Neutral Citation Number: [2021] EWHC 3315 (Comm)

Case No: CL-2019-000407

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

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

Date: 24/03/2021

Before :

MR SIMON RAINEY QC
(SITTING AS DEPUTY HIGH COURT JUDGE)

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Between :

(1) Hirbodan Management Company **(2) HICO FZE**	**Claimants**
- and -	
Cummins Power Generation Limited	**Defendant**

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The Claimants did not appear and were not represented
Mr Paul Lowenstein QC, Ms Angharad Parry, (instructed by **IBB Law**) for the **Defendant**

Hearing dates: 24 March 2021

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Approved Judgment

MR SIMON RAINEY QC :

Background

1. This is an application for security for costs by the Defendant, Cummins Power Generation Limited, in connection with an action brought against the Defendants by the Claimants, Hirbodan Management Company and HICO FZE. The action concerns a claim by the Claimants to enforce a judgment. The Claimants are judgment creditors pursuant to a judgment of the 27th branch of the Public Civil Court of Tehran and the Defendant is the judgment debtor pursuant to that judgment. The Claimants seek to enforce the Iranian judgment against the Defendant in England and Wales.

2. The Defendant accepts that the Iranian judgment was rendered by a court of competent jurisdiction and that it was for a fixed money sum but advances three defences as follows. Firstly, the judgment is insufficiently final and conclusive, so it is not enforceable. Secondly, the procedure adopted by the Iranian court was deficient (*e.g.*, there was a want of natural justice/fairness) and/or enforcement is contrary to public policy. Thirdly, the Defendant is in any event unable to satisfy the judgment because of the effect of US sanctions against Iran.

3. The case has been extensively pleaded out, and the issues are plainly substantial. The trial is scheduled to commence in February 2022 with a 7-day trial estimate, which reflects the complexity of the issues.

4. With that introduction, I clear out of the way immediately one relevant consideration on any security for costs application, and that is, the nature of the claim brought and the strength of that claim. It is accepted that it is inappropriate to carry out any detailed assessment of the merits. However, under well-settled *Sir Lindsay Parkinson & Co Ltd v Triplan Ltd* [1973] QB 609 principles, it remains a relevant consideration that the court is satisfied that the Claimants' claim is a *bona fide* one and not a sham, and that the Claimant has reasonable prospects of success.

5. I am satisfied from reading the papers and the extensive pleadings that those two points are met. I am also satisfied that the claim gives rise to substantial issues. The defence is also *bona fide* and stands equally reasonable prospects of success. In other words, the merits are balanced. For those reasons, I put them out of my mind for any further consideration of the entitlement to security for costs.

6. It is necessary to summarise the procedural history leading up to the present hearing. The Claimants have been represented from the time of the issuance of the claim form by Zaiwalla & Company (Zaiwalla) as their solicitors. The case was originally pleaded by Mr Richard Lord QC and in later pleadings by Mr Hodge Malek QC. The pleadings are fully developed and the case has gone to a first CMC.

7. In terms of the relevant procedural history, the Defendant first notified the Claimants that it intended to seek security for costs on 10 June 2020. The Claimants said that they would engage constructively with the Defendant. However, there was no evidence of that in the correspondence. For that reason, the Defendant raised the matter at the first CMC on 11 November 2020 when Mr Justice Picken gave various directions for the security for costs application.

8. The Defendant accordingly applied by application notice dated 16 December 2020 attaching a third witness statement of Mr Kite which annexed expert evidence on Dubai and Iranian law. There was then a lengthy exchange of correspondence between December 2020 and February 2021 in which the Defendant sought to elicit a response from the Claimants on the evidence. On 1 March 2021, the Defendant applied on paper for an "unless" order in respect of that responsive evidence. The Claimants did not serve any responsive evidence, although they sent a letter dated 3 March 2021 protesting that the security for costs application was "tactical" (although not indicating why). They also indicated they would serve responsive evidence by 12 March 2021. On 9 March 2021, Mrs Justice Moulder made an "unless" order requiring the Claimants to serve responsive evidence by 12 March 2021 and debarring them from relying on any evidence if that was not done. The Claimants had a right to apply within seven days to vary or set aside that order. The Claimants neither served any responsive evidence nor made any application to vary or set aside that order.

9. Following the 9 March 2021 Order, there was further correspondence by the Defendant to Zaiwalla (to which there was no response), and the Defendant sent the skeleton argument to Zaiwalla. On 19 March 2021, Zaiwalla emailed the Defendant to say they did not have instructions to respond to its letters or attend the hearing, and had not instructed counsel to attend the hearing. Without notice to the Defendant, Zaiwalla applied to this court for an order to come off the record. That order was made on 19 March 2021 by Mrs Justice Cockerill.

10. The result of this chronology is that the Claimants are not represented and do not appear today. There has been no communication of any sort from the Claimants with the Court or otherwise; I am satisfied that the Claimants had ample notice of the date of this hearing and the materials which are relied upon by the Defendant in support of its application, including the skeleton argument, and they could have responded. They have chosen not to do so. In my view, the only fair inference is that they have consciously decided not to engage with the process.

11. It follows therefore that the Claimants have put forward no evidence and the evidence by the Defendant is unchallenged.

Preliminary matters

12. There are two preliminary matters arising out of the fact that the Claimants are not represented and do not appear before me.

13. First, I have considered in the exercise of my discretion whether I should adjourn or defer this application. However, no application for adjournment or deferment has been made by the Claimants, and there has been no correspondence from the Claimant. In those circumstances, it would be contrary to the overriding objective to defer this application and extremely unfair to the Defendant.

14. Second, I remind myself of the principles which are to be applied by the court in determining a trial or an interim application when one party does not attend. Mr Lowenstein QC who appears on behalf of the Defendant has helpfully compiled the relevant well-known principles in a supplemental note. The principles were considered and restated by HHJ Waksman QC (as he then was) in *CMOC Sales and Marketing v Persons Unknown* [2018] EWHC 2230 (Comm) where Judge Waksman

considered the authorities, including the decision of Mr Justice Cresswell in *Braspetro Oil Services v FPSO Construction Inc* [2007] EWHC 1359 (Comm).

15. The core principles are as follows. First, where one party does not attend a hearing at trial, the participating party (here, the Defendant) is required to bring to the attention of the non-participating party what has happened. The Defendant has plainly brought all the elements relied upon, including the skeleton argument, to the attention of the Claimants. Second, the participating party is under an obligation to present the case fairly. This is not the same as a duty of full and frank disclosure on without notice applications, but an obligation to present the facts and arguments fairly. Thirdly, that involves drawing to the attention of the court facts and legal points which might be made by the non-participating party or which might be beneficial to the non-participating party. Fourthly, as part of that duty, the participating party must bring to the attention of the court any points which the non-participating had made whilst it was still represented or appearing, and points which had not been made but which might have been taken had it decided to attend.

16. In *CMOC*, Judge Waksman was referring to the situation at trial, but in my view the position is precisely the same in an application. This hearing as with a trial is not merely an exercise of rubber-stamping the case of the attending party but is to test and consider all aspects of the case.

17. Mr Lowenstein QC refers to a series of cases dealing with interim applications where precisely the same principles detailed by Judge Waksman in *CMOC* were applied. See, *Akcine Bendrove Bankas Snoras (a company incorporated pursuant to the laws of the Republic of Lithuania) v Vladimir Antonov Raimondas Baranauskas* [2020] EWHC 3515 (Comm) (a summary judgment application involving allegations of fraud) and *Qingdao Huiquan Shipping Co v Shanghai Dong He Xin Industry Group Co Ltd* [2018] EWHC 3009 (Comm). decision of Mr Justice Bryan in *Qingdao* is worth noting as he was dealing there with an interim application for an anti-suit injunction, and, having referred to *Braspetro* and *CMOC*, he identified that the duty was precisely the same. That is, in my view, important guidance. Like Mr Justice Bryan in the *Qingdao* case, I am satisfied that Mr Lowenstein QC has borne those obligations well in mind and has been punctilious to take fair presentation points throughout and to identify (almost exhaustively) any points which might be regarded as points which went to the position of the Claimants in response to this application or which could possibly have been taken by the Claimant.

Security for costs

18. I now turn to the substance of the application for security for costs made by the Defendant. The jurisdiction of the court and the relevant principles are well-known and do not need to be set out in any detail. The power of the court to order security for costs under CPR 25.12 is subject to the conditions which are set out in CPR 25.13. An order for security for costs may be made if (1) one of the conditions set out in CPR 25.13(2) is met – the condition requirement, sometimes referred to as a pre-condition, (2) if the condition has been satisfied, then the court has to be "satisfied, having regard to all the circumstances of the case, that it is just to make such an order" – the discretion requirement, sometimes referred to as the justice requirement.

19. As regards the condition requirement, the Defendant relies on the condition in CPR 25.13(2)(a). That is, "(a) the claimant is (i) resident out of the jurisdiction; but (ii) not resident in a Brussels Contracting State, a State bound by the Lugano Convention, a State bound by the 2005 Hague Convention or a Regulation State, as defined in section 1(3) of the Civil Jurisdiction and Judgments Act 1982".

20. The First Claimant is an Iranian body corporate domiciled in Iran. The Second Claimant is a UAE body corporate domiciled in Dubai, UAE. As those countries are not countries which fall within subparagraph 2(a)(ii), then the condition is satisfied.

21. However, to avoid discrimination, it has become a settled aspect of CPR 25.13(2)(a) that the applicant must show it will experience difficulties in enforcement of an award of costs either against the foreign claimant or in the place where the foreign claimant is to be found. The relevant principles are well-settled and are set out in a series of cases to which I have been taken by Mr Lowenstein QC. Firstly, *Nasser v United Bank of Kuwait* [2001] EWCA Civ 556. Secondly, the exposition of those principles in *Kazakhstan Kagazy Plc v Zhunus* [2015] EWHC 996 (Comm). Lastly, the even more succinct summary of the principles by Lord Justice Hamblen (as he was then) in *Chernukhin v Danilina* [2018] EWCA Civ 1802. The relevant principles are as follows.

22. First, residence in the foreign State is not, by itself, a justification for an order for security for costs. The grant of security for costs is never "automatic or inflexible".

23. Second, it is necessary for the applicant to demonstrate to the court that it will experience "substantial obstacles or extra burdens" in relation to the enforcement of a costs order in the foreign country "meriting the provision of an order for security for costs".

24. Third, the court can only find that there is a substantial obstacle or extra burden based on an objective assessment of evidence.

25. Fourth, and importantly in my view, it is not necessary for the applicant to establish that there will be, on the balance of probabilities, a substantial obstacle, but only that there is a real risk that the applicant will not be in a position to enforce the award for costs in that place. This is summarised and developed in two authorities: *Bestfort Developments LLP v Ras Al Khaimah Investment Authority* [2016] EWCA Civ 1099 and *PJSC Tatneft v Bogolyubov & Ors* [2019] EWHC 1400 (Comm).

26. I turn to the evidence on which the Defendant relies to demonstrate that there are obstacles and burdens on enforcement which give rise to a real risk that enforcement of a costs order will not be possible.

27. It is important to note that the Claimants are in different jurisdictions. That point has been relied upon heavily by the Claimants as a ground for not ordering security in correspondence sent in 2020. The Claimants have said, as they are jointly and severally liable for any costs if they are unsuccessful in the action, any alleged difficulties in enforcing a costs order in Iran would not be relevant because it would be much easier to enforce the costs order against the Second Claimant in Dubai. It is therefore necessary to consider the position in each jurisdiction.

28. There is no evidence from the Claimants on any of these matters in relation to enforcement. But in light of the principles set out in the cases referred to, namely *CMOC* and the subsequent endorsement of that decision, I must assess the evidence carefully and scrupulously for myself.

29. In respect of Iran, there is a report which has been put in by the Defendant from an attorney at law authorised to practice in Iran and a member of the Iranian Central Bar Association, Mr Karimi, who is a member of Karimi and Associates.

30. He has written an opinion which reaches the conclusion that there is a risk of total non-enforcement of the costs order in Iran for essentially two reasons. First, Iranian law requires reciprocity or mutuality of recognition to allow enforcement of a foreign judgment. As he puts it, if the current action in England ends with the English court refusing to enforce the Iranian judgment, the Iranian courts would not allow enforcement of the English costs order in Iran due to Article 169(1) of the Civil Judgments Enforcement Act. In my view, that seems to be entirely coherent given the materials upon which Mr Karimi relies. The second reason he gives is that enforcement of a foreign judgment is only possible in Iran if it does not conflict with an Iranian judgment. An English costs award against the Claimants would necessarily denote that the Defendants had resisted enforcement of the Iranian judgment. In Mr Karimi's view, this would be viewed by the Iranian courts as being in conflict with the original Iranian judgment. For those reasons, he concludes that the Iranian court would not enforce the foreign costs order in Iran. I accept that evidence. It follows therefore that there is a real risk of total non-enforcement of the costs order in Iran.

31. The elements in relation to Dubai are given in two letters of advice, one incorporated by reference in the second, and the second has been written by Mr Hutchinson. Mr Hutchinson states that he is a partner in the Dubai office of Clyde & Co. LLP. He is qualified as an English solicitor and has practiced in the UAE since 2007. He is a registered practitioner at the courts of the Dubai International Financial Centre (DIFC), and he has acted and advises on a regular basis in relation to various foreign judgment enforcement cases in the UAE courts.

32. The first issue that arises is that there are two jurisdictions in Dubai which might be relevant: (1) the onshore Dubai jurisdiction and (2) the jurisdiction of the DIFC. The Second Claimant is located not in the DIFC free zone but in the Jebel Ali free zone. The evidence of Mr Hutchinson is that the Second Claimant is outside the jurisdiction of the DIFC courts. In a letter written by Zaiwalla in July 2020, no distinction is made between various Dubai jurisdictions. I hold that, on present evidence, the only relevant law is the law which applies in the onshore Dubai jurisdiction.

33. In relation to the onshore Dubai jurisdiction, Mr Hutchinson's view is that there would be very substantial difficulties in enforcing a costs award before those courts. I take judicial notice of the fact that those are effectively the local courts which are different to the international jurisdiction exercised by the DIFC courts. Therefore a different approach is taken for understandable reasons. The first important point to note is that Mr Hutchinson is aware of no historic or recent example of an English judgment or costs award ever being recognised or enforced before the onshore jurisdiction courts. In one sense, this is enough to dispose of the point in the Defendants' favour. However, he goes on to consider issues as a matter of principle. He analyses two reasons why this is presumably the case. First, onshore courts require

reciprocal or mutual enforcement. As he narrates, historically there has been no reciprocity with England and there is only a single English judgment in 2020 which recognised an onshore Dubai judgment. Mr Hutchinson states (in my view logically and understandably) that this has not been translated into a recognition of mutuality in the Dubai. Second, costs orders as we know them do not exist under UAE law and therefore an onshore Dubai court might not enforce an English costs order because there is simply no comparable regime in Dubai local law. Mr Hutchinson also considers that the Dubai onshore court would regard it as a matter of public policy not to allow the enforcement of an award for costs.

34. For those reasons, having considered the evidence, which has been carefully prepared by Mr Hutchinson, I find that there is a real risk of total non-enforcement of an English costs order against the Second Defendant in the onshore jurisdiction in Dubai, which is the only relevant jurisdiction.

35. The judgment could stop there. Nevertheless, pursuant to the duty of fair presentation, Mr Hutchinson considered and Mr Lowenstein QC addressed me on the position in the DIFC jurisdiction.

36. However, before considering the position in the DIFC jurisdiction, there is an important point to note. If the Second Claimant is established in the Jebel Ali Free Zone, for a DIFC judgment which enforces the costs award to be effected, there would need to be assets within the jurisdiction of the DIFC courts. At the moment, there is no transparency in relation to the assets of the Claimants. Therefore, even if the Second Defendant was subject to the DIFC jurisdiction, it is not possible to say whether there are any assets there rather than in the Jebel Ali Free Zone. That matters because if there are no assets within the DIFC zone, the DIFC court will go no further: there will be no ability to unlock assets in the Jebel Ali free zone.

37. I bear in mind that lack of transparency in relation to assets is relevant to security for costs because it obviously impacts upon the efficacy of any enforcement order. See *Pisante v Logothetis* [2020] EWHC 3332 (Comm). Whether the assets could be moved around so the applicant has to "chase" the assets is also a relevant factor. See *PJSC Tatneft v Bogolyubov* [2019] EWHC 1400 (Comm).

38. I am therefore satisfied that, whichever jurisdiction applies to the Second Claimant, the evidence clearly establishes that there exists a substantial obstacle and additional burdens to enforcement which are enough to amount to a real risk of total non-enforcement.

39. I however note that enforcement in the DIFC is open to derailment by a party bringing parallel proceedings before the onshore jurisdiction courts. That depends on the judgment debtor on the costs order electing to challenge the recognition of the costs order before the DIFC court by bringing parallel proceedings before the onshore jurisdiction courts. In my view, if there is a valid way of challenging the recognition of a costs order, the obvious inference is that almost all litigants are likely to take it. Even if that were too pessimistic a view, given that the Second Claimant has not cooperated at all in the process of security for costs, I infer that there would be a substantial risk that the Claimant would engage in parallel proceedings. If parallel proceedings are engaged, that would be fatal to the enforcement of the costs order because the matter would have to be dealt with by the Joint Judicial Committee (JJC),

where the majority of members are onshore judges and recent case law suggests that the JJC is readily inclined to quash DIFC jurisdiction when used as a conduit to enforcement.

40. For these reasons, the DIFC jurisdiction has nothing to do with the case on the evidence as it stands before me. If it did, for the reasons I have given, there is a real risk of total non-enforcement of the costs order in whatever jurisdiction, namely, Iran, Dubai onshore, or Dubai DIFC.

41. Therefore, in my view, the condition in the CPR is met.

42. As regards the discretion requirement, CPR 25.13(1)(a) requires the court to be "*satisfied, having regard to all the circumstances of the case, that it is just to make such an order*". This brings in well-known discretionary considerations summarised by Lord Denning MR in *Sir Lindsay Parkinson & Co Ltd v Triplan Ltd* [1973] QB 609.

43. Mr Lowenstein QC carefully went through as many potential arguments as were possible which might impact on the discretion which might have been relied upon or which were relied upon in correspondence by the Claimants.

44. The first matter is whether the effect of security for costs would effectively be to stifle the Claimants' claim. See *Keary Developments Ltd v Tarmac Construction Ltd* [1994] 3 All ER 534. A stifling argument can only be relied upon by a Claimant who puts all his cards on the table, shows his full asset position and for whom there are no means at all to fund the proceedings. Because the Claimants have not appeared and put in no evidence, that factor can instantly be dismissed. Note in passing that, until Friday of last week, the Claimants had instructed a major firm of solicitors and engaged the services of a leading QC. In those circumstances, stifling seems to me to be unarguable.

45. Secondly, the Claimants have made no proposals or any constructive debate in relation to the lodging of security for costs.

46. Thirdly, I have to consider whether there has been any undue delay on the part of the Defendants in bringing this application. In my view, there is none: (1) there was no complaint about delay at the first CMC where Mr Justice Picken laid down a timetable for the security for costs application, (2) the trial is not until 2022, and (3) the application for security for costs is prospective and covers all costs down to trial. In my view, this has been brought perfectly properly and without any relevant delay.

47. It is also necessary to deal with the points made by the Claimants previously in correspondence.

48. In the letter to Mrs Justice Moulder on 3 March 2021, the Claimants objected to the application for an "unless" order. The gravamen of that letter was that the application for security for costs was inappropriate because it was tactical. In my view, it is certainly not a tactical manoeuvre. Indeed, it is a perfectly well-grounded application for security for costs. In one sense, it is always tactical to apply for security for costs because it makes the claimant 'put up or shut up'. In that sense, it is tactical, but it is not improperly tactical, and therefore that letter takes matters nowhere.

49. More important is the letter sent by Zaiwalla on 13 July 2020 which Mr Lowenstein QC specifically referred me to as part of his duty of fair presentation. That makes a number of points which can be dealt with shortly.

50. First, it says the request for security for costs has not been properly explained. That is untenable on its face.

51. Second, it says that there is no real risk and it takes the point that any problems in Iran would not be relevant because the Claimants are jointly and severally liable. I have dealt with that point.

52. Thirdly, it says that an English court order can be ratified in the DIFC court and enforced easily against the Second Claimant. No explanation is given as to why DIFC jurisdiction applies over the Jebel Ali Free Zone one. Even if it could, for the reasons given by Mr Hutchinson, there would be a very serious obstacle to enforcement.

53. Fourth, it says that the Claimants are a long-standing judgment debtor. That begs the question whether the judgment can be recognised or not. As I said, both sides' cases are substantial and *bona fide*, and it is not appropriate to go any further into the merits.

54. Fifth, it says that the claim has strong prospects of success. That is impossible to say at this stage and takes the Claimants nowhere.

55. Sixth, it relies on a well-known line of authority starting with *Crabtree (BJ) (Insulation) Ltd v GPT Communications Systems Ltd* [1990] 59 BLR 43 which provides that, if the same issues arise in the claim and counterclaim, then the costs incurred in defending the claim are also incurred in bringing the counterclaim, and therefore security for costs is inappropriate because you are effectively getting security for your counterclaim (this was previously referred to as *The Silver Fir* principle: see *Samuel J Cohl Co v Eastern Mediterranean Maritime Ltd (The Silver Fir)* [1980] 1 Lloyd's Rep. 371). In my view, that is unarguable given the issues in this case because the counterclaim is effectively the defence. The counterclaim seeks a declaration that the judgment cannot be enforced and includes a very short point of law on the Protection of Trading Interests Act 1980. In my view, the *Crabtree/Silver Fir* principle has no application.

56. This leaves the other possible points which might have been taken, which were exhaustively considered by Mr Lowenstein QC (with more ingenuity than the Claimants might themselves have deployed).

57. First, the Defendant holds deposit monies in the sum of £170,000 or a sum of that order which was paid to it by the Claimants in about 2008. The Claimants might have said this needs to come off the security because you can look to that to discharge any costs order which is made. In my view, as a matter of discretion, that would be a very harsh result because the request for security for costs is prospective only and does not deal with already incurred costs. If the costs are not honoured, then the Defendant is going to be substantially out of pocket. In my view, that should not go to the grant of security for costs nor to the amount of security ordered.

58. A technical but better point is that the Claimants might have advanced an argument that the quantum of prospective costs includes a small element for costs which were incurred before the application for security for costs was made. It is well-settled that when you apply for security for costs, you apply for security for costs going forward, not already incurred. If you choose to incur costs before, then that is at your risk. This is a point which I am attracted to. A reduction should therefore be made in any sum ordered for security to reflect this.

59. This analysis brings me on to the conclusion that security for costs is appropriate and should be ordered.

60. As to the amount, the starting point is that there is a real risk of total non-enforcement. This is not one of those cases where one *can* enforce but it is going to be a long and thorny road. Here, the real risk is the total unenforceability of the costs order. In those circumstances, the relevant principle is summarised by Lord Justice Hamblen (as he then was) in *Chernukhin v Danilina* [2018] EWCA Civ 1802 at paragraph 51(7): "where the risk is of non-enforcement, security should usually be ordered by reference to the costs of the proceedings – see, for example, the orders in *De Beer* and *Bestfort*".

61. My starting point is, therefore (subject to the point I have just made as to deducting costs incurred), the total approved prospective costs, namely, £930,025.00. From that, the Defendants have fairly deducted the estimated future costs of two stages (Issues and Statements of Case, and a further CMC) and contingency costs for ADR, security for costs and the Claimants' threatened application for summary judgment. That is total prospective approved costs of £762,100, subject to a deduction for costs incurred. I therefore order security for costs in that adjusted sum.

62. The Defendant seeks security in tranches based on the costs stages set out in the approved costs budget. I order those stages.

63. The form of security sought is payment into court; alternatively, provision of security in a form acceptable to the Defendant and to the court. As usual, if that cannot be agreed, then the matter can be restored to me or to any judge of the Commercial Court to be resolved as to the form.

64. For those reasons, I make an order in the terms set out in paragraphs 1, 2, 4 and 5 of the draft order, subject to a deduction of £13,500 from the disclosure tranche and an amendment to paragraph 1 to reflect paragraph 58 of the Defendant's skeleton argument.

Alternative service

65. This is a further application arising out of the coming off the record of Zaiwalla as solicitors for the Claimants. As stated, on 19 March 2021, Zaiwalla applied to the court and was granted an order allowing it to come off the record by Mrs Justice Cockerill. Zaiwalla had permission to serve a copy of that order on the Claimants by transmitting a copy to the email address set out in that order. This is not without significance because that is an address given to the court by solicitors as an effective address for transmission of an order of the court to the Claimants. Unfortunately, by I think an oversight, it was not appreciated that under PD 42.5(1), "where the court has

made an order under rule 42.3 that a solicitor has ceased to act …, the party for whom the solicitor was acting must give a new address for service to comply with rules 6.23(1) and 6.24".

66. The Claimants have given no such address. That means the Claimants have not complied with their obligations under PD 42.5(1). They have no place of business or other address in the United Kingdom from which they operate. Therefore, at the moment, there is no address for service within the United Kingdom or the jurisdiction as required by CPR 6.9. That needs to be remedied.

67. In those circumstances, Ms Parry, Junior Counsel for the Defendant, applies for two types of orders. The first is an order allowing retrospective good service of costs budgets which would have been served on Zaiwalla but could only be sent after Zaiwalla came off the record. The costs budgets were sent to the email address set out in the order of Mrs Justice Cockerill. An order is sought that that was good service. In my view, it is plainly appropriate to order retrospective good service for a number of reasons. Firstly, the Claimants should have given an address for service. They have not complied with the rules. They can hardly grumble if matters have to go by retrospective means or if they were served by an email address. Secondly, that email address was given by their own solicitors to the court; therefore, the court can assume it is a good email address for directing matters to their attention. Thirdly, given the fact they chose not to attend, again, they can hardly complain if documents were sent by that alternative route. In those circumstances, I make the retrospective order.

68. In terms of the future, matters need to be resolved so the court has an address through which it can communicate with the Claimants but also so the Defendant has an address for forthcoming stages of the action so it can properly serve documents on the Claimants as necessary.

69. In those circumstances, Ms Parry seeks an order for alternative or substituted service under CPR 6.27. This will be ordered whenever there is a good reason for alternative or substituted service. There is obviously a very good reason to order substituted service because the Claimants have given no address, and until and unless they do, the court has to find some other means for the Defendant and the court to communicate with the Claimants. The addresses provided by the Defendant to the court are postal addresses, the email address in the order of Mrs Justice Cockerill, and the general email addresses on the Claimants' websites. It is plainly appropriate to make an order for substituted or alternative service, and I so make that order.

70. Additionally Ms Parry seeks an order that the Claimants shall forthwith provide a valid address for service as required by CPR 6.26 and PD 42.5. I make the order in the terms sought by Ms Parry.