



Neutral Citation Number: [2022] EWHC 1921 (Ch)

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

Claim No. PT-2018-000641

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

Date 21/7/2022

Before:

DEPUTY HIGH COURT JUDGE LANCE ASHWORTH QC

BETWEEN:

MR NICHOLAS PRINSE

Applicant/Claimant

-and-

(1) LANDMASTERS (OVERSEAS) LTD
(2) LANDMASTERS DEVELOPMENTS LTD
(3) MR GEORGE NICOLAIDIES
(4) MR CHRIS NICOLAIDES
(5) MR CHRISTOPHER TAKIS CHRISTOFOROU

Defendants

-and-

(6) LANDMASTERS DEVELOPMENT UK LIMITED

Non-Defendant Respondent

Richard Bowles (instructed by **ebl miller rosenfalck**) for the **Claimant**
The Fourth Defendant in person and representing the Sixth Defendant
No appearance by the First, Second, Third and Fifth Defendants

Hearing dates: 28th and 29th June, 2022

APPROVED JUDGMENT

I direct that no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.



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LANCE ASHWORTH QC

Covid-19 Protocol: This judgment was handed down by the judge remotely by circulation to the parties' representatives by email and release to the National Archives. The date and time for hand-down is deemed to be 10.30 am on 21 July 2022.

Introduction

1. This is the return date of an application dated 9 December 2021 made by Mr Nicholas Prinse (“**Mr Prinse**”), in a claim brought by way of a common law single derivative action on behalf of Landmasters (Overseas) Ltd, a company incorporated in accordance with the law of Cyprus (“**Overseas**”) and a common law double derivative action on behalf of Landmasters Developments Ltd, an English company (“**Landmasters**”) seeking among other relief proprietary and personal freezing orders against Landmasters Developments UK Ltd (“**LDUK**”), described as a “non-defendant respondent”.
2. It is also the substantive hearing of the application notice dated 29 March 2022 by Mr Prinse for among other relief continuation of the proprietary and freezing orders against LDUK made as set out below and in addition for a freezing order/proprietary order against the third and fourth Defendants who are his uncles, Mr George Nicolaides and Mr Chris Nicolaides.
3. The other relief sought in the application notice of 29 March 2022 is for (1) permission to lift the stay of proceedings only for the purposes of amending the claim and putting into effect and enforcing the other orders sought, (2) permission pursuant to CPR 19.9(4) to amend the claim and add a party to the claim, (3) permission to amend the claim form and particulars of claim in accordance with the draft which is attached to the application notice, (4) permission to add LDUK as a party to the claim, (5) permission to the extent that the same is necessary to rely upon the expert report produced by Forth’s forensic accountants dated 14 September 2021, (6) an interim order requiring LDUK to repay all sums transferred from the first and second defendants in breach of the order of Morgan J in August 2018 (7) the defendants to provide disclosure of specific classes of documents contained in the draft order.
4. On the application Mr Prinse has been represented by Richard Bowles of counsel, Overseas and Landmasters have taken no part, the third defendant Mr George Nicolaides has neither taken part nor been represented, the 4th defendant Mr Chris Nicolaides has appeared in person and also to represent LDUK of which he is a director, and the 5th defendant Mr Christoforou has taken no part.

Background

5. Overseas was incorporated on 16 September 1982. 85% of the shares were owned by Mr Prinse's grandfather, Costas Nicolaides ("**Costas**"). 5% of the shares were owned by the Claimant's mother and 5% by each of Mr George Nicolaides and Mr Chris Nicolaides.
6. Overseas owns the freehold of 39 Camden Mews, London, NW1 9BY ("**Camden Mews**"). That property is rented out on an Assured Shorthold tenancy. Overseas also owns 90% of the shares in Landmasters, a company incorporated on 6 April 1982 in England and Wales. The remaining 10% of the shares are owned by Mr George Nicolaides and Mr Chris Nicolaides. The current directors of Overseas are Mr Prinse, Mr George Nicolaides and Mr Chris Nicolaides.
7. Landmasters owns the long leasehold interest of 65 Inverness Terrace, London, W2 3JT ("**Inverness Terrace**"). This is an investment property comprised of 13 flats. The current directors of this company are Mr George Nicolaides and Mr Chris Nicolaides. Mr Prinse is not and never has been a director of this company.
8. On 5 July 2018 Costas transferred his shares in Overseas to Mr Prinse. That transfer of shares has been registered in Cyprus, so that Mr Prinse is now the registered holder of 85% of the shares in the Cypriot company. The circumstances in which this transfer took place are hotly disputed as between Mr Prinse and his two uncles. The two uncles say that it had always been the intention of their father, Costas, that his shares should be split three ways namely between the two of them and their sister, who is Mr Prinse's mother. There is some evidence in the bundles before me to support this position. I have been supplied with a lot of evidence setting out the two sides' contentions as to the relationships and living circumstances of Costas and his relatives. It is not necessary for me to decide any of these matters, but it is clear from the evidence (and indeed from observing Mr Prinse and his mother's reaction to Mr Chris Nicolaides in court) that there is a great deal of animosity between the parties.
9. It appears that three sets of proceedings have been commenced in Cyprus. There was a claim brought in August 2018 by Mr Prinse and Costas against the defendants alleging breach of duty by Mr George Nicolaides, Mr Chris Nicolaides and Mr Christoforou in their capacity as directors of Overseas and/or Landmasters. There was a claim brought by Mr

George Nicolaides and Mr Chris Nicolaides against Mr Prinse and Overseas seeking annulment of the transfer of shares to Mr Prinse. Costas was also party to those proceedings when they were commenced in the summer of 2018 shortly after the disputed transfer. Sadly Costas has since died. There was also a claim brought by Mr Chris Nicolaides and Mr George Nicolaides seeking a medical examination of Costas. I have not seen the full complaints made in those proceedings, but I am told they include claims that Costas lacked capacity to transfer his shares. They may also include claims of undue influence and possibly duress.

10. Meanwhile on 17 August 2018, Mr Prinse sought and obtained an interim order from Zacoroli J in this jurisdiction restraining his uncles from disposing of or encumbering either Camden Mews or Inverness Terrace, it being asserted that any such action would be a breach of their duties as directors causing loss to Overseas and to Landmasters. That order was subsequently varied by a further order of 20 August 2018 of Fancourt J. The current proceedings were started by claim form dated 21 August 2018. In the claim form it was asserted that the claim comprised two derivative claims, being a claim on behalf of Overseas brought under the laws of Cyprus and a claim on behalf of Landmasters brought under chapter 1 of part 11 of the Companies Act 2006.
11. The matter came before Morgan J on 31 August 2018 on the application to continue the interim relief granted at the without notice hearing. The parties entered into a consent order running to 5 pages, which recorded that the parties had agreed terms of continuation pending the resolution of the proceedings before the Cyprus courts. That included a requirement that Mr Prinse must withdraw his request dated 23 August 2018 for an extraordinary general meeting of Overseas. Also that he must withdraw his application for interim relief within the Cyprus proceedings which he had brought against his uncles and that they withdraw their application for interim relief against him in the action that they had brought in Cyprus.
12. The consent order included provisions as to the running of the companies and what Mr George Nicolaides and Mr Chris Nicolaides were permitted to do and/or prohibited from doing. The defendants were required on receipt of rent paid in connection with the occupation of Camden Mews to pay it into a bank account maintained by Overseas as soon as reasonably practicable. Similar provision was made in respect of rent paid in connection

with the occupation of Inverness Terrace, that having to be paid into a bank account maintained by Landmasters as soon as reasonably practicable. Among the prohibitions, there was a bar on any transfer or assignment of any property of the two companies to any of Mr Prinse, Mr George Nicolaides and Mr Chris Nicolaides, to any company or other entity owned in whole or in part by the same people, and to any company or other entity controlled either alone or with others by these people. However there was an express carve out to permit transfers between the two companies if necessary or desirable in their interests. Mr George Nicolaides and Mr Chris Nicolaides were not to take any step to remove Mr Prinse as director of Overseas and he was not to take any step to remove them as directors of Overseas. The order then provided that all further proceedings in the claim be stayed except for the purposes of enforcing the terms of that order and for that purpose the parties had permission to apply without the need for fresh proceedings.

13. In the Cyprus proceedings, Mr George Nicolaides and Mr Chris Nicolaides obtained an interim injunction on 3 October 2018 preventing the calling of a general meeting which had been requested on 13 September 2018 and/or any other general meeting of the shareholders of Overseas until after the final determination of their application. Subsequently that order was extended until after trial of the Cyprus action seeking to set aside the transfer of shares from Costas to Mr Prinse.
14. The effect of the English consent order and the order of the court in Cyprus is that while Mr Prinse is the registered majority shareholder, holding 85% of the shares in Overseas, until the Cyprus proceedings are concluded, he cannot remove the other directors of that company, rather he remains as a minority director being just one of three. He likewise cannot gain control of the board of Landmasters because Mr George Nicolaides and Mr Chris Nicolaides cannot be removed as directors of that company given that Overseas is the majority shareholder and is under the control of Mr George Nicolaides and Mr Chris Nicolaides.
15. Things appeared to run relatively smoothly for a while but on 8 April 2019 Mr Prinse made a further application for the return of a sum of £25,000 said to have been paid out in breach of the order of Morgan J. Mr George Nicolaides and Mr Chris Nicolaides made a cross application on 19 July 2019 seeking to rectify or vary the terms of the Morgan J order, effectively to permit this payment to have been made, they having understood the order of

Morgan J to refer to real property, not to money. Those applications came before Murray Rosen QC on 31 July 2019, on which occasion a further consent order was made, adjourning the applications for a longer hearing, but varying the Morgan J order as to the running of the companies. Those variations provided for the appointment of an independent property management company to conduct the property management business and affairs of the two companies. The companies were to procure that the property management company would agree to the provision of quarterly management accounts and would pay the balance of rent received after deduction of expenses to UK bank accounts, to be set up by Landmasters, one for the benefit of Overseas and one for the benefit of Landmasters.

16. The full hearing of those applications came on before His Honour Judge Hodge QC on 23 January 2020. Mr Prinse was represented by Mr Bowles, the first to fifth defendants were represented by Mr Rupert Butler of counsel. The judge required Mr Prinse to file evidence explaining how he obtained copies of the bank statements of a company called Luxury Collections UK Limited (“LCL”), which was owned by Mr George Nicolaides and Mr Chris Nicolaides and which Mr Prinse had used to seek to establish a breach of the Morgan J order. He further ordered Mr George Nicolaides and Mr Chris Nicolaides to pay £25,000 to Landmasters by 20 February 2020, he having been satisfied that the order of Morgan J had been breached by virtue of the making of a payment in that sum to LCL. He went on to vary further the order of Morgan J by replacing paragraph (2) of that order with new provisions as to the operation of the companies pending determination of the Cyprus proceedings.

17. The matter came back once more before the court on 14 July 2020 before Nugee J. By this time, Mr George Nicolaides and Mr Chris Nicolaides had not repaid the £25,000 which had been paid by Landmasters to LCL as they had been ordered to by His Honour Judge Hodge QC. The parties were represented as before, and the matter was again settled by consent. The consent order required Mr George Nicolaides and Mr Chris Nicolaides to use their best endeavours to procure that Landmasters should open 2 UK bank accounts with reputable High Street banks, one for the benefit of Overseas for receiving rental income from Camden Mews and one for the benefit of Landmasters for receiving rental income from Inverness Terrace, with Mr Prinse being entitled to receive monthly statements in respect of the bank account for Overseas. Having opened the bank accounts, Mr George Nicolaides and Mr

Chris Nicolaides were to procure payment of the sum of £25,000 to Landmasters' bank account. In the event that they were not able to open the bank accounts, Mr George Nicolaides and Mr Chris Nicolaides were to pay the sum of £25,000 pounds into court until such time as the bank account for Landmasters had been opened. Further provisions were made as to the appointment of property management agents for Inverness Terrace. As I will address below, UK High Street bank accounts were not opened and the £25,000 was paid into court on 5 August 2020.

The New Claim

18. Again matters appeared to go relatively quiet until Mr Prinse issued his application dated 9 December 2021 in which he sought to add LDUK (which had been incorporated on 21 May 2019) as a party to the claim and sought proprietary and freezing orders against it and Mr George Nicolaides and Mr Chris Nicolaides. It was recognised in that application notice that the stay imposed by Morgan J would need to be lifted for that application to be dealt with.

19. The basis for the application for the proprietary and freezing orders was that Mr George Nicolaides and Mr Chris Nicolaides breached their fiduciary duties as directors of Overseas and their statutory duties under the Companies Act 2006 as directors of Landmasters in that they had:
 - (a) procured rental sums due to Landmasters in the period to June 2019 to be paid to an unknown third party bank account, rather than to any account maintained on behalf of Landmasters;

 - (b) procured that the sum of £8,016.66 which had been held in Landmasters' bank account to be paid to an unknown bank account when Landmasters' account was closed in May 2019;

 - (c) procured rental profits in the sum of at least £172,500 from June 2019 to August 2021 in respect of Inverness Terrace to be paid to LDUK rather than Landmasters;

- (d) procured Landmasters to make payments of £96,658 to LCL, not for renovations as alleged by Mr George Nicolaides and Mr Chris Nicolaides and there was no other explanation for such payment;
 - (e) procured payment of £12,242.50 in respect of rental for Camden Mews to be paid to LDUK rather than to Overseas;
 - (f) made provision for the payment of a further £137,292 in respect of supposed renovation costs, but which are not, but are rather a diversion of Landmasters' funds.
20. There is also a claim based on knowing receipt by Mr Chris Nicolaides and LDUK, including of some £28,000 which it is claimed that Mr Chris Nicolaides has received from Overseas by means of payments made to his mother, Maria Nicolaides, which she has then passed on to him.
21. This new claim is founded on an accountant's report dated 14 September 2021 prepared by Mr Anthony Flint of Forths Forensic Accountants which Mr Prinse exhibited to his affidavit. Mr Flint had analysed documentation which had been made available to him, mainly in the form of financial statements of Landmasters and LCL, some personal bank statements of Mr Chris Nicolaides, some bank statements of Landmasters, some bank statements of LCL, some bank statements of LDUK, various invoices and other documents relating to the properties and some bank statements of Maria Nicolaides, Costa's wife and Mr Prinse's grandmother. From these documents he made various assumptions reaching conclusions as to under reported rental income in respect of Inverness Terrace, what he classified as diverted rental profit in respect of each of Inverness Terrace and Camden Mews, what he described as alleged renovation costs and alleged management charges. Based on the information that he had been provided with, he set out at paragraph 7.4 of his report maximum potential losses which he said totalled £617,339 before credit was given for the actual value of renovation works.
22. In paragraph 3.17 of his report Mr Flint says "It should be noted that in order to fully consider Mr Prinse's contention that the rental income included in [Landmasters'] accounts has been deliberately understated, I would require copies of the missing bank statements referred to at paragraph 3.5 above, as well as copies of the companies' accountants working

papers, detailing how the rental income included in the accounts have been calculated ... I would also require copies of the rental agreements relating to each of the flats being let, and details of the reasons for any expedited periods of vacancy (with supporting documentation, such as correspondence with rental agents, details of renovations undertaken et cetera).” This is an entirely proper and, in my judgment, substantial qualification to his conclusions.

23. In Mr Prinse's affidavit in support, he set out his belief that there was a continued and serious risk of the further dissipation of the company's assets, relying on the transfer of the £25,000 following the making of the order of Morgan J in August 2018, the failure to repay that sum without requiring 2 court orders, the prima facie case he said was established by the accountant's report that Mr George Nicolaides and Mr Chris Nicolaides were willing to divert significant sums from Overseas and Landmasters, payments to Maria Nicolaides which he said was a means of getting round the prohibition in the court orders on payments being made directly to Mr Chris Nicolaides, the fact that LDUK is under the control of Mr George Nicolaides and Mr Chris Nicolaides and has paid out substantial sums which he asserts had not properly been accounted for as well as an assertion that Mr George Nicolaides and Mr Chris Nicolaides had repeatedly shown a commercially moral standard significantly below that which a director needs to show relying on the compulsory winding up of LCL on 13 October 2021.

24. Nowhere in that affidavit did Mr Prinse explain why it had taken almost 3 months from 14 September 2021 until 9 December 2021 to bring his application for freezing orders, nor did he set out what, if any, steps had been taken to ask for the information which Mr Flint had identified he was missing, although I was told in argument that there had been a lot of correspondence on this topic. As far as I can tell these points were not addressed, by way of full and frank disclosure or otherwise, before the Deputy High Court Judges who made and continued the orders as set out below. It is surprising if Mr Prinse was contending that there was ongoing misbehaviour on the part of Mr George Nicolaides and Mr Chris Nicolaides and a real risk of dissipation, that there should have been a 3-month unexplained delay.

25. I understand that on 9 December 2021 Meade J adjourned the application, although I have not seen an order of that date.

26. That application came on without notice to Mr Chris Nicolaides, Mr George Nicolaides or LDUK before Mr Richard Farnhill sitting as a Deputy High Court Judge on 13 January 2022. I have seen Counsel’s note of his judgment. Mr Farnhill refused to make the case management and disclosure orders sought because the application for those had not been served on the defendants. He considered the application for freezing relief, refusing to grant any relief in respect of the derivative claim by Overseas as he had no evidence that derivative claims could be brought in Cyprus. However, in respect of monies said to relate to Inverness Terrace and therefore due to Landmasters, he did make an interim proprietary order against LDUK in the sum of £59,256.32 and interim freezing orders against each of Mr Chris Nicolaides and Mr George Nicolaides in the sum of £328,580.37 and in the amount of £125,485.87 against LDUK, holding that there were issues which required explanation and that there was a risk of dissipation. He directed there should be a further hearing on 27 January 2022. The order contained the standard provision of information requirements.
27. On the return date, the matter came before Jonathan Hilliard QC sitting as a Deputy High Court Judge. Mr Prinse had been unable to effect personal service of the freezing order on Mr George Nicolaides. Mr Prinse, Mr Chris Nicolaides and LDUK had agreed to vary the freezing order including to provide for a return date on the first available date after 25 February 2022. The order of Mr Hilliard QC recited the agreements that had been reached as to living expenses and payments out of the LDUK account, which, as I will set out in further detail below, had been used for the running of Inverness Terrace. The freezing order granted by Mr Farnhill was to remain in place until the following hearing. The order also provided for service out of the jurisdiction and by alternative means, namely via e-mail, on Mr George Nicolaides. By paragraph 9 of the order the Deputy Judge “to the extent that it was necessary” lifted the stay of proceedings ordered by Morgan J on 30 August 2018 but only to the limited extent required for the applications before Mr Hilliard QC.
28. The matter came back before the court once more on 1 March 2022, this time before Andrew Hochhauser QC sitting as a Deputy High Court Judge. He noted that Mr Chris Nicolaides had not been able to access funds to take legal advice or to arrange representation. He adjourned the matter reserving it to himself to be heard on 3 March 2022 with a time estimate of two days, maintaining the injunctions in the meantime. The

reason for the inability to access funds appears to have been due to a lack of cooperation from Mr Prinse's solicitors.

29. On 3 March 2022 when the matter came back before Mr Hochhauser QC, he noted that despite the adjournment, Mr Chris Nicolaides had still not been provided with access to funds to take legal advice or to arrange representation nor had he been able to access funds to pay his ordinary living expenses. He adjourned the matter to be heard over two days on 10 and 11 March 2022, continuing the order of Mr Hilliard QC save insofar as it related to Mr Chris Nicolaides. Insofar as it related to Mr Chris Nicolaides, the order of Mr Hilliard QC was discharged forthwith. The order expressly recorded that that was without prejudice to Mr Prinse to renew his application against Mr Chris Nicolaides on the return date. I have not been provided with a note of any reasons given, but I am informed and understand that this was because of Mr Hochhauser QC's concern that the failure to obtain access to funds was due to the actions of Mr Prinse's solicitors. He directed that Mr Chris Nicolaides' costs should be paid by Mr Prinse and also directed there be an inquiry as to damages consequent on the discharge of the freezing order. Mr Hochhauser QC also made provision for monies held in the account of Search & Co on behalf of Landmasters to be kept in that account save that they could be used to make payments of the reasonable costs and expenses in relation to Inverness Terrace which were then listed.

30. The matter came back once more to court on 10 March 2022 before Murray Rosen QC sitting as a Deputy High Court Judge. On that occasion Mr Watson-Gandy appeared for Mr Prinse, but there was no attendance by any of the defendants, Mr Chris Nicolaides having reported he was unwell with COVID and that he had not obtained access to funds. Mr George Nicolaides had not engaged in the application. Both Mr Prinse and Mr Chris Nicolaides sought an adjournment. Mr Rosen QC adjourned the applications before him to the first open date after 28 March 2022 with a time estimate of two days. He directed that the freezing order be continued against LDUK only, discharging it as against Mr George Nicolaides, again without prejudice to any application by Mr Prinse to renew the application for freezing orders against Mr George Nicolaides and/or Mr Chris Nicolaides on prior written notice at the next return date. He continued the injunction in respect of the monies held by Search & Co, stating that nothing should prevent Search & Co from dealing with the funds of any other client.

31. On 24 March 2022, having had the benefit of some legal advice, Mr Chris Nicolaides submitted a document setting out his position on the procedural aspects of the derivative claims. He pointed out that Mr Prinse needed permission of the court to continue the derivative claims and he had not yet obtained that permission. He said that Mr Prinse should therefore be required to make applications now to continue the claims.
32. It is against that background that the application notice dated 29 March 2022 was issued. While the application notice does not expressly refer to permission to continue the derivative claims it does refer, as set out above, to CPR 19.9(4) and I take this as the application to continue the derivative claims, albeit that application is almost certainly not in the correct form. Mr Bowles confirmed to me that he was seeking that permission from me.
33. On 13 April 2022, Falk J made an order stated to be by consent upon Mr Prinse's application dated 8 April 2022. This was an order made to clarify paragraph 3 of the order of Mr Hochhauser QC of 3 March 2022, there having been some difficulty or confusion caused as to the operation of the Search & Co bank account. I will revert to this in due course because of the complaints made by Mr Chris Nicolaides about this order.
34. To complete the procedural matters, there was an application heard by Master Dray on 1 June 2022 made without notice to Mr George Nicolaides seeking permission to serve out of the jurisdiction the application notice dated 29 March and various other documents in the claim by e-mail on Mr George Nicolaides. The application was granted.

The Hearing before me

35. Accordingly, the position before me was that there was in place an interim proprietary order against LDUK, an intended defendant, in the sum of £59,256.32 and an interim freezing order in the amount of £125,485.87 against LDUK, each of these being in respect of sums which Mr Prinse asserts, on the basis of Mr Flint's first report were sums which should have been paid to Landmasters. There were no injunctions in respect of any money which it is asserted should have been paid to Overseas, and no injunctions against either Mr George Nicolaides or Mr Chris Nicolaides.

36. Mr Bowles submitted a detailed skeleton argument in advance of this hearing and I also received an updated note from Mr Chris Nicolaides in relation to double derivative claims. There was no engagement by Mr George Nicolaides, but I am satisfied from the documents before me that he had been served in accordance with the order of Master Dray.
37. In his skeleton argument Mr Bowles helpfully provided a reading list all of which documents I have read. I received detailed submissions from Mr Bowles and from Mr Chris Nicolaides over the course of 2 days. Mr Bowles addressed the various relief sought in the application in his skeleton, starting with the application to lift the stay and then moving on to the interim proprietary and freezing relief sought, the application to amend the Claim Form, the Particulars of Claim and to join Landmasters and then the Disclosure application. It was within the section dealing with the interim relief sought that he dealt with derivative actions.
38. In my judgment, it is more appropriate to deal with the derivative claim issues separately from the interim proprietary and freezing relief sought, because if the Court does not grant permission to continue the claims, no question of interim relief arises as the claims will fall to be dismissed. It also makes sense to deal with the application to amend before the application for interim relief, as the application for interim relief is based on the amended claim.

Application to Lift the Stay

39. The stay was imposed by Morgan J, because at that time the Cyprus courts were seized with the issue as to the validity of the transfer of the shares by Costas to Mr Prinse. All that was required from the English Court at that time was injunctive relief to prevent Mr George Nicolaides and Mr Chris Nicolaides granting charges over or otherwise encumbering the 2 properties. As this was an urgent application for interim relief, it was permitted under CPR 19.9(4). No further step could be taken without obtaining the Court's permission.
40. The stay was lifted on a temporary basis by Mr Hilliard QC, it being recognised that the further relief being sought in the 9 December 2021 application went beyond enforcement of the Morgan J order. He reimposed it at the end of that hearing.

41. Mr Bowles relies on the power in CPR 3.1(7) to lift the stay, namely the power to revoke or vary the order of Morgan J. He referred me to the decision of *Tibbles v. SIG Plc* [2012] EWCA Civ 518 and says that there has been a material change of circumstances since the order was made. He submits that matters have moved on since the position as it was before Morgan J, in that now it has become clear that Mr Prinse has substantial claims which are for monetary remedies.

42. In my judgment, there has been a material change in circumstances in light of the relief which is now sought in this jurisdiction compared to what was sought in August 2018. It would be in accordance with the overriding objective to lift the stay for the purposes of these applications being heard and, if appropriate, granting the relief sought. No application is made to vary or revoke any other part of the orders of Morgan J or His Honour Judge Hodge QC.

Permission to continue the Derivative Actions

43. This is by my reckoning the 15th occasion that this matter has been before the court. Prior to this hearing there has been no application for permission to continue the derivative claim in respect of Overseas or the double derivative claim in respect of Landmasters. Mr Prinse now seeks that permission.

44. The claim in respect of the Camden Mews property is a common law derivative action brought under Cyprus law on behalf of Overseas. I have been provided with evidence from Mr Rodda of Mr Prinse's solicitors in the form of a "Statement on Derivative Claim" from Andreas I. Karydes & Co LLC Advocates, who are Mr Prinse's lawyers in Cyprus. They state that a derivative action is available when, among other things, there has been a fraud on the company and the wrongdoers are in a position to stifle any attempt to institute proceedings on behalf of the company either by being majority shareholders or majority directors and reference is made to a Cypriot case *Pirillis v. Kouis* Civil Appeal Np. 1387 31.01.2004. The case itself was not put before me.

45. Mr Bowles also relied on an article by N. Pirilides & Associates on Derivative Actions dated 14 April 2020, which I was told Mr Hochhauser QC had brought to his attention in one of the hearings that took place before him. That article refers to the English law on

this topic, including the 2-stage process which requires the permission of the Court to proceed with such a claim. It says that:

“The same approach has been followed by the Supreme Court of Cyprus in *Theodoros Pirillis v. Eleftherios Kouis* (2004) 1 CLR 136 and subsequently in *Yiannis G. Mammous and others v Willstrop and others* (2012) 1 CLR 90. Under Cyprus law, the derivative action is not simply another form of litigation but a unique procedural and equitable mechanism governed by well-established common law principles and **provides minority shareholders** with the opportunity to enforce the company's rights in cases where a wrong has been committed against the company which amounts to fraud on the minority and the wrongdoers themselves control the company's affairs.” (emphasis added)

46. It is said in the “Statement on Derivative Claim” from Andreas I. Karydes & Co LLC Advocates, that as a matter of Cypriot law, Mr George Nicolaides and Mr Chris Nicolaides owe duties to Overseas to exercise their powers in good faith and to promote the interests of the company, and not to prioritise their personal interests over the interests of the company. In *Neocleous’s Introduction to Cyprus Law* (2010), at paragraph 11.39ff, there is a discussion of director’s fiduciary duties which closely matches the position under the English common law.

47. Mr Prinse has not placed before me independent expert evidence as to Cypriot law. For the purposes of the application for permission to continue the derivative action it is not, in my judgment, necessary to do so. It is clear to me that the Cyprus courts apply the common law still and I shall apply that to this application. I note, in passing, the recent decision of Calver J in *Suppipat v. Narongdej* [2022] EWHC 1806 (Comm) in which he applied the new provisions of the Commercial Guide to determine that even at trial, it is not necessary always to adduce expert evidence of foreign law, where the foreign law has its origins in the English common law system. If it is not necessary at trial, it would be strange if it were necessary on an application such as this.

48. The claim in respect of the Inverness Terrace property is a double derivative action brought under English law on behalf of Landmasters. In *Universal Project Management Services Ltd. v. Fort Gillicker Ltd* [2013] Ch 551, Briggs J (as he then was) held that the English common law recognised a double or multiple derivative claim and that it had survived the coming into force of the Companies Act 2006. The Court of Appeal in *Boston Trust Co. Ltd v. Verhoef* [2022] BCC1 confirmed that the circumstances in which such double and

multiple derivative claims may be brought are governed by the common law rules, known as the exceptions to the rule in *Foss v. Harbottle* (1843) 2 Hare 461.

49. It follows, in my judgment, that both the derivative claims are to be considered on the basis of the common law. In *Boston Trust Co. Ltd v. Verhoef* (supra), David Richards LJ noted (at [16]) that until relatively recently there had been no requirement for a claimant to apply for permission to continue a derivative claim, rather the practice was for defendants to apply to strike out the claim if they considered it did not fall within the exceptions to the rule in *Foss v. Harbottle*. That ceased to be the practice with effect from 2 May 2000 when CPR 19 was amended to bring in the requirement to seek permission to continue such a claim (at which point, the requirement undoubtedly applied to the usual simple derivative claim). However, he went on to say that the requirement to seek permission for a double derivative claim does not arise, strictly speaking from CPR 19.9. Nonetheless (at [20]) he said that it was the settled practice of the court to require permission to be obtained for double and multiple derivative claims and that the Court was entitled and right to impose this requirement and to apply by analogy the practice in CPR 19.9. I therefore apply that approach to the double derivative claim in respect of Landmasters. I apply the same approach to the common law claim in respect of Overseas, as that would appear to be a matter of procedure governed by the *lex fori*. But even if it is viewed as a matter of Cyprus law, given the contents of the article by N. Piriides & Associates, which includes that the 2-stage approach is followed in Cyprus, the same approach would be applied by its courts to the common law claim in respect of Overseas.

50. In his submissions on the procedural aspects of the derivative claims (and in the updated version) Mr Chris Nicolaides submitted that it is not open to Mr Prinse to bring these claims as he is not a minority shareholder in Overseas, rather he is the registered holder of 85% of the shares, that is to say that he is the majority shareholder. Accordingly, the first issue to decide is whether a majority shareholder can bring a derivative action.

51. In *Prudential Assurance Co. Ltd. v. Newman Industries (No. 2)* [1982] Ch 204 the Court of Appeal stated (at page 210D-211B):

“A derivative action is an exception to the elementary principle that A cannot, as a general rule, bring an action against B to recover damages or secure other relief on behalf of C for an injury done by B to C. C is the proper plaintiff because C is the party injured, and, therefore, the person in whom the cause of action is vested. This

is sometimes referred to as the rule in *Foss v. Harbottle* (1843) 2 Hare 461 when applied to corporations, but it has a wider scope and is fundamental to any rational system of jurisprudence. The rule in *Foss v. Harbottle* also embraces a related principle, that an individual shareholder cannot bring an action in the courts to complain of an irregularity (as distinct from an illegality) in the conduct of the company's internal affairs if the irregularity is one which can be cured by a vote of the company in general meeting. We are not concerned with this aspect of the rule.

The classic definition of the rule in *Foss v. Harbottle* is stated in the judgment of Jenkins L.J. in *Edwards v. Halliwell* [1950] 2 All E.R. 1064 as follows. (1) The proper plaintiff in an action in respect of a wrong alleged to be done to a corporation is, prima facie, the corporation. (2) Where the alleged wrong is a transaction which might be made binding on the corporation and on all its members by a simple majority of the members, no individual member of the corporation is allowed to maintain an action in respect of that matter because, if the majority confirms the transaction, cadit quaestio; or, if the majority challenges the transaction, there is no valid reason why the company should not sue. (3) There is no room for the operation of the rule if the alleged wrong is ultra vires the corporation, because the majority of members cannot confirm the transaction. (4) There is also no room for the operation of the rule if the transaction complained of could be validly done or sanctioned only by a special resolution or the like, because a simple majority cannot confirm a transaction which requires the concurrence of a greater majority. (5) **There is an exception to the rule where what has been done amounts to fraud and the wrongdoers are themselves in control of the company. In this case the rule is relaxed in favour of the aggrieved minority, who are allowed to bring a minority shareholders' action on behalf of themselves and all others. The reason for this is that, if they were denied that right, their grievance could never reach the court because the wrongdoers themselves, being in control, would not allow the company to sue.**" (emphasis added)

52. The part emphasised above talks about an "aggrieved minority" being allowed to "bring a minority shareholders' action". The question is whether the exception referred to is only available to a minority or whether the reference to an aggrieved minority was only illustrative of a situation where the exception could apply, namely where there is wrongdoer control.

53. In *Barrett v. Duckett* [1995] BCC 362, the derivative claim was brought by a 50% shareholder. At first instance, Sir Mervyn Davies had refused to strike out the action, holding that even though the plaintiff was a 50% shareholder he was able to bring a derivative action. The Court of Appeal struck out the claim on the basis that it has been brought for an ulterior purpose. At page 367F-H, Peter Gibson LJ set out the general principles governing actions in respect of wrongs done to a company or irregularities in the conduct of its affairs (which he noted were not in dispute) as follows:

- “(1) The proper plaintiff is prima facie the company.
 (2) Where the wrong or irregularity might be made binding on the company by a simple majority of its members, no individual shareholder is allowed to maintain an action in respect of that matter.
 (3) **There are however recognised exceptions, one of which is where the wrongdoer has control which is or would be exercised to prevent a proper action being brought against the wrongdoer: in such a case the shareholder may bring a derivative action (his rights being derived from the company) on behalf of the company.**
 (4) When a challenge is made to the right claimed by a shareholder to bring a derivative action on behalf of the company, it is the duty of the court to decide as a preliminary issue the question whether or not the plaintiff should be allowed to sue in that capacity.
 (5) In taking that decision it is not enough for the court to say that there is no plain and obvious case for striking out; it is for the shareholder to establish to the satisfaction of the court that he should be allowed to sue on behalf of the company.
 (6) **The shareholder will be allowed to sue on behalf of the company if he is bringing the action bona fide for the benefit of the company for wrongs to the company for which no other remedy is available.** Conversely if the action is brought for an ulterior purpose or if another adequate remedy is available, the court will not allow the derivative action to proceed.” (emphasis added)

54. There was no express reference in paragraph (3) to the shareholder having to be a minority shareholder. In paragraph (6) the Court emphasised that the purpose of this exception is to allow a claim to be brought for wrongs to the company for which no other remedy is available. This might well be the situation where there was a 50/50 split in shareholding.

55. Mr Bowles also placed reliance on the decision of Morgan J in *Bhullar v. Bhullar* [2016] BCC 134, in particular on paragraph [33]. Mr Chris Nicolaides also referred to this in his document on the derivative claims, citing paragraph [37]. This was a successful application by a minority shareholder for permission to continue a double derivative claim. In the course of his judgment, Morgan J said:

“Is there a prima facie case that the claim falls within the exception to the rule in *Foss v Harbottle*?

32. The rule in *Foss v. Harbottle* is, so far as relevant, that the right to sue a director for a breach of his duty owed to the company is a right which is vested in the company and which cannot normally be pursued by a shareholder of the company. **The relevant exception to the rule is that a shareholder will be allowed to bring such a claim, by way of a derivative action, where there is a “fraud on the minority”.**

33. If the wrongdoing amounts to actual fraud, then there is clearly “fraud” for the purposes of the exception. If the wrongdoing does not involve actual fraud but

consists of a breach of fiduciary duty or negligence, then it must be shown that there is a prima facie case that there was a benefit or profit for the wrongdoer.

...

37. I next consider the contentions as to whether this is a case of wrongdoer control. Currently, the directors of BBL, BDL and BL are Jat and Rajinder. As one of two directors, Jat has negative control of the boards of all three companies as he can prevent there being a majority on any resolution of the board as to whether BBL or BDL should sue Jat. Jat has 41 per cent of the shares in BL and so does not by himself have control of BL in general meeting. However, Jat and Rajinder have 78 per cent of the shares in BL, whereas Inder has only the remaining 22 per cent of those shares. Between them Jat and Rajinder can block any resolution of the shareholders of BL to authorise BBL and BDL to sue Jat. Mr Chaisty submits that Inder has not shown the necessary wrongdoer control in this case because he does not allege that Rajinder is a wrongdoer. I do not agree. It is true that Inder has not joined his mother as a defendant and he does not wish to do so. However, the substance of his allegation against Jat implicates Rajinder in the alleged wrongdoing. I consider that enables Inder to show a prima facie case of wrongdoer control exercised by Jat and Rajinder.”

56. Again, there is reference to a “fraud on the minority” and in paragraph [37] Morgan J considered the question of wrongdoer control by reference to who held the shares in the company, concluding that the wrongdoers held the majority.

57. In the course of argument, I drew Mr Bowles’ attention to 2 decisions of Roth J which I thought were or might be relevant, namely *Cinematic Finance v. Ryder* [2012] BCC 797 and *Bamford v. Harvey* [2013 Bus LR 589; [2012] EWHC 2858 (Ch). Each case dealt with an application to continue a derivative claim under the Companies Act 2006.

58. In the *Cinematic Finance* case, the claimant was the controlling shareholder of the companies, which it asserted were insolvent. When the claimant took control of the companies, the directors resigned and the claimant did not appoint replacement directors, despite having the power to do so. This was not a case where the claimant was a minority shareholder and the companies for which it sought to bring a claim refused or were unwilling to bring a claim themselves, nor was it a case where a claim that lay in the companies was being stifled by the attitude of those in control. Since the claimant itself controlled the companies, the claimant could procure that the companies themselves brought these claims. The defendants asserted that in these circumstances the procedure of the derivative action was altogether inappropriate so that permission should be refused: a

derivative action was an exception to the rule that a cause of action vesting in a company should be pursued by the company and not by its shareholders to deal with the circumstances when the company could not or would not bring an action against the alleged wrongdoer.

59. Roth J dismissed the application for permission to bring the derivative claim. In the course of his judgment, when dealing with the submissions that there was nothing under the Companies Act 2006 that prevented a majority shareholder from bringing a derivative claim, he made a number of observations:

“9. The general rule is that a cause of action vesting in a company should be pursued by the company and not by its shareholders. A derivative action is an exception to that rule to deal with the particular circumstances when the company cannot or will not bring an action against the alleged wrongdoer. It is to address those circumstances that the court may allow a member of the company to pursue that action for the benefit of the company and thus, indirectly, all its shareholders.

11. ... There is nothing to suggest that the Act intended such a radical reversal of long-standing and fundamental principles. It is relevant that this part of the Act has its genesis in the Report of the Law Commission on Shareholder Remedies (Law Com No.246 (1997)). That report states at the outset in paragraph 1.2:

*“The focus of the project was on the remedies available to a **minority shareholder** who is dissatisfied with the manner in which the company of which he is a member is run.”*

12. The Report proceeded to set out “Guiding Principles” that the Law Commission applied as governing its proposals for reform of the law. The first of these is expressed as follows at para.1.9:

“(i) Proper plaintiff

*Normally the company should be the only party entitled to enforce a cause of action belonging to it. **Accordingly, a member should be able to maintain proceedings about wrongs done to the company only in exceptional circumstances.**”*

13. Although this part of the Act does not completely mirror the approach to be found in a combination of the Law Commission’s draft bill and draft procedure rules, it clearly reflects the overall approach in the Law Commission’s proposal and, in my view, one would expect very different language in the Act if it were adopting such a radically different approach that involved discarding the Guiding Principle that I have quoted. Indeed, in the Act the governing provision for the grant of permission by the court to continue a derivative claim is s.261(4) which makes clear that this is a discretion resting in the court.

14. Whilst the discretion must, of course, be exercised in accordance with established principles, in my judgment this is one such principle. I would not go so far as to say that it could never be appropriate for a derivative claim to be brought by a shareholder holding the majority of the shares in a company. A judge must be cautious about using the word “never” when faced with a statutory discretion and when this is not one of the enumerated circumstances in s.263(2) in which permission must be refused. And faced only with the facts of the instant case, it is impossible to envisage all the factual circumstances that might arise in other cases. **But in my judgment, only in very exceptional circumstances could it be appropriate to permit a derivative claim brought by a shareholder in control of the company. For my part, I find it difficult to envisage what those exceptional circumstances might be.**” (emphasis added)

60. In the *Bamford v. Harvey* case (supra) the claimant and first defendant each owned 50% of the shares in the company. The claimant’s application for permission to continue the derivative claim was resisted by the first defendant on the ground that there was a shareholder agreement which provided a mechanism by which proceedings could have been brought in the name of the company. Roth J accepted the first defendant’s submission, noting that he regarded that the dispute as to the ability to bring a derivative action had been driven by tactical manoeuvring between the parties seeking to impose a cost burden by the one party on the other. Roth J referred back to his earlier judgment in the *Cinematic Finance* case (supra) and also to a decision of the Inner House of the Court of Session in *Wishart v. Castlecroft Services Ltd* 2010 SC 16.

61. In that latter case, the Judge at first instance had said that unless those responsible for the act or omission complained of remained in majority control, permission to bring a derivative action had to be refused under the equivalent Scottish provisions in the Companies Act 2006. On a reclaiming motion, the Inner House disagreed with that view. In the opinion of the Inner House, Lord Reed stated at paragraph [38]:

“Nor . . . can we endorse a rule that leave can only be granted where the directors whose breach of duty is in issue were and remain in majority control: in practice, that is likely to be the position in many cases where leave is appropriately granted, but, as we have explained, one of the objects of the 2006 Act was to **introduce more flexible criteria than the former ‘fraud on the minority’ exception** to the rule in *Foss v Harbottle* (1843) 2 Hare 461. The common law requirement of ‘wrongdoer control’, in particular, had given rise to difficulty in a number of cases . . . and is not repeated in section 268.” (emphasis added)

62. Having considered that decision Roth J went on to say

“29. I accept that **‘wrongdoer control’ is not an absolute condition for a derivative claim**: if it were, it would be specified as such in section 263(2) (or, in

Scotland, section 268(1)). Although *Wishart v Castlecroft Securities Ltd* 2010 SC 16 is not technically binding upon me, it is of very strong persuasive authority and I respectfully follow it. It is clearly desirable that the interpretation of the statutory provisions (or their equivalents) should be the same in England as in Scotland. But **I do not see anything in the opinion in the *Wishart* case to suggest that the potential for the company itself to commence proceedings is not a relevant consideration in the exercise of the court's discretion.** Moreover, the copious reference by the Inner House to the Law Commission report seems to me consistent with the approach I adopted in the *Cinematic Finance* case. The latter was indeed an extreme case, where those seeking to bring a derivative claim were in overall control of the company. Here, if there were real uncertainty as to whether Mr Bamford was able to avail himself of the provisions of clause 11, I think that **the flexible approach to which Lord Reed referred could justify a derivative claim.**

32. In his skeleton argument for this hearing, [it was] submitted that the appropriate course, to which Mr Harvey would not object, is for the proceedings to be reconstituted as an ordinary CPR Pt 7 claim. Since the proceedings, in my judgment, always could have been brought in the name of the company and there is expressly no objection to them proceeding in the name of the company, I consider that is the correct way forward. **It is not elevating 'wrongdoer control' to a preclusive condition for the court to hold that when proceedings clearly can be brought in the name of the company and there is no objection raised on that ground, they should be brought in the name of the company.** The first 'guiding principle' set out by the Law Commission that is quoted in *Cinematic Finance Ltd v Ryder* [2012] BCC 797, para 12, remains applicable." (emphasis added)

63. Because the applications before me are not claims proceeding under the Companies Act 2006 but rather under the common law, the "flexible approach" does not apply. "Wrongdoer control" remains a requirement under the common law. The dicta of Roth J would tend to suggest that under the common law, a majority shareholder will not be able to establish "wrongdoer control", because generally a majority shareholder will always be able to control the actions of the company, if necessary by using the powers under the Companies Act 2006 to replace the directors of the company.

64. However, as Roth J made clear in the *Cinematic Finance* case (supra) (albeit in the context of the Companies Act 2006 but when he was not adopting the "flexible approach" explained by Lord Reed), he would not say that a majority shareholder could never bring a derivative claim, rather he just could not envisage what the "very exceptional" circumstances might be where it would be appropriate to permit a derivative claim to be brought by a shareholder in control of the company.

65. In my judgment, it is important to remember that a derivative claim is merely a procedural device designed by the common law to enable justice to be done where the wrongdoer is in control of the entity in which the cause of action was vested. It allows a claim to be brought, where it should be brought but would otherwise not be brought, because the shareholder is unable to cause the company to bring it. This is normally because the wrongdoers are the directors who control the board and will not cause the company to sue themselves, and who are backed by, or are themselves, the majority shareholders, such that they cannot be forced from office. In almost every case, the shareholder wishing to bring the derivative claim is a minority shareholder or no more than a 50% shareholder. It is, in my judgment, in that context that the authorities cited above talk about an “aggrieved minority” or a “fraud on the minority”.
66. However, if there is a shareholder who is registered with more than 50% of the shares, but who is subject, by reason of matters beyond his control, to some legal or practical bar on voting those shares so that the wrongdoers have practical control over the company, they would be the “very exceptional” circumstances which Roth J was unable to envisage. There could be no jurisdictional or supervening discretionary objection to the derivative action on the basis that he was a majority shareholder.
67. Mr Prinse says he finds himself in that situation here. He is only one of 3 directors of Overseas and is not a director of Landmasters. Although he is registered as holding 85% of the shares in Overseas, he submits that because of the order of the Cyprus court on 3 October 2018 which was subsequently extended he was prevented from calling a general meeting which had been requested on 13 September 2018 and he is prevented from calling any other general meeting of the shareholders of Overseas until after the trial of the Cyprus action seeking to set aside the transfer of shares from Costas to Mr Prinse. Accordingly, he cannot remove either of Mr George Nicolaides or Mr Chris Nicolaides as directors of Overseas and cannot appoint any new directors in their place. It follows that he cannot take control of the board of Overseas and therefore cannot take control of the board of Landmasters. Accordingly, he cannot cause either of the companies to bring proceedings against Mr George Nicolaides and/or Mr Chris Nicolaides for their alleged breaches of fiduciary duty and/or the knowing receipt of Mr Chris Nicolaides and LDUK. He submits that there is wrongdoer control of both companies and he finds himself in the same position as if he were an “aggrieved minority”.

68. In my judgment, those circumstances would indeed be very exceptional, such that the common law procedural device would be open to Mr Prinse so that he could bring a derivative claim. The fact that he was the registered holder of 85% of the shares in Overseas would not prevent him from doing so, even in a claim which is not under the more flexible approach of the Companies Act 2006. He would be unable to procure the bringing of a claim by either Overseas or Landmasters, which would be in wrongdoer control as a result. Whether, as a matter of discretion, it would be proper to allow the claim to continue where the fact of wrongdoer control was due to an order of a foreign court of competent jurisdiction is another matter.

69. I have to ask myself whether Mr Prinse is actually in this position because of the order of the Cyprus courts. In my judgment, he is not:

(a) Under paragraph (1)(b) of the consent order of Morgan J of 31 August 2018, Mr Prinse agreed to withdraw his request dated 23 August 2018 for an extraordinary general meeting of Overseas. I have not seen that request, but it seems likely from paragraph (1)(a) it was related to the directorships of Overseas;

(b) Under paragraph (1)(c) of the consent order, he agreed to withdraw his application for interim relief in the Cyprus claim he had brought against Mr George Nicolaides and Mr Chris Nicolaides for their alleged breaches of fiduciary duty as directors of both Overseas and Landmasters. I have not seen that application, but it is clear that he had an application for interim relief in respect of breaches of fiduciary duty against them;

(c) Under paragraph (2)(g) of the consent order, he agreed not to renew the interim application identified in paragraph (1)(c);

(d) Under paragraph (2)(k) of the consent order, he agreed not to take any steps to remove Mr George Nicolaides and Mr Chris Nicolaides as directors of Overseas;

(e) Under paragraph (2)(l) of the consent order, he agreed not to take any steps to remove Mr George Nicolaides and Mr Chris Nicolaides as directors of Landmasters;

(f) Under paragraph (2)(m) of the consent order, Mr Prinse, Mr George Nicolaides and Mr Chris Nicolaides agreed not to appoint any additional director of Overseas or Landmasters;

(g) The provisions of paragraphs (2)(g), (k), (l) and (m) were repeated in the order of His Honour Judge Hodge QC of 23 January 2019 and remain in place as at the hearing of the application before me.

70. Given the terms of the consent order, which was made pending the resolution of proceedings in the Cyprus courts, Mr Prinse could not have requested a general meeting of Overseas on 13 September 2018 if its purpose was to seek to remove Mr George Nicolaides and Mr Chris Nicolaides as directors of Overseas. That would have been a clear breach of paragraph (2)(k) of the consent order made just 13 days previously by Morgan J. There was no evidence of what the proposed resolutions were about, but I was told in submissions by Mr Bowles that he understood them to be about the setting up of trusts. I have not seen a note of any judgment of the Cyprus court on its reasons for granting the injunction.

71. In my judgment, the reason why Mr Prinse is unable to exercise his rights as majority shareholder to remove Mr George Nicolaides and Mr Chris Nicolaides as directors of Overseas is because of the terms of the consent order that he entered into before Morgan J and renewed by consent by His Honour Judge Hodge QC, which terms are to continue until resolution of the proceedings in the Cyprus courts. He has not sought to vary or set aside either of those orders to allow him to exercise his rights as majority shareholder. Nor has he, as far as I understand it, sought to vary or set aside the order of the Cypriot courts.

72. It follows that in my judgment, Mr Prinse does not fall within those “very exceptional” circumstances set out above. He is not in a position akin to the aggrieved minority, because of the order of the Cyprus court. He has agreed to the state of affairs which prevents him from voting his majority shareholding. To allow him to continue the derivative claims would, in my judgment, give back to him powers which he effectively agreed to suspend until after the resolution of the Cyprus proceedings.

73. This could be viewed as a jurisdictional issue, however, I would also come to the same conclusion as a matter of exercising my discretion. I have firmly in mind the first of the

Guiding Principles as quoted by Roth J above. Where a majority shareholder is prevented from exercising his rights because of an agreement embodied in a court order, the Court should not allow him to get round that agreement via the procedural mechanism of a derivative claim.

74. When exercising my discretion, I also take into account that the Cypriot court is seised of the substantive issue here, namely whether the transfer of shares by Costas to Mr Prinse was valid or not. That court has prohibited Mr Prinse from voting his shares to seek to oust Mr George Nicolaides and Mr Chris Nicolaides as directors. No application, as far as I have been told, has been made to the Cypriot court to seek to vary or revoke that order on the basis of the claimed actions of Mr George Nicolaides and Mr Chris Nicolaides as directors. There is no obvious bar to the making of such an application to the court which is actually determining the substantive issue as to who should own the shares. Nor has any application for permission to bring a derivative action in respect of Overseas (nor in respect of Landmasters) been made to the Cyprus court, even though one of the sets of proceedings in Cyprus sought interim relief in respect of alleged breaches of duty by Mr George Nicolaides and Mr Chris Nicolaides as directors of both Overseas and Landmasters. To allow Mr Prinse to bring these derivative claims in England would not only be to ignore the agreement embodied in the consent order but would effectively be to ignore the order of the Cyprus court. In my judgment that would be contrary to judicial comity, which is not something I should exercise my discretion to achieve.

75. Further, the relief sought here is injunctive relief in a derivative claim which is never going to be pursued as a derivative claim. Mr Prinse seeks the reimposition of the stay after the determination of this application, so this action will not be progressed any further for example by the service of defences by the defendants. Either Mr Prinse will defeat the claim brought in Cyprus to set aside the share transfer and will be free to exercise his rights to remove Mr George Nicolaides and Mr Chris Nicolaides as directors, to put in his own directors and thereafter procure the 2 companies to bring claims against the former directors without the need for a derivative action or he will lose that action, the shares will return to the estate of Costas and will pass according to the terms of any will he left. That will almost certainly result in the shares passing in equal portions to Mr George Nicolaides and Mr Chris Nicolaides and their sister, Mr Prinse's mother. It was accepted by Mr Bowles on behalf of Mr Prinse that if he were to lose the claim in Cyprus, he would not be a

shareholder at all. In those circumstances, Mr Prinse would have no standing to pursue the derivative claim. If this was the only concern I had, it would probably not be decisive on the question of the exercise of my discretion, but as is clear from the matters set out above, it is not the only one.

76. Apart from these matters, by analogy to the approach that would be adopted if there were none of the above issues, it is for Mr Prinse to persuade the Court that he should be allowed to sue on behalf of the companies. The authorities show that he should be allowed to do so if he is bringing the action bona fide for the benefit of the company for wrongs to the company for which no other remedy is available.

77. It is not open to me, nor would it be proper, to conduct a mini trial as to the merits of the claim, but I need to be satisfied that Mr Prinse can establish something more than simply a prima facie case (*Iesini v. Westrip Holdings Ltd* [2011] 1 BCLC 498 per Lewison J at [79]). Nonetheless, the court can potentially grant permission for a derivative claim to be continued without being satisfied that there is a strong case; the merits of the claim are relevant to whether permission should be given, but there is no set threshold (*Kleanthous v. Paphitis* [2012] BCC 676 per Newey J at [42]). The test was pithily put by Norris J in *McAskill v. Fulton* (unreported 31 October 2014 at [14]) as the question being “whether the case advanced is the sort of case which a properly advised and governed company would lay out money on, in pursuit of its own interest”.

78. I have had detailed evidence by way of 2 affidavits from Mr Chris Nicolaides, as well as a witness statement and an affidavit from his mother, Maria Nicolaides. These, together with the exhibits, run to 601 pages and address the matters set out in Mr Prinse’s affidavit and the Forth report, providing a response to every point made. In his oral submissions, Mr Chris Nicolaides helpfully took me to a lot of the exhibits. He says that there has been no breach of fiduciary or statutory duty by him or his brother. In response to the matters set out at paragraph 19 above, I can summarise (and it is only a summary) his position is as follows:

(a) all rental sums due to Landmasters in the period to June 2019 were properly paid into the bank account maintained on behalf of Landmasters. Mr Flint has only done a desk

top analysis without all of the relevant documents. There have been no diversions of monies elsewhere;

- (b) the sum of £8,016.66 which had been held in Landmasters' bank account was not paid to an unknown bank account when Landmasters' account was closed in May 2019, rather it related to a deposit on one of the properties which had to be, and was, paid back to the tenant;
- (c) rental profits from June 2019 to August 2021 in respect of Inverness Terrace were paid to LDUK rather than Landmasters. It had proved impossible to open a bank account in the name of Landmasters as it was a company with a Cypriot parent company, so that it could not meet the banks' anti money laundering requirements. Mr George Nicolaides and Mr Chris Nicolaides had caused LDUK to be incorporated so that a bank account could be opened (as they were both resident in the UK and could satisfy the banks' requirements), which then could be used as the bank account for Landmasters and Overseas. LDUK had no trade of its own. The effect of this was that LDUK was simply acting at all times as agent for Landmasters and Overseas, and all monies received had been used solely for the genuine liabilities of those companies. The directors of Overseas and Landmasters approved this as a practical way around the problems facing them;
- (d) Landmasters had made payments to LCL, which were for renovations to the 2 properties. I was provided with a substantial amount of photographic evidence and associated invoices which appeared to show that a lot of work had been done, more than had been paid for so far;
- (e) as to the payment of £12,242.50 in respect of rental for Camden Mews, this was paid to LDUK rather than to Overseas for the same reasons as the rental payments in respect of Inverness Terrace were paid to LDUK. Everything has been properly accounted for;
- (f) there are further renovation costs in respect of the properties for which provision has been made. There has been no diversion of Landmasters' funds.

79. As to the claim based on knowing receipt by Mr Chris Nicolaides of some £28,000 which Mr Chris Nicolaides has received from Overseas by means of payments made to his mother, Maria Nicolaides, which she has then passed on to him, he says that all payments made to his mother were in part repayment of a loan which she made to Overseas many years ago and in respect of which she had not received repayment. I was taken to documents which show a loan by her to Overseas and also to the accounts of Overseas which record loans. It is difficult to follow how the loans in the accounts work as there was a separate loan shown as owing to Mrs Nicolaides, which was reduced to nil over time, but there was a further loan which appears to have been renamed so that it is now recorded in more recent sets of accounts as the loan by Mrs Nicolaides. He says that his mother having received the money in repayment of her loan, it was at her free disposal and she chose to give it to him to recompense him, in part, for the expense and effort he had gone to looking after her. This was not a scheme to get round the prohibition in the earlier orders on payments being made to him directly from Overseas or Landmasters.

80. Mr Prinse and his solicitors responded to this, denying that it was true. In addition, they provided an updated report from Forths dated 8 June 2022 on which he commented on the evidence adduced by Mr Chris Nicolaides. Mr Flint of Forths did not comment on, nor has he done any analysis of, the documents provided to support the answers in respect of the renovations. The bulk of his commentary was on the alleged loan repayments to Mrs Nicolaides and the oddities above in the accounts of Overseas.

81. It is not possible to form any very meaningful view as to the merits, but in my judgment, this does not strike me as a strong case. There are questions that need to be answered, but it seems likely that Mr Chris Nicolaides (and therefore his brother, Mr George Nicolaides) has answers for them. It is naïve to think that these 2 companies could have been run without the assistance of LDUK, given that neither was able to open a bank account. It seems highly unlikely that renovations were not undertaken or that the invoices which have been produced to support those renovations are not genuine. There is serious doubt as to the level of the claim as advanced in the first Forth report. However, whether the monies received by LDUK have all been properly and precisely accounted for is another matter. Likewise the assertions as to the loan and alleged repayments to Mrs Nicolaides are not matters which are clear on the evidence I was taken to.

82. Asking myself the question whether the case advanced is the sort of case which a properly advised and governed company would lay out money on, in pursuit of its own interest, I come to the conclusion that it is just about such a case. The monies at issue are not substantial, so such a company would not want to incur huge costs in seeking to recover these sums (I was told that Mr Prinse has already spent £300,000 just getting this far – this is not the level of spending a properly advised and governed company would be likely to want to lay out on a claim of this nature). However, a properly advised and governed company would want a full account as the first step if it could obtain it, rather than launching into full litigation.
83. Permission to bring a derivative claim can be granted in stages for example up to the stage of disclosure (see by way of illustration *Kiani v. Cooper* [2010] 2 BCLC 427). Had I been minded to grant permission, it would only have been in the first instance to the stage of disclosure and inspection. But, as set out above, this stage of disclosure and inspection is never going to be reached because of the immediate reimposition of a stay, pending determination of the Cyprus proceedings. Accordingly, I would not have granted permission on the facts of this case.
84. I therefore do not grant permission in respect of either the single derivative claim by Overseas or the double derivative claim by Landmasters. It follows that both actions should be dismissed. This will mean that the orders of Morgan J, His Honour Judge Hodge QC and the first order of Mr Rosen QC of 31 July 2019 as to the running of the companies pending determination of the Cyprus proceedings will fall away. That will not operate as a bar to Mr Prinse seeking to obtain orders to similar effect from the court in Cyprus, which he might then seek to get recognised in this jurisdiction, but he will not have the protection of the current orders in this jurisdiction.
85. It follows from this that the remaining parts of the application do not fall to be determined. However, lest this matter goes further, I set out my judgment on these matters, albeit not at such great length.

Application to amend and add LDUK as a party

86. On an application to amend, the amending party has to persuade the Court that the amended claim is arguable, carries a degree of conviction, is coherent, properly particularised and

supported by evidence that establishes a factual basis for the allegation (*Kawasaki Kisen Kaisha Ltd. v. James Kimball Ltd* [2021] EWCA Civ 33 at [18]).

87. In my judgment, for the reasons set out above when discussing the merits of the claim in the context of permitting the derivative claim to continue, I would have found that generally the draft Amended Particulars of Claim met this test. There are some anomalies and errors in the draft, which seems to have been prepared at a time when adding Mrs Maria Nicolaidis as the seventh defendant was being contemplated. Also there is a claim in paragraph 48 of the current draft that the alleged breach of the order of Morgan J in paying monies to LDUK and (via Mrs Nicolaidis) to Mr Chris Nicolaidis gave rise to a proprietary remedy. Mr Bowles did not press this claim (rightly in my judgment). He also said he did not maintain the claim in dishonest assistance, as opposed to knowing receipt.

88. Subject to Mr Bowles tidying up these parts, I would have given permission to amend and to add LDUK as a party, albeit I would have required a final perfected copy of the Amended Particulars of Claim to have been provided before making an order to this effect.

Proprietary and Freezing Relief

89. In order to obtain a freezing order, it is necessary for the applicant to show a good, arguable case, that there is a real risk that judgment would go unsatisfied by reason of the disposal by the respondent of his assets unless he is restrained by the court from disposing of them, and that it would be just and convenient in all the circumstances to grant the freezing order (*Thane Investments Ltd. v. Tomlinson* [2003] EWCA Civ 1272 at [21]).

90. The test of good arguable case provides a higher hurdle than serious issue to be tried: see *Gee on Commercial Injunctions*, 7th Ed. at 12-032. The good arguable case test was summarised by Haddon-Cave LJ in *Lakatamia Shipping Company Ltd v Morimoto* [2020] 2 All ER (Comm) 359 at [38], by reference to the judgment of Green LJ in *Kaefer v AMS* [2019] 3 All ER 979 in the context of jurisdictional gateways, as involving a central concept of “a plausible evidential basis”.

91. As to the risk of dissipation, the key principles were summarised by Haddon-Cave LJ in *Lakatamia Shipping Company Ltd v Morimoto* (supra) at paragraph [34] (taken, subject to

one correction, from the decision of Popplewell J in *Fundo Soberano de Angola v dos Santos* [2018] EWHC 2199 (Comm):

“(1) The claimant must show a real risk, judged objectively, that a future judgment would not be met because of an unjustified dissipation of assets. In this context dissipation means putting the assets out of reach of a judgment whether by concealment or transfer.

(2) The risk of dissipation must be established by solid evidence; mere inference or generalised assertion is not sufficient.

(3) The risk of dissipation must be established separately against each respondent.

(4) It is not enough to establish a sufficient risk of dissipation merely to establish a good arguable case that the defendant has been guilty of dishonesty; it is necessary to scrutinise the evidence to see whether the dishonesty in question points to the conclusion that assets [may be] dissipated. It is also necessary to take account of whether there appear at the interlocutory stage to be properly arguable answers to the allegations of dishonesty.

...

(6) What must be threatened is unjustified dissipation. The purpose of a WFO is not to provide the claimant with security; it is to restrain a defendant from evading justice by disposing of, or concealing, assets otherwise than in the normal course of business in a way which will have the effect of making it judgment proof. A WFO is not intended to stop a corporate defendant from dealing with its assets in the normal course of its business. Similarly, it is not intended to constrain an individual defendant from conducting his personal affairs in the way he has always conducted them, providing of course that such conduct is legitimate. If the defendant is not threatening to change the existing way of handling their assets, it will not be sufficient to show that such continued conduct would prejudice the claimant's ability to enforce a judgment. That would be contrary to the purpose of the WFO jurisdiction because it would require defendants to change their legitimate behaviour in order to provide preferential security for the claim which the claimant would not otherwise enjoy.

(7) Each case is fact specific and relevant factors must be looked at cumulatively.”

92. One of the issues which is often relevant to the grant of a freezing injunction is delay. While delay is far from an automatic bar to freezing relief, and the mere fact of delay or that the application is first heard *inter partes* does not mean that, without more, there is no risk of dissipation: the court may be satisfied on other evidence that there is such a risk. Even if the delay demonstrates that the applicant does not consider that there is a real risk of dissipation, that is only one factor to be weighed in the balance (*Madoff Securities International Ltd v. Raven* [2012] All ER (Comm) 634 at [156]). Delay may, nonetheless, be an important factor (*Taylor v. Khodabakhsh* [2021] EWHC 655 (Ch) at [109]).
93. As to proprietary injunctions, the applicant has to show a serious issue to be tried, but it is not necessary to show any risk of dissipation of assets. The test is the *American Cyanamid* balance of convenience test, which has been described as taking the course which seems likely to cause the least irremediable prejudice to one party or the other (per Lord Hoffmann in *National Commercial Bank Jamaica Ltd v. Olint Corpn Ltd* [2009] 1 WLR 1405 at [17]). It can be granted notwithstanding a delay which might have led to the refusal of a freezing injunction, but when considering the balance of convenience and exercising discretion whether to grant a proprietary injunction, delay is a factor which can and will usually be taken into account.

Good Arguable Case/Serious Issue to be Tried

94. I cannot resolve the substantive issues on the basis of affidavit or witness evidence. Again, it will be clear from what I have said above that in my judgment Mr Prinse has shown that there is a serious issue to be tried. He also just gets over the higher hurdle of a good arguable case.

Risk of Dissipation - Freezing Order

95. Mr Bowles candidly accepted that there was no recent evidence of dissipation by any of Mr George Nicolaides, Mr Chris Nicolaides or indeed LDUK. As to the former 2, the freezing orders against them made by Mr Farnhill were discharged by Mr Hochhauser QC on 3 March 2022 in respect of Mr Chris Nicolaides and by Mr Rosen QC on 10 March 2022 in respect of Mr George Nicolaides. There is no evidence that either has done anything since the freezing orders were lifted by way of dissipation of assets.

96. As set out above in paragraph 23, Mr Prinse relies on a number of other matters. In my judgment, neither taken individually or taken together do these establish a real risk of dissipation by Mr George Nicolaides, Mr Chris Nicolaides or LDUK. Dealing with these:

(a) the transfer of £25,000 following the Morgan J order was something which should not have occurred, but it was a relatively small amount of money, which has (albeit following 2 court orders) been paid back, by way of payment into court. There has been no dissipation of this amount;

(b) the prima facie case of diversion of monies is not a strong one, and seems to me to be in effect a claim for an account. The accountant quite properly did not say that monies had definitely been taken, but that on the basis of the limited documentation he had, there was a case that not all monies had been accounted for. This is one of those cases where what Mr Prinse is seeking to do is to establish a sufficient risk of dissipation merely by seeking to establish a good arguable case that the directors have been guilty of dishonesty. Even if the new claim properly analysed is a claim based on dishonesty, that is not sufficient. When one scrutinises the evidence to see whether the dishonesty in question points to the conclusion that assets may be dissipated, one comes to the conclusion that it does not. I take into account that there appear at this stage to be properly arguable answers to the allegations of dishonesty (which were not before either Mr Farnhill or Mr Hilliard QC when they considered the risk of dissipation), namely that the monies all went through LDUK in order to allow the properties to be run because neither Landmasters nor Overseas had their own bank accounts, all the monies were used for the benefit of Landmasters and Overseas, including by way of renovations and that the payments to Mrs Nicolaides were a repayment of a genuine, documented loan;

(c) the payments to Maria Nicolaides are not themselves prohibited by an order of the Court. It is quite a large step to make to find that they were payments made to her to benefit Mr Chris Nicolaides in order to get round the prohibition in the earlier orders of making payments to him. It is not one that I can make at this stage on the evidence presented to me;

(d) the circumstances of the winding up of LCL do not, in my judgment, show a commercially moral standard significantly below that which a director needs to show. The winding up was as a result of Mr Prinse enforcing a costs order against LCL having successfully set aside a statutory demand for monies said to be due from Mr Prinse to LCL. There was no finding that they were not due, rather a finding that there was a genuine dispute as to whether they were due. Having managed, by this action, to cut off LCL's source of income, it was not able to meet those adverse costs and Mr Prinse was able to put it into liquidation. The liquidators of LCL can still pursue that claim and it may turn out that the monies were in fact due. This is not a case of directors of a company incurring trading debts when they know it is unable to pay its debts, which might show a lack of commercial morality. Having had the opportunity of reading the evidence in this case and of hearing from Mr Chris Nicolaides at length, he has not demonstrated any lack of commercial morality, rather he gives the impression (which I accept may turn out subsequently to be a false one) to have acted in difficult circumstances as well as he can.

97. Further, although not determinative in this matter, the unexplained delay on the part of Mr Prinse in seeking the freezing order once he had the Forths' report is contrary to a genuine belief in any risk of dissipation.

98. In my judgment, Mr Prinse has not established the necessary risk of dissipation to justify the imposition of a freezing order against any of Mr George Nicolaides, Mr Chris Nicolaides or LDUK. Therefore, even if I had permitted the derivative claims to proceed, I would not have made a freezing order. The current one against LDUK will fall away with the dismissal of the proceedings in any event.

Proprietary Injunction

99. Notwithstanding the terms of the application notice, it is clear from the draft order and the substance of Mr Bowles' skeleton argument that the proprietary injunction is only sought against LDUK. Pursuant to the order of Mr Farnhill, the sum caught by this is £59,256.63 in LDUK's Lloyd's Bank Account. The draft order attached to the current application seeks to extend this to £71,499.13 again in LDUK's Lloyd's Bank Account. No explanation was given in Mr Bowles' skeleton argument as to how this figure was reached.

100. The rationale for the lower figure is set out in paragraph 56 of Mr Bowles' skeleton argument, namely the Forths' Report identified that the sum of £119,383.36 was paid to LDUK between 11 June 2019 to 30 December 2019. These sums were paid in respect of rent from Inverness Terrace and are claimed beneficially to belong to Landmasters (the skeleton said they belonged to Overseas, but that cannot be right). It appears that the sum of £60,000 odd was then used for the benefit of Landmasters. Accordingly, the continuation order was sought only in respect of the difference namely £59,256.23.

101. The difficulty with this approach is that it assumes that there is the sum of £59,256.23 in LDUK's Lloyd's Bank account as at the date of the hearing before me (and must have been at the date of the hearing before Mr Farnhill). I was not taken to any evidence to suggest that there was any money in the LDUK bank account, let alone £59,256.23, nor can I see that Mr Farnhill was. Absent such evidence, there is no fund over which I could impose a proprietary interim order. I was told in submissions by Mr Chris Nicolaides that LDUK only has the one bank account and there is only about £600.00 in that account, the balance having been used to pay bills. Further he told me that he had supplied details of this to Mr Prinse's solicitors.

102. In my judgment, there is not sufficient evidence to establish the existence of a fund in the LDUK bank account over which there is now a proprietary claim. It is up to Mr Prinse to demonstrate this and he has not done so. Even if there was £600.00 in that bank account, it would not be just and convenient to make an interim proprietary order over that small sum and I would decline to do so in the exercise of my discretion. Therefore, even if I had permitted the derivative claims to proceed, I would not have made an interim proprietary order. The current one against LDUK will fall away with the dismissal of the proceedings in any event.

Clean Hands

103. Because of the conclusions I have reached above, I do not need to deal with the complaints made about Mr Prinse not coming to court with clean hands, and in particular the complaints about the conduct of Mrs Prinse, Mr Prinse's mother, in purporting to appoint herself a director of Landmasters, about the manner in which Mr Prinse obtained bank statements of companies to which he had no entitlement, or about the orders made by Mr Hilliard QC or by Falk J as a consent order.

104. Nonetheless, the 2 latter complaints which are to do with court orders need to be addressed briefly. As to the former, Mr Chris Nicolaides signed a draft of the order to signify his consent, which was countersigned by the solicitor for Mr Prinse. The signed order included reference to Mr Chris Nicolaides being allowed to pay off his Barclaycard loan, notwithstanding the freezing order. This was something which Mr Chris Nicolaides wanted to be provided for and had inserted when sending back the signed draft order before it was countersigned. He did not draw this expressly to the attention of Mr Prinse's solicitor, and there is no suggestion of him being underhand in trying to insert this. It was merely what he was offering to agree to. On instructions, Mr Bowles told me that Mr Prinse's solicitor says that he did not notice that this had been inserted when he countersigned the order. When he sent the order to the Court for sealing, he used the prior draft which did not include reference to payment of the Barclaycard loan. He says that he did this entirely innocently. Fortunately, the freezing order was discharged on 3 March as set out above and little harm appears to have flowed from this. Notwithstanding that this explanation was not put into the form of a witness statement and no formal apology has been offered, I accept that this was an innocent mistake on the part of Mr Prinse's solicitors, but it is one which should never have been made and one which would not have been made had Mr Prinse's solicitor exercised proper care in dealing with such an important document as a consent order.

105. The complaint in respect of the Falk J order is that Mr Chris Nicolaides was not asked for and did not give his consent to the order, but nonetheless it was presented to the Court as having been made by consent and, I have no doubt, was dealt with by Falk J as boxwork on that basis. Mr Bowles accepted that neither Mr George Nicolaides nor Mr Chris Nicolaides signed or consented to the order, but that the Court was not told this. The party which had consented was Tide & Co, the bankers to Search & Co, use of whose bank account has potentially been impacted by the order of Mr Hochhauser QC. Gunnnercooke, solicitors for Tide & Co, had been trying to obtain a form of words to make it clear that Search & Co were able to use their bank account for their other customers and they reached agreement with Mr Prinse's solicitors on that form of wording. Mr Bowles accepted that this could not properly have been called a consent order as only one party to the proceedings, Mr Prinse, had consented to it. It should never have been represented to Falk J that it was an order, to which the parties had consented. That it was is the fault of Mr

Prinse's solicitors and is a breach of their obligations as officers of the court. It is not good enough to say, as Mr Bowles did, that if Mr Chris Nicolaides had been concerned about it, he should have applied to vary the order. While that was a course open to him, he is a litigant in person who would not necessarily know how to do this. Having made these points, I am satisfied that this was not done in an attempt to put one over on Mr Chris Nicolaides or any of the other defendants and that no harm was done as a result of the order. Accordingly, I would not have attributed this to a lack of clean hands on the part of Mr Prinse, rather to serious incompetence on the part of his solicitors.

Disclosure

106. As the action will be dismissed this does not arise. However, if the action had been permitted to continue, I would not have granted this application. It is premature in that pleadings have not closed. It is an attempt to obtain disclosure in advance in order to seek to make good the claim which Mr Prinse has pleaded. That is not an appropriate order to make at this stage.

Conclusion

107. I have lifted the stay to allow these applications to be determined. I decline to permit either of the derivative claims to proceed. In the circumstances, the claim falls to be dismissed, the previous orders as to the running of the companies will automatically fall aside, all outstanding freezing or proprietary orders will be set aside and there will have to be an enquiry into damages, if any, suffered by LDUK which can be pursued along with the inquiry into damages which Mr Hochhauser QC ordered in respect of Mr Chris Nicolaides. That is not to say that either enquiry into damages must be pursued, rather it is open to Mr Chris Nicolaides and LDUK to pursue this if they wish. They would be well advised to seek legal advice before doing so.

108. It would usually follow that Mr Prinse must pay all of the other parties' costs of the action to be assessed on the standard basis if not agreed, although I have heard no submissions on this. I would ask Mr Bowles to draw up, and the parties to seek to agree, an order reflecting this judgment. If they are unable to agree an order, including what the appropriate order for costs is, further submissions will have to be made on outstanding matters. I will adjourn the hearing for such matters, including (in accordance with the guidance in *McDonald v. Rose* [2019] EWCA Civ 4 at paragraph [21]) any application for

permission to appeal and direct that in the event that the parties cannot agree an order, written submissions on any consequential relief that is to be sought, including any application for permission to appeal, shall be filed by 4.30 pm on Friday 29 July 2022, limited to no more than 3 sides of A4 paper.