



Neutral Citation Number: [2023] EWHC 1797 (Comm)

Case No: CL-2022-000048

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

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

Date: 14/07/2023

Before :

MR JUSTICE BRIGHT

Between :

- (1) Commercial Bank of Dubai PSC
- (2) Hortin Holdings Limited
- (3) Westdene Investment Limited
- (4) Lodge Hill Limited
- (5) VS 1897 (Cayman) Limited

Claimant

- and -

- (1) Abdalla Juma Majid Al Sari
- (2) Majid Abdalla Juma Al Sari
- (3) Mohamed Abdalla Juma Al Sari
- (4) FAL Oil Co LLC
- (5) Investment Group Private Limited
- (6) IGPL General Trading LLC
- (7) Globe Investment Holdings Limited
- (8) MENA Investment Holdings Limited
- (9) MAS Capital Holdings Limited

Defendant

Mr Anthony Peto KC and Mr Andrew Trotter (instructed by Jones Day) for the Claimants
Mr Chris Smith KC and Mr Craig Williams (instructed by Axiom Ince Ltd) for the 7th, 8th and
9th Defendants

The 1st, 2nd, 3rd, 4th, 5th and 6th Defendants did not appear and were not represented

Hearing dates: 13, 14 June 2023

Approved Judgment

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Mr Justice Bright :

A: INTRODUCTION

A1: The hearing

1. It is a truism, but one that bears endless repetition, that litigation is a dynamic process.
2. This judgment follows a hearing on 13 and 14 June 2023 which was primarily concerned with the application of the Seventh, Eighth and Ninth Defendants (“**Globe**”, “**Mena**” and “**MAS**” respectively; collectively “**the Globe Defendants**”) in respect of their challenge to the jurisdiction pursuant to CPR Part 11. Their application notice was issued on 24 May 2022.
3. Also before the Court was an application notice dated 26 April 2022, issued by Charles Russell Speechlys (“**CRS**”) on behalf of the Defendants they then represented – i.e., the First, Second, and Fourth to Sixth Defendants (collectively, the “**Former CRS Defendants**”). This, too, was an application challenging jurisdiction. As explained later, CRS recently came off the record. Since then, the Former CRS Defendants have been unrepresented, and they did not attend the hearing. In all the circumstances, their application is dealt with briefly, at the end of this Judgment.
4. Finally, the Claimants have applied to amend their Particulars of Claim and have produced draft Amended Particulars of Claim (“**APOC**”). My understanding from Mr Smith KC, for the Globe Defendants, is that, if the Globe Defendants’ jurisdictional challenge fails, they do not object to the amendments in principle. Their primary position, however, is that I should dismiss the claims against them, irrespective of the amendments.
5. Throughout the hearing, Mr Peto KC, for the Claimants, emphasized to me that the main interest of the Claimants, and the factor which had driven this litigation

throughout, was to gain possession of premises at a commercial and residential complex in London called The Bridge (the “**Bridge Properties**”), and to claim damages associated with the various Defendants’ efforts to keep the Claimants from achieving this.

6. Within a few days of the hearing, there was an important development in another jurisdiction. I explain this in more detail below, but the important consequence is that there no longer appears to be anything preventing the Claimants from obtaining possession.
7. I have no doubt that the submissions that I received at the hearing would have been very different had this development occurred before the hearing, rather than after it.

A2: The parties

8. The First Claimant (“**CBD**”) is a commercial bank incorporated in the UAE.
9. The Second to Fourth Claimants (“**Hortin**”, “**Westdene**” and “**Lodge Hill**”, together the “**BVI Companies**”) are companies incorporated in the BVI. The BVI Companies were formerly ultimately beneficially owned by the Second and Third Defendants but are now owned by the Fifth Claimant (“**VS 1897**”), a company incorporated in the Cayman Islands.
10. The First to Third Defendants (“**Abdalla Al Sari**”, “**Majid Al Sari**”, and “**Mohamed Al Sari**”, together the “**Al Sari Defendants**”) are Emirati nationals and members of the Al Sari family. They appear to be normally resident in Sharjah, UAE. They are the ultimate beneficial owners of an international group of companies with various business interests (the “**Al Sari Group**”).

11. The Fourth to Sixth Defendants (“FAL”, “IGPL” and “IGPL GT” respectively) are companies incorporated in Sharjah (collectively, the “Sharjah Companies”). They are ultimately owned by various members of the Al Sari family.
12. Globe and MAS are companies incorporated in the Jebel Ali Free Zone in Dubai, UAE. Mena is a company incorporated in the BVI and is the owner of Globe and MAS.

A.3: The relationship between the Defendants

13. It is the Claimants’ case that the Al Sari Defendants are the controlling mind(s) and will(s) of Globe, MENA and MAS, just as they are of the Sharjah Companies. The Globe Defendants deny this and will dispute it in any subsequent proceedings. However, their case that they are not associated with the Al Sari Defendants is not a point that the Globe Defendants rely on for the purposes of this application.

A.4: The Bridge Properties

14. Hortin and Westdene are the owners of leasehold interests in various flats and commercial premises comprising the Bridge Properties. Lodge Hill owned the freehold interest in the Bridge Properties until it was sold in July 2020. VS 1897 is a corporate nominee of CBD, through which CBD’s interests in the BVI Companies are held.
15. The Bridge Properties include an extensive residential apartment, which is said to be the UK residence of the Al Sari family, and which has for some time been occupied on their behalf by their housekeeper, Mr Gebremedhin.

B: BACKGROUND

B1: CBD's claim in Sharjah and the s. 25 Freezing Order

16. On 25 November 2012, CBD issued a claim in the Sharjah Court of First Instance (“**Sharjah CFI**”) in respects of amounts said to have been outstanding under credit facilities CBD had granted to FAL (as borrower), in relation to which IGPL and the Al Sari Defendants acted as guarantors (“**the Sharjah Proceedings**”).
17. On 17 November 2014, on the Bank's application, this Court granted an ancillary freezing order against the Al Sari Defendants and the BVI Companies in respect of assets in England and Wales, in aid of the Sharjah Proceedings (the "**s.25 Freezing Order**"). Amongst other things, paragraphs 5 to 7 of s.25 Freezing Order prohibited the Al Sari Defendants from dealing with or diminishing the value of their assets in England and Wales up to the value of AED 430 million, specifically including any beneficial interest in the Bridge Properties and Freehold. The s.25 Freezing Order (as continued by subsequent orders) was discharged as against the BVI Companies on 19 March 2021 but remained in force against the Al Sari Defendants until discharged on 11 March 2022, following the grant of a worldwide freezing order in these proceedings.
18. On 29 March 2016, the Sharjah CFI handed down its judgment on CBD's claim, ordering that the Sharjah Companies and the Al Sari Defendants jointly pay CBD AED 433,831,166.81 plus interest and costs (“**CBD's Sharjah Judgment**”).
19. On 27 February 2017 an appeal against CBD's Sharjah Judgment was dismissed.
20. Abdalla Al Sari and Majid Al Sari filed a petition for review of CBD's Sharjah Judgment on 23 February 2020. The appeal was dismissed by the Sharjah Appeal Court on 26 April 2021.

B2: The practical significance of the Bridge properties

21. The Bridge properties are among very few assets of any significance that CBD has identified as amenable to enforcement. This led CBD to seek to enforce its claims first against the BVI Companies (on the basis that they were owned by Majid Al Sari and Mohamed Al Sari) and then directly against the Bridge Properties.

B3: CBD's claim in the BVI

22. On 29 June 2017, CBD issued proceedings in the BVI seeking to enforce CBD's Sharjah Judgment. On 7 June 2018, the BVI Court entered judgment in CBD's favour ("**CBD's BVI Judgment**"). On 25 October 2018, the BVI Court dismissed an application by Majid Al Sari to set aside the BVI Judgment.
23. On 19 February 2019, the BVI Court granted a charging order, appointed a receiver for the BVI Companies (the "**Receiver**") and made an order for sale of the shares in the BVI Companies (the "**Charging Order**").
24. Majid Al Sari applied for a stay of the Charging Order, which was dismissed on 13 May 2019. On 11 November 2020 he made a second application for a stay of the Charging Order, which was rejected on 15 December 2020.
25. The Charging Order resulted in CBD acquiring the shares in the BVI Companies pursuant to a share purchase agreement dated 6 April 2021 ("**the SPA**"). In return, CBD agreed to release CBD's Sharjah Judgment debt in the sum of £9 million, this being the estimated value of the BVI Companies at that time – reflecting, in turn, the estimated value of the Bridge Properties (being the BVI Companies' only assets).
26. The Charging Order was directly ancillary to CBD's BVI Judgment. CBD's purpose in bringing enforcement proceedings in the BVI was, precisely, to enforce against the

BVI Companies, via a charge; and, through them, to acquire the Bridge Properties. It was evidently anticipated that, following the SPA, it would then be possible to realise the value of the Bridge Properties.

27. This would first necessitate the BVI Companies obtaining possession of the Bridge Properties. To this end, Hortin and Westdene have been involved in possession proceedings, commenced in England in the Central London County Court (the “**CLCC Possession Proceedings**”), which I summarise a little later in this judgment. However, the CLCC Possession Proceedings have to be considered in the context of two obstacles that have impeded the BVI Companies’ attempts to gain possession.

B4: The Tenancy Agreement

28. The first such obstacle is a Tenancy Agreement dated 16 January 2013 (the “**Tenancy Agreement**”), between the BVI Companies (as Landlords) and various members of the Al Sari family and IGPL GT (as Tenants). It has an addendum purportedly dated 4 March 2013 (the “**Addendum**”).
29. The Claimants say that the provisions of the Tenancy Agreement (and, in so far as relevant, the Addendum) are obviously uncommercial. They also refer to a number of other curious features – not least, that Abdalla Al Sari signed both documents on behalf of every single party, despite having no authority to act on behalf of the BVI Companies (as has now been found both in the BVI and in England); and that the Tenancy Agreement refers to the Bridge Properties by a postcode (SW11 8NP) which was not ascribed to them until nearly four years later.
30. Furthermore, they say that no-one appears to have known about or acted upon the Tenancy Agreement until recently. Indeed, it is inconsistent with the fact that one suite within the Bridge Properties had been let by Westdene to a third-party tenant, for

a 10-year term, by a (genuine) agreement dated 12 October 2016. Westdene could not have granted this tenancy if it had known about the Tenancy Agreement purportedly signed on its behalf by Abdalla Al Sari.

31. The Claimants' case is that the Tenancy Agreement and the Addendum are sham documents, which were created by the Al Sari Defendants and IGPL GT in 2019, to prevent the BVI Companies from obtaining possession of the Bridge Properties and to harm the Claimants. They also say that the Tenancy Agreement and the Addendum were backdated, and were in reality created after, and in breach of, the s. 25 Freezing Order.
32. The Globe Defendants do not accept this, but they accept that there is a serious issue to be tried. Accordingly, they did not argue before me that the Tenancy Agreement and the Addendum are not sham documents, for the purposes of their application (albeit they reserve the right to do so later).

B5: Reliance on the Tenancy Agreement

33. The Receiver was notified of the existence of the Tenancy Agreement by Majid Al Sari's lawyers on 27 June 2019.
34. On 28 January 2021, IGPL GT applied without notice to the Dubai International Financial Court ("**DIFC**") and obtained an injunction restraining the Receiver and the BVI Companies from dealing with the residential apartments at the Bridge Properties, which had been converted into a single apartment ("**the Bridge Apartment**") (the "**DIFC Tenancy Injunction**"). This was shortly after Majid Al Sari's second application in the BVI for a stay of the Charging Order had been rejected – i.e., on 15 December 2020. IGPL GT's application was founded on the Tenancy Agreement.

35. On 14 February 2021, IGPL GT commenced proceedings in the DIFC, seeking specific performance of the Tenancy Agreement (the “**DIFC Tenancy Proceedings**”). On 22 August 2021, the DIFC Tenancy Proceedings were dismissed, on a summary basis, because Justice Roger Giles accepted the argument of the Receiver and the BVI Companies that Abdalla Al Sari did not have authority to sign the Tenancy Agreement on behalf of the BVI Companies.
36. On 7 September 2021, IGPL GT sought permission to appeal. The DIFC Tenancy Injunction was continued, pending the determination of the appeal.
37. IGPL GT’s application for permission to appeal the DIFC judgment of 22 August 2021 was dismissed on 23 March 2022, and the DIFC Tenancy Injunction was also discharged. This made it possible for the Claimants to commence proceedings in England seeking possession of the Bridge Properties, which they did on 5 April 2022.
38. IGPL GT then turned to Sharjah. On 14 April 2022, it issued proceedings in Sharjah for a declaration that the Tenancy Agreement was valid and enforceable. They were dismissed for want of jurisdiction on 15 June 2022. IGPL’s appeal against this decision was dismissed on 13 October 2022.
39. The Tenancy Agreement has also been relied on in a pleading served by IGPL GT in the CLCC Possession Proceedings; and IGPL GT has subsequently made vague suggestions that it may commence still further proceedings in Dubai, relying on the Tenancy Agreement. However, these matters have had no real practical effect.
40. In summary, while reliance on the Tenancy Agreement has arisen in various forms and in various forums, it is the DIFC Tenancy Proceedings, and the DIFC Tenancy Injunction associated with them, that has had a real effect – namely, to prevent the

BVI Companies from commencing the CLCC Possession Proceedings from 31 January 2021 until 23 March 2022.

B6: The Globe Documents

41. The second obstacle to the Claimants' gaining possession of the Bridge Properties comprises three agreements (the "**Globe Documents**") recording a series of transactions by which indebtedness of AED 582,652,815 was transferred from the Al Sari Defendants to the BVI Companies, and the right to be repaid this indebtedness was transferred to Globe:
- i) A Memorandum of Understanding dated 13 April 2014 between Globe, MAS, the Al Sari Brothers and the BVI Companies (the "**Globe MOU**") under which: (a) MAS agreed to pay the Al Sari Brothers' debts under guarantees given to certain banks totalling AED 651,803,603; (b) MAS assigned to Globe its right to be repaid AED 550 million from the Al Sari Brothers; and (c) the Al Sari Brothers transferred to the BVI Companies their liability to repay that amount.
 - ii) A loan agreement dated 14 April 2014 between Globe (as lender) and the BVI Companies (as borrower) (the "**Globe Loan Agreement**"), under which the BVI Companies declared their debt of AED 550 million to Globe and agreed to pay that debt plus interest in instalments between 2015 and September 2018.
 - iii) A settlement agreement dated 1 November 2018 between Globe and the BVI Companies (the "**Globe Settlement Agreement**"), entered into following defaults under the Globe Loan Agreement, under which (a) the parties recorded that the amount owed under the Globe Loan Agreement was AED 574,750,000; and (b) the BVI Companies agreed by way of settlement to pay

Globe AED 582,652,815 in 10 instalments from 31 January 2019 to 30 April 2021.

42. The Claimants say that the Globe Documents, like the Tenancy Agreement, are obviously uncommercial and that their purpose was to manufacture a bogus debt against the BVI Companies. They say that there was no proper reason for MAS to agree to discharge the indebtedness of the Al Sari Defendants to the banks, nor is it obvious how it was able to do so (unless funded by the Al Sari Defendants); still less why MAS assigned the right to be repaid to Globe, or why the BVI Companies accepted the obligation to repay and (in the process) entirely relieved the Al Sari Defendants of their former liabilities as guarantors. The apparent effect was to benefit the Al Sari Defendants at the expense of the BVI Companies, who received nothing whatsoever in return.
43. The Claimants also say that there are clear connections between the Al Sari Defendants and the Globe Defendants, noting that two directors of Globe (“**Mr Almheiri**” and “**Mr Al Shehhi**”) hold (or have until recently held) positions within various other companies associated with the Al Saris. In particular, Mr Almheiri is (or was until recently) the General Manager of IGPL GT.
44. The Claimants allege that, like the Tenancy Agreement and Addendum, the Globe Documents are sham documents, which were created by the Al Sari Defendants and IGPL GT to prevent the BVI Companies from obtaining possession of the Bridge Properties and to harm the Claimants. They also say that, like the Tenancy Agreement and Addendum, they were signed by Abdalla Al Sari, purportedly on behalf of the BVI Companies but without their authority. They further say that they (or at least the Globe MOU and the Globe Loan Agreement) were backdated and (like

the Tenancy Agreement and Addendum) were in reality created after, and in breach of, the s. 25 Freezing Order.

45. Once again, the Globe Defendants do not accept this, but they accept that there is a serious issue to be tried. Accordingly, they did not argue before me that the Globe Documents are not sham documents, for the purposes of their application (albeit they reserve the right to do so later).
46. It is noteworthy that the apparent date of the Globe Settlement Agreement (1 November 2018) was 6 days after the BVI Court dismissed Majid Al Sari's application to set aside CBD's BVI Judgment (25 October 2018). Whether this or any of the other allegedly sham documents was in fact created on the date it bears is, of course, in issue. However, for this specific document, that may not be important to the Claimants' case.

B7: Reliance on the Globe Documents

47. Globe commenced proceedings against the BVI Companies in Sharjah on 17 April 2019, alleging default under the Globe Settlement Agreement and seeking payment of the sums due under it (the "**Sharjah Globe Proceedings**").
48. On 17 March 2020, the Sharjah Court dismissed Globe's claims. Globe lodged an appeal on 12 April 2020. On 6 April 2021, the Sharjah Appeal Court allowed Globe's appeal and ordered the BVI Companies jointly to pay Globe AED 582,652,815 plus interest and costs (the "**Globe Appeal Judgment**"). My understanding is that the issues raised both at first instances and before the Sharjah Appeal Court included questions as to whether they were sham documents and whether they were signed with the authority of the BVI Companies.

49. The BVI Companies made various efforts to reverse the Globe Appeal Judgment, which appear to have come to an unsuccessful conclusion in December 2021.
50. On 10 January 2022, Globe filed a claim in Sharjah for execution of the Globe Appeal Judgment against the BVI Companies. This was something of an empty gesture, as the BVI Companies do not appear to have any assets apart from the Bridge Properties, and certainly none in Sharjah. In the context of the execution claim, Globe sought arrest warrants and travel bans against CBD's Head of Legal ("**Dr Tayeb**").
51. Nothing further happened in Sharjah. Elsewhere, the various other proceedings mentioned in this judgment were ongoing – including the CLCC Possession Proceedings, and this action, both of which I deal with below. Anticipating that, the immediate context for the next significant step taken in reliance on the Globe Documents includes the following:
 - i) On 28 February 2023, CRS came off the record in this action, having until then acted for the Al Sari Defendants (save Mohamed Al Sari) and the Sharjah Companies.
 - ii) On 10 March 2023, unless orders were granted in this action against the Former CRS Defendants.
 - iii) On 28 April 2023, the hearing took place in this action of the Claimants' application for summary judgment against the Al Sari Defendants and the Sharjah Companies, to enforce CBD's Sharjah Judgment – i.e., in respect of CBD's original debt claim. At the hearing, summary judgment was granted by Butcher J. The relevant Defendants did not attend and were not represented – a decision that, it can be assumed, was made some time in advance of the

hearing, and which means they must have anticipated that summary judgment would be granted against them.

- iv) On 28 April 2023, in the CLCC Possession Proceedings, judgment was given in favour of Hortin and Westdene, and they were granted possession of the Bridge Properties.
52. On 11 April 2023, Globe issued an application in the DIFC for a Worldwide Freezing Order against all the Claimants (the “**DIFC Globe Proceedings**”). The application was based on the Globe Documents and the Globe Appeal Judgment. The order applied for was granted at a without notice hearing on 3 May 2023 (the “**DIFC Globe WFO**”). It was worded so as expressly to restrain the Claimants from dealing with the Bridge Properties.
53. It is striking that Globe took these steps a few weeks after CRS had come off the record in this action, and a few days before Butcher J’s summary judgment in this action and the judgment in the CLCC Proceedings.
54. There was an interim return hearing in relation to the DIFC Globe WFO on 16 May 2023, at which Justice Michael Black directed that Globe should commence enforcement proceedings against the Claimants by 30 May 2023, otherwise the DIFC Globe WFO would be discharged. My understanding is that this is because the DIFC Globe WFO is an ancillary order, intended to support substantive proceedings elsewhere.
55. I further understand that, in the course of that hearing, it was suggested on behalf of the Claimants that the appropriate forum for those proceedings would be England, this being the jurisdiction in which the assets that are the focus of the DIFC Globe WFO

are situated. Counsel for Globe accepted this in principle but indicated that Globe did not intend to commence enforcement proceedings here, but would do so elsewhere.

56. On 26 May 2023, Globe issued enforcement proceedings in the BVI (the “**BVI Globe Proceedings**”); albeit the only defendants to those proceedings are the BVI Companies (rather than all the Claimants).
57. I was told at the hearing before me that a further return date hearing was due to take place in the DIFC on 16 June 2023. I asked to be informed of any significant developments. Late in the afternoon of 19 June 2023, I was told that Justice Black had dismissed the DIFC Globe Proceedings and had discharged the DIFC Globe WFO. In due course I received a copy of the Order made by Justice Black, issued on 19 June 2023. It provides at paragraph 1: “The Application is dismissed and the Freezing Order is discharged.”
58. The Order said that the reasons would follow. I received Justice Black’s reasons on 5 July 2023, and so have been able to complete this judgment having had the benefit of being able to read them. The primary reason for discharging the Freezing Order was that Globe had failed to demonstrate a risk of dissipation. However, Justice Black would have discharged it in any event, because he considered that Globe had misled him at the without notice hearing on 3 May 2023. Furthermore, he would have concluded in any event that it was not just and convenient for the relief sought to be granted in the DIFC; in his view, the natural forum for Globe’s claim, and for any freezing order, was the BVI.

B8: The CLCC Possession Proceedings

59. As already noted, the CLCC Possession Proceedings could not be commenced until 5 April 2022, following the discharge of the DIFC Tenancy Injunction on 23 March 2022. Service was effected on 19 April 2022.
60. The original defendants to the CLCC Possession Proceedings were the people believed to be in possession – a UK management company and Mr Gebremedhin.
61. In June 2022, IGPL GT applied to be joined as a defendant, and provided a draft Defence to be served jointly on behalf of Mr Gebremedhin and it. The joinder application was heard on 14 December 2022 and the application succeeded. The Defence of Mr Gebremedhin and IGPL GT was formally signed and dated 22 December 2022. In this Defence, IGPL indicated its intention to rely on the Tenancy Agreement.
62. At that joinder hearing, IGPL GT was represented by Counsel instructed by CRS, IGPL GT’s solicitors. However, CRS came off the record in the CLCC Possession Proceedings in February 2023.
63. The merits of the CLCC Possession Proceedings were decided at a hearing on 28 April 2023. None of the defendants to those proceedings, including IGPL GT, attended or were represented.
64. HHJ Johns KC gave judgment in favour of Hortin and Westdene, granting them possession of the Bridge Properties (the “**CLCC Possession Judgment**”). In his judgment, he held that the Tenancy Agreement and Addendum were “fabricated”. He also held (consistently with the judgment of Justice Roger Giles of 22 August 2021 in the DIFC Tenancy Proceedings) that Abdalla Al Sari had not had the authority to sign

the Tenancy Agreement and Addendum. This judgment was given on 28 April 2023 and is recorded in an order sealed on 3 May 2023.

65. At the time of the hearing before me, the evidence was that Mr Gebremedhin had declined to surrender possession of the Bridge Properties, apparently on the basis that he considered himself bound by the DIFC Globe WFO. In any event, the position on 13 and 14 June 2023 was that the DIFC Globe WFO prevented the Claimants (and certainly Hortin and Westdene, being the parties that were granted possession) from taking steps to enforce the CLCC Possession Judgment.
66. However, following the discharge of the DIFC Globe WFO, that can no longer be the case. I do not know whether Mr Gebremedhin is still reluctant to vacate the Bridge Properties, but, if so, this can no longer be because of the DIFC Globe WFO. In any case, there is no longer any obvious reason why the Claimants cannot enforce the CLCC Possession Judgment.

C: THIS ACTION AND THE CLAIMS AGAINST THE GLOBE DEFENDANTS

C1: The Claimants' WFO

67. This action was effectively commenced by the application for, and grant of, a Worldwide Freezing Order (the “**Claimants' WFO**”), together with associated relief including permission to issue proceedings for service on the Defendants out of the jurisdiction, on 18 February 2022. The Claim Form was issued on 21 February 2022.

C2: Overall summary of the claims

68. The claims brought in the action fall into two groups:
- i) First, there were claims against the First to Fifth Defendants for the enforcement of CBD's Sharjah Judgment. These are straightforward debt

claims, arising out of the underlying debt claims brought in Sharjah in respect of credit provided to FAL and the guarantees provided by the Al Sari Defendants and IGPL.

- ii) Second, there were claims arising from the conduct of all the Defendants (except FAL and IGPL GT), following CBD's Sharjah Judgment (“**the Conduct Claims**”). The Conduct Claims are all tortious, equitable or statutory. They are put in a number of ways that I consider in more detail below, but, taken overall, the gist is that the Defendants have acted fraudulently so as to prevent the Claimants from enforcing CBD's Sharjah Judgment; in particular so as to prevent the Claimants from obtaining possession of the Bridge Properties. The Conduct Claims culminate in allegations that all the Defendants fraudulently conspired together to achieve that purpose by unlawful means, by their reliance on sham documents: the Tenancy Agreement (and its Addendum) and the Globe Documents.

Procedural history

69. Mohamed Al Sari did not respond to service and has never taken any part. Default judgment was entered against him on 20 May 2022 in relation to the enforcement of CBD's Sharjah Judgment.
70. The Former CRS Defendants acknowledged service and indicated that they intended to challenge the jurisdiction of the court – hence the application issued on their behalf by CRS, dealt with at the end of this judgment. The application was supported by the First and Third Witness Statements made by Sara Sheffield of CRS, dated 26 April 2022 and 26 May 2022.

71. However, their response to the Claimants' WFO was otherwise not completely satisfactory. It is not necessary to set out the full procedural history, but the upshot of this patchy record is as follows:
- i) On 28 February 2023, CRS came off the record.
 - ii) Since that date, there has been no engagement by any of Former CRS Defendants.
 - iii) On 10 May 2023, Butcher J granted summary judgment against some but not all the Former CRS Defendants – Abdalla Al Sari, Majid Al Sari, FAL and IGPL. This summary judgment, like the default judgment against Mohamed Al Sari, related only to claims to enforce CBD's Sharjah Judgment. It did not relate to the Conduct Claims.
72. It follows that the Conduct Claims still remain to be determined, against all the Defendants against whom they are brought – whether in this action, or in other proceedings elsewhere; which essentially depends on my decisions in relation to the jurisdiction applications before me.
73. Furthermore, there are also outstanding applications for committal for contempt of court, (a) against the Former CRS Defendants and Mohamed Al Sari and (b) against the Globe Defendants. Those applications will go ahead in any event, on separate dates later this year.

C3: The claims against the Globe Defendants

74. It is convenient to set out the claims against the Globe Defendants in the same sequence as set out in the draft Amended Particulars of Claim, and by reference to the

headings adopted in the draft Amended Particulars of Claim. However, it became apparent during submissions that this sequence is misleading.

75. The sequence is misleading because unlawful means conspiracy is set out as almost the last heading and the last pleaded claim. However, Mr Peto KC made it clear that he regarded this as the Claimants' main case against the Globe Defendants, and indeed against the other Defendants. It is pleaded as almost the last claim only because it draws upon all the matters set out earlier in the pleading.
76. The headings are misleading because the facts alleged under the various headings could and (as I understand Mr Peto KC's submissions) will in due course be said to amount to torts not reflected by the headings.

C4: Deceit

77. The facts alleged under the heading of deceit are that, by relying on the Globe Documents in the Sharjah Globe Proceedings, in the DIFC Globe Proceedings and in the BVI Globe Proceedings, Globe knowingly made false representations that the Globe Documents were genuine and valid and that Globe believed them to be genuine and valid.
78. These representations are alleged to have affected the Claimants in that they caused them to incur legal costs in Sharjah, in the DIFC and (at least prospectively) in the BVI. They also alleged to have affected the relevant Court in each case.
79. Although the heading used refers only to deceit, the knowing reliance upon sham documents in the relevant jurisdictions could conceivably amount to the commission of what in English law would normally be referred to using other tortious labels, such as (potentially) malicious prosecution and/or malicious falsehood. It of course could

also be relied on as contributing to the case in unlawful means conspiracy. Mr Peto KC confirmed in submissions that this will be the Claimants' case.

C5: Marex torts

80. The heading adopted by the Claimants refers to the tort recognised at first instance by Knowles J in *Marex Financial Limited v Sevilleja* [2017] EWHC 918 (Comm) and reviewed by Bryan J in *Lakatamia Shipping Co Limited v Nobu Su* [2021] EWHC 1907 (Comm), i.e., the tort of intentionally violating rights in a judgment debt.
81. As regards the Globe Defendants, the facts alleged are that the Al Sari Defendants, Globe and/or MAS created the Globe Documents, in the circumstances and with the intentions set out above, including the intention to violate CBD's rights under CBD's Sharjah Judgment and/or CBD's BVI Judgment. It is further alleged that the Al Sari Defendants, Globe and/or MAS violated CBD's rights under those judgments (viz., CBD's Sharjah Judgment and/or CBD's BVI Judgment) by falsely asserting that the Globe Documents were genuine and created rights against the BVI Companies and/or by depriving the BVI Companies of value at the time they were transferred to CBD, pursuant to CBD's BVI Judgment and Charging Order.
82. Accordingly, the judgments alleged to have been violated by Marex torts are, only, CBD's Sharjah Judgment and CBD's BVI Judgment.

C6: Malicious prosecution

83. The facts alleged under the heading of malicious prosecution do not concern the Globe Defendants, the Globe Documents, the Sharjah Globe Proceedings or the DIFC Globe Proceedings. Nevertheless, later in the APOC (in paragraph 59), the pursuit of the DIFC Globe WFO (i.e., in the DIFC Globe Proceedings) and the Globe BVI Proceedings appear to be said to be "actionable as... malicious prosecution".

84. My inference from this was that the facts alleged in relation to the Globe Defendants under the heading of deceit are meant to be understood as allegations that (if made out) would constitute the tort of malicious prosecution. While this was far from clear, I assumed that this would relate to the deceit alleged to have affected (respectively) the Courts of the DIFC and the BVI, in the DIFC Globe Proceedings and in the BVI Globe Proceedings and I proceed below on that basis.

C7: Breach of fiduciary/dishonest assistance

85. The facts alleged under the heading of breach of fiduciary duty/ dishonest assistance are all concerned with the fiduciary duties owed by the Al Sari Defendants to the BVI Companies and their alleged breaches of those fiduciary duties and their dishonest assistance of each other. The allegations therefore are directed exclusively at establishing liability on the part of the Al Sari Defendants. There is no allegation that any of the Globe Defendants is liable for breach of fiduciary duty or for dishonest assistance.
86. I mention this heading only because paragraph 59 of the APOC appears to allege (at least on one possible reading) that the pursuit of the DIFC Globe WFO (i.e., in the DIFC Globe Proceedings) and the Globe BVI Proceedings is “actionable as... breach of fiduciary duty”. With respect, it is not; and certainly not as against the Globe Defendants, who are not alleged to have owed any fiduciary duties.

C8: Unlawful means conspiracy

87. It is alleged that the Al Sari Defendants combined with each other and with all the other Defendants (including the Globe Defendants) to harm the Claimants by unlawful means, in particular to preserve the Bridge Properties for the Al Sari

Defendants and prevent the Claimants from realising their value – i.e., to prevent the Claimants from obtaining possession.

88. It is alleged that this conspiracy included (at least) the creation and use of the Tenancy Agreement and the Globe Documents. The means used were unlawful and included all the torts and breaches of equitable duty identified above (together with further torts alleged only against the Al Sari Defendants and/or the Sharjah Companies) and the claim under s. 423 Insolvency Act 1986 (summarised below). Further:
- i) By breaching the s. 25 Freezing Order, the relevant Defendants acted in contempt of court. (The relevant paragraph of the Amended Particulars of Claim refers only to the Al Sari Defendants and the Tenancy Agreement, but, given the express allegations elsewhere that the Globe Defendants' involvement in the Globe Documents was also a contempt of court, I believe that the Claimants must intend also to rely on the alleged contempt of the Globe Defendants).
 - ii) By relying on the Globe Documents in the Sharjah Globe Proceedings the Globe Defendants acted unlawfully under the relevant local laws. My understanding of Mr Peto KC's oral submissions was that this should be treated as extending also to Globe Defendants' reliance on the Globe Documents in the DIFC Globe Proceedings and BVI Globe Proceedings.
 - iii) By relying on the Tenancy Agreement and Addendum in the CLCC Possession Proceedings, Abdalla Al Sari and Majid Al Sari acted in contempt of court.

C9: s. 423 Insolvency Act 1986

89. It is alleged that the Globe Documents (as well as the Tenancy Agreement and Addendum) were transactions entered into at an undervalue for the purpose of putting the BVI Companies and/or the Bridge Properties beyond the reach of CBD, or of prejudicing its interests in relation to its claims against the Al Sari Defendants.
90. In this regard, the Claimants say that there is a sufficient connection to the UK to justify this Court exercising jurisdiction under s. 423 Insolvency Act 1986 and ordering the position to what it would have been if the transactions had not been entered into and/or releasing the BVI Companies from any obligations under the Tenancy Agreement and/or the Globe Documents.

The evolution of the Particulars of Claim

91. As noted, this action was commenced in February 2022. At that time, the main obstacle in the way of the Claimants obtaining possession of the Bridge Properties arose from the Tenancy Agreement, including the various ways in which the Defendants (but essentially the Al Sari Defendants and IGPL GT) relied on the Tenancy Agreement and its Addendum, initially in Dubai in the context of DIFC Tenancy Injunction.
92. In February 2022, the Globe Documents had been relied on in Sharjah in the context of the Globe Appeal Judgment, but had not been raised directly in respect of the Bridge Properties.
93. Over time, the Tenancy Agreement was also relied on in Sharjah and, ultimately, in the CLCC Possession Proceedings.

94. Turning to the Globe Documents, they were relied in the DIFC Globe Proceedings and the BVI Globe Proceedings, specifically to obtain the DIFC Globe WFO. As already noted, when the hearing before me began, the DIFC Globe WFO was the obstacle that was then standing in the way of the Claimants' obtaining possession of the Bridge Properties.
95. Shortly before the hearing, the Claimants served draft Amended Particulars of Claim. Section D set out the facts relied on, and now included the facts in respect of the Sharjah Tenancy Proceedings, the CLCC Possession Proceedings and the DIFC Globe Proceedings (including the DIFC Globe WFO). The claims advanced on the basis of these facts were then set out in Section E. The draft amendments to Section E included, at least to some extent, revisions reflecting the new facts set out in Section D.
96. However, it was apparent to me that these draft amendments, especially in Section E, might have been prepared without the Claimants having fully analysed the various causes of action that the underlying factual allegations might be said to constitute. It also seemed to me highly likely that further possible ways for the Claimants to put their case were bound to emerge during oral submissions; and that, as a matter of efficient case-management, I should seek to accelerate that process. I therefore made some observations at an early stage of the hearing to the effect that there might be additional ways in which the Claimants might put their case. I also indicated that, if the Claimants wished to adopt any such additional causes of action, they should serve a revised draft of the Amended Particulars of Claim by 09:30 on the second day of the two-day hearing.

97. I should record my gratitude to both teams for the phlegmatic pragmatism with which they accepted the imposition of this no doubt unwelcome burden, and the graciousness with which they confirmed that they would both be able to cope with it, given the time available.
98. The result was a revised draft in the form that I have summarised above, produced overnight by Mr Peto KC and his junior, Mr Trotter. I indicated to Mr Smith KC that, if he and his junior, Mr Williams, wished to ask for more time to deal with the revised draft, I would almost certainly be amenable to this in principle. Mr Smith KC gallantly said that this was not necessary.

Points not pleaded

99. I have explained the evolution of the Particulars of Claim not only in order to express my gratitude and pleasure at the behaviour of all Counsel, but also to highlight the circumstances in which some ways of putting the case are still not taken, even in the revised draft Amended Particulars of Claim now before the Court.
100. This is so even when it is taken into account that the headings used by the Claimants cannot be relied on as complete summaries of the causes of action included below each heading, and that the relevant causes of action were explained in rather broader terms by Mr Peto KC in his oral submissions. I have highlighted the most prominent examples in the preceding passages in this section of my judgment.
101. Perhaps most significantly in the context of this application, the only pleaded point arising in relation to the CLCC Possession Proceedings is the fact that Abdalla Al Sari and Majid Al Sari gave false evidence in witness statements in those proceedings (relating to the Tenancy Agreement). This is relied on as unlawful for the purposes of the claim in unlawful means conspiracy.

102. So, while there are claims expressly characterised as “Marex torts”, they are confined to the intentional violation of CBD’s Sharjah Judgment and CBD’s BVI Judgment. It is not alleged – at least expressly – that the Defendants (including the Globe Defendants) have intentionally violated the CLCC Possession Judgment. This is so even though Mr Peto KC made it clear that the Claimants’ case is that the Globe Documents were brought into existence and the Globe Appeal Judgment was obtained in Sharjah precisely with a view to preventing the BVI Companies from obtaining possession of the Bridge Properties, and that the Globe DIFC Proceedings and the Globe BVI Proceedings have been brought specifically because of the CLCC Possession Proceedings and the CLCC Possession Judgment.
103. In the circumstances, it is not entirely clear to me whether the reason that there is no allegation of a Marex tort in relation to the CLCC Possession Judgment is because (a) the indications that I gave early in the hearing were insufficiently clear or comprehensive, or (b) the Claimants have made a considered decision not to adopt them.
104. What is clear to me, however, is that the fact that the Claimants might wish to put their case in that additional way has not been made clear to the Globe Defendants. No such case has been pleaded, nor was any such case advanced by Mr Peto in his oral submissions. Thus, the Globe Defendants were not put on notice that they should address any such claim, and it was not in fact addressed by Mr Smith KC in his submissions. It therefore would be unfair to Mr Smith KC and his clients if I were to permit the Claimants to rely on such a claim in the context of this application.
105. I therefore approach the application on the basis that the claims advanced by the Claimants do not include a Marex tort claim in respect of the CLCC Possession

Judgment.

D: THE GLOBE DEFENDANTS' CHALLENGE TO ENGLISH JURISDICTION

D1: Summary of the Globe Defendants' case on jurisdiction

106. The claims asserted against the Globe Defendants are all non-contractual. From an English-law perspective, they are all essentially tortious in nature (subject to a possible query as to whether the s. 423 claim is truly tortious, mentioned below).

107. The Globe Defendants' challenge to English jurisdiction application is based on the following grounds:

- i) First, they say that the claims do not disclose a serious issue to be tried, because they are governed by UAE (or BVI) law and no claim under UAE (or BVI) law is pleaded. Accordingly, this first ground has two limbs, and the Globe Defendants must succeed on both. The first limb is that each tortious claim is governed by UAE law (or BVI law). The second is that each claim is defective because UAE law (or BVI law) has not been pleaded.
- ii) Second, they say that England is not the proper forum in which to bring the claims (cf. CPR r 6.37).
- iii) In relation to the s. 423 claim, they say that there is not a sufficient connection to England.

108. The Globe Defendants accept that there is an available jurisdictional gateway in respect of each claim, for the purposes of CPR PD 6B paragraph 3.1.

109. As already noted (and as Mr Smith KC kindly confirmed in oral submissions), the Globe Defendants also accept that there are serious issues to be tried in respect of the

Claimants' key factual allegations:

- i) that the Globe Defendants are all owned and controlled by, or at least closely associated with, the Al Sari family;
- ii) that the Tenancy Agreement and Addendum are sham documents; and
- iii) that the Globe Documents are also shams.

D2: No argument of res judicata

110. There is one further point not taken by the Globe Defendants that is worth highlighting.

111. The Globe Appeal Judgment was rendered by the Sharjah Appeal Court in proceedings involving Globe as claimant/appellant and the BVI Companies as defendants/respondents. The issues raised before that Court and determined by it included whether the Globe Documents are shams and whether they were signed with the authority of the BVI Companies. In principle, it is obvious that there might be some scope for the Globe Defendants to argue that the BVI Companies and/or the Claimants as a whole cannot run the same issues again in this action and thus that they do not constitute serious issues to be tried, for the purposes of jurisdiction. Against that, it is also obvious that the Claimants might say that the Globe Appeal Judgment was procured by fraud, so no judgment estoppel or issue estoppel or any similar doctrine of res judicata can be relied on by the Globe Defendants. Furthermore, the Claimants would rely on the relatively low bar presented by the test of serious issue to be tried.

112. None of these matters were raised in the application notice, the witness statements served by either side or their skeleton arguments. None of the authorities or other

legal materials that I would have had to consider, if judgment estoppel (etc.) had been in play before me, were included in the very extensive authorities bundle.

113. In the course of his oral submissions, Mr Smith KC at one stage appeared to suggest that this was nevertheless a relevant point. The specific context of Mr Smith KC's remarks was a submission to the effect that there was likely to be a doctrine in UAE law as to judgment estoppel and/or issue estoppel, similar to that in English law. I told Mr Smith that if he wished to develop an argument based on res judicata principles in English law, I would need to be provided with the relevant legal materials and I would also need some assistance from him and from Mr Peto KC (on behalf of the Claimants). I heard nothing further, and no legal materials or assistance were forthcoming during the remainder of Mr Smith KC's submissions.
114. I take it from this that the Globe Defendants have made a considered decision not to argue before me that the Globe Appeal Judgment gives rise to any kind of judgment estoppel or issue estoppel, and that it is in the light of that considered decision that the Globe Defendants accept that there is a serious issue to be tried that the Globe Documents are shams.

E: THE LEGAL PRINCIPLES ON DETERMINING APPLICABLE LAW(S)

E1: Rome II Art. 4

115. The law or laws applicable to the Claimants' tortious claims must be determined in accordance with Article 4 of the Rome II Regulation:

"Article 4

General rule

1. Unless otherwise provided for in this Regulation, the law applicable to a non-contractual obligation arising out of a tort/delict shall be the law of the country in which the damage occurs irrespective of the country in which the event giving rise to the damage occurred and irrespective of the country or

countries in which the indirect consequences of that event occur.

2. However, where the person claimed to be liable and the person sustaining damage both have their habitual residence in the same country at the time when the damage occurs, the law of that country shall apply.

3. Where it is clear from all the circumstances of the case that the tort/delict is manifestly more closely connected with a country other than that indicated in paragraphs 1 or 2, the law of that other country shall apply. A manifestly closer connection with another country might be based in particular on a pre-existing relationship between the parties, such as a contract, that is closely connected with the tort/delict in question.”

116. The Rome II Regulation is directly applicable (rather than being applicable as retained law) because the events giving rise to damage are said to have occurred before 31 December 2020 (being the end of the transition period following the UK’s departure from the EU): Article 66(b) of the UK-EU Withdrawal Agreement.

117. Article 4(2) applies as between the BVI Companies and Mena, but not otherwise. It was common ground, and is in any event my view, that even if this meant that the challenge to jurisdiction failed in respect of Mena, but succeeded in respect of the other Globe Defendants, that could not justify the exercise of the Court’s jurisdiction even over Mena, let alone the other Globe Defendants, because it would not be sufficient to make England the appropriate forum.

118. Accordingly, most of the submissions in this context related to Article 4(1), and to a lesser degree to Article 4(3).

E.2: The relation between Art. 4(1) Rome II and Art. 5(3)/7(2) Brussels Recast

119. While I was shown and given references to a large number of authorities in relation to Article 4(1), there was very little disagreement between Mr Smith KC and Mr Peto

KC as to the law.

120. Many of these decisions relate to what was originally Article 5(3) of the 1968 Brussels Convention, then of the 1988 Lugano Convention, then of the Brussels I Regulation, then of the 2007 Lugano Convention, and is now Article 7(2) of EU Regulation 1215/2012. For convenience, I refer to all these provisions compendiously, as “Article 5(3)/7(2) of Brussels Recast”. There are more decisions on Article 5(3)/7(2) of Brussels Recast, in the context of jurisdiction, than there are on Article 4(1) of Rome II. Those decisions are informative in the context of Rome II, even if not directly applicable to it, not only because many of the same considerations apply, but because recital (7) in the preamble to Rome II expressly states that its scope and provisions should be consistent with the Brussels I Regulation.
121. One naturally must bear in mind that Article 4(1) of Rome II is concerned only with the place where damage occurs, not the event giving rise to damage, whereas the scope of Article 5(3)/7(2) of Brussels Recast is broader. Nevertheless, a number of the English authorities on Article 4(1) of Rome II expressly draw on the jurisprudence that has developed both in England and in the EU in the context of jurisdiction: *Fortress Value Recovery Fund I LLC v Blue Sky Special Opportunities Fund LP* [2013] EWHC 14 (Comm) per Flaux J at [44]-[45]; *Erste Group Bank AG v JSC VMZ “Red October”* [2013] EWHC 2926 (Comm), per Flaux J at [45]; *Pan Oceanic Chartering Inc v. UNIPEC UK Co Limited* [2016] EWHC 2774 (Comm) per Carr J at [196] (albeit I note the caution expressed by Carr J in the preceding paragraph).
122. The appropriate approach is to interpret Article 4(1) of Rome II “in a manner which is broadly in harmony with the jurisprudence and interpretation of similar provisions in the Judgments Regulation”: *Erste Group Bank AG v JSC 'VMZ Red October'* [2015]

EWCA Civ 379, per Gloster LJ at [90]-[91]; therefore the authorities on Article 5(3)/7(2) of Brussels Recast are “likely to be useful”: *FM Partners Ltd v Marino* [2018] EWHC 1768 (Comm), per Cockerill J at [485]-[486].

E3: Original damage, directly caused

123. The most important precept, undoubtedly applicable both to Article 5(3)/7(2) of Brussels Recast and to Article 4(1) of Rome II, is that the search is for the place where the harmful event directly had its effect on the immediate victim and where the original damage was manifested; not where indirect or more remote damage occurred or consequential financial loss. This formulation is taken from a judgment on Article 5(3)/7(2) of Brussels Recast: – *AMT Futures Ltd v Marzillier, Dr Meier & Dr Guntner Rechtsanwaltsgesellschaft mbh* [2014] EWHC 1085 (Comm), Popplewell J at [34]. It was applied in a judgment on Article 4(1) of Rome II: *Pan Oceanic* at [196]. It has been applied since, in a further judgment on Article 4(1): *Lakatamia Shipping* at [846]. Popplewell J’s formulation was itself the distillation of a familiar roll-call of ECJ decisions on Article 5(3)/7(2) of Brussels Recast.
124. Applying the distinction between (a) original damage, directly caused and (b) indirect, remote or consequential damage can be difficult in some cases, especially where all the damage is economic. The Court of Appeal recently noted in *Kwok Ho Wan v UBS AG* [2023] EWCA Civ 222 that arriving at a correct understanding of the CJEU decisions requires acknowledging their different factual circumstances (per Sir Geoffrey Vos MR at [33]). The corollary is that, in order to apply correctly the principles evinced by these CJEU decisions, it is first necessary to take great care to identify and analyse the relevant facts of the instant case. More pithily: the exercise is fact-specific.

125. Nevertheless, the principle is clear, and it is undoubtedly common to both contexts, i.e., Article 5(3)/7(2) of Brussels Recast and Article 4(1) of Rome II. This was common ground between the parties.

E4: The autonomous approach; do pleadings matter?

126. Many international or supranational legal instruments necessarily have to be construed autonomously. It has long been established that an autonomous approach is required for Article 5(3)/7(2) of Brussels Recast: *Marinari v Lloyd's Bank plc* [1996] QB 217 at [18]-[19]; *JSC BTA Bank v Ablyazov* [2018] UKSC 19, at [32]; *Kwok Ho Wan* at [17].

127. Mr Smith KC relied on the decision of Flaux J in *Erste Group Bank* at first instance at [170], as establishing that this also applies to Article 4(1) of Rome II. The decision itself was overturned by the Court of Appeal [2015] EWCA Civ 379, but there was no appeal on this point. I did not understand Mr Peto KC to dispute that Article 4(1) must be construed autonomously, and that is my view in any event.

128. Mr Smith KC then went further, alighting on a phrase used in *Erste Group Bank* to the effect that the enquiry under Rome II is “cause of action blind”, and going so far as to suggest in oral submissions that the way that the case has been pleaded does not matter and the pleadings should be ignored. It was not entirely clear to me whether Mr Peto KC was still content to agree with Mr Smith KC. I certainly am not.

129. I unhesitatingly go so far as to accept that the labels and terminology of national law are not relevant or helpful. Insofar as they are incorporated into a pleading, they certainly can be ignored. As it happens, in this case, I would have had to ignore them anyway, simply because (as already noted) the structure headings of the APOC are fundamentally misleading.

130. However, in the course of an exercise that is fact-specific, the court's task begins with working out what facts it should have in mind. The only way to do this is by seeing what facts have been alleged. Furthermore, given the importance of distinguishing between (a) the events giving rise to damage and (b) the damage, all with a view to then distinguishing between (a) the original damage, directly caused and (b) indirect, remote or consequential damage, it is vital to look at the facts alleged with great care. The only way to do this is by studying the pleadings. Ignoring the pleadings is not an option.
131. This is made evident by the explanation given by the Master of the Rolls in *Kwok Ho Wan* at [49] ff, himself drawing on the Supreme Court in *JSC BTA Bank v Ablyazov*:

“49 I regard it as of the first importance to give the words of article 5(3) and the damage limb established by [19] of *Bier* an autonomous construction. The same outcome ought to prevail on the same facts whatever law governs the tort or delict relied upon. I am conscious too of what the Supreme Court said in *Ablyazov* at [31] to the effect that:

However, the requirement of an autonomous interpretation does not mean that the component elements of the cause of action in domestic law are irrelevant. On the contrary they have a vital role in defining the legally relevant conduct and thus identifying the acts which fall to be located for the purposes of article 5(3). In particular, whether an event is harmful is determined by national law. To take an example raised during the hearing of the appeal, if a firearm is manufactured in State A and fired in State B the place of the event giving rise to the damage within article 5(3) is likely to differ depending on whether the basis of the complaint in national law is negligent manufacture of the firearm, or its negligent handling by the gunman.

50 In this case, UBS London places central reliance, in effect, on the fact that Mr Kwok and Ace Decade sustained some loss when Ace Decade entered into the Co-Investment Agreement in Hong Kong. Accordingly, the tort of negligent misstatement was complete at that stage and some loss had manifested itself immediately. UBS London points to the pleading of loss at that point.

51 In my judgment, that approach is over technical and not appropriate in this case. It puts form above substance, and places too much reliance on the shape of the pleadings. An autonomous approach to article 5(3) requires an answer to the pragmatic questions of where the damage claimed by Mr Kwok and Ace Decade actually manifested itself, and whether there are, in substance, factors connecting the dispute to England and Wales such as to allow the specific jurisdiction in article 5(3) to be invoked and to outweigh the general rule that, under Lugano II, parties are to be sued in the place of their domicile.”

132. Certainly, we must not be beguiled by the way that the case has been pleaded, and must resist accepting form over substance. Nevertheless:
- i) The question “where the damage claimed... actually manifested itself” is one that can only be answered by looking at “the damage claimed”.
 - ii) This in turn requires being careful not to confuse this “damage claimed” with matters that are being asserted not as “damage claimed” but its precursors – i.e., the events claimed to have caused the “damage claimed”.
 - iii) The importance of distinguishing between (a) identifying original damage, directly caused and (b) indirect, remote or consequential damage, means that it is also necessary to look carefully at the causative link(s) relied on.

E5: Can there be more than one applicable law?

133. The Claimants suggested that, where damage for the purposes of Article 4(1) of Rome II (i.e., original damage, directly caused) has been suffered in more than one country, there can be more than one applicable law. Mr Peto KC referred to *MXI Ltd v Farazhad* [2018 EWHC 1041 (Ch), per Marcus Smith J at [41]-[45], stating that this is the position both under Article 4(1) of Rome II and under Article 5(3)/7(2) of Brussels Recast:

“... where damage occurs across several jurisdictions, there will be several applicable laws.”

134. For the Globe Defendants, Mr Smith KC again relied on the judgment of Hopewell J in *AMT Futures*, per Popplewell J at [34(5)(a)]:

“... the task is so far as possible to identify a single place for the occurrence of damage. The search is for the place where the damage occurred. This reflects the fundamental objective of certainty.”

135. Mr Smith KC again noted that the principles set out by Popplewell J in *AMT Futures* were adopted in the Rome II context by Carr J in *Pan Oceanic* and by Bryan J in *Lakatamia Shipping*.
136. Mr Peto KC did not reply to Mr Smith KC's submissions on this point, in his oral submissions. However, after the hearing, when I had requested submissions on the significance of the decision of Justice Black in the DIFC, Mr Peto KC took the opportunity to draw my attention to 8 additional authorities, which had not been included in the bundle agreed between the parties and had not been the subject of any submissions. Most of these were on this specific point: notably *Shenzhen Senior Technology Material Co Ltd v Celgard LLC* [2020] EWCA Civ 1293, per Arnold LJ at [61]; and *Autostore Technology AS v Ocado Group plc* [2023] EWHC 716 (Pat), at [346]-[350] (where HHJ Hacon directly applied Arnold LJ's judgment in *Shenzhen Senior Technology*). On the basis of these authorities, Mr Peto KC now wrote that "[the Globe Defendants] would lead the Court into error with a 'single place of damage' theory."
137. It is sometimes necessary for the Court to be referred to additional legal materials even after submissions have ended and while the judgment is pending. However, this invariably raises problems about the parties having equal opportunity to address the additional materials, and then to respond to each other's further submissions. Such unattractive consequences are inevitable, where the effect of the additional legal materials is unclear.
138. I see force in Mr Peto KC's fresh submissions. However, the position is not straightforward.

- i) In *Shenzhen Senior Technology*, Arnold LJ said at [61] (and relied in this regard on the European Commission’s Explanatory Memorandum accompanying the proposal for Rome II):

“... although counsel for Senior argued that it was desirable to locate the direct damage caused by misuse of confidential information in a single country, that is contrary to the approach laid down by both art.4 and art.6.”

- ii) However, after the decision of the Court of Appeal in *Shenzhen Senior Technology* and before the decision of HHJ Hacon in *Autostore Technology* came the decision of the Supreme Court in *Brownlie v FS Cairo (Nile Plaza) LLC* [2021] UKSC 45. Here, Lord Lloyd-Jones appears to have suggested at [56] that the European approach is aimed at identifying a single place of damage. His comments there are made with specific reference to Article 5(3)/7(2) of Brussels Recast, but they were made in conjunction with a reference to an article by Professor Adrian Briggs on the preceding phase of the Brownlie litigation: “Holiday Torts and Damage within the Jurisdiction” [2018] LMCLQ 196. The second paragraph of that article makes it clear that Professor Briggs regarded his text as concerned both with the gateway for jurisdiction and with applicable law under Rome II. The critical section of the article, which Lord Lloyd-Jones cited with approval at [56], stated that the European jurisprudence is driven by the “... imperative to try to concentrate the jurisdictionally-significant damage in one place”.

139. Professor Briggs’ comments, and their endorsement by Lord Lloyd-Jones may or may not have been preceded by careful study of the European Commission’s Explanatory Memorandum. In any event, their terms do not necessarily exclude the possibility of there being more than one place of damage, and thus more than one jurisdiction under

Article 5(3)/7(2) of Brussels Recast or applicable law under Article 4(1) of Rome II – at least, in principle. However, they are consistent with the earlier comments of Popplewell J in *AMT Futures* and they do at least suggest that, in any given case, the Court should perhaps be slow to arrive at the conclusion that there is more than one place of damage; and/or that such a conclusion may make it appropriate to take a particularly careful look at Article 4(3) of Rome II.

140. I would not normally wish to avoid deciding a point that the parties' submissions had identified as arising. However, given the way that the point developed, following the hearing, I would not have felt able to do so without allowing both parties yet further submissions, which would inevitably further have delayed the completion of this judgment. Fortunately, however, I have come to the conclusion that the point is not, in fact, one that it is critical to my disposal of the Globe Defendants' application.

F: APPLICABLE LAWS UNDER ROME II

F1: The obscurity of the pleaded case as to causation and damage

141. I have already observed that the application of Article 4(1) of Rome II requires the Court to look closely at the pleaded case as to (a) the events that gave rise to the damage, (b) the damage that was caused and (c) the causative connection between them.
142. In this case, the APOC proceeds by alleging a series of different causes of action under various headings (all essentially devoted to setting out matters relevant to the events that gave rise to damage), then a compendious section headed "Loss and damage" which begins: "As a result of the wrongdoing set out above the Claimants have suffered loss and damage" and then catalogues various different heads of loss.

143. The APOC makes only very limited efforts to demonstrate the causative connection between (a) any particular set of matters alleged to have given rise to damage and (b) any individual head of loss. Mr Peto KC explained some of the Claimants' case on this in oral submissions. However, for the most part, I have been left to work it out for myself.
144. This very unsatisfactory: not merely because it has been bothersome to me, but because in some cases it might cause unfairness to one or both parties. It has not made any real difference to the outcome of this case, but I highlight it as a cautionary tale to the Counsel who may have to plead such cases in the future, and to the judges who have to assess those pleadings. With hindsight, I should have insisted on the APOC being substantially re-worked. That is what I will do if I encounter the same problem again.

F2: Claims under the "Deceit" heading

145. I deal here with claims by which damage is said to have been incurred because of knowingly false representations made by Globe about the Globe Documents. The relevant representations were made, separately, in the Sharjah Globe Proceedings, in the DIFC Globe Proceedings and in the BVI Globe Proceedings. They are alleged to have affected the Claimants in that they caused them to incur legal costs in Sharjah, in the DIFC and (at least prospectively) in the BVI. I understood Mr Peto KC to confirm that these are the only losses alleged to have been caused in this way.
146. For the purposes of Article 4(1) of Rome II, each such set of knowingly false representations gave rise to a separate claim and caused separate losses, in the forms of the legal costs incurred in each set of proceedings. Thus, there are three separate

claims. The country in which the damage occurred, for the purposes of Article 4(1) was in each case:

- i) In the Sharjah Globe Proceedings, costs were incurred in the UAE.
- ii) In the DIFC Globe Proceedings, costs were incurred in the UAE.
- iii) In the BVI Globe Proceedings, costs will have been (or might be) incurred in the BVI.

147. On the application of Article 4(1), the applicable law therefore is the law of the relevant country in each case. The fact that the money used to discharge these costs bills may have come from elsewhere (from the BVI Defendants' bank accounts in the UK) is irrelevant for the purposes of Article 4(1).

148. Furthermore, in circumstances where the events that gave rise to the damage (i.e., the false representations made in the respective proceedings) occurred in the same country as the damage, the tort/delict in each case is closely connected with that country. Accordingly, Article 4(3) does not suggest that the law of any other country should apply.

F3: Claims under the "Deceit" heading, which should be under the "Malicious prosecution" heading (and/or malicious falsehood)

149. I deal here with the allegations relating to knowingly false representations in relation to the Globe Documents that are alleged to have been made in the Sharjah Globe Proceedings, in the DIFC Globe Proceedings and in the BVI Globe Proceedings, and are alleged to have affected the relevant Court in each case.

150. My understanding of what Mr Peto KC said orally about the damage alleged to have been caused in each case, and my conclusions on the basis of that understanding, are

as follows:

151. As regards the Sharjah Globe Proceedings:

- i) The Globe Appeal Judgment was entered in Sharjah and the BVI Companies were subjected to an order of the Sharjah Court of Appeal to pay Globe AED 582,652,815 plus interest and costs. This was followed by an order in Sharjah for the execution of the Globe Appeal Judgment.
- ii) All these consequences occurred in the UAE.
- iii) I suppose it may be the case that the Globe Appeal Judgment has had an effect on the BVI Companies in the sense of affecting their corporate balance sheets or accounts, but the pleadings do not go into this kind of detail and I have seen no evidence to this effect. In any event, that would seem to me consequential, indirect damage of the kind that Article 4(1) of Rome II eschews.
- iv) The applicable law under Article 4(1) law is that of the UAE.

152. As regards the DIFC Globe Proceedings:

- i) Globe obtained the DIFC Globe WFO, which was in place from 3 May 2023 to 19 June 2023, which affected all the Claimants.
- ii) Although the order was in worldwide terms, it was an order made in and supervised by the DIFC. Any breach of it by the Claimants would have been scrutinised by the DIFC and (if appropriate) would have resulted in penalties exacted by the DIFC, in the UAE.

- iii) It had consequences beyond the UAE, in that the DIFC Globe WFO appears to have made the Al Saris' housekeeper, Mr Gebremedhin, feel entitled and/or obliged to ignore the CLCC Possession Judgment. That seems to me a very clear case of consequential, indirect damage.
- iv) All direct damage was suffered in the UAE. The applicable law under Article 4(1) of Rome II is that of the UAE.

153. As regards the BVI Globe Proceedings:

- i) I am not aware that false representations that Globe is alleged to have knowingly made to the BVI Court have caused any damage to the Claimants at all. I was not told that anything has, in fact, happened in the BVI Globe Proceedings, save that Globe has commenced them. In the light of the outcome in the DIFC on 19 June 2023, it is not clear that these proceedings will develop.
- ii) Article 4(1) does not arise because there has been no damage. In any event, there is no need to consider what the applicable law might be. This claim simply fails on the merits.

154. It cannot be said that any of these claims is manifestly more connected with a country other than the country where the relevant proceedings have taken place. Once again, therefore Article 4(3) does not affect the conclusion under Article 4(1).

F4: Claims under the "Marex torts" heading

155. The relevant allegations under this heading are that the Globe Defendants intentionally violated (a) CBD's Sharjah Judgment and (b) CBD's BVI Judgment.

156. Each of those is a judgment that I would expect to be honoured by payment to the lawyers acting for the successful claimant (i.e., CBD's lawyers in Sharjah and in the BVI) and which, if not honoured, falls to be enforced (at least initially) in the country where the judgment was rendered. That suggests to me that the relevant countries are the UAE and the BVI (respectively).
157. This seems to me to follow as a matter of principle from the analysis of Christopher Clarke J in *Dolphin Maritime & Aviation Services Ltd v Sveriges Angartygs Assurans Forening* [2009] EWHC (Comm) 716, a case on Article 5(3)/7(2) of Brussels Recast which has frequently been followed both in the Brussels Recast context and in that of Rome II. Christopher Clarke J held at [60] that, where damage consists of the non-receipt of money, it occurs where the money should have been received.
158. This very point was considered in relation to a Marex tort, and for the purpose of identifying the applicable law, in *Lakatamia Shipping* at [848]. Bryan J held at [853]-[854] that the reasoning of Christopher Clarke J in *Dolphin Maritime & Aviation Services* was apposite for the purposes of Article 4(1) of Rome II.
159. Mr Smith KC sought to persuade me that Bryan J was wrong on this point in *Lakatamia Shipping*. With respect, I am certain that he was right.
160. As already noted, the APOC does not assert that the Globe Defendants have intentionally violated the CLCC Possession Judgment. If that had been alleged, applying the same reasoning as I have in relation to the Marex torts that are pleaded in the APOC, I would have held that the applicable law was that of England.

F5: Breach of fiduciary duty

161. I mention this only to repeat that there does not appear to be a claim pleaded against the Globe Defendants under this heading. If that is the intention of the fleeting reference in paragraph 59 of the APOC, this does not disclose a serious issue to be tried.

F6: Claim under “unlawful means conspiracy”

162. This is a complex claim in that it involves all the Defendants, who are said to have combined over a series of several years. It also involves a long list of actions that are alleged to have constituted the use of unlawful means, occurring in a number of different countries. These actions include the creation of and reliance upon the Globe Documents; i.e., forgery and (in a word) fraud. I take it that the Globe Defendants are alleged to have been participating in the since at least April 2019 (which is when the Globe Documents were first relied on, in the Sharjah Globe Proceedings and so is the latest date they could have been produced, on the Claimants’ case).

163. These matters are relevant to the events giving rise to the damage, but they are not the damage itself. So far as that is concerned, the APOC alleges at paragraph 51 that conspiracy was entered into:

“... in order to benefit the Al Sari Defendants at the expense of the Claimants, and in particular to preserve the Bridge Properties for the benefit of the Al Sari Defendants and to prevent the Claimants from realising their value.”

164. Then, under the heading “Loss and Damage”, the APOC alleges at paragraphs 58 and 59 that, had the Tenancy Agreement and the Globe Documents not been created or entered into, the BVI Companies would have sold the Bridge Properties and realised their proceeds; whereas, instead, they have been kept out of possession.

165. While the way that the APOC sets out the Claimants' case does not make the exercise easy, my interpretation is that it is alleged that the damage that the conspiracy was intended to cause, and did in fact cause, related to the Bridge Properties, in London.
166. It is fair to say that the extent to which damage of this kind has been caused by any involvement in the conspiracy of the Globe Defendants has been minimal. This is because it was really the Tenancy Agreement that has prevented the BVI Companies from obtaining possession of the Bridge Properties for nearly the whole of the relevant period. The period when the Globe Documents can be said to have had that effect has been confined to the few weeks when the DIFC Globe WFO was in force – i.e., only from 3 May to 19 June 2023.
167. Nevertheless, as a matter of principle, it seems to me that the country where any direct damage was suffered, by reason of the Globe Defendants' involvement in this alleged conspiracy, is England. Therefore, under Article 4(1) of Rome II, the applicable law is English law.

F7: s. 423 Insolvency Act 1986

168. In *Erste Group Bank* at first instance, Flaux J suggested at [95] that a claim under s. 423 of the Insolvency Act 1986 is not cause of action in tort. The context was whether Article 4(1) of Rome II was applicable; Flaux J's views was that it was not. This point was not considered when the case went to the Court of Appeal.
169. 'Dicey & Morris on Conflict of Laws' (16th ed.) expresses scepticism with the proposal that a s. 423 claim is not non-contractual (albeit I note this was not quite what Flaux J said). However, the editors then go on to say that, if (as they think) Rome II applies, s. 423 "... is best analysed as an overriding mandatory provision within Art.16..."

170. Article 16 of Rome II provides as follows:

“Article 16

Overriding mandatory provisions

Nothing in this Regulation shall restrict the application of the provisions of the law of the forum in a situation where they are mandatory irrespective of the law otherwise applicable to the non-contractual obligation”.

171. On Dicey’s view (which I find persuasive), English law is applicable.

G: ARE THE CLAIMS DEFECTIVE BECAUSE FOREIGN LAW HAS NOT BEEN PLEADED?

G1: How this question arises

172. This question does not arise for the claims pleaded as unlawful means conspiracy and s. 423, because the applicable law is that of England.

173. Nor does it arise for the claims that have been (or might arguably be treated as having been) pleaded as malicious prosecution in relation to the BVI Globe Proceedings and as breach of fiduciary duty, because I have already rejected those claims on the merits. They do not disclose a serious issue to be tried.

174. It arises for the other claims, where I have held (variously) that the applicable law is that of the UAE or of the BVI. No case is asserted in the APOC as to the content of the law of the UAE or of the BVI. The Globe Defendants say that this means that these claims are defective, and jurisdiction should be declined on that basis, there being no serious issue to be tried.

G2: Dicey Rule 2; Lord Leggatt JSC in *Brownlie v FS Cairo*

175. Chapter 3 of Dicey discussed the principle set out as Dicey’s Rule 2:

“RULE 2—(1) Where a party relies on foreign law, that law must be pleaded and proved as a fact to the satisfaction of the court by evidence or sometimes by other means.

(2) In a case involving a foreign element in which foreign law is not pleaded, the court will apply English law.

(3) Where foreign law is recognised to be applicable, but there is no evidence, or insufficient evidence, of the content of the foreign law, it will in general be presumed to be the same as English law.”

176. This principle, which Dicey says “has long been well established”, was considered by the Supreme Court in *Brownlie v FS Cairo*, in the speech of Lord Leggatt JSC.
177. First, Lord Leggatt JSC emphasises at [112] the distinction between “the default rule” and “the presumption of similarity”.
178. The default rule treats English law as applicable in its own right where foreign law is not pleaded. As Lord Leggatt JSC explains at [114]-[115], sometimes neither party asserts that a foreign system of law is applicable – typically because each considers that it will not make any material difference or in order to avoid the cost that might be incurred in investigating and proving the content of any such foreign law. In such cases, the Court is free simply to apply English law, without considering whether some other system might be applicable (for example, under Rome II).
179. By contrast, the presumption of similarity arises where a foreign system of law has to be applied (i.e., because one or both of the parties has pleaded the applicability of foreign law, so the default rule is not applicable), but the content of the relevant foreign law has not been proved. As Lord Leggatt JSC explains at [123]-[125], the application of foreign law will often lead to the same result as would obtain under English law, so the presumption is not inherently unrealistic and the parties may not consider it worthwhile to displace the presumption, and in such cases they should not be put to the trouble and expense of doing so. The presumption merely places the burden of adducing evidence on a party that wishes to displace it.

180. Lord Leggatt JSC emphasises several times that the presumption is flexible. He says at [126] that it should only be applied where to do so is fair and reasonable, meaning that it is necessary to consider whether it is reasonable to expect that the applicable foreign law is likely to be materially similar to English law.
181. Later, at [143]-[148] he gives some practical guidance. This includes the observations at [144] that the presumption is more likely to be applied where the applicable foreign law is a common law system (although some “great and broad” principles are likely to be similar in all systems); and at [147] that the presumption is more likely to be applied at an early procedural stage, “when all that a party needs to show in order to be allowed to pursue a claim or defence is that it has a real prospect of success.”

G3: The application of Lord Leggatt’s analysis in this case

182. The Globe Defendants say that the presumption should not be applied, and the Court should approach the Claimants’ case on the basis that (a) foreign law is applicable to some claims, (b) the Claimants have not pleaded the content of the relevant foreign law systems, (c) the Claimants cannot rely on the presumption, therefore (d) the Claimants’ case is defective.
183. It is right that the case pleaded by the Claimants is, so far, set out only in their APOC. This document says nothing about foreign law. None of the Defendants has yet had to plead, because of their challenges to jurisdiction. However, the Globe Defendants have made it clear in the course of their challenge that they dispute the applicability of English law. I have decided that the law of the UAE and the law of the BVI apply, respectively, to certain claims, not English law. The issues here therefore all relate to the presumption of similarity, not the default rule.

184. Mr Smith KC accepted that the law of the BVI is likely to be similar to that of this country. I agree. It follows that this argument has no bearing on the claims that I have held to be subject to the law of the BVI. It only has any relevance in so far as I have held the applicable law to be that of the UAE.
185. The claims under the headings of deceit and malicious prosecution are concerned, fundamentally, with liability that relates to telling lies. I consider it inconceivable that UAE law does not impose liability in such circumstances. This is one of the “great and broad” principles referred to in *Brownlie* at [144], as the Ninth Commandment illustrates.
186. This leaves only the claim pleaded as a *Marex* tort in relation to CBD’s Sharjah Judgment and CBD’s BVI Judgment. The English tort with this name is a relatively new juridical concept, but this, too, is a context in which it is important not to put form over substance, and certainly not to be distracted by the use of English legal nomenclature.
187. The labels and language used in the relevant part of the APOC signal an intention to rely on the English cause of action identified in *Marex Financial* and in *Lakatamia Shipping*. However, the same underlying facts could have been analysed by reference to other English torts. One obvious possibility would be unlawful means conspiracy. This is much longer established in England and (in my view) likely to be recognised as conduct giving rise to legal liability in most other systems; especially where the relevant unlawful means include forgery and fraud.
188. It happens that the Claimants have chosen to apply the label of unlawful means conspiracy only to unlawful conduct intended to affect the BVI Companies’ right to possession of the Bridge Properties, and to apply the *Marex* label to the same conduct

in so far as intended to violate the CBD's Sharjah Judgment and CBD's BVI Judgment. However, if a UAE lawyer were asked whether that conduct could give rise to liability under the law of the UAE, he would do so without reference to the fact that the APOC uses the term Marex. In my judgment, it is reasonable to presume that the factual allegations made under the Marex tort heading would, if made out, give rise to liability under the law of the UAE.

189. Furthermore, it is important that this all arises at an early procedural stage (cf. *Brownlie* at [147]). Neither side has yet set out a positive case that the law of the UAE or the law of the BVI is materially different from the law of England. For all I know, neither of them ever will. They may both proceed on the basis that, in words that Lord Leggatt quoted at [123] from the judgment of Mustill LJ in *Muduroglu Ltd v TC Ziraat Bankasi* [1986] QB 1125, 1246:

“...in so many practical respects there is insufficient difference between the commercial laws of one trading nation and another to make it worthwhile asserting and proving a difference.”

190. Conversely, if the Globe Defendants do in due course assert that the law of the UAE or the law of the BVI is materially different from the law of England, I would expect this to be in their Defence. The Claimants would then be entitled to serve a Reply and I see no reason why it should not be open to them to plead a case as to the content of foreign law at that stage. It would be wrong to strike out these claims simply because the parties have not yet pleaded out their respective positions.

191. In this regard, the outcome in *Brownlie* is instructive. In that case, it was common ground that the law of Egypt applied. Egyptian law was not pleaded, but directions were given that the parties should set out their respective cases as to Egyptian law in their expert evidence. It then became apparent that there were gaps in the expert

evidence. Lady Brownlie sought to rely on the presumption to fill the gaps – i.e., at a relatively late procedural stage, when a defence had been served and evidence in respect of foreign law had been completed.

192. On some points, the presumption was held to be applicable in principle (see at [157]). It was disapplied only, and specifically, on the question whether Egyptian law allows concurrent claims in contract and in tort (see at [159]). The result was not, however, that any part of the claim was dismissed or struck out. Instead, Lady Brownlie was required to serve revised particulars of claim (see at [160]).
193. Even if I were persuaded that it is not safe to presume that the law of the UAE is materially similar to English law on critical points, this would not lead me to conclude that the right course would be to decline jurisdiction. In the circumstances of this case – in particular, because neither side has yet pleaded or set out a case that the law of the UAE is materially different – I would instead proceed on the basis that the Claimants had been entitled to rely on the presumption for the purposes of the APOC, i.e., prior to their reliance on it being challenged by the Globe Defendants. This would not prevent the Globe Defendants from asserting later that the claims should be dismissed as defective, if the Claimants were to continue to decline to set out any case as to UAE law despite it having become necessary for them to do so (cf. *Brownlie* at [163]).
194. However, this is a case where, in relation to all the relevant claims, the presumption does seem to me applicable – not merely because of the early procedural stage, but because it is realistic to presume that the Claimant’s factual allegations could give rise to liability under the law of the UAE.

H: CONCLUSION ON WHETHER THERE ARE SERIOUS ISSUES TO BE TRIED

195. There is no case against the Globe Defendants, or none which raises a serious issue to be tried, under the heading of malicious prosecution in relation to the BVI Globe Proceedings or under the heading of breach of fiduciary duty.
196. Otherwise, the first limb of this part of the Globe Defendant's case was that the applicable law is not English law. I have rejected this argument in relation to the claim in unlawful means conspiracy and also in relation to the claim under s. 423 Insolvency Act 1986.
197. The remaining claims are those under the headings of deceit, malicious prosecution and Marex. The second limb of this part of the Globe Defendant's case was that the APOC is defective in relation to these claims, because no positive has been pleaded as to the content of the law of the UAE or the law of the BVI (as relevant). I have rejected this argument in every instance, for a variety of reasons.
198. It follows that all the claims against the Globe Defendants raise serious issues to be tried, save for the claims (if any such be intended) under the heading of malicious prosecution in relation to the BVI Globe Proceedings and under the heading of breach of fiduciary duty.

I: IS ENGLAND THE PROPER FORUM?

199. I have noted above that Mr Peto KC made it clear in oral submissions that:
- i) The Claimants' main interest in this litigation relates to the Bridge Properties. These are in London.
 - ii) The Claimants' main case against the Globe Defendants, and indeed against the other Defendants, is their claim in unlawful means conspiracy. This has

the Bridge Properties as its focus, and I have held this claim to be subject to English law.

200. Mr Peto KC also made the point that the claim in unlawful means conspiracy relies on and brings together all the factual allegations comprised in the other claims. There is, therefore, a complete overlap between the evidence for the claim in unlawful means conspiracy and that for the totality of all the other claims.
201. Mr Smith KC submitted that the natural forum for all these claims is the UAE, being the place where all the claims were substantially committed. His submissions effectively proceeded on the basis that the only choice was between the UAE and England.
202. On this point, the decision of Justice Black on 19 June 2023 and the judgment he produced on 4 July 2023 is of some relevance. As noted above, Justice Black said that (if necessary) he would have declined jurisdiction because of his view that the natural forum for Globe's claim and for any freezing order was the BVI.
203. As I write this judgment, therefore, the position is that there is no prospect of the issues between the parties being resolved in the DIFC, which has declined jurisdiction. In theory it might be possible, I suppose, for fresh proceedings to be commenced in relation to these issues elsewhere in the UAE – notably, in Sharjah. However, the Globe Defendants instead chose to commence substantive proceedings against the Claimants in the BVI and have thereby submitted to the jurisdiction of the BVI. If they wished to, the Claimants could, as of right, rely on that submission to the jurisdiction of the BVI and could bring all the claims in this action as counterclaims in the BVI. The Claimants prefer not to do this. They prefer their claims to be litigated in England, but I have no doubt that the BVI would be their second choice. If I were

to accede to the Globe Defendants' challenge, the reality is that the Claimants' claim will not be litigated in the UAE. They will be litigated in the BVI.

204. All of that having been said, on this point I agree with Mr Peto KC.

- i) Much of the documentary evidence has already been brought together in England.
- ii) It seems likely that more of the factual witnesses are based in the UAE than in any other jurisdiction, but at least one on the Defendants' side – Mr Gebremedhin – is here.
- iii) The claims against the Al Sari Defendants and against the Sharjah Companies will proceed in England in any event (I deal with this later), including the claim against them for unlawful means conspiracy.
- iv) I do not take it for granted that the Al Sari Defendants and IGPL GT will take part in the proceedings, but nor do I assume the opposite. They should take part. The history to date suggests that they may in fact do so. That is as far as I can safely go, without entering into speculation.
- v) The claim for unlawful means conspiracy is the crucial claim. Its centre of gravity is not the UAE, no matter that much of the underlying conduct occurred there. Some of the relevant conduct occurred in this country (principally in the context of the CLCC Possession Proceedings) and some in the BVI. However, the focus of the claim is the Bridge Properties.
- vi) As between the UAE and England (although not as between the BVI and England), a significant pointer towards England being the appropriate forum is

the fact that English law will apply to the claim in unlawful means conspiracy.

vii) Legal teams in England are fully engaged both on the part of the Claimants and on the part of the Globe Defendants.

viii) It is of some weight that contempt proceedings are pending.

205. In my judgment, England is the most appropriate forum.

J: THE CLAIM UNDER S. 423 INSOLVENCY ACT 1986

206. By this claim, the Claimants ask the Court to exercise its power under s. 423 Insolvency Act 1986 to reverse the transaction effected by the Globe Documents on the basis that it was a transaction entered into at an undervalue.

207. The Globe Defendants accept that the power arises in principle, but say that the Court can only properly exercise its discretion under s.423 if there is a sufficient connection with England and Wales: *Orexim Trading Limited v Mahavir Port and Terminal Pte Ltd* [2018] EWCA Civ 1660.

208. Given that the alleged purpose of the transaction was to put the BVI Companies and/or the Bridge Properties beyond the reach of CBD, I have no doubt that there is a sufficient connection in this case.

209. I would not have considered it appropriate for a claim to be brought under s. 423 if I had accepted the Globe Defendants' challenge to jurisdiction on the other claims; especially, if I had acceded to the submission that England is not the appropriate forum for those claims. However, this does not arise.

K: THE CHALLENGE BY THE FORMER CRS DEFENDANTS

210. As noted, the Former CRS Defendants issued an application notice challenging jurisdiction on 26 April 2022. CRS then came off the record on 28 February 2023. The Former CRS Defendants did not appear before me and were not represented. The only information I have as to their arguments therefore comes from the application notice and the supporting materials served with it, notably two witness statements made by a partner at CRS.
211. Unlike the Globe Defendants, the Former CRS Defendants challenge some, but not all of, the jurisdictional gateways relied on by the Claimants. This could not avail them:
- i) They accept that gateway 20 applies to the claim under s. 423 Insolvency Act 1986.
 - ii) Gateway 11 unquestionably applies to the claim for unlawful means conspiracy, being a claim that relates “wholly or principally to property within the jurisdiction”. So too does gateway 9(a), the BVI Companies having sustained damage in the jurisdiction (their inability to take possession of the Bridge Properties) and also gateway 9(b), the relevant damage having been sustained as a result of acts committed within the jurisdiction (the reliance on the Tenancy Agreement in the CLCC Proceedings and the conduct of Mr Gebremedhin).
 - iii) The application of some of the other gateways relied on by the Claimants for the other claims is more questionable. However, the other claims arise out of the same facts and so pass through gateway 4A, and the Former CRS are necessary and proper parties within gateway 3.

212. Again, unlike the Globe Defendants, the Former CRS Defendants do not accept that there is a serious issue to be tried in respect of the Claimants' case as to the Tenancy Agreement and Addendum and the Globe Documents. However, in light of the conclusions arrived at, independently, both in the DIFC Tenancy Proceedings and in the CLCC Possession Proceedings that Abdalla Al Sari did not have authority to sign on behalf of the BVI Companies, as well as the further point regarding the postcode used in the Tenancy Agreement and the fundamentally uncommercial nature of all the purported transactions, there is unquestionably a serious issue to be tried.
213. Otherwise, the points made by the Former CRS Defendants are similar to points made by the Globe Defendants. I have already addressed them. I therefore dismiss the application of the Former CRS Defendants.

L: THE CLAIMANTS' APPLICATION FOR PERMISSION TO AMEND

214. As noted, Mr Smith KC on behalf of the Globe Defendants did not oppose the Claimants having permission to amend per the draft APOC.
215. There having been no appearance by the Former CRS Defendants, the Claimants nevertheless had to pursue their application for permission, which I will grant unless Mr Peto KC indicates that the Claimants may wish to make further amendments in light of this judgment.

M: OVERALL CONCLUSION

216. Both the challenges to jurisdiction are dismissed.
217. I will now deal with directions, costs and any other consequential matters.