Court of Appeal

*Société Generale *v* Goldas Kuyumculuk Sanayi Ithalat Ihracat AS and others

Société Generale *v* Goldas Kuyumculuk Sanayi Ithalat Ihracat AS and another

[2018] EWCA Civ 1093

2018 May 1, 2; 15 Longmore, Macur, Simon LJJ

Injunction — Freezing order — Undertaking as to damages — Freezing order discharged eight years after service of claim forms disputed — Defendants seeking inquiry as to damages — Whether delay rendering inquiry inappropriate

Practice — Service — Alternative service — Relevance of negligence or incompetence on part of claimant's legal advisers — Whether "good reason" for ordering alternative service — Whether alternative service to be ordered where limitation defence had accrued or arguably accrued — CPR r 6.15

In 2008 the claimant brought two sets of proceedings in the High Court and, on the basis of a cross-undertaking as to damages, obtained freezing orders over the defendants' assets. The claimant attempted to serve the claim forms on the defendants in Turkey and Dubai respectively, but, due to the methods of service used, there was no valid service. Eventually the claimant decided to pursue bankruptcy proceedings against some of the defendants in Turkey instead, but with no success. In 2016, by which time they had accrued a limitation defence, the defendants applied for the proceedings to be struck out and/or dismissed on the ground that the time limit in CPR r 7.5(2)[1] for serving the claim forms had expired. The claimant applied for an order under CPR r 6.15 retrospectively permitting service of the claim forms by an alternative method. The judge refused the claimant's application and dismissed the claims, observing among other things that negligence or incompetence on the part of the claimant's lawyers was not a "good reason", within CPR r 6.15(1), for authorising alternative service but rather was a bad reason for doing so, a reason for declining relief; and ordered an inquiry into damages pursuant to the cross-undertaking.

On the claimant's appeal—

Held, (1) that the negligence or incompetence of a claimant's lawyers was not always a bad reason for making an order for alternative service; that whether it constituted a "good reason" for doing so pursuant to CPR r 6.15 would depend on the facts of the case, but wrong or negligent advice would seldom be such a "good reason"; that, although where no limitation period had expired erroneous or even negligent or incompetent advice might be irrelevant or of minimal importance, once a limitation defence had accrued, or even arguably accrued, negligent or incompetent advice could not be a "good reason" for making a retrospective order for alternative service which had the effect of depriving a defendant of that defence; that the judge had not erred in saying that the negligent advice of the claimant's Turkish lawyers was a reason for not granting relief, and that observation was in any event immaterial in the light of the fact that the judge had correctly applied the principles relating to CPR r 6.15 to the facts of the case as a whole; and that, therefore, the judge's order

[1] CPR r 6.15: see post, para 19.
R 7.5(2): "Where the claim form is to be served out of the jurisdiction, the claim form must be served in accordance with Section IV of Part 6 within 6 months of the date of issue."

A refusing to permit alternative service under CPR r 6.15 and dismissing the claims would be upheld (post, paras 23, 28–29, 35, 37–40, 42, 54, 55, 56).

Cecil v Bayat [2011] 1 WLR 3086, CA, *Abela v Baadarani* [2013] 1 WLR 2043, SC(E) and *Barton v Wright Hassall llp* [2018] 1 WLR 1119, SC(E) considered.

Kaki v National Private Air Transport Co [2015] 1 CLC 948, CA distinguished.

(2) Allowing the appeal in part, that delay in asking for an inquiry into damages pursuant to a cross-undertaking was a hugely important consideration, and the delay
B between 2008 when service had been disputed and 2016 when the defendants had sought the inquiry was an excessively long time; and that, in all the circumstances, the judge had been wrong to order an inquiry and his order to that effect would be discharged (post, paras 45–48, 54, 55, 56).

Decision of Popplewell J [2017] EWHC 667 (Comm) reversed in part.

The following cases are referred to in the judgment of Longmore LJ:

C *Abela v Baadarani* [2013] UKSC 44; [2013] 1 WLR 2043; [2013] 4 All ER 119, SC(E)

Aktas v Adepta [2010] EWCA Civ 1170; [2011] QB 894; [2011] 2 WLR 945; [2011] 2 All ER 536, CA

Barratt Manchester Ltd v Bolton Metropolitan Borough Council [1998] 1 WLR 1003; [1998] 1 All ER 1, CA

Barton v Wright Hassall llp [2018] UKSC 12; [2018] 1 WLR 1119; [2018] 3 All ER
D 487, SC(E)

Birkett v James [1978] AC 297; [1977] 3 WLR 38; [1977] 2 All ER 801, CA and HL(E)

Cecil v Bayat [2011] EWCA Civ 135; [2011] 1 WLR 3086, CA

Godwin v Swindon Borough Council [2001] EWCA Civ 1478; [2002] 1 WLR 997; [2001] 4 All ER 641, CA

Hashtroodi v Hancock [2004] EWCA Civ 652; [2004] 1 WLR 3206; [2004] 3 All ER
E 530, CA

Hoffmann-La Roche (F) & Co AG v Secretary of State for Trade and Industry [1975] AC 295; [1974] 3 WLR 104; [1974] 2 All ER 1128, HL(E)

Kaki v National Private Air Transport Co [2015] EWCA Civ 731; [2015] 1 CLC 948, CA

Knauf UK GmbH v British Gypsum Ltd [2001] EWCA Civ 1570; [2002] 1 WLR 907; [2002] 2 All ER 525; [2002] 2 All ER (Comm) 960; [2002] 1 Lloyd's Rep
F 199, CA

The following additional cases were cited in argument:

Anderton v Clwyd County Council (No 2) [2002] EWCA Civ 933; [2002] 1 WLR 3174; [2002] 3 All ER 813, CA

Bethell Construction Ltd v Deloitte and Touche [2011] EWCA Civ 1321, CA

G *Bowring (CT) & Co (Insurance) Ltd v Corsi & Partners Ltd* [1994] 2 Lloyd's Rep 567; [1995] 1 BCLC 148, CA

Burtenshaw v Jenkins (unreported) 4 April 1989, CA

Cain v Francis [2008] EWCA Civ 1451; [2009] QB 754; [2009] 3 WLR 551; [2009] 2 All ER 579, CA

Cheltenham & Gloucester Building Society (formerly Portsmouth Building Society) v Ricketts [1993] 1 WLR 1545; [1993] 4 All ER 276, CA

H *Chief Constable of Greater Manchester v Carroll* [2017] EWCA Civ 1992; [2018] 4 WLR 32, CA

Dadourian Group International Inc v Simms [2009] EWCA Civ 169; [2009] 1 Lloyd's Rep 601, CA

Denton v TH White Ltd (De Laval Ltd, Part 20 defendant) (Practice Note) [2014] EWCA Civ 906; [2014] 1 WLR 3926; [2015] 1 All ER 880, CA

Fiona Trust and Holding Corp v Privalov [2014] EWHC 3102 (Comm); [2014] 2 CLC 551
Global Torch Ltd v Apex Global Management Ltd (No 2) [2014] UKSC 64; [2014] 1 WLR 4495; [2015] 2 All ER 206; [2015] 1 All ER (Comm) 1183, SC(E)
Golden Ocean Assurance and World Mariner Shipping SA v Martin (The Goldean Mariner) [1990] 2 Lloyd's Rep 215, CA
Hoddinott v Persimmon Homes (Wessex) Ltd [2007] EWCA Civ 1203; [2008] 1 WLR 806, CA
Koza Ltd v Akcil [2018] EWHC 384 (Ch)
Phillips v Symes (No 3) [2008] UKHL 1; [2008] 1 WLR 180; [2008] 2 All ER 537; [2008] 1 All ER (Comm) 918; [2008] 1 Lloyd's Rep 344, HL(E)
Shiblaq v Sadikoglu [2004] EWHC 1890 (Comm); [2004] 2 All ER (Comm) 596

The following additional cases, although not cited, were referred to in the skeleton arguments:

Abbey Forwarding Ltd v Hone (No 3) [2014] EWCA Civ 711; [2015] Ch 309; [2014] 3 WLR 1676, CA
Arbuthnot Latham Bank Ltd v Trafalgar Holdings Ltd [1998] 1 WLR 1426; [1998] 2 All ER 181, CA
Bank St Petersburg OJSC v Arkhangelsky [2014] EWCA Civ 593; [2014] 1 WLR 4360, CA
Battersby v Anglo-American Oil Co Ltd [1945] KB 23; [1944] 2 All ER 387, CA
Bill Kenwright Ltd v Flash Entertainment FZ llc [2016] EWHC 1951 (QB)
Dagnell v J L Freedman & Co [1993] 1 WLR 388; [1993] 2 All ER 161, HL(E)
Easy v Universal Anchorage Co Ltd [1974] 1 WLR 899; [1974] 2 All ER 1105, CA
Grovit v Doctor [1997] 1 WLR 640; [1997] 2 All ER 417, HL(E)
Hall, Ex p (1883) 23 Ch D 644, CA
Kuenyehia v International Hospitals Group Ltd [2006] EWCA Civ 21; [2006] CP Rep 34, CA
Marashen Ltd v Kenvett Ltd [2017] EWHC 1706 (Ch); [2018] 1 WLR 288
SCF Tankers Ltd (Formerly Fiona Trust and Holding Corp) v Privalov [2017] EWCA Civ 1877, CA
Smith v Day (1882) 21 Ch D 421, CA
Yukong Line Ltd v Rendsburg Investments Corpn of Liberia The Times, 22 October 1996, CA

APPEAL from Popplewell J

By a claim form dated 18 March 2008 the claimant, Société Generale, issued proceedings against the defendants, Goldas Kuyumculuk Sanayi Ithalat Ihracat AS, Goldas Kiymetli Madenler Ticareti AS, Meydan Doviz Ve Kiymetli Maden Ticaret AS, and Goldas llc, seeking an order for delivery up of gold delivered or for money due in respect of priced purchase contracts, or damages. By a claim form dated 4 April 2008 the claimant issued proceedings against the defendants, Goldas Kuyumculuk Sanayi Ithalat Ihracat AS and Goldart Holdings AS, as guarantors of certain of the liabilities of the second and fourth defendants to the first claim in respect of the gold which was the subject of the first claim. On giving cross-undertakings as to damages the claimant was granted freezing orders in respect of the defendants' assets.

By application notices issued on 9 February 2016 the defendants sought orders that (1) the claim forms be struck out and/or the claims dismissed, on the grounds that (i) the claim forms had not been served and the time for doing so under CPR r 7.5 had expired, alternatively, (ii) the failure to progress the claims amounted to an abuse of the process of the court; (2) the

A freezing orders which had been made in support of the claims be discharged on the grounds that (i) the claim forms had been struck out and/or the claims dismissed, alternatively (ii) there had been misrepresentations and/or a failure to make full and frank disclosure in obtaining them; and (3) there be an inquiry as to damages under the cross-undertakings given in support of the freezing orders.

B By application notices issued on 12 May 2016, the claimant sought orders (1) to overcome invalid service of the claim forms in Turkey and Dubai by either (i) an order for deemed service by an alternative method with retrospective effect pursuant to CPR r 6.15 or (ii) an order dispensing with service pursuant to CPR r 6.16; (2) for summary judgment under CPR Pt 24, including permission to apply for summary judgment prior to the filing of an acknowledgment of service under CPR r 24.4(1)(i).

C By a decision dated 3 April 2017 Popplewell J [2017] EWHC 667 (Comm) refused the claimant's application and granted the defendants' application, dismissing the claims, discharging the freezing orders, and ordering an inquiry into damages pursuant to the cross-undertakings as to damages.

By an appellant's notice dated 24 April 2017 and with the permission of D the Court of Appeal (Longmore LJ) dated 14 September 2017, the claimant appealed on the grounds that the judge had erred (i) in refusing to grant an order for deemed service by an alternative method with retrospective effect pursuant to CPR r 6.15 or an order dispensing with service pursuant to CPR r 6.16; and (ii) in permitting enforcement of the cross-undertakings. At the hearing of the appeal the court refused the claimant permission to amend the E grounds of appeal.

The facts are stated in the judgment of Longmore LJ, post, paras 1–10.

Laurence Rabinowitz QC and *Niranjan Venkatesan* (instructed by *Mayer Brown International llp*) for the claimant.

Stephen Moverley Smith QC and *Hugh Miall* (instructed by *Morgan Rose Solicitors Ltd*) for the defendants.

F

The court took time for consideration.

15 May 2018. The following judgments were handed down.

LONGMORE LJ

G *Introduction*

1 This appeal from Popplewell J [2017] EWHC 667 (Comm) raises, once again, questions about alternative service under CPR r 6.15.

2 As long ago as 18 March 2008 Société Générale ("Soc Gen"), the well known French bank, issued proceedings (Folio 267) in relation to 15·725 metric tonnes of gold bullion delivered to three Turkish companies and one H Dubai company in the Goldas group of companies. Those proceedings were issued three days after Kitchin J had, on Saturday 15 March 2008, made freezing orders in substantial sums against the four defendants on the basis of an undertaking that proceedings would be issued and served "as soon as practicable". The claim was for an order for delivery up of gold delivered or

(in respect of 4·425 mt) for money due in respect of priced purchase contracts, or damages. There was also a claim for repayment of loans made to the first defendant.

3 On 4 April 2008 Soc Gen issued further proceedings (Folio 329) against the first defendant to the Folio 267 proceedings and another Turkish Goldas company as guarantors of certain of the liabilities of the other Goldas companies in respect of the bullion the subject of Folio 267. These proceedings were issued two days after Burton J had continued the freezing orders made by Kitchin J and had himself issued a further freezing order in respect of the guarantee claims on the basis of the same undertaking that proceedings would be issued and served "as soon as practicable".

4 Burton J was informed that service had taken place in Turkey and that service through diplomatic channels in Dubai would take up to six months. The statement that service had taken place in Turkey was based on erroneous advice from a firm of Turkish lawyers ("Pekin") who had not appreciated that service had to take place in accordance with the Hague Convention on the Service Abroad of Judicial and Extraterritorial Documents in Civil and Commercial matters ("the Hague Convention") and that, therefore, the only valid method of service was through the Turkish Ministry of Justice.

5 Attempts at service through diplomatic channels in Dubai were held by the judge to be ineffective so that there was no valid service in Dubai either.

6 It may safely be inferred that the Turkish defendants to Folio 267 knew of the contents of the claim form and of the attempts to serve them since, on 27 March 2008, they wrote to Soc Gen saying that they could only be served pursuant to the Hague Convention. On 7 April 2008 the Turkish Notary Public made the same point to Soc Gen on the prompting of the Turkish companies' lawyer, Postacioglu, who made the same point on 1 May 2008 in relation to attempted service of Folio 329.

7 By that time Soc Gen had decided not to progress the English proceedings but rather to pursue bankruptcy proceedings in Turkey against the Turkish defendants. These proceedings have been protracted and have so far got nowhere, on the basis (at least partly) that, since the contractual arrangements between the parties provided for the application of English law and submissions by Goldas to the jurisdiction of the High Court in England, there was as yet no debt that could be the foundation of any bankruptcy proceedings in Turkey.

8 So it has come about that, by application notices issued on 9 February 2016, the defendants have sought orders that:

(1) The claim forms be struck out and/or dismissed, on the grounds that: (a) the claim forms have not been served and the time for doing so under CPR r 7.5 has expired; (b) alternatively the failure to progress the claims amounts to an abuse of process;

(2) The freezing orders be discharged on the grounds that: (a) the claim forms are struck out and/or dismissed; alternatively (b) there were misrepresentations and/or failure to make full and frank disclosure in obtaining them;

(3) There be an inquiry as to damages under the cross-undertaking given in support of the freezing orders.

A 9 By application notices issued on 12 May 2016, Soc Gen has itself sought orders:

(1) To overcome invalid service in Turkey and Dubai by either: (a) an order for deemed service by an alternative method with retrospective effect pursuant to CPR r 6.15; or (b) an order dispensing with service pursuant to CPR r 6.16;

B (2) For summary judgment under CPR Pt 24, including permission to apply for summary judgment prior to the filing of an acknowledgment of service under CPR r 24.4(1)(i).

10 Popplewell J has declined to order deemed service by an alternative method or to dispense with service altogether [2017] EWHC 667. He therefore dismissed the claims, discharged the freezing injunctions and ordered an inquiry into damages pursuant to the cross-undertaking as to

C damages. This court has granted permission to appeal.

The judgment

11 The judge first set out the relevant facts and procedural history in detail. The above description distils the essence of them but reference can be made to the judgment for a full recitation. The judge then set out the

D relevant law, as he saw it, in nine propositions, three of which are challenged on this appeal. He applied those principles to the facts, correctly saying that the starting point was that all the defendants had notice of the content of the claim forms and that the Turkish defendants also knew that Soc Gen had purported to effect service. That could not, however, be "a good reason" on its own for alternative service. He held that failure to effect service within

E the validity of the claim form was culpable on Soc Gen's part because the advice that service had been validly effected in Turkey was negligent (or at the very least erroneous) in the light of the application of the Hague Convention and Soc Gen had ignored the effect of the evidence of the process server in Dubai to the effect that service had not been effected in that jurisdiction; it was further relevant that Soc Gen's claims had become time-

F barred in mid 2014; although Soc Gen could have sought an order for alternative service at a time before the claim became time-barred, the reason it did not do so was that it had decided to warehouse the English proceedings in favour of Turkish proceedings which was its own decision. That meant there was a delay of some eight years which was only brought to an end when the defendants made their applications that the claim forms be struck

G out or dismissed.

12 In these circumstances there was no good reason to make a retrospective order for alternative service. For good measure, he added that Soc Gen's conduct of the proceedings had been abusive in three separate respects:

(1) Soc Gen, having obtained the draconian remedy of a freezing order, had failed to progress the proceedings expeditiously, when it was incumbent

H on it to do so;

(2) It had put the English proceedings on hold to await the outcome of litigation abroad without the sanction of the court; and

(3) It had broken undertakings given to both Kitchin J and Burton J to issue and serve the claim forms as soon as practicable.

13 He said further that to grant relief would be to circumvent the treaties made with both Turkey and Dubai about arrangements for service and summarised the position reached so far [2017] EWHC 667 at [66]:

> In summary, therefore, Soc Gen chose to pursue proceedings in Turkey to recover the price or value of the gold in place of pursuit of the claim in these proceedings which were put on hold for about eight years until after the validity of the claim forms had expired and after the limitation period had expired, abusively warehousing the English proceedings and improperly maintaining freezing orders in place, in circumstances where it knew that the validity of service in Turkey was disputed, ought to have known that the claim forms had not been served in Turkey and did not believe that the claim form had been served in Dubai. None of those features suggest there is good reason for validating defective service, still less by a method which was contrary to the Hague Convention and Dubai Bilateral Treaty, nor exceptional circumstances justifying dispensing with service. On the contrary they provide good reasons for not doing so."

14 He then considered ten separate factors advanced by counsel then appearing for Soc Gen as amounting to good reason for ordering alternative service pursuant to CPR r 6.15 (and, indeed, exceptional circumstances justifying an order dispensing with service pursuant to CPR r 6.16) and rejected them. Nothing could be plainer than that this was an evaluative judgment in relation to a complex case, in respect of which this court should not interfere unless the judge made an error of principle or the judge was plainly wrong, see *Barton v Wright Hassall llp* [2018] 1 WLR 1119, para 15 per Lord Sumption JSC.

15 The judge, in the light of his decision, struck out the claims since the validity of the claim forms had expired without being served (such lack of service not being curable) and discharged the freezing orders. He then considered whether to order an inquiry into damages. He held (para 81) that the freezing orders were wrongly maintained from the time Soc Gen decided in mid-April 2008 to put the English proceedings on hold to await the outcome of the Turkish insolvency proceedings. He rejected Soc Gen's argument that no such inquiry should be ordered because the defendants had themselves delayed their applications to discharge the freezing orders and seek an inquiry into damages between April 2008 and February 2016 when they issued their applications. He held that it was Soc Gen which was responsible for the delay rather than the defendants who did not become aware that Soc Gen had decided to put the English proceedings on hold pending the Turkish insolvency proceedings until Mr Surgeoner of Soc Gen's solicitors had given evidence to that effect in the course of the applications in his first witness statement. Moreover Soc Gen had not been prejudiced by the delay.

Soc Gen's submissions

16 Soc Gen submitted that the judge made three errors of principle:

(1) He was wrong to say that reliance on negligent legal advice can never constitute a good reason for alternative service, let alone to say it is always a bad reason (para 49(5));

(2) He required "exceptional circumstances" rather than "a good reason" to justify alternative service under CPR r 6.15, if the making of such an order

would (or might) deprive the defendants of an accrued limitation defence (para 49(8)(b)); and

(3) He likewise required "exceptional circumstances" rather than "a good reason" if any such order would be to sanction a method of service not permitted by the Hague Convention or other applicable treaty: para 49(9)(b).

17 Soc Gen then identified two good reasons for ordering alternative service:

(1) That it had reasonably sought and relied on advice that turned out to be erroneous; and

(2) That the conduct of the Goldas defendants in the Turkish proceedings had been to encourage the Turkish courts to believe that the English proceedings were live and would decide whether there was a debt in respect of which bankruptcy proceedings could be brought, while not revealing that their case in England was that they had never been properly served and that the claim was now time-barred.

18 Soc Gen further challenged the judge's conclusions about abuse of process and his order that there should be an inquiry into damages.

The relevant CPR

19 The relevant rules are rules 6.15, 6.16, 6.40 and (although reliance is no longer placed on it) 7.6:

"*Service of the claim form by an alternative method or at an alternative place*

"6.15

"(1) Where it appears to the court that there is a good reason to authorise service by a method or at a place not otherwise permitted by this Part, the court may make an order permitting service by an alternative method or at an alternative place.

"(2) On an application under this rule, the court may order that steps already taken to bring the claim form to the attention of the defendant by an alternative method or at an alternative place is good service."

"*Power of court to dispense with service of the claim form*

"6.16

"(1) The court may dispense with service of a claim form in exceptional circumstances.

"(2) An application for an order to dispense with service maybe made at any time and— (a) must be supported by evidence; and (b) may be made without notice."

"*Methods of service—general provisions*

"6.40

"(1) This rule contains general provisions about the method of service of a claim form or other document on a party out of the jurisdiction."

"(3) Where a party wishes to serve a claim form or other document on a party out of the United Kingdom, it may be served— (a) by any method provided for by— (i) rule 6.41 (service in accordance with the Service Regulations); (ii) rule 6.42 (service through foreign governments, judicial authorities and British Consular authorities) or (iii) rule 6.44 (service of claim form or other document on a state); (b) . . . (c) by any other method permitted by the law of the country in which it is to be served.

"(4) Nothing in paragraph (3) or in any court order authorises or requires any person to do anything which is contrary to the law of the country where the claim form or other document is to be served."

"*Extension of time for serving a claim form*

"7.6

"(1) The claimant may apply for an order extending the period for compliance with rule 7.5.

"(2) The general rule is that an application to extend the time for compliance with rule 7.5 must be made— (a) within the period specified by rule 7.5; or (b) where an order has been made under this rule, within the period for service specified by that order.

"(3) If the claimant applies for an order to extend the time for compliance after the end of the period specified by rule 7.5 or by an order made under this rule, the court may make such an order only if— (a) the court has failed to serve the claim form; or (b) the claimant has taken all reasonable steps to comply with rule 7.5 but has been unable to do so; and (c) in either case, the claimant has acted promptly in making the application."

Supposed error of principle (1): wrong legal advice

20 In para 49(5) the judge said there would be focus on whether the claimant could have effected proper service within the validity of the claim form; he said that generally it is not necessary for a claimant to show he has taken all the steps he could reasonably have taken to effect service by the proper method and then added:

"however negligence or incompetence on the part of the claimant's legal advisers is not a good reason; on the contrary, it is a bad reason, a reason for declining relief: *Hashtroodi v Hancock* [2004] 1 WLR 3206, para 20; *Aktas v Adepta* [2011] QB 894, para 71."

It is said that the authorities on which the judge relied for this purpose are authorities on CPR r 7.6 which requires a claimant who applies for an extension of the validity of a claim form after the validity has expired to show that he has taken all reasonable steps to effect service. They should not apply to CPR r 6.15 which only requires "a good reason" for alternative service. Moreover, *Kaki v National Private Air Transport Co* [2015] 1 CLC 948 which is an authority on CPR r 6.15 is an example of a case where this court upheld a decision by a judge who had not regarded the negligence or incompetence of the claimant's lawyers as a bar to relief.

21 The judge was careful to confine his statement of principle to a case where the claimant's legal advisers had been negligent or incompetent (rather than just erroneous) and he clearly considered that the advice received by Soc Gen was negligent or incompetent in this case. Even as so confined, the judge probably put the matter too high by saying that negligent or incompetent advice was always a bad reason for ordering an alternative service. In the context of CPR r 7.6 (extension of validity of a claim form before or after its expiry) it is, no doubt, right to say that negligent or incompetent advice is always a bad reason for granting an extension. That is because there is often a disciplinary factor in the decision to extend the validity of a claim form analogous to the disciplinary factor which is commonly found in decisions about relief from sanctions. This accounts for

A the reasoning in the cases on which the judge relied, *Hashtroodi v Hancock* [2004] 1 WLR 3206, para 20, per Dyson LJ and *Aktas v Adepta* [2011] QB 894, para 71, per Rix LJ who said in terms: "The negligence of a claimant's solicitor is no excuse. It is not a good reason for an extension, even where the extension is applied for in time. It is a bad reason, a reason for declining an extension."

B **22** But as Lord Sumption JSC observed in *Barton v Wright Hassall llp* [2018] 1 WLR 1119, para 8 (a decision of the Supreme Court handed down subsequent to the decision of Popplewell J in the present case):

> "CPR r 6.15 is rather different. It is directed specifically to the rules governing service of a claim form. They give rise to special considerations which do not necessarily apply to other formal documents or to other
C rules or orders of the court. The main difference is that the disciplinary factor is less important. The rules governing service of a claim form do not impose duties, in the sense in which, say, the rules governing the time for service of evidence, impose a duty. They are simply conditions on which the court will take cognisance of the matter at all."

23 It must, I think, follow that in the context of alternative service, it
D cannot be right to say that negligence or incompetence of the claimant's lawyers is always "a bad reason". It does not, of course, follow that it is "a good reason". That must depend on the facts of the case. It is noteworthy that in the *Kaki* case [2015] 1 CLC 948, on which Soc Gen relied, the time limit for making the claim had not expired, so that the defendants had no accrued limitation defence.

E *Supposed error of principle (2); the requirement of exceptionality if the reason of alternative service has not impacted on the expiry of the limitation period*

24 In para 49(8) under the heading of "Limitation" the judge said:

> "(a) Where relief under rule 6.15 would, or might, deprive the defendant of an accrued limitation defence, the test remains where there
F is a good reason to grant relief: *Abela v Baadarani* [2013] 1 WLR 2043.
> "(b) However save in exceptional circumstances the good reason must impact on the expiry of the limitation period, for instance where the claimant can show that he is not culpable for the delay leading to it or was unaware of the claim until close to its expiry: *Cecil v Bayat* [2011] 1 WLR 3086, para 108 and see *Godwin v Swindon Borough Council* [2002]
G 1 WLR 997, para 50."

25 In *Godwin v Swindon Borough Council* [2002] 1 WLR 997 May LJ, at para 50, made the point that the rule dispensing with service (now CPR r 6.16) cannot extend to extricate a claimant from the consequences of late service of the claim form where limitation is critical and the claimant cannot rely on CPR r 7.6 to obtain an extension to the validity of the claim form. It
H is para 108 of the judgment of Rix LJ in *Cecil v Bayat* [2011] 1 WLR 3086 which makes the point in relation to CPR r 7.6 that:

> "It is . . . for the claimant to show that his 'good reason' directly impacts on the limitation aspect of the problem, as for instance where he can show that he has been delayed in service for reasons for which he does

not bear responsibility, or that he could not have known about the claim until close to the end of the limitation period. If he cannot do that, he is unlikely to show a good or sufficiently good reason in a limitation case."

Rix LJ does not rule out the possibility of a good reason even if it does not impact on the expiry of the limitation period but the judge can hardly be criticised for saying that such a case would be exceptional.

26 Soc Gen submitted that the judge by using the words "save in exceptional circumstances" was confusing the test under CPR r 6.16 for dispensing with service altogether with the test under CPR r 6.15 requiring a good reason. I do not so read para 49(8)(b) of the judgment which is merely saying that the requirement that the good reason should impact on the expiry of the limitation period was not an absolute one.

27 Soc Gen also submitted that the requirement that the good reason should impact on the expiry of the limitation period was appropriate for CPR r 7.6 but not for CPR r 6.15, that in *Abela v Baadarani* [2013] 1 WLR 2043 the good reason for ordering alternative service did not in fact impact on the expiry of the limitation period and that it should, therefore, be irrelevant whether the good reason impacted on the expiry of the limitation period or not.

28 I cannot agree with this submission. Once it is clear that the claim is (or is arguably) time-barred, that must be highly relevant to the exercise of the court's discretion. A failure to serve by the proper method may be permissible if, as Rix LJ says, the claimant did not know he had a claim until close to the end of the limitation period but the requirement of a good reason for the purpose of CPR r 6.15 must contemplate an inquiry into the reason for not achieving proper service before the expiry of the limitation period; otherwise limitation becomes irrelevant and that is not the law. The Supreme Court in the *Abela* case concluded that the defendant was evading service or "playing technical games" with the claimant, because he had deliberately obstructed service by declining to disclose his address. That shows, to my mind, that the good reason in that case did indeed "impact on the expiry of the limitation period", even though the phrase itself was not used: see paras 38–39, per Lord Clarke of Stone-cum-Ebony JSC.

29 The subsequent case *Barton v Wright Hassall llp* [2018] 1 WLR 1119 also makes it clear that the expiry of any limitation period before application is made to extend the validity of the claim form (or, I might add, for a retrospective order for alternative service) is a highly important matter in the overall exercise of discretion: see paras 16 and 21, per Lord Sumption JSC. In this respect there can be no substantial difference of approach under CPR r 7.6 from that under CPR r 6.15.

30 I do not, therefore, accept that para 49(8)(b) of the judgment shows any error of principle in the judge's approach to limitation.

Supposed error of principle (3): need for "exceptional circumstances" in a Hague Convention case

31 The judge said [2017] EWHC 667 at [49(9)]:

"Cases involving service abroad under the Hague Convention or a bilateral treaty:

"(a) Where service abroad is the subject matter of the Hague Convention or a bilateral treaty, it will not normally be a good reason for

A relief under CPR rr 6.15 or 6.16 that complying with the formalities of service so required will take additional time and cost: *Knauf UK GmbH v British Gypsum Ltd* [2002] 1 WLR 907, para 47; *Cecil v Bayat* [2011] 1 WLR 3086, paras 66, 113.

"(b) It remains relevant whether the method of service which the court is being asked to sanction under CPR r 6.15 is one which is not permitted by the terms of the Hague Convention or the bilateral treaty in question. B For example, where the country in which service is to be effected has stated its objections under article 10 of the Hague Convention to service otherwise than through its designated authority, as part of the reciprocal arrangements for mutual assistance on service with this country, comity requires the English Court to take account of and give weight to those objections: see *Shiblaq v Sadikoglu* [2004] 2 All ER (Comm) 596, C para 57. In such cases relief should only be granted under rule 6.15 in exceptional circumstances. I would regard the statement of Stanley Burnton LJ in the *Cecil* case at para 65 to that effect, with which Wilson and Rix LJJ agreed, as remaining good law; it accords with the earlier judgment of the court in the *Knauf* case at paras 58–59; Lord Clarke JSC at paras 33 and 45 of *Abela v Baadarani* was careful to except such cases from his analysis of when only a good reason was required, and to express D no view on them (at para 34); and although Stanley Burnton LJ's reasoning that service abroad is an exercise of sovereignty cannot survive what was said by Lord Sumption JSC (with unanimous support) at para 53 of the *Abela* case, there is nothing in that analysis which undermines the rationale that as a matter of comity the English Court should not lightly treat service by a method to which the foreign country E has objected under mutual assistance treaty arrangements as sufficient. That is not to say, however, that there can never be a good reason for ordering service by an alternative method in a Hague Convention case: *Bank St Petersburg OJSC v Arkhangelsky* [2014] 1 WLR 4360, para 26."

32 Soc Gen submitted that, in the light of the finding at para 72 of the judgment that attempts at service (in this case on a Neighbourhood F Executive Officer in the case of the first and second defendants and on a gentleman who had previously accepted service of other proceedings in the case of the third defendant) were not positively prohibited under Turkish law but were simply not steps which constituted good service, the court could rely on CPR r 6.40(3)(b) and/or 6.40(4) to order that the attempts at service could constitute alternate service pursuant to CPR r 6.15. That was what happened in *Abela v Baadarani* [2013] 1 WLR 2043 where the G attempts at service had not been prohibited by Lebanese law. If "comity" (to use the judge's word in para 49(9)(b)) permitted alternative service in that case, so should it in this case.

33 Since Lord Clarke JSC was at pains in *Abela* to say (paras 33–34 and 45) nothing about the position where the Hague Convention applied and expressly referred to paras 65–68 of *Cecil v Bayat* [2011] 1 WLR 3086 on H which the judge relied, without expressing any disapproval of them, I cannot accept Soc Gen's submission. In paras 65–66 Stanley Burnton LJ said:

"65. In modern times, outside the context of the European Union, the most important source of the consent of states to service of foreign process within their territory is to be found in the Hague Convention (in

relation to the state parties to it) and in bilateral conventions on this matter. Because service out of the jurisdiction without the consent of the state in which service is to be effected is an interference with the sovereignty of that state, service on a party to the Hague Convention by an alternative method under CPR r 6.15 should be regarded as exceptional, to be permitted in special circumstances only.

"66. It follows, in my judgment, that while the fact that proceedings served by an alternative method will come to the attention of a defendant more speedily than proceedings served under the Hague Convention is a relevant consideration when deciding whether to make an order under CPR r 6.15, it is in general not a sufficient reason for an order for service by an alternative method."

The phrase "interference with the sovereignty" might now be re-phrased in the light of Lord Sumption JSC's judgment in the *Abela* case but the essential reasoning of Stanley Burnton LJ (with whom Wilson and Rix LJJ agreed) remains binding on this court so that service by an alternative method is to be permitted "in special circumstances only."

34 Soc Gen submitted that alternative service (if there was otherwise good reason) should only be refused if such service subverted and was designed to subvert the Hague Convention. But, although that was in fact the position in *Knauf UK GmbH v British Gypsum Ltd* [2002] 1 WLR 907 which was one of the cases on which the judge relied, there is no indication in *Cecil v Bayat* that any such subversion is required. I do not, therefore, see that the judge made any error of principle in para 49(9)(b). If any change to the approach of the court to applications for application for alternative service is to be made in Hague Convention cases, that is a matter for the Supreme Court, rather than this court.

35 I would therefore only uphold Soc Gen's submission that the judge made an error of principle to the limited extent of saying that he was wrong to say that negligence or incompetence of the claimant's lawyers must always be a bad reason for making an order for alternative service. Does this error vitiate his evaluation of the case as a whole?

Evaluation vitiated?

36 The judge in my view is to be congratulated on his attempt in para 49 to distil nine essential principles from an ever-increasing number of authorities of ever-increasing complexity. It is not likely that a small error in enunciating one of those principles is likely to vitiate his overall evaluation and this court should not be too ready to say that it does. As Lord Sumption JSC said in *Barton v Wright Hassall llp* [2018] 1 WLR 1119, para 9:

"What constitutes 'good reason' for validating the non-compliant service of a claim form is essentially a matter of factual evaluation, which does not lend itself to over-analysis or copious citation of authority."

37 In his application of the principles to the facts of the case, the judge began (para 52) by saying that Soc Gen's failure to effect valid service both in Turkey and in Dubai was culpable and that negligent Turkish advice did not absolve Soc Gen from culpability for that failure. I can see nothing wrong so far. Wrong or negligent advice, even if as the judge held (para 70(4)) reliance

A on Turkish law was necessary and reasonable, will seldom be a "good reason" for ordering alternative service. If no limitation period has expired and the claimant can thus begin his proceedings again, it may be that (as in the *Kaki* case [2015] 1 CLC 948) the erroneous (or even negligent or incompetent) advice can be put to one side as irrelevant or of minimal importance. But once a limitation period has expired and a defendant has an accrued (or even arguably accrued) defence of limitation, the picture B changes. It is very difficult to see that negligent or incompetent advice should be a good reason for making a retrospective order for alternative service which has the effect of depriving a defendant of that defence unless there is some reason which impacts on the expiry of the period in some such way as Rix LJ indicated in *Cecil v Bayat* [2011] 1 WLR 3086.

38 It is true that in the next sentence in para 52 the judge says that the C negligent advice "is not a good reason for granting relief but rather a reason for not doing so." But he does not here use the objectionable phrase that it is a "bad reason" and it seems to me that when limitation is taken into account the judge can scarcely be criticised for observing that negligent advice is a reason for not granting relief. In the context of limitation, negligent advice is not a neutral factor or at least cannot amount to a good reason for granting the relief sought. The judge then went on to say that Soc Gen ignored the D Goldas defendants' assertion that service had not been effected which then gave Soc Gen the opportunity to make an application at that time for alternative service before the limitation period had expired. Soc Gen did not do so because it had decided to warehouse the English proceedings which could not itself excuse the failure to make an application at that time. All this cannot be criticised.

E **39** So even if it was an error to say that the negligent advice was a reason for not granting relief (which I do not think it was), it was an immaterial error in the light of the judge's applications of his principles to the facts as a whole. Indeed, quite apart from the points about negligent advice and the accrual of a limitation defence the judge also relied on the fact that Turkey was party to the Hague Convention and on what he called Soc Gen's abusive behaviour in failing expeditiously to progress the English F proceedings, after obtaining the freezing injunctions and putting the entire proceedings on hold. Soc Gen's only response to this aspect of the matter was to say that such abuse should not be permitted to outweigh the good reasons it submitted to exist. But since the judge held that there was no good reason that submission goes nowhere, unless his whole evaluation is discredited and this court has to conduct its own evaluation.

G **40** That is not the case; the judge's minor error goes nowhere near vitiating his evaluation of all the factors in the case; in the context of the case as a whole any error was immaterial and this court should not interfere with what is a balanced and careful judgment. It certainly cannot be said that the judge was plainly wrong.

41 In these circumstances I need not address the matters on which Soc Gen relied as constituting good reason if this court was to say that the H judge's evaluation was based on an error of law or principle or was plainly wrong. I would only repeat: (1) that reliance on negligent or incompetent advice will seldom be a good reason for ordering alternative service once a limitation period has expired; and (2) that Soc Gen disavowed any apparent contention to the effect that the Goldas defendants had deceived the Turkish

courts; the contention was that they had not explained that their case was that they could not be liable in England since they had never been properly served and would now plead that any claim was time-barred. We were taken through some of the detail of the Turkish proceedings but I was unpersuaded that the conduct of the Goldas defendants was so unmeritorious that it could itself constitute a good reason for now permitting alternative service. It was always open to Soc Gen to inform the Turkish Court of the true position in England if they had wished to do so. Nor do I consider that there is anything unconscionable in a defendant relying on an English jurisdiction clause or on the fact that proceedings are taking place in England without explaining that he is taking points about service or otherwise has a strong defence which may well succeed if there is a trial.

42 I would therefore uphold the judge's order dismissing Soc Gen's claims and discharging the freezing injunctions.

The order for an inquiry into damages suffered by the Goldas defendants pursuant to the cross-undertaking in the freezing orders

43 Soc Gen is on stronger ground attacking the judge's order for an inquiry into damages. It submits that the judge made errors of principle: (1) in failing to appreciate the importance of the long delay on the part of the Goldas defendants in coming to the English court for relief; it was, said Soc Gen, not even-handed for the judge to criticise in harsh terms Soc Gen's delay in failing to progress the English proceedings while being benevolent towards the similar delay on the part of the Goldas defendants in asking for the injunctions to be discharged; (2) in saying that, because the defendants were concentrating on the Turkish proceedings, the explanation for the delay was "credible and understandable"; (3) in saying that Soc Gen's abusive stance was not known to Goldas until Mr Surgeoner of Soc Gen's English solicitors had given evidence in the applications brought by the defendants to the effect that a decision had been taken in 2008 to "warehouse" the English proceedings; and (4) in relying on the absence of prejudice suffered by Soc Gen as a result of the delay.

44 Lord Diplock enunciated the general principle which applies to the enforcement of cross-undertakings in injunction cases in *F Hoffmann-La Roche & Co AG v Secretary of State for Trade and Industry* [1975] AC 295, 361:

> "It [the court] retains a discretion not to enforce the undertaking if it considers that the conduct of the defendant in relation to the obtaining or the continuing of the injunction or the enforcement of the undertaking makes it inequitable to do so."

In *Barratt Manchester Ltd v Bolton Metropolitan Borough Council* [1998] 1 WLR 1003 Barratt had obtained an order for an inquiry but had (allegedly) failed to prosecute the inquiry with reasonable diligence. The Attorney General who had given a cross-undertaking in damages as a condition of being granted a stay of an order pending an appeal sought an order dismissing the inquiry for want of prosecution. The main question was whether, in accordance with *Birkett v James* [1978] AC 297 on dismissal for want of prosecution, the applicant had to show that he had been prejudiced by the delay. This court held that it was not necessary to

A show prejudice. Millett LJ (with whom Sir Brian Neill and Kennedy LJ agreed) said at p 1009F, in a passage cited by the judge:

> "Since there is no cause of action there is no period of limitation either; but the cross-undertaking cannot be enforced without the leave of the court, which may be withheld if not applied for promptly: see *Smith v Day* (1882) 21 Ch D 421 and *Ex p Hall; In re Wood* (1883) 23 Ch D 644.
B As those cases show, the court does not inquire whether the other party has been prejudiced by the delay. The only question is whether the applicant has behaved with reasonable despatch."

At p 1012C–F in a passage partially cited by the judge, Millett LJ said this:

> "In my judgment the same principles ought to apply to the discharge of
C the cross-undertaking for failure to prosecute the inquiry as apply to the grant or refusal of the inquiry in the first place. The enforcement of the cross-undertaking should be regarded as being conditional on the inquiry being applied for promptly and prosecuted with reasonable diligence. This would allow for a desirable degree of flexibility. Just as the court may decline to enforce the cross-undertaking if the plaintiff does not apply to enforce it with reasonable promptitude, so it ought to be willing
D to discharge it where the plaintiff does not conduct the enforcement proceedings with reasonable diligence.
>
> "This is not to say that the presence or absence of prejudice to the defendant is irrelevant. Its presence will always be highly material. Where the delay has occasioned significant prejudice, it will almost always be right to dismiss the inquiry and discharge the cross-undertaking. But the
E greater the delay, the less the need to establish prejudice, and the court should not hesitate to discharge the cross-undertaking and dismiss the inquiry where there has been excessive and prolonged delay even though it cannot be shown to have occasioned any prejudice to the other party."

It is thus clear that the presence of prejudice will be important but its absence is in no way decisive. Yet the judge, at the end of para 84, regarded the
F absence of prejudice as important.

45 I am driven to agree with Soc Gen that the judge has here committed errors of principle. Delay in asking for an inquiry is a hugely important consideration to which the judge has attributed inadequate weight despite his acknowledgment of its existence. Here the delay between 2008 when service was disputed and 2016 when the application for the inquiry was
G made was no less than eight years which is an excessively long time. The Goldas defendants had invested enormous sums in the Turkish proceedings; not only did they defend the bankruptcy proceedings brought by Soc Gen but they instituted (we were told) no less that 56 applications of their own against Soc Gen and its personnel. Despite the alleged bankruptcy, money seems to have been freely available for the purpose of the Turkish proceedings; there cannot therefore have been any inhibition in bringing the
H English proceedings to a head if the Goldas defendants had genuinely wished to do so; it is therefore difficult to see how the judge was able to say that, because Goldas were concentrating on the Turkish proceedings, the delay was "credible and understandable". No doubt Soc Gen's own delay is the more reprehensible since they had obtained the freezing injunctions; but that

cannot mean that the Goldas delay can be discounted, especially in the light of the emphasis on promptness in *Barratt*.

46 Moreover Mr Surgeoner's evidence in the applications was evidence given in response to Goldas asking for the injunctions to be discharged and for an inquiry to be ordered. If Goldas were indeed ignorant that a decision had been made by Soc Gen to warehouse the English proceedings in 2008, such ignorance in no way inhibited them from making their applications. They always knew that Soc Gen was not progressing the English proceedings (indeed their case before the judge, which he rejected, was that it had abandoned the proceedings). Thus they knew no more in 2016 when they asked for the inquiry than they already knew in say 2010 or 2012.

47 It is, moreover, far from clear that Soc Gen has suffered no prejudice. Quite apart from the inevitable difficulty in investigating facts which occurred now more than ten years ago (no doubt a difficulty for both parties and the court), if an application had been made even as late as 2013, Soc Gen's claim would not have been time-barred. It would have had the opportunity to consider whether it should institute fresh proceedings or apply at that stage for an order for alternative service. Even if that had not happened, it would have been able to deploy an argument on the inquiry to the effect that the court should take into account the fact that it had an unanswerable claim to be paid for the gold it had delivered. Even now it is not suggested that there is any defence to that claim apart from the time bar.

48 In all these circumstances I conclude that the judge was wrong to order an inquiry and that his order to that effect should be discharged.

Application to amend the grounds of appeal

49 The judge handed down his judgment on 3 April 2017 after a four day hearing. On 14 September I granted an application for permission to appeal on grounds which had been argued before the judge. The appeal was in due course listed for two days on 1 and 2 May 2018. On 15 March the court received a substantial application for permission to amend the grounds of appeal and to serve a supplementary skeleton argument of 35 pages. The new grounds of appeal were as follows:

> "4A. Further and in any event, the defendants were not, save by way of an application made in accordance with CPR Pt 11, entitled to ask the judge to strike out and/or dismiss the claims on the ground that the claims had not 'been served on the defendants and the time for doing so under CPR r 7.5 has expired'. The judge should have dismissed the defendants' application dated 9 February 2016 (in so far as it was based on the alleged non-service of the claim forms) on this ground alone because it was not made in accordance with CPR Pt 11.
>
> "4B. Further and in any event, by issuing their application dated 9 February 2016, the defendants submitted to the exercise of English jurisdiction and thereby waived any defect in the service of the Folio 267 and Folio 329 claim forms. The judge should on this ground alone have treated both claim forms as validly served.
>
> "4C. Further and in any event, the defendants were aware of the alleged defect in the service of the Folio 267 and Folio 329 claim forms by mid 2008 but failed to issue any application purporting to challenge

A service until 9 February 2016. The judge should have held that they failed to make the application challenging service within a reasonable time after they knew of the alleged defect in service and ought for that reason alone have allowed Soc Gen's applications under CPR r 6.16 and/or CPR r 6.15 (and alternatively should have taken into account the failure in his assessment of whether to allow Soc Gen's applications under those rules) and/or remedied any error in service of the claim forms pursuant to CPR r 3.10."

B

None of these matters had been argued before the judge. Section A of the supplementary skeleton raised matters which could have been covered in the original skeleton apart from a reference to *Barton v Wright Hassall llp* [2018] 1 WLR 1119 which had been decided in the Supreme Court after the C judge gave his judgment. Section B dealt with the new proposed grounds of appeal.

50 It is virtually impossible for this court to handle its business of deciding permission to appeal applications and hearing appeals if time has to be found to deal with substantial applications in pending appeals some six or seven weeks before the hearing. In order even to understand the applications it is necessary to read into the appeal almost as carefully as one does in D preparing for the actual appeal and there is just no time to do justice to the application and, if the application is opposed, fix a hearing which would probably be necessary and which, even after reading, would be likely to take a half a day to hear and determine. Substantial applications of this sort should be made at the time permission to appeal is sought or not at all. In the event on 12 April 2018 I ordered that the application to amend the E grounds of appeal be dealt with at the hearing of the full appeal if there was time to do so within the two day estimate, allowing reference to be made to section B of the supplementary skeleton and refusing permission to rely on section A of that skeleton.

51 In the event there was time for Mr Laurence Rabinowitz QC on behalf of Soc Gen, who had not been counsel at first instance, to make short F submissions on the proposed new grounds. They proved to be grounds of great technicality, namely that the defendants had adopted the wrong procedure by applying for the dismissal or strike out of Soc Gen's claims. That was because such an application in relation to improper service could only be made pursuant to CPR Pt 11 which required an acknowledgment of service to be filed with an indication whether or not the defendants were G submitting to the jurisdiction; that had not been done and the defendants, by making their application, on a ground which was independent of lack of service (namely that the failure to progress the claim amounts to an abuse of process), had submitted to the jurisdiction and waived any objection there might have been to service.

52 I am far from saying that such points might not have succeeded if taken at the proper time before the judge. But one also has a suspicion that H any commercial judge, if the points had been taken at the proper time, would (subject to all questions of costs) have permitted the defendants to file a late acknowledgment of service and proceeded to hear the arguments of substance. What I am certain of is that it is too late to take such points for the first time in the Court of Appeal.

53 For these reasons, we indicated at the close of the oral hearing that the court would not grant permission to amend the grounds of appeal at this late stage and would proceed to give judgment on the original grounds only.

Conclusion

54 I would therefore uphold the judge in his refusal to order alternative retrospective service under CPR r 6.15 (and indeed to dispense with service under CPR r 6.16). I would also uphold his dismissal of Soc Gen's claim but I would discharge the order he made for an inquiry into damages pursuant to the cross-undertakings given to the court in the freezing injunctions. To that limited extent only, I would allow this appeal.

MACUR LJ

55 I agree.

SIMON LJ

56 I also agree.

Appeal allowed in part.
Order for inquiry into damages discharged.

MATTHEW BROTHERTON, Barrister