**THE EASTERN CARIBBEAN SUPREME COURT**

**IN THE COURT OF APPEAL**

**TERRITORY OF THE VIRGIN ISLANDS**

**BVIHCMAP2018/0046**

**BETWEEN:**

**[1] THELMA PARASKEVAIDES**
**[2] CHRISTINA PARASKEVAIDES**

Appellants

and

**[1] CITCO TRUST CORPORATION LIMITED**
**[2] EFTHYVOULOS IACOVIDES**
**[3] VOLKART INTERNATIONAL LTD**
**[4] ADOW CORPORATION INC**
**[5] BAURU HOLDINGS LTD**
**[6] KNOCK HOLDINGS LTD**
**[7] DANDYBOARD LTD**
**[8] BELOGLOW LIMITED**
**[9] FAWNTOWN LIMITED**
**[10] BARICREST LIMITED**
**[11] DABCEY CORPORATION**

Respondents

**Before:**

The Hon. Mr. Mario Michel — Justice of Appeal
The Hon. Mr. John Carrington, QC — Justice of Appeal [Ag.]
The Hon. Mr. Reginald Armour, SC — Justice of Appeal [Ag.]

**Appearances:**

Mr. Vernon Flynn, QC with Mr. Daniel Warents and Mr. Christopher Pease for the Appellants
Ms. Akesha Adonis for the 1st Respondent
Mr. David Chivers, QC with Mr. Nicholas Burkill and Mr. Nicholas Brookes for the 2nd and 7th to 10th Respondents

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2018: October 2 & 3;
2020: March 30.

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*Interlocutory appeal — Appeal from discharge of ex parte interlocutory injunction and refusal to renew or grant fresh injunction — Whether interests of justice require renewal or grant of fresh injunction — Duty to present case fairly at ex parte hearing — Whether non-disclosure was not innocent — Jurisdiction to order service of interim order before claim form issued — Breach of undertaking to serve claim form after grant of ex parte order — Whether appellants have arguable claim with real prospect of success in the court below — Section 19(2) of Limitations Act, Cap. 23, Laws of the Virgin Islands — Whether the appellant's claim to BVI shares statute barred — Whether amendments to statement of claim disclose cause of action — Standing of beneficiaries to present direct and derivative claims in respect of trust property in absence of a trustee — Whether claim defective because trustee and other beneficiaries to alleged trust not joined as parties — Whether an administration claim should have preceded the claim for relief in the BVI — Whether steps taken by administrator before grant of administration were nullities*

George Paraskevaides ("George") a resident of Cyprus, died intestate in 2007. During his lifetime, George built up a Guernsey company, Joannou & Paraskevaides (Overseas) Limited ("JPO") with extensive operations internationally, and appeared to have taken steps to create a structure for his holding in JPO, which comprised 40% of the shareholding and 50% of the voting rights of that company, using intermediary BVI companies which had issued bearer shares. After his death, the question arose as to whether the shareholding formed part of his estate, was held by a Liechtenstein Foundation or was the subject of a trust created by him orally during his lifetime. The appellants, Thelma and Christina Paraskevaides, (the widow and daughter of George respectively) took the view that the structure was subject to a trust. Thelma and Christina sought an interim injunction to restrain the first respondent, Citco Trust Corporation Limited, who held the bearer shares in the BVI companies as custodian, from holding itself out as a member of the BVI companies. Thelma and Christina also sought an interim injunction to restrain the second respondent, Efthyvoulous Iacovides, the administrator appointed over George's estate by a Cypriot court, who had taken steps to change the directors of the BVI companies in the structure, from exercising powers in relation to the companies. These injunctions were granted ex parte by the High Court on 9th May 2018 ("the May Order") but were discharged by a judge ("the Learned Judge" or "the Judge") at the subsequent inter partes hearing on the basis that the case had not been fairly presented at the ex parte hearing. The Learned Judge also refused to renew the injunctions on the basis that the non-disclosure had not been innocent and ordered that there be an inquiry into damages.

The appellants appealed and the 2nd and 7th to 10th respondents cross-appealed from the decision made at the inter partes hearing. The appellants argued that: (i) the Learned Judge was incorrect in finding that there was material non-disclosure by the appellants of letters they received from Mr. Iacovides and his lawyers; (ii) the appellants' non-disclosure of a letter by Mr. Iacovides was innocent; and (iii) the Judge was wrong to refuse to renew or grant a fresh injunction. The respondents argued that: (i) the Judge had no jurisdiction to order service of the May Order on the respondents outside the jurisdiction before the appellants' claim was issued; (ii) the judge was correct to refuse to renew or grant a fresh

injunction as the appellants breached their undertakings to file and serve their claim form within a specified time; (iii) the appellants had no standing to seek the interim injunction; (iv) the appellants' claim was time barred; (v) the appellants' statement of claim did not disclose a cause of action; (v) the appellants' failure to join Leonie and Efthyvoulos Paraskevaides (the other beneficiaries) and the trustee of the trust at the outset, rendered their claim defective; (vi) the steps taken by Mr. Iacovides and Citco Trust were nullities; and (vii) the purpose of the appellants seeking injunction was merely to control JPO.

**Held:** allowing the appeal in part and dismissing the cross appeal, setting aside the order of the Learned Judge and ordering that the injunctions be regranted provided that the appellants take steps within 7 days of this order to join Leonie and Efthyvolouos Paraskevaides as defendants to the claim, and that permission is sought to serve them with the claim out of the jurisdiction (if required); directing that the parties agree to the form of the orders made by this Court; and ordering the 1st, 2nd and 7th to 10th respondents to pay to the appellants the costs of the appeal and for the proceedings before the Learned Judge to be assessed if not agreed within 21 days, with such costs to be discounted by 10% to reflect the Court's disapproval of the appellants' failure to comply with their undertakings, that:

1. In order to interfere with the Learned Judge's conclusion that letters received by the appellants from Mr. Iacovides and his lawyers were material and not adequately disclosed to Adderley J, this Court must be satisfied that the Learned Judge's conclusion was blatantly wrong. The Learned Judge considered these letters to be material and gave reasons for why he felt that they had not been adequately disclosed. The reasons given by the Learned Judge evidence that he acted within the ambit of his discretion under the relevant principles in arriving at his decision on the materiality and need for disclosure. There is no basis therefore to interfere with the Judge's conclusion in this regard.

2. An instance of non-disclosure is innocent if the undisclosed fact was not known to the applicant or its relevance was not perceived by him. There was nothing within Mr. Iacovides' letter, or the surrounding circumstances when it was sent, to suggest that the appellants ought to have been aware that Mr. Iacovides had intended to take a particular course in relation to the shares. It is clear that the appellants, by the manner in which they disclosed the letter, did not perceive its importance in this regard. In as much as the Learned Judge did not consider this fact, the Judge failed to consider relevant matters when finding that the non-disclosure of this letter was not innocent and that this Court is entitled to set that finding aside and to come to its own conclusion on this issue.

   **Banca Turco Romana S.A. (in Liquidation) v Cortuk and others** [2018] EWHC 662 (Comm) applied; **Brink's-Mat Ltd v Elcombe** [1988] 1 WLR 1350 applied.

3. It was within the Learned Judge's discretion to refuse to renew the injunctions. In exercising his discretion, the Judge did not appear to consider that the risk of asset disposal was only one element of possible prejudice or that the appellants had amended their claim before he delivered his ruling. These were material

matters for the Judge's consideration. In the circumstances, and given the finding that the Learned Judge erred in his conclusion on the non-innocent non-disclosure of the Mr. Iacovides' letter, the conclusion follows that the Judge failed to consider material matters in the exercise of his discretion. This Court therefore is entitled to consider afresh whether the injunctions ought to be regranted.

4. Rule 17.2(5) of the **Civil Procedure Rules 2000** ("CPR") provides that where the court grants an interim remedy before a claim is issued, the court must require an undertaking by the claimant to issue and serve the claim form by a specified date. It would be contrary to the spirit and intendment of the rule if an interim remedy can be granted before the issue of a claim form but the order granting the remedy cannot be served on the respondent until the claim form is issued. The Judge, accordingly, had the jurisdiction to permit service of the May Order outside the jurisdiction.

   Rule 17.2 of the **Civil Procedure Rules 2000** considered; **Halliwel Assets Inc et al v Hornbeam Corporation** BVIHCMAP2015/0001 (delivered 12th October 2015, unreported) distinguished; **Fourie v Le Roux and others** [2007] UKHL 1 distinguished.

5. The proportionate response to the breach of an undertaking must depend on the circumstances of each case. Here, the claim form was in fact served (albeit belatedly) on the respondents' legal practitioners before the return date. In the circumstances, there is no indication that the late issuance of the claim form occasioned any prejudice on the respondents' part. Accordingly, the breaches by the appellants of their undertakings, without more, do not justify depriving the appellants of the continuation of the injunction.

   **P.S. Refson & Co Ltd v Saggers and another** [1984] 1 WLR 1025 considered; **Jewson v Heatspace Ltd** [2007] EWHC 3139 (Ch) considered.

6. On an application for an interim injunction, the applicant must demonstrate that there is a serious issue to be tried or a claim with a real prospect of success. The respondents' arguments on appeal are not sufficiently conclusive against the strength of the appellants' assertion that there is a serious issue to be tried. Instead, the respondents' arguments appear to be more directed to whether the appellants may be able to prove their case at trial on a balance of probabilities, which is beyond the scope of the Court's consideration at this stage.

7. The **Limitation Act** would not apply to the claim in so far as the appellants' claim is that Mr. Iacovides and Citco Trust have become trustees *de son tort* by intermeddling with the trust property (the shares in the BVI Companies). Furthermore, the terms of the alleged trust are that the shares in the BVI Companies were to be distributed to the children in 2022. This would mean that it is arguable that at least Christina's interest is not yet vested in possession. Accordingly, the proviso to section 19(2) of the **Limitation Act** would apply and the appellants' claim is not statute-barred.

**Gany Holdings (PTC) SA v Khan and others** [2018] UKPC 21 considered; **Re Diplock** [1948] Ch 465 considered; Section 19(2) of the **Limitation Act** Cap. 43, Laws of the Virgin Islands applied**.**

8. The amended statement of claim places the dispute over the ownership of the shares as between the Endra Foundation, a Liechtenstein Foundation which George had created during his lifetime, and the alleged trust, of which the appellants are said to be two of the four beneficiaries. In the circumstances, a court trying the appellants' claim could conceivably grant the declarations sought against Mr. Iacovides and Citco Trust as well as any other related relief that is not inconsistent with the pleaded case to ensure the efficacy of such declarations.

   **Kirin-Amgen Inc v Transkaryotic Therapies Inc** [2002] EWCA Civ 1096 followed.

9. In the absence of a personal representative in the BVI or an indication of willingness by the 2nd Defendant (as administrator appointed by the Cypriot court) to seek a grant of representation in the BVI, it becomes at least arguable that no one other than the beneficiaries of the alleged trust, including the appellants, has standing to bring the claim in the court below. If the appellants therefore have the standing to seek interim protective measures, and are willing to do so without recourse to the appointment of a receiver prior to seeking the appointment of a new trustee as final relief, the failure to join the other beneficiaries should not be the basis for refusal of the interim protective measures and the claim cannot be defective on that basis.

   Section 19 of the **Trustee Ordinance** Cap. 303, Laws of the Virgin Islands considered; **New York Breweries Company v Attorney General** [1892] AC 62 considered.

10. CPR 8.5(2)(a) states that where a claimant claims a remedy to which some other person is jointly entitled, all persons jointly entitled to the remedy must be parties to the proceedings, unless the court orders otherwise. This rule does not appear to apply to applications for interim relief. Furthermore, this matter is in its early stages, no defence having been filed. There is no procedural bar or even exercise of discretion to be overcome before additional parties can be joined under CPR 19.2(1). Accordingly, an allegation that the appellants' derivative claim is procedurally defective, for failure to join relevant parties, at this time, is not sufficient to prevent the exercise by the court of the discretion to grant fresh injunctive relief.

    Rules 8.5 and 19.2 of the **Civil Procedure Rules 2000** considered.

11. The claim is not defeated by the failure to join the trustee at the onset of proceedings. This is moreso in this case where the appellants' claim is that there is currently no trustee.

**Roberts v Gill & Co and Another** [2011] 1 AC 240 considered; **Lewin on Trusts** (18th Edn. Sweet & Maxwell, 2007) considered.

12. On the facts, it is arguable that if the trust does exist and the shares comprise the trust fund, Mr. Iacovides' actions may be open to challenge if they are contrary to the trusts on which the shares were held. The appellants cannot challenge the companies' actions as they are not shareholders and the companies will not recognize their beneficial interests in the shares. However, if Citco Trust was not entitled to vote the shares on the instructions of Mr. Iacovides, the appellants may be able to seek orders vitiating those resolutions or compelling Citco Trust to pass resolutions reversing the earlier resolutions.

    **Re Diplock** [1948] Ch 465, 502-504 considered; Section 69 of the **Business Companies Act, 2004** Act No. 4 of 2004 considered.

13. By virtue of section 245 of the **Business Companies Act, 2004**, the BVI is the situs of ownership of shares issued by BVI companies for the purposes of determining matters relating to title. Equally, the custody agreements entered into by Citco Trust are governed by BVI law and so are also arguably BVI property, as the BVI is the forum in which an action on those agreements can be brought. The issue here therefore, being one of competing claims to BVI shares, is a matter for trial once it is established that there is a serious issue to be tried as to the existence of the trust.

    Section 245 of the **Business Companies Act, 2004** Act No. 4 of 2004 considered.

14. The court below did not make any findings in respect of the purpose for which the injunction was sought. In the absence of cross-examination and bearing in mind the limited role of a court at this stage in making findings of fact, it is difficult to conclude that the purpose of the application for interim relief was solely the preservation of control over the JPO structure as alleged by the respondents. If, as the appellants allege, Mr. Iacovides has no right to intermeddle in the BVI companies and their subsidiaries, then this is sufficient for a court to grant protective orders to restrain him from doing what he is not entitled to do.

15. In considering whether to regrant an injunction in the appellants' favour, this Court must be satisfied that it is in the interests of justice to do so. Given that the appellants have made out at least an arguable case as to the existence of a trust in their favour, and taking into account all the circumstances of the case, the course of least irremediable prejudice lies in the regrant of interim protection in relation to the shares in the BVI Companies and the rights to control Dabcey pending the determination of the claim.

## JUDGMENT

[1] **CARRINGTON JA [AG.]**: This interlocutory appeal and counter-notice were heard over 2 days in October 2018. I start by expressing my regret on the delay in delivering this judgment, the fault for which is entirely my own. The appeal is by the claimants in the court below against the order of a judge ("the Learned Judge" or "the Judge") by which he discharged an ex parte injunction granted in the commercial division of the High Court in the Territory of the Virgin Islands ("the BVI"). The Learned Judge also refused to grant a fresh injunction on the same or any other terms or to appoint a receiver and ordered that there be an inquiry into damages caused by the grant of the ex parte injunction.

[2] The counter-notice of appeal is by the 2nd and 7th to 10th respondents to the appeal. They appeal the Learned Judge's refusal to find that the court below had no jurisdiction to grant leave to serve an order outside of the jurisdiction in proceedings in which no claim form had been issued. The respondents also seek to support the Learned Judge's order on the alternative bases that the appellants had no standing to seek the injunction and there was no evidence of risk to the property in question; that the appellants had breached their undertaking to the court on the ex parte hearing to serve an application to continue the order, claim form and statement of claim as soon as possible; that they failed to disclose an authoritative decision from the Court of Appeal that was relevant to the issue of leave to serve the order out of the jurisdiction; and, that they failed to present the possible defences to the claim fairly to the judge who heard the ex parte application.

### Background

[3] The factual background is one that will not be unfamiliar to many attorneys who practice before the BVI Commercial Court: the battle for control of BVI companies. The issue raised at the heart of this appeal is also frequently encountered by judges of that court, namely the obligation on applicants and their counsel to present their case fairly at the hearing of a without notice application for urgent

relief. The uncontested background facts must be set out in order that the legal issues argued by the parties can be better appreciated but it should be clear that in stating these facts, I do not intend to make any findings of fact that may be binding upon the parties as the proceedings are still at a relatively early interlocutory stage, the defendants having not yet filed a defence to the claim.

[4] The appellants, Thelma and Christina Paraskevaides ("Thelma" and "Christina"), are respectively the widow and daughter of George Paraskevaides ("George"), who was a resident of Cyprus during his lifetime. It appears that George was a successful businessman who built up a series of companies involved in civil engineering works, the relevant one of which is Joannou & Paraskevaides (Overseas) Limited ("JPO"), a Guernsey company, which operated via subsidiaries in various countries in the Middle East. After his death in 2007, the desire to control JPO seems to have divided George's family into two distinct camps with Thelma and Christina on one side and his two other children, Leonie and Efthyvoulos Paraskevaides, on the other.

[5] During his lifetime, George appeared to have taken steps to create a structure for his holding in JPO, which comprised 40% of the shareholding, held through a BVI company, Dabcey Corporation ("Dabcey"), and 50% of the voting rights of that company. At the centre of the current dispute, however, is the nature of these arrangements at the date of his death. Thelma and Christina's case is that George had created a structure whereby he held the bearer shares issued by the 3rd to 6th respondents to this appeal ("BVI Companies"), which together held the shares in Dabcey and that he had declared a trust in 2004 under which he held the shares in the BVI Companies for himself during his lifetime and thereafter each of Thelma and the three children would be entitled to the shareholding in one BVI company so that effectively each would hold a one quarter interest in Dabcey and through it in JPO. Thelma's shareholding would vest immediately upon his death but those of the other children would only vest in 2022. The existence of this alleged oral trust only came to light in 2015. Christina commenced arbitration proceedings against

the Foundation Council of the Endra Foundation, a Lietchtenstein foundation, which George had created during his lifetime, for a declaration that the shares were settled on trust by George in 2004 and the Foundation counterclaimed that the shares belonged to the Foundation.

[6] Leonie and Efthyvoulos are not parties to these proceedings. However, their position appears to be, based on arbitration proceedings that they have commenced in January 2016 against the Foundation Council that this Foundation held the shares in the BVI Companies at the date of George's death with the result that the shares vested in all the beneficiaries in 2015.

[7] There appears to be a third position which neither camp in the family is currently advancing but which Thelma and Christina had previously held, namely that as during George's lifetime, he held the actual bearer share certificates in custody in Switzerland, the shares in the BVI Companies form part of his estate. This appears to be the position of the first respondent, Citco Trust, and possibly the second respondent, Mr. Iacovides as can be seen from his correspondence of 22nd March 2018 to Citco Trust "that you procure that the Custodian as sole member of each of the Companies on behalf of the estate as beneficial owner to take all necessary action … to remove Mr. Michaelides as a director of each of the Companies with immediate effect". Notwithstanding this correspondence, Mr. Iacovides has kept his powder dry on this issue by not declaring the shares to be part of the inventory of the estate in Cyprus and by not applying for letters of administration in the BVI in respect of George's estate. His evidence nevertheless disclosed that "there is a real prospect of it being found that the shares are an asset belonging to the estate." The letter of 31st May 2018 from his Cypriot solicitors best sums up the equivocal nature of his position:

> "In light of what is stated in the Affidavit with regard to the issue of whether the Shares form part of the Estate, Mr. Iacovides has not at this stage lodged a revised Inventory of assets with the Cypriot court and has not sought directions from the Cypriot court. This is because we have advised him that it would be premature to take these steps in circumstances where

> he is not, at this stage, in a position to determine whether the Shares are part of the Estate or should be held by the Endra Foundation (with regard to this matter we refer you to what is stated in paragraph 10 of the Affidavit). Mr. Iacovides certainly does not exclude the possibility of lodging a revised Inventory of assets or of seeking guidance from the Cypriot court if this is deemed necessary."

[8] George died intestate in December 2007 and the Cypriot court granted letters of administration to Mr. Kyriacos Michaelides, a resident of Cyprus, with whom George had a close professional relationship during his lifetime. The shares in the BVI Companies were not declared to be part of the assets of the estate, a position that continued to the date of the hearing of this appeal. Mr. Michaelides was one of the directors of the BVI Companies. Mr. Michaealides lodged the share certificates for the BVI Companies with Citco Trust Corporation Limited ("Citco Trust"), the 1st respondent, an authorized custodian in the BVI under the provisions of the BVI **Business Companies Act, 2004**[1] in 2009. Mr. Michaelides wrote to Christina's lawyers on 31st May 2018 stating that the share certificates were never held in Cyprus.

[9] The Citco Trust custody agreement provided inter alia that Citco Trust will "exercise the voting rights attached to the share(s) in accordance with your (i.e. Mr. Michaelides') written instructions or those of your designated advisor". Mr. Michaelides signed the custodian agreements "as administrator of the estate of George Paraskevaides" but had not been appointed by a BVI court as personal representative of the estate in the BVI where the shares are deemed to be located under section 245 of the **Business Companies Act, 2004**. Following their appointment as custodian, Citco Trust wrote to Herbert Smith Freehills ("HSF"), solicitors for Thelma and Christina, on 28th August 2013 confirming that they held the shares as custodian, indicating their belief that they held the shares for George's estate and advising that: "Following the death of Mr. Paraskevaides, a probate process must be undertaken in the courts of the British Virgin Islands

[1] Act No. 4 of 2004.

before the shares in the Companies can be dealt with in any way." In January 2014, Citco Trust sent an email to Conyers Dill & Pearman, a BVI law firm acting for Leonie and Efthyvoulos, and HSF stating inter alia:

> "As you are well aware the bearer shares are held by Citco… pursuant to a custody agreement between Citco and Mr. Kyracios Michaelides. In accordance with the custody agreement, the shares are held by Citco to the order of Mr. Michaelides. We make no assertion or otherwise as to the underlying beneficial ownership of the Bearer Shares. Unfortunately, it has become evident to us through the attached correspondence that a dispute as to the underlying ownership of the Bearer Shares exists between the family members and the trustees of the Endra Foundation. In the circumstances we believe it would be imprudent for us to take any action regarding the Bearer Shares, until such time as the ownership dispute is settled between the parties, or alternative arrangements are made for the custody of the Bearer Shares …".

Citco's failure to follow its own counsel of prudence is one of the matters that has given rise to these proceedings.

[10] In January 2016, the Cypriot court, on the application of Leonie and Efthyvoulos, removed Mr. Michaelides as administrator of George's estate. Subsequently on 22nd September 2017, the Cypriot court, after a contested hearing, appointed Mr. Efthyvoulos Iacovides, the 2nd respondent, as administrator of George's estate. He was the nominee of Leonie and Efthyvoulos. Thelma and Christina appealed that decision and applied for a stay of the order, but it appears that there had been no stay of his appointment or of his powers granted in Cyprus by the dates on which several matters that formed the subject of the injunction hearing in the court below took place in early 2018. Mr. Iacovides, notwithstanding the application for the stay, did not consider that he needed to hold his hand in respect of any dealings with the BVI Companies while awaiting the decision of the Cypriot court on that application. In any event, that application for the stay was refused by the Cypriot court on 18th May 2018.

[11] By letter dated 3rd January 2018, Mr. Iacovides wrote to Christina asking for her positions and opinions on the matter of the shares in the BVI Companies that were being held by Citco Trust as custodian. The letter read as follows:

> "Dear Christina,
>
> **Re: Estate Administration of the deceased George E. Paraskevaides (ID. No. 90167)**
>
> I send you this letter in my capacity as the Administrator of the estate of your unforgettable father, George Paraskevaides.
>
> Following my recent appointment by the Court, it has come to my attention that the shares of four companies, which are registered in the British Virgin Islands, i.e. of the companies Adow Corporation Inc., Bauru Holdings Ltd, Knock Holding Ltd and Volkart International Limited (which are the shareholders of the shareholder of J&P (Overseas) Ltd, the company Dabcey Corporation Ltd) are held by the company Citco (BVI) as custodian by virtue of Custody Agreements that were signed between Citco and Mr. Kyriacos Th. Michaelides in his then capacity as Administrator of the estate of George Paraskevaides.
>
> Because, as far as I understand and has come to my attention, several (different) positions have been formulated on the subject, including on behalf of Mr. Michaelides, in his then capacity as Administrator of the estate of George Paraskevaides, as well as of Citco, I would kindly ask you to inform me in writing of your positions and opinions regarding this subject.
>
> Yours faithfully,
>
> [EI's signature]
>
> Efthyvoulos Iacovides
> Adminsitrator of the deceased George E. Paraskevaides".

[12] Christina did not respond to this letter, which was exhibited to her affidavit before Adderley J. This was the first of the letters that in the view of the Learned Judge had not been fairly presented to Adderley J at the ex parte hearing. By letter dated 22nd March 2018, Mr. Iacovides wrote to Citco Trust asking them to take the necessary action to remove Mr. Michaelides as director of the BVI Companies. Notwithstanding the terms of their email of January 2014 to Conyers and HSF, Citco Trust acted on these instructions, based on their understanding that they

were obliged so to do, by passing the resolutions to remove Mr. Michaelides as director of each of the BVI Companies on 26th March 2018. Having done so, Citco Trust reasserted their intention not to take further action in regard to the BVI Companies "for the time being" while reserving its position on whether it could take any action without the consent of all the parties in later correspondence to HSF on 5th April 2018.

[13] Citco Trust, notwithstanding that correspondence, on 23rd April 2018, passed members' resolutions for the BVI Companies appointing Mr. Iacovides and Dandyboard Ltd as directors of the BVI Companies. On the same day, Mr. Iacovides' Cypriot attorneys, Scordis Papapetrou & Co. LLC, wrote to HSF reminding them of his letter of 3rd January 2018 to Christina and the lack of response thereto and inviting them once more to inform him of their views and positions with regards to the BVI companies and informing them of his willingness to respond to requests to be informed about actions taken by him in his capacity as administrator of the estate since his appointment. It must be of some significance that this letter did not disclose or even hint at the appointment of the new directors of the BVI Companies which took place that day. The respondents also took issue before the Learned Judge on the non-disclosure by the appellants of this letter in the application heard by Adderley J.

[14] Citco Trust passed further resolutions on 24th April 2018, on behalf of the BVI Companies as shareholders in Dabcey, removing all directors of Dabcey and appointing the 7th to 10th respondents (Dandyboard Ltd, Belgolow Limited, Fawntown Limited and Baricrest Limited ("the Cyprus Companies") as directors. Christina states that these companies are all Mr. Iacovides' companies. This resolution was passed at a time when Dabcey had been struck off the register for non-payment of statutory fees and so the resolutions were all stated to take effect upon restoration of the company to the register. I note here that it was Citco Trust, as shareholder of each of the corporate shareholders of Dabcey, which purported to act on behalf of these notwithstanding that on the day before these purported

resolutions were passed, Mr. Iacovides and Dandyboard had been appointed as directors of the BVI Companies. The same resolutions were further signed on 30th April 2018 by Genmanco Corporation, which is not a party to these proceedings but which Christina states to be a nominee of Citco Trust, as director on behalf of each of the BVI Companies and this action was then ratified by Genmanco, Dandyboard and Mr. Iacovides as directors of each of the BVI Companies on 9th May 2018.

[15] The day after the first Dabcey resolutions, on 23rd April 2018, Citco Trust through its own English solicitors, MacFarlanes, informed HSF of its reversion to its position that it would accept instructions from Mr. Iacovides as from 25th April 2018 in respect of the BVI companies unless it received a court order to the contrary and informed the appellants' solicitors that they should address any inquiries as to Mr. Iacovides' instructions or communications to his solicitors and not to Citco Trust. This letter also did not bring to the attention of the reader the recent actions taken by Citco Trust in appointing Mr. Iacovides and Dandyboard as directors of the BVI Companies or the purported appointment by the BVI Companies of replacement directors of Dabcey. One must recall that all of these actions which entrenched Mr. Iacovides' control of the structure holding JPO were being done while Mr. Iacovides was requesting from the appellants their views and positions with regard to the BVI Companies.

[16] Presumably in ignorance of the events taking place in the BVI, HSF responded to Scordis Papapetrou's letter of 23rd April 2018 on 25th April 2018 informing them that it was common ground among all the heirs of George that the shares of the BVI Companies never formed part of his estate and demanding that Mr. Iacovides should file a revised inventory in Cyprus showing these shares to be part of the estate. This letter was disclosed before Adderley J. Scordis Papapetrou responded on 27th April 2018 indicating that Mr. Iacovides had been compelled to deal with the situation caused by Mr. Michaelides entering into the custody agreements with Citco Trust in his capacity as administrator of George's estate.

The letter protested strongly against the contention that Mr. Iacovides had taken actions in relation to the BVI Companies without communication or coordination from the beneficiaries of the estate on the ground that Mr. Iacovides had sent the letter of 3rd January 2018 requesting the views and positions of the beneficiaries. Rather surprisingly in the light of the events of April 2018, the Scordis Papapetrou letter did not inform the reader that notwithstanding the silence from at least the appellants in response to that letter, Mr. Iacovides had still taken steps in relation to the BVI Companies. The irony of the final statements in the letter that "Mr. Iacovides has acted and will continue to act in a transparent manner …" could not have been lost even on the writer of that letter as in earlier correspondence dated 9th April 2018 to Citco Trust, the writer had instructed Citco Trust that it was not to disclose communications from Mr. Iacovides to third parties, which could only include the appellants and their legal advisors. In accordance with the trend established by earlier correspondence, none of the April actions of Citco Trust were disclosed to the recipient of that letter.

[17] On 9th May 2018, Adderley J granted an ex parte order ("the May Order") on the application of the appellants restraining inter alia Citco Trust and Mr. Iacovides from holding out Citco Trust as a member of the BVI Companies; restraining Citco Trust from exercising any rights over the shares of the BVI Companies; restraining Mr. Iacovides from dealing with the shares of the BVI Companies or exercising any rights or powers in respect of these shares including giving Citco Trust instructions in respect of the exercise of such rights or powers; restraining the BVI Companies from dealing with or exercising any rights or powers in respect of their shareholding in Dabcey; and restraining Dabcey from dealing with or exercising any rights or powers in respect of its shareholdings including its shareholding in JPO. The May Order further restrained Mr. Iacovides and the Cyprus Companies, which do not appear on this appeal, from holding out the Cyprus Companies as directors of Dabcey or representing that any of the former directors of these companies is not a director of Dabcey. The May Order also ordered Citco Trust, Mr. Iacovides and the Cyprus Companies to provide disclosure of every resolution

or action taken by them in the exercise or purported exercise of rights in relation to the BVI Companies and Dabcey; of the names and addresses of every person to whom such resolutions or the purported passing of such resolutions was disclosed and copies of the written communications or evidence of non-written communications by which such disclosures were made. The May Order granted to the appellants permission to serve the May Order out of the jurisdiction on Mr. Iacovides and the Cyprus Companies.

[18] The appellants' case is further that Mr. Iacovides was being financed by Leonie and Efthyvoulos in respect of his BVI actions, despite his earlier position that he was financing the actions himself, which he concedes in his second affidavit in the High Court proceedings, and that in a letter of 31st May 2018, Scordis Papapetrou admitted that Mr. Iacovides could not maintain a claim to the shares in the BVI Companies on behalf of George's estate.

[19] The respondents filed an application to discharge the May Order on 28th May 2018 which was supported by evidence from Mr. Iacovides. Mr. Iacovides sought to have the May Order discharged because it prevented him from taking steps as administrator appointed by the Cyprus court to investigate serious concerns about the management of Dabcey. He also sought to reverse the deteriorating position of JPO and that it was his concern about the mismanagement of Dabcey (i.e. for the benefit only of Thelma and Christina to the exclusion of Leonie and Efthyvoulos) that caused him to decide to take urgent action in pursuance of his duty as administrator to preserve the assets for which he became responsible by his appointment as administrator and by the custody agreements signed by his predecessor administrator. Mr. Iacovides stated that he felt able to take steps in the BVI to assuage these concerns (and indeed was required to take such steps to ensure that the shares were preserved for the benefit of the beneficiaries) although his evidence was that he was not in a position as at May 2018 to determine whether the shares in the BVI Companies were part of George's estate, and that he was unclear as to what interest the estate may have in the BVI Companies.

Although he discounted the argument led by the claimants of the Trust, his evidence was that under Cyprus law, in his capacity as administrator of the estate, he would hold the shares on such trusts if they did exist.

[20] Mr. Iacovides' concerns about JPO were supported in letters of complaint from its employees in March 2018, which had been copied to the appellants outlining the hardships caused by the failure of that company to pay salaries to employees. What is significant here is that firstly the written allegations of mismanagement on which Mr. Iacovides sought to justify his actions were not addressed to him and he does not indicate in his evidence when he became aware of this correspondence and secondly, the complaints were about the management of JPO, whereas the actions that he took did not relate to the management of that Jersey company but only to its ownership and voting. His evidence did not explain how one would affect his concern about the other. His concerns about Dabcey were prompted by complaints from Leonie and Efthyvoulos that they had not received any dividends from Dabcey since George's death in 2007 notwithstanding that over $48 million in dividends had been declared by JPO in favour of Dabcey and that Thelma had received a bonus of $7 million from JPO. There was also a dispute whether the appellants were indebted to Dabcey that required investigation. The effect of the injunction, Mr. Iacovides concluded, was to maintain the control of JPO in the hands of the appellants, through Mr. Papathomas, the partner of Christina.

[21] Mr. Iacovides sought to have the May Order discharged on five main grounds (each containing several sub-heads), namely that Thelma and Christina had failed to establish a cause of action or one that had a real prospect of success; that service of the order out of the jurisdiction should be set aside (with a consequence that the injunction order should be discharged); that there was insufficient evidence of need for the relief granted in the May Order; that the appellants had failed to make full and frank disclosure on the ex parte application; and that the provisions for redaction and withholding of material were not justified. Only the first four of these grounds were pursued on the appeal.

[22] The final instalment on this summary before I consider the judgment of the Learned Judge in the court below is that the appellants obtained an order from the District Court of Nicosia on an ex parte application on 21st August 2018 restraining Mr. Iacovides from inter alia interfering with the management or business of or from exercising any rights of a shareholder personally or through other persons of the BVI Companies, Dabcey and JPO. The order stated that there was a return date for an inter partes hearing on 4th September 2018. The Court was not informed of the outcome of that hearing.

**The Learned Judge's judgment**

[23] The Learned Judge heard the applications by the respondents, to discharge and by the appellants, to continue the May Order over three days in June 2018 and delivered a closely reasoned written ruling on 5th July 2018 in which, inter alia, he discharged the injunctions and disclosure orders made by Adderley J, refused to stay the discharge of those orders, ordered that there be directions for an inquiry as to damages caused to the successful respondents by the May Order and made orders for costs including for the payment of costs on an interim basis to the successful respondents.

[24] The Learned Judge made his reasoning for his decision immediately apparent, namely, that the May Order was being discharged because of the appellants' failure in their duty to provide full and frank disclosure. Firstly, he found, that the appellants, in submitting to Adderley J that Mr. Iacovides had attempted to seize control of the corporate group by ambush, had failed to bring to the attention of the court the contents of the letter of 3rd January 2018: "I would kindly ask you to inform me in writing of your positions and opinions regarding this subject (i.e. the several positions that had been formulated on the subject of the shares of the BVI Companies)". That letter was exhibited to Christina's evidence before Adderley J and was referred to in argument by counsel. Secondly, he found that the appellants had failed to disclose the letter dated 23rd April 2018 from Scordis

Papapetrou to HSF which followed up on the letter of 3rd January 2018 from Mr. Iacovides. Thirdly, they had failed to disclose the correspondence from HSF to Scordis Papapetrou dated 25th April 2018 in which HSF had responded to the 3rd January 2018 letter and the letter from Scordis Papapetrou to HSF dated 27th April 2018 in which the views of the appellants were sought once more. The Learned Judge quoted part of the letter in which Scordis had stated "Mr. Iacovides needs to have a clear understanding of the position of all interested parties with regards to the beneficial ownership of the BVI Companies before responding to the points you raise about the matter.". Fourthly, the appellants had not disclosed the explanation by Scordis Papapetrou that Mr. Iacovides had taken those steps to monitor the BVI Companies and their subsidiaries with a view to ensuring that their value is preserved for the benefit of the ultimate beneficiaries. The Learned Judge concluded that this correspondence painted a materially different picture from that presented by the appellants to Adderley J and that it was at least arguably not correct that Mr. Iacovides had acted surreptitiously without consulting the appellants and so the court appeared to have been misled into an impression of Mr. Iacovides' actions by the appellants' presentation of an unfinished portrait. The Learned Judge found that the extent to which Mr. Iacovides had sought to solicit the views of the appellants was a material issue and that their non-disclosure of such solicitation was not innocent.

[25] The Learned Judge found fifthly that the explanation given in the Scordis Papapetrou letter of 27th April 2018 was material to the appellants' further case that Mr. Iacovides could cause the wrongful and prejudicial disposal of Dabcey's interest in JPO as this went against their fears of disposal of the asset and therefore should have been brought to the court's attention for him to appreciate the extent of the risk of disposal of the asset. Sixthly, the appellants had failed to bring to the court's attention the alternative explanation for the financial difficulties of JPO that had been advanced in the correspondence from the representatives of the employees in March 2018, namely mismanagement of the company's cash flow rather than the failure by the Saudi Government to fulfill its payment terms

towards the company and thereby presented the court with only a one sided view on this issue.

[26] The Learned Judge next found that the appellants had failed to disclose to the court hearing the ex parte application the nature of their proposed claim and arguably had not pleaded a case that disclosed a cause of action with a real prospect of success. As at the date of the ex parte hearing before Adderley J, they had not yet issued a claim form but in submissions before him they explained that they would bring their claim as a derivative claim, as beneficiaries of the trust that George had declared in 2004 as there was no trustee of that trust. A claim form was issued on 4th June 2018, two days before the first hearing date of the discharge and continuation applications before the Learned Judge and amended on 11th June 2018 after that hearing had commenced but the statement of case did not seek declarations that the shares in the BVI Companies do not form part of the estate of George. The Learned Judge found that the appellants' difficulty in formulating their case was relevant to whether they were able to establish a serious issue to be tried and thereby the Court's discretion to continue the ex parte injunction.

[27] In dealing with the issue of full and frank disclosure, the Learned Judge referred to the decision of this Court in **Enzo Addari v Edy Gay Addari**[2] which cited, with approval, the principles set out in **Brink's-Mat Ltd v Elcombe and others**.[3] He concluded that it was highly material for the court to know that Mr. Iacovides had sought the views and positions of the appellants but that the appellants had failed to respond to him before he took the steps complained of and that he had stated that he had been acting transparently as one of the central planks of their case was that he had acted surreptitiously to take steps to change control of the structure holding JPO. The Learned Judge also considered that it was material for the court to know that Mr. Iacovides had stated the purpose of the corporate

[2] British Virgin Islands Civil Appeal No. 21 of 2005 (delivered 23rd September 2005, unreported).
[3] [1988] 1 WLR 1350.

changes was to allow him to monitor the affairs of the companies concerned and of the complaints of the employees concerning the management of JPO as this undermined the appellants' case which had been advanced on the basis of their fear of his disposal of the assets of the companies. He concluded that the court must be presented with as balanced and full a picture of the tensions and dynamics as is reasonably possible in order to weigh whether the balance of convenience favours the grant of an injunction.

[28] The Learned Judge continued his analysis by finding that the evidence of risk of disposal of the assets, though not (generally) a condition for the grant of a proprietary injunction, was a factor in determining the necessity for the injunction on the balance of convenience in the instant case. The appellants had a duty to attempt to ascertain from Mr. Iacovides what his intentions were relating to a possible disposal of assets, and as he had expressed himself to be open to inquiries, it would have been proper and necessary for them to take him up on this notwithstanding any reservations they might have held about his sincerity. This was moreso as he offered, through Scordis Papapetrou, the "monitoring" explanation in correspondence of 27th April 2018, some 6 days before the application for the injunction was filed and 12 days before it was actually heard ex parte by Adderley J.

[29] The Learned Judge concluded that in light of his determination of the materiality of the factual non-disclosures, the May Order should be discharged on the basis that an incomplete picture had been presented to Adderley J which inevitably distorted his assessment of the balance of convenience in granting that order. He further found the omission to disclose the letter of 3rd January not to be innocent as the letter had been disclosed for a different purpose. The Learned Judge then considered whether he should continue or grant a fresh order on new terms in the interests of justice, citing the principles referred to by Flaux J in **Congentra AG v Sixteen Thirteen Marine SA**.[4] He considered the relative strengths of the parties'

[4] [2008] EWHC (Comm) 1615 at paragraph 62.

statements of case (although it is apparent that no defence has been filed in the proceedings) in light of the evidence so far presented and found that it was difficult to conclude that either side had the better of the arguments overall although the appellants had not yet pleaded the special circumstances required to bring a derivative action on behalf of the alleged trust as is required under **Roberts v Gill & Co and another**[5] and **Joseph Hayim Hayim and another v Citibank N.A. and another**.[6] He also considered the prejudice that may be suffered by each side by the discharge or continuation of the injunction but was not persuaded that the risk of disposal of assets was as stated by the appellants. The Learned Judge therefore refused to reinstate the injunctions granted by Adderley J or to appoint a receiver as sought by the appellants over the BVI companies and made consequential orders.

**Discussion and Analysis**

**Disclosure in ex parte applications**

[30] The jurisdiction to grant an injunction or to appoint a receiver and, by extension, to discharge or refuse an injunction or appointment, by interlocutory order, is derived from section 24(1) of the **Eastern Caribbean Supreme Court (Virgin Islands) Act**.[7] The exercise of this jurisdiction clearly involves an exercise of discretion by the court dealing with such applications. An appeal from the exercise of such discretion is by way of review to determine whether there is some proper juridical basis for the Learned Judge's decision. This Court is required to examine whether the Judge considered all the relevant matters, took into consideration irrelevant matters or erred in principle or law, so as to render his overall decision blatantly wrong and outside the reasonably available scope for the exercise of his discretion in the matter at hand.

[5] [2011] 1 AC 240.
[6] [1987] AC 730.
[7] Cap. 80 of the Laws of the Virgin Islands.

[31] I agree with the Learned Judge that the statement of law from this Court in **Addari**[8] reflects the principles relevant to whether there has been a material non-disclosure of fact and the consequences that the court should attach to such non-disclosure. The onus is on an applicant for ex parte relief to comply with the obligation to make full and frank disclosure as ex parte applications are, generally speaking, inconsistent with the adversarial nature of court proceedings under our system of law which usually permits a respondent to be heard before an order is made against them. The key elements are that the duty is not only to disclose what the party or their legal advisers considers to be material but what one reasonably should expect a court to consider to be material in the exercise of its discretion whether to grant the order being sought. This requires not only objective consideration of the matters that the party puts before the court, but also an active duty to make proper inquiries so as to determine whether there is other material that may available for him to place before the court on the application. This is because even an innocent non-disclosure on account of a party not being aware of the fact or not realizing its materiality may be a factor against him whereas a deliberate non-disclosure will always be a factor against him.

[32] A distinction may perhaps be made here between material that is known and material that ought to have been known by an applicant. The extent of the obligation differs between the two categories of material. With respect to the former, the duty appears understandably to be more absolute. Whereas for the latter, the duty is to make proper inquiries as to the existence of further material facts. The extent of this obligation to make such inquiries is dependent on all the circumstances including the nature of the case being advanced, the order being sought, the effects of such an order, if granted, on both the applicant and potential respondent and the interplay between the degree of urgency of the application and the time available for making such inquiries.

[8] See n.1.

[33] Once it has been established that there has been non-disclosure of a material fact, and the duty is in relation to facts,[9] the Court must ensure that the party who failed to disclose is stripped of any advantage that he gained from that breach of his duty. This may not always result in the discharge of the ex parte order but, even if it does, the Court may nevertheless grant a fresh order if the non-disclosure was innocent only and the balance of convenience in light of all the material facts of which the court is aware demands that a new injunction should be granted. However, the consequences of non-disclosure are not necessarily as severe if the court finds that the non-disclosure relates to a fact that is of lesser importance to the issues to be determined in order to grant the relief being sought.

[34] The duty is not merely to disclose, but also to take active steps to bring to the court's attention the material facts in the matter. This requires the input of both the client and his legal advisers in the presentation to the court as both facts and legal argument must be presented fairly for the judge, who often has had limited lead up time in the matter, to get the full picture of both issues of fact and law involved in the application for the relief.

[35] Nevertheless, there are, in my view, other considerations that come into play. The court hearing an application is not to embark on a mini-trial with a view to making findings of fact from the affidavit evidence. This is in fact expressly prohibited by authorities such as **American Cyanamid v Ethicon Ltd**.[10] Further, the materiality of evidence should not be confused with the volume of evidence and should instead be elided with relevance. The emphasis must be on the overall picture given to the court which as a result of presentation of the evidence and argument in a fair and even-handed manner in all material respects.[11] In that connection, a party seeking an urgent temporary solution to a genuine and pressing problem may not need to overwhelm the court with evidence to show the need for such

[9] See Brink's-Mat v Elcombe and others at page 1356F, et seq per Ralph Gibson LJ and adopted by this Court in Enzo Addari v Edy Gay Addari at paragraph 7.
[10] [1975] AC 396.
[11] Per Popplewell J in Fundo Soberano de Angola v Dos Santos in [2018] EWHC 2199 (Comm) at para. 50.

relief. There is still some scope for discretion as to what is needed to present the fair overall picture to the court.

[36] The hearing of an ex parte application involves three considerations which are relevant to the role of the judge. Firstly, per rule 17.4(4) of the **Civil Procedure Rules 2000** ("CPR"), the judge should be satisfied that it is appropriate for the matter to proceed ex parte. If he is not satisfied, the hearing should be stopped and be continued only on notice to the respondent. If a judge, moreso an experienced judge, has any concerns whether he is being presented with the full picture, he should also stop the hearing for it to be resumed on another occasion either ex parte or on notice. Justice cannot be sacrificed on the altar of expediency. Secondly, an ex parte order has a limited life span. The judge has total control over this lifespan including the amount of notice required for an application to discharge or modify the order. Thirdly, the court in considering whether to discharge an ex parte order must bear in mind the principle of proportionality. The duty to disclose is meant to operate as an instrument of justice rather than of injustice. In exercising the discretion whether to set aside an ex parte order, a judge must therefore give consideration to all the circumstances of the matter including the public interest in ensuring that the duty of disclosure is observed.

**Non-disclosure of letters from Mr. Iacovides and Scordis Papapetrou**

[37] The appellants' main complaint was that the Learned Judge erred in his finding that there had been non-innocent non-disclosure of the letter of 3rd January 2018 from Mr. Iacovides. Mr. Flynn QC, for the appellants, submitted that this letter was part of the bundle of documents relied on by Christina and was addressed in submissions before Adderley J. He submitted further that the terms of the letter did not support the Learned Judge's conclusion that it was an effort by Mr. Iacovides to consult, in general terms, before he took the impugned steps to change the management of the company structure, as no reasonable recipient of that letter could have so understood this from its terms. Mr. Chivers, QC, for the respondents, submitted that the letter was material as it envisaged, at least

implicitly, that Mr. Iacovides would need to take some action in relation to the shares in the BVI Companies in his capacity as administrator.

[38] There may be certain difficulties inherent in Mr. Chivers' argument. This is, however, an appeal against the exercise by the Learned Judge of his discretion to discharge the injunction. The question is whether his conclusion that this letter and the letters dated 23rd and 27th April 2018 from Scordis Papapetrou were material facts that were not adequately disclosed to the judge hearing the ex parte application, rendered his decision blatantly wrong even if another court may have come to a different conclusion on their materiality. The test of materiality is primarily one for the judge himself. He has given his reasons why he considered these letters to be material and why he felt that they had not been adequately disclosed. Having considered these reasons, I have come to the conclusion that the Learned Judge acted within the ambit of his discretion under the relevant principles in arriving at his decision on the materiality and need for disclosure.

[39] The Learned Judge further found that the non-disclosure of the letter of 3rd January 2018 was not innocent as Christina was aware of the existence of the letter, having exhibited it to her affidavit and her counsel having referred to it in her legal argument in support of a different issue. In **Brink's-Mat**, Ralph Gibson LJ stated that a non-disclosure would be innocent if the fact was not known to the applicant or its relevance was not perceived by them.[12] The onus is on the applicant to explain the non-disclosure. In **Banca Turco Romana S.A. (in Liquidation) v Cortuk and others**[13] it was held that "the very least that can be said is that no innocent explanation has been put forward, and if an applicant who is guilty of non-disclosure wishes the court to treat it as innocent, it is incumbent upon it to explain how it came about."

[12] See page 1357D.
[13] [2018] EWHC 662 (Comm) at para. 35.

[40] The Learned Judge found that the 3rd January 2018 letter was relevant to the issue of whether Mr. Iacovides had acted surreptitiously in his takeover of the control of the JPO structure. Mr. Flynn, QC correctly in my view, characterised the issue as whether the appellants could have been expected to appreciate that the inquiry about their position on the shares was an attempt by Mr. Iacovides to consult with them on his proposed steps in relation to the structure. I find unsatisfactory the response from the respondents that the 3rd January letter envisaged implicitly that Mr. Iacovides would need to take some action in relation to the shares. If the shares did not form part of George's estate, which issue had not been determined as of January 2018, there would not have been any obvious need for Mr. Iacovides to take any action. If action had to be taken, and nothing in January suggested that action was contemplated as both the actions taken and the justification advanced for such actions do not appear until 2 months later in March 2018, a clearer statement of intention to act or of the reason for the consultation would have been expected from Mr. Iacovides.

[41] The Learned Judge found that Mr. Iacovides did seek to consult with the appellants "albeit in more general terms". However, there are limits to how general a statement can be while still remaining within the scope of relevance to a particular issue. Here, the finding of the Learned Judge was in effect that the appellants should have understood the 3rd January letter in one way whereas they disclosed the letter based on their understanding of it in a completely different way. The Learned Judge below appears to have adopted *ex post facto* reasoning to conclude that the appellants should have perceived the relevance of that letter. There was nothing within the letter itself, or surrounding circumstances when it was sent, which suggested the proposed action by Mr. Iacovides in relation to the shares, and nothing tied that letter to the subsequent actions taken by Mr. Iacovides. For this reason, I have come to the conclusion that the Learned Judge failed to consider relevant matters in finding that the non-disclosure of this letter was not innocent and that this Court is entitled to set aside that finding. Instead, I

find that the non-disclosure arose from Christina's failure to perceive the relevance of the letter on certain issues only and was therefore innocent.

**Refusal to renew or grant fresh injunction**

[42] The appellants also challenged the Learned Judge's refusal to renew or grant a fresh injunction primarily on the ground that he had refused to consider certain material factors in the exercise of his discretion such as (i) that Mr. Iacovides had still not stated whether his position was that the shares formed part of George's estate whereas the appellants have established a claim to an interest in the shares; (ii) the appellants' claim that Mr. Iacovides had no authority to deal with the shares in his capacity as administrator of the Cyprus estate; (iii) the fact that the non-disclosure did not concern the proprietary relief claimed by the appellants and that it was likely that the injunction would have been granted if such matters had been disclosed; and (iv) the prejudice that the appellants would suffer from the discharge of the injunction as control of the structure would be in the hands of Leonie and Efthyvoulos. The appellants also pointed out that the Learned Judge was incorrect in stating that special circumstances had not been pleaded, as the amended statement of claim was filed 10 days before the judgment was delivered; that, in considering the issue of prejudice, the Judge concentrated on the extent of the risk of disposal of the assets, which is not relevant to a proprietary claim, rather than on the nature of the claim itself; and, that the Judge erred in his finding that there had been non-innocent non-disclosure of the letter of 3rd January 2018.

[43] Mr. Chivers, QC responded that there was no need for a fresh injunction as (i) there was no objective evidence of likely harm to the shares whilst under the control of Mr. Iacovides, as he is an appointee of the Cypriot court; and (ii) the appellants in any event have obtained injunctive relief in Cyprus against him since the injunction was discharged by the BVI High Court.

[44] The Learned Judge clearly had the discretion to refuse to renew the injunction and in the exercise of this discretion, he considered correctly that the overriding

question was where the interests of justice lay. While the Judge considered the strengths and weaknesses of the appellants' case and the prejudice to be suffered by each side from the grant or refusal of the injunction, I find that he nevertheless failed to weigh in the balance other factors that were material to his decision. In particular, the Judge did not consider that the risk of asset disposal was only one element of the possible prejudice. The appellants' claim is a proprietary claim so, strictly speaking, there was no requirement to establish such risk. The more relevant consideration was the right of Mr. Iacovides to interfere in the structure. With respect to the relative strengths of the appellants' case, the Learned Judge's attention was perhaps not drawn to the fact that the appellants had filed their amended claim before he delivered his ruling. Moreover, as expressed above, my view is that he erred in principle in finding that the non-disclosure of the latter part of the 3rd January 2018 letter was not innocent. I am satisfied that the Learned Judge failed to consider certain matters that were material to the exercise of his discretion whether to grant a fresh injunction and for this reason his decision on this issue should be set aside.

[45] This Court can therefore consider afresh the question of whether it is in the interests of justice to regrant the injunction. Lord Hoffman in **National Commercial Bank Jamaica Ltd v Olint Corporation Ltd** reminded us of the basic principles that:

> "[t]he purpose of such an injunction is to improve the chances of the court being able to do justice after a determination of the merits at the trial. At the interlocutory stage, the court must therefore assess whether granting or withholding an injunction is more likely to produce a just result."[14]

Lord Hoffman further stated that "the underlying principle is … that the court should take whichever course seems likely to cause the least irremediable prejudice to one party or the other".[15]

[14] [2009] UKPC 16 at 16.
[15] See para.19.

[46] As the consideration of whether an injunction should be regranted inevitably requires consideration of the matters raised by the respondents in the counter-notice, I propose to deal firstly with those issues and then to determine whether in all the circumstances it is appropriate to regrant the injunction.

**The counter-notice of appeal**

**Jurisdiction to serve ex parte order outside jurisdiction before claim form issued**

[47] The first ground of the counter-notice raises the issue of jurisdiction. The May Order permitted the appellants to serve the order on the respondents outside the jurisdiction. The respondents submit, relying on the decision of this Court in **Halliwel Assets Inc et al v Hornbeam Corporation**,[16] that as there had not been a claim form issued in the proceedings at the date of the May Order, the court below had no jurisdiction to order service out of the May Order on Mr. Iacovides and the Cypriot companies. The Learned Judge did not deal with this issue in his judgment.

[48] **Halliwel** concerned an application for permission to serve a third-party costs application out of the jurisdiction. The application was refused in the High Court on the basis that none of the CPR 7.3 gateways for service out of the jurisdiction applied. On appeal, this Court held that the gateway under CPR 7.3(10) would apply as the court's jurisdiction to make costs orders was a statutory jurisdiction, but that such an application could only be served out of the jurisdiction with permission of the court under CPR 7.14 in the context of proceedings where "the claim form in the proceedings in which the application is issued must be one which would qualify for service out under one of the gateways contained in CPR 7.3".

[49] The appellants herein responded firstly that the BVI defendants (Citco Trust, the BVI Companies and Dabcey) in any event have been properly served within the jurisdiction with the order and Mr. Iacovides, supposedly in his capacity as director

[16] BVIHCMAP2015/0001 (delivered 12th October 2015, unreported).

of these companies, would have had notice of the orders and could not take steps contrary to the provisions of the orders without risking being in contempt of court. Secondly, under CPR 17.2(1)(b), an interim remedy including an injunction can be ordered before a claim form is issued and **Halliwel** did not deal with this situation where interim relief is granted before the claim is issued.

[50] In my view, CPR 17.2 offers the response to the respondents' argument on this ground. The rule permits the court to grant interim relief before a claim form is issued subject to any rule which provides otherwise. Mr. Chivers, QC was not able to point us to any rule to the contrary. CPR 17.2(3) states that the court may grant an interim remedy before a claim has been made only if the matter is urgent or it is otherwise necessary to do so in the interests of justice. Sub-rule (5) states that when such a remedy is granted, the court must require an undertaking to issue and serve the claim form by a specified date. It seems to me that it would be contrary to the spirit and intendment of the rule that the interim remedy can only be granted before the issue of a claim form when necessary in the interests of justice to say that the order granting the remedy then cannot be served on the respondent until the claim form is issued. No purpose would then be served by rule 17.2. I am satisfied that neither **Halliwel** nor the decision of the House of Lords in **Fourie v Le Roux and others**[17] dealt with this situation. What remains of concern, however, is that CPR 17.2(5) does not appear to have been followed as the undertakings by the appellants do not include the undertaking to issue and serve the claim form by a specified date. Nevertheless, subrule (5) speaks to an obligation on the court not the parties and does not provide a sanction on the appellants for failure to comply. I therefore find that the court did have jurisdiction to order service out of the May Order and do not allow this ground of the counter-notice. In light of my view that **Halliwel** does not apply in the instant case, I also dismiss the ground of the counter-notice dealing with failure by the appellants to inform the court below of the decision in **Halliwel**. I agree with the appellants' submission that there can be no breach of the duty to disclose material facts by

[17] [2007] UKHL 1.

failure to disclose a legal authority that is not material to the determination of the issue.

**Breach of undertakings**

[51] I turn next to the complaint about the appellants' breaches of their undertakings to serve on the respondents the application to continue the May Order, the claim form and statement of claim as soon as practicable. This issue was not dealt with by the Learned Judge. Mr. Chivers, QC submitted that the documents were not served on the respondents but were provided to their legal practitioners less than 2 working days before the hearing on 6th June 2018 before the Learned Judge. In **P.S. Refson & Co Ltd v Saggers et Anor**,[18] Nourse LJ held that the undertaking to issue a writ "as soon as reasonably practicable" meant the same as to issue the writ "forthwith", that is, within a relatively short time after the grant of the interim order. Nourse LJ emphasised that a breach of this undertaking would mean that the claimant is possibly in contempt and that his solicitors are possibly aiding that contempt and are subject to the disciplinary jurisdiction of the court. In that case the writs were issued up to 19 days after the grant of the ex parte orders. In the instant case, it appears that more than 21 days elapsed between the grant of the May Order and the filing and service of the claim form. This delay calls for at least an explanation on the part of the solicitors and appellants for their breaches of the undertaking. This was not addressed in the evidence before the Learned Judge. The question, however, is whether the possible contempt must be translated into the discharge or refusal to continue the injunction. In **P.S. Refson**, this was not the consequence because the parties had settled the proceedings in two of the three cases and in the third, there was no complaint by the respondents who had left the jurisdiction. In **Jewson v Heatspace Ltd**,[19] Rimer J dealt with a case where, on the return date for an ex parte injunction, the respondent opposed the continuation of the injunction on the ground of the breaches of the undertaking to issue the claim form forthwith, to serve a note of the hearing of the ex parte application and

[18] [1984] 1 WLR 1025.
[19] [2007] EWHC 3139 (Ch).

to provide a statement of means by a certain date. The judge there considered that these undertakings were primarily those of the legal practitioners rather than the claimant herself but accepted that the claimant must bear personal responsibility for these defaults. He concluded: "I nevertheless do not regard them as of sufficient magnitude to deprive her of the right to any continued injunctive relief that she may be entitled to." As in **P.F. Refson**, the applicant was penalized in costs.

[52] The question therefore is whether the court's disapproval of the breaches of undertaking by the appellants should be reflected in a refusal to continue the injunction (on the assumption that there is no other good reason why the injunction should not be continued). The proportionate response to the breach of an undertaking must depend on the circumstances of each individual case. Here, the claim form was in fact issued (albeit belatedly) before the return date. The claim form and other documents were served on the solicitors for the respondents before the inter partes hearing before the Learned Judge, who, I must presume, did not consider the breaches of sufficient seriousness to warrant the discharge of the injunctions on this ground only. I do not see much in the point that the claim form and other documents were served on the legal practitioners for the respondents rather than the respondents themselves. By retaining legal practitioners in the jurisdiction to act for them, the respondents must have clothed these practitioners with the authority to accept service of such documents on their behalf. Otherwise one would have expected the legal practitioners to refuse to accept service of the documents.

[53] The respondents complain that the lateness of the service of the documents prejudiced them in the preparation of their submissions before the Learned Judge. However, as a practical matter, there is no indication that they sought an adjournment before the Learned Judge in order to have the proper opportunity to deal with the issues arising from the claim form. Indeed, the Learned Judge was able to remark that both sides deployed a great many legal arguments for his

consideration on the strength and weakness of the statements of case. Additionally, they have appealed against the decision of the Learned Judge that the appellants had demonstrated that there is an issue with a real prospect of success on their claim. The respondents therefore have not satisfied me on the issue of prejudice before the Learned Judge and further have had the opportunity to deploy all arguments on the issue before this Court and have demonstrably done so in their written and oral submissions. I believe that, in the circumstances, the breaches by the appellants of their undertakings, without more, are not of sufficient magnitude to justify depriving them of the continuation of the injunction.

**Standing to pursue a claim to shares in the BVI Companies**

[54] The respondents further raise at grounds 9 through 12 of the counter-notice that the appellants have no standing to pursue a claim to the shares in the BVI Companies either directly or by way of a derivate claim and have not demonstrated a sufficiently arguable claim to obtain possession of those shares. In his analysis of these issues, the Learned Judge expressed the view that the appellant had arguably at least still not disclosed a cause of action that can move forward. He observed that in their skeleton arguments for the ex parte hearing, the appellants indicated that they would bring the claim as beneficiaries of the trust and that in their submissions on the return date, it was argued that: (i) they had the standing to bring the claim as beneficiaries of the trust in the absence of a trustee, relying on the decision of the UK Supreme Court in **Roberts v Gill**;[20] and (ii) as beneficial owners of the shares in the BVI Companies they could bring double derivative claims at common law in respect of the their subsidiaries, relying on **Universal Project Management Services Ltd v Fort Gillicker Ltd**.[21] The Learned Judge noted that the respondents had submitted that neither the analysis nor the authorities referred to before him had been referred to by the appellants at the ex parte hearing. He further noted that the appellants' statement of claim did not disclose any cause of action as they had not pleaded any special

[20] [2011] AC 240.
[21] [2013] Ch 551.

circumstances which is a required part of the cause of action for such a derivative claim; and that the trustee had not been made a party to the claim, which is fatal to the derivative action. The Learned Judge accepted that it was necessary for the appellants to show that there was a serious question to be tried as part of a claim that they have standing to bring if the court were to continue or reimpose the injunctions and concluded that their pleadings, evidence and submissions when taken together demonstrated that there was a serious question to be tried. Notwithstanding this conclusion, the Judge went on to state that the appellants had not organised their case sufficiently in time for the return hearing to present a case that is currently capable of going forward and that they had not pleaded the special circumstances that would enable them to bring a derivate action.

[55] While I find it difficult to reconcile the statements of the Learned Judge with his conclusion, it is probable that the Judge was taking into consideration the fact that after the hearing before him, but before delivery of his judgment, the appellants had filed an amended statement of claim. I am satisfied nevertheless that the Judge proceeded on the basis that a serious question to be tried had been established on the pleadings as they were at the date of the return hearing, as he regarded the submission from the respondents that the appellants could not show a serious issue to be tried as "a conclusion which goes too far". Mr. Chivers, QC challenged the Learned Judge's finding that the appellants had demonstrated that there was a serious issue to be tried in relation to the amended statement of claim filed by them on 11th June 2018 on several grounds which I shall shortly attempt to summarise as this was the backbone of the counternotice.

[56] In their amended statement of claim, Thelma and Christina pleaded that they are both beneficiaries of the trust settled by George in 2004 and of his estate, and that the trust was declared orally in a statement by George to Thelma in the following terms:

> "the shares of JPO are for you and our children in equal shares. I will hold the shares for all my life and will take the income and look after us and the

children. The children or the grandchildren will not take their shares until 2022."

[57] No trustee has been appointed over the trust since the death of George in 2007. The ownership of the shares is subject to arbitration proceedings between Christina and the Endra Foundation, which claims that the shares belong to the Foundation. The hearing in the arbitration has concluded and the parties are awaiting the award. No one has claimed in Cyprus that the shares are assets of George's estate, nor has there been an application for a grant over the estate in the BVI or any application which identifies the shares of the BVI Companies as part of George's estate, with the result that Mr. Iacovides has no right to deal with the shares in the BVI Companies as administrator of George's estate or otherwise. The pleadings then challenge the various resolutions passed by Citco Trust in March and April 2018 and in April and May 2018 by Genmanco Corporation, which, with Mr. Michaelides until his purported removal as director in March 2018, was the corporate director of the BVI Companies, as being void and ineffective because Mr. Iacovides had no authority to give instructions to Citco Trust. The pleadings further challenged that Citco Trust, as custodian, had no authority to vote the shares as members of the BVI Companies, and that the authentication process for shareholder resolutions under regulations 7 and 8 of the articles of association of the BVI Companies had not been satisfied. The appellants then averred that this is a derivative claim brought on behalf of the trust (declared by George) and state the following as the special circumstances that justify them being permitted to bring the derivative claim:

> "They are that since there is presently no trustee of the Trust, there is no one in a position to bring this claim on behalf of the Trust other than the Beneficiaries of the Trust. It would not have been possible for the beneficiaries to take steps to appoint a new trustee of the Trust before commencing these proceedings. Accordingly, the Claimants have no means of protecting the assets of the Trust from wrongful interference by Mr. Iacovides and the other Defendants unless they are permitted to bring a derivative claim. The Claimants will apply to the Court for the appointment of a trustee of the Trust so that such trustee can take over the conduct of these proceedings from the Claimants."

The relief sought in the amended statement of claim included declarations as to the validity of the various decisions purportedly made by Citco Trust; as to the names of the persons who are directors of the BVI Companies and Dabcey with associated mandatory orders for rectification of the registers of directors; and that Mr. Iacovides has no right to deal with, vote or exercise any rights or issue instructions in respect of the shares of the BVI Companies or Dabcey.

[58] On an application for an interim injunction, the applicant must demonstrate that there is a serious question to be tried or, stated in more modern terms, a claim with a real prospect of success. The reason for this requirement was explained by Lord Diplock in **American Cyanamid Ltd v Ethicon Ltd**[22] who opined:

> "The use of expressions such as 'a probability', 'a prima facie case' or 'a strong prima facie case' in the context of the exercise of a discretionary power to grant an interlocutory injunction leads to confusion as to the object sought to be achieved by this form of temporary relief. The court no doubt must be satisfied that the claim is not frivolous or vexatious, in other words, that there is a serious question to be tried.
>
> It is no part of the court's function at this stage of the litigation to try to resolve conflicts of evidence on affidavit as to facts on which the claims of either party may ultimately depend nor to decide difficult questions of law which call for detailed argument and mature considerations. These are matters to be dealt with at the trial. One of the reasons for the introduction of the practice of requiring an undertaking as to damages upon the grant of an interlocutory injunction was that 'it aided the court in doing that which was its great object, viz. abstaining from expressing any opinion upon the merits of the case until the hearing': *Wakefield v. Duke of Buccleugh* (1865) 12 L.T. 628, 629. So unless the material available to the court at the hearing of the application for an interlocutory injunction fails to disclose that the plaintiff has any real prospect of succeeding in his claim for a permanent injunction at the trial, the court should go on to consider whether the balance of convenience lies in favour of granting or refusing the interlocutory relief that is sought."

[22] [1975] AC 396, at page 407G.

Lord Diplock further stated that the consideration of the strength of the evidence is reserved to instances where:

> "The extent to which the disadvantages to each party would be incapable of being compensated in damages in the event of his succeeding at the trial is always a significant factor in assessing where the balance of convenience lies, and if the extent of the uncompensatable disadvantage to each party would not differ widely, it may not be improper to take into account in tipping the balance the relative strength of each party's case as revealed by the affidavit evidence adduced on the hearing of the application. This, however, should be done only where it is apparent upon the facts disclosed by evidence as to which there is no credible dispute that the strength of one party's case is disproportionate to that of the other party. The court is not justified in embarking upon anything resembling a trial of the action upon conflicting affidavits in order to evaluate the strength of either party's case."

[59] The first of Mr. Chivers' challenges was that the evidence of the alleged oral trust was unsatisfactory for several reasons. Christina's evidence was hearsay and not on all fours with an earlier account of the establishment of the trust given by Thelma by letter dated 25th May 2015 to Endra Foundation. There had been no reference to the existence of such a trust between 2004 when George allegedly had the conversation with Thelma until 2015 after the dispute had broken out between the family members. It was implausible that George would have created such a trust without at least notifying Mr. Michaelides. The terms of the trust were inconsistent with a letter of wishes made by George 2 years earlier. In the year preceding the alleged declaration of trust, George had procured Endra Foundation to change its bylaws to hold the shares in the BVI Companies and to provide for vesting of the shares in the BVI Companies in 2015. It was inherently improbable that George would have chosen to take the shares into his personal ownership so as to declare a trust while not making provision for the appointment of a trustee after his death instead of continuing use of the Foundation to ensure that these exact same wishes would have been carried out. No rational reason had been advanced as to why George would have created the trust which would have the

disadvantage that control of the shares would be in Cyprus with possible adverse tax consequences after the control of the JPO structure had been kept out of Cyprus for over 20 years previously by way of the Foundation. By letter of 2013 from HSF, their solicitors, the appellants had advanced the contention that the shares formed part of George's estate and were not held by the Foundation. The timing of the assertion of the trust came just before the shares would have vested in the beneficiaries under the Foundation and eventually upon Thelma's death, Efthyvoulos and Leonie would have taken over control of the JPO structure. The existence of the alleged trust would have the effect of delaying such change of control. Prior to 2004, the shares were held by the Endra Foundation and George only had a life interest in the shares. George could only have declared the trust if Endra Foundation had transferred the shares to him during his lifetime and there was no evidence of intention or agreement of the Foundation to so do and so George would have held the shares on a resulting trust for the Foundation if he did end up with the shares. The appellants had failed to disclose that the Endra Foundation had owned the JPO assets prior to 2004 so the question was not whether they ever got the bearer shares but whether they ever lost them.

[60] These arguments may all have merit but the test to be satisfied at this stage of the proceedings is only whether the appellants have established that there is an issue with a reasonable prospect of success that George had declared a trust over the shares in his lifetime as stated by the appellants. I do not believe that the respondents' arguments are sufficiently conclusive against the appellants' satisfying this test based on their evidence in the circumstances that the hearing judge is not required to make findings of fact at this stage. These arguments are more directed to whether the appellants may be able to prove their case at trial on a balance of probabilities. In particular, there was no incontrovertible evidence before the court below that Endra Foundation ever had the share certificates.

**Whether the appellants' claim is time-barred**

[61] Mr. Chivers, QC submitted, secondly, that the claim to recover the shares should have been brought against Mr. Michaelides who executed the custody agreements in 2010, thereby bringing the shares of the BVI Companies into the estate of George, and that any claim to the shares would therefore be time-barred under section 19(2) of the **Limitation Act**[23] which prescribes a limitation period of 6 years for actions by a beneficiary to recover trust property or in respect of a breach of trust. Once that limitation period has expired, the estate has a better title as against the trust to the shares in the BVI Companies. The respondents' complaint is that this point was not raised before Adderley J on the ex parte hearing. I would add that this point was also not referred to by the Learned Judge in his ruling.

[62] I have some difficulty accepting that the unilateral act of the Cypriot administrator could introduce assets into the estate of the deceased. Nevertheless, if this were so, it would appear to me that, assuming that the beneficiaries have a cause of action to recover those assets, that cause of action should be enforceable against anyone into whose hands the assets have come, as the claim is a proprietary claim to those assets. In **Gany Holdings (PTC) SA v Khan and others**,[24] the Privy Council upheld a claim by the beneficiaries of a trust against a recipient of trust property, who had not provided consideration therefor, for the return of that property which remained in the hands of the recipient to the trust or for an account by the recipient of what he did with the trust property. In **Re Diplock**,[25] the beneficiaries under a will claimed against persons who had received property under provisions in the will that were found to be void. The English Court of Appeal stated that, "in the case, however, of a volunteer who takes with notice, e.g. by way of gift from the fiduciary agent… he holds the money on behalf of the true owner whose equitable right to the money still persists as against him".[26]

[23] Cap. 43, Laws of the Virgin Islands.
[24] [2018] UKPC 21.
[25] [1948] Ch 465.
[26] See page 539.

[63] The respondents' submission, that the claim lay against Mr. Michaelides must be based on the premise that the estate would have received, without consideration, the assets that were the subject of the alleged trust from Mr. Michaelides, into whose hands the trust assets (the bearer share certificates) fell after George's death. Citco Trust holds the legal title to the shares pursuant to an agreement that is based on the statutory obligation that bearer shares must be lodged with a custodian and so in my view is the equivalent of a volunteer for these purposes as it does not claim to have acquired the shares for value. Citco Trust has been acting on the instructions of Mr. Iacovides. This seems to place both of these respondents into focus with respect to a claim to the shares by beneficiaries of the trust, and the requirement that a serious issue to be tried should be established is satisfied.

[64] There are two possible responses to the limitation issue raised by the respondents. Firstly, if the appellants' claim is that Mr. Iacovides and Citco Trust have become trustees *de son tort* by intermeddling with the trust property (the shares in the BVI Companies), the **Limitation Act** does not apply to the claim. Secondly, the appellants point to the proviso to section 19(2) of the **Limitation Act** which states "[p]rovided that the right of action shall not be deemed to have accrued to any beneficiary entitled to a future interest in the trust property, until the interest fell into possession." An interest is vested possession when the beneficiary has an immediate right to present enjoyment of the property. The terms of the alleged trust are that the shares in the BVI Companies were to be distributed to the children in 2022. This would mean that it becomes arguable that at least Christina's interest is not yet vested in possession so that the proviso to section 19(2) would apply.

**Whether the amended statement of claim discloses a cause of action**

[65] Mr. Chivers, QC submitted, thirdly, that the amended statement of claim merely asserts ownership of the shares in the BVI Companies without making allegations that any of the defendants beneficially hold the shares for the trustee or that a

trustee of the trust has a right of possession of the shares as against Citco or Mr. Iacovides. In Mr. Chivers' submission, the amended claim also does not seek any relief that would be necessary to determine the ownership and/or status of the shares. The declarations sought on the claim were therefore largely hypothetical as there was no dispute as to the existence of any relevant right among the parties.

[66] This argument raises the issue of whether the amended statement of claim discloses a cause of action. The amended statement of claim pleads the existence of the trust allegedly created by George in 2004 and that by reason of such trust or the claim by Endra Foundation "Iacovides has no right to deal with the shares of the four BVI Cos either as administrator of the Estate or otherwise." The amended statement of claim therefore places the dispute over ownership of the shares as between Endra Foundation and the Trust, of which the appellants are two of the four beneficiaries. This approach is perhaps understandable as Mr. Iacovides as administrator of the estate does not claim that the shares form part of the estate. What he has done is to instruct the taking of steps by Citco Trust, as custodian of the shares, to alter the directorships of the companies in which the shares are held without asserting a right to the shares. This is the "relevant right", that is, the right to vote the shares in the BVI Companies that appellants challenge in the claim and both the pleadings and the relief sought are directed to reversing these changes of directors.

[67] The appellants referred to the BVI High Court decision in **Andrey Lych et al v Coffee Commodities Ltd et al**[27] where the beneficial owner of bearer shares issued by Coffee Commodities Ltd sought declarations as to the validity of steps to remove directors of that company. However, in that case the beneficial owners also sought declarations as to the ownership of the shares used to vote on the resolutions to change the directors. In my judgment, the appellants have sufficiently pleaded in the amended statement of claim that they and not Mr.

[27] BVIHCV2004/0008 (delivered 28th November 2006, unreported).

Iacovides or Citco Trust are the beneficial owners of the shares of the BVI Companies, and that the resolutions passed changing the directors of these companies, that enabled changes in the companies lower in the structure, were wrongly done by the person who had the standing to vote the shares and those on whose instructions it was acting.

[68] The relief sought on the claim includes a prayer for further or other relief. In such circumstances, a court trying the claim could conceivably grant the declarations sought against Mr. Iacovides and Citco Trust as well as any other related relief that is not inconsistent with the pleaded case to ensure the efficacy of such declarations. This comes within the principles set out in this regard by Neuberger J in **Kirin-Amgen Inc v Transkaryotic Therapies Inc**[28] that were applied in this jurisdiction by Mason J in **Bertha Francis v First Caribbean Internationl Bank (B'dos) Ltd**.[29]

**Failure to join trustee or other beneficiaries to the claim**

[69] Fourthly, Mr. Chivers, QC submitted that the claim itself is defective as the appellants, being two out of four beneficiaries of the alleged trust, could not pursue the claim. The appellants incorrectly pleaded that no one else can bring the claim on behalf of the trust as under Cypriot law, which should govern the trust, the personal representative of the deceased trustee (Mr. Iacovides) would have been entitled to exercise the powers of the trustee, including the power to bring legal proceedings in the interests of the beneficiaries, and so could not be considered as a trustee *de son tort* in relation to the shares. Mr. Chivers, in any event, argued that the appellants have not provided evidence in support of the assertion that they could not have taken steps to appoint a new trustee before commencing the proceedings in light of the fact that they had asserted the existence of the trust since 2015 and were aware of Mr. Iacovides' steps in relation to the shares in the BVI Companies since April 2018, a month before they commenced the ex parte

[28] [2002] IP&T 331, 339F.
[29] SLUHCV0583/1998 (delivered 3rd Jul 2008, unreported) at paragraph 27.

application, and they had offered an undertaking after the inter partes hearing to file an application for the appointment of an independent trustee within 7 days of an order but have failed to comply with that undertaking.

[70] This Court was not directed to any evidence of Cypriot law so I will need to consider this submission on the assumption that Cypriot law is the same as BVI law on this issue.[30] The argument of the respondents here is directed towards the derivative claim on which the appellants argue that they do not solely rely. Under BVI law, the position appears to be the same as that under the Cypriot statute quoted by the respondents. Section 19 of the **Trustee Ordinance**[31] states that the personal representative of a sole trustee shall be capable of exercising the powers or trust given to or capable of being exercised by the deceased trustee. However, in my judgment, for the purposes of BVI law, the reference must be to a personal representative who has been appointed by a BVI court. In **New York Breweries Company v Attorney General**,[32] a resident of the United States of America died owning shares in an English company. A grant of representation was made in the United States in respect of his estate. The holders of the American grant had indicated that they did not propose to take out a grant in England. Nevertheless, based on the American grant, the English company followed the grant holders' instructions and paid dividends and transferred the shares in their company. The House of Lords held that this made the English company an executor *de son tort* as the American grant holders had no authority to give such instructions as only the holder of an English grant would have title to the shares. By its actions, the company enabled a stranger to take possession of property that did not belong to him but belonging to the estate.

[71] In the absence of a BVI personal representative or even an indication of willingness to seek a BVI grant, it becomes at least arguable that no one other than the beneficiaries can bring the claim. The respondents further argued that

[30] See Bumper Development Corporation v Commissioner of Police of the Metropolis [1991] 1 WLR 1362.
[31] Cap. 303, Laws of the Virgin Islands.
[32] [1892] AC 62.

the appellants could have sought the appointment of a receiver or a new trustee for the protection of the assets. I fail to see how such an appointment would have advanced the appellants' position where they are seeking interlocutory relief pending the determination of their claim. The appointment of a receiver is usually a measure of the last resort where no other interim remedy would suffice. If the appellants therefore have the standing to seek the interim protective measures and are willing to do so without recourse to the appointment of a receiver, and prior to seeking the appointment of a new trustee as final relief, this in itself should not be the basis for refusal of the interim protective measures.

[72] I also do not accept the argument that the derivative claim is procedurally defective for want of joinder of the trustee and other beneficiaries. If, as I have concluded above, there is no present trustee, then the claim cannot be defective on that basis. Furthermore, the suggestion that an administration claim should first be commenced to compel the trustees to take the proceedings before the derivative claim is pursued begs the question: an administration claim against whom? I shall deal with the requirement that the administration claim be brought further in the succeeding paragraphs of this judgment.

[73] I agree, that it is to be expected that the other beneficiaries to the alleged trust would have been joined in the proceedings and that permission could have been sought to serve them out of the jurisdiction perhaps under CPR 7.3(2). CPR 8.5(1) states the general rule is that a claim does not fail because a person who should have been made a party was not made a party. CPR 8.5(2)(a) however states that where a claimant claims a remedy to which some other person is jointly entitled, all persons jointly entitled to the remedy must be parties to the proceedings, unless the court orders otherwise. I interpret this rule, which carries no express sanction, as meaning that the other jointly entitled persons must be made parties before any remedy is granted by the court on the claim. It does not apply to applications for interim relief. As this matter is yet in its early stages, no defence having been filed, there is no procedural bar or even exercise of discretion that should be overcome

before additional parties can be joined under CPR 19.2(1). I therefore do not agree that a procedural defect in the derivative claim, at this time, is sufficient to prevent the exercise by the court of the discretion to grant fresh injunctive relief.

**Should an administration action in Cyprus have been brought first?**

[74] Fifthly, Mr. Chivers, QC submitted that the appellants failed to seek relief in the proper forum, as they ought first to have brought an administration action in Cyprus and have satisfied the requirements of **Roberts v Gill**[33] in relation to derivative actions in trusts. In particular, he submitted, there is a substantive requirement that the trustee and other beneficiaries be joined so that they are bound by the decision. If they are not so joined, it was incumbent upon the appellants to bring first an administration action in Cyprus, either to compel the trustee to bring the proceedings where the proceedings are in the nature of a derivative claim or where the claim at law is brought in the name of the beneficiaries, and there is a dispute among the beneficiaries whether such an action should be brought, the administration claim should be brought so that the matter can determined as among the beneficiaries before the proceedings are commenced in the name of any of them or in the name of the trustee. Mr. Chivers, QC referred to a passage in **Lewin on Trusts**[34] which also states that "the beneficiary can sue only if there are exceptional circumstances and he seeks equitable relief". The appellants cannot rely on any alleged direct cause of action in their own right, such as a claim for an account against Citco Trust and Mr. Iacovides as trustees *de son tort*, as this is not their pleaded case.

[75] At the heart of this argument, which addresses the derivative claim, is the assumption that Cypriot law was meant to apply to the alleged trust. There was no evidence that George had made an express choice of the law to govern the trust and in the absence of such evidence, the proper law of the trust will be the system of law with which the trust has its closest and most real connection. This could be

[33] [2011] 1 AC 240.
[34] Lewin on Trusts, (18th Edn. Sweet & Maxwell, 2007) at 43-001 onward.

either Cypriot law as George was domiciled in Cyprus at the relevant time or BVI law as the subject of the trust was the shares in the BVI Companies. Mr. Flynn, QC referred to the concession in the submissions that the application of Cypriot law may have had adverse tax consequences as an indicator that Cypriot law was not meant to apply to the trust. In my judgment, there is at least a serious question to be tried as to what the proper law of the trust was. Secondly, the Court was being invited by Mr. Chivers, QC to interpret a statutory provision under Cypriot law in order to arrive at the conclusion that Mr. Iacovides would have been entitled to bring proceedings upon his appointment by the Cypriot court as personal representative of George so that the appellants' contention to the contrary was unsustainable. There was no expert evidence, however, on the interpretation of this law.

[76] On the question of whether the appellants were wrong in saying that they could not take steps to appoint a new trustee before commencing the action, regard should probably be paid to the realities of the matter. If the alleged trust were valid, the new trustee would have to be appointed by the appellants along with Leonie and Efthyvoulos. It seems that it would be unrealistic to expect agreement on such appointment when the appointment of Mr. Iacovides, as replacement personal representative of George's estate, was contentious. With respect to the need to bring an administration action before making the derivative claim, there was no direct evidence from Leonie and Efthyvoulos, the two other alleged beneficiaries, that they disputed the appellants' decision to bring the claim. There was some indication that they were financing Mr. Iacovides but, as he did not claim that the shares in the BVI Companies formed part of the estate, nor did he claim to be acting as trustee of the alleged trusts established by George, their support of his actions is not necessarily inconsistent with the appellants' claim that the shares in the BVI Companies are subject to trusts.

[77] **Roberts v Gill** was a decision of the UK Supreme Court on an application by a beneficiary under a will, to amend a claim so as to plead a derivative claim by the

estate for negligence against the estate's solicitors. The beneficiary pleaded a direct claim in negligence against the solicitors in the unamended statement of claim in respect of which the limitation period had expired at the time of the proposed amendment. The application was refused by the Supreme Court on the grounds that the beneficiary did not demonstrate that there were any special circumstances that would allow him to bring a derivative action on behalf of the estate, and also that he had failed to join the personal representative of the estate in the action.

[78] The essence of the derivative claim, as stated by the Privy Council in **Royal Brunei Airlines Sdn Bhd v Tan**,[35] is that the rights of action by the trustees against third parties form part of the property of the estate and can be enforced by beneficiaries "in a suitable case if the trustees are unable or unwilling to do so." The Privy Council in **Hayim v Citibank NA**[36] stated a beneficiary has the standing to bring a derivative claim against a third party in place of the trustee:

> "when a trustee commits a breach of trust or is involved in a conflict of interest and duty or in other exceptional circumstances… which embrace a failure, excusable or inexcusable by the trustees in the performance of the duty owed by the trustees to the beneficiary to protect the trust estate or the interests of the beneficiary in the trust estate."

If the failure by a trustee to protect the estate satisfies the requirement of special circumstances, it would seem to me to be properly arguable that the absence of a trustee to protect the estate should also satisfy this requirement as both situations lead to similar results; that is, that no steps are being taken to protect an estate that is under attack by a third party.

[79] It is clear to me that where a derivative claim is being made, the trustee is a necessary party to the claim so that, procedurally, he can be bound by the result of the claim and estopped from bringing a further claim on the same issue against the third party; and, substantively, the beneficiary, who has no direct cause of action,

[35] [1995] 2 AC 378, 391.
[36] [1987] AC 730, 747-48.

might have a suit brought on his behalf. No issue of the expiry of the limitation period arises in this case. The question therefore is whether the requirement that the trustee is a party to the derivative claim can be satisfied by allowing them to be added to the claim in the future, that is, before trial or judgment.

[80] Perhaps the unique feature of this case is that the appellants plead, as one of the special circumstances, that there is no current trustee of the alleged trust and that they will apply to the court for the appointment of trustees. In **Roberts v Gill**, Lord Collins indicated that he:

> "would not rule out the possibility that there may be circumstances in which justice would require that joinder of the administrator be dispensed with. But the mere fact that there were "special circumstances" justifying an action by the beneficiary… would not be sufficient."[37]

[81] Lord Hope was also of the opinion that the rule that a trustee must be joined is not absolute and may be departed from if necessary, to avoid an injustice. His Lordship opined that, "[a]n action which is raised on this basis is not to be regarded as bad from the outset, although the personal representative may have to be joined at a later stage".[38] Lord Clarke agreed with this view.[39] It therefore appears to be at least arguable that the claim is not defeated by the failure to join the trustee at the onset of proceedings. This is more so in this case where the pleading is that there is currently no trustee. For this reason, I do not uphold Mr. Chivers' submission that the claim must fail for want of joinder of the trustee.

[82] The discussion above on joinder of the administrator in **Roberts v Gill** is, in any event, relevant only to the conduct of the derivative claim, and not to the personal claim being advanced by the appellants, as Lord Collins made clear in his judgment.[40] Therefore, so far as the amended statement of claim appears to

[37] at paragraph 69.
[38] at paragraph 84.
[39] at paragraphs 124-125, 130.
[40] at page 256D.

plead a direct as well as a derivative claim, the principles set out in **Roberts v Gill** do not totally defeat the claim.

**The steps taken by Mr. Iacovides and Citco Trust**

[83] Sixthly, Mr. Chivers, QC submitted that the steps taken by Mr. Iacovides and Citco Trust were not nullities as Mr. Michaelides deliberately contracted that he was depositing the bearer shares in the BVI Companies in a representative capacity so that Mr. Iacovides, as his successor in that capacity, was the person with power to give instructions to Citco under the agreements, as the terms of the custody agreement are a private contractual matter between the depositor of the shares and the custodian into which the principles of probate law do not intrude. As Mr. Michaelides was in actual possession of the bearer share certificates, his status as administrator of George's estate was irrelevant to his power to enter into the custody agreements with Citco Trust. Citco Trust therefore took steps in accordance with the contract by which it holds the shares and these steps are, in the circumstances, valid and can only be challenged by a person with a better right to instruct Citco Trust under the custody agreement. If George were the trustee of the shares, Mr. Iacovides as his personal representative will have become the trustee of the shares upon his appointment. In any event, the impugned actions were taken by Citco Trust as shareholder of the BVI Companies. The appellants, who are not members of any of the companies, do not have any cause of action against these companies and these actions were fully effective as a matter of company law.

[84] There are several aspects to this submission that require examination. It is correct that Mr. Michaelides signed the custody agreement as administrator of George's estate. However, the question still arises whether this is sufficient to make the shares part of George's estate. In other words, does the signature in that capacity by itself determine any trusts on which the shares were held? It is difficult to see how the contrary position cannot remain arguable as a trustee (on the respondents' case) should not be able to divest himself/the trust of trust assets in

such an arbitrary manner or without consequences, including that proprietary claims can be made to the assets against the recipient.

[85] The existence of a direct cause of action by the beneficiaries of the trust against the estate which would have received the shares seems to be analogous to the equitable remedy confirmed in **Re Diplock**[41] where the Court of Appeal's decision (that was upheld on appeal to the House of Lords) was that there was a direct claim by next of kin against persons who had been wrongly paid from the residuary estate. The equitable remedy (available to next of kin or legatee, subject to conditions such as exhausting their claims against the personal representative, to make direct claims against persons who wrongfully received assets from the estate), said Lord Simonds in the House of Lords in **Ministry of Health v Simpson and others**,[42] was available to avoid the evil of allowing one man to retain money legally payable to another and was applicable wherever it could appropriately be applied. Such a remedy should arguably be available to the beneficiaries of a trust who allege that the trust fund has been wrongly paid over to the estate of the trustee.

[86] Citco Trust agreed that they would accept instructions from Mr. Michaelides or his designated advisor. It is clear that they have accepted instructions from Mr. Iacovides. Does he fall within the definition of a designated advisor of Mr. Michaelides? If not, do the beneficiaries, if Mr. Michaelides deposited the shares as trustee, stand as privies to this contract so as to enable them to enforce it against Citco Trust? In my judgment, these questions of law remain open and available to the appellants to raise for determination in the proceedings. Further, it does not appear to be as straightforward a matter as the respondents argue, to reach the conclusion that Mr. Iacovides is the successor trustee. He does not admit the existence of the trust and claims that his actions were for the protection of the estate for which he was responsible as personal representative appointed

[41] [1948] Ch 465, 502-504.
[42] [1951] AC 251 at 268.

by the Cypriot court. Therefore, it must be arguable that if the trust does exist and the shares comprise the trust fund, Mr. Iacovides' actions may be open to challenge if they are contrary to the trusts on which the shares were held. I agree with Mr. Chivers' submission that the appellants cannot challenge the companies' actions as they are not shareholders and the companies will not recognize their beneficial interests in the shares. However, they can challenge the actions of Citco Trust as section 69(3) of the **Business Companies Act, 2004** states that a custodian is not a shareholder of the company and may only be able to exercise voting rights of the shares on the instructions of the beneficial owners of the shares. If Citco Trust was not entitled to vote the shares on the instructions of Mr. Iacovides, the appellants may be able to seek orders vitiating those resolutions or compelling Citco Trust to pass resolutions reversing the earlier resolutions.

**Steps taken by administrator prior to grant**

[87] Seventhly, Mr. Chivers, QC submitted that in any event, the appellants were incorrect to state that steps taken by an administrator prior to grant were a nullity. Citing **Dicey, Morris & Collins on Conflict of Laws**,[43] he submitted that the entitlement of Mr. Iacovides to recover assets in the BVI is a matter of BVI law and that the general proposition that letters of administration do not relate back to the date of death was subject to exceptions at common law where this is for the benefit of the estate. In any event, no one else has applied in the BVI to represent the estate and, as the appellants' case is that the shares in the BVI Companies do not form part of George's estate, no personal representative of the estate, in any event, could impeach the transactions or claim a better title to the shares.

[88] The passage from **Dicey** states:

> "All property of the deceased, whether it consists of movables or immovable (apart from the special case of settled land) which at the time of his death is locally situate in [England], vests in the [English] personal representative. It is not necessary that he should have reduced the

[43] Dicey, Morris & Collins on Conflict of Laws (15th Edn, Sweet & Maxwell 2018), 26-023.

property into possession. On the other hand, assets outside [England] do not vest in an English personal representative by virtue of his grant."

By virtue of section 245 of the **Business Companies Act, 2004**, the BVI is the situs of ownership of shares issued by BVI companies for the purposes of determining matters relating to title. Equally, the custody agreements entered into by Citco Trust are governed by BVI law and so are also arguably BVI property as the BVI is the forum in which an action on those agreements can be brought.[44] The grant by the Cypriot court would therefore not extend to the shares in the BVI Companies or arguably the custody agreements.

[89] Mr. Iacovides has taken no step to obtain a grant from a BVI court, although it appears that he may not have gone so far as to say that he would not do so. It therefore becomes arguable that he had no authority to exercise control over the shares in the BVI companies by giving instructions as to how they should be voted, and Citco Trust ought not to have acted on these instructions, save to its own peril including that the actions may be nullities.[45] Nevertheless, the issue here is not merely one of administration of George's BVI estate, but of competing claims between the alleged trust and the estate to the shares. In such a case, the real consideration is not whether any other personal representative can claim a better title to the shares than Mr. Iacovides as administrator appointed by the Cypriot court; but, whether the trustee can claim a better title to the shares and whether Mr. Iacovides had any right to act on behalf of a trust whose existence he does not admit. This, in my judgment, is a matter for trial once there is a serious issue to be tried as to the existence of the trust.

**The appellants' intentions in seeking the injunction**

[90] I can now turn to grounds 13, 14 and 15 of the counter-notice, with which I propose to deal together. These allege in summary that the appellants' purpose in seeking the injunction is to preserve their control over the structure by which JPO

[44] Re Banque des Marchands de Moscou (Koupetschesky) (No. 2) [1954] 1 WLR 1108.
[45] See Mountford v Gibson (1804) 4 East 441.

is held, and the prevention of the oversight of such control by Mr. Iacovides, and that there was no evidence that his control would cause any risk to the property or its value whereas there was evidence of a risk to such value while the property was under the control of the appellants.

[91] The court below did not make any findings in respect of the purpose for which the injunction was sought. In the absence of cross-examination, and bearing in mind the limited role of a court at this stage in making findings of fact, I find that I am unable to arrive at a conclusion that the purpose of the application for interim relief was solely the preservation of control over the JPO structure. It is difficult, in my view, to distinguish between such control and the ownership, and therefore the right to vote or to control the vote, as an incident of such ownership of the shares of the BVI companies. It is similarly difficult to understand why Mr. Iacovides would have oversight over the BVI companies where they do not form part of the assets of the Cypriot estate; he has not sought a grant in the BVI and he denies the existence of the alleged trust of which he might possibly be the successor trustee. That Mr. Iacovides may have meant no harm or may have caused no harm, misses the point. If, as the appellants allege, he has no right to intermeddle in the BVI companies and their subsidiaries, then this is sufficient for a court to grant protective orders to restrain him from doing what he is not entitled to do.

**Citco Trust's position on appeal**

[92] I can now deal briefly with the position of Citco Trust on this appeal. Citco Trust has, once more, signaled its retreat to a position of neutrality, taking no stance on whether the injunction should be continued or discharged. In some ways this is an unusual position for it to take seeing that the nub of the appellants' complaint lies in the actions and consequences of such actions taken by Citco Trust in voting for the changes of management of the structure. Citco Trust sought guidance from the court below in relation to the continued management of the BVI Companies. This was refused, rightly in my view, by the court below and in the absence of an appeal from that decision, there is no basis on which this Court should seek to

differ from that position. In any event, the evidence does not reveal that Citco Trust had a role in the management of the BVI Companies of which it was merely the authorized custodian of the shares issued by these companies. Citco Trust also sought to support the direction by the court below of an inquiry into damages. For the reasons given earlier in this judgment, I have come to the conclusion that this direction, was in any event, premature.

**The interests of justice in regranting the injunction**

[93] I can now return to the issue of whether the interests of justice require this Court to exercise its discretion in favour of regranting the injunction by considering whether the lesser irremediable prejudice lies in the grant or refusal of the injunction. In my judgment, the critical factors remain firstly, that Mr. Iacovides does not advance a positive case, to date, in the face of the claim by Thelma and Christina, that the shares form part of George's estate that is administered by the Cypriot court or are the subject of trust of which he claims to be trustee, nor does he claim to be acting on behalf of Endra Foundation. If therefore, he represents none of the possible claimants to the beneficial interest in the shares of the BVI Companies, his argument that he was acting to protect the beneficiaries and the shares seems difficult to justify.

[94] Secondly, there is that Citco Trust, despite its vacillating approach to this matter, appear to have come down on the side of following instructions from Mr. Iacovides unless prohibited from doing so by a court order. The appellants have made a claim with a real prospect of success, as found by the court below and with which finding I agree, that the shares are subject to a trust outside the estate. In my judgment, the course of least irremediable prejudice lies in the regrant of interim protection of the subject matter of that trust (the shares in the BVI Companies and the rights to control Dabcey) pending the determination of the claim.

**Conclusion and order**

[95] In all the above circumstances, I would therefore set aside the order made by the Learned Judge and further order that, provided that the appellants take steps within 7 days of this order to join Leonie Paraskevaides and Efthyvoulos Paraskevaides as defendants to the claim and to seek permission to serve them with the claim out of the jurisdiction (if required), the injunctions be regranted along the following lines and would ask that the parties agree the form of this order:

(i) Citco Trust shall be restrained from voting the shares it holds in the companies as custodian without the prior consent in writing of the claimants or a trustee appointed by the beneficiaries of the trust or from acting on the instructions of Mr. Iacovides in his capacity as personal representative of the estate of George Paraskevaides appointed by the Cypriot court. Citco Trust should pass resolutions to remove Mr. Iacovides and Dandyboard Ltd as directors of the BVI Companies and should reinstate Mr. Michaelides as director.

(ii) Mr. Iacovides and Dandyboard Ltd shall not exercise any powers as directors of the BVI Companies pending their removal and shall hand over all books and records in relation to these companies in their possession to Mr. Michaelides and prepare and submit to him a report on all actions taken by them as directors of these companies from 23rd April 2018 to date of handover, within 21 days of the date of this order. Mr. Iacovides is restrained from giving instructions to Citco Trust in relation to its exercise of any powers as custodian of the shares under the custodian agreement or the **Business Companies Act, 2004**.

(iii) The BVI Companies, pending the determination of the claim or further order are restrained from disposing of, encumbering or dealing with the shares held by them in Dabcey Corporation provided that this restriction does not extend to exercising the voting rights to remove the Cyprus companies, respondents 7 to 10 in this

appeal, as directors of Dabcey and reinstating those persons who were directors of Dabcey immediately prior to 24th April 2018.

(iv) Respondents 7 to 10 shall hand over all books and records in relation to Dabcey in their possession to the reinstated directors of Dabcey, within 14 days of this order and prepare and submit to them a report on all actions taken by them as directors of Dabcey from the date of their appointment to the date of handover within 21 days of the date of this order.

(v) Dabcey be restrained from disposing of or encumbering or dealing with any shares or interest in the shares held by it in JPO.

[96] As matters such as the sufficiency of the disclosure, the seal and gag order and the stay of the claim pending determination of the arbitration were not raised before this Court or dealt with in the ruling of the Learned Judge, I direct that these issues be listed before the High Court for determination if the appellants wish to pursue them.

[97] There remains the matter of costs. The appellants are the successful parties before this Court and I can see no reason why the general rule that costs follow the event should not be applied. I would therefore direct that the costs of the hearing before this Court and before the Learned Judge in the court below be paid to the appellants by Citco Trust, Mr. Iacovides and the 7th to 10th respondents, with such costs to be assessed if not agreed within 21 days. These costs will be discounted by 10% to reflect the Court's disapproval of the appellants' failure to comply with their undertakings.

[98] It would be remiss of me not to thank Mr. Flynn, QC and Mr. Chivers, QC and their respective juniors for the immense assistance that they gave to this Court by the

clear and learned written and oral submissions and very comprehensive hearing bundles that were before us.

I concur.
**Mario Michel**
Justice of Appeal

I concur.
**Reginald Armour, SC**
Justice of Appeal [Ag.]

**By the Court**

**Deputy Chief Registrar**