Neutral Citation Number: **[2026] EWHC 837 (Comm)**

Case No: **CL-2025-000087, CL-2025-000090**

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

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

Date: **Friday, 20 March 2026**

Before:

His Honour Judge Pelling KC
(Sitting as a Judge of the High Court)

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Between:

BEIJING SONGXIANGHU ARCHITECTURAL DECORATION ENGINEERING CO. LTD

Claimant

- and -

KITTY KAM
(also known as WANG YUZHI)

Defendant

- -
- -

Mr A Ayoo (instructed by **Reed Smith LLP**) for the **Claimant**
Mr M Khoshdel (instructed by **BCL Solicitors**) for the **Defendant**

Hearing date: **Friday, 20 March 2026**

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JUDGMENT

Friday, 20 March 2026

HIS HONOUR JUDGE PELLING KC:

1. This is the claimant's application made by an application notice dated 28 November 2025 for an order that unless the defendant provides asset disclosure by no later than 4 p.m., seven days after the date of any order made pursuant to this application, she be debarred from further defending proceedings between the parties made under claim number CL-2025-000087 ("Part 7 claim") and that judgment be entered for the claimant without further order.

2. The defendant opposes the application on the basis that the original disclosure order is contained in a domestic freezing order made in CL-2025-000090 ("Part 8 Claim") and that:

> (1) the freezing order was obtained in breach of an undertaking given to the Hong Kong Court of First Instance ("the Hong Kong Court") or was at least realistically arguably so obtained;
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> (2) there is an application that has been made by the defendant to the Hong Kong Court for an anti-suit injunction, which is due to be heard in rather less than five weeks' time and an appeal to the Court of Appeal from an order of Butcher J continuing the freezing order that is due to be heard on 23 April next;
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> (3) the claimant's attempt to reformulate the injunction application as one in aid of the Part 7 claim rather than the Hong Kong proceedings is a late change adopted in order to circumvent these difficulties; and

(4) in the result, either the application should be dismissed or the time for compliance should be set so as to post-date the determination of either the anti-suit application before the Hong Kong Court or until after determination of the appeal by the Court of Appeal. The basis of this submission is that the Court of Appeal has given permission to appeal so that the single judge must have been satisfied that the defendant has at least a realistic prospect of success in relation to the issue that arises on that appeal.

There is also a point concerning the court fee paid in respect to the Part 7 claim, which I will return to at the end of this judgment.

3. I should say, at this stage, that it was common ground between the parties that the defendant has a realistically arguable defence to the Part 7 proceedings, that the facts and matters on which she relies are very sensitive, and that it was unnecessary for these to be developed in either the submissions that I heard or in this judgment. In light of the common position of the parties, I agree that is so but strictly only for the purposes of determining this application. Where this issue arises in relation to any future applications, it will have to be determined on its merits by reference to the circumstances then applying.

4. In light of that concession, the facts that matter for present purposes are uncontroversial. On 25 October 2024, the claimant obtained a judgment from the Hong Kong Court in the sum of HK$220 million-odd. In those proceedings, the claimant had applied for and obtained a worldwide freezing order from Chan J. That order included an asset disclosure order in conventional form. The order was expressed by para.6 to:

> "... remain in force up to and including the final determination of this Action, unless before then it is varied or discharged by a further order of the Court."

5. Various undertakings by the claimant were set out in Sch.2 to that order. They included, at paras.5 and 6:

> "5. The Plaintiff will not without leave of the Court begin proceedings against the defendant in any other jurisdiction or use information obtained as a result of an order of the Court in this jurisdiction for the purpose of civil or criminal proceedings in any other jurisdiction.
>
> "6. The plaintiff will not without leave of the court seek to enforce this Order outside Hong Kong."

6. Following various procedural steps before the Hong Kong Court that I need not take up time describing, by an order made by a deputy judge at the Hong Kong Court on 9 August 2024, that judge ordered the defendant, (a) to pay HK$170.9 million-odd into court within 14 days; and (b) within 28 days, to file and serve an affidavit or affirmation stating the location and recipients of a further sum of some HK$46.9 million. In giving his reasons for making that order, the Deputy Judge of the Hong Kong Court found that:

> (a) the defendant had failed to file an affirmation confirming that the HK$170.9 million fund ("Fund A") remained in her bank in Singapore as she had promised to do;
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> (b) the defendant had failed to comply with a previous disclosure order in relation to the HK$49.5 million fund ("Fund B"), either by the date ordered or at all;
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> (c) on 17 September 2024, the defendant disclosed for the first time that Fund A was no longer in her account, notwithstanding her

assurances to the Court that Fund A would remain in her account until the conclusion of the Hong Kong claim and a related arbitration;

(d) the movement of Fund A was contrary to the defendant's assurances to the Court and a direct breach of the proprietary injunction granted by the Hong Kong Court and that such conduct was intentional; and finally

(e) the defendant had flouted the disclosure order made in relation to Fund B.

It is worthwhile noting in passing that at para.33, the Deputy Judge said of Chan J's order that:

> "It is common ground that in obtaining the Mareva Injunction from Anthony Chan J ... the Plaintiff has given the Court an undertaking ... that it will not without leave of the Court begin proceedings against Kam in any other jurisdiction or to seek to enforce the Mareva Injunction outside Hong Kong."

7. The orders made on 9 August were not complied with and, on 27 September 2024, the Hong Kong Court issued an application for an order that unless the defendant complied by a short fixed future date, her defence should be struck out and judgment entered. The Deputy Judge concluded, on the hearing of that application, that the defendant had consciously refused to transfer Fund A in accordance with the order previously made and that her evidence as to what had happened to the fund was disingenuous and neither full or meaningful. For those reasons, the Deputy Judge ordered:

> "(1) Unless on or before 4:00 p.m. on 25 October 2024 the Defendant do pay into Court the sum of HK$170,962,682 in compliance with paragraph 2 of the Order of Deputy High Court Judge KC Chan dated 9 August 2024, the Defendant's Amended Defence dated 6 December

2023 in relation to the sum of HK$220,548,682 be struck out and judgment be entered against the Defendant in the form of the judgment annexed to this Order."

"(2) Costs be reserved until the written decision to be handed down by Deputy High Court Judge KC Chan in respect of the Summons."

That order was not complied with, and on 25 October 2024, judgment was entered against the defendant in the sum of HK$220.55 million-odd.

8. On the face of it, that judgment was a final determination of the Hong Kong proceedings, in which the Hong Kong freezing order had been made or was so in relation to the element of that claim in respect of which judgment had been entered. If so, the Mareva order made by the Hong Kong Court arguably ceased to apply by para.6 of that order, unless a post-judgment order had been made or the Mareva order extended by variation after judgment had been entered. I asked about that in the course of this hearing. Neither party suggested that a post-judgment freezing order had been sought or granted[1].

9. Following entry of the Hong Kong judgment, on 4 March 2025 the claimant commenced the Part 7 claim and the Part 8 claim in this jurisdiction. By the Part 7 claim, the claimant sought recognition and enforcement at common law of the Hong Kong judgment, which was described as being "final and conclusive". The court fee paid was £626. The defendant maintains it should have been £10,000, because the claim was for a money judgment. By the Part 8 claim, the claimant claimed:

"Details of claim:

[1] After oral delivery of this judgment, it was suggested that this was not so because the claim remained active in relation to Fund B. This point was not made during the hearing before me and does not appear to have been considered at all in the Hong Kong proceedings. It does not provide a very clear answer in relation to the sum the subject of the default judgment that has been entered It is not an issue that can be taken further on this application however and does not matter for reasons I explain later in the judgment.

> (1) The Claimant has (by a separate Part 7 claim) commenced an action for recognition and enforcement at common law of a judgment of Hong Kong Special Administrative Region Court of First Instance dated 25th October 2024 ("HCA Judgment") ("the Enforcement Action"). The HCA Judgment is to the value of HK$220,548,682 ...
>
> (2) Pending determination of the Enforcement Action and actual enforcement of the HCA Judgment, the Claimant seeks (by this Part 8 Claim) a domestic freezing injunction (and ancillary disclosure orders) in support of foreign proceedings under s.25 of the Civil Jurisdiction and Judgments Act 1982 ("CJJA"), CPR 25.1(f)(i) and (g) and CPR25.4.
>
> (3) In the alternative, in the event that the HCA Judgment is set aside and (as a result) the underlying proceedings in Hong Kong proceed to trial, the Claimant nevertheless makes the injunction application at paragraph (2) above in support of those proceedings."

10. On 12 March 2025, Robin Knowles J made a domestic freezing order on a without notice application, which order bore the claim numbers of both the Part 7 and Part 8 claims. The order was a maximum sum order expressed to be £30 million and identified specifically two properties in London as assets to which the order applied.

11. By an order made on 28 March 2025, Butcher J continued that order. At that hearing, the defendant had submitted the without notice order should be set aside: (a) because it was being sought in breach of the undertaking given to the Hong Kong Court; and (b) because of a failure on the part of the claimant of its duty of fair presentation. Butcher J was not invited to consider the effect of para.6 of Chan J's order, but recorded an order made on 16 December 2024 by the Deputy Judge in the Hong Kong proceedings that:

> "... the Plaintiff be released from the undertaking given under paragraph 5 of Schedule 2 of the Order ... to the extent of and be at liberty to enforce the judgment entered herein on 25 October 2024, if it so desire, anywhere outside the jurisdiction."

12. I now turn to s.25 of the Civil Jurisdiction and Judgments Act 1982. As Butcher J held at para.14 of his judgment at the return date hearing:

> "The procedural power to grant such an injunction comes from CPR 25.1(f)(i) and (g), which relate to freezing and ancillary disclosure orders and CPR 25.4(1)(a), which applies where the remedy is sought in relation to proceedings which are taking place or will take place outside the jurisdiction."

There is a debate between the parties as to the relevance of s.25 to these proceedings. The defendant contends that s.25 is relevant only to an injunction sought from the English Court in aid of proceedings in a foreign court, and that it is immaterial to a freezing order sought in aid of a claim to enforce a foreign judgment in England. That issue does not appear to have been argued in front of Butcher J.

13. At para.20 of his judgment, Butcher J said that in his view the present case was one in which a freezing order was eminently justified. I respectfully agree. The material set out in the Hong Kong judgment summarised earlier justify that conclusion and plainly so. Butcher J's conclusion in relation to the effect of Chan J's order was set out at paras.22-23 of his judgment in these terms:

> "[22] In my judgment, at least in circumstances where it is disputed, it would be inappropriate for the English court to seek to determine what the effect of the Hong Kong court's order is and whether the defendant is in breach of its undertaking to the Hong Kong court. The potential difficulties of doing so are obvious. Suppose that this court were to say that there was a breach of that undertaking and order and the Hong Kong court were then to say that there was not. That would be a most regrettable inconsistency and would show that the English court should not have made the determination that it did. Equally unsatisfactory would be any contention that the English court having determined the question, it could not be reargued before the Hong Kong court, which is the 8 court to which the undertaking was given and which made the order.
>
> [23] The terms of a court's own order and the interpretation of undertakings given to it seem to me pre-eminently matters for that court, and that a different court will only venture upon a determination of such matters if there is agreement that it should or if it is unavoidable.

> [24] Here, I am satisfied that there is a bona fide argument that there is no breach of the undertaking given to the Hong Kong court, effectively for the reasons given by Ms Cherry."

14. I have some sympathy for the view that the ultimate effect of the undertaking, if it still has any effect at all, is a matter for the Hong Kong Court, and it can be argued that, much as is the case with an anti-suit injunction, the undertakings bind the parties and not this Court. On the other hand, injunctions are orders which are equitable in nature, and a party applying for an order it had given an undertaking not to apply for would at least arguably not be coming to equity in good conscience. If that is the correct analysis, it is difficult to see how an English court can avoid coming to at least a provisional view as to the likely meaning and effect of an overseas court order or the undertakings given to such a court. These are issues that will have to be resolved ultimately by the Hong Kong Court at the hearing of the anti-suit injunction or by the Court of Appeal on the hearing of this appeal.

15. The defendant argues that a Court could only grant a freezing order in aid of English enforcement proceedings following an application in those proceedings under CPR Part 23. The claimant submits that the Commercial Court Guide at F14.13 requires such an application to be made by separate Part 8 proceedings. In my view, the claimant's approach is mistaken. That provision is concerned exclusively with applications under s.25 where there are no substantive proceedings in England. In my judgment, where a freezing order is sought in aid of an enforcement claim commenced in England, then the application should be made under Part 23 in the usual way. In my judgment, therefore, the Part 8 proceedings in this case are the result of confusion. The intended effect of paras.2 and 3 in the Part 8 claim form are not entirely clear and reflect that confusion. Paragraph 2 seems intended to preserve the position in England until judgment in the

Part 7 claim has been obtained. If so, that application should have been brought by application in those proceedings under CPR Part 23. In relation to para.3 of the Part 8 claim, that would appear to be an application which would only arise in circumstances which have not, as yet, arisen. That said, I do not consider the procedural confusion that has arisen ought to have any impact on the issue that arises on this application. That is so because, (a) the validity of the making of the freezing order containing the disclosure obligations is not before me; (b) there is no order staying compliance with any part of Butcher J's order; and (c) an error of procedure does not generally invalidate steps taken in the proceedings (see CPR r.3.10). In any event, no real prejudice appears to have been caused to the defendant by what I consider to be a procedural error. No point of substance emerges from the reference to s.25, other than the fact that for an order under s.25 to be obtained, the expediency test set out in s.25(2) of the Act has to be complied with. That makes the task of the claimant more, not less, difficult. In those circumstances, since the only point made by the defendant is that the freezing order should have been sought under s.37 of the Senior Courts Act using the Part 23 procedure, not under s.25 of the Civil Jurisdiction and Judgments Act using the Part 8 procedure, I consider that the problem thereby highlighted could be rectified without any difficulty by directing the Part 7 and Part 8 claims to be consolidated, with the freezing order continuing in aid of the consolidated claim.

16. However, I return to the point I made a moment ago. The problem does not arise on this application because there is no application to set aside the freezing order before me, and no stay of compliance with it has been ordered by any court. This was precisely the point made by Andrew Baker J in his judgment in these proceedings on 14 November 2025 (see para.12). The application before Andrew Baker J was for a variation of the

freezing order so that the defendant did not have to provide asset disclosure until five days after determination of the application to the Hong Kong Court for an anti-suit injunction. Andrew Baker J rejected that application. He did so on the basis that a pending application is not a reason for delaying asset disclosure because generally but not invariably, where there is a pending dispute as to whether the freezing order should have been made that is not a reason for deferring compliance with an asset disclosure order, not least because such orders are made to enable freezing orders to be policed effectively, and that would be compromised by a deferment, or potentially would be. As Andrew Baker J held, in most cases, the prejudice to a defendant of having to give asset disclosure, if ultimately the freezing order is set aside, will be outweighed by the prejudice to the claimant in not being able to police the order effectively if the order is not set aside. That is all the stronger, in my judgment, where the application is concerned with the enforcement of a final judgment.

17. On the facts of this case, there is a long and profoundly unsatisfactory history of delay, evasion and defiance by the defendant, both in these proceedings and in Hong Kong. That history is set out in detail in the evidence and in the Hong Kong judgments, and I do not need to repeat it beyond drawing attention to the salient details summarised earlier in this judgment. In essence that history discloses a plain risk of dissipation of assets by moving them. Given the history as set out in the Hong Kong judgments and the evidence, the longer the claimant is unable to police the English orders effectively, the greater is the real risk that assets will be dissipated in breach of the order. Whilst committal is of course available to the claimant, that would be of little material value in this case because it is unclear where the defendant is located, and by the time any

breach becomes known to the claimant, the trail will have gone cold and the chances of recovering dissipated assets will be materially reduced.

18. Returning to this application, the first question is whether I should make any order at all. I am satisfied that, plainly, I should. As I have said, there is nothing of substance in the point that the freezing order should have been brought under s.37 using the Part 23 procedure. Secondly, and in consequence, there is nothing in the point that the order sought is an order striking out the defence in the Part 7 claim for non-compliance with the order made in the Part 8 proceedings. On proper analysis, the freezing order was being sought and was made in aid of the English enforcement proceedings. It is plain that Robin Knowles J thought that was so because he included both claim numbers in his order. Furthermore, whilst the language is not entirely clear, that can only be what para.2 of the Part 8 claim form was referring to. That appears had been the understanding of Butcher J (see para.16 of his judgment).

19. It was submitted on behalf of the defendant that either this Court had no jurisdiction or should not exercise its jurisdiction to debar the defendant from defending the Part 7 proceedings for breach of an order made in the Part 8 proceedings. I do not accept that there will be no jurisdiction to make such an order. Such an order was made, for example, in AA v BB & CC [2025] EWHC 456 (KB) but, even if that is wrong, as I said earlier, there is no reason why the Part 7 and Part 8 proceedings cannot be consolidated and if that order is made then this point cases to be of any material relevance. That is a core case management power which is available to the court wherever a court considers such an order to be appropriate (see CPR r.3.1(2)(g)). The effect of such an order is to combine two claims so that they proceed thereafter as one claim. That, as I see it, is a complete answer to the jurisdictional point.

20. The second question is whether any order I make should be formulated so that the obligation to give disclosure is delayed until after judgment in either the Hong Kong anti-suit injunction proceedings, or the appeal to the Court of Appeal. In relation to this, in my judgment, there is no justification for any such order. Precisely that issue was considered and rejected by Andrew Baker J. To make such an order now would be to undermine, or permit a collateral attack on, Andrew Baker J's order in circumstances where permission to appeal from that order was refused. Whilst I accept that if there had been a material change of circumstances that would have permitted, at least in principle, revisiting the issue, there has been no such change of circumstance. Although it was argued that the point now relied upon by the defendant - that any order in aid of the Part 7 proceedings should have been brought under s.37 of the Senior Courts Act by a Part 23 application, not under s.25 of the Civil Jurisdiction and Judgments Act by a Part 8 claim - has not been considered before, that is not to the point. First, it could with reasonable diligence to have been deployed before Butcher J if there was any substance in it, but it was not. In any event, it is a point that has no substantive impact for the reasons explained earlier and, in any event, is entirely avoided if these proceedings are consolidated.

21. Finally, although it was submitted on behalf of the defendant that the hearing of the Hong Kong application and/or the appeal are only a few weeks away, that is, again, not the point. The claimant has flagrantly failed to comply with her disclosure obligations so as potentially to have seriously harmed the ability of the claimant to enforce its judgment and to preserve assets pending final enforcement of its judgment. That follows a similar pattern of misconduct in Hong Kong that led directly to the judgment that the claimant now seeks to enforce in England. Submitting that there are only a few

weeks to the hearings in Hong Kong and the Court of Appeal cannot be considered, ignoring what has gone before. Secondly, the point is illusory, because one or other, or both courts, could reserve judgment, which means that the delay is likely to last longer than the date when the Hong Kong Court and the Court of Appeal hearings are to commence.

22. The final alternative suggested by the defendant was that I should restrict access to the material. That submission is one I must reject for the reasons set out by Andrew Baker J at para.32 and following of his judgment refusing an extension of time in which to give asset disclosure. That analysis was approved by Popplewell LJ when refusing permission to appeal (see the final paragraph of his reasons and, in particular, subpara.(3) and the penultimate and final sentences).

23. Two points remain. The first was a submission that if the order sought was made, then the defendant would be deprived of her opportunity to argue the points set out in her defence to the Part 7 claim. That submission is entirely without merit. That consequence will only the result of the defendant's protracted refusal to date to comply with the orders of this Court, and will only happens if she fails to comply with the order I intend to make.

24. The final point concerns the court fee. The defendant submits that the Part 7 claim is for a claim to recover money and so comes within line 1.1 of Sch.1 to the Court Proceedings Fees Order 2008. I disagree. The claim is for registration under CPR r.74.3 and, as such, comes within line 1.4 of the Schedule. As such, the claimant has paid the correct fee. In any event, the question whether the correct fee has been paid is a matter for His Majesty's Court and Tribunal Service. The proceedings would not

have been issued if the officials, who are expert in this area, had considered the wrong fee was being offered. Finally, even if correct, it would not provide an answer to the application. If the defendant had seriously thought that there was substance in this point, then she could and should have issued an application to stay these proceedings, or for their summary dismissal, by reference to the fee issue. In those circumstances, the fee issue is entirely immaterial to the application I have to resolve.

25. Two procedural points remain. The first concerns the length of time I should allow before debarment takes effect. The second concerns whether I should permit judgment to be entered without further order. As to the first point, the application notice seeks a period of seven days from today. Robin Knowles J's order had required the information to be provided within five days of service, with the information being confirmed by affidavit ten days thereafter. That order was not complied with. Butcher J's extended time for compliance to 8 April 2025. That order, too, was not complied with. By his order of 14 November 2025, Andrew Baker J extended time for compliance to 21 November 2025. That order, too, was not complied with. The failure to comply with this last-mentioned order was a particularly stark, and seriously contumelious failure, to comply. The material sought either will be readily available or should be, given the history I have summarised and the time the defendant has been given to provide it by the orders that I have just referred to. In those circumstances, I will direct that the information be provided by 4 p.m., seven days from today.

26. The final question is whether judgment should be entered in default of compliance. As I said earlier, it is accepted that what is pleaded by the defendant is a realistically arguable defence. However, no party is entitled to continue to defend proceedings whilst at the same time flagrantly ignoring court orders, as has happened in this

case. There is no proper basis for refusing to enter judgment, other than to put the claimant to the expense of proving its claim against a defendant who has failed to comply with orders made against her in a deplorable history of non-compliance. In those circumstances, I will direct that in default of compliance with my order, there be liberty to enter judgment without further notice.

27. Finally, I should say that this judgment was one which was ready for delivery very early in the week following the hearing of the application, which was on a Friday. It has only been delivered today because of the non-availability of counsel.

LATER

28. The issues that I now have to determine concern the question of costs as a matter of principle and the question of the basis of assessment. As to the first issue, the test for who should pay the costs of any particular application is to be measured by assessing who has been successful and who has not, applying common-sense principles. So far as that is concerned, there is no dispute and cannot be any dispute that it is the claimant that has been successful and therefore it is the claimant who is entitled to recover its cost from the defendant.

29. The next question is whether or not the costs should be assessed on the indemnity or standard basis. The test which has to be applied in deciding whether or not to direct costs to be assessed on the indemnity basis involves applying the well-known *Excelsior Commercial and Industrial Holdings Ltd v Salisbury Hammer Aspden and Johnson* (A Firm) [2002] EWCA Civ 87 test. That is to say asking whether the conduct of the paying party is outside the norm to be expected for the reasonable conduct of litigation,

or, putting it another way, whether the conduct of the paying party is unreasonable to a high degree.

30. So far as that is concerned, it was submitted on behalf of the claimant by Mr Ayoo that that test is satisfied in the circumstances of this case, essentially for the reasons identified by me in the judgment I delivered a few moments ago. That is to say that there has been a flagrant disregard of the obligations to provide information by a failure to comply with at least three orders of this court, viewed against the background of an equally flagrant failure to comply with information disclosure orders made in the Hong Kong proceedings, which led to the judgment being enforced.

31. As against that, it was submitted on behalf of the defendant by Mr Khoshdel that I should conclude that there were arguments which he deployed which were reasonably available to the defendant and that, in those circumstances, I should not conclude that costs should be assessed on the indemnity basis. He made the point that, in principle, there was a point available to him in relation to the Part 7/Part 8 claim dichotomy and, in those circumstances, he says costs should be assessed on the standard basis. I am wholly unable to accept that submission for the following reasons.

32. First, I accept the point made on behalf of the claimant by Mr Ayoo that there has been, in the circumstances of this case, a flagrant failure on the part of the defendant to comply with the orders made on three separate occasions in these proceedings alone. There has never been an application for a stay of the order made by Butcher J. There was therefore a continuing obligation to comply with the information disclosure orders that he made, just as there was an obligation to comply with the orders made by Robin Knowles J. Finally, and most flagrantly, there was a breach of the

obligation to comply with the order made by Andrew Baker J. That of itself is plainly conduct outside the norm or is conduct which is unreasonable to a high degree.

33. Secondly, and as a subsidiary point, the point concerning court fees was a point which was simply not available to the defendant and should not have been argued. Thirdly, so far as the Part 8/Part 7 dichotomy issue is concerned, the procedural error was one that had caused and could cause no material prejudice to the defendant and was one that by operation of CPR r.3.10 could not defeat or render invalid any of the steps taken in the proceedings. If And to the extent that was not so, the obvious answer was to treat these proceedings as consolidated.

34. In those circumstances, the true focus of attention should not be on the procedural errors by the claimant but on the failure of the defendant to comply with orders made by three High Court judges on three separate occasions in circumstances where not merely had those orders not been stayed, but no application to stay had been made. In those circumstances, costs will be assessed on the indemnity basis.

LATER

35. The issue I now have to determine is whether or not there should be a summary determination of the costs of and occasioned by the application or whether I should direct a detailed assessment at a later stage. As is rightly submitted on behalf of the claimant, this was an application which lasted for one day or less. It was therefore an application where the default position is that the costs should be assessed on a summary basis. The policy underlying the Civil Procedure Rules is that costs should be assessed on a summary basis in relation to interlocutory proceedings, essentially because it underpins a pay-as-you-go policy in relation to interlocutory applications which is

designed to focus attention on the need not to oppose applications unreasonably and/or not to bring interlocutory applications unreasonably. That is particularly significant in this case given the stance adopted by the defendant.

36. Furthermore, directing a detailed assessment of costs delays recovery by the receiving party of the costs to which it is undoubtedly entitled, which an interim payment on account can only partly address. In addition it will result in needless use of public resources by requiring a detailed assessment by a costs judge in the Senior Courts Costs Office, which is plainly avoidable and unnecessary.

37. In those circumstances, I direct that there be a summary assessment, which we will now turn to.

LATER

38. This is the summary assessment of the costs to which the claimant is entitled by reason of the orders that I made a moment ago. I remind myself at the outset that since I have directed that costs be recovered on the indemnity rather than the standard basis, it follows that the test must be whether the work for which payment is claimed was work that it was reasonable to carry out and, secondly, in respect of that work, whether the sums claimed are reasonable in amount. The difference between an indemnity assessment and the standard basis is that proportionality has no role to play in an indemnity assessment.

39. Against that background, the first issue which arises concerns hourly rates. The sums which are claimed stem from a Grade A fee earner claiming an hourly rate in excess of £1,000 an hour, through Grade B and C lawyers charging in excess of the London 1

rate, and a costs lawyer also charging in excess of the London 1 rate. The question which arises on an application like this is what is a reasonable sum to be recovered? The sums which should be recovered should not be assessed by a sum for hourly rates in excess of the London 1 guideline rate. I reach that conclusion because the London 1 rate is reserved for cases of the greatest complexity. There would have been an argument available to the defendants, had this case been one where costs were to be assessed on the standard basis, that the costs should be assessed by reference to the London 2 rate, having regard to the relatively straightforward issues that arose on the application. However, this is an assessment on the indemnity basis. Therefore, the test is reasonableness, and in my judgment, reasonableness requires that the costs be recovered at but at no more than the London 1 guideline rate. Whilst I fully accept that guideline rates are not fixed rates, but are the starting point, no facts or matters have been identified justifying a departure from the London 1 rate. Indeed, in effect, Mr Ayoo accepted that that was the appropriate rate to apply.

40. I am satisfied that all the attendances down to the attendances at the hearing were reasonable attendances to undertake. The hours expended were reasonable and the sums recoverable will be reasonable if recalculated by reference to the London 1 rate.

41. The next question that arises concerns attendances at the hearing. So far as that is concerned, the claimant has claimed for the attendance of three fee earners, being the A, B and C fee earners, for the whole of the hearing. That is in excess of what is reasonable. If this had been an assessment on the standard basis, reasonableness and proportionality would have dictated that counsel be attended by the B fee earner. This is an assessment on the indemnity basis however and, in those circumstances, I am prepared to accept that it is reasonable for the partner concerned rather than a Gade B

solicitor to attend the hearing. However, the attendance of both the B and the C fee earner in addition was in excess of what is reasonable, and I disallow those costs in their entirety. I permit the partner to recover 2.5 hours for attending but the sum recoverable must be recalculated, as I have said, by reference to the London 1 guideline rate.

42. I expressly enquired as to counsels' fees, but those were not challenged.

43. The issue that remains concerns the schedule of work done on documents. There are two points which arise on that. The first concerns a challenge to 25 hours of B fee earner time expended in considering the application, drafting the application notice, draft order and, more particularly, the fifth statement in support of the application. So far as that is concerned, whilst the hours which are expended are high, I take full account of the fact that this case has an extensive history including in relation to the Hong Kong proceedings. In those circumstances, with some hesitation I admit, I am prepared to allow, on the indemnity basis, the hours claimed for Item 1 in the work done on documents.

44. So far as Item 3 is concerned, different considerations apply. I am prepared to accept that, in principle, the A fee earner would have to expend time preparing ahead of the hearing that he was to attend. There is no justification whatsoever, however, for the B and C fee earners to expend 12 and 10 hours respectively in preparing for a hearing they ought reasonably not to have attended. In those circumstances, I disallow the B and C fee earner time for preparing for the hearing in its entirety. I allow the A fee earner time at 13.5 hours as claimed. That is reasonable, even if it might arguably not have been proportionate, and is all the more reasonable because he should have been the sole person attending on counsel at the hearing.

45. The only other question that arises concerns the D fee earner for whom 5.5 hours has been claimed. The D fee earner is a costs lawyer who prepared the costs schedule. The costs schedule is a superficially simple document because it reduces the sums which are claimed in respect of the claim to a series of boxes with numbers. However, it is important to remember that a significant amount of work has to be done in order to reduce the hours for which payment is claimed to the boxes in the form used for these purposes. Whilst 5.5 hours might arguably have been in excess of what was proportionate for such an exercise, I cannot conclude it was unreasonable. In those circumstances, I allow the 5.5 hours claimed for the costs lawyer as sought, but subject to re-adjustment to apply the relevant guideline rate. With those adjustments, I so assess the claimant's costs.

(Hearing continues)