THE HIGH COURT
COMMERCIAL

[2016 No. 9981 P.]

BETWEEN

TRAFALGAR DEVELOPMENTS LIMITED,
INSTANTANIA HOLDINGS LIMITED,
KAMARA LIMITED
and
BAIRIKI INCORPORATED

PLAINTIFFS

AND

DIMITRY MAZEPIN, OJSC UNITED CHEMICAL COMPANY URALCHEM, URALCHEM HOLDING PLC, EUROTOAZ LIMITED, ANDREY GENNADYEVICH BABICHEV, YULIA BOLOTNIKOVA, BELPORT INVESTMENTS LIMITED, MILKO EMILOV MINKOVSKI, ANDROULA CHARILAOU, DIMITRY KONYAEV and YEVGENIY YAKOVLEVICH SEDYKIN

DEFENDANTS

JUDGMENT of Mr. Justice David Barniville delivered on the 17th day of January, 2019

Introduction

1. This is my judgment on the plaintiffs' application for judgment in default of appearance against the seventh defendant, Belport Investments Limited ("Belport"), a company registered in Tortola in the British Virgin Islands ("BVI"), and the eleventh defendant, Mr. Yevgeniy Yakovlevich Sedykin ("Mr. Sedykin"), a Russian citizen with an address in Togliatti City in the Samara Region of the Russian Federation. The application is made pursuant to O. 13 rr. 6 and 9 RSC, as amended. The plaintiffs also seek injunctive and ancillary reliefs in aid of execution, in the event that the judgment in default of appearance is granted by the court.

2. The proceedings were commenced pursuant to leave granted by the High Court (McDermott J.) on 7th November, 2016, by a plenary summons which was issued on 9th November, 2016. In short, the plaintiffs claim that the defendants (including Belport and Mr. Sedykin) are co-conspirators in an alleged scheme (the "Scheme") which is intended wrongfully to divest the plaintiffs of their shares, or the benefit of their shares, in a Russian company called OJSC Togliattiazot ("ToAZ"). It is claimed that the defendants' participation in this alleged Scheme amounts to unlawful means conspiracy in tort, or alternatively, that the means employed by the defendants in aid of the alleged Scheme, if lawful, are nonetheless actionable as being carried out for an unlawful end.

Motion for Judgment in Default of Appearance

3. The immediate background to the present application is that on 6th June, 2018, the plaintiffs issued a motion seeking judgment in default of appearance and injunctive and ancillary relief in aid of execution against Belport and Mr. Sedykin and against the first, second, third, sixth, ninth and tenth defendants.

4. The motion for judgment default of appearance and for the other reliefs referred to was listed for hearing on 28th July, 2018. On 13th July, 2018, a conditional appearance was filed on behalf of the first, second, third, sixth and tenth defendants. On 25th July, 2018, an unconditional appearance was filed on behalf of the ninth defendant. No appearance was filed on behalf of Belport or Mr. Sedykin. The plaintiffs proceeded with the motion as against those defendants only.

5. The plaintiffs' application was grounded on an affirmation of Mr. James Walfenzao, a director of the first named plaintiff, Trafalgar Developments Limited ("Trafalgar"), dated 1st June, 2018. Further affidavit evidence was also adduced in support of the application. This evidence is contained in the affidavit of Ms. Karyn Harty sworn on 6th June, 2018, the affidavit of Mr. Evgeniy Korolev sworn on 3rd, October, 2017, the affidavit of Professor Richard Sakwa sworn on 4th June, 2018, the affidavit of Mr. Vladimir Gladyshev sworn on 1st June, 2018, the affidavit of Mr. Sergei Makhlai sworn on 10th April, 2017 and the affidavit of Mr. Andreas Zivy sworn on 6th April, 2017. In total the papers provided to the court for the purpose of this application for judgment in default of appearance comprised some seventeen lever arch folders (including a book of legal submissions and authorities).

6. The plaintiffs assert on the basis of the affidavit evidence and legal submissions that there has been a default in entering an appearance by Belport and Mr. Sedykin, that the default procedures under O. 13 RSC have been complied with and that the court can, therefore, be satisfied that it is entitled to grant judgment in default of appearance against Belport and Mr. Sedykin. In addition, although they take the view that they are not required under O. 13 RSC to do so, the plaintiffs have sought to verify their claims by means of this affidavit evidence.

7. In the event that I am disposed to granting judgment in default of appearance, the plaintiffs seek the following injunctive and ancillary reliefs against Belport and Mr. Sedykin:-

(a) *Mareva* type injunctive relief restraining Belport and Mr. Sedykin, their respective servants or agents, from reducing their personal assets, including assets in which these defendants hold any direct or indirect interest, below the sum of US$78,769,219.84 (or such other sum as the court considers appropriate) pending further order of the court.

(b) An order restraining Belport and Mr. Sedykin, their servants or agents from dealing with any direct or indirect interest of OJSC United Chemical Company Uralchem ("*UCCU*"), the second defendant, in the shares of ToAZ.

(c) An order restraining Belport and Mr. Sedykin from dealing with any assets in order to prevent or obstruct the plaintiffs from enforcing or recovering on foot of the judgment of this court or such damages as might be awarded on such judgment.

(d) An order requiring each of Belport and Mr. Sedykin to disclose on affidavit or equivalent document, all of their assets and liabilities (including any interest therein) to include assets in which the first or second defendant has a direct or indirect interest.

(e) An order requiring each of Belport and Mr. Sedykin to disclose on affidavit or equivalent document all bank accounts (and/or wallets in respect of any cryptocurrency) worldwide in which these defendants have a direct or indirect legal or beneficial interest.

(f) An order for disclosure on affidavit or equivalent document of all documents relating to any actions taken by these

defendants, or on their behalf, to place their assets beyond the reach of the plaintiffs.

8. I will first outline in a little greater detail the factual background to this application and the manner in which the proceedings were commenced. I will then consider the requirements which must be satisfied by the plaintiffs in order to obtain judgment in default of appearance against Belport and Mr. Sedykin and the evidence provided by the plaintiffs in that regard. Next I will set out my conclusions on the plaintiffs' application for judgment in default of appearance against those defendants. I will then consider and set out my conclusions on the plaintiffs' application for injunctive and other ancillary relief in aid of execution.

9. I should make clear that in this application I am dealing solely with the claims made by the plaintiffs against Belport and Mr. Sedykin in circumstances where they have not entered an appearance to the proceedings and have not sought in the proceedings to dispute any of the claims made against them by the plaintiffs. I make no findings whatsoever in relation to the plaintiffs' claims against the other defendants in the proceedings. Those claims remain to be addressed in the proceedings in accordance with the appropriate procedures of the court. Nothing which I say in this judgment is intended in any way to affect the conduct of the plaintiffs' case against the other defendants or the defences or objections which those other defendants have or may wish to raise in respect of the plaintiffs' claims.

Factual Background

10. As appears from the amended statement of claim dated 10th April, 2018, which was filed in the Central Office of the High Court on 26th April, 2018, and from the affidavit evidence adduced on this application for judgment, the plaintiffs' claims may be briefly summarised as follows. The plaintiffs claim that together they own in excess of 70% of the shares in ToAZ, a Russian company, which is stated by the plaintiffs to be one of the largest producers of trade ammonia in Russia. The plaintiffs claim that the defendants are co-conspirators in the alleged Scheme, the intention of which it is alleged is to deprive the plaintiffs of their shares in ToAZ for the benefit of Mr. Dimitry Mazepin ("Mr. Mazepin"), the first defendant. The plaintiffs describe Mr. Mazepin as a Belarussian businessman and the ultimate beneficial owner of UCCU, the second defendant. UCCU is said by the plaintiffs to be a minority shareholder in, and a direct competitor of, ToAZ.

11. The plaintiffs claim that the alleged Scheme displays features that are typical of a phenomenon known as a "raider attack". A description of these so-called "raider attacks" is set out in an affidavit sworn by Professor Richard Sakwa, an associate fellow of the Russian and Eurasia Programme (REP) at the Royal Institute of International Affairs, Chatham House, on 7th June, 2018. It is stated on behalf of the plaintiffs that such attacks typically involve the so-called "raider" acquiring a minority shareholding in a target company. Thereafter, illegal, dishonest and corrupt means are deployed in order to acquire a controlling shareholding in the target. The means deployed to wrest control of the target often include the repeated issuing of improper civil and criminal lawsuits against the target in order to devalue the company's stock, the placing of unlawful pressure on judicial authorities to bring regulatory and tax prosecutions against the target company and the seizing of confidential information at the target's offices. These actions are intended to cause the owners of the target to either give up the target company or sell it at a discounted rate. The plaintiffs assert that in the Russian Federation it is particularly common for "raiders"' to register themselves as a victim after an improper criminal complaint has been made against the target and then to seek compensation from the target upon conviction for the criminal wrongdoing. The debt or damage owed to the alleged victim can then result in the bankruptcy of the target. The compensation is then used by the "raider" to buy the collapsed target company. The plaintiffs claim that the alleged Scheme in which it is alleged the defendants, including Belport and Mr. Sedykin have participated, bears many of the features typically associated with such "raider attacks".

12. The plaintiffs contend that the alleged Scheme comprises many individual actions undertaken by different defendants at different times. It is alleged that each defendant can be linked to Mr. Mazepin, either directly or indirectly. It is further alleged that each defendant can be linked to the other by the common purpose of the defendants' actions in aiding the attempted expropriation of the plaintiffs' shares in ToAZ for the ultimate benefit of Mr. Mazepin. The plaintiffs have adduced detailed evidence as to the provisions and principles of Russian law which they contend apply to their claims against the defendants. The alleged involvement of Belport and Mr. Sedykin in this alleged Scheme is briefly noted below and will be more fully described later in this judgment.

The seventh and eleventh defendants, Belport and Mr. Sedykin

13. Belport, the seventh defendant, is a company registered in the BVI, but said by the plaintiffs to be operating in Nicosia, Cyprus. In the affirmation of Mr. Walfenzao, it is asserted that Belport was the counterparty to a false share purchase agreement relied upon in evidence by UCCU in its alleged campaign of vexatious litigation, which is said by the plaintiffs to be a central feature of the alleged Scheme the subject of these proceedings. It is asserted that Belport is owned by Mr. Minkovski, the eighth defendant, and that Ms. Androula Charilaou, the ninth defendant, is a director of Belport.

14. Mr. Sedykin, the eleventh defendant, is stated to be a Russian Citizen with an address in Togliatti City, in the Samara Region of the Russia Federation. It is claimed by the plaintiffs that he has acted on behalf of the fourth defendant, Eurotoaz Limited ("Eurotoaz"), by power of attorney, in the context of its alleged campaign of vexatious litigation carried out in aid of the alleged Scheme. The plaintiffs claim that he was also central to an attempt to unlawfully gain control of the board of ToAZ carried out in November 2015 which resulted in Mr. Sedykin's criminal conviction in Russia in July 2017. It is further claimed that Mr. Sedykin has publicly reported links to Mr. Mazepin.

15. The alleged involvement of both of these defendants in the alleged Scheme will be set out in greater detail later in this judgment. Before doing so, it is necessary to refer to the manner in which these proceedings were commenced in the High Court against the defendants, including Belport and Mr. Sedykin, in November 2016.

Commencement of proceedings

16. As a number of the defendants to these proceedings, including Belport and Mr. Sedykin, are domiciled outside the jurisdiction, in countries which are not party to Regulation 1215/2012/EU (the "Brussels I Regulation Recast") or the Lugano Convention, the plaintiffs brought an *ex parte* application before McDermott J on 7th November, 2016, seeking leave to issue and serve notice of these proceedings on those defendants outside the jurisdiction pursuant to O. 11 RSC. By order of the High Court (McDermott J) of 7th November, 2016 (perfected on the 8th November, 2016) (the "November 2016 Order") the court granted leave to issue and serve the proceedings out of the jurisdiction on the non-EU defendants, including Belport and Mr. Sedykin, and allowed for substituted service. In particular, the court made the following orders:

(a) An order for leave to serve out notice of plenary summons in these proceedings on *inter alia* Belport and Mr. Sedykin, pursuant to O. 11, r (1)(h) RSC.

(b) Substituted service on *inter alia* Belport and Mr. Sedykin, pursuant to O. 10, r. 1 RSC, in the following manner:

(i) On Belport, by post to its registered office in the BVI and by post to its registered agent's address in that jurisdiction.

(ii) On Mr. Sedykin, (dispensing, in the exceptional circumstances established in the evidence before the court, with requirements under the Hague Convention on service in civil and commercial matters) by post to his address in Togliatti City, in the Samara Region of the Russian Federation.

(c) The defendants the subject of the application, including Belport and Mr. Sedykin, were required to enter an appearance to these proceedings within a period of eight weeks from the date of service of the plenary summons on them.

17. Following the granting of the November 2016 Order, the plaintiffs' Irish solicitors, McCann FitzGerald, issued a plenary summons on behalf of the plaintiffs in respect of the defendants outside Ireland and the EU (including Belport and Mr. Sedykin) and concurrent plenary summonses in respect of the Irish and EU domiciled defendants on 9th November, 2016.

18. The plaintiffs claim that Belport and Mr. Sedykin, having been served with notice of the plenary summons in accordance with the November 2016 Order, failed to enter an appearance within eight weeks of the date of service, as required by that order. The plaintiffs claim that Belport and Mr. Sedykin are, therefore, in default of appearance.

19. Before considering whether or not the plaintiffs are now entitled to judgment in default of appearance, I will first set out the relevant legal requirements which must be satisfied before the plaintiffs' application could be granted and the proofs which must be met by a plaintiff seeking judgment in default of appearance.

Judgment in default of appearance: the proofs required

20. The rules governing the granting of judgment in default of appearance, as applicable to the plaintiffs' application, are laid down in Order 13 RSC.

21. Where there are multiple defendants to proceedings and some defendants enter an appearance and others do not, O. 13, r. 9 RSC entitles a plaintiff to seek judgment in default against those defendants which have not appeared. It states:

> *"Where there are several defendants to such a plenary summons as is mentioned in rule 6 and one or more of such defendants appear to such summons, and another or others of them fail to appear, the plaintiff may proceed under the said rule against the defendant or defendants so failing to appear and the application for judgement thereunder shall be heard and the damages (if any) to which the plaintiff may be entitled ascertained, as against such defendant or defendants, at the same time as the trial of the proceeding or issue therein against the other defendant or defendants, unless the Court shall otherwise direct."*

22. O. 13 RSC requires a plaintiff to satisfy a number of requirements before judgment will be granted against non-appearing defendants. Those requirements are set out below.

23. First, a plaintiff must establish that the notice of plenary summons (in the case of the non-Irish and non-EU defendants) was served on the relevant defendant or defendants. O. 13, r. 2 RSC requires a plaintiff seeking judgment in default to file an affidavit of service of the plenary summons or notice in lieu of service before taking default proceedings. It states:

> *"Where any defendant fails to appear to a summons, and the plaintiff is desirous of proceeding upon default of appearance under any of the following rules of this Order or Order 37, rule 12, he shall, before taking such proceeding upon default, file an affidavit of service of the summons or notice in lieu of service, as the case may be."*

24. Second, it must be shown that following service of the plenary summons on the relevant defendant or defendants, there was a default in entering an appearance by that defendant or those defendants.

25. Third, a plaintiff must show that the plaintiff's statement of claim was delivered by being filed in the Central Office of the High Court. This requirement is set out in O. 13, r. 6 RSC which states:

> *"In case of default of appearance by any defendant (other than such defendant as is in rule 1 mentioned) to a plenary summons, the plaintiff shall, except in the case of a claim otherwise provided for in any of the preceding rules of this Order, deliver a statement of claim by filing the same in the Central Office and thereupon may apply to the court for judgment in the proceeding in default of appearance, …"*

26. Fourth, the court must be satisfied that the notice of motion seeking judgment in default of appearance itself has been served on the relevant defendant or defendants. A motion for judgment in default of appearance is generally required to be served personally (*Taylor v Huband-Smith* (1921) 55 ILTR 120). However, where this is not possible or practicable, an order for substituted service may be obtained pursuant to O. 10, r. 1 RSC.

27. In summary, before granting judgment in default of appearance pursuant to O. 13 RSC, the court must be satisfied on the evidence before it as to:

(a) Service of the notice of plenary summons on the relevant defendants.

(b) Default in entering an appearance by the relevant defendants.

(c) Delivery of the plaintiffs' statement of claim by filing in the Central Office of the High Court.

(d) Service of the notice of motion seeking judgment in default on the relevant defendants.

28. Further, although the plaintiffs take the view that it is not strictly required under O. 13 RSC, they have also sought to verify by way of affidavit evidence their claims against Belport and Mr. Sedykin.

29. I now turn to consider whether the evidence put forward by the plaintiffs satisfies the four criteria listed above, so as to entitle

the plaintiffs to judgment in default of appearance.

(a) Service of notice of plenary summons on Belport and Mr. Sedykin
30. As noted above, the first requirement to be satisfied for the purpose of the plaintiffs' application is that service of the notice of the plenary summons was effected on Belport and Mr. Sedykin in accordance with the November 2016 Order.

31. Ms. Karyn Harty, a partner in McCann FitzGerald, has averred in her affidavit, sworn on 6th June, 2018, that on 22nd November, 2016, her firm sent notice of the plenary summons (which was issued on 9th November, 2016), a true copy of the original statement of claim (dated 21st November, 2016) and a copy of the perfected November 2016 Order to a number of the defendants including Belport and Mr. Sedykin. Mr. Sedykin was sent Russian translations of those documents under the same cover letter (para. 25 of Ms. Harty's affidavit).

32. In Ms. Harty's affidavit, it is averred that service on Belport and Mr. Sedykin was effected in accordance with the November 2016 Order (i.e. by post to the registered office of Belport and of its registered agent in the BVI and by post to Mr. Sedykin's address in Togliatti City in the Samara Region of the Russian Federation) (para. 26 of Ms. Harty's affidavit). Ms. Harty avers that while it is not possible to verify that the correspondence to Belport and Mr. Sedykin was actually delivered, it was not returned and there is no reason to believe that it was not delivered in the ordinary course of post. I agree. That is a reasonable assumption to make on the evidence.

33. An affidavit of service in relation to the service of these documents was sworn on 24th November, 2016, by Ms. Bébhinn Dunne, a solicitor with McCann FitzGerald. At paragraph 4 of that affidavit, Ms. Dunne confirms service on Belport of the notice of the plenary summons and a true copy of the original statement of claim, which were sent by prepaid ordinary post on the 22nd November, 2016 to the two addresses identified in the November 2016 Order. At paragraph 3(vi) of that affidavit, Ms Dunne confirms service on Mr Sedykin of the notice of plenary summons and a true copy of the original statement of claim in Russian and in English, which were also sent by prepaid ordinary post on the 22nd November, 2016 to the relevant address identified in the November 2016 Order.

34. While that affidavit of service of Ms. Dunne does not refer to the service of the November 2016 Order itself on Belport and Mr. Sedykin, on 26th July, 2018, the day before the hearing of this application, Ms. Dunne swore a supplemental affidavit in which she confirmed that the November 2016 Order was also enclosed with the documents sent to Belport and Mr. Sedykin on the 22nd November, 2016.

35. The plaintiffs also note in their submissions that the basis upon which they sought leave to serve out on the non-EU defendants, including Belport and Mr. Sedykin, was later upheld by Haughton J. in a judgment delivered in these proceedings on 23rd November, 2017 (*Trafalgar Developments Limited & ors v. Mazepin & ors* [2017] IEHC 721).

36. At paragraph 42 of Ms. Harty's affidavit, she states that the relevant affidavits of service for the purpose of this application were filed in the Central Office prior to the issuing of the motion seeking judgment in default of appearance. Ms. Dunne's affidavit of service of 24th November, 2016, was filed in the Central Office on 25th November, 2016.

37. The plaintiffs assert that the evidence outlined above is sufficient to satisfy the court that the notice of plenary summons was properly served on Belport and Mr. Sedykin and that, therefore, the first proof required of a plaintiff seeking judgment in default of appearance has been made out. As will be noted below, service of the notice of plenary summons was in fact effected for a second time on both Belport and Mr. Sedykin in May 2018 when the amended statement of claim was sent to them.

38. I am satisfied, on the basis of the evidence summarised above, that Belport and Mr. Sedykin were properly served with the notice of plenary summons in the manner required by the November 2016 Order. Thus, the first requirement has been satisfied.

(b) Default of appearance on the part of Belport and Mr. Sedykin
39. The next requirement which the plaintiffs must satisfy in order to obtain judgment in default of appearance against Belport and Mr. Sedykin is that those defendants must be in default of appearance.

40. Ms. Harty avers in her affidavit of 6th June, 2018, that by 14th February, 2017, Belport and Mr. Sedykin were in default of appearance. Ms Harty avers that it is reasonable to assume that the documents which were posted on the 22nd November, 2016 (in the manner described above), namely, the notice of plenary summons, a true copy statement of claim and a copy of the November 2016 Order, were delivered to Belport and Mr. Sedykin in the ordinary course of post. Ms. Harty further states, at paragraph 27 of her affidavit, that none of the documents posted to Belport and Mr. Sedykin on 22nd November, 2016, were returned and that she has no reason to believe that the documents were not delivered in the ordinary way. Ms. Harty then states, at paragraph 29 of her affidavit, that it can be assumed that service of the notice of plenary summons on Belport and Mr. Sedykin occurred by 19th December, 2016, given that the postage of the plenary summons took place 27 days prior to that date. I agree that these are reasonable and appropriate assumptions to make and I find that service of the notice of plenary summons is likely to have taken place by 19th December, 2016.

41. The defendants were required by the November 2016 Order to enter an appearance within eight weeks of the date of service of the plenary summons. The plaintiffs claim, therefore, that by 14th February, 2017, Belport and Mr. Sedykin were in default of appearance, as by that date, at least eight weeks had passed since the date of service of the relevant documents and an appearance had not been entered by either Belport or Mr. Sedykin (see paras. 29 and 30 of Ms. Harty's affidavit).

42. On the basis of this affidavit evidence, the plaintiffs claim that the second requirement to be satisfied on this application for judgment in default of appearance, namely, the default of appearance by Belport and Mr. Sedykin, has been made out. I agree. I am satisfied that by 14th February, 2017, Belport and Mr. Sedykin were in default of appearance.

Further opportunity to enter an appearance
43. The plaintiffs have adduced evidence indicating that Belport and Mr. Sedykin were afforded further opportunities to enter an appearance to these proceedings and yet failed to do so. The plaintiffs point to the fact that warning letters were sent to Belport and Mr. Sedykin, on 14th February, 2017, indicating that they were in default of appearance, consenting to the late entry of an appearance by each of them within 21 days of the date of the letters and stating that judgment in default would be sought unless they entered appearances to the proceedings within 21 days of the date of the letters. Evidence that these warning letters were sent is provided at paragraph 30 of Ms. Harty's affidavit. Copies of the warning letters are exhibited to that affidavit. Those letters referred to the fact that a notice of plenary summons had been served on Belport and Mr. Sedykin. The final paragraph of each letter stated:

> *"Please note if no appearance is entered by you or on your behalf within twenty one days of the date of this letter, being on or before 7 March 2017, we will issue a motion seeking judgment in default of appearance without further notice to you and will rely on this letter in support of that motion …"*

44. An affidavit of service was sworn by Mr. Sean Nolan (a courier with Connect Couriers) on the 20th February 2017, deposing to the fact that on the 14th February, 2017, these warning letters were sent by certified prepaid ordinary post to Belport and Mr. Sedykin at the addresses at which service of the proceedings was effected in accordance with the November 2016 Order.

45. While Ms. Harty appropriately states in her affidavit (at para. 32) that it is not possible to verify that the letters of 14th February, 2017, were actually delivered to Belport and Mr. Sedykin, she states that they were not returned and that she has no reason to believe that they were not delivered in the ordinary course of post. I agree. That is a reasonable assumption. I conclude on the evidence that those letters were in fact delivered.

Motion for leave to amend, further warning regarding judgment in default

46. On 16th February, 2018, the plaintiffs issued a motion seeking leave to amend the original statement of claim in the proceedings. As will be described below, the motion for leave to amend was served on Belport and Mr. Sedykin under covering letters which contained further warnings that the plaintiffs would seek judgment in default of appearance in due course.

47. The motion for leave to amend together with the affidavit grounding that application and other relevant documents (translated into Russian in the case of Mr. Sedykin) were served on both Belport and Mr. Sedykin in accordance with an order made by Haughton J. on 13th February, 2018 (the "February 2018 Order"). It had been necessary for the plaintiffs to make an application before Haughton J. for leave to serve out and for substituted service of further documents in the proceedings as the November 2016 Order only provided for the service of the initiating documents in the proceedings. In the February 2018 Order, Haughton J. (a) granted leave to the plaintiffs pursuant to O. 11, r. 11(h) and O. 11, r. 11 RSC to issue and serve out of the jurisdiction on a number of the defendants (including Belport and Mr. Sedykin) any motions, pleadings or documents which the plaintiffs may be required to or may wish to serve on (inter alia) Belport and Mr. Sedykin (including, but not limited to, a motion or motions for judgment and a motion or motions to amend the original statement of claim) and (b) allowed substituted service of such documents pursuant to O. 10, r. 1 RSC in respect of (*inter alia*) Belport and Mr. Sedykin. Under this order, service was permitted to be effected on Belport by post to its registered office and to its registered agent's address in the BVI and on Mr. Sedykin, by post to his address in Togliatti City, in the Samara Region of the Russian Federation.

48. An affidavit of service was sworn by Mr. Gerard Sadlier, solicitor with McCann FitzGerald, on the 9th April, 2018, which provides evidence that the motion for leave to amend and the accompanying covering letters (and their enclosures) were served on Belport and Mr. Sedykin, in accordance with the February 2018 Order. The covering letters sent to Belport and Mr. Sedykin are exhibited to Mr Sadlier's affidavit. The documents enclosed with those covering letters comprised: a copy of the February 2018 Order, a copy of the plaintiff's notice of motion dated 16th February, 2018, seeking leave to amend the original statement of claim (which was returnable for 10th April, 2018), a copy of an affidavit sworn by Ms. Harty on 22nd February, 2018, for the purpose of grounding that motion, a copy of the exhibit to that affidavit and a copy of the (draft) amended statement of claim (which was the subject of the motion to amend).

49. The covering letter sent to Belport was dated the 16th February, 2018. The final paragraph of that letter contains a further warning that judgment in default of appearance would be sought by the plaintiffs in due course. It states:

> *"For the avoidance of doubt, please note that a motion for judgment in default of Appearance will be issued against you in due course. The Plaintiffs reserve the right to rely on this correspondence to seek the costs of and incidental to their motion in relation to their Amended Statement of Claim and/or in support of the motion which they intend to bring for judgment in default of appearance against you".*

50. The covering letter sent to Mr. Sedykin was dated the 22nd February, 2018, enclosed copies of the same documents together with translations into Russian of all of the enclosed documents except the exhibit to Ms. Harty's affidavit, which Haughton J. had directed did not need to be translated. A further warning regarding the plaintiffs' intention to seek judgment in default against Mr. Sedykin was also contained in the final paragraph of this letter. It states:

> *"For the avoidance of doubt, please note that on proof that you have been properly served, this motion may be heard and determined in your absence. We strongly recommend therefore that you immediately seek independent legal advice from an Irish lawyer and enter an appearance in these proceedings. A motion for judgment in default of Appearance will be issued against you in due course, unless you enter an appearance in these proceedings."*

51. An affidavit of service was sworn by Mr. Nolan, also on the 9th April, 2018, confirming that the postage of these papers by prepaid ordinary post to Belport occurred on the 16th February, 2018 and to Mr. Sedykin on the 22nd February, 2018, in the manner provided for in the February 2018 Order.

52. The motion to amend the original statement of claim was listed for hearing before me on the 10th April, 2018. On that occasion, I considered the affidavits of service of Mr. Sadlier and Mr. Nolan, referred to above, and I was satisfied that the motion had been served correctly on Belport and on Mr. Sedykin and the other defendants (there was an issue with regard to the service on the eighth defendant, Mr. Minkovski, but the current application does not concern him). On that date, I made an order granting the plaintiffs leave to amend their statement of claim in the terms of the draft amended statement of claim provided to the court (the "April 2018 Order"). For the purpose of this application for judgment in default of appearance, I have reconsidered all of the papers in relation to the service of the motion to amend the statement of claim. Having done so, I remain firmly of the view that the motion to amend the statement of claim and the other documents served for the purpose of that motion, which were enclosed with the letters to Belport and to Mr. Sedykin of 16th February, 2018 and 22nd February, 2018, respectively, were properly served in accordance with the February 2018 Order.

Further evidence that Belport and Mr. Sedykin aware of these proceedings

53. While it is perhaps unnecessary, in light of the technical proofs provided by the plaintiffs, evidence has been presented by the plaintiffs on affidavit indicating that Belport and Mr. Sedykin are aware of the proceedings for reasons other than the fact that service has been properly effected in accordance with the RSC.

54. Ms. Harty avers at para. 56 of her affidavit that Belport is aware of these proceedings through its director, Ms. Charilaou (the ninth defendant), and the alleged owner of Belport, Mr. Minkovski (the eighth defendant). At the hearing of this application, counsel for the plaintiffs stated that Ms. Charilaou has been served multiple times with these proceedings and noted that the firm of Irish

solicitors, AMOSS Solicitors, entered an unconditional appearance for Ms. Charilaou on the 25th July, 2018. The plaintiffs claim that given this, there is no reason to believe that Belport is not fully aware of these proceedings.

55. Further, at para. 46 of her affidavit, Ms. Harty notes that Ms. Anastasia Tolstaya, an officer of the third defendant, Uralchem Holding Plc ("Holdings"), swore an affidavit, on 18th April, 2017, in proceedings in Cyprus, in which she admitted awareness of the proceedings and stated that she had received advice in relation to these proceedings from AMOSS Solicitors. This affidavit was sworn in the context of separate proceedings which the plaintiffs brought in Cyprus to which Holdings was a respondent. Those proceedings sought, *inter alia*, freezing orders in aid of the current proceedings. Ms. Harty states at paragraph 51 of her affidavit that the decision of the court of first instance in the Cypriot proceedings which refused the reliefs sought by the plaintiffs is currently under appeal. In addition, according to Ms. Tolstaya, CGV, a Cypriot law firm acting for Holdings, was informed by solicitors for the fourth and fifth defendants about the current stage of the proceedings in Ireland. Ms. Harty contends, at paragraph 47, that it is clear that the fourth and fifth defendants are assisting the respondents in the Cypriot proceedings, including Holdings. The plaintiffs contend that Ms Tolstaya's awareness of the proceedings is further evidence that the other defendants are fully aware of the existence of these proceedings, given that it is alleged that Mr. Mazepin is the ultimate controller, director of and beneficial owner of Holdings (see para. 48 of Ms. Harty's affidavit) and that the defendants are all acting in concert in the alleged Scheme.

56. Moreover, it is asserted in the affirmation of Mr. Walfenzao, relied upon by the plaintiffs to ground this application for judgment in default of appearance, that Mr. Sedykin has publicly reported links to Mr. Mazepin who it is alleged owns and controls the Uralchem group. It is further asserted that Mr. Sedykin has been central both to the alleged Eurotoaz campaign of vexatious litigation and an alleged separate campaign to oust the management of ToAZ (in connection with which he received a criminal conviction), as will be referred to later in this judgment. Given Mr. Sedykin's alleged objective and publicly reported links to Mr. Mazepin, the plaintiffs claim that it is impossible to believe that he is unaware of these proceedings.

57. The plaintiffs submit on the basis of the affidavit evidence set out above, that it is clear, quite apart from the fact that Belport and Mr. Sedykin were served correctly with these proceedings, that both these defendants are fully aware of these proceedings and have had ample opportunity to enter an appearance to them. Despite this, they have failed to do so and remain in default of appearance.

58. Having regard to the conclusion which I have reached that the plaintiffs have satisfied the requirement of establishing that Belport and Mr. Sedykin were properly served with notice of the proceedings in accordance with the November 2016 Order (and, as I conclude later in this judgment, were served with notice of the proceedings for a second time in May 2018), it is unnecessary for me to express any view on whether there is a basis for the plaintiffs' assertions that Belport and Mr. Sedykin are otherwise aware of the proceedings by reason of the other matters asserted by the plaintiffs which I have just summarised and I refrain from doing so.

(c) Amended statement of claim filed in the Central Office

59. The next requirement which the plaintiffs must satisfy in order to establish an entitlement to judgment in default of appearance against Belport and Mr. Sedykin is that the amended statement of claim was delivered to those defendants by being filed in the Central Office of the High Court as required by O. 13, r. 6 RSC.

60. I am satisfied on the evidence that the amended statement of claim (amended pursuant to the April 2018 Order) was filed in the Central Office on 26th April, 2018. Paragraph 42 of Ms. Harty's affidavit verifies that fact. A copy of the amended statement of claim bearing the Central Office stamp of that date was provided to me in the course of the hearing of the application for judgment in default of appearance. The plaintiffs claim that the court can be satisfied, therefore, that the third requirement to be met by a plaintiff seeking judgment in default has been satisfied.

61. I accept the plaintiffs' evidence and I am satisfied that the plaintiffs have complied with the requirement contained in O. 13, r. 6 RSC to deliver the amended statement of claim by filing it in the Central Office. That is sufficient to discharge the third requirement which must be satisfied by the plaintiffs in order to obtain judgment in default of appearance against Belport and Mr. Sedykin.

62. While it was not necessary for the plaintiffs to deliver the amended statement of claim other than by filing it in the Central Office of the High Court (having regard to the provisions of O. 13, r. 6 RSC), the plaintiffs did in fact proceed to deliver the amended statement of claim together with additional documents. Delivery of the amended statement of claim together with a copy of the April 2018 Order and of the February 2018 Order and a further copy of the notice of plenary summons dated 22nd November, 2016, was effected on Belport on 14th May, 2018 and on Mr Sedykin on 24th May, 2018 in the manner provided for in the February 2018 Order. Evidence of such delivery and service is provided in the affidavit of service of Mr. Lorcan Hurley, a legal executive with McCann FitzGerald, sworn on 6th July, 2018 (as regards Mr. Sedykin), in the affidavit of service of Mr. Sadlier, sworn on 20th July, 2018 (as regards Belport), and in the affidavit of service of Mr. Nolan, sworn on 9th July, 2018 (as regards both of them). Mr. Nolan confirmed that he sent the letters and their enclosures to Belport on 14th May, 2018 and to Mr. Sedykin on 24th May, 2018, by prepaid certified ordinary post to the addresses provided for those defendants in the February 2018 Order.

63. I observe that this was the second occasion on which Belport and Mr. Sedykin were served with the notice of the plenary summons.

64. The final paragraph of the plaintiffs' solicitors' letter to Belport dated 14th May, 2018, states as follows:

> *"For the avoidance of doubt, please note that a motion for judgment in default of appearance will be issued against Belport Investments Limited in due course. That motion will seek judgment against Belport Investments Limited in its absence because Belport Investments Limited has not participated in these proceedings, even though it has been properly served with these proceedings and in sufficient to permit Belport Investments Limited to do so. The plaintiffs' motions for judgment (once issued) are currently listed to be heard by the court in Ireland on 27th July, 2018. We therefore strongly recommend that Belport Investments Limited seeks independent legal advice from Irish lawyers immediately and enters an appearance in these proceedings, without further delay. The plaintiffs reserve the right to rely on this correspondence in support of and to seek the costs of and incidental to the motion which they intend to bring for leave to enter judgment in default of appearance against Belport Investments Limited."*

A copy of that letter is exhibited at exhibit "JS1" to Mr. Sadlier's affidavit of 20th July, 2018.

65. The plaintiffs' solicitors' letter to Mr. Sedykin dated 21st May, 2018 which was posted on 24th May, 2018, contained a final paragraph in almost identical terms. A copy of that letter (and a Russian translation thereof) is exhibited at exhibit "LH1" to Mr. Hurley's affidavit of 6th July, 2018.

66. Finally, in this regard, while Mr. Sadlier states, at para. 7 of his affidavit of 20th July, 2018, in relation to the correspondence sent to Belport by post, and while Mr. Hurley states, at para. 7 of his affidavit of 6th July, 2018, in relation to the correspondence sent to Mr. Sedykin by post, that it is not possible to verify delivery of that correspondence, both Mr. Sadlier and Mr. Hurley confirm that none of the correspondence was returned and that they have no reason to believe that it was not delivered in the ordinary course of post. Again, I agree that they are reasonable assumptions to make and I conclude on the evidence that the correspondence of 14th May, 2018 (and its enclosures) sent to Belport and the correspondence of 21st February, 2018 (and its enclosures) sent to Mr. Sedykin, was sent and delivered to those defendants.

(d) Service of the notice of motion for judgment in default of appearance

67. The final requirement which the plaintiffs must meet in order to satisfy the court that they are entitled to a default judgment is that service of the motion for judgment in default of appearance was properly effected on Belport and Mr. Sedykin.

68. The plaintiffs state that service of the notice of the motion for judgment in default of appearance was effected on Belport on the 19th and 21st June, 2018, and on Mr. Sedykin, (with certified translations of the required documents in Russian) on 22nd June, 2018, in accordance with the February 2018 Order. Notice of this motion was served along with other relevant documentation, including the February 2018 Order, the April 2018 Order and the amended statement of claim. In addition, the grounding affirmation of Mr. Walfenzao of 1st June, 2018, was also served with these papers, along with the other affidavits relied on in this application, namely, the affidavit of Ms. Harty sworn on the 6th June 2018, the affidavit of Mr. Korolev sworn on 3rd, October, 2017, the affidavit of Professor Sakwa sworn on 4th June, 2018, the affidavit of Mr. Gladyshev sworn on 1st June, 2018, the affidavit of Mr. Makhlai sworn on 10th April, 2017 and the affidavit of Mr. Zivy sworn on 6th April, 2017.

69. Evidence of service of the motion and the other relevant documents on Belport is provided in the affidavit of service of Mr. Hurley sworn on 5th July, 2018, the affidavit of service of Ms. Dunne sworn on 18th July, 2018 and the affidavit of service of Mr. Nolan sworn on 9th July, 2018. Evidence of service of the motion on Mr Sedykin is provided in the affidavit of service of Mr. Hurley sworn on 5th July, 2018 and the affidavit of service of Mr. Nolan sworn on 9th July, 2018.

70. With regard to service of the motion for judgment in default of appearance and the other relevant documents on Belport, Mr. Hurley explains that the copy documents listed at para. 4(a) – (k) of his affidavit (being those identified above), together with a covering letter dated 19th June, 2018, were sent to Belport at the addresses provided for in the February 2018 Order by certified prepaid ordinary post on 19th June, 2018. Mr. Hurley explains, at para. 6 of his affidavit, that, due to an administrative error, the copy of the exhibit to Mr. Gladyshev's affidavit of 1st June, 2018 (exhibit "VG1") sent to Belport was incomplete. Therefore, a complete copy of Mr. Gladyshev's affidavit and the exhibit was re-sent to Belport at the two addresses in the BVI on 21st June, 2018, under cover of a further letter of that date. This is further verified by another affidavit of service sworn by Ms. Dunne on 18th July, 2018. Ms. Dunne is one and the same as Ms. Bollard referred to at para. 6 of Mr. Hurley's affidavit (Dunne being Ms. Bollard's maiden name).

71. The plaintiffs' solicitors' letter to Belport dated 19th June, 2018, contains the following paragraph:

> *"The motion for judgment, ancillary and injunctive reliefs against Belport is listed for hearing in the High Court in Dublin, Ireland, on Friday, 27th July, 2018 and judgment in default of appearance, and the reliefs listed in the notice of motion, will be sought against Belport at that time. Please note that on proof that Belport has been properly served, this motion may be heard and determined in Belport's absence. If Belport wishes to defend this motion, Belport should be represented in court on that date and we strongly recommend that Belport seek independent legal advice from an Irish lawyer without delay."*

72. With regard to service of the motion for judgment in default of appearance and other relevant documents on Mr. Sedykin, Mr. Hurley explains, at para. 7 of his affidavit of 5th July, 2018, that on 22nd June, 2018, he sent, by certified prepaid ordinary post, a letter (which was dated 21st June, 2018), together with a certified Russian translation thereof, and enclosures to that letter (which are listed at para. 9 of Mr. Hurley's affidavit) to Mr. Sedykin at the address referred to in the February 2018 Order (and in the April 2018 Order). Paragraph 9 of Mr. Hurley's affidavit makes clear which of the enclosures to that letter were accompanied by a certified Russian translation.

73. The plaintiffs' solicitors' letter to Mr. Sedykin dated 21st June, 2018, contains an identical paragraph to that contained in the letter to Belport which I recited above.

74. At para. 12 of his affidavit, Mr. Hurley states that while it is not possible to verify delivery of the correspondence sent to Belport or to Mr. Sedykin, he confirms that as of the date of swearing that affidavit (on 5th July, 2018), none of the correspondence had been returned and that he has no reason to believe that it was not delivered in the ordinary course of post. Again it seems to me that this is a reasonable and appropriate assumption for Mr. Hurley to make. I am satisfied on the evidence that the correspondence of 19th June, 2018 and 21st June, 2018, together with the enclosures to that correspondence, was delivered to Belport and to Mr. Sedykin, respectively.

Conclusions in relation to requirements for granting of judgment in default of appearance

75. For the reasons I have already provided, I am satisfied that the plaintiffs have complied with all of the technical requirements of the RSC for obtaining judgment in default of appearance against Belport and Mr. Sedykin. With regard to service of the notice of plenary summons, I am satisfied that the notice of plenary summons was effected on Belport and Mr. Sedykin in the proper manner in accordance with the November 2016 Order. The plaintiffs initially served the notice of plenary summons on Belport and on Mr. Sedykin on 22nd November, 2016, in accordance with the November 2016 Order. Both Belport and Mr. Sedykin were again served with the notice of plenary summons on 14th May, 2018 and 24th May, 2018, respectively. Neither Belport nor Mr. Sedykin entered an appearance to these proceedings within eight weeks of being served with notice of the proceedings. Thus, following the lapse of this eight week period, neither Belport nor Mr. Sedykin had complied with the terms of the November 2016 Order and both were in default of appearance. I am also satisfied that the plaintiffs' amended statement of claim of 10th April, 2018 was properly delivered by being filed in the Central Office, as required under O. 13, r. 6 RSC. Finally, I am satisfied on the evidence that the motion for judgment in default of appearance was properly served on Belport and Mr. Sedykin. As of the date of the hearing of the application for judgment in default of appearance, both Belport and Mr. Sedykin remained in default of appearance despite being given multiple warnings from the plaintiffs regarding their intention to seek judgment in default and being granted further opportunity to enter an appearance to these proceedings. Consequently, I am satisfied that the procedures provided for in O. 13 RSC have been complied with and that the plaintiffs are now entitled to judgment in default of appearance against Belport and Mr. Sedykin.

Verification of the plaintiffs' claims against Belport and Mr. Sedykin

76. While the plaintiffs take the view that it is not strictly required under O. 13 RSC, they have sought to verify their claims against

Belport and Mr. Sedykin on affidavit. Orders 13A and 11E RSC in respect of judgments under Regulation (EU) No. 1215/2012 of the European Parliament and of the Council of 12th December, 2012, on jurisdiction and the recognition and enforcements of judgments in civil and commercial matters, and judgments in proceedings where service was effected pursuant to the Hague Convention, respectively, require a plaintiff seeking judgment in default of appearance to file an affidavit in the Central Office (in the case of O. 13A) and to support its application by affidavit (in the case of O. 11E) verifying the facts relied upon in their claim (see O. 13A, r. 3 and O. 11E, r.4(4)). Neither provision applies to the present case. I agree that O. 13 does not expressly require the plaintiffs to support their motion for judgment in default of appearance against Belport and Mr. Sedykin by an affidavit verifying their claims against those defendants and the facts relied upon by them. However, in light of the particularly complex nature of these proceedings and the serious claims made by the plaintiffs against Belport and Mr. Sedykin, it was, I believe, appropriate for the plaintiffs to verify their claims against Belport and Mr. Sedykin on affidavit. I have treated the facts as verified by the plaintiffs in the affirmation and affidavit evidence relied upon by them in support of their motion for judgment against Belport and Mr. Sedykin as being referable only to their claims against those defendants and not against the other defendants to the proceedings. The plaintiffs' claims against those other defendants will be dealt with in accordance with the appropriate procedures of the court and are not the subject of the plaintiffs' application for judgment in default of appearance against Belport and Mr. Sedykin or this judgment.

77. The plaintiffs assert, and seek to verify by affirmation and affidavit evidence, that the facts giving rise to the plaintiffs' claim are as set out in the original statement of claim and in the plaintiffs' amended statement of claim of 10th April, 2018. As noted above, it is claimed that the defendants' alleged participation in the alleged Scheme amounts to unlawful means conspiracy in tort, or alternatively, that the means employed by the defendants in aid of the alleged Scheme, if lawful, are nonetheless actionable as being carried out for an unlawful end. The evidence put forward by the plaintiffs as verifying these facts is comprised principally in the affirmation of Mr. Walfenzao. Other evidence put forward by the plaintiffs as verifying the plaintiffs' claim can be found in the affidavit of Mr. Makhlai sworn on 10th April, 2017, the affidavit of Professor Sakwa sworn on 4th June, 2018, the affidavit of Mr. Gladyshev sworn on 1st June, 2018, the affidavit of Mr. Korolev sworn on 3rd October, 2017 and the affidavit of Mr. Zivy sworn on 6th April, 2017.

78. In his affirmation, Mr. Walfenzao seeks to verify the plaintiffs' case, and the facts supporting the allegations made as regards each of the defendants, including Belport and Mr. Sedykin. However, for the purpose of this application, I am concerned only with what is said in relation to Belport and Mr. Sedykin.

Belport's alleged participation in the alleged Scheme
79. In relation to Belport, Mr. Walfenzao asserts, at paras. 70-110 of his affirmation, that it was a participant in a campaign of vexatious litigation which was conducted by UCCU and supported by false evidence, for the ultimate purpose of achieving an illegal takeover of ToAZ.

80. Mr. Walfenzao asserts that this campaign of vexatious litigation began in October 2011, when UCCU brought a civil claim alleging that it had been denied access to ToAZ's list of shareholders, to which it was allegedly entitled as a shareholder (the "Shareholder Civil List Claim"). In December 2011, the Arbitrazh Court in Russia adjudicated upon this claim and held that ToAZ had in fact supplied the shareholder list to UCCU.

81. In October 2011, it is asserted that UCCU also filed a criminal complaint (the "Shareholder List Criminal Complaint") on very similar grounds to the civil claim. In January 2012, the criminal complaint was dismissed. However, it is asserted that on 9th February, 2012, UCCU adduced a purported share purchase agreement (the "purported SPA") to which Belport was a counterparty. Under the purported SPA, UCCU allegedly agreed to sell its shares in ToAZ to Belport for in excess of US$200 million. At para. 84 of his affirmation, Mr. Walfenzao alleges that Belport was a company with little or no assets or trading activity and could not have entered into such an agreement in good faith. On the basis of the purported SPA, UCCU set out its alleged loss, for the first time, on 9th February, 2012, claiming in excess of $200 million in damages and an additional loss of US$1,000,000 as a result of penalty payment it claimed was owed to Belport under the agreeement. On the same day that this agreement was adduced by UCCU, a senior criminal investigator determined that the investigation into the Shareholder List Criminal Complaint should recommence.

82. It is further asserted that on 10th November, 2013, the relevant Office of Criminal Investigations terminated the Shareholder List Criminal Complaint, holding, inter alia, that the purported SPA was fictitious. Mr Walfenzao exhibits this decision to his affirmation. At page 22 of this decision, the investigator held:

> *"Moreover … Contract No. UR-012/07 between OJSC Uralchem UCC and Belport Investments Limited, dated 8 August 2011, referred to in the accusation, is a sham transaction, executed merely for the appearance of causing losses to the applicant and not for the purpose of creating legal consequences"*

83. On the basis of this evidence, the plaintiffs contend that Belport, as a party to the purported SPA, produced or knowingly acquiesced in the production of false evidence and is an active participant in the conspiracy at the centre of the Scheme.

84. The plaintiffs further allege that despite the findings of the Russian authorities that the civil and criminal complaints were contrived, UCCU continued to pursue its alleged campaign of vexatious litigation. Mr. Walfenzao asserts, at paras. 88-110 of his affirmation, that further criminal and civil complaints were made by UCCU. A decision was made by the Russian authorities to prosecute UCCU's further criminal complaint on the basis of allegations made by UCCU of embezzlement by those in control of ToAZ. It is contended by the plaintiffs that the criminal case and the civil complaint have been used as a pretext for the making of oppressive orders by the Russian courts, involving the freezing of the plaintiff's shares in ToAZ, the freezing of property and cash of ToAZ, the issuing of criminal charges and arrest warrants (both domestic and international) against officers of ToAZ and the suspension of Mr. Makhlai from the ToAZ board of directors.

Mr. Sedykin's alleged involvement in the alleged Scheme
85. In his affirmation, at paragraphs 50-68, Mr. Walfenzao sets out the alleged involvement of Mr. Sedykin in the alleged Scheme. At para. 50 he asserts that Mr. Sedykin is an individual with public links to Mr. Mazepin and exhibits newspaper articles from the Russian press which reported these links.

86. Mr Walfenzao also asserts, at para. 51 of his affirmation, that Mr. Sedykin was central to an attempt to unlawfully gain control of the board of ToAZ. It is asserted, at paras. 52-55 of the affirmation, that on or about the 22nd November, 2015, Mr. Sedykin purported to convene an annual general meeting of the shareholders of ToAZ. It is further alleged that Mr. Sedykin drew up false resolutions which he claimed were passed at the meeting and which recorded that five new directors had been appointed at the meeting. It is further alleged that Mr. Sedykin produced, or caused to be produced false minutes of a ToAZ board meeting which it was alleged took place between members of the new board who were purportedly appointed at the AGM.

87. It is asserted by Mr. Walfenzao that a decision of a Russian Court, the Eleventh Arbitrazh Appeal Court, on 7th July, 2016, declared the decisions made by the purported new board of directors on 22nd November, 2015 to be invalid. This decision is exhibited to the affirmation of Mr. Walfenzao.

88. Further, para. 56 of Mr Walfenzao's affirmation and para. 43 of Mr Korolev's affidavit, allege that on 28th July, 2017, the Krasnoglinsky District Court in Samara, (the "District Court") found Mr Sedykin guilty of pursuing a criminal scheme to illegally acquire rights to assets in ToAZ, based on his actions in purporting to hold an AGM of ToAZ and drawing up false resolutions and board minutes. It is contended that this judgment was upheld on appeal by a decision of the Judicial Panel for Criminal Cases of the Samara Regional Court (the "Judicial Panel"), dated the 29th November, 2017. These judgments, with certified English translations, are exhibited to Mr. Walfenzao's affirmation.

89. The plaintiffs assert that the decision of the District Court was appealed to the Judicial Panel, which issued its determination on 29th November, 2017. The plaintiffs assert that the Judicial Panel altered the verdict in one respect. It noted that Mr. Sedykin had been charged with two counts of the offence of forging an official document representing rights and exempting from duties (in relation to events which took place on the 22nd November, 2015 and on the 26th November, 2016). The plaintiffs state that the Judicial Panel held that the limitation period for the prosecution of the charge in relation to events which occurred on the 22nd November, 2015 had expired. Consequently, the Judicial Panel ordered that Mr. Sedykin be released from punishment for the first count of the offence. However, it is asserted by the plaintiffs that the rest of the verdict of the District Court was upheld and the Judicial Panel noted that:

> *"the [District] Court's findings about Ye. Ya. Sedykin's (the Eleventh Defendant) guilt in the commission of the crimes for which he was convicted contrary to the arguments of the appeals, correspond to the facts of the case and were made as a result of a comprehensive and thorough examination of the evidence gathered in the case, which received a properly substantiated and legal evaluation in the verdict".*

90. It is further asserted by the plaintiffs that Mr. Sedykin has acted by power of attorney for the fourth defendant, Eurotoaz, in its alleged campaign of vexatious litigation and that this alleged campaign was pursued in an attempt to have an alleged shareholding of Eurotoaz in ToAZ recognised. At paragraph 34 of his affirmation, Mr. Walfenzao asserts that the alleged campaign of vexatious litigation undertaken by Eurotoaz involved the prosecution of numerous unfounded complaints to both criminal and regulatory bodies and civil proceedings alleging that there had been a failure to recognise it as a shareholder in ToAZ, and that it had been deprived of its shareholder rights. Mr. Walfenzao refers to the affidavit of Mr. Korolev, a former employee and director of ToAZ, sworn on 3rd October, 2017, which he says details the nature of this alleged vexatious litigation. The evidence set out in Mr. Korolev's affidavit is summarised in Mr. Walfenzao's affirmation (at paras. 34 – 38 and elsewhere in the affirmation).

91. The plaintiffs summarise the claims made against Belport and Mr. Sedykin at paras. 36 – 39 of their legal submissions. In those submissions, the plaintiffs contend that Mr. Walfenzao has deposed to the basis upon which Belport is sued, as an active participant in the conspiracy comprised in the alleged Scheme and as an entity which has allegedly produce or knowingly acquiesced in the production and deployment of false evidence for the purpose of the alleged conspiracy. The plaintiffs submit, as regards Mr. Sedykin, that the evidence of his alleged participation in the alleged conspiracy effected by the alleged Scheme is "compelling". The plaintiffs then submit that it is relevant that the nature of the case which they make against Belport and Mr. Sedykin:

> *"…necessarily involves allegations of the most serious kind – of actions which are not only wholly unlawful (both in and of themselves and by virtue of their purpose) but which are utterly corrupt and dishonest. The evidence adduced supports these allegations. It includes findings of the Russian investigative authorities that the false SPA entered into by Belport was merely a device and not genuine, and that the (brazen and dishonest) actions of Mr. Sedykin were criminal acts." (para. 38 of the plaintiffs' submissions).*

92. Finally, Mr. Walfenzao (at para. 112 of his affirmation) seeks to verify the loss and damage allegedly suffered by the plaintiffs. He confirms that the original statement of claim and the amended statement of claim of 10th April, 2018, has correctly identified the loss and damage allegedly suffered by the plaintiffs which, he asserts, includes "t*he effect deprivation of the rights of ownership of their shares, including the right to alienate the shares at full market value which together with the loss of dividend results in the loss of any value attributable to those shares in the hands of the plaintiffs.*" He then sets out, in particular, the loss and damage allegedly suffered by the plaintiffs. Later in his affirmation, at para. 124, Mr. Walfenzao asserts that certain of the losses allegedly sustained by the plaintiffs are quantifiable and have been quantified, while a significant proportion of its alleged losses is quantifiable but has not yet been quantified. He contends (at paras. 124-126) that, at the very least, the plaintiffs' share of dividends in ToAZ, which have been frozen as a result of the alleged Scheme, is in excess $78.7 million and that the plaintiffs have been deprived of those dividends since October, 2014. He contends that this level of dividends is an appropriate figure to serve as a reference point for the injunctive relief which the plaintiffs seek in aid of execution. As noted earlier, the plaintiffs seek damages against the defendants, including Belport and Mr. Sedykin.

Conclusions on verification of claim

93. While I agree with the plaintiffs that it is not necessary for the purpose of O. 13 RSC for the plaintiffs to verify on affidavit the facts relied upon in support of its claim, it was appropriate for the plaintiffs to do so in the present case, having regard to the complex and serious nature of the claims made by the plaintiffs against Belport and Mr. Sedykin. I am satisfied that the affirmation of Mr. Walfenzao and the voluminous affidavit evidence adduced by the plaintiffs on this application is sufficient to verify the plaintiffs' claims against Belport and Mr. Sedykin. I have considered the affirmation and other affidavit evidence relied upon by the plaintiffs solely for the purpose of the plaintiffs' application for judgment in default of appearance against Belport and Mr. Sedykin. I make no findings against the other defendants to the proceedings arising from the affirmation and affidavit evidence considered by me for the purpose of this application for judgment in default of appearance.

Conclusions on motion for judgment in default of appearance against Belport and Mr. Sedykin

94. I have concluded that the plaintiffs have satisfied the various requirements in order to obtain judgment in default of appearance against Belport and Mr. Sedykin. I have set out my reasons for so concluding earlier in this judgment. In those circumstances, I grant the plaintiffs judgment in default of appearance against Belport and Mr. Sedykin in the terms of paras. 155, 156, 157 and 158 of the prayer for relief in the amended statement of claim. I direct that the plaintiffs are entitled to damages as sought at paras. 159, 160 and 161 of the prayer for relief for any loss suffered by them. Having regard to the provisions for O. 13, r. 9 RSC, such damages (if any) should be ascertained at the same time as the trial of the proceedings as against the other defendants to the proceedings. I am also satisfied that the plaintiffs are entitled to the injunctive relief set out para. 162 of the prayer for relied in the amended statement of claim. The plaintiffs are also entitled to interest pursuant to statute under para. 163. As regards the reliefs sought at para. 164, I accept, as counsel for the plaintiffs submitted at the hearing, that the relief referred to in this paragraph is more appropriately dealt with in the context of the plaintiffs' application for injunctive and ancillary relief in aid of execution. The plaintiffs are also entitled to costs under para. 165 of the prayer for relief. The final terms of the order giving effect to the judgment in default of appearance

which I have granted in favour of the plaintiffs as against Belport and Mr. Sedykin can be further discussed with counsel.

95. I now turn to the question of the injunctive and other ancillary reliefs which the plaintiffs have sought against Belport and Mr. Sedykin in aid of execution of the judgment in default of appearance to which they are entitled against those defendants.

Injunctive and ancillary reliefs in aid of execution

Reliefs sought
96. The reliefs sought by the plaintiffs in the event that I grant judgment in default of appearance against Belport and Mr. Sedykin (which I have decided to do) are, in summary:

> (a) *Mareva* type injunctive relief, as described in para. 4 of the notice of motion. This is linked to the *quantum* of loss which the plaintiffs claim is capable of being quantified at this time and outlined in Mr. Walfenzao's affirmation (at paras. 124 and 126), namely, the sum of US$78,769,219.84. The plaintiffs accept that an appropriate arrangement can be made at the discretion of the court permitting expenditure on reasonable living expenses to include appropriate legal expenses.
>
> (b) An order, as described in para. 5 of the notice of motion, restraining Belport and Mr. Sedykin, their servants or agents from taking any steps to deal with in any way any direct or indirect interest of UCCU in the shares in ToAZ or of holdings in the shares of UCCU.
>
> (c) An order, as described in para. 6 of the notice of motion, restraining the Belport and Mr. Sedykin, their servants or agents, from dealing with any assets in order to prevent or obstruct the plaintiffs from enforcing or recovering on foot of the judgment of this court or such damages as might be awarded on foot of such judgment.
>
> (d) Orders, as described in paras. 7, 8 and 9 of the notice of motion, for disclosure on affidavit or equivalent document of Belport's and Mr. Sedykin's assets and liabilities to include assets in which Belport or Mr. Sedykin has a direct or indirect interest, for disclosure on affidavit or equivalent document of any bank accounts in which Belport and Mr. Sedykin have a direct or indirect legal or beneficial interest and finally, disclosure on affidavit or equivalent document of all documents relating to any steps taken by Belport and Mr. Sedykin to place their assets beyond the reach of the plaintiffs.

The plaintiffs accept that each of the orders summarised at (a) – (c) above should be subject to the proviso contained at Appendix 1 to the notice of motion to the extent that the court considers it necessary or appropriate. Appendix 1 makes clear that the orders sought in those paragraphs would have effect outside the jurisdiction. I address the appropriateness of the proviso contained in this appendix later in the judgment.

97. As I have decided the plaintiffs are entitled to judgment in default of appearance against Belport and Mr. Sedykin, it is now necessary for me to consider whether it is appropriate to grant these further injunctive and ancillary reliefs in aid of execution. I will first consider the legal principles applicable to the granting of these various reliefs. I will then consider and set out my conclusions on whether the plaintiffs are entitled to any of those reliefs in accordance with the relevant legal principles and the evidence before the court.

Injunctive relief sought in aid of execution

Principles applicable to post-judgment Mareva-type relief
98. The plaintiffs seek post-judgment worldwide *Mareva*-type relief. The jurisdiction of the Irish courts to grant such relief is well established and has been discussed in a number of Irish and English cases.

99. The inherent jurisdiction of the courts to grant post-judgment *Mareva*-type relief in appropriate circumstances was confirmed by Robert Goff J. in the English case of *Stewart Chartering v C&O Managements SA (the Venus Destiny)* [1980] 1 W.L.R. 460. In that case Robert Goff J stated that the power of the courts in this regard was based on "*the inherent jurisdiction of the court to control its own process and in particular to prevent any possible abuse of that process*" (at p. 461). He continued:

> *"If the court so acts, it can also order that the Mareva injunction continue in force until after the judgment, in aid of execution. The purpose of a Mareva injunction is to prevent a defendant from removing his assets from the jurisdiction so as to prevent the plaintiff from obtaining the fruits of his judgment; from this it follows that the policy underlying the Mareva jurisdiction can only be given effect to if the court has power to continue the Mareva injunction after judgment in aid of execution" (at p. 461).*

100. It was confirmed that the Irish courts have an inherent jurisdiction to grant post-judgment *Mareva*-type relief by the High Court (Carroll J.) in *Elwyn Cottons v Pearle Designs* [1989] IR 9. In that case the plaintiff sought a protective measure in the nature of an injunction restraining the defendant from reducing his assets within the jurisdiction below the sum owed to the plaintiff under a judgment of the English High Court which the plaintiff was seeking to enforce in this jurisdiction. In granting the enforcement order and the protective measure sought, Carroll J stated that:

> *"The protective measure sought, namely a mareva-type injunction for the total amount due under the judgment, is a protective measure which the High Court would have power to grant in respect of proceedings within its jurisdiction" (at p. 164).*

101. A more recent example of an Irish court granting post-judgment *Mareva*-type relief can be seen in the decision of the High Court (Humphreys J.) in *Walsh v Walsh (No. 2)* [2017] IEHC 177 ("*Walsh (No.2)*"). The decision of the High Court in *Walsh (No. 2)* is of particular interest in the context of the present application on the question of whether an undertaking as to damages should be required of a judgment creditor who obtains such relief. I return to that issue later.

102. Such relief, if granted, can extend outside the jurisdiction. In *Deutsche Bank AG v Murtagh* [1995] 2 IR 122 ("*Deutsche Bank*") it was recognised that an Irish Court may grant worldwide Mareva-type relief in respect of assets held outside the territorial jurisdiction of the court. The High Court (Costello J.) held that, where it was warranted by the facts, the court could make an order restraining the dissipation of assets held abroad, so as to ensure that a defendant did not take action designed to frustrate subsequent orders of the court. Costello J. stated:

> *"In my opinion the court has jurisdiction to restrain the dissipation of extra-territorial assets where such an order is warranted by the facts. The basis on which a Mareva injunction is granted is to ensure that a defendant does not take*

action designed to frustrate subsequent orders of the court. It is well established in England that a Mareva injunction may extend to foreign assets and I believe that the Irish courts have a similar power in order to avoid the frustration of subsequent orders it may make" (at p. 131).

In the subsequent case of *Bennett Enterprises Inc v. Lipton* [1999] 2 I.R. 221 ("*Bennett*"), the High Court (O'Sullivan J.) accepted that on the facts of that case it was appropriate for the court to grant a worldwide Mareva-type order.

103. On the basis of these authorities, I accept that I have an inherent jurisdiction to grant post-judgment *Mareva*-type injunctive relief and that such relief can, in appropriate cases and where the circumstances warrant it, extend to assets located outside the jurisdiction.

104. The next question is what criteria must be satisfied before such relief should be granted. It is to that question that I now turn.

Criteria to be established in granting post-judgment, worldwide Mareva relief

105. In their written submissions the plaintiffs refer to and rely upon Kirwan, *Injunctions Law and Practice*, (2nd ed.) where the author sets out (at para. 8-54) a number of guidelines used by the courts in determining whether *Mareva*-type relief should be granted. Those guidelines (derived from case law) indicate that in order for such relief to be granted various criteria must be satisfied. They include the requirement by the applicant to demonstrate a substantive cause of action and a good arguable case, the existence of assets, evidence of a risk of dissipation by the defendants of assets for the purpose of preventing the plaintiff from recovering damages, demonstration that the balance of convenience favours the granting of such relief and, depending on the facts, that the behaviour of the defendant should be considered as a relevant factor by the court.

106. While Kirwan states (at para. 8-201) that the grounds on which a pre-judgment *Mareva* injunction is sought are the same as those on which a post-judgment order is sought, it seems to me, however, that the criteria to be established before a post-judgment injunction is granted must necessarily differ to an extent from, or at least be adapted from, those which are required to be established before pre-judgment *Mareva* relief is granted. In *Walsh (No.2)*, Humphreys J. stated that the application for a post-judgment Mareva-type order "*has to be viewed as a distinct situation from a normal Mareva injunction*" (at para. 5, p. 4). He went on to note that as the case before him involved a proprietary claim (which he had upheld in an earlier judgment- *Walsh v. Walsh* [2017] IEHC 181- where he held that the plaintiff had established an express or, alternatively, a constructive trust in relation to the relevant monies) it was not necessary for the plaintiff to establish a risk of dissipation of assets. The judgment in default of appearance which I have decided to grant in favour of the plaintiffs against Belport and Mr. Sedykin does not involve the establishment of a proprietary claim and so the question of dissipation does require to be dealt with in the present case.

107. There are at least three different respects in which the criteria for the grant of post-judgment *Mareva*-type relief will differ from those applicable to the grant of such relief prior to judgment. First, the establishment of a substantive cause of action and a good arguable case will not arise as the court will already have found for the plaintiff in the action by granting judgment in its favour. Second, the question of the balance of convenience is not likely to arise as it would in a pre-judgment situation where the court is dealing with an interim or interlocutory situation. Third, an undertaking as to damages may not be required in the case of an application for such relief post-judgment.

108. On the question of the existence of assets and the risk of dissipation of those assets to frustrate a judgment, the High Court (O'Sullivan J.) in *Bennett* accepted that it is not necessary for a plaintiff seeking such post-judgment relief to establish that there are assets within the jurisdiction. O'Sullivan J. stated:

"I do not consider that the alleged failure of the plaintiffs to establish that there are assets within the jurisdiction is necessarily fatal to their application. On the contrary, I can see force in the observation of Donaldson M.R. in Derby & Co Limited v. Weldon (Nos. 3 and 4) [1990] 1 Ch 65, to the effect that the fewer the assets within the jurisdiction the greater the necessity for taking protective measures in relation to those outside it." (per O'Sullivan J. at pp. 227-228).

The authorities establish that the court is entitled to take into account all the circumstances of the case in assessing the risk of dissipation. Such other circumstances include, *inter alia*, the nature of the assets (whether liquid or real property), their value, and any other evidence concerning the defendants which will tend to support the existence of a risk of dissipation. The fact that a defendant may have been found to have acted fraudulently or dishonestly is a factor which may be taken into account in considering the risk that assets may be dissipated. Another relevant factor is whether the transactions at issue are of a sophisticated and international nature involving significant amounts of money. The leading cases in this jurisdiction on the relevance of those factors are *Bennett, Aerospares Ltd v. Thompson* [1999] IEHC 76 ("*Aerospares*") and *Tracey v. Bowen* [2005] 2 I.R. 528 ("*Tracey*").

109. Since the High Court (Clarke J.) in *Tracey* approved of the principles applied by O'Sullivan J. in *Bennett* and Kearns J. in *Aerospares*, for convenience, I will focus on the decision of Clarke J. in *Tracey.* It should be said that that case did not involve an application for post-judgment *Mareva* relief. However, the comments of Clarke J. (and those of O'Sullivan J. and Kearns J. in the earlier cases referred to) are of considerable assistance.

110. Having cited with approval the decision of O'Sullivan J. in *Bennett*, Clarke J. noted that Kearns J. in *Aerospares* had quoted with approval a passage from Gee, *Mareva Injunctions and Anton Piller Relief* (4th ed., p. 198) (the passage is now found in Gee, *Commercial Injunctions* (5th ed.) at para. 12-040, p. 356-357) where the author stated:

"Good grounds for alleging that the defendants have been dishonest is relevant. Dishonesty is not essential to the exercise of the jurisdiction and there is no need to show an intention to dissipate assets. But if there is a good arguable case in support of an allegation that the defendant has acted fraudulently or dishonestly (e.g. being implicated in an ingenious scheme for the misappropriation of funds belonging to the Plaintiff) or has acted unconscionably, then it is unnecessary for there to be any specific evidence on risk of dissipation for the court to be entitled to take the view that there is a sufficient risk to justify granting Mareva relief. Once this is shown, the limit of the Mareva relief will take into account claims for which the plaintiff has a good arguable case, including those which do not involve such an allegation. The fact that a defendant is experienced in intricate sophisticated international transactions involving movements of large sums of money may also indicate that there is a real risk of dissipation." (at pp. 25-26 of Aerospares; and para. 12, p. 532 of Tracey)

111. Clarke J. went on to state as follows:

"It seems to me therefore that Bennett and Aerospares… are authority for the proposition that in assessing the risk of dissipation the court is entitled to take into account all the circumstances of the case which can include, in an

appropriate case, an inference drawn from the nature of the wrongdoing alleged which if fraudulent or unconscionable may lead to the establishment of a risk that further fraudulent or unconscionable actions will be taken so as to place any assets of the defendant outside the jurisdiction of the court." (at para. 12, p. 532)

112. Clarke J. noted that the principles quoted above require the court to look at "*all the circumstances of the case*". He drew particular attention to the fact that evidence of alleged dishonest or fraudulent behaviour on the part of the defendants was likely to be more significant "*where the only assets of the defendant within the jurisdiction are liquid assets capable of being moved about with great ease*". He further noted that this factor would be of particular significance "*where the defendant is, in the words of the passage quoted from Gee, 'experienced in intricate, sophisticated, international transactions involving movements of large sums of money'*" (per Clarke J. at para. 13, p. 533).

113. I fully agree that these are all factors which have been and should be taken into account by the court in deciding in the context of an application for post-judgment *Mareva*-type relief whether there is a significant risk of dissipation of assets by the judgment debtor. As is clear from the evidence put before the court by the plaintiffs on this application, these factors are present in this case.

Undertaking as to damages
114. The next criterion which may differ in the case of an application for post-judgment Mareva-type relief as distinct from such an application made prior to judgment concerns the requirement by the applicant for such relief to provide an undertaking as to damages. Such will almost invariably be required in the latter situation. It may not, however, be required in the former. Gee summarises the position under English law (at para 11-044, p. 332 of the 5th edition of his text) as follows:

"If a claimant succeeds at trial on a claim which results in the granting of a final injunction, no cross-undertaking in damages is required. This is because the claimant has succeeded and the final injunction is relief to which he has been adjudged entitled…

If Mareva relief is sought post-judgment, the purpose is to preserve assets so that the judgment can be satisfied. If such an injunction is sought ex parte, or whilst there is the possibility that it may be said that the injunction was wrongly granted, the cross-undertaking must be given. If the relief is granted inter partes, after the judgment debtor has had an opportunity to dispute the granting of the injunction if he wishes, then if there is no prospect of an issue about the injunction being 'wrongly granted' or improperly used, it may be appropriate to dispense with the cross undertaking in favour of the judgment debtor. This is because the judgment debtor has brought about the position by defaulting on the judgment." (at para 11.044, p. 322)

115. The High Court (Humphreys J.) in *Walsh (No.2)* accepted that the law in Ireland is as stated by Gee in the above extract from his text (see para. 3 of the judgment of Humphreys J. in *Walsh (No.2)* at p. 3). In *Walsh (No.2)* the plaintiff had indicated that he was prepared to offer an undertaking as to damages in the event that the court was disposed to grant the post-judgment Mareva-type relief sought by him. However, having regard to the law as set out by Gee which represents the law in this jurisdiction, Humphreys J. did not require that undertaking as to damages to be provided.

116. I agree with Humphreys J. that the law as set out Gee in the passage quoted above represents the law in this jurisdiction. While the position is clear in the case of an injunction sought on an *ex parte* basis before judgment (in which case an undertaking as to damages will almost invariably be required) and where such relief is sought on an *inter partes* basis after judgment has been granted in proceedings in which the judgment debtor has disputed the granting of the injunction, the position is arguably slightly different where the relief is being sought in circumstances where judgment in default of appearance has been granted in aid to execution on foot of such judgment where the judgment debtor has not disputed the granting of the relief. That situation is not precisely the same as either of the two situations in which the position is clear. However, it is clear from the authorities that the court does have a wide discretion in terms of the relief which it can grant in aid of execution and in terms of the conditions to which the grant of such relief may be made subject, including as to whether an undertaking as to damages may be required. As I explain in my conclusions on this issue below, it is possible for the court to fashion an order which is just in all the circumstances of the case.

Application of the above principles
117. I now apply the relevant principles discussed to the evidence adduced by the plaintiffs on this application for *Mareva*-type relief post judgment sought at paras. 4, 5 and 6 of the plaintiffs' notice of motion. Having done so I will turn to the disclosure orders sought by the plaintiffs at paras. 7, 8 and 9 of the motion.

Substantive cause of action and a good arguable case
118. For the reasons outlined above, I agree that the fact of judgment having been given in default of appearance against Belport and Mr. Sedykin means that the plaintiffs have done more than satisfy the requirement to show a substantive cause of action and an arguable case as against Belport and Mr. Sedykin. This requirement, to the extent that it is applicable, has therefore been satisfied.

Assets of Belport and Mr. Sedykin/Risk of dissipation
119. Mr. Walfenzao affirms (at para. 133 of his affirmation), and it is accepted by the plaintiffs, that it is not possible, on the evidence currently available, to identify substantial assets in the hands of Belport or Mr. Sedykin. The plaintiffs submit that this is simply because their assets are not known. The plaintiffs assert, however, that they believe that Belport and Mr. Sedykin are likely to have materially benefitted from their participation in the alleged Scheme – in the case of Mr. Sedykin it is alleged that clear evidence has been adduced of an agreement whereby he would receive 50% of whatever he managed to recover from his participation in the alleged Eurotoaz campaign of vexatious litigation. The plaintiffs further submit that it is clear from the evidence that those defendants will be or are prepared to interfere with the assets of other defendants, directly or indirectly, or to take other steps to frustrate the ability of the plaintiffs to execute on foot of the judgment in default. The plaintiffs rely on the matters set out at paras. 129-135 of Mr. Walfenzao's affirmation in that regard. For the purposes of this application as against Belport and Mr. Sedykin, the facts asserted by Walfenzao in his affirmation have not been contested by those two defendants.

120. The plaintiffs submit that the fact of judgment increases the risk of dissipation of assets and also renders the application for *Mareva* relief particularly urgent at the time judgment is given. I agree with that submission.

121. It is the uncontroverted evidence of Mr. Walfenzao that Belport and Mr. Sedykin are likely to take steps to frustrate execution on foot of the judgment in default of appearance in these proceedings. At paragraph 134 of his affirmation, Mr. Walfenzao states as follows:

"As set out above, the Plaintiffs believe that Ms Bolotnikova, Belport, Ms. Charilaou, Mr. Konyaev and Mr. Sedykin (the Sixth, Seventh, Ninth, Tenth and Eleventh Defendants) are integrally linked to Mr. Mazepin (the first Defendant) and have

participated in a wholly corrupt and dishonest campaign to defraud the Plaintiffs of their shares in ToAZ. These Defendants do not, on the face of it, have significant resources at their disposal. However, they have each, in the manner set out above, participated in a dishonest and corrupt campaign whose purpose is to harm the Plaintiffs. The tactics employed in the campaign are themselves unlawful and the Plaintiffs apprehend that these Defendants, who have already taken very significant steps to advance the Scheme, will continue to do so by actively facilitating the movement of assets from Mr. Mazepin, UCCU or Holdings (the First, Second or Third Defendants). It is relevant to recall that Ms. Bolotnikova and Ms. Charilaou (the Sixth and Ninth Defendants) are lawyers who, by all appearances, are experienced in litigation and in the commercial sphere. The tenth Defendant, Mr. Konyaev, is a senior business executive in UCCU who must have very significant business knowledge and is a close professional associate of Mr. Mazepin (the First Defendant). The eleventh Defendant Mr. Sedykin (the Eleventh Defendant) has already been convicted of criminal offences in connection with the Scheme, yet continues in his efforts to pursue the Scheme on behalf of Mr. Mazepin (the First Defendant), as evidenced in the latest available judgment in the UCCU (the Second Defendant) campaign, identified at paragraph 111, above."

122. I am satisfied that, on the basis of the principles outlined in *Aerospares* and *Tracey*, the plaintiffs have established a sufficient basis for believing that there is a significant risk of dissipation of assets by Belport and Mr. Sedykin and that steps will be taken by those defendants to interfere with the assets of other defendants or otherwise to frustrate the ability of the plaintiffs to execute on foot of the judgment in default of appearance which I have decided to grant to the plaintiffs. The judgment in default of appearance has been granted against Belport and Mr. Sedykin on the basis of very serious allegations made against them by the plaintiffs which Belport and Mr. Sedykin have chosen not to contest in these proceedings. The reliefs which I have decided should be granted to the plaintiffs on foot of the application for judgment in default of appearance against Belport and Mr. Sedykin include declarations that those defendants have wrongfully and unlawfully conspired to defraud and injure the plaintiffs and have carried out unlawful acts for the purpose or aim of injuring the plaintiffs. Furthermore, the circumstances in which the plaintiffs have made those claims against Belport and Mr. Sedykin fall squarely within the type of case referred to by Kearns J. in *Aerospares* and by Clarke J. in *Tracey*. They can fairly be described as involving "*intricate, sophisticated, international transactions*" involving allegations of fraudulent and unconscionable actions. I accept that these are factors which the court can and should take into account in considering the risk of dissipation of assets in the exercise of the wide discretion which it has deciding whether to grant post-judgment *Mareva*-type relief. I am satisfied that on the uncontroverted evidence before the court, I am entitled to conclude that there is a significant risk of dissipation of assets by Belport and Mr. Sedykin and of those defendants taking steps to interfere with or frustrate the judgment in default of appearance which I have decided should be granted against them.

Other circumstances to be considered in determining what best serves the interests of justice
123. Insofar as the question of the balance of convenience may be relevant, and I do not believe that it really does apply in the context of an application such as this post-judgment, at least in the particular circumstances which arise in this case, I have no doubt that on the uncontested evidence before the court, the balance of convenience clearly favours the granting of the *Mareva*-type relief sought by the plaintiffs as paras. 4, 5 and 6 of the notice of motion. This is so in circumstances where the plaintiffs have obtained judgment in default of appearance against Belport and Mr. Sedykin in which the reliefs granted include declarations to the effect that those defendants have been involved in an unlawful conspiracy to defraud the plaintiffs as well as damages. Belport and Mr. Sedykin have chosen not to contest those claims or to advance evidence as to why the *Mareva*-type reliefs should not be granted post-judgment.

Undertaking as to damages
124. As discussed earlier, it is open to the court in granting post-judgment Mareva-type relief not to require an undertaking as to damages from the applicant for such relief. The plaintiffs have argued that such an undertaking should not be required of them as a matter of law. However, the plaintiffs made clear to me (and it is expressly stated at para. 136 of Mr. Walfenzao's affirmation) that if I were to rule that an undertaking as to damages were required, they are in a position to provide such an undertaking.

125. In this case, the application brought by the plaintiffs is not an ex parte application. However, nor has there been a full *inter partes* hearing on the plaintiffs' motion (either for judgment in default of appearance or for injunctive or other ancillary relief post-judgment) in which Belport and Mr. Sedykin have participated. The plaintiffs contend that the defendants have had ample opportunity to participate in these proceedings but have chosen not to, and that for this reason, the present case can be distinguished from an application which is made on an ex parte basis, where a defendant would not have had an opportunity to be heard. There is considerable merit in that submission, in my view. Belport and Mr. Sedykin have had numerous opportunities of appearing to contest the plaintiffs' application for judgment in default of appearance and for the injunctive and other ancillary reliefs sought by the plaintiffs in aid of execution. I have concluded earlier in this judgment that Belport and Mr. Sedykin have been properly served with the proceedings and with all other relevant documents for the purpose of the present application. They have had ample opportunity of appearing but have failed to do so. This is not, therefore, an *ex parte* application in which an undertaking as to damages would almost invariably be required before such relief could be granted. The plaintiffs' application was in form an *inter partes* hearing at which Belport and Mr. Sedykin chose not to attend.

126. I am satisfied that on the basis of the wide discretion which the court has in relation to the granting of post-judgment relief such as that sought by the plaintiffs, it is open to me to dispense with any requirement on the part of the plaintiffs to provide an undertaking as to damages as a condition for granting the relief which the plaintiffs seek. However, I indicated in the course of the hearing that I was contemplating, in the event that I decided to grant judgment in default and other ancillary and injunctive relief, giving Belport and Mr. Sedykin liberty to appear and apply to vary the terms of the injunctive and ancillary relief. Any such application could encompass an application by those defendants that the plaintiffs should be required to provide an undertaking as to damages as the price for the injunctive and ancillary relief which they seek in aid of execution. In the event that such an application is made by Belport and Mr. Sedykin, I will hear further argument as to whether an undertaking as to damages should be required. However, I am satisfied that it would be just and appropriate in the circumstances of this case, and in the absence of any appearance and argument by Belport and Mr. Sedykin, to dispense with any requirement that the plaintiffs provide an undertaking as to damages as a condition for the injunctive reliefs which the plaintiffs seek in aid of execution.

Conclusions on application for Mareva-type injunctive relief
127. I am satisfied, therefore, that on the basis of the evidence and the submissions which I have heard, it would be appropriate for me to make orders in terms of paras. 4, 5 and 6 of the notice of motion subject to the provisos contained at Appendix I to the notice of motion. I believe that the provisos set out in Appendix I are appropriate having regard to the extra-territorial effect of the orders which I have decided to make and the legitimate protections to which third parties are entitled in accordance with well-established English case law (such as *Babanaft International Co. SA v. Bassatne* [1990] Ch 13, *Baltic Shipping Co. v. Translink Shipping Ltd* [1995] 1 Lloyd's Reps 67 and *Bank of China v. NBM LLC* [2002] 1 W.L.R 844).

Disclosure orders

128. The plaintiffs also seek disclosure orders at paras. 7, 8 and 9 of the notice of motion. The power of the courts to make such disclosure orders was recognised by Costello J. in *Deutsche Bank*. He stated:

> *"The court has ancillary powers also and in suitable cases it may grant a disclosure order requiring a defendant to swear an affidavit in respect of assets outside the jurisdiction (see Derby & Co. Ltd. v. Weldon (Nos. 3 and 4) [1989] 2 W.L.R. 412) ." (at p. 131)*

129. This passage was later approved by Kelly J. in *IBRC v Quinn* [2013] IEHC 388. In that case, having referred to *Deutsche Bank* and to a number of English authorities including *House of Spring Gardens Ltd v. Waite* [1985] FSR 173, *AJ Bekhor & Co. v. Bilton* [1981] 2 All ER 565 and *A & anor v. C & ors* [1980] 2 All ER 347, Kelly J. stated:

> *"These authorities satisfy me that the court has inherent jurisdiction to ensure that injunctions granted by it are effective. In the case of the Mareva type injunction this may involve orders of discovery, disclosure, the answering of interrogatories or the production of a deponent for cross examination." (per Kelly J. at para. 29, pp. 10-11).*

130. I am satisfied, therefore, that the court does have an inherent jurisdiction to make the disclosure orders sought at paras. 7, 8 and 9 of the notice of motion to ensure that the judgment in default of appearance which I have decided to grant against Belport and Mr. Sedykin is effective.

131. The next question then is whether, on the evidence, I should exercise my discretion to grant the disclosure orders sought under that inherent jurisdiction. The plaintiffs submit that the making of orders requiring disclosure by Belport and Mr. Sedykin is warranted having regard, in particular, to their current lack of knowledge as to the means or assets available to these defendants. The plaintiffs further submit that the nature and extent of assets available to these defendants, including liquid assets in bank accounts, and knowledge of the steps taken by them to deal with those assets, if any, are matters which the plaintiffs are entitled to know, having secured judgment against them and that the plaintiffs have a *prima facie* right to enforce an award of damages against their available assets. The plaintiffs further contend that that they are justifiably apprehensive, given the conduct alleged, that Belport and Mr. Sedykin will be, or are, prepared to take whatever means are necessary to ensure that the plaintiffs are unable to exercise their right to enforce any judgment obtained from this court.

132. I agree with the submissions made by the plaintiffs on this issue. I am satisfied that, having regard to the case made by the plaintiffs against Belport and Mr. Sedykin, and the fact that I have decided to grant judgment in default of appearance against those two defendants on the basis of the plaintiffs' claims against them of conspiracy to defraud the plaintiffs, and having regard to the evidence disclosed in the affirmation of Mr. Walfenzao on behalf of the plaintiffs, it is appropriate for me to exercise my discretion to make the disclosure orders sought. I am satisfied that the plaintiffs' concerns as expressed in the evidence and in the submissions are reasonable and that the disclosure orders are necessary and appropriate to ensure that the judgment in default of appearance which I have decided to grant against Belport and Mr. Sedykin is effective and will not be frustrated. Therefore, I will make the orders sought at paras. 7,8 and 9 of the notice of motion.

Conclusions

133. In conclusion, therefore, I am satisfied that the plaintiffs are entitled to judgment in default of appearance as against Belport and Mr. Sedykin in the terms summarised at para. 94 of this judgment. I will, therefore, make an order against Belport and Mr. Sedykin in terms of para. 1 of the notice of motion. I will make an order in terms of para. 3 of the notice of motion that such damages to which the plaintiffs may be entitled against Belport and Mr. Sedykin be assessed as against those defendants at a date to be fixed by the court which should, subject to any further submissions which may be made on the question, take place at the same time as the trial of the proceedings against the other defendants in the case takes place.

134. I will further grant the injunctive reliefs sought in aid of execution at paras. 4, 5 and 6 and the disclosure orders sought at paras. 7, 8 and 9 of the notice of motion.

135. I will not require an undertaking as to damages from the plaintiffs for the purposes of the orders made in respect of paras. 4,5, and 6 of the notice of motion. However, I will grant liberty to Belport and Mr. Sedykin to appear and apply in relation to the terms of the injunctive and other ancillary relief granted in aid of execution, including on the question as to whether an undertaking as to damages should be required. Subject to that, however, I do not require such an undertaking from the plaintiffs.

136. I will discuss with counsel the precise terms of the order to be made on foot of this judgment.