Neutral Citation Number: [2021] EWHC 1680 (Comm)

Case No: CL-2019-000807

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
COMMERCIAL COURT (QBD)

The Rolls Building
7 Rolls Buildings
Fetter Lane
London EC4A 1NL

Date: 16/06/2021

Before:

MASTER DAGNALL

- -

Between:

ADARE FINANCE DAC	**Claimant**
- and -	
(1) YELLOWSTONE CAPITAL MANAGEMENT S.A.	
(2) MICHEL OHAYON	**Defendants**

- -

MR. ROBERT WEEKES (instructed by **Allen & Overy LLP**) for the **Claimant**

MR. FRASER CAMPBELL (instructed by **Capital Law Limited**) for the **Second Defendant**

- -

APPROVED JUDGMENT

Transcript of the Stenograph Notes of Marten Walsh Cherer Ltd.,
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MASTER DAGNALL:

1. This is my judgment in matter number CL-2019-000807. The claimant judgment creditor is Adare Finance DAC appearing before me by Mr. Weekes of counsel. The first defendant is Yellowstone Capital Management SA which does not appear. The second defendant is Michel Ohayon who appears before me by Mr. Campbell of counsel.

2. Part 71 is introduced by rule 71.1 which provides:

> "This Part contains rules which provide for a judgment debtor to be required to attend court to provide information, for the purpose of enabling a judgment creditor to enforce a judgment or order against him."

3. It is the part which has been used by the claimant judgment creditor in this case to obtain an order from Master Davison on 14th February 2021, which was somewhat amended by me on 21st April 2021, but where the relevant judgment debtor being the second defendant, Mr. Ohayon, has applied by application notice dated 14th May 2021 to set aside or vary those orders to some degree, in particular with regards to the question as to what documents he should have to provide the claimant before the examination, presently fixed for 26th July 2021, takes place.

4. The matter arises in the context of lending transactions between the claimant and the first defendant, which were guaranteed by Monsieur Ohayon. The transactions resulted in demands being made by the claimant upon the defendants, and the commencement of litigation in the London Circuit Commercial Court being part of the Business and Property Courts of England and Wales.

5. Notwithstanding that the first defendant is a French company, and that the second defendant is resident in France, the proceedings were brought in this country on the basis of jurisdiction agreements contained within the relevant financing documents.

6. An application was made for summary judgment by the claimant, and notwithstanding the defendants contending that summary judgment should not be granted, an order was made by Mr. Peter McDonald Eggers QC (sitting as a Deputy Judge of the High Court) on 19th October 2020, whereby he required the defendants, jointly and severally, to pay sums to the claimant, as set out therein by 2nd November 2020. Those sums were something over US$12 million and £475,000 in relation to costs. Those judgments not being satisfied, the claimant then sought to institute the CPR Part 71 process in this country.

7. However, in the meantime the claimant had sought to implement other enforcement processes in France. Although the claimant had, at some point in time during the history of the financial relationship between the parties, been provided with a statement of affairs relating to the second defendant, which showed assets then being owned by the second defendant and his wife, with a net value said to be close to €1 billion, the claimant's attempts to enforce in France seem, so far, to have been to seek to attach a number of French bank accounts, in which the total amount being held to the credit of the second defendant is supposed to amount to some €18,000.

8. Those attachments have resulted in applications made by Monsieur Ohayon in France, to seek to set aside the attachments on a number of grounds, some of which are procedural, in terms of the mechanics and timing employed by the claimant, others of which are substantive, and which take two forms. One form is to seek to attack elements of the English judgments. The other is to seek to attack enforcement of the judgment generally in France. It is common ground and accepted that the Judgments Regulation applies to this litigation, as having been instituted before the Brexit Withdrawal Agreement came into effect, and that under it the underlying claims were properly litigated in this country.

9. Under the Judgments Regulation, although, as I have said, it is provided that Mr. Ohayon was properly sued in this country as a result of the relevant jurisdiction agreement, there is also provided that the questions of actual enforcement within the European Union, and thus within France, are to be determined by the law of the Member State concerned.

10. It is further common ground that while the judgment is enforceable in France without any need for any recognition procedure to be undergone, the Judgments Regulation also provides that it is open to a party, against whom enforcement is sought in that Member State, to seek, effectively, a declaration that enforcement should not take place on what are effectively public policy grounds, relating to that individual Member State, here France.

11. Mr. Ohayon, as I have already said, attacks various elements of the English judgment on the basis of certain asserted French public policy grounds, relating to the French equivalent of the English law of penalties and punitive interest and the like, but which grounds would only serve, if successful, to reduce the overall amount of what is a very substantial judgment to a lesser, but still very substantial, figure. But secondly, he seeks to attack the judgment generally, and to obtain a declaration of general non-enforceability in France, on the basis that he says that the way in which the English summary judgment procedure operated in this particular instance contravenes French legal notions of justice, and, therefore, should not lead to any enforcement in France.

12. The claimant has resisted these various applications, and the evidence is that a first instance judgment, with regards to these matters, will be delivered by a French judge on 1st July 2021. The evidence before me also suggests that it is at least unclear as to whether the first instance judgment in France will deal with all of Monsieur Ohayon's various contentions. If the judge was to decide in his favour, then it is possible that the judge might simply decide in Monsieur Ohayon's favour on the initial procedural timing grounds, without going on to the further questions of French public policy, and the question as to whether or not there should be a declaration of unenforceability in France.

13. I come back to what has happened in this country. Following the institution of the French proceedings and Monsieur Ohayon's resistance and counter-application, an application was made to Master Davison for an order to be made under CPR Part 71. Under CPR Part 71.2 it is provided by sub-rule (1):

> "A judgment creditor may apply for an order requiring - (a) a judgment debtor" -- as Mr. Ohayon is here -- "to attend court to

> provide information about - (i) the judgment debtor's means, or (ii) any other matter about which information is needed to enforce a judgment or order."

14. Under sub-rule (2) it is provided that such an application (a) may be made without notice; and under sub-rule (3) that it must be in a particular form and contain particular information, as required by Practice Direction 71. The application in this case was made in very standard form, and without notice.

15. Sub-rule (4) provides that the application may be dealt with by a court officer without a hearing. In this particular case, this is common in this division, particularly when dealing with business and property courts case, as it was actually dealt with by Master Davison.

16. Sub-rule (5) provides:

> "If the application notice complies with paragraph (3), an order to attend court will be issued in terms of paragraph (6)."

17. Paragraph (6) of the rule provides:

> "A person served with an order issued under this rule must – (a) attend court at the time and place specified in the order; (b) when he does so, produce at court documents in his control which are described in the order; and (c) answer on oath such questions as the court may require."

In other words, what the rule provides is that if the application is in proper form, an order will be made. It will be an order to attend and answer questions, and it will be an order to produce whatever documents are described in the order itself.

18. Under sub-rule (7) it is provided that a penal notice will be applied to the order, and that is somewhat reflected in terms of the sanction of failure by the person against whom the order is made to comply with it, which is contained in CPR 71.8, which provides that if the court officer or Master, hearing the examination, comes to the conclusion that either the person has failed to attend court, refused to answer questions, or otherwise failed to comply with the order, then they will refer the matter to a High Court judge, and the High Court judge may then, if they regard various matters as being satisfied, treat the matter effectively as being contempt of court and make an appropriate punishment order, even though the rule provides, in the first instance, such orders are almost invariably suspended, in order to encourage compliance to take place. I do, therefore bear in mind throughout, that this part of the Civil Procedure Rule, and the orders which are made under it, are effectively penal in effect.

19. The application notice, in this case was issued on 3rd February 2021. In paragraph 5 of the application notice, there was something of an expansion upon the usual provisions. The first paragraph stated that it was desired that the examination should take place before a judge, rather than a court officer, and various reasons were given, principally that the judgment debtor's financial arrangements were likely to be highly complex. There was then an explanation as to what was said to be the reported wealth

of Monsieur Ohayon, the fact that assets of substantial value, said to be worth up to €290 million are said to exist in a number of jurisdictions, including France, Luxembourg and Switzerland, some being held through corporate vehicles.

20. There was then a paragraph starting:

> "However, when the judgment creditor sought to enforce the judgment against the judgment debtor's bank accounts in France only EUR 20,000 was available to be attached (which attachment is now being contested by the judgment debtor)."

21. There is then a reference to attempts to attach bank accounts in Luxembourg, and difficulties which it was said that the claimant was under in seeking to do that. There was no further explanation of the nature of the contest which Monsieur Ohayon was making in France with regards to the French bank accounts.

22. In any event, Master Davison made an order of 14th February 2021; whereby Master Davison recited that he had considered the application, and, by paragraph 1 of the order, he ordered for Mr. Ohayon to attend the court on a date in April, which I subsequently altered to 26th July. By paragraph 2, it was provided that Mr. Ohayon should, by a specific date, which I have now ordered to be 9th July, "shall serve on the solicitors for the Judgment Creditor ... all documents in his control that relate to his means of paying the amount due under the Judgment Order. The documents produced must include, but are not limited to, those shown in the list at Annex 1 which are in his control".

23. Annex 1 is entitled "List of additional documents to produce", and there are a number of paragraphs dealing with certain types of asset which the claimant was either contending that Monsieur Ohayon owned, or might own, and a requirement, generally, to disclose all documents relating to his ownership of or any interest in such assets, and all documents relating to the location or value of the same and any outstanding encumbrances or charges on the same.

24. Paragraph 7, the previous paragraphs having dealt with specific types of assets, was something of a catch-all in the same form, applying to effectively any other asset which had not been mentioned already.

25. Paragraph 8 was a requirement for Monsieur Ohayon to produce tax returns or other statements regarding his assets or income made to tax authorities in any jurisdiction in the world.

26. The examination was initially due to occur on 21st April 2021. However, Monsieur Ohayon, after a process of service upon him of the order of Master Davison, which process is a matter of dispute between the parties, objected to the examination taking place on 21st April on various grounds, including that he wished to challenge the order for provision of documents. It was agreed as a common sense way of proceeding forwards that the examination hearing should not take place on 21st April, but, rather, the question of directions and related matters should be the subject matter of submissions before me, and which duly occurred.

27. What I directed at the hearing on 21st April 2021 was that the examination should, instead, take place on 26th July 2021, that provisions should be made for applications to be made, if so advised by Monsieur Ohayon, in early July if he wished to contend that the examination should take place remotely, in particular due to whatever is then the state of the Covid pandemic and governmental regulations in England and France, and also as to whether or not he was going to seek to have the examination hearing take place in private. I also, however, made provision for this hearing, and directions for an application to be made (was made on 14th May 2021) and for evidence to be filed by the parties dealing with the question as to whether or not the order with regards to provision of documents should be set aside or varied. That has been the subject matter of this hearing, where I have been provided with three substantial lever arch files of relevant documents. I have also been provided with further supplemental bundles, rather shorter in nature, from both the claimant and the second defendant. I have read various of the documents in the files, and in particular those to which my attention was expressly drawn by counsel. I have also had before me, and considered, detailed skeleton arguments from both Mr. Weekes, appearing for the claimant, and Mr. Campbell, appearing for the second defendant. I have also heard extensive oral submissions from both, and been provided with a significant bundle of authorities, to various of which I have been taken. This being an ex tempore judgment, and it being necessary to get on with matters in terms of the court timing, I do not propose, in this judgment, to consider every particular document and submission which has been either drawn to my attention or made to me by counsel. I have, however, borne all of them in mind in coming to my conclusions. If I omit any particular matter that is not because I have not borne it in mind. If it is a matter of particular importance which a party wishes to have something particularly in writing about, then if an application is made to me to approve a transcript of the oral judgment, then I will consider as to whether or not whatever transcript is provided should be expanded upon to further flesh out my reasoning.

28. Monsieur Ohayon is, consequent upon his application dated 14th May, now seeking to vary or set aside various elements of the documents order. His case, as put forward to me by Mr. Campbell in oral submission, and which is something of a development of what had been previously intimated, has been effectively concentrated into a number of sets of arguments.

29. The first is that he contends that the claimant was under an obligation when obtaining the original order from Master Davison to make full and frank disclosure of all matters which might be material to Master Davison's decision. Mr. Campbell submits that that was not done in relation to the French proceedings, although it is somewhat unclear to me as to what consequence Mr. Campbell says flows from this. It seems to me the main consequence which I have to consider in this judgment is its potential impact on the way in which I approach the question as to what I should do about the documents order, if anything.

30. Secondly, Mr. Campbell submits that I should exclude from the documents order any requirement on Monsieur Ohayon to produce documents which relate to assets, or at least certain assets, which are located in France. Mr. Campbell does this on two sets of bases. Firstly, he relies on what is happening in the existing French proceedings. He submits to me that the potential outcome of the existing judgment will be declared to be impossible or impermissible in France, and that if that is the ultimate outcome

that would justify a deletion from the documents production order of documents relating to those assets.

31. Mr. Campbell goes on to submit that even though the position is not at all clear now, the court will be in a much better position to consider this after 1st July 2021, and should not be leaving in place any order for a production of documents relating to relevant French assets at this point in time.

32. His second basis of contending for an equivalent result is that Monsieur Ohayon relies upon a French statutory provision, which Monsieur Ohayon says would give rise to a risk or real risk of prosecution if he was to contravene it, and which he would if he was to provide certain documents relating to assets, at least assets located in France. Mr. Campbell says that this risk of prosecution is enough, but that, in any event, the existence of the French statute is, itself, a matter which should lead me, as a matter of discretion, to deleting documents relating to French assets from the existing order as a matter of international comity.

33. Mr. Campbell's third general submission is whether or not I am for him on those particular previous points, that in any event the documents production provisions, both the general one contained in paragraph 2 of the order of all documents relating to Monsieur Ohayon's means, but also the specific paragraphs of Annex 1 as to specific documents which are to be included, should be substantially revised. Mr. Weekes, for the claimant, takes a very different position, although the claimant and Mr. Weekes are prepared to accept that certain revisions should be made to the documents production annex.

34. In considering the parties' contentions, it seems to me that I should consider, first, the underlying provisions and policy of CPR Part 71 itself, and I have had various authorities drawn to my attention in that regard. The first relevant general authority is the decision of Teare J in *Sucden Financial Limited v Fluxo-Cane Overseas Limited* [2009] EWHC 3555. That decision concerned the question as to what CPR Part 71 itself actually was and whether or not it was part of an enforcement process. That was particularly relevant because an order had been made in that case staying enforcement of the relevant judgment. The judgment debtor asserted that as a result a CPR Part 71 order for examination could not be made, or at least should not stand, on the basis that it was part of an enforcement process and enforcement had already been stayed. Therefore, it was said that an examination should not take place because that would be inconsistent with the stay.

35. Teare J, in paragraph 7 of his judgment, referred to Rule 71.1, which I have already incorporated in this judgment. He said that the purpose of Part 71, as stated therein, is to enable a judgment creditor to enforce a judgment order against the judgment debtor. That means it is an order which puts the judgment creditor into a position where he might thereafter be able to enforce the judgment but it did not seem to the judge to be part and parcel of the process of enforcement.

36. At paragraph 8, he said, rather, it is, as I have said, anterior to such an enforcement process.

37. In other words, Teare J was considering that it was not part of an enforcement process itself; it is simply an anterior procedure which is aimed to put the judgment creditor

into a position where the judgment creditor can consider what attempts to enforce the judgment creditor might make, and to enable the judgment creditor to consider as to whether those, or any other steps, are appropriate.

38. A further statement of principle appears in the decision of W *Nagel (a Firm) v Pluczenik Diamond Company* [2019] Costs LR 2117. At paragraph 36, Griffiths J said that CPR 71 is not an enforcement procedure as such, but a process for obtaining information that will help the judgment debtor decide what the best means of enforcement might be, or, indeed, whether it is worth attempting enforcement at all. There is then a citation from *The Reform of Civil Procedural Law and Other Essays in civil Procedure*, and an article written by Sir Jack Jacob, under the heading "The enforcement of Judgment Debts", where a quotation was cited as follows:

> "'In order to enable a judgment creditor to choose more intelligently and more effectively the appropriate mode of enforcement against a judgment debtor, provision is made for what is called discovery in aid of execution, i.e. the oral examination of the judgment debtor as to his circumstances and in particular what his assets, income and property are and what are his liabilities, so that both the judgment creditor and the court can see how he stands and the judgment creditor can decide which method he should employ to enforce the judgment in a fruitful and effective way.'"

39. Griffiths J went on to say this process assists in choosing a mode of enforcement for the future; it is not enforcement in itself. Griffiths J then went on to refer to what Teare J had said in *Sucden Financial Ltd v Fluxo-Cane Overseas Ltd and Garcia* [2009] EWHC 3555.

40. I have also had my attention drawn to Cooke J's consideration of these matters in *Deutsche Bank AG v Sebastian and Alexander Vick* [2015] EWHC 2773. At paragraph 20, he summed up part of the judgment of Hughes J in *Mubarak v Mubarak* [2002] EWHC 2171, stating:

> "... a predecessor to Part 71 did not 'authorise a freestanding process of specific discovery'. He [that is Hughes J] stated that the oral examination was a process of considerable potential utility to a judgment creditor in a case where the judgment debtor was deliberately evading his obligation to pay. The obligation on the judgment debtor to procure books or documents was necessarily ancillary to the process of examination and not independent of it but it was an important and often vital part of the process and a significant tool in the enforcement of the court's order in relation to which, ex hypothesi, the judgment debtor was in default. The document specified production had however to be relevant to the questions to which examination was directed, which, for the purposes of CPR Part 71 are those which I have set out above."

41. In paragraph 33, Cooke J went on to say:

> "Examination under CPR 71 is intended to be a summary and straightforward process allowing the judgment creditor to obtain information from the judgment debtor for the purpose of being better able to decide which method or methods of enforcement to use, whether sequentially or simultaneously."

42. He then goes on to refer to various methods of enforcement and continues:

> "Any order is, by definition, intended to assist in establishing the extent and whereabouts of the judgment debtor's current means to pay the judgment debt and, as decided by a two judge Court of Appeal in *Interpool Ltd v Galani* [1988] 1 QB 738, a judgment debtor or its officer can be questioned about assets outside the jurisdiction in respect of debts incurred inside or outside the jurisdiction."

43. I was also taken to the *Mubarak* decision itself, reported at [2003] 2 FLR 553. At pages 559 and 560 of the report, there is a section entitled "Propriety of adjournment and order to produce". It starts:

> "I accept the submission of Mr. Howard, for the husband, that Ord 48 [that being the predecessor of CPR Part 71] does not authorise a freestanding process of specific discovery. The oral examination is, however, a process of considerable potential utility to a judgment creditor in a case where the judgment debtor is deliberately evading his obligation to pay. Whilst the obligation on the judgment debtor to produce books or documents is necessarily ancillary to the process of examination and not independent of it, that does not mean it is anything other than important and often vital part of the process. It is a significant tool in the enforcement of the court's order in relation to which, *ex hypothesi*, the judgment debtor is in default.
>
> I do not accept Mr. Howard's further submission that the only time when the court can order production of documents is on first ordering attendance for examination, or that that order can only be a generalised one in the terms of Ord 48, that is to say, to produce anything relevant to any debts owing or other assets. It is no doubt the case that the great majority of Ord 48 oral examinations are quite brief and the documents relating to them comparatively few. The rules permit the examinations to be conducted by non-judicial court officers, and straightforward ones conventionally are so conducted. No doubt a salaried householder who has contracted a consumer debt which remains unpaid can be examined very concisely and will have little by way of documents to produce, other than evidence a salary, committed outgoings and bank or building society balances. That, however, is not to say that the process is not available in and adaptable to the very complex case, such as the present, where the debt and the assets are counted in millions

> and the potential relevant documents require a trolley rather than an envelope to bring them to court. Indeed, it may be all the more important a process in a case of that kind.
>
> I am quite satisfied that the rules permit the examination to be adjourned from time to time, if that is necessary, and that orders for the production of relevant documents may also be made from time to time. Such orders may be specific as well as general, providing of course that what is specified for production is relevant to the two questions to which the examination is directed, that is to say, debts owing to the judgment debtor and his property or other means of paying what he owes. If it were not so, a judgment debtor in a complex case such as the husband here, and even if benefiting from skilled advice, which is often not the case, would be faced with real doubt about what documents to bring. At the very least, the court has the power to explain by way of specific order which documents are relevant and thus covered by the generalised order for production which Mr. Howard contends goes with the original summons. But there is no need for such analysis; the power to order production may be exercised from time to time."

44. The judge then referred to the fact that Bodey J in that case had, in fact, constructed an order which worked in precisely that way.

45. Further on towards the bottom of the page of 560, Hughes J referred to the fact that it was correct that the district judge in that case would be aware that as a production of documents was ancillary to the process of examination, there could be adjournments enabling further questions to be asked, and with the adjournments also carrying with them orders for production of further documents, all dependent on what had happened during the initial stages of the examination.

46. It seems to me that I can draw from all of that that Part 71 is a mechanism which is anterior; that is to say, prior to enforcement. It is not enforcement itself. The Part 71 power, which extends to both questions and to the provision of documents, is one which is designed to put the judgment creditor in the fullest position of information as to the judgment debtor's means; that is to say, both assets and income, but also, generally, the judgment debtor's possible ability to pay the debt, and which thus extends to such matters as liabilities, which will impinge upon what is available in terms of property and assets, both now and in the future. It does, of course, extend to both assets and income, and all of which may be the subject of various processes of enforcement; such as, in this country, attachment or charging orders over assets, real or personal, but also other types of attachment, such as attachments over sources of income and income itself. The aim of and policy underlying Part 71 is that the judgment creditor obtains full information so that the judgment creditor can take informed decisions about what, if anything, to do, and also has the material which will assist them in doing it. Thus, information as to the existence of an asset will assist both in enabling the judgment creditor to decide whether that asset is worth going for, in terms of launching an enforcement procedure, but will also assist the judgment creditor in terms of the enforcement procedure itself, because the judgment creditor

will then have proof of the existence and location of the asset. The judgment creditor may also be able to use the other information for other purposes associated with enforcement.

47. However, I also have to bear in mind two matters. First, that this is all about enforcement, and obtaining information as to means directed towards considerations of enforcement. It should not justify the obtaining of information for other purposes. Secondly, that orders for production of documents are ancillary to this process of obtaining information with regards to enforcement, and the examination itself. In other words, the documents can relate to enforcement itself but also to the process of ascertaining information in order to enable the judgment creditor to decide how (a) they might and also (b) how they should take enforcement steps and otherwise approach enforcement.

48. There has been a considerable debate before me as to what discretion, if any, the court has with regards to making an order for production of documents. Mr. Campbell has referred me to some of the passages I have cited in the *Mubarak* decision as being support for his contention that the court effectively has a general discretion to be exercised very much on a principled basis in accordance with the policy underlying Part 71, but also the overriding objective, including considerations of proportionality when it comes to consider what documents the judgment debtor should be ordered to produce. Mr. Weekes has drawn my attention to the passage I cited in *Mubarak*, which referred to the ordinary general form of order, being documents related to the judgment debtor's means. I do bear in mind that *Mubarak* was a decision in relation to the previous Order 48 of the Rules of the Supreme Court. I am concerned with Part 71 of the Civil Procedure Rule, and where the Civil Procedure Rule are to be construed generally in the light of the overriding objective. I also bear in mind that, as provided by CPR 71.2, the order which is applied for is an order to provide information about the judgment debtor's means and any other matter about which information is needed to enforce the judgment or order. However, I do also bear in mind that CPR 71.2(6), referring to what must be done if an order is issued under the rule, in terms of documents, only provides that the person who is the subject matter of the order must produce at court documents in his control which are described in the order. In other words, the rule itself does not prescribe what documents are to be produced. That is a question as to what the individual order says. It seems to me that this, necessarily, imports a situation of discretion as far as the court is concerned, albeit a discretion which is to be exercised on a principled basis in the light of the case law, and of the policy underlying Part 71, which I have already dealt with in this judgment.

49. Mr. Campbell, in support of his submissions as to this, and his submission that when a without notice application, as permitted by the rule, is made, there is an obligation of full and frank disclosure upon the claimant judgment creditor, has drawn my attention to the decision of Master Davison in *Vale v BSG* [2020] EWHC 2021. There, an application had been made by a judgment debtor to set aside or vary an order which had been made under Part 71 on various grounds, including an alleged failure to make full and frank disclosure.

50. At that particular hearing, Mr. Weekes appeared on behalf of the judgment debtor. It is, of course, perfectly usual for counsel to find themselves on different sides in different cases, and I in no way hold Mr. Weekes to the submissions that he very

properly made on instructions in that case in any way as binding him in relation to his submissions made in this case.

51. However, Master Davison considered the content of those submissions. At paragraph 37, under a heading entitled "Full and frank disclosure", the Master said:

> "Mr. Weekes was on stronger ground when he said that the duty of full and frank disclosure applied. This was a correct proposition which Vale has not disputed. Such dispute as there was concerned the extent of the duty and whether it was complied with."

52. It seems to me that Master Davison was very clearly saying that although there had been no argument to the contrary that on this type of without notice application, as is the general principle as a matter of ordinary justice on without notice applications, there is an obligation of full and frank disclosure upon the applying judgment creditor.

53. The Master went on in paragraph 38 to say:

> "The facts that fall to be disclosed are those which it is material for the judge to know in dealing with the application as made; see *Brink's Mat Ltd v Elcombe* [1988] 1 W.L.R. 1350 at 1356–1357. To put that slightly differently, facts are material if they would be capable of influencing the court in the decision to be made. Thus, the nature of the decision will shape the parameters of the duty of full and frank disclosure."

54. At paragraph 39 he said:

> "Here, the court was not making a decision, such as a freezing injunction, which involved a broad exercise of discretion and the weighing up of a range of competing factors. The exercise was somewhat more mechanical than that. The court had to decide (perhaps 'ascertain' would be a better word) whether the application was in the proper form and contained the requisite information, i.e. the information mandated by paragraph 1 of the Practice Direction to Part 71. In the case of a judgment debtor which was a company or corporation (as here) that required Vale to identify the name and address of the officer of the company, the details of the judgment debt and the amount owing. Upon provision of that information, the effect of rule 71.2(5) was to render the making of an order automatic because that rule says *If the application notice complies with paragraph (3) an order to attend court <u>will be issued</u> in the terms of paragraph (6).*"

55. At paragraph 40 he said:

> "The matters that were material to this – essentially 'tick-box' – exercise were matters going to the identification of the officer of the judgment debtor and to whether there was a judgment

> debt 'owing'. (I will come separately to (a) the documents that Mr Cramer was ordered to produce and (b) before whom the examination was to take place, both of which involved the exercise of a true discretion.) There was and is no issue that Mr Cramer was and remains an officer of BSGR. As to the judgment debt that was owed, Vale rightly drew the attention of the court to the Guernsey Administration. It was incumbent on them to do so because an administration usually places a moratorium on debt recovery against the company concerned. Here, that was not the case because the Administration had not been recognised in the UK and because Bryan J had given permission to enforce the Award. These matters were drawn to the attention of the court and explained in paragraph 6 of the Application Notice."

56. He then went on in paragraph 41 to say that a set of alleged material non-disclosures were not such, because they could not properly have influenced the making of the order, and various references were made to the officer (against the order who had been made)'s ability to obtain various documents.

57. In paragraph 42 and onwards he dealt with matters which he had put under a heading of "Oppression" as well as trespass on to certain other proceedings. After paragraph 44, he had a section "Oppression -- the scope of the documents sought". He dealt with various submissions which were made about the relevant width of the documents requested in that particular case, although the parties' counsel have not sought to address me upon those particular paragraphs.

58. What I draw from these authorities is that, firstly, as I have said, there is a discretion as to what documents are ordered to be provided, albeit one which has to be exercised on a principled basis in accordance with both the policy of Part 71 and the overriding objective. Secondly, that where, as here, an application was made without notice, although that is perfectly proper, and permitted by the rules, there is an obligation to make full and frank disclosure. Thirdly, that obligation to make full and frank disclosure is only in relation to matters which might inform the court's decision. Fourthly, since the court has a discretion as to what categories of documents, whether either general or specific, to order to be produced, the duty to make full and frank disclosure includes a duty to make disclosure of matters which might affect the court's discretion as to whether to order particular categories of documents to be disclosed. Fifthly, that, as part of the court's discretion, it will consider as to whether or not to order disclosure of a particular category of documents would be oppressive in nature, although that is a matter which, again, has to be considered on a fact-sensitive basis in the light of all the circumstances of the particular case.

59. In the light of those considerations of principle, I can turn to Mr. Campbell's various categories of points. His first is that he contends that full and frank disclosure was not provided. He accepts that in the application it was stated both that an attachment process was taking place in France, and that it was being contested by Monsieur Ohayon. What Mr. Campbell submits is that although there was some disclosure, there was insufficient disclosure, in so far as in particular what was not stated was that Monsieur Ohayon was contending by application in the French proceedings that a

declaration should be granted that enforcement of the English judgment was impermissible in France, and so that the judgment would not be enforced in France.

60. Mr. Campbell submits that this was a matter which would have been relevant to Master Davison's consideration of what order he should make, as it might well have led Master Davison to ask, in his own mind, as to whether an order should be made to produce documents relating to French assets, if it was possible at some time, and in particular in the near future, that a French court might declare that no such enforcement should be capable of taking place.

61. Mr. Campbell submits that what was said was a failure to make full and frank disclosure, both in terms of it being incomplete and in terms of the point only being made to support a contention that the examination should take place before a Master, rather than a court officer, and not on the basis of drawing material to the court's attention, which might, if the defendant had had a chance to make submissions at that point in time, have been relied upon by a defendant, judgment debtor, in support of a submission that French assets should effectively be excluded from the documents production order.

62. Mr. Weekes submits to me that there is nothing in this. He submits to me, firstly, that the order which was made was entirely standard in form. Secondly, that, in fact, disclosure was provided, which was sufficient, and presumably if the Master had had any query in the Master's own mind, the Master could have directed a hearing or requested further information. Thirdly, that, in any event, none of this matters now; I am considering what to do on a principled basis and I know what all the material is.

63. In relation to Mr. Weekes's first submission, that there is effectively nothing in this simply because the order would be made in any event in the usual form, it seems to me that I should reject that. Firstly, I am not actually satisfied that there is a "usual" form of order, even of the general nature, at least in terms of that being an automatic consequence prescribed by the rule. The general type of order actually made is standard. It is almost invariably made in the paragraph 2 form that the judgment debtor will produce all documents relating to their means, with some sort of further refinement.

64. However, it does not seem to me, for the reasons I have already given, that it is in any way prescribed by the rule (either specifically or as something which is "usual" and not to be departed from without reason). It also seems to me, in any event, that there is a discretion as to what order the court will actually make with regard to production of documents. It does not seem to me that Mr. Weekes is right to say that this order is always made, and therefore there is no need to provide full and frank disclosure in order to obtain it and therefore, any such disclosure or absence of it is neither here nor there. It seems to me that it does impact on the discretion that the court is exercising.

65. Mr. Weekes's second point is to say that in any event sufficient disclosure was provided. It is only, and I accept, disclosure which might materially influence a court's decision. Mr. Weekes says, for reasons that he has then developed much more in relation to the further matters which I have to consider, that the Master simply would not be concerned with regards to whether or not a French court might decide that the order was not enforceable in France. Mr. Weekes contends that the Master would simply ask him or herself as to whether or not this was a proper request for

information, or documents relating to information to be used for Part 71 purposes, and that whether or not the order was enforceable in France would not be a reason for not directing that the information be provided.

66. For reasons which I will come on to in due course, it seems to me that there is substantial force in what Mr. Weekes says, but, nonetheless, it does seem to me that, in circumstances where it is being said in actual litigation in France to the judgment creditor's knowledge by the judgment debtor, that the French court should simply declare the judgment to be unenforceable in France altogether, and in circumstances where it is the judgment creditor's case, at least, that there are very substantial assets in France, that what was said in the application was, on an objective basis, incomplete.

67. It seems to me to simply say that the judgment debtor is resisting a particular attachment without providing any further details, saying it is in part on the basis of saying that judgment is altogether unenforceable in France does not present a full picture. It seems to me that this is the sort of matter which, standing back, one can see that, objectively, the judgment debtor might well be wishing to say to the English court, and thus the Master, that if the French court was going to, as the judgment debtor contends it will, declare that the judgment is unenforceable in France, that that might potentially impact upon the Master's decision as to what documents to order to produce. It therefore does seem to me that there is some breach of the obligation of full and frank disclosure in these circumstances.

68. What I do do is acquit the claimant of any suggestion which, to Mr. Campbell's credit, was not actually being made, that such non-disclosure was in any way deliberate. It seems to me that to come to the conclusion that this disclosure was required (but should not be given) would have involved a careful and detailed consideration, where it seems to me all that all that the claimant’s solicitors were actually thinking about was simply their desire to draw to the court's attention the fact that the matter was complicated and giving a reason for doing so. It does seem to me that for there to be any suggestion that they in any way had considered in their own minds the potential ramifications on the documents production order of omitting this particular information, and taking some decision that they did not want the court to know about it at that stage, is simply fanciful. It seems to me that they were more approaching this matter on a one track basis from the judgment creditor's point of view, without, perhaps, giving full consideration to what might be the judgment debtor's point of view. It does not seem to me that there was any deliberate attempt to conceal anything from the court at all.

69. What I do come on to, though, next, is the question as to what is the ramification, or what is the consequence of this. Mr. Campbell, for Monsieur Ohayon, does not suggest in any way, in oral submissions, that what should happen is a discharge of the Part 71 order. In fact, quite the contrary, notwithstanding what is said in certain of the earlier documents emanting from the judgment debtor’s side. He accepts that the particular rules which relate to non-disclosure, in the context of the obtaining of freezing, search and other invasive interim injunctions do not apply in the Part 71 context. Those rules may well lead to an order which would have been obtained had full and frank disclosure been made, being set aside and not continued, owing to a failure to make full and frank disclosure.

70. However, Mr. Campbell does not say that I should take that approach. It seems to me that he is quite right to do so. Those types of injunctions involve very different considerations indeed and where full and frank disclosure is essential to justice where the court is being asked to exercise discretions to make highly invasive orders without having heard the person(s) against whom the order is to be directed and under which they will be subject to immediate duties to comply. However, that is not the CPR Part 71 (or this) situation. I can see absolutely no reason as to why, in circumstances such as these, of a judgment debtor who is plainly doing everything that he can to avoid having to satisfy the relevant judgment, what seems to me to be a distinctly minor failure to provide full and frank disclosure should result in the Part 71 order being set aside. The claimant is entitled to have Part 71 information, which is an important part of the court ensuring that its judgments are complied with. It would be highly detrimental to the important public policy that judgments should be complied with if a party was to be prohibited from obtaining relevant information because of what seems to me to be a relatively minor failure on its part.

71. Mr. Campbell submits this is relevant to costs, which is a submission he can make in due course. It does not seem to me to be relevant at this point in this judgment. Mr. Campbell can also properly submit that this is not a matter which Master Davison had considered when making the original order. In this context, I note that Mr. Weekes has a submission that Mr. Ohayon's various applications should be seen in the context that they are challenges to an order which the court has decided to make, and that therefore Monsieur Ohayon should be under something of an uphill burden in seeking to make those challenges good.

72. It seems to me that Mr. Campbell's reliance on there not having been full disclosure having been made is, in fact, relevant to that submission, which submission I reject in its absolute form for the following reasons: firstly, the application was made perfectly properly without notice. If an application is made without notice, and the court makes an order, then there is a general right, under CPR 23.8 and following, for a party to apply to set aside or vary that order, and the right to make which application is simply a matter of natural justice. If somebody has not been heard on the making of an order, through no fault of their own, they should then be entitled to challenge that order and say that it either should not have been made, or should not continue. If they are not permitted to do that, and not permitted to do so on what might be described as an open re-hearing basis, then effectively they have been disadvantaged without having been given a chance to be heard, and which is contrary to natural justice.

73. Secondly, I must, though, recognise that there is a decision of a High Court judge in *R. (on the application of Kuznetsov) v Camden* ***[2019] EWHC 3910 (Admin)*** that holds that although re-hearing is the general principle, nonetheless the court should give proper weight to the fact that the judge has made the original order, and should only set aside or vary the original order if there is some reason to do so. It is somewhat unclear to me as to what sort of strength of reason is required, but in circumstances where Master Davison did not know about what precisely Monsieur Ohayon was trying to do in France, it seems to me that is precisely that could be capable of being such a reason, albeit that it has to be considered on its own merits, as I am now going to come on to. Otherwise, although I do find there was a minor failure to make full and frank disclosure, in circumstances where Monsieur Ohayon has been fully able, or able fully, to argue out why he says the documents production

order should not stand as it is, and in particular in relation to French assets, I am at the moment unclear as to where Mr. Campbell's submission goes. It does not seem to me that it impacts on the further matters I have to consider as part of this judgment.

74. Mr. Campbell's second matter, though, is to say that French assets should be excluded from the documents production order in any event. He says that there is going to be this judgment in France on 1st July 2021. Monsieur Ohayon may well win there. If he loses, then he will seek to appeal, and that any appeal may well take up to two years to be resolved. Mr. Campbell submits, in those circumstances, to require Monsieur Ohayon to provide the information, (a), may well be entirely pointless, because judgment may be impossible in France, but in any event (b) would interfere with what is happening within the French courts, and be contrary to international comity.

75. Mr. Weekes says that, firstly, his side will win, and if they lose they will appeal and will, nonetheless, seek to enforce on an interim basis during the currency of such an appeal process. Secondly, he submits that in any event all of this is irrelevant, because his client should have the information effectively as of right. Thirdly, even if there is a discretion, he submits that there is a point in the information being provided, and that sufficiently justifies the existence of a documents production order and its extending to French assets. Fourthly, he says that there is no interference with any comity under the circumstances.

76. The evidence before me as to what is happening in the French proceedings is effectively supplied from a Monsieur Poisson, who is a partner in the claimant's solicitors, and effectively in charge of the claimant's enforcement process in France. It is accepted that he is obviously not an independent expert, although he clearly has a knowledge of French law. The defendant has very recently produced a short, relatively short letter, from a Monsieur Kamal Sefrioui, who is the French advocate instructed by Monsieur Ohayon in France. That only contests certain elements of Monsieur Poisson's analysis, and was supplied at a very late stage. As a result of its lateness, a second witness statement was provided from Monsieur Poisson, to which Mr. Campbell has taken some objection, in particular its reference to the French interim freezing process known as saisie conservatoire.

77. It seems to me that, in the light of the lateness of the production of evidence from Monsieur Sefrioui, Mr. Campbell, if he wishes to rely on Monsieur Sefrioui's evidence, has no real justification for challenging the admission of Monsieur Poisson's second witness statement. I accept that there is no direction with regard to the provision of expert evidence, but, firstly, this evidence is only part expert, in so far as it is partly factual, and, secondly, though, it seems to me that for Mr. Campbell to take that point would be somewhat self-defeating, because, as Mr. Weekes has correctly reminded me by reference to other case law, the approach of the English courts is to assume that foreign process and foreign law is the same as English, unless evidence to the contrary is provided. That evidence, at first sight, should be provided by experts, but the court has something of a discretion. It seems to me to be in the interests of justice in this case, and in fact consistent with what both parties are doing in terms of evidence, for me simply to consider the documents and material produced by Monsieur Poisson and Monsieur Sefrioui for what they are worth. In saying that, I do not, in any way, seek to resolve the debate which exists between certain judgments of the Court of Appeal and first instance judges as to whether or not permission is

technically required for the adducing of opinion evidence. It seems to me that in the circumstances of this case, whilst applying the overriding objective, I grant any such permission as is required for the production for the adducing of those three sets of documents as being consistent with the consistent with seeking to resolve the matter "fairly" and enabling me to deal with this hearing justly.

78. I do also bear in mind there seems to be common ground that (1) as far as the underlying litigation is concerned, the Judgments Regulation is applicable, it being pre-withdrawal agreement litigation, (2) that provides that the underlying litigation is to take place in England, and subject to English procedure, a matter which is, in principle, as far as it goes, binding upon the French courts as a matter of European Union law (3) although enforcement in France can take place without there being any procedure of recognition of the English judgment, (4) it is possible, as Monsieur Ohayon has applied for a declaration to confirm, for the French courts to come to the conclusion that enforcement is contrary to French public policy.

79. Mr. Weekes's first submission is that this is all entirely irrelevant. His submission is that the Part 71 process is designed simply for the obtaining of information, and that their question as to whether the judgment is or is not enforceable in France is a matter for the enforcement stage, not the obtaining of the information stage. In one sense, Mr. Weekes, it seems to me, is correct in terms of his initial submission. As I have sought to identify from the authorities I have already cited within this judgment, and in particular *Sucden*, W *Nagel* and *Deutsche Bank*, Part 71 is all about obtaining information to enable the judgment creditor to decide what to do and for the judgment creditor also to be able to use, if the judgment creditor sees fit, in order to do it. At first sight, the question as to whether or not actual enforcement can take place in relation to those assets is another matter entirely. However, it does seem to me that, for the reasons which I have already given, the question as to whether to exercise the discretion to require particular documents to be produced is a question which the court has to consider in the light of all the circumstances, and one of which circumstances is that Monsieur Ohayon is seeking to challenge enforcement in the French courts, and that there is potential, on 1st July 2021, and indeed thereafter, for the French court to make a declaration saying that enforcement is impermissible in France. It seems to me, and is supported by the *Vale* decision, that in considering whether or not the discretion should be exercised, the court has to consider all the circumstances, including as to whether to order documents to be produced of a particular nature is oppressive, or otherwise contrary to the overriding objective, even taking into account the policy underlying Part 71. It seems to me, at first sight, that it could be material to questions of oppression as to whether or not enforcement in France is impossible.

80. Mr. Weekes did, however, rely on two types of submission and citations from the authorities to submit to me that it is simply irrelevant. First, he drew my attention to paragraph 14 of the judgment of Teare J in *Sucden*. There it was said by Teare J, when the judge was dealing with the question as to whether a stay of execution operated to bar the use of the Part 71 procedure:

> "For those reasons [being those he had previously given] I consider that Master Kay had jurisdiction to make the order he did and that paragraph 3 of the order made by Beatson J was

> not a reason why he should not have exercised that jurisdiction."

81. Mr. Weekes draws from that a submission to say that a mere prohibition on enforcement, whether temporary but with potential for becoming permanent, is no reason as to why a Part 71 order should not be made, and therefore is no reason as to why particular documents should not be ordered to be produced. It does not seem to me that that follows from paragraph 14 of Teare J's judgment in relation to the scope of a documents production order. First, Teare J was simply considering the question as to whether a stay of execution, or the existence of a stay on execution, barred any order being made under Part 71 at all, and as a matter, in effect, of jurisdiction. That is not the question which is before me. Secondly, Teare J was considering the matter generally in terms of order under Part 71, not the specific question as to whether or not an order should extend to specific classes of documents, which, for the reasons which I have given already, I consider to be a matter of discretion, rather than something simply falling from the wording of the rule as being subject to a tick box exercise, as stated by Master Davison in the *Vale* decision.

82. Secondly, Mr. Weekes considered a scenario which I had postulated to him in argument of a situation of an imaginary country, which I shall call Ruritania, as is usual in these circumstances, having a law banning enforcement of English judgments against assets located within that particular imaginary state (and perhaps also preventing the export of proceeds from any sale of real property or maybe even preventing sales of certain real property e.g. castles, altogether). I asked Mr. Weekes as to whether, in those circumstances, the English court would have to, under Part 71, make an order that a judgment debtor discloses the existence of relevant property interests, such as, let us say, castles in Ruritania, as a matter of law under Part 71. Mr. Weekes answered the question yes. He said that if the judgment creditor applied for such an order, then it would follow simply as a matter of law that the judgment debtor would have to disclose the existence and other details with regards to the Ruritanian castle, notwithstanding that it was absolutely clear that enforcement could not take place against that asset, and notwithstanding the cost and time which would have to be taken in doing so.

83. It seems to me, for the reasons which I have given, that that does not necessarily follow. It does seem to me that this is a discretionary jurisdiction and that the court would be conducting a balancing exercise asking itself as to whether or not it would involve such a waste as to be contrary to the overriding objective, and balancing, as part of the exercise, the question as to whether or not such an order could be described as oppressive in the circumstances.

84. For all those reasons, I reject Mr. Weekes's absolute case.

85. However, that does not seem to me to be the end of the matter by any means at all. The question still arises as to whether or not I should make an order at this point, and notwithstanding that a judgment is going to come from the French court on 1st July 2021, and which would put me in a better position.

86. Mr. Campbell submits that it would put me materially in a better position, because he says that if the French court does come to the conclusion that enforcement is impermissible in France, I might well then be led, as a result, to think it appropriate to

limit whatever order I would otherwise make or allow to stand with regards to documents having to be produced with regards to French assets. He says that, in those circumstances, if it was said to be impermissible for there to be enforcement in France, then there would be simply no point in going through the relevant production exercise.

87. Mr. Weekes's primary response to that is to submit that there would still be a point, and that that point would justify the order for production of documents to extend to French assets. He submits, first, that that is the case in relation to any asset which is movable in nature. He submits to me that that must apply because, as the judgment creditor, he needs to know what those assets and what their values are so that, first, he can carry out whatever exercise he regards as appropriate to trace the movements of such assets and, secondly, to decide, if he manages to trace a movement of an asset outside France, as to whether or not it is worthwhile to bring enforcement proceedings, wherever that asset then happens to be located.

88. Mr. Campbell considered how to respond to this in relation to various classes of asset. Mr. Campbell was driven to accept that in relation to some classes of assets, such as yachts or cars or other vehicles, it was difficult to resist Mr. Weekes's submission. I think Mr. Campbell was right to take that stance. As I have said, the policy underlying Part 71 is that the judgment creditor should be put in a full position to consider not only what a judgment creditor should do by way of enforcement, but also what a judgment creditor might do in order to put themselves into a position to enforce. As far as readily movable assets are concerned, it seems to me that it must be right that the creditor should have the information as to what there is so that the creditor can at least track it.

89. Mr. Campbell, however, submitted I should not go further than that. He said that in relation to other items of personal property, that although they might be movable, that they are likely to remain in France in any event. It seems to me that simply for the reasons of enabling the claimant to be able to track them, if they are of sufficient value to be the subject matter of the documents production order, that if they are movable, then exactly the same considerations apply as with regards to other categories of movable property. If they are valuable assets, then the judgment creditor should be in a position where they should know what they are and be able to track them on an informed basis. Therefore, I can see no reason as to why the documents production order should be restricted as a matter of discretion to not extend to them.

90. However, there are two other types of asset which are said to potentially exist in France. The first types of asset are what might be regarded as choses in action, or similar to choses of action, namely money held in bank accounts and assets which, although personal property, may be said to be permanently located in France, such as may be the case in relation to shares which are not bearer shares in French companies. Secondly, there is real property situate in France in the form of land and buildings and so on, which is immovable.

91. Mr. Weekes submits in relation to both those classes of asset, although he also extends the submission to the more movable classes of asset to which I have already referred, that he should be given full information with regards to those assets for a number of different reasons. First, he submits that those assets can simply be turned

into cash, and that, again, he should be provided with full information so that his client may consider as to how to track whatever might happen with regards to that cash in terms of it being moved around bank accounts in different jurisdictions, or it being turned into assets such as property in other jurisdictions, and where he might seek to enforce against the relevant proceeds. He submits that, as a matter of modern commercial practice, that is the sort of thing which can be tracked in all sorts of ways in terms of searches to see what is happening with regards to the underlying immovable and whether or not it is being turned into something which appears eventually outside the relevant jurisdiction.

92. Mr. Campbell submits that that is speculative, hypothetical and, indeed, to a degree, fanciful, what Monsieur Ohayon is seeking to resist enforcement is going to do is to seek to keep everything carefully in jurisdictions where he believes that enforcement cannot take place, such as France.

93. It seems I should bear that in mind as a matter of general discretion, but at first sight it seems to me that there is very much to be said for Mr. Weekes's position. The underlying purpose of Part 71 is to enable a judgment creditor to be in a position where they can do everything that they can, and that the court should be very careful before it allows the judgment debtor, who is seeking to evade the English judgment, to, in any way, restrict the information which is available to the judgment creditor with regards to the judgment debtor's means. It seems to me that I would make the order in general terms which Mr. Weekes seeks on this basis alone.

94. Mr. Weekes, however, relies on at least two sets of other matters. First, he relies on wider considerations which the judgment creditor may have to wish to have all this information available to use for other purposes linked to enforcement. In particular, he says that he may well wish to rely on this information to deal with any attempts by Monsieur Ohayon to resist enforcement in other jurisdictions, including on grounds of impecuniosity or financial difficulty. He points me to a passage in a witness statement of Mrs. Jones, the solicitor for Monsieur Ohayon, where Mrs. Jones says that Monsieur Ohayon has been facing financial difficulties as a result of the Covid pandemic, which has resulted, it is said, in various of his operations becoming singularly less profitable, or making losses, and Mrs Jones at least implies that Monsieur Ohayon wishes to rely upon this in some way. The claimant, in fact, says that this is in fact incorrect, that what is actually happening is Monsieur Ohayon seems to be perfectly able to deploy large financial resources in acquisitions of properties in France if he chooses to do so, and this quite goes against any suggestion of financial difficulty. However, Mr. Weekes submits that if Monsieur Ohayon is going to seek to deploy this sort of argument against attempts to enforce in other jurisdictions, the judgment creditor should be in a position to be able to say to the courts in those other jurisdictions "Actually, there is nothing in this. Monsieur Ohayon has massive resources in France and therefore you, the court of the other jurisdiction, should treat him as being someone who has ample assets available and you should not give him any free rein or loose rein on the basis of impecuniosity."

95. I do have to bear in mind that the documents production order is supposed to be ancillary to the process of investigating how and what enforcement might take place, and therefore I should be careful that a documents production order and its underlying reasons should be linked to such matters. Nonetheless, it seems to me that there is

force in what Mr. Weekes says, and that reinforces me in my consideration as to how I should exercise my discretion.

96. Thirdly, Mr. Weekes says that in any event, even if the claimant loses in France at first instance, the claimant would be able to apply for protective steps in the meantime in the form of saisie conservatoire as being some sort of equivalent to an interim freezing injunction in this country.

97. Mr. Campbell submits that a saisie conservatoire is, he says on his instructions, something which cannot be obtained by the claimant in these particular circumstances. Mr. Weekes submits that if that was a contention to be advanced at all it should have been advanced with the support of expert evidence, rather than simply on the basis of instructions.

98. It seems to me that I can approach all of this on something of a more simpler basis. Mr. Weekes's position, it seems to me essentially, is that if he is losing at this point in France, he wishes to be able to consider taking further steps, and that this information would be of value in terms of taking such further steps. It seems to me that the most that Mr. Campbell can say on the information and evidence before me, and in circumstances where it does seem to me that Monsieur Ohayon has had plenty of time to advance full French evidence, that the situation is simply one where it is not clear as to what the claimant can or cannot do, but it may well be possible for the claimant to take steps in France to freeze particular assets, or to enforce against them. In those circumstances, it seems to me that this is a classic situation where the policy underlying Part 71 goes in favour of making the full documents production order. The reason for production of the information is not simply to actually enable enforcement to take place, it is to give the information to the claimant to enable the claimant to take an informed decision as to what enforcement the claimant wishes to try to achieve. The fact that that enforcement may ultimately be unsuccessful, it seems to me, does not mean that the information should not be provided. The purpose of the information is to enable an informed decision to take place. It is only in circumstances such as, perhaps, my Ruritanian example, that is to say where it may be entirely and absolutely clear that enforcement cannot occur and that there is no way in which the information will be of practical use to the judgment creditor, that Mr. Campbell's submission starts to have some foundation and real basis. However, that is not the situation here. The situation is that at worst, as far as the claimant is concerned, it is not clear that the claimant's enforcement methods in France would succeed, but nonetheless it seems to me that the claimant should be in a position to be able to take a decision as to whether or not to try in various ways to succeed, and that is what the Part 71 information, including the documents, are designed to enable the claimant to be put in a position to achieve.

99. It therefore seems to me that, even in a situation of lack of clarity, the documents production order ought to be made, because it is then that the claimant can take the relevant decisions. However, it also seems to me that the position goes potentially further than that. Enforcement in France may be resisted on a number of different bases. Freezing relief in France, if it is available, may be available on a number of different bases. At first sight, in the absence of other expert evidence, it seems to me that I should proceed on the basis that the French court is likely to wish to consider, in the context of whether it should order particular interim or other steps, similar matters to an English court, and in particular if the method of enforcement or interim step

sought is something similar to a freezing injunction. There, an English court would be distinctly interested to know as to what the relevant assets are and their values in order to consider whether any, and if so what sort of, freezing order should be made. That is precisely the sort of information which is being sought by the documents production order.

100. So, it seems to me, for that additional reason, that that, again, is a reason as to why the documents production order should be made so that the claimant is in a position not only to decide what to do, but to seek to justify it before a French court.

101. I have stood back and asked myself the general question as to whether or not there is a real point in the documents production order extending to French assets, in the circumstances which Monsieur Ohayon is seeking to raise in France. For the reasons which I have given, even if Monsieur Ohayon were to be eventually successful in his seeking to obtain a declaration that enforcement is impossible in France from a French court, it seems to me that the documents ought to be produced because there is a real point they can be used either to police what happens to those assets in terms of their potential to be either moved abroad or turned into something which could be enforced against abroad, but, secondly, that they are relevant in terms of whatever does happen abroad, in terms of providing a counter to any attempt by Monsieur Ohayon to rely on impecuniosity. Even if that was wrong, that nonetheless I should still make the order in principle, because there is a real point, because the information is, (a), relevant to the claimant deciding what it is going to do in France, but, (b), is also potentially relevant on the basis of the evidence before me to what it might do in France in terms of what it might produce to the French courts.

102. The only caveat which I am going to put on that is that I am not going to bar Monsieur Ohayon from making an application based on whatever the French judgment on 1st July actually is. It does not seem to me that I can do so, because I do not know what the content of that judgment is going to be. However, it does not seem to me that that is any reason not to leave the document production order in place. If Monsieur Ohayon chooses to make an application as a result of that judgment, an application will be considered on its own merits but in the light of this judgment.

103. However, Monsieur Ohayon also makes two other submissions. The first one comes out of what I have already dealt with, that is the question of comity, as to whether or not, as Monsieur Ohayon says, for me to make the document productions order would interfere with the French process, and where the French process might eventually involve the French court making a determination that the underlying judgment should not be enforceable in France.

104. Mr. Weekes has taken me to the decision in *Morris v Banque Arabe et Internationale d'Investissement SA* [2001] ILPr 37, a decision of Neuberger J (as he then was). Although Neuberger J was mainly dealing with a different point to which I will come, he does make quite clear, at paragraphs 51 onwards, that CPR 71 is, as I have already said, merely a provision relating to investigation. It is not a provision relating to enforcement itself. However, what seems to me to be the important point and seems to have been directly supported by Neuberger J's reasoning, is that as far as comity is concerned, while comity questions might arise if the English court was interfering in the French court's own process, it does not seem to me that the documents production order does that in any way at all.

105. The documents production order as Mr. Weekes has said and I have said in this judgment, is merely a process anterior to enforcement. It is merely a question of learning what exists, and where the information which is learnt can be used in a number of different ways. One way in which it might be used, I said, is to be used in connection with enforcement elsewhere. It can also be used in a way to actually enable submissions to be made to the French courts with regards to enforcement in France. But in no way does it dictate the enforcement process at all. It simply does not impinge upon it in any way whatsoever. It simply puts the claimant in a position to decide what the claimant might do, although also possibly to aid the claimant in actually doing it.

106. With regards to what happens outside France, that at first sight is no concern to the French courts whatsoever. As to what happens inside France, if the claimant either decides to do something in France, or to use the information in order to do that, the French court is perfectly capable of policing its own enforcement. I cannot see how, at first sight, there is any problem with comity in this regard at all.

107. Secondly, I also bear in mind that under the Judgments Regulation, the taking place of the English proceedings, and proceedings which are designed to be anterior to enforcement, is, at first sight, matters for the English court. While it is for the French court to decide what enforcement actually takes place, what has happened so far, it seems to me, very much falls on the English side of things as far as the Judgments Regulation is concerned. It is the production of these documents that enables the claimant to decide whether or not it wishes to go to France in the first place. It seems to me that this is very much matters which, in Judgments Regulations terms, are English rather than French. Both the English court and the French court are, for these purposes, bound by the Judgments Regulation, and this, it seems to me, is a further reason as to why there is no invasion of what is properly within the French sphere, so as to give rise to any question as to what is appropriate as a matter of international comity.

108. Mr. Campbell, however, has his further argument based on what appears to be called in French law "loi de blocage", or colloquially in English, “the Blocking Statute”. That provision is described in some detail by Mr. Poisson in his first witness statement as providing:

> "Subject to Treaties or International Agreements and to currently applicable laws and regulations, it is prohibited for any person to request, seek or disclose, in writing, orally, or in any other form, documents or information of an economic, commercial, industrial, financial or technical nature directed toward establishing evidence in view of foreign judicial or administrative proceedings or in relation thereto."

109. That is a matter of French law. Mr. Campbell submits to me that it renders it a criminal offence in France for Monsieur Ohayon to provide the documents sought by the document production order, or, indeed, to answer questions orally regarding the relevant French assets.

110. Mr. Weekes responds to that in a number of ways. His first submission is to say that it does not apply to this material at all. He refers to what Monsieur Poisson goes on to

deal with in paragraphs 59 and 60 of his witness statement, to say that it only applies to economic, commercial, industrial, financial or technical information, it does not apply to personal information, and what is sought is personal information regarding Monsieur Ohayon.

111. It did not seem to me, from Mr. Campbell's submissions, or from Monsieur Sefrioui's letter, that the defendant was really contesting the principle of this. It seemed to me that Mr. Campbell's contest to what Mr. Weekes said on this point was directed towards the possibility that certain of the information which was sought to have to be produced was commercial information, as far as Monsieur Ohayon's companies were concerned, and might relate to confidential financial or property matters.

112. It seems to me that, in principle, Mr. Weekes is right on this particular point. The English court, although it is in no way determining what French law actually is, approaches the French statute on an intelligent basis, such as set out in *Bank Mellat* [2019] EWCA Civ 449, at paragraph 53. The wording of the French law certainly suggests that it does not apply to simply personal information, but what would be described as technical or commercial information, and although Monsieur Poisson is not an independent expert, that is what is stated in his witness statement. It does not seem to me that any evidence has been adduced to the contrary. It seems to me that the vast majority of what is sought is merely personal information, and does not fall within the French statute in the first place. There is a possible exception here in relation to the primary commercial information of companies.

113. There is an ancillary point here, of course, that Monsieur Ohayon can only be ordered to provide documents which are within his control. It is unclear to me, and I have little evidence, as to whether or not the documents of his companies are technically within his control for these particular purposes. In English law anyway, that gives rise to complex questions, even if a company is majority or solely owned by an individual, because there is a distinction between the company and the individual as a result of the corporate veil. There may also be constraints upon the company as to how its information can be used.

114. In any event, in the absence of particular information or evidence as to what it is said cannot be produced as a result of the Blocking Statute, on the assumption that it only applies to non-personal information, I am not presently satisfied that there is anything material to which it particularly applies which is included within the document production order.

115. The next point of Mr. Weekes is as to whether or not the Blocking Statute is actually applicable in these particular circumstances of an individual being ordered to provide details of their assets in order to comply with an English judgment, which is properly an English judgment in French law as a result of the application of the Judgments Regulation. Mr. Weekes says that it is extremely unlikely that a French court would regard it as being applicable in these circumstances.

116. It does seem to me that it is distinctly unlikely that a French court would come to that particular conclusion. Although Mr. Campbell submits that the statute is intended to have an extremely wide effect, at least on its own terms, it does seem to me to be extremely odd that it could be consistent with the Judgments Regulation, which is binding on France as a matter of European Union law, that the French should have

passed a statute which makes it a criminal offence for a judgment debtor to provide information with regards to their own assets in order to enable a judgment creditor, who has the benefit of an English judgment, to decide as to what steps they might take to enforce it.

117. It seems to me that that sort of consideration has led Mr. Campbell to accept the French statute should not be a problem with regards to assets situate outside France, even though on its own terms it is not limited geographically in any particular way. It does seem to me, although I do not decide it, that it is a powerful reason for considering that the French court is unlikely to apply this statute to Mr. Ohayon's prejudice in this particular case or to regard this situation as being something which is being infringed by the English court's order.

118. Lastly, although he put this very much at the forefront of his submissions, Mr. Weekes submits that this is a statute which is not enforced by the French courts, except in exceptional circumstances. The evidence from Mr. Poisson is that it has only ever been enforced once, and that was in a particular egregious situation, where a French lawyer had practised a deception on a French company to enable him to provide information to an American entity in relation to American proceedings. This was the only time that there had ever been a prosecution, let alone a successful prosecution, under this particular statute, and that was because the French authorities regard it as being designed to enable French entities to refuse to provide information to the American courts, who are prone to make extremely wide disclosure orders, and is designed to deal with what was perceived to be that particular problem, at least where those in France were regarded as misbehaving, as the lawyer was in that particular case.

119. Mr. Weekes in support of this has drawn my attention to a number of English authorities, which Mr. Campbell has sought to distinguish on the basis that none of them involve attempted enforcement in France. In view of considerations of time, I am not going to go through those authorities. It seems to me that Mr. Campbell is right to say that there is a point of distinction on that particular basis, and that the English court should be more concerned as to what might happen, where the documents are sought to be produced, at least in part, to enable enforcement in France. However, I do, nonetheless, bear in mind that other English judges have come to the conclusion that there is no real risk of prosecution or problem in those circumstances.

120. Mr. Weekes has also taken me specifically to Neuberger J's consideration of this in the *Morris v Banque Arabe* case, in particular his consideration at paragraphs 71 onwards, and including his view that it is important to note, firstly, that French companies often provide disclosure in English proceedings, even though that is not in relation to enforcement against French assets, but also, in paragraph 74, that his view is that the French court would consider underlying policy and the desirability of parties being able to enforce their relevant rights, even though, in that case, that was concerned with a situation where the underlying litigation concerned fraud, rather than merely failure to comply with financing obligations.

121. It seems to me that all of this, but in particular what is said in Mr. Poisson's witness statement, strongly supports Mr. Weekes's submission that the risk of any prosecution in France is extremely low. I, nonetheless, have to stand back and ask myself two

questions. The first is, is there such a risk of prosecution or other deleterious consequence that I should expose Monsieur Ohayon to it by continuing to maintain the documents production order to extend to assets in France; is that oppressive or unfair?

122. Having stood back and considered all the various matters which I have covered as to reasons as to why the Blocking Statute either does not apply at all, or does not apply to the particular documents sought, or would not result in any process against Monsieur Ohayon in France, it seems to me that the risk of prosecution or other deleterious consequences to him is so small as for it not to stand in the way of the documents production order extending to assets in France.

123. Secondly, I have to look at it this from the point of view of international comity, and the question of the undesirability of an English court requiring a French citizen to do something which would amount to an offence in France. I have considered this somewhat anxiously, but it seems to me, again, for all the reasons which I have given, that there is no real invasion of French law here of a sufficient seriousness to mean that the documents production order is a breach of ordinary international comity. It seems to me, firstly, that in French authorities terms, the French authorities and French law would not regard this as being anything more than a minimal invasion, if indeed an invasion at all, of the Blocking Statute; and, secondly, that if one looks at this in overall European Union terms, that, France being bound by the Judgments Regulation, this would be seen to be properly a matter of the province of the English courts, what is appropriate in English law, rather than French law. For all those reasons, it does not seem to me that the documents production order should be affected by these grounds.

124. Therefore, it seems to me, that the documents production order it should extend to French assets. There then, however, comes the question of what should be in the documents production order itself. At an extremely, it seems to me, late stage, Monsieur Ohayon produced his version of what ought to be in the order. Mr. Weekes complains about that as being massively late, but in any event says that Monsieur Ohayon's various attempts to restrict the order are, in the main, not appropriate, but on the basis that the claimant is prepared to incorporate various restrictions.

125. It seems to me, first, that this divides into two sections. The first question is paragraph 2 of the body of the order, which provides general provision of all documents relating to Monsieur Ohayon's means. Secondly, there is Annex 1, which is headed "Additional documents", which essentially relates to specific assets, albeit which are mainly sought on the basis of their capital value, although various of them would give rise to income being generated, and there is also a catch-all with regards to Monsieur Ohayon's tax returns, which would also involve questions of income.

126. Mr. Campbell submits that I should remove the generality of paragraph 2 and concern myself simply with specific assets. The difficulty which exists here seems to me to be as follows: the claimant requires something along the lines of paragraph 2 in order to be able to obtain information about income, in circumstances where the court's enforcement processes of this jurisdiction, and therefore potentially of other jurisdictions, will include rights to its abilities to attach income. However, as Mr. Campbell says, to ask someone to produce all documents relating to their income is potentially extremely wide and could be oppressive.

127. The parties, it does not seem to me, have really provided a solution to what is a problem in both directions. Having considered this carefully, it does not really seem that it is for me to come up with such a solution myself. It seems to me that the best that I can do, bearing in mind that I do have a discretion and I am concerned as to whether this could be oppressive to Monsieur Ohayon, is to include within the body of the order "all documents relating to means" but to include a permission to apply to Monsieur Ohayon to vary the order to exclude various categories of documents if Monsieur Ohayon is prepared to adduce evidence as to both what those categories of documents are, and as to why he says production of them is oppressive, and that this permission is, of course, to be in the light of this particular judgment.

128. My intention behind this is as follows: Monsieur Ohayon should have to provide documents relating to his means and income, but if he is able to say, "Well, you effectively have the documents which you require. There are further documents where I am concerned that this order might be construed to apply to them, but they are of such a combination of extents and weight and expense to produce, when balanced against their peripheral use, in terms of working out what my income is, and how you might seek to get hold of it, that I should not have to provide them", then it seems to me that Monsieur Ohayon should be able to make such an application. It may well be that the claimant might, in some circumstances, actually consent to elements of it.

129. However, without Monsieur Ohayon actually having defined, (a), what he has actually provided, and, (b), why providing more would be oppressive, it does not seem to me that I should be varying paragraph 2 of the body of the order. It is for Monsieur Ohayon to say as to why the standard practice should be departed from in a fact-sensitive way, which involves him saying what he is providing, and why more is not required in the circumstances.

130. I turn, therefore, to Annex 1. Monsieur Ohayon has sought to cut down Annex 1 in a number of ways. It seems to me that a number of points of principle arise. The first question of principle, which is not actually in issue, is as to number of documents, where documents are sought in a category which could extend over many years, but the documents would be produced on a regular basis, as to whether only the latest set of those documents should have to be produced. The claimant's approach is to say that only the latest should have to be produced, but previous versions should have to be produced if they show a change in excess of £15,000 or its equivalent to the value of the rest of the asset on Mr. Ohayon's interest in such asset since 1st January 2016. Mr. Weekes says that that is important, because if there has actually been some transaction in the asset itself, or some change, then that may well suggest that something has been produced, which the claimant might wish to enforce against.

131. It seems to me that this is an appropriate way of dealing with those particular matters. The latest version will assist Monsieur Ohayon in terms of restricting what has to be produced, but as far as changes are concerned, which are changes since the inception of the financing arrangement, it seems to me that there is force in the claimant's contention that something may have been produced which is sought by the claimant to effectively enforce against, or that there may have been some transaction which the claimant may wish to seek to upset in some way, such as by an assertion that it is a transaction at an undervalue, and potentially subject to section 423 of the Insolvency Act. It therefore seems to me that that is an appropriate limitation with regards to documents.

132. Secondly, all these matters are introduced with the words "all documents" and then there are a set of specific documents in brackets related to Monsieur Ohayon's direct or indirect ownership or interest in the types of asset.

133. I suggested to Mr. Weekes in argument that that was potentially extremely wide and could involve all sorts of documents which were of very marginal or peripheral relevance to what the claimant is actually seeking; that is to say, documents which are relevant to enforcement. Mr. Weekes was prepared in argument to accept that there was force in a rewriting of the opening words to the account statements, valuations, sale/purchase/option or other contractual documents, registration documents and tax documents related to and other documents evidencing Monsieur Ohayon's direct or indirect ownership, et cetera.

134. Mr. Campbell sought for a much more limited formulation. It seems to me that Mr. Weekes's formulation as adjusted is appropriate. The relevant account statements, valuations, sale/purchase/option or other contractual documents seems to me all are matters either of being an asset in their own right or matters which potentially impact not only on value but also enforceability, and are within a limited compass. Other documents evidencing would make it clear that those documents evidence the relevant ownership, it seems to me, and would therefore be restricted.

135. Balancing the parties' various contentions together and my discretion, it seems to me that formulation of that nature both achieves the Part 71 objectives that I dealt with earlier in this judgment and affords a degree of limit so as to reduce the potential for oppression and be appropriate.

136. Mr. Campbell accepted the words "direct or indirect" should be there, but sought to have inserted the word "beneficial ownership" so as to make clear that it only relates to what Monsieur Ohayon himself owns. Mr. Weekes wished to have the words "legal or beneficial ownership", because he says that he wishes to have the information with regards to legal ownership to investigate as to whether or not Monsieur Ohayon actually has a beneficial ownership. Mr. Campbell said it should only be a question of what Monsieur Ohayon actually owns. It seems to me that if Monsieur Ohayon actually has legal ownership of the relevant asset, that it is perfectly legitimate for the judgment creditor to investigate as to whether or not he also has beneficial ownership and indeed simply to assert that to the courts. At first sight, if somebody legally owns an asset, then they also beneficially own it. It seems to me, for all those reasons, it should be legal or beneficial ownership. If some other party, such as a beneficiary, wishes to make an application to say that Monsieur Ohayon should not have to disclose the relevant material, it is up to that party to seek to make that application. In any event, they have no evidence from Monsieur Ohayon that there is any such relevant other party, apart from the potential for Madame Ohayon to have it, since her name appears on the statement of assets, but it seems to me that if she wishes to make an application, she is perfectly capable of doing so.

137. The next general point is that the relevant paragraphs each contain a requirement for Monsieur Ohayon to disclose all documents relating to the location or value of the assets. Mr. Campbell submits to me that that is too wide. All documents relating to value could be extremely wide indeed. It seemed to me that in argument Mr. Weekes was effectively prepared to go down something of a route which was proposed by a

mixture of myself and Mr. Campbell, which it seems to me is the appropriate way of balancing the relevant factors involved.

138. Mr. Campbell is prepared, on Mr. Ohayon's behalf, to produce a valuation of each of the relevant assets. It seems to me that the appropriate way to deal with this is for the provision to be that Mr. Ohayon should produce what is stated to be a confirmation of the location and of the value of the assets, and to produce copies of all documents relied on by Mr. Ohayon or his advisers in producing those confirmations, being of location and of value. It seems to me that as long as there is added to that in relation to companies where Mr. Ohayon accepts that he should produce their accounts, both their published accounts and their up-to-date management accounts, that that would be sufficient to avoid oppression. It seems to me that that will result in a substantial amount of documentation, which will be the sort of documentation which the claimant will be able to consider, and form its own view upon. If the claimant comes to the conclusion that the documentation is inadequate, then it seems to me that this is classically the sort of further documentation which should be sought under a *Mubarak* process at the first examination itself. It seems to me, in that way, that oppression, at this point, can be avoided.

139. Mr. Campbell otherwise produced a set of submissions with regard to seeking to limit the documentation which should be produced, in particular in terms of contracts, tax documents and securities. As far as securities is concerned, I can see no reason for limiting them at all. Securities are a form of financial instrument and asset, and I can see no reason as to why there should be some deletion of that nature. As far as sale/purchase/option contracts are concerned, Mr. Campbell submitted that they could be very varying in nature and personal, and there was no need to produce those. It seems to me that sale/purchase/option contracts are matters which go very much to the existence and value of assets. They are indeed assets in their own right. I can see no reason why they should not be produced.

140. There was a question he raised with regards to whether or not leases should be produced. I can see no reason at all as to why leases should not be produced. Mr. Weekes submitted that they are capable of being encumbrances, and that is plainly right. In any event, he says these are potentially valuable assets, and I agree. It seems to me that they should be produced.

141. As far as tax documents are concerned, it seems to me that tax documents should be produced as potentially showing somebody's assets and income and the like. The claimant seems to be prepared to restrict that to from 1st January 2016, and it seems to me that that is a reasonable restriction. It potentially avoids oppression, and that is the approach which I shall take.

142. As I said, Mr. Campbell objected to correspondence being produced. It seemed to me that that was so wide as to be potentially oppressive. The way to deal with that is to delete the references to "correspondence" but include "other documents evidencing [ownership]". It seems to me if there is correspondence which evidences an ownership, then at first sight that should be produced.

143. Subject to those various matters, it seems to me that, in general, I should vary the annex, but only along the lines that the claimant proposes, but subject to those various provisions.

144. Therefore, for those reasons, that is how I am going to deal with Mr. Campbell's application. I am not going to vary out French assets. I am going to make those various variations. Otherwise, the conformed order, as it is called, will only be varied to that limited extent, but with the inclusion of the permission to apply, which I have mentioned.

[*Further Argument]*

145. Mr. Campbell submits that it is oppressive to have to provide information with regards to assets which are already the subject matter of attachment, and where he says that the claimant knows perfectly well as to where and what those assets are, and therefore why should further work have to be done with regards to value, et cetera, et cetera.

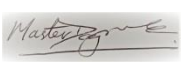
146. Mr. Weekes submits that it is important to know exactly what the assets are and, more importantly, as to how much they are worth, on both a gross and a net basis, in order to be able to consider as to what enforcement process should take place where, and, indeed, whether to continue with regards to enforcement with regards to those particular assets.

147. It seems to me that, again, I should accept Mr. Weekes's submissions. It may well be that the amount of documentation which is required is more limited as a result of the fact that there is enforcement already. I see that it may be problematic as to why Monsieur Ohayon should have to produce documents evidencing his ownership of a particular asset if, in fact, he accepts that he owns it, and it has been attached by the claimant. However, I am not at all sure as to what Monsieur Ohayon's position is in relation to particular matters and assets. He seems to be trying to contest matters in France as hard as he possibly can, and I suspect that it may be distinctly fact-sensitive as to what (if anything) Monsieur Ohayon actually accepts with regard to ownership.

148. In any event, as far as value is concerned, and as to what, if any, charges or pledges or whatever exist in relation to particular assets, it seems to me that this is all part of the judgment creditor being put in the position where the judgment creditor has full information to decide as to what to do next, which might even include deciding not to continue to try and enforce against a particular asset because it is thought that that particular game is not worth the candle.

149. While I would expect the parties to at least correspond as to whether or not Monsieur Ohayon should have to produce particular material because the claimant has it already, it does not seem to me that I should be excluding any assets from this particular requirement, at least not without very much more evidence as to what the position is with regards to a particular asset, which I do not have.

150. For all those reasons, I am not going to make that exclusion.

Approved  21.6.2021

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