Neutral Citation Number: [2020] EWCA Civ 762

Case No: B6/2020/0520

**IN THE COURT OF APPEAL (CIVIL DIVISION)**
**ON APPEAL FROM THE HIGH COURT**
**FAMILY DIVISION**
**Mr Justice Holman**
**[2020] EWHC 1037 (Fam)**

Royal Courts of Justice
Strand, London, WC2A 2LL
Date: 16/06/2020

**Before:**
**LORD JUSTICE MOYLAN**
**LORD JUSTICE MALES**
and
**LORD JUSTICE PHILLIPS**

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**Between:**

**CAROLINE JILL CROWTHER** — **Appellant**

**- and -**

**1) PAUL ANTHONY CROWTHER** — **Respondents**
**2) STEVEN KNIGHT**
**3) CARASOL GROUP LTD**
**4) CASTLE TRUST AND MANAGEMENT SERVICE LTD**
**5) CASTLE NOMINEES LTD**
**6) CASTLE SHIP MANAGEMENT LTD**

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**Charles Howard QC & Alex Tatton-Bennett** (instructed by **Hughes Fowler Carruthers**) for the **Appellant**
The **First Respondent** in person
**Charles Hale QC, James Copley & James Watthey** (instructed by **Preston Turnbull LLP**) for the **Second to Sixth Respondents**

Remote Hearing date: 9th June 2020

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# Approved Judgment

Covid-19 Protocol: This judgment was handed down remotely by circulation to the parties' representatives by email, release to BAILII and publication on the Courts and Tribunals Judiciary website. The date and time for hand-down is deemed to be on Tuesday 16th June 2020 at 10.30 a.m.

## Lord Justice Males:

## Introduction

1. Paul and Caroline Crowther used to run a shipping business together, but are now in the throes of a bitter divorce. In the course of the financial remedy proceedings Mrs Crowther obtained a freezing order from Lieven J to restrain the second to sixth respondents (Mr Steven Knight and companies controlled by him) from disposing of or charging four vessels operated within that shipping business. While it is common ground that legal title to the vessels is held by companies controlled by Mr Knight, Mrs Crowther's case is that she and her husband are entitled to the beneficial interests in those vessels, or strictly speaking the beneficial interests in the shares in the companies which own the vessels, and that there is a fraudulent conspiracy between Mr Crowther and Mr Knight to claim that neither of the Crowthers have any interest in the vessels and thus to reduce the value of the assets available for distribution in the financial remedy proceedings.

2. Mr Knight, supported by Mr Crowther, denies these allegations. He says that his companies are not only legal but also beneficial owners of the vessels and that there is an urgent need to sell (or perhaps to charge) one of them in order to generate funds for the upkeep and running costs of the remaining vessels in the fleet.

3. At a hearing on 10th March 2020 Holman J discharged the freezing order against the second to sixth respondents, leaving them free to dispose of the vessels, although there was no challenge to a freezing order also made against Mr Crowther preventing him from doing so, which remains in place. However, the freezing order against the second to sixth respondents was reinstated by Floyd LJ on 13th March 2020 pending this appeal. Mrs Crowther now appeals, seeking to continue the injunction granted by Lieven J until the issue as to beneficial ownership of the vessels can be determined.

4. On this appeal Mrs Crowther and the second to sixth respondents have each been represented by leading and junior counsel. Mr Crowther, who supports the position of the second to sixth respondents, has represented himself.

5. At the conclusion of the hearing we informed the parties that the appeal would be allowed so as to continue the prohibition on disposal of the vessels by the second to sixth respondents, but on terms which would enable one of the vessels to be sold (or vessels to be charged as security for a loan up to the value of the most valuable vessel) and the proceeds to be used to pay running costs and to carry out any necessary repairs or maintenance work. The terms of our order are set out in the schedule to this judgment. I now give my reasons for joining in that decision.

## The background facts

6. The Crowthers were married on 28th September 1996. They owned a shipping business, which operated vessels providing services in the construction of offshore wind farms and oil and gas subsea operations. Mr Crowther's expertise was in shipping, so he was responsible for chartering out the vessels and for their management and operation. Mrs Crowther dealt primarily with the financial side of the business and also with property management, managing a serviced office centre called Maritime House until it was sold in 2018. Until 2012 the vessels were owned

by offshore companies ultimately owned by the Crowthers, but that changed in 2012 after they were introduced to Mr Knight. Thus until November 2012 the vessels were owned by subsidiaries of a company called Med Marine Charters Limited, while a limited partnership, Atlantic Marine & Aviation LLP ("AMA"), dealt with the operation and management of the vessels.

7. It appears that the business was sufficiently successful to enable the Crowthers to enjoy an affluent lifestyle. They lived in a house in Sussex valued in excess of £4.5 million (but subject to a mortgage for £1 million), educated their three children privately, owned horses (for which purpose they employed a groom), a collection of expensive cars, and (until recently) an interest in a private aeroplane.

8. Mr Knight is a UK qualified chartered accountant who has specialised in international tax planning and asset management. In 1989 he was appointed to manage the Gibraltar office of Price Waterhouse but when that office was closed in 1992 he decided to stay in Gibraltar and to set up his own business, the Castle Trust Group, to take over Price Waterhouse's private client and trust portfolio of clients. Castle has been operating in Gibraltar for over 27 years. According to Mr Knight, it manages a portfolio of assets worth in excess of several hundred million US dollars and is heavily regulated. Mr Knight emphasises that the Crowthers were just two out of hundreds of clients.

9. Mr Knight and Mr Crowther were introduced in early 2012 and first met each other on 8th May 2012. According to Mr Knight, Mr Crowther explained that he and his wife owned three vessels through offshore companies and were currently acquiring a fourth, but the business was highly leveraged and they were struggling to finance their debts. Mr Knight says that he had some familiarity with the Crowthers' business as Castle acted for some of those who had loaned them money. One of those creditors was Richard Morgan, a family friend to whom the Crowthers had agreed to pay interest at the remarkably high rate of 25% *per annum*. Mr Knight says that he considered that the business of operating offshore vessels was attractive and he saw an opportunity to invest in it. Various possibilities for collaboration were discussed.

10. The upshot was that two letters were sent to Mr Crowther, summarising two distinct structures. One of these letters was deliberately mis-dated 11th May 2011 in order (according to Mr Knight) to distinguish it from the other which was correctly dated 11th May 2012. This seems an odd way to distinguish the two letters, but it is clear that the 2011 letter was indeed written in May 2012 as it is common ground that the parties had not met before then. The 2011 letter proposed a transfer of the shares of the owning companies to a company within the Castle group in return for which Castle would take over the companies' debts, together with a bareboat charter of the vessels to AMA, which would therefore continue to operate and manage them. The 2012 letter proposed a different structure, described as an "international pension trust" to be formed by Castle, who would place sufficient funds into the trust to finance ongoing obligations of the business, with the vessels being transferred to a new company to be owned by the trust, with personal loans available to the Crowthers, and with their option to terminate these arrangements and take back control of the vessels at any time on repayment of the funds advanced.

11. At that stage neither of these proposals was taken further. However, discussions continued through the summer of 2012, while at the same time, according to Mr

Knight, loan note holders were making clear that they wanted to get their money back. According to Mr Knight, by 1st October 2012 AMA was in default of at least one outstanding loan and, on 12th November 2012, Castle wrote on behalf of loan note holders to AMA giving notice that it was exercising the right to take over ownership of the vessels. In response, by an email dated 19th November 2012, Mr Crowther apologised for his failure to respond earlier and for the fact "that the company is having difficulty in making the contractual payments at this time", which he attributed to "cashflow issues", and promised to make a proposal by the following afternoon at the latest.

12. After some further exchanges a meeting took place in Gibraltar on 21st November 2012. Mr Knight and Mr Crowther both say (and Mrs Crowther does not deny) that Mrs Crowther attended this meeting together with her husband. It was agreed that there would be two agreements, one being an agreement whereby a newly formed Castle entity, Castle Ship Management Ltd ("CSM"), would take over the indebtedness under the loan notes together with ownership of five vessels (the *Atlantic Guardian*, *Atlantic Surveyor*, *Atlantic Cougar*, *Atlantic Wind* and *Atlantic Carrier*), which would then be bareboat chartered back to AMA. The second agreement was a Family Settlement which it was contemplated would protect Mrs Crowther and the children in the event of Mr Crowther's early death. It was envisaged that part of the income which would come to AMA from sub-chartering the vessels would be paid into the Settlement in order to build up a fund. In the event, however, Mr Knight says that no money was ever transferred into the settlement.

13. As a result a formal agreement dated 22nd November 2012 was concluded, governed by Gibraltar law and signed by Mr Crowther on behalf of Med Marine Charters Ltd and by Mr Knight on behalf of CSM. It recorded that Mr Knight and CSM represented the interests of loan note holders who had made a series of loans to Med Marine on which the latter had defaulted and that in full and final settlement of their claims it was agreed that the beneficial title to all five vessels was transferred to CSM by way of a transfer of 100% of the shares in each ship owning entity; and that the vessels would be bareboat chartered back to AMA. In addition the agreement stated that AMA had agreed to purchase a commercial charter yacht from a company called CD One Ltd but, because it was unable to complete the purchase, it nominated CSM as the buyer, as it was entitled to do under the terms of the Memorandum of Agreement for the purchase of the yacht. The yacht was subsequently renamed as the *Atlantic Endeavour*.

14. A bareboat charter, between CSM and AMA, was concluded on 24th November 2012 and was also signed by Mr Knight and Mr Crowther. It covered the five vessels named above "and all other vessels beneficially owned by" CSM, so that any vessel acquired in the future would be subject to the charter. The charter was on the standard Barecon 89 form and was stated to be for a firm period of 10 years, extendable by mutual agreement, but with either party having a right to terminate it at any time. The hire rate varied for each vessel depending on its gross tonnage and "operational days" on sublet time charter. This was further explained in additional clause 27:

> "**Rates and payment of hire:** Payment of hire shall be at the rate specified in box 19, on the basis of the ship being supplied by the owners to the charterers on a 'bare boat' basis whereby all crew, insurance, management, operational expenses and

> disbursements for consumables (i.e. bunkers and lubes) including maintenance and repairs costs shall be charterers' responsibility and to charterers' account. It is understood and agreed that charterers principal business is to sub charter the ship to third party charterers on a 'time charter' and managed basis, that charter rates and flexibility within these terms reflect this approach, and as such the parties are both accepting commercial market risk. Therefore, hire is only payable for 'operational days' where the vessel is on charter to a third party and earning revenue there from. It is further agreed that charter hire shall not be payable in respect of time laid up, on delivery voyages or when undertaking duties for the charterers but not sublet, nor during any time when the vessel is sublet but where hire payments to charterers have been suspended for whatever reason."

15. Clause 28 further provided that:

> "In the case where market forces and or currency variation have created a change to the demand and/or change to normal commercial rates being charged by similar vessels in the market and region, it is hereby agreed that charterers may, at their option, vary the charter rate according to market conditions, subject to the owners' consent, which shall not be unreasonably withheld, and always within reasonable limits with regard to the market conditions prevailing."

16. The combined effect of these two clauses was to protect the charterers against any risk that the vessels would be unable to find employment or that market rates would decline. Mr Knight says that the rationale for this was that the vessels were to be employed in the offshore market which typically has seasonal periods with increased demand in spring, summer and autumn, but with many such vessels having to be laid up during the winter when weather conditions are adverse. Thus a vessel might typically have only 120 to 180 days of revenue earning employment a year.

17. Mr Knight, supported by Mr Crowther, contends that these arrangements were what they appear on their face to be, that is to say an agreement whereby the legal and beneficial title to the vessels and the companies which owned them was transferred to CSM, which then bareboat chartered them to AMA on terms that hire would be payable when the vessels were earning hire on sub-charter. He says that pursuant to these agreements hire was paid until 2015 in the total sum of about £2.1 million but that hire payments ceased thereafter; that the information provided by AMA which was necessary in order to allocate hire to particular vessels was unsatisfactory; that in due course the vessels initially transferred to CSM were sold and replaced by different vessels which, pursuant to the terms of the charter, were also bareboat chartered to and managed by AMA; and that about £1.6 million was advanced to the Crowthers by way of loan to fund their lifestyle, including payment of school fees and equestrian equipment, which was partly secured by a charge (albeit unregistered) for £500,000 on the family home.

18. In addition, it appears that when Maritime House was sold in August 2018 the Crowthers needed to purchase an asset in order to obtain rollover relief from capital gains tax. CSM (on Mr Crowther's advice) had recently purchased a vessel called the *Atlantic Discovery* which it agreed to sell to the Crowthers' company, Maritime Atlantic Ltd, for £2.95 million. According to Mr Knight this purchase price was never paid although the bill of sale says that it was.

19. Overall, Mr Knight currently claims that CSM is owed some £5 million by the Crowthers or their companies, although in November 2019 he was contending that the sum owed was as high as £7 million (about £3 million outstanding in connection with the purchase of the *Atlantic Discovery* and about £4 million unpaid bareboat charter hire).

20. By 2019 the Crowthers' marriage was in trouble and on 6th September 2019 each of them issued a petition for divorce. Shortly afterwards Mr Crowther travelled to Gibraltar for a meeting with Mr Knight. That was followed on 19th September 2019 by CSM giving notice of termination of the bareboat charter to AMA with immediate effect "following our continued requests for payment of our hire charter fees". However, on the same day, CSM concluded a new bareboat charter with Atlantic Marine Offshore & Subsea Services Ltd ("AMOSS"), a new company established by Mr Crowther. According to Mr Knight the appointment of AMOSS was a temporary expedient. In the event, however, Mr Knight has continued to work with Mr Crowther, initially through AMOSS and subsequently by appointing him as technical manager of the vessels. This too was said to be a temporary appointment, for a period of 30 days, but over three months later it appears that Mr Crowther is still acting in this capacity at the date of this appeal.

## The injunction proceedings

21. It is unnecessary to set out the depressing procedural history of the divorce proceedings so far, which demonstrates a high degree of acrimony and mistrust on both sides.

22. On 19th December 2019 Mrs Crowther applied to Lieven J for an injunction to restrain the respondents, that is to say Mr Crowther on the one hand and the second to sixth respondents on the other, from disposing of, charging, or diminishing the value of any of the following:

    (1) *MV Atlantic Enterprise*, a ship said to be worth approx. £2.5 m;

    (2) *MV Atlantic Tonjer*, a ship said to be worth approx. £1.8 m;

    (3) *MV Atlantic Discovery*, a ship said to be worth approx. £2.95 m;

    (4) The proceeds of sale of *Atlantic Explorer*, of approx. £300,000;

    (5) *Atlantic Endeavour*, a yacht said to be worth approx. £600,000.

23. She did so contending that the arrangements entered into in 2012 and described above were a sham. She acknowledged that "on paper it looks like Castle Ship Management have owned their ships since 2012", but said that this was not the reality and was only done to "reduce our tax liabilities", the reality being that "100% of the shareholding in

Castle Ship Management Ltd is held on trust for us". Although she did not put it anything like so bluntly, what her evidence came to is that her husband conspired with Mr Knight to conceal from HMRC that ultimately the vessels were beneficially owned by the Crowthers; that this was done in order to evade tax; and that what Mr Knight gained from this arrangement was a relatively modest annual fee. Mr Charles Howard QC for Mrs Crowther confirmed in argument before us that Mrs Crowther's case is indeed that this was unlawful tax evasion as distinct from legitimate tax avoidance, albeit that her case will be that despite being a partner in the business and responsible for financial matters, and despite having attended the November 2012 meeting, she was not a participant in unlawful activity.

24. The five vessels the subject of the application were those operated by AMA as at November 2019, save that the *Atlantic Explorer* had been sold by CSM for scrap in November 2019, with Mr Crowther acting under a Power of Attorney. It can be seen that the total value attributed to these vessels was about £8.15 million, rather less than the figure of £10 million referred to in Mrs Crowther's evidence (and also in an email from Mr Crowther to which I shall refer), although there is no independent or up-to-date valuation evidence to support these figures. It should be noted also that although Mrs Crowther's case in the divorce proceedings is that the *Atlantic Discovery* is worth £2.95 million, in the Admiralty proceedings referred to below she contends that this is a "gross overvaluation", being a figure inserted into the Memorandum of Agreement for the purchase of the vessel in order to obtain rollover relief and thereby evade capital gains tax on the sale of Maritime House, and that it was never intended to pay £2.95 million when the true value of the vessel was only £320,000. Thus, on Mrs Crowther's own case, the true value of the remaining vessels as at the date of the application to Lieven J appears to have been closer to £5 million than £10 million and, if she is right, a substantial part of that value will be owed to HMRC. The current value of the vessels is likely to be much lower, as I shall explain.

25. Lieven J granted the freezing order sought, with a return date of 10th March 2012. Her order contained a proviso that it did not prevent the second to sixth respondents from operating business as usual. It also included an undertaking in damages by Mrs Crowther.

26. As I have said, a freezing order in similar terms was also made against Mr Crowther and that order remains in place.

## The position at the return date

27. Mr Knight served two affidavits, dated 16th January and 18th February 2020, giving his account of how CSM had come to acquire title to the vessels and providing information which he had been ordered to provide. As at the date of the freezing order and his first affidavit, Mr Knight and his companies had not claimed an interest in the *Atlantic Discovery*, but by the date of his second affidavit he was claiming that due to non-payment of the purchase price of £2.95 million, he was entitled to take over ownership of this vessel. He said also that as AMOSS had proved itself unable to sub-charter the vessels, CSM was in the process of terminating its commercial relationship with AMOSS.

28. CSM did terminate the bareboat charter with AMOSS on 24th February 2020, but agreed that Mr Crowther could continue as technical manager of the vessels for a

period of 30 days. On the following day, 25th February 2020, CSM and various associated companies issued proceedings in the Admiralty Court claiming a declaration of legal and beneficial ownership of the *Atlantic Enterprise*, *Atlantic Tonjer*, *Atlantic Discovery* and *Atlantic Endeavour*.

29. Finally, on 6th March 2020 Mr Knight served a witness statement stating that, if the freezing order was not lifted, CSM would be forced out of business within two or three months (although at the hearing the court was told that this would happen in only two or three weeks). He explained that the vessels are ageing and in ever increasing need of maintenance, repair and upgrading if they are to be successfully sub-chartered; that running costs in respect of crewing, port fees, fuel costs and other expenses were accruing on a monthly basis; that classification society fees had to be paid to maintain one of the vessels in class, without which it would be unable to trade; that these matters had previously been the responsibility of AMA and AMOSS as bareboat charterers, who had failed to make the payments, but that CSM was now responsible for them as the bareboat charters had been terminated; that sub-chartering opportunities had been lost for lack of funds to carry out the necessary upgrade work; and that CSM had funds of only about £190,000 left, reduced from about £600,000 in November 2019. He explained also that a prospective buyer had been found for the *Atlantic Enterprise* who was willing to pay a total of US $2.7 million (US $700,000 upfront and the balance over a period of a year). This would enable investment in the remaining vessels, but was prevented by the terms of the freezing order. (We were told, however, that this sale is no longer a possibility).

30. Unfortunately, before coming into court on the return date, Holman J had had no proper opportunity to read any of the voluminous evidence served by the parties, although he had read the lengthy and very detailed position papers which had been served, including by Mrs Crowther. No pre-reading time had been allowed for and the judge had been dealing with other cases on the previous day when the documents were delivered to him. Moreover, the freezing order was merely one item on a crowded agenda for the hearing, which was also meant to be the first directions hearing of the financial remedy proceedings in the divorce.

31. Mr and Mrs Crowther were both present in court during the hearing before the judge, as was Mr Knight. The judge was therefore able to observe Mr Knight and Mr Crowther during the hearing and commented, based on their interaction, that there was obviously a friendly relationship between them, as well as a business relationship.

## The judgment

32. In his judgment, given *extempore* at the end of the day, Holman J outlined the nature of the dispute about ownership of the vessels and summarised the evidence of Mr Knight as to the situation now faced by CSM. He pointed out that an injunction against Mr Knight and his companies did not fall directly within section 37 of the Matrimonial Causes Act 1973 as Mr Knight was not a party to the marriage, but regarded it as providing some analogy.

33. The test which the judge applied was whether he was satisfied, at least to some threshold level, that there was a current intention on the part of Mr Knight or his companies to defeat Mrs Crowther's claims to financial remedy orders. His conclusion was that he was not satisfied of that at all. Whatever the purpose of the

arrangements entered into in 2012, that was long before there was any stress in the marriage between Mr and Mrs Crowther and those arrangements were not entered into with a view to defeating a claim for financial remedy orders. It was apparent that Mrs Crowther was well aware of whatever was arranged and negotiated at that time and had been content with it until the marriage began to fail. Moreover, the judge was not satisfied that there was any real evidence of deviousness on the part of Mr Knight or any intention to try to defeat Mrs Crowther's claims. On the contrary, it was in her interests that the current structure remained solvent in the event that she had any claim to the beneficial interest in the vessels.

34. The judge stated his conclusion at [21]:

> "So, although I have canvassed during the course of argument, in order to try and cut through this dispute, that there might be some modified form of injunction, or undertakings by Mr Knight, to the effect that if he sells a ship or ships the proceeds will be reinvested to meet the various expenditure commitments to which he refers in paragraphs 9 and 10 of his recent statement, in the end I have been forced to adjudicate. My adjudication is that there is no sufficient basis for an injunction whatsoever to remain in place against Steven Knight, who is the second respondent, nor any of the companies which are the third to sixth respondents. For those reasons the whole of any subsisting injunctions, insofar as they impact upon any of the second to sixth respondents, are now discharged."

**The submissions on appeal**

35. Mr Charles Howard QC for Mrs Crowther submitted, in outline, that the hearing before the judge was unfair and that the judge was wrong to discharge the injunction against the second to sixth respondents. He submitted that:

(1) The judge had not read the evidence and did not allow him time to develop his oral submissions which would have provided answers to the recently served witness statement of Mr Knight; instead the judge cut his submissions short at just before 4 pm and proceeded to deliver judgment.

(2) As a result the judge never understood the strength of the evidence supporting Mrs Crowther's case, which he had not even considered.

(3) The case should be sent back to a different judge of the Family Division, preferably Lieven J, for a fresh hearing.

(4) Alternatively, if (as urged by the second to sixth respondents) this court were to consider for itself whether there should be a freezing order, we should conclude that Mrs Crowther has a strong case on the merits that the vessels are beneficially owned by Mr and Mrs Crowther, and that there is a risk that Mr Crowther and Mr Knight will dissipate assets so as to put them beyond the reach of the financial remedy proceedings; accordingly a freezing order against the second to sixth respondents is appropriate.

(5) There is no urgent need for a sale of one of the vessels in circumstances where (as Mrs Crowther believes) they are currently employed and earning hire and there is no proper explanation of why CSM has no money with which to pay running costs, although if necessary Mrs Crowther would be prepared to agree to a sale provided that the proceeds were frozen.

36. Mr Crowther, who appeared in person, told us that the position is now extremely urgent. The three offshore vessels are in Tilbury, unemployed and uninsured, and with no crew on board as there is no money to pay them. Prohibition Notices have just been served on the vessels by the Maritime & Coastguard Agency which (if nothing is done) are likely to lead to their arrest and forced sale, probably for scrap, in the very near future. The yacht is in Barcelona, also unemployed and uninsured.

37. Mr Charles Hale QC for the second to sixth respondents supported the reasoning of the judge. He submitted that:

(1) Although the judge had not had time to read the evidence, he had read the detailed position statements served by the parties and neither Mrs Crowther nor the second to sixth respondents had applied for an adjournment of the hearing. Accordingly the judge had done the best he could in the circumstances and had reached the right decision. In particular, he had been correct to focus on the balance of convenience, which favoured the discharge of the freezing order against the second to sixth respondents. The process had been far from perfect, but had been the same for both parties.

(2) If this court were to conclude that the hearing had been unfair, we should consider the matter for ourselves rather than sending it back for a fresh hearing before a different judge.

(3) There is no reason to doubt the evidence of Mr Knight, a respected professional accountant and entrepreneur, which is supported by the contemporary documents. Conversely, there is no document supporting Mrs Crowther's case that she and her husband (or her husband alone) are the beneficial owners of the vessels or the vessel owning companies.

(4) Accordingly there is no sufficient basis for a freezing order against the second to sixth respondents.

(5) The balance of convenience now points even more strongly against such a freezing order than it did at the time of the hearing before the judge. The Prohibition Notices served by the Maritime & Coastguard Agency demonstrate the extreme urgency of the current position.

(6) Moreover, Mrs Crowther's evidence to Lieven J had been lacking in candour, with only selective reliance on documents; in particular, she had failed to make clear that her case was one of tax evasion as distinct from legitimate tax avoidance.

**Was there a fair hearing?**

38. To some extent both parties contended that they had not had a fair hearing before the judge because he had only read the parties' position statements and there was very

limited time for their oral submissions. But the judge was placed in a very difficult position. A substantial volume of papers was only provided to him on the previous day, when he was in court dealing with other complex cases, and it would have taken him well over a day to read them (he said in argument that it could have been done in a day, but my own experience is that it took longer, although much of the material was of only peripheral relevance to the freezing order). The judge was not assisted (and nor have we been) by a reading list directing him to the most important documents although it is likely, as no time at all had been allowed for pre-reading, that this would have made no real difference. Moreover, the freezing order was not the only urgent item on a crowded agenda for the day. The judge was also pressed with the need to put in place arrangements for the sale of the matrimonial home and with applications by Mr Crowther to adjourn the hearing and for funding to enable him to obtain legal representation.

39. In those circumstances what was the judge to do? There was only a day available, as the judge was committed to further hearings on the following day. We do not know whether it would have been a practical possibility to adjourn to a date in the near future when sufficient reading time in advance could have been allowed for (although with the benefit of hindsight we do know that the Covid-19 lockdown was about to intervene), but in any event neither party invited the judge to take this course. On the contrary, he was pressed with a submission that a decision was urgent which, on the face of things, appeared to have force. A decision to adjourn would therefore have been tantamount to a decision to leave the freezing order in place for the time being, potentially with catastrophic consequences for the second to sixth respondents, in circumstances where plainly Mrs Crowther's undertaking in damages would be of little or no value.

40. So the judge did the only thing which he could, which was to seek the parties' assistance to identify the most urgent matters on which a decision was needed, to identify the critical issues on which those matters would turn, and to deal with them as best he could in the time available.

41. That being so, I find it surprising that Mr Howard chose to spend most of the morning seeking to persuade the judge to transfer the Admiralty Court proceedings to the Family Division. By no stretch of the imagination was that the most urgent item for decision and the debate about whether the Admiralty Court constituted a "specialist list" within the meaning of CPR 30.5 strikes me as (to say the least) an unnecessary luxury when time was so limited. In the event the judge expressed no concluded view on whether he had power to transfer the Admiralty Court proceedings, but decided that, whether he did or not, this was an issue which the Admiralty Court should consider for itself. That decision is not challenged on this appeal and, in my judgment, is plainly right. If an application to transfer is to be made, the sooner that is done, the better.

42. Nevertheless, while fully acknowledging the difficult position in which the judge was placed and that in some respects he did not receive as much assistance from the parties as he might have, I am bound to conclude that the hearing was unsatisfactory and that as a result the judge's decision was flawed. He never saw the material on which Mrs Crowther relied in support of her case that the 2012 arrangements constituted a sham and, in the event, did not reach even a provisional view as to whether she had established a good arguable case. As the judge had not read the

evidence, his conclusion that there was "no real evidence of any deviousness" on the part of Mr Knight must carry little or no weight. Moreover, while the judge regarded himself as forced to adjudicate between maintaining the freezing order and discharging it against the second to sixth respondents altogether, I see no reason why he could not have made an order to the effect which he described, that is "to the effect that if [Mr Knight] sells a ship or ships the proceeds will be reinvested to meet the various expenditure commitments to which he refers". As the judge apparently did not regard that possibility as open to him, I consider that his exercise of discretion cannot stand.

## What should this court now do?

43. We must therefore decide whether to send the case back to the Family Division for a fresh hearing or to determine for ourselves whether there should be a freezing order against the second to sixth respondents and, if so, on what terms. Whatever might be the preferable course if time and expense were not a consideration, I have no doubt that in the circumstances of the present case we should consider the position for ourselves. The current position is extremely urgent as demonstrated by the Prohibition Notices served by the Maritime & Coastguard Agency. Mr Howard asserted repeatedly that the vessels are currently employed, but that was not based on any evidence and is manifestly not so. It is not difficult to ascertain a vessel's movements but Mrs Crowther has not taken the trouble to do so. Mr Howard even asserted, extraordinarily to my mind, that the Prohibition Notices are somehow the result of collusion between Mr Crowther and the Maritime & Coastguard Agency, but if he had a basis for that assertion he did not share it with us. The position, therefore, is that no money is being spent on these vessels even to insure them and there is a real danger that enforcement action against them will lead to their forced sale in the near future. Even now it may be too late.

44. Moreover, I consider that we are in a position to determine this issue fairly. Unlike the judge, we have read the evidence and are able to form the necessary views at this interlocutory stage. Further, although Mr Howard submitted that Mrs Crowther has had no opportunity to answer the witness statement of Mr Knight served very shortly before the hearing on 10th March 2020 and other evidence relied on by him, I do not accept this. If she had relevant evidence to give, I see no reason why she could not have applied to adduce that evidence on this appeal. As Mr Hale pointed out, he would not have been in a position to resist such an application in view of the late stage at which Mr Knight's evidence had been served. In the event many of the points which Mrs Crowther wished to make were in the nature of submissions, and were forcefully made by Mr Howard.

## Freezing orders – the law

45. There was no dispute as to the relevant law.

46. Section 37(2) of the Matrimonial Causes Act 1973 provides:

> "Where proceedings for financial relief are brought by one person against another, the court may, on the application of the first-mentioned person—

> (a) if it is satisfied that the other party to the proceedings is, with the intention of defeating the claim for financial relief, about to make any disposition or to transfer out of the jurisdiction or otherwise deal with any property, make such order as it thinks fit for restraining the other party from so doing or otherwise for protecting the claim; …"

47. As the judge said, this section is not directly relevant to Mrs Crowther's application for a freezing order against Mr Knight. Of greater relevance are the principles governing the making of freezing orders generally, recently summarised by Haddon-Cave LJ in *Lakatamia Shipping Company Limited v Morimoto* [2019] EWCA Civ 2203:

> "33. The basic legal principles for the grant of a WFO are well-known and uncontroversial and hardly need re-stating. It nevertheless is useful to remind oneself of the succinct summary of the test by Peter Gibson LJ in *Thane Investments Ltd v Tomlinson (No 1)* [2003] EWCA Civ 1272 at [21] where he stated that, before making a WFO, the court must be satisfied that:
>
>> '… the applicant for the order has a good, arguable case, that there is a real risk that judgment would go unsatisfied by reason of the disposal by the defendant of his assets, unless he is restrained by the court from disposing of them, and that it would be just and convenient in all the circumstances to grant the freezing order."
>
> 34. I also gratefully adopt (as the Judge did) the useful summary of some of the key principles applicable to the question of risk of dissipation by Mr Justice Popplewell (as he then was) in *Fundo Soberano de Angola v dos Santos* [2018] EWHC 2199 (Comm) (subject to one correction which I note below):
>
>> (1) The claimant must show a real risk, judged objectively, that a future judgment would not be met because of an unjustified dissipation of assets. In this context dissipation means putting the assets out of reach of a judgment whether by concealment or transfer.
>>
>> (2) The risk of dissipation must be established by solid evidence; mere inference or generalised assertion is not sufficient.
>>
>> (3) The risk of dissipation must be established separately against each respondent.
>>
>> (4) It is not enough to establish a sufficient risk of dissipation merely to establish a good arguable case that the defendant has been guilty of dishonesty; it is necessary to scrutinise the evidence to see whether the dishonesty in

> question points to the conclusion that assets [may be][*] dissipated. It is also necessary to take account of whether there appear at the interlocutory stage to be properly arguable answers to the allegations of dishonesty.
>
> (5) The respondent's former use of offshore structures is relevant but does not 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. Such legitimate reasons may properly include tax planning, privacy and the use of limited liability structures.
>
> (6) What must be threatened is unjustified dissipation. The purpose of a WFO is not to provide the claimant with security; it is to restrain a defendant from evading justice by disposing of, or concealing, assets otherwise than in the normal course of business in a way which will have the effect of making it judgment proof. A WFO is not intended to stop a corporate defendant from dealing with its assets in the normal course of its business. Similarly, it is not intended to constrain an individual defendant from conducting his personal affairs in the way he has always conducted them, providing of course that such conduct is legitimate. If the defendant is not threatening to change the existing way of handling their assets, it will not be sufficient to show that such continued conduct would prejudice the claimant's ability to enforce a judgment. That would be contrary to the purpose of the WFO jurisdiction because it would require defendants to change their legitimate behaviour in order to provide preferential security for the claim which the claimant would not otherwise enjoy.
>
> (7) Each case is fact specific and relevant factors must be looked at cumulatively.
>
> ([*] Note: I have replaced the words 'are likely to be' in sub-paragraph (4) with 'may be')."

48. The sixth of these principles is worth emphasising. As I said in *Vneshprombank LLC v Bedzhamov* [2019] EWCA Civ 1992:

> "57. … As is clear from numerous statements of principle, a freezing order is not intended to provide a claimant with security for its claim but only to prevent the dissipation of assets outside of the ordinary course of business in a way which would render any future judgment unenforceable. While the disposal of assets outside of the ordinary course of business is prohibited as being contrary to the interests of justice, payments in the ordinary course of business are permitted even if the consequence will be that the defendant's assets are completely

> depleted before the claimant is able to obtain its judgment. This has been clear since the decision of Robert Goff J in *The Angel Bell* [1981] 1 QB 65. Moreover, so long as the payment is made in good faith, the court does not enquire as to whether it is made in order to discharge a legal obligation or whether it represents good or bad business on the defendant's part."

## Good arguable case

49. Plainly the judge was right to say that the arrangements concluded in 2012 had nothing to do with any attempt by Mr Crowther to put assets beyond his wife's reach or to defeat any financial remedy claim in the event of their divorce. At that time their marriage was continuing to thrive and they were actively involved together in the conduct of the AMA business.

50. Only two possibilities have been suggested as the true nature of the 2012 arrangements. The first is that the arrangement reached was, as Mr Knight and Mr Crowther say, a commercial agreement to transfer both legal and beneficial title to the vessel owning companies to CSM in exchange for CSM taking responsibility for paying off the loan notes, combined with a bareboat charter to AMA which would enable it to continue in business and to earn a profit on sub-charters of the vessels. The suggested rationale for this arrangement was that the Crowthers were in default of their loan commitments due to cashflow difficulties and faced the vessels being taken over by Castle acting on behalf of their creditors. The second possibility is that it was a criminal conspiracy between Mr Knight and Mr Crowther, but also involving Mrs Crowther who attended at least one of the relevant meetings, to evade tax properly due on the Crowthers' earnings.

51. The first of these possibilities has the support of some contemporary documents, by which I mean not only the agreements concluded themselves but also surrounding documents such as the letters and emails which say on their face that the Crowthers' business was unable to meet loan payments due to "cashflow issues" and that they were faced with a real prospect of losing control of the vessels in any event. If that was so, it would not be a commercially implausible arrangement to make, albeit that it has what I would regard as some unusual features, such as the hire provisions to which I have referred.

52. I bear fully in mind that the second possibility is a very serious allegation, meaning that Mr Knight, who is apparently a respected professional man carrying on a substantial regulated business in Gibraltar, was prepared to put his career and professional reputation at risk in order to assist the Crowthers, whom at that stage he had only just met, to evade tax illegally, and that he was prepared to do all this for a relatively insignificant annual fee. Cogent evidence would be required to make good such a serious allegation at trial.

53. It would not be right on this interlocutory appeal, when there has been no cross examination of witnesses and no disclosure of documents, to attempt to reach anything more than a provisional view about these matters. Nevertheless, I am satisfied that Mrs Crowther has a good arguable case that the 2012 arrangements were indeed a sham. Some of the matters relied on by Mr Howard in support of this case appeared to me to miss their target by a considerable distance. For example, it is of no

significance that AMA paid for the insurance of the vessels (which would ordinarily be the responsibility of a bareboat charterer) or that it was described in sub-charters as the owner of the vessel (which is standard usage). However, I set out below the principal matters which have weighed with me in reaching this conclusion in more or less chronological order.

54. First, there is reason to be sceptical about Mr Knight's evidence that the Crowthers' creditors were pressing for repayment and threatening to take over the vessels. In November 2012 Mr Crowther and Mr Knight set up new email accounts for what was described by Mr Crowther as an "offline info flow". The emails exchanged on these offline accounts appear to show that the demand letters sent by CSM, purportedly acting on behalf of creditors and threatening to take over the vessels, were in fact carefully orchestrated between Mr Knight and Mr Crowther. If that is so, the supposed rationale for the arrangement falls away and the contemporary documents purporting to show pressure from creditors are no more than an artificial paper trail.

55. Further doubt as to the truth of this rationale appears from the witness statement of Mr Morgan, a statement served by Mr Crowther on which both he and Mr Knight strongly relied. Mr Morgan, together with his wife, appears to have been the single largest creditor of the Crowthers. But his evidence was not that Castle was acting for them to obtain payment or that the Crowthers were in default. Rather it was that he and his wife were merely notified that ownership of the vessels together with the loan notes had been transferred to Castle.

56. Second, the economics of the arrangement do not appear to make sense. A single page taken from CSM's accounts for the year ending 31st December 2013 appears to show that the total value of the loan notes taken over by CSM as at 31st December 2013 was £346,980, although the opening figure for the year was only £297,086. Nevertheless it was the figure of £346,980 which was stated in what we were told was an attachment to the agreement dated 22nd November 2012, more than a year before, as being the outstanding debt on loan notes as at that date. The attachment purports to show the gross value of the five vessels transferred to CSM as being £862,500, against a total liability of £1,039,929. But some of the items making up that total liability are difficult to understand. They include the value of the loan notes. But, for example, they also include a "forced sale devaluation 25%", amounting to £194,062, which has not been explained. The document has the appearance of an attempt to manufacture liabilities showing the Crowthers in a worse position than was really the case.

57. Third, the agreement dated 22nd November 2012 provided that AMA would nominate CSM as the buyer under the Memorandum of Agreement for the purchase of the yacht *CD One*. That would mean that CSM would be responsible for payment of the purchase price. However, an AMA bank statement shows a payment of €220,000 made to CSM on 23rd November 2012 described as "CD1 Payment". On its face, that suggests that it was AMA and not CSM which purchased and paid for the yacht. Mr Hale submitted that despite the reference to "CD1 Payment", the figure of €220,000 can be explained as representing the difference between the value of the vessels taken over by CSM and total liabilities in the document attached to the agreement dated 22nd November 2012. However, while that may prove to be a valid explanation, there is at present no evidence to support it and Mrs Crowther is entitled to rely on what is said in the bank statement.

58. Fourth, the "offline" emails provide some support for Mrs Crowther's case that the true nature of the arrangement was that Mr Knight would be paid a fee for setting up and managing the new structure. It appears that his initial proposal of a setup fee of £25,000 and an ongoing fee based on a percentage was reduced as a result of negotiation to a setup fee of £10,000 and a fixed monthly fee of £3,000 thereafter. Nothing to this effect appears in the formal agreement.

59. Fifth, in an email dated 30th December 2013, an AMA employee James Stenning asked Mrs Crowther:

> "Would you like me to get another £100k over to Castle. Let's build up that house fund!!!"

60. This appears to support Mrs Crowther's case that the purpose of the arrangement was to transfer funds offshore and to contradict Mr Knight's evidence that no money was ever paid into the Family Trust. Although we do not know how Mrs Crowther responded to this enquiry, the word "another" suggests that this was a procedure which had been employed in the past and with which Mrs Crowther and AMA staff were familiar.

61. Sixth, in an email to Mr Knight dated 2nd May 2014 (incidentally using his "offline" email address), Mrs Crowther made a formal request to the trustees of an entity called the Mediterranean Sports, Art and Educational Foundation "to consider a grant to purchase a horse box" for one of the Crowthers' children who had been offered an equestrian scholarship. That seems hard to reconcile with Mr Knight's evidence that when funds were advanced to fund the Crothers' lifestyle, it was done by way of loan.

62. Seventh, the circumstances in which the *Atlantic Discovery* was acquired appear to merit close scrutiny. It is odd that a vessel which appears to have been purchased by CSM for only £320,000 in June 2018 should only two months later be purchased by Mr and Mrs Crowthers' company for £2.95 million. Contemporary emails show that Mr Crowther was advised by his accountant that in order to obtain rollover relief on the sale of Maritime House, thereby avoiding a substantial tax bill, he would need to reinvest a total sum of £3,192,276. These facts do at least give rise to a suspicion that £2.95 million was a fictional purchase price. Moreover, the bill of sale (signed by an employee of Mr Knight) includes a receipt for the price, but Mr Knight now says that the price was never paid, entitling him to take back ownership of the vessel.

63. Eighth, it seems odd that the same Mediterranean Sports, Art and Educational Foundation should have paid school fees for another of the Crowthers' children in January 2018. That would make sense if the money was in reality the Crowther's' own money, but it is puzzling that Mr Knight's entity was prepared to make such "charitable" donations at a time when, as will be seen, Mr Knight now says that he was owed a substantial amount.

64. Ninth, Mrs Crowther can point to an email dated 11th February 2019 which directly contradicts Mr Knight's case. Mr Crowther wrote (my italics):

> "**Who we are**: Private family Ship owners with a small fleet of four large offshore ships involved in off shore wind farm

> construction and oil and gas subsea operations. (See www.atlantic-marine.co.uk)
>
> The business has NO debt. (£300k asset loans on subsea equipment we own but nothing on trading accounts and nothing for the vessels). We are asset rich, owning the say >£10M fleet of ships outright (offshore) *within the group*, with bank against them. Last year we produced a net profit of £2.2M GBP on the 2018 accounts based on around 10M turnover. This year will be better still. We do not trade with an overdraft and have no bank trading facilities set up or available -- normally relying on regular cash payment for the charter of the fleet, so debt is not normally needed."

65. The context for these claims was an attempt to raise a loan of £1 million to fund litigation against a sub-charterer which had failed to make hire payments. In his evidence and in his oral submissions to us Mr Crowther has sought to explain the claim to ownership by emphasising the words "within the group" which I have italicised, claiming that this included CSM as the owner of the vessels. I find that implausible, as is his assessment of the value of the vessels, while his optimistic claims in this email about the profitability of the business are hard to reconcile with his evidence in October 2019 that the last three years had "seen an offshore industry crisis worldwide" and "a severe downturn in business" in which it was difficult to generate income. Further, the statement that "The business has NO debt" is impossible to reconcile with Mr Knight's claim, admitted and averred by Mr Crowther, that a substantial debt is owed to CSM.

66. Tenth, Mr Knight's evidence is that CSM is currently owed some £5 million by the Crowthers or their companies, although in November 2019 he was contending that the sum owed was as high as £7 million. This includes, as I understand it, unpaid hire and the purchase price of the *Atlantic Discovery* in 2018. But there is no evidence of any payment being demanded by CSM before the breakdown of the Crowthers' marriage in September 2019. If these sums or anything like them were really thought to be due, I find that inexplicable.

67. The claim for unpaid hire raises the question of how the vessels have been employed in the last few years. If they have been sub-chartered so as to be earning hire (and Mr Crowther's evidence was that at any rate the *Atlantic Voyager* and *Atlantic Discovery* were employed as at 7th October 2019), but hire has not been paid, the question arises why not. On the face of things, that would suggest either that Mr Crowther has been cheating Mr Knight (which Mr Knight has not suggested) or that AMA's office has been remarkably inefficient in accounting for the hire due (a complaint which Mr Knight has made). But in either event, Mr Knight would have serious cause for dissatisfaction with the way Mr Crowther conducts his business. In either event it seems odd that Mr Knight should be so willing to continue to work with Mr Crowther, a man who on his case owes him a substantial sum which he has little prospect of recovering, and to remain on what the judge noted were obviously friendly terms with him.

68. Eleventh, although Mr Knight now says that he made a loan to the Crowthers secured by an unregistered charge on their family home, no documents in support of this allegation have been produced.

69. In these circumstances there is at least scope to question whether the substantial liability of the Crowthers and their business to Mr Knight has been exaggerated or even invented.

70. I repeat that I reach no final conclusion about any of these matters. All of them will require careful investigation, either in the course of the Family Court or Admiralty proceedings or perhaps by the tax authorities. There may be an explanation which is consistent with the case made by Mr Knight and Mr Crowther. But as matters stand at present, I am inclined to think that the court has not been provided with a full account of the parties' relationship and have no doubt that Mrs Crowther meets the standard of demonstrating a good arguable case on the merits of her claim.

## Risk of dissipation

71. In these circumstances the risk that assets will be put beyond reach of any judgment speaks for itself. Significant aspects of Mrs Crowther's case, as to which I have held that she meets the standard of showing a good arguable case, are that Mr Knight has been engaged in tax evasion and has also advanced spurious claims in order to assist Mr Crowther to conceal the true extent of the family assets. Once again, I emphasise that these are only allegations to which there may be valid answers. However, on the present state of the evidence, there is a sufficient risk that assets may be dissipated to justify the grant of a freezing order.

## Lack of candour

72. Mr Hale submitted that there had been a lack of candour on the part of Mrs Crowther in making the application for a freezing order to Lieven J. I am not prepared to consider this submission. It does not appear to have been contended below that the freezing order ought not to be continued because of a failure to make full and frank disclosure of material facts on the application to Lieven J and there is no respondents' notice raising this point. If such an argument is to be run, it is essential that there is a clear statement identifying precisely the matters allegedly not drawn to a judge's attention on a without notice application. Nothing of that kind exists here.

## Ordinary course of business

73. However, it is important to recall the limitations of a freezing order. As already noted, this is not to provide a claimant with security or to prevent a defendant from carrying on business in the ordinary course. The freezing order made by Lieven J in the present case restrains Mr Knight and his companies from disposing of the vessels, but expressly does not prevent them from operating business as usual. There is a tension between these two provisions of the order because a sale may be made in the ordinary course of business. Indeed all five of the vessels the subject of the 2012 agreement have since been sold in the ordinary course of business and the proceeds have been used either to purchase further vessels or to invest in the existing fleet. Thus a disposal of one vessel in order to pay running costs of the remaining vessels and to

carry out necessary repairs, maintenance and upgrading work so as to render them suitable for chartering out can properly be regarded as an ordinary business activity.

74. I see no reason to doubt that running costs are being incurred. The crews need to be paid and, if they are not, will be able to enforce their rights with the benefit of a maritime lien; so too do port charges, insurance costs, classification fees and the like. Unless such payments are made, it is impossible for the vessels to operate. Moreover, these are ageing vessels. The *Atlantic Tonjer* was built in 1983 and is therefore 37 years old; the *Atlantic Discovery* is 29 years old; and the *Atlantic Enterprise* is 22 years old, although apparently it was rebuilt in 2015. It would not be surprising if at least some of these vessels are approaching the end of their useful life and it is entirely plausible that they will need maintenance and repair if they are to be gainfully employed in a competitive chartering market. Mr Knight suggests that monthly costs across the fleet are of the order of US $115,000 and, although this figure is not precisely documented, it seems to me to be plausible.

75. It is fair to say that there is very little evidence as to the absence of funds available to CSM to meet these costs from its own resources without a sale of a vessel. We are told, for example, but there is no evidence, that the proceeds of sale of the *Atlantic Explorer* have been consumed by running costs for the remaining vessels and that CSM's funds have now been used up by a combination of running costs and legal expenses in this litigation. This lack of evidence is not satisfactory, but it does appear to be the fact that the vessels are currently uninsured so that basic costs are not being met.

76. A freezing order ought not in principle to prevent a defendant from selling one asset in order to invest in the remaining assets used in his business. That is what Mr Knight says that he wishes to do and he made the case before the judge that there was a degree of urgency in doing so. As I have explained, the position now is even more urgent. Accordingly, like the judge, we canvassed with the parties the possibility of an order which would enable a vessel to be sold or charged as security for a loan and for the proceeds to be used only for the purpose of paying such running costs together with repairs and maintenance. Mr Knight was prepared to offer an undertaking to this effect. Although very sceptical about the supposed impecuniosity of CSM, Mrs Crowther was prepared at any rate to contemplate such an order as a last resort, provided that various safeguards were included.

77. In my judgment an order to this effect is the just and convenient course. It accords with the principles applicable to the grant of freezing orders and (which in this case amounts to the same thing) is in accordance with the balance of convenience. It provides a prospect that the value of the vessels may be preserved for whomever is held to be their ultimate beneficial owner in circumstances where, if nothing is done, there is a very real risk that they will shortly be sold on a forced sale for no more than scrap value. As the judge said, that cannot be in Mrs Crowther's interests if she is able to make good her case. Conversely, if she is unable to make good her case, she will potentially be exposed on her undertaking in damages to a significant liability which she is unlikely to be able to meet.

78. I have considered the parties' submissions as to the safeguards which are appropriate. In my judgment it is not appropriate to require Mrs Crowther's approval in advance when expenditure is incurred, which would be a recipe for dispute and paralysis, but it

is necessary that proper records of expenditure should be kept and made available to Mrs Crowther's solicitors.

79. Accordingly I would allow the appeal and continue the freezing order, but on the terms set out in the schedule to this judgment.

**Lord Justice Phillips:**

80. I agree.

**Lord Justice Moylan:**

81. I also agree.

**SCHEDULE**

**ORDER**

**UPON** hearing Charles Howard QC with Alex Tatton-Bennett, of counsel, on behalf of the appellant (Caroline Crowther), the first respondent Paul Anthony Crowther appearing in person, and Charles Hale QC with James Copley and James Watthey, of counsel, on behalf of second to sixth respondents on 9 June 2020, on the hearing of an appeal brought by way of an Appellant's Notice dated 11 March 2020 against parts of an order made by Mr Justice Holman on 10 March 2020 ("the appeal"), in respect of which a stay was ordered by Floyd LJ on 13 March 2020 and permission to appeal was granted by Moylan LJ by an order dated and sealed on 3 April 2020;

**AND UPON** the court allowing the appeal and setting aside paragraphs 20, 21 and 26 of the freezing order of Mr Justice Holman dated 10 March 2020 and substituting those orders with this order, and confirming that the order of Mrs Justice Lieven of 19 December 2019 has been in force from 19 December 2019 until the date of this order and remains in full force save that paragraphs 26 to 29 (inclusive) are replicated as amended by the order herein;

**AND UPON** the court confirming that the order of Mrs Justice Lieven dated 19 December 2019 and the order herein is deemed to be made after proper service on the respondents;

**FREEZING ORDER MADE BY LORD JUSTICE MOYLAN, LORD JUSTICE MALES AND LORD JUSTICE PHILLIPS ON 9 JUNE 2020**

**WARNING**

**TO: (1) STEVEN ANDREW KNIGHT OF 2 DEXTEROUS HOUSE, QUEENSWAY QUAY, GIBRALTAR; (2) CARASOL GROUP LTD, OF QUIJANO & ASSOCIATES, QUIJANO CHAMBERS, PO BOX 3159, ROAD TOWN, TORTOLA, BVI; (3) CASTLE TRUST AND MANAGEMENT SERVICES LTD OF SUITE 932, EUROPORT, GIBRALTAR, GX11 1AA; (4) CASTLE NOMINEES LTD; OF SUITE 932, EUROPORT, GIBRALTAR, GX11 1AA; AND (5) CASTLE SHIP MANAGEMENT LTD OF SUITE 932, EUROPORT, GIBRALTAR, GX11 1AA.**

**WARNING: IF YOU (1) STEVEN ANDREW KNIGHT, (2) CARASOL GROUP LTD, (3) CASTLE TRUST AND MANAGEMENT SERVICES LTD, (4) CASTLE**

**NOMINEES LTD OR (5) CASTLE SHIP MANAGEMENT LTD DISOBEY THIS ORDER YOU MAY BE HELD TO BE IN CONTEMPT OF COURT AND MAY BE IMPRISONED, FINED OR HAVE YOUR ASSETS SEIZED AND ANY OF YOUR DIRECTORS MAY ALSO BE LIABLE TO IMPRISONMENT OR TO BE FINED OR TO HAVE THEIR ASSETS SEIZED.**

**ANY OTHER PERSON WHO KNOWS OF THIS ORDER AND DOES ANYTHING WHICH HELPS OR PERMITS (1) STEVEN ANDREW KNIGHT, (2) CARASOL GROUP LTD, (3) CASTLE TRUST AND MANAGEMENT SERVICES LTD, (4) CASTLE NOMINEES LTD OR (5) CASTLE SHIP MANAGEMENT LTD TO BREACH THE TERMS OF THIS ORDER MAY BE HELD TO BE IN CONTEMPT OF COURT AND MAY BE IMPRISONED, FINED OR HAVE THEIR ASSETS SEIZED**

**The parties**

1. The appellant is Caroline Jill Crowther.

2. The first respondent is Paul Anthony Crowther.

3. The second respondent is Steven Andrew Knight of 2 Dexterous House, Queensway Quay, Gibraltar, a citizen of the United Kingdom of Great Britain and Northern Ireland – Gibraltar.

4. The third respondent is Carasol Group Ltd, a British Virgin Islands company, registered at Quijano & Associates (BVI) Limited, Quijano Chambers; PO Box 3159, Road Town, Tortola, British Virgin Islands.

5. The fourth respondent is Castle Trust and Management Services Ltd, registered at Suite 932, Europort, Gibraltar, GX11 1AA with company number 46030

6. The fifth respondent is Castle Nominees Ltd, registered at Suite 932, Europort, Gibraltar, GX11 1AA with company number 46113.

7. The sixth respondent is Castle Ship Management Ltd, registered at Suite 932, Europort, Gibraltar, GX11 1AA with company number 108313.

8. By virtue of paragraph 15 of the directions order dated 10 March 2020 of Mr Justice Holman, Maritime Atlantic Ltd is the seventh respondent in these proceedings.

9. Unless otherwise stated, a reference in this order to ‘the respondents’ means all of the respondents.

10. This order is effective against any respondent on whom it is served or who is given notice of it.

**Definitions and interpretation**

11. A respondent who is an individual who is ordered not to do something must not do it himself or in any other way. He must not do it through others acting on his behalf or on his instructions or with his encouragement.

12. A respondent which is not an individual which is ordered not to do something must not do it itself or by its directors, officers, partners, employees or agents or in any other way.

**Recitals**

13. This is a freezing injunction made against the respondents (1) Steven Andrew Knight, (2) Carasol Group Ltd; (3) Castle Trust and Management Services Ltd, (4) Castle Nominees Ltd (5) Castle Ship Management Ltd and (6) Maritime Atlantic Ltd on 9 June 2020 by the Court of Appeal on the application of the appellant, Caroline Jill Crowther.

14. For the avoidance of doubt, the freezing order of Mr Justice Holman dated 10 March 2020 against the first respondent husband Paul Crowther, and all the other paragraphs of the order save for paragraphs 20, 21 and 26, remain in full force until further order.

15. The appellant shall apply for a mirror order in Gibraltar and the British Virgin Islands.

**Undertakings given to the court by the appellant Caroline Jill Crowther**

16. If the court later finds that this order has caused loss to the respondents or any of them and decides that the said respondent or respondents should be compensated for that loss, the appellant shall comply with any order the court may make.

17. Anyone notified of this order shall be given a copy of it by the appellant's legal representatives.

18. The appellant shall not without the permission of the court use any information obtained as a result of this order for the purpose of any civil or criminal proceedings, either in England and Wales or in any other jurisdiction, other than this claim.

**IT IS ORDERED THAT:**

19. Until further order of the court, save for the exceptions provided at paragraph 23 below, the respondents must not in any way dispose of, charge, or diminish the value of the following assets, including their contents and fixtures (to include ROGE and RAKE systems) whether they are in or outside England and Wales, namely:

    a. MV Atlantic Enterprise;

    b. MV Atlantic Tonjer;

    c. MV Atlantic Discovery;

    d. The proceeds of sale of Atlantic Explorer, of approx. £300,000;

e. Atlantic Endeavour;

g. All funds held by Mr Steven Knight, Carasol Group Ltd, Castle Trust and Management Services Limited, Castle Nominees Limited or Castle Ship Management Limited for the benefit of either Mr Paul Crowther, Mrs Caroline Crowther or both in: (a) the Castle Trust and Management Services Mediterranean Sports, Arts & Education client account with account no. 6060-48163880; (b) Castle Ship Management Service's Sterling Account with Barclays Bank Gibraltar with account no. 33290220; or (c) any other account of any kind in any jurisdiction;

h. All funds held by Mr Steven Knight, Carasol Group Ltd, Castle Trust and Management Services Limited, Castle Nominees Limited or Castle Ship Management Limited which derive from payments made to any of those parties as a result of payments made to them by either Mr Paul Crowther, Mrs Caroline Crowther or both; or by Atlantic Marine and Aviation LLP or Atlantic Marine Offshore & Subsea Services Ltd or Maritime Atlantic Ltd or Atlantic Marine Management Ltd in: (a) the Castle Trust and Management Services Mediterranean Sports, Arts & Education client account with account no. 6060-48163880; (b) Castle Ship Management Service's Sterling Account with Barclays Bank Gibraltar with account no. 33290220; or (c) any other account of any kind in any jurisdiction.

20. Save for the exception provided at paragraph 23 below the respondents must not, whether by themselves or by encouraging or instructing others, cause the sale, damage, disposal or change of registration/ flag of any of the items listed in 19 above.

21. Nothing in this order shall prevent the first respondent's business, Atlantic Marine Offshore & Subsea Services Ltd, from operating its business as usual.

22. Nothing in this order shall prevent the second to sixth respondents from operating business as usual.

23. The exception to orders at paragraphs 19 and 20 of this order is that nothing in this order shall prevent the second to sixth respondents from:

a. selling by way of an arm's length transaction to an independent third party buyer who is not owned (legally or beneficially) or controlled by any of the 2nd to 6th Respondents) or an associate of the 2nd to 6th Respondents; or
b. charging any <u>one</u> of the aforementioned vessels (save for the Atlantic Discovery) up to the current market value of that vessel; or
c. charging any two or more of the aforementioned vessels (save for the Atlantic Discovery) up to a maximum amount of the current market value of the most valuable vessel (save for the Atlantic Discovery); and
d. using the net proceeds of sale/ charge to:

pay for the running costs of the vessels incurred in the ordinary course of business including in particular and without prejudice to the generality of the foregoing: insurance premiums, reasonable brokerage commissions, reasonable management fees, crew wages, port fees, classification fees, bunker fuel, and the costs of repairs to and the maintenance of the

aforementioned vessels, including upgrades to the vessels, provided always that the second to sixth respondents keep full records of such outgoings, and shall serve them on the appellant. Such records shall comprise invoices and bank statements showing payments of such outgoings, and shall at all times be served by the second to sixth respondents on the appellant by way of a monthly account on the 1st day of each calendar month.

24. And provided that:
    (i) If sold or charged the net proceeds shall be placed in an account identified to the appellant and retained in such account to be used only in the manner set out above;
    (ii) If a sale is proposed, the second to sixth respondents shall provide the appellant with details of the proposed sale including a draft memorandum of sale including details of the broker and the proposed brokerage fee no later than 48 hours before the proposed execution of the sale contract and the signed documents of sale forthwith thereafter;
    (iii) If a charge is proposed against the vessel or vessels above, the second to sixth respondents shall provide the appellant with details of the proposed charge including a draft of the mortgage offer (or equivalent) including details of the broker and the proposed brokerage/ charge fee no later than 48 hours before the execution of the charge and the signed charge documents forthwith thereafter; and
    (iv) No payment may be made to the first respondent or any of his companies out of the proceeds of sale/ charge without 48 hours' notice to the appellant providing details of the proposed payment including the quantum of the payment and the purpose of the payment.

25. The second to sixth respondents shall forthwith serve on the appellant all signed contracts between them and the first respondent husband in respect of his, or his company's, current management of any of the aforementioned vessels.

**Costs**

26. The costs of this appeal and the costs of obtaining the injunction against the respondents (including the costs of the hearings of 19 December 2019 before Mrs Justice Lieven and 10 March 2020 before Mr Justice Holman) are reserved until the judgment has been handed down.

**The right to seek variation or discharge of this order**

27. Anyone served with or notified of this order may apply to the court at any time to vary or discharge this order (or so much of it as affects that person), but they must first inform all parties of any such intention. If any evidence is to be relied upon in support of the application, the substance of it must be communicated in writing to all parties to this order in advance.

**Parties other than the applicant and respondent**

28. It is a contempt of court for any person notified of this order knowingly to assist in or permit a breach of this order. Any person doing so may be imprisoned, fined or have their assets seized.

29. This injunction does not prevent any bank from exercising any right of set off it may have in respect of any facility which it gave to the respondent before it was notified of this order.

30. No bank need enquire as to the application or proposed application of any money withdrawn by the respondent if the withdrawal appears to be permitted by this order.

**Persons outside England and Wales**

31. The terms of this order will affect the following persons in a country or state outside the jurisdiction of this court –

    a. the respondents or his officer or agent appointed by power of attorney;
    b. any person who –
        i. is subject to the jurisdiction of this court;
        ii. has been given written notice of this order at his residence or place of business within the jurisdiction of this court; and
        iii. is able to prevent acts or omissions outside the jurisdiction of this court which constitute or assist in a breach of the terms of this order; and
    c. any other person, only to the extent that this order is declared enforceable by or is enforced by a court in that country or state.

**Assets located outside England and Wales**

32. Nothing in this order shall, in respect of assets located outside England and Wales, prevent any third party from complying with –

    a. what it reasonably believes to be its obligations, contractual or otherwise, under the laws and obligations of the country or state in which those assets are situated or under the proper law of any contract between itself and the respondent; and
    b. any orders of the courts of that country or state, provided that reasonable notice of any application for such an order is given to the applicant's solicitors.

Dated 9 June 2020

**Notice pursuant to PD 37A para 2.1**

You Caroline Jill Crowther, the applicant, may be sent to prison for contempt of court if you break the promises that have been given to the court

**Statement pursuant to PD 37A para 2.2(2)**

I understand the undertakings that I have given, and that if I break any of my promises to the court I may be sent to prison for contempt of court

*Signed* ____________________________________________

**Caroline Jill Crowther**