Case No: CL-2012-000625

Neutral Citation Number: [2016] EWHC 850 (Comm)

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
COMMERCIAL COURT

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

Date: 15/04/2016

Before :

THE HON. MR JUSTICE POPPLEWELL

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Between :

(1) ORB a.r.l. (2) ROGER JAMES TAYLOR (3) NICHOLAS THOMAS	**Claimants**
- and -	
ANDREW JOSEPH RUHAN	**Defendant**
and	
SIMON JOHN MCNALLY	**Third Party**
SIMON NICHOLAS HOPE COOPER	**Fourth Party**
GAIL ALISON COCHRANE	**Fifth Party**
GERALD MARTIN SMITH	**Sixth Party**
SMA INVESTMENT HOLDINGS LIMITED (a Marshall Islands company)	**Seventh Party**

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James Drake QC, Matthew Ryder QC, Lorna Skinner, Nicholas Gibson, Sarah Martin & James Goudkamp (instructed by **Stewarts Law LLP**) for the **Claimants**
Richard Waller QC, Tim Jenns & Michael Ryan (instructed by **Memery Crystal LLP**) for the **Defendant**

Ian Mill QC & Mark Vinall (instructed by **Jones Day LLP**) for the **3rd & 4th Parties**
Angeline Welsh (instructed by **Simons Muirhead and Burton LLP**) for the **6th Party**
Niall McCulloch (instructed by **Holman Fenwick Willan LLP**) for the **Liquidators**
David Head QC & Christopher Bond (instructed by **Stewarts Law LLP**) for **Minardi Investments**

Hearing dates: 14-17 March 2016

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Judgment

The Hon. Mr Justice Popplewell :

Introduction

1. On 20 March 2015 Cooke J made an order in these proceedings ("the March Order") which included:

   (1) a worldwide freezing order over the assets of the Claimants, the Fifth Party (Dr Cochrane) and the Seventh Party ("SMA") (collectively "the Orb Parties") up to a value of £67,323,000 ("the March Freezing Order"); and

   (2) an order that the Orb Parties provide disclosure in relation to certain assets and transactions, verified on affidavit and by an independent accountant ("the March Disclosure Order").

2. The March Order followed an order made by Cooke J on 11 February 2015 ("the February Order") which included:

   (1) an order for the provision of information in four categories by the Orb Parties ("the February Disclosure Order"); the March Disclosure Order replaced the February Disclosure Order and was in wider terms as a result of the Orb Parties' failure to comply with the February Disclosure Order; and

   (2) undertakings given both by the Orb Parties and by the Defendant (Mr Ruhan), to the Court and to each other, which were made part of the February Order ("the February Undertakings"); by the February Undertakings the Orb Parties and Mr Ruhan each undertook not to dispose of, or deal with, or encumber, or diminish the value of, scheduled lists of assets; the February Undertakings were not replaced by the March Order which recorded that they should remain in place.

3. The Orb Parties have not complied with the March Disclosure Order.

4. Over four days between 14 and 17 March 2016, sitting extended court hours, I heard a number of applications and a third Case Management Conference in this action, which presents considerable case management challenges. I gave directions towards a trial fixed to start on 12 December 2016, with an estimate of 16 weeks including 8 days' reading time.

5. Amongst the applications I heard and determined were:

   (1) an application by the Orb Parties dated 15 October 2015 for a declaration that the March Order had ceased to have effect, alternatively an order that it should be discharged ("the Lapse/Discharge Application);

   (2) an application by Mr Ruhan dated 8 February 2016 for variation of the March Order in a number of respects, including the freezing of additional assets and additional disclosure ("the Variation Application");

   (3) an application by Mr Ruhan for an order that unless the Orb Parties complied with the March Disclosure Order, their claim and defence to counterclaim should be struck out ("the Unless Order Application").

6. At the conclusion of the hearing I announced my decision on these applications and heard argument on the appropriate terms of the orders, with my written reasons to follow. These are my reasons.

The Claim and Counterclaim

7. The First Claimant ("Orb") is a private limited company registered in Jersey. Following a corporate reorganisation in August 2002, it became the holding company of a group with interests in hotels, commercial and warehouse properties, transport and logistics businesses and venture and private capital. Its shares are held by a company as trustee of a Jersey settlement, of which Dr Cochrane, the former wife of the Sixth Party (Dr Smith), and their two daughters, are the sole beneficiaries. Dr Cochrane is a GP who practises full time in Jersey. Pro Vinci Ltd ("Pro Vinci"), a company of which Ms Dawna Stickler is the managing director and sole shareholder, provides family office services to Dr Cochrane's family, including investment management in respect of the investments owned by her.

8. Between August and November 2002, Dr Smith who was then Chief Executive of Orb, stole approximately £35 million from Izodia plc, a company in which Orb held a 29.9% shareholding, and misapplied the bulk of those monies for Orb's benefit. Of the total sum of £35 million stolen, only about £2.8 million was returned, leaving a balance of about £32.2 million owing to Izodia. In December 2002, the Serious Fraud Office raided Orb's offices in London and Jersey. As a result of the SFO's investigations, Dr Smith personally faced criminal sanctions. By early 2003, Izodia had also brought proceedings against Orb and Dr Smith for recovery of sums transferred from Izodia's bank account. Once Dr Smith's Izodia theft had been discovered, those in control of Orb resolved to sell a substantial proportion of Orb's assets.

9. During the early part of 2003, negotiations took place between Dr Smith on the one hand, and Mr Ruhan and Mr Campbell on the other hand, resulting in an agreement for the sale of various of Orb's assets to Mr Ruhan and companies associated with and/or controlled by him ("the Orb Assets"). At the time the Second Claimant, Mr Taylor, was the group property director of the Orb group. The Third Claimant, Mr Thomas, was a businessman with whom Dr Smith had had previous business dealings. The Orb Assets comprised:

    (1) A portfolio of 37 hotels ("the Hotel Portfolio"), of which:

        (a) 32 were formerly part of the Thistle group of hotels; these included three hotels, the Thistle Lancaster Gate Hotel, the Thistle Kensington Park Hotel and the Thistle Kensington Palace Hotel, (collectively "the Hyde Park Hotels") which were regarded as having valuable development potential for conversion to residential use.

        (b) 5 were country house hotels, including the Cannizaro House Hotel in Wimbledon.

    (2) A portfolio of development, commercial and warehouse properties and businesses ("the Orb Securities Portfolio");

(3) A minority shareholding in Izodia.

10. Although the sale of the Orb Assets was recorded in documented agreements, it is the Orb Parties' case that the documents did not fully reflect the deal agreed orally at a meeting between Dr Smith, Mr Taylor, Mr Ruhan and Mr Campbell on 6 May 2003. In particular the Orb Parties allege that it was agreed amongst other things that Mr Ruhan would redevelop, restructure, manage and/or dispose of the Hotel Portfolio and the Orb Securities Portfolio; he would pay Orb, Mr Taylor and Mr Thomas (in agreed proportions) 40% of the profits thereby generated from the Hotel Portfolio; and he would pay Orb 50% of the profits thereby generated from the Orb Securities Portfolio, with Orb retaining a 50% interest in any assets retained within the Orb Securities Portfolio. It is alleged that Mr Thomas subsequently negotiated a further 7.5% share of the profits and retained assets in respect of the Orb Securities Portfolio. Mr Ruhan denies any such oral agreement. The written agreement dated 7 May 2003 by which the Hotel Portfolio was transferred (as varied on 13, 14 and 23 May 2003) provided that Orb group should receive interest bearing loan notes in the principal sum of £35 million issued by Atlantic Hotels (UK) Ltd, which following completion would be the holding company of subsidiaries through which the Hotel Portfolio would be held, and that these should be assigned by Orb to Izodia in settlement of the claim brought by Izodia against Orb and Dr Smith, amongst others.

11. Following the acquisition, in 2004 or 2005 the Orb Assets were transferred by Mr Ruhan into a complex structure involving numerous companies ultimately owned by the trustee of an Isle of Man settlement established by deed of settlement dated 29 March 2004 known as "the Arena Settlement". The trustee was Atticus Trust Co Ltd. Between 2005 and 9 April 2014, there were over 100 companies within the Arena Settlement. It is the Orb Parties' case that Mr Ruhan, in breach of the May 2003 agreement and his fiduciary duties, sold on the Orb Assets to third parties for his personal profit and concealed such sales behind an opaque arrangement with, principally, a Mr Anthony Stevens.

12. Whilst Mr Ruhan originally denied it in his Defence, he now avers in his amended Defence and Counterclaim that he was at all material times the ultimate beneficiary of the Arena Settlement, by virtue of his former solicitors and trusted business advisors, Mr Simon Cooper and Mr Simon McNally, who were discretionary objects thereunder, holding such interest as nominee for him. He also maintains that he was in ultimate control of all of the companies within the Arena Settlement.

13. In April 2006, Dr Smith pleaded guilty to a number of charges relating to the transfer of Izodia's monies and was subsequently sentenced to eight years in prison. This was not his first conviction: in 1993 he was convicted of fraud in relation to a sum of £2 million and sentenced to 2 years' imprisonment. In 2007, a confiscation order was made against Dr Smith in the sum of approximately £41 million and enforcement receivers were appointed to recover the debt.

14. On 27 October 2012, shortly after Dr Smith's release from prison, this action was commenced by Orb, Mr Taylor and Mr Thomas alleging that in breach of the May 2003 oral agreement and Mr Ruhan's fiduciary duties, Mr Ruhan had sought to conceal the Orb Assets in the complex structure of the Arena Settlement, sold

them for his own benefit and failed to account for the share of the profits due under the oral agreement.

15. The Claimants have agreed with Dr Smith that, in return for his cooperation and assistance in this action, they will transfer to him 50% of the sums recovered, up to the amount owing by Dr Smith under the confiscation order. Although Dr Smith is described in the evidence as being merely a "consultant" to Orb, there is good reason to believe that he is the driving force behind the prosecution of the claim.

16. Shortly before the deadline for disclosure in the action, in March 2014, Dr Cochrane and SMA (a company incorporated in the Marshall Islands which she owns and controls) entered into an agreement with Mr Cooper and Mr McNally. The effect of this arrangement, which has come to be known as the Isle of Man Settlement, was for Mr Cooper and Mr McNally to procure the transfer by the trustee of the Arena Settlement (AS Managers Ltd, who had replaced Atticus) to Dr Smith, Dr Cochrane, SMA and/or their nominees, ownership and control of all of the businesses and property which they held under the terms of the Arena Settlement ("the Arena Assets"), together with other shareholdings in companies which were outside the Arena Settlement ("the Non Arena Assets"). That is to say, rather than awaiting the outcome of the action, the Claimants have taken matters into their own hands and have taken control of such of the Orb Assets and/or their allegedly traceable proceeds as were in the Arena Settlement without waiting for the trial.

17. In response, Mr Ruhan, who says he learned of this on 9 April 2014, is now counterclaiming in the action for what he contends is a misappropriation of the Arena Assets and also of the Non Arena Assets. His application to amend to pursue the counterclaim was heard with other applications by Cooke J over four days between 2 and 5 February 2015. The counterclaim involved a volte face by Mr Ruhan from the position adopted in his then defence. In his original defence, when he was seeking to avoid interference by Dr Smith and the Claimants in his business affairs, he had said that he had no beneficial interest in the Arena Settlement assets. Now that what had emerged was that the Claimants had acquired the assets as a result of the Isle of Man Settlement, Mr Ruhan wished to assert that those assets were in reality his; and that although he was not a named discretionary beneficiary after 2012, Mr Cooper and Mr McNally who were so named were always his nominees. Cooke J found that what Mr Ruhan had previously said had been misleading, and deliberately so, but that there was an arguable case for the proposed amendments and that permission should be granted.

18. The counterclaim advances a proprietary claim to the assets and their traceable proceeds which were acquired by the Orb Parties from Messrs McNally and Cooper, both those from the Arena Settlement and the Non Arena Assets, together with personal claims in constructive trust and conspiracy to defraud. The scope of any arguable proprietary claim is in issue on these applications and is addressed below.

19. Cooke J concluded that on the evidence before him it was clear that the amount recovered by the Orb Parties by this form of self-help exceeded the maximum

value of the claim. Before me there was additional evidence and this was in dispute. For the reasons explained below, on the current evidence I regard it as very likely, to put it at its lowest, that the Orb Parties have indeed recovered more than the maximum amount of their claim (inclusive of interest and costs), as Cooke J held, and that it is Mr Ruhan who is out of the money.

The Arena Settlement structure

20. The following aspects of the Arena Settlement structure are set out in a chart dating from February 2011 and are relevant to the current applications.

21. The trustee held the assets through its 100% shareholding in each of six holding companies. It was the shares in these six holding companies which were transferred to SMA under the Isle of Man Settlement. Four of those holding companies were Glen Moar Properties Ltd ("Glen Moar"), Sulby Investment Holdings Ltd ("Sulby"), Ballaugh Holdings Ltd ("Ballaugh") and Unicorn Worldwide Holdings Ltd ("Unicorn").

22. Glen Moar was the parent of a group of companies whose assets included a data services business called Sentrum.

23. Sulby was the ultimate parent of a group of companies through which the Cannizaro House Hotel was held. The hotel was owned by Bridgehouse Nominees Ltd and Bridgehouse Nominees 2 Ltd. They were 100% owned by Bridgehouse Hotels Ltd which was 100% owned by Bridgehouse Holdings Ltd which was 100% owned by Sulby.

24. Ballaugh was the ultimate holding company of a group of companies, some of whose names also included the name Bridgehouse, whose assets included Global Marine Systems Ltd ("GMSL"). The 2011 chart suggests that GMSL was 100% owned by Bridgehouse Marine Ltd which was 100% owned by Bridgehouse (Arena Central) Ltd which was 100% owned by Ballaugh. Ms Stickler's evidence refers to the position in 2014 being that Bridgehouse Marine Ltd's parent was Bridge Properties (Arena Central) Ltd ("Arena Central"), which was 100% owned by Specialty Finance Ltd, which was in turn 100% owned by Ballaugh. GMSL operated a business which was sold in September 2014. I will proceed on the basis that Ms Stickler's evidence of the structure is accurate for the purposes of these applications.

25. These four holding companies were incorporated in the British Virgin Islands. On 6 March 2015 (Unicorn) and 13 March 2015 (the other three) they were put into liquidation by the Orb Parties, who claim they were insolvent. The appointed liquidators were partners of Quantuma LLP, insolvency practitioners from Southampton, together with a local BVI resident liquidator ("the Liquidators").

The relevant procedural history

26. On 4 June 2014 the Orb Parties issued an application for injunctive relief against Mr Ruhan to preserve assets pending trial. Their solicitors, Stewarts Law LLP, sought undertakings. From June 2014 Mr Ruhan in turn raised concerns with the Orb Parties via solicitors' correspondence that the value of the assets appropriated

by the Orb Parties, which were the subject of Mr Ruhan's proprietary and personal claims, should be preserved to "hold the ring" pending trial. To that end Mr Ruhan sought appropriate undertakings. On 15 September 2014, Mr Ruhan issued an application for a proprietary injunction and/or worldwide freezing order against the Orb Parties, which was in due course listed for hearing in February 2015. In September 2014, the provision of mutual undertakings was agreed in principle and the solicitors corresponded over their precise scope and wording. Shortly afterwards, Mr Ruhan learned that a sale was being negotiated of the Cannizaro House Hotel. By letter dated 19 September 2014, Mr Ruhan's solicitors, Memery Crystal LLP, sought further information and confirmation that the sale proceeds would be paid into Court or an escrow account until the Court had determined Mr Ruhan's injunction application. On 23 September 2014, Stewarts Law responded on behalf of the Orb Parties assuring Mr Ruhan that (a) the proceeds of sale of the Cannizaro House Hotel would be retained within the "*relevant corporate group as per the spirit of the correspondence between the parties in relation to the proposed undertakings*" (paragraph 4); and (b) the proceeds of sale of GMSL, (which they disclosed had also just been sold) would be retained within the "*Arena group*" (paragraph 6).

27. Following a letter from Memery Crystal asking questions about the sale proceeds of GMSL, Stewarts Law sent a second letter on 23 September 2014, in which they repeated the assurance given earlier in the day stating that their "*clients have…confirmed that the proceeds of the sale of [GMSL] will be retained within the Arena Group as per the spirit of the correspondence between the parties in relation to the proposed undertakings*".

28. On 26 September 2014, the Orb Parties (save for Mr Thomas[1]) provided signed contractual undertakings to Mr Ruhan (periodically renewed until 11 February 2015) under which the Orb Parties agreed, *inter alia*, not to dispose of, deal with, encumber, or diminish the value of, any of the assets (as defined) save in the ordinary course of business (as defined) and to retain the entire proceeds of any transactions within the Arena group of companies (as identified in the undertakings). This was intended to ring fence the Arena Assets and Non Arena Assets pending trial.

29. As I have indicated above, at the February 2015 hearing Cooke J heard an application by Mr Ruhan for permission to amend his defence and pursue a counterclaim for recovery of the Arena Assets and Non Arena Assets. In his judgment he was critical of Mr Ruhan's volte face and found that Mr Ruhan had deliberately lied and misled the Court.

30. At the same time Cooke J also heard an application by the Claimants to add Mr Stevens and three other corporate defendants, together with permission to serve them out of the jurisdiction; and for a proprietary injunction against those defendants with ancillary relief. Cooke J refused the application to serve out of the jurisdiction against the additional defendants and refused the application for an injunction.

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[1] Mr Thomas provided a signed contractual undertaking on 29 September 2014 **[G1/130-135]**

31. In his judgment he was critical of the Claimants' refusal to disclose the Isle of Man Settlement documents until the third day of the hearing pursuant to the Court's request. At paragraph 52 he described the terms of the documents which were disclosed in relation to the Isle of Man Settlement as "extraordinary". He drew attention to the remarkable circumstances in which Mr McNally and Mr Cooper put forward evidence to the Court that they were entitled to the assets concerned, without any nominee arrangement, but where no consideration appeared to have passed to them in respect of the supposed transfer by them of millions of pounds worth of assets which they owned, other than the compromise of a claim against them, where there was no explanation with supporting evidence of the background to, the nature of, and the exact terms of the Isle of Man Settlement. The Claimants' conduct in relation to the Isle of Man Settlement was regarded by Cooke J as fatal to the application to serve out of the jurisdiction, and for injunctive relief, against the Stevens parties for two separate reasons. First, although the Claimants might have established realistic prospects of success on the causes of action against the Stevens defendants they were seeking to join, the Court would not countenance permitting service out of the jurisdiction where full recovery had already been made in respect of the claim for the profit shares alleged against them by virtue of the remedy of self-help which Dr Smith and Dr Cochrane had achieved through the Isle of Man Settlement. Secondly, Cooke J held that although the Claimants had held the assets themselves for nine months and disposed of some of them for considerable sums, they had failed to inform the Court that the value thereby obtained exceeded the value of the claim being advanced against Mr Ruhan, conduct which Cooke J again described as extraordinary. On the evidence before him he held that the Orb Parties had recovered far more than any claim they could properly justify, even if they were right on all points. This, together with their steadfast refusal until the third day of the hearing to give disclosure of the Isle of Man Settlement documents to Mr Ruhan, constituted a failure to make full and frank disclosure, showed a lack of clean hands, and prevented it being just and convenient to grant discretionary relief.

32. Cooke J concluded, at paragraph 57:

> "This is hard fought litigation with no holds barred between parties who are at enmity with one another and where a war of attrition is being waged in the shape of this action and other litigation being waged by the claimants against Mr Ruhan. The history of proceedings in the Isle of Man and of bankruptcy applications launched at the claimants' instigation and dismissed, with indemnity costs, because they were being used as a tool of oppression, speaks for itself. The Court will not give aid to a party who seeks to harass another in this way. It is not just and convenient to do so."

33. Cooke J went on at paragraph 139 of his judgment to say:

> "It is clear from Dr Smith's approach, as mentioned earlier, that he uses the process of litigation, and abuses it, for the purpose of obtaining leverage and harassing others …"

34. The mutual applications for freezing order relief which had been issued by each side were withdrawn because the contractual undertakings were embodied in the Court order. These February Undertakings provided that:

    (1) the Orb Parties would not in any way dispose of, deal with, encumber, or diminish the value of, any of 32 defined classes of assets set out in Schedule 2, which were in substance the Arena Assets and Non Arena Assets identifiable by Mr Ruhan;

    (2) Mr Ruhan would not dispose of, deal with or diminish the value of ten categories of assets set out in Schedule 1, which included two yachts called LADY K II and BABYLON.

35. At the February hearing before Cooke J, consistent with the assurances given on 23 September 2014 and the contractual undertakings given since 26 September 2014, the Orb Parties permitted their Counsel to represent to Mr Ruhan and the Court that the proceeds of the sale of the Cannizaro House Hotel and GMSL had been and would be retained within the Arena Group.

36. At the February hearing, Cooke J also made the February Disclosure Order in the following terms:

> "2. The Orb Parties shall, by 4:30pm on Friday, 27 February 2015, provide to Mr Ruhan's solicitors, Memery Crystal the following information:
>
> (1) Confirmation that the £10,000,000 paid to Dr Cochrane on 15 November 2013 remains in cash in full and standing to the credit of an account, and identifying the name of the account, its number, bank and address in which it is held and if the current balance of the account is less than £10,000,000, where and in what form the difference is now held.
>
> (2) Confirmation of the amount of cash referred to in Schedule 3 of the Security Deed dated 26 February 2014 that was transferred to the Orb Parties pursuant to the Isle of Man Settlement and that such cash remains standing to the credit of an account, and identifying the name of the account, its number, bank and address in which it is held and the current balance of the account and, if the current balance is less than the amount of cash transferred, where and in what form the difference is now held.
>
> (3) Confirmation of the amount of proceeds of sale of Global Marine Systems Limited realised by the Orb Parties, and that such proceeds are currently held in cash and identifying the name of the account, its number, bank and address in which it is held and the current balance of the account and, if the current balance is less than the

amount of the proceeds realised, where and in what form the difference is now held.

(4) Confirmation of the amount of proceeds of sale of Cannizaro House Hotel realised by the Orb Parties, and that such proceeds are currently held in cash and identifying the name of the account, its number, bank and address in which it is held and the current balance of the account and, if the current balance is less than the amount of the proceeds realised, where and in what form the difference is now held."

37. The February Disclosure Order was ancillary to the February Undertakings given by the Orb Parties and was granted in order to ensure that they could be properly policed. The February Undertakings given by the Orb Parties extended to assets which included, but were not confined to, those over which Mr Ruhan made a proprietary claim.

38. Despite the Penal Notice contained in the February Order, the Orb Parties failed to provide the disclosure required by paragraphs 2(1)-(4). Instead, on 27 February 2015, in purported partial compliance with the February Disclosure Order, the Orb Parties provided two letters, one from Pro Vinci and one from a firm of accountants, Stone Turn, both dated 27 February 2015 ("the Pro Vinci Letter" and "the Stone Turn Letter").

39. The letters revealed that the Orb Parties had failed to keep the Arena Assets within the group structure but had instead paid £41.28 million of the proceeds of sale of the Cannizaro House Hotel and GMSL to Dr Cochrane's personal bank account at Coutts. The Pro Vinci Letter identified that of the cash sums covered by the February Disclosure Order, some £51.8 million in total had been paid to Dr Cochrane personally as follows:

(1) Paragraph 2(1): £10 million was paid to a personal bank account in the name of Dr Cochrane at Barclays Bank on 15 November 2013; this £10 million had been spent on "*personal expenditure/indebtedness*" and the Barclays account was now closed.

(2) Paragraph 2(2): £583,321.80 (being the cash referred to in Schedule 3 to the Security Deed) was paid to a bank account in the name of Dr Cochrane at Lloyds Bank on 1 April 2014: this money was said to have been used in part for personal expenditure and in part for expenditure related to the Arena group (although, no attempt was made to state the nature, purpose or amount of the payments made in relation to the Arena group from Dr Cochrane's personal account).

(3) Paragraph 2(3): £37,280,281 was paid to a bank account in the name of Dr Cochrane at Coutts & Co on 23 September 2014, and a further £1 million was paid to the same account on 21 October 2014, from an escrow account holding the net proceeds of the sale of GMSL.

(4) Paragraph 2(4): £3 million was paid to Dr Cochrane's Coutts account on 5 November 2014 from the sale of the Cannizaro House Hotel. The Coutts account was said to have been opened in June 2014, and all the £41.28 million paid into it to have been spent.

40. By an application dated 27 February 2015 (the last day for compliance) the Orb Parties also sought a two week extension for compliance with the February Disclosure Order, to a self-imposed deadline of 13 March 2015.

41. On 2 March 2015, Memery Crystal placed the Orb Parties on notice that, due to their failure to comply with the February Disclosure Order, Mr Ruhan would apply to appoint receivers over certain of the companies forming part of the Arena group assets. On 5 March 2015 Mr Ruhan issued an application for the appointment of a receiver. The Orb Parties' application for an extension of time and Mr Ruhan's receivership application were listed to be heard by Cooke J on 19 and 20 March 2015.

42. In the period pending the hearing, Unicorn, Glen Moar, Sulby and Ballaugh were put into liquidation on 6 and 13 March 2015.

43. Late on 16 March 2015, three days after the Orb Parties' self-imposed deadline to comply with the February Disclosure Order and only two clear days before the hearing, Dr Cochrane filed her Third Witness Statement in purported (late) compliance with the February Disclosure Order and in response to the receivership application. Dr Cochrane exhibited a report prepared by Mr David Stern, a chartered accountant and partner of Stone Turn, dated 16 March 2015 ("the Stone Turn Report").

44. Dr Cochrane's witness statement was deficient in form because it failed to identify her source of information. Paragraph 3 said that save where indicated to the contrary the facts were "within my personal knowledge, having made enquiry or been so advised". She did not identify who had responded to the enquiries or provided the advice. In that witness statement:

(1) Dr Cochrane claimed that the Orb Parties had complied with the February Disclosure Order in the form of the Stone Turn Report, whilst simultaneously admitting to not having provided all the necessary information, including the bank account numbers or addresses for the accounts, on the grounds that she was concerned that Mr Ruhan would "*take unlawful steps to interfere with [her] affairs*". This concern had been ventilated at the February Hearing and Cooke J had declined to qualify the terms of the Disclosure Order. Nevertheless Dr Cochrane took it upon herself to decide that the Orb Parties would not comply in this respect.

(2) Dr Cochrane admitted that she was in breach of her contractual undertakings in relation to the £1 million GMSL escrow monies and £3 million from the sale of the Cannizaro House Hotel by reason of the fact that those monies were transferred into her own account rather than kept in the Arena group. She had allowed Stewarts Law and her counsel to mislead the Court at the February hearing by representing that the proceeds remained "ring-fenced" within the Arena group.

(3) Dr Cochrane stated that what had happened to the £15.46 million of proceeds of the sale of GMSL referred to in paragraph 2(3) of the February Disclosure Order was that it was used to repay a loan to Arena Central granted in June 2014, Arena Central having at that time loaned an equivalent sum to Dr Cochrane for repayment in 2017. Dr Cochrane said that she had spent the loan in part on expenses of the Arena companies.

(4) Dr Cochrane exhibited a letter agreement dated 16 December 2013 under which she agreed to repay to Messrs Cooper and McNally the £10 million paid to her on 15 November 2013 out of the realisation of the Assets and to pay them a 5% asset management fee.

45. The Stone Turn Report also confirmed, based on information provided by Pro Vinci, that a large proportion of the sums identified in paragraph 2 of the February disclosure Order, which had been received by Dr Cochrane into her personal accounts, had not been spent on Arena business. These totalled some £27 million:

(1) Of the £10 million paid into her Barclays account on 15 November 2013 from Messrs Cooper and McNally, £2.1 million remained in the bank account as at 31 December 2013 and the account was closed on 3 February 2014. None of this money was used for Arena-related expenditure.

(2) Of the £583,322 cash paid to Dr Cochrane on 1 April 2014 pursuant to Schedule 3 of the Security Deed, all had been spent, with £137,000 spent on Arena related items according to Pro Vinci and, £446,322 on non-Arena related items.

(3) Of the £37,280,281 sale proceeds of GMSL, £1 million GMSL escrow monies and £3 million sale proceeds of the Cannizaro House Hotel which were paid into Dr Cochrane's account, totalling £41,280,281, approximately £16.68 million was spent on non-Arena related items, i.e. personal expenditure/indebtedness, and the balance of £24.6 million was, according to Pro Vinci, spent on Arena related items.

46. In fact the amount spent on Non Arena business was greater than this £27 million because only an unidentified part of the £15.46 million "loaned" from Arena Central was said to have been used for Arena expenses.

47. The Orb Parties' application for an extension of time and Mr Ruhan's receivership application were heard during the course of a two day hearing on 19 and 20 March 2015. On 20 March 2015, Cooke J gave judgment and made the March Order. He held that:

(1) The Court had been misled by the Orb Parties at the February hearing. The Orb Parties had advanced the position that the Assets and their proceeds were ring-fenced within the Arena group, pursuant to the assurances and contractual undertakings given by them on 23 and 26 September 2014, and would (pursuant to the Court Undertakings) remain so. However, the Court was not told that by 24 September 2014 a considerable volume of the Arena Assets had already been moved out of the Arena group and expended as part of Dr Cochrane's "*personal expenditure*". Accordingly, the premise on which the

February Order proceeded, and the Court Undertakings were given, was incorrect, the intention being to protect the Assets until trial by ring-fencing them.

(2) The Court had been further misled about the Isle of Man Settlement, in that the existence of the 16 December 2013 letter agreement exhibited to Dr Cochrane's Third Witness Statement was not disclosed to the Court at the February hearing.

(3) The Stone Turn Report was "*deficient as a sufficiently independent verification of the matters to which it relates, being based on inadequate inspection of documents and on instructions from the Orb Parties*".

(4) The Orb Parties were in breach of the February Disclosure Order: none of the proceeds remained in the accounts where they were first received and the Orb Parties had not (by Dr Cochrane's Third Witness Statement or the Stone Turn Report) identified where and in what form the difference was now held. Cooke J concluded that "*virtually nothing had been revealed as to the present whereabouts of those particular sums*".

(5) There was no adequate excuse or apology offered for the failure to comply with the February Disclosure Order.

(6) Mr Ruhan's complaint that "*the Orb parties cannot be trusted*" was well founded.

(7) Consequently, Cooke J held, in essence, that it was necessary for the Court and Mr Ruhan to know what had become of the cash sums the subject of the February Disclosure Order, and of the Assets more generally, and the Orb Parties should give full and proper disclosure in relation thereto; and that Mr Ruhan's claim to the Assets "*requires that those assets be protected from the depredations of Dr Smith, Dr Cochrane and the Orb Parties in the shape of an injunction and orders for further disclosure"*.

48. On 20 March 2015, Mr Justice Cooke made the March Order. Paragraph 1 provided that it varied the February Disclosure Order but that the February Undertakings remained in place. Paragraph 2 granted the March Freezing Order, freezing assets worldwide up to a maximum of £67,323,000. Paragraph 8(c) contained the usual exception that the order did not prohibit the Orb Parties from dealing with or disposing of the assets in the ordinary and proper course of business; paragraph 8(d) contained further terms as to what was not to be considered as being in the ordinary and proper course of business, reflecting the agreed wording in the contractual undertakings in that respect. The Freezing Order was backed by Mr Ruhan's cross undertaking in damages in the usual form, which was required to be fortified in paragraph 10 of the Order by Mr Ruhan charging the shares of Ainos Shipping Ltd ("Ainos"), which owned the yacht BABYLON, in the sum of £2.5 million. Ainos is a Maltese company wholly owned by Mr Ruhan.

49. Paragraph 7 contained the March Disclosure Order which required the information to be provided, verified on affidavit by identified deponents, and accompanied by

a report of an independent accountant by 10 April 2015, with the documents to be supplied by 24 April 2015. It was to be provided to Mr Ruhan's solicitors, who undertook not to disclose it to Mr Ruhan or anyone other than counsel and experts without the further permission of the Court following an application on notice. The information and documentation required was set out in ten numbered paragraphs in Schedule 1. It included (a) information relating to certain of the Orb Parties' assets generally (b) information as to the nature and purpose of the payments into Dr Cochrane's personal accounts (c) the source of funds for various of the payments described in the Pro Vinci Letter (d) information as to what had happened to the Arena Assets and Non Arena Assets transferred in the Isle of man Settlement and (e) information to identify the traceable proceeds of the sums which were the subject matter of the February Disclosure Order.

50. Paragraph 8(f) provided as follows:

> "f) The order will cease to have effect if the Orb Parties
>
> > i) provides security by paying the sum of £67,323,000 into court, to be held to the order of the court; or
> >
> > ii) makes provision for security in that sum by another method agreed with the Defendant's legal representatives."

51. There are two points to note about the March Order which are relevant to the disputes which have arisen on the current applications.

52. First, the sum of £67,323,000 which formed the maximum amount of the Freezing Order was made up of the six sums which were those which were the subject matter of the February Disclosure Order, namely:

    (1) £10m paid by Mr Cooper and Mr McNally to Dr Cochrane into her personal Barclays Bank account on 15 November 2013, which was closed on 3 February 2014.

    (2) £583,222 which was paid in cash to Dr Cochrane pursuant to Schedule 3 of the Security Deed dated 26 February 2014, received by Dr Cochrane into her personal Lloyds Bank account on 1 April 2014.

    (3) £37,280,281 representing proceeds of the sale of GMSL received into Dr Cochrane's Coutts account on 23 September 2014.

    (4) £1 million representing further proceeds of the sale of GMSL received into Dr Cochrane's Coutts account on 21 October 2014.

    (5) £3m representing the net proceeds of sale of Bridgehouse (Cannizaro House) Limited, which owned the Cannizaro House Hotel paid into Dr Cochrane's Coutts account on 5 November 2014.

(6) £15,460,003 connected to the proceeds of the sale of GMSL, paid to Dr Cochrane's personal account in June 2014 and said to have been a loan to her from Arena Central.

53. There is a dispute as to whether Mr Ruhan has an arguable proprietary claim to any more than the first two of these, which I address below. But the March Freezing Order was not in form a proprietary injunction which froze these payments or their traceable proceeds. It was a freezing order over all the Orb Parties' assets, albeit that the maximum sum was calculated by reference to these payments.

54. Secondly the scope of the Disclosure Order was not primarily that of a standard disclosure order which is made ancillary to a freezing order and requiring disclosure of all the defendant's assets up to the maximum amount of the order. It was addressed to the traceable proceeds of the six sums covered by the February Disclosure Order and additionally to other Arena or Non Arena Assets. It was therefore designed to enable Mr Ruhan to police the efficacy of the February Undertakings which were to preserve the Arena and Non Arena Assets, and in particular to enable him effectively to pursue his proprietary claim in respect of such assets.

55. It was in these respects that the Order was, as Cooke J described it, a hybrid order. The injunctive relief was not proprietary, albeit that the maximum was calculated by reference to six sums in which, or in whose traceable proceeds, Mr Ruhan was advancing a proprietary claim. But the disclosure was in part ancillary to Mr Ruhan's proprietary claim in respect of those and other assets, which was intended to be protected by the February Undertakings which in turn had been made part of the Court's order pursuant to Mr Ruhan's original application for proprietary injunctive relief.

56. In the period between early April 2015 and 3 August 2015, the parties entered into without prejudice settlement negotiations, and consequently it was agreed that the 10 April 2015 date for compliance with the March Disclosure Order be extended to 7 August 2015.

57. On 7 August 2015, the last day for compliance, Stewarts Law wrote to Memery Crystal enclosing a conditional negative pledge dated the same day, 7 August 2015, which had apparently been given by Dr Cochrane to the Liquidators to secure liabilities of £67,323,000 allegedly owed to the four holding companies in liquidation ("the Negative Pledge"). The Negative Pledge was signed as a deed by Dr Cochrane and two of the four Liquidators. It contained an undertaking by Dr Cochrane not to dispose of or encumber a series of assets said to be valued at £71.1 million set out in a schedule ("The Pledge Assets"). Dr Cochrane warranted that she personally held both the legal title and the entire beneficial interest in the Pledge Assets. In its covering letter, Stewarts Law asserted "*We believe the provision of security outlined complies with paragraph 8(f) of the Freezing Order and accordingly the terms of the Freezing Order are no longer effective*".

58. Memery Crystal sent letters seeking compliance with the March Disclosure Order. On 11 August 2015 Stewarts Law replied, asserting that "*our clients will not be providing any disclosure pursuant to the Freezing Order since that obligation has*

fallen away…Quantuma LLP has taken steps to safeguard the assets which are the subject of the Freezing Order." On 12 August 2015, Stewarts Law wrote to Memery Crystal, asserting among other things that the March Order was a pro forma Part 25 freezing order to which the March Disclosure Order was merely ancillary and had fallen away by reason of the Negative Pledge.

59. The Orb Parties did not seek Mr Ruhan's prior agreement to accept the Negative Pledge in place of the security provided by the March Injunction, nor the Court's prior decision on their purported interpretation that its mere existence had the automatic effect that the March Order had lapsed and no longer had to be complied with.

60. On 27 August 2015, Memery Crystal wrote a detailed letter to Stewarts Law taking issue with the Orb Parties' purported interpretation of the March Order, and making it clear that Mr Ruhan's position was that the March Disclosure Order remained fully in force. The Orb Parties did not respond.

61. On 4 September 2015 Mr Ruhan issued the Unless Order Application.

62. On 15 October 2015 the Orb Parties issued the Lapse/Discharge Application.

63. Ms Stickler's Fourth Affidavit dated 14 October 2015 and Fourth Witness Statement dated 13 November 2015, which were served in relation to these applications, maintained the Orb Parties' position that the Orb Parties were not obliged to comply with the March Disclosure Order, and did not purport to provide the information required.

64. On 8 February 2016 Mr Ruhan issued the Variation Application, supported by his Fourth Affidavit which set out at some length his concerns that there had been a breach of the February Undertakings.

65. In response Ms Stickler swore her Fifth and Sixth Affidavits on 4 and 7 March 2016 respectively, the last only a week before the hearing before me. These contained for the first time a good deal of additional evidence about the relevant transactions and assets, although they were not, and did not purport to be, substantial compliance with the March Disclosure Order, which the Orb Parties continued to maintain had lapsed in accordance with paragraph 8(f).

The Lapse/Discharge Application

66. This application was put on three grounds:

    (1) The existence of the Negative Pledge has automatically caused the March Order to cease to have effect from 7 August 2015 because of the operation of paragraph 8(f) of the Order; alternatively it provides adequate security and/or negates the risk of dissipation such that the March Order should be discharged.

    (2) Mr Ruhan has failed to provide adequate fortification for the cross undertaking because his shareholding in the Ainos shares could be defeated by the setting aside of their transfer to him in the event of a liquidation of the transferor.

    (3) Mr Ruhan should be denied the equitable relief represented by the March

Order because he has unclean hands.

The Negative Pledge

67. The Orb Parties' argument that the existence of the Negative Pledge caused the March Disclosure Order to lapse is hopeless. Paragraph 8(f) provides for lapse only where alternative security is agreed with Mr Ruhan's legal representatives. No such agreement was even sought by the Orb Parties, let alone given. Mr Drake QC argued that the order should be read as if it said that it would cease to have effect if reasonable alternative security was proffered. That is not what the plain language of the Order says.

68. I have little doubt that the Orb Parties were aware of this and had no genuine belief that the Disclosure Order had automatically lapsed on 7 August 2015, when it ought to have been complied with. Mr Drake accepted that the logic of his argument, even if correct, was that the order would not cease to have effect until Mr Ruhan's solicitors had had a reasonable opportunity to resolve in correspondence their inquiries aimed at the adequacy and reasonableness of the Negative Pledge as alternative security. But in any event the language of paragraph 8(f) is plain and unambiguous. The Orb Parties must have appreciated that its effect was to require actual consent to alternative security, not least because by its terms the Negative Pledge was itself conditional on just such agreement: clause 4 provided that it should not come into effect until Dr Cochrane had received confirmation that the security caused the March Order to lapse, and undertook to seek such confirmation from Mr Ruhan's solicitors forthwith. The conditionality of actual confirmation from Mr Ruhan's solicitors is quite inconsistent with any belief on the part of the Orb Parties that it was not necessary; if such confirmation were not necessary in order for the Order to cease to have effect, the absurd consequence of the Orb Parties' avowed stance would be that the conditional Negative Pledge caused the March Order to have lapsed without ever taking effect itself (no such confirmation having been given).

69. For reasons I address below, the Negative Pledge does not provide reasonable alternative security and would not afford good grounds for discharging the March Freezing Order, still less the March Disclosure Order which is ancillary to the February Undertakings. But however that may be, the proper course for the Orb Parties to have adopted would have been to apply to the Court for an order varying the March Order and seeking interim relief from compliance pending determination of that issue. Instead the Orb Parties simply ignored the Court's order, despite the fact that it bore a penal notice, and advanced what they must have appreciated was a spurious argument as a fig leaf for doing so.

70. This conclusion renders it unnecessary to consider an alternative argument of Mr Waller QC, namely that because the Disclosure Order was ancillary to the February Undertakings as well as the Freezing Order, any replacement security for the Freezing Order could not as a matter of construction of paragraph 8 have been intended to discharge the Disclosure Order.

71. There is no merit in the Orb Parties' further argument that the March Disclosure Order should now be discharged because of the existence of the Negative Pledge. It is bad for at least four reasons.

72. First, the pledge is given to the Liquidators, not Mr Ruhan. Were the Liquidators to agree to any variation, or to the dealing with any particular assets, Mr Ruhan might not know and would have no control.

73. Second, any undertaking by Dr Cochrane in the Negative Pledge is just that: a personal undertaking (although the pledge is signed by Dr Cochrane "for and on behalf of the Orb Parties" the latter are nowhere defined and the assets pledged are all said to be legally and beneficially owned by Dr Cochrane herself). Given the previous behaviour of the Orb Parties, which fully justifies Cooke J's conclusion that they are not to be trusted, it is necessary that the Freezing Order against Dr Cochrane and the other Orb Parties should carry with it the sanction of committal for contempt in the event of non compliance. The coercive effect of that sanction is absent from a personal undertaking by Dr Cochrane.

74. Third, there is no secure basis for treating the Pledge Assets as being beneficially held by Dr Cochrane; nor for concluding that they are not susceptible to being encumbered or dissipated without the knowledge of the Liquidators or Mr Ruhan; nor is there any reliable basis for treating them as having a value of £71 million or anything like that amount. In the Negative Pledge Dr Cochrane refers to them in the paragraph giving the undertaking as "my or the Orb Parties' assets as listed in Schedule 1"; whereas in the next paragraph she confirms that she holds the legal title to all the Pledge Assets. This latter assertion is now accepted to be untrue: most if not all of the assets are held by corporate entities. The beneficial ownership is in many instances no more than assertion, uncorroborated by supporting documentation. The history of these proceedings and the many respects in which the Orb Parties can be seen to have lied and cheated means that I feel unable to place reliance on the uncorroborated word of Ms Stickler or Dr Cochrane.

75. Indeed it is now apparent from a letter of 2 March 2016 and a witness statement dated 11 March 2016 of Mr Bonney, that the Liquidators themselves are not satisfied that they could rely on the Negative Pledge, having previously called for supporting documentation which has not been provided; and that they are further concerned that some of the assets are for sale or that it is intended to sell them. The correspondence lays bare another instance of Ms Stickler seeking to mislead the Court. In her Fourth Witness Statement dated 14 October 2015 and Fourth Affidavit dated 13 November 2015 she deposed that the Liquidators were satisfied that the Negative Pledge was acceptable and adequate security, relying on these assertions in support of the Lapse/Discharge Application and to resist the Unless Order Application. These were assertions she knew to be untrue when she made them. On 15 September 2015 Mr Bonney had written to her seeking a list of further information and clarification which the Liquidators required before they could be satisfied that their position had been protected. Without Dr Cochrane or Pro Vinci having provided the information which had been requested, an email from Pro Vinci on 12 October 2015, copied to Ms Stickler, asked disingenuously whether further information was required; and was answered by an email on the same day from Quantuma listing information yet to be received. None was provided prior to the assertion in Ms Stickler's Fourth Affidavit two days later in which she swore that the Liquidators were satisfied with the adequacy of the security. On 20 October 2015 Quantuma sent a further email to Ms Stickler attaching a summary which addressed each of the Pledge Assets and its value

separately, and identified the many items of further information and documentation which were required. None had been provided before Ms Stickler made her Fourth Witness Statement three weeks later again asserting that the Liquidators were satisfied with the security.

76. Fourth, even were the Negative Pledge to provide adequate security in respect of the March Freezing Order, which it does not, that would not justify discharge of the March Disclosure Order. As I have explained, the March Disclosure Order was not merely, or indeed primarily, ancillary to the freezing order relief: it was ancillary to the February Undertakings and was granted to protect the efficacy of Mr Ruhan's proprietary claims. Mr Drake submitted that Mr Ruhan could not establish an arguable proprietary claim to any more that £10,583,322 (the £10 million paid to Dr Cochrane by Messrs McNally and Cooper on 23 November 2013 and the Schedule 3 cash). I reject that submission for the reasons I explain below when dealing with the Variation Application.

77. Mr Drake argued that it is incumbent on Mr Ruhan to agree to provision of security to the Liquidators as sufficient protection because if anyone has claims in respect of the funds from the sale of GMSL and the Cannizaro House Hotel, it is the Liquidators, who are liquidators of the companies which, through subsidiaries, owned the assets in question; and that they have agreed that the Negative Pledge constitutes acceptable security. Put another way, it is the Liquidators who are the rightful claimants in respect of these assets – not Mr Ruhan who has only a proprietary claim to the shares in certain holding companies and no proprietary claim over particular assets held by any of the companies, whether within or without the Arena Settlement – so that it is to the Liquidators that the Orb Parties should provide some form of security in respect of such claims. The Negative Pledge does exactly that, and at the same time provides protection to Mr Ruhan in respect of these particular assets. So, the argument goes, quite apart from the question of whether or not the Negative Pledge amounts to satisfactory alternative security, the Negative Pledge means that there is no longer any risk of dissipation. Since the Orb Parties have pledged not to dissipate assets to the value of £67,323,000, which the Liquidators (the proper claimants) have agreed to be acceptable security, there is no risk of dissipation of assets to that value.

78. This argument is unsound, and not only because the Liquidators do not themselves regard the Negative Pledge as adequate security. Mr Ruhan has an arguable proprietary claim to assets beyond merely the shares in the four companies in liquidation (see below), so that it is wrong to categorise the Liquidators, rather than Mr Ruhan, as the sole proper claimant in respect of assets indirectly held by such companies. In any event, the Pledge Assets are not all held within structures of which one of the four companies in liquidation is the holding company. Moreover it is apparent from the dealings with those assets which are within such structures (dealings which I address below), that such assets are not wholly under the control of the Liquidators and are not protected from dissipation to, or to the order of, the Orb Parties. The Negative Pledge, even were it adequate security for the Liquidators, which it is not, would not remove the risk of dissipation by the Orb Parties, a risk which is firmly established by their misleading the Court, breaching their contractual undertakings, failing to comply with the February Disclosure Order, breaching the February Undertakings, and failing to comply with the March Disclosure Order. Cooke J's assessment that the Orb Parties are

not to be trusted is amply justified by the further conduct considered in this judgment.

Fortification of the Cross Undertaking

79. The Orb Parties' complaint is not that Mr Ruhan has failed to comply with the order for fortification of his cross undertaking by charging the shares in Ainos. He has signed the pledge, although to date the Orb Parties have refused to sign it. The complaint is that the fortification provides inadequate security. Mr Drake did not pursue any argument that the inadequacy of the fortification caused the March Order to lapse. This ground therefore cannot prevent the Orb Parties having been in breach of the March Order.

80. Two reasons for the inadequacy of the fortification are advanced. The first is that the shareholding in Ainos was transferred to Mr Ruhan by P Court Ltd ("P Court") on 22 November 2013 for no consideration; and because P Court was balance sheet insolvent at the time, the transaction is liable to be unwound in a liquidation of P Court. In written argument it was also suggested that the transfer for nil consideration meant that the shares were held on a resulting trust such that Mr Ruhan never acquired any beneficial interest; but in oral argument Mr Drake conceded that Mr Ruhan acquired a beneficial interest, but one which was defeasible if the transaction was set aside in a liquidation.

81. The first and short answer to this argument is that it was open to the Orb Parties to take the point before Cooke J and they failed to do so. None of the material relied on has come to their attention subsequently (save for evidence given by Mr Gabriel Ruhan in matrimonial proceedings against his ex-wife, which although it supports the point does no more than that). They were given an opportunity to do so: the transcript of the hearing shows that counsel for Mr Ruhan revealed that there was a potential dispute about title; Mr Upson, the partner of Stewarts Law dealing with this action, confirmed that the Orb Parties accepted that Mr Ruhan had legal title to the shares; Cooke J gave Mr Drake an opportunity to raise any other objections to these shares fortifying the cross undertaking; the points now raised were not raised then although they were well known to the Orb Parties, if not to Mr Drake, because they had already been raised in contested proceedings in the Isle of Man, the proceedings were referred to in the evidence for the February hearing and were still on foot at the time of the March hearing and Order. There has been no significant or material change of circumstances.

82. That is fatal to this ground for discharge: see ***Chanel Ltd v FW Woolworth & Co Ltd*** [1981] 1 WLR 485. Mr Drake emphasised that that case involved a consent order. But the principle is well established, and often applied, in relation to contested interlocutory hearings. It is that if a point is open to a party on an interlocutory application and is not pursued, then the applicant cannot take the point at a subsequent interlocutory hearing in relation to the same or similar relief, absent a significant and material change of circumstances or his becoming aware of facts which he did not know and could not reasonably have discovered at the time of the first hearing. It is based on the principle that a party must bring forward in argument all points reasonably available to him at the first opportunity; and that to allow him to take them serially in subsequent applications would permit abuse and obstruct the efficacy of the judicial process by undermining the

necessary finality of unappealed interlocutory decisions.

83. The Orb Parties also rely on material suggesting that the BABYLON has been advertised for sale on brokers' websites, both before and since the March hearing. That is no reason to doubt the efficacy of the fortification of the cross undertaking. This was not clandestine behaviour, and Mr Ruhan is entitled to test the market; if a sale of the yacht involved sale of the Ainos shares, the beneficial ownership of the yacht would remain charged in favour of the cross undertaking. If the yacht itself were sold by Ainos, the proceeds would belong to Ainos and the value of the shares would not be diminished. Only if the vessel were sold and the proceeds transferred elsewhere by Ainos would the value of the fortification be diminished and the cross undertaking require backing with alternative security. Those circumstances have not arisen. Mr Ruhan has said through his solicitor that if that occurred he would seek the consent of the Orb Parties to vary the March Order by paying £2.5 million of the sale proceeds into court to replace the charge on the Ainos shares.

84. There are two other answers to both the points taken by the Orb Parties. The first is that Mr Ruhan identified in his First Affidavit the limited assets that were available to him to fortify the cross undertaking: by the time of the hearing it appeared that the Ainos shares were the only substantial assets available. It is Mr Ruhan's case, which is arguable, that the absence of available assets is the result of the wrongful conduct of the Orb Parties for which he seeks redress in these proceedings. I would not have thought it right, in the exercise of my discretion, to refuse the injunctive and disclosure relief which is otherwise appropriate and necessary to render Mr Ruhan's arguable claim effective on the countervailing grounds that he is unable to provide assets to back his cross undertaking, when that inability has arguably been caused by the very conduct of which he complains and for which he has a good arguable case for redress.

85. Secondly, by reason of the Isle of Man Settlement and transfer of Arena and Non Arena Assets, it is very likely, to put it at its lowest, that the Orb Parties have recovered significantly more than the maximum amount of their claim, inclusive of interest and costs. This was the conclusion reached by Cooke J on the evidence before him. I have reached the same conclusion on the evidence before me.

86. As to the Orb Parties' claim:

    (1) Having taken back control of the Orb Assets, the Orb Parties are in a good position to assess what profits Mr Ruhan made from them. The profits which they have identified arise from the proceeds of sale of the three Hyde Park Hotels. As Mr Drake put it, that is where the money is in relation to the Orb Parties' claim. They have not identified any profits on the sale of the other Orb assets i.e. in relation to the Orb Securities Portfolio, the sale of four of the five Country House hotels and the other Thistle Hotels. The last remaining hotel, the Cannizaro House Hotel, was effectively recovered by the Orb Parties under the Isle of Man Settlement.

    (2) The Orb Parties plead that Mr Ruhan made £252.5 million profit from the sale of the Hyde Park Hotels. However, as Cooke J identified in the February Judgment, this figure fails to take into account (i) expenses payable on the sale

of the Lancaster Gate Hotel; and (ii) the Candy Brothers' 50% profit share for two of the hotels. After allowing for these adjustments, the total profit made by Mr Ruhan would only have been £122.3 million, and the Orb Parties' claimed entitlement to 40% would amount to some £49 million plus interest. Cooke J put this at £75 million to £100m inclusive of compound interest.

(3) There is reason to believe that the value of the Orb Parties' claim may well be much less than £49 million. At the February hearing, Mr Stevens adduced evidence that at the time of the disposal of the Thistle Kensington Park and Thistle Kensington Palace Hotels he no longer owned 100% of Cambulo Madeira (20% had been sold to Wellard) and therefore the net profit realised was £102.3 million. Moreover Mr Ruhan had apparently divested himself of 66.6% of the beneficial interests in the Hyde Park Hotels as part of a December 2004 reorganisation under which Thistle Hotels and Morgan Stanley took 66.6% of the equity in HPII (which owned the Hyde Park Hotels) leaving the Arena Settlement with the balance, with the result that from that moment onwards Mr Ruhan could only have been liable to account for a maximum of 33.3% of the profits derived from the subsequent use or disposal of the Hyde Park Hotels. Even if (as alleged by the Claimants but denied by Mr Ruhan) Mr Ruhan is to be equated with Cambulo and re-acquired a 100% interest in the Hyde Park Hotels as the Claimants allege, it is arguable that that was a separate transaction and not subject to any prior equities in favour of the Claimants. Accordingly it may well be that the most that the Claimants can realistically claim for the sale of the Hyde Park Hotels is £102.3m x 33.3% (Mr Ruhan's interest) x 40% (the Claimants' profit share), namely £13.6 million plus interest.

(4) The Claimants' only other quantified claim, brought by way of amendment, is for £35 million plus interest in relation to Izodia. The premise of this claim is that under the 7 May 2003 Euro & UK SPA, loan notes totalling £35m would be retained by Atlantic (and secured on Atlantic) and that Orb's directors believed (at the time) that such loan notes would be available to Izodia to compromise its claims against Orb. It is alleged that Mr Ruhan has misapplied the £35 million from Izodia by a series of separate transactions in which Mr Ruhan (i) through a company called Denzel caused Izodia to be wound up; and (ii) agreed with Izodia that, in consideration for Atlantic issuing further loan notes worth £5.95m, the £35m loan notes would be assigned by Izodia to other companies within the Arena Group, such that the £35 million was no longer available to Izodia. There are significant hurdles in the way of such a claim: any claim would appear to lie against Atlantic as party to the Euro & UK SPA and not against Mr Ruhan personally. Moreover it was never intended that the Claimants, as opposed to Izodia, would receive the £35 million loan notes and therefore the Claimants have no debt claim to the £35 million or any interest thereon. Given that Izodia's claims against Orb were nevertheless compromised, it is difficult to see how Orb has suffered any loss.

87. As to Mr Ruhan's counterclaim, Mr Ruhan's unchallenged evidence before Cooke J was that the assets that were transferred to SMA/Dr Cochrane under the Isle of Man Settlement are worth at least between £150 million and £205 million. That valuation was (somewhat belatedly) disputed in Ms Stickler's Fifth Affidavit. The points she makes are addressed, and, in a number of respects, effectively refuted in

Schedule 1 to Mr Ruhan's skeleton argument. Without burdening this judgment with an analysis of all the points, it appears to me that the recovery made by the Orb Parties for which it must give credit against its claim is very likely well in excess of £150 million.

88. I am fortified in my conclusion that the Orb Parties have very likely recovered more than their maximum claim, and that it is Mr Ruhan who is out of the money, by what Dr Smith is recorded as saying in his conversation with Mr Mason on 8 January 2016. For the background to this conversation, see my Judgment at [2016] EWHC (Comm) 361. The relevant content of the note is set out at paragraph 63. It involves Dr Smith saying that they have already recovered the money from Mr Ruhan and are now only interested in stopping the case.

Unclean Hands

89. The conduct of Mr Ruhan which is said to give him unclean hands can be summarised as falling within the following categories:

    (1) concealment of his assets in the Arena structure;

    (2) misleading the Court, in particular, as Cooke J held, in relation to his interest in the Arena Settlement;

    (3) attempting to suborn the Orb Parties' security advisers and persuade them to provide confidential information about the Orb Parties, Pro Vinci and Dr Smith;

    (4) harassment involving intrusive stalking and surveillance;

    (5) a plot to blackmail the Orb parties;

    (6) illegal acquisition of private and legally privileged information by bin sweeps and computer hacking, including in particular hacking into the servers of Pro Vinci.

90. Allegations (5) and (6), and to some extent allegation (4), emerged in evidence served by the Orb Parties shortly before the hearing. Mr Ruhan denies involvement in any such conduct. It is apparent from the nature of the allegations, which I address in greater detail below, that they cannot fairly be determined without disclosure, oral evidence tested by cross examination, and very probably IT expert evidence. It was common ground that subject to one argument advanced by Mr Waller, it would be necessary to hold such a mini trial in order to determine whether the March Order should be discharged on the grounds that Mr Ruhan does not have clean hands, in accordance with the principles in ***JSC BTA Bank v Granton Trade Ltd*** [2012] EWCA Civ 564 at paragraph 21, approving the observations of Christopher Clarke J as he then was at [2011] EWHC 2506 (Comm) paragraph 123.

91. Mr Waller's argument was that the Court could determine on a summary basis that the allegations, if true, did not have the necessary and immediate connection with the equity invoked, which is an essential ingredient of the clean hands doctrine. In order to address this argument it is necessary to set out the allegations in a little

more detail.

92. The new allegations are contained in a witness statement of Mr Mills, the Fourth Witness Statement of Mr Upson and the Fifth Witness Statement of Ms Stickler, all dated 8 March 2016. Mr Mills' evidence includes the following:

    (1) Mr Mills is a former soldier who has been involved in training and carrying out close protection security, surveillance, and checks on open source data through or on behalf of Elbus Solutions Ltd, Elbrus Solutions Training Ltd and Ronin Concepts Elite Ltd, the latter being owned by a Mr John Graham.

    (2) From November 2012 he was engaged, through Ronin, by Mr Graham to conduct surveillance on Dr Smith "and his associates" and "deep background analysis" on Dr Smith. The Ronin engagement was to find any "dirt" on Dr Smith and his associates, and the project lasted intermittently until "the end of 2013" or "November 2013" for a couple of weeks each month. The surveillance was extensive and took place in London, Jersey and the Isle of Man. A number of "associates" of Dr Smith were followed, including Ms Stickler. The 91 surveillance reports compiled by Mr Mills were provided to Mr Graham. In addition to surveillance, the team recruited by Mr Mills carried out a "bin sweep" on Pro Vinci's offices, that is to say the collection of rubbish to find "useful material", which operated for about eight weeks in total in late 2012 and early 2013. The results of the bin sweep were provided to Mr Mills on a USB stick or sticks; Mr Mills included anything relevant in his surveillance reports to Mr Graham. In January or February 2013 Mr Graham also asked Mr Mills to hack into Pro Vinci's servers and obtain the emails of Dr Smith and others. Mr Mills arranged this through an unnamed "middleman", who provided him with the results on USB sticks. Between January/February 2013 and November 2013 the middleman provided USB sticks on four or five occasions containing material downloaded from Pro Vinci's servers and computers, including full downloads of the email inboxes of Dr Smith and Ms Stickler for August 2013. The middleman was paid a fee in cash, provided by Mr Graham, of £15,000 to £30,000 on each occasion data was provided. Mr Mills provided the USB sticks to Mr Graham and kept copies on the hard drive of his laptop. At the time Mr Mills was told that the instructions emanated from Mr Cooper and Mr McNally; as a result of his research into these proceedings he concluded that they emanated from Mr Ruhan, and this was expressly confirmed to him in later conversations with Mr Ruhan in 2014.

    (3) Mr Ruhan contacted Mr Mills and at a meeting in August 2014 asked if he would resume hacking into Dr Smith's computers. Mr Ruhan also asked him to assist in forming and implementing a plan to discredit Dr Smith in order to force a settlement of the Court proceedings. Mr Ruhan agreed to pay £100,000 for the plan and the hacking. At a subsequent meeting in late August/early September 2014 Mr Mills gave Mr Ruhan a USB memory stick with the surveillance reports, including the results of the bin sweep; and Mr Ruhan said, amongst other things, that the plan had to "be implemented and go live" before February 2015. Shortly after this second meeting Mr Mills dropped off at offices associated with Mr Ruhan (those of Genii Capital at Arlington House) an envelope marked for his attention containing the results

of the previous hacking into the Pro Vinci servers.

(4) The plan to discredit Dr Smith, as subsequently developed and discussed with Mr Ruhan, and/or those identified by him to act on his behalf, involved compiling a document called "Op Babbs" from the material previously collected by hacking, bin sweeps and surveillance. The plan was to blackmail Dr Smith in one or more of three potential ways: by deploying the Op Babbs document which would focus on Dr Smith's relationship with women; and/or by getting made a TV documentary entitled something like "Britain's biggest ever fraudster"; and/or by running newspaper articles against Dr Smith.

(5) Mr Mills got back in touch with the middleman and paid him for further material hacked from Ms Stickler's computer provided on a USB memory stick. This "disappointed" Mr Mills because it consisted only of screenshots and he had been expecting something like another full download of emails. Prior to a further meeting in Abu Dhabi on 21 to 23 November 2014 Mr Ruhan instructed Mr Mills to put all the material obtained from the surveillance, bin sweep and hacking on to a new laptop computer and hand it to Mr Anthony Stevens. The discussion of the plan with Mr Stevens over that weekend involved focussing on the blackmail material being helpful "for a case in February". Mr Mills asked for a success fee of £200,000. At a meeting in Geneva on 10 December 2014 with Mr Ruhan's associates, Mr Mills was told that Mr Ruhan did not want to go ahead with the plan and it was cancelled.

(6) In August or September 2015 Mr Mills was again approached by one of the associates of Mr Ruhan with whom he had previously been dealing to ask whether he could "get to any of the security guards working on the inside of Pro Vinci."

(7) Having become disillusioned with Mr Ruhan, Mr Mills decided on 6 January 2016 that he did not want to be associated with Mr Ruhan any longer. On that day he telephoned Dr Smith and arranged to meet him. He subsequently agreed to provide the information in his affidavit to the Orb Parties, for which he has not been offered or given any payment. In the course of preparing the affidavit he met Dr Smith and "asked him to deliver a sealed box containing the hard drive with all the material to Stewarts Law". The expression "all the material" is not particularised, but the place in which the passage is to be found in the affidavit gave rise to the submission by Mr Waller that it was a reference to the surveillance, bin sweep and hacking which formed part of the Ronin engagement which ended in November 2013.

93. Mr Upson's Fourth Witness Statement explains that:

(1) Dr Smith went to the Middle East on or about 16 February 2016 to meet Mr Mills to view the contents of his laptop. On 18 February 2016 a sealed box with the name of a Middle Eastern Hotel was received in his office. The hard drive it contained was sent to computer experts to be imaged and the original and a copy returned to Stewarts Law on 24 February 2016.

(2) Steps were then taken to analyse its contents. The volume of material,

involving at least thousands of documents, could not be fully viewed or analysed in the time available before putting the evidence before the Court, but what was already apparent was that it included personal, confidential and legally privileged material including:

(a) an email dated 30 April 2013 from the solicitors formerly acting for the Orb Parties in relation to this claim, enclosing a note of a conference with counsel; this was one of a large number of emails to and from the solicitors, and to and from witnesses, which there has not yet been time to review;

(b) an email to Dr Smith dated 18 June 2013 enclosing an advice on the merits from Leading Counsel then instructed by the Orb Parties;

(c) photographs of several pages of a legal strategy paper, which from the face of the document appear to emanate from a surveillance report dated 11 December 2012, which sets out strategy in relation, for example, to freezing orders, and (it is to be inferred from one of the headings) a rehearsal of the points Mr Ruhan might take and how to meet them; it also revealed that the Orb Parties were then unaware of the details of the Arena Settlement;

(d) a document entitled "Litigation Capital Funding" which contains a table with a breakdown of the fees of counsel for the Orb Parties in this action for the period up to December 2013;

(e) a copy of Dr Cochrane's Barclays Bank account statement for the period 18 January to 19 February 2014;

(f) emails with Ms Stickler relating to the purchase of one of the flats at Hamilton House dated 3 February 2014;

(g) screenshots of Ms Stickler's inbox;

(h) the contents of Dr Smith's inbox for the entire period 2 July 2013 to 3 August 2013 and that of Ms Stickler for 3 July 2013 to 1 August 2013;

(i) video and photographic surveillance of Dr Smith, Dr Cochrane and Ms Stickler, and a sound recording of a conversation between Dr Smith and someone else on a train.

94. Ms Stickler's Fifth Witness Statement records that in early August 2013 there were problems with the Pro Vinci servers which led them to suspect that the server had been hacked. The suspicion was reported to the police at the time. The suspicion of an email hack is corroborated by contemporaneous documents. She gives further evidence of the contents of the hard drive provided by Mr Mills, including the intrusive and extensive nature of the surveillance reports prior to November 2013 and screenshots of her work desktop when she was using it in March 2013.

95. Dr Hunton, a computer specialist engaged by the Orb Parties, has confirmed in a letter dated 8 March 2016 that on the basis of his analysis to date of the hard drive,

he has no reason to believe that the files have been deliberately modified or manufactured at a single period of time, that the date stamps are likely correct, and that the files have not been manufactured en masse.

96. Mr Ruhan has sworn a Fifth Affidavit verifying what is said on instructions from him by Mr Rands of Memery Crystal in his First Affidavit sworn on 11 March 2016, namely that Mr Ruhan did not authorise, has not received and has not employed in these or any other proceedings any "Illegally Obtained Documents" as defined in paragraph 3 of the letter from Stewarts Law dated 8 March 2016, which is a compendious description which includes all the material I have referred to above.

97. Mr Waller made a number of points suggesting weaknesses in Mr Mills' evidence. However they were not such as to enable me to reject such evidence or the allegations as fanciful on a summary basis. Whether they are true must await a determination of the issue with disclosure, witness evidence and probably expert evidence.

98. Mr Waller's main point was that even taking the evidence at face value, the Court could now be satisfied that there was no real prospect of the Orb parties satisfying the required threshold of connectivity between the conduct alleged and the relief sought and granted.

99. It is well established that the clean hands doctrine is not engaged simply by any misconduct on the part of the Claimant. As Lord Scott put it in ***Grobbelaar v News Group Newspapers Ltd*** [2002] 4 All ER 732 at paragraph 90:

> "…it is long established practice that an equitable remedy should not be granted to an applicant who does not come with "clean hands". The grime on the hands must, of course, be sufficiently closely connected with the equitable remedy which is sought in order for an applicant to be denied a remedy to which he ordinarily would be entitled. And whether there is or is not a sufficiently close connection must depend on the facts of each case."

100. In order to bar the relief there must be misconduct which has an immediate and necessary relation to the equity sued for. This test was propounded as long ago as 1787 in the oft cited passage of Lord Chief Baron Eyre in ***Dering v Earl of Winchelsea*** (1787) 1 Cox 318, 319 and has been repeatedly applied since: see for example ***Moody v Cox*** [1917] 2 Ch 71, 87, ***Memory Corporation plc -v- Sidhu (No.2)*** [2000] 1 WLR 1443, 1457, and ***Fiona Trust & Holding Corporation v Privalov*** [2008] EWHC 1748 (Comm) at paragraphs 17 to 20. In ***Royal Bank of Scotland Plc v Highland Financial Partners LP*** [2013] EWCA Civ 328 Aikens LJ said:

> "159. It was common ground that the scope of the application of the 'unclean hands' doctrine is limited. To paraphrase the words of Lord Chief Baron Eyre in *Dering v Earl of Winchelsea* the misconduct or impropriety of the claimant must have 'an immediate and necessary relation to the equity sued

> for'. That limitation has been expressed in different ways over the years in cases and textbooks. Recently in *Fiona Trust & Holding Corp v Privalov* Andrew Smith J noted that there are some authorities in which the court regarded attempts to mislead it as presenting good grounds for refusing equitable relief, not only where the purpose is to create a false case but also where it is to bolster the truth with fabricated evidence. But the cases noted by him were ones where the misconduct was by way of deception in the course of the very litigation directed to securing the equitable relief. *Spry: Principles of Equitable Remedies* suggests that it must be shown that the claimant is seeking 'to derive advantage from his dishonest conduct in so direct a manner that it is considered to be unjust to grant him relief'. Ultimately in each case it is a matter of assessment by the judge, who has to examine all the relevant factors in the case before him to see if the misconduct of the claimant is sufficient to warrant a refusal of the relief sought."

101. Mr Waller's argument is that when Mr Mills' evidence is carefully analysed it does not allege that any computer hacking took place after the end of 2013; whereas Mr Ruhan's counterclaim, which is the claim in support of which the equitable relief was granted in the March Order, was only advanced for the first time in 2014; and that there can therefore be no connection, or at least no immediate and necessary connection, between conduct undertaken when Mr Ruhan was merely defending the claim by the Orb Parties and the grant of equitable relief on his counterclaim, the grounds for which did not then exist and were ex hypothesi unknown to him.

102. I am not persuaded by this argument for a number of reasons. First, it does not follow that conduct aimed at defeating the claim could not have the necessary and immediate connection required with the prosecution of the counterclaim, and therefore with the equitable relief sought to protect the efficacy of such counterclaim. The counterclaim is based on the self-help remedy adopted by the Orb Parties in response to Mr Ruhan's defence of their claim. The hypothesis on which Mr Waller's argument must proceed if it is to be determined in his favour on a summary basis is that Mr Ruhan indulged in extensive hacking of the Orb Parties' computers for the purposes of obtaining privileged and private information; and that he did so with a view to obviating the due process of justice which had been invoked by the Orb Parties to uncover and redress Mr Ruhan's theft of assets and profits which Mr Ruhan was seeking to conceal within the complexities of the Arena Settlement. On that basis it is at the lowest arguable that such misconduct has the necessary connection with the equity Mr Ruhan invokes: that equity is invoked in support of an arguable but unestablished claim that the self-help remedy adopted by the Orb Parties in response to his defence is itself wrongful and requires the Court's intervention on an interlocutory basis to protect it pending trial. I decline to embark on the exercise of making a final determination of whether such an argument would succeed on assumed facts. As Lord Scott observed, the inquiry in every case is fact sensitive, and resolution of this argument should await resolution of the undecided factual issues upon which it depends.

103. Secondly, the hacking alleged by Mr Mills is not confined to activity in 2013. It includes hacking in and after the summer of 2014. Mr Waller drew attention to the fact that Mr Mills describes the fruits of this 2014 hacking as simply "screenshots", none of which are amongst the current material relied upon by the Orb Parties. However that would not greatly diminish the gravity of the 2014 hacking, which Mr Mills' evidence suggests was aimed at gathering the same material as had been targeted or obtained in 2013, which included legal advice. Whether it was successful to a similar extent is as yet unknown, because the Orb Parties have not yet had an opportunity to analyse the full extent of the material on the hard drive provided by Mr Mills; but if its purpose were the same, it attracts much of the same opprobrium, however successful.

104. Mr Waller advanced an associated argument, to the effect that the 2014 material which has been found on the hard drive, and is referred to by Mr Upson, must have been planted there by Dr Smith because it does not comprise screenshots; whereas screenshots are referred to by Mr Mills as the only material gathered by hacking after 2013. I do not regard this as a fair point to which the Orb Parties have had a reasonable opportunity to respond, either by evidence or argument. This was an argument developed very late in the day. Following service of the new unclean hands material on 8 March 2016, the Tuesday in the week before the hearing, the Orb Parties served a supplemental skeleton argument on 9 March 2016 seeking an adjournment of all applications. On Friday 11 March 2016, the last working day before the hearing, Mr Ruhan's team served a supplemental skeleton argument resisting a wholesale adjournment of all applications, but accepting that the clean hands argument could not be resolved at the hearing and that it would have to be adjourned with directions for an oral hearing. On the same day I sent an email to the parties seeking assistance, amongst other things, on the question whether there needed to be a mini trial to address and resolve those issues. In a helpful written note provided on Monday 14 March 2016, the first day of the hearing, Mr Ruhan's team drew my attention to the authorities governing whether and when an oral hearing is appropriate to resolve such issues. The final paragraph stated that where there is no real prospect of a party relying on an unclean hands defence establishing a sufficient connection, the Court may summarily dismiss the defence and citing *Fiona Trust* per Andrew Smith J at paragraph 30. This, however, gave no hint of the argument which subsequently emerged, which was not developed by Mr Waller until towards the end of his submissions on the third day of the hearing. Mr Drake had a large number of points to deal with in limited time in his reply on the morning of the fourth day before being guillotined to enable time for argument on the case management issues presented by the CMC.

105. Thirdly, the new clean hands evidence is not confined to computer hacking. It includes evidence of a blackmail plot in 2014 which, on Mr Mills' evidence, was focussed in time and intended potential effect on the February 2015 hearing before Cooke J. It also includes evidence of a plan to suborn security personnel working for the Orb Parties to provide confidential information. The latter is to be seen together with the evidence before Dingemans J and Warby J of the recruitment of Quest to carry out such behaviour (see paragraphs 58 to 61 of my judgment of 26 February 2016 [2016] EWHC 361 (Comm)); and evidence that Mr Anciano was recruited by Mr Ruhan in the autumn of 2015 to try to suborn one such security

officer, Mr Woodhead, and that he took steps with others to seek to do so. The latter evidence is in Mr Woodhead's affidavit of 14 January 2016 summarised in paragraph 16 of my 26 February 2016 judgment, confirmed in many respects relevant to this allegation by the contents of Mr Anciano's Second Affirmation dated 27 January 2016.

106. As Andrew Smith J observed in the *Fiona Trust* case at paragraph 19, elements of misconduct must be looked at cumulatively, not just individually, to determine whether they are sufficiently serious and connected with the equity invoked to bring the doctrine into play. What is said by Mr Mills must be considered together with the other allegations which go to make up the unclean hands argument advanced by the Orb Parties.

107. For these reasons I cannot determine the clean hands argument summarily in Mr Ruhan's favour on the written evidence before me. I have given directions to enable the issues be tried at, or shortly before, the trial of the action.

108. I shall return to the question whether that means, as the Orb Parties contended, that there could be no variation to extend the March Order, and no unless order for failure to comply, until the clean hands issued have been resolved; or whether as Mr Ruhan contended, the unresolved clean hands issues are no obstacle to extending the March Order and requiring compliance backed by an unless order now. I will first consider whether such a variation and/or unless order would be appropriate in the absence of any unresolved clean hands argument.

Mr Ruhan's Variation Application

109. In his application as issued, Mr Ruhan sought a number of variations to the March Order, including removal of the maximum sum from the Freezing Order; payment into Court of £54 million by the Orb Parties; addition of the Pledge Assets and other assets; additions to the scope of disclosure required; removal of the fortification of the cross undertaking; and removing the normal course of business proviso. By the conclusion of argument these had resolved into two variations, namely (1) the addition of the Pledge Assets as separately frozen assets on the grounds that there was an arguable proprietary claim to them, with the consequent removal of the normal course of business exception to these (but not other) assets and adjustment of the £67.323 million cap on the Freezing Order to prevent double counting; and (2) variation of the amount of the Freezing Order, together with additional disclosure, by reference to a series of further transactions with a value of about £38 million which were said to give cause for concern about dissipation.

The Pledge Assets

110. Mr Ruhan's claim to a proprietary interest in the Pledge Assets proceeds in two stages. First it is said that he has a good arguable proprietary claim to the six sums making up the £67.323 million. Secondly it is said that there is a good arguable case that each of the Pledge Assets can be traced to one or more of those six sums.

Stage 1: tracing into the six sums

111. It will be recalled that the six sums were the following:

(1) £10m paid by Mr Cooper and Mr McNally to Dr Cochrane into her personal Barclays Bank account on 15 November 2013, which was closed on 3 February 2014.

(2) £583,222 pursuant to Schedule 3 of the Security Deed, received by Dr Cochrane into her personal Lloyds Bank account on 1 April 2014.

(3) £37,280,281 representing proceeds of the sale of GMSL received into Dr Cochrane's Coutts account on 23 September 2014.

(4) £1 million representing further proceeds of the sale of GMSL received into Dr Cochrane's Coutts account on 21 October 2014.

(5) £3m representing the net proceeds of sale of Bridgehouse (Cannizaro House) Limited, which owned the Cannizaro House Hotel, paid into Dr Cochrane's Coutts account on 5 November 2014.

(6) £15,460,003 connected to the proceeds of the sale of GMSL paid to Dr Cochrane's personal account in June 2014 and said to have been a loan to her from Arena Central.

112. Mr Drake accepted that the claim to the first two, totalling £10,583,222, is arguably a proprietary claim, but took issue with the submission that there was an arguable proprietary claim to the remainder.

113. As to the £37,280,281 and £1 million representing the proceeds of the sale of GMSL received into Dr Cochrane's Coutts account on 23 September 2014 and 21 October 2014 respectively, the starting point is Mr Ruhan's case that he has an equitable proprietary interest in the Arena Assets following the Isle of Man Settlement, which is pleaded at paragraph 203 of the Amended Defence in the following terms;

> "203. Mr Ruhan's equitable proprietary interest in the Arena Settlement Assets arose as follows:
>
> (1) In the premises referred to above, Messrs Cooper and McNally, being the only named beneficiaries under the Arena Settlement were entitled to, and did invoke the *Saunders v Vautier* principle under the Confidential Deed by exercising their collective right to collapse the Arena Settlement and convert it into bare trust for themselves and then direct (not request) ASM to declare a bare trust over Arena Settlement Assets in favour of Dr Cochrane and to transfer legal title to those assets to Dr Cochrane and SMA. Accordingly, at the moment when the Arena Settlement was collapsed Mr Ruhan became absolutely entitled under the sub-trust constituted by Messrs Cooper and McNally of their collective beneficial interest under the Arena Settlement in favour of Mr Ruhan pursuant to the 2004 Arrangement and the 2012 Arrangement. The consequence is that Mr Ruhan is entitled to the reconstitution of the Arena

Settlement Assets (and/or any traceable product of those assets) in his hands.

(2) Further or alternatively the transfer of the Arena Settlement Assets by ASM to strangers to the trust Dr Cochrane and SMA was a disposition made in breach of trust by ASM and void in equity and, alternatively voidable in equity and should be set aside, thereby giving rise to an equitable proprietary interest on the part of Messrs. Cooper and McNally which Mr Ruhan is entitled to assert pursuant to the terms of the sub-trust referred to above. The consequence, if contrary to Mr Ruhan's primary case, sub-paragraph (1) above is not correct but this sub-paragraph (2) is correct, is that Mr Ruhan is entitled to have the Arena Settlement Assets (and/or any traceable product of those assets) reconstituted in the hands of a new trustee subject to the control and direction of this Court and/or the Isle of Man Court."

114. Mr Drake submits that the effect of the transfer can have been to confer, at most, no more than an equitable proprietary interest in the shares in the six holding companies, those being the shares which were transferred by the trustee to SMA in the Isle of Man Settlement. That does not equate to any proprietary interest in the assets held by the indirect subsidiaries, which would involve ignoring their separate corporate personality. A proprietary interest in the shares of a company is not a proprietary interest in the assets of a company. Accordingly, he submits, the transfer of the proceeds of sale of the shares in GMSL, which were an asset of its immediate parent company Bridgehouse Marine Ltd, are not assets to which Mr Ruhan ever had an arguable proprietary claim.

115. Mr Waller retorts that the payments of such proceeds to Dr Cochrane are not explained by any loan or other commercial transaction; they are simply distributions to the ultimate beneficial owner (Dr Cochrane) of the ultimate parent company (SMA); the only legal analysis which can explain each payment, he submits, is that it is to be characterised as a dividend by Bridgehouse Marine Ltd to its parent, and then a dividend by each company in the structure to its respective parent all the way up, ultimately from Ballaugh to SMA. Its receipt by Dr Cochrane is therefore to be treated as a dividend by Ballaugh to its shareholder SMA. As such it represents the traceable proceeds of the property in which Mr Ruhan has an arguable proprietary interest, namely the shareholding in Ballaugh. I am satisfied that there is a good arguable case that this is the right analysis, such that Mr Ruhan has an arguable proprietary claim to the £37,280,281 and £1 million representing the proceeds of the sale of GMSL received into Dr Cochrane's Coutts account on 23 September 2014 and 21 October 2014. No alternative legal analysis was suggested by Mr Drake.

116. The same analysis applies to the £3m representing the net proceeds of sale of Bridgehouse (Cannizaro House) Limited, which owned the Cannizaro House Hotel, which was paid into Dr Cochrane's Coutts account on 5 November 2014. There is no commercial explanation for the payment by the vendor to Dr Cochrane. There is a good arguable case that the payment is to be treated as a dividend to its shareholder, and from it up the chain of wholly owned subsidiaries

in the corporate structure until it represents a dividend by Sulby to SMA, and so the traceable proceeds of Mr Ruhan's arguable proprietary interest in the Sulby shares.

117. As to the £15,460,003 paid to Dr Cochrane's personal account in June 2014, according to Ms Stickler in the Pro Vinci Letter of 27 February 2015, and her subsequent evidence, this was connected to the proceeds of the sale of GMSL in the following way. There had been in June 2014 three loans in that sum (a) from GMSL to its parent Bridgehouse Marine Ltd (b) from Bridgehouse Marine Limited to its parent, Arena Central and (c) from Arena Central to Dr Cochrane. This was prior to the sale of GMSL which occurred pursuant to an SPA dated 22 September 2014. £15,460,003 from the proceeds of sale was then used to discharge the debts (a) and (b), leaving simply the loan to Dr Cochrane by Arena Central.

118. This payment therefore differs from those considered earlier because the Orb Parties have put forward a legal basis for the payment, namely a loan, and the loan monies were paid in June 2014 which was three months prior to the sale of GMSL. I am, however, unable to take the assertion of a loan at face value. Dr Cochrane's evidence in her Third Witness Statement that the payment was a loan is exiguous. She merely asserts the existence of a loan and that it is repayable "in 2017". The assertion is unsupported by any documentation; the loan is not said to carry interest or be secured in any way; and its terms are unidentified save for an unspecified repayment date some time in 2017. There is a Liquidator's report of the assets of Ballaugh and its subsidiaries dated 6 November 2015 in which there is no mention of any such sum as a debt receivable owed to the group.

119. On that basis there is a good arguable case that the June 2014 payment to Dr Cochrane was made in anticipation of the intercompany debts referred to in paragraph 117 (a) and (b) above being repaid out of the proceeds of sale of GMSL three months later because that is what happened, by which means Arena Central would and did reimburse itself for the money "loaned" to Dr Cochrane. The use of the GMSL proceeds in September to make Arena Central whole would therefore represent the fulfilment of a coordinated scheme of which the June payment was part.

120. Mr Waller argued that by a process of reverse tracing this was sufficient to establish a good arguable proprietary claim to the June payment as the traceable proceeds of sale of GMSL, and addressed me on the principles of reverse tracing. I found the analysis difficult to follow because it appeared to start from the premise that Mr Ruhan had a proprietary interest in the proceeds of sale of GMSL, rather than to the shares in the holding company Ballaugh. Mr Waller described it as Dr Cochrane borrowing from the Global Marine Group by reference to her pending future dividend stream. This would involve treating Arena Central's acceptance of payment from Bridgehouse Marine in September 2014 as something which discharged Dr Cochrane's debt, and so as a benefit conferred at that time by Arena Central on Dr Cochrane; and that such benefit is to be treated in September as a dividend up to Ballaugh and by Ballaugh to SMA/Dr Cochrane. This analysis seems to treat the payment to Dr Cochrane in June as a genuine loan which is then written off in September.

121. There is, I think, a simpler analysis. If the June payment was made in anticipation that it would never be repaid by Dr Cochrane and that Arena Central would be made whole out of the proceeds of sale of GMSL three months later, then the payment in June 2014 was never in truth a loan to Dr Cochrane by Arena Central, but was a payment by Arena Central which is only properly explicable at that time as a dividend by Arena Central to its shareholder, and a dividend up through the company structure to Ballaugh, being ultimately a dividend by Ballaugh to Dr Cochrane/SMA; it is therefore the traceable proceeds of Mr Ruhan's proprietary claim to the shares in Ballaugh. If so, principles of reverse tracing do not come into play. I am satisfied that there is a good arguable case to this effect.

Stage 2: tracing into the Pledge Assets

122. The Pledge Assets comprise the following:

(1) a substantial residential property in Jersey known as the Steephill Estate, together with a number of nearby houses or cottages;

(2) an "art collection and collectibles", described in the schedule as including sculpture, scientific instruments, fossils, cars and first editions, and said by Ms Stickler also to include fine wine ("the Art Collection");

(3) three Polish development properties;

(4) fifteen leasehold flats, together with interests in the head lease and freehold, at Hamilton House, a six storey commercial and residential block in Southampton Row, London;

(5) the shares in Sixup Ltd, a private company which owns a former office tower block in the centre of Birmingham;

(6) three villas in Mallorca and their associated estates;

(7) two Italian parcels of land said to be suitable for development, one by Lake Como and one near Perugia;

(8) a four acre development site at Berrow in Somerset.

Steephill

123. The main Steephill property is already specifically identified in the March Freezing Order as an asset which is frozen under the £67.323 million capped freezing provision, albeit subject to the normal course of business proviso. What is sought is a variation to freeze all the properties, outside the capped amount and without the normal course of business proviso. There are four grounds put forward for suggesting that Mr Ruhan's proprietary claim is traceable into the Jersey properties. First, the investigating officer in the confiscation proceedings brought against Dr Smith identified that in June 2006 there was a £2 million mortgage on the property. The Negative Pledge describes the property as unencumbered. It is a reasonable inference that the mortgage was paid off using part of the £67.323 million because Dr Cochrane is a GP practising full time in

Jersey and has disclosed no other obvious sources of wealth or funding which would have enabled her to make this repayment. Secondly, according to Ms Stickler, a claim by Dr Smith's Enforcement Receivers that Dr Smith had an interest in the property was compromised by a payment to the Viscount of Jersey, who was responsible for pursuing their claim in Jersey. Ms Stickler does not identify the amount or date of the payment, save to say that the discussions with the Viscount were successfully concluded on 24 October 2013. Mr Drake said, on instructions, that the amount was £3.51 million (in compromise also of a claim over the art collection) but did not provide a date of payment. 24 October 2013 was only shortly before the receipt by Dr Cochrane of the £10 million to which Mr Ruhan has an arguable proprietary claim, and the inference can be drawn that part of this sum was used to settle the claim against the property and to that extent discharge an encumbrance on it. Thirdly the witness statement of Mr Bonney, one of the Liquidators, reveals that three of the ancillary cottages/houses were bought in 2014 or 2015. Again, it is said that given Dr Cochrane's declared circumstances it is reasonable to infer that part of the £67.323 million was used for this purpose. Fourthly Ms Stickler says in her recent evidence that £106,000 was spent on building works at the properties from the proceeds of sale of an aeroplane formerly owned by Skypark Ltd, a company within the Arena Settlement structure. Mr Waller argues that the same dividend analysis can be applied to that payment so as to make it part of the traceable proceeds of the shares in the holding companies.

124. I am satisfied that these afford sufficient grounds for treating Mr Ruhan as having a good arguable case to a proprietary claim in the Steephill properties.

The Art Collection

125. The Art Collection is also already specifically identified in the March Freezing Order as an asset which is frozen under the £67.323 million capped freezing provision, albeit subject to the normal course of business proviso. What is sought, therefore, is a variation to freeze it outside the capped amount and without the normal course of business proviso. Mr Waller was not able to identify any basis for a tracing claim other than that Dr Cochrane's personal wealth was inferentially derived from the Arena Assets. There was also Mr Drake's subsequent assertion, on instructions, that the payment of £3.51 million to the Viscount of Jersey on an unidentified date after 24 October 2013 was to some unidentified extent to compromise a claim by the Enforcement Receivers to the art collection. However the evidence suggests that the collection predated the Isle of Man Settlement and had been built up over a number of years prior to that. There is no evidence to which my attention was drawn of whether or when there were any additions to the collection after that date or after receipt by Dr Cochrane of any of the six sums. I do not regard this evidence as sufficient to meet the threshold of a good arguable tracing claim.

The Polish properties

126. Ms Stickler explains that these properties were acquired by companies within the Arena structure before the Isle of Man Settlement, who were in 2014 indebted to Unicredit. Unicredit agreed to sell the debt to SMA for a discounted price of €5.5 million. The vehicle which SMA used to acquire the debt and take ownership of

the properties was Radix Investments UK Ltd. The Stone Turn Report records that between 30 September 2014 and 23 December 2014 payments totalling £4,632,964 were paid out of Dr Cochrane's Coutts account (into which £41,280,281 from the proceeds of sale of GMSL and the Cannizaro House Hotel had been paid between 23 September 2014 and 5 November 2014); and that these were for "Polish properties". It is a reasonable inference that this £4,632,964 represents the €5.5 million used to acquire the Polish properties. Mr Ruhan therefore has a good arguable case for tracing his proprietary claim into these properties.

Hamilton House

127. Flat 11 at Hamilton House is already specifically identified in the March Freezing Order as an asset which is frozen under the £67.323 million capped freezing provision, albeit subject to the normal course of business proviso. What is sought, therefore, is a variation to extend the order to all the Hamilton House properties, and freeze them outside the capped amount and without the normal course of business proviso.

128. Ms Stickler says in her Sixth Affidavit that all 15 flats were purchased with the proceeds of the £67.323 million. Although this might at first sight appear inconsistent with the evidence that the leasehold interest in two of the flats (Flats 10 and 14) had been purchased in 2011, there is evidence that the mortgage on those two flats was discharged in 2014 and it is therefore reasonable to infer that Ms Stickler's reference to the 15 apartments being purchased with the proceeds of the £66.7 million as meaning that for those two flats such proceeds were used to pay off the mortgages. Mr Ruhan has established a good arguable case for tracing his proprietary claim into all the Hamilton House property.

The Sixup shares

129. Ms Stickler says in her Fifth Affidavit that since 31 October 2014 the shares in Sixup have been held by Dr Cochrane via GAC Holdings Ltd and that Sixup bought the property on 7 November 2014. In her Sixth Affidavit she identifies sums totalling £2,281,204 being paid on dates between 20 October 2014 and 28 November 2014 to Mr Grumbridge; and that he was the solicitor who acted on the purchase of the property by Sixup. These payments were identified in the Stone Turn Report as coming from Dr Cochrane's Coutts account. Mr Ruhan has therefore established a good arguable case that he is entitled to trace his proprietary claim into this property.

The Mallorca properties

130. Ms Stickler says in her Sixth Affidavit that the third mentioned property, "Val D'Orient" was purchased under a contract signed in June 2015 but that Dr Cochrane has taken steps to avoid the purchase for alleged breaches of the contract. Three of the payments identified in the Stone Turn Report as coming out of Dr Cochrane's personal accounts, into which the £67.323 million went, can now be seen, on the basis of Ms Stickler's recent evidence, to have been spent on the Mallorcan properties:

(1) £1,773,000 paid on 9 October 2014 to "*F.Flow Monex*", was the sterling equivalent of a bank loan of €2.3 million which was paid to discharge a mortgage on the Mallorca properties purchased by Dr Cochrane;

(2) £28,159 paid to Conor Mallorca Trading SL on 17 October 2014 was a deposit for building works on the Mallorca properties;

(3) £317,465 transferred by Dr Cochrane to Mr Barton on 29 October 2014, was, according to Ms Stickler, part of the purchase price for the two Mallorca properties Dr Cochrane was buying from Mr Barton.

131. Mr Ruhan has therefore established a good arguable case that he is entitled to trace his proprietary claim into these properties.

The Italian properties

132. Ms Stickler says that these were purchased in May and June 2015 and are to be valued at €6.7 million. She does not identify the source of these funds. Dr Cochrane warrants in the Negative Pledge that these properties are beneficially owned by her and unencumbered. It is a reasonable inference from (a) the timing of the payments, (b) Ms Stickler's failure to identify the source of the purchase funds and (c) the absence of any evidence of a source of substantial wealth or funding for Dr Cochrane outside the proceeds of the Isle of Man Settlement, that the purchase funds emanated from the £67.323 million. Mr Ruhan has established a good arguable case that he is entitled to trace his proprietary claim into these properties.

Berrow

133. Ms Stickler says that this land was purchased by a company owned by Mr Taylor using a loan from Dr Cochrane on 23 November 2013 for £395,000. She does not identify the source of these funds. Dr Cochrane warrants in the Negative Pledge that this property is beneficially owned by her and unencumbered. It is a reasonable inference from (a) the timing of the payment, just a fortnight after receipt of the £10 million, (b) Ms Stickler's failure to identify the source of the purchase funds and (c) the absence of any evidence of a source of substantial wealth or funding for Dr Cochrane outside the proceeds of the Isle of Man Settlement, that the purchase funds emanated from the £67.323 million. Mr Ruhan has established a good arguable case that he is entitled to trace his proprietary claim into these properties.

Adding the Pledge assets to the Freezing Order

134. Given the existence of a good arguable proprietary claim to these assets, it is right that they should be specifically frozen, and that in accordance with well established principles there should not be any ordinary course of business proviso: see for example ***Polly Peck International v Nadir (No 2)*** [1992] 4 All ER 767, 784. The Orb Parties cannot sensibly complain that there is any unfair prejudice in such an order because it is their case that by the Negative Pledge they undertook to the Liquidators to keep these assets frozen and not to encumber or

deal with them, and that Mr Ruhan could rely on that undertaking being performed.

135. In the case of Steephill, however, which I understand to be Dr Cochrane's main residence, there should be a proviso which permits normal residential and maintenance expenditure.

The List of Dissipated Assets

136. In a refinement of his argument for a variation of the March Order, Mr Waller produced a table headed "Defendant's table of further dissipation of the Orb Parties" with details of nine sums totalling approximately £38 million. The application had originally been to remove the limit on the Freezing Order entirely, alternatively to increase it to £220 million representing the full value of Mr Ruhan's claim. As modified in oral argument, Mr Waller's application was to raise the cap by reference to these particular transactions. The relief sought in respect of these transactions was not premised on there being an arguable proprietary tracing claim to these sums. Mr Waller submitted that they represented sums which ought to have remained frozen under the contractual and February Undertakings, but that (a) there was good reason to suppose that they had been disbursed outside the Arena group and/or (b) there was real cause for concern that they had been and would be so dissipated and/or (c) it was impossible to discern the truth about them because of the inadequacies of the Orb Parties' disclosure about them; and that therefore the monetary cap of the Freezing Order should be increased by the amount of their value; and further disclosure should be ordered to enable the order to be properly policed. Mr Drake's response on behalf of the Orb Parties was essentially that these transactions have been explained in the Orb Parties' evidence as properly expended within the Arena group (save as to some £2 million), and they do not represent arguable "dissipations"; and that, with the exception of two of the transactions, they represent assets within the Arena structure under the control of the Liquidators who can be trusted to protect them in accordance with the February Undertakings and March Order of which they have notice.

137. I shall take each in turn.

Qatar Settlement: £15,405,832

138. According to Mr Ruhan's evidence, he invested in a substantial development in Qatar through the Bridge Tower Companies numbered 1 to 6 ("the Bridge Tower Companies"), which were beneficially owned and controlled by Mr Ruhan via his nominee, Mr Cooper.

139. The Bridge Tower Companies were amongst the assets transferred to the Orb Parties pursuant to the IOM Settlement. In consequence, the Bridge Tower Companies are included in the February Undertakings and by the terms of para. 4(iv) of Schedule 2, the entire proceeds of, or consideration for, any transaction dealing with the assets of such a company are to be retained within the companies listed at paragraphs 3.2 to 3.23, to which the parties referred as "the Arena group".

140. The Qatar Project was a joint venture with Minardi Investments Limited ("**Minardi**"). In 2014 GAC Holdings Ltd became the shareholder of Minardi, and remains a substantial minority shareholder, the majority stake having been acquired by Allan Rankin, an associate of the Orb Parties.

141. The contractor was Al Arrab Construction Company JSC ("**Al Arrab**"). The project was not completed, and a substantial dispute arose with Al Arrab in relation to four of the residential apartment towers to be built. At the February 2015 hearing, Mr Ruhan informed the Court that his losses included the claim of the Bridge Tower Companies against Al Arrab, but at that time he was not aware of any proceedings against Al Arrab. No amount was included for that claim in the quantification of his loss at that stage.

142. The dispute with Al Arrab has now been settled and Al Arrab has made a payment of QR 158,775,000 (about £30.8 million) pursuant to a settlement agreement between Al Arrab, the Bridge Towers Companies and Minardi dated 11 June 2015. The settlement monies were paid to Ocean Advisory & Consulting WLL ("**Ocean**").

143. Mr Ruhan, who has obtained a copy of the settlement agreement from sources other than the Orb Parties, alleges that the Orb Parties knew of and sanctioned this settlement, and that they thereby breached the February Undertakings because Ocean is not within the Arena group. The Orb Parties contend that there has been no breach; they had no control over the handling or settlement of the Al Arrab litigation because exclusive powers to conduct and conclude negotiations were conferred on Mr Donald Jordan, an employee of Ocean, pursuant to powers of attorney conferred on him by the Bridge Tower Companies in 2009 and 2012, before the Isle of Man Settlement; and that they have no control over Mr Jordan. Further they say that there is no risk of dissipation: these sums are not in the possession or control of the Orb Parties, and Mr Jordan has given assurances that he will hold the net proceeds of the settlement until competing claims are resolved.

144. I find it difficult to accept Ms Stickler's evidence that the Orb Parties did not know of the negotiations or the amount of the settlement, and did not approve it in advance. Documents obtained by Mr Ruhan (not from the Orb Parties) reveal that prior to the Isle of Man Settlement Mr Jordan's authority was confined to conducting negotiations: he did not have authority to bind the Bridge Tower Companies. It was Dr Cochrane who signed fresh powers of attorney in favour of Mr Jordan, on behalf of the Bridge Tower Companies, on 24 March 2015. This was not an arrangement inherited by the Orb Parties which they were unable to change or control, as their evidence would have the Court believe. One would have expected the Orb Parties to take a close interest in what their agent was doing in negotiating the settlement of a claim worth at least tens of millions of pounds. Ms Stickler says in her Sixth Affidavit that although she and Dr Smith have met Mr Jordan several times and were told of the fact of the settlement after the event, Mr Jordan never disclosed details of the amount of the settlement. This is difficult to believe. The Orb Parties were entitled to the information as directors and beneficial owners of Mr Jordan's principals, and would no doubt have been interested in knowing the amount involved. No reason for Mr Jordan refusing the information is given by Ms Stickler. The Orb Parties were less than candid in

solicitors' correspondence when pressed for information about the settlement. There is a curious letter from Ocean to Stewarts Law dated 26 October 2015 in which Ocean says that it can only answer to the board of directors of its clients. But since its clients include the Bridge Tower Companies of which Dr Cochrane was the very director who had granted the power of attorney, this does not explain any lack of access to the information by the Orb Parties. Ms Stickler's assertion of ignorance on the part of the Orb Parties is all the more improbable given the position of Minardi. Minardi was party to the settlement agreement and its board must have been informed of and approved its terms. In August 2014, Minardi had been acquired by GAC Holdings Ltd (a corporate vehicle for Dr Cochrane) and Dr Cochrane was and remains a director of GAC.

145. There is therefore good reason to believe that there may have been a breach of the February Undertakings, to put it at its lowest, and that in any event the Orb Parties have not been frank about this settlement and cannot be trusted in relation to it.

146. The settlement sums are not adequately protected by the "assurance" given by Mr Jordan. It is contained in an email from Mr Jordan to Stewarts Law dated 10 March 2016. It has no contractual force and is only addressed to the Orb Parties. It refers to holding the settlement monies pending resolution of the competing claims, but it is not clear that it includes amongst the competing claims that of Mr Ruhan in these proceedings, as distinct from those claiming an entitlement to the settlement monies under disputes relating to the project. Whilst Mr Jordan has apparently confirmed that no monies have been paid to or at the direction of Orb, this is scant comfort given the Orb Parties' ingenuity in extracting funds by circuitous routes.

147. In those circumstances it is right that the amount of the Freezing Order should be increased to include the Bridge Tower Companies' 50% interest in the settlement monies, and that further information should be given in relation to them.

GMSL sale escrow monies: £8 million

148. The proceeds of the sale of GMSL have been a source of concern to Mr Ruhan since he first heard of the sale in September 2014, and were to be protected by the contractual undertakings and then the February Undertakings (paragraph 3(19) of Schedule 2 to the February Order). The undertakings required prior written notice to be given to Mr Ruhan in advance of any dealings with these funds (paragraph 5 of Schedule 2) unless paid to an Arena group company to discharge obligations arising out of current trading activities.

149. As has been seen, the net proceeds of the sale of GMSL were paid into a personal account of Dr Cochrane outside the Arena Group in the autumn of 2014 in breach of the assurances given by the Orb Parties and/or the contractual undertakings. Then a substantial proportion of the sale proceeds were admittedly spent on non Arena related items in disregard of those self-same assurances and contractual undertakings. Further, much of the so-called ordinary course of business Arena-related expenditure was nothing of the sort: see below.

150. However, at the time of the March 2015 hearing before Cooke J there remained a sum held in an escrow account representing proceeds of sale of GMSL which had

which had not yet been released. The Pro Vinci Letter and Dr Cochrane's Third Witness Statement confirmed that £14 million remained in escrow.

151. At the March hearing, Cooke J was particularly concerned that these monies held in escrow should be preserved. In consequence, disclosure was specifically ordered of all bank accounts holding monies in respect of the sale of GMSL (March Order Schedule 1 paragraph 2).

152. The Orb Parties have now informed the Court and Mr Ruhan, in Ms Stickler's recent Sixth Affidavit, that £10 million was released from escrow in April 2015 and £4 million in February 2016.

153. Ms Stickler says that the £10 million was ultimately released into the possession of the Liquidators of Ballaugh, and that they sanctioned payment of £4 million of this as a loan to SMA by Arena Central. The Liquidators, however deny having received any more than £5.95 million and deny having sanctioned any payment to SMA. There remains, therefore, a little over £4 million of this £10 million unaccounted for on the Liquidator's evidence. I do not feel able to accept Ms Stickler's word, uncorroborated by any documentary support, over that of the Liquidators.

154. Moreover if one takes Ms Stickler's explanation for the payment out of £4 million at face value, it supports the contention that there has been a dissipation in breach of the February Undertakings. Ms Stickler simply says that on 22 May 2015, £4 million of the amount held in escrow was loaned by Arena Central to SMA who in turn loaned the sum of £2.5 million to Minardi (by now owned by Dr Cochrane and her associate Mr Rankin). No evidence in support has been provided as to these loans or their alleged commercial basis. They look like a simple payment to the vehicle used by Dr Cochrane and Dr Smith in the Isle of Man Settlement for their unconditional benefit. This was a disposal outside the Arena group to a Dr Smith/Dr Cochrane entity without notice. Ms Stickler asserts that Minardi used the £2.5 million to make a loan to Mr Ruhan to help fund his legal costs at a time when settlement discussions were taking place and that Mr Ruhan has defaulted on repayment of this debt when it fell due in November 2015. However there is nothing to suggest that Mr Ruhan knew this emanated from sums which were meant to be frozen.

155. In relation to the other £4 million, released from escrow in February 2016, Ms Stickler gives an account of how it was spent by the Liquidators within the Arena group on the basis of what she says she has been told by the Liquidators. It is uncorroborated by any evidence from the Liquidators or any documentary support. I am not prepared to proceed on the basis that this evidence can be taken at face value given the apparent falsity of what Ms Stickler said about the Liquidators having control of the other £10 million from the escrow account, and the many instances I have set out in this judgment where her uncorroborated evidence can be seen to be unreliable.

156. Accordingly I conclude that there is real cause for concern that £8 million of the GMSL escrow monies have been or will be dissipated outside the Arena group. Further disclosure should be given in relation to these sums, which should be added to the amount frozen.

Sentrum Escrow and Earnout

157. Sentrum Holdings Ltd ("Sentrum") was another company of substantial value held within the Arena Group. By a Share Sale and Purchase Agreement dated 26 June 2012 (the "Sentrum SPA"), Sentrum was sold by Glen Moar to Digital Stout Holding LLC ("Digital Stout"). As part of this agreement, £10 million would be held in escrow, and earn out payments would be made by Digital Stout in defined circumstances.

158. It now transpires that from the escrow account:

(1) £3,628,862.73 was paid from the account in July 2015 purportedly to discharge rent liabilities at the Hayes Site. The justification for this payment remains opaque. No supporting documentation has been adduced and it remains unclear why this should have been an appropriate liability for Glen Moar to meet.

(2) £1,415,909.37 was, according to Ms Stickler, paid to the Liquidators. However in a recent letter of 11 March 2016 the Liquidators refer only to a sum of £987,000 having been received; this leaves £428,909 unaccounted for.

(3) £2,159,108.07 was paid out to a number of different destinations, according to Ms Stickler. None of her assertions are corroborated by any documentary support or independent verification. There is therefore a real cause for concern that these may have been paid out in breach of the February Undertakings and otherwise than to an Arena group company in the normal course of business, especially given that:

(a) £300,000 was paid to Mr McNally and entities controlled by Messrs Cooper and McNally;

(b) £991,000 was paid to Dr Cochrane personally in August 2015.

159. In relation to the Sentrum Earnout, it is admitted by the Orb Parties that £2,750,587.71 was received after the Isle of Man Settlement. Ms Stickler's evidence is that almost £2.5m of this sum went straight to Optimal Technical Construction Limited ("OTC"). OTC is 100% owned by SMA and its directors are Ms Stickler and Sinead Irving. According to Ms Stickler OTC is responsible for managing the Hayes site and this sum was to support the running of the site, in the light of the fact that it then had trade creditors in excess of £2 million. Again there is no supporting documentation or independent verification. In any event, OTC is not within the Arena group as defined in the February Undertakings. Again this justifies real concern that this may have been paid out in breach of the February Undertakings and otherwise than in the normal course of business, especially given that a further £45,000 from the Sentrum Earnout account was paid to entities controlled by Messrs Cooper and McNally.

160. Accordingly these sums should be added to the Freezing Order and disclosure ordered.

Proceeds of Sale of a Development Site belonging to Bridgehouse (Bradford IOM) Ltd

161. The shares and assets of Bridgehouse (Bradford IOM) Ltd are subject to the February Undertakings (see paragraph 3(23) of Schedule 2). A property in Wolverhampton in which Bridgehouse (Bradford IOM) Ltd had an interest was sold for the sum of £4 million on 2 March 2015. Ms Stickler's explanation for what has happened to the proceeds is again mere assertion without supporting documentation or independent verification. Again this justifies real concern that this may have been paid out in breach of the February Undertakings and otherwise than to an Arena group company in the normal course of business. This concern is heightened by the following aspects of Ms Stickler's account:

    (1) About £2.6m of the proceeds of this sale were apparently paid to Unicorn and then loaned to SMA. This was a breach of the February Undertakings.

    (2) The Orb Parties, via SMA, then used this sum to pay £1m of their own adverse legal costs in these proceedings viz. the £1m payment on account ordered in favour of the Stevens Parties. This use of monies is particularly deserving of condemnation given that at the February hearing leading counsel for the Orb Parties expressly confirmed that there was no carve-out under the undertakings for payment of legal fees, let alone adverse legal costs.

    (3) £1.2m was paid to Dr Cochrane herself. The justification for this is said to be a payment made by Dr Cochrane to Mr Harvey to settle a claim he had against Bridgehouse (Bradford IOM) Ltd. This explanation for the payment to Mr Harvey had not been raised before, and no evidence of this debt was provided. In fact, Mr Harvey's previous position was that he was owed money in respect of this matter from Mr Ruhan personally, not Bridgehouse (Bradford IOM) Ltd. Dr Cochrane used this money in part to purchase a further flat in Hamilton House.

162. Accordingly these sums should be added to the Freezing Order and disclosure ordered.

Proceeds of sale of private aircraft Pilatus M-ZUMO: £1.7 million

163. This aircraft was owned by Skypark Ltd and was sold for US$ 2.4 million. Ms Stickler gives an account of the use of the proceeds. £106,000 was for building works at Steephill which was a breach of the February Undertakings. Some supporting documentation is provided for two payments totalling about £1.3 million said to be Arena expenses, but this is inadequate. One is a cash call by Arena Central for £550,000 but no evidence is given as to what the money was to be used for save for about £150,000 of fees. The other is said to be payment for a generator for OTC, but the email exchange exhibited suggests that OTC did not need that sum as cash flow to pay for the generator. There remains real cause for concern that these payments may have been made in breach of the February Undertakings and otherwise than to an Arena group company in the normal course of business, especially given the use of some of the proceeds for expenditure on Steephill.

The Liquidators

164. I have not overlooked Mr Drake's overarching argument that the assets in the Arena structure (which do not include the Qatar settlement monies or the Wolverhampton property proceeds) are under the control of the Liquidators who can be trusted to deal with them in accordance with the February Undertakings and the March Order; and that concerns about the behaviour of the Orb parties are therefore nothing to the point. The answer lies in what can be seen to have happened: there have been payments of considerable sums to or for the personal benefit of the Orb Parties since the Liquidators were appointed in March 2015. Mr Waller argued that the Liquidator's independence was questionable. I do not need to reach a conclusion about that. If I assume their independence, the payments suggest that it is simply not the case that as liquidators of the holding companies they have taken control of all the assets of the companies within the group.

165. Accordingly these sums should be added to the Freezing Order and disclosure ordered.

Adjustment for value of Pledge Assets

166. Mr Waller recognised that if the Pledge Assets were frozen separately, outside the cap imposed by the Freezing Order, then any increase in the amount of the cap by £38 million to take account of the transactions I have been considering would have to be counterbalanced by a reduction to reflect the value of the Pledge Assets added to the order. I value those assets at £41 million, and accordingly the net effect of notionally increasing the cap by £38 million and adding the Pledge Assets as separately frozen is that the £67.323 million cap will be reduced by £3 million.

167. My valuation of £41 million for the Pledge Assets is reached as follows.

Valuation of Pledge Assets

Steephill Properties

168. The schedule to the Negative Pledge refers to a value of £15 million. The Orb Parties put in evidence a Jersey estate agent's valuation dated 28 August 2015 valuing the properties at a total of £14.5 million. It did not involve any identified comparables save for reference to an attached article (not in evidence) that the property was in the same league as several properties selling in the last 12 months "for in excess of £10m". In a schedule attached to an email from the Liquidators dated 20 October 2015, the Liquidators put the value of the property at £12,760,000. The value which Dr Cochrane had put on the property in May 2014 was £7 million. In 2006 Dr Smith's Enforcement Receivers were suggesting that he had the real beneficial interest in the Steephill Estate. In the light of all these uncertainties I would not treat Steephill as affording security for any more than £12 million.

The Polish Properties

169. The Negative Pledge schedule valued the Polish properties at a total of £11.5 million. In the Liquidators' schedule attached to their email of 20 October 2015 a

valuation of £11 million is given on the understanding that these were owned by Radix Investment UK Limited and wholly beneficially owned by Dr Cochrane. The value of these properties is not addressed by any supporting evidence from the Orb Parties. The pledge asserts that they are unencumbered but in the course of argument, Mr Drake asserted that they were in fact encumbered with a charge to secure the debt for the money with which they were purchased. Accordingly I do not feel able to attribute any value to these properties for the purpose of security provided to Mr Ruhan.

Hamilton House

170. The Hamilton House flats were valued in Schedule 1 to the Negative Pledge at £20 million. In the schedule attached to the email of 20 October 2015 the Liquidators valued them at £9,219,166 based on purchase cost. The Orb Parties' evidence included a valuation from estate agents based in the Fulham Road dated 22 October 2015 which valued the properties at £20 million. However such a valuation must be treated with caution for two reasons. Hamilton House is in Southampton Row, a part of London with which Fulham Road based estate agents would not be assumed to have familiarity; and the valuation contains no details of any comparable properties as a basis for valuation. On this evidence I attribute a value of £16 million to these properties for present purposes.

Shares in Sixup Limited

171. Sixup is said in the schedule to the Negative Pledge to be the owner of a former office tower block in the centre of Birmingham, said to be suitable for conversion to residential accommodation. The value given in the schedule is £6 million. The schedule to the Liquidators' email dated 20 October 2015 places a value of zero on the shares, in the absence of a valuation and confirmation that the holder of the shares, GAC Holdings Limited, would charge its interest in the shares ranking ahead of its shareholder loan. The evidence reveals that the property was purchased on 7 November 2014 for £1,375,000. The Orb Parties have put in evidence a valuation dated 27 August 2015, which gives various different valuations depending on the use and development of the tower. That which seems to me most pertinent is a valuation of £2,805,000 as its current value assuming planning permission for conversion to residential use. It is not clear that such planning permission has been granted. I attribute a value of £2 million to the shares in Sixup for present purposes.

Properties in Mallorca

172. The schedule to the Negative Pledge attributes a value of £7.1 million to three properties in Mallorca. Of these, the evidence from the Orb Parties is that the third has been sold by way of a reversal of the purchase, leaving only two properties. The Orb Parties have provided a valuation of the two remaining villas by a local real estate company dated 9 June 2015 giving a total value of €7.8m (approximately £6.1 million). No comparables are provided. The schedule to the Liquidators' email of 20 October 2015 valued all three properties at £3.15 million. The evidence suggests that the properties were bought in October 2014 for about £2.3 million and that £530,000 has been spent on refurbishment. For present purposes I attribute a value of £5 million to these properties.

Italian Properties

173. The schedule to the Negative Pledge identifies two Italian development properties, one near Lake Como and the other in the Umbrian/Tuscan borders. These are valued in the schedule at £5 million. The schedule to the Liquidators' email of 20 October 2015 values this property at £4.9 million. The Orb Parties support the valuation by two letters dated 21 May 2015 from "Fervidus White", a company with a registered address in Surrey whose expertise in Italian property valuation is not apparent. Those valuations total €6.7 million. They are very brief and do not draw attention to any comparables or identify the basis of the valuation. In the circumstances I do not feel able to put a value of more than £4 million on these properties.

Berrow

174. The schedule to the Negative Pledge includes an unencumbered development site in Berrow, Somerset, which is valued at £1.5 million. A subsequent valuation dated 27 August 2015 from property consultants in Somerset identifies the land value as being £1.26 million and the development value after planning permission and development, as £4.2 million. It appears that planning permission has been granted, although the development has not been undertaken. For present purposes I attribute a value of £2 million to this property.

Unless Order

175. I shall consider first whether this would be an appropriate case for the disclosure order to be in the form of an unless order if there were no outstanding unclean hands issues waiting to be resolved.

176. Mr Drake drew my attention to the following statement of Moore-Bick LJ in ***Marcan Shipping (London) Ltd v Kefalas*** [2007] EWCA Civ 463 (paragraph 36):

> " … before making conditional orders, particularly orders for the striking out of statements of case or the dismissal of claims or counterclaims, the judge should consider carefully whether the sanction being imposed is appropriate in all the circumstances of the case. Of course, it is impossible to foresee the nature and effect of every possible breach and the party in default can always apply for relief, but a conditional order striking out a statement of case or dismissing the claim or counterclaim is one of the most powerful weapons in the court's case management armoury and should not be deployed unless its consequences can be justified".

177. ***In Huscroft v P&O Ferries Ltd*** [2010] EWCA Civ 1483, Moore-Bick LJ said at paragraph 19 that before exercising the power in CPR 3.1(3) to make an order with a condition attached, the Court should identify the purpose of imposing a condition and satisfy itself that the condition represents a proportionate and effective means of achieving the intended purpose, having regard to the order to which it is to be attached.

178. Mr Drake also submitted that an unless order should not be made in the absence of a breach so serious that it would give rise to a risk of injustice in the adjudication of the trial of the issues in the action, such as would make a fair trial impossible, citing as authority ***Raja v Hoogstraten*** [2004] EWCA Civ 968, per Chadwick LJ (paragraphs 112-113). This proposition is unsound in principle and unsupported by the authority cited. It was the argument rejected by the Court of Appeal in ***Marcan Shipping v Kefalas***. The Court's orders are made with a view to promoting a fair and effective trial. In the context of freezing orders, the emphasis is on an effective trial, so as to enable the applicant's rights to be vindicated by enforcement, not merely judgment. The interest of a party in seeking an effective and realistic outcome to his litigation, if he succeeds, may be as important in the balance of things as the interest of the other party in preserving his right of access to trial despite his refusal to abide by orders of the court: see ***JSC BTA Bank v Ablyazov (No 8)*** [2013] 1 WLR 1331 per Rix LJ at paragraphs [182]-[185]. Moreover, the Court's orders are to be obeyed. The administration of justice depends on it. Maintaining public confidence in the Court's ability and willingness to secure compliance with its orders is an important and legitimate objective of an unless order in itself: ***ibid*** at paragraph [188]. The Court regularly makes debarring orders where the failure does not directly impact on the substantive issues which fall to be decided at trial. It does so, for example when it stays proceedings for failure to provide security for costs. It is well established that such an unless or debarring order may be justified by failure to comply with a freezing order and ancillary disclosure order: see for example ***Lexi Holdings Plc v Luqman*** [2007] EWCA Civ 1501; ***JSC BTA Bank v Ablyazov*** [2010] EWHC 2219 (Comm); ***JSC BTA Bank v Shalabayev*** [2011] EWHC 2903 (Ch); and ***JSC BTA Bank v Ablyazov (No 8)*** (supra).

179. There are a number of factors which have persuaded me that only by imposing an unless order can the Court render the March Order effective.

180. The Orb Parties have already failed twice to comply with the Disclosure Orders, in each case without any adequate apology or excuse:

(1) In respect of the February Disclosure Order, they failed to comply in the respects identified in Cooke J's March judgement.

(2) As I have held, in August 2015 and thereafter the Orb Parties simply ignored the Court's March Disclosure Order, despite the fact that it bore a penal notice, and advanced what they appreciated was a spurious argument as a fig leaf for doing so.

181. This high handed behaviour, and refusal to recognise the authority of the Court's orders, is of a piece with their abusive behaviour in other respects. There is a long history of behaviour by the Orb Parties in these and other proceedings which shows that they are prepared to mislead the Court and abuse the Court's processes for the improper collateral purpose of putting pressure on Mr Ruhan. It includes the following:

(1) the abusive bankruptcy proceedings: see below;

(2) the abusive attempted joinder of the Stevens parties despite having made an

over recovery by self-help: see the February 2015 Judgment of Cooke J;

(3) misleading Cooke J at the February hearing, and failing to come to the Court with clean hands, in the respects identified in his February 2015 Judgment;

(4) misleading Cooke J at the February hearing in the respects identified in his March 2015 Judgment and referred to above;

(5) breaches of the contractual undertakings in the respects identified by Cooke J in his March Judgment.

182. Moreover, it is now apparent from Ms Stickler's Fifth and Sixth Affidavits that the Orb Parties have misled the Court and breached the contractual and February Undertakings in a number of further respects.

(1) Ms Stickler has sought to mislead the Court in four separate passages in her Fourth Affidavit and Fourth Witness Statement about the Liquidators being satisfied that the Pledge Assets provide satisfactory security.

(2) Pro Vinci's contention that the balance of the GMSL sale proceeds (£24.6 million) was all spent in the ordinary course of business on Arena-related expenditure was simply untrue. This contention was advanced to the Court in the Stone Turn Report, served in purported compliance with the February Order, whose author made clear that his allocation of what expenditure was or was not Arena related was made simply in in reliance on what he was told by Pro Vinci. The following payments there categorised as Arena related can now be seen from Ms Stickler's recent Sixth Witness Statement not to have been Arena related:

(a) £5,586,329 paid to Devonhirst Investments Ltd, a company associated with Mr Cooper and Mr McNally, on 2 October 2014, just a week after the contractual undertakings had been given, was apparently a partial repayment of the £10 million paid by Mr Cooper and Mr McNally on 13 November 2013.

(b) £1,773,000 paid on 9 October 2014 to "*F.Flow Monex*", was the sterling equivalent of a bank loan of €2.3, million which was paid to discharge a mortgage on the Mallorca properties purchased by Dr Cochrane.

(c) £28,159 paid to Conor Mallorca Trading SL on 17 October 2014 was a deposit for building works on Dr Cochrane's Mallorca properties which Ms Stickler accepts was not Arena related.

(d) £317,465 transferred by Dr Cochrane to Mr Barton on 29 October 2014, was, according to Ms Stickler, part of the purchase price for the two Mallorca properties Dr Cochrane was buying from Mr Barton.

(e) £250,029 paid to James Hayes Gilsenan on 29 October 2014 and classified by Pro Vinci as Arena-related expenditure is now admitted by Ms Stickler not to have been Arena-related.

(f) £100,029 paid to Nicholas Greenstone on 5 November 2014, and classified by Pro Vinci as Arena-related expenditure describing it as "fees" and "provision of advice on corporate matters on structure" is now admitted by Ms Stickler not to be an Arena-related expense but rather part payment for Mr Greenstone's interest in a flat at Hamilton House.

(g) £500,029 was paid to Atticus Legal LLP on 5 November 2014. This was described as Arena-related expenditure, namely "*Trust re Ruhan children"*. In argument this was portrayed as a payment of which Mr Ruhan could not make any legitimate complaint because it was for his benefit. On analysis each of these characterisations can be seen to have been thoroughly misleading. Ms Stickler now states that Dr Cochrane is seeking the return of this money through legal proceedings and that in fact the money was to be held on trust for Dr Cochrane pending "*an eventual gift of the Funds to… Mrs Tania Richardson Ruhan*". The Defence of Atticus Legal in those proceedings indicates that Dr Smith and Mr Harvey met Mrs Ruhan, from whom Mr Ruhan is separated, in October 2014 to seek her assistance against Mr Ruhan in the current dispute, and that the £500,000 was advanced for this purpose.

(3) Two of the Hamilton House flats were purchased on 27 October 2014 (Flat 1) and 17 November 2014 (Flat 20) from the proceeds of the £67.323 million in breach of the contractual undertakings which had by then been given. Ms Stickler offers no explanation or excuse for the breach other than the irrelevant observation that the negotiations had started before the undertakings were given.

(4) £4 million from the GMSL escrow monies was paid to SMA in May 2015 in breach of the February Undertakings.

(5) Over £2.6 million from the sale of the Wolverhampton property by Bridgehouse Bradford (Isle of Man) Ltd was paid to SMA on or after 2 March 2015 in breach of the February Undertakings, £1 million of which was used to pay the adverse costs order made against the Orb Parties by Cooke J as a result of the February hearing.

183. In the respects identified above what was said in the Stone Turn Report, on the basis of the categorisation by Pro Vinci of what was Arena related expenditure, was false. It must have been known to be so when the Stone Turn Report was put forward by the Orb Parties as purported partial compliance with the Order. I can only conclude that these were deliberate attempts by the Orb Parties to mislead the Court. Moreover these payments were all made after and in breach of the contractual undertakings given to Mr Ruhan.

184. The same is true of another payment which, as a result of Ms Stickler's recent evidence, can be seen to carry an additional affront to the Court. On 29 December 2014 £36,000 was paid to Warrens Law. The Stone Turn Report identifies this as emanating from the money paid into Dr Cochrane's Coutts account and categorises it as an Arena related payment. Warrens Law were the lawyers acting

for Mr Harvey in bankruptcy proceedings heard by Ms Registrar Barber. This was the amount of the indemnity costs order she made in Mr Ruhan's favour against Mr Harvey. The Registrar was concerned with a bankruptcy petition presented by Skypark Ltd against Mr Ruhan, together with statutory demands by a number of companies including Bridgehouse Cannizaro. Skypark and Bridgehouse Cannizaro were companies controlled by the Orb Parties. At the same time Mr Harvey also presented a bankruptcy petition against Mr Ruhan. The petitions were presented on an expedited basis under s.270 of the Insolvency Act 1986.

185. At paragraph 109 of her judgment, the Registrar concluded that not only was the Skypark petition wholly lacking in merit, as was the demand upon which it was based, but also that expedited presentation of the Skypark petition was unwarranted. The expedited presentation resulted in substantive injustice to Mr Ruhan by depriving him of the opportunity to set aside the statutory demand, which would undoubtedly have occurred had Skypark not unjustifiably claimed to have been entitled to expedited presentation. Mr Ruhan was thereby subjected to the serious prejudice of having a bankruptcy petition recorded against his name affecting his standing, reputation and credit, which ought not to have occurred. At paragraph 110 she recorded that in the circumstances she would mark the disapproval of the Court by an award of indemnity costs.

186. At paragraphs 219 to 220, the Registrar dismissed Mr Harvey's petition and marked the Court's disapproval with an award of indemnity costs against him, for the same reasons and in similar terms as for the Skypark petition. The petition was wholly lacking in merit, as was the demand upon which it was based, and the expedited presentation of the Harvey petition was unwarranted. It was this award of indemnity costs which Dr Cochrane enabled Mr Harvey's solicitors to pay by paying them £36,000 from the Arena Assets, in breach of the contractual undertakings.

187. At paragraphs 141 to 144 the Registrar drew attention to a series of anomalies in the invoices which were said to support the statutory demand made by Bridgehouse Cannizaro. At paragraph 145 she recorded that viewed in the context of the evidence as a whole "they bear all the indicia of having been doctored."

188. At the end of her judgment she addressed the argument raised on behalf of Mr Ruhan that the petitions and statutory demands which formed the subject matter of the hearing, together with other demands which had either then been abandoned or not then served or pursued, formed part of an abusive and concerted attempt on behalf of Dr Smith, Dr Cochrane and the claimant companies to force Mr Ruhan to settle the main action, amounting to an improper collateral purpose. The Registrar concluded at paragraph 226 that the relevant question was whether the demands and petitions were being used as "instruments of oppression" and concluded on the evidence before her that they "clearly" were. She therefore concluded at paragraph 228 that regardless of her other grounds for setting aside the demands and petitions, it would have been appropriate to set them aside on the grounds of abuse and/or improper purpose alone.

189. So Dr Cochrane used money being claimed by Mr Ruhan, in breach of her contractual undertakings, to meet Mr Harvey's liability to Mr Ruhan for indemnity costs in bankruptcy proceedings brought for an improper and abusive purpose

against him; and misled the Court in response to the February Disclosure Order about the expenditure being an Arena related expense.

190. The previous failures to comply with the February and March Disclosure Orders are particularly serious because it is apparent from what has now emerged that the failure to comply has been used to facilitate breaches of the February Undertakings, in the ways identified above, which it was the very purpose of those orders to prevent.

191. In all the circumstances, I conclude, without any real hesitation, that an unless order is necessary to bring home to the Orb Parties the importance of complying with the Court's order. It is a necessary and proportionate sanction without which the Orb Parties would likely continue their pattern of behaviour in failing to comply if it did not suit them. The Orb Parties will be given a further period within which to comply with the March Disclosure Order, failing which their claim and defence to counterclaim will be struck out. This sanction will only apply in respect of the terms of the March Disclosure Order as made, not to the extensions and variations which result from my decision. It is not proportionate to apply the unless order sanction to terms with which there has been no previous failure to comply.

Should there be a variation and Unless Order now despite unresolved clean hands issues?

192. I return to the question whether the Court should grant the relief I have identified, in the form of a variation and unless order, pending resolution of the outstanding clean hands issues. This involves weighing the balance of prejudice to each side. I must consider on the one hand the prejudice to the Orb Parties if I make the order now and it turns out upon resolution of the clean hands issues that the Court should for that reason have denied Mr Ruhan the equitable relief I otherwise consider justified; and on the other hand the prejudice to Mr Ruhan if I decline to make the order now and it turns out upon resolution of the clean hands issues that they afford no grounds for denying Mr Ruhan the equitable relief to which he is entitled.

193. The potential prejudice to the Orb Parties is relatively limited. So far as disclosure is concerned, this will mostly have to be supplied in the process of disclosure in the action for the purposes of resolving the issues at trial, including Mr Ruhan's proprietary claim. That is due to take place in June 2016. The effect of an order for disclosure pursuant to the March Order, with my variations, is to bring forward the time for that disclosure by about two months. The only significant potential prejudice attached to doing so lies in the unless order sanction, and some potential additional burden in terms of time and expense. However I bear in mind that the disclosure should have been provided long before the Orb Parties became aware of the new unclean hands allegations, and would have been provided had they not advanced spurious reasons for refusing to comply with the March Order. So far as concerns the freezing relief, there is no real prejudice in freezing the Pledge Assets in the light of the undertaking given to the Liquidators not to deal with them in the Negative Pledge. Mr Drake accepted, when seeking an adjournment of all the applications, that the existing freezing relief capped at £67.323 million would have to remain in place pending the

resolution of the clean hands issues if they were not resolved now. The effect of my order has been to reduce the cap by £3 million. In any event such damage as can be shown to have been suffered as a result of freezing relief having wrongly been granted is covered by the cross undertaking in damages, which for the reasons given below I regard as adequately fortified.

194. On the other hand the potential prejudice to Mr Ruhan is serious. It would involve the Orb Parties successfully avoiding complying with the Court's order for over 18 months by raising spurious clean hands arguments shortly before this hearing. The Orb Parties would thereby have defeated the Court's ability to render a judgment in Mr Ruhan's favour effective and have facilitated their dissipation of assets in the face of the Court's order. The Orb Parties would have succeeded in neutering the effect of the February Undertakings, the March Disclosure Order and my variations to the order, all of which the Court considers to be necessary to protect the assets from the depredations of the Orb Parties in circumstances where they are not to be trusted. That would not only involve serious prejudice to Mr Ruhan, but would also be contrary to the public interest in the due administration of justice which requires that litigants in these Courts abide by the rules and comply with Court orders.

195. The balance comes down decisively in favour of making the order now notwithstanding the outstanding clean hands issues which are yet to be resolved.

Orb Parties' Application for further fortification of the Cross Undertaking

196. Cooke J ordered fortification of the cross undertaking up to an amount of £2.5 million, observing that "no one has been able to point to any real risk of loss". The Orb Parties' application for an increase in the fortification of the cross undertaking was based on the evidence of Ms Stickler as to losses which had been or would be suffered as a result of the Freezing Order being in place. She makes a general point that because Dr Cochrane has enjoyed success in property redevelopments, for example with Hamilton House, a freeze on assets is likely to cause loss by impeding her ability to invest in new projects and borrow against her existing assets to do so. The force of this assertion is somewhat diminished by the fact that Dr Cochrane was prepared to freeze the Pledge Assets by giving the Negative Pledge to the Liquidators; there is no evidence of other assets on which she would wish to borrow which are additionally caught by the Freezing Order.

197. Ms Stickler identifies three projects which she says have given rise to losses, or will do so, as a result of the Freezing Order. The first is a project next to Tate Modern on Bankside, in which the allegations of loss are speculative and in relevant respects entirely unsupported by documentary or other independent evidence. The second is a loss of "up to €10.75 million" in relation to a project to develop a Mallorcan property. Again the allegations of loss are speculative and in relevant respects entirely unsupported by documentary or other independent evidence. The third project is the development of an olive oil business in Mallorca at or including the Mallorcan properties which comprise Pledge assets. Once again the allegations of loss are speculative and in relevant respects entirely unsupported by documentary or other independent evidence; and in any event the Pledge Assets were to be frozen by reason of the Negative Pledge provided to the Liquidators. In the light of what I have said elsewhere in this judgment about Ms

Stickler's evidence, I am not prepared to treat her undocumented and uncorroborated assertions as a sound basis for concluding that there is a real prospect of the Freezing Order having caused or potentially causing significant loss to the Orb Parties.

198. There are two further reasons for not requiring any additional fortification of the cross undertaking, which I have already identified when addressing the argument that the March Order should be discharged due to the inadequacy of the existing fortification. The first is that by reason of the Isle of Man Settlement and transfer of Arena and Non Arena Assets, it is very likely, to put it at its lowest, that the Orb Parties have recovered significantly more than the maximum amount of their claim. It is very likely that the Orb Parties are therefore oversecured. Secondly, I would not have thought it right, in the exercise of my discretion, to refuse the injunctive and disclosure relief which is otherwise appropriate and necessary to render Mr Ruhan's arguable claim effective on the countervailing grounds that he is unable to provide assets to back his cross undertaking when that inability has arguably been caused by the very conduct of which he complains and for which he has a good arguable case for redress.