Approved judgment

Neutral Citation Number: [2024] EWHC 996 (Comm)

Case No: CL-2021-000412

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
COMMERCIAL COURT

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

Date: 30/04/2024

Before :

MR ADRIAN BELTRAMI KC

- -

Between :

INVEST BANK P.S.C. — **Claimant**

- and -

Defendant

(1) AHMAD MOHAMMAD EL-HUSSEINI
(2) MOHAMMED AHMAD EL-HUSSEINY
(3) ALEXANDER AHMAD EL-HUSSEINY
(4) ZIAD AHMAD EL-HUSSEINY
(5) RAMZY AHMAD EL-HUSSEINY
(6) JOAN EVA HENRY
(7) VIRTUE TRUSTEES (SWITZERLAND) A.G.
(8) GLOBAL GREEN DEVELOPMENT LIMITED

- -
- -

Marc Delehanty (instructed by PCB Byrne LLP) for the Claimant
Niranjan Venkatesan and Constantine Fraser (instructed by Debenhams Ottaway) for the Second and Sixth Defendants
The Third Defendant in person
The Fourth Defendant in person
The Fifth Defendant in person, on his own behalf and as representative of the Eighth Defendant, pursuant to permission granted

Hearing dates: 22 April 2024

- -

JUDGMENT

MR. ADRIAN BELTRAMI KC:

Introduction

1. The Claimant (the **Bank**) is a bank operating as such in the United Arab Emirates and Lebanon. The First Defendant (**Ahmad**) is described as an international businessman. The Second to Fifth Defendants (**Mohammed**, **Alexander**, **Ziad** and **Ramzy**, respectively) are Ahmad's sons. The Sixth Defendant (**Joan**) is or was Ahmad's wife and the mother of Mohammed, Alexander, Ziad and Ramzy. The Seventh Defendant (**Virtue Trustees**) is the trustee of the Spring Blossom Trust. The Eighth Defendant (**Global Green**) is an English company. Ramzy is its current sole director and I granted permission at the outset for Ramzy to represent Global Green for the purpose of this hearing only.

2. Mr Delehanty appeared on behalf of the Bank. Mr Venkatesan and Mr Fraser appeared on behalf of Mohammed and Joan. Alexander, Ziad and Ramzy appeared in person and made short following submissions in support of their own positions. Ramzy submitted a "*position statement*", which he updated after the hearing and to which the Bank submitted a brief response. Neither Ahmad nor Virtue Trustees attended, though the applications were not made against them. I refer to Mohammed, Alexander, Ziad, Ramzy, Joan and Global Green together as the **disclosure respondents**.

3. These proceedings have come before the court on many occasions and, indeed, there is a pending appeal to the Supreme Court on certain aspects. That is due to be heard on 7 and 8 May 2024. The main trial is listed to commence on 1 July 2024. In very brief outline, the Bank claims in debt against Ahmad and now has

the benefit of a default judgment, entered on 13 January 2023, for around £20m. By Order dated 6 October 2023, Mr Stephen Houseman KC, sitting as a Judge of the High Court, refused an application by Ramzy, Joan and Global Green to set that judgment aside. The Bank brings claims against all the defendants pursuant to s. 423 of the Insolvency Act 1986 to reverse various transfers of value from Ahmad or companies owned by him to his family members or their companies, this comprising what the Bank describes as a "*worldwide asset dissipation scheme to defeat his creditors*". Save as discussed below, the detail of those transfers does not matter for present purposes.

4. There are two substantive applications before me. The first is dated 5 January 2024. The Bank seeks various forms of disclosure relief against the disclosure respondents. There is attached to the application notice a draft order setting out, over 10 pages, the particular forms of relief sought. A second application was issued on 9 April 2024. This seeks various additional forms of relief against the disclosure respondents and also modifies the relief sought on the first application. The attached draft orders are separated out between the disclosure respondents (as there are differences for each one). Those draft orders run to 35 pages. To the extent necessary, I grant permission for the amendments to the first application by the second application. It is important that all relevant matters are now before the court, so that there is clarity in the short period until trial.

5. The first application is supported by the Fifteenth witness statement of Trevor Mascarenhas of PCB Byrne LLP. That statement runs to 120 pages, with a primary exhibit of 1168 pages. There are witness statements in response from

Alexander, Ziad, Ramzy, Joan and Juliet Schalker of Debenhams Ottaway. There is no evidence specifically in support of the second application, although Part C to the application notice is in the following terms:

> *"The Claimant relies upon (without limitation):*
>
> *(a) All the evidence served in connection with the January Disclosure Application and disclosure generally in these proceedings.*
>
> *(b) Statements as to factual matters made by the Defendants, and their solicitors, in inter partes correspondence in connection with the January Disclosure Application and disclosure generally in these proceedings…*
>
> *(c) Disclosed documents in these proceedings, including those referred to in the inter partes correspondence in connection with the January Disclosure Application and disclosure generally in these proceedings…*
>
> *(d) The trial evidence of the Defendants and hearsay notices served in these proceedings."*

6. In total, the electronic bundles for the hearing were in excess of 4000 pages, with a further 1000 pages of authorities. The time estimate for the hearing was 1 day. I suggested to Mr Delehanty at the outset that this estimate was unrealistic, given the amount of material being presented to the court and the number of issues which were said to arise. In the event, the oral hearing was compressed to fit the time which was available but this had the result that arguments were curtailed and only a fraction of the materials was looked at. Whilst I have read and re-read the more detailed skeleton arguments, I have necessarily focussed on the points and materials thought to be of importance to the parties, as developed in oral submissions. To the extent that I have not chased down every last element of every form of relief included in the draft orders, I see that as a consequence of an overblown and unfocussed application on an inadequate time estimate.

7. I also note, with regret, that this is not the first occasion on which the court has been presented with an out of scale application in these proceedings. On 13 May 2022, Andrew Baker J gave judgment on various amendment and jurisdiction applications ([2022] EWHC 894 (Comm)). At [13]-[16], he made critical reference to the scale by which that exercise was being conducted and the volume of materials presented to the court, which he described as "*a disproportionate and unreasonable approach to the proceedings, wasteful of the parties' and the court's resources."* In his judgment dated 10 November 2022 on an application for security for costs ([2022] EWHC 3008 (Comm)), Bryan J also commented on the volume of materials before him, and observed that "*It would be fair to say that neither time nor expense has been spared by any of the parties in exhaustively arguing the issues that arise before me"*. Finally, Mr Stephen Houseman KC set a post-script to his judgment on preliminary issues ([2023] EWHC 2302 (Comm)) at [97]-[99]) directed to the proliferation of cited authorities and the consequent inadequacy of time estimates. He noted that he was able in that instance to keep the trial of preliminary issues within the agreed 3 day time estimate but that he could just have easily adjourned it with adverse costs orders.

8. Whilst this is no doubt hard fought litigation, the parties need to take heed of these repeated calls for restraint, focus and efficiency. It is not easy to see how an application which is said to be reliant (without limitation) on all previous evidence, all disclosure, solicitors' correspondence and all the defendants' trial evidence chimes with the overriding objective. Such an approach places an unnecessary burden on the court and will normally serve to increase costs. It may also work to the disadvantage of the applicant if otherwise valid points

become lost in the welter of materials or cannot be adequately addressed in the truncated time available.

The issues

9. Disclosure was ordered by His Honour Judge Pelling KC at the CMC on 24 April 2023. There were various elements to the disclosure order, but in material part it was directed that:

    a. The parties use their reasonable endeavours to agree outstanding points of dispute in respect of the joint DRD, failing which the outstanding points would be addressed at a further short hearing before the Judge.

    b. Disclosure in accordance with the joint DRD should be provided by 13 October 2023 (in respect of all parties other than Virtue Trustees) and by 12 January 2024 by Virtue Trustees.

    c. Disclosure in accordance with Model D shall include searches for and disclosure of narrative documents.

10. In the event, disclosure has been provided by all parties other than Alexander (albeit that some of this was late). I understand that Alexander issued an application for an extension of time for the provision of disclosure by him but he has not listed that application. He told me that he does intend to provide disclosure, although he is already very late. Given that there ought to have been compliance 6 months ago, it is not at all clear to me why this has not yet been done.

11. The Bank complains that the disclosure of each of the disclosure respondents (insofar as it has been given at all) is inadequate. Taking each in turn, it observes that:

    a. Mohammed disclosed only 36 documents, and spent only £926 on solicitor costs for disclosure in the four months prior to 13 October 2023.

    b. Alexander has provided no disclosure to date.

    c. Ziad provided his disclosure late and there are "*wholesale email collection and search failures*".

    d. Ramzy/Global Green disclosed only 38 documents.

    e. Joan disclosed only limited documents and spent a minimal sum on solicitors' costs.

12. It is a recurring complaint by the Bank that the disclosure respondents are prioritising other parts of the case, including various jurisdiction and other challenges to the Bank's claim, and in that context spending large sums in costs to pursue such challenges, which sums contrast starkly with the relative paucity of expenditure on disclosure. The disclosure respondents, for their part, disagree with the comparison and contend that they either have undertaken (or, in the case of Alexander, will undertake) a full and proper disclosure exercise, and that the amounts spent and/or the number of documents disclosed are products merely of the fact that there is little to disclose. They emphasise that, although they are defendants to the Bank's claim for s. 423 relief, this is only as recipients of impugned transfers. They are not alleged to have been complicit in the asset dissipation scheme itself.

13. At any rate, by the two applications, the Bank seeks a comprehensive re-performance (or performance) by the disclosure respondents of their disclosure obligations, together with detailed specific directions as to the content of those obligations. Following the first application, there has been engagement with several of the disclosure respondents, and agreement by them to re-perform some parts of the exercise. This is said to be by way of pragmatic compromise with a view to reducing the issues and without acceptance that there has been any inadequacy in performance. That engagement, in part, led to the second application, which to some extent reflects this movement. There has, however, not been the same level of engagement with other disclosure respondents. This has led to a fragmentation of the application, and the separate draft orders.

14. In practical terms, there is now a patchwork of relief claimed, varying between respondents, some of which is in issue and some not. Certain of the matters in dispute before me have been agreed to, in whole or in part, by some of the respondents. During the course of the hearing, I asked Counsel to produce a schedule confirming which parts of which draft orders were either agreed or in dispute, as this was not otherwise evident. I intend to address the principal matters in dispute generally. My conclusions do not impact on aspects which have already been agreed between the Bank and individual disclosure respondents. I anticipate that, for the purpose of any consequent order, there be a schedule recording those matters which were agreed and by which parties.

15. I will address the principal issues for determination under the following heads:

a. Issue 1: whether the disclosure respondents should be ordered to re-perform or perform their disclosure obligations against the issues in the DRD.

b. Issue 2: the treatment of intra-family communications.

c. Issue 3: the treatment of bank statement and bank records.

d. Issue 4: whether there should be further production orders against the non-represented disclosure respondents.

e. Issue 5: whether the scope of collection should extend to particular third parties said to be under the relevant disclosure respondent's "*control*".

f. Issue 6: whether the disclosure respondents should be obliged to produce a "*privilege schedule*".

g. Issue 7: residual/granular issues.

16. I turn first to the legal basis of the application, which occupied a material portion of the argument.

Legal basis

17. Although the applications were in theory made on multiple bases, the focus of the argument was correctly on PD 57AD paragraphs 17 and 18. These read as follows:

> *"17. Failure adequately to comply with an order for Extended Disclosure*
>
> *17.1 Where there has been or may have been a failure adequately to comply with an order for Extended Disclosure the*

court may make such further orders as may be appropriate, including an order requiring a party to—

(1) serve a further, or revised, Disclosure Certificate;

(2)undertake further steps, including further or more extended searches, to ensure compliance with an order for Extended Disclosure;

(3) provide a further or improved Extended Disclosure List of Documents;

(4) produce documents; or

(5) make a witness statement explaining any matter relating to disclosure.

17.2 The party applying for an order under paragraph 17.1 must satisfy the court that making an order is reasonable and proportionate (as defined in paragraph 6.4).

17.3 An application for any order under paragraph 17.1 should normally be supported by a witness statement."

"18. Varying an order for Extended Disclosure; making an additional order for disclosure of specific documents

18.1 The court may at any stage make an order that varies an order for Extended Disclosure. This includes making an additional order for disclosure of specific documents or narrow classes of documents relating to a particular Issue for Disclosure.

18.2 The party applying for an order under paragraph 18.1 must satisfy the court that varying the original order for Extended Disclosure is necessary for the just disposal of the proceedings and is reasonable and proportionate (as defined in paragraph 6.4).

18.3 An application for an order under paragraph 18.1 must be supported by a witness statement explaining the circumstances in which the original order for Extended Disclosure was made and why it is considered that order should be varied.

18.4 The court's powers under this paragraph include, but are not limited to, making an order for disclosure in the form of Models A to E and requiring a party to make a witness statement explaining any matter relating to disclosure."

18. The Bank contended as its primary case that the applications fell within paragraph 17, because the court could be satisfied that there had been or may have been a failure adequately to comply with an order for Extended Disclosure. As such, the court was then empowered to "*make such further orders as may be appropriate*", subject to the qualification at [17.2], namely that the applicant must satisfy the court that making an order is reasonable and proportionate, as defined in [6.4]. That paragraph, in turn, reads as follows:

> *"6.4 In all cases, an order for Extended Disclosure must be reasonable and proportionate having regard to the overriding objective including the following factors—*
>
> *(1) the nature and complexity of the issues in the proceedings;*
>
> *(2) the importance of the case, including any non-monetary relief sought;*
>
> *(3) the likelihood of documents existing that will have probative value in supporting*
>
> *(4) or undermining a party's claim or defence;*
>
> *(5) the number of documents involved;*
>
> *(6) the ease and expense of searching for and retrieval of any particular document (taking into account any limitations on the information available and on the likely accuracy of any costs estimates);*
>
> *(7) the financial position of each party; and*
>
> *(8) the need to ensure the case is dealt with expeditiously, fairly and at a proportionate cost."*

19. In *The Public Institution for Social Security v Al-Wazzan* [2024] EWHC 480 (Comm) (**Al-Wazzan**) at [17], Jacobs J considered that the "*likelihood*" of further documents existing should be interpreted as denoting "*a real possibility that a search will produce relevant and probative documents*", rather than a (higher) balance of probabilities test.

20. Two further points on paragraph 17:

    a. Mr Delehanty contended that it was not necessary to find that there had been or might have been a "*breach*" of an order for Extended Disclosure in order to engage the paragraph. Instead, it sufficed if there had been or might have been a "*failure adequately to comply*" with such an order. This appeared to me a distinction without a difference, if it is a distinction at all.

    b. Mr Delehanty also contended that it was enough to establish a failure adequately to comply in any one respect as regards Extended Disclosure, at which point orders could be made under paragraph 17 which attached to any aspect of Extended Disclosure (whether or not there had been or might have been a failure adequately to comply in that respect). Mr Venkatesan argued for a more limited application of the paragraph. I agree that the wording employed is broad, no doubt deliberately so, and that there should not be room for fine distinctions. However, paragraph 17 is explicitly directed to a failure adequately to comply with an order for Extended Disclosure. I do not consider that the paragraph is available to revisit aspects of Extended Disclosure for which there has been no, or no case that there might have been a, failure adequately to comply. Such a case would have to be brought under paragraph 18.

21. The court's power under paragraph 18 is also broadly expressed, and there is no requirement of prior non-compliance. The test under [18.2] is slightly different to that under [17.2], in that any order must be not only reasonable and proportionate (as in [17.2]) but also "*necessary for the just disposal of the*

proceedings". Mr Venkatesan directed me to the decision of Mr Richard Salter QC, sitting as a Judge of the High Court, in *Ventra Investments Ltd v Bank of Scotland plc* [2019] EWHC 2058 (Comm), a case under the predecessor to PD 57AD, in which the Judge observed at [35] that the difference in approaches under the two paragraphs was "*at most a difference in emphasis*" which had no practical effect in the particular circumstances of the case before him. Those circumstances were a relatively late application (which was being heard 6 months before the trial date) and which would if successful increase the burden on the parties in the lead up to trial. Against that background, the Judge concluded that there were "*no circumstances in which it would be reasonable and proportionate for me now to make an order for disclosure – even to rectify a failure adequately to comply with the earlier order for disclosure – unless that order was one that was necessary for the just disposal of the proceedings."*

22. Mr Delehanty did not accept that the approach of Mr Salter QC was the correct one and further contended that the circumstances in the present case were relevantly different. I disagree on both points and approach the respective tests in paragraphs 17 and 18 on the same basis as articulated in *Ventra*.

23. There were two further areas of dispute as regards paragraph 18.

24. The first concerned the interaction, if any, between the power to grant a variation under paragraph 18 and the general procedural rules which limit the ability of a party to revisit an interlocutory order absent special circumstances. Mr Venkatesan referred to what he described as "*the Chanel principle"*, after *Chanel Ltd v FW Woolworth & Co* [1981] 1 WLR 485, for the proposition that, if a point is open to a party on an interlocutory application and is not pursued,

then the applicant cannot take the point at a subsequent interlocutory hearing in relation to the same or similar relief, absent a significant and material change of circumstances or his becoming aware of facts which he did not know and could not reasonably have discovered at the time of the first hearing. This was, he said, part of the broader set of protections against abuse of process, linked to the rule in *Henderson v Henderson* [1843] 3 Hare 100. The point is relevant to the present case, it was argued, because several of the heads of relief now claimed by the Bank were not advanced as part of the proposed disclosure exercise at the time of the CMC.

25. Mr Delehanty disputed that the *Chanel* principle had any application to paragraph 18. He relied upon *Vannin Capital PCC v RBOS Shareholders Action Group Ltd* [2019] EWHC 1617 (Comm), a decision of Joanna Smith QC, sitting as a Judge of the High Court. In that case, again under the predecessor to PD57 AD, a similar point was taken, albeit by reference to the rule in *Tibbles v SIG plc* [2012] 1 WLR 2591, which is specifically directed to the court's power to vary its own order under CPR 3.1(7). The Judge rejected the applicability of that rule, contrasting the general jurisdiction of the court thereunder with the specific requirements of paragraph 18, which expressly sets out a different test for variation. Whilst not exactly on all fours with the point advanced by Mr Venkatesan, the analysis seems to me sufficiently close to be transferrable. Paragraph 18 grants the court express power to vary existing orders for Extended Disclosure, subject to the requirements of necessity, reasonableness and proportionality. In my judgment it would not be right to import into that regime a further hard precondition, under the *Chanel* principle, to an applicant's ability to access that power. That said, in the court's exercise of the power, it

will no doubt often be relevant, and perhaps in any given case determinative, to explore why a variation is being sought and whether it could and should have been raised at an earlier stage. The obvious relevance of such an enquiry is, indeed, apparent from the terms of [18.3], which gave rise to the second aspect of disagreement.

26. Pursuant to [18.3], an application "*must be supported by a witness statement explaining the circumstances in which the original order for Extended Disclosure was made and why it is considered that order should be varied."* Mr Venkatesan contended that this is on its face a mandatory requirement, and that, if it is not complied with, the court has no power to make any order at all. The point is relevant in the present case because, somewhat remarkably given the all-inclusive listing of evidence and materials relied upon in support of the second application, there was no witness statement accompanying that application. In large measure, relevant points which in reality amounted to variations of existing heads of relief had already been addressed in Mr Mascarenhas's Fifteenth statement but that was not the case insofar as the Bank sought by the second application the provision of privilege schedules by the disclosure respondents. This was an entirely new request and was unsupported by evidence.

27. In support of his submission, Mr Venkatesan relied upon:

    a. The difference in wording between [17.3] ("*should normally be supported by a witness statement*") and [18.3] ("*must be supported by a witness statement*").

b. The decision of His Honour Judge Paul Matthews, sitting as a Judge of the High Court, in *Brake v Lowes, in re Stay in Style* [2020] EWHC 538 (Ch). Addressing this very point under the predecessor to PD 57AD, the Judge concluded that the evidential requirement was a "*threshold condition"* (at [13]), absent satisfaction of which the court could not make a variation order.

28. Mr Delehanty countered with the decision of His Honour Judge Kramer, sitting as Judge of the High Court, in *Cocoa Sdn Bhd v Maersk Line A/S* [2023] EWHC 2168 (Comm). At [40], and having been referred to *Brake v Lowes*, the Judge concluded that he should not apply a "*mechanistic approach under which I should refuse relief for a technical failure provided the court can ascertain the reason for the original order and why it may be just to vary."* In that case, it seems that evidence had been adduced in support of the variation application but it was alleged that that evidence did not cover the specific matters identified in [18.3]. The Judge was prepared to overlook the deficiency, in circumstances where those matters were to his satisfaction apparent from other materials (although he did not in the event make the order).

29. Insofar as there is a difference between these two approaches, I prefer that of His Honour Judge Paul Matthews. In my opinion, the wording of [18.3] is clear and the distinction with [17.3] is telling. The information specified is of obvious materiality to the application and I see no reason to dilute the express requirement. In any event, I was not taken to any other material which provided an explanation for why it was that privilege schedules had not been sought at the CMC but were nevertheless being sought now.

The issues on the application

Issue 1: whether the disclosure respondents should be ordered to re-perform or perform their disclosure obligations against the issues in the DRD.

30. I have identified this issue as logically first in time because the premise of the application against each of the disclosure respondents is that there should be re-performance (or in Alexander's case performance) of the disclosure exercise. However, in the absence of any of the more detailed suggested content of the exercise, a bland requirement of re-performance adds nothing. Hence, having identified the issue, I will return to it after consideration of the more detailed requests.

Issue 2: the treatment of intra-family communications.

31. Much of the argument at the hearing focussed on this element of the proposed exercise. By intra-family communications, the Bank intends to refer to all communications, by whatever documentary or electronic media, between Ahmad and members of his family and between the family members themselves. It is the Bank's case in summary that:

    a. This is a critical source of core material of central relevance to the Bank's case. Under s. 423, the Bank must establish that Ahmad acted with the relevant intention namely for the purpose of putting assets beyond the reach of creditors other otherwise prejudicing the interests of creditors. That allegation is hotly contested in the action, with the defendants contending that, insofar as alleged transfers happened at all, they were for succession planning or other legitimate reasons.

b. The Bank has no direct visibility over the arrangements for the transactions themselves. Its case is largely an inferential one, drawn from the nature of the transfers and the surrounding circumstances. However, it is highly likely that the transactions would have been the subject of discussions between family members and that this will be evidenced by this body of communications.

c. There is evidence that some or all of the individual disclosure respondents used emails and most used WhatsApp and other media platforms, on which such relevant communications will have been exchanged. Further, the fact that Ahmad is playing no part in the proceedings, and has not given disclosure, makes the need for proper disclosure from the rest of the family more acute.

d. However, the individual disclosure respondents have disclosed either no or very few of such communications. The Bank infers that one of the reasons for this is that the disclosure respondents have inappropriately used key words as a filter before manual review, in circumstances where the likely range of informal family exchanges means that key words will often be inadequate to identify relevant hits.

32. The Bank seeks different relief against separate disclosure respondents.

a. As against the non-represented individual respondents, namely Alexander, Ziad and Ramzy, the Bank seeks what it describes as "*production*" orders, namely that they provide without prior review "*All communications between [him and Ahmad and any of the other*

individual disclosure respondents] in the period 1 January 2016 to 31 December 2018 (subject only to CPR PD57 AC compliant redaction).”

b. As against the represented respondents, namely Mohammed and Joan, the Bank seeks relief in the alternative. Either

i. A production order in similar terms, that they provide without prior review “*All communications between [him/her and Ahmad and any of the other individual disclosure respondents] in the period 1 January 2016 to 31 December 2018 (subject only to redaction performed by [his/her] solicitors.” Or*

ii. A review order, for “*collection and search, without application of keywords, of all communications between [him/her and Ahmad and any of the other individual disclosure respondents] in the period 1 January 2016 to the date of this Order.”*

33. These applications are made, in the first instance at least, under paragraph 17. The Bank’s primary submission, as I understood it, is that the use by the disclosure respondents of key words to narrow down the pool of reviewable documents in this (and indeed all other categories) constituted without more a failure adequately to comply with the order for Extended Disclosure. This was on the basis that, because there was not an agreed list of key words at the time of the CMC, it was necessarily incumbent on the disclosure respondents either to seek agreement from the Bank or to revert to the court for approval of their proposal words, failing which they were simply not allowed to use any key words at all by way of limitation of their searches. That did not seem to me to reflect either the terms or spirit of PD 57 AD and I asked Mr Delehanty if there

was authority in support. He was not able to identify any[1]. To the extent that that that argument is still pursued, I reject it. It is certainly beneficial to obtain agreement or court approval in advance and if a party does not do so it uses its self-selected key words at its own risk. But I fail to understand the argument that that must amount in and of itself to inadequate compliance.

34. As a second string, Mr Delehanty advanced a slightly more subtle argument to the effect that, since disclosure is an ongoing process, its terms and efficacy need to be kept under review. In the course of conducting their disclosure reviews, so it was said, the disclosure respondents ought to have realised that the application of key words was excluding all or most of the documents from this critical repository and so ought to have modified their approach by converting to a full manual review. It was the decision to persist in the application of key words when the results should have told them those key words were inapposite that led to a failure to comply with the disclosure obligation.

35. Inventive though this second argument was, I am not persuaded by it. Other than the fact that key words were used, it is not known what the results were and nor is it obvious that anyone should have realised, on review of those results, that there was a critical flaw in the process which needed immediate correction and an entirely different approach. There is too much assumption built into the argument.

---

1 Following the circulation of this Judgment in draft, Mr Delehanty referred me to the decision of His Honour Judge Worster in *AAH Pharmaceuticals Ltd v Jhoots Healthcare Ltd* [2020] EWHC 2524 (Comm), in which the Judge was critical of a party's failure to co-operate in the agreement of search terms, contrary to the expectation contained in what is now paragraph 2.3 of PD57 AD. That is, to my mind, a different point and is not authority for the proposition advanced.

36. Other than that, the Bank's case on non-compliance was that the paucity of documents disclosed was itself sufficient to satisfy the paragraph 17 test. But, again, there is very little to go on and I do not consider that it does make out the case. The other side of the argument is that it is not the object of the disclosure process to ensure that every single document of potential relevance is necessarily identified and produced. Under the regime directed by PD57 AD, parties must undertake a reasonable and proportionate search, in accordance with the parameters and guidance set out. It does not follow that, merely because only a small number of documents has been produced, there has not been a reasonable and proportionate search.

37. In conclusion, I am not satisfied that, in respect of intra-family communications, there has been or may have been a failure adequately to comply with an order for Extended Disclosure. It follows that this part of the application cannot be brought under paragraph 17.

38. The argument is rather different under paragraph 18, which is free from the condition of prior non-compliance. The Bank's case is that, looking at the matter now, when it is known that key words have been applied and there has been very little return, it is necessary, reasonable and proportionate to require a further review on more exacting terms. This raises a number of considerations:

    a. *Is this a potentially central repository of documents, the content of which may have been overlooked?* On this critical point, I am satisfied that the Bank has a sufficiently arguable case both that there may be highly relevant documents within the description of intra-family communications and that such documents might have been missed.

There is a measure of speculation in this assessment but common sense does suggest that, if large transfers of value were being made between family members, this would have been the subject of relevant discussion and that this might well have gone beyond the purely oral.

b. *Is the Bank precluded from seeking a variation by reason of the fact that it did not make this point at the CMC?* The principal point underlying the Bank's case is that key words cannot be safely calibrated to the numerous variations which are likely to be found in intra-family communications. That is not a new point and could have been made at the CMC. Had it been so made, and had it been accepted, then either a different sort of disclosure exercise would have been conducted or there would have been greater focus on and discussion about possible expansions of key words. Either way, it would probably not have been necessary (in this respect at least) now to seek a variation and the undertaking of a new task. For the reasons I have explained above, I do not regard that, through the application of the *Chanel* principle, as a knock-out blow, but it is undoubtedly a relevant factor.

c. *Is it necessary, reasonable and proportionate to require the disclosure respondents to carry out further work in respect of intra-family communications?* With some hesitation, I am satisfied that it is necessary, reasonable and proportionate to require the disclosure respondents to carry out some further work in this area. That is principally because of the likely existence and relevance of material. I consider that, in accordance with *Al-Wazzan*, there is a real possibility

that a further review will produce relevant and probative documents and that, in broad terms, if this can be proportionately undertaken, then it is in the interests of justice that it be done. But the circumstances of the matter and the proximity to trial will affect the scope of that work. I am conscious that any order for further work will impose an additional burden on the disclosure respondents, at a time when preparation for trial is being undertaken. I was also told of some particular personal burdens. Hence a balance needs to be struck, which to my mind should be set at finding the minimum that should properly be done to achieve some realistic prospect of the additional disclosure the Bank seeks.

d. *What further work should be carried out?* As for the possible further exercise itself, there are three variations on the table: (a) a full manual review without key words; (b) a full manual review with more extensive key words; and (c) production of everything without review. I am not attracted to the third option. Mr Delehanty submitted that this was the simplest and easiest solution, requiring the least amount of work but I do not see that as a principled basis to make disclosure decisions, even if it were correct, especially given the no doubt private nature of many of these communications (and, insofar as the proposed order allows for the redaction of such matters, the supposed benefit of the solution would be quickly lost). As between the other two options, this ultimately turns on the balance between likely effort and likely outcome. I am at a disadvantage because there is no evidence upon which a firm view can be taken on this point. For the present, my current view is that there should be a manual review without the application of key words,

because (a) I am not aware of any specific evidence to indicate that this (on the more confined basis I discuss below) would be a task that could not be done; and (b) there has been no real discussion as to whether a more comprehensive set of key words could be devised and which would both reduce the burden and assuage the Bank's concerns.

e. I am prepared to leave this point open for further discussion and determination at a consequentials hearing, as I do not consider that it has been fully explored. However, there is not much time and it is important that this be resolved speedily. Hence, if any disclosure respondents wish to contend that it would be disproportionate to undertake a full manual review without search terms then they may do so, but at that stage I will need evidence of the actual scale of the task, together with a viable alternative solution by the use of key words that address the Bank's concerns.

f. *Are there any other limitations to be placed on the exercise?* I am concerned, as I say, to keep this exercise to the minimum, given the burden, whilst seeking to ensure that it has value. Particular aspects that arise:

    i. The draft orders refer to "*All communications*". As discussed during the course of argument, I consider that to be too imprecise to be contained in an order, especially one which is intended for reasonably quick compliance. The parties must agree a specific list of media or platforms, together with a list of applicable fields

(for example, to, from and cc), so that there is clear definition of what needs to be done.

ii. There is then the date range. The Bank alleges that the period from 1 January 2016 to 31 December 2018, is the "*most intensive period of [Ahmad's] asset transferring activity"*. I consider that this is too broad. The Case Memorandum, at [3], records the Bank's case as being that "*from 2017 D1 undertook a worldwide asset dissipation scheme*" and several of the impugned transactions are in fact said to have taken place in mid-2017. I propose to order a date range of 1 January 2017 to 31 December 2018. That ought materially to reduce the burden of the exercise. I am aware that, by narrowing the range, this risks excluding, for example, earlier planning communications, if there were any. But the process is imperfect and the aim is not to guarantee that every stone is looked under. Given the circumstances, the balance favours a narrower range.

iii. I anticipate an order for compliance by 13 May 2024, if it can practicably be achieved by then. Again, if any disclosure respondent wishes to contend that this cannot be done within that timeframe, this can be resolved at the consequentials hearing, though I do not anticipate much leeway.

39. Finally, I note a concern expressed by Ramzy that, if he is obliged to disclose intra-family communications, these might fall into the hands of the UAE authorities, with damaging repercussions. The Bank has offered to create a

confidentiality club for such communications. I do not know if this concern remains and if such a confidentiality club will be required. If it is, then this will need to be set up without delay.

Issue 3: the treatment of bank statement and bank records.

40. The Bank seeks, as against all the disclosure respondents, a "*production*" order for the provision of "*all bank statements, instructions and transaction records for the period 1 January 2016 to the date of this Order*", save that entries for less than US$100,000 may be redacted and that records of instructions and transactions need only be produced in respect of transactions above US$100,000.

41. This application is also made under paragraph 17 and then paragraph 18. Mr Delehanty submitted that this is a further critical repository of information in a case which is directly concerned with fund transfers. He highlighted in particular the Bank's claim in respect of a transaction which commenced with an attempted transfer of US$15m from Medstar Holding SAL (**Medstar**), a company said to be owned and controlled by Ahmad, to Mistar Investment Group Holding SAL (**Mistar**) a company which came to be owned by Mohammed, Alexander, Ziad and Ramzy. In May 2017, Medstar attempted to transfer the US$15m to Mistar but the transaction failed. The Bank claims by way of its inferential case that (a) the failed transfer was for the purpose of putting the assets out of the reach of creditors; and (b) on some subsequent date and in some way the same monies would have been transferred, with the same intent, to or for the benefit of Mohammed, Alexander, Ziad and Ramzy. In granting permission to amend to permit this claim to be advanced, Andrew

Baker J considered that he was, "*just persuaded, on balance, to consider that there is a serious issue to be tried to that effect rather than pure speculation by the Bank."* [2022] EWHC [894] (Comm) at [101]. Nevertheless, now that the claim is part of the action, the Bank says that all bank statements of all the disclosure respondents, together with the statements of several another entities and persons said to be under their control, are central documents because they may indicate whether and if so when and in what amounts the funds were actually transferred. Further, it was said, bank statements may also be relevant to claims in respect of other transfers, especially where the Bank is seeking to find existing value.

42. The case for non-compliance for the purpose of paragraph 17 is necessarily put on a different basis. Given that Model D was ordered rather than Model C at the CMC, the argument is that, for whatever reason, the disclosure has simply been inadequate. Given that the Bank appears to accept that, at the very least, transactions under US$100,000 may be redacted, presumably because insufficiently relevant, the Bank's case has to be that the disclosure respondents have omitted to disclose bank statements with transaction entries above US$100,000 and which are or are potentially relevant to the Bank's claim. The trouble with this, however, is that there is no basis to support the conclusion. Another, and perhaps fuller, way to express the position that the Bank has to adopt is that, on the assumption that the Bank's case is correct and on the further assumption that relevant transactions can be identified on the bank statements, it must follow that there has been (or, for the purpose of paragraph 17, may have been) a failure to disclose those very bank statements. But this is just to assume what is needed to be established.

43. In the same vein, the Bank contends that, given the numerous different ways that monies or benefit might have been received, it is "*plainly not an appropriate task for D2's solicitors, still less the unrepresented Ds, to evaluate whether the transactions shown on the statements are such that the Bank might seek to draw inferences from them and their patterns in support of its claim."* But this is to argue that the disclosure exercise undertaken by the solicitors was or may have been flawed merely because the Bank might take a different view of the evidence. That is not a sound basis to proceed, certainly as regards the represented defendants, and I consider that it would be wrong to treat the non-represented defendants differently.

44. This part of the application, accordingly, must be brought under paragraph 18. As to the relevant considerations:

    a. *Is this a potentially central repository of documents, the content of which may have been overlooked?* The balance is to my mind rather different as regards the bank statements. They might or might not contain critical information, if there is indeed information to be found. The risk that that information, if it exists, has been overlooked, is much more slight. This is not a case where keywords might be said to prove inadequate because of the informality of language. See further the postscript to this Judgment.

    b. *Is the Bank precluded from seeking a variation by reason of the fact that it did not make this point at the CMC?* Although this point is not determinative, the Bank's position is left more vulnerable. The Bank could have asked for Model C disclosure of bank statements at the CMC,

which is what it is in effect asking for now. That would have been a relatively conventional approach to take. Such an order might or might not have been made, but it is not clear why it did not do so. Nothing that has happened since has changed the rationale for Model C.

c. *Is it necessary, reasonable and proportionate to require the disclosure of the bank statements?* I have come to the conclusion that the order sought is not necessary, reasonable or proportionate. The production of bank statements is a necessarily invasive exercise. The orders sought would not be straightforward or easy to comply with, given both the scope of the material sought (well beyond the statements themselves) and the redactions permitted. And fundamentally, if the application does not fit within paragraph 17, as I have found, it is difficult to see how it would be necessary, reasonable or proportionate to make a production order under paragraph 18, the only purpose of which would be to correct an error in review which, *ex hypothesi,* has not been established.

45. Two further points on this aspect:

a. As I have said the Bank relied principally (though not exclusively) on the Medstar transaction to demonstrate the importance of bank records across a broad date range. Whilst there are elements of this argument which help to advance the Bank's position, countervailing points also undermine it. It is one thing to say, in any given case, for example, that a transaction did occur on a certain date and that therefore bank statements at or around that date are likely to show both the transaction and its antecedents or descendants. It is of a different scale to say that a

transaction might have happened on an unknown date in an unknown amount and between unknown parties and that broad disclosure across accounts of multiple parties over an extensive period (currently 8 years) is needed to see whether anything can be found. The Bank is fully entitled to run its inferential case, and I say nothing about that, but this is not a firm basis for what could properly be characterised as speculative disclosure.

b. During argument, I discussed with Mr Venkatesan the possible "*evidence of absence*" aspect of this case, namely whether the purported absence of any relevant transactions over $100,000 would be deployed against the inference that the Bank was seeking to draw. In other words, could this be used in attempted support of a positive case advanced by the defendants that, in the case of the Medstar transaction for example, there was no such transfer. I rather understood that he would like to run that argument: at least he did not disclaim it. But it is an argument, if made, reliant on the fact that that is the asserted outcome of the disclosure process. I say nothing about the strength of that argument. For the purpose of the application before me, it does not make the actual production of the bank statements necessary for the fair disposal of the trial.

Issue 4: whether there should be further production orders against the non-represented disclosure respondents.

46. The Bank seeks, as against the non-represented disclosure respondents a series of further "*production"* orders in respect of documents relating to various

companies, projects, transactions and allegations. For example, the order sought against Ziad seeks production of the following categories of document:

> *"All documents (including but not limited to notes, records, emails, electronic or text messages, other communications, bank statements, instructions and transaction records) in D4's possession or control concerning, or referring to, the transactions of (i) Ras Beirut 3486 SAL or (ii) Mistar, in the period from 1 January 2016 to the date of this Order.*
>
> *"All documents (including but not limited to notes, records, emails, electronic or text messages, other communications, bank statements, instructions and transaction records) in D4's possession or control concerning, or referring to, the business of (i) Commodore Netherlands, (ii) Commodore Belgium, or (iii) D8, in the period from 1 January 2015 to the date of this Order. Without limitation, this shall include all such documents in relation to:*
>
> a. *Transfers of money received from Federal Development Co in 2017;*
>
> b. *The projects of Commodore Netherlands;*
>
> c. *The liquidation of Commodore Turkey; and,*
>
> d. *The alleged embezzlement of funds and diversion of projects to entities connected to Sheikh Tahnoon.*
>
> *"All documents (including but not limited to notes, records, emails, electronic or text messages, other communications, bank statements, instructions and transaction records) in the D4's possession or control concerning, or referring to: (i) the Spring Blossom Trust; (ii) the property at 18bHyde Park; (iii) Marquee; or (iv) Norton BVI, in the period from 1 January 2016 to the date of this Order.*
>
> *"All documents (including but not limited to notes, records, emails, electronic or text messages, other communications, bank statements, instructions and transaction records) in D4's possession or control concerning, or referring to, the operation of Federal Development Co in the period from 1 January 2015 to the date of this Order. Without limitation, this shall include all such documents in relation to transfers of money made by Federal Development Co in 2017 (whether to Commodore Netherlands, Commodore Belgium, entities which the Second Defendant owned or controlled, or otherwise).*

> *"All documents (including but not limited to notes, records, emails, electronic or text messages, other communications, bank statements, instructions and transaction records) in D4's possession or control concerning, or referring to, Sheikh Tahnoon in the period from 1 January 2015 to 31 December 2019. Without limitation, this shall include all such documents in relation to:*
>
> *(i) the First Defendant's ownership, control and operation of: (i) Federal Development Co, (ii) Commodore UAE, and (iii) Tadamun UAE;*
>
> *(ii) any involvement of Sheikh Tahnoon (directly or indirectly) in the affairs of Commodore Netherlands or Commodore Belgium; and*
>
> *(iii) any legal actions brought, or sought to be brought, against the First Defendant by or at the instigation of Sheikh Tahnoon.*
>
> *"All documents (including but not limited to notes, records, emails, electronic or text messages, other communications, bank statements, instructions and transaction records) in D4's possession or control concerning, or referring to, the transfers of properties to: (i) ABR Real Estate Company SAL; and (ii) Ras Beirut 3486 SAL.*
>
> *"All documents (including but not limited to notes, records, emails, electronic or text messages, other communications, bank statements, instructions and transaction records) in D4's possession or control concerning, or referring to, the status of the First Defendant's marriage to the Sixth Defendant in the period from 1 January 2016 to the date of this Order.*
>
> *"All documents (including but not limited to notes, records, emails, electronic or text messages, other communications, bank statements, instructions and transaction records) in D4's possession or control concerning, or referring to, the subject matter of the claim brought against the First Defendant by Doha Bank."*

47. These are all matters which, one way or another, feature in the various allegations made by the Bank. Notwithstanding the extensive nature of the relief sought, this aspect of the application occupied almost none of the argument at the hearing. For reasons similar to those in respect of bank statements, though with even greater force given the evidently wide-ranging nature of the relief

being sought, I am not satisfied that the Bank has made out a case for any of these orders against any of the non-represented disclosure respondents.

Issue 5: whether the scope of collection should extend to particular third parties said to be under the relevant disclosure respondent's "control".

48. Against each of the disclosure respondents, the Bank seeks orders that there should be collection of documents held by third parties, for the purpose of further review or, as appropriate, production. Again by way of example, the order sought against Ziad includes the following relief:

> *"Compliance with D4's obligations under paragraphs {122} and {13A} shall require D4 to collect documents held by: (i) Hachem law firm, (ii) Kendris AG, (iii) Mistar, (iv) Mistar's liquidator, (v) First National Bank, (vii) D7, (viii) Commodore Netherlands, (ix) Commodore Belgium, (x) D8, (xi) Ras Beirut 3486 SAL, and (xii) Norton BVI."*

49. So far as Mohammed is concerned, the equivalent relief against him is in different form. This begins with some new definitions:

> *"**D2 Corporate Vehicles**" being special purpose vehicles / corporate entities in respect of which D2 was or is the ultimate beneficial owner and/or has total effective control (including but not limited to Ventura Capital Management Limited, Niosis Holdings Ltd and Orion Offshore Corp); and (ii) "**D2 Connected Entities"** being D2 Corporate Vehicles and other entities in which D2 has had or has an ownership or financial interest."*

50. On the back of that definition, the Bank then seeks:

> *"Collection, and search of, documents from the following persons and entities: (i) Hachem law firm (in respect of documents within D2's control); (ii) Kendris AG (in respect of documents within D2's control); (iii) Streathers Solicitors (in respect of documents within D2's control); (iv) (in respect of documents within D2's control) any other person or entity who has provided professional services to D2, in the period of 1 January 2015 to the date of this Order, in connection with: (I)*

> *the incorporation, administration, or operation (including liquidation) of any D2 Corporate Vehicles; or (II) D2's interests in relation to, or dealings with, any D2 Connected Entities.*
>
> *"Collection, and search of, documents (including but not limited to bank statements) held by (i) any D2 Corporate Vehicles; (ii) the liquidators of any D2 Corporate Vehicles (in respect of documents within D2's control); and (iii) any D2 Connected Entities in respect of which D2 (to his knowledge or that of his solicitors) has practical control over documents they hold."*

51. I was referred in the skeleton arguments to a number of pertinent decisions on the question of control for disclosure purposes, including *Lonrho Ltd v Shell Petroleum Co Ltd* [1980] 1 WLR 627, *Ardila Investments NV v ENRC NV* [2015] EWHC 3761 (Comm), *Pipia v BGEO Group Ltd* [2020] 1 WLR 2582, *Berkeley Square Holdings Ltd v Lancer Property Asset Management Ltd* [2021] EWHC 849 (Ch), *Various Airfinance Leasing Companies v Saudi Arabian Airlines Corp* [2022] 1 WLR 1027 and *Al-Wazzan*.

52. These cases contain various summaries and distillations of the applicable principles, which are by now well established. At a very high level, sufficient for the purposes of this judgment, (a) the onus is on the party seeking to establish that a document in the physical possession of a third party is nevertheless within the control of a litigating party; (b) the structural relationship between the third party and the litigating party is not necessarily irrelevant but it is not determinative; (c) there must be established an existing arrangement or understanding, which may be short of a legally binding arrangement, the effect to which is to grant free access to the documents (or to any relevant category of documents); (d) this may be inferred from the relationship and the particular circumstances; and (e) if the necessary control is not established, the court cannot make an order. For the purpose of the present application, it would

follow that, if the court is satisfied that the control test is established in respect of any particular third party, and if disclosure has been given in the absence of collection of documents from that third party, then there may potentially be non-compliance under paragraph 17, entitling the court to make a curative order.

53. It will be seen from the draft order as against Ziad that the list of potential third parties is large, in his case amounting to 11 entities. As against Mohammed, the list is potentially even wider. The defined terms "*D2 Corporate Vehicles*" and "*D2 Connected Entities*" are limited only by description and on their face are potentially problematic. In particular, a defined term embracing all entities in which Mohammed has a "*financial interest*" may be both uncertain in its application and almost limitless in its reach. It is not possible to tell from the draft order itself the identity of all entities from whom Mohammed is to collect documents or even how many there are.

54. At the hearing, Mr Delehanty did not develop the case on control in any detail. The only specific example he took me to, briefly, was the contention that Global Green had control over the documents of two companies referred to as "*Commodore Netherlands*" and "*Commodore Belgium*", this on the grounds, as I understood it, that (a) Ramzy had produced a document belonging to Commodore Netherlands in connection with an asset disclosure application; (b) Ramzy is a director of both companies; and (c) Global Green shared a bank account with the Commodore companies at ING Netherlands (although Ramzy subsequently said that they did not).

55. Mr Venkatesan argued that:

a. The Bank had failed in principle to establish its case on control across the board, because it had sought to contend that control could be established by generic relationships, such as shareholdings in companies, but had not in accordance with the authorities established on an entity by entity basis the necessary relationship.

b. Insofar as, as against Mohammed and Joan, the Bank's most recent draft orders include the qualification that orders should only be made "*in respect of documents within D2's control*" or the like, this did not solve but rather exposed the problem. The court may make such an order only if the applicant establishes to its satisfaction that there was such control. It cannot make, or at least there is no value in, an order which merely begs the question. Two related difficulties are (a) if the court does not address the control issue, then the paragraph 17 route is not available and it is not obvious why this would then justify a paragraph 18 extension in such terms; and (b) the Bank's draft orders result in an asymmetry between the position of represented and non-represented disclosure respondents. For the represented parties, the court is being asked to pull its punches, not to decide control, but to make contingent orders which leave that point open (perhaps left to the respondents to decide, perhaps to be determined later). For the non-represented parties, in contrast, the court is being asked to make determinations of actual control for up to (in Ziad's case) 11 entities, including several entities for which no such determination is to be made in Mohammed and Joan's case.

56. I am not prepared to make any of the orders sought by the Bank under this head. I accept the submissions of Mr Venkatesan that the Bank has not established the necessary arrangement on an entity by entity basis in respect of the multiple parties in respect of whom it seeks this relief. I go so far as to say that this aspect of the application is misconceived in its underlying basis and ambit. As against the non-represented disclosure respondents a positive order that a respondent collect documents from a third party is of obvious significance. If the respondent does not comply, it is in breach of the order, even if this is because it is unable to do so. That is why it is important that such an order will be made only following a determination by the court on a case by case basis that the evidence establishes the necessary control. I do not say that, buried within the interstices of the 4000 pages of bundle, and if the point were properly examined and developed, there might not be an arguable case of control in respect of one or perhaps even more than one third party (at which point there would need to be consideration of whether any further order was justified under paragraph 17 or 18). But it cannot be done *en masse* and it cannot be done purely on a relationship basis.

Issue 6: whether the disclosure respondents should be obliged to produce a "privilege schedule"

57. The Bank seeks, against each of the disclosure respondents, relief in the following terms (again using Ziad as an example):

> *"By no later than 4pm on 10 May 2024, D4 shall serve a schedule containing the information at Schedule C to this Order in respect of all documents being withheld from production on privilege grounds (other than those covered by litigation privilege in respect of these English proceedings and the related*

proceedings brought by the Claimant in the United States, Germany and Canada).

SCHEDULE C – PRIVILEGE SCHEDULE

(1) The time and date of the document;

(2) The author of the document;

(3) A description of the nature of the document (whether communication / correspondence, advice / opinion, note, record of meeting or call or otherwise);

(4) The lawyer(s) involved (if any);

(5) The primary addressee of, and other parties to, the document (including who sent and received it and for whom it was created);

(6) Insofar as the document is a note or record of a meeting or call, the persons the document identifies as having attended such meeting or call; and,

(7) The nature of the privilege in the document (whether legal advice, litigation or otherwise).”

58. The Bank contended that the information described in the schedule is not intrinsically privileged information (this was accepted by Mr Venkatesan). It also contended that it was or was potentially important information which could be material to its inferential case. As an example, it said, in relation to any particular transfer or in relation to the purported divorce between Ahmad and Joan (which is a point in dispute) it could be significant to know when it was that a family member consulted a lawyer and about what.

59. Mr Venkatesan argued that this relief was precluded because the Bank had not complied with the requirement for evidence in [18.3] (there being no question of paragraph 17 relief in this case). For the reasons I have already given, I accept that submission. In agreement with His Honour Judge Paul Matthews, I consider that this requirement is a threshold condition and that the application

in this respect therefore fails *in limine*. However, even if that were wrong, the difficulty facing the Bank remains the absence of the very information that the court needs before it can make an informed decision under paragraph 18. The Bank explains in its skeleton argument why it would now like a privilege schedule from the disclosure respondents. But there is no explanation of why this was not considered necessary or desirable at the time of the CMC. The points which are made now, if they were good, were equally good at that time and the inference is that the Bank or its lawyers have just had another thought. In the absence of such an explanation, and quite apart from the technicalities of [18.3], I am not able to conclude that the provision of a privilege schedule at this late stage is necessary, reasonable or proportionate. I should also add, for the avoidance of any doubt, that, even if the evidential requirements were satisfied, I consider that a last minute application such as this, which on its face would require substantial work shortly before trial, the performance of which might well raise difficult individual issues around privilege, and the benefit of which would be, at best, rather indirect, is an ambitious one.

60. I was less impressed by other arguments advanced by Mr Venkatesan:

a. He suggested that the court could not make such an order because paragraph 18, and PD57 AD in general, is concerned with the disclosure of existing documents, not the creation of new documents. However, both paragraphs 17 and 18 expressly envisage the provision of a witness statement as amongst the (non-exclusive list of) powers available to the court. This undermines the suggestion that PD57 AD must be tied to the disclosure of existing documents alone.

b. Mr Venkatesan went on to argue, somewhat inconsistently, that the only purpose for ordering a privilege schedule of this nature was to enable the applicant to challenge a claim for privilege. Accordingly, he submitted, an application such as this for a privilege schedule to assist at trial was for a collateral and impermissible purpose. I accept that there are examples of cases where such a course was indeed taken to assist in a challenge to a claim for privilege. But I am not persuaded that that means that there can be no other legitimate purpose, or that an application to obtain ostensibly non-privileged information for use at trial is in and of itself objectionable. The Bank's problem is not that it is seeking relief for an improper purpose but that it has not complied with the applicable rule and there is consequently no evidential basis on which the application can be granted.

Issue 7: Residual/granular issues.

61. There were some residual or more granular issues which I can now sweep up:

a. One of the effects of the passage between the first and second applications is that some of the heads of relief that had initially been sought by the Bank, especially against Mohammed and Joan, were removed from the draft orders attached to the second application. This was done with a little equivocation, in that the Bank sought to preserve the right to bring such matters back, depending on the results of whatever order was actually made or agreed. For this purpose, it sought "*liberty to apply*". Mr Venkatesan objected to this approach and submitted that the removed matters should be considered and dismissed, so that there was no danger of their return.

During the course of the hearing, I asked Mr Delehanty what he proposed to do about these matters. He confirmed that he was not advancing them before me and, moreover, was not seeking an order that they be adjourned until a future date. Upon that confirmation, I indicated that, so far as I was concerned, those removed matters had been abandoned and were no longer before the court. If and insofar as the Bank wished to seek such relief again, it would have to issue a new application. On that basis, Mr Venkatesan did not persist in the argument that I should consider and formally dismiss a residual application for such relief.

b. There are one or two additional orders sought, in particular in relation to document preservation statements, that I am prepared to grant. To identify these, and to provide what I hope is a clear statement of my decision, there is attached to this judgment an Appendix recording the outcome on each paragraph of the draft orders.

c. The Bank has identified certain email accounts which it contends should be searched and the subject of disclosure:

i. Alexander: aelhusseiny@federal1.ae

ii. Ziad: zeh@federal1.ae

iii. Ramzy: reh@federal1.ae

iv. Joan: joehaidamous@hotmail.com

The position of the disclosure respondents is that they do not have access to these accounts either because (in the case of the federal1.ae accounts), they

have been shut out or because (in the case of the hotmail account) it was never Joan's account. The Bank has sought to circumvent this factual issue, which it cannot gainsay, by extending the draft orders to documents held "*locally or remotely*", supposedly to address the possibility that documents might be held on a local server. However, the problems here are that (a) the suggested wording does not limit the exercise but extends it so as to require collection from both local and remote sources; and (b) insofar as this were again modified just to focus on the local source, there is no evidence that I was shown these email accounts or their contents were in fact held locally and that there has been or may have been a deficiency in the exercise. I decline to make these orders.

62. Reverting to issue 1, accordingly, the outcome is that I will order that Mohammed, Ziad, Ramzy and Joan re-perform their disclosure exercise but only to the extent that I have described for intra-family communications. Save as set out in the Appendix, I will not make orders in respect of the various other heads of relief claimed. This means that the issue of whether any more general review should be undertaken with or without key words does not arise. In some respects, as I have said, individual disclosure respondents, in particular Mohammed, Ramzy and Joan have already agreed to perform some further tasks. Insofar as this overlaps with or goes beyond what I have ordered, then it is by way of consensual agreement.

63. So far as Alexander is concerned, he must perform his disclosure exercise, and do so by 13 May 2024. Given that there has been non-compliance, it is appropriate to include in the order against Alexander some further elements of

the exercise which must be complied with. I indicate these in the attached Appendix. Nothing I have said in this Judgment excuses full performance by Alexander of his primary obligations.

Conclusion

64. Drawing the threads together:

a. I have concluded that Mohammed, Ziad, Ramzy and Joan must do further work in respect of intra-family communications, and that Alexander must do similar work as part of his own disclosure exercise. The precise detail will need to be worked out, within the parameters that I have explained. There are some further orders which I am prepared to make, as indicated in the Appendix.

b. Alexander must perform his disclosure exercise in full by 13 May 2024.

c. I will not order any of the other relief sought. Where there has been agreement to carry out further work which overlaps with or goes beyond that which I have ordered, this should be recorded in a Schedule to the court's order. Otherwise, I dismiss the applications.

Postscript

65. Following the circulation of this Judgment in draft, a point arose which went beyond the normal issue of corrections. Mr Venkatesan fairly pointed out that it appeared from the draft Judgment that I had understood, based on what he had said in submissions, that the bank statements had been reviewed by at least his clients without the prior filter of key words. He explained that that was not the case and that the bank statements of Mohammed and Joan were in fact reviewed

only after the application of key words. In further written submissions, Mr Delehanty suggested that this was an error which justified a reconsideration of the application, insofar as it concerned the bank statements, and he also offered various possible refinements to that application. I am grateful to both Counsel for addressing this point but it does not alter my conclusions. As indicated at paragraph 44(a) above, the same objection to the use of key words does not arise in this context. In his skeleton argument in support of the application for the production of bank statements, Mr Delehanty submitted that (a) the statements ought to have been disclosed under Model D because all such statements were "*inherently disclosable*"; and (b) further or alternatively, there was a clear basis for production by way of Model C request. I do not accept either point. Further, neither point is, to my mind, impacted by the prior use of key words and the particular issue in the present case over the complication of informal language in intra-family communications.

APPENDIX

Draft order	**Outcome**
Mohammed	
1	Ordered
2	Ordered
4	Ordered, but only insofar as applies to the detail specified below
5(a)	Ordered
5(c)	Not ordered
5(d)	Not ordered
5(e)	Not ordered
6(a)	Not ordered
6(c)	Not ordered
6(d)	Not ordered
6(e)	Not ordered
6(f)	Modified review ordered
7(a)	Ordered, by 13 May
7(b)	Ordered, by 13 May
7(c)	Ordered, by 13 May
7(d)	Ordered, by 13 May
7A	Not ordered
7B	Not ordered
7C	Not ordered
7D	Not ordered
Alexander	
8	Ordered, by 13 May
9(a)	Not ordered

9(b)	Ordered
9(c)	Ordered
9(d)	Not ordered
9(e)	Not ordered
9(f)	Ordered
9(g)	Ordered
11	Ordered, by 13 May
11A(a)	Not ordered
11A(b)	Modified review ordered
11A(c)	Not ordered
11A(d)	Not ordered
11A(e)	Not ordered
11A(f)	Not ordered
11A(g)	Not ordered
11A(h)	Not ordered
11A(i)	Not ordered
11B	Not ordered
Ziad	
12	Ordered, but only insofar as applies to the detail specified below
13(a)	Not ordered
13(b)	Not ordered
13(c)	Not ordered
13(d)	Not ordered
13(e)	Not ordered
13(f)	Ordered
13(g)	Ordered
13A(a)	Not ordered
13A(b)	Modified review ordered
13A(c)	Not ordered

13A(d)	Not ordered
13A(e)	Not ordered
13A(f)	Not ordered
13A(g)	Not ordered
13A(h)	Not ordered
13A(i)	Not ordered
13A(j)	Not ordered
13B	Not ordered
Ramzy	
15	Ordered, but only insofar as applies to the detail specified below
16(a)	Not ordered
16(b)	Not ordered
16(c)	Not ordered
16(d)	Not ordered
16(e)	Not ordered
16(f)	Ordered
16(g)	Ordered
16A(a)	Not ordered
16A(b)	Modified review ordered
16A(c)	Not ordered
16A(d)	Not ordered
16A(e)	Not ordered
16A(f)	Not ordered
16A(g)	Not ordered
16A(h)	Not ordered
16A(i)	Not ordered
16A(j)	Not ordered
16B	Ordered, by 13 May
16C	Not ordered

Joan	
18	Ordered, but only insofar as applies to the detail specified below
19(a)	Ordered
19(b)	Not ordered
19(c)	Not ordered
19(d)	Not ordered
20(a)	Not ordered
20(b)	Modified review ordered
20(c)	Not ordered
20(d)	Not ordered
20A	Not ordered
20B	Not ordered
20C	Not ordered
20D	Not ordered
Global Green	
21	Not ordered
22(a)	Not ordered
22(b)	Not ordered
22(c)	Not ordered
22(d)	Not ordered
22(e)	Not ordered
22(f)	Not ordered
22A(a)	Not ordered
22A(b)	Not ordered
22A(c)	Not ordered
22B	Not ordered