**Judgment amended at paragraph 12 under the slip rule on 13 November 2018 pursuant to CPR 40.12**

Neutral Citation Number: [2018] EWHC 2876 (Ch)

Claim No: HC-2015-004673

**IN THE HIGH COURT OF JUSTICE**
**BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES**
**BUSINESS LIST (ChD)**

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

Date: 30 October 2018

**Before**:

**THE HONOURABLE MR JUSTICE MARCUS SMITH**

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**Between:**

| | |
|---|---|
| **NEW MEDIA DISTRIBUTION COMPANY SEZC LIMITED (formerly known as New Media Distribution Company Limited)** | Claimant |
| **- and –** | |
| **KONSTANTIN GRIGORYEVICH KAGALOVSKY (acting by his next friend, Natasha Kagalovsky)** | Defendant |

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**Ms Barbara Dohmann, QC** and **Mr Ajay Ratan** (instructed by **GSC Solicitors LLP**) for the **Claimant**
**Mr James Ramsden, QC** and **Ms Rebecca Drake** (instructed by **Bird & Bird LLP**) for the **Defendant**

Hearing dates: 16 and 17 October 2018

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# Approved Judgment

**Mr Justice Marcus Smith:**

## A. INTRODUCTION

### (1) The claim and the parties

1. This is a claim under sections 423 to 425 of the Insolvency Act 1986 in respect of a transaction entered into at an undervalue by Iota Ventures LLP ("Iota"[1]) at the instructions of the Defendant, Mr Konstantin Kagalovsky, in relation to a television network in Ukraine ("TVi") indirectly owned by Iota.

2. New Media Distribution Company Sezc Ltd ("New Media") brings this claim against Mr Kagalovsky. New Media is a company incorporated in the Cayman Islands. It is, and at all material times was, indirectly owned to approximately 85% by Mr Vladimir Gusinski.[2]

3. Iota is a Delaware limited liability partnership. The partnership is governed by an Amended and Restated Partnership Agreement dated 14 April 2008 (the "Partnership Agreement"). The parties to the Partnership Agreement are the owners in equal shares of Iota. At all material times, these partners were:

   (1) New Media Holding Company LLC, a Delaware limited liability company, as nominee for Mr Gusinski. I shall refer to New Media Holding Company LLC as "Mr Gusinski's Nominee", so as to avoid confusing it with the Claimant, New Media.

   (2) Iota LP, a Jersey limited partnership, as nominee for Mr Kagalovsky. Iota LP replaced a previous entity – whose details are immaterial. To the extent necessary, I shall refer to Iota LP as "Mr Kagalovsky's Nominee", so as to avoid confusing Iota LP with Iota.

### (2) The factual background

#### *(a) Iota*

4. As has been described, Iota is a partnership between Mr Gusinski's Nominee and Mr Kagalovsky's Nominee. Both parties invested substantially in the partnership, Mr Gusinski's Nominee making various funding payments to Iota pursuant to various written loan agreements entered into with Iota (the "Loan Agreements"). For its part, New Media entered into three written licence agreements (the "Licence Agreements") for the provision of television content to Iota.

5. Iota, as has been described, indirectly (that is, through intermediaries) owned TVi.

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[1] Annex 1 hereto lists all terms and definitions used in this Judgment, identifying the paragraph in the Judgment where the term or definition is first used.

[2] See Transcript 17 October 2018 at pp.6*ff*, where Mr Gusinski's interest in New Media was probed.

### *(b) The Dilution*

6. Through various dealings with Iota's interests in these intermediaries and in the interests of the intermediaries themselves, Iota's interest in TVi was substantially transferred away from Iota to Mr Kagalovsky, who now owns (again, indirectly) over 99% of TVi. For the purposes of this Judgment, I shall refer to this transaction as the "Dilution".[3] Two of the companies involved in the Dilution, which were under the effective control and beneficial ownership of Mr Kagalovsky, were Aspida Ventures Limited ("Aspida") and Seragill Holdings Limited ("Seragill").

7. The facts and matters regarding the Dilution are pleaded in paragraphs 6 to 8 of the Particulars of Claim and are admitted in paragraphs 8 and 12 of the Amended Defence. Paragraph 12 of the Amended Defence further admits that, at the time of the Dilution, TVi was worth at least US$50 million. Given these admissions, it is unnecessary to describe the Dilution with any greater specificity.

### *(c) The New York Proceedings*

8. The Dilution resulted in litigation, which was commenced in the Commercial Division of the Supreme Court of the State of New York (the "New York State Court"). I shall refer to these proceedings generally as the "New York Proceedings". It is important, however, to note that the New York Proceedings actually involved two separate and distinct complaints:

   (1) A complaint filed by Mr Gusinski's Nominee on 14 December 2009 against *(i)* Mr Kagalovsky, *(ii)* Mr Kagalovsky's Nominee, *(iii)* Aspida and *(iv)* Seragill under Index No 603742/09 E (the "Nominee Action"). By this complaint, Mr Gusinski's Nominee alleged that Mr Kagalovsky and his Nominee had breached contractual and fiduciary duties by surreptitiously transferring ownership of TVi and its trademarks away from Iota by way of the Dilution.

   (2) A complaint filed by New Media on 17 December 2009 against *(i)* Iota, *(ii)* Mr Kagalovsky and *(iii)* Mr Kagalovsky's Nominee under Index No 650754/09 E (the "New Media Action"). The New Media Action was in respect of overdue licence fees and for damages consequent upon termination of the Licence Agreements.

9. Both proceedings were clearly related to the Dilution, but the causes of action and the damages claimed were different, which is unsurprising, given the different interests of Mr Gusinski's Nominee and New Media. The two actions were consolidated for the purposes of discovery and trial in the New York State Court, before Justice Ramos. The trial took place over 24 days between 7 December 2011 and 26 April 2012. Justice Ramos handed down his decision – the "New York Judgment" – on 10 August 2012.

10. The New York Judgment decided in favour – respectively – of Mr Gusinski's Nominee and New Media. On 20 September 2012, the following judgments were entered:

[3] The Dilution was effected in a number of stages, and it might have been said that there were multiple transactions rather than a single transaction. However, these stages were clearly linked, and no point was taken in this regard. I shall, therefore, refer to "transaction" in the singular, this term to include all of the linked stages of the Dilution.

(1) In the Nominee Action, it was ordered that Mr Gusinski's Nominee should recover US$31,732,541.85 jointly and severally from Mr Kagalovsky, Mr Kagalovsky's Nominee, Aspida and Seragill (the "Nominee Judgment").

(2) In the New Media Action, it was ordered that New Media should recover US$4,571,059.54 jointly and severally from Mr Kagalovsky and Iota (the "New Media Judgment").

11. The New York Judgment was appealed to the Appellate Division of the New York Supreme Court (the "New York Supreme Court"). On 29 April 2014, the New York Supreme Court:

(1) Affirmed the Nominee Judgment in its entirety.

(2) Affirmed the New Media Judgment subject to a modification on the law so as to vacate the award against Mr Kagalovsky personally. In the New York Proceedings, Justice Ramos had found Mr Kagalovsky liable in relation to claims for tortious interference and unjust enrichment. The New York Supreme Court held that these findings of liability against Mr Kagalovsky by Justice Ramos had been incorrectly made, and they were dismissed on substantive grounds.[4] As a result, the New Media Judgment was modified to vacate the award against Mr Kagalovsky.

### *(d) The Settlement Agreement*

12. On 15 August 2014, Mr Gusinski and his Nominee of the one part and Mr Kagalovsky and his Nominee of the other part entered into a settlement agreement (the "Settlement Agreement"). Pursuant to the Settlement Agreement, Mr Gusinski **was** paid the sum of US$36,317,675.41. It will be necessary to return to the scope of the Settlement Agreement in due course, because it is said by Mr Kagalovsky, and disputed by New Media, that the New Media Judgment was compromised by the Settlement Agreement.

### *(e) These proceedings*

13. As I have stated, these proceedings are made under sections 423 to 425 of the Insolvency Act 1986. Broadly speaking, in order to make good its claim, New Media must show:

(1) *A transaction at an undervalue.* New Media contends that the Dilution was a transaction entered into by Iota with Mr Kagalovsky at an undervalue within the meaning of section 423(1) of the Insolvency Act 1986. Section 423(1) provides, so far as material, as follows:

> "This section relates to transactions entered into at an undervalue; and a person enters into such a transaction with another person if—
>
> …
>
> (c) he enters into a transaction with the other for a consideration the value of which, in money or money's worth, is significantly less than the value, in money or money's worth, of the consideration provided by himself."

[4] See pp.17 to 18 of the judgment of the New York Supreme Court.

**(2)** *That it was a "victim" of this transaction.* Section 424(1) identifies three classes of person who may apply under section 423. The first two classes are, for present purposes, immaterial. New Media contended it fell within the third class. Section 424(1) provides in this regard:

> "An application for an order under section 423 shall not be made in relation to a transaction except—
>
> …
>
> (c) in any other case, by a victim of the transaction."

Section 424(2) provides that "[a]n application made under any of the paragraphs of subsection (1) is to be treated as made on behalf of every victim of the transaction".

**(3)** *That the transaction was entered into for a purpose described in section 423(3).* Section 423(3) defines or describes two purposes:

**(a)** The purpose "of putting assets beyond the reach of a person who is making, or may at some time make, a claim against him": section 423(3)(a).

**(b)** The purpose "of otherwise prejudicing the interests of persons who are victims of the transaction": section 423(1)(b).

**14.** If satisfied in these three respects, the court may (pursuant to section 423(2)) make such order as it thinks fit for:

> "(a) restoring the position to what it would have been if the transaction had not been entered into, and
>
> (b) protecting the interests of persons who are victims of the transaction."

Section 425 provides, additionally:

> "(1) Without prejudice to the generality of section 423, an order made under that section with respect to a transaction may (subject as follows)-
>
> (a) require any property transferred as part of the transaction to be vested in any person, either absolutely or for the benefit of all the persons on whose behalf the application for the order is treated as made;
>
> (b) require any property to be so vested if it represents, in any person's hands, the application either of the proceeds of sale of property so transferred or of money so transferred;
>
> (c) release or discharge (in whole or in part) any security given by the debtor;
>
> (d) require any person to pay to any other person in respect of benefits received from the debtor such sums as the court may direct;
>
> (e) provide for any surety or guarantor whose obligations to any person were released or discharged (in whole or in part) under the transaction to be under such new or revived obligations as the court thinks appropriate;

(f) provide for security to be provided for the discharge of any obligation imposed by or arising under the order, for such an obligation to be charged on any property and for such security or charge to have the same priority as a security or charge released or discharged (in whole or in part) under the transaction.

(2) An order under section 423 may affect the property of, or impose any obligation on, any person whether or not he is the person with whom the debtor entered into the transaction; but such an order-

(a) shall not prejudice any interest in property which was acquired from a person other than the debtor and was acquired in good faith, for value and without notice of the relevant circumstances, or prejudice any interest deriving from such an interest, and

(b) shall not require a person who received a benefit from the transaction in good faith, for value and without notice of the relevant circumstances to pay any sum unless he was a party to the transaction."

**15.** I shall describe, in Section A(3) below, the issues arising between the parties. Before I do so, however, it is necessary briefly to identify and describe two previous occasions on which this matter came before this court:

**(1)** *The jurisdictional challenge.* At a hearing before Mr Clive Freedman, QC, sitting as a Deputy Judge of the Chancery Division (Neutral Citation Number [2016] EWHC 2221 (Ch)), Mr Kagalovsky sought a declaration that this court had no jurisdiction to try the claims brought against him, alternatively that the court should not exercise that jurisdiction. That application failed. Mr Freedman held that this court had jurisdiction pursuant to Article 4 of Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 (the "Brussels I Regulation Recast") and that this court was mandated to accept jurisdiction.[5] Mr Freedman held that there was no scope for the operation of the *forum non conveniens* doctrine, nor for a finding that the courts of the State of New York were the appropriate forum. I shall refer to this hearing as the "Jurisdiction Hearing".

**(2)** *The preliminary issue.* His Honour Judge Davis-White, QC, sitting as a Judge of the Chancery Division, heard a preliminary issue as to whether Mr Kagalovsky was, for the purposes of these proceedings, estopped from making certain allegations inconsistent with the New York Judgment, thus rendering the making of such allegations an abuse of process. At this hearing (Neutral Citation Number [2017] EWHC 2334 (Ch)), His Honour Judge Davis-White concluded that there were a number of findings made by Justice Ramos which Mr Kagalovsky was prevented from contradicting by virtue of the doctrines of issue estoppel and/or abuse of process. I shall refer to this hearing as the "Preliminary Issue Hearing".

## (3) Issues between the parties

**16.** Section 423 proceedings ordinarily give rise to the three issues I have described in paragraph 13 above, together with argument about what relief – if any – is appropriate.[6] Although most of these issues do arise between the parties in the present case, there are

[5] At [62].
[6] As to which, see paragraph 14 above.

additionally a number of anterior issues that arise between the parties regarding the availability of the section 423 remedy to New Media.

**17.** The issues, as I propose to consider them, are as follows:[7]

**(1)** *Issue 1: Is New Media's section 423 claim merged in the New York Judgment and the New Media Judgment?* As has been described, Iota was a defendant in the New Media Action, which resulted in the New York Judgment and the New Media Judgment. Mr Kagalovsky contends that New Media's claim under section 423 is merged in the New York Judgment and the New Media Judgment. This issue is considered in Section C below.

**(2)** *Issue 2: If, contrary to Mr Kagalovsky's contention in relation to Issue 1, there is no merger, is New Media's section 423 claim an abuse of process, in that this claim could and should have been brought before the New York State Court?* This is a contention on the part of Mr Kagalovsky that, even if there has been no merger, the present claim is nevertheless an abuse of process within the rule in *Henderson v. Henderson* (1843) 3 Hare 100. This issue is considered in Section D below.

**(3)** *Issue 3: Has the New Media Judgment been compromised by the Settlement Agreement?* As has been noted,[8] Mr Kagalovsky contends that the New Media Judgment was compromised by the Settlement Agreement. If so, this has obvious implications for New Media's section 423 claim, not least because it is difficult to see how – if there has been such a compromise – New Media can claim to be a victim of the Dilution within the meaning of section 424(1)(c) of the Insolvency Act 1986. This issue is considered in Section E below.

**(4)** *Issue 4: Has there been a transaction at an undervalue within the meaning of section 423(1) of the Insolvency Act 1986?* This issue is in fact admitted and was not controversial between the parties. However, it is important to understand exactly how it is said that the transaction at an undervalue arose, and the basis upon which this was admitted by Mr Kagalovsky. Accordingly, this issue, albeit uncontentious, is (briefly) considered in Section F below.

**(5)** *Issue 5: Was the purpose in effecting the transaction at an undervalue a purpose within section 423(3) of the Insolvency Act 1986?* As regards this issue, a number of admissions have been made by Mr Kagalovsky, and it will be necessary to articulate these precisely. Nevertheless, Issue 5 remains controversial between the parties and is considered in Section G below.

**(6)** *Issue 6: Whether New Media has standing to bring a claim under section 423?* As section 424 of the Insolvency Act 1986 makes clear, only certain persons may make a claim under section 423. Mr Kagalovsky disputes New Media's standing to make such a claim. This is considered in Section H below.

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[7] For the most part, I have derived these issues from the list of issues agreed between the parties. However, the contentious issues between the parties did fluctuate. Notably, the merger argument (Issue 1) and the effect of the Settlement Agreement (Issue 3) were issues that appeared to go out of and then come back into contention. They were not explicitly conceded by Mr Kagalovsky. In these circumstances, I have considered it best to deal with them in this Judgment.

[8] See paragraph 12 above.

(7) *Issue 7: Assuming New Media's claim prevails so far, is New Media entitled to relief at all against Mr Kagalovsky under section 423; and, if so, what sort of relief should the court grant?* Mr Kagalovsky contended that the links between the Dilution and this jurisdiction were tenuous, and the section 423 jurisdiction exorbitant. For these reasons, he contended that the appropriate course for the court to take – even if all of the other issues were determined against him – was to make no order at all under section 423. The question of relief is considered in Section I below.

## (5) Structure of this judgment

18. These seven issues are considered in turn below in Sections C to I. Before doing so, however, it is necessary to describe the evidence before the court. That is done in Section B below.

# B. THE EVIDENCE

## (1) General

19. Evidence from the following witnesses of fact was adduced. On behalf of New Media, I heard evidence from:

(1) *Mr C William Phillips.* Mr Phillips is a partner in the New York office of the law firm Covington. Mr Phillips was involved in the conduct of the New York Proceedings on behalf of (amongst others) New Media. His evidence related to the nature and conduct of those proceedings and the negotiation of the Settlement Agreement. Mr Phillips made two statements:

(a) The first dated 2 April 2016 ("Phillips 1"); and

(b) The second dated 23 May 2016 ("Phillips 2").

Mr Phillips gave evidence on 16 October 2018. Mr Phillips was a clear and frank witness, articulate in his evidence. He was careful to delineate what he could remember and what he could not, given that the relevant events were some time ago. He was also constrained, in some of his answers, by the fact that he was bound by legal privilege which New Media had not waived.

(2) *Mr Gusinski.* As has been described, Mr Gusinski is the majority owner of New Media. His evidence related to the partnership between himself and Mr Kagalovsky (i.e. Iota) and the nature of his relations between himself and Mr Kagalovsky. Mr Gusinski made two statements:

(a) The first dated 7 May 2018 ("Gusinski 1"); and

(b) The second dated 12 July 2018 ("Gusinski 2").

Mr Gusinski gave evidence in the afternoon of 16 October 2018 and the morning of 17 October 2018. He gave evidence in English, which was not his first language, with minimal assistance from an interpreter (who provided translations of the odd word). I am grateful to Mr Gusinski for giving evidence in a language that he

clearly was not totally comfortable with, for it enabled me to hear his evidence directly, and not at one remove through an interpreter. Mr Gusinski struck me as a businessman who had a clear grip on his businesses' overall strategies and aims, but who delegated the detail to others. His evidence reflected this: Mr Gusinski was able to deal clearly and helpfully with "broad-brush" questions. He was less able to provide detailed answers to very specific questions. I consider that he was doing his best to assist the court, and that his inability to deal with questions of narrow detail was not (as was suggested) evasion, but simply a reflection of Mr Gusinski's *modus operandi* combined, no doubt, with the fading of memory. The relevant events, I remind myself, occurred some years ago.

**20.** Mr Kagalovsky relied upon his own evidence and that of Mr Frederic Newman:

**(1)** *Mr Frederic Newman.* Mr Newman is a partner in the law firm Hoguet Newman Regal & Kenney LLP. Like Mr Phillips, Mr Newman's evidence related to the New York Proceedings, where he acted for Mr Kagalovsky, Iota LLP and Mr Kagalovsky's Nominee, and to the Settlement Agreement. Mr Newman made two statements:

**(a)** The first dated 1 April 2016 ("Newman 1"); and

**(b)** The second dated 3 May 2016 ("Newman 2").

Mr Newman gave evidence on 16 October 2018. Like Mr Phillips, he was a careful and straightforward witness, doing his best to assist the court.

**(2)** *Mr Kagalovsky.* During the course of these proceedings, Mr Kagalovsky made four witness statements, only two of which are material for present purposes. They are:

**(a)** Mr Kagalovsky's third witness statement, dated 7 May 2018 ("Kagalovsky 3"); and

**(b)** His fourth witness statement, dated 12 June 2018 ("Kagalovsky 4").

**21.** Two points need to be considered further in relation to Mr Kagalovsky's evidence:

**(1)** First, there is the fact that Mr Kagalovsky did not attend court to give evidence.

**(2)** Secondly, there was an application by New Media to exclude from evidence some paragraphs in Kagalovsky 4.

I consider these points in turn below.

## (2) Mr Kagalovsky did not attend to be cross-examined on his evidence

**22.** Although Mr Kagalovsky would have wanted to give evidence, due to serious illness he was unable to do so. The title to these proceedings shows that Mr Kagalovsky acted in this litigation by his next friend, his wife, Natasha Kagalovsky.[9] It was common ground

[9] At least, for the purposes of the trial and the period immediately preceding the trial.

between the parties that Mr Kagalovsky lacked the capacity to give evidence at the trial, but that I should admit his written evidence.

23. I entirely accept the reason for Mr Kagalovsky's non-attendance; and I endorse the view of both parties that this court should do its utmost to ensure that Mr Kagalovsky's voice is heard. That obviously implies admitting into evidence Kagalovsky 3 and Kagalovsky 4, as well as other documents, such as the Amended Defence, which are verified by a statement of truth made by Mr Kagalovsky.

24. Nevertheless, I must bear in mind that it has not been possible for New Media to test Mr Kagalovsky's evidence in cross-examination. Many cases have stressed that the basic principle under which English courts operate is that evidence is given orally, with cross-examination of witnesses, and that the admission of hearsay evidence is, and should be, the exception to the rule.[10] Here, for reasons I have explained, the admission of Mr Kagalovsky's evidence is essential as a matter of justice. However, when considering that evidence, I bear in mind that New Media's limited ability to challenge that evidence may be something that goes to its weight.

### (3) The application to exclude certain paragraphs in Kagalovsky 4

25. On 27 July 2018, New Media issued an application to exclude, as inadmissible, the evidence in paragraphs 48 to 50 of Kagalovsky 4. These paragraphs refer to certain propositions of Ukrainian and New York law and incorporate by reference further evidence that is appended to Kagalovsky 4, namely:

(1) An expert opinion of a Professor William Butler dated 12 May 2018 on Ukrainian law.

(2) A memorandum from New York Attorneys Mr Joshua Rievman and Ms Raquel Alvarenga dated 8 June 2018.

26. I dealt with this application at the beginning of the trial and ruled (for reasons given in my ruling at Neutral Citation Number [2018] EWHC 2742 (Ch)) that this evidence should be excluded.

## C. ISSUE 1

27. Issue 1 is whether New Media's cause of action under section 423 of the Insolvency Act 1986 is merged in the New York Judgment – specifically, the New Media Judgment dated 20 September 2012.

28. Paragraph 2(1) of the Amended Defence pleads that "[New Media's] cause of action is merged in the [New Media Judgment] entered on 20 September 2012 by the New York State Court".

29. At the hearing, this point did not appear to be pursued as a separate line of argument by Mr Kagalovsky. Paragraph 59 of Mr Kagalovsky's written submissions states that Mr Kagalovsky's "submissions on this issue are substantively the same as its submissions

[10] See the synthesis of the law in Hollander, *Documentary Evidence*, 13th ed (2018) at [32-18].

on why the court should not exercise its discretion to grant relief under section 423 given that the matter has already been litigated in New York".

**30.** This point will be considered in due course below.[11] However, because the question of merger has been pleaded and was not unequivocally conceded by Mr Kagalovsky (although it certainly was not pressed) it is appropriate to consider and deal with the point in this Judgment.

**31.** Where there is an identity between causes of action in two sets of proceedings, with a judgment given in the first set of proceedings, the cause of action in the second set is said to be merged in that earlier judgment. As Diplock LJ explained in *Thoday v. Thoday* [1964] P 181 at 197 to 198, there are two species of estoppel *per rem judicatam*:

> "The first species, which I will call 'cause of action estoppel', is that which prevents a party to an action from asserting or denying, as against the other party, the existence of a particular cause of action, the non-existence or existence of which has been determined by a court of competent jurisdiction in previous litigation between the same parties. If the cause of action was determined to exist, i.e. judgment was given upon it, it is said to be merged in the judgment, or, for those who prefer Latin, *transit in rem judicatam*. If it was determined not to exist, the unsuccessful plaintiff can no longer assert that it does; he is estopped *per rem judicatam*. This is simply an application of the rule of public policy expressed in the Latin maxim '*Nemo debet bis vexari pro una et eadem causa*'. In this application of the maxim '*causa*' bears its literal Latin meaning. The second species, which I will call 'issue estoppel', is an extension of the same rule of public policy. There are many causes of action which can only be established by proving that two or more different conditions are fulfilled. Such causes of action involve as many separate issues between the parties as there are conditions to be fulfilled by the plaintiff in order to establish his cause of action; and there may be cases where the fulfilment of an identical condition is a requirement common to two or more different causes of action. If in litigation upon one such cause of action any of such separate issues as to whether a particular condition has been fulfilled is determined by a court of competent jurisdiction, either upon evidence or upon admission by a party to the litigation, neither party can, in subsequent litigation between one another upon any cause of action which depends upon the fulfilment of the identical condition, assert that the condition was fulfilled if the court has in the first litigation determined that it was not, or deny that it was fulfilled if the court in the first litigation determined that it was."

**32.** In *Republic of India v. India Steamship Co Ltd* [1993] 1 AC 410 at 417 to 418, Lord Goff considered the application of these principles in the context of the judgments of non-English courts:

> "The distinction between cause of action estoppel and issue estoppel on the one hand, and the principle of merger in judgment on the other hand, has been of great importance where the judgment in question is the judgment of a foreign court in the sense of a non-English court. This is because, whereas it has been recognised that the judgment of a non-English court may give rise to a cause of action estoppel where the judgment is in favour of the defendant (see, e.g., *Ricardo v. Garcias* (1845) 12 CI & F 368), and more recently to an issue estoppel (see *Carl Zeiss Stiftung v. Rayner & Keeler Ltd. (No 2)* [1967] 1 AC 853), nevertheless such a judgment, in favour of the plaintiff, did not at common law constitute a bar against proceedings in England founded upon the same cause of action. This was because the principle of merger in judgment did not apply in the case of a non-English judgment: see Spencer Bower and Turner, *Res Judicata,*

[11] See Section I below.

pp. 363-364, and cases there cited. It was to remove this anomaly that section 34 of the Civil Jurisdiction and Judgments Act 1982 was enacted. This provides:

"No proceedings may be brought by a person in England and Wales or Northern Ireland on a cause of action in respect of which a judgment has been given in his favour in proceedings between the same parties, or their privies, in a court in another part of the United Kingdom or in a court of an overseas country, unless that judgment is not enforceable or entitled to recognition in England and Wales or, as the case may be, in Northern Ireland."

In Dicey & Morris, *The Conflict of Laws*, 11th ed. (1987), p. 431 the effect of the section is described as being that it "reverses in part the rule that a foreign judgment does not of itself extinguish the original cause of action in respect of which the judgment was given."

**33.** In this case, of course, the claims made by New Media against Mr Kagalovsky failed. This cannot, therefore, be a case of merger (which, for the reasons given by Lord Goff, would in any event not apply in this case). If anything, it is a case of estoppel *per rem judicatam*. Such an estoppel will arise provided that:[12]

**(1)** *The New Media Judgment (including, of course the New York Judgment out of which it arose) was of a court of competent jurisdiction, final and conclusive and on the merits.* His Honour Judge Davis-White in the Preliminary Issue Hearing concluded that this was the case,[13] and I do not understand this to be disputed by Mr Kagalovsky. I find that the New Media Judgment was by a court of competent jurisdiction, final and conclusive and on the merits.

**(2)** *The parties in the earlier action – the New York Proceedings – and this action are the same.* It cannot be disputed that the parties to the New Media Action include the same parties as are before this court now. The New Media Action may have failed against Mr Kagalovsky, but he was nonetheless a party to that action.

**(3)** *The cause of action (in the case of cause of action estoppel) or the issue (in the case of issue estoppel) must be the same.* Issue 1 turns on an identity of causes of action. Issue estoppel is not contended for. In my judgment, and for substantially similar reasons as informed Mr Freedman at the Jurisdiction Hearing,[14] there is a considerable difference between the claims advanced in the New Media Action and the claims advanced here. They are certainly not the same causes of action:

**(a)** The New Media Action concerned claims arising out of the Licence Agreements for overdue licence fees and for damages for future fees that would not be paid. The New Media Action resulted in a judgment debt in the amount of US$4,571,059.54, which remains (according to New Media) unpaid.

**(b)** Iota was (again, according to New Media) put in a position – by reason of the Dilution – whereby it was unable to pay this judgment debt.

**(c)** The cause of action in the present case involves as essential elements to the cause of action *(i)* a transaction at an undervalue (as defined in section

[12] See *The Sennar (No 2)* [1985] 1 WLR 490.
[13] At [44(1)].
[14] At [57] to [60]

423(1)), namely the Dilution *(ii)* affecting a "victim" of that transaction (within section 424(1)(c)).

**(d)** The New Media Action involved neither of these issues. It did not, in any real sense, involve the Dilution. Granted, the claims arising out of the Licence Agreements no doubt only arose because of the Dilution – but that was merely a background factor. The basis of the claim by New Media was its rights under the Licence Agreements. Conversely, these rights have not featured in the present claim. I have not had to consider questions relating to breach of or damage arising out of the Licence Agreements.

**(e)** Equally, the question of whether New Media was a "victim" within the meaning of section 424(1) of the Insolvency Act 1986 was an issue in these proceedings, but was not an issue before the New York State Court.

**34.** Accordingly, in relation to Issue 1, I conclude that there was no merger of judgment and no cause of action estoppel. There is no merger of judgment because *(i)* Mr Kagalovsky succeeded, on appeal, in having the claims against him in the New Media Action dismissed and *(ii)* because the doctrine of merger does not apply where the anterior judgment was that of a non-English court. There is no cause of action estoppel because there is no identity of causes of action between the two sets of proceedings: the causes of action are very different.

## D. ISSUE 2

**35.** The abuse jurisdiction under *Henderson v. Henderson* (1843) 3 Hare 100 is a well-known tool to prevent multiple proceedings where there is no good reason for such multiplicity. The nature of the jurisdiction was described by Lord Bingham in *Johnson v Gore Wood & Co (a firm)* [2002] 2 AC 1 at 31 (emphasis added):

> "…*Henderson v. Henderson* abuse of process, as now understood, although separate and distinct from cause of action estoppel and issue estoppel, has much in common with them. The underlying public interest is the same: that there should be finality in litigation and that **a party should not be twice vexed in the same matter**. This public interest is reinforced by the current emphasis on efficiency and economy in the conduct of litigation, in the interests of the parties and the public as a whole. The bringing of a claim or the raising of a defence in later proceedings may, without more, amount to an abuse **if the court is satisfied (the onus being on the party alleging abuse) that the claim or defence should have been raised in the earlier proceedings if it was to be raised at all**. I would not accept that it is necessary, before abuse may be found, to identify any additional element such as a collateral attack on a previous decision or some dishonesty, but where those elements are present the later proceedings will be much more obviously abusive, and there will rarely be a finding of abuse unless the later proceeding involves what the court regards as unjust harassment of a party. **It is, however, wrong to hold that because a matter could have been raised in earlier proceedings it should have been, so as to render the raising of it in later proceedings necessarily abusive.** That is to adopt too dogmatic an approach to what should, in my opinion, be a broad, merits-based judgment which takes account of the public and private interests involves and also takes account of all the facts of the case, focussing attention on the crucial question whether, in all the circumstances, a party is misusing or abusing the process of the court by seeking to raise before it the issue which could have been raised before. As one cannot comprehensively list all possible forms of abuse, so one cannot formulate any hard and fast rule to determine whether, on given facts, abuse is to be found or not."

**36.** In the same case, Lord Millett said this at 59 to 60 (emphasis added):

> "**It is one thing to allow a party to relitigate a question which has already been decided; it is quite another to deny him the opportunity of litigating for the first time a question which has not previously been adjudicated upon.** The latter (though not the former) is *prima facie* a denial of the citizen's right of access to the court conferred by the common law and guaranteed by Article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms (1953). While, therefore, the doctrine of *res judicata* in all its branches may properly be regarded as a rule of substantive law, applicable in all save exceptional circumstances, the doctrine now under consideration can be no more than a procedural rule based on the need to protect the process of the court from abuse and the defendant from oppression. In *Brisbane City Council v. Attorney General for Queensland* [1979] AC 411, 425 Lord Wilberforce, giving the advice of the Judicial Committee of the Privy Council, explained that the true basis of the rule in *Henderson v. Henderson*…is abuse of process and observed that it "ought only to be applied when the facts are such as to amount to an abuse: otherwise there is a danger of a party being shut out from bringing forward a genuine subject of litigation". There is, therefore, only one question to be considered in the present case: **whether it was oppressive or otherwise an abuse of the process of court for Mr Johnson to bring his own proceedings against the firm where he could have brought them as part of or at the same time as the company's action.** This question must be determined as at the time when Mr Johnson brought the present proceedings and in the light of everything that had then happened. There is, of course, no doubt that Mr Johnson *could* have brought his action as part of or at the same time as the company's action. But it does not at all follow that he *should* have done so or that his failure to do so renders the present action oppressive to the firm or an abuse of process of the court. As May LJ observed in *Manson v. Vooght* [1999] BPIR 376, 387, it may in a particular case be sensible to advance claims separately. In so far as the so-called rule in *Henderson v Henderson* suggests that there is a presumption against the bringing of successive actions, I consider that it is a distortion of the true position. The burden should always rest upon the defendant to establish that it is oppressive or an abuse of process for him to be subjected to the second action."

**37.** In this case, the abuse that Mr Kagalovsky contended for was said by Mr Kagalovsky to arise in the following way:

**(1)** In the New York Proceedings, and specifically in the New Media Action, New Media sought to recover overdue licence fees and damages consequent upon the termination of the Licence Agreements.

**(2)** This was a claim that was adjudicated upon, on the merits, by the New York State Court and the New York Supreme Court. New Media was entirely successful before Justice Ramos, resulting in the New Media Judgment against Iota and Mr Kagalovsky in the amount of US$4,571,059.54. On appeal, the New Media Judgment was substantially upheld. The one respect in which the New York Judgment was overturned was in relation to Mr Kagalovsky, where the Supreme Court held that the findings of liability against Mr Kagalovsky were incorrectly made. To that extent, but to that extent only, the New Media Judgment was modified.

**(3)** There was some suggestion before me that the Supreme Court's decision in this regard was not a decision on the merits. I reject this suggestion. Whilst it is true to say that the Supreme Court concluded that, on the facts as established before Justice Ramos and the Supreme Court, New Media's claims against Mr Kagalovsky could not succeed as a matter of law, that does not render the decision not "on the merits". All substantive adjudications of disputes involve applying the relevant law to the

facts as found by the court. In some cases, the law is more contentious than the facts and in other cases the converse is true. In some cases, propositions of law or certain issues of fact may be entirely uncontentious. None of this renders the ultimate judgment anything other than a judgment "on the merits". A judgment "on the merits" is to be distinguished from a purely procedural or case management decision, where the court may very well have to consider the facts and the law, but makes no attempt to finally adjudicate upon either.

**(4)** Thus, New Media proceeded against Mr Kagalovsky in respect of the overdue licence fees and damages consequent upon the termination of the Licence Agreements and failed on the merits. There was some question as to whether New Media could have appealed this decision. I conclude, based upon the evidence of Mr Phillips,[15] that whilst there was no appeal as of right, New Media could have sought permission to appeal. Naturally, such permission may or may not have been granted. However, it was never sought, and so we will never know whether permission would have been given.

**38.** It is against this background that Mr Kagalovsky contended that the abuse of process arose. The present action, so it was said, was no more than a re-run, in a different jurisdiction, of a claim against Mr Kagalovsky that had previously been brought by the same claimant and which, in the earlier proceedings, had failed on the merits as against Mr Kagalovsky.

**39.** Put this way, the argument seems a powerful one. But it proves too much, and is based upon an essential misunderstanding of the relationship between these proceedings and the New Media Action. If Mr Kagalovsky's argument were right, this would be a case of cause of action estoppel. That is a question I have already considered – see Section C above. There is no cause of action estoppel because the present claim amounts to a separate and very distinct cause of action against Mr Kagalovsky to those claims advanced against him in the New Media Action.

**40.** It may very well be said that the present claim is parasitic upon the New Media Action and the New Media Judgment. Indeed, it is New Media's status as an unsatisfied judgment creditor in the New Media Action that gives it standing to advance the present claim under section 423 of the Insolvency Act 1986. Moreover, this claim is emphatically not a re-run of the issues in the New York Proceedings. Rather, it involves New Media claiming that it is the victim of a transaction – the Dilution – such that New Media cannot recover its judgment debt.

**41.** In short, these proceedings have the effect of enabling this court – should it have jurisdiction and choose to exercise it – to act effectively in support of the New Media Judgment.

**42.** The question, then, is whether proceedings having this relationship constitute an abuse of process within the *Henderson v. Henderson* rule. I hold that there is no such abuse, for the following reasons:

[15] See Transcript 16 October 2018 at pp.99 to 100.

**(1)** There is, for the reasons I have given, no overlap between the causes of action asserted against Mr Kagalovsky in the New Media Action and the cause of action asserted here.

**(2)** Indeed, although Mr Kagalovsky was a defendant in the New Media Action and is a defendant in these proceedings, the reason he was joined is different for each cause of action. In the New Media Action, the claims against him were for tortious interference and unjust enrichment in relation to Iota's failure to meet its obligations under the Licence Agreements. In this case, Mr Kagalovsky is joined because (so it is said) he effected a transaction (the Dilution) within section 423 of the Insolvency Act for one of the defined purposes set out in section 423(3) (putting assets beyond reach or otherwise prejudicing the interests of victims).

**(3)** Furthermore, it is very difficult to see how this claim could have been brought as part of the New York Proceedings. The basis of New Media's claim is that, by reason of the Dilution, Iota is unable to meet the New Media Judgment. Paragraph 17 of the Particulars of Claim provides:

> "[New Media] is entitled to seek relief under section 423 of the 1986 Act as a victim of the Dilution within the meaning of sections 423(5) and 424(1)(c). The Dilution deprived [Iota] of over 99% of the indirect ownership of TVi. [Iota] is therefore unable to pay all or any part of the sum owed under the [New Media Judgment]. [New Media] is thus prejudiced."

Self-evidently, this is a claim that could not have been made in the New York Proceedings, because it predicates the existence of the New Media Judgment that was the outcome of the New Media Proceedings.

**(4)** At root, Mr Kagalovsky's complaint is that the remedy that section 423 affords is wide-ranging and exorbitant. As will be described, Mr Kagalovsky contended that – because of what he said was the more-or-less complete absence of a link between this jurisdiction and the facts and matters giving rise to the New Media Judgment – the discretion conferred by section 423 should not be exercised by this court, even if it had jurisdiction. That is a point that I will come to: but it is a bad point in the context of *Henderson v. Henderson* abuse. The fact is that English law affords this right of action – I say nothing for the moment about its breadth or alleged exorbitance – to which claimants in this jurisdiction are entitled to avail themselves. It would, in principle, be wrong to shut out a claimant from exercising a claim simply because of the nature of that claim.

**(5)** Finally, I bear in mind the Jurisdictional Hearing before Mr Freedman. As I noted in paragraph 15(1) above, Mr Freedman concluded that not only did this court have jurisdiction, but that the jurisdiction was a mandatory one. In other words, the claim was a claim this court was bound to accept, and there were no provisions in the Brussels I Regulation Recast permitting or requiring the court to decline jurisdiction. I do not say that in such circumstances a *Henderson v. Henderson* abuse cannot exist: in *Ferrexpo AG v. Gilson Investments Ltd* [2012] EWHC 721 (Comm), Andrew Smith J held that the fact that an English court had jurisdiction pursuant to e.g. the Brussels I Regulation Recast did not remove the court's power to prevent oppressive or abuse proceedings. But where the basis for the allegation of oppression or abuse is previous proceedings in a foreign court, which proceedings do not prevent the English court assuming jurisdiction pursuant to the

Brussels I Regulation – even when reflexively applied (as Mr Freedman applied the Regulation in the hearing before him) – then this court must, in such circumstances, be very careful in dismissing a claim as an abuse of process, for that involves declining to determine a claim, properly before the court, on the merits.

**43.** Accordingly, I determine Issue 2 against Mr Kagalovsky. The tests for *Henderson v. Henderson* abuse, as articulated by Lord Bingham and Lord Millett in *Johnson v. Gore Wood* are clearly not met:

**(1)** This is not a case where Mr Kagalovsky had been "twice vexed in the same matter". As I have described, Mr Kagalovsky is being sued in relation to two entirely different causes of action.

**(2)** This is not a case where "the claim…should have been raised in the earlier proceedings if it was to be raised at all". For the reasons I have given, this claim could not have been articulated in the New Media Action, even if New Media had wanted to include it.

**(3)** This is not a case where a question already decided is being re-litigated. Preventing this claim from proceeding would deny New Media the opportunity of litigating this cause of action for the first time.

## E. ISSUE 3

**44.** At various points, it was contended by Mr Kagalovsky that the judgment debt arising out of the New Media Judgment was compromised by the Settlement Agreement. This point does not appear in the agreed list of issues and did not appear to be pursued by Mr Kagalovsky at the hearing before me. But it was not expressly abandoned and is unequivocally pleaded in Mr Kagalovsky's Amended Defence.[16] In these circumstances, it seems to me that I should deal with the point, if only briefly.

**45.** The Amended Defence pleads that the "Settlement Agreement compromised the [New Media Judgment] and any action to enforce it".[17] I reject that contention for the following reasons:

**(1)** The Settlement Agreement is governed by the laws of the State of New York. Both Mr Phillips in his evidence[18] and Mr Newman orally[19] accepted that the Settlement Agreement did not embrace or compromise the New Media Judgment. Obviously, as New York qualified attorneys, involved in the negotiation of the Settlement Agreement, their views carry considerable weight.[20]

**(2)** That also appears to have been Mr Kagalovsky's own view. Kagalovsky 4 states:

[16] See paragraphs 4(2) and 5(1) of the Amended Defence.
[17] See paragraph 4(2).
[18] See substantially all of Phillips 1 and Phillips 2.
[19] Transcript 16 October 2018/pp.120 to 121.
[20] I did not hear expert evidence on this point. Neither party sought permission to adduce expert evidence. It was accepted by both parties that this was a case like that in *F&K Jabbour v. Custodian of Israeli Absentee Property* [1954] 1 WLR 139, where the parties had agreed for a question of foreign law to be resolved without the assistance of expert evidence.

> "42. Mr Gusinski alleges that the [New Media] proceedings were never intended to be covered by this settlement agreement because the agreement is defined to apply only to the [New Media Proceedings] and [New Media] is not a party to the agreement.
>
> 43. That is not correct. Because my personal liability in New York had been set aside…this is the reason I believe that the [New Media] licence claims were not included. As I was not personally liable, I believe that is the reason that it was not part of the settlement agreement."

I need not trouble myself about why Mr Kagalovsky considered that the New Media Action and the New Media Judgment were not included in the Settlement Agreement. What matters is that the Settlement Agreement appears to have reflected Mr Kagalovsky's (and, indeed, Mr Gusinski's) intentions by excluding New Media and the New Media Action from the effect of the Settlement Agreement.

**(3)** This is clear from the terms of the Settlement Agreement itself:

**(a)** The agreement is expressed to be "by and between [Mr Gusinski's Nominee]…and Vladimir Gusinski ("Gusinski" and, together with [Mr Gusinski's Nominee], the "Gusinski Parties"). New Media is simply not a party.

**(b)** The agreement refers to a desire to "end the [Nominee Action] and cease further legal action between themselves arising from the allegations set forth in the complaint in *New Media Holding Company LLC v Konstantin Kagalovsky, et al*, New York County Index No 603742/2009 (the "Complaint")." Thus, the Nominee Action is explicitly referenced: the New Media Action is not referenced at all.

**(c)** The amount paid in settlement was US$36,317,675.41. This was the amount of the Nominee Judgment plus post-judgment interest. When this amount was paid – as it was – the Nominee Judgment debt was recorded on the court files as having been settled. No such record was ever made in relation to the New Media Judgment. I find that the settlement payment made by Mr Kagalovsky pursuant to the Settlement Agreement was referable to the Nominee Judgment debt only. It was suggested that a compromise that involved Mr Kagalovsky paying substantially all of the Nominee Judgment debt was intrinsically unlikely, and that this was an indicator that the New Media Judgment debt was embraced by the Settlement Agreement. I do not consider that this point can hold sway against the clear wording of the agreement, and (what is more) the evidence of Mr Kagalovsky himself, referred to above.[21] I consider that Mr Gusinski's evidence that Mr Kagalovsky was being released from certain further interest payment obligations to be the explanation for the benefit Mr Kagalovsky derived from the Settlement Agreement.

[21] See paragraph 45(2) above.

**46.** For these reasons, I conclude that the Settlement Agreement does not extend to or compromise the judgment debt arising out of the New Media Judgment.

## F. ISSUE 4

**47.** As I have noted,[22] it is conceded that this is a case of a transaction at an undervalue. On the pleadings, Mr Kagalovsky admits:

**(1)** That, by effecting the Dilution, he "seized ownership" of TVi, which was at the time worth at least US$50 million.[23]

**(2)** He did this at a cost of less than US$68,000.[24]

**(3)** The Dilution was a transaction at an undervalue.[25]

**48.** Before me, there was no argument on this point, and I find that the Dilution was a transaction falling within section 423(1)(c) of the Insolvency Act 1986.

## G. ISSUE 5

### (1) The pleaded purpose

**49.** It was contentious between the parties as to whether, in effecting the transaction described above, Mr Kagalovsky was acting with the requisite purpose within section 423(3) of the Insolvency Act 1986. This section provides that an order under section 423 shall only be made if the transaction in question was entered into for the purpose:

**(1)** Of putting assets beyond the reach of a person who is making, or who may at some time make, a claim against him; or

**(2)** Of otherwise prejudicing the interests of such a person in relation to the claim which he is making or may make.

**50.** In this case, the Particulars of Claim allege two purposes on the part of Iota. Paragraph 12 alleges:

"A real and substantial purpose of [Iota] in entering into the Dilution (which purpose is to be attributed to [Iota] from Mr Kagalovsky in the light of the matters set out in paragraph 11 above) was:

12.1 to put an asset (TVi) beyond the reach of [Mr Gusinski's Nominee] who had potential claims against [Iota]; and/or

12.2 otherwise to prejudice the interests of [Mr Gusinski's Nominee] in relation to such claims."

[22] See paragraph 17(4) above.
[23] Paragraphs 8.8 and 8.9.1 of the Particulars of Claim; paragraphs 12(1) and (2) of the Defence.
[24] Paragraph 8.9.2 of the Particulars of Claim; paragraph 12(2) of the Defence.
[25] Paragraph 8.9 of the Particulars of Claim. Paragraph 12(1) of the Defence.

**51.** An alternative case – pleaded in paragraph 14 of the Particulars of Claim – was that Iota's purpose was to put an asset beyond New Media's reach, New Media having potential claims against Iota or to otherwise prejudice New Media in relation to such claims.

**52.** It seems to me that it is more appropriate to consider the alternative case pleaded in paragraph 14 of the Particulars of Claim rather than the primary case pleaded in paragraph 12. That is because the alternative case relates directly to New Media, whereas the primary case relates to Mr Gusinski's Nominee.

**53.** Of course, the transaction whose purpose I am seeking to discern is the same in each case: it is the Dilution. The difference between the two pleaded cases is the identity of the "victim": in the primary case, the victim is Mr Gusinski's Nominee, in the alternative case it is New Media. Mr Gusinski's Nominee, of course, had the benefit of the Nominee Judgment, which was paid pursuant to the Settlement Agreement and recorded by the court as satisfied. Thus, it is difficult for Mr Gusinski's nominee – which is not a formal party to these proceedings – to show any on-going prejudice, and the fact of the Settlement Agreement and the payment of the judgment debt pursuant to the Settlement Agreement must at least be relevant to the question of purpose.

**54.** Of course, the Dilution occurred before the Settlement Agreement, and I do not say that the case pleaded in paragraph 12 of the Particulars of Claim must fail. Rather, I find that there is no way in which the averment in paragraph 14 of the Particulars of Claim can fail, whilst the averment in paragraph 12 succeeds. Accordingly, it makes sense to consider the alternative case pleaded in paragraph 14 of the Amended Defence.

## (2) Attribution

**55.** It was admitted by Mr Kagalovsky that his purposes for effecting the Dilution were to be attributed to Iota.[26]

## (3) The meaning of "purpose"

**56.** The meaning of the term "purpose" in section 423(3) of the Insolvency Act 1986 was considered by the Court of Appeal in *JSC BTA Bank v Ablyazov* [2018] EWCA Civ 1176. Leggatt LJ, considering the earlier decision of the Court of Appeal in *Inland Revenue Commissioners v. Hashmi* [2002] EWCA Civ 981, held as follows:

> "13. As mentioned, the *Hashmi* case establishes that, where the transaction was entered into by the debtor for more than one purpose, the court does not have to be satisfied that the prohibited purpose was the dominant purpose, let alone the sole purpose, of the transaction. In a passage quoted above, Arden LJ (with whom Laws LJ agreed) held that it is sufficient if the statutory purpose can properly be described as "a purpose" (my emphasis) of the transaction; but she later referred to "a real substantial purpose" and the term "substantial" was also used by the other members of the court. The significance of this epithet is not immediately clear. The word "substantial" is capable of bearing a wide range of meanings. In *Re Brabon* [2000] BCC 1171, Jonathan Parker J confessed to finding it difficult to distinguish between a "substantial" purpose and a "dominant" purpose. If, on the other hand, the contrast is between a "substantial" purpose and a "trivial" purpose, it is not easy to understand when it would make sense to regard putting

[26] Paragraph 11 of the Particulars of Claim; and paragraph 16 of the Amended Defence.

assets beyond the reach of creditors as a "trivial" purpose for entering into a transaction at an undervalue.

14. The description of the requisite purpose as a "substantial" purpose was not necessary to the decision of the Court of Appeal in the *Hashmi* case and to my mind it risks causing confusion. The word "substantial" is not used in section 423 and I can see no necessity or warrant for reading this (or any other) adjective into the wording of the section. At best it introduces unnecessary complication and at worst introduces an additional requirement which makes the test stricter than Parliament intended. I agree with the point made in McPherson's *Law of Company Liquidation* (4th ed (2017)), para 11-116, that there is no need to put a potentially confusing gloss on the statutory language. It is sufficient simply to ask whether the transaction was entered into by the debtor for the prohibited purpose. If it was, then the transaction falls within section 423(3), even if it was also entered into for one or more other purposes. The test is no more complicated than that.

15. Arden LJ made this very point in the *Hashmi* case when she said (at [23]) that "there is no epithet in the section and thus no warrant for reading one in". When later in her judgment she referred (at [25]) to a "real substantial" purpose, it is apparent from the context that the reason for using those adjectives at that point was to underline the distinction between a purpose and a consequence of the relevant transaction. As Arden LJ emphasised, it is not enough to bring a transaction at an undervalue within section 423 that the transaction had the consequence of putting assets of the debtor beyond the reach of creditors. That is so even if the consequence was foreseeable or was actually foreseen by the debtor at the time of entering into the transaction. Evidence that the debtor believed that the transaction would result in putting assets beyond the reach of creditors may support an inference that the transaction was entered into for the purpose of doing so, but the two things are not the same. To illustrate the distinction using a less homely example than that given by Arden LJ, a commander may order a missile strike on a military target knowing that it will almost certainly cause some civilian casualties. But this does not mean that the missile strike is being carried out for the purpose of causing such casualties.

16. When judging a person's intentions, we are generally more inclined to accept that an action was not done for the purpose of bring about a particular consequence, even if the consequence was foreseen, if there is reason to believe that the consequence was something which the actor wished to avoid or at least had no wish to bring about. Hence, in the example just given, where the missile strike had a clear strategic purpose, we may readily accept that it was not ordered for the purpose of causing civilian casualties – particularly if, for example, there is evidence that the commander gave anxious consideration to how many civilians were likely to be in the target area and planned the strike for a time when the number was expected to be low. By contrast, a consequence is more likely to be perceived as positively intended if there is reason to think that it is something the actor desired. Thus, evidence that a person who has entered into a transaction at an undervalue foresaw that the result would be to put assets out of reach of creditors and desired that result might lead the court to infer that the transaction was entered into for that purpose. But such a conclusion is not a logical or legal necessity. It is a judgment which has to be based on an evaluation of all the relevant facts of the particular case."

## (4) Mr Kagalovsky's purpose

**57.** Mr Kagalovsky's case as to his purpose in effecting the Dilution is most clearly stated in Kagalovsky 3:[27]

> "6. In effecting the Dilution, it was not my intention to prejudice any claim that [New Media] or [Mr Gusinski's Nominee] had or might have against [Iota].
>
> 7. As set out in paragraphs 12-13 of my First Witness Statement, I have always had a wider interest and motivation to preserve TVi as an independent broadcaster in Ukraine. I believe that the best way to achieve that aim was to take TVi into my exclusive control because I did not consider that Mr Gusinski shared my interest. In June 2009, an election was called in Ukraine which took place in January 2010. From the announcement of the election Mr Gusinski insisted that TVi's output should reflect and support the Russian view towards Ukraine and in particular the Putin regime's support of then President Viktor Yanukovych. Mr Gusinski's insistence was linked to the fact that his own media business was and remains heavily supported by Gasprom Media, which acts effectively as an investment proxy for the Putin regime. Gusinski could not therefore afford to take a truly independent line in relation to the Ukraine election or he would put at risk that financial support from Gasprom Media.
>
> 8. These are no mere reflections and my own very different motivation is evidenced by my extensive subsequent efforts to keep TVi as an independent broadcaster in Ukraine when TVi was itself seized and effectively taken off air. I refer to the judgments of Turner J in *Kagalovsky v. Balmore Invest Ltd & Others* [2013] EWHC 3876 (QB), [2014] EWHC 108 (QB) and [2015] EWHC 1337 (QB)…In or around April 2013, following the Ramos Judgment, a corporate raid was staged by the then current regime of Ukrainian President Viktor Yanukovych to remove TVi from my control using forged documents and fraudulent transfers and transfer TVi to the ultimate ownership of a series of UK companies…The management of TVi was physically locked out of TVi's offices on 23 April 2013.
>
> 9. I brought the proceedings against Balmore Invest Ltd and others, at very significant expense, in order to seek to keep TVi on air as an independent broadcaster in Ukraine. I did not commence these proceedings for financial reasons, given that TVi was not profit making and had no realistic prospect of becoming profit making in the future.
>
> 10. It was the same motive that caused me to litigate for over two years in the Balmore case that motivated the Dilution: to ensure that TVi would be kept on air as an independent broadcaster. I considered that Mr Gusinski's involvement in TVi would frustrate that aim. Mr Gusinski's loyalty to the Yanukovych regime and to Putin's administration in Moscow meant it would lose all editorial independence if Mr Gusinski continued to be directly involved in its running and broadcast output. I did not effect the Dilution in order to prejudice any claims by [Mr Gusinski's nominee] or [New Media]."

**58.** It was in support of this case, so I understand, that Mr Kagalovsky contended that the Dilution was not unlawful according to Ukrainian law.[28] Whilst I heard no evidence on the point, I am quite prepared to proceed on the basis of an assumption that Mr

[27] Kagalovsky 4 makes further points, which are summarised in Mr Kagalovsky's written opening submissions at paragraphs 96 to 97. I have not set these points out but have taken them fully into account.
[28] See Mr Kagalovsky's written opening submissions at paragraphs 93 to 94.

Kagalovsky believed the Dilution to be lawful under Ukrainian law, and I proceed to consider Mr Kagalovsky's evidence in this light.

**59.** Even accepting that Mr Kagalovsky believed the Dilution to be lawful under Ukrainian law, and giving as much weight as I can to Mr Kagalovsky's evidence, I am afraid that I do not accept this evidence. I find that, at the minimum, one purpose of the Dilution was to put an asset (TVi) beyond the reach of New Media (which had potential claims against Iota) and/or otherwise to prejudice the interests of [New Media] in relation to such claims. Indeed, I conclude that this was the purpose behind the Dilution.

**60.** I have reached this conclusion for the following reasons:

**(1)** The explanation advanced by Mr Kagalovsky of his purpose in effecting the Dilution has been advanced very late in the day. It did not feature in his original Defence filed in October 2016. Nor does it feature in the Amended Defence. In fact, Mr Kagalovsky's pleading, in its present form, simply contains a bare denial as to the purpose alleged against him.[29] It is odd – given the importance of purpose to section 423 proceedings – that Mr Kagalovsky's explanation of his purpose has emerged so late. Inevitably, this affects the weight that I can attach to the explanation advanced by Mr Kagalovsky.

**(2)** What is more, the explanation, when it appeared, was extremely broad-brush. The explanation – as can be seen from the passages quoted in paragraph 56 above – is long on assertion, and very short on actual fact and detail. Whilst, again, I must take account of the fact that when compiling and signing his third and fourth witness statements Mr Kagalovsky was an ill man, I cannot simply accept Mr Kagalovsky's bald assertions as to purpose, particularly when Mr Gusinski was not cross-examined on the point.

**(3)** I fully appreciate that Mr Gusinski cannot say very much – if anything – about Mr Kagalovsky's state of mind. But he could have been cross-examined about his independence – or lack of it. He was not. Such cross-examination would have established whether there was basis to Mr Kagalovsky's allegations that Mr Gusinski was prejudicing TVi's independence. Of course, I appreciate that even if Mr Gusinski's approach to TVi's broadcasting independence was not as Mr Kagalovsky characterised it, Mr Kagalovsky might nonetheless have (wrongly, but genuinely) believed that TVi's independence was at risk. But it would have been helpful to know whether there was an objective basis to Mr Kagalovsky's belief. None was established before me.

**(4)** Nor does the subsequent *Balmore* litigation, to which Mr Kagalovsky makes extensive reference, take matters any further. The events regarding the corporate raid, the effect of which was to strip Mr Kagalovsky of control over TVi, *(i)* did not involve Mr Gusinski and *(ii)* occurred some years after the Dilution, in 2013.[30] I do not consider that these events can shed any light on purposes of the various protagonists (specifically, Mr Kagalovsky and Iota) during the Dilution.

[29] See paragraphs 43.1 to 43.4 of New Media's written opening submissions.
[30] See *Kagalovsky v. Balmore Invest Ltd* [2013] EWHC 3876 (QB) at [7] (*per* Turner J).

**(5)** What is more, viewed objectively, the Dilution looks like an attempt to put assets beyond the reach of New Media and Mr Gusinski's Nominee. An asset indirectly held by Iota was transferred away from Iota *(i)* by Mr Kagalovsky *(ii)* at an undervalue *(iii)* in circumstances where the expropriation was concealed from Mr Gusinski[31] but where *(iv)* Mr Kagalovsky himself benefited. Given that, at the time of the Dilution, there was already a sense in Mr Kagalovsky that Mr Gusinski's companies were doing too well out of the partnership, the Dilution looks very much like an attempt deprive those companies of their entitlements.[32] In particular, this is the case where New Media had certain claims under the Licence Agreements, which claims were prejudiced by the Dilution.

**(6)** I do not go so far as to say that Iota's failure to abide by the terms of the Licence Agreements was an inevitable consequence of the Dilution. It was not. Mr Kagalovsky could have effected the Dilution but nevertheless caused Iota to abide by the terms of the Licence Agreements. Instead, Mr Kagalovsky – simultaneously with the Dilution – caused Iota to cease making payments due to New Media under the Licence Agreements. I find this significant. This is not a case where the Dilution had the inevitable consequence of causing Iota to default on its obligations. There was a choice in this regard, and Mr Kagalovsky chose to cause New Media to default on its obligations under the Licence Agreements. That strongly suggests that the purpose of the Dilution was not, in some way, to bolster the independence of TVi, but rather to procure a situation where Iota could default on its obligations.

**61.** On Issue 5, I conclude that Mr Kagalovsky's purpose was within section 423.

## H. ISSUE 6

### (1) Introduction

**62.** Issue 6 turns on whether New Media has standing to bring a claim under section 423 of the Insolvency Act 1986. This requires consideration of whether New Media is a "victim of the transaction" within the meaning of section 424(1). If so, then the application under section 423 is treated as made on behalf of every victim of the transaction.[33]

**63.** Section 423(5) defines a victim as "a person who is, or is capable of being, prejudiced by" the transaction in question.

**64.** Mr Kagalovsky denied that New Media was a victim of the transaction for three reasons:

**(1)** Mr Kagalovsky denied that the Dilution was the cause of Iota's inability to satisfy the New Media Judgment. Paragraph 101(a) of Mr Kagalovsky's written submissions asserts:[34]

> "[Iota] would have been unable to satisfy all or any part of the [New Media Judgment] regardless of the Dilution. As at the date of the transaction, it had a debt of US$24m and capital of only US$5,000…"

[31] See paragraph 9 of the Particulars of Claim. Paragraph 13 of the Amended Defence admits this paragraph.
[32] See paragraph 49.4 of New Media's written opening submissions and the evidence referenced there.
[33] See section 424(2) of the Insolvency Act 1986.
[34] See, also, Amended Defence at paragraph 5(2).

**(2)** New Media's judgment debt was compromised by virtue of the Settlement Agreement.[35]

**(3)** New Media was a corporate vehicle of Mr Gusinski's. Paragraph 102 of Mr Kagalovsky's written opening submissions states:

> "In ascertaining whether or not [New Media] was a victim within [section 423(5)] involves an assessment of [New Media] in context rather than in isolation. At the time of the Dilution and the New York judgment, [New Media] was owned by [Mr Gusinski's nominee]. Both these corporate vehicles were merely entities through which Mr Gusinski made his *personal* investment in the joint venture. Neither had a value outside the joint venture and neither had a value (or balance sheet solvency) without the sustained financial support of the joint venture partners."

**65.** These points are considered in turn below.

## (2) Iota's inability to satisfy the New Media Judgment, even if the Dilution had not taken place

**66.** I do not consider this to be a tenable argument, for substantially the reasons given in New Media's written opening submissions at paragraph 67. This states (omitting references):

> "…[Mr Kagalovsky] admits that, prior to the Dilution, [Iota] was the owner of a television station worth at least US$50 million. He has rightly abandoned his allegation that [Iota] was insolvent as at the date of the Dilution or would have become insolvent imminently. Further, as the New York State Court recorded in its judgment, he gave evidence in those proceedings that TVi was valuable when he took it from the partnership and said not long after the Dilution that "it is quite clear this is going to be very profitable". The [New York Supreme Court] dismissed [Mr Kagalovsky's] challenge to the New York State Court's valuation of TVi, ruling that "the evidence presented at trial could reasonably have allowed the court to conclude that, given the lengths that defendants travelled to remove TVi from plaintiff's control, funding for the network would have continued."…"

**67.** Iota had debts, but these were as a result of the funding provided by Mr Gusinski and Mr Kagalovsky. The existence of these debts casts no doubt on the solvency or ability to pay of Iota assuming its continued indirect ownership of TVi. In short, and as explained in paragraph 60(6) above, the Dilution was the indirect but not the immediate cause of Iota's default in relation to the Licence Agreements.

## (3) Compromise by virtue of the Settlement Agreement

**68.** I have already considered, in Section E above, whether the New Media Judgment was compromised by the Settlement Agreement. I have held that it was not, and accordingly this point must fail.

## (4) Corporate vehicle

**69.** I do not consider the underlying ownership of New Media to be in any way relevant to this claim. New Media is a legal person in its own right. It brings this claim in its own

[35] Paragraph 101(b) of Mr Kagalovsky's written opening submissions; Amended Defence at paragraph 30(3).

name. The ownership and control of New Media is irrelevant to these proceedings. I see no basis for piercing nor reason to pierce the corporate veil.

## I. ISSUE 7

### (1) Introduction

**70.** Paragraph 31 of the Amended Defence pleads that "…the Court in its discretion should decline to grant relief pursuant to sections 423-425 of the 1986 Act because [Mr Kagalovsky] and/or [New Media's] claim have no or no sufficient connection with England and Wales for it to be just and proper for the Court to make an order against [Mr Kagalovsky]." There are then set out a series of propositions – largely uncontentious – showing the absence of links between this jurisdiction and *(i)* the Dilution and *(ii)* the persons involved in or affected by the Dilution.

**71.** It will be necessary to consider the territorial scope of section 423 and the extent to which this court can decline to exercise jurisdiction under section 423 because there is insufficient connection with this jurisdiction. Thereafter, it will be necessary to consider whether, in light of these matters, there is sufficient connection in the present case. If there is a sufficient connection, it will be necessary to consider the appropriate form of relief.

### (2) Territorial scope of section 423 and the court's discretion

**72.** The question of territorial scope was considered in *Re Paramount Airways Ltd* [1993] 1 Ch 223. The Vice-Chancellor, Sir Donald Nicholls, noted the *prima facie* broad territorial scope of these provisions:[36]

> "…on its face, the legislation is of unlimited territorial scope. To be within the sections, a transaction must possess certain features. For instance, it must be at an undervalue and made at a time when the company was unable to pay its debts, the company must be in the course of being wound up in England or subject to an administration order, and so on. If a transaction satisfies these requirements, the section applies, irrespective of the situation of the property, irrespective of the nationality or residence of the other party, and irrespective of the law which governs the transaction. In this respect, the sections purport to be of universal application. The expression "with any person" merely serves to underline this universality. It is, indeed, this generality which gives rise to the problem."

**73.** Although Nicholls V-C saw force in the need for some limitation on the ambit of the provision, he was unable to frame a clear-cut bright line:[37]

> "In the end, I am unable to discern any satisfactory limitation…The case for some limitation is powerful, but there is no single, simple formula which is compelling, save for one expressed in wide and loose terms (e.g., that the person, or the transaction, has a "sufficient connection" with England) that would hardly be distinguishable from the ambit of the sections being unlimited territorially and the court being left to display a judicial restraint in the exercise of the jurisdiction.
>
> …

[36] At 235
[37] At 237 and 239.

In my view the solution to the question of statutory interpretation raised by this appeal does not lie in retreating to a rigid and indefensible line. Trade takes place increasingly on an international basis. So does fraud. Money is transferred quickly and easily. To meet these changing conditions, English courts are more prepared than formerly to grant injunctions in suitable cases against non-residents or foreign nationals in respect of overseas activities. As I see it, the considerations set out above and taken as a whole lead irresistibly to the conclusion that, when considering the expression "any person" in the sections, it is impossible to identify any particular limitation which can be said, with any degree of confidence, to represent the presumed intention of Parliament. What can be seen is that Parliament cannot have intended an implied limitation along the lines of *Ex parte Blain* 12 ChD 522. The expression must be left to bear its literal, and natural, meaning: any person."

**74.** However, this was by no means the end of the story. These provisions in the Insolvency Act 1986 contain a significant discretion in the court both as to the nature of the remedy to grant and whether a remedy should be afforded at all. On this, Nicholls V-C said:[38]

"The discretion is wide enough to enable the court, if justice so requires, to make no order against the other party to the transaction or the person to whom the preference was given. **In particular, if a foreign element is involved, the court will need to be satisfied that, in respect of the relief sought against him, the defendant is sufficiently connected with England for it to be just and proper to make the order against him despite the foreign element. This connection might be sufficiently shown by the residence of the defendant. If he is resident in England, or the defendant is an English company, the fact that the transaction concerned moveable or even immovable property abroad would *by itself* be unlikely to carry much weight. Likewise, if the defendant carries on business here and the transaction related to that business.** Or the connection might be shown by the situation of the property, such as land, in this country. In such a case, the foreign nationality or residence of the defendant would not *by itself* normally be a weighty factor against the court exercising its jurisdiction under the sections. Conversely, the presence of the defendant in this country, either at the time of the transaction or when proceedings were initiated, will not necessarily mean that he has sufficient connection with this country in respect of the relief sought against him. His presence might be coincidental and unrelated to the transaction. Or the defendant may be a multinational bank, carrying on business here, but all the dealings in question may have taken place at an overseas branch.

Thus, in considering whether there is a sufficient connection with this country the court will look at all the circumstances, including the residence and place of business of the defendant, his connection with the insolvent, the nature and purpose of the transaction being impugned, the nature and locality of the property involved, the circumstances in which the defendant became involved in the transaction or received a benefit from it or acquired the property in question, whether the defendant acted in good faith, and **whether under any relevant foreign law the defendant acquired an unimpeachable title free from any claims even if the insolvent had been adjudged bankrupt or wound up locally**. The importance to be attached to these factors will vary from case to case. By taking into account and weighing these and any other relevant circumstances, the court will ensure that it does not seek to exercise oppressively or unreasonably the very wide jurisdiction conferred by the sections."

## (3) Analysis and application

**75.** In my judgment, a clear distinction must be drawn between those cases where the court has, as of right, a personal jurisdiction over the defendant, and those cases where the

[38] At 239-240 (emphasis added).

court has an element of choice as to the exercise of personal jurisdiction over a defendant, such that it may decline jurisdiction.

**76.** In *Re Paramount Airways Ltd*, Nicholls V-C recognised the importance of the safeguard provided by the need to seek permission to serve abroad (obviously in non-Brussels Regulation cases). In such cases, there plainly is less of a link between this jurisdiction and the defendant than the case where there is a mandatory jurisdiction in this court to hear the case. The other section 423 cases that were cited to me – *Erste Group Bank AG (London Branch) v. JSC "VMZ Red October"* [2015] EWCA Civ 379 and *Orexim Trading Ltd v. Mahavir Port and Terminal Private Limited* [2018] EWCA Civ 1660 – were both cases involving the question of service out of the jurisdiction, where the link between this jurisdiction and the defendant was more attenuated than where a mandatory jurisdiction existed. Plainly, before troubling a defendant outside the jurisdiction with a section 423 claim, the court must satisfy itself (amongst other things) that there was a good arguable claim against the defendant.

**77.** This requirement does not exist in the present case, because these proceedings have been commenced as of right. That does not mean that where a section 423 claim is commenced against a defendant as of right, the court should never exercise its undoubted discretion to make no order against that defendant. But it seems to me that a court having jurisdiction as of right should be slow to decline to make an order at all unless it is clear that the making of such an order will cut across the position under some relevant foreign law. Where that is the case, an English court seised as of right must pay careful regard to the exorbitance or potential extraterritorial adverse effect of making an order under the section 423 jurisdiction. That, naturally, will involve the sort of *Henderson v. Henderson* considerations already considered in this Judgment: but these will not be the only considerations.

**78.** In this case, as it seems to me, the making of an order under section 423 against Mr Kagalovsky will reinforce and support, rather than undermine, the New York Proceedings. In effect, providing New Media with the relief it seeks will buttress the New Media Judgment in a manner that respects, and certainly does not undermine, the New York jurisdiction. I can see nothing in making an order under section 423 that would cut across the law of Ukraine – and, indeed, no-one contended that this was the case.

**79.** In these circumstances, as it seems to me, it would be wrong for me to decline to exercise the jurisdiction that I have and wrong to decline to make an order under these sections of the Insolvency Act 1986.

**80.** Accordingly, I determine Issue 7 in favour of New Media, and must now consider the appropriate form of relief under section 423 of the Insolvency Act 1986.

## (4) Relief

**81.** I have concluded that New Media was and is a "victim" within the meaning of section 424(1)(c).

**82.** Mr Gusinki's Nominee was once, but due to the Settlement Agreement, is no longer, a "victim". Relief for Mr Gusinski's Nominee is not necessary and, indeed, would be

inappropriate.[39] There is, in my judgment, no other person affected by the Dilution as a "victim". Accordingly, it is the position of New Media that I must consider.

**83.** It is, therefore, necessary to consider the appropriate relief under section 423 only so far as New Media is concerned:

**(1)** As New Media accepts,[40] "it is impractical for the position to be restored in the literal sense of returning TVi into the indirect ownership of [Iota]". Indeed, this would be inappropriate, given the existence of the New Media Judgment.

**(2)** Rather, Mr Kagalovsky, as the cause and beneficiary of the Dilution at the time (irrespective of what happened afterwards), should be obliged to provide relief to New Media in the amount of the New Media Judgment. I appreciate that this is a judgment debt owed by Iota, but this judgment represents (as it seems to me) a clear statement by a court of appropriate jurisdiction describing the loss sustained by New Media as a result of the Dilution.

**(3)** Accordingly, I order Mr Kagalovsky to pay to New Media the amount of the New Media Judgment: US$4,571,059.54. I am only, however, prepared to make such an order, on New Media's undertaking to procure that, on payment of this amount (plus interest – which I consider further below), the New Media Judgment in the New York Proceedings is recorded as having been satisfied and Iota discharged.

**(4)** New Media claims interest pursuant to section 35A of the Senior Courts Act 1981 and/or on a compound basis. In my judgment, given that the facts and matters giving rise to a claim to compound interest have not been pleaded, it would be inappropriate to make any such order.[41] Rather, New Media is entitled to interest at a rate of Bank of England base plus 2% from the date on which the New Media Judgment was entered.

**84.** I shall leave it to the parties to draw up an appropriate form of order.

[39] This is the position taken by New Media: see paragraph 21 of the Particulars of Claim.
[40] See paragraph 23.1 of the Particulars of Claim.
[41] The relevant law is summarised in *Sainsbury's Supermarkets Ltd v MasterCard Incorporated* [2016] CAT 11 at [509]*ff*.

# ANNEX 1

## TERMS AND DEFINITIONS

(Judgment, paragraph 1, footnote 1)

| TERM/DEFINITION | FIRST REFERENCE IN JUDGMENT |
|---|---|
| Aspida | Para. 6 |
| Brussels I Regulation Recast | Para. 15(1) |
| Dilution | Para. 6 |
| Iota | Para. 1 |
| Jurisdiction Hearing | Para. 15(1) |
| Licence Agreements | Para. 4 |
| Loan Agreements | Para. 4 |
| Mr Gusinski's Nominee | Para. 3(1) |
| Mr Kagalovsky's Nominee | Para. 3(2) |
| New Media | Para. 2 |
| New Media Action | Para. 8(2) |
| New Media Judgment | Para. 10(2) |
| New York Judgment | Para. 9 |
| New York Proceedings | Para. 8 |
| New York State Court | Para. 8 |
| New York Supreme Court | Para. 11 |
| Nominee Action | Para. 8(1) |
| Nominee Judgment | Para. 10(1) |
| Partnership Agreement | Para. 3 |
| Preliminary Issue Hearing | Para. 15(2) |
| Settlement Agreement | Para. 12 |
| Seragill | Para. 6 |
| TVi | Para. 1 |