

**THE EASTERN CARIBBEAN SUPREME COURT
ANTIGUA AND BARBUDA
IN THE HIGH COURT OF JUSTICE**

**CLAIM NO. ANUHCV2023/0254 and ANUHCV2023/0239
BETWEEN:**

[1] FLYING DUTCHMAN OVERSEAS LIMITED
(A Company Incorporated in the Territory of the Virgin Islands)

[2] VITA FELICE LIMITED
(A Company Incorporated in the Territory of the Virgin Islands)

Claimants/Applicants

-and-

[1] THE PORT AUTHORITY)
(A Body Corporate Established by the Port Authority Act)

[2] THE ATTORNEY GENERAL

Defendants/Respondents

**TOGETHER WITH:
CLAIM NO. ANUHCV2023/0220**

YULIA MOTLOKHOV

Claimant/Applicant

-and-

**[1] THE PORT MANAGER OF THE PORT AUTHORITY
OF ANTIGUA AND BARBUDA**

**[2] THE DIRECTOR OF THE ANTIGUA AND
BARBUDA DEPARTMENT OF MARINE
SERVICES AND MERCHANT SHIPPING**

**[3] ATTORNEY GENERAL OF ANTIGUA AND
BARBUDA**

Defendants/Respondents

Appearances:

Mr. Thomas Roe KC and Mr. Andrew O'Kola for the Claimants in Claim nos.
ANUHCV2023/0239 and ANUHCV2023/0254

Mr. Robin Barclay KC, Dr. David Dorsett and Ms. Leandra Smith for the Claimant in
Claim no. ANUHCV2023/0220

Mr. Anthony Astaphan SC, Ms. Carla Brookes-Harris, Ms. Alicia Aska, Ms. Joy Dublin, Ms. Rose- Anne Kim and Mr. Zachary Phillips for the Defendants in all claims
Ms. C Debra Burnette holding a watching brief on behalf of Marina & Resorts Limited

2024: February 27th
June 6th

RULING
(Applications to Strike out Affidavit of Paul Reichler)

- [1] **WILLIAMS, J.:** These proceedings are part of ongoing litigation involving the vessel the M/Y Alfa Nero which is described as a superyacht. That vessel has been the subject of sanctions imposed by the international community in response to the ongoing conflict in Ukraine.
- [2] The Port Manager acting pursuant to the provisions of the **Port Authority (Amendment) Act 2023**¹ took the decision to seize and sell the vessel via public auction. This decision has been challenged by the reputed owners of the vessel via both constitutional and judicial review proceedings. These proceedings will be described in further detail later in this decision.
- [3] The defendants as part of their responses to these claims have filed an affidavit of Mr. Paul Reichler who is a lawyer retained by the Government of Antigua and Barbuda. His role was to intercede on the Government's behalf with the relevant sanctions authority in the United States of America namely the Office of Foreign Assets Control (OFAC). Mr. Reichler describes himself "as a lawyer qualified in the United States of America specializing in public international law..."²
- [4] The claimants in all claims have filed applications to strike out Mr. Reichler's affidavit or parts thereof. The grounds of these applications will be examined in greater detail shortly. A broad overview of the claims will now be provided.

¹ Act No. 1 of 2023

² Affidavit of Mr. Paul Reichler filed on 27th June 2023 at paragraph 1

Claim No. ANUHCV2023/0239

- [5] The matter concerns three separate claims namely ANUHCV2023/0254, ANUHCV2023/0239 and ANUHCV2023/0220. Claim ANUHCV2023/0239 is a judicial review claim filed on 23rd June 2023 by way of Fixed Date Claim Form on the sole ground of “procedural unfairness as described in the judgment of Mr. Justice Williams on 8 June 2023”. The procedural unfairness alleged by the claimants relates to the defendants’ failure to engage with the owners of the vessel prior to its seizure. That claim is brought by two companies namely Flying Dutchman Overseas Ltd. and Vita Felice Ltd. Flying Dutchman Overseas Ltd. was the registered owner of the vessel before its seizure whilst Vita Felice Ltd claims to be the owner of several works of art aboard the vessel.

Claim No. ANUHCV2023/0254

- [6] Claim ANUHCV2023/0254 is a constitutional claim brought by way of Originating Motion filed on 6th July 2023 also by Flying Dutchman Overseas Ltd. and Vita Felice Ltd. The companies are seeking relief on the basis that their property (the vessel and the works of art) have been compulsorily acquired without compensation contrary to sections 3 and 9 of the Constitution of Antigua and Barbuda.

Claim No. ANUHCV2023/0220

- [7] The third claim (Claim No. ANUHC2023/0220) has been filed by Yulia Gurieva-Motlokhov who claims to be a beneficiary of the Tyne and Flagstaff Trusts which are governed by the law of Guernsey. She alleges that these trusts ultimately control the previously mentioned companies Flying Dutchman Overseas Ltd and Vita Felice Ltd. She challenges the constitutionality of the Port Authority (Amendment) Act 2023 and the actions taken thereunder. Ms. Motlokhov similarly claims that her property rights in the vessel and the works of art which are guaranteed by sections 3 and 9 of the Constitution of Antigua and Barbuda have been infringed by the Port Authority (Amendment) Act 2023. She alleges that her rights to the property are by virtue of being a beneficiary of the trust.

The Applications

Claims Nos. ANUCHV2023/0254 and ANUHCV2023/0239

[8] On 12th September 2023 Flying Dutchman Overseas Ltd. and Vita Felice Ltd. the claimants in claims ANUHCV2023/0254 and ANUHCV2023/0239 filed a Notice of Application for an order to strike out paragraphs 19, 20, 22, 23, 24, 25, 32, 33, 34, 35, 36 and 37 of the affidavit of Paul Reichler dated 25th July 2023 in the proceedings between (1) Yulia Gurieva-Motlokhov and (2) the Port Manager, the Department of the Antigua & Barbuda Department of Marine Services and the Attorney General, which affidavit the Respondents herein have sought to introduce into evidence in the present proceedings by exhibiting the same to the affidavit of Paul Reichler dated 8th August 2023. The application is supported by the affidavit of Ms. Rocklyn Jeremiah filed 13th September 2023.

[9] The claimants in ANUCHV2023/0254 and ANUHCV2023/0239 have made their applications on the basis that there are paragraphs in Mr. Reichler's affidavit which consists of opinion evidence for which the court's permission is required pursuant to Rule 32.6(1) of the Civil Procedure Rules (Revised Edition) 2023. They say that no such permission has been obtained and that the evidence in the affidavit is therefore inadmissible and should be struck out. The Applicants further say that Mr. Reichler is unable to comply with the requirement of CPR 32.4(2) to provide independent assistance to the court since he is acting on the Government's behalf in connection to its dealings with OFAC.

Claims No. ANUCHV2023/0220

[10] On 14th September 2023 Ms. Motlokhov the claimant in ANUHCV2023/0220 filed a Notice of Application pursuant to CPR 11.3 for an order and declaration that:

1. Mr. Paul Reichler's affidavit dated 27th July 2023 is not admissible.
2. The Reichler Affidavit be struck out; and
3. Costs in the application.

[11] This Application is supported by the Affidavit of Mr. Radford Hill filed on 14th September 2023.

[12] The strikeout application in ANUHCv2023/0220 is made on the grounds that Mr. Reichler is assisting the Government of Antigua and Barbuda in these proceedings and therefore lacks independence. Additionally, the claimant contends that Mr. Reichler purports to give evidence outside of his knowledge contrary to Part 30.3(1) of the CPR.

[13] The claimant further objects to Mr. Reichler's affidavit for the following reasons:

- a. Mr. Reichler is not an expert under CPR 32.1
- b. Mr. Reichler is not an independent expert under CPR 32.4(1) and (2)
- c. Mr. Reichler does not state the facts or assumptions on which his opinions are based contrary to CPR 32.4(3); and
- d. The Respondents have not applied for, and the Court has not given permission to adduce any expert testimony from Mr. Reichler under CPR 32.6.

[14] The Applicant says that the Affidavit should be excluded in its entirety pursuant to the court's power under CPR 26.1(2) (y), 29.1 and 32.2 to control and restrict evidence in the proceedings.

Hearing

[15] This application as well as applications for specific disclosure and an application to for permission to admit a report of a yacht surveyor as expert evidence were heard between 26th to 28th February 2024. The instant application was heard on 27th February 2024.

The Applicants' Submissions

Claims ANUHCv/2023/0254 and ANUHCv2023/0239

[16] Mr. Roe KC for Flying Dutchman Overseas Ltd. and Vita Felice Ltd. submits that the impugned paragraphs of Mr. Reichler's affidavit purport to give evidence about the likely behaviour of other states in light of the US sanctions, the financial value of the

Alfa Nero in the hands of its owners while under US sanctions, OFAC's likely reasons for its behaviour and OFAC's likely reaction in certain other scenarios were they to arise. Counsel argues that these are not factual issues but matters of expert opinion.

[17] Mr. Roe further argues that Mr. Reichler's evidence is inadmissible as the defendants have not requested permission from the court to put in his evidence as the report of an expert witness pursuant to CPR 32.6. He also states that the offending paragraphs in Mr Reichler's affidavit are central to what will presumably be the defendants' case at trial. He submits that the defendants are trying to argue that due to sanctions the Alfa Nero was worth nothing in the hands of the claimants. Thus, the claimants cannot complain of its expropriation without compensation. Counsel says that if that proposition is to feature in this case, it should only be considered on the basis of opinion evidence from an independent expert with no connection to the parties and not on the basis of disguised expert evidence from someone who is the defendant's own attorney.

Submissions in Claim ANUHCV2023/0220

[18] Mr. Barclay KC on behalf of Ms. Motlokhov has made a wider application to strike out Mr. Reichler's affidavit in its entirety. His argument is that Mr. Reichler has not been appointed as an expert witness by the court pursuant to CPR Part 32. Furthermore, counsel says that he could not in any event qualify as an expert for want of independence and partiality as he is the lawyer of the Government of Antigua and Barbuda. Further Mr. Barclay says that the content of his affidavit (purporting to be an expert report) does not satisfy the requirements of an expert report. He also points out that Mr. Reichler purports to give factual evidence of matters which are outside of his own knowledge.

[19] Mr. Barclay has also argued that Mr. Reichler's affidavit is inadmissible as his evidence will not assist the court. He argues that the relevance of Mr Reichler's evidence is unclear as the defendants cannot and do not contend that US sanctions

apply in Antigua and Barbuda. Additionally, there is no explanation of how an opinion on US sanctions law and related issues will assist the Court with the constitutional and administrative law issues raised by this claim.

[20] Finally, Mr. Barclay argues that the affidavit contravenes CPR 30.3(1) as at paragraphs 32 -34 and 36-37 of his affidavit Mr. Reichler makes assertions as to OFAC's state of mind, internal deliberations, processes, and conclusions. He further states that none of these matters could be within Mr Reichler's own knowledge as he is neither an employee nor agent of OFAC. In addition, Mr. Reichler does not state that he learned these facts from speaking with any person at OFAC. Counsel also complains that at paragraphs 25 and 36 of the affidavit, Mr. Reichler purports to give evidence of what Ms. Motlokhov has or has not done and that these matters are not within Mr. Reichler's knowledge.

The Defendant's Submissions

[21] Mr. Astaphan SC for the defendants submits that rule 32.1(2) allows for a witness like Mr. Reichler who has expertise in the field of international law and sanctions to give evidence as a witness of fact. Counsel further states that Mr. Reichler's affidavit does not offend CPR 30.3(1) as he is not giving evidence as an expert.

[22] Counsel argues that Mr. Reichler in his affidavit is giving evidence from his general knowledge of sanctions and facts acquired by him personally and during his discussions and correspondence and via information conveyed to him during his discussions with OFAC. These facts include the position of OFAC as to what may be done with the vessel. Counsel indicates that Mr. Reichler is also giving evidence of his understanding of the facts and that the said facts are directly relevant to the status of the vessel.

[23] The defendants complain that the affidavit in support is sworn to by the attorney on record, Mr. Radford Hill and submits that this affidavit is not properly before the court as Mr. Hill has previously appeared as counsel in these proceedings. Additionally,

Mr. Astaphan submits that Mr. Hill's affidavit should be struck out as he failed to identify the source of his knowledge or information with regard to several paragraphs of his affidavit which is contrary to CPR 30.3(2).

Issues

[24] Having considered the applications and the arguments advanced by counsel for the Parties, the issues to be determined are as follows:

1. Whether the supporting affidavit of Mr. Radford Hill in claim ANUHCV2023/0220 should be struck out?
2. Whether the applications for strike out should be granted?

Discussion

Striking Out the Affidavit of Mr. Radford Hill in Claim No. ANUHCV2023/0220

[25] In **Richard Frederick v. Comptroller of Customs**³ George-Creque JA (as she then was) stated:

"It is well settled and accepted that it is most undesirable for counsel with conduct of a matter or application to swear an affidavit in that matter for the reason given by Lewis CJ in *Casimir v Shillingford and Pinard* (1967) 10 WIR 269. In common parlance it amounts to giving evidence from the bar table – an unacceptable and wholly inappropriate practice. Having so stated however, it is not applicable to the current circumstances since the solicitor swearing the affidavit in support of the application to extend time to the defendants did not appear as counsel in the matter."

[26] As I understand the **Richard Frederick** case, counsel within the same Chambers may swear to an affidavit in proceedings where he or she has not appeared as counsel in the matter. The court notes however that since filing the said affidavit Mr. Hill has not appeared on record in this matter. However, he has previously appeared as counsel in these proceedings as recently as June 2023. Having already appeared as counsel and having not totally withdrawn from the matter in accordance with CPR

³ SLUHCVAP2008/0037 decided 6th July 2009 (unreported)

Part 63, Mr. Hill is precluded from swearing an affidavit in the same proceedings. Accordingly, based on the principles outlined in **Richard Frederick v. Comptroller of Customs** and **Casimir v Shillingford and Pinard**⁴ I have no alternative but to strike out Mr. Radford Hill's affidavit in support of the application.

[27] I further agreed with the second objection raised in relation to Mr. Hill's affidavit in that it offends CPR 30.3(2). This is as he has failed to identify the source of his knowledge or information with regard to paragraphs 10, 13, 22, 25, 26, 28, 36, 39, 40, 41, 43 and 47 of the said affidavit.

[28] CPR 30.3(2) states as follows:

- “(2) An affidavit may contain statements of information and belief –
- (a) If any of these rules so allows; and
 - (b) If the affidavit is for use in an application for summary judgment under Part 15 or any procedural or interlocutory application, provided that the affidavit indicates –
 - (i) Which of the statements in it are made from the deponent's own knowledge and which are matters of information or belief; and
 - (ii) The source of any matters of information and belief.”

[29] Having read the supporting affidavit I note that the paragraphs complained of are conclusions drawn by Mr. Hill with regards to the affidavit of Mr. Reichler. In so doing Mr. Hill's affidavit offends the provisions of CPR 30.3(2) as he makes a number of assertions throughout without providing the source of his information or belief. In the circumstances even if I am wrong in my application of **Richard Frederick v. Comptroller of Customs** and **Casimir v Shillingford and Pinard** Mr. Hill's affidavit should still be struck out for non-compliance with CPR 30.3(2).

⁴ (1967) 10 WIR 269

[30] However, this is not the end of the matter as there is no requirement for this application to be supported by an affidavit. CPR 11.8 provides as follows:

“The applicant need not give evidence in support of an application unless

It is required by a –

- (a) Court order;
- (b) Practice direction; or
- (c) Rule.”

[31] Accordingly, the instant application does not need to be supported by an affidavit. I now turn to the substantive application.

Whether the Affidavit of Paul Reichler should be struck out?

[32] At common law opinion evidence is inadmissible unless given by an expert. The well-known authority for this statement is the Court of Appeal decision in **Phillip Abbott v. Aziz Hadeed**⁵ where Carrington JA stated as follows:

“[28] The common law drew a distinction between evidence of fact and evidence of opinion. I agree with the statement made by the authors of Phipson on Evidence at paragraph 37-01 that at common law, subject to certain exceptions opinion evidence is inadmissible as proof of material facts. The well-known exception is that the courts will accept the evidence of expert opinion, i.e. opinions that are the result of competence acquired by specialized study or experience.”

[33] Part 32 of the Civil Procedure Rules governs the use of expert evidence in civil proceedings before this court. Part 32 gives the court wide powers to control the deployment of expert evidence. In this regard **CPR 32.2** states, “Expert evidence must be restricted to that which is reasonably required to resolve the proceedings justly.”

⁵ ANUHCVP2010/0041 decided 28th January 2012 (unreported)

[34] The Privy Council in **Bergan v. Evans**⁶ further outlined the purpose of CPR Part 32 as follows:

“[41] Turning to rule 32.6, read in conjunction with the court’s and the parties’ general duty to limit expert evidence in rule 32.2, these provisions were intended (as in England and Wales) to work a sea-change in the approach to expert evidence in civil proceedings by subjecting the entirety of the deployment of expert evidence to active judicial control by way of case management, in the pursuit of the overriding objective and, in particular, the need to ensure proportionality and economy in the resolution of civil disputes.”

[35] CPR 32.1(2) defines an expert witness as follows:

“Means an expert who has been instructed to prepare or give evidence for the purpose of court proceedings but does not include a person with expertise who is giving evidence as a witness of fact.”

[36] Rule 32.6 of the CPR 2023 speaks to the Court’s power to restrict expert evidence and states as follows:

“(1) A party may not call an expert witness or put in the report of an expert witness without the court’s permission.

(2) The general rule is that the court’s permission is to be given at a case management conference.

(3) When a party applies for permission under this rule – that party must name the expert witness and identify the nature of his or her expertise; and permission granted shall be in relation to that expert witness only.

⁶ [2019] UKPC 33

(4) The oral or written expert witness' evidence may not be called or put in unless the party wishing to call or put in that evidence has served a report of the evidence which the expert witness intends to give.

(5) The court must direct by what date the report must be served.

(6) The court may direct that only part of an expert witness' report be disclosed."

[37] In order for expert evidence to be admitted the court must give permission. Also, in accordance with CPR 32.6(4) expert evidence is to be given in the form of a report. Such permission has neither been sought nor granted in respect of Mr. Reichler in these proceedings.

[38] Thus, the only means by which Mr. Reichler's evidence will not be totally excluded pursuant to CPR 32.2 is if Mr. Reichler is considered to be a person with expertise who is giving evidence as a witness of fact. In accordance with CPR 32.1(2) such persons seem to fall outside the ambit of Part 32.

[39] Unfortunately, I have not come across any authorities which specifically mentioned CPR 32.1(2) in relation to persons giving evidence as witnesses of fact. This may be due to the fact that this rule in its present form was only promulgated in July 2023. However, **Blackstone's Civil Practice** provides the following guidance:

"As a matter of practice, witnesses who are qualified to be experts are frequently called as witnesses of fact where they were personally involved in the matters relating to litigation. As factual witnesses, they are not subject to CPR, Part 35, and there is no requirement that permission be sought. It is both inevitable and appropriate that a witness who happens to be a professional will give advice of his actions based on his professional experience and expertise, because no professional person can explain or justify his actions and decisions save by reference to his training and experience. (ES v. Chesterfield and Derbyshire Royal Hospital NHS Trust

[2003] EWCA Civ 1284, [2004] Lloyds Rep. Med 90 at [31]). It would be intolerable if an architect suing for his fees had to adduce independent expert evidence as to what those fees should be. A professional person is permitted to give evidence on his own conduct by reference to the professional literature reasonably available to him as a busy practitioner or by reference to his own professional experience. He may also rebut allegations made against him by the other side's expert as one professional person against another. (DN v. Greenwich London Borough Council [2004] EWCA Civ 1659, [2005] LGR 597 at [25]). The limit is that expressions of opinion from such a witness must be reasonably related to facts within his own knowledge. *Multiplex Constructions (UK) Ltd. v Cleveland Bridge UK Ltd.* [2008] EWHC 2220 (TCC) The lack of independence goes to weight rather than admissibility.⁷

[40] In ***Multiplex Constructions (UK) Ltd. v Cleveland Bridge UK Ltd (No 6)***⁸ Jackson J giving a judgment in complex construction litigation illustrates the practical application of the principle quoted above:

"672. Having regard to the guidance of the Court of Appeal and the established practice in TCC (Technology and Construction) cases, I conclude that in construction litigation an engineer who is giving factual evidence may also proffer (a) statements of opinion which are reasonably related to the facts within his knowledge and (b) relevant comments based upon his own experience. For example, an engineer after describing the foundation system which he designed may (and in practice frequently does) go on to explain why he believes that this was appropriate to the known ground conditions."

[41] Based on the foregoing the court will not strike out Mr. Reichler's affidavit in its entirety on the sole basis that he is not an expert witness permitted to give evidence

⁷ Blackstones Civil Practice 2020 ed.- Paragraph 54.8

⁸ [2008] EWHC 2220 (TC)

in accordance with CPR Part 32. However, the affidavit will be scrutinized to ensure that Mr. Reichler's evidence is confined to facts within his personal knowledge. Further, any expression of opinion on his part must be reasonably related to such facts. In this case his evidence must relate to the negotiations with OFAC which he carried out on behalf of the Government of Antigua and Barbuda.

[42] When I examine Mr. Reichler's affidavit it is apparent that several matters deposed to are not facts being reported by him but opinion on matters which would be outside of his direct knowledge. I will therefore adopt the approach proposed by Mr. Roe KC and identify certain paragraphs which seem to run afoul of the general principles identified above.

Paragraph 7- 18

[43] In these paragraphs Mr. Reichler outlines the US sanctions regime which is applicable to the vessel. Mr. Barclay KC notes that these paragraphs refer to US law which as foreign law is only admissible via expert evidence. However, Mr. Roe KC helpfully referred the court to The UK Supreme Court decision of **Brownlie v. FS (Nile Plaza) LLC**⁹ where Lord Legatt stated:

"[148] The old notion that foreign legal materials can only ever be brought before the court as part of the evidence of an expert witness is outdated. Whether the court will require evidence from an expert witness should depend on the nature of the issue and of the relevant foreign law. In an age when so much information is readily available through the internet, there may be no need to consult a foreign lawyer in order to find the text of a relevant foreign law. On some occasions the text may require skilled exegesis of a kind which only a lawyer expert in the foreign system of law can provide. But in other cases it may be sufficient to know what the text says."

⁹ [2021] UKSC 45 at paragraph 148

[44] I have noted that the Privy Council has adopted the above principle with respect to foreign law in **Perry v. Lopag Trust**.¹⁰ In this case all Mr. Reichler is deposing to is the simple matter of whether or not the vessel and/or its reputed owners are listed on the relevant US sanctions instrument. This is not a complicated issue which requires expert evidence and in any event Mr. Reichler has stated that he is qualified to practice in the United States of America (**Although he does not disclose which particular State**). Accordingly, in this case it is sufficient for Mr. Reichler's affidavit to identify and quote the relevant legislation. This is especially so in light of his interactions with OFAC in relation to the said vessel. I therefore decline to strike out paragraphs 7 to 18 of Mr. Reichler's affidavit and I rule that any disputes concerning this evidence should be resolved at trial.

Paragraph 19

[45] Paragraph 19 of Mr. Reichler's affidavit states as follows:

"Technically, the sanctions are US-specific. However, the soft power of the US, and its importance in the global economy, means that its allies routinely respect its sanctions. Indeed, many impose their own overlapping sanctions (including the European Union and United Kingdom.)"

[46] I have been invited to strike out this paragraph on the basis that its contents speak to the field on international relations rather than Mr. Reichler's qualifications as a lawyer. I decline to do so as it is possible that Mr. Reichler may have gained such knowledge as part of his experience as a lawyer. Mr. Reichler at paragraph 1 of his affidavit speaks of his background in public international law and his affidavit as a whole demonstrates his overall knowledge of the US sanctions regime. Any objection to the content of paragraph 19 may therefore be addressed in submissions at trial.

Paragraph 20

[47] Paragraph 20 of the affidavit states: "Other states may choose to encourage persons and authorities their jurisdiction to comply with US sanctions (by not dealing

¹⁰ [2023] UKPC 16 at paragraph 21

with persons/property that is sanctioned by the US) by warning them that if they do so then they may directly be the subject of further sanctions from the US, or find banking or other trading partners in or with connections to the US unwilling to do business with them.”

[48] This paragraph contains statements of opinion as to how other states react to US sanctions. The issue is whether these statements of opinion are “are reasonably related to the facts within his knowledge” as outlined in the **Multiplex (UK) Ltd. v Cleveland Bridge UK Ltd (No 6)**. I believe that this paragraph satisfies this test as in paragraph 21 he identifies Antigua and Barbuda as a country which has encouraged compliance with US sanctions. I therefore decline to strike out paragraph 20 of the affidavit.

Paragraphs 22 and 23

[49] In these paragraphs Mr. Reichler outlines the effects of the sanctions on the claimants. In particular he outlines that they will be unable to maintain it or complete any transactions related to it. He also notes that it will be difficult to sell it or its contents. These expressions of opinion are sufficiently related to the factual information on the US sanctions regime given by Mr. Reichler at paragraph 11 of the affidavit. I therefore decline to strike out paragraphs 22 and 23 of Mr. Reichler’s affidavit.

Paragraph 24

[50] Paragraph 24 of the affidavit states: “In reality, therefore, the Alfa Nero and its contents, while under US sanctions, had no value to either Ms. Gurieva-Motlokhov, Flying Dutchman Overseas or Vita Felice.” This paragraph speculates as to the value of the vessel to the claimants. This cannot be within Mr. Reichler’s knowledge. I will therefore strike out paragraph 24 of the affidavit.

Paragraph 25

[51] At paragraph 25 Mr. Reichler outlines that persons may seek licences from OFAC presumably to transact with sanctioned property. He also states that he has seen

no indication that the claimants have applied for such a licence. So far this is not objectionable. However, he goes on to speculate as to the claimants' motives for not doing so. This offends CPR 30.3(2) and is therefore impermissible. I will therefore order that the following words in paragraph 25 of the affidavit be struck out: "I expect that this is because they likely deduced (correctly in my view) that OFAC would never have granted them such a licence."

Paragraph 33

[52] This paragraph is extensive and I decline to reproduce it in its entirety. Essentially, I find that this paragraph speculates on what OFAC would or would not do if proceeds of any sale of the vessel were to be transferred to the Claimants. This matter concerns the internal policies and deliberations of OFAC which unless Mr. Reichler identifies the source of his information in accordance with CPR 30.3(2) (ii) is inadmissible. I also find the contents of the paragraph to be speculative unless Mr. Reichler was informed by OFAC that it would act in the manner which he says. I therefore order that paragraph 33 of the affidavit be struck out in its entirety.

Paragraphs 34 and 35

[53] Similar to paragraph 33, paragraphs 34 and 35 contain information which would not be within Mr. Reichler's knowledge. Similarly, I also find that with the exception of the first sentence of paragraph 34, this paragraph is mere speculation. Accordingly, I will order with the exception of the first sentence of paragraph 34, that paragraphs 34 and 35 be struck out entirely.

Paragraph 36

[54] Paragraph 36 of the affidavit is concerned with why Ms. Motlokhov has never applied to OFAC for a licence to permit her to maintain or purchase the vessel. He speculates as to her motives for not doing so. He also states that OFAC would re-impose sanctions if Ms. Motlokhov were permitted to maintain the vessel. For the same reasons which I have indicated in respect of paragraph 25 of the affidavit I will order that paragraph 36 of the affidavit be struck out.

Paragraph 37

[55] Paragraph 37 of the affidavit states as follows: "Fourth, the same consequence would inevitably follow if the court were to issue an order compelling the sale of the vessel to Ms. Gurieva-Motlokhov or allowing her or the previous owners to participate in the sales proceeds or enabling them to maintain the vessel. I consider it virtually certain that OFAC would immediately reimpose sanctions on the vessel and impose sanctions on Ms. Gurieva-Motlokhov and the previous owners directly. And bilateral relations between Antigua and Barbuda and the USA would be severely prejudiced, threatening trade and commercial relations between the countries."

[56] Mr. Reichler appears to be warning the court not to rule in a particular manner. In accordance with CPR 30.3(1) Mr. Reichler's affidavit should only contain such facts as he is able to prove from his knowledge. Making legal submissions to the court is not within Mr. Reichler's remit. Accordingly, I will order that the said paragraph be struck out.

Order

[57] The applications to strike out the affidavit of Mr. Paul Reichler are therefore granted in part. The order of the court is as follows:

1. Paragraph 24 of Mr. Reichler's affidavit is struck out in its entirety.
2. The last sentence of paragraph 25 of Mr. Reichler's affidavit which reads "I expect that this is because they likely deduced (correctly in my view) that OFAC would never have granted them such a licence" is struck out.
3. Paragraph 33 of Mr. Reichler's affidavit is struck out in its entirety.
4. Paragraph 34 of Mr. Reichler's affidavit is struck out with the exception of the first sentence.

5. Paragraphs 35, 36 and 37 of Mr. Reichler's affidavit are struck out in their entirety.
6. The defendants are at liberty to file an affidavit of Mr. Paul Reichler edited in accordance with paragraphs 1 to 5 of this order within 14 days hereof and the Claimants in turn are at liberty to file an affidavit in reply 14 days thereafter.
7. The claims are scheduled for Pre-Trial Review on 3rd July 2024.
8. No order as to costs.

[58] The court takes this opportunity to express its gratitude to all counsel for their helpful submissions.

Rene Williams
High Court Judge

By the Court



Registrar