Neutral Citation Number: [2024] EWHC 2135 (Comm)

Case No: CL-2024-000448

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
LONDON CIRCUIT COMMERCIAL COURT (KBD)

The Rolls Building
7 Rolls Buildings
Fetter Lane, London
EC4A 1NL

Date: 2 August 2024

Before:

HIS HONOUR JUDGE PELLING KC
(Sitting as a High Court Judge)

Between:

CAMPER & NICHOLSONS INTERNATIONAL LIMITED

Claimant / Applicant

- and -

TIMOTHY LANGMEAD

Defendant / Respondent

- -
- -

MR DAVID WALSH (instructed by **Holman Fenwick Willan LLP**) for the **Claimant / Applicant**
THE DEFENDANT did not appear and was not represented

- -

Approved Judgment

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HIS HONOUR JUDGE PELLING KC:

1. This is an application made without notice for a worldwide freezing order in aid of proposed arbitration proceedings to be commenced in Switzerland.

2. The circumstances which give rise to the claim, broadly speaking, are that the defendant, and respondent to the application, Mr Langmead, was, until the end of January 2024, an employee or had a consultancy arrangement with the claimant and applicant. His relationship with the applicant was terminated with effect from beginning of February 2024. Thereafter, a comprehensive search of his emails going back many years was undertaken by or on behalf of the claimant and applicant. The result of that activity was the discovery of some emails (which the respondent had apparently attempted to delete) that suggest a course of conduct on the part of the defendant and respondent while associated with the claimant and applicant in which he was either diverting business from the applicant, or diverting to his own personal accounts some commissions or part of some commissions that would otherwise have been payable to the applicant. In those circumstances, the applicant wishes to bring a claim against the defendant to recover the sums it says have been wrongfully and dishonestly diverted in the way I have described. The agreement between the parties is subject to an arbitration clause which requires arbitration to take place in Switzerland. Therefore, this application is made under both Section 44 and Section 2(3) of the Arbitration Act in aid of an arbitration which is yet to be commenced.

3. As I have explained, the relationship between the applicant and respondent came to an end at the beginning of February 2024. We are now in the beginning of the summer vacation when this application is made on the basis that it is urgent and properly to be treated as vacation business. The evidence establishes that there is no realistic reason why the respondent would know that the emails that he thought he had deleted from the servers maintained by the claimant have been downloaded and reviewed. Therefore, he has no reason to suppose that the claim is about to be brought against him. In those circumstances, there is a real question as to whether or not this claim can be described as urgent or fit for vacation business.

4. Mr Walsh appearing for the applicant submits , however, that I should treat the application as urgent on the basis that there is an ongoing risk of dissipation based upon basically a chain of dishonest conduct going back many years, that there are a number of transactions or at least one transaction that appears to have been diverted wrongfully by the respondent from the applicant at or about the time his relationship with the claimant was terminated which may generate or have generated funds which may be expended by the respondent unless immediate action is taken. Of all the points which have been relied upon, this last one is perhaps the most telling. I remain hugely sceptical as to whether or not this can properly be said to be a truly urgent vacation business type case but having regard to the fact that the work has now all been done because it was necessary for me to pre-read all the papers before coming to a view on this issue, I am prepared to deal with the application today. There is no sense now in refusing to hear it other than to discourage other inappropriate applications but that is out balanced by the factor that if I refuse to hear the application today, that will mean another judge on another day will have to repeat this work.

5. Two other points arise. The first is this. An attempt has been made, or an attempt was to be made to commence these proceedings in the Commercial Court. The quantified value of this claim is under £550,000, although I appreciate there are some unliquidated claims which may arise as well. This is manifestly a case which could and should have been commenced in the London Circuit Commercial Court. The London Circuit Commercial Court, together with all Circuit Commercial Courts, enjoys current jurisdiction with the Commercial Court and the Technology and Construction Court in relation to arbitration claims (see CPR r.62.1(3) and PD 62, para 2.3). The reference to "*District Registry*" in this context is to be construed as including (in relation to the London Circuit Commercial Court) the Commercial Court, within which the London Circuit Commercial Court is established – see PD 59, Para 1.2(2). These proceedings should manifestly have been commenced in the London Circuit Commercial Court and I direct that they be commenced there accordingly.

6. Having directed these proceedings to be started in the London Circuit Commercial Court, which is a specialist branch of the Business and Property Courts of England and Wales within the High Court of Justice, the further question is whether I should direct these proceedings now be transferred into the County Court at Central London business list for the application to be heard and determined there. Aside from the fact that it is questionable whether a County Court would have jurisdiction applying PD 62, para 2, even if the claim were started in the Commercial or Circuit Commercial Court and transferred, such an order would be inappropriate for all the reasons I gave when agreeing to hear the application as vacation business.

7. In the result, therefore, I am prepared to hear this application.

(See separate transcript for continuation of proceedings)

8. This is an application made without notice for a worldwide freezing order in aid of Swiss arbitration proceedings which are yet to be commenced. At the outset of the hearing, I requested an undertaking which I understand is being offered for the immediate commencement of the arbitral proceedings once this application has been determined. It is appropriate that I should seek such an undertaking since were these proceedings to be domestic English proceedings an undertaking to issue a claim form relevant to the substantive proceedings would be required as a matter of course. There is no principled reason for adopting a different course in respect of an application in aid of an arbitration, whether or not that arbitration is to be seated in England or elsewhere. My understanding is that the claimant is willing to offer an undertaking to serve notice commencing arbitration by no later than 4.00 p.m. next Tuesday. It could, as easily be done by serving the notice of intention to commence arbitration with the order that is sought if I make it.

9. The jurisdiction which the claimant relies upon comes from a combination of Sections 2 and 44 of the Arbitration Act 1996 and/or Section 37 of the Senior Courts Act 1981. Section 44 of the 1996 Act empowers the court to make various orders for the purpose of and in relation to arbitral proceedings to the same extent that such orders could be made in relation to domestic English proceedings. The orders that can be made are those listed in Section 44(2) and include the granting of an interim injunction or the appointment of a receiver. By subsection (3):

> "If the case is one of urgency, the court may, on the application of a party or proposed party to the arbitral proceedings, make such orders as it thinks necessary for the purpose of preserving evidence or assets."

However, if the case is not one of urgency, then by subsection (4):

> "...the court shall act only on the application of a party to the arbitral proceedings ... made with the permission of the tribunal..."

10. By subsection (5) the court will only act by where the arbitral tribunal has no power or is unable for the time being to act effectively. As I have explained, the arbitration is yet to be commenced, so, it necessarily follows that any putative arbitral tribunal cannot act effectively at the moment. The case is said to be one of urgency because of the ongoing risk of dissipation, an issue to which I return in a moment.

11. Normally, one would expect that the powers contained in Section 44 would take effect in relation to arbitrations, the curial seat of which was England. However, by Section 2 of the 1996 Act, the powers conferred by Section 44 apply even if the seat of the arbitration is outside England and Wales but critically:

> "...the court may refuse to exercise any such power if, in the opinion of the court, the fact that the seat of the arbitration is outside England and Wales or ... makes it inappropriate to do so."

Thus, the position by a combination of Section 44 and Section 2(3) of the 1996 Act is to put the English court in relation to foreign seated arbitrations in broadly the same position the English court would be in in relation to foreign judicial proceedings applying Section 25 of the Civil Jurisdiction and Judgments Act 1982.

12. It follows therefore that there is a two-stage process that must be adopted in relation to applications of this sort. The first is to enquire whether the order sought is one that would be granted assuming the arbitration was seated in England. Answering that question involves applying the usual principles that apply to the grant of freezing orders, Assuming the answer to that question is affirmative, the second question is whether the fact that the arbitration is to be based, as in this case, in Switzerland, makes it inappropriate for the court to make the order sought. That engages the usual issues of comity and quasi comity that arise more usually in claims under Section 25 of the Civil Jurisdiction and Judgments Act 1982.

13. The first question which I have to ask, therefore, is whether there is an arguable case on the merits, which is the threshold question that applies in English law whenever a freezing order is sought. The circumstances which lead to this claim, broadly speaking, are these. By an agreement between the parties made on 26 June 2012, the claimant engaged with the defendant in his capacity as a contracting yacht broker. Clause 1 of the contract required that each party make available to the other all its current listings and added that:

> "The contracting broker shall have absolute discretion in deciding upon whether to handle and the method of handling any in leads furnished by the company. Nothing herein

> should be construed to require the contracting broker to accept or service any particular listing, or prospective listing, offered by the company, nor shall the company have any right or authority to direct the contracting broker, see or service particular parties, or direct its activities to particular areas. The company shall furnish such advice, information, and cooperation that the contracting broker shall request. The company retains no authority or right to direct or control the contracting broker's actions. The contracting broker assumes and retains full responsibility and discretion for methods, techniques, and procedures in soliciting and obtaining lists, sales, charters, and list of vessels in respect of the law."

14. A point which arises and which I should perhaps deal with now is the question of whether or not the wide discretions conferred by section 1 and other provisions within the agreement to similar effect mean that the activities to which I refer in more detail below are ones which were permitted by the agreement. I have no hesitation in concluding to the realistic arguability standard which applies on an application of the sort that however wide the discretion conferred by section 1 of the agreement was, it was not a discretion which permitted the defendant to divert either leads or commissions derived from leads to his own personal use or to his own personal account, nor did it entitle him to make demands of clients to make payment into his own personal accounts. The last point is emphasised by clause 5 of the agreement which provided that:

> "Commissions paid to the company are to be held in the company's client trust account with the contracting broker's share to be paid per the attached (inaudible) schedule upon billing the company by the contracting broker. In no event shall the company be liable to the contracting broker for any commission earned but not collected by the company paid to the company."

Clause 5 could not have been clearer in setting out the mechanism by which the relationship between the claimant and the defendant was to be managed. It provides in the clearest terms that all commissions were to be paid to the claimant with the defendant's share being thereafter paid by the claimant to the defendant. Clause 11 further emphasises the point. It provides that:

> "The contracting broker agrees that any and all listing of yachts and ships he procures and all his undertakings in connection with the yacht brokerage business should be undertaken in the name of the company, listings to be filed with the company within 24 hours after receipt. The contracted broker shall and does hereby assign all right entitled to his listings to the company for the benefit of the company."

This clause is manifestly inconsistent with the notion that the defendant could honestly consider it appropriate to establish bank accounts in his own name, to handle work in his own name using the (inaudible) and other intellectual property of the claimant to do so, or to divert funds to his own bank account.

15. The agreement between the parties was expressly agreed to be governed by the law of Switzerland with each of the parties submitting to the non-exclusive jurisdiction of the Swiss courts but subject to clause 16, which contains the arbitration agreement between the parties and provided that any disagreement or dispute between the claimant and the defendant "*arising out of or in connection with this agreement*", which could not be resolved between them amicably, was to be referred to arbitration in accordance with that provision.

16. The evidence establishes, unsurprisingly, that as a matter of Swiss law, the phraseology of the arbitration agreement is capable of including both contractual claims and the delictual claims that arise out of the relationship between the claimant and the defendant and so is applicable not only to the breach of contract claims but also to what, in English law, would be regarded as the tortious passing off claim but which, as a matter of Swiss law, is treated as a delictual unfair competition claim.

17. The circumstances which lead to the making of this application can be relatively speedily summarised. The defendant was engaged under the agreement to which I have referred until 18 February 2024 when the relationship was terminated as a result of dissatisfaction on the part of the claimant with the defendant's sales performance. I am told that the relationship having come to an end on 18 February 2024, thereafter, the claimant embarked upon what the applicant described as a standard review of the defendant's work email account which led to the discovery that a large number of emails had been apparently deleted from that account. Following some internal attempts to reconstruct the account, the claimant decided to instruct the claimant's solicitors to carry out a review of the email account. I am told that that commenced on 23 April 2024. It involved, in the end, the review of 263,547 documents which were, or had formerly been, on the relevant email account. I am told that review was completed on 2 July and revealed the facts and matters which give rise to this claim.

18. As will be apparent from what I have just said, there is an apparent gap between the end of the contractual relationship between the parties and the commencement of the review by the claimant's solicitors of about two months and a delay of about one month between the completion of that exercise and the making of this application. That is relevant to the delay issue which is material to an exercise of discretion. It is convenient that I deal with that now.

19. So far as the two-month delay that occurred between the end of the relationship between the parties and the commencement of the review by the claimant's solicitors, I am satisfied that on the information presently made available to me, that is explainable by the attempts by the claimant to deal with the issue of review internally before instructing solicitors. The position was made difficult by the attempts of the defendant to delete large numbers of emails from his account before the end of the relationship with the claimant. In those circumstances, I am satisfied that there is a proper explanation for the delay that occurred. In any event, the delay that occurred could not be even arguably support the proposition that the claimant inferentially had no real fear of a risk of dissipation.

20. So far as the one-month delay that occurred between the end of the investigation and the commencement of these proceedings, I am satisfied with the explanation offered, namely that it took a month for the claimant's solicitor to report to the claimant, provide advice in relation to what had been ascertained from the

enquiry, then for decisions taken as to whether to commence proceedings, thereafter to instruct counsel, collate the documents necessary to make the application, and to bring the application before the court. I am satisfied, therefore, that that delay cannot even arguably support the proposition that the claimant had no relevant fear of dissipation.

21. Returning therefore to what had been discovered, that is dealt with in detail in the affidavit of Mr Vitou filed in support of the application. In essence, the points which are made are that the defendant had operated various bank accounts, including bank accounts maintained in the name of a limited liability company wholly controlled and managed by the defendant called Evendine Limited, for the purpose of rendering various invoices in relation to work carried out by the respondent during the currency of the agreement. This is dealt with at paragraph 10 and following of the affidavit. It includes sales commissions paid to Evendine's accounts.

22. There are two transactions which it would appear are at least arguably time barred according to the limitation laws of Switzerland. I make clear those transactions, which are the T/T GAIA and SPIRIT OF ROMO commissions, do not form part of the maximum sum which the claimant seeks to freeze by the freezing order. They rely upon them, however, as evidence of a chain of conduct in relation to the way in which the defendant apparently managed his relationship with the claimant and with third-party clients who should have been clients of the claimant. The T/T GAIA is a typical example. It shows the issuing of an invoice for commission, as it turned out, of $15,000 for the sale of a tender which was an invoice issued in the name of Evendine, the company controlled by the defendant, but which incorporates in its letterhead CNI's relevant logo for the purpose of creating the impression that there was a legitimate link between the applicant and Evendine. There are then listed in paragraph 10 of the affidavit various transactions, the common theme of which is the rendering of invoices which require payment to be made to bank accounts controlled by the defendant personally rather than to bank accounts controlled by the claimant, as was at least realistically arguably required by the terms of the agreement between the claimant and the defendant.

23. The various transactions are summarised in a table at paragraph 10.4.4 which set out the total commission and the share of the commission which was apparently lost to the claimant. The position adopted by the claimant is that as a result of this activity, as a matter of Swiss law it is entitled to recover the whole of the commission that was diverted. However, its secondary case is that on any view it is entitled to recover at least its contractual share to the sums which were received by the defendant.

24. It is submitted that that was conduct which was dishonest because the various contractual obligations to which I have referred were ignored and because he well knew what the contract required, as is evidenced by the many transactions where the defendant had directed commissions to be paid to the claimant and then invoiced the claimant for his share. The applicant alleges that by conducting himself in the way alleged in these proceedings, the respondent deliberately departed from what was required by the contract by which he was bound. There is also some evidence of the creation of fictitious persons for the purposes of aiding the scheme disclosed by the material. Some reliance is also placed on the fact that the defendant attempted to delete the various emails before the end of his relationship with the claimant.

25. There is then a second stream to this misconduct which relates to charter business and is dealt with in paragraph 11 of the witness statement in support of the application and refers to four occasions on which the defendant is alleged to have referred charter business to contacts of his outside other than the claimant, and directed the payment of the referral fee into his personal bank account. It is not necessary that I simply repeat what is already set out in the statement. That is the evidence and the documentation contained in the exhibit to the affidavit supports that proposition and demonstrates what is alleged to the realistically arguable standard required.

26. There is then a third stream of alleged misconduct concerning valuation work undertaken by the respondent that gives rise to the delictual unfair competition claim. The claimant has a well-established practice going back many years of providing valuation services to banks and solicitors in support of their professional and commercial activities. It would appear on the evidence that from about 2012 onwards, the defendant provided yacht valuation services to clients and received payments for those services into his Evendine account, and, by so doing, held himself out as acting on behalf of the claimant by incorporating the claimant's name, address, and logo in correspondence and on invoices. The relevant invoices are exhibited and demonstrate that that is so.

27. The point which is made in 12.2 of the affidavit in support of the application is that the claimant has an international reputation as one of the oldest and most well-established yacht brokers in the world and that what was happening, therefore, at least realistically arguably, was that the defendant was passing himself off by reference to the claimant whilst, in fact, benefiting exclusively from the work the subject of this part of this claim. This gives rise to the unfair competition claim to which I alluded earlier in this judgment and the evidence relevant to that is set out in paragraph 12.3 of the relevant witness statement. It makes clear that the claim can be advanced under Swiss federal law as a claim in unfair competition and, as I have said, will be recognisable to an English lawyer as a passing off claim. In the result, there are significant sums of money which it is said the claimant is entitled to recover as a result and that is all set out at 12.7 of the affidavit in support.

28. The final area of claim which has yet to be fully fleshed out because it is not, at the moment, quantified results in activities following the termination of the relationship between the claimant and the defendant. As I have already explained, the defendant's engagement by the claimant ended on or about 18 February 2024. He commenced work thereafter for a yacht broker in London called Fraser Yachts. The claimant alleges that on 2 February, at the latest, therefore while the defendant was still engaged by the claimant, he effectively diverted a listing opportunity for a vessel called LADY HERTHA, which was then made subject to a central agency agreement with Frasers and in email correspondence, the explanation offered for this was that the defendant now headed up the London UK office of Fraser Yachts brokers who would be the agency to sell the yacht, not now Camper & Nicholsons. This is alleged by the claimant to give rise to a claim as a matter of Swiss law for breach of both clauses 1 and 11 of the agreement I referred to earlier and similar considerations apply in relation to two other vessels.

29. All of this leads to the submission made on behalf of the claimant, which I accept, that they have demonstrated a sufficiently good arguable case to merit the grant of a freezing order because, as I have explained, the evidence demonstrates that sale commissions were paid to personal or Evendine accounts

when they should have been paid to the claimant's accounts. There was referral of charter business otherwise than to the claimant. There was redirection of sales to Fraser Yachts. Also, there was a failure to inform the claimant of listings. All of this justifies the claims advanced and there is a further claim for unfair competition in tort by reason of the holding out by the defendant of him as carrying out valuation work linked to the claimant whilst at the same time diverting payment for that work exclusively to his account.

30. The second question which arises in deciding whether the order sought would be granted in aid of English domestic proceedings is whether the applicant has demonstrated that there is a real risk of dissipation. The evidence in support of that element of the application is in paragraph 12.9 of the affidavit in support, which draws attention to the fact that one of the bank clients of the claimant challenged the defendant as to why he was requesting payment into a personal account when the invoice was apparently issued by the claimant. This resulted in what, at least realistically arguably, were false representations as to the way in which the claimant conducted its business with the defendant involving express misrepresentations by the defendant (which in the circumstances were at least realistically arguably representations that the respondent knew to be untrue at the time they were made) to the effect that the defendant's account was a business client account, not a personal account, and that the defendant acted "care of" Camper & Nicholsons when invoicing valuation services. As I have already explained, by reference to the contract there could be no justification for that view, nor, at least realistically arguably, could the defendant have honestly believed that to be so. Dishonest misrepresentation used in the course of the conduct giving rise to the claims is capable of supporting an inference of a risk of dissipation because it suggests a willingness to use dishonest means to hide misconduct.

31. Similarly in another email a few years later, the explanation offered was that the bank account was a company business account maintained in the name of the defendant but was:

> "...care of Camper & Nicholsons International for all reporting, expert witness statements, valuations and travel expenses we bill from our individual companies in the first instance."

That representation was untrue by reference to the terms of the agreement between the parties to which I have referred earlier in this judgment and that is relied upon as part of the evidence of risk of dissipation being a willingness actively to dishonestly represent the true position in order to hide misconduct.

32. I remind myself that merely because dishonesty is arguably demonstrated in relation to the index claim does not lead necessarily to the conclusion that there is to be inferred a real risk of dissipation. However, if the dishonesty that is demonstrated by the evidence in relation to the index claims facilitated the index claims and were intimately wound up with it, then the inference of a risk of dissipation arises. It is only where the dishonesty is independent of the claims that arise that the risk of dissipation becomes a more difficult inference to draw. Here, the dishonesty that is alleged by the claimant is intimately rolled up with the claims that are being advanced. This is a defendant, on the claimant's case, who has created false email addresses and identities; forged documents; told lies in order to induce well known firms of solicitors and banks to make transfers to the defendant personally rather than to the claimant, or to his company Evendine

rather than to the claimant, has misused the claimant's IP, including but not limited to the use of its logos on letterheads and used personal accounts to receive funds to which, at least realistically arguably, he was not entitled. All of this, of itself, gives rise to an inference of a real risk of dissipation by removal or concealment of assets in order to defeat enforcement of any award in favour of the applicant because this was on the claimant's case a protracted, deliberate, and sustained attempt to disguise dishonest conduct. The evidence demonstrates to a realistic level such conduct and, in my judgment, a risk of dissipation is readily to be inferred in those circumstances.

33. I have already dealt with the issue of delay and I need to say no more about it.

34. So far as justice and convenience is concerned, subject to the question of fortification to which I return at the end, there are no countervailing circumstances sounding in justice and convenience which would make it inappropriate to make the order sought.

35. So far as full and frank disclosure is concerned, there are two strands to this. First of all, there is the full and frank disclosure which has been made both in the affidavit in support of the application and summarised at paragraph 27 of the skeleton in support of the application, which I have taken account of and which, in my judgment, does not justify refusing the making of the order that is sought. The second full, frank, and fair presentation issue that arises concerns what I set out earlier concerning the detail, in particular, of what occurred and what led to the investigation of the relevant email account and why it was that it took between the middle of February 2024 and today to make the application. That is material which is not set out in the evidence in support of the application but I have been offered an undertaking that by 12 noon on Monday, a supplemental affidavit will be prepared by Mr Vitou which deals with the issues and confirms as true the information supplied to me by counsel on instructions.

36. The second and third questions which arise (assuming the application was for a freezing order in aid of English proceedings) is whether or not I should, as a matter of justice and convenience, make a worldwide order or simply a domestic order. So far as that is concerned, the evidence is unsatisfactory. As things currently stand, the evidence shows that the respondent has lived and worked in London now for many years and continues to work in London as a broker employed by a London-based international yacht broker. There is no evidence of foreign bank accounts being maintained by the respondent in the recent past, although I was taken to some emails which showed that at a time when the defendant was employed or had a relationship with the claimant operating out of France, he may have been paid into a French bank account by the claimant. However, that issue has not been dealt with it all in the evidence and was made good only by reference to an isolated email which was exhibited in the bundle, which was dated some 10 years ago and many years before the respondent started to work for the applicant in London.

37. Although I was offered an undertaking to file a supplemental witness statement which affectively made good the point made by counsel by reference to the email that in 2014, when the respondent had been employed in France and therefore had a bank account in France, I unpersuaded that this material would make it just and convenient to make an order in worldwide terms. Worldwide orders are potentially exorbitant and generate significant additional cost in enforcing and it is not appropriate to make one unless there is clear evidence of extra territorial activity. In reality there is no such evidence in this case. In those

circumstances, had these been English proceedings, I would have made a domestic freezing order but I would not have made a worldwide freezing order.

38. Returning to Section 2 of the Arbitration Act 1996, the question that then arises, is whether it is inexpedient to make the order sought because it is sought in aid of an arbitration to be seated outside England and Wales. So far as that is concerned, firstly, as I have already recorded, there will be an undertaking to commence arbitration proceedings by notice in the way I have described earlier in this judgment. Therefore, there is no risk that there would be no arbitration commenced.

39. Secondly, so far as arbitration in Switzerland is concerned, the evidence suggests that the Swiss courts would have jurisdiction to make a domestic freezing order, or the equivalent in Switzerland, but it is accepted that it is in the highest degree improbable that the defendant has assets in Switzerland so that that is unlikely to assist. The evidence suggests that neither the Swiss courts nor Swiss arbitrators would be juridically offended if the English court made a freezing order in aid of the proceedings in Switzerland, and with a freezing order confined in the way I have described, it seems inherently even more unlikely that the court in Switzerland, or the arbitrators, would be juridically offended by the making of the order since it has no effect in Switzerland and it is not suggested that there is any public order or public policy reasons why freezing orders are offensive as a matter of Swiss law and it is inherently improbable there could be any such objection given that domestic freezing orders or their functional equivalent are available in Switzerland. There is no risk of a jurisdictional challenge based upon the commencement of these proceedings because these proceedings can be served in England on the defendant in England in the usual way, and in those circumstances, as I see it at the moment, there is no reason for concluding that it would be inappropriate or inexpedient to make the order sought.

40. The final issue concerns for fortification. So far as that is concerned, the claimant is a Swiss registered company. The company carries on business in various parts of the world, including London. However, if it should turn out that judgment be entered under the cross-undertaking in damages, then any such judgment may have to be enforced in Switzerland. That may give rise to unnecessary difficulty not least because cross-undertakings in damages are not necessarily recognised as a course of action outside England and Wales and to additional avoidable cost.

41. In those circumstances, what I propose to direct, subject to any further submissions concerning amount, is that fortification be provided in the sum of £30,000 to be paid into the claimant's solicitor's client account against an undertaking by the claimant's solicitors not to dissipate the sum so paid other than with the written prior consent of the defendant, or his solicitors if solicitors are appointed, or further order of the court. I have arrived at the figure of £30,000 broadly by seeking to calculate, in a very rough and ready manner, a reasonable sum in respect of costs down to the return date and the cost of borrowing the maximum sum frozen until the return date. The question of whether fortification should be continued and if so in what amount can be reviewed at the return date and increased if appropriate but I am satisfied that £30,000 will provide the necessary protection for the defendant over until any return date.

42. In those circumstances, what I am prepared to do is to make a domestic freezing order against the respondent subject to the undertakings that I have mentioned in the course of the judgment and to fortification in the terms that I have indicated.

(See separate transcript for continuation of proceedings)

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(This Judgment has been approved by the Judge)

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