Neutral Citation Number: [2024] EWHC 2558 (Ch)

CLAIM No: [BL-2024-001333]

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

7 Rolls Buildings,
Fetter Lane,
London EC4A 1NL

Thursday, 3 October 2024

BEFORE:

MR JUSTICE FANCOURT

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BETWEEN:

GRIGORI FISHMAN

Claimant/Applicant

-and-

VIKTOR MANGAZEEV

Defendant/Respondent

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MR JUSTIN FENWICK KC and MS SAAMAN POURGHADIRI (Instructed by Greenberg Traurig, LLP The Shard, Level 8, 32 London Bridge St, London, SE1 9SG) appeared on behalf of the Claimant / Applicant.

MR ALAN GOURGEY KC (Instructed by Quillon Law LLP, Holborn Gate, 330 High Holborn, London WC1V 7QH) appeared on behalf of the Defendant

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JUDGMENT
APPROVED

- - - - - -

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JUDGMENT

MR JUSTICE FANCOURT:

1. On 16 September 2024 the claimant, Grigori Fishman, issued an application for world-wide freezing injunctive relief against the defendant, Viktor Mangazeev, in relation to a claim of up to US $19,710,000, and for ancillary relief. Mr Fenwick KC and Mr Pourgmadiri appeared on behalf of Mr Fishman. Mr Gourgey KC and Mr Lakshman appeared on behalf of Mr Mangazeev.

2. The claimant, Mr Fishman, is an Israeli businessman. The defendant, Mr Mangazeev, is a Russian businessman who is permanently resident in England. The two have at times collaborated on business matters and at times have fallen out, and it is said that they are now business rivals since the most recent fall out between them, in late August this year.

3. The application is in support of a claim form issued on 6 September 2024 seeking damages for repudiatory breach of a loan agreement dated 17 July 2023 (the "Loan Agreement") under which the claimant lent the defendant US $18.33 million for up to 18 months.

4. The defendant, it is common ground, is the sole owner of a BVI registered company, Wadjet Limited ("Wadjet"), which is the registered owner of a large residential property in Weybridge, Surrey, called "The Ramparts" (which I will refer to as "The Property").

5. Consideration for the loan was in the form of an option for the claimant to take a stake in another company owned by the defendant, and five per cent per annum interest on the amount of the loan. In the event that the property was sold sooner than 18 months, the loan would be repayable on receipt of the proceeds of sale. If the loan was not repaid upon sale, a higher rate of interest, 50 per cent per annum, would apply retrospectively.

6. There was no security for the loan as such, but the loan agreement contained a negative pledge to the effect that the defendant would not make any further disposal of, or of an interest in, the property, clearly with a view to the remaining equity in the property (subject to an existing mortgage) being comfort for the claimant in the event that the terms of the agreement for repayment were not complied with.

7. The relevant clause of the loan agreement is clause 6.1 which reads:

> “The borrower until the full and complete repayment of the loan account covenants and agrees that it (1) shall not without the prior consent of the lender not to be unreasonably withheld or delayed transfer, sell, pledge, encumber or otherwise dispose of its shares in the Company; (2) shall procure that without prior consent of the lender not to be unreasonably withheld or delayed, the company does not transfer, sell, pledge, encumber or otherwise dispose of its right in the property.”

The Company, as defined, was Wadjet.

8. The claimant alleges that the defendant, by his Russian lawyers, also agreed expressly with the claimant’s Russian lawyer that the defendant would grant a charge in favour of the claimant over his shares in Wadjet.

9. A final version of the deed of charge was agreed between the lawyers. The grant of the charge was deferred by agreement; in the event, it never was granted. When the defendant was later asked to do so, he declined. The defendant contends that he personally never agreed to the charge over his shares, even though his solicitors agreed the draft.

10. By a letter dated 30 August 2024, the defendant’s solicitors contended that the defendant was not liable to repay the loan because all existing

liabilities, obligations and claims had been settled by a Deed of Settlement dated 2 November 2023 (the "Deed of Settlement").

11. The issues that arise in this application are the following; first, whether there is a serious issue to be tried (as to which see *Dos Santos v Unitel SA* [2024] EWCA Civ 1109) that on its true construction the Deed of Settlement did not settle any liability of the defendant to the claimant under the Loan Agreement. That issue is likely to depend in part on a correct analysis of the factual background to the execution of the Deed of Settlement, though not of course the negotiations of the parties to it. It is not argued by the defendant at this stage that if the Deed of Settlement excludes that liability, the claimant is not liable for it, either as damages, if there was a repudiatory breach, or as damages for breach of contract and the amount of the debt falling due and interest if there was not.

12. The second issue is whether there is a real risk of the defendant improperly dissipating his assets before trial and judgment so that if the claimant succeeds in his claim there are inadequate or no assets against which the judgment can be enforced. The third issue is whether, if there is such a real risk, it is just and convenient in all the circumstances to grant the relief sought, in whole or in part.

13. The first issue turns on the meaning of the Deed of Settlement. It was a Deed made between the claimant, the defendant and Alexander Grebnev and recital (5) states that Mr Grebnev, the claimant and the defendant "now wish to settle their differences in connection with the High Court claim, the Oxygen Convexity claim and the Claims as defined below in accordance with the terms of this Settlement Deed and the company arrangements".

14. The High Court claim was a claim issued by the claimant against Mr Grebnev in November 2022, in which Mr Grebnev eventually issued a Part 20 claim against the defendant in June 2023. There was no claim or counterclaim between the claimant and the defendant directly. The "Claims" was very broadly defined as follows:

> "All and any actions, claims, counterclaims, suits, proceedings, appeals, rights of set off or indemnity, demands, causes of action, rights or interests of any kind or nature whatsoever, however and whenever arising, including, for the avoidance of doubt, any claims relating to fraud, dishonesty, impropriety, misrepresentation, conspiracy or other misconduct, deliberate or otherwise, whether contractual or non-contractual and whether in law

or in equity, whether in this jurisdiction or in any other, in respect of any monies, damages, losses, liabilities, interest, costs, declaratory or injunctive relief or any other relief of whatever nature."

15. The relevant provision of the Deed of Settlement for these purposes is clause 2.1 which provides as follows:

> "Subject to and simultaneously with the registration of each of the parties (or their respective related parties or nominees) as shareholders in the company holding the number of shares in the company as set forth in the SHA, execution of the SHA, each party (a) on behalf of themselves and their related parties releases and forever discharges each other and their related parties from any and all liabilities and obligations, past, present and future, howsoever and whensoever arising, whether known or unknown and whether currently existing or arising in the future, arising out of or in any way connected with the High Court claim, the Oxygen Convexity claim and the Claims."

16. It is the inclusion of the words “the Claims”, as very broadly defined, which gives rise to the defendant’s case that on the literal and correct interpretation of the Deed of Settlement the claimant’s rights under the Loan Agreement were released and any future claim based on it was discharged.

17. The claimant’s case is that properly construed in its factual context, the Deed of Settlement, though tripartite and mutual, did not objectively extend to the liabilities that the defendant had assumed under the Loan Agreement because those liabilities were not under consideration by the claimant and the defendant at the time of the Deed of Settlement (see *BCCI v Ali* [2002] 1 A C 251 per Lord Nicholls of Birkenhead at [28]).

18. That argument is constructed as follows: First, the purpose of the Deed of Settlement was to settle the disputes between Mr Grebnev and the claimant and between Mr Grebnev and the defendant; that is clear from the background and from the recitals which, at (b) and (c), identify disputes between Mr Grebnev and the claimant and Mr Grebnev and the defendant but not disputes between the claimant and the defendant.

19. Second, at the material time there was nothing in dispute between the claimant and the defendant; their differences had been resolved by a 26

February 2022 deed of settlement in wide terms that settled all disputes between them.

20. Third, prior to the 2 November Deed of Settlement, the claimant and the defendant and their representatives did not identify or discuss disputes between them that would or could be settled by the Deed of Settlement. No such dispute has been identified by the defendant.

21. Fourth, on 30 July 2023 the claimant and the defendant entered into a joint venture agreement pursuant to which they agreed to share equally between them compensation that each of them recovered from Mr Grebnev, so, in addition to the claimant and the defendant resolving their differences as against Mr Grebnev, they had a unity of interest at the time of the Deed of Settlement.

22. Fifth, the joint venture agreement was a yet further agreement between the claimant and the defendant post-dating 26 February 2022 deed and pre-dating the Deed of Settlement which was not intended to be wiped out by the Deed of Settlement.

23. Sixth, value did not move from the defendant to the claimant pursuant to the Deed of Settlement or the suite of accompanying documents.

24. Seventh, simultaneously with the Deed of Settlement the parties executed a suite of documents containing ongoing obligations. The widely drawn release at clause 2.1(a) of the Deed of Settlement was not intended to wipe out those obligations either, despite its apparently wide language.

25. The defendant argues that the factual background cannot or is not sufficient to displace the clear meaning of the wide words of release. They argue that the Deed of Settlement contains significant new commercial agreements between the claimant, the defendant and Mr Grebnev, which it is clear were intended to supplant any obligations and claims previously existing; and that although it is implicit that the new agreements made at the same time as the Deed of Settlement were not to be discharged, all pre-existing agreements and liabilities were to be discharged.

26. I have little difficulty in concluding that there is obviously a serious issue to be tried here as to the scope of the releases contained in the Deed of Settlement. It is a classic case of literalism and contexualism potentially clashing and having to be reconciled, and a typical case as described by Lord Nicholls in *BCCI v Ali* of establishing the true scope of the liabilities that were being addressed by the Deed of Settlement. That requires

careful analysis of the state of the relationship between the claimant and the defendant at the time and the nature of their existing liabilities as well as the overall effect of the terms of the Deed of Settlement. I express no provisional view on this matter because I feel myself unable to do so without a much more careful examination of the context and content of the Deed of Settlement than is possible on this application. It is sufficient to say that the claimant's case has a realistic prospect of success sufficient to take it across the serious issue to be tried threshold.

27. Turning to the issue of the risk of dissipation of assets, the assets of the defendant in England and Wales that are so far known to the claimant are limited to the equity in the Property, which could be anything between about £4 million and about £8 million depending on the price that it will be sold for, and the cash proceeds of the Hilco loan, now said to be £5.95 million out of the net £8.15 million received by the defendant. These are said to be in a Barclays bank account in the name of the defendant.

28. Other assets that the defendant has identified are shares in overseas companies and cryptocurrency and other digital assets of various kinds that may be controlled by the defendant or owned by him.

29. Both parties referred me to the law on the right approach to whether there is a real, i.e. substantial, risk of dissipation, and the law was not in dispute. I can take it in summary from the defendant's skeleton argument as follows: First, there must be a real risk, judged objectively, that a future judgment would not be met because of *unjustifiable* dissipation of assets; the use of assets in the ordinary course of business, even if it involves using up or devaluing those assets, is not unjustifiable dissipation.

30. Second, the risk of dissipation must be established by solid evidence; mere inference or generalised assertion is not sufficient.

31. Third, claims of dishonesty against the respondent are relevant but generally will not alone establish a real risk of dissipation; in each case, the court must scrutinise whether the allegations justify the inference that the respondent will dissipate assets unless restrained.

32. Fourth, if a respondent has not dissipated assets in a substantial period during which he knew about the claims, this may indicate that there is no risk of dissipation.

33. Fifth, the fact that an individual defendant is firmly established in the jurisdiction, with family and/or business connections, is relevant because

such a person is in general less likely to dissipate his assets (particularly in the sense of moving them out of the jurisdiction) than the defendant with only a fleeting connection with it.

34. Sixth, the respondent's use of offshore structures is relevant but does not of itself equate to a risk of dissipation. Businesses and individuals often use offshore structures as part of the normal and legitimate way in which they deal with their assets.

35. Seventh, the real risk established by evidence must be sufficient in all the circumstances to make it just and convenient to grant a freezing injunction. These principles are taken from *Fundo Soberano De Angola v dos Santos* [2018] EWHC 2199 (Comm) in a passage that was cited with approval in *Lakatamia Shipping Co v Morimoto* [2019] EWCA Civ 2203 at [34].

36. Other than the alleged breach of covenant by the defendant in charging the Property to Hilco without the claimant's agreement, which diminished the value of the asset that the claimant was contractually entitled to have preserved, and spending over £2 million of the loan monies between July 2024 and today, there is no evidence in this case that the defendant has unjustifiably dissipated assets. The defendant's evidence says that the remaining loan monies will be used in whole or in part in connection with business ventures conducted by companies that the defendant controls.

It is likely that the Hilco monies will be expended if no relief is granted, and one question is whether I can be satisfied that there is no real risk of it being wrongly dissipated, as opposed to being spent on the normal and proper course of the defendant's business affairs.

37. There is obviously the risk, given that the defendant has already done so, that he will further charge the Property or borrow more money from Hilco on the security of the existing charge. The Property itself and the monies loaned on the security of it are in a different position from the rest of the worldwide assets of the defendant, first, because they are within the jurisdiction and, secondly, because of the terms of the negative pledge that was calculated to preserve that value for the repayment of the claimant's loan. Indeed, clauses 3.1.1 and 4.3 of the loan agreement specifically contemplate that the proceeds of sale of the Property will be used to repay the claimant's loan. However, it is important to recognise that the loan agreement does not give the claimant a proprietary claim to the proceeds of sale or security on the Property.

38. The case of the claimant is otherwise based on inference from the conduct of the defendant which is alleged by the claimant to be variously dishonourable, in bad faith and of low commercial morality, such as to

give rise to a real risk of unjustified dissipation. Whether the Hilco loan and use of the monies was a breach of covenant depends on the interpretation of the Deed of Settlement. The facts are nevertheless important: the claimant relies on them as demonstrating the kind of conduct that creates a real risk, because they were themselves an attempt to deprive the claimant of agreed protection for the repayment of his loan.

39. The claimant relies principally on two matters: first, the fact that the defendant charged the property to Hilco on 29 July 2024 without telling the claimant first or asking for his consent, as the negative pledge required; second, the fact that the defendant agreed to grant the claimant a charge over the shares in Wadjet as collateral for the loan but then delayed and ultimately refused to do so, dissembling in the meantime about the reason, and being evasive.

40. The charge to Hilco was security for a twelve-month loan of £9.75 million, £8,151,000 of which, net of fees and retained interest, was actually paid to the defendant, at an interest rate of 14.4 per cent per annum, and double that if the loan was not repaid on time. The non-default interest was all paid in advance. The claimant says that these terms are indicative of a borrower who could not show that he was a good covenant and able

to perform the terms of the loan during the twelve months. I agree that they tend to reflect the lack of other resources or assets, because the terms are onerous. If the claimant is right about the scope of the Deed of Settlement, the Hilco charge was a breach of contract but the defendant's case is that he received advice from lawyers about the scope of the Deed of Settlement before proceeding with the Hilco loan. What that advice was is unknown.

41. The claimant says that what is most significant is that the defendant deliberately did not tell the claimant before he proceeded to charge the property to Hilco of his wholly new argument, that ran contrary to the claimant's and the defendant's understanding until June 2023, that the Loan Agreement was discharged. The defendant accepts that his understanding prior to July 2024 was that the loan agreement with the claimant remained in place. That understanding is alleged to have changed in July 2024 even though the defendant had acknowledged to the claimant in June 2024 that the loan was repayable.

42. The claimant argues that the defendant was deliberately trying to get an advantage, to jump the gun. Had he told the claimant, it would have been obvious that the claimant would have disagreed and taken steps to protect his rights. Mr Gourgey on behalf of the defendant in answer to

my question frankly agreed, as he realistically had to, that the defendant did not notify the claimant of his position in order to ensure that he could not be prevented from obtaining the loan from Hilco. Mr Gourgey argues that that was not an action done in bad faith, but in good faith on the basis of undisclosed advice about the effect of the Deed of Settlement. He argued that being opportunistic, which again the defendant cannot sensibly dispute, does not amount to bad faith or dishonourable conduct.

43. Mr Fenwick for the claimant argued that charging the Property to Hilco without notifying the claimant was in bad faith because both parties had proceeded up to that point on the basis that the Loan Agreement was valid, and that accordingly the Property could not be charged by Wadjet. In June 2024 the defendant had re-affirmed that he intended to repay the loan. Whilst the claimant believed that reassurance, the defendant took pre-emptive action to his advantage and to the claimant's detriment. That amounted to sharp practice or bad faith, he said, but whatever one calls it, it is evidence that creates a risk that the defendant will take steps to avoid his liabilities.

44. In my judgment, the claimant is right that the conduct of the defendant in not notifying the claimant of his changed position and stealing a march by proceeding with the Hilco charge was sharp practice in the

circumstances. It falls below the generally accepted standard of commercial morality and was an attempt to prejudice the claimant and advantage the defendant. The fact that there is a real argument about whether inadvertently the Deed of Settlement released the defendant is nothing to the point. That issue could and should have been stated openly, which would have been perfectly legitimate commercial 'hard ball' rather than the defendant clandestinely proceeding with Hilco and saying nothing to the claimant. It demonstrates, in my view, that the defendant was willing to act covertly, in an underhand way, in order to extract a benefit from the assets within the jurisdiction.

45. The second matter is the charge of the shares in Wadjet. The claimant accepts that he cannot establish now that there was a legal obligation to do so, but says that it was clearly agreed and understood that there would be a share charge deed and a final version of the document was agreed. It was understood that there would be a delay in executing it so that the existing charge in favour of Capital Rise Finance Limited could be redeemed first. That loan was repaid in November 2023 but, in any event, the defendant did not then execute the charge. When the claimant sought to pursue the matter, various reasons why not were given.

46. Mr Plekhanov, the claimant's Russian lawyer, said that in August or September 2023 he chased the matter and was told (correctly) that the Capital Rise charge had not yet been redeemed so the claimant had to wait. Mr Dmitriev, the defendant's Russian lawyer, accepts in his first witness statement that Mr Plekhanov raised with him in December 2023 the question of the outstanding share charge. He says that he told Mr Plekhanov that he had not had time to think about it or discuss it with the defendant.

47. On 2 April 2024 Mr Plekhanov said that he called the defendant himself and asked for an update, and was told by the defendant that the sale of the Property was progressing. The defendant referred Mr Plekhanov to Mr Dmitriev, who then told him that the charge deed had not been agreed and that the last version of the form was only a red line version. Mr Plekhanov checked that and found that on 16 July 2023, the day before the loan agreement was executed, Mr Dmitriev had sent him a clean version of the share charge called "Share charge, agreed version."

48. He called Mr Dmitriev the following day and explained this and Mr Dmitriev then said that a signed share charge was not necessary and, further, that as eight months had passed since the Loan Agreement, it was not any longer needed. Mr Dmitriev said that a charge over the

shares would make the property harder to sell and affect its marketability. Mr Plekhanov disagreed. He called Mr Dmitriev again the following day and was told then, for the first time, that the defendant himself had not agreed the share charge deed. This was a point that the defendant himself had not made two days earlier. Mr Dmitriev also asserted that Mr Plekhanov had previously agreed that the deed was unnecessary, which Mr Plekhanov disputed.

49. In his witness statement Mr Dmitriev accepts that the conversations took place and says that he considered that the defendant was reviving this old matter because of other, newer disputes arising between the parties. He agrees that he told Mr Plekhanov that the deed had not been finally agreed by the defendant but also that he could not see why it should not now be executed after eight months.

50. The contemporaneous documents show that Mr Plekhanov appears to be right about this matter, and that the idea that the defendant had not agreed the terms of a share charge deed is implausible. It was clearly understood and agreed in WhatsApp messages between the defendant and the claimant on 9 July 2023 that the Property would be used as collateral for the loan. Without the share charge there would be no effective collateral, there would simply be a covenant by the defendant

not to deal with the property which, if breached, or if the defendant sold his shares in Wadjet, would leave the claimant with a personal claim only. The share charge was, therefore, obviously agreed as a necessary part of the package.

51. On 17 July 2023, the day on which the loan documents were executed, the defendant told the claimant, “We’ve agreed about the documents with Vadim.” The suggestion advanced by Mr Gourgey that this related only to the three documents that were signed the next day is implausible, given that the previous day Mr Dmitriev had emailed Mr Plekhanov four documents, including the share charge agreed version. It had been understood that this document would not be executed until the Capital Rise charge had been redeemed, so the fact that it was not in fact executed the next day proves nothing. Neither does the defendant’s WhatsApp on 17 July 2023, which said: “then I sign and we send the documents to Vadim”. The claimant's case is that the defendant knew perfectly well that a share charge deed had been agreed and was to be executed once the CapitalRise charge had been redeemed. But that the defendant first ignored that and then the claimant was fobbed off by the defendant and Mr Dmitriev on several occasions with various justifications or excuses for not providing the charge. The defendant’s case is that there never was an agreement approved by the defendant

personally, and the defendant was therefore entitled, in June 2023, to say “No.” This was no more than playing commercial ‘hard ball’ in changed circumstances, Mr Gourgey submitted.

52. I reject the argument that there was no clear agreement to provide a share charge deed. To proceed with the loan agreement on the basis that their might or might not be a share charge, depending on the defendant's views at a later date, would undermine the collateral which it was agreed that the claimant should enjoy. I accept the argument that the defendant was seeking to evade his responsibilities in a way that fell below the standards of commercial morality, even if there was no legal obligation to execute the share charge deed. I infer that the defendant did not wish to honour his agreement to provide a share charge, first because relations with the claimant had soured by June 2024; and secondly because the defendant would then be able to use the shares, as he did the following month, to secure another loan.

53. Putting the two matters relied on by the claimant together, in my own words, I consider that the defendant's conduct was slippery and demonstrates that he cannot be relied upon to act honourably when his own interests point in a different direction. There is obviously a line between playing legitimate commercial ‘hard ball’ and being

opportunistic, on the one hand, and acting dishonourably on the other. In my view, the defendant has crossed it in respect of both these matters.

54. My conclusion is supported by the failure of the defendant's solicitors in correspondence, following the claimant's discovery of the application to register Hilco's charge, to give any answer at all to repeated legitimate questions about the amount of monies lent by Hilco on the security of the Property and the whereabouts of that money. Although, as Mr Gourgey said, the defendant's solicitors were not obliged to provide an answer, the fact that they were either instructed not to do so or felt that they should not reinforces the fact that the defendant is trying to conceal matters from the claimant and is not dealing with him in an open and straightforward way.

55. These are not matters that amount to improper dissipation of assets as such because the loan from Hilco replaced equity in the property. Rather, the Hilco loan put the defendant in the position where he could more easily dissipate the value of the Property if he wished to do so. Mr Fenwick tried to argue that the Hilco loan was itself improper dissipation of assets that were for the benefit of the claimant, but that is not right in my view. The loan monies remained within the jurisdiction so far as the

evidence established, and would appear not to have been wrongly dissipated.

56. In order to establish that there is a real risk of dissipation of the Hilco loan monies or the Property, the claimant needs to establish that there is a real risk that monies will be used or moved or the Property further disposed of or charged unjustifiably. That is to say, not for good business reasons but in order to use up assets in this country or move them away from reach. The fact that the defendant has already once charged the Property without notice is ample evidence of a risk that he will do so again, which justifies an injunction restraining him from causing or permitting Wadjet from doing so. It is true that Hilco's charge would prevent a sale of the Property or of the shares in Wadjet without Hilco's consent, but those charges would not prevent further borrowing from Hilco or a remortgage. Ultimately the defendant indicated that he was willing to undertake not to allow Wadjet to make any further disposal or charge of the Property or to use the existing Hilco charge as security for more borrowing.

57. As for the £5.95 million of the loan monies remaining in Barclays Bank, I take full account of the fact that only part of the funds raised in July this

year have so far been used, avowedly for business purposes, and that the remainder of the funds remain in the bank for possible future use. I also take into account that the defendant has permanent residency in this country and his family is settled here. So, it is clearly not a case in which he will flee the jurisdiction. Equally, he has no need for the Property as a residence, as he rents at £7,000 a week a flat in London. The Property itself has been intended for sale since June 2022, if not before.

58. The defendant contends that the Barclays funds are to be used for legitimate business investment and for legal or other expenses. These are described in the defendant's evidence with some documentary support. The claimant seeks to argue they will be dissipated on speculative ventures or otherwise removed from the jurisdiction. The aspersions cast by the claimant on the speculative nature of the defendant's businesses are not a substitute for evidence of the likelihood of improper dissipation of funds. However, I do not need to decide whether the proposed investments are or are not proper or normal business expenditure. I am concerned only with whether there is a real risk of improper dissipation. Whether the use of the monies is justified in the future is a matter that can be controlled by the standard terms of the freezing injunction, giving the respondent the right to use monies for

reasonable legal expenses and for normal and proper business purposes, but requiring the respondent to give advance notice of the expenditure of more than a specified amount, so that the applicant has the opportunity to challenge the payment. Nevertheless, this is not an argument for granting a freezing injunction that is not otherwise warranted: freezing injunctions can cause significant disruption and inconvenience to the respondent.

59. I have given the assessment of the risk careful consideration overnight. This is not an easy case, but bearing in mind all the evidence that I have read and the submissions made to me, I am satisfied that there is a real risk that the Barclays cash or other assets in the jurisdiction about which the claimant is currently unaware will be used, either in whole or in part, otherwise than for proper business purposes. I consider that the defendant will do what he realistically can to avoid repayment of the loan, regardless of the legal merits. I am not satisfied that these assets will be used by the defendant only for normal and proper business expenditure. No indication was given in the evidence of the levels of business investment required. The only figure provided by Mr Dmitriev was £500,000 for the anticipated costs of an arbitration.

60. On the other hand, the claimant did not identify any assets already abroad that suggested that the defendant intends to dissipate them in order to avoid a judgment -- nor is there evidence to support such a case. The fact that the defendant's businesses use crypto or other digital assets and that they are structured in offshore companies does not, in my view, prove anything in that regard. Such businesses are routinely structured offshore. Indeed, the claimant's submission was ultimately that the intended use of the Hilco loan monies by the defendant to support his businesses was a change in the normal and proper operation of them, compared with the period July 2023 to July 2024, since the intention was to use assets within the jurisdiction, even at the cost of expensive borrowing, to fund businesses outside, rather than use the assets of the businesses themselves.

61. I am not persuaded the defendant intends to take steps in relation to assets already outside the jurisdiction that would have the effect of putting them beyond reach. I am also not persuaded that the mere act of borrowing money from Hilco on the security of the property was itself improper dissipation such that the defendant cannot use those monies for proper business purposes.

62. Mr Gourgey sought to press on me the fact that when the claimant sought relief on a without notice basis last month, Rajah J gave a short judgment saying that he was not persuaded on the evidence that there was sufficient risk of dissipation for the application to be heard without notice. It is clear to me that, although Rajah J expressed some views about what the claimant's evidence proved, he was only concerned with the risk of dissipation between the date of giving notice of an application and its being heard. In other words, was there sufficient evidence that the defendant would immediately act to remove assets from the jurisdiction? I am concerned with a risk of dissipation between today and the date of trial, in the light of all the evidence that has been filed by both parties since the without notice hearing. I must reach my own conclusion based on an evaluation of that evidence and the arguments that I have heard.

63. As for the argument that it is not just and convenient to grant an injunction because of the prejudice that will be caused to the defendant and his business activities, I accept that granting an injunction in the extraordinarily wide terms sought by the claimant would be likely to be highly prejudicial. I decline to make an order in those terms. I will limit the injunction to assets within the jurisdiction, but I am willing to

consider fine-tuning the reach of the injunction, if justified, once the outcome of the ancillary disclosure exercise is completed.

64. I consider that it is just and convenient to grant the injunction to this extent, in part because it will provide appropriate protection for the claimant in place of the collateral for the loan that it was agreed that he should have pending repayment.

65. I take into account the danger of an injunction being inappropriately used by a business rival to put unjustified constraints on the defendant's normal and proper business expenditure. However, there was no evidence on behalf of the defendant, much less from him personally, to the effect that he needs to use the Barclays monies to fund business expenditure, as opposed to wishing to do so. In other words, it is not proved that a fetter on use of the Barclays monies will prevent the desired investment. If the defendant does wish to use the Barclays monies for legitimate business purposes, there will be a mechanism within the order, enabling but not requiring his solicitors to certify the nature of any proposed substantial business expenditure, and providing for the claimant in those circumstances to be able to challenge that expenditure only for cause within a limited time period. Otherwise, the

usual provision will be included for simple notice to be given of any expenditure exceeding £10,000, which the claimant will then be able to challenge in the usual way. I will require the defendant, while the injunction is in place, to provide the claimant with fortnightly updates on the amount standing to the credit of the Barclays bank account.

66. In summary, I will therefore accept an appropriately worded undertaking from the defendant in relation to the Property and the shares in Wadjet, provided that the defendant's solicitors confirm in a statement that they have explained to the defendant personally the nature and effect of an undertaking to the court and the consequences of breaching it, and that the defendant himself signs the undertakings. Otherwise, there will be an injunction to the same effect. I will also grant an injunction freezing the £5.95 million (or thereabouts) currently standing to the credit of the Barclays account on the basis of standard terms as to legal expenses, living expenses and other normal and property/business expenditure andthe bespoke term that I have already identified.

67. The freezing injunction will extend to any other property within the jurisdiction, including any crypto currency or other digital assets held by the defendant in his name or in the names of others as nominees or

trustees for him, or which he has power to deal with as if it were his own. This is all up to an aggregate value of £19,710,000.

68. There will be the usual undertaking in damages by the claimant, which must be fortified by the payment into court at the outset of £500,000 or provision of appropriate alternative security. There will be liberty to apply to both parties in relation to the extent of the injunction once the ancillary disclosure is completed, and liberty to the defendant to apply in connection with the amount of the fortification.

(10.51)