Neutral Citation Number: [2024] EWHC 2659 (Comm)

Case No: CL-2022-000139

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

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

Date: 28/08/2024

Before :

THE HON. MR JUSTICE BRYAN

- -

Between :

SHAHRAAB AHMAD	**Claimant**
- and -	
(1) KARIM OUAJJOU, **(2) YASMIN AL SAHOUD PEREZ**	**Defendant**

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- -

MR L PAGE (instructed by **RWK Goodman LLP**) appeared on behalf of the Claimant
MR A GUPTA (instructed by **Colman Coyle**) appeared on behalf of the Defendants

Hearing dates: 28th August 2024

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Approved Judgment

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MR JUSTICE BRYAN :

A. INTRODUCTION

1. The parties appear before the Court on the hearing of the Defendants' application dated 21 August 2024 (the "Application") for the following Orders:

   (1) First, that the time for compliance in paragraph 1 of the Unless Order of His Honour Judge Pelling KC dated 19 July 2024 in relation to payment of outstanding costs orders against the Defendants and in favour of the Claimant (the "Pelling Order") be extended until 4pm on 16 November 2024; and,

   (2) Secondly, that the Worldwide Freezing Orders of 18 March 2022 made against each of the First and Second Defendant be varied to permit the Defendants to sell a property in Dubai referred to in the schedule of assets exhibited as exhibit KO1 to the Affidavit of the First Defendant dated 29 March 2022, to facilitate the payment of the outstanding costs.

2. The Application is supported by the First Defendant's eighth witness statement ("Ouajjou 8") dated 21 August 2024 accompanied by a translated Spanish tax advice of Srs.Beatriz Carro Sans. The Application is largely opposed in the fourth witness statement of Eleanor Katherine Spencer ("Spencer 4") dated 23 August 2024 served on behalf of the Claimant.

3. It is the Defendants' case that they "can't pay" the costs orders, rather than they "won't pay", such that they ought to be granted the relief sought. It is said that if the Court refuses relief, the result would be catastrophic and duly unfair to the Defendants in that the Defendants' Defence will stand struck out without further order and the Defendants will be debarred from defending the claim; the Defendants' Counterclaim will stand struck out without further order and they shall be debarred from bringing the Counterclaim; and a disposal hearing will be listed whereby judgment will be sought by the Claimants against the Defendants for a sum approaching €100 million.

4. The Defendants submit that it is appropriate to grant an extension of time for compliance with the Unless Order, it being submitted on behalf of the Defendants that the Application is an in-time application (to which the principles as to relief from sanctions do not apply) and that an extension is appropriate in furtherance of the overriding objective enabling the Court to deal with the case justly and at proportionate cost, having regard to what it is submitted is a change of circumstances since the Pelling Order, both in relation to what is known as the Spanish Proceeds and also the marketing of (and finding of) a purchaser for a Dubai property owned by the Defendants which, it is said, will facilitate payment of the outstanding costs.

5. The Application for an extension is opposed on the basis that it is, in reality, said to be an attempt to re-argue the Pelling Order and the appropriateness thereof, in circumstances where the Defendants have not demonstrated they are unable to comply with the Pelling Order by the current deadline in terms of assets available to them, and in circumstances where it is said that there has, in truth, been no change of circumstances justifying an extension.

B. BACKGROUND

6. By a Claim Form and Particulars of Claim dated 22 March 2022 the Claimant alleges that between September 2020 and September 2021 the Claimant loaned the First and Second Defendants the sum of €24,622,717.10, pursuant to six separate loan agreements and the First Defendant alone further sums. The Claimant claims for €44,999,800.36 and US$1,905,600 (as at the date of the claim this amounted to £39,314,860.72). These sums are claimed on various alternative bases together with damages, interest and costs. These claims are defended on various bases, together with a Counterclaim.

7. The Claimant applied for Worldwide Freezing Orders against each of the Defendants, which were granted without notice on 18 March 2024 and extended by consent (the "WFOs").

8. Certain subsequent events are of relevance to the Application. In this regard the First Defendant subsequently transferred to the Second Defendant, who then disposed of, a property caught by paragraph 6 of the WFOs, namely a property situated at Calle Valenzuela, 8 BAJO Izquierda, 28014 Madrid (the "Madrid Property").

9. That dissipation resulted in Dame Clare Moulder finding the Defendants guilty of contempt, by orders dated 1 May 2024 which imposed custodial sentences which included an order for payment of the Claimant's costs, summarily assessed in the sum of £113,000 (the "Costs Order").

10. The Claimant then applied for, and obtained, the Pelling Order, which provided in paragraph 1, that unless the Defendants pay the first Costs Order plus accrued interest by 4pm by 28 August 2024 (i.e. by 4pm this afternoon), then:

> "a. The Defendants' Defence shall stand struck out without further order and they shall be debarred from defending the claim; and
>
> b. The Defendants' Counterclaim shall stand struck out without further order and they shall be debarred from bringing the Counterclaim; and
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> c. A disposal hearing shall be listed on the first available date thereafter with a provisional time estimate of 1 hour at which the Claimant shall be at liberty to seek judgment on the claim (if so advised), in the alternative to request a judgment in default."

11. By paragraph 2 of the Pelling Order (which is not subject to the sanctions in that Unless Order), the Defendants were ordered to pay the Claimant's costs in principle, which are yet to be assessed on the papers.

12. The Defendants made an application to discharge the WFO (made on 30 January 2024), which was dismissed by Mr Simon Salzedo KC (sitting as a Deputy Judge of the High Court) by order dated 30 July 2024, but that did result in a variation to the WFOs in respect of ordinary living expenses and the remit of legal expenses (the

"Variation Order"). The Defendants were ordered to pay costs in the sum of £68,000, payable by 4pm on 6 August 2024.

13. The Defendants have not paid the Costs Order (£113,000) or the costs provided for in the Variation Order (£68,000). The Claimant is seeking a sum of £26,919 in respect of the Pelling Order which remains to be summarily assessed on the papers. The overall anticipated costs liability, with accruing interest, is likely to be around £200,000.

C. THE APPLICATIONS

C1. Applicable principles

14. Whilst the relevant CPR provision relied upon is not expressly identified in the Application notice, the first application is effectively an application for an extension of time for compliance with the Pelling Order pursuant to CPR r3.1(2)(a) which provides that:

> "Except where these Rules provide otherwise, the Court may – (a) extend or shorten the time for compliance with any rule or practice direction or Court order (even if an application for an extension is made after the time for compliance has expired)."

15. The present application is an "in time" application, i.e. the Application was made before the time for compliance when the Pelling Order expired, and so the application stands to be decided in accordance with the overriding objective of enabling the Court to deal with the case justly and at proportionate cost (see the *White Book 2024,* volume 1, para 3.1.2.1 (page 73)).

16. Where an in-time application is made (even if in respect of an unless order) the correct test is still CPR r3.1(2)(a). In this regard, the rule 3.9 principles on relief from sanctions do not apply, provided that the application is made in time (see, for example, *Everwarm Ltd v BN Rendering Ltd* [2019] EWHC 2078 (TCC) at [37] to [38] per Mr Alexander Nissen QC (sitting as a Deputy Judge of the High Court)).

17. That does not mean, however, that in the context of an application to extend time, the fact that the extension is sought in respect of an unless order is not of relevance, it clearly is as part of a consideration of the overriding objective and the exercise of the Court's discretion.

18. Thus, as was said in *Everwarm* at [41]:

> "To conclude when applying the principles of the overriding objective in determining an in-time application made pursuant to Rule 3.1(2)(a), the Court is entitled to, and should ordinarily be expected to, take into account that the additional time being sought relates to an 'unless' order, in respect of which there is always a powerful public interest in ensuring compliance. The Court should consider both this, and the need to conduct litigation efficiently and at proportionate cost, not because

> those matters are identified within Rule 3.9 but because they fall within the overriding objective."

19. That is, of course, expressly set out as part of the overriding objective in CPR r1.2(2) which includes (at (f)), "enforcing compliance with rules, practice directions and orders."

20. In terms of compliance with orders to pay costs, there is a distinction between cases where a litigant does not have the finances to pay a costs order ("can't pay") and those where a litigant has the finances to pay but chooses not to pay ("won't pay"). The former engages a consideration of Article 6. See, in this regard, by way of an analogy, the recent case of Paul Stanley KC (sitting as Deputy Judge of the High Court) in *J Robbins Capital Partners Ltd v Zamsort Ltd and Others* [2024] EWHC 1990 (Comm) ("*Zamsort*").

21. In *Zamsort*, the Claimant's application to re-amend its Particulars of Claim was itself contentious but the Defendants sought that the amendment be made conditional on payment of historic cost orders/the claim be stayed until payment was made of the outstanding costs order (several costs orders totalling over £60,000). The Judge decided that, on the balance of probabilities, the Claimant did not have, and could not raise, the money required to pay the orders, so that the grant of a stay would effectively stifle the claim. Whilst this was a decision about imposing conditions, rather than extending deadlines where an "unless order" had already been made, the discussion of the underlying principles is of relevance to sanctions for non-compliance with the Costs Order (see at [16] and [17], and the summary of applicable principles when making orders carrying sanctions at [27] to [34]). In this regard the Judge identified at [31] that:

> "Stifling and Article 6. One (and the most commonly occurring) countervailing consideration will be if the party in breach can show that it does not have and cannot raise the money to comply with the order, so that there is a substantial risk to the claim or defence will be stifled. The court will then consider whether proposed sanction is consistent with Article 6. The burden lies on the party asserting that a claim will be stifled to show that it is so. It must produce detailed, cogent and frank evidence sufficient to persuade the court on a balance of probabilities that it does not have and cannot raise the money required."

22. Where it is submitted that a costs order cannot be met on grounds of impecuniosity the evidential requirements of such an argument are high. In *Michael Wilson & Partners Limited v Sinclair and Others* [2017] EWHC 2424 (Comm), Sir Richard Field (sitting as a Deputy Judge of the High Court) held:

> "A submission by the party in default that he lacks the means to pay and therefore a debarring order would be a denial of justice and/or in breach of Article 6 of ECHR should be supported by detailed, cogent and proper evidence which gives full and frank disclosure of the witness's financial position, including his or

> her prospects of raising the necessary funds where his or her cash resources are insufficient to meet the liability."

23. See also, in this regard, *Credico Marketing Limited and another v Lambert and another* [2023] EWCA Civ 262 in which Underhill LJ applied the *Michael Wilson & Partners* decision in a case where the Claimant had failed to comply with an unless order and put forward evidence of his assets by way of assertion rather than supported by documentary evidence.

24. The Claimant points out that at the 19 July 2024 hearing (the "Pelling hearing") the Defendants disavowed a formal plea of impecuniosity. What the Defendants are now seeking to do is reconsider the application to sanction, on the basis that the Defendants do not have the means to pay. The Claimant submits that the principles identified by Rix LJ in *Tibbles v SIG Plc* [2012] EWCA Civ 518 would be applicable, in which he held that there must be a "principled curtailment" of an otherwise apparently open discretion to reconsider applications. He summarised seven principles from previous case law at [39] identifying that there are in general two reasons that might justify re-opening an issue that has already been decided: (i) if there has been a material change in circumstances since the order was made; or (ii) if the facts on which the original decision was made were (innocently or otherwise) misstated. The Judge stated that, "the successful invocation of the rule is rare".

C2. <u>Discussion</u>

25. The Claimant submits that there has not been a material change of circumstances and there is no good reason why the arguments now raised could not have been raised at the Pelling hearing.

26. For its part, the Defendants submit that there has been a material change of circumstances and also that they do not challenge or seek to re-open the unless order as such – rather they are seeking further time to pay in the light of subsequent events which, if necessary, do amount to a change of material circumstances, and that it is appropriate to grant an extension in furtherance of the overriding objective.

27. It is therefore necessary to consider first the order that was made by HHJ Pelling and secondly, what has happened since the Unless Order was made, which is addressed in the Defendants' solicitor's letter of 21 August 2024 and Ouajjou 8.

28. Insofar as the Pelling Order, there is before me a transcript of the Pelling hearing. It is clear that in the course of that hearing there was discussion as to whether any unless order, if made, should be made by a date by reference to any embargo on the Spanish property proceeds. In that regard, at what is page 139 of the Supplementary Bundle, there is a reference to the initial embargo being for six months which can be extended by a further six months; and a reference, it appears, to the Defendants that it would expire on 14 August but it may be renewable. HHJ Pelling then said this,

> "If it is, that would give you grounds to apply to stay any order, but if it isn't the case then all this disappears and payment can and should be made, subject to your appeal point".

The response is,

> "Yes, if you're minded making the unless order we seek that it be for 3 months, because not only we have to work out whether the restraint applies or it is renewed or set aside but we have to apply to vary the English FO as well and if the restraint does apply".

29. I also have before me a copy of the judgment of HHJ Pelling in transcript form (if I can put it like that). It is clear that in that judgment he also considered the question of the Spanish property. It is also clear that he did not consider the information provided at that time to be wholly satisfactory in that regard. He made three points in particular, of which the third point was, "Should I make the order in the terms [that are] sought?" which was for an order to:

> "Unless the relevant costs were to be paid by 4pm on the date 14 days from order, strike out consequences should follow. 14 days from today is before the administrative decree is expressed to come to an end and in addition it seems to me that a little time would [be] necessary to realise other assets if that is what is intended, no evidence as to how long that would take or what the assets are, so impossible for me to arrive at any sensible conclusion as to how long the process would take other than that it is unlikely to be instantaneous. **<u>In the circumstances, the appropriate course is to consider [an] order takes effect a few days after the apparent expiry of the administrative decree</u>**" (emphasis added).

30. It is clear therefore, and the contrary was not suggested before me by the Claimant's counsel, Mr Laurence Page, that at the time of the judgment HHJ Pelling was contemplating that one source for the payment of the Costs Order was the Spanish property proceeds which must be the case because HHJ Pelling crafted the timescale for the Unless Order by reference to the administrative decree itself. It is right, however, that he also appears to have contemplated that it would allow a little time to realise other assets if that is what is intended. The Pelling Order itself is also not confined by reference to the Spanish proceeds but it is clear from his judgment that the deadline chosen was set against a backdrop and indeed in the context of the administrative decree in Spain.

31. Returning then to events subsequent to the Pelling Order. What has happened since the Unless Order was made is addressed in the Defendants' solicitor's letter of 21 August 2024 and Ouajjou 8, as I have said. It is asserted that, as set out in the letter, the First and Second Defendants are currently unable to pay the costs awarded in the Claimant's favour as, "we do not have liquid assets available to enable us to do so".

32. I have some sympathy with the Claimant in its submission that the Defendants have not descended into the detail as to whether they do, in fact, have any readily available, but as yet unrealised, assets as identified in the Claimant's Skeleton Argument.

33. There is also the fact that in an Affidavit made on 6 August 2024, in relation to assets available to the Defendants, it appears that certain liquid assets were identified which, it is said, are no longer available. It is clear, as Mr Amit Gupta, counsel for the Defendants, accepted during the course of oral argument, that it will be necessary for

there to be a further Affidavit of assets which will have to deal with and correct the 6 August Affidavit. I will return to that because I consider that that Affidavit of assets, as part of any conditions I impose, should extend beyond that and should update all available assets.

34. In the absence of any material change in circumstances since the Unless Order was made, the auspices would not be good for an extension of time in relation to the Unless Order contained within the Pelling Order – the time for the Defendants to argue that they could not pay the Costs Orders would have been at the time when the Unless Order was sought.

35. However, subsequent events can be relevant should an extension of time be sought – specifically if there is a material change in circumstances. The evidence before me is that subsequent to the Pelling Order the First Defendant has, through a broker, found a buyer for a property in Dubai that he owns and which is subject to the WFOs. The First Defendants' evidence is that this is a purchaser with whom he has no connection and it is an arm's length transaction. He states that if permission is granted to vary the WFO to allow him to sell the property he anticipates being able to enter into a contract of sale within seven days with completion within around 60 days.

36. The Claimant has understandable concerns in the context of the WFOs, to ensure that any such sale is at arm's length and at a proper value. The Claimant's stance in Spencer 4 at [28] is that while separate from the Defendants' obligations to comply with the Court's order, the Claimants will not oppose a variation to the WFOs to allow the Defendants to comply with the Costs Orders subject to the imposition of appropriate safeguards to avoid any further breaches of the WFOs, specifically:

(1) The Defendant should provide a minimum of two independent valuations of Dubai property;

(2) The identity of the prospective purchaser should be disclosed so that the Claimant can be assured that any sale is at arm's length; and

(3) The proceeds of sale of the Dubai property should be expressly subject to the WFOs and paid directly to the Defendants' solicitors in these proceedings who shall first give an undertaking to the English High Court to hold the monies in a designated account in the UK pending further agreement between the parties or order of the Court.

37. I interject at this point that the first of those two points were catered for in the draft order that accompanied the Defendants' Skeleton Argument. In relation to the third point and what was to happen in relation to the proceeds, that was the subject of further discussion during the course of oral argument and also further instructions taken by Mr Gupta from his instructing solicitors at the end of that oral argument to which I will return in due course.

38. Subsequent to Ouajjou 8 and Spencer 4, the Defendants' solicitors have provided a letter from the Dubai broker dated 26 August 2024 which provides as follows:

> "**SALE OF PROPERTY AT ADDRESS SKYVIEW, DUBAI**

> **BLVD A21447 – SHEIKH MOHAMMED BIN RASHID BLVD, DOWNTOWN DUBAI – DUBAI – UNITED ARAB EMIRATES**
>
> "I am writing to confirm my role as the real estate agent for the property located at Address Skyview Dubai. I have been exclusively managing the sale of this property on behalf of the owner, Mr. Ouajjou Karim.
>
> The buyer of the property was introduced through my agency, I can confirm that this is an independent, arm's length transaction. To the best of my knowledge, there is no prior relationship between the buyer and the seller, ensuring this is a genuine market transaction.
>
> The agreed sale price for the property is AED 6,200,000, which is approximately £1.28 million based on current exchange rates as of August 26, 2024. The terms of the sale stipulate that payment will be made within 60 days of signing the contract. Additionally, a penalty of 10% will be applied if either the buyer or the seller fails to comply with the agreed terms.
>
> SINCERELY,
>
> BLUE PALACE REALESTATE BROKER".

39. The Claimant at [31] of its Skeleton somewhat sought to step back from what was stated in the sixth witness statement of Howard Colman ("Colman 6") at [28], submitting that the application to vary the WFOs is premature while stating, "The Claimant intends to engage positively with the proposal and will consent to the application if appropriate information is provided and safeguards are put in place". It is submitted that the pragmatic route forward is to adjourn the application for the variation of the WFOs with liberty to apply. It is said, however that, if nonetheless the Defendants are determined to move the application at the hearing, it should be dismissed due to the history of non-compliance with Court orders and the absence of any proper safeguards that the sale will not result in a dissipation of funds contrary to the terms of the WFOs.

40. The Claimant submitted that the envisaged sale of the Dubai property did not amount to a material change of circumstance since the Pelling Order was made. I disagree. It is clearly a material change of circumstance and I consider that there are, in fact, two material changes of circumstance.

41. First, it is clear that at the Pelling hearing there was discussion in relation to the sales proceeds of the Spanish property in Madrid and that being subject to an embargo imposed by the Spanish tax authority and that the time for compliance for that Unless Order was contemplated both in the submissions before HHJ Pelling and by reference to the Unless Order made by reference to when the embargo would expire (15 August 2024).

42. I have already addressed what was said by HHJ Pelling not only in the course of submissions but also in his judgment from which it is clear that the expiry date that HHJ Pelling chose, in relation to the Unless Order, was in the context of the Spanish property and the embargo, albeit he also contemplated there being a little time to realise other assets if that was what was intended.

43. The evidence before me from the Spanish lawyer, Sra. Sans, is that even if the embargo has not been renewed, it is not permissible for the Defendants to use the monies unless they are "unblocked" and if they did so without that, that would amount to a criminal offence under the Spanish law. There does appear to be some uncertainty about precisely what the position under Spanish law is, in the light of the submissions made to me by Mr Page at the end of the submissions. At present there is no further Spanish law evidence before the Court and the Claimant has chosen not to adduce any Spanish law evidence which, of course, is their right. However, from that evidence which is before me, that evidence would appear to be that a release from seizure cannot be requested until 15 working days have expired from 16 August.

44. I consider that whatever the true position in relation to Spanish law is, there has been a material change in circumstance in relation to the availability of the Spanish proceeds. The evidence currently before me is that they will not be available, on any view, before the expiry of the time under the Unless Order; that is the first change in circumstances which I consider to be relevant when considering the exercise of my discretion in relation to whether or not it is appropriate in furtherance of the overriding objective to extend the time for compliance.

45. However, more fundamentally, and again contrary to the Claimant's submission, I do consider that the Dubai sale is a material change of circumstance and one which, on the evidence before me, suggests can be completed within a relatively short period of time and easily provides the proceeds to satisfy the Costs Orders whilst the balance is subject to the WFOs.

46. In this regard, during the course of oral submissions, I explored further with Mr Gupta in relation to what the position would be concerning those proceeds of sale if and when they are realised. I also received submissions from Mr Page on behalf of the Claimant in relation to those. As part of that Mr Gupta took instructions from his instructing solicitors and the product of those instructions is that there will be an undertaking from the solicitors for the Defendants. Those proceeds of sale will be paid into a UK bank account and held subject to that undertaking pending a further hearing of the Court which will decide, in particular, as to whether or not any of those monies can be used for the discharge of legal fees or personal expenses; and until that further hearing the WFOs will extend to freeze those proceeds in that UK bank account such that none of those proceeds can be taken out of that bank account. Now, I will, if I make the order, in due course, address with counsel the precise terms of that additional requirement.

47. In considering the overriding objective, and whilst recognising the importance of enforcing compliance with Court orders, I consider that the just and proportionate course is to extend the time for compliance with paragraph 1 of the Pelling Order and vary the terms of the WFOs, coupled with appropriate conditions which I will come on to address in a moment.

48. This should allow the payment of the Costs Orders within a short period of time whilst appropriate terms will protect the proceeds of sale and will result in the action being determined on the merits in due course.

49. Now, I cannot accept the suggestion that the Claimants would be irremediably prejudiced by such a course. At most, they will have to continue an action they commenced for a very large amount of money for a relatively short period of time set against what would undoubtedly be catastrophic consequences for the Defendants if an extension of time was not granted. In circumstances where the evidence before me is that there will be proceeds within the UK within a relatively short period of time, one aspect of the order that I will order being that those costs be paid out of those proceeds.

50. I do consider, however, that as part of that order to extend time, there should be additional conditions, in circumstances where I do not consider that the position historically in relation to the Defendants' assets is wholly satisfactory. As I have already indicated, firstly there shall be a further Affidavit of assets from the First and Second Defendants addressing the up-to-date position as to all assets that each of them have which shall include, but not be limited to, corrections as necessary to the Affidavit sworn on 6 August.

51. Secondly, within 28 days, the Defendants' solicitors shall write to the Claimant's solicitors, substantively, setting out the position in relation to the embargo and the Spanish proceeds and whether or not those proceeds are, by that time, available to meet the Unless Order. In the meantime, of course, those Spanish proceeds remain subject to the WFOs and will remain subject to the WFOs thereafter. I do not, at this stage, consider that it will be appropriate for me to make an order that those Spanish proceeds be paid into an account in England in similar terms to the Dubai proceeds, in circumstances where the legal position, as a matter of Spanish law, is insufficiently clear to me at this time. I reiterate though that those proceeds are still subject to the WFOs in the meantime.

52. Mr Gupta also took instructions in relation to certain assets which are in existence and potentially capable of realisation. Those include a Ferrari and one or more Rolex watches. Mr Page, on behalf of the Claimant, submitted that as part of any conditions for an extension of time, those should be brought into the jurisdiction. Mr Gupta has taken instructions and I am told, on instructions and I have no reason to go behind that nor, I am sure has Mr Gupta, that the Ferrari is subject to the Spanish embargo and it would be a criminal offence under Spanish law if they were to move that. Whether or not that is true if they were subject to a Court order of a foreign court, I do not know, but in such circumstances I do not consider it appropriate at this time to make that a condition of the order.

53. So far as there are Rolex watches which are available to be brought into this jurisdiction, I do consider that would be an appropriate condition. Mr Gupta has taken instructions and has already indicated that that will be possible in relation to one of the Rolex watches, albeit it may be necessary for the parties to liaise as to how precisely that Rolex gets into the jurisdiction in circumstances where there is not, as I understand it, any current intention on the part of either the First or Second Defendants to enter this jurisdiction. After this judgment, I will hear further from Mr

Gupta in relation to whether or not there are other Rolex watches which could also be brought into this jurisdiction.

54. Accordingly and for the reasons that I have given, I do consider that it is appropriate in furtherance of the overriding objective to grant an extension of time to 16 November and make an order varying the terms of the WFOs to allow the sale of the Dubai property on terms that I have foreshadowed and which I will finalise with counsel and which I make clear include the provision of two independent valuations which may necessitate a variation from the draft order from an exchange within seven days to within 14 days but I will hear counsel in relation to that.

55. I am satisfied it is appropriate to extend time and to grant such a variation in furtherance of the overriding objective because that will enable, assuming that that comes to fruition, the action to be determined on its merits without the Draconian and indeed catastrophic consequences that would follow if the Unless Order was not extended.

56. In doing so, I am very alive to the importance of upholding Court orders but I do consider, in circumstances where there is a realisable asset which can be realised within a short period of time, that the appropriate course, on the conditions that I have identified, which will give further protection to the Claimant, is that the extension of time should be granted and I do so, and make the variation sought.

57. I shall now proceed to finalise the order and associated directions with the assistance of counsel for both parties.

58. I would add only this, which is that the Defendants have very much thrown themselves at the mercy of the Court. I doubt very much whether, if the Unless Order is not complied with by 16 November, any application hereafter to extend time would be likely to fall upon fertile ground, but that, of course, would be a matter for another day and another Judge.

D. COSTS

59. The final matter that arises is in relation to costs. The Defendants accept that they have thrown themselves upon the mercy of the Court and that they should pay the costs of the Claimants. I agree. I order therefore that the costs of the application be paid by the Defendants to the Claimants on the standard basis to be summarily assessed.

60. In terms of summary assessment, I bear well in mind the submissions I have just heard from Mr Gupta in relation to the rates, an element of alleged duplication and the size of Mr Page's brief fee. However, this is, on any view, large scale Commercial Court litigation with sums in excess of some £80 million in what is essentially a fraud claim that is proceeding to a two-week Commercial Court hearing, next year. I do not consider the rates to be very high in that context.

61. I do bear in mind the points made about an element of duplication. There certainly were three fee-earners, as I understand it, attending today and whilst obviously I have no doubt all those fee earners would wish to attend and hear the fruits of their labour

played out, it does not necessarily follow that, on the standard basis, all those costs should be recoverable from the Defendants.

62. I am not impressed by the point in relation to the brief fee given the importance of the issues arising today, and the possibility of what effectively would be a terminating ruling, if the Unless Order bit, with all the consequences that would follow, as described by the Defendants as “catastrophic “ but no doubt amenable to an equivalent adjective for the Claimants, had they been successful.

63. In those circumstances I consider that it was understandably a hard-fought application which required a considerable amount of legal time to be spent both by solicitors and counsel, over what includes a Bank Holiday period.

64. Accordingly, doing the best I can, and adopting a broad-brush approach, as I am encouraged to do, I summarily assess the costs at a figure of £17,500.