Neutral Citation Number: [2025] EWHC 829 (Ch)

Case No: BL-2022-000657 & BL-2023-000303

IN THE HIGH COURT OF JUSTICE
CHANCERY DIVISION
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES

Royal Courts of Justice, Rolls Building,
Fetter Lane, London, EC4A 1NL

Date: 7 April 2025

Before :

MR JUSTICE RAJAH

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Between :

BL-2022-000657

(1) ZAZA OKUASHVILI
(2) VELSAN TRADING CORPORATION
(3) OLYMPUS LTD

Claimants

- and –

(1) BIDZINA IVANISHVILI
(2) OTAR PARTSKHALADZE
(3) LEVAN KIPIANI
(4) TBC BANK GROUP PLC
(5) JSC TBC BANK

Defendants

BL-2023-000303

(1) ALLIED GLOBAL TOBACCO LIMITED
(2) OMEGA MOTOR GROUP LLC
(3) ZAZA OKUASHVILI

Claimants

- and –

(1) JSC TBILISI TOBACCO
(2) LEVAN KIPIANI

(3) BIDZINA IVANISHVILI
(4) OTAR PARTSKHALADZE
(5) IRAKLI CHUBINI
(also known as IRAKLI CHUBINISHVILI)
(6) IVANE CHKHARTISHVILI

Defendants

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DEAN ARMSTRONG KC and **ANDREW MAGUIRE** (instructed by **Keystone Law**) for the **Claimants**

LOUISE HUTTON K.C. and **WATSON PRINGLE** (instructed by **Blake Morgan LLP**) for **MR BIDZINA IVANISHVILI**

THOMAS MUNBY KC (instructed by **Alius Law**) for **MR OTAR PARTSKHALADZE**

WILLIAM BUCK (instructed by **Fladgate LLP**) for **MR LEVAN KIPIANI**

KOYE AKONI (instructed by **Baker & McKenzie LLP**) for **TBC BANK GROUP PLC** and **JSC TBC BANK**

SIMON ATRILL KC and **CHRISTOPHER MONAGHAN** (instructed by **Mishcon De Reya LLP**) for **MR IRAKLI CHUBINI (also known as IRAKLI CHUBINISHVILI)**

BARRY COULTER (instructed by **Lawlex Solicitors**) for **JSC TBILISI TOBACCO** and **MR IVANE CHKHARTISHVILI**

Hearing dates: 27 – 31 January

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APPROVED JUDGMENT

Mr Justice Rajah :

A. Introduction

1. This is a jurisdiction dispute in relation to two claims brought by Mr Zaza Okuashvili and certain of his companies which I will refer to as Claim 1 (Bl-2022-000657) and Claim 2 (BL-2023-000303). Mr Okuashvili's primary target in each is Mr Bidzina Ivanishvili, the former Prime Minister of Georgia, although there are a number of other parties in each claim. All the Defendants have applied, albeit on different grounds, to stop either claim continuing in this jurisdiction.

2. In Claim 1, the claims relate to an alleged extortion by Mr Ivanishvili with the involvement of the other Defendants, of the sum of $1.79m from Mr Okuashvili's companies in Georgia.

3. In Claim 2, the claims relate to a Georgian patent owned by one of Mr Okuashvili's companies, its alleged infringement and devaluation, and an alleged attempt to force a merger of Mr Okuashvili's company exploiting the patent with another company, for the benefit of Mr Ivanishvili. The other Defendants are said to have been participants.

B. Issues

4. The key issues which arise for each of Claims 1 and 2 are these.

5. Should the Court accept jurisdiction?

    a. Do any of the claims raise a serious issue to be tried? This raises questions as to whether the claims are governed by English law or Georgian law, and if by Georgian law whether they are time-barred. It also raises questions as to whether the facts alleged are sufficient to make out the claims which are alleged.

    b. Do any claims, where there is a serious issue to be tried, pass through one of the gateways provided by the Civil Procedure Rules justifying service out of the jurisdiction?

    c. Is England and Wales the appropriate forum to determine this case or is it Georgia? The Claimants say that they cannot get justice in Georgia because of Mr Ivanishvili's influence there.

    d. The Court has an overarching discretion not to accept jurisdiction. Should it be exercised?

6. Should the Court set aside the orders made by the Masters permitting service out of the jurisdiction on the Defendants on the basis that the Claimants did not make full and frank disclosure?

7. Have the Claims been validly served on all the Defendants? Some of the Defendants dispute that they have been properly served under Georgian law and say that email service ordered by the Master in Claim 2 was inappropriate. If there is a defect in service, should it be waived by the Court?

8. The Defendants' main challenge is as to whether there is a serious issue to be tried in respect of each of the claims against each of the Defendants. The next question is whether there has been full and frank disclosure on that issue to the Masters who made the orders for service out of the jurisdiction. I will deal with those issues first after setting out the background. I intend only to deal with the issues which I consider need to be decided to reach a conclusion on this jurisdiction dispute.

C. Parties

Claimants

9. Zaza Okuashvili was once a Georgian national. He has been resident in London since 2005 and a British citizen since 2011. Mr Okuashvili is the owner of a number of companies loosely described by him as the Omega Group (although not, as a matter of corporate structure, all part of the same group). Through his companies, Mr Okuashvili had business interests in Georgia until the Georgian Dream party came to power. Mr Okuashvili is the first Claimant in Claim 1 and the third Claimant in Claim 2. The other Claimants are his companies.

10. Velsan Trading Corporation ("**VTC**") is the second Claimant in Claim 1. It is a company incorporated in the British Virgin Islands and is owned directly by Mr Okuashvili as sole shareholder. Olympus Limited ("**Olympus**") is the third Claimant in Claim 1. Olympus is a company incorporated in Georgia. It is indirectly owned by Mr Okuashvili through a nominee and an intermediate company.

11. The first Claimant in Claim 2 is Allied Global Tobacco Limited ("**AGT**"). It is a company incorporated in England and Wales. Mr Okuashvili is the sole shareholder. Omega Motor Group LLC ("**OMG**"), a Georgian company, is the second Claimant in Claim 2. It is wholly owned directly by Mr Okuashvili.

Defendants

12. Bidzina Ivanishvili is resident in Georgia. He is the founder of the ruling Georgian political party called "*Georgian Dream*" and is presently its Honorary Chairman. He served as Prime Minister of Georgia from 2012 to 2013. He is the first Defendant in Claim 1 and the third Defendant in Claim 3.

13. Otar Partskhaladze is a Georgian resident. He was briefly the former Prosecutor General of Georgia at the end of 2013. He is the second Defendant in Claim 1 and the fourth Defendant in Claim 2.

14. Levan Kipiani is also a Georgian resident and a former Minister of Sports and Youth Affairs in Georgia. He is the third Defendant in Claim 1 and the second Defendant in Claim 2.

15. Irakli Chubinishvili is a Georgian resident in Kenya. He was the Georgian ambassador to Russia between 2005 and 2008. He is the fifth Defendant in Claim 2.

16. Ivane Chkhartishvili is another Georgian resident. He was Minister of Economy, Industry and Trade for Georgia from 2000 to 2001. He is the sixth Defendant in Claim 2.

17. Mr Chubinshvili and Mr Chkhartishvili were the joint owners of the first Defendant in Claim 2, a Georgian company called JSC Tibilisi Tobacco ("**TT**") until 2019 when Mr Chubinishvili sold his shares. TT manufactures and distributes tobacco products.

18. TBC Bank Group PLC ("**TBC UK**") is a company incorporated in England and Wales. It is the parent company of JSC TBC Bank ("**TBC Georgia**"), a leading bank headquartered and operating in Georgia. They are the fourth and fifth Defendants in Claim 1.

D. The Claims

Claim 1

19. The allegations in Claim 1 can be summarised as follows.

    a. In 2003-4, following the Rose Revolution in Georgia, the offices of the *'Omega Group'* were raided and damaged by officials of the then new (Saakashvili) government.

    b. On 16 September 2015 Mr Kipiani had, at his request, been engaged as a consultant by Omega 2 LLC ("**Omega 2**"), a Georgian company owned by VTC under a contract with an exclusive jurisdiction clause in favour of the courts of England and Wales ("**the 2015 Consultancy Agreement**").

    c. In November 2015, with the Georgian Dream party back in office and at Mr Ivanishvili's request, Mr Kipiani arranged a meeting between himself, Mr Okuashvili and Mr Ivanishvili in Mr Ivanishvili's office. Mr Ivanishvili said that the State would compensate Mr Okuashvili for the damage caused to his companies in 2003-4.

    d. In a series of meetings attended by Mr Ivanishvili or people acting on his behalf (including Mr Patskhaladze and Mr Kipiani) with Mr Okuashvili or people acting on his behalf, Mr Ivanishvili said that if Mr Okuashvili wanted to open up negotiations for those reparations in the

sum of around GEL 25 million ($10 million) to be paid, he should pay $4 million to the government.

e. A number of threats were made by Mr Partskhaladze and Mr Kipiani on behalf of Mr Ivanishvili that if the $4 million was not paid, Mr Okuashvili's businesses would be harmed and Mr Okuashvili, his family, the directors of his companies and their families would be physically harmed.

f. Mr Kipiani demanded that a separate company be set up to make the payment. Such a company was set up on 19 April 2016 – this was Olympus. Mr Okuashvili arranged for VTC to pay $1.79 million (being GEL 4 million rather than the $4 million which had been demanded) to Olympus on 20 April 2016, in an account opened by it at TBC Georgia.

g. On 21 and 22 April 2016, at Mr Kipiani's instruction, the money was withdrawn in cash, put into bags and taken away in black cars with armed men inside them. Mr Okuashvili infers that those men were employees of Mr Ivanishvili and/or Mr Partskhaladze and contends that the money was withdrawn for the benefit of Mr Ivanishvili.

h. Omega 2 has assigned any claims it has against Mr Kipiani under the 2015 Consultancy Agreement to Mr Okuashvili.

20. The legal causes of action now relied upon against the Defendants can be summarised as follows:

a. Breach of contract and breach of fiduciary duty by Mr Kipiani.

b. Dishonest assistance in Mr Kipiani's breach of fiduciary duty by Mr Ivanishvili, Mr Partskhaladze, TBC UK and TBC Georgia.

c. The tort of unlawful interference with the economic relationship arising from the 2015 Consultancy Agreement and the tort of inducement of a breach of that contract by Mr Ivanishvili and Mr Partskhaladze.

d. The tort of intimidation by Mr Ivanishvili, Mr Partskhaladze and Mr Kipiani.

e. The tort of conspiracy by Mr Ivanishvili, Mr Partskhaladze and Mr Kipiani to obtain money and cause harm by unlawful means.

f. Unjust enrichment of Mr Ivanishvili.

g. Breach of statutory duty by TBC Georgia.

h. The tort of negligence by TBC UK and TBC Georgia.

21. The original Particulars of Claim, and application for service out of the jurisdiction, were premised on legal causes of action in Claim 1 arising under the law of Georgia. As appears below, the Claimants in Claim 1 now propose to amend to allege, among other things, that the causes of action above arise under the law of England and Wales (for convenience "***English law***"), alternatively the law of Georgia.

22. The Claimants in Claim 1 claim the following relief:

    a. Damages or restitution of $1.79m, representing the withdrawn funds.

    b. Damages for "*consequential losses*" of "*at least $23 million*", said to constitute:

        i. profits which the Claimants claim have been lost by 'the Group' by virtue of having to dip into its working capital, rather than using the $1.79m that had to be handed over by virtue of the matters complained of, in order to complete the construction of a Bentley and Maserati showroom which 'the Omega Motor Group' was in the process of building at the time; and

        ii. loss and damage caused to the 'Omega Group' by virtue of a delay in purchasing tobacco related equipment from China, caused by the withdrawal of the $1.79m.

    c. Legal costs in excess of $250,000 which continue to accrue.

Claim 2

23. In Claim 2, the allegations are in summary as follows:

    a. In 2010-11, Mr Okuashvili's English company, AGT, obtained a patent for a type of non-filter cigarette taxable at a lower excise rate than normal cigarettes ("**the Patent**"). No other entities were entitled to manufacture or sell non-filter cigarettes of this type in Georgia.

    b. In 2013 AGT granted another of Mr Okuashvili's companies, OGT LLC ("**OGT**"), a Georgian company, an exclusive licence to use the Patent for a term of five years. OGT began manufacture and distribution of the patented cigarettes in May 2017 and they proved to be very popular.

    c. The Georgian State preferred an entity favourable to it, TT, owned by Mr Chkhartishvili and Mr Chubini, to produce that type of cigarette instead (and to pay a stipend, referred to in the pleading as "*tugriks*", to the government for the privilege). TT started to do so, and OGT demanded that it stop on the basis that it was infringing the Patent.

d. Mr Chubini and Mr Chkhartishvili told Mr Okuashvili that Mr Ivanishvili had decided to merge the two companies (OGT and TT) on terms unfavourable to OGT, and that Mr Ivanishvili would control the merged vehicle (defined in the Particulars of Claim as the "*Merger*"). They said that Mr Okuashvili had no alternative but to agree to this plan.

e. A number of threats were made that Mr Okuashvili's companies would lose their businesses, and he and his employees would lose their lives if they did not enter into the proposed Merger and pay *tugriks* to the government for continuing to be able to profit from the Patent.

f. In the meantime, while Merger negotiations were ongoing, Mr Chubini and Mr Chkhartishvili insisted that profits from the use of the Patent should be capped at a particular level, and TT continued to infringe the Patent by producing the patented type of non-filter cigarettes.

g. Omega 2 had stopped paying Mr Kipiani under the 2015 Consultancy Agreement in July 2016. Mr Partskhaladze informed Mr Okuashvili that he was required to immediately resume payments to Mr Kipiani and this resulted in Mr Kipiani being employed by OMG under a virtually identical consultancy agreement ("**the 2017 Consultancy Agreement**").

h. Mr Okuashvili and OGT did not ultimately agree to enter into the Merger.

i. The government responded by increasing financial pressure upon OGT such that it was unable to continue its tobacco production business, which shut down in August 2018.

24. In Claim 2 the legal causes of action relied upon against the Defendants under English law, alternatively Georgian law, can be summarised as follows:

a. Breach of contract and breach of fiduciary duty by Mr Kipiani.

b. Dishonest assistance in Mr Kipiani's breach of fiduciary duty by TT, Mr Ivanishvili, Mr Partskhaladze, Mr Chubini and Mr Chkhartishvili.

c. The tort of intimidation by TT, Mr Kipiani, Mr Ivanishvili, Mr Partskhaladze, Mr Chubini and Mr Chkhartishvili.

d. The tort of conspiracy by TT, Mr Kipiani, Mr Ivanishvili, Mr Partskhaladze, Mr Chubini and Mr Chkhartishvili to obtain money and cause harm by unlawful means.

e. Unjust enrichment of TT and Mr Kipiani.

25. On that basis the Claimants' claim for relief includes:

a. an account of profits by TT from its use of the Patent between 2016 and 2019;

b. an account of profits made by Mr Kipiani and compensation for any loss caused to OMG; and

c. in damages:

    i. the profits lost by the "*Omega Group*" generally by virtue of the inability to prevent TT from infringing the Patent from 2016 to 2019, estimated as at least $20m;
    ii. any losses arising from the diminution in value of the Patent by virtue of AGT being unable to prevent infringement of it by TT; and
    iii. any losses arising from the fact that AGT lost the chance to negotiate an additional licence fee when the OGT licence expired on 5 January 2018.

E. Procedural background

26. Claim 1 was issued on 19 April 2022. An order granting permission to serve the Claim Form out of the jurisdiction on Mr Ivanishvili, Mr Partskhaladze, Mr Kipiani and TBC Georgia was made by Deputy Master Arkush on 12 September 2022 ("**the Arkush Order**").

27. By 13 January 2023 all of the Defendants in Claim 1 had issued applications to challenge jurisdiction. Mr Ivanishvili, Mr Partskhaladze, Mr Kipiani and TBC Georgia disputed that the Court had jurisdiction and all the Defendants asserted that if the Court had jurisdiction, it should not exercise it and England was not the appropriate forum. Mr Partskhaladze, Mr Kipiani and TBC Georgia also asserted that the Claim Forms had not been validly served on them.

28. On 8 September 2023 the Claimants in Claim 1 issued an application to amend the Particulars of Claim in Claim 1 and served draft Amended Particulars of Claim. As stated already, one aspect of the proposed amendment is to plead that the causes of action are governed by English law, the original claim having only made claims under Georgian law. That application has yet to be heard and may be opposed. However, the Defendants in Claim 1 have agreed that *"the jurisdiction challenge in Claim 1 should proceed on the basis of the claims set out in the draft Amended Particulars of Claim"*. I take this to mean that I should assume that if service is not set aside this is the claim which will be advanced and so the question of whether there is a serious issue to be tried, for example, is to be judged by reference to the draft Amended Particulars of Claim.

29. Claim 2 was issued on 2 March 2023. An order for service of the Claim Form out of the jurisdiction on all the Defendants to Claim 2 was made by Master Pester ("**the Pester Order**"). The order included an order for substituted service on each of the Defendants by email to specified email addresses.

30. By the end of March 2024 all of the Defendants had applied to set aside the order of Master Pester asserting that the Court had no jurisdiction alternatively that if the Court had jurisdiction it should not exercise it and England was not the appropriate forum. TT, Mr Kipiani, Mr Partskhaladze and Mr Chkhartishvili also disputed that the Claim form had been properly served within time.

31. The jurisdiction challenges in Claim 1 were due to have been heard in October 2023, but the hearing was vacated.

32. The Claimants have been represented by JMW Solicitors LLP throughout this period and until relatively recently. Keystone Law came on the record on 10 December 2024.

F. Service out of the jurisdiction - principles

33. On a defendant's application under CPR Part 11 to challenge the grant of permission, the original without notice grant of permission "*leaves no footprint*"; Briggs, Civil Jurisdiction and Judgments, 7th ed (2021) para 27.07. On the defendant's application, the burden remains on the claimant to show the court that the grant of permission is justified: *Navig8 Pts Ltd v Al-Riyadh Co* [2013] EWHC 328 (Comm); [2013] 2 CLC 461 at [10]. To justify the grant of permission by the Court to serve out of the jurisdiction under CPR r.6.36 and 6.37, each claimant must show that each of their claims against each defendant satisfies the four requirements set out below: *Altimo Holdings and Investments Ltd v Kyrgyz Mobil Tel* [2011] UKPC 7, [2012] 1 WLR 1804 at [71] per Lord Collins.

F.1 Serious issue to be tried

34. The first requirement is that there must be a serious issue to be tried on the merits. This means that there must be a real, as opposed to fanciful, prospect of success on the claim. A mini-trial is to be avoided; *Lungowe v Vedanta Resources Plc* [2019] UKSC 20, [2020] AC 1045 at [9] to [16], *Okpabi v Royal Dutch Shell Plc* [2021] UKSC 3, [2021] 1 WLR 1294 at [20] –[23]. The analytical focus is on the particulars of claim (where there are some) and whether, on the basis that the facts there alleged are true, the cause of action has a real prospect of success; *Okpabi* at [22].

F.2 Good arguable case that it passes a gateway

35. The second requirement is that there must be a good arguable case that the claim falls within one of the jurisdictional gateways in CPR PD 6B paragraph 3.1. A "*good arguable case*" in this context means that in respect of each claim, each claimant has "*the better of the argument*" than the foreign defendant that the claim falls within a gateway. If there is a dispute of fact (including a dispute of foreign law), the Court will take a view on the material available if it can reliably

do so. If it cannot, there is a good arguable case if there is a plausible evidential basis for it; *Brownlie v Four Seasons Holdings Inc* [2018] 1 WLR 192 at [7].

F.3 England is the appropriate forum

36. The third requirement is that England must be clearly or distinctly the appropriate forum for the trial of the claim. The "*appropriate"* forum means that in which the case may be tried more suitably for the interests of all the parties and the ends of justice: *Spiliada Maritime Corp v Cansulex Ltd* [1987] AC 460 at 476C, *Lungowe* at [66]. In determining the appropriateness of the forum, the Court looks at connecting factors to determine with which forum the action has the most real and substantial connection (*Spiliada* at p. 478A). These include not only factors affecting convenience or expense, but also factors such as governing law, the place where the parties reside or carry on business, and where the wrongful acts and harm occurred (*Spiliada* p.478A-B). The risk of multiplicity of proceedings giving rise to a risk of inconsistent judgments is only one factor but it is an important one (*Lungowe* at [69]). In applying these connecting factors to cases involving multiple defendants their relative status and importance in the case should be taken into account, such that greater weight is given to the claims against those who may be described as a principal or major party or chief protagonist; *JSC BTA Bank v Granton Trade Limited* [2010] EWHC 2577 (Comm) at [28], *Limbu v Dyson Technology Ltd* [2024] EWCA Civ 1564 at [22].

37. In respect of the Defendants in respect of whom the Claimants need permission to serve out of the jurisdiction, the burden is on the Claimants to show that England is clearly the more appropriate forum. Those Defendants (such as Mr Kipiani and TBC Bank Group Plc) who have been served by the Claimants as of right and contend that the Court should nevertheless not exercise its jurisdiction to try the claim because England is not the appropriate forum (*forum non conveniens)* have the burden of showing that there is another available forum that is clearly more appropriate. In a mixed service in and service out case such as this, the Court has to look holistically and in the round at the question of appropriate forum to identify the single jurisdiction where the claims against all the defendants may most suitably be tried; *Limbu* at [33].

38. For both service in and service out cases, if the Court concludes that the foreign court is more appropriate by reference to connecting factors, the Court will nevertheless retain jurisdiction, if the Claimant can show by cogent evidence that there is a real risk that it will not be able to obtain substantial justice in the appropriate foreign jurisdiction (*Lungowe* at [88]). If there is a real risk of denial of justice in a particular forum it is unlikely to be an appropriate one in which the case can most suitably be tried in the interests of the parties and the ends of justice (*Lungowe* at [88]).

F.4 In all the circumstances, the court should exercise its discretion to permit service out

39. Finally, the Court retains a discretion to refuse to permit service out even if the above requirements are satisfied. It may do so, for example, where a particular anchor defendant has only been sued in order to enable a claim to be brought against another defendant: *Erste Group AG (London) v JSC (JMV Red October)* [2015] EWCA Civ 379, [2015] 1 CLC 706 at [150].

G. Serious issue to be tried

G.1 Breach of contract/fiduciary duty

40. Mr Kipiani is the main anchor Defendant in both Claims. If there is no serious issue to be tried between the Claimants and Mr Kipiani then that will raise significant issues as to which causes of action and gateways are available to the Claimants in respect of the other Defendants.

41. The claims which make Mr Kipiani the anchor Defendant are claims for breach of contract and breach of fiduciary duty arising from the virtually identical 2015 and 2017 Consultancy Agreements. There is no dispute that clause 14 of each of the 2015 and 2017 Consultancy Agreements confers exclusive jurisdiction, to determine disputes arising from the respective agreement on the Courts of England and Wales. By their Particulars of Claim (the proposed amended version in the case of Claim 1), the Claimants assert that the 2015 and 2017 Consultancy Agreements are also governed by English law. The significance of that is that if the governing law of the 2015 and 2017 Consultancy Agreements is English law, the Defendants accept that the claims for breach of contract and the claims for breach of fiduciary duty will be governed by English law. Claims for breach of contract and breach of fiduciary duty under English law were arguably not time barred when the Claim Form was issued. Whereas claims for breach of contract under Georgian law have a three-year limitation period and would have been time barred, unless some exception applied. There is also no agreement between the experts as to whether Georgian law recognises fiduciary duties.

2015 and 2017 Consultancy Agreements

42. The copies of the 2015 and 2017 Consultancy Agreements which are before the court are translations into English of the original Georgian language documents.

43. The 2015 Consultancy Agreement is dated 16 October 2015 and is made between Omega 2 and Mr Kipiani. Under its terms, Mr Kipiani agreed to provide consultancy services to Omega 2 or any "*Group Company*". A "*Group Company*" was defined as Omega 2's subsidiaries or holding companies and any subsidiaries of any holding company from time to time. The only "*Group Company*" within that definition is VTC which was at the time Omega 2's holding company.

44. The consultancy services were set out in a schedule and were to communicate in Omega 2's interests and in support of its business operations with the governmental authorities and institutions of Georgia. The place of providing these services was stated to be Georgia.

45. Clause 3.1 imposed a duty on Mr Kipiani to act with due care and skill and to use his best endeavours to promote the interests of Omega 2 and VTC. By clause 7, Mr Kipiani agreed to personally indemnify Omega 2 and VTC for any loss arising from a breach of the 2015 Consultancy Agreement by him.

46. The 2017 Consultancy Agreement is made between OMG and Mr Kipiani and is otherwise in identical terms. There are no companies falling within the definition of "*Group Company*" in relation to OMG.

Governing law

47. The law governing the Consultancy Agreements is to be determined by reference to the Rome 1 Regulation (as now incorporated into English law). The primary rule as set out in Article 3 is that the contract is governed by the law chosen by the parties, either expressly or as clearly demonstrated by the terms of the contract or the circumstances of the case. If the governing law is not express, the Court must find that the parties made a real choice, but it is just not expressed in the contract, rather than not having made a choice at all.

48. Clause 14 in the 2015 and 2017 Consultancy Agreements provides:-

"14. <u>Governing Law and Jurisdiction</u>

14.1 The parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with the Agreement or its subject matter or formation (including non-contractual disputes or claims)."

49. Although headed "*Governing Law and Jurisdiction*", there is no dispute that the words below it deals expressly only with jurisdiction and confer exclusive jurisdiction on the Courts of England and Wales in respect of claims arising out of the Agreements. Recital 12 of the Rome 1 Regulation states that an agreement to confer exclusive jurisdiction on the courts of a country is "*one of the factors*" to be taken into account in determining whether a choice of law has been clearly demonstrated. The heading and the terms of clause 14 provide further support for the contention that the governing law and jurisdiction were to go together. There are other indications that the governing law was intended to be the law of England and Wales, such as the reference to English statutes such as the Bribery Act 2010 and the Employment Rights Act 1996. Clause 13 excludes a non-party to the Agreement from having any rights under the Contracts (Rights of Third Parties) Act 1999 which is, at the very least, an odd provision to have

in a contract which was intended to be governed by Georgian law. It is difficult to see what application that English statute could have if the contract was governed by Georgian law, as the Defendants contend. I am satisfied that there is a serious issue to be tried as to whether the 2015 Consultancy Agreement is governed by English law and the Claimants have the better of the argument on this issue.

Claim 1

50. The Defendants say that even if the claims against Mr Kipiani for breach of contract and breach of fiduciary duty are not time barred, there is no serious issue to be tried. This is because the alleged loss that is pleaded of $1.79m is pleaded as loss suffered by VTC and Olympus. It is not alleged that any loss has been suffered by Omega 2, as Mr Kipiani's counterparty to the 2015 Consultancy Agreement. The claims for lost profits by "*the Omega Group*" and for legal fees incurred by "*VTC and/or Olympus and/or Okuashvili (as assignee of Omega-2 as pleaded above)*" are said to be unsatisfactorily vague and in any event do not identify Omega-2 as having suffered any such loss.

51. However, under the terms of the Consultancy Agreement Mr Kipiani owed a contractual duty to Omega-2 to promote the interests of VTC as a Group Company (clause 3.1.1) and to indemnify VTC from loss arising from any breach of the 2015 Consultancy Agreement. Omega2, and ostensibly Mr Okuashvili as its assignee, can seek to enforce those duties owed by Mr Kipiani in respect of loss suffered by VTC. In addition, in principle if the agreement gave rise to fiduciary duties, they transcend the contract and the rules of privity of contract. If owed to VTC, VTC can enforce them directly in respect of loss suffered by it.

52. The Claimants have pleaded loss suffered by VTC. They say that Mr Okuashvili, Olympus and VTC were intimidated by Mr Ivanishvili, Mr Partskhaladze and Mr Kipiani. They say that VTC was coerced into transferring $1.79m to Olympus' account at TBC Georgia and Olympus was coerced into withdrawing that sum and handing it over at the bank's premises in Tbilisi. These actions by Mr Kipiani are relied on as giving rise to breaches of contract and fiduciary duty. The Defendants say that the loss of $1.79m is loss suffered by Olympus and not VTC because the money was withdrawn from Olympus' bank account. I think that is questionable in the circumstances pleaded whereby Olympus was allegedly created at the coercers' demand for their purposes as a vehicle to receive the money to be appropriated, and to cover their tracks. Even if it were correct, that analysis fails to consider VTC's own loss in being forced to transfer a similar sum away from its bank account to Olympus. VTC has no shareholding or interest in Olympus.

53. I conclude that there is a serious issue to be tried in Claim 1 as against Mr Kipiani in relation to the claims by VTC and Mr Okuashvili for breach of contract and breach of fiduciary duty.

Claim 2

54. A similar point is made by the Defendants, but with more force, in relation to Claim 2. The Patent was owned by AGT and licensed to OGT. The Defendants say the real loss from infringement of the Patent was suffered by OGT, but the pleaded claim is for loss suffered by AGT. In any event, neither OGT nor AGT were parties to the 2017 Consultancy Agreement. The 2017 Consultancy Agreement was between OMG and Mr Kipiani. No loss by OMG is pleaded. There were no Group Companies of OMG for the purposes of the Agreement. Unlike VTC and the 2015 Consultancy Agreement, neither OGT nor AGT were Group Companies for the purposes of the 2017 Consultancy Agreement. In such circumstances Mr Kipiani did not owe duties to promote the interests of OGT or AGT. He did not agree to indemnify them for loss caused by any breach of the 2017 Consultancy Agreement. He did not owe them fiduciary duties.

55. The Defendants also point out that the Claimants have not pleaded any acts by Mr Kipiani after the 2017 Consultancy Agreement was entered into. The last pleaded involvement of Mr Kipiani is in May 2016 while the 2017 Consultancy Agreement was entered into in March 2017. Although payments were made to him until October 2017, the pleading does not identify anything done by Mr Kipiani after March 2017 which is said to constitute a breach of contract or breach of fiduciary duty.

56. I conclude that there is no serious issue to be tried in Claim 2 between the Claimants and Mr Kipiani in relation to their claims for breach of contract and breach of fiduciary duty.

57. It follows that there is no serious issue to be tried in relation to the alleged wrongs associated with the alleged breaches of contract and fiduciary duty. There is no serious issue to be tried against the other Defendants in Claim 2 for dishonest assistance in Mr Kipiani's alleged breach of fiduciary duty. I do not refer to these further below.

G.2 The torts - Unlawful interference/inducement of breach of contract, intimidation, conspiracy, breach of statutory duty, negligence

Governing law

58. In relation to the causes of action founded in tort, the governing law falls to be considered under Article 4 of the Rome II Regulation (retained by s1A European Union (Withdrawal) Act 2018 in respect of events prior to 1 January 2021 and by section 6 of that Act in respect of events occurring thereafter).

59. Article 4 states as follows:

> "*1. Unless otherwise provided for in this Regulation, the law applicable to a non-contractual obligation arising out of a tort/delict shall be the*

> *law of the country in which the damage occurs irrespective of the country in which the event giving rise to the damage occurred and irrespective of the country or countries in which the indirect consequences of that event occur.*
>
> *2. However, where the person claimed to be liable and the person sustaining damage both have their habitual residence in the same country at the time when the damage occurs, the law of that country shall apply.*
>
> *3. Where it is clear from all the circumstances of the case that the tort/delict is manifestly more closely connected with a country other than that indicated in paragraphs 1 or 2, the law of that other country shall apply. A manifestly closer connection with another country might be based in particular on a pre-existing relationship between the parties, such as a contract, that is closely connected with the tort/delict in question."*

60. Mr Armstrong noted that dishonest assistance, being an equitable claim associated with the 2015 Consultancy Agreements, might logically be governed by the law governing that contract – English law on the Claimants' case. However, he made clear that he did not seek to argue that Dicey, Morris & Collins on the Conflict of Laws, 16th ed, which says otherwise, is wrong or to dissuade me from following it. To fit the framework of the Rome I and Rome II regulations, equitable claims, being unknown to many other legal systems, must be classified as "*contractual*" or "*non-contractual*" and then assigned to one of the rules within the two Regulations for determining the law applicable to contracts or non-contractual obligations: Dicey [34-091]. Dicey at 36-060 states:

    > *"**Dishonest assistance in breach of trust.** Dishonest assistance in a breach of trust is very likely to fall within the choice of law rules for torts in the Rome II Regulation. It is a claim based on non-contractual wrongdoing for which the paradigm claim is for compensation for loss. At common law, after some uncertainty, it appeared to have been established that the choice of law rules for torts applied equally to dishonest assistance. In Casio Computer Co Ltd v Sayo, the Court of Appeal considered that dishonest assistance fell within the European autonomous meaning of "matters relating to tort" under Art.5(3) of the Brussels Convention."*

61. In the absence of argument as to why the dishonest assistance claim in Claim 1 (or Claim 2) does not fall within Article 4 of Rome II, I proceed on the basis that it does.

62. In Claim 1, the Claimants say that Mr Okuashvili, Olympus and VTC were intimidated by Mr Ivanishvili, Mr Partskhaladze and Mr Kipiani, that VTC was coerced into transferring $1.79m to Olympus' account at TBC Georgia and that Olympus was coerced into withdrawing that sum and handing it over at the bank's premises in Tbilisi. These are the core factual allegations

which underpin all the non-contractual causes of action. The primary damage is the loss of $1.79m and that clearly occurred in Georgia. The other claims for consequential losses flowing from the loss of $1.79m are indirect consequences to be disregarded. The general rule that therefore the law governing the tort giving rise to that loss is Georgia is not displaced by the habitual residence of Mr Okuashvili in England and Wales or VTC's incorporation in the British Virgin Islands because Mr Ivanishvili, Mr Partskhaladze and Mr Kipiani are habitually resident in Georgia. Nor is it displaced by there being some other country which is manifestly more closely connected to these events than Georgia. Apart from one meeting in London, the acts of coercion and intimidation that are pleaded all took place in Georgia. The 2015 Consultancy Agreement is not closely connected to the torts – it is not alleged that the torts arose from the services to be provided pursuant to that Consultancy Agreement and none of the Defendants apart from Mr Kipiani are party to it. Georgia is the country which is manifestly most closely connected with these events.

63. In Claim 2, the loss is said to have been incurred by AGT from the diminution in value of its Patent and its inability to renew its licence with OGT when it expired. The Patent conferred exclusive rights on AGT in Georgia. The licence to OGT permitted OGT to manufacture and distribute the patented cigarettes in Georgia. A diminution in value of the Patent and loss from an inability to exploit the Patent in Georgia is loss which occurred in Georgia. Again, AGT's incorporation as an English company does not displace the general rule because almost all the Defendants, and in particular, the alleged puppet master, Mr Ivanishvili, are habitually resident in Georgia. More meetings in London are relied upon in Claim 2 than in Claim 1 and it is said that they were part of the coercion and intimidation. However, the claim is that the coercion and intimidation of Mr Okuashvili and his companies was to force him to do things in Georgia in respect of businesses carried on in Georgia. The 2017 Consultancy Agreement has no connection with the torts – see paragraph [55] above. It cannot in my judgment be said that England is more closely connected to these events than Georgia.

Georgian law – time bar

64. Expert reports on Georgian law from Professor George Jugeli, Dr Irakli Adeishvili, Professor Tevdore Ninidze and Associate Professor Giorgi Rusiashvili were relied on by the Defendants and by Professor Nunu Kvantaliani and Professor Lali Lazarashvili by the Claimants. The matters on which there is no disagreement are that:

    a. Article 992 provides a general rule of tort which covers all cases of non-contractual damage that are not listed or highlighted by a separate article in the Georgian Civil Code. Article 992 states; "*A person who has caused harm to another person by an unlawful, intentional or careless act is obliged to compensate him for this harm.*"

b. Article 998 of the Civil Code states:

"1. If more than one person has caused damage, they shall be liable as joint tortfeasors.
2. Tortfeasors as well as instigators and accessories, also those consciously benefiting from the damage caused to another person, shall be liable for the damage."

c. The limitation period for tort claims is three years from the moment when the affected person became aware of the damage and the person liable for the damage; Article 1008 of the Georgian Civil Code as interpreted in Georgian jurisprudence.

d. Therefore, the limitation period for the following torts (if they were all actionable in Georgia, which is not agreed) would be three years per Article 1008:
    a. dishonest assistance;
    b. unlawful interference and inducement of breach of contract;
    c. the tort of intimidation;
    d. unlawful means conspiracy.

e. The claims against TBC Georgia and TBC UK for breach of statutory duty or negligence, if actionable which is not agreed, would be three years from when the person knew or ought to have known of the breach if analysed as arising from a breach of the contractual mandate (Article 129) or three years from knowledge of the damage and the person who caused it if in in tort (Article 1008 above).

Exception to limitation period

65. There is no dispute that all claims under Georgian law in Claims 1 and 2 apart from unjust enrichment are *prima facie* time barred. The Claimants say that their claims are not time barred for two reasons. The first is that Article 132(b) of the Georgian Civil Code applies, and the second is that torts based on intimidation and coercion are "*continuing*" torts where the cause of action does not begin until the intimidation or coercion has ended.

Article 132(b)

66. In her report of 28 July 2023, Professor Kvantaliani, in answer to a general question in her instructions as to whether Georgian law allowed for the interruption or prolongation of the limitation period, explained that Article 132(b) provided for the suspension of the running of a period of limitations when "*filing of a claim is prevented by extraordinary and, under given circumstances, unavoidable force majeure*". The Georgian civil code does not define force majeure. Professor Kvantaliani's sets out her understanding of force majeure as "*According to the established opinion, irresistible force is a natural phenomenon, as well as political, military, social and other*

circumstances, which are insuperable for an authorized person and make it impossible to perform actions". Professor Kvantaliani does not identify any matters in Claim 1 or Claim 2 that could amount to force majeure and she does not say that it is her opinion that the limitation period has been arguably suspended in either Claim.

67. Nevertheless, Mr Westcott's witness statement of 28 July 2023 on behalf of the Claimants in Claim 2 relied on this aspect of Professor Kvantaliniani's report to say that the limitation period under Georgian law in relation to the Claimants' claims in Claim 2 were suspended pursuant to Article 132(b) because Mr Okuashvili is unable to obtain a fair trial in Georgia.

68. Dr Adeishvili's report of 15 March 2024 says there is no Georgian case law to support the application of Article 132(b), in a situation such as that in the present case. The case law contemplates "*natural disasters and public events (civil war) that break the normal regime of activity of transport, court or other bodies*". In any event, he says, the provision can only be to actual events not hypothetical ones. For Article 132(b) to apply, the Claimants will have needed to try to bring their case and have been unable to do. The Court can then judge whether the event which stopped them constituted *force majeure*. Here, the Claimants have not brought proceedings in Georgia, and as evidenced by their ability to issue Claims 1 and 2, there was nothing to stop them bringing claims in England within the Georgian limitation period.

69. The Claimants' latest expert, Professor Lazarashvili does not mention *force majeure* and does not address Dr Adeishvili's points. Mr Armstrong's skeleton argument for trial relies on Professor Lazarashvili's report in relation to limitation and not Professor Kvantalini's. It makes no mention of *force majeure*. Mr Armstrong made no oral submissions that *force majeure* suspended the limitation period under the Georgian law in respect of any of the claims in Claim 1 or Claim 2. The point appears to have been dropped. I do not regard it as having a real prospect of success.

"Continuing torts"

70. The Claimants' other limitation point, which was introduced in Professor Lazarashvili's report dated 29 August 2024, is that the torts in question are '*continuing'*. According to Professor Lazarashvili a continuing tort is a continuous infringement of a right. She says that coercion is a continuing act, and that the limitation period will therefore only begin to run from the end of the coercion, as viewed subjectively by the coerced person.

71. This is clearly not so even on the facts alleged.

72. The coerced person appears to be Mr Okuashvili, and the coercion is in the form of threats to the business and people of his companies. He has been resident in England since 2005 and a British citizen since 2011. Whether there is a serious issue to be tried is to be judged from the Particulars of Claim. The Particulars of Claim and proposed Amended Particulars of Claim are silent on his subjective views as to the existence of a coercive

relationship and when he says a coercive relationship came to an end. There is no proposal to amend to deal with this issue. Nor is there any evidence on this issue. I could stop there.

73. However, if one looks objectively at the facts pleaded, there is also no reason to think there is a real prospect of showing a suspension of the Georgian limitation periods. The Claimants' case in Claim 1 is that the coercion and intimidation resulted in $1.79m being paid in cash in April 2016. There is no pleaded allegation of any continuing threats or coercion thereafter in Claim 1. The Claimants' case in Claim 2 is that the Omega companies resisted the coercion and intimidation applied to them with the result that their tobacco business was placed under financial pressure and had to cease in 2018. There is no pleaded allegation of coercion or intimidation after September 2017. In October 2017 OMG stopped paying Mr Kipiani under the 2017 Consultancy Agreement, indicating emancipation from influence. By 2018, AGT was pursuing Court proceedings in Georgia to establish the validity of the Patent also indicating emancipation from influence. There is nothing pleaded, and no evidence, from which one could say that there was a realistic prospect of successfully showing that there was a coercive relationship which was continuing within three years before Claim 1 was issued in April 2022 and Claim 2 was issued in March 2023.

74. The tort claims, therefore, are clearly time-barred.

G.3 Unjust enrichment

75. The Claimants accept that the claim against Mr Ivanishvili in unjust enrichment in Claim 1, and TT and Mr Kipiani in Claim 2, is governed by Georgian law.

76. There is no disagreement between the experts that Georgian law recognises unjust enrichment. A translation of Article 978 of the Civil Code (Claim for return of property transferred under duress or threat) states: "*A person who transfers something to another person not for the purpose of performing an obligation but under duress or threats may reclaim it, except when the recipient had the legal right to what was transferred to him/her*".

77. The limitation period for claims for unjust enrichment is 10 years per Article 128.3, so unlike the tort claims there is no clear limitation issue with the unjust enrichment claims.

Claim 1 – unjust enrichment – Ivanishvili

78. Dr Adeishvili says that Georgian law requires proof of enrichment of the defendant. Ms Hutton says that the pleaded case that Mr Ivanishvili has been enriched is based on inference only. If, however, the facts alleged in the Particulars of Claim are proved then that is an inference which can properly be drawn from those facts, even if there is no direct evidence that the appropriated money was paid to him.

Claim 2 – unjust enrichment – TT

79. The claim against TT in Claim 2 is premised on the validity of the Patent and is for an account of the profits made by TT in infringing the Patent between "*2016 and 2019*". If there was no valid Patent, there was nothing for the Defendants' to infringe or devalue, and the Claimants have suffered no loss. On 26 July 2017 the Patent was reviewed and cancelled in full by the Sakpatenti, the Georgian patent authority on the grounds that it lacked an inventive step ("**the 2017 Sakpatienti Decision**"). AGT challenged this decision and obtained a judgment of Mtskheta District Court overturning the 2017 Sakpatienti Decision. ("**the 2018 District Court Judgment**"). That in turn was overturned by the Court of Appeal on 31 January 2019 ("**the 2019 CoA Judgment**"). On 11 May 2020, OGT issued proceedings against TT for infringement of the Patent. On 13 May 2021, these were stayed pending the outcome of the proceedings relating to the validity of the Patent. On 25 November 2021, the Supreme Court overturned the 2019 CoA Judgment and remitted the case back to the Court of Appeal for a rehearing. At that rehearing on 6 March 2024, the Court of Appeal confirmed the overturning of the 2018 District Court Judgment and affirmed the 2017 Sakpatienti Decision (i.e. confirming that the Patent was revoked). A final appeal to the Supreme Court by AGT was rejected on 11 December 2024. There is no doubt therefore that as a matter of Georgian law, the Patent has been revoked.

80. There was disagreement between the experts as to the status of the Patent in the period before the 2017 Sakpatenti Decision. Professor Lazaraishvili's evidence suggests that the 2017 Sakpatienti Decision rendered the Patent invalid with only prospective effect, while Dr Adeishvili's evidence is that the decision renders the Patent invalid with prospective effect. This dispute between the experts turns on whether the provisions of Article 58 of the Patent Law of Georgia (relied upon by Dr Adeishvili) take precedence over the General Administrative Code in Georgia (relied upon by Professor Lazaraishvili). This is not a dispute which I can resolve on this application. I accept that Professor Lazaraishvili's evidence means that there is an argument here with a real as opposed to fanciful prospect of success.

81. On any view, however, this restricts any actionable infringement to the period prior to 26 July 2017 whereas the claim for an account of profits made by TT is for the period from 2016 to 2019. Nevertheless, there remains something left in the unjust enrichment claim on which there is a serious issue to be tried.

Claim 2 – unjust enrichment – Kipiani

82. This is a claim, in the alternative to the claim for breach of contract, and without making an election, for the return of Georgian Lari 5000 paid to Mr Kipiani between March and October 2017, on the basis that the 2017 Consultancy Agreement was voidable for duress. The total sum claimed is

therefore in the region of GBP £15,000. This claim was not addressed by either side in any detail. On the face of the pleadings there is a serious issue to be tried.

G.4 Taking stock

83. What therefore remains in Claim 1 as claims where there is a serious issue to be tried, are the claims for breach of contract and fiduciary duty against Mr Kipiani if English law applies to them and the claim against Mr Ivanishvili for unjust enrichment. In Claim 2, there remains the claim against TT and Mr Kipiani for unjust enrichment.

H. Full and Frank disclosure

Principles

84. An applicant for an order on a without notice application must make full and frank disclosure of all material facts; *Brinks Mat Ltd v Elcombe* [1988] 1 WLR 1350 at 1356G. The material facts are the facts which might reasonably be taken into account by the judge in deciding whether to grant the application; *MRG (Japan) Ltd v Engelhard Metals Japan Limited* [2003] EWHC 3418 at [23]. It is for the court to determine what is material according to its own judgment and not by the assessment of the applicant or his legal advisors; *Brinks Mat* at 1356H. If the court considers there to have been material non-disclosure it is not an answer that the applicant in good faith took a different view; *MRG* at [24]. The applicant must make proper inquiries before making the application. The duty of disclosure therefore applies not only to material facts known to the applicant but also to any additional facts which he would have known if he had made such inquiries; *Brinks Mat* at 1356H. The duty is not confined to the applicant's legal advisors but rests upon the applicant itself; *Fundo Soberano de Angola v Dos Santos* [2018] EWHC 2199 at [53]. Although expressed as a duty of disclosure, the ultimate touchstone is whether the presentation of the application is fair in all material respects; *Fundo Soberano* at [52].

85. In an application for permission to serve out of the jurisdiction, the focus of the inquiry is whether the Court should assume jurisdiction over a dispute. The Court needs to be satisfied that there is a serious issue to be tried; that there is a good arguable case to hear it; and that England is clearly the appropriate forum. Beyond this, the Court is not concerned with the merits of the case; *MRG* at [26]. There is no duty to disclose facts which could not on any reasonable view affect the judge in deciding those questions; *MRG* at [30].

86. A failure to comply with the duty of full and frank disclosure on applications for permission to serve out is very serious – an individual or entity has been subjected to the Court's jurisdiction and exposed to costs without an opportunity to be heard; *The Libyan Investment Authority v JP Morgan*

Markets Ltd [2019] EWHC 1452 at [120]. The Court has a discretion: (a) to set aside the order for service and require a fresh application; or (b) to treat the claim form as validly served and deal with non-disclosure if necessary by a costs order; see *NML Capital Limited v Republic of Argentina* [2011] UKSC 31: [2011] 2 AC 495 at [136]. Such is the importance of the duty that in the event of any substantial breach the Court inclines strongly towards setting aside the order and not renewing it, even where the breach is innocent; *Banco Turco Romana SA (in liquidation) v Cortuk* [2018] EWHC 622 at [45]. Where the breach is deliberate, the conscious abuse of the Court's process will almost always make it appropriate to impose the sanction; *Banco Turco* at [45]. The sanction operates not only to punish the applicant for the abuse of process but also to ensure others are deterred from such conduct in future; *Banco Turco* at [45].

Claim 1 – the Arkush Order

87. It will be seen that in relation to Claim 1, the position is a world away from the position as it was presented to Deputy Master Arkush on paper. It is now apparent that Claim 1, as originally pleaded, was seriously flawed and there was no serious issue to be tried in respect of any of the claims made in it. In summary:

    a. The claim against Mr Kipiani as anchor Defendant for breach of contract was made on the basis that the 2015 Consultancy Agreements was governed by Georgian law. It was therefore time-barred.

    b. All the tort claims, also at this stage brought only under Georgian law, were in any event time-barred.

88. It is deeply troubling that the inherent problems in this case were not drawn clearly to the Deputy Master's attention on a without notice application on paper. Matthew Westcott prepared a 17-page witness statement of 8 September 2022 (Westcott 1) in support of the application for permission to serve out of the jurisdiction. It stated that the claims against all the Defendants were based on their breaches of Georgian law [66]. It said that there was a real and serious issue to be tried on the merits and that the Claimants believed they had a reasonable prospect of success [79]. Then, under the heading full and frank disclosure on the last substantive page it referred to Article 1008 of the Georgian Civil Code [83] and said that, therefore, all the tort claims relied on were time-barred [84]. Pausing there, that was (or ought to have been) a recognition that there was no serious issue to be tried against any of the Defendants apart from Mr Kipiani (in respect of the contractual claim) and Mr Ivanishvili (in respect of unjust enrichment and potentially in constructive trust: Mr Westcott did not address the limitation period for the constructive trust claim against Mr Ivanishvili which was advanced in the original Particulars of Claim, and subsequently abandoned by the Claimants themselves in the draft Amended Particulars of Claim). Yet, the previous 16 pages had given completely the opposite

impression. I do not understand how the statement in [79] that these were claims with a reasonable prospect of success and which raised a serious issue to be tried could have been made. Mr Armstrong did not seek to defend this statement.

89. It does not stop there. Mr Westcott said that he was not aware of the limitation period in Georgia in respect of a breach of contract [86]. The answer is 3 years – Article 129 of the Georgian Civil Code. The Defendants say this was basic information which could have been found with basic research, and I agree. Mr Westcott cites several Articles of the Georgian Civil Code, including the preceding Article 128, and must have had the wherewithal to find out this information. Mr Okuashvili must have known the answer as a sophisticated businessman operating in Georgia. Material non-disclosure includes material which could and should have been found and put before the court with reasonable diligence. This is just such information. Its significance is that it meant that there were no claims against Mr Kipiani, and therefore no anchor Defendant to link the last remaining claim against Mr Ivanishvili in unjust enrichment to this jurisdiction.

90. I am satisfied that the presentation of this application was ***not*** fair in all material respects. It seems to me that if this matter had been put before the Deputy Master properly, with full and frank disclosure of the problems with this claim, and without the misleading if not false statements that the claims had merit, permission to serve out of the jurisdiction on any of the Defendants would not have been granted.

91. I have received no explanation as to how this has come to pass.

92. I am satisfied that the order for service out of the jurisdiction should be set aside for this failure to provide full and frank disclosure. The failure to put this application fairly before the Deputy Master has meant that a claim with no serious issue to be tried has been allowed to be served out of the jurisdiction on the Defendants. If I treat the claim form as validly served, I will breathe life into what was commenced as a claim which was jurisdictionally unsound and without any merit. The new anchor claims against Mr Kipiani based in English law have limitation periods which arguably only expired a few days after the claim form was issued on 19 April 2022, but they were not raised as potential claims until the application to amend the Particulars of Claim in Claim 1 on 8 September 2023. The only way the Claimants can now proceed on those claims is by post limitation amendments under CPR 17.4. Mr Ivanishvili is exposed to a claim by the Claimants if they get permission to amend because he has been brought into the jurisdiction on a flawed basis where the Court was misled into making the necessary order.

93. I will set aside the order for service against all the Defendants in Claim 1. The order for service out of the jurisdiction on Mr Kipiani was a belt and braces order as the Claimant did not need permission pursuant to CPR

6.33(2B)(b) (see below). Setting the order aside for failure to make full and frank disclosure does not affect the validity of service upon Mr Kipiani.

Claim 2 - the Pester Order

94. In Claim 2 the Defendants criticise the Claimants with less justification for material non-disclosure in the paper and oral application to Master Pester which resulted in his order dated 16 August 2023. They say that the Claimants should have set out in detail all the stages of the litigation in Georgia in relation to the Patent. In fact, Mr Westcott did refer to the parallel litigation in relation to the infringement of the Patent by TT and the fact that it had been stayed pending resolution of other proceedings as to the validity of the Patent. At that point in time, while the validity of the Patent was still in play, the pendulum had swung in favour of AGT with its victory in the Supreme Court. The history of the patent litigation could not have affected the Master's decision as to whether there was a serious issue to be tried at that point in time. The Defendants say it is material non-disclosure because the involvement in proceedings in Georgia undermined the Claimants' case that they could not get substantial justice in Georgia, but I do not think it does. At that point in time the fact of proceedings being on foot shed no light on whether the proceedings would be determined fairly or without influence. There was no failure to make full and frank disclosure to Master Pester.

I. Gateways

Claim 1 – Kipiani

95. CPR 6.33 (2B)(b) permitted the Claimants to serve the claim form on Mr Kipiani out of the jurisdiction without the Court's permission where in respect of each claim made against him "*a contract contains a term that the court shall have jurisdiction to determine that claim*". The claims for breach of contract and breach of fiduciary duty against Mr Kipiani fall within the wide words of clause 14 of the 2015 Consultancy Agreement conferring exclusive jurisdiction on the Courts of England and Wales to determine "*any dispute or claim that arises out of or in connection with the Agreement or its subject matter or formation (including non-contractual disputes or claims)*".

Claim 2 – Kipiani

96. As with Claim 1, clause 14 of the 2017 Consultancy Agreement permitted the Claimants to serve Mr Kipiani abroad without the Court's permission pursuant to CPR 6.33 (2B)(b). There is a good arguable case that a claim that the 2017 Consultancy Agreement is voidable for duress is a claim "*in connection with the Agreement or its…formation*".

Claim 2 – TT

97. As against TT, in relation to the claim for unjust enrichment, none of the gateways on which the Claimants relied before Master Pester are available. The Claimants relied on PD 6B para 3.1(16)(c) on the basis that TT's liability for unjust enrichment was governed by English law, but Mr Armstrong now concedes that it is not. They relied on para 3.1(16)(a) on the basis that the claim in unjust enrichment from the use of AGT's Patent was facilitated by unlawful threats made to Mr Okuashvili in England and therefore arose from "*acts committed within the jurisdiction*". I am satisfied that the Claimants do not have a good arguable case that they pass through this gateway. The basis of the claim in unjust enrichment is the infringement by TT of the Georgian Patent by importing and selling infringing cigarettes in Georgia and keeping the profits it made in Georgia. All these acts occurred in Georgia and not in this jurisdiction. The unlawful threats are alleged to have been made for a different purpose which was to force the merger of OGT with TT – but the tortious claims in relation to that alleged wrong are time barred. Finally, the Claimants relied upon para 3.1(4A)(c) on the assumption that jurisdiction over some other claim against TT on the same or closely connected facts was established, but as can be seen that has not happened.

98. Taking stock again, all that remains are the claims against Mr Kipiani in Claim 1 for breach of the contractual and fiduciary duties arising from the 2015 Consultancy Agreement and in Claim 2 for restitution of the £15,000 odd consultancy fees he was paid under the 2017 Consultancy Agreement.

J. Forum

99. Mr Kipiani accepts there is an exclusive jurisdiction clause and that therefore the Court has jurisdiction to try the claim but he says that the English court should decline to exercise jurisdiction, and that Georgia is the forum where the case may be tried more suitably for the interests of all parties and the ends of justice. Mr Kipiani has offered to undertake to submit to the jurisdiction of Georgia's courts. Those submissions have now to be looked at in a different light when the only remaining claims which might go to trial are claims against Mr Kipiani which are said to be governed by English law and which he has agreed in a binding contract should be subject to the exclusive jurisdiction of the courts of England and Wales.

100. The Claimants and Mr Kipiani approached the Court's jurisdiction to override the exclusive jurisdiction clause on the basis that the Hague Convention on Choice of Court Agreements 2005 does not apply to this case. There was no argument on the point apart from a brief footnote to Mr Kipiani's skeleton argument that this does not qualify as an "*international case*" for the purposes of the Convention. I will assume that this is so. If it had applied, then jurisdiction could not be declined by this Court. At common law, the Court has a discretion to override an exclusive jurisdiction clause, but it is sparingly exercised. This is because contracting parties should be held to the bargains they have made. In *Donohue v Armco Inc* [2001] UKHL 64, [2002] 1 All ER 749 at [24] Lord Bingham said:

> "*If contracting parties agree to give a particular court exclusive jurisdiction to rule on claims between those parties, and a claim falling within the scope of the agreement is made in proceedings in a forum other than that which the parties have agreed, the English Court will ordinarily exercise its discretion (whether by granting a stay of proceedings in England, or by restraining the prosecution of proceedings in the non-contractual forum abroad, or by such other procedural order as is appropriate in the circumstances) to secure compliance with the contractual bargain, unless the party suing in the non-contractual forum (the burden being upon him) can show strong reasons for suing in that forum …*"

101. While there are clearly connecting factors with Georgia in these Claims, such as witnesses, events, documents and language, taken together they do not come close in my judgment to a good reason not to hold the parties to their bargain. All of these matters were readily foreseeable when Mr Kipiani agreed that these claims should be heard by the courts of England and Wales, and only by these courts.

K. Valid Service – Kipiani

102. The Claimants in Claim 1 obtained the order of Deputy Master Arkush on the 12 September 2022 on a without notice basis. The Claimants were granted permission to "*serve the Claim Form, Particulars of Claim and any other document in the proceedings*" on Mr Kipiani out of the jurisdiction at three addresses detailed in the order "*or elsewhere in Georgia*". However, no actual method of service – by post, in person, or by leaving papers at any address – was specified. No application was made for any order for service by an alternative means. The Claim Form therefore needed to be served by one of the means specified in CPR 6.40. One such method is service in accordance with Georgian law.

103. The Claimants claim to have effected good service. They attempted service in Georgia through Georgian lawyers, who couriered documents to seven addresses for Mr Kipiani. The Claimants also attempted service directly from London by courier and also sent documents by email. There is no dispute that delivery was successfully effected at two addresses and were received by Mr Khachaparidze on 10 October 2022 and by Ms Nana Apkhaidze on 12 October 2022. They are lawyers who the Claimants believed acted for Mr Kipiani. Mr Khachaparidze was interviewed on television on 12 October 2022 about the proceedings against Mr Kipiani and he is quoted as saying:

> *"I have studied the Particulars of Claim and I can tell you my position: firstly – the facts given in the claim are not the truth and express only the position of Okuashvili. And secondly – a mechanism of enforcement does not exist. With that party, we are not entering the court's jurisdiction. The lawyer who was hired should know it. On our side, we are ready to provide a legal response. If the court summons us, we are ready for that too. If*

> *Okuashvili covers his expenses, he will go, otherwise, he is in a quite hard condition financially and I doubt he will be able to do it."*

104. The experts (Nunu Kvantaliani for the Claimants and Zviad Gabisonia for the Defendants) agree that service of Mr Kipiani's lawyers is good service unless their representational powers restrict the acceptance of process. Both Mr Khachaparidze and Ms Apkhaidze have filed minimalistic affidavits stating that they were not authorised to accept service of these proceedings on behalf of Mr Kipiani. Neither says what communications they had with Mr Kipiani about the documents they received or when they sent them to him. Mr Kipiani has filed no evidence but has informed his solicitors that he only received the documents on 22 October 2022 and only from Ms Apkhaidze. The relevance of that delay is that service of the Claim Form needed to be effected by 19 October 2022. Ms Apkhaidze only responded on 20 October 2022 to the Claimants' solicitor's email of 14 October sending her (again) the relevant documents saying that she was not authorised to accept service. There is no explanation in the evidence as to why documents received by her on 12 and 14 October were not delivered by her to Mr Kipiani until 22 October 2022.

105. I am satisfied that it is highly likely that Mr Kipiani was aware of the attempted service of these documents and highly likely that he had seen them before 22 October 2022. The television interview by Mr Khachaparidze is a clear acknowledgment that Mr Khachaparidze represents Mr Kipiani as his lawyer, that the claim has been received and considered, and that he has Mr Kipiani's instructions on how to respond to it. I find that service on Mr Khachaparidze was good service on Mr Kipiani, and if it was not I would order that the steps already taken by the Claimants to serve the Claim Form, including by service on Mr Khachaparidze are good service and deem service to have been effected on 12 October 2022.

106. On 19 October 2022 the Claimants made an application to retrospectively dispense with service entirely against all the Georgian defendants to Claim 1 after other defendants challenged purported service on them. The application was dismissed on paper by Master Marsh without a hearing as (effectively) premature when the potential dispute as to service had not crystallised or been explored. I do not regard that prior application as providing any impediment to my making such an order now after hearing the challenge to service.

107. As for Claim 2, the Claimants again served the documents at various addresses, including on Mr Khachparidze and Ms Apkhaidze. This time, however, they applied for and obtained an order from Master Pester for service by alternative means by serving the claim form by email at three email addresses. Mr Kipiani accepts that he received the email (although he says that he did not read it or open the attachments which the Claimants say is not credible). He was thereby properly served by the alternative means directed by the Master. Mr Buck says that there was no justification for Master Pester making an order for substituted service and I should set aside

that order. I consider there was sufficient evidence of Mr Kipiani seeking to evade service in Claim 1 to justify the order for substituted service. Mr Buck says that service by email which is not acknowledged is not good service under Georgian law, but that is irrelevant. It was served in a manner authorised by Master Pester's order.

L. Other matters

108. A consequence of the reasoning and decisions above is that it is not necessary to consider whether there was valid service on Defendants other than Mr Kipiani. Nor is it necessary to consider whether there could be a fair trial of Claim 1 or Claim 2 in Georgia – an issue on which there was extensive disputed expert evidence and reliance by the Claimants on the comments made in the Bermuda Court of Appeal in *Credit Suisse v Ivanishvili & Ors* [2024] CA (Bda) 2 Civ. International comity is not served by considering that issue when it is not necessary to do so.