

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS
QUEEN'S BENCH DIVISION
COMMERCIAL COURT

Rolls Building
Fetter Lane
London EC4A 1NL

Friday, 24 November 2017

BEFORE:

THE HON. MR JUSTICE BRYAN

BETWEEN:

GERALD METALS S.A.

Applicant

- and -

VASILE FRANK TIMIS & OTHS

Respondent

MR S MIDWINTER QC and **MR B WOOLGAR** (instructed by Quinn Emanuel Urquhart & Sullivan UK LLP) appeared on behalf of the Applicant
MR S THOMPSON QC and **MR E CUMMING** (instructed by Kingsley Napley) appeared on behalf of the Respondent

APPROVED JUDGMENT

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MR JUSTICE BRYAN:

1. In this application the claimant Gerald Metals SA (“Gerald”) seeks disclosure of two documents by the fifth defendant, FPC Management Inc as trustee of the FPC capital trust (“FPC”). FPC is the subject of a worldwide freezing order in Gerald's favour granted by Picken J on 14 September 2017 (the “FPC Freezing Order”).
2. It is said that disclosure should be given of these documents in order to ensure that the FPC Freezing Order cannot be circumvented. The application is supported by the sixth affidavit of Nicholas Marsh, dated 21 November 2017, served on behalf of Gerald. It is opposed in the second witness statement of William Christopher of 23 November 2017.
3. The application has been made on two rather than three days' notice. It is said that it is important that the true position as to actual control over the assets to which the documents relate, is ascertained as soon as possible. The alleged urgency is denied by FPC. Be that as it may, the parties were able to prepare for this hearing; submit evidence; serve extensive skeleton arguments; and secure a half-day hearing before the Commercial Court today. In such circumstances, I have been willing to hear, and have heard, the application this afternoon in order to rule upon it at the end of oral argument.

Factual Background

4. In November 2014 Gerald advanced \$50 million of financing to a company called Timis Mining Corporation SL Limited (“TMCSL”) and got a contract to redevelop an iron ore mine in Sierra Leone. It is said that the ultimate beneficial owner or controller of TMCSL is the first defendant Mr Timis. Under the off-take contract, Gerald was to receive quantities of iron ore or payment in lieu
5. In order to secure its lending, Gerald required and was provided with a guarantee issued by Safeguard Management Inc (“Safeguard”) in its capacity as trustee of the Timis Trust, guaranteeing TMCSL's liability under the off-take contract, subject to a cap of \$75 million (the “Guarantee”). TMCSL subsequently defaulted under the off-take contract and Gerald called on the Guarantee.
6. Safeguard did not pay, and in August 2014 Gerald commenced an arbitration under the guarantee. The tribunal (Christopher Symons QC, Sir Gordon Langley and Andrew Foyle issued an award on 21 July 2017 by which Safeguard was ordered to pay \$75 million plus interests and costs (the “Award”).
7. From an earlier affidavit of Mr Marsh on behalf of Gerald, namely his third affidavit of 11 September 2017, I am informed that the Tribunal made various findings of dishonesty concerning the evidence of both Mr Timis and Mr Martinez, one of Safeguard's directors in this regard. I have been taken to the Award, and it is right that the arbitrators do say various things in that regard in relation to Mr Timis, and they say certain other things in relation to Mr Martinez.

8. Mr Marsh also refers to the fact that although Safeguard told this court before the Award was rendered, that it had sufficient assets to meet its liabilities under the guarantee, notwithstanding that, thus far nothing has been paid under the Award. The amount due under which stands at \$87.8 million. And while Safeguard did not challenge the Award in this jurisdiction, it subsequently indicated it will contest enforcement in the BVI.
9. Of course I bear well in mind, because it has been stressed to me this afternoon, that so far as we are concerned today, we are concerned with the fifth defendant and the order against the fifth defendant FPC.
10. These proceedings arise out of steps which Gerald says were taken to defeat its ability to enforce the Award. At the time the off-take contract and Guarantee were concluded, the most valuable asset of the Timis Trust was an interest in two off-shore oil blocks known as the "Senegal oil interests". Unknown to Gerald, in August 2015, the Senegal oil interests were transferred out of the Timis Trust and into a "new trust" which Gerald now knows is FPC, the fifth defendant in this action.
11. It is Gerald's case that the purpose of that transfer was to put the Senegal oil interests out of Gerald's reach as a creditor, it being said that the result is that there is little to nothing of value remaining in the Timis Trust to enforce against. Gerald claims that the transfer involved an unlawful means conspiracy to which each of the defendants in the present action was party. The unlawful means being said to be a transaction at undervalue with the intention to defraud creditors contrary to section 423 of the Insolvency Act 1986 or the equivalent BVI and Cayman provisions.
12. Gerald's evidence is that the Senegal oil interests were owned directly via a BVI company called Timis Corporation which sits at the bottom of the corporate chain. They were subsequently sold by Timis Corporation to BP for an undisclosed sum. Those proceeds are subject to a freezing order of \$85 million granted ex parte by Blair J on 8 May 2017, and continued after a contested hearing before Knowles J on 7 June 2017.
13. In August 2016 Gerald did not know the identity of the trustees of the new trust nor any details about it, and thus could not make it a party to the proceedings. However, it subsequently learnt who its directors were as a result of answers given during the cross-examination of Mr Martinez in the arbitration. The new trust also intervened under a pseudonym, "UVW", in proceedings in Cayman concerning disclosure of certain documents in the arbitration such that it had lawyers on the record in Cayman.
14. As a result, Gerald was able to join it as an unnamed defendant to these proceedings and for permission to serve the claim form on it by an alternative means. That application was granted by Teare J on 17 July 2017.
15. Subsequently, Gerald sought a worldwide freezing order against UVW which was granted on 14 September 2017 by Mr Justice Picken (the FPC Freezing Order). Paragraph 21 of the FPC Freezing Order required UVW to disclose its identity including its full name, place of incorporation and/or registration and registered office

to Gerald within two working days. It did so by way of an affidavit of a Mr Alberto Martinez dated 18 September 2017 the "Martinez Affidavit".

The FPC Freezing Injunction and Subsequent Events

16. Paragraph 8(1) of the FPC Freezing Order granted by Picken J related to the disclosure of assets of FPC, and was in the following terms:

"The respondents [that is FPC] must within 24 hours of service of this order and to the best of its ability inform the applicant's solicitors of all its assets worldwide exceeding £50,000 [or its equivalent in other currencies] in value, whether in its own name or not, and whether solely or jointly owned, giving the value, location and then **details** of all such assets." [my emphasis].
17. What FPC was required to disclose by paragraph 8(1) of the FPC Freezing Order is at the heart of the present application. Gerald submits that FPC failed properly to comply with that order, and indeed has made allegations that FPC was in contempt of court in that regard, although it has not brought, at least to date, any contempt proceedings. Any such matters are not before me today, and in consequence I will identify what disclosure was given, but I am alive not to make any findings in that regard, save to the extent necessary to determine today's applications for disclosure.
18. Returning to the history of events, and as already noted, Gerald's evidence is that the Senegal oil interests were directly owned by Timis Corporation, which now holds some of the proceeds under a freezing order. Approximately 63 per cent of the shares in Timis Corporation are owned by another BVI corporation called Dorchester Overseas Limited ("Dorchester").
19. The precise manner in which the shares in Dorchester are held is itself at the heart of the present application for disclosure. It is Gerald's case that the manner in which the shares in Dorchester are held has been the subject of what Gerald alleges has been inconsistent and allegedly demonstrably false evidence on the part of the defendants.
20. In this regard, I am referred to the fact that on 12 August 2016 Rose J ordered Mr Timis to give disclosure preparatory to a possible application for a worldwide freezing order. In response to that order, Mr Timis swore an affidavit in which he said that, "So far as he was aware, he had no interest in the Timis Corporation". That was, said Gerald, false. That of course is the position in relation to Mr Timis.
21. Gerald also made an application against Safeguard under section 44 of The Arbitration Act 1996. In response to that application, Ms Benkert, the third defendant in this action, made a witness statement which referred to the transfer of the shares in Timis Corporation. No mention was made of the existence of Dorchester. Again, of course, that is in the context of the third defendant, Ms Benkert. Today's application is against the fifth defendant.

22. Subsequently, when Gerald sought a *Norwich Pharmacal* order from Mr Timis in March 2017, Ms Benkert stated:

"The Timis Trust interest in Timis Corporation at the time of the transfer was formally held through a holding company called Dorchester Overseas Limited. It was at this level that the share transfer took place. To be completely clear, the shares that were transferred as part of the restructuring were shares in Dorchester Overseas Limited."

The statement that the shares that were transferred were the shares in Dorchester was, says Gerald, not correct.

23. Turning then to the evidence adduced in the present proceedings following the FPC freezing order of Picken J on 14 September 2017, which of course is the relevant material evidence. There was then the Martinez affidavit of 18 September 2017 which described FPC's only asset as *"100 per cent ownership (being 50,000 shares) of Dorchester Overseas Limited"*.
24. As will be seen, it has subsequently transpired that legal ownership resided elsewhere and that the interest was a beneficial interest. Gerald alleges that the evidence given amounted to a failure to comply with the terms of the FPC Freezing Order which required disclosure of the details of the assets held by FPC. It is submitted that the fact that an asset was a beneficial interest was an important "detail".
25. On 10 November 2017 FPC served its defence. Paragraph 7 for the first time refers to the transfer of, *"The beneficial interest in 50,000 shares ... in Dorchester Overseas Limited"*. It then said, *"Legal title to the Dorchester Overseas shares is, and has at all material times been, held by CP Nominees SA"*.
26. The position therefore now appears to be that rather than FPC owning the Dorchester shares, they are held on trust for FPC by a company called CP Nominees SA [which is a Panamanian company. Gerald says that the revelation that FPC held a beneficial rather than a legal interest in Dorchester and that legal title was held by CP Nominees SA was the immediate trigger for this application.
27. It is said that Gerald has a broader concern that underlies this which is that (a) behind all of these structures ultimately sits Mr Timis, a man who, says Gerald, has demonstrated a propensity to move assets in order to avoid enforcement and to give what it characterises as untruthful evidence, both to the court and to the arbitrating tribunal; and (b) it is submitted that the defendants have been remarkably unwilling to divulge the truth about the corporate structure within the Senegal oil interests and how their proceeds have been held.
28. It is submitted that at each stage the story has either changed or information has been incomplete, which leads Gerald to submit that it is difficult to have any confidence in what has been said. I bear in mind the case advanced by Gerald, but for the purpose of today's application, what matters is the fifth defendant, and the conduct of the fifth

defendant, to date, which is limited to those matters which have arisen in the course of these proceedings involved with the fifth defendant, which I have already identified.

29. Following the service of the defence, Gerald's concerns in relation to whether there has been compliance with paragraph 8(1) of the order of Picken J led to extensive correspondence between the parties. As part of that, some further disclosure has been provided to Gerald.

The Deed of Assignment

30. This documentation includes a deed of assignment of beneficial interests dated 6 August 2015, between FPC, Safeguard and CP Nominees SA (the "Deed of Assignment"). This provides, amongst other matters, recital (a) CP Nominees hold 50,000 shares of \$1, par value each, in Dorchester Overseas Limited, a company incorporated in the British Virgin Islands [the shares] as nominee for Safeguard [as trustee of the Timis Trust] on the terms of a declaration of trust dated 9 July 2015 (the "Declaration of Trust"). I interpose at this point that that Declaration of Trust of 9 July 2015 has subsequently been disclosed to Gerald.
31. Recital (b) provides Safeguard wishes to assign the whole of its right, title and interest in the shares to FPC to hold on the terms of a settlement of today's date and made by FPC which established a trust known as the FPC Capital Trust (the "FPC Capital Trust"). I interpose at this point that the settlement of 6 August 2015, which in its submission before me FPC have referred to as the "FPC Trust Instrument", is the first of the two documents that Gerald is seeking disclosure of before me today.
32. The deed of assignment then continues under the heading, "Operative Provisions", at paragraph 1 as follows:

"(1) **Assignment.** Safeguard (as trustee of the Timis Trust) hereby assigns the whole of its rights, title and interests in the shares pursuant to the declaration of trust and any dividends and other rights attaching to the shares ("the interests") to FPC for FPC to hold on the terms of the FPC Capital Trust. (2) Declarations of trust: 2.1 CP Nominees SA acknowledges the assignment effected by clause (2) of this deed [and I interpose here the reference to clause 2 must be a mistake and should be taken to be a reference to clause 1] declares that it holds the shares as nominees for FPC (as trustee of the FPC Capital Trust) and undertakes: 2.1.1 not to transfer, deal or dispose of the shares or any of them save as FPC directs in writing from time to time. 2.2 FPC agrees to and declares that it shall hold the interest upon the terms of the FPC Capital Trust."

33. The subsequent correspondence I have referred to also includes two affidavits from a Grainne Brady, a director of FPC which is referred to in Mr Marsh's affidavit.

The Applications

34. By an application notice issue on 21 November, Gerald originally sought four categories of documents. FPC has disclosed one and confirmed that another does not exist. As such there are two categories of document in dispute. They are:

(1) The documents which contain "the terms of the FPC Capital Trust", as referred to in clauses 1 and 2 of the Deed of Assignment, which are defined by the claimant as the Trust Terms Documents, but as I have said are also referred to by the fifth defendant as the FPC Trust Instrument. Either way, it is common ground what we are talking about is the documentation that is referred to in terms of the settlement of 6 August 2015.

(2) To the extent not included within (1) documents evidencing the "indemnities" said to have been given to Safeguard by FPC at the time of the transfer (the "Indemnity Documents").

Gerald's Submissions and Disclosure

35. Gerald seeks the Trust Terms Documents on two bases. First, paragraph 8(1) of the FPC Freezing Order requires, as I have already quoted, FPC to disclose, "All of its assets worldwide ... whether in its own name and whether solely or jointly owned. Value, location and **details** of all such assets". It is alleged that the "terms of the FPC Capital Trust" constitute "details" of the assets within the meaning of paragraph 8(1) of the Order.
36. Gerald submits that it is insufficient for FPC to say merely that it, "holds a beneficial interest" in the Dorchester shares. It is said that Gerald and the court are entitled to know the nature and scope of the interest that FPC holds. That will depend upon the terms on which FPC is acting as a trustee under the FPC Capital Trust. The "asset" which FPC, as opposed to the beneficiary, holds is defined by the Trust Terms Document.
37. Alternatively, Gerald asks the court to order disclosure in any event (ie whether it is strictly within the existing terms of the FPC freezing order or not) on the basis of the principle set out in *Gee on Commercial Injunctions* Fifth Edition at paragraph 23-003:

"An order can be made if the purpose is to identify and preserve assets for the defendant which might otherwise be dissipated notwithstanding the injunction. This will include obtaining the information so that notice of the injunction can be given to third parties who will then become bound not to commit a contempt of court ... or so this order can be obtained from a foreign court, freezing the assets there, or so that if necessary an order can be made for the delivering up of specified assets."

38. In relation the indemnity, FPC claims that it gave an indemnity to Safeguard at the time the Senegal Oil Interests were transferred. In paragraph 9.2 of FPC's defence, the indemnity is described as forming part of the consideration for the transfer.

39. Gerald submits that the indemnity will be an important document in the proceedings. It is referred to in the defence, and is a central plank in the defendant's case that the transfer of the Senegal Oil Interests away from the Timis Trust was not conducted at an undervalue. It is submitted that there is a strong case for saying that it should be disclosed now simply as part of sensible case management so that Gerald can consider it for the purposes of preparation of its reply.
40. But, says Gerald, the indemnity is also relevant to the validity, nature and value of FPC's interest in Dorchester as, depending on its terms, it may affect FPC's right to deal with the transferred interest or the value to be ascribed to FPC's beneficial interest in them.

FPC's Submissions

41. In contrast, FPC submits that the FPC Trust Instrument and the indemnity are irrelevant to the relation between CP Nominees and FPC and the terms on which CP Nominees holds legal title to the Dorchester shares as nominees for FPC. As to the FPC Trust Instrument, FPC submits that it is clear from the face of the Deed of Assignment that the FPC Trust Instrument sets out the terms on which FPC holds its interest in the Dorchester shares for the beneficiaries of the FPC Capital Trust.
42. It is said that it does not concern the relationship between CP Nominees and FPC at all. It cannot be of any relevance to the claimant's ability to police the FPC Freezing Order. As to the latter, the indemnity, the indemnity forms part of the consideration for FPC's acquisition of its 100 per cent beneficial interest in the Dorchester shares from Safeguard. That FPC has acquired this 100 per cent beneficial interest in the Dorchester shares is apparent from the face of the Deed of Assignment. Documents recording the terms on which FPC acquired that asset, such as the indemnity itself, are of no relevance, it says, whatsoever to the relationship between FPC and CP Nominees or their assets.
43. FPC also rely on the fact that its directors confirmed that it will comply with the FPC Freezing Order and that under the Deed of Assignment, CP Nominees is required to comply with its directions. Reference is also made to the second witness statement of Mr Christopher at paragraph 27 where he says that:

"FPC is not aware of any document other than the deed of assignment that sets out or records the terms on which CP Nominees holds legal title to the Dorchester shares as nominee for FPC or that commits anyone other than FPC to give any directions to CP Nominees regarding the Dorchester shares".
44. It will be noted that the thrust of that paragraph is that there is no document, other than the Deed of Assignment, that sets out or records the terms on which CP Nominees holds the legal title. Of course it is apparent from the face of the Deed of Assignment itself that there is this document, the settlement of 6 August 2015, from which it is clear at paragraphs 1 and 2 of that, that that sets out the terms of the FPC Capital Trust on which FPC is holding the interest.

45. Gerald's riposte to the case of FPC is to say that FPC itself can only give those directions in accordance with the terms of the FPC Trust. So, by way of example, it may be that FPC's directors are in turn required to follow any instructions from the beneficiaries or the beneficiaries have the power to give instructions directly or that there is a protector who can do so, or who can at any time dissolve the FPC Capital Trust and direct CP Nominees themselves.
46. It is submitted that given the history of disclosure as to assets which it is said hardly inspires confidence, neither Gerald nor the court could have any confidence that the FPC Freezing Order will be effective unless it has sight of the FPC Trust Instrument or indemnity documents.
47. Of course in response to that, it is said by the fifth defendant that all that is relevant for today's purposes is to look at what the fifth defendant was obliged to do, and the extent to which the fifth defendant has or has not complied with its obligations in that regard.

Discussion

48. The starting point is paragraph 8(1) of the Freezing Injunction Order of Picken J of 14 September. It will be recalled that it provides:

"The respondent [that is FPC] must within 24 hours of service of this order and to the best of its ability inform the applicant's solicitors of all its assets worldwide exceeding £50,000 [or its equivalent in other currencies] in value, whether in its own name or not, and whether solely or jointly owned, giving the value, location and details of all such assets."

49. I have already emphasised, and emphasise again, the word "details". So, that provision is directed at what FPC's assets are. In that regard, I am reminded in relation to the proper interpretation of paragraph 8(1), which is substantially in the form of the standard commercial court freezing order wording, that that is informed by the principle of strict interpretation identified by Beatson in *JSC and BTA Bank Number 10* [2014] 1 WLR 1414 and adopted by Lewison in the *JSC* case [2016] 1 WLR 160 at 169G, namely that:

"Because of the penal consequences of breaching a freezing order and the need of the defendants to know where he, she or it stands, such orders should be clear and unequivocal and should be quickly construed."

50. In the Supreme Court in *Ablyazov (No.10)* [2015] 1 WLR 4754, the court agreed, at paragraphs 18 to 19, that freezing orders are to be construed in accordance with this principle and that because of the risk of oppression:

"Strict construction is also an aspect of the 'great circumspective' with which Lord Mustill in *Mercedes Benz AG v Leedak* [1996]

Appeal Cases 284 and 297 stated that the jurisdiction [to make freezing orders] should be exercised."

51. It is rightly accepted by Mr Thompson QC on behalf of the fifth defendant that the provision at paragraph 8(1) should be construed purposefully, and that this must include the nature and extent of those assets, as Mr Thompson QC also accepted.
52. At one level, and as is now known, this can be answered in these terms:

"The details of FPC's assets equals a 100 per cent beneficial interest in the shares of Dorchester Overseas Limited, the legal title in those shares being held by CP Nominees SA as nominee for FPC on the terms of the deed of assignment of beneficial interest dated 6 August 2015."
53. However, it is clear from recital (b) that in relation to the assignment to FPC, FPC is to hold on the terms of a settlement dated 6 August 2015 which establishes the FPC Capital Trust. That settlement of course to be called the FPC Trust Instrument. It is clear from paragraph 1 of the Deed of Assignment that FPC is to hold on the terms of the FPC Capital Trust.
54. Even more fundamentally, it is expressly provided at paragraph 2.2 of the deed of assignment that FPC agrees to and declares that it shall hold the interest "**upon the terms of the FPC Capital Trust**". Without knowing the terms of the FPC Capital Trust, it is simply not possible to know the nature and extent of FPC's interests. That will depend on the terms on which FPC is acting as "trustee" under the "FPC Capital Trust". The "asset" which FPC, as opposed to the beneficiaries, holds will or is likely to be defined by the FPC Trust Instrument.
55. Accordingly, I consider that on the true and proper interpretation of paragraph 8(1) of Picken J's order, the most accurate answer to the information that was sought extends to not only revealing the fact that there is a deed of assignment of beneficial interest, but also referring to and providing details of the document, which has been variously described as the FPC Trust Instrument.
56. In saying that, I am not making a finding of breach of the order of Picken J, but simply saying that I consider it could most accurately be complied with by providing that documentation. Whether or not that is so, in any event, I consider that it is appropriate by way of clarification or by way of addition, that such disclosure should be given, by way of variation of that order, for the avoidance of doubt.
57. Disclosure of that documentation, I am satisfied, is required as part of the policing of the injunction so that the nature and extent of FPC's interest is identified and so that assets which might otherwise be dissipated can be preserved; either on the basis of the existing order, or by variation of the order or on the basis of the principle identified in *Gee on Commercial Injunctions* Fifth Edition at paragraph 23/003.

58. I should say that I do not consider that it is an answer to the reasoning that I have just provided to say, "*Well, in any event the freezing order prevents the FPC from taking any action which would dissipate those assets*". That is always true, in general terms, by reference to paragraph 4 of the freezing order itself. Nevertheless, this court has long recognised, as is reflected in paragraph 8(1) of the order in this case which is substantially in the form of the standard commercial court order, that in addition to entities being enjoined from dissipating assets, it is also important that there are provisions to police that, which include disclosure of assets.
59. For the reasons I have given, I consider that the disclosure that is required extends to the document that I have identified, ie the FPC Trust Instrument as that is defined. However, I can see no similar justification for provision of the indemnity documentation unless, of course, that happens to be the same documentation.
60. The indemnity itself formed part of the consideration for FPC's acquisition of its 100 per cent beneficial interest in the Dorchester shares from Safeguard, and that has already occurred. That FPC has acquired this 100 per cent beneficial interest in the Dorchester shares is already known. The documents recording the terms on which FPC acquired that asset, such as the indemnity, are not relevant to the relationship between FPC and CP Nominees, and more specifically the assets of FPC.
61. I consider that this request is, in reality, a request for advanced specific disclosure. Indeed, paragraph 25 of Gerald's skeleton comes close to saying as much. Indeed, in the oral submissions that were advanced before me, it was indeed put on that alternative basis. There are well-established principles as to such disclosure, and as to the circumstances in which advanced disclosure of particular matters will be given by way of specific disclosure at an early stage. I consider that the requirements for such disclosure, which have not been fully addressed before me, are not made out. In such circumstances that request is refused, in terms of policing the freezing injunction; in terms of the jurisdiction identified in *Gee*; and on the basis of advanced disclosure.
62. Accordingly, the FPC Freezing Order will be varied as I have indicated in relation to the settlement of 6 August 2015 variously referred to as the FPC Capital Trust Instrument or the Trust Term Document, and not in relation to the indemnity. I order disclosure to be made by 4.00 pm on Friday, 1 December 2017.
63. The final matter before me today is the question of the costs of this hearing. The claimant has been successful for the reasons I have identified in relation to the first part of the documentation it seeks, ie in relation to the FPC Trust Instrument, but has not been successful in relation to getting the indemnity documentation.
64. It is submitted that really those are equal amounts of time, both in terms of preparation and in terms of hearing time, briefing costs etcetera. I consider, having read all the material, that the real thrust of the application has always been the FPC Trust Instrument point. The indemnity point has not actually taken much time today. I also doubt very much whether it has taken as much time in terms of preparation either.

65. I am alive to the fact that the reason it has not taken quite so long today is because I indicated at a fairly early stage that I was not over enamoured with that point, although I did hear, in fairness, full argument on that point.
66. It seems to me that the claimant is the successful party, and the costs follow the event, but I should reflect the fact that it has not been wholly successful. It is common ground that there are two ways I can do that. One of them would be by making a percentage order of costs in favour of the claimant. And the other one is to bear that in mind in the context of summary assessment (which is before me today). The parties leave it to me as to which approach to adopt.
67. It seems to me that given that summary assessment itself, is something of a broad brush exercise, that probably the better way to deal with matters is for me to take account of the claimant's relative success as part of my summary assessment, which I will do. Accordingly, unless either party now requires me to do so, I will not do that in terms of expressing a precise percentage.
68. So, the final point before me this afternoon is to summarily assess the costs. The figure claimed is £47,641.50. A point has been made in terms of the hourly rates of the solicitors concerned, and in terms of the hours used, but I note that overall the summary assessment and the N260 form of the claimant comes in at £47,641.5 and a similar form lodged on behalf of the fifth defendant comes in at £42,395.50.
69. In terms of summary assessment, I have considered carefully the N260 form and the matters contained there, and I have the benefit of being familiar with the issues that have arisen, having heard today's application. It seems to me, doing the best I can (and summary assessment is always to an extent a rough and ready exercise), and taking into account the claimant's relative success, the costs which are recoverable and shall be payable by the fifth defendant to the claimant, are summarily assessed in the figure of £32,500.
70. I bear in mind the fact that the fifth defendant is overseas, but I would have thought a period of 21 days would be appropriate for payment, and I so order.