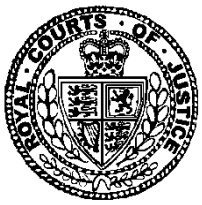

Neutral Citation Number: [2023] EWHC 455 (Comm)

Case No: CL-2022-000412

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
KING'S BENCH DIVISION
COMMERCIAL COURT

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

Date: Monday 6 March 2023

Before :

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

- -

Between :

DR MORTEZA RAJABIESLAMI	**Claimant**
- and –	
(1) MR SAM TARIVERDI	**Defendants**
(2) MELOUSA INC	
(3) PASSA NAVIGATION INC	

- -

Mr Max Davidson (instructed by **Stephenson Harwood Middle East LLP**) for the **Claimant**
Ms Colleen Hanley (instructed by **Waterson Hicks**) for the **Defendants**

Hearing dates: 24, 27 February 2023

- -

Approved Judgment

I direct that no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

……..

This judgment was handed down remotely by circulation to the parties' representatives by email and release to The National Archives.
The date and time for hand-down is deemed to be 10:30am on Monday 6 March 2023

MR SALTER KC:

(A) Introduction

1. This is an application by the defendants for security for costs.

2. The first defendant, Mr Tariverdi is an Iranian national resident in England and Greece. Mr Tariverdi is the sole shareholder and director of Melousa Inc and Passa Navigation Inc, the second and third defendants, which are companies incorporated in Liberia. The claimant, Dr Morteza Rajabieslami, is an Iranian national resident in Qatar.

3. The defendants' application for security relies on each of conditions (a), (e) and (g) of those set out in CPR part 25.13(2) as a gateway to the making of the order sought.

4. Dr Rajabieslami strongly resists the application. Mr Davidson, who appears on his behalf, argues that the gateways in (e) and (g) in CPR part 25.13(2) have not been made out on the facts. More generally, Mr Davidson submits that the court should not be satisfied, having regard to all the circumstances of the case, that it is just to make such an order. In particular:

    4.1 While accepting that gateway (a) has been made out, Mr Davidson submits that there are no "objectively justified grounds relating to obstacles to or the burden of enforcement" against Dr Rajabieslami, such as would make an order for security appropriate.

    4.2 Furthermore, Mr Davidson submits that this is in any event one of those exceptional cases in which the court should take into account the merits of the underlying action which, Mr Davidson submits, are plainly in Dr Rajabieslami's favour.

    4.3 Mr Davidson also relies upon what he says has been the defendants' conduct in connection with this case, including late compliance with orders for disclosure and belated provision of further information.

(B) The action

5. In very brief summary, Dr Rajabieslami's case is that Mr Tariverdi has stolen and sold the vessel owned by Desero Shipping Corporation ("**Desero**"), a Liberian one-ship company, the shares in which Mr Tariverdi had agreed, pursuant to a written Declaration of Trust, to hold on trust for Dr Rajabieslami. According to Dr Rajabieslami, he was himself holding the shares in Desero on trust for a Ms Sanchouli, who had financed the acquisition of the ship. The purpose of passing on the shares to Mr Tariverdi was so that Mr Tariverdi could operate the ship (through

another company) on behalf of Dr Rajabieslami (in turn, on behalf of Ms Sanchouli) and could access financing for Desero, in accordance with the terms of a written "Financial Advisory/Consultancy Agreement".

6. The defence, in equally brief summary, is that the alleged Declaration of Trust is a forgery and that the shares were transferred to or for the benefit of Mr Tariverdi as the consideration for what is described in the Defence as "a domestic transaction in Iran". In the defendants' response to the claimant's Request for Further Information, this "domestic transaction" is identified as the sale by Mr Tariverdi and his family to Dr Rajabieslami between 2016 and 2019 of a number of valuable Persian carpets, itemised in eight invoices totalling just over USD 9m.

7. It will be plain even from these brief summaries that both the claim and the defence involve allegations of dishonesty against the other side.

(C) The procedural history

8. Before I turn to the substance of the application it is necessary for me to set out a little of the procedural history, both of the application and of the action itself.

9. The claim form was issued on 5 August 2022. On the same day, Jacobs J granted Dr Rajabieslami a freezing injunction restraining the defendants from removing from England and Wales any assets up to the value of USD 7,392,995.20 or disposing or dealing with any assets up to that value, wherever situated. The order made by Jacobs J contains standard provisions for asset disclosure, to be made informally within five days of service and by affidavit to be served within 14 days. By order of Robin Knowles J made on 18 August 2022, that freezing injunction was continued by consent until further order.

10. Mr Tariverdi made an affidavit of assets on 19 August 2022. On 4 October 2022, Dr Rajabieslami applied for permission to cross examine Mr Tariverdi on that affidavit. That application was eventually adjourned on 13 January 2023 to the Costs and Case Management Conference to be held on 27 January 2023.

11. Particulars of claim were served on 15 September 2022. The Defence was served on 13 October 2022. The Reply was served on 3 November 2022, together with a Request under CPR Part 18 for Further Information in relation to the "domestic transaction" relied on in the Defence.

12. The present application was begun by Application Notice issued on 16 December 2022. It was supported by the first witness statement of the defendant's solicitor, Mr Edward Bayliss.

13. By order of Foxton J made on 19 January 2023, the 14 day period prescribed by PD 58 para 13.2 for service of Dr Rajabieslami's evidence in response was extended by

consent for about a month, to 3 February 2023. On that date, Dr Rajabieslami served, by way of response, his own witness statement and the fifth witness statement of his solicitor, Mr Mark Lakin.

14. In the meantime, on 27 January 2023 HHJ Pelling KC (sitting as a judge of the High Court) had heard the first Costs and Case Management Conference and had given directions intended to lead to a six-day trial not before 30 October 2023. HHJ Pelling KC also made an order recording the withdrawal of Dr Rajabieslami's application to cross-examine Mr Tariverdi, on the basis of the further witness statements which Mr Tariverdi had served on 12 and 20 January 2023 and of the undertakings recorded in that order which Mr Tariverdi had agreed to give. Mr Tariverdi was ordered to pay the costs of that application.

15. Thereafter, on 14 February 2023 the defendants served the second witness statement of Mr Bayliss, in reply to the evidence served on behalf of Dr Rajabieslami.

16. On 16 February 2023 the defendants served their response to Dr Rajabieslami's Request for Further Information, annexing to it copies of the various documents (including the invoices) to which that response referred.

17. Sometime after 8pm on the evening of Wednesday, 22 February 2023, Dr Rajabieslami unexpectedly served evidence in rejoinder, consisting of his own second witness statement and the sixth witness statement of Mr Lakin. Including the exhibits, the "Claimant's additional evidence for the SFC hearing" bundle lodged with the court on the morning of Thursday 23 February 2023 was 193 pages long.

18. In outline, this further evidence served on behalf of Dr Rajabieslami dealt with three main areas. First, Dr Rajabieslami gave evidence contradicting and/or explaining the evidence given by Mr Bayliss in relation to gateways (e) and (g). Second, Mr Lakin exhibited a further letter from Dr Rajabieslami's expert witness on Qatari law, Mr El Haddad, dealing with gateway (a). Finally, Mr Lakin gave evidence seeking to demonstrate that Dr Rajabieslami's signature on the copies of the invoices and other documents provided by the Defendants on 16 February 2023 were forgeries.

19. Later on the morning of Thursday 23 February 2023, the solicitors acting for Dr Rajabieslami wrote to the Court, indicating that, in their view and that of Mr Davidson, a total of 3 ½ hours would now be required for judicial pre-reading and that there was a material risk that the hearing of the Application would exceed the half day of court time currently allocated to it. The defendant's solicitors responded with a letter to the court, objecting to the admission of this further evidence, on the basis that:

> **.. There is simply no time to digest and respond to this evidence even if it were admissible in this application, which it plainly is not .. The eleventh hour conduct of the Claimant attempting to shoehorn in voluminous**

> **further evidence not relating to the stated grounds of the application and then raising the suggestion that 2.5 hours will not be sufficient to dispose of the application is nothing more than a thinly veiled attempt to have the Defendants' application hearing adjourned and derailed ..**

20. These letters to the court were placed before me at lunchtime on Thursday. I directed that the hearing should remain in the list for Friday morning and that I would deal with any applications by either side at the beginning of the hearing.

21. At the outset of the remote hearing on Friday morning, Mr Davidson sought permission to rely upon this further evidence, despite its late service.

22. PD 58 para 13.2 does not provide for the service of a second round of evidence by the respondent to an application. Furthermore, the Overriding Objective and considerations of good case management require that applications for security for costs should be both made and opposed in a reasonable and proportionate manner. For the sake of other litigants, they should not be allowed to take up more than an appropriate share of the court's resources.

23. I was therefore at first inclined to exclude this new evidence from consideration on this application. The arguments put forward by Mr Davidson in relation to the further evidence of Dr Rajabieslami in relation to gateways (e) and (g) and the further letter from Mr El Haddad dealing with gateway (a) did not seem to me to be persuasive. It seemed to me that the voluminous nature of the materials now put forward on behalf of Dr Rajabieslami risked turning this application into the kind of "large interlocutory hearing involving great expenditure of both money and time" (to adopt the language of Sir Nicholas Browne Wilkinson VC in *Porzelack KG v Porzelack (UK) Ltd* [1987] 1 WLR 420 at 423) that the court should be astute to avoid.

24. As for the evidence of Mr Lakin seeking to demonstrate that Dr Rajabieslami's signatures were forged, this was clearly directed solely to the merits of the case. As Ms Hanley, who appeared on behalf of the defendants, submitted, it is well established that the merits of the case are relevant to an application for security only where it can clearly and shortly be demonstrated that one or other of the parties is very likely to succeed. As is stated in paragraph 4 of Appendix 10 of the Commercial Court Guide:

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

25. Mr Davidson, however, stressed that these materials had only been provided by the defendants to Dr Rajabieslami on 16 February 2023, despite the strenuous efforts of

Dr Rajabieslami's solicitors to obtain them earlier. In the circumstances, Mr Davidson argued that it would be unjust to prevent Dr Rajabieslami from relying on these new materials. Mr Davidson also assured me that he proposed to submit on the basis, inter alia, of these new materials that this was one of those exceptional cases where "it can be clearly demonstrated one way or another that there is a high degree of probability of success or failure": see *Danilina v Chernukhin* [2019] 1 WLR 758 at [69]-[70], per Hamblen LJ.

26. Ms Hanley told me that, despite the very short notice that she had received of these new materials, she was prepared to agree that the court should consider them, so long as that did not prevent her application being heard that day.

27. By this time, some 50 minutes had already elapsed from the original half-day appointment. I was, however, able to accommodate a further half-day appointment on Monday 27 February 2023, for which both counsel told me that they were available. In the circumstances, it seemed to me that the most practical course from a case management point of view was for me to admit this further evidence (while making due allowance for the fact that the defendants had had no opportunity to respond to it), to begin the hearing in what remained of the time on Friday, and then to continue it on Monday 27 February.

28. When I indicated that that was what I proposed to do, Mr Davidson said that he would prefer the matter to be adjourned so as to permit his clients to obtain expert handwriting evidence to support their case on forgery. This was a new suggestion, which had not been included in Dr Rajabieslami's solicitors' letter on Thursday. It also seemed to me to be a step too far into the sort of detailed investigation of evidence that is not appropriate on applications for security. In the circumstances, I declined to adjourn the application and continued the hearing in the way that I had previously indicated.

29. Shortly before the hearing resumed on Monday 27 February 2023, Dr Rajabieslami's solicitors filed an expanded version of the "Claimant's additional evidence for the SFC hearing" bundle. This now contained the seventh witness statement of Mr Lakin, exhibiting and commenting on what he described as a "bound bundle of documents which also includes an original of the Declaration of Trust", received by him from his client on 24 February 2022. Ms Hanley took the pragmatic approach that she would not object on behalf of the defendants to my reading and taking into account this yet further witness statement, provided that I also took into account the fact that the defendants had had no opportunity whatsoever to consider or respond to it. The hearing therefore continued on the afternoon of Monday 27 February 2023 on that basis.

(D) Gateways (e) and (g)

30. With that somewhat lengthy preamble, I now turn to the substance of the defendants' application for security. Though Ms Hanley did not put them at the forefront of her submissions, it is convenient to begin by considering gateways (e) and (g).

31. The court's power under CPR 25.12 to order security may be exercised only if one or more of the conditions in paragraph 2 of CPR 25.13 applies. Before an applicant for security can invite the court to consider whether it is just to make an order, the applicant must first prove to the court on the balance of probabilities that one of these conditions is made out. As Nugee LJ observed in *Infinity Distribution Ltd v Khan Partnership LLP* [2021] 1 WLR 4630 at [30]:

> **The pre-conditions or gateways in rule 25.13(2) are not questions for the court's discretion: they are matters of fact on which the court needs to be satisfied**

32. Condition (e) in paragraph 2 of CPR 25.13 is that:

> **the claimant failed to give his address in the claim form or gave an incorrect address in that form**

The address given by Dr Rajabieslami in the Claim Form was "Energy Venture Holding Company, Al Dafna Area, West Bay, Zone 63, Street 920, Building 27". Condition (e) will therefore be satisfied only if the defendants can show that that was "an incorrect address".

33. Para 2.1 of PD 16 provides that

> **The claim form must include an address (including the postcode) at which the claimant lives or carries on business, even if the claimant's address for service is the business address of their solicitor.**

It is therefore sufficient if the address given is an address at which the claimant at the relevant time carries on business.

34. Mr Bayliss's first witness statement explains that Building 27 is the Al Qassar Office Tower and that the address of Energy Venture Holding Company LLC ("**Energy Venture**") is office No. 4 on the 15th floor of the Al Qassar Office Tower. On the basis of that evidence, Mr Bayliss makes 2 points. The first is that the address given does not include "the actual number of the property within Building 27". The second is that the address given is not the address of Dr Rajabieslami, but that of a separate legal entity.

35. In his evidence in response, Dr Rajabieslami states that the address given for Energy Venture is:

> **.. the correct address and the address where I carry on business on a day-to-day basis. This is the address which is provided for the building by the Doha Municipality .. As with many Middle Eastern countries, addresses in Qatar do not have postcodes ..**

36. Mr Bayliss's second witness statement responds to that evidence by drawing attention to the fact that Dr Rajabieslami has chosen to use a different "current residential address" in his witness statement, has given various other addresses in other documents, and that there is therefore "sufficient and substantial uncertainty as to what [Dr Rajabieslami]'s primary address now is and thus uncertainty as to where it would be most appropriate to attempt any enforcement proceedings".

37. Ms Hanley realistically accepts that this evidence from Mr Bayliss, even taken at its highest, establishes no more than a "risk" - in other words, a possibility rather than a probability - that the address given by Dr Rajabieslami in the claim form may have been incorrect. In my judgment, that concession was rightly made. The evidence before the court on this application does not establish on the balance of probabilities that the address given by Dr Rajabieslami in the Claim Form was incorrect. Gateway "e" has therefore not been made out.

38. Condition (g) in paragraph 2 of CPR 25.13 is that:

> **the claimant has taken steps in relation to his assets that would make it difficult to enforce an order for costs against him**

39. The purpose of condition (g) is to prevent injustice to a defendant where the assets available to enforce any order for costs they may obtain have been or are being put beyond the reach of enforcement. The principles to be applied under this ground were summarised by Roth J in *Ackerman v Ackerman* [2011] EWHC 2183 (Ch) at [16]. Those 10 principles are set out in the *White Book* at paragraph 25.13.16, and I will not repeat them here, other than to record that Ms Hanley laid particular stress on principle 2 (that the test is an objective one) and principle 4 (that there is no temporal limitation as to when the relevant steps were taken).

40. The evidence in support of the defendants' case in relation to this condition is primarily contained in paragraphs 19 to 29 of Mr Bayliss's second witness statement. In brief summary, the substance of that evidence is this: that Dr Rajabieslami conducts his business through a variety of corporate vehicles and has given no details of any bank accounts or other assets held in his own name; that in consequence "the only visible assets held by [Dr Rajabieslami] against which the Defendants may seek enforcement [are] the shares held by [Dr Rajabieslami]"; and that it is unclear how much those shares are worth and how easy it would be to enforce any costs judgment against them.

41. Ms Hanley also relies on the factual background to the present claim, which involves (on Dr Rajabieslami's case) the use of a Liberian company whose shares are held on trust and then on sub-trust, thus producing three degrees of legal separation between the ultimate beneficial owner (Ms Sanchouli) and the asset (the ship) which she is said beneficially to have owned.

42. Mr Bayliss is correct to say that the only assets disclosed by Dr Rajabieslami in his witness statements in response to this application are the shares which he owns in the Qatari companies, Energy Venture and Petro White QFZ LLC, the Omani company, Bawakher Al Duqm Co, and the Emirati company, AAB KAMCA Energy FZC ("**AAB KAMCA**"). Unlike Mr Tariverdi, however, no order has been made against Dr Rajabieslami for disclosure of assets: and the mere fact of owning shareholdings in trading companies cannot, of itself, be said to be taking steps in relation to one's assets that would make enforcement difficult. The shares themselves are assets of Dr Rajabieslami and it is not been argued that he has at any time taken any specific steps in relation to those assets to put them beyond the reach of enforcement.

43. In other circumstances, there might perhaps have been more force in Ms Hanley's submissions in relation to what, on Dr Rajabieslami's case, is the complicated factual background to the present claim. The defendants, however, face the difficulty in relying on those matters in order to establish their case for security that they do not admit the existence of any trust for Ms Sanchouli and deny the existence of any trust for Dr Rajabieslami.

44. Each case must, of course, turn on its own facts: but it seems to me that something more than the bare facts which I have just described (although, perhaps, not very much more) is required to establish the facts required to show that this gateway for security applies. On the basis of the evidence presently before me, I am therefore not persuaded that gateway (g) has been made out.

(E) Gateway (a)

45. That brings me to condition (a) in paragraph 2 of CPR 25.13, which Ms Hanley put at the forefront of her argument. This gateway requires that

> **the claimant is**
>
> **(i) resident out of the jurisdiction, but**
>
> **(ii) not resident in a State bound by the 2005 Hague Convention, as defined in section 1 (3) of the Civil Jurisdiction and Judgements Act 1982**

46. It is common ground that the factual requirements of this gateway are satisfied. It is, however, also common ground that the court has to ensure that its discretion to make

an order by virtue of this condition is exercised in a non-discriminatory manner for the purposes of Articles 6 and 14 of the ECHR.

47. As Hamblen LJ explained in *Danilina v Chernukhin* [2019] 1 WLR 758 at [51], this requires the court to be satisfied of "objectively justified grounds relating to obstacles to or the burden of enforcement in the context of the particular foreign claimant or country concerned". Such grounds exist where there is a "real risk of substantial obstacles to enforcement or of an additional burden in terms of cost or delay".

48. It is not necessary, in this context, for an applicant for security to show on the balance of probabilities that enforcement will be difficult or impossible. As Gloster LJ said in *Bestfort Developments LLP v Ras Al Khaimah Investment Authority* [2018] 1 WLR 1099 at [77]:

> **.. It is sufficient for an applicant for security for costs simply to adduce evidence to show that "on objectively justified grounds relating to obstacles to or the burden of enforcement" there is a real risk that it will not be in a position to enforce an order for costs against the claimant/appellant and that, in all the circumstances, it is just to make an order for security.**
>
> **Obviously there must be a proper basis for considering that such obstacles may exist or that enforcement may be encumbered by some extra burden: whether the evidence is sufficient in any particular case to satisfy the judge that there is a real risk of serious obstacles to enforcement, will depend on the circumstances of the case.**
>
> **I consider that the judge was wrong to uphold the Master's approach that the appropriate test was one of "likelihood", which involved demonstrating that it was "more likely than not" (i.e. an over 50% likelihood), or "likely on the balance of probabilities", that there would be substantial obstacles to enforcement, rather than some lower standard based on risk or possibility. A test of real risk of enforceability provides rational and objective justification for discrimination against non-Convention state residents ..**

A "real risk" in this sense must, however, be "a risk supported by solid evidence". A risk that is merely "speculative or fanciful" is not sufficient: see *JSC Karat-1 v Tugushev* [2121] 4 WLR 66 at [148], per Cockerill J.

49. The evidence before the court in relation to this aspect of the application was mainly directed to the question of how easy or difficult it would be to enforce any costs judgment in Qatar.

50. Mr Bayliss exhibited to his first witness statement an article dated 4 April 2019 from the online source, *Lexology*, entitled "Litigation: Enforcement of Foreign Judgments in Qatar". This article is signed by two lawyers from Al Tamimi & Company, a well-

known Middle Eastern law firm with offices throughout the area, including in Doha. The article states that:

> **.. The recognition and enforcement of foreign judgments in Qatar is governed by Articles 379 and 380 of the Civil and Commercial Procedural Code. Article 379 states that foreign judgments may be recognised and enforced in Qatar "on the same conditions that exist under the laws of that country". Therefore, applicants must prove that a judgment issued by a Qatar court is enforceable in the jurisdiction that rendered the foreign judgment.**
>
> **Securing the recognition and enforcement of a foreign judgment in Qatar is generally easier if a level of reciprocity can be established between Qatar and the country that issued the foreign judgment (ie, that judgments issued by the Qatar courts enjoy the same enforceability treatment in the country that issued the foreign judgment). If this reciprocity cannot be established by any bilateral or multilateral treaty, the Court of Execution will call for evidence on the laws of the country that rendered the foreign judgment in relation to the conditions applicable to the execution of a Qatari judgment in the jurisdiction that issued the foreign judgment.**
>
> **In the absence of any reciprocal arrangement between Qatar and the country that rendered the foreign judgment, it may be challenging to secure the recognition and enforcement of that foreign judgment in Qatar, and the Qatar courts will likely refuse to recognise and enforce the judgment or rehear the dispute.**
>
> **There have been cases where the Court of Appeal has declined to enforce a foreign judgment on the basis that neither party submitted evidence establishing the existence of any bilateral or multilateral treaty concerning the recognition and enforcement of judgments and/or judgments issued by the Qatar courts being enforced in the jurisdiction of the foreign judgment in accordance with the principle of judicial comity ..**

51. Mr Bayliss also exhibited to his first witness statement an article from another online resource, *Juris Arbitration Law*, written by Mr Hani Al Naddaf, Mr Al Naddaf is a partner in Al Tamimi and an advocate and the firm's Head of Litigation in Qatar. Under the heading "Present attitude towards enforcement of foreign money judgements", Mr Al Naddaf gives two specific examples of cases in which the Qatari Court of Appeal has refused enforcement of judgments issued by French courts for want of evidence of reciprocity between the French and Qatari courts. It seems likely that these are the cases which are referred to at the end of the passage cited above from the *Lexology* article.

52. In response to this evidence, Mr Lakin exhibited to his fifth witness statement a letter of advice from Mr El Haddad, the managing partner of Lex LLC, a company of legal consultants licenced by the Qatar Financial Centre Authority. This also drew attention to the requirement in Article 379 of the Qatari Civil and Commercial Procedural Code ("**the Code**") for proof of reciprocity, and observed that:

> **.. Qatari courts can call for textual evidence on English laws concerning the rules regulating enforcement of a Qatari judgment in England and Wales. If the textual evidence were such that the English courts can re-examine the merits of a case upon which Qatari courts had already passed judgment, then Qatari courts would similarly be entitled to re-examine the merits of an English court judgment or order ..**

53. Mr El Haddad also drew attention to the equivalent position in the UAE, saying that:

> **.. We note that following the English courts enforcing a Dubai court of cassation judgment in *Lenkor Energy Trading DMCC v Puri*, the UAE Ministry of Justice issued a directive confirming that English court judgments can be enforced in the UAE. We would expect the Qatari courts to also follow this approach if an English court recognises and enforces a Qatari court judgment ..**

54. In Mr El Haddad's opinion, it is "very likely" that a costs order made by an English court could be enforced successfully in Qatar, "assuming that there are available Qatar based assets and of course the requirements of Articles 379 and 380 of [the Code] .. are satisfied".

55. In response, Mr Bayliss exhibited to his second witness statement a letter of advice from Mr Hassan Al Khater, a registered Qatari Advocate. Mr Al Khater points out in that letter that there is no treaty between Qatar and the United Kingdom for the reciprocal enforcement of judgements, and no case known to him in which either a Qatari judgment has been enforced in the UK or a UK judgment in Qatar.

56. In relation to the requirement in Article 379 for reciprocity, Mr Khater's letter of advice expresses the view that:

> **.. The Qatari court will require concrete evidence in order to be satisfied as to reciprocity. In the absence of a treaty, that evidence would need to be in the form of examples of Qatari judgments actually having been enforced by English courts without re-examination of the merits, or a declaration by the government of the foreign country i.e. the United Kingdom government, that Qatari judgments will be recognised in the English courts without re-examination.**

> **If it is the case that there are no such concrete examples, and there is no government declaration, the Qatari courts will be certain to reject any request for an enforcement order ...**

57. This view is disputed by Mr El Haddad in the further letter of advice exhibited to Mr Lakin's sixth witness statement. Mr El Haddad indicates in that second letter that, in his view, neither a government declaration nor "concrete examples" are absolutely necessary and that reciprocity could sufficiently be proved by expert evidence of the position in England:

> **.. It is correct that in the absence of a treaty evidence of reciprocity could be by way of a declaration by the UK Government or providing the Qatari courts with examples of where English courts have enforced Qatari judgments in England, but these two modes of evidencing reciprocity are not exclusive and Qatari courts can call for textual evidence concerning the rules regulating enforcement of a Qatari judgment, for example, by way of expert evidence on the English law position to the Qatari court ..**

58. It is not in dispute that, as a matter of English law and subject to the usual rules and exceptions, an English court would, if asked to, enforce a final and conclusive Qatari money judgment. As is stated in Rule 46(1) of *Dicey, Morris and Collins on the Conflict of Laws* (16th edn), a copy of which was exhibited by Mr Lakin to his fifth witness statement:

> **Subject to the Exceptions hereinafter mentioned and to Rule 63 (international conventions), a foreign judgment in personam given by the court of a foreign country with jurisdiction to give that judgment in accordance with the principles set out in Rules 47 and 48, and which is not impeachable under any of Rules 52 to 55, may be enforced by a claim or counterclaim for the amount due under it if the judgment is:**
>
> **(i) for a debt or definite sum of money (not being a sum payable in respect of taxes or other charges of a like nature or in respect of a fine or other penalty); and**
>
> **(ii) final and conclusive**
>
> **but not otherwise.**

59. The issue which I have to decide for the purposes of the present application is whether there is a "real risk" that a Qatari court would not be satisfied of that position for the purposes of Article 379 of the Code simply by what Mr El Haddad refers to as "textual evidence" from a suitably qualified expert, but would instead require (as Mr Al Khater asserts) either specific examples of Qatari judgments actually having been enforced by English courts without re-examination of the merits, or a declaration by the UK government that Qatari judgments will be recognised in the English courts

without re examination - it being common ground that neither of those things presently exists.

60. Ms Hanley points out that the views initially expressed by Mr El Haddad were less unequivocal on the subject of whether expert evidence will be sufficient to satisfy a Qatari court, saying only that the Qataris courts "can" call for textual evidence, not that that would be likely on its own to satisfy them. Ms Hanley also invites the court to note that Mr El Haddad gives no examples of a Qatari court actually being satisfied by expert evidence about reciprocity in order to enforce a foreign judgment. She also submits that the one example given by Mr El Haddad - about the position in Dubai - actually supports Mr Al Khater's views rather than those of Mr Haddad, in that both a concrete example of enforcement and a consequent ministerial decree were thought necessary in Dubai, perhaps the most western-thinking of Middle East jurisdictions, in order to establish enforceability.

61. Mr Davidson, by contrast, submits that, since it is clear that the English courts would enforce a Qatari judgment, it would be straightforward to provide expert evidence of that, which could not be contradicted by any evidence tendered on behalf of Dr Rajabieslami. In the circumstances, he submits, it would be wrong to assume that the Qatari court would not accept that evidence. Mr Davidson also invites me to prefer the evidence of Mr El Haddad to that of Mr Al Khater. In that connection, Mr Davidson draws attention to the fact that Mr Al Khater's views on the difficulty of enforcing judgments against shares appear clearly to be contradicted by the statutory provisions cited in Mr El Haddad's second letter. This, in Mr Davidson's submission, significantly undermines the credibility of Mr Al Khater's opinions. Furthermore, according to Mr Davidson, there is no evidence that Mr Al Khater understands his duties as an expert to the court, and is not simply acting as an advocate for those who have instructed him.

62. Finally, Mr Davidson draws attention to the offer made by Dr Rajabieslami in his second witness statement to undertake not to challenge enforcement in Qatar of any costs order which the defendants might obtain.

63. In my judgment, Ms Hanley has the better of the argument on this point. All that she has to show for these purposes is that there is "a real risk of serious obstacles to enforcement". That, it seems to me, is sufficiently demonstrated by the materials on which she relies. The online article from *Lexology* says that enforcement "may be challenging" and is likely to be refused in the absence of the kind of concrete examples or governmental statement to which Mr Al Khater refers. That view, from a published independent source wholly unconnected with either party to this application, seems to me to give at least some support to the views of Mr Al Khater. I also accept Ms Hanley's argument that the analogy with Dubai provides more support for Mr Al Khater's views than it does for those of Mr El Haddad. Had the Dubai courts generally been prepared to act simply on the basis of expert evidence as to

English law, these ministerial statements would have been unnecessary. Finally, it seems to me to be telling that Mr El Haddad has not been able to give any example of a European judgment actually being enforced in Qatar – though I accept that that may be explained, at least in part, by the fact that Qatari judgments are not generally reported.

64. Taken overall, it seems to me that the evidence before the court on this application is sufficient to establish that there is, at the least, "a real risk of serious obstacles to enforcement" in Qatar of any costs judgment given in the defendants' favour.

65. The undertaking offered by Dr Rajabieslami is not, in my judgment, sufficient to obviate these apparent difficulties. First of all, by the time that enforcement of any costs judgment becomes relevant, it may not be straightforward for the defendants to enforce such an undertaking against Dr Rajabieslami. Dr Rajabieslami is resident outside the jurisdiction and apparently has no assets here, so may not in practice be susceptible to enforcement in this jurisdiction. As for enforcement in Qatar, there is no evidence that the Qatari courts themselves would enforce such an undertaking so as to prevent Dr Rajabieslami from arguing there against enforcement. Secondly, Article 379 of the Code appears to limit the jurisdiction of the Qatari courts in relation to the enforcement of foreign judgments, and the evidence does not suggest that these jurisdictional requirements can effectively be waived by either side.

66. Mr Davidson, however, has a further argument on behalf of Dr Rajabieslami in relation to gateway (a). In Mr Davidson's submission, the issue which the court has to decide on this application is not simply whether there are obstacles to enforcement in Qatar, but whether there is a real risk that the defendants will not be in a position to enforce an order for costs against Dr Rajabieslami. Since Dr Rajabieslami has given evidence that he has assets in jurisdictions other than Qatar, the possibility of enforcement in those other jurisdictions is also a very relevant consideration.

67. Specifically, Mr Davidson points out that Dr Rajabieslami has given evidence in his first witness statement that he owns 14% (ie 21 of the 150 shares) of AAB KAMCA, a private company incorporated in the Hamriyah Free Zone based in Sharjah, UAE, and which operates a small refinery in Sharjah. Dr Rajabieslami has produced a valuation report on AAB KAMCA as at 31 December 2016 from Morison (UAE) Consulting, which values its equity at just over USD 53m. On the basis of that report, Dr Rajabieslami therefore says in his first witness statement that "I estimate my share of the equity [in AAB KAMCA] to have been worth around USD 7,475,872.32 as at 31 December 2016". In his second witness statement, Dr Rajabieslami confirms that AAB KAMCA continues as a going concern and that he continues to own his shareholding, noting that, as a result of "amortisation" as well as changes in oil prices, his "best guess" at the value of his shareholding is now around USD 5,233,110.62. That value, Mr Davidson points out, is almost 10 times the amount now sought by way of security.

68. With regard to enforcement in the UAE, Mr Davidson draws attention to the evidence given by Mr Lakin in his sixth witness statement. In paragraph 1 of his fifth witness statement Mr Lakin says that he has "practiced in the Middle East for around six years and [is] a registered Legal Consultant in the United Arab Emirates". According to Mr Lakin's sixth witness statement:

> **.. Enforcement of foreign judgments in the UAE is governed by Articles 222 to 225 of the Federal Law No 42 of 2022 (the Civil Procedure Law) .. and there is no requirement that a judgment could be only enforced against a resident – enforcement could be sought regardless of the residency of the person as long as there are assets within the jurisdiction against which enforcement could be sought ..**

69. I accept Mr Davidson's argument that the central issue is whether "in the context of the particular foreign claimant" – ie Dr Rajabieslami - there is a real risk that a costs order could not effectively be enforced. I also accept Mr Davidson's argument that, in the case of Dr Rajabieslami, that issue is not wholly confined to the question of enforcement in Qatar. For the purposes of this application, I am also prepared to accept that it would be possible to enforce an English costs judgment against assets of Dr Rajabieslami in the UAE, even though that judgment was against, and those assets were owned, by a person who was not present or resident in the UAE.

70. Where, however, the court has to consider in this context assets in a jurisdiction other than the jurisdiction in which the claimant is resident, material considerations include not just the ease of enforcement in that other jurisdiction, but also how likely it is that those assets will still be there and will still be sufficient to satisfy any costs judgment, if and when made. That involves considering, among other things, the nature of the assets, their value (and how likely they are to appreciate or depreciate in value), how easy those assets are to move or to dispose of, and how likely it is that the claimant will dispose of them, either in the intervening period or if faced with a costs judgment that was likely to be executed against them.

71. In the present case, the assets concerned are shares in a trading company. Shares can, in general, be sold or transferred rapidly and easily: and there is no evidence in the present case that there would be any significant difficulty or delay were Dr Rajabieslami to wish to dispose of his shares in AAB KAMCA. Were any such difficulties in fact to exist, they would, of course, also be hindrances to the enforcement of any costs judgment against those shares.

72. As to the value of those shares, the valuation report from Morison (UAE) Consulting suggests that, at the end of 2016, it was very significantly more than would be required to satisfy any likely costs judgment. However, that valuation is now very out of date. It was in any event prepared simply as "an internal tool for the management",

using the Discounted Cash Flow method and applying an "illiquidity discount" of 20%. The reliability of the DCF method of valuation depends crucially upon the reliability of the predictions of future cash flows that are used. Morison (UAE) Consulting's valuation report records that their DCF valuation has been prepared on the basis of "financial projections .. including the basis of information and assumptions" provided by the company's management, which "has not been independently verified .. with regard to accuracy or completeness" by Morison (UAE) Consulting. In substance, therefore, the accuracy of this valuation is entirely dependent upon the accuracy of the company's management's own predictions of the company's then future performance, made about six years ago in late 2016 or early 2017.

73. The evidence served on behalf of Dr Rajabieslami does not include any current accounting information whatsoever for the company. It is therefore impossible to tell whether those predictions have in fact proved accurate over the intervening six years since they were made. Indeed, Dr Rajabieslami himself describes his own present estimate of the value of his shares as a "guess". Nor is there any indication (beyond the 20% "illiquidity discount") of how easy or difficult it might be for a judgment creditor to realise the value of these shares in this private company.

74. Taking all these matters into account, the reality is that there is no reliable current information before the court as to the amount (if anything) which a judgment creditor might now be able to realise from Dr Rajabieslami's shares in AAB KAMCA.

75. As to the issue of how likely it is that these shares will still be in Dr Rajabieslami's ownership if and when any costs judgment comes to be enforced, Dr Rajabieslami can pray in aid the fact that he has owned these shares since 2014. It is, however, also legitimate to take into account the other evidence before the court as to Dr Rajabieslami's general way of life and of doing business. His own evidence shows that he is an international businessman, with interests in a number of jurisdictions. On his own case, the present claim involves the use of a Liberian company whose shares are held on trust and then on sub-trust. It is plain that he is very familiar with the use of corporate structures to hold assets and the methods of moving assets between jurisdictions. It is also relevant that he has chosen to give no information whatsoever about any bank accounts or other assets held in his own name, rather than through companies. There must, therefore, at least be a real risk that he will dispose of these shares, either in the intervening period or if faced with a costs judgment that is likely to be executed against them.

76. These considerations, taken together and considered as a whole, lead me to conclude that it is probable, despite Dr Rajabieslami's evidence with regard to his ownership of these UAE shares, that the defendants would need to enforce any order for costs against Dr Rajabieslami in Qatar, where there is a real risk that they will face difficulties in enforcement.

77. For these reasons, I am satisfied that gateway (a) can properly be applied in the present case.

(F) Is it just, in all the circumstances, to make an order?

78. The system of justice which prevails in this country is founded on the premise that the interests of justice are ordinarily best served if successful litigants recoup the costs of their litigation, or the bulk of those costs, and unsuccessful litigants pay them: see *Heathfield International LLC v Axiom Stone (London) Ltd* [2021] Costs LR 819 at [29]-[30], per Nugee LJ. Accordingly, the establishment of gateway (a) on the basis that there is a real risk that any order as to costs against Dr Rajabieslami might be difficult or impossible to enforce is (to use the words of Sir Robert Megarry V-C in *Pearson v Naydler* [1977] 1 WLR 899 at 906):

> **.. a matter which not only opens the jurisdiction [to order security], but also provides a substantial factor in the decision whether to exercise it ..**

79. Mr Davidson has nevertheless sought to persuade me that, having regard to all the circumstances of this particular case, it would not be just for me to make any order for security against Dr Rajabieslami. In Mr Davidson's submission, the defendants' defence is demonstrably a dishonest one, based upon fabricated and forged documents, and it is not just to require security for the costs of such a defence.

80. The first matter which Mr Davidson urges on me in this connection is the submission that the invoices and other documents disclosed by the defendants on 16 February 2023 are, for the reasons set out at length in Mr Lakin's sixth witness statement, "obvious and inept forgeries". Mr Lakin includes in that witness statement photographs of the various signatures which purport to be those of Dr Rajabieslami on those documents, and states:

> **[21] Whilst I am not a forensic expert, viewing the various signatures side by side, it is apparent to the naked eye that these appear identical or different sized versions of the same signature.**
>
> **[22] As these documents have supposedly been signed over the course of several years, the identical appearance could only be explained if this was an electronic signature that the Claimant regularly used between 2016 and 2019.**
>
> **[23] That is not however the case. I have reviewed the documents my firm holds on this file, and it appears that this signature has been lifted from a hard copy document, which the Claimant signed on 18 April 2019 - page 2 of the Declaration of Trust itself.**

81. Mr Davidson points out that the translations served with these documents appear to date from October and November 2022, but that the defendants have delayed

disclosing them until 16 February 2023, saying (untruthfully, in Mr Davidson's submission) that the delay has been caused by the need to "recover documents from Iran". Mr Davidson submits that the proper inference is that the defendants have intentionally withheld these (forged) documents in the hope of having their security for costs application dealt with first, and in the hope that an order to provide security will stifle Dr Rajabieslami's claim against them.

82. Mr Davidson also draws attention to the fact that the transactions which these invoices purport to record are priced in USD - a circumstance which, he submits, is improbable given that this is alleged (in paragraph 6 of the Defence) to have been "a domestic transaction in Iran".

83. Mr Davidson secondly relies upon the summary of the material placed before Jacobs J on the without notice application for a worldwide freezing order which is to be found in the note of the hearing on 5 August 2022 exhibited to Mr Lakin's fifth witness statement. That note records Jacobs J as saying as follows in his judgment on that application:

> **If the case turned on the Declaration of Trust and the ancillary documents, I might not have been persuaded but it seems to me that that is not all there is in this case.**
>
> **I will mention some points which seem to me to be important which lend some credence to the Declaration of Trust and so to the case that this ship was in fact owned indirectly by Ms Sanchouli:**
>
> **First, contemporaneous evidence of invoices from Ms Sanchouli's company of expenses which would ordinarily have been borne by the owner and not the time charterer. Substantial expenses for the Dry docking, USD3 million paid to the company. If Ms Sanchouli was simply a time charterer the dry docking expenses would not have been payable by her or her company.**
>
> **Second, I have been referred to an important exchange which took place in November 2020 between Stephenson Harwood acting on behalf of Desero and one other, the company known as Saint James an operating company owned and run by Mr Tariverdi, there was at this point a dispute on unrelated issues in relation to the sale of a vessel – problems arising in relation to crew, a letter was sent by Stephenson Harwood who said they were acting on behalf of Desero and this was sent to Saint James, the response did not come from Mr Tariverdi himself but from a senior person from the company, no issue was taken with the fact that Stephenson Harwood was instructed by the company and the email indicated as a whole that Saint James considered that Stephenson Harwood were acting for the owners.**

That email goes somewhat further as it is dealing with the issue of crew under a time charter ordinarily and the one produced by Mr Tariverdi in original proceedings, crew would be paid by owners not time charterers but email from Saint James asks for remittances to be paid to make payments for crew supporting proposition that the true ownership was not with SJ or its principal Mr Tariverdi but rather with SH's clients from whom the letter of November 2020 had been sent.

Fourth, the witness evidence and affidavit refers to various expenses of, ordinarily, owners having been paid and in contrast the absence of any evidence of hire being paid by Ms Sanchouli or the company to Mr Tariverdi's company. I have been shown evidence of payments in relation to dry docking as well as other expenses which would ordinarily be expenses of the owner rather than the charterer.

Next, it is fair to say that back in November 2021, when Mr Tariverdi did assert ownership, that was instantly and emphatically denied by Ms Sanchouli with detailed reasons being given why that was not the case, though true at the time the Declaration of Trust was not produced but I don't consider that a point of great significance, more important was that Ms Sanchouli did not accept that Mr Tariverdi was the owner of the ship.

Next I agree with Mr Davidson that there is some force in the point that there is an absence of any documentation which indicates how it was that Mr Tariverdi or his company made payment for the owning company to have acquired the ship. One expects a substantial payment and there is no evidence of payment having passed to the Claimant or Ms Sanchouli, this may look very different when it returns on the return date but that is the present position.

Next, a significant WhatsApp exchange in January of this year, at the time Ms Sanchouli raised the question that a rumour had been heard that the vessel was being sold. The WhatsApp although perhaps somewhat cryptic shows that Ms Sanchouli believed that the vessel was hers. Mr Tariverdi in response did not put forward any suggestion he was the owner, and that Ms Sanchouli was asking about something that was not any business of hers and he denies any sale had taken place. It in fact transpires a MOA was entered into by Mr Tariverdi on behalf of Saint James effecting a sale of the ship to a company called Last voyage and it is that company which is the Defendant along with Mr Tariverdi to the Bangladesh proceedings. But the point is that first Mr Tariverdi did not deny Ms Sanchouli's ownership interest. Appears to have falsely indicated there was a sale.

Finally, most recently, on 9 June 2022, following the unsuccessful application to Mr [Justice] Baker, they wrote to Mr Tariverdi relying on and enclosing the Declaration of Trust. There was not as far as I can see

> **from the correspondence any assertion that the correspondence was not genuine and there was never in fact any detailed or brief response to the letter which had been sent. There was simply the response which indicated that he was travelling and would provide a response in due course. As far as I'm aware there's never been an open response to what was said, I was referred as part of the full and frank disclosure, what was discussed in WP discussions but Mr Davidson has said as far as he is aware there was no denial of ownership of Ms Sanchouli even though Mr Tariverdi had asserted ownership in September 2021.**
>
> **So when I look at those matters all taken together I do consider there is a sufficient case for present purposes. That Ms Sanchouli has been a victim of a serious fraud on the basis of having heard Mr Davidson and the case may look very different on the return date.**

84. Mr Davidson points out that, although Jacobs J said that the position "may look very different on the return date", the defendants have thereafter chosen not to have a return date at which they could put their side of the story. As recorded in the order of Robin Knowles J made on 18 August 2022, the defendants have formally consented to the freezing injunction remaining in place until further order.

85. Mr Davidson's third point concerns the inadequacy of the defendants' initial responses to the orders made by Jacobs J for disclosure in support of the freezing order, as reflected in the orders ultimately made by HHJ Pelling KC on 27 January 2023.

86. I have given careful and anxious consideration to all of this material. Having done so, however, I have concluded that this is not one of those exceptional cases in which I can reach a sufficiently reliable conclusion as to the prospects of success to make it just or appropriate for me to take those merits into consideration when deciding whether to order security for costs.

87. As to the argument that the signatures on the invoices and other documents are "obvious and inept forgeries", the various exhibited signatures do indeed appear, as Mr Lakin asserts, to be identical or different sized versions of the same signature, when viewed on-screen in the versions in the online trial bundle. However, there are well-documented dangers in the court attempting, even at a trial, to judge such issues without the benefit both of expert evidence and of full and proper documentary and oral evidence of the surrounding circumstances. For me to attempt to do so in the context of the limited evidence on this application, on the basis of copy images viewed only on-screen, would, in my judgment, be wrong in principle.

88. There is also the point that, even if these signatures could eventually be shown to be forgeries, that would not on its own necessarily mean that Dr Rajabieslami's claim was bound to succeed.

89. First of all, Dr Rajabieslami's claim is based (inter alia) upon the Declaration of Trust. The defendants say that that document itself is a forgery. Although Mr Lakin gives evidence of the validity of that document in his seventh witness statement, that does not seem to me to be a matter on which I can properly adjudicate on the basis of the evidence currently available to me. In that connection, I note that Jacobs J is recorded as saying that, if the application before him had turned simply on the Declaration of Trust and the ancillary documents, he "might not have been persuaded".

90. Secondly, the case put forward by the defendants in their Response to the Request for Further Information is that the transaction on which they rely in their Defence was "agreed initially orally, then committed to writing and performed by conduct" and is only "evidenced" by (rather than made in writing in) the invoices which are said by Dr Rajabieslami to have been forged. It is, of course, likely to be significantly more difficult for the defendants to make out such a case if they have sought to support it by reliance on forged documents. It is not, however, by any means impossible that they should be able to do so, if their oral and other evidence is believed at trial.

91. As to the contemporary documents reviewed by Jacobs J in the passage from his judgment which I have set out at length above, these do seem (as Jacobs J held) to support Dr Rajabieslami's case and to be inconsistent with that of the defendants. However, I have not myself seen those documents, only this summary. Disclosure has not yet taken place, nor have witness statements dealing in detail with the merits of the case been served. I therefore have no material presently available to me on the basis of which I can judge the context of those documents or assess the extent to which they are, as Mr Davidson suggests, supportive of Dr Rajabieslami and damaging to the case of the defendants.

92. As to the defendants' conduct in relation to this claim, Mr Davidson's points are well made. However the defendants are not currently in breach of any court orders and have, albeit late, now provided the information and documents sought from them. This application has been promptly made, well before the first Costs and Case Management Conference. Ms Hanley also makes some good countervailing points about the conduct of the claim by Dr Rajabieslami, including as to the delayed provision of documents and the late service of evidence.

93. As for the suggestion that this application has been pushed forward in the hope of stifling the claim before the implausibility of the defence can be established, it is a striking feature of the evidence served on behalf of Dr Rajabieslami that it contains no evidence whatsoever (other than Mr Lakin's forensic assertion) that the making of a reasonable order for security would hinder or deter Dr Rajabieslami from prosecuting what is, after all, a claim which is said to be worth between USD 7.4m and USD 10m, plus lost trading profits and interest.

94. When I put this point to Mr Davidson, he accepted that there was no evidence of stifling, other than the fact that Dr Rajabieslami is presently subject to US sanctions. That fact, however, has plainly not stopped Dr Rajabieslami from funding this claim and there is simply no evidence that that circumstance would hinder or stop Dr Rajabieslami from complying with any order for security. Resistance to an order for security on the basis that it would prevent Dr Rajabieslami from continuing his claim would, of course, have required Dr Rajabieslami to give "full, frank, clear and unequivocal evidence" of his means and resources (see *Al-Koronsky v Time Life Entertainment Group Ltd* [2005] EWHC 1688 (QB) at [31], per Eady J). For whatever reason, that is something that Dr Rajabieslami has chosen not to do.

95. I have dealt (albeit briefly) with each of the groups of submissions made by Mr Davidson individually. I have also, of course, considered their cumulative effect. Even taken together, however, they do not convince me that Dr Rajabieslami's claim has such a very high probability of success as to make it unjust, having regard to all the circumstances of the case, to make an order for security.

96. Rather, the submissions which have been addressed to me illustrate the wisdom encapsulated in paragraph 4 of Appendix 10 to the Commercial Court Guide, which strongly discourages any investigation of the merits of the case on an application for security. As Lord Steyn observed in *Medcalf v Weatherill* [2003] 1 AC 120 at [42]:

> **.. The law reports are replete with cases which were thought to be hopeless before investigation but were decided the other way after the Court had allowed the matter to be tried ..**

As Sir Igor Judge PQBD noted in *Wrexham Association Football Club v Crucialmove Ltd* [2006] EWCA Civ 237 at [58], "This collective judicial experience does not always, or inevitably, provide a compelling reason for allowing the case to proceed to trial". However, an application for security for costs is not the right occasion for the kind of "detailed investigation of evidence or law" that would be required to reach that sort of conclusion in a case such as the present.

97. In dealing with this application, I am simply in no position to engage in the kind of detailed investigation of evidence that would be required to judge whether Dr Rajabieslami's factually complicated claim is certain or almost certain to succeed. Indeed, to attempt to do so would be contrary to the Overriding Objective, in that it would involve allocating to this application a disproportionate share of the court's limited resources.

98. For these reasons, the defendants' application succeeds and I will make an order for security.

(F) Quantum

99. Ms Hanley invites me to make an order for security in the sum of GBP 567,948, which is the full amount of the defendants' costs budget approved by HHJ Pelling KC. Mr Davidson, however, urges me both to limit the period for which security is initially ordered and to discount the amount shown in that budget to take into account (a) the costs of the application for the freezing order, (b) the costs of the present application, which will be dealt with separately, and (c) the amount by which the "incurred" costs down to the CCMC might be discounted on any assessment.

100. To judge by what has happened so far, this litigation is likely to be hard-fought and to involve matters which are difficult to predict at the present stage. The case may look very different as it proceeds. In the circumstances, it seems to me to be appropriate to limit this first order for security to the period up to and including the expert evidence stage, but to exclude for the moment the subsequent stages of trial preparation, the PTR and the trial. I shall, of course, give permission to apply (if thought fit) at an appropriate time for further security to cover those later stages.

101. I accept Ms Hanley's submission that the defendants' costs budget should be used as the relevant reference point, both in relation to the incurred costs elements as well as the estimated costs elements, for considering the amount which should be ordered by way of security: see *Sarpd Oil International Ltd v Addax Energy SA* [2016] EWCA Civ 120 at [49]-[53], per Sales LJ.

102. The items in lines 8 to 12 of the defendants' approved cost budget which cover the period which I have indicated total GBP 203,298. That figure does not include either of the "Contingent Cost" amounts, the first of which relates to the application for security for costs, the second of which relates to a potential application to set aside the freezing order.

103. In the circumstances, I propose to make an order that Dr Rajabieslami provides security for the defendants' costs in the sum of GBP 203,298 either by payment into court or by another method reasonably acceptable to the defendants or the court, by 4pm on Friday 31 March 2023.

104. Ms Hanley and Mr Davidson sensibly agreed at the end of the hearing on Monday 27 February 2023 that the costs of this application should follow the event and that I should summarily assess them. As the defendants have succeeded, they are entitled to their costs of the application, which I shall summarily assess on the standard basis. The defendants' revised statement of costs dated 27 February 2023 claims a total of GBP 66,112. The rates claimed do not appear to me to be significantly out of line with the Guideline Hourly Rates, the hours claimed do not seem to be significantly more than is reasonable and proportionate, and Ms Hanley's fees do not seem excessive for her level of seniority. By comparison, Dr Rajabieslami's solicitors' claim was for a total of GBP 85,136.95, though the comparison is not a direct one, since Dr Rajabieslami's solicitors took upon themselves the burden of dealing with the

merits of the action in a way which was not addressed by those acting for the defendants.

105. Doing the best I can, on a somewhat broad brush basis, I summarily assess the costs of this application in the round sum of GBP 60,000, and require Dr Rajabieslami to pay that sum to the defendants by 4 pm on Friday, 31 March 2023.

106. I invite the parties to agree the terms of a Minute of Order giving effect to this judgment.

107. This judgment will be handed down remotely by circulation to the parties' representatives by email and release to the National Archives. No attendance by the parties is necessary.