Neutral Citation Number: [2025] EWHC 271 (KB)

Case No: KF-2024-003996

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 11/02/2025

Before :

HHJ PARFITT

- -

Between :

BYJU'S ALPHA, INC	**Applicant**
- and -	
(1) OCI LIMITED	**Respondents**
(2) OLIVER CHAPMAN	
(3) RUPIN BANKER	

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Mark Tushingham (instructed by **Quinn Emanuel Urquhart & Sullivan UK, LLP**) for the **Applicant**
Matthew Parker KC (instructed by **Laytons LLP**) for the **Respondents**

Hearing dates: 18 December 2024

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Approved Judgment

This judgment was handed down remotely at 10.30am on 11 February 2025 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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HHJ PARFITT

HHJ Parfitt :

1. The Applicant ("Alpha") is the plaintiff in a fraud claim in the United States Bankruptcy Court for the District of Delaware ("the Delaware Claim"). The supervising judge in the Delaware Claim, the Honourable John T. Dorsey, a United States Bankruptcy Court Judge, made a letter of request dated 26 June 2024 for the Respondents to produce documents and/or give sworn testimony for the benefit of the Delaware Claim ("the LOR"). On 11 July 2024, Senior Master Cook made an order giving effect to the LOR ("the 11 July Order"). On 31 July 2024, the Respondents applied to set aside the 11 July Order. This is the court's judgment on that application.

2. Alpha instigated the Delaware Claim after its lenders exercised rights enabling them to replace and appoint directors. By the Delaware Claim Alpha seeks to recover assets and losses said to arise out of the fraudulent conduct of those previously in control of it. Alpha's current statement of case in the Delaware Claim is its "Second Amended Complaint" ("the SAC").

3. The First Respondent ("OCI") is a UK based company which operates in the procurement industry. The Second Respondent is a director of OCI. The Third Respondent is called an Investor and Structuring Advisor for OCI. The Respondents have denied involvement in or knowledge of any wrongdoing and the Respondents are not referred to in the SAC.

4. The parties' solicitors have filed witness statements. Alpha relies on witness statements of Mr Matthew Bunting dated 10 July 2024, 14 August 2024 and 8 November 2024. The Respondents rely on witness statements of Rebekah Jean Parker dated 31 July 2024 and 30 October 2024.

5. The Respondents' case is that the LOR is oppressive and represents an illegitimate attempt to obtain pre-trial discovery type material rather than evidence for trial. Furthermore, if the court upholds the 11 July Order, there is a material risk that the Respondents would be forced to provide material that would be used by Alpha for the purpose of considering and/or framing substantive proceedings against the Respondents.

6. Alpha argues that judicial comity requires this court to recognise and give effect to the LOR. Judge Dorsey, who has an intimate knowledge of this dispute, signed the LOR which told this court that the requested information was relevant and significant for the Delaware Claim and it would be wrong for this court to go behind that. In any event, the material requested was plainly relevant to the location of the defrauded assets and the reasons why the impugned transactions occurred. This court should be doing everything possible to assist Judge Dorsey and Alpha to find and restore to Alpha and its creditors the missing USD 533 million. The LOR is a necessary and legitimate step to obtain material which was of essential relevance to the issues for the trial of the Delaware Claim, in particular the location of the assets and the reasons why the impugned transfers took place.

7. In this judgment I give a factual overview, sufficient to explain the discussion which follows, set out the contents of the LOR, summarise the relevant case law and then apply those principles in weighing the more detailed arguments presented by the parties.

Factual Overview

8. I acknowledge making use of Mr Tushingham's chronology and skeleton argument in this section of the judgment. I do not understand any of these matters to be controversial, for the purposes of this application at least, except where I have indicated.

9. For the most part, the parties' arguments focused on the difference between the limited facts relied upon in the SAC and new facts obtained, eventually, from the Camshaft defendants (see below) in the Delaware Claim which are not reflected in the SAC but which, Alpha says, are key to its understanding about what happened to the missing USD 533 million.

10. Alpha is clear that the SAC, filed on 24 April 2024, represented its understanding and knowledge at that time. Judge Dorsey, at about the time of granting pre-trial freezing order type relief and subsequently, has issued various disclosure orders. The evidence before this court shows there has been a substantial failure by the Delaware defendants to comply with those disclosure orders. Eventually, shortly after the SAC was filed, Alpha obtained documents, in particular from the Camshaft defendants and related entities, the substance of which has led to the current application.

11. In this narrative I indicate, where relevant, whether facts are alleged or not in the SAC. When I do so there is no criticism of Alpha. Nor could there be – the SAC represented what Alpha's new directors and their advisors knew at the time it was filed and their understanding has moved on. This is set out by Mr Bunting at paragraph 21 of the 14 August 2024 witness statement.

12. Alpha was incorporated in September 2021 and its ultimate holding company was, and is, Think and Learn Private Limited ("T&L"). T&L is an Indian company and is the sixth defendant in the Delaware Claim. T&L was founded by its director, Byju Raveendran (and so "Byju's Alpha"). The allegedly fraudulent director of Alpha was Byju's brother, Riju Rivindran ("Riju"). Riju is the fourth defendant in the Delaware Claim.

13. In November 2021 Alpha borrowed about USD 1.2 billion on terms set out in a credit agreement. By 16 March 2022, Alpha was in breach of those terms. Those breaches continued.

14. By 26 April 2022, but not a fact alleged in the SAC, Alpha had signed the first of two similar side letters with Camshaft Capital Management LLC, who is the third defendant in the Delaware Claim. The first and second defendants are also Camshaft entities. I will refer to them generally as "Camshaft" or "the Camshaft defendants". For present purposes the differences do not matter (one count in the SAC is a fee recovery based claim against those Camshaft entities that took fees from Alpha's money).

15. Alpha's case is that Camshaft was a purported hedge fund, run by a young man with no relevant experience or background, which had no significant commercial presence beyond whatever it was doing or gained with Alpha's assets as part of the fraud. The gist of the first side letter was that Alpha acquired a partnership interest in Camshaft for payment of USD 318 million which would be loaned by Camshaft to OCI. The side letter also provided that Camshaft would report to the Second Respondent about Camshaft's performance.

16. On 26 April 2022, and not included in the SAC, OCI signed, by the Second Respondent, a promissory note in favour of Camshaft for a principal amount of USD 318 million with a repayment date of 26 April 2025 ($300 million face value and $18 million prepaid interest).

17. On about 27 or 28 April 2022 Alpha transferred USD 318 million to Camshaft. This is alleged in the SAC. The gist of Alpha's claim is that the payment, and a second payment set out below, were made without legitimate purpose and deprived Alpha's creditors of access to the cash paid away.

18. On 10 May 2022 Camshaft paid USD 300 million to OCI. This is not alleged in the SAC.

19. The second side letter was dated 12 July 2022. This was in substantially the same terms as April 2022 except the envisaged payment was USD 215 million. It is not referred to in the SAC.

20. This time there were two promissory notes made by OCI in favour of Camshaft: one for USD 215 million (USD circa 191 million face value / circa USD 24 million prepaid interest) and the other for circa USD 16 million (circa 14.6 USD million face value and circa 1.4 million interest). Mr Tushingham's skeleton summarises: "It appears these sums represent the face value of the three promissory notes…(i.e. the principal amounts less pre-paid interest)". These promissory notes are also not referred to in the SAC.

21. The repayment dates for the OCI promissory notes (in the order I have set them out above) are 26 April 2025; 12 July 2025; and, 15 July 2025.

22. On around 12 to 15 July 2022:

    i) As set out in the SAC, Alpha transferred USD 215 million to Camshaft.

    ii) As not set out in the SAC, Camshaft transferred just over 205 million to OCI.

23. On 3 March 2023 Alpha's lenders took control from Riju and replaced him as a director of Alpha.

24. The fifth defendant to the Delaware Claim is Inspilearn LLC ("Inspilearn"). Like Alpha, Inspilearn is a subsidiary of T&L. On 31 March 2023 Inspilearn signed a side letter with Camshaft relating to the OCI loans and providing that OCI would repay "the Original OCI Loan" in multiple payments and Camshaft should provide reports on its performance to OCI's director Mr Oliver Chapman, who is the Second Respondent to this application. This Inspilearn side letter is not mentioned in the SAC.

25. In summary, at this point in the history:

    i) As alleged in the SAC, Alpha had paid USD 533 million to Camshaft and Alpha had a "limited partnership interest" in Camshaft said to be purchased for or reflective of those sums ("the LPI"). The USD 533 million payments are the first impugned transfer in the SAC. Alpha seeks to set it aside, essentially as a fraud on Alpha and its creditors, and Alpha asserts proprietary rights over the USD 533 million.

ii) As not alleged in the SAC, Camshaft had paid just over USD 505 million to OCI and OCI had granted promissory notes to Camshaft with promises to repay totalling about USD 508.5 million (when the "prepaid interest" sums in the notes are included they more than cover the full USD 533 million).

26. Thereafter, the factual narrative in the SAC is about what happened to the LPI. Nothing more is said about the USD 533 million, which in SAC terms stops with Alpha asserting its proprietary claim against Camshaft.

27. On or about 31 March 2023, and notwithstanding his no longer having any standing to do so, Riju purportedly transferred the LPI, on behalf of Alpha, to Inspilearn. This is the second impugned transfer. Alpha's case includes that it transferred the LPI and got nothing in return. Alpha asserts throughout the SAC its proprietary interest in the LPI.

28. On 8 May 2023, Byju is said to have told an advisor of the lenders to Alpha, who was investigating what happened to the missing USD 533 million, that "the money is someplace the lenders will never find it". Byju says he meant that it was used and so not recoverable. Understandably, Alpha refers to and relies on this statement by Byju throughout its filings and submissions in both the Delaware Claim and before me.

29. On 1 February 2024 Alpha filed for Chapter 11 bankruptcy protection. On the same date Riju, on T&L's instruction and with Camshaft's consent, transferred the LPI from Inspilearn to a "non-US trust on behalf of Inspilearn". The SAC refers to this as transfer 3. Subsequently Riju said that he had then made a further transfer of the LPI from that trust to "a non-US based 100% subsidiary of T&L". The SAC refers to this as transfer 4. The SAC impugns these transfers and asserts Alpha's continuing rights in the LPI.

30. On 2 February 2024 Alpha commenced the Delaware Claim.

31. On 16 February 2024, Judge Dorsey granted certain discovery motions.

32. On 14 March 2024 Judge Dorsey granted Alpha's motion for a temporary restraining order ("the TRO") preventing the transfer or use of the Alpha Funds (as defined) and held Camshaft's founder and CEO (Mr William Morton) and Camshaft in contempt for failing to comply with the order for expedited discovery. Judge Dorsey's written reasons were given on 3 April 2024. Those written reasons include, as emphasised in Alpha's submission before this court, that locating the USD 533 million was at the heart of what the case is about.

33. On 24 April 2024, Alpha filed the SAC and a further request for document production against Camshaft.

34. On 29 April 2024 Camshaft's former fund administrator provided documents which revealed the existence of the OCI promissory notes. Camshaft produced some further documents during May and June 2024. These presumably included those referenced above relating to the dealings between OCI and Camshaft.

35. Alpha filed the motion for the LOR on 5 June 2024. The Delaware Claim defendants made no objection and the LOR was made on 26 June 2024. It is common ground that the LOR was made on paper and in the terms drafted by Alpha's US lawyers. I

summarise and set out the most relevant parts of the LOR in the next section of this judgment.

36. On 8 July 2024 Alpha applied for summary judgment on 5/11 counts in the SAC. It is not necessary to set out those counts in detail but I was taken through them. It is sufficient to identify that the gist of the SAC is that Alpha had over USD 1.2 billion of debt and prior to the impugned transactions about USD 633 million of cash assets. After the impugned transactions Alpha had about USD 100 million of assets and the same USD 1.2 billion of debt. Consequently, it is said, the loss of USD 533 million was a significant fraud on Alpha's creditors.

37. On 31 July 2024 the Respondents made the current application to set aside the 11 July Order. As well as the witness statements, there has been substantial correspondence between the parties to this application. It is necessary to refer to two aspects.

38. On 2 September 2024, the Respondents made an open offer to Alpha. This offer was expressed to be reactive to Alpha's concerns about where and why the USD 533 million was paid. The Respondents offered the following documents, all within the description of trade arrangements between OCI & T&L or its subsidiaries, (i) agreements; (ii) purchase orders received by OCI; (iii) invoices received by OCI for products and services for T&L; (iv) OCI sales ledger; (v) promissory notes between OCI and Camshaft. Alpha turned down the offer but subsequently, just before the hearing, proposed a fall back amended order limited to the offered material.

39. Finally, in correspondence Alpha has made clear that it is not prepared to give any undertaking to the Respondents, or any of them, not to bring substantive proceedings against them if appropriate.

The LOR

40. Alpha stressed that comity required this court to give effect to the LOR unless there were compelling reasons not to. The essential purpose of the Delaware Claim, as set out by Judge Dorsey, was to find out what has become of Alpha's USD 533 million and restore it for the benefit of Alpha's creditors. The LOR is a tool to assist in that end by obtaining evidence which will show what happened next to that part of the USD 533 million received by OCI and why these transactions happened at all.

41. The LOR is 17 pages long and signed by Judge Dorsey. In its preamble it states that "This Court has determined that it would further the interests of justice if [the Respondents] produce the documents as described below". It seeks a response as soon as possible because of the "risk of dissipation of $533 million belonging to [Alpha]…regarding which OCI likely has significant relevant information". The relevant courts and parties are then set out.

42. Paragraph 7 is headed "Nature and Purpose of the Proceedings and Summary of the Facts". This summarises that the case arises from the fraudulent transfer away from Alpha of the USD 533 million. Paragraph 7(ii) is headed "Plaintiff's Claims as they relate to OCI". This explains that "discovery from OCI will provide key information regarding the various fraudulent transfers of the Alpha Funds…including any legitimate and lawful business reasons for doing so…relate specifically to OCI's…acceptance and

receipt of the Alpha Funds as putative loans…which do not appear as liabilities in its accounts".

43. In a similar way paragraph 8 asserts that the documents and testimony are required about "the transfers and location of the Alpha Funds". It is said that it is believed that the evidence sought "will be highly relevant to and either probative or disapprobative of material facts relevant to the [SAC]" and that because of the failures of the defendants to the Delaware Claims among other things to "disclose the current location of and what happened to the $533 million, the Court considers that the most proportionate and effective way for Plaintiffs to obtain documents and answers they require is by making the Order sought". [The Respondents] "…given their respective roles in the transfer of substantial funds out of the control of the Debtor…can be expected to have relevant evidence to provide in connection with the disposal of the US proceedings".

44. Paragraph 10 sets out the topics for oral examination. These include: OCI's business relationship with the defendants and various third parties and "any of their principles, representatives or affiliates"; "the contemplation, negotiation and execution of the transactions relating to the promissory notes…including but not limited to [the various notes]"; similar topics relating to the side letters; "the transfer, disposition and location of the Alpha Funds"; and, repayment of the promissory notes.

45. Paragraph 11 deals with the documents sought. These include: "All communications with the [parties in the Delaware Claim] relating to the Alpha Funds"; "all documents and communications relating to the contemplation, negotiation, and execution of the transactions relating to the promissory notes…"; "all documents and communications relating to the transfer, disposition, and location of the Alpha Funds"; "all documents and communications relating to the repayment, if any, of the promissory notes"; likewise regarding the side letters; and OCI's business relationship with the defendants and the third parties referred to in the examination request.

46. Paragraph 13 sets out the generality that the examination will be subject to the relevant US procedural code and various other matters but including being subject to protective orders effective in the Delaware Claim; a subject limit to those matters set out in paragraph 10, unless the examiner permits wider; a purpose limited to "eliciting and recording testimony appropriate to be given at the trial, briefing or other related dispositions in the [Delaware Claim]"; and no question should be permitted that is not such as "could properly be asked by counsel examining a witness at a trial in…England and Wales".

47. Paragraph 16 sets out the possible privileges that provide a right to refuse to provide evidence.

The Law

48. The court's powers are contained in the Evidence (Proceedings in Other Jurisdictions) Act 1975 ("the 1975 Act"). Sections 1(a) and (b) of the 1975 Act set out two preconditions to the exercise of the powers which are set out in section 2. There is no dispute that those preconditions are satisfied in the present case: there is a request from the Court in Delaware, USA and the evidence is for the purpose of civil proceedings before the requesting court.

49. There has been discussion in the authorities as to whether "relevance" comes in at the "for the purposes" stage under section 1 of the 1975 Act or as part of the "may appear to the court to be appropriate" stage under section 2. The parties addressed me on the premise that it was a section 2 issue – which was the view of Lord Diplock, see In re Westinghouse Uranium Contract [1978] AC 547 at 633H – 634A.

50. Section 2 of the 1975 Act contains a number of subsections: subsection (1) establishes the general power to give effect to the letter of request; subsection (2) sets out particular exercises of that power of which (a) examination of witnesses and (b) production of documents are the relevant ones for present purposes; subsection (3) limits the steps that can be required of a person under the 1975 Act to those that might be "required to be taken by way of obtaining evidence for the purpose of civil proceedings in the court making the order"; subsection (4) imposes a further restriction, stating that no order can require a person (a) to give what amounts to discovery or (b) "to produce any documents, other than particular documents specified in the order" which are or are likely to be in his possession custody or power.

51. The 1975 Act was enacted as part of the UK ratifying the 1970 Hague Convention and the restrictions under subsections (3) and (4) are related to a reservation that the UK courts would not make orders in the aid of pre-trial discovery. This picked up earlier English law decisions refusing to order on the request of US courts pre-trial discovery (see the discussion in Westinghouse by Lord Wilberforce at p. 608). Thereafter many of the cases to which I was referred explore this distinction but, it seems to me, not because there is any difficulty about stating what the distinction is – it is clearly stated in the 1975 Act – but on its particular application, given that each case will depend on the facts and circumstances relevant to the particular request before the court. The difference between Alpha and the Respondents before me is another example of this: the Respondents' arguments come down to saying this is pre-trial discovery but Alpha says, no, these requests are relevant to the issues for trial, as Judge Dorsey has stated.

52. The distinction between information and evidence is applied in the discussion of "fishing" by Kerr LJ and cited by Lord Woolf MR in The State of Minnesota v Philip Morris Inc [1998] I.L.Pr. 170 at [13] to [18] and in particular (emphasis added by my underlining):

> [15]…However, in a case which did involve similar issues to those at present under consideration, the question of what constitutes "fishing" was considered by Kerr L.J. in *Re State of Norway's Application (No.* 1). [4] He said [5] :
>
> > Although 'fishing' has become a term of art for the purposes of many of our procedural rules dealing with applications for particulars of pleadings, interrogatories and discovery, illustrations of the concept are more easily recognised than defined. It arises in cases where what is sought is not evidence as such, but information which may lead to a line of inquiry which would disclose evidence. It is the search for material in the hope of being able to raise allegations of fact, as opposed to the elicitation of evidence to support allegations of fact, which have been raised bona fide with adequate particularisation. In the present context fishing may occur in two ways. First, the 'evidence' may be sought for a preliminary purpose, such as the process of pre-trial discovery in the United States. The fact that this is clearly impermissible for the purposes of the Act of 1975 is established in the *Westinghouse* case *[1978] A.C. 547* , and was equally so held by this

> court in relation to the Foreign Tribunals Evidence Act 1856 in *Radio Corporation of America v. Rauland Corporation [1956] 1 Q.B. 618* . This is irrelevant in the present context, since the 'evidence' is required for the trial itself. But fishing is in my view also relevant in another sense in the present context, as McNeill J. rightly indicated. It is perhaps best described as a roving inquiry, by means of the examination and cross-examination of witnesses, which is not designed to establish by means of their evidence allegations of fact which have been raised bona fide with adequate particulars, but to obtain information which may lead to obtaining evidence in general support of a party's case.
>
> [16] If a court comes to the conclusion in this jurisdiction that an application is a fishing application, then the application will be refused. If, in relation to a request of a court in a foreign jurisdiction, the conclusion of the court is that an application is fishing, then that has a more significant effect. In my judgment, the consequence is that the court does not have the power under the 1975 Act to make an order.

53. I refer generally to "information", by which for present purposes I mean anything of potential relevance to the USD 533 million and related matters which might be obtained from testimony or documents. This general information category includes anything of potential relevance to a dispute and in English terms, would encompass the general obligation to give disclosure and in US terms could properly be the subject of an application for pre-trial discovery. In short summary, anything that it would be useful for a party or potential claimant to know about the subject matter of the dispute.

54. The distinction between this type of information and evidence is that evidence is the subset of that information which can establish the alleged facts: see the underlined parts of the quotation from Kerr LJ above, which while about two meanings of "fishing" relies on and applies this information / evidence distinction. In general terms "evidence" is a particular category of otherwise relevant information which has probative value in relation to a factual allegation.

55. The quotation from Kerr LJ also sets out that a 1975 Act request cannot be a means by which "material is sought in the hope of being able to raise allegations of fact as opposed to the elicitation of evidence to support allegations of fact".

56. So requests under the 1975 Act cannot seek relevant information in general but only information which will be evidence of material facts. The subject matter of the request must come after and be about the facts alleged. If not, then it is highly likely to be a request founded on the requirement for discovery, to give a plaintiff, normally, the information they otherwise lack.

57. There have been a number of first instance summaries of the factors relevant to the exercise of the powers under the 1975 Act. I was referred to at least four: Gredd v Busson [2003] EWHC 3001, Stanley Burnton J at [27]; Mudan & Ors v Allergan, Inc [2018] EWHC 307 (QB), Cockerill J at [53] to [55] concluding that "relevance and intention to use at trial are the key points" and then from [56] discussing and applying those key points on the facts and circumstances in that case; Aureus Currency Fund L P v Credit Suisse Group AG [2018] EWHC 2255, Senior Master Fontaine at [30] to [41]; and, Atlantica Holdings Inc v Sovereign Wealth Fund Samruk-Kazyna JSC [2019] EWHC 319 (QB), Julian Knowles J at [57] to [83].

58. There is no doubt that a court can refuse a letter of request if it forms the view that forcing the respondents to comply would be oppressive to them and that an example of such oppression would be where a party would be obliged to give information (or for that matter evidence) to be used to make them a defendant in the claim. This was the outcome in First American Corporation v Zayed [1999] 1 WLR 1154, Sir Richard Scott V-C in particular at 1168C to 1169D. I note that one factor present in that case, but not present here, is that the applicants had publicly stated their view that Price Waterhouse were complicit in the alleged fraud. Alpha's stated position about the Respondents before me might be described as sceptical – no express allegations have been made but a number of points of potential prejudice against the Respondents have been raised in evidence.

59. There is nothing to be gained by setting out a further summary of the law in the present case beyond identifying that the parties' arguments include focus on the following:

    i) Whether the question of "relevance" has a hard edge: Alpha says that since the US court has considered relevance then comity requires this court to accept that determination; the Respondents say that in the circumstances of this case comity does not require such deference.

    ii) Would a finding of "oppression" because the provision of the evidence requested was for the purpose of framing a potential case against one or more of the Respondents require the court to impermissibly attribute to Alpha an improper purpose[1] – i.e. not seeking evidence for trial but seeking pre-trial disclosure so that Alpha can determine whether to join OCI or its officers to the Delaware Claim?

Detailed Discussion

Going behind Judge Dorsey's assertions in the LOR

60. I agree that there need to be good reasons not to accede to a letter of request and that comity requires a high degree of deference to be given to the views expressed by the courts seeking the judicial assistance of the courts of the UK. I agree that this cooperation is of particular importance in the context of international fraud (see Atlantica at [64]).

61. On such evidence as I have seen this is an example of an international fraud type case – in part because, as Alpha stresses, the Delaware defendants have variously told Alpha's advisors and/or the US Court that they will not find the money and that the transfers of the LPI down the off-shore transaction train was done to keep the benefit of the LPI out of the hands of Alpha's lenders, but more substantively because of the allegations about Alpha having disposed of USD 533 million to an otherwise insubstantial apparent fund manager with no apparent exchange benefit for Alpha while leaving USD 1.2 billion of debt behind. This appears to be a classic fraud on a power and/or wrongful taking of a company's money for the benefit of third parties.

[1] In Westinghouse Lord Wilberforce at 611G said the assertion that the requests were really for a different set of proceedings required an allegation of bad faith to be made (which was disclaimed) and so it was impossible to deny that the purpose of the request was for the stated proceedings

62. I also consider that the extent to which the receiving court should look into questions of relevance is fact specific. It will depend on what is apparent from the LOR in context. But there is no hard and fast rule, for example, that if the US Court has signed off a request in the terms put to it without hearing argument that this court should necessarily look behind it. It will all depend.

63. In this case the LOR was not the product of a contested hearing and it is accepted that it was signed by Judge Dorsey in the terms presented to him by Alpha's lawyers. The LOR contains no express and fact specific consideration that its subject matter is restricted to take account of the requirements of sections (3) or (4) of the 1975 Act. As I have said, it does contain Golden Eagle wording but not with any explanation or consideration about why or how that might impact the nature of the request. The generalised wording of the LOR does not itself demonstrate that the LOR has been tailored to keep it within the bounds of what is permissible under the 1975 Act, i.e, evidence focused rather than information useful to Alpha which would be duly obtainable under US pre-trial discovery, if such was available. Indeed, for the reasons set out below, paragraphs 7 and 8 in particular of the LOR, give the general impression that it is pre-trial discovery and making up Alpha's information deficit which is at the heart of Alpha's application to Judge Dorsey for the LOR.

64. In all the circumstances, I conclude it is appropriate for the English Court to look in broad terms at what is being said about the type of information sought by the LOR in order to assess the validity of the request under the 1975 Act and the potential consequences of acceding to the request on the position of the Respondents. This is not a case where I consider it would be appropriate to follow the approach taken by the court in Atlantica, following the analysis at paragraphs [79] to [83] of the judgment, and not look behind the assertions of relevance contained in the LOR. The key question being relevant to what? I have no doubt all the information requested is generally relevant to the dispute but does the subject of the request properly fall within the 1975 Act – is it seeking evidence?

Information or Evidence?

65. It is understandable that Mr Tushingham categorised his relevance case as being about where the money is and why these transactions happened. Those comments were supported by substantial reference to Judge Dorsey's written opinion for granting the TRO and other relief designed to ensure that Alpha's position was not further prejudiced before it could obtain judgment. It is not surprising in the context of a TRO application, arising in a claim based in part on proprietary rights, if a judge refers to the importance of finding the money – in any common law jurisdiction that is likely key to the grant of a proprietary TRO and related disclosure.

66. Nevertheless at this stage, the SAC does not "follow the money" in the way categorised by Mr Tushingham, at least so far as the USD 533 million which, before me, is common ground was for the most part transferred by Camshaft to OCI. The SAC starts with the USD 533 million and impugns the first transaction by which it was paid to Camshaft but then focuses on the creation of the LPI and the transfer of the LPI out of Alpha's control and into the beneficial hands of T&L. Count 1 of the SAC impugns all those transactions as failing to give Alpha value for the paid away assets and T&L and Riju continuing "to control the Alpha Funds" which, as Mr Parker rightly says, can only be

a reference to the LPI and potential value related to the LPI. It is not alleged that T&L or Riju "control" OCI or any part of the USD 533 million when it was in OCI's hands.

67. The LOR says at paragraph 7.b.(i) that the Delaware Claim is for the "turnover of the Alpha Funds" – i.e. remedies against the Delaware defendants to get back into Alpha's hands the LPI and/or, at most, any part of the USD 533 million so far as the Delaware defendants still control it. Importantly, the SAC is not about getting OCI to "turnover…the Alpha Funds" because OCI is not yet a defendant. It is obvious that if OCI had the Alpha Funds, or the traceable proceeds of them, then it is highly likely that steps would be taken to make OCI a defendant, either for tracing purposes or substantively depending on what Alpha felt able to allege.

68. The LOR sets out in general terms why the Respondents' information is said to be relevant in a section headed "Plaintiff's claims as they relate to OCI Limited". This summarises: "[the Respondents] will provide key information regarding the various fraudulent transfers of the Alpha Funds and the Defendants' reasons for so transferring including whether there was any legitimate and lawful reasons for doing so". Later, under paragraph 8, the LOR states the relevant subject matter as follows: "the transfers and location of the Alpha Funds" and "current location of and what happened to the $533 million…".

69. This is a request for information gathering rather than a request for specific evidence directed at an issue of fact requiring proving at trial, which could be expected to be based on an assertion about where the funds were and then evidence relevant to whether that assertion was true or false.

70. I take on board, and agree with, Mr Tushingham's point that use of the word "discovery" is not determinative of itself and apply the same caution to the word "information". This also applies to the Respondents' reliance on Alpha's US representatives telling Judge Dorsey on 21 May 2024 that they were preparing to "serve discovery on OCI". What matters more is the substance rather than the label.

71. However, the "discovery" label is more accurate in the particular circumstances here – the LOR seeks information about the transactions involving the USD 533 million once it went to OCI but those transactions, and any payments of those monies to OCI, are not yet facts alleged in the SAC.

72. More telling than the mere use of the word "discovery" in the LOR is the reference to the Delaware defendants' having failed to give discovery and so, the LOR continues, seeking the information from the Respondents is "the most proportionate and effective way for Plaintiffs to obtain documents and answers they require": i.e. the discovery that was not obtained, but should have been, from the Delaware defendants and the information that the Plaintiffs need from that discovery. Since the Delaware defendants have not provided the relevant discovery, then the Respondents should do so. This is a clear and determinative indication about the subject matter of this LOR.

73. The SAC does not plead a case about what happened to the USD 533 million after it was in the hands of Camshaft. The SAC does assert Alpha having a continuing proprietary claim to the fund against Camshaft and the other defendants, in so far as they were holders of the LPI. So when the subject matter of the requests is described as being the "acceptance and receipt of the Alpha Funds as putative loans…which do not

appear as liabilities in [OCI's] accounts" then the LOR is asking for information not about something which is a pleaded issue in the SAC. I agree this information is relevant. But it is most relevant to any potential claim to expand the SAC to trace the cash beyond Camshaft into its next recipient, OCI. This necessarily involves OCI as a potential defendant. These are not issues in the present claim founded on the SAC.

74. Consequently, the Respondents argue that there is little or no evidential relevance to the claims in the SAC of the information topics in the LOR. At present, as I understand it, no Delaware defendant has submitted a defence which asserts the commercial validity of the transactions currently at issue or otherwise sets out a positive defence on the facts. The only defence I was taken to during submissions, that of Riju, included general denials but no positive case about the impugned transactions, let alone one which relied on any part of the transactions involving OCI. I well understand why Alpha is seeking summary judgment on the substantive claims.

75. On my raising the question about the Delaware defendants' position, Mr Parker showed me Byju's witness statement dated 8 October 2024 in response to the summary judgment application against Riju. Riju's lawyers referred to having been given the Byju statement and so submitted it to Judge Dorsey. It was not obvious from this covering letter that the lawyers on behalf of Riju were endorsing its truth. In any event, in this statement Byju, among other things, gave his explanation as to what happened to the borrowed funds, including the USD 533 million, which appears to be for security ("OCI had a right of set off"). As I have said, Riju's defence provided no such factual explanation. The payments by Camshaft to OCI, the OCI promissory notes and any facts relevant to those matters are not present in the SAC. Consequently, those facts are outside the substantial scope of the current trial and any evidence about those facts will be, at best, of peripheral relevance to any trial of the pleaded facts. The date of the Byju witness statement, in any event, is well after the LOR and so its material cannot form the basis upon which the LOR was granted.

76. I agree with what the Respondents have argued about the scope of the SAC and it demonstrates that the benefit of the LOR topics to the SAC based Delaware Claim is marginal, at best.

77. There is also some substance in Mr Parker's point that if the summary judgment application succeeds Alpha appears to be entitled to the substantive relief sought and so there may be little cost benefit to Alpha in proceeding further with the existing claim – this includes obtaining the LPI from T&L or its proxies which is the express subject of count 2. But this is not a decisive point in the present case and I look at the matter on the assumption that the trial for which evidence is sought might address the totality of the SAC claims. Nevertheless, the application does give some insight into the lack of factual issues raised by the Delaware defendants against the claims put forward in the SAC – the overall impression is that there are few factual issues between the parties at this stage just possible legal and conclusory issues to be drawn from those facts.

78. In Mr Bunting's evidence and Mr Tushingham's submissions, Alpha takes a broad brush to the issues of relevance and this approach is also reflected in the LOR (drafted by Alpha's US lawyers): the key topics are the location of the USD 533 million and the purpose of the transactions. These are necessarily beyond the scope of the SAC: the SAC make no assertion about the location of the USD 533 million beyond it having

been paid to Camshaft (which is not in dispute) and the SAC's focus is the four impugned transactions which, as set out in the SAC, do not involve OCI or its officers.

79. From Alpha's perspective the focus on information it lacks rather than evidence for trial is not surprising since Alpha considers there is no genuine dispute preventing judgment from being given for the various claims made in the summary judgment application and the remaining counts either focus on relief ancillary to the summary judgment counts or a different basis for attacking the later LPI transactions, which on the material before the court do not involve OCI. I do not understand even the Byju witness statement to justify the alienation of the LPI from Alpha on the basis of the OCI transaction. I have no doubt that the prime benefit that Alpha would obtain from the LOR is information about the OCI transactions rather than evidence to prove matters for trial raised in the SAC.

80. In order to consider the position of OCI, which became vital for Alpha once it got the Camshaft related discovery in early Summer of 2024, Alpha would be much assisted by the information described at paragraphs 7(ii) and 8 of the LOR. What OCI did with the USD 533 million and the nature and purpose of the transactions by which OCI got it are all highly material information for any further claims about the whereabouts and application of that part of the USD 533 million that was paid to OCI. However, that information will not be probative of the assertions of fact made in the SAC – the fraudulent nature of the transfer to Camshaft is based on characteristics of Camshaft which appear true regardless of what Camshaft might have done with the USD 533 million. Otherwise the SAC is about ensuring Alpha recover the LPI.

81. The problems for the LOR arising from the scope of the SAC are not answered by Mr Bunting's evidence about the possibility of amendments at trial or new evidence coming to light at trial which might reveal new causes of action. Those procedural possibilities are not in dispute and there is no bar to a letter of request if there is a risk that the evidence sought might go further than might be necessary for the issues at trial and the Golden Eagle restrictions, which are contained in the LOR, provide sufficient marginal protection. Likewise, as Lord Wilberforce made clear in Westinghouse the chance of evidence obtained through letters of request being used in other proceedings is no reason to refuse to allow it to be requested. These protections are designed to ensure that a substantively proper request is not derailed by it being capable of producing material that would not fall within the 1975 Act powers.

82. So long as the predominant substance or, if different, what the request is really about, is within the 1975 Act powers then the existence of some leakage around the margins of the evidence / information distinction does not undermine the request. This is not the Respondents' case here – they say that the request is improper because at heart it is not about evidence for the SAC but about the obtaining of information, including that which will enable Alpha and its advisors to obtain potential facts for new claims involving, or potentially involving, the Respondents.

83. A separate ground for refusing the document request in the LOR, addressed in some detail below, is the failure to meet the requirement in the 1975 Act for specific documents rather than disclosure categories. This failure, however, goes further than being a technical or drafting issue. Rather, the use of category type definitions for relevance is further proof that the substantive consequence of the LOR would be pre-trial discovery rather than specific evidence for trial. The LOR fails to identify specific

documents (even if compendiously described) which the Respondents can be required to produce. The LOR takes a class based approach to document production because what is being sought is discovery from the Respondents rather than the production of specific documents required to prove facts which have been asserted in the SAC.

84. For the reasons given, I conclude that the substance of the LOR is the obtaining of information from the Respondents rather than evidence for trial. In this respect it is outside the scope of the 1975 Act. In addition, and separately, I go on to consider whether the substantive purpose of obtaining that information would also be oppressive to the Respondents.

Oppression

85. On the facts of this case issues of relevance and consequence are bound together. The SAC states at paragraph 1 "the troubling details…are still coming to light, as discovery continues to progress". At the date of the SAC, the Delaware Claim was still in the pre-trial discovery phase, not least because of how difficult it had been to obtain cooperation from the Delaware defendants. The case set out in the SAC is one that was put together before Alpha knew about the involvement of OCI, whether as the recipient of the majority of the USD 533 million, or the provider of promissory notes which may well be the only substantial relevant asset of Camshaft, which in turn provides the only apparent basis upon which the LPI might have any value and then there is the curious question as to why the side letters require Camshaft to report to the Second Respondent.

86. Standing back, objectively, there is every reason why Alpha might want to get pre-trial discovery, if they could, from the Respondents. This does not determine the present application, that must be answered by the substance of the relevant issues, but the obvious benefit to Alpha in getting the information they want is part of the context to decide if the LOR is within the 1975 Act powers or not.

87. I disagree with Mr Tushingham that the Respondents would be required to allege against Alpha an "improper purpose" in order to raise oppression because of being forced to give information to a party who are likely to use that information in fraud proceedings against the giver of that information.

88. The Respondents' oppression submission is not based on the motivation of Alpha but on the objective consequences for the Respondents if the order of the Senior Master remains in place. If the order of the Senior Master is oppressive it will not be because of any improper motive on Alpha's part but because of the position of the Respondents following the order relative to what is likely to occur as Alpha takes steps to pursue its potential claims (over and above those currently set out in the SAC).

89. I also stress that I do not consider there is anything "improper" in Alpha not offering an undertaking not to use any information obtained as a result of the LOR for the purpose of perusing claims against the Respondents. On the contrary, given the material available to Alpha, it would be surprising if such an undertaking was given (and probably contrary to the obligations owed by Alpha's office holders to Alpha and/or Alpha's creditors). Likewise, I do not consider there would be anything improper in Alpha considering bringing fraud proceedings against the Respondents to this application and pursuing this application on the basis that the evidence is relevant to

trial. There is nothing wrong with Alpha having as many benefits as it hopes to get in mind.

90. As I have said already, there is no necessary problem with information being useful for other purposes or with evidence being given which could then be used for other proceedings. All those things are the normal incidence of parties giving evidence at trial or being required to do so.

91. I have already drawn a distinction between the substance of a request and marginal matters that may well arise as a result of acceding to the request. Just as it will not be a good answer to a request for a respondent to identify the likelihood that information might come out beyond the evidence for trial which is the substance of the request, so an applicant should not be able to counter substantive oppression by identifying evidence on the periphery of a substantial request for information (i.e. some part of the information we are seeking is likely to be evidence and therefore what would otherwise be a request for information is valid).

92. I do not consider Lord Wilberforce had in mind that the English court should preclude any raising of oppression unless a respondent had some basis for alleging impropriety or bad faith in the applicant. It is the substantive consequence that matters not the particular motivation of the applicant, which in most cases where this issue might arise is likely to be mixed anyway – wanting the evidence for trial, because otherwise there would be no basis to apply, but also wanting information which will be useful more generally. The court should focus on the substance of the LOR.

93. The court's obligation to consider and if necessary refuse an LOR if it considers it to be oppressive is clear and recognised in various of the authorities to which reference has been made, in particular First American as above; Gredd at [27(11)]; Charman v Charman [2005] EWCA Civ 1606 at [53] and Atlantica at [90].

94. The Respondents have given a brief explanation of the transaction at paragraphs 12 and 13 of Ms Parker's first witness statement and maintain their innocence of any improper conduct. I am not concerned to weigh the merits of these assertions but to assess in all the circumstances whether the risk of the Respondents or any of them being the subject of fraud proceedings by Alpha makes the LOR oppressive bearing in mind the limits on this jurisdiction expressed in the 1975 Act aimed at pre-trial type discovery.

95. In broad terms and from Alpha's perspective, the best and most likely outcome of the Delaware Claim, as presently framed by the SAC, is Alpha getting a money judgment against the Delaware defendants, tracing relief against the present defendants and reacquiring the LPI, while not mentioned, it is also not unlikely that Alpha will also acquire from Camshaft the beneficial right to the promissory notes (even if only as enforcement of a money judgment but also under its tracing remedy). I appreciate this is speculative, although other than the point about the promissory notes, it is all reflected in the relief sought in Alpha's argument for summary judgment contained in the exhibits bundle, but it all points to OCI as the next relevant subject of tracing or other remedies. Subject to any difference in the analysis that might come about if OCI make payments under the promissory notes during this year, the obvious inference for this court to draw is that there is a high likelihood of OCI and/or its officers being defendants in a further iteration of the Delaware Claim or in separate proceedings because that is the obvious next step for a fraud claimant in these circumstances.

96. I also take into account that based on the evidence before the court, and in particular the evidence of Alpha, from Alpha's perspective the next likely potential defendant, who would have sufficient means to be able to meet any part of Alpha's alleged losses, is OCI. I have no information about Riju's assets, Camshaft is said to be "a sham hedge fund" and T&L appears, from what Byju says, to be in some difficulties.

97. I find that the predominate consequence of the 11 July 2024 Order will be to force the Respondents, under threat of committal, to provide evidence that will be used to consider and/or frame a fraud claim against them and to answer questions about the underlying facts from which such a claim will emerge but without knowing the actual claim to be brought against them. This would be oppressive for the reasons given in First American.

98. This substantive consequence also flows from my earlier conclusion that the predominate substantive effect of the LOR would be pre-trial discovery contrary to the limits imposed by Parliament in the 1975 Act: it seeks information relevant to choices which Alpha will need to make in seeking to recover the USD 533 million, its value equivalent or damages, rather than evidence of direct relevance to issues set out in the SAC.

99. My conclusion from the above is that leaving in place the 11 July 2024 Order would be oppressive and for this reason I would set that order aside and dismiss Alpha's application under CPR 34.17 dated 10 July 2024.

Other Matters

100. I agree with the Respondents that the document classes are not drawn so as to capture specific documents or specific documents which can be described as "a compendious description of several documents". The relevant test is that summarised and explained in Tajik Aluminium Plant v Hydro Aluminium AS [2005] EWCA Civ 1218, Moore-Bick LJ at [27] and [28] which, while applying to domestic document summonses, took as its starting point the approach of Lord Fraser of Tullybelton in In re Asbestos Insurance Coverage Cases [1985] 1 WLR 351 which was under the 1975 Act. What is required is a description which is sufficiently certain so that the recipient of the request knows the particular document or documents they need to bring with them. The object is to capture particular documents rather than a class of documents which gives the recipient the need to search and then consider whether any particular document falls within that class or not.

101. The descriptions of documents in the LOR fail that test because they define a class and ask for "all documents and communications" which fall within that class. I suspect this is obvious but the inclusion of the expression "including but not limited to" is something of a give-away. Another way of describing the problem is that the request seeks types of information which it is assumed will be available from documents rather than asking that particular documents be produced. It would be necessary for the recipient of the request to interrogate any particular document to see if it met the subject matter criteria. This is contrary to the requirements of the 1975 Act – it is seeking disclosure and not production.

102. I do not agree with Mr Tushingham's argument that the Family law case of Charman v Charman [2005] EWCA Civ 1606, has changed the law in this respect. In terms, the

Charman approach at [46] was said not to be relevant to "ordinary civil litigation, in particular commercial litigation", a fraud case is typical ordinary commercial litigation, even if it is being brought within an insolvency wrapper. But, in any event, the particular subject matter of the Charman extension is the requirement, which is potentially different from the problem with documents only described by category, that the described documents exist (a requirement of Lord Fraser) rather than be clearly described but nevertheless in some sense conjectural because they might not exist (allowed by Charman). The category description in the present case would still fail to capture specific documents for the reasons summarised above.

103. The problems with the approach taken to document disclosure cannot be solved by use of the blue pencil. The problems are too extensive.

104. It is also not appropriate to write down the LOR so that it encompasses only those document classes offered to Alpha by the Respondents' solicitor's letter of 2 September 2024. I agree with Mr Parker's argument that the open offer, while available as forensic material supporting the Respondents' wish to be helpful to Alpha, would not make it appropriate for this court to rewrite the LOR. The court's role on an LOR application, subject to the blue pencil which can strike-out parts to otherwise leave a substantively compliant request, is to give effect to it if proper and not if it falls outside the 1975 Act or otherwise is improper. The open offer gave Alpha the opportunity to mitigate the potential risk of the LOR being order being set aside, it did not prejudice the Respondents' substantive position.

Conclusion

105. I come back to the quotation from Kerr LJ referred to above and that a LOR cannot be used to obtain information which is to assist in the selection of facts to form the basis of a claim. In my judgment, the LOR fails that test. In my assessment the LOR is predominantly and determinatively about enabling Alpha to obtain information (whether through testimony or documents) which will increase Alpha's understanding of relevant transactions and dealings with the USD 533 million and allow Alpha to make material (and important) litigation decisions rather than the obtaining of evidence to prove the allegations in the SAC. On the facts and circumstances of this particular case the substance of that potential outcome of acceding to the LOR predominates over the marginal potential relevance of any evidence the Respondents might have for the purposes of a trial based on the SAC.

106. In addition, seeking this information at this stage against these Respondents is oppressive because of the opportunity it gives to Alpha and its advisors to obtain sworn testimony and documents from the Respondents prior to formulating any claim against the Respondents.

107. I will allow the application and set aside the Senior Master's order.