Neutral Citation Number: [2020] EWHC 2739 (Ch)

Royal Courts of Justice,

Rolls Building, Fetter Lane,
London EC4A 1NL
Date 16 October 2020

IN THE HIGH COURT OF JUSTICE **Claim No. PT-2020-000680**
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
IN THE MATTER OF THE TRSUTEE ACT 1925

Before

Mr Peter Knox QC
(sitting as a Deputy Judge of the High Court)

B E T W E E N:

SYED AMIMUL HAQUE

Claimants

- and -
(1) ALTAF HUSSAIN
(2) IQBAL HUSAIN
(3) TARIQ MIR
(4) MOHAMMAD ANWAR
(5) IFTIKHAR HUSSAIN
(6) QASIM ALI RAZA
(7) EURO PROPERTY DEVELOPMENTS LIMITED

Defendants

- - - - - - - - - - - - - - - - - - - -

- - - - - - - - - - - - - - - - - - - -

Mr NAZAR MOHAMMAD (instructed on direct access) for the **Claimant**

MR PETER IRVIN (instructed by C M Atif & Co solicitors) for the **Defendant**

Hearing date 30 September 2020

Approved Judgment

Covid-19 Protocol: This judgment was handed down (subject to editorial corrections) by the judge remotely by circulation to the parties' representatives. The date and time for hand-down is deemed to be 10.45 am on Friday 16 October 2020.

Introduction

1. The claimant, who is bringing this action on behalf of an unincorporated association known as the Muttahida Quami Movement Pakistan, seeks a number of interim orders, essentially (a) to restrain the defendants from dealing with six trust properties in London, (b) to give up possession, (c) to account for their rental income, and (d) in the case of another trust property, to provide information about what has happened to the sale proceeds. He also seeks an order that the defendants provide information about all other assets in their control around the world held in the name of the Muttahida Quami Movement Pakistan.

2. The first, second and fifth to seventh defendants resist this application, essentially on two grounds.

3. First, they say, the claim raises no serious issue to be tried, because although the properties in question are (as they accept for the purpose of this application) trust properties, they are held in trust not for the "Muttahida Quami Movement Pakistan" which the claimant represents, but for a different unincorporated association, called the "Muttahida Quami Movement" (i.e. without the addition "Pakistan"), which came into being long before the claimant's organisation started, and which continues, they say, to exist as a separate organisation operating from London. Indeed, they say that the organisation represented by the claimant is an "imposter", passing itself off under the name to which only their organisation is entitled. Second, they say that even if there is a serious issue to be tried, it would be inappropriate to grant any relief, or at least, anything more than a fraction of what is being claimed.

4. As to the third and fourth defendants, they hold two of the six trust properties in their joint names, and they have recently entered into an agreement, set out in an undated and unsealed consent order, to transfer them to a person nominated by the claimant, who is to hold the same on trust for the "Muttahida Quami Movement Pakistan" which the claimant represents. The claimant seeks an order from me approving this agreement so it can be sealed as an order of the court. The other defendants resist this, on the basis that these two properties are held on trust for the "Muttahida Quami Movement" which they (save the seventh defendant) represent, not the organisation represented by the claimant. Further, they too (save for the seventh defendant) are trustees of these two properties, whose consent is required for any disposal.

5. The matter first came before Mr Justice Fancourt (save for the proposed consent order) on an *ex parte* application on 1 September 2020, who accepted, on the material then before him, consisting of a witness statement with exhibits from the claimant, that it raised a *prima facie* case, but who refused to make an order because he was not satisfied that there was sufficient urgency to justify coming before him *ex parte*. Further, he expressed a concern that there was more to the story than had been shown to him, there having been no real attempt to make full and frank disclosure, and there was not enough evidence to suggest a risk of dissipation.

6. Subsequently, the claim form (without particulars of claim) was issued on 3 September 2020, and the application, issued on 7 September 2020, was served on the defendants late on 8 September 2020, together with the claimant's witness statement. Notice of a hearing to take place in a window of 28 to 30 September 2020 was served on 11 September 2020, but it was not until 18 September 2020 that the first defendant, who appears to be the predominant force amongst the defendants, instructed

solicitors, who now act for all of them save the third and fourth defendants. The first defendant, I should add, is not a well man and suffers from a number of serious conditions, as is evident from a doctor's letter of 21 September 2020.

7. In the event, it was not until 26 September 2020 that the defendants got round to putting in evidence in reply, given on their behalf by a witness statement from their solicitor Mr Chaudhry Mohammad Atif, on information supplied by the first defendant. This took, in forceful terms, the point that the beneficiary of the trust properties was not the organisation represented by the claimant, but the "real" Muttahida Quami Movement, which the first defendant had founded back in 1984.

8. In particular, it took the point that under Article 10 of the movement's 2015 constitution, no alteration could be made without the first defendant's assent as founder and leader; and therefore the constitutional amendments passed on 31 August 2016 and later, which purported to revoke this provision and to change other articles, were unlawful and of no effect, because they were all made without his consent and indeed without satisfying other prerequisites. Therefore, the 2015 constitution remained in force, and the movement represented by the claimant, which operates under the purported amendments made on 31 August 2016 (and later amendments) is merely an unlawful breakaway movement and is not the beneficiary of the trusts, which were all created well before then on various dates up to May 2012.

9. This was a point which had not been covered or anticipated by the claimant in his witness statement or mentioned to Mr Justice Fancourt, no doubt because, so far as I can tell, there had been no pre-action correspondence between the parties. In any event, his lawyers, evidently in response to this argument, included in a supplementary bundle put before the court a news article which had appeared in the press on 24 August 2016, i.e. shortly before the constitutional change on 31 August 2016. This recorded a public statement by the first defendant that he was handing over complete power related to policy making, decision making and organisational authority to the Muttahida Quami Movement's Central Coordination Committee (or the "Rabita Committee" as it is sometimes called).

10. In his oral submissions, Mr Mohammad, who appeared for the claimant, relied on this news article to rebut the suggestion that the first defendant had not consented to the constitution of the "Muttahida Quami Movement Pakistan", and pointed out that even at the date of the hearing (30 September 2020) it was still posted on the website of the "Muttahida Quami Movement" controlled by the first defendant, which showed that he approved its contents. Therefore, for this and other reasons, he said that the Muttahida Quami Movement Pakistan which he represented was the lawful constitutional successor to the Muttahida Quami Movement in existence when the trusts were set up, and therefore, on a proper construction, the beneficiary thereof.

11. Mr Irvin, who appeared for all the defendants save the third and fourth, was taken by surprise by this point (it had not been flagged in Mr Mohammad's skeleton argument), and so pursuant to my direction further evidence and written submissions were put in on 5 October 2020 as to how the change to the constitution came about in 2016, and as to how the news article came to be on the first defendant's movement's website, and the inferences I should draw from it. Further written submissions were made on 14 October 2020 after further questions I asked in the light of my

consideration of this material and the documents already in the bundle. I am very grateful to counsel for these further written submissions, as I am for those they made before.

12. There are therefore three issues I have to consider, (a) whether there is a serious issue to be tried as to whether the unincorporated association which the Claimant represents is, as he alleges, the beneficiary of the trust properties, (b) if so, whether I should grant any interim relief, and if so, what relief, and (c) whether I should approve the proposed consent order so that the third and fourth defendants can transfer the two Whitchurch Lane properties to the claimant. Before turning to these issues, I shall summarise the history of the matter.

The history

13. The Muttahida Quami Movement was founded by the first defendant in about 1984, having evolved from a student movement into a political party. Its purpose was to give voice and recognition to the Mohajirs, the migrants who had left India for Pakistan on the partition of British India in 1947. Although the official party leader, until the split in the movement in August 2016, was always Dr Farooq Sattar, the first defendant was treated as its *de facto* leader and revered as its founder. I shall for convenience call the Muttahida Quami Movement until the split "MQM"; and the two rival movements since then "MQM Pakistan" (whom the claimant represents) and "MQM London" (the movement led by the first defendant).

14. In 1988, within just four years of being set up, the MQM won all the seats in Karachi, and became Pakistan's third largest party in its National Assembly. As I understand it, its stronghold has always been in Karachi, and it has always had members elected to the National Assembly in the subsequent elections. (According to the claimant, MQM Pakistan currently holds six seats in the National Assembly, and 21 seats in the Sindh provincial assembly, as a result of the elections held in July 2018 - i.e. after the split.)

15. Things did not go smoothly for the first defendant, and he left Pakistan and came to the UK in January 1992, where he subsequently claimed asylum in June 1992. According to the claimant, an arrest warrant had been issued against him in a murder case, and the MQM was running torture cells. But according to the first defendant he left Pakistan at the request of the MQM's Central Coordination Committee (I discuss what this is below) in order to lead the movement from abroad, because he had been a victim of an attempted suicide attack, and then of a hand grenade attack. In any event, it appears to be common ground that, after being granted indefinite leave to remain in the United Kingdom in 1999, he acquired British citizenship on 5 February 2001, since when, as I understand it, he has lived in the UK, from where he has continued to run the MQM and then he says (after the split) MQM London.

The properties acquired by MQM

16. Between 1997 and 2009, the first six defendants variously acquired the seven properties which are the subject matter of this claim, and which they hold or held on trust for "MQM". At the time of their acquisition, there was no issue as to who "MQM" was, because the split in the party had not yet occurred. In chronological sequence, the properties bought were the following.

(1) On 19 February 2001, the first defendant bought the freehold of 12 Abbey View, Mill Hill, NW7, for £1,020,000, and on the same day he declared that he had bought this property *"on trust for the party Muttahida Quami Movement (MQM)"*, with £470,000 provided by the party, and a mortgage loan of £550,000 from the National Westminster Bank, which loan was to be repaid *"through bank account of the MQM"*. By declaration of trust made on 8 December 2010, the first and third to sixth defendants declared that they hold the property *"upon trust for the Beneficiary absolutely"*, who is identified as *"MQM (the Beneficiary)"*. The first defendant, according to the claimant, has lived in this property since its acquisition without paying any rent to MQM, or latterly to MQM London.

(2) On 18 May 2001, the first defendant bought a long lease of the first floor at 54 to 58 High Street, Edgware, HA8 for £385,000 plus £67,000 VAT. By a declaration of the same date, he declared that *"the premises [are] held in my name on trust for Muttahida Quami Movement (MQM)"*, and that the purchase monies came from the sale proceeds of 70 Colindale Avenue *"being the previous offices of MQM"*. As this indicates, these are office premises: all the other properties are residential. According to the claimant, the first defendant and his associates use these premises without paying rent to MQM or (latterly) MQM London.

(3) On 13 August 2004, the third and fourth defendants jointly purchased the freehold of 185 Whitchurch Lane, Edgware, HA8, for £430,000. Further, by declaration of trust dated 14 May 2012, they, along with the first, fifth and sixth defendants, declared that they hold this property *"upon trust for the Beneficiary absolutely"*, being *"MQM (the Beneficiary)"*. According to the claimant, this property has been used only by the first defendant's friends and associates, without yielding any rental payments.

(4) Also on 13 August 2004, the third and fourth defendants jointly purchased the freehold of 221 Whitchurch Lane, Edgware, HA8, in this case for £450,000. And they, along with the first, fifth and sixth defendants, made an identically worded declaration of trust in favour of MQM, also dated 14 May 2012, in the same terms as for 185 Whitchurch Lane. According to the claimant, this property has been used as a rental property, with the rents being paid to MQM.

(5) On 22 October 2004, the second defendant was registered as the freehold owner of 5 Highview Gardens, Edgware HA8, which had been bought for £364,400. By a declaration made on 19 April 2005, he acknowledged that he held the property *"on trust for Muttahida Quami Movement"*; and by a later declaration, dated "2012", all the first six defendants declared that they held this property *"on trust for the Beneficiary absolutely"*, again identified (as in the 14 May 2012 declarations for Whitchurch Lane) as *"MQM (the Beneficiary)"*. According to the claimant, this property has at all material times been occupied by the fifth defendant, at a rent paid to MQM (and latterly to MQM London) which matches the housing benefit he receives for it.

(6) On 27 January 2006, the second defendant was registered as the freehold owner of 1 Highview Gardens, Edgware HA8, which had been bought for £560,000. By an earlier declaration made on 7 October 2005 after exchange of contracts, he acknowledged that he held the property *"on trust for the Muttahida Quami Movement"*, and that the movement had provided the funds for the purchase. By a later declaration dated "2012", the first six defendants declared (as in the case of 5 Highview Gardens) that they held this property *"on trust for the Beneficiary absolutely"*, again identified as *"MQM (the Beneficiary)"*. The property has been rented out since its acquisition to tenants, most recently, according to the

documents in the bundle, at a rent of £2,150 a month. On 5 September 2019 District Judge Kanwar ordered the tenants to give up possession, and to pay rent arrears of £37,550 plus costs in proceedings brought by the second defendant. It is not clear whether those sums have been paid, or whether the property is now rented out or not.

(7) On 7 February 2007, the first and third defendants were registered as the freehold owners of 53 Brookfield Avenue, NW7, which had been bought for £260,000. By another declaration of trust made on 14 May 2012, these two defendants, along with the fourth to sixth defendants declared that they held this property *"on trust for the Beneficiary absolutely"*, again identified as *"MQM (the Beneficiary)"*. According to the claimant, this property was lived in by one Saleem Syed Ul-Haq, but whether at a rent or not is unclear. It was sold for £620,000 and registered in the name of its new owner on 4 September 2017. It is unclear what happened to the proceeds of sale, but the claimant alleged at the hearing, without adducing evidence, that £400,000 was paid to the first defendant, and £220,000 to the third defendant. (Evidence was subsequently adduced on 14 October 2020, but this was too late and it would be unfair to take into account.)

17. In short, all the properties acquired were held on trust by the various defendants for the unincorporated association identified as "Muttahida Quami Movement" or "MQM", and were still held on trust for it at the time of the party's split in August 2016. Since the split, such rents as have been collected, and the proceeds of 53 Brookfield Avenue, have not been paid over to MQM Pakistan. Nor is there any evidence one way or the other whether or not they have been used since the split to or for the benefit of MQM London.

The development of the MQM constitution

18. I discuss the MQM constitution from 2002 onwards and its various amendments below. For present purposes, it is sufficient to note that:

(1) The 2002 constitution gave the "Central Coordination Committee", a body elected by party members by secret ballot, power to manage the party, to approve members, and to select candidates for election to national and provincial office. However, under Article 9(b), in the case of *"major issues and important policy decisions"*, this Committee had to seek the first defendant's *"guidance… on the major issues if it deems fit for ratification"*. Further, it had the power under Article 10, by two thirds majority, to amend the constitution. For convenience, I shall call this committee "the CC Committee".

(2) In 2015, this constitution was replaced by what I call the 2015 constitution. This replaced the CC Committee with a *"Central Executive Council"*, which had similar powers of management, approval and selection, but now subject on certain points to obtaining the first defendant's *"assent"*, or on others, his *"guidance"*, without any discretion over whether to do so. Importantly, and fundamentally to the issues in the case, Article 10 of the 2015 constitution now required that any amendment could be made only with the vote of two thirds of an *"Electoral College"* (a new concept), and with the first defendant's assent. So the 2015 constitution gave him considerably more control over both (a) policy and decision making, and (b) constitutional amendments.

(3) Puzzlingly, on 12 April 2016, the CC Committee (not the *"Central Executive Council"*) made or purported to make a series of amendments to the constitution.

It is quite plain, however, that these were amendments to the 2002 constitution (as amended in 2012), not to the 2015 constitution. The defendants say that they do not have copies of these amendments.

The first defendant's speech on 22 August 2016

19. This was how things stood when, on 22 August 2016, the first defendant made a speech from London, which was broadcast, it seems by telephone, to crowds gathered in Karachi. In this speech (which the claimant calls, somewhat pejoratively, the *"hate speech"*), the first defendant, as he acknowledges, criticised what he said was Pakistan's military regime, and the ISI (its military intelligence agency), accusing them of extra judicial executions, custodial deaths, enforced disappearances and arbitrary arrests of MQM sympathisers. This resulted in his later being charged in the Central Criminal Court in London with encouraging terrorism contrary to s.1(2) of the Terrorism Act 2006, on the footing that what he said was intended and likely to be understood as encouraging acts of terrorism.

20. The speech appears to have caused uproar in Pakistan. According to a later newspaper report, scores of MQM activists, on the same day as the speech, ransacked a news office in Karachi, then clashed with police, leaving at least one person dead and over half a dozen injured. According to the first defendant, paramilitary forces raided MQM's offices, and the army and paramilitary rangers arrested the party's central leaders, and took them to a safe house where they forced them to disassociate themselves from him.

21. In any event, on the following day, 23 August 2016, a press conference was held by the "Rabita Committee" (which appears to be another name for the CC Committee), and various elected representatives of the MQM, in which the CC Committee expressed a *"loud and clear"* disassociation from the first defendant and from the MQM members based in London (this is the effect of a letter in the bundle dated 20 March 2020 from Dr Khalid Maqbool Siddiqui, MQM Pakistan's now leader). Further, and importantly, the first defendant himself issued a press release in Urdu to the following effect, according to the translation supplied by Mr Mohammad for the claimant.

> "I hand over complete authority, organisation, decision making and policy making to the Contact Committee [RABTA COMMITTEE]. Altaf Hussain
>
> I pray to god that the Rabta Committee will serve and provide more and more to this nation. Altaf Hussain.
>
> I appeal to MQM's elected representatives, responsible workers and sympathisers to make Rabta Committee stronger. Altaf Hussain
>
> I will pay special attention to my health as per the Rabta Committee's advice. Altaf Hussain
>
> Owing to ongoing incidents, sad news and day and night organisational activities, I am under immense mental stress. Altaf Hussain
>
> As a result of my speech I apologise once again for breaking hearts of the Pakistani nation. Altaf Hussain

> I appeal to the Rabta Committee that they look after the relatives of martyrs; help recover missing members, look after their families and pay attention to cases on members held captive. Altaf Hussain."

22. The translation of the first paragraph provided by Mr Irvin for the defendants is rather different, and reads:

> "I fully authorise Coordination Committee for organisational matters, decision making and policy making …"

23. A brief report of this speech was carried in the Express Tribune on 24 August 2016, which was the article published on the website controlled by the first defendant referred in the introduction to this judgment, under the headline: **"Altaf Hussain hands over complete power to Rabita Committee"**. (I should add that the first defendant, as I understand Mr Irvin's submissions of 1 October 2020, accepts that the article appears on the website.)

24. A few days later a meeting was held in Karachi on 31 August 2016 to discuss proposed amendments to the constitution, attended by 20 members of the CC Committee, together with the party leader (Dr Farooq Sattar), and two deputy convenors. At the meeting, these members ratified the stand that had been taken by "MQM Pakistan" on 23 August, and resolved (or purported to resolve) to remove Article 9(b) in MQM's constitution (i.e. the article, both in the 2002 and 2015 constitutions, which provided for the CC Committee to obtain the first defendant's guidance on major policy decisions, albeit in slightly different terms). The minutes of this meeting, which contained these resolutions, were approved by a further meeting on the following day.

25. As I discuss below, these meetings, like the April 2016 meeting, proceeded on the premise that the relevant constitution was not the 2015 constitution, but the 2002 constitution as amended in 2012 (and perhaps later). The amendments were reported in the press on 1 September 2016 (albeit with a comment that a Mr Wasay Jalil would not accept the *"minus Altaf"* formula), and were notified to the Election Commission of Pakistan on 20 March 2017.

26. From now on (if not from 23 August 2016), according to Dr Khalid Maqbool Siddiqui's 20 March 2020 letter, *"MQM Pakistan stopped all political and organisational engagement as well as they terminated all communications with [the first defendant] and MQM London"*. So from now, the two organisations ran separately, each claiming the title "MQM" or "Muttahida Quami Movement", but with the addition of the word "Pakistan" in the case of the MQM Pakistan. This alteration to the name was formalised by a further constitutional amendment made by the CC Committee of MQM Pakistan on 29 November 2017, and notified to the Election Commission on 30 November 2017.

27. On 13 January 2018, Dr Khalid Maqbool Siddiqui was elected party leader of MQM Pakistan in succession to Dr Farooq Sattar, and on 25 July 2018 MQM Pakistan won seven seats in the National Assembly, and became a member of Pakistan's governing coalition. MQM London, the defendants say, boycotted the election and did not put

forward any members. In the meantime, the latter's CC Committee, according to Mr Irvin's submissions of 1 October 2020, set up a new committee, which resulted in Dr Farooq Sattar's expulsion (or purported expulsion) in October 2016 from MQM London. (I mention this here *de bene esse*, but it is not properly evidence before the court and I attach no weight to it.)

28. At some point (it is unclear when) the first, second, fourth and fifth defendants were charged in Pakistan on counts of conspiracy and aiding and abetting in the murder of one Dr Imran Farooq in 2010 in Edgware, the then second in command in the MQM hierarchy. On 18 June 2020, they were all convicted on these counts. I understand that an appeal has been launched, and that the first defendant has not been approached by the police in London. The defendants contend that the trial was politicised and fundamentally unfair. As for the charge in the UK of encouraging terrorism contrary to the Terrorism Act, this, as I understand it, has yet to come to trial. The defendants say that it is they who the victims, and allege that on 13 January 2018 MQM London's deputy convenor Professor Dr. Hasam Zafar Arif was abducted, tortured and murdered by the ISI.

MQM London's financial difficulties and property or intended property sales

29. After August 2016, MQM London ran into financial difficulty, as evidenced by a circular dated 8 November 2016 from the first defendant to party office holders, workers and supporters, which said that all telephone lines and internet services of its secretariat had been disconnected for non-payment, and which appealed for contributions to a Lloyds bank account in the first defendant's name in Edgware. To alleviate these difficulties, it was decided, the first defendant says, to sell one of its properties, i.e. 53 Brookfield Avenue. Hence the sale for £620,000 mentioned above, in September 2017.

30. In addition, the first defendant tried to get the third and fourth defendants to transfer legal title in 185 and 22 Whitchurch Lane to MQM London or a MQM London nominee. Hence, it seems, on 2 July 2018, MQM London purported to revoke the 14 May 2012 deeds of trust, and on 28 January 2019 the "MQM International Secretariat" (i.e. of MQM London) wrote to them asking for a transfer back, a request repeated on 7 February 2019 by Messrs Maddersons solicitors. By reply of 20 March 2019, the third defendant, after reciting these events, expressed concern that only MQM Pakistan, not the "MQM International Secretariat" (or the first defendant), had rights over the property. He also complained that there were properties *"whose income was supposed to have been spent on the welfare of the martyrs [sic] families back home but squandered on litigation, office expenses and security expenses"*.

31. Subsequently, on 10 August 2020, a report appeared in the press that the third and fourth defendants had asked the first defendant to transfer 221 Whitchurch Lane to Dr Imran Farooq's widow and her two sons, which the claimant alleges was proposed by way of compensation for his murder mentioned above; and around the same time, the claimant discovered that the offices at Elizabeth House, Edgware, were being advertised for sale by estate agents at a price of £900,000. These, it seems, were the immediate triggers for the current proceedings and application. There is no suggestion that the other four unsold trust properties are also on the market or about to be sold.

The first issue: is there a serious issue to be tried?

32. The essential question on this is whether the "Muttahida Quami Movement" or the "MQM" identified as the beneficiary on the various trust documents is to be construed, as Mr Mohammad contends, as covering the Muttahida Quami Movement Pakistan for whom he acts. If arguably it is, then there is a serious issue to be tried; but if not, there is no serious issue to be tried, and the application for interim relief must fail on this preliminary point, as argued by Mr Irvin.

33. Mr Mohammad advances his case on three main bases.
    (1) First, he says that on a proper construction of MQM's 2015 constitution, it could be altered by the CC Committee under Article 9 without the first defendant's consent under Article 10, and so the constitutional amendments made on 31 August 2016 were valid. Therefore, from that moment on, MQM Pakistan was the lawful, and indeed the only lawful, constitutional successor to the MQM operating under the previous constitution: and thus, on a proper construction, it is the "MQM" or "Muttahida Quami Movement" referred to in the trust documents.
    (2) Second, he says that in any event, on a proper construction, the first defendant's public announcement, by which he handed over complete authority to the CC Committee on 23 August 2016, was sufficient consent for the purposes of Article 10 so as to justify the 31 August 2016 amendments if his consent was necessary. Further, nothing turns on the point that the amendments were approved only by the CC Committee, rather than by two thirds of the Electoral College
    (3) Third, he says that in any event, the reality is that MQM Pakistan is derived from MQM and it is the only functioning political party which is actually pursuing the movement's aims and objectives as successor to MQM; and further it is the only party lawfully able to operate and send its members to the national and local assemblies in Pakistan. So in any event, MQM Pakistan should be construed as the beneficiary under the trusts, not MQM London, regardless of any irregularities in the passing of the August 2016 and later amendments.

34. Before turning to these arguments, I shall something more about the constitutions, as they appear in the bundle.

The 2002 constitution

35. The first constitution is "The Constitution of Muttahida Quami Movement 2002", as updated by the first amendment made on 23 May 2012. The preamble provided for the movement's aim to create a true democratic system and to ensure that the fundamental rights of the peoples of Pakistan and the rule of law were guaranteed, and then went on to provide:

> "NOW THEREFORE we the signatories of this constitution of the Muttahida Quami Movement give to the peoples of Pakistan the creation of a political party, which will work toward the aforesaid goals according to the provisions of this instrument."

36. The signatories, it seems, were the 37 Members of the CC Committee whose names are given at the end of the document. It is not clear whether these were the signatories only to the 2012 amendment, rather than to the 2002 constitution itself, nor is it clear

from the 2002 constitution by what power they purported to pass it. However, it is not suggested that anything turns on this.

37. The structure of the 2002 constitution was as follows:
    (1) Article 4 set out the MQM's aims and objects, and Article 12 its policy principles.
    (2) Article 5 provided that the MQM was to raise funds through subscriptions, voluntary donations and other lawful sources.
    (3) Article 6 provided for the management of the movement to be administered by the CC Committee at the Federal Level, Provincial Level and local levels through sub-committees.
    (4) Article 7 set out the duties of the various office holders, and provided for who was to look after the MQM's accounts and the money it received.
    (5) Article 8, headed "Membership", provided that every citizen of Pakistan, not in the service of Pakistan, was eligible for membership and could be elected as an office holder, but membership was subject to the CC Committee's approval. The CC Committee was to determine membership fees.
    (6) Article 9(a) provided that the CC Committee was the highest policy and decision making organ of the movement, whose decisions were to be made by simple majority, or by a two thirds majority in the case of important and major policy decisions. Under Article 9(b), this committee was obliged to *"seek guidance from [the first defendant] being the founder and ideologue, on the major issues, if it deem fit for ratification"*. The CC Committee was obliged, under Article 9(h), *"to frame Rules, Regulations and necessary Guidelines for implementing the policies and decisions of the [MQM]"*.
    (7) Article 10, headed **"AMENDMENTS"** provided:
        > "No Rules and Regulations or any part of this Constitution shall be rescinded or amended except by a 2/3 vote of the [CC Committee]."
    (8) Article 13 provided that all party offices were to be filled by election every four years (including, it would seem, to the CC Committee); Article 14 for annual general meetings; Article 15 for disciplinary procedures; Article 17 for resolution of intra party disputes; Article 18 for election to office, including the CC Committee, to be by secret ballot (save in the case of Convenor and Deputy Convenor); and Article 19 for the CC Committee to form a board to select candidates for election to the national and provincial assemblies.

38. On 23 May 2012, certain amendments were made, as I understand it, by the CC Committee in the exercise of its powers under Article 10, but none has a bearing on the issues in this case.

The 2015 constitution

39. In 2015 a new constitution appears to have been passed, headed "Constitution of Muttahida Quami Movement Revised 2015". It is not clear precisely how this came about or when, but it is exhibited to paragraphs 15, 16 and 20 of the claimant's witness statement as an authentic constitution (a point confirmed by Mr Mohammad in his submissions after the hearing), subject to the reservation that by this point that the first defendant was ineligible to hold office under the constitution from the day he acquired British citizenship in 2001, and that by now, he had an *"iron grip"* on the party through his associates.

40. This constitution is printed in a different typeface from the 2002 constitution, and has a different prologue, preamble, and text. In particular:
    (1) The prologue recorded that *"Muttahida Quami Movement is the only Party, that is led by an ideologue-Founder leader Altaf Hussain, that is committed to bring on fore the suppressed, deprived middleclass [sic] to fight for justice …"*
    (2) There was no provision for the CC Committee named as such (i.e. the "Central Coordination Committee); but instead there was provision for a *"Central Executive Council"*, a *"Central Advisory Council"*, an *"Electoral College"* (of 500 or 2,500 permanent members of good character), and various other specific committees not mentioned in the 2002 constitution (see Articles 3 and 4).
    (3) Its aims and objects in Articles 5 and 12 were much the same as before.
    (4) Under Article 7(1), the *"Central Executive Council"* (like the previous CC Committee) was to administer the party's organisation and management, but now expressly *"subject to over all [sic] view and assent of the Founder Leader"*. (Article 3 defined the *"Founder Leader"* as the first defendant, i.e. Altaf Hussain.)
    (5) Under Article 9(a), it was now the *"the Council"* (which is clearly a reference to the Central Executive Council) which was to be the highest decision making body, with similar powers to the CC Committee's previously.
    (6) Under Article 9(b), the first defendant's right to be consulted, which previously applied only if the CC Committee *"deem fit for ratification"*, was turned into an absolute right, by providing that the Central Executive Council *"shall"* seek guidance from him on all major policy decisions.
    (7) Article 9(g) was likewise firmed up in his favour, so as now to provide that rules and the like made by the Central Executive Council had to have the first defendant's consent.
    (8) To similar effect, Article 10 was firmed up in his favour, so as to provide that neither the constitution nor any rules passed thereunder were to be amended or made without his consent. (I set out this Article, along with 9(a), (b) and (g), in full below).
    (9) Elections to the Central Executive Council were to be by two thirds majority of the Electoral College, replacing the previous equivalent provision in the 2002 constitution, that elections to the CC Committee were to be by the members under Article 13.
    (10) Article 19 repealed the 2002 constitution, albeit describing it as one which had been amended on 24 July 2002, not, as appears to have been the case, on 23 May 2012.

The amendments, or purported amendments, made in April 2016

41. On 12 April 2016, the CC Committee, in a joint session in the Pakistan and London secretariat, met and made a series of amendments, or purported constitutional amendments. The relevant resolution records:

> "ARTICLE – 10 of the Constitution of Muttahida Quami Movement provides that an amendment may be proposed with a two-third (2/3) majority votes by the Committee"

42. The resolution then goes on to record amendments or additions to articles 3, 5, 6, 7, 9, 12, 13A14, 14A and 18.

43. It is plain from the reliance on Article 10 that the CC Committee at this meeting was proceeding on the basis of its powers under the 2002 constitution as amended in May 2012 (and perhaps later), because only that Article gave them power to alter the constitution, unlike Article 10 of the 2015 constitution, which, as said, required an amendment to be approved by the Electoral College, with the first defendant's assent. This is also apparent from the numbering of the amendments, Thus, for example, the amendment to Article 3(b) altering the definition of *"Pakistan "Nation""* is altering the previous, very similar, definition set out in Article 3(b) of the 2002 constitution, and not the quite different Article 3(b) in the 2105 constitution, which contains a definition of *"Attached Wing"*; and likewise, the amendment to Article 5, dealing with the raising of funds, is obviously an amendment to Article 5 of the 2002 constitution on the same subject, not to Article 5 of the 2015 constitution, which concerns the movement's aims and objects.

44. The same pattern is found in the 31 August 2016 amendments by which Article 9(b) was removed. Thus they too were passed by the CC Committee (or members purporting to act as such) without the Electoral College's approval; and, by way of example, the amendment of Article 7(b) concerning convenors is plainly an amendment of article 7(b) of the 2002 constitution on the same subject, and not of Article 7(b) of the 2015 constitution, which concerns the members of the Central Advisory Committee. The same points apply to the amendments made on 29 November 2017, i.e. they were made without the Electoral College's assent, and they amend a version of the 2002 constitution, not the 2015 constitution, as is apparent by comparing the complete text of the constitution as so amended with those two constitutions.

The claimant's first argument

45. With this preamble, I turn to Mr Mohammad's first argument, that Article 9(a) and (b) of the 2015 constitution gave the CC Committee the power to make the alterations on 31 August 2016 (and later) regardless of Article 10. For convenience, I shall therefore set out these provisions in full, along with Articles 7(1) and Article 9(g) which also concern the first defendant's powers.

> **"ARTICLE 7: MANAGEMENT**
>
> (1) The Central Executive Council, through the respective horizontal and vertical tiers of the Party, shall administer the Organisation and management of MQM, subject to over all [sic] view and assent of the Founder Leader.
>
> …….
>
> **ARTICLE 9 – FUNCTIONS OF THE CENTRAL EXECUTIVE COUNCIL**
>
> (a) The Council shall be the highest policy and decision-making organ of the Movement. Its decisions shall be binding on all party organs and members. Ordinary decisions shall be made by a simple majority of members present in a scheduled meeting, while all the important and major policy decisions shall be taken by 2/3 majority of the Council.

(b) THE [sic] Central Executive Council shall seek guidance from the Founder Leader on all major policy decisions before implementation.

…….

(g) The CEC [i.e. the Central Executive Council] shall frame Rules, Regulations and necessary Guidelines for implementing the policies and decision of the Movement subject to assent by the Founder Leader.

ARTICLE 10

Provisions of the Constitution and Rules, Regulations and bye-laws framed there under [sic] shall not be rescinded, inserted and amended without the vote of 2/3rd majority of the electoral-college [sic] and assented to by the Founder Leader."

46. Mr Mohammad's argument is that the CC Committee is the same thing as the Central Executive Council, and that its power in Article 9(a) is in the widest terms and sufficient to cover making constitutional changes, and further, in making them the CC Committee did not have to seek the first defendant's guidance under Article 9(b).

47. In my judgment, this argument is plainly wrong, and not seriously arguable, for three separate reasons.
    (1) First, even if one treats the CC Committee (i.e. the Central Coordination Committee) as the "Central Executive Council", Article 10 is the governing provision for making constitutional amendments, and provides a specific limit on the general powers in Article 9. *Generalia specialibus non derogant* – i.e. general provisions (such as Article 9) do not derogate from special provisions (such as Article 10). So a purported exercise of the power under Article 9(a) was unlawful and void: it could be exercised only in accordance with the procedure set out in Article 10, which at the very least required the first defendant's assent.
    (2) Second, even if an amendment could be made under Article 9(a), the requirement in Article 9(b) that the first defendant's guidance be sought on any major policy decision, albeit procedural, is absolute (hence *"shall seek guidance")*. No doubt, the CC Committee, having obtained his guidance, could decide not to follow it: but it was constitutionally obliged to obtain it before coming to any such major decision, and if it failed to do so, its decision was unlawful and void.
    (3) Third, the argument ignores the built in protections requiring the first defendant's consent in articles 7(1) and 9(g). It would be astonishing if his assent was required for administering the organisation of the movement (as in article 7(1)) and for framing rules and regulations, and implementing policies (as in article 9(g)), but not for a change to the constitution itself, when article 10 makes express provision for this too in the same terms.

The claimant's second argument

48. The first part of this argument is based on the first defendant's public announcement on 23 August 2016 that *"I hand over complete authority, organisation, decision making and policy making to the Contact Committee [RABTA COMMITTEE] …."* (the translation provided by Mr Mohammad), or (in the rather different translation provided by Mr Irvin) *"I fully authorise Coordination Committee for organisational matters, decision making and policy making ….."*.

49. Mr Mohammad contends that this declaration was sufficient to transfer to the CC Committee the first defendant's right under Article 10 of the constitution to prevent a constitutional amendment without his consent. Or put another way, by this declaration, he waived his rights thereunder. But whichever way one looks at it, he says, his assent was obtained to the 31 August 2016 amendments within the meaning of Article 10.

50. In my judgment, quite a bit turns on which translation one adopts. The phrase *"hand over complete authority"* does suggest, at least arguably, that the first defendant was intending to hand not only the authority vested in him in by articles 7(1), 9(b) and 9(g) over organisation, administration, and policy, but also his right to veto a change in the constitution. I see considerable force in Mr Irvin's point that this right of veto is different in substance, but I cannot say that it is so different that there is no serious issue to be tried, in particular because, given the uproar and violence which the first defendant's comments had caused (at least on the claimant's evidence), there is a case for saying that he was reasonably understood as intending to abdicate all the authority vested in him by the constitution. Further, I note that the first defendant does not appear to have made any contemporary objection to the amendments made on 31 August 2016 on the footing that his assent was required for them.

51. I appreciate, of course, the defendants' position that the translation provided by the claimant is not accurate, and that the defendants' translation *"I fully authorise Coordination Committee for organisational matters, decision making and policy making ....."* is a much weaker statement, in particular because it does not contain the all important words *"hand over complete authority"*. However, I am not able to resolve that dispute. Further I note that the Express Tribune article of 24 August 2016 on the first defendant's website contains the headline in English *"Altaf Hussain hands over complete power to Rabita Committee"*, which rather suggests that this is what he himself intended, because on the face of it one would not expect him to put an article on his (or rather MQM London's) website which was materially inaccurate, albeit in translation, and contrary to what he intended to say.

52. I note Mr Irvin's point (in his written submissions of 5 October 2020) that the first defendant made his statement at the request of the MQM leadership in Pakistan, and only after being reassured by them that they were disassociating themselves because of the extreme pressure under which they had been put by the Pakistan military, and that the dissociation would be temporary. However, that is plainly not a dispute I can resolve on this application, and anyway it is not supported by evidence. Finally, I accept too that the first defendant never issued a statement saying he was resigning as leader or founder, nor did he ever put up on the website controlled by MQM London the constitution as amended by the 31 August 2016 amendments or subsequently. But none of this matters if what he said on 23 August 2016, on a proper construction and taken in context, amounted to a complete "hand over" of his authority under the constitution to the CC Committee.

53. However, I reject as unarguable the second part of Mr Mohammad's argument under this head, i.e. that the August 2016 amendments were lawfully passed even though two thirds of the Electoral College did not vote for or approve them.
    (1) Contrary to Mr Mohammad's submissions, the Electoral College is not such a vague and unworkable term as to be meaningless. It is defined by Article 3(i) of

the 2015 as *"the five hundred or two thousand and five hundred permanent members of the Movement who enjoy good character and reputation"*. Membership of the college would appear to be an *"office"* and so election to it would be governed by Article 17(a), and the number of members it was to have (whether 500 or 2,500) would probably be a decision for the Central Executive Council under Article 9(a).

(2) It is immaterial that in April 2016, the CC Committee purported to pass amendments to the constitution pursuant to a power which it did not then have, and that the first defendant was then still the *de facto* leader of the MQM. A constitution is for the benefit of all the members of the unincorporated association, and those in positions of power and responsibility (such as the first defendant and the CC Committee) have no right to change its provisions in contravention of the required procedures. And in any event, a mere single breach of the required procedures cannot be said to give rise to a known settled practice which might bind all the members.

The claimant's third argument

54. This is based on the contention that MQM Pakistan is the only "MQM" party (a) which is actually functioning and pursuing the movement's long standing aims and objectives; (b) whose constitution has been sent to and (as I understand it) approved by the Election Commission of Pakistan, and (c) which is lawfully authorised to take part in and does take part in the elections in Pakistan (MQM London has no right to do so and is not a registered party there). Therefore, the irregularities in the passing of the August 2016 amendments are immaterial, in particular given the first defendant's hand over of authority, and do not affect the point that, in substance, MQM Pakistan is properly speaking the "MQM", and the only possible "MQM", referred to in the trust documents.

55. The first defendant's riposte to this on the facts is that the MQM movement in London is still fully functional and is not limited to assisting the Mohajirs in Pakistan, but covers all suffering Mohajirs throughout the world; and the reason it is no longer able to operate in Pakistan is that the military regime there does not allow it to carry out its political activities there, and has forced thousands of its members to go underground or into exile. That said, no documents or particulars have been provided in support of this, and in particular, nothing has been put before me to show what sums it controls, what sums it has raised since August 2016 and how it has been spending them. In particular, there is no evidence that the proceeds of 53 Brookfield Avenue were spent in fulfilling the movement's aims and objectives. There is, therefore, a serious question on current evidence as to whether MQM London is really functioning at all, or at least functioning as an organisation actively serving the purposes for which the movement was set up, as recognised in its various constitutions.

56. In the circumstances, it is in my judgment sufficiently arguable, on current material, so as to give rise to a serious issue, that:

(1) The only "MQM" association that has been functioning and serving the movement's purposes since September 2016 is MQM Pakistan, unlike MQM London, which ceased to do so either then or subsequently.

(2) MQM Pakistan can properly be regarded as a successor organisation to MQM, because its existence is derived from that of MQM. In particular, it is not suggested that the current members or governing officials are all or mainly derived from an entirely different source from those who served or were members of MQM before the split: indeed it seems that 15 of the 25 members of the CC Committee who voted for the 31 August 2016 amendments voted for the 12 April 2016 amendments. In short, it is arguable that there is sufficient continuity in practice between the two organisations.
(3) The irregularities in the passing of the 31 August 2016 and 29 November 2017 amendments without the Electoral College's consent were not, taken in the round, so fundamental as to deprive MQM Pakistan of the essential characteristics of the MQM identified in the trust documents. In particular, there appears not to have been an Electoral College in place at the time, and there is no evidence that, given the first defendant's (alleged) complete handing over of authority, an Electoral College if elected would have opposed them, or that anyone made any challenge on this particular point on or after 31 August 2016 (in particular, to the Election Commission).
(4) Therefore, MQM Pakistan, being the only unincorporated association of this nature which is really functioning, comes within the meaning of what is intended by the phrase "MQM" in the trust documents, notwithstanding the irregularities in the passing of the amendments.

57. I therefore find, albeit with some hesitation, that for this reason the claimant's case raises a serious issue to be tried.

The balance of inconvenience or least risk of injustice

58. Under the *American Cyanimid* test, the next question is whether the balance of convenience is in favour of granting the orders sought, and whether it would be just to do so. Perhaps more pertinently in a case such as this where there are competing claims to property, the question is, what is the course that *"is likely to involve the least risk of injustice"* (see *Zockoll Group v. Mercury Communications (No. 1)* [1998] FSR 354 at 365 per Phillips LJ), that is to say, the course which involves the least risk of irremediable prejudice (see *National Commercial Bank Jamaica Ltd v. Olint Corporation Ltd: Practice Note* [2009] 1 WLR 1405 (paragraph 19) per Lord Hoffman).

The order claimed over the properties

59. In my judgment, on the information currently before me, I see no injustice in restraining sales of the six trust properties, because there is no satisfactory evidence before me (to the extent the defendants are intending to sell them) that they need the proceeds for any particular activity, and if so, what activity. As against that, if MQM Pakistan eventually succeeds at trial, great prejudice may well be suffered if in the meantime the properties are sold and the proceeds spent, as they could well be unless the defendants are restrained from doing so, because in each case the sums involved are likely to be substantial.

60. Accordingly, I shall make an order pending trial or further order restraining sales of the properties. However, I should emphasise that the defendants should have liberty

to apply to the court (a) to sell them, and (b) to use the proceeds for the purposes of MQM London. Whether they should be entitled so to sell and use them will depend upon the nature of the evidence, and a further assessment, *de novo*, of the balance of convenience, or risk of injustice at such further hearing and, if appropriate, my view that the claimant's case only just reaches the threshold of serious arguability.

61. I am conscious that although the defendants could have acted a little more swiftly to put in some evidence going to these issues on the application before me, they did not have all that much time and the first defendant, the predominant force among them, is not well. Further, the point on which I have held there is a triable issue largely arises out of the 24 August 2016 news article put before the court, without explanation, only a day or so before the hearing, and even then, such as had to be further clarified; and (as I discuss in the next paragraph) there was no satisfactory undertaking in damages offered until the hearing itself.

The undertaking in damages

62. The claimant is based in Pakistan and represents an unincorporated association based in Pakistan. Further, no information has been given about his or MQM Pakistan's means. It is clearly appropriate, therefore, that the claimant should fortify his undertaking in damages by payment into court or otherwise of a suitable sum to cover the defendants as trustees of the properties in the event that as such they suffer loss as a result of the restraining orders. At the hearing, Mr Mohammad said that the claimant would be able to put £25,000 into court, which, given the relatively limited nature of the order I have made, should be sufficient to cover the defendants and MQM London against any losses caused by the order I propose. Accordingly, I shall make the above order, conditional upon provision of this fortification, upon terms to be agreed or otherwise decided on the handing down of this judgment.

The other orders sought

63. As to the other orders sought, I dismiss the application.

64. First, I see no basis for making an interim order requiring any of the defendants to give up possession of the properties pending trial. At its highest, the claimant has established only a serious issue to be tried, and the balance of convenience, and, so far as material, the *status quo*, is entirely against the making of such an order. If the claimant eventually succeeds, then no doubt he will be able to claim damages for trespass or mesne profits for wrongful use between now and the trial, but there is no evidence before me that the defendants will not be able to satisfy a judgment for such sums. By contrast, if the defendants (who evidently occupy with the consent of MQM London) were wrongfully ejected, the damage and inconvenience they would sustain in the meantime, in finding new properties to occupy, is likely to be very great, and considerably more than the £25,000 which the claimant has offered by way of fortification of his undertaking.

65. Second, I am not satisfied that pending trial the rents from the properties should be paid to the claimant or (more realistically) into a joint solicitors' account to await the event. Although the defendants have not properly particularised MQM London's current financial position and there is a real question as to whether it is functioning or serving the purposes for which the movement was set up, they have put in evidence

that there is still a Central Coordination Committee, twelve of whose members have put their name to a statement verified with a statement of truth on its behalf, exhibited to Mr Atif's statement, that it is still fighting for the rights of Mohajirs under the first defendant's leadership. I am not prepared, therefore, to make a positive finding that in fact MQM London is no longer functioning, or that the defendants do not reasonably require at least the rental income for its own legitimate purposes until trial (for instance, to cover outgoings on the properties and to pay for MQM London's own activities). Nor has the claimant put forward sufficient evidence to satisfy me that the defendants will not be able to satisfy a judgment in damages for the rents accruing between now and trial, which, on the evidence before me, are unlikely to be more than about £5,000 or so a month (i.e. £2,150 odd for 1 Highview Gardens if it has been let out again; a figure of roughly the same amount for 221 Whitchurch Lane to judge by its slightly lower purchase price of £450,000 as against 1 Highview's £560,000 back in late 2004 and early 2005; and rent equal to the housing benefit being paid by the fifth defendant on 5 Highview Gardens).

66. It is true that claimant has made a number of allegations of financial wrongdoing against the first defendant (i.e. (a) he has occupied 12 Abbey View Road since 2001 without paying rent to MQM; (b) he borrowed £1.5 million from MQM in 2009 in order to pay off a lump sum in a divorce settlement without repaying it; (b) he set up, it is said, the seventh defendant in 2012 as a sham company, for the purpose of receiving the sum of £4 million from MQM donations in return for work on a supposed building development which never got carried out; and (d) MQM made an unsecured five year term loan in 2013 of £218,000 odd to a charity called the Society of Unwell and Needy (or "SUN") controlled by the third defendant, of which £187,745 odd was still outstanding as at May 2018). However, the claimant's application is not for a standard freezing order, on the basis that the defendants are likely to dissipate their assets to defeat a judgment, but for an order on the basis that it has a proprietary claim, which requires it to show only a serious issue to be tried, without showing an intention to dissipate.

67. Further, all these are historic allegations, and the first two and the fourth matters, on current evidence, appear to have been acquiesced in by MQM, without any complaint by it or MQM Pakistan until these proceedings; and on the third there is nothing like enough evidence before me to support an allegation of fraud. I should add that I reject the suggestion that until the judgment in Pakistan against the first defendant on 18 June 2020, the members of MQM Pakistan were too frightened to take on the defendants in litigation: they have been prepared to challenge him since the split in August 2016, and there is no evidence of any subsequent intimidation.

68. It is also true that from 2013 MQM in London and the first defendant were the subject of moneylaundering investigations, which meant that MQM's bank accounts were frozen, at least for a while from 2015, but it is not alleged that the defendants or MQM's officers were ever charged or convicted of such offences. I am not, therefore, prepared to draw the inference that if judgment were given against the defendants for the relatively small sums of rent which are likely to accrue between now and trial, they would take steps to defeat its enforcement.

69. I have considered whether or not to make an order that the defendants be restrained from using the rental income save on providing evidence that they are going to use it

for the purposes of meeting such outgoings and payments, but I do not think this would be appropriate.

(1) First, MQM London has been receiving the rents without objection since the split in August 2016, and so the status quo is in favour of leaving the position as it is.

(2) Second, given the extremely fraught nature of the relations between MQM London and MQM Pakistan, I do not think it would be just or indeed cost efficient, given the relatively small sums likely to be at stake, to impose upon the defendants the burden of explaining to MQM London what it wants to use the rents for before being allowed to use them.

70. Third, there is no basis for ordering the defendants now to provide an account of what happened to the sale proceeds of 53 Brookfield Avenue, because that presupposes that the claimant is the beneficiary under the trust of that property, when that is the issue which is to be determined at trial. Of course, on disclosure, the claimant will be entitled to disclosure of documents which go to whether or not MQM Pakistan is the beneficiary in the first place, and if it proves its case at trial, it will be entitled to an account of what has happened to the sale proceeds, but until then, and in the absence of an application for a freezing order against the defendants supported by appropriate evidence, there is no basis for the order sought.

71. Fourth, I am not prepared to make an order that the defendants disclose all their assets worldwide in their possession and control in the name of MQM Pakistan (or MQM London) in excess of £1,000, or to make an order that the claimant is entitled to trace into the assets of the seventh defendant or other entities. The short point is that this again presupposes that the claimant has proved his case that MQM Pakistan is a beneficiary of the trusts, when it has not, or that this is an application for a freezing order with sufficient proof of intention to dissipate, which it is not, for the reasons above.

The third issue: the proposed consent order

72. Under the proposed consent order, the third and fourth defendants propose to transfer their "legal interests" in 185 and 221 Whitchurch Lane to a person nominated by the claimant to be held on trust for MQM Pakistan, notwithstanding the resistance of their co-trustees under the 14 May 2012 declaration of trust (i.e. the other defendants save the seventh). No consideration is payable to MQM London for the proposed transfer, and the only ones who will benefit are the third and fourth defendants personally, in particular from the discontinuance of the claim against them and against any entity they own, including SUN.

73. My decision on whether to approve this order follows from my conclusion above that the claimant has no more than an arguable case on the merits that the properties affected by this proposed order, 185 and 221 Whitchurch Lane, are held on trust for MQM Pakistan. The converse also follows, that there is an also arguable case that they are held on trust for MQM London.

74. Further, so far as material, no undertaking in damages has been given on behalf of MQM Pakistan in return for an order allowing the transfer to go ahead.

75. Accordingly, I am not prepared, before the issue of beneficial ownership in the two properties is decided, to make the proposed consent order, because it proceeds upon the premise that MQM London has no interest in the property, when that is the issue to be decided at trial. Further, I do not see how, on current information, either the third or the fourth defendant could properly give the required statutory declaration or statement of truth that the disposition would be in accordance with the 14 May 2012 declaration of trust, as required by the restrictions at the Land Registry entered on 20 July 2012, because the position in my judgment is no more than merely arguable.

Miscellaneous points

76. There are two miscellaneous matters.
    (1) First, I refuse to make an order, urged upon me at the hearing by Mr Mohammad, that the second defendant be removed as a trustee of the properties in his name, on the footing that he has clearly been out of the jurisdiction for over one year, because no notice was given to him of this argument in the application.
    (2) Second, at the hearing, I refused to deal with the defendants' application for security for costs, because insufficient notice had been given, and anyway the costs of hearing the claimant's application on that day had already been incurred. The claimant has sought an order that the defendants pay the costs they incurred in having to deal with that late application on 30 September 2020. I shall deal with this question on hearing argument on consequential orders at the handing down of this judgment.

77. For these reasons, and upon the fortification of the undertaking mentioned above, I shall order that the defendants be restrained from disposing of the six still unsold trust properties, with liberty to apply to sell them and to use the proceeds if such order seems appropriate to the judge then hearing the matter, but otherwise I dismiss the application.

Peter Knox Q.C.

16 October 2020

(With editorial corrections on 19 October 2020)