Neutral Citation Number: [2022] EWHC 706 (Comm)
IN THE HIGH COURT OF JUSTICE Claim No CL-L-2021-000009
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
COMMERCIAL COURT (QBD)

Royal Courts of Justice. Rolls Building
Fetter Lane, London, EC4A 1NL
Wednesday 30 March 2022

BEFORE:

MR RICHARD SALTER QC
Sitting as a Deputy Judge of the High Court

BETWEEN:

(1) HRH PRINCE KHALED BIN SULTAN BIN ABDULAZIZ AL SAUD
(2) HRH PRINCESS DEEMA BINT SULTAN BIN ABDULAZIZ AL SAUD

Claimants

- and –

(1) RONALD WILLIAM GIBBS
(2) SUNNYDALE SERVICES LIMITED
(a company incorporated under the laws of the British Virgin Islands)

Defendants

- -

Mr Simon Atrill and Mr Samuel Rabinowitz
(instructed by *Quinn Emanuel Urquhart & Sullivan UK LLP*)
appeared for the Claimants

Mr Matthew Parker QC
(instructed by *Clyde & Co LLP*)
appeared for the Defendants

Hearing date: 11 March 2022

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Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

……..

Covid-19 Protocol: This judgment was handed down remotely by circulation to the parties' representatives by email and release to BAILII. The date and time for hand-down is deemed to be 10:30am on 30 March 2022.

MR SALTER QC:

Introduction

1. This is an application by the claimants under CPR Part 18, seeking further information. It is supported by the fourth witness statement of the claimants' solicitor, Mr Khaled Khatoun. The first defendant ("**Mr Gibbs**") has made his fourth witness statement in answer. At the hearing before me on Friday 11 March 2022, the claimants were represented by Mr Simon Atrill and Mr Samuel Rabinowitz. The defendants were represented by Mr Matthew Parker QC.

The background to the application

2. The background to this application, in brief, is as follows. Mr Gibbs retired as a partner in Linklaters in 2006. In May 2006 he entered into a written consultancy agreement with the first claimant ("**HRH Prince Khaled**"). In about 2011**,** HRH Prince Khaled transferred USD 25m to an account with Credit Suisse ("**the Credit Suisse Account**"). The Credit Suisse Account was opened in the name of HRH Prince Khaled's sister, the second claimant ("**HRH Princess Deema**"), but was to be managed by Mr Gibbs under a power of attorney. The funds in the Credit Suisse Account were subsequently invested by Mr Gibbs in various ways.

3. HRH Prince Khaled and Mr Gibbs entered into a written Settlement Agreement dated 2 December 2013 under which Mr Gibbs' consultancy agreement terminated on 31 December 2013. According to the claimants, in 2012 and 2013 the claimants' representatives (Mr Salih Kholaifi and General Ayed) asked Mr Gibbs to arrange to transfer the management of the funds remaining in the account and the investments that had been purchased with the transferred funds to Mr Kholaifi: but Mr Gibbs did not do so.

4. On 18 April 2018, Mr Gibbs entered into a written settlement agreement with Mr Kholaifi, acting on behalf of HRH Princess Deema ("**the April 2018 Settlement Agreement**"). There are disputes as to the legal effect (if any) of that document, but (again in very broad summary) its terms stated that Mr Kholaifi would arrange for a letter signed by HRH Princess Deema to be sent to Mr Gibbs instructing him to liquidate the portfolio of investments listed in the "Summary of Investor Position as at 19.01.2018" appended to the April 2018 Settlement Agreement ("**the 2018 Investor Summary**") and to pay the proceeds into a designated bank account, and that Mr Gibbs would comply with that instruction.

5. By this action, begun by a claim form issued on 8 January 2021, the claimants seek as their primary claim the various accounts and enquiries which they say are necessary in order to find out what assets now represent the USD 25m originally transferred to the Credit Suisse Account, followed by the transfer and/or payment over to them of those assets. The claimants also seek damages and/or equitable compensation and compound interest. By way of alternative claim, the claimants rely upon the April 2018 Settlement

Agreement and claim damages in respect of Mr Gibbs' alleged failure to transfer or to liquidate the assets and/or to transfer the proceeds of any liquidations.

6. Particulars of Claim were served on 26 January 2021. On 2 February 2021, Butcher J granted a Worldwide Freezing Order over Mr Gibbs' assets. That was continued by consent on 27 April 2021.

7. By his Defence, served on 20 April 2021, Mr Gibbs took issue with many of the allegations in the Particulars of Claim, and relied upon the April 2018 Settlement Agreement as superseding any prior obligations. According to paragraph 3(5) of the Defence, pursuant to that agreement:

> **.. Mr Gibbs has not yet completed the process of liquidating investments but intends to do so as soon as reasonably practicable and to make payment to Princess Deema representing 45% of the net proceeds of the sales of the Silver Arrows Marine Group, Elysium Yacht Limited and an apartment at the Regent Hotel in Porto Montenegro ..**

8. On 10 September 2021, the defendants issued an application for summary judgment and/or to strike out parts of the claim. On 29 October 2021 HRH Princess Deema issued an application for summary judgment on her alternative claim based on the April 2018 Settlement Agreement. The first Case Management Conference was heard by Cockerill J on 12 November 2021, who ordered (inter alia) that those two applications should be heard by the same judge over two days in May 2022 or sooner. (The applications have, in fact, now been listed to be heard on 27 and 28 April 2022.) Cockerill J adjourned for hearing after the determination of these applications a further application issued by the defendants on 2 November 2021, seeking directions for preliminary issues in relation to the governing law of the claimants' primary claim. Cockerill J also gave permission for Amended Particulars of Claim, which were served on 17 November 2021, for an Amended Defence, served on 20 December 2021, and for a Reply, served on 23 February 2022.

The RFI and the defendants' responses

9. The claimants first made a formal request for further information of the Defence ("**the RFI**") on 13 May 2021. The RFI comprised 35 numbered requests, the majority of which were themselves sub-divided into several individual questions.

10. The defendants responded on 16 July 2021. That response (which incorporated the text of the RFI) extended to just over 28 pages. It provided some information in response to the great majority of the requests in the RFI, but raised the overall objection that the RFI was not concise or properly limited in its scope. It was verified by a statement of truth, signed by Mr Gibbs.

11. The claimants were not satisfied with the defendants' response to the RFI. Their solicitors consequently wrote on 2 August 2021 to say that the defendants' response was:

> **.. a largely inadequate document. Instead of taking the opportunity to clarify your clients' opaque and evolving case, your clients have sought to hide behind a 'General Response' which claims that the RFI was not concise to simply avoid engaging with vast swathes of it, and thus to refuse to clarify and explain their case in fundamental respects.**
>
> **The fact that the RFI was detailed does not mean it was not concise. It was necessarily detailed in circumstances where your clients' case as presently put is not only inconsistent with the contemporaneous documentation and implausible, but is also vague and ambiguous ..**
>
> **.. in order to understand your clients' Defence, and in order to prepare their own claims, the Claimants need clarity on what the Defendants say happened to the monies in question, and the nature and extent of the Claimants' interest in any related assets and investments.**

12. The defendants' solicitors responded on 8 September 2021, saying that

> **.. Our clients do not accept that their Further Information was "largely inadequate". Nor were they seeking to hide behind anything. The reality is that the requests made by your clients went far beyond what is permissible pursuant to Part 18 of the Civil Procedure Rules. Your clients do not need the vast majority of the information they sought in order to understand our clients' case – which is clear from the face of our clients' Defence – or to prepare their own – which they were able to do without any difficulty without engaging in any pre-action correspondence with our clients and thus without requesting any information from our clients ..**
>
> **Our clients' position is therefore that they have satisfied any obligations which might be on them in respect of your clients' Request for Further Information ..**

That letter was nevertheless 5½ pages long and provided at least some response to the majority of the criticisms made by the claimant's solicitors in their 2 August 2021 letter.

13. On 1 November 2021 the claimants' solicitors wrote to the defendants' solicitors, indicating the specific requests from the RFI which (they said) needed to be further answered for the purposes of HRH Princess Deema's application for summary judgment. The defendants' solicitors responded by letter dated 26 November 2021, saying once more that "Our clients .. have provided all further information which they are properly required and able to provide". That letter (which was six pages long) nevertheless provided additional information in answer to the claimants' requests.

14. A significant amount of further information was also provided in Mr Gibbs' fourth witness statement.

The requests in issue

15. Only 10 of the 35 requests in the RFI are the subject of the present application. They are Requests 16 to 18, 21, 27 to 29, and 32 to 34. In his oral presentation, Mr Atrill did not press his application in respect of requests 21 and 32.

Requests concerning the 2018 Investor Summary

16. Request 16 concerns the assets listed in the 2018 Investor Summary, and seeks details about the composition of each asset, the terms of acquisition of any asset acquired after 15 August 2011, and what has become of that asset and any proceeds.

17. Paragraphs 20E(5) and 64(2) of the Amended Defence and Response 4 of the 16 July 2021 response to the RFI make the case that, when Mr Gibbs acquired assets using the funds in the Credit Suisse Account, those assets were not themselves held on trust for HRH Princess Deema but instead:

> **.. Mr Gibbs was permitted to make investments and/or allocate *notional interests* in assets already being used and/or to be used in the future for the personal benefit of Mr Gibbs, his family, or his other investment interests ..**[1]

18. Request 17 concerns these "notional interests", and seeks details of the dates when they were allocated, the value attributed and the basis of the valuation, and what has become of those "notional interests".

19. Request 18 seeks details of any third parties who were also allocated "notional interests" in those assets.

Requests concerning the 2019 Investor Summary

20. It is common ground that, on 6 July 2019, Mr Gibbs provided a further "Summary of Investor Position" as at 30 June 2019 (**"the 2019 Investor Summary"**).

21. Requests 27 to 29 seek similar (though more extensive) information about the assets in the 2019 Investor Summary as is sought in requests 16 to 18 about the assets in the 2018 Investor Summary.

Requests concerning assets which Mr Gibbs has promised to liquidate

22. Paragraph 3(5) of the Amended Defence (set out in paragraph 7 above) asserts (at least inferentially) that the funds from the Credit Suisse Account are presently represented by notional interests in 45% of three assets: the Silver Arrows Marine Group, Elysium Yacht Limited and an apartment at the Regent Hotel in Porto Montenegro.

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[1] Response 4 (emphasis added).

23. Requests 32 to 34 seek details of these assets, of how and when the claimants were ascribed their "notional interests", and of any third parties that similarly have "notional interests" in these assets.

CPR Part 18

24. CPR Pt 18.1 provides that:

> **(1) The court may at any time order a party to –**
> **(a) clarify any matter which is in dispute in the proceedings; or**
> **(b) give additional information in relation to any such matter,**
> **whether or not the matter is contained or referred to in a statement of case.**
>
> **(2) Paragraph (1) is subject to any rule of law to the contrary.**
>
> **(3) Where the court makes an order under paragraph (1), the party against whom it is made must –**
> **(a) file his response; and**
> **(b) serve it on the other parties,**
> **within the time specified by the court.**

Paragraphs (a) and (b) of CPR Pt 22.1(1) (when read with the definition of "statement of case" in CPR Pt 2.3(1)) between them require any further information provided under Pt 18 (either voluntarily or pursuant to a court order) to be verified by a statement of truth.

25. Paragraph 1.1 of Practice Direction 18 requires a written request (allowing a reasonable time for response) to be served before any application is made to the court for an order under Part 18: and paragraph 1.2 of that Practice Direction provides that such a request:

> **.. should be concise and strictly confined to matters which are reasonably necessary and proportionate to enable the [requesting] party to prepare his own case or to understand the case he has to meet ..**

26. The request for further information under CPR Pt 18 has replaced two different procedures under the old RSC: the Request for Further and Better Particulars under RSC O 18 r 12 and the procedure for Discovery by Interrogatories under RSC O 26. It enables a party to seek clarification or additional information relating to any matter, whether or not that matter is pleaded or referred to in a statement of case.

27. In support of his submission that the court should take a liberal approach to the scope of CPR Pt 18, Mr Atrill relied upon *Harcourt v Griffin* [2007] EWHC 1500 (QB), [2008] Lloyd's Rep IR 386. In that case, Irwin J granted an application by a personal injury claimant for an order under CPR Pt 18 for further information to establish the full nature and extent of the insurance cover enjoyed by the respondents who were liable for his injuries. Mr Atrill particularly drew my attention to Irwin J's observation (at [10]) that:

> **.. The nature and extent of the Defendants' insurance cover is not in itself a 'matter .. in dispute in the proceedings' between the Parties, in the sense that the proper quantum of damages payable to the Claimant could be determined without determining whether the Defendants can actually pay those damages. However, it appears to me that the wording of CPR. r. 18 requires to be interpreted reasonably liberally. The purpose of the jurisdiction must be taken to be to ensure that the Parties have all the information they need to deal efficiently and justly with the matters which are in dispute between them. Moreover, the wording need not be taken to imply that there must be a live disagreement about the relevant issue, since on very many occasions parties are properly required to furnish information pursuant to CPR r. 18 precisely to discover whether there is or is not a live disagreement between the parties on a given point. The whole thrust of the new approach to civil litigation enshrined in the Civil Procedure Rules is to avoid waste of time and cost and to ensure swift and, as far as possible, proportionate and economical litigation. Therefore, I have no hesitation in finding that if there is no rule of law or significant rule of practice to the contrary, then the wording of CPR r. 18 is broad enough to cover information of this kind ..**

28. Irwin J's decision in *Harcourt* was followed and applied by HHJ Robinson (sitting as a Judge of the High Court) in another personal injuries case, *Senior v Rock UK Adventure Centres Ltd* [2015] EWHC 1447 (QB).

29. Mr Parker, however, invited my attention to the case of *West London Pipeline & Storage Ltd v Total UK Ltd* [2008] EWHC 1296 (Comm), [2008] Lloyd's Rep IR 688, in which Steel J declined to follow *Harcourt*, holding that (on the facts of that case) the court had no jurisdiction under CPR Pt 18 to require disclosure of the insurance position, since it was not in itself a matter which was in dispute in the proceedings.

30. Steel J's approach was in turn followed by Thirlwall J in *XYZ v Various Companies (the PIP Breast Implant Litigation)* [2013] EWHC 3643 (QB), [2014] Lloyd's Rep. IR 431. Thirlwall J held (at [29]) that the claimants' request for disclosure of the defendant's insurance position did not fall within the scope of Pt 18 because:

> **.. The insurance position of the defendant is not a matter in dispute in these proceedings. Information about it does not relate to any matter in dispute. In light of the Practice Direction I cannot conclude that [CPR Pt 18] should be given a sufficiently broad interpretation to permit me to make the order sought here ..**

31. Thirlwall J nevertheless held that the general power of case management under CPR 3.1 (2)(m) gave the court power (on the facts of that case) to order the respondent defendant to disclose, not whether it had insurance cover against any finding of liability, but rather whether it had insurance adequate to fund its participation in the litigation to the completion of the trial and the conclusion of any appeal. Unlike the scope of insurance cover against liability, that was an issue relevant to case management and so could properly be the subject of an order made for the purposes of case management.

32. With great respect to Irwin J, it seems to me that his more liberal and pragmatic approach to CPR Pt 18 risks stretching the scope of the rule beyond that which can reasonably be thought to be contemplated by its terms. The rule expressly says that the matter about which clarification or further information can be sought must be one "which is in dispute in the proceedings". That wording, in my judgment, makes it clear that there are two cumulative aspects to this restriction: the matter must be "in dispute", and that dispute must be "in the proceedings".

33. That means (for example) that requests under Pt 18 cannot be used for the purpose of obtaining material for cross-examination as to credit (*Thorpe v Chief Constable of Greater Manchester* [1989] 1 WLR 665), or to obtain material to support different claims between the same parties or claims against different parties (*Trader Publishing Ltd v Autotrader.com Inc* [2010] EWHC 142 (Ch)). As Morgan J observed in *Barness v Formation Group Plc* [2018] EWHC 1228 (Ch) at [10]:

> **.. [R]ule 18 deals with the current position at the time of the application to the court and requires the court to identify: what matter is currently in dispute? It is only in relation to such a matter that an order can be made clarifying the matter or giving additional information in relation to the matter ..**

34. The terms of the Practice Direction also make it clear that requests and orders under CPR Pt 18 must be strictly confined to matters which are reasonably necessary and proportionate for the stated purposes. In *Hall v Sevalco Ltd* [1996] PIQR 344 at 349 (a case about interrogatories under the RSC) Lord Woolf MR observed that "necessity is a stringent test": and in *King v Telegraph Group Ltd* [2004] EWCA Civ 613, [2005] 1 WLR 2282 at [63], Brooke LJ laid particular stress on the strictness required by the terms of the Practice Direction:

> **.. the emphasis, as always in the CPR, is on confining this part of any litigation (in which costs tended to get out of control in the pre- CPR regime) "strictly" to what is necessary and proportionate and to the avoidance of disproportionate expense ..**

35. In my judgment, the requirement of the rule that the information sought must relate to a "matter which is in dispute in the proceedings", and the requirement of the practice direction that any request must be strictly confined to matters which are reasonably necessary and proportionate for one or other of the stated purposes, are threshold conditions. If those conditions are not satisfied, then the court simply has no jurisdiction to make any order under CPR Pt 18 (though, as Thirlwall J has pointed out, there may be other powers available to the court to assist in avoiding the waste of time and costs and in achieving the "swift and .. proportionate and economical litigation" referred to by Irwin J).

36. If, however, those threshold conditions are satisfied, then the question becomes a matter for the court's discretion. The power under CPR Pt 18 is one of the court's case

management powers, and its exercise should be considered in the context of the overall case management of the action: see *Toussaint v Mattis* [2001] CP Rep 61, CA, at [16], per Schiemann LJ.

37. CPR Pt 1.2 requires the court to seek to give effect to the overriding objective when considering whether and, if so, how to exercise a power such as that under CPR Pt 18. As Roth J noted in the cartel case of *National Grid Electricity Transmission plc v ABB* Ltd [2014] [EWHC] 1555 (Ch) at [39]:

> **A Part 18 request .. is to be interpreted in the light of the overriding objective and is part of the more open approach to litigation which the CPR seeks to establish and promote.**

38. As the notes at paragraph 18.1.10 of the White Book state, that will usually mean in cases involving CPR Pt 18 having regard:

> **.. (a) to the likely benefit which will result if the information is given and (b) to the likely cost of giving it; and (c) whether the financial resources of the party against whom the order is sought are likely to be sufficient to enable that party to comply with such an order ..**

39. The requirement in the Practice Direction that requests under CPR Pt 18 must be strictly confined to matters which are reasonably necessary and proportionate for one or other of the stated purposes reflects that fact that requests and orders under CPR Pt 18 are not an automatic aspect of the progress of litigation under the CPR, and should not therefore be made as a matter of routine.

40. Statements of Case, if properly drafted, should already contain all the information necessary to define the issues which the court has to decide and to ensure that each party knows the case which it has to meet: see eg *Ventra Investments Ltd v Bank of Scotland* [2019] EWHC 2058 (Comm) at [22] to [25]. Moreover, clarity is usually better served by brevity than prolixity. As Lord Woolf MR pointed out in *McPhilemy v Times Newspapers Ltd and others* [1999] 3 All ER 775 at 793:

> **.. As well as their expense, excessive particulars can achieve directly the opposite result from that which is intended. They can obscure the issues rather than providing clarification ..**

41. It follows that it will not usually be either necessary or proportionate (or in accordance with the overriding objective) for the other party to request (or for the court to order) a party who has served a compliant but concise statement of case to expand upon that pleading by the provision of more detailed further information.

42. In cases begun using the procedure in CPR Pt 7, disclosure under CPR Pt 31 will normally be followed by the exchange of witness statements under CPR Pt 32. It will therefore also not often be necessary or proportionate (or in accordance with the overriding objective) for the other party to request (or for the court to order) a party to

provide at any earlier stage information which will in due course be revealed on disclosure or which will be contained in those witness statements or in expert reports: see eg *National Grid Electricity Transmission plc v ABB Ltd* [2012] EWHC 869 (Ch) at [73] to [74], per Roth J, and *Stocker v Stocker* [2014] EWHC 2402 (QB) at [27], per HHJ Richard Parkes QC (sitting as a judge of the High Court).

43. Of course each case must depend upon its own facts. As Schiemann LJ went on to say in *Toussaint* (supra), "The court now has a wide range of case management powers, and they are capable of being used flexibly to meet the precise needs of an individual case".

44. There will always, regrettably, be cases in which the statements of case do not, as they should, ensure that each party knows the case which it has to meet. There will also be other cases in which the court can be satisfied that "a clear litigious purpose will be served" (per Lord Woolf MR in *Hall v Sevalco* (supra)) by ordering the provision of further information either at an earlier stage or in a more extensive fashion than would normally be the case under the CPR. Such cases may, perhaps, include those where a clearer early understanding of the other party's position than can be obtained by correspondence is realistically likely to help the parties to narrow the issues between them, to avoid wasting costs on unnecessary steps connected with the litigation (eg in relation to disclosure, witnesses of fact or expert witnesses), or to promote settlement.

45. The burden must nevertheless always be on the party seeking an order under CPR Pt 18, both to demonstrate that the threshold conditions identified in paragraph 35 above are met and (to the extent not already implicit in the satisfaction of those conditions) to satisfy the court that, in all the circumstances, the making of such an order would assist in dealing with the case justly in accordance with the overriding objective.

46. One of the complaints made by the claimants about Mr Gibbs' responses to the RFI is that they show that he has failed to exercise reasonable diligence in examining relevant documents and undertaking reasonable enquiries. Mr Atrill invited my attention to the following passage in paragraphs [20.96], [20.98] and [20.101] of Matthews and Malek, *Disclosure* (5th edn, Sweet & Maxwell 2017):

> **.. It is incumbent upon a party responding to a Request to a Pt 18 order to exercise reasonable diligence in formulating a response ..**
>
> **.. [T]he court is likely to regard a party [as] being under a duty to undertake reasonable enquiries, but what constitutes reasonable enquiries will depend on the circumstances .. [A] party is not bound to make enquiries to the extent that such enquiries place an unfair or oppressive burden on him ..**
>
> **.. If it is necessary for the purposes of responding to a Request, the party must examine the documents in his control .. or that of his servants or agents held in that capacity. If a such search would be unduly burdensome, then that may be a ground for objecting to the Request ..**

47. In my judgment, those passages accurately state the law in this area. I would, however, add this rider. Where, as in the present case, a request under Pt 18 has already been answered, and the objection is that the answer given is inadequate because reasonable diligence has not been exercised, the proper way forward will not usually be to ask the court (as the claimants in the present case have done) simply to order that the original generally worded request should be answered again. Such a course will often just postpone until an application for sanctions for non-compliance or for relief from such sanctions is made the inevitable issue of what reasonable diligence in formulating a response to that request - and thus compliance with the order – actually requires. By that time it is likely to be too late to consider the appropriateness of the scope of the original order: see eg *Griffith v Gourgey* [2015] EWHC 1080 (Ch) at [40] and [54(1)].

48. The better course will usually be, wherever possible, to ask the court to specify in its order precisely what further enquiries the party responding to the Pt 18 request should carry out, so that the issue of what proper compliance requires is plainly defined from the outset.

49. A related issue (which similarly arises on the facts of the present application) is how the court should approach assertions by the party responding to a Pt 18 that that party is not able to recall and/or to provide the requested information, either at all or in the detail requested.

50. On an application under Pt 18, the court is not required to take at face value and without analysis everything that a party says in its response or its witness statements. In some cases it may be clear that there is no real substance in the assertions made: see eg (in the context of CPR Pt 24) *ED & F Man Liquid Products v Patel* [2003] EWCA Civ 472 at [10], per Potter LJ. However, it is also clear that the court should not, on such an interim application, conduct a "mini-trial". In most cases, it will neither be possible nor appropriate (having regard to the overriding objective) to go behind what is said in answers to Pt 18 requests: cf the guidance given by Beatson J in *West London Pipeline and Storage Ltd v Total UK Ltd* [2008] EWHC 1729 (Comm) at [80], in relation to challenges to claims to privilege. To reject a statement contained in a document verified by a statement of truth will, in many cases, involve the implicit conclusion that the person making the statement has lied. That is a conclusion which a court will understandably be reluctant to reach on an interim application where the statement has not been tested in cross-examination.

Analysis and conclusions

51. Against that background, I now turn to consider the specific requests that have been made.

52. Two general factors seem to me to be of importance to the exercise of the court's discretion in the present case. The first is that there are cross-applications for summary judgment which are likely to be heard in about a month's time. Those applications may or may not dispose of the case as a whole, or of parts of the case. The summary

judgment application by HRH Princess Deema is confined to her alternative case based on Mr Gibbs' alleged failure to comply with the April 2018 Settlement Agreement. If that application based on her alternative case is successful, the claimants' primary claims may well go no further.

53. HRH Princess Deema's alternative claim is pleaded in paragraph 41 of the Amended Particulars of Claim, in the following terms:

> **If, contrary to paragraph 40 above, the claims are precluded by the April 2018 Settlement Agreement, Mr Gibbs breached the said agreement as follows:**
>
> **41.1 By failing or refusing to transfer or liquidate the Investment Portfolio or any part of it, and/or to transfer any proceeds thereof to the Claimants;**
>
> **41.2 By reinvesting the proceeds of liquidations and/or available cash into other assets;**
>
> **41.3 By failing to provide the certificates and reports required by Clause 1.4.**

54. The relief sought on the basis of this alternative claim is pleaded in paragraphs 46 to 48:

> **46. In the further alternative, Mr Gibbs' breaches of the April 2018 Settlement Agreement have caused HRH Princess Deema, alternatively HRH Prince Khaled, loss and damage by Mr Gibbs' failure to transfer or liquidate the assets and/or transfer the proceeds of any liquidations as required.**
>
> **47. If the investments had been transferred or liquidated and their proceeds transferred as agreed, they would have been invested by Mr Kholaifi in a balanced portfolio of real estate, with 75% invested in commercial and residential opportunities in Europe and the USA which would have achieved returns of 8-9% per annum, and 25% invested in commercial and residential opportunities in Saudi Arabia which would have achieved returns of around 30% every two years. Such a portfolio would have been selected by Mr Kholaifi and approved by HRH Prince Khaled.**
>
> **48. The quantification of this loss will be a matter for expert evidence, but the Claimants estimate such total loss to be at least US$30 million. Mr Gibbs is estopped from denying that the loss is at least US$24,561,691 by his representation in the Schedule to the April 2018 Settlement Agreement that the value of Princess Deema's assets was this sum.**

55. Mr Atrill submitted that the fact that these summary judgment applications were pending did not mean that the scope of the information that could be ordered on this Pt 18 application was limited solely to that which was relevant to those Pt 24 applications. He submitted that it would be in accordance with the overriding objective for the court now to order the defendants to provide all of the further information to which the

claimants were entitled, in order to avoid the need for any further applications to the court.

56. Mr Parker, by contrast, submitted that the fact that HRH Princess Deema had already issued an application for summary judgment meant that it was clear that no further information was necessary. In that connection, he drew my attention to paragraph 20.4 of Mr Khatoun's second witness statement, made on 29 October 2021 in support of HRH Princess Deema's summary judgment application, in which Mr Khatoun stated that:

> **20.4 If the Defendants continue to refuse to provide information as to precisely what assets were liquidated and in what sums, HRH Princess Deema will seek by this Application (in addition to summary judgment on the cash holding of US$826,117):**
>
> > **20.4.1. Summary judgment in the sums set out in the Schedule in respect of the asset classes that have apparently been liquidated or have matured, i.e., company shares, futures contracts and the Credit Suisse managed securities (those sums being US$2,536,000, US$3,476,812 and US$2,323,000 respectively), on the basis that these are the sums for which (at the least) those assets should have been liquidated, upon the instruction of 25 April 2018;**
> >
> > **20.4.2. Alternatively, an interim payment in the same sums, pending determination at a short quantum trial of what sums of money should have been realised by the liquidation of the assets in question (the question of liability having been determined summarily this Application)**

This, Mr Parker submitted, clearly showed that no further information was "reasonably necessary" for either of the stated purposes in connection with that application, since the claimants' solicitor had himself stated that the application could proceed without it.

57. In my judgment, that submission to some extent overstates the position. Paragraph 20.4.2 of Mr Khatoun's witness statement reflects the fact that HRH Princess Deema's application notice seeks judgment on the question of liability, and either summary judgment for an ascertained sum or an order for an interim payment. It is possible that further information may still be "reasonably necessary" in relation both to liability and to quantum. The fact that the claimants have asserted this fall-back position does not, of itself, mean that no further information of any kind could reasonably be necessary for HRH Princess Deema and the court.

58. Nevertheless it would not, in my judgment, be proportionate or in accordance with the overriding objective for me to make any order for the provision of further information on the present application that goes beyond what is reasonably necessary for the forthcoming summary judgment applications. The costs and time that would be involved in complying with any such further order might well be wasted. Even if those applications do not in practice bring this litigation to an end, they could well change the landscape of it, and so change the nature and scope of the further information reasonably

required by the claimants; and compliance with any wider order might well unnecessarily and unfairly hinder or distract Mr Gibbs from his preparation for those applications.

59. The second general factor is that Mr Gibbs has already provided answers (albeit answers which the claimants submit are inadequate) to each of the relevant requests in the RFI. I have to consider what practical litigious purpose would be served by simply repeating those general requests in the form of a court order at this stage, given the impending summary judgment applications. I have to consider how likely is it that such an order would, in reality, produce further information that would actually be useful to HRH Princess Deema and to the court. Very different considerations may, of course, apply if and when any judgment is obtained against Mr Gibbs.

60. Mr Gibbs' assertion that he has not kept and/or cannot now obtain sufficient records to enable him to give a full and properly detailed account of what has become of the USD 25m which came under his management in 2011, and of the assets into which that money has from time to time been invested, is one which naturally invites a degree of scepticism. That scepticism is only reinforced by the fact that each iteration of the defendants' responses to the RFI has provided some further detail, despite earlier assertions that they were unable to provide any more. These details include, in paragraph 14.1 of Mr Gibbs' fourth witness statement, the perhaps surprising assertion that Mr Gibbs does "not believe that any of the assets in the 2018 or 2019 Investor Summaries were acquired using [that] USD 25m".

61. Furthermore, as Mr Atrill points out, paragraph 10.2 of Mr Gibbs' fourth witness statement refers to 7 banks at which (according to Mr Gibbs) relevant accounts were held "in [Mr Gibbs'] name and the name of various companies which [Mr Gibbs] operated". It nevertheless seems that Mr Gibbs has asked only one of these 7 entities to assist in providing the detailed information requested in the RFI. There is therefore force in Mr Atrill's submission that Mr Gibbs' approach to providing answers to the RFI has not so far involved the reasonable enquiries or demonstrated the reasonable diligence which the claimants were entitled to expect.

62. Mr Atrill accordingly invited me to reject Mr Gibbs' assertion that he has already provided the best response that he is able to give as implausible.

63. In my judgment, it is established by the evidence presently before me that Mr Gibbs has not made the reasonable enquiries which he ought to have made in order to provide a proper and detailed answer to the RFI. I cannot, however, reject simply on the basis of that evidence Mr Gibbs' assertion that, in the absence of information and documents from these banks and other third parties, he has provided the best response that he is presently able to.

64. For the reasons indicated in paragraphs 47 and 48, it would not be right for me in those circumstances simply to order Mr Gibbs to answer the entirety of the RFI again from

scratch. If the problem is that he has failed to make particular enquiries, then any order ought to make clear the enquiries which he is expected to make in order to provide a proper answer. In terms of practicality, it also seems to me to be possible that the responses to any general enquiries that I might order might not now come back in time to be useful for the hearing of the summary judgment applications.

65. That, however, is not to say that there are not some specific questions in the RFI which Mr Gibbs can properly be ordered to answer more fully, and some more focussed enquires in that connection that he can properly be expected to make, as I shall explain in the following sections of this judgment.

Requests concerning the 2018 Investor Summary

66. As stated in paragraph 16 above, Request 16 seeks details of the assets listed in the 2018 Investor Summary. These consist of seven categories: "Cash" (USD 826,117); "Credit Suisse managed securities" (USD 2,323,000); "UK residential real estate" (USD 6,412,331; "Other residential real estate" (USD 1,912,312); "UK commercial real estate" (USD 7,075,119); "Company shares" (USD 2,536,000) and "Contract future trading" (USD 3,470,812), giving a total stated as "under management" of USD 24,561,691. I am satisfied that the matters concerning which further information is sought by Request 16 are matters which are in dispute in the proceedings, within the meaning of Pt 18.1(1). Mr Parker did not seek to argue the contrary.

67. I therefore have to consider whether Request 16 is strictly confined to matters which are reasonably necessary and proportionate to enable the claimants to prepare their own case or to understand the case they have to meet: and, if so, whether it would be an appropriate exercise of the court's case management powers to make an order in the terms of Request 16, having regard to the overriding objective.

68. In my judgment, applying the principles and considerations discussed above, further answers to Request 16 are not at this stage reasonably necessary and proportionate for either of the stated purposes. Nor would it be an appropriate exercise of the court's case management powers to make such an order.

69. As Mr Atrill submitted, Mr Gibbs' initial response to Request 16 was perfunctory. However, significant further details have been provided in Mr Gibbs' solicitors' letter dated 26 November 2021 and in Mr Gibbs' own fourth witness statement. The claimants' complaints about these responses, in summary, are that what is said is implausible, and that it is implausible Mr Gibbs cannot provide further information without asking third parties (which he ought already to have done). However, I cannot on this application simply reject Mr Gibbs' assertion. I am not asked to direct that any particular enquiries should be made by Mr Gibbs of any particular third parties. In any event, it is by no means clear that any such wide-ranging enquiries would produce anything useful in the limited time between now the hearing of the summary judgment applications.

70. In those circumstances, it seems to me that the claimants have failed to establish that any clear litigious purpose would be served by an order in the very general terms of Request 16.

71. Requests 17 and 18 in the RFI, however, seem to me to stand in a different category. As I have set out in paragraphs 17 and 18 above, request 17 concerns the "notional interests" which paragraphs 20E(5) and 64(2) of the Amended Defence and Response 4 of the 16 July 2021 response to the RFI say that "Mr Gibbs was permitted to .. allocate .. in assets already being used and/or to be used in the future for the personal benefit of Mr Gibbs, his family, or his other investment interests".

72. Mr Gibbs' original response to the RFI was again perfunctory, referring back to an earlier response in relation to an earlier Investor Summary and saying that it was "in any event an impermissible request for evidence". However, unlike the defendants' answers to Request 16, that response has not significantly been expanded by later correspondence or by Mr Gibbs' fourth witness statement. On the contrary, Mr Gibbs' solicitors' letter dated 26 November 2021 said simply that "[O]ur clients do not have access to any records in that regard. We will update you with this regard before the end of next month". Paragraph 15.1 of Mr Gibbs' fourth witness statement repeated this assertion, saying that "I did not carry out the calculations which formed the basis of that benchmarking exercise, and I have not been able to find any records which contain the detailed calculations".

73. I am satisfied that the information requested by Request 17 relates to matters which are in dispute in the proceedings, within the meaning of Pt 18.1(1). Again, Mr Parker did not seek to argue the contrary.

74. I am also satisfied that Request 17 is strictly confined to matters which are reasonably necessary and proportionate to enable the claimants to prepare their own case or to understand the case they have to meet. Requests 17.1, 17.3 and 17.4 (Mr Atrill did not press Requests 17.2 and 17.5) are, in substance, straightforward requests for a further explanation of the defendants' assertions in their Amended Defence concerning "notional interests" and their allocation. I am presently wholly unable to understand the defendants' case on this point from the oblique and opaque references made to it in the Amended Defence and the initial response to the RFI. Mr Gibbs' statement in paragraph 15.1 of his fourth witness statement that he did not carry out the calculations is, in particular, difficult to reconcile with his assertion in Response 4 to the RFI that he was himself permitted to make these allocations, and with his assertion in paragraph 34 of his third witness statement that he had an obligation and an absolute discretion to manage the assets. This aspect of the defendants' case therefore cries out for a full, clear and proper explanation of when, how and by whom this process was carried out in relation to each of the relevant assets.

75. Request 17.6, which asks:

> **[W]hat has become of the Claimants' notional interest in each component asset; the values ascribed to those assets immediately before any re-allocation; the basis on which those valuations were calculated; and the identity and value ascribed to each new asset allocated to the Claimants upon such re-allocation**

in my judgment goes to the heart of the matters that will be in issue on HRH Princess Deema' forthcoming application under Pt 24, as it asks the defendants to explain their case as to what has become in the intervening period of the assets listed in the 2018 Investor Summary.

76. The Amended Defence asserted that Mr Gibbs' obligation to liquidate the assets identified in the 2018 Investor Summary had not yet been triggered because (as is stated in paragraph 75(2)) "Mr Gibbs has not received any letter of instruction for the purposes of clauses 1.2 and 1.3 [of the April 2018 Settlement Agreement] and, when the Defence was first filed, Princess Deema had not yet provided details of any such account" into which the proceeds of that liquidation should be paid.

77. However, no proper explanation is given in the Amended Defence itself about what has happened to those assets in the meantime. The Amended Defence simply asserts in paragraph 63(3)(e) that those assets had changed because the "funds were benchmarked by Mr Gibbs against a basket of assets, which he was entitled to change from time to time".

78. Such explanation as the claimants and the court have been given is contained instead in the defendants' solicitors' letter dated 17 February 2022, written in answer to the claimants' further Pt 18 request dated 10 February 2022. That letter accepts that Mr Gibbs' "obligation under the 2018 Settlement Agreement to liquidate the current assets allocated to HRH Princess Deema, and to transfer HRH Princess Deema's share of the net liquidation proceeds, has now been triggered", but indicates that the "assets which now constitute the Investment Portfolio (as defined in the 2018 Settlement Agreement)" are the three entirely different assets, Silver Arrows Marine Limited, Elysium Yacht Limited and an apartment at the Regent Hotel in Porto, Montenegro, referred to in paragraph 3(5) of the Amended Defence.

79. In my judgment, the claimants and the court are entitled to be given full and proper details of the process by which (according to the defendants) the portfolio of seven different asset classes valued at USD 24.5m in the 2018 Investor Summary has, pending liquidation, been transformed into these three individual assets.

80. It would therefore be very much in the interests of good case management for the defendants to be required to make the nature of their case on these points clear. In the circumstances, it seems to me that the claimants are entitled to an order requiring the defendants to give the further information and clarification sought by Request 17.

81. Request 18 seeks details of any third parties who were also allocated "notional interests" in the relevant assets. For the reasons which I have just given, it seems to me that this also is a proper request under Pt 18, which the defendants should be required to answer.

82. Mr Gibbs' initial response to this Request was that "The Defendants are not currently able to provide the information sought and cannot, in any event, disclose that information for reasons of client confidentiality". In the defendants' solicitors' letter dated 26 November 2021, a further objection – that of irrelevance - was raised:

> **Our clients do not propose to rely on their dealings with third party investors in response to your client's summary judgment application. For the avoidance of doubt, however, our clients' position remains that your client was allocated a notional interest in only a proportion - usually 25% - of the value of the assets in question (and on no basis could your client have any claim based on any greater proportion of the value of the assets). The allocation of the remaining value of the assets has no bearing on your client's claim or our clients' defence to it.**

83. As to the first of these objections, it is not clear to me why the defendants say that they are "not currently able" to provide this information, given the terms of Response 4 to the RFI and paragraph 34 of Mr Gibbs' third witness statement. The claimants and the court are entitled to a full and proper explanation of this apparent contradiction.

84. As to the second objection, Mr Gibbs is right to say that he could not voluntarily disclose information confidential to third parties. However the order which I propose to make will be a complete answer to any claim against him for breach of confidence by any such third parties. I have, of course, carefully weighed the rights of any such third parties to confidentiality in relation to their private affairs against the interests of justice in the present case. In my judgment, however, the interests of any such third parties will be adequately protected by the undertaking (which would in any event be implied but which I shall require to made express in the order which I propose to make) that this information will be kept confidential and used or disclosed only to the limited extent necessary for the purposes of this action. The balance therefore comes down firmly in favour of making an order for the provision of this further information.

85. As for the objection based on irrelevance, I have no hesitation in rejecting it. The claimants challenge the whole basis of this aspect of the defendants' case and, in particular, do not accept the good faith or genuineness of the allocations which Mr Gibbs says have been made. The identity of the alleged third party co-investors would be an integral part of any full and proper explanation of the process of allocation. Moreover, information as to the identity of these third-party investors may well enable the claimants to make their own enquiries about what has become of the assets in the 2018 Investor Summary. The information sought by Request 18 is therefore clearly "additional information" in relation to matters in dispute in the proceedings. In my judgment, that information is also strictly confined to that which is reasonably necessary

and proportionate to enable the claimants to prepare their own case and to understand the case that they have to meet.

86. In the absence of any proper explanation from the defendants as to why Mr Gibbs is unable (if he is indeed unable) to provide the information sought by Requests 17 and 18, it does not seem to me to be in any way unjust or oppressive to require the defendants to provide the information sought.

87. In accordance with the principles that I have set out in paragraph 46 above, the defendants must exercise reasonable diligence in formulating their response. They must also make reasonable and prompt enquiries of anyone who may be able to furnish them with any information that they lack, and must include in their response details of the enquiries which have been made and, if they have omitted any obvious lines of enquiry, must explain why. Of course, if they are genuinely unable to answer a particular aspect of these Requests, then they must say so and must explain in proper detail why that is the case.

Requests concerning the 2019 Investor Summary

88. Requests 27 to 29 seek similar (though more extensive) information about the assets in the 2019 Investor Summary as is sought in Requests 16 to 18 about the assets in the 2018 Investor Summary.

89. If the defendants give a full and proper answer to Requests 17 and 18, that will include an explanation of how the assets in the 2018 Investor Summary became (if they in fact did become) the assets in the 2019 Investor Summary, and an explanation of how the assets in the 2019 Investor Summary have subsequently been dealt with and have become the three assets referred to in paragraph 78 above.

90. In those circumstances, a further order in relation to Requests 27 to 29 would be neither necessary nor proportionate.

Requests concerning assets which Mr Gibbs has promised to liquidate

91. Requests 32 to 34 seek details of how and when HRH Princess Deema was ascribed her "notional interests" in the three assets referred to in paragraph 78 above, and of any third parties that similarly have "notional interest" in these assets.

92. This information should be included in any full and proper response to Requests 17 and 18. In those circumstances, a further order in relation to Requests 32 to 34 would be neither necessary nor proportionate.

Disposition

93. I therefore propose to make an order that the defendants should, by 4 pm on Friday 22 April 2022, file and serve further information and/or clarification verified by a statement

of truth in response to Requests 17 (omitting sub-paragraphs 17.2. and 17.5) and 18 of the RFI. I shall require an express undertaking from the claimants that the information provided (in particular in answer to Request 18) will be kept confidential and used or disclosed only to the limited extent necessary for the purposes of this action.

94. The defendants' responses given as a result of my order should be complete in and of themselves. They should replace any responses previously given to those Requests, whether formally or in correspondence. To the extent (if any) that information previously supplied is to be incorporated in the defendants' responses, it should be set out in full again, so that the court only has to look at a single document to see the entirety of the defendants' answer. Any relevant statements of account, certificates, documents of title or other relevant documents should be exhibited.

95. As set out in paragraph 87 above, the defendants must exercise reasonable diligence in formulating their response to these Requests. That means (amongst other things) naming any financial institutions or other entities that have held relevant assets, providing details of the names in which any such accounts or assets are held and of any relevant account or other reference numbers. The defendants must make reasonable and prompt enquiries of any person or entity who may be able to furnish them with any information that they lack, and must include in their response details of the enquiries which have been made (exhibiting any relevant documents) and, if any obvious lines of enquiry have been omitted, must explain why. Of course, if the defendants are genuinely unable to answer a particular aspect of these Requests, then they must say so and must explain in proper detail why that is the case.

96. I invite the parties to attempt to agree the terms of a Minute of Order giving effect to this judgment and dealing with all consequential matters. In the event that agreement cannot be reached by 4pm on Friday 1 April 2022, the parties should so inform the court and should lodge written submissions in relation to the points of disagreement by 4pm on Wednesday 6 April 2022. I will then either give a ruling by email or direct a short further hearing by video conference. Pursuant to CPR PD 52A 4.1(a), I adjourn any application for permission to appeal together with all other consequential applications to be determined in that way and extend time under CPR Pt 52.12(2)(a) until 21 days after that determination.

97. In accordance with the Covid-19 Protocol, this judgment will be handed down remotely by circulation to the parties' representatives by email and release to BAILII. No attendance by the parties is necessary.

Coda

98. This was listed as a half day application, no doubt because Cockerill J had observed at the hearing on 12 November 2021, in answer to a submission by Mr Parker that at least a full day was required, that the parties should not need more than half a day to deal

with those aspects of the further information required to make the summary judgment applications run properly.

99. The Notice dated 28 September 2020 from the Judges in Charge of the Commercial Court and the London Circuit Commercial Court clearly states that:

> **Half a day is strictly 2.5 hours inclusive of a judgment and costs arguments. Submissions in a half day hearing therefore need to be capable of being completed within 1.5 – (maximum) 2 hours.**
>
> **Inaccurate hearing estimates may result in a case being stood out of the list and re-listed for a realistic time estimate with no expedition of the relisting. There may also be costs consequences.**

100. Although the hearing of this application began promptly at 10.30 am, the parties did not complete their submissions until well after 1pm. There was therefore no time for judgment to be given or for consequential matters to be dealt with. I was therefore obliged to reserve judgment.

101. At the moment, half day appointments in the Friday applications list are readily available, but full day appointments are now being fixed for dates in 6 months' time. That practical reality results in applications such as this continuing to be given unrealistic estimates. The remedy, however, is for the parties to tailor the scope of their applications to the time available, and not (as in the present case) for them to try to cram more issues than can possibly be dealt with into an unrealistically short hearing time.

102. When Cockerill J said that the *necessary* aspects of this application could be dealt with in half a day, she was indicating to the claimants that they should reduce their application to such of its essential elements as could properly be dealt with in an absolute maximum of 2 hours of submissions. That is what should have been done.

103. Any further inaccurate estimates given for the hearing of applications in this case are therefore likely to be visited with the sanctions indicated in the September 2020 Notice.