Neutral Citation Number: [2024] EWHC 83 (Comm)

Case No: CL-2021-000666

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

Royal Courts of Justice, Rolls Building
Fetter Lane, London, WC4A 1NL

Date: 26 January 2024

Before :

MR JUSTICE BRIGHT

- -

Between :

GLAS SAS (London Branch)

Claimant

- and -

(1) European Topsoho SARL
(2) Dynamic Treasure Group Limited
(3) Chenran Qiu

Defendants

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- -

Sue Prevezer KC and Alex Barden (instructed by Jenner & Block (London) LLP) for the Claimant
Leonora Sagan (instructed by CMS Cameron McKenna Nabarro Olswang LLP) for the 1st Defendant
Niall McCulloch and Christopher Pask (instructed by Archer, Evrard & Sigurdsson LLP) for the 2nd Defendant
Hugo Page KC and James A Davies (instructed by Mackrell) for the 3rd Defendant

Hearing dates: 18 January 2024

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Approved Judgment

This judgment was handed down remotely at 10:00am on 26/01/2024 by circulation to the parties' representatives by e-mail and by release to the National Archives.

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Mr Justice Bright:

1. On 17 November 2023, there was a hearing in this matter to deal with the application of the Claimant ("GLAS") for summary judgment against the Defendants. GLAS's application notice had been issued on 29 August 2023, and the hearing date had been fixed on 6 September 2023, with an estimate of 2.5 hours.

2. It was not possible to deal with the Claimant's application, because:

   (1) On 13 November 2023, the Third Defendant ("Ms Qiu") issued an application seeking an extension of time to file and serve a Defence. Ms Qiu had not previously taken any part in the action, save that she had filed an acknowledgment of service on 3 January 2022.

   (2) On 16 November 2023, the Second Defendant ("Dynamic") issued an application seeking an extension of time to file and serve an acknowledgment of service indicating that it intended to challenge the jurisdiction of the Court. Dynamic had not previously taken any part in the action whatsoever.

3. I made directions intended to enable all the outstanding applications to be dealt with on an expedited basis, on 18 January 2024, with an estimate of 1 day. This judgment follows the hearing which duly took place on 18 January 2024, when I heard oral submissions on the various applications from Ms Sue Prevezer KC and Mr Alex Barden on behalf of the Claimant, from Ms Leonora Sagan on behalf of the First Defendant ("ETS"), from Mr Niall McCulloch on behalf of Dynamic and from Mr Hugo Page KC on behalf of Ms Qiu. I am very grateful to all of them for their assistance.

<u>The parties, and other relevant entities/individuals</u>

4. GLAS is a corporate trustee, providing trustee and loan administration services. It is incorporated in France, but also has an office in London, which is the emanation involved in this case and in the underlying business.

5. ETS is a company incorporated in Luxembourg. It is indirectly owned by Shandong Ruyi Technology Group Co. Ltd. ("Shandong Ruyi"), which is incorporated in the PRC and owns interests in a number of group companies, mainly in the textile/clothing industry. ETS was incorporated for the purpose of holding a majority stake in SMCP S.A. ("SMCP"), a company incorporated in France that carries on business in the fashion industry. By 2018, it held a 53% stake in SMCP.

6. On 28 February 2023, ETS was declared bankrupt in insolvency proceedings in Luxembourg, and a Curator was appointed, Ms Valérie Kopéra.

7. Prior to February 2023, the person running ETS (in effect its CEO) appears to have been Ms Qiu. She signed the statements of truth that supported ETS's statements of case, as "Manager". In more formal terms and under ETS's constitution, its "A" managers included Mr Kelvin Ho (until 9 September 2021) and, until the appointment of the Curator, Ms Qiu and Mr Tan Huang. Its "B" managers included Mr Hans de Zwart and Mr Joost Mees (from incorporation until September/October 2021) and Mr Giovanni Incardona (until October 2021).

8. Ms Qiu is the daughter of Mr Yafu Qiu, who has at all material times been the Chair of Shandong Ruyi. She is resident in Jining, in Shandong Province in the PRC. This is where Shandong Ruyi has its headquarters. I do not know what, if any, role she has in other companies with the Shandong Ruyi group, in addition to ETS.

9. Wuhu Ruyi Xinbo Investment Partnership (Limited Partnership) ("Xinbo") is a PRC limited partnership in which the principal interests are of Shandong Ruyi and China Cinda Asset Management Co., Ltd ("Cinda"), a Chinese financial institution. Cinda is a major creditor of Shandong Ruyi and/or of companies within the group. Xinbo appears to have its headquarters in Wuhu, in the PRC.

10. Dynamic is a company incorporated in the BVI.

    (1) It was founded by Ms Qiu in April 2017. Until 30 July 2021, it was owned by Ms Qiu, who was also its sole director.

    (2) On that date, its ownership was transferred to a Precious Pearl Candy Holding Ltd ("Precious Pearl"), another BVI company which was itself owned by Ms Qiu and which owned Dynamic subject to a trust for Ms Qiu's children, administered by Intertrust (Singapore) Ltd ("Intertrust"). On the same date, Ms Qiu was replaced as director by Grandall International Holding Ltd ("Grandall"), a BVI company which acted via two professional service providers in Singapore who appear to be associated with Intertrust, Ms Kanchana Boopalan and Mr Yongtao Song.

    (3) In about March 2022, the trust arrangement ended. On 16 March 2022, a further BVI company owned by Ms Qiu, Dynamic Day Enterprises Ltd ("Dynamic Day") was appointed as director of Precious Pearl. On 12 April 2022, Dynamic Day was appointed as sole director of Dynamic, replacing Grandall.

    (4) On 5 May 2023, Precious Pearl transferred its shareholding in Dynamic to a subsidiary of Xinbo. Xinbo appears to have had ultimate control over Dynamic since that date, with the result that Dynamic's evidence in support of its application was provided by Ms Zhang Yu, the Deputy General Manager of Xinbo. The sole director remains Ms Qiu's company, Dynamic Day.

11. Ms Zhang's evidence suggests that, until 5 May 2023, Dynamic was, in practice, effectively managed by Ms Qiu. Ms Qiu does not accept this, but it is not clear who the person in charge of Dynamic was, prior to 5 May 2023, if not Ms Qiu. It seems unlikely that Grandall (i.e., Ms Boopalan and Mr Song) had significant practical involvement in any decisions.

The Trust Deed and the Bonds

12. On 21 September 2018 and pursuant to documentation including a Trust Deed of that date, ETS issued €250,000,000 of Secured Exchange Bonds ("the Bonds") bearing a coupon of 4% per annum, due September 2021. They were secured by the pledge of some of the ETS's shares in SMCP.

13. The original Trustee under the Trust Deed was BNP Paribas Trust Corporation UK Limited ("BNP Trust").

14. GLAS took over the relevant trust duties on 24 December 2020. A dispute arose between GLAS and ETS in 2021, which was compromised on 17 June 2021. In the context of the settlement of that dispute, Ms Qiu (as "A" manager of ETS) and Mr Joost Mees (as "B" manager of ETS) certified that, other than GLAS's pledge over the Pledged Shares, there was no security over any shares held by ETS in SMCP ("the Managers' Certificate").

15. ETS failed to pay any sum to GLAS when the Bonds matured on 21 September 2021. On 22 September 2021 GLAS issued a Notification of Breach. On 4 October 2021 it issued a Default Notice, which ETS failed to pay. On 5 October 2021, GLAS sent a demand for payment of a Deferred Fee, payable by ETS.

The Pledged Shares in SMCP

16. Security under the Trust Deed was provided by a requirement for ETS to pledge some of its shares in SMCP, to be held in an identified security account with BNP Paribas Securities Services (London Branch) ("BNPPSS London"). On 21 September 2021, 28,028,163 shares were pledged ("the Pledged Shares"). The Pledged Shares are still held by or for GLAS.

The Unpledged Shares

17. The value of the Pledged Shares was below the total sum due under the Bonds. ETS's only substantial asset was its shareholding in SMCP. This hearing has mainly concentrated not on the Pledged Shares, but on the balance of 12,106,939 shares ("the Unpledged Shares"). Until October 2021, they were held by ETS in an account with BNP Paribas Securities Services Paris ("BNPPSS Paris"), in France.

The Disposal of the Unpledged Shares

18. The following transactions are referred to in the statements of case and evidence as "the Disposal":

    (1) On 27 October 2021, ETS transferred the Unpledged Shares from its own account with BNPPSS Paris to that of Dynamic. Dynamic's account with BNPPSS Paris had been opened on 18 October 2021 and the account number was communicated to Dynamic on 21 October 2021. Ms Qiu's evidence is that Dynamic's account was opened specifically for it to receive the Unpledged Shares, as transferee from ETS.

    (2) On 3 November 2021, Dynamic instructed BNPPSS Paris to transfer the Unpledged Shares into bearer form (from pure registered form) and to transfer the bearer shares to an account held by Dynamic with JP Morgan Chase Bank N.A. Singapore ("JPM Singapore"), where they are still held.

19. On 4 November 2021, SMCP issued a press release announcing that ETS had disposed of the Unpledged Shares but gave no details.

20. On 5 November 2021, GLAS obtained an order from the Paris Commercial Court against BNPPSS Paris, requiring it to provide information in relation to the transfer of the Unpledged Shares. On 12 November 2021, BNPPSS Paris disclosed to GLAS that the Unpledged Shares were now held by JPM Singapore.

21. Pursuant to the order of the Paris Commercial Court dated 16 November 2021, BNPPSS Paris disclosed a copy of what appears to be a Share Sale Agreement dated 22 October 2021, by which ETS appears to have agreed to sell the Unpledged Shares to Dynamic for €1 (the "SSA"). BNPPSS Paris's understanding from ETS was this was the instrument by which the Disposal took place. That was for some time ETS's case. It is still the case of Dynamic and of Ms Qiu.

The course of these proceedings, up to October 2022

22. GLAS commenced these proceedings on 15 November 2021.

23. From the outset, GLAS's claims included claims against ETS in debt, but there were also claims against all three defendants in unlawful means conspiracy, as well as claims against ETS and Dynamo under s. 423 Insolvency Act 1986 ("the s. 423 claim"). The pleaded case has from the outset included the following elements:

    (1) As regards the s. 423 claim, GLAS says that the Disposal was at an undervalue and its purpose was to put the Unpledged Shares beyond the reach of GLAS.

    (2) As regards the unlawful means conspiracy claim, GLAS says that the Defendants acted in combination to defeat or prejudice GLAS's entitlement to recover the sums due to it, by the Disposal.

24. On 17 November 2021, HHJ Pelling KC gave permission for service out of the jurisdiction on Dynamic. He also made worldwide freezing orders against ETS and Dynamic.

25. Permission to serve out of the jurisdiction was not required as against ETS, because the Trust Deed was subject to English law and jurisdiction, but HHJ Pelling KC made an order for substituted service (which has not been challenged). As against Ms Qiu, permission to serve out of the jurisdiction was not required because she could be and was served in England.

26. ETS acknowledged service within time and has participated fully in the proceedings.

27. Dynamic did not acknowledge service and did not comply with the freezing order. It has taken no part in the proceedings until very recently.

28. Ms Qiu filed an acknowledgment of service on 3 January 2022 (a few days out of time) but thereafter took no part in the proceedings until very recently, in her role as Third Defendant. However, in her role as Manager of ETS, she participated by making witness statements and signing statements of truth on behalf of ETS.

29. Initially, ETS denied that GLAS had been validly appointed under the Trust Deed (even notwithstanding that this had been agreed by the compromise of 17 June 2021), and so denied the validity of the notices and demands served by GLAS and further denied GLAS's claim in debt and GLAS's rights in and entitlement to the Pledged Shares.

30. It also denied GLAS's other claims, notably the s. 423 claim and the unlawful means conspiracy claim. The defence to those claims was, throughout, to the effect that the Disposal was a genuine, arm's length transaction, conducted for proper reasons rather than merely to put the Unpledged Shares beyond the reach of GLAS or to defeat or

prejudice GLAS's entitlement to recover the sums due to it. However, the detailed explanation given for the Disposal evolved over time, with additional materials being produced and relied on by ETS, and considered and responded to by GLAS.

31. On 27 October 2022, GLAS obtained summary judgment in respect of its claim in debt against ETS, under the Bonds. The judgment of Mr Simon Salzedo KC (sitting as a Deputy Judge) also confirmed that GLAS had been validly appointed, and was entitled to the Pledged Shares.

ETS's defence to the s. 423 claim and unlawful means conspiracy claim

32. ETS's defence to the s. 423 claim and the unlawful means conspiracy claim relied on a series of documents involving ETS and other companies in the Shandong Ruyi group, as well as Dynamic. As I have noted, it developed over time. In its final form, it proceeded as follows:

(1) On 9 August 2016, Shandong Ruyi borrowed RMB1,400,000,000 (approximately €180,000,000 at the time) from Pacific Securities Co. Ltd. ("the Pacific Loan Agreement"). The debt was originally due on 28 September 2019, but this was later extended to 28 September 2020.

(2) On 27 December 2017, Cinda acquired the debt due under the Pacific Loan Agreement. On the same date, Cinda assigned its rights to Xinbo.

(3) On 25 July 2018, ETS entered into an agreement with Xinbo and Shandong Ruyi ("the 2018 Agreement"), by which (among other things), ETS guaranteed the debt owed by Shandong Ruyi to Xinbo and pledged 40,135,102 shares in SMCP (i.e., its entire shareholding, including not only the Unpledged Shares but also what shortly became the Pledged Shares). The 2018 Agreement provided for arbitration either in Jining or in Jinan (the document is written in Chinese; I have seen two different translations, one saying Jining and the other Jinan).

(4) On 8 October 2021, Xinbo gave notice to Ms Qiu referring to the Pacific Loan Agreement and assignment to Xinbo and stating that it had recently learned of the Bonds and of their effect on the SMCP shares. Xinbo asked Ms Qiu, as director of ETS, to transfer the remaining shares (i.e., the Unpledged Shares) out of ETS and require the transferee to pledge them to Xinbo. This document ("the 8 October Notice") was written in Chinese and sent to Ms Qiu.

(5) On 9 October 2021, Xinbo gave notice to ETS, demanding that it transfer the Unpledged Shares to Dynamic. In the form provided to me, it appears to have given and gave details of the account number at BNPPSS Paris. This document ("the 9 October Notice") was written in English and addressed to ETS at its offices in Luxembourg.

(6) On 22 October 2021, ETS and Dynamic entered the SSA.

33. ETS's pleaded case was that these documents gave rise to the Disposal, specifically the transfer from ETS to Dynamic on 27 October 2021 and the subsequent transfer of the bearer shares to JPM Singapore on 3 November 2021.

34. All these matters were challenged by GLAS in its statements of case from an early stage of the proceedings. In particular, GLAS disputed the authenticity of the SSA, by an amendment made on 11 February 2022. Later, GLAS also disputed the authenticity of the 9 October Notice.

GLAS's proceedings in Singapore

35. On 18 November 2021, GLAS commenced proceedings in Singapore against ETS and Dynamic ("the GLAS Singapore Proceedings"). GLAS's case was similar to its case in the proceedings in this country.

36. The object of the GLAS Singapore Proceedings appears to have been to obtain a freezing order in Singapore against ETS and Dynamic. Such an order was granted on 19 November 2021.

37. On 15 December 2021, GLAS applied for a stay of the GLAS Singapore Proceedings, in favour of these proceedings. The basis of the application was that England was the appropriate forum for the issues arising to be determined. It was supported by affidavit evidence from GLAS's English solicitor, to this effect.

38. The application for a stay was determined in Singapore on 9 March 2022. The court granted a stay. The order records that they heard from counsel for GLAS and also from counsel from ETS and counsel for Dynamic.

39. I have seen the evidence filed on behalf of Dynamic, in which Ms Boopalan and Mr Song said on affidavit that Dynamic was neutral on the stay application. They also said that, while not directly relevant to the stay application, they felt obliged to tell the court that they had not signed the SSA and that they believed that it was not authentic. This gave rise to the amendment of GLAS's Particulars of Claim in this action four days later (on 11 February 2022), as regards the SSA.

40. I assume that the submissions made by Dynamic's counsel at the hearing on 9 March 2022 are likely to have been in line with their affidavit, i.e., neutral on the application for a stay in favour of these proceedings.

41. I do not know what was said on behalf of ETS, but I have been told that it did not oppose the application.

The bankruptcy proceedings in Luxembourg

42. On 22 October 2021, GLAS issued and served a bankruptcy petition in Luxembourg. This was resisted by ETS, on grounds including those relied on by it in its Defence in these proceedings.

43. On 26 November 2021, the bankruptcy petition was denied by the District Court in Luxembourg.

44. Following the summary judgment of this court in GLAS's favour on 27 October 2022, on 28 February 2023 the Luxembourg Court of Appeal allowed GLAS's appeal and declared ETS bankrupt, appointing the Curator.

The Xinbo arbitration in Beihai

45. It is said that there was an agreement to vary the 2018 Agreement by changing the arbitration venue. On this, Dynamic and (in particular) Ms Qiu rely on an undated document which appears to have been executed by Xinbo, Shandong Ruyi and ETS, which records that "Jining Arbitration Commission does not have the conditions for hearing foreign-related arbitration cases" and provides for arbitration by the Beihai Court of International Arbitration.

46. While both Jining and Jinan are in Shandong Province, Beihai is well over a thousand miles away. I am well aware of there being established international arbitration centres in Tianjin (in Shandong Province and reasonably convenient for Shandong Ruyi and for Ms Qiu) and in Shanghai (reasonably convenient for Xinbo). It may well be that there are other international arbitration centres near to Jining, Jinan and/or Wuhu. Beihai seems a surprising choice.

47. Be that as it may, in 2022 Xinbo commenced arbitration proceedings in Beihai ("the Beihai Arbitration"). This appears to have been on 21 March 2022, i.e., shortly after the stay of proceedings commenced by GLAS in Singapore in favour of the proceedings in this court.

48. Xinbo's request for arbitration was filed on 18 November 2022 and the tribunal was formed on 26 December 2022 (consisting of a sole arbitrator). The hearing took place on 30 December 2022 and the tribunal issued its award on 10 January 2023 ("the Beihai Arbitration Award").

49. The Beihai Arbitration Award records that Shandong Ruyi and ETS, as respondents, agreed to waive the time limit for court debate, proof, the selection of arbitrators and the composition of the tribunal. It proceeds by setting out Xinbo's case on a series of points, in relation to each of which the respondents had no objection to the facts asserted by Xinbo, no objection to Xinbo's evidence and no objection to Xinbo's requests for relief (save that Shandong Ruyi took a modest point about the rate of interest on the loan).

50. The arbitrator's reasons are largely set out in Part Four of the Beihai Arbitration Award, where the arbitrator gave separate issues and explained his views on each.

    (1) Issues 1 and 3 arose only between Xinbo and Shandong Ruyi. The Arbitrator confirmed Shandong Ruyi's indebtedness to Xinbo and also dealt with the interest payable.

    (2) Issue 2 was whether the guarantee between Xinbo and ETS was established. The arbitrator concluded that the 2018 Agreement constituted a guarantee. He also said that the pledge terms in the 2018 Agreement were true and valid.

    (3) Issue 4 was "whether [Xinbo's] requests for relief on priority compensation of the collateral provided by [ETS] should be supported". This issue arose between Xinbo and ETS. The arbitrator's conclusion was:

        "The Tribunal held that the [Xinbo] had the pledge right to 12,027,751 shares of SMCP S. A held by the [ETS], and had the right to discount the shares or to

> have priority to be repaid within the scope of the creditor's rights confirmed by the Tribunal at the price of auction or sale."

(4) Issue 5 concerned costs.

51. Part Five was headed "Decisions" and appears to contain the dispositive part of the Award. As regards ETS, it said:

> "1. [Shandong Ruyi] shall repay the loan principal of 600 million yuan and interest to [Xinbo] (interest calculation method: based on 600 million yuan, calculated from January 1, 2018 to the date of actual repayment of the loan principal according to the annual interest rate of 6.56%).
> 2. [Shandong Ruyi] shall bear the arbitration fee 2,487,780 yuan. The arbitration fee has been prepaid by [Xinbo]. The Court will not refund it. It shall be paid directly by [Shandong Ruyi] to [Xinbo].
> 3. [Xinbo] has the priority right of compensation for the proceeds from the discount, auction and sale of 12,027,751 shares of SMCP S.A. held by [ETS].
> 4. All other requests for relief are rejected.
> 5. The above amount shall be paid by [Shandong Ruyi] to [Xinbo], and [Shandong Ruyi] shall pay off in a lump sum within ten days from the date of service of this award. If [Shandong Ruyi] fails to perform its obligation to pay money within the time limit specified in this award, it shall double the interest of the debt during the period of delay in performance in accordance with Article 260 of the Civil Procedure Law of the People's Republic of China. [Xinbo] may apply to the people's court with jurisdiction for compulsory execution within two years from the last day of the performance period specified in this award.
> 6. This award is final and shall have legal effect from the date of making."

52. It appears that the arbitrator was informed that the Unpledged Shares were in the possession of ETS. If so, this information was incorrect. The Unpledged Shares are held by JPM Singapore, to the account of Dynamic. Neither JPM Singapore nor Dynamic was party to the Beihai Arbitration and neither is affected by the Beihai Arbitration Award.

The Singapore Enforcement Proceedings

53. On 13 March 2023, Xinbo issued proceedings in England and Singapore for the enforcement of the Beihai Arbitration Award. In the event, it was only the proceedings in Singapore that were pursued ("the Singapore Enforcement Proceedings").

54. On 14 March 2023, the court in Singapore made an ex parte order giving permission to Xinbo to enforce the Beihai Arbitration Award against Shandong Ruyi and ETS in Singapore ("the Singapore Enforcement Order").

55. I am not entirely sure what the effect of this is.

(1) I assume that what is to be enforced is the dispositive part of the Beihai Arbitration Award, i.e., Part Five.

(2) I understand its effect in relation to the financial relief granted against Shandong Ruyi in paragraphs 1 and 2 of Part Five. This money award can be enforced in

Singapore against any assets of Shandong Ruyi that are found in Singapore; subject to the Singapore Enforcement Order being set aside.

(3) I do not understand how the purely declaratory relief in paragraph 3 of Part Five can be "enforced" against ETS in Singapore.

(4) I assume that the Singapore Enforcement Order can have no effect against GLAS or Dynamic and cannot be enforced against them.

56. Later in this judgment, I summarise GLAS's reasons for disputing the authenticity of the 2018 Agreement, the 9 October Notice and the SSA, and its objections to the Disposal. I also note that ETS, in the person of Ms Kopéra, now takes broadly the same view as GLAS. If GLAS and ETS are right, then the Beihai Arbitration Award was wrong.

57. On 3 April 2023, ETS applied to have the Singapore Enforcement Order set aside.

58. On 25 April 2023, GLAS applied to intervene in the Singapore Enforcement Proceedings. The application was refused on 3 July 2023. I have not seen any documents relating to the refusal of GLAS's application, but I assume that this was on the basis that GLAS was not a party to the arbitration agreement and did not have a sufficient interest in the Beihai Arbitration Award.

59. On 3 November 2023, the court in Singapore made an order that any judgment in the Singapore Enforcement Proceedings would be anonymised, and that the court file should be sealed. This has prevented any of the parties to the Singapore Enforcement Proceedings from providing this court with any further information about the Singapore Enforcement Proceedings.

60. Strictly, it also means that Ms Zhang, who is the Deputy General Manager of Xinbo, cannot share whatever she knows about the Singapore Enforcement Proceedings with Dynamic, whose conduct in these proceedings she appears to control.

GLAS's second application for summary judgment

61. On 29 August 2023, GLAS issued the application for summary judgment that is before me. This primarily concerns the s. 423 claim and the claim in unlawful means conspiracy, these being claims against all the Defendants. It also includes a claim against ETS alone, for the Deferred Fee, which was not dealt with in the earlier summary judgment application.

62. One important event that had occurred subsequent to the summary judgment of Mr Simon Salzedo KC on 27 October 2022 was the bankruptcy order in Luxembourg. This meant that Ms Qiu no longer had control over ETS's conduct in these proceedings. Since 28 February 2023, the Curator has been in charge – Ms Kopéra.

63. Ms Kopéra investigated afresh. What her investigations revealed, as set out in her evidence to this court, included the following:

(1) There is no record in ETS's files of the 2018 Agreement or any of the agreements that are said to have preceded it.

(2) There is no record of the 8 October Notice or of the 9 October Notice.

(3) There is no record of the SSA.

(4) There is no record of the Beihai Arbitration.

(5) Neither of the "B" managers who have been interviewed for this purpose (Mr de Zwart and Mr Mees) have any knowledge of these matters. The 2018 Agreement and the SSA should have been signed by a "B" manager, as well as an "A" manager, under ETS's constitution.

(6) None of these matters had been disclosed to ETS's auditor, KPMG. (I have seen several sets of financial statements, up to the year ending 31 December 2020. They reflect the Trust Deed, the Bonds and the effect of the Bonds on the SMCP shares held by ETS. They do not reflect the 2018 Agreement. This is anomalous, given that it purports to give rise to a pledge over all the SMCP shares, in favour of Xinbo.)

64. Ms Kopéra's conclusion was that ETS should not continue to advance the positive case pleaded in its Defence, and therefore should not actively resist GLAS's claim.

65. In addition to this change in the stance of ETS, there had been one further important development, following the judgment of 27 October 2022. On 7 March 2023, BNPPSS Paris provided GLAS with information relating to the opening of Dynamic's account. This revealed that, as already noted, the account was opened on 18 October 2021 and the account number was communicated to Dynamic on 21 October 2021 – i.e., after the 9 October Notice. It therefore was unclear how the account number appears to have been included in a document dated 9 October 2021.

66. GLAS's application for summary judgment of 29 August 2023 therefore was supported by additional information which had not previously been available to GLAS. Beyond this, GLAS was now able to say that ETS did not oppose the application.

67. As I have already noted, on 6 September 2023, the application was listed to be heard on 17 November 2023, with an estimate of 2.5 hours. This was in circumstances where there had been no participation by Dynamic or Ms Qiu. However, on 13 November 2023, Ms Qiu issued her application seeking an extension of time to file and serve a Defence. On 16 November 2023, Dynamic issued its application seeking (in effect) an extension of time to challenge the jurisdiction of the court.

68. Ms Qiu's application was accompanied by the draft Defence that she wished to file and serve. This was essentially on the same lines as the case previously advanced by ETS – unsurprisingly, given that it had been Ms Qiu's statements of truth that supported ETS's pleadings, until the bankruptcy. It would probably have been possible to deal with this on 17 November 2023, albeit it would have been challenging to do so within 2.5 hours.

69. It was certainly not possible also to deal with Dynamic's application, both because it was made only on the eve of the hearing and because it raised different issues.

70. At the hearing on 17 November 2023, I made directions intended to enable the new applications to be heard along with GLAS's application for summary judgment, on 18

January 2024. These directions provided for further evidence from Dynamic, being the information it ought to have given in response to the freezing order granted by HHJ Pelling KC as long ago as 1 December 2021; and also from Ms Qiu, in relation to the 9 October Notice and as to her ability to meet any financial condition which might be imposed on her.

71. Dynamic and Ms Qiu both served further evidence on 1 December 2023, and Ms Qiu then served an additional witness statement on 5 December 2023. Her evidence appeared to be intended to support her existing position, viz., that she should be allowed to serve a Defence and then to defend the claims made against her.

72. GLAS served responsive evidence, as directed, on 12 December 2023.

73. However, on 22 December 2023, Ms Qiu issued and served a fresh application, in which she too sought an extension of time within which to challenge the jurisdiction of this court.

74. Additional evidence was served by ETS on 12 January 2024 and by Ms Qiu on 13 January 2024. This was late but did not cause any difficulty and there was no real objection by any other party. Ms Qiu applied for an extension in this regard, which is granted.

Dynamic's application for an extension of time to acknowledge service/challenge jurisdiction

75. Mr McCulloch accepted that Dynamic ought to have filed an acknowledgement of service by 21 December 2021 (indicating its intention to challenge jurisdiction). As explained by Mr McCulloch, if permitted, Dynamic would then challenge jurisdiction in two separate ways, albeit for both the substance of the prospective challenge to jurisdiction would be that England is not the appropriate forum:

    (1) First, Dynamic wished to apply to set aside order of HHJ Pelling KC of 17 November 2021, giving permission for service out of the jurisdiction on Dynamic.

    (2) Second, Dynamic wished to apply for stay of the proceedings, per *Spiliada Maritime Corp v Cansulex Ltd* [1987] AC 460.

76. Mr McCulloch further accepted that Dynamic had to apply for relief from sanctions in order to file its acknowledgment late. On the basis of the decision of the Privy Council in *Texan Management Limited v Pacific Electric Wire & Cable Company Limited* [2009] UKPC 46 per Lord Collins at [68] to [73], this was so for both the ways Dynamic put its case.

77. However, in so far as Dynamic's prospective challenge relied on events that had not occurred until after the expiry of time for the acknowledgment of service – i.e., matters that could not have been known to or prayed in aid by Dynamic by 21 December 2021, even if it had acknowledged service within time – Dynamic would have a good reason for not having acted within time (for the purposes of the first and/or second limb of the test for relief from sanctions) so that the period of culpable delay would not be so great: *Apollo Ventures Co. Limited v Surinder Singh Manchanda* [2021] EWHC 3210 (Comm), per Teare J at [14] to [16]. These later events would be a "change of circumstances", to adopt the language of Lord Collins and of Teare J.

78. It is for this reason that Dynamic wished to challenge jurisdiction in the two separate ways outlined above. The second species of challenge would rely on a change in circumstances. The change identified by Mr McCulloch was the existence of the proceedings in Singapore.

79. Dynamic's primary position was that the appropriate forum was Singapore, alternatively the PRC. This was on the basis that the Unpledged Shares are in Singapore; in so far as Dynamic committed any relevant acts in 2021 (notably, entering into the SSA), it did so by Ms Boopalan and Mr Song, in Singapore; some of the witnesses are in Singapore (Ms Boopalan and Mr Song); and there are proceedings on foot in Singapore, i.e. the GLAS Singapore Proceedings and the Singapore Enforcement Proceedings.

80. Alternatively, Dynamic suggested the PRC, on the basis that a number of the key agreements are subject to the law of the PRC (notably the 2018 Agreement and the SSA); Ms Qiu's evidence suggests that there are likely to be disclosable documents in the PRC (she said that some of ETS's files are stored in an office of Shandong Ruyi); Ms Qiu and several individuals identified by her as Shandong Ruyi employees who assisted her in her work for ETS who would be witnesses are all in the PRC; and the acts relied on by GLAS were mostly committed in the PRC.

81. Although Mr McCulloch outlined the likely nature of the substantive challenge(s) to the jurisdiction of this court, he did not want me to determine those challenges, if an extension were to be granted. He said that the substantive decision on jurisdiction should be made at a further hearing, for which directions should be made.

82. As regards the first way that Mr McCulloch explained Dynamic's position, he accepted that the breach of the rules concerned a delay of approximately two years, which is unquestionably a significant breach.

83. Dynamic gave no real reason for not having acknowledged service within time. It was suggested that those in control of Dynamic at the time did or may have assumed that ETS would defend the claim, but this is not an acceptable reason. In any event it seems more likely to me that Dynamic did not wish to acknowledge service because to have done so would have required it to engage with the worldwide freezing order granted by this court, which it evidently preferred not to do.

84. Dynamic's breach has caused significant disruption. If the extension is granted, the effect will be to cause yet more disruption. Pleadings are closed, as between GLAS and ETS, and the court stood ready to determine GLAS's application for summary judgment, and would have done so on 17 November 2023, but for Dynamic's application. Instead, that hearing had to be adjourned and (as requested) the court arranged for this hearing to be listed on an expedited basis – i.e., on a basis which, by definition, uses up the court's ability to deal with the business of other court users. If Dynamic's application is granted, there will then have to be a further hearing to determine jurisdiction. Only after that (if Dynamic's challenge fails) will GLAS finally once again be in a position to seek the hearing of its application for summary judgment – probably not within 2024, unless the court allows both the putative additional hearings to be expedited (i.e., yet again inconveniencing other court users). By contrast, if Dynamic had applied within time, its challenge to jurisdiction would have been determined well before the end of 2022 (even without expedition).

85. To summarise, by reference to the familiar three-stage test for relief from sanctions:

(1) The breach is very significant.

(2) The reason for the breach was Dynamic's deliberate choice, which was associated with its decision not to comply with the worldwide freezing order made by this court.

(3) The breach has caused significant disruption and wasted costs. Granting relief from sanctions would lead to yet more significant disruption and wasted costs.

86. On the basis of Dynamic's first approach, I have no hesitation in refusing relief from sanctions.

87. As regards the second way that Mr McCulloch explained Dynamic's position, I have noted that he referred to the proceedings in Singapore as the relevant change of circumstances. However:

(1) The GLAS Singapore Proceedings were commenced on 18 November 2021 and were then stayed – with Dynamic's knowledge and without any objection by Dynamic following GLAS's application – on 15 December 2021. This was all before, not after, the time by which Dynamic ought to have filed its acknowledgment of service in these proceedings. Accordingly, this was not a change of circumstances, because nothing changed after 21 December 2021. However, even if these matters had occurred only after 21 December 2021, the fact that the GLAS Singapore Proceedings have been stayed in favour of these proceedings means that the GLAS Singapore Proceedings are positively unhelpful to Dynamic in relation to jurisdiction.

(2) The Singapore Enforcement Proceedings were not commenced until 13 March 2023. However, they are of no relevance to either Dynamic or GLAS, neither of which is party to them. Indeed, as matters currently stand, neither Dynamic nor GLAS can be told anything about them.

88. Accordingly, there has been no relevant change in circumstances, and Dynamic's second way of putting matters makes no difference to my decision on relief from sanctions.

89. I therefore refuse Dynamic relief from sanctions and its application for an extension of time fails accordingly, at least in so far as it relates to any challenge to jurisdiction.

<u>My provisional view of the arguable merits of the challenge to jurisdiction</u>

90. This is a decision I have reached without regard to the arguable merits of the challenge to jurisdiction (save for the comments above in relation to the GLAS Singapore Proceedings and the Singapore Enforcement Proceedings, neither of which can assist Dynamic). In other words, this is what I would have done even had I thought that the merits might be strong.

91. For the avoidance of doubt, however, and in case it might be relevant, the merits of Dynamic's challenge to the jurisdiction of this court do not seem to me to be at all strong.

92. As regards Singapore:

(1) The fact that the Unpledged Shares – or, strictly, the bearer share certificates – are in Singapore carries no real weight at all, in terms of the convenience of Singapore as a forum.

(2) The only meaningful factor in favour of Singapore is the fact that Ms Boopalan and Mr Song are both resident there. They may well be important witnesses, at least in relation to the SSA, but by itself this is not enough to make Singapore the appropriate forum.

93. As regards the PRC:

(1) The fact that Ms Qiu says that some of ETS's files are currently in the PRC does not seem to me significant. She also says that all the relevant documents in those files have now been made available; and, in any event, as Mr Page KC accepted, all the ETS documents currently in the office premises of Shandong Ruyi should be given to Ms Kopéra as Curator – not by way of disclosure in these proceedings, but because they are the property of ETS.

(2) It is true that some witnesses are resident in the PRC, notably Ms Qiu herself. It is not clear if any of them will be called by her or by Dynamic. In particular, Ms Zhang, who provided several witness statements on behalf of Dynamic, appears to have very little, if any, first-hand knowledge of the relevant events. As to Ms Qiu, the fact that she chose to make herself amenable to the jurisdiction of this country means that I give less weight to the fact that she is resident in the PRC. The other likely witnesses of particular significance are in Luxembourg – in particular, the former "B" managers of ETS.

(3) I accept that, on GLAS's case, many of the relevant acts were committed in the PRC. But this is simply because most of the individuals involved were and are based in the PRC, i.e., it adds nothing to the previous point.

(4) It is true that a number of the contracts involved are subject to the law of the PRC. However, there do not appear to be any issues of law or construction that arise in relation to them. The real issues arising are whether they exist as authentic documents, rather than shams. This applies, in particular, to the 2018 Agreement and the SSA, as well as the 8 October Notice and 9 October Notice.

94. Much more significant than any of these factors, in my view, is the fact that it seems likely that GLAS would be unable to bring the relevant claims in the PRC.

(1) The s. 423 claim is brought under an English statutory provision that is unusual in its extra-territorial effect. The English Insolvency Act 1986 obviously is not in force in the PRC. I am not prepared to assume, without evidence, that the law of the PRC enables a claimant to bring a claim arising from the insolvency of a company registered in Luxembourg.

(2) As regards the claim in unlawful means conspiracy, Mr McCulloch said that no such cause of action is recognised in the PRC, referring to *廈門新景地集團有限公司 v Eton Properties and others* [2020] HKCFA 32, at [91], where this was noted by the

Hong Kong Court of Final Appeal. On any view (i.e., even considering the possibility that GLAS might bring a tortious claim in the PRC but say that the PRC court should apply the law of France or Luxembourg as the proper law of the tort, rather than its own law) this suggests that the PRC is not the ideal forum.

Ms Qiu's application for an extension of time to challenge jurisdiction

95. Ms Qiu's position on jurisdiction is different. She was served within the jurisdiction and was not affected by the order of 17 November 2021 for service out of the jurisdiction. She could in principle have applied for a stay at any time on a *Spiliada* basis, but Mr Page KC acknowledged in his submissions that this would have been "hopeless", at least until November 2023. He, like Mr McCulloch, relied on a change of circumstances; but the change of circumstances relied on by Mr Page KC was the fact that Dynamic sought to challenge the jurisdiction of this court, by its application of 16 November 2023. His reasoning was that, if the claim against Dynamic were not to be pursued in England, nor should the claim against Ms Qiu.

96. This was not highlighted as a change of circumstances in the submissions made on behalf of Ms Qiu at the hearing on 17 November 2023, when the court was given no indication that Ms Qiu's position on jurisdiction had altered or might alter. Nor can it satisfactorily be explained why the evidence served by Ms Qiu on 1 December 2023, and 5 December 2023 appeared to be intended to support her existing position, viz., that she should be allowed to serve a Defence and then to defend the claims made against her. If anything, this doubled-down on the submission to the jurisdiction presaged by the acknowledgment of service that had been filed on 3 January 2022.

97. In any event, my rejection of Dynamic's application means that the alleged change of circumstances amounts to nothing. The claim against Dynamic will be pursued in England, in these proceedings. Ms Qiu's application for an extension of time to challenge jurisdiction therefore fails.

Ms Qiu's application for an extension of time to file and serve her Defence

98. Ms Prevezer KC accepted that, if I were not to grant summary judgment, Ms Qiu should be granted this extension.

GLAS's application for summary judgment

99. The principles applicable to an application for summary judgment were not in issue, being set out in the White Book at 24.2.3. In the circumstances of this case, they really boil down to whether the Defendants have a realistic, rather than fanciful, prospect of successfully defending GLAS's claims.

100. I have noted that ETS no longer advances the positive case pleaded in its Defence, in response to the s. 423 claim and the claim in unlawful means conspiracy. However, the case against ETS on both those claims is entirely bound up with the case against Dynamic and Ms Qiu. I suggested to Ms Prevezer KC and to Ms Sagan that, if summary judgment were not given against those Defendants, it should not be given against ETS, not least because Ms Kopéra would be bound to wish to see what further evidence might be forthcoming from the other Defendants. Ms Prevezer KC and Ms Sagan agreed with this.

101. I have also noted that Ms Qiu's draft Defence proceeds along essentially the same lines as the Defence previously pleaded by ETS. It begins with the alleged indebtedness of Shandong Ruyi to Xinbo, and then proceeds to explain the Disposal by relying, fundamentally, on the 2018 Agreement, the 8 October and 9 October Notices and the SSA. In both Ms Qiu's evidence and in Mr Page KC's submissions, these were said to be authentic.

102. Dynamic did not proffer a draft Defence, Ms Zhang's evidence all being directed to the application for an extension of time and to the associated prospective challenge to jurisdiction (and to supporting Ms Qiu's case). However, Ms Zhang's explanation of Dynamic's case on jurisdiction (and that of Mr McCulloch, in submissions) tracked that of Ms Qiu, in that it relied on the authenticity of the 2018 Agreement and the 8 October and 9 October Notices. One difference is that, while Ms Zhang referred to the SSA in passing, she did not say, either way, whether the purported signatures of Ms Boopalan and Mr Song (purportedly on behalf of Dynamic) were genuine. It therefore was not clear to me whether Dynamic's case was that the SSA was genuine, or whether it adopted the evidence given by Ms Boopalan and Mr Song to the court in Singapore – which would necessarily mean that the SSA is tainted by forgery and is a sham. I asked Mr McCulloch if he could tell me what Dynamic's case is on this point and he said that he would need to take instructions.

103. Over the course of the proceedings as a whole, and certainly in the context of this hearing, GLAS has raised a number very significant questions about all these critical documents. None of them has yet been dealt with by entirely satisfactory answers, which is why Ms Kopéra has taken the pragmatic decision not to support ETS's pleaded Defence.

104. As regards the 2018 Agreement:

(1) It was not signed by a "B" manager.

(2) Under ETS's constitution, ETS could only enter into a pledge over shares in SMCP with the prior written consent of Sino Power Resources Inc. ("Sino Power"). It seems that Sino Power did not give prior written consent. Ms Qiu says that Sino Power's consent was given orally, by telephone, but there is no documentary record of this.

(3) Not only do ETS's files contain no record of the 2018 Agreement itself, but there does not appear to be any trace of any negotiations or post-agreement exchanges.

(4) No-one in Luxembourg knows anything about it.

(5) It was not disclosed to ETS's auditor and is not mentioned in ETS's financial statements.

(6) It was not registered in France. GLAS's evidence is that this was necessary in order for it to provide valid security.

(7) Its existence is not consistent with the Managers' Certificate signed by Ms Qiu (with Mr Mees) on 17 June 2021. Ms Qiu says that her understanding of the text of the Managers' Certificate was (in effect) that it merely certified the existence of

GLAS's pledge. However, (i) this would be unnecessary and (ii) it seems surprising that the meaning and truth of the Managers' Certificate was not discussed with Ms Qiu by the lawyers who dealt with the compromise of the legal proceedings to which it related.

(8) It is not clear why ETS would have given a pledge over 100% of its shares in SMCP. Their value was significantly greater than the indebtedness of Shandong Ruyi that ETS is said to have guaranteed under the 2018 Agreement.

105. As regards the 8 October Notice:

(1) This was not sent to ETS but to Ms Qiu.

(2) What it asked her to do was:

> "… immediately transfer the remaining outstanding shares out of European Topsoho S.a.r.l and require the transferee of the shares to pledge these shares to our company…"

(3) This would have left it open to ETS to select the transferee. It is not what happened.

106. As regards the 9 October Notice:

(1) It was addressed to ETS in Luxembourg but was not sent to ETS in Luxembourg. In fact, it is not clear when, how or to whom it was sent, if at all.

(2) It reads as follows:

> "RE: DYNAMIC TREASURE GROUP LIMITED
> Dear Sirs,
> We hereby demand you to transfer 12,106,939 ordinary shares in SMCP S.A., a company incorporated and existing under the laws of France, who shares are listed on the Paris Stock Exchange (Euronext Paris) stock code: SMCP (ISIN code: FR0013214145) to DYNAMIC TREASURE GROUP LIMITED.
>
> Details of Account:
> Bank: BNP Paris Securities Services
> Account number: 11845
>
> Yours faithfully…"

(3) Dynamic's account details with BNPPSS Paris were typed in, in the same font as the other text. At first sight, they appear to be part of the text of the Notice as a whole.

(4) However, Dynamic did not have an account with BNPPSS Paris on 9 October 2021 and the account number was not communicated to Dynamic until 21 October 2021.

(5) When giving directions on 17 November 2023, I ordered Ms Qiu to file a witness statement setting out the full extent of her knowledge as to the creation and receipt of the 9 October Notice (in hard copy and/or electronic form and in relation to any metadata) and of the recording in it of Dynamic's account number. My order

required her to identify any individuals on whose actions she relied and to exhibit any documents relied on.

(6) Ms Qiu's evidence on this is that, so far as she can recall, the 9 October Notice was received by her/ETS with the account details left blank. She asked an ETS employee to fill them in later; she could not identify the relevant person with certainty but was probably a Shandong Ruyi employee working for ETS, who left Shandong Ruyi in about October 2022. The individual at Xinbo who created the 9 October Notice also left in late 2022. Ms Qiu was unable to exhibit any documents, because (she said) the 9 October Notice had been sent to her personal WeChat account, and all the data had been lost when she changed her mobile phone at the end of 2021. Everyone else who might have been involved has also lost all WeChat data, for the same reason. None of them backed-up their data, when changing to a new mobile phone.

(7) Ms Qiu's case is supported by a brief statement from Ms Su Xiao, an Investment Decision Committee Member of Xinbo. Ms Su says that she sent the 9 October Notice to Ms Qiu, by WeChat (although she did not create it). She says that she does not recall whether Dynamic's account details were already included. She too lost all WeChat data when she changed to a new mobile phone.

107. As regards the SSA:

(1) As noted above, it purports to have been signed on behalf of Dynamic by Ms Boopalan and Mr Song.

(2) On 7 February 2022, they made a joint affidavit in Singapore stating that these signatures are not theirs.

(3) Ms Qiu's evidence is that, to the best of her recollection, the SSA was received by her from Xinbo to be signed by her first, on behalf of ETS; she signed it then sent it back to Xinbo. It was left to Xinbo to arrange for it to be signed on behalf of Dynamic.

(4) Ms Zhang is the Deputy General Manager of Xinbo and has given all Dynamic's evidence in this application but has said nothing about the purported signatures of Ms Boopalan and Mr Song.

(5) Neither Ms Qiu nor Dynamic has provided any documents that shed any light on how the SSA came into existence or, specifically, when and by whom it was signed.

(6) Like the 2018 Agreement, it was not signed on behalf of ETS by a "B" manager, and there does not appear to have been any prior written consent from Sino Power.

108. The Defendants face significant difficulties in relation to each of these matters (as well as on some others). However, I do not regard their difficulties as so extreme that the points raised by GLAS can be determined against the Defendants on a summary basis. Ms Qiu and Dynamic can both point to documents that appear to provide at least some support for what they say. Justice requires a full hearing, so that the evidence of Ms Qiu (in particular) can be tested properly.

109. I therefore do not grant summary judgment against any of the Defendants (save on one limited point which affects ETS alone, dealt with near the end of this judgment).

Ms Qiu's application for an extension of time for her Defence

110. In these circumstances, I will allow Ms Qiu's application for an extension of time to file and serve her Defence, subject to the next section of this judgment.

111. Dynamic has not made a similar application, but it too must, in principle, be allowed to file and serve a Defence.

Conditions pursuant to CPR 24.6(c)

112. Very realistically, Ms Prevezer KC did not really attempt to persuade me that this was a suitable case for summary judgment. Rather, she sought to persuade the court to impose conditions on Dynamic and Ms Qiu – specifically, payment into court.

113. In response to this, Mr Page KC (although not Mr McCulloch) not only relied on Ms Qiu's draft Defence and on her evidence, but also on two technical points.

114. First, he said that GLAS did not have a proper case of conspiracy, because there was no involvement by ETS or Dynamic, and so no combination.

(1) As regards ETS, he relied on the fact that ETS's entry into the 2018 Agreement and SSA was said by GLAS to be ultra vires of ETS. However, the fact remains that ETS transferred the Unpledged Shares to Dynamic. ETS therefore was involved, on any view.

(2) As regards Dynamic, he said that GLAS's case is that the SSA was not signed on behalf of Dynamic, the signatures of Ms Boopalan and Mr Song being said by GLAS to be forgeries. However, the fact remains that Dynamic opened an account with BNPPSS Paris, specifically to receive the Unpledged Shares from ETS, and then instructed BNPPSS Paris to convert them to bearer shares and transfer them to its account with JPM Singapore. It is not clear which natural persons gave the relevant instructions on behalf of Dynamic, Ms Zhang's evidence shedding no light on this. However, all this will presumably become apparent in due course, when Dynamic gives disclosure. For the time being, there is on the face of things a strong case that Dynamic was involved.

115. Second, Mr Page KC said that the only allegation in respect of an unlawful act is the contravention of s. 423 of the Insolvency Act 1986. This is not the case.

(1) GLAS has a pleaded case that the 9 October Notice and the SSA are sham documents, and it specifically alleges that the 9 October Notice was fraudulently created.

(2) It has also pleaded that the Managers' Certificate contained a fraudulent misrepresentation (this, I assume, relating only to Ms Qiu and not to Mr Mees).

(3) Overall, it is clearly alleged that the purpose of the Disposal was to defraud GLAS.

116. Accordingly, neither of these technical points assists Ms Qiu; nor could they assist Dynamic.

117. It follows that they are left with the answers that I have already identified. While sufficient to resist summary judgment, they are extremely unimpressive; more so given the time that has been available to Ms Qiu and Dynamic since 17 November 2023, and the directions that I made on that date.

118. It is particularly striking that Ms Boopalan and Mr Song made their joint affidavit in Singapore concerning the signatures on the SSA, which purport to be theirs, on the earliest possible date. That was nearly two years ago. Neither Dynamic nor Ms Qiu has adduced any positive evidence to explain how the SSA came to bear these purported signatures.

119. Mr Page KC suggested that Ms Boopalan and Mr Song may have given this evidence out of concern that they, too, might face allegations of unlawful means conspiracy. With respect, that seems far-fetched. They appear to be professional corporate trustees and are unlikely to have deliberately committed perjury.

120. However, if the SSA was not signed on behalf of Dynamic, and if the purported signatures of Ms Boopalan and Mr Song were forgeries, it is difficult to understand how the Disposal nevertheless occurred without fraud on the part of the Defendants; and none of them has attempted to explain this. It is not clear who may have forged these signatures, or under whose direction, but the centrality of Ms Qiu's role in the Disposal makes it unlikely that she was not at least aware. If so, it is obviously arguable that her knowledge is attributable to ETS and Dynamic.

121. Similarly, the oddities surrounding the 9 October Notice cannot be ignored. It may be that inspection of the original document by an expert might shed further light, but on the face of things the details of Dynamic's account with BNPPSS Paris do not look to have been added subsequently. If so, and if this is a sham document, it is not clear what answers the Defendants can have.

122. Accordingly, it is possible that Ms Qiu's defence may succeed; similarly, by extension, that of ETS and Dynamic. However, that defence has sufficient gaps and peculiarities that there are real grounds to doubt the reliability of the evidence of Ms Qiu (and, so far as relevant, that of Ms Zhang and Ms Su). I am very conscious that cases often look different by the time they get to trial. However, on the basis of the material made available to me, the defence looks weak and unlikely to succeed.

123. CPR 24.6(c) provides that, on an application for summary judgment, even if the Court does not grant summary judgment, it may give directions (e.g., as to the Defence) and may "make its order subject to conditions in accordance with rule 3.1(3)". The notes in the White Book say at 24.6.5 that a conditional order will be made "if it appears to the court that, in respect of some claim or defence, it is possible that the claim, defence or issue may succeed but it is improbable that it will do so."

124. This appears to suggest that a condition may be justified if the prospects of the defendant succeeding appear to be just below 50%. However, at 24.56.6 the notes refer to *Abbot Investments (North Africa) Ltd v Nestoil Ltd* [2017] EWHC 119 (Comm), where Teare J said at [23] that a defence that is "only just" more likely to fail than

succeed would not justify a conditional order. Indeed, he regarded this as obvious. He contrasted that with the situation where the defence is "very likely" to fail; and later in that paragraph he used the phrase "particularly weak". At [25], he said "the purpose of making a conditional order requiring payment into court is to provide security in respect of a particularly weak defence".

125. Also relevant is the decision of the Court of Appeal in *Gama Aviation (UK) Ltd v Taleveras Petroleum Trading DMCC* [2019] EWCA Civ 119, where Males LJ said at [42] that it is not necessary to show that a defence is shadowy or dubious in its bona fides (although, if established, such factors would no doubt be relevant), and then said at [43]:

> "It follows that there is a category of case where the defendant may have a real prospect of success, but where success is nevertheless improbable and a conditional order for the provision of security may be made. This is the typical case where a conditional order may be made requiring the provision of security for the full sum claimed or something approaching that sum."

126. I do not regard this as indicating that mere improbability, i.e., a prospect of success that is below 50%, will necessarily be sufficient. The jurisdiction to impose a condition in the context of summary judgment applications stems from CPR 3.1(3), as emphasized by the Court of Appeal in *Olatawura v Abiloye* [2002] EWCA Civ 998 and in *Deutsche Bank AG v Unitech Global Ltd* [2016] EWCA Civ 119. It follows that the power has the broad purpose of furthering the overriding objective. It must be exercised consistently with that function and with the wealth of authority relating to it, but it does not seem to me fruitful to engage in minute consideration of the precise percentage likelihood of success or failure that will or will not make a condition appropriate. Indeed, if there are other factors bearing on the discretion, it may be unnecessary to say precisely how weak the defence may be; in which case the judge hearing the interlocutory application should not do so, out of deference to the trial judge.

127. In this case, I have in mind not only my view that the defence is weak, but also the fact that Ms Qiu and Dynamic both chose not to participate in the proceedings for a very significant period and so require the indulgence of significant extensions. In all the circumstances, this is a case where each of them should show that they are now in earnest by putting their money where their mouth is: cf. *Industrial and Commercial Bank of China Ltd v Ambani* [2020] EWHC 272 (Comm) at [23].

128. Where a condition is appropriate – partly or wholly because of the poor prospect of success – *Gama Aviation* indicates that this will often justify requiring the provision of security for the full sum claimed or something approaching that sum. However, at [45] to [56] Males LJ set out a series of principles relating to the evaluation of the right condition. These are fairly summarised in the White Book at para. 24.6.6, as follows:

> "1. In a case where the defendant has a real prospect of successfully defending the claim, the court must not impose a condition requiring payment into court or the provision of security with which it is likely to be impossible for the defendant to comply.
> 2. The burden is on the defendant to establish on the balance of probabilities that it would be unable to comply with a condition requiring payment into court or the provision of equivalent security.

> 3. In order to discharge that burden a defendant must show, not only that it does not itself have the necessary funds, but that no such funds would be made available to it, whether (in the case of a corporate defendant) by its owner or (in any case) by some other closely associated person.
> 4. Despite the fact that the Rules expressly contemplate the possibility of a payment condition being imposed, it is not incumbent on a defendant to a summary judgment application to adduce evidence about the resources available to it, at any rate in a case where no prior notice has been given that the claimant will be seeking a conditional order.
> 5. The court's power to make a conditional order on a summary judgment application is not limited to a case where it is improbable that the defence will succeed. Such an order may be appropriate in other circumstances, for example (and without being exhaustive) if there is a history of failures to comply with orders of the court or there is a real doubt whether the party in question is conducting the litigation in good faith. However, the court needs to exercise caution before making a conditional order requiring a defendant who may have a good defence to provide security for all or most of the sum claimed as a condition of being allowed to defend."

129. Here, the Defendants were given notice of the possibility of a condition being imposed at the hearing on 17 November 2023. I ordered Dynamic to provide the information as to its means that it ought to have given in response to the freezing order granted by HHJ Pelling KC on 17 November 2021. This elicited evidence from Ms Zhang that Dynamic had no significant assets beyond the shares and some cash held in its account with JPM Singapore. However, she also said that Dynamic was not dependent on its own assets to fund this litigation, because all its legal expenses have been met by Xinbo. Against this background, it seems reasonable to me to infer that Xinbo could and would make the necessary funds available and Mr McCulloch did not seek to suggest otherwise.

130. My order of 17 November 2023 also required Ms Qiu to give evidence as to her ability to meet any condition that the court might impose. She purported to do so, but her evidence in this respect was obviously deficient – she asserted a beneficial interest in the cash held in Dynamic's account with JPM Singapore, but said nothing else about her income or assets. Mr Page KC rightly conceded that this did not enable him to say that Ms Qiu would not be able to comply with any reasonable financial condition that the court might impose.

131. Evaluating the proper sum required consideration of the realistic quantum of GLAS's claim. The difficulty here is that GLAS wishes ETS to receive the Unpledged Shares. It is not certain that GLAS will succeed in that goal, but, if so, that would reduce the compensatory damages that my conditional order would secure. Nevertheless, because GLAS's primary case is for the return of the Unpledged Shares to ETS, it seems to me right to assess the condition on the assumption that that case succeeds. If so, and I ignore a claim for loss in the shares' value (which I cannot assess), GLAS's evidence suggests that a reasonable assessment of its outstanding claim in damages is approximately €18,000,000.

132. I intend to impose the same condition on Dynamic and on Ms Qiu. It does not seem right to require each of them to pay the full amount into court. The condition will therefore be that each pays €9,000,000 into court. I recognise that this takes no account of interest and costs, as well as assuming that GLAS will rapidly succeed in ensuring

the return of the Unpledged Shares. It is, therefore, in some respects a very conservative figure. Nevertheless, it is sufficiently significant to represent earnest money. If Dynamic and Ms Qiu wish to file and serve a Defence to the claim, they must show that they are indeed earnest about defending GLAS's claims.

Deferred Fee

133. One outstanding claim that is included in GLAS's application is its claim against ETS for a Deferred Fee, in the sum of €5,000,000. This is not resisted by ETS. I therefore give summary judgment in GLAS's favour on this specific claim.

The forthcoming judgment in Singapore

134. The judgments of foreign courts are like the inhabitants of George Orwell's 'Animal Farm'. They are all equal; but some are more equal than others.

135. Judgments from the courts of Singapore are in Mr Orwell's second category. I and my colleagues on the English bench hold them in extremely high regard. This is not merely because of the excellent (and entirely deserved) reputation that the courts of Singapore enjoy. It is also because the similarities between the legal system in Singapore and that in this country (as well as other common features such as legal education and training) mean that judges in Singapore go about analysing points and then expressing their reasoning in a way that makes their judgments extremely accessible to English lawyers and scholars. I have seldom read anything that flowed from the pen (or keyboard) of a judge in Singapore that did not leave me better informed and, usually, intellectually stimulated.

136. It is therefore a source of great regret to me that the court in Singapore has ruled that any judgment in the Singapore Enforcement Proceedings is not to be published in a way that would enable any member of the public to deduce the identities of the parties. So far as the Singapore court is concerned, GLAS, Dynamic, Ms Qiu and I are all members of the public. It would be unfortunate for none of us to be able to benefit fully from the forthcoming judgment.

137. This court has a real interest in knowing not merely the outcome of ETS's application in the Singapore Enforcement Proceedings, but also in reading and understanding the judgment of the court. This is partly because I am sure that I and any other judge charged with dealing with the proceedings in this country will derive great assistance from doing so. Above all, it is because it is only if we know what has happened in Singapore, and why, that we can strive to avoid inconsistency: which we naturally would wish to do.

138. If it is possible for the judgment in Singapore to be published in a manner, or on terms, that will satisfy the rights of the litigants in Singapore to privacy, while also assisting this court to do justice, I and my colleagues will be extremely grateful. However, I of course appreciate that the court in Singapore must act according to its own lights.