Neutral Citation Number: [2019] EWHC 2299 (Comm)

Case No: CL-2016-000527

**IN THE HIGH COURT OF JUSTICE**
**QUEEN'S BENCH DIVISION**
**COMMERCIAL COURT**

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 28/08/2019

**Before** :

**CHRISTOPHER HANCOCK QC**
**(Sitting as a Judge of the High Court)**

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**Between :**

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|---|---|
| **OREXIM TRADING LIMITED** | **Claimant** |
| **- and -** | |
| **MAHAVIR PORT AND TERMINAL PRIVATE LIMITED (formerly known as FOURCEE PORT AND TERMINAL PRIVATE LIMITED)** | **Defendant** |

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**Mr Staurt Adair** (instructed by **Druces LLP**) for the **Claimant**
**The Defendant did not appear and was not represented**

Hearing dates: 28 June 2019

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# Approved Judgment

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## Christopher Hancock QC: :

## Introduction.

1. This is the hearing of the application of the Claimant ("Orexim") by notice dated 24th April 2019 ("the Application") for an order that:

   (1) The defence of the Defendant ("MPT") be struck out; and

   (2) There be judgment for Orexim for the full amount claimed ($7,391,600) plus interest;

   or, alternatively, an "unless order".

2. MPT did not appear and was not represented before me.

## The facts.

3. I can deal with the relevant facts, as alleged by Orexim, in outline only. I note that the facts as set out below consist of allegations only at the present time.

   (1) On 5th December 2013 Orexim entered into a written agreement with Atlantis Middle East FZE ("Atlantis") for the sale and delivery by Orexim to Atlantis of 10,000 metric tonnes of crude Ukrainian sunflower seed oil ("the Goods");

   (2) Unbeknownst to Orexim, on or about 25th November 2013 Atlantis had entered into an agreement with Global International Imex Private Limited ("Global") to sell the Goods to Global, and Global had, in turn, agreed to sell the Goods to Tose-E Tejarat Beynolmelal Zarrin Persia Omid PJS ("Zarrin Persia");

   (3) On the insistence of Atlantis, Orexim agreed to charter the MT Bon Vent ("the Vessel") from MPT to transport the Goods. A charterparty for the charter of the Vessel was concluded between Orexim and MPT on or about 19th December 2013 ("the Charterparty"). The bills of lading named Bandar Abbas in Iran as the port of discharge;

   (4) Contrary to the clear instructions of Orexim and in full knowledge of the fact that Orexim had not been paid the balance of the purchase price of the Goods, the Vessel unloaded the Goods into tanks at Bandar Imam Khomeini. MPT justifies this conduct by reference to an order it obtained from the Bombay High Court permitting it to discharge the Goods into tanks at Bandar Imam Khomeini and granting it a lien over the Goods;

   (5) On 20th March 2014 MPT commenced arbitration proceedings against Orexim in India claiming demurrage and damages and obtained and order from the Bombay High Court appointing Mr Rahul Narichania as the sole arbitrator ("the Indian Arbitration proceedings");

   (6) On or about 30th April 2014 Orexim commenced criminal proceedings for fraud in Ukraine against MPT and its employees. Pursuant to these criminal proceedings the Vessel was arrested on 2nd May, 9th May and 2nd June 2014 in the port of Yuzhny in Ukraine. On each occasion the arrest was discharged by the Ukrainian courts;

(7) On 15th May 2014 Mr Budnyk attended a meeting with representatives of Atlantis, Zarrin Persia and MPT at the offices of Atlantis in Istanbul. Rajesh Lihala attended the meeting on behalf of MPT. Mr Budnyk's evidence is that during the meeting it was acknowledged that Zarrin Persia had paid Global for the Goods and agreed that Orexim had to be paid the balance of the price of the Goods, which was US$7,694,700

(8) Prior to the meeting in Istanbul no one at Orexim had been aware of a link between MPT and Global. However, Mr Budnyk states in his affidavit that during the meeting he was informed by Rajesh Lihala that (a) Global was Rajesh Lihala's company, (b) Atlantis owed around US$5 million to Rajesh Lihala in respect of unpaid freight on other deals and Rajesh Lihala wanted to keep the monies paid by Zarrin Persia to Global to discharge that debt.

(9) At the conclusion of the meeting Orexim, Atlantis and MPT executed the Settlement Agreement compromising all the claims and disputes between them and providing for payment of Orexim. The following were, *inter alia*, express terms of the Settlement Agreement:

> "*Parties have agreed to settle their disputes in terms of this Settlement Agreement and to file the same before the sole arbitrator, the Bombay High Court and FOSFA and inviting orders of the sole arbitrator and Bombay High Court in terms of this Settlement Agreement"*(clause 1);
>
> "[MPT] *shall cause Global International Imex Pvt. Ltd ("Global") to deposit on behalf of Atlantis as part of monies payable by Global to Atlantis, an amount of USD7,391,600… with the Bombay High Court…"* (clause 2.i.);
>
> "*Orexim shall withdraw the total amount stated under paragraph 2.i. on release of the Vessel from arrest and withdrawal of the criminal proceedings…"* (clause 2.vi.);
>
> "*Each of the Parties warrants and undertakes to the other Party that it has full right, power and entitlement to enter into this Settlement Agreement and to perform its terms without reference to any other person …"* (clause 3);
>
> "*This Agreement shall be subject to English law and any dispute arising out of or in connection with this Agreement shall be referred to High Court of Justice of England and Wales*" (clause 7).

(10) Global failed to deposit any monies with the High Court in Bombay, but on 25th June 2014 MPT caused Global to pay US$466,364.80 to Orexim;

(11) At the end of June 2014 Orexim learned that Zarrin Persia had obtained forged bills of lading and was using these documents to remove the Goods from the tanks at Bandar Imam Khomeini. Orexim commenced proceedings in Iran to prevent the removal of the Goods, but the Iranian court dismissed those proceedings on the basis, *inter alia*, that Zarrin Persia had paid Global for the Goods. Thus, the Goods have been delivered to

Zarrin Persia notwithstanding that Orexim has not been paid the balance of the purchase price (US$7,694,700);

(12) It is Orexim's case that it has been the victim of a fraud. Orexim contends that MPT and its director, Rajesh Lihala, have played a key role in perpetrating that fraud. In particular, Orexim contends that Rajesh Lihala:

a. Has an interest in Global and negotiated the Global Sale Contract with Atlantis and the separate contract between Global and Zarrin Persia; and

b. Was involved in the production of the forged bills of lading.

(13) Whilst it is common ground between the parties that Zarrin Persia obtained forged bills of lading, MPT and Rajesh Lihala deny any involvement in the production of those bills of lading or any fraud. Furthermore, Rajesh Lihala denies that he has any interest in Global and/or that he had any involvement in the negotiation of the Global Sale Contract.

## Procedural history

4. The procedural history of the proceedings can be summarised briefly as follows:

(1) On 30th August 2016 Orexim successfully applied *ex parte* to HHJ Waksman QC (as he then was) for a freezing injunction in respect of the Vessel and an order permitting service of the claim form on the Defendants out of the jurisdiction. The claim form included a claim under section 423 of the Insolvency Act 1986 ("IA 1986") for an order setting aside the sale of the Vessel to the then Second Defendant, Singmalloyd Marine (s) Pte Limited, ("Singmalloyd") and subsequently to the then Third Defendant, Zen Shipping and Ports India Private Limited ("Zen"). Zen is owned and controlled by Sahil Lihala, who is the son of Rajesh Lihala;

(2) On 17th February 2017 Mr Justice Blair made an order that the steps already taken to bring the proceedings to the attention of the Defendants constituted good and sufficient service and that Orexim be permitted to serve all other documents relating to these proceedings on MPT by email, "*which will constitute good and sufficient service*";

(3) On 24th and 26th May 2017 respectively Zen and MPT issued applications challenging the jurisdiction of the court to hear the claim under section 423 IA 1986 and seeking orders setting aside the orders of HHJ Waksman QC granting Orexim permission to serve the proceedings out of the jurisdiction and granting the freezing injunction. The application was heard on 10th October 2017 and in a judgment dated 27th October 2017 HHJ Waksman QC held that the court did not have jurisdiction to hear the claim under section 423 IA 1986;

(4) On 22nd December 2017 MPT filed and served its Defence to Orexim's claim for damages;

(5) On 24th January 2018 Orexim filed and served Amended Particulars of Claim and an Amended Claim Form. On 22nd February 2018 MPT filed and served its Amended Defence and on 15th March 2018 Orexim filed and served its Reply to the Amended Defence;

(6) On 7th June 2018 Orexim served on MPT a Notice to Admit Facts;

(7) The appeal from the order of HHJ Waksman QC was heard by the Court of Appeal on 3rd July 2018. In a judgment handed down on 13th July 2018 the Court of Appeal held that the Court does have power under the jurisdictional "gateway" created by paragraph 3.1(20)(a) of Practice Direction 6B to permit the service out of the jurisdiction of a claim under section 423 IA 1986 and that the Judge was entitled to conclude that the claim had reasonable prospects of success, but that, on the facts, there wasn't a sufficient connection between the Defendants and England and Wales. The Court of Appeal therefore upheld the decision of HHJ Waksman QC, but for different reasons. As a consequence, Singmalloyd and Zen have ceased to be parties to the proceedings;

(8) On 24th August 2018 MPT was struck off the Register of Companies in India;

(9) On 9th November 2018 a Case and Cost Management Conference took place before Mr Andrew Burrows QC (sitting as a deputy Judge of the High Court). He made an order incorporating directions which were agreed by the parties prior to the hearing ("the Directions Order"). These directions required MPT to:

a. Give standard disclosure by list in respect of 4 specified issues by 4.00 pm on 1st March 2019 (paragraph 2);

b. Inspection of copies of the disclosed documents within 7 days of receipt of requests (paragraph 3);

c. Exchange witness statements of fact by 4.00 pm on 12th April 2019 (paragraph 4); and

d. Exchange expert evidence as to whether certain signatures purporting to be the signatures of Rajesh Lihala are forgeries (as he contends) by 4.00 pm on 10th May 2019 (paragraphs 6 and 8).

(10) The order also provided for a half-day PTR, which has been fixed for 5th July 2019, and a 6-day trial, which has been listed to commence on Monday 18th November 2019.

(11) On 22nd January 2019 Mr Justice Butcher made an order on the application of HFW that the firm had ceased to act for MPT I understand that this order was not served on Orexim's solicitors, Druces, until 18th February 2019.

(12) On 18th February 2019 HFW served the order of Mr Justice Butcher on Druces by email and stated in that email that (a) they were not aware which firm was replacing them as solicitors on the record and (b) Rajesh Lihala had recently been in intensive care.

(13) In response to repeated requests from Druces for contact details for MPT and Rajesh Lihala, on 28th February 2019 HFW wrote to Druces by email stating:

"*The email address for Mr Lihala used for service on MPT before HFW came on the Court record is the same email address that we have continued to use and to which you have already sent an email.*"

The two emails which Druces had used to serve proceedings on MPT (which service was approved by Mr Justice Blair) were mahavirport@gmail.com and rajesh@fourcee.co.in ("the MPT Email Addresses").

(14) On 26th February 2019 Druces sent emails to the two MPT Email Addresses, referring to the fact that HFW were no longer acting, and reminding MPT and Rajesh Lihala that paragraph 2 of the Directions Order required the parties to give disclosure by list by 4.00 pm on Friday 1st March 2019 and seeking confirmation that such disclosure would be provided by the deadline.

(15) On 26th February 2019 Rajesh Lihala responded from his rajesh@fourcee.co.in email address stating that MPT had been struck off the Register of Companies in India and that it had filed an appeal against that striking off and concluding:

"*Separately, the company does not have any solicitors in England. We request that all correspondence be addressed to the company at its address in Mumbai and not to my personal email id.*
*However, given the current state of affairs, the Company, until restored, will temporarily not be able to participate in the proceedings.*
*In the circumstances, we request that you consent to suspend the Directions Order of Mr Andrew Burrows QC of 9 November 2018 until the company is restored."*

(16) Orexim contends that by that email Rajesh Lihala made clear that MPT would temporarily not be complying with the Directions Order or otherwise engaging with the proceedings.

## Overview of Orexim's claims and the defence

5. Orexim's claims are for damages:

(1) For breach of clause 2.i of the Settlement Agreement; or

(2) Alternatively, for breach of the warranty at clause 3 of the Settlement Agreement, by which MPT warranted that it had:

> "*full right, power and entitlement to enter into this Settlement Agreement and to perform its terms without any reference to any other person…".*

The basis of the claim for breach of warranty is that MPT warranted that it had the "*right, power and entitlement*" to cause Global to deposit US$7,391,600 with the Bombay High Court, whereas it now contends that it has no connection with Global.

6. Orexim additionally claims a declaration that, by concluding the Settlement Agreement, the parties compromised the Indian Arbitration Proceedings and an injunction restraining MPT from prosecuting the Indian Arbitration Proceedings (or any similar proceedings).

7. It is Orexim's case that its claims are very strong. I do not need to express a view on this for the purposes of this application and I therefore do not.

**Overview of MPT's defences**

8. MPT's primary defence to these claims is that it entered into the Settlement Agreement under duress (duress of goods and/or economic duress). The allegation is essentially that Orexim made false criminal allegations of fraud against MPT to the Ukrainian prosecuting authorities.

9. MPT additionally defends the claims on the basis that:

(1) The parties impliedly agreed to abandon the Settlement Agreement;

(2) On its true construction, the Settlement Agreement did not impose any obligation on MPT to cause Global to deposit US$7,391,600 with the Bombay High Court;

(3) On the true construction of the Settlement Agreement and by reason of the failure of the parties to fulfil various alleged contingencies, there was no settlement of the disputes between the parties.

**The current application: service.**

10. In breach of the requirements of CPR 6.23(2) and (3), MPT has failed to provide an address for service within the United Kingdom.

11. The application, the supporting evidence and notice of the hearing date have been served on MPT and Rajesh Lihala in accordance with the substituted service order made by Mr Justice Blair on 17th February 2017 at the email addresses which HFW confirmed that they used to communicate with their client.

12. There is little doubt that the application has come to the attention of MPT, but, in any event, Orexim has done everything it can to draw the application to the attention of MPT.

13. I accept that the application has been validly served.

**The application: substantive considerations.**

14. Orexim made the following submissions in support of its application in front of me.

(1) MPT has failed to comply with an order of the Court, namely the order of Andrew Burrows J.

(2) By reason of this failure, the Court has jurisdiction to strike out MPT's defence under CPR Rule 3.4(2)(c) and 3.4(3).

(3) MPT has made clear in its email dated 26th February 2019 that it will not be participating in the proceedings. The explanation for this appears to be that it has been struck off the Register of Companies in India. However, MPT is an Indian company and it is clear that as a matter of Indian law, MPT continues to have capacity to defend these proceedings and to instruct lawyers for that purpose. It has continued to instruct counsel to represent it in parallel arbitration proceedings in India.

(4) The Claimants suggest that it is clear that MPT and Rajesh Lihala (who owns and controls the company) are implicated in a serious fraud that has been perpetrated against Orexim and that the merits of Orexim's claims are very strong.

**Principles applicable to a strike out application under CPR 3.4(2)(c)**

15. In *Walsham Chalet Park Ltd v Tallington Lakes Ltd* [2014] EWCA Civ 1607 the Court of Appeal held that the principles laid down in *Mitchell v News Group Newspapers* [2013] EWCA Civ 1537 and restated in *Denton v TH White Ltd* [2015] 1 All ER 880 have a direct bearing even though they relate to applications for relief from sanction. Richards LJ, however, pointed out at paragraph 44 of his judgment that in the case of a strike out application the proportionality of the sanction itself is in issue, whereas on an application for relief from sanction the court proceeds on the basis that the sanction is properly imposed.

16. That paragraph of Richards LJ's judgment states as follows:

*"44. The judge treated the principles in Mitchell as "relevant and important" even though the question in this case was whether to impose the sanction of a strike-out for non-compliance with a court order, not whether to grant relief under CPR rule 3.9 from an existing sanction. In my judgment, that was the correct approach. The factors referred to in rule 3.9 , including in particular the need to enforce compliance with court orders, are reflected in the overriding objective in rule 1.1 to which the court must seek to give effect in exercising its power in relation to an application under rule 3.4 to strike out for non-compliance with a court order. The Mitchell principles, as now restated in Denton, have a direct bearing on such an issue. It must be stressed, however, that the ultimate question for the court in deciding whether to impose the sanction of strike-out is materially different from that in deciding whether to grant relief from a sanction that has already been imposed. In a strike-out application under rule 3.4 the proportionality of the sanction itself is in issue, whereas an application under rule 3.9 for relief from sanction has to proceed on the basis that the*

*sanction was properly imposed (see Mitchell , paragraphs 44-45). The importance of that distinction is particularly obvious where the sanction being sought is as fundamental as a strike-out. Mr Buckpitt drew our attention to the recent decision of the Supreme Court in HRH Prince Abdulaziz Bin Mishal Bin Abdulaziz Al Saud v Apex Global Management Ltd [2014] UKSC 64 , at paragraph 16, where Lord Neuberger quoted with evident approval the observation of the first instance judge that "the striking out of a statement of case is one of the most powerful weapons in the court's case management armoury and should not be deployed unless its consequences can be justified".*

17. In their joint judgment in *Denton* Dyson MR and Vos LJ explain the following three stage approach to consideration of an application:

(1) The first stage is to identify the seriousness of the breach;

(2) The second stage is to consider why the failure or default occurred;

(3) The third stage is to consider all the circumstances of the case in order to enable the court to deal with the application justly.

**The application of these principles.**

18. As far as the first stage of the process is concerned, it was submitted that the breach could not be more serious. MPT has disinstructed its solicitors or caused them to apply to come off the record and has made clear that it will not be participating in the proceedings. It would be clear that the consequence of not providing disclosure or exchanging witness statements and expert reports is that the trial could not go ahead. The breach of the court order could not be more flagrant and is compounded by MPT's refusal to respond to communications from Orexim's solicitors. As to this submission:

(1) The effect of the failure to serve witness statements and expert reports is provided for by the CPR. In essence, the result of such a failure is that the party in default will not be permitted to adduce any factual or expert evidence: see CPR 32.10 (in relation to factual evidence) and 35.13 (in relation to expert evidence). The rules therefore provide their own sanction in relation to these matters. The failings do not mean that the trial cannot go ahead; it would simply be a much shorter trial, since the Defendants would not have any evidence in support of their position.

(2) The position in relation to disclosure is different, in my judgment. Here, the CPR do provide an automatic sanction, in CPR 31.21, which provides that a failure to disclose means that a party cannot rely on a document that is not disclosed. However, since the duty extends to documents which are adverse to a party, this sanction is clearly not a full or adequate remedy. In my judgment, the failure to comply with a disclosure obligation is a serious breach.

19. As far as the second stage of the process is concerned, it is submitted that no proper explanation for the failure to comply with the Directions Order has been provided. The

implicit suggestion in Rajesh Lihala's email of 26th February 2019 is that it is due to the fact that MPT has been struck off the register of Companies in India.

20. As to this suggestion, Orexim suggests that, as a matter of Indian law, the striking off of MPT does not result in an inability to take part in these proceedings; and, further, Orexim submits that this is evidenced by the fact that MPT has continued to participate in proceedings elsewhere in the world where it is advantageous to it to do so.

(1) First, Orexim submits that the unchallenged evidence of Indian law is that MPT is not disabled from defending these proceedings. As the fifteenth edition of Dicey Morris & Collins makes clear at paragraph 30-010 and 30-011, the corporate capacity and status of a foreign company must be determined in accordance with the law of its place of incorporation, which in the case of MPT is the law of the Republic of India:

"*Whether an entity exists as a matter of law must, in principle, depend upon the law of the country under which it was formed. That law will determine whether the entity has a separate legal existence. The law of that country will determine. The legal nature of the entity so created, e.g. whether the entity is a corporation or a partnership, and, if the latter, the legal incidents which attach to it.*
*It is well established that a corporation duly created in a foreign country is to be recognised as a corporation in England, and accordingly foreign corporations can both sue and be sued in their corporate capacity in the courts. Whether a corporation has been dissolved must be determined by the law of its place of incorporation for "the will of the sovereign authority which created it can also destroy it"."*

See also *Lazard Bros v Midland Bank [1933] AC 289, 297*.

(2) On that basis Orexim has obtained the expert evidence of Mr Vishal Sheth regarding the status and capacity of MPT following its striking off the register of Companies. That evidence, in paragraph 6, states that:

"…*a company which is struck off from the register of companies in India pursuant to a notice issued under section 245(5) of the 2013 Act, remains responsible for discharge of its obligations and liabilities and it retains legal personality for that limited purpose.*"

(3) Mr Sheth's expert opinion is primarily based on his interpretation of the wording of sections 250 and 248(6) of the (Indian) Companies Act 2013 ("the 2013 Act"). Section 250 of the 2013 Act provides:

"*Where a company stands dissolved under section 248, it shall on and from the date mentioned in the notice under subsection (5) of that section cease to operate as a company and the Certificate of Incorporation issued to it shall be deemed to have been cancelled from such date <u>except for the purpose of… the payment or discharge of the liabilities or obligations of the company</u>*" (emphasis added)

(4) Section 248(6) of the 2013 Act provides:

"*The Registrar, before passing an order under sub-section (5), shall satisfy himself that sufficient provision has been made for the realisation of all amount due to the company and for the payment or discharge of its liabilities and obligations within a reasonable time and, if necessary, obtain necessary undertakings from the managing director or other persons in charge of the management of the company:*
*Provided that notwithstanding the undertakings referred to in this sub-section, the assets of the company shall be made available for the payment or discharge of all its liabilities and obligations even after the date of the order removing the name of the company from the register of companies*." (emphasis added)

(5) It follows that the fact that MPT has been struck off the Register of Companies in India does not deprive it of capacity or otherwise prevent it from defending these proceedings.

21. Secondly, Orexim submits that Rajesh Lihala's assertion in his email of 26th February 2019 that MPT will be unable to participate in proceedings as a result of it having been struck off is inconsistent with the way in which MPT has conducted itself.

(1) Although MPT was struck off the Register of Companies in India on 24th August 2018, it continued to instruct HFW and counsel to represent it in these proceedings and, in particular, to attend the Costs and Case Management Conference before Mr Andrew Burrows QC on 9th November 2018.

(2) Furthermore, notwithstanding the fact that MPT was struck off the Register of Companies in India on 24th August 2018, it has continued to be represented by lawyers (Shardul Amarchand Mangaldas & Co) in the Indian Arbitration Proceedings. By way of example:

a. On 28th January 2019 MPT's Indian lawyers submitted detailed submissions to the arbitrator on behalf of MPT in response to Orexim's application to terminate the Indian Arbitration; and

b. On 22nd May 2019 the same Indian Lawyers made further representations to the arbitrator by email.

(3) It would appear that MPT is perfectly capable of instructing lawyers to represent it when Rajesh Lihala considers that it is in his best interests to do so.

(4) Accordingly, there is no good reason for the failure to comply with the Court's order.

22. As far as the third stage is concerned, Orexim submits that all the circumstances of the case include the strong merits of Orexim's claims, the prejudice caused to Orexim by the conduct of MPT and the strong evidence of dishonesty and fraud on

the part of MPT. The evidence of fraud and dishonesty must inform the view taken of the conduct of MPT and any explanation provided. Finally, it is submitted that it would appear that MPT has taken a decision not to oppose this application.

23. I will deal first with the damages claim. My conclusions in relation to this claim are as follows:

(1) There has clearly been a breach of the order of Andrew Burrows QC made in November 2018. The time limits in relation to disclosure, witness statements and expert reports have not been complied with.

(2) In my judgment, as I have noted, this breach is extremely serious, since it has put the trial date in jeopardy.

(3) No good reason has been put forward for this breach. In this regard:

a. I accept the evidence of Indian law put forward by Orexim, and hold that, on the basis of that evidence, there is nothing to prevent MPT from continuing to participate in these proceedings.

b. I also note, and place weight, on the fact that MPT has continued to participate in the Indian arbitration proceedings, despite the fact that it remains the case that it has not yet been restored to the register, as I understand the position as at the date of this judgment.

(4) The natural conclusion to be drawn is simply that MPT is declining to participate in these proceedings and refusing to comply with the orders of the Court.

(5) There is accordingly, in my judgment, no good reason for the breach.

(6) This leaves the question of the appropriate sanction. In my judgment, despite the pendency of trial, it would not be appropriate to strike MPT out at this stage. As is noted in the extract from *Walsham Chalet Park Ltd v Tallington Lakes Ltd*, the striking out of a statement of case is an extreme remedy. In my judgment it is not a proportionate response to the current situation.

(7) Instead, in my view, the appropriate order is an unless order. I therefore order that unless within 28 days of the date of this judgment and the order flowing from it, MPT has complied with its obligations in relation to disclosure, the service of any witness evidence that it intends to place reliance on, and any expert evidence, then Orexim shall be at liberty to enter judgment on its damages claim.

24. However, in my judgment different considerations apply in relation to the claims for injunctive and declaratory relief.

(1) In general, a declaration will not be granted without full argument, of a type which has not occurred before me.

(2) It is also my view that it would be wrong to grant injunctive relief without a fuller consideration of the claim for such relief and a consideration of the interaction between the decisions reached to date by the Indian arbitrator and the English Court.

25. In the circumstances, I propose to adjourn the application for injunctive and declaratory relief. This application can be relisted before me, if Orexim wishes to pursue it, and I will hear it with expedition if necessary.

26. I would be grateful if Counsel would draw up an order giving effect to this judgment.