FYI as sent".

308. Minardi also sent a letter, on 28 November 2022, with the Minardi admin Proton email stated at the top of the letter, to the directors of Harbour Fund II LP and Stewarts Law LLP via registered post and email, stating:

> "Dear Madam and Sir,
>
> [2021] EWHC 1272 (Comm) the Directed trial Judgement, and a Notice of assignment pursuant to section 136 of the English Law of Property Act 1925.
>
> Please find attached a copy of the notice of assignment that we have sent to the Orb Claimants giving them notice that Mr Andrew Ruhan executed a deed of assignment in our favour on the 5th October 2022."

309. On 8 December 2022, Harneys (Minardi's BVI agents) emailed Mr Stevens billing information for Minardi. Mr Stevens forwarded it to Mr Ruhan, stating "Andy Why am I still receiving emails from Harneys for Minardi (billing and yesterday economic substance)? I resigned as director and Phoenix transferred the shares to you over 2

months ago. Please be kind enough to send me by return the email(s) that you sent to Harneys confirming change of director and shareholder". Mr Ruhan forwarded the chain to Dr Smith (at his personal email) saying "Please can we discuss".

310. I consider this to be telling. As soon as Mr Ruhan receives the relevant information from Mr Stevens, he forwards it to Dr Smith's personal account asking for a discussion, from which it is clear that they are working together. There is no suggestion of tension here or any suggestion that Mr Ruhan is a mere debtor for hundreds of millions of pounds. The apparent dynamic is one of equals passing information between each other.

311. On 8 December 2022, Mr Ruhan emailed Mr Slade, copying Mr Stevens, regarding the "Settlement Parties" (i.e., a certain bloc of parties in the SFO Proceedings) request for a variation of freezing orders. He said:

> "As you are aware, you no longer act for Minardi and therefore cannot accept a variation. The recent judgement [sic] from Foxton reconfirmed that Phoenix is being held on my behalf and whilst you may not wish to debate that issue at this juncture I have spoken with Anthony earlier and ask that no action is taken to vary these Orders until I have met with him. I believe that is agreed and he will instruct you accordingly."

312. This is a further example of Mr Ruhan intervening and taking steps on behalf of Minardi, and asserting Minardi's rights, well after his transfer of the shares to MDL. I consider it to be clear that the reality is that Mr Ruhan was still in control of, and had an interest in, Minardi despite the transfer, including in the context of litigation.

313. On 12 December 2022, Minardi emailed (from a Proton email account) the Settlement Parties' lawyers a letter. Interestingly, in the email, Mr Cockburn's name was misspelled as Mr "Cochrane" (the name of Dr Smith's former wife). I am satisfied that Dr Smith was the author of this email. The email to the Settlement Parties' lawyers was then forwarded to Mr Ruhan, who then forwarded it to Mr Stevens, making further requests regarding Phoenix: "The letters of objection as discussed. I would appreciate it if Phoenix either doesn't respond to the application or Richard confirms he is without instruction. I believe on this basis there is a strong possibility that the matter will not be dealt with on Wednesday".

314. It is clear from this that Dr Smith was continuing to give Mr Ruhan visibility without anyone else seeing that fact. Mr Ruhan then forwarded the chain on to Mr Stevens, giving Mr Stevens an update and making requests for how Phoenix should act (Mr Ruhan having his Minardi hat on in this regard).

315. On 22 December 2022, MDL emailed Mr Stevens (from a Proton email account), copying Mr Ruhan, saying "As you are aware we acquired the entire share capital of Minardi recently. … Can you kindly provide us with the actual invoice and a contact email for your account manager please. Perhaps an email to them copied to us confirming we are now Minardi's owners. For completeness we have copied this email to Mr Ruhan." I am satisfied that this email evidences the continuing cooperation between Mr Ruhan and Dr Smith.

316. Also on 22 December 2022, MDL (through a Proton email address) emailed Harneys chasing a response to an earlier email of 15 December 2022. Copied in to the 22 December 2022 email was Mr McNally. On 28 December 2022, MDL forwarded the email of 22 December 2022 to Mr Ruhan saying: "as sent."

317. I consider the fact that Mr McNally is copied in (having had an alliance with Dr Smith since the IOM Settlement), reinforces the collusion that occurred as noted by Foxton J in the February 2023 Judgment. It is apparent that MDL is keeping Mr Ruhan in the loop with "as sent" updates.

318. On 6 January 2023, MDL emailed Mr Ruhan (from a Proton email account) referring to the MDL June Charge, and various notices, "and our recent telephone call". It asked Mr Ruhan to email Harneys and state that MDL was Minardi's rightful owner and sole corporate director. Two suggested draft emails were supplied. The email was signed off: "Admin":

> "Dear Mr Ruhan,
>
> We refer to the 26 June 2022 charge, the 1 July 2022 notice of default, the 20 September 2022 notice of payment, the 29 September 2022 notice of the exercise of our security and our recent telephone call.
>
> We would be grateful if you would kindly confirm to Harney's by email [….], Minardi's registered agents, that we are the rightful owners of Minardi's entire share capital and its sole corporate director.
>
> We attach Mr Stevens resignation for ease. May we suggest two emails along the following lines:
>
> regards
>
> Admin
>
> **Email 1**
>
> Dear Harney's,
>
> **Re: Minardi Investments Limited.**
>
> On 28 September 2022 I was appointed as a director of Minardi by means of a confidential deed executed by
>
> Anthony Stevens on behalf of Phoenix Group Foundation, Minardi's then sole shareholder, following which I accepted Mr Stevens resignation which I attach.
>
> Sincerely
>
> Andrew Ruhan

> It would be helpful if Mr Stevens would kindly confirm the above email to Harney's.
>
> And by way of a separate email copied to us,
>
> **email 2**
>
> Dear Harney's,
>
> **re Minardi Investments Limited (the Company) .**
>
> Further to my earlier email. I write to further confirm that on the 14 October 2022, I appointed Marlborough
>
> Developments Limited as sole corporate director of the Company.
>
> I understand that MDL has provided you with a copy of the directors minute and shareholder resolution enacting
>
> the above.
>
> Please let MDL or I know if you require anything further.
>
> Sincerely
>
> Andrew Ruhan
>
> Administration
>
> **Marlborough Developments Limited**
>
> Sent with Proton Mail secure email."

319. This is a yet further example of cooperation between Dr Smith and Mr Ruhan with respect to Harneys/Minardi for their mutual benefit, long after Mr Ruhan transferred Minardi, with MDL even working to give Mr Ruhan proposed drafts to send on. No mention is made in the draft emails of Mr Ruhan having resigned himself as director of Minardi (which apparently occurred in October 2022).

320. On 8 January 2023, MDL emailed Mr Ruhan (again from a Proton email account): "Please find attached a letter for your kind attention". Attached to the email was a "Notice of Ownership" from MDL, which was purportedly electronically signed by Mr Almond, and said:

> "We write as a courtesy to confirm that we have recently perfected our ownership of the shares of Minardi … However, we have yet to perfect our share ownership of the other previously charged companies: Grenda …, Giotto …, and Bluestone …. In the circumstance, we would be grateful for your

> further assistance to help us register the ownership changes with the BVI registered agents and to obtain copies of the appropriate historical corporate records as we require. … ."

321. I am satisfied that this is further evidence of cooperation as part of the ongoing "legal choreography". It is shortly before the first CPR 71 Examination by HPII, and two days before Mr Ruhan's deadline for producing documents.

322. On 8 January 2023, Ozturk emailed (again from a Proton email account) Mr Ruhan a letter referring to "your recent discussions with our agents" and requested copies of the documents which Mr Ruhan was going to be providing to HPII for the CPR 71 Examination:

> "We refer to your recent discussions with our agents.
>
> They have as a consequence, recommended that we hold off our proposed service of a statutory demand until after your forthcoming examination by HPII.
>
> It would greatly assist us with our deliberations, if you were in the meantime, to provide us with copies of the documents that you are providing to HPII.
>
> A drop box link would greatly assist."

323. It is clear from this that Mr Ruhan was talking to the Ozturk Claimants/Dr Smith about his forthcoming CPR 71 Examination. I am satisfied that this letter was part of the choreographed cover Mr Ruhan and Dr Smith put in place which was intended to justify or explain Mr Ruhan providing the same documents to Dr Smith as he was required to produce to HPII, especially his supposed employment contract with Quantum Switch, which would then set up a reason for his giving of the MDL January Charge (over entirely new assets) shortly thereafter.

324. On 10 January 2023, Mr Ruhan produced certain documents to HPII in advance of the first hearing of his CPR Part 71 Examination scheduled for 17 January 2023. He disclosed documents, including the Default Judgment, and a (supposed) contract of employment with Quantum Switch MENA Limited.

325. On Sunday 15 January 2023, MDL emailed (from a Proton email account) Mr Ruhan stating: "Please find attached a self-explanatory letter and the charge for execution". The attachments have not been seen by HPII, and were not before me.

326. A letter addressed to Mr Ruhan dated 16 January 2023, from MDL, purportedly signed by Mr Almond, was headed "Notice of Ongoing Default". It said (inter alia) that MDL had not yet perfected its ownership of the companies subject to the MDL June Charge, and asked for Mr Ruhan's assistance. It continued: "we have become aware that you previously held option and or equity rights to your employer, the Quantum Switch group of companies, which you have informed us were withdrawn on the publication of [the Ruhan Trial Judgment]. In the circumstances, pursuant to clauses 7, 8, 9, 10 and 14 of the [MDL June Charge] we now require you to execute the additional security in

the form of the Additional Charge that is attached. ….". This is the "MDL January Charge", the second of the two "MDL Charges".

327. I am satisfied that this was part of the choreography to justify the MDL January Charge in advance of the first CPR 71 Examination, in order to protect Mr Ruhan's assets subject to that charge, howsoever characterised. Clauses 7-10, and 14, of the MDL June Charge do not in any way justify the grant of supplementary or additional security.

328. The reality is that this would appear to be an entirely gratuitous charge following the earlier (supposed) full and final June Settlement, and I cannot see any basis on which Mr Ruhan was obliged to provide the same. The reason for its provisions is, I am satisfied, clear enough. It was provided to further protect his assets from HPII's scrutiny and enforcement in light of the CPR 71 Examination. That is no doubt why there is no hint of any objection, negotiation, or resistance from Mr Ruhan. On the contrary, Mr Ruhan immediately signs it, the charge being set up to protect his assets pursuant to the Scheme.

329. On 16 January 2023, Mr Ruhan emailed MDL, returning a signed copy of the MDL January Charge. On 17 January 2023, MDL responded (from a Proton email account) to Mr Ruhan, to provide a counterparty document of the new charge in merged form (the "MDL January Charge"), requesting "Can you kindly provide details of the appropriate individual at Quantum Switch to notify of our interests".

330. The attached version was not signed by MDL. Under the MDL January Charge, Mr Ruhan charged certain other of his assets in favour of MDL. That included interests in HPIIJ and certain Atlantic entities, and Quantum Switch entities.

331. I am satisfied that these assets were at this point being specifically protected, in particular Quantum Switch, because of the fact that Mr Ruhan was required to disclose his (supposed) employment contracts with Quantum Switch to HPII in the CPR 71 Examination, which suggested he at one time had (on the face of those documents) a conditional beneficial interest in Quantum Switch.

332. On 21 January 2023, Mr Ruhan forwarded an email to Dr Smith (saying "FYI"), which had been forwarded to him by Mr Stevens. That email was from Harneys to Mr Stevens on 20 January 2023 relating to a hearing concerning P&M and the JLs in the BVI on 23 January 2023 and attaching relevant documents. This is a further example of Mr Ruhan and Dr Smith continuing to work together on Minardi issues long after MDL was transferred Minardi by Mr Ruhan.

333. On 28 February 2023, Foxton J handed down the February 2023 Judgment, in relation to Minardi's activities in the SFO Proceedings by which they were seeking to abusively undermine the Directed Trial Judgment.

334. On 4 May 2023, Minardi entered liquidation in the BVI.

Dr Smith's Control of the Ozturk Claimants

335. It is clear that Dr Smith, with Mr Ruhan's knowledge and assistance, de facto controls the Ozturk Claimants in the Ozturk Proceedings.

336. Mr Crossley's affidavit confirmed that he received "significant input" from Dr Smith regarding instructions from MDL and Minardi. That was, I am satisfied, an understatement. Dr Smith has at all material times, controlled all activity and run the litigation for the Ozturk Claimants. All other de jure directors had no material involvement (other than their names being used on certain letters when convenient).

337. As for Ozturk, this seemingly has connections to the Ozturk Trust, a trust set up for Dr Smith and his immediate family. Its de jure director was Mr A Smith, Dr Smith's brother (who has also been held to be Dr Smith's nominee). However, in June 2024, Dr Smith became a de jure director of Ozturk to enable him to represent Ozturk in the winding up injunction proceedings, with MDL adopting his arguments. The NCADs have always played a lesser role but are on the face of it directed by Mr A Smith (who, in turn, is directed by Dr Smith).

338. Mr Bryce said the reason for the delay in MDL/Ozturk responding to the RFIs pursuant to the Dias Order was that they "had to set aside time to work with Dr Gerald Smith…but he was based in Jersey on 1, 2 and 3 November 2023 at the time of a very severe storm…. Accordingly, he was unable to assist in the provision of key information which has prevented the production of the information contained in this statement".

339. I note, however, that most requests made were straightforward and could have been answered by the de jure directors if Dr Smith was not in reality the mind behind the operation. This shows that Dr Smith was the controller and his sign off was needed. Further, the "hold me harmless, pay or discharge" terms of MDL's "engagement" of Dr Smith for the MDL FS Litigation were remarkable. I am satisfied that this demonstrates that MDL was used as a vehicle to underwrite Dr Smith's arbitration liability to Mr Sodzawiczny, acting principally for Dr Smith's benefit; anything recoverable by MDL from Mr Sodzawiczny (not that anything was) would go back to him to cover Dr Smith's liability.

340. I am also satisfied that Dr Smith was behind all the emails sent by "MDLlitigation@protonmail.ch"; "Minardiadmin@pm.me"; and "Ozturk2recoveries@pm.me" – from which administration of these companies' day-to-day activities was undertaken.

341. The email addresses were stated as being the companies themselves, but the emails that were sent were never signed off by the author personally. The obvious inference, which I draw, is that this was done to seek to conceal the author's identity – Dr Smith. In this regard, it does not appear that Dr Smith was copied in on emails from those accounts, unlike the other de jure directors, lawyers, and Mr Ruhan.

342. I note that direct interactions with Mr Ruhan on important matters were virtually always from these addresses (or, on more private occasions, from Dr Smith himself). The obvious inference, which I again draw, is that all such communications emanated from Dr Smith. It is clear that Dr Smith routinely uses Proton Mail as a secure email platform, as recognised by Foxton J at [12] of the February 2023 Judgment: "Those communications were sent by Minardi using a ProtonMail email address, a form of email long used by Dr Smith.".

343. Dr Smith authored the RFI response from Mr Ruhan; he also edited draft Minardi settlements moments before they were sent from the Minardi address such that it can be inferred that Dr Smith was in control of the relevant account. He also gave instructions to Minardi's lawyers to file things and to other persons to sign documents (e.g. the Minardi Litigation settlement).

344. HPII's RFIs in the HPII Proceedings about the authorship of emails and letters have not been satisfactorily answered, although it is admitted (in Bryce 1) that, "Emails would have been primarily drafted by Dr Smith", albeit this is said to have been done "at the request and instruction of [Mr Bryce] and Mr Almond". However, there is no evidence as to the latter "requests and instructions", nor any documents showing the same, and I consider that the reality is that Dr Smith was drafting emails on his own behalf.

345. I am satisfied, set against the backdrop of what can only be described as Dr Smith's extremely persuasive personality (having previously been described as the "driving force" behind the IOM Settlement, see Directed Trial Judgment at [212], and having successfully persuaded (including by way of threats and financial inducement, to which I have already referred above) Messrs Cooper and McNally to betray Mr Ruhan, who were the latter's friends) as well as Dr Smith's intimate acquaintance with the factual background, that he was the "mastermind" insofar as the actions of the Ozturk Claimants were concerned (together with Mr Ruhan, as the context permits). I am satisfied that this is equally true of Dr Smith and the Orb Claimants in the Orb Proceedings, in which the Orb Claimants' solicitor has described Dr Smith as the "driving force", and "the source of the knowledge, the ideas" (Directed Trial Judgment at [212], per Foxton J). In this regard Foxton J has also stated, in the February 2023 Judgment at [12], that "I have no doubt that Dr Smith was closely involved in the formulating of Minardi's claims, together with or on behalf of those now behind MDL".

E. FINDINGS ON COLLUSION AND SECTION 423 OF THE INSOLVENCY ACT 1986

346. I draw together my findings from my consideration of the documentation and the chronology of events, which are as follows:

i) Mr Ruhan and Dr Smith were aware from the Draft Ruhan Trial Judgment (which Mr Ruhan obtained through his lawyers) that Mr Ruhan would be liable to HPII for at least £102.26m plus very substantial interest and costs. Mr Ruhan had no intention of paying HPII the judgment debt, and he and Dr Smith discussed at a meeting in Palma and on other occasions ways to escape that obligation, which resulted in the Scheme.

ii) This was all discussed with the Ozturk Claimants (controlled by Dr Smith), who confirmed that they would support any proposed IVA and assist Mr Ruhan, who was considering insolvency at that time ("…we will support and vote in favour of your intended Individual Voluntary Arrangement"). In this regard I am satisfied that Mr Ruhan and Dr Smith/Ozturk Claimants reached a consensus before the Ozturk Proceedings began to use those proceedings to thwart payment of the judgment debt.

iii) As one of the clearest examples of the Scheme, Mr Ruhan paid for the very Ozturk Proceedings to be issued against himself (through Wynndel with

reference "MDL" so as to avoid paying Mr Crossley directly; there also being the payment of £120,000 to Wynndel on 29 April 2022 which has never been properly explained), with a Letter before Action and subsequent Particulars of Claim that at first glance looked professionally drafted but upon even the most superficial examination set out spurious claims which were plainly contrived and hopeless.

iv) In this regard, Ozturk's claims in the Ozturk Proceedings were said in the Ozturk Particulars to be brought as a shareholder of Orb, bringing the "equivalent" of a reflective loss claim, but Ozturk later admitted in the HPII Proceedings that it was not a shareholder of Orb at that time, nor has it inherited any rights to bring any such claims to that effect. Ozturk's claims in the Ozturk Proceedings had already been raised in the Orb Proceedings and were settled at the Geneva Settlement stage; and the claims in the Ozturk Proceedings were time-barred and had been litigated by Dr Smith in the Orb Proceedings. As regards the NCADs' and MDL's claims, these were equally flawed; NCAD's cross-undertaking claims were settled by Order, and MDL's claim was (among other faults) really MTech's claim, which was not a party and had been dissolved. All of this would have been recognised as such by any remotely competent solicitor (and indeed by Mr Ruhan himself).

v) Within days of that Letter before Action being sent, the June Settlement was being produced with indecent haste and far too quickly for it to be reflective of a genuine negotiated settlement, having clearly been arranged in advance.

vi) Mr Ruhan then submitted to the June Settlement without any negotiations whatsoever. This was not the only time Mr Ruhan did so, having also never questioned why a Default Judgment was necessary or where all the references to judgments in the Ozturk Proceedings came from which did not exist at the time of writing the June Settlement. Mr Ruhan also agreed to the June Settlement without requesting advice from his lawyers (or even forwarding the draft settlement), notwithstanding the extremely onerous consequences thereof for him. Mr Ruhan was thus acting very differently to litigants involved in genuine settlement negotiations.

vii) The Scheme was actioned through two parallel chains of emails, the "legal choreography chain" and the "private chain". Discussions or documents regarding the Default Judgment, the draft settlement, the RFI response or the pre-filled out and signed admissions form, were never relayed to Mr Crossley directly by email, the chain being kept clean in case it would be subjected to disclosure. Meanwhile, the private chain was being used by Dr Smith (including through email accounts for MDL, Ozturk and later Minardi) and Mr Ruhan to update each other or exchange documents for signature.

viii) Notwithstanding the efforts taken by Dr Smith and Mr Ruhan to fabricate legal proceedings that were designed to appear to be genuine, upon examination it is clear that they both failed to keep up with the lies they were spinning, tripping up a number of occasions. Two obvious examples being Mr Ruhan in his email to Mr Crossley as to whether he had the resources to defend the claim set out in the LBA, sent at a time before he had even received the quote from Mr Goodwin,

and Dr Smith mis-addressing an email to "Mr Cochrane" (with the spelling of his former wife's name) rather than "Mr Cockburn".

ix) I am satisfied that various other matters also support the conclusion that the proceedings were a product of collusion, and not part of any genuine dispute between arm's length litigants or judgment creditors/debtors. In particular:-

a) The fact that Mr Ruhan was prepared to give a witness statement and RFI responses to assist Dr Smith in the Ozturk Proceedings (which were drafted by Dr Smith), both of which were intended to bolster a new claim by MDL against Mr Sodzawiczny (which was later dismissed) at a time after the Default Judgment against Mr Ruhan, which was not normal behaviour.

b) The fact that Mr Ruhan himself provides the evidence that, far from being under siege from Dr Smith, he is working in concert with him through the Personal Email (in which he seeks to persuade Mr Stevens to do the same) and the Feeding From The Trough Email ("We are trying to put maximum pressure on [Mr Jackson]", which can only refer to Mr Ruhan and Dr Smith). The threat of litigation against Mr Stevens in the Personal Email exposes the inherent improbability of Mr Ruhan falling on his sword in settling the Ozturk Proceedings without the slightest dispute. In the latter email, Mr Ruhan also admitted to his strategic moving of assets with regard to Minardi, and his plans to do the same for Bluestone, Grenda, and Giotto.

c) The fact that Dr Smith was in control of Minardi even before the formal transfer of it to him (writing to Mr Jackson from a Proton email account, and copying in Mr Ruhan, with an attached letter which was supposedly signed by Mr Ruhan; and emailing Mr Stevens and Mr Ruhan about Minardi, personally issuing instructions to Mr Stevens, who is Mr Ruhan's nominee), and the fact that Mr Ruhan was still dealing with Minardi (such as by signing a document as its director, and writing to Mr Slade that he no longer acted for Minardi) at a time well after the shares had been transferred to MDL, and Mr Ruhan had ostensibly resigned, coupled with the fact that Mr Ruhan was continually kept in the loop on emails. It is also telling that MDL, Ozturk and Dr Smith all steadfastly refused to plead back, in their Defences in the HPII Proceedings, to any Minardi-related issues, despite RFIs having been issued by HPII, which were repeatedly not engaged with.

d) The fact that the timing of the events show the activities to be coordinated activities, occurring at a speed that defies belief. For example, only hours after Mr Ruhan agreed to the transfer to himself of Minardi, MDL sends him the "Notice of Intended Enforcement of Security" on an urgent basis; the transfer of Minardi to Mr Ruhan, and the calls and transfer from Mr Ruhan to MDL, all occur in short order; the transfer to Mr Ruhan by Phoenix is followed by the MDL Call Notice the very next day; and mere two days before the CPR 71 Examination, Mr Ruhan signs a gratuitous additional charge protecting other of his assets.

e) The very tone of the extensive communications between Mr Ruhan and Dr Smith (and, through him, MDL, Ozturk or Minardi), which at no time convey the impression of a genuine relationship of arm's length litigants before the Default Judgment, or one of arm's length judgment creditor and debtor after the Default Judgment. The correspondence referred to above shows two men working together for a common purpose (for example the above email relating to the IVA, the Art of the Possible Letter, and when Mr Ruhan asks for a discussion with Dr Smith on the back of an email received from Mr Stevens).

347. I am satisfied that Mr Ruhan was not willing to pay HPII, and was prepared to do all that he could to thwart HPII's enforcement efforts, which he then carried into effect through the June Settlement and Default Judgment, followed by the transfer of assets as has been addressed. This is entirely consistent with, and entirely at one with, Dr Smith's and Mr Ruhan's propensity for thoroughly dishonest dealings, as found by other judges of this Court in a number of previous judgments.

348. For the above reasons, I am satisfied that Dr Smith and Mr Ruhan colluded by way of the Scheme.

The Transaction

349. For the purposes of section 423 of the Insolvency Act 1986, there needs to be a transaction at an undervalue (as addressed in Section B.2 above). HPII submits that the "transaction" in this case should be the entirety of the substance of what was agreed and arranged as part of the Scheme by Mr Ruhan and Dr Smith via the June Settlement, containing the Two Promissory Clauses and the MDL June Charge, which was later extended in January 2023 via the MDL January Charge (together, the "Transaction"). It is convenient to repeat the four components of the Transaction here:

i) The Two Promissory Notes:

a) MDL Note (£100m; secured) (incorrectly dated 26 June 2020);

b) Ozturk Note (£900m; unsecured) (incorrectly dated 26 June 2020);

ii) The MDL Charges:

a) MDL June Charge (the aforementioned three items constituting the June Settlement);

b) MDL January Charge.

350. The functional elements of the Transaction amounted, in substance, to an arrangement whereby Mr Ruhan agreed to pay MDL £100m and Ozturk £900m (under the MDL Note and Ozturk Note, respectively), and charged certain assets in favour of MDL with a view to then transferring them to MDL (in the MDL June Charge and later the MDL January Charge, the latter being an extension to the Scheme and thus part of the Transaction).

351. As part of the Transaction, the Minardi shares were transferred by Mr Ruhan to MDL in October 2022. It is unclear to HPII whether any other of Mr Ruhan's assets were

transferred (although Mr Almond has stated in an affidavit that other shares have been transferred into MDL's ownership, such as the shares in Grenda, Bluestone, and Giotto, and Mr Crossley has stated (in a draft document he prepared before the CCMC before Dias J) that sums of cash have also been transferred by Mr Ruhan).

352. As I set out in Section B.2 above, I am satisfied that if Party A to a supposed compromise is in reality on the other side of it, and engages with Party B in fake litigation to obtain an abusive default judgment from the court, there is no genuine dispute between the parties and no consideration is received.

353. I consider it artificial to look at each of the operative agreements under Transaction (the June Settlement, and the MDL January Charge), as a "series" of transactions divorced from the overall Scheme, as to do so would involve the court minutely parsing what was one exercise or a single transaction. The reality is that there was one transaction here (as noted above) which had various elements. The transaction was, essentially, that Mr Ruhan gave a chose in action through a promise to pay MDL/Ozturk a total of £1bn, and proprietary rights via charging his assets (effectively giving them) to MDL for safekeeping so as to later transfer them over (and doing so in some cases).

354. I am satisfied that, on the basis of the findings I have made above in relation to the Scheme, the Transaction (the giving of the promissory notes and charges by Mr Ruhan and transfers of assets), was a transaction at an undervalue, being a transaction by Mr Ruhan with others on terms that provided for him to receive no consideration (section 423(1)(a)).

355. Whilst in return for doing what he did, Mr Ruhan on the face of it obtained a settlement of the Ozturk Proceedings' claims against him and related claims arising out of the facts, that was premised on there having been genuine litigation and claims against Mr Ruhan, and a real dispute. I am satisfied that on the contrary, Mr Ruhan obtained nothing: there was no real dispute and there were no genuine claims. The collusive claims brought against him in the Ozturk Proceedings were meritless and the settlement thereof (the June Settlement) was itself collusive. In such circumstances the consideration he was to receive was purely illusory, did not bear examination, and amounted to no consideration for the purpose of section 423(1)(a).

356. I am also satisfied that the Transaction was entered into by Mr Ruhan not only for a purpose, but for the purpose, of putting assets beyond HPII's reach and/or prejudicing HPII's rights in relation to the claims made by HPII (for the purposes of section 423(3). HPII was a person who had very recently obtained a judgment against Mr Ruhan (the Ruhan Trial Judgment) and would be able to lay claim to Mr Ruhan's assets via enforcement. Not only was the Transaction entered into by Mr Ruhan for the purpose of putting assets beyond HPII's reach, that was then carried through into effect with certain assets being transferred to MDL (for example, Minardi was transferred and utilised by Dr Smith and Mr Ruhan, in concert). Each of Dr Smith and the Ozturk Claimants shared, assisted and participated in this enterprise.

357. Further, in the event of Mr Ruhan entering into an insolvency situation, which was envisaged prior to the Transaction as a real possibility with Mr Ruhan having paid various sums to insolvency practitioners and Mr Ruhan having evidently planned an IVA or bankruptcy, the effect of fabricating creditors to which Mr Ruhan would then agree to pay sums and secure assets, would dwarf or prejudice the unsecured claims of

others (i.e. HPII) and would have (unless challenged) the effects of: (1) enabling Mr Ruhan/Dr Smith to hold first security over Mr Ruhan's assets up to £100m; and (2) enabling Mr Ruhan/Dr Smith to use an unsecured debt of at least £900m (or more, to the extent MDL was unsecured) which would give Mr Ruhan and Dr Smith (being in control of the Ozturk Claimants) major and inappropriate control qua creditors over any insolvency process.

358. I am satisfied that HPII is a victim of the Transaction it seeks to impinge, it being prejudiced by the Transaction. As such HPII has standing to seek section 423 relief (see section 423(5)).

Relief

359. Turning to relief, and as addressed in Section B.2 above, the Court has very wide discretionary powers with regard to relief for the purpose of restoring the position to what it would have been if the transaction had not been entered into, and protecting the interests of persons who are victims of the transaction (see section 423(2).

360. The consequences of my findings in relation to section 423(1)(a) of the Insolvency Act 1986 are that HPII's claim in the HPII Proceedings for relief against MDL and Ozturk under section 423(1)(a) succeeds, and in terms of the relief sought I consider it appropriate to make the following orders in furtherance of the purposes of section 423(2):-

i) I declare that the Two Promissory Notes and MDL Charges fall within section 423, and are of no effect. I make orders setting aside those documents and any transfers of assets which were charged under the same.

ii) I make an order requiring MDL to re-transfer the Minardi shares (which had been transferred by Mr Ruhan to MDL in October 2022) back into Mr Ruhan's name (which will then be subject to the WFO against Mr Ruhan with the result that Mr Ruhan will not be permitted to deal with them in any way without a court order).

iii) MDL and Ozturk are ordered to transfer the shares, or any other assets, as may have been transferred to them under the MDL June and January Charges, back to Mr Ruhan (which will then be subject to the WFO against Mr Ruhan with the result that Mr Ruhan will not be permitted to deal with them in any way without a court order).

iv) MDL and Ozturk's directors are required to swear an affidavit by a date to be specified by the Court which:

a) more clearly explains what assets, other than Minardi (including cash, property or shares), of any description, have been transferred to them by Mr Ruhan directly or indirectly (if any), and when (in particular providing further and better particulars with respect to the affidavit made by Mr Almond with respect to the Bluestone, Grenda and Giotto shares with evidence of the same);

b) states what has been done with or become of those assets (if anything) and when; and

c) confirms the steps which shall be taken to re-transfer the same by a deadline to be specified by the Court.

v) Any transfers back to Mr Ruhan must be notified to HPII immediately.

vi) HPII has liberty to apply.

361. The precise terms of such Orders, and the timing of associated steps, will be finalised with the assistance of HPII's counsel upon the handing-down of judgment.

362. I make clear that if rather than approaching the matter as one Transaction, it were more appropriate or apt to treat each of the operative agreements under the June Settlement and the MDL January Charge to be separate "transactions", together with the relevant transfers of assets, I consider that HPII would be entitled to similar relief under section 423 in respect of each transaction, and for the same reasons.

F. FINDINGS ON THE *MAREX* TORT

363. Having determined above that, triggered by the Ruhan Trial Judgment, Dr Smith and Mr Ruhan (and through them MDL and Ozturk, which Dr Smith controlled) have colluded in a Scheme to prejudice HPII's enforcement and/or legitimate creditor position (through dwarfing HPII as a creditor and fraudulently inflating Mr Ruhan's other creditors) and/or to move Mr Ruhan's assets into the control of third parties (the Ozturk Claimants), I am satisfied that Dr Smith, MDL and Ozturk committed the *Marex* tort as addressed below.

364. Turning to the elements of the *Marex* tort. HPII secured a judgment against Ruhan in its favour in the form of the Ruhan Trial Judgment. On the part of Mr Ruhan, HPII's judgment rights were breached by his failure to pay the judgment debt. On the part of Dr Smith and, through him, MDL and Ozturk, they have procured, encouraged and directly assisted Mr Ruhan's breach. They played an integral part in the Scheme, with Mr Ruhan, which was designed to assist and enable Mr Ruhan to breach HPII's judgment rights. Their actions, by their very nature within the Scheme, have sufficient causal connection with the breach, and they intended to violate HPII's rights.

365. As is clear from the above findings, Dr Smith, MDL and Ozturk knew of HPII's judgment against Mr Ruhan. It is Mr Ruhan's own position that Dr Smith turned up at his house in Palma at virtually the same time as the Draft Ruhan Trial Judgment was being circulated. This is also clear from the various references to the Ruhan Trial Judgment that I was taken to in submissions, in the Ozturk Claimants' Letter before Action; the Ozturk Proceedings' Particulars of Claim; the Global Settlement Deed, both in draft and final versions; and the MDL January Charge. Dr Smith, MDL and Ozturk knew full well that the Scheme would and did involve a breach by Mr Ruhan of HPII's rights under the judgment, as that was its purpose.

366. On the facts that I have found, Dr Smith, MDL and Ozturk clearly realised that the conduct being induced or procured would breach the rights owed under the judgment.

367. In such circumstances, the elements of the *Marex* tort (as identified in *Lakatamia v Su* at [126]) are made out.

Relief

368. In terms of relief, HPII seeks injunctions against Dr Smith and MDL/Ozturk restraining any furtherance, development or continuation of wrongdoing by these defendants in relation to the *Marex* tort.

369. I am satisfied that the making of such injunctions is the appropriate form of relief to be ordered in this case. Given the scale and seriousness of the wrongdoing on the part of the defendants, and the previous findings of dishonesty in relation to each of Dr Smith and Mr Ruhan, there is a real likelihood that, unless restrained by the court, the defendants will continue with the Scheme as identified in this judgment, or schemes of a similar nature which are designed to prejudice HPII, and assist Mr Ruhan in charging and/or diverting his assets so as not to satisfy the judgment debt. There is a strong likelihood of continued tortfeasance which should be prevented by a court order in terms which restrain and prohibit such behaviour, breach of which will amount to a contempt of court.

370. I find that it is just and convenient to make such order in the terms of the draft Order which has been provided to me, subject to finalisation of the precise wording of the Order upon the hand-down of this judgment.

G. FINDINGS ON THE SET ASIDE APPLICATION

371. As I have already found, I am satisfied that the purpose of the Scheme was to prejudice HPII's judgment rights. The Default Judgment in the Ozturk Proceedings was improperly and irregularly obtained under the Scheme and allowed the Ozturk Claimants the benefit of a court order so as to be judgment creditors of Mr Ruhan. That judgment debt would dwarf HPII's (regularly-obtained) judgment debt, be harder to impugn given its judgment status, and be less likely to be subjected to scrutiny in an insolvency. HPII's legal rights and interest in enforcing its judgment would thus be materially and adversely affected by the Default Judgment, especially in any insolvency situation, or should the Default Judgment be enforced by the Ozturk Claimants against Mr Ruhan. In such circumstances, and on the principles identified in Section B.4 above, there can be no doubt that HPII have locus standi to apply to set aside the Default Judgment.

372. I am satisfied that the Default Judgment in the Ozturk Proceedings was fraudulently obtained as part of the Scheme and amounted to a serious abuse of the court's process, designed to directly affect and prejudice HPII's rights. As such the Default Judgment should be set aside, and I so order.

H. FINDINGS ON THE STRIKE OUT APPLICATION

373. I am satisfied that the Ozturk Proceedings were abusive and collusive, and were issued as part of the "legal choreography" of the Scheme. The Ozturk Proceedings were contrived by Mr Ruhan and Dr Smith to try and legitimise the fraud they were committing against HPII. Mr Ruhan paid for the Ozturk Proceedings to be issued against himself. Dr Smith has form for abuse of process, see the Directed Trial

Judgment, at [94] and [102]. On no view was this legitimate, bona fide, or honestly conducted, litigation.

374. The claims themselves were entirely concocted and meritless (and, in the case of Ozturk, were advanced on a knowingly false factual basis, as Ozturk was never a shareholder of Orb Arl). The court was misled and its process was invoked for purposes significantly different from its ordinary or proper purpose. Had the Ozturk Claimants been honest, they could not have come to court seeking what they did and/or the Ozturk Proceedings would have been struck out.

375. The Ozturk Proceedings amount to an abusive misuse of the court's procedure that if permitted to persist would bring the administration of justice into disrepute. I consider that the Ozturk Proceedings are a paradigm example of abusive proceedings that should be struck out, and I so order.

I. CONCLUSION

376. In the HPII Proceedings I grant the section 423 relief sought against MDL and Ozturk, and grant the final injunctive relief sought against MDL, Ozturk and Dr Smith. In the Ozturk Proceedings I set aside the Default Judgment against Mr Ruhan and strike out the Ozturk Proceedings as abusive.

377. I will hear from counsel for HPII on the handing down of this judgment as to the finalisation of the Order to be made to give effect to this judgment.