Neutral Citation Number: [2024] EWHC 2798 (Comm)

Case No: CL-2023-000828

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: 05 November 2024

Before :

RICHARD MILLETT K.C.

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Between :

POWER PROJECTS SANAYI INSAAT TICARET LIMITED SIRKETI	**Claimant**
- and –	
STAR ASSURANCE COMPANY LIMITED	**Defendant**

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Georgios Petrochilos KC and Benedict Tompkins (instructed by **Three Crowns LLP**) for the **Claimant**
Joseph Wigley (instructed by **Edwin Coe LLP**) for the **Defendant**

Hearing dates: 18 October 2024

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Judgment

This judgment was handed down by the Judge 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 10:30 on Tuesday 05 November 2024.

Richard Millett K.C. (Sitting as a Deputy High Court Judge):

Introduction

1. I have before me an application by the Defendant Star Assurance Company Limited ("Star") to convert the claim brought pursuant to Part 8 of the CPR by the Claimant Power Projects Sanayi Insaat Ticaret Limited Sirketi ("PP") into a claim under Part 7 and to give directions, among other things, for pleadings and disclosure.

2. In point of procedure this is the hearing of Star's objection to the use of the Part 8 procedure articulated in its amended acknowledgment of service dated 11 June 2024 amended pursuant to the order of Butcher J dated 6 June 2024. There is no formal application notice: the hearing of Star's objections has come before the Court by virtue of having been listed for hearing by an e-mail from the Court of 16 July 2024, on PP's request earlier that day that it should be so listed.

3. The hearing was listed with an estimate of 2 hours, including the giving of judgment. I had intended to give an *ex tempore* judgment immediately after hearing submissions but because counsel did not complete their oral submissions in sufficient time to allow me to give judgment during the 2 hours allocated and therefore within normal court sitting hours this judgment is in writing.

4. PP's Part 8 Claim Form was issued on 28 November 2023 and is for the payment of the sum of US $6,297,000 pursuant to a demand dated 9 November 2021 ("the Demand") made under a performance bond ("the Bond") dated 22 November 2018 by Star in favour of PP. The Bond was an irrevocable, unconditional on-demand payment instrument. The total amount of the Bond was US $6,297,000 and it was valid until 21 November 2021.

5. Star says that the sums due under the Bond are not due. It says that it has a defence to the Demand and that such defence involves a substantial dispute of fact such as to make Part 8 inappropriate and to justify conversion of the claim into a Part 7 claim and to proceed thereunder.

Factual background

6. I take the factual background largely from Star's recitation of events set out in its helpful skeleton argument for this hearing. It is in all essential respects uncontroversial for present purposes.

7. PP is a company incorporated in Turkey and registered as an external company in Ghana, which carries on business as a contractor specialising in the construction of large-scale energy projects. It is part of the Metlen Energy & Metals SA group, which is listed on the Athens stock exchange and had a turnover of about EUR 6.3 billion in 2022, the most recent financial year.

8. On 22 June 2017, PP concluded a contract with Early Power Limited, a Ghanaian company, for, among other things, the construction of a power-generation plant in Ghana ("the Project") for a contract price of approximately US$363 million.

9. In turn, PP entered into a subcontract dated 9 May 2018 with Glotec Engineering Limited, a Ghanaian company ("Glotec Ghana"), which was appointed as subcontractor

for part of the Project works ("the Initial Subcontract"). Pursuant to clause 8.5 of the Initial Subcontract and at the request of Glotec Ghana, on 22 November 2018 Star issued a bond in favour of PP which was valid for one year until 21 November 2019, when it was replaced with the Bond (also dated 22 November 2018) as part of the reorganisation of the contractual arrangements in February 2019 described in paragraph 11 below.

10. On or around January 2019, Glotec Ghana asked PP to divide the scope of works under the Initial Subcontract into two separate subcontracts for the onshore and offshore portions of the works, respectively between Glotec Ghana and Glotec Korea Limited ("Glotec Korea"), a company incorporated in Korea. There is no material distinction for present purposes between the two Glotec companies (therefore together "Glotec").

11. PP therefore agreed to terminate the Initial Subcontract and replace it with the two separate Subcontracts ("the Subcontracts"). In February 2019, the following agreements, among others, were executed:

    (i) the Subcontract dated 10 May 2018, between PP and Glotec Ghana, for the onshore portion of the works for a total price of US$4,198,000; and

    (ii) the Subcontract dated 10 May 2018, between PP and Glotec Korea for the offshore portion of the works for a total price of US$37,782,000.

The terms of the Subcontracts

12. Pursuant to clause 8.5 of each of the Subcontracts, Glotec were required to provide an on-demand performance bond in favour of PP to secure Glotec's performance of their obligations under the Subcontracts.

13. Clause 8.5 of each of the Subcontracts went on to provide, among other things, that:

> "*Failure and or omission of the Subcontractor to proceed in compliance with the present or to perform and or remedy any defects, perform the Subcontract Works and all obligations, commitments, guarantees and responsibilities under the present and the applicable Laws, entitles* [the Claimant] *to make a demand under performance* [sic] *bond irrespective of any possible objections the Subcontractor* [sic]-*who is expressly consenting to that, and his consensus is only proved by the signature of the present contract.*"

14. Pursuant to clause 1.1 of each of the Subcontracts, 'Subcontract Works' is defined as

> "*Equipment and services to be provided by the Subcontractor including the PRE-NTP Works under the Agreement and its Appendices 1-13 in compliance with the Law, including the remedying of the Defects*".

15. Pursuant to clauses 8.6 and 8.7 of each of the Subcontracts, where any of the "*Guarantees or Bonds*"[1] provided by Glotec is subject to a fixed expiry date, not less than 14 days before their expiry Glotec must amend or replace the relevant Guarantee or Bond in order to extend its validity.

[1] Neither of which capitalised terms appear to be defined but which, it is assumed includes the Bond.

The Bond and its terms

16. Pursuant to clause 8.5 of the Subcontracts and upon Glotec's request, Star provided the Bond. The relevant terms of the Bond are these:

    (i) by clause 2 Star undertook to pay to PP within three business days of receipt of written demand from PP in accordance with clause 4 an amount equal to the lesser of the amount specified in the demand or US $6,297,000 less any previous payments made under the Bond;

    (ii) by clause 3 Star's obligation to make payments under the Bond "*shall arise upon receipt of a demand made in accordance with provisions of this Bond, without any further proof or condition and without any right of set-off or counterclaim, and [Star] shall not be required or permitted to make any other investigation or enquiry*";

    (iii) by clause 4 any demand by PP "*shall be substantially in the form set out in Schedule 1 and shall be delivered to [Star*] *on a business day and during normal Insurance Companying* [sic] *hours at its principal office address…*"; and

    (iv) by clauses 1 and 6 the Bond was due to expire on 21 November 2021;

    (v) by clause 11 the Bond was to be governed by English law, and clause 12 was an irrevocable exclusive jurisdiction agreement in favour of the courts of England.

Events since 2019

17. PP's case, as set out in the supporting witness statements of Mr Fragoulis, is that from 2019 to 2021 there were a number of failures by Glotec under the Subcontracts.

18. However, Glotec denied and still denies that they were liable to pay any amounts to PP. In particular:

    (i) Glotec Ghana asserted to PP that:

        a. it had successfully completed the project and was in no way indebted to PP;

        b. rather, it was PP who was indebted to Glotec Ghana in the total sum of US$3,542,159; and

        c. owing to PP's failure to meet its obligations it would withdraw its staff from the site on or before 30 September 2021; and

    (ii) Glotec Korea similarly said that it had complied with its obligations.

19. On 2 September and 13 October 2021, PP sent reminders to Glotec to renew the Bond.

20. Star alleged that, notwithstanding that PP knew that Glotec's Ghana and Glotec Korea's position was that they had complied with their obligations under the Subcontracts and that, rather than PP having suffered any loss, it was in fact PP which was significantly indebted to Glotec Ghana, on 9 November 2021 PP nevertheless proceeded to issue the written demand calling upon the Defendant to pay US$6,297,000 under the Bond.

21. By letter in response dated 23 November 2021, Star contended that the underlying Subcontracts had been "executed" and that PP had failed to comply with its obligations under the Subcontracts to make the final payment of 2% of the contract price. In doing

so, Star referred to various correspondence from Glotec's Ghanaian solicitors and Glotec in which, among other things, Glotec alleged breaches of contract on PP's part and set out the basis upon which it contended that PP was indebted to it. Star went on to express its surprise that PP was making a demand under the Bond in the circumstances and invited PP to contact it to arrange a meeting to discuss the issue.

22. By letter dated 30 November 2021, PP, among other things, notified Star that it considered its refusal to honour the Demand and investigation of the claim was a breach of the Bond and made a final demand for payment, failing which it would commence proceedings.

23. In December 2021, Glotec issued proceedings in the Ghanaian courts for an order to require PP to pay to it the sum of US$3,670,859 plus interest, being the sum by which Glotec claimed PP was indebted to it under the Subcontracts. However, the Ghanaian High Court stayed the proceedings on PP's application for arbitration pursuant to the mandatory arbitration clause at clause 15.5 of the relevant Subcontract.

Star's application to convert to Part 7

24. Under CPR 8.8:

"

(1) Where the defendant contends that the Part 8 procedure should not be used because -
(a) there is a substantial dispute of fact; and

(b) the use of the part 8 procedure is not required or permitted by a rule or practice direction,

he must state his reasons when he files his acknowledgement of service.
(Rule 8.5 requires a defendant who wishes to rely on written evidence to file it when he files his acknowledgment of service)

(2) When the court receives the acknowledgement of service and any written evidence it will give directions as to the future management of the case.

(Rule 8.1(3) allows the court to make an order that the claim continue as if claimant had not used the Part 8 procedure."

25. It appears to be common ground between the parties that, when considering whether a claim involves substantial disputes of fact, the court is entitled to scrutinise the disputed facts and arguments and assess whether they surmount the summary judgment threshold under CPR Part 24, namely whether the relevant party has a real prospect of success on that relevant issue: see CLS Civil Engineering limited v WJG Evans & sons (a partnership) [2024] EWHC 194 at [50]. It is therefore readily apparent that it is not enough that the defendant simply asserts that there is a factual dispute. Accordingly, if the facts advanced by the defendant by way of defence to a Part 8 claim provide no resistance to summary judgment, then the claim is "unlikely to involve a substantial dispute of fact" for the purposes of CPR Part 8.1(2). The reference in CPR Part 8.1(2)

and 8.8(1)(a) to a "substantial dispute of fact" means a dispute of fact where the outcome of the factual dispute has legal relevance.

26. It is important to emphasise, however, that in entertaining a defendant's objection to the use of the CPR Part 8 procedure the Court is not conducting a summary assessment of the merits so as to entitle one or other party to proceed to judgment. The Court is simply examining the defendant's allegations in order to determine whether the claimant has properly founded jurisdiction under Part 8 or whether, to the contrary, the defendant is right that Part 8 is inappropriate because a substantial dispute of fact is involved. It is no part of the court's exercise of its discretion to determine the dispute at this stage. I must therefore be careful not to usurp the jurisdiction or fetter the discretion of the court who eventually comes to hear the merits.

27. The substance of Star's objections is contained in Appendix B of Star's acknowledgment of service, and in particular at paragraph 5. I have taken account of the entirety of Appendix B. The nub of the objection, which occupied much of the written and oral submissions before me, was that the Demand was not bona fide because PP knew the various matters set out in paragraphs 5.1.1.1 to 5.1.1.3 of Appendix B. The gist of those paragraphs was (i) that there was a dispute about whether Glotec had failed to perform the Subcontracts, (ii) the work covered by the Subcontracts was ready for commissioning and due notice of that had been given to PP but that the reason it did not take place was because PP failed or refused to commission the works or cause it to be commissioned, in breach of the Subcontracts and (iii) that the ultimate beneficiaries of the Project had accepted it and the Project has been in operation for a number of years.

28. In addition, on the evening of 16 October 2024, one working day before the hearing, Star served a witness statement in support of its objections from a Mr Fred Sheppard, who is a Senior Associate of Edwin Coe LLP, the London firm of solicitors representing Star in these proceedings. There was no direction for the service of that evidence and from PP's perspective it came out of the blue. PP had no proper opportunity to prepare or serve any responsive evidence and no good reason was given to me by Star for its lateness. On behalf of PP Mr Tompkins (who conducted the advocacy at the hearing) unsurprisingly made vigorous objection to its admission.

29. I pre-read that witness statement in preparation for the oral hearing on a *de bene esse* basis, and at the hearing extensive submissions were made to me about the weight and relevance of the matters to which Mr Sheppard speaks. It seems to me that, as Mr Tompkins fairly accepted, Mr Sheppard's witness statement could be served as part of the Part 8 proceedings, I should examine it for the purposes of my decision on this application even if not formally admitting it in evidence. Its lateness, although not accompanied by a convincing explanation, did not prejudice PP from being able to make cogent submissions about its relevance and weight. I therefore take account of it so far as it goes for present purposes.

30. The question for me on this application is whether the proceedings are likely to involve a substantial dispute of fact. In order to answer that question it is important to understand the nature of these proceedings, being a claim under an on-demand performance bond governed by English law.

Performance Bonds: the law

31. The basic principles are well established, and I take them, with all due deference and some adjustment, from PP's skeleton argument.

    (i) On-demand bonds (and similar instruments) are the "*life-blood of international commerce*" (Harbottle v NatWest [1978] QB 146 at 155); they are to be treated as "*an autonomous contract, independent of disputes between the seller and the buyer as to their relative entitlements pursuant to the different contract between themselves*" (Wuhan Guoyu Logistics Group Co Ltd v Emporiki Bank of Greece SA [2014] 1 All ER (Comm) 870 (CA) at [21].

    (ii) Liability under the bond is separate from liability under the underlying contract: Edward Owen v Barclays Bank [1978] Q.B. 159 at 171 (per Lord Denning MR):

    "A bank which gives a performance guarantee … is not concerned in the least with the relations between the supplier and the customer; nor with the question whether the supplier has performed his contracted obligation or not; nor with the question whether the supplier is in default or not. The bank must pay according to its guarantee, on demand, if so stipulated, without proof or conditions."

    (iii) Any lack of correlation between payment made under an on-demand bond and liability in the underlying contractual relationship is a matter for resolution between the parties to that relationship, not for the bond issuer and beneficiary:

    "By agreeing to provide a bond which is payable on demand, a party agrees that the bond may be called pending resolution of any dispute with the counterparty beneficiary. He thereby agrees to assume the risk of payment being made notwithstanding that he can subsequently establish in litigation or arbitration that the dispute is to be resolved in his favour": Ouais Group v. Saipem [2013] EWHC 990 (Comm) at [45].

    (iv) The only exception to the rule in Edward Owen in relation to contractual obligations as between the beneficiary and issuer of an on-demand bond is "*when there is a clear fraud of which the bank has notice*" (Lord Denning MR again, at 171). Accordingly:

        a. The issuer is required to plead and prove dishonesty on the part of the beneficiary, or absence of any good-faith belief that the relevant amount is due. An honest but mistaken belief will not suffice: see AES-3C v. Credit Agricole [2011] BLR 249 (TCC) at [48], no will the fact that the underlying contractual claim is contested: see Wuhan Guoyu at [21].

        b. Fraud alone does not do; the bond issuer must have notice of the fraud at the time of the demand. As Tomlinson LJ said in Wuhan Guoyu at [22]:

        "It is critical to the efficacy of these financial arrangements that as between beneficiary and bank the position crystallises as at presentation

of documents or demand as the case may be, and that it is only in the case of fraudulent presentation or demand by the beneficiary that the bank can resist payment against an apparently conforming presentation or demand."

(v) The rule in Edward Owen and the status of the fraud exception as the sole defence as between issuer and beneficiary was reiterated by the Court of Appeal in National Infrastructure v. Banco Santander [2018] 1 All ER (Comm) 156 at [17] to [19]. In that case Longmore LJ made it plain that a defence will only exist where:

"'the only realistic inference is that [the claimant] could not honestly have believed in the validity of its demands' (the emphasis is mine but none the less crucial for that)."

(vi) In the context of on-demand bonds, in applying the summary judgment test, "*the Court must be mindful of the principle that banks … need particularly cogent evidence to establish the fraud exception*": Banco Santander, Longmore LJ at [22] quoting Teare J in Enka Insaat Ve Sanayi AS v Banca Popolare Dell' Alto Adige SpA [2009] EWHC 2410 at [25].

Star's objections to Part 8: discussion and decision

32. In my judgment Star's objections to PP's use of Part 8 are ill-founded and I dismiss them. My reasons are as follows.

33. It is far from obvious that the facts arrayed by Star either in Appendix B or in Mr Sheppard's witness statement provide a defence to PP's claim that would require the court to investigate them at trial.

34. The starting point is the legal nature of the Bond. The Bond is a classic performance bond of the type considered in the cases such as Wuhan Guoyu and Ouais Group. Clause 3 provides that:

"[Star's] obligation to make payments under this Bond shall arise upon receipt of a demand made in accordance with provisions of this Bond, without any further proof or condition and without any right of set-off or counterclaim, and [Star] shall not be required or permitted to make any other investigation or enquiry."

35. Therefore as a matter of law the only defence that Star could raise is that the Demand was fraudulent, in other words that PP knew that it had no right to make it, and that Star knew that it was fraudulent at the time when its obligation crystallised, namely on the making of the Demand. It was not entitled to fail or refuse to pay pending investigation of the state of the underlying account or relationship between PP and Glotec. Nor was it entitled simply to rely on Glotec's case as against PP, however confident it was that Glotec's case was well founded.

36. In my judgment none of the facts identified by Star go anywhere near satisfying those strict legal requirements.

(i) The facts of which PP is said to have knowledge, and which are said to found the allegation of lack of bona fides, at paragraphs 5.1.4 and 5.1.1.1 to 5.1.1.3 of Appendix B, are not facts which establish that PP knew that its Demand was one it was not entitled to make, let alone that Star knew it at the time of the Demand. Although I agree with Mr Wigley, for Star, that Appendix B is not a pleading, its contents are attested to by a statement of truth, and signed on behalf of Star by the senior partner of Edwin Coe LLP, a London law firm, and it is fair to assume that the greatest of care was given to exactly what was stated in it. The facts set out at paragraphs 5.1.1.1 to 5.1.1.3 are not facts which, if true, prove that PP knew that it was not entitled to make the Demand, nor could found any inference to that effect, still less that Star knew that the Demand was fraudulent.

    a. As to paragraph 5.1.1.1 that is simply an allegation that there was a dispute between Glotec and PP about whether Glotec or PP was in breach of the Subcontracts.

    b. As to paragraph 5.1.1.2, that is "further to 5.1.1.1", in other words, a further detailing of Glotec's side of the argument it has against PP, and not inconsistent with an honest demand under the Bond.

    c. Paragraph 5.1.1.3 is a very broad statement that is not inconsistent with an honest demand under the Bond.

(ii) Nor does Mr Sheppard's evidence, such as it is, provide any reinforcement. Even leaving aside that his evidence is largely opinion and hearsay, it is based on what he has been told by Glotec of its dispute with PP, and that Star agrees with Glotec (see paragraphs 8 to 10 of Mr Sheppard's witness statement). Even if the substance of that belief is correct, it is no more than belief in the merits of Glotec's case against PP, and the corresponding weakness of PP's case against Glotec.

(iii) The evidence does show that there is clearly a burgeoning dispute between Glotec and PP which was beginning to take shape before the Demand was made on 9 November 2021. Indeed, on 11 June and 12 July 2021 Glotec had intimated to PP a cross-claim in the sum of US $3,542,159.00 under the Subcontracts, and the dispute had developed from there over the following weeks. However, I was not taken to any material which shows that PP had acknowledged or admitted that cross-claim or that it knew that it had no right to any money under the Subcontracts, nor did I see any evidence consistent only with that position. Indeed, in its skeleton argument (at paragraph 17) Star's submission was that PP knew that Glotec's "position" was that they had complied with their obligations under the Subcontracts and that it was PP who owed them money. That may very well be so, and it may also very well be that Star has aligned itself with, and agrees with, Glotec's position in its dispute with PP, but that does not amount to a case that PP knew for a fact that Glotec's position was right, and that its own position in the dispute was wrong, and that it therefore had no right to make the Demand.

(iv) On the contrary, the dispute between Glotec and PP appears to be substantial. Although there is no way for me to be able to assess the merits, and no need for me to do so, it is pertinent that on 9 October 2024 Edwin Coe, this time acting for Glotec, gave PP what purports to be a notice of arbitration under clause 15.5 of the Subcontracts. Although that does not of itself prove that PP has a genuine defence to Glotec's cross-claim, or that PP has no claim of its own, it is consistent with the existence of a genuine dispute between PP and Glotec. The fact that Glotec has also instructed Edwin Coe indicates a high degree of co-ordination between them, and a concomitant lack of independence and autonomy on the part of Star.

(v) Nor is there any evidence that Star knew at the time of the Demand that PP's claim was fraudulent. Had it done so it would have said so. The terms of its letter of response of 23 November 2021 go nowhere near making such an assertion. On the contrary, Star merely stated that after "investigation", its position was that the Subcontracts had been "executed" (i.e. performed), it referred to Glotec's letter of cross-claim of 11 June 2021 which it attached, and it expressed surprise that PP was making a claim on the Bond when 2% of the final price had yet to be paid. Even allowing for the demands of business courtesy, those statements are inconsistent with any knowledge on the part of Star that the Demand was fraudulent. Indeed, the terms of clause 3 of the Bond precluded any investigation or enquiry by Star into the underlying statement of account. The fact that Glotec had a cross-claim of its own was legally irrelevant unless Star knew that it was unanswerable and that PP had no right to make any claim for any amount.

(vi) I similarly reject Mr Wigley's submission that the refusal of payment was itself a basis for any inference that Star knew that the Demand had been made by PP fraudulently. It is clear that Star's refusal to pay was based on no more than its perception of the strength of Glotec's case against PP.

(vii) Mr Wigley's reliance on the decision of the Court of Appeal in Balfour Beatty Civil Engineering v Technical & General Guarantee Co Ltd (2000) CLC 252 for the proposition that the issuer can rely on evidence of fraud that it obtains later than the time of the demand in order to resist payment is misplaced. In my judgment the decision does not go that far. Waller LJ was simply saying that if at the stage of summary judgment the issuer can show that the only proper inference is fraud then it would be absurd to have judgment entered against it; but he was not saying that the issuer could simply refuse to pay and then wait to see what evidence of fraud emerged later. The modern cases on performance bonds require evidence of actual knowledge on the part of the issuer at the time of the demand, even if the evidence about that knowledge is incomplete and may be augmented later. Star's approach is really little more than the "Micawberism" against which Megarry V-C warned in Lady Ann Tennant v Associated Newspapers [1979] FSR 298 at 303, and which has long been an illegitimate approach for defendants to summary judgment.

(viii) Nor is it relevant that the amount of the Demand was for the full amount under the Bond. Clause 8.6 of the Subcontracts entitled PP to make a demand for the full amount of the Bond if the Bond was not renewed beyond its expiry

by Glotec. That was the basis on which the Bond was called for the whole amount. I was not shown evidence that demonstrated that both PP and Star knew that Glotec's renewal obligation under clause 8.6 had not arisen.

37. In summary, it is not open to Star to advance a factual case that shows that Glotec has a strong case in its dispute with PP. Star's role is not to act as Glotec's advocate in its dispute with PP, but to pay PP on a demand being made in due form, and to leave it to Glotec to recover from PP in an arbitration under the Subcontracts. The fact that Glotec Ghana and Star have chosen to instruct the same London solicitors shows that the relationship is closely aligned and that Star has not properly understood that its obligations are independent and autonomous.

38. This is not a case like Doosan Babcock Ltd v Comercializadora de Equipos v Materiales Mabe Ltda [2013] EWHC 3010 or TTI Team Telecom International v Hutchison 3G UK Ltd [2003] EWHC 762, relied on by Mr Wigley, where the customer is seeking to restrain by injunction the issuer from paying the beneficiary. In those cases, the customer was seeking to enforce its own contractual rights against the beneficiary under the underlying contracts. In this case, by contrast, PP is seeking payment under the Bond from Star, and Glotec has made no attempt to restrain it from either making or pursuing payment under the Demand, either by seeking an order from this court or from an arbitral tribunal once constituted. Indeed Glotec are not parties to these proceedings, nor need to be.

Conclusion and order

39. For these reasons I conclude that CPR Part 8 is the appropriate procedure for PP's claim and that I reject Star's objections and its submission that the claim should proceed under CPR Part 7.

40. I will hear the parties in writing on the form of the order and the question of costs.