Neutral Citation Number: [2016] EWHC 1448 (Ch)

Case No: HC-2014-000819

IN THE HIGH COURT OF JUSTICE
CHANCERY DIVISION
HIGH COURT

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 17/06/2016

Before :

MR JUSTICE NORRIS

- -

Between :

Mr Mohammad Reza Ghadami	**Claimant**
- and -	
(1) Paul Bloomfield	
(2) Philip James Saunders	
(3) Paresh Kantilal Chohan	
(4) Jan Bonde Nielsen	
(5) Peter Bonde Nielson	
(6) Saif Durbar	
(7) Mark Rhodes	
(8) Mahendra Narottam Bakhda	
(9) David John Risbey	
(10) Kennth John Fincken	
(11) Larios Properties Ltd	
(12) Festio Investments Ltd	
(13) Belgrave Capital Ltd	
(14) Brazxa Investments International Corporation	
(15) Beacon Industries Corporation	
(16) Lynn Properties Limited	
(17) Vitala Investment Holding Limited	
(18) Merix International Ventures Limited	
(19) 41 USG INC	**Defendants**

- -
- -

The Claimant **Mr Ghadami** in person
The Second Defendant **Mr Saunders** in person
Mr Ben Hubble QC (instructed by **Mills & Reeve**) for the Third Defendant
The Other Defendants did not appear but the Fourth, Fifth, Seventh, Eighth and Sixteenth to Eighteenth Defendants adopted in correspondence the submissions of the Third Defendant

Hearing dates: 7 April 2016

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Judgment

Mr Justice Norris :

1. On 9 April 2013 Mr Ghadami commenced proceedings against 19 defendants for damages of up to £36,000,000 for conspiracy, interference with a contract or business, inducing or procuring a breach of contract and causing loss by unlawful means. Mr Gahdami obtained a default judgment against the First Defendant ("Mr Bloomfield"). The Second to Eighth Defendants, and the Sixteenth to Eighteenth Defendants applied for the claims against them to be struck out (or for summary judgment to be given against Mr Ghadami).

2. Those applications came before Deputy Master Mark on 19 February 2014. Mr Ghadami (who has throughout acted as a litigant in person) made several unsuccessful attempts to secure an adjournment of that hearing. On 19 February 2014 he did not attend the hearing but sent his son to make a further application for an adjournment. That too was unsuccessful. So Mr Ghadami's son left the hearing before the Master and the hearing continued over two days in the absence of Mr Ghadami. The Deputy Master decided (of his own initiative) to consider whether the cases against the Ninth Defendant ("Mr Risbey") and Tenth Defendant should also be struck out.

3. On 28 March 2014 the Deputy Master decided that all of the remaining cases should be struck out, leaving in place the default judgment that Mr Ghadami had obtained against Mr Bloomfield (but apparently setting aside a default judgment that had been obtained against Mr Risbey and the Tenth Defendant).

4. Mr Ghadami appealed the decision of the Deputy Master to refuse an adjournment ("the Appeal"): but he did not appeal the other orders made by the Deputy Master. As to those, Mr Ghadami applied for them to be set aside under CPR 39.3 and for the proceedings to be restored for re-hearing ("the Application").

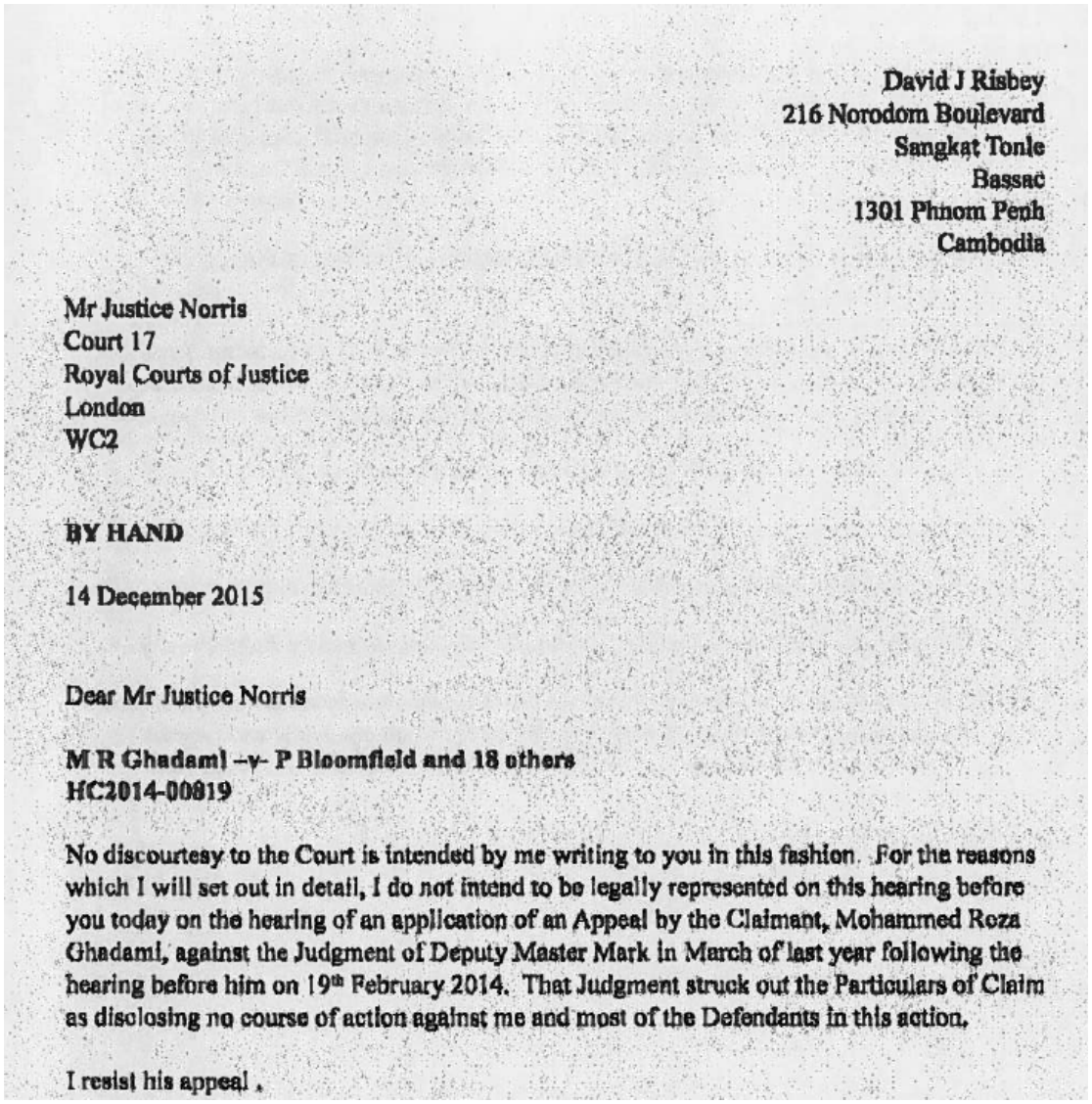
5. The Appeal and the Application were directed to be heard together before the same judge. The Appeal and the Application came before me at a hearing from 14 – 21 December 2015.

6. There had been eight lever files of paper before the Deputy Master. The Defendant parties prepared a further volume relating to the Appeal and the Application. Mr Ghadami had prepared 4 lever arch files of documents in support of the Application. Mr Ghadami then prepared a further 15 lever arch files of documents (containing about 10% of the product of third party disclosure which he had obtained as the result of about a dozen applications which he had made in the Applications Court). He applied on 9 December 2015 (supported by a witness statement dated 11 December 2015 i.e. the working day before the hearing) for permission to adduce this additional material. Mr Ghadami did not prepare a skeleton argument for the December 2015 hearing.

7. Rather than use up the time allocated for the Appeal and Application in an opposed hearing of this new application to adduce fresh evidence, Counsel for the Respondents accepted that Mr Ghadami could refer to it and that they would have to do their best to respond to it, but they said that their position was otherwise reserved. Accordingly Mr Ghadami deployed this newly introduced material in his argument on the Appeal and the Application. That argument extended over the bulk of the 5 days allotted for

the hearing: the time for hearing submissions from Counsel for the Respondents was strictly curtailed.

8. When I came into Court on the afternoon of 14 December 2015 at the commencement of the hearing there was on the bench a small pile of two or three items of additional papers. All but one of these items were referred to in the course of the hearing. Towards the conclusion of the hearing I examined the remaining item, which was an envelope which I opened, and the contents of which I read. It proved to be a letter from the Ninth Defendant Mr Risbey from an address in Cambodia. It was in these terms (I include both a scanned copy and for clarity a transcribed copy):-



David J Risbey
216 Norodom Boulevard
Sangkat Tonle
Bassac
1301 Phnom Penh
Cambodia

Mr Justice Norris
Court 17
Royal Courts of Justice
London
WC2

BY HAND

14 December 2015

Dear Mr Justice Norris

M R Ghadami –v- P Bloomfield and 18 others
HC2014-00819

No discourtesy to the Court is intended by me writing to you in this fashion. For the reasons which I will set out in detail, I do not intend to be legally represented on this hearing before you today on the hearing of an application of an Appeal by the Claimant, Mohammed Reza Ghadami, against the Judgment of Deputy Master Mark in March of last year following the hearing before him on 19th February 2014. That Judgment struck out the Particulars of Claim as disclosing no course of action against me and most of the Defendants in this action.

I resist his appeal .

As I am sure it will be clear from the papers before you and seeing the Claimant before you in person he is mentally deranged, and is what I understand to be a vexatious litigant. He also served time in prison for VAT fraud and has been involved in many court actions all of which he has acted in person and has lost. I have to date spent thousands of pounds on solicitors and Counsel and do not propose to spend another penny on legal representation. He should not be allowed to bring any proceedings and make the malignant allegations he has against me and all of the others.

The facts are as follows: -

1. I have not had any involvement whatsoever in the subject matter of these actions.

2. Unfortunately, in a document entitled "The Cast" prepared by the Second Defendant Philip Saunders it was suggested that I administered Lynn Properties Limited, one of the Defendants . That was not in fact true. Mr Saunders in his Defence originally asserted that I was so involved but subsequently filed an amended Defence that I was not so involved.

3. I defy anyone to find my name appearing on any documentation relating to Lynn Properties Limited.

4. The Claimant originally served or attempted to serve the Notice of Claim on me by sending it to Mr Saunders. At that time I lived and carried on business from Zug in Switzerland. Mr Saunders did not accept service of those proceedings.

5. When he served the proceedings he did not include the response pack.

6. He did not obtain leave to serve out of the jurisdiction.

7. Despite all these irregularities he nonetheless signed Judgment in default.

8. Deputy Master Mark set aside that Judgment and struck out the Particulars of Claim.

9. There is not a shred of evidence that I was involved in any way shape or form with the transactions which are the subject matter of these proceedings nor have I ever had any dealings with nor have I ever met Paul Bloomfield .I am an innocent bystander

Yours respectfully

David Risbey

David J Riseby
216 Norodom Boulevard
Sangkat Tonle
Bassac
1301 Phnom Penh
Cambodia

Mr Justice Norris
Court 17
Royal Courts of Justice
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[SIGNATURE]

[END OF PAGE ONE]

[PAGE TWO]

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Yours respectfully

[SIGNATURE]

David Risbey

9. The transcript of the hearing (which has not been approved by me) then records what happened. Having ascertained that Mr Ghadami had concluded his submissions I said that there was a matter I wished to raise with him. I continued

> "Amongst the papers that I received was a sealed envelope and before the hearing concluded I thought I ought to open it to see what it said and it's a letter from David Risbey from Phnom Penh in Cambodia. And I have not read it all the way through so I will read it out so you can all hear what it says"

I then read out the letter (though according to the transcript my reading did not exactly match the text at two or three points). Having done so, the following exchange then occurred:-

"Mr Justice Norris: And that letter is signed. Now what should I do about that letter Mr Ghadami?

Mr Ghadami: My Lord I am speechless in the way he has offered before us with the letter through a third party that he would talk… I did say that before that and My Lord knows that, he didn't do it. Secondly his defence or his letter…his statements [inaudible] later because he actually said he lived in Switzerland 20 years, he proved it and he doesn't. He just lives on and off. We can't prove that beyond doubt so there will have to be a hearing for that because that's important: letter and important [inaudible] look at that now, look at it show you where his passport pictures everything that he lived in Dubai and Central Africa on and off. [inaudible] And somewhere is Australia. He said he always lived in Switzerland which is not true and, as far as I am concerned My Lord, that is important because it has to be investigated and I have documents to prove that what he said in his statement is lie. This is mainly now manufactured because he knows with Mr Saunders because he [inaudible] his lawyer in London with ample document to show that [inaudible] My Lord.

Mr Justice Norris: Well I just wanted your views with what I should do with the document.

Mr Ghadami: The document My Lord will have to be considered in properly because you can't just [inaudible]. I am sure you will accept that I was in 1992 VAT I don't deny that. Some twenty-odd years I did not spend same as everybody else but I have never denied it. That's a

matter for the Court.

Mr Justice Norris: Yes, alright, OK. So I've got your….your position is it ought to be considered separately – Thank you.

Mr Ghadami: Adjourned hearing with that, with this.

Mr Justice Norris: Yes, alright. At an adjourned hearing.

Mr Ghadami: Of course.

Mr Justice Norris: Alright, that's your position.

Mr Ghadami: I will have to be because we got document.

Mr Justice Norris: Yes. Would it be sensible if I were to give you the chance to respond to the letter in writing, within a limited period, and then I could perhaps consider everything together…at the same time?"

Mr Ghadami then went on to say that he would have to have copies of the letter: to which I responded:-

> "Oh I'll make sure you all get copies of the letter. As I say I've only just opened it…but at the conclusion of the hearing alright?"

10. I then went on to enquire whether the matter could be dealt with in the immediate future: but Mr Ghadami thought not. So I invited Mr Ghadami to prepare a witness statement setting out what his observations on Mr Risbey's letter were by 4 January: and I invited the Respondents (should they wish) to submit skeleton arguments or witness statements by 18 January (recognising however, that they may not wish to say anything).

11. I then reserved judgment to afford an opportunity for fair consideration of the huge volume of additional material that Mr Ghadami had lodged and which had been referred to for the first time in argument.

12. Mr Ghadami then lodged two further lever arch files of material which he said addressed the matters raised by Mr Risbey in his letter. So there were now 29 lever arch files relating to the Appeal (against the refusal of an adjournment) and the Application (seeking a setting aside of the Deputy Master's order made in the absence of Mr Ghadami).

13. On 4 February 2016 Mr Ghadami lodged an application (supported by two witness statements and another lever arch file of documents) that I should recuse myself from any further dealings with the Appeal and the Application (and, indeed, the action generally). In particular he did not want me to deliver judgment on the Appeal and the Application and wanted these reheard before another judge.

14. Amongst the exhibits was a witness statement which Mr Ghadami had obtained from the Court Usher when he interviewed her on the afternoon of 13 January 2016. It was in these terms:-

> "I remember before the start of the hearing a gentleman who said he was a solicitor handed me two or three envelopes and a piece of paper, stating that they were witness statements to be given to the judge. Before court was called I told the judge and I then left them on his desk. "

15. Mr Ghadami does not himself accuse me of actual bias: he says that the reasonable independent observer would consider from the conduct of the hearing that there was a real possibility of bias. He submits:-

> "If an informed and balanced member of the public were to be enlightened to the facts surrounding this issue, then they would conclude bias was apparent and unavoidable, as circumstances exist that give rise to justifiable doubts as to Norris J's impartiality. Those doubts about his impartiality are alleged to involve apparent bias, not actual bias, but do include unconscious bias. "

Mr Ghadami spent the majority of the hearing on 7 April 2016 explaining why this was so.

16. Applications for recusal inevitably involve a tension between two principles. On the one hand, that justice be seen to be done; and on the other, that litigants cannot choose their judges. As to the first, I have firmly in mind the clear guidance in Locabail (UK) Limited v Bayfield Properties [2000] QB 451 at 480 paragraph [25] that "if in any case there is real ground for doubt, that doubt shall be resolved in favour of recusal". I am also clear in my mind that the "real ground for doubt" involves the ascertainment of all of the circumstances which bear on the suggestion that I am biased, and then an assessment of whether those circumstances would lead a fair minded and informed observer to conclude that there was a real possibility, or a real danger that I was (or am) biased: per Lord Hope in Porter v Magill [2012] 2 AC 357 at [103]. My own protestations (that I would insistently make) that I am not biased can be given no weight in this process. I have to stand in the place of the fair minded and informed observer.

17. As to the second, whilst real ground for doubt must result in recusal it is important that I bear in mind observations made by Chadwick LJ in Triodos Bank v Dobbs [2005] EWCA Civ 468 at paragraph [8] to this effect:-

> "It is always tempting for a judge against whom criticisms are made to say that he would prefer not to hear further

> proceedings in which the critic is involved. It is tempting to take that course because the judge will know that the critic is likely to go away with a sense of grievance if the decision goes against him. Rightly or wrongly, a litigant who does not have confidence in the judge who hears his case will feel that, if he loses, he has in someway been discriminated against. But it is important for a judge to resist the temptation to recuse himself simply because it would be more comfortable to do so. "

To insist upon sitting when there is real ground for doubt does a disservice to the critic: to recuse oneself because one is too ready to admit real ground for doubt does a disservice to the critic's opponents.

18. Mr Ghadami had a dozen points which he said were capable of being known by members of the public generally and which, if known to a fair minded and informed observer, would lead that person to conclude that there was a real possibility that I was biased. That is not exactly the way Mr Ghadami put it: but it was the burden of his separate submissions.

19. First, Mr Ghadami observed that I did not say from where I had received the envelope containing Mr Risbey's letter. The short is answer to that is that I do not myself know: the envelope was simply one of (I think) three that were on the bench when I sat at the commencement of the hearing. I do not think any fair minded and informed observer would regard my disclosure of receipt of the letter (but not of the means by which it had come into my hand) as any indicator of a real possibility of bias. He or she would not presume that I had some knowledge I was withholding, and would have no ground for thinking that the means of despatch of the communication (and information about it) would favour one side or the other as regards the Appeal or the Application.

20. Second, Mr Ghadami asserts that I did not say when I *opened* the envelope. I think a fair reading of the transcript contains the information that at the end of the hearing I thought that, before the hearing concluded, I ought to open the envelope and that on doing so I immediately appreciated that it was something I ought to share with the parties even though I had not myself at that point read it all the way through. I do not think that any fair minded and informed observer who heard me say "As I say, I have only just opened it" would have been left in any doubt that I opened the letter immediately before the conclusion of the hearing. I do not think that a fair minded and informed observer would think that I was lying.

21. Third, Mr Ghadami asserts that I did not say when I *read* the letter. I think a fair reading of the transcript shows that I read the letter to all parties publically and that before so doing I had not myself read it all the way through. I do not think that a fair minded and informed observer would think that I was lying.

22. Mr Ghadami argues that a fair minded and informed observer would doubt that I was telling the truth. Mr Ghadami argues that a fair minded and informed observer would have elicited from the usher the information which she provided to Mr Ghadami, and would have noted that the usher said that she had placed two or three envelopes and a piece of paper on my "desk" having informed me before the case was called that additional documents had been handed in. Mr Ghadami says that the use of the word "desk" rather than "bench" is significant and that the fair minded and informed

observer would conclude that the usher had taken the documents from the courtroom up to my chambers and placed them on my desk in chambers. Such an observer would note that the court did not sit until 13½ minutes past two o'clock and would conclude that the delay was occasioned by my reading in chambers the newly handed-in documents (including Mr Risbey's letter). Accordingly, says Mr Ghadami, the fair minded and informed observer might well not believe that I had only opened the envelope at the conclusion of the hearing and that I read the entirety of the letter for the first time in public.

23. Mr Ghadami reinforces that submission with two further points. First I opened two other envelopes (and it is possible to identify from the transcript at approximately what point in the proceedings I did so: see the transcript of 16 December 2015 between lines 1147 and 1149) and it is not credible that I should leave the third unopened. He submitted: "You open one, you open all of them". Second, it is simply incredible that I should have left *any* envelope unopened throughout a 6 day hearing. Mr Ghadami says either I opened the envelope or I ought to have opened it: and either way the fair minded observer would think that I was biased against Mr Ghadami.

24. I think a fair minded and informed observer would have thought Mr Ghadami's submissions on 7 April 2016 to be a straightforward attack on my truthfulness, and however politely wrapped was in essence a submission that what took place at the conclusion of the hearing was a charade. I can do no more than repeat that I do not think any fair minded and informed observer would have viewed it that way. A fair minded and informed observer would allow that a judge would possibly wait to be referred to material which was handed up at the last moment before the commencement of the hearing and which was not included in the hearing bundles: and if not referred by any party to that material would disclose to all parties what had been received but had not been referred to by any of them. That is what I did.

25. Fourth, Mr Ghadami has noted that my reading out of the letter was not literally correct and that I made some mistakes. I omitted one sentence. I omitted a number. According to the transcriber (whose transcript I have not approved) I apparently said "obtained" where the text said "signed". I do not think a fair minded and informed observer would treat these mistakes as indicators of bias against Mr Ghadami. They have no bearing on any issue which had been argued during the preceding 6 days. Since it was my declared intention that everyone should be provided with a copy of the letter the mistakes (if significant) would have been apparent when the copy letter was received.

26. Fifth, Mr Ghadami says that I failed to read out that the letter was hand delivered and that I did not read out either the rubric "by hand" or the date. Mr Ghadami poses the question: Why should someone not read out the date or "by hand"? He says that an independent person would think that the reason for that was because the judge was biased against Mr Ghadami. I simply do not see what relevance the mode of delivery or date has to any issue argued on the Appeal or the Application: and I do not agree that a fair minded and informed observer who knew that I intended that copies of the letter should be provided and that Mr Ghadami should have a full opportunity to address any issue arising on it would think that I was intending to disadvantage him in any way by not reading out every single word on the printed page.

27. Sixth, at one point in the hearing I put a proposition to Mr Ghadami, he prefaced his response with a patient "with the greatest of respect My Lord…" and I responded with the jest that he did not really mean that. Mr Ghadami says that an independent person would regard this as a rejection of his compliment, and that that shows I had a closed mind against his submissions. The great difficulty is that a grin does not appear on a transcript. No fair minded and informed observer would think from this exchange that I had taken against Mr Ghadami because I had read disparaging comments about him in Mr Risbey's letter.

28. Seventh, (a more weighty point): I clearly intended that all parties should have a copy of the letter which I had received: and I had set a timetable for Mr Ghadami to respond to it by 4 January and other parties by 18 January 2016. However, between 1pm (when the hearing concluded) and 9pm (when I left Court) on 21 December I failed to ensure that the necessary arrangements had been made for sending out copies of the letter. Mr Ghadami says I cannot justify why he did not get the letter, and that it must be because I think him of no value. So he poses the question "How can I accept a judgment from you?". Mr Ghadami accepts that the omission was an oversight: but he says it is a demonstration that I do not care about him. Of course, nobody got a copy of the letter from me until the start of the next term (though I have ascertained that at least one other party had received a copy of the letter directly from Mr Risbey or Mr Risbey's messenger, and had provided Mr Ghadami with a copy of it on 4 January 2016).

29. I am confident that a fair minded and informed observer would see that this was an oversight on the last day of term: and an oversight which did not single out Mr Ghadami but applied to everyone. Mr Ghadami was able to file two further lever arch files of material dealing with Mr Risbey's letter (on 11 January 2016). Nobody has ever taken any point that these were "out of time".

30. Eighth, Mr Ghadami says that I have treated him unfairly in relation to questions which he had about Mr Risbey's letter (both in relation to the production of documents and in answering interrogatories).

31. As to documents, Mr Ghadami has asked to inspect the envelope in which I received Mr Risbey's letter, and the envelopes in which I received the other documents (three witness statements) and the piece of paper that the usher says she placed on the desk. Putting on one side the question whether a litigant has any right to inspect a judge's papers, I am simply unable to provide this material. I have not retained the envelopes. I believe "the piece of paper" was the list of counsel which I still have in my notebook in the handwriting of the usher: though Mr Ghadami argues that this cannot be a "list of Counsel" because it was in the handwriting of the usher and not signed by Counsel. I should record that Mr Ghadami applied to adjourn the hearing and to call the usher and to "cross examine her" to ascertain what this piece of paper was: I refused the application. No fair minded and informed observer would think that my inability to produce envelopes (which have no bearing on any issue argued) can raise a real possibility of bias against Mr Ghadami at the December hearing: or that the view I take as to the significance of "the piece of paper" gives any realistic ground for the suspicion of bias.

32. As to answering questions, these were contained in a tide of emails. In order to ensure that Mr Ghadami got a copy of the letter I had, I myself photocopied it on the Court

photocopier. Mr Ghadami says that an independent person would think this was of itself suspicious. I wanted to be in a position personally to assure Mr Ghadami that the copy was a true copy. I consider that a fair minded and informed observer apprised of the fact that the judge had personally copied the document and who had observed Mr Ghadami's presentation between 14 and 21 December would expect that a judge might well take that course and would not regard it as suspicious.

33. The letter was on two separate pages. The default setting on the court photocopier was double sided printing. The copy which Mr Ghadami received from me was therefore a double sided copy with a small triangulation in the top corner (where the page had been turned over). Mr Ghadami had also received a different copy of Mr Risbey's letter from another party. Mr Ghadami raised enquiries as to when and how and from whom that party (and any other party) had received it and asked them to provide on an urgent basis a copy of the email or letter which attached or enclosed the copy which had been received. He then emailed all other parties to enquire whether they had received a copy of the letter from Mr Risbey. He threatened a disclosure application if his questions were not answered. When they were not answered to his satisfaction he said that the other parties were involved in a form of conspiracy to hide the letter from him, that the way he had been treated needed to be investigated and stopped so that no other litigant should go through the same unfair and unjust routine, and that the matter "may result in the case being reheard by a different tribunal and different legal representatives" (an email of 7 January 2016 which also contained the assertion by Mr Ghadami that I had the contents of Mr Risbey's letter in mind throughout the 6 days of the hearing, but only read it out on the last day).

34. Mr Ghadami pursued this last allegation in a letter dated 14 January 2016 to me and to the Chancellor (copied to all of the other parties). When he received from me the photocopy I had taken Mr Ghadami increased the number of questions he was asking and the frequency with which he was asking them (because he suspected that the version of the letter that I had received and copied to him was different from the copy provided to him (and received by) other parties). His e-mails to me were sent with "High Importance" and required me to answer by return or to make arrangements for him to undertake physical inspections of documents at Court the same day. It was plain that matters were getting out of hand.

35. So on 26 January 2016 I sent an e-mail in these terms

> "Dear Mr Ghadami
>
> You will immediately stop emailing me, my clerk and others on your circulation list concerning Mr Risbey's letter. Nobody is obliged to reply to any of the emails you have already sent. …I personally copied the letter on a court photocopying machine. My recollection is that the document I photocopied was a two page document, printed on one side only. I cannot confirm that this is the case because the letter is in my chambers in London and I am sitting out of London for three weeks. You may not inspect any of the papers in my room. When I return to London, I will look at the original and confirm the position. If you do not believe me, I will arrange an appointment for you to inspect the original. In the meanwhile you are to let this matter rest".

Mr Ghadami describes this as "a gagging order". He does not say that it demonstrates actual bias against him. But he says that a fair minded and informed observer would think that I might be biased against him.

36. In my judgment a fair minded observer informed of all of the email correspondence circulating from 4 January to 26 January 2016 would take the view that my e-mail was simply an endeavour to stop a huge waste of money on a matter of no real significance to the Appeal or the Application, but one which had had to be disclosed in the interests of transparency.

37. Ninth, Mr Ghadami says I have treated him unfairly in "admitting Mr Risbey's letter as evidence". I have, of course, done no such thing. I have simply read out a letter that I received, asked Mr Ghadami what he wanted to do about it, and afforded him the opportunity to respond to it (as he asked). It would have been possible to say as soon as I had finished reading out the letter in Court on 21 December 2015 (assuming I thought such treatment to be fair to Mr Risbey): "I propose to ignore this letter". But that would have left Mr Ghadami with the complaint that I was unconsciously influenced by material to which he had not had the opportunity to respond: and indeed on 7 April 2016 Mr Ghadami told me that if I had said I would ignore the letter he would *still* have had some ground for complaint. The fact is that letter is not evidence: the assertions of fact in the letter are not evidence in the case. The letter is simply an open statement of Mr Risbey's position and of his reasons (good or bad) for adopting that position.

38. Tenth, Mr Ghadami says that an independent person would think that I was biased against him because "during the course of the hearing it was very apparent…that [I was] very much against [his] submissions" (in a letter copied to the Chancellor) and that "throughout the hearing [I] gave [Mr Ghadami] in person little or no leeway" (his Fifth Witness Statement). Mr Ghadami submits that in accordance with Chapter 7 of the Chancery Guide (October 2013) "sufficient time must be allowed for pre-reading any documents required to be read" (see paragraph 7.4). He observed that in this case the case management order made on the appeal whilst giving a time estimate of 5 days did not allocate any pre-reading time. Mr Ghadami delivered volumes 13-27 of the lever arch files for the hearing commencing at 2pm on Monday 14 December 2015 at about 3.45pm on Friday 11 December 2015. Mr Ghadami has ascertained that I was not at court in London that day and that I was delivering judgment in another case on the morning of 14 December 2015. He therefore says that I came to his case "blind" and because there was so much paper and because Mr Ghadami was a litigant in person I did not concern myself too much with his case and that my questions to him betrayed a closed mind to the case.

39. He seizes on two examples. First, at one point in the hearing I referred to Ms Galley of Counsel as representing more parties than the others (whereas she represented two parties, but Mr Rosenthal of Counsel represented three and Mr Buttimore of Counsel represented four). Mr Ghadami says this error demonstrates that before the hearing I had read nothing save for (as Mr Ghadami asserts) (a) the skeleton argument of Mr Hubble QC (who represented one party) and (b) the documents that had been put on the bench (including the letter from Mr Risbey). As a matter of fact, how wrong he is in the inference he draws about the extent of my pre-reading: but I do not think the fair minded and informed observer would draw from the error the conclusion that I was biased against Mr Ghadami or had a closed mind. I think the fair minded and

informed observer would be more impressed by the three and a half days over which I allowed him to develop his submissions and by my endeavour both to follow him through a maze of lately-introduced material and to guide him towards areas that I might find helpful in relation to the matters for decision.

40. A second instance is that Mr Ghadami told me that he had been considering making an application that Deputy Master Mark should have recused himself from dealing with Mr Ghadami's case, but that he had decided not to pursue the application: to which I had responded "I hope not". Mr Ghadami says that my expression of hope that he did not pursue recusal applications against judges dealing with his cases is in fact a clear indication that I will not entertain any appeal from a decision of Deputy Master Mark and that an independent observer would treat this as evidencing bias. I am absolutely clear in my mind that there is a fundamental distinction between an application to a judge to recuse himself from conducting a hearing and an appeal against that judge's decision as containing an error of law, and I do not consider that any independent person would view my expression of opinion about the one as having any bearing on the other.

41. Taking Mr Ghadami's point as a whole (rather than looking at his two specific examples), far from demonstrating a closed mind I think an independent person would have viewed my treatment of Mr Ghadami by the Court as demonstrating

    a) an anxiety to draw to the attention of Mr Ghadami upon what points the Court would find submissions and argument helpful:

    b) a desire to understand and engage with complex and not readily comprehensible submissions which were often not directed to matters indicated as helpful:

    c) a desire to keep the case within its allotted time (despite Mr Ghadami's demand that his case was so important that it required much longer than its allotted time):

    d) a generous allocation of the allotted time to Mr Ghadami (I allowed him four of the five days allotted in which to present his arguments): and

    e) a very forgiving attitude to a quite extraordinary outburst by Mr Ghadami on 16 December 2015.

42. Eleventh, at the very outset of his submissions Mr Ghadami asked me to bear with him (as a litigant in person). I responded that Mr Ghadami was "a very skilled litigant in person" so that we would manage perfectly well. Mr Ghadami says that an independent person would gain from this exchange the impression that I had read Mr Risbey's letter (with its description of Mr Ghadami as a litigant involved in many court actions) and that rather than viewing Mr Ghadami as a skilled litigant in person (as I stated) I actually regarded him as a vexatious litigant.

43. This submission is, in my judgment, wholly unreal. The fully informed observer may be taken to know (and would in fact have been informed by Mr Ghadami during the course of the December hearing itself) that Mr Ghadami had appeared before me in

the applications court, and that reports of other cases he had brought were readily available. The point does not deserve further consideration.

44. Twelfth, Mr Ghadami said there is clear authority which governs the position: see Lesage v Mauritius Commercial Bank Limited [2012] UKPC 41. Shortly before his trial Mr Lesage had written to the trial judges apparently disclosing advice he had received about the strength of his case. The judges nonetheless commenced the trial. Mr Lesage contended that in conducting the case "the judges would be consciously or subconsciously disposed to scepticism of [his] case". The Privy Council said that whether that was so involved a consideration of the actual conduct of the judges during the trial to see whether it supported or detracted from the suggestion that there was the appearance of possible prejudice.

45. The Privy Council first observed that it would be difficult for an informed observer *not* to conclude that there was at least the possibility that the judges would adopt a doubtful and sceptical approach to the defence, not least because the judges themselves did not raise with the parties or their counsel what effect the letter might have. From this failure to raise the matter would arise the inference that the court was not alert to the need for vigilance to ensure that the information did not have an unintended effect on its view of the credibility of Mr Lesage's case. The Privy Council held that "it follows that the possibility that the judges would be influenced to subconscious disposition against the Appellant's case was inescapable".

46. The Privy Council went on to express the view that that conclusion was reinforced by a consideration of the way it which the trial itself was conducted. So a retrial was ordered, in which connection the Privy Council said (at paragraph [59]):-

> "It is inevitable and it is to be regretted that ordering a retrial will involve substantial administrative difficulties. In a case where it has been concluded that there is the appearance of bias and unfairness, however, these are consequences which simply have to be accepted. They cannot outweigh the answerable need to ensure that a trial which is free from even the appearance of unfairness is the indispensible right of all parties and is fundamental to the proper administration of justice."

Mr Ghadami says that I must take the same course.

47. I do not find this case helpful to Mr Ghadami. If the December transcript is to be accepted as containing truthful statements by me as to what I did, then I have followed exactly the course contemplated by the Privy Council. As soon as I became aware of a communication from a party to the Court I drew it to the attention of all parties and afforded them the opportunity to respond to it according to its terms.

48. Mr Ghadami's whole application turns on the proposition that a fully informed and fair minded observer would simply not have believed what a judge has said, and would have entertained a real suspicion that the judge was lying. Putting myself as best I can in the position of such an observer I do not believe that to be the case. Nor does any other party that has responded to Mr Ghadami's application.

49. I dismiss the application. I shall proceed to deliver my judgment on the Appeal and the Application.

50. I have perhaps devoted more time to this application than its substance warrants. Other parties have asked me to declare that the recusal application was totally without merit. It would not be fair to Mr Ghadami to do so without affording him the opportunity to make representations I will accordingly consider that matter when I hand down judgment on the Appeal and the Application (together with the issue of how the costs of the recusal application should be addressed).