Neutral Citation Number: [2025] EWHC 322 (Ch)

Claims Nos. BL-2024-000741 and BL-2024-000799

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
CHANCERY DIVISION

14 February 2025

Before :

JONATHAN HILLIARD KC SITTING AS A DEPUTY HIGH COURT JUDGE

- - - - - - - - - - - - - - - - - - - -

B E T W E E N:

AIMAN MEQHAM ALMEQHAM
(Liquidation Trustee of Maan Bin Abdul Wahed Al-Sanea and Saad Trading, Contracting & Financial Services Co.)

Claimant

-and-

(1) MAAN BIN ABDUL WAHED AL-SANEA (an individual in liquidation)
(2) BELGRAVE PROPERTIES (BELIZE) LTD. (a company incorporated in Belize)
(3) CLIFTON PROPERTIES (ST. LUCIA) LTD. (a company incorporated in St. Lucia)
(4) GOLDSPRING LTD. (a company incorporated in the Republic of Seychelles)
(5) MARLOW PROPERTIES (NEVIS) LTD. (a company incorporated in the Federation of St. Kitts and Nevis)
(6) WINCHESTER PROPERTIES (BERMUDA) LTD. (a company incorporated, following re-domiciling, in the British Virgin Islands)

Defendants

- - - - - - - - - - - - - - - - - - - -
- - - - - - - - - - - - - - - - - - - -

Andrew Hunter KC and Barnaby Lowe (instructed by Quinn Emanuel Urquhart & Sullivan, LLP) for the Claimant
The First Defendant was not represented and did not appear
Richard Morgan KC and Duncan McCombe (instructed by Pinsent Masons LLP) for the Second to Sixth Defendants

Hearing dates: 17-18 December 2024

- -
APPROVED JUDGMENT
- -

JONATHAN HILLIARD KC sitting as a Deputy Judge of the High Court:

Introduction

1. The Claimant is the liquidation trustee of Mr Al-Sanea and Saad Trading, Contracting & Financial Services Co. (**"STCFSC"**), appointed by 2 March 2022 order of the Saudi Arabian Courts (the **"2022 Order"**). On the application of the Claimant, the Saudi Arabian liquidation proceedings in which the Claimant has been appointed (the **"Saudi Arabian Proceedings"**) were recognised in England and Wales pursuant to the Cross Border Insolvency Regulations 2006 (the **"CBIR"**) by 16 February 2024 orders (the **"Recognition Orders"**).

2. Having obtained recognition, the Claimant has issued proceedings against the Defendants for (a) a declaration that the Second to Sixth Defendants (**"D2-D6"**), who are offshore companies, held 19 English properties (the **"English Properties"**) on resulting or constructive trust for Mr Al-Sanea and/or STCFSC following a purported transfer to D2-D6 in 2012 by two other companies, Markant Holdings Inc (**"Markant"**) and Saad Inc. (the **"Trust Claim"**), and (b) in the alternative, an order under section 423 of the Insolvency Act 1986 that title to the English Properties should be vested in the Claimant on the ground that the 2012 transfers were made for the purpose of putting them beyond the reach of Mr Al-Sanea's and/or STCFSC's creditors (the **"s.423 Claim"**).

3. By 24 May 2024 order, Richard Farnhill sitting as a Deputy High Court Judge (**"DHCJ Farnhill"**) granted the ex parte application of the Claimant for permission to serve the Defendants out of the jurisdiction and granted a proprietary injunction, which has been referred to before me as the asset preservation order (the **"APO"**). The claim was served out of the jurisdiction on D2-D6 and, the Claimant considers, on Mr Al-Sanea, who is currently serving a 9 year prison sentence in Saudi Arabia. The Claimant also purported to serve on D2-D6 within the jurisdiction, at the address that they had given for the purposes of the Economic Crime (Transparency and Enforcement) Act 2022 (the **"2022 Act"**). However, in case that does not constitute valid service for the purposes of the Civil Procedure Rules, the Claimant brought the service out application as well.

4. Four applications are before me:

   (1) The application of D2-D6 to set aside service out of the jurisdiction and have the claims against them dismissed (the **"Jurisdiction Challenge"**).

   (2) The Claimant's application to continue the APO on the return date of the injunction (the **"Return Date Application"**).

   (3) The Claimant's application to amend its particulars of claim (the **"Amendment Application"**), both in response to points made by D2-D6 in the course of their

Jurisdiction Challenge and also to deal with documents reviewed following the production of the original version.

(4) The Claimant's application for substituted service upon the First Defendant (**"Mr Al-Sanea"**) (the **"Substituted Service Application"**).

5. As recently as 25 October 2024 it was common ground between the parties that all four applications could be heard together. However, in the immediate lead up to the hearing D2-D6 contended that the hearing should be limited to dealing with the Jurisdiction Challenge (and if the Court thought fit the Substituted Service Application), on the grounds that:

(1) the Return Date Application and Amendment Application would not be relevant if the Jurisdiction Challenge succeeded;

(2) there was not time in the 1.5 day hearing before me to deal with the Return Date Application and Amendment Application; and

(3) D2-D6 would risk submitting to the jurisdiction if they made substantive submissions on the Return Date and Amendment Applications.

6. Therefore, D2-D6 only appeared before me in relation to the Jurisdiction Challenge, although, as I shall come onto later, Mr Morgan did address me relatively briefly on the other applications. Mr Morgan rested the D2-D6's stance orally on point (1) above.

7. I considered that I should hear submissions on the Return Date Application as well before deciding how to deal with it, for the following reasons:

(1) The return date was listed for this date with the consent of D2-D6.

(2) It is efficient for me to deal with it if I can given that I am hearing the Jurisdiction Challenge.

(3) The Jurisdiction Challenge was initially listed for 1 day and in my judgment it did not require the full 1.5 day slot before me.

(4) There has been a late change of stance by D2-D6, in the 4 December 2024 letter of Pinsent Masons. The only basis on which the change was put is that the Return Date and Amendment Application would not be necessary if the Jurisdiction Challenge was successful, but that could not realistically be determined during the hearing.

(5) I do not consider that D2-D6 contesting the continuation of the APO or the Amendment Application would constitute submission to the jurisdiction if D2-D6 explained that they were opposing the continuation of the APO without prejudice to their primary position that there was no jurisdiction over them. It is clear from *SWAY Investments Ltd v Sachdev* [2003] 1 WLR 1973 at [44] that it is possible to oppose a freezing injunction without submitting to the jurisdiction as long as one makes clear that one is not so submitting and the same is in my judgment equally true in respect of a proprietary injunction. This reflects the general principle that a submission to the jurisdiction needs to be unequivocal. Taking objections to the continuation of an injunction as a fallback in case one is wrong on jurisdiction arguments is consistent with maintaining one's objection to jurisdiction. This also ensures that cases can be dealt with efficiently where- as here- it is convenient to deal with a jurisdiction challenge and continuation of an injunction at the same hearing and the same or similar objections by the defendants run in relation to each.

Therefore, while D2-D6 did not file written submissions opposing the continuation of the APO, they were able to do so, and in any event were able to make short oral submissions before me, and did briefly address me orally on the continuation of the APO.

(6) In any case, the core arguments that they ran against jurisdiction were equally arguments against the continuation of the APO, such as that the Trust and s.423 Claims were misconceived and that there had been a failure of full and frank disclosure in the presentation of the ex parte application before DHCJ Farnhill.

8. In my judgment, I should also deal with the Amendment Application, because one of the bases on which it is made is to seek to cure any defect in the pleading arising from the fact that the Court has not yet granted relief under article 21 of the CBIR, which is a matter that D2-D6 put at the forefront of their Jurisdiction Challenge, as I shall come onto in a moment. Therefore, it is relevant to the Jurisdiction Challenge and the disposal of it, and what order I might make if I accepted that Jurisdiction Challenge. Save where otherwise stated, any references in this judgment to articles of the CBIR are to articles *in Schedule 1* to the CBIR.

9. Having heard the Return Date and Amendment Applications, I consider that I should rule on them, for the reasons set out above.

Summary of my decision

10. In my judgment, for the reasons below:

(1) Leave to serve out should be set aside in respect of the Trust Claim, because at present there is no serious issue to be tried in respect of it. Leave to serve out should *not* be set aside in respect of the s.423 Claim, so I reject the Jurisdiction Challenge in respect of that claim.

(2) The APO should continue.

(3) The Amendment Application should be granted, save to the extent that I set out below in relation to paragraph 48 of the draft amended Particulars of Claim.

(4) The Substituted Service Application should be granted.

(5) The claims have been validly served on D2-D6 within the jurisdiction at the service addresses provided by them under the 2022 Act. However, I consider that the Particulars of Claim, whether in their current or proposed amended form, do not disclose reasonable grounds for bringing the Trust Claim and therefore that claim should be struck out.

(6) As floated by Mr Morgan orally, I considered that it was appropriate to allow on circulation of the draft judgment submissions on whether there should be a greater than usual time between provision of the draft judgment and the handing down of the final version, in order to allow the Claimant to make an application under article 21 of the CBIR as Mr Hunter indicated orally that the Claimant was minded to do if my judgment was as per (1) and (5) above on the Trust Claim. In the event, on circulation of my draft judgment, both parties considered that the final judgment should be handed down without a greater period being inserted between provision of the draft judgment and final judgment.

The relevant facts

11. I can take these relatively shortly from Mr Hunter's skeleton.

12. Mr. Al-Sanea is a Saudi Arabian national and resident there. He is currently serving a nine-year prison sentence in Saudi Arabia for bribery and other offences. He established various companies over the course of his career which came to be known as the Saad Group. They included STCFSC, Markant, and Saad Inc. The Claimant contends that they are all connected to Mr. Al-Sanea.

13. The Claimant's case is that:

(1) From 2009, Mr Al-Sanea and the Saad Group began to encounter serious financial difficulties.

(2) From February to May 2009, he transferred or procured the transfer of 34 parcels of land in Saudi Arabia from his name and/or that of STCFSC into the names of his wife and children. The Saudi Arabian Courts have found that the transfers were fraudulent and should be reversed.

(3) Later in May 2009, the King of Saudi Arabia issued orders freezing the assets of Mr. Al-Sanea and his family.

(4) Since then, the Claimant contends that Mr. Al-Sanea has taken further steps to conceal his and/or STCFSC's assets.

(5) The English Properties were acquired between 1991 and late 2008, 17 by Markant and 2 by Saad Inc.

(6) Between March and May 2012, the English Properties were transferred by those companies to D2-D6 in seven transactions, purportedly in exchange for 5 parcels of land in Saudi Arabia that formed part of the 34 that I have mentioned. Prior to December 2008, five of the six plots were registered as owned by Mr. Al-Sanea and one by STCFSC.

(7) In any event, title to those 6 pieces of land was not in fact ever transferred to Markant or Saad Inc.

(8) Following the 2012 transfers, there is evidence that Mr. Al-Sanea's children used some of the English properties.

(9) Therefore, the Claimant contends that (a) immediately prior to the 2012 transfers, the English Properties were held on resulting or constructive trust for Mr. Al-Sanea and/or STCFSC, (b) the 2012 transfers were shams, so D2-D6 likewise hold the Properties on such trusts, and (c) if the Claimant is wrong on (b), the 2012 transfers were nevertheless entered for the purposes of defeating the claims of the creditors of Mr. Al-Sanea and/or STCFSC so they can be set aside under s.423 and the English Properties should be vested in the Claimant as the liquidation trustee of the persons who were beneficial owners of the properties before the transfer. Mr Hunter explained to me orally that the reason that the claim puts in the alternative the possibility of the properties being held for STCFSC rather than just focusing on Mr. Al-Sanea is that it is not clear in respect of the two properties acquired by Saad Inc whether the beneficial owner was Mr. Al-Sanea or STCFSC.

14. Turning to the procedural background:

(1) On 20 November 2023, the Claimant applied for recognition of the liquidations of Mr. Al-Sanea and STCFSC in Saudi Arabia as foreign main proceedings pursuant

to article 15 of the CBIR. The applications were heard on 14 February 2024 and made on 16 February 2024 effective from midday on 14 February 2024.

(2) On 21 May 2024, the Claimant applied for the APO without notice, and it was granted by DHCJ Farnhill on 24 May 2024. He considered that the requirements for an APO were comfortably made out, and also granted the Claimant permission to serve out of the jurisdiction and set within the APO order a return date for 7 June.

(3) On 28 May, the APO was served on the Offshore Companies at their respective offshore addresses and at an address in Durham, which was the service address provided by the Offshore Companies under the 2022 Act.

(4) On 31 May, the Claimant filed the Return Date Application and served it on each of the Offshore Companies between 3 and 4 June 2024.

(5) Shortly before 7 June, the Claimant and Offshore Companies agreed that the return date should be re-listed, and that was given effect by the 6 June order of Smith J, which listed the present hearing.

(6) The Claim Form and Particulars were served on the Offshore Companies at the Durham Address on 11 June 2024 and on each of the Offshore Companies at their respective offshore addresses between 10 and 14 June 2024.

(7) The Jurisdiction Challenge was filed and served on 15 July 2024.

(8) The Amendment Application was filed and served on the Offshore Companies on 24 October 2024.

(9) The Service Application was filed and served on the Offshore Companies on 26 November 2024.

The legal test for the Jurisdiction Challenge

15. I shall start with the Jurisdiction Challenge.

16. It was common ground that the burden was on the Claimant to establish:

(1) a serious issue to be tried on the merits;

(2) a good arguable case that one of the jurisdictional gateways in CPR PD6B [3.1] applies, and

(3) that England is clearly and distinctly the most appropriate forum for the trial of the dispute.

17. I shall deal with the test for the APO, amendment and substituted service in the specific section of my judgments dealing with these later.

The Jurisdiction Challenge

18. D2-D6's written submissions contended, in the case of both the Trust and s.423 Claims, that the application notice for the original service out and APO application was defective because it did not specify the grounds for the application in the application notice as required by CPR r.6.37. I reject that contention in relation to the Trust Claim. As Form PF6A and [6.37.2] of the White Book explain, the grounds can be set out in the application notice or supporting affidavit, both constituting part of the "application" for these purposes. Here grounds were set out in the supporting affidavit. Orally Mr

Morgan focused instead on the argument that the Claimant identified no gateway at all for the s.423 Claim, whether in the application notice or the affidavit. I shall deal with that argument in the section of my judgment on the s.423 Claim below.

19. I take in turn the specific arguments mounted by D2-D6 in respect of the Trust Claim and s.423 Claim respectively, before dealing with the full and frank disclosure challenge mounted in respect of both.

(i) The Trust Claim

20. I start by summarising what the substantive argument raised by D2-D6 is here, before expanding upon that and setting out my analysis:

(1) The Claimant has obtained recognition of the Saudi Arabian proceedings, which carries with it a number of automatic consequences under the CBIR, including the automatic stay and suspension under article 20.

(2) However, the Claimant has not- putting to one side for the moment the Amendment Application- sought to apply for any of the additional relief available under article 21 in appropriate cases upon recognition, such as entrustment to the Claimant of the administration and realisation of Mr. Al-Sanea's and STCFSC's assets located in England, specifically the 19 English Properties or at least any claims that Mr. Al-Sanea and/or STCFSC may have in respect of them.

(3) The question is whether (2) prevents the Claimant establishing a serious issue to be tried in relation to the Trust Claim. D2-D6 contend that it does.

21. The respective cases of the Claimant and D2-D6 have evolved over time on this. On the Claimant's side: (a) article 21 was not mentioned to DHCJ Farnhill in the May application, including at the May hearing or in the Particulars of Claim; (b) the 8 July 2024 letter from the Claimant's solicitors, Quinn Emmanuel Urquhart & Sullivan, LLP (**"Quinn Emmanuel"**) stated that in the substantive proceedings the Claimant was seeking an order entrusting the administration or realisation of all or part of the debtor's assets located in Great Britain to him, pursuant to article 21(1)(e) of the CBIR, and that this was reflected in paragraph 1 of the Particulars of Claim; (c) their 5 August 2024 letter and the 30 August 2024 witness statement of Mr Grasso of Quinn Emmanuel stated that the Claimant sought a declaration confirming that, as a matter of English law, he *already* has title to the English Properties because they always properly belonged to Mr. Al-Sanea and/or STCFSC. The 5 August letter stated as a fallback that if necessary the fact that no application under article 21 had yet been made could be remedied either by waiver of the requirement for such an application or the filing of such an application in due course. On D2-D6's side, Pinsent Masons' 12 July 2024 letter stated among other things that article 21 did not recognise or confer title that the Claimant would otherwise lack. That stance was not maintained before me.

22. Before me, Mr Hunter argued that:

(1) Whether or not the Claimant currently had any beneficial interest in the English Properties, the Claimant was entitled to argue for the declaration set out in the Particulars of Claim and there was at least a serious issue to be tried as to whether it was entitled to that relief. The Claimant was entitled to obtain a declaration that the English Properties were held for Mr. Al-Sanea and/or STCFSC in order both to assist in establishing what assets were subject to the article 20 stay and suspension and whether there were assets in respect of which an article 21 application for

entrustment of the administration and realisation of the English Properties could be made.

(2) The Claimant's primary case was that he *already* had title to the English Properties by virtue of the recognition of the Saudi Arabian Proceedings because those proceedings purported to vest title under Saudi Arabian law in the Claimant to all of the debtors' assets worldwide, but whether or not that was the case, he could claim the declaration set out in (1).

(3) If I rejected arguments (1) and (2), this was not a jurisdiction point but rather a point where there had been a defect in form. Therefore, article 57 allowed this to be cured, and I should either permit the amendment that the Claimant proposed to the Particulars of Claim to seek article 21 relief within the present proceedings or otherwise allow the Particulars to be used to seek article 21 relief.

(4) If, contrary to all the above, a prior article 21 application was necessary before bringing the Trust Claim, it remains open to the Claimant to make such an application now: e.g. [60.3] of the Claimant's skeleton.

23. Mr Morgan's core submission was that an article 21 application was necessary to allow the Court to order that the Claimant may have the right to realise any of the debtor's assets in England, such as the claim which the Claimant seeks to bring in these proceedings. Unless and until the Claimant did so, it had no right to bring the Trust Claim.

24. To explain the position, I need to set out the relevant provisions of the CBIR, the 20 November 2024 Supreme Court judgment in *Kireeva v Bedzhamov* [2024] UKSC 39 and what the Particulars of Claim state in this regard.

(a) The CBIR

25. The CBIR were made under section 14 of the Insolvency Act 2000 in order to implement and give the force of law in Great Britain to the Model Law on Cross-Border Insolvency adopted by UN Commission on International Trade Law (**"UNCITRAL"**) in 1997, with certain modifications to adapt it for application in Great Britain. Regulation 2 provides that the Model Law, with those modifications, is set out in Schedule 1 to the CBIR.

26. The Model Law is designed to assist States to equip their insolvency laws with a modern, harmonized and fair framework to address more effectively instances of cross-border proceedings concerning debtors experiencing severe financial distress or insolvency. Those instances include cases where the debtor has assets in more than one State or where some of the creditors are not from the State where the insolvency proceeding is taking place. To achieve these aims, the Model Law focuses on four key elements: (a) access to local courts for representatives of foreign insolvency proceedings and for creditors and authorisation for representatives of local proceedings to seek assistance elsewhere, (b) recognition of certain orders issued by foreign courts; (c) relief to assist foreign proceedings, and (d) cooperation among the Courts of States where the debtor's assets are located and coordination of current proceedings. Elements (a) to (c) are relevant here. It does not seek to displace the common law or any other provisions of the law of adopting States that may allow additional assistance to be provided: article 7. Therefore, in the case of Great Britain, it sits alongside the other powers to deal with cross-border insolvency under, for example, section 426 of the

Insolvency Act 1986 and the common law principles of recognition of foreign insolvency proceedings and the lending of assistance to foreign representatives appointed by them.

27. Article 1 applies the Model Law to four situations, of which the first is relevant here, namely where assistance is sought in Great Britain by a foreign court or foreign representative (here the Claimant) in connection with a foreign proceeding (here the Saudi Arabian Proceedings).

28. Access to British Courts is given by, among other things:

(1) article 9, which allows the foreign representative to apply directly to a court in Great Britain (thereby freeing the foreign representative from having to meet formal requirements);

(2) article 15, which allows the foreign representative to apply to a British Court for recognition of the foreign proceedings in which they were appointed (done here by the February 2024 application mentioned above);

(3) article 12, which allows a foreign representative to participate upon recognition in a proceeding regarding the debtor under British insolvency law;

(4) article 23, which gives a foreign representative upon recognition of the foreign proceedings standing to apply to Court under the various transaction avoidance provisions under the Insolvency Act 1986, such as section 423; and

(5) article 24, which upon recognition allows the foreign representative to intervene in any proceedings in which a debtor is a party as long as the requirements of the law of Great Britain are met.

29. A foreign proceeding shall be recognised, subject to the public policy exception in article 6, if the conditions in article 17(1) are fulfilled. It shall, as here, be recognised as a foreign main proceeding if it is taking place in the State where the debtor has the centre of its main interests: article 17(2).

30. Recognition has a number of effects. Those in articles 12, 23 and 24 are mentioned above. The main consequences are the automatic effects set out in article 20 and the additional relief which the Court may grant upon recognition under article 21, which are intended to assist the foreign proceeding. Article 20 provides that, to the extent that would apply to a domestic insolvency under the Insolvency Act 1986, the following stay and suspension shall apply subject to article 20(3)-(6):

> "(a) commencement or continuation of individual actions or individual proceedings concerning the debtor's assets, rights, obligations or liabilities is stayed;
>
> (b) execution against the debtor's assets is stayed; and
>
> (c) the right to transfer, encumber or otherwise dispose of any assets of the debtor is suspended."

31. Article 21 sets out additional relief that may be granted at the request of the foreign representative upon recognition. Given its centrality to the argument before me, I set the article out in full:

"*Article 21. Relief that may be granted upon recognition of a foreign proceeding*

(1) Upon recognition of a foreign proceeding, whether main or non-main, where necessary to protect the assets of the debtor or the interests of the creditors, the court may, at the request of the foreign representative, grant any appropriate relief, including—

(a) staying the commencement or continuation of individual actions or individual proceedings concerning the debtor's assets, rights, obligations or liabilities, to the extent they have not been stayed under paragraph 1(a) of article 20;

(b) staying execution against the debtor's assets to the extent it has not been stayed under paragraph 1(b) of article 20;

(c) suspending the right to transfer, encumber or otherwise dispose of any assets of the debtor to the extent this right has not been suspended under paragraph 1(c) of article 20;

(d) providing for the examination of witnesses, the taking of evidence or the delivery of information concerning the debtor's assets, affairs, rights, obligations or liabilities;

(e) entrusting the administration or realisation of all or part of the debtor's assets located in Great Britain to the foreign representative or another person designated by the court;

(f) extending relief granted under paragraph 1 of article 19; and

(g) granting any additional relief that may be available to a British insolvency officeholder under the law of Great Britain, including any relief provided under paragraph 43 of Schedule B1 to the Insolvency Act 1986.

(2) Upon recognition of a foreign proceeding, whether main or non-main, the court may, at the request of the foreign representative, entrust the distribution of all or part of the debtor's assets located in Great Britain to the foreign representative or another person designated by the court, provided that the court is satisfied that the interests of creditors in Great Britain are adequately protected.

(3) In granting relief under this article to a representative of a foreign non-main proceeding, the court must be satisfied that the relief relates to assets that, under the law of Great Britain, should be administered in the foreign non-main proceeding or concerns information required in that proceeding.

(4) No stay under paragraph 1(a) of this article shall affect the right to commence or continue any criminal proceedings or any action or proceedings by a person or body having regulatory, supervisory or investigative functions of a public nature, being an action or proceedings brought in the exercise of those functions."

32. Interim relief may be granted under article 19 at the request of the foreign representative from the time of filing an application for recognition, including the entrusting of the administration or realisation of part or all of the debtor's assets located in Great Britain to the foreign representative or someone else. This allows urgent relief to be granted where necessary. Article 19 relief terminates when the recognition application is decided, unless the relief is extended under article 21(1)(f).

33. In deciding whether to grant relief under article 19 or 21, article 22 requires the Court to be satisfied that the interest of creditors and other interested parties, including if appropriate the debtor, are adequately protected: article 22(1). The Court may subject relief granted under articles 19 or 21 to such conditions as it considers appropriate, including the provision by the foreign representative of security or caution for the proper performance of its functions: article 22(2), and may at the request of the foreign representative or a person affected by relief granted under articles 19 or 21 or of its own motion modify or terminate such relief: article 22(3). This all holds a balance between the relief that may be granted and the interests of affected persons.

34. The procedure for making applications and other procedural matters is dealt with in Schedule 2 to the CBIR. The procedure for a recognition application is set out in paragraphs 2 to 6 of that schedule. The procedure for applications for relief under article 19 or 21 is set out in paragraphs 7 to 11. Under paragraph 10, an article 21 relief application must be supported by an affidavit sworn by the foreign representative stating:

> "(a) the grounds on which it is proposed that the relief applied for should be granted;
>
> (b) an estimate of the value of the assets of the debtor in England and Wales in respect of which relief is applied for;
>
> (c) in the case of an application by a foreign representative who is or believes that he is a representative of a foreign non-main proceeding, the reasons why the applicant believes that the relief relates to assets that, under the law of Great Britain, should be administered in the foreign non-main proceeding or concerns information required in that proceeding;
>
> (d) whether, to the best of the knowledge and belief of the foreign representative, the interests of the debtor's creditors (including any secured creditors or parties to hire-purchase agreements) and any other interested parties, including if appropriate the debtor, will be adequately protected; and
>
> (e) all other matters that in the opinion of the foreign representative will assist the court in deciding whether or not it is appropriate to grant the relief applied for."

35. Form ML5 (as set out in Schedule 5) shall be used for such an application: paragraphs 18(1)(a)(ii), 19(1). The application shall be served on the persons set out in paragraph 21(2). The following service provisions apply in relation to the application: (a) subject to paragraphs 22, 75 and 77, CPR Part 6 applies: paragraph 76; (b) in respect of service within the jurisdiction, service shall be effected in the manner set out in paragraph 22, namely by delivering the documents to a person's proper address (as specified in paragraph 22(3)) or in such other manner as the Court may direct: paragraph 22(2); and

(c) in respect of service outside the jurisdiction, Sections III and IV of CPR Part 6 (dealing with service out of the jurisdiction and service of process of foreign court) do not apply, but rather the Court may order service to be effected in such manner as it seeks fit: paragraph 77.

36. Such applications should be listed in the Insolvency and Companies List, as the recognition application was dealt with here.

37. There are various notification and advertisement requirements that apply under paragraph 26 on the making of orders, including in respect of recognition orders and orders made under articles 19 and 21. The making of a recognition order shall be advertised in the manner set out in paragraph 26(7).

38. No proceedings under the CBIR shall be invalidated by any formal defect or irregularity, unless the Court before which objection is made considers that substantial injustice has been caused by the defect or irregularity, and that the injustice cannot be remedied by any order of the Court: paragraph 57.

(b) *Kireeva*

39. As the Supreme Court has recently explained in *Kireeva*, dismissing the appeal:

(1) The principle of private international law, known as the "immovables rule", established in many national legal systems, including the common law of England and Wales, provides that questions as regards rights to and interests in land and other immovable property are governed by the law of the country in which the property is situated, and that jurisdiction to decide those questions belongs to the courts of that country, in this case England and Wales.

(2) Therefore, where immovable property is situated in England or Wales, neither English law nor the English Courts will recognise or give effect to any laws or judicial decisions of other countries which purport to govern or decide issues of rights to and interests in that immovable property, save to the extent of any exceptions under English law.

40. In *Kireeva*, the appellant had been appointed by the Russian Court as the respondent's financial manager, a position equivalent to a trustee in bankruptcy under English law. The appellant sought an order at common law recognising the Russian bankruptcy order and entrusting the English property in that case to it. Snowden J (as he then was, now Snowden LJ) recognised the foreign bankruptcy because of the bankrupt's submission to the foreign jurisdiction, but held that there was no power to entrust the property to the appellant. This latter finding was appealed and was upheld by the Court of Appeal and Supreme Court. The CBIR was not applicable in that case because it does not apply to Russian proceedings, but the Court nevertheless dealt with the principal features of the CBIR insofar as relevant to the interrelationship between the CBIR and the immovables rule.

41. In relation to the CBIR, the Supreme Court explained the following:

(1) "*Recognition has some automatic consequences such as a stay of proceedings, and it also empowers the court to give assistance*": [57]. Pausing there, the automatic consequence of a stay is under article 20, the power to give assistance upon recognition of the foreign insolvency proceedings is under article 21.

(2) Article 21 gives a power to grant appropriate relief upon recognition of foreign proceedings, including, among other things and without prejudice to the generality of the foregoing, the making of an order entrusting the administration or realisation of all or part of the debtor's assets in Great Britain to the foreign representative (under article 21(1)(e)) and an order entrusting the *distribution* of the assets to that representative (under article 21(2)): [59].

(3) The reference to all or part of the debtor's assets in Great Britain are not qualified, are wide enough to include interests in land, and there is nothing in the context or guidance surrounding them to suggest an implicit qualification by reference to the immovables rule: [60].

(4) Therefore, a statutory exception to the immovables rule has been established by the CBIR: [102], [48].

(5) In particular, the CBIR has greatly expanded the circumstances in which the Court may provide this *assistance* (beyond the circumstances offered by earlier legislation) to any case in which the bankruptcy order has been made in a state in which the bankrupt had his or her centre of main interests: [102].

42. While the discussion in *Kireeva* of the CBIR was obiter, in my judgment I should follow it, and no-one suggested otherwise before me. On the contrary, both sides relied on particular passages from it.

(c) The Particulars of Claim

43. The most relevant provisions for present purposes are as follows:

(1) Paragraph 1, having recited the recognition of the Saudi Arabian proceedings, pleads that "[t]he Claimant accordingly is an office-holder in those proceedings, with standing to bring the present claim in order to gather and realise Mr. Al-Sanea's and STCFSC's assets".

(2) Paragraph 48, under the heading "The Claimant's Claim", states that "[b]y reason of the matters set out above, the Claimant is entitled to, and seeks, a declaration that [D2-D6] hold the English Properties on trust for Mr. Al-Sanea and/or STCFSC and that they form part of his or its estates".

(3) Paragraph (1) of the prayer claims "a declaration that the English Properties are held on trust by [D2-D6] for the benefit of Mr. Al-Sanea and/or STCFSC".

44. The reference in paragraph 1 to the claim being to *gather and realise* the debtors' assets and the reference to forming part of the debtors' estates in paragraph 48 could be read as suggesting that relief was being sought as to the *Claimant's* rights in respect of the English Properties. That would tally with the way that the proceedings were put in the 8 July and 30 August 2024 Quinn Emanuel letters and 30 August 2024 affidavit set out in paragraph 21 above. However, Mr Hunter stated orally in the context of his submissions on the Amendment Application that the claim would not itself give the ability to manage or realise the assets. I do not read the claim as seeking a declaration or other relief in respect of the Claimant's rights, because the claim does not anywhere seek a declaration that the beneficial ownership of the English Properties is vested in the Claimant, and the prayer is limited to a declaration that Mr. Al-Sanea and/or STCFSC is the beneficial owner. If one or both of them are beneficial owners, they will form part of their "estates" in the sense of forming part of their assets located in Great

Britain, but none of that involves any determination of what rights if any the Claimant has in respect of them.

45. Finally, the amendments proposed by the Claimant to paragraph 48 as part of the Amendment Application are underlined in the following:

> "By reason of the matters set out above, the Claimant is entitled to, and seeks, a declaration that the Offshore Companies hold the English Properties on trust for Mr. Al-Sanea and/or STCFSC and that they form part of his and/or its estates (and hence are "assets of the debtor" for the purposes of the Cross-Border Insolvency Regulations 2006, Sch. 1). Insofar as necessary, the Claimant also seeks an order entrusting the administration or realisation of the English Properties to him pursuant to the Cross-Border Insolvency Regulations 2006, Sch. 1, Art. 21)."

46. As I deal with in the Amendment Application section below, Mr Hunter confirmed that the opening words of the last sentence are intended to mean "insofar as is necessary *to obtain the declarations sought in the prayer*" rather than meaning that the Claimant seeks an order under article 21 whether or not necessary to obtain the declaration as to beneficial ownership set out in the prayer.

Analysis

47. The first question is whether the Claimant *already* has beneficial title to the English Properties if it is correct in its allegation that those properties were held for Mr. Al-Sanea and/or STCFSC after the 2012 transfers.

48. The Claimant's primary case was that there was a serious issue to be tried that *recognition* of the foreign proceedings under article 20 *itself* is sufficient to prevent the immovables rule applying where the foreign law provides for such vesting, as Saudi Arabian law does under article 100 of its Bankruptcy Law on the appointment of an officeholder. Mr Hunter relied on [61] of *Kireeva*, which states:

> "*Like section 426, it is the clear effect of the CBIR that the immovables rule does not apply to foreign bankruptcies recognised under the CBIR.*"

Therefore, so the Claimant contends, recognition has the effect here that under English law the Claimant already has beneficial title to the English Properties as assets belonging to Mr. Al-Sanea and/or STCFSC for the purposes of Sched.1 of the CBIR. The 2022 Order appointed the Claimant as officeholder, under article 100(2) of the Saudi Arabia Bankruptcy Law that caused the Claimant to replace the debtors in the management of their activities, and the Recognition Order prevents the immovables rule standing in the way of the Claimant having beneficial title to the English Properties.

49. I reject that contention. In my judgment it is clear that recognition of the foreign proceedings under article 17 does not itself vest rights or interests in English land in the foreign representative without an order under article 21:

(1) The effect of recognition provided for by the CBIR is *the stay and suspension* under article 20, the empowering of the Court to grant assistance under article 21 and the other specific consequences under the CBIR (such as under article 23), but not more. The terms of article 20 do not go any further than the stay and suspension. As *Kireeva* explains at [57], "*[r]ecognition has some automatic consequences such as a stay of proceedings, and it also empowers the court to give assistance*".

(2) This in turn reflects the purpose of article 20, which is to preserve a debtor's assets by stopping actions, proceedings and executions against the debtor's assets and stopping the debtor from disposing of its assets. The former affords breathing space until appropriate measures are taken for reorganisation or liquidation of the assets and the latter protects against the property being moved. Therefore, in short, there is nothing in the restrictions of the debtor's rights to dispose of the assets through article 20 or the stay of third party proceedings by that article that transfers the rights over the asset to the foreign representative.

(3) Where it is clear that the debtor is the legal and beneficial owner of particular English land at the time of recognition, relief can be sought under article 21(1)(e) and- if appropriate- article 21(2). It is at the point of entrusting the administration, realisation or distribution of the assets that the foreign representative has title to the land, because the representative is being given for the first time powers to deal with the asset.

(4) Neither the CBIR nor *Kireeva* – whether [61] of the judgment or otherwise- draw any distinction between the effect of recognition on those foreign proceedings that *do* purport to vest title to the bankrupt's overseas assets in the foreign representative and those foreign proceedings that do not.

(5) Rather, [61] means that recognition of the foreign legal proceedings empowers the Court to give assistance under article 21*, and that assistance can grant rights over the immovable assets to the foreign representative who has been appointed under the foreign law*. It is in that sense that the immovables rule does not apply to foreign bankruptcies recognised under the CIBR. That is clear from [57], which I have quoted above, and [59], which explains the effect of article 21, including the ability to entrust the administration, realisation and distribution of assets to the foreign legal representative. There is no mention in [59] or the section leading up to [61] more generally of article 20, because it is pursuant to article 21 that the vesting takes place. Rather, as [59]-[60] explain, the reference to "*all or part of the debtor's assets located in Great Britain*" covers interests in land and therefore when that phrase is used in article 21 in the extracts from that article set out in [59], it means that the article 21 powers cover interests in land in Great Britain. Therefore, those powers can be used to give assistance to the foreign representative appointed under foreign law by giving them rights in respect of the immovable property.

(6) Put another way, unlike in respect of movable property, in respect of English immovables there is a substantive rule of English law that the provisions of foreign law have no effect on the ownership of interests in land situated in England and that a foreign court has no jurisdiction to make an order which affects the ownership of interests in land in England: *Kireeva* at [46]-[47]. That is the starting point in respect of immovables against which one must consider any statutory exceptions to the rule. The CBIR provide exceptions, most notably the powers under article 21 to take steps to give rights over immovable property to the foreign representative. Article 23 for example also allows a claim to be brought upon recognition whether or not the claim is seeking an order that English land should be transferred to the foreign representative, and the Court has power under article 23(7) on making an order in such proceedings to give such directions regarding distribution of any proceeds as it sees fit. However, what recognition does not do is automatically give title to the immovable property to the foreign representative.

(7) If the debtor's rights, if any, in respect of English immovable property are not clear, then relief can if appropriate be sought under article 21. What relief is appropriate will differ from case to case. In some cases, it will be necessary to seek relief under article 21(1)(d) for the delivery of information or examination of witnesses to gain information about the debtor's assets, affairs, rights, obligations or liabilities. If there is a fund that appears to be owned by the debtor but which third parties may have rights over, the foreign representative may seek Court directions under article 21(1)(g) and (depending on whether it is a case of corporate insolvency or bankruptcy) section 168(3) or section 303(2) of the Insolvency Act as to who has rights over the property. That was the approach in the *Brian Glasgow (the bankruptcy trustee of Harlequin Property SVG Limited) v ELS Law Limited and others* [2018] 1 WLR 1564 decision that I drew the parties' attention to.

(8) Equally, if the foreign representative considers that they will need to bring hostile proceedings in England against third parties to establish whether the debtor has particular rights in respect of English immovable property registered in the name of another, rather than through the mechanism of a directions claim as under (7), relief can be granted to the foreign representative to allow them to do so. Given that article 21(1)(e) allows for relief entrusting the administration and realisation of all or part of the debtor's assets located in Great Britain to the foreign representative and the assets include any rights over foreign land, it allows- as the Supreme Court considered- relief to be granted vesting such rights over English land in the foreign representative. In my judgment article 21 is therefore plainly broad enough to allow an order to be made giving the foreign representative standing to bring a claim to establish the debtor's rights over particular English land. That is simply vesting *any* right that the debtor has in respect of the particular land in the foreign representative. An order under article 21(1)(e) could for example simply entrust the administration and realisation of the debtor's assets located in Great Britain to the foreign representative.

(9) The CBIR itself contemplates through article 19 that such an order entrusting the administration or realisation of assets to the foreign representative may even be made *before* the application for recognition is determined in appropriate urgent cases in order to protect and preserve the assets in cases of jeopardy between the filing of an application for recognition and its determination. Therefore, I would not expect the Court to have difficulty under article 21 making orders once the recognition order had been made that allowed the extent of the debtor's rights to be *determined*, assuming that it was an appropriate case to do so having regard to the factors in article 22.

50. The next question is whether there is a serious issue to be tried as to whether the Claimant can seek a declaration that the English Properties are held on trust for Mr. Al-Sanea and/or STCFSC without the Claimant currently having a proprietary interest in those properties under English law.

51. Mr Hunter's argument here does not depend on the foreign representative seeking to bring themselves within a particular provision of the CBIR that specifically entitles them to bring the Trust Claim. Rather his argument is that the power to grant declaratory judgments does not require the person seeking the declaratory judgment currently to have any proprietary interest in the asset. The Court has, as he submits, a broad jurisdiction under CPR rule 40.20 to grant declarations where it would serve a useful purpose. He contends that the declaration would serve two useful purposes in respect

of the Claimant here by virtue of the recognition of the foreign proceedings. The first is that it will assist in determining which assets are caught by the stay and suspension brought about by article 20. The second reason for wishing to determine whether the English Properties are the debtor's assets is to determine whether it is worth seeking article 21 relief in respect of them to entrust them to the Claimant. Therefore, in short, the Claimant seeks to invoke the Court's general jurisdiction to grant declarations in order to facilitate the operation of the CBIR in the present case, article 20 in the case of the first reason mentioned above and article 21 in the case of the second.

52. In response, Mr Morgan states that the Claimant actively seeking a declaration engages and therefore breaches the immovables rule because in substance the Claimant is seeking to assert rights in relation to the English Properties, and he argues in relation to Mr Hunter's first reason that the Claimant's focus is on obtaining the English Properties not on the exercise of ascertaining what is caught by the article 20 stay. Further, in any case, he states that the Court should not grant declarations to a Claimant who has no proprietary interest in the asset. The Trust Claim is, he contends, a hostile one designed ultimately to allow the Claimant to administer the English Properties, and if that sort of claim is to be brought, it should only be brought by someone who can contend that they have a present right in those properties.

53. The result of my reasoning above is that:

(1) The Claimant currently has no interest in the English Properties.

(2) Nor is the Claimant currently entitled to administer, realise or distribute them.

(3) The Claimant could, subject to satisfying the test in articles 21 and 22, seek now an order under article 21 vesting in himself any rights that Mr. Al-Sanea and/or STCSFC have in respect of the English Properties.

54. Therefore, the question is whether there is a serious issue to be tried as to whether a declaration can and should be granted in those circumstances.

55. In my judgment, there is not.

56. Starting with the test for a declaration, it is, as Mr Hunter contends, a broad jurisdiction. A helpful statement of its parameters can be found in the judgment of Neuberger J as he then was in *Financial Services Authority v Rourke* [2002] C.P. Rep 14, one of the cases mentioned in the White Book extract at [40.20.2] that I was specifically referred to by Mr Hunter:

> "As between the parties in the section [i.e. the parties to the claim], it seems to me that the court can grant a declaration as to their rights, or as to the existence of facts, or as a to principle of law, where those rights, facts, or principles have been established to the court's satisfaction. The court should not, however, grant any declarations merely because the rights, facts or principles have been established and one party asks for a declaration. The court has to consider whether, in all the circumstances, it is appropriate to make such an order…
>
> It seems to me that, when considering whether to grant a declaration or not, the court should take into account justice to the claimant, justice to the defendant, whether the declaration would serve a useful purpose and whether there are any other special reasons why or why not the court should grant the declaration."

57. In *Rourke,* the Court considered that it would be appropriate to grant declarations that the defendant had on particular occasions, contrary to section 3 of the Banking Act 1987, accepted deposits without authorisation, because it might assist members of the public from whom unauthorised deposits had been taken by Mr O'Rourke, it might assist potential depositors, it might be relevant to other regulators and all of the foregoing reasons were supported by the general duties of the Financial Services Authority (**"FSA"**) under the Financial Services and Markets Act 2000, which listed among the regulator's objectives market confidence, public awareness, the protection of consumers and the reduction of financial crime.

58. Mr Hunter also directed me to the statement of principle from *Milebush Properties Ltd v Tameside MBC* [2011] EWCA Civ 270 referred to in [40.20.2] of the White Book. In that case, in the course of upholding by a 2-1 majority the decision of Arnold J (as he then was) not to grant a declaration on the facts of the case, the Court of Appeal endorsed the summary of principles set out by Aiken LJ at [120] in his dissenting judgment in *Rolls-Royce plc v Unite the Union* [2010] 1 WLR 318:

> "(1) The power of the court to grant declaratory relief is discretionary.
>
> (2) There must, in general, be a real and present dispute between the parties before the court as to the existence or extent of a legal right between them. However, the claimant does not need to have a present cause of action against the defendant.
>
> (3) Each party must, in general, be affected by the court's determination of the issues concerning the legal right in question.
>
> (4) The fact that the claimant is not a party to the relevant contract in respect of which a declaration is sought is not fatal to an application for a declaration, provided that it is directly affected by the issue; (in this respect the cases have undoubtedly "moved on" from *Meadows.*)
>
> (5) The court will be prepared to give declaratory relief in respect of a "friendly action" or where there is an "academic question" if all parties so wish, even on "private law" issues. This may particularly be so if it is a "test case", or it may affect a significant number of other cases, and it is in the public interest to decide the issue concerned.
>
> (6) However, the court must be satisfied that all sides of the argument will be fully and properly put. It must therefore ensure that all those affected are either before it or will have their arguments put before the court.
>
> (7) In all cases, assuming that the other tests are satisfied, the court must ask: is this the most effective way of resolving the issues raised? In answering that question it must consider the other options of resolving this issue."

(*Milebush* at [46] (Mummery LJ), [87]-[88] (Moore-Bick LJ) and [95] (Jackson LJ, agreeing that the appeal should be dismissed for the reasons given by Mummery LJ.)

59. One gloss to add to that was that Moore-Bick LJ, dissenting on the result of the appeal, considered that principle (2) was expressed somewhat too narrowly and that, as set out above, declarations can be granted in appropriate circumstances where the dispute relates to a legal right which might come into existence in the future: [87]. In *Pavledes v Hadjsavva* [2013] EWHC 124 (Ch), David Richards J (as he then was) considered at

[24]-[25] that this was consistent with Lord Diplock's reasoning in *Gouriet v Union of Post Office Workers* [1978] AC 501 and should be followed, and the White Book states, as Mr Hunter pointed out, that a declaration may be granted where the dispute relates to a legal right which might come into existence in the future.

60. I agree with Mr Hunter that those are the governing principles, including Moore-Bick LJ's gloss, and do not detect any tension with the way that the principles were put in slightly different terms by the other case to which I was referred by Mr Hunter, *Rourke*.

61. Here, the Claimant has no arguable current proprietary interest in the English Properties of the sort that a claimant seeking proprietary relief against third parties in hostile proceedings would ordinarily have. Whether the Claimant will ever have one will turn on a future article 21 application.

62. While Mr Hunter put his points here extremely elegantly, in my judgment it is clear that it would not be appropriate to grant a declaration in these circumstances for the following reasons:

(1) The Claimant could make that article 21 application now and could have made it before.

(2) In my judgment, the main ultimate purpose of the Trust Claim is, as paragraph 1 of the Particulars of Claim sets out, for the Claimant to gather and realise the debtors' assets, rather than establishing what assets are subject to the article 20 stay and suspension. However, granting a declaration would not resolve whether the Claimant has any legal right to gather in and realise the English Properties, because a future article 21 application would be necessary.

(3) I do not consider that it would be appropriate for expensive hostile proceedings to be brought against Mr. Al-Sanea and D2-D6 that will not themselves determine whether the Claimant has any rights in respect of the English Properties, without any right to the English Properties that Mr. Al-Sanea may arguably have first being entrusted to the Claimant, as can be done relatively simply through article 21 assuming that the article 22 test is complied with. That approach seems to me to be the wrong way round.

(4) The natural route for seeking additional relief in respect of a debtor's assets on recognition will- at the very least in the generality of cases- be using article 21, and this is the case here.

(5) Article 21, taken with article 22, contain important safeguards and therefore I am reluctant to allow proceedings to be brought at common law in a manner that would not automatically engage such safeguards.

Therefore, I do not consider that this is a case where there are appropriate circumstances for granting outside article 21 a declaration in respect of legal rights that might arise in the future.

63. Ordinary asset recovery proceedings brought by an insolvency practitioner would seek relief that the property is or be brought under the control of the practitioner, as the s.423 Claim seeks to do here. To do so here, an article 21 application would be needed in the present case.

64. Expanding on point (3), I have explained above at paragraph 49(8) that an article 21 application could be brought and determined at this stage. The Trust Claim seeks

proprietary relief against third party legal owners involving allegations of sham transactions so it is plainly a hostile claim of the sort set out in paragraph 49(8) above rather than a directions claim of the type set out in paragraph 49(7). I do not accept the Claimant's argument that it would be premature or onerous to expect an article 21 application to be brought and determined at this stage. The submission to the contrary proceeds on the incorrect premise that the article 21 application would require the Court to determine the Trust Claim and therefore the facts and legal issues underlying it before entrusting any rights the debtors have in respect of the English Properties to the Claimant. I have dealt with that at paragraph 49(8) above. Once that is appreciated, in my judgment it is clear that this is the right way to proceed, rather than bring hostile proceedings seeking relief that particular assets that the debtors do not claim are the debtors' assets. Those sort of proceedings are only appropriate if the Claimant is the person who will receive those assets for the benefit of the debtors' creditors if it succeeds in the claim.

65. As to (4), article 21 is deliberately phrased in broad terms so that applications can easily be brought under it upon recognition, as article 19 is to allow urgent relief to be sought before recognition in appropriate cases. The intended purpose of article 21, as it would be here, will at least often be to lead ultimately to the entrusting of particular assets to the foreign representative for their distribution. That is an end that will ultimately need to be achieved through article 21(1)(e) and 21(2). Therefore, one would expect steps towards that end upon recognition under the CBIR to be brought under (article 21 of) the CBIR as part of one process towards the entrustment and distribution of the assets, rather than having obtained recognition under the CBIR with the effects in article 20, then dipping outside the CBIR to invoke the common law in aid of the ultimate article 21 entrustment and distribution, to which the process ultimately leads. Consistent with that, no case was put before me of an example of common law relief being sought consequent upon article 20, and the *Glasgow* case is an example of the use of article 21. In my judgment, that likely reflects the fact that the tenor of article 21 is that unless and until article 21 is invoked, the foreign representative only enjoys the same rights as a British insolvency officeholder insofar as the CBIR provides for them, as for example it does by article 23 in respect of section 423 and other transaction avoidance claims.

66. As to (5), an article 21 application engages a number of safeguards, such as (a) the requirement in the opening words of article 21 that the relief be necessary to protect the assets of the debtor or the interests of the creditors, (b) the requirement in article 22(1) that the Court be satisfied that the interests of creditors and other interested persons are adequately protected, and (c) the requirement in paragraph 10 of Schedule 2 of an affidavit from the foreign representative stating a number of matters, including whether to the best of the knowledge and belief of the foreign representative the interests of the debtor's creditors and any other interested parties, including if appropriate the debtor, will be adequately protected, to assist the Court in determining whether the requirement in article 22(1) is met.

67. I do not regard the relief sought in the Trust Claim as infringing the immovables rule in itself. I accept that, as Mr Morgan argues, the immovables rule applies to any interest in the immovable, and therefore, as the Supreme Court explained in *Kireeva*, bars for example the appointment of a receiver over the property or even the rents and profits unless those rents and profits could be properly characterised as movable property and were received pursuant to rights existing as assets as the date of the foreign bankruptcy: [98], [99].

68. However, as Mr Hunter argues, seeking a declaration that through the application of English law Mr. Al-Sanea and/or STCFSC is the beneficial owner is consistent with the rule, because it is applying English law and only seeking relief that can be granted under English law. It is not seeking the vesting of the property in the Claimant. The declarations sought on my reading of them at paragraph 44 above are not themselves seeking to use foreign law or an order of a foreign court to affect any rights to or interests in land located in England. Rather they are seeking a declaration as to the effect of the application of English law, and if that declaration is that the debtor is the beneficial owner, then the Claimant will seek to use the article 21 exception to the immovables rule to vest title in itself.

69. Instead, the inability of the Claimant to assert any proprietary interest in the Trust Claim is a result of the immovables rule coupled with the absence of article 21 relief having been granted. That, and the points (1) to (6) above that this gives rise to, is the relevance of the immovables rule here.

70. Mr Hunter's next argument was that any defect here was one of form, not of jurisdiction, and therefore could be cured by paragraph 57 of Schedule 2 to the CBIR. In my judgment, this is not the case. Recapping, paragraph 57 provides that no proceedings under the CBIR shall be invalidated by any formal defect or any irregularity, unless the Court before which the objection is made considers that substantial injustice has been caused by the defect or irregularity, and that the injustice cannot be remedied by any order of the Court. Here, the defect is greater than a formal defect or irregularity. The Claimant is not entitled to bring the Trust Claim because it does not have the requisite interest in the English Properties. That is an important substantive matter fundamental to the Trust Claim. The Claimant could obtain such standing through a successful article 21 application, made in the proper manner. That cannot be done in these proceedings simply through an amendment to the particulars, and I do not read the present Particulars of Claim as themselves containing any article 21 application because there is no mention of it in paragraph 1 (which refers to article 15 but no other provision of the CBIR) or elsewhere. Rather it requires a properly made article 21 application with the necessary affidavit and the Court to grant such application having considered the test in article 21 and the matters set out in article 22.

71. That takes me to Mr Hunter's final argument, I agree that it remains open to the Claimant to make an article 21 application now. As set out below, I have found that the jurisdiction challenge fails in respect of the s.423 Claim and that the APO should remain in place. Therefore, if the Claimant wishes to make a swift article 21 application in these circumstances, as Mr Hunter has indicated that it would, in my judgment that would be an appropriate course.

(ii) The s.423 Claim

72. The Jurisdiction Challenge in respect of this claim was put orally on the following, freestanding grounds:

(1) No gateway for service out was identified.

(2) The pleading of the claim is defective.

(3) The claim is defective without the joinder of Markant and Saad Inc.

(4) There is no sufficient connection with England to engage s.423, and in any case the Claimant has not shown that England is clearly and distinctly the appropriate jurisdiction for the claim.

73. A number of points (1)-(4) above, specifically points (1), some aspects of (2) and point (4), were not made by D2-D6 until their skeleton for the hearing before me.

74. It was also suggested at one point by Mr Morgan in oral submissions that the failure to have obtained article 21 relief also prevented there being a serious issue to try in respect of the s.423 Claim because the claim relied on Mr. Al-Sanea and/or STCFSC having had a beneficial interest in the English Properties immediately before the 2012 transfers. However, I reject that submission. The allegation that they previously had such an interest prior to the 2012 transfers is just a constituent element of the s.423 Claim that the Court is therefore entitled to rule on as part of the s.423 Claim.

(1) No gateway for service out was identified

75. The affidavit supporting the service out application referred to a number of gateways at [172]. I shall take them in turn.

76. The first, under PD6B [31.1(11)], concerns cases where the subject-matter of a claim wholly or principally concerns property in England. The affidavit stated that "*[b]y my claim, I allege that the English Properties are held by the Offshore Companies on trust for Mr. Al-Sanea and/or STCFSC and, as such, form part of his and/or its estates in liquidation. Thus, the subject-matter of my claim wholly and principally concerns property in England.*"

77. Mr Hunter relied on this gateway and stated that it was put to DHCJ Farnhill as the gateway for the s.423 Claim. However, I accept Mr Morgan's submission that the affidavit did not refer to the gateway for the s.423 Claim. Rather, the claim that the English Properties are held by D2-D6 on trust for Mr. Al-Sanea and/or STCFSC referred to in the affidavit extract above is the Trust Claim. The matter was put in similar terms to the affidavit in the skeleton before DHCJ Farnhill (at [74]) and before the Judge at the hearing (see pp.40E-G of the transcript), so the gateway for the s.423 Claim was not specifically dealt with by the Judge in his ex tempore judgment. Rather the reasoning in [27] of his judgment related to the Trust Claim, reflecting the manner in which the point was put to him:

> "The second [requirement for obtaining permission to serve out] is that the claim must fall within one of the jurisdictional gateways in CPR PD6B, para.3.1. *Here the applicant asserts that the English Properties are held in a resulting or constructive trust for Mr. Al-Sanea, meaning he is the beneficial owner of property situate within the jurisdiction*. In my view, that shows a good arguable case that PD6B, para.3.1(11) applies against all respondents and para.3.1(15) applies against the offshore companies." (italics added)

Therefore, I reject Mr Hunter's contention that the specific gateway for the s.423 Claim was put to the Judge.

78. Nevertheless, it was ultimately common ground before me, and in any event I consider it to be the case, that a s.423 claim can fall within gateway (11) where it relates to property located in England, as it did in respect of the shares of a company with a UK

share register in *In re Banco Nacional de Cuba* [2001] 1 WLR 2039. Therefore, I consider that the Claimant can rely on gateway (11) for the following reasons:

(1) *In NML Capital Ltd v Republic of Argentina* [2011] UKSC 31 [2011] 2 A.C. 495, the Supreme Court commented, albeit obiter, that the Court had the discretion to allow a claimant to rely on additional or alternative bases for serving out a jurisdiction challenge where that gateway could have been established at the time of the original application. Lord Phillips explained at [75] that "*It is, of course, highly desirable that care should be taken before serving process on a person who is not within the jurisdiction. But if this is done on a false basis in circumstances where there is a valid basis for subjecting him to the jurisdiction, it is not obvious why it should be mandatory for the claimant to be required to start all over again rather than that the court should have a discretion as to the order that will best serve the overriding objective.*" Similarly, as Lord Mance put it at [137], "*where the so-called rule in Parker v Schuller…might apply in a case where the ground for service out has been incorrectly identified, the court would also have power to grant permission to serve out on a fresh basis and dispense with re-service.*"

As the White Book explains at [6.37.14], while the comments in *NML* were obiter, it is now accepted that the court has a discretion to allow a claimant to rely on a new jurisdictional gateway that was not referred to at the permission stage- e.g. *Alliance Bank v Aquanta Corp* [2013] All ER (Comm) 819. This is the case as long as the gateway could have been invoked at the permission stage rather than requiring reliance on subsequent facts to do so.

(2) Exercising my discretion in favour of the Claimant would involve no prejudice to D2-D6.

(3) On the contrary, to require the Claimant to start proceedings afresh would be pointless and involve a waste of costs.

79. I deal below with the consequences of this issue for consideration of whether there is a sufficient connection with England to engage s.423.

80. The second gateway identified in the affidavit is [3.1(15)], which provides that the fact that a claim is made against the defendant as constructive trustee, or a trustee of a resulting trust, where the claim relates to assets in England, is a gateway. However, this gateway is rightly described in the affidavit as relating to the Trust Claim. The s.423 Claim does not claim that D2-D6 currently hold on trust for Mr Al-Sanea or STCFSC.

81. The third gateway identified in the affidavit is [3.1(3)]. However, this is used to run an argument that if service can validly be effected on D2-D6, then it can be on Mr Al-Sanea too. Therefore, it is not a gateway invoked to allow service out on D2-D6.

(2) The pleading of the claim is defective

82. As foreshadowed above, many of these points were taken for the first time in D2-D6's skeleton, so the Claimant had limited time to deal with them.

83. It is helpful to start by setting out the relevant paragraphs of the Particulars of Claim. Much of the focus of D2-D6 was on [49].

(1) The history of the ownership of the shares in Markant and Saad Inc respectively are pleaded at [9] and [14], together with the links of their directors to Mr Al-Sanea (at

[11] and [15] respectively). The pleaded history of the ownership begins with Mr Al-Sanea before moving to his wife in late 2008 and ultimately moving from 2011 to Mr Al-Rushaid, who was an employee of STCFSC, Deputy General Manager in the Saad Group and had been found guilty in Saudi Arabia of participating with Mr Al-Sanea in misleading the Saudi Arabian banking system.

(2) Section C, entitled "*Steps taken by Mr Al-Sanea to conceal his and STCFSC's assets*", runs from [25] to [35] and concludes at [35] – "*In the premises, as at 2012, Mr. Al-Sanea and/or STCFSC each had extensive histories of transferring property properly owned by them to offshore corporate structures and/or family members in order to conceal such assets or put them beyond the reach of creditors.*"

(3) Section D2, starting at [41], deals with the 2012 transfers complained of in the Trust and s.423 Claims, and commences:

> "*Between March 2012 and May 2012, Mr. Al-Sanea procured that the English Properties were transferred from Markant and Saad Inc. to the Offshore Companies (the "2012 Transfers") in seven transactions purportedly in consideration for parcels of land in the Kingdom of Saudi Arabia (the "KSA Land") as follows*".

The paragraph then goes on to identify which company purchased which English Property when.

(4) [42] pleads that the KSA Land which was used as purported consideration for each of the 2012 transfers of the English Properties was at the time of those transfers beneficially owned by Mr. Al-Sanea and/or STCFSC or, alternatively, was property which they had unlawfully divested and to which they or their estates had a legal entitlement and 100% economic interest. The paragraph goes on to set out what the Claimant relies on in support of this plea.

(5) [43] pleads that in any event title to the KSA Land was never transferred to either Markant or Saad Inc.

(6) [44] pleads that following the 2012 transfers Mr. Al-Sanea continued to exercise control over the English Properties and treat them as his assets, and explains what matters are relied on in support of this.

(7) Section D3, from [45]-[47], entitled "*The true ownership of the English Properties*", pleads at [45] that the English Properties were prior to the 2012 transfers held by Markant and/or Saad Inc. on resulting or constructive trust for Mr. Al-Sanea.

(8) [46] pleads three things about the 2012 transfers, namely that (i) they took place at a time when as set out earlier in the Particulars Mr. Al-Sanea and his companies were beginning to experience significant financial pressure, (ii) the consideration purportedly used by the Offshore Companies to purchase the English Properties consisted of the KSA Land, which had been found by the Saudi Arabian courts properly to belong to Mr. Al-Sanea and/or STCFSC; and (iii) title to the KSA Land was in fact never transferred to either Markant and/or Saad Inc. in consideration for the English Properties.

(9) [47] pleads that (i) it is to be inferred that the purported consideration of the 2012 transfers was never intended to be provided, that the 2012 transfers were shams, intended to conceal Mr. Al-Sanea's ongoing beneficial ownership of the English

Properties and in an attempt to prevent the English Properties from being used to satisfy Mr. Al-Sanea's and/or STCFSC's creditors, (ii) alternatively, any consideration provided for the 2012 transfers was provided by Mr. Al-Sanea and/or STCFSC, and (iii) either way, after the 2012 transfers, D2-D6 held the English Properties on resulting or constructive trust for Mr. Al-Sanea and/or STCFSC.

(10) Section E, from [48] to [49], is entitled "*The Claimant's claim*". [48] seeks a declaration that D2-D6 hold the English Properties on trust for Mr. Al-Sanea and/or STCFSC by reason of the matters set out earlier on in the Particulars. [49] states:

> "*In the alternative, by reason of the matters set out above, and in particular, in circumstances where: (i) the English Properties were purportedly procured by the Offshore Companies for consideration owned by Mr. Al-Sanea and/or STCFSC; and (ii) no consideration was, in fact, paid to Markant and/or Saad Inc. in exchange for the English Properties, it is to be inferred, and the Claimant infers, that the English Properties were transferred to the Offshore Companies, for no consideration, for the purpose of putting the English Properties beyond the reach of Mr. Al-Sanea's and/or STCFSC's creditors, and/or to prejudice the interests of such creditors. In the premises, the Claimant seeks an order, pursuant to s.423 of the Insolvency Act 1986, that title to the English Properties be vested in the Claimant, so as to allow him to discharge his duties and realise the English Properties in order to satisfy Mr. Al-Sanea's and/or STCFSC's creditors.*"

84. D2-D6 rely on the recent decision of Calver J in *Invest Bank PSC v El-Husseini* [2024] EWHC 2976 (Comm) as setting out the requirements of s.423 and emphasising the importance of carefully pleading those requirements. I agree with that analysis. It is helpful to set out [20] of his judgment to explain the constitutent elements of a section 423 claim, given that it underlies the arguments for D2-D6 that follow:

> "Section 423 is accordingly concerned with transactions entered into at an undervalue; and the person entering into such a transaction is referred to as '*the debtor*'. An order can be made under section 423 only if three conditions are satisfied:
>
> (1) First, the debtor must have '*entered into*' a '*transaction*' with another person.
>
> (2) Second, that transaction must be a transaction '*at an undervalue*', either because it is a gift or because its terms provide for the debtor to receive no or inadequate consideration.
>
> (3) Third, the debtor must have entered into the transaction for the purpose specified in section 423(3), namely (a) of putting assets beyond the reach of a person who is making, or may at some time make, a claim against him or (b) of otherwise prejudicing the interests of such a person in relation to the claim which he is making or may make ("the Alleged Purpose")."

85. The first argument made by D2-D6 is that the Claimant does not identify (1) who the alleged debtor is and (2) what the relevant transaction that debtor is said to have entered

into that the Claimant seeks to impugn. However, it is acknowledged, although said to be by no means clear, that the debtor is alleged to be Mr. Al-Sanea and/or STCFSC.

86. Starting with the relevant transaction, it is clear to me from [49] that the relevant transaction is, as inferred by D2-D6, the 2012 Transfers:

(1) That is the transfer by which to use the language in (i) of [49] "*the English Properties were purportedly procured by the Offshore Companies for consideration owned by Mr. Al-Sanea and/or STCFSC*".

(2) That is the transfer in respect of which it is pleaded in (ii) of [49] that "*no consideration was, in fact, paid to Markant and/or Saad Inc. in exchange for the English Properties*".

(3) That is the transfer referred to in what follows (i) and (ii) in [49], when the paragraph states that "*the English Properties were transferred to the Offshore Companies, for no consideration, for the purpose of putting the English Properties beyond the reach of Mr. Al-Sanea's and/or STCFSC's creditors, and/or to prejudice the interest of such creditors*".

87. Turning to the alleged debtor, [49] does not itself state in terms who entered into the transaction. However, [41], which I take to be one of the paragraphs referred back to by the opening wording of [49], states that the allegation is that Mr. Al-Sanea procured that the English Properties were transferred from Markant and Saad Inc. to the Offshore Companies under the 2012 Transfers. The section of the Particulars dealing with the 2012 Transfers, which runs from [41] to [44], makes clear that it is alleged that Mr. Al-Sanea brought about the 2012 Transfers and continued to treat them as his assets after the transfer. Therefore, I consider that it is clear from the context that the allegation is that it was Mr. Al-Sanea who entered into the transaction.

88. The next objection taken by D2-D6 is that Mr Al. Sanea (or STCFSC) cannot have entered into transactions for the purpose of s.423, because they were entered into by Markant and Saad Inc as transferors, not Mr. Al-Sanea or STCFSC. I reject that objection. It has been held by the Court of Appeal in *Invest Bank PSC v El-Husseini* [2024] KB 49 that a debtor *could* enter into a transaction for the purposes of s.423 in circumstances where the debtor did not beneficially own the asset transferred. The judgment of the Supreme Court in that case is awaited. Here, it is pleaded that (i) Markant and Saad Inc. were procured by Mr. Al-Sanea to make the transfer, (ii) that the holders of the shares in those companies was an individual with the close links to Mr Al-Sanea that I have explained, having originally been owned by Mr. Al-Sanea and then his wife, and (iii) the English Properties were held by Markant and Saad. Inc on trust for Mr. Al-Sanea and/or STCFSC immediately before the 2012 Transfers. Therefore, in my judgment that makes clear enough how the argument runs, and on the basis of the Court of Appeal decision in *El-Husseini* the argument can be run this way.

89. The next objection taken by D2-D6 is that the Claimant needs to plead how the "*procuring*" of Markant and Saad Inc. to transfer the English Properties by Mr. Al-Sanea alleged at [41] came about, but does not. In my judgment, he does not. The Claimant explained orally that it does not know precisely how it came about. The critical thing is *who* caused it to come about, and that is alleged to be Mr. Al-Sanea. In any event, (a) it is pleaded later at [45] that Mr. Al-Sanea ultimately owned and controlled the two companies such that it is inferred that the English Properties were purchased using monies provided by Mr. Al-Sanea and held by those companies as

nominees for his benefit immediately before the 2012 Transfer, and (b) the history of the shareholders and directors of the two companies is pleaded earlier in the Particulars at [8]-[15], which allege, among other things, that (i) the shares were originally owned by Mr. Al-Sanea, then his wife and the last known shareholder is a person connected to Mr. Al-Sanea who has previously been found by the Saudi Criminal Courts to have acted on Mr. Al-Sanea's instructions in an important respect and to have participated with Mr. Al-Sanea in misleading the Saudi Arabian banking system and (ii) the directors are each connected with Mr. Al-Sanea in various ways. Therefore, while it would be better if this was spelled out simply and clearly in [41], it appears from [45] taken together with [41] to be alleged that Mr. Al-Sanea ultimately controlled the two companies in a manner that allowed him to bring about the 2012 Transfers.

90. Finally, D2-D6 allege that the Claimant has failed to identify (i) who is said to have the statutory purpose, and (ii) the primary facts relied upon as to why this purpose should be inferred. It is said that the pleading of a transaction at an undervalue is not sufficient to satisfy the latter requirement.

91. As to limb (i), [49] does not itself state expressly who is alleged to have the stated purpose. It is stated in [41] that it was Mr. Al-Sanea who procured the 2012 Transfers, so I consider that the obvious inference is that it is he (rather than say he and/or STCFSC) who is alleged to have the statutory purpose. Therefore, I reject D2-D6's contention. This is consistent with the allegations in the following paragraphs, which form part of the context to this:

(1) [35]: Mr. Al-Sanea and/or STCFSC each had extensive histories of seeking to put assets beyond the reach of creditors.

(2) [44]: Mr. Al-Sanea continued to exercise control over the English Properties after the 2012 Transfers.

(3) [45]: the English Properties were held for Mr. Al-Sanea prior to the 2012 Transfers.

(4) [46]: The 2012 Transfers took place at a time when Mr. Al-Sanea and his companies were beginning to experience significant financial pressure.

(5) [47]: The 2012 Transfers were intended to conceal Mr. Al-Sanea's continued beneficial ownership and attempting to prevent them being used for Mr. Al-Sanea and STCFSC's creditors.

92. Turning to limb (ii) of the argument, I reject this contention:

(1) Contrary to D2-D6's argument, the pleading in [49] itself is not limited to an allegation that the transfer was entered into at an undervalue. It is that (a) the purported consideration was in the form of assets owned by Mr. Al-Sanea and/or STCFSC, and (b) that the purported consideration was not in fact paid, rather than just that there was no consideration.

(2) The natural reading of (a) and (b), taken together with [47.1], are that these were markers of an extremely suspicious transaction with no obvious legitimate explanation for it, as it purported to use consideration not even owned by the counter-parties to it (D2-D6) and it purported to have the hallmarks of a commercial transaction by purporting to have consideration when in fact there was none.

(3) Further, the opening words of [49] rely on the "*matters set out above*", which include (a) the allegation in [35] of the extensive history by 2012 of Mr. Al-Sanea

and/or STCFSC or transferring property properly owned by them to offshore corporate structures and/or family members in order to conceal such assets or put them beyond the reach of creditors, (b) the pleading in [46] as to the circumstances at the time of the 2012 Transfers, including that Mr. Al-Sanea and his companies were beginning to experience significant financial difficulties, and (c) in [47] that the 2012 Transfers were shams intended to conceal his ongoing beneficial ownership of the English Properties and in an attempt to prevent the English Properties from being used to satisfy his and/or STC FSC's creditors.

93. Putting the above together, as *El-Husseini* explains at [27], the allegation that someone has acted for the purpose of putting assets beyond the reach of creditors is a sufficiently serious allegation to engage the rules concerning the pleading of fraud. There are points in the above analysis where I have relied on clear inferences from the rest of the pleading because [49] itself is fairly compressed. In my judgment, it is clear from the context what is being alleged and it is clear that there is a serious issue to be tried, so I reject D2-D6's argument. It would be helpful for further particulars to be provided, particularly if requested by D2-D6, but that is a matter for the Claimant.

(3) The claim is defective without the joinder of Markant and Saad Inc.

94. This point is put the following way in D2-D6's skeleton argument:

> "Even if C succeeds in impugning the 2012 transfers, it is by no means clear why that should result in an order vesting title to the English properties in C. On the face of it, the impugning of the 2012 transfers would naturally result in title being vested in Markant and Saad Inc respectively. If C wishes to avoid that consequence, it would need to seek relief against Markant and Saad Inc, but C seeks no such relief and has not joined those companies to the claim. The only explanation that C has provided for this is that the registration of these companies in Panama has been "suspended"…However, C does not explain why this means that they cannot be joined as defendants. Indeed, it is clear from evidence as to Panamanian law served by Ds that the suspension of registration does not prevent a Panamanian company being a defendant to proceedings…."

95. In my judgment, the absence of the joinder of Markant and Saad Inc does not prevent there being a serious issue to be tried, for the following reasons submitted to me by the Claimant.

(1) The relief sought is that the property presently held by D2-D6 be vested in the Claimant for the benefit of creditors. Therefore, it is not relief sought in that sense against Markant or Saad Inc.

(2) In order to obtain the relief it seeks, the Claimant will need to persuade the Court at trial that it is appropriate for the English Properties to be transferred to it rather than back to Markant and Saad Inc. However, the Claimant's argument is that it would not be appropriate for it to be transferred back to Markant or Saad Inc. because they held the property on trust for Mr. Al-Sanea and/or STCFSC.

(4) The Claimant has not shown that the s.423 Claim has a sufficient connection with England to engage s.423 or that England is clearly and distinctly the most appropriate forum for the claim

96. D2-D6 contend that there is no sufficient connection for s.423 to be engaged in order to assist a foreign insolvency practitioner to impeach transactions between overseas entities allegedly in relation to steps taken by a foreigner to transfer assets so as to affect the interests of foreign creditors in a foreign liquidation process, and that for the same reasons the Claimant has not shown that England is clearly and distinctly the most appropriate forum.

97. I reject this argument.

98. Taking first the question of sufficient connection, the question is whether this prevents there being a serious issue to be tried in respect of the s.423 Claim. I agree that the different factors in favour of England and against it should be considered as best the Court can at this stage, as set out in *Erste Group Bank AG v JSC 'VMZ Red October' & Ors* [2015] EWCA Civ 379 at [119], and note the statement in *Orexim Trading Ltd v Mahavir Port and Terminal Pte Ltd* [2018] 1 WLR 4847 at [55] that the breadth of the potential scope of section 423 makes it all the more important that in a case with a foreign element the court is scrupulous to ensure that the safeguards are rigorously applied, of which the sufficient connection requirement is one.

99. I also agree that many of the connecting factors in this case relate to other countries. The companies are incorporated offshore or in Saudi Arabia, the individuals appear to be principally at least in Saudi Arabia, the relevant actions may have taken place abroad by individuals located abroad to prejudice (at least in part) the interests of foreign creditors and the action is brought by a Saudi Arabian liquidation trustee.

100. However, the fact remains that this claim concerns English immovable property. It concerns the transfer of that property, how the property was held before that transfer, why the property was transferred, how it was enjoyed afterwards in England, and seeks the transfer of that property to the Claimant. Therefore, in my judgment, there is a strong argument that there is a sufficient connection with England, more than sufficient to allow the s.423 Claim to get over the serious issue to be tried threshold.

101. For the same reasons, I consider that England is clearly and distinctly the most appropriate forum.

(iii) Absence of full and frank disclosure

102. D2-D6 contend that the failure to explain the possible deficiencies in the Trust Claim to the Deputy High Court Judge and the deficiencies raised by D2-D6 in respect of the s.423 Claim should cause me to set aside the service out application in its entirety, including in relation to the s.423 Claim.

103. Taking first the legal principles, D2-D6 did not raise any objection to those put forward by the Claimant, based on *Tugushev v Orlov & ors* [2019] EWHC 2031 (Comm) per Carr J (as she then was) at [7]. They were recently adopted by the Court of Appeal in *Mex Group Worldwide Ltd v Ford & Ors* [2024] EWCA Civ 959 at [119], with the additions in [120]. These principles include that if a Court finds that there has been a material non-disclosure, it retains a discretion to continue the order or to impose a fresh order, despite a failure to disclose. The overriding consideration in the exercise of such discretion is the interests of justice. Such consideration will include examination of: (i) the importance of the non-disclosed facts; (ii) whether and to what extent the breach was culpable; and (iii) the injustice to a claimant which may occur if an order is discharged, leaving a defendant free to dissipate assets.

104. Taking first the Trust Claim, the possible relevance of article 21 and the argument that there was an absence of standing for the Trust Claim without an article 21 order was not put to the Deputy High Court Judge, and *Kireeva* was not put before him. Rather, it was asserted at the start of the hearing that the foreign representative did have the necessary standing, in response to a question from the Judge.

105. Therefore, I consider this was a significant failure, particularly in circumstances where I have found that there is an absence of standing prevents the Trust Claim generating a serious issue to be tried.

106. In respect of s.423, of the alleged deficiencies raised by D2-D6: (i) there was a failure to put the specific s.423 Claim gateway to the Judge but I consider that this was an oversight rather than a failure of fair presentation given that gateway (11) was available and DHCJ Farnhill's reasoning relied on gateway (11) (albeit without dealing specifically with the s.423 Claim in that regard), (ii) the lack of particularisation of the pleading is not a full and frank disclosure point and I have found that there was not a lack of particularisation, (iii) I do not consider that D2-D6's standing argument in relation to Markant and Saad Inc. is correct, (iv) the Claimant put to the Judge why he suggested that England was clearly the proper forum and (v) the Claimant did, so far as I can see, fail to identify the requirement in respect of the s.423 Claim for a sufficient connection with the jurisdiction and address that specifically before DHCJ Farnhill. It should have done, but its arguments would I imagine have been essentially the same as those put on why England was clearly the proper forum.

107. The failures in respect of the Trust Claim are most significant. I have found that the Jurisdiction Challenge should succeed in relation to the Trust Claim because of the substantive points made by D2-D6. I do not consider that the failures of full and frank disclosure in relation to the Trust Claim should cause me to set aside the service out in relation to the s.423 claim for the following reasons:

(1) The failures in the Trust Claim related specifically to that claim rather than the s.423 Claim.

(2) They were wholly innocent.

(3) They can be marked in costs if appropriate.

(4) Little would be achieved by setting aside service out and requiring it to be done again.

108. Any failings in respect of the s.423 Claim, namely those in (i) and (v) above, were in my view relatively minor for the reasons set out in (i) and (v) and the points in (2) to (4) apply to them equally, so in my judgment they do not justify discharging the service out order.

Service within the jurisdiction

109. I have found that there is no serious issue to be tried in respect of the Trust Claim so that the service out should be set aside in respect of it. However, I have also found that the challenge to service out fails in respect of the s.423 Claim.

110. The Claimant asserts that it has validly served the claims *within* the jurisdiction by serving them at the address provided by the Offshore Companies for the purposes of the 2022 Act.

111. In my judgment strictly I do not get into that question, because given that there is no serious issue to be tried in respect of the Trust Claim and my conclusions above about the merits of the Trust Claim in the absence of article 21 relief having been granted, it should be struck out whether or not it was validly served within the jurisdiction, and the s.423 Claim has been validly served out.

112. However, I consider that I should deal with the question of service within the jurisdiction, for the following reasons: (i) I heard argument on it, from Mr Lowe in the case of the Claimant and (ii) it is potentially relevant to how to serve the Defendants with any further Trust Claim brought after a successful article 21 application.

113. The legal question here is whether a claimant can serve applications and pleadings on an entity at their service address provided under the 2022 Act. It arises in the following way.

114. The 2022 Act was passed quickly in response to the 2022 Russian invasion of Ukraine. Its purposes were to prevent the use of foreign companies laundering money through the UK property market by requiring them to provide details for a beneficial ownership register for overseas entities holding UK real estate, and to strengthen the sanctions and unexplained wealth order regimes.

115. To achieve the first of these purposes, Part 1 of the Act sets up a register of overseas entities, which will include information about their beneficial owners, and makes provision that is designed to compel overseas entities to register if they own UK land: section 1.

116. By section 4, an application for registration must contain, among other things, the information about the entity set out in Schedule 1, and the required information about the entity set out in Schedule 1 includes a "*service address*": paragraph 2(1)(d). Section 4 also requires information to be provided about other persons, namely each registrable beneficial owner that the entity has identified and each manging officer of the entity, and Schedule 1 likewise requires a service address to be provided for each of them. An overseas entity is also required to provide, among other things, an e-mail address: paragraph 2(1)(e).

117. A service address is stated by section 44(1) to have the same meaning as in the Companies Act, and that definition directs the reader to section 1141(1) and (2) of the Companies Act 2006 (the **"2006 Act"**). Section 1141(1) provides that in the Companies Acts, "*a "service address", in relation to a person, means an address at which documents may be effectively served on that person*".

118. CPR rule 6.1(a) provides that the rules on service contained in Part 6 do not apply where "*another Part, any other enactment or a practice direction makes different provision*". Therefore, the question is whether the 2022 Act does make different provision by requiring the provision of a service address for the persons mentioned above.

119. In my judgment, it does, for the following reasons.

120. First, the natural meaning of the service address definition is that it is providing an address at which someone can be validly served with documents.

121. Second, there is no express restriction on the type of documents covered by the definition.

122. Third, applications and pleadings are documents that it is critical to be able to serve validly. Therefore, they are obvious documents that would be caught by the service address definition.

123. Fourth, the 2022 Act contains no reference to particular documents that are to be served *under the Act*. Therefore, there is no basis to read the category of documents covered as being limited to particular documents covered by a specific regime under the 2022 Act. On the contrary, given the absence of such a regime, the definition of service address is focusing on documents to be served other than for the purposes of the Act.

124. Fifth, this chimes with the broader purpose of Part 1 of the 2022 Act, which is to mandate transparency on the part of overseas entities holding UK property by requiring them to provide details on a register that can be seen by the public. That both enables their details to be known and provides a means of contacting them and serving documents on them. There is nothing in that rationale that suggests that there should be a distinction between using the service address to serve legal proceedings and applications, and using it to serve other documents that must be validly served. On the contrary, given the transparency and enforcement rationale (as the name of the Act suggests), one would expect it to be as easy as possible to identify where formal legal documents like a claim form or application can be served on an overseas entity.

125. Sixth, there is a consistent line of case-law on the use of the Companies Act definition of service address to serve company directors pursuant to section 1140 of the 2006 Act which states that it includes the service of legal proceedings. The first in the line was *Key Homes Bradford v Patel* [2015] 1 BCLC 402, a decision of Chief Master Marsh, and the final one *PJSC Bank "Finance and Credit" v Zhevago* [2021] EWHC 2522 (Ch), a decision of the Chancellor. Section 163(1) of the 2006 Act requires a company's register of directors to contain a service address for each director who is an individual. Such address may be the company's registered office: section 163(5). Section 1140(1) provides that a document may be served on a person to whom this section applies by leaving it or sending it by post to the person's registered address. The section applies to, among others, a director of a company: section 1140(2). A registered address means any address shown on the register: section 1140(5), which is therefore the service address. Section 1140(3) provides that the section applies whatever the purpose of the document in question and is not restricted to service for purposes arising out of or in connection with the appointment or position mentioned in subsection (2) or in connection with the company concerned.

126. Mr Morgan submitted that the absence of an equivalent to section 1140(3) of the 2006 Act in the 2022 Act meant that one could not conclude that the category of documents was broad enough to include legal proceedings and applications. I reject that submission for the following reasons:

(1) The first to fifth points I have mentioned and the seventh point below.

(2) I read section 1140(3) as a provision for the avoidance of doubt.

(3) Its main intended aim appears to be to make clear that the documents not relating to the appointment or position mentioned in section 1140(2) or in connected with the company concerned are included, rather than seeking to make clear that legal proceedings or applications relating to the person concerned are covered. Indeed, if anything, the second sentence of section 1140(3) assumes that documents relating to the person in question are covered.

(4) The fact that the provisions dealing with service addresses in the 2022 Act are more abbreviated and do not contain explanatory wording as to their scope does not itself detract from the breadth of those provisions and may possibly reflect the urgency of the introduction of the legislation.

127. Seventh, none of this compels an overseas entity or anyone else for whom a service address needs to be provided under the 2022 Act to accept service within the jurisdiction, because they may choose to give a service address outside the jurisdiction.

The application to continue the APO on the return date

128. The burden remains on the Claimant to establish that the ordinary requirements for a proprietary injunction are made out, namely (i) that the claimant has shown a serious issue to be tried on the merits, (ii) that the balance of convenience is in favour of granting an injunction, and (iii) that it is just and convenient to grant the injunction.

129. In my judgment, the APO should be continued in support of the s.423 Claim. Further, if the Claimant does wish to make an urgent article 21 application, as I understood that they would wish to if I concluded that this was required to give standing to bring the Trust Claim, then I consider that the APO could also be continued in support of the article 21 application if need be while it was dealt with, as long as the Claimant undertook to issue one promptly. This latter point was a course constructively floated by Mr Morgan in oral submission.

130. I take in turn the Trust Claim, then the s.423 Claim, before dealing with the question of whether there are breaches of the duty of full and frank disclosure that should cause me to discharge the APO.

(i) The Trust Claim

131. Starting with the Trust Claim, given that I consider it should be struck out, it cannot provide a basis for continuing the APO.

132. However, given that the purpose of an article 21 application would be to provide standing to bring the Trust Claim, in my judgment the APO could be continued in support of the article 21 application if the Claimant was to bring one. I consider that the Trust Claim plainly gives rise to a serious issue to be tried, putting to one side the standing issue, for the reasons given by Deputy High Court Judge Farnhill, some of which are summarised below in respect of the s.423 Claim, and that the article 21 application itself stands at the very lowest a serious prospect of success. It is clear after *Convoy Collateral Ltd v Broad Idea* [2021] UKPC 24 that the relevance of a cause of action, where there is one, is evidential, namely in showing that there is a sufficient basis for anticipating that a judgment will be obtained to justify the exercise of the court's powers to freeze assets against which such a judgment, when obtained, can be enforced: [92]. Therefore, the fact that an article 21 application does not give rise to a classic private law cause of action does not matter. It is the path to take in order to be able ultimately to obtain a judgment against the 19 English Properties, and therefore a proprietary injunction should in principle be capable of being granted in aid of it.

133. I should say for completeness that I do not accept that the APO should continue just because of the offer made in correspondence by D2-D6 some months ago to allow it to

continue while an article 21 application was brought, because the Claimant did not seek to bring such an application then and D2-D6 made clear in their skeleton that the offer was withdrawn. Rather it would continue in aid of the article 21 application for the reasons set out in the paragraph above.

(ii) The s.423 Claim

134. In my judgment, there is plainly a serious issue to be tried on the merits here, for the reasons given by Deputy High Court Judge Farnhill. Summarising some of the relevant points that are pleaded and for which evidence is adduced:

(1) There is asserted to be a history of transactions before 2012 procured by Mr. Al-Sanea to conceal his assets and put them out of the reach of creditors.

(2) It is asserted that Mr. Al-Sanea and his businesses were in financial difficulty by 2012 and proceedings had been commenced against Markant in the English Commercial Court.

(3) Mr. Al-Sanea had moved the legal title to the shares in Markant and Saad Inc out of his name to his wife in 2008 and she had transferred it on. No commercial reason appears from the papers for those transfers. Similarly, that he retained control of Markant and Saad Inc.

(4) There is no obvious commercial reason for the 2012 Transfers.

(5) On the contrary, one would not expect a genuine commercial transaction to involve consideration that was already owned by Mr. Al-Sanea and/or STCFSC.

(6) And one would expect a genuine commercial transaction to go through with the transfer of the purported consideration to Markant and Saad Inc. but it appears that it did not.

(7) There is evidence that Mr Al-Sanea continued to exercise control over the English Properties and treat them as his own, which is difficult to square with them having been transferred under a legitimate transaction to D2-D6. Rather it suggests that the transfers were a device to put them beyond the reach of creditors and to obscure who was really controlling the English Properties.

135. Standing back, there is a serious case by reason of the points above of a transaction that is intended to conceal Mr. Al-Sanea's continued control of the English Properties and put them out of the reach of his and/or STCFSC's creditors.

136. In my judgment, the other requirements for the APO are made out. The balance of convenience firmly lies in favour of granting the injunction:

(1) The order simply restricts dealings with the English Properties. I have seen no evidence that would cause prejudice.

(2) It protects the interests of the creditors of Mr. Al-Sanea and STCFSC while ownership to the property is determined.

(3) This is all in circumstances where there has been put forward prior evidence of concealment of beneficial ownership and attempts to prejudice creditors.

137. Similarly, for the same reasons in my judgment it would be just and convenient to grant the injunction.

(iii) Full and frank disclosure

138. I have dealt in paragraphs 102 to 108 above with the question of full and frank disclosure in respect of the service out application.

139. In my judgment, the same points apply in respect of the continuation of the APO, so the APO should remain in place.

140. I also take into account that the Court should be more willing in cases of proprietary injunctions to allow the injunction to continue because of the lesser prejudice to the defendant in having frozen a distinct fund that it may not own: *Boreh v Republic of Djibouti* [2015] EWHC 769 (Comm) at [253]-[254]. This reinforces my conclusion.

Amendment Application

141. The Claimant seeks permission to amend its Particulars of Claim in two respects:

(1) To amend paragraph 48 to deal with the points taken in correspondence about the need for article 21 relief.

(2) Amendments proposed by the Claimant on 3 October 2024 following his review of further documents obtained by him.

142. In respect of the amendments in category (1), I have explained above that I think that there is no standing to bring the Trust Claim and therefore no sustainable Trust Claim *unless and until* relief is obtained under article 21. Therefore, the proposed amendment does not cure this. As I have explained, any article 21 relief should be sought now before the claim is brought. Accordingly, permission should not be granted for this amendment and the Trust Claim should be struck out.

143. As for category (2), the amendments principally set out (a) material from the Panama Papers that the Claimant asserts shows that Mr. Al-Sanea was intended to continue to control Markant and Saad Inc after he purportedly transferred the shares to his wife and/others and (b) material that the Claimant suggests shows that Mr.Al-Sanea retained control of the English Properties after the 2012 Transfers. Therefore, in my judgment permission should be granted for these amendments as they flesh out the existing pleading on these topics.

Substituted service application

144. CPR r.6.28 gives the Court a discretion to dispense with service of the documents in the proceedings.

145. The Claimant has been seeking to serve Mr. Al-Sanea in prison in Saudi Arabia with documents in these proceedings, but Mr. Al-Sanea has ultimately been refusing to accept documents once they arrive at Khobar Prison, which is where he is held.

146. Therefore, in my judgment it is appropriate to dispense with service on Mr. Al-Sanea henceforward, as has been done in the context of the recognition orders, for the following reasons put forward by Mr Grasso for the Claimant in his third witness statement and amplified orally by Mr Lowe:

(1) the general difficulty in effecting service on Mr. Al-Sanea given he is in prison in Saudi Arabia;

(2) the lack of engagement from him to date;

(3) his consistent refusal to accept delivery of documents; and

(4) his local lawyers' failure to engage with the Claimant.