Neutral Citation Number: [2020] EWHC 1526 (Fam)

Case No: FD13D05340

IN THE HIGH COURT OF JUSTICE
FAMILY DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 12/06/2020

Before :

MRS JUSTICE KNOWLES

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Between:

TATIANA AKHMEDOVA	**Applicant**
- and -	
(1) FARKHAD AKHMEDOV	**Respondents**
(2) WOODBLADE LIMITED	
(3) COTOR INVESTMENT SA	
(4) QUBO 1 ESTABLISHMENT	
(5) QUBO 2 ESTABLISHMENT	
(6) STRAIGHT ESTABLISHMENT	
(7) AVENGER ASSETS CORPORATION	
(8) COUNSELOR TRUST REG.	
(9) SOBALDO ESTABLISHMENT	
(10) TEMUR AKHMEDOV	

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Alan Gourgey QC and James Willan (instructed by PCB Litigation) for the Applicant
Graham Brodie QC and Richard Eschwege (instructed by BCL Solicitors) for the Eighth and Ninth Respondents
Charles Howard QC and Charlotte Hartley (instructed by Hughes Fowler Carruthers) for the Tenth Respondent
Tim Owen QC and Tim James-Matthews (instructed by Hughes Fowler Carruthers) for the Tenth Respondent

Hearing dates: 11-13 May; 18-19 May 2020

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Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

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THE HONOURABLE MRS JUSTICE KNOWLES

This judgment was delivered following a remote hearing conducted on a video conferencing platform and attended by the press. The judge has given leave for this version of the judgment to be published.

Covid-19 Protocol: This judgment was handed down remotely by circulation to the parties' representatives by email and release to BAILII. The date and time for hand-down is deemed to be at 10.30am on Friday 12th June 2020.

Mrs Justice Knowles:

1. By an order dated 26 March 2020, I directed that, at a hearing listed to commence on 11 May 2020, the court would determine the following applications:

   a) an application for disclosure by the Applicant Wife against the Tenth Respondent made on 15 November 2019; and

   b) an application by the Tenth Respondent dated 29 November 2019 for (i) disclosure from the Applicant Wife in respect of her litigation funding arrangements (to be heard with the Applicant Wife's application to strike out the Tenth Respondent's counterclaim relating to funding dated 28 February 2020), (ii) disclosure of the "Reviewable Documents" provided by Mr Henderson, and (iii) disclosure of other documents on which the Applicant Wife relies.

2. There were additional matters to determine, namely whether the Tenth Respondent should answer certain requests for information made by the Applicant Wife in relation to his Defence; to give directions for the hearing of a stay application by the Eighth and Ninth Respondents fixed for hearing in mid-June 2020; and to give directions for trial fixed for three weeks commencing on 30 November 2020. Finally, the Tenth Respondent asked the court to make a reporting restriction order and an order prohibiting the disclosure of certain court documents to third parties.

3. This judgment will deal with (a) the applications relating to the Applicant Wife's litigation funding; (b) the applications for a reporting restriction order and an order prohibiting disclosure to third parties; and (c) the applications relating to disclosure generally.

4. The Applicant Wife is Tatiana Akhmedova ("the Wife") and the Tenth Respondent is her son ("Temur"). The First Respondent is her former husband, Farkhad Akhmedov ("the Husband") who, for some time, has played no visible role in this ongoing litigation for enforcement of the Wife's award against him within ancillary relief proceedings.

5. I am grateful to counsel who appeared before me during this hearing, conducted remotely in accordance with the President's Protocol for Remote Hearings in the Family Court and in the Family Division of the High Court dated 23 March 2020. The quality of their written and oral submissions was excellent. I record that Mr Owen QC and Mr James-Matthews appeared for Temur to address the issue of the Wife's litigation funding.

Brief Summary of Background and the Claims

6. The background to this litigation is set out in detail in my judgment dated 2 October 2019 with neutral citation [2019] EWHC 2561 (Fam). What follows is a brief outline:

   a) in December 2016 the Husband was ordered to pay the Wife £453,576,152 by Haddon-Cave J (as he then was) by way of financial remedies consequential on their divorce. The Husband has not voluntarily paid a penny of that award, and enforcement to date has realised only about £5 million;

b) The Husband's main identified assets are (i) a superyacht known as the M/Y Luna ("the Yacht"), (ii) modern art valued in January 2016 as US$145.2 million ("the Artwork") and (iii) cash and securities worth around US$650 million which were previously held by Cotor at UBS ("the Monetary Assets"). Collectively, these are the "Identified Assets";

c) The Yacht and the Artwork were transferred into Liechtenstein trust structures in November 2016, the month before the trial of the Wife's claim for financial relief against the Husband;

d) Between 2015 and 2016 Cotor transferred at least US$60 million from the Monetary Assets to Temur's Swiss bank account;

e) By December 2016, Cotor – as nominee for the Husband – held the Monetary Assets at UBS in Switzerland. On or about 5 December 2016 Cotor transferred those assets to an account in its name at LGT Bank in Liechtenstein, in turn dissipating them such that, by January 2017, nothing remained in that account;

f) In 2018 the ultimate beneficial ownership of a valuable office property in Central Moscow ("the Moscow Property"), then held through a Cypriot company, was transferred from the Husband to Temur.

7. I set out a short summary of the claims and defences, now live, in this litigation which proceeds pursuant to s.423 of the Insolvency Act 1986 ["IA"] and s.37 of the Matrimonial Causes Act 1973 ["MCA"]. They are crucial to an understanding of the matters on which I was asked to rule at the May 2020 hearing.

8. I also note that, by my order on 20 January 2020, I directed that the parties should particularise their claims against each other. I did so to bring some coherence and discipline into these complex proceedings. Properly articulated pleadings are an invaluable means for the court to ensure that fairness prevails, and that valuable court time is used proportionately. Those pleadings are crucial to an understanding of the issues analysed in this judgment. They are not documents which can be drafted and then ignored if that does not fit with an argument that a party wishes to advance.

Claims against Counselor and Sobaldo

9. This claim by the Wife relates to the Monetary Assets previously held at UBS in Switzerland by Cotor. In December 2016 all those assets were transferred into bank accounts held by Liechtenstein trusts of which Counselor and Sobaldo are trustees. The Wife's case is that the purpose of those transfers was to put the Monetary Assets beyond her reach, and she relies on the following:

a) all the Identified Assets were transferred into Liechtenstein trusts in the weeks immediately before trial in December 2016. This took place in a context where the Husband's lawyer had described a strategy of moving assets to a jurisdiction which did not enforce English judgments (as is the case in Liechtenstein);

b) following judgment and the initiation of proceedings by the Wife in Liechtenstein, the trustees took further steps to move the assets into yet further Liechtenstein trusts to make them harder to trace and recover;

c) Haddon-Cave J held that the Husband has engaged, and continues to engage, in an "*elaborate and contumacious campaign to evade and frustrate the enforcement of the judgment debt against him*". The Husband is said to have described the English court's judgment as being "*worth as much as toilet paper*";

d) The Liechtenstein criminal courts have repeatedly concluded that there is a concrete suspicion of fraudulent bankruptcy and money laundering in respect of these transfers.

10. Counselor and Sobaldo have presently offered no defence on the merits of the Wife's claims. They contend that they are unable to plead to the facts because of Liechtenstein secrecy laws and assert that there should be a stay of these proceedings and/or the court's powers should not be exercised extra-territorially in this case.

Claims against Temur

11. The Wife's claims relate to two matters. First, the Husband (including his companies and trusts) transferred some of the Monetary Assets to Temur, namely and as asserted in the Wife's Particulars of Claim (a) US$50 million transferred on 25 August 2015 at a time when a scheme to transfer the Monetary Assets to the United Arab Emirates had been abandoned; and (b) US$10 million between May and June 2016 in the months leading up to trial. Second, the Moscow Property was transferred to Temur in 2018 at a time when the Wife was seeking to enforce the judgment abroad. The transfer was carried out in April 2018 by Sunningdale Ltd ("Sunningdale"), a Cypriot company beneficially owned by the Husband, transferring its interest in the Moscow Property to Solyanka Servis LLC, a Russian company. In June 2018 Sunningdale transferred its interest in Solyanka Servis to Temur.

12. The Wife contends that Temur played a key role – essentially as his father's lieutenant – in the Husband's strategy of evasion, in particular, by devising and executing the schemes.

13. In his Defence, Temur admits that the English court has jurisdiction to determine the Wife's claims and that he has received over US$106 million from the Husband (and his companies) in addition to (unparticularised) "*generalised financial provision*", although he does not admit the provenance of these funds. He also accepts that the relevant intention for the purposes of s.423 of the IA and s.37 of the MCA is that of the Husband which he says is outside his knowledge. However, Temur contends that, in late 2013, the Husband told him that he would make available funds so that Temur could invest in the financial markets for his sole financial benefit. Temur denies receiving any direct distributions from the identified Liechtenstein Trusts.

14. The Wife asserts that, for the reasons set out in her Particulars of Claim, the court can infer that at least a purpose of gifting well over US$100 million to Temur was to put those assets well beyond her reach. She points to the Husband, with Temur's assistance, having been engaged since about October 2014 in concerted efforts to ensure that all his assets were not amenable to enforcement. She also maintains that Temur has received monies, directly or indirectly from the Liechtenstein trusts in circumstances where, since those trusts were established, the Husband has received very substantial sums from those trusts (known to exceed US$113 million since 2017) and he has, in turn, transferred well in excess of US$25 million to Temur since 2017.

15. In his Defence relating to the Moscow Property, Temur admits that this was ultimately beneficially owned by the Husband. He contends that, in June 2018, he purchased Solyanka Servis (and thus the Moscow Property) from his father for RUB 50 million (that is, less than £600,000). He admits that the transfer of shares was registered in the Russian state register. However, he offers no explanation as to why the shares were sold to him at an apparent fraction of their true value in 2018, at a time when the Wife was actively seeking to enforce the judgment abroad.

16. Temur now contends that he failed to pay the purchase price for Solyanka Servis in July 2018 thereby rendering the purchase agreement "forfeit". The shares, however, remain at present registered in his name. A very short time after the Wife issued her Particulars of Claim in January 2020, Sunningdale – the company controlled by the Husband - suddenly commenced proceedings in Moscow against Temur to recover the shares for his default of payment. Temur states that he will not defend this claim. The Wife contends that this litigation is a transparent and collusive attempt by the Husband and Temur to move the shares out of Temur's ownership so that this court cannot grant effective relief now that a claim has been brought against Temur in this jurisdiction.

Temur's Counterclaims

17. Temur has included two counterclaims in his Defence. The first seeks an injunction to prohibit the Wife from instructing any lawyers funded, directly or indirectly, from monies paid by Burford Capital on the grounds, it is asserted, that the Wife's funding arrangements with Burford Capital are contrary to the public policy against champerty. The second is a claim for misuse of private and/or confidential information insofar as the documents provided to the Wife's lawyers by Mr Henderson relate to the personal, financial or business affairs of Temur. Temur seeks (i) an order prohibiting the Wife from using such documents in proceedings, (ii) an injunction to prohibit publication of such documents, and (iii) an order for delivery up of such documents.

<u>The Wife's Litigation Funding: Strike Out and Disclosure Applications</u>

The Wife's Relationship with Burford Capital

18. This litigation by the Wife to enforce her financial remedies order is being funded by Burford Capital, a well-known and London-listed professional third-party funder. Burford Capital are founding members of the Association of Litigation Funders ["the ALF"] and are thereby committed to the Code of Conduct endorsed by the Civil Justice Council. The precise terms of the Wife's arrangement with Burford Capital are not known. However, on 22 January 2018 the Wife entered into a Deed of Assignment (otherwise known as the Security Assignment) with Burford Capital which contains a number of provisions which may be of relevance to the contentions advanced by the parties. The Deed of Assignment is in my bundle. I note that the Wife instructed PCB Litigation LLP in late autumn 2018.

19. First, pursuant to clause 3.1(a) under the heading Grant of Security/Assignment, as security for the repayment of funds made available to the Wife under the funding agreement, the Wife assigned to Burford Capital all her rights and interests in these proceedings. Clause 3.1(b) provides that the Wife is entitled to exercise all her rights in the Secured Assets before an Enforcement Event. An Enforcement Event is defined in section 1.1 of the Deed as "*the failure by the Assignor to pay an amount payable under*

the Agreement to the Fund when due". The effect of Clauses 3.1(a) and 3.1(b), when read together, is that the Wife retains sole control over the litigation unless and until she defaults in paying Burford Capital. The Wife's solicitor with conduct of these proceedings, Mr Riem, has confirmed that the Wife rather than Burford Capital decides what steps to take and gives instructions to the lawyers acting for her. Whilst he concedes that Burford Capital is consulted, given its role as litigation funder, Mr Riem confirmed that, in any discussions with Burford Capital, he did not waive the Wife's right to privilege and that Burford Capital did not control the proceedings: "*In my dealings with Burford, they have never sought to exercise control over the litigation but, to the contrary, have always made clear that it is for [the Wife] to decide what steps to take*" (paragraph 10, fourth witness statement of Anthony Riem).

20. There are additional provisions in the Deed which (a) address the Wife's ability to part with the possession of or dispose of "*in any manner*" her rights and interests in the proceedings without the prior written consent of Burford Capital [clause 6.1(b)]; and (b) require the Wife to take whatever action [Burford Capital] or any Delegate may reasonably require to facilitate the realisation of any of her rights and interests in the proceedings [clause 12.1]. What the effect of those clauses might be – and indeed, Clause 3 of the Deed - on the extent of Burford Capital's involvement in these proceedings is, however, somewhat academic given developments which took place during the hearing.

21. By correspondence from the Wife's solicitors dated 15 May 2020, the court was informed that, on 13 May 2020, BC Investments Limited (a Burford entity) and the Wife concluded a Deed of Revocation of Assignment. Notice of the revocation was given to the Husband, Cotor and Woodblade on 14 May 2020. A copy of the Deed of Revocation was provided to me. Clauses 2.1 and 2.2 of that Deed cancelled and revoked the Security Assignment and provided for Burford Investments Limited to assign back to the Wife any interest it had received from her under the Security Assignment. The Wife's solicitors emphasised that the reasons for the revocation of the Security Assignment were unconnected with the applications before me and did not affect the relationship between the Wife and Burford in any respect material to the issues being debated before me. The Wife's solicitors were at pains to stress that the revocation was intended to do nothing more than replace Burford's security rights but without otherwise affecting Burford's entitlements or rights.

22. Revocation of the Security Assignment was deemed to be necessary for reasons relating to the enforcement of this court's orders in foreign jurisdictions. In summary, certain judgment debtors – including the Husband and Cotor – have challenged enforcement in France, Russia and Switzerland on the basis of an argument that the Wife is not entitled to enforce the judgment in her own name because she has assigned her rights to Burford. That argument was said to be misconceived as the Deed of Assignment only granted a security interest to Burford enforceable in the event of default by the Wife and did not divest the Wife of her right to enforce the judgment itself. By a judgment of the Zurich District Court dated 16 April 2020 and received on 4 May 2020, that court discharged an arrest of one of the Husband's Swiss bank accounts on the basis that "*the applicant alone would no longer be actively legitimised to assert the assigned claims*". In the light of that development, the Wife did not want to have to debate this defence to enforcement in numerous foreign courts, bearing in mind the time, costs and litigation risks involved. Thus, she and Burford agreed – strictly without prejudice to

the position that the Wife has never divested herself of her rights under the judgment – to cancel the Security Assignment and for Burford to assign back to the Wife whatever interest, if any, had been assigned. That was done in the hope that judgment debtors would find it impossible to challenge the Wife's standing to enforce the judgment debt in her sole name.

23. I will consider the significance of this development later in this ruling.

24. I now summarise the claims and positions of the Wife and Temur in respect of her funding arrangements with Burford Capital. My summary is just that and is not intended to be a comprehensive recital of each and every argument deployed by the parties. It will be plain that their positions are as wide apart as it is possible to be.

Temur's Counter-Claim and Position: Summary

25. Temur has brought a counter-claim by which he seeks an injunction restraining the Wife from instructing in these proceedings any firm of solicitors to be paid, whether directly or indirectly, by or on behalf of Burford Capital. He seeks disclosure from the Wife of the following broad categories of document:

a) any agreement for the provision of funding by Burford Capital to the Wife;

b) any agreement between the Wife and her solicitors, PCB Litigation, for the provision of legal services;

c) any agreement for the provision of funding between PCB Litigation and Burford Capital in connection with these proceedings;

d) and all communications between the Wife, PCB Litigation and/or Burford Capital relating to the provision of funding or the terms of funding.

The skeleton argument produced by Mr Owen QC and Mr James-Matthews states that this relief is sought on the basis that the funding arrangements that the Wife has entered into with Burford Capital are unlawful because they are contrary to the public policy against the champertous maintenance of litigation [paragraph 1]. Further, it is submitted that Temur's counter-claim raises a novel and important issue of public policy concerning the conduct of family proceedings, namely whether third-party litigation funding, with an interest in sharing the financial spoils of litigation, should be permitted in family proceedings. As Mr Owen QC submitted, Burford Capital – by trafficking in the outcome of the spoils of this matrimonial litigation – hoped to pocket a large reward and make a "*big fat killing*" for its shareholders. He drew my attention to the unique position of family proceedings in public policy terms in that such proceedings are excluded from the category of legal proceedings for which a legal advisor might enter into a conditional fee agreement [see s.58A of the Courts and Legal Services Act 1990] and sought to draw an analogy therefrom with third party litigation funding.

26. He resisted the Wife's strike-out application on the basis that this would deprive the court of an opportunity to scrutinise the Wife's funding arrangements with an understanding of the complete factual position.

The Wife's Application to Strike-Out and Position: Summary

27. The Wife has applied to strike out Temur's counter-claim on the basis that (a) he has no standing to seek relief in respect of her funding arrangements or (b) he has no grounds in fact or law for asserting that those arrangements are unlawful or contrary to public policy. Mr Gourgey QC submitted that Temur's applications were nakedly tactical manoeuvres intended to gain an advantage over the Wife by discovering how much funding she has and the terms on which it was provided. Temur's strategy was to prevent the Wife from instructing solicitors funded by or on behalf of Burford Capital with the result that she would be unable to pursue her claim against him and the Husband. The suggestion that public policy required the Wife to be deprived of the funding she needed in order to pursue enforcement of this court's orders and that the interests of justice were served by leaving her without the means of unravelling Temur and the Husband's dishonest schemes to frustrate and evade those orders turned both justice and the public interest on their heads.

28. Mr Gourgey QC submitted that this court should not, by analogy with the prohibition on conditional funding arrangements in family proceedings, embark upon the road towards the creation of a rule of public policy forbidding third-party litigation funding in family proceedings. That was not a matter for the court where Parliament had chosen not to enact and/or bring into force rules relating to third-party funding. This was particularly undesirable in circumstances where litigation funding by professional funders, adhering to a Code of Conduct, has been sanctioned and approved in this jurisdiction as facilitating access to justice and as being unlikely to corrupt the same.

Strike-Out: The Law

29. Rule 4.4 of the Family Procedure Rules 2010 ["the FPR"] provides in relevant part that:

(1) […] [T]he court may strike out a statement of case if it appears to the court -

a) that the statement of case discloses no reasonable grounds for bringing or defending the application;

b) that the statement of case is an abuse of the court's process or is otherwise likely to obstruct the just disposal of the proceedings […]

Practice Direction 4A - Striking Out a Statement of Case contains within paragraph 2.1 examples of cases which the court may conclude that an application falls within r 4.4(1)(a) as follows:

a) those which set out no facts indicating what the application is about;

b) those which are incoherent and make no sense;

c) those which contain a coherent set of facts but those facts, even if true, do not disclose any legally recognisable application against the respondent.

30. The language of FPR r 4.4 (1) mirrors the language of r 3.4(2) of the Civil Procedure Rules 1998 ["the CPR"] and should be interpreted analogously (paragraph 20 of Wyatt v Vince [2015] UKSC 14 per Lord Wilson). Wyatt and Vince is also authority for the proposition that (a) the three sets of facts set out in paragraph 2.1 of Practice Direction 4A exemplify the limited reach of r 4.4(1)(a) which must be construed without reference

to real prospects of success and (b) the touchstone is whether the application is legally recognisable (paragraph 27 per Lord Wilson).

31. It is inappropriate to strike out a claim in an area of developing jurisprudence since, in such areas, decisions on novel points of law should be based on actual findings of fact (page 557f-g of Barrett v Enfield London Borough Council [2001] AC 550 per Lord Browne-Wilkinson).

Champerty: The Law

32. What follows is a short summary of the relevant law and principles: it is not a learned analysis of this interesting though, in this jurisdiction at least, increasingly recondite area of law.

33. With respect to litigation, a person is guilty of maintenance where they support litigation in which they have no legitimate concern without just cause or excuse. Champerty is an aggravated form of maintenance which occurs when a person maintaining another stipulates for a share of the proceeds of the action or suit. The torts and crimes of maintenance and champerty were abolished pursuant to s.14(1) of the Criminal Law Act 1967. However, Parliament preserved the public policy against the champertous maintenance of litigation. Section 14(2) of the Criminal Law Act 1967 provides that: "*the abolition of criminal and civil liability… for maintenance and champerty shall not affect any rule of law as to the cases in which a contract is to be treated as contrary to public policy or otherwise illegal*".

34. The modern law of champerty, developed since 1967, does not reflect the attitudes set out in much of the older case law. The Court of Appeal in Thai Trading Co v Taylor [1998] EWCA Civ 370 observed that: *"... in examining the present scope of the doctrine, it must be remembered that public policy is not static. In recent times the roles of maintenance and champerty have been progressively redefined and narrowed in scope*" [paragraph 17 per Lord Justice Millett]. Lord Phillips MR described only "*vestigial remnants*" of the law of champerty surviving in paragraph 91 of R (o.a.o Factortame) v Secretary of State for Transport [2003] QB 381, which bears fuller citation as an insight into modern judicial thinking on this topic:

"*91. The costs judge concluded that the 1998 agreements lacked the characteristics that might have rendered them contrary to public policy under the vestigial remnants of the law of champerty. As we considered the evidence and heard the argument unfold, we became increasingly convinced that he was correct. Reflection after reserving our judgment has not shaken that conclusion. The claimants had been brought low by the initial wrong done to them and by the costs and stress of prolonged litigation in which no quarter was given. They were faced with an extraordinarily complicated task in proving the damage that they had suffered and there was a real risk that lack of funds might result in their losing the fruits of their litigation. The 1998 agreements ensured that they continued to enjoy access to justice. They did this without putting justice in jeopardy. The 1998 agreements were not champertous*".

35. The tests for maintenance and champerty are set out in the decision of the House of Lords in Giles v Thompson [1994] 1 AC 142. Maintenance and champerty (where profit is involved) will only be established where there is "*wanton and officious intermeddling with the disputes of others in which the [maintainer] has no interest whatsoever and*

where the assistance he renders to the one or the other party is without justification or excuse" [per Lord Mustill at p.164C-D]. Lord Mustill explained that all aspects of the transaction should be taken together for the purpose of considering the test described above [p.164C].

36. In Sibthorpe v Southwark LBC [2011] EWCA Civ 25 the Court of Appeal explained that, when considering an allegation of champerty in relation to an agreement to which the person conducting the litigation (or providing advocacy services) is not a party, the modern approach was for the court to decide whether the agreement would undermine the purity of justice or would corrupt public justice which is a question to be decided on a case by case basis [paragraph 35-36]. It formulated that approach given the views expressed by Lord Justice Steyn in Giles v Thompson (Court of Appeal decision), Lord Mustill in Giles v Thompson in the House of Lords and Lord Phillips in Factortame. In Davey v Money [2019] EWHC 997 (Ch), Mr Justice Snowden held that, in determining whether an agreement with a non-party as regards the conduct of litigation would tend to undermine or corrupt the process of justice, "*the crucial issue appears to be whether the non-party can exercise excessive control or influence over the conduct of the proceedings in such a way as, for example, to suppress evidence, influence witnesses, or procure an improper settlement*" [paragraph 78].

37. Finally, the observations of Lord Justice Neuberger MR (as he then was) in Sibthorpe suggest that the law of champerty should be curtailed rather than expanded by the courts in a context where access to justice is difficult to achieve for the great majority of citizens, given the ever reducing availability of legal aid, and where legislative policy has shifted to permit a wider variety of more flexible funding arrangements.

38. There is some caution against undesirable satellite litigation to investigate funding arrangements in circumstances where the claim is bona fide and the inquiry into funding arrangements would afford no defence to the claim (see Abraham v Thompson [1997] C.L.C. 1370, a decision of the Court of Appeal).

39. The modern law of champerty is equally applicable in the Family Division as in the other Divisions. The Court of Appeal said in this very case, "*let it be said and understood, once and for all: the legal principles – whether of the common law or principles of equity – which have to be applied in the Family Division (and, for that matter, also, of course, in the Family Court) are precisely the same as in the Chancery Division, the Queen's Bench Division and the County Court*" (paragraph 22 of Kerman v Akhmedova [2018] EWCA Civ 307 per Sir James Munby, President of the Family Division).

Litigation Funding: Relevant Considerations

40. Prior to 1967, providing funding for litigation would have been regarded as a criminal act, whereas the role played by professional funders is now seen by the courts as "*highly desirable*" in order to facilitate access to justice (Gulf Azov Shipping Co Ltd v Chief Idisi [2004] EWCA Civ 292 at paragraph 54 and Arkin v Borchard Lines Ltd [2005] EWCA Civ 655 at paragraph 16).

41. Mr Gourgey QC drew my attention to the history of modern legal developments in litigation funding. In Chapter 11 of his Final Report from the Review of Civil Litigation Costs (2009), Lord Justice Jackson concluded that "*in principle, third party litigation*

funding is beneficial and should be supported" for five reasons, including that it promotes access to justice and, for some parties, may be the only means of funding litigation (para. 1.2). He also recommended that a voluntary code be established (para. 2.12) and that it be made clear that funding arrangements complying with such regulation would not be overturned on grounds of maintenance and champerty (para. 5.3). The Civil Justice Council – an agency of the Ministry of Justice – published its Code of Conduct in 2011 which is administered on a self-regulatory basis by the ALF. In his sixth lecture on the Civil Litigation Costs Review Implementation Programme, Lord Justice Jackson stated that the Code of Conduct was a satisfactory implementation of his recommendations.

42. The Code of Conduct specifically governs the control which can be exercised by a funder. For example, the Code forbids the funder from seeking to influence the client's solicitor or barrister to cede control or conduct of the dispute to the funder (para. 9.3) and it also provides for an independent QC to resolve any dispute between a funder and client about settlement (para. 13.2).

43. Following those developments, the judicial attitude to litigation funding was summarised by the Court of Appeal in Excalibur Ventures LLC v Texas Keystone Inc [2016] EWCA Civ 1144 as follows: "*litigation funding is an accepted and judicially sanctioned activity perceived to be in the public interest*" [paragraph 31]. Mr Gourgey QC's researches have revealed that no agreement with a professional litigation funder has been found to be contrary to public policy during the course of the last fifteen years.

44. In Excalibur, the Court of Appeal recognised that it was necessary and, in fact, promoted the administration of justice, for responsible funders to be involved in rigorous analysis and review of the litigation which they fund [paragraph 31 per Lord Justice Tomlinson]:

> *"...As the judge pointed out, champerty involves behaviour likely to interfere with the due administration of justice. Litigation funding is an accepted and judicially sanctioned activity perceived to be in the public interest. What the judge characterised as "rigorous analysis of law, facts and witnesses, consideration of proportionality and review at appropriate intervals" is what is to be expected of a responsible funder – as the ALF to some extent acknowledges and as did some of the funders in this case in their evidence presented to the judge – and cannot of itself be champertous. I agree with Mr Waller that, rather than interfering with the due administration of justice, if anything, such activities promote the due administration of justice. For the avoidance of doubt I should mention that on-going review of the progress of litigation through the medium of lawyers independent of those conducting the litigation, a fortiori those conducting it on a conditional fee agreement, seems to me not just prudent but often essential in order to reduce the risk of orders for indemnity costs being made against the unsuccessful funded party. When conducted responsibly, as by members of the ALF I am sure it would be, there is no danger of such review being characterised as being champertous.*"

45. It is thus difficult to envisage how litigation funding conducted by a responsible funder adhering to the Code of Conduct could be construed to be illegal and offensive champerty or might be held to corrupt justice.

Temur's Standing to Seek Relief

46. Before consideration of Temur's arguments about the Wife's funding arrangements, Mr Gourgey QC submitted that the court should ask itself whether Temur had standing to seek any relief in respect of how the Wife was funding her claim. He submitted that Temur had no standing and thus his counter-claim should be struck out.

47. First, it is important to recognise that Temur has not pleaded that he has any defence to the substantive claims against him under s.423 of the IA and s. 37 of the MCA by reason of the Wife's funding arrangements. That course would not have been open to him as the fact that an applicant has been maintained by a third person is no defence to the proceedings (page 421 of Martell v Consett Iron Co Ltd [1955] 1 Ch 363 per Lord Justice Jenkins).

48. Second, he has not applied for the proceedings against him to be stayed. A party is generally entitled to proceed to trial of a bona fide claim which is not an abuse of process. Even if the funding for that claim may be against public policy and therefore unenforceable as between the parties is, by itself, no reason for regarding the proceedings to which it relates or their conduct as an abuse [see paragraph 59 of Stocznia Gdanska SA v Latreefers Inc [2001] BCC 174].

49. Third, Temur has not alleged that the Wife has been or is abusing the processes of the court. There is no suggestion that the Wife is pursuing these proceedings in bad faith or that either she or her legal representatives have done anything improper in the conduct of the litigation.

50. Given the above which all militate against Temur having standing to seek relief, Temur's case was that he sought "*to protect the integrity of public civil justice*" by seeking an injunction to prevent the Wife from instructing solicitors funded by or on behalf of Burford Capital. That remedy was targeted at the mischief to which the public policy against the champertous maintenance of proceedings was directed, namely the involvement of Burford Capital in these proceedings and the clear attendant risk of a distorting influence of that involvement upon the just disposal of the underlying dispute. Furthermore, Mr Owen QC submitted that the grant of injunctive relief would not deprive the Wife of the right to continue with the proceedings "*provided that she did so with alternate representation*". With apologies to Mr Owen QC, I think he meant to say "*alternate funding*" rather than "*alternate representation*" since it is difficult to see any principled basis on which a third party could obtain an injunction to prohibit a party from instructing a solicitor pursuant to a perfectly lawful contract of retainer.

51. Mr Owen QC relied on the court's jurisdiction to grant injunctive relief in all circumstances in which it was just and convenient to do so. That jurisdiction derives from the pre-Supreme Court of Judicature Act 1873 (36 & 37 Vict C 66) powers of the Chancery and other courts to grant injunctions (see pp.329H -330A of Fourie v Le Roux [2007] 1 WLR 320 (HL) per Lord Scott). He submitted that the jurisdiction to grant relief was not restricted to certain categories but was to be developed in such situations as the court considered right to make the remedy available (see pp.332H-333B of Fourie v Le Roux). Mr Owen QC submitted that Temur had a cognizable interest in preventing proceedings being unlawfully maintained against him and that interest subsisted after the abolition of the tort of champerty. Further, or alternatively, the power to grant injunctive relief arises due to the Court's inherent power to protect its own processes from abuse, for example by granting a stay of champertously maintained proceedings.

52. Whilst I accept Mr Owen QC's submission that the court has the theoretical jurisdiction to grant Temur injunctive relief, that does not amount to him having reasonable grounds for bringing his counter-claim or even the standing to do so. Fourie v Le Roux makes clear that, without the issue of substantive proceedings or an undertaking to do so, the propriety of the grant of injunctive relief would be difficult to defend. Lord Scott stated at p.333H that "*whenever an interlocutory injunction is applied for, the judge, if otherwise minded to make the order, should as a matter of good practice pay careful attention to the substantive relief that is or will be sought*". However, Cartier International AG v British Sky Broadcasting [2016] EWCA Civ 658 went further by emphasising that the grant of injunctive relief in novel circumstances required a recognition of the great width of equitable powers, a historical appraisal of the categories of injunctions that have been established and an acceptance that, pursuant to general equitable principles, injunctions might be made in new categories where that course appeared appropriate [paragraph 54]. In circumstances where Temur has pleaded no cause of action against the Wife in respect of her funding arrangements which prejudices him - the tort of champerty having been expressly abolished by s.14 of the Criminal Law Act 1967 – it is doubtful that he can point to any injustice which would justify or render appropriate the grant of injunctive relief. His mere involvement in the proceedings provides no justification for that equitable remedy.

53. It is well-established that the court will not stay a bona fide action even if it were to be supported by a champertous funding agreement. In those circumstances, it is difficult to see how the court would hinder the pursuit of these proceedings by granting an injunction to stop the Wife instructing solicitors even if champertously funded by a third party.

54. Mr Gourgey QC submitted that, even when champerty was both a crime and a tort, it was well-established that the court of equity would not intervene by granting an injunction. In Elborough v Ayres [1870] L.R. 10 EQ. 367, Sir William James V-C stated "*what I have been looking for, during the whole of the argument ... is something like an authority or principle for the interference of this Court [of equity] in the matter*". That authority remains unchallenged and I accept Mr Gourgey QC's submission that, given the very much more restricted role played by the doctrines of maintenance and champerty in the present, it appears unjustifiable to argue that equity should now start to intervene by the grant of injunctive relief.

55. It thus follows that Mr Gourgey QC's submissions that Temur has no standing to seek relief are attractive. They would justify the striking out of his claim pursuant to FPR rule 4.4(1)(a) and Practice Direction 4A paragraph 2.1(c) on the grounds that there are no reasonable grounds for bringing or defending the application in that the facts pleaded do not disclose any legally recognisable application against the Wife.

56. However, before I come to a concluded view on this aspect of the argument, it seems to me that I should consider the parties' contentions relating to strike-out.

57. If I was against him on the remedy sought, Mr Owen QC sought leave to amend Temur's defence to seek a stay of the proceedings. I do not grant leave in circumstances where that relief could have been sought and properly pleaded in the alternative within Temur's Defence. Even if I am wrong about refusing to allow Temur leave to amend his defence, any putative application for a stay in these proceedings would fail for the reasons contained in the remainder of this judgment.

The Legality of the Wife's Funding Arrangements: Temur's Defence

58. At the hearing in January 2020, when it became apparent that Temur sought to challenge the Wife's funding arrangements, it was suggested that her legal advisors were acting under a conditional fee agreement contrary to s.58A of the Courts and Legal Services Act 1990. That allegation of professional misconduct by the Wife's legal representatives now forms no part of Temur's case as Mr Owen QC was rightly at pains to stress in his submissions to me. Instead, Temur has pleaded at paragraph 41 of his Defence that the Wife's litigation funding arrangements are unlawful in that they are contrary to the public policy on champerty.

59. In this regard, Temur relies on a number of matters in his Defence which I propose to examine in order to ascertain whether the remedy – strike-out - contended for by the Wife is appropriate. That is, in my view, the proper and logical course for the court to take.

60. First, reliance is placed on the "*significant control*" ceded by the Wife to Burford Capital pursuant to the Deed of Assignment dated 22 January 2018 [paragraph 41(a)]. The consent of Burford Capital was said to be required for the Wife to settle the financial remedy proceedings against any of the Respondents and Burford Capital was said to be able to require the Wife to take particular steps in the conduct of the proceedings. The January 2018 Deed of Assignment has been revoked as paragraphs 21-22 make clear and Mr Owen QC sought to persuade me that this was a matter of significance since the court no longer had any factual material upon which it could examine the relationship between the Wife and Burford Capital. That is not strictly speaking accurate since the statement of Mr Riem survives unchallenged and describes the Wife's control over the litigation process and the involvement of Burford in that. Though I regard it as unfortunate that the Deed of Assignment was revoked during the course of the hearing, it does not alter the import of Mr Riem's statement. I observe that, even if Temur's pleaded allegations were true, Burford's mere control would not - of itself - suffice to engage the law of champerty. A funder of litigation is not forbidden from having rights of control but is forbidden from having a degree of control which would be likely to undermine or corrupt the process of justice (see the Court of Appeal's decision in Excalibur cited in paragraph 43 and 44 above). With respect to settlement, I observe that even if the Wife was required to obtain Burford Capital's consent before settling her enforcement action, that would appear to be a perfectly proper protection for Burford Capital as funder and would not tend to corrupt justice. In circumstances where Temur has accepted without reservation that this litigation is being pursued entirely properly and appropriately by the Wife and her legal advisors, it is difficult to see a great deal of substance in this pleaded point.

61. In paragraph 41(b), Temur relies on the significant value of the financial investment made by Burford Capital in support of the litigation pursued by the Wife in this jurisdiction and elsewhere. Assuming that Temur is correct, I cannot see how that would render the funding arrangement champertous.

62. Paragraph 41(c) alleges that Burford Capital will stand to profit from any settlement. That is obvious but does not render the agreement unlawfully champertous such that relief would be afforded to a Respondent.

63. In paragraph 41(d) Temur makes reference to the fact that in June 2019 the Wife's solicitors granted a floating charge over their own assets to another Burford Capital entity. Mr Riem's statement has confirmed that this arrangement has no connection with these proceedings. The pleading fails to describe how this arrangement could possibly affect the conduct of these proceedings or undermine the administration of justice. It seems to me to be a relic of the suggestion, now abandoned, that somehow the Wife's legal team were guilty of professional misconduct.

64. Finally, in paragraph 41(e), Temur refers to a comment made by the CEO of Burford Capital, Christopher Bogart, about its role in a case called Petersen v Argentine Republic being heard before the US District Court for the Southern District of New York. Whatever Mr Bogart said about the role of Burford Capital in that case cannot be relevant to this case being conducted in this jurisdiction especially when the quotation contained in the Defence included the comment that "*our role varies by case; there are other matters in which we are much less involved*".

65. The pleaded facts on which Temur's Defence relies do not engage with how or why any rights granted by the Wife to Burford Capital could or would be exercised to corrupt the judicial process. Rather more significantly, his Defence does not specifically plead that third-party funding is impermissible in family proceedings. However, the main thrust of Mr Owen QC's oral submissions and of much of his skeleton argument was to the effect that there is a public policy against champerty in family proceedings which renders the litigation funding arrangements in this case unlawful. The failure to specifically plead a prohibition on third party funding in family proceedings is unfathomable in the particular circumstances of this case. However, given the seriousness of the issues at stake, I have decided to overlook any deficit in pleading and assume that the allegedly unlawful and champertous nature of the Wife's funding arrangements already pleaded applies with particular force to family proceedings.

Third-Party Litigation Funding in Family Proceedings

66. In January 2020 Mr Owen QC accepted that the Wife's enforcement claim was a "*quasi-Chancery civil claim*" but he now relies on these proceedings being "*family proceedings*". They are indeed family proceedings but are enforcement proceedings rather than proceedings in which the court is exercising its discretion to achieve the fair distribution of finite matrimonial assets. Any perusal of this judgment will underscore the hybrid nature of the proceedings.

67. Mr Owen QC submitted that the Wife's litigation funding arrangement with Burford Capital was, on the face of it, champertous maintenance in that Burford would obtain a proportion of the monies recovered by the Wife in the enforcement proceedings. He submitted that the proper approach was to consider the precise terms of the impugned agreement in order to determine whether it tends to conflict with existing public policy directed to protecting the due administration of justice with particular regard to the interests of defendants (see Factortame at paragraph 44).

68. The most trenchant aspect of Mr Owen QC's submission was that family proceedings were in a unique position with respect to litigation funding in that, by virtue of s.58A of the Courts and Legal Services Act 1990, they are specifically excluded from the category of proceedings for which a legal advisor may enter into a conditional fee agreement. He submitted, by analogy with conditional fee agreements, that litigation

funding made the settlement of proceedings more difficult and that it was to the detriment of the parties that the litigation funder received a share of finite matrimonial property. Furthermore, the intervention of a litigation funder would inflate the needs of the funded party artificially. He referred me to the debate in the House of Lords on 26 January 1999 when the Government accepted the prohibition of conditional funding arrangements in family proceedings and submitted that many of the concerns therein articulated were also relevant to third-party litigation funding in family proceedings. Those concerns were in summary: (a) that the ethos of family proceedings was to limit costs and acrimony by seeking compromise and avoiding adversarial stances; (b) it was often difficult in family proceedings to define who had won or lost; (c) ancillary relief claims are not the same as claims for debt or for compensatory damage since the court's discretion means that there is seldom a precisely predictable result; and (d) the court would not be able to exercise its control over the costs of matrimonial litigation if it were not privy to the detail of funding arrangements.

69. Mr Owen QC also referred me to a lengthy decision of Ng J in the Hong Kong High Court which was handed down on 19 March 2020 following a hearing on 25 and 26 June 2019 (Re A [2020] HKCFI 493). This concerned third-party litigation funding in matrimonial proceedings by reason of an application by a husband for a declaration that the proposed third-party funding of his claim did not breach the laws of champerty and maintenance. The husband in that case submitted that those arrangements fell, for example, within an Access to Justice Exception in article 10 of the Hong Kong Bill of Rights. Mrs Justice Ng surveyed the law with respect to third-party litigation funding in matrimonial proceedings worldwide, yet her decision was taken in a Hong Kong context where maintenance and champerty remain crimes and torts. Unsurprisingly she refused the application for declaratory relief. Whilst the case is of interest in its detailed description of the public policy arguments in play, I did not find it decisive in reaching my decision.

70. It seems to me that I should be very cautious in accepting the analogy that, because conditional fee agreements are prohibited in family proceedings, public policy prohibits third-party funding in family proceedings. That analogy seems to me to be misplaced because the different treatment afforded by the courts to contracts with lawyers is obvious. There is a clear concern about a person's lawyer having a financial interest in the outcome of proceedings which might improperly influence both the advice and the representation given. Those concerns do not arise in third-party funding arrangements where the lawyers conducting the proceedings have no financial interest in the outcome. In this context, I am also mindful of the inappropriateness of extending the prohibition on third party litigation funding to family proceedings as if settlement were any more difficult/desirable in those proceedings or because a portion of the monies at stake in the litigation were used to pay a funder.

71. Absent any evidence for the improper conduct of the Wife and her legal advisors in these proceedings or any statutory barrier to her funding arrangements, Mr Owen QC's contentions came perilously close to a submission that there was an issue of principle as to whether third-party funding was per se permissible in family proceedings. Those submissions are misplaced, in my view, in circumstances where third-party funding has been accepted in this jurisdiction to be desirable to facilitate access to justice and where first-instance decisions in the Family Division have concluded that (a) it is "*a necessary and invaluable service in the right case*" (per Mr Justice Francis at paragraph 53 in

Weisz v Weisz [2019] EWHC 3101 (Fam)) and (b) that nothing should be said "*that makes it even more difficult for litigants to obtain litigation funding in the future, particularly given that there is no legal aid available in this area anymore*" (per Mr Justice Moor at paragraph 9 of Young v Young [2013] EWHC 3637 (Fam)).

72. Is there merit in an investigation of the detail of the Wife's funding arrangements which would justify refusing the application to strike-out because there is an issue of principle about those arrangements in family proceedings? Having thought about this matter very carefully, I do not think that there is. To do so would require more than the matters pleaded in the Defence or advanced in argument by Mr Owen QC. Ignorance as to the precise terms of the Wife's funding arrangements does not, of itself, justify further enquiry or disclose reasonable grounds for bringing the application particularly in circumstances where the Wife's litigation funder adheres to the ALF's Code of Conduct. In that context, Temur is required to show some prejudice or injustice to him arising from those funding arrangements or that the funding arrangement may be champertous. That might constitute a legally recognisable ground. However, I have seen nothing in his case which comes close to that. In my view, he cannot sensibly maintain, in the light of the Court of Appeal decision in Excalibur, that the litigation funding in this case is prima facie champertous.

73. Furthermore, this is not a developing area of jurisprudence which requires detailed consideration by this court. Litigation funding practised by a funder adhering to the Code of Conduct has been endorsed by the senior courts in robust terms. Funding is being provided post-judgment to enable the Wife to secure the recovery of sums already awarded to her in the face of the Husband's contumelious conduct (assisted by others) in evading and frustrating the enforcement of the judgment debt. Without such funding, the Wife would lose access to justice and the chance of recovering the monies awarded to her in December 2016. In those particular circumstances and for the other reasons set out in this judgment, the concerns expressed in a Parliamentary debate over twenty years ago have little traction.

Conclusion: Strike-Out

74. Standing back and applying the relevant test, I have concluded that Temur's counter-claim should be struck out. He has no entitlement to seek any relief in respect of the Wife's funding arrangements and has failed to demonstrate that there are reasonable grounds – in the sense of being legally recognisable - for challenging the legality of those arrangements. The draconian course of strike-out is justified, in my view, to prevent justice being turned on its head in the manner described by Mr Gourgey QC in paragraph 27 above.

Temur's Application for Disclosure: Litigation Funding

75. Given my decision on strike-out, it follows that I need not determine this application. I observe that, during oral submissions, Mr Owen QC had, in fact, abandoned his application for disclosure of the documents contained in paragraphs 44.1.2 and 44.1.3 of his skeleton argument, namely any agreement for the provision of legal services to the Wife by PCB Litigation LLP in connection with these proceedings and any agreement for the provision of funding between PCB Litigation LLP and Burford Capital (and any entity related or linked to them or directly or indirectly owned by them) in connection with these proceedings. Had he not withdrawn his application for

disclosure in respect of that material, I would have refused it since the terms of the Wife's retainer with her solicitors would have been irrelevant and because any funding agreement between PCB and Burford Capital was not in her control since neither were parties to the litigation.

Temur's Application for a Reporting Restriction Order

76. The application was made on 25 March 2020 and was unsupported by any witness statement. It has been served on representatives of the media in accordance with the relevant Practice Direction. It is opposed by certain members of the national media whereas the Wife, whilst not formally opposing the application, observes that it does not appear to be justifiable.

77. Before I address both this application and the application for an order prohibiting disclosure to third parties, it is important to register the context in which these applications were made. Prior to the commencement of the hearing, there were media reports about the proceedings which included information about the arguments which Temur would deploy to persuade the court that third-party litigation funding in matrimonial proceedings was impermissible (an article in the Observer newspaper on 10 May 2020 entitled "*Oligarch's wife brings son into high-stakes divorce case*"). The Wife sought clarification from Temur's legal representatives as to who had provided this information to the media and was told that Temur had not spoken to the Observer and had provided no assistance or comment. There followed an exchange of correspondence as to the alleged involvement of media agencies with each of the parties. It is plain that both the Wife and the Husband have, in the past, briefed media agencies about this litigation and their respective roles in it.

78. I stress that neither the press reports immediately prior to the hearing, the prior involvement of media agencies, nor any of the accusations made by each party against the other in this regard played a role in my decision making.

79. Paragraph 9 of the draft order which deals with reporting restrictions underwent some refinement during the litigation. It now reads as follows:

"Subject to the 'territorial limitation' above, this order prohibits without the leave of the court the publishing or broadcasting in any newspaper, magazine, public computer network, internet website, social networking website or any form of social media, sound or television broadcast or cable or satellite program service of;

a) Confidential material or information relating to the personal financial affairs or business activities of the Tenth Respondent that has been disclosed in any of the following forms, within these proceedings:

i) in a witness statement, affidavit or oral evidence;

ii) in pleadings or application notices;

iii) in orders or judgments of the court;

iv) In any material filed at court or served on any other parties pursuant to any order made by the court in the proceedings.

b) For the purposes of paragraph 9(a), "confidential material or information relating to the personal financial affairs or business activities" means: tax returns (and the contents thereof), statements or details of any bank accounts, investment portfolios or any trading activity (in particular in relation to all dealings with his UK-based trading platform [name omitted], reference to [his home address], STE Capital Corporation SA and shall further expressly include documents 1-10 as served by the Tenth Respondent in the Schedule headed "Initial Disclosure" dated 21 February 2020."

80. Mr Howard QC on behalf of Temur made it plain that he was not seeking to have the proceedings heard in private or for representatives of the media to be excluded from hearings or that the proceedings should be in any way anonymised. He accepted that the press could report Temur's name, the allegations against him, and his defence but wished to prevent details of his personal finances being made public or the media having access to written material which might disclose details of his client's finances.

81. In connection with this application, I received a letter dated 3 April 2020 from The Guardian newspaper setting out its objections to the order sought. The letter made plain that the concerns raised by The Guardian were shared by the BBC, the Financial Times, and the Press Association. On 6 April 2020 I received a supplemental email from The Guardian in response to revisions made to the draft order sought by Temur. Both communications were forwarded by my clerk to the parties. Representatives of the media were present during the hearing, but none appeared via counsel to make any submissions additional to those made in written form by The Guardian.

82. This is a case which has generated considerable media interest for reasons I summarise as follows:

a) these are matrimonial proceedings which concern the largest award for ancillary relief apparently ever made in this jurisdiction;

b) the Husband has not voluntarily paid a penny of that award and the Wife seeks enforcement against him;

c) and the Wife now claims her son. Temur, has assisted the Husband to evade payment of the award and seeks to enforce settlement via an examination of Temur's financial affairs with a view to recovering from him monies gifted to him by the Husband with the intention of putting those assets out of her reach.

83. In this case, none of the statutory prohibitions on publication (for example, in relation to children) apply. Nevertheless, the court has an inherent jurisdiction based on the Human Rights Act 1998 to restrict the reporting of private matters. In the present case, Articles 6, 8 and 10 are engaged and, where Article 10 is engaged, Article 12(4) requires the court to have particular regard to the importance of the right to freedom of expression as well as the principle of open justice. In so doing, the court must specifically consider the extent to which the information has already (or is about to become) available to the public and the extent to which it would be in the public interest for it to be published.

84. These proceedings are being heard in public and thus the presumption of open justice applies with full force. In H v News Group Newspapers Ltd (Practice Note) [2011] 1

WLR 1645, Lord Neuberger MR (as he then was) gave helpful guidance on the principles to be applied as regards open justice:

[9] Open justice is a fundamental principle. The general rule is that hearings care carried out in, and judgments and orders are public: see Article 6(1) of the Convention, CPR 39.2 and Scott v Scott [1913] AC 417 …

[10] Derogations from the general principle can only be justified in exceptional circumstances, where they are strictly necessary as measures to ensure the proper administration of justice. They are wholly exceptional… Derogations should, where justified, be no more than strictly necessary to achieve their purpose.

[11] The grant of derogations is not a question of discretion. It is matter of obligation and the court is under a duty to either grant the derogation or refuse it when it has applied the relevant test.

[12] There is no general exception to open justice where privacy or confidentiality is in issue. Applications will only be heard in private if and to the extent that the court is satisfied that by nothing short of the exclusion of the public can justice be done. Exclusions must be no more than the minimum strictly necessary to ensure justice is done and parties are expected to consider before applying for such an exclusion whether something short of exclusion can meet their concerns as will normally be the case … Anonymity will only be granted where it is strictly necessary and then only to that extent.

[13] The burden of establishing any derogation from the general principle lies on the person seeking it. It must be established by clear and cogent evidence…

[14] When considering the imposition of any derogation from open justice, the court will have regard to the respective and sometimes competing Convention rights of the parties as well as the general public interest in open justice and in the public reporting of court proceedings…

85. Documents referred to in public hearings fall within the ambit of the open justice principle. In R (Guardian News & Media Ltd) v City of Westminster Magistrates Court (Article 19 intervening) [2012] EWCA Civ 420, the Court of Appeal held that the media was entitled to obtain copies of documents referred to in open court on request, absent compelling reasons to the contrary. That rule was recently reinforced by the Supreme Court in Cape Intermediate Holdings v Dring [2019] UKSC 38. Access to the underlying court materials is thus accepted as being wholly relevant to a journalist's understanding of the proceedings and thus their ability to produce a fair and accurate report.

86. In Chodiev v Stein [2016] EWHC 1210 (Comm), Mr Justice Leggatt refused to make an order prohibiting the use of documents which had been read to or by the court or referred to at a public hearing. The documents were said to be of a confidential nature containing private information (including about financial transactions). The judge held that in principle all the material which had or may have affected the decision-making process should be open to public scrutiny. Ultimately, he was willing only to make an order in respect of bank details for which there was no possible public interest in publication.

87. What is the nature of the public interest in this case? The Guardian submitted in its correspondence that the inability to enforce the Wife's award raised serious concerns about "*the jurisdiction/probity*" of the English courts, the use of British tax havens to protect assets and the potential to avoid judgment debt. Previous judgments in this case had found the Husband to have acted in an improper and dishonest manner throughout the proceedings and to have conducted a campaign to avoid his liabilities under the judgment. The Wife's case now involved her son, Temur, in an attempt to recover monies given to him by the Husband as part of his efforts to avoid payment of the judgment debt to her. It was said to be imperative for the media to have access to and publish information in the proceedings "*should that information give rise to serious financial queries, irregularities or improprieties, or even criminal or contemptuous conduct as it has in the past*" (letter dated 3 April 2020).

88. Turning to the balancing exercise, I accept that Temur is not a public figure and that his involvement in this litigation will bring an intense and no doubt painful scrutiny to bear on his relationship with both his parents and on his finances. His personal financial information would not become public otherwise but for these proceedings. He asserts that there would be detriment to his activities as a trader if details of those activities were to become known but there is no witness statement in support of that contention. Mr Howard QC submitted that the damage would be obvious, but this court requires evidence in relation to those matters before derogating from the principle of open justice. Likewise, I have been provided with no information as to why Temur's involvement with a company, separate from his trading activities, requires the making of the order sought. I also note that the material in the Schedule to the Defence identified in paragraph 9(b) is material on which Temur relies as being of relevance to his Defence and thus might be thought to be of crucial importance within the proceedings.

89. Balanced against that is the public interest in the accurate reporting of complex litigation involving the use of financial structures apparently designed to obfuscate the whereabouts of the Husband's wealth and to prevent the enforcement of this court's judgment in favour of the Wife. Restricting access to material referred to in court would inhibit the proper and accurate reporting of proceedings where the public interest is both obvious and amply justified.

90. Standing back and balancing the interests engaged, I have decided that paragraph 9 of the draft order cannot be justified in the circumstances of this litigation. It would inhibit responsible reporting of these proceedings which have been held in open court since well before my involvement with them. However, I am persuaded that there should be an order, similar to that directed in Chodiev, preventing the reporting of Temur's address; the identifying numbers of his bank accounts including their IBAN number; the reference number of his tax returns and the contents thereof; the details of the specific products contained in his investment portfolios; and the name of his UK-based trading platform. A restriction on reporting those matters would preserve the privacy and security of his home and his financial affairs from those who might seek to do him harm or defraud him and does not inhibit the proper reporting of these proceedings. However, general details of the sums gifted to Temur by the Husband, his trading gains and losses or the gist of his trading activity cannot legitimately fall within my order, not least because it would make it very hard indeed to make a comprehensible report of the proceedings.

91. I will consider and approve an order in these terms once the parties have been able to collaborate to produce one, as I expect them to do.

Temur's Application for an Order Prohibiting Disclosure to Third Parties

92. Temur also seeks an order prohibiting the parties without the court's permission, from disclosing to any third party any (a) applications or pleadings, (b) any witness statements and affidavits, including the exhibits to either, and (c) any document filed or served in the course of court ordered disclosure. As revised during the course of the litigation, paragraph 13 of the draft order reads as follows:

"No party may disclose to any third party (including but not limited to accredited representatives of the media, and including any party's litigation funding service) other than his or her legal representatives any of the following documents (and information contained therein) produced within these proceedings without leave of the court:

a) any applications or pleadings,

b) any witness statements, affidavits including exhibits to either,

c) any document filed or served in the course of court-ordered disclosure (including items 1-10 of the 'Initial Disclosure' produced voluntarily with the tenth respondent's Defence on 21 February 2020),

even if such document has been read to or by the court or referred to at a hearing which has been held in public.

Save that any party may so disclose the above:

i) for the purpose of preparing witness statements for these proceedings and/or

ii) for the purpose of enforcement of the financial remedies order or any related action claiming the financial provision made in that order in any jurisdiction worldwide or responding to an application for such enforcement or claim, or

iii) such as it strictly necessary for the purpose of these proceedings, it being held that it is not necessary for the purpose of these proceedings for a party to disclose any of the above documents to:

media agencies or representatives

public relations/publicity management agencies or representatives, or

Burford Capital,

provided any such permitted disclosure as set out above shall not take place until the disclosing party's solicitors have obtained a binding written assurance from the recipient that any such disclosure is to remain confidential and is not to be published or disseminated further without leave of the court."

93. Mr Howard QC submitted that the basis for the application was to prevent Temur's private information contained in court documents being shown either to the media or to

the Wife's litigation funders. Though the parties were bound by r.22.20 of the FPR which prevented the use of witness statements for other purposes save where the court gave permission for some other use or the witness statement had been put in evidence at a hearing held in public, Mr Howard submitted that more was required to protect his client's private information especially as Burford Capital were not explicitly bound by r.22.20. The revision of paragraph 13 during the course of the hearing was prompted by my query of Mr Howard QC as to how that paragraph should be amended if I were not in agreement with Temur's case on the Wife's litigation funding. Mr Howard QC accepted that, in those circumstances, paragraph 13 should be amended to remove the reference to Burford Capital save that they should have no access to Temur's private financial information and should provide the written assurance contended for.

94. Mr Gourgey QC opposed an order in the terms of paragraph 13 as drafted. The Wife accepted that there was a legitimate interest in ensuring that Temur's disclosure and witness statements were not used for improper or collateral purposes. She was willing to give an express undertaking in terms which reflected the prohibition on collateral use of disclosed documents contained the r.31.22(1) of the Civil Procedure Rules 1998, subject to paragraph 2 of the order of Mr Justice Haddon-Cave dated 20 December 2016, that is:

"The Wife may use a document disclosed to her by Temur only for the purpose of the proceedings in which it is disclosed, except where –

a) the document has been read to or by the court, or referred to, at a hearing which has been held in public;

b) the court gives permission;

c) the party who disclosed the document and the person to whom the document belongs agree;

d) for the purpose of the enforcement of the financial remedies order or any related action claiming the financial provision made in that order in any jurisdiction worldwide."

Mr Gourgey QC opposed disclosure restricted to the parties' legal teams only since this was not required by the implied or (under the CPR) express prohibition on collateral use. Restraint on the Wife providing case materials to her litigation funder was permissible under the prohibition on collateral use (see paragraphs 64-66 of Caldero Trading Ltd v Beppler & Jacobson [2012] EWHC 1609 (Ch)). Without sight of that material a funder would not be able to undertake the rigorous analysis which the Court of Appeal had made clear was expected and required of a litigation funder (see paragraph 31 of Excalibur Ventures LLC referred to above)

95. In its email dated 6 April 2020 the Guardian newspaper took exception to any blanket prohibition or limitation to access court documents which was implied by this paragraph. This flew in the face of the Supreme Court's decision in Dring (see above) and the Guardian made the point that "*Reporting on court proceedings as complex as these appear to be will only be feasible if the media is allowed access to underlying court documents. Court documents are often obtained through the parties themselves which is a more practical and proportionate method of access which does not unduly*

burden the court and ensures fair and accurate reporting". I note that no media organisation was able to comment on the final version of paragraph 13 which I considered on 18 May 2020.

96. Having considered the parties' submissions, I have decided that I will not make an order in the terms of paragraph 13 as contended for by Temur. My reasons for rejecting that course are as follows.

97. First, the terms of paragraph 13 would represent a disproportionate interference with the principle of open justice and with the media's ability to report proceedings in which there is a legitimate public interest. I see no justification whatsoever for restricting access to court documents referred to in open court and to impose upon the media the necessity of making applications to see any court document. That would fly in the face of Dring and, if the tenor of this litigation to date is anything to go by, would expend considerable and valuable court time in what can only be described as disproportionate satellite litigation, scrutinising the contents of court documents to see if they might be disclosed so as to permit media reporting. My order protecting Temur's private information is sufficient to protect his Article 8 rights and strikes the correct balance between the Article 6, 8 and 10 rights in play in this case. The media will be bound by that order – nothing more stringent is required and certainly not an order in the form envisaged by paragraph 13.

98. Second, an order restricting disclosure to the parties' legal teams only is the sort of restriction capable of causing serious professional and juridical difficulties. It is impractical and only to be contemplated in the most exceptional of cases – this is not one of them.

99. Third, I accept Mr Gourgey QC's submission that disclosure to Burford Capital is both permissible and justifiable so as to permit Burford Capital to carry out the duties expected of it as a responsible litigation funder. In that context, I note that paragraph 7 of the Code of Conduct for litigation funders requires a funder to "*observe the confidentiality of all information and documentation relating to the dispute to the extent that the law permits*" and also obliges a funder to preserve confidentiality or behalf of any funder's subsidiary or associated entity. Whilst that is not to the same effect as the prohibition on collateral use required by either the FPR or the CPR of the Wife herself, use by a litigation funder of material in a manner not permitted to its client would likely represent a serious breach of the Code of Conduct.

100. Fourth, the application of paragraph 13 is simply impractical. The provision of advance written assurances from third parties – for example, potential witnesses - to whom documents might be disclosed might impede each party's ability to prepare their case. Moreover, it would appear to require a foreign court to provide assurances in advance of the disclosure of any material to it. That provision might practically inhibit the use of material in enforcement proceedings in certain jurisdictions, rendering paragraph 13 (ii) nugatory.

101. Fifth, the formulation in paragraph 13 (iii) – "*strictly necessary*" - goes rather further than the prohibition on collateral use for reasons which are entirely unexplained by Mr Howard QC.

102. Thus, having rejected Temur's application, it seems to me that the parties should be restrained from using material derived from these proceedings for improper or collateral purposes. That would be entirely in accordance with the tenor of the relevant rules in both the FPR and the CPR applied to these proceedings which take place in open court. I have decided that there will be an order binding all the parties to the proceedings as follows:

"A party to these proceedings may use a document disclosed to it by another party only for the purpose of the proceedings in which it was disclosed except where –

a) the document has been read to or by the court or referred to at a hearing which has been held in public (save that material contained therein and covered by the reporting restriction order shall not be published or disseminated as provided for in that order);

b) the court gives permission;

c) the party who disclosed the document and the person to whom the document belongs agree;

d) for the purpose of enforcement of the financial remedies order or any related action claiming the financial provision made in that order in any jurisdiction worldwide or responding to an application for such enforcement or claim."

The precise wording for paragraph (a) above may require some amendment once the parties have collaborated to draft the limited reporting restriction order I have sanctioned.

<u>The Disclosure Applications</u>

103. There are a variety of disclosure applications which, to a greater or lesser extent, require judicial determination. In no order of importance, I deal with these below, starting with those made by the Wife.

The Wife's Disclosure Applications

104. By an application notice dated 15 November 2019, the Wife applied for 'standard' disclosure from Temur [this being documents material to the proceedings, of whose existence he is aware and which are or have been in his control]. I observe that PD21A paragraph 2.1 applies to this process. Happily, that provision of those documents has been agreed by Temur.

105. The Wife also applied in November 2019 for specific disclosure within the meaning of PD21A paragraph 2.4 of documents in Temur's control relating, broadly speaking, to (i) the transfer of the Monetary Assets into the Liechtenstein Trusts, (ii) the reasons for the transfers of monies to him and what further sums he has received, and (iii) what has become of the Monetary Assets generally. That specific disclosure in paragraph 13(b) of the draft order is agreed though one issue requires my determination.

106. Temur submits that, in relation to documents showing receipts of monies by him, either directly or indirectly, from the Husband (or any company or trust associated with him), disclosure should be limited to receipts of $500,000 rather than the $100,000 contended for by the Wife. Mr Howard QC submitted that $500,000 was the limit suggested by

the Wife in her own Request for Information so this should be applied consistently. In response, Mr Gourgey QC submitted that disclosing receipts of $100,000 would not be onerous – such payments, if many in number, would total significant sums and ought to be disclosed.

107. I have decided that Temur should disclose documents containing receipts of $100,000 or more. Though this is a case involving very rich individuals, the aggregated transfer of sums less than $500,000 might well reveal substantial payments from the Husband which would not be caught by the limit for which Temur contends. I note that it is not submitted by Mr Howard QC that providing disclosure of sums in excess of $100,000 is said to be onerous. In the circumstances of this case, this court requires clarity as to the sums transferred by the Husband (or entities associated with him) to Temur. Furthermore, even if the Wife had accepted in her Request for Information that $500,000 was the amount which should apply to the detailing of the amounts of generalised financial support provided by the Husband to Temur, I do not consider that to be acceptable in the circumstances of this case where the Wife has only recovered about £5,000,000 of the huge sum owed to her by the Husband.

108. On 25 March 2020 in correspondence, the Wife sought disclosure of documents in five further categories. The original disclosure application was issued before the Wife had extended her claim to include the Moscow Property and before Temur had filed his Defence. In summary, she sought specific disclosure of (a) Temur's communications (namely, documents) with the Husband and Sunningdale regarding the sale of shares in Solyanka Servis, (b) documents relating to an exchange of letters on 30 November/1 December 2018 when Temur allegedly discussed the cancellation of the sale, (c) documents evidencing Temur exercising rights as a shareholder in Solyanka Servis, (d) communications (documents) with the Husband relating to the "Investment Purpose", and (e) communications (documents) with the Husband relating to generalised financial support.

109. Mr Howard QC accepted that the documents sought would be covered by standard disclosure and would be disclosed accordingly. He also accepted that, if Temur had had communications - other than in written form - with his father relevant to these matters, then he should give a full account of the same in any witness statement.

110. The Wife made a Request for Further Information on 4 March 2020. Following an exchange of correspondence, there is a substantial measure of agreement between the parties on which requests do and do not need to be answered. However, I was asked to determine whether requests 9, 10, 11, 13, 14, 16 and 19(a) should be answered by Temur. Mr Gourgey QC confirmed to me that he no longer sought an answer to request 22(b).

111. In general terms, Mr Howard QC objected to providing answers to the Wife's Request on the basis that the information ought more properly to be provided in a witness statement from Temur. He relied on McPhilemy v Times Newspapers and Others [1999] 3 All ER 775 in which Lord Woolf MR observed that the need for extensive pleadings (including particulars) should be reduced by the requirement that witness statements are now exchanged. This reinforced paragraph 1.2 of PD18 in the CPR which states that: "*A Request should be concise and strictly confined to matters which are reasonably necessary and proportionate to enable the first party to prepare his own case or to understand the case he has to meet*". The twin requirements of necessity and

proportionality are to be strictly applied in the circumstances (see paragraph 63 of King v Telegraph Group Ltd [2004] EWCA Civ 613 per Lord Justice Brooke).

112. Mr Gourgey QC distinguished McPhilemy on the basis that this was not a case directed at a Part 18 Request but was concerned with unnecessary issues being raised consequential on an amendment to a pleading and then an objection thereto. It was not sufficient to answer a Request by saying that the information would be forthcoming in witness statements when the purpose of a Request was to allow a party to prepare her case and understand the case she had to meet. It was not contended by Temur that answering the Request was either onerous or disproportionate or that what was being asked was unnecessary.

113. Requests 9-12 relate to Temur's acquisition of shares in Solyanka Servis. He is prepared to answer request 12 to explain why he failed to make the payment under the Purchase Agreement within one month of the register entry but refuses to provide information about, inter alia, who the representatives from Sunningdale were who offered him an opportunity to acquire the shares in Solyanka Servis or who participated in the negotiations which took place in about June 2018 and what form those negotiations took. Mr Howard QC submitted that this would all be answered in witness statements, but I see absolutely no difference in the information sought in those requests and that which Temur is willing to provide in response to Request 12. Request 11 asks whether Temur knew that the price he was paying was far less than the true value of Solyanka Servis and, if so, what he understood to be the reason for a sale at an undervalue. That information is important so that the Wife can understand Temur's case as to the purpose of the transfer and also whether he can rely on the bona fide purchaser defence in s.423 of the IA and s.37 of the MCA. That is simply asking for basic information about Temur's case which should not await a witness statement. Requests 9-11 should be answered by Temur in accordance with the timetable I will direct.

114. Requests 13 and 14 concern themselves with the purported exchange of correspondence on 30 November and 1 December 2018 relating to the termination of the Purchase agreement for non-payment by Temur. The Wife has put in issue the authenticity of those documents. Mr Howard QC submitted that the Wife would get details of the correspondence when the documents were disclosed. However, that exchange of correspondence has already been disclosed and the Wife now needs information about, for example, how this correspondence was delivered to Temur which would allow her to investigate and prepare her case accordingly. Those Requests should also be answered – the information sought is not complex or onerous.

115. Request 16 asks whether Temur discussed the alleged cancellation of the Purchase Agreement with the Husband. Mr Howard QC said this was akin to cross-examination and would be dealt with in a witness statement by Temur. In my view, the Wife needs to know before witness statements whether it will be in issue that the return of the shares was agreed with the Husband given that she asserts this was a collusive arrangement between father and son.

116. Request 19(a) asks whether Temur has ever indirectly received money from the Liechtenstein trusts identified in the Particulars of Claim. Mr Gourgey QC clarified that this related to money rather than other benefits in kind and confirmed that, prior to the hearing, the Wife's legal representatives had clarified that Temur should answer this Request to the best of his knowledge as he may not know whether a payment he

received came initially from one of the trusts. That clarification dealt with the concerns raised by Mr Howard QC before me so that Request can also be answered by Temur.

117. For the avoidance of doubt, I have decided that the monetary value in respect of payments made to Temur sought in Requests 19 and 6 should be $100,000 for the reason I explained in paragraph 107 above.

Temur's Disclosure Applications

118. Temur has applied for disclosure of the Reviewable Documents provided by Mr Henderson to the Wife's legal representatives. This material featured in my judgment dated 22 November 2019 with neutral citation [2019] EWHC 3140 (Fam). The material contained in these documents is said to be material to Temur's counter-claim against the Wife, namely the misuse of his private information and/or misuse of his confidential information, in that she knowingly received documents from Mr Henderson disclosed in breach of Temur's privacy and/or confidence.

119. Mr Howard QC submitted that Temur had no knowledge of the scale and extent of the disclosure made by Mr Henderson. This material had been disclosed to the Wife and to the court and fairness required its disclosure to him now that he was a party to the proceedings. It was not right that the Wife should be the arbiter of what Temur could see since material in the Reviewable Documents might be relevant to his Defence for reasons which the Wife's legal team might not appreciate. Mr Howard QC submitted that, as my order dated 4 November 2019 had provided that the Husband should be given a copy of the Reviewable Documents on request, Temur was also entitled to a copy as he was now a party to the proceedings.

120. Mr Gourgey QC stated that the Wife had no objection to disclosing any relevant documents to Temur. She had already disclosed the six documents from the Reviewable Documents which contained information about Temur's personal, financial and business affairs and which would be relevant to his counter-claim. She will also disclose all other documents which are relevant to the pleaded issues in these proceedings by way of standard disclosure. Temur was not, however, entitled to see irrelevant Reviewable Documents. Temur had already received copies of all but one of the Reviewable Documents deployed in these proceedings for any purpose and Mr Gourgey QC confirmed that the Wife would provide him with the outstanding document.

121. I can deal with this issue shortly. First, Temur has already received all but one of the Reviewable Documents produced to this court and will shortly receive that missing document. He will not be prejudiced by not having had sight of the Reviewable Documents which have been relied on and thus produced to the court. Second, the Wife's legal representatives have already scrutinised the Reviewable Documents to identify personal/financial information relating to him and have made that material available to him. He has no need to see documents which the Wife's solicitors are satisfied do not contain any such information. The suggestion that he needs to see all the Reviewable Documents to check that the Wife's solicitors have, in effect, done their job properly and complied with their obligation and duties to the court is, in my view, entirely misconceived. Third, my order in November 2019 is not directly applicable to Temur's role in these proceedings. The Husband was entitled to a copy of the Reviewable Documents as those documents were generated during Mr Henderson's

employment by the Husband and thus "belonged" to the Husband. Thus, I refuse Temur's application for disclosure of the entirety of the Reviewable Documents.

122. Though not specifically set out in Mr Howard QC's skeleton argument, Temur also contended that, as part of standard disclosure from the Wife, he should be provided with (a) all the papers the Wife had obtained from proceedings in Liechtenstein and (b) all the Kerman papers deployed at a much earlier stage in these proceedings. Mr Howard QC submitted that this was essential so that Temur could know the case he had to meet and would not be subject to trial by ambush. He sought to draw a distinction between documents which were the property of the Wife and those which had come into her possession either because she obtained them in proceedings elsewhere or because they were provided to her. That latter category represented documents which must be disclosed in full to Temur.

123. Mr Gourgey QC submitted that the Wife would provide Temur with all the material on which she relies as well as any other relevant (including adverse) documents by way of standard disclosure. There was no reason why Temur should be entitled to non-relevant disclosure. There was no breach of Article 6 by the Wife holding on to irrelevant documents which did not need to be disclosed.

124. I am not persuaded that the distinction Mr Howard QC sought to draw between documents the Wife owned and those which had come into her possession is applicable to the disclosure obligation in this case. Parties are obliged to disclose the documents material to the proceedings, the existence of which a party is aware and which are or have been in that party's control [PD21A, paragraph 2.1]. The concept of ownership is not apposite here. Furthermore, I accept Mr Gourgey QC's submission that it is difficult to see how Temur's right to a fair hearing would be prejudiced by the Wife having complied properly with her disclosure obligations to the court and holding onto irrelevant documents which did not need to be disclosed. There is thus no need for an order for specific disclosure of the entirety of the Kerman and Liechtenstein papers.

Conclusion

125. That is my decision.