Neutral Citation Number: [2025] EWHC 3119 (Comm)

Case No: CL-2021-000412

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

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

Date: **Tuesday, 25 November 2025**

Before:

Mr Justice Andrew Baker

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Between:

INVEST BANK P.S.C. **Claimant**

- and -

(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 **Defendants**

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Mr M Delehanty (instructed by **PCB Byrne LLP**) for the **Claimant**
Mr M Venkatesan KC and **Mr C Fraser** (instructed by **Debenhams Ottaway LLP**) for the **Second** and **Sixth Defendants**
Mr M Friston (instructed by **Longmores Solicitors LLP**) for the **Third** and **Fourth Defendants**
The **Fifth Defendant** appeared in person
The **First**, **Seventh** and **Eighth Defendants** did not appear and were not represented

Hearing dates: 24, 25 November 2025

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JUDGMENT
(Approved Transcript)

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Tuesday, 25 November 2025

Mr Justice Andrew Baker:

1. The primary claim in these proceedings was a claim by the claimant against the first defendant, Ahmad El-Husseini ('Ahmad'), on what it said were judgment debts arising out of proceedings against him in Abu Dhabi. The bank also pursued secondary claims, variously involving the other defendants, for relief relating to assets against which it wished to assert an entitlement, directly or indirectly, to enforce those judgment debts although, at least on the face of things, the assets did not belong to Ahmad.

2. In February 2022, I heard argument on a set of interrelated applications relating to those secondary claims. The applications took the form of challenges to the court's jurisdiction, an application by the second defendant ('Mo'), for summary dismissal, and an application by the bank to amend. Between them, they were or became a convenient vehicle for exploring the extent to which the secondary claims, as pleaded or proposed to be pleaded by the bank, raised a serious issue to be tried.

3. Following that argument, I handed down a judgment, [2022] EWHC 894 (Comm), dated 13 May 2022. The order on that judgment permitted some amendments, declared that certain of the bank's secondary claims as then pleaded did not raise a serious issue to be tried, dismissed Mo's jurisdiction application for a reason specific to him, and afforded the bank an opportunity to seek to re-amend, which it did. Costs were reserved, and directions were given for a further hearing, which was listed for 8-9 September 2022.

4. In the event the bank's application to re-amend was dealt with on paper, as to substance, by an order of mine dated 11 July 2022. Under that order, the costs of and occasioned

by the re-amendments for which permission was granted, and the costs of the application to re-amend, were reserved to the September hearing.

5. At that hearing, by an order dated 9 September 2022, I dealt with the final disposal of the various applications, permission to appeal, and costs, and I made various case management directions. As regards costs, for the most part I ordered that costs be in the case. There were also costs orders relating to a freezing order obtained against Ahmad, but they do not concern me for present purposes.

6. In my main judgment, following the argument on one of the points raised, of which there were many, I adopted the approach that steps taken by Ahmad which, upon analysis, amounted only to steps taken by a company acting by him, could not themselves amount to or involve Ahmad entering into a transaction for the purpose of undoing transactions at an undervalue under s.423 Insolvency Act 1986, one of the bases upon which the bank hoped, ultimately, to gain access to the value of assets not held by Ahmad (*ibid* at [47]).

7. On appeal, the Court of Appeal preferred the view that:

> "Such acts are capable in law, without more, of falling within the terms of s.423 of the 1986 Act. Whether they do so, and whether there are other facts … which are more than simply the fact that the company acts through its director, would have to be established at trial on the whole of the evidence."
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> ([2023] EWCA Civ 555, at [54] *per* Singh LJ, with whom Males and Popplewell LJJ agreed.

The Court of Appeal stressed (*ibid*) that this meant allowing an appeal by the bank "*on a narrow issue of law*." The Supreme Court referred to that issue as the 'Capacity Point' in its judgment dealing with a further appeal on a different point, see [2025] UKSC 4 at

[13], [16]-[17]. The Supreme Court noted at [20] that permission to appeal from the Court of Appeal had only been sought on that other point.

8. By its order dated 23 May 2023, the Court of Appeal varied the permission to amend that I had given to the bank, such that it was to be entitled to re-re-re-amend its particulars of claim in line with the Court of Appeal's judgment. The Court of Appeal directed that any dispute over whether any proposed re-re-re-amendment accorded with its judgment was to be determined in this court and that any application to vary my September 2022 costs orders was to be made to this court. Pursuant to the latter direction, the bank issued an application notice dated 23 June 2023, to pursue a variation of those costs orders.

9. Between the hearings before me and the hearing in the Court of Appeal, a default judgment was entered against Ahmad in January 2023 on the primary claim. He remained a co-defendant to the secondary claims, albeit without any active participation on his part in the proceedings. The costs variation application was listed to be heard in December 2023, but that hearing was vacated in November 2023 at the request of the third defendant ('Alexander') and the fourth defendant ('Ziad'), after they had been granted permission for the appeal to the Supreme Court. That was logical, or at all events so it seemed to me at the time, notwithstanding that the Capacity Point was not going to the Supreme Court. The application to revisit my orders for costs to be in the case was made because it was held on appeal that the legal analysis of the secondary claims was not quite as I had judged it to be. It would not have been just or convenient, or so I assessed the matter, to consider that application before the correct legal analysis had been finally settled by the outcome of that further appeal.

10. The appeal to the Supreme Court was argued in May 2024 with the trial of the secondary claims by then only eight weeks away in July 2024. In the event the costs variation application was not heard before Calver J handed down judgment on that trial, just over a year ago, in November 2024: [2024] EWHC 2976 (Comm). The secondary claims all failed and were dismissed. By his order dated 29 November 2024, Calver J awarded costs generally against the bank in favour of all defendants other than Ahmad. That order recited the existence of the bank's costs variation application, gave a direction as to its listing and, except as regards the seventh defendant, stayed detailed assessment of the bank's costs liability until judgment on that application.

11. I shall describe in a moment the order now sought by the bank on that application. Reflecting the draft order I was asked to consider, that description will include several references to Ahmad bearing certain of his own costs. Those references are not intended to beg any question of whether that is not the current position, given that no costs order was made in Ahmad's favour at trial (or for that matter against him at trial), and I do not claim to be making any decision about that.

12. As ultimately pressed, then, the application as issued having been more ambitious, the bank now asks for an order that, in each case instead of the costs in question being in the case, as I ordered in September 2022:

    (i) Ahmad, Alexander and Ziad bear their own and have a joint and several liability to pay 50% of the bank's costs of their Part 11 application and of a related application for some expert evidence;

    (ii) Mo bear his own and pay 50% of the bank's costs of his Part 11 and summary judgement applications;

(iii) Ahmed, Alexander, Ziad, Mo and the fifth defendant ('Ramzy') each bear his own and have a joint and several liability to pay 50% of the bank's costs of its amendment application determined in May 2022, upon the basis of the February 2022 hearing and my main judgment;

(iv) there be no order as to the costs of that amendment application as between the bank and the sixth defendant ('Joan'), and as between the bank and the eighth defendant ('the company');

(v) Ahmad, Alexander, Ziad, Mo, Ramzy, Joan, and the company each bear their own and have a joint and several liability to pay 50% of the bank's costs of and occasioned by the re-amendments dealt with in July 2022, including the costs of the application to re-amend and of the September 2022 hearing;

(vi) there be no order as to the costs of the February and May 2022 hearings as between the bank and each of Ramzy, Joan and the company.

13. Depending on the court's decision as to those proposals, the bank also seeks payments on account in its favour and/or a reconsideration of amounts it was ordered by Calver J to pay on account of costs, which it was ordered to pay by 13 December 2024 and which I am told it duly paid. The latter part of that, i.e. the possible proposal to re-open the payments on accounts ordered after trial, is at first sight somewhat surprising. This application was known when Calver J settled the amounts to be paid on account, and was referred to in his order, as I have already mentioned. If it was to be said that costs the subject of this pending application should not be considered for the purpose of fixing post-trial payment on account obligations, that was, it might be thought, a matter to be raised before Calver J.

14. The bank's skeleton argument for the hearing before Calver J indeed raised the point, and sought an order that such costs be excluded for the purpose of payments on account. Issue was joint on that by Mo and Joan, in writing, on a submission that the proper analogy was that of an appeal, so that the possibility that the September 2022 costs orders might be, in effect, later altered by reason of the Court of Appeal's May 2023 decision, should not have a bearing on the amounts to be paid on account. Alexander, Ziad and Ramzy, speaking for himself and for the company, adopted that submission. No order such as the bank sought was made. Calver J gave an *ex tempore* ruling on costs but only so as to deal with applications made by defendants for some or all of their costs entitlement to be assessed, if not agreed, on the indemnity basis.

15. Mr Delehanty indicated that there was more to be said on this payment on account aspect, but it arises at all only if the September 2022 costs orders are now to be varied, which is the first matter for determination.

16. Mr Delehanty submitted that in determining that matter, the final outcome of the secondary claims at trial cannot be taken into account. He relied for that submission on authorities in which it was held that orders fixing one side or the other with costs liability for some interlocutory phase of proceedings, or some particular interlocutory application, should not be revisited after trial in the light of the trial result *Compagnie Noga D'Importation et D'Exportation SA v Abacha and another (as personal representatives of Sani Abacha (deceased)) (No 3)* [2003] EWCH Civ 1101 at [3]-[6]; *Business Environment Bow Lane Ltd v Deanwater Estates Ltd* [2009] EWHC 2014 (Ch) at [2], [5], [7], [10]-[12], [18] and [29]-[41].

17. Mr Delehanty submitted that *Tibbles v SIG plc* [2012] EWCA Civ 518, a decision concerning the court's general power under CPR 3.1(7), to vary a previous order, and in particular the formulation of a test at [49], *per* Rix LJ, with whom Etherton LJ, as he was then, and Lewison LJ both agreed, is not authority for the admissibility, in the present circumstances, of the trial outcome, as a fact properly to be taken into account. Likewise, he argued, *Taylor v Burton & Burton* [2014] EWCA Civ 21 at [33]-[34], the context in that case being an inadvertent failure by a trial judge to consider any possible separate exercise of discretion, as compared to the general costs decision in the case, in respect of certain costs that had been reserved to the trial judge at an earlier stage.

18. Mr Delehanty relied, also, on the policy behind the availability of adverse costs orders relating to interlocutory stages of proceedings or individual interlocutory applications, namely to encourage discipline, moderation and efficiency in the conduct of litigation.

19. It is not self-evident that the authorities or the policy on which Mr Delehanty relied apply, or apply with equal force, to an order that some identified or identifiable interlocutory costs should be costs in the case. The researches of counsel did not locate any authority considering precisely this situation, namely an order for costs to be in the case which falls to be reconsidered on a ground unconnected to the outcome at trial, but only after that outcome has become known.

20. There is, however, I think, more evident force in the further submission by Mr Delehanty that to have regard to the trial outcome in such a case would be inappropriate, because it is likely to be true – and, he said, it is certainly true in the present case – that it is essentially arbitrary that the reconsideration of the earlier costs order only occurs after a final result at trial. In that regard, in particular, Mr Delehanty noted that the bank

moved promptly following the Court of Appeal decision to seek a reconsideration of the September 2022 costs orders and was content for its application to be heard in December 2023, despite what was then the pending further appeal to the Supreme Court.

21. There is, I think, some real room for the view that it would create an appearance of unfairness to the bank, the appeal to the Supreme Court having failed so as to be irrelevant in the event to the substance of the costs variation application, to take account of the happenstance that that appeal delayed the resolution of that application for long enough that it now falls to be decided only after the outcome of the trial is known. I shall not need to take a final view about that, however. I therefore proceed on the assumption, in the bank's favour, that the trial outcome is indeed an irrelevant consideration.

22. The bank's essential submission is that, on the basis of my original judgment, as corrected by the Court of Appeal's decision on the Capacity Point, the bank was the clear winner upon a substantial attack on the viability of its secondary claims, such that costs liabilities for that interlocutory battle should be fixed in any event, and that the proper liabilities to fix, after making due allowance for the extent to which the bank was not wholly successful and its pleading was criticised, are the mix of 50% costs awards in the bank's favour and some directions for there to be no order as to costs that I have already summarised.

23. Section F of Mr Friston's skeleton argument for Alexander and Ziad, at paras.15 to 23, set out a careful analysis of the effect of my judgment and of the impact that adopting the Court of Appeal's analysis on the Capacity Point, rather than my own, would have

had. I agree with Mr Friston's analysis. The effect, agreeing in substance with his consequent argument, is as follows.

24. Firstly, had I reached the conclusion reached by the Court of Appeal on the Capacity Point, three of the bank's secondary claims would have escaped an immediate demise, namely the s.423 claims in respect of 9HP, the Proceeds, and the UK Shares (to use the labels for the Claim Assets that I used in my judgment in 2022). However, (i) they would only have escaped immediate demise as a result of the relevant pleadings being re-amended, as in the event they were following the Court of Appeal's decision, as they did not raise a serious issue to be tried as they stood, and (ii) they would still have needed to be reformulated for reasons unrelated to the Capacity Point but related to the unarguability of certain other allegations advanced by the bank.

25. Secondly, some of the other secondary claims, such as the Medstar US$15m claim, would have been allowed to proceed on a stronger footing, in the sense that the bank could have advanced them on an additional basis, albeit not one that was likely, ultimately, to make a major difference at trial.

26. Thirdly, therefore, as regards the Part 11 applications and Mo's summary judgment application, the substantive outcome would have been the same, thanks to a necessary round of re-pleading by the bank, except that Mo would not have scored the partial success on his summary judgment application that was given effect by para.3 of my May 2022 order and para.1 of my September 2022 order. It would still have been the case that significant parts of the claims that would proceed to trial, as they had been pleaded, would have been found to raise no serious issue to be tried; and Ahmad, Alexander and Ziad's Part 11 application would still have succeeded in respect of some

of the secondary claims, namely the 9HP and 32HP resulting trust and constructive trust claims. The outcome of the interlocutory battle, taking account of the Court of Appeal's conclusion of the Capacity Point, is still in my view rightly regarded, as Mr Friston submitted, as a "*mixed bag*".

27. Fourthly, as regards the bank's amendment application, the outcome would not have been materially different. The bank would still have needed to show by a re-pleading – meaning, in the event, a re-amendment in line with that effected after the Court of Appeal decision – that those claims which were attacked on an argument that the Capacity Point was sufficient to defeat them, as pleaded, were indeed viable. Moreover, the primary issue in the amendment application was the Medstar US$15m claim, the major difficulty with which was its close to speculative nature on the facts, rather than anything else. By a fine margin, the bank got that claim in, and I agree with Mr Friston that its ability to advance an additional legal basis for it under the Court of Appeal's ruling on the Capacity Point does not affect the fairness of saying, as I did at the time, that the costs of and occasioned by the amendments, including the costs of the amendment application, should be costs in the case.

28. The secondary claims were weak claims, badly and inadequately pleaded in such a way as to invite attack by defendants and close scrutiny by the court, some of which were advanced without proper foundation. The degree to which the bank could have said, and can now say, that the end result of that attack and scrutiny was somewhat better for it, analysed with the benefit of the Court of Appeal's decision on the Capacity Point, rather than mine, is, in my view, modest. I do not consider it sufficient to render it just to visit upon defendants, in any event, the costs of that battle, in whole or in part.

29. It was submitted for the bank that the defendants' prize – or, at all events, Ahmad, Alexander, Ziad and Mo's prize – was the rejection of all of the secondary claims against them, that they did not win that prize, and that they should be considered unsuccessful parties for the purpose of imposing costs liabilities in any event. I do not consider that the fair way of characterising the particular, complex interlocutory battle and outcome in this case.

30. The purpose of Ahmad, Alexander and Ziad's application and Mo's applications, and of their respective objections to the bank's amendment application, was to knock out claims that did not raise a serious issue to be tried, of which it was strongly arguable that there were at least some, possibly many. They succeeded in that purpose to a substantial degree, under my judgment, even as corrected by the Court of Appeal decision on the Capacity Point.

31. The high watermark of Ahmad, Alexander and Ziad's argument, it is true – likewise that of Mo's argument – was that the court could say that none of the bank's claims or proposed claims against them was viable. Their argument came up sufficiently short of that for it to be unjust, in my view, for there to be an order that they recover costs in any event of their interlocutory attack on the bank's claims. On the other hand, however, that attack was sufficiently successful, and at the same time it exposed significant concern about the merits of at least some of the secondary claims that survived it and forced the bank to confront serious shortcomings in its pleading, such that I consider it would be unjust for there to be an order that they not recover their costs of that attack, or that they be liable to pay costs to the bank in respect of it, if the secondary claims failed at trial to a sufficient extent that there was a general costs order in their favour at the end of the case. My view in respect of the outcome of that battle, under my

judgment as corrected by the Court of Appeal, is that the just costs order is for costs to be in the case.

32. In that reasoning, I have focused on matters from the defendants' perspective. That is natural, I think, as this is the bank's application for costs in the case orders to be varied so as to be less favourable to defendants and correspondingly more favourable to the bank. To be clear, however, my analysis is even-handed. I would likewise say that it is not just to consider the bank the unsuccessful party, on an argument that its aim was to persuade the court that all of its secondary claims were properly arguable and fit to be tried without any or more than minimal need to amend its pleading, and, to a substantial degree, it failed to achieve that aim. I would not have said it was just to fix the bank with a liability for defendants' costs of the interlocutory battle in any event. At the same time, though, in my view, it would not have been just to deny the bank any chance to recover its costs of that battle if, despite the difficulties with the secondary claims and the bank's failures to plead them properly, those claims that survived ultimately succeeded to such an extent that the bank secured an order for costs after trial.

33. From the bank's perspective also, therefore, in my view, in response to the outcome of the interlocutory battle that fell to me to resolve, but taking account of the Court of Appeal decision on the Capacity Point as one aspect of it, the just order is for costs to be in the case.

34. I agree with the bank's analysis (in September 2022) that the substantial individual win for it in that interlocutory battle was its success on the point that Alexander and Ziad took to the Court of Appeal and later to the Supreme Court, *viz.* whether a s.423 claim can lie where the asset transferred is that of a company owned or controlled by the

debtor who therefore had no ownership interest in the asset itself. The bank was successful on that point under my judgment and again in the Court of Appeal and the Supreme Court. There was no appeal against my decision at the time that the costs should be in the case, and it was not submitted on this application that that was not a decision properly within the scope of my discretion as to costs in September 2022. Upon the landscape set by my judgment as now corrected on the Capacity Point by the judgment of the Court of Appeal, I still consider it just to say that the party's fortunes as regards costs should follow their fortunes on the merits of the secondary claims generally at trial. That is given effect by the costs orders as originally made in September 2022, which therefore I have decided should not be varied.

35. The bank's costs variation application therefore fails. It does so without needing to consider criticisms put forward by defendants of the bank's conduct in respect of the Medstar US$15m claim which I was persuaded in 2022, but only just, not to treat as pure speculation. The bank's application also fails without needing to consider whether the costs in the case orders relating to Mo, Joan, Ramzy and the company should be unaffected, even if there were to be a change to the costs orders between the bank and Ahmad, Alexander and/or Ziad, or whether there is any distinction to be drawn in relation to the proper costs orders between Mo, on the one hand, and Joan, Ramzy and/or the company, on the other hand.

36. Submissions were made on that in writing on behalf of Mo and Joan, and it may be that Ramzy would have made submissions on it if I had allowed him to address argument at this hearing, although he did not file or serve any skeleton argument for it. As it is, I am not persuaded by the bank's application without the need to consider those further

aspects and, indeed, without having found it necessary to call on the defendants at the hearing. The bank's costs variation application therefore is dismissed.

37. Finally, there are also before the court on this hearing: (i) a further application notice issued by the bank dated 20 May 2025 seeking (a) an order permitting it to amend the costs variation application as regards the terms of relief sought by it and (b) an order for the partial reversal or variation of Calver J's orders for payments on account after trial; and (ii) the costs of an application by Mo and Joan by application notice dated 21 July 2023 for an extension of time to serve evidence in response to the costs variation application.

38. Taking those in reverse order, the bank proposed that the costs of the extension of time application by Mo and Joan be in the costs variation application, and I shall let Mr Venkatesan KC for Mo and Joan tell me in a moment whether that is contentious. The application to reverse or vary the payment on account orders made by Calver J falls with the dismissal of the costs variation application and will also be dismissed. I envisage that the application to amend the costs variation application was not independently contentious, in which case I would propose to allow it with costs in the costs variation application, unless something else has been agreed between the parties, and I shall hear counsel also as to that before making any decision.

Later:

39. The application now, on behalf of Mo and Joan, and on behalf of Alexander and Ziad, is that the general costs order that will be in their favour on the costs variation application,

and any reserved costs or other costs that are now going to be treated as costs of that application, be assessed, if not agreed, on the indemnity basis rather than the standard basis.

40. As it seems to me, there are two factors that do take the matter out of the norm as regards the court's view as to whether – which, of course, is all that an order for indemnity costs in fact achieves – questions of proportionality should not separately come into play in any detailed assessment and the burden should be on the bank as the paying party to persuade a costs judge that costs claimed were either unreasonably incurred or unreasonable in amount, rather than having the benefit of the burden being on the party entitled to costs having to demonstrate reasonableness.

41. The first of those two matters is the elevation of what should have been, albeit with its degree of complexity, essentially a technical argument in which the bank would seek to persuade this court (if possible, given the history of the matter, me specifically) that the impact of the Court of Appeal judgment was sufficiently significant to change the balance on costs, into something rather different. That different something was the claim, and associated allegation in support, that the costs orders should be replaced by costs orders against the defendants (other than the seventh defendant) on an indemnity basis, on the supposed ground that they had been guilty of deliberately misleading this court (or deliberately and knowingly allowing their co-defendants to mislead this court) in the interlocutory battle and through the hearing of it in February 2022.

42. Issue was joined as to that extremely serious allegation, and I am in a position only to know that prior to its falling to be subject to the scrutiny of the court at a hearing, it was dropped without explanation or prior fanfare. That was done on 31 March 2025 at a

time when this application was listed to be heard on the listing for 23-24 June 2025 that in the event was vacated at the direction of HHJ Pelling KC. The grounds upon which it is said on behalf of Mo and Joan, in submissions adopted on behalf of Alexander and Ziad, why, on the face of things, it seems to be an allegation that should never have been made have not been gainsaid by any evidence. In my judgment, it is appropriate to proceed on the basis that, indeed, it is an allegation for which there was never any proper foundation and which should never have been made.

43. Furthermore, not only was that advanced as a suggested basis upon which defendants, if now to be the subject of adverse interlocutory costs orders in relation to the matters I have been dealing with at this hearing, should be subject to assessment on the indemnity basis, but also, *in terrorem*, their solicitors and counsel were threatened with applications for wasted costs. In my view, that is a threat that should never have been issued, and it is highly reprehensible that those responsible for deciding what points to authorise should have authorised that point to be made. I put that in a slightly clumsy way because I am not in a position, given the limited visibility I have as to the arrangements behind PCB Byrne, to know exactly who, on behalf of whom, is making decisions to authorise the legal representatives to take or pursue certain allegations. In particular, it is not clearly apparent to me whether appropriate proper officers of the bank itself, the named claimant, will be those who were taking that decision, as opposed it may be to others interested in the litigation or its funding.

44. The second matter that seems to me to justify the more generous approach to a detailed assessment that is represented by an order that costs be assessed, if not agreed, on the indemnity basis, is the willingness communicated by Mo, and by Alexander and Ziad – indeed more so the latter two – to avoid the substantial (no doubt) final costs of the

process of dealing with this application this year through offers made to accept a reduced entitlement than that of the costs in the case orders that will now apply, unvaried. In the case of Mo, that was an offer that was made on 4 August 2025, to reduce his recovery under the costs in the case orders, which he would be arguing, and in the event has argued successfully, should not be varied, and then under any costs order on this application itself, by 25%. In the case of Alexander and Ziad, that willingness was evidenced by their initial offer on 28 May 2025, equivalent in nature, but on the basis of a reduction of 50% rather than the 25% later offered by Mo, and what is more, as Mr Delehanty fairly indicated, an unquantified indication of willingness not to treat that 50% as necessarily their final word, in the context of some correspondence 'without prejudice save as to costs' which followed.

45. The appropriate response, then, in my judgment overall, is as follows. It is not as neat as the ordering of costs to be assessed on the indemnity basis generally. The two matters upon which I have focused, and which are the only matters amongst those about which submissions were made that, in my view, justify costs being assessed on the indemnity basis, do not between them justify an order for an indemnity basis across the whole of the application. The impact, however, is, I think, definable in a way that should be capable, with an appropriate level of detail in the investigation of the costs incurred, of being given effect by a costs judge if costs are now not agreed and have to proceed to detailed assessment.

46. The order therefore will be that the second, third, fourth and sixth defendants have their costs of and occasioned by the costs variation application – including, therefore, any reserved costs or other costs that will now be ordered to be costs in that application – to be assessed, if not agreed, on the standard basis, except that:

(i) costs incurred considering, responding to, or preparing to respond to the evidence given in the 11th witness statement of Mr Mascarenhas at paras.42 to 48 inclusive are to be assessed, if not agreed, on the indemnity basis, and

(ii) Mo's costs incurred on or after 11 August 2025, respectively Alexander and Ziad's costs incurred on or after 4 June 2025, should be assessed on the indemnity basis.

47. Finally in relation to costs, a costs application is made by the fifth defendant, Ramzy, but solely for time-based costs for his work on this application as a litigant in person. I consider that the 91 hours he says he has calculated that he has spent on the application is evidently reasonable and should be allowed in full. Realistically, for which I am grateful, the bank did not contend otherwise. The only question, which I left with Ramzy and on which I shall ask him now to help me further, is how much of that time he is able to indicate he incurred prior to 1 October 2025, because that makes a difference to the hourly rate I am able to award him.