Neutral Citation Number: [2023] EWHC 93 (Ch)

Case No: CR-2021-000377

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

IN THE MATTER OF SOLID STAR LIMITED (IN LIQUIDATION)
AND IN THE MATTER OF THE COMPANIES ACT 2006
AND IN THE MATTER OF THE INSOLVENCY ACT 1986

Date: 20/01/2023

Before :

HIS HONOUR JUDGE JARMAN KC
Sitting as a judge of the High Court
Between :

QUEENSGATE PLACE LIMITED	**Petitioner**
- and -	
(1) SOLID STAR LIMITED (IN LIQUIDATION)	**Respondents**
(2) VIKING WORLD INVESTMENTS SA	
(3) MR PRAKASH BHUNDIA	
(4) MR MINESH BHUNDIA	

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Mr Fenner Moeran KC (instructed by **Setfords Law Limited**) for the **Petitioner**
The **Third Respondent** represented himself and as a director of the **Second Respondent**
Ms Sarah Bayliss and Mr James Kane (instructed by **Spencer West LLP**) for the **Fourth Respondent**
The **First Respondent** did not appear and was not represented

Hearing dates: 11 and 12 January 2023

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Approved Judgment

This judgment was handed down remotely at 10.00am on 20 January 2023 by circulation to the parties or their representatives by e-mail and by release to the National Archives..

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HIS HONOUR JUDGE JARMAN KC

HH JUDGE JARMAN KC :

1. The petitioner (Queensgate) seeks an order that its shares in the first respondent (Star) should be purchased by the other respondents because of conduct which is unfairly prejudicial to it as a shareholder within the meaning of section 994 of the Companies Act 2006. Such conduct is denied. The sum which Queensgate says should be paid is over £10 million. A seven day trial on liability is listed in just over six weeks' time on 27 February 2023. By an application dated October 2022, Queensgate seeks summary judgment against the second respondent (Viking) and third respondent (Mr Bhundia). By an application made at about the same time, the fourth respondent (Mr Bhundia's brother to whom I shall refer to distinguish him as Minesh Bhundia) seeks an order that Queensgate should provide security for his costs.

2. Both those applications are disputed and came on for hearing before me. At the end of the summary judgment application I indicated that it would be dismissed and that I would give written reasons in due course. At the end of the application for security for costs, I indicated that I would order security in respect of the costs from the date of the application, for reasons to be given in writing. These are my written reasons in respect of both applications.

3. I shall deal with the application for summary judgment first, before turning to the application for security for costs. Summary judgment is dealt with in CPR Part 24.2 as follows:

> "The court may give summary judgment against a claimant or defendant on the whole of a claim or on a particular issue if—
>
> (a) it considers that—
>
> (i) that the claimant has no real prospect of succeeding on the claim or issue; or
>
> (ii) that the defendant has no real prospect of successfully defending the claim or issue; and
>
> (b) there is no other compelling reason why the case or issue should be disposed of at a trial."

4. CPR Part 24.3(2) provides that the court may give summary judgment against a defendant in any type of proceedings, except those set out in the rule, which exceptions are not relevant here.

5. After the petition was filed, Mr Bhundia was made bankrupt on 8 June 2022. Star was put into liquidation on 7 September 2022. The latter order was made on the petition of Lazuli Properties Ltd (Lazuli) on the basis of a judgment it had obtained against Star (see *Lazuli Properties Ltd v Prakash Bhundia and others* [2022] EWHC 758 (Ch)). Both the trustee in bankruptcy of the former and the liquidator of the latter are aware of these proceedings but have no wish to take part.

6. Mr Moeran KC, for Queensgate, says that it is likely that any sum which Mr Bhundia is ordered to be paid can be pursued against him, his bankruptcy notwithstanding. This

on the basis that such a sum will constitute a bankruptcy debt, even though any order to pay it will be made after the bankruptcy order. He relies on the case of *In re Nortel Gmbh (in administration)* [2014] AC 209, where the Supreme Court held that costs orders in proceedings which were commenced before liquidation, but which were ordered after the winding-up order, would be provable in the insolvency. Whilst accepting that there is no direct authority on the point, Mr Moeran says that the same principle applies by analogy to an order for payment for shares under section 994.

7. Even if that is so, it will not assist Queensgate if the usual rule applies as to release of bankruptcy debts upon the discharge of the bankruptcy. Mr Moeran relies on the preservation from general discharge set out in section 281(3) of the Insolvency Act 1986, as follows:

> "281.— Effect of discharge.
>
> (1) Subject as follows, where a bankrupt is discharged, the discharge releases him from all the bankruptcy debts, but has no effect—
>
> (a) on the functions (so far as they remain to be carried out) of the trustee of his estate, or
>
> b) on the operation, for the purposes of the carrying out of those functions, of the provisions of this Part;
>
> and, in particular, discharge does not affect the right of any creditor of the bankrupt to prove in the bankruptcy for any debt from which the bankrupt is released.
>
> (2) Discharge does not affect the right of any secured creditor of the bankrupt to enforce his security for the payment of a debt from which the bankrupt is released.
>
> (3) Discharge does not release the bankrupt from any bankruptcy debt which he incurred in respect of, or forbearance in respect of which was secured by means of, any fraud or fraudulent breach of trust to which he was a party."

8. It has been held that a dishonest breach of fiduciary duty by a director may be recognised and characterised as a fraud or a fraudulent breach of trust a within the meaning of section 281(3) (*Templeton Insurance Ltd v Brunswick* [2012] EWHC 1522 (Ch), paragraph 76, per Simon Barker KC, sitting as a judge of the High Court). It is well established that the test for dishonesty in such cases is an objective one. The question is whether the person alleged to be dishonest knew of elements of the transaction in question which made it dishonest according to normally acceptable standards of honest behaviour.

9. Mr Moeran realistically accepts that to give summary judgment on a petition under section 994 is unusual, but points out that it may be given "in any type of proceedings." Moreover, he also accepts that generally conclusions on dishonesty should be reached at trial, but says that this is an overwhelmingly clear case of dishonesty.

10. In *Wrexham Association Football Club Ltd v Crucialmove Ltd* [2007] BCC 139, the Court of Appeal upheld a summary judgment given by His Honour Judge Norris, as he then was, sitting as a judge of the High Court. The President of the Queen's Bench Division, Sir Igor Judge as he then was, said this:

> "57. I do not underestimate the importance of a finding adverse to the integrity to one of the parties. In itself, the risk of such a finding may provide a compelling reason for allowing a case to proceed to full oral hearing, notwithstanding the apparent strength of the claim on paper, and the confident expectation, based on the papers, that the defendant lacks any real prospect of success. Experience teaches us that on occasion apparently overwhelming cases of fraud and dishonesty somehow inexplicably disintegrate. In short, oral testimony may show that some such cases are only tissue paper strong…
>
> 58. This collective judicial experience does not always, or inevitably, provide a compelling reason for allowing the case to proceed to trial, nor for that matter require the judge considering the application to reject the conclusion that there is no real prospect of a successful defence of the claim if he is satisfied that there is none. That is not what the Rules provide, and if that had been intended, express provision would have been made. It is however a factor constantly to be borne in mind, if and when, as here, the reason for concluding summary judgment is appropriate is consequent on a disputed finding, adverse to the integrity of the unsuccessful party."

11. That case was cited by Gross J, as he then was, in *Antonio Gramsci Shipping Corpn v Recoletos Ltd* [2010] EWHC 1134 (Comm), at paragraph 3 as follows:

> "On the one hand, summary judgment is designed for plain cases—cases which are not fit for trial at all: *Three Rivers District Council v Governor and Company of the Bank of England (No 3)* [2003] 2 AC 1 , para 95, per Lord Hope of Craighead. That consideration weighs all the more heavily when the case involves allegations of serious fraud or dishonesty; generally, conclusions on such issues ought to be reached at trial, so that obvious caution ought to be exercised before giving summary judgment in a case of that natu*re: Wrexham Association Football Club Ltd v Crucialmove Ltd* [2007] BCC 139, especially at paras 49–59. On the other hand, where it can be ascertained without the conduct of a mini-trial that there is no realistic prospect of a successful defence, then summary judgment will or may be appropriate and the court should not be deterred from granting such relief simply because of the volume—or, in some cases, smokescreen—of documents. Moreover, if in all the circumstances, there is no real prospect of

> a defendant successfully defending a claim, then, even though good faith, fraud or integrity are an issue, there is no longer a bar to giving summary judgment: *Wrexham Associated Football Club*, above."

12. However, Mr Moeran says that it is overwhelmingly clear from contemporaneous documentation that there has been dishonest conduct in several respects on the part of Mr Bhundia and on that basis summary judgment is sought against him and Viking, a Panamanian company believed to be wholly owned beneficially by Mr Bhundia. Although he denies dishonesty, he gives no proper explanation for the conduct complained of, and indeed his witness statement in response to the application admits that he transferred assets from Star to a company owned or controlled by him, PropertyX1 Ltd (X1) "to afford protection in respect of the assets… as it was unclear what Mr Ugboma and/or Bafarawa might try to do." Those persons were directors or involved in the management of Queensgate at the time. X1 was incorporated in 2017.

13. Assuming for present purposes, without deciding, that that is what the evidence before me clearly establishes, so that Viking and/or Mr Bhundia have no realistic prospect of defending the petition, I nevertheless consider that there are compelling reasons why these issues should be dealt with at the forthcoming hearing and decided after hearing all the evidence including cross examination.

14. That being so, in my judgment it is unnecessary and inappropriate for me to make any findings on the allegations of dishonesty against Mr Bhundia. The trial judge will have to deal with these and with the case against Minesh Bhundia. I will however summarise briefly the allegations as they may inform the compelling reasons why they should be determined at trial and why security for costs has been ordered.

15. Mr Bhundia and Mr Bafarawa were good friends. They discussed the development of a hotel in Queen's gate, London into residential flats for sale. In 2003 Star was incorporated as the corporate vehicle for this joint venture, and it is not in dispute that the shares were held equally by Viking and by Queensgate, which is a company incorporated in the Isle of Man and then wholly owned by Mr Bafarawa, now by his son.

16. Viking and Queensgate entered into a shareholders agreement on 6 January 2004 which was signed by Mr Bafarawa and Mr Bhundia respectively and which confirmed their equal shareholding in Star. Clause 2 provided that the joint venture was to buy and develop the hotel and to sell the flats. No other venture was included. Clause 4 provided that each of the parties would lend up to £3.5 million to Star and that funding would thereafter be by bank loans, operating proceeds and additional shareholder loans as necessary by the board. It was also provided that the parties' loan accounts should be in proportion to their shareholding, that is equal, and that any excess of one or the other should be paid first out of the loan accounts which should then be divided equally. By clause 13 each of the parties undertook to act and procure others to act, and to pass such resolutions as shareholders and directors, as may be required to give effect to the import or intent of the agreement.

17. The hotel was owned by Phoenix Hotels Limited (Phoenix) which was in turn owned by Viking. The purchase price was over £10 million. This was provided by Queensgate's loan of £3,500,000, and, says Mr Bhundia, a deferral of part of the

purchase prices which he procured from Phoenix. The balance was provided by a bank loan.

18. Mr Bafarawa is a prominent politician based in Nigeria and was content to leave the development essentially to Mr Bhundia. The latter's brother Minesh Bhundia was the manager of the hotel, and was made a director of Star. The hotel continued to trade for a few more years until the development commenced. Minesh Bhundia has an engineering background and was involved in the development. That was successful, and by 2017 some 12 of the 20 flats had been sold. Mr Bhundia and Mr Bafarawa then discussed what to do with the unsold flats and each signed a further agreement drafted by Mr Bhundia and dated 24 April 2017.

19. The 2017 agreement expressly acknowledged that the parties were the beneficial owners of Viking and Queensgate respectively, and that Star held "unencumbered property valued at £22,175,000." That could only refer to the unsold flats. The agreement then provided that Mr Bhundia and Mr Bafarawa had agreed that this property "should be split" in accordance with the schedule to the agreement. That specified which flats should go to Viking, giving a total value of £10,575,000, and which should go to Queensgate, giving a total of £11,600,000. The agreement provided that the balance due from Queensgate of £1,335,000 should be remitted to Viking "or as directed." It also provided that Queensgate and Viking should pay equally £620,000 in respect of planning permission obligations. In the event Queensgate paid £368,000 odd not to Star but to another company, Crane Court Properties Ltd (Crane Court), at the direction of Mr Bhundia.

20. The split provided for by the 2017 agreement did not happen. Queensgate say they were not informed what was happening with the unsold flats, and so filed this petition in 2021. It wasn't until May 2022 that it came to light, and this is not disputed, that seven of the unsold flats had been transferred to two companies owned and/or controlled by Mr Bhundia and/or members of his family, one to Jenmark Properties Ltd (Jenmark) for over £1 million, and the remaining six to X. The claimant says no consideration was given in respect of these six. Mr Bhundia says that consideration was given by way of discharge of liabilities and a debtor balance due.

21. In his witness statement in response to the summary judgment application dated December 2022, Mr Bhundia seeks to justify the transfers. He says that the transfer to Jenmark was to pay a debt owed by Star to HMRC in respect of which HMRC had issued a winding up petition against Star. The other transfers were to raise cash for Star as it became clear that Queensgate and Mr Bafarawa wanted a cash settlement rather than a distribution in specie. Moreover, Star's bank account had been closed in 2014, and Mr Bhundia says this was connected with criminal charges which Mr Bafarawa and his son were facing, and which impacted upon Star's ability to borrow, as did the HMRC winding up petition.

22. Mr Bhundia also says that at this time, an associate of Mr Bafarawa, Mr Ugboma, was claiming to control Queensgate, although the precise involvement was unclear, and was blackmailing him for £2 million and for half of the development proceeds to be paid into a company controlled by him. Mr Bhundia added that he thought that the transfers would afford protection of the assets of Star as indicated above.

23. Mr Moeran submits that the first reason relied upon by Mr Bhundia is demonstrably wrong as the 2017 agreement and correspondence at the time makes it clear that Queensgate was looking for in specie transfers of unsold flats. The second reason is plainly irrational as Star could have raised cash just as easily on the security of the unsold flats as X1. The third reason appears to be an admission that the transfers were made to defraud creditors of Star.

24. The remaining unsold flats were transferred to X1 in three tranches, in March 2019, March 2020 and November 2020, and were used as security for various loans. It is accepted that some of this money was used to discharge debts of Star. However, it is not in dispute that the borrowing was also used to pay £300,000 to Mr Bhundia, he says because he had personally paid interest on the loans. Mr Moeran points to contemporaneous completion statements showing that interest was deducted from the loans. He also says he paid some £500,000 to discharge debts of Mr Bafarawa.

25. Those statements show that some £2,170,000 of the monies raised was used to pay a Lazuli loan which had nothing to do with Star. Mr Bhundia does not mention this in his witness statement. He represented himself at the hearing before me, and Viking. His bankruptcy does not, apparently, automatically prevent him carrying on as a director of Viking under Panamanian law. In his oral submissions, he said that this payment was by way of equalising payments for monies paid by Viking, in respect of the development, such as closing down costs of the hotel, and certain works. In response Mr Moeran says there is no detail or documentation as to these, but even on Mr Bhundia's case this amounted to just over £1 million and does not explain a payment to Lazuli of over £2 million.

26. There are other allegations of unfairly prejudicial conduct, which include the following three allegations. First, the accounts of Star, signed off by Mr Bhundia who qualified as a chartered accountant, show that Queensgate paid the £3.5 million, or most of it, by way of loan to Star under the 2004 agreement. There is no indication in the accounts or other documents that Viking did the same. Mr Bhundia's explanation of the deferred purchase price to Phoenix is not supported by documents and the accounts of that company do not show such an arrangement.

27. Second, the accounts of Star show that some of the Queensgate loan was repaid but Mr Bafarawa denies this, and there are no contemporaneous documents to support this. Third, the transfer of one of the flats to Jenmark was for some £170,000 lower than its contemporary valuation.

28. All of this provides a sound basis for Mr Moeran's submission that these amount to dishonest breaches of Mr Bhundia's fiduciary duty as a director of star. However, I consider that there are compelling reasons for a trial as follows.

29. First, there are several different aspects of the dishonesty alleged, and the evidence on paper regarding some appear stronger than others. For example, the issue of whether Star could have procured secured borrowing may be better decided at trial. In my judgment, a trial is necessary to determine precisely which allegations are made out. In the words of Sir Igor Judge, some of the allegations, at least, may inexplicably disintegrate at trial.

30. Second, the trial is only some weeks away. I accept that not all of the delay in respect of the summary judgment application can be laid at the door of Queensgate. It was only in May 2022 that it found about the transfers, and that led to amendments of the claim to allege dishonesty. There were then some weeks until the application was filed. Since then, because of the application for security was made at the same time, a total hearing time estimate of 2.5 days was given and this could not be accommodated before the end of 2022. Nevertheless, the reality remains that a trial is not far away.

31. Third, there is a realistic prospect that that trial will take place. Mr Moeran indicated that if summary judgment were given against Mr Bhundia and/or Viking, that may lead Queensgate to reassess the commercial wisdom of proceeding against Minesh Bhundia, who has limited assets. However, this was not put on the basis that it was unlikely in that event that the trial would proceed. Minesh Bhundia has some assets as I deal with below, which are the subject of a freezing order, and substantial costs have already been incurred in proceeding against him.

32. Fourth, although the trial is on liability only, even if I had granted summary judgment I would have done so in respect of liability only and not in respect of quantum. Realistically accepting that the court may have concerns in this regard, Mr Moeran submitted that an alternative course would be to grant summary judgment on liability and direct that there be an inquiry before a master as to what sum should be paid. The documentation in support of the application, and Mr Moeran' skeleton argument, did not set out what sum was claimed as payment for Queensgate's shares in Star, and when I inquired about that, Mr Moeran took a little while to produce a figure, which was £10, 168,500. He said that was based on the latest values of the unsold flats namely £16,101,000, deducting of £3,500,000 in respect of the loan, dividing by two for half shareholding, then adding £3,500,000 in respect of the Viking loan not made and £368,000 for the money paid to Crane Court. Whilst that may appear beguilingly straightforward, in my judgment it is not beyond argument.

33. Fifth, I must consider the position of Minesh Bhundia, against whom summary judgment is not sought. A summary finding of liability against Viking or Mr Bhundia might run the risk of impacting on Minesh Bhundia's defence at trial. During submissions I referred the parties to *Iliffe v Feltham Construction Ltd* [2015] EWCA Civ 715, as mentioned in the notes to CPR 24.2(b) in the White Book. Jackson LJ, giving the lead judgment, said at paragraphs 72 and 73, that summary judgment was inappropriate…

> "…when similar issues remained to be determined at a full trial as between the other parties. In the particular circumstances of this case that constitutes a "compelling reason" not to enter summary judgment within the meaning of CPR 24.2(b) . A judge in multi-party litigation must aim to do justice as between all parties involved in the case."
>
> 73. A further significant feature is that summary judgment in this case achieves much less in terms of saving costs and court time than is normal. There is going to be a trial anyway…"

34. The case against Minesh Bhundia is that he, as a director, should have known about the transfers and acted to prevent the dissipation of assets, and not merely accept

explanations from his older brother, Mr Bhundia, as he says he did. However, in my judgment this case depends to a large extent upon proving the allegations against Mr Bhundia.

35. Those are the reasons why I dismissed the application for summary judgment. I turn now to the application by Minesh Bhundia for security for costs.

36. Mr Moeran accepts that the conditions for such an order set out in CPR 25.13 are met, namely that Queensgate is incorporated out of the jurisdiction and, perhaps more importantly, there is reason to believe that it will be unable to pay the costs of Minesh Bhundia if ordered to do so. However, CPR 25.13(1) also provides that the court may make an order if it is satisfied having regard to all the circumstances that it is just to do so.

37. The principles to be applied were summarised by the Court of Appeal in *Keary Developments Ltd v Tarmac Construction Ltd* [1995] 3 All ER 534, 539–42, which may be stated, so far as material, as follows:

> "1. The court has a complete discretion whether to order security.
>
> 2. The possibility that the claimant will be deterred from pursuing its claim by an order for security is not without more a sufficient reason for not ordering security.
>
> 3. The court must weigh the injustice to the claimant if prevented from pursuing a proper claim against the injustice to the defendant if no security is ordered and any costs ordered in the defendant's favour cannot be recovered.
>
> 4. The court will have regard to the claimant's prospects of success, but should not go into the merits in detail unless it can clearly be demonstrated that there is a high degree of probability of success or failure.
>
> 5. The court can order any amount up to the full amount claimed by way of security, provided that it is more than a simply nominal amount but is not bound to make an order of a substantial amount.
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> …
>
> 7. The lateness of the application for security is a circumstance which can properly be taken into account but how it should be taken into account depends upon which party is responsible. It is proper to take into account the fact that costs have already been incurred by the claimant without there being an order for security. Nevertheless it is appropriate for the court to have regard to what costs may yet be incurred."

38. Mr Moeran, in submitting that it is not just to make an order on the facts of this case, relies upon two main factors, the high degree of probability that Queensgate will succeed against Minesh Bhundia, and the delay in making the application.

39. Ms Bayliss for Minesh Bhundia submits that he is liable to suffer serious injustice if security for costs is not ordered. The impecuniosity of Queensgate was caused by the transfers of the unsold flats and it is not alleged that he was involved in those transfers or subsequent loans and payments. Apart from shares in a family company whose articles prevent the sale of shares, his total assets amount to less than £700,000, including his interest in the family home which he owns with his wife. His budgeted costs, incurred and estimated, amount to over £775,000.

40. As to merits, the witness statements filed on behalf of Queensgate say this about the case against Minesh Bhundia: 'The Petitioner believes that on cross examination it will become apparent that he in fact either knew and participated in the dishonesty, or had sufficient knowledge that he was in effect dishonestly assisting the 3rd Respondent by means of (at least) simply signing off [Star']'s accounts every year.' The point regarding the signing of the accounts is factually incorrect. It was only Mr Bhundia who signed the accounts. Ms Bayliss makes the point that even if accounts had been checked, they were audited until 2016 and showed liquidity.

41. Ms Bayliss also submits that Minesh Bhundia should not be responsible for damage not caused by his wrong or made to pay by way of compensation more than the loss suffered from such wrong (see *Target Holdings Ltd v Redferns* [1996] AC 421, 432). Moreover, the court can only conclude that he is responsible for Queensgate's impecuniosity if it first concludes that he is responsible for the losses incurred by Star.

42. The case for Queensgate is put in the alternative that Minesh Bhundia was at least negligent. In his witness statement he makes a number of points to show that he acted honestly and reasonably and should be excused any breach of his duty as a director. He says that he was excluded by his brother from the transactions relied upon by Queensgate. He was not involved in discussions with Queensgate or Mr Bafarawa, although he did know that a Nigerian investor was involved with Star. He did not see a copy of the 2004 agreement or the management accounts or annual accounts. He was not involved in the financing of the development. When he tried to challenge his brother's running of Star and to introduce rigorous processes, his brother was bullying and rejected all proposals.

43. In response, Mr Moeran submits that there is a very strong case in negligence at least. If as Minesh Bhundia says he was bullied by his brother, that does not justify applying a lower standard of conduct. He accepts that his brother told him that the unsold flats would be split and that he didn't understand why they were not being rented out. He says he didn't know about the transfer to Jenmark at the time, but accepts that some months later had involvement with the flat transferred which, Mr Moeran says, should have put him on notice that one flat may have been disposed of and not dealt with in the split. He says that he requested financial information from his brother about Star. He failed to get it, but does not say he did anything more such as chasing for it, or checking the position. Even on his case, Mr Moeran submits, it is clear that he was negligent in the exercise of his director's duties.

44. Moreover, Mr Moeran submits, Minesh Bhundia should have found out about the transfers of flats in three tranches over 20 months, and about the payment to Lazuli. He was a director of Crane Court and should have seen the payment of £368,000 coming in.

45. I take these points into account, but in my judgment the case against Minesh Bhundia is not so strong as to justify the dismissal of the application.

46. As for delay, there are no hard and fast rules. If there is delay then the security may be limited to future costs (*Re RBS* [2017] 1 WLR 4635). Ms Bayliss submits that the application was triggered by Queensgate's admission that it had no valuable assets, made for the first time in June 2022 in the course of its ex parte application for a worldwide freezing order. His solicitor then requested Queensgate to provide security for costs in the sum of £900,000. That went unacknowledged, and after chasing, Queensgate's solicitors at the end of August 2022 said they were seeking instructions and counsel's advice and would revert, but did not. The application was made on 26 October 2022, some four months before trial. Queensgate was also asked to vary the freezing order to enable Minesh Bhundia to borrow against the equity of his home, but this was not agreed to until October 2022, which made it difficult for him to take any steps in the meantime.

47. Mr Moeran submits that it was 18 months after the claim was issued before the application for security was made. Although first intimated in July 2022, it took a further four months or so to make the application. In my judgment, the points made by Ms Bayliss give some, but not complete, justification for the delay. In my judgment it should have been made in July 2022. The delay is not such as to defeat the application. I accept the other points made by Ms Bayliss in support of the application.

48. However, the delay is such as to limit the amount. This should be limited to the future costs, as from the date of the application. Those costs are budgeted at some £49,000 for witness statements, £199,000 for trial preparation and £100,000 for trial. The budget for witness statements has now been incurred, since the application was made. The budget was for statements from both the Bhundia brothers when represented by the same solicitor, who now only represents Minesh Bhundia. Mr Moeran says only about half this sum should be allowed. Ms Bayliss accepts that there should be some deduction, but not as much as half as there would have been some overlap in the preparation of two. I accept this later point.

49. Mr Moeran also submits that the trial costs were budgeted on the basis of leading and junior counsel, but Ms Bayliss will now appear at trial with a junior. He submits that the figures should be reduced to £129,000 and £90,000 respectively. Again Ms Bayliss accepts some deduction, but she is a senior junior and says that the deduction should be less than that. Again I agree.

50. In my judgment, the appropriate figures are £30,000, £150,000 and £100,000 respectively. Security should be given in the sum of £280,000, within 14 days by solicitors' undertaking, otherwise the claim against Minesh Bhundia will be stayed.

51. I end by expressing my gratitude to counsel for their full and helpful submissions.