Neutral Citation: **[2019] EWHC 1693 (Comm)**
Case No: CL-2013-000683

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

Royal Courts of Justice,
The Rolls Building
Fetter Lane, London, EC4A 1NL

Date: 27/06/2019

Before :

MR JUSTICE JACOBS

- -

Between :

(1) KAZAKHSTAN KAGAZY PLC
(2) KAZAKHSTAN KAGAZY JSC
(3) PRIME ESTATE ACTIVITIES KAZAKHSTAN LLP
(4) PEAK AKZHAL LLP
~~**(5) PEAK AKSENGER LLP**~~
(6) ASTANA - CONTRACT JSC
(7) PARAGON DEVELOPMENT LLP

Claimants

- and -

(1) BAGLAN ABDULLAYEVICH ZHUNUS
(formerly BAGLAN ABDULLAYEVICH ZHUNUSSOV)
(2) MAKSAT ASKARULY ARIP
(3) SHYNAR DIKHANBAYEVA
(4) SHOLPAN ARIP
(5) LARISSA ASILBEKOVA

Defendant

- and –

HARBOUR FUND III LP

Additional Party

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Robert Howe QC and Daniel Saoul QC (instructed by **Allen & Overy LLP**) for the **First, Second, Third and Fourth Claimants.**
Stephen Auld QC and Stephanie Wood (instructed by **Gresham Legal**) for the **Fourth Defendant**

Hearing dates: 26 June 2019
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Judgment Approved by the court

Mr. Justice Jacobs :

A: Factual background

1. The Claimants apply for an order that the Fourth Defendant ("Mrs. Arip") attends court to be cross-examined on her asset disclosure which has been provided under paragraph 7 of a Worldwide Freezing Injunction ("WFO") made against her on 12 October 2018 by Mr. Justice Teare, as varied by Richard Salter QC (sitting as a Judge of the High Court) on 7 December 2018 and Mr. Justice Andrew Baker on 22 January 2019.

2. The background to the case is well-known to the parties, and it is not necessary to describe it in detail. In summary, the Claimants were successful in a very substantial fraud claim made against a number of defendants, including Maksat Askaruly Arip, who is the husband of Mrs. Arip. Picken J handed down a lengthy judgment in December 2017 following a 13 week trial. On 28 February 2018, he handed down a further judgment on consequential matters. The Claimants thereby obtained final judgment against Mr Arip and the third defendant for a total of US$298,834,593.00; together with a further order for £8,000,000.00 as an interim payment on account of the costs, to be paid by 4pm on 14 March 2018. No part of that judgment has yet been paid.

3. The Claimants are now attempting to enforce that judgment against Mr. Arip by various means. They are pursuing several charging order applications in relation to the properties in London which are owned by a number of trusts which are, or alleged to be, Arip family trusts; specifically trusts known as the "Wycombe Settlement", the Jailau Trust and the Ratalkha Trust. They are also applying, consequential to the judgment which they have obtained, to commence a tracing claim, to identify the proceeds of the sums misappropriated by Mr Arip. The applications for charging orders are currently due to be tried over 6 days in the Commercial Court commencing on 23 July 2019, although it presently seems likely that this application will be adjourned. The application to commence the tracing enquiry was heard by Waksman J. in the Commercial Court last week (21 June 2019). He decided to adjourn the application so that it could be heard by the trial judge (Picken J). At the time of that adjournment, it was understood that Picken J. would be available for a hearing on 16 July 2019; since this was the date fixed for the hearing of an application, pursuant to s.51 of the Senior Courts Act ("the s.51 application"), against Mrs. Arip and her mother Mrs. Larissa Asilbekova ("Mrs. Asilbekova"), in relation to the costs of the original action. However, it is now clear that no such hearing will take place on 16 July, although there is a prospect, somewhat uncertain, that it might take place in the week commencing 22 July.

4. Mrs. Arip was not a defendant to the original action, and indeed an attempt to join her to that action was dismissed. She therefore has no liability under the judgment. However, she did provide funds for her husband's defence to that action in the sum of approximately £ 13.8 million, and it is this funding which creates a potential liability to the Claimants (in respect of their costs of around £ 13.2 million) under s.51. It is this potential liability which led to the WFO, the procedural history of which is as follows.

5. On 27 September 2018, at a hearing without notice and held in private, Mr Justice Andrew Baker granted a worldwide freezing injunction against Mrs Arip in support of

the Section 51 application against her. The Judge declined to make an equivalent order against Ms Asilbekova. The WFO contained provisions for the prompt disclosure of information as to Mrs. Arip's assets, followed by a confirmatory Affidavit to be sworn by 15 October 2018.

6. On 9 October 2018, Mrs. Arip's English solicitors provided disclosure of those assets. This amounted to approximately US$ 25 million, although the Claimants contend that this is a generous estimation.

7. The return date of the WFO application was 12 October 2018, and the matter came before Teare J. The injunction was continued without substantial opposition.

8. On 15 October 2018, Mrs. Arip provided the confirmatory Affidavit in relation to her worldwide assets.

9. The Claimants considered that the disclosure which she had provided was inadequate, in particular in failing to explain what had become of very substantial distributions (around US$ 300 million) which had been made from a trust known as the WS Settlement. This led to an application being made by the Claimants, on 30 October 2018, for a variation to the WFO; so as to require Mrs. Arip to provide information concerning distributions from the WS Settlement, and also to remove exceptions for ordinary living expenses and reasonable legal expenses, unless and until Mrs. Arip complied with her disclosure obligations.

10. The matter came on for hearing before Richard Salter QC on 7 December. He made an order for the provision of further information. He also removed, subject to one exception, the exception for reasonable legal expenses. This meant that the relevant order as to provision of information read as follows:

> **PROVISION OF INFORMATION**
>
> 7.
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> 1) The Fourth Defendant must by 5pm on 15 October 2018 swear and serve on the Claimants' solicitors an affidavit setting out:
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> (a) All her assets worldwide exceeding £5,000.00 in value whether in her own name or not and whether solely or jointly owned, giving the value, location and details of all such assets; and any bank, building society or similar account to which the Fourth Defendant is a signatory either in the Fourth Defendant's own name alone or with someone else. In the case of any bank, building society or similar account, whether or not it has a balance in excess of £5,000.00, the Fourth Defendant must provide:
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> (i) The name or names in which it is held;
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> (ii) The name of the bank, building society or other similar institution;
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> (iii) The address of the branch;

(iv) The number of the account; and

(v) The approximate balance in the account; and

(b) The details of any trust, discretionary or otherwise, or any similar structure (herein referred to as the "**trust**"), of which she is or was at any time the beneficiary, settlor, or protector, giving the names and addresses of the trustees, the location of the trust, details of her relationship to the trust and the value, location and details of the Trust's assets.

2) The Fourth Defendant must by 5pm on 11 January 2019 swear and serve on the Claimants' solicitors an affidavit setting out a full and frank explanation of what has happened to any funds distributed to her (or anyone else on her behalf) from the WS Settlement, including full details of the following and exhibiting relevant bank statements and all other relevant supporting documents:

(a)How much was paid to her and when, from each distribution, including in particular (but without limitation) the following distributions (or any part of any of them):

(A) The sum of approximately £16,559,620, distributed by the WS Settlement on or after 25 June 2010.

(B) The sum of approximately £81,252,000, distributed by the way of WS Settlement on or after 29 March 2011.

(C) The sum of US $181,911,000 distributed by the WS Settlement to the Fourth Defendant on or shortly after 18 December 2013

(b) If she claims that any part of any of the distributions was paid to anyone other than her, how much, and to whom;

(c) Precisely what she did with each distribution, setting out all the banks and accounts through which the monies have passed;

(d) If and to the extent that she claims to have spent or transferred any of the monies:

(A) When, how and on what she spent any of the monies;

(B)When, how and to whom she transferred any of the monies; and

(e) Where the monies or their proceeds are now located.

> 3) If the provision of any of this information is likely to incriminate the Fourth Defendant, she may be entitled to refuse to provide it, but is recommended to take legal advice before refusing to provide the information. Wrongful refusal to provide the information is contempt of Court and may render the Fourth Defendant liable to be imprisoned, fined or have its, her or his assets seized.

11. The provision of the further information led to further hearings before Hildyard J. and Andrew Baker J. It is not necessary to describe these in detail. Suffice it to say that the Claimants did (following the hearing before Andrew Baker J) receive and read the Second Affidavit of Mrs. Arip, which had originally been served in a sealed envelope.

12. In March 2019, some of the Claimants obtained an order, made on a without notice basis, for non-party disclosure from a bank, Julius Baer International Ltd. ("JBIL") which had provided banking services to the Arip family.

13. The position at the beginning of April, in summary, was that the Claimants had received evidence as to Mrs. Arip's assets at different times and from different sources. They had by that time received three Affidavits from Mrs. Arip which were responsive or related to the WFO. They could compare these to witness statements or Affidavits of Mrs. Arip which had been served, for example, in the early stages of the principal claim against Mr. Arip, or in relation to proceedings for anti-suit injunctive relief which had been commenced by Mrs. Arip in Cyprus. They had received certain information from another bank, Bank Julius Baer & Co ("BJB"), as a result of an order obtained in Guernsey. They were about to receive information from JBIL, although an anti-tipping off order meant that Mrs. Arip did not know about the without notice order which Teare J. had made. There was also information which had become available in other ways.

14. The Claimants continued to be of the view that Mrs. Arip had failed to provide proper disclosure in response to the WFO as amended, and on 11 April they made the present application. The application was supported by the 39th witness statement of Mona Vaswani ("Vaswani 39" – a designation which gives some idea of the scale of the present litigation). This addressed in considerable detail the alleged inadequacies in Mrs. Arip's disclosure. The hearing of the application was in due course listed for 26 June, which was rather later than the Claimants would have desired.

15. Mrs. Arip responded to Vaswani 39 on 24 May 2019. The substance of her evidence was that she had made full disclosure in accordance with the WFO. Ms. Vaswani responded on 7 June 2019, with another long and detailed witness statement ("Vaswani 43"). It was at this stage that she and the Claimants revealed and relied upon documents obtained from JBIL pursuant to the order made by Teare J. Mrs. Arip has not responded to Vaswani 43. Mr. Auld QC, who appeared for Mrs. Arip, said that there had not been sufficient time or funding available to do so.

16. On 18 June 2019, Mrs. Arip's solicitors (Gresham Legal) wrote to offer the Claimants "such security over her assets as she is reasonably able, thereby providing very substantial protection to your clients in respect of their substantive claim against her". The letter identified a number of assets: a property in Lugano, two properties in Dubai, monies held at LGT Bank and BJB, and an assignment of a judgment debt against a BVI company called Carabello Holdings Inc. ("Carabello") and another BVI company

Dencora Ltd. ("Dencora"). Some days later, on 24 June, the Claimants rejected this proposal as inadequate for detailed reasons given by their solicitors, Allen & Overy.

17. In the meantime, a further short (3 page) witness statement ("Vaswani 44") was served on 21 June 2019, albeit without permission of the court.

18. At the hearing, Mr. Howe QC made submissions for the Claimants, and Mr. Auld QC for Mrs. Arip.

B: Legal principles

19. There was no dispute that the relevant legal principles were conveniently and correctly summarised by Vos J in *Jenington International Inc v Assaubayev* [2010] EWHC 2351 (Ch)

    1) The statutory discretion to order cross-examination is broad and unfettered. It may be ordered whenever the court considers it just and convenient to do so.

    2) Generally, an order for cross-examination in aid of an asset disclosure order will be very much the exception rather than the rule.

    3) It will normally only be ordered where it is likely to further the proper purpose of the order by, for example, revealing further assets that might otherwise be dissipated so as to prevent an eventual judgment against the defendants going unsatisfied.

    4) It must be proportionate and just, in the sense that it must not be undertaken oppressively or for an ulterior purpose; thus, it will not normally be ordered unless there are significant or serious deficiencies in the existing disclosure.

    5) Cross-examination can, in an appropriate case, be ordered where assets have already been disclosed in excess of the value of the claim against the defendants.

C: The parties' arguments

20. Mr. Howe QC submitted that the present was a paradigm case for the exercise of the court's discretion to order cross-examination. The Claimants had obtained orders for disclosure of assets. Those orders had not been properly complied with, as shown by the evidence of Ms. Vaswani. Cross-examination was necessary in order to enable the Claimants to take steps to secure assets. The security which had been offered was in many respects very uncertain and inadequate. The Claimants had done all that they could short of cross-examination. They had received a series of incomplete and unsatisfactory answers, and the most efficient and appropriate way forward now was for there to be cross-examination.

21. Mr. Auld submitted, in summary, that:

    a) The touchstone for ordering cross-examination was fairness. The fair thing to do in the present case was for the present application to be determined by Picken J. in a few weeks' time. It will then be known whether or not any order under s.51 will be made, and if so in what amount. It was not fair or sensible to require the parties to prepare for

what could be a lengthy cross-examination in advance of that determination, particularly bearing in mind the very limited time since the service of Vaswani 43.

b) There was a considerable overlap with the nascent tracing claim. All substantive issues can and should be addressed in the context of that claim. They could then be addressed by proper bilateral discovery, with the trustees being party to it.

c) WFOs are exceptional remedies. Here, there was no immediate risk of dissipation of assets, either generally or in the period prior to the determination of the s.51 application by Picken J.

d) The Claimants were, generally, acting oppressively, and wanted to maintain their foot on Mrs. Arip's throat. They had unreasonably refused an offer from the trustees of the WS Settlement which would have resulted in the provision of security for the full amount of the sum covered by the WFO.

e) There has been a further refusal to accept the security offered by Mrs. Arip via her solicitors' letter of 18 June.

f) The court should exercise care before permitting an exceptional order of the present kind. This was not a case where a list of focused questions had been provided. As things presently stood, the cross-examination could turn into a massive exercise.

g) Mrs Arip had provided detailed witness statements, and had given all the information that she reasonably could. There had been compliance with the provisions of the WFO. She had addressed Vaswani 39 point by point, blow by blow.

h) It was obvious that she did not have other assets which could readily be paid into court. Otherwise, she would have taken the easy step of paying the money into court. It was implausible to suggest that she was hiding vast assets.

D: Analysis and conclusion

Would cross-examination further the proper purpose of the WFO?

22. In my view, the starting point is to consider whether or not cross-examination would further the proper purpose of the WFO. The principal question here is whether, if there were to be cross-examination, assets might be revealed that might otherwise be dissipated so as to prevent an eventual judgment against Mrs. Arip going unsatisfied. This in turn gives rise to the question of whether:

a) as Mr. Howe contends, the disclosure previously provided is incomplete and inadequate, so that in all probability there are further assets which could potentially be caught by the WFO, and notice given thereunder, if only they were revealed; or

b) as Mr. Auld contends, supported by Mrs. Arip's 4th Affidavit, this is a case where there has been proper compliance with the existing orders, so that there is no basis for contending that the information previously provided is incomplete.

23. This is an important question because, as Vos J. said, cross-examination will not normally be ordered unless there are significant or serious deficiencies in the existing disclosure.

24. On the materials which I have read, I consider that the Claimants have a very strong case for saying that the disclosure hitherto provided has been inadequate with significant or serious deficiencies, and that cross-examination may (at least if honest answers to questions are given) reveal relevant further assets in relation to which the Claimants could then take steps to ensure that they are not dissipated. I emphasise that I am not presently dealing with an application to commit for contempt in failing to comply with an existing order, where an applicant must prove its case to the criminal standard. Rather, I am dealing with an interlocutory application, ultimately leading to the exercise of a judicial discretion, where a disputed issue – such as the whether disclosure has been inadequate – must be resolved on the balance of probabilities on the basis of the existing materials.

25. It is sufficient, in my view, to identify a number of matters which lead me to this conclusion.

26. First, I refer to the substantial transfers which have taken place from Mrs. Arip to her mother, Mrs. Asilbekova, and to her brother.

a) The background is that there is no dispute that between 2010 and 2013, Mrs. Arip received sums in the region of £ 77 million and US$ 181 million from the WS Settlement.

b) It was the distribution of these and one other sum, totalling in round terms US$ 300 million, which lay at the heart of the addition of paragraph 7 (2) to the Freezing Order following the hearing before Mr. Salter QC.

c) Paragraph 7 (2) (d) required disclosure of full details and documentation in relation to a number of specific matters, including what Mrs. Arip did with each distribution; and if and to the extent that she claimed to have spent or transferred any of the monies, when and how these were spent, when, how and to whom she transferred any of the monies; and most importantly in the present context, "where the monies or their proceeds are now located".

d) As a result of her Second Affidavit (sworn in January 2019 and originally served in the sealed envelope), it became known that she had made a number of substantial payments to family members, including US$ 97.5 million to her mother; of which US$ 20 million was then repaid.

e) She also paid US$ 37 million to her brother, of which US$ 20 million was repaid; a net US$ 17 million.

27. The Claimants contend that there is no good explanation for gifts of these amounts; other than the parking of assets. The Claimants challenge the idea that this could have been gifts. There is no explanation, if these were gifts, of why both Mrs. Arip's mother and brother then returned $ 20 million each.

28. I cannot of course decide now whether or not these payments were or were not gifts. However, it does seem to me on the present material that the Claimants are justified in their contention that an obvious inference is that these monies were being parked by Mrs Arip with her mother and brother. It is highly unusual for a person to give a gift of this magnitude to a person's mother or father; the usual transmission of assets within a family is downwards to children. In addition, the fact that some US$ 20 million was returned by Mrs. Arip's mother strengthens that inference, and Mrs. Arip's evidence contains no explanation as to why the money was returned. The Claimants are also able to point to evidence from the JBIL disclosure which indicates that it was Mrs. Arip who gave instructions on behalf of her mother in relation to transactions involving the bank, and indeed she was subsequently granted a broad power of attorney over her mother's accounts; so that she could instruct payments and make investment decisions without her involvement. The notes of the account manager describe her mother, Mrs. Asilbekova, as a person with "no knowledge and experience", and "unemployed" and "with no sophistication level like Mr. and Mrs. Arip.

29. If there is a reasonable inference to regard the money given to Mrs Arip's mother as being parked, there is the same inference in relation to the money given to her brother; where again US$ 20 million was repaid without explanation

30. I consider that the question of whether these payments were indeed gifts, or whether this is an implausible if not incredible explanation, is a matter which can be explored in cross-examination; and I note that Vos J. in *Jenington* (see paragraph [65(5)]) considered that similar questions in that case were appropriate matters for cross-examination.

31. But in any event, Mrs. Arip was required under the order to provide an explanation, under paragraph 7 (2) (d), of where the monies or their proceeds are now located. In relation to these transfers, no such information has been given, so that the Claimants are not in a position to give notice to third parties of the WFO. All that has been said is that the money has been transferred. I consider that this too is an appropriate area for cross-examination.

32. Secondly, I have been referred to a witness statement served by Mrs. Arip in July 2014 in the present proceedings. The background to the witness statement was that the WFO granted against her husband was said to be causing difficulties in relation to her business activities, which she maintained were separate from those of her husband. In that evidence, she referred to having purchased seven investment properties "predominantly" in London for a cost of £ 40 million, and that these had significantly increased in value so as to now to be worth well over double; i.e. in excess of £ 80 million. None of these properties was referred to in Mrs. Arip's schedule of assets disclosed in October 2018 in response to the WFO. In Vaswani 39, Ms. Vaswani draws attention to what had been said in July 2014, and the absence of any information about these properties.

33. Mrs. Arip responded in her 4th Affidavit. But it does not seem to me that her responses meet the point that was made; namely that her July 2014 witness statement had referred to properties which had been acquired, and which had increased in value. It was not referring to properties which had not yet been acquired. I agree with Mrs. Arip that the WFO, in its original form (and leaving aside the additions introduced by Mr. Salter QC), does not require general disclosure of past assets or historic dealings with assets. It was rightly focused on current assets. However where substantial assets amounting to over £ 80 million, consisting of real property, were identified in a witness statement served in 2014, it is a legitimate question – and a legitimate line of cross-examination – to enquire what the properties were, and what has become of them. In the absence of explanation – and in my view Mrs. Arip's 4th witness provides none – the inference is that the properties remain under her direct or indirect ownership, and have not been disclosed.

34. Thirdly, there are a number of trusts (including but not limited to those described below) where, as it seems to me, Mrs. Arip has failed to give proper disclosure in response to paragraph 7 (1) of the WFO. That paragraph provides for disclosure of

> "The details of any trust, discretionary or otherwise, or any similar structure (herein referred to as the "trust"), of which she is or was at any time a beneficiary, settlor or protector, giving the names and addresses of the trustees, the location of the trust, details of her relationship to the trust and the value, location and details of the trust's assets"

35. (1) The *Jailau Trust* was a trust where Mrs. Arip acted as "Protector" from April 2014 to 29 March 2018; ie. around 6 months before the WFO and the information supplied pursuant thereto. Although Mrs. Arip did disclose certain assets in this trust, she did not disclose the existence of funds held from the sale of a particular property. This information was revealed in January 2019 in evidence given by the current trustee of that trust. These undisclosed funds were substantial; in the region of £ 10 million. Mrs. Arip's explanation is that she had ceased to be a protector in March 2018, and did not have up to date information. However, the disclosure obtained from JBIL indicates that what may well have been the relevant sale transaction was concluded in March 2018, when Mrs. Arip was Protector.

36. (2) *Ratalkha Trust*. This trust owns a valuable residential property in London. The Claimants discovered its existence as a result of reviewing disclosure from BJB Guernsey. Mrs. Arip acknowledges that she did not disclose the existence of this trust, although she says that this was an oversight. I agree with the Claimants that this is a somewhat surprising oversight, given that the trust holds a property worth around £ 15 million in Belgravia. But in any event, there does not appear to have been disclosure of the details required by the WFO, including the value, location and details of the trust's assets.

37. (3) *Balta Trust*. In 2015 and 2016, Mrs. Arip paid just over £ 9 million to the Balta Trust. In late 2016, the Balta Trust repaid the equivalent of US$ 6,181,550 to her. The existence of this trust was not disclosed in the original disclosure in October 2018, but only subsequently in her second Affidavit which was unsealed in January. Mrs. Arip contends that she has no interest, role or control in this trust. However, the evidence indicates that she paid money into it, and received money out of it. The JBIL documents

describe this trust as one where Mrs. Arip was the settlor, and they describe it as "her" trust.

38. (4) The *Deccan Trust* was a trust of which Mrs. Arip was protector until 28 March 2018. Payments of some US$ 24 million were made by Mrs. Arip to that trust in November and December 2016. Prior to the disclosure given in the January Affidavit, Mrs. Arip had not disclosed this trust, although she says that this was an innocent mistake. The explanation is therefore similar to that given in relation to Ratalka. Again, as with Ratalkha, there has been no disclosure of the details of this trust required by the WFO.

39. When one stands back from this detail, I am in no doubt that this is a case where there have been significant or serious deficiencies in the existing disclosure. This is in my view a necessary, but not sufficient, condition for ordering cross-examination.

40. It therefore does not automatically follow that cross-examination should be ordered, and I do therefore need to consider the range of other matters relied upon. However, I do think that the matters which I have described mean that there is no force in Mrs. Arip's case that there is no risk of dissipation of assets and therefore no need for the exceptional remedy of cross-examination. The court was satisfied, when it granted the WFO, that there was a real risk of dissipation of assets, and in my view the deficiencies in disclosure can only serve to reinforce the Claimants' case in that regard. There is, furthermore, evidence that a sum of approximately US$ 1 million had been paid to a Russian law firm, in apparent breach of the WFO, albeit that the money has been repaid.

Security

41. The WFO provides in paragraph 8 (4) that it will cease to have effect if Mrs. Arip provides security by paying £ 13.2 million into court or "makes provision for security in that sum by another method agreed with the Claimants' legal representative".

42. There has been no payment into court. Mr. Auld invited me to conclude that this was because Mrs. Arip had no available assets which would enable her to take that easy route to removal of the WFO. I cannot draw that conclusion in circumstances where there have been deficiencies in the disclosure hitherto provided, and no information as to the whereabouts of the substantial assets gifted to Mrs. Arip's mother and brother. It is a realistic possibility, to put it no higher, that monies are available from those funds which would enable a payment into court to be made, and also that the reason why no such payment has been made is that Mrs. Arip's preference is to try to use existing disclosed assets in order to provide security.

43. However, Mrs. Arip has offered security via the letter from her solicitors dated 18 June. The security comprised a number of assets: a property in Lugano; two properties in Dubai; monies in accounts at the LGT bank and BJB; and debts owed under BVI judgments against two BVI companies, Carabello and Dencora. The total value of the assets offered was said to be approximately £ 20.875 million. On 24 June, Allen and Overy on behalf of the Claimants stated that they were willing to consider proposals to provide security of an equivalent standard to the payment of funds into court, but that the 18 June proposals fell very far short of that standard. Detailed reasons were given, and these were elaborated upon in the Claimants' supplemental skeleton served on 25 June.

44. If adequate security in a form which the court considered reasonably acceptable were to be proposed, then I agree with Mr. Auld that it would not then be appropriate to order cross-examination. For the reasons which follow, I do not consider that reasonably acceptable security has been offered, but it remains open to Mrs. Arip to provide such security (for example by paying into court, or providing a bank guarantee) prior to any date fixed for cross-examination, and therefore to that extent to have liberty to apply to discharge any order that I make on this application.

45. I consider that a charge over the Lugano property is, in principle, acceptable security. However, Gresham's letter of 18 June – which referred to the property having a value of roughly £ 7.090 million – failed to take into account a mortgage on the property in the approximate value of around £ 2.8 million. Moreover, the value of the property depended upon the timescale for a sale. The valuation letter gave a value of CHF 7.9 million for a sale within 3-6 months, and 8.5 million for a sale within one year. This means that the value of the equity, after allowance for the existing mortgage, is between £ 3.5 and £ 4 million.

46. On the present materials, I do not consider that the proposed charge over the Dubai properties is acceptable security. A letter from Dubai lawyers, exhibited to the 18 June letter, says that a mortgage over property under UAE law "may only be placed for the benefit of Financial institutions/ banks to secure bank loan. This type of security is not floated for private individuals or parties". The letter goes on to identify difficulties in the enforcement of a foreign judgment in the UAE, there being no bilateral treaty between the UAE and UK for enforcement of foreign judgments. In the light of this letter, the creation of an effective security in favour of the Claimants, in respect of these properties, seems problematic to say the least.

47. The monies in the LGT and BJB accounts (totalling around £ 4.116 million, with the majority in the LGT account) also seem to me to be somewhat uncertain security. It is not clear, on the present materials, whether these are the subject of charges in favour of third parties. In that context, I note that when the 18 June offer letter was made, the mortgage on the Lugano property was not referred to or taken into account. If they are potentially good security, then it would seem to me to be more appropriate for the LGT Bank, which holds most of these assets, to provide a guarantee in favour of the Claimants. Even if, however, the total of these monies were to be added to the equity in the Lugano property, there would still be shortfall of nearly £ 6 million when compared to the £ 13.2 million WFO.

48. I do not accept that the debts owed by Carabello and Dencora are acceptable security. The underlying asset of these companies is a valuable property in Wycombe Square. But the Claimants have obtained an interim charging order in respect of that property on the basis that it is beneficially owned by Mr. Arip. Were that case to succeed, neither company would have the means to pay the debt under the BVI judgment (which has not in fact been produced in evidence).

Oppression or ulterior purpose

49. The proper scope of cross-examination can only be for the purpose of identifying assets belonging to Mrs. Arip against which the WFO should bite. There were passages in the evidence and submissions of the Claimants which suggested that cross-examination would address the issue of whether the ultimate beneficial ownership in a particular

asset was Mrs. Arip's. But in the course of his submissions, Mr. Howe accepted that the purpose was to enable assets to be secured, so that the WFO could be made effective.

50. I consider that if cross-examination is so confined, it cannot be said to be oppressive or for an ulterior purpose. The fact of the matter is that the Claimants have obtained a WFO, and did so some considerable time ago. That WFO was obtained in support of a claim for an order under s.51, for which there is very obviously a good arguable case. It was obtained on the basis that, unless granted, there was a real risk of dissipation of assets. There has been no attempt to challenge the WFO by Mrs. Arip. The court has, since the time that it was first granted, strengthened the WFO in material respects. It is clear, therefore, that the Claimants have a legitimate interest in policing and enforcing the WFO in relation to what is a substantial claim for around £ 13 million. It is true that this claim is dwarfed by the unsatisfied judgment against Mr. Arip, and that the s.51 claim can be viewed as ancillary to that judgment. However, this does not mean that it is not a substantial legitimate and indeed important claim, from the Claimants' perspective.

51. It is also true, as Mr. Auld submitted, that there are other claims which the Claimants are seeking to pursue, in particular the tracing claim and the claims for charging orders. There may indeed be some degree of overlap between the tracing claim and the information ordered under the WFO. Again, however, the fact that there may be an overlap does not mean that it is oppressive for the Claimants to seek proper information so as to enforce and police the WFO, or that the present application is made for an ulterior purpose.

52. I also consider that safeguards can be introduced so as to ensure that the cross-examination is not oppressive. I will hear counsel on these matters, but I presently consider that:

    a) The cross-examination should be limited to a single day.

    b) The Claimants should provide, in advance of the cross-examination, a list of the topics to be addressed. I note that this was done, voluntarily, in the *Jenington* case.

    c) If the Claimants intend to refer to specific documents, they should provide a bundle of such documents in advance of the hearing.

    d) The Claimants should in any event provide disclosure, in so far as they have not already done so, of the documents obtained from BJB and BJIL.

    e) As previously stated, cross-examination is for the purpose of identifying assets which belong to Mrs. Arip against which the WFO should bite.

    f) Counsel for Mrs. Arip can make submissions as to any other safeguards that he considers are appropriate or necessary.

53. Another aspect of Mrs. Arip's case as to oppression is the suggestion that the Claimants are acting with undue aggression towards her, seeking to maintain (as Mr. Auld colourfully put it) their foot on her throat. It is clear from the materials that I have read that the Claimants are indeed pursuing the present litigation vigorously. But this is

hardly surprising in circumstances where they have established fraud against Mr. Arip and have a substantial judgment against him. They have also pursued Mrs. Arip vigorously, having obtained the WFO and then strengthened it in the course of a number of interlocutory applications. But I see nothing oppressive about this: the court has very largely accepted the Claimants' case on these various applications, and the WFO remains in full force.

54. The most concrete example of alleged oppression relied upon concerned the Claimants' refusal to accept a transfer of around £ 13 million from the WS Settlement, and which could have stood as security for the s.51 claim and thereby enabled the WFO to be discharged. However, I cannot conclude that this was oppressive, since there was a good reason for the Claimants' decision. They are claiming that the monies in the WS Settlement are the traceable proceeds of Mr. Arip's fraud. If that is right, the effect of the transfer would be to diminish the assets available to meet their existing judgment against him. It can therefore readily be understood why the Claimants have not been willing to permit Mrs. Arip to benefit from such a transfer.

55. Since there are significant or serious deficiencies in the existing disclosure, and since (at least with the safeguards that I have mentioned) the cross-examination can be carried out without oppression or for ulterior purposes, I consider that the requirement that an order should only be made if "just and proportionate" is satisfied.

Just and convenient

56. It is still necessary to consider, however, other aspects of Mrs. Arip's argument that the order is not just and convenient. The principal argument in that respect focused on the fact that there is no certainty that a s.51 order will be made against Mrs. Arip; that a hearing on that very issue before Picken J is imminent; and that it was not appropriate to require the parties to spend time and money on an expensive cross-examination exercise in circumstances where no order under s.51 may be made, or an order for a reduced sum (possibly covered by the security that Mrs. Arip is prepared to offer) may be made.

57. I have weighed these points in the balance, but I do not consider them to be of any great strength. The starting point, again, is that there is an existing WFO in place with a disclosure order which was reinforced in December 2018. It is appropriate for the court to proceed on the basis that this order was rightly made. It must therefore be right for that order to be enforced and properly policed, even though (as is always the case with pre-judgment freezing orders) the parties' substantive rights have yet to be finally determined. The fact that substantive rights have yet to be decided cannot provide a reason for non-compliance with the terms of an existing order.

58. I recognise, however, that there may be case management reasons why it might be appropriate to defer a decision, so that the parties' efforts and resources are not engaged on an unnecessary exercise, or case management reasons for leaving a decision to the trial judge. Here, however, there is no certainty that a hearing before Picken J will take place in a few weeks' time, since this in part depends upon whether a current criminal trial will have concluded. But even if there was more certainty, I come back to the fact that there is an existing order and it is legitimate for the Claimants to seek to protect their rights under that order now, having made the present application back in April. Indeed, there may be a significant advantage in cross-examination taking place in

advance of the s.51 hearing, since a possible sanction for non-attendance at the cross-examination is that Mrs. Arip would be debarred from making submissions at the hearing (albeit that the judge would still need to consider whether to exercise his discretion under s.51). It may be, therefore, that an order to take effect prior to the s.51 hearing would be more effective, in securing attendance, than an order made subsequently.

59. There are also, in my view, no other case management reasons for leaving the present decision to Picken J at the hearing which may or may not take place in July. The present application is part of the WFO proceedings which have been handled by a number of judges (Andrew Baker J, Teare J, Hildyard J and Mr. Salter QC) other than Picken J. The application has been fully argued over the course of 1 day, and I am in a position to decide the argument. It is not clear how much time, if any, will be available to Picken J even if there is a July hearing, bearing in mind that it will need to address the s.51 arguments as well as the application for tracing remedies which was adjourned last week.

60. Nor do I consider that there is any unfairness to Mrs. Arip in the court deciding this issue now. In reaching my conclusions, I have paid regard to the evidence on Vaswani 43. I do not think that this is unfair, even if Mrs. Arip has not responded to it. The evidence was served in good time before the hearing, and it does seem to be responsive to points made by Mrs. Arip in her 4th Affidavit. It does draw upon materials, obtained from BJIL, which had not previously been disclosed. But these materials clearly provide evidence which is relevant to the court's decision, and the Claimants are entitled to point to passages in documents which are supportive of their case. There is presently no basis for concluding that there has been "cherrypicking" in the sense that either the documents or the passages relied upon have been taken out of context. It is true that Mrs. Arip may not have been provided with all of the BJIL materials for review. But she did not, subsequent to Vaswani 43, ask for such materials to be provided to her, and it is difficult to see how she can now complain.

Conclusion

61. I bear in mind that cross-examination is a "strong step", and that an order is very much the exception not the rule. However, viewing the matter overall, I consider that it is just and convenient for such cross-examination to be ordered, and for the court's discretion to be exercised in favour of the Claimants. It seems to me that this is potentially a more efficient use of the resources of the court, and the parties, than yet further rounds of evidence and potential applications.

62. I will hear counsel as to the safeguards to which I have referred, as well as the questions of timing, as well as any other consequential matters.