Neutral Citation Number: [2023] EWHC 3396 (Comm)

Case No: CL-20230-000441

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 03/10/2023
Start Time: **2.33 pm** Finish Time: **3.19 pm**

Before:

MR JUSTICE JACOBS

- -

Between:

EBURY PARTNERS BELGIUM NV/SA

Applicant

- and -

GROSSISTE FRANCOCHINE SARL

Respondent

- -
- -

Mr Steven Reed (instructed by **Eversheds Sutherland**) for the **Applicant**
Mr Henry Mainwaring for the **Respondent**

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JUDGMENT
Approved

- -

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MR JUSTICE JACOBS:

1. This is an application by the claimant for an interim anti-suit injunction in respect of French proceedings which the claimant alleges has been brought by the defendant in breach of an exclusive jurisdiction agreement in favour of the English courts. The claimant is a company incorporated in Belgium and, at the material times, it carried on business as a provider of currency payment, trade finance and foreign exchange services. Further detail on the claimant company can be found in a decision which I gave at the end of last year in a case involving Technical Touch, as defendant; *Ebury Partners Belgium SA/NV v Technical Touch* [2022] EWHC 2927 (to which I will refer as "*Ebury 1*").

2. The defendant is a company incorporated in France. Its business, at the material times, involved selling vaping products. In July 2022, the defendant completed the claimant's online application form and entered into what was called a Relationship Agreement. The defendant ticked a box in the application form which acknowledged its acceptance of the claimant's terms and conditions. There was a term in the conditions, clause 1.2, which provided for the possibility that updated terms might apply, in which case notice would be treated as having been given to the defendant.

3. In the event, there is no material difference, for present purposes, between the original terms and conditions which were acknowledged in July 2022 and some later terms, which varied them. Both the original terms and the later terms contained clauses which provided for English law and English jurisdiction. Clause 4.1 provided as follows:

> "This agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation, interpretation, performance and/or termination (including non-contractual disputes or claims) shall be exclusively governed by and construed in accordance with the laws of England and Wales."

4. Clause 4.2 provided as follows:

> "Each party irrevocably agrees that the courts of England shall have exclusive jurisdiction to settle any dispute arising out of or in connection with this agreement, or its subject matter or formation, interpretation, performance and/or termination (including non-contractual disputes or claims). For such purposes, each party irrevocably submits to the jurisdiction of the English court and waives any objection to the exercise of such jurisdiction. Each party also irrevocably waives any objection to the recognition or enforcement in the courts of any other country of a judgment delivered by an English court, exercising jurisdiction pursuant to this clause."

5. The dispute between the parties has arisen as a result of the defendant's alleged failure to pay certain margin calls which were made in late 2022 and early 2023. The claimant's case is that this led to the relationship agreement being terminated and an outstanding sum of €1,191,517.27, which is to be claimed in the present proceedings. There were, in fact, three margin calls which were made in quite substantial amounts

in late 2022 or early 2023, the calls being respectively for €4,256,410, €520,233 and €448,778.

6. The correspondence between the parties in April 2023 led to the assertion by the defendant that the relationship agreement between the parties was a nullity. In correspondence, it was contended that the jurisdiction clause, as well as the applicable law clause, were unlawful clauses which meant that French law should apply and, therefore, that the French courts would be validly competent in the event of litigation.

7. Having made that point in correspondence, the defendant began proceedings in the Commercial Court in Paris and it seeks a ruling or orders that the Paris Commercial Court has jurisdiction because the jurisdiction clause is void and not applicable. It claims other relief including that the agreement between the parties should be declared null and void and that various terms of the contract should be deemed invalid.

8. These proceedings led in turn, as frequently happens in cases of this kind, to the commencement of proceedings by the claimant. The present proceedings were begun on 4 August 2023 and they were served as the claimant was entitled to do, relying on an exclusive jurisdiction clause, without requiring the court's permission. The time for filing acknowledgement of service has, in fact, passed. In the meantime, the claimant has issued the present application, which was issued on 24 August 2023, claiming an anti-suit injunction on an urgent basis. Attempts were made to have the matter heard as quickly as possible and the matter came on before me yesterday, 2 October 2023.

9. Evidence was served on behalf of the claimant in August. That evidence was not responded to at the time by the defendant. However, over the weekend, the defendant did produce some evidence which identifies the key points on which it relies. That evidence came from Jocelyn Ziegler, who is a lawyer in Paris and a partner in the law firm of Ziegler Associés. They are acting for the defendant in the French proceedings and Ms Ziegler provided a short and clear statement as to the French law position. She had in fact provided the Commercial Court, at an earlier stage, a letter (but not a witness statement) which set out the substance of French law relied upon.

10. The claimant referred to my decision in *Ebury 1*, the earlier case involving the present claimant. In that case, as will become apparent, there were arguments which bore some similarity to the points which I have to decide. One question which arose in the course of the hearing was whether or not that case can be materially distinguished. Mr Mainwaring, who puts his case, if I might say so, extremely well on behalf of the defendant, has submitted there are material distinctions between that decision and the present case. In particular, he says that there was no argument in that case, which involved Belgian proceedings, that the defendant was entitled to take advantage of and rely upon provisions which protect quasi-consumers in circumstances which I will describe in a moment.

11. The relevant legal principles, relating to the grant of anti-suit injunctions, were not materially in dispute. They are set out in various places and it is convenient to refer to the decision of Foxton J in *QBE Europe SA/NV v Generali Espana de Seguros Y Reaseguros* [2022] EWHC 2062 (Comm). The relevant principles are as follows:

(1) The court's power to grant an anti-suit injunction to restrain foreign proceedings, when brought or threatened to be brought in breach of a binding agreement to refer disputes to arbitration, is derived from section 37(1) of the Senior Courts Act. It will do so when it is just and convenient.

(2) The touchstone is what the ends of justice require.

(3) The jurisdiction to grant an anti-suit injunction should be exercised with caution.

(4) The injunction applicant must establish, with a high degree of probability, that there is an arbitration or jurisdiction agreement which governs the dispute in question.

(5) The courts will ordinarily exercise its discretion to restrain the pursuit of proceedings brought in breach of a forum clause unless the defendant can show reasons to refuse the relief.

(6) The defendant bears the burden of proving there are strong reasons.

That summary is taken from paragraph [10] of Foxton J's judgment.

12. In paragraph [11], he went on to elaborate on his points 5 and 6. He said as follows:

> "By way of further elaboration of those last two points:
>
> (i) It has been held that respect for comity is not a strong reason for the court not to give effect to a contractual choice of forum clause, and that comity requires that where there is an agreement for a sole forum for the resolution of disputes under a contract, that agreement is respected: Males LJ in *AIG Europe*. By way of parenthesis in that context comity is served by applying the same respect to choice of court or arbitration agreements in favour of other jurisdictions and arbitral seats.
>
> (ii) It has been held that the existence of a mandatory provision of foreign law applicable in the foreign court which overrides the contractual choice of jurisdiction is not a strong reason to refuse an [anti-suit injunction]."

13. Foxton J there referred to two authorities, *Shipowners' Mutual Protection Association (Luxembourg) v Containerships Denizcilik Nakliyat ve Ticaret (The Yusuf Cepnioglu)* [2016] EWCA Civ 386, paragraphs [34] to [37] and [57] to [58], and also to the well-known book by Thomas Raphael, KC, "*The Anti-Suit Injunction*", 2nd edition, paragraphs 8.31 to 8.44. I have looked at both of those authorities and will come back to the discussion in Mr Raphael's book in due course. Mr Raphael's book contains a very useful discussion of what seems to me to be the central point between the parties in this case.

The submissions of the parties

14. On behalf of the claimant, Mr Reed submits that this is a straightforward case for an anti-suit injunction. The French proceedings have been brought in breach of the exclusive jurisdiction agreement. He submits there are no strong reasons for not granting the injunction. He submits that there is no reason to disapply the exclusive

jurisdiction agreement in this case. He submitted that the analysis in *Ebury 1* was indistinguishable. He referred to aspects of the reasoning in that case in relation to whether or not there was a strong reason to decline to grant an anti-suit injunction in that case. He said that those factors are equally applicable here.

15. Mr Mainwaring, on behalf of the defendant, argues that England is not the natural forum for the resolution of a dispute under a contract made between a Belgian company and a French company and which did not require performance in England. His main point, however, was that an anti-suit injunction would result, in the present case, in a material injustice to the defendant. The basis of the argument is that, under French law, a number of relevant clauses, including, in particular, the exclusive jurisdiction agreement, would be struck down. This argument is based on the French Consumer Code, as introduced by the Ordinance of 14 March 2016, which is described in Ms Ziegler's evidence.

16. It seemed to me that Mr Mainwaring fairly summarised the effect of Ms Ziegler's evidence in his skeleton argument, which was as follows. The French Consumer Code, as introduced by the Ordinance of 14 March 2016, distinguishes "non-professionals" from "consumers". The latter are natural persons acting outside their professional activities. The term "non-professional" is defined as "any legal person acting for a purpose that do not fall within the scope of its commercial, industrial, artisanal, liberal or agricultural activity". This distinction is crucial because it dictates the level of protection that an entity is entitled to under French law.

17. He submits that the claimant is a specialist financial services company but, on the other hand, the defendant is a company which specialises in the wholesale trading of goods. Its business consisted of selling vaping products. He says that the currency trades, which the defendant undertook with the claimant, represented a peripheral activity for the defendant and they were not intrinsically part its core business activities. The subject matter of the contracts which the defendant entered into with the claimant did not pertain to that core business. The defendant did not possess the same level of expertise or bargaining power as it does in its primary line of business, which was wholesale trading.

18. Accordingly, he submitted that, in reliance upon Ms Ziegler's evidence, the defendant was qualified under French law as being non-professional for the purposes of the contracts. This brought with it a level of protection which would otherwise not be available to entities engaged in commercial activities. He submitted that the agreements which were made in the present case between the claimant and the defendant involved no opportunity for the defendant to negotiate the proposed terms. The consequence of all of this was that the defendant, who had no real opportunity to negotiate, had effectively entered into a contract of adhesion.

19. The further consequence of that is that, under French law, the contractual clauses, which create a significant imbalance between the rights and obligations of the parties to the contract, can be deleted by the judge at the request of the contracting party which has suffered detriment. Mr Mainwaring identified a number of clauses which would be so deleted and those include the clause which provides for English jurisdiction.

20. The bottom line is, therefore, that if the English jurisdiction clause was to be enforced by an anti-suit injunction, the defendant would be denied significant rights and protections to which it would be entitled under French law. He submits that is a strong reason for not granting the anti-suit injunction in the present case.

21. In his oral submissions, Mr Mainwaring submitted that the previous *Ebury* decision is not determinative. That case did not involve a consumer or someone in the position of a non-professional which, at times, he equated to being a consumer and described as a quasi-consumer. He submitted that the defendant here stood in a privileged position, as do other consumers and quasi-consumers. So, it would be wrong to deprive the defendant of the protections afforded under the French law introduced in 2016. The effect of the anti-suit injunction which the claimant sought would be to abrogate the consumer rights which existed under French law in the context of a contract which was not the product of a bespoke negotiation.

22. Accordingly, the upshot is that the court should, one way or another, apply French law to the contract. In the course of his later submissions, he indicated that one route to do so would be Article 3.3 of the Rome 1 Convention (i.e. Regulation (EC) No 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations), which applies to issues of choice of law. But this was not the only route which he relied upon in support of the argument that discretionary considerations should, because of the impact of French law and protections which French law provided, be taken into account in the court's decision as to whether or not to grant an anti-suit injunction. He submitted that the denial of significant protections under French law is a strong reason not to enforce the exclusive jurisdiction clauses. He also emphasised that the protections are mainstream French law and do not come from some obscure backwater.

23. Mr Reed, as I said, responded to this by submitting that there was no reason to disapply the exclusive jurisdiction clause.

Discussion

24. There is no dispute that the Rome 1 Convention applies to determine the applicable law of the relationship agreement between the parties. There is, as is common ground, an express choice of English law in that agreement. Unlike in *Ebury 1*, it is not argued by the defendant that the terms and conditions to which the defendant assented by ticking the relevant box on the website were not fully incorporated. One of the terms and conditions to which the defendant agreed is the exclusive jurisdiction agreement, which is at the heart of the present application. Rome 1 does not directly apply to that clause because it is not applicable to jurisdiction agreements. However, as Mr Reed said, without there being any dispute on this: since the applicable law of the contract in which that clause is contained, or the matrix contract as it is sometimes called, is governed by English law it necessarily follows that the validity of the jurisdiction clause itself is also governed by English law. That seems to me to be the approach taken by Article 10.1 of Rome 1.

25. It follows that the first stage of the inquiry, namely that the claimant must show to a high degree of probability that there is a jurisdiction agreement which governs the dispute in question is, in this case, easily passed by the claimant. It is fair to say that

Mr Mainwaring's argument has not focused on that aspect of the requirement for an anti-suit injunction.

26. The argument which has developed concerns whether there was strong reason not to enforce that agreement. Contrary to Mr Mainwaring's argument, I do not accept that it is relevant to consider where the national forum for the resolution of claims under the contract would have been if there had been on exclusive jurisdiction agreement. There is an exclusive jurisdiction agreement in the present case and it is valid under English law, which is its applicable law. I do not consider that the strong reasons argument is advanced by asking what the position might have been if there had been no such clause.

27. As it seems to me, the issue between the parties comes down to the question of whether or not it is appropriate to decline to give effect to the exclusive jurisdiction agreement in the light of French legislation which, on the basis of Ms Ziegler's evidence, protects corporations who are not actually consumers but are categorised as non-professionals and, therefore, are, to some extent, equated with consumers.

28. The basic approach is, as indicated by Foxton J in the *QBE* case, paragraph [11 (ii)] that the existence of mandatory provisions of foreign law, applicable in the foreign court and which override the contractual choice of jurisdiction, is not a strong reason to refuse an anti-suit injunction.

29. It seems to me that that paragraph is a fair statement of the legal position, as it currently exists in England. I have looked carefully at paragraphs 8.31 and 8.44 of Mr Raphael's book, to which Foxton J referred. It is fair to say that there is some discussion in those paragraphs as to possible different approaches that might be taken by the English courts when arguments similar to that advanced by Mr Mainwaring are put forward. However, Mr Raphael says this, in paragraph 8.33:

> "In general, the English courts have adopted an uncompromising approach to the conflict of conflicts in anti-suit injunction cases if the injunction defendant is in actionable breach of contract by breaching an exclusive forum clause under the substantive law applied by English choice of law principles."

30. He goes in 8.34 to say as follows:

> "Thus, in a number of cases, the courts have held that it was not a 'strong reason' to refuse to enforce an exclusive forum clause by injunction but the foreign court will not enforce the clause because the foreign court applies a mandatory domestic statute which overrides the parties' choice of law and forum or because the foreign court would hold that the clause was not incorporated into the contract, applying a different substantive law to that which the English would apply, or because the foreign court will refuse to enforce the forum clause in its discretion, applying principles contrary to those which would be deployed by an English court. Recently in *The Yusuf Cepnioglu*, Longmore LJ's reasoning, although not entirely explicit, can be read to suggest that questions of comity just do not arise when an exclusive

> forum clause has been agreed in the eyes of an English court and, as a matter of principle, foreign mandatory laws can be ignored."

31. He goes on in later parts of this section of the book to refer to some decisions which, *obiter dicta*, float the possibility that some different conclusion might be reached. For example, he says in paragraph 8.41:

> "Nevertheless, in recent years, some regard has begun to be paid to the conflict of conflicts. There is a devolving line of authority which suggests that the system-transcendent reason of sufficient weight in favour of the foreign law may be capable, in some particular cases, of being a 'strong reason' against the grant of an injunction. To date, this remains merely a possibility floated in *obiter dicta*. The scope of any exception, if one exists at all, is unclear and there is little sign, as yet, that it will be applied broadly."

32. One case to which Mr Raphael refers in the footnotes is a case on which Mr Mainwaring placed particular reliance and which I will discuss in due course: the decision of Waller J, as he then was, in *Phillip Alexander Securities and Futures Ltd v Bamberger* [1997] ILPR 73, in particular paragraph [51]. Raphael goes on in paragraph 8.43 to say:

> "Similarly, it is possible that where a dispute or public policy consideration is of a 'strongly domestic nature', and from a system-transcendent point of view can be seen as legitimately within the sphere of influence of the foreign state, a foreign mandatory statute overriding the parties' choice of law should be give weight. This is a principle which the court should only apply, if at all, with care; but one candidate that has been suggested is a foreign statute for the protection of the foreign country's domestic consumers."

33. There is a reference there to the *Phillip Alexander Securities* case. Raphael goes on in that paragraph to say:

> "In contract, a foreign statute which seeks to impose domestic public policy choices on international and commercial transactions, in defiance of the parties' freely chosen choice of law, is less likely to be given system transcendent weight by the English courts."

34. The thrust of those passages is that, generally speaking, the English courts take an uncompromising attitude. Ultimately, the existence of contrary provisions of a foreign jurisdiction will not override the clear choices of law and, in particular, jurisdiction to which parties have freely agreed. It is, in fact, quite difficult to find any cases in which the courts have chosen, in effect, to treat the existence of a valid English jurisdiction clause or an arbitration clause as being subservient to the approach and law taken in the foreign country where the defendant wishes to litigate.

35. The one case which Mr Mainwaring was able to cite in that context was the decision in the *Philip Alexander Securities* case. He, in fact, referred to what is a very helpful discussion and summary of that case in a later decision of Aikens J in *OT Africa Line Ltd v Hijazy & Ors* [2001] 1 Lloyd's Rep 76, 2001 CLC 148. As is apparent from

paragraphs [73] to [87] of that decision, the *Philip Alexander Securities* case involved facts which were substantially different to the facts of the case which I am considering. It was a case which involved parties in Germany who were actually, and without doubt, consumers. There was evidence that the German courts, to which those parties had resorted, would be offended by the anti-suit injunctive relief, which the claimant, in the *Philip Alexander Securities* proceedings, was seeking to obtain. Waller J did not ultimately have to decide whether or not it was appropriate to grant an anti-suit injunction in that case. The principal ground of his decision was based on the fact that he was not satisfied that there was a relevant arbitration agreement in the contract at all. However, it is clear that he went on to consider whether relief in the circumstances of that case was appropriate. He said that had it been necessary to decide the point, he would have declined to grant relief, given the way in which matters had proceeded in Germany with decisions actually having been made in favour of the consumers and the evidence as to the attitude of the German courts to anti-suit injunctive relief.

36. The case went on appeal and Waller J's decision was upheld by the Court of Appeal. The Court of Appeal did not need to consider the second ground on which Waller J had expressed a view, although a passage at the end of the judgment indicated that there may be certain cases where anti-suit injunctive relief might not be appropriate, notwithstanding a clear jurisdiction agreement.

37. I have not been referred to any subsequent case where Waller J's decision has been applied. In the *OT Africa* case itself, Aikens J did grant an anti-suit injunction and he was able to distinguish the *Philip Alexander Securities* case on the basis that there had been positive evidence in that case of the attitude of the German courts. By contrast, in the case before him, there was no good evidence as to the attitude of the Belgian courts.

38. It seems to me that the *Philip Alexander Securities* case does not provide any real guidance as to how I should approach the circumstances of the present case. I can well understand the caution of Waller J about the grant of an anti-suit injunction in a case involving actual consumers, where decisions favourable to the consumers had been given in Germany and where there was positive evidence as to the attitude of the German courts to the grant of anti-suit relief.

39. However, it does not seem to me that this case has any real application in the present context. I am dealing here not with consumers, who are natural persons under the approach taken in Rome 1, but I am dealing with a defendant company which appears to have been in a reasonably substantial way of business. The evidence as to the nature of the defendant company in the present case is somewhat limited. However, it is reasonable to infer, from the size of the margin calls that were made in this case, that there was substantial trading that was being carried out.

40. It may well be the case, and indeed is the case on Ms Ziegler's evidence, that, as a matter of French domestic law, applying the relevant public policy considerations which have thought to be appropriate in France, the defendant is a company which is treated as worthy of some protection. But to adopt the language of Mr Raphael in his book, a foreign statute which seeks to impose domestic public policy choices on international commercial transactions, in defiance of the parties' freely chosen choice of law, is less likely to be given system-transcendent weight by the English courts.

41. In the present case, one needs to constantly bear in mind that, in the eyes of English law and in the eyes of the English courts, there is a very important factor which enters into this equation; namely the importance of giving effect to the parties' freely chosen bargain. It does not seem to me that this is, in any sense, outweighed by the fact that the defendant may be able to claim that it is in the position of a quasi-consumer, albeit not a fully-fledged consumer, in the eyes of French law.

42. It follows that I do not consider that the grounds of opposition to the anti-suit injunction, which have been relied upon by Mr Mainwaring, are sufficient to amount to a strong reason to decline to enforce it. I reach that conclusion without needing to rely on the decision in *Ebury 1*. However, while I accept that the decision in *Ebury 1* is not precisely on all fours with the present case because, as Mr Mainwaring correctly said, the consumer argument was not advanced in that case, there are certain similarities which point to the conclusion which I have reached.

43. In *Ebury 1*, the defendant was seeking to rely upon certain provisions of Belgian law. The defendant contended that, notwithstanding jurisdiction agreements, which on the claimant's case had been incorporated, the provisions of Belgian law should be applied by the court. For that purpose, reliance was placed on Article 3.3 of Rome 1. If that argument were to be successful, then the effect in substance would be to disapply, at least to some extent, the applicable law to which the parties had agreed, namely English law.

44. In that case, I decided that the possible availability of an Article 3.3 argument was not a strong reason to decline to enforce the English jurisdiction clause. The relevant discussion is at paragraphs [118] to [126] of my judgment. It seems to me that case is of some relevance, although I accept that it is not determinative; because it illustrates that even if there is a route which enables a party to invoke a foreign law (in that case Belgian law) in order to displace, to some extent, the application of English law, nevertheless the availability of that route is not, in itself, a strong reason to decline to enforce a jurisdiction agreement. One reason is because the English court will look carefully at Article 3.3 arguments. As I indicated in *Ebury 1*, they are by no means easy to advance. Another reason is that if the English court were to decide that Article 3.3 led to the application of some different law, there would be no difficulty in the English court applying that different law.

45. It seems to me that those points have some application in the present case for this reason. Rome 1 does, as *Ebury 1* shows, provide a route by which certain provisions of a foreign law, here French law, could be made applicable if the conditions of Article 3.3 are satisfied. Mr Mainwaring has said that this is a route on which he intends to embark in the present case. He says that Article 3.3 is a road which will enable him to apply French law and, therefore, to some extent, displace English law in the present case.

46. However, *Ebury 1* shows that the existence of this route is not in itself a good reason for disapplying the English jurisdiction agreement or refusing to grant anti-suit relief on the basis of it. The reasons are, as I have indicated, that English can apply the foreign law and it is difficult, in any event, for a party to bring itself within Article 3.3. In the present case, it is obvious that there will be substantial arguments as to whether Article 3.3 is applicable at all, given the international nature of the dealings between the parties.

47. If that direct route under Article 3.3 to the application of French law is not a strong reason to decline to grant relief, it would, in my judgment, be somewhat surprising if, nevertheless, the court were to decline to enforce the present English jurisdiction clause by injunction because of discretionary arguments based on French law; that being, in substance, the case which the defendant advances. It seems to me that it would be an odd result if the direct route under Article 3.3 to French law was not a good enough reason to decline to grant an injunction but, nevertheless, the court declined to grant an injunction because of provisions of French law such as those relied upon in the present case.

48. It seems to me that this was not a point focused on in the *Philip Alexander Securities* case and, indeed, there is no example, apart from that case, of the court declining to grant relief by way of anti-suit injunction based upon mandatory provisions of a foreign law which, in the eyes of English law, is not the applicable law of the contract.

49. All of that means that however the case is put, whether on the basis of Article 3.3 or simply on the basis of the broad discretion which is available to the English court, I am not satisfied that there are strong reasons to decline to enforce the English jurisdiction agreement in the present case. I, therefore, will grant the injunction which has been sought by the claimant.

(Following further submissions)

50. The claim for costs here includes certain work that Mr Reed had to do after the hearing, because points were raised by the defendant very shortly before the hearing and they gave rise to questions from me. The total claim is £69,000 of which £12,000 approximately is VAT. That means the total claim is £57,000. I think Mr Mainwaring has some fair points on the fact that the work charged is not exclusively related to the injunction but includes Particulars of Claim and perhaps other work which will be claimable separately. I am concerned with the costs related to the application.

51. The application was not a particularly complex application, particularly since the claimant had the benefit of my earlier decision. It obviously did require a certain amount of work and did require perhaps a little bit more work because the defendants only instructed English lawyers relatively late in the day.

52. I bear in mind that, when these things do go to a detailed assessment, parties tend to recover somewhere between 60% and 80%. I am going to say that the appropriate figure here is £42,000 out of the £57,000. I am going to make deductions to reflect the points which have been made by Mr Mainwaring and the fact that, if it did go to a detailed assessment, I am sure some of these figures would be cut back.

53. £42,000 is my summary assessment, excluding VAT. If VAT is payable, that will be at 20% on the £42,000. I will decide that on paper, if you cannot agree it.
