Neutral Citation Number: **[2026] EWHC 2908 (Comm)**

Case No: CL-2025-000566

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY DIVISION
COMMERCIAL COURT

Royal Courts of Justice,
Fetter Lane,
London, WC2A 2LL

Date: Monday, 9 November 2026

Before:

MRS JUSTICE DIAS

- -

Between:

EAD GROUP LCC

Claimant

- and -

(1) AHMET BULENT TOROS
(2) T LONDON LIMITED

Defendant

- -
- -

Mr M Gregoire for the Claimant
Mr G Halkerston and Mr T Dixon for the First Defendant
Mr A McLeod for the Second Defendant

Hearing date: Monday, 9 November 2026

- -

JUDGMENT

MRS JUSTICE DIAS:

1. This matter arises out of a freezing order which I granted on 11 December 2025 under s.25 of the Civil Jurisdiction and Judgments Act 1982, over the English assets of the first defendant, Mr Toros, in support of proceedings against him in New York. The only specifically identified assets were two properties in London. The injunction was also granted against the second defendant, T London, who owned the properties, on the basis that Mr Toros had sufficient control over its assets to justify exercise of *Chabra* jurisdiction against it as a non-cause-of-action defendant.

2. Mr Toros now applies to discharge or set aside the freezing order on the grounds of serial and serious breaches of the Claimant's duty of full and frank disclosure. The second defendant makes no discharge application of its own. If the freezing order is discharged as against the first defendant, then it must necessarily fall against the second defendant as well. There is also a cross-application by the claimant for continuation of the injunction or, if I am minded to discharge the freezing order, a re-grant, which is opposed by both defendants. The parties sensibly agreed to address me on the discharge application first.

3. On behalf of Mr Toros, Mr Halkerston submitted that there had been a breach of the duty of full and frank disclosure at the ex parte hearing in the following respects:

    a. A failure to disclose the Answer submitted in the ICC arbitration by WMS and SRT, and the defence on the merits there set out. This, he said, was relevant to whether there was a good arguable case.

    b. Unfair and misleading presentation of the Amended Complaint submitted in the ICC arbitration, and also of the Motion to Compel a stay of the New York proceedings to arbitration issued by Mr Toros, which was relevant to whether there was a proper basis of jurisdiction under s.25 of the 1982 Act.

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c. Insupport of its case on risk of dissipation, the claimant relied on the transfer by Mr Toros of shares in a company, SRT UK, to his wife made shortly after the commencement of the ICC arbitration. However, the claimant failed to disclose that SRT was, at that time, a dormant company showing assets of only £100 at the time the shares were transferred.

d. Failure by the claimant to draw specific attention to a letter from PVL, the owner of the yacht HERCULES, notwithstanding that PVL had expressly asked this to be brought to the attention of the Court.

e. Unfair and misleading presentation as regards Mr Toros' connection with the London properties, which was obviously relevant, Mr Halkerston submitted, not only to the existence of assets within the jurisdiction and whether they were amenable to enforcement for the purposes of the *Chabra* jurisdiction, but also whether it was expedient for the purposes of s.25 to grant any order.

4. These asserted failings at the *ex parte* stage were said to be compounded by the failure to disclose the judgment of Judge Ho in New York on the Motion to Compel as soon as it had been received.

5. There was no dispute between the parties as to the principles applicable to the duty of full and frank disclosure. These were explained in Brink's Mat Ltd v Elcombe [1988] 1 WLR 1350 (CA) and endorsed in Tugushev v Orlov [2019] EWHC 2031 (Comm). They remain as important as they ever were, and the fact that I do not set them out *in extenso* now does not detract from the seriousness with which they should be treated, although each party understandably emphasised different aspects as best suited their respective cases.

6. Applying these principles, I have reached the clear conclusion that there were breaches of the duty of full and frank disclosure in all the respects referred to by Mr

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Halkerston. Some were undoubtedly serious, albeit not all of them would necessarily have had an impact on my decision.

7. I make two threshold points.

8. First, even now, it is not entirely clear how some of these breaches came about. The supposed explanations belatedly offered are less than adequate in many respects and, in truth, amount to little more than an acknowledgement of the failing with a rather lame confession of inability to explain how or why it occurred. Mr Halkerston suggested that there was a consistent pattern of material information not being passed from the claimant's lawyers in the US, Quinn Emanuel, to their lawyers in London, PCB. He also suggested that there had been selective disclosure in some jurisdictions but not others, and while not quite bringing himself to accuse Quinn Emanuel of an attempt to mislead the English court by deliberately concealing matters adverse to their client, he submitted that on any view something had clearly gone very wrong with the processes and procedures put in place for the exchange of information.

9. In cases such as the present, where litigation is ongoing in multiple jurisdictions, he submitted that it is essential to establish procedures to ensure that all legal teams are kept up to date. He referred in this context to Moore v Moore [2007] 2 FLR 339 and Lewis v Eliades (No.1) [2002] EWHC 335 (QB). He pointed out that since the grant of the English freezing order was relied on in a subsequent application made in the BVI, any breach of duty in relation to the English order necessarily tainted that subsequent application as well.

10. I agree with the thrust of these submissions. Solicitors and counsel in this jurisdiction have heavy professional responsibilities to the Court, and it is therefore incumbent on them to take steps to ensure that not only their clients but also any foreign lawyers equally understand what is required for compliance with that duty. In this case, however, there was simply no evidence before me as to what processes had been put in place by PCB to ensure the proper flow of information, and no evidence from

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Quinn Emanuel explaining why, if it be the case, certain material was not drawn to PCB's attention. There was a belated statement from Mr Rezk saying, in relation specifically to the Answer, that its omission was inadvertent and innocent and that it was inadvertently omitted from material sent to PCB. However, he does not say who was responsible for selecting the documents to send to PCB, the basis on which that person decided what should or should not be sent, and the reason why they did not think it was necessary to send the answer or, if they did, why it was not in fact sent.

11. A further example is the judgment of Judge Ho, which was delivered on 17 September this year, and was of blindingly obvious relevance, but apparently not sent to PCB, who remained in blissful ignorance of it until alerted by Mishcon de Reya over a week later on 25 September. It has to be said that this provides powerful support for Mr Halkerston's submission that something has gone very wrong with whatever procedures PCB had in place with Quinn Emanuel to ensure that they were kept informed of all developments. This is all wholly unsatisfactory, but in the absence of concrete evidence as to what actually happened, I am not prepared to make findings of misconduct against Quinn Emanuel, who of course are not before me on this application and have not had an opportunity to be heard. Still less am I prepared to opine on whether misrepresentations were made to other courts.

12. I content myself with saying that the strong impression given is that the overall litigation worldwide has not been handled in the coordinated and professional way that might have been hoped and expected, and that a number of important matters have fallen through the cracks as a result. I of course accept the assurances of Mr Gregoire (who appeared on behalf of EAD) and PCB that, for their part, they are very mindful of the duty of full and frank disclosure, and have always attempted to discharge it to the best of their ability. However, I am not satisfied that sufficient attention was necessarily paid at every other link in the chain as to what was required to discharge that duty for the purposes of the English proceedings, and it may be that

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more could and should have been done to make them aware. Clearly, urgent steps must be taken to improve matters going forward.

13. The second threshold point is Mr Gregoire's portrayal of the first defendant's approach as an example of the scattergun approach to allegations of full and frank disclosure deprecated in the authorities. He referred to Tugushev at [7(vii)] and Mex Group v Ford [2024] EWCA Civ 959; [2025] 1 WLR 975, at [112]. He accepted that some points were properly taken but, he submitted, not all. This characterisation of the application seems to me to be unfair. What the courts deplore is a "kitchen sink" attitude where every single point is pursued, whether good, bad or indifferent, and every little molehill is presented as a mighty mountain. In fact, Mr Halkerston's submissions were focused on specific matters and I have found in his client's favour on all of them. Mr Gregoire's submission does not therefore fall on promising territory. Whether the breaches in question would have made any difference to my decision in December is, of course, a different question, and Mr Gregoire urged me to maintain a sense of proportion, which I hope I have tried to do.

14. With that preamble, I turn to the specific breaches relied on. Although Mr Halkerston sought to draw attention to respects in which he said that unfair presentations had been made to other courts, I am of course primarily concerned with the way in which the case was presented to me in December.

Failure to refer to the Answer

15. I note that this document was an Answer to a Request for Arbitration, not a fully pleaded defence. It was also an answer filed on behalf of WMS and SRT, not Mr Toros, who at present is not a party to that arbitration. Nonetheless, the Answer makes clear that key issues in the arbitration will be whether Mr Toros was unaware of the final provisions of the MLA because they had been changed by Mr Maass without his knowledge or authority, and whether Mr Maass was acting fraudulently in concert with Mr Rezk and in breach of his fiduciary duties. No clear allegation of

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fraud is made against Mr Toros, but the Answer does refer to misconduct on the part of both men.

16. Mr Halkerston said that EAD's case was presented to the English court as one of planned fraud by Mr Toros from the outset, before the MLA had even been signed, and that the Answer materially cast doubt on that characterisation and in particular on whether it was Mr Toros, rather than Mr Maass, who was the orchestrator of the alleged fraud. He also relied on the fact that the Answer was presented to the Zurich court in a subsequent application for attachment of assets there, and that the Zurich court granted attachment but not on the basis of fraud. I am not convinced that this is in fact the case. The Zurich court appears to have accepted at paragraph 4.4.3 of its judgment that Mr Toros was clearly aware of the restrictions on disposal of the collateral, but in any event I regard this is irrelevant. I am not interested in what the Zurich court made of the evidence presented to it. I am only concerned with whether the Answer should have been shown to me and, if so, how that would have affected my assessment of the issues in December.

17. It is not in dispute that the claimant was aware of the Answer from the date it was filed on 14 November 2025, and Mr Gregoire very fairly and frankly accepted that it should have been put before the Court and, to that extent, there had been a breach of the duty of full and frank disclosure. He apologised and said that it had been an innocent and inadvertent error. However, he was wholly unable to explain whose inadvertence and error was involved or when, why or how it arose. That, as I have said, is unsatisfactory. Particularly if a breach of the duty of full and frank disclosure is acknowledged and accepted, the Court is entitled to expect a full explanation of how and why it occurred before it can properly be asked to accept that it was indeed merely inadvertent and innocent.

18. Indeed, I am somewhat surprised that PCB felt able to confirm that the error was innocent and inadvertent without knowing how or why it occurred, in which case I would have expected to be told. If it was simply based on their instructions then that

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also should have been made clear, rather than the categorical assertion in Mr Davies' witness statement that it arose from an oversight. While I accept that there was no intention to mislead on the part of PCB or Mr Gregoire, in the absence of a proper explanation, I cannot conclude affirmatively that this was simply a matter of inadvertence or oversight. Equally, I cannot conclude that it was not, but it does mean that the claimant cannot rely on innocence as providing any sort of mitigation.

19. There was no good excuse for the failure to include the Answer in the materials put before the Court, and to draw it specifically to the Court's attention. It bore materially on the allegations being made against Mr Toros, and in particular whether the prime mover in any fraudulent or deceptive conduct was Mr Toros or Mr Maass. It is true that there was a tangential reference to the Answer in the Motion to Dismiss filed by Mr Toros in the New York proceedings, but it was not set out there in any detail and certainly not in a way which gave its full flavour.

Motion to Compel/Amended Request for Arbitration

20. Mr Halkerston submitted that the dispute referred to arbitration was presented to me in December as a straight contractual dispute between EAD and WMS/SRT, in contradistinction to the New York proceedings against Mr Toros, which were for fraud. The Motion to Compel was presented as an irrelevance and a mere delaying tactic, not least because Mr Toros was not party to the arbitration and the other parties would need to agree to him being added. No mention was made to me of the Amended Request for Arbitration, which had been served on 12 September to include a claim of fraud against WMS as well.

21. Mr Halkerston argued that this was unfair and misleading because the Amended Request made clear that substantially the same allegations would be covered in arbitration as in the New York Court proceedings. Moreover, New York law has more expansive rules as to the circumstances in which agents can take advantage of arbitration clauses in contracts to which they are not party but with which they are

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intimately connected. Therefore, far from being a mere delaying tactic, the Motion to Compel had a realistic prospect of success, and even if Mr Toros found himself unable to join the existing arbitration, separate proceedings could always be commenced against him. This was important, Mr Halkerston argued, because it went to the very foundation of relief under s.25. If there was no realistic prospect of the substantive dispute being tried in foreign court proceedings, there was no basis for a freezing order under s.25 of the Act, and s.44 of the Arbitration Act was the only gateway for an application. Indeed, he submitted that the point went further because if Mr Toros was in fact entitled to take advantage of the arbitration clause in the MLA, then arguably the New York Court proceedings had been brought in breach of the arbitration agreement.

22. Further, the claimant had relied on the assertion that the Motion was a delaying tactic as grist to its mill on risk of dissipation when it was actually, in Mr Halkerston's submission, anything but.

23. On behalf of the claimant, Mr Gregoire pointed out that the Motion to Compel was referred to at two points in the transcript and that the claimant's assessment at the time had been that it was indeed no more than a delaying tactic. The fact that it was subsequently allowed did not mean that the relevant threshold for s.25 was not met.

24. To my mind, however, this submission raises almost as many questions as it answers. The transcript references, in truth, did no more than merely identify that the Motion had been made. There was no discussion of the principles that would be applied by the New York courts in determining the Motion or the circumstances in which it might or might not succeed. It is unclear whether PCB were aware of these principles. If not, then they should have been, since it is difficult to see how they could properly have formed a view that the Motion was a mere delaying tactic without some idea as to whether it might have merit. The two are not incompatible, of course; many meritorious applications may be pursued with the sole purpose of delaying proceedings. Nevertheless, if it is intended to submit to the English court

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that it should ignore a prima facie meritorious application for a stay to arbitration which, if successful, might undermine the whole basis of the application, there is no question that there should have been some explanation of why that was the case.

25. In my judgment, therefore, this was another serious breach of the duty of full and frank disclosure.

Failure to disclose that SRT was a dormant company

26. Mr Halkerston submitted that the transfer of shares in SRT London was presented by the claimant as compelling evidence of risk of dissipation. Yet, while the evidence before the Court expressly stated that two other UK companies associated with the first defendant were dormant, the claimant failed to state in relation to SRT London that the company had filed accounts as a dormant company with assets of £100, even though this had been expressly disclosed in a previous application for freezing relief in the Cayman Islands. Mr Halkerston submitted that the non-disclosure cannot be said to have been inadvertent since the claimant was obviously aware of the fact. He relied on this as another demonstration of selectivity in the presentation of information to different courts.

27. Mr Gregoire again apologised and accepted that greater emphasis should have been placed on this matter. However, he submitted that the focus of his submissions with regard to SRT London was less on the value of the transfer and more on its suspicious timing, just after service of the Request for Arbitration, and the fact that it demonstrated an ability on the part of Mr Toros to move assets. The fact that the company was dormant and that the actual value transferred was negligible did not, in his submission, detract from either of those points.

28. Even accepting the force of this argument, I nonetheless consider that it should have been made clear to the Court that in the scale of asset dissipation this was really small fry. Mr Gregoire could still have made his submissions as to the manner in which it

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demonstrated Mr Toros' ability to move assets around and the fact that there was no obvious explanation for him seeking to do so at that particular time, if not linked to the commencement of arbitration. To that extent, however, I consider that this too was a breach of the duty of full and frank disclosure.

The PVL letter

29. As I have said, the claimant obtained a freezing order in the Cayman Islands in September. One of the assets covered was a yacht, the HERCULES, which was owned by an Isle of Man company, PVL. PVL wrote to the claimant on 29 September 2025, pointing out that, as a Manx company, it was not bound by the Cayman Order and stating that the claimant would need an order from the Isle of Man Court. They asked expressly that this letter be drawn to the attention of any court from which further relief was sought. However, while the letter was included in the thousand-odd pages of material accompanying the application before me, it was not specifically referred to me.

30. This again is deeply unsatisfactory and not the conduct that the Court expects if the duty of full and frank disclosure is being properly complied with. It is unclear where the fault lies in this respect. The only submission made by Mr Gregoire was that it did not make any difference to my assessment since I discounted the HERCULES for other reasons anyway. That, however, is not the point. There was an express request by the owner of the yacht for their letter to be drawn to the Court's attention, and this was not done. This was an obvious breach.

Unfair presentation in relation to Mr Toros' connection with T London and the London properties

31. The sole basis on which the claimant was able to assert that Mr Toros had assets in this jurisdiction was by reference to his supposed control of the London properties owned by the second defendant, T London. By the same token, this was the sole

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basis on which T London could be brought within the scope of the order under the *Chabra* jurisdiction.

32. The only solid evidence to which the claimant could point in this regard was the entry in the Companies House Register of Overseas Entities in which Mr Toros was registered as a beneficial owner of T London for the purposes of the Economic Crime Transparency and Enforcement Act 2022. T London is a private limited company incorporated in Jersey. At the date of the freezing order, its sole shareholder was Zedra Nominees Jersey Limited, a professional nominee shareholder. Its directors are employees of a corporate and trust services provider incorporated in Liechtenstein, DVP.

33. The Register showed that T London had two active beneficial owners. The first was DVP, on the basis that it had a shareholding greater than 25 per cent as trustees of a trust and, in that capacity, also had voting rights, the right to appoint and remove directors, and significant influence over T London. Mr Toros was said to be a beneficial owner on the basis that he had significant influence and control over T London. The nature of that influence and control was not specified on the face of the Register.

34. This entry was relied on by the claimant and accepted by me to be an indication, albeit no more than an indication, that Mr Toros might have a beneficial interest in T London which could support the case that he had an interest in the properties against which a judgment against him could be enforced. While I appreciated that there was no solid evidence to this effect, merely an inference, I was satisfied that it was sufficient to support an order at the interim stage.

35. In fact, the reality is somewhat more nuanced. What I was not told was that the test for registration as a beneficial owner under the 2022 Act is not the same as the test for beneficial ownership in the true equitable sense. Guidance issued by the government for the purposes of the Act makes clear that a person is registrable as a beneficial

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owner if they are a person with significant influence or control of the entity in question, and that for this purpose a person with significant influence and control includes anyone who can appoint or remove trustees. The definition is thus wide enough to include a settlor who has a power to appoint trustees, but no other powers in relation to either the trust or the trust property. This guidance was not drawn to my attention; again, it appears that PCB was not even aware of it. I am afraid I regard that as another regrettable failing. Although the guidance is non-statutory, it was issued for the express purpose of providing technical guidance on registration under the Act, and it can hardly be said that it is difficult to find.

36. The Court was also not told that the identity of beneficiaries of a trust is not disclosed on the public register but is kept on a private register. The public register by definition, therefore, will not disclose the identity of the beneficiaries of any trust. In short, the submission to the Court was that I should draw an inference from an entry on a register which I was invited to take at face value, when it should have been explained to me that that entry might have been made on any one of a number of different bases, some of which would not necessarily indicate the type of beneficial interest sufficient to support a freezing order or the exercise of *Chabra* jurisdiction. As a result, the drawing of any inference would have needed to be caveated to that extent.

37. Mr Gregoire attempted to excuse this on the basis that I was not misled into thinking there was firm evidence of any true beneficial interest, and that the nature of the first defendant's influence and control was left entirely open on the Register. However, I am afraid that I cannot accept this as adequate justification. In my judgment, this was another serious breach of the duty of full and frank disclosure. The guidance was plain for all to read and should have been referred to. After all, the existence of assets in this jurisdiction was the sole basis for seeking relief from the English Court and for involving T London. If the claimant could not persuade me on this point, then the whole application would necessarily fail. This was therefore an obviously critical

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point which needed to be addressed fully and fairly. It is one thing not to have concrete and watertight evidence at an ex parte stage. It is quite another to invite an inference on the basis of a statement in a register without properly explaining the basis on which that statement was or may have been made.

Effect of breaches of duty of full and frank disclosure

38. I then turn to consider whether my decision in December would have been any different but for the breaches of the duty of full and frank disclosure.

39. In relation to the Answer, Mr Gregoire submitted, somewhat ambitiously, that disclosure of the Answer could only have strengthened his client's case on good arguable case as to fraud. I am not entirely sure I agree with him on that but, in any event, I regard it as irrelevant. The Court of Appeal in Unitel SA v dos Santos [2025] KB 438 recently and authoritatively considered the test to be applied when considering the question of good arguable case at a contested hearing. (In fact, that was an on-notice first hearing rather than a return date, but the same principles must apply by analogy at a contested return date.)

40. Dos Santos confirmed that the applicable merits threshold is the relatively low threshold set out in the Ninemia Maritime Corp v Trave Schiffahrtsgesellschaft GmbH ("The Niedersachsen") [1983] 2 Lloyd's Rep 600; in other words, more than barely capable of serious argument but not necessarily one which the Court considers has a greater than 50 per cent chance of success. In particular, it is not necessary in a contested hearing to conclude that the claimant has the better of the argument. The weighing of the merits and the prospect of mini trials on incomplete evidence was deprecated by the Court. The merits are for the trial judge in due course.

41. To my mind, the Answer, in truth, does little more than make clear that there are allegations and counter-allegations of fraud and misconduct in this case. It is impossible for the Court to form any view as to which party has the better of this

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particular argument. All that can be said is that the claimant's case is plausible and coherent based, as it is, on a prima facie clear breach of the express terms of the MLA. That comfortably meets the threshold, and that is the conclusion that I would have come to in December, even if the Answer had been put before me.

42. I note in passing that I in any event discounted the 27 May email relied on by the claimant for precisely the reason set out in the Answer, namely, that the first drafts of the MLA did permit hedging in certain circumstances, and that initially, during the discussions, there was no blanket prohibition. The Answer asserts that the final agreement was altered without Mr Toros' knowledge or authority, but it makes no difference to the core fact that a contract was ultimately signed by WMS containing an obligation not to dispose of shares, but that they did so and, on at least one plausible interpretation of the facts, sought to conceal what they had done. I am therefore confident, as I have said, that failure to disclose the Answer would not have altered my ultimate decision in December.

43. I do not consider that the failure to disclose the Amended Request would on its own have caused me to alter my decision in any way. However, the unfair presentation of the Motion to Compel is altogether in a different league. As will be obvious from reading my judgment in December, I was already hesitant about granting the order because of the delay. Some of the factors relied on by the claimant in December in relation to risk of dissipation I had also not found to be compelling. Had I appreciated that the Motion to Compel had a realistic prospect of success, there is a possibility that I might not have granted the order at all. At the very least, I would have required substantially more by way of fortification of the cross-undertaking, and I would have demanded a very short return date so that the defendants could come before the Court to argue the point.

44. In relation to SRT London, it is true that the transfer in relation to SRT London was one of two factors that I accepted as providing sufficiently solid evidence of risk of dissipation of assets. The other was the underlying allegation of fraud itself. Had I

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known that the value transferred was so small and that SRT London was in fact dormant, I would have given that particular factor far less weight. Nonetheless, on the basis that there was still a plausible case of fraud, and that Mr Toros had shown himself clearly able and willing to transfer assets of whatever value, I am confident, so far as I now can be, that this would not of itself have affected my decision.

45. Likewise, in relation to the HERCULES. The movement of the HERCULES from Monaco to Turkey was relied on by the claimant as evidence of dissipation. However, as is clear from my judgment, the Cayman order only prohibited the removal of assets from Cayman, and since the yacht was not in Cayman to start with, there had been no breach of the order and I discounted this as a relevant factor in any event. The sight of the PVL letter would therefore have made no difference to my decision in practice.

46. As for the Companies House information and the position regarding beneficial ownership, despite the seriousness of the breach, I accept that my decision in December might not have been any different, even if the basis of the Register had been properly explained. As Mr Gregoire rightly submitted, the nature of Mr Toros' influence and control was not explicitly stated on the Register. It may have been an anodyne connection, but equally it may not. There was no way of knowing, and it seems to me that at that interim stage in December, that would have been sufficient to justify making the order.

47. Mr Halkerston submitted that even if each individual breach might not of itself have led to a refusal of injunctive relief, I should have regard to their cumulative effect. He said that, between them, the breaches went to each and every one of good arguable case, presence of assets within the jurisdiction, risk of dissipation, *Chabra* jurisdiction, s.25 jurisdiction, and expediency. There is some force in this. As I have said, I was in any event hesitant about granting the injunction because of delay, and it may well have been that if I had had more substantial doubts in other respects,

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particularly with regard to the Motion to Compel and whether there was a proper basis for s.25 relief, this would have led me to refuse the order.

48. Doing the best I can to put myself back into the position I was in in December, however, I do not believe that I would have refused a freezing order at the ex parte stage, although obviously all these matters would have needed to be ventilated at a return date and, as I have indicated, I may well have imposed more stringent conditions regarding fortification and timing of an inter partes hearing. Perhaps somewhat charitably, therefore, I am prepared to proceed on the basis that this is not a case where the freezing order should never have been granted in the first place at all, although the impact on costs will need to be considered in due course.

Continuation

49. The question then arises as to whether the freezing order should be continued or whether it should now be discharged, particularly in the light of two critical developments since it was granted, namely the decision of Judge Ho allowing the Motion to Compel, and the disclosure of the trust deed relating to the trust under which T London holds the London properties. It is common ground that the claimant has to justify its position afresh. It does not start 15-0 up merely because it succeeded in getting an order first time round.

50. Both defendants argue that there is no basis for continuing this injunction. They say, first, that there is insufficient evidence of assets within the jurisdiction because Mr Toros, as we now know, is only the settlor of a trust which holds the London properties and is not in a position to exercise any control over the trust or direct its activities. He has certain powers as settlor, but these do not allow him to nominate himself as a beneficiary. Certainly, they submit, there is no basis for saying the properties could be the subject of any legal process of enforcement to satisfy a judgment against Mr Toros personally. Secondly, they say that the New York proceedings have now been stayed to arbitration by virtue of the judgment of Judge

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Ho. Any residual jurisdiction in the New York courts is supervisory only and this is insufficient to found relief under s.25.

51. Taking the latter first, Judge Ho's judgment was, as I have already said, given on 17 September 2026. Clearly, the claimant, Mr Toros and Quinn Emanuel must have been aware of it, but there was apparently no attempt to bring it to the attention of the English lawyers, notwithstanding that they should have appreciated that the latter were under an ongoing duty of full and frank disclosure. Once alerted to its existence, PCB obtained a copy and put it before the Court, but that does not alter the fact that information which should have been disclosed was apparently not sent on - for whatever reason is not explained. Mr Rezk merely says he was not aware that it affected the English order. However, while it makes no difference to my conclusions, it is difficult to regard this as anything other than a further breach of the ongoing duty of full and frank disclosure on the part of the claimant, albeit one which was cured relatively speedily.

52. The effect of Judge Ho's decision is that the New York proceedings are now stayed on the basis that Mr Toros is entitled to the benefit of the arbitration clause in the MLA. That remains the position, whether or not the pending application for joinder in the ICC arbitration succeeds or not. Given that there is no objection by either of the existing respondents or Mr Toros, it is difficult to see that the joinder application would be refused by the ICC. But even if it is, the claimant's remedy is to commence separate arbitration proceedings against Mr Toros and seek to have them heard concurrently, as is permissible under ICC Rules, not to resurrect the court proceedings.

53. Judge Ho declined to dismiss the court proceedings altogether but, as appears from his judgment, this was only on the basis that the practice of the courts in this situation is to retain a purely supervisory jurisdiction. It is therefore clear that no adjudication on the substance of the dispute is envisaged in the New York Court. While that Court retains jurisdiction for supervisory purposes, the judgment makes clear that the

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substance of the dispute must be determined in arbitration. Accordingly, it would only be in the most exceptional circumstances that the dispute might come back to the courts.

54. In these circumstances, I fail to see how the claimant can now satisfy the threshold requirement for the exercise of s.25 jurisdiction that it be in support of substantive proceedings. Court proceedings ancillary to arbitration proceedings, which is what the New York proceedings effectively now are, are not substantive proceedings for this purpose: see the decision of the Court of Appeal in ETI Euro Telecom International NV v Republic of Bolivia [2009] 1 WLR 665. The only basis on which a freezing order can therefore be obtained is under s.44 of the Arbitration Act, an application which is not before me.

55. Mr Gregoire did not challenge these principles. His only argument was that the ICC had not yet accepted jurisdiction and might not do so. If it did not, or if the arbitration broke down for any reason, then it would be open to the claimant to go back to court, and therefore it was still expedient to grant the freezing order under s.25. I regard this argument as misconceived. The plain fact is that there are currently no substantive proceedings in the New York Court which this order would be supporting. Freezing orders are serious remedies, notoriously described as one of the law's "nuclear weapons". It cannot conceivably be considered expedient to fire such a weapon against the purely remote and speculative possibility that proceedings might one day be revived in court. I decline to do so and, for this reason alone, the freezing order must be discharged against both defendants forthwith.

56. Turning then to the asset position. The disclosure of the trust deed casts a materially different light on Mr Toros' relationship with the London properties since it is now clear that those properties are held by a Jersey trust of which Mr Toros is settlor for the benefit of his infant son and any future children or remoter issue. Under the provisions of the trust deed, Mr Toros himself is not a beneficiary and has no power to appoint himself a beneficiary. He has no power of revocation; the trust is

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irrevocable. He has no power to remove a trustee. He can appoint a new trustee in certain circumstances, and he can appoint additional trustees, as well as a protector, although he has not to date sought to do the latter. However, under both English and Jersey law, these powers are fiduciary and as such are exercisable only for the purposes of the trust and in the interests of the beneficiaries. Under the trust deed, Mr Toros has no power to direct the trustees how to act. They are therefore both entitled and obliged to act independently in accordance with their own fiduciary duties.

57. The primary beneficiary, Mr Toros' son, who I understand is now aged 10, has a fixed interest in income, while capital can be advanced to him at the trustee's discretion. The deed provides that payments of capital and interest may be made to Mr Toros in his *parental* capacity during the minority of his son, but these are not payments to him in his personal capacity or in his capacity as settlor. The evidence is also that the properties are let and that rental payments are made to T London's letting agents, not to Mr Toros.

58. I agree with Mr Halkerston and with Mr Andrew McLeod, who argued this point on behalf of T London, that there is nothing here to suggest a basis on which these properties could be made available for enforcement of a judgment against Mr Toros personally. Any powers which Mr Toros has in relation to the trust are fiduciary and this in itself prevents him from legally appropriating the trust assets for his own benefit. Of course, if there were other evidence demonstrating that, notwithstanding the ostensible provisions of the trust, the assets were in fact being treated by Mr Toros as his own, then I accept that the position might be different. Mr Gregoire fairly accepted that on the face of the trust deed he would need to be able to show that Mr Toros was de facto controlling the properties in order to be able to enforce against them since it was not suggested that there was any other way in which judgment against Mr Toros could be executed against the trust properties.

59. Even now, however, the only concrete evidence to which the claimant has been able to point is the entry in the Register which, as discussed above, leaves the possibility

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of control open, but does not of itself establish it. Subsequent disclosure of the trust deed provides powerful contrary evidence, but the claimant has nothing further to suggest that that trust deed cannot be taken at face value. It sought to rely on the failure by Mr Toros and T London to answer various queries about the trust as an indication of evasiveness from which I was invited to draw adverse inferences casting doubt on the veracity of the trust structure.

60. I am not prepared to do anything of the sort. The disclosure which Mr Toros and T London were obliged to provide was set out in the order which I made. Mr Toros denied having any interest in the properties, and disclosed the trust deed which prima facie confirmed his position. T London provided the information which related to them. The order did not require the further information demanded by PCB to be provided, and indeed many of the questions were only legitimate if one assumed the connection which PCB was setting out to prove.

61. The claimant could, of course, have sought an order for disclosure if it considered that this was information to which it was entitled, but it has not done so to date and there is some force in the submission of the defendants that it is hardly surprising that Mr Toros, as parent of the only current beneficiary, keeps himself abreast of what is happening with the properties, for example whether they are let or not, and has the ability to access mortgage statements,. But at all events, it is unarguable that positive adverse factual inferences can be drawn from a mere failure to answer questions where there is no obligation to provide answers. In the absence of any additional evidence casting doubt on the information already provided or the provisions of the trust deed, I can only regard this as a pure fishing expedition to search for material to support the claimant's case.

62. This case is nowhere near as strong as JSC Mezhduanarodniy Promyshlenniy Bank & Anor v Pugachev & Ors, where not only was Mr Pugachev the protector of the trust with the power to dismiss trustees, he had in fact replaced the original trustees with new trustees and there was plausible evidence before the Court suggesting that these

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new trustees were in fact acting in accordance with his directions and not exercising an independent discretion. Moreover, the trust had a very complex property holding structure and there were 12 findings of contempt against Mr Pugachev. In those circumstances, it is unsurprising the Court held there was a real possibility that Mr Pugachev had - note, not "might" - put in place trustees through whom he could seek to influence the trust. There is nothing of that nature here and, in my judgment, the claimant is a very long way from establishing a sufficient case that the first defendant has assets within the jurisdiction against which judgment could be enforced to support any freezing order, whether under s.25 or not.

63. Mr Gregoire also sought to pray in aid the fact that Mr Toros is apparently in breach of asset disclosure orders in the BVI. However, even if that is the case, it has no bearing on whether or not he has a de facto beneficial interest in these properties. Insofar as reliance was placed on the witness statement of Mr Maass, I discount it entirely. This was hearsay evidence of a man who, on his own admission, had no first-hand knowledge, but was merely recounting his recollection of various casual conversations with Mr Toros on dates and occasions which are wholly unidentified, save that they occurred at some stage over the past 14 years. There are obvious questions as to the reliability of his recollection.

64. Mr Gregoire accepted that the points he relied on would not get him home taken individually, but even in combination I do not consider that he has sufficiently established the existence of assets within the jurisdiction that would be amenable to enforcement. By the same token, he cannot establish *Chabra* jurisdiction against T London since it is only the availability of a non-cause-of-action defendant's assets for enforcement against a cause-of-action defendant that justifies their inclusion in the order. It is not sufficient that the cause-of-action defendant exercises substantial control over those assets or that the non-cause-of-action defendant might choose to make them available: see Algosaibi v Saad Investments Co Ltd [2011] (1) CILR 178. The circumstances must be such that the non-cause-of-action defendant could be

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compelled by some process of enforcement to make them available. There is no evidence on which I can conclude that there is a real possibility that this might be the case.

65. That means there is no basis for freezing relief at all over English assets, as nothing specific has been identified other than these properties. Accordingly, the question of expediency under s.25 does not arise, because there is no order which can properly be made in the first place. It should be recalled that the claimant was only ever applying for a domestic freezing order over assets in this jurisdiction. Different considerations might have applied if it had been seeking worldwide relief, but even then it is difficult to conceive of circumstances in which it could nonetheless be expedient to grant relief for the purposes of s.25 where the defendant has no assets here and no other connection with the jurisdiction: see Gee, Commercial Injunctions (7th edn, 2021), para.13-053 and the cases there referred to.

66. For this reason as well, the freezing order must be discharged forthwith.

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