Neutral Citation Number: [2022] EWHC 1599 (Comm)

Case No: CL-2009-000709

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

7 Rolls Building
Fetter Lane, London, EC4A 1NL

Date: 24/06/2022

Before:

MRS JUSTICE MOULDER

- -

Between :

DEUTSCHE BANK AG	**Claimant/ Applicant**
- and -	
(1) SEBASTIAN HOLDINGS, INC **(2) MR ALEXANDER VIK**	**Defendant Respondent/ Defendant for Costs purposes only**

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Sonia Tolaney QC and James MacDonald QC (instructed by **Freshfields Bruckhaus Deringer LLP**) for **Deutsche Bank AG**
Duncan Matthews QC, Tony Beswetherick QC and Andrew Feld (instructed by **Brecher LLP**) for **Mr Vik**

Hearing dates: 3-5, 9-13, 17-19 May 2022

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Approved Judgment

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THE HONOURABLE MRS JUSTICE MOULDER

43. For reasons which are set out below it is not necessary for this Court to place reliance on either the Cooke Judgment or the Connecticut Judgment in order to reach its findings on the Contempt Application but the Court is entitled to take into account those findings in support of its conclusions on the detailed allegations to the extent and in the manner discussed below.

44. There was also a strike out application brought by Mr Vik which was heard before Cockerill J. The application failed: Cockerill J held that in the original application there was a clear summary which was enough to enable Mr Vik to understand the case which he had to meet. Cockerill J also rejected (at [134]) a submission for Mr Vik that the CPR 71 Order was unclear. For reasons which will be apparent from what is set out below, in my view it is not necessary to consider in any detail the findings of Cockerill J.

Alleged breaches

45. It was submitted for Mr Vik (paragraphs 6-26 of its Closing Submissions) that the Bank has sought to expand its case to raise a new case that Mr Vik was obliged under the Part 71 Order not only to order questions truthfully but also to provide information beyond responding to the actual question which was asked.

46. It was also submitted for Mr Vik that the Bank was seeking to advance a new case that Mr Vik was in breach of the Part 71 Order if he could have found out about matters by making relevant enquiries prior to the XX Hearing.

47. It was submitted for Mr Vik that it was not open to the Bank to advance a new case and that the particulars of contempt set out in the Schedule to the Application Notice are that the evidence of Mr Vik was "deliberately false".

48. Given my findings below that Mr Vik has deliberately given false evidence, it is not necessary for me to determine whether Mr Vik was obliged to provide information beyond responding to the actual question.

Credibility of Mr Vik

49. Mr Vik's evidence in his Affidavit is that he attended the XX Hearing as required, he answered all questions that were put to him and he gave honest answers. He also suggested in his Affidavit that the topics covered were vague and thus I infer, the questions said to be unclear to him, and that the topics covered a wide time period.

50. It is important to consider at the outset the extent to which, in determining whether the allegations against Mr Vik have been proved to the requisite standard, the Court can take into account its assessment of the overall credibility of Mr Vik in giving evidence to this Court.

51. It is clear on the authorities that on a committal application:

    i) The Court has to weigh up the reliability of the evidence of the alleged contemnor taking into account how far in the view of the Court his evidence is credible (*VIS Trading v Nazarov* [2016] EWHC 245 (QB) at [27]);

ii) The Court should bear in mind that if the Court finds that Mr Vik has told lies on other occasions it does not necessarily mean that he has lied about everything (*Nazarov* at [30]).

iii) The Court does not have to have direct evidence that Mr Vik was not telling the truth in any given respect but can draw inferences on the basis of all the evidence so long as the Court is sure to the criminal standard about the conclusions (ibid);

iv) It is against that background of the overarching conclusions on credibility and reliability that the Court will consider the specific evidence in response to the individual allegations (*Nazarov* at [31]).

52. Therefore, although I consider below the individual allegations of contempt against Mr Vik, it is appropriate and important to form a view on his evidence to this Court in the round in order to assist in determining what weight the Court should give to his evidence in response to the detailed allegations.

53. Although I have been taken by the Bank to the findings of Cooke J, I accept the submission for Mr Vik that even if Mr Vik had told lies in the past, he may take a different view when faced with committal proceedings. I also accept that the standard of proof which governed the findings of Cooke J was the usual civil standard of proof and therefore this Court cannot take any findings of Cooke J as having been made to the criminal standard which applies in these committal proceedings. I approached Mr Vik's evidence to this Court therefore with an open mind and have formed an independent view based on his evidence to this Court.

54. Whilst I do not prejudge Mr Vik's credibility based on the previous findings of Cooke J (or of the Connecticut court) I do take into account his background in assessing the credibility of his evidence particularly when it concerned financial matters and his own commercial interests. It is clear on his own (earlier) evidence (to which I was taken at the start of the cross examination) that he is a highly educated and successful businessman. He studied economics at Harvard, trained at Lehman Brothers and then went on to work as a stockbroker including for Smith Barney. In his witness statement in 2012 Mr Vik accepted that:

> "In this early part of my career, I gained a good general understanding of, and insight into, financial markets generally. As a result, I know how to invest in companies and over the years have done so on many occasions and in many different areas."

55. He also accepted in that witness statement as "*broadly accurate*" a description of him in an internal note prepared by the Bank in 2007 which described him as:

> "...sophisticated and focuses fully on investing his wealth through direct investments in private companies, macro-driven investment themes in listed equities, bonds, FX and commodities, real estate/hotel operations, co-investments with some of the largest private-equity/hedge-fund firms, as well as

> activist value-creating shareholder in large-cap companies." [emphasis added]

56. In his evidence to this Court Mr Vik accepted that by 2007 the value of SHI's assets were worth in the region of US$1 billion.

57. This background is relevant in my view both to Mr Vik's ability to understand the nature and import of the questions which were put to him at the XX Hearing and his evidence concerning his degree of involvement in the various matters at issue: in particular the evidence relating to the oversight of the Trust/Beatrice and the sale of the Devon Park Interest.

58. It was submitted for Mr Vik (paragraphs 27-29 of the Closing Submissions) that in assessing Mr Vik's evidence it was important to bear in mind the context of the Part 71 proceedings. It was submitted that the Part 71 cross examination covered "*a great range of events and transactions spanning a period of at least 8 years prior to the cross examination*". It was submitted (amongst other things) that the matters in respect of which Mr Vik is alleged to be in contempt concern "*a very limited number of events and a small number of documents*" and Counsel for Mr Vik asked rhetorically why there would have been deliberate non-compliance set against the "*extensive compliance"*. It was further submitted that many of the events and documents are "*minor and peripheral*" in the context of Mr Vik's life and business.

59. There are two distinct aspects to the issue of the passage of time: firstly, whether Mr Vik was able to recall the relevant matters at the time of the XX Hearing and secondly whether Mr Vik was able to recall matters when giving evidence to this Court in 2022.

60. As to the former it was unclear at times whether Mr Vik's oral evidence was that he could not remember the relevant matters or (as suggested in the Vik Affidavit) did not understand the question. This is dealt with below in the context of the specific allegations of contempt.

61. As to the latter I note that Mr Vik frequently responded to questions in cross examination before this Court that he could not remember. However, he also repeatedly referred to the fact that the topics raised by counsel for the Bank were matters which he had addressed many times.

> "Q. But we know that Mr Johansson reported to you in everything he did in relation to SHI, didn't he?
>
> A. No.
>
> Q. Well, Mr Vik, you were, as you say, the sole shareholder of SHI, and Mr Johansson had to report to you about the activities he conducted on behalf of SHI, didn't he?
>
> A. No.
>
> Q. Why do you say that, Mr Vik?

> A. This is old ground; we have been over this so many times…" [emphasis added] (transcript day 5, p16)

62. Further Mr Vik demonstrated on occasion a good recollection of detail: for example, when he was being cross examined in relation to the IFA Shares he was able to recollect the previous evidence of Mr Johansson from 2014:

> "Q. In 2012 those shares were worth at face value about US$13.3 million?
>
> A. That sounds about right.
>
> Q. But in fact because their shares amounted to a blocking position, their value was higher?
>
> A. I remember seeing that in Mr Johansson's affidavit. I am not sure that is really true. It didn't turn out that way. But I think in any case that was the (inaudible) ...
>
> Q. You are right, it was in Mr Johansson's affidavit…" [emphasis added] (transcript day 6, p74)

63. Mr Vik also alluded to the fact that he well understood the significance of the questions being put to him before this Court: for example, when questioned about the arbitration proceedings between Devon Park and SHI Mr Vik commented in response to counsel:

> "Q. And you remember detail, don't you, Mr Vik, as we have just seen?
>
> A. I know where you are going I know where you are going with it, you know, sometimes I do, sometimes I don't." [emphasis added] (transcript day 5, p80)

64. Whilst the court takes into account the time that has elapsed in respect of the matters at issue both at the time of the XX Hearing and in 2022 and the lapse of time could be a perfectly acceptable response to some questions of detail, one has to look at the particular occasions when this was his response. For reasons discussed below, in my view the assets of the Trust and Beatrice are significant and cannot be said to be "*peripheral or minor*" in the context of Mr Vik's life and business. The significance of the alleged contempts to the identification of the destination/ location of the assets of SHI in my view provides an answer to the rhetorical question posed by counsel for Mr Vik as to why there would have been deliberate non-compliance set against the "*extensive compliance*".

65. So far as relevant the credibility of Mr Vik's individual responses is considered in the context of the specific allegations below. However, it is relevant to the overall assessment of his credibility to note the occasions in his evidence to this Court where he asserted that he did not recall matters.

66. At the XX Hearing when asked about the Trust Deed, Mr Vik accepted that he was "*generally familiar with it*":

> "Q Are you familiar with the document?
>
> A I haven't looked at it for years, but generally, I was familiar with it, yes."

67. Further at the XX Hearing Mr Vik was taken to provisions of the Trust Deed such as the provision that the trust was revocable, and his wife could revest the trust property:

> "Q. This trust is entirely revocable, isn't it, Mr Vik?
>
> A. Yes.
>
> Q. And your wife can revest property to you just as your spouse, can't she?
>
> A. I don't know.
>
> Q. Let's look at it. It is in Article 2 over the page, subparagraph 2, if you go over the page to the top of the next page you will see: "Grantor's spouse power to revest. Carrie Vik will have the power exercisable at any time and from time to time to revest assets ..." in you.
>
> A. Okay."

68. This evidence at the XX Hearing can be contrasted with Mr Vik's evidence to this Court where he sought to present himself as unfamiliar with even the main trust provisions:

> "Q. Article II, we see the trust is revocable in whole or in part at any time on your instructions, correct?
>
> A. Yes. I read that.
>
> Q. And you agree that the trust is revocable at any time in whole or part at any time on your instruction?
>
> A. That is what it says, yes.
>
> Q. If we go over the page, please to the next provision. This is: "Grantor's spouse [that is Mrs Vik] ... shall have the power, exercisable at any time ... to revest absolutely in the grantor [that is you] ... " Any of the trust property without the approval or consent of anyone else.
>
> A. Shall I read it?
>
> Q. Yes, Mr Vik. I am surprised you are not more familiar, but it is going to take a little while if we are going to have to read the document as if you have never seen it before. But do read it again. (Pause).

> A. Okay, I read it.
>
> Q. Do you accept that is what it says?
>
> A. Yes, grantor's spouse has the power to revest.
>
> Q. Mr Vik, you are acting as though you have never seen this document, but we went through it at the Part 71 hearing, and one of the contempts alleged is in relation to the Beatrice trust, so I assume you are familiar with the topic that was put to you at the Part 71 hearing?
>
> A. I have not looked at this document for many years" [emphasis added] (transcript day 8, p21-22)

69. Mr Vik's manner of giving evidence to this Court in relation to the Trust Deed and his purported ignorance of key provisions was in my view not credible in light of both his previous evidence at the XX Hearing but more significantly the fact that these key provisions were the basis on which he transferred US$700 million of assets to his family through the Trust. He is, as referred to above, a highly educated man with a long and successful background in finance. Although counsel for Mr Vik repeatedly stressed that Mr Vik was not a lawyer and should not be assumed to have acted as a lawyer would have done, it is inconceivable in my view given the financial significance of this transaction both to him and his family, that he was unaware of the terms on which the trust assets had been placed in the Trust and the rights which he had retained over those assets. Further the allegations against him relating to Beatrice and assets transferred to the Trust are and have been central features to this litigation and are a major plank of the committal application which Mr Vik now faces. Accordingly, it is inconceivable in my view that he would have now forgotten the major features of the basis on which the assets were placed in the Trust. In my view Mr Vik was being disingenuous in the manner in which he gave this evidence about the operation of the Trust Deed.

70. Mr Vik's approach to the provisions of the Trust Deed and his purported lack of familiarity with its provisions can be contrasted with his evidence to this Court when he was able to recall aspects of his wife's evidence from her deposition in the Stamford proceedings in July 2015. Counsel for the Bank was asking Mr Vik about his wife's evidence in the deposition of her understanding of Beatrice and her knowledge of the identity of the trustees.

> "A. I notice that on one of the pages you were going very quickly there but she actually answered the question about why she didn't hand over the trust document.
>
> Q. Yes, I was wondering if you were going to pick that up." (transcript day 8, p46)

71. It is unlikely in my view that Mr Vik was able to reread the deposition in the course of that particular exchange in cross examination and thus in my view this was an example where Mr Vik demonstrated that he was fully up to speed with the evidence concerning the issues and able to recall and identify quickly relevant provisions from

supporting documents (even from other proceedings) when he thought they were supportive of his case.

72. Mr Vik's apparent ability to recall his wife's deposition in other proceedings has to be contrasted with his approach when he was being asked about his understanding of the questions put to him at the XX Hearing and which form the basis of the allegations of contempt. Before this Court Mr Vik professed himself unable to follow the transcript of the hearing as Counsel for the Bank took him through it.

> "Q. So you knew, Mr Vik, when you were listening and answering all of these questions, that it was aimed at establishing what you knew about the trust assets and your involvement in its activities, didn't you?
>
> A. Now I am confused here. At the top of 51, those are the ...
>
> Q. No, it's page 52, lines 10 to 14. 3
>
> A. Sorry, 52, 10 to 14 (transcript day 8, p72)
>
> "A. I lost track. Which one of these pages am I supposed to look at? [emphasis added] (transcript day 8, p73)

73. This was in my view an example of Mr Vik seeking to avoid answering direct questions and an attempt to obfuscate.

74. A further example of this is when Mr Vik was being cross examined about the correspondence that has now come to light between Devon Park and Mr Vik:

> "Q. Why did you ask a question, Mr Vik, in an investment that you had no interest in?
>
> A. Because, as I told you before, I was interested that this company suddenly was doing better.
>
> Q. We see the response from Mr Kantesaria telling you about their future plans.
>
> A. Yes.
>
> Q. Again, why would a private equity house do that to somebody who had no interest in the fund?
>
> A. I don't know.
>
> Q. On what basis did you expect a response to your question, Mr Vik?
>
> A. I don't understand the question.

> Q. Well, you were asking about their future plans which could have been confidential. Why did you think that they would respond to you?
>
> A. I really don't remember why or why not or if they would, I have no memory of that." [emphasis added] (transcript day 6, p13)

75. Mr Vik in my view as an experienced businessman with a background in finance would have understood what lay behind the question posed by counsel for the Bank, namely that it was surprising that Devon Park were willing to provide confidential and probably price sensitive information about their future plans to someone who was no longer an investor in the Fund. I find that his evidence in this regard was merely intended to obfuscate and avoid the obvious inference that he/SHI retained an (economic) interest in Devon Park at that time.

76. On occasion when faced with a contemporaneous document which Mr Vik understood was adverse to his case he resorted to giving evidence which was clearly absurd. He was asked about an email form Mr Johansson to Mr Kantesaria of Devon Park after SHI had purportedly divested itself of its/VBI's interest in response to an email in which Mr Kantesaria had objected to "*endless emails and calls*". Mr Johansson wrote:

> "Please understand that the [Devon Park] stake is a significant amount of money for which I am responsible…Please know that it is important for me to know things like this, it is what you would ask about also I think as any good manager would, and that I am not trying to waste your time. [emphasis added]

77. The relevant exchange in cross examination was as follows:

> "Q… Pausing there, why was Mr Johansson responsible? He worked for you, Mr Vik.
>
> A. I am not sure why he said that, but I can imagine that he was getting complaints from the buyer that they had bought an asset and they were not receiving the funds that they were entitled to.
>
> Q. And he says at the bottom of this email: " ... I think as any good manager would ..." So he sees his role as the manager of this asset.
>
> A. Yes, he says that.
>
> Q. That is not consistent with your evidence, Mr Vik, that he was facilitating the transfer of VBI to Universal.
>
> A. I don't know what Per meant or didn't mean, but I am quite certain that this is about solving the problem of Devon Park not paying Universal the money it was entitled to.

> Q. Mr Vik, can you point me to anywhere in your statement that you have given that explanation, your witness statement?
>
> A. You cut out there, I couldn't hear you.
>
> Q. There is nothing in your witness statement with that explanation, it is an explanation that you have come up with this morning as you have just thought about it, as you have seen the emails, isn 't it?
>
> A. No. That is what it was. My witness statement is my witness statement, but I am here for questioning and this is for sure what happened.
>
> Q. It is for sure what happened that Mr Johansson got involved as he thought the manager of the asset because he was worried that Universal weren't getting the distributions; that is your evidence, is it?
>
> A. You know, I am not sure, I think he was, he might have used the word "manager" I am not really sure. Let me just read this a bit more carefully. (Pause) Yes, the manager doesn't even… it relates to management of time, or something like that, it is not the manager of the asset. But he was solving this particular helping solve this particular problem, and unsuccessfully so, but that is what he was doing.
>
> Q. Let me get this absolutely straight. You say the words "as any good manager would" means he was managing time, that is your evidence, is it?
>
> A. If you want to get into technical interpretation of it I will have to read it again.
>
> Q. I think that is what you just said, Mr Vik, I was simply clarifying.
>
> A. (Pause) Yes, I think he is talking about time, time and work." [emphasis added] (transcript day 6, p37)

78. This answer (that it related to "*management of time*") was in my view not credible and clearly a lie when the email is given its natural meaning. It is another example, in my view, of Mr Vik trying to explain away contemporaneous documentation which has now come to light and (as is evident from the transcript reproduced above), when he was pressed on his first explanation, that Mr Johansson was helping Universal to get distributions, on the basis that it was inconsistent with his earlier evidence that Mr Johansson was facilitating the transfer, persisted in a response which was clearly absurd.

79. Although the allegations of false statements in relation to the transfer of the private equity interests held by SHI in two Reiten funds and five Carlyle funds are no longer

pursued by the Bank, questions were put in cross examination to Mr Vik about documents which have now been disclosed and it is relevant to the assessment of Mr Vik's general credibility to note his response to questions when faced with contemporaneous documentation which were adverse to his position.

80. Mr Vik was asked in the course of cross examination about the timing of the transfers of the Reiten interests in the course of which his evidence was that Sarek was Mr Johansson's company:

> "Q. Again, we see you are receiving information as to the value of the Reiten interests, and this is as late as August 2009…
>
> Q. That is not consistent with you having divested yourself of any interest, or SHI having done so a long time prior, is it?
>
> A. You just showed, in fact, that the investment moved from Sebastian Holdings to Sarek.
>
> Q. Right, and you said Sarek was Mr Johansson's company and not yours?
>
> A. It is his company." [emphasis added] (transcript day 7, p90)

81. In an email from Reiten Mr Johansson was asked for confirmation as to the beneficial ownership of Christiana Holdings as the vehicle was said to have a 25% holding in Sarek Holdings. Mr Johansson replied in an email that Mr Vik was the beneficial owner of Christiania.

82. In cross examination when taken to this email, Mr Vik's evidence was as follows:

> "Q. So according to these communications, which involved Mr Johansson, you do have an interest in Sarek Holdings, which is holding the interests stripped from SHI?
>
> A. Yes, I -- yes, I see that it says that. As far as I know, the company is Mr Johansson's company, and if Christiania Holding had an interest in it, I don't know.
>
> Q. Well, Mr Vik, Christiania Holding is your company, and you must have known whether you had an interest in Sarek?
>
> A. I really don't know what Christiania Holding is, I really don't.
>
> Q. So Mr Johansson has got it completely wrong, has he; your right-hand man, who is dealing with all the execution of the transfer agreements, we see, doesn't know who owns Sarek, and Christiania Holding?
>
> A. You know, again, I really don't know where this is going. Christiania Holding is not a name that I recognise" [emphasis added]

83. In my view this was another example of a wholly incredible answer to a question when faced with contemporaneous evidence that clearly undermined his earlier evidence regarding the ownership of Sarek. Even if the Court had been inclined to give Mr Vik the benefit of the doubt concerning his memory of Christiania, his evidence was further called into question by the next document which Counsel for the Bank took him to in cross examination, in which Mr Johansson in his stated capacity as the acting secretary of Sarek Holdings Ltd., certified that as of December 2010 Mr Vik owned 100% of the outstanding common shares of Sarek.

84. Mr Vik's response to this contemporaneous evidence was as follows:

> "A. As far as I am concerned, that is not correct, but I don't know what it is. I don't know what this is, but for me, Sarek is Per Johansson's company, and you know, you are in litigation with -- your receivers are in litigation with Sarek and Per Johansson about this, so it is Per Johansson's company." (transcript day 7, p92)

85. Mr Vik then denied in his evidence to this Court that he was lying but in my view, the contemporaneous documentation which is from 2010 cannot be explained away by any later litigation involving Sarek and Mr Vik provided no satisfactory explanation. His earlier evidence to the Court that it was Mr Johansson's company was in my view false and shown to be false by the documentation.

86. Finally, I have regard to the evidence concerning the deeds of transfer of the Partnership Interests. Whilst the particular documents at issue are not now the subject matter of the alleged false statements in these committal proceedings it is a matter which is relevant to the credibility of Mr Vik's evidence, in particular because in relation to certain of the specific allegations on this Committal Application the genuineness of other documents are in issue.

87. In October 2015 Mr Vik disclosed five purported deeds of transfer recording the transfer of the Carlyle interests from SHI to Delagoa. The version disclosed had the date of 26 September 2008 written in by hand and an effective date also written in by hand of 26 September 2008. On its face it was executed by Mr Vik for SHI in the presence of his wife and executed for Delagoa Bay, Mr Vik's father's company, by Mr Johansson, again with Mr Vik's wife as witness. Each of these transfers required the consent of the general partner but the version disclosed did not contain any signature by the general partner.

88. Subsequently the Bank obtained a Norwich Pharmacal order against certain of the general partners in the Carlyle and Reiten groups. This revealed certain documents that Mr Vik had not disclosed in October 2015. One of those documents was a version of the transfer deeds which, unlike the version disclosed by Mr Vik at the top right-hand corner, had the words "Execution Version" and on the bottom left-hand corner, said "version 6" whereas the reference on the version that Mr Vik disclosed said "version 5".

89. Mr Vik's response in cross examination was:

> "A. I had nothing to do with this, I really don't know anything about it, but --you know, obviously here, it says "v5" or "v6"; more than that, I don't know.
>
> Q. Well, Mr Vik, you executed these documents, so you did have something to do with it?
>
> A. Excuse me?
>
> Q. You executed the documents?
>
> A. Oh, yes, but as I said, I sign all kinds of things, but I had no knowledge of these things." [emphasis added] (transcript day 7, p79)

90. Further differences between the versions were that the later version of the deed was dated 2 December 2009 and recorded that although the assignor and the assignee had agreed that the transfer would be effective as of 26 September 2008, the transfer effective date was treated as being effective as of 30 September 2009 whereas this text did not appear in the versions Mr Vik disclosed. Finally, the versions obtained through the Norwich Pharmacal order had the general partner's signature and consent. The same points applied to all five executed deeds provided to the Bank by the Carlyle/Reiten general partners.

91. Mr Vik denied in cross examination that he had deliberately disclosed a document to support his argument that the transfers had happened in September 2008. He sought to suggest that any fault lay with Mr Johansson:

> "Q. What you disclosed to this court as evidence of the partnership transfers pursuant to the CPR 71 order were drafts where somebody had handwritten in, conveniently, dates in September 2008, and that's all you disclosed pursuant to the Part 71 order.
>
> A. I disclosed what I was given by Mr Johansson. So that was what I was given." [emphasis added] (transcript day 7, p84)

92. Mr Vik's evidence was that he signs documents without reading them and merely disclosed what he was given by Mr Johansson. However, this evidence fails to provide a satisfactory explanation as to why (even if he does not read documents before he signs them) these 5 separate deeds were each signed twice by him (i.e. both versions 5 and 6). The explanation that the documents were given to him by Mr Johansson to disclose does not explain how Mr Vik came to sign five deeds twice.

93. Mr Vik disclosed the earlier versions of the Deeds (and these themselves were amended in manuscript) and the Court would therefore have to infer that it was mere chance that he had retained and then disclosed (only) the earlier versions of each of these deeds with the dates which accord with his case rather than the later version which is adverse to his case.

94. In my view such an inference is wholly implausible and there is no explanation for the manuscript amendments other than they must have been made deliberately.

95. In the circumstances where the later versions have only come to light from third parties, I do not accept any explanation that Mr Vik was unaware of the fact that these documents which were disclosed by or on his behalf were not the final versions. I am sure that this was a deliberate attempt by Mr Vik to mislead by his disclosure and his evidence to this Court that he did not know anything about the different versions and merely disclosed what he was given by Mr Johansson is a deliberate lie. Whilst this allegation is not before the Court on this Application, it is highly relevant to the credibility of Mr Vik generally and to the plausibility of arguments put forward concerning Mr Vik's actions.

96. It was submitted for Mr Vik (paragraph 30 of Closing Submissions) that it is "*plausible*" that Mr Vik did not take an interest in substantial sums in cash or cash equivalents (the assets in Beatrice) and plausible that out of "*curiosity*" that Mr Vik made an enquiry about an investment he had disposed of (the Devon Park Interest) and that these matters do not call into question the accuracy of his answers.

97. Whether something is a plausible explanation in the context of the specific allegation i.e. reasonable or likely depends on the circumstances but also on the Court's assessment of the overall reliability and credibility of his evidence.

98. In reaching a conclusion as to whether the evidence excludes all realistic possibilities consistent with the defendant's innocence the Court is entitled to and does take into account the court's assessment of the overall reliability and credibility of Mr Vik's evidence.

99. My impression of Mr Vik gained from his oral evidence read against the contemporaneous documents is of a man who on his own case has demonstrated a readiness not to tell the truth in his business dealings: on his case it was an unnecessary inconvenience to get the consent of Devon Park to the transfer of the beneficial interest by SHI to VBI.

100. On Mr Vik's evidence little weight should be placed on documents as representing the true position merely because they are signed by Mr Vik.

101. As discussed above, I do not accept as a general proposition that the passage of time is an explanation for his stated inability to recall matters. Rather Mr Vik's approach to giving evidence to this Court was that of someone who had been engaged in litigation over many years and was unfazed by the task of cross examination and giving evidence. It could be said that he appeared to regard it as an intellectual challenge to pit himself against counsel for the Bank.

102. Mr Vik is and I infer was at the XX Hearing, fully abreast of the issues in this litigation and he is sufficiently skilled (in terms of education and background) to understand the import of both the questions put to him both at the XX Hearing and in cross examination before this Court and the potential ramifications of his evidence. I do not accept as genuine the (majority of) occasions in his evidence to this Court where he professed to be confused or lost.

103. More significantly and as referred to above, in my assessment Mr Vik lied to this Court when faced with clear documentary evidence which contradicted his position.

104. For all these reasons I approach Mr Vik's evidence to this Court on individual issues on this Committal Application with considerable caution as to whether he was telling the truth to this Court in relation to the individual allegations of contempt.

105. Lest it be said that the Court has somehow reversed the burden of proof by this finding I would note the findings of the Court of Appeal in *Ablyazov* at [57] where such an argument was rejected:

> "…as is typical of any trial, the evidence of any witness depends critically on his or her credibility and reliability. Just as typically, a judge comments that he is unable to credit the witness save to the extent that his evidence is reliably corroborated by the documents."

106. I note that the Court of Appeal whilst referring to the evidence of the witness being corroborated by the documents (above) refers to evidence which is "*reliably corroborated*" by the documents. In this case it is alleged by the Bank that some documents notably the Sale Agreement are not bona fide documents and thus the extent to which Mr Vik's evidence is "*corroborated*" by the documents also depends on the Court's assessment of whether such documents are themselves reliable.

107. Finally, in relation to the significance of the overall assessment of his credibility to the individual allegations of breach, I note the Court of Appeal's observation in *Ablyazov* at [60] that**:**

> "…ultimately, however much each allegation of contempt needed to be looked at on its own merits, the key question of Mr Ablyazov's honesty with respect to his assets is likely to link the allegations…".

Fairness of the process/abuse

108. It is necessary for the Court to address some preliminary submissions made for Mr Vik on the whether the process was "fair" to Mr Vik.

109. It was submitted for Mr Vik (Closing Submissions paragraphs 2-5) that the "process" is not fair to Mr Vik. The following matters were relied upon (in summary):

i) The time elapsed- the Court has to make findings as to what was in Mr Vik's mind in December 2015 and to why he could not produce emails which in several cases were more than 6 years previously;

ii) It was part of a strategy of putting pressure on him personally even though he is not personally liable for the debt;

iii) The Committal Application was conceived without adequate reflection;

iv) The evidence is advanced in an unbalanced and unnecessarily tendentious manner;

v) The Bank asks the Court to assume that the burden is on Mr Vik;

vi) The case has evolved impermissibly.

110. It was not expressly asserted in this section of the written closings for Mr Vik that the Committal Application is an abuse of process. Rather it was submitted that it merely posed for the Court "*an unnecessarily difficult task of extracting what is relevant and probative*".

111. In his oral and Section E of the written Closing Submissions Mr Vik appeared to go further when it was submitted that the Committal Application was not for the purpose of assisting recovery against SHI but was intended to put pressure on Mr Vik by a threat of imprisonment to obtain a payment from him personally. It was submitted [Day 11 p63] that this was not "*a legitimate purpose of the contempt proceedings*". It was further submitted that it was not "*proportionate*" to seek to pursue "*a collection of redundant documentation which Mr Vik has no realistic prospect of being able to recover against the threat of imprisonment, if he fails to do so, or, which is not going to assist Deutsche Bank in any event".*

112. Further it was submitted (paragraph 206 of its Closing Submissions) for Mr Vik that a large number of allegations had to be discontinued; the Bank proceeded on the basis that the Bank assumes that what is said by Mr Vik is incorrect until proved otherwise; the allegations are not proportionate; the Bank asked questions to which it already knew the answer to try and obtain a substantive response and there is no evidence that there is anything further by way of documentation.

113. In my view the process was "fair":

i) Mr Vik had due notice of the allegations (his application to have the allegations struck out as unclear and lacking particularity was heard and rejected by Cockerill J).

ii) The burden and standard of proof which the Court must apply is common ground.

iii) Mr Vik has been represented throughout by leading and junior counsel.

iv) Mr Vik had an opportunity to respond to the evidence which he chose to do through his Affidavit and by submitting to cross examination. It was clear that counsel had advised him of his right not to file evidence and not to submit to cross examination.

v) Further by permitting Mr Vik to give evidence remotely from abroad, there can be no suggestion that the Court compelled him (indirectly) to enter the jurisdiction in order to defend himself.

vi) The fact that some of the allegations are no longer pursued does not make the process unfair. Mr Vik is able to engage lawyers to deal with the detail of the proceedings and the fact that the number of allegations has reduced assists Mr Vik rather than prejudices him. The issue of the costs of abandoned allegations will be considered in due course but the abandoned allegations do not in my

view render the process unfair. There is evidence in Mr Hart's First Affidavit that goes to the now abandoned allegations but the passages of evidence relied on for the allegations that remain are clearly identified in the Application Notice. The Court is familiar and experienced in the need to focus on the evidence which is relevant and probative and there is nothing of particular concern which would suggest that the Court was unable to do so on this occasion.

vii) The effect of the passage of time is considered above in relation to the credibility of Mr Vik. Further much of the detailed evidence now before this Court largely relate to matters which occurred in 2013-2015. The contemporaneous documents are evidence which is unchanged notwithstanding the passage of time and assists the Court in reaching its conclusions.

viii) The courts are very familiar with having to make findings as to the state of mind of a person at the time of an alleged offence.

ix) The Court has well in mind the precise matters which are alleged and makes findings below by reference only to the matters which are alleged; as set out above the Court also has in mind throughout in assessing the evidence and submissions the burden and standard of proof and there is no unfairness which results in that regard.

x) As to the alleged motive of the Bank to put pressure on Mr Vik personally, in light of the Court of Appeal decision in *Navigator v Deripaska* [2021] EWCA Civ 1799, subjective motive is irrelevant to an application for contempt. (It is not entirely clear from the submissions (paragraph 113 of Mr Vik's skeleton for the hearing and paragraph 205 of his Closing Submissions) whether this decision is accepted for Mr Vik, it is nevertheless binding on this Court). The relevant passage is at [110]:

> "110. I do not agree with this analysis of the authorities. In my judgment, for the reasons set out below, where a civil contempt application:
>
> i) is made in accordance with the relevant procedural requirements;
>
> ii) is properly arguable on the merits (by reference to the necessary constituents of a claim for contempt); and
>
> iii) has the effect (and so at least the objective purpose) of drawing to the attention of the court to an allegedly serious contempt,
>
> then the fact that the application is motivated, whether predominantly or even exclusively, by a personal desire for revenge on the part of the applicant is not a good reason for striking out the application as an abuse of process."

114. Whilst I accept that in *Deripaska* there was reference to a "*legitimate purpose*" or "*motive*", this in my view is satisfied in this case: this is not a case where the proceedings can be characterised as "*hopeless*" or purely technical contempts: in *Deripaska* the Court of Appeal said at [114]:

> "114. Sectorguard was thus "[f]irst and foremost" a case where compliance with the relevant undertaking was found to be impossible at all material times; that set the context for all that followed. I do not consider that the subsequent reference in [53] to "legitimate motive" is a reference to subjective motive but rather a reference to legitimate purpose in the sense identified in [47], where Briggs J had identified the two "legitimate ends" of committal proceedings, namely enforcement or bringing to the court's attention serious rather than technical breaches. The words "ends" and "motives" were being used interchangeably, but the clear thrust of [47] is that proceedings which are hopeless or relate to purely technical contempts are the signs to look for when searching for abuse, not questions of subjective motive." [emphasis added]

115. In my view this Committal Application satisfies the test laid down in *Deripaska*: it is made in accordance with the relevant procedural requirements (including that it was properly served and the allegations are properly particularised); it is properly arguable on the merits and has the objective purpose of drawing to the attention of the court an allegedly serious contempt that is a failure to give truthful information and to comply with the disclosure obligations imposed by a Court order.

Beatrice-Failure to provide truthful or complete information regarding the funds and assets of Beatrice or the Trust

Allegations

116. In the Schedule to the Application Notice the Bank particularised the allegations in respect of Beatrice and the Trust as follows:

> "1. At the Vik XX Hearing, Mr Vik gave evidence (transcript p. 61 1. 23 - p. 63 1. 20), the substance of which was that he did not know and was unable to provide information about:
>
> (a) what assets Beatrice had at the date of the Vik XX Hearing;
>
> (b) what funds of SHI were held by Beatrice at the date of the Vik XX Hearing;
>
> (c) what assets Beatrice had in August 2015; and
>
> (d) what assets the Trust had in August 2015 or at the date of the Vik XX Hearing
>
> (Mr Vik falsely claimed, instead, that the last time he knew what the assets of the Trust were was October 2008).

> 2. Mr Vik's evidence, as summarised in paragraph 1 above, was deliberately false. As at the date of the Vik XX Hearing, Mr Vik did know and/or was able to provide information about:
>
> (a) what assets Beatrice had at the date of the Vik XX Hearing;
>
> (b) what funds of SHI were held by Beatrice at the date of the Vik XX Hearing;
>
> (c) what assets Beatrice had in August 2015; and
>
> (d) what assets the Trust had in August 2015 and at the date of the Vik XX Hearing."

Evidence

117. The Bank's evidence in support of the allegations above is set out in the First Affidavit of Mr Hart (at paragraphs 58-93) and in the Third Affidavit of Mr Hart (at paragraphs 11-16).

118. From that evidence I note in particular the following:

i) Transfers of funds and assets totalling approximately US$ 730 million took place from SHI to Beatrice between 13 and 15 October 2008 (the "Beatrice Transfers").

ii) At the time of the Beatrice Transfers, Mr Vik was the sole shareholder and director of Beatrice.

iii) Mr Vik has given evidence that, having transferred SHI's funds to Beatrice, he then transferred his interest in Beatrice to the Trust "*as of*" 30 October 2008, allegedly as part of his "*estate planning*" (paragraph 59 First Affidavit of Mr Hart).

iv) The Bank notified Mr Vik in advance of the Vik XX Hearing that it intended to question him about the assets of Beatrice and the Trust (paragraph 63 of First Affidavit of Mr Hart). The "List of Topics" (comprising some 13 topics) included the following:

> "8. The assets of C.M. Beatrice, Inc. ("Beatrice"), which may be available to satisfy the Judgment Debt, including:
>
> (a) Transfers from SHI to Beatrice and the current whereabouts of the proceeds of such assets;
>
> (b) The location and control of current assets of Beatrice;
>
> (c) Ownership of Beatrice and the alleged transfer of Beatrice to the CSCSNE Trust; and
>
> (d) Mr Vik's relationship to, and the status, control and trusteeship of, the CSCSNE Trust."

v) Mr Vik was the settlor or grantor of the Trust. Under the terms of the Trust Deed, in his capacity as Grantor of the Trust, Mr Vik: (a) has the power to alter, amend, revoke or terminate the Trust in whole or in part; (b) can have any part of the Trust property revested in him at any time at the request of his wife in her capacity as the 'Grantor's Spouse' (c) has to approve in writing all proposed payments to the beneficiaries of the Trust; and (d) may at any time, and without the consent of the trustees, acquire all or any portion of the Trust property by substituting other property of equivalent value.

vi) Mr Vik was also, until August 2015, the "Protector" of the Trust. Thereafter it appears that the former wife of Mr Vik's brother, Barbara Esparrago was appointed and that she was then replaced in February 2017 by Ms Maria Jesus Lopez de la Torre.

vii) The beneficiaries of the Trust are Mr Vik's children.

viii) Mr Vik's wife and daughter were until 2013 the trustees of the Trust. In Mrs Vik's deposition in the Connecticut Proceedings in July 2015 Mrs Vik's evidence was that she had no understanding as to what the business of Beatrice was, merely stating that she knew it was "*a company with assets*". Her evidence was that she did not know what those assets were and did not know what business it was in.

In that same deposition Mrs Vik also said that she did not know who became trustee when she and her daughter resigned as trustees.

In her deposition in May 2017 Mr Vik's daughter, Caroline Vik, gave evidence that the Trust had *"assets and holdings and investments and debt"* but *"I don't know when and what"*. She then said that she knew the Trust had Beatrice and that she knew it had made investments. [A/4.1/248]

ix) Mr Vik's wife and daughter were replaced as trustees by Maximillian Broquen, the managing director of Mr Vik's family's hotels business, and subsequently in July 2016 by Ivan Gonell Santana, a junior legal assistant at a law firm in the Dominican Republic. Mr Gonell was directed to file an affirmation in New York proceedings. In that affirmation Mr Gonell stated that apart from four documents which related to his appointment as trustee, the resignation of Ms Esparrago and provided a copy of the Trust Deed, he had no documents in his possession pertaining to the Trust or Beatrice and no knowledge of where such documents could be located or whether they existed.

x) The Trust Deed was only disclosed in October 2015; previously Mrs Vik (who was at the relevant time a trustee of the Trust) was not prepared to provide a copy to Ms Asgarian, a lawyer acting for Mr Vik. When asked in the course of her deposition for the Connecticut proceedings why she had refused, Mrs Vik replied;

"A. Because I didn't want to.

Q. Why?

> A. Protect my family from -- I didn't want to. I just didn't think it was appropriate.
>
> Q. To protect your family from what?
>
> A. It's -- my children. I protect my children…"

119. I also note the evidence of Mr Vik in his Affidavit as follows:

i) The Trust was originally set up in October 2008 and Mr Vik settled Beatrice's shares into trust on 30 October 2008.

ii) Shares in a company do not need supervision or maintenance.

iii) Prior to the establishment of the Trust, Beatrice was his "*savings*" company and, as such, it had no "*operations*" or "*business*" to speak of; it was simply an entity that held assets. The assets that it held, in keeping with its use as a savings company, were low-risk and low-maintenance. Prior to the settlement of his shares in Beatrice on trust, Beatrice's assets were, as far as he recalled, primarily, cash, fiduciary deposits or treasury bills.

iv) The nature of Beatrice's assets meant that they did not need much management, at least at the time that Mr Vik settled Beatrice's shares into the Trust. It was in this context that he was content for his wife and daughter, and later Mr Broquen, to act as trustees of the Trust without "*supervision or intrusion*" from him. (paragraph 31)

Mens rea

120. It was submitted for Mr Vik (paragraph 32 of his Closing Submissions) that the substance of his responses should be interpreted as a statement that in December 2015 he did not know "*exactly*" what assets or funds Beatrice, or the Trust had either at the date of the XX Hearing or in August 2015.

> "… the short point is that in giving the answers that he did, Mr Vik stated that he did not know the assets that Beatrice held, though as a matter of asset class, he indicated it had been, and likely remained, cash and cash instruments. He did not know the assets that the trust held, though as to that, he was unaware of anything other than Beatrice shares having been transferred in." [emphasis added] (transcript day 10, p22)

121. As noted above, Mr Vik was given notice of the intended questions and that he would be asked about the assets of Beatrice.

122. In my view Mr Matthews sought to put a gloss on the answers of Mr Vik and to draw a distinction between knowledge of the class of assets and the precise assets which is not warranted. In support of this conclusion, it is important to read the transcript of the XX Hearing and to see the development of the points which were put to Mr Vik concerning Beatrice and the Trust. The answers given by Mr Vik which are alleged to be false must be interpreted in context. Once the questions are read in context it is apparent that the answers which are alleged to be false were in response to questions

which were of a general nature concerning Mr Vik's knowledge of the assets in Beatrice and the Trust and it is wholly implausible that the distinction now being advanced for Mr Vik that the substance of his answers was that he had given answers about the asset class but could not provide the detail was how Mr Vik could reasonably have understood the questions or did understand the questions.

123. The structure of the questions is apparent if one looks at the sequence of the questions put to Mr Vik and how the questions were developed in the light of Mr Vik's answers. It is apparent from the transcript that the questions which were put at this stage of the XX Hearing were directed at the assets in Beatrice and the Trust and were put as a logical progression from the initial transfer of assets to Beatrice and of Beatrice to the Trust in October 2008 through what had happened thereafter. This elicited Mr Vik's evidence that he had resigned as Protector in 2015 and then questions were put about what Mr Vik knew at that point and thereafter in particular what Mr Vik knew from Mr Broquen who was then trustee.

124. The progression of the questions can be seen from the following extracts from the XX Hearing (transcript pages 20-33):

> "Q. Mr Vik, you told the court that your savings company, Beatrice, was transferred by you to the CSCSNE trust on 30 October 2008. Is that right?...
>
> Q. The sum of 4.38 billion Norwegian Krones was transferred by SHI to Beatrice in October 2008…
>
> Q. Then those funds were then transferred into the trust as part of Beatrice' assets.
>
> A. Well, Beatrice was transferred to the trust…
>
> Q. The company held the 4.38 billion Norwegian Krones that you had transferred to it?...
>
> "Q. Mr Vik, your wife said that the trust was simply to hold Beatrice' assets. Is that right?...
>
> A. The trust was simply to hold Beatrice' assets? No…
>
> Q. Have you transferred anything else since then?...
>
> Q. Has your wife?...
>
> Q. Have any of the trust assets been revested in you?...
>
> Q. You are the protector of the trust, aren't you?
>
> A. Not any more…
>
> Q. Your children's inheritance is now managed by Mr Broquen who is the new trustee?...

> Q. And you control what he does with the trust?
>
> A. No…
>
> Q. Mr Vik, you just said that you kept a close eye on the trust, so tell me how you kept a close eye…
>
> Q. …So you do ask Mr Broquen how the trust assets are performing, do you?...
>
> Q. So you have no idea, since 5 August, how the assets are performing. Is that right? …
>
> Q. They could have all been depleted and you would have no concern at all?
>
> A. Of course I would have concern, but I don't -- I haven't asked him…
>
> Q. Well, Mrs Vik says she wasn't, so in practice, Mr Vik, the only person who could have been dealing with Beatrice' assets was you, wasn't it?"

125. The line of questioning then pursued the issue of who would have carried out any dealings in the assets of Beatrice and the specific issue of the transfers disclosed by bank statements between Beatrice and SHI and how such transfers were authorised on behalf of Beatrice (transcript page 33-36):

> "Q. Who do you say was dealing with Beatrice' assets?
>
> A. As far as I know the trust was dealing with Beatrice' assets.
>
> Q. Your wife, as the trustee, said she had no dealings…
>
> Q. …Anyway, we have identified 101 further transfers between Beatrice and SHI between November 2008 and November 2012?
>
> A. Yes.
>
> Q. Do you accept that? Do you accept that there were transfers between them?
>
> A. I am aware now that there were transactions between the two companies."

126. The next stage of the questions was in relation to the loans identified in the witness statement of Mr Johansson (transcript page 52):

> "Q. But you knew about these transfers. We have established that, because you were authorising them on behalf of SHI.

A. Yes. At the time they were happening I was aware of them."

127. Then Mr Vik was asked general questions about transfers into Beatrice (transcript page 59-60):

> "Q. So have you transferred further monies and assets into Beatrice since 30 October 2008?
>
> A. No.
>
> Q. Has any company associated with you transferred further assets or monies since October 2008?
>
> A. Not that I can recollect, no…
>
> A. I don't remember any transfer into Beatrice.
>
> Q. What about the trust?
>
> A. I don't remember any transfer into the trust." (transcript p60 l 8-12)

128. Finally, Mr Vik was asked about the assets of Beatrice leading to the answer which the Bank alleges is false. It is clear from the questions that Mr Vik was being led through a structured set of questions designed to elicit what was in Beatrice and the Trust in 2008, the transfers between SHI and Beatrice, the absence of any other transfers in or out of Beatrice and the Trust and leading to the question whether Mr Vik knew what assets were in Beatrice.

129. It is wholly implausible when the transcript is read as a whole to infer that any distinction was being drawn between the "*class of assets*" and the precise assets or to infer that Mr Vik would have understood the question as now seems to be submitted on his behalf.

> "Q. [Mrs Vik] said that Beatrice' assets were still in the trust in 2013. Is that right?
>
> A. I think that is what she said, yes.
>
> Q. Is it right that they were?
>
> A. I don't know.
>
> Q. Well, you must have known that they had money when you were authorising transfers.
>
> A. 2013?
>
> Q. 2012.
>
> A. I thought you said 2013.

> Q. I did, so I am asking you, are you saying something happened between 2012 and 2013 to change your knowledge?
>
> A. No.
>
> Q. Have you disposed of the monies held by Beatrice since then?
>
> A. No.
>
> Q. Can you tell the court what assets Beatrice currently has?
>
> A. No. [emphasis added] (transcript p61 6-25)

130. Mr Vik was then asked whether he could tell the court what assets Beatrice had in August 2015 when he retired as Protector of the Trust and he answered "*No*".

131. The point was then pursued by Counsel for the Bank, so it was then clear to Mr Vik if he had been in any doubt (which in my view he was not) as to the broad nature of what was being asked or believed that he had somehow already answered the question:

> "Q. Can you tell the court what assets Beatrice had in August 2015 when you retired as the protector of the trust?
>
> A. No.
>
> Q. Why not? You were the protector of the trust. You must have known?
>
> A. I don't know.
>
> Q. Why did you not know, Mr Vik? It was your job to look after the trust and protect it.
>
> A. I just don't know.
>
> Q. Mr Vik, I am sorry, but I don't think you are being candid here?
>
> A. I am being perfectly candid.
>
> Q. Are you really trying to tell the court that when you were the protector of the trust and there was nobody else looking after that money you cannot tell the court in August 2015 what it had?
>
> A. I do not know what it had in 2015, no. I do not." [emphasis added] (transcript p62-63)

132. There is nothing qualified about Mr Vik's answer which would suggest that Mr Vik thought the Bank was only asking for detail which he asserts he did not have. It was a

broad question and having been challenged on his initial response by reference to his role in the Trust, his evidence was that he did not know the position in relation to the assets of Beatrice and the Trust.

133. The Court has to be satisfied to the criminal standard that when Mr Vik made the relevant statements, he knew it was not true or did not honestly believe it to be true. As well as having regard to his answers viewed in the context of the overall line of questioning, I take into account the history of these proceedings.

134. I infer from the history of the proceedings that Mr Vik understood only too well why the Bank was asking questions about the assets in Beatrice and the Trust. In this context the issue is not whether the findings of Cooke J are binding on this court as amounting to a form of issue estoppel or whether the Connecticut court was right when it found that Mr Vik did not transfer the assets out of SHI to Beatrice in order to prevent the Bank from getting those assets. The significance lies in that Mr Vik knows that the Bank's case is that the relevant assets were transferred out of SHI to Beatrice "*with a view to depleting SHI's assets*" and to make it more difficult for the Bank to seek recovery. The Bank has therefore been keen to establish what assets were and are in Beatrice and the Trust in order to assist it in enforce the outstanding Judgment Debt. I am satisfied that this provides a clear motive which explains why Mr Vik would (and did) lie to the Court at the XX Hearing about the assets of Beatrice and the Trust.

135. I note in support of that conclusion the evidence from the XX Hearing that Mr Vik had not mentioned in his earlier witness statements any funds transferred from Beatrice to pay litigation costs. Mr Vik's explanation at the XX Hearing [p55-58] was that this was the fault of his lawyers in drafting the witness statements and/or Mr Johansson was responsible for managing this. Whilst Mr Vik did say at the XX Hearing that Mr Johansson, was in charge of the "*day-to-day operation, the day-to-day litigation and operations of the company from 2008 on*", this was challenged by the Bank at the XX Hearing by reference to his own solicitors' evidence. Further and in any event it does not address the issue of knowledge and overall supervision by Mr Vik. Given the significant sums involved, and the significance of the issue to the proceedings (such that Mr Vik would, as referred to above, have had a motive for wishing to conceal the true position), this explanation for the failure to mention previously the transfers from Beatrice was not credible.

136. To the extent that Mr Vik asserts that he had an honest belief in his answers because he understood the questions to refer to the precise assets rather than the "class of assets" which he had already answered to some degree, I reject that assertion as not in any way credible for the reasons discussed above.

<u>The nature of the Trust and its operation</u>

137. Turning then to consider the falsity of the statements and whether Mr Vik did in fact know the assets of Beatrice and the Trust in 2015. In summary it was submitted for Mr Vik that:

i) Mr Vik was advised to and did distance himself from the Trust;

ii) The trustees did not need to have significant investment expertise given the nature of the assets in Beatrice and the Trust.

138. It was submitted for Mr Vik (paragraph 36 of his Closing Submissions) that there is no basis that the Court can be satisfied to the criminal standard that Mr Vik was lying about his state of knowledge and in particular the trustees did not need to have significant investment expertise given the nature of the assets in Beatrice and the Trust, namely that the assets transferred to Beatrice in October 2008 were cash, fiduciary deposits and Norwegian treasury bills and the shares in Beatrice were transferred to the Trust (paragraph 46-47 of his Closing Submissions).

139. I propose to address the submissions under the following headings:

i) The nature of the Trust;

ii) The role of the Protector;

iii) The trustees;

iv) Whether Mr Vik distanced himself from the Trust;

v) The Beatrice credit line;

vi) The nature of the assets in Beatrice and the Trust.

The nature of the Trust

140. As referred to above, Mr Vik retained considerable legal rights to control the assets in the Trust. Whilst he may not have exercised the rights to approve distributions and to substitute assets, the overall way in which the Trust was set up did not suggest a trust where Mr Vik would not be involved in the decision making of the Trust.

141. It was submitted for Mr Vik that it is "*understandable/appropriate*" that a settlor will lack close involvement with the assets settled into a trust when the settlor is neither a trustee nor a beneficiary. In my view that ignores the fact that this trust was for the benefit of his children, the powers retained by Mr Vik as the settlor and as discussed below, the identity of the particular trustees.

The role of the Protector

142. Mr Vik was until August 2015 the Protector of the Trust. Mr Vik gave evidence to this Court that he did not know exactly what the role of the Protector was, however that evidence was contradicted by other statements in the course of his evidence.

143. For example, Mr Vik's explanation for being comfortable with Mr Gonell being a trustee of the family trust even though he was someone that he did not know, was the role of Ms Esparrago as the protector:

> "Q. So 730 million of assets is in the family trust being managed by somebody you don't know?
>
> A. That is correct.

> Q. And you are comfortable with that?
>
> A. I withdrew from the trust completely and left it in-- I appointed Barbara Esparrago as the protector to take care of the trust.
>
> …
>
> A. I trust Barbara Esparrago to take care of things properly for the trust." [emphasis added] [Day 8 p62-63]

144. This is consistent with Mr Vik's understanding at the XX Hearing where in the course of questions about Mr Broquen Mr Vik made reference to the role of the Protector and described the role as to "*protect the trust, like myself*":

> "Q. You would be very surprised if Mr Broquen transferred those assets without checking with you first?
>
> A. If he transferred the 500 million or whatever the number is, would I be surprised? Yes, I would be surprised.
>
> Q. Because you would expect to be consulted first?
>
> A. In these days I am no longer the protector, there are other people who are protectors, and so their job is to protect the trust, like myself.
>
> Q. Yeah, but you would expect to be consulted before he dealt with the assets, wouldn't you.
>
> A. I would -- I don't really know exactly how this fund works, but I would say that he would have to deal with a protector, first, and I would be shocked if 700 million or 500 million or whatever the exact number is disappeared from the trust…" [emphasis added]

145. This is to be contrasted with Mr Vik's evidence to this Court where he initially said he did not know what the role of the Protector was, alternatively he had been advised not to have anything to do with the Trust, alternatively that he did not actually do anything as Protector:

> "Q. Mr Vik, you were the protector of the trust until at least August 2015, so you were involved?
>
> A. Yes, in that sense I was involved. I was --you know, I was advised to not, as a grantor, not to really have anything to do with the trust, so I didn't have anything to do with the trust. I think it was -- I just didn't and I think -- I don't know if it was my wife or my daughter said that I had nothing to do with the trust.

> Q. But as the protector you had to keep an eye on what was happening with the trust, that was your job?
>
> A. But I --what my job is I am not 100% sure, but I didn't -- wasn't involved with the trust. I let them run the trust.
>
> Q. So do you suggest that --what do you suggest the role of the protector is then?
>
> A. Obviously it's -- I don't really know exactly what the role of protector is, but I didn't take any actions of any kind to protect or unprotect or ... I didn't.
>
> Q. (Inaudible) when you did and appoint somebody else who could fulfil the role?
>
> A. I resigned in 2015, I think it was, and --
>
> Q. So seven years after you were appointed, roughly. Why have the role for seven years?
>
> A. I had -- as I said, I was advised not to be involved. I had no reason to do any protection, whatever that is supposed to mean. I didn't do anything." [emphasis added] (transcript day 8, p10)

146. This evidence was in my view inconsistent with the earlier evidence at the XX Hearing and of itself both inconsistent and not credible. Mr Vik gave no satisfactory explanation as to why he remained as Protector from 2008 until 2015. His evidence was merely that he was advised not to be involved and did not do anything.

147. Further it is in my view not without significance that Mr Vik resigned as Protector at the beginning of August 2015 shortly after service of the CPR 71 Order on 21 July 2015.

148. It was submitted for Mr Vik that the role of the Protector under the Trust Deed was not to "*protect the Trust*" and that as Protector, Mr Vik had power to appoint or remove trustees but had no power to direct the trustees' activities or otherwise control the assets (paragraph 52 of his Closing Submissions).

149. In my view the significance of Mr Vik acting as Protector lies not in his legal powers under the Trust Deed (as to which the Court has no evidence other than the Trust Deed itself) but in asking who in reality was looking after the interests of the Trust and whether Mr Vik's evidence that he distanced himself from the Trust is credible. Whatever the legal position, the evidence of Mr Vik when asked who was looking after the interests of the Trust, was that he was relying on Ms Esparrago as Protector and I infer that Mr Vik regarded himself as carrying out that function (at least) until 2015 whilst he held the role of Protector.

150. Further whether or not Mr Vik sought to discharge his duties qua Protector and irrespective of the person holding that role, someone would have needed to look after the interests of the Trust and it is inconceivable that Mr Vik would not have wanted to keep an eye on such a substantial amount of money intended as a family inheritance

when the trustees clearly had little or no relevant experience and knowledge as discussed below.

The Trustees

151. The trustees were initially Mr Vik's wife and daughter and their evidence was that they had little or no knowledge of the assets and recalled minimal participation. They were replaced by Mr Broquen who was experienced in running hotels. Mr Vik's evidence at the XX Hearing was that he had worked with him for eight years and had faith in him.

> "Q. You have just said, Mr Vik, that you would like to keep a close eye on the trust, have you not, so how are you keeping a close eye on the trust?
>
> A. Obviously I want to know that they are well taken care of, but I am not -
>
> Q. Tell me how you know, Mr Vik. How you keep a close eye?
>
> A. From Mr Broquen, why.
>
> Q. Tell me how you do.
>
> A. In general I have not been involved with this trust. It has really been left to the hands of the various trustees.
>
> Q. Mr Vik, you just said that you kept a close eye on the trust, so tell me how you kept a close eye.
>
> A. Maybe I said that but what I meant is I would definitely want to know, you know, how -- that the trust is in good shape and well run, and yeah, so I -" [emphasis added] (transcript p28)

152. It was submitted for the Bank that Mr Vik at the CPR 71 Hearing accepted that he would have liked to keep a "*close eye*" on his children's inheritance (T25/14-19) and admitted that he would definitely want to know the trust is in "*good shape and well run*" (T28/22-25).

153. It was submitted for Mr Vik that this evidence did not show that in fact Mr Vik kept a close eye on the Trust.

154. However, Mr Vik appeared to accept at the XX Hearing (as set out in the passage above) not only that he "*would*" want to know the trust was "*well taken care of*" but that he got information from Mr Broquen but then appeared to try and back track and denied that he had asked him. Further in seeking to deny that he kept a "*close eye*" on the Trust, Mr Vik did say that he "*would definitely want to know, you know, how -- that the trust is in good shape and well run*" and in my view this is consistent with the inference that someone would have been responsible for the Trust and its assets and the obvious person in the circumstances was Mr Vik. (As to the submission this means Mr Vik had some high level knowledge only that is discussed further below.)

155. It was submitted for Mr Vik (paragraph 47 and 48 of his Closing Submissions) that the Trust did not require management by trustees with "*significant investment expertise*".

156. However in my view the value of the assets in the Trust (represented by the Beatrice Shares) was a very substantial amount of money (US$700m at the time of transfer) even taking account of Mr Vik's wealth, and whilst Mr Vik might be content for such a substantial sum of cash to be held in Beatrice and not require "*close management*" such that the trustees did not require "*significant*" investment expertise, the appointment of trustees who had no investment expertise, casts considerable doubt on this explanation as plausible explanation. It was submitted for Mr Vik (paragraph 48 of his Closing Submissions) that it is "*perfectly normal for fund managers having a discretionary mandate to manage much more complex investments [than those of Beatrice] without the need to consult the legal or beneficial owner of the funds"*. However, there is no evidence to suggest that there were fund managers appointed to manage the assets of Beatrice. Insofar as this is intended to be a reference to Zimmerman & Gauch, the evidence of Mr Vik (as discussed below) is that they were appointed to manage drawdowns under the credit line and there is no evidence that they were appointed to discharge any wider discretionary management role.

157. Further even if the Trust and/or Beatrice by reason of the nature of the assets did not require "*active management*", the Trustees appointed lacked any relevant experience to manage the assets. It seems to me self-evident that US$700m of assets even in the form of cash and "cash equivalents" could not be left without any management or supervision over a period of years by someone who had, at least some, investment experience and when one considers the considerable financial experience of Mr Vik and contrasts this with the lack of experience of the various trustees, the inference is clear that Mr Vik would be the person with knowledge and control of the assets.

158. I also take into account the evidence of Mrs Vik and her daughter and the apparent lack of knowledge of the assets of the Trust and management of Beatrice.

159. It was submitted for Mr Vik (paragraph 49 of his Closing Submissions) that it was "*unsurprising*" that Mrs Vik and Mr Vik's daughter were unable when giving their depositions to recall specifics of transactions and investment decisions carried out by Beatrice and the Trust. The submission seemed to be based on the apparently contradictory alternatives that on the one hand they could not recall such matters given the passage of time and the stress of giving evidence and on the other that there is no reason to expect that there were such transactions and decisions. In my view even allowing for the passage of time, the evidence of the depositions would suggest that Mr Vik's wife and daughter had no real involvement in either Beatrice or the Trust.

160. Mr Broquen, however trusted as an employee or manager of hotels, had no experience of managing a trust and I infer that he had no experience which was directly suited to a role investing and protecting US$700m of assets but as a trusted employee, I infer he would report to Mr Vik and act on his directions as required.

161. Mr Gonell's evidence (in the New York proceedings as referred to above) also demonstrates a lack of knowledge of (and involvement in) the Trust by the trustee

which is unexplained if in reality the trustees were looking after the interests of the Trust.

162. As noted above Mrs Vik refused to disclose the Trust Deed to Mr Vik's lawyer on the basis she wanted to protect her family. It was submitted for Mr Vik in oral closings (transcript day 10, p42-44) that his wife's refusal to hand over a copy of the Trust Deed to Ms Asgarian demonstrated a "*determined woman*" who was taking "*an independent stance on behalf of the Trust*" and that this was "*redolent of Mrs Vik acting as the trustee of a legitimate trust for the protection of her children's inheritance*."

163. Whilst I infer that Mrs Vik was doubtless trying to protect her children's inheritance by her refusal to hand over a copy of the document and as a trustee, she had power to do so, her refusal to disclose a copy of the Trust Deed does not provide evidence that she was either competent to manage the assets of the Trust or actually involved in the management of the Trust. Her evidence as referred to above, was of someone who lacked any real knowledge of firstly, the assets for which she was responsible as trustee and secondly, of who became trustee upon her retirement in her stead (and on Mr Vik's case would thus be responsible for managing the family trust and protecting the family's interests). I infer that she did not know about the assets in the Trust or who became trustee because she was relying on her husband to manage the assets in the Trust and thus in Beatrice.

164. I do not accept the submission for Mr Vik (paragraph 39-40 of his Closing Submissions) that a "*key plank*" of the Bank's case is that the Trust was a "*sham*" and a "*mere device*" to try to hide from the Bank what the Bank alleges were SHI's assets. It was acknowledged by the Bank in its oral closing submissions (Day 9 p55) that no such finding was necessary. In my view the issue of Mr Vik's knowledge of the assets of the Trust and Beatrice is not dependent on a finding that the Trust was a device to shield assets from the Bank.

165. In my view, contrary to the submissions for Mr Vik (paragraph 45 of his Closing Submissions) the Court is entitled to conclude on the evidence referred to above and for the reasons discussed above, that Mr Vik continued to keep a close check on the assets of the Trust and Beatrice without having to infer that the Trust was an attempt to hide SHI's assets from the Bank. It is not therefore necessary for me to consider whether the findings of Cooke J give rise to an issue estoppel (paragraph 42-45 of Mr Vik's Closing Submissions) or to consider the findings of the Connecticut Judgment as to Mr Vik's intent when he made the transfers form SHI to Beatrice in October 2008 (paragraph 43 of Mr Vik's Closing Submissions).

166. Thus, it is not necessary for this Court to find that the trustees were not "*genuine*" (which goes to the sham argument below) but given the lack of knowledge and expertise on the part of the trustees, I do infer that someone else must have been supervising and managing the investments (to the extent deemed necessary) in the Trust and Beatrice.

Advised to keep his distance

167. Mr Vik's evidence to this Court is that he was advised to keep his distance from the Trust:

> "A. …I was advised to not, as a grantor, not to really have anything to do with the trust, so I didn't have anything to do with the trust…
>
> Q. So seven years after you were appointed, roughly. Why have the role [of Protector] for seven years?
>
> A. I had -- as I said, I was advised not to be involved." [Day 8 p10]
>
> "A…I was advised as a grantor not to be involved with the trust, as a proper management of the trust, and that is what I did.
>
> Q. Without going into privileged material, by whom were you advised?
>
> A. Withers" (transcript day 8, p13)

168. It was submitted for Mr Vik that he understood he should distance himself from the Trust, and if the Court accepts that he did so act, or that it is a permissible inference, then all of the rest of the complaint and the oddities flagged up by the Bank fall away.

169. Mr Vik referred the Court (paragraph 55 of Vik's Closing Submissions) to his evidence to this Court in relation to that:

> "A. I have not been involved in the trust at all so I really don't know." (transcript day 8, p9)
>
> "Q. You keep a close eye on your children's inheritance, don't you?
>
> A. I think we went through this in the 71 hearing, and I would like to, but I don't" (transcript day 8, p18)

170. However, the credibility of Mr Vik's evidence that he was advised to distance himself and did so, has to be weighed against the Court's general assessment of his credibility and whether it is plausible when considered in the light of the other evidence:

i) His actions appear inconsistent with this in that he held the role of Protector from 2008 until August 2015; even if as a matter of law, the role of Protector is limited, as is submitted for Mr Vik, to the appointment of trustees, as discussed above, Mr Vik clearly understood it to be a wider role and whether given a narrow or wider interpretation it is inconsistent with the purported advice and/or a desire to distance himself from the Trust;

ii) At the XX Hearing when asked why he had resigned as Protector, Mr Vik's explanation was that he had decided to retire, not that he was following legal advice to distance himself:

> "Q. Why did you stop?

> A. I am trying to resign from various positions throughout -- I am retiring." [p26 l20-22]
>
> He subsequently said in his evidence that he had tried to separate himself "*for a long time*" but there was no reference to acting on legal advice (an explanation advanced to this Court):
>
> "Q. "Yes", or, "No" Mr Vik, you would expect him to consult you first before dealing with the trust assets?
>
> A. No, because I have been -- you know, my family is one thing, and I have been unfortunately involved in all of these very unpleasant activities and they don't want to be involved in that, and I have tried to separate any self as much as possible for a long time, and I am retiring." [emphasis added] (transcript p31)

171. Further in my view it is not credible that if Mr Vik had received legal advice to keep his distance from the Trust that it would have been structured in a way that reserved such significant powers to himself (and his wife as the grantor's wife). The relevance for this purpose of the Trust Deed is not whether Mr Vik actually exercised the powers granted but the fact that the Trust was set up in a way which gave him such powers.

172. If he intended from the outset that he would distance himself from the Trust it is inconsistent with such a proposition that (a) he would appoint trustees who had little or no knowledge of the business and assets (his wife and daughter and Mr Gonell) of the Trust/Beatrice and who had no relevant qualifications or experience to manage and administer the Trust assets; and (b) that he would appoint trustees (his wife, daughter and Mr Broquen) who were clearly connected to him and likely to be regarded as not truly independent of him.

The transfers from Beatrice and the credit line

173. Insofar as it was submitted that the trustees did not need to have any relevant experience or qualifications, I also take into account the fact that the Trust was the director of Beatrice.

174. It was submitted for Mr Vik that Beatrice had no operations and the strategy was simply to maintain the status quo. It was accepted by Mr Vik however that payments were made between Beatrice and SHI.

175. It was Mr Vik's evidence at the XX Hearing that Beatrice had set up a "*general facility"* funding the "*general requirements*" of SHI and some of that money was used to pay SHI's legal fees.

176. Mr Vik's daughter was asked about the operation of this facility in her deposition in May 2017. She was asked who was aware of Beatrice transferring money to and from SHI;

> Q. "…Who was minding the Beatrice store at the time?

A. Well I don't have any recollection of it so the rest it up to…

Q. It wasn't you?

A. …Up to other people to decide

Q. It wasn't you though?

A. Not that I can recall

…

Q. Do you know of an entity Zimmerman and Gauch…?

A. Not to my recollection." [emphasis added]

177. Mr Vik's evidence at the XX Hearing was that he was still a director of SHI between November 2008 to November 2012. It was put to him:

> "Q. Because you were the director, we have established, there was no one else for SHI, so you knew what SHI was sending and receive something during that period.
>
> A. Yes.
>
> Q. So who do you say was authorising the transfers on behalf of Beatrice?
>
> A. The way it worked was this I would make a request to Zimmerman and Gauch and they would take care of matters, shall we say. [emphasis added] (transcript p38)

178. This evidence seemed to accept that Mr Vik would make a "request" to Zimmerman & Gauch apparently on behalf of SHI. However elsewhere in his evidence Mr Vik seemed to suggest that Zimmerman & Gauch would determine when SHI needed funds to be advanced even without a request being submitted:

> "Q. How do you say Beatrice knew how much to pay to meet SHI's capital contributions to Devon Park?
>
> A. Zimmerman & Gauch were managing whatever flows of money were needed.
>
> Q. Who was instructing Zimmerman & Gauch about what money flows were needed?
>
> A. They would see, if there were requests for capital, and the company didn't have -- SHI didn't have it, then they were organising it to manage the credit lines to support that." [emphasis added] (transcript day 8, p33)

179. The basis on which Zimmerman & Gauch would have access to SHI's financial books and records to determine whether SHI needed funds was entirely unclear and wholly implausible.

180. It was submitted for Mr Vik that:

i) His evidence was that there was a pre-existing credit line whereby SHI was able at will to draw down funds and when it had surplus cash to make repayments (paragraph 50 of Mr Vik's Closing Submissions).

ii) The arrangement made "*good sense*" from the perspective of the Trust when it was expected that SHI would recover substantial sums and was analogous to a "*typical sweep account where funds are drawn down automatically*".

181. In oral Closing submissions, having been challenged in relation to the written submission for Mr Vik that the arrangement was "*analogous*" to a "*sweep*" account, Mr Matthews submitted that this was in effect the arrangement described by Mr Vik and referred the Court to Mr Vik's evidence that:

> "… When there wasn't enough and there was requirements for more money that SHI needed to spend on various things, [Zimmerman & Gauch] would draw that money from the credit line."

182. Mr Matthews submitted that Mr Vik "*may have struggled to articulate it particularly well …partly because he considered the matter to be relatively straight forward*" and that transfers were made as and when necessary. (transcript day 11, p32)

183. In my view Mr Vik did struggle to explain how Zimmerman & Gauch could draw down funds on behalf of SHI without being told by SHI that SHI needed money and how Beatrice could have authorised ad hoc payments to SHI for capital calls and litigation costs in advance but I infer not because such an arrangement can be said to be straightforward.

184. Mr Vik was questioned before this Court about the role of Zimmerman & Gauch. In my view he sought to evade the question of who was authorising the payments referring to Zimmerman & Gauch "*managing*" the credit line and "*organising*" the payments:

> "A…I think <u>they were managing the credit line</u>, monies going back and forth, and they were doing that.
>
> Q. Managing is not the same question, as you well know, as authority.
>
> A. I think I testified before that I think I had given them the authority and my wife had given the authority as well. Again, this is going back 14 years. But I think they managed -- when I say managed, <u>they had the authority to send and receive funds</u>.
>
> Q. Your wife, we will look at her evidence, but she says she had nothing to do with anything to do with Beatrice. So the

only person that leaves, Mr Vik, is you, and you were authorising the payments made between 2008 and 2012, weren't you?

A. Again, I think I tried to make that very clear the last 2 time, I think, but Zimmerman & Gauch on behalf of both entities were managing the credit line, and the monies were -- when the money was needed from one direction or the other direction, they were organising that…" [emphasis added] [transcript day 8, p31-32]

"Q. Who was instructing Zimmerman & Gauch about what money flows were needed?

A. They would see, if there were requests for capital, and the company didn't have -- SHI didn't have it, then they were organising it to manage the credit lines to support that.

Q. You said there had been no documents that Zimmerman & Gauch held, and here we are seeing that Zimmerman & Gauch must have had requests, you say, and they were seeing, I think you said, you suggested, a document of what was needed. So, did they have documents?

A. I don't know what they have.

Q. Right. Because you do need to explain I think to this court how you say Beatrice knew how much to pay SHI to meet the capital commitments and other business commitments of SHI.

A. I thought I already did that…" [emphasis added] (transcript day 8, p34)

185. His evidence to the Court at the XX Hearing concerning how the payments were authorised by Beatrice was in my view equally evasive:

"Q. Right, but who at Beatrice -- somebody must have been authorising it on behalf of Beatrice. Who was it?

A. I don't know.

Q. Mr Vik, are you really saying that US$80 million were transferred back and forth, and you had no idea who was dealing with it at Beatrice? Are you telling the court that?

A. Yes. I am telling the court that I was not involved with Beatrice. I didn't speak to anybody by Beatrice about these payments.

Q. I asked you a different question. I said, "Who do you think was authorising the payment and receipt"?

> A. I already told you. I think Zimmerman and Gauch --
>
> Q. No, they were the intermediary. Who at Beatrice was dealing with its affairs?
>
> A. I don't know if they spoke to Beatrice or if they had pre-standing orders, I don't know." [emphasis added]

186. It is unnecessary for me to decide whether Zimmerman & Gauch were acting as an agent for HSBC in managing the credit line as the issue is one of knowledge by Mr Vik of the amounts being paid out between Beatrice and SHI not the issue of any delegated authority to manage the administration of the drawdowns. No documentation has been disclosed in support of any such arrangement described by Mr Vik and in my view it is wholly incredible even with a pre-existing credit line that US$80m would be transferred between SHI and Beatrice without any oversight by Beatrice or any request from SHI.

187. In my view, even if Zimmermann & Gauch was manging the credit line and had been given prior authorisation by Beatrice for amounts to be advanced (notwithstanding the amounts involved), Mr Vik would have been aware of the amounts drawn down by SHI given his role in relation to SHI and the need to identify the amount and timing of funds to be drawn down by SHI.

188. It would appear on the evidence that there were approximately 100 transfers between SHI and Beatrice between November 2008 and November 2012. It would appear from his evidence to this Court that Mr Vik was aware of the amounts:

> "A. If I remember correctly, at first SHI was repaying Beatrice further monies, and that over time there was like US$25 million that Beatrice provided net to -- to SHI.
>
> …
>
> A. As I said, it started as a repayment, SHI paying Beatrice, and over -- and net, in the end, it went the other way" [transcript day 8, p28]

189. Mr Vik accepted that he knew that payments were made and received but his evidence was that he did not know the detail of the payments:

> "Q. Yes, I can tell you, but you accept there were transfers going both ways, and about 101 between November 2008 to November 2012.
>
> A. Again, I don't know the details because that I haven't looked at, but I do know there were transfers back and forth.
>
> Q. Because you were the director, we have established, there was no one else for SHI, so you knew what SHI was sending and receive something during that period.
>
> A. Yes." [emphasis added]

190. However, the credibility of this evidence has to be assessed not only in light of the Court's general assessment of Mr Vik's credibility but also in light of the fact that this was a "*general facility*" used for various purposes including to fund SHI's capital contributions in respect of the Devon Park Interest and the costs of the litigation. These were not therefore regular payments the amount of which could have been known at the outset of the facility but specific payments to meet specific liabilities as and when they arose.

191. Mr Vik's evidence to this Court was that Beatrice was unaware of the uses of the funds:

> "Q. I am putting to you, and you seem to have accepted there, that Beatrice paid SHI money to fund its capital contributions in respect of the Devon Park interest.
>
> A. I think Beatrice was agnostic to what the uses were, unaware of them, but they actually were funding at some point the capital requirements of SHI, for whatever purpose.
>
> Q. How do you know, Mr Vik, that they were agnostic?
>
> A. Because it was a credit line." [emphasis added] (transcript day 8, p33)

192. The purported explanation appears to lack any real justification. It has to be viewed in light of the Court's assessment of Mr Vik's general credibility.

193. Even if there was a pre-existing credit line and, funds were advanced to SHI without any need for specific authorisation to be given by Beatrice to Zimmerman & Gauch, the only reasonable inference in all the circumstances is that Mr Vik would have made the requests on behalf of SHI (or would have been aware of them in his role at SHI) and with his interest and desire to protect the Trust would have been keeping a close eye of the assets of Beatrice and would have had knowledge of the funds being transferred to and from SHI.

The nature of the assets in Beatrice and the Trust.

194. Whether or not Mr Vik sought to distance himself from the Trust by his actions, it does not follow that he had no knowledge of the assets in Beatrice and the Trust.

195. It was submitted for Mr Vik (paragraph 47 of his Closing Submissions) that:

i) There is no evidence that Beatrice held any other sort of asset (than the initial assets transferred to it) or had any "*business*" or "*operations*"; and

ii) There is no evidence that the Trust held any other assets beyond the shares in Beatrice.

196. In my view this supports a finding that Mr Vik would have known and did know precisely what was in Beatrice and the Trust both in August 2015 and December 2015 since on Mr Vik's own case neither Beatrice nor the Trust had any business other than, in the case of Beatrice, the holding of the cash/cash like assets and in the case of

the Trust, the shares in Beatrice. It is a reasonable inference that there had been no change to the assets which might otherwise have occurred had Beatrice had any real business or operations or the Trust had held any other assets other than as a result of the payments to and from SHI as discussed above.

197. It is thus against this context that the Court assesses the submission for Mr Vik that he would have been aware of a "*catastrophic shift*" in the assets but not of the detail. Mr Matthews submitted (in oral closings) that Mr Vik would have known if there was "*some sort of catastrophic shift in the assets*" but that one would not be surprised that it had "*never crossed Mr Vik's mind*" that there would not be available assets, nor would he need to keep detailed knowledge of those assets, in order to satisfy himself of the availability of assets so that Beatrice would be able to continue to fund SHI to the tune of less than US$100 million, in circumstances where it had received assets in excess of US$700 million. (transcript day 10, p52)

198. In my view this was a submission which was ingenious but not consistent with a fair reading of the evidence given by Mr Vik. His evidence was clearly to the effect that he had no control or involvement and thus no knowledge of the assets of Beatrice and the Trust. He was not in my view seeking to draw a distinction between a high level state of knowledge and knowledge of the detail. The relevant passage of his evidence at the XX Hearing was as follows:

> "Q. So you do ask Mr Broquen how the trust assets are performing, do you?
>
> A. I haven't yet.
>
> Q. Have you ever asked Mr Broquen?
>
> A. No.
>
> Q. Right. So you have no idea, since 5 August, how the assets are performing. Is that right?
>
> A. No idea.
>
> Q. They could have all been depleted and you would have no concern at all?
>
> A. Of course I would have concern, but I don't -- I haven't asked him."
>
> …
>
> Q. You would be very surprised if Mr Broquen transferred those assets without checking with you first?
>
> A If he transferred the 500 million or whatever the number is, would I be surprised? Yes, I would be surprised.
>
> Q. Because you would expect to be consulted first?

> A In these days I am no longer the protector, there are other people who are protectors, and so their job is to protect the trust, like myself.
>
> Q. Yeah, but you would expect to be consulted before he dealt with the assets, wouldn't you.
>
> A. I would -- I don't really know exactly how this fund works, but I would say that he would have to deal with a protector, first, and I would be shocked if 700 million or 500 million or whatever the exact number is disappeared from the trust. That would be shocking."

199. Thus the evidence read in context is that Mr Vik was asked about his dealings with Mr Broquen, whether he would seek information from Mr Broquen and whether Mr Broquen would have consulted him before he dealt with the assets. Mr Vik's response concerning his "*shock*" if all or the majority of the assets were to disappear has to be read in that context as well as read in the context of the wider line of questions as described above.

200. In addition, in response to the submissions for Mr Vik, I do not accept as plausible or in any way grounded in reality, that Mr Vik would have regarded transfers up to US$100 million as sufficiently low value in the context of the fund of US$700 million that Mr Vik would not have been keeping track of the amount of the assets in Beatrice. I am strengthened in my conclusion by the evidence before Cooke J who stated at [661] that Mr Vik had "a *keen eye for the numbers*" and noted that one of Deutsche Bank Suisse employees (Mr Brügelmann who was Mr Vik's point of contact for trades) "*held Mr Vik in awe because of his extraordinary faculty for retaining details of his trading positions in his head and his ability to conduct his business on a blackberry, without detailed records in front of him.*"

201. Whilst Mr Vik may have been advised to keep his distance and may have taken steps to do so in order to protect the assets from potential attack by the Bank, such as resigning as Protector albeit belatedly in 2015, it does not follow that he has no knowledge of the assets nor that this is a plausible inference. It is entirely consistent to accept that Mr Vik wanted to distance himself and was advised to distance himself and yet to conclude that he nevertheless has knowledge of the assets.

Conclusion on Beatrice and the Trust

202. I have dealt above with individual submissions made for Mr Vik. However, I reach my conclusion by reference to all the evidence and as referred to above it is "*the essence of a successful case of circumstantial evidence that the whole is stronger than individual parts*".

203. For the reasons discussed above and having regard to all the evidence, I am satisfied beyond reasonable doubt in respect of each allegation set out below that:

    i) Mr Vik knew of the terms of the Order;

    ii) He acted in a manner which involved a breach of the CPR 71 Order; and

iii) He knew of the facts that made his conduct a breach.

204. I find that Mr Vik's evidence was deliberately false in that at the date of the XX Hearing, Mr Vik did know:

i) What assets Beatrice had at the date of the XX Hearing;

ii) What funds of SHI were held by Beatrice at the date of the XX Hearing;

iii) What assets Beatrice had in August 2015; and

iv) What assets the Trust had in August 2015 and at the date of the XX Hearing.

Devon Park- Providing false or incomplete testimony regarding SHI's interest in Devon Park

Allegations

205. As set out in the Application Notice it is alleged that at the XX Hearing, Mr Vik gave evidence that SHI sold the "Devon Park Interest to VBI pursuant to an "Instalment Purchase Agreement" between SHI and VBI dated as of 26 September 2012 (the "Sale Agreement")'.

206. The substance of Mr Vik's evidence at the XX Hearing is said to have been that:

i) SHI sold the Devon Park Interest to VBI pursuant to the terms of the Sale Agreement, and, also pursuant to the terms of the Sale Agreement, subsequently transferred the Devon Park Interest out of SHI to a third party on VBI's instructions (transcript p 16611.3-10, p. 18011. 3-18; transcript p. 193 1.22 - p. 1941. 15);

ii) As at the date of the XX Hearing, Mr Vik did not have any connection to Universal Logistic Matters, S.A. ("Universal") (transcript p. 189, 11. 17-21), Universal being the entity to which SHI purported to assign and transfer the Devon Park Interest pursuant to an Assignment and Assumption Agreement dated 29 August 2014 (the "Assignment and Assumption Agreement"); and

iii) As at the date of the XX Hearing, Mr Vik had "*nothing to do with SHI*" (transcript p. 141 11. 17 - p. 142 1. 9, p. 216 11. 12-19).

207. It is alleged by the Bank that Mr Vik's evidence, as summarised above, was deliberately false. The Bank alleges that:

> "As Mr Vik knew at the date of the Vik XX Hearing:
>
> (a) The Sale Agreement was not a bona fide agreement entered into between SHI and VBI;
>
> (b) SHI did not sell the Devon Park Interest to VBI pursuant to the Sale Agreement, nor transfer it out of SHI on VBI's instructions pursuant to the terms of the Sale Agreement. Instead, the Devon Park Interest remained an asset owned by SHI until 29 August 2014, when it was transferred by SHI to

> Universal pursuant to the terms of the Assignment and Assumption Agreement;
>
> (c) Mr Vik continued as at the date of the Vik XX Hearing to have a connection to Universal, in that (a) Mr Vik continued as at the date of the Vik XX Hearing to have at least a direct (alternatively indirect) economic interest in the Devon Park Interest; and (b) Universal was as at the date of the Vik XX Hearing beneficially owned by Mr Vik's father, Erik Martin Vik; and
>
> (d) Mr Vik continued to have a connection and/or involvement with the affairs or former affairs of SHI, given his continuing interest in the Devon Park Interest as described in paragraph 4(c) above."

208. The Bank by its Application Notice relied on the evidence in support of the allegations in respect of Devon Park set out in Mr Hart's First Affidavit at paragraphs 94-126.

Evidence

Sale Agreement

209. In his Affidavit Mr Vik's evidence was that:

> "I do not understand what DBAG means by its assertion that the Sale Agreement was "not a bona fide agreement entered into between SHI and VBI". However, the Sale Agreement is a genuine document and SHI did indeed sell (but not transfer) the Devon Park interest, along with all its non-cash assets, to VBI by the Sale Agreement."

210. In his evidence to this Court Mr Vik's evidence was that the Sale Agreement was:

> "…a genuine commercial arrangement, an arrangement with over 300 million was paid to Sebastian Holdings for a group of assets which were not worth, you know, a lot more. It was a very fair transaction for both parties and it has been implemented in the way that we typically do business, and the courts have confirmed its validity." (transcript day 6, p65)

211. The Sale Agreement which Mr Vik says was entered into in 2012 was only disclosed in 2014 in response to the application by the Bank that the prosecution of SHI's appeal against the Judgment Order be made conditional upon SHI making a payment into court. Evidence was given by Mr Johansson on behalf of SHI in his sixth witness statement that SHI had transferred all of its remaining non-cash assets in September 2012 pursuant to the Sale Agreement in return for NOK 300 million (approximately £32 million). In his witness statement Mr Johansson stated that the identity of the purchaser had been redacted from the agreement which was then disclosed but that the purchaser was "*not Mr Vik nor a company controlled by Mr Vik*".

212. Mr Vik's evidence to this Court was:

> "…my father was very nice to me and was very helpful in financing Sebastian Holdings and provided a huge amount of money to Sebastian Holdings, you know. Unfortunately, Sebastian Holdings, through the misdeeds of Deutsche Bank and Klaus Said, lost it all, but –– so my father's company lost a lot of money unfortunately." (transcript day 6, p73)
>
> "They paid a lot of money for them"; "over 300 million was paid to Sebastian Holdings."

213. Mr Vik seeks to rely on evidence of fund movements in support of the purported sale (paragraph 69(a) of his Closing Submissions). However, there is no documentary evidence which has been put before the Court which indicates that the transfers which took place were pursuant to an arrangement for the sale of the assets (as opposed to a loan).

214. One of the recitals to the Sale Agreement referred to the fact that some of the assets were "*illiquid*" and would remain in the possession of the Seller for up to four years:

> "The Parties acknowledges that some of the Assets are illiquid and may be time consuming, costly, or otherwise complicated to transfer, therefore as condition of the purchase, the Corporation wishes that the Seller maintain possession in trust, with limited power's, of all or part of the Assets for a period of time not exceeding four years and the Seller has accepted such condition, provided that the Corporation will pay all reasonable out of pocket expenses actually incurred by the Seller in connection with the assets held in trust from December 31, 2013."

215. The Sale Agreement only contained a generic description of the assets that were sold. Subsequently in 2015 a more detailed schedule was produced in response to the requirement to produce such a schedule imposed by the Court (paragraph 96 of Mr Hart's First Affidavit). The detailed schedule was apparently prepared by Mr Johansson. That schedule recorded that the following assets were among those sold pursuant to the Sale Agreement:

    i) 1,920,143 shares in IFA;

    ii) the Devon Park Interest.

<u>The Assignment and Assumption Agreement (the "AAA")</u>

216. On its face the AAA provided for the transfer of the Devon Park Interest by SHI to Universal "as of" 29 August 2014.

217. The recitals to the AAA provided:

> "WHEREAS, <u>Assignor owns a limited partnership interest {the "Interest") in Devon Park Bioventures, L</u>.P ... a Delaware

made in putting SHI's address as the address for Universal on tax forms, Mr Vik's evidence (and thus knowledge) that Universal was not receiving the distributions it was entitled to in respect of Devon Park and the emails with Devon Park about the transfer to Universal.

373. I also have regard to the relationship between father and son on which counsel for Mr Vik places such reliance in relation to the relative informality of the Sale Agreement. As discussed above, it is not necessary in my view to have evidence that Mr Vik "interfered" in his father's business in order to conclude that in the circumstances it is not credible that Mr Vik received no explanation for the transfer to Universal and merely regarded it as his "duty" to follow the instructions of Mr Blanco.

374. It is also relevant to note the value of the asset in issue. The nominal value at the date of transfer was US$13.3m but in 2014 Mr Johansson had previously told the Court that the true value was significantly higher due to the fact that the shareholding was a blocking percentage:

> "…the value of SHI's position in IFA is significantly higher than a simple multiple of the number of its shares and the stock price, because SHI holds a significant blocking position which exceeds the available float in the stock, making it impossible to build such position in the open market."

375. Somewhat surprisingly before this Court Mr Vik sought to reject the previous evidence given by Mr Johansson on behalf of SHI and deny that the blocking position had any value:

> "I am not sure that it had a blocking position. I am not really sure what that is referring to, maybe I misunderstand but I don't think, I am not sure how 29% is a blocking position, I am not really sure" (transcript day, 6 p75)

376. Whilst the value of the stake may not be the most significant issue, it is part of the overall picture of Mr Vik and the credibility of his evidence that he should seek to deny what had previously been advanced for SHI in circumstances where in 2014, it is to be inferred that it suited SHI to maximise the value of the stake whereas in 2022, I infer Mr Vik wanted to minimise its value given that there was a regulatory filing suggesting that it was transferred to Universal for no consideration.

377. The official notification to the German regulator (BaFin) stated that the transfer was for no consideration although Mr Vik's evidence was that VBI did receive consideration:

> "Q…I am talking about why VBI would transfer for no consideration to a shell company, Universal. Why would they do that?
>
> A. They didn't. They didn't transfer for no consideration. I don't know what they did or didn't do. The no consideration was between me and Universal, because I was not entitled to any money." (transcript day 7, p27)