Neutral Citation Number: [2020] EWHC 377 (Comm)

Case No: CL-2018-000297

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

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

Date: 7 February 2020

Before :

The Honourable Mr Justice Bryan

- -

Between :

Skatteforvaltningen
(The Danish Customs and Tax Administration)

Claimant

- and –

Edo Barac
&Others

Defendant

- -
- -

James Goldsmith and KV Krishnaprasad (instructed by **Pinset Masons**) for the **Claimant**
Paul Lowenstein QC (instructed by **Brown Rudnick LLP**) for the **Defendant**

Hearing date: **7 February 2020**

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APPROVED JUDGMENT

MR JUSTICE BRYAN:

Introduction.

A1. The Application.

1. There are before me today three applications ("the Applications"):

   (1) an application made for this hearing to be in private and/or an anonymity order ("the Privacy Application"). Pursuant to this application, I have made an order that there be no reporting of financial information and assets revealed during the course of the hearing pursuant to the Privacy Application, and this judgment is redacted accordingly;

   (2) an application for variation of a proprietary injunction brought by the Defendant against the claimant ("the Variation Application"). The Defendant (Mr Barac) seeks a variation of a proprietary injunction made on 27 June 2018 against him ("the Proprietary Injunction"), and subject to a Consent Order dated 8 March 2019 ("the Consent Order"). The Proprietary Injunction was made in connection with the claimant ("SKAT")'s attempts to recover monies and property in respect of an alleged tax fraud said to have been perpetrated by numerous defendants allegedly including Mr Barac. Mr. Barac now seeks to vary this Proprietary Injunction to access further funds to meet his living and legal expenses.

   (3) an application to amend the claimant's re-re-amended particulars of claim ("RRAPOC") brought by the Claimant against the Defendant to plead a further particular of an existing claim against Mr. Barac ("the Amendment Application").

2. I will deal with the Background Facts (A.2), followed by the Privacy Application (at B) then the Variation Application (at C.1 and C.2). I have dealt with the Amendment Application in the course of argument and do not propose to repeat my reasons in this judgment.

A.2 Background Facts.

Underlying dispute.

3. The underlying dispute concerns a purported fraud in connection with refunds to certain foreign shareholders of a tax payable by Danish companies on shareholder dividends to SKAT ("the WHT") pursuant to double tax treaties.

   (1) Between August 2012 and July 2015, SKAT received applications for WHT refunds from tax reclaim agents ("the Agents") who claimed to be acting on behalf of US pension funds and certain entities in the UK and Luxembourg ("the WHT applicants"). In response, SKAT paid out approximately Danish krone 12.09 billion (circa £1.44 billion).

   (2) SKAT's case is that it was induced to pay out these sums by fraudulent misrepresentations made as part of a conspiracy or several conspiracies ("the WHT Scheme") and/or that SKAT was mistaken in making payments pursuant to the WHT applications. SKAT alleges that the WHT fraud involved a closed loop of circular transactions whereby via intermediaries a "seller" agreed to sell shares in a Danish company to a "buyer" who simultaneously agreed to loan the same shares to the "seller", which was later reversed by a series of opposite transactions. In fact, according to SKAT, the seller did not own any shares, the buyer never paid for the shares and neither party had received any dividends: therefore, no WHT was ever deducted and paid to SKAT. The WHT applicants, it is said, were not entitled to claim from SKAT a refund of WHT that was never paid in the first place.

4. SKAT commenced four claims against a total of around 81 defendants, including Mr Barac who they allege knowingly participated in the conspiracy. Somewhere around 75 of those defendants remain active with, at least at one point, 27 separate legal teams having been retained, although the precise figures may have changed as at today's date.

5. SKAT alleges that the main animating mind of the fraud was a Mr. Sanjay Shah ("Mr Shah"), who received large sums of money that SKAT alleges to be traceable to the fraud. SKAT further alleges that he also organised sharing the fraud proceeds with other alleged participants, including Mr Barac.

6. Amongst other matters, SKAT alleges that Mr Shah was the ultimate owner of multiple companies including inter alia Solo Group Companies. SKAT claims that Solo Capital Partners LLP ("SCP") and individuals and entities formerly associated with it were the principal parties to the WHT Scheme. Mr Shah was SCP's principal holder, and it is said Mr Barac was a member between 31 March 2012 and 31 March 2014. SKAT also claims that, in return for what is said to be Mr Barac's participation in the fraud -- which I should make clear Mr Barac strongly denies -- he received substantial payments from Mr. Shah and SCP.

Proceedings.

7. On 4 May 2018, SKAT commenced proceedings against Mr Barac. On or around 27 June 2018 Jacobs J made a worldwide freezing order ("WFO") against Mr Barac, amongst other respondents, including a Proprietary Injunction. The WFO and the Proprietary Injunction were continued by Jacobs J on 13 July 2018, and again by Cockerill J on 12 October 2018. At that time Cockerill J made additions to the list of assets caught by Schedule D of the Proprietary Injunction to reflect the scope of SKAT's proprietary claim against Mr Barac.

8. The Consent Order dated 9 March 2019 permitted Mr Barac access to £323,390.39 from funds ("the Bank Funds") held in two accounts identified at the hearing ("the Bank Accounts"), subject to Mr Barac selling two of his assets (shares in a company named at the hearing ("the Company") and a property named at the hearing ("the Property"), and to hold the net proceeds of these sales subject to the Proprietary Injunction. Both items have now been sold, and have been used to, in part, replenish the Bank Funds.

9. Mr Barac now seeks to vary the Proprietary Injunction for access to the following further funds to meet his living and legal expenses:

   (1) monies held in an account representing the proceeds of the repayment of a loan advanced by Mr. Barac to the Company ("the Company Loan Proceeds");

   (2) monies held in an account which are the net proceeds of the sale of the Property ("the Property Sale Proceeds");

   (3) a sum set out in the hearing held in a different bank account constituting the rental proceeds of the Property ("the Rental Proceeds").

10. On or around 6 February 2020, after a three-day case management conference, Andrew Baker J handed down several orders in relation to parties in the SKAT litigation. Amongst other things, he ordered that there should be a further CMC to consider matters relevant to disclosure listed for the week commencing 30 March 2020, and a further CMC to be listed in July 2020 ("the February Order" and "the July 2020 CMC").

11. In advance of that July 2020 CMC, the parties were ordered to "consider and use reasonable endeavours to seek to agree whether a trial of preliminary issues or ways to determine the issues in the First to Fourth claims, other than in a single trial or the two trials proposed at the

January 2020 CMC, would be feasible [...]" (the February Order at [9A]). As will be seen, the February Order and what it envisages is of some considerable potential relevance to the variation application, which I deal with later.

B. The Privacy Application

12. Due to the sensitive nature of the financial information discussed at this hearing, and in circumstances where, perfectly understandably, members of the public and the Press are in court, an application is made before me that this hearing be in private.

B.1 The Legal Principles

13. The relevant provisions are set out in CPR r39.2:

> "(1) The general rule is that a hearing is to be in public. A hearing may not be held in private, irrespective of the parties' consent, unless and to the extent that the court decides that it must be held in private, applying the provisions of paragraph (3).
>
> (2) In deciding whether to hold a hearing in private, the court must consider any duty to protect or have regard to a right to freedom of expression which may be affected.
>
> (2A) The court shall take reasonable steps to ensure that all hearings are of an open and public character, save when a hearing is held in private.
>
> (3) A hearing, or any part of it, must be held in private if, and only to the extent that, the court is satisfied of one or more of the matters set out in sub-paragraphs (a) to (g) and that it is necessary to sit in private to secure the proper administration of justice
>
> > […] (c) it involves confidential information (including information relating to personal financial matters) and publicity would damage that confidentiality"

14. The background to this is the principle of open justice, which is well established. The origins and rationale for the principle are stated by Lady Hale in *Cape Intermediate Holdings v Dring* [2019] UKSC 38 [42] and [43], referring to *Scott v Scott* [1913] App. Cas 417. Further, the test is one of necessity and not of discretion (*AMM v HXW* [2010] EWHC 2457 (QBD) per Tugendhat J. This is reflected in the wording of rule 39.2(3): "A hearing [or part of a hearing] ... **must** be held in private if [...]the court is satisfied that one or more of the factors specified in the subparagraphs are satisfied **and** [...] it is necessary to sit in private to secure the proper administration of justice [...]" (emphasis added).

15. The court also needs to consider proportionality: namely, whether the proper administration of the justice can be achieved by a lesser measure or a combination of measures, such as imposing reporting restrictions or anonymising parties or restricting access to court records. This is because a private hearing will restrict the exercise of the right of freedom of expression set out in Article 10 European Convention of Human Rights, through prohibiting the disclosure of information. Further, it is well-established that the general principle that hearings should be in public is not to be lightly departed from in civil proceedings.

B.2 Application of the principles to the facts

16. I consider that CPR 39.2(3)(c) is prima facie engaged because confidential information will be revealed during the course of this hearing, and publicity of the details of that financial information is likely to damage confidentiality. However, considering proportionality and the overall administration of justice, it is my view that there is an intermediate option which furthers the open justice principle whilst protecting the confidentiality of the defendant.

17. That intermediate option for the hearing to remain in public, but that there be an Order that there shall be no reporting of the financial information and assets which is revealed during the course of this hearing – such an Order can be made under the relevant provisions of the Contempt of Court Act 1981 and the relevant provisions of the CPR.

18. Mr Goldsmith, who appears as counsel for SKAT, has indicated that he has wording for such an order which has previously been used without objection, and that will be supplied. It may be that his junior can pass a message so that that this information is available before the end of the hearing, or at least after the break we're going to take for the shorthand writers, so that members of the public and the Press are in no doubt as to the definition and scope of what can and cannot be reported. It is important that any restriction on reporting is in clear terms, such that there is no possibility of any inadvertent breach, and that the wording of such a reporting restriction is disseminated to the relevant persons.

19. Accordingly, and for the reasons which I have given, I imposed reporting restrictions. Subject to those reporting restrictions, the hearing continued in public.

C. The Variation Application.

C.1. Legal principles

20. I summarised the applicable legal principles in the case of *GFH Capital Limited v Haigh* [2018] EWHC 1187 (Comm) at [34] (I add comments in square brackets for ease of reference):

> "[…] The law is now well established and is summarised as a three-stage test.
>
> The law is now well established and is summarised as a three-stage test:
>
> (i) before there can be any question of using funds to which a claimant has a strong proprietary claim, the defendant must show that he has an arguable case for denying they belong to the claimant; [The First Stage]
>
> (ii) where there are assets which may belong to the claimant, the defendant should not be entitled to use those funds unless the court is convinced that the defendant has no other assets to use for this purpose, and the onus is firmly on the defendant to satisfy the court of this, and where there are any such funds, they should be expended before there is any question of expending funds subject to a proprietary claim; [The Second Stage]
>
> (iii) if the court can be satisfied that there are no assets other than those subject to a proprietary claim, the court must nevertheless still weigh whether the balance of justice militates in favour of permitting or refusing the payment [The Third Stage]..."

21. Those principles are the same as those set out by the Court of Appeal in *Marino v FM Capital Partners Limited* [2016] EWCA Civ 1301. The summary in *GFH Capital* was subsequently endorsed in *Mark Alan Ford v Ben Everton Williams* [2018] EWHC 3172 (Comm) at [29] (a decision of Martin Griffiths QC sitting as a Deputy High Court Judge).

22. SKAT and Mr Barac accept that Mr Barac has an arguable case for denying that the funds belonged to SKAT. The requirements of the First Stage have therefore been fulfilled.

23. With regards to the Second Stage, a defendant must establish that any funds which he has which are not subject to the proprietary injunction are insufficient to allow him to defend the proceedings.

    (1) As was stated in *Marino* at [18], the "ordinary position is that a defendant who has resources of his own which are not affected by a good arguable claim by the claimant that they are his (the claimant's) property, should be required to use those unaffected resources to finance his legal defence". This distinguishes a proprietary freezing injunction from a general, personal freezing injunction given in relation to the defendant's own assets.

    (2) The onus is on the defendant to establish on "proper evidence" that he has no or inadequate non-proprietary assets available to fund his or her defence: see *Ostrich Farming Corporation v Ketchell* (unrep, CA, 10 December 1997) at p. 9 per Roche LJ, and see *Marino* at [20] and [22].

    (3) Available assets are those which a defendant can sell or borrow against to meet legal expenses; see *Marino* at [9], [15(ii)] and [25].

24. If a defendant can establish that he has no assets unaffected by proprietary claims against him on which he can draw to meet his living and legal expenses, then the court should balance considerations of justice on both sides [The Third Stage]:

    (1) The court must consider where the balance of justice lies as between, on the one hand, permitting the defendant to expend funds which might belong to the claimant and, on the other hand, refusing to allow the defendant to expend funds which might belong to it: see *Marino* at [23].

    (2) It does not automatically follow that a defendant should be entitled to draw on proprietary funds if he can show that he has no other funds with which to defend the action; see Ostrich Farming at p. 7 (per Millett LJ).

    (3) The court is required to come to a "careful and anxious judgment as to whether the injustice of permitting the use of the funds by the defendant is outweighed by the possible injustice to the defendant if he is denied the opportunity of advancing what may of course turn out to be a successful defence": *Marino* at [19]. This balancing exercise should be carried out based on "all relevant circumstances": see *Ostrich Farming* at p.10, per Roche LJ.

    (4) There are less strong reasons to permit the payment of incurred legal fees rather than future legal expenses. The court is concerned with the interests of the parties and not the defendant's solicitors: see *Angel Group Ltd v Davey* (unrep, Ch D, 21 February 2018) ("*Angel Group Ltd*") at [46].

    (5) The court will "act cautiously so as to ensure that the funds are not wasted", which may be achieved by "limiting the amount ... even if that may cause a defendant to reassess how to pursue her case or to consider alternative funding models": see *Angel Group Ltd* at [44] to [45].

    (6) It is not conclusive that the defendant will have to act as litigant in person. The defendant may be able to receive a fair hearing through such representation; *Marino* at [31].

(7) A key factor in the granting of permission to use arguably proprietary funds is the court's interest in having parties professionally represented; see *Fundo Soberano de Angola v Dos Santos* [2018] EWHC 3624 (Comm), per Popplewell J as he then was, at [11] and [29] to [33].

(8) It will be relevant to consider what undertakings or offers are made by the defendant. For example a defendant may offer to replenish funds taken from proprietary assets with non-proprietary assets; see *Marino* at [19].

25. If the variation is granted, the court is concerned to ensure that the proposed expenditure is at least necessary for the proper purposes of the defence. The claimant is not entitled to monitor each of the steps the defendant proposes to take in litigation, but it would be wrong, for example, for certain expenditures to be made prematurely or where there is a real danger that it will be thrown away. This is because part of the exercise of a discretion involves taking into account the risks of injustice to a claimant in having his own money used to litigate against him, so the court will act more cautiously to minimise the wastage of funds; see *Gee* on *Commercial Injunctions*, 6th Ed, at 21-056 citing *NMB Postbank Groep NV v Naviede (No.2)* [1993] BCLC 715 at 713I to 714A.

26. The court can also evaluate whether the proposed living expenses are reasonable, though the court will not inquire into whether the defendant ought to reduce his standard of living:

(1) In the context of a Mareva freezing injunction, Lloyd J in *PCW (Underwriting Agencies) Ltd v Dixon* [1983] 2 All ER 158 ("*PCW*") at 164G said:

> "I would regard it as unjust in the present case if the defendant were compelled to reduce his standard of living, to give up his flat or take his children away from school in order to secure what is as yet only a claim by the plaintiffs."

(2) Variations to a proprietary injunction risk depriving the claimant of his own money as opposed to regulating the defendant's use of his own funds, which causes the court to act more cautiously.

(3) Lloyd J in *PCW* noted that the claimant had attempted to bring the case under the "wider jurisdiction to trace in equity", and in either case justice and convenience require the defendant to be allowed the means to defend himself and to live as he was accustomed. Lloyd J did not specifically grapple with the point that I have outlined above. However, I do not consider that an extensive inquiry into the defendant's standard of living is necessary in order to consider the balance of justice in this case, and the court will generally not inquire beyond the defendant's list of monthly expenditure confirmed by reference to a bank statement or set out in an affidavit.

C2. Application of the legal principles.

Preliminary Question: The relevant timeframe

27. Before turning to the application of the Second Stage of the above legal principles which govern the Variation Application, (whether or not Mr Barac has discharged the onus upon him to establish "proper evidence" that he has no or inadequate non-proprietary assets available to fund his defence), I must ascertain as a preliminary point the relevant period of time to which those principles are to be applied.

28. At one end of the spectrum is the current date: does Mr Barac today have available funds for living expenses and his legal costs without regard to funds caught by the Proprietary Injunction: or has he, as at today's date, "run out of funds"? The other end of the spectrum is the position if the matter proceeds to a full trial, thus being a large number of months and a number of years from now, with all the parties participating including with Mr Barac and with Mr Barac having full legal representation throughout.

29. Taking that far end of the spectrum first, it is Mr. Barac's case (as accepted by SKAT) that if matters proceed to such a trial, Mr Barac will not have sufficient funds to cover his living expenses and legal costs out of monies and assets not consisting of funds subject to the Proprietary Injunction. Indeed, it is quite possible that if he is permitted to expend funds subject to the Proprietary Injunction, these too will (or at least might) be exhausted in the fullness of time. Mr Barac says that is unsurprising: it is the consequence of SKAT choosing to sue individuals of relatively modest means. At the other end of the spectrum (i.e.: the present day), Mr Barac does have some cash in hand and other assets: this is subject to a question as to his liability for existing legal costs incurred but not yet billed at the present time. I will address this matter briefly in due course.

30. Set against that backdrop, at the time of the application before me, SKAT was submitting that (at least at this stage) Mr Barac had not discharged the burden upon him and was not entitled to the relief sought.

31. I consider it appropriate that Mr. Barac's financial position should be considered going forward from today's date until the July 2020 CMC. This is for two reasons

32. Firstly, it would be somewhat myopic to take no regard of the fact that, in applications such as the present, it takes some time to get on and to marshal the associated facts and have the application determined by the court, and that funds are being consumed on an ongoing basis. Further, I consider that regard should be had to the future, at least so far as it can be mapped out with any degree of certainty. This is because it is appropriate to make sure that the parties know where they stand going forward in the immediate future: this ensures that there are funds available for Mr. Barac's living expenses to support his wife and family, and to have regard to what legal costs have been incurred and will be incurred in any relevant timeframe. Put another way, matters should be considered by the court before the defendant is unable to feed his family and has lost his legal representation.

33. Secondly, it is not at this stage clear how matters in this litigation will be resolved after the July 2020 CMC.

    (1) I consider the February Order to be of particular importance. It will be recalled that in February 2020, after a three-day case management conference, Andrew Baker J handed down several orders in relation to parties in the SKAT litigation. Amongst other things, he ordered that there should be a further CMC to be listed in July 2020, and in advance of that CMC the parties were ordered to "consider and use reasonable endeavours to seek to agree whether a trial of a preliminary issue or ways to determine the issues in the first to fourth claims other than a single trial or the two trials proposed at the January 2020 CMC would be feasible ..." (Order at [9A]).

    (2) I consider that the February Order and what it envisages to be of some considerable relevance, as I have already foreshadowed, to the Variation Application. This is because it will not be clear until July 2020 what form any trial or trials will take place. One possibility as envisaged by the February Order is that there may in fact be a trial of preliminary issues which (while no doubt substantial in its own right) would potentially resolve, at least some,

matters within weeks of hearing time rather than months of hearing time, and might also come on for determination at a shorter timeframe than any global overall trial.

(3) It is therefore not clear at this time what form the resolution of the disputes in this case will take, or within what timescale. That will be a matter for consideration in advance of and at the July 2020 CMC, and Andrew Baker J as the designated judge in this case will no doubt have his own views in relation to that. I consider it would be both inappropriate and premature to express any views on such matters, or indeed the likely scope of the action and associated legal costs beyond the July 2020 CMC. At that time, Andrew Baker J will therefore have a far clearer view of the action going forward and likely financial burden to Mr. Barac, which will be dependent on what trial or trials are going to take place with what involvement and when. Further, for reasons that are apparent on the material before me, Andrew Baker J will have a clearer view of Mr Barac's financial position at the July 2020 CMC, as to the status of certain assets or potential assets may change (or at least become clearer) by that time.

34. Accordingly, in such circumstances and for such reasons, I consider it appropriate that Mr Barac's financial position, and the evidence in relation to the same, should be considered as at today's date and also looking forward, but no further forward than July of this year. This inevitably places a different complexion on matters than if one were looking forward over a longer period of time to any trial, and will also result in there being a greater degree of certainty as to the position now and between now and July, albeit there are inevitably uncertainties in relation to any future events.

The Second Stage: evidence as to Mr Barac's financial position.

35. I now consider the Second Stage of the applicable legal principles set out above: whether the funds currently available to Mr. Barac ("the Available Funds") can meet his necessary living and legal expenses ("the Necessary Expenses").

36. I first consider the Available Funds. Prior to the oral hearing today, the parties were not in agreement as to what funds were available to Mr Barac. Mr Barac was saying that he had already run out of funds, having regard to available non-proprietary assets and necessary expenses. SKAT was saying that Mr Barac had remaining available assets not caught by the Proprietary Injunction and would continue to have such assets up until the July 2020 CMC, whilst recognising that the position would need to be revisited at that time and also between now and July should the need arise. I am pleased to say, however, that no doubt encouraged by the likely reaction of the Court and the available time to deal with matters today, and also in the spirit of co-operation that I would expect from commercial parties, by the time of the oral hearing before me, both parties had moved somewhat from those positions.

37. In this regard, in the witness evidence before me today, there was certain information from Mr Barac in relation to assets and also in relation to legal expenses. As a result of that, in the skeleton argument of SKAT before me today there were two schedules: a Schedule 1 which dealt with what was titled "Mr Barac's non-proprietary assets", and a Schedule 2 titled "Mr Barac's necessary expenses until July 2020". Synthesising matters, and in the same spirit of co-operation to narrow the issues before me today, Mr Paul Lowenstein QC (appearing on behalf of Mr Barac) helpfully created two schedules. Schedule 1 was again Mr Barac's non-proprietary assets, with his counter submissions as comments in red upon it. Schedule 2, set

out similar information and submissions in relation to what were entitled “necessary legal expenses”. Schedule 2 had figures which were identified in SKAT's Schedule 2, and the rival figures identified on behalf of Mr Barac, accompanied by a column containing submissions in relation to that.

38. I have heard submissions from both parties in relation to each of those Schedules. The position in relation to Schedule 1 and the non-proprietary assets ultimately is common ground between the parties: the results of this were discussed during the hearing and are now redacted. That common ground has arisen in circumstances which I need to explain, because it has been the product of some movement of position and clarification on the part of SKAT, including SKAT taking a sensible and pragmatic view about whether or not certain assets which might otherwise be caught within the scope of the Proprietary Injunction could nevertheless be used. As already noted, the hearing before me has been in public but I have imposed reporting restrictions to protect confidential financial information. In what follows I have redacted such confidential financial information. The parties are aware of the detail of that information, as has been discussed in the course of the hearing. I set out below only such matters are as necessary for the purpose of rendering this judgment comprehensible.

39. Essentially, there are five elements.

    (1) The remaining funds of Mr Barac, the quantum of which was common ground between the parties.

    (2) Proceeds of a sale of jewellery, which is contemplated to be effected and the proceeds are contemplated to be received in the near future. The quantum of this sale was common ground between the parties.

    (3) Funds held in the Rental Account, the quantum of which was common ground between the parties. Mr. Barac was initially of the view that these assets fell within the scope of the Proprietary Injunction, but in written and oral submissions SKAT accepted that this figure could be used by Mr. Barac to meet his living and legal expenses.

    (4) Funds currently held in an account to meet unforeseen costs arising from the sale of the Shares, which is an amount agreed between the parties, minus incurred costs but not Capital Gains Tax Liability expected to be incurred in 2021. That item and the next item are addressed in terms of the wording which is set out of the draft order, which grapples with the scenario depending on whether or not elements of that money have to be accounted for in a particular way.

    (5) Funds held in the escrow account in respect of the sale of the Shares. These funds will become available to Mr Barac on 5 June 2020, subject to the question of whether or not there is any claim arising in relation to that sale. That is a figure agreed during the hearing. Again, the possible scenarios that could arise in relation to that money are also catered for in the draft order which is before the court.

40. The long and the short of it is that, in those circumstances and subject to the protections which are set out in the draft order before me, it is common ground in the sense that I have described it that the Available Funds are a particular figure which is to be viewed against the liabilities that are identified in Schedule 2.

41. Secondly, the Necessary Expenses were dealt with at the hearing as follows:

    (1) In view of the fact that this hearing was a half day hearing, which includes time for the giving of an ex tempore judgment such as this if the court thinks fit, it was necessary --

effectively with the agreement of both parties -- to deal with those individual items in turn with each party expressing their views in relation to each item, and me then giving short reasons as to what I considered the appropriate figure to be. Both parties know what those items are, and the reasons for the figures which have been produced, which I will not repeat here.

(2) At the end of that exercise (which I should say in reality was very close to the entirety of the time allowed for this hearing) those figures based on my reasons were calculated, and both parties agreed that this calculation produced a particular figure. That figure constitutes the Necessary Expenses.

42. If one then deducts the Available Funds figure from the Necessary Expenses figure, that produces a shortfall of £69,589: the Necessary Expenses therefore exceed the identified available non-proprietary assets in the period between now and July 2020.

The Third Stage: Interests of Justice

43. That then leads on to a consideration of whether it is in the interests of justice to grant the application in part or refuse the application. I have already set out the applicable legal principles, which are not controversial.

44. It is unnecessary for me to set out full reasons in relation to this aspect of the matter, for two reasons:

(1) Mr Goldsmith did not ultimately object to me making a further order in relation to proprietary assets after the Second Stage was considered. Therefore, the issue of whether it was inappropriate to make any further order was not fully argued.

(2) This matter will be almost certainly before Andrew Baker J at the CMC in July 2020. At that CMC, he will have to consider similar issues, but set against the backdrop of the situation on that date, and knowing how the action is likely to go forward from that date.

45. I am, however, satisfied that it is in the interests of justice that allowance should be made at this stage, out of proprietary assets, for this further expenditure in the period between now and July. What I say below is not intended in any way to bind Andrew Baker J and relates solely to the position, as I see it, at the present time. The matter will need to be considered again at that time, and with regard to what the interests of justice at that time, and going forward, dictate.

46. I consider that, at this stage, it very much in the Court's interests for Mr. Barac to continue to be legally represented, and this will avoid the risk of any injustice to Mr. Barac that might be caused if he was inhibited from benefiting from professional legal advice at this time in pursuing his defence. In this regard:=

(1) Mr. Barac is a party to very large-scale litigation involving a large number of parties, with a lot of interparty correspondence, and is required to liaise and co-operate with the other parties to assess and discuss proposals (e.g.: in relation to case management steps). That inevitably creates a burden upon Mr Barac as an individual and, at least in the time period between now and July, is one reason why he requires the assistance of lawyers. His position, therefore, is perhaps different to a defendant in smaller scale litigation: it is certainly fair to say that the complexity and volume of work involved is larger than would occur, for example, in two party litigation between a claimant and a litigant in person. The large size of the litigation will also produce a large volume of documents from other parties in disclosure: review of this disclosure will have to commence before the July 2020 CMC.

As I have addressed when addressing Schedule 2 during the course of argument, whilst Mr Barac as an individual may well be able to spend time on reviewing documents, I have made allowance for at least some time for taking legal advice and the involvement of lawyers.

(2) I am conscious that Mr Barac has already received substantial legal assistance including in relation to the analysis of SKAT's claim, including (I am told), legal advice on Danish law, and two Defences (one for himself personally and one for EB corporate defendants). Further, I am conscious of the fact that there are a number of other legal teams available: many of them will be defending particular issues vociferously, and Mr Barac will no doubt have the benefit of such other arguments being advanced. I consider, however, that in the period between now and July there are further matters where Mr. Barac is likely to need to receive advice, in the respects that O identified when addressing Schedule 2. I consider it appropriate that he should be in a position to receive such advice.

(3) I am also conscious of the serious nature of the allegations being made against Mr Barac, and the publicity that this claim has presented. I consider that at this stage, and based on the position between now and July, it is also important so far as can be achieved, that Mr Barac's interests are defended with an element of legal representation.

47. In balancing the considerations of justice on both sides, I bear in mind that there is potential prejudice to SKAT in permitting the use of funds caught within a proprietary injunction in its favour. However, at least at this time, I consider that this potential prejudice (i.e. the use of funds that may ultimately be found belong to SKAT) is outweighed by the interests of the Court and Mr Barac (and by extension the EB corporate defendant) that Mr Barac continues to be legally represented, to an extent that is appropriate, in the period between now and July. This is a point which has previously been given decisive weight - see *Dos Santos*, [31] and [33]. That case also involved complex claims (there was an alleged fraud of the chairman of a sovereign wealth fund to siphon away assets to companies under its control), and a large number of defendants (around 20), albeit some of those defendants shared legal representation.

48. I therefore consider that, in the period between now and July, it is in the interests of justice for Mr. Barac to continue to receive legal representation in appropriate terms and in appropriate amounts as I have identified when addressing Schedule 2. For those reasons, as also elaborated upon in relation to the individual items, and having regard to the overall interests of justice, I consider it is appropriate that there should be a variation of the order to take account of the figure that I have identified. This ultimately was not, for the purpose of today's hearing, resisted by Mr Goldsmith although, of course, he fully reserves his position in relation to the position from July, and the fact that particular matters were not argued by him today, is no bar to him raising any and all available arguments upon any future application.

The Order

49. Therefore, and for the reasons that I have given, I consider that an order in the form of the draft order that has been discussed between the parties during the course of this hearing, and which has also featured in my reasoning in relation to both assets and in relation to liabilities, is appropriate.

50. I also consider (and there is some precedent for this) that there should be within that order an express requirement that Mr Barac maintain records of the costs and disbursements paid pursuant to the order, so as to be able to show for what purposes such costs have been paid.

That may be implicit as a result of his solicitors' professional obligations, but I consider it appropriate that it be made express for the avoidance of doubt.

51. I should make clear that in the time available it has not been possible for either party to finalise that order fully. I would hope that it will be possible to reach agreement on the final version of that order. I make clear, however, that should there be any outstanding matters, they can be addressed by the parties in short submissions accompanying the respective draft orders which I will determine without further hearing. I would hope, however, that it will not be necessary to do so in the light of the detailed manner in which the points have been considered during the course of this afternoon's hearing, and as a result of this judgment.

Conclusion

52. Accordingly, and for the reasons that I have identified, I order the variation of the existing order in the terms set out in the envisaged order.