Neutral Citation Number: [2021] EWHC 3425 (Ch)

Claim No: BL-2021-000365

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
BUSINESS LIST (ChD)

Royal Courts of Justice, Rolls Building
Fetter Lane, London, EC4A 1NL
Date: 20 December 2021

Before:

STUART ISAACS QC (sitting as a Deputy Judge of the High Court)

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Between:

Mrs Nebahat Evyat İşbilen

Claimant

(1) Mr Selman Turk
(2) SG Financial Group Limited
(3) Barton Group Holdings Limited
(4) Sentinel Global Asset Management, Inc
(5) Sentinel Global Partners Limited
(6) AET Global DMCC

Defendants

(7) Forten Holdings Limited
(8) Forten Limited
(9) Heyman AI Limited
(10) Gary Bernard Lewis

Proposed Additional Defendants

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Mr Dan McCourt Fritz and Mr Tim Benham-Mirando (instructed by Peters & Peters Solicitors LLP) appeared on behalf of the Claimant.

The 1st Defendant appeared in person.

Hearing date: 14 and 15 December 2021

Approved Judgment

Covid-19 Protocol: This judgment was handed down by the judge remotely by circulation to the 1st defendant and the other parties' representatives by email and release to Bailii. The date and time for hand-down is deemed to be 10.30am on 20 December 2021.

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

Stuart Isaacs QC:

Introduction

1. The claimant is an elderly Turkish lady. By a claim form issued on 8 March 2021, she began the present proceedings against the defendants in which she alleges that she entrusted the 1st defendant ("Mr Turk") with effective control as her trustee or agent of at least USD 87.5 million of her funds. The claim form alleges that Mr Turk dishonestly and systematically breached his fiduciary duty owed to her and is liable in deceit in respect of a number of agreements and transactions which he induced her to enter into. The claimant claims against him *inter alia* an account of profits, a declaration as to her beneficial entitlement to a purported loan of USD5 million made by him to himself or its traceable profits, equitable compensation and damages.

2. The claim form seeks relief against the other defendants as the recipients of the claimant's funds. Her primary claims against 2nd, 4th and 5th defendants (respectively "SG Financial", "SGAM" and "SG Partners") are in knowing receipt; she also claims against SGAM and SG Partners in deceit and brings proprietary and restitutionary claims against the 2nd to 6th defendants.

3. Mr Turk served a defence dated 25 June 2021 in which he vigorously denies the claims against him. SG Financial and SGAM served a defence dated 12 August 2021 also disputing the claims against them. SG and SGAM indicated, by their solicitors' letter dated 26 November 2021, that they would not be participating in the present hearing. The 3rd defendant ("Barton"), SG Partners and the 6th defendant ("AET Global") did not enter appearances to the claim and have taken no part in the present proceedings.

4. At the hearing which has taken place before me, the claimant applies for:

    (1) permission to (a) amend the claim form and particulars of claim; (b) add new defendants whom she alleges received traceable proceeds of her assets; (c) rely for those purposes and in support of her claims on evidence given by Mr Turk in cross-examination at a hearing on 20 April 2021; and (d) serve the amended claim form and particulars of claim, together with any order made on the application and any further necessary documents out of the jurisdiction in Jersey on the proposed 7th defendant ("Forten Holdings") (application notice dated 3 June 2021);

    (2) disclosure by Mr Turk of various bank statements and related relief (the "Disclosure Application") (application notice dated 21 July 2021);

    (3) an order for alternative service (application notice dated 30 November 2021); and

(4) an order striking out Mr Turk's application (application notice dated 2 December 2021).

5. Mr Turk applies for reverse summary judgment on the claims against him or an order striking out certain paragraphs of the particulars of claim (application notice dated 2 July 2021).

6. SG Financial and SGAM do not oppose the applications for permission to amend the claim form and particulars of claim and to add new defendants whom the claimant alleges received traceable proceeds of her assets (together, the "Amendment Applications"). Prior to the service by Mr Turk of written submissions on the afternoon before the hearing, at which Mr Turk appeared in person, he did not indicate his position with regard to the Amendment Applications. Those written submissions addressed only Mr Turk's application. In relation to the other applications before the court, the written submissions stated only that Mr Turk opposed them, without any elaboration of the grounds for his opposition.

7. In his written submissions, Mr Turk also asked the court to permit him to be assisted by a Mr John Bechelet, a partner in his former solicitors, Bivonas Law LLP ("Bivonas") as a McKenzie friend. The claimant, without accepting that Mr Bechelet met the requirements of a McKenzie friend, conceded that Mr Bechelet should be permitted to address the court and the hearing proceeded on that basis, with both Mr Turk and Mr Bechelet making oral submissions. The claimant's concern as to whether Mr Bechelet was able to act as a McKenzie friend primarily related to whether he maintained an interest in the proceedings as a partner in Bivonas. To address that concern, I directed that Mr Bechelet should disclose the extent of any interest in the proceedings by reference to the matters raised in paragraph 17 of the claimant's supplemental note served on 14 December 2021 in response to Mr Turk's written submissions.

The Amendment Applications

8. The basis for the Amendment Applications appears from the first witness statement dated 3 June 2021 and fourth witness statement dated 3 November 2021 of Jonathan Tickner, a partner in the claimant's firm of solicitors. The proposed amendments reflect new information obtained by the claimant, in particular as the result of (i) material provided by Mr Turk pursuant to his disclosure obligations under an order made by Miles J on 4 March 2021 granting a worldwide freezing order (the "WFO") and disclosure orders against him so as to enable the claimant to know the whereabouts of her money or its traceable proceeds; (ii) an affidavit dated 22 March 2021 sworn by Mr Turk in which he identified Forten Holdings and the proposed 8th defendant ("Forten") as possible recipients of traceable proceeds; (iii) Mr Turk's evidence in cross-examination at a hearing on 20 April 2021; (iv) information provided by Bivonas on 4 May 2021 which further identified the proposed 9th defendant ("Heyman") as a possible recipient of traceable funds; (v) successful court applications by the claimant in the British Virgin Islands against Barton and in the Cayman Islands against SGAM and SG Partners for documentary and affidavit evidence; and (vi) evidence relating to the proposed 10th defendant ("Mr Lewis") described in Mr Tickner's fourth witness statement.

9. As a result of that information, by the Amendment Applications the claimant seeks to add allegations against Mr Turk that she was induced to enter into the agreements and transactions relied on as the result of undue influence exerted by him and that he received traceable proceeds from Barton; to advance her primary claim against Barton and each of the proposed additional defendants as well as against SG Financial and SGP; and to allege deceit against Barton as well as against SGAM and SGP. She seeks expanded relief in respect of those claims against the defendants and proposed additional defendants.

10. As I have mentioned, SG Financial and SGAM do not oppose the Amendment Applications. Mr Turk submitted at the hearing that the proposed new claim for undue influence was not maintainable as a matter of law and so he objected to it. According to Mr Turk, the undue influence claim had no real prospect of success. In relation to the other proposed amendments, he stated that he did not object to any of them. However, during the course of his submissions on his summary judgment/strike out application, he added that he also objected to the proposed expansion of paragraph 111 of the particulars of claim which, in its original form, states that "*So far as Mrs İşbilen is aware, Barton provided no consideration for the payments that it received out of her funds.*"

11. The principles applicable to the grant of permission to amend a statement of case are well-known, were not disputed by Mr Turk and do not require detailed elaboration. In deciding whether or not to exercise its discretion to grant permission to amend, the court must strike a balance between the injustice to the applicant if the application is refused and the injustice to the opposing party and other litigants in general if the application is granted. A key consideration is whether the proposed amendment has any real prospect of success or, in other words, that the allegation made by the proposed amendment is not fanciful, see for example *ED&F Man Liquid Products v Patel* [2003] EWCA Civ 472. On the question whether or not a new party should be added to a claim, CPR 19.2 provides that the court may order a person to be added as a new party if it is desirable to do so in order that the court can resolve all the matters in dispute in the proceedings; or there is an issue involving the new party and an existing party which is connected to the matters in dispute in the proceedings and it is desirable to add the new party so that the court can resolve that issue.

12. With the exception of the undue influence allegation and the addition to paragraph 111 of the particulars of claim, which Mr Turk opposes, none of the proposed amendments is opposed. I accept the claimant's submission that the proposed amendments which are not opposed are closely tied up with the issues which currently arise in the proceedings and have at least a real prospect of success. I also accept that the addition of the proposed new defendants is both appropriate and desirable in circumstances where they have close links with Mr Turk and were the alleged recipients of the traceable proceeds of the claimant's monies.

13. I am unable to accept Mr Turk's submission that the proposed new allegation of undue influence pleaded in paragraphs 136G to J of the draft amended particulars of claim is not maintainable. Pending discovery, the claimant relies on a host of allegations in paragraph 136H which cannot be said on their face to be unsustainable. In my judgment, the undue influence claim, whether or not it succeeds at trial, has at least a real prospect of success. Further, Mr Turk has alleged that the claimant was

able to understand the nature and contents of various documents in issue in the proceedings. That is a matter contested by the claimant who, it is alleged, speaks little English and does not read English. The allegation of undue influence is sought to be made in response to Mr Turk's allegation. Any injustice to Mr Turk in permitting the amendment to be made – and none was suggested by him other than that the claim lacked merit – is outweighed by the injustice to the claimant if the application is refused in not being able to have the issue determined in the present proceedings.

14. I also reject Mr Turk's submission that paragraph 111 of the particulars of claim should not be amended in the form proposed by the claimant since the amended text is irrelevant. In its amended form that paragraph alleges that:

"*So far as Mrs İşbilen is aware, Barton provided no consideration for the payments that it received out of her funds, let alone any services that could have begun to justify a fee of approximately £11,164,164.24. As pleaded above at paragraph 64, SGAM also apparently charged Mrs İşbilen $1.7m for the same purported service of assisting in cashing in the Promissory Notes. Accordingly, on Mr Turk's version of events he induced Mrs İşbilen to pay two different entities for the same purported services*." (underlining added)

15. The proposed amendment results from Mr Turk's evidence in cross-examination. Unless that evidence is to be excluded, there is a sufficient basis for it and it is closely tied up with the issues which currently arise in the proceedings. I do not accept that the proposed amended text is in any way irrelevant or ought to be refused for that reason.

Claimant's application for permission to rely on evidence given by Mr Turk in cross-examination

16. One aspect of the Amendment Applications is whether the claimant should be entitled to rely on evidence given by M Turk in cross-examination on 20 April 2021. Without that evidence being able to be relied on, not all of the proposed amendments can be made out. The cross-examination of Mr Turk was provided for by an order dated 25 March 2021 of Ms Pat Treacy (sitting as a deputy judge of this court), to which the background is summarised in Mr Tickner's first witness statement. Mr Turk was agreeable to being cross-examined subject to certain safeguards, of which the relevant one for present purposes, recorded in paragraph 5(3) of the deputy judge's order, was that his evidence given in cross-examination at the 20 April 2021 hearing "*shall not be admissible in these proceedings or any other proceedings (including any contempt proceedings) without the permission of the Court*".

17. The claimant now applies for permission to rely on the evidence given by Mr Turk in cross-examination at the hearing on 20 April 2021 for the purposes of the Amendment Application and in support of her claims.

18. The ground for Mr Turk's opposition to the application was stated in his oral submissions and without elaboration to be that the cross-examination was confined to an investigation of his assets and nothing else; and that, therefore, it would not be an appropriate use of the evidence which he gave to allow the claimant to use it for the purposes of the Amendment Application and in support of her claims.

19. That submission is factually incorrect and I reject it. The central purpose of the cross-examination and the relevant disclosure obligations imposed on Mr Turk was to allow the claimant to develop her case. Miles J's judgment of 3 March 2021 clearly envisaged that the claimant could and would use the information obtained in the proceedings to formulate and plead further proprietary claims, including claims against third parties. The order for his cross-examination resulted from Mr Turk's failure to comply with his disclosure obligations under Miles J's order. Had Mr Turk complied, the cross-examination would have been unnecessary. The claimant is certainly able to rely on materials disclosed by Mr Turk. It would be strange in those circumstances if Mr Turk's evidence at his cross-examination were not to be permitted to be admissible to enable the claimant to advance her case. It is apparent from the list of topics for his cross-examination agreed to by Mr Turk at a time when he was represented by solicitors and counsel that the topics for cross-examination extended well beyond an inquiry into his assets.

20. Accordingly, the Amendment Applications (subject to what follows in relation to Heyman) and the claimant's application for permission to rely on evidence given by Mr Turk in cross-examination are granted.

The position of Heyman

21. During the course of Mr Turk's submissions in opposition to the Disclosure Application on the second day of the hearing and following the conclusion of the submissions on the Amendment Applications, it emerged that, unbeknown to the claimant until then, Heyman had been wound up on 15 September 2021. Given the way in which Heyman's position came to be known by the claimant, the consequences of the winding up were not able to be addressed in oral submissions on the Amendment Applications. Under section 130(2) of the Insolvency Act 1986, "*'when a winding-up order has been made or a provisional liquidator has been appointed, no action or proceeding shall be proceeded with or commenced against the company or its property, except by leave of the court and subject to such terms as the court may impose*". By a letter dated 16 December 2021 to the court, which was copied to Mr Turk and Mr Bechelet, the claimant sought permission under section 130(2) for Heyman to be added as a party without the need for a formal application to be made to that effect and that the court should deal with the matter as part and parcel of the Amendment Applications.

22. The claimant argued that such a course of action would be appropriate given that Mr Turk did not at any time until the second day of the hearing disclose what he must already have been aware of for some time and did not oppose the joinder of Heyman to the proceedings. It would also be more efficient, given that the claims against Heyman arise out of the same facts that give rise to the claims against the existing defendants for the claims against it to be dealt with in the present proceedings,

23. There is force in the claimant's submissions and I accept them. I therefore give permission for the claims against Heyman to be proceeded with. However, it would not be right to make a final order to that effect without giving Mr Turk the opportunity to seek to set aside that permission if he so chooses. I do not encourage him to do so but it would be his right. I therefore direct that if Mr Turk wishes to apply to set aside

the permission, he must make a reasoned application by 4pm on Thursday 23 December 2021.

Permission to serve the amended claim form and particulars of claim, together with any order made on the application and any further necessary documents out of the jurisdiction in Jersey on Forten Holdings

24. There is one further ancillary matter arising out of the Amendment Applications: the claimant seeks permission to serve the amended claim form and particulars of claim, together with any order made on the application and any further necessary documents out of the jurisdiction in Jersey on Forten Holdings. I am satisfied that it is appropriate to grant such permission, for the following reasons. First, the claimant has a good arguable case that Forten Holdings is a necessary and proper party to the proceedings against Mr Turk since the claims against it concern transfers effected by him and depend on a single investigation of his alleged wrongdoing. The claimant should be allowed to assert her alleged propriety rights against Forten Holdings resulting from that wrongdoing. Second, there is no doubt that the claimant's claims against Forten Holdings have at least a real prospect of success. Third, the claims against Forten Holdings and the other defendants involve overlapping evidence and are closely connected with the English jurisdiction such that England is the appropriate forum for the resolution of the claims against Forten Holdings.

Mr Turk's summary judgment/strike out application and the claimant's application to strike out Mr Turk's application

25. By his application notice of 2 July 2021, Mr Turk applies for reverse summary judgment on the claims against him on the grounds that they have no real prospect of success and that there is no other compelling reason for the case to be disposed of at trial. He further seeks to have paragraphs 17 to 19 and 127 to 130 of the particulars of claim struck out on the basis that they are irrelevant such that they disclose no reasonable grounds for bringing a claim or that they are an abuse of process or otherwise likely to obstruct the just disposal of the proceedings.

26. On 2 December 2021, the claimant issued her application to strike out Mr Turk's application, supported by Mr Tickner's witness statement of that date, pursuant to the court's inherent jurisdiction and CPR 3.1(2)(m). It is convenient to deal first with the claimant's application.

27. The claimant submitted that Mr Turk's application should be struck out for the following reasons:

    (1) Her claims against Mr Turk are principally based upon his alleged deceit, breaches of fiduciary duty and undue influence in relation to her assets, which allegations Mr Turk denies. The factual disputes raised in the pleadings clearly cannot be resolved without disclosure and oral evidence from the claimant and Mr Turk.

    (2) When Miles J granted the WFO on the without notice application, he took into account the same arguments now being advanced by Mr Turk in support of his application (which arguments had been raised by the

claimant by way of full and frank disclosure) and yet granted the WFO. At the return date, Mr Turk did not challenge the judges' conclusion that the claims against him were well arguable, or to contend that the claimant or her legal representatives had breached their duty of full and frank disclosure.

(3) If the Court assumes for the purpose of the strike out application, as it is bound to do, that the facts pleaded are true, the particulars of claim plainly disclose maintainable causes of action against Mr Turk.

(4) Even if alleged irrelevance is a ground for striking out a statement of case, if the facts and matters pleaded are assumed to be true they are manifestly relevant to the claimant's claims.

(5) For those reasons, it is unnecessary for the court to embark on a detailed consideration of Mr Turk's application.

28. The claimant submitted that, if Mr Turk's application were not struck out as having manifestly no real prospect of success, it should be struck out as an abuse of process, having regard to the eight reasons set out in paragraph 8(4) of her skeleton argument (derived from Mr Tickner's fifth witness statement). While it would be tempting to accede to the claimant's application, in the exercise of my discretion I consider that it would not be appropriate to do so. I do not consider that several of the reasons advanced by the claimant are germane or else sufficient in this context, for example the fact that there is no direct supporting evidence from Mr Turk himself, the timing of Mr Turk's application, his failure to engage with the claimant concerning directions for the hearing as directed by the court, the alleged inference that Mr Turk lacks any serious conviction in the merits of his application and its effect on the future conduct of the proceedings. There is, on the other hand, merit in the submission that Mr Turk's application is misconceived and inappropriate and that Mr Turk should not be allowed to bring his application when he previously declined to challenge the WFO and proprietary injunction granted without notice and continued at the return date hearing on the basis of the existence of good arguable claims. However, a determination of those matters necessarily involves a consideration of the substantive arguments advanced by Mr Turk in support of his application and is better dealt with in that context. I therefore refuse the claimant's application to strike out Mr Turk's application.

29. The legal principles applicable to an application for summary judgment on which the claimant relied were not disputed by Mr Turk. Those include that:

(1) to defeat an application for summary judgment, a respondent need do no more than show that his claim has a real prospect of success;

(2) the Court should be slow to make a final decision without trial where reasonable grounds exist for believing that a fuller investigation into the facts would add to or alter the evidence available, thereby affecting the outcome of the case, *Bolton Pharmaceuticals v Doncaster Pharmaceuticals* [2006] EWCA Civ 661 at [18];

(3) it should be assumed that the respondent to the application will establish the facts alleged at trial unless those facts are obviously untrue, see *Director of the Assets Recovery Agency v Woodstock* [2006] EWCA Civ 74 at [14] *per* Hughes LJ, *Gohil v Gohil* [2015] UKSC 61 at [49]-[50] *per* Lord Neuberger, *Three Rivers District Council v Governor and Company of the Bank of England (No 3)* [2003] 2 AC 1 and *Okpabi v Shell* [2021] UKSC 3 at [22], where the Supreme Court stated (in a different but comparable context) that simply disputing facts by producing evidence of your own is not good enough and indeed backfires: it merely shows that there is a triable issue; and

(4) it is not the court's function on a summary judgment application to embark on a mini-trial by conducting a minute and protracted examination of documents and the facts of a case in order to see whether the respondent does indeed have a claim, see *Three Rivers* at [96] *per* Lord Hope.

30. The issue on Mr Turk's summary judgment application concerns whether, in application of those undisputed principles, the application should succeed. In his written and oral submissions, Mr Turk (assisted by Mr Bechelet) took me through the allegations in his defence in response to the allegations in the particulars of claim and to the evidence in support of his application of Mr Sergey Litovchenko, a solicitor at the time at Bivonas. It is, however, noteworthy that no evidence was provided by Mr Turk himself. Mr Turk disputed that he owed the claimant the duties alleged and, if he did, disputed that they were breached. He went through the documents in exhibit SL2 to Mr Litovchenko's witness statement dated 2 July 2021 which, he submitted, bore out his position. He drew attention to his denial of each of the allegations against him. He emphasised in particular that he obtained the claimant's instructions for every transaction; and that the claimant, a sophisticated investor, approved all transactions, signed documentation in both the Turkish and English languages and knew exactly what she was doing. Her signature on Turkish language bank statements confirmed that all payments were made in accordance with her orders. Some of the documents in question were notarised and so their contents must have been explained to her and understood by her. Anyone with any financial knowledge would know that his position was the correct one.

31. The claimant, in an annex to her skeleton argument and in her submissions, explained at length why Mr Turk's application was not tenable. The claimant disputed that some of her signatures relied on by him were genuine and, even if they were, there were gaping holes in Mr Turk's attempt to show that the duties alleged against him did not exist or were not breached. It was not suggested by the claimant that there were not serious matters to be tried.

32. As already stated, it is not the court's function to conduct a mini-trial. In my judgment, the claimant has clearly crossed the relatively low threshold of showing that her claims have a real prospect of success. As I listened to Mr Turk's submissions, it became increasingly apparent that the matters to which he drew attention raised multiple triable issues. The court cannot simply accept his version of events and conclude from that, as Mr Turk invited the court to so, that the claimant's case was bound to fail. This is particularly so where the issues in the case involve

disputed questions of fact on which oral evidence will be required in the light of full disclosure and the witnesses will be subjected to cross-examination.

33. The other limb of Mr Turk's application seeks to have paragraphs 17 to 19 and 127 to 130 of the particulars of claim struck out on the basis that they are irrelevant such that they disclose no reasonable grounds for bringing a claim or that they are an abuse of process or otherwise likely to obstruct the just disposal of the proceedings. On a strike out application, the court must proceed on the basis that the allegations which the applicant seeks to strike out are true, *Libyan Investment Authority v King* [2020] EWCA Civ 1690 at [96]. At the outset, therefore, the argument made by Mr Litovchenko in his second witness statement that allegations should be struck out because they are factually incorrect does not hold water unless the allegations can be shown to be bound to fail.

34. In my judgment, the strike out application is hopeless. The first set of paragraphs which Mr Turk seeks to strike out is paragraphs 17 to 19, in the factual background section of the particulars of claim. They relate to the withdrawal on Mr Turk's advice of $400,000 held by the claimant in an account in Istanbul and the events which followed. Those matters concern Mr Turk's dealings with the claimant's assets where it is alleged that he owed her fiduciary and common law duties; see paragraphs 27 and 28 of the particulars of claim which refer back to earlier paragraphs in the particulars of claim, including paragraphs 17 to 19.

35. The second set of paragraphs is paragraphs 127 to 130 which relates to a £750,000 payment which Mr Turk fraudulently told her she needed to make in connection with the provision of assistance in relation to her Turkish passport. By way of amendment to the particulars of claim, it is now pleaded that the payment has been returned and therefore no claim any longer arises in relation to it. On that basis, Mr Turk submitted that the paragraphs are irrelevant. In my judgment, the paragraphs, while no longer giving rise to a claim, are not thereby irrelevant in the context of the allegations against Mr Turk as a whole. I accept the claimant's submission that they remain an instance of Mr Turk acting dishonestly and in breach of his duties to the claimant and that they should not be struck out.

The Disclosure Application

36. The claimant also applied for an order for disclosure by Mr Turk of various bank statements and related relief, as set out in detail in her application notice of 21 July 2021. She seeks disclosure of the "Mr Turk Natwest Statements" (as defined in Schedule 1 to the draft order attached to the application notice) under paragraph 21.1(2) of CPR PD 51U; and of all of the bank statements in that Schedule under the court's general case management power under CPR Part 3 to make an order similar to the previous specific disclosure regime and the court's jurisdiction under section 37(1) of the Senior Courts Act and CPR 25.1(g) in support of the WFO.

37. Paragraph 21.1(2) of CPR PD 51U provides that "[a] *party may at any time request a copy of a document which has not already been provided by way of disclosure but is mentioned in … a witness statement.*" In *White Winston Select Asset Funds LLC v Mahon* [2019] EWHC 1014 (Ch), Mr Edwin Johnson QC (sitting as a deputy judge of this court) considered at [13] that, at least as a matter of the general case management

powers of the court, the court was able "*to make at least the equivalent of an order which could previously have been made under CPR rule 31.12*" so as to ensure that a defendant complied with his standard disclosure obligations insofar as there had been a failure to comply with those obligations." See also the judgment of Andrew Baker J in *Kazakhstan Kagazy plc & Ors v Zhunus & Ors* [2019] EWHC 878 (Comm) at [1] to similar effect. The claimant submitted that the same principle must apply where the respondent has failed to comply with an obligation for disclosure pursuant to a court order: there was no reason why such a respondent should be treated more leniently than a respondent who is in breach of his standard disclosure obligations.

38. The claimant also submitted that where, as in the present case, disclosure has been ordered in support of a freezing order, and such disclosure is inadequate, it is open to a party to apply to the court for further orders. In my judgment, there is no doubt that the court has the power to make a further disclosure order in such circumstances. As much is clear from Jacob J's judgment in *The Public Institution for Social Security v Fahad Maziad Rajaan Al Rajaan & Ors* [2020] EWHC 1498 (Comm) at [18]-[29]. The court also has jurisdiction under CPR 25.1.1(g) to require a party to provide information "*about the location of relevant property or assets or to provide information about relevant property or assets which are or may be the subject of an application for a freezing injunction*". As explained in *The Public Institution for Social Security* case at [27], this power enables the court to make an order for the provision of information in respect of assets which not currently within the scope of a freezing order, but where the further information may lead to their inclusion. In *JSC BTA Bank v Solodchenko & ors (No 3)* [2011] EWHC 2163 (Ch), Henderson J also stated at [26] that the court has the power under section 37(1) of the Senior Courts Act 1981 to make ancillary orders on the grounds that "*it is just and convenient to do so in order to ensure the effectiveness of an earlier order*".

39. The claimant advanced six reasons why the Disclosure Application should be granted: (1) Mr Turk has been in persistent breach of his disclosure obligations and his efforts to comply with those obligation has been inadequate; (2) in accordance with paragraph 21.1(2) of CPR PD 51U, the claimant is entitled to the bank statements referred to in Mr Turk's witness statement, as explained in paragraphs 58 to 60 of Mr Tickner's second witness statement; (3) the substantial discrepancy between the amounts received by Mr Turk from the claimant and the assets he has disclosed in response to orders made by Miles J justifies the making of a further disclosure order; (4) the evidence in respect of bank statements for accounts other than those held personally by Mr Turk that traceable proceeds passed through them; (5) the substantial shortfall in the amounts received into those other accounts compared with the assets which they now hold; and (6) the claimant is not embarking on a fishing expedition for documents. As the claimant summarised the position in paragraph 118 of her written submissions, "*there is good evidence that Mr Turk, and the other entities, received traceable proceeds but the essential question is what then happened to these amounts. The purpose of getting an answer to that question is so that Mrs İşbilen can take steps to locate and recover those assets. That purpose is one that underlies the Miles J Order – which should be supported so that it can be as effective as it was intended to be.*"

40. In response, Mr Turk made very brief submissions to the effect that he had already given substantial disclosure in Mr Litovchenko's witness statement and the schedule

to his defence; that he only appears in these proceedings in a personal capacity and not as a director of any company; and that only the first three categories of documents in schedule 1 to the draft order are ones which are arguably in his possession. Except as just stated, Mr Turk did not seek to deal with the detailed points made by the claimant in support of the Disclosure Application.

41. In my judgment, the claimant is entitled to a disclosure order on each of the grounds on which the Disclosure Application was put. It was not suggested by Mr Turk that there was no basis for orders being made on those grounds. The making of a disclosure order will serve to enforce the policing of the WFO and the proprietary injunction granted and will enable the claimant to formulate and plead additional proprietary claims and understand what further steps may need to be taken to protect her assets. These are all legitimate purposes for the making of a disclosure order. I should add that SGAM's solicitors confirmed in a letter to the claimant's solicitors dated 14 December 2021 *inter alia* that SGAM holds bank accounts with Raffaisen Bank for the benefit of Mr Turk and Barton and is willing to assist with compliance with any order in relation to those accounts made on the Disclosure Application.

42. The fact that Mr Turk has already made some disclosure in Mr Litovchenko's witness statement and the schedule to his defence does not begin to address the gaps in his disclosure and his failure to comply with previous disclosure order to which the claimant drew attention. The scope of his obligation to make disclosure is not confined to documents held by Mr Turk in a purely personal capacity. If the bank statements and detailed transaction data are not available to Mr Turk, then he will be under no obligation to produce the documents in question but, to the extent that they are, he is obliged to produce them whether pertaining to his personal accounts or not.

Mandate to the banks

43. Section 39(1) of the Senior Courts Act 1981 provides *inter alia* that where the High Court has given or made a judgment or order directing a person to execute any document, then, if that person neglects or refuses to comply with the judgment or order or cannot after reasonable inquiry be found, the court may, on such terms and conditions, if any, as may be just, order that the document shall be executed by such person as the court may nominate for that purpose. By section 39(2), a document executed in pursuance of an order under this section shall operate, and be for all purposes available, as if it had been executed by the person originally directed to execute.

44. In paragraph 67 of his second witness statement, Mr Tickner argues that it is just and convenient that Mr Turk, or failing him, Mr Litovchenko, be directed to sign the mandates directing the banks to disclose the requested statements to the claimant. Since Mr Litovchenko no longer works at Bivonas, the claimant asked that a master be directed to do so in place of Mr Turk. The claimant relies on Mr Turk's poor record of compliance with court orders and his inability or reluctance to obtain bank statements when left to his own devices.

45. While I accept the criticisms made of Mr Turk's previous conduct in relation to disclosure, I am not satisfied that there is jurisdiction under section 39(1) to make the orders requested. If Mr Turk is himself ordered to produce the requested statements

and declines to comply with the order, he may be in contempt of court and the jurisdiction under section 39(1) comes into play. But Mr Turk has not currently neglected or refused to comply with the orders made on the Disclosure Applications. If he were to do so, then the court's jurisdiction under section 39(1) would be triggered and the court would have to consider whether to order that another person should execute the documents necessary to obtain the requested documents. There is no jurisdiction under section 39(1) to make an order against Mr Turk himself.

Claimant's application for alternative service

46. By her application notice of 30 November 2021, the claimant applies for permission (i) pursuant to CPR 6.28(1) to dispense with service of documents on Barton, SG Partners and AET Global, which did not enter appearances to the claim and have taken no part in the present proceedings, until further order; and (ii) pursuant to CPR 6.27 to serve documents on Barton and SG Partners, where required, by email at Mr Turk's email address selmanturk@hotmail.co.uk and on AET Global, where required, by email at the address info@aetglobaldmcc.com. The grounds on which the application is based are set out in Mr Tickner's evidence included within the application notice.

47. On Mr Tickner's undisputed evidence, none of Barton, SG Partners and AET Global, which are incorporated outside England and Wales, has provided an address for service within the jurisdiction or taken any part in the proceedings, despite having been served with the proceedings in the BVI, Cayman Islands and Dubai respectively. On 12 November 2021, Walkers Corporate Ltd ("Walkers"), where SG Partners has its registered office, on whom substituted service was previously effected for SG Partners, stated that it would no longer accept service on SG Partners' behalf in connection with the English proceedings. Mr Tickner states that the claimant is put to considerable expense whenever a document is required to be served due to the need to engage foreign lawyers and process servers and that, in view of the recently stated position of Walkers, there is no effective means of serving SG Partners. Mr Turk is a director of Barton and SG Partners but has not accepted service or made any arrangements for service on those companies.

48. CPR 6.28(1) provides that "*The court may dispense with service of any document which is to be served in the proceedings*". In the circumstances described by Mr Tickner and which are not disputed, I consider that it is appropriate to make an order as requested by the claimant dispensing with service of documents on Barton, SG Partners and AET Global, subject to any further order of the court.

49. CPR 6.15 provides that "*Where it appears to the court that there is a good reason to authorise service by a method or at a place not otherwise permitted by this Part, the court may make an order permitting service by an alternative method or at an alternative place*". CRP 6.27 provides that "*Rule 6.15 applies to any document in the proceedings as it applies to a claim form and reference to the defendant in that rule is modified accordingly*". In the event that documents do require to be served on those companies, and in the circumstances described by Mr Tickner, there is in my judgment good reason to authorise service of documents on Barton and SG Partners by email to Mr Turk at selmanturk@hotmail.co.uk. In relation to AET Global, Mr Tickner's evidence is that service was effected on that company by the deputised

bailiff of the Dubai courts by email to info@aetglobaldmcc.com. There is therefore good reason to authorise service of AET Global at that email address. In the case of each of Barton, SG Partners and AET Global, service by those alternative means is likely to be effective to bring the documents served to the attention of those companies.

Disposal

50. For the reasons set out above:
    (1) the Amendment Applications are granted;
    (2) the claimant has permission to rely on the evidence given by Mr Turk in cross-examination at the hearing on 20 April 2021 for the purposes of the Amendment Applications and in support of her claims;
    (3) the claimant has permission pursuant to section 130(2) of the Insolvency Act 1986 to proceed with her claims against Heyman, subject to any reasoned application being made by Mr Turk by 4pm on Thursday 23 December 2021 to set aside or vary the order giving permission;
    (4) the claimant has permission to serve the amended claim form and particulars of claim, together with any order made on the application and any further necessary documents out of the jurisdiction in Jersey on Forten Holdings;
    (5) the claimant's application to strike out Mr Turk's application is refused;
    (6) Mr Turk's application is refused;
    (7) the Disclosure Application is granted in the terms of schedule 1 to the draft order before the court;
    (8) the claimant's application for an order under section 39(1) of the Senior Courts Act 1981 is refused; and
    (9) service of documents on Barton, SG Partners and AET Global be dispensed with, subject to any further order of the court.

51. Following the conclusion of the hearing, I received from the claimant's counsel on 17 December 2021 three statements of costs which, it is said, were served by email on Mr Turk on the first day of the hearing, provided to him in hard copy during the hearing and provided again to Mr Turk and Mr Bechelet by email on 20 December 2021. No reference was made to these statements of costs at the hearing and it is unclear whether and, if so, what the claimant now invites the court to do in relation to them. If that were the claimants' intention, I certainly do not propose to make any costs order on the basis of those statements of costs when I have not heard from Mr Turk on them.

52. I propose to leave it to the parties to prepare a draft order which reflects this judgment. To the extent that there are any matters which are unable to be agreed, they can be dealt with on paper or, if essential, at a short remote hearing.