Neutral Citation Number: **[2022] EWCA Civ 1051**

Case No: CA-2021-003257, CA-2021-003257-A

IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
COMMERCIAL COURT (QBD)
Simon Salzedo QC (sitting as a Judge of the High Court)
[2021] EWHC 3166 (Comm)

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 26/07/2022

Before:
LORD JUSTICE PETER JACKSON
LORD JUSTICE MALES
and
LORD JUSTICE BIRSS

Between:

(1) ATHENA CAPITAL FUND SICAV-FIS S.C.A. **(2) ATHENA CAPITAL REAL ESTATE AND SPECIAL SITUATIONS FUND 1** **(3) WRM CAPITAL ASSET MANAGEMENT S.A.R.L.** **(4) RAFFAELE MINCIONE**	**Appellants/ Claimants**
- and -	
SECRETARIAT OF STATE FOR THE HOLY SEE	**Respondent /Defendant**

- -
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Charles Samek QC & Tetyana Nesterchuk (instructed by **Withers LLP**) for the **Appellants**
Charles Hollander QC, Samar Abbas Kazmi & James Bradford (instructed by **Hill Dickinson LLP**) for the **Respondent**

Hearing date: 6 July 2022
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Approved Judgment

Remote hand-down: This judgment was handed down remotely at 10.30am on 26 July 2022 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

Lord Justice Males:

1. The issue in this appeal is whether the judge was wrong to impose a case management stay of the appellants' claims for wide-ranging negative declarations, essentially to the effect that they have no liability to the respondent in connection with the sale to the respondent of an expensive property in London. Mr Simon Salzedo QC sitting as a Deputy High Court judge accepted that, if the appellants' claims are to be tried at all, they should be tried in England, but decided to impose a stay because the declarations claimed would serve no useful purpose. In short, that was because he took the view that the respondent had adopted a neutral position as to whether the appellants were under any liability and because the real dispute was not between the parties to this action but between the appellants and the prosecuting authorities responsible for the conduct of criminal proceedings against the fourth appellant in the Vatican City State.

The parties

2. The respondent/defendant ("the Secretariat") is the Secretariat of State for the Holy See. It is a governmental unit of the Holy See, which is the jurisdiction of the Pope, the head of the Roman Catholic Church. The Holy See exercises sovereign jurisdiction over the Vatican City State, and is recognized as a foreign sovereign in international law. The Secretariat assists the Pope in the exercise of his office. It has various administrative roles as well as responsibility for diplomatic relations with other States.

3. The Office of the Promoter of Justice (the "OPJ") is a separate emanation of the Holy See. It is responsible for investigating and prosecuting crimes on behalf of the state. It is not a party to this action and is independent of the Secretariat.

4. The fourth appellant/claimant, Mr Raffaele Mincione, is an individual holding Swiss and British nationality. He is a defendant to criminal proceedings brought by the OPJ in the Vatican City Court. He is accused of having misused his position as a financial adviser to the Secretariat in order to defraud it and embezzle money from it over a period of years going back to at least 2014.

5. For practical purposes Mr Mincione exercises control over the first and third appellants/claimants ("Athena Capital" and "WRM"), both of which are entities organised under the laws of Luxembourg engaged in investment management. The named second appellant/claimant ("RSS1") is not in fact a separate legal person at all, but is a sub-fund of Athena Capital. In that capacity it was the sole legal and beneficial owner of all the issued shares in 60 SA-2 Limited, which was the sole legal and beneficial owner of all the shares in 60 SA-1 Limited, which was the sole legal and beneficial owner of all the shares in 60 SA Limited. 60 SA Limited was the legal and beneficial owner of a freehold property at 60 Sloane Avenue in London (the "Property").

6. Athena Capital and WRM are not defendants to the Vatican criminal proceedings and are not themselves accused of wrongdoing in them, although they are named in the proceedings in connection with the allegations against Mr Mincione.

The facts

7. For the purpose of this appeal the following summary of the facts will suffice. Greater detail can be found in the judge's judgment.

The Transaction

8. Although the allegations faced by Mr Mincione in the Vatican criminal proceedings range more widely, the claims in this action are concerned with a transaction whereby the Secretariat became the indirect 100% owner of the Property ("the Transaction"). The Transaction can be summarised as follows.

9. Prior to the Transaction, the Secretariat held shares in a sub-fund of Athena Capital called the Global Opportunities Fund ("the GOF"), which held 45% of the units in RSS1. It held, therefore, an indirect interest in the Property. The circumstances in which it acquired this interest appear to be in issue in the Vatican criminal proceedings, but are not (or at any rate not yet) relevant in this action. According to the appellants, the Secretariat wanted to become the 100% owner of the Property and, to that end, it was agreed that it would purchase all the shares of 60 SA-2 from RSS1 for a consideration of £40 million plus shares in the GOF; it was agreed also that the Secretariat would act through a Luxembourg agent, Gutt SA.

10. The Transaction was implemented through several documents, including a Framework Agreement and a Share Purchase Agreement ("the SPA").

11. The Framework Agreement was dated 22nd November 2018. It was made between (1) Gutt SA as "Purchaser", (2) Athena Capital as "Seller", and (3) the Secretariat, represented by the Head of its Administrative Office, Mgr. Alberto Perlasca. Recitals to the Framework Agreement stated that the Property had become "a strategic asset" for the Secretariat, with "significant upside potential"; and that it was intended that a sale and purchase agreement would be concluded for a consideration consisting of a combination of cash and shares in the GOF so that the Secretariat would become the indirect 100% owner of the Property.

12. Clause 11 of the Framework Agreement provided for English law and the exclusive jurisdiction of the English courts:

> "11.1. This Framework Agreement is governed by, and shall be construed in accordance with, the laws of England.
>
> 11.2. Any dispute arising in connection with this Framework Agreement shall be submitted to the competent courts of England."

13. The Framework Agreement contained various acknowledgements, confirmations, agreements, waivers and releases by the Secretariat which were stated to be given not only to Athena Capital, but also for the benefit of its managers, principals, representatives and consultants. Although Mr Mincione is not named as a party to the Framework Agreement, it is the appellants' case (and was not disputed for the purpose of the application before the judge or this appeal) that he is entitled to enforce these terms pursuant to section 1 of the Contracts (Rights of Third Parties) Act 1999.

14. The SPA was dated 3rd December 2018. It was made between (1) Athena Capital as "Seller" and (2) Gutt SA as "Buyer". It too provided in wide terms for English law and exclusive jurisdiction:

> "11.1 This Agreement and any dispute or claim arising out of or in connection with it or its subject matter, existence, negotiation, validity, termination or enforceability (including non-contractual disputes or claims) shall be governed by and construed in accordance with English law.
>
> 11.2 Each Party irrevocably agrees that the Courts of England shall have exclusive jurisdiction in relation to any dispute or claim arising out of or in connection with this Agreement or its subject matter, existence, negotiation, validity, termination or enforceability (including non-contractual disputes or claims)."

The Vatican criminal proceedings

15. One of the allegations against Mr Mincione in the Vatican criminal proceedings is that, as a result of the corruption of Secretariat officials, the Transaction involved a very substantial overpayment by the Secretariat in order to acquire its 100% interest in the Property, with the surplus monies being diverted to the personal use of Mr Mincione and his associates. It is this allegation which has led to the present action in the English court. In a Letter Rogatory sent by the OPJ to the Swiss Federal Prosecutor on 19th December 2019, the OPJ alleges that its investigations focusing on the Property have shown damage to the assets of the Secretariat quantified at no less than €300 million. Those investigations included a search of the Secretariat's offices on 1st October 2019, the suspension of Vatican officials and, subsequently, the seizure of computers and documents in February 2020 from the home of Mgr Perlasca who had signed the Framework Agreement on behalf of the Secretariat.

16. These matters were widely reported in the Italian and international press. The Pope himself is reported to have described the Transaction as "a scandal". Mr Mincione for his part has given press interviews defending the Transaction.

17. The OPJ sought to interview Mr Mincione about the Transaction and an interview was arranged for 19th June 2020. However, Mr Mincione did not attend. Instead his lawyers filed what was described as a "Defence Brief" asserting his innocence of all the allegations against him and communicating that this action in England had been commenced, as it was by the issue of the claim form on 16th June 2020. The Defence Brief continued:

> "The aim of the action is to obtain a Declaratory Relief judgment which will achieve, among other things, the recognition and confirmation of the rights and obligations of each of the parties based on the Framework Agreement, the SPA, the Transfer Agreement, the Power of Attorney and, more generally, their validity and binding nature on the parties."

18. The Vatican criminal proceedings were formally commenced a year later, on 1st July 2021, by the issue of an indictment by the OPJ charging Mr Mincione and 13 others

with serious offences, including in relation to the Transaction. On 22nd July the Secretariat formally joined the criminal proceedings as a "*parte civile*" for the purpose of claiming an indemnity in relation to the damage incurred as a result of the criminal conduct alleged in the indictment. However, this proved to be a false start. On 6th October 2021 the Vatican City Court upheld objections by the defendants based on the fact that they had not been interviewed or received a written charge. The indictment was returned to the OPJ. There is a dispute between the parties, which it is unnecessary to resolve, as to the legal effect of this on the status of the criminal proceedings against Mr Mincione. The practical effect was that at the time of the hearing before Mr Salzedo in the Commercial Court there were no active criminal proceedings against Mr Mincione in the Vatican City Court. However, I would attach no significance to this. It was inevitable that the indictment would be re-issued and highly likely that the Secretariat would once again become a *parte civile* to the proceedings.

19. That is indeed what happened. Mr Mincione was invited to appear in order to comment on the allegations against him, but declined to do so. On 25th January 2022 the OPJ issued a fresh indictment against Mr Mincione and the other defendants, whereby he was re-indicted for the 10 charges for which he had previously been charged. On 15th February 2022 the Secretariat filed a new application to be admitted as a *parte civile*, which was approved by the Court on 1st March 2022. The terms of the new indictment and the Secretariat's application to be admitted as a *parte civile* are identical in all material respects to those originally in place.

The claims in this action

20. The appellants' Particulars of Claim sets out the Transaction and its component documents, including the Framework Agreement and the SPA. It alleges that the Secretariat has made, or has appeared to make, numerous claims about the Transaction, including that it was not a genuine and/or lawful transaction. As a result the appellants claimed as many as 42 separate declarations, together with an indemnity or damages in respect of all loss or damage incurred arising out of any claim brought against them by the Secretariat (although there are no particulars of any such loss or damage). The declarations sought essentially track the terms of the Framework Agreement and the SPA. Although some of these declarations are couched in positive language (e.g. a declaration that the appellants acted in good faith in connection with the Transaction), their cumulative effect is that the appellants have no liability to the Secretariat in respect of the Transaction. The claim is, therefore, properly to be regarded as in substance a claim for negative declaratory relief.

Procedural history

21. Service of the proceedings on the Secretariat was effected in accordance with the State Immunity Act 1978 on 14th January 2021. On 28th April 2021, having filed an acknowledgement of service, the Secretariat filed an application challenging the jurisdiction of the English court. In the alternative it sought a stay of the proceedings until the conclusion of the criminal investigation being conducted by the OPJ against Mr Mincione. It was this application that came before the judge on 25th and 26th October 2021. The Secretariat did not claim to be immune from the jurisdiction of the English court.

The judgment

The Secretariat's central argument

22. After setting out the facts the judge identified what he described as the Secretariat's "central argument". This was as follows:

> "56. The Defendant's case is that at all material times (namely, when these proceedings were issued and up until the hearing of the Application), the only relevant or real dispute was and is between the Claimants (whom the Defendant contends are controlled by Mr Mincione) and the OPJ and concerns whether or not Mr Mincione is guilty of the criminal offences which the OPJ has alleged against him and others. Accordingly, the Defendant argues that the purpose and/or effect of these proceedings is to subvert a criminal process, that there is no real present civil dispute to be determined between the parties to this claim and that it is an abuse of the process of this court to seek to use it to influence criminal proceedings in another state."

23. He added at [57] that the Secretariat's position was that "the [Secretariat] itself is essentially neutral about the disputed issues, because it is awaiting their outcome in the criminal proceedings to discover whether it has been the victim of the serious acts of dishonesty which are alleged against former officers of the [Secretariat] who are alleged to have conspired with Mr Mincione and others", and that "the party who is actually in opposition to the Claimants in respect of the questions raised in these proceedings is the OPJ".

24. The judge accepted that characterisation of the Secretariat's position. Dealing specifically with the fact that the Secretariat had applied to be a *parte civile* in the criminal proceedings, the judge concluded:

> "70. I have not received any expert evidence of Italian or Vatican State law which would enable me to make any concluded finding as to the status of a civil party to criminal proceedings in the Vatican State. Based on the words of the document I have set out above, my understanding is that by seeking to register as a *parte civile*, or even if it has in fact done so, the Defendant has not taken a position that the charges are true, but merely asserted a right to compensation in the event that they are proved."

25. He added that by joining the criminal proceedings as a *parte civile*, the Secretariat had not (or had not yet) made a claim in those proceedings:

> "73. … As I read the relevant legal framework, this remains a contingent claim by the Defendant which will be advanced if and when the relevant facts are established in the criminal case."

26. It is important to note that the judge's understanding of the effect of the Secretariat's having become a *parte civile* was expressly stated to be based on the words of the document by which it had applied to join the proceedings. We are therefore in as good a position as the judge to read and understand those words.

27. Despite the Secretariat's joining in the criminal proceedings, therefore, the judge's conclusion on this central argument was that:

> "74. Taking all in all, it seems to me that the Defendant has adopted a neutral position in relation to the allegations against Mr Mincione and others. As an organ of the same state which is investigating the allegations, it has naturally not sought to play them down, and indeed, it has welcomed the fact of an investigation. The Defendant's public pronouncements are consistent with a view that there appear to be questions which it is proper for the OPJ to investigate, but it has gone no further than that."

28. As will be seen, this conclusion was fundamental to the judge's approach to the question of a case management stay.

The appellants' motivation

29. The judge dealt next with the appellants' subjective motivation for bringing the English proceedings. Mr Mincione had given evidence of prejudice suffered as a result of the allegations made against him, which would continue so long as the lawfulness and validity of the Transaction was disputed. The judge accepted that this was one reason why the appellants had commenced these proceedings, but in view of his conclusion on the Secretariat's "central argument" did not accept that it was the Secretariat who had challenged the lawfulness and validity of the Transaction. Rather, it was the OPJ.

30. But the judge also found that it was part of the appellants' intention that the fact of the English proceedings, together with any favourable judgment obtained, should be used in Mr Mincione's defence of the Vatican criminal proceedings. As to that, however, the judge found that the English proceedings (including any judgment in favour of the appellants) would have no effect on the criminal process before the Vatican City Court. The English action was intended by the appellants as "a counterblast to the media interest in the OPJ investigation", but would not in fact interfere with the criminal process.

31. Having dealt with these preliminary matters, the judge addressed the issues for decision. I summarise next his decisions on those issues which remain relevant. Other issues with which the judge had to deal have now fallen away.

Issue 1: Is there a good arguable case that Brussels Recast Regulation Article 25 governs some or all of the claims?

32. The judge concluded that there was a good arguable case that all of the appellants' claims (apart from any claims by Mr Mincione as a non-party to the SPA to the benefit of any declarations deriving from the SPA as distinct from the Framework Agreement) were claims to which Article 25 of the Brussels Recast Regulation ("the Judgments Regulation") applied. This meant that the English court had exclusive jurisdiction over those claims. This conclusion has not been challenged on appeal. Nor has it been suggested that the fact that Mr Mincione cannot claim the benefit of any declarations deriving from the SPA should have any effect on the outcome of the appeal.

Issue 3: should the claims be dismissed at this stage?

33. The Secretariat submitted that the claims should be dismissed on the grounds that (1) the relief sought would interfere with a criminal investigation into the Transaction, (2) the relief sought would serve no useful purpose, (3) the relief sought amounted to interference with the legitimate acts of a foreign state and would be contrary to comity, (4) the matters forming the basis of the Particulars of Claim did not constitute a justiciable civil dispute, and/or (5) the relief sought, and the appellants' subsequent conduct, amounted to an abuse of the court's process.

34. The judge rejected these submissions, dealing with them in a different order. The Secretariat does not challenge his conclusions.

Interference with a criminal investigation/legitimate acts of a foreign state

35. The judge concluded that the proceedings in England would involve the determination of some of the factual issues likely to be raised by any criminal proceedings in the Vatican City Court, but that it would be wrong to describe the relief sought here as a usurpation of the function of the Vatican criminal courts or prosecuting authorities. In any event, as already found, the English claims would not in fact interfere in any relevant sense with the criminal process in the Vatican and there would be no breach of comity.

Justiciability/abuse

36. The judge described the terms of the Particulars of Claim as "juridically unremarkable" and found that they plainly identified a justiciable civil matter. The proceedings were not abusive as the appellants genuinely wished to obtain the relief sought in order to achieve public vindication from the charges made against Mr Mincione which had affected the attitude of regulators and trade associations to all of the appellants.

Utility

37. It was common ground that the court would not grant a declaration unless to do so would serve a useful purpose and that this was particularly so in the case of negative declarations. The judge referred to the summary by Mrs Justice Cockerill in *BNP Paribas SA v Trattamento Rifiuti Metropolitani SpA* [2020] EWHC 2436 (Comm) at [78], including that in general a declaration will not be granted on a purely hypothetical question where there is no real and present dispute between the parties, and to the decision of this court in *Messier-Dowty Ltd v Sabena SA* [2000] 1 WLR 2040.

38. The judge's conclusions on this question of utility were of critical importance to his decision to impose a stay. Accordingly I set out the relevant paragraphs in full:

> "176. It is at this stage that the findings I have made in relation to the Defendant's central argument become important. On the evidence before this Court, the real adversary of the Claimants in relation to the Transaction is not the Defendant, but other organs of the Holy See or the Vatican State, in particular, the OPJ. I readily accept the Claimants' submission (supported by reference to *National Bank of Khazakstan v Bank of New York*

Mellon [2017] EWHC 3512 (Comm) at [48]) that the Defendant's neutrality is sufficient to constitute a 'dispute' for the purposes of the Court's jurisdiction to grant declarations. But that does not address whether such declarations would serve a useful purpose or whether they would be futile and risk creating confusion, as Cockerill J put it in the *Trattamento* case.

177. The Defendant submitted that it does not have access to its own documents, which have been seized by the OPJ, that it will not be in a position to call any of the key factual witnesses, and that it does not have a position on whether its officers acted in the Transaction properly on the Defendant's behalf or in breach of duty and trust (using those terms loosely, as English law may not govern some or all of the issues arising).

178. The points about documents and witnesses are less powerful now that the Defendant has access to documents through its participation as a *parte civile*. However, I consider that determination of the issues as between the Claimants and the Defendant would serve no useful purpose because it is not the Defendant who is primarily interested in them at this stage and because there is another party who is interested, but who will not be before the Court, namely the OPJ. Given that the OPJ is acting in its capacity as the official investigator and prosecutor of a foreign state, there would be no reality to any suggestion that it ought to join the English proceedings. To grant declarations which are primarily aimed at the position of a third party who is not before the court, cannot be brought before the court and who cannot reasonably be expected to come before the court voluntarily is, in my judgment, a paradigm example of a claim which is barred by the principle of utility. In these circumstances, it is almost adventitious that another defendant presents itself as one over whom the court has jurisdiction and that event should not be permitted to overwhelm the reality of the situation.

179. Does this point reach the level of a determination that there is no real prospect of any of the claims for declarations succeeding? I must bear in mind not only the evidence now available, but also the evidence that can reasonably be expected to be available at trial. Whether a declaration will be granted at trial will depend on all the circumstances that pertain at the time of trial. In that connection, I accept that it is reasonably possible that the picture might look different at trial, not so much because the evidence before me is incomplete without disclosure and oral evidence, but because the situation might reasonably be expected to change in important respects. In particular, it is possible that the prosecution of Mr Mincione might be dropped, or it might fail or succeed. It is also possible, as far as the evidence before me reveals, that the Defendant itself might take a partisan position either in the course of its *parte civile* action or in some

> other way. If events of that sort occur, then they might change the picture and bring it within the bounds of reasonable likelihood that the claim could succeed. For these reasons, I conclude that I ought not to grant summary judgment for the Defendant."

39. Accordingly the judge came close to dismissing the claims altogether on the ground that the declarations would serve no useful purpose by reason of the neutral stance adopted by the Secretariat in relation to them. In the end, however, he did not dismiss the claims because of the possibility that circumstances might have changed by the time of the trial.

Issue 6: stay of proceedings

40. Finally, the judge dealt with the question of a case management stay, recognising that a claim should only be stayed on such grounds in "rare and compelling circumstances" (*Reichold Norway ASA v Goldman Sachs International* [2000] 1 WLR 173) and, in a case where there is an exclusive jurisdiction clause in favour of England, where there are "exceptionally strong grounds" for a stay (*Mazur Media Ltd v Mazur Media GmbH* [2004] EWHC 1566 (Ch), [2004] 1 WLR 2966 at [70]). He held, however, that there should be a stay in this case for two reasons. The first was that the Secretariat was "hamstrung from participating fully by its proper role as a neutral party awaiting the outcome of a criminal investigation of alleged crimes in relation to which it would be the alleged victim, but of which it has no actual direct knowledge". This meant that it would be "neither just nor fair to require the [Secretariat] to answer these claims at the moment". The second, albeit a "relatively minor additional factor", was that some of the Secretariat's material documents had been retained by the OPJ. The judge accepted, however, that the Secretariat had access to the documents taken by the OPJ through its participation as a *parte civile* in the criminal proceedings.

41. The judge accepted that "if the claims under the contract are to be tried at all, then they should be tried in England" pursuant to the exclusive jurisdiction clauses in the Framework Agreement and the SPA, but held that as a matter of fairness "they should not be tried until such time as the Secretariat is freed from the impediment that I have mentioned above or has become in substance an appropriate respondent to the Claimants' claims for declaratory relief". He declined the Secretariat's request that the stay should only come to an end upon resolution of the Vatican criminal proceedings and ordered instead that the proceeding should be stayed until there was a material change of circumstances, with materiality to be judged by reference to the reasons given in his judgment.

42. Thus the judge expressly recognised that one circumstance in which it would or might be appropriate to lift the stay would be if the Secretariat ceased to maintain a position of neutrality in relation to the appellants' claims regarding the propriety of the Transaction.

The parties' submissions

43. Mr Charles Samek QC for the appellants emphasised the judge's decisions that: (1) the English court had exclusive jurisdiction over the claim pursuant to Article 25 of the Judgments Regulation; (2) the claim gave rise to a justiciable civil dispute; (3) as it had

withstood an application for reverse summary judgment, it was a claim with a real prospect of success; (4) it would not interfere with the Vatican criminal proceedings; and (5) it was not abusive because the appellants had a genuine wish to obtain public vindication. In those circumstances he submitted that while the judge had referred to the demanding tests applicable to a stay of proceedings on case management grounds, he could not have applied those principles correctly: the effect of his decision had been to circumvent the Regulation and to deprive the appellants of their right of access to a court having jurisdiction over *bona fide* claims, contrary to Article 6 ECHR.

44. While these submissions ranged widely, in oral argument Mr Samek concentrated his fire on the judge's characterisation of the Secretariat's position as one of neutrality. He submitted that in the light of the terms in which the Secretariat had become a *parte civile* in the Vatican criminal proceedings, this characterisation was untenable. Accordingly the only basis on which the judge had decided to stay the claim was flawed.

45. For the Secretariat Mr Charles Hollander QC pointed out that the judge had held that, as matters stood, the claim was bound to fail because the declaration sought would serve no useful purpose; he had only allowed it to survive at all because of the possibility that circumstances might change in the future. The grant of a stay, rather than dismissing the claim altogether, was actually a benefit to the appellants rather than a detriment.

46. Mr Hollander submitted that the appellants' submissions confused jurisdiction and utility. The court had jurisdiction over the claim, but was entitled to deal with the claim in accordance with the court's procedural rules and case management powers. As the court had determined that the claim would fail on its merits as matters presently stood because the declarations lacked utility, the judge was entitled in accordance with those rules to order that it should not proceed unless circumstances changed. The judge had been right to find that the appellants' real adversary was the OPJ and not the Secretariat, a finding which was open to him on the evidence: in particular, joining in the criminal proceedings as a *parte civile* did not involve taking a partisan position in those proceedings.

47. Mr Hollander emphasised also that the judge had found that the appellants' principal purpose in commencing proceedings here, which was to interfere with the Vatican criminal proceedings, could not be achieved. In that sense also, therefore, the declarations lacked utility: they are not capable of achieving the appellants' principal objective. Moreover, the OPJ's allegations regarding the Transaction formed only a relatively small part of the allegations in the criminal proceedings as a whole. However, while Mr Hollander floated these points, they were not the basis on which the judge decided the case and there is no Respondent's Notice. I therefore say no more about them.

Case management stays

48. The court has power to stay proceedings "where it thinks fit to do so". This is part of its inherent jurisdiction, recognised by section 49(3) of the Senior Courts Act 1981. The statute imposes no other express requirement which must be satisfied. This is a wide discretion. The test is simply what is required by the interests of justice in the particular case.

49. Such a stay may be permanent or temporary and may be imposed in a very wide variety of circumstances. Obvious examples include that proceedings may be stayed in order to await the decision of an appellate court in another case; or until a party complies with an order to provide security for costs; or to enable mediation to take place. Cases which speak of "rare and compelling circumstances" (or similar phrases) being necessary have nothing to do with these kinds of commonplace example. They have generally been concerned with stays which have been imposed in order to allow actions in other jurisdictions to proceed, the usual assumption being that the outcome of the foreign proceedings will or may render the proceedings here unnecessary.

50. That was the position in *Reichold Norway ASA v Goldman Sachs International*. The claimant had two possible claims by which to obtain compensation for loss allegedly suffered as a result of purchasing a business. The first was a relatively straightforward claim against the seller of the business, which was subject to arbitration in Norway. The second was a much more complex but overlapping claim against the defendant for negligent mis-statement. Mr Justice Moore-Bick decided to stay the English proceedings against the defendant pending the final determination of the Norwegian arbitration. He did so on case management grounds, in particular because the claimant had a straightforward remedy in the arbitration which, if its claim was good, would enable it to recover in full for the loss which it had suffered and which would be achieved more quickly and cheaply.

51. This court upheld Mr Justice Moore-Bick's exercise of discretion. Despite dicta in *Abraham v Thompson* [1997] 4 All ER 362, a claimant does not have an unfettered right to pursue a claim to judgment, subject only to considerations of abuse of process, on a timetable of its own choosing; rather, the court has power to control its own business and there may be circumstances in which it is in the interests of justice for the pursuit of a claim to be deferred until something else has happened. Lord Bingham CJ (with whom Lord Justices Otton and Robert Walker agreed) recognised that the court would need to bear in mind Article 6 ECHR. Referring to the risk that granting a stay would open the door to a flood of similar applications, he observed that:

> "It will very soon become clear that stays are only granted in cases of this kind in rare and compelling circumstances. Should the upholding of the judge's order lead to the making of unmeritorious applications, then I am confident the judges will know how to react."

52. However, the test which Mr Justice Moore-Bick had actually applied, and which this court held to be correct, was not whether there were rare and compelling circumstances, but whether a stay was in the interests of justice (see 179B-C):

> "The court's power to stay proceedings is part of its inherent jurisdiction which is expressly preserved by section 49(3) of the [Senior Courts] Act 1981. It is exercised under a wide range of circumstances to achieve a wide variety of ends. Subject only to statutory restrictions, the jurisdiction to stay proceedings is unfettered and depends only on the exercise of the court's discretion in the interests of justice. I am in no doubt, therefore, that I do have jurisdiction to stay the present proceedings; the

> question is whether it would ever be right to do so in a case such as the present, and if so under what circumstances."

53. The expression "rare and compelling circumstances" has been taken up in later cases and sometimes treated as if it were in itself the applicable test in such cases: e.g. *Konkola Copper Mines Plc v Coromin* [2006] EWCA Civ 5, [2006] 1 All ER (Comm) 437 at [63], a reinsurance claim where a stay of Part 20 proceedings was refused: it would have been unfair to leave the defendant insurer unable to seek to pass on the claim being made against it in the English proceedings until after the conclusion of proceedings against other insurers in Zambia; and *The Princess of the Stars* [2012] EWCA Civ 1341, [2013] 1 All ER (Comm) 495, where a stay of a reinsurer's claim for a declaration of non-liability until after the conclusion of proceedings against the insurer in the Philippines was refused. As Mr Justice Flaux explained in *Standard Chartered Bank (Hong Kong) Ltd v Independent Power Tanzania Ltd* [2015] EWHC 1640 (Comm), [2016] 1 All ER 233 at [128], the question whether to grant a stay in such cases is concerned with the order in which decisions should be made.

54. Other cases have considered whether a stay should be granted in cases to which the Judgments Regulation (or its predecessors) applies. Considerations of *forum conveniens* are irrelevant to the allocation of jurisdiction under the Regulation. In cases where the English court has jurisdiction under the Regulation, it cannot be a sufficient ground to impose a stay that the dispute would be more conveniently decided in another Regulation jurisdiction. So to decide would circumvent the Regulation, as Mr Justice Lawrence Collins explained in *Mazur Media Ltd*. That would be so *a fortiori* in a case where the English court has jurisdiction under Article 25 by virtue of an exclusive jurisdiction clause. In such a case it is a very weighty factor that a stay of English proceedings in favour of a foreign jurisdiction would be contrary to the terms of the Regulation and the parties' agreement. As Mr Justice Lawrence Collins put it:

> "69. In fact the court has an inherent discretion, reinforced by the Supreme Court Act 1981, section 49(3), to stay proceedings, whenever it is necessary to prevent injustice. But the power cannot be used in a manner which is inconsistent with the Judgments Regulation. Section 49 of the Civil Jurisdiction and Judgments Act 1982 provides that nothing in that Act prevents the court from exercising its power to stay, where to do so is not inconsistent with the Brussels or Lugano Conventions. That section has not been amended to refer to the Judgments Regulation, because the Regulation is directly applicable without national legislation. Where the court has jurisdiction under the Judgments Regulation, the power of the court to stay proceedings cannot be used simply because another Regulation State is the *forum conveniens*: Dicey and Morris, *Conflict of Laws*, 13th ed (2000), para 11-012.
>
> 70. It follows that the power should not be used simply because the claim in the English proceedings could be made, or more appropriately made, in the German insolvency. I would accept that there is a power to stay English proceedings in favour of insolvency proceedings in a Regulation state to prevent injustice, but it would require exceptionally strong grounds for

> the English court to exercise that power, particularly where (as regards the contractual claim) the parties have conferred exclusive jurisdiction on the English court. Otherwise, the court would be circumventing the Judgments Regulation by introducing *forum non conveniens* principles by the back door."

55. This reasoning has also been taken up in later cases. In *MAD Atelier BV v Manès* [2020] EWHC 1014 (Comm), [2020] QB 971 Mr Justice Bryan summarised the position in these terms and his summary was adopted by Mr Justice Butcher in *Banca Intesa Sanpaolo SpA v Commune di Venezia* [2020] EWHC 3150 (Comm):

> "82. The court has a discretion to order a stay to await the outcome of foreign proceedings in the exercise of its case management powers pursuant to section 49(3) of the Senior Courts Act 1981 and/or CPR r.3.1(2)(f). The principles relevant to the exercise of this discretion can be summarised as follows:
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> (1) The court has a discretion to stay an action pending the resolution of a claim pending in another forum, but a stay should only be granted in 'rare and compelling circumstances': *Reichhold Norway ASA v Goldman Sachs International* [2000] 1 WLR 173, 186).
>
> (2) 'Exceptionally strong grounds' are required to justify a stay on case management grounds where the parties have conferred exclusive jurisdiction on the English court: *Mazur Media Ltd v Mazur Media GmbH* [2004] 1 WLR 2966, paras 69-70 (Lawrence Collins J); *Jefferies International Ltd v Landsbanki Islands HF* [2009] EWHC 894 (Comm) at [26]. The danger of inconsistent judgments is not a legitimate consideration amounting to exceptional circumstances and does not justify a stay in a case where the court has jurisdiction under Parliament and Council Regulation (EU) No 1215/2012 ('BIR'), especially exclusive jurisdiction: *Mazur*, para 71.
>
> (3) The court's power to stay proceedings cannot be used in a manner which is inconsistent with Council Regulation (EU) No 1215/2012 ('the Judgments Regulation'): *Mazur*, para, 69; *Jefferies*, para 26. A defendant should not be permitted 'under the guise of case management, [to] achieve by the back door a result against which the ECJ has locked the front door': *Skype Technologies SA v. Joltid Ltd* [2009] EWHC 2783 (Ch), [2011] IL Pr 8, para 22 (Lewison J).
>
> (4) A stay will not, at least in general, be appropriate if the other proceedings will not bind the parties to the action stayed or finally resolve all the issues in the case to be stayed, or the parties are not the same: *Klöckner Holdings GmbH v. Klöckner Beteiligungs GmbH* [2005] EWHC 1453 (Comm) at [21] (Gloster J)."

56. The Supreme Court discussed briefly the court's power to order a stay where there are parallel proceedings in another jurisdiction in *Unwired Planet International Ltd v Huawei Technologies (UK) Co Ltd* [2020] UKSC 37, [2020] Bus LR 2422:

> "99. We therefore turn to case management. The English courts have wide case management powers, and they include the power to impose a temporary stay on proceedings where to do so would serve the Overriding Objective: see CPR 1.2(a) and 3.1(2)(f). For example a temporary stay is frequently imposed (and even more frequently ordered by consent) in order to give the parties breathing space to attempt to settle the proceedings or narrow the issues by mediation or some other form of alternative dispute resolution. A temporary stay may be ordered where there are parallel proceedings in another jurisdiction, raising similar or related issues between the same or related parties, where the earlier resolution of those issues in the foreign proceedings would better serve the interests of justice than by allowing the English proceedings to continue without a temporary stay: see *Reichhold Norway ASA v Goldman Sachs International* [2000] 1 WLR 173. But this would be justified only in rare or compelling circumstances: see per Lord Bingham CJ [2000] 1 WLR 173 at 185-186, and *Klöckner Holdings GmbH v Klöckner Beteiligungs GmbH* [2005] EWHC 1453 (Comm)."

57. Finally, the expectation that it will only be in "rare and compelling circumstances" that such a stay will be granted was reiterated by this court in two very recent cases: see *Municipio de Mariana v BHP Group (UK) Ltd* [2022] EWCA Civ 951 at [373]; and *Nokia Technologies OY v Oneplus Technology (Shenzhen) Co Ltd* [2022] EWCA Civ 947 at [67].

58. It is interesting to see how an observation by Lord Bingham that there was no need to be concerned about a "floodgates" argument because *in fact* it would only be in rare cases, where there was a compelling reason to do so, that a stay of English proceedings would be granted in order to await the outcome of proceedings abroad has been elevated almost into a legal test that "rare and compelling circumstances" must exist before the apparently unfettered jurisdiction to grant such a stay can be exercised.

59. There is, as it seems to me, no reason to doubt that it is only in rare and compelling cases that it will be in the interests of justice to grant a stay on case management grounds in order to await the outcome of proceedings abroad. After all, the usual function of a court is to decide cases and not to decline to do so, and access to justice is a fundamental principle under both the common law and Article 6 ECHR. The court will therefore need a powerful reason to depart from its usual course and such cases will by their nature be exceptional. In my judgment all of the guidance in the cases which I have cited is valuable and instructive, but the single test remains whether in the particular circumstances it is in the interests of justice for a case management stay to be granted. There is not a separate test in "parallel proceedings" cases. Rather, considerations such as the existence of an exclusive English jurisdiction clause and the danger of circumventing a statutory scheme for the allocation of jurisdiction (such as the Judgments Regulation) will be weighty and often decisive factors pointing to where the interests of justice lie.

Negative declarations

60. The English courts have always been cautious about granting negative declarations (i.e. declarations that the claimant is not under any liability) because of concern about possible abuse and the need to ensure that such declarations serve a useful purpose. When they do serve such a purpose, however, there is no reason why they should not be granted. Thus the court has jurisdiction to grant a negative declaration, adopting as a matter of discretion a pragmatic approach to the question of utility, as explained by Lord Woolf MR (with whom Lady Justice Hale and Lord Mustill agreed) in *Messier-Dowty Ltd v Sabena SA* [2000] 1 WLR 2040. After discussing the judgments of Lord Denning MR in this court and Lord Wilberforce in the House of Lords in *Camilla Cotton Oil Co v Granadex SA* [1975] 1 Lloyd's Rep 470; [1976] 2 Lloyd's Rep 10 Lord Woolf said:

> "41. Lord Wilberforce and Lord Denning MR differed in the circumstances of that case as to whether the declaration would serve a *useful* purpose. However, if it would, that it would then be appropriate to grant a declaration was agreed. The approach is pragmatic. It is not a matter of jurisdiction. It is a matter of discretion. The deployment of negative declarations should be scrutinised and their use rejected where it would serve no useful purpose. However, where a negative declaration would help to ensure that the aims of justice are achieved the courts should not be reluctant to grant such declarations. They can and do assist in achieving justice. … in my judgment the development of the use of declaratory relief in relation to commercial disputes should not be constrained by artificial limits wrongly related to jurisdiction. It should instead be kept within proper bounds by the exercise of the courts' discretion.
>
> 42. While negative declarations can perform a positive role, they are an unusual remedy in so far as they reverse the more usual roles of the parties. The natural defendant becomes the claimant and vice versa. This can result in procedural complications and possible injustice to an unwilling 'defendant'. This in itself justifies caution in extending the circumstances where negative declarations are granted, but, subject to the exercise of appropriate circumspection, there should be no reluctance to there being granted when it is useful to do so."

61. In *Messier-Dowty* the claimant, the designer and manufacturer of aircraft landing gear which had failed during the landing of an aircraft owned by Sabena, sought a declaration that it was under no liability to Sabena in respect of loss caused as a result of the accident. However, Sabena had no contract with the claimant and had not made or intimated any claim against it. Instead it had brought proceedings in France, which had exclusive jurisdiction under Article 17 of the Brussels Convention (the predecessor of Article 25 of the Judgments Regulation), against Airbus from whom it had purchased the aircraft. Moreover, it was doubtful whether Sabena would ever have cause to make any claim against the claimant as it had a perfectly good remedy against Airbus. In those circumstances this court concluded that there was no justification for proceedings

against Sabena seeking a negative declaration. Lord Woolf acknowledged, however, at [45(5)], that the position might be different if Sabena were to make a claim.

62. Reference was also made to the points collected by Mrs Justice Cockerill in *BNP Paribas SA v Trattamento Rifiuti Metropolitani SpA* [2020] EWHC 2436 (Comm) at [78], emphasising the importance of utility:

> "i) The touchstone is utility;
>
> ii) The deployment of negative declarations should be scrutinised and their use rejected where it would serve no useful purpose;
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> iii) The prime purpose is to do justice in the particular case: see *TQ Delta, LLC v ZyXEL Communications UK Limited, ZyXEL Communications A/S* [2019] EWCA Civ 1277 at [37]. 'Justice' includes justice not only to the claimant, but also to the defendant: see *Fujifilm Kyowa Kirin Biologics Co., Ltd. v Abb Vie Biotechnology Limited* [2017] EWCA Civ 1, [2018] Bus LR 228 ("*Fujifilm*") at [60];
>
> iv) The Court must consider whether the grant of declaratory relief is the most effective way of resolving the issues raised: see *Rolls Royce v Unite the Union* [2010] 1 WLR 318 at [120]. In answering that question, the Court should consider what other options are available to resolve the issue;
>
> v) This emphasis on doing justice in the particular case is reflected in the limitations which are generally applied. Thus:
>
> a) The court will not entertain purely hypothetical questions. It will not pronounce upon legal situations which may arise, but generally upon those which have arisen: *Zamir & Woolf* at 4-036 and *Regina (Al Rawi) v Sec State Foreign & Commonwealth Affairs* [2008] QB 289 at 344.
>
> b) There must in general, be a real and present dispute between the parties before the court as to the existence or extent of a legal right between them: *Rolls Royce* at [120].
>
> c) If the issue in dispute is not based on concrete facts the issue can still be treated as hypothetical. This can be characterised as *'the missing element which makes a case hypothetical'*: see *Zamir & Woolf* at 4-59.
>
> vi) Factors such as absence of positive evidence of utility and absence of concrete facts to ground the declarations may not be determinative; *Zamir and Woolf* note that the latter *"can take different forms and can be lacking to differing degrees"*. However, where there is such a lack in whole or in part the court will wish to be particularly alert to the dangers of

> producing something which is not only not utile, but may create confusion."

63. These principles demonstrate, to my mind, that the critical question in this appeal is whether the judge's conclusion that the Secretariat has adopted a position of neutrality is tenable. It was only because of that conclusion that he decided that the declarations sought by Athena Capital lacked any useful purpose. I turn, therefore, to that question.

Is the Secretariat neutral?

64. Mr Samek relied on several factors as showing that the Secretariat was not a neutral party. These included reported statements made on behalf of the Secretariat, including by Cardinal Pietro Parolin the Secretary of State, and by the Pope himself, which are alleged to show that the Secretariat adopts the allegations made in the criminal proceedings against Mr Mincione and intends to bring a claim. The judge, however, regarded the statements as going no further than saying that the allegations need to be investigated.

65. However that may be, it seems to me that the clearest evidence of the position adopted by the Secretariat is that contained in the formal documents by which it became a *parte civile* in the criminal proceedings. As I have already noted, the judge's view, based on the words of these documents, was that the Secretariat has not taken a position that the charges are true, but has merely asserted a right to compensation in the event that they are proved. In my judgment, however, that is not a tenable reading of the documents.

66. Article 2043 of the Vatican Civil Code provides for civil liability to pay compensation for any malicious or culpable act which causes another person and unwarranted loss. Such a claim may be brought in the civil court.

67. Article 7 of the Vatican Criminal Code contemplates that criminal conduct may also give rise to civil liability. If so, parallel civil and criminal proceedings may be brought: see Article 8. However, by Article 9 of the Code:

> "A civil action may not proceed or continue before the civil judge while the criminal case is in progress and until an irrevocable judgment on the same is pronounced, unless otherwise provided for by law."

68. Thus a claim for compensation in the civil court will be effectively stayed pending the resolution of criminal proceedings. However, although a victim of a criminal act cannot bring or continue with civil proceedings for compensation while the criminal proceedings are ongoing, it may make a claim for compensation by joining as a *parte civile* in the criminal proceedings. Article 53 of the Criminal Code provides:

> "A civil action under Article 7 is brought in the criminal proceedings when the plaintiff joins the proceedings."

69. There is nothing in the Code to require the victim of criminal conduct to join as a *parte civile* in the criminal proceedings. It can wait until the criminal proceedings are concluded in order to bring or continue with a claim in the civil court. Indeed, if the criminal proceedings result in a conviction, that will be treated as *res judicata* in any

subsequent civil proceedings: see Article 13. Accordingly there was no obligation on the Secretariat to join as a *parte civile* in the criminal proceedings. It was the Secretariat's choice to do so. Moreover, if it wanted to make a civil claim as a result of having entered into the Transaction, there was nothing to stop it from bringing such proceedings in the English court in accordance with the exclusive jurisdiction clauses in the Framework Agreement and the SPA.

70. The procedure by which the Secretariat became a *parte civile* was initiated by the grant of a special mandate to its lawyer, Professor Paola Severino. The special mandate was granted "so that, in the name of and on behalf of the Secretariat of State and the APSA [Administration of the Assets of the Apostolic See], as injured and damaged parties in the aforesaid proceedings, she can arrange the representation and civil action incidental to the aforesaid criminal proceedings" against those charged in the criminal proceedings "in relation to all the offences and all violations charged to them and described in detail in the charges … for the restitutions and for indemnity of all damages to assets and otherwise incurred by the Secretariat of State and APSA …". The mandate concluded by stating that it was the wish of the Secretariat that all the offences and violations charged against the defendants should be pursued.

71. Professor Severino then made a "Declaration of civil action incidental to criminal proceedings". This Declaration asserted that the Secretariat was an injured party damaged by the offences committed by the defendants to the criminal proceedings, including Mr Mincione, and had "incurred significant damage – to assets and otherwise – including therein damage to their own image – that they incurred due to the conduct of the above-mentioned individuals and legal entities". It went on to say that in accordance with her special mandate from the Secretariat as an "injured and damaged party", Professor Severino "hereby declares that she takes civil action incidental to criminal proceedings" against the defendants "for the purpose of obtaining full indemnity of all damage to assets and otherwise (which will be quantified in due course upon the outcome of the preliminary investigation of the debate) as a consequence of the offences and violations charged …". Accordingly the indemnity claimed was for all damage incurred as a result of the defendants' alleged wrongdoing, and was not limited to compensation for loss incurred as a result of the Transaction, but it did include a claim for such compensation.

72. There is nothing contingent or precautionary about these documents. They do not say that, if it should turn out that the criminal proceedings are well founded, the Secretariat would wish to make a claim. The Secretariat was not (as it claimed: see the judgment at [57]) passively awaiting the outcome of the criminal proceedings "to discover whether it has been the victim of the serious acts of dishonesty which are alleged against former officers of the [Secretariat] who are alleged to have conspired with Mr Mincione and others". On the contrary, it asserted positively that it is a victim of the defendants' criminal conduct and advanced a claim which would be quantified in due course, while urging that the criminal proceedings should be pursued. This is not consistent with neutrality.

73. The judge considered at [195] that the Secretariat was "hamstrung from participating fully by its proper role as a neutral party awaiting the outcome of a criminal investigation of alleged crimes in relation to which it would be the alleged victim, but of which it has no actual direct knowledge", and that in view of this it would not be just or fair to require the Secretariat to answer the appellants' claims at the moment. It will

be apparent from what I have said already that I do not accept this characterisation of the Secretariat's position. Nor do I accept that the Secretariat will be under any real impediment in answering the appellants' claims. It has apparently suffered under no impediment in making a claim in its capacity as a *parte civile* when it was not required to do so and, as the judge accepted, in that capacity it has had access to a substantial volume of documentation gathered by the OPJ.

74. Accordingly I consider that the judge's conclusion on what he described as the Secretariat's "central argument" was mistaken. The Secretariat was not neutral. It follows that the basis on which the judge concluded that, at present, the grant of declarations would serve no useful purpose and therefore exercised his discretion to grant a case management stay was fundamentally flawed. Indeed the circumstances in which he envisaged that the declarations might serve a useful purpose and that the stay might be lifted, that is to say if the Secretariat adopted a partisan position in the criminal proceedings in the Vatican, already existed.

75. It seems to me that the Secretariat's submission that the appellants', or at any rate Mr Mincione's, real dispute was with the OPJ was a distraction. Clearly there is a dispute between the OPJ and Mr Mincione as to whether he engaged in criminal conduct, including in relation to the Transaction. That dispute is the subject of the criminal proceedings in the Vatican City Court. However, the existence of that dispute does not preclude the existence of a dispute between the appellants and the Secretariat as to whether the appellants are under any civil liability to the Secretariat, for example to pay compensation, as a result of entering into the Transaction.

76. In those circumstances, it seems to me that far from there being a compelling reason to stay the present claim, there is every reason why it should be permitted to proceed. It is a claim which the judge found to be justiciable, over which the English court has exclusive jurisdiction in accordance with the Judgments Regulation. He said that, if it is to be tried at all, it should be tried in England, but the effective result of the stay which he imposed is that it will not be tried in England but in the Vatican. The judge found also that to allow the proceedings here to continue will not interfere with the criminal proceedings in the Vatican (so that one concern which might have led to the grant of a stay did not arise) and that the appellants have a valid reason for wishing the proceedings here to continue, namely to vindicate their position (if they can) in the parties' chosen forum in order to mitigate the regulatory and reputational pressures resulting from the allegations which have been made.

77. It must be recognised that, as matters stand, the result of allowing the case to proceed here will be that there are parallel proceedings concerning the same subject matter (i.e. the appellants' liability to compensate the Secretariat as a result of the Transaction) both here and in the Vatican. In my judgment, however, that is not a reason to refuse to allow the case to proceed in the parties' chosen forum, namely the English court.

Future case management

78. It will of course be necessary for this case to be managed carefully as it proceeds further. In particular, it seems to me to be highly unlikely that the court would contemplate making all of the numerous declarations which the appellants seek. But it will be the function of pleadings to focus the issues on what is really in dispute in relation to the Transaction and it may well be appropriate, if the appellants are able to demonstrate

their good faith in entering into the Transaction, to grant one or more declarations in some form.

79. A starting point may be (although this will be for the Commercial Court to decide) to consider what was the true value of the Property at the relevant time. The essence of the case against the defendants in the criminal proceedings, so far as they concern the Transaction, is that the Secretariat's interest in the Property was acquired for a price very substantially greater than the Property's true value. That should be a relatively straightforward issue to determine, with disclosure of documents relating to the Transaction and the benefit of expert valuation evidence which is readily available to both parties in this jurisdiction. If the Secretariat paid the market price or thereabouts, it obtained an asset which was worth what it paid and (at any rate so far as the Transaction is concerned) would not appear to have any valid grounds for complaint. On the other hand, if it paid substantially more than the market price, that would in the absence of some convincing explanation constitute strong evidence of corruption.

80. Needless to say, this judgment expresses no view about whether the appellants will be able to vindicate their position. It is limited to saying that the English proceedings in which they seek to do so should be allowed to continue.

Disposal

81. I would allow the appeal and set aside the case management stay imposed by the judge.

Lord Justice Birss:

82. I agree.

Lord Justice Peter Jackson:

83. I also agree.