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Case No: 2008 Folio 1324
and 2010 Folio 1176

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
COMMERCIAL COURT

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 12/07/2012

Before :

MR. JUSTICE TEARE

Between :

Antonio Gramsci Shipping Corporation and others	**Claimants**
- and -	
Recoletos Limited and others including Aviars Lembergs	**Defendants**

Simon Rainey QC, Robert Thomas QC and Natalie Moore (instructed by **Clyde & Co**) for the **Claimants**
Anthony de Garr Robinson QC and Laurence Emmett (instructed by **Pinsent Mason LLP**) for **Mr. Lembergs**

Hearing dates: 16 November 2011, 13-15 February 2012 and 21 March 2012

Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

.....

Mr. Justice Teare :

1. This is an application by the Seventh Defendant ("Mr. Lembergs") challenging the jurisdiction of this court to hear and determine claims brought by the Claimants against him. In essence he says that there is no good arguable case for establishing jurisdiction over him pursuant to the Brussels Regulation. The Claimants rely upon Articles 23 and 24 of the Brussels Regulation.

2. The claim made by the Claimants against Mr. Lembergs stems from a claim brought by the Claimants against five offshore companies ("the Corporate Defendants"). Both claims arise out of what the Claimants say was a fraudulent scheme by which the Corporate Defendants chartered a number of vessels owned by the Claimants on charterparties at less than the market rate and sub-chartered the vessels at the market rate thereby depriving the Claimants of the difference between the market rate and the charter rates and keeping the profits themselves. The profits were to be used to enable Mr. Lembergs and others to purchase shares in the Latvian Shipping Company (LSC), the parent company of the Claimants.

3. The jurisdiction of this court in respect of the claim against the Corporate Defendants was established because the charterparties provided for English jurisdiction. The claim against the Corporate Defendants in respect of which the Claimants sought summary judgment was a claim for restitution of the profits unlawfully diverted from the Claimants. It was based upon the charterparties being void (on the grounds that, to the knowledge of the Corporate Defendants, LSC, who made the charterparties on behalf of the Claimants, had no authority to do so) or unlawful (being a fraud on the minority shareholders of the Claimants). These two causes of action were discussed and explained by Gross J. in his judgment upon the summary judgment application; see [2010] EWHC 1134. He refused to give summary judgment but only permitted the Corporate Defendants to defend the claim on condition that they made a substantial payment into court.

4. In due course the Claimants obtained judgment against the Corporate Defendants following their failure to make the required payment into court. The claim against the Corporate Defendants is proceeding towards a hearing on quantum.

5. The Claimants have sought, in addition, to make two individuals, Mr. Stepanovs and Mr. Lembergs, liable for the diverted profits. It is said that they, along with others, used the Corporate Defendants as a device for the purposes of diverting the profits and that the Claimants are therefore entitled to pierce the corporate veil and hold them jointly and severally liable with the Corporate Defendants. Piercing the corporate veil permits the Claimants, it is said, not only to enforce the charterparties and the resulting claims for restitution against Mr. Stepanovs and Mr. Lembergs but also to enforce the English jurisdiction clause contained in the charterparties against Mr. Stepanovs and Mr. Lembergs. The argument is that by piercing the corporate veil Mr. Stepanovs and Mr. Lembergs are revealed as the true parties to the charterparties and the jurisdiction clause contained within them.

6. The Claimants proceeded, first, against Mr. Stepanovs. He challenged the jurisdiction of this court but his application was dismissed on 25 February 2011 by Burton J.; see [2011] 1 Lloyd's Reports 647. There has been no appeal from that decision.

7. The Claimants proceeded, second, against Mr. Lembergs. On 13 April 2011 Beatson J. granted a worldwide freezing order against Mr. Lembergs. Mr. Lembergs applied for an order setting aside that order but Cooke J. refused to do so on 4 August 2011; see [2011] EWHC (2242) (QB). In his judgment Cooke J. said as follows:

> "In my judgment, however, there is a wealth of evidence which shows that the claimants have a good arguable case on the merits against Mr. Lembergs. Mr. Justice Burton found that they did have such a good arguable case against Mr. Stepanovs and, much for the same reasons – but in particular, on the evidence of Mr. Meroni, Mr. Kveps and Mr. Stepanovs, and the documents available to the court that has considered the position of both these two defendants I find the same in relation Mr. Lembergs. I proceed, therefore, on the basis that there is such a good arguable case."

8. On 24 August 2011 Mr. Lembergs issued his application which challenged the jurisdiction of the court to hear and determine the claim brought against him.

9. The Claimants' case against Mr. Lembergs is the same as their case against Mr. Stepanovs and their case that this court has jurisdiction to decide the claim which is brought against him is the same as that which Burton J. decided was good against Mr. Stepanovs. But Mr. Lembergs was not party to Mr. Stepanovs' challenge and so is not bound by the decision of Burton J.

10. Mr. Lembergs' challenge to the jurisdiction was estimated to last half a day but that estimate was most inadequate. The half day hearing fixed for 16 November 2011 was barely sufficient for the parties to make their submissions on the factual aspect of the jurisdictional challenge. The hearing had to be adjourned for submissions on the law. The arguments on the law were heard on 13-15 February 2012 but were not completed even then. They were only completed on 21 March 2012. Some matters, including the scope of Article 23 and the argument based on Article 24, were dealt with by way of written submissions only. At the same time the Court of Appeal was hearing an expedited appeal in an unrelated case which involved the question whether Burton J.'s approach to the *Stepanovs* case was correct. In those circumstances I considered that it was sensible to delay giving judgment in this matter until the Court of Appeal had given judgment. The Court of Appeal gave judgment on 20 June 2012.

The factual issue

11. The factual issue to be determined is whether there is a good arguable case that Mr. Lembergs was a beneficial owner and controller of the Corporate Defendants which were, it is said, incorporated for the purpose of diverting profits from the Claimants. This is the factual case which the Claimants must establish in order to lay the foundation for their argument that the corporate veil may be pierced.

12. It would appear from the judgment of Cooke J. dated 4 August 2011 that he has already found, in proceedings to which the Claimants and Mr. Lembergs were party, that there was a good arguable case against Lembergs and that it is therefore not open to Mr. Lembergs to seek any different finding now. This point was not taken in the Skeleton Argument of Robert Thomas QC, counsel for the Claimants who appeared at

the hearings, but he said, when asked on 16 November 2011, that he was taking the point. Laurence Emmett, counsel for Mr. Lembergs at the November 2011 hearing, said that it was not open to the Claimants to take such a point. There was no final determination of the point and new evidence has since been adduced.

13. Although there was some debate before Cooke J. on the merits of the case against Mr. Lembergs it is clear that it was known that there was to be, in the future, a jurisdictional challenge notwithstanding the prior challenge to the freezing order. In those circumstances, although Cooke J. does appear to have made a finding on the question of a good arguable case, I shall myself consider the evidence and in particular the new evidence which has been adduced by Mr. Lembergs in order to determine whether there is a good arguable case against Mr. Lembergs.

14. The evidence relied upon by the Claimants is, in essence, the evidence adduced by the Corporate Defendants on the summary judgment application against them. It was analysed in some detail by Gross J. He concluded, at paragraph 85 of his judgment:

> "First, ...the Claimants have a powerful case both in respect of Want of Authority and Illegality. Secondly, ...I would readily conclude that the Claimants have the better of the arguments thus far. Thirdly, it would not be over-stating the matter to characterise the explanation of the Scheme as "shadowy" (to use the old terminology of O.14, RSC)."

15. However, he decided not to give summary judgment because, having regard to an *ex turpi causa* defence, he could not say that the Corporate Defendants had no real prospect of defending the claim. He therefore gave leave to defend on condition that the Corporate Defendants paid a sum of money into court. They did not do so and accordingly judgment was given against them.

16. When Mr. Stepanovs sought to challenge the jurisdiction of this court against him Burton J. noted that it was common ground that Mr. Stepanovs and four others, including Mr. Lembergs, were the ultimate beneficial owners of the Corporate Defendants; see [2011] 1 Lloyd's Reports 647 at paragraph 1. He said that the evidence filed on behalf of the Corporate Defendants was to the effect that the Corporate Defendants were "merely used as vehicles for the 63 chartering transactions in which the Corporate Defendants were interposed between the Claimants and third parties" and that decisions were taken by an informal organisation with regular meetings, called the Table, of which Mr. Stepanovs and Mr. Lembergs and the other beneficial owners, were the dominant members: see paragraph 3. He also noted that on the Claimants' case the Corporate Defendants "had no independent or non-fraudulent existence.....because the company was set up for that very purpose, in order to abuse the company's structure": see paragraph 15.

17. These findings are not binding upon Mr. Lembergs. He submitted that the evidence relied upon by the Claimants against Mr. Stepanovs was not sufficient to establish a good arguable case against him. He also adduced evidence which had not been before either Gross J. or Burton J. The principal evidence adduced by Mr. Lembergs on this application consisted of statements from Mr. Lembergs dated 23 August 2011, 28 October 2011 and 7 November 2011, a decision of a Latvian criminal court which recorded certain testimony and a number of affidavits from other persons. At the

hearing on 13 February 2012 I gave leave for 5 additional pieces of documentary evidence to be adduced.

18. There is certainly evidence implicating Mr. Lembergs as a controller of the Corporate Defendants. Thus Mr. Paderov, a Latvian national who has known Mr. Lembergs since 1980, and is the sole shareholder of the Corporate Defendants, has said in his first affidavit dated 24 March 2009 that Mr. Lembergs "approved the arrangements" and that "nothing could have been done within the Ventspils Group without Lembergs' approval." He also gave evidence that Mr. Lembergs was one of the beneficial owners of the Corporate Defendants. Having identified Mr. Lembergs as one of the individuals behind the Ventspils Group he said that "the ultimate beneficial owner of each of the defendants was at all material times and continues to be the Ventspils Group." Whilst the language used by Mr. Paderov was not as precise as it might have been there is no doubt that he has implicated Mr. Lembergs as a beneficial owner and controller of the Corporate Defendants.

19. Mr. Paderov gave evidence that he set up the Corporate Defendants at the request of the Ventspils group "for the purpose of carrying out the Charters." This seems to me to be clear evidence supporting Burton J's observation that the Corporate Defendants were set up for the "very purpose" of utilising their corporate structure to divert profits away from the Claimants. (As was pointed out by Mr. de Garr Robinson QC at the hearing on 13 February 2012 there is evidence in the fifth affidavit of Ms. Glebova that the Corporate Defendants had funds from charters not involving the Claimants and from ship repair work. Whilst this is evidence that the Corporate Defendants had funds other than those derived from the charterparties involving the Claimants it is unlikely that this evidence was intended to be read as denying the truth of Mr. Paderov's statement as to the reason why the Corporate Defendants were incorporated since both Mr. Paderov's evidence and Ms. Glebova's evidence were adduced by the Corporate Defendants.)

20. Mr. Kveps, a lawyer who acts for four of the beneficial owners of the Corporate Defendants but not for Mr. Lembergs, also provided evidence by affidavit. He said in his first affidavit dated 24 March 2009 that Mr. Lembergs was a beneficial owner of, and led, the Ventspils Group although he had transferred his interest to his children. He said that the Table consisted of about 12 individuals including his clients and Mr. Lembergs. The Table was said to control the Corporate Defendants.

21. The evidence relied upon by the Claimants was summarised by Mr. Thomas in his Skeleton Argument for the hearing on 16 November 2011 at paragraph 69. I am not sure that the evidence justifies the description of being "clear and detailed" but it is evidence from a number of individuals that Mr. Lembergs, as a beneficial owner and controller of the Corporate Defendants, was one of the masterminds behind the scheme to divert profits from the Claimants in order to provide funds for the purchase of shares in LSC. The evidence is that adduced by the Corporate Defendants and is, as Mr. Thomas accepted in paragraph 79 of his Skeleton Argument, the only evidence the Claimants have. It is readily understandable why Gross J., having considered that evidence, described Mr. Lembergs as the "leader" of the Ventspils group and why Cooke J. said that there was "a wealth of evidence which shows that the Claimants have a good arguable case on the merits against Mr. Lembergs". However, Mr. Lembergs has now put in evidence his own statements, albeit late. These statements were not before Cooke J.

22. In his first statement dated 23 August 2011 Mr. Lembergs has said that he does not and has never controlled the Corporate Defendants, that he is not and has never been a beneficial owner of the Corporate Defendants and that he has never received any benefits related to the alleged charterparty fraud. He said that certain persons, including Mr. Stepanovs, had political motives to slander him and that Mr. Kveps represents them. He said that it was his own son Anrijs who had uncovered the fraud. Thereafter he learnt that Mr. Stepanovs had misappropriated many tens of millions USD. Mr. Stepanovs and that Mr. Kveps had decided to implicate Mr. Lembergs in the fraud. Mr. Lembergs has thus denied the allegations against him in trenchant terms.

23. The decision of the Latvian Court dated 6 October 2011 records that Mr. Skoks, Mr. Sevcovs and Mr. Berkis (who are also said to have been beneficial owners of the Corporate Defendants and party to the fraud) testified that they had not been involved in the alleged fraud. In particular, whereas Mr. Kveps had stated in an affidavit dated 24 March 2009 that the charterparties had been arranged by an informal group of individuals known as "the Table" which included Mr. Lembergs and, in a subsequent affidavit dated 19 June 2009, that the Table was subsequently "legalised" as the Business Development Association, the aforesaid three individuals (whom Mr. Kveps named as his sources along with Mr. Stepanovs) testified to the Latvian court that the Business Development Association never dealt with chartering.

24. It was therefore submitted that Mr. Kveps' evidence was fundamentally unreliable because it was not supported, indeed was denied, by those stated to have been Mr. Kveps' sources. Moreover, whilst Mr. Kveps said that the fraud was hatched at "informal" meetings it was clear (it was said) from certain documents that the meetings were not informal in that there were minutes of the meetings.

25. In an affidavit dated 27 September 2011 Mr. Pumpurs, who had participated in meetings of the Business Development Association, said that chartering was never discussed. In an affidavit dated 10 October 2011 Mr. Solomatins, who also attended meetings of the Business Development Association, said that chartering was not discussed, still less a scheme to divert profits away from the shipowners.

26. In a long witness statement dated 28 October 2011 Mr. Lembergs addressed the allegations which had been against him and dealt with each in some detail. In particular he suggested that Mr. Stepanovs (and others) were behind the fraud, that he had not met Mr. Paderov for some 20 years, and that Mr. Kveps has been charged with fraud in Latvia.

27. It is thus apparent from the evidence of Mr. Lembergs that whilst he vehemently denies being involved in the alleged fraud he does not appear to advance a positive case that the fraud did not take place.

28. Mr. Emmett made very detailed written submissions on the evidence at the hearing on 16 November 2011 (extending over some 20 pages) and at the further hearing on 13 February 2012 Mr. Anthony de Garr Robinson QC took the opportunity to make further submissions as to the suggested unreliability of the evidence against Mr. Lembergs (extending over 11 pages). Mr. Thomas has provided 14 pages of written submissions commenting upon the 5 additional pieces of documentary evidence

adduced by Mr. Lembergs on 13 February 2012 and summarising his case on the facts, to which Mr. Robinson has replied with a further 3-4 pages.

29. The test of what constitutes a good arguable case when jurisdiction is in issue was considered by Waller LJ in *Canada Trust v Stolzenberg (No.2)* [1998] 1 WLR 547 at p.555. He pointed out that where the point at issue was one which would be the subject of argument at trial the court "must be concerned not even to appear to express some concluded view as to the merits". He also observed that:

> "the "good arguable case" test, although obviously applicable to the ex parte stage, becomes of most significance at the inter partes stage where two arguments are being weighed in the interlocutory context which, as I have stressed, must not become a "trial". "Good arguable case" reflects in that context that one side has a much better argument on the material available. It is the concept which the phrase reflects on which it is important to concentrate i.e. of the court being satisfied or as satisfied as it can having regard to the limitations which an interlocutory process imposes that factors exist which allow the court to take jurisdiction."

30. This approach was approved by Lord Steyn in the House of Lords in that case (see [2002] 1 AC 1 at p.13) and by Lord Rodger in the Privy Council in *Bols Distilleries v Superior Yacht Services* [2007] 1 WLR 12 at para.28.

31. In the present case there is a plain conflict of evidence on the factual issues relevant to the Claimants' case on jurisdiction. Mr. Emmett, junior counsel for Mr. Lembergs, stressed the following considerations at the hearing on 16 November 2011. The Claimants' case against Mr. Lembergs arises from the response of the Corporate Defendants to the claim against them. In that response it was said that LSC, which owned the shares in the Claimants, had approved the charterparties alleged to be fraudulent because their business was controlled by the Table as explained by Mr. Kveps and others. Mr. Emmett said that that evidence must be rejected because it had been denied by some of those on whose behalf it had been given. In this regard reliance was placed on the testimony recorded in the Latvian decision. Mr. Emmett also said that a crucial part of Mr. Kveps' evidence, that Mr. Lembergs controlled LSC, was not accepted by the Claimants and therefore Mr. Kveps must be, on the Claimants' own case, a dishonest witness. Further, Mr. Kveps' evidence as to how the Table was operated is contradicted by Mr. Solomatins and Mr. Pumpurs and by records which show that the table did not operate "informally". Mr. Emmett also stressed (a) that there is no unequivocal statement in the evidence relied upon by the Claimants that Mr. Lembergs was the beneficial owner or in control of the Corporate Defendants (and in this regard he examined the evidence minutely, particularly with regard to what is meant by the "Ventspils Group"), (b) that there is no evidence that Mr. Lembergs benefitted from the alleged fraudulent scheme and (c) that Mr. Kveps himself states that Mr. Kveps' control of the Corporate Defendants ended in or around 2004 when it is said that the fraudulent scheme continued into 2005. Mr. de Garr Robinson QC, at the hearing on 13 February 2012, added that it was unclear which parts of Mr. Kveps' evidence were said to be first-hand knowledge and which parts were said to be based upon and information and belief. Further, it was unclear what

his sources of information and belief were. Similar points were made as to Mr. Paderov's evidence. By contrast Mr. Lembergs' evidence was largely first-hand.

32. Mr. Thomas QC, counsel on behalf of the Claimants, accepted that the court had to be satisfied that the Claimants had the better of the argument but said that the court could not conduct a trial of the evidential issues at this stage or require the Claimants to establish their case on the balance of probabilities on the material available. In his most recent written submissions (commenting upon the 5 pieces of additional evidence adduced by Mr. Lembergs) he emphasised the concept of a good arguable case and noted Waller LJ's guidance that the Court has to be satisfied or as satisfied as it can be, having regard to the limitations which an interlocutory process imposes, that "factors exist which allow the Court to take jurisdiction." Mr. Thomas said the evidence relied upon by the Claimants, to which Cooke J. had referred as a "wealth of evidence," was sufficient to show that the Claimants had the better of the argument. He did not accept that Mr. Kveps had lied (with regard to Mr. Lembergs being in control of LSC) but even if part of his evidence was wrong it did not follow that the whole of his evidence was wrong. He said that it was not surprising that certain of "the Table" (who, on the Claimants' case, were fraudsters) had denied the allegations against them. He suggested that the evidence of Mr. Pumpurs and Mr. Solomatins was of poor quality because it was unclear to what period of time their evidence related. He said the evidence of Mr. Paderov, which implicated Mr. Lembergs, was very clear.

33. Mr. Thomas drew my attention to certain documents which contradicted Mr. Lembergs' denial of any interest in Hinch, a company which is shown in the Annex to the judgment of Gross J. as owning 62% of Regina, which was said to own 50% of Ojay and Eastgate which in turn were said to own 27.5% of LSC. I was shown a document dated 2 July 2001 in the name of Mr. Lembergs which authorised the purchase of shares in Regina in the name of Hinch and the certificate of a director of Hinch dated June 30 2006 stating that the ultimate beneficial owner of Hinch was Mr. Lembergs. Although, as counsel for Mr. Lembergs has pointed out, the fraudulent scheme which lies at the heart of the Claimants' case was allegedly put into practice between 2003 and 2005, these documents do tend to cast doubt on the veracity of Mr. Lembergs' statement in his affidavit sworn on 23 August 2011 that "I am not a shareholder of company Hinch. I have not realised and do not realise control over this company." At the very least they suggest that he may not be telling the whole truth about his involvement with Hinch.

34. In this case the factual issue is whether or not Mr. Lembergs was a beneficial owner of the Corporate Defendants with control over them who had brought about their incorporation with a view to effecting the alleged fraudulent scheme. That issue is relevant *both* to the jurisdictional gateway (did Mr. Lembergs agree to the English jurisdiction in the charterparties ?) *and* to an issue in the trial (was he party to the charterparties such that he is liable in restitution in respect of them jointly and severally with the Corporate Defendants ?).

35. How the principle in *Canada Trust* should be applied in such a case has been the subject of judicial discussion in a number of cases: see *Petroleum Investment Co. Ltd. v Kantpan Holdings* [2002] 1 AER (Comm) 124 at paragraph 38 per Toulson J., *Konkola Copper Mines PLC v Coromin* [2006] 1 Lloyd's Reports 410 at paragraphs 74-86 per Rix LJ., *WPP Holdings Italy v Benatti* [2007] 1 WLR 2316 at paragraphs 37-44 per Toulson LJ., *Cherney v Deripaska* [2008] EWHC 1530 (Comm) at

paragraphs 19-44 per Christopher Clarke J. and *Cecil v Bayat* [2010] EWHC 641 (Comm) at paragraphs 30-36 per Hamblen J.

36. In *Konkola Copper Mines* Rix LJ described the application of the "Canada Trust gloss" in a case where there is a factual dispute relevant both to jurisdiction and the trial of the action as "difficult". In *Cecil v Bayat* Hamblen J. considered that where the issue of jurisdiction depended upon disputed evidence there were "difficulties" with the "Canada Trust gloss". I respectfully agree. In such a case there is a risk that an enquiry as to who has the better of the argument will lead to the court forming a view as to the merits of the very issue to be determined at trial on the basis of much fuller evidence than is available at the interlocutory stage. Yet it is plain from *Canada Trust* that there cannot be a trial at the interlocutory stage. Consideration of the evidential points made by counsel in this case (which I have summarised above) comes very close to the court conducting a trial of the respective strengths and weaknesses of the evidence relied upon by both parties. Rix LJ observed that "in such a case [where the jurisdictional issue reflected an issue at trial] it seems to me that the Waller LJ's warning about avoiding even the appearance of pre-trying the central issue move to centre stage."

37. In *Cherney v Derapaska* Christopher Clarke J. considered this issue and concluded that the "Canada trust gloss" nevertheless applied. He had particularly in mind that:

> "In granting permission to serve out of the jurisdiction the court is exercising an exorbitant jurisdiction over those who are not within its ordinary reach. In those circumstances the court is, as it seems to me, justified in applying the good arguable test in that manner in order to avoid the risk of compelling individuals or companies to submit to a jurisdiction to which they ought not in truth to be made subject. "

38. He concluded in these terms:

> "I do not regard this as introducing by the back door a requirement that a claimant seeking permission should prove his case on the balance of probabilities. The Court is concerned, at this stage, with the *arguments* in favour of the respective parties in the light of the material then tendered. Whilst the Court is entitled to reject the wholly implausible, what it will be concerned with is the relative plausibility of the contentions. Proof on the balance of probabilities would require a finding of fact, not a decision about the strength of arguments, and would probably require the availability of oral evidence and discovery. "

39. I am, with respect, not sure that concentrating on *arguments* avoids the difficulty in applying the "Canada trust gloss" where the arguments depend upon consideration of rival evidence (albeit written not oral). The Court is still at risk of appearing to conduct a trial prior to the trial itself. However, as was pointed out by Hamblen J. in *Cecil v Bayat* this approach has been adopted and applied by the Court of Appeal in *Sharab v Al Saud* [2009] EWCA Civ 353 and accordingly I am bound to apply the "Canada Trust gloss" whilst being careful not to prejudice the determination of the

factual issue at trial. The "Canada Trust gloss" does however advise the court to concentrate on whether the court is "satisfied or as satisfied as it can be having regard to the limitations which an interlocutory process imposes that factors exist which allow the court to take jurisdiction." It seems to me that in a case where there is, in the main, a conflict of evidence which cannot be resolved without appearing to conduct a pre-trial it is particularly important that the court asks itself whether factors exist which allow the court to take jurisdiction.

40. In the present case there does not appear to be any issue as to whether the interposition of the charters between the Claimants and the Corporate Defendants was a scheme to divert profits away from the Claimants. The issue is as to whether Mr. Lembergs was party to that scheme as one of the beneficial owners and controllers of the Corporate Defendants. The evidence that Mr. Lembergs was a powerful politician who was involved with Ventspils port does not appear to be in dispute. Mr. Paderov described Mr. Lembergs as very influential in the Baltic shipping industry and Mr. Lembergs' own statement dated 28 October 2011 confirms that in the years 2003-2005 he held a number of positions in Latvian institutions and non-governmental organisations, including being Chairman of the Board of Business Development Association. However, Mr. Lembergs states that it is absurd and ridiculous to say that he is an important player in the shipping industry. Mr. Paderov (and others) say that Mr. Lembergs was one of the beneficial owners and controllers of the Corporate Defendants but Mr. Lembergs firmly denies that allegation. He says that Mr. Stepanovs and others were the beneficial owners and controllers of the Corporate Defendants.

41. There are weaknesses in the evidence of both parties. A weakness in the evidence against Mr. Lembergs is that Mr. Paderov states that Mr. Lembergs was also in control of the LSC, the holding company of the Claimants, an allegation which the Claimants accept is untrue. A weakness in the evidence of Mr. Lembergs is his denial of an interest in Hinch when there are documents showing that he had such an interest in 2001.

42. As is apparent from the lengthy written submissions on the facts there are many points which can be made for and against the reliability of the evidence of both parties. Where the factual dispute is as stark as it is in this case it is difficult to say that the Claimants have a much better argument on the material available. They have several witnesses to support their case but Mr. Lembergs has given evidence in support of his case and has given reasons as to why the Claimants' evidence is not reliable. Whilst the Claimants may well succeed in establishing their case at trial after their witnesses have been cross-examined I do not consider that I am able to say now, on the material available, that they have the better of the argument. The arguments of the Claimants and Mr. Lembergs are equally plausible. This is not a case where, on the material presently available, the Claimants can say that the contemporaneous documents support their case (save with regard to Mr. Lembergs' ownership of Hinch).

43. The 5 additional pieces of documentary evidence adduced by Mr. Lembergs do not materially alter the overall shape or strength of the competing arguments.

44. In the result, whilst the Claimants are able to adduce evidence from several individuals in support of their case, that evidence is contradicted by Mr. Lembergs. That dispute will only be resolved by reference to the contemporaneous documents

(which have not yet been produced) and/or by the testing of the evidence on both sides by cross-examination (which will not take place until trial). I am unable to say that either party has the better of the argument on the material presently available.

45. If the "Canada Trust gloss" required the Claimants to have the better of the argument at the interlocutory stage in all cases then Mr. Lembergs' jurisdictional challenge would succeed. But I am not persuaded that that test must be satisfied in a case where there is a stark dispute between opposing witnesses. To seek to judge who has the better of the argument on such evidence risks a pre-trial at the interlocutory stage. In order to avoid doing so it is preferable, in my judgment, to concentrate on whether factors exist which allow the court to take jurisdiction. That will oblige the court to consider whether the evidence relied upon by the claimant has sufficient strength to allow the court take jurisdiction. Such an approach is, it seems to me, consistent with the "Canada Trust gloss".

46. This approach is supported by the following observation of Toulson J. in *Petroleum Investment Co. Ltd. v Kantpan Holdings* [2002] 1 AER (Comm) 124 at paragraph 38:

> "When the subject matter involves questions of fact on which the evidence is incomplete or contradictory, it may be very difficult for a court to form even a preliminary view as to the parties' rival strengths. Reading Waller LJ's judgment as a whole, I do not understand him to be suggesting that in such a case the court has to be satisfied that the evidence on the claimant's side is stronger than the evidence on the defendant's side in order for the claimant to make out a good arguable case, for that would be in effect to apply the civil standard of proof, which he emphasised is not applicable at the interlocutory stage. "

47. This approach is also consistent with the following observation of Toulson LJ in *WPP Holdings Italy v Benatti* [2007] 1 WLR 2316 at paragraph 44:

> "There might be a case in which, because of the limitations imposed by the interlocutory process, the court found it impossible to form a positive view which side had the better argument. ... I would not exclude the possibility that application of the principle in the *Bols* case might lead a court to conclude that if the case for jurisdiction was as good as the case against jurisdiction, and that it was not possible to reach any firmer conclusion without conducting a mini-trial, in those circumstances factors would exist which would allow the court to take jurisdiction.

48. In the present case the evidence relied upon by the Claimants appears to me to have sufficient strength (assuming the Claimants' argument on the law is correct which I have yet to consider) to allow the court to take jurisdiction notwithstanding that, by reason of the conflict of evidence and the limitations imposed by the interlocutory process, I am unable to conclude that the Claimants have the better of the argument.

<u>The legal issue</u>

49. It is now necessary to consider the law, namely, whether the Claimants are entitled to raise the corporate veil so that Mr. Lembergs (and the other beneficial owners of the Corporate Defendants) may be revealed as the true parties to the charterparties including the jurisdiction clause contained within them.

50. Burton J. held, when dismissing the jurisdictional challenge by Mr. Stepanovs, that the Claimants' case on the law was correct, or arguably correct: see *Antonio Gramsci and others v Stepanovs* [2011] 1 Lloyd's Reports 647 at paragraph 26.

> "There is in my judgment no good reason of principle or jurisprudence why the victim cannot enforce the agreement against both the puppet company and the puppeteer who, all the time, was pulling the strings."

51. However, Arnold J. has disagreed with that decision. In *VTB Capital PLC v Nutriek International Corp. and others* [2011] EWHC 3107 (Ch) Arnold J. had to consider, inter alia, an application to set aside permission which had been given to VTB to serve proceedings out of the jurisdiction on Nutriek. VTB's claim against Nutriek was a claim in tort for damages caused by fraudulent misrepresentations which had induced it to enter into an agreement with Russagroprom LLC ("RAP"). VTB sought to amend its particulars of claim to advance a claim under the agreement against certain other parties on the basis that they were jointly and severally liable with RAP under the agreement. Its primary motive in seeking to do so was to provide an alternative basis for establishing jurisdiction against Nutriek. If the court had mandatory jurisdiction against the other parties then Nutriek would be a necessary or proper party to that claim: see paragraph 67 of Arnold J.'s judgment. Arnold J. noted that the contractual measure of damage would be substantially more than VTB could claim in tort: see paragraph 68 of the judgment.

52. The basis upon which it was said that the other parties were jointly and severally liable with RAP on the contract was that they controlled RAP and used RAP as the corporate vehicle to enter into the agreement. This was an improper use of the company structure of RAP because it was used as a device or façade to conceal the wrongdoing of the other parties. Nutriek and the other parties resisted this argument saying that even if the factual allegations were true VTB's contract claim against the other parties was unsustainable in law. VTB relied upon Burton J.s decision in *Antonio Gramsci v Stepanovs and others* but Nutriek and other parties said that decision was wrong and should not be followed. Having reviewed the authorities Arnold J. concluded that he could not agree with the reasoning of Burton J. or with the result to which it led: see paragraph 96 of his judgment.

53. Arnold J.'s decision in *VTB Capital PLC v Nutriek International Corp. and others* has been appealed. As I have already noted, it seemed to me appropriate to await the decision on that appeal before concluding my judgment in this matter.

54. The Court of Appeal has concluded that Burton J's decision was wrong and should be overruled: see *VTB Capital PLC v Nutriek and others* [2012] EWCA Civ 808 at paragraph 96. The reasoning of the Court of Appeal was summarised, so far as is material, in this way:

"88. We come to our conclusions on the appeal against Arnold J's refusal to allow the amendment. We respectfully consider that Arnold J was correct to hold that the contract claim that VTB wishes to advance against the three defendants is not founded on a cause of action known to English law. We can also identify no principled basis upon which the law might be incrementally developed so as to recognise such a claim. We consider that Arnold J was right to refuse the amendments.

89. First, we derive no assistance from any analogy with the law relating to undisclosed principals. That corner of the law of contract is recognised as anomalous and we are unable to draw from it any guidance that can be said to assist, let alone support, Mr Snowden's essential submission. At least one reason why it does not is that the undisclosed principal can neither sue nor be sued unless the agent entering into the contract on his behalf did so with his authority. On the assumed facts of the present case, there is no question of the puppeteers having authorised the puppets to enter into the contracts on their behalf, whether expressly or impliedly, or by any means of apparent or "usual" authority. Therefore there is no analogy with the position of an undisclosed principal. The question that the appeal poses for us must, we consider, be answered by reference to considerations of more general principle.

90. Second, ... VTB's submission amounts to the proposition that there is a principle of English law that a person can be held to be a party to a contract when, assessed objectively, none of the undisputed parties to the contract had any thought that he was, let alone an intention that he should be. In our judgment, to accede to VTB's submission would be to make a fundamental inroad into the basic principle of law that contracts are the result of a consensual arrangement between, and only between, those intending to be parties to them. It is contrary to that principle, which is applicable save in some exceptional cases, none of which applies here, that a stranger to the contract should be held to be a party to it.

91. Third, whilst we accept that the court can, in an appropriate case, "pierce a company's corporate veil" and, in doing so, substantially identify the company with those in control of it, no authority has been cited to us, apart from Burton J's decisions in *Gramsci* and *Alliance*, that supports the proposition that, once the veil is pierced, the court either does or can (or that it is arguable that it does or can) proceed in consequence to a holding either that the puppet company was a party to the puppeteer's contract, or vice versa. As we have said, we interpret Burton J as having regarded *Gilford* and *Jones* as cases in which the remedies against the companies were granted on the basis that they were themselves parties to

the individuals' contracts. We respectfully regard that as a misreading of both cases.

92. We of course recognise the logic of Mr Snowden's proposition in relation to *Gilford* and *Jones* that, if the remedies of an injunction and specific performance were to be granted against the companies, it was necessary for such orders to be underpinned by the existence of recognisable causes of action against them. We nevertheless do not regard the orders made against the companies in either case as premised on the basis that there was a cause of action in contract against them. Neither court so explained its decision. We regard the order made in *Gilford* as having been based on the conclusion that, for the reasons we have given, it was convenient to make an order against the company directly. The latter explanation is also clearly the basis on which Russell J made his order in *Jones*. Our consideration of the reported authorities leads us to the conclusion that, in a case in which it is thought appropriate to pierce the veil, any order made in consequence of such veil piercing is by way of the exercise by the court of a discretionary jurisdiction. We do not see how else the orders against the companies in *Gilford* and *Jones* can be explained. Neither case supports VTB's proposition that the judicial piercing of the veil of a company that an individual has used with a view to masking his own breach of contract results in the court treating the company as itself a party to that contract. Insofar as the starting premise for Burton J's decisions in *Gramsci* and *Alliance* was to a different effect, we have indicated our disagreement with it. It follows that we also respectfully regard as wrong Burton J's extension of the decisions in *Gilford* and *Jones* to embrace the proposition that there is a good arguable case in law for the conclusion that, if the puppet can have the puppeteer's contract imposed on it, so can the puppeteer have the puppet's contract imposed on him.

93. Fourth, we respectfully consider that Mr Snowden's submission is flawed by its own inherent unreality. His proposition is that, once the corporate veil is lifted and the *true facts* are revealed, such facts will require the court to conclude that the puppeteers are additional parties to the contracts into which they have procured the puppet to enter. We do not understand this. It is inconceivable that the revelation of the true facts will show Marcap BVI, Marcap Moscow or Mr Malofeev to be parties to either of the relevant contracts. It will at most show no more than that they induced VTB to enter into the relevant contracts by dishonest deception. The suggestion that the application of the veil piercing principle to the facts will require the court to find that these three defendants were original, additional parties to the contracts is nothing more than an appeal to the court to decide the case on the basis of pure

fiction. No authority, *Gramsci* and *Alliance* apart, supports the view that that is something the court might or should do.

94. Fifth, there remains a question as to whether, even if founded on mistaken reasoning, *Gramsci* and *Alliance* anyway represent a principled development of the law that this court should adopt. We have said enough to show that we consider that they do not. The "veil piercing" cases show that the principle is, in its application, a limited one, which has been developed pragmatically for the purpose of providing a practical solution in particular factual circumstances. The reported authorities certainly proceed on the basis that (in the usual case) the puppet company and the controlling puppeteer are to be closely identified, an identification that will or may be regarded as justifying the grant of a judicial remedy against the puppet as well as the puppeteer, if only on the basis that it will be just and convenient to do so. They do not, however, go to the length of treating the puppet company as other than a legal person that is formally distinct and separate from the puppeteer; and, were they to do otherwise, they would wrongly be ignoring the principles of *Salomon.* Consistently with that, they do not provide any basis for the proposition that the puppeteer should be regarded as having always been a party to a contract to which it or he plainly was not a party.

95. Not only do we not regard the common law as recognising the principle for which VTB contends, we are also not persuaded that it would be a principled development of the law for us to recognise it by our decision in this appeal. Any such development would not be a modest development of existing principle. It would, in substance, amount to the adoption by the courts of a jurisdiction to subject parties to contractual obligations under a contract to which neither they, nor the only undisputed parties to the contract, had ever agreed or intended that they should be subject. Yet further, if, which we question, it would ever be appropriate to develop any such principle, we do not regard this case as the right one in which to do so. There is no need to do so. Mr Snowden submitted that English law needs the tools to deal with commercial fraud. In principle, we agree. But if VTB's factual assertions are well founded, English law already provides it with a perfectly good remedy against the defendants, by way of a claim in the tort of deceit for the wrong which it claims they have inflicted upon it. There is no good policy reason for inventing and giving it an artificial remedy in contract, which VTB does not need, but which it merely invokes in support of its claim that the English courts should assume jurisdiction in its claims. In this context, Mr Lazarus referred us to the cautionary words of Lord Goff of Chieveley in *Kleinwort Benson Ltd v. Lincoln City Council* [1999] 2 AC 349, at 378A to D, as to the manner in which the

> judges do or should develop the common law. We have had regard to them.
>
> 96. We are conscious that we have not referred to Arnold J's full and careful reasons for declining to follow and apply Burton J's decision in *Gramsci.* We intend no discourtesy to the judge if we do not extend this part of our judgment yet further by setting out and discussing his reasons. We say simply that, for the reasons we have given, which are similar in substance to those expressed by him, we respectfully agree with his conclusion that, contrary to the view favoured in *Gramsci,* VTB's proposed contract claim is unsustainable as a matter of law. We therefore dismiss the appeal against his refusal to allow the amendments; and, to the extent that *Gramsci* and *Alliance* provide support for the view that the proposed amendments assert a cause of action for the reasonableness of which there is a good arguable case, we overrule them as having been wrongly decided."

55. I am bound to follow this decision of the Court of Appeal. It must follow that the Claimants, even if they establish their factual case, cannot show that they have a good arguable case against Mr. Lembergs on the law. Their case against him is based upon him being party to the charterparties and to the jurisdiction clause contained in them. However, although that case is supported by the decision in the *Stepanovs* case, that decision has been clearly overruled as wrong in law. I am grateful for the careful and extensive arguments addressed to me on this issue but in circumstances where the Court of Appeal has expressly overruled Burton J.'s decision it seems to me that no useful purpose can be served by any further consideration of this question by me.

Article 23 of the Brussels Regulation

56. Extensive arguments were addressed to me in writing with regard to the scope and application of article 23 of the Brussels Regulation which provides:

> "Article 23
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> 1. If the parties, one or more of whom is domiciled in a Member State, have agreed that a court or the courts of a Member State are to have jurisdiction to settle any disputes which have arisen or which may arise in connection with a particular legal relationship, that court or those courts shall have jurisdiction. Such jurisdiction shall be exclusive unless the parties have agreed otherwise. Such an agreement conferring jurisdiction shall be either:
>
> (a) in writing or evidenced in writing; or
>
> (b) in a form which accords with practices which the parties have established between themselves; or

> (c) in international trade or commerce, in a form which accords with a usage of which the parties are or ought to have been aware and which in such trade or commerce is widely known to, and regularly observed by, parties to contracts of the type involved in the particular trade or commerce concerned."

57. I had understood that the Claimant's reliance on article 23 was premised upon the basis that they were able to pierce the corporate veil so as to treat the acts of the Corporate Defendants as the acts of Mr. Lembergs so that their consent to the jurisdiction clause was his consent; see paragraphs 126, 129, 132 and 133 of Counsel's Skeleton Argument dated 8 February 2012 and paragraphs 49, 50 and 63 of Counsel's Skeleton Argument dated 9 March 2012. I had therefore understood that if the Claimants were unable to pierce the corporate veil for this purpose the claim based on article 23 must fail.

58. However, after the Court of Appeal had given judgment (in which, I note, it declined to consider the question of article 23, see *VTB Capital PLC v Nutriek and others* [2012] EWCA Civ 808 at paragraph 97) Mr. Rainey QC, who also appeared for the Claimants, informed me that the Claimants submitted that article 23 could apply, and did on the facts of this case apply, even if the Claimants were unable to say that Mr. Lembergs was party to the charterparties and to the jurisdiction clause within them. Mr. Emmett said that this had not been previously argued. On re-reading paragraph 133 of the Skeleton Argument dated 8 February 2012 and paragraphs 57-64 of the Skeleton Argument dated 9 March 2012 it appears that the point had been argued. Mr. Emmett now accepts that the point was raised, "albeit faintly".

59. As explained by Burton J. in the *Stepanovs* case at [2011] 1 Lloyd's Rep. 647, paragraphs 31-63, the national law determines who is party to the jurisdiction agreement whereas EU law determines whether there has been sufficient "consensus" between the parties identified by the national law. "Consensus" in article 23 requires a claimant to show that a defendant has clearly and distinctly consented to the alleged jurisdiction agreement.

60. Burton J. does not appear to have alluded to the argument to which Mr. Rainey has referred. But assuming that it is possible to demonstrate consensus in the absence of a formal contract (as Mr. Thomas submitted was indicated by *Berghoefer GmbH v ASA SA* [1985] ECR 2699 and *Powell Duffryn v Petereit* [1992] ECR 1-1745 and as Adrian Briggs has argued in *Agreements on Jurisdiction and Choice of Law* at paragraphs 7.36-38) such consensus must be established on the facts. Adrian Briggs suggests that there must be some "public willingness" to agree to the jurisdiction of the court in question.

61. In circumstances where, on the evidence adduced by the Claimants, Mr. Lembergs has induced the Claimants to contract with the Corporate Defendants on terms which included a jurisdiction clause in favour of the English court but where there is no evidence that Mr. Lembergs has himself expressed or indicated any willingness (public or otherwise) that claims brought against him by the Claimants may be tried in the English court, I do not consider that there is an arguable case that Mr. Lembergs has indicated his willingness to be sued in the English court so as to give rise to the sort of consensus required by article 23. Just as it is not permissible to raise the corporate veil to reveal Mr. Lembergs as party to the charterparties and to the

jurisdiction clause within them so it is not possible, in my judgment, to raise the corporate veil to reveal Mr. Lembergs as a person expressing his willingness to submit to the jurisdiction of the English court. It is, it seems to me, unrealistic (or, as the Court of Appeal has more forcibly put it, "pure fiction") to say that Mr. Lembergs has demonstrated a willingness to have claims against him brought in the English court when he has, on the Claimants' case, carefully avoided doing that and has, at best, demonstrated only a willingness that claims against the Corporate Defendants be brought in the English court.

62. I therefore hold that the Claimants are unable to establish jurisdiction pursuant to Article 23 of the Brussels Regulation.

Article 24 of the Brussels Regulation

63. In addition to the arguments based upon article 23 Mr. Thomas submitted that the Claimants were able to establish that Mr. Lembergs had submitted to the jurisdiction pursuant to article 24 of the Brussels Regulation which provides as follows:

> "Article 24
>
> Apart from jurisdiction derived from other provisions of this Regulation, a court of a Member State before which a defendant enters an appearance shall have jurisdiction. This rule shall not apply where appearance was entered to contest the jurisdiction, or where another court has exclusive jurisdiction by virtue of Article 22."

64. The basis of this submission is a series of applications issued by Mr. Lembergs in October 2011 in which he sought findings that the Claimants had acted in contempt of court. Mr. Thomas argued that such applications were only necessary or useful if Mr. Lembergs' objection to the jurisdiction had been waived.

65. It is common ground that in determining whether there has been an appearance pursuant to Article 24 of the Brussels Regulation it is appropriate to consider whether there has been a submission to the jurisdiction in accordance with the local law, in this case, English law. In *Global Multimedia International Limited v Ara Media Services* [2006] EWHC 3612 (Ch) at paragraph 27 the Chancellor referred with approval to the following statement of principle by Patten J. in *SMAY Investments v Sachdev* [2003] 1 WLR 1973 at p.1976:

> "In arriving at the view to be imputed to the disinterested bystander, it seems to me that one has to bear in mind that there will be an effective waiver, or a submission to the jurisdiction, only where the step relied upon as a waiver, or a submission to the jurisdiction, cannot be explained, except on the assumption that the party in question accepts that the court should be given jurisdiction. If the step relied upon, although consistent with the acceptance of jurisdiction, is a step which can be explained also because it was necessary or useful for some purpose other than acceptance of the jurisdiction, there will, on the authorities, be no submission.

> If the well-informed bystander had been left in doubt because what the defendants had done was equivocal, in the sense that it was explicable on other grounds in addition to agreement to accept the jurisdiction of the court, then the conclusion must be, on the authorities, that there would have been no submission to the jurisdiction. The representation derived from the conduct of the party said to have submitted must be capable of only one meaning."

66. The Chancellor concluded at paragraph 28:

> "Thus the test to be applied is an objective and what must be determined is whether the only possible explanation for the conduct relied on is an intention on the part of the defendant to have the case tried in England."

67. On 24 August 2011 Mr. Lembergs issued his application challenging the jurisdiction of this court. There then followed a series of contempt applications.

68. On 4 October 2011 Mr. Lembergs sought an order "to initiate contempt proceedings against the Claimants and/or their solicitor … because Claimants and their solicitor … undertake unfair and aggressive activities against litigant in person and provide false information to the court." The witness statement in support showed that the application was based upon an alleged failure to give timely notice to Mr. Lembergs of the hearing at which he was to be cross-examined as to his assets.

69. On 11 October 2011 Mr. Lembergs sought a similar order complaining of false evidence and applying for such evidence to be deleted from the court proceedings. It is apparent from the witness statement in support that the evidence alleged to be false was that relied upon by the Claimants in support of their case that this court has jurisdiction to hear and determine the claim brought against Mr. Lembergs. In that statement Mr. Lembergs said that he had explained his position "on these matters in more detail in my Application Challenging Jurisdiction."

70. On 13 October 2011 Mr. Lembergs sought an order that the Claimants and their solicitor were guilty of contempt because they had deliberately delayed service of documents concerned with his cross-examination as to his assets and provided false information to the court.

71. On 26 October 2011 Mr. Lembergs sought an order that that the Claimants and their solicitor were guilty of contempt for disclosing confidential information to a Latvian internet portal in breach of the freezing order.

72. This was an unusual flurry of applications in a very short space of time. The fact that they were preceded by an application challenging the jurisdiction and that such application was referred to in the witness statement in support of the second application are clear and objective indications that Mr. Lembergs did not intend to waive his challenge to the jurisdiction.

73. Mr. Thomas submitted that Mr. Lembergs was actively and voluntarily invoking the jurisdiction of the court to make an order that the Claimants and their lawyers were in

contempt of court and to make a positive finding that the factual evidence adduced by the Claimants on the merits of the claim was false. If he had been successful on that application the court would have decided the factual issues in his favour and against the Claimants. There would then be an issue estoppel against the Claimants which Mr. Lembergs could have invoked to prevent them pursuing their claims against him in the English court and possibly also overseas. Mr. Lembergs was therefore submitting to the jurisdiction of this court.

74. The difficulty with this submission is that the evidence relied upon by the Claimants in support of their case that Mr. Lembergs is liable to them under the charterparties is the same evidence which supports their case that Mr. Lembergs is party to the jurisdiction agreement in those charterparties. That evidence is challenged by Mr. Lembergs who says it is untrue. That is the basis of his evidential challenge to the jurisdiction of this court. In my judgment it cannot be said that the only possible basis for the contempt application alleging that the Claimants' evidence is false is an intention on the part of Mr. Lembergs to have the Claimants' case against him brought in England. On the contrary it is entirely consistent with his challenge to the jurisdiction.

75. It is true that the first, third and fourth applications sought an order for contempt on other bases. The first and third concerned the alleged late notice of a summons to Mr. Lembergs to attend court to be cross-examined as to his assets pursuant to the freezing order. The fourth concerned an alleged disclosure of information in breach of the freezing order. In circumstances where Mr. Lembergs' challenge to the freezing order had been without prejudice to his intended application to challenge the jurisdiction of the court, where the jurisdiction challenge had been issued on 23 August 2011, and where a date had been fixed for the hearing of that challenge on 16 November 2011 I do not consider that, objectively, it can be said that the only possible explanation for these applications is an intention on the part of Mr. Lembergs to have the case against him tried in England. On the contrary, the Claimants knew that Mr. Lembergs was challenging the jurisdiction of the court. In those circumstances his complaints of alleged misconduct concerning the freezing order would be regarded by the well-informed bystander as limited to that and not extending to an acceptance that the court had jurisdiction to determine the Claimants' claim against him.

76. For these reasons I have concluded that the Court does not have jurisdiction pursuant to Article 24 of the Brussels Regulation.

Conclusion

77. This court does not have jurisdiction over Mr. Lembergs pursuant to either Article 23 or Article 24 of the Brussels Regulation.