Cristiana Crociani v Edoarda Crociani

Jurisdiction:	Jersey
Judge:	Bailiff
Judgment Date:	25 November 2016
Neutral Citation:	[2016] JRC 220B
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Court:	Royal Court
Date:	25 November 2016

Text

[2016] JRC 220B

ROYAL COURT

(Samedi)

Before:

W. J. Bailhache, Esq., Bailiff and Jurats Nicolle and Ramsden

Between
Cristiana Crociani
First Plaintiff
A (by her Guardian ad Litem Nicolas Delrieu)
Second Plaintiff
B (by her Guardian ad Litem Nicolas Delrieu)
Third Plaintiff
and
Edoarda Crociani
First Defendant

Paul Foortse
Second Defendant
BNP Paribas Jersey Trust Corporation Limited
Third Defendant
Appleby Trust (Mauritius) Limited
Fourth Defendant
HRH Princess Camilla de Bourbon des Deux Siciles
Fifth Defendant
Camillo Crociani Foundation IBC (Bahamas) Limited
Sixth Defendant
BNP Paribas Jersey Nominee Company Limited
Seventh Defendant
GFIN Corporate Services Limited
Eighth Defendant

Advocate W. A. F. Redgrave **for the Third Defendant**.

Advocate N. M. C. Santos-Costa **for the First Defendant**.

Authorities

Crociani and others v Crociani and others [2015] JRC 227.

Crociani and others v Crociani and others [2016] JRC 030.

Mercedes Benz AG v Leiduck [1996] AC 284.

Solvalub Limited v Match Investments Limited [1996] JLR 361.

Siskina [1979] AC 210.

Zucker and others v Tindall Holdings PLC [1992] 1 WLR 1127.

Johnson Matthey Bankers Limited v Arya Holdings Limited [1985 – 86] JLR 208.

Krohn GmbH v Varner Shipyard [1997] JLR 152.

(*Yachia v Levi 1998/61* Royal Court 26th March 1998 unreported).

Qatar v Al Thani [1999] JLR 118.

Papa Michael v National Westminster Bank PLC [2002] 2 All ER (Comm) 60.

Kazakhstan Kagazy PLC and others v Zhumus and others [2016] 4 WLR 86.

Fletcher v Bealey (1885) 28 ChD 688.

Rowland v Gulfpac (No.1) [1999] Lloyds Rep 86.

Royal Court Rules 2004.

Pell Frischmann v Bow Valley and others [2007] JRC 105A.

Goldtron Limited v Most Investments Limited [2002] JLR 424.

Crociani v Crociani [2016] JRC 085.

Trust — application by the defendant to strike out order of justice and have the injunction set aside.

Bailiff

THE

1 Interim injunctions were obtained by an Order of Justice signed by me as Bailiff on 4 th August, 2016. The document is entitled *"Supplemental Order of Justice of the Third Defendant"* and by it the Third Defendant seeks relief against the First Defendant. The proceedings are supplemental to those commenced by the Plaintiffs by Order of Justice under Court File reference 2013/004 ("the main action"), and the supplemental Order of Justice is rightly so described, because it raises matters ancillary to the questions raised in the main action.

2 In essence by the supplemental Order of Justice, the Third Defendant seeks injunctions to freeze assets beneficially owned by the First Defendant or over which she has control, coupled with disclosure orders to support the freezing injunction, those orders being said by the Third Defendant to provide necessary protection in connection with the Third Defendant's third party claim in the main action seeking an indemnity from the First Defendant in relation to any liability which the Third Defendant may incur in the main action. The interim injunctions were granted *ex parte*, and on 2 nd September, 2016, the First Defendant applied to have the injunctions and the disclosure orders discharged in their entirety.

Background

3 The First Plaintiff is a beneficiary of the Grand Trust, a trust governed by the laws of Jersey of which the First, Second and Third Defendants were trustees. The Second and Third Plaintiffs are children of the First Plaintiff. On 9 th February, 2010, the First, Second and Third Defendants are said to have appointed all of the assets of the Grand Trust, other than a secured long term promissory note issued by Croci International BV in favour of the First Defendant to a trust then governed by the laws of Jersey known as the Fortunate Trust ("the 2010 Appointment"). At the time of the 2010 Appointment, it is said that the trustees of the Fortunate Trust were the First Defendant and the Third Defendant. The Second Defendant

was subsequently appointed as a trustee of the Fortunate Trust in May 2010.

4 On 30 th June, 2011, the First Defendant revoked the Fortunate Trust and the assets comprising the trust fund of that trust vested in her pursuant to an instrument of revocation and termination of that date ("the 2011 Revocation"). In the main action the Plaintiffs allege inter alia that the First, Second and Third Defendants executed the 2010 Appointment in breach of trust and they seek, inter alia, the reconstitution of the Grand Trust fund and the appointment of a new trustee by the Court – alternatively they seek equitable compensation. These proceedings are defended by the First, Second and Third Defendants.

5 Until May 2015 the First, Second, Third, Fourth and Seventh Defendants were all represented by Messrs Carey Olsen, and a composite answer had been filed by that firm on behalf of the First to Fourth Defendants, followed later by an answer on behalf of the Seventh Defendant. After May 2015, the Third and Seventh Defendants chose to be separately represented and wished to amend their answers rather than rely upon the answers filed previously. The Third Defendant sought leave to amend and also to bring a third party claim against the First Defendant, and two bases were advanced for doing so. The first was that the Third Defendant was entitled to an indemnity under clause 6 of the 2010 Appointment. The second was that the Third Defendant was entitled to an indemnity under the 2011 Revocation. The Master allowed the application to amend, bringing the third party claim in respect of the 2010 Appointment but he refused permission for the 2011 third party claim – see *Crociani and others v Crociani and others* [2015] JRC 227. The Third Defendant appealed this order to the Royal Court on the basis that it should have had leave to bring the third party claim in respect of the 2011 Revocation as well, and the appeal was allowed – see *Crociani and others v Crociani and others* [2016] JRC 030. The First and Second Defendants have now filed an answer and counter-claim to that third party claim.

6 It is right to say that the sums involved both in the main action and accordingly also in the third party claim are very substantial indeed. It is asserted by the Third Defendant that if the Plaintiffs were to be successful in all elements of their claim for reconstitution of the Grand Trust fund, the Third Defendant would be jointly and severally liable with the First and Second Defendants for sums up to approximately US$149 million, that being the value of the assets which the Plaintiffs allege should currently be held within the Grand Trust, but are not. In addition to those sums, reconstitution of the Grand Trust fund could also involve the transfer of the promissory note mentioned above the value of which is thought to be approximately €36 million. At the time of the hearing of the application for interim relief, it was said that applying the then current conversion exchange rates, the total which the Third Defendant sought to have frozen was US$194 million.

7 The action commenced by the Supplemental Order of Justice has been tabled and put on the pending list.

8 We record that as a preliminary to the application to discharge the injunctions and disclosure orders, the Court received an application by the Third Defendant for leave to amend paragraph 114 of the answer and third party claim. This paragraph relates solely to the third party claim and it was unnecessary therefore to convene the Plaintiffs or other defendants to it.

9 The Third Defendant sought to amend paragraph 114 of its Answer and Third Party Claim by the addition of language as shown below:-

> *"114. In light of the foregoing paragraphs 109 – 113 BNP Jersey is entitled pursuant to clause (6) of the 2010 Appointment to be indemnified and claims to be indemnified by Mme Crociani in respect of any liability which BNP Jersey is found to owe to the Plaintiffs (or any one or more of them) or any other person, persons, entity or entities as a result of orders made in these proceedings and in respect of the legal costs, expenses and disbursements which BNP has incurred and will incur in relation to these proceedings."*

10 The underlined passage shows the proposed amendment to the Answer and Third Party Claim.

11 The amendment was proposed by Advocate Redgrave on the basis that in the skeleton argument submitted by Advocate Santos Costa on behalf of the First Defendant, he asserted that the Third Defendant had obtained injunctions freezing sums far in excess of anything to which it could possibly be entitled on its own case. The basis of this was that the third party claim was for an indemnity against liability for sums found to be *"owed to the Plaintiffs"* and costs. This needed to be distinguished from any liability that might arise in favour of the trustees of the Grand Trust. The effect of the assertion that injunctions had been obtained for excessive amounts would be to reduce the extent of the freezing order from US$194 million to €6.6 million plus US1.235 million coupled with the restoration of the value of the shares in Crica Investments Limited. Advocate Redgrave submitted that the amendment did not change anyone's understanding of the case of the Third Defendant, nor the conduct of the proceedings by either the Third or the First Defendant and in those circumstances he submitted that the Court should give leave to amend. In response, Advocate Santos Costa said that the principal argument raised in this case on behalf of the First Defendant was that the whole process had been unfair to her. Had it not been for an unfair process, she would not have had to point out the extent by which the Third Defendant was claiming excessive relief. For my part, I did not think there was anything in that argument, and applying the usual principles of leave to amend, I gave such leave, the Third Defendant having to pay all the costs thrown away as a result of the amendment.

The application to discharge the injunctions

12 In her application to discharge the injunctions, the First Defendant through Advocate Santos Costa made a number of submissions:

(i) At best there was a mere contingent liability from the First Defendant toward the Third Defendant for an unascertained sum, that liability potentially arising if the Defendants are unsuccessful at trial.

(ii) There is no jurisdiction to grant a freezing injunction on the basis of a contractual indemnity where the underlying loss is not yet crystallised.

(iii) Injunctions could be granted as *quia timet* relief, in which case the applicant would have to show a clear right of indemnity, a clear prospect that the indemnity will be engaged (the so called “visible cloud”); and a clear indication or imminent threat or danger that the indemnity will not be honoured. On the evidence, the Third Defendant had not demonstrated that it satisfied the relevant criteria for *quia timet* relief for even if the criteria for *quia timet* are identical to those for a traditional freezing injunction, the Third Defendant had to demonstrate that the Plaintiffs had a good arguable case, and not just that it has a good arguable case for an indemnity against the First Defendant.

(iv) There was no real risk of dissipation of assets on the part of the First Defendant.

(v) The Third Defendant had failed to make full and frank disclosure.

(vi) The Third Defendant had waited too long to seek this relief and did not come to equity with clean hands.

13 By contrast, Advocate Redgrave on behalf of the Third Defendant submitted–

(i) that the freezing orders made at common law and the equitable *quia timet* jurisdiction were both remedies based on the same principle and a response to the unjust situation in which the beneficiary of an indemnity is at risk of being left out of pocket merely because the extent of his liability has not yet crystallised and/or is contingent.

(ii) In any event, Jersey law rightly followed the dissenting judgment of Lord Nicholls in *Mercedes Benz AG v Leiduck* [1996] AC 284 – that much was clear by a decision of the Court of Appeal of Jersey in *Solvalub Limited v Match Investments Limited* [1996] JLR 361 where the Court found that the Jersey courts did have jurisdiction to grant freezing orders in support of foreign proceedings despite the majority in the *Siskina* [1979] AC 210 deciding that the English court had no such power.

(iii) It was also submitted that the Third Defendant had not made any sufficiently material non-disclosures as to amount to a breach of its duty to make full and frank disclosure.

The question of jurisdiction

14 Advocate Santos Costa submitted that the Court had no power to grant freezing relief

dependent upon a future event. In this case the future event was the possibility of the Plaintiffs succeeding against the Defendants at trial. The contingency turns on whether or not the alleged indemnities on which the Third Defendant relies, contained in the 2010 Appointment and the 2011 Revocation mean what the Third Defendant alleges they mean. Accordingly it is said by Advocate Santos Costa that as of now, there is not an accrued cause of action upon which the Third Defendant can rely as against the First Defendant. For this he relied upon the decision in the *Siskina* (supra), in *Mercedes Benz* (supra) and on the decision in *Zucker and others v Tindall Holdings PLC* [1992] 1 WLR 1127.

15 We start with the Jersey authority of *Solvalub Limited v Match Investments Limited* [supra]. In that case, the appellant had obtained a Mareva injunction against the respondent in support of proceedings in England to recover a debt. The Jersey proceedings restrained the respondent from dealing with its assets held in a Jersey bank account, but there was otherwise no connection with the Island. The respondent's advocate accepted service of the Order of the Justice under protest, but subsequently filed an answer and counter-claim, again protesting the Court's jurisdiction but also claiming that the goods had not been received and that it had not entered into the contract at all. The appellant appealed against a decision of the Royal Court to strike out the Order of Justice on the grounds that the Court had no power to order the respondent to be served, the mere existence of a Mareva injunction not conferring any substantive rights, and therefore not permitting the Court to assume jurisdiction over a non-resident. The Court of Appeal allowed the appeal holding that on the facts it was clear that the respondent had accepted the jurisdiction of the Royal Court despite its stated protest because its pleadings had gone far beyond a mere denial of the Court's jurisdiction. There had not only been a counter-claim but also a request for discovery, an injunction against the appellant and even a claim for damages. Accordingly, the respondent had accepted the jurisdiction, because it had averred it, and in those circumstances it was bound to accept the legal consequences of its actions.

16 The Court of Appeal went on to say that there was authority to support the view that the Royal Court had the power to grant a Mareva injunction in aid of foreign proceedings, even if there were no proceedings before the Jersey court other than the seeking of the Mareva itself. In that context, the Court of Appeal placed reliance on *Johnson Matthey Bankers Limited v Arya Holdings Limited* [1985 – 86] JLR 208, and the dissenting judgment of Lord Nicholls in the *Mercedes* case. Accordingly, the Court of Appeal found that the Mareva injunction had been properly ordered and the appeal was allowed.

17 In *Krohn GmbH v Varner Shipyard* [1997] JLR 152 the fourth party cited, Messrs Lawrence Graham a firm of English solicitors, were a party to proceedings in which the Plaintiff had sought an order for service out of the jurisdiction against the defendant, a Bulgarian shipyard, and the solicitors based in London. The fourth party cited contended that the Court of Appeal in *Solvalub* had misunderstood the pre-existing jurisprudence on the jurisdiction of the Royal Court to assume Mareva type injunctions when the parties were outside the Island and that the observations of the Court of Appeal in this respect should be treated as obiter, the narrow *ratio decidendi* of the decision being that by pleading to the Order of Justice and seeking substantive relief, the defendant had voluntarily submitted to

the jurisdiction of the court. The Royal Court expressed the view at page 157 line 26 that:

> ***"In our judgment it is quite impossible to construe those passages as being obiter.*** This court is bound by the conclusion that it does have jurisdiction in the sense of power to grant a Mareva injunction in aid of proceedings in a foreign court."

18 *Solvalub* was followed in *Krohn* (twice because there was a subsequent application by the defendant shipyard to set aside the order of the Deputy Judicial Greffier granting leave to effect service out of the jurisdiction and the injunctions imposed upon the defendant *ex parte* by the Bailiff in Chambers), in (*Yachia v Levi* Royal Court 26th March 1998 unreported), and *Qatar v Al Thani* [1999] JLR 118 and indeed on many other occasions.

19 We take it as firmly established in our jurisdiction that the Royal Court has jurisdiction, in the sense of power, to impose a Mareva injunction in support of foreign proceedings where there is no claim for substantive relief other than the injunction in this jurisdiction.

20 The jurisdiction of the Royal Court, again in the sense of power, to order an injunction in support of Jersey proceedings is well established, quite apart from the *Solvalub* authority. Indeed it would be surprising as a court of original jurisdiction if the Royal Court did not have the power to grant an injunction in support of proceedings before it. We have no doubt therefore that we have jurisdiction to grant the orders in question.

21 It is also to be noted that there is no dispute that the First Defendant is amenable to the jurisdiction of this Court. She has already been served with the main proceedings, and is participating in them. There is no basis upon which objection could be taken to the service of proceedings which are supplementary to the main proceedings, as is the case here. In those circumstances, citations from the *Siskina* and from the *Mercedes* case appear to us to be not in point.

22 The First Defendant relied extensively on *Zucker*, a case where the plaintiffs had brought proceedings in Switzerland seeking a declaration that they had validly exercised a put option to sell shares and an order for payment to them of a sum of money in lieu of new shares in the defendant. They had also issued a writ in England claiming specific performance of the agreement for the sale of the shares, with the consideration being a sum of money, and obtained a freezing injunction *ex parte* against the defendant. The injunction was discharged at the *inter partes* hearing on the basis there was no jurisdiction to grant it, and the matter went to appeal. The Court of Appeal dismissed the appeal, applying the *Siskina*, holding that the Court had no jurisdiction to grant an injunction because, although there would be an obligation on the part of the defendant to pay the sum of CHF 6 million for the shares in question, that obligation had not yet fallen due, and there was therefore at that time no legal or equitable right being interfered with.

23 Thus it is said by Advocate Santos Costa that in this case the obligation to indemnify the

Third Defendant is a contractual one which is not presently performable, and cannot be so until the Court has given judgment in the main proceedings. As such, there is simply no basis, he says, for the freezing injunctions which have been imposed, and they should be discharged.

24 We note that the *Zucker* case predated the *Mercedes* case by some four years. As to the underlying thinking to which we have referred, this was commented upon by Lord Nicholls in *Mercedes* at page 735 paragraph A/B where he said:-

> ***"A further point, to be noted here in passing, is that the plaintiff's underlying cause of action is essentially irrelevant when considering the Court's jurisdiction to grant Mareva relief.*** Since Mareva relief is part of the Court's armoury relating to the enforcement process what matters, so far as the existence of jurisdiction is concerned, is the anticipated money judgment and whether it will be enforceable by the Hong Kong court. In general, and with some well-known exceptions, the cause of action which led to the judgment is irrelevant when a judgment creditor is seeking to enforce a foreign judgment. It must surely be likewise with a Mareva injunction. When a court is asked to grant a Mareva injunction, and a question arises about its jurisdiction to make the order, the answer is not to be found by looking for the cause of action on which the plaintiff is relying to obtain judgment. So far as jurisdiction in concerned, that would be to look in the wrong direction. Since Mareva relief is designed to prevent a defendant from frustrating enforcement of a judgment when obtained, the plaintiff's underlying cause of action entitling him to his judgment is not an apposite consideration, any more than it is when a judgment creditor applies to the Court to enforce the judgment after it has been obtained .
>
> ***Of course, the matter stands very differently when the Court is considering the exercise of the jurisdiction and whether in its discretion to grant or refuse relief.*** Among the matters the Court is then concerned to consider are the plaintiff's prospects of obtaining judgment and the likely amount of the judgment. For that purpose the Court will be concerned to identify the plaintiff's underlying cause of action."

25 In the context of this case, we see the Third Defendant's application for freezing orders as a request to the Court to exercise that part of its armoury so as to ensure that if the Plaintiffs are successful at trial and the Third Defendant successful in its claim for third party relief against the First Defendant, then that order of the Court can be enforced.

26 Advocate Santos Costa submitted that the injunctions ought more properly to be characterised as *quia timet* relief, and he used this as an opportunity to introduce a number of English cases on that type of relief. As we understand it, *quia timet* relief applies for the purposes of granting an injunction to prevent an injury that is apprehended to the plaintiff's property. The injunction may be granted in cases where the acts intended to be restrained are illegal in their inception as well as in cases where such acts are lawful in their inception

but which, of necessity, must cause injury to others. The plaintiff is expected to show a strong probability that the apprehended mischief will in fact arise, but he is not required to wait until the damage is actually done. Accordingly it was said that on English law principles, even though there was no present cause of action, limited *quia timet* jurisdiction could be invoked, but all the rules restricting that jurisdiction should be applied. Reliance for these purposes was placed on a series of cases of which perhaps the most important are *Papa Michael v National Westminster Bank PLC* [2002] 2 All ER (Comm) 60, *Kazakhstan Kagazy PLC and others v Zhumus and others* [2016] 4 WLR 86 and what Advocate Santos Costa described as the classic formulation of Pearson J in *Fletcher v Bealey* (1885) 28 ChD 688; and finally *Rowland v Gulfpac (No.1)* [1999] Lloyds Rep 86. From these cases, Advocate Santos Costa invited us to find that the correct test for *quia timet* relief in respect of an indemnity is:-

(i) There must be a sufficiently clear right to an indemnity;

(ii) There must be reasonably good perhaps clear evidence that a liability will fall on the party entitled to be indemnified; and

(iii) There must be clear evidence of a threat by the indemnifier to ignore his obligations.

27 Thus it was said that on the evidence in this case, the relevant criteria for *quia timet* relief are not met.

28 In response, Advocate Redgrave contended that the First Defendant was setting up a straw man for the purposes of knocking it down. The right test, he submitted, was straight forward:-

(i) Do the Plaintiffs have a good arguable case in the Order of Justice?

(ii) If they do, does the Third Defendant have a good arguable case for an indemnity from the First Defendant?

(iii) Is there a real risk that the Third Defendant will dissipate her assets so as to frustrate any judgment in favour of the Third Defendant in respect of the indemnity.

29 In our judgment, Advocate Redgrave's submissions as to the right test to apply are correct and are consistent with the Jersey authority we have mentioned, the practice of the Royal Court in granting Mareva injunctions in this jurisdiction, and, as a matter of policy, provide a just and sensible approach for this Court to adopt in modern circumstances where it is all too easy for a defendant to take steps which have the effect of delaying and sometimes delaying indefinitely if not completely frustrating a successful plaintiff's enforcement of the judgment which has been obtained in the court. Whether to grant an injunction of this kind is always a matter of discretion, having regard to the balance of convenience and the justice of the case. It was contended by Advocate Santos Costa that conservatory

injunctions of the *quia timet* category ought not in any event be imposed in relation to a case where the substantive cause of action was under an indemnity because of the principle in Jersey that the creditor must first exhaust the assets of the principal debtor before having recourse to the guarantor. We do not think that prevents the grant of injunctions in these circumstances. The *droit de discussion* runs along a parallel road to that of conservatory relief, and indeed we are not completely convinced that it is appropriate to describe them as principles on parallel roads because they may not go even in the same direction. In our judgment, it is not unthinkable that the surety might apply to freeze the assets of the principal debtor if the grounds upon which conservatory relief are established as in any other case.

30 We now turn to the facts and our exercise of discretion in the light of the legal test which we have identified.

31 The application by the First Defendant was to strike out the Order of Justice as an abuse of process under Rule 13(1)(d) of the Royal Court Rules 2004, and/or to discharge the injunctions. In support of the application, the First Defendant relied upon her affidavit which was sworn before a notary in San Tropez on 31 st August. The thrust of her affidavit is that she is a wealthy woman. It was said to us by her counsel in addition that she is an Italian film star and a very well-known figure who would be easy to find. She is very much in the public eye, and it would take nothing at all to pursue her. For her to be declared bankrupt would be devastating. She lives in Monaco for most of the time, and is friendly with the Royal Family there.

32 The thrust of the First Defendant's case was that there was no adequate basis for the injunctions in the first place, but that maintaining them would cause real administrative difficulties in terms of time and effort. Those difficulties related to the disclosure of assets and not to the non-dissipation of assets. It was pointed out that, when this application was heard, the parties were only some four months before trial, with expert evidence due by the end of September. Tax advice would be needed, together with expert advice from the USA, the Netherlands and the Bahamas. Advocate Santos Costa, who has been instructed only relatively recently, was facing a significant amount of work to catch up with what had gone on in the proceedings so far. Thus it was said that in terms of the balance of convenience, these injunctions would cause great inconvenience to the First Defendant, and were not necessary because there was no real threat that she would dissipate assets.

33 It was then said that there was no current cause of action because the Third Defendant relied only upon the indemnity when, as of the present, that contractual obligation had not fallen in for performance. It was said that the application was brought three and a half years after the main action had started; on the other hand, the Third Defendant was a professional trustee, quite able to take its own decisions.

34 The First Defendant contended that the Third Defendant could not possibly assert that the Plaintiffs had a good arguable case in circumstances where the Third Defendant was

vigorously defending the Plaintiffs' claims. There was no evidence of the First Defendant ever failing to comply with a judgment taken against her, and the reality was, according to Advocate Santos Costa, that the Third Defendant was now seeking to improve its position in relation to the indemnities upon the basis that the Third Defendant did not seek fortification of the indemnities when the 2010 Appointment and 2011 Revocation were executed and it is too late to do so now. Furthermore, the Third Defendant had facilitated the actions of the First Defendant at the time and had advised her – it was the case that if the position was as Kim Deveney, on behalf of the Third Defendant, suggested in her affidavits in relation to the First Defendant's poor conduct, the Third Defendant was complicit in that poor conduct too and therefore did not come to the Court with clean hands. The First Defendant concluded that part of her objections by saying that she could not understand why injunctions should be imposed in circumstances where, if she had any intention of disobeying any orders of the Royal Court, she could simply have walked away from the proceedings in the main action and allowed a judgment to be taken against her, and then ignored it. The world-wide freezing order was devastating to her reputation, and was an order that essentially assumed her guilt. The perception that that might be so was devastating to her. Although she says in her affidavit that she cannot meet her current financial obligations in the present circumstances, and therefore the injunctions are causing her financial hardship, it is not at all clear from her affidavit why that should be so, and we have therefore disregarded that part of her affidavit. It seems to relate to the fee dispute which she has with her previous lawyers, but we do not think that that is relevant to the present position.

35 Advocate Santos Costa submitted that the Plaintiffs had a much better case for injunctions like these and that to grant them to the Third Defendant would mean in practice that the First Defendant would have to concede injunctions to her daughter and provide her with much more discovery. Indeed he complained that the First Plaintiff would know details about her mother's assets but her mother would not know details about the daughter's assets and that this was unfair. We do not think we have sufficient information to know whether this submission is or is not well founded but it is clear to us that if it is right to grant injunctions to the Third Defendant it cannot cease to be right just because another party may be entitled to such injunctions too; so we reject that submission. He also relied upon what he alleged to be material non-disclosure on the part of the Third Defendant, but we will come to this separately.

36 The arguments in favour of the obtaining of the injunction by the Third Defendant were essentially these. In effect, the combination of the 2010 Appointment and the 2011 Revocation was to appoint significant assets, comprising the entirety of the capital of the Grand Trust fund other than the promissory note to the Fortunate Trust which was then revoked with the effect that the First Defendant received all those assets. If the First and Third Defendants lost the main action, the Plaintiffs would have to pursue her and the Third Defendant by way of enforcement. The Third Defendant is a regulated Jersey trust company which has been operating in the Island since 1979 and part of a global group. For the purposes of enforcement, it is an immediate and obvious target, if the Plaintiffs are found to be successful.

37 In the Third Defendant's submissions, there was a real risk that the First Defendant would not comply with any judgment in favour of the Third Defendant in respect of the third party claim. The factors which pointed to that risk were these:-

(i) The amount of money was very substantial indeed and therefore an encouragement to the First Defendant to take steps to avoid that liability.

(ii) The past dealings of the First Defendant showed her to be a sophisticated user of offshore structures, utilising them in a secretive manner to mitigate adverse tax consequences and to protect her assets from third parties. The Third Defendant pointed to the arrangements by which the Grand Trust had been settled in 1987, which included an arrangement the effect of which was to avoid the confiscation of certain assets by the Italian state and also to avoid the effect of Italian forced heirship laws. By this arrangement, the First Defendant had been able not only to circumvent those forced heirship laws but also to reduce the share of wealth inherited by her deceased husband's two children from his previous marriage. The Third Defendant contended that it appeared that the First Defendant and her deceased husband had employed a similar mechanism in order to prevent valuable artworks owned by the husband from being confiscated. The First Defendant denied this. In connection with the First Defendant's familiarity with and use of trust and company structures, the Third Defendant pointed to examples where a newly incorporated BVI company received from another BVI company the investment portfolio which was subsequently liquidated and transfers made at the First Defendant's request to various offshore companies and accounts not managed by the Third Defendant. Her secretiveness was emphasised in various documents put before this Court and exhibited to Ms Deveney's affidavit and the contention on behalf of the Third Defendant was that the evidence established a strong case that the First Defendant would go to very considerable lengths to protect her assets from claims by third parties and furthermore that she had used and would use offshore structures in a secretive and opaque manner. In particular it was pointed out that the First Defendant had recently sought to circumvent the decision of the Privy Council on 26 th November, 2014, which had found, inter alia, that the provisions of the Grand Trust which purportedly conferred exclusive jurisdiction on the Mauritian courts were not effective as an exclusive jurisdiction clause, and that the proper forum for the dispute was in fact Jersey. Following that decision, the First Defendant had procured, so the Third Defendant asserted, that GFIN, new trustees replacing the former trustees of the Grand Trust should issue anti-suit injunction proceedings in Mauritius restraining the parties to the Jersey proceedings from continuing with them, the connection between GFIN and the First Defendant being established by the provision of a fee and indemnity agreement from her towards GFIN. The Third Defendant relied upon the events in Mauritius as indicative of the disregard which the First Defendant had for the Royal Court, and of the lengths to which she will go in order to avoid liability to third parties. Reliance was placed on the fact that numbers of court orders in Jersey had been breached, without apology from the First Defendant.

(iii) The Third Defendant contended that the First Defendant was not resident in

Jersey, and that is clearly admitted because she accepted she was resident in Monaco. Her net worth was estimated to be considerably in excess of the sum enjoined and, in reaching a conclusion on the balance of convenience, the Third Defendant's case essentially amounted to this – if the Plaintiffs in the main action succeeded, the Third Defendant's potential liability was very substantial and there was strong evidence that the First Defendant would so structure her assets to prevent them being available either to the Plaintiffs or to the Third Defendant in satisfaction of any order in respect of the third party claim. As against that, the prejudice caused to her by the freezing order would be minimal. Furthermore, if the Plaintiffs should be successful, then there was still a risk that the beneficiaries of the Grand Trust might reunite, in which case the First Defendant would have the benefit of the assets which she took back into her own hands in 2011, and in addition any sums paid by the Third Defendant, if found liable, would find their way into the hands of the Plaintiffs. Such an outcome would be manifestly unfair. To this last argument, Advocate Santos Costa contended that the First Defendant would not benefit from the Grand Trust if the Plaintiffs were fully successful, and therefore it is difficult to see how she could benefit twice. That rather misses the point – the point which the Third Defendant put forward for our consideration was that it would be, from a family perspective, all too easy to reunite if the Plaintiffs were successful such that the family as a whole was $194 million better off, and the Third Defendant was the same amount worse off, and that this would be grossly unfair.

38 The Court is in no doubt that the balance of convenience lies in favour of maintaining these injunctions and accepts the submissions made by Advocate Redgrave on behalf of the Third Defendant in that respect.

Good arguable case

39 In his skeleton argument on behalf of the First Defendant, Advocate Santos Costa contended that the Third Defendant had to show, if a freezing injunction were to be available to it, that its defence in the main proceedings was likely to fail. Without that, it was said that the Third Defendant could not justify that it had a good arguable case for an injunction. This was repeated by Advocate Santos Costa, and indeed expanded upon at the oral hearing. The Third Defendant's response to that contention was that it proceeded on a flawed understanding of the *"good arguable case"* test. We agree. The premise for the First Defendant's argument is that the Court cannot have regard to the possibility that a contingency will come to pass when considering whether or not to grant an injunction. It seems to us that that is plainly wrong. Mareva injunctions are frequently ordered, on the balance of convenience, based upon the contingency that the Plaintiff may be successful at trial – indeed that is why the undertaking in damages is given, because, if the Plaintiff were to be unsuccessful, the Defendant might have suffered a loss as a result of the injunction obtained by the Plaintiff. We therefore do not consider that it is impossible for the Third Defendant to seek the protection of the Court in relation to its third party claim for an indemnity simply because it denied liability in the main proceedings.

40 In a sense this argument is linked to Advocate Santos Costa's submission that there is no current cause of action, because at this stage there is no crystallised liability but only the relevant indemnity. In our judgment, that argument similarly fails, because if there were no current cause of action, it must be possible to have the third party claims struck out on just that basis. The fact that it cannot be struck out at present – and we thought Advocate Santos Costa in effect conceded as much – shows that there is a current cause of action. Similarly, the fact that a strike out application is not possible is at least some evidence that there is a good arguable case. Indeed, in this case, the amendment to the Third Defendant's answer was permitted by the Master in respect of that element of the third party claim relating to the indemnity contained in the 2010 Appointment, and on appeal by the Third Defendant, permitted by the Royal Court. In other words, a *prima facie* case for the third party claim has been accepted, and if it were otherwise, the amendment would not have been permitted.

41 In our judgment the Third Defendant has established that there is a good arguable case for the injunction. That is so because there is a good arguable case on the part of the Plaintiffs in the main proceedings that they will be successful. They may not, but they have a good arguable case. Similarly there is a good arguable case that the Third Defendant is entitled to the indemnities which it seeks under the third party claim, if the Plaintiffs are successful. Even if the Plaintiffs are successful, it does not follow that the Third Defendant will be successful in its third party claim; but it may be. The good arguable case threshold has been passed.

Delay

42 It is said by the First Defendant that the Third Defendant ought properly to be precluded from obtaining the injunctions on the basis of delay/laches and/or acquiescence. Reference was made to *Pell Frischmann v Bow Valley and others* [2007] JRC 105A where the Royal Court held that the doctrine of laches forms part of Jersey law. It has the effect that material delay may mean that an equitable remedy should be refused. In this case it is submitted that the delay of over three years and six months since the service of the Plaintiffs' Order of Justice, and a delay of fifteen months since the Third Defendant obtained separate representation means that it is unjust in the circumstances to impose a freezing injunction even if all other determinative conditions for such an order were satisfied.

43 It seems to us that this argument is one which properly falls to be considered, but in our judgment it is not conclusive. First of all we take account of the fact that following the issue of the Plaintiffs' Order of Justice, the First and Third Defendants had the same representation until 26 th May, 2015, when Messrs Baker and Partners were instructed. An application was thereafter made to amend the answer filed so as to include the third party claim. On 2 nd July, 2015, the Master ordered the Third Defendants to provide a draft amended answer to all other parties for approval by 31 st July, and that if the amendments were not agreed, an application for leave to amend should be filed. Given the complexity of the main proceedings, in our judgment we think that it was not unreasonable that the

lawyers instructed on 26 th May should have had some five weeks to file a draft amended answer. In fact the First Defendant contested the amendment, and was partially successful before the Master whose judgment was delivered on 11 th November. Until the amendment was allowed, there was no basis upon which the Third Defendant could reasonably have been expected to bring an application for an injunction. Thereafter the Third Defendant appealed that part of the Master's order which did not permit the amendment (in relation to the 2011 Revocation) and judgment in that respect was delivered by the Royal Court on 2 nd February, 2016. Until that date, an application for a freezing order in respect of the full amount of the third party claim could not have been brought although it is true that an application could have been brought in relation to the claim for an indemnity arising out of the 2010 Appointment.

44 We note that the trial of the main proceedings and the third party claim is fixed to begin in January 2017. There has been extensive discovery and exchange of factual evidence. The fact that the application for the injunction is brought at this time will not put at risk the preparations for trial. We also note that the First Defendant's amended answer, which was the first time she pleaded to that element of the third party claim which relates to the 2011 Revocation, was served on the Third Defendant in April 2016. Crucially however, whatever suspicions might have existed previously, we note that the Third Defendant only became aware of the conclusion on the terms of the purported appointment of the Eighth Defendant as trustee of the Grand Trust which the Supreme Court of Mauritius found in a judgment handed down in July 2016. That conclusion, so the Supreme Court of Mauritius found, was that these terms were intended to circumvent and defeat the judgment of the Privy Council that Jersey was the correct forum for the determination of the main action. We think this is material which the Third Defendant would take into account in any proper consideration of its position and in those circumstances we do not think that the relatively late stage at which this application is now brought should debar the Third Defendant from seeking the injunctions.

Full and frank disclosure/clean hands

45 It is said by Advocate Santos Costa that the Third Defendant has failed to make full and frank disclosure of material arguments and of material facts which weigh against the making of the orders obtained. In that connection, we accept entirely that the test to be applied is that set out in *Goldtron Limited v Most Investments Limited* [2002] JLR 424 where Birt DB held:-

> ***"14. The essential feature of judicial proceedings is that each party has the opportunity of putting his case. Thus the court will not generally hear only one side to a dispute. However, on occasions, this is necessary either because of the urgency of the matter or because the very nature of the relief requested requires that it be done in the absence of the other party (e.g. the obtaining of an injunction freezing assets because it is feared that the other side will remove them). Even then, the other side has the right to bring the matter back before the court at the earliest opportunity for an***

inter partes hearing. Clearly, there is great scope for injustice if orders are made in the absence of one party. If the court "wrongly" imposes a freezing order on a party's assets because it has been misled by the applicant, serious damage may be caused without that party having had the opportunity to put its case to the court. Accordingly, it is fundamental and of the highest importance that a party applying for ex parte relief must be completely frank with the court and must put before the court any matters which militate against the making of the order in question .

15. In our judgment, a short and accurate summary of the duty lying upon the party applying for ex parte relief is to be found in the decision of Bingham, J. in *Siporex Trade SA v Comdel Commodities Ltd* [1986] 2 Lloyd's Rep. at 437:

'The scope of the duty of disclosure of a party applying ex parte for injunctive relief is, in broad terms, agreed between the parties. Such an applicant must show the utmost good faith and disclose his case fully and fairly. He must, for the protection and information of the defendant, summarise his case and the evidence in support of it by an affidavit or affidavits sworn before or immediately after the application. He must identify the crucial points for and against the application, and not rely on general statements and the mere exhibiting of numerous documents. He must investigate the nature of the cause of action asserted and the facts relied on before applying and identify any likely defences. He must disclose all facts which reasonably could or would be taken into account by the Judge in deciding whether to grant the application. It is no excuse for an applicant to say that he was not aware of the importance of matters he has omitted to state. If the duty of full and fair disclosure is not observed, the Court may discharge the injunction even if after full enquiry the view is taken that the order made was just and convenient and would probably have been made even if there had been full disclosure.'

16. We must emphasise the passage concerning the exhibiting of numerous documents. It is not sufficient for a plaintiff to be able to say that, buried somewhere amongst the voluminous exhibits, the point at issue was available to the judge. The duty is much more stringent. All defences actually raised by the defendant or which can reasonably be expected to be raised in due course must be identified and fairly summarised in the affidavit. If the affidavit itself is voluminous, counsel may need to refer the judge to the relevant points. The overriding duty of the applying party and his advocate is to ensure that all actual or possible defences (and other material matters) are brought to the specific attention of the judge so that he may consider them before making his order."

46 We have reviewed the skeleton argument filed by the Third Defendant in support of its application for *ex parte* freezing orders. The attention of the Court was drawn to the differences between the orders applied for and the Practice Direction template set out at RC15/04. An explanation was given as to why it was necessary for the application to be

made *ex parte*. The attention of the Court was drawn to the jurisdiction to make world-wide freezing orders and a reference to English authority was included because the Third Defendant had the belief that the Royal Court had not previously made a world-wide freezing order (including the usual asset disclosure order) prior to judgment. It was pointed out that to date, the Royal Court had made freezing orders post-judgment, and freezing orders in support of overseas judgments. The Court was directed to the fact that the Third Defendant had a primary defence in common with the First and Second Defendants in the main proceedings, and that there was no liability to the Plaintiffs. The question of a good arguable case was addressed, as was the risk, identified by the Third Defendant as a real risk, that the judgment would go unsatisfied. Counsel set out in the skeleton argument that the application came at a relatively late stage, thereby anticipating a defence of laches. It is true that the skeleton argument in support of the application for *ex parte* relief did not address arguments around the approach of the English courts to *quia timet* relief – but in our judgment that was not a surprising omission, and not one which we would be minded to hold against the Third Defendant.

47 The First Defendant's real complaint in relation to the contention that the Third Defendant has failed to make full and frank disclosure appears to be addressed to the alleged failure to present pertinent affidavit evidence sworn by Messrs Appleby in relation to its retirement in favour of GFIN. That issue was addressed by Appleby in an affidavit dated 9 th March, 2016, (which was not put before the Court when the ex parte order was obtained and indeed the whole affidavit does not appear to have been put before us by the First Defendant who objects in this respect to the failure to draw our attention to it in August), but the Third Defendant did put before the Court the affidavit sworn by Messrs Appleby on 29 th March, 2016. It is also true that the witness statement of Mr Lee Mo Lin a director of the Fourth Defendant which was a former trustee of the Grand Trust was not put in evidence before the Court when the *ex parte* application was considered. In this witness statement, Mr Lin indicates that the Fourth Defendant had been contemplating retiring as trustee for some time, and more especially since the beginning of the litigation in Jersey. He sets out that the arrangements for the retirement and appointment were made by GFIN and says that it was his understanding of the First Defendant's belief that clause 12 of the Grand Trust conferred exclusive jurisdiction on the courts where the trust was administered and it was on that basis that the Fourth Defendant had agreed to be appointed trustee in February 2012. The decision of the Privy Council that clause 12 did not have that effect came as a significant surprise to him and his colleagues – and he went on to say in his witness statement that the Fourth Defendant had been advised that it was anticipated that the appointment of GFIN would provide an opportunity for this mistake to be put right by the deed of appointment conferring exclusive jurisdiction for all disputes in relation to the Grand Trust to the Mauritius courts. That witness statement was not before the Royal Court at the time the *ex parte* application was considered.

48 In our judgment, that misses the point. The thrust of the application was that the First Defendant would be likely to hide her assets to the detriment of the Third Defendant if the third party claim were successfully established following the Plaintiffs' success on liability. The witness statement of the First Defendant was rightly put before the Court, but more

importantly the thrust of the Third Defendant's application was that the Supreme Court of Mauritius, in its judgment of 5 th July, 2016, had said this:-

> ***"Fourthly and above all, an injunction including an anti-suit injunction is an equitable remedy and 'he who comes to equity must come with clean hands'.*** No justifiable and convincing reason has been advanced for the retirement of Appleby as trustee and for the appointment of GFIN in the middle of the Jersey proceedings. And there is more, it is not unreasonable to conclude by the manner in which they are drafted that clauses 2(a) and (b), 7 and 8 have been inserted in the 2016 deed in response to the reasons given by the Judicial Committee of the Privy Council as to why clause 12 only determines the proper law for the administration of the Trust, is not a jurisdiction clause and does not confer exclusive jurisdiction on the courts of Mauritius. It is also not unreasonable to conclude that the purpose of the exclusive jurisdiction clause is to circumvent and defeat the effect of the judgment of the Privy Council. In these circumstances, an injunction and the more so anti-suite injunction cannot and will not lie."

49 The 2016 deed is a reference to the instrument of retirement and appointment dated 29 th January, 2016, whereby Appleby retired as trustee of the Grand Trust and GFIN was appointed as the sole trustee. Exhibited to the affidavit of Ms Deveney on the application for an *ex parte* injunction was a copy of the judgment of this Court handed down on 18 th April, 2016, and reported at *Crociani v Crociani* [2016] JRC 085. At paragraph 35 of that judgment, reference is made to a letter to the Court from the First Defendant giving her explanation about her involvement in the appointment of GFIN. At paragraph 38 of its judgment the Court said this:-

> ***"This Court is very concerned at the picture that is emerging from the documents and explanations so far provided.*** The fourth defendant and GFin, possibly funded by the first defendant, appear to have procured :-
>
> ***(i) The removal of the remaining but still substantial trust assets beyond the reach of this Court, and***
>
> ***(ii) The creation of a platform, the declarations in the 2016 appointment, from which GFin has launched the new Mauritius proceedings in defiance of the Privy Council decision, proceedings which may have been contemplated when it was appointed trustee by the fourth defendant."***

50 It is unsurprising that the Royal Court expressed that concern. It noted that GFIN had launched proceedings in Mauritius through lawyers in that jurisdiction and it makes the not unreasonable assumption that GFIN would not be providing its professional services gratuitously or using its personal funds to pay for the new Mauritius proceedings. On that basis GFIN must be presumed to be in receipt of funding from another source and the Court noted that attached to the First Defendant's letter to the Court was a copy of a fee agreement and indemnity dated 29 th January, 2016, under which the First Defendant gives

GFIN a wide indemnity for acting as trustee, as has been the case with previous trustees. The preamble to that indemnity was noted to anticipate litigation for which apparently the First Defendant had agreed to pay. The clear implication was that the First Defendant was the source of GFIN's funding and indeed the Court's understanding was that the First Defendant was paying or procuring the payment of the fees and outgoings of the Fourth Defendant to date as well.

51 The issue therefore was not a question of whether the Fourth Defendant was or was not party to this course of action, but what was the approach taken by the First Defendant. In our judgment the complaint of an incomplete picture is not one which can be maintained.

52 It was also contended by Advocate Santos Costa that the documents exhibited at tabs 27 – 30 of his bundle indicated that the First Defendant had complied with her discovery obligations to the Court and this was not brought to the Court's attention. At tab 27 was an affidavit of discovery filed on behalf of the First, Second and Fourth Defendants and sworn on 13 th May, 2016. That affidavit gave rise to a request for further discovery, and a court order of 30 th June, 2016. The court order appears to have been complied with by the First Defendant pursuant to an affidavit sworn on 14 th August, 2016, and a summary explanation of United States and tax advice provided by Messrs Collas Crill as advocates for the First, Second and Fourth Defendants at some point in August 2016. Finally at tab 30 is a copy of the judgment of the Master dated 23 rd August, 2016. None of this material goes to any failure on the part of the Third Defendant to make full and frank disclosure in the context of the application for an injunction on 2 nd August, 2016, but we accept that, to the extent it was originally contended by the Third Defendant that the First Defendant had failed to comply with orders of the Court, such a contention, in respect of the documents to which we have referred, can no longer be maintained. Nonetheless, the compliance in August 2016 does not amount to any failure to make full and frank disclosure at the beginning of that month.

53 In the application put before us, it was asserted on behalf of the First Defendant that she had followed professional advice. Indeed, she says as much in relation to the appointment of GFIN in January 2016 in her affidavit sworn on 30 th June, 2016, where she said this:-

> *"169. In or around the end of January 2016 I was contacted by telephone by a director of GFIN Corporate Services Limited ('GFIN') in Mauritius. He informed me that he had been in communications with Appleby Mauritius regarding the potential appointment of GFIN as trustee of the Grand Trust in place of Appleby Mauritius. Appleby Mauritius considered that in light of the fact that one of the beneficiaries of the trust, Cristiana, had questioned their independence, they should step down as trustee.*
>
> *170. The director explained that GFIN would be willing to act as trustee of the Grand Trust, provided that its appointment would be governed by the laws of Mauritius and that all disputes relating to that appointment would be heard and determined exclusively by the courts of Mauritius.*

171. Before these communications my earlier application to challenge the jurisdiction of the Jersey court had been rejected. In that application I had sought to rely upon clause 12 of the Grand Trust, alleging that it permitted the proper law to be changed to the law of the place where the new trustee was situated and conferred exclusive jurisdiction upon the courts of that place. Although this was what I had intended when I had created the trust, the Privy Council determined that it did not have that effect. GFIN advised me that the change of trustee in Mauritius was an opportunity to remedy this defect in the drafting of the Grand Trust deed which I had wanted to do for a long time. GFIN told me it would be possible for me to achieve this by the deed of appointment conferring exclusive jurisdiction for all disputes in relation to the Grand Trust to the Mauritius courts.

172. Appleby Mauritius and GFIN informed me that they had taken the advice of Clarel Benoit of Benoit Chambers in Mauritius and that he had confirmed that the steps they proposed were proper. I was therefore satisfied that it was the right course of action."

54 The Third Defendant points to this passage to emphasise that the First Defendant was well aware therefore that the execution of the deed of January 2016 was deliberately intended to by-pass the decision of the Judicial Committee of the Privy Council in relation to clause 12. We agree that this passage in her affidavit certainly suggests as much and for the purposes of this interlocutory application, we are proceeding on that basis. In case, however, it might be suggested that the First Defendant merely follows the advice of her professional advisers, it is material to refer to one other document, amongst the many that were put before us. It is a letter dated January 1996 sent by the First Defendant to her two daughters Camilla and Cristiana. It is expressed in Italian, and appears to be hand written and signed by the First Defendant, counter-signed by her two daughters. The translation in our papers is as follows:-

"My dear Camilla and Cristiana,

As you already know, I am about to get married and it is my intention to guarantee you, in relation to my future husband, since I know him only for three months. For this reason, I will arrange, in a few days, before my wedding, to transfer in trust with a private act, the bare title of shares of Croci International NV, while keeping the usufruct, the right to vote and the right to receive dividends.

When my marriage relationship will be consolidated or broke up and my husband won't be able to claim anything regarding these shares, you both, will transfer back them to me immediately, in the times I will tell you and in the same way I have transferred them to you.

I ask you to sign this letter for acceptance."

55 Admittedly in a different context, this letter demonstrates that the First Defendant is not beyond making arrangements which, in effect, hide her entitlement to assets. Unless otherwise explained at a later trial, the apparent transfer of assets such that the title of shares would not appear in her name, against an assurance that they will be transferred back whenever she calls for them, suggests, without explanation, exactly the kind of conduct which the Third Defendant asserts causes concern in relation to the possibility of enforcing any judgment obtained on the third party claim. The Third Defendant also relies on a document provided by the Fourth Defendant's discovery. It is an email dated 16 th January, 2012, from Natasha Hardowar to Gilbert Noel and others. Ms Hardowar is a compliance manager for Appleby in Mauritius and she said this:-

> *"Dear all*
>
> *Following the meeting which you had with the client last week, I hereby take note of the following:*
>
> *Client:*
>
> *Mrs Edoardo Vessell [the First Defendant]*
>
> *Mrs Camilla Crociani de Bourbon de Siciles*
>
> *…*
>
> *Following our internal discussion I hereby note the following (some of which are definitely red flags):*
>
> *The client is very secretive;*
>
> *The client is one who is liaising with us (note usually high net worth clients appoint other people to do such things);*
>
> *The client does not want (is not keen) to liaise by email because she stated that she does not want any trail;*
>
> *She mentioned that telephone calls should be kept to a minimum;*
>
> *She also mentioned that when she sent money to the trust she wants to do it in such a way that there is no trail (she stated that she wants to wipe out all traces of the source of funds – that is funds transferred);*
>
> *She also explained that she does not want her daughter to know the existence of the trust because the beneficiary would be Mrs Camilla Crociani de Bourbon de Siciles and she left only a small amount of money for the other daughter;*
>
> *I also note that Mrs Edoardo Vessell stated that she wants the distribution to be at her request.*
>
> *Mrs Edoardo Vessell would also be the co-trustee.*

Mrs Edoardo Vessell is very verse with the laws relating to trust as she stated she has various trusts in offshore jurisdictions.

…"

56 Advocate Redgrave submits that the fact that Appleby in its internal discussions recognises the First Defendant to be a person with knowledge of offshore structures, with a mind set to being secretive and with the intention of concealing assets and their trail all adds to their suspicions that while it may be possible to track down the First Defendant, it will not be necessarily be easy to track down her assets. In his submission, this material went very much to the balance of convenience as to whether the injunctions should be maintained, and that is a submission which we accept.

57 In our judgment, Advocate Redgrave was correct to say that the risk to the Third Defendant is huge, and the essence of it is that it would leave the First Defendant, who took the assets from the Fortunate Trust, with the money. She is the first port of call to return it, if the return is due. There is no evidence of particular inconvenience as far as the First Defendant is concerned, no trading business or capital has been frozen, and we accept the view that the balance of convenience lies firmly in the maintenance of the injunctions and the disclosure orders which should be performed within 48 hours of handing down this judgment, with liberty to apply.

58 Accordingly the application of the First Defendant to strike out the Order of Justice and have the injunction set aside is refused.