

EASTERN CARIBBEAN SUPREME COURT
BRITISH VIRGIN ISLANDS

IN THE HIGH COURT OF JUSTICE
COMMERCIAL DIVISION

CLAIM NO. BVIHCM 2013/00160

BETWEEN:

By way of Claim:

[1] RENOVA INDUSTRIES LIMITED
[2] WEDGWOOD MANAGEMENT LIMITED
[3] ZAPANCO LIMITED
[4] LAMESA HOLDING SA

Claimants

and

[1] EMMERSON INTERNATIONAL CORPORATION
[2] ~~TOMSA HOLDINGS LIMITED~~
[3] ~~ALABASTER ASSOCIATES LIMITED~~
[4] GARDENDALE INVESTMENTS LIMITED
[5] MIKHAIL ABYZOV
[6] ROMOS LIMITED
[7] FRESKO FINANCIAL LIMITED

Defendants

And by way of Counterclaim:

[1] EMMERSON INTERNATIONAL CORPORATION
[2] ~~TOMSA HOLDINGS LIMITED~~
[3] ~~ALABASTER ASSOCIATES LIMITED~~
[4] ~~GARDENDALE INVESTMENTS LIMITED~~
[5] ANDREY TITARENKO

Claimants by way of Counterclaim

and

[1] RENOVA INDUSTRIES LTD
[2] WEDGWOOD MANAGEMENT LIMITED
[3] ZAPANCO LIMITED
[4] LAMESA HOLDING SA
[5] VIKTOR VEKSELBERG
[6] INTEGRATED ENERGY SYSTEMS LIMITED
(a company incorporated under the laws of Belize)
[7] ODVIN FINANCIAL INC

Applicants

[8] GOTHELIA MANAGEMENT LIMITED

[9] RENOVA HOLDING LIMITED
[10] VLADIMIR KUZNETSOV

[11] ALEXEI MOSKOV
[12] ALEXANDER KOLYCHEV
[13] MIKHAIL SLOBODIN
[14] MAKSIM MAYORETS
[15] RENOVA MANAGEMENT AG
[16] PAO T PLUS

[17] INTEGRATED ENERGY SYSTEMS LIMITED
(a company incorporated under the laws of Cyprus)
Applicant

[18] CLERN HOLDINGS LIMITED
[19] STARLEX COMPANY LIMITED
[20] SUNGLET INTERNATIONAL INC
[21] OOO RENOVA-HOLDING RUS

Defendants by way of Counterclaim

And by way of Ancillary Claim:

[1] MIKHAIL ABYZOV
[2] ROMOS LIMITED
[3] FRESKO FINANCIAL LIMITED
[4] ANDREY TITARENKO
[5] GOLDFORT LIMITED

Claimants by way of
Ancillary Claim

and

[1] RENOVA INDUSTRIES LTD
[2] WEDGWOOD MANAGEMENT LIMITED
[3] ZAPANCO LIMITED
[4] LAMESA HOLDING SA
[5] VIKTOR VEKSELBERG
[6] INTEGRATED ENERGY SYSTEMS LIMITED
(a company incorporated under the laws of Belize)
[7] ODVIN FINANCIAL INC
[8] FLOPSY OVERSEAS LIMITED

Applicants

[9] VLADIMIR KUZNETSOV
[10] ALEXEI MOSKOV
[11] ALEXANDER KOLYCHEV
[12] MIKHAIL SLOBODIN
[13] RENOVA MANAGEMENT AG
[14] RENOVA HOLDING LIMITED
[15] PAO T PLUS

[16] INTEGRATED ENERGY SYSTEMS LIMITED
(a company incorporated under the laws of Cyprus)
Applicant

[17] CLERN HOLDINGS LIMITED
[18] MAKSIM MAYORETS

Defendants by way of Ancillary Claim

And by way of Third Ancillary Claim:

[1] EMMERSON INTERNATIONAL CORPORATION

Claimant by way of Third Ancillary Claim

and

[1] VIKTOR VEKSELBERG
[2] INTEGRATED ENERGY SYSTEMS LIMITED
[3] VLADIMIR KUZNETSOV
[4] EVGENY OLKHOVIK
[5] ANDREY BURENIN
[6] YAKOV TESIS
[7] ALEXEI MOSKOV
[8] IGOR CHEREMIKIN
[9] IRINA MATVEEVA
[10] PAVLINA TSIRIDES
[11] IRINA LOUTCHINA SKITTIDES
[12] PHOTINI PANAYIOTOU
[13] ARTEMIS ARISTEIDOU
[14] A.B.C. GRANDESERVUS LIMITED
[15] STARLEX COMPANY LIMITED
[16] RENOVA INDUSTRIES LIMITED
[17] SUNGLET INTERNATIONAL INC.

Defendants by way of Third Ancillary Claim

Appearances:

Mr. David Quest, QC with him Mr. Michael Bolding, Miss Arabella di Iorio and Mr. Shane Quinn for the Claimants, the First to Eighth Defendants by way of Ancillary Claim and First to Seventh Defendants by way of Counterclaim, the Nineteenth and the Twentieth Defendants by way of Counterclaim ('the Renova Parties') and the Seventeenth Defendant by way of Counterclaim and Sixteenth Defendant by way of Ancillary Claim ('IES Cyprus') (together 'the Applicants'),

Mr. Jonathan Crystal, with him Mr. James Walmesley, Mr. Scott Cruickshank, Mr. Phillip Baldwin and Mr. Jonathan Child for the Fifth Claimant by way of Counterclaim and Fourth Claimant by way of Ancillary Claim ('Mr. Titarenko').

2020: May 18;
September 19, 21;
2021: June 22;
July 14.

JUDGMENT

- [1] **WALLBANK, J. (Ag.):** This is the Court's judgment in respect of a suite of applications referred to by the parties as the 'Remitted Extension Applications'.
- [2] There are three applications in this suite:
- (1) An application of the 'Renova Parties' as they are referred to in these proceedings, filed on 5th September 2018, in which the Renova Parties sought an extension of three months, from 14th September 2018 to 14th December 2018, for filing their Defences to a set of claims referred to in these proceedings as the 'Schedule 4 Claims';
 - (2) An application, dated 8th October 2018, by a company connected to the Renova Parties, referred to in these proceedings as 'IES Cyprus', for a similar extension from 15th October to 14th December 2018;
 - (3) An application filed on 17th April 2020 by the Renova Parties and IES Cyprus, seeking orders that if their extension applications are dismissed, they should have relief from sanctions and be permitted to rely upon Schedule 4 Defences they had filed on 14th December 2018.
- [3] The Respondent to these applications is a Claimant in the Schedule 4 Claims (as well as in a Counterclaim), Mr. Andrey Titarenko. Mr. Titarenko did not file evidence in response to these applications.
- [4] Mr. Titarenko however filed a cross-application on 1st May 2020 seeking an order that the Remitted Extension Applications be struck out, on grounds that the Renova Parties had not complied with a costs order ('the Debarring Application'). Mr. Titarenko seeks to rely upon the evidence he filed in support of this application. He had been out of time for filing evidence in the Remitted Extension Applications itself. The Court has previously already heard and dismissed the Debarring Application.
- [5] The Schedule 4 Claims include ancillary claims to the main claims in these proceedings. Consequently, if defendants miss the deadline for filing their Defences, they are deemed to have admitted the claims brought against them, pursuant to rule 18.12 of the Civil Procedure Rules 2000 ('CPR').

- [6] The background to these applications is simply stated. But, as has become the norm in these high value proceedings (the claims amount to around US\$1 billion and counting, with the accrual of interest), the issues have become embroiled into a tight and seemingly ever-growing knot of arguments.
- [7] On 21st February 2018, the Abyzov Parties and Mr. Titarenko were granted permission to bring the Schedule 4 Claims. Schedule 4 was a schedule appended to the Abyzov Parties' amended pleadings in the main proceedings. Schedule 4 ran to more than 60 pages and made new claims in fraud. Also permitted by the 21st February 2018 Order was the addition of 14 new defendants. The parties agreed that the new claims, including the Schedule 4 Claims, would be case managed and tried separately from the main claims, for which a trial was due to commence in June 2018.
- [8] On 6th April 2018 a significant supervening event occurred. The government of the United States imposed sanctions upon prominent Russian businessmen, including Mr. Vekselberg and a company majority owned by him. Mr. Vekselberg is considered by the Abyzov Parties to be the principal behind the Renova Parties.
- [9] On 12th April 2018, this development was brought before the Court on an urgent basis, given that the sanctions would affect not only how the Renova Parties could continue to do business, including their use of the United States' Dollar currency, but also their ability to conduct these proceedings. The sanctions would also make it impossible for the Renova Parties to continue to be advised and assisted by their then onshore law firm, Messrs. Akin Gump Strauss Hauer & Feld LLP ('Akin Gump').
- [10] As a result, on 12th April 2018, the Court vacated the trial and set down a status hearing for 15th June 2018.
- [11] On 8th June 2018, Akin Gump were permitted by the Office of Foreign Assets Control of the US Treasury Department to continue acting for the Renova Parties until 5th September 2018.
- [12] At the status hearing on 15th June 2018, the Renova Parties asked for an extension of time to file their Schedule 4 Defences. The Abyzov Parties argued that the Renova Parties should file their Defences in August 2018. Counsel for the Renova Parties contended that, whilst they

hoped a suitable replacement for Akin Gump could be found and be in place by 5th September 2018, they could not be certain of it. The Court ordered the Schedule 4 Defences to be filed by 14th September 2018.

- [13] On 21st June 2018, the Court made an order permitting service out of the jurisdiction on IES Cyprus. IES Cyprus was served (or purportedly served) on 20th August 2018. Its Schedule 4 Defence was due to be filed by 15th October 2018.
- [14] On 22nd August 2018 the Renova Parties wrote to the Abyzov Parties and Mr. Titarenko to seek a three month extension. Three main reasons were given – unavailability of ‘key Renova personnel’ over the summer holiday period; difficulties in finding alternative solicitors in London able to accept their instructions; and unavailability of the Renova London counsel team over the summer and not returning to chambers until the beginning of September.
- [15] The Abyzov Parties refused to grant an extension, on 27th August 2018. Mr Titarenko did not respond.
- [16] The Renova Parties filed their application for an extension, with a certificate of urgency, about a week later, on 5th September 2018, some 9 days before the 14th September 2018 deadline.
- [17] Also on 5th September 2018 the Renova Parties had formally instructed Messrs. DLA Piper UK LLP (‘DLA Piper’), a firm of London solicitors, instead of Akin Gump.
- [18] The Renova Parties’ application was supported by a First Witness Statement of a Mr. Jeremy Andrews, an English lawyer at DLA Piper (‘Andrews 1’). This gave the primary reason for the delay as having been that the sanctions had necessitated a change in law firms and that the key Renova personnel had been busy dealing with sanctions related matters (i.e., observed Mr. Titarenko, for different reasons than stated in the letter of 22nd August 2018). Mr. Andrews’ primary source of knowledge, information and belief in relation to conduct of the matters within the Renova group was stated to be a Ms. Loewe, in-house counsel to the Renova Parties.
- [19] This application was listed for hearing on 13th September 2018. Mr. Titarenko objected to the hearing going ahead on that day, as he explained – in a letter to the Court dated 12th September 2018 - that he had been in a different jurisdiction since early September and had to

fly back to the United Kingdom to pick up his daughter from school and take her back to Russia.

- [20] The application was heard on 13th September 2018, with the Abyzov Parties present but Mr. Titarenko absent. The learned judge adjourned the application but, in the interim, granted an extension of time until 14 days after the final hearing of the application.
- [21] IES Cyprus wrote to the Abyzov Parties on 2nd October 2018 seeking an extension, but this was also not agreed. IES Cyprus filed a similar application for an extension on 8th October 2018, also to 14th December 2018. This application was supported by a second Witness Statement of Mr. Andrews ('Andrews 2'). This application was listed for hearing on 15th October 2018 before the same judge. Neither the Abyzov Parties, nor Mr. Titarenko, appeared at that hearing, although they had notice of it. The learned judge gave a similar interim extension.
- [23] On 1st November 2018 Mr. Titarenko applied to set aside both interim extension orders.
- [24] On 6th December 2018 that application was heard and judgment was reserved.
- [25] On 14th December 2018 the Renova Parties and IES Cyprus filed and served their Schedule 4 Defences. As matters then stood, that service was regular, in that it was within the time permitted by the Court's orders.
- [26] On 1st April 2019 the Court handed down its judgment, dismissing Mr. Titarenko's application of 1st November 2018.
- [27] Mr. Titarenko appealed. His appeal succeeded. The Court of Appeal set aside the interim extensions of time and the Schedule 4 Defences insofar as they related to Mr. Titarenko. The Court of Appeal remitted the original extension applications back to this Court for further hearing and determination.
- [28] In January 2020, the remitted extension applications were listed for hearing on 18th May 2020, together with certain other applications. They could not be heard in full on that day and were brought back before the Court on 19th and 21st September 2020.

- [29] I will refer to the Renova Parties and IES Cyprus for convenience, together, as the Applicants.
- [30] The essence of the Applicants' argument was that since they had made an in-time application for an extension, the question whether or not the extension should be granted simply engages the Court's case management discretion. They submitted that the Court should then balance the prejudice to the respective parties and that this comes down in favour of granting the extension. The Applicants contended that what Mr. Titarenko tried to do was to force the Applicants into a position where they would have to apply for relief from sanctions, to which a considerably more stringent test applies, before any application for an extension could be considered.
- [31] Mr. Titarenko was represented at the hearing by learned leading Counsel, Mr. Jonathan Crystal.
- [32] Mr. Crystal argued that even though the Applicants had applied for their extensions before their respective deadlines, they would nevertheless have to satisfy the test for obtaining relief from sanctions. The reason for this, urged Mr. Crystal, was that the applications had been made so close to the deadlines that they could not be heard within the time specified in the CPR for a substantively fair hearing to be held, and indeed, both the hearings had gone ahead in the absence of Mr. Titarenko and one in the absence of the Abyzov Parties as well.
- [33] The Applicants argued that this analysis is wrong, because a party is only required to apply for relief from sanctions once he has already failed to comply with a rule, order or direction. Until he has failed to comply, sanctions do not apply to him, the Applicants urged. Consequently, they argued, it is open to a party to whom sanctions do not yet apply to apply for an extension. Once that application is heard, be it before or after the deadline for compliance expires, the Applicants submitted that the Court decides the application simply on discretionary grounds.
- [34] I agree with the Applicants on this point. The whole scheme of CPR 26.8 is predicated upon a failure to comply having already occurred. The language of the rule indicates this in at least six places. The rule provides (with emphasis added):

1. An application for relief from any sanction imposed **for a failure to comply** with any rule, order or direction must be –
 - a. made promptly; and
 - b. supported by evidence on affidavit.
2. The court may grant relief only if it is satisfied that –
 - a. the failure to comply **was** not intentional;
 - b. there is a good explanation for **the failure**; and
 - c. the **party in default** has generally complied with all other relevant rules, practice directions, orders and directions.
3. In considering whether to grant relief, the court must have regard to –
 - a. the effect which the granting of relief or not would have on each party;
 - b. the interests of the administration of justice;
 - c. whether **the failure to comply** has been or can be remedied within a reasonable time;
 - d. whether **the failure to comply was due** to the party or the party's legal practitioner; and
 - e. whether the trial date or any likely trial date can still be met if relief is granted.
4. The court may not order the respondent to pay the applicant's costs in relation to any application for relief unless exceptional circumstances are shown.

[35] Thus, in my respectful judgment, the Applicants have no need to satisfy the test for relief from sanctions.

[36] The Court therefore does not need to determine their application for relief from sanctions.

[37] The Applicants argued that there was never any prejudice to the Abyzov parties or Mr. Titarenko by the grant of the extensions:

- (1) As at September/October 2018, the next Case Management Conference was some six months away, until which time the proceedings were effectively at a standstill;
- (2) There was no deadline in place for service of replies to the Schedule 4 Defences;
- (3) No trial date was in place (and still is not);
- (4) A number of other defendants to the Schedule 4 Claims had either not yet been served or had launched service and jurisdiction challenges which had not yet been heard;
- (5) There were no other orders or directions in place which might be affected;
- (6) Following the Case Management Conference (which took place on 5th March 2019), the Court ordered replies to the Schedule 4 Defences to be served by 31st July 2019, but in

fact nobody did so. Both the Abyzov Parties and Mr. Titarenko applied for what were in effect open-ended extensions.

- (7) In Mr. Titarenko's own extension application, he argued that there was no prejudice to the Renova Parties because there was no trial date and some defendants had not served their defences yet. He also relied upon the happening of the long vacation and that there would be a Christmas break (which was then still some four months away);
- (8) There was a Case Management Conference in November 2019, but it was part heard until the summer of 2021.

[38] Mr. Crystal argued that it is improper for the Court to have regard to a global overview of circumstances for the purpose of this determination. He argues that the Court should look at the matter as if it were again sitting in September/October 2018. He argues that the Court should ignore all the Court knows now about the proceedings, including the fact that the Applicants filed their Defences, and indeed in time in accordance with the then operative orders of the Court (which were later set aside).

[39] It is obvious why Mr. Crystal wished to constrain the Court in this way. It is plain that the Applicants' delay in filing their Schedule 4 Defences was of no moment whatsoever in relation to the overall progress of the matter. It was completely and utterly academic. There was no prejudice caused to Mr. Titarenko by the delay and he would suffer none if the extensions were to be granted.

[40] Having considered a quite lengthy list of alleged prejudicial factors that Mr. Titarenko contended he would suffer if the extensions were granted, I have concluded that the only intelligible possible prejudice that Mr. Titarenko might suffer would be, as Mr. Crystal argued, that he would be deprived of the benefit of the deemed admission that would occur if the Applicants should have failed to obtain an extension of the deadline for the service of their Schedule 4 Defences. Mr. Crystal argued that Mr. Titarenko had a legitimate expectation to receive that benefit.

[41] I respectfully disagree that this is an appropriate way of regarding such a deemed admission.. The 'loss' by an ancillary claimant of a deemed admission, where an ancillary defendant can reasonably obtain an extension, is not prejudice the Court should generally have regard to. The deemed admission rule operates to compel defendants to ancillary proceedings to file their

defences within deadline so that main proceedings are not thereby held up. If they do not, then they lose the right to defend. There is a disciplinary element to this against the party in default.¹ They are deemed to admit the ancillary claims against them, unless they can obtain relief from that sanction. However, where it is just and fair for the ancillary defendant to have an extension, the converse is that there can be no injustice, nor unfairness, in the ancillary claimant not obtaining the benefit of a deemed admission as a result.

[42] Mr. Crystal relied upon the English Court of Appeal case of **Swain-Mason & Ors v Mills & Reeve LLP**² as authority for a proposition that when an original order is overturned by the Court of Appeal, and the issue whether or not the original order should be made falls for determination again, then the Court ought to 'approach the exercise of discretion on the basis of the material that was before the original judge as at the original hearing date, and normally nothing else'.³

[43] The Applicants disagreed that **Swain-Mason** is apposite here. I accept this submission. The Court of Appeal in **Swain-Mason** stated in terms that '[t]he correct approach might differ according to the kind of case in which it arises. For example, it would be easier to justify looking at later events...applying to an ongoing situation'.⁴ We are here dealing with an ongoing situation – the case management as a whole of the Schedule 4 Claims. In **Swain-Mason** the point was far narrower – how the claimant should be allowed to present its case with respect to a single central issue during a trial that had already commenced.

[44] Moreover, the passage Mr. Crystal principally places reliance upon makes it clear that the Court of Appeal was not laying down a hard and fast rule. It spoke in terms of 'normally nothing else' (emphasis added), countenancing different approaches for differing situations.

[45] In that case, the order being appealed concerned an application to amend a pleading during a trial. The trial judge in the court below had allowed the amendment and the parties had prepared for trial on the basis of the amendment. The Court of Appeal overturned the order allowing the amendment on grounds that the judge's exercise of discretion was based on errors

¹ Cf: Barton v Wright Hassall LLP [2018] UKSC 12 at paragraph 18 (Sumption LJ).

² [2011] EWCA Civ 14.

³ [2011] EWCA Civ.14 at paragraph 102 (Lloyd LJ).

⁴ [2011] EWCA Civ.14 at paragraph 102 (Lloyd LJ).

of law. The Court of Appeal had to ask itself whether it was right for the Court of Appeal to take into account the fact that, because of the judge's orders, the parties had been preparing for trial as best they could on the basis of the amended pleading.⁵ The Court of Appeal held:

"If it [i.e. the Court of Appeal] takes the view that the order ought not to have been made at that time and on that evidence, then it seems to me that the appellant ought not to have his task rendered the more difficult because of reliance by the respondent or the court on what has been done, as a matter of obligation, under the order in the meantime."⁶

[46] The particular mischief in that case was that the party wishing the Court of Appeal to approve an amendment could not have obtained permission from the original judge to do so in those terms, because at that original point in time a certain piece of expert evidence had not yet become available.⁷ The Court of Appeal disallowed the amendment on the basis that it was too late.

[47] It also disallowed the amendment on the basis that the proposed amended pleading was 'so unsatisfactory' that the court should not allow it in.⁸

[48] The Applicants argued that the facts of **Swain-Mason** are far removed from this case. I agree.

[49] Unlike in **Swain-Mason**, this Court is not sitting as a Court of Appeal seeking to exercise a discretion afresh. Here, the Court of Appeal has remitted the question of whether time for filing defences should be extended, back to the Court that has case management responsibility for the progress of the matter as a whole. That cannot have been an accident. The Court of Appeal frequently exercises the court's discretion afresh where it has found that the lower court erred. The Court of Appeal could have done so too here, but it did not. The Court of Appeal decided to remit the matter. The overall case management situation of the proceedings was not within the knowledge of the Court of Appeal, but, as the Court of Appeal would have been fully aware, it was within the knowledge of this lower Court. That lower Court was/is the Court with the remit of managing the case to take it forward. The Court of Appeal clearly did not intend (and indeed it is not the law) that case management decisions should be exercised in a

⁵ [2011] EWCA Civ.14 at paragraph 101 (Lloyd LJ).

⁶ [2011] EWCA Civ.14 at paragraph 102 (Lloyd LJ).

⁷ [2011] EWCA Civ.14 at paragraph 109 (Lloyd LJ).

⁸ [2011] EWCA Civ.14 at paragraph 107 (Lloyd LJ).

manner separated from reality. The Overriding Objective⁹ of dealing with cases justly requires the Court to take into account all circumstances so that substantive justice and fairness can be done. I take that to include the circumstances as at the time the applications were made, as well as at the time the applications are heard, because it is at the latter point that the discretion falls to be exercised and the orders made then must manage the case to take it forward sensibly.

[50] There is moreover a fundamental distinction between considering whether to grant permission to amend pleadings after a trial has begun (as in **Swain-Mason**) and considering the merits or otherwise of an extension for filing a defence in proceedings that are at an early stage. The former engages a very narrow set of case management considerations (and they clearly must be kept narrow if all the prior trial preparation is not to be undone), to manage the conduct of a case during a trial. An extension for filing a Defence before pleadings have closed, by contrast, involves broad case management considerations.

[51] In **Swain-Mason** the proceedings had progressed to trial on a certain pleaded basis. On the second day of the trial, the claimant sought to bolster her case with a pleading amendment, ostensibly to clarify her case. What ensued was a lengthily protracted process, with the trial being adjourned twice, during which the claimant put forward several iterations of a new pleading. She was, in retrospect, clearly trying to improve her case on an on-going basis and ultimately achieved this at first instance. The High Court initially extended some liberality, doubtlessly with a view to tightly managing the change, but matters then spun out of control. Neither side appears to have wanted the trial to have proceeded as it had been prepared. The trial judge (in fact, the second trial judge) was faced not only with a claimant who was apparently seeking to re-write her pleadings on an on-going basis but a defendant who was apparently intent upon the trial being put off as long as possible. The task facing the English Court of Appeal was to restore order and clarity.

[52] The subject of the appeal was an order from the English High Court that a re-amendment of the pleading in the terms of a draft would be allowed, as long as the claimant could support it with evidence within a certain time. The draft in question was about the eighth that had been proposed. The claimant then adduced an expert opinion that supported her re-amended case.

⁹ CPR 1.1.

When the Court of Appeal came to exercise its discretion afresh, having overruled the judge at first instance for errors of law, the claimant argued that this re-amendment should be allowed to stand because the parties had already been preparing for resumption of the trial on the basis of that case. The Court of Appeal rejected such an approach. The fatal point that the Court of Appeal identified was that the new expert opinion had not yet been available when the re-amendments had been sought.¹⁰ Thus, in re-exercising the discretion, which had been undertaken at a time the expert opinion had not yet been available, the appropriate course identified by the English Court of Appeal was to do so without regard to the content of that subsequent expert opinion.

- [53] In **Swain-Mason** the Court of Appeal was astute to prevent the claimant taking advantage of a *fait accompli*. The Court of Appeal's approach was, in essence, that its discretion should not be fettered, nor indeed overridden, by subsequent events. Here the precise opposite situation applies: there have been no subsequent events. Nothing of any significance in the proceedings has occurred, because other defendants have apparently yet to be served and other defendants' jurisdiction and other preliminary challenges have yet to be determined. It is this fact that Mr. Titarenko wants the Court studiously to ignore.
- [54] There is no set of circumstances in the present case that would mean anyone being inconvenienced, let alone prejudiced, by the three month extension that the Applicants had sought. On the other hand, the Applicants would clearly face the massive prejudice of being deemed to admit billion-dollar claims, even though they applied for an extension before the expiry of their deadline for filing Defences.
- [55] Even the mischief behind the 'deemed admission' rule – namely, to prevent main proceedings being held up by dilatory conduct in ancillary proceedings – does not in reality arise in the present case, because these ancillary claims have already been directed to be case managed and tried separately from the main proceedings. Mr. Titarenko's resistance to an extension is entirely intellectual.

¹⁰ [2011] EWCA Civ.14 at paragraph 109E (Lloyd LJ).

- [56] The fact that the Applicants filed their Defences within the time set by the Court (albeit those orders were subsequently set aside) is not a significant development. Indeed, it is no reason for granting an extension retrospectively.
- [57] That said, it could have been completely different if the Applicants had still not filed Defences by the time the hearing was held. That would have indicated a fundamental problem and the Court would clearly have been empowered to refuse an extension (if yet more time had then been sought) on the basis that the Applicants would have had more than ample opportunity to organise their affairs. But that is not the situation here.
- [58] Mr. Crystal correctly argued that parties are not capable under the CPR of agreeing between themselves an extension of time beyond the 56 days allowed.¹¹ Mr. Crystal submitted that extensions for filing a defence are a special case. He contended that a pre-condition for the grant of such an extension is that there has to be a good explanation for what has been done up until then and the necessity for extension. Mr. Crystal could point to no authority for this proposition, other than what he said was the practice in relation to English High Court time summonses.
- [59] The Applicants disagreed. They pointed to our Court of Appeal's decision in **Rose v Rose**¹² as authority for a proposition that applications for extension of time simply engage a court's discretionary power: an application can be granted for good and substantial reasons, necessity not being needed to be shown.
- [60] At paragraph [2], Chief Justice Byron (as he then was) stated:
- “Granting the extension of time is a discretionary power of the Court, which will be exercised in favour of the applicant for good and substantial reasons. The matters which the Court will consider in the exercise of its discretion are: (1) the length of the delay; (2) the reasons for the delay; (3) the chances of the appeal succeeding if the extension is granted; and (4) the degree of prejudice to the Respondent if the Application is granted. (1) (Harold Simon v Carol Henry and Tracey Joseph, Court of Appeal, Antigua and Barbuda, Civil Suit No. 1 of 1995; Monica Patsy Greuner v Carl Eugene Greuner, Court of Appeal, Grenada, Motion No. 13 of 1999).¹³

¹¹ CPR 10.3(7).

¹² Saint Lucia Civil Appeal No. 19 of 2003.

¹³ Saint Lucia Civil Appeal No. 19 of 2003 (unreported, delivered 22nd September 2003) at paragraph [2] (Sir Dennis Byron, CJ).

[61] In **Rose v Rose**, the Court of Appeal was concerned with a retrospective application for an extension of time to appeal. The Applicants in the present case argued that the principle is no different here: once the Court is concerned with exercising its discretion to extend time, as opposed to considering whether to grant relief from sanctions, the test summarised in **Rose v Rose** applies. Absent any authority to the contrary, to the effect that extensions of time to file a Defence are to be treated as a special case, I agree.

Length of the delay

[62] In terms of the length of delay, in the overall scheme of the proceedings as a whole, and the fact that these ancillary claims were at a procedural standstill anyway, not only was the delay in filing Defences (from February to September/October 2018) insignificant, but it was also of no moment. Equally, the further three months sought was of no moment.

Reasons for the delay

[63] In terms of the reasons for the delay, Mr. Crystal invested considerable effort in criticising the evidence of Mr. Andrews filed in support of the extension applications.

[64] Mr. Crystal's first argument was that there was a fundamental contradiction between Andrews 1 and Andrews 19. The effect of this contradiction, said Mr. Crystal, was that Andrews 1 should be rejected. The alleged contradiction was that in Andrews 1, Mr. Andrews had said that it 'would not be possible [for the Renova Parties] to file their defences to the Schedule 4 Claims by 14 September 2018'. However, in Andrews 19, he said that if the extensions granted on 13th September 2018 and 15th October 2018 respectively had not been granted, 'the Renova Parties and IES Cyprus would have filed defences before the relevant deadlines for doing so'. *Ergo*, submitted Mr. Crystal, Andrews 1 must have been untrue and there was in fact no difficulty at all in meeting the deadline. Consequently, no extension should be granted.

[65] The Applicants pointed out that Mr. Crystal had however not read on in Andrews 19, in which he explained that *in extremis* the Applicants would have served **outline defences** within the respective deadlines.

[66] Mr. Crystal suggested that this would still not save the Applicants, as there is a requirement that a party should plead all the facts upon which he wishes to rely, so it would not have been open to the Applicants to file outline Defences. That would have been an abuse of process which the Court should not countenance.

[67] There are two fundamental flaws with this suggestion. First, there is no inflexible rule that a pleading must be perfect first-time round. Some latitude must be given for amendment, as indeed the Rules allow. It is a question of degree. If a pleading is so vague or so ambiguous or so defective that it is hopeless, then of course the Court should not allow it to stand, if it were to be challenged. Whether or not the Court should then allow it to be rescued through amendment depends upon all the circumstances. Indeed, here, the Court does not have before it the outline defences that the Applicants might then have filed. The Court cannot assume that they would have been so deficient that they would have been incapable of sensible amendment if required. Secondly, if (which is not the case) the Applicants should not have been allowed to file outline Defences, then this would have underlined the desirability, all else being equal, to accord them an extension within which they could file a fuller Defence.

[68] Then, Mr. Crystal argued that Mr. Andrews's evidence should be rejected as an abuse of process because, as a legal representative of the Applicants, it is contrary to BVI professional legal ethics for an attorney-at-law to give evidence of fact for a client. Mr. Crystal refers here to Section 26 of the Legal Profession Act, 2015¹⁴ which incorporates the Code of Ethics. Mr. Crystal refers specifically to Rule 30 of the Code of Ethics. This provides:

“30. (1) A legal practitioner should not appear as a witness for his or her own client except as to merely formal matters or where such appearance is essential to the ends of justice.

(2) If a legal practitioner is a necessary witness for his or her client with respect to matters other than such as are merely formal, he or she should entrust the conduct of the case to another legal practitioner of his or her client's choice.”

[69] The flaw in Mr. Crystal's argument here was that Mr. Andrews is not a legal practitioner in the BVI. The Legal Profession Act does not apply to him.

[70] Mr. Crystal sought to argue that nonetheless Mr. Andrews should be treated as falling within the Act because he acts for the Applicants as a legal representative as part of their onshore

¹⁴ No. 13 of 2015.

legal team and the spirit of the rule is that a legal representative should not be allowed to give evidence of fact, otherwise the scheme of the Legal Profession Act and Code of Ethics is 'disrespected'. But there is no rule stopping a foreign lawyer giving evidence on behalf of his client. It has been a practice for decades, and so common as to be almost universal, for evidence to be given in complex commercial matters by a solicitor or equivalent on behalf of the underlying client.

[71] What weight should be given to the evidence of such a solicitor is another matter entirely. Here, Mr. Crystal sought to apply what he described as a 'forensic approach' to deconstruct Mr. Andrews' explanations and present them as falling short of adequacy. The picture Mr. Crystal sought to extract from Mr. Andrews' evidence was that the unidentified 'key personnel' within the Renova group had not seen fit to give any priority to preparation of the Defences (some of them were said not to be able to make themselves available to address defence preparation issues until October 2018), and that the truth of the matter was that, as shown in earlier correspondence, they even treated vacation time as more important. Mr. Andrews was also criticised by Mr. Crystal for 'critically' not saying what had been done by Akin Gump, and what remained to be done in terms of preparing the Defences, and for not explaining why it was essential that DLA Piper (as opposed to the Renova in-house and/or BVI legal teams) had to be used.

[72] There are a number of difficulties with these submissions:

- (1) Quite apart from the fact that the earlier correspondence was unsworn, even Mr. Titarenko for himself prayed in aid the fact that certain times of the year are (as we all know) when people take vacation. The correspondence and evidence do not show that vacation time was being treated as more important than preparing Defences. It is entirely to be expected that in a large organisation, such as the Renova group clearly is, and in a large, international legal team, such as the Applicants clearly had and have, various team members will be on vacation from time to time, especially in standard vacation periods.
- (2) The overall picture Mr. Andrew paints of the Renova group staff members being heavily occupied in reorganising the group's affairs to minimise the effect of the US sanctions is entirely credible. That imposition was as monumental as it was sudden. Equally, the difficulties apparently encountered in finding, instructing and bringing up to speed a new

onshore law firm with the willingness and capability of taking over from Akin Gump are also entirely credible.

- (3) Mr. Crystal criticised Mr. Andrews' evidence for being vague and unparticularised with key details missing, clearly in an effort to persuade the Court that it should not be accepted as true. But there was no evidence filed to contradict Mr. Andrews' account, nor was Mr. Andrews cross-examined on his evidence. Whilst I accept that the Applicants' staff might have made errors of judgment in terms of prioritisation, or been inefficient at times, or indeed that they may have procrastinated, since such imperfections are simply human nature, there is no evidential basis for making any finding that such faults were a predominant cause of the delay. Moreover, where the Court's discretion to grant an extension can be exercised if there are 'good and substantial reasons', it is perfectly in order for a Court to look at and accept a big picture. The evidence as whole must be credible and not so general as to amount to no more than a bare assertion of some shapeless difficulty. But the Court need not engage upon a forensic audit, such as was suggested by Mr. Crystal, to require, for example, evidence as to how much work Akin Gump had actually done and what, if any, attempts had been made to arrange meetings between legal team members and key Renova personnel, and who did or did not do what, or precisely why the Applicants needed to rely upon DLA Piper to get the work done. Mr. Crystal's approach was the classic 'salami-slicing' technique, to make the whole disappear under a thousand cuts. It is, rather, the whole that the Court must keep firmly before its eyes.
- (4) Moreover, the Schedule 4 Claims are lengthy and complex. They involve a number of different individual actors, who are said to have done different things at different times. It would be unrealistic to expect defences to be settled without thorough and well-coordinated discussions between key staff members. Simultaneously, there was also clearly an imperative need to have personnel of the Renova group work urgently to re-arrange its affairs in order to survive the sanctions, without mentioning the ordinary day to day matters that would also inevitably need to continue to be handled. In such circumstances, it is not difficult to see that work in reaction to sanctions should reasonably demand priority.

- (5) The circumstances of this case include that the first extension granted by the Court had been too tight. Mr. Crystal argued that this extension had already accommodated the summer vacation period, and the anticipated time the Applicants would need to change lawyers from Akin Gump to another firm. That is so, but the extension had been granted as an approximation of what could be expected to be reasonable. It was never intended to be a guillotine cut-off date from which no further extension should be granted save for grave reasons.
- (6) In the circumstances as portrayed by Mr. Andrews, which I broadly accept, a request for a further three-month extension was neither unreasonable nor disproportionate. It was not an 'extraordinary' extension as Mr. Crystal submitted it was.
- (7) The reasons why IES Cyprus sought its extension were given in Andrews 2. In essence, service of documents (though not all documents) was purportedly effected upon an alternate director of IES Cyprus at an address in Cyprus other than the company's registered address. The purported service over the summer holiday period was not brought to DLA Piper's attention until 4th September 2018. DLA Piper was engaged to act for IES Cyprus the next day. Steps were then taken to ascertain whether IES Cyprus had been properly served. An acknowledgement of service was filed on its behalf on 24th September 2018, the same day the Renova Parties' BVI law firm was engaged also to act for IES Cyprus. Mr. Andrews says that IES Cyprus was in no better position than the Renova Parties with regard to preparation of its Defence. It sought to proceed by way of obtaining consent to an extension by contacting the legal practitioners for the Abyzov Parties and Mr. Titarenko on 2nd October 2018. IES Cyprus learned on 4th October 2018 that consent would not be forthcoming from the Abyzov Parties and on 5th October that it would not be forthcoming from Mr. Titarenko. It then filed its application for an extension. The timelines mentioned by Mr. Andrews here do not stand out as unusually long, in comparison with many other, indeed far less complicated, matters before this Court. There is nothing in Mr. Andrews' narrative here that suggests any particularly dilatory behaviour. It should also not be forgotten that a claimant generally has an open-ended amount of time (limitation issues aside) in which to prepare a claim. A defendant, on the other hand, must work to a time limit, although it may take him as much effort, and often more, to prepare his defence. Allegations are easily made but not infrequently require considerably more trouble to respond to them.

[73] Mr. Crystal also criticises Mr. Andrews' evidence on the basis that the source for his knowledge, information and belief for the Renova parties' difficulties was the Renova group's in-house lawyer, a Ms. Evgenia Loewe. This, urged Mr. Crystal, had the effect of interposing two layers between the Court and the real source of information, namely the unidentified Renova personnel who were ostensibly dealing with the matters on the ground. The real, ultimate, source had not been identified. Ms. Loewe was herself merely a messenger. Mr. Crystal suggested that this was an abuse that degraded the process of the Court. Mr. Crystal accepted, of course (as he had to) that in this jurisdiction, in interlocutory matters, hearsay evidence is admissible, as long as the source has been identified, as provided by section 75 of the Evidence Act, 2006.¹⁵

[74] That is a complete answer to his criticism. Ms. Loewe was Mr. Andrews' source. Mr. Andrews was required to do no more than identify his source. The Court need not exercise any discretion pursuant to section 55(3) of the Evidence Act as Mr. Crystal had submitted it would have to. The Court's approach to the rule is aptly summarised in **Bancroft Life & Casualty, ICC, Ltd v Telebrands Insurance IC, Limited**.¹⁶ There, the complaint was that an affiant had identified as his source a named United States attorney who acted for the litigant, as well as unnamed associates of the litigant's United States' law firm. The St Lucia High Court (Commercial Division) accepted that this sufficed and stated the position thus:

"[30] It is advisable that legal practitioners, as much as possible, adopt the practice of disclosing the names of individuals providing information and their respective position, when hearsay evidence is adduced in affidavits. I consider this to be best practice, as the court should be satisfied that the person who relayed the information to the deponent would have been in a position to know what is being relayed. It would also assist when assessing credibility and applying weight to such evidence.

[31] However the practice of using generalized descriptions for sources of information in the circumstances of this application is not unusual. I am satisfied that the relevant paragraphs do not offend the applicable provisions of the law so as to warrant removal from the record. I find no difficulty in accepting the affidavits, in the manner presented, having regard to the various exhibits which give credence to the sources of the information."¹⁷

[75] Lest it be said that **Bancroft** is authority for a proposition that the Court is required to have regard to other documentary evidence in order to verify the credence of the information

¹⁵ No. 15 of 2006.

¹⁶ SLUHCV2015/0992 (unreported, delivered 3rd May 2016).

¹⁷ SLUHCV2015/0992 (unreported, delivered 3rd May 2016) at paragraphs [30] and [31] (St Rose-Albertini J(Ag.)).

sources, I do not read any such requirement into that decision. The Court can be satisfied by the circumstances of the case as a whole. Here, there is already a history of Ms. Loewe's involvement as someone who would or should know what had been going on within the Renova group, with no evidence that she is generally to be disbelieved, and in light of the overall likelihood of the difficulties portrayed.

[76] Again, the weight to be given to hearsay evidence is a completely different matter, and therein lies the check and balance inherent in this evidentiary rule.

[77] Mr. Crystal argued that Mr. Andrews' evidence should be given minimal weight because his source Ms. Loewe had been the Renova staff member who had given all the Renova Parties' Certificates of Truth on their pleadings, including in respect of those pleadings in which the Renova parties had advanced radically inconsistent facts that changed their story over time: in other words, Ms. Loewe should be treated as an unreliable source. This however would be a disproportionate conclusion. There is no reason to suppose that Ms. Loewe has been generally wrong, nor evidence that she is fundamentally dishonest, such that nothing she says can be given any credence. This is particularly so, where, as here, neither Mr. Andrews nor Ms. Loewe has been called to give oral evidence and, moreover, there has undeniably been a momentous event (the imposition of the U.S. sanctions) which by its nature and purpose was obviously intended to make it extremely difficult, and indeed impossible, for the prominent Russians affected to do business within a U.S. Dollar context. That these sanctions should have caused the Renova Parties the degree of difficulties that Mr. Andrews says they did has the ring of truth about it.

[78] Mr. Crystal furthermore criticised Mr. Andrews' evidence on the basis that, in places, it amounted to submissions. Mr. Crystal submitted that this was all the more egregious, in that in doing so Mr. Andrews was practising law in the jurisdiction without being admitted to the Roll of legal practitioners, and thus that he was practising law illegally.

[79] In commercial matters there is indeed a frequent tendency for an affiant to drift into making submissions. But the Court is experienced in differentiating submissions (which it should and does ignore, making up its own mind upon the facts) from more nuanced explanations which are fact based but clearly intended ultimately to persuade the Court of a particular position. There is a fine line between the two. In commercial matters, a rigidly compartmentalised

approach, which does no more than state facts, with separate legal submissions being required in order to make them intelligible, rarely assists the Court. A more articulated approach in affidavit evidence generally allows the Court to grasp more quickly and comprehensively what it is a party is trying to convey, why certain facts are being presented and what weight should be given to them. I do not see that Mr. Andrews' evidence, as a whole, was objectionable in this regard.

- [80] In Andrews 1, the 'high points' of criticism that Mr. Andrews was making submissions were that:
- (1) he said that the Applicants and their legal teams had made 'best efforts' to prepare their Defences on time;¹⁸ and
 - (2) he did not consider that any prejudice would be caused to the Abyzov Parties if the extensions sought were granted.¹⁹
- [81] The rest of Andrews 1 can fairly be characterized as a procedural overview of the status of the matter and a description of the difficulties encountered consequent upon the United States sanctions.
- [82] These two points can be characterized as submissions, but they can equally be construed as simply spelling out (in the case the Court might not see it) a factual conclusion that Mr. Andrews proffered to the Court for the Court to decide upon. These two points are easily aspects upon which the Court could make up its own mind. Mr. Andrews' mentioning them is not so egregious that all the rest of his factual and procedural narrative should be excluded. That would be a grossly disproportionate reaction. It would be both procedurally and substantively unjust and unfair.
- [83] Andrews 2 contained slightly more extensive submissions. He made two similar points as identified above.²⁰ He then devoted two paragraphs to argument against positions Mr. Titarenko had taken.²¹ These can simply be disregarded as they do not affect the facts Mr. Andrews recounted elsewhere. Then, Mr. Andrews devotes parts of two further paragraphs to

¹⁸ At paragraph 15.

¹⁹ At paragraph 29.

²⁰ At paragraphs 11(i) and 13(e).

²¹ At paragraphs 14 and 15.

argument on how he thought the Court should approach the applications.²² These can also be ignored, without detracting from any facts Mr. Andrews has elsewhere recounted.

[84] The Applicants' application for relief from sanctions was supported by the Nineteenth Witness Statement of Mr. Andrews ('Andrews 19'). A considerable part of Andrews 19 has both the form and content of submissions. Since the Court finds that the Applicants did not need to apply for relief from sanctions, it is unnecessary to consider which parts of this Witness Statement should be treated as inadmissible. In any event, those parts do not affect the admissibility of facts stated in this Witness Statement.

[85] There is no authority for a proposition that if a witness includes submissions in his statement then the whole statement is to be disregarded. Indeed, CPR 29.5(2) is authority to the contrary. This provides:

"The court may order that any inadmissible, scandalous, irrelevant or otherwise oppressive matter be struck out of any witness statement."

[86] Mr. Crystal's argument that Mr. Andrews was illegally practicing BVI law by making submissions to the Court in his evidence does not assist Mr. Titarenko. The Court was not taken to any authority that the Court ought to enforce the prohibitions contained in the Legal Profession Act, against unadmitted overseas lawyers practising BVI law, by refusing to admit their evidence. The Legal Profession Act provides an express remedy for such breach by way of a prohibition against recovery of costs by such unadmitted foreign lawyers. That is a provision precisely and carefully targeted at overseas lawyers, not at their clients. Indeed, a refusal to admit such evidence would be liable to prejudice the underlying litigant, which would be contrary to the Overriding Objective of dealing with cases justly. There is no law that disqualifies a foreign lawyer from giving evidence as a witness of fact before this Court.

Prospects of success of Defences

[87] Mr. Crystal argued that since the Schedule 4 Defences were defective, the Court should not make orders that would have the effect of aiding and recognising them. Accordingly, he said, the Court should deny extensions of time that would legitimate the Defences that had been filed.

²² At paragraphs 18(b) and (c) and paragraph 19.

- [88] There are two alleged categories of defects. I apprehend the first alleged defect to be that the Certificate of Truth for the Schedule 4 Defences had been given by Ms. Loewe as opposed to by the litigants themselves. The second alleged defect is that a case advanced in the Defences ‘subverted’ an order made by this Court on 15th June 2018.
- [89] A flaw in these arguments is that it ignores that case management of legal proceedings at first instance is a continuous, multi-stage process. The approach advocated by Mr. Crystal would, if taken to its logical conclusion, require the Court to consider and determine, in the context of this application for an extension, disputes about whether or not defences are substantively flawed such that they should effectively be struck out.
- [90] **Swain-Mason** is not authority in favour of such a proposition. There, one of the reasons for the English Court of Appeal’s refusal to allow the re-amendment that the Claimant had sought was that the text of the amendment was ‘so unsatisfactory’.²³ It was an ‘embarrassing’ pleading that was ‘too compressed’ to be ‘worked out’ and advanced ‘two significantly different versions’ of material propositions.²⁴ Upon an application for permission to amend a pleading, or to rely upon an amendment already filed, it is squarely and directly part of the task of the court to assess whether the proposed pleading is sufficiently ‘satisfactory’ to go forward. Upon an application for an extension of time for filing a defence (or other pleading), it is not directly the task of the Court upon that occasion to assess whether the proposed pleading is flawed. There may be instances where a pleading is obviously so defective that the Court should not allow any effect to be given to it, but where the issue of the alleged defect(s) is factually or legally arguable, the Court would generally do no more than consider the application for an extension on its own merits and leave arguments about alleged pleading defects, their procedural and/or substantive consequences, and any appropriate directions that might cure the defects, to a later occasion.
- [91] Neither is **Rose v Rose** authority for a proposition that this Court should conduct an in-depth investigation into the prospects of success of the Defences for which extensions are sought. In **Rose v Rose**, the extension considered was for a belated appeal to be permitted. Clearly if such an appeal would have little or no prospects of success, that would be a relevant factor in

²³ [2011] EWCA Civ.14 at paragraph 107 (Lloyd LJ).

²⁴ Ditto.

deciding whether an extension should be granted. The Court of Appeal cannot sensibly have intended that the extension hearing should transform itself into a mini trial in anticipation of the substantive appeal. Equally, an appeal is quite different from pursuit of a substantive claim in the Court below. Upon appeal, the issues have usually already been narrowed and precisely identified and matters of fact generally treated as settled. In proceedings in the court below, the claim and defences thereto, and then the factual and any expert evidence, are systematically built up so that the Court can hear the evidence and rule upon the rival contentions of law and fact in an orderly way at trial. In proceedings in the court below, parties have greater latitude to improve their respective cases before trial. It would only be in clear cases where the Court would exclude a Defence immediately without more, and without opportunity even to amend it, particularly before a case management conference is held following close of pleadings.

[92] In the present case, I note that there is argument about whether or not alleged defects are indeed defects, and also that a case management conference following close of pleadings is not yet due. It is precisely the purpose of such case management conference to manage the determination of issues such as these. The Defences should be permitted to go forward at least to the case management conference, unless struck out or excluded beforehand on other grounds.

[93] Mr. Crystal advanced an argument that the extension should be denied on grounds that, he submitted, the Renova Parties had been guilty of vexatious conduct.

[94] He identified three alleged examples of vexatiousness:

- (1) in the Renova Parties' approach to an application for an unless order that the Court heard on 27th April 2020 and dismissed on 27th July 2020;
- (2) in the Renova Parties' approach to payment of costs of the appeal that led to the remission to this Court of the extension applications; and
- (3) by pursuing an application known to the parties herein as the 'combined representation application'. In that application the Renova Parties are seeking an order that Mr. Titarenko and companies associated with him should be represented by the same legal practitioners as the Abyzov Parties.

[95] There is in my respectful judgment nothing in these points:

- (1) The fact that the Renova Parties made an application that was unsuccessful does not make an application 'vexatious'. Mr. Crystal did not urge before me that the Court had on that occasion made any finding that that application had been made in bad faith or with a purpose of 'vexing' Mr. Titarenko. Even if such a finding had been made, that does not mean that the Renova Parties should necessarily be denied an extension of time to file a Defence against a billion-dollar claim. Such a ruling would be grossly disproportionate.
- (2) In relation to the costs, the Renova Parties had demonstrated a good explanation why the costs had not immediately been paid (they had been stolen by an on-line interloping imposter). This matter had been the subject of what the parties herein referred to as the 'Debarring Application' by Mr. Titarenko. That application was unsuccessful. Thus, this unsuccessful application was revived under the guise of the vexation argument. It fails for the same reasons as the Debarring Application did.
- (3) Concerning pursuit of the 'combined representation application', that application currently stands part heard. It has yet to be determined. This extension application hearing is not the place to determine whether or not the 'combined representation application' should fail for vexation.

Prejudice

[96] I am satisfied that Mr. Titarenko would suffer no prejudice if the extensions are granted.

[97] On the other hand, the Applicants would be most seriously prejudiced, as they would be deemed to admit billion-dollar claims to which they say they have defences.

Other matters

[98] The Court has been informed by Mr. Titarenko through correspondence dated 6th July 2021, following circulation of this judgment in draft, that Mr. Titarenko has filed an application in which he contends that the grounds of the Remitted Extension Applications are set out in documents which are nullities, and he seeks to have the Remitted Extension Applications struck out ('Mr. Titarenko's July 2021 Application'). I understand Mr. Titarenko's July 2021 Application has been listed for hearing during a Case Management Conference scheduled for further hearing

later this month (July 2021). Subject to the outcome of Mr. Titarenko's July 2021 Application, which has yet to be heard, the Court is persuaded that it should grant the extensions sought.

Disposition

- [99] In the circumstances, the Court is persuaded that it should grant the extensions sought, subject to the outcome of Mr. Titarenko's July 2021 Application.
- [100] Mr. Titarenko shall pay the Applicants' costs of the Renova Parties' application filed on 5th September 2018 and of IES Cyprus's application dated 8th October 2018, to be assessed if not agreed within 21 days.
- 101] The Court expresses its gratitude to the parties for the assistance they have rendered to the Court.

Gerhard Wallbank
High Court Judge

By the Court

Registrar