Neutral Citation Number: [2019] EWHC 2993 (Comm)

Case No: CL-2019-000126

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 13/11/2019

Before :

MRS JUSTICE CARR

- -

Between :

THE WORLD LLC	**Claimant**
- and -	
SHOKAT MOHAMMED DALAL	**Defendant**

- -
- -

Mr David Head QC and Mr Stephen Robins (instructed by **Norton Rose Fulbright LLP**) for the **Claimant**
Mr Michael McParland QC (instructed by **Fortuna Law LLP**) for the **Defendant**

Hearing dates: 9, 10 and 11 October 2019

- -

Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

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MRS JUSTICE CARR

Mrs Justice Carr :

A. INTRODUCTION

1. This is an application by the Defendant, Shokat Mohammed Dalal ("Mr Dalal"), to discharge a worldwide freezing order (and ancillary orders) obtained against him by the Claimant, The World LLC ("World"), at a without notice hearing before Teare J on 5 April 2019 ("the WFO"). The effect of the WFO was to freeze Mr Dalal's assets worldwide up to a value of £34 million.

2. It appeared originally (by reference to his fifth and seventh witness statements in particular) that Mr Dalal brought his application solely on the basis of material misrepresentation and/or non-disclosure. However, as the hearing developed, it became apparent that Mr Dalal applies to discharge the WFO on the following four (sometimes overlapping) bases:

    i) The WFO was obtained by material non-disclosures, misrepresentations and failures to make fair presentation by World in respect of (i) Mr Dalal's possible fraud defence; and/or (ii) the risk of the judgment going unsatisfied; and/or (iii) the risk of dissipation; and/or (iv) Mr Dalal's possible defence under s.33(1)(c) of the Civil Jurisdiction and Judgments Act 1982 ("the CJJA");

    ii) Further or alternatively, in view of all of the available evidence now before the court, there is no risk of the judgment going unsatisfied;

    iii) Further or alternatively, in view of all of the available evidence now before the court, there is no real risk of dissipation;

    iv) Further or alternatively, World did not make the WFO application with clean hands.

3. It is not Mr Dalal's case that there should be a discharge of the WFO because there is no good arguable case against him. He (rightly) accepts that there was and remains one.

4. Mr Head QC (on behalf of World) fairly accepted that I should consider all bases. The court is entitled to stand back and look at the evidence as it stands now in the round and consider whether there is a sufficient risk of the judgment going unsatisfied and/or a real risk of dissipation.

5. The alleged misrepresentations and non-disclosures on behalf of World are said to have been dishonest. In particular, Mr Dalal levels this serious allegation at Mr John Davidson ("Mr Davidson"), general counsel of the Nakheel Group (comprising of Nakheel PJSC ("Nakheel") and its subsidiaries, including World). The allegations are wide-ranging and, in places, detailed. This judgment focusses on the central points advanced.

B. BACKGROUND

6. World is a company incorporated in the UAE. It is the principal developer of the World Islands Project ("the Project"), which comprises approximately 240 man-made islands constructed in the shape of a stylized version of Mercator's projection of the world,

within a perimeter breakwater off the shore of Dubai. World is a wholly owned subsidiary of Nakheel, one of the world's largest property developers.

7. Mr Dalal is an individual resident in the United Kingdom.

8. In late 2007, Mr Dalal entered into negotiations to purchase two plots of land in the Project from World, namely Plots D13 and D94. The principal individuals at World with whom Mr Dalal negotiated were Mr Hamza Mustafa ("Mr Mustafa") and Mr Sameer Chinoy ("Mr Chinoy").

9. In respect of D94, World signed a document relating to the sale of the land to Mr Dalal on 12 December 2007. Mr Dalal countersigned this document on 13 December 2007 ("the 2007 Booking Letter"). In respect of D13, in May 2008, a document was signed by World relating to the sale of the land to Mr Dalal ("the Information Form"). The legal status of those documents under the applicable law has been and remains in dispute between the parties.

10. In May/June 2008, Mr Dalal entered into negotiations with World for the purchase of three further plots in the Project, namely D54, D55, and D103. It is common ground that there was no written record of any agreement between the parties relating to the sale and purchase of these plots. It was subsequently disputed as to whether there were any oral agreements between the parties relating to the sale and purchase of these plots.

11. In the course of 2008, Mr Dalal paid to World various deposits in relation to the purchase of those plots. In particular, he paid: (i) on 7 January 2008 and then on 15 June 2008, 15% of the purchase price of Plot D94, in two instalments; (ii) in May 2008 5% of the total purchase price of Plot D13. A post-dated cheque for a further 10% of the total purchase price of Plot D13 was never cashed and was returned to Mr Dalal in November 2008; (iii) between May 2008, 5% of the purchase price of Plots D54, D55 and D103. A post-dated cheque for a further 10% of the purchase price of Plot D103 again was never cashed and was returned to Mr Dalal in November 2008.

12. In November 2008, in the wake of the global financial crisis, the parties entered into negotiations for the possible repayment of some of those deposits. Some US$9.1 million of the deposits, in the form of un-cashed cheques, was returned to Mr Dalal. The US$9.1 million consisted of part re-payments of the deposits for Plots D13 (AED 7,191,175) and D103 (AED 26, 332, 927). There were then negotiations between the parties as to whether repayment of the deposits could be "consolidated" towards the possible purchase of Plots D13 and D94. Those negotiations broke down without agreement.

C. DWT PROCEEDINGS

13. In 2010, it appears that Mr Dalal decided that he no longer wanted to proceed with the purchase of Plots D54, D55 and D103. On 12 December 2010, he issued proceedings in which he sought to recover from World the deposits that he had paid in respect of those plots (but not Plots D13 and D94). The proceedings were issued before The Special Tribunal Related to Dubai World and its Subsidiaries ("DWT"), a tribunal established by royal decree ("the DWT Proceedings"). The trial took place over two days in May 2012, before a tribunal composed of Sir John Chadwick and Michael Hwang SC.

14. Mr Dalal's essential case before the Tribunal was as follows: World has an invariable contractual practice when selling plots of land which consists of (i) the payment of a deposit; (ii) the signing of a Reservation Contract; (iii) the approval of a Development Plan; and (iv) a concluded Sale and Purchase Agreement (incorporating an approved Development Plan) ("SPA"). This contractual practice was confirmed by Mr Mustafa, World's principal witness. The four-stage process was never completed in respect of Plots D54, D55 and D103. Nor was the payment of a deposit considered by World to constitute a sale or create a binding contract, as confirmed by Mr Mustafa in his evidence. Nor did Mr Chinoy have authority to enter into any sort of contract on behalf of World, something also confirmed by Mustafa in his evidence. As such, the parties had not entered into any binding contracts in respect of Plots D54, D55 and D103.

15. World refused to return the deposits in respect of Plots D54, D55, and D103. It argued that the parties had entered into binding oral contracts in respect of those plots, such that Mr Dalal was not entitled to recover the deposits. It did not bring any counterclaim for any outstanding sums due for the purchase of the plots.

16. The DWT handed down its judgment on 28 August 2012 ("the DWT Judgment"). The DWT held that under Dubai law: (i) there was no binding contract, whether oral or by conduct, made in May/June 2008 between the parties in respect of the sale and purchase of Plots D54, D55 and D103; and (ii) there was no agreement between the parties that Mr Dalal was not entitled to withdraw from the arrangement and seek the return of the monies which he had paid. The DWT Judgment ordered World to repay the sum of AED 57,048,281 to Mr Dalal. And by further judgments and orders dated 20 February 2013, 10 March 2013, and 5 April 2015, the DWT ordered World to pay interest and costs to Mr Dalal.

17. On 1 July 2012 (before the handing down of the DWT Judgment), World made a without notice application to the DWT alleging that the DWT Proceedings were void, and seeking a re-trial of the case before a new tribunal. That application was dismissed by the DWT on 11 July 2012. Subsequently (although it is not clear exactly when), World sought to challenge the DWT Judgment in the Dubai Courts, which challenge was also unsuccessful.

D. DUBAI PROCEEDINGS

18. Subsequently, Mr Dalal did not pay the outstanding balance to World in respect of Plots D13 and D94. On 4 May 2014, World issued proceedings against Mr Dalal before the Dubai Court of First Instance for the unpaid balance of those plots, in the sum of AED 244,526,426.40 ("the Dubai Proceedings"). It is common ground that by now the DWT had ceased to have jurisdiction over World; the litigation therefore fell within the jurisdiction of the Dubai civil courts.

19. World paid the sums owed to Mr Dalal under the DWT Judgment (AED 62,796,896) into the Dubai Courts, and obtained a without notice attachment order over them, pending the determination of World's claim in the Dubai Courts in respect of Plots D13 and D94 ("the attachment order").

20. World's case in the Dubai Proceedings at first instance was that, on the proper application of UAE law as to the formation of contracts, the objective facts in respect of the parties' dealings as to Plots D13 and D94 were sufficient to give rise to binding

contracts. It relied in part on the 2007 Booking Letter in respect of Plot D94 and the Information Form in respect of Plot D13.

21. Mr Dalal's case was that (i) there was no factual basis for concluding that binding contracts existed in respect of Plots D13 and D94; (ii) alternatively if such binding contracts had come into existence, they had been cancelled by Nakheel; (iii) alternatively, if they had come into existence, and had not been cancelled, they were void under UAE law for want of registration. Mr Dalal further pleaded (albeit in general terms) that the "claimant's claim [was] totally devoid of truth". In his Reply he stated that the claim "was no more than a claim of trickery".

22. At no point did Mr Dalal contend that World was estopped (or otherwise prevented) by the DWT Judgment (or otherwise) from advancing its case.

23. Mr Dalal also filed a counterclaim seeking to recover the deposits paid to World for Plots D13 and D94.

24. On 9 April 2015, the Dubai Court of First Instance handed down judgment ("the Dubai Judgment"). It held that: (i) there was sufficient objective evidence to conclude that the parties had entered into binding contracts for Plots D13 and D94; (ii) the contracts had not been cancelled; and (iii) the UAE registration law was inapplicable. Accordingly, Mr Dalal was ordered to pay AED 152,151,369 and his counterclaim was dismissed.

25. Mr Dalal then appealed to the Dubai Court of Appeal. In an "Explanatory Memorandum of Appeal", he alleged that a letter dated 26 September 2011 in relation to the cancellation of the contracts was "fabricated". World also sought to uphold the judgment on the basis of the arguments advanced below. On 17 January 2017, the Dubai Court of Appeal dismissed the appeal and held that (i) there were sufficient objective facts to conclude that binding contracts had been entered into; (ii) the contracts had not been cancelled; and (iii) the UAE registration law, although applicable, did not invalidate the contracts.

26. Mr Dalal then appealed further to the Dubai Court of Cassation. The arguments of both parties were substantially the same as advanced below. On 21 June 2017, the Dubai Court of Cassation dismissed Mr Dalal's appeal, and upheld the decision of the Dubai Court of Appeal.

27. Following the Dubai Court of Cassation's decision in respect of Plots D13 and D94, World was permitted to withdraw the monies that it had paid into Court in partial satisfaction of Mr Dalal's liability. World then took steps to enforce the Dubai Judgment in UAE, but Mr Dalal's assets were insufficient to meet the Dubai Judgment. It then sought to enforce against assets held by Mr Dalal in this jurisdiction.

E. ENGLISH PROCEDURAL HISTORY

28. On 27 February 2019, World issued the present enforcement proceedings against Mr Dalal ("the English Proceedings"). The claim form was served on Mr Dalal on 4 March 2019, along with the Particulars of Claim. On 11 March 2019 World issued an application to amend its Particulars of Claim, which was granted by Moulder J on 21 March 2019. Later that day, World's Amended Particulars of Claim were served on Mr Dalal.

29. On 28 March 2019, Mr Dalal commenced a claim against the UAE by way of an ICSID arbitration under the Bilateral Investment Treaty between the UK and the UAE dated 8 December 1992 ("the BIT") ("the Request for Arbitration"). The BIT action had previously been threatened in a letter from Mr Dalal's Mumbai solicitors, Shardul Amarchand Mangaldas, to the President of the UAE on 6 November 2018 ("the November Letter").

30. On 2 April 2019, Mr Dalal issued an application to stay the English Proceedings under Section 9 of the Arbitration Act 1996 on the basis that World was party to an arbitration agreement in the form of the BIT. The stay application (described by World as "hopeless") was subsequently withdrawn by consent by Andrew Baker J on 18 July 2019.

31. On 3 April 2019, World filed its without notice application for the WFO against Mr Dalal. The hearing took place before Teare J on 5 April 2019, in which he granted the WFO. The WFO was served on Mr Dalal's solicitors on 8 April 2019. Mr Dalal then made an application dated 11 April 2019 to vary paragraphs 8 and 9 of the WFO ordered by Teare J. The WFO was continued on 3 May 2019 by Sir Michael Burton following a hearing on notice.

32. On 12 July 2019, Mr Dalal filed his Defence in the English Proceedings. On 15 July 2019, Mr Dalal filed the present application to discharge the WFO. On 19 July 2019, World made an application for an extension of time in which to serve evidence in response to Mr Dalal's discharge application. That application was heard, and granted, on 2 August 2019 by Knowles J, World being directed to serve its responsive evidence to the discharge application by 9 September 2019.

F. WORLD'S CLAIM IN THE ENGLISH PROCEEDINGS

33. World's claim in the English Proceedings is a claim at common law to enforce the Dubai Judgment. World has made recoveries of AED 42,950,301.28 from Mr Dalal (by auctioning some of Mr Dalal's properties in the UAE). It anticipates that it will further recover AED 4,253,686.07 once the new owners of the auctioned UAE properties have received the title deeds from the Dubai Land Department. In the English Proceedings, World seeks to recover AED 104,947,381.65 excluding interest. It claims AED 47,324, 766.02 in interest, i.e. a global total of AED 152,272,147.67. The sterling equivalent as pleaded in the Amended Particulars of Claim is £31,747,220.07.

34. World's claim in the English Proceedings can be summarised as follows:

    i) A court of a foreign country outside the United Kingdom has jurisdiction to give a judgment in personam capable of recognition and enforcement in England if the defendant: (i) submitted to the foreign court's jurisdiction by voluntarily appearing in the proceedings; and/or (ii) counterclaimed in the foreign proceedings (see *Dicey, Morris & Collins on the Conflict of Laws* 15th Ed., vol 1 at [14R-054], Rule 43) ("*Dicey"*);

    ii) This rule "rests on the simple and universally admitted principle that a litigant who has voluntarily submitted himself to the jurisdiction of a court by appearing before it cannot afterwards dispute its jurisdiction" *(*see *Dicey* at [14-069]). "Where such a litigant…appears and pleads to the merits without contesting the

jurisdiction there is clearly a voluntary submission" (ibid.). Further, a "defendant who resorts to a counterclaim…clearly submits to the jurisdiction" (see *Dicey* at [14-068]);

iii) In cases which fall within the principle above, a foreign judgment in personam "may be enforced by a claim" and "is entitled to recognition at common law and may be relied on in proceedings in England" (see *Dicey* at [14R-020], Rule 42);

iv) Further, in such a case the foreign judgment cannot be impeached by the English court for any error either of fact or of law (see *Dicey* at [14R-118], Rule 48). A foreign judgment is not impeachable even if it is "*manifestly wrong*" (see *Adams v Cape Industries plc* [1990] Ch 443, per Slade LJ at 569);

v) Mr Dalal submitted to the jurisdiction of the Dubai Court by: (i) voluntarily appearing in the Dubai Proceedings; (ii) counterclaiming to recover the deposits; and (iii) appealing to the Dubai Court of Appeal and the Dubai Court of Cassation;

vi) It is not open to Mr Dalal to contend that the Dubai Judgment was wrong in fact or law, and in particular it is not open to him to contend that (i) there were insufficient objective facts to give rise to binding contracts under UAE law; and/or (ii) that the contracts were cancelled; and/or (iii) that the contracts were void for want of registration;

vii) The Dubai Judgment should therefore be recognized and enforced in England & Wales.

35. Mr Dalal's pleaded defence in the English Proceedings is that the Dubai Judgment should not be recognized and enforced in this jurisdiction because: (i) the Dubai Judgment is impeachable for fraud in the sense that World engaged in conscious and deliberate dishonesty in relation to the relevant evidence given, actions taken, statements made and matters concealed during the proceedings before the Dubai Court (see *Abouloff v Oppenheimer* [1882] 10 QBD 295 per Lord Coleridge CJ at 303; *Jet Holdings Inc v Patel* [1990] 1 QB 335 at 346); and/or (ii) the Dubai Judgment is contrary to public policy; and/or (iii) the Dubai Proceedings were contrary to substantial justice, and/or natural justice, and/or involved a breach of Mr Dalal's rights to a fair trial under Article 6 of the European Convention on Human Rights; and/or (iv) Mr Dalal did not submit to the Dubai jurisdiction, because, pursuant to S.33(1)(c) of the CJJA, Mr Dalal appeared in the Dubai Proceedings only in order to protect or obtain the release of the sums the subject of the attachment order. Amongst other things, Mr Dalal will contend that the Dubai Proceedings were brought "on behalf of an influential government-owned entity before a court system which is noted for its lack of independence from political influence". Their sole purpose was to prevent recovery by Mr Dalal of the sums found to be due to him in the DWT Proceedings.

G. HEARING BEFORE TEARE J

36. Given that this application (i) is substantially (albeit not exclusively) brought on the basis of various material non-disclosures at the hearing before Teare J; and (ii) raises serious allegations of dishonesty against Mr Davidson and allegations of misleading the

Court against (junior) counsel for World ("counsel"), it is necessary to set out in some detail the evidence, as well as the written and oral submissions before Teare J.

37. The hearing before Teare J took place on 5 April 2019, with a time estimate for the hearing of 45 minutes, and a time estimate for pre-reading of one hour. World's application was supported by: (i) the First Affidavit of Mr Davidson, which had been sworn in Dubai on 3 April 2019 ("Davidson 1"); (ii) an exhibit to Davidson 1 ("JD1"); (iii) a draft WFO; (iv) counsel's skeleton argument. Mr Davidson, who is based in Dubai, was not in court at the hearing before Teare J.

Davidson 1

38. Mr Davidson addressed the question of risk of dissipation at paragraphs 39 to 58. He referred to Mr Dalal's failure to discharge his liability following the Dubai Proceedings and to the transfer of a property known as 9 Buncer Lane, Blackburn ("9 Buncer Lane") by Mr Dalal to his wife, Ms Samiya Dalal, on 18 February 2011, at a time after the commencement of the DWT Proceedings and "when the Defendant was being pursued for the balance of the purchase price of all five properties (ie Plots D13, D94, D54, D55 and D103)." The court was invited to infer that the transfer was made in the hope of putting the property beyond World's reach.

39. Mr Davidson went on:

> "[45] Further, the Defendant is currently a director of Elliot Investment Ltd ("EIL"), a UK limited company with registration number 06578665, whose registered office is Malcolm House, 27 Windsor Road, Newton Heath, Manchester, England, M40 1QQ. Until 1 November 2018, the Defendant was the sole director and shareholder of EIL.
>
> …
>
> [52] Until recently the Defendant was the sole owner of 100% if the shares in EIL.
>
> [53] However, two forms that were lodged with Companies House on 12 September 2017 indicate that the Defendant's shares in EIL were transferred to a Hong Kong registered company called "Elliot Investments Limited" (with an "s" after Investment), whose registered or principal office address is Futara Plaza, Room 2103, 111 How Ming Street, Kwun Tong, Hong Kong (pages 204 to 209 of Exhibit "JD-1"). Elliot Investments Limited appears to be owned by ASD Holdings Foundation, a Belize-registered trust (pages 304 to 311 of Exhibit "JD-1"). The Claimant has no further information in respect of ASD Holdings Foundation or the Defendant's interest in it (if any).
>
> [54] As to the timing of the share transfer, I note that the shares in EIL were transferred away from the Defendant after the Court of Cassation decided in favour of the Claimant on 21 June

> 2017, exhausting the Defendant's rights of appeal in Dubai. The Claimant infers, and invites the Court to infer, that the Defendant was attempting to distance himself from EIL in the hope of putting the assets beyond the reach of the Claimant.

40. There followed reference to the registration of a charge against a residential property owned by Mr Dalal at Barcroft, Carr Lane, Blackburn ("Barcroft") on 21 December 2015 in favour of Elliot Investments Limited (emphasis added), a company incorporated in the Jebel Ali Free Zone in Dubai. The inference invited was that this company was owned and/or controlled by Mr Dalal. The charge was registered after the Dubai court at first instance had ruled against him. Further, on 18 March 2019, a notice of home rights under the Family Law Act 1996 had been registered in Ms Dalal's name, one day after Mr Dalal acknowledged service of the English Proceedings.

41. Having set out the basis for World's application, Mr Davidson turned expressly to his duty of full and frank disclosure:

> "81. I am aware of and understand the duty of full and frank disclosure and have made enquiries to ascertain whether there are any points which the Defendant would be likely to raise with the Court, if he had notice of the application."

42. He proceeded to draw the court's attention to the November Letter (which he exhibited at JD1). World was not a party to the claim outlined in the letter, but had been sent a copy by a Dubai government department. He quoted from: (i) paragraph 14 in which Mr Dalal alleged "serious procedural irregularities" and a "failure to adhere to principles of natural justice and were in complete violation of [the Defendant's] due process rights" in the Dubai Proceedings; (ii) paragraph 15, in which Mr Dalal alleged collusion between World and the Dubai Land Department; (iii) paragraph 17, in which Mr Dalal had alleged that World had executed the Dubai judgment by "illegally" attaching and auctioning his assets in Dubai "even though such properties are not connected to The World project".

43. Mr Davidson also referred to the allegation in paragraph 8 of the November Letter that a few months before the hearing before the DWT Mr Dalal had been prevented from travelling to the UAE as a result of an arrest warrant that the Dubai police had issued against him in response to a complaint filed (in error) by World in relation to a dishonoured cheque.

44. Mr Davidson took the court to the Request for Arbitration and the allegations made there by Mr Dalal that the UAE had breached its obligations under the BIT. He stated that Mr Dalal's application for a stay strengthened World's concerns regarding the risk of dissipation of assets.

45. Finally, Mr Davidson identified that Mr Dalal might seek to contend that World had delayed in seeking a freezing order and that one should be refused on that basis.

Counsel's skeleton

46. On risk of dissipation, the skeleton stated:

"[36] …there is a real risk of dissipation. D has not utilized his assets to discharge his liability to C under the Dubai Judgment. To the contrary, the evidence shows that D has already begun a process of putting his assets beyond C's reach, to thwart the Dubai Judgment, and that there is a real risk that D will continue to do so, in an attempt to render himself judgment-proof unless restrained by this Court. In summary:

…

(1) D was formerly the registered proprietor of 9 Buncer Lane, Blackburn, BB2, 6SE. However, on 18 February 2011, at a time when C was demanding payment from D of the outstanding balance of the purchase price of the five plots of land mentioned above, D transferred 9 Buncer Lane to his wife, Ms Samiya Dalal.

(2) D was formerly the owner of 100% of the shares in Elliot Investment Ltd ("EIL"), a company incorporated in England which holds substantial property investments. However, at some point before 12 September 2017, D transferred his shared in EIL to Elliot Investments Limited, a company incorporated in Hong Kong, which is owned by ASD Holdings Foundation, a Belize-registered trust. It appears that this transfer was prompted by the decision of the Dubai Court of Cassation on 21 June 2017, dismissing D's appeal and exhausting D's rights of appeal in Dubai.

(3) D purchased the freehold title to the property known as Barcroft, Carr Lane in Blackburn for £862,500 on 22 November 2007. There have been two relevant dealings in respect of this property. First, on 21 December 2015 (a number of months after the Dubai Court of First Instance had decided in favour of C), a charge was registered against this property in the name of Elliott Investments Limited, a company incorporated in the Jebel Ali Free Zone ("JAFZA"), in Dubai. Given that the name of this company is similar to EIL and the Hong-Kong incorporated Elliot Investments Limited, C suspects that D owns and/or controls this company. Secondly, on 18 March 2019 (only one day after D acknowledged service of the Claim Form in these proceedings), D's wife registered a notice of home rights under the Family Law Act 1996 against Barcroft, Carr Lane.

…

[41] …D's behaviour in response to C's claim is troubling. Instead of seeking to respond on the merits, D has applied for a stay on grounds which are contrary to Court of Appeal authority and unsustainable on the facts. C believes that D is simply trying to buy time in order to complete his disposals of assets to put them beyond C's reach."

47. The final section of counsel's skeleton argument was headed "Full and Frank Disclosure" and read as follows:

> "[49] C is aware of the duty of full and frank disclosure and has sought to comply with it in paragraphs 81 to 82 of Davidson-1 in support of this application.
>
> [50] D's position on the merits has been set out in a letter from D's Mumbai Attorney, Rishab Gupta of Shardul Amarchand Mangaldas, to His Highness Sheikh Khalifa bin Zayed Al Nahyan and His Highness Sheikh Mohammed bin Rashid Al Maktoum dated 6 November 2018, requesting negotiations under Article 8 of the BIT, and in D's request for arbitration under the BIT dated 28 March 2019. In summary, D alleges that there were various procedural irregularities in Dubai. Whilst it is not entirely clear, it is possible that D will contend in due course that the Dubai Judgment is tainted by fraud and that it should not be enforced in England (Dicey, [14R-137], Rule 50).
>
> [51] C's position is that there were no procedural irregularities. Further, it was open to D to raise any allegations of procedural irregularity during the appeal process and, to the extent that he did so, his objections were duly considered and rejected by the Dubai Court of Appeal and the Dubai Court of Cassation. In any event, there was no fraud. Finally, an attempt by D to impeach the Dubai Judgment in England would not affect the conclusion that C has a *good arguable case* to enforce the Dubai Judgment.
>
> [52] D may seek to contend that C has delayed in seeking a freezing order and that it should be refused on this basis. However, C has not delayed. As explained above, the litigation was proceeding in Dubai, including by way of D's appeals, and this was followed by C's attempts to enforce the Dubai Judgment in Dubai. When it became apparent that D's assets in Dubai would not be sufficient to satisfy the Dubai Judgment, C commenced the present claim in England. In any event, delay is not a reason to decline to grant a freezing order where it is justified by objective facts: see *FM Capital Partners Ltd v Marino* [2018] EWHC 2612 (Comm) at [45]-[50], citing *Madoff Securities International Ltd v Raven* [2011] EWHC 3102 (Comm), at [148]-[159], per Flaux J; *JSC Mezhdunarodniy Promyshlenniy Bank v Pugachev* [2015] EWCA Civ 906; [2015] WTLR 1759, at [34], per Bean LJ and *Ras Al Khaimah Investment Authority v Bestfort Development LLP* [2017] EWCA Civ 1014; [2018] 1 WLR 1099, at [55], per Longmore LJ."

The Transcript

48. Having opened the application, counsel referred to Plots D94 and D13 but also to Plots D54, D55 and D103. He identified the latter as "not directly relevant but… important in understanding the defendant's position…". Counsel discussed with Teare J the DWT and the Dubai Proceedings. There then followed this exchange:

> "MR JUSTICE TEARE: So the sum he was ordered to pay is the purchase price of these two islands?
>
> COUNSEL: Yes, that is right.
>
> MR JUSTICE TEARE: And so have the islands now been transferred to him?
>
> COUNSEL: That is my understanding, but could I confirm my instructions?
>
> MR JUSTICE TEARE: In English terms, this looks as if it is an application for specific performance of a contract to buy land.
>
> COUNSEL: Yes.
>
> MR JUSTICE TEARE: Yes?
>
> COUNSEL: That is right. And it is my understanding from reading these judgments that the land was registered in his name. It is one of the complaints he makes, because he said – he initially sought to defend the claim on the basis that it had not been registered in his name. The contracts were then registered, and he complained about that saying that this was – as we will see from the arbitration request – collusion between the claimant and the Dubai Lands Department. I can confirm, on instructions that that is correct…
>
> MR JUSTICE TEARE: And so have the islands now been transferred to him?"

49. In relation to the risk of dissipation, the key exchanges between counsel and Teare J were as follows:

> "COUNSEL: As to the risk of dissipation, there are three points in particular that we rely on. The first, in 36(1) related to 9 Buncer Lane, and I think I should take your Lordship to documents----
>
> MR JUSTICE TEARE: I was not particularly impressed by that because it was so long ago.
>
> COUNSEL: Yes it was, but it was at a time when the claimant was demanding payment from the defendant in respect of the

outstanding balance of the purchase price for all five plots of land.

MR JUSTICE TEARE: Yes.

COUNSEL: So a very substantial sum of money. He transferred the property to his wife for no consideration. So that is the first point. Your Lordship is right to say that it was in 2011, but one sees a pattern of behaviour that is extremely troubling and that is the beginning of it. Then, more recently, in subpara.(2) the defendant was the owner of the shares in Elliot Investments Ltd, which holds property investments.

MR JUSTICE TEARE: Yes.

COUNSEL: The defendant describes himself as a property investor. And at some point before 12 September 2017, he transferred his shares to Elliot Investments [plural] Ltd., which is incorporated in Hong Kong and owned by a Belize registered foundation.

MR JUSTICE TEARE: Well, that is obviously much more significant.

COUNSEL: Yes, and that follows the Dubai Court of Cassation's decision----

MR JUSTICE TEARE: Quite, yes.

COUNSEL: --exhausting his rights of appeal. Now, if your Lordship wants to see the documents in relation to that, they are in volume 2.

MR JUSTICE TEARE: Yes.

COUNSEL: If we start at p. 206, this is from Companies House in relation to Elliott Investment Ltd, the property-owning company. At 206 your Lordship will see that the entire issued share capital is transferred – in fact, sorry there is a date given. We had not spotted that. This is an odd discrepancy because if your Lordship goes back to 206----

MR JUSTICE TEARE: Yes.

COUNSEL: --it is registered on 12----

MR JUSTICE TEARE: September.

COUNSEL: --September 2017.

MR JUSTICE TEARE: Yes.

COUNSEL: But p,207 records that the shares were transferred on—I do not know whether it is meant to be 12th September or 9th December 2015, which is obviously a feature that you sometimes see in these sorts of cases where people register something saying they did it a considerable time ago, and artificially backdating it. Obviously we do not know if that is what has happened here. But if it was in 2015, that is then after the Dubai court of first instance has delivered its judgment holding the defendant to pay----

MR JUSTICE TEARE: Right.

COUNSEL: --153 million dirhams. If we then go to p. 204.

MR JUSTICE TEARE: 204?

COUNSEL: Yes.

MR JUSTICE TEARE: Yes.

COUNSEL: Your Lordship will see that Elliot Investments Ltd is incorporated in Hong Kong, and the registered office address is given.

MR JUSTICE TEARE: Yes.

COUNSEL: We have then got, at p. 304, the annual return from the Hong Kong companies registry, and it is at p. 311 that your lordship will see that the owner of the share capital is the Belize foundation. And we do not know anything about the foundation or who has a beneficial interest in it.

MR JUSTICE TEARE: No. Right.

COUNSEL: The third factor relates to the property known as Barcroft in Carr lane, Blackburn which was bought in 2007 for £862,000. Your Lordship can see the points in relation to this from the document at p.210, which is the office copy entry from the Land Registry. At p. 212, first, there is a charge registered over this property in December 2015 after the Dubai first instance judgment. The proprietor of the charge is Elliott Investments Ltd.

MR JUSTICE TEARE: Yes.

COUNSEL: Not the Hong Kong one but another one incorporated in the Jebel Ali Free Zone.

MR JUSTICE TEARE: Oh, right.

COUNSEL: So it looks to us to be the tactic of getting a connected party to obtain a charge over the property in the hope

> of putting the equity beyond the reach of a creditor. Secondly, recently, entry 6 on the register----
>
> MR JUSTICE TEARE: Well, you will have to help me with this. What is a register of, or notice of, home rights?
>
> COUNSEL: I am afraid I do not know. Can I take instructions to see if those behind me know? (After a pause) No I am sorry, I cannot assist with that.
>
> MR JUSTICE TEARE: It is just that you do rely upon it.
>
> COUNSEL: Yes, Well, it is some sort of dealing with the property in an attempt to register rights, one day after the defendant acknowledged service of these proceedings.
>
> MR JUSTICE TEARE: Yes.
>
> COUNSEL: So we are concerned that, looking at those points collectively, it reveals a pattern of attempts to put assets beyond the claimant's reach.
>
> MR JUSTICE TEARE: I mean, certainly the dealings with Elliot Investment Ltd and the two Elliot Investments Ltd seem to give rise to unnecessary risk.
>
> COUNSEL: Yes.
>
> MR JUSTICE TEARE: Yes.
>
> …
>
> COUNSEL: And in terms of risk of dissipation, we also rely of course on his response to the claim----
>
> MR JUSTICE TEARE: Yes.
>
> COUNSEL: -- with the stay application, which we see as an attempt to buy time----
>
> MR JUSTICE TEARE: Yes.
>
> COUNSEL: -- and we fear it may be to put assets beyond reach….

50. In relation to Mr Dalal's potential fraud defence, the key exchanges between counsel and Teare J were as follows:

> "COUNSEL: Your Lordship will see from p.50, at the second hole punch, the defendant appealed, criticizing the first instance judgment for misapplying the law, for deficient causation and reasoning, as well as contradicting the documentary evidence.

…

MR JUSTICE TEARE: On a good arguable case, it is difficult to see, subject to the stay point, any defence.

COUNSEL: There is one point that we can just sort of begin to see the glimmer of the outline of, that I was going to come to----

MR JUSTICE TEARE: Right, okay.

COUNSEL: --in the context of full and frank disclosure

MR JUSTICE TEARE: Yes. Yes thank you.

…

MR JUSTICE TEARE: --I accept your submission that this is an appropriate case to grant the order.

COUNSEL: In which case shall I just deal with full and frank disclosure.

MR JUSTICE TEARE: Why don't you? Yes, please.

COUNSEL: So that that has been dealt with before your Lordship expresses any decision.

MR JUSTICE TEARE: Yes, thank you.

COUNSEL: The advantage we have in the present case is that the defendant has recently set out his position in his request for arbitration.

MR JUSTICE TEARE: Yes.

COUNSEL: That is in volume 3 at tab 9, starting at p.2

MR JUSTICE TEARE: Yes

COUNSEL: One of the things that that confirms is that the party to the arbitration is the United Arab Emirates, not the claimant. Your Lordship will see what he says on p.9 at para 23 first of all talking about the Dubai World Tribunal proceedings. He says that Nakheel and World, in collusion with the UAE State apparatus, did everything it could to make it difficult for Mr Dalal to pursue his case, for example, while proceedings were pending they filed a police complaint seeking his arrest in relation to a dishonoured cheque. And he says in 24 that he feared for his safety and decided not to travel, but was instead allowed to give evidence by video link to the Dubai World Tribunal. And in 25, he gave evidence by video link and then of

course the Dubai World Tribunal decided in his favour in respect of those particular three plots. So insofar as our claim is concerned, we do not see that that has any relevance but I draw it to your Lordship's attention. It is something he has complained about.

MR JUSTICE TEARE: Was there some particular reason why he defeated you in the other claim.

COUNSEL: It was held by the tribunal that on the facts relating to those three particular islands, there was no binding contract.

MR JUSTICE TEARE: Right. I see. Yes.

COUNSEL: And one of the points he makes is to say, well, it is very strange that the Dubai court came to a different decision in respect of two further plots of land on what he describes as very similar or nearly identical facts. But we say of course they are not different—they are not the same or similar facts, they are different facts, different transactions, different pieces of land, and that is why it is not surprising that there is a different decision. He then makes a complaint, on p.15—no sorry, I have skipped over one. I should mention p.14, para 48 is the point I was just making.

MR JUSTICE TEARE: Yes.

COUNSEL: Where he says that there is a puzzle because one tribunal found that there was no contract in relation to three plots but another court found there was a transaction---

MR JUSTICE TEARE: YES

COUNSEL: --in respect of two separate plots. Then in 49 he says: "More egregiously, these proceedings were tainted by serious procedural irregularities." These are presumably the sort of points that his attorney was relying on in the appeal, but they were rejected. Then on 15, he says at 56 that the Court of Appeal in Dubai disregarded his rights to a fair trial.

MR JUSTICE TEARE: Yes.

COUNSEL: And at 57 he says that the Court of Appeal admitted evidence into the proceedings, which was clearly fabricated. This is the point that I made earlier, that he complained that the plots were not registered in his name. And then, in 59, the claimant responded by getting these plots registered, at which point he complained about that, and said that it should not have been done, and then complained, at the top of p.16, that the Court of Appeal admitted those deferred sale contracts into evidence and confirmed the first instance decision.

MR JUSTICE TEARE: Presumably, he was able to argue these points----

COUNSEL: Yes.

MR JUSTICE TEARE: --before the court----

COUNSEL: As far as we can see, he did. He was represented by an attorney throughout.

MR JUSTICE TEARE: Yes

…

MR JUSTICE TEARE: What is the point at which there is, to quote you earlier, a faint glimmer?

COUNSEL: Where he talks about collusion and fabricated evidence, there is a possibility that he may say that the Dubai judgments can be impeached for fraud. It is a very narrow exception from the usual rule set out in Dicey.

MR JUSTICE TEARE: But he presumably had the opportunity, and may well have taken it, to run that--

COUNSEL: Well, exactly.

MR JUSTICE TEARE: --when the evidence was adduced.

COUNSEL: But we have got a duty to----

MR JUSTICE TEARE: Of course.

COUNSEL: --tell your Lordship things that he----

MR JUSTICE TEARE: Yes, of course.

COUNSEL: --would presumably want to say if he were here.

MR JUSTICE TEARE: Yes.

COUNSEL: And that is – when I read those words about fabricated documents, and so on, I thought he could possibly go off in that direction.

MR JUSTICE TEARE: Oh I see. It might engage the fraud exception.

COUNSEL: If his allegations were factually correct----

MR JUSTICE TEARE: Yes.

> COUNSEL: --he might be able to bring himself within that exception.
>
> MR JUSTICE TEARE: Yes, quite. I see."

51. Counsel also drew Teare J's attention to the question of delay:

> "COUNSEL: The other point he might potentially take to say we should not have a freezing order is that we have delayed. He could say, for example, that the transfer of the 9 Buncer Lane property to his wife has been apparent from the Land Registry since 2011, so that is another point that we should draw to your Lordship's attention. Our response to that would be to say that it is prompted by what we have now seen as a pattern of behaviour. It was not a one-off. There are more concerning events happening in more recent times and, in any event, the case law is very clear that delay on its own does not disentitle a claimant to a freezing order where it is otherwise justified by objective facts. If that were possible, you could never, for example, have a post judgment freezing order because you would always be able to say "Well, too late, you should have got one before judgment". We were not able to identify any other points in relation to full and frank disclosure. I think I have covered everything that Mr Davidson has set out in his witness statement."

52. Teare J gave a short ruling in the following terms:

> "…may I just say that, having read the evidence in support of the application and counsel's written skeleton argument, and having heard counsel's oral submissions and noted the documents to which he referred, I am satisfied that this is in principle an appropriate case for the grant of a freezing order. The claimant has to show a good arguable case. Its cause of action is a claim at common law on a foreign judgment, and it does appear from the evidence which has been provided that the defendant voluntarily appeared before the Dubai court and pleaded to the merits, and the judgment of the Dubai court is now, after all appeals have been exhausted, final and conclusive. There does not appear to be any possible defence to the claim, though counsel has properly referred me to the defendant's application for a stay of these proceedings, pursuant to Section 9 of the Arbitration Act, where, in the witness statement of the solicitor acting for the defendant, there is an allegation that some evidence was obtained by fraud. If those facts could be established, they might give rise to a defence to this cause of action, but it appears the defendant had every opportunity to take that type of point before the Dubai courts and, nevertheless, his appeals were dismissed. So although there is that faint possibility of an argument, I am satisfied that the claimant's case has the necessary strength to make it appropriate to order a freezing order.

> The next most important question is whether there is solid evidence to believe that there is a risk of dissipation. A number of matters have been relied upon, which are summarized in para 36 of counsel's skeleton argument. The first of those dates back to 2011 and, by reason of its date I am not satisfied that by itself it has much significance, though counsel is quite right to point out that this transfer of property took place at a time when the claimants were claiming a large sum from the defendant. The fourth item relied upon is a register by the defendant's wife of home rights, which took place very recently on 18th March 2019. It is possible that that is related to these proceedings, but it is also possible that it may relate to some dispute between the defendant and his wife.
>
> However, the second and third matters relied upon are of a different character, it seems to me. The second item is that the defendant was the owner of 100 per cent of the shares in Elliott Investment Ltd, a company incorporated in England, which holds substantial property investments. At some point before 12th September 2017, he transferred his shares in that company to Elliott Investments Ltd, a company incorporated in Hong Kong, which is owned by a Belize-registered trust. That transfer, if it took place in September 2017, occurred shortly after the decision of the Dubai Court of Cassation of June 2017 dismissing the defendant's appeal, The third matter relied upon is that in December 2015 a charge was registered against a property purchased by the defendant in the name of another company, called Elliott Investments Limited, this time a company incorporated in the Jebel Ali Free Zone. Not much more is known about those transfers but, having regard to the fact that they occurred whilst the litigation was going on in Dubai, and in the case of the second transfer possibly after the final appeal had been dismissed, they do give grounds for suspecting that the defendant is taking steps to make himself judgment-proof, at least with regard to those assets, and that is particularly so in circumstances where it is not possible at present to know who is the ultimate owner of the Belize-registered trust or of the company incorporated in the Jebel Ali Free Zone. But the similarity of names involved suggests that the ultimate owner may be the defendant. Those two matters, in my judgment, amount to the necessary solid evidence of a risk of dissipation and, accordingly, it is appropriate to grant the order….."

H. FREEZING ORDERS: THE RELEVANT LAW

53. The scope of the duty of full and frank disclosure and the correct approach to applications to discharge for alleged breach of that duty in the context of worldwide freezing orders were summarised recently in *Tugushev v Orlov (no 2)* [2019] EWHC 2013 (Comm) (at [7]) (and set out for ease of reference):

"i) The duty of an applicant for a without notice injunction is to make full and accurate disclosure of all material facts and to draw the court's attention to significant factual, legal and procedural aspects of the case;

ii) It is a high duty and of the first importance to ensure the integrity of the court's process. It is the necessary corollary of the court being prepared to depart from the principle that it will hear both sides before reaching a decision, a basic principle of fairness. Derogation from that principle is an exceptional course adopted in cases of extreme urgency or the need for secrecy. The court must be able to rely on the party who appears alone to present the argument in a way which is not merely designed to promote its own interests but in a fair and even-handed manner, drawing attention to evidence and arguments which it can reasonably anticipate the absent party would wish to make;

iii) Full disclosure must be linked with fair presentation. The judge must be able to have complete confidence in the thoroughness and objectivity of those presenting the case for the applicant. Thus, for example, it is not sufficient merely to exhibit numerous documents;

iv) An applicant must make proper enquiries before making the application. He must investigate the cause of action asserted and the facts relied on before identifying and addressing any likely defences. The duty to disclose extends to matters of which the applicant would have been aware had reasonable enquiries been made. The urgency of a particular case may make it necessary for evidence to be in a less tidy or complete form than is desirable. But no amount of urgency or practical difficulty can justify a failure to identify the relevant cause of action and principal facts to be relied on;

v) Material facts are those which it is material for the judge to know in dealing with the application as made. The duty requires an applicant to make the court aware of the issues likely to arise and the possible difficulties in the claim, but need not extend to a detailed analysis of every possible point which may arise…'

vi) Where facts are material in the broad sense, there will be degrees of relevance and a due sense of proportion must be kept. Sensible limits have to be drawn, particularly in more complex and heavy commercial cases where the opportunity to raise arguments about non-disclosure will be all the greater. The question is not whether the evidence in support could have been improved (or one to be approached with the benefit of hindsight). The primary question is whether in all

the circumstances its effect was such as to mislead the court in any material respect;

vii) A defendant must identify clearly the alleged failures, rather than adopt a scatter gun approach. A dispute about full and frank disclosure should not be allowed to turn into a mini-trial of the merits;

viii) In general terms it is inappropriate to seek to set aside a freezing order for non-disclosure where proof of non-disclosure depends on proof of facts which are themselves in issue in the action, unless the facts are truly so plain that they can be readily and summarily established, otherwise the application to set aside the freezing order is liable to become a form of preliminary trial in which the judge is asked to make findings (albeit provisionally) on issues which should be more properly reserved for the trial itself;

ix) If material non-disclosure is established, the court will be astute to ensure that a claimant who obtains injunctive relief without full disclosure is deprived of any advantage he may thereby have derived;

x) Whether or not the non-disclosure was innocent is an important consideration, but not necessarily decisive. Immediate discharge (without renewal) is likely to be the court's starting point, at least when the failure is substantial or deliberate. It has been said on more than one occasion that it will only be in exceptional circumstances in cases of deliberate non-disclosure or misrepresentation that an order would not be discharged;

xi) The court will discharge the order even if the order would still have been made had the relevant matter(s) been brought to its attention at the without notice hearing. This is a penal approach and intentionally so, by way of deterrent to ensure that applicants in future abide by their duties;

xii) The court nevertheless has a discretion to continue the injunction (or impose a fresh injunction) despite a failure to disclose. Although the discretion should be exercised sparingly, the overriding consideration will always be the interests of justice. Such consideration will include examination of i) the importance of the facts not disclosed to the issues before the judge ii) the need to encourage proper compliance with the duty of full and frank disclosure and to deter non-compliance iii) whether or not and to what extent the failure was culpable iv) the injustice to a claimant which may occur if an order is discharged leaving a defendant free to dissipate assets, although a strong case on

> the merits will never be a good excuse for a failure to disclose material facts;
>
> xiii) The interests of justice may sometimes require that a freezing order be continued and that a failure of disclosure can be marked in some other way, for example by a suitable costs order. The court thus has at its disposal a range of options in the event of non-disclosure."

54. Given the particular arguments raised in this case, I refer also to *Bank Mellat v Nickpour* [1985] FSR 87 at 89 where Lord Denning MR commented that "the plaintiff ought to disclose, so far as he is able, any defence which the defendant has indicated in correspondence or elsewhere". In *Konameneni v Rolls Royce Industrial Power (India) Ltd* [2002] 1 WLR 1269 Lawrence Collins J (as he then was) said (at [180]) that "an applicant does not have a duty to disclose points against him which have not been raised by the other side and in respect of which there is no reason to anticipate that the other side would raise such points if it were present".

55. In *Tugushev v Orlov no 2* (supra) the principles relating to the real risk of dissipation were also summarised (at [49]) (and again set out for ease of reference):

> "Generally, a cautious approach is appropriate before deployment of what has been called one of the court's nuclear weapons. As for risk of dissipation specifically:
>
> i) The court must conclude on the whole of the evidence before it that the refusal of a freezing order would involve a real risk that judgment would remain unsatisfied, in the sense that, unless restrained by injunction, either the defendant will dissipate or dispose of his assets other than in the ordinary course of business or assets are likely to be dealt with in such a way as to make enforcement of any award or judgment more difficult, unless those dealings can be justified for normal and proper business purposes. The claimant must show a real risk, judged objectively, that a future judgment would not be met because of an unjustified dissipation of assets;
>
> ii) The risk is not to be inferred lightly. Bare or generalised assertion of risk by a claimant is not enough. There must be solid evidence of the risk of dissipation;
>
> iii) Mere reliance on the alleged dishonesty of the defendant is not, of itself, sufficient to found a risk of dissipation. The court must scrutinise with care whether what is alleged to have been the dishonesty justifies the inference of a real risk of dissipation. Where the dishonesty alleged is at the heart of the claim against the defendant the court may be able to draw the inference that the making out to the necessary standard of that case against the defendant also establishes sufficiently the risk of dissipation of assets;

iv) A defendant's former use of offshore structures may be relevant but does not itself equate to a risk of dissipation. Businesses and individuals often use offshore structures as part of the normal and legitimate way in which they deal with their assets;

v) Each case is fact specific and relevant factors must be looked at cumulatively."

I. ANALYSIS: UNFAIR PRESENTATION OF FRAUD DEFENCE

56. Mr Dalal submits that World failed to give a fair presentation of his potential fraud defence at the ex parte hearing. The essence of Mr Dalal's potential fraud defence is that, in the light of the DWT Proceedings, World knew that it was simply not entitled to bring the Dubai Proceedings. The pursuit of the Dubai Proceedings by World was, so it is suggested, in and of itself dishonest.

57. Mr Dalal complains that, amongst other things, the court should have been informed of: (i) World's evidence before the DWT that the 2007 Booking Letter was not a contract; (ii) the finding of the DWT that the 2007 Booking Letter would not have been regarded by World as a contract; (iii) the DWT's finding that no Reservation Contract for Plots D13 and D94 had been signed; (iv) that World's standard contractual practices were not disclosed to the Court; (v) that World had always wanted a Reservation Contract and a SPA to be signed for Plots D13 and D94; (vi) that Mr Chinoy had no authority to enter into a contract on behalf of World. A total of 18 specific complaints were listed by Mr McParland QC for Mr Dalal.

58. In summary, it is said that World failed to give a fair presentation of the evidence in the DWT Proceedings, the DWT Judgment, the evidence in the Dubai Proceedings, and the reasons for the different and allegedly incompatible outcomes between the DWT Judgment and the Dubai Judgment.

59. Mr Dalal also submits, as a separate but related point, that Teare J was not reminded of the following principle of law: a foreign judgment is impeachable for fraud even if fraud: (i) was alleged in the foreign proceedings and the foreign court rejected the allegation; and/or (ii) was not alleged in the foreign proceedings and only came to light thereafter; and/or (iii) was not alleged in the foreign proceedings despite the fact that the party now relying on the fraud knew at the time of the foreign proceedings and could have alleged it but chose not to do so: see *Abouloff v Oppenheimer* (supra); *Vadala v Lawes* (1890) 25 QBD 310; *Syal v Heyward* [1948] 2 KB 443 (CA); and *Jet Holdings v Patel* (supra).

60. The written and oral submissions of both parties in relation to this aspect of Mr Dalal's case were extensive. They went beyond what is strictly relevant to this application. As the authorities make clear, on an application such as this, the Court should avoid engaging in a mini-trial. The question before me is not to decide, on a thorough analysis of all the evidence, the merits of Mr Dalal's fraud defence. That will be a matter for further debate in due course.

61. Rather, the question is one of alleged non-disclosure/unfair presentation. Did World present fairly to Teare J Mr Dalal's potential fraud defence as matters stood on 5 April 2019?

62. In my judgment, it did, for the following four main reasons.

63. First, by the time of the without notice application, Mr Dalal had not identified in terms with any real degree of precision the fraud defence that he now seeks to run in the English Proceedings, namely that World knew that it was not entitled to bring the Dubai Proceedings, and therefore did so dishonestly. World was entitled to rely on the November Letter and the Request for Arbitration as containing the most up-to-date statement of Mr Dalal's position as at 5 April 2019.

64. In the November Letter, allegations were made of "serious procedural irregularities", a "failure to adhere to principles of natural justice" and collusion, in the Dubai Proceedings, but these were not the allegations of fraud as now pleaded. In the Request for Arbitration, which was sent after service of the English Proceedings, the Dubai Proceedings were said to have been tainted by major procedural irregularities, and were described as a collateral attack on the DWT Judgment. Again, that is not an allegation of fraud as now pleaded; nor were the assertions as to trickery and untruthfulness in the Dubai Proceedings themselves an allegation of fraud as now pleaded. For example, the reference to fabricated evidence before the Dubai Court of Appeal was a reference to the deferred sale contracts, which is not the fraud now alleged.

65. Secondly, even though Mr Dalal had himself not identified the fraud defence now pleaded as at 5 April 2019, World nevertheless did identify to Teare J in clear terms that Mr Dalal might run a defence of fraud.

66. Mr Davidson identified, by way of full and frank disclosure, the complaints made by Mr Dalal in respect of the Dubai Proceedings in the November Letter and in the Request for Arbitration. He specifically referred the Court to the allegations made by Mr Dalal in paragraphs 14, 15, and 17 of the November Letter. Counsel's skeleton at the without notice hearing also referred to the November Letter and the Request for Arbitration, and explicitly raised the possibility that Mr Dalal might run the fraud defence, having made allegations of serious procedural irregularities. He said in terms:

> "While it is not entirely clear, it is possible that the D will contend in due course that the Dubai Judgment is tainted by fraud and that it should not be enforced in England".

67. Teare J was taken to the November Letter and the Request for Arbitration, with the relevant paragraphs in which Mr Dalal made various complaints, from which it was inferred that a defence of fraud might be forthcoming, highlighted. In fact, counsel was careful to make sure Teare J understood this point, intervening to alert the Judge to the fraud defence and to prevent him from making any final decision without having considered it. Teare J then having indicated that it was appropriate to grant the WFO, counsel again ensured that he understood the position set out in the November Letter and the Request for Arbitration.

68. Accordingly, Teare J acknowledged the potential fraud defence in his ruling. He concluded that "there is an allegation that some evidence was obtained by fraud. If those facts could be established, they might give rise to a defence to this cause of action".

69. Thirdly, the numerous matters which Mr Dalal complains were not presented to Teare J were not necessary for resolution of the without notice application for the WFO. The full detail did not need (nor would it have been appropriate for it) to be ventilated before him for the purpose of the application. The short point is that, even now, Mr Dalal (rightly) accepts that World has a good arguable case on the merits. The extent, for example, of any discrepancies between the DWT Judgment and the Dubai Judgment, will be a matter for the full merits in due course.

70. World does not therefore fall to be criticised for failing to take Teare J to the granular evidence on the merits in the DWT Proceedings and the Dubai Proceedings. At times during the hearing, it seemed as if Mr Dalal's position was almost that World was under a duty to "confess" its own (allegedly obvious) dishonesty to Teare J. Yet it is clear that World's position is that its claim in the Dubai Proceedings was in no way dishonest whatsoever. Indeed, the findings of the Dubai courts (applying UAE law) are supported by the views of an eminent independent expert, Dr Habib Mohammad Sharif All Mulla, who indicates, amongst other things, that the Dubai courts were entitled to reach the conclusions that they did (fully cognisant of the conclusions reached in the DWT Judgment).

71. Fourthly, I am not persuaded that there was any unfair presentation of Mr Dalal's ability to raise his potential fraud defence afresh in the English Proceedings, irrespective of how it had been advanced in the Dubai Proceedings. Looking carefully at the transcript, counsel made clear that the fraud exception might be engaged if Mr Dalal's allegations were factually correct. Thus, for example, he used the expression "might be", rather than "might have been", indicating that the defence may yet be run. There was no suggestion that that defence was no longer open to Mr Dalal.

72. Teare J considered that *"*although there is that faint possibility of an argument, I am satisfied that the claimant's case has the necessary strength to make it appropriate to order a freezing order". When counsel confirmed to Teare J that the fraud defence had been open to Mr Dalal to run in the Dubai Proceedings, the fact that he did not was (understandably) a relevant factor in assessing whether World had a good arguable case. It was accordingly clear to Teare J that the fraud defence was one which remained open to Mr Dalal in the English Proceedings. He was not under any (mis)apprehension that Mr Dalal was not so entitled.

73. For these reasons, World fairly presented the potential fraud defence as matters stood on 5 April 2019. I am not persuaded that that there was any material non-disclosure or failure of fair presentation as alleged.

74. Given the gravity of the allegation, I formally record my finding that there was no dishonesty on the part of World or its lawyers in this context.

K. ANALYSIS: NON-DISCLOSURE IN RELATION TO THE RISK OF AN UNSATISFIED JUDGMENT

75. Mr Dalal submits that Teare J was misled by (i) being told by counsel that Plots D13 and D94 had already been transferred to Mr Dalal; (ii) being told by counsel that Plots D13 and D94 were registered in Mr Dalal's name; (iii) not being told that Plots D13 and D94 had only been entered in Mr Dalal's name on the Interim Real Estate Register; (iv) not being told that World was able to re-sell the Plots to third parties by removing Mr Dalal's name from the Interim Real Estate Register via an administrative application.

76. In particular, Mr Dalal relies on the early oral exchange between counsel and Teare J (set out above) when the Judge asked counsel whether the plots had been transferred to Mr Dalal. Counsel answered (on instructions) that they had been transferred and registered in his name.

77. Mr Davidson and counsel either were or should have been aware of the fact that Plots 13 and 94 were only registered in Mr Dalal's name on an interim register. This was an issue raised in the Dubai First Instance Court, the Dubai Court of Appeal, and the Dubai Court of Cassation. In fact, Mr Davidson was alive to the issue in his first witness statement sworn on 30 April 2019 in response to Mr Dalal's application for a stay. At paragraphs 31 and 32 he stated:

> "Whilst the Plots remain on the Interim Real Estate Register (prior to the Claimant receiving payment), the Defendant will not have full title in the Plots (and is therefore incapable of disposing of the Plots) until he pays for them in full. Any undertaking by the Defendant not to dispose of the Plots would therefore be meaningless, as they continue to be the Claimant's property".

78. Mr Davidson was unfortunately not in court when Teare J asked the questions that he did and counsel answered on the basis of his (apparently limited) understanding of the position.

79. The true position, submits Mr Dalal, is that World still owns Plots D13 and D94. He submits that in fact Plots D13 and D94 are only pre-registered in his name, and registration on the Interim Real Estate Register did not affect ownership. And this is what Teare J should have been told.

80. The upshot of this, submits Mr Dalal, is there is no risk that the Dubai Judgment could go unsatisfied. Mr Dalal relies on the evidence of an email dated 12 May 2019 from Mr Alex Whayman of Allsop and Allsop, which he says shows that the sale prices for a number of islands in the Project are in excess of the sums which World seeks to recover. If Teare J had been told of the true position, it would have been clear that there was no risk of the judgment in World's favour going unsatisfied, because World already had full security for its claim. Therefore there was no need for the granting of the WFO.

81. Although it was in one sense accurate for counsel to submit (on instructions) that Plots D13 and D94 had been registered to Mr Dalal, this did not fully explain the position. Neither counsel nor Mr Davidson made clear that (i) the registration was only on the

interim register; nor (ii) that registration on the interim register was revocable; nor (iii) that title had not passed to Mr Dalal; nor (iv) that World was able to re-sell the properties.

82. The question is whether there was a *material* misrepresentation or non-disclosure. In my judgment there was not. Although the fact of there being a distinction between the interim register and the final register had been flagged in the Dubai Proceedings, the distinction itself was not an issue in those proceedings. Nothing turned on it. Nor will anything turn on it going forward, because Mr Davidson has confirmed for World in these proceedings that upon satisfaction of the judgment, full title to Plots D13 and D94 will be transferred to Mr Dalal. There is no basis on which to go behind this evidence which I accept.

83. Thus, I do not accept the submission that, had Teare J known the true position, he would have concluded that World was fully secured in its claim.

84. Further, Mr Dalal's evidence as to values is very thin. The email from Allsop and Allsop does not contain any valuation in the sense of an expression of open market value. It appears to refer merely to vendors' asking prices for onsales in relation to different plots. In any event, Mr Dalal's suggestion that World should sell Plots D13 and D94 is in effect a suggestion that it should mitigate its loss. But World is under no such obligation: its claim is one in debt, not damages. It is a judgment creditor in relation to a liquidated sum without any obligation to mitigate. It is entitled to insist on the performance of the contract. That is all the more so when, on World's evidence, there is only a limited pool of potential purchasers for these islands, such that even if World were able to re-sell Plots D13 and D94 to a third party, it would in so doing be deprived of the opportunity to sell some of its other plots.

85. On this point, I admitted the sixth witness statement of Mr Davidson dated 3 October 2019, rejecting Mr Dalal's objection on the basis that it was served on Mr Dalal only hours before his skeleton argument was due to be filed and without warning. Mr Dalal stated that he would have wanted to investigate Mr Davidson's statement that approximately 70% of the World plots had already been sold prior the onset of the 2008/9 global financial crisis and that there was only a very limited pool of potential purchasers. However, the evidence was served six days before the commencement of the hearing before me. Mr Dalal had made no efforts during that period to seek from World further details or particulars of Mr Davidson's evidence. In all the circumstances, including where serious allegations of dishonesty are made against World and its lawyers, I admitted it.

86. Given the gravity of the allegation, I formally record my finding that there was no dishonesty on the part of World or its lawyers in this context.

L. ANALYSIS: NON-DISCLOSURE OF RISK OF DISSIPAITON

87. Mr Dalal submits that the Court was misled materially as to the risk of dissipation. He relies on three alleged misrepresentations.

88. The first relates to Mr Dalal's property at 9 Buncer Lane, which was transferred to Ms Dalal on 18 February 2011. As already set out above, Mr Davidson said of this transfer:

> "…it is clear that the transfer of 9 Buncer Lane into the Defendant's wife's name occurred after the commencement of the DWT proceedings, at a time when the Defendant was being pursued for the balance of the purchase price of all five properties (i.e. Plots D13, D94, D54, D55, and D103)."

89. The substance of that evidence was repeated by counsel in submissions when he asserted that the transfer "…was at a time when the claimant was demanding payment from the defendant in respect of the outstanding balance of the purchase price for all five plots of land". And Teare J, although he did not attach too much significance to the transfer, nevertheless noted that "counsel is quite right to point out that this transfer of property took place at a time when the claimants were claiming a large sum from the defendant".

90. Mr Dalal says that this was misleading because the true position in February 2011 was that World was not in fact doing anything to pursue Mr Dalal for the balance of the purchase prices. Rather, it was only seeking to keep the deposits for Plots D54, D55 and D103.

91. The second relates to the transfer of shares in Elliot Investment Limited (a UK registered property investment company) ("Elliot UK") to Elliot Investments Limited (a Hong Kong registered company) ("Elliot HK"). Paragraphs 53 and 54 of Davidson 1 stated that documents lodged at Companies House showed that on 12 September 2017 the Defendant's shares in Elliot UK were transferred to Elliot HK, which was after the Court of Cassation's decision in June 2017 dismissing Mr Dalal's appeal. This evidence was also reflected in counsel's skeleton argument and oral submissions when he said:

> "At some point before 12 September 2017 he transferred his shares to Elliot Investments ltd, which is incorporated in Hong Kong and owned by a Belize-registered foundation".

92. Mr Dalal's case is that this presentation was unfair because the true position was that Mr Dalal's shareholding in Elliot UK had in fact been transferred to Elliot Dubai in December 2015. That transfer in fact would have made it easier for World to enforce any Dubai judgment in the UAE against the assets of Elliot Dubai, namely the shares in Elliot UK. This failure is said by Mr Dalal to be inexcusable, because it was common ground that the correct information was readily available to World as at 5 April 2019 through public documents at Companies House.

93. Thirdly, Mr Dalal submits that there was a failure to present properly his case on delay. He relies on the principle articulated in *Holyoake v Candy* [2017] EWCA Civ 92 at [62]: where a defendant knows that he faces legal proceedings for a substantial period of time prior to the grant of the order, and does not take steps to dissipate his assets, that can be a powerful factor militating against any conclusion of a real risk of dissipation. Mr Dalal says that he took no steps to dissipate, despite knowing that he faced legal proceedings: the litigation between the parties had been running for nine years before the English proceedings were issued; there was an 18 month gap between the conclusion of the appeal process in Dubai and the application for a freezing order in England; Mr Davidson's own evidence was that World had considered taking enforcement steps in England as long ago as September 2017.

94. I address each of these in turn.

95. I do not consider there to have been a material non-disclosure in respect of the Buncer Lane property. The DWT Judgment notes that in September 2010 Mr Dalal was informed by Nazita Pashootan (a customer service officer employed by Nakheel) that he should make all payments for all five plots in order to avoid incurring any further delay fees. It was therefore not misleading to submit, as Mr Davidson did at paragraph 43 of Davidson 1, that the transfer of Buncer Lane took place at a time when Mr Dalal was being pursued for the balance of the purchase price of all five properties. Further and in any event, the transfer was made at a time when the parties were in large-scale dispute with the potential for further claims and counterclaims in the future (and Mr Dalal was at risk of an adverse costs order). I also note that World's original defence in the DWT Proceedings (as served in April 2011) claimed explicitly that Mr Dalal was obliged to complete the purchases on Plots D54, D55 and D103.

96. Mr Davidson's evidence did undoubtedly contain a mistake in relation to the transfer of shares in Elliot UK. It did not explain that ownership of Elliot UK passed from Mr Dalal first to Elliot Dubai on 9 December 2015 (and then on to Elliot HK in September 2017). I do not accept Mr Head's submission that this mistake was of the "most inconsequential kind". It was a mistake that should not have been made, given the publicly available material. Mr Davidson has rightly apologised for the error.

97. However, although an unfortunate mistake, I do not regard it as a material non-disclosure (or dishonest). It was recognised during the hearing that the transfer date of shares in Elliot UK might be December 2015, and not 2017. More fundamentally, the thrust of World's submissions on the transfer of shares in Elliot UK and the consequent risk of dissipation remained sound. Ultimately, the shares in Elliot UK ended up in the ownership of a Hong Kong company owned by a Belize trust in which Mr Dalal's wife is apparently interested as a result of transactions executed in the context of findings in the Dubai Proceedings adverse to Mr Dalal.

98. Nor am I persuaded that there was a material non-disclosure in respect of delay. Both Mr Davidson and counsel alerted Teare J to the delay argument that Mr Dalal might want to raise, before submitting that delay was not a reason to decline to grant a freezing order where it was otherwise justified by objective facts.

99. Given the gravity of the allegation, I formally record my finding that there was no dishonesty on the part of World or its lawyers in this context.

M. ANALYSIS: NON-DISCLOSURE OF OTHER MATTERS

100. Mr Dalal submits that there was a further non-disclosure of a possible defence to World's claim in the English proceedings. It is said that World did not draw Teare J's attention to the possibility of Mr Dalal succeeding in a defence under s. 33(1)(c) of the CJJA, which provides that:

> "(1) For the purposes of determining whether a judgments given by a court of an overseas country should be recognised or enforced in England and Wales or Northern Ireland, the person against whom the judgment was given shall not be regarded as having submitted to the jurisdiction of the court by reason only

> of the fact that he appeared (conditionally or otherwise) in the proceedings for all or any one or more of the following purposes, namely—
>
> …
>
> (c) to protect, or obtain the release of, property seized or threatened with seizure in the proceedings."

101. It is said by Mr Dalal that he did not voluntarily submit to the jurisdiction of the Dubai Courts, but was obliged to appear in the Dubai Proceedings in order to protect and obtain the release of property seized or threatened with seizure, namely the sums due to him under the DWT Judgment which World had attached in Dubai.

102. I am not persuaded that there was any culpable failure to disclose this possible defence such as to warrant discharge of the WFO (or any other sanction). First, the suggestion had not been raised in any form by Mr Dalal before the hearing on 5 April 2019. Secondly, World and its lawyers can be forgiven for not believing that this was a point that Mr Dalal might sensibly advance in circumstances where he had counterclaimed in the Dubai Proceedings, and appealed on the merits both to the Dubai Court of Appeal and the Dubai Court of Cassation. I am satisfied that the point did not occur to them. In any event, it remains the case that World has a good arguable case on the merits.

103. Given the gravity of the allegation, I formally record my finding that there was no dishonesty on the part of World or its lawyers in this context.

N. ANALYSIS: NO-RISK OF UNSATISFIED JUDGMENT

104. Mr Dalal submits that, irrespective of whether there was a material non-disclosure in relation to the registration of the plots, there is in any event no risk that the Dubai Judgment could go unsatisfied because World retains title to Plots D13 and D94 which have a value in excess of the Dubai Judgment. I do not accept this submission for the reason outlined in section K. above.

O. ANALYSIS: NO RISK OF DISSIPATION

105. Mr Dalal submits that, irrespective of the position before Teare J, in view of all of the available evidence now, there is no risk of dissipation. He relies on the following three points in particular.

106. First, the transfer of 9 Buncer Lane in Blackburn to Ms Dalal on 18 February 2011 does not indicate any risk of dissipation because it was so long ago, and at that time Mr Dalal was not being pursued for the purchase price of any plots.

107. Secondly, he submits that transfer of his shareholding in Elliot UK to Elliot Dubai in 2015 made it easier for World to enforce a claim in the UAE, as opposed to being indicative of a risk of dissipation.

108. He suggests in his evidence that there were sound commercial reasons for the transfer: in 2010/2011, Mr Dalal and Elliot UK were short of capital which Ms Dalal wanted to help remedy. She sold some of her assets and made loans to Elliot Dubai, which in turn made loans to Elliot UK. In 2015, Elliot UK was unable to maintain its re-payments to

Elliot Dubai, which put Elliot UK in a "*negative net asset position*". In September 2017, Ms Dalal was owed a substantial amount by Elliot Dubai, and although in ordinary circumstances, Mr Dalal would have transferred ownership of Elliot Dubai to his wife, she did not want to own a business in Dubai, and therefore to reduce the amount of the loan owed to her, Elliot Dubai transferred the shareholding in Elliot UK to Elliot HK, which is partly owned by Ms Dalal through a Belize-registered foundation.

109. Thirdly, he submits that the creation of the charge over Barcroft also assisted, rather than obstructed, enforcement – because the charge was granted in favour of a Dubai company.

110. It is common ground that, irrespective of any issue of non-disclosure, I am entitled to take a different view from Teare J as to the risk of dissipation on a fuller consideration of the evidence. It is therefore open to me conclude that there is solid evidence of an even greater risk of dissipation than did Teare J. That is the conclusion I have reached for the following five reasons.

111. First, I regard the transfer of the Buncer Lane property as evidence of a risk of dissipation, despite the fact that it took place in 2011. No explanation has been provided as to why that transfer, for nil consideration, took place. It also took place after Nakheel had pressed for payment on all five plots, and after Mr Dalal had commenced the DWT Proceedings, at which point he was at risk of an adverse costs order.

112. Secondly, the share transfers are evidence of a risk of dissipation. Not only would Elliot Dubai's shareholding in Elliot UK not have been known to World (because details of such shareholding would not have been publicly available), there was a further transfer in September 2017 from Elliot Dubai to Elliot HK. That was a transfer shortly after the Dubai Court of Cassation judgment, from a company wholly owned by Mr Dalal into a company which is owned in part by a Belize foundation in which Ms Dalal has an interest. That was an indication that Mr Dalal was divesting himself of any indirect interest in Elliot UK, which would make enforcement against the assets more difficult.

113. Furthermore, the explanations advanced by Mr Dalal by way of commercial rationale are far from complete or straightforward and not supported by any documentary evidence. By way of example:

    i) There is no explanation as to the dates or amounts of the loans made by Ms Dalal, or any explanation as to the source of those funds, or any explanation as to the purpose of the loans;

    ii) The suggestion that it was more tax efficient for Ms Dalal to provide the loans through Elliot Dubai is at odds with the statement elsewhere that the reason for the transfer of shares to Elliot Hong Kong was because Ms Dalal wanted nothing to do with a Dubai company;

    iii) World did not learn of the alleged beneficial ownership of the Belize-registered foundation until receipt of Mr Dalal's fifth witness statement (dated 15 July 2019). The foundation is said to be "partly owned" by Ms Dalal; there is no evidence as to who else owns it, though it does not appear (from his asset disclosure affidavit) to be Mr Dalal.

114. Thirdly, as to the charge granted over Barcroft, I am unable to identify any sound commercial explanation as to why a charge over what was the family home was granted in favour of Elliot Dubai or why it was granted when it was - in December 2015, shortly after the first instance decision of the Dubai court in April that year. Again no documentary evidence has been submitted to support the explanation given by Mr Dalal.

115. Fourthly, as to the registration of home rights on Barcroft, the effect of this was to create an equitable charge which would operate so as to make enforcement against the property more difficult. No explanation at all for the reason for this registration, one day after acknowledgement of service of these proceedings, has been provided by Mr Dalal. In the circumstances, it evidences a risk of dissipation.

116. Fifthly, World can point to the fact that Mr Dalal appears to have gone from being the "sole breadwinner" with a financially dependent wife (as he put it in a witness statement dated 16 April 2012 for the DWT proceedings) to having no (or only very modest) assets and an independently wealthy wife able to provide some £11million to assist him (as he put it in a witness statement dated 26 June 2019 in these proceedings). No explanation has been proffered for what appears to be a significant change in Mr Dalal's personal fortunes. Mr Dalal's declaration as to (lack of) income also does not sit easily with his direct debits for school fees, or his recent holidays to Kenya and Mauritius. World can also point to shifts in Mr Dalal's evidence as to the value of his shareholding in Elliot Dubai and the nature or extent of monies available to him through Elliot UK in respect of his personal legal expenses, alongside the finding of Teare J on 16 April 2019 that over the preceding week Mr Dalal had been attempting "to provide no information at all", notwithstanding his duty under the WFO to provide information to the best of his ability.

117. I accept that that there is a general pattern of behaviour on Mr Dalal's part of attempting to avoid paying the Dubai Judgment. This includes his misconceived stay application, and what I have found to be his misconceived allegations of dishonest material non-disclosure and misrepresentation in this application. Mr Dalal appears deeply aggrieved by the outcome of the Dubai Proceedings. These are all matters indicative of a determination to do what he can to avoid satisfying the judgment against him.

118. Any delay that there has been in seeking the WFO is not sufficient to displace the objective risk of dissipation that I have identified.

P. ANALYSIS: CLEAN HANDS

119. Mr Dalal submits that World's conduct in the lead up to the WFO application has been improper, such that it did not come to the without notice hearing with clean hands and/or that World has been guilty of abuse of process. He relies on two particular points in this respect.

120. First, that in January 2012, World had sought to procure Mr Dalal's arrest for a dishonoured cheque in Dubai dating back to 2008. It is said that this was done in order to put pressure on Mr Dalal not to come to Dubai for the trial in the DWT Proceedings. Mr Dalal also suggested that World then compounded the position by objecting to Mr Dalal giving evidence by videolink in the DWT Proceedings in a further attempt to stifle his claim. Secondly, it is said that World has sought improperly to obtain

disclosure of various Emirates NBD bank statements in the course of these proceedings. In essence, the suggestion is that World already had access to those statements from 15 May 2019 (because of legal steps taken in Dubai), and so should not have issued an application on 13 June 2019 for an order compelling Mr Dalal to provide the statements here.

121. World denies any deliberate attempt to have Mr Dalal arrested improperly, and any improper pursuit of disclosure of the NBD Emirates Bank Statements. World corrected the error in relation to the cheque upon discovery. World suggests that any fear of incarceration on the part of Mr Dalal arose out of the activities of Mr Qurashi, a former business partner of Mr Dalal. As for the bank statements, World's application for disclosure in these proceedings post-dated the application for the WFO and so cannot affect it, at inception at least. I am in any event not in a position to make a finding of bad faith/impropriety on the part of World by reference to the activities of its Dubai lawyers and on the basis of contested evidence. On the face of it, World was entitled to press for compliance by Mr Dalal with his disclosure obligations under the WFO.

122. I therefore reject for present purposes the submission that the WFO should be set aside on the basis that World did not come to the court with clean hands or has been guilty of some sort of abuse of process.

Q. CONCLUSION

123. For these reasons, I reject Mr Dalal's allegations of material non-disclosure and/or misrepresentation against World and/or its legal representatives. There are good grounds for continuing the WFO. The application to discharge the WFO will be dismissed.

I invite the parties to agree all consequential matters, including costs, so far as possible.