Neutral Citation Number: [2024] EWHC 356 (Comm)

Case No: CL-2021-000009

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
COMMERCIAL COURT

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

Date: 21/02/2024

Before :

MR JUSTICE CALVER

- -

Between :

~~**HRH PRINCE KHALED BIN SULTAN BIN ABDULAZIZ AL SAUD**~~

HRH PRINCESS DEEMA BINT SULTAN BIN ABDULAZIZ AL SAUD

Claimant

- and -

(1) RONALD WILLIAM GIBBS

Defendant

(2) SUNNYDALE SERVICES LIMITED

Non-Cause of Action Respondent

- -
- -

Simon Atrill KC and Samuel Rabinowitz (instructed by **Quinn Emanuel Urquhart & Sullivan UK LLP**) for the **Claimant**

Ronald William Gibbs appeared as a litigant in person.

Hearing dates: 24, 25, 30 January 2024 and 6 February 2024

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APPROVED JUDGMENT

This judgment was handed down by the Judge remotely by circulation to the parties' representatives by email and release to The National Archives. The date and time for hand-down is deemed to be 10:00 on Wednesday 21st February 2024.

Mr Justice Calver :

A. INTRODUCTION

1. By this action the Claimant ("**C**") effectively claims the return of around US$25 million, together with consequential losses, pursuant to a Settlement Agreement dated 18 April 2018 (the **"Settlement Agreement"**), being a sum that was originally transferred to the Defendant ("**Mr. Gibbs**"), a former Linklaters partner, to invest on behalf of C. Mr. Gibbs has done everything he possibly could to avoid returning these funds to C and his behaviour has been reprehensible. C also seeks further compensation reflecting the loss of use of that money.

2. In seeking to avoid having to disclose what he has done with C's US$25 million, Mr. Gibbs has chosen to breach numerous court orders over a 3 year period. In consequence, by Order of Dias J dated 14 July 2023 he was finally debarred from defending these proceedings. This court dismissed Mr. Gibbs' application to defend this claim at trial (despite the order of Dias J) by its Judgment and order dated 24 January 2023[1], at which point Mr. Gibbs packed up his belongings and left the courtroom, despite being invited to remain.

B. FACTUAL BACKGROUND TO THE CLAIM

3. The claims relate to US$25 million (the "**Funds**") gifted to C by her father, the late HRH Prince Sultan Bin Abdulaziz Al Saud of Saudi Arabia, before his death. It is common ground[2] that the Funds were transferred to Mr Gibbs' control in 2011, via C's brother, HRH Prince Khaled Bin Sultan Bin Abdulaziz Al Saud ("**HRH Prince Khaled**") for the original purpose of buying a property for C in Europe. C executed a Power of Attorney in favour of Mr. Gibbs on 9 July 2011 in respect of her banking relationship with Credit Suisse, where an account was opened in C's name into which US$24,999,947.50 (US$25 million less bank charges) was transferred on 15 August 2011.

4. The monies were transferred to a notary in respect of the purchase of a property in Paris. However, in 2012 C decided not to go ahead with the purchase as she had

[1] See the judgment at [2024] EWHC 123 (Comm).
[2] See the Agreed Case Memorandum for the first CMC, dated 10 November 2021 and "Claimant's Updated Case Memorandum" of 4 November 2022.

planned. Instead, Mr. Gibbs was instructed to invest the money on C's behalf via Credit Suisse. On 3 April 2012 Mr. Gibbs sent Mr. Salih Kholaifi, C's financial adviser, a Credit Suisse statement of investments as at 29 February 2012 showing how funds belonging to C had been invested by them; he also sent him various proposals as to how the Funds should be invested going forwards, once the money was returned by the notary to C in the light of the aborted purchase of the Paris property.

5. The Funds in the Credit Suisse Account were then invested by Mr. Gibbs in various ways.

C's repeated requests for Mr. Gibbs to liquidate her supposed investments and return the Funds

6. However, after the notary had returned the Funds in 2012, C had decided that she wanted Mr. Kholaifi to manage her investments instead of Mr. Gibbs. Accordingly, on 28 November 2012 Mr. Kholaifi sent Mr. Gibbs an email informing him of C's wishes and requesting details of the procedures for the liquidation of her investments with Credit Suisse. In the absence of a response from Mr. Gibbs, Mr. Kholaifi re-sent the same email on 12 December 2012 and again on 13 December 2012.

7. Mr. Gibbs does not appear to have responded to Mr. Kholaifi's request and nothing further appears to have been done at this stage in terms of liquidating the portfolio.

8. By 12 November 2014, Mr. Gibbs provided a performance report of the investment portfolio to Mr. Kholaifi. He stated "*The portfolio posted positive performance for the month of September, continuing its strong streak of positive returns despite volatile markets*". At this point he reported US$19,176,783 worth of assets under management and US$6,000,000 to be invested in a later fund because of a supposed delay in the recovery of the monies from the abortive purchase of the apartment in Paris.

9. On 9 February 2015 Mr. Gibbs emailed Mr. Kholaifi and asked him to have C sign two attached Credit Suisse forms and return them to him "*so that I can continue the*

handover of her investment portfolio. In addition the bank also requires a copy of the passport of [C] and a proof of address." Mr. Kholaifi provided this information.

10. By email dated 17 August 2015 Mr. Kholaifi then sent Mr. Gibbs a letter signed by C requesting the transfer of the balances of all of her Credit Suisse accounts to her personal account at National Commercial Bank. Mr. Kholaifi asked Mr. Gibbs whether he should send the letter to Mr. Gibbs or hand it to Credit Suisse personally.

11. By reply email dated 18 August 2015, Mr. Gibbs told Mr. Kholaifi to send the letter to him personally, to send on to Credit Suisse "*as the requested transfers cannot happen overnight. As you know, [C's] funds are largely invested in a portfolio of hedge fund investments and it will take some time for CS to liquidate the positions, particularly if you want to sell positions out at an optimum time rather than just dump them on the market*?" I find that this was the first of the excuses utilised by Mr. Gibbs in order to avoid returning the funds.

12. On 5 September 2015 Mr. Gibbs emailed Mr. Kholaifi and stated as follows:

> "*The original amount invested was just under USD25M and it has grown to approximately USD 26.5 M +/- depending on when the evaluation is taken. The amount realised on sale will of course depend on the value of the securities at the time of sale plus the balance on the liquidity account at that time.*
>
> *I have asked CS to consider appropriate windows to liquidate the investment as you requested and to transfer the proceeds of sale to the account in Saudi Arabia which you supplied.*"

13. In light of what happened subsequently, the supposed request to Credit Suisse was likely a lie.

14. Mr. Kholaifi thereafter chased Mr. Gibbs for an up to date report on the portfolio. Mr. Gibbs failed to provide it and Mr. Kholaifi chased again for it on 26 November 2015. Mr. Gibbs replied by email on the same day and blamed Credit Suisse for the delay.

15. On 21 March 2016, General Ayed, who works for HRH Prince Khaled's office, informed Mr. Gibbs by email that he wanted the contact details of the person at Credit Suisse who was in charge of C's portfolio so that he could meet them during the first week of April 2016. This prompted a response from Mr. Gibbs on the same day, suggesting to General Ayed that the management of C's portfolio had been transferred to Credit Suisse, Dubai.

16. On 28 March 2016, General Ayed met with representatives of Credit Suisse in Dubai. After this meeting, he emailed Mr. Gibbs to request documentation held relating to C's portfolio. Mr. Gibbs replied by email dated 30 March 2016 but he did not provide the documents requested. In his email he informed General Ayed of steps he had supposedly taken in relation to the portfolio as follows:

> "*When Credit Suisse started making substantial losses on the portfolio I took steps to protect the capital value of the portfolio, which I am pleased to report has returned from below USD$23m to just over USD$25m. There are no specific properties, I arranged a fund investment and Credit Suisse have no details of this.*
>
> *If you are planning to take over the management of the portfolio then please advise which vehicle will own the portfolio and whether or not you plan to leave this with Credit Suisse or transfer the funds to another bank I can then arrange for the portfolio to be liquidated and transferred, as required, under your management.*"

17. On 31 March 2016, General Ayed replied by email stating "*Based on the directives of [C] I will manage the Portfolio by having myself as a Director of Sunnydale Co*". Sunnydale was Mr. Gibbs' company.

18. Mr. Gibbs responded on the same day and informed General Ayed that he would not be made a Director of Sunnydale as "*Sunnydale is used as an investment company for a number of clients, so I am unable to make you a Director. If you can form a new SPV or use a dormant SPV within the trusts, I can sign the required forms to transfer the portfolio to the new company."*

19. On 27 May 2016, General Ayed emailed Mr. Gibbs a letter signed by C in which she requested Mr. Gibbs to transfer her portfolio with Credit Suisse to her personal account with Credit Suisse Dubai. Mr. Gibbs failed to reply and so on 7 June 2016 General Ayed chased him for an update "*on the status of the transfer of [C's] portfolio with Credit Suisse."*

20. In his reply email dated 7 June 2016, Mr. Gibbs stated "*As far as I am aware there is nothing outstanding from myself to Credit Suisse. I was in touch with them last week and I will send another email now.*" This, I find, was a lie.

21. On 13 June 2016 General Ayed emailed Mr. Gibbs, questioning why it was taking so long to initiate the requested transfer process, with 2 weeks now having passed since the last request. General Ayed stated "*Today, I spoke to the Bank, who have confirmed that to this effect, as of today they have not received any request or email from you to initiate the necessary action. I therefore request you to please send the necessary instructions to the bank if possible today, with a copy to me*".

22. On 14 June 2016 Mr. Gibbs replied and vaguely referred to "*a failure of communication*". He claimed that "*I have tried to call the bank twice today but have not made contact with Mr Al Kurdi*". General Ayed responded by email on the same day, and stated:

> "*Please note that the issue is very important. The portfolio needs to be transferred to [C's] personal account with Credit Suisse Dubai as soon as possible. Since you have already received the letter from [C], which has also been copied to the bank. I understand you just need to send an e-mail to the bank (under copy to me) to this effect which will help in initiating the process. Please do this as soon as possible.*"

23. On 15 June 2016 Mr. Gibbs responded by email and stated:

> "*I have been in touch with Credit Suisse today. They are putting together a statement so we can assess the current status of the portfolio and agree the best date for the transfer. I'm not sure I understand the urgency. The portfolio has been managed by CS for the last 6 years!*"

24. General Ayed in turn responded by email to Mr. Gibbs the next day, in which he reiterated:

> "*Please note that I have been tasked to manage the portfolio therefore I need to know the status – since [C] is intending to purchase a real estate in Europe which can generate some income for her…*
>
> *in view of the above I request you to expedite the matter with Credit Suisse Dubai, to finalise it as soon as possible, and as requested earlier, please mark me a copy of all your communications with the Bank on the matter.*"

25. On 24 June 2016 Mr. Gibbs emailed General Ayed further. In this email the beginnings of Mr. Gibbs' subsequent and repeated excuses for not returning the funds to C can be detected. He said:

> "*on the advice of the previous CS team they borrowed against the portfolio to make further investments and thereby "turbo charge" the portfolio returns.*
>
> *I am working with [CS Dubai] to understand whether this strategy was successful and if it is still continuing then the loans also need to be transferred from Sunnydale to C's account. If the strategy has not proved successful then certain securities will need to be sold and the loans repaid. I have a conversation booked with [CS Dubai] on Sunday to discuss this.*"

26. Three months later, on 5 September 2016, General Ayed requested an update by email on the status of the transfer of C's portfolio with Credit Suisse: "*I tried to call you several times but, no success and also you did not call me back. Also, I had sent you an email but, received no answer to it. Please update me on the status of transfer of [C's] Portfolio to her name. The matter has already been dragged so long."*

27. General Ayed received no response to his email and so he sent another email two days later. Mr. Gibbs responded with an out of office message on 7 September 2016.

28. Another month passed and then on 4 October 2016 General Ayed enquired again about the status of the portfolio. He emailed Mr. Gibbs and stated: "*I called you but unlikely to get hold of you. It took so much time for the transfer of [C's] account to myself. I've heard that there are facilities against the Portfolio? Please need to clarify what are those facilities and who authorized it*?"

29. It is obvious that General Ayed meant to say that it was taking so much time to transfer C's account to himself. However, Mr. Gibbs seized upon his poor use of English to prevaricate further over the transfer, stating in his email in reply dated 5 October 2016: "*I am pleased to hear that you have completed the transfer of the account to yourself. I was planning a trip to Dubai later this month to deal with this among other things."* He went on: "*we have discussed the facilities before. To regard to authorisation please send me a copy of the written instructions for the operation of the account and we can start from there. I have instructed the sale of certain of the real estate investments and will return the funds to the account with any accrued profits as soon as possible*".

30. General Ayed responded on the same day as follows:

> "*Simply I meant [I] did not receive the transfer yet because they requested a letter from you. The letter of the transfer was sent to you already and the bank in Dubai.*"

31. Mr. Gibbs stated in his email in response on the same day: "*I will add a meeting at CS to my Dubai trip to finally resolve this*".

32. In November 2016 General Ayed continued to request Mr. Gibbs to transfer the portfolio. On 9 November 2016 General Ayed emailed Mr. Gibbs again and stated "*After so many attempts to reach either by phone or by email, with no answer, it took so long to transfer the portfolio with no justification up until now… We have to finalise the transfer. I will be in London on Nov 29th and 30th to meet.*"

33. Mr. Gibbs continued to prevaricate, stating in his reply email dated 9 November 2016:

> "*I apologise for the delay in replying but I am in the middle of closing a major transaction which is occupying all of my time. I see that you tried to call me on Sunday when I was travelling. As advised to you I was hoping to visit Dubai in October to understand the position of the portfolio but my current transaction has prevented me from doing this. I will reschedule this trip as soon as possible. I am therefore unable to confirm the current position of the portfolio as I have not received any information from Credit Suisse in many months.*"

34. I find that this was very likely a lie. Indeed, on the same day, Mr. Gibbs instructed Credit Suisse Dubai to transfer the remaining balances of all of C's accounts with Credit Suisse to a Credit Suisse account in the name of Sunnydale. Credit Suisse duly transferred US$47,050, EUR220.46 and £858.04 to Sunnydale the next day.

35. Mr. Gibbs still did nothing to liquidate the funds. The matter can be picked up in September 2017, almost a year later. Having been unable to obtain the Funds, C's representatives arranged to meet Mr. Gibbs on 22 September 2017 at the Dorchester Hotel in London ("**the Dorchester Meeting**"), which was attended by Mr. Gibbs and two representatives of C, namely Mr. Al Dhabaan and Mr. Hanka (a lawyer).

36. The agreement reached at the Dorchester Meeting was that Mr. Gibbs would transfer US$25 million to an account nominated by C by a longstop date of 31 December 2018. The matters discussed and agreed at this meeting are reflected in the minutes which were provided to Mr. Gibbs for his approval and which he duly approved. The "matters discussed" section contains the false excuses which Mr. Gibbs had given to C and her advisers as to why he had failed to return the Funds to her:

> "*Matters Discussed*
>
> *…*
>
> *c) Whilst acting as custodian for the Funds [Mr. Gibbs] has placed them in an account with Credit Suisse, which is managed on a discretionary portfolio basis. The account is in the name of Sunnydale Services Limited, a BVI company beneficially owned by [Mr. Gibbs]. This company is used by [Mr. Gibbs] to manage*

money for a number of his clients and so it is not possible simply to transfer ownership or control of this company to [C].

d) Over the years there have been Issues with Credit Suisse's management of the account. This has been passed between various internal teams at Credit Suisse (many of whom have left to join UBS) and is currently under the responsibility of a team based in Dubai. Previous attempts to transfer control over this account to [C] have failed because Credit Suisse have either not advised or processed the required paperwork.

e) Additionally the financial performance of the account has not been good due to turbulence in the international equity markets. The value of the Funds had at one time fallen to around USD 21 million and [Mr. Gibbs] decided to take over management of some of the Funds to improve performance.

f) He has done this through a mix of methods (equities, hedge funds etc), including investing in properties. This strategy has proved successful and [Mr. Gibbs] has now managed to recover all of Credit Suisse's losses such that the value of the Funds is now back to USD 25 million.

g) Not all of the value of the Funds is currently represented by cash, some is in property investments that are managed by [Mr, Gibbs] on behalf of his clients. It is difficult to say exactly how much of the Funds is represented by investments in properties and whether these can be sold and by when.

h) However, [Mr. Gibbs] said he will be able to find ways through restructuring or disposing of these property investments to return to [C] the full value of the Funds (SD 25 million) in cash. This will take him some time to achieve and he will advise how long this will be once he has had a chance to consider the matter more carefully.

i) MD said [C] wants the money to be returned wholly in cash and [Mr. Gibbs] said all he needs to do this is details of an account in her name to which the money should be sent ("Account"). The Account could be with Credit Suisse or another bank and could be located anywhere, not necessarily in Switzerland or Dubai. MDDB said the Account was most likely to be with Credit Suisse but he would find out."

37. The "matters agreed" section recorded the following agreement:

> "*1. [Mr. Al Dhabaan] will send to [Mr. Gibbs] details of the account once he has been advised by [C] plus a signed written instruction from C to transfer the funds to the account.*
>
> *2. Subject to (1) above, [Mr. Gibbs] will refer to the account the full value of the funds (USD 25 million) in cash.*
>
> *The transfers will take place as soon as reasonably possible.*
>
> *As soon as [Mr. Gibbs] receives the details of the account he will commence the liquidation of securities and real estate investments and seek to refinance joint investments. The proceeds of the liquidation and refinancings will be paid into the account as soon as reasonably possible after the proceeds of liquidation and or financing have been received up to an aggregate amount of USD 25 million.*
>
> *The long stop for the payment of the full amount by [Mr. Gibbs] will be 31st December 2018.*"

38. It was agreed that there would be no need for a legal contract to embody what was agreed at the Dorchester Meeting.

39. Despite the terms of this agreement, in emails which followed the meeting Mr. Gibbs was keen to emphasise that the portfolio liquidation and transfer would be a slow and lengthy process. Thus, on 25 September 2017 he emailed Mr. Hanka and stated:

> "*With regards to the funds to be paid by me to the new account to be opened by [C], I will do this as soon as I receive the proceeds of the liquidations. As you and Mohammed will appreciate, to sell and receive the proceeds of securities can take up to 12 months and selling real estate is also a lengthy and time-consuming process. A "fire sale" of securities or real estate is not in anyone's interest, so I have also agreed to re-finance where possible to raise the proceeds*".

40. By his reply email dated 26 September 2017, Mr. Hanka observed that "*the nub of the issue is of course the return of the funds to [C] which I understand has been*

requested almost two years now" and in view of the tone of Mr. Gibbs' email, he informed him that Prince Khaled was very unhappy according to Mr. Al Dhabaan: "*His view on reading your reply is that we now have a BIG problem with the Prince and he requests you to propose another solution urgently*".

41. This prompted Mr. Gibbs into replying as follows on 26 September 2017: "*To be clear. I have never been requested by [C] to return the funds to her or hand over control of the funds to anyone el*se." That was an out and out lie.

42. He continued: "… *you and I all know that it will take many months to sell real estate and liquidate securities. I contacted Credit Suisse and to liquidate the securities they hold will take three to nine months alone. I am not saying that it will take until the end of next year to pay funds into the new account. I am saying that this is a long stop date by which all of the funds will be in the account. I would expect to pay substantial funds into the account on a monthly basis. If I can liquidate all investments and pay the total funds sooner then I will clearly do so."*

43. As will be seen, Mr. Gibbs did none of these things, and the suggestion that he contacted Credit Suisse and was told that to liquidate the securities would take three to nine months alone was undoubtedly another lie.

44. Importantly, however, Mr. Gibbs confirmed that his understanding of the agreement reached at the Dorchester Meeting was that "*I am effectively agreeing that if I cannot realise all of these funds by the end of 2018, then I have personal liability to pay the balance of the funds into the account. I do not take this obligation lightly*!" Despite this, it will be seen that he failed to realise the funds by the end of 2018.

45. In his reply email of 27 September 2017, Mr. Hanka requested a telephone discussion that day or the following day with Mr. Gibbs and emphasised that "*I would like to focus on establishing how the funds are currently represented (property, securities, cash, etc) and explore ways in which we can start to deliver to [C] parts of it in tranches rather than wait until the end and do it all in cash*".

46. In November 2017, General Ayed managed to meet Mr. Gibbs in Dubai. By an email dated 20 November 2017 to General Ayed, Mr. Gibbs stated that "*my office in Monaco has produced a summary of the investments under management and this is attached. I remain confident, that given a little more, the net realisable investment will exceed USD 25m. Much of course depends on continued market conditions, and as we discussed the world is a very difficult place at present with huge uncertainty in all markets.*" The attachment refers to C as "Investor 00103" which seeks to give the, no doubt false, impression that Mr. Gibbs had at least 102 other clients[3], and purports to give a vague, generalised breakdown of investments supposedly made for C as follows:

> "***SUMMARY OF INVESTOR POSITION***
> ***INVESTOR 00103***
> ***AS AT 17.11.2017***
>
> | | *USD$* |
> |---|---|
> | *cash:* | *1,673,042.72* |
> | *Credit Suisse managed securities:* | *2,500,000.00* |
> | *UK residential real estate:* | *5,563,540.00* |
> | *Other residential real estate:* | *1,846,175.00* |
> | *UK commercial real estate:* | *7,167,150.00* |
> | *Company shares:* | *2,359,000.00* |
> | *Contract future trading:* | *3,593,936.00* |
> | *Total under management* | *24,702,843.70*" |

47. In response on the same day, General Ayed emailed Mr. Gibbs asking for clarification. He stated:

> "*1. My understanding is that the "Summary of Investor" represents the investments made on behalf of [C] out of her Portfolio. Please confirm."*

[3] The suggestion that this had been produced by Mr. Gibbs' "office in Monaco" also seeks to give the false impression that Mr. Gibbs had a team of staff working for him in Monaco. He did not.

> *2. If the answer to 1 above is yes, then please clarify whether the amounts indicated against each investment represents the actual amounts invested? Or it represents the market value as of today of such investments?*"

48. Mr. Gibbs responded on 21 November 2017 as follows:

> " *1. Correct.*
>
> *2. The statement represents the market value as of today. Over five years Credit Suisse had reduced the value of the portfolio by almost USD5m. Over the last two years this amount has been recovered and the returns on the portfolio continued to be positive.*"

49. The parties' thoughts now turned to drawing up a settlement agreement in to order document what was agreed between them at the Dorchester Hotel. To assist in that process, on 4 December 2017 Mr. Hanka sought clarification from Mr. Gibbs on certain points of agreement between him and General Ayed, and Mr. Gibbs inserted his answers into the text of the email sent to him by Mr. Hanka on the same day as follows:

> "*3. I assume whatever is transferred into the new account will all be in cash and no assets in kind will be transferred (eg share portfolios or properties) – please confirm?*
>
> Mr. Gibbs' response: *Correct*
>
> *4. Is there a long stop date by which you have committed to getting the funds into the account, or any milestones along the way?*
>
> Mr. Gibbs' response: *I agreed at The Dorchester that this would be before the end of 2018 but we have lost several weeks since then. I suggest 14 months from the date of signature of the settlement agreement.*
>
> *5. Have you committed to crediting the full USD 25m or just whatever is secured from liquidating the identified assets on your list?*
>
> Mr. Gibbs' response: *USD 25m.*"

50. By email to General Ayed dated 3 January 2018, Mr. Gibbs complained that the draft settlement agreement prepared by Mr. Hanka did not reflect what was agreed. He again falsely stated that "*At no time have I received any request from either the Estate of Prince Sultan or from [C] to liquidate and pay these funds*." On 1 February 2018 he emailed Mr. Hanka, stating "*if you wish to prepare a new draft agreement which does reflect what was agreed and if it is sensible and if indeed there are any funds to make the overdue payments*[4] *then I will consider whether further time and expense is warranted to attend yet another meeting."*

51. It follows that Mr. Gibbs had again successfully further stalled the whole process of the liquidation of the assets.

52. On 13 February 2018 Mr. Gibbs emailed General Ayed about a conversation they had earlier that day. He recorded his understanding of what they agreed in relation to the portfolio to be as follows:

> "*1. I have asked my team to put together the information which you … requested regarding the portfolio investments and I hope to have this to send on to you by the end of this week.*
>
> *2. I have asked my team to commence liquidation of the investments in a conservative and prudent manner to maximise the returns and avoid any unnecessary expenses or early termination penalties. I will ensure the total proceeds are not less than USD 25m.*
>
> *3. You will send to me the account details into which liquidation proceeds are to be paid.*"

53. Once again, the suggestion that he had a team who was having to put together the relevant information was a lie and designed to delay matters.

54. On 18 February 2018, Mr. Gibbs emailed General Ayed and attached a purported summary of invested funds which purported to include for the first time detail of the individual asset classes as follows ("**the 2018 Investor Summary**"):

[4] Which Mr. Gibbs was claiming in relation to a separate matter.

"***SUMMARY OF INVESTOR POSITION***
INVESTOR 00103
AS AT 19.01.2018

	USD$
cash:	*826,117.00*
Credit Suisse managed securities:	*2,323,000.00*

Initial investment: USD$24,999,802.00
Balance 01.01.2014: USD$22.12m
Current Securities Include:
Accum SHS-A2-Marchall Wace Duns Plc-
MW Eureka Fund USD$ 0.001 Restr Voting
PTG.SHS-A-Marshall Wace Fund PLC-MW
Global Opportunities Fun USD Non-Voting Restr
Units Blackrock Fixed Income Global Alpha Funds
(Dublin)- Blackrock Fixed Income Global Alpha
Fund USD Institutional Class
PTG.SHS-1-Fundlogic Alternatives PLC -IPM
Systematic Macro Units Fund USD
SHS Horizon Portfolio 1 Ltd USD 0.01 USD Series
1 non voting
RED.PTG.SHS-B2-Cos diversified fund (SPC) Ltd
Segregated portfolio Alpha USD 0.01 USD Segregated
Portfolio Alpha
SHS-A1-AH (Cayman) SPC USD Class A Evolution
Segregated Portfolio

UK residential real estate:	*6,412,331.00*

Initial investment: USD$5.75M
Undivided equitable interest in:
Kings Road, Richmond TW10
Mount Carmel Chambers, London W8
Park Road Richmond TW10
Duke Shore Wharf, Narrow Street, London E13
Drury Road, Harrow HA6
Canning Place, London W8

Other residential real estate:	*1,912,312.00*

Initial investment: USD$1.6m
Equitable undivided interest in:
Regent Hotel, Porto Montenegro
102 Christopher Street, New York, NY

UK commercial real estate:	*7,075,119.00*

Initial investment: US$6.5m
Equitable undivided interest in:
High Street Ruislip, HA2
Bankmore Square, Dublin [Road, Belfast]
The Green, Richmond

> ***Company shares:*** *2,563,000.00*
> *Initial investment: USD$2.4m*
> *Equitable undivided interest in a portfolio including:*
> *Banco Santander SA*
> *National Grid plc*
> *Lloyds Banking Group plc*
> *BT Group Plc*
> *SSE plc*
> *Centrica plc*
> *BG Group plc*
> *Royal Dutch Shell plc*
> *Silver Arrows Marin (Holding) Ltd*
>
> ***Contract future trading:*** *3,476,812.00*
> *Initial investment: USD $2.9m*
> *Equitable undivided interest in a discretionary managed portfolio with UBS, Geneva*
>
> *Total under management* *24,561,691.00*"

55. The 2018 Investor Summary ended with a series of notes as follows:

    55.1. The percentage interest in real estate and share/trading investments per investor was *"typically 25%"*: note 2.

    55.2. Valuations were "*current book values, and actual market values may be higher or lower*": note 3.

    55.3. The "*cost of liquidating investments had been estimated at current market rates*": note 4.

    55.4. The cost of liquidating assets assume no fire sale or penalties: note 5.

    55.5. The costs of managing and maintaining real estate had not been included: note 6.

56. In his covering email, Mr. Gibbs again falsely pretended that he had a "team" working on this[5], stating:

[5] In his email of 18 February 2018 Mr. Gibbs similarly suggested that he had "*my guys working through last weekend to produce [this] information.*"

> "*Once I receive the account details for the realisation proceeds and payment of the long outstanding debt*[6] *... I will instruct my team to commence realisation of the investments by sales/ refinancings/ substitution of new investors etc always seeking to maximise the returns.*"

57. On 25 February 2018, the same summary was sent to Mr. Kholaifi.

58. On 2 March 2018, Mr. Gibbs applied for a mortgage in respect of a property at 36 Kings Road, Richmond. As can be seen from the foregoing, a property in Kings Road Richmond was listed by Mr. Gibbs as a property in which C supposedly had an "undivided equitable interest".

59. On 28 March 2018, General Ayed emailed Mr. Gibbs in order to "*find a mutually acceptable resolution in order to finalize the settlement agreement*". He once again requested information from Mr. Gibbs on the investments and assets including "*Detailed breakdown of Her Royal Highness share in each of the assets listed in your document; Detailed breakdown of Her Royal Highness ownership percentage in each of the assets involved; Gains/(Losses) as of today for each investment*.". He stated "*Where transfer of legal title of the assets is not possible – such as property assets, we will require you to hold [C's] share of the assets until such time that they are realized into cash, which can be transferred to her."*

60. Mr. Gibbs did not reply to this email.

The Settlement Agreement

61. On 18 April 2018, Mr. Gibbs entered into a written settlement agreement with Mr. Kholaifi, acting on behalf of C ("the **Settlement Agreement**").

[6] Which Mr. Gibbs was claiming in relation to a separate matter.

62. The Settlement Agreement was entered into between Mr. Gibbs and Mr. Kholaifi, who was expressly (as set out in Recital A) acting on behalf of C. It provided in material part as follows:

    62.1. By Recital B, that Mr. Gibbs had *"for a number of years been managing cash funds totalling USD 25,000,000 (hereinafter referred to as the "Funds") which were transferred to him on behalf of [C] in connection with the possible purchase of a property, which as at the date of this Agreement have not been used for that purpose".*

    62.2. By Recital C, that Mr. Gibbs had *"been managing the Funds on behalf of [C] on a discretionary basis and the Funds are currently represented by an investment portfolio of assets as more particularly described in the Schedule to this Agreement (hereinafter referred to as the "Investment Portfolio")"* – this is the 2018 Investor Summary.

    62.3. By Recital D, that Mr. Gibbs had:

> "*agreed to consult with [Mr. Kholaifi] regarding the management of the Investment Portfolio with a view to liquidating as soon as reasonably possible certain securities investments and in due course, liquidating the entire Investment Portfolio. Net liquidation proceeds will be transferred to an account of [C] managed by [Mr. Kholaifi]. Liquidations will be made on terms which maximise the returns on current investments and avoid any early termination penalties or 'fire sale' losses. Following the liquidation of the Investment Portfolio, it is agreed that the fund created by the liquidation proceeds will be managed by [Mr. Kholaifi] on behalf of [C]*". [emphasis added]

    62.4. By Clause 1.1, Mr. Gibbs agreed that on or prior to the execution of the Settlement Agreement, he had procured the delivery to Mr. Kholaifi of *"a summary of the current Investments Portfolio and the value in each investment position which is attributable to [C]".*

    62.5. By Clause 1.2, Mr. Gibbs agreed that he would *"continue to manage the portfolio"* and *"report regularly"* to Mr. Kholaifi, and that upon receipt of a letter of instruction described in Clause 1.3, he would "*commence a program to liquidate the Investment Portfolio with a mandate, but no liability, to realise liquidation proceeds of not less than US$25m. The*

program of management and liquidation will be to maximise current investments and achieve liquidations without penalties and to avoid any 'fire sale' situations".

62.6. By Clause 1.3, Mr. Kholaifi agreed to procure for Mr. Gibbs a letter from C instructing him to *"commence liquidation of the Investment Portfolio and to consult with [Mr. Kholaifi] with respect thereto"* and specifying a bank account into which the proceeds would be paid. Following receipt of that letter, Mr. Gibbs agreed that he would "*instruct the liquidation of all positions of [C] in any shares and securities on terms that no penalties are to be incurred and all net liquidation proceeds will be paid into the designated account*".

62.7. By Clause 1.4, Mr. Gibbs further agreed that as soon as practicable he would procure "*certificates, signed by the relevant investment vehicle under his control, specifying the interest of [C] in the residential and commercial real estate holdings within the Investment Portfolio. [Mr. Gibbs] will provide to [Mr. Kholaifi] a quarterly report regarding the valuation of such investments and the attributable share of any net income received from such investments.*"

63. The 2018 Investor Summary was accordingly attached to the Settlement Agreement. The document, said by its heading to apply as at 19 January 2018, set out C's portfolio of investments/assets as described above, with the total value under management stated to be US$24,561,691.

64. On 25 April 2018 Mr. Kholaifi sent a letter from C by email to Mr. Gibbs, instructing him *"to commence transferring the full amount of my investment along with all relevant returns"* to the account that she nominated. HHJ Pelling KC, in granting summary judgment to C as described in paragraph 93 below, determined that this was a valid instruction pursuant to Clause 1.3 and, from that date, Mr. Gibbs' obligations under the Settlement Agreement were triggered. Thus, from 25 April 2018 Mr. Gibbs was required to commence liquidation of the assets in the 2018 Investor Summary "*to maximise current investments and achieve liquidations without penalties and to avoid any 'fire sale' situations*".

Mr. Gibbs' continued failure to liquidate assets and hand over the proceeds

65. On 27 June 2018, Mr. Kholaifi emailed Mr. Gibbs, following up the letter sent on 25 April 2018 "*as we did not receive a transfer yet. Pls let me know when"*. By reply on 28 June 2018, Mr. Gibbs sought to excuse the delay on the ground that he had been travelling; "*As I have explained to General Ayed, I am presently in Washington DC on urgent business but I will return to Monaco next week and catch up on where matters stand*[7] *and report to you*."

66. A month then passed without C hearing from Mr. Gibbs. On 19 July 2018, Mr. Faisal Abukhalaf, acting on behalf of C, emailed Mr. Gibbs requesting an update on the Funds. Mr. Gibbs replied by email the following day stating that the status of the transfer was that his "*office in Monaco tells me these are about ready, subject to my approval*"[8].

67. A further week passed and then on 27 July 2018 Mr. Gibbs sent an email to General Ayed informing him "*I will be in my office next week, to review the liquidations which have taken place, approve the first transfer and finalise an updated report for Salih Al Kholaifi*." (emphasis added)

68. No transfer was made. On 20 August 2018 Mr. Gibbs emailed Mr. Kholaifi and informed him that the transfer was being held up because, he said, it had been made the subject of a compliance review by the bank. He requested that C should answer a series of questions and supply documentary evidence of various matters.

69. It was only several months later, on 4 December 2018, that Mr. Gibbs emailed General Ayed stating "*Good news at last from HSBC, they have completed their long review and the restrictions on my corporate account have been lifted… I can now actively progress with the bank the planned transfers to [C]."* He also suggested that instead of returning the Funds, they be used to buy a property instead.

[7] This again sought to give the false impression that he had a staff in an office in Monaco whom he would have to consult in order to catch up on developments.
[8] See fn 7 above.

70. On 10 December 2018, Mr. Gibbs emailed Mr. Abukhalaf and stated that HSBC had removed their restrictions on his corporate accounts so he "w*ill request a meeting with the bank compliance team and get back to you as soon as I receive further news. Hopefully we can now make good progress*!"

71. However, once again no transfers to C were made, despite Mr. Gibbs' hollow promises.

72. On 27 February 2019 Mr. Abukhalaf emailed Mr. Gibbs stating that he had tried many times to get hold of Mr. Gibbs but was unable to do so. He stated "*I hereby would like to reiterate that HRH Prince Khalid is displeased and somehow upset about the stagnant status quo of the issue at hand as we have been waiting in vain for a certain response from you. Consequently would you please advise us when you are planning to start transferring the sums in hand as we have up to now received none."*

73. Mr. Gibbs replied by email the next day. Once again, he was full of excuses, blaming anything from ageing populations to Brexit, to the banking crash in 2007. He further stated:

> "*By insisting that Credit Suisse liquidate the balance of the investment portfolio and without any new investments being made, the net result after fees and expenses was over a USD$1m loss from what was forecast. I am currently doing my best to recover this loss. The real estate investments in London, Northern Ireland and Montenegro are all proving impossible to sell*."

74. This was another lie. The London property situated at Park Road, Richmond, had already been sold by Mr. Gibbs in January 2019. Deputy Master Linwood referred to this lie in his judgment in the enforcement proceedings brought by C against Mr. Gibbs for the sale of 36 Kings Road, Richmond. The Northern Ireland property, at Bankmore Square, Dublin Road, Belfast, had been sold as recently as 12 February 2019, which Mr. Gibbs must have known. 36 Kings Road, Richmond , had been used by Mr. Gibbs for a remortgage.

75. On 5 March 2019 Mr. Abukhalaf emailed Mr. Gibbs for an update on the transfers. He stated that Mr. Gibbs' email of 28 February 2019 *"is not in compliance with the agreement we signed a long time ago*" and "*As per our agreement, the Portfolio of [C] should not be liquidated to avoid any losses but it should be transferred immediately to her name, where Mr. Saleh Al [Kholaifi] will manage the Portfolio directly with the Bank, while the cash should be transferred to her account*". This was a misunderstanding of the terms of the Settlement Agreement.

76. Mr. Gibbs seized upon this in his reply by email dated 6 March 2019, stating that "*there is no provision in the agreement which requires any investment to be transferred to [Mr. Saleh Al Kholaifi]*". He sought to explain his inaction in complying with Clause 1.4. – which required him to procure certificates specifying the interest of C in the residential and commercial real estate holdings – as being due to his bereavement following the death of his mother and because "*Saleh has not chased me for these items so they have not made it to the top of the list of priorities but I will get on this."* It is now known that the real reason is that, unbeknown to C, Mr. Gibbs had in fact failed to use any of the Funds to acquire legal or beneficial interests in any of the properties listed in the 2018 Investor Summary in her favour. He lied once again, in stating in his email that "*Most of the real estate and other investments (in terms of value) are on the market for sale but no acceptable offers have yet been made."* He continued to pretend that the delays were caused by the banks, stating: "*the banks however are still requiring significantly increased compliance when dealing with Saudi Arabia and prior approval of transactions*."

77. On 22 March 2019, Georgina Simpson (a representative of C) emailed Mr. Gibbs to "*discuss the information required to evidence [C's] portfolio.*" As she explained, the 2018 Investor Summary did not contain sufficient information such as postal addresses to enable land registry checks; names of owners; details of companies; where the investment portfolios were held; if there were jointly held investments or the shareholder agreements amongst other things. She sent a further email dated 30 March 2019 in which she said she had been asked to deal with this and had requested a letter of authority to provide to Mr. Gibbs. In view of the fact that C simply did

not have any legal or beneficial interest in many of these supposed assets, contrary to the 2018 Investor Summary, Mr. Gibbs was naturally not very keen to provide this information.

78. In his email in response dated 31 March 2019 he accordingly declined to supply the information. The reason he gave was "*You have failed to answer any of my questions about who you are working for. Your email address suggests the Al Hayat media group? You would not even tell me where you are based or why you "need" the information you request*.".

79. On 6 May 2019 Ms. Simpson sent Mr. Gibbs a letter from C which confirmed her authority to act on C's behalf. She again asked for documentation evidencing C's ownership of the investments contained in the 2018 Investor Summary, as well as other details. She did not receive an answer.

80. On 13 May 2019 General Ayed emailed Mr. Gibbs, stating "*what we need from you is to transfer the Portfolio and identify the real estate*".

81. In response on 14 May 2019 Mr. Gibbs ignored all of these requests and simply stated "*the portfolio has been adjusted more towards equities to facilitate early stages. Negotiations are progressing well and I hope to have some good news for you before the summer*".

82. On 27 May 2019 General Ayed sent a further email to Mr. Gibbs, enclosing a letter from HRH Prince Khaled which stated "*I write to confirm my wishes and that of [C], which have already been communicated to you, that you provide Ms. Georgina Simpson with such information as she requires in order to verify the information required under clause 1.4 of the attached agreement dated the 18 April 2018 made between yourself and Salih Al Kholaifi. In order to start this process, please send Ms. Simpson the information referred to below and cooperate with providing her with such other information as she may require regarding the portfolio*." Mr. Gibbs ignored this request. He could not, of course, provide any of this information/these documents because they did not exist.

83. On 6 July 2019, Mr. Gibbs emailed Mr. Kholaifi and attached a supposedly updated schedule of the investment portfolio ("**the 2019 Investor Summary**"). His covering email is full of lies. He stated "*in view of the often expressed and keen wish to liquidate the portfolio, it has been adjusted*[9] *into asset classes and individual assets which should be realized more quickly*". This 2019 Investor Summary stated as follows:

> "**SUMMARY OF INVESTOR POSITION**
> **INVESTOR 00103**
> **AS AT 30.06.2019**
>
> | | USD$ |
> |---|---|
> | **cash:** | 683,117.00 |
> | **Credit Suisse managed securities:** | 65,000.00 |
> | **UK residential real estate:**
Undivided equitable interest in:
36 Kings Road, Richmond TW10
16 Duke Shore Wharf, Narrow Street, London E13
99 Drury Road, Harrow HA6
Park Road Richmond TW10
Lansdowne Crecent, Portrush 24 Units
Rushmore, Tullygally Road, Craigavon 140 Units | 4,483,689.00 |
> | A 2% undivided equitable interest in the attached profile of new developments | 1,050,000.00 |
> | **Other residential real estate:**
Equitable undivided interest in:
Regent Hotel, Porto Montenegro
102 Christopher Street, New York, NY
La Cerisaie, Mont Agel, France | 2,890,335.00 |
> | **UK commercial real estate:**
Equitable undivided interest in:
172/174 High Street Ruislip, HA2
1 Bankmore Square, Belfast
14 The Green, Richmond TW9 | 8,572,000.00 |
> | **Company shares:**
Equitable undivided interest in a portfolio including:
Banco Santander SA
National Grid plc | 6,678,000.00 |

[9] What Mr. Gibbs euphemistically came to call "re-basing".

Lloyds Banking Group plc
BT Group Plc
SSE plc
Centrica plc
BG Group plc
Royal Dutch Shell plc
Silver Arrows Marin (Holding) Ltd

Contract future trading: 398,716.00
Initial investment: USD $2.9m
Equitable undivided interest in a discretionary managed portfolio with UBS, Geneva

Total under management 24,820,877.00"

84. Despite the clear terms of the Settlement Agreement requiring liquidation of assets, Mr. Gibbs, knowing he did not have the assets to liquidate, sought to hide such fact from C by stating as follows: "*I do continue to have a dilemma because HRH Prince Sultan's expressed wish was for the funds to be invested at my discretion and then utilised to purchase a property for the [C] outside of the Kingdom. General Ayed confirmed to me on the phone last Wednesday that HRH Prince Khalid would prefer the funds to be liquidated and paid into an account of [C]*."

85. So far as the non-provision of the certificates required under Clause 1.4 of the Settlement Agreement were concerned, he came up with this untruthful excuse:

> "*I have been asked for title certificates etc showing the interest of [C] in the various investments for reasons of security and to share risk and provide low risk safe investments and in accordance with the instructions of Prince Sultan to protect [C] the various investments are not held directly or indirectly in her name but are held by me either directly or through companies controlled by me. Each investment is also shared with other investors providing an equitable undivided interest for [C]. If you require the title deeds or investment contract for any particular investment please let me know and I will arrange for this to be sent to you but to be clear it will not show [C] as the legal owner of the investment for the reasons given.*"

86. On 26 August 2020, Credit Suisse informed Mr. Kholaifi that the bank account in the name of C which was opened on 8 August 2011, had been closed on 12 June

2018, despite Mr. Gibbs having represented that as at 30 June 2019 that account was active and in credit in the sum of US$683,117.00.

87. This action was then commenced on 8 January 2021. On 12 January 2021, Mr. Gibbs emailed Mr. Kholaifi stating "*It has been a difficult time for me… There is however some good news for the main corporate investment [ie. SAM], so I have reallocated much of the portfolio to this to maximise the liquidation proceeds. M&A advisors have been appointed and as soon as I have detailed timetable, I will let you know*."

88. This was, I find, another lie. He then suggested that it was necessary to "*refresh the CDD on [C]*" and asked for "*an up to date copy of her passport and proof of address*". This was again a delaying tactic as well as an attempt to give the impression that Mr. Gibbs was actively investing the Funds when he was not. Finally, he asked whether C wanted "*to purchase a property outside of the Kingdom as her Father wished*" or whether she "*would prefer the cash instead*". I find that the reason why Mr. Gibbs said this was, once again, because it would be a way of his seeking to hide the fact that he no longer had the Funds which he could return to C, having dissipated much of them for his and his family's own benefit. Instead, he likely wished to hide this fact by "allocating" what he termed a "notional interest" of C to a property which he already held.

89. To date, Mr. Gibbs has failed to return any of the Funds despite the numerous requests for him to do so.

C. PROCEDURAL BACKGROUND

90. The procedural background to these proceedings is as follows.

91. As stated, on 8 January 2021 the Claim Form in these proceedings was issued. In a letter dated 21 January 2021, Mr. Gibbs' former solicitors, Keystone Law LLP, informed C's representatives that he did not accept service, claiming that he was in Spain at the time of service. This objection was dropped after C's solicitors provided video evidence of the attempted service of the Claim Form upon Mr.

Gibbs, with Mr. Gibbs somewhat comically seeking to evade service by running off down the road.

92. On 3 February 2021 Butcher J granted a worldwide freezing order against Mr. Gibbs (the "**WFO**"). The WFO was continued by consent on 28 April 2021 and later on 12 July 2022 an amendment and continuation of the WFO was granted by HHJ Pelling KC.

93. On 28 April 2022 C obtained summary judgment before HH Judge Pelling KC to the effect that Mr. Gibbs was in breach of the Settlement Agreement by, at the very least, failing or refusing to transfer to C (i) the cash that he had said he held for her, and (ii) the proceeds of assets, also said to have been held for C, that he had admittedly liquidated. HHJ Pelling KC also awarded C interim awards of damages in respect of that liability, in the sums of US$2,076,117 and £330,250 ("**the Pelling Order**"). Mr. Gibbs has failed to comply with that order.

94. HHJ Pelling KC determined that the letter of 25 April 2018 was a valid instruction pursuant to Clause 1.3 and, from that date, Mr. Gibbs' obligation to liquidate the Investment Portfolio under the Settlement Agreement was accordingly triggered pursuant to Clause 1.2 thereof. I consider that to be undoubtedly correct. Thus, from 25 April 2018 Mr. Gibbs was required to commence liquidation of the assets in the 2018 Investor Summary "*to maximise current investments and achieve liquidations without penalties and to avoid any 'fire sale' situations*". He entirely failed to do so.

95. At a Case Management Conference on 24 June 2022, Mr. Gibbs was ordered to file a Re-amended Defence by 22 July 2022. He failed to comply with this order.

96. On 19 July 2022, Master Cook made an interim charging order over 36 Kings Road, Richmond ("**36 Kings Road**") in respect of Mr. Gibbs' unpaid debts arising under the Pelling Order as well as a separate order of HHJ Pelling KC dated 11 July 2022 (in respect of an award of costs). The amount stated to be owing was £484,456.62 and $2,076,117 (including any interest on the GBP sums and costs). A further

interim charging order over 36 Kings Road in the sum of £10,351.04 was made on 3 October 2022 by Master Cook.

97. On 10 October 2022 Master Cook made a final charging order over 36 Kings Road against Mr. Gibbs in the sums of $2,076,117 and £508,773.38. The costs of the applications and associated application for directions of 19 August 2022 were assessed summarily in the sum of £27,000.

98. On 4 November 2022 Jacobs J ordered Extended Disclosure by List by 17 February 2023 (subsequently extended to 21 February 2023) in respect of (i) the Issues in the Disclosure Review Document which included in particular documents concerning how the funds of $25m were invested and the value of the assets supposedly purchased with the funds supposedly invested ("**the Disclosure Order**"); and (ii) the exchange of witness statements for trial by 5 May 2023 (later extended to 19 May 2023), as well as (iii) a timetable for the exchange of expert evidence in relation to the valuation of the assets specified in the schedule to the Settlement Agreement.

99. In the light of Mr. Gibbs' failure to comply with the Pelling Order or the Disclosure Order, on 14 July 2023 Dias J ordered that unless he complied with the Disclosure Order, he would be debarred from defending the proceedings; and unless he complied with the Pelling Order, he would similarly be debarred from defending the proceedings. His application for permission to appeal against her order was refused.

100. Mr. Gibbs did not comply with the Unless Order and was automatically debarred from defending the proceedings at 4pm on 25 August 2023.

101. On 28-29 November 2023 there was a trial of enforcement proceedings in the Chancery Division relating to the C's application for the sale of 36 Kings Road. On 5 December 2023 Deputy Master Linwood granted the order for sale. In his judgment, he made serious findings of dishonesty by Mr. Gibbs. The Deputy Master highlighted Mr. Gibbs' evasiveness and attached special importance to his attempts to mislead the Court as to the movement of cash and assets.

102. On 1 December 2023, Andrew Baker J made an order that any application by Mr. Gibbs for permission to participate at trial notwithstanding being debarred from defending these proceedings must be issued and served, together with any evidence to be relied on in support, by 4.30 pm on Wednesday 10 January 2024. Mr. Gibbs made an application to participate in the proceedings in relation to both liability and quantum which was dismissed by Calver J on 24 January 2024 for the reasons set out in that judgment.

MR. GIBBS' BREACH OF CONTRACT

Proper Construction of the Settlement Agreement

103. The terms of the Settlement Agreement, which are set out above, are clear. Once he received the letter signed by C instructing him to liquidate the assets in the Investment Portfolio (which he received on 25 April 2018), Mr. Gibbs was obliged to liquidate those assets as soon as reasonably possible, seeking to realise liquidation proceeds of US$25 million, but avoiding penalties and fire sale situations. The net liquidation proceeds were to be paid into C's specified bank account. C provided Mr. Gibbs with details of her bank account for this purpose on 25 April 2018.

104. Mr. Gibbs has in the past raised two arguments by way of defence to this immediate obligation: (1) that Clause 1.2 means that he was entitled to *"continue to manage the portfolio"* with liquidations over time, and (2) that he had *"no liability"* to achieve any particular sum with those liquidations, or to liquidate at all. Both of these contentions are wrong:

    104.1. As to (1), as C rightly points out, the Court has already determined, summarily, that once the valid instruction letter had been sent, Mr. Gibbs had an obligation to commence the liquidation of the assets in the Investment Portfolio – subject to the possibility that there were any assets that for whatever reason could not be liquidated in accordance with the Settlement Agreement.[10] Mr. Gibbs was only entitled to continue to

[10] Judgment of HHJ Pelling KC of 28 April 2022 at [40], [41], [52].

manage an asset within the Investment Portfolio (in consultation with Mr. Kholaifi) after the conclusion of the Settlement Agreement until the obligation came to liquidate it, or in circumstances where the liquidation of a particular asset may not have been possible or appropriate in the conditions at the time, because it would lead to a fire-sale or penalties.

104.2. As to (2), the suggestion that Mr. Gibbs had no obligations at all with regard to liquidations is obviously wrong and would rob the Settlement Agreement of any contractual effect. Clause 1.2 cannot sensibly be construed as meaning that Mr. Gibbs could have "*no liability"* if he liquidated the Investment Portfolio for *"less than US$25m"* without more. The wording simply means that Mr. Gibbs' mandate was to seek to liquidate the portfolio for US$25 million, but if upon liquidation less than US$25 million is recovered (if, for example, the value of the assets therein had decreased by the time that the instruction to liquidate was made) he is not liable without more for the difference. But if he failed to liquidate the Investment Portfolio in the required manner he would of course be liable for breach of contract. (Similarly, the reference in Clause 2.2 to Mr. Gibbs and the Manager having no personal obligation or liability towards each other arising out of the Settlement Agreement simply makes clear the fact that Mr. Gibbs' liability under the Settlement Agreement is owed to C and not to the Manager).

104.3. This construction of the 'mandate' also reflects the contractual context set out above which shows the parties' intentions. At the meeting with C's representatives in London on 22 September 2017, Mr. Gibbs had agreed in principle to transfer US$25 million to an account nominated by C by a longstop date of 31 December 2018, having told C's representatives that the value of the Funds was US$25 million at that time. The Settlement Agreement, which grew out of these discussions, maintained that commitment to return C's US$25 million investment – as was reflected in Recitals B and C, as well as Clauses 1.1 and 1.2.

104.4. It is also clear from Clause 1.4 of the Settlement Agreement that Mr. Gibbs had represented that C held a specific and valuable interest in the

sums stated in the Investment Portfolio in respect of the real estate holdings listed therein and not some mere "notional interest" as he now alleges, whatever that may mean. I return to this below.

105. Having cleared these arguments out of the way, it is clear, as the Court has already determined by way of the Pelling Order, that Mr. Gibbs is in breach of the Settlement Agreement by failing to transfer to C's nominated bank account the monies and liquidation proceeds in respect of the cash that was held for C as part of the Investment Portfolio (in the Credit Suisse account), and those assets which could be identified, at that summary stage, to have already been liquidated or which had matured, namely: (i) "*Credit Suisse managed securities*", (ii) the property at Park Road, Richmond, (iii) shares in Banco Santander SA, National Grid plc, BT Group plc, SSE plc, Centrica plc and Royal Dutch Shell plc, and (iv) the "*Contract future trading*" portfolio. In using the Funds for any purpose other than transferring them to C's designated account, Mr. Gibbs had further breached the Settlement Agreement, including by investing the funds in Mr. Gibbs' own Silver Arrows Marine ("**SAM**") group of companies (which was the way in which Mr. Gibbs said he spent most of the liquidated money)[11].

106. What HHJ Pelling KC was not in a position to determine summarily was whether Mr. Gibbs was also in breach of contract in relation to the <u>other</u> asset classes set out in the 2018 Investor Summary – that is, real estate and company shares other than those referred to in paragraph 105 above – because the Judge (like C) had no knowledge at that stage of Mr. Gibbs having liquidated those assets. If it were the position, as it appeared, that Mr. Gibbs had not liquidated the assets in question, the Court could not determine summarily that that was a breach, because the Court would need evidence as to whether, in respect of each of those assets, such liquidation was not carried out as soon as reasonably possible. That required the Court to establish when the liquidation of each of the remaining assets could have occurred (without the sale being by way of a fire sale or incurring penalties).

[11] ibid at [42]-[45]

107. C has now adduced evidence at trial from experts in the various fields of assets covered by the 2018 Investor Summary in order to establish these matters. That evidence is as follows as to the saleability of those assets:

107.1. As regards each of the properties in the category "*UK residential real estate*", together with the commercial property situate at High Street, Ruislip, Mr. Manley, C's expert property valuer, gives his opinion that *"each such property would have been marketed from 25th April 2018 and sold on a typical timeframe not long thereafter [i.e. July 2018]"* save for the property at Duke Shore Wharf, which Mr. Manley concludes would have sold later in order for work to the river wall to be completed before its sale in December 2019. This is subject to the caveat that in the course of this litigation, Mr. Gibbs has said that contrary to the impression given by the 2018 Investor Summary, C's interest in the property at Flat 9, Mount Carmel Chambers was in fact a *contract to purchase* that property, rather than the property itself. Mr. Manley explains that he is unable to value any such contract about which he has no information. I do not consider that that matters for the reasons set out below.

107.2. As regards the remaining properties ("*Other residential real estate*" and "*UK commercial real estate*"):

107.2.a) *Christopher Street, New York*: Mr. Manley gives an estimate of the price for which the property should have been sold (between US$700,000 and US$1,000,000) based on the sale of similar one-bedroom apartments in the area, thus confirming his opinion that it would not have been impossible to sell it. Again, Mr. Gibbs has asserted in this litigation that C's interest was in an option agreement rather than the property itself, but he has failed to disclose any such option agreement. Mr. Manley is unsurprisingly unable to give an opinion on the purported option agreement absent any such agreement. Again, I do not consider that that matters for the reasons set out below.

107.2.b) *Regent Hotel, Montenegro*: despite a lack of information Mr. Manley indicates that the property could have been sold in 2018

and an immediate sale in April 2018 would have achieved the highest price.

107.2.c) *Bankmore Square, Belfast*: Mr. Manley notes that the development site in question was in fact sold in February 2019 for £7,050,000. Again Mr. Gibbs has asserted in this litigation that C's interest was in a related *agreement* rather than the property itself, but Mr. Manley is unable to offer his expert opinion on that as no such agreement has been disclosed by Mr. Gibbs. Again, I do not consider that that matters for the reasons set out below.

107.2.d) *14 The Green, Richmond*: Mr. Manley confirms his view that the property could have been sold by October 2018. Again, Mr. Gibbs has asserted that C's interest was in an *option* to acquire the property (which was personal to him and not capable of being assigned or sub-contracted), rather than in the property itself. Mr. Manley states that he has limited information with which to assess such a limited option agreement but which would likely have been worthless as at 25 April 2018. Again, I do not consider that that matters for the reasons set out below.

107.3. As regards the company shares other than those in public companies that Mr. Gibbs says he sold, the only other company shares listed in the 2018 Investor Summary are in Lloyds Banking Group and SAM. It is clear that shares in Lloyds Banking Group could have been sold, as it is a public company.[12] As to SAM, Mr. Stern's evidence is that its shares could have been sold within 6-9 months of the instruction to liquidate and I accept that evidence.

108. Mr. Gibbs is accordingly in breach of contract in respect of his failure to liquidate each of the assets referred to above which could have been, but were not, liquidated by him on the stated dates. As regards those four properties described above where, despite what is said in the 2018 Investor Summary, Mr. Gibbs has subsequently claimed that C had no interest in the properties themselves, but only an option or

[12] Mr. Gibbs said in his Fourth Witness Statement, dated 21 January 2022, that he had *"recently discovered"* that he still owned those shares.

a related agreement, I explain below that he is estopped from advancing that position.

BREACH OF TRUST

109. C also advances a claim that each of the breaches of contract above must also be a breach of trust/ fiduciary duty in that Mr. Gibbs held the assets in question on trust for C and was required to liquidate those assets and transfer the net proceeds to C's nominated account, but in breach of trust failed to do that. She alleges that Mr. Gibbs' application of the cash and liquidated proceeds in any way other than by way of transfer to C's nominated account was a breach of trust.

110. However, Mr. Atrill KC indicated at trial that C recognises that the formulation of any declaratory relief in this respect might require some detailed consideration and at present she has been unable to identify the traceable proceeds of these assets (because of Mr. Gibbs' refusal to give disclosure). Accordingly, C does not presently consider that it is necessary or proportionate to seek this further relief at this trial. In those circumstances, Mr. Atrill KC invited the Court to stand this element of the claim over, should it ever become useful for C to seek such relief, and I agree to do so.

ESTOPPEL BY AGREEMENT

111. As explained above, in the course of these proceedings Mr. Gibbs has taken the position that C did not in fact hold any interest in four of the real estate assets set out in the 2018 Investor Summary, and that she instead held (i) in respect of *Christopher Street, NYC* a mere option agreement which apparently expired and of which Mr. Gibbs does not have a copy; (ii) in respect of *The Green, Richmond,* an option which apparently expired, which Mr. Gibbs has provided to C in unsigned form only; (iii) in respect of *Mount Carmel Chambers*, a contract to purchase which he says was aborted on 21 April 2018, days after his entry into the Settlement Agreement, and which contract has never been seen; and (iv) in respect of *Bankmore Square, Belfast*, an agreement in relation to a property development project which did not proceed, where the agreement was apparently never documented in written form as it was based on a course of dealing between Mr.

Gibbs and the company which held the relevant rights to the development opportunity, the Richland Group.

112. This is simply not what is stated in the 2018 Investor Summary, attached to the Settlement Agreement. The assets in which it said that C had an interest were the properties themselves, and not mere agreements relating thereto. There is nothing to indicate that there was anything different about these four properties.

113. Also, in the context of C's application for summary judgment, Mr. Gibbs gave evidence that, in respect of the portfolio of company shares in which C's equitable interest was said in the 2018 Investor Summary to be worth US$2,536,000, his *"recollection"* was that C only held shares to the value of £250 per listed company and the vast majority of C's shares – deduced to have had a value of c .€2,150,000 – were held in SAM. None of this is documented anywhere and I reject this evidence.

114. It is not a plausible reading of the 2018 Investor Summary that a multi-million pound portfolio of shares, described as consisting of shares in a number of well-known public companies, was in fact a multi-million pound investment in Mr. Gibbs' company, SAM, being a company which at that time, according to Mr. Stern, C's expert, appeared to have had a value of only c .€1.44 million to €2.24 million, supplemented by nominal holdings worth £250 each in the public companies.

115. Indeed, in relation to the following year's 2019 Investor Summary, which shows C's interest in the portfolio of shares as having increased in value to US$6,678,000, Mr. Gibbs' position upon the application for summary judgment was that that reflected investments in SAM and Elysium Yacht Ltd only and that there was no change to the holding in the various public companies. Yet when he sent the 2019 Investor Summary by email on 6 July 2019, he said, inconsistently with this, that C's portfolio had been *"adjusted into asset classes and individual assets which should be realized more quickly"* (emphasis added).

116. A portfolio of more than US$2.5 million of largely publicly listed company shares could obviously have been liquidated immediately. Mr. Gibbs' approach to this is similar to his suggestion that C's interest in the four real estate assets discussed above was not in fact an interest in the properties themselves, such that minimal liability would arise from his failure to liquidate the properties. This approach fails: Mr. Gibbs is estopped by contract from denying the truth of what he agreed in the Settlement Agreement relation to those assets, as I shall explain next.

117. Contractual estoppel arises when parties have concluded a binding contract containing an acknowledgment of a state of affairs. The maker of the statement is estopped from asserting in litigation that the opposite was true. The basic principle is that *"[t]here is no reason in principle why parties to a contract should not agree that a certain state of affairs should form the basis of the transaction, whether it be the case or not"*. In such a case, a party cannot *"subsequently deny the existence of the facts and matters upon which they have agreed, at least as far as concerns those aspects of their relationship to which the agreement was directed"*.[13] Contractual estoppel is a "*separate doctrine"* to other forms of estoppel; it contains no requirement of reliance or detrimental reliance, and the party relying on the estoppel does not have to show that it would be unconscionable for the other party to resile from the agreed state of affairs.[14] The representation of fact is enforceable because it forms part of the contract between the parties.

118. It is clear from the Settlement Agreement and the 2018 Investor Summary that the basis on which the parties contracted was that Mr. Gibbs held C's investments/ assets, that those investments/assets were accurately set out in the appended 2018 Investor Summary, that C had a proprietary interest in each of those assets and that they had a value of just under US$25 million. That was the very purpose of the agreement: to liquidate the assets that Mr. Gibbs represented that he held for C in order to return her investment of US$25 million. The parties specifically agreed, by Clause 1.1 of the Settlement Agreement, that the 2018 Investor Summary set

[13] *Peekay Intermark Ltd v Australia and New Zealand Banking Group Ltd* [2006] EWCA Civ 386, [2006] 2 Lloyd's Rep 511 at [56] (Moore-Bick LJ) [2006] 1 CLC 582.
[14] *Springwell Navigation Corp v JP Morgan Chase* [2010] EWCA Civ 1221 at [177], and see at first instance (upheld by the Court of Appeal) at *JP Morgan Chase v Springwell Navigation Corp* [2008] EWHC 1186 (Comm) [556]-[563].

out *"the value in each investment position which is attributable to [C]"*. This referred to the valuations given in that document for each asset class, and the valuation of the total investment under management of US$24,561,691. The real estate holdings were each described in the 2018 Investor Summary. They were properties, rather than any mere contractual arrangement relating thereto. By the 2018 Investor Summary the parties agreed that C had an equitable undivided interest in each of those properties, meaning a beneficial interest in each property.

119. It follows that whether or not Mr. Gibbs was telling the truth that each of the listed assets in the 2018 Investor Summary, appended to the Settlement Agreement, were held by him as part of a portfolio of assets for C – which was not something that C was in a position to know – he is contractually estopped from denying the truth of the representations contained in the 2018 Investor Summary.

QUANTUM

120. The liability of Mr. Gibbs having been established by C, it is next necessary to consider C's contractual measure of damages, being the amount that would have been realised if the assets had been liquidated in accordance with Mr. Gibbs' obligations. By reason of the contractual estoppel described above, Mr. Gibbs is estopped from denying that his liability to C is at least US$24,561,691, being the sum agreed in and represented by the 2018 Investor Summary and Settlement Agreement.

121. C submits that in light of (i) the significant evidential uncertainty as to the asset position recognised by each of C's experts, because of Mr. Gibbs' failures and (ii) the fact that C cannot be certain what her interest was in each asset, because he said at the time only that her interest was *"typically"* 25%, and there is no documentary evidence on this (and certainly nothing to suggest that her interest, even if 25% in relation to a number of assets, was 25% for *all* of them), the best evidence of her interest in the value of those assets is the figure that Mr. Gibbs represented and agreed, i.e. US$24,561,691.

122. Alternatively, C points out that each expert in this case has explained that in various respects further information and documents was/were needed from Mr. Gibbs in order to carry out their valuation exercises. By her Unless Order of 14 July 2023, Dias J included these documents requested by the experts as part of the disclosure that Mr. Gibbs was required to provide (or give an explanation by way of affidavit why he could not), failing which he would be debarred from defending the claim.

123. Mr. Gibbs provided neither any of the documents pursuant to the Unless Order, nor the affidavit. It is not plausible that he had none of the documents that the experts had asked for: for example, Mr. Stern asked for unredacted bank statements for all bank accounts held in the name of any of the entities in the SAM group from 18 April 2018 to date, which must be available to him because (i) he has told the Court that he is the person that manages SAM, and (ii) he has previously disclosed *redacted* versions of SAM's statements. Yet he failed to provide these documents.

124. Further, by a separate order of 21 July 2023, Cockerill J set out simple steps for Mr. Gibbs to take in order to arrange access for and provide information to C's maritime expert in relation to the vessels that he was required to value (including a list of vessels owned by SAM from 25 April 2018 to date, in circumstances where C believes there to be only four such vessels). Mr. Gibbs ignored the Order, despite the fact that he owns 95% of, manages and controls SAM.

125. Mr Gibbs has therefore been deliberately obstructive in the provision of documents to the experts. I am accordingly willing to draw the inference that, in principle, the documents which he failed to produce would have undermined his case and supported C's case so far as quantum is concerned.

126. C accordingly submits that if there is evidential uncertainty as to the scope or value of the shares/real estate holdings that is not resolved by an estoppel, the Court should resolve any such doubts in favour of C, since the absence of evidence is the fault of Mr. Gibbs in light, in particular, of his failure of disclosure for which he was debarred: see *India Oil Corporation v Greenstone Shipping SA* [1987] 2 QB

(Com. Ct.) 286, 293, where the Court held that *"If the wrongdoer prevents the innocent party proving how much of his property has been taken, then the wrongdoer is liable to the greatest extent that is possible in the circumstances".* See also *Active Media v Burmester and others* [2021] EWHC 232 (Comm) at [302]-[311].

127. I accept this submission; however, I do not consider that there *is* evidential uncertainty as to the scope or value of the shares/real estate holdings that is not resolved by the contractual estoppel in this case.

Quantum: breach of contract and estoppel

128. In order to determine the quantum of C's claim it is necessary to ask the following question in respect of each asset set out in the 2018 Investor Summary, namely how much money would have been generated by way of liquidated proceeds, and therefore transferred to C's nominated account, if, upon the instruction of 25 April 2018, Mr. Gibbs had performed his contractual obligation to commence a programme of liquidation as soon as reasonably possible in such a way as *"to maximise current investments and achieve liquidations without penalties and to avoid any 'fire sale' situations"*?

129. Each expert in conducting his valuation of the assets accordingly was asked, pursuant to paragraph 10(a) of the Order of Jacobs J dated 4 November 2022, to address the following question:

> "*If an instruction to liquidate the Investment Portfolio and to sell the investments/ assets/ properties set out in the 2018 Investor Summary had been given on or around 25 April 2018, and on the assumption that the seller was to make the liquidation/sale in each case as soon as reasonably possible but on terms maximising the returns on those assets/investments and avoiding (as applicable) any early termination or other penalties or 'fire sale' situations, by what date (if at all) and for what value would each of the following have been liquidated /sold?*"

130. That exercise is, however, subject to the contractual estoppel to which Mr. Gibbs is subject. Thus, if the valuation of an asset that an expert is able to reach on the

basis of the evidence before them is in fact lower than the value represented by Mr. Gibbs in the 2018 Investor Summary – including a case where it transpires that the property was never in fact held by him at all – then Mr. Gibbs cannot rely on that valuation to establish a smaller loss. Instead, he is estopped from denying that each of the assets set out in the 2018 Investor Summary was an asset actually held for C in which she had a proprietary interest, with its then-current valuation ascribed to it.

131. I consider each asset in the 2018 Investor Summary next. It must be borne in mind that HHJ Pelling KC has already summarily determined that, in each case, the entirety of the net proceeds of each liquidation was required to be paid to C's nominated account, rejecting Mr. Gibbs' submission that *"some part of the fund needed to be retained in order to enable [Mr. Gibbs] to manage the portfolio pending its liquidation"*.[15]

(1) Cash

132. As HHJ Pelling KC held, in circumstances where cash is a liquid asset that could and should have been immediately transferred to C's account upon the 25 April 2018 instruction. It follows that the full **US$826,117** was required to be transferred on 25 April 2018.

(2) Credit Suisse managed securities

133. The valuation given in the 2018 Investor Summary to this portfolio of securities, which was said to be held entirely by or for C (as opposed to her holding an undivided equitable interest therein alongside other *"investors"*) was US$2,323,000.

134. C's securities expert is Dr Chudozie Okongwu. Dr Okongwu states that the information available with respect to the securities portfolio (the "**Credit Suisse Portfolio**") and also the futures portfolio (the "**UBS Portfolio**") which I refer to

[15] HHJ Pelling KC further held that *"retaining any part of the portfolio once it was liquid, that is reduced to cash or its equivalent, was contrary to the instructions contained in [the] 25 April letter"* (emphasis added): at [42].

below is *"limited"* that he is therefore *"required to make certain assumptions"* to value them. He would ordinarily expect, unsurprisingly, there to be periodic Credit Suisse account statements listing the individual assets and their values. However, no account statements have been disclosed by Mr. Gibbs despite Court orders for disclosure of the investment positions in the Credit Suisse Portfolio as set out in the 2018 Investor Summary.

135. In light of the lack of relevant documentation and information, Dr Okongwu has valued each portfolio in a base scenario and has also performed various *"sensitivity tests"* of those results, which show how various changes to the assumptions would affect his conclusions (although these tests do not encompass all possible changes to his assumptions).

136. Dr Okongwu considers that each fund could be liquidated in an orderly manner, given that the investment positions to be liquidated are small relative to (i) the sizes of the funds from which they would be redeemed and (ii) the standards of the markets in which the liquidations take place, given that the markets in which the liquidations take place are deep and liquid. The liquidation date for each fund is taken by Dr Okongwu as the next available month-end date after the instruction to liquidate is placed, in light of the notice period for the fund in question.

137. Dr Okongwu's conclusion is that if an instruction to liquidate the Credit Suisse Portfolio on the basis set out in paragraph 10(a) of the Order of Jacobs J had been given on or around 25 April 2018:

137.1. Assuming equal distribution of funds through the five identified funds:

137.1.a) The portfolio could have been liquidated by 31 July 2018 for US$2,390,089 on the basis of a conservative assumption (in favour to Mr. Gibbs) of 0% interest being earned on the liquidation proceeds between each liquidation date, in circumstances where they would not all have been liquidated at the same time.

137.1.b) If there was reinvestment in 3-month US Treasuries (again a conservative selection, as this would be a nearly risk-free investment,

as opposed to a riskier one that would have higher expected returns), that figure would be US$2,396,501.

137.2. In the scenario where the portfolio is in fact comprised entirely of securities from the best-performing of the identified funds (save for the 10% held in cash), it could have been liquidated on 30 April 2018 for US$2,456,252.

137.3. In the scenario where the portfolio is in fact comprised entirely of securities from the worst-performing of the identified funds (save for the 10% held in case), it could have been liquidated on 31 May 2018 for US$2,304,780.

137.4. In the final alternative scenario, which assumes equal allocation across the five identified funds and then uses performance benchmarking for the two unidentified funds, the portfolio could have been liquidated on 31 July 2018 for somewhere in the range of US$2,369,506 and US$2,380,645.

138. C's position is that, on the basis of the evidence and applying the *India Oil Corp* approach set out in paragraph 126 above, the appropriate figure to use in assessing contractual loss is the figure from the "best performing" fund scenario assuming liquidation on 30 April 2018 upon receipt of the instruction of 25 April 2018, being US$2,456,252. C further submits that the "best performing fund" figure is in any event not a true "best case" figure, because:

138.1.a) The asset value given in the 2018 Investor Summary for the Credit Suisse Portfolio, from which this assessment proceeds, appears to have been an undervalue. That is because the valuations given for each asset in the 2018 Investor Summary include a reduction of 10% of the value of the asset to take into account the costs of selling those assets. But there is no evidence that any such 10% charge would be incurred to liquidate a securities portfolio; and

138.1.b) In any event, the "best performing fund" figure applies data from the best-performing of the identified funds. It is not known whether the two non-identifiable funds performed better or worse than this

particular fund. If they performed better, then a higher figure may be appropriate depending on how the monies were allocated (which is again unknowable).

139. However, I consider that this approach is too speculative. The 2018 Investor Summary provides a non-exhaustive list of seven fund names in which investments were held in the Credit Suisse Portfolio, but the unique identifiers of those funds were not provided by Mr. Gibbs and no information has been given by him as to the size of the seven individual positions. Through no fault of his own, Dr Okongwu has not had this basic information and his analysis is accordingly full of assumptions which may or may not be correct. Even were I to draw an *India Oil Corp* inference in this case, I do not consider that it would assist me to determine reliably the quantum of C's loss in respect of this category of asset.

140. I consider that the correct approach is to find that Mr. Gibbs is estopped from denying that the loss is US$2,323,000, being the sum agreed and represented by the 2018 Investor Summary to be the then-current valuation of the Credit Suisse Portfolio. I do, at least, draw comfort from Dr Okongwu's evidence that this figure is a reasonable figure to select, being broadly in line with his alternative valuations. I accept C's case that this portfolio could have been liquidated in this sum on 30 April 2018.

(3) Contract future trading – the UBS Portfolio

141. The 2018 Investor Summary provides that C had an equitable undivided interest in a *"discretionary managed"* contract futures portfolio with UBS in Geneva, valued at US$3,476,812 ("**the UBS Portfolio**").

142. HHJ Pelling KC said as follows about the UBS Portfolio, in the Summary Judgment, at [44]:

> "*The only explanation for what has become of those is that offered by [Mr Gibbs'] solicitors in correspondence – that is that: "these investments matured and the net proceeds were invested in Silver Arrows Marine group of companies ..." It is not suggested this occurred other than after the settlement*

> *agreement had been entered into and the 25 April letter received by the first defendant. There is no information available as to the sums generated at maturity. Clearly however, some funds were generated by the process if they were "... invested in Silver Arrows Marine group of companies ...*".

143. The Judge also referred, in making his interim award, to C's skeleton which had referred to Mr. Gibbs' evidence that *"to the best of [his] recollection"*, the proceeds of the entire UBS portfolio had generated *"just under £1 million"* and that *"c. $250,000"* of that figure had been *"allocated"* to C. C had noted that this story seemed dubious, (not least) given that no explanation was provided as to how C's investment supposedly decreased from US$3,476,812 to US$250,000, or what happened to the remaining US$3.2 million but this did not need to be determined for the purposes of the summary judgment hearing.

144. In any event, the relevant question for present is not what liquidations *were* made, but the sum for which C's interest in the UBS Portfolio *should* have been liquidated.

145. Dr Okongwu notes that the position here, in terms of missing documentation (such as UBS account statements) despite Court orders, is even worse than with the Credit Suisse Portfolio, and only *"extremely"* limited information can be gleaned about the portfolio from the 2019 Investor Summary. Dr Okongwu notes that no information has been provided as to the individual futures positions held or even the types of futures held (e.g. equity futures, commodity futures).

146. In light of the lack of information and documentation available, again I do not consider that the quantum of the claim in respect of this asset can reliably be ascertained by the expert. There are too many speculative assumptions involved.

147. I consider that the right approach is that Mr. Gibbs is estopped from denying that the loss is US$3,476,812, being the sum agreed and represented by the 2018 Investor Summary and Settlement Agreement to be the then-current valuation of the UBS Portfolio. The best evidence of what could have been realised upon a liquidation on 30 April 2018 is the valuation that Mr. Gibbs agreed and represented

would be obtained upon a liquidation less than two weeks prior, on 18 April 2018 (I accept C's case that this portfolio could have been liquidated in this sum on 30 April 2018.)

(4) UK residential real estate

148. The 2018 Investor Summary states that C had an undivided equitable interest in six properties contained in the asset category "UK residential real estate", her interest being valued at US$6,412,331.

149. It provides also that C's percentage interest in the real estate properties was *"typically"* 25%. Subsequently, in Further Information provided in these proceedings in April 2022, Mr. Gibbs said that C's interest was 25% in relation to five of the six UK residential properties (36 Kings Road; Mount Carmel Chambers; Park Road, Richmond; 16 Duke Shore Wharf; and 3 Canning Place Mews) but 5% in relation to the property at 99 Drury Road. That smaller interest in Drury Road appears to be on the basis that Mr. Gibbs himself only owned 20% of that property, so C held a 25% *interest in Mr Gibbs' share*.

150. C does not know whether, as a matter of fact, her interest was indeed always 25% in Mr. Gibbs' share. That is not what the 2018 Investor Summary says – it says that was *"typically"* her interest – and there is no documentation that sets out what her interest in fact *was*, despite the repeated requests of C's representatives for such a document to be produced, and despite Mr. Gibbs' obligation under Clause 1.4 of the Settlement Agreement to procure certificates specifying her interest. In Mr. Gibbs' Further Information he asserted that C's interests were only "notional", whatever that may mean.

151. In circumstances where C has no way of knowing what her interest in each property *actually* was, and given that this evidential deficiency is all of Mr. Gibbs' own making, I accept C's submission that an evidential presumption should be made against him, with the best evidence of the value of C's interest being the value that Mr. Gibbs agreed by the Settlement Agreement, namely US$6,412,331.

152. C's expert valuer, Mr. Manley, who attempts to assess the value for which each property could have been sold on 25 April 2018, is hamstrung by the almost total absence of relevant documentation from Mr. Gibbs and his inability to inspect the properties. Once again, in light of the lack of information and documentation available, I do not consider that the quantum of the claim in respect of this asset can reliably be ascertained by the expert, in this case Mr. Manley. There are too many speculative assumptions involved.

153. I consider, however, relying upon Mr. Manley's evidence, that the fair approach is to determine that completion in respect of the sale of each of these properties would have taken place by 4 August 2018, with the proceeds being transferred to C's account on that date. In the case of Duke Shore Warf which, as adverted to above, had problems with the river wall of the flat, I consider that the same approach should be taken. The problems with the river wall existed and were already known about at the time when Mr. Gibbs drew up the 2018 Investor Summary. Whilst Mr. Manley concludes that it would have been difficult to sell until the price of the repair works had been fixed and the duration of the works known, I consider that the Court is entitled to presume against Mr. Gibbs that it could have been sold as part of the overall figure of US$6,412,331 which is set out in the 2018 Investor Summary. Mr. Gibbs is estopped from denying that a sale of all of the properties *in their current condition*, including Duke Shore Wharf, would have resulted in any less than a total sum of US$6,412,331.

(5) <u>UK commercial properties</u>

154. C is said in the 2018 Investor Summary to have an equitable undivided interest in three properties, that interest being valued at US$7,075,119.[16] For the same reasons as given above in relation to residential properties, I find that the sum that she should have been transferred upon the liquidation of these properties was that sum of <u>US$7,075,119</u> because this figure, as agreed and represented by the 2018 Investor Summary, is the best evidence of the value of C's interest in the commercial properties in circumstances where she does not know her true percentage interest in

[16] **[F/95/485]**

those properties and the actual value of these properties is unclear by reason of Mr. Gibbs' refusal, despite court order, to give disclosure. Mr. Gibbs is accordingly estopped from denying that the sum for which this asset class could have been liquidated is any less than this. I do not accept Mr. Gibbs' suggestion that C is only entitled to a development agreement over the property at One Bankmore Square, or that C is only entitled to an interest in an option agreement in respect of 14 The Green Richmond in light of the 2018 Investor Summary, and he is estopped from so contending.

155. In the light of Mr. Manley's evidence, I consider that the funds upon liquidation of these properties should have been transferred to C's nominated account by 30 November 2018.

(6) Residential property abroad

156. The "other residential real estate" category in the Settlement Agreement consists of two properties: one in New York and one in Montenegro. C's interest therein is said to be US$1,912,312. Again, C maintains that is the sum for which her interests should have been liquidated and that Mr. Gibbs is estopped from contending to the contrary in light of the evidential uncertainty relating to these overseas properties: the best evidence of C's interest in these properties is that agreed and represented by the 2018 Investor Summary and Settlement Agreement. I accept that submission. I do not accept Mr. Gibbs' suggestion that C is only entitled to an interest in an option agreement in respect of Unit 6C, 102 Christopher Street, New York 10014.

157. Mr. Gibbs has given wholly inconsistent, and no doubt untruthful, evidence in respect of this property. He initially said that he *"believe[d]"* the interest in this property was held by a company, Vesper Management Consultancy FZE, on his behalf but that Vesper had since been removed from the company register. This belief then changed to an assertion that he had an option over this property, through Vesper, which he allowed to expire because he *"did not consider it financially or practically viable to exercise the option".* He said that he does not have and is not able to obtain a copy of the agreement. Mr. Manley explains that without a copy

of the purported option agreement, he is unable to ascertain whether it provides any financial benefit or is capable of having any value.

158. In the light of Mr. Manley's evidence, I consider that the funds upon liquidation of these properties should have been transferred to C's nominated account by 4 August 2018.

(7) Company shares

159. Finally, the 2018 Investor Summary stated that C had an equitable undivided interest in a portfolio including eight publicly listed companies (although one, BG Group, was included as a mistake: it no longer existed) and his own company, SAM. C's interest in that portfolio was valued at US$2,536,000.

160. I find that Mr. Gibbs failed to produce any documents as to these shareholdings because they would have undermined his position about how these shares were allocated in the portfolio (it would obviously have been possible to produce documents showing the shares held and liquidated in these companies).

161. As a result of the total absence of disclosure by Mr. Gibbs in this respect, the Court's only evidence as to this portfolio and its value is that found in the 2018 Investor Summary.

162. That is reinforced by the fact that the vast majority of companies were public companies in which shares could have been sold instantly, thus reducing any risk that the valuation significantly changed from that represented on 18 April 2018.

163. As regards the shares in SAM, the relevant expert, Mr. Stern, says that upon an instruction of 25 April 2018, a sale of SAM could have been completed within six to nine months. On the basis of Mr. Stern's report, this may have led to a decrease in the value, from 25 April 2018, of the SAM shares sold. However, as Mr. Stern explains, his valuation of SAM is subject to significant uncertainty. Moreover, it is not known (in light of the matters set out in the foregoing paragraphs) what allocation of the portfolio should be attributed to the SAM shares in any event.

164. Accordingly, the best evidence that the Court has as to the value of C's interest in the portfolio at the time it should have been liquidated is the valuation given in the 2018 Investor Summary of US$2,536,000, the majority of which could have been liquidated by 30 April 2018, with shares in SAM later. Assuming an equal division of share value throughout the companies set out (with the exception of BG Group, which was included as a mistake), meaning that SAM shares comprised one-eighth of the portfolio, I find that US$2,219,000 should have been transferred to C by 30 April 2018, and the remaining US$317,000, in respect of SAM's shares, should have been transferred by 25 December 2018.

Consequential losses

165. C is also entitled to relief in respect of the lost value of the money of which she was deprived by reason of Mr. Gibbs' breaches of contract. In this regard, C says that if the proceeds of her investments had been transferred as agreed, they would have been invested by Mr. Kholaifi. Mr. Kholaifi has given evidence as to his investment of C's money generally, and how he would have invested her monies if they had been returned by Mr. Gibbs. I accept Mr. Kholaifi's evidence which is consistent with the contemporaneous documentary evidence showing how he invested C's money with Investcorp, a fund manager, prior to the relevant events.

166. Mr. Kholaifi has managed C's finances since July 2017. Investcorp sends him investment opportunities which he assesses on a case-by-case basis. The majority of C's money is invested in portfolios of US real estate and, to a lesser extent, European real estate. These portfolios are a mix of residential and commercial property.

167. This investment approach has been consistent since Mr. Kholaifi took over management of C's finances. He generally aims to achieve a return of approximately 8-10% of the portfolio. When he began this work, and during the life of most of C's investments, returns were about 9%.

168. Mr. Kholaifi provided Investcorp's contemporaneous annual summary reports of C's investments for the years 2018-2022, as well as teasers for the investment opportunities that he approved and reports as to the results of certain investments, in order to show the projected annual rate of return which C receives from each investment, in addition to the increase in her capital value.

169. I accept that had the proceeds of the investments been transferred by Mr. Gibbs as they should have been, Mr. Kholaifi would either have increased C's existing positions in her Investcorp portfolios or invested in a comparable mix of real estate portfolios, either through Investcorp or a similar fund manager.

170. Mr. Manley then deals in his expert evidence with the likely percentage returns which would have been attained by C over the period from 25 April 2018 to the date of trial. I have regard in particular to the updated table attached to the C's Supplemental Note dated 29 January 2024 which provides an up to date position of both fair value and distributions as considered in Mr. Manley's Supplementary Report dated 24 January 2024. Mr. Manley considers that the additional funds invested *"would have performed to the same degree"* or a *"similar manner, depending upon the fund selected"*. I accept that evidence. On that basis I consider that, based on the performance of the actual funds, together with the wider statistics that Mr. Manley has been able to analyse (tracking global performance), a compounding return of 9% per annum would have been made between April 2018 and the present day, being the mid-point of Mr. Manley's evidence of 8-10%.

171. I draw comfort that this rate of return is not excessive from the fact that Dr Okongwu considers how the Credit Suisse and UBS portfolios that he has analysed would have fluctuated in value since 25 April 2018. On his 'base' scenarios, the Credit Suisse Portfolio would have increased from US$2,390,089 to US$2,905,585 between 25 April 2018 and 31 May 2023 and the UBS Portfolio would have increased from US$3,384,682 to US$4,105,058 between 25 April 2018 and 31 October 2022 (although there was subsequently a slight dip in value, before it started to rise again in early 2023). Those are both increases of more than 20%, making 9% seem a conservative percentage figure.

172. In the light of my findings on quantum, I leave C to carry out the requisite monetary calculation of the judgment sums for which Mr. Gibbs is liable, to be confirmed by the Court.