Neutral Citation Number: [2019] EWHC 2561 (Fam)

Case No: FD13D05340

IN THE HIGH COURT OF JUSTICE
FAMILY DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 02/10/2019

Before:

THE HONOURABLE MRS JUSTICE GWYNNETH KNOWLES

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Between:

TATIANA AKHMEDOVA	**Applicant**
- and -	
(1) FARKHAD TEIMUR AKHMEDOV	**Respondents**
(2) WOODBLADE LIMITED	
(3) COTOR INVESTMENT SA	
(4) QUBO 1 ESTABLISHMENT	
(5) QUBO 2 ESTABLISHMENT	
(6) STRAIGHT ESTABLISHMENT	
(7) AVENGER ASSETS CORPORATION	
AND	
(8) COUNSELOR TRUST REG.	
(A trust enterprise registered under the laws of the Principality of Liechtenstein as trustee of the trusts set out in Part A of Schedule 1)	
(9) SOBALDO ESTABLISHMENT	
(an Anstalt established under the laws of the Principality of Liechtenstein as trustee of the trusts set out in Part B of Schedule 1)	

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Anna Dilnot (instructed by **PCB Litigation LLP**) for the Applicant

Hearing date: 15 August 2019

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Approved Judgment

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

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THE HONOURABLE MRS JUSTICE GWYNNETH KNOWLES DBE

This judgment was delivered in private. The judge has given leave for this version of the judgment to be published on condition that (irrespective of what is contained in the judgment) in any published version of the judgment the anonymity of the children and members of their family must be strictly preserved. All persons, including representatives of the media, must ensure that this condition is strictly complied with. Failure to do so will be a contempt of court.

Mrs Justice Knowles:

Introduction

1. This judgment represents another instalment in the long-running litigation consequent upon the breakdown of the marriage of Tatiana Akhmedova ["the Wife"] and Farkhad Teimur Akhmedov ["the Husband"]. In December 2016 Haddon-Cave J (as he then was) ordered the Husband to pay the Wife the sum of £453,576,152 in settlement of her financial claims in respect of the marriage. Regrettably, the Husband has not voluntarily paid a penny of that award and, to date, enforcement has only been possible in respect of a very small proportion of that sum (around £5 million or so). In a judgment dated April 2018, Haddon-Cave J described the Husband as engaging in an "*elaborate and contumacious campaign to evade and frustrate the enforcement of the judgment debt against him*".

2. The English court has already granted orders against various offshore companies and other entities used by the Husband as part of this campaign of evasion, namely against the Second to the Seventh Respondents. This application seeks similar relief against two Liechtenstein trustees which have been used to hide and thus "*protect*" the Husband's assets: the Eighth Respondent, "Counselor", and the Ninth Respondent, "Sobaldo". The application relates to a portfolio of cash and securities worth approximately US$650 million in December 2016 which was previously owned by the Husband (through Cotor Investment SA, "Cotor", as his nominee) and held at UBS in Switzerland ["the Monetary Assets"].

3. Shortly after the conclusion of the trial before Haddon-Cave J in December 2016, it was discovered that, during the course of the trial, the Husband had caused the Monetary Assets to be spirited away to Liechtenstein in order to ensure that the Wife would not be able to enforce a judgment against them. Such was the success of that scheme that, until recently, the Wife had been unable to ascertain what had happened to the Monetary Assets after they reached Liechtenstein. However, the Wife now has information which suggests that some or all of the Monetary Assets have been transferred into a number of Liechtenstein trusts of which Counselor and Sobaldo are trustees. Counselor and an entity under common control, WalPart Trust Reg., are Liechtenstein licensed trust companies which claim to specialise in, amongst other matters, "*asset protection*". Counselor and WalPart are associated with a Liechtenstein law firm, Walch & Schurti. Sobaldo appears to be associated with both Counselor and WalPart in that its registered address is care of WalPart and its board of directors is made up of three individuals who are or were also directors of Counselor. Counselor, WalPart and Walch & Schurti appear to have played a key role since late 2016 in holding the Husband's assets in a way which frustrates enforcement of the English court's judgments and orders. I note that the Counselor entities are responsible for managing other Liechtenstein entities which have already been found by Haddon-Cave J to have entered into transactions intended to put assets beyond the Wife's reach.

4. This application is made by the Wife in an attempt to recover the Monetary Assets from these trusts and, pending judgment, to preserve them. She applies:

a. (without notice) to join Counselor and Sobaldo, in their capacity as trustees, to the proceedings pursuant to Family Procedure Rules 2010 r.9.26B ["the FPR"];

b. (without notice) for freezing injunctions and ancillary orders against Counselor and Sobaldo;

c. for orders under s. 423 Insolvency Act 1986 ["the IA"] and/or s. 37 of the Matrimonial Causes Act 1973 ["the MCA"] setting aside all transfers of the Monetary Assets to trusts of which Counselor and Sobaldo are trustees, and ordering Counselor and Sobaldo to pay the value of the sums received by each of them to her. This substantive application should be determined on notice to Counselor and Sobaldo, and thus the Wife seeks only initial directions at this stage.

5. This application is being made without notice because the giving of notice is likely to frustrate its purpose – the Wife asserts that the history demonstrates that the Respondents will use any opportunity afforded to them to move assets again in order to ensure that any orders granted by this court are rendered futile. The grant of a freezing order is thus essential before Counselor and Sobaldo have any notice of these applications.

6. I am grateful to Ms Dilnot for her thorough skeleton argument and her oral submissions. I have read three bundles of documents and been referred to a bundle of authorities. As this matter was listed before me a day before I ended my sitting duties in vacation, I indicated orally that I would make the orders sought by the Wife and reserved my written judgment to a later date. A return date is fixed for hearing before me on 2 October 2019.

7. As in my judgment handed down in July 2019 (Akhmedova and Akhmedov and Others [2019] EWHC 1705 (Fam)), I intend to describe the background pertinent to an understanding of the Wife's applications. I then consider the basis for the claims against Counselor and Sobaldo and deal with whether the Wife has discharged the duty on her of full and frank disclosure given that this is a without notice application. I finally consider whether I should make the orders sought.

Background

The Proceedings

8. The trial of the Wife's application for financial relief took place between 29 November and 5 December 2016. By a judgment dated 15 December 2016, the Court granted the wife financial relief against the Husband in the sum of £453,576,152. On 20 December 2016 the Court gave two further judgments in consequence of which two Liechtenstein entities managed by Counselor entities – Qubo 1 and Qubo 2 – were joined as Fourth and Fifth Respondents to these proceedings. The Court also made a freezing order against the Respondents, including the Husband and the Fifth Respondent.

9. The following matters arising from the substantive order dated 20 December 2016 are pertinent:

   a. The Husband had submitted to the jurisdiction of the English Court;

b. The Husband and three companies found to be his nominees (Cotor, Qubo 1 and Qubo 2) were ordered to pay the Wife the sum of £350 million and to transfer certain property (including a valuable collection of artwork) to her;

c. Cotor was found to be the Husband's nominee, such that assets held in its name in fact belonged to the Husband;

d. Certain transactions were set aside as they were found to have been made for the purpose of putting assets beyond the reach of creditors. Of relevance to this application, any purported transfer of monies and investments held in Cotor's portfolio at UBS Switzerland AG and/or UBS AG (that is, the Monetary Assets) to Qubo 1 and/or Qubo 2 was set aside pursuant to s.423 IA 1986, with an order that Qubo 1 and Qubo 2 pay cash and securities up to the amount of £350 million to the Wife;

e. The Wife's claims were not to stand dismissed until full compliance with the award with the consequence that the proceedings remain afoot. The Wife was also given express permission to bring any other applications for enforcement under s. 37 MCA 1973 and/or s. 423 IA 1986.

10. Since December 2016 the Wife has been pursuing enforcement remedies against the Husband in a variety of jurisdictions but, given the content of previous judgments by this court, the Husband has done all that he can to frustrate enforcement of the substantive order.

The Husband's Assets

11. The substantial wealth of the Husband was derived from the sale of his interest in ZAO Northgas in November 2012 for US$1.375 billion. The proceeds of sale appear to have been paid into Cotor's UBS bank account, from where a significant part was disbursed on the Husband's instructions to acquire a variety of assets.

12. Three principal classes of assets are known to exist. These are:

a. A superyacht known as the M/Y Luna which was acquired from a Mr Roman Abramovich in February 2014 for 260 million euros (with substantial costs being incurred on refits) ["the Vessel"];

b. A portfolio of artwork acquired by Cotor from Sotheby's which was valued in January 2016 at US$145.2 million ["the Artwork"];

c. The remainder of the cash and securities, apparently in the sum of around US$650 million, which were – prior to the events I subsequently describe – held by Cotor at UBS (the Monetary Assets).

The Vessel and the Artwork

13. This application was made on the basis that the Husband had previously taken steps to put the Vessel and the Artwork beyond the reach of the Wife.

14. As to the Vessel, in outline:

a. The Husband contracted to purchase the Vessel in his own name in February 2014. He assigned his interest in the Vessel to an Isle of Man company called Tiffany Limited ["Tiffany"];

b. After the marriage ended in 2014, the Vessel was – as found by Haddon-Cave J in April 2018 – to be the subject of a "*dummy sale… to Avenger*", a Panamanian company, using funds derived from the Husband's own bank account. The transfer of monies to Avenger and the payment of those monies to Tiffany was a deliberate mechanism by which the Husband tried falsely to pretend that the Vessel was owned by a Panamanian company rather than a company incorporated in the Isle of Man where enforcement was possible (see the judgment of Haddon-Cave J in December 2016);

c. In March 2015 the Husband purported to assign his shares in Avenger to a Bermudan law discretionary trust. This transfer was subsequently set aside by Haddon Cave J under s. 423 of the IA 1986;

d. The trial before Haddon-Cave J proceeded on the basis that Avenger owned the Vessel. However, on the second day of the trial – 30 November 2016 - the Vessel was secretly transferred by Avenger via another Panamanian entity known as Stern Management Corporation to Qubo 2 (a Liechtenstein Anstalt of which WalPart is the sole director). The Vessel was also re-registered from the Cayman Islands to the Marshall Islands. Haddon-Cave J described this series of transactions as a "*rapid series of further surreptitious steps to attempt to place his yacht further beyond the reach of enforcement*";

e. The Husband's lawyer and 'man of business', Mr Kerman of Kerman & Co, was cross-examined on 16 December 2016 pursuant to a witness summons. This process revealed that two Liechtenstein Anstalts, Qubo 1 and Qubo 2, had recently been established and had taken ownership of (at least) the Artwork. Haddon-Cave J joined Qubo 1 and Qubo 2 to the English proceedings and concluded that they were no more than the Husband's ciphers and alter egos. He made Qubo 1 and Qubo 2 jointly and severally liable for the sum of £350 million and granted freezing orders against them. On 28 December 2016 the Liechtenstein Court granted payment orders against Qubo 1 and Qubo 2 (thereby effectively enforcing the English order) as well as making its own freezing orders. Both English and Liechtenstein orders were served on Qubo 1 and Qubo 2 on 29 December 2016. However, at this time, the Wife did not know that the Vessel had been transferred to Qubo 2;

f. On 8 March 2017 – apparently in response to the English and Liechtenstein orders made against Qubo 1 and Qubo 2 – Qubo 2 transferred the Vessel to Straight, another Liechtenstein Anstalt of which Counselor is the sole director. In 2018 Haddon-Cave J concluded that the transfer was in breach of both the English and Liechtenstein freezing orders. I note that this is disputed by Counselor since a criminal complaint has been made in Liechtenstein against the wife's Liechtenstein lawyer, Mr Arnold, for providing a declaration in proceedings in the Marshall Islands in which he stated that the transfers were in breach of the freezing orders. In any event, as Ms Dilnot submitted, the Wife does not need to rely on Haddon-Cave J's finding. On any view, the transfer was undertaken by

Qubo 2 at a time when it knew that it was subject to an English judgment as well as a Liechtenstein payment order which it could only satisfy using the value of the Vessel. The transfer was undoubtedly intended to prevent enforcement of the English and Liechtenstein orders against the Vessel as has subsequently been admitted by one of Counselor's directors, Dr Schurti;

g. The Wife eventually discovered that the Vessel had been transferred as a result of information which she obtained from the registry in the Marshall Islands. She thus sought commensurate relief against Straight. Haddon-Cave J concluded that the transfer of the Vessel to Straight was "*part of H's continuing campaign to defeat W by concealing his assets in a web of offshore companies*". He granted a further order on 21 March 2018, pursuant to which he (a) pierced Straight's corporate veil, (b) declared Straight to be the Husband's alter ego, (c) ordered that the Vessel be transferred to the Wife, and (d) granted an order requiring Straight to pay the judgment debt up to the current value of the Vessel to the Wife. I record that, in contempt of court, the Husband and Straight have failed to transfer the Vessel to the Wife and have paid no monetary equivalent to her. In fact, the Husband and his associates appear to be doing all they can to prevent the enforcement of the English court's orders including challenging all attempts to restrain the Vessel in Dubai and opposing the enforcement proceedings in the Marshall Islands;

h. The Vessel is presently in Dubai. On 26 March 2019 I made an order requiring Straight, amongst other things, to take certain steps intended to ensure that the Vessel could not be moved from Dubai and to file an affidavit verifying that those steps had been taken. To date, Straight has failed to comply with my order and it would appear that the positive steps required by my order have not been taken. Accordingly, the Wife applied on 21 May 2019 for declarations that Straight and Counselor are in contempt and for orders of committal against the individual directors of Counselor. This application is listed to be heard on 25 October 2019.

15. As to the Artwork, again in outline:

a. The Artwork was acquired by auction and through private sales at Sotheby's by Cotor. I note that Cotor was found by Haddon-Cave J to be the Husband's nominee. By early 2015 the Artwork had been moved from London and New York to Switzerland;

b. In mid-November 2016 the Husband caused the Artwork to be transferred into Qubo 1's ownership and physically moved to the Stabiq Treasure House in Liechtenstein. The director of Qubo 1 is WalPart (an affiliate of Counselor). Mr Kerman gave evidence under cross-examination on 16 December 2016 that Walch & Schurti drew up the transfer documents to Qubo 1. Furthermore, Ms Dilnot submitted that Liechtenstein was chosen as a suitable venue because, unlike Switzerland, it is not party to any enforcement convention with the United Kingdom. It is thus difficult to enforce English judgments and orders there as, for example, the judgment debtor has a right to re-litigate the underlying dispute on the merits before the courts in Liechtenstein;

c. On 20 December 2016 Haddon-Cave J concluded that Qubo 1 and Qubo 2 "*form part of the latest scheme by H to hide his assets*" and "*this transfer [of the Artwork] was at an undervalue or nil value and was simply the latest part of H's attempts to avoid his liabilities by purporting to transfer his assets to new entities in a new jurisdiction and thereby making enforcement more difficult"*. He found that Qubo 1 and Qubo 2 were no more than ciphers and the alter ego of the Husband and that the transfer of the Artwork infringed s. 423 of the IA 1986. The Liechtenstein court granted payment orders against Qubo 1 and Qubo 2 on 28 December 2016 as well as its own freezing order;

d. It is assumed that the Artwork is still held in Stabiq Treasure House although, due to the protracted appeals process in Liechtenstein, this has not been confirmed.

The Monetary Assets: Whereabouts till early 2017

16. Cotor also held a very substantial portfolio of cash and securities with UBS in Switzerland. This derived from US$1.26 billion transferred from the Husband's private account to Cotor in 2013. The net balance on Cotor's UBS accounts was US$1.055 billion as of 23 July 2015 and US$890 million as of 30 November 2015 but had reduced (according to Mr Kerman, as a result of poor investment performance) to about US$650 million by the time of the transfers in December 2016. As determined by Haddon-Cave J, these assets were held by Cotor as nominee for the Husband. These Monetary Assets are the subject of this application.

17. As with the transfer of the Artwork to Liechtenstein, the Monetary Assets were also transferred to that same jurisdiction as follows:

a. Mr Kerman made contact with LGT Bank ("LGT"), a Liechtenstein private bank, in July 2016. On 1 August 2016 Mr Kerman wrote to LGT providing details of the Husband and his discretionary trust, setting out a proposal to open an account in the name of Cotor. Mr Kerman met with LGT the following day;

b. Throughout November 2016, the Husband, Mr Kerman, UBS and LGT were in correspondence for the purpose of arranging the transfer of the assets held by Cotor at UBS in Switzerland to an account at LGT in Liechtenstein;

c. In his oral evidence, Mr Kerman said that around US$650 million was transferred from Cotor's account at UBS in Switzerland to Cotor's account at LGT in Liechtenstein. The Husband also instructed UBS to transfer Avenger's funds to Cotor's UBS account and from there to Cotor's LGT account. This was all done by 5 December 2016.

18. However, the money quickly disappeared from Cotor's account at LGT. On 3 January 2017 the Wife obtained a freezing order in Liechtenstein against Cotor for £351,096,971. Yet on 19 January 2017 LGT informed the court in Liechtenstein that LGT did not hold any attachable assets on behalf of Cotor as at 4 January 2017. The Wife was thus in the dark about what had happened to this very substantial sum after it was moved to Liechtenstein. As neither the Husband nor Cotor complied with their asset disclosure obligations under paragraph 24 of the freezing order granted by Haddon-Cave J on 20 December 2016, the Wife had no method of knowing if the

Monetary Assets were still held by Cotor (perhaps at another bank or in another jurisdiction) or had been moved away from Cotor.

The Monetary Assets: Whereabouts after early 2017

19. The Wife has now obtained information from two sources which leads her to believe that the Monetary Assets were transferred to several Liechtenstein trusts.

20. The **first source** of that information is two complaints to the Constitutional Court in Liechtenstein made by Counselor and Sobaldo. Copies of these complaints were provided by the Constitutional Court (apparently in error) to the wife's Liechtenstein lawyers, Gasser Partner, in June 2018. Gasser Partner have confirmed that there is no restriction on using this material as a matter of Liechtenstein law and have also confirmed that WalPart has been notified that the Wife was sent a copy of both complaints. Ms Dilnot accepted that it was possible the Respondents might argue that the English court should exercise its discretion under Civil Procedure Rules 1998 r.32.1(2) ["the CPR"] to exclude this evidence as it is confidential information provided to the Wife in error. She submitted however that this was relevant and significant evidence obtained without any impropriety on the Wife's part and it should not be excluded, especially given that it is information being wrongly concealed by the Husband in breach of his obligations to the English court. I accept that submission for the reasons advanced by Ms Dilnot.

21. The context of both complaints requires some brief background to the Liechtenstein criminal proceedings. In May 2017 the Wife filed a criminal complaint with the Public Prosecutor against the Husband, Cotor and persons unknown based on a suspicion that the offence of prevention of enforcement had been committed contrary to section 162 of the Liechtenstein Criminal Code. That section makes it an offence punishable by imprisonment for a debtor to conceal, discard, dispose of or forfeit any part of his assets, or to acknowledge a non-existent liability, or otherwise to actually reduce the appearance of his assets, thereby preventing or reducing the satisfaction of a creditor by way of foreclosure in pending proceedings. Essentially the complaint was that the Husband and Cotor had transferred the Artwork and the Monetary Assets away from Cotor knowing that enforcement proceedings may take place in view of the pending court proceedings in England. The Liechtenstein courts thus opened a criminal case and, during the course of his investigation, certain orders were granted to the Public Prosecutor.

22. The first tranche of these orders prohibited another Liechtenstein bank, Bendura Bank AG ["Bendura"] from disposing of funds held in certain accounts held in the name of (a) Sobaldo in its capacity as trustee of the Longlaster Trust and (b) Counselor in its capacity as trustee of the Carnation Trust, in each case up to the amount of £350 million. These orders were made under section 97a of the Liechtenstein Criminal Procedure Code which permits the court, on the request of the Public Prosecutor, to freeze assets where it is feared that, otherwise, steps might be taken which would jeopardise a subsequent order for the forfeiture of assets obtained for or under the commission of a criminal offence.

23. The second tranche of orders required both Bendura to produce to the court all documents relating to the business relationships with those entities and Counselor in

its capacity as trustee of the Genus Trust. These orders were made pursuant to section 98a of the Liechtenstein Criminal Procedure Code which permits an order to be made requiring a financial institution to provide documents to the Public Prosecutor where there is an investigation into money laundering, a predicate offence to money laundering, or an act relating to organised crime.

24. The complaints showed that both Counselor and Sobaldo appealed against the freezing and document seizure orders but those appeals were rejected on 24 April 2018. Counselor and Sobaldo now challenge those decisions before the Constitutional Court. I understand from Ms Dilnot that these complaints remain presently unresolved.

25. The Wife has no access to other documents relating to the criminal proceedings; does not know the factual basis upon which the Public Prosecutor obtained the orders; and does not know if any additional orders have been made. The Liechtenstein first instance and appeal courts have granted the Wife the status of a private party to the criminal proceedings (as victim) and determined that she is entitled to inspect the court files. However, those determinations are the subject of complaints to the Constitutional Court by Qubo 1, Qubo 2 and WalPart, those complaints suspending the effect of these orders, meaning that the Wife is not presently able to access the criminal files.

26. I accept Ms Dilnot's submission that the overwhelming inference is that some or all the Monetary Assets which previously belonged to the Husband and/or Cotor were transferred either directly or indirectly to the Longlaster Trust, the Genus Trust and/or the Carnation Trust. It is the only plausible basis upon which the Public Prosecutor could have obtained orders freezing those assets as being potentially subject to forfeiture as the proceeds of a criminal act or seizing documents on the basis of an investigation into money laundering in the context of the Wife's criminal complaint about the prevention of enforcement.

27. There is very limited publicly available information in Liechtenstein about these entities. What is known is that:

    a. Counselor is the trustee of the Genus Trust and the Carnation Trust;

    b. Sobaldo is the trustee of the Longlaster Trust and is itself managed by three of the directors of Counselor (Dr Schurti, Dr E Walch and Mr Hanselmann);

    c. The trusts were established in October 2016 (Genus Trust), February 2017 (Longlaster Trust) and October 2017 (Carnation Trust);

    d. and Longlaster Trust was previously named the "Reward Trust" and Sobaldo was previously named the "Return Establishment".

28. The **second source** of information available to the Wife about the Monetary Assets was obtained from banks based in New York pursuant to orders obtained from the US District Court for the South District of New York pursuant to 28 US Code paragraph 1782 (Assistance to foreign and international tribunals and to litigants before such tribunals). On 18 January 2019 and again on 24 April 2019, the District Court granted without notice orders entitling the Wife to conduct discovery aimed, in summary, at

identifying international US dollar transactions to/from entities known to be associated with the Husband which had cleared through New York.

29. The relevant banks provided information which revealed that:

a. Between 18 January and 12 June 2017 eight transfers totalling US$37.7 million were made from an LGT account held in the name of the Arbaj Trust to an account held in the Husband's name at UBS in Switzerland;

b. On 7 March 2017 US$350,000 was transferred from Arbaj Trust's LGT account to SDE Consulting Services Limited in London. SDE Consulting Services is a company registered at the offices of Kerman & Co, of which Sebastian Devlin (a former partner of Kerman & Co) was the sole shareholder and director. Kerman & Co were the advisors who played a central role in implementing the Husband's asset protection strategy. It seems that this payment was likely to be for further asset protection advice to the Husband's benefit;

c. On 13 July 2017 one transfer of US$7 million was made from a Bendura account held in the name of Counselor Trust Reg. as trustee of the Ladybird Trust to an account held in the Husband's name at UBS in Switzerland;

d. On 22 December 2017 a transfer of US$4 million was made from Counselor as trustee of the Ladybird Trust to a company (Y.CO) which manages the Vessel, presumably for its operating expenses;

e. On 7 February 2018 a transfer of US$1,530 was made from the Ladybird Trust's Bendura account to Global Corporate Consultants Inc in Panama bearing the description "BY ORDER OF: STE CAPITAL CORP.S.A INVOICE NO. 789005". STE Capital is the Husband's sons' company, STE being their initials. Global Corporate Consulting's website states that it "*gives primary importance to the design and implementation of programs that provide protection, preservation, privacy and facilitates the control of the assets the client has accumulated and the income derived from them*". This payment appears to represent further expenses incurred for asset protection.

30. Ms Dilnot emphasised that the above did not represent a complete record of all transfers involving entities associated with the Husband as it would not record any transfers within or between Liechtenstein banks or any transfers in currencies other than US dollars. The public register reveals only that the Arbaj Trust was established on 9 January 2017 and its trustee is Counselor and that the Ladybird Trust was established on 21 February 2017 and its trustee is also Counselor.

31. The Wife does not know how money got into the Arbaj and the Ladybird Trusts. Ms Dilnot submitted that there was an overwhelming inference that these Trusts, directly or indirectly, received some of the Monetary Assets. This was the only plausible explanation given that (a) these trusts transferred nearly US$45 million to the Husband personally as well as funding the operation of the Vessel; (b) they were established relatively soon after the Wife began to take steps in Liechtenstein in January 2017 to enforce the English orders there; and (c) they are managed by Counselor which is part of a number of related service providers used by the Husband to hold assets in Liechtenstein.

32. In conclusion, taking into account the information now available to the Wife, Ms Dilnot submitted that there was very strong evidence that:

    a. Just as the Husband was working with Counselor entities in the run-up to trial with the aim of placing the Vessel and the Artwork beyond the Wife's reach, so was he working with Counselor entities to establish Liechtenstein vehicles, such as the Genus Trust formed in October 2016, to take over the Monetary Assets for the same purpose;

    b. Some or all of the Monetary Assets transferred to Cotor's LGT account in December 2016 were, very promptly, moved into other Liechtenstein entities and bank accounts managed by Counselor entities;

    c. After the Wife discovered the use of Liechtenstein vehicles (through cross-examination of Mr Kerman) and started to take steps in January 2017 to enforce the English orders in Liechtenstein, the Monetary Assets appear to have been distributed by Counselor entities between a number of Liechtenstein trusts so as to put them beyond the Wife's reach. For that purpose, new trusts were formed in January, February and October 2017 ["the Known Trusts"];

    d. At least two of these Known Trusts – the Arbaj and Ladybird Trusts – have made substantial payments to the Husband himself. Just as Cotor was described by Haddon-Cave J as being an open cheque book used to fund the Husband's lifestyle, it appears that the Liechtenstein trusts perform this same function using the assets previously held by Cotor.

Counselor Entities

33. It will be apparent from the facts set out above that, as the trial and judgment in England became imminent, the Husband appears to have engaged Lichtenstein service providers (that is, the Counselor Entities) as part of his scheme to make himself judgment proof. The Vessel and the Artwork were certainly placed under the control of Counselor Entities in late 2016. There is, submitted Ms Dilnot, an overwhelming inference that the Monetary Assets suffered the same fate.

34. Counselor and WalPart are both Liechtenstein licensed trust companies. They share the same directors who, until recently, were: Dr Ernst Walch, Dr Andreas Schurti, Urs Hanselmann, Dr Moritz Blasy and Dr Barbara Walch. I note that Dr Ernst Walch and Dr Barbara Walch resigned as directors in June/July 2019. WalPart's brochure describes itself as "*a medium-sized governmentally licensed trust company based in Vaduz*". Amongst the services offered by WalPart are "*Liechtenstein and foreign trusts and foundations*". It notes that "*fields of particular interest and expertise are estate planning, asset protection as well as the setup and management of corporate, foundation and trust structures*". It would appear that Counselor performs similar services although, given its lower public profile, Ms Dilnot suggested that it was used for more '*sensitive*' engagements.

35. WalPart and Counselor are both closely related to Walch & Schurti, a Liechtenstein law firm. All the directors of Counselor and WalPart, apart from Urs Hanselmann, are or were at the material time, also partners of Walch & Schurti. Walpart, Counselor

and Walch & Schurti are all registered at the same address in Vaduz, which is a substantial office building bearing the names of Walch & Schurti and WalPart.

36. These entities are all known to be closely involved in providing asset protection structures to the Husband or for his benefit. Thus:

    a. Mr Kerman identified Walch & Schurti as the Liechtenstein lawyers who drew up the trust documents relating to the transfer of the Artwork to Qubo 1 shortly before the trial took place in England;

    b. it appears that Dr Schurti and Dr Blasy, both partners of Walch & Schurti, were granted powers of attorney to represent Cotor;

    c. Counselor is the sole director of Straight, which is the Anstalt to which the Vessel was secretly transferred from Qubo 2 in March 2017 (that is, after Qubo 2 had received the English and Liechtenstein orders);

    d. WalPart is the sole director of Qubo 1 and Qubo 2 (that is, the entities to which the Artwork and the Vessel were transferred shortly before trial);

    e. and it is now also known that Counselor is the trustee of at least four Liechtenstein trusts which have been involved in taking steps to put the Monetary Assets beyond the Wife's reach. Sobaldo, whose registered address is c/o WalPart and shares three directors in common with it, is the trustee of the fifth.

37. Further information has also been obtained as a result of a declaration made by Dr Schurti (on behalf of Straight and Qubo 2) in the Marshall Islands enforcement proceedings and his subsequent deposition. Though the veracity and completeness of Dr Schurti's evidence is disputed, he has revealed that, firstly, Counselor is the trustee of the "Simul Trust" which holds Qubo 1 and Qubo 2. The Husband and his family, among others, are the beneficiaries of that trust and the Husband is a director (one of four) of the protector (which has power to add and remove trustees, and to veto key decisions).

38. Secondly, Dr Schurti explained that he had decided to move the Vessel from Qubo 2 to Straight (and, simultaneously, to a new trust known as the "Navy Blue Trust") in part because he saw the English proceedings as "*a hostile attack on the trust structure which had been properly established and administered by ourselves, in a cynical attempt by the Husband's ex-wife to acquire a share of his post-marital success*" and wanted to protect the Vessel "*from further efforts to enforce the judgment of the English court, which had been entered against Qubo 2 without notice or proper jurisdiction, and which was in conflict with a prior Russian divorce that had been demonstrated to us by official documents*". He considered these actions to be his "*duty*".

Basis of claims against Counselor and Sobaldo

39. Ms Dilnot submitted that this was a classic case for voiding the transfers of the Monetary Assets into the Liechtenstein trusts under s.423 IA 1986 and/or s.37 of the MCA 1973.

40. It is unnecessary and inappropriate for the Wife to set out at this stage her full case on the merits because that will be a matter for an on notice hearing in due course. However, for the purpose of her without notice applications for joinder and freezing orders, it is necessary for her to satisfy me that she has a good arguable case for substantive relief against Counselor and Solbaldo.

41. I note that the court has already made a number of orders under s.423 IA 1986 and s.37 MCA 1973 setting aside and/or making payment orders in respect of (a) the transfer of the Husband's interest in Avenger to his Bermudan discretionary trust; (b) the transfer of the Artwork by Cotor to Qubo 1; (c) any purported transfer of the Monetary Assets from Cotor to Qubo 1 and/or Qubo 2; and (d) the transfer of the Vessel to Straight. The transfers identified at (b) to (d) involved transfers of assets into structures managed by Counselor Entities.

42. Ms Dilnot submitted that the present application sought only to travel once more down the same well-trodden path, but now in respect of further transfers which had come to light since Haddon-Cave J's judgment in March 2018.

43. She relied principally on s. 423 IA 1986 which provides the court with broad powers to grant remedies where a person has entered into a transaction at an undervalue (s. 423(1)) for the purpose of putting assets beyond the reach of a person who is making, or may at some time make, a claim against him, or of otherwise prejudicing the interests of such a person in relation to the claim which he is making or may make (s. 423(3)). The relevant principles are set out in paragraphs 102 to 107 of Haddon-Cave J's judgment of 15 December 2016 and also in 4Eng Ltd v Harper [2010] BCC 746. Importantly, it is only necessary for the Wife to show that the prohibited purpose was one of the purposes of the transaction - it is not necessary for it to be the sole or dominant purpose.

44. However, for a transaction to fall within s.423, it is not enough that the transaction had the consequence of putting the assets of the debtor beyond the reach of creditors - this must have been a purpose of the transaction. From the matters described in the paragraphs above relating to the Monetary Assets, it can be inferred that Cotor (as nominee for the Husband) directly or indirectly transferred some or all the Monetary Assets into the Known Trusts. Ms Dilnot submitted that it was overwhelmingly likely that these transfers were gifts or, at the very least, transactions at an undervalue. The obvious inference was that these transfers were settlements of the Monetary Assets into trusts associated with the Husband and/or his family.

45. Ms Dilnot submitted that it could also be inferred that the purpose (or, at least, one of the purposes) of these transfers was to put the Monetary Assets beyond the reach of the Wife or to prejudice her claims. The following matters are pertinent.

46. First, the timing of the transfers is striking:

    a. the transfers out of Cotor must have taken place on or after 5 December 2016 (that is, after the Monetary Assets had been moved to LGT in Liechtenstein) and before 4 January 2017 (that is, when LGT said it held no assets for Cotor). The trial before Haddon-Cave J - which included claims against Cotor - completed on 5 December 2016 with the first judgment given on 15 December 2016. The transfers therefore all took place when judgment was imminent or had just been granted;

b. the Arbaj Trust, the Longlaster Trust and the Ladybird Trust were formed in January and February 2017. It appears that they, like Straight, were created as a direct response to the orders obtained in England and Liechtenstein in December 2016. There is therefore a strong inference that transfers to those trusts were carried out specifically to put assets further beyond the Wife's reach as soon as the Liechtenstein structures came under attack;

c. the Carnation Trust was formed later in 2017. By that time, the individuals behind the Counselor entities must have been fully aware, given their participation on behalf of Qubo 1 and Qubo 2 in the Liechtenstein proceedings, of the judgment obtained against the Husband, of the campaign to defeat enforcement described by Haddon-Cave J, and of the fact that the Wife would, once she discovered what had happened to the Monetary Assets, seek relief against the recipients of the Monetary Assets.

47. Second, Haddon-Cave J's previous findings strongly support the conclusion that the transfers of the Monetary Assets were part of a larger scheme to impede enforcement of any financial remedies order granted to the Wife. The court found that the Husband had conducted an "*elaborate and contumacious campaign to evade and frustrate the enforcement of the judgment debt against him*" and that he had engaged in a "*continuing campaign to defeat W by concealing his assets in a web of offshore companies*". The court also found that, if the Monetary Assets were transferred from Cotor to Qubo 1 or Qubo 2, then that transfer infringed s. 423 IA 1986. Additional transfers were held to have infringed s.423: (a) the transfer of the Artwork and the Vessel in late 2016 to Liechtenstein structures administered by Counselor entities and (b) the transfer of the Vessel from Qubo 2 to another Liechtenstein structure in response to the Wife's attempts to enforce her judgment in Liechtenstein against Qubo 2. Given these findings, the transfer of the Monetary Assets into Liechtenstein structures during December 2016 and in 2017 appeared to form part of the same overall strategy as the transfer of the Artwork and the Vessel into Liechtenstein structures. It can therefore readily be inferred that the transfer of the Monetary Assets was carried out with the same prohibited purpose as those transfers.

48. Third, there is no other sensible explanation for why Cotor transferred its cash and securities, directly or indirectly, to a number of Liechtenstein trusts in December 2016 and during 2017. The Husband had been using Cotor as his "piggy bank", holding assets at UBS in Switzerland since at least 2013. The only credible explanation for the sudden movement of assets to Liechtenstein and into multiple Liechtenstein trusts - at precisely the time when judgment in England had become imminent and was then delivered - is that the Husband had decided to fortify his defences against enforcement of that judgment. That is particularly so given that all his other substantial assets also moved to Liechtenstein at the same time. Ms Dilnot submitted that it would be unreal to think that the Husband coincidentally decided at that time to move substantially all of his assets to Liechtenstein for an innocent purpose (for example, tax or estate planning) rather than because he was about to be, or had just been, found liable to pay £350 million to the Wife.

49. Fourth, insofar as any direct transfers from Cotor are concerned, the relevant intention is that of the Husband given that Cotor had been found to be his alter ego. There can

be no real doubts that the Husband has acted throughout the relevant period with the intention of preventing the Wife enforcing her judgment.

50. Fifth, it appears that the funds received by the Arbaj Trust, the Longlaster Trust and the Carnation Trust may not have come directly from Cotor. Ms Dilnot submitted that this did not matter because, where a transaction infringing s.423 IA 1986 had taken place, the court was permitted to make orders not only against the immediate recipient but also against subsequent transferees of funds. Thus, if the initial transfer from Cotor to trust X was susceptible to challenge under s. 423, then an order could also be made against anyone to whom trust X transferred those same funds (such as one of the Known Trusts). This power is granted by s.425(2) IA 1986, which permits the court to make orders against any person whether or not he is the person with whom the debtor entered the transaction unless, essentially, that person is a bona fide purchaser for value without notice of the relevant circumstances. Ms Dilnot argued that it was overwhelmingly likely that the Known Trusts (a) did not acquire the money "for value", and/or (b) had notice of the relevant circumstances, such that orders could be made against them as subsequent recipients of the funds. In the alternative, Ms Dilnot submitted that, if Cotor transferred money to trust X which later transferred that money to one of the Known Trusts, the subsequent transfer between trust X and the Known Trust would itself be open to challenge under s. 423 IA 1986 given that it could safely be inferred that at least one purpose of the further transfer would be to prejudice the Wife's ability to bring a claim against trust X on the basis that it had received the funds as part of a scheme to prevent the Wife enforcing her judgment.

51. Finally, Ms Dilnot submitted that the court would be able to exercise its powers under s. 423 IA 1986 notwithstanding that the respondents and assets were located outside England. Section 423 has extraterritorial effect, although the court will only exercise that power where there is a sufficient connection to the jurisdiction (see Orexim Trading Ltd v Mahavir Port and Terminal Pte Ltd [2018] 1 WLR 4847 at [54]-[60]; Erste Group Bank AG v JSC VMZ Red October [2015] 1 CLC 706 at [116]). Given that the conduct in this case was intended to frustrate an imminent and then actual judgment of the English court and that judgment was granted in divorce proceedings taking place in England in respect of which the Husband had submitted to the jurisdiction and that the intended and only victim of these acts is an English resident, namely the Wife, there is plainly sufficient connection with England. In coming to that view, I have considered all the circumstances which are set out in paragraph 57 of the Orexim judgment cited above.

52. Ms Dilnot accepts that a complicating factor in this case is that the Wife is unable, at present, to identify the precise transfers by which the Monetary Assets moved from Cotor to the Known Trusts. However, the reason she cannot do so is because those transfers were deliberately undertaken in secret as part of the strategy of concealing assets from the Wife. The details of the transfers ought to be revealed by disclosure or factual evidence in these proceedings. However, in the event that the Husband, Counselor and/or Sobaldo refused to provide that information, the Wife would be entitled to invite the court to draw appropriate inferences. The court cannot allow its process and orders to be defeated by recalcitrant parties. As described above, there appears to be a solid evidential basis on which the court can properly and reasonably infer that the Known Trusts have received the Monetary Assets as part of a scheme to

put them beyond the Wife's reach, such that it is appropriate to grant relief under s.423 IA 1986. The Wife may, in due course, be able to supplement her knowledge about these transfers from other sources, for example, the Liechtenstein criminal proceedings once the appeals against the orders permitting her access to the files in those proceedings are exhausted.

Full and Frank Disclosure

53. The Wife seeks certain relief without notice and, as such, she is subject to the duty of full and frank disclosure. Ms Dilnot draws my attention to the following matters in support of her application.

54. First, Counselor and Sobaldo may contend that they have a defence to the claims on the merits. The Wife's position is that there appears to be no realistic defence to this claim at all but, critically for present purposes, she contends that there is nothing which would deprive her of a good arguable case (which is all that she is required to show for present purposes). In particular, Counselor and Sobaldo may dispute that the transfers were carried out for the prohibited purpose since it might be argued, for example, that the transfers were simply a restructuring of the existing Bermudan trust or were carried out for other purposes such as estate or tax planning. Given the matters set out above, the evidence certainly discloses a good arguable case that the transfers were - at least in part - intended to put the Monetary Assets beyond the Wife's reach. Counselor and Sobaldo may also dispute that the Wife is able to prove the existence of the relevant transactions, namely that the Known Trusts can be shown to be recipients of the Monetary Assets. The Wife has addressed this point in some detail as set out above. Finally, it might be argued that the transactions are not sufficiently connected to England because they involve Liechtenstein entities transferring assets located in Liechtenstein, such that the court should not exercise jurisdiction or grant relief over Counselor or Sobaldo. Once more the Wife has addressed this point as set out above.

55. Second, Counselor may argue that it is a professional trust company, licensed in Liechtenstein and whose principals are primarily Liechtenstein lawyers. Though it is not itself a licenced trust company, Sobaldo may argue that its directors are Liechtenstein lawyers or, in the case of Mr Hanselmann, a licensed trustee. Both entities may contend that this negatives any risk of dissipation and may also argue that the grant of a freezing order would cause reputational damage or interfere with their business for other clients. In response, the Wife asserts that there is compelling evidence of a risk of dissipation for the reasons set out in this judgment. It seems that Counselor and its related entities have previously engaged in transactions for the specific aim of frustrating the enforcement of orders of the English court: Ms Dilnot submitted this was the only credible explanation for the transfer of the Vessel from Qubo 2 to Straight after judgment had been obtained in England (and had been made the subject of a payment order in Liechtenstein). It, therefore, cannot be assumed that Counselor and its related entities, or its principals, would not act so as to frustrate an English order, at least absent an injunction specifically prohibiting them from doing so. In that context, it is also telling that the Public Prosecutor appears to be investigating Counselor and Sobaldo for the potential laundering of the proceeds of criminal acts of evasion of enforcement. I note that one of the key services which Counselor and its related entities provide to its clients is "*asset protection*" and it

would be surprising if Counselor and its related entities did not try to protect the assets unless they were subject to an injunction which prohibited them from doing so. There is no reason why the grant of a freezing injunction should cause any damage to the business of the Counselor entities or interfere with other clients' affairs. The freezing injunction is directed only to trusts in which the Husband has an interest or which received, either directly or indirectly, the Monetary Assets. The Wife will not publicise the fact of the injunction so there is no reason to think that it will cause any reputational damage.

56. Third, Counselor and Sobaldo may contend that they will be placed in an invidious position where they owe duties under Liechtenstein law to perform the trusts in the interests of the beneficiaries, but are nevertheless being ordered by the English court to act contrary to those duties. Ms Dilnot submitted that this could not provide an answer to the present application otherwise the English court would be powerless to prevent the use of asset protection structures to defeat its own judgments. In any event, this is a risk to which both entities exposed themselves by becoming involved in steps to defeat orders of the English court and, if they are ultimately shown to have done no wrong, they have the benefit of the cross undertaking in damages. Moreover, if there are such difficulties, they can apply to vary the orders and/or argue that any breach should not be penalised.

57. Fourth, Counselor and Sobaldo (or their directors) may contend that giving asset disclosure would require them to breach trustee confidentiality in a way which involves a disciplinary or criminal offence. This risk, as well as the defences are addressed in the affidavit supporting this application which, amongst other matters, considered that there was a good chance of a defence being available if disclosure were made pursuant to an English freezing injunction (though much would depend upon the attitude of the Public Prosecutor and the Liechtenstein criminal court). Ultimately, the English court has power to order disclosure even if doing so may involve an offence under foreign law (see Bank Mellat v Her Majesty's Treasury [2019] EWCA Civ 449 at [54]-[63] relating to the disclosure of documents) and – taking into account both the limited risk to Counselor/Sobaldo and the significant importance of the information to the Wife if she is to obtain effective relief in respect of a dishonest campaign of evasion - such disclosure should be ordered. The Husband should not be permitted, having chosen to use trustees in Liechtenstein as part of his fraudulent scheme, to put the whereabouts of his assets behind a veil of secrecy. Whether or not to make an order in this context is a matter for my discretion. In coming to my decision, I have taken into account and balanced the actual risk of prosecution set against the importance of the documents to the fair disposal of the Wife's application.

58. Fifth, Counselor and Sobaldo may argue that there has been delay in making this application. This is not accepted particularly in circumstances where it has taken the Wife time to gather information through legal processes in the United States. In any event, as the Court of Appeal made clear in JSC Mezhdunarodniy Promyshlenniy Bank v Pugachev [2015] EWCA Civ 906 at [34], delay is not a bar to obtaining a freezing injunction provided the court is satisfied that there remains a real risk of dissipation.

59. Sixth, Ms Dilnot properly draws to my attention the fact that the Wife and her legal team have certain information relating to the Liechtenstein structures holding the Artwork and the Vessel (but not the Monetary Assets) from the confidential parts of Dr Schurti's deposition in the Marshall Islands proceedings. However, the Wife and her lawyers are prohibited from using or disclosing such information other than for the purposes of those proceedings and it is therefore not possible to provide that information to this court.

60. Seventh, it may be argued that a freezing injunction is unnecessary because the Public Prosecutor has obtained similar relief against at least some of the Known Trusts in Liechtenstein. However, the existence of the orders obtained by the Public Prosecutor is insufficient because (a) it does not appear that the Public Prosecutor has frozen the assets of all the Known Trusts (including those which the wife has identified through the discovery obtained in New York); (b) those orders are being challenged by Counselor and Sobaldo before the Liechtenstein Constitutional Court and may be set aside without any prior warning to the Wife; and (c) the Wife has a legitimate interest in obtaining the relief so that for example she can obtain disclosure of where the Monetary Assets have gone, can freeze assets outside Liechtenstein and has standing to take steps herself, including through committal proceedings, in the event of any breach.

61. Eighth, whilst the Wife offers a cross undertaking in the usual form, its value is limited by the fact that the Wife's net worth (leaving aside the orders in these proceedings which she is seeking to enforce) is somewhat limited. She does, however, have a house in Surrey with an estimated value of £8,500,000 as at July 2016. There is no mortgage over the property which ought therefore to be sufficient to give real substance to the cross undertaking. Counselor and Sobaldo may argue that the cross undertaking should be fortified, for example by provision of security from Burford Capital which is funding this application. The Wife submits that this would be inappropriate given that she is an individual, resident in England, and with assets of some value in this jurisdiction. The harm which might be caused by the freezing injunction, if any, would be very limited especially in the short period until a return date. Accordingly, there is no need for fortification at least for the time being and Counselor and Sobaldo will have an opportunity to seek to prove at the return date that they are exposed to greater losses for which fortification ought to be provided.

62. Ninth, the Wife has received documents relating to the Husband's affairs, including potentially privileged and/or confidential documents, provided to her by an individual who previously worked in the Husband's family office. The Husband might argue that the Wife should have returned these documents to him and/or sought directions from the court. Ms Dilnot stressed that the Wife has not relied on those documents to support this application and any such arguments therefore ought not to affect her entitlement to the relief being sought. Further, the Wife intends to make an application to the court in the light of Tchenguiz v Imerman [2011] Fam 116 for directions to determine what should happen to those documents. For the avoidance of doubt, I was told that the documents have been reviewed by the Wife's legal team and nothing in the content of that material would assist the Husband, Counselor or Sobaldo in resisting this application.

63. Finally, Counselor and Sobaldo know that the Wife (a) has seen the Liechtenstein complaints (and therefore that she knows of the existence of the Longlaster, Carnation and Genus trusts as well as the fact that relevant assets may be held at Bendura Bank) and (b) is aware of the Ladybird settlement (because it was referred to in Dr Schurti's deposition within the Marshall Islands proceedings, and he declined to answer questions about it). There is, therefore, a risk that Counselor and Sobaldo have already been alerted to the fact that the Wife might seek orders against them in respect of the Known Trusts (save for the Arbaj Trust) and have taken steps to put the Monetary Assets further beyond her reach. However, that is not a reason for refusing to grant the order sought, not least because the orders obtained by the Liechtenstein authorities may have trapped some of the assets and because the existence of the criminal proceedings in Liechtenstein may have given Counselor and Sobaldo pause for thought before taking further steps to dissipate the Monetary Assets. It may also be the case that Counselor and Sobaldo will not have reason to suppose the Wife has any meaningful information in relation to the trusts or their assets.

64. Having considered the totality of the above submissions, I am satisfied that the Wife has complied with the duty of full and frank disclosure placed on her. None of the matters raised in that context tip the balance firmly against granting the relief she seeks on a without notice basis.

Relief Sought (I): Joinder of Counselor and Sobaldo

65. The Wife invites me to join Counselor and Sobaldo (in their capacities as trustees of the Known Trusts and any other relevant trusts) under FPR r. 9.26B. The proceedings are ongoing by virtue of paragraphs 21 and 27 of the Order of 20 December 2016, such that it is possible legitimately to join additional parties to resolve any further issues arising in these ongoing proceedings. The relevant conditions under FPR r. 9.26B are satisfied in that (a) it is desirable to add those parties so that the court can resolve all matters in dispute in the proceedings, and/or (b) there is an issue involving the new parties and the Husband/Cotor (namely, whether they have transferred assets at an undervalue) which is connected to the matters in dispute in the proceedings, and it is desirable to add the new parties so that the court can resolve that issue. This was essentially the basis on which Straight and Avenger were joined to the proceedings by Haddon-Cave J pursuant to paragraph 6 of his Order of 21 March 2018.

66. Given that the Wife seeks a freezing injunction, the application for joinder is being made without notice. FPR rr. 18.10 and 18.11 therefore apply with the consequence that Counselor and Sobaldo will have 7 days from the date on which they are served to make an application to set aside their joinder. Whilst Counselor and Sobaldo are resident out of the jurisdiction in Liechtenstein, permission to serve them out of the jurisdiction is not required by virtue of FPR r. 6.41.

Relief Sought (II): Freezing Injunction and ancillary relief

67. The Wife seeks a freezing injunction on a without notice basis together with ancillary relief in support of her substantive claim. This relief is sought to avoid or reduce the risk that the Monetary Assets are simply moved again within the web of offshore structures to frustrate any relief granted by the English court.

Freezing Injunction

68. Mostyn J set out the principles applicable to the grant of freezing injunctions under s. 37 of the MCA 1973 and s. 37 of the Supreme Court Act 1981 in L v K (Freezing Orders: Principles and Safeguards) [2013] EWHC 1735 (Fam). The Wife must show:

    a. an "*appropriately strong case*" which is generally understood to mean a case "*which is more than barely capable of serious argument and yet not necessarily one which the judge believes to have a better than 50 per cent chance of success*" (that is, a good arguable case);

    b. solid evidence of a real risk of dissipation. The Wife must show by reference to "*clear evidence an unjustified dealing with assets (which would include threats) by the respondent giving rise to the conclusion that there is a solid risk of dissipation of assets to the applicant's prejudice. Such an unjustified dealing will normally give rise to the inference that it is done with the intention to defeat the applicant's claim…*"

    c. and that it is just and convenient for a freezing injunction to be granted.

69. The decision in L v K emphasised that a without notice application should only be made where there is powerful evidence that the giving of any notice would be likely to lead the respondent to take steps to defeat the purpose of the injunction. I note that these are proceedings where freezing injunctions have already been granted against the existing respondents by Haddon-Cave J.

70. I am satisfied that the requirements set out in L v K are satisfied in this case.

71. On the merits, this appears to be a clear case where the Monetary Assets have been moved, directly or indirectly, into the Known Trusts as part of the Husband's wider strategy of evading enforcement by moving his assets into Liechtenstein structures.

72. The risk of dissipation is also made out in a case where there is a proven history of actual dissipation (see Haddon-Cave J's finding about the Husband's "*elaborate and contumacious campaign*"). The Counselor entities manage several Liechtenstein establishments – Qubo 1, Qubo 2 and Straight – which have already been found to have participated in transactions intended to put the Husband's assets beyond the Wife's reach.

73. I note that the transfer of the Vessel from Qubo 2 to Straight shortly after Qubo 2 had been served with English and Liechtenstein judgments is persuasive evidence that the Counselor entities will take all possible steps to prevent orders being enforced against assets under their control. Dr Schurti admitted that the purpose of this transfer was to prevent enforcement of the English orders which he saw as a "*hostile attack*" from "*fake proceedings*" which it was his "*duty*" to protect the assets against [see his written deposition dated 26 February 2019]. If the trusts learned that the Wife knew their whereabouts and intended bringing claims against them, there is every reason to suppose that these entities would engage in similar tactics with the Monetary Assets.

74. With regret I record that Counselor and the individuals who make up its board of directors have failed to cause Straight, of which Counselor is the sole director, to comply with my order dated 26 March 2019. Straight is thus in contempt of court. Also, Qubo 1 (whose sole director is WalPart, another Counselor entity) has failed to

transfer the Artwork and is thus also in contempt of court. There are pending committal applications in respect of these breaches. Ms Dilnot submitted that this was strong evidence that the directors of Counselor and Sobaldo could not be trusted to act in a proper or lawful manner.

75. In that context I note that, in a judgment dated 12 June 2019 in JSC VTB Bank v Skurikhin [2019] EWHC 1407 (Comm) at paragraphs 128, 141(u), (x), (ff) – (hh), Dr Schurti was found by Patricia Robertson QC sitting as a Deputy High Court Judge to have given untruthful evidence to the English court, falsely denying that a document (which the judge concluded had been created to defeat an English receivership order) had been backdated.

76. Unless restrained by injunction, the Counselor entities will seek to protect the assets under their management from being susceptible to the enforcement of an English judgment, this being consistent with the asset protection services they promote. Dr Schurti stated that he felt under a duty to transfer the Vessel so as to prevent enforcement of this court's orders.

77. Finally I can properly infer that the husband exercises a high degree of influence if not control over the Known Trusts and would, given his past conduct, instruct or encourage the Known Trusts to take steps to conceal or dissipate their assets if he thought those funds were at risk of falling into the Wife's hands.

78. Given the above, I am also satisfied that it is just and convenient for a freezing injunction to be granted. I have already considered the Wife's duty of full and frank disclosure and I conclude that there is nothing raised by her as set out above which operates so as to persuade me that I should not grant the freezing orders sought on a without notice basis.

Ancillary disclosure

79. Asset disclosure runs hand in hand with a freezing injunction so as to render it effective and capable of being policed. It is particularly important here since the Wife has very limited knowledge of what has happened to the Monetary Assets and how and where they are held. The Wife thus seeks an order requiring, amongst other matters, (a) disclosure of details of all trusts of which Counselor and/or Sobaldo is trustee in which the Husband has an interest, and (b) disclosure of what has happened to the Monetary Assets which were held by Cotor (allowing further recipients to be identified and, if appropriate, further freezing orders sought). I have the power to make such orders pursuant to FPR r. 20.2(1)(g) and do so.

Naming individual directors in the penal notice

80. FPR 37.4(3) provides that a committal order against a company or other corporation may be made against any director or other officer of the company or corporation. A judgment or order may not, however, be enforced under FPR 37.4(3) unless it contains a penal notice. Practice Direction 37A paragraph 1.1 provides for a form of words to be used in a penal notice but the requirements are not fixed as the wording make clear. As long as the wording is clear and accords substantially with the standard wording, the form of words may be adapted to the needs of the individual case. The White Book Vol 1 (2019) commentary at paragraph 81.9.2 deals with the

requirements of a penal notice in other divisions of the High Court and recommends specific wording with respect to a corporate respondent, which includes naming the directors or officers.

81. I am persuaded that it would be appropriate to name the de jure directors of Counselor and Sobaldo in the penal notice. This would make it plain to them that they are personally at risk of committal proceedings in the event of any breach of the order. It would be no hurdle to committal proceedings that those directors are resident outside the jurisdiction [see Dar Al Arkan Real Estate Development Co and another v Refai and others [2014] EWCA Civ 715].

Relief Sought (III): Directions

82. The Wife seeks directions for the determination of her substantive claim under s.423 IA 1986 and/or s. 37 MCA 1973. The directions sought are aimed at maximising the prospects of enforcement in Liechtenstein of any substantive relief granted by this court against Counselor and/or Sobaldo. It is not necessary for me to consider in detail in this judgment the directions sought save that I concur with the direction that Counselor and Sobaldo should be entitled to apply to set aside or vary any directions made by me today.

83. The Wife proposes to serve the Husband, Cotor, Counselor and Sobaldo with this application. It seems to me to be unnecessary for her to serve the other respondents given that they are not directly concerned by the relief sought; have not participated in the proceedings; or have been found to be alter egos of the Husband.

84. The Wife proposes to serve the documents on Counselor and Sobaldo through judicial channels in Liechtenstein as, otherwise, it might be argued by the respondents that service other than by this means would constitute a criminal offence in Liechtenstein. I agree with Miss Dilnot's suggestion that I should dispense with the requirement for personal service of the injunction for the purposes of enforcement by way of committal. Service via the judicial authorities in Liechtenstein is the proper course which will ensure that the order is brought to the attention of the respondents.

85. I also permit alternative service on the Husband and Cotor in accordance with the methods previously permitted by Haddon-Cave J. I have the jurisdiction to do so under FPR r. 6.1(b) and I declare that service by these means constitutes good service in furtherance of my case management power contained in FPR r. 4(1)(o), namely taking any step or making any other order for the purpose of managing the case and furthering the overriding objective to deal with cases fairly and justly.

86. Finally, I note that the Wife proposes to give notice of the injunction by sending it to the email addresses of each of the relevant individuals at Walch & Schurti and to give notice to Mr Hanselmann (for whom no individual email address is known) by sending it to Counselor and WalPart's generic email address but marked for his attention. The giving of notice is intended to ensure that the order is effective immediately and I approve of this course.

Conclusion

87. The return date of this application is listed before me on 2 October 2019. I hope to hear from not only the Wife but also the relevant Respondents so that I may progress this long-running litigation to some sort of substantive conclusion.

88. That is my decision.

Signed: Date: