Neutral Citation Number: [2022] EWHC 1867 (Comm)

Case No: LM-2020-000069

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

Rolls Building
7 Rolls Building, London EC4A 1NL

Date: 21/07/2022

Before :

Ms Lesley Anderson QC
(sitting as a Deputy Judge of the High Court in the London Circuit Commercial Court)

- -

Between :

MOUNTAIN ASH PORTFOLIO LIMITED (As Trustee of CF Structure Products BV)	**Claimant**
- and –	
BORIS TSIBENOVICH VASILYEV	**Defendant**

- -
- -

Tom Poole Q.C. and Chloe Shuffrey (instructed by **Edmans & Co**) for the Claimant
Richard Power (instructed by **Dentons UK & Middle East LLP**) for the Defendant

Hearing date: Monday 11 July 2022

- -

JUDGMENT

Ms Lesley Anderson QC sitting as a Deputy Judge of the High Court in the London Circuit Commercial Court:

Preliminary

1. This is my judgment following the hearing of the application by the Defendant, by application notice dated 19 November 2021 ("the Application"), for an order that the Claimant give security for the Defendant's costs of defending these proceedings by making a payment into court. Although the Application Notice had sought that the Claimant pay security in the sum of £2,755,185.98 (representing the entire incurred and estimated costs of the proceedings) in his Skeleton Argument for the hearing and in oral submissions, Counsel for the Defendant sought the revised sum of £2,000,000. The Application is opposed on behalf of the Claimant.

2. Although the papers indicate that these are proceedings in the Financial List of the Commercial Court, the matter came before me sitting as a Deputy Judge of the High Court in the London Circuit Commercial Court. The Application was held remotely by Microsoft Teams.

The Factual Background

3. Much of the factual background was not in dispute. The underlying claim was issued on 29 April 2020. The Claimant seeks to recover the sum of £101,394,000 from the Defendant pursuant to a written shareholder's guarantee dated 1 November 2007 ("the Guarantee"). On the Claimant's case, the Defendant (together with Georgy Yuryevich Trefilov ("Mr Trefilov")) jointly and severally guaranteed the obligations and liabilities of MARTA Unternehmensberatung GmbH ("MUG") to CF Structured Products BV ("CFSP") pursuant to a loan agreement made between CFSP and MUG dated 21 October 2007 in a sum of USD 100m ("the Loan"). Until April 2008, the Defendant had been employed as Vice-President for retail of the Marta Group of companies which owned a chain of supermarkets trading under the Grossmart brand in the Russian Federation. The Capital for the Loan was provided by Ashmore Investment Management Limited ("Ashmore") and CFSP, a special purpose vehicle, was appointed as the designated issuer of loan notes with a corresponding value of USD 100m ("the Loan Notes") which were then placed with Ashmore. Deutsche Trustee Company Limited ("DTCL") was appointed as the trustee of the Loan Notes pursuant to a Supplemental Trust Deed dated 1 November 2007 made between CFSP and DTCL. MUG defaulted on the Loan in 2008 and it was placed into insolvency process in early 2009 and then liquidated in 2017.

4. In around December 2013, Ashmore sold the Loan Notes to 515 Capital Limited ("515") which then stepped into the shoes of Ashmore, including requiring the then

trustee, DTCL, to take enforcement action against MUG and the two guarantors of the Loan. In March 2018, the Claimant replaced DTCL as corporate trustee and, as the title to the proceedings indicates, it brings these proceedings in its capacity as trustee of CFSP. Although at one point the Defendant had suggested that the true beneficiaries of any proceeds recovered by the Claimant were opaque, both parties proceeded before me on the basis that the principal beneficiary, after payment of the Claimant's costs and taxes, is 515.

5. Returning to the procedural chronology, no acknowledgment of service was filed by or on behalf of the Defendant and pursuant to a request dated 23 September 2020, judgment in default was entered in favour of the Claimant in a sum of £101,404,140 ("the Default Judgment") which was served on the Defendant on 29 September 2020. On 5 February 2021, the Defendant made an application to set aside the default judgment under CPR Part 13.3 ("the Set Aside Application"). According to the two, disjunctive limbs of CPR Part 13.3, the court may set aside a judgment in default if: (a) the defendant has a real prospect of successfully defending the claim or (b) it appears to the court that there is some other good reason why the judgment should be set aside or varied or the defendant should be allowed to defend the claim.

6. The Set Aside Application was heard by Stephen Houseman QC sitting as a Deputy Judge of the High Court in the London Circuit Commercial Court on 23 June 2021 and his detailed written judgment was handed down on 7 July 2021 with the neutral citation number [2021] EWHC 1853 (Comm) ("the Judgment"). The parties were represented by the same solicitors and Counsel as appeared before me. Unusually therefore in this type of application, I have had the benefit of being able to read and consider carefully that judgment and the Judge's analysis of the evidence before him. I am particularly assisted by his account of the factual background in paragraphs [8] to [32]. It is not in issue before me that the Judge there correctly identified that the Defendant was seeking to defend on two distinct bases: first, the Defendant denied that the signature on the Guarantee was his (referred to in the Judgment as "the Forgery Issue") and secondly, that the Guarantee was witnessed in his presence by a Ms Irina Lerner (known then by her unmarried name as Irina Kozlova) ("Ms Lerner") (referred to by the Judge as "the Witness/Deed Issue").

7. The outcome of the Set Aside Application can be seen from Stephen Houseman QC's order ("the Order"). The Default Judgment was set aside on conditions that: (1) the Defendant was to pay the Claimant's costs (i) of and occasioned by entering the Default Judgment; (ii) of an application dated 22 December 2020 seeking recognition of the

Default Judgment and (iii) of dealing with the Set Aside Application which costs were agreed as if assessed on the indemnity basis in the sum of £146,323.52 to be paid by the Defendant and (2) the Defendant was to pay the sum of £482,000 into court by 4pm on 18 August 2021. As I shall refer to further below, the Order reflected very serious concerns and reservations that the Judge had about the substantive merits of the Defendant's proposed defence and the significant delay on his part in bringing the Set Aside Application after learning of the Default Judgment. In the Judgment at [83], the Judge summarised that he was satisfied that the threshold merits gateway in CPR 13.3(1)(a) had been met by the Defendant in relation to the Witness/Deed Issue but barely in relation to the Forgery Issue.

8. At [134], the Judge commented that the Defendant should be in no doubt that he had managed to set aside the Default Judgment "*by the skin of his teeth*".

The Grounds of Opposition

9. The Claimant opposes the Application on three grounds.

10. First, it is submitted that the claim has a very high probability of success and that this is, in substance, what is the effect of the findings made by Stephen Houseman QC in the Judgment. I will refer to this as the Merits Ground.

11. Second, it is submitted that it is inappropriate to order security for costs in relation to this claimant which brings the claim as a corporate trustee and is not itself the beneficiary of any proceeds of the claim. The Claimant submits that such an order would be exceptional and that no exceptional circumstances exist here. I will refer to this as the Trustee Ground.

12. Third, it is submitted that the application for security is oppressive and a transparent attempt to stifle the claim and that an order for security would have that effect. Bearing in mind the views expressed on the merits in the Judgment, it would be unjust for the Claimant to be prevented from pursuing a highly meritorious claim, for which the Claimant has now issued an application for summary judgment. I will refer to his as the Stifling Ground.

The Evidence

13. The Application was supported by the following evidence on behalf of the Defendant: the witness statement of Thomas Leyland (solicitor and partner at Dentons, solicitors for the Defendant) dated 2 November 2021 and a witness statement of Adrian Giles (solicitor at Dentons) dated 14 April 2022.

14. On behalf of the Claimant, I have read and considered the following evidence: the witness statement of Stanislav Yoffe (a director of 515) dated 7 January 2022; the third witness statement of David Manasyan (solicitor and director of Edmans & Co, solicitors for the Claimant) dated 10 January 2022 and the recent statement of Vladimir Zayachkovsky (former Head of Securities at Marta Holdings) dated 27 May 2022. I was also referred to the witness statement of Sergey Grechishkin dated 20 March 2021 (which was made in connection with the Set Aside Application) and to the fourth witness statement of Mr Manasyan dated 22 June 2022 (which has been sworn in support of the Claimant's application for summary judgment).

The Law

15. The parties were broadly agreed as to the relevant legal principles and cited a large number of common authorities.

16. The starting point is CPR 25.12(1) which provides that a defendant to any claim may apply under that section for security for his costs of the proceedings.

17. CPR rule 25.13 then provides that:

"*(1) The court may make an order for security for costs under rule 25.12 if:*

(a) it is satisfied, having regard to all the circumstances of the case, that it is just to make such an order; and

(b) (i) one or more of the conditions in paragraph (2) applies"

18. The relevant condition here is in CPR 25.13(2)(c):

"the claimant is a company or other body (whether incorporated inside or outside Great Britain) and there is reason to believe that it will be unable to pay the defendant's costs if ordered to do so".

19. Thus, there is a two-stage process: the court must first consider whether the relevant condition is satisfied and, if that is met, the court must go on to consider as a matter of

discretion whether it is just in all the circumstances to make an order and if so, how much should be paid or secured by way of security for the costs.

20. I was referred to a number of authorities on the relevance of the merits when determining an application for security for costs. It is well established that the court should not go into the merits of the claim in detail unless it can be demonstrated that there is a high degree of probability of success or failure – see *Porzelack KG v Porzelack (UK) Limited* [1987] 1 All ER 1074 at 1077 and the decision of Peter Gibson LJ in *Keary Developments Ltd v Tarmac Construction Ltd* [1993] All ER 534 at 540D-E. Leading Counsel for the Claimant went further and submitted that where a claimant can demonstrate at the time of the application for security that it is "*highly likely to succeed at trial"*, it ought not to be required to lodge security for the defendant's costs – see per Sedley LJ in the Court of Appeal in *Al-Koronky and another v Time-Life Entertainment Group Ltd and another* [2007] 1 Costs LR 57 at [24].

21. More recently, in *Danilina v Chernukhin and others* [2018] EWCA Civ 1802, Hamblen LJ at [69] (with whom the other Lord Justices agreed) said as follows:

"*In relation to the appropriateness of considering arguments on the merits, the position is correctly summarised in the notes to the Civil Procedure 2018, vol 1, p.836, para. 25.13.1: "Parties should not attempt to go into the merits of the case unless it can be clearly demonstrated one way or another that there is a high degree of probability of success or failure. See Porzelack KG v Porzelack (UK) Ltd [1987] 1 WLR 420".*

22. He went on to observe at [70] that the commentary in the notes to the White Book that in considering an application for security for costs against a claimant, the court must take into account the claimant's prospects of success was wrong and should not be followed.

23. I was also referred by Counsel for the Defendant to the decision of Mr Justice Leggatt (as he then was) in *Dena Technology (Thailand) Ltd and another v Dena Technology Limited and Dr B Sulaiman* [2014] EWHC 6161 (Comm) as an unusual example where the judge decided it was appropriate to investigate the merits. At [31], the Judge concluded that it did not seem likely that Dr Sulaiman would succeed in his defence but that that view of the merits, formed on necessarily limited material at that stage, should not deprive the defendants of any security for their costs. Rather he considered that it was a matter to take into account in exercising his discretion as to what was the

appropriate amount of security. He also referred me to the guidance in the most recent Commercial Court Guide at paragraph 4 of Appendix 10 which states that:

"Investigation of the merits of the case on an application for security is strongly discouraged. It is usually only in those cases where it can be shown without detailed investigation of evidence or law that the claim is certain or almost certain to succeed or fail that the merits be taken into consideration".

24. Although Counsel for the Defendant identified a potential tension here with the comments of Sedley LJ in the *Al-Koronky* decision at [24], I am satisfied that the correct position is that set out in the passage from *Chernukhin* which I have already identified and that the Commercial Court Guide properly reflects the law. Moreover, I accept his submission that the present case is very different from the *Dena* case (a claim for fraudulent misrepresentation because, unusually for such a case, the Judge was satisfied on the materials before him, that the relevant representations had been made and that there was a high probability of the claim succeeding).

25. So far as the stifling objection is concerned, I was referred to the well-known observations of Lord Denning MR in *Sir Lindsay Parkinson & Co v Triplan* [1973 QB 609 at 626 that the Court might, in the exercise of its discretion, consider whether the application for security was being used oppressively so as to try to stifle a genuine claim and to the comments of Lord Wilson (with whom Lord Neuberger and Lord Hodge agreed) in *Goldtrail Travel Ltd v* Aydin [2017] UKSC 57 at [12] to [17]. At [12] he said: "*If an appellant had permission to bring an appeal it is wrong to impose a condition which has the effect of preventing him from bringing it or continuing it"*. It was not in issue that the burden is on the claimant to show, on the balance of probabilities, that the effect of an order for security for costs would be to stifle the claim. Further, as Lord Wilson made clear at [17], even if the party against whom an order for security is contemplated appears to have no realisable assets of its own with which to satisfy it, an order for payment will not stifle the claim if it can raise the required sum. Particular caution is to be exercised where the applicant suggests that security can be raised from a controlling shareholder.

26. I was also referred by Counsel for the Defendant to the observations of Eady J at first instance in the *Al-Koronky* case [2005] EWHC 168 (QB) at [31] and not disturbed on this point by the Court of Appeal:

"*.... It is necessary for the Claimants to demonstrate the probability that their claim would be stifled. It is not something that can be assumed in their favour. It must turn on the evidence. I approach the matter on the footing that there needs to be full, frank, clear and unequivocal evidence before I should draw any conclusion that a particular order will have the effect of stifling. The test is whether it is more likely than not*".

27. Finally, on quantum of security for costs, I was referred to the decision of Henshaw J in *(1) Victor Pisante (2) Swindon Holdings & Finance Limited (3) BCA Shipping Investment Corporation (4) Castor Navigation Limited v (1) George Logothetis (2) Lomar Corporation Limited (33) Lomar Shipmanagement Limited (4) Libra Holdings Limited* [2020] EWHC 3332 (Comm) at [88] and to the endorsement there of the approach in *Excalibur Ventures v Texas Keystone* [2012[EWHC 975 (QB) at [15]. What is required, the Defendant submits, is not an exercise similar to detailed assessment rather that the evidence as to the amount of costs which will be incurred is to be approached on a robust basis and applying a broad brush.

Threshold Condition CPR 25.13(2(c)

28. It is not now disputed that the Claimant is a company for the purpose of the relevant condition in CPR 25.13(2)(c) and that there is reason to believe that it will be unable to pay the Defendant's costs if it is ordered to do so. In his witness statement, Mr Yoffe deals with the position of the Claimant and 515 but in view of that concession it is not necessary for me to set it out in any detail. It is clear on the evidence before me that the Claimant is balance sheet insolvent, with current assets of only £99.00, current creditors of £336.00 and net liabilities of £237.00. The latest filed accounts for 515 for the year ending 31 July 2021 reveal that it too is heavily insolvent on both a balance sheet and cash flow basis.

29. Accordingly, I go on in the remainder of this judgment to consider whether, having regard to all of the circumstances of the case, it is just to make an order for security for costs and if so, for how much.

The Merits Ground – Analysis

30. For the Claimant, Mr Poole QC submits that this is one of those cases where I can be satisfied, on the evidence before me, that the Claimant is highly likely to succeed at trial such that I am either precluded, as a matter of law, from ordering security or that, at the very least, it should weigh very heavily against the grant of security.

31. His starting point is the Judgment on the Set Aside Application which, when properly analysed, he submits carries the inference that the Court has already decided that the claim is highly likely to succeed at trial. Further, insofar as the Judgment identified potential weaknesses in the Claimant's case, he submits that those evidential gaps have now been filled in the most recent evidence.

32. Starting with the Judgment itself, he referred me to the following paragraphs in support of that submission: paragraphs [33], [51], [52], [53]; [55] to [62], [63], [66], [71]; [73] to p[82]; [83] and especially to the conclusions in [129], [131] and [132]. He pointed to the dubious nature of the defences as the reason why the Judge ordered the Defendant to pay into court security for the Claimant's costs. In addition, he pointed to serious credibility issues for the Defendant, not least because it was only in December 2021 (well over 13 years since it was executed) that the Defendant disavowed the Guarantee.

33. So far as the more recent evidence is concerned, this is set out in Mr Manasyan's third witness statement at [15] and summarised in Mr Poole QC's Skeleton Argument at [31]. It consists of: (a) evidence from the files of Clifford Chance (who were acting for one of the lenders in 2007); (b) a witness statement from Ms Yevgeniya Usova, a former employee at MUG, who has stated that the Defendant attended the New Registrar on the morning of 1 November 2007 and that she witnessed him sign various documents and (c) the witness statement of Mr Zayachkovsky, to which I have already referred. He casts significant doubt on the account given by Ms Lerner and goes so far as to describe her evidence as "knowingly false" or "improbable".

34. Despite the powerful submissions in this regard, I am completely satisfied that this is not a case where I can properly conclude at this stage that the Claimant is highly likely to succeed at trial such that I should delve further into the merits. First, it seems to me that I have to take account of the fact that on the Set Aside Application, Stephen Houseman QC was addressing a completely different test. As I have already set out, the legal threshold test on the Set Aside Application was whether the Defendant had a real prospect of successfully defending the claim. In my judgment it goes too far to suggest that I can infer that he would have concluded that the Claimant had a high degree of possibility of success, which is the test I must apply. Secondly, whilst the Claimant has convincing arguments on the credibility of the substantive defences, it remains the case that in the Judgment at [66], the Judge concluded (albeit reluctantly) that the statement from Ms Lerner created "*genuine doubt as to whether the Guarantee was validly executed as a deed at the 1 November meeting*". Far from putting matters finally at rest, it seems to me that the evidence of Ms Zayachkovsky raises more doubt as to what happened that day. The documents from Clifford Chance are equivocal and in his Reply, Mr Power pointed to the absence of any evidence either way from the

relevant representatives of Clifford Chance who were present at the meeting. In my judgment, it is simply not possible to say that this is a case which will turn only on the contemporaneous documents and disclosure and inspection have not taken place. However, I am reluctant to say more about the strength or otherwise of the Claimant's case on the merits in circumstances where there is an extant application for summary judgment.

The Trustee Ground – Analysis

35. I can deal with this point shortly. Neither Counsel has been able to point to any authorities to the effect that a claimant acting as security trustee is to be treated differently for the purpose of an application for security for costs. Although Mr Poole QC sought to drawn an analogy with the position of a trustee in bankruptcy, I don't consider that analogy to be of any assistance here. A liquidator or trustee in bankruptcy acts in the context of an underlying insolvency which is in the nature of a class action. Mr Poole QC accepts that there is nothing in CPR 25.13 to indicate that it is not intended to apply to a company which is acting as a corporate trustee but submits that the fact that the Claimant is bringing proceedings in fulfilment of its duties to a third party (here CFSP) and will not itself benefit from the recoveries, is a highly relevant factor which weighs against the grant of security.

36. In my judgment, there is nothing to prevent security for costs being ordered in the present circumstances. This is not, for example, a situation where the trustee is a charity. It is a commercial arrangement and as Mr Yoffe explains in his witness statement at [10], 515's objective in acquiring the loan notes was as essentially as an investment. It would potentially undermine the core purpose of the security for costs regime, which is to protect a party in whose favour an order is made from the risk of being unable to enforce an order for costs they may later obtain, if the category of claimants against whom an order might be made was restricted without proper justification.

37. This, whilst the fact that the Claimant does not act in its own self-interest is a matter which I weigh as a relevant circumstance, it does not in my view mean that, as a matter of law, exceptional circumstances are required before an order for security is made and in my judgment, no special weight attaches to it on the facts of this case.

The Stifling Ground – Analysis

38. In order to establish that the claim will be improperly stifled, the burden is on the Claimant to show, on the balance of probabilities, that it cannot itself provide security

and cannot obtain the assistance of others. The Claimant's evidence in this regard has to be "*full, frank, clear and unequivocal*".

39. I have already referred to the evidence in relation to the lack of means of the Claimant and 515. In his witness statement at [12] and [13], Mr Yoffe sets out that as of 2016, 515's main business activity consisted of enforcement action in relation to the Loan Notes. The main payments received by 515 during the period 2017-2021 (which he says has been used by it to fund professional fees) are: (i) a distribution of EUR 520,517.56 received from the liquidation of MUG on or about 14 February 2017; (ii) an unsecured loan from Tudela Trading Corporation to fund working capital received on or about 5 March 2017 and (iii) a distribution of £76,262.62 from the bankruptcy estate of Mr Trefilov in or about April 2019. Tudela Trading Corporation is a company owned by Mr Rzhebaev, who is also the sole shareholder in 5151. Mr Yoffe says at [12] and [15] that 515 does not expect to receive any further revenues from any further source. He also says that 515 sought third party funding from 11 different third party funders but none were prepared to assist in view of perceived difficulties in enforcing any loans in the Russian Federation. Mr Yoffe denies at [16] that A1 LLC is backing the litigation and in its letter dared 21 February 2022, Edman & Co has denied that Damkor Veritas Limited or Tudela Trading Corporation are backers.

40. I was also referred to the witness statement by Mr Trevilov dated 22 March 2021 (in relation to the Set Aside Application) where he denies that he asserts direct or indirect influence over the proceedings or has any interest in them.

41. Finally, Mr Manasyan and Mr Poole QC each draws attention to the amount which the Defendant seeks by way of security which, they suggest is so wholly unreasonable and unreasonable in amount as itself to smack of oppression.

42. I take all this into account but I am not satisfied that the Claimant has discharged the burden of being full and frank in relation to its ability to continue the claim or that it satisfied me, on the balance of probabilities, that such an order will stifle the claim. First, as Mr Poole QC accepted, there is a clear inference to be drawn that someone is assisting the Claimant to meet its ongoing legal fees (which I was told are now c. £900,000). Secondly, in his witness statement at [17], Mr Yoffe does not assert unequivocally that the ostensibly connected third parties are unwilling or unable to provide further funding. Instead, his evidence is equivocal: "*As [far] as I am aware, these parties are presently not able to provide any further funding to 515*". Thirdly, the bulk of the monies which I have referred to above as having been received by 515 were received in February and March 2017. The financial accounts for the Claimant and 515 to which I have referred do not obviously support the statement made on the Claimant's behalf on 10 November 2021 that "*our client has sufficient funding for the*

purposes of pursuing the Claim against your client to trial" unless it is a reference to third party funding. Fourthly, as I have already noted, this is a commercial transaction whereby 515 acquired the Loan Notes for investment purposes. I am not satisfied on the evidence before me that the claim will indeed be stifled.

43. As to the amount of security sought by the Defendant, I accept some of the criticisms made on behalf of the Claimant both as to the overall amount and some of the individual sums. However, the sum has been verified as an accurate estimate by Mr Leyland and I am not persuaded that it is, in itself, oppressive. However, I will take these matters into account in determining quantum when making any order.

The Order

44. Overall, I am satisfied that whilst it is appropriate to take them into account as part of the exercise of my discretion, none of the grounds of opposition relied on by the Claimant are sufficient to displace my conclusion that it is just, having regard to all the circumstances, to make an order for security for the Defendant's costs. In due course, it may well be that all of the criticisms made by the Claimants (and echoed in part in the Judgment) of the robustness of the Defendant's defences will be made good. However, in the meantime, the Defendant is entitled to be protected against the risk that, if he succeeds, the Claimant is not able meet an order for costs.

45. In the event that I was satisfied that some order for security should be given Mr Poole QC invited me to consider making a staged order whereby his client should be ordered to provide security only to a particular phase in the proceedings. He submitted that the appropriate stage here would be to the conclusion of the hearing of his client's application for summary judgment. In my view that is not the appropriate course here. In the event that the Claimant succeeds in whole or in part, it is open to the Judge on that occasion to deal with any security which has been ordered.

46. I have already indicated that I do regard the amount of security sought by the Defendant to be excessive. In particular, it seems to me that notwithstanding the recital in the Order, it is likely to be an uphill struggle for the Defendant to recover the costs which he was ordered to pay as security for the Claimant as a condition of the order on the Set Aside Application. Next, adopting a broad brush approach and for the purpose of this application only, I agree with the submissions made on behalf of the Claimant that the sums of £445,082.63; £259,933.60; £664,427.61 and £105,686.21 in relation to, respectively, pre-action costs; statements of case; disclosure and the costs of a handwriting expert appear, at this stage, to be excessive. The product of the statement of case phase is a 10 page defence and whilst the estimate covers work beyond the drafting exercise itself, some of the same work will have been undertaken as part of the

pre-action investigation. Much of the disclosure so far has come from the Claimant. The handwriting expert is likely to be considering one core signature and material samples. The Claimant is also correct, in my view, that the costs of this application itself will fall to be dealt with as part of the application. In my view, the reasonable amount to order by way of security is £1.1m.

47. The parties should attempt to agree the terms of an Order giving effect to my judgment and to deal with all and any consequential matters. In the event that no agreement can be reached, I will deal with all consequential matters at the formal hand down.