

EASTERN CARIBBEAN SUPREME COURT
BRITISH VIRGIN ISLANDS

IN THE HIGH COURT OF JUSTICE
(COMMERCIAL DIVISION)

CLAIM NO. BVIHC (COM) 2020/0070

BETWEEN:

COMMERCIAL BANK OF DUBAI

Applicant

And

[1] 18 ELVASTON PLACE LTD

[2] FAIRMONT GRAND HOLDING LTD

Respondents

Appearances:

Ms. Claire Goldstein and Mr. Christopher Pease of Harney Westwood & Riegels
for the applicant

Mr. Tim Prudhoe and Mr. Mikhail Charles, instructed by Simonette Lewis LP for
the first respondent

The second respondent did not appear but Mr. Richard Brown of Carey Olson
made written submissions.

2020: June 10, 16

JUDGMENT

[1] **JACK, J [Ag.]**: On 25th May 2020 I granted a **Black Swan** injunction¹ *ex parte* against the defendants, both of which are BVI companies. The injunction was made in order to assist in the enforcement of a future judgment debt which the claimant bank was seeking to obtain in the courts of the United Arab Emirates

¹ See *Black Swan Investment I.S.A. v Harvest View Limited et al*, BVIHCV2009/0399 (delivered 23rd March 2010).

against a Mr. Khaleefa Butti Omair Yousif Almuhairi, who is generally known as “KBO”. The amount claimed is about US\$245 million.

- [2] On 29th March 2020 the Court of Appeal handed down its judgment in **Broad Idea International Ltd v Convoy Collateral Ltd (“Broad Idea (No 2)”)**.² The Court overruled **Black Swan** and held that only a legislative amendment (which they encouraged) could allow this Court to grant free-standing freezing injunctions in support of foreign court proceedings where no substantive claim was being made inside the jurisdiction.
- [3] The ordinary return date on the injunction is 18th June 2020. However, since **Broad Idea (No 2)** went to the Court’s jurisdiction, Ms. Goldstein very properly sought to bring the matter back before the Court sooner so that this discrete issue of jurisdiction could be dealt with. The first respondent was represented by Mr. Tim Prudhoe and Mr. Mikhail Charles of counsel; Mr. Richard Brown made written submissions on behalf of the second respondent.
- [4] I should say at once that, apart from the jurisdictional issue, I have not revisited the merits or otherwise of the order which I made on 25th May. That will be a matter for the return date. The respondents have indicated that they have multiple objections to the order, including its substantive merits, the need for it in the light of a freezing order already obtained from the English High Court, the evidence (or lack of evidence) of KBO’s ownership of either of the defendants and issues of non-disclosure. These points will all stand to be dealt with on the return date. Accordingly, I am considering solely jurisdiction and what consequential orders I should make if the Court has no jurisdiction.
- [5] This Court is a tribunal with unlimited jurisdiction. Thus, unless and until the order I made on 25th May is discharged, it is binding on the parties to whom it is addressed. Breach is punishable as a contempt of court. The issue with which I am concerned is technically the *power* of the Court to make a **Black Swan** order

² BVIHCMAP2019/0026.

under section 24 of the **Eastern Caribbean Supreme Court (Virgin Islands) Act**,³ which it is agreed is the only source for the Court's power to grant interlocutory injunctions. However, issues of the Court's powers are usually referred to as matters going to the Court's jurisdiction and this is the sense in which I shall use the word.

The issues

- [6] It was common ground between the parties that the effect of **Broad Idea (No 2)** was to overrule **Black Swan**. No one sought to argue that the overruling was not part of the *ratio decidendi*. I agree. The Court of Appeal determined three matters: first, that **Black Swan** was wrongly decided; second, that the defendant BVI company against which the **Black Swan** injunction was granted was not the "money box" of the majority shareholder against whom the substantive cause of action existed, so that the defendant could not be treated as his *alter ego*; and third, that there was no sufficient risk of dissipation. In the light of the second and third holdings, the first holding was not necessary to the Court of Appeal's decision. That, however, is not sufficient to render the Court of Appeal's first holding *obiter*. A judgment can have more than one *ratio decidendi*: see Sir Rupert Cross's arguments in **Cross and Harris on Precedent in English Law**.⁴ The first holding in my judgment was part of the *ratio*.

- [7] There were three matters argued before me:
- (a) Legislation to reverse **Broad Idea (No 2)** and give a statutory basis for **Black Swan** injunctions is imminent, so I should continue the injunctions pending the enactment of the amending Act.
 - (b) I should add KBO as an additional defendant, so that there was an anchor defendant against whom a substantive cause of action lay. This would mean all the elements for an ordinary **Chabra** injunction⁵ were in place.

³ Cap 80, Revised Laws of the Virgin Islands 1991.

⁴ 4th Ed, 1991 at pp 81-84.

⁵ TSB Private Bank International SA v Chabra [1992] 1 WLR 231.

(c) I should stay any order discharging the **Black Swan** injunction pending a leapfrog appeal to the Privy Council.

The imminence of legislation

[8] Turning to the first point, Ms. Goldstein says that the Bar Council is urgently drafting legislation which is likely to be enacted rapidly. Mr. Prudhoe objected to her making this submission without formal evidence being adduced. On this, he is no doubt right. I am, however, well aware that the Commercial Court Users' Group has been debating proposals for an amending Act, because I, like Ellis and Wallbank JJ, have been invited to and have attended the Users' Group's meetings where these proposals have been discussed. I have not, however, played any rôle in formulating proposals or making amendments to the draft circulating of the suggested legislation. If it were necessary, it would be easy for Ms. Goldstein to adduce any evidence she needed.

[9] In my judgment, there are two insuperable objections to continuing the injunction on this basis. The first is that, if the Court does not have jurisdiction to make a **Black Swan** injunction, it does not have the jurisdiction to do so. Now it is true that there are cases where the English Courts have taken the imminence of new legislation into account when deciding whether to grant injunctions. The most recent example is **Re a Company (Injunction to Restrain Presentation of a Petition)**.⁶ The judgment of Morgan J was handed down on 2nd June 2020. The debtor tenant owed rent to the petitioning landlord. Under very recently enacted Covid-19 legislation in the United Kingdom, the debtor could not, during the pandemic, be evicted by process of law. However, that emergency legislation did not suspend a tenant's obligation to pay rent, so it was open to the petitioning creditor to serve a statutory demand for the outstanding rent and then issue a winding-up petition.

[10] There is currently before the United Kingdom Parliament a **Corporate Insolvency and Governance Bill**. This is a Government Bill, the effect of which will be to

⁶ [2020] EWHC 1406 (Ch).

prevent the presentation of a winding-up petition against a company affected by the coronavirus lockdown. It is anticipated that the Bill will achieve Royal Assent by the end of this month. The judge held:⁷

“that when the court is deciding whether to grant relief and, in particular, relief which involves the court controlling or managing its own processes, that it can take into account its assessment of the likelihood of a change in the law which would be relevant to its decision.”

- [11] In deciding to grant the injunction, he relied on three earlier English cases: **Hill v C A Parsons**,⁸ **Sparks v Holland**⁹ and **Travelodge Ltd v Prime Aesthetics Ltd**.¹⁰ The first was a decision of the Court of Appeal, which granted an injunction preventing the defendant employer dismissing the plaintiff employee in breach of contract. Now, there is no doubt that the English courts have the power to grant injunctions to prevent breach of contract. It is simply that the courts will not, and would not then, *generally* do so to enforce a contract of service between employer and employee. The Court of Appeal in exercising its discretion took into account the imminent coming into force of the **Industrial Relations Act 1971**,¹¹ which (a) would have given the plaintiff a right not to be unfairly dismissed and (b) would have prohibited the closed shop agreement with a trade union (to which the plaintiff did not belong) which was the true reason for his dismissal.
- [12] In all three cases, as in the case before Morgan J, there was no doubt that the Court had the jurisdiction to make the order in question. The imminence of fresh legislation was simply a matter to be taken into consideration when deciding whether to grant the injunction.
- [13] The current case is quite different. As a result of **Broad Idea (No 2)**, this Court has no power to grant a **Black Swan** injunction. The fact that legislation might be

⁷ At para [24].

⁸ [1972] Ch 305.

⁹ [1997] 1 WLR 143.

¹⁰ [2020] EWHC 1217 (Ch).

¹¹ 1971 c 72.

passed tomorrow, or next week, or next month giving this Court the power to make such an order is in my judgment neither here or there. Either the Court has a power to do something or it does not. It would be subversive of the rule of law for this Court to assume a power which it does not have on the basis that it might acquire such a power in the future. That the Court might have a power tomorrow, does not give it that power today. Accordingly, I hold that the imminence of possible legislative change does not give the Court the power to grant, as at today's date, a **Black Swan** injunction.

[14] Even if I were wrong in that conclusion, there is at present insufficient evidence that legislation to amend the **Supreme Court Act** is imminent. The current position is that the Bar Council is keen for a Bill to be introduced. The Commercial Court Users' Group is drafting the proposed amendment. The drafting has not yet been finalised. The Attorney-General has not yet indicated his support for the draft currently being circulated. The matter has not been broached before the Cabinet. The Government have not yet indicated a view on whether it would support such legislation. No timetable for enacting the legislation exists, so far as I am aware. It may be many months before legislation is enacted — or it may never be enacted at all, if the Government took the view that the Privy Council should decide whether **Broad Idea (No 2)** was correct in overruling **Black Swan**, before the BVI legislature is troubled with new legislation.

[15] Accordingly, even if I had the power to disregard my want of jurisdiction, it would in my judgment be inappropriate to extend the order. There are just too many steps to be taken and too many uncertainties before I could be satisfied that legislative change is imminent.

Adding KBO as an additional defendant

[16] The Court of Appeal in **Broad Idea (No 2)** did not seek to question the **Chabra** jurisdiction. Under its **Chabra** power the Court has jurisdiction to grant a freezing order against a non-cause of action defendant, so long as there is a defendant to the action against whom a cause of action does lie. The Court of Appeal's

criticism of **Black Swan** was that there was no cause of action defendant. The question therefore arises whether it may be possible to add KBO as an additional defendant, so as to cure the defect in the **Black Swan** proceedings and turn the current action into a claim for **Chabra** relief.

[17] I am told that, before Bannister J handed down his judgment in **Black Swan**, it was usual for claimants to add as one of the defendants the cause of action defendant (in other words, the defendant against whom a judgment in foreign proceedings would be obtained). I was not shown any judgment which discussed this procedure. Nor do I know what cause of action the claimants brought against the cause of action defendant or how service was affected (if it was).

[18] CPR 19.2(3) provides:

“The court may add a new party to proceedings without an application if—
(a) it is desirable to add the new party so that the court can resolve all the matters in dispute in the proceedings; or
(b) there is an issue involving the new party which is connected to the matters in dispute in the proceedings and it is desirable to add the new party so that the court can resolve that issue.”

[19] In my judgment, both limbs potentially apply. Unless KBO is added as an additional party, the Court can for want of jurisdiction determine nothing in relation to the two BVI companies (for example, whether it is an asset of KBO, the putative foreign judgment debtor), so (a) is made out. Further KBO’s beneficial ownership of the two companies is a key issue, so (b) is also established.

[20] This raises the question: what is the cause of action against KBO, in respect of which he should be added as a defendant? The most obvious cause of action would be the claim to the debt said to be owed by KBO to the claimant. There are two problems with this. Firstly, that matter is already being litigated in the UAE. Secondly, that claim has no connection with this jurisdiction, apart from the bank’s

desire in due course to enforce any future UAE judgment in this jurisdiction against the existing BVI defendants.

[21] These are very powerful grounds on which to hold that the BVI are not the *forum conveniens* for determining the claim against KBO. That, however, is not in my judgment a sufficiently good reason for which to refuse to add KBO as an additional defendant. He needs to be added, because he is a necessary party to a claim for **Chabra** relief. The fact that the claim on the loans will be tried in the UAE rather than here is of little weight. It would be easy to stay the claim here against KBO until the UAE proceedings are concluded.

[22] The greater problem is one of service. The underlying debt claim here is not one for which permission to serve outside the jurisdiction can be made. It does not fall under the only relevant gateway, CPR 7.3(3) (a contract with a relevant connection with the jurisdiction). Alternative service out of the jurisdiction under CPR 7.8A is thus not available.

[23] Could service be affected within the jurisdiction? Obviously, KBO is not present in the BVI, so ordinary personal service is not available under CPR 5.1(1). In **Starr Investments Cayman II Inc v Ou Wen Lin and another**¹² service was being affected through the **Hague Convention**¹³ on a defendant in the People's Republic of China. I was dealing with an application to extend the validity of the claim form. As a result of the coronavirus, the Foreign Office team dealing with foreign service had been disbanded, so that service under the **Hague Convention** had ground to a halt. I therefore considered what other means of service might be available. Alternative service under CPR 7.8A is not available on defendants domiciled in the People's Republic: CPR 7.8A(4)(d) and (5).

[24] I held:

¹² BVIHC (COM) 2018/0225 (delivered 8th June 2020).

¹³ Convention of 15th November 1965 on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters.

"[5] ...Under the overriding objective, the Court must ensure that cases are 'dealt with expeditiously': CPR 1.1(2)(d). It is not satisfactory simply to adjourn the return date repeatedly. Where there are difficulties in effecting service, the classic response is to make an order for alternative or specified service under either CPR 5.13, 5.14 or 7.8A. The Court also has a power to dispense with service completely: CPR 7.8B...

[7] Looking first at alternative or specified service, the easiest form of service of the applications would be at an address within the jurisdiction. Now CPR 5.13 deals with alternative service, which in the Eastern Caribbean is an *ex post facto* authorisation of a form of service chosen by the claimant. In the current case, the applicant has made no attempt to serve by an alternative method chosen by itself, so at present the rule has in my judgment no application.

[8] CPR 5.14 deals with 'service by a specified method'. This more closely resembles the English order for alternative service (English CPR 16.5) in that the order is made *before* service is attempted. The Court determines the method by which service is to be effected. Although this rule does not itself refer to service outside the jurisdiction, CPR 5.4 requires a claim form to be served at a place within the jurisdiction '[e]xcept as permitted by Part 7'.

[9] Is specified service within the jurisdiction available in the current case under CPR 5.14 and 5.4? The registered agent of China Medical is Vistra (BVI) Ltd ('Vistra'). In order for the Court to order that service on Vistra be good service, the applicant would need to file an affidavit 'showing that that method of service is likely to enable the person to be served to ascertain the contents of the claim form and statement of claim': CPR 5.14(2)(b). Given that the second respondent is the sole shareholder of China Medical, Vistra may, as part of its 'know-your-client' duties, be able to pass documents on to the second defendant. Thus, the applicant may be able to provide such evidence. Specified service *within* the jurisdiction may thus be available."

[25] At common law, the only form of service available was personal service within the jurisdiction. Permission to serve out of the jurisdiction in limited circumstances was first permitted by sections 18 and 19 of the **Common Law Procedure Act 1852**¹⁴. The gateways were subsequently included in the (English) **Rules of the Supreme Court** and gradually expanded during the twentieth century. This was considered a potential encroachment on the sovereignty of the foreign state in

¹⁴ 15 & 16 Vict c 76.

which process was to be served, so that the jurisdiction was considered to be an “exorbitant” one to be exercised narrowly.

- [26] Further, if a defendant was served within the jurisdiction, there was no power to stay the action on the basis that some foreign court was a more appropriate jurisdiction. It was only with the House of Lords decision in **The Spiliada**¹⁵ in 1986 that the doctrine of *forum non conveniens* was finally introduced from Scotland. As Lord Wilberforce pointed out,¹⁶ the “Latin tag” was really a matter of determining “the suitability or appropriateness of the relevant jurisdiction” — what one might now-a-days describe as a case management function.
- [27] In the current century, the old approach is no longer sustainable. As Lord Sumption JSC said in **Abela v Baadarani**¹⁷, a case involved with service of English proceedings on a defendant in the Lebanon:

“53. In his judgment in the Court of Appeal, Longmore LJ described the service of the English court’s process out of the jurisdiction as an ‘exorbitant’ jurisdiction, which would be made even more exorbitant by retrospectively authorising the mode of service adopted in this case. This characterisation of the jurisdiction to allow service out is traditional, and was originally based on the notion that the service of proceedings abroad was an assertion of sovereign power over the defendant and a corresponding interference with the sovereignty of the state in which process was served. This is no longer a realistic view of the situation. The adoption in English law of the doctrine of *forum non conveniens* and the accession by the United Kingdom to a number of conventions regulating the international jurisdiction of national courts, means that in the overwhelming majority of cases where service out is authorised there will have been either a contractual submission to the jurisdiction of the English court or else a substantial connection between the dispute and this country. Moreover, there is now a far greater measure of practical reciprocity than there once was. Litigation between residents of different states is a routine incident of modern commercial life. A jurisdiction similar to that exercised by the English court is now exercised by the courts of many other countries. The basic principles on which the

¹⁵ *Spiliada Maritime Corporation v Cansulex Ltd* (“The Spiliada”) [1987] AC 460, although the decision was foreshadowed in *The Abidin Daver* [1984] AC 398.

¹⁶ At p 474.

¹⁷ [2013] UKSC 44, [2013] 1 WLR 2043.

jurisdiction is exercisable by the English courts are similar to those underlying a number of international jurisdictional conventions...”

[28] Lord Neuberger PSC held:

“33. The question is whether the judge was entitled to hold that there was a good reason to order that the delivery of the documents to Mr Azoury [the defendant’s Lebanese lawyer] on 22 October 2009 [in the Lebanon] was to be treated as good service. Whether there was good reason is essentially a matter of fact. I do not think that it is appropriate to add a gloss to the test by saying that there will only be a good reason in exceptional circumstances. Under CPR r 6.16 [our CPR 7.8B], the court can only dispense with service of the claim form ‘in exceptional circumstances’. CPR r 6.15(1) [our CPR 5.14 and 7.8A] and, by implication, also 6.15(2) [our CPR 5.13] require only a ‘good reason’. It seems to me that in the future, under rule 6.15(2), in a case not involving the **Hague Service Convention** or a bilateral service Treaty, the court should simply ask whether, in all the circumstances, there is good reason to order that steps taken to bring the claim form to the attention of the defendant is good service.

34. This is not a case in which the **Hague Service Convention** applies or in which there is any bilateral service convention or treaty between the United Kingdom and Lebanon. In the courts below, the case was argued throughout on that basis and, although there was a hint in the argument before this court that that might not be the case, it was accepted that the appeal should be determined on that basis. It follows that an alternative service order does not run the risk of subverting the provisions of any such convention or treaty: cf the reasoning of the Court of Appeal in **Knauf UK GmbH v British Gypsum Ltd**¹⁸ and **Cecil v Bayat**.¹⁹ In particular, Rix LJ suggested at para 113 of the latter case that it may be that orders permitting alternative service are not unusual in the case of countries with which there are no bilateral treaties for service and where service can take very long periods of up to a year. I agree. I say nothing about the position where there is a relevant convention or treaty.

35. As stated above, in a case of this kind the court should simply ask itself whether, in all the circumstances of the particular case, there is a good reason to make the order sought. It should not be necessary for the court to spend undue time analysing decisions of judges in previous cases which have depended on their own facts.”

¹⁸ [2001] EWCA Civ 1570, [2002] 1 WLR 907 at para [46]-[59].

¹⁹ [2011] EWCA Civ 523, [2011] 1 WLR 3086 at para [65]-[68], [113].

[29] It would follow that in appropriate cases, it may be possible to make an order that someone like KBO may be served within the jurisdiction by specified service under CPR 5.14 on the registered agent of the BVI defendants who would, but for **Broad Idea (No 2)**, have been subject to a **Black Swan** injunction. The claim against KBO could then immediately be stayed, pending the outcome of the proceedings in the UAE.

[30] It should be noted that Lord Neuberger took a pragmatic approach to service:

“37. Service has a number of purposes but the most important is to my mind to ensure that the contents of the document served, here the claim form, is communicated to the defendant. In **Olafsson v Gissurason (No 2)**²⁰ I said, in a not dissimilar context, that

‘...the whole purpose of service is to inform the defendant of the contents of the claim form and the nature of the claimant’s case: see eg **Barclays Bank of Swaziland Ltd v Hahn**²¹ per Lord Brightman, and the definition of “service” in the glossary to the CPR, which describes it as “steps required to bring documents used in court proceedings to a person’s attention...”’

I adhere to that view.

38. It is plain from... his judgment... that the judge [at first instance] took account of a series of factors. He said that, most importantly, it was clear that the respondent, through his advisers was fully apprised of the nature of the claim being brought. That was because... the respondent must have been fully aware of the contents of the claim form as a result of it and the other documents having been delivered to his lawyers on 22 October in Beirut and communicated to his London solicitors and to him. As Lewison J said...:

‘The purpose of service of proceedings, quite obviously, is to bring proceedings to the notice of a defendant. It is not about playing technical games. There is no doubt on the evidence that the defendant is fully aware of the proceedings which are sought to be brought against him, of the nature of the claims made against him and of the seriousness of the allegations.’

I agree.”

²⁰ [2008] EWCA Civ 152, [2008] 1 WLR 2016 at para [55].

²¹ [1989] 1 WLR 506 at p 509.

- [31] It could be said that the UK Supreme Court approved a test that the proof of the pudding is in the eating. If service did in fact result in the proceedings coming to the attention of the defendant, then the courts should lean in favour of finding the service good.
- [32] A corollary of this approach is that the traditional view may need to be revisited that personal service is the Gold Standard by which to judge whether service has been effected as a matter of law. In a case like **Gorbachev v Grigoryevich**²² the Russian defendant, who claimed to speak little English, was going to his car surrounded by his “associates”. The process servers attempted to serve him with a claim for just under £1 billion sterling. The associates hustled the defendant into the car. The process server put the papers to be served on the ground beside the car just before it sped off. The whole process seems to have taken seconds rather than minutes. Now that was held to be good service, but it may be doubted whether it was as effective in bringing the details of the case to the defendant’s attention as an order for specified service would have been.
- [33] Ms. Goldstein, however, did not wish to make any application to add KBO so as to seek (at least ostensibly) a money judgment on the Dubai debt claim. She clearly felt that there were insuperable objections to adding the debt claim against KBO to the current proceedings, although it was unclear what these were. I therefore do not need to consider this aspect of the case further. She did indicate that the bank might wish to start separate proceedings against KBO. Whether such proceedings would be an abuse of process is not something which is before me.
- [34] The application Ms. Goldstein did wish to make was to add KBO as a defendant to a claim for enforcement of any UAE judgment which may be obtained. She then wanted leave to serve the claim on KBO outside the jurisdiction under CPR 7.3(5), which allows such service “if a claim is made to enforce any judgment... which was made by a foreign court... and is amenable to be enforced at common law.”

²² [2019] EWHC 2684 (Comm).

The difficulty, it seems to me, is that this gateway requires there to be an existing judgment, which is to be enforced. At present, the bank has not obtained a judgment against KBO in the UAE. Ms. Goldstein argued that the rule also encompassed enforcement of a future judgment, but that in my judgment is an impossible construction of the wording of the rule. There has to be a judgment which “*is amenable* to be enforced”, not a judgment which “*will be amenable* to be enforced”.

[35] During argument, it was suggested that a claim could be made against KBO on *quia timet* grounds. It is true that, when the Court grants a *quia timet* injunction, the cause of action has not yet accrued. The whole purpose of the grant of the injunction is to prevent the defendant breaching some legal duty to the claimant in the future. However, Ms. Goldstein was able to point to no authority where a money judgment could be sought on a *quia timet* basis. In my judgment it cannot be.

[36] Whilst writing this judgment, it occurred to me that there might be scope for a claimant, such as the bank here, to seek a declaration that a judgment would be enforceable as and when it was delivered by the foreign court. The point was not, however, argued before me and I am aware that there is a lot of law about declaratory claims and declaratory judgment. Further whether there was any gateway for service outside the jurisdiction of a claim for a declaration is unclear. I shall therefore say nothing further about declaratory judgments.

[37] Accordingly, I refuse Ms. Goldstein’s application to add KBO as a defendant for the purpose of enforcing any UAE judgment and refuse her application to serve the amended claim out of the jurisdiction under CPR 7.3(5).

A leapfrog appeal to the Privy Council

[38] In the event that she lost on the first two points, Ms. Goldstein indicated that her client would wish to appeal. Given that the Court of Appeal had given a definitive ruling in **Broad Idea (No 2)**, what she would seek is permission for a leapfrog

appeal to the Privy Council. There would be no point going to the Court of Appeal first. Permission to appeal to the Privy Council is not, however, something which I can grant. She must seek permission elsewhere.

- [39] Ms. Goldstein sought a stay of execution pending an appeal. As to the test which I should apply in deciding whether to grant a stay, the leading English authority is **Novartis AG v Hospira UK Ltd (Practice Note)**²³, the headnote of which reads:

“Where a claimant appeals against a first instance decision and seeks an interim injunction to restrain the defendant pending appeal from acting in accordance with that decision the following principles apply. (1) The court has to be satisfied that the appeal has a real prospect of success. (2) If the court is so satisfied it will not usually be useful to attempt to form a view as to how much stronger the prospects of appeal are, or to attempt to give weight to that view in assessing the balance of convenience. (3) It does not automatically follow from the fact that an interim injunction has or would have been granted pre-trial that an injunction pending appeal should be granted. The court has to assess all the relevant circumstances. following judgment, including the period of time before any appeal is likely to be heard and the balance of hardship to each party if an injunction is refused or granted. (4) The grant of an injunction is not limited to the case where its refusal will render an appeal nugatory, which merely represents the extreme end of a spectrum of possible factual situations in which the injustice to one side is balanced against the injustice to the other. (5) As in the case of the stay of a permanent injunction which would otherwise be granted to a successful claimant, the court should endeavour to arrange matters so that the Court of Appeal is best able to do justice between the parties once the appeal has been heard.”

- [40] Our Court of Appeal in the headnote to **C-Mobile Services Ltd v Huawei Technologies Co Ltd**²⁴ might appear on one reading to disagree with point (2) of **Novartis**. The headnote says that “the court should also take into account the prospect of the appeal succeeding, but only where strong grounds of appeal or a strong likelihood the appeal will succeed is shown.” One reading of this might be that Blenman JA considered that the existence of “strong grounds” or a “strong likelihood” was a jurisdictional threshold to the grant of a stay. However, at para

²³ [2013] EWCA Civ 583, [2014] 1 WLR 1264.

²⁴ BVIHCMAP 2014/0017 (delivered 2nd October 2014).

[52] of her judgment she lays emphasis on the fact that Pereira CJ had granted leave to appeal. This showed, she held, that “C-Mobile’s case in the substantive appeal is at the minimum arguable.” That, on my reading of her judgment, was sufficient to give the Court of Appeal jurisdiction to grant a stay. Because of the irreparable harm which might be caused in that case by a refusal of a stay (the case concerned the appointment of a liquidator over C-Mobile), the Court of Appeal went on to grant the stay.

[41] The reference to “strong grounds of appeal or a strong likelihood [of success]” comes from authority cited by Mostyn J in a family case in England to which Blenman JA refers.²⁵ This judgment of Mostyn J in turn cited a decision of Ma J (as he then was) in the Hong Kong Court of First Instance²⁶, who in turn cited (the citation from the citation from the citation) what he himself had said in **Star Play Development Ltd v Bess Fashion Management Company Ltd**.²⁷ The relevant passage (omitting yet further citations) reads:

“(5) How relevant then is the court’s consideration of the merits or strength of the appeal? In my view, while it is impractical and even undesirable for the court in dealing with an application for a stay of execution, to go deeply into the merits and strengths of an appeal, it must however form a preliminary view of these aspects...

(6) The existence of merely an arguable appeal cannot *by itself* amount to sufficient reason to justify a stay. It can be put this way: the existence of an arguable appeal (that is, one with reasonable prospects of success) is the minimum requirement before a court would even consider granting a stay. In other words, however exceptional the circumstances may be otherwise justifying a stay of execution, if the court is not convinced that there exist arguable grounds of appeal, no stay will be granted.

(7) Conversely, however, the existence of a strong appeal or a strong likelihood that the appeal would succeed, will usually by itself enable a stay to be granted because this would constitute a good reason for a stay.”

²⁵ NB v London Borough of Haringay [2011] EWHC 3544 (Fam), [2012] 2 FLR 125. Blenman JA’s reference is at para [44] of her judgment.

²⁶ Wenden Engineering Service Co Ltd v Lee Shing Yue Construction Co Ltd [2002] HKCFI 147.

²⁷ HCA No 4726 of 2001 (determined 7th June 2002) at para [6]-[10].]

[42] In my judgment, this fuller quotation shows that Blenman JA was not intending to take an approach different to that taken in **Novartis**. This has the happy consequence that I do not need to consider whether **Broad Idea (No 2)** was correctly decided or not, or whether the grounds for an appeal were “strong” or had “a strong likelihood of success”. That is simply not the task of a first-instance judge. It would put me in an invidious position if I had to consider the correctness of the Court of Appeal’s decision. What I should do is consider whether there are properly arguable grounds for an appeal to the Privy Council and then carry out the balancing exercise required by all the authorities cited above in deciding whether to grant a stay.

[43] At the heart of the decision in **Broad Idea (No 2)** is the Court of Appeal’s view that Bannister J, when he decided **Black Swan**, was bound by the majority decision in **Mercedes-Benz AG v Leiduck**²⁸, so that he should not have followed Lord Nicholls’ minority view:

“[35] In the Eastern Caribbean, as in many jurisdictions with a common law legal system, the principle of stare decisis or the doctrine of precedent is a fundamental pillar. The principle is essentially that lower courts are bound to follow the decisions of higher courts. The principle is aptly explained by Lord Neuberger in **Willers v Joyce and another**²⁹ in the following way:

‘In a common law system, where the law is in some areas made, and the law is in virtually all areas developed, by judges, the doctrine of precedent, or as it is sometimes known stare decisis, is fundamental. Decisions on points of law by more senior courts have to be accepted by more junior courts. Otherwise, the law becomes anarchic, and it loses coherence clarity and predictability.’

At first blush, it is passing strange that the learned judge in **Black Swan** relied principally on the dissenting judgment of Lord Nicholls in **Mercedes-Benz** in arriving at his conclusion. To my mind, there is no doubt that the

²⁸ [1996] AC 284.

²⁹ Also known as *Re Gubay (Deceased) (No 1)* [2016] UKSC 43, [2018] AC 779, [2017] 2 All ER 383 at para [4]

majority judgment of Lord Mustill contains the *ratio decidendi* of the decision of the Privy Council, which is the highest court of the BVI. In so far as the learned judge preferred the dissenting judgment of Lord Nicholls to the majority judgment, and relied on it in arriving at his decision, I am constrained to hold that although the policy reasons are well understood, this was not a course of action open to him.”

[44] In this the Court of Appeal followed its decision in **Broad Idea (No 1)**³⁰ where Farara JA held:

“[23] The decisions from the cases are not as uniform when the court is considering a decision from another jurisdiction that also has the Privy Council as its final court of appeal. Mr. McGrath QC [counsel for the claimant] referred to the 2008 decision of the Court of Final Appeal of Hong Kong in **A Solicitor v the Law Society of Hong Kong**³¹ where Hong Kong’s final Court of Appeal decided that decisions of the Privy Council from other jurisdictions were not binding in Hong Kong. On the other hand, there is the long standing Privy Council decision of **Fatuma Binti Mohamed Bin Salim Bakhshuwen v Mohamed Bin Salim Bakhshuwen**³² where the Board decided that its previous decisions on the question of Mohammedan law on appeals from India were binding on the Court of Appeal of East Africa. The **Bakhshuwen** case has never been overruled. Finally, this Court recently decided in **Allen Chastanet v Ernest Hilaire**³³ that decisions of the Privy Council from another jurisdiction in the Eastern Caribbean on the same point of law are binding. In my opinion the same principle applies in this case because the Privy Council’s decision in **Mercedes-Benz** is from Hong Kong which is a common law jurisdiction and the point of law that was settled by the Board’s decision is substantially the same point as is before this court. Further, this Court has already decided that **Mercedes Benz** is binding.³⁴”

[45] **Bakhshuwen** concerned the validity of a wafk make in East Africa. A wafk is a type of perpetual trust established for charitable purposes, but under which members of the settlor’s family can receive benefits. In **Abdul Fata Mahomed**

³⁰ *Convoy Collateral Ltd v Broad Idea International Ltd and another* HVIHCMAP 2016/0030 (delivered 30th March 2020).

³¹ [2008] HKCFA 15, [2008] 2 HKLRD 576, (2008) 11 HKCFAR 117, CACV No. 107 of 2005.

³² [1952] AC1.

³³ *SLUHCVP2019/0005* (delivered 16th January 2020, unreported).

³⁴ *Yukos CIS Investments Limited and another v Yukos Hydrocarbons Investments Limited and others; Brittany Management Ltd* HCVAP 2010/028 (delivered 26th September 2011, unreported).

Ishak v. Russomoy Dhur Chowdhry³⁵ the Privy Council on appeal from India held that there had to be a genuine (rather than merely notional) charitable intent. If the waqf was in truth for virtually the sole benefit of the family members, the waqf was void. In **Bakhshuwen** the Privy Council said:

“[I]t has not been suggested that, apart from the differences existing among the Shafi, Hanafi and other sects, which have no present significance, Mohamedan law is not the same in East Africa as in India. The appellants have themselves relied on its universality and invoke the text of the Koran and the writings of learned commentators who expounded the law not of East Africa or any part of it but of the whole Muslim world. In these circumstances their Lordships are as little justified in reviewing **Abdul Fata's** case in an appeal from the courts of Kenya as they would be in an appeal (if that were now possible) from the courts of India.”

In other words, because Islamic law was the same in India as in Kenya, the Privy Council's decision on this aspect of Islamic law was necessarily the same on appeal from both jurisdictions.

[46] Our Court of Appeal in **Broad Idea (No 1)** do not seem to have investigated whether Hong Kong law is the same as BVI law, but rather seem to have assumed that that is the case. In **Allen Chastanet v Ernest Hilaire** the Court of Appeal were able to say that the common law of the Eastern Caribbean did not vary from one member state and territory to another, so that Privy Council decisions from one state or territory were binding in all member states and territories (bar the Commonwealth of Domenica, whence final appeals go to the Caribbean Court of Justice). However, that was easy for the Court of Appeal to determine, since they heard all such cases in the Eastern Caribbean at second instance.

[47] Ms. Goldstein points out that the **Interpretation Act**³⁶ in this jurisdiction has an express canon of statutory construction requiring a teleological approach to construction. It is unclear whether Hong Kong had a similar statutory term. If it

³⁵ (1894) LR 22 IA 76.

³⁶ Cap 136, section 42(1), Revised Laws of the Virgin Islands.

does not then, a different construction of our **Supreme Court Act** may be appropriate.

- [48] The Court of Appeal may of course be well justified in making the assumption that the relevant Hong Kong and Eastern Caribbean law were the same and it is of course what they decided. However, if the matter does go to the Privy Council, there may be two points in addition to those argued before the Court of Appeal which may stand to be taken by the appellants. The first is in relation to the question whether Hong Kong law is in fact the same as BVI law. The position in relation to Australia is potentially relevant to this. The second is as to the way in which the law of freezing orders has developed since its invention in the **Mareva** case in 1975.³⁷

Australian law

- [49] So far as Australian law is concerned, there was in the nineteenth century a question as to how English law had been received into the new colony of New South Wales. Where an empty land was settled by the English, the settlers were taken to bring with them their birthright of English law.³⁸ Now Australia was³⁹ considered to be unsettled land. However, the convicts on the First Fleet could hardly be described as volunteer settlers cheerily carrying their English law heritage with them. Further the Naval, Marine and Army personnel with them were all under orders rather than being there by choice.⁴⁰ A United Kingdom Statute of 1828⁴¹ provided for the reception in New South Wales and Van Diemen's Land (now Tasmania) of English law and statutes as at 25th July 1828. However, even at an early stage English law was not always applied without changes for local conditions.

³⁷ *Mareva Cia Naviera SA v International Bulkcarriers SA* ("The Mareva") [1980] 1 All ER 213; [1975] 2 Lloyd's Rep 509.

³⁸ See the discussion in *VTB Bank v Micccros Ltd BVIHC (COM) 2018/0067* (delivered 26th January 2020) at para [46]ff.

³⁹ Erroneously: see *Mabo v Queensland (No 2)* (1992) 175 CLR 1.

⁴⁰ The position that English law had been brought over with the First Fleet was only established in *Cooper v Stuart* (1889) 14 App Cas 289.

⁴¹ 9 Geo IV c 83.

[50] Shortly after the passing of that Act, three men, Farrell, Dingle and Woodward were tried in Sydney for offences arising from burgling of the premises of the Bank of Australia in 1823 and stealing £12,000 in banknotes. Farrell and Dingle, together with at least one other man, Blaxstone, had crawled down one of Sydney's main sewers and then dug through the foundations of various houses to reach the bank premises, which they then broke into. Woodward laundered £1,000 of the £12,000 stolen. An initial criminal investigation came to nothing. Subsequently, however, Blaxstone was convicted of a separate felony. His sentence of death was commuted to fourteen years transportation to Norfolk Island (the penal colony for recidivists with a very harsh regime). At that point, he offered to turn King's Evidence in relation to the 1823 bank heist.

[51] At trial, counsel for the prisoners took objection to the competence of Blaxstone, as a convicted felon, to give evidence. They relied on the English case of **Rex v Patrick Murphy and others**⁴², where the evidence against the prisoners was to be given by one Gully. Gully was a convicted felon, but held a promise of a pardon given under the Royal Sign Manual. The Old Bailey Sessions (Willes J and Serjeant Glynn, the Recorder of London) held that a felon was not competent to give evidence: his blood was attainted. A promise of pardon, even one signed by the King, was insufficient. Only a pardon given under the Great Seal would render him a competent witness. (Passing any document under the Great Seal was very expensive, in part because of the fees payable to the holders of sinecures associated with the Great Seal,⁴³ so it is not surprising that a convicted felon could not afford to obtain such a pardon.) Accordingly, the prisoners were acquitted, because the only witness against them was not competent to give evidence.

⁴² Reported as *Rex v William Gully* (1773) 1 Leach 98, although Gully was the witness whose evidence was held inadmissible.

⁴³ In 1833 the holders of the sinecures of chaff wax and of the sealer received fees of £1,272.15s.5d and £797.16s.9d respectively: House of Commons Committee Reports 1834 Vol VI, Appendix 1 to the Report of the Committee on Sinecures. The sinecures were abolished by the Lord Chancellor's Pension Act 1832 (2 & 3 Will IV c 111), but only on the death of the holder of the office: see sections 1 and 2.

[52] The Supreme Court of New South Wales (Stephen and Dowling JJ, Forbes CJ dissenting) sitting as the Court of Crown Cases Removed held that this rule could not sensibly be applied to a penal colony such as New South Wales: there would otherwise be no competent witnesses to many crimes. Blaxstone's evidence was thus properly admitted at his trial.⁴⁴

[53] Now it is true that during the nineteenth century, the courts of Australia considered themselves bound by English precedent. This reached its apogee in **Robins v National Trust Co**⁴⁵, when Lord Dunedin, giving the advice of the Privy Council held:

“[The House of Lords] is the supreme tribunal to settle English law, and that being settled, the Colonial Court, which is bound by English law, is bound to follow it. Equally, of course, the point of difference may be settled so far as the Colonial Court is concerned by a judgment of this Board.”

[54] However, in 1963 the High Court of Australia in **Parker v The Queen**⁴⁶ held that it was not bound by decisions of the House of Lords. This was followed by legislation in 1968 and 1975⁴⁷, restricting appeals from the Federal Courts to the Privy Council.⁴⁸ The Commonwealth Parliament had no power to restrict appeals to the Privy Council from state courts, so until the final abolition of appeals to the Privy Council by the **Australia Act 1986**⁴⁹ litigants in state courts had a choice whether to appeal to the High Court or to the Privy Council.

[55] In the meantime, the Privy Council held that Australian courts were entitled to develop the common law to suit local conditions. In **Australian Consolidated**

⁴⁴ Rex v Farrell, Dingle and Woodward (1831) 1 Legge 5.

⁴⁵ [1927] AC 515 at p 519.

⁴⁶ 111 CLR 610.

⁴⁷ Privy Council (Limitation of Appeals) Act 1968 (Cth) (No 36, 1968), Privy Council (Appeals from the High Court) Act 1975 (Cth) (No 33, 1975), Laws of the Commonwealth of Australia.

⁴⁸ Section 74 of the Commonwealth of Australia Constitution Act 1900 (63 & 64 Vict c 12) had always restricted appeals from the High Court in constitutional matters.

⁴⁹ 1986 c 2 (UK) section 11. Mirror legislation was passed by every state parliament and the Commonwealth.

Press Ltd v Uren⁵⁰ the Privy Council had to consider whether the limitations then recently imposed by the House of Lords in **Rookes v Barnard**⁵¹ on exemplary damages for libel applied in Australia. It concluded that they did not. Australian common law was different to English common law.

- [56] This right to go a separate way to England was applied to statutory construction in **Geelong Harbor Trust Commissioners v Gibbs Bright & Co**⁵². There a harbour authority claimed a statutory tort (which arguably imported at least an element of strict liability) against a ship-owner for damage to the docks caused by the ship-owner's ship. The statute was modelled on UK legislation, which had been considered by the House of Lords in 1877 and the High Court of Australia in 1914,⁵³ but the High Court in the decision under appeal had refused to follow these earlier authorities. The Privy Council held:⁵⁴

"Apart from those factors which are special to the particular field of law in the instant case, there is however a wider consideration which would make their Lordships reluctant to interfere with the decision of the High Court on a matter of this kind. If the legal process is to retain the confidence of the nation, the extent to which the High Court exercises its undoubted power not to adhere to a previous decision of its own must be consonant with the consensus of opinion of the public, of the elected legislature and of the judiciary as to the proper balance between the respective roles of the legislature and of the judiciary as lawmakers. Even among those nations whose legal system derives from the common law of England, this consensus may vary from country to country and from time to time. It may be influenced by the federal or unitary nature of the constitution and whether it is written or unwritten, by the legislative procedure in Parliament, by the ease with which parliamentary time can be found to effect amendments in the law which concern only a small minority of citizens, by the extent to which Parliament has been in the habit of intervening to reverse judicial decisions by legislation; but most of all by the underlying political philosophy of the particular nation as to the appropriate limits of the lawmaking function of a non-elected judiciary.

⁵⁰ [1969] 1 AC 590.

⁵¹ [1964] AC 1129.

⁵² [1974] AC 810.

⁵³ *River Wear Commissioners v Adamson* 2 App Cas 743; *Townsville Harbour Board v Scottish Shire Line Ltd* 18 CLR 306.

⁵⁴ At pp 820-821.

The High Court of Australia can best assess the national attitude on matters such as these. Their Lordships would not regard it as proper for them in the instant case to interfere with the decision which the High Court reached to abstain from altering the law in Australia from what it had previously been understood to be.”

[57] The Privy Council, hearing any appeal from **Broad Idea (No 2)**, might in my judgment consider that **Black Swan** represented (at least until the decisions in **Broad Idea (No 1) and (No 2)**) “the consensus of opinion of the public, of the elected legislature and of the judiciary” in the BVI. It is noticeable that the Court of Appeal were not adverse to there being a **Black Swan** jurisdiction. Its concern was that there should be a statutory, rather than merely a common law, underpinning to the jurisdiction. The Court of Appeal did not consider whether Caribbean common law (like Australian common law) had developed differently to that of Hong Kong.

[58] In my judgment there are arguable grounds of appeal that the common law of the Eastern Caribbean is not necessarily the same as that of Hong Kong pre-1997.

The development of the Black Swan jurisdiction

[59] The **Black Swan** jurisdiction was a development of the **Mareva** injunction. It is worth recounting the speed with which the **Mareva** jurisprudence developed. The English Court of Appeal presided over by Lord Denning MR heard the original **Mareva** case in June 1975. At that point the injunction was granted solely in respect of the defendant’s assets within the jurisdiction. **The Siskina** was decided in December 1976, when the **Mareva** jurisdiction was in its infancy. In 1982, the **Civil Jurisdiction and Judgments Act 1982 (UK)**⁵⁵ reversed **The Siskina** in part, so that the English courts could grant **Mareva** relief in support of claims being brought in countries within the European Economic Area. It was only in the probably small number of cases where the foreign proceedings in support of which

⁵⁵ 1982 c 27.

relief was sought were being brought outside the EEA that **The Siskina** remained good law.

[60] By three decisions handed down in July 1988, the English Court of Appeal held that a world-wide **Mareva** could be granted: **Republic of Haiti v Duvalier**, **Derby & Co Ltd v Weldon** and **Babanaft International Co SA v Bassatne**.⁵⁶ In 1989 the English High Court held that a **Mareva** could be granted against a businessman resident in Saudi Arabia in support of French proceedings: **X v Y**.⁵⁷ In 1992, the **Chabra** decision was handed down. Mummery J held that **The Siskina** did not prevent the grant of a **Mareva** against a non-cause of action defendant, where the injunction was “ancillary and incidental to the claim against [the cause of action defendant]”.⁵⁸

[61] In 1995, the Privy Council gave its advice in **Mercedes Benz AG v Leiduck**.⁵⁹ In 1997, the **Civil Jurisdiction and Judgments Act 1982 (Interim Relief) Order 1997**⁶⁰ extended the power under the 1982 Act to grant orders in support of foreign proceedings to proceedings before courts outside the EEA.

[62] In 2010, Bannister J handed down his judgment in **Black Swan** in which he relied on Lord Nicholls’ minority advice in **Mercedes Benz**. In 2011, our Court of Appeal in **Yukos CIS Investments Ltd and another v Yukos Hydrocarbons Investments Ltd and others**⁶¹ approved **Black Swan** and, in particular, Bannister J’s reliance on Lord Nicholls’ minority view. Now, our Court of Appeal in **Broad Idea (No 2)** has held that the Court in **Yukos** was speaking *obiter* when it approved **Black Swan**, but on any view Redhead JA’s judgment in **Yukos** thoroughly considered the impact on **Black Swan** of **The Siskina** and **Mercedes Benz**.

⁵⁶ [1990] 1 QB 202, [1990] Ch 48 and [1990] Ch 13 respectively.

⁵⁷ [1990] 1 QB 220.

⁵⁸ TSB Private Bank International SA v Chabra [1992] 1 WLR 231 at p 242.

⁵⁹ [1996] AC 284.

⁶⁰ SI 1997 No 302.

⁶¹ HCVAP 2010/028 (determined 26th September 2011).

[63] Shortly afterwards, the BVI legislature passed the **Arbitration Act 2013**.⁶² Section 43(2) and (5) of that Act gave a statutory power to grant **Black Swan** relief in respect of foreign arbitration proceedings. There is no indication that the legislation thought that **Black Swan** (in relation to foreign court proceedings) was wrongly decided. On the contrary **Black Swan** had been generally acclaimed. There is no reason why the legislature should have wanted this Court to have a **Black Swan** jurisdiction in relation to foreign arbitration proceedings, but not in relation to foreign court proceedings.

[64] There have been repeated references in the case law to **Mareva** injunctions, now freezing orders, being “a fast-developing area of law”: see, for example, **Derby & Co Ltd v Weldon** at p 59 *per* Nicholls LJ. Moreover, as Sachs LJ held in **Hill v C A Parsons & Co Ltd**:⁶³

“[I]n matters of practice and discretion it is essential for the courts to take account of any important change in that climate of general opinion which is so hard to define but yet so plainly manifests itself from generation to generation. In that behalf account must, *inter alia*, be taken of the trend of the views of the legislature expressed on behalf of the community in its enactments and also of the trend of judicial decisions.”

[65] In **Lowsley v Forbes (trading as LE Design Services)**⁶⁴ the House of Lords said:

“It is Parliament’s understanding of the existing law when enacting [legislation] that matters, not what the law is subsequently shown to have been. As Lord Simon of Glaisdale said in **Black-Clawson International Ltd v Papierwerke Waldhof-Aschaffenburg AG**:⁶⁵

‘Once it is accepted that the purpose of ascertainment of the antecedent defect in the law is to interpret Parliament’s intention, it must follow that it is Parliament’s understanding of that law as

⁶² No 13 of 2013, Laws of the Virgin Islands.

⁶³ [1972] Ch 305 at p 321.

⁶⁴ [1999] 1 AC 329 at p 342.

⁶⁵ [1975] AC 591 at p 648.

evinced such a defect which is relevant, not what the law is subsequently declared to be.'

If common error can make the law, so can parliamentary error."

[66] In my judgment, it is properly arguable that the Courts of the Eastern Caribbean should not follow **The Siskina**, a case decided when Lord Denning MR's child, the **Mareva**, was barely a toddler. The UK legislature reversed **The Siskina** in part in the 1982 Act and in full in the 1997 Order. The restrictions imposed by it were evaded in **Chabra**. **Yukos** approved Bannister J's approach both to it and to **Mercedes Benz**. The BVI legislature were clearly happy with the decision when it passed the 2013 Act.

Conclusion

[67] It is in my judgment premature to determine Ms. Goldstein's application for a stay pending appeal of the discharge of the **Black Swan** order. The return date on the injunction is only Thursday of this week. I will need to consider the points raised on the return date in considering whether to grant a stay.

[68] Therefore, I determine:

- (a) I had no power to grant the **Black Swan** injunction on 25th May 2020.
- (b) I refuse Ms. Goldstein's application to add KBO as an additional party.
- (c) I shall not discharge the order of 25th May 2020 until the completion of the hearing on the return date to the injunction, when I will consider whether to stay the discharge of the order pending an appeal.

Adrian Jack
Commercial Court Judge [Ag.]

By the Court

Registrar