Neutral Citation Number: [2024] EWHC 3087 (Comm)

Case No: CL-2023-000152

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

Released in public without reporting restrictions on 28 February 2025
Following expiry of the Seal and Gag Order

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

Date: 29/11/2024

Before :

THE HON. MR JUSTICE BRYAN

- -

Between :

Cancrie Investments Limited Sarl	**Claimant**
- and -	
Mr Zulfiqur Al Tanveer Haider	**Defendant**
- and –	
EFG Private Bank Limited	**Respondent**

- -
- -

George Hayman KC and **Duncan McCombe**
(instructed by **Lewis Silkin**) for the **Claimant**
The Respondent (represented by **Fladgate LLP**)
adopted a neutral stance and did not appear

Hearing date: 29 November 2024

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APPROVED JUDGMENT

MR JUSTICE BRYAN :

A. INTRODUCTION

1. The hearing before me today (the "Disclosure Application") is the application of the Claimant Cancrie Investments Limited Sarl (the "Claimant") for third party disclosure against the Respondent EFG Private Bank Limited ("EFG Bank") which is in a banking relationship with Mr Zulfiqur Al Tanveer Haider (the "Defendant") against whom the Claimant has a World Wide Freezing Order (the "WFO") granted by HHJ Pelling KC on 18 July 2023 (the "WFO"), the relief sought being under section 37 of the Senior Courts Act 1981 and the Court's inherent jurisdiction and/or the *Norwich Pharmacal* jurisdiction.

2. Today's hearing is the second stage in a two-stage application process by the Claimant. The Claimant first appeared before me on 15 November 2024 when I made what is known as a "seal and gag" order against EFG Bank (the "15 November Order") sealing the Court file, and prohibiting EFG Bank from, amongst other matters, informing the Defendant of this application, for the reasons set out in my judgment including, in particular, to avoid tipping the Defendant off about the application which would increase the risk of the Defendant dissipating his assets (such risk having been found previously by HHJ Pelling KC, and subsequently admitted as arising by the Defendant on his unsuccessful attempt to discharge the WFO) (the "15 November Judgment" – [2024] EWHC 2927 (Comm)).

3. The 15 November Order, the 15 November Judgment and the Disclosure Application were served on EFG Bank by email on 15 November 2024 and in person on 18 November 2024. EFG Bank subsequently instructed solicitors Fladgate LLP, and correspondence followed between Fladgate LLP and the Claimant's solicitors Lewis Silkin. This culminated in a letter dated 27 November 2024 (the "Fladgate Letter") in which it was indicated that EFG Bank would adopt a "neutral position on the substance of the relief sought" and, without intending any discourtesy to the Court, would not appear unless asked to do so by the Court. I indicated that I did not consider that to be necessary.

4. The Fladgate Letter drew attention to a number of aspects of the Disclosure Application and draft Order. I confirm that I have given careful consideration to the matters raised in the Fladgate Letter, and I will return to a number of the matters raised during the course of this judgment. I make clear at the outset that I consider that the stance adopted by EFG Bank was both realistic and appropriate in the context of the fact that EFG Bank was subject to banking confidentiality rules, and was not in a position to reveal information about those with whom it was in a banking relationship absent a court order.

5. The Disclosure Application was brought in circumstances where the Claimant says that (1) the Defendant has provided insufficient disclosure of his assets in breach of the requirements of the WFO, (2) there is an extant real risk of dissipation by the Defendant, and (3) the WFO has been, and continues to be, breached by the Defendant.

6. For similar reasons to those addressed in the 15 November Judgment in relation to the previous hearing, I ordered that today's hearing was to be held in private in circumstances where publicity would defeat the object of the hearing (as to which see

Gee on Injunctions 7th Ed, at 8-001), and the hearing was rightly made in private and without notice to the Defendant as it was necessary to secure the administration of justice and avoid the risk of the Defendant being tipped off which I was satisfied would have led to a heightened risk of the Defendant dissipating his assets so as to thwart the WFO against him.

B. THE DEFENDANT'S RELATIONSHIP WITH EFG BANK

7. It appears from the available evidence submitted by the Claimant, that the Defendant and his family have an extensive banking relationship with EFG Bank. This includes:

   (1) at least two accounts held by the Defendant (believed to be joint accounts held with the Defendant's wife) (see the sixth witness statement of Fraser Mitchell 6 ("Mitchell 6"), at paragraphs 86, 108-110);

   (2) lending secured on the only substantial asset in which the Defendant declared an interest in his affidavit of assets, as well as on other family assets in which the Claimant infers the Defendant has an interest, but which the Defendant denies (Mitchell 6, at paragraph 78); and

   (3) various investment portfolios in which the Claimant infers the Defendant has an interest, but which the Defendant denies (Mitchell 6, at paragraph 100).

C. RELEVANT BACKGROUND

8. The Claimant is the assignee of the benefit of a judgment debt arising from a judgment in the United Arab Emirates (the "UAE Judgment"). The Defendant is an individual formerly resident in the UAE, but now resident in London. The Defendant states that he was forced to leave the UAE illegally after having become the victim of a fraud which led to his wrongful imprisonment (see the First Witness statement of Richard Slade ("Slade 1"), at paragraphs 14-28).

9. By its claim, the Claimant seeks to enforce the UAE Judgment in this jurisdiction. The background to the UAE Judgment was set out by Mr Nigel Cooper KC (sitting as a Deputy High Court Judge) at [5]-[18] of his judgment in these proceedings dated 22 July 2024 following a hearing on 8-9 May 2024 (the "May Hearing Judgment"). The UAE Judgment found the Defendant to be liable to the Abu Dhabi Commercial Bank ("ADCB") in the sum of United Arab Emirates Dirham ("AED") 362,000,000 (roughly the equivalent of £81,671,000). The benefit of the UAE Judgment was assigned by ADCB to the Claimant by an assignment agreement dated 19 August 2022 (the "Assignment").

10. The Claimant issued this claim on 16 March 2023. As I already mentioned earlier, at a without notice hearing on 18 July 2023, HHJ Pelling KC (sitting as a Judge of the High Court) granted a WFO against the Defendant in the sum of £88 million, together with ancillary asset disclosure orders. This was continued in the form of undertakings given by the Defendant to the Court at the return date before Dias J on 25 July 2023 (the "Continuation Order"). Between the granting of the WFO and the hearing before Dias J, the Defendant served his Defence, and applied to strike out the claim (the "Strike Out Application").

11. The Claimant's application to continue the freezing relief (the "Continuation Application"), the Strike Out Application and a (very late) application for summary judgment issued by the Defendant (the "Summary Judgment Application") were all heard at the hearing on 8-9 May 2024 (the "May Hearing"). In the May Hearing Judgment, which was handed down on 22 July 2024, the Judge allowed the Continuation Application and dismissed both the Strike Out Application and the Summary Judgment Application. The Court accordingly made an order continuing the freezing relief against the Defendant (the "Second Continuation Order"). It also ordered the Defendant to pay the Claimant's costs of all the applications heard at the May Hearing, and that the Defendant should pay the Claimant an interim payment on account of those costs of £209,000. That amount remains unpaid. I will refer to the WFO, the Continuation Order and the Second Continuation Order collectively as the "Freezing Orders".

12. Meanwhile, on 2 February 2024, Foxton J heard an application by the Defendant to vary the freezing relief in the Continuation Order (the "Variation Application") to allow him to sell the only substantial asset in which he had admitted to having an interest in his affidavit of assets, a residential property in London ("16 Price's Court"). The application was dismissed.

13. The application for the seal and gag order before me on 15 November 2024 (the "Seal and Gag Application") was brought back to court pursuant to a liberty to restore provision in an order of Butcher J, which adjourned the application following a short hearing on 22 July 2024 ("the July Hearing"). At that hearing, the Claimant had sought determination of "wrapped up applications", namely for both the Seal and Gag Application and the Disclosure Application to be determined at the same time, both without notice to the Defendant or EFG Bank, seeking that both those applications be heard in private. Butcher J decided that the applications in that form should not be heard in private and, although expressly not deciding the point, expressed scepticism as to whether the application should be heard without notice, at least to EFG Bank.

14. In the light of that decision, the Claimant sought and obtained the adjournment of the wrapped-up application in order to consider how best to proceed. I agreed with the view of Butcher J that the Disclosure Application should have been on notice to EFG Bank, but for the reasons set out in the 15 November Judgment was satisfied that it was appropriate to hear the application for the seal and gag order in private, and having made a seal and gag order in the form of the 15 November Order, I also considered it appropriate that the Disclosure Application proceed in private as well.

D. THE DISCLOSURE SOUGHT

15. The Disclosure Application is sought on the following alternative bases:

    (1) Section 37 Senior Courts Act 1981 and/or the Court's inherent jurisdiction.

    (2) The *Norwich Pharmacal* jurisdiction.

    As to which see *Gee on Commercial Injunctions*, 7th Edn, 2022 at 23-051 and 23-058 to 23-060 and *Grant and Mumford – Civil Fraud* 2022 at 29-004.

16. In summary, the disclosure sought from EFG Bank relates to:

(1) documentation and information relating to the two specific accounts held by EFG Bank, which the Claimant understands are accounts jointly held by the Defendant and his wife Mrs Hussain;

(2) documentation and information relating to specific investment portfolios and deposits of which the Claimant is currently aware; and

(3) an order requiring EFG to identify any other accounts or deposits held at EFG Bank by the Defendant or Mrs Hussain, or financing arrangements entered into between EFG Bank and the Defendant and Mrs Hussain, of which the Claimant is not aware.

E. APPLICABLE LEGAL PRINCIPLES

E. 1 Section 37 of the Senior Courts Act / inherent jurisdiction

17. The Court has jurisdiction to make disclosure orders under s.37 of the Senior Courts Act 1981 and/or its inherent jurisdiction. This is particularly so where such disclosure orders are ancillary to a freezing injunction and are necessary, if not essential, to police the same. As Popplewell J said in *Angola v Perfectbit Ltd* [2018] 3 WLUK 76 at [8]:

> "Unless proper disclosure is given, it is impossible to police the freezing order, and if it cannot be policed, then fraudulent defendants are able to ignore the order and to breach it with impunity. Disclosure is, in almost all cases, essential in order to render effective a worldwide freezing order."

18. See also what Lewison LJ said in *JSC Mezhdunarodniy Promyshlenniy Bank v Pugachev* [2016] 1 WLR 160 (CA) at [47]:

> "So far as judicial precedent is concerned we can say with some confidence that the jurisdiction to make a freezing order also carries with it the power to make whatever ancillary orders are necessary to make the freezing order effective: *AJ Bekhor & Co Ltd v Bilton* [1981] QB 923… We were not shown any authority which places explicit limits on that power."

19. In *Mercantile Group (Europe) AG v Aiyela* [1994] QB 366 ("Aiyela"), the Court of Appeal upheld disclosure orders against a defendant's wife (a third party), against whom there was no substantive cause of action, because those orders were ancillary to a (post judgment) freezing injunction granted against the defendant (see per Hoffmann LJ at 374-375, Steyn LJ at 376-377 and Sir Thomas Bingham MR at 377). In *A v C* [1981] QB 956, Robert Goff J granted disclosure orders ancillary to a pre-judgment freezing injunction against a third-party bank which had been joined as a party purely for the purposes of such disclosure orders (see 959-961).

20. In *JSC BTA Bank v Ablyazov* [2011] EWHC 2664, Christopher Clarke J made the following observations on the application of s.37 to applications for disclosure beyond the usual orders (at [47]):

> "The jurisdiction is essentially protective: its purpose is to ensure that assets are not disposed of in (disguised) breach of the

> freezing order. It is not, I think, necessary to set a particular threshold which the claimant must cross in order to secure such an order. The order may be made if it is just and convenient to make it in order to ensure that the injunction is effective. There must, therefore, be grounds to believe that there is a real risk that the injunction may be being broken. Whether the order is in fact made is likely to depend on the strength of those grounds and the considerations which militate in favour and against making such an order. It is not a precondition of making the order that the money in question has been established to be that of the defendant. But the Court will always seek to be careful to ensure that a freezing order is not used as a weapon to oppress the defendant: *House of Spring Gardens Ltd v. Waite* [1985] FSR 173, 181."

21. Similarly, Patricia Robertson QC (sitting as a Deputy Judge of the High Court) stated in *JSC BTA Bank v Ablyazov* [2018] EWHC 1368 (Comm) at [4] that the overarching question "is whether there are sufficient grounds for concluding that disclosure should be ordered in order to ensure that the WFO can be effectively policed." In that case, the claimant sought further disclosure as to the source of the payment of the defendant's legal fees, which the defendant had said were being paid by his mother. In that context, the Judge stated at [10]:

> "This is not an application for committal. I am not deciding whether there has been a breach of paragraph 9(1) [of the order] on the footing that Mr Khrapunov is, in fact, meeting his legal expenses from frozen funds without making full and proper disclosure, as required by that paragraph. Rather, the issue before me is whether Mr Khrapunov should be ordered to make disclosure because he may be doing so."

22. The Judge then went on at [13] to cite the passage from Christopher Clarke J's judgment in *Ablyazov* as set out above, and then stated as follows at [15]-[17]:

> "15. In circumstances where the Claimant is applying for an order for disclosure, it seems to me it is for the Claimant to establish that there are adequate grounds for making the order…
>
> 16. In each of those cases, on the facts, the evidence was such as to establish "strong ground" and "good reason" (*JSC BTA Bank v Ablyazov* [2011] EWHC 2664 (Comm) at [71]) or that "there was a properly arguable case that it was likely" (*JSC Mezhprom Bank v Pugachev* [2017] EWHC 1847 (Ch) at [81]) that the funds for legal expenses were coming from funds frozen by the WFO. However, those phrases express the Court's view of the strength of the evidence before it in those particular cases, rather than setting a threshold which necessarily has to be met before an order can be made. Evidence may be such as to establish a risk which is real, and not fanciful, of a breach of the WFO, without being "strong" or making it "likely" that there is a breach of the WFO. As Christopher Clarke J put it, the strength (or otherwise)

> of the evidence is then a factor which needs to be weighed with other considerations for and against making an order.
>
> 17. Whilst, in principle, the Court will be alert to the need to police its own orders effectively, it must also be astute to prevent a WFO becoming an instrument of oppression."

23. The Court's approach to whether such orders should be made was also addressed by Jacobs J in *Public Institution for Social Security v Al Rajaan* [2020] EWHC 1498 (Comm) at [23]-[27]:

> "… Where disclosure has been ordered in support of a WFO, and it is alleged that such disclosure is inadequate, it is open to a party to apply to the court for further orders. There was some debate as to the test to be applied in relation to such an application: Mr. Weisselberg ultimately submitted that the test was whether further disclosure was 'necessary'. Mr. Lazarus submitted that the test was whether it was just and convenient.
>
> 24. I consider that, in the context of a non-proprietary claim giving rise to a freezing order, the approach of Hildyard J. in *JSC Mezhdunarodniv Promyshlenniy Bank v Pugachev (No 2)* [2015] EWHC 1694 (Ch), [2016] 1 WLR 781 at [38] – [40] is instructive. Under the heading "Test whether to order further affidavit evidence …", Hildyard J. said:
>
> > "[38] I can be brief in this context: the test is in effect whether the court is satisfied that further evidence is necessary in order to make the freezing order more effective.
> >
> > [39] As it seems to me, the court must be persuaded that there is practical utility in requiring such evidence and that it is necessary to enable the freezing order properly to be policed. It will be vigilant to prevent the abuse of seeking further evidence for some other purpose: such as to expose further inconsistencies, unduly pressurise a defendant who has already been cross-examined, yield ammunition for an application for contempt, or provide further material which might be of assistance, even if not actually deployed, in the main (foreign) proceedings.
> >
> > [40] I consider also that the court must be satisfied that a yet further round of evidence is proportionate."
>
> 25. One circumstance in which a court may be prepared to order further disclosure is where there is an obvious discrepancy between assets which were at one time held by a defendant, and the current assets disclosed in response to the disclosure order in a freezing injunction, and where there is a real possibility that there are further assets to which the freezing order may apply:

> see *FM Capital Partners Ltd. v Marino* [2018] EWHC 2889 (Comm), [2019] 1 WLR 1760, para [72].
>
> …
>
> 27. This power enables the court to make an order for the provision of information in respect of assets which are not currently within the scope of a freezing order, but where the further information may lead to their inclusion: see the decision of the Court of Appeal in *JSC Mezhdunarodniy Promyshlenniy Bank v Pugachev* [2015] EWCA Civ 139, [2016] 1 WLR 160, at [58]."

24. Jacobs J also emphasised at [19] that "Questions of proportionality will always arise" and (quoting from *Arab Monetary Fund v Hashim (No.5)* [1992] 2 All ER 911) that "the potential advantage of the order to [the claimant] 'must be balanced against the detriment to the person against whom the order was sought, not merely in terms of cost… but by way of invasion of privacy and requiring breach of obligations of confidence to others'." Jacobs J continued at [20] that: "Such a balancing exercise may more readily come down against disclosure in a case where an application is made for a disclosure exercise to be carried out by an innocent third party… than when it is made against an alleged wrongdoer."

E.2 *Norwich Pharmacal* Relief

25. The requirements for *Norwich Pharmacal* relief are summarised in *Grant & Mumford* at 29-060:

> "(1) There must have been a wrong carried out, or arguably carried out, by an ultimate wrongdoer.
>
> (2) The disclosure sought must be necessary in order to enable the applicant to bring legal proceedings or seek other legitimate redress for the wrongdoing.
>
> (3) The person against whom the order is sought must be involved in the wrongdoing in a way which distinguishes him from being a mere witness.
>
> If these threshold conditions are met, it remains a matter for the court's discretion whether to grant the order sought."

26. As to (1), the wrong arguably carried out by the ultimate wrongdoer, the relevant wrong can include a contempt of court (*Orb arl v Fiddler* [2016] EWHC 361 (Comm) per Popplewell J at [84]) or taking steps to dissipate assets (*Aiyela* (supra) per Sir Thomas Bingham MR at 377 and *Arcelormittal USA LLC v Essar Steel Ltd* [2019] 2 All ER (Comm) 414 at [159]). The threshold to which the existence of the wrongdoing must be established is equivalent to the "good arguable case" test used in freezing injunctions: *Ramilos Trading Ltd v Buyanovsky* [2016] 2 CLC 896 ("Ramilos Trading") per Flaux J at [14] and [23].

27. The recent controversy as to what that test amounts to, and whether it is to be equated with the "better of the argument" test used for service out of the jurisdiction, has been resolved by the decision of the Court of Appeal in *Unitel SA v. Unitel International Holdings BV* [2024] EWCA Civ 1109. The test remains the traditional test of "more than barely capable of serious argument, and not necessarily with a better than 50% chance of success", and so the "serious issue to be tried" is the standard to be applied. The Judge agreed with that in the May Hearing Judgment (see [72]-[88]). That was also the view of Flaux J in *Ramilos Trading*, and reflected the traditional formulation of the "good arguable case test" that should be applied in the context of *Norwich Pharmacal* applications.

28. As to (2), necessity, this is a threshold condition, not merely an element in the exercise of the Court's discretion. However, this condition must be applied flexibly. As Maurice Kay LJ said in *R (Omar) v Secretary of State for Foreign and Commonwealth Affairs* [2014] QB 112 (CA) at [30]:

> "Whilst necessity is sometimes referred to as if it were simply a matter for consideration in the exercise of discretion, in truth it is more than that. It is a test which must be satisfied if Norwich Pharmacal relief is to follow… Nevertheless, I agree with the statement of the Divisional Court in the present case (at paragraph 83) that: "the requirement of necessity is a requirement that must be dictated flexibly in the circumstances of each case." Moreover, in this context there is no practical or substantial difference between a requirement of "necessity in the interests of justice" and a test of what is "just and convenient in the interests of justice": President of the State of Equatorial Guinea v Royal Bank of Scotland International [2006] UKPC 7, per Lords Bingham and Hoffmann, at paragraph 16. The latter is no less exacting than the former."

29. As to (3), involvement in the wrongdoing, in *Ashworth Hospital Authority v MGN Ltd* [2002] 1 WLR 2033 (HL), Lord Woolf CJ said at [35]:

> "Although this requirement of involvement or participation on the part of the party from whom discovery is sought is not a stringent requirement, it is still a significant requirement. It distinguishes that party from a mere onlooker or witness. The need for involvement (the reference to participation can be dispensed with because it adds nothing to the requirement of involvement) is a significant requirement because it ensures that the mere onlooker cannot be subjected to the requirement to give disclosure. Such a requirement is an intrusion on the third party to the wrongdoing and the need for involvement provides justification for this intrusion."

30. In *NML Capital Ltd v Chapman Freeborn Holdings Ltd* [2013] 1 CLC 968 (CA), Tomlinson LJ said at [22]:

> "There has been some discussion in the authorities of the question whether facilitation of the wrongdoing is required, as

> opposed to involvement or participation. The point is discussed, albeit obiter, by Maurice Kay LJ in paragraphs 36–40 of his judgment in R (on the application of Omar) v Secretary of State for Foreign and Commonwealth Affairs [2013] EWCA Civ 118. He noted that in Norwich Pharmacal itself only Lord Reid and Lord Cross of Chelsea had spoken of facilitation, Lord Morris and Viscount Dilhorne having spoken of involvement and Lord Kilbrandon of the significance of not being merely a bystander. Founding on the speech of Lord Woolf in Ashworth as set out above, which attracted the support of the whole House, Maurice Kay LJ, with whom Lord Judge CJ and Richards LJ agreed, concluded that facilitation need not be established."

31. Tomlinson LJ went on to say at [25]-[26] that:

> "it is in my judgment clear that if the Norwich Pharmacal jurisdiction is not to become wholly unprincipled, the third party must be involved in the furtherance of the transaction identified as the relevant wrongdoing… It follows that it is important to analyse with some care in what precisely lies the alleged wrongdoing."

32. The required level of involvement in the wrongdoing by the third party was analysed in depth by Mann J in *Various Claimants v News Group Newspapers Ltd (No.2)* [2014] Ch 400. At [28], Mann J identified the question he was required to answer: "The question that I will have to determine is whether the only thing which can turn a mere witness into a discovery giver is participation or facilitation… or whether something else will work as well." Mann J analysed the authorities in depth and concluded at [52]-[54]:

> "52. If a participation or facilitation test were the sole test, incapable of expansion, Miss Rose [Counsel for the party opposing Norwich Pharmacal relief] would be correct. However, I do not think that it is the sole test. It is true that the traditional formulation of the test is in such terms, but that is because those are the usual circumstances in which someone becomes something beyond a mere witness. On the facts of the cases where orders were made, the respondent was usually in that position. In my view the answer to the question lies in recognising that what the cases are doing is contrasting two things - the mere witness on the one hand, and a person who is not a mere witness on the other. On the cases the latter class is generally described in terms of participation/facilitation, as though that were the opposite of being a mere witness. But the real analysis lies in appreciating that the courts are holding not that those factors are indeed the other side of a dichotomy, but that those factors prevent the respondent from being a mere witness. Once that is recognised then it becomes relevant to consider whether there are other facts, short of participation/facilitation, which could prevent a person from being a mere witness. That question has not arisen in the cases

> in terms, but since the real question is the scope of the mere witness rule it is relevant to consider that particular question. It has been made to arise in the present case because of its unusual facts.
>
> 53. This analysis is not heretical. It is, in my view, correct as a matter of logic and, when properly read, quite consistent with the case law. It is not inconsistent with the cases which set out the apparently narrower test, because the issue which now arises did not arise in those cases…
>
> …
>
> 54. I therefore turn to consider the relevant question which is not whether the MPS [the respondent to the application] have participated in, or facilitated, or been involved in the actual wrongdoing in this case. It is whether the MPS is a mere witness (or metaphorical bystander) or whether its engagement with the wrong is such as to make it more than a mere witness and therefore susceptible to the court's jurisdiction to order Norwich Pharmacal disclosure."

33. As to (4), discretion, in *RFU v Consolidated Information Ltd* [2012] 1 WLR 3333 (SC) the Supreme Court emphasised per Lord Kerr at [16] that a *Norwich Pharmacal* order will only be made if it is a "necessary and proportionate response in the circumstances" albeit that "The test of necessity does not require the remedy to be one of last resort". Lord Kerr discussed some of the relevant factors at [17] (citations omitted):

> "The essential purpose of the remedy is to do justice. This involves the exercise of discretion by a careful and fair weighing of all relevant factors. Various factors have been identified in the authorities as relevant. These include: (i) the strength of the possible cause of action contemplated by the applicant for the order…; (ii) the strong public interest in allowing an applicant to vindicate his legal rights…; (iii) whether the making of the order will deter similar wrongdoing in the future…; (iv) whether the information could be obtained from another source…; (v) whether the respondent to the application knew or ought to have known that he was facilitating arguable wrongdoing…; (vi) whether the order might reveal the names of innocent persons as well as wrongdoers, and if so whether such innocent persons will suffer any harm as a result; (vii) the degree of confidentiality of the information sought…; (viii) the privacy rights under article 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms of the individuals whose identity is to be disclosed…; (ix) the rights and freedoms under the EU data protection regime of the individuals whose identity is to be disclosed; (x) the public interest in maintaining the confidentiality of journalistic sources…"

34. Another potentially relevant factor is delay in seeking the relief sought (*Ramilos Trading* (above) at [221]).

35. The Court always has to consider carefully the form of any order made. As Flaux J said in *Ramilos Trading* (above) at [62]:

> "… the *Norwich Pharmacal* jurisdiction remains an exceptional jurisdiction with a narrow scope. The court will not permit the jurisdiction to be used for wide-ranging disclosure or gathering of evidence, as opposed to focused disclosure of necessary information… Furthermore, it is impermissible to use the jurisdiction as a fishing expedition to establish whether or not the claimant has a good arguable case or not."

F. WHETHER A DISCLOSURE ORDER SHOULD BE MADE

36. The Claimant submits that the balance is firmly in favour of granting the disclosure orders sought for the following reasons, which I have already addressed in some detail in my 15 November Judgment when considering whether to make the seal and gag order that I went on to make. In particular:

    (1) First, it is submitted that there is a real risk of dissipation in this case.

    (2) Secondly, it is submitted that the Defendant has not complied with his asset disclosure obligations under the Freezing Orders, it is to be inferred because he wishes to frustrate the Claimant's attempts to police those Freezing Orders.

    (3) Thirdly, it is further submitted that the Defendant has not complied with his obligations to disclose the source of the payment of his living expenses and legal fees under the Freezing Orders;

    (4) Fourthly, it is submitted that there is (at the very least) a real risk and/or a good arguable case that the Freezing Orders are being breached, constituting wrongdoing for the purpose of *Norwich Pharmacal* orders;

    (5) Fifthly, it is submitted that the disclosure sought is necessary to ensure that the Freezing Orders are effective.

37. I will address each of these issues in turn. Whilst many of the matters addressed below are also addressed in my 15 November Judgment it is appropriate to address them once again in this judgment in the context of the fact that this is the hearing of the actual Disclosure Application against EFG Bank (and upon which EFG Bank has responded with, amongst other matters, the Fladgate Letter).

Real Risk of Dissipation

38. In granting the Freezing Orders, the Court has been satisfied that there is a real risk of dissipation by the Defendant of assets in this case. This is not one of those cases where it is difficult to come to such a conclusion, and indeed HHJ Pelling KC had no difficulty finding that there was a real risk of dissipation on the basis of the evidence in the first affidavit of Prashan Patel ("Patel 1"), at paragraphs 113-143, when he granted the WFO.

39. The evidence for a real risk of dissipation has only got stronger since then, and the Defendant has in fact conceded for the purposes of the application to continue the WFO heard in May 2024 that there was a real risk of dissipation.

40. During the application for the 15 November Order (including the seal and gag order) I was satisfied that such a risk exists – see the 15 November Judgment at [21]-[22]. It is not necessary for me to repeat such findings.

Adequacy of disclosure of assets

41. In making the 15 November Order, I was satisfied that it is properly arguable that the Defendant has not complied with his asset disclosure obligations under the WFO, and that that supports the Claimant's submission that the Defendant is seeking to frustrate the Claimant's attempts to police the WFO: see the 15 November Judgment at [25]-[26].

Compliance with disclosure obligations as to the source of payment of legal fees

42. I understand that the Defendant initially made no disclosure as to the source of the payment of his legal fees (notwithstanding the terms of the Freezing Orders). The evidence before me is that it was only during the Defendant's (abandoned) request for security for costs that it emerged that his wife was allegedly loaning him the money to pay for his legal fees (see Mitchell 6, at paragraphs 57-72, and 102-106). The source of Mrs Hussain's ability to do so has still not been disclosed. In any event, it appears that even that is untrue as the evidence before me is that the Defendant's expert's fees are being paid by his son, Mr Masroor Haider (see Mitchell 6, at paragraph 71).

43. In granting the 15 November Order, I was satisfied that there was a properly arguable case—following analysis of the discussion (of the potential conflict of authorities on whether, if a respondent to a freezing injunction's legal fees are being paid by a third party, the respondent needs to disclose the source of that third party's means of doing so, and if he does not do so he is in breach of the injunction) by Birss J (as he then was) in *JSC Mezhdunarodniy Promyshlenniy Bank v Pugachev* [2017] EWHC 1847 (Ch) at [65]-[73] (who considered it sufficient that he could be satisfied "that there is a properly arguable case that the funding for this application is likely to come from funds which are frozen by the worldwide order")—that the Defendant's legal fees are being discharged from frozen funds and that the Defendant has not complied with his obligation under the WFO to disclose the source of the payment of his legal fees - see the 15 November Judgment at [29]-[30].

Compliance with disclosure obligations as to the source of payment of living expenses

44. Nothing has been disclosed by the Defendant about the source of payment of his living expenses except a Delphic reference to a single bank account (third affidavit of Prashan Patel ("Patel 3"), at paragraph 19), and even that was seemingly made as a result of pressure from EFG Bank and not voluntarily (Mitchell 6 at paragraph 39).

45. This bank account was not included in the Defendant's affidavit of assets, and it is to be assumed, therefore, that the balance in it (or the Defendant's share in that balance) was below £50,000 at that time, and is likely to have been exhausted in the 15 months since the grant of the WFO. Yet no other source of the payment of the Defendant's

living expenses has been identified and nor has he said that his living expenses are being paid by a third party.

46. Yet further, at the hearing of the Variation Application, Mr Slade (the Defendant's solicitor, who appeared as advocate for the Defendant) said that the Defendant "does nevertheless have a number of investment properties" and that this was "how he makes money on which to live". This would appear to be inconsistent with the fact that the Defendant had only disclosed an interest of any value in one such property in his affidavit of assets (namely a half-share in 16 Price's Court). The Claimant has written to the Defendant in this regard but has not received any response.

47. When granting the 15 November Order, I was satisfied that there is a properly arguable case that the Defendant has not complied with his obligation to disclose the source of payment of his living expenses, and that as a result of it being properly arguable that the Defendant has not complied with his asset disclosure obligations under the Freezing Order (both generally and in relation to the source of the payment of his legal fees and living expenses), the Claimant has limited knowledge of the Defendant's assets and is not in a position to police the Freezing Orders, without further information (which is the basis for the Disclosure Application) - see 15 November Judgment at [33]-[34].

Wrongdoing

48. Given the above, I am satisfied that there is (at the very least) a real risk and/or a good arguable case that the Freezing Orders are being breached. There is also (as the Defendant has himself conceded at least for the purposes of the Continuation Application) a real risk of dissipation of assets in this case. Both of these amount to sufficient wrongdoing for *Norwich Pharmacal* purposes.

Is the Disclosure Application necessary to police the Freezing Orders?

49. When making the 15 November Order, I was satisfied that a Court is likely to conclude that at least some of the disclosure sought from EFG Bank is likely to be necessary to police the Freezing Orders. It is for the Claimant to satisfy me, at this hearing, that the disclosure sought is necessary to police the Freezing Orders.

50. The Claimant seeks order for disclosure under three separate categories:

    (1) Details of known bank accounts;

    (2) Details of known Investment Portfolios and Deposits; and

    (3) Details of any other accounts, funds, deposits, assets or lending.

51. I am satisfied that details as to the two known bank accounts, both of which have been brought to the Claimant's attention by the Defendant, is necessary to be disclosed to provide some transparency concerning the payment of D's legal fees and living expenses. This is because, despite the Defendant being asked repeatedly, the Claimant knows little about these accounts and is none the wiser, for example, as to who is their beneficial owner; what the balances on the accounts were/are; what the source of the money is; how those accounts are replenished from time to time; whether they receive income from investment properties as indicated by the Defendant's solicitor at the

hearing before Foxton J; what the money in those accounts is used for, and whether the Defendant is operating within the restriction of the WFO that he spends no more than £20,000 a month on his ordinary living expenses.

52. I am satisfied that the disclosure sought is targeted at policing the WFO, and that it does not constitute "fishing" for evidence of breaches of the WFO (a matter raised in the Fladgate Letter). I am satisfied that disclosure sought is necessary "to ensure that the WFO can be effectively policed" (as per *JSC BTA Bank v Ablyazov* [2018] EWHC 1368 (Comm) at [4]).

53. I am also satisfied that details of known investment portfolios and deposits (which were named in lending documentation provided by the Defendant as part of his evidence when he sought to vary the WFO) are necessary to be disclosed to police the Freezing Order. Four of these (known as the EFGAM Portfolio, the Trinity House Portfolio, the EFG Deposit and the Trinity House Deposit) are mentioned in documentation emanating from EFG Bank itself (Mitchell 6, at paragraph 100). The other (known as the Holland Park Deposit) is referred to in documentation emanating from a different bank (UBS) (Mitchell 6, at paragraph 100(d)).

54. The Claimant only seeks information concerning the proceeds of the Holland Park Deposit "to the extent that they have ever been held by the Respondent". The information sought includes the identity of those that opened the portfolio, the source of funds, the signatories, any mandate, instructions to transfer amounts exceeding £20,000, and transaction statements since the date of the WFO. I am satisfied that the purpose of this targeted disclosure is to enable the policing of the asset disclosure provisions in the WFO, by providing information concerning the ownership of those investment portfolios and deposits in which the Defendant is likely to have an interest (as explained in Mitchell 6, at paragraphs 98-101) but which he has not disclosed.

55. As already foreshadowed, I do not consider that it can fairly be said that what is sought amounts to fishing for evidence that the WFO is being breached. Inevitably disclosure which may be necessary to police a freezing order may reveal evidence of breach of the freezing order, but that is not a reason not to order such disclosure if, as I am satisfied is the case here, such disclosure is necessary to police the freezing order.

56. I am also satisfied that an order requiring EFG Bank to identify any other accounts, funds, deposits or assets currently held by the Defendant or Mrs Hussain with EFG Bank, to the extent that they are not already addressed by other parts of the Order sought, is necessary.

57. The Claimant seeks the same concerning financing arrangements with EFG Bank, entered into after the granting of the WFO. I am satisfied that this is necessary in the context where the Defendant's asset disclosure has been inadequate and so the Claimant cannot be sure that the assets it has identified through its own investigations encompass all relevant assets that should be frozen. In relation to bank accounts, the Claimant seeks information concerning "Any accounts which the Defendant or Mrs Hussain (individually or jointly) hold with the Respondent or for which they are authorised signatories." (emphasis added).

58. The Claimant recognises, and has emphasised to me (as part of the duty of full and frank disclosure), that the underlined wording will also capture company and trust

accounts for which the Defendant or Mrs Hussain are not (on paper at least) the beneficial owner.

59. However I am satisfied that such orders are justified in the circumstances of the present case:

(1) First, regarding company accounts, Mr Slade and the Defendant's evidence is that the Defendant is retired and is said to be too unwell even to produce a full witness statement (Slade 1, at paragraphs 8-11, and first witness statement of the Defendant ("Haider 1"), at paragraph 2). Whilst the Claimant is circumspect as to the accuracy of such statements, if the Defendant's evidence is to be believed he should not be the signatory of any company bank accounts for trading companies or companies in which he does not have a beneficial interest. Equally, Mrs Hussain has never identified any independent source of income or wealth, despite numerous questions being asked of her in this regard.

(2) Secondly, as for trust accounts, and as was identified to me during the hearing on 15 November, one of the issues with the Defendant's asset disclosure appears to be a failure to disclose a Guernsey trust. Accordingly, the capture of trust accounts of which the Defendant or Mrs Hussain are signatories is, I am satisfied, justified notwithstanding the risk that this may also capture company and trust accounts for which the Defendant or Mrs Hussain are not (on paper at least) the beneficial owner thereof.

60. In the circumstances identified above I am satisfied that the disclosure sought will assist the Claimant in enforcing, and vindicating its rights under, the Freezing Orders, and that there is also a clear public interest in ensuring that such court orders are effective which can be furthered by making the orders sought.

Involvement of EFG Bank

61. The Claimant does not accuse EFG Bank of any wrongdoing, and does not need to do so. What is clear is that it is not a "mere witness" but rather is an entity that is in an extensive banking relationship with the Defendant and his family as a result of which it is intrinsically caught up in the Defendant's affairs and in a position to provide information that is necessary to police the Freezing Orders.

62. If, as appears likely, there have been breaches of the Freezing Orders through non-disclosure or dissipation of assets, then EFG Bank is not simply a bystander to such wrongdoing, but has (however unknowingly) been involved in it.

63. I am also satisfied that none of the information sought is likely to be relevant to the ultimate merits of the Claim. For that reason it is unlikely that if disclosure is not ordered now, it will be obtained through other mechanisms, such as via inter partes disclosure in the action, or via a witness summons or third party disclosure.

Factors militating against the relief sought

64. As part of the duty of full and frank disclosure (given that the Disclosure Application is made without notice to the Defendant, or Mrs Hussain) I have had drawn to my attention, and have given independent consideration to, matters which it is said might

militate against granting the relief sought, including the matters raised in the Fladgate Letter. I address each of these in turn. However ultimately, I do not consider that these matters, either individually or cumulatively, and to the extent they are made out, outweigh the factors I have identified in favour of grating the relief sought.

65. First, the Defendant has repeatedly argued in correspondence that the Freezing Orders have not been breached. However, such assertions have not been accompanied by full explanations or supporting evidence, and I remain satisfied, as addressed above, that there is at least a real risk and/or a good arguable case that the Freezing Orders have been or are being breached.

66. Secondly, the information sought, being private financial information, is highly confidential. The order sought also involves requiring EFG Bank to do something which would otherwise be a breach of its obligation of confidentiality to the Defendant and Mrs Hussain. However, I am satisfied that this information is only being sought because the Court has previously found (and the Defendant has accepted, at least for the purposes of the Continuation Application) that the evidence shows there to be a real risk of improper dissipation of assets by him. I am also satisfied that there are good reasons to believe that the Defendant's asset disclosure under the Freezing Orders is defective, and the Defendant (and Mrs Hussain) have failed to answer the Claimant's legitimate attempts to police the Freezing Orders.

67. Thirdly, I gave careful consideration to the fact that Mrs Hussain is not a defendant to the proceedings, and nor is she a respondent to the Freezing Orders. The orders now sought seek disclosure in relation to accounts, assets and deposits at EFG Bank which are (or may be) held in her name. However, Mrs Hussain is bound by the Freezing Orders being resident in the jurisdiction and having been served with them. I am therefore satisfied that there is (at least) a real risk that assets have been placed in her name to disguise the Defendant's interest in them. If this is the case, Mrs Hussain is sufficiently involved in the Defendant's wrongdoing to justify disclosure. This is especially so given that she is represented by the same solicitors as the Defendant and questions have repeatedly been expressly asked of her, especially as to the sources of her wealth (Mitchell 6, at paragraphs 111-113), without satisfactory response.

68. I am also satisfied that the failures to answer what Foxton J has called the Claimant's "pertinent questions" can also be laid at her door. Mrs Hussain will (in addition to the Defendant and EFG Bank) have the benefit of the Claimant's cross undertaking in damages should the grant of the order sought cause her loss, fortified in the sum of US$100,000 paid into the Claimant's solicitors client account (Mitchell 6, at paragraphs 142-145). It is not easy to comprehend how the Defendant, Mrs Hussain or EFG Bank are likely to suffer any substantial loss, but the cross undertaking and its fortification provide protection should any order not have been made and which has resulted in loss.

69. Fourthly, instead of seeking third party disclosure from a third party such as EFG Bank, the Claimant could have sought further disclosure orders from the Defendant himself, or from Mrs Hussain. However, the Defendant has already shown himself to be willing to breach the Court's existing orders in a number of respects and his asset disclosure is, I am satisfied, inadequate. The Defendant and Mrs Hussain have also repeatedly refused to engage in correspondence with what Foxton J considered to be the Claimant's "legitimate queries". I am therefore satisfied that any further orders (which would in

substance just be repeats of orders already made) against the Defendant would be unlikely to be fully effective.

70. Fifthly, I bear in mind that EFG Bank will be put to trouble and expense in responding to any order that I make. However I am satisfied that as a large international private bank, any inconvenience and cost is likely to be limited, and EFG Bank has the usual benefit of the Claimant's undertaking to pay its reasonable costs, and the costs of the application.

71. Sixthly, I have considered whether it could be said that either as a result of steps taken to acquire information from the Defendant (specifically enquiries made of the Defendant), or by reason of the very time that has passed since the WFO has been in place, any assets will already have been dissipated and so it would not be appropriate to order third party disclosure. However, there is a difference between enquiries as to assets to police the Freezing Orders, and very specific disclosure requests of the sort made in the Disclosure Application which could reveal further assets (and if asked of the Defendant could lead to further dissipation). Additionally, even if some assets may have been dissipated, I do not consider that it necessarily follows that the present case is one of locking the stable door after the horse has bolted. In cases where there remains a real risk of dissipation such as in the present case, there is no reason, in the memorable words of Cooke J, in *Antonio Gramsci Shipping Corporation & ors v Recoletos Ltd & ors* [2011] EWHC 2242 (QB) at [29], "not to shut the gate, however late the application, in the hope, if not the expectation, that some horses may still be in the field or, at the worst, a miniature pony". The same is true of seeking third party disclosure in relation to assets, even if some assets may have been dissipated. If nothing else the disclosure may reveal assets which can be traced.

72. Finally, I have given careful consideration to whether there has been any delay in the bringing of the Disclosure Application. The WFO was granted on 18 July 2023 and the Defendant's asset disclosure (albeit in an unsworn affidavit) was provided on 2 August 2023. It might therefore be argued that the Claimant should have applied for this relief earlier.

73. However, I am satisfied that there is a good explanation for the delay. The inadequacy of the Defendant's asset disclosure has taken significant time to uncover through investigation and correspondence (Mitchell 6, at paragraphs 130-133). The Claimant considered it appropriate to give the Defendant (and Mrs Hussain) every opportunity to engage with the Claimant's reasonable enquiries through correspondence before embarking on this sort of application, which I do not consider to be an inappropriate course of action.

74. It is well-known that applications such as the present are not to be embarked upon lightly and often take a considerable time to consider and prepare. Further, in the present case, the backdrop is that the Defendant had applied to strike out the claim and was opposing the continuation of the freezing relief, and so the Claimant considered (legitimately in my view) that the Court might have been reluctant to entertain or grant further orders reliant on that relief (in particular against third parties), whilst such challenges were extant. The hearing of the Strike Out Application and Continuation Application was to be listed on the first available date after 30 October 2023, but ultimately did not come on until May 2024 due to no fault on the part of the Claimant

(a delay in respect of which Foxton J expressed considerable regret given the pressures on the court list: see the Variation Application Judgment at [2]).

75. In the circumstances, I am satisfied that the Claimant was correct to consider it appropriate to await the outcome of the Defendant's challenges to the Freezing Orders and the underlying claim. The reality is that Judgment on the Claimant's Continuation Application and on the Defendant's Strike Out Application (and late filed reverse Summary Judgment Application) took considerably longer than could reasonably have been expected (see Mitchell 6, at paragraph 133). I am also satisfied that following the May Hearing Judgment being handed down, the Claimant took steps to bring this application on expeditiously. The delay between the July Hearing before Butcher J and this hearing is explained by the fact that the reasoning underlying Butcher J's decision meant that the Claimant felt unable to proceed again on an urgent basis during the long vacation, and time was needed to take stock, and bifurcate the adjourned matter into two applications, with the second following if the first was successful. On the information that I have been provided with in relation to fixing a hearing date, I am satisfied that the Claimant acted promptly to fix the first of those applications (the Seal and Gag Application).

G. THE GRANTING OF RELIEF

76. In the above circumstances, and for the above reasons, I am satisfied that it is both just and convenient, and necessary in the interests of justice, to grant the disclosure orders sought in circumstances where I am satisfied that there is a real risk and/or good arguable case that the Freezing Orders have been or are being breached, and the relief sought is necessary to police the Freezing Orders and ensure that the Freezing Orders are effective. I accordingly make the disclosure order against EFG Bank in the terms sought, subject to finalisation of the precise wording of the Order in discussion with Claimant's counsel, immediately following this judgment.

H. CONTINUATION OF THE "SEAL AND GAG" ORDER

77. The 15 November Order provided that the seal and gag order continued "until following the hearing on 29 November 2024". In the event that the Court makes an order against EFG Bank, as I have done, the Claimant seeks a continuation of the seal and gag order in order to allow time for EFG Bank to provide the disclosure ordered, and for the Claimant to consider it and take any steps that it may consider necessary, on the basis that if such an extension is not granted the very basis for the making of the order, and the obtaining of the disclosure sought, may be thwarted by the action of the Defendant should he become aware of the Disclosure Application and the relief that has been granted.

78. It is clearly appropriate for the seal and gag order to be continued, the only real question is for how long given the importance of open justice and the need for the public (and the Defendant) to be aware of the judgments that have been given, and the orders that have been made (the Court envisaging that the 15 November Judgment and this judgment will be released in public as soon as the necessity for the seal and gag order has fallen away).

79. In the Draft Order, the Claimant proposed an extension of the seal and gag order for a period of 8 weeks. In the Fladgate Letter, EFG Bank has queried whether such a period

is necessary. I have given the period anxious consideration and I am satisfied that this period is no more than the minimum which is reasonably necessary, as it allows time (1) for EFG Bank to produce the disclosure (for which 21 days is allowed in the Draft Order, to 20 December 2024), (2) the Claimant to consider that disclosure and (if necessary) prepare and make further urgent applications to the Court, and (3) (if considered appropriate) for the Claimant to get back before the Court with a view to seeking to surmount the high hurdle of persuading the Court that a further extension is necessary in the light of subsequent developments.

80. I am also mindful that these steps may take longer to carry out during the holiday period and the Court vacation, and eight weeks will expire on 24 January 2025, which is the end of the second week of the new legal term, which will allow sufficient time for the Claimant to get back before the Court if necessary and appropriate to do so.

81. As with the seal and gag order, a penal notice is included in the draft order referrable only to the seal and gag element, which I am satisfied is appropriate, and which EFG Bank can, and ought, to be able to comply with, this also being consistent with the Model Order in the Practice Guidance.

I. COSTS

82. EFG Bank, in the Fladgate Letter, requested their reasonable costs for compliance with the order as well as the costs of the Disclosure Application itself to be paid by the Claimant, "as is standard in applications for Norwich Pharmacal (or similar) relief". The draft Order as now before me states that the Claimant "shall pay the Respondent's reasonable costs of complying with paragraphs 1 and 2 of the draft Order, and the Respondent's reasonable costs of the Application" (paragraph 6), but that otherwise "the costs of the Application be reserved" (paragraph 9).

83. A claimant normally indemnifies the person giving disclosure who is not himself a wrongdoer, against costs incurred in assisting the claimant, see *Gee on Injunctions* (7th ed), at 23-059 (19), citing *Cartier International AG v British Sky Broadcasting Ltd* [2018] 1 W.L.R. 3259 ("*Cartier International*"). See also *Gee*, at 23-067, applying the principle stated by the Supreme Court in *Cartier International*, that it is the ordinary rule, absent exceptional circumstances, for the entitlement of innocent third parties who are the subject of a *Norwich Pharmacal* order to the costs of compliance. The potential advantage to the claimant of an order against third parties, such as a bank, "must be balanced against the detriment to the [third party] against whom the order was sought, not merely in terms of cost …", *Arab Monetary Fund v Hashim (No.5)* [1992] 2 All E.R. 911.

84. I am satisfied that the Claimant should bear the reasonable costs of EFG Bank in complying with paragraphs 1 and 2 of the Disclosure Order and EFG Bank's reasonable costs of the Disclosure Application, and I so order.

85. I will now finalise the Order to be made, with the assistance of counsel.