



Neutral Citation Number: [2020] EWHC 2227 (Ch)

Case No: PT-2019-001066

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS
OF ENGLAND AND WALES
TRUSTS AND PROBATE LIST (ChD)

By Zoom and then at
Royal Courts of Justice, Rolls Building
Fetter Lane, London, EC4A 1NL

Date: 14/08/2020

Before :

MR JUSTICE ROTH

Between :

GABRIELA SCHWARTZ

Claimant

- and -

- (1) VGV (UK) LIMITED**
(2) PROMOCIONES E INVERSIONES
SUDAMERICANAS S.A.
(3) PERUEXPRES SOCIEDAD DE
RESPONSIBILIDAD LIMITADA
(4) HOLDING GRUPO TV CABLE S.A. LIMITED
(5) CLEMENTE JOSE VIVANCO SALVADOR

Defendants

Mr James Weale (instructed by McDermott Will & Emery UK LLP) for the Claimant
Mr Richard Colbey (by Direct Access) for the 5th Defendant
The 1st Defendant was not represented

Hearing dates: 1st- 4th and 14th June 2020

Judgment Approved by the court

Covid-19 Protocol: This judgment was handed down by the judges remotely by circulation to the parties' representatives by email and release to Bailii. The date and time for hand-down is deemed to be 10.30am on 14 June 2020.

Mr Justice Roth :

INTRODUCTION

1. This is an application to commit for contempt the First Defendant (“VGV UK”) and the Fifth Defendant (“Mr Vivanco”). VGV UK is an English company but has only an administrative address in England and carries out no activity in the UK. Mr Vivanco is an Ecuadorian lawyer based in Quito and the managing partner of the Ecuador law firm, Vivanco & Vivanco Cia Ltda (“Vivanco & Vivanco”).
2. The factual circumstances giving rise to this application concern the operation of a trust, known as the Consov Trust (“the Trust”), of which the Claimant (“Ms Schwartz”) is and was at all times a beneficiary. VGV UK is the trustee of the Trust and Mr Vivanco is the protector of the Trust. The Trust was established under and is governed by the law of the British Virgin Islands (“BVI”), and under the original declaration of trust (“the Trust Deed”) the courts of the BVI were the forum for the administration of the Trust.
3. The Second Defendant (“PEISA”) is a Panamanian company that is wholly owned by the Trust. It has served as a holding company through which the Trust owns assets. The Third Defendant (“Peru Express”) is a company incorporated in Costa Rica. The Fourth Defendant (“TV Cable”) is an English company but appears to carry out no operations in England. It is the holding company for the TV Cable group which provides television and communications services in Ecuador. The TV Cable group was founded by Ms Schwartz’s father, Mr Jorge Schwartz, who was its president and chief executive officer until his death. During his lifetime, Mr Schwartz was also a beneficiary of the Trust. Among the major assets of the Trust are 1,430 shares in TV Cable, that represent 1.43% of the company’s share capital and are worth at least \$2 million and possibly more (“the TV Cable Shares”).
4. The contempt allegations concern breaches of two orders of this Court. Those orders were made in proceedings that commenced with an urgent, without notice application and resulting order of 20 December 2019 granting Ms Schwartz an interim injunction (“the December Order”). That application was made following Ms Schwartz’s discovery that PEISA was no longer receiving dividends on the TV Cable Shares because they had been transferred from PEISA to Peru Express. The December Order essentially restrained further dealing with the TV Cable Shares and required Peru Express and TV Cable to provide information regarding any dealings in those shares. No order was made against VGV UK. At that stage, Mr Vivanco was not a defendant.
5. The English proceedings, and the application which led to the December Order, were expressly in support of proceedings Ms Schwartz was commencing against the same defendants in the BVI. As stated in counsel’s skeleton argument placed before the Court on the without notice application:

“By reason of the jurisdiction provisions in the Trust ..., the Claimant would face difficulties in pursuing a substantive claim in England and she therefore intends to issue proceedings as soon as possible in the British Virgin Islands (the “BVI Proceedings”).

...

The relief sought in these proceedings is entirely supportive of, and complementary to, the BVI Proceedings. The purpose of the relief is simply to preserve assets so that such orders as may be made following the conclusion of the BVI Proceedings are not frustrated.”

6. Accordingly, the Part 8 claim form issued on 20 December 2019 stated:

“This claim is for the purpose of enabling the Claimant to seek interim relief under section 25 of the Civil Jurisdiction and Judgments Act 1982 and/or CPR Part 25.4(1)(a) in support of proceedings which will shortly be issued against, among others, the above Defendants in the British Virgin Islands.”

7. The return date under the December Order was 17 January 2020. VGV UK, PEISA and Peru Express were all jointly represented at the hearing on 17 January by counsel instructed by Withers, solicitors. Trower J there made a further order (“the January Order”) restraining any dealing with the TV Cable Shares and preserving both the proceeds of any sale of the TV Cable Shares and any dividends. The January Order restrained VGV UK from disposing of or dealing with any assets of the Trust without prior written notice to Ms Schwartz’s solicitors, and further provided, at para 12:

“A director of the First Defendant (in its capacity as trustee of the Consov Trust) shall, by 4pm on Tuesday 21 January 2020, serve on the Claimant’s solicitors a witness statement setting out to the best of the First Defendant’s knowledge and ability:

- a. A list of the assets currently held in the Consov Trust and the approximate value of such assets;
- b. A list of the assets which the companies held within the Consov Trust (including the Second Defendant and the Third Defendant) currently own and/or have an interest in and the approximate value of such assets.”

8. At that stage, Mr Vivanco was still not a defendant to the present proceedings. However, on 23 December 2019, Ms Schwartz commenced proceedings in the BVI to which all five present Defendants to these proceedings (i.e. including Mr Vivanco) are defendants. On about 22 January 2020, the claim in the BVI proceedings was amended to add, as sixth defendant, Ms Ruth Garzon, the widow of Mr Schwartz. The amended claim form seeks, inter alia, orders removing VGV UK as trustee and Mr Vivanco as protector of the Trust; and declarations that a document entitled Letter of Wishes purportedly signed by Mr Schwartz on 7 May 2019 is void and of no effect, on the basis that it is a forgery, and that a document entitled Deed of Amendment of Declaration of Trust and Exhibit Replacement (“the Deed of Amendments”) is void and of no effect and/or voidable, on various grounds including, that it was improperly executed and/or backdated.

9. Following a further application by Ms Schwartz, the matter came back to this Court on 26 February 2020, when Nugee J ordered that Mr Vivanco be added as a defendant on the basis that there was a good arguable case that he was the de facto controller of VGV

UK and PEISA. By that stage, Withers had ceased to act and none of the Defendants attended or were represented. The order of Nugee J (“the February Order”) provided, at paras 4-6:

“4. By 4pm on 4 March 2020, Mr Vivanco and a director of VGV [UK] shall each file and serve an affidavit which addresses each of the following matters to the best of their knowledge and ability (the “**Affidavits**”):

- a. A list of the assets currently held in the Consov Trust (and which have been held within the Consov Trust since 1 January 2019) and the approximate book value and market value of such assets;
- b. A list of the assets including, but not limited to real estate properties, bank accounts, shares, and loans, which the companies or the Trustee purportedly held within the Consov Trust (including, but not limited to, PEISA and Peru Express) have owned and/or had an interest in since 1 January 2019) and the approximate book and market values of those assets;
- c. The affidavits shall exhibit any documents evidencing the current ownership by the Trust or its companies of any assets and any documents evidencing the transfer of such assets to/from the Trust or its companies;
- d. The Affidavits shall state whether or not the purported Managing Director of VGV [UK], Alexandra Meade (“**Ms Meade**”), exists and, if so, the Affidavits shall state Ms Meade’s principal residential address (the “**Address**”), her current passport number and her National Insurance number and the Affidavits shall exhibit:
 - i. A copy of Ms Meade’s passport certified by a notary regulated in England;
 - ii A copy of Ms Meade’s driving licence (insofar as one is held) certified by a notary regulated in England; and
 - iii Two utility bills or a landline telephone bill sent to the Address in the last 6 months.

5. The Claimant shall have liberty to apply for further relief for the purpose of establishing Ms Meade’s existence/identity following the receipt of the above Affidavits.

6. VGV [UK] and Mr Vivanco shall, by 4pm on 4 March 2020:

- a. Provide an electronic copy of the final/latest draft of the purported Deed of Amendment dated 8 May 2019;
 - b. Provide an electronic copy (insofar as one is held) of the purported Letter of Wishes dated 7 May 2019; and
 - c. Provide to the Defendants' [sic] solicitors at least 3 dates between 4 March 2020 and 18 March 2020 at which the original copies of the purported Letter of wishes dated 7 May 2019 and the purport Deed of Amendment shall be made available for inspection at the London offices of McDermott Will and Emery."
10. The allegations of contempt now before the Court concern breaches of para 12 of the January Order, and of paras 4 and 6 of the February Order.

THE COMMITTAL PROCEEDINGS

11. The application notice for committal ("the Committal Application") was issued on 1 April 2020 with a time estimate of half a day. A revised, substitute application ("the revised Committal Application") was issued on 2 May 2020, which added a schedule setting out an enumerated list of the seven separate breaches alleged ("Breaches 1-7"), pursuant to CPR rule 81.10(3). Breaches 1-3 are alleged as against VGV UK, and breaches 4-7 as against Mr Vivanco. However, the breaches alleged against Mr Vivanco include the breaches by VGV UK on the basis that he exercised de facto control over VGV UK.
12. VGV UK made no response at all to the Committal Application and took no part in the hearing. Mr Vivanco initially made no response. The application was first due to be heard on Monday, 4 May 2020, but on 30 April 2020 the solicitors to Ms Schwartz were contacted by Mr Colbey of counsel who informed them that he had been instructed by Mr Vivanco but only for the purpose of seeking an adjournment, essentially on the basis of Mr Vivanco's difficulties due to the Covid-19 crisis in participating in the proceedings from Ecuador. I heard that application on 4 May (by Skype for Business) and Mr Vivanco was able to participate remotely. He informed me that he would like to instruct Mr Colbey to represent him at the substantive hearing and to put in evidence. I accordingly adjourned the substantive hearing, but for a shorter period than he requested, to commence on 1 June; and made an order giving Ms Schwartz permission to make the amendments in the revised Committal Application, allowing alternative service on Mr Vivanco and permitting Mr Vivanco to file evidence, including any late compliance with the February Order, by witness statement with a statement of truth instead of by affidavit because the notarial offices in Ecuador were not fully operating due to the pandemic. Since the revised Committal Application had not yet been served on VGV UK, I also required that this was done.
13. By the time of the adjourned hearing, significant further evidence had been filed both by and on behalf of Mr Vivanco and by and on behalf of Ms Schwartz. Ms Schwartz has been represented throughout by a large international law firm and has clearly devoted substantial resources to this application. Mr Vivanco, who had done nothing initially in response to the February Order, at the 11th hour instructed Mr Colbey of counsel by direct access. While Mr Colbey has done his best acting for a client abroad,

he obviously cannot give assistance in gathering evidence and drafting statements which a solicitors' firm would provide. Thus there is a real inequality of arms as between the parties, which is the more acute because of the volume, complexity and range of evidence, with further documents being produced during the course of hearing itself.

14. It is very surprising that an established lawyer, with an active commercial practice, facing extremely serious allegations, should conduct his defence in this way. I do not know if this is due to limited personal resources or, possibly, a cynical ploy to provide an excuse for the inadequacies and omissions in his evidence. I note that by the time of the substantive hearing, when Mr Vivanco did take part, he treated the Court with respect and he sought to answer all the questions put to him. Since these are contempt proceedings, I remind myself that the criminal standard of proof applies, and I think it would be wrong to make assumptions or draw inferences against Mr Vivanco from his lack of appreciation of the way evidence should be gathered and presented. That is important in a case where the great majority of factual assertions made by Mr Vivanco are disputed and challenged. I also note that the style of his witness statements, with a degree of formalism and repetition, is very different from the style of evidence prepared with the assistance of English lawyers.
15. I add three further observations:
 - i) As noted above, these proceedings are brought in support of the BVI proceedings. The Statement of Claim in those proceedings was amended on 25 March 2020 and makes serious allegations of dishonesty, both in respect of certain documents and as regards the alleged creation of a non-existent signatory of the Deed of Amendment. The present proceedings are not a surrogate trial of the allegations advanced in the BVI proceedings. Some aspects which overlap have to be addressed, but only where they relate to the specific contempts alleged. I was told that none of the defendants to the BVI proceedings has acknowledged service except for Ms Garzon. Whether Ms Schwartz is therefore able to get judgment in default or summary judgment in respect of some or all of the relief she seeks in those proceedings is not a matter for this Court. I understand that VGV UK is also the subject of winding up proceedings brought by Ms Schwartz and that Ms Schwartz is in addition involved in litigation in Florida concerning loans made by the Trust.
 - ii) The substantive hearing took place remotely by Zoom. Mr Vivanco was in Ecuador, which is well-known to have been particularly affected by Coronavirus. He would not have been able to travel to the UK even if he had wished to. I refused to adjourn this application for potentially very many months until the pandemic is over. But because of the time difference with Ecuador, the hearing could take place only in the afternoons. The oral evidence was not completed in the afternoons of 1-3 June, and to accommodate counsel's difficulties a further hearing was therefore held between 5-7.45 pm on 4 June (with closing submissions in court by a 'hybrid' hearing on 15 June). Although there were occasional interruptions due to the internet connection dropping (and this problem affected Mr Colbey more than Mr Vivanco), I am satisfied that Mr Vivanco was able fully to participate in the hearing, and neither he nor Mr Colbey suggested otherwise. Ms Schwartz participated in the hearing from Israel.

- iii) An enormous range of evidential issues were canvassed. To explore all the relevant evidence properly with Mr Vivanco would have needed significantly more than four half days; probably four full days. It was Ms Schwartz who pressed for the application to be heard urgently and whose lawyers gave the time estimate. As a result, certain issues were not fully explored or put to Mr Vivanco and it would be wrong for me to reach a conclusion upon them. While this judgment will of necessity have to review a significant range of factual material, at the end of the day the Court's only concern is with the specific contempts alleged.

THE FACTUAL BACKGROUND

16. Mr Jorge Schwartz was a very successful businessman in Ecuador who built up the TV Cable group. Ms Gabriela Schwartz is his only child, by his first wife, Mrs Rachel Schwartz. In the mid-1980s, Mr and Mrs Schwartz divorced. By that stage, Mrs Schwartz and her young daughter were largely living in Israel but they had at first travelled regularly to Ecuador to visit Mr Schwartz. Following the breakdown of the marriage, Mrs Schwartz and her daughter settled permanently in Israel. In about 1987, Mr Schwartz re-married Ms Ruth Garzon, who had children by her previous marriage. Ms Schwartz said in evidence that her father kept his life in Ecuador and his new Ecuadorian family very separate from her.
17. On 28 September 2010, the Trust Deed was executed declaring an irrevocable discretionary trust. Mr Schwartz was the settlor (although the settlor is not identified in the deed) and the original trustee was Mossack Fonseca & Co (BVI) Ltd, a BVI company affiliated to the Panamanian law firm, Mossack Fonseca, which subsequently acquired notoriety in the "Panama Papers" affair. Pursuant to clause 2.2, the proper law of the Trust was the law of the BVI and the courts of the BVI were the forum for the administration of the Trust. Pursuant to clause 1.1 and Exhibit A to the Trust Deed, the beneficiaries were Mr Schwartz as the "Principal Beneficiary" and Ms Schwartz as the "Substitute Beneficiary".
18. Pursuant to clause 17.1 and Exhibit C to the Trust Deed, Mr Vivanco was appointed the protector of the Trust.
19. The Trust Deed includes the following provisions, insofar as material:
- "5.1 The Trustee and/or the Settlor may, at any time during the Trust Period, declare that any person or class of persons ... shall be added to the class of Beneficiaries,....
- 19.4 The Trustee may, at any time, with the prior written consent of the Protector but otherwise in its discretion declare in writing that, from the date of such declaration or from a later date specified, the forum for the administration of these trusts shall be the courts of any specified jurisdiction.
- ...
- 22.2 The Trustee with the prior written consent of the Protector, may at any time or times during the Trust Period, by instrument

in writing, make any variation, addition or deletion of or to all or any of the trusts, powers and provisions of this Deed (other than sub-clauses 16.3, 16.4, 22.1 and (subject to clause 31) this sub-clause 22.2) which is for the benefit of all or any one or more of the Beneficiaries.”

20. On the same date as the Trust Deed, Mr Schwartz wrote a non-binding “Letter of Wishes” to the trustee. The letter stated:

“The trust, which owns all of the outstanding shares in CONSOV TRADING LTD, a Nevada corporation, has been established by me for the benefit of my family and myself.

During my lifetime you are to treat me as the sole beneficiary of the Trust. Accordingly, during my lifetime I would ask you to consult with me on any policy matters regarding the Trust, including as it regards any distribution of capital and/or income.

After my death, you should consult the Protector named in the Trust Deed for guidance on policy matters. I would like the Protector and yourselves to have regard to the following guidelines:

- i. After my lifetime all the income, capital and interest from the Trust Fund should be made available to GABRIELA SHWARTZ.
- ii. After my lifetime the Trust Fund itself should transfer all its assets, capital, income and interest to GABRIELA SHWARTZ.
- iii. After my lifetime no distributions of income, capital, interest or assets should be made to [*sic*] without the consent of the Protector.”

21. On 9 June 2014, Mr Vivanco as protector, pursuant to clause 16 of the Trust Deed, signed a “Resolution” removing Mossack Fonseca & Co (BVI) Ltd as trustee and appointing in its place VGV UK. No complaint is made about that document.
22. It appears that PEISA was originally owned by Mr Schwartz, who transferred his entire shareholding in that company to the Trust. As noted above, a major asset of the Trust is the TV Cable Shares. The Trust now has other valuable assets, including substantial portfolio and cash investments held through PEISA’s accounts (“the Bank Accounts”) with two banks, EFG Bank and Trust (Bahamas) Ltd (“EFG”) in the Bahamas and Merrill Lynch, Pierce, Fenner & Smith Inc (“Merrill Lynch”) in the US. It is also a creditor in respect of substantial loans made to CNA Technology LLC in the US (the “CNA Loans”).
23. On 16 February 2011, PEISA granted Mr Schwartz a general power of attorney to act without limitation on its behalf. It seems that he largely managed the Trust’s assets, including giving instructions to EFG and Merrill Lynch on portfolio investments.

24. On 14 June 2019, Mr Schwartz died. It appears that he did not leave a will. It was accepted by both sides that under Ecuadorian law, if a deceased has no will his spouse has a matrimonial claim to one half of his assets and the other half goes to his children. Thus, Ms Garzon has a claim to a half share of the late Mr Schwartz's assets, referred to in Mr Vivanco's evidence as his "free estate", in contrast to the assets in the Trust, and the other half goes to Ms Schwartz. Mr Vivanco said that in the absence of a will, an application can be made to the Ecuador court for the appointment of a "liquidator" who is then responsible for the distribution of the estate. Ms Schwartz said in evidence that she did not know the value of the free estate, but believed it is "a lot more" than \$3 million but under \$10 million.
25. Shortly after her father's funeral, Ms Schwartz and her partner had two meetings with Mr Vivanco in his office in Quito, on 24 and 28 June 2019. Mr Vivanco told Ms Schwartz about her financial position under the Trust. There is a sharp conflict of evidence regarding what Mr Vivanco said in these conversations, to which I shall return. In the second meeting, Mr Vivanco gave Ms Schwartz a USB stick containing copies of material Trust documents. He says, but Ms Schwartz disputes, that this included the Deed of Amendment. However, it is not in dispute that, following her father's death, Ms Schwartz was authorised to give instructions to EFG and Merrill Lynch regarding the management of the portfolio accounts, as her father had done beforehand, and she became the sole signatory on those accounts.
26. In October and again in November 2019, Ms Schwartz noticed that the monthly dividends in respect of the TV Cable Shares had not been received in PEISA's account at EFG. Ms Schwartz corresponded about this with Mr Vivanco, and then on 13 December 2019 she was contacted on behalf of the lawyers to TV Cable who informed her that the Shares had been transferred from PEISA to Peru Express. Since that was inconsistent with the explanations for delay in the dividends which Mr Vivanco had given, Ms Schwartz understandably became extremely concerned at what might be happening. Those concerns were heightened by the discovery that the lawyer who claimed in correspondence to be acting on behalf of Peru Express was the same lawyer who represented Ms Garzon in making a claim to a share of Mr Schwartz's estate. This, in summary, prompted Ms Schwartz to make the urgent application in this Court which led to the December Order, and to commence the BVI proceedings. In that application, Ms Schwartz alleged that VGV UK, PEISA and Peru Express appeared to be engaged in a fraudulent scheme to dissipate assets of the Trust, and asserted that there was reason to believe that Ms Garzon lay behind this.
27. On 24 December 2019, Withers, who were then acting for the first three Defendants, wrote to Ms Schwartz's solicitors, McDermott Will & Emery ("MWE"), stating that Peru Express was also owned by the Trust so that the transfer from PEISA to Peru Express was in effect an internal transfer, and that there was no proposal for onward sale of the Shares. On 8 January 2020, Withers responded to letters from MWE stating that Ms Schwartz was not, as she had asserted, the sole beneficiary of the Trust since Ms Garzon was also a discretionary beneficiary. The next day, Withers sent MWE a copy of the Deed of Amendment. The recital to the Deed of Amendment states that Mr Schwartz issued a further Letter of Wishes on 7 May 2019 ("the 2nd Letter of Wishes") that replaced his original Letter of Wishes. Purportedly to give effect to the 2nd Letter of Wishes, the Deed of Amendment:

- i) in reliance on clause 5.1 of the Trust Deed, added Ms Ruth Garzon as an additional beneficiary of the Trust “for all the income, capital and interest from the Trust Fund’s assets located within Ecuador”;
 - ii) in reliance on clause 22.2 of the Trust Deed, declared that the TV Cable Shares “must be considered assets located within Ecuador due to the fact that [TV Cable] is only a dormant, non-active holding company that holds shares of operating companies all located in Ecuador”;
 - iii) in reliance on clause 19.4 of the Trust Deed, specified that from the date of the death of Mr Schwartz, the forum for the administration of the Trust shall be “solely and exclusively” the courts of Ecuador.
28. The Deed of Amendment accordingly provided a replacement Exhibit A to the Trust Deed, declaring that Mr Schwartz was (as before) the “Principal Beneficiary” but that Ms Schwartz was a “Substitute Beneficiary” only for all the income, capital and interest from the Trust Fund’s assets located *outside* Ecuador; with Ms Garzon a “Substitute Beneficiary” for all the income, capital and interest from the Trust Fund’s assets located *within* Ecuador.
29. The Deed of Amendment was executed by a Ms Alexandra Meade on behalf of the trustee, VGV UK, and by Mr Vivanco as protector.
30. This document prompted an immediate response from MWE asking for a copy of the 2nd Letter of Wishes and for “the last electronic word version” of both that document and of the Deed of Amendment.
31. None of those documents were supplied at the time. On 13 January 2020, two affidavits were served on behalf of the first three defendants, one made by Ms Alexandra Meade as a director of VGV UK and the other by Mr Vivanco. Mr Vivanco said in his oral evidence that his affidavit was drafted by Withers, and from the style it seems clear that Ms Meade’s affidavit was similarly drafted. Ms Meade’s affidavit describes the background to and arrangements of the Trust, and refers in detail to the 2nd Letter of Wishes and the Deed of Amendment. She refers to the fact that PEISA held the TV Cable Shares, explains the transfer to Peru Express as made only to achieve a tax saving (in consequence of a change to Ecuadorian tax law introducing a penalty surcharge for holdings in Panamanian companies), and states that Peru Express is controlled by VGV UK and that there was never an intention to transfer the TV Cable Shares out of the Trust. The affidavit also gives details of the Merrill Lynch and EFG bank accounts and the value of the assets held in them and the exhibit to the affidavit includes a chart setting out the structure of the Trust holdings and the assets held. The exhibit includes the Deed of Amendment, but not the 2nd Letter of Wishes.
32. It was only on 4 May 2020, in a witness statement made in belated response to the February Order, that Mr Vivanco exhibited a copy of the 2nd Letter of Wishes. This document is addressed to VGV UK and bears the signature of Mr Schwartz. The substantive text is as follows:

“I. I hereby state to the Trustee the following instructions:

- a. After my life all the income, capital and interest from the Trust Fund's assets located **outside** Ecuador should be made available to GABRIELA SCHWARTZ.
- b. After my life all the income, capital and interest from the Trust Fund's assets located **within** Ecuador should be made available to RUTH JURADO GARZON.

II. Any Beneficiary who challenges the TRUST or my instructions will automatically lose her right to the income, capital and interest from the Trust Fund.

III. After my lifetime no distributions of income, capital, interest or assets should be made to without the consent of the Protector.

IV. This Letter of Wishes expressly replaces the Letter of Wishes issued on September 28th 2010 which after this date is cancelled and no validity.

V. The Protector is hereby instructed to inform both Beneficiaries of the content of this Letter of Wishes but is not authorized to provide a copy of this Letter to them unless instructed by a judge or other competent authority.”

33. Ms Schwartz contends that her father never signed the 2nd Letter of Wishes and that this document is, in effect, a forgery produced after his death. Further, she contends that the Deed of Amendment was similarly produced after his death and back-dated. As noted above, the amended claim form issued on 22 January 2020 in the BVI proceedings seeks declarations to that effect. Furthermore, on 25 March 2020, the statement of claim in the BVI proceedings was amended to include the allegation that Ms Meade, who purportedly executed the Deed of Amendment on behalf of VGV UK, does not exist. It is there asserted:

“Alexandra Meade is simply a name which Mr Vivanco uses in the course of his VGV businesses, including as a purported director of VGV [UK]”.

THE EVIDENCE

34. In addition to substantial documentation, including a series of affidavits, affirmations and witness statements from Ms Schwartz, Ms Robertson and Ms Shah of MWE, and from Mr Vivanco, Mr Vivanco served witness statements from Ms Parra and Ms Nuñez, along with a related affidavit of an English solicitor, Mr Marsh. Both Ms Schwartz and Mr Vivanco were cross-examined.

Ms Schwartz

35. As noted above, Ms Schwartz left Ecuador with her mother while still a child, and they settled permanently in Israel after Mr and Mrs Schwartz's marriage broke up. She said that she never returned to Ecuador thereafter while her father was alive. However, she

remained close to her father, maintaining regular contact and seeing him once or twice a year on his travels out of the country. She said that her father liked to keep his life in Ecuador very separate and that he was secretive about his private affairs. Indeed, she said that her father never told her about the Trust or mentioned Mr Vivanco to her, and that she only learnt of the Trust when she met Mr Vivanco in Quito after going there for his funeral.

36. It seems clear that Ms Schwartz has developed animosity towards Ms Garzon and her family. Ms Schwartz's strength of feeling is evident from her email of 27 September 2019 to Mr Vivanco when she wrote:

“I am approaching you for your assistance in preserving my father's amazing legacy against the blatant and greedy attacks of which we have recently learned. I know he would have liked us to join forces in our attempt to honor that legacy and give effect to his intentions as evidenced in his creation of the trust. Ruth's attempts to claim rights over the assets of the trust, of which she is not a beneficiary, contravene my father's clear wishes. It is doubly troubling that while trying to persuade me to give up assets in Ecuador, she has gone behind our backs and tried to claim the right over the loans made by the trust to CNA,....”

37. Although she initially turned to Mr Vivanco for help on the basis that she could rely on him as her father's former lawyer who was 'on her side', as a result of what happened over the dividends, and then production of the Deed of Amendment and 2nd Letter of Wishes, Ms Schwartz is now convinced that Mr Vivanco is conspiring against her, whether in league with Ms Garzon or to further his own interests, to misappropriate assets of the Trust to which she is entitled.
38. As a result, I found that Ms Schwartz is now quick to conclude that little which Mr Vivanco says that is not within her own knowledge can be believed. Thus as regards the change of trustee in 2014 from Mossack Fonseca to VGV UK, Mr Vivanco stated in his first witness statement that this was because Ecuador had introduced strict laws to control foreign entities from blacklisted jurisdictions, of which the BVI was one. Ms Schwartz said in her evidence that this was not the true reason: it was because Mossack Fonseca had acquired notoriety through the Panama Papers affair. In fact, since the Panama Papers scandal emerged only in 2016, that cannot be correct; and of course Ms Schwartz has no direct knowledge of what led to the change of trustee, although she said this was what an official of EFG in Miami had told her. Further, Ms Schwartz suggested that Mr Vivanco came up with the explanation that his signature on his affidavit of 13 January 2020 was an e-signature only because she and MWE produced customs evidence that Mr Vivanco did not travel to the US that month. In fact, Mr Vivanco had stated in his first witness statement of 4 May 2020, before the production of that evidence, that he had remained in Quito since 11 January 2020 so he made no secret of the fact that he was not in Miami on the date that his affidavit was notarised there.
39. I emphasise that by this observation I am not suggesting that Ms Schwartz was in any way dishonest in giving evidence of facts within her own knowledge, and she may well be justified in her assessment of what Ms Garzon was attempting. Nonetheless, I found that the strength of her feeling of outrage clouded her approach to matters outside her

direct knowledge. However, much of Ms Schwartz's evidence comprises the results of the extensive personal efforts she has devoted to making investigations, together with opinion and argument, as opposed to facts within her own knowledge.

Mr Vivanco

40. As noted at the outset, Mr Vivanco is the managing partner of Vivanco & Vivanco, a long-established law firm in Ecuador which carries out litigation as well as private client, tax, corporate and trademark work. His father was a friend of Mr Schwartz and he said that he had known Mr Schwartz ever since he was 14 years old. He later became Mr Schwartz's personal lawyer and the outside counsel to the TV Cable Group, of which he was also for a time a director. All this makes his failure to respond to the February Order all the more extraordinary. He said, in answer to a question from the Court:

“... it's a bad oversight on my end.... It was a very bad mistake on my end and I regret it ever since a lot.”

41. However, when he finally did engage with these proceedings, Mr Vivanco appeared of his own volition and submitted himself to three sessions of intense and probing cross-examination. Throughout, he was courteous and endeavoured to answer the questions put to him. But the truth of aspects of that evidence is something that I have to assess, as set out below. Although I have concluded that on some significant points Mr Vivanco cannot be believed, that does not mean that his entire evidence was dishonest. Each point of relevance has to be considered on its own terms.

Ms Parra and Ms Nuñez

42. Mr Vivanco adduced evidence in the form of witness statements signed on 20 May 2020 by two witnesses in Ecuador: Ms Charry Parra, the office manager of Vivanco & Vivanco; and Ms Veronica Nuñez, who for 23 years had been the personal secretary to Mr Schwartz and who now works for the TV Cable group. There is no doubt about the authenticity of their statements since, perhaps mindful of the various allegations levelled against him, Mr Vivanco arranged for an English solicitor, Mr Terence Marsh, to observe by video their signing of the statements with production of their passports to confirm to him their identity and attendance of an interpreter for the witnesses to explain to Mr Marsh their understanding of their evidence. Mr Marsh made an affidavit to that effect.
43. Ms Parra's signature appears on the Deed of Amendment as witness to the signature of Mr Vivanco, and her statement deals with the signing of that document by her and Mr Vivanco in his office on 8 May 2019. Ms Nuñez's statement describes how she typed the 2nd Letter of Wishes on the morning of 7 May 2019 from a handwritten document that Mr Schwartz gave her before Mr Vivanco came to Mr Schwartz's office to review it; and how on 8 May she gave Mr Schwartz's chauffeur a manila envelope containing some documents (which she did not type) with instructions to take this to Mr Vivanco's office; wait for him to sign them; and then hand deliver the envelope “to an individual by the name of “Alexandra” in the lobby of the Sheraton Hotel”.
44. Prior to the start of the hearing on 1 June 2020, Mr Colbey said that Mr Vivanco was trying to persuade Ms Parra and Ms Nuñez to be available for cross-examination on

their statements (in which case an interpreter would be required). But when the hearing started, Mr Vivanco said that they were unwilling to attend.

45. Ms Schwartz said in her evidence that the statements can be discounted because in Ecuador people in their position will feel under pressure to say whatever is asked of them. As she graphically expressed it: in Ecuador, “self-preservation far exceeds the truth”. Mr Vivanco strongly disputed this. That is not a matter I can resolve: apart from anything else, Ms Schwartz’s sweeping assertion is opinion evidence as to the culture or practice in Ecuador where she has not lived since she was a child, and which she is not qualified to give. I recognise that even a wholly honest witness may be reluctant to appear for questioning by video for English court proceedings, which she does not understand, thousands of miles away. However, I am concerned that Ms Parra and Ms Nuñez should both make statements in English, rather than in Spanish with subsequent translations: the fact that Mr Marsh asked each of them “briefly to explain her understanding” of her statement is not an adequate substitute. Mr Marsh says that Mr Vivanco told him that both of them “had limited English language skills” and he had to talk to them through an interpreter. Furthermore, when the maker of a witness statement cannot be cross-examined, in a case with such serious allegations, that is a serious deficiency. In all the circumstances, I consider that these statements should carry little weight.

Potential witnesses

46. Mr Weale, in his closing submissions, referred to a range of other potential witnesses whom Mr Vivanco could have called to support his case. He submitted that adverse inferences could be drawn from his failure to adduce evidence from any of them, relying on the well-known dicta in *Wisniewski v Central Manchester HA* [1998] PIQR 324 at 340. The individuals identified ranged from the late Mr Schwartz’s chauffeur to Ms Beth Leon, the Florida notary who was employed by Vivanco & Vivanco and had notarised Ms Meade’s affidavit.
47. Given the broad reach of the allegations against him, there are many individuals Mr Vivanco could have contacted. In most cases, he was not specifically asked why a particular individual was not giving evidence. Given the way that Mr Vivanco’s case was prepared, to which I refer above, I think it would be necessary to ask him specifically about the absence of a particular witness before I proceeded to draw any adverse inferences. I did ask him about Ms Leon, who appeared to me the most relevant, and he said that since she acted as a notary in certifying the affidavit of Ms Meade, he considered she owed a professional obligation to Ms Meade and for him to ask her how the notarisation was conducted would infringe on the confidentiality of that process and might amount to his applying inappropriate pressure to a junior employee of his firm. Although I found that explanation somewhat strange, applying the criminal standard to any finding I have to make, I cannot dismiss it as implausible. In my view, the guidance in *Wisniewski*, which does not apply in criminal cases, cannot be applied without qualification in contempt proceedings where the criminal standard of proof is applied. In all the circumstances here, I do not think it is appropriate to draw inferences from the failure of Mr Vivanco to call other witnesses.

THE CONTEMPTS

The Law

48. It is fundamental that I have to apply the criminal standard in determining whether Ms Schwartz, on whom the burden rests, has established each contempt alleged.
49. The further legal principles relied on are not in dispute. Mr Colbey emphasised that a failure to do something that is impossible, even if a breach of an order, is not a contempt. As stated in *Sectorguard v Dienne* [2009] EWHC 2693 (Ch), by Briggs J (as he then was):
- “32. ... The mental element required of a contemnor is not that he either intends to breach or knows that he is breaching the court order or undertaking, but only that he intended the act or omission in question, and knew the facts which made it a breach of the order: see *Adam Phones v. Goldschmidt* [1999] 4 All ER 486 at 492j to 494j.
33. Nonetheless, even a mental element of that modest quality assumes that the alleged contemnor had some choice whether to commit the relevant act or omission. An omission to do that which is in truth impossible involves no choice at all. Failure to comply with an order to do something, where the doing of it is impossible, may therefore be a breach of the order, but not, in my judgment, a contempt of court.”
50. Referring to these dicta and to other authority, in *Perkier Foods Ltd v Halo Foods Ltd* [2019] EWHC 3462 (QB) Chamberlain J said, at [14]-[15]:
- “... In a case where the respondent says that compliance was impossible, and there is *some* evidence to that effect, *mens rea* is in issue and it should be for the applicant to prove to the criminal standard that compliance was possible, in the sense that the respondent had a choice about what to do. That result is consistent with the general rule in criminal law.
- ... Furthermore, as the above cases show, it is not necessary to show that compliance would have been easy or convenient or inexpensive. Court orders must be complied with even if compliance is burdensome, inconvenient and expensive...”
51. Mr Weale submitted that where the alleged contemnor puts forward a reason why he failed to comply with an order, whether on the ground of impossibility or by way of mitigation, and that reason is untrue, this will aggravate the contempt. I think that must be correct.
52. I proceed to address each of the breaches alleged in the revised Committal Application. Breaches 1-3 are alleged against VGV UK and breaches 4-7 against Mr Vivanco.

Breach 1

53. It is alleged that VGV UK failed to provide a witness statement from a director setting out all the information required by para 12 of the January Order, by 21 January 2020, or at all.
54. The information required was a list of assets currently held by the Trust and by any companies held within the Trust, and the approximate value of such assets. VGV UK was to do this to the best of its knowledge and ability: see para 9 above.
55. On 21 January 2020, MWE received an email from Ms Alexandra Meade, sent from the address alexandra@vgvcorporate.com, which stated that it was enclosing a letter in compliance with para 12 of the January Order. The letter attached, on notepaper headed VGV Corporate Services, was signed by Ms Meade as Director of VGV UK. On the first page, under the heading, **“A. A LIST OF THE ASSETS CURRENTLY HELD IN CONSOV TRUST AND THE APPROXIMATE VALUE OF SUCH ASSETS”**, there are listed: (i) 100% of the shares in PEISA, stated currently to be worth \$15 million, based on the latest bank statements; (ii) 100% of the “Membership Rights” of Peru Express, with approximate value “to the best of our knowledge” of \$2 million. The second page received with the email sets out three items as follows:
- “(iv) Consov Trading Ltd (Nevada – USA)(Status: Dissolved).
 - (v) Two (2) Loans to CNA Technology LLC
 - (vi) Approximate value to the best of our knowledge and ability three million dollars (US\$3,000,000).”
56. Mr Vivanco also sent an email to MWE very shortly afterwards that day, cc to Ms Meade, confirming in his capacity as protector of the Trust that the letter has the complete list of assets required in para 12 of the January Order. He added:
- “... please note that there are other inheritance assets located in Ecuador that are not part of the Trust’s assets and that you might be aware of. This list of assets is not included in the attached letter as the Trustee has no visibility over them.”
57. In response to those emails and letter, that same day Ms Robertson of MWE sent an email to Ms Meade and Mr Vivanco referring to the fact that Ms Meade’s affidavit of 13 January had attested to the Trust having assets that included real estate holdings but that the letter of 21 January has “omitted that asset”. Ms Robertson asserted that Ms Meade and Mr Vivanco are therefore either guilty of perjury or in contempt of court and suggested that they “take immediate steps to purge [their] contempt.”
58. On 31 January 2020, a Ms Karen Acosta from VGV Corporate Services sent an email stating that it was enclosing an “Amandment [sic] letter in compliance to point 12” of the January Order. The email stated:
- “Alexandra Meade is out of the office today, so I am sending this notice on her behalf.”

59. The attached letter, dated 31 January 2020 and signed by Ms Meade, states that on 30 January 2020 in response to their inquiry the directors of PEISA informed them about the existence of “an additional asset” not disclosed in the 21 January letter, and continues:

“Therefore point B.i of our January 21st, 2020 letter shall be replaced by the following:”

60. The letter then sets out: the account at EFG, with an approximate value of \$10 million; two accounts at Merrill Lynch, with an approximate value of \$5 million; and:

“Real estate property located in Quito – Ecuador.

APPROXIMATE VALUE TO THE BEST OF OUR KNOWLEDGE AND ABILITY: The property was purchased on December 28th, 1998 for NINE HUNDRED AND EIGHT AMERICAN DOLLARS (US\$ 908)”

61. The allegation of Breach 1 relies on various grounds:
- i) Ms Meade does not exist or her identity has been appropriated by Mr Vivanco, so these letters are not from a director of VGV UK;
 - ii) These were letters not a witness statement as ordered;
 - iii) The 21 January letter failed to refer to any real estate assets or the assets held by Peru Express, including the TV Cable Shares;
 - iv) The 31 January letter failed to state the current value of the real estate asset but only its purchase price in 1998, and still failed to refer to the TV Cable shares.
62. I leave aside the question of Ms Meade’s existence as this is addressed in detail below. As regards the other allegations:

(ii) is clearly correct. To that extent, VGV UK is in breach and in contempt;

(iii), and the repeated complaint about the TV Cable shares in (iv), is to my mind unclear. The document attached to the email of 21 January 2020 in its enumerated list of assets skips from point (ii) at the end of the first page to point (iv) on the second page. It also omits the Bank Accounts. Moreover, the correcting letter of 31 January refers to replacing point B.i of the first letter to add “an additional asset” but the replacement point B.i includes the Bank Accounts as well as the real estate asset whereas the document attached to the email of 21 January 2020 did not refer to the Bank Accounts. Ms Meade was clearly well aware of the TV Cable Shares and the Bank Accounts: she had given details of them in her affidavit served about a week earlier. Accordingly, there could be no possible reason to omit them from the 21 January letter. VGV UK was not represented before me so there were no submissions on its behalf. Looking at these documents, it seems to me highly likely that the letter of 21 January comprised not two but three pages and was double sided, and that in attaching a copy of this letter to the email of that date the reverse side of the first page (i.e. page 2) was omitted. If that is correct, then the missing page 2 would be expected to include the TV Cable Shares, along with the Bank

Accounts. I find it somewhat surprising that MWE did not immediately seek to clarify this when the letter was received, but in any event I note that in their response to that letter, MWE complained only about the omission of the real estate asset. Accordingly, I am not satisfied that VGV UK intended this omission in the sense explained in *Sectorguard*;

(iv): the value given for the real estate asset is very historic. I consider that VGV UK was required at least to give some estimate of what the current value of the property might be and it failed to do so. To that extent, the breach is also made out.

63. However, I note that in her evidence, Ms Schwartz's complaint (again, aside from the question of Ms Meade's existence) was a different one. She asserted that there was a valuable real estate asset held by the Trust, which was not disclosed at all. That is of course a much more serious allegation. Ms Schwartz said that Mr Vivanco had told her, during one of their meetings in Quito on either 24 or 28 June 2019, that the Trust, through PEISA, owned a large income-generating commercial property in Ecuador. Reliance was also placed on the reference to "real estate assets" in para 35 of Ms Meade's affidavit of 13 January 2020.
64. Mr Vivanco agreed that he had told Ms Schwartz about other real estate assets but said that these were personal assets of Mr Schwartz and not part of the Trust. He said he told Ms Schwartz what he knew about the properties owned by her father as she would have a personal inheritance claim on his 'free estate'. But he said firmly that he never suggested or indicated that those were part of the Trust or that the Trust owned a large commercial property.
65. I do not consider on this basis that such a further ground of contempt under Breach 1 can be accepted or is made out. In the first place, this a serious allegation but it is not included in the particulars of breach in the Committal Application, notwithstanding that this Application had been amended. Secondly, on such a contradiction in the oral evidence I am not satisfied to the criminal standard, that Ms Schwartz's evidence is correct. I should emphasise that I am not suggesting that Ms Schwartz is being dishonest. But she had a lot to take in at the two meetings with Mr Vivanco, as her father had never told her any details of either the Trust or his finances. Neither she, nor it seems her partner who accompanied her, took any notes. Among all the information, it is very easy not to recall clearly what was and was not part of the Trust. I should add that I do not think that any weight can be put on the use of the plural in Ms Meade's affidavit. What Ms Meade there said was:

"The purpose of PEISA was to invest in portfolio assets and financial positions as well as in private equity outside Ecuador, and in real estate assets in Ecuador" [emphasis added].

This does not mean that as at 2019 PEISA actually owned several real estate assets. And Ms Schwartz herself said that her understanding was that the Trust had just one piece of property in Ecuador.

Breach 2

66. It is alleged that VGV UK failed to provide an affidavit from a director setting out all the information required by para 4 of the February Order, whether by 4 March or at all.
67. The text of para 4 of the February Order is at para 9 above. VGV UK did nothing in response to that provision. It has not sought to provide any explanation. The breach is clearly made out and VGV UK is in contempt.

Breach 3

68. It is alleged that VGV UK failed to provide electronic copies of (a) the final draft of the “purported” Deed of Amendment and (b) the “purported” 2nd Letter of Wishes, and (c) to provide the Claimant’s solicitors with at least three dates between 4 and 18 March 2020 when original copies of those two documents could be inspected at the London offices of MWE, in breach of para 6 of the February Order.
69. As noted above, VGV UK made no response to the order and has not appeared in response to the Committal Application. As regards (a), this was a document prepared by VGV UK and in the absence of any explanation I find the breach is made out. As regards (b), although the Order requires this to be produced “insofar as one is held” I think it would be for VGV UK at the very least to state that it does not hold an electronic copy: see *Perkier Foods*, above. However, VGV UK has done nothing.
70. As regards (c), para 6 of the Order in fact requires those dates to be provided to the *Defendants’* solicitors. Although Mr Colbey stressed that he was appearing for Mr Vivanco and not for VGV UK, since this para 6 imposes an equal obligation on Mr Vivanco, Mr Colbey addressed me on the interpretation of this provision for the purpose of contempt proceedings. Mr Colbey pointed out that the revised Committal Application, in two places, purportedly quoting para 6 of the February Order and then referring to that provision, has substituted “Claimants” for “Defendants”. He submitted that this was a serious misrepresentation of the Order, which Ms Schwartz had never applied to correct, and that Mr Vivanco should not be committed for breach of an order on that basis: on its terms, since Mr Vivanco by then had no solicitors, it was impossible for him to comply with this provision. If that submission is accepted, it would apply equally to VGV UK.
71. It is well-established that an order of the Court should be drafted clearly, and that if it is ambiguous the Court will not punish for contempt. But that does not mean that a clear mistake will be applied literally and cannot be overlooked. As stated in *Gee on Commercial Injunctions* (6th ed., 2016) at para 19-007:

“Interpretation of a court order depends on the words used which have to be interpreted in their context.... If from the admissible background it is obvious that a mistake has been made in the order and what that mistake is the order will be interpreted taking into account that obvious mistake.... The court places itself in the position of the reasonable recipient of the order together with all the background knowledge which is reasonably available to the class consisting of the defendant and non-parties who may be affected by the order.”

72. In my judgment, this was a manifest typographical error. Not only would it have made little sense to require these Defendants to supply dates to their own solicitors, but it was evident at the time the Order was made that they no longer had solicitors. Accordingly, I find that this mistake was obvious and would have caused no confusion. It is notable that Mr Vivanco did not himself suggest that he was under any misunderstanding, and of course there is no evidence from VGV UK at all. It is unfortunate that the Committal Application in referring to the terms of the Order ‘corrects’ the text without indication of what is being done, but I do not regard that as so serious as to disentitle Ms Schwartz to rely on the Order, as I hold it should be interpreted.
73. It follows that VGV UK clearly failed to comply with any part of para 6 of the February Order and this breach is made out.

Breaches 4 and 7

74. Breach 4 concerns breach 1 above and breach 7 concerns breaches 2 and 3 above. It is alleged that those breaches by VGV UK were also breaches by Mr Vivanco on the basis that exercised de facto control over VGV UK. These breaches therefore depend on that allegation being made out.
75. In his affidavit of 13 January 2020, filed as part of the evidence of the first three Defendants in response to the December Order, Mr Vivanco stated, at para 25:
- “... I confirm that:
- (a) VGV Corporate Services and Vivanco & Vivanco are both brands that belong to the same group of companies that provide international corporate services in 14 locations worldwide; and
- (b) I am the Managing Partner of the VGV Corporate Services / Vivanco & Vivanco Group.”
76. In his subsequent evidence, as I understood it, Mr Vivanco said that there was a commercial alliance between VGV Corporate Services (“VGV”), which comprised a number of VGV companies including VGV UK, and his law firm, Vivanco & Vivanco: they would share the use of service offices and facilities in providing trust services. He said that the law firm, Vivanco & Vivanco, was a purely Ecuadorian law firm that had no offices of its own outside Ecuador. It had a limited presence in Miami, as explained below. He was emphatic that he was never an office-holder in VGV, nor were the people working in VGV under his control. Moreover, he stressed that he was never a director or shadow director or controller of VGV UK.
77. Mr Vivanco explained the nature of VGV as follows in his witness statement of 4 May 2020:

“28. VGV offers firms worldwide to be a part of his [sic] commercial network in order to broaden their footprint and reach. VGV offers access to a network of firms, use of office space and marketing tools. This does not mean that member firms are owned, managed, controlled or bound by VGV, or the other way around.”

78. He went on to state that the alliance had come to an end:

“46. Vivanco & Vivanco was part of the VGV commercial alliance until early January 2020 when the firm decided to terminate the commercial alliance. Shall the court grant me additional time to comply with the Order, I will provide extensive information that reflects both the termination of the alliance and its independent nature.”

79. In his witness statement of 14 May 2020, Mr Vivanco said that the termination of the alliance was a result of this litigation which had soured relations. In oral evidence he added that the termination had been “ugly”, clearly meaning that it was acrimonious.

80. However, although Mr Vivanco made a number of further witness statements and exhibited various documents on other matters, he never provided documentation concerning the structure of the alliance. As Mr Weale pointed out, such a commercial arrangement, sharing for example the use of service offices in Miami (where at least one Vivanco & Vivanco employee was based) could be expected to have written arrangements regarding expenses, at the very least. Nor has a single document been produced regarding the break-up of the alliance.

81. Mr Vivanco repeated in his oral evidence that VGV Corporate Services is a brand. He said he did not know if there was actually a corporate entity with that name. I can accept that this may be a brand, which can then be applied for marketing purposes to different companies. But while Mr Vivanco was serving as managing partner, it seems to me that he would have had significant involvement in the way the brand was managed and applied.

82. Like most law firms, Vivanco & Vivanco has a website. There were in evidence extensive extracts from the website as it was at the material time. Unsurprisingly, it makes the point that the firm is very long-established, having been founded in 1902. But the “Overview” then includes the following:

“We are a multidisciplinary firm, covering all areas of the law through specialized departments. VIVANCO & VIVANCO heavily invests in IT, softwares and AI to maximize efficiency and client communication...

The Firm is headquartered in Miami and has offices in Argentina, Canada, Colombia, Costa Rica, Bolivia, Mexico, Miami, The Netherlands, Panama, Quito, Guayaquil, Spain and the United Kingdom.

...

As one of the oldest Latin American Firms, we are especially linked to the culture of the region in all its aspects.... ”

83. There are further webpages for the different countries, and the link for the UK shows the London office as 133 Higham Road, N17 6NU, which is the registered address of

VGV UK. It includes a London telephone number and an email: london@vivancoyvivanco.com

84. The website includes a gallery of photographic snapshots of the “Team”. That includes some administrative staff who are non-lawyers (e.g. Ms Isabel Charry) and translators, but among the lawyers is Ms Melissa Guardia Tinoco. Clicking on her photo brings up further details, showing that she is based in Costa Rica and has the job title, “Director VGV Corporate Services”. It was not always clear from what date the website entries were captured, but one extract (it seems from 2018), which had no photos, included among the lawyer members of the team, Mr Marco Grauso and Mr Charney Palacios.
85. The website has a page headed “Trust Services”. Until it was changed (apparently in November 2019) the text below included the following:

“VIVANCO & VIVANCO TRUST SERVICES is a natural expansion of the international services that we have been providing for decades and which has shown significant growth in recent times....

Our trust services are oriented towards high income/net worth families and individuals in Latin America. Although our services have worldwide reach, our focus and strength is in Latin America.

Through our wholly-owned trustee firm (Fiduciaria) in Costa Rica, we set-up and manage corporate and fiduciary structures for our clients.

Our local firms in Costa Rica, VGV CORPORATE SERVICES and VGV TRUST SERVICES are licensed to act as trustees and even settlers of trusts and other structures.

VGV CORPORATE SERVICES and VGV TRUST SERVICES have a team of lawyers and advisers that offer solutions”

86. Since Mr Vivanco asserted that Vivanco & Vivanco does not have, and never had, an office in London or Miami, he recognised that on his own evidence his firm’s website was wholly inaccurate. He said that its purpose was to assist with marketing, building on the alliance with VGV. The Miami office was a service office that was shared with VGV, where Vivanco & Vivanco had only one member, Ms Leon, who was a paralegal and notary, whereas the head office was firmly in Quito. The London “office” was simply used to give the firm a nominal presence in the UK, and was provided by VGV. He further said that neither Ms Tinoco nor Mr Palacios were employed by Vivanco & Vivanco, and he exhibited payroll documents showing that they were not among the employees. He said the website was out of date and that it had to be changed, but explained that he felt it was inappropriate to change it while this case was being heard.
87. It is beyond doubt that the London address is not a law office: there was evidence that it is simply an ordinary residential house. I also accept that the head office of the firm has always been in Quito. Mr Vivanco acknowledged that the website is misleading but said it was not deliberately misleading. I do not accept that. I think it is clearly

deliberate: it was designed to promote Vivanco & Vivanco as an international law firm to impress actual and potential clients. However, I recognise that some firms (even law firms) seek to exaggerate their scope, experience and importance. So I make some allowance for that. Mr Vivanco said that in fact there were only 12 lawyers at the firm, including himself.

88. It is also evident that Vivanco & Vivanco was very lax in updating its website. On the evidence adduced by Ms Schwartz, Mr Grauso had left the firm in 2016 to become an in-house lawyer at CaixaBank in Barcelona.
89. The position is less clear regarding Ms Guardia Tinoco and Mr Palacios. I observe that Ms Guardia Tinoco's email is stated to be mguardia@vgvcorporate.com, unlike all the other lawyers and staff of the firm, whose emails are at the domain address vivancoyvivanco.com. Mr Palacios is not shown as having any personal email and is ascribed simply the same email as the London office (i.e. london@vivancoyvivanco.com). And he no longer appears in what seems to be the more recent website gallery of the Vivanco & Vivanco "Team".
90. In the Committal Application, reliance is placed on the website reference under "Trust Services" to the "wholly-owned trustee firm (Fiduciaria)" which is said to refer to Fiduciaria VGV SA. In his witness statement of 14 May 2020, Mr Vivanco sought to explain this on the basis that Fiduciaria is the Spanish for trustee/fiduciary and that the capital "F" was a typographical error; and he said that the company being referred to was Exporama SA. I do not accept this last point: as Mr Weale stressed, Mr Vivanco himself states that Exporama SA is a Panamanian company whereas the website clearly refers to a trustee firm in Costa Rica. Whether the reference is in fact to Fiduciaria VGV SA is less clear, although this seems likely. It is also unclear whether the trustee company referred to is in reality owned by Vivanco & Vivanco or whether this is another inaccurate aspect of the website. Mr Vivanco also says that that website entry was replaced in November 2019. It is true that what I understood to be the later version in evidence no longer refers to Fiduciaria but it is notable that the revised text states:

"Through our wholly-owned trustee firms in Florida, Nevada, Wyoming, Canada, the UK and Costa Rica, we set up and manage corporate and fiduciary structures for our clients."

Although Mr Vivanco was not asked about this, I consider it must be a reference to various VGV-related entities.

91. In the December Order, Ms Schwartz was given permission to serve the Order and related documents by email to several addresses, including the email of Mr Vivanco, i.e. cjv@vivancoyvivanco.com. Mr Vivanco responded to an email serving some of the documents on 23 December 2019, saying:

"I write on behalf of the First Defendant VGV UK) LTD, as well as the Second and Third Defendants, both subsidiaries of the CONSOV TRUST.

...

The First, Second and Third Defendants are in the process of instructing lawyers in London. It [sic] expects to do so overnight so that the firm it instructs can write further tomorrow.”

As mentioned above, Withers were then instructed and Mr Vivanco put in an affidavit, along with Ms Meade, on 13 January 2020.

92. It may be that, as he claims, Mr Vivanco was acting only as the protector of the Trust and not purporting to exercise any wider authority over VGV UK. However, it is notable that once he was joined personally in the proceedings, Mr Vivanco ceased to take any responsibility for VGV UK but, on the contrary, sought to distance himself from it. There are yet further aspects relied on by Mr Weale in argument which I will not further prolong this judgment by going into, and he presented a powerful case of the close interconnection between Vivanco & Vivanco and Mr Vivanco personally on the one hand, and VGV on the other. At the same time, I think it is clear that VGV is separate from the law firm. It had its own website, and most of the individuals listed as comprising its “Team” are distinct from those so listed on the Vivanco & Vivanco website. In August 2019, Ms Schwartz carried out correspondence with a Ms Karen Acosta of VGV (who is not a member of the “Team” at Vivanco & Vivanco), and she assisted in providing Ms Schwartz with a power of attorney from the Trust so that she could pursue the Trust’s claims on the CNA Loans. Indeed, Mr Vivanco said that Ms Acosta was the person with whom he dealt at VGV.
93. I note also that the VGV notepaper used for the Deed of Amendment (and thus sometime in 2019) gives its London address at that time as 18 Soho Square in the West End. This was not investigated or explored in evidence.
94. The critical question for present purposes is whether Mr Vivanco had such control over VGV UK that, as alleged, he “procured and/or permitted” its breaches of the January and February Orders. For that, I consider it necessary to focus on VGV UK specifically. It was incorporated on 22 April 2014, a couple of months before it was appointed as replacement trustee of the Trust. It is a wholly owned subsidiary of Cersei SA (“Cersei”), a company incorporated in Costa Rica. The position of Cersei was not explored during the hearing, but I see from the written evidence that it apparently has the same address in San José, Costa Rica, as the controlling shareholder in TV Cable, another Costa Rican company, Back to the Harbor SA. The registered address of VGV UK on its incorporation was 5B Sandringham Road, London E8, which appears to be purely a nominal address, but that was the same address as the initial registered address of TV Cable. On 14 November 2016 the registered address of VGV UK was changed to its current address, 133 Higham Road, and on 28 February 2017, TV Cable also changed its registered address to 133 Higham Road. At that time, Mr Schwartz was the CEO of TV Cable and there was of course no suggestion that Mr Vivanco exercised control over TV Cable. Thus, it appears that there is also some kind of connection between VGV UK and TV Cable.
95. The directors now registered for VGV UK are Ms Meade (whom I consider below) and Mr Palacios, who is stated in the Companies Registry to be resident in Costa Rica and gives the same service address as Cersei. The original director when the company was incorporated was Mr Marco Grauso, which supports the inference that Vivanco & Vivanco was involved in setting up the company, but that of course does not mean that Mr Vivanco personally controlled it. Mr Grauso resigned on 10 October 2016 and, as

noted above, is now working in Spain. Neither side appears to have tried to contact him.

96. While there is no evidence of VGV UK carrying out any activity other than as trustee of the Trust, there is at least some acknowledgment of its presence at its London address. The process server who served the revised committal application on VGV UK states that a man at 133 Higham Road confirmed that he was authorised to accept documents on behalf of VGV UK.
97. I have found this the most troubling aspect of this case. The relationship between VGV and Vivanco & Vivanco remains opaque. Mr Vivanco's evidence on this was confusing and, as indicated above, there are some aspects which I cannot accept. However, I have to decide whether he personally exercised such control over VGV UK that he is responsible for the company's conduct. Although I do not think that he was being frank and open in his evidence about the extent and nature of VGV, about which I consider he knows far more than he divulged, I am not persuaded to the criminal standard that he exercised de facto control over VGV UK at the time of the January and February Orders or since. In my judgment, it would have required more thorough exploration with Mr Vivanco of the many strands of evidence, and consideration of how the Vivanco & Vivanco firm itself was controlled, before I could reach that conclusion without serious doubt.
98. It follows that Breaches 4 and 7 are not made out.

Breach 5

99. It is alleged that Mr Vivanco failed to provide "an affidavit (or any other document)" providing the information required by para 4 of the February Order, whether by 4 March 2020 (or at all).
100. It is accepted on behalf of Mr Vivanco that he failed to make any response by 4 March 2020. To that extent, he is clearly in breach.
101. By my order of 4 May 2020, I permitted Mr Vivanco to provide that information by way of witness statement instead of affidavit, because of the Covid-19 situation in Ecuador. His two witness statements of 4 and 14 May 2020 purport to comply, as far as he is able, with the February Order. In his statement of 4 May, Mr Vivanco acknowledged that it was not complete and that he would continue to make further inquiries before he could comply completely: hence his further witness statement made 10 days later.
102. Para 4 of the February Order effectively imposes two sets of requirements which fall to be considered separately.

(a)-(c) Assets in the Trust

103. In summary, Mr Vivanco was required to list the assets held within the Trust since 1 January 2019, stating the approximate book and market value of those assets and exhibiting any documents evidencing current ownership and any transfers of ownership. Mr Vivanco has addressed these matters in his witness statements of 4 and 14 May 2020, with extensive exhibits. As I understand Mr Weale's closing

submissions, no serious complaint is made about the information now provided (save, presumably, for the omission of an alleged further property owned by the Trust: see para 63 above). The submission for Ms Schwartz is that no proper excuse is given for such late compliance and that the breach was “cynical and deliberate”.

104. The excuse put forward by Mr Vivanco is the Covid-19 crisis which, he says, “has impacted on my ability to comply as fully or quickly with the order as I would have wished to.” He further states that he was in lockdown in his home in Quito since 28 February 2020 because a member of his family has a severe lung condition, and that there were extreme mobility restrictions in Ecuador.
105. I fully accept that the crisis caused by the pandemic has severely affected normal working in Ecuador and I appreciate that Mr Vivanco may have had, for personal reasons, to take particular precautions. I have recognised that this situation has prevented Mr Vivanco from making an affidavit and permitted him, belatedly, to comply by witness statement. And I could accept that it may have caused delay in obtaining some of the information: the deadline specified in the Order was very tight. But none of that can begin to excuse Mr Vivanco’s total disregard of the Order until over two months later. He is an experienced lawyer and in January 2020, before he was joined as a defendant, he had engaged in email correspondence with MWE about the proceedings. Accordingly, he could have responded to MWE at once, explaining any difficulties and offering to provide by witness statement as much information as he could. As I understand his evidence, he was still in lockdown on 4 May but was nonetheless able to provide significant, although not complete, information in his statement of that date. In any event, the Order incorporates (at para 16), in the usual way, express permission for anyone notified of it to apply to vary it, so Mr Vivanco could have sought any amendment to the terms of para 4 to accommodate the difficulties caused by the pandemic.
106. Mr Vivanco did none of those things. Indeed, it appears that he took no steps towards compliance until the end of April 2020. I find that there is no good excuse for the extent of the breach, which was therefore deliberate.

(d) Ms Meade

107. Mr Vivanco was required in his affidavit to state whether Ms Meade exists and if so, to provide her principal residential address, state her current passport and National Insurance numbers and exhibit copies of her passport and driving licence, both certified by a notary registered in England, and two utility bills or a telephone bill sent to that address in the last 6 months.
108. In his witness statement of 4 May 2020, Mr Vivanco states:

“Alexandra Meade does exist. I have met her four times in person in Panama for brief period of times. She is probably in her late thirties. I believe she is a citizen of and resident of Panama, her father, from whom her mother became estranged early in her life, was British, from the US or Australian [sic] hence her anglicised name, and probably she holds another citizenship.”

He proceeds to set out in some detail the dates, place and circumstances of each of the four meetings: the third of those meetings was in the company of Mr Schwartz who, Mr Vivanco says, appeared to know Ms Meade fairly well. Mr Vivanco says that he does not have any of the documents specified in the Order but has been asking Ms Meade to provide them.

109. Mr Vivanco's witness statement of 14 May 2020 repeats the above text, adding:

“She speaks fluent Spanish and even though I have never spoken English to her, her pronunciation of English terms is good.”

He exhibits emails which he sent to Ms Meade at alexandra@vgvcorporate.com, first asking her on 1 May 2020 to send him the documents specified in para 4 of the February Order, a follow-up chasing email of 6 May, and a further email of 9 May saying that if she did not want to send the documents a video-call could be set up to verify her identity. His email said: “I emphasise how important this is to me.” He says she made no response to any of these requests.

110. If Ms Meade does exist, I think it is understandable that Mr Vivanco would not have access to the various personal documents specified in the Order, unless she provided them to him. For Ms Schwartz, it is contended that she is a creation of Mr Vivanco for the purpose of serving as director of various companies that he controlled. The Deed of Amendment purports to be signed by Ms Meade as director of VGV UK. A significant part of the argument and evidence was accordingly devoted to the allegation that Ms Meade does not exist.

111. Mr Weale submitted that the evidence of this is overwhelming. He relied in particular, on the following:

- i) Ms Meade is shown in the English Companies House records as being director of over 50 companies, where the entries for her directorship state that she is resident in England (and of Australian nationality). However, Kroll was engaged on behalf of Ms Schwartz to carry out investigations and found no publicly available records (e.g. UK Land Registry) of Ms Meade's existence in England;
- ii) Although most of those entries state Ms Meade's date of birth as May 1980, at least 10 state her birth date as June 1980; and her occupation is stated on some as “accountant” and on others as “entrepreneur.”
- iii) When MWE asked Mr Vivanco in a telephone call on 24 January 2020 to arrange a meeting the following week with Ms Meade, on the basis that she is based in London, Mr Vivanco responded:

“She is definitely based in London, I don't know if she is going to be in London next week because she travels a lot. I will contact her to try to arrange a call.”

The website of VGV also ascribes to her a London telephone number. When followed up by MWE a few days later, Mr Vivanco replied by email on 31 January saying that she was on medical leave and that he would follow up with

her the next week. On 6 February he wrote again to say that she would “let us know once she is available.” When pursued by Ms Robertson of MWE on 12 February protesting that Ms Meade seemed to be unavailable “due to an unspecified illness” and asserting that Ms Schwartz has good reason to believe “that Ms Meade is not who she purports to be and/or does not exist”, Mr Vivanco replied on 14 February 2020:

“She is on medical leave and yes her “illness is unspecified” as you can probably imagine she rather not share details with you or your client. I kindly invite you to please respect her personal situation. What I can tell you is that her situation is not simple and the she rather keep her medical information confidential.”

The day before, there was filed at Companies House the registration of a further company with Ms Meade as a director, having subscribed to its memorandum of association. Moreover, as noted above, in his witness statement of 4 May 2020, Mr Vivanco for the first time said that he believes Ms Meade is resident in Panama. In his oral evidence, when asked about the Companies House records showing Ms Meade as resident in England, Mr Vivanco said he did not know if that is correct. He added:

“... I have no solid evidence to prove Ms Meade’s residence or location. So I am just trying to emphasise the fact that I have no conclusive evidence to show whether she is resident of Panama or the UK.”

However, there was no evidence to show that Ms Meade was resident in Panama.

- iv) Despite being asked by Ms Robertson on 12 February 2020 for a copy of Ms Meade’s current passport and NI number, Mr Vivanco (who was apparently then in contact with Ms Meade), failed to provide them.
 - v) In his oral evidence, Mr Vivanco said that he had tried to obtain Ms Meade’s contact details from Ms Acosta of VGV but she had refused to provide them. Mr Weale submits that this must be invented since Mr Vivanco never mentioned this before and since Ms Acosta “forms part of Mr Vivanco’s team at VGV” and its related companies there could no reason for her refusal to provide this information.
 - vi) Inferences should be drawn from the failure of Mr Vivanco to provide evidence from various people who could have given confirmation of Ms Meade’s existence.
112. I have addressed at para 47 above the question of drawing adverse inferences from Mr Vivanco’s failure to call potential witnesses. I am not very impressed by the point about the birth dates or occupation on the Companies House records. The forms sent in for company registration and returns are not necessarily completed by the director herself, and given the large number of companies for which Ms Meade is registered as a director, if a mistake is made once regarding the month of birth that may readily be

copied onto returns for other companies and so perpetuated. Being an accountant is not inconsistent with being an entrepreneur. And a person does not have to be physically present on the date he or she is recorded as subscribing to a newly formed company. Moreover:

- i) Ms Meade signed the letters of 21 January and 31 January 2020 setting out the assets of the Trust. The first letter was sent attached to an email from Ms Meade (sent from the address consistently used for her) but the second came with an email from Ms Acosta, with the explanation that Ms Meade was out of the office so that Ms Acosta was sending the document on her behalf: see para 58 above. That email was cc to Ms Meade. Although anything is possible, I would regard it as an extraordinary height of deviousness for Ms Acosta to write in that way (at a time when Ms Meade's existence had not been questioned), if Ms Meade did not exist. If she was a fictitious creation of convenience, the second email could simply have been sent using her name.
- ii) In August 2019, Ms Schwartz corresponded with Ms Acosta regarding the provision of a power of attorney ("PoA") from the Trust so that Ms Schwartz could pursue claims on the CNA Loans. Ms Acosta was helpful, and after some discussion a suitable PoA was provided. This was signed on behalf of VGV UK by Ms Meade, witnessed by Ms Acosta. If Ms Meade is fictitious, Ms Acosta was therefore also significantly involved in this fraudulent conspiracy. I also note that it does not need a handwriting expert to see that Ms Meade's signature on the PoA, while similar, is not identical to her signature on the letters of 21 and 31 January. Therefore this is not a case of a single e-signature of Ms Meade being generally used.
- iii) Ms Meade's affidavit of 13 January 2020 was notarised by Ms Leon in the office in Miami which Vivanco & Vivanco shared with VGV. I recognise that Ms Leon is not only a Florida notary but a para-legal employed by Vivanco & Vivanco. Nonetheless, Ms Schwartz's case means that as a notary working in the US, Ms Leon was either prepared to notarise a signature without ascertaining that the person existed, or alternatively was also involved in the conspiracy.
- iv) Mr Vivanco exhibited to his 14 May witness statement a letter from Morgan Stanley Smith Barney LLC ("Morgan Stanley") in Miami dated 17 January 2020 to Alakon Ltd, another private company registered at 133 Higham Road, confirming the personal and financial information held for a "personal holding company" account, which appears to be a brokerage investment account. Ms Meade is shown as one of the two "authorised individuals" for the account. Mr Vivanco said that Morgan Stanley would not have accepted Ms Meade as a signatory without proof of identity. While it was not very clear how Mr Vivanco got a copy of this letter, there is no suggestion that it was not genuine. This led Ms Schwartz to produce with her evidence in response a downloaded Morgan Stanley Investment Management application form, said to show that for personal holding companies the due diligence carried out by Morgan Stanley did not require photo identification for authorised signatories. However, on its face, that application form is clearly for a Mutual Funds account and it seems to be for US persons. I permitted Mr Vivanco to arrange for a colleague to contact Morgan Stanley during the course of the hearing to seek clarification, provided that all communications were copied to MWE. This elicited a response from Mr

Mauricio Quintero, a senior vice-president at Morgan Stanley Wealth Management in Miami, stating that the application for international customers is in another format and that:

“In order to sign into a personal or corporate account, a copy of the ID of the holder or the signer is required.”

Although I do not give this evidence particular weight, due to the unsatisfactory way in which it came out, I think it gives some support to the existence of Ms Meade.

113. Furthermore, Ms Meade’s affidavit was made and served at a time when Withers were acting for VGV UK. As I observed above, it seems clearly to have been drafted by the same source as Mr Vivanco’s affidavit of the same date, which was prepared by Withers. I find it astonishing if responsible English solicitors should prepare an affidavit to be sworn by a director of their client without speaking to that individual. Furthermore, it would be surprising if in 2019 Withers had taken on as a client a private company, involved in litigation about a BVI trust, without carrying out proper “know your client” procedures, which would include verification of the identity of the director giving instructions.
114. It is notable that the UK private company registrations for Ms Meade record her appointments as director of numerous companies prior to the death of Mr Schwartz. All the companies are registered at the 133 Higham Road address, but that is of course the service address apparently used by VGV. Ms Meade is shown as one of the team members on the VGV website, with her email address. Mr Weale acknowledged that, on his case, the alleged invention of Ms Meade was therefore not for the purpose of the present dispute but went much wider as part of Mr Vivanco’s conduct generally.
115. That would be a wholly exceptional strategy, involving widespread fraud and deception. While Mr Weale submitted that it is surprising that Mr Vivanco never sought to contact Ms Acosta earlier for verification of Ms Meade’s identity and left it so late to try to contact Ms Meade herself, that seems to me no different from Mr Vivanco’s general lack of response to the February Order. While it may at first sight seem very curious that neither are prepared to assist him, in my judgment, in light of my findings below regarding the 2nd Letter of Wishes, there is a cogent explanation why they might refuse to have any further involvement in these proceedings. In my view, therefore, this does not support the assertion that Ms Meade does not exist.
116. I emphasise that it is not necessary for me to make a finding that Ms Meade probably does exist. The burden of proof is on Ms Schwartz and, in light of all the considerations set out above, I am far from satisfied to the criminal standard that she does not exist.
117. In view of the nature of the allegations, I have deliberately not based this conclusion on Mr Vivanco’s detailed account of his four meetings with Ms Meade. I would only add that since Ms Meade became a director of VGV UK 1½ years before Mr Schwartz died, and Mr Schwartz was by all accounts an impressive and prudent businessman, I would regard it as surprising if he had never troubled to meet Ms Meade as one of only two directors of the company responsible for the Trust which, in effect, held a substantial part of his personal wealth.

118. Accordingly, I am not satisfied that it was possible for Mr Vivanco to comply with para 4(d) of the February Order. This contempt is therefore not made out.

Breach 6

119. It is alleged that Mr Vivanco failed to provide an electronic copy of either the “purported” Deed of Amendment or the “purported” 2nd Letter of Wishes by 4 March 2020 (or at all), or to provide three dates between 4 and 18 March 2020 on which the originals of those two documents could be made available for inspection at MWE’s London offices, in breach of para 6 of the February Order.
120. With his witness statement of 4 May 2020, Mr Vivanco exhibited copies of each of those two documents, and as I understand it both the witness statement and the exhibits were sent electronically. Mr Vivanco says in his witness statement of 14 May 2020 that he had not understood the wording “electronic copy” in para 6 of the February Order as referring to the latest digital file of each of the two documents until that was clarified at the first hearing on 4 May. However, in her 4th Affidavit of 5 April 2020 served in support of the original committal application, Ms Schwartz made clear at para 39.2 that an electronic copy was sought so that its metadata could be inspected. I also note that on 15 January 2020, MWE had written to Withers clearly making such requests, and on 21 January 2020 MWE sent Mr Vivanco a copy of that letter. Moreover, Mr Vivanco knew that Ms Schwartz already had a copy of the Deed of Amendment by the time of the February Order since it was exhibited to the Affidavit of Ms Meade, served on 13 January 2020, and as I understand it that exhibit was served electronically. By the time the order was made, Mr Vivanco also knew that the authenticity of these documents was being challenged. Although the wording of para 6 of the Order is not as clear as it might be, having regard to the principles set out above, in the circumstances I consider that it is to be interpreted as requiring digital copies.
121. On that basis, it is accepted by Mr Vivanco that he has not complied with these requirements. The question is whether he has a good reason for not doing so, such that compliance was not possible. In that regard, it is necessary to consider each of the requirements separately.

(a) Electronic copy of the 2nd Letter of Wishes

122. Mr Vivanco, in his witness statement of 14 May 2020, says that it was not possible to provide this since it was typed by Mr Schwartz’s secretary in his then office and she had not been able to gain access to the computer there due to the lockdown. He exhibits his email correspondence with Ms Nuñez to that effect.
123. This raises the question whether the 2nd Letter of Wishes was indeed typed by Mr Schwartz’s secretary in his office for review by Mr Vivanco and Mr Schwartz on 7 May 2019. As noted above, Ms Schwartz alleges that it was created by Mr Vivanco some time after her father died for the purpose of seeking to add Ms Garzon as a beneficiary of the Trust, and that it is therefore a forgery.
124. I have regard to the following documents and evidence:
- i) It was not in dispute that in one of their meetings in Quito in late June 2019, Mr Vivanco told Ms Schwartz about the Trust and its assets and gave her an

illustrative diagram. He sent her a further copy of the diagram attached to an email on 15 October 2019. That diagram expressly shows Ms Schwartz as the “Sole Beneficiary” of the Trust. Mr Vivanco’s explanation was that the chart was prepared before the Trust was amended. But the email does not indicate that it therefore needs qualification, as one would expect if that were the position.

- ii) As noted at para 36 above, on 27 September 2019, Ms Schwartz wrote to Mr Vivanco referring to Ms Garzon’s “attempts to claim rights over the assets of the trust, of which she is not a beneficiary”. That email continued:

“In light of the above, I believe that we must now act in unison to give effect to my father’s legacy and his wishes, as expressly worded in his letter of wishes. In order to do so, it is essential that all of the trust’s assets (held either directly or indirectly via a company or other entity) are properly secured and protected”

In his reply, Mr Vivanco did not suggest this was not correct or that the letter of wishes to which Ms Schwartz was referring had been replaced.

- iii) I referred above to Ms Schwartz approaching Ms Acosta at VGV to request a PoA from the trustee in order to pursue claims on behalf of the Trust in respect of the CNA Loans. Ms Schwartz wrote to Ms Acosta on 20 August 2019, introducing herself as the “only daughter of Jorge Benito Schwartz Rebinovich and sole beneficiary of the Consov Trust.” In her reply to Ms Schwartz, Ms Acosta did not suggest that she was under a misapprehension since Ms Garzon was also now a beneficiary. Given the link of VGV UK to VGV, it seems almost inconceivable that Ms Acosta would not have been aware of such a material change to the Trust.

- iv) On 12 July 2019, Mr Vivanco wrote to Ms Jeanne Perretty at Cable Network in the US about the CNA Loans. His email included the following statement:

“PEISA is 100% owned by a UK TRUST in which Gabriela Schwartz is the Sole Beneficiary.”

Similarly, in a letter dated 18 September 2019 sent to the lawyer in Miami acting for CNA, Mr Vivanco wrote:

“... on June 14, 2019, Mr Jorge Schwartz passed away. At that time, pursuant to the Declaration of Trust, his daughter, Ms Gabriela Schwartz, replaced Mr Jorge Schwartz as the sole beneficiary of the Consov Trust,”

When asked about these statements in evidence, Mr Vivanco said that he was referring there only to the beneficiary entitled to the benefit of the CNA Loans. Given what Mr Vivanco had actually written, I found that explanation incredible.

- v) Mr Vivanco said in his evidence that he told Ms Garzon about the 2nd Letter of Wishes and consequent amendment to the Trust when he met her on the morning of 28 June 2019 (before his meeting with Ms Schwartz and her partner). However, on 9 September 2019 Ms Garzon’s lawyers, Quevedo & Ponce, wrote to assert a matrimonial claim on behalf of their client to 50% of the TV Cable Shares. If Ms Garzon had been told that she was entitled to the entirety of those shares pursuant to an amendment to the Trust, I find it inexplicable that her lawyers should thereafter assert a claim to only half that shareholding, and on a more complex basis.
- vi) In his affidavit of 13 January 2020, Mr Vivanco went into some detail regarding the preparation of the 2nd Letter of Wishes by Mr Schwartz in his office in Quito on 7 June 2019. Mr Vivanco said:

“At the meeting on 7 May 2019, Mr Schwartz’s secretary printed the document and he [i.e. Mr Schwartz] signed it in two original copies. He kept one original document and gave me the other.”

Mr Vivanco’s witness statement of 14 May 2020 (by which stage he knew that the document was alleged to be forgery) was in similar terms:

“[Mr Schwartz’s] secretary, Veronica Nuñez..., had the draft on her computer, I reviewed the document and she printed it. Then I read the final draft of the letter of wishes to Mr Schwartz, he had no further comments and he signed the document in two original copies. I kept one copy and he kept the other.”

Following disclosure of the 2nd Letter of Wishes, Ms Schwartz in her 5th affidavit of 19 May 2020 put in evidence closely comparing her father’s signature on the 2nd Letter of Wishes with his signature on the original Letter of Wishes, seeking to show that it is so closely identical that it must have been ‘photo-shopped’. In his witness statement in response of 22 May 2020, Mr Vivanco said for the first time that he did not see Mr Schwartz sign the document and that it is simply his belief that he signed it that day. Then under cross-examination, he suggested that the signature was “most likely” an electronic signature. Mr Vivanco said:

“Mr Schwartz, in the last couple of years, had taken the habit of signing documents just electronically.”

While I cannot accept Ms Schwartz’s evidence regarding the signatures, since it amounts to expert opinion evidence that she is not qualified to give, I consider that Mr Vivanco was embellishing and changing his account of how this crucial document was produced.

125. I note in addition that the 2nd Letter of Wishes is a very curious document. It is difficult to discern a rationale for clause (V) to the effect that the Protector (i.e. Mr Vivanco) was expressly directed not to provide a copy to either Ms Schwartz or Ms Garzon “unless instructed by a judge or other competent authority.” That suggests to me a desire to preclude the possibility for independent scrutiny of the document as long as possible.

126. Taking all this into account, I am driven to the conclusion, beyond reasonable doubt, that the 2nd Letter of Wishes was not produced on 7 May 2019, but well after the death of Mr Schwartz. It follows that I also reject the evidence of Ms Nuñez regarding the production of this letter, and that as between the evidence of Mr Vivanco - that he told Ms Schwartz when they met in Quito about her father deciding to add Ms Garzon as a beneficiary under the Trust in respect of assets within Ecuador - and that of Ms Schwartz - that he said nothing of the sort - I accept Ms Schwartz's evidence and reject that of Mr Vivanco as untrue. If Mr Vivanco had told Ms Schwartz that Ms Garzon was now a beneficiary, it is such a fundamental point that I have no doubt Ms Schwartz would remember it.
127. It is not necessary to speculate on the possible motive for such conduct. However, I note that Ms Schwartz said that Mr Vivanco had pressed her to give up part of the assets she was receiving from her father in favour of his second wife, which she refused to do. That evidence was not challenged, and is reflected in Mr Vivanco's email to her of 29 September 2019 in response to Ms Schwartz's email of 27 September that I have quoted above:

“I'm open and willing of course to help you enforce your father's wishes. Notwithstanding, I have to be very honest and tell you that I disagree with the way you are handling things.”

That may perhaps indicate why Mr Vivanco subsequently took steps to achieve a different outcome.

128. Since the Deed of Amendment refers to and purports to implement the 2nd Letter of Wishes, it inevitably follows that I reject the evidence of Ms Parra and conclude that this document was also produced later and back-dated. That is consistent with the analysis by Kroll of the USB stick given by Mr Vivanco to Ms Schwartz in their meeting of 28 June 2019, which Kroll found, contrary to Mr Vivanco's assertion, never included the Deed of Amendment.
129. Accordingly, I reject Mr Vivanco's explanation as to why it is impossible for him to produce an electronic copy of the 2nd Letter of Wishes. The terms of para 6 of the February Order require him to produce such a copy “insofar as one is held”. Since I have found that his account of why he does not hold a copy is untrue, Mr Vivanco has failed to provide an evidential basis for suggesting that he may not hold a copy: see *Perkier Foods*. Indeed, I infer that he would be able to access a copy. This aspect of the contempt is therefore made out.

(b) Electronic copy of the Deed of Amendment

130. Although it follows from the above that the Deed of Amendment was produced sometime between the death of Mr Schwartz and 13 January 2020, that does not determine this aspect of the alleged breach. Mr Vivanco was required to produce an electronic copy of the “purported” Deed of Amendment, and such a document clearly exists. It is a document on VGV notepaper and although Mr Vivanco may have arranged for it to be produced by VGV, relying on the 2nd Letter of Wishes, that does mean that it was produced in his office.

131. Mr Vivanco's explanation for failing to produce a digital copy is that he never had one. Since it appears to have been prepared by VGV or VGV UK, the basis on which it is alleged Mr Vivanco could have produced it depends upon his control over VGV. I have held above that I am not persuaded that he exercised such control. Accordingly, I am not satisfied to the criminal standard that it was possible for him to produce a digital copy of this document. This aspect of the contempt is therefore not made out.

(c) Provision of dates when original copies of the 2nd Letter of Wishes and Deed of Amendment could be made available at MWE's offices in London

132. It is common ground that Mr Vivanco had these documents. They have not been made available to MWE. The issue is Mr Vivanco's explanation of why that was not possible.

133. Mr Vivanco asserts that he delivered the original documents to the custody of Public Notary 81st of Quito "to ensure their safety". He said in his witness statement of 14 May 2020 that the public notaries had only restricted operations (due to Coronavirus) and that he would be able to mail them to MWE once full services were restored.

134. However, Ms Schwartz contends that Mr Vivanco deposited these documents with the Public Notary only on 14 May 2020, the day he served his witness statement, specifically to avoid them being produced. If that were correct, far from being an excuse it would aggravate the breach of the Order. Mr Vivanco asserts that this is not correct: he states that he deposited them on 17 January 2020.

135. There was presented to the Court a series of exhibits containing notarial documents and extracts from Ecuadorian legislation with conflicting explanations as to how the references on the notarial documents should be interpreted. Neither side had applied for permission to adduce expert evidence of Ecuadorian law or procedure and there were no proper expert's reports. It should be sufficient to state that on the evidence I do not feel able to resolve, and certainly not beyond reasonable doubt, whether the documents were deposited on 17 January 2020, and thus before the February Order was made; or long afterwards, on 14 May 2020. It follows that this contempt is not made out.

136. At the end of his evidence, on 4 June 2020, Mr Vivanco said in answer to a question from the Court that the notarial offices had just resumed full services and that he could therefore retrieve the documents and make them available under an agreed arrangement for inspection. I suggested that the parties should consider and submit to the Court a proposed form of order specifying the arrangements for delivery and inspection.

137. However, the following day, MWE on behalf of Schwartz wrote to the Court stating that Mr Vivanco had deposited the original documents under a procedure which precluded him from recovering them, so that delivery of the original documents was now impossible. That was followed up, on Monday 8 June 2020, by an affirmation from Ms Robertson to the same effect, with a 49 page exhibit, including two detailed legal opinions in Spanish from Ecuadorian notaries, with English translations. This prompted Mr Vivanco to serve on 11 June 2020 a witness statement in response, stating that he can indeed recover the original documents, offering to courier them to MWE's offices if so ordered, and exhibiting a 10 page opinion from a former Ecuadorian judge (and the former Attorney General of Ecuador), in Spanish with English translation, apparently confirming that as the person who had deposited the documents, Mr Vivanco

could recover them. Two days later, Ms Schwartz made what was her seventh affidavit in these proceedings, stating that the translation of the Spanish opinion exhibited by Mr Vivanco was misleading and exhibiting what she said was the correct translation.

138. No permission had been sought to adduce this further evidence, submitted after the conclusion of the hearing of the evidence, or to allow expert evidence. None of the expert opinions comply with the requirements for expert evidence in CPR Part 35: see rule 35.10. I refused to admit any of this further evidence which, apart from anything else, would have required a further hearing with attendance of the experts for cross-examination.

CONCLUSION

139. For the reasons set out above, I therefore find that:

- i) VGV UK is in contempt:
 - a) for failure to comply with para 12 of the January Order, but only because the information was provided by letter and not by witness statement and failed to provide a value for the real estate asset held by the Trust; and
 - b) for failure to comply at all with paras 4 and 6 of the February Order.
- ii) Mr Vivanco is in contempt:
 - a) for failure to comply with para 4 of the February Order, but that this contempt was purged by his provision of the information by his witness statements (pursuant to my order of 4 May 2020) of 4 and 14 May 2020; and
 - b) for failure to comply with para 6(b) of the February Order.
- iii) the other allegations of contempt against Mr Vivanco, listed as breaches 4, 6(a) and (c), and 7 in the revised Committal Application, are dismissed.

140. Mr Weale made clear at the outset that if contempt was found, he was not seeking in this hearing a decision on sentence. That would be left over to a further hearing. I accordingly direct that Ms Schwartz's solicitors seek to liaise with Mr Colbey to a fix a hearing to determine sentence at the first available date next term.