

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

Rolls Building
Fetter Lane
London, EC4A 1NL

16 January 2024

Before :

DAVID MOHYUDDIN KC sitting as a Deputy Judge of the Chancery Division

Between :

BARCLAYS BANK PLC

Applicant

- and -

CITIBANK, N.A.

Respondent

- and -

GLOBAL INVESTMENT MANAGEMENT HOLDINGS INC

Interested Party

James Knott (instructed by **Eversheds Sutherland (International) LLP**) for the **Applicant**
The **Respondent** did not attend
Philip Galway-Cooper (instructed directly) for the **Interested Party**

Hearing dates: 30 November 2023, 16 January 2024

APPROVED JUDGMENT

This judgment was handed down by email to the parties' Counsel and release to The National Archives on 16 January 2024 at 3.00 pm.

David Mohyuddin KC:

1. Barclays Bank PLC (**'Barclays'**) has on foot two claims (together, **'Proceedings'**). The first, BL-2021-001939, is brought against Mr Scott Dylan, Mr Gareth Dylan, Ms Sally Ann Glover and Mr David Antrobus. The second, BL-2021-002082, is brought against Fresh Thinking Group Limited (now known as Old3 Limited) (**'FTG'**), Mr Jack Mason and Inc Travel Group Limited (now known as Old2 Limited) (**'ITG'**), both of which companies are now in compulsory liquidation.
2. Put shortly and as far as is presently relevant, the Proceedings arise from the transfer, by subsidiaries of FTG, of some £13.7m from accounts held with Barclays which, at the time, had no or no material credit balance. Barclays says that there were some 830 CHAPS payments of amounts just below the £50,000 threshold that would have caused the payment requests to be have been referred for further approval. Barclays says that the money went to FTG and one of its other subsidiaries, FT Ops Limited (**'FTOPS'**), before onward disbursement.
3. FTG and ITG went into administration in April 2022 and then compulsory liquidation in November 2023; the claims against them have been stayed pursuant to the statutory moratorium under the Insolvency Act 1986 and they are no longer active participants in the Proceedings.
4. It is Barclays' case that all the individual defendants other than Mr Gareth Dylan (**'Defendants'**) were involved in a conspiracy to cause damage to Barclays by unlawful means, the damage being the total of the payments.
5. The Defendants deny the conspiracy allegation.
6. Barclays says that the conspiracy can be inferred from various restructures which are purported to have taken place and by which assets purchased with or which benefitted from monies wrongfully obtained from it were moved out of the FTG group. It says that there were three restructures:
 - i) The first purported to transfer the ownership and control of eight of the subsidiaries which made the payments to a Belizean national called Alex Heredia who, when asked, said that the relevant (and, Barclays says, backdated) filings at Companies House had been made without his knowledge or consent.
 - ii) The second purported to further transfer the ownership of those eight subsidiaries from Mr Heredia to Stephen Linchel.
 - iii) The third, which is said to have occurred after the commencement of the Proceedings and in breach of a freezing injunction, involved the purported transfer of the majority of the assets of the Group (and nearly all of the companies below FTG) out of the jurisdiction to two companies in the BVI.
7. The relevant part of Barclays' Amended Particulars of Claim in BL-2021-001939 starts at paragraph 41. Paragraph 46.10 asserts the first purported restructure and paragraph 46.11 asserts the second. Paragraph 47.5.1 asserts that there was an overall scheme for assets to be removed from the FTG group. The equivalent paragraphs of Barclays' Particulars of Claim in BL-2021-002082 start at paragraph 24; the first purported

restructure is asserted in paragraph 29.10, the second in 29.11 and the overall scheme in 30.5.1. The third purported restructure is not expressly asserted until Barclays' Replies to the individual Defendants' Defences and, as such, has not been the subject of any response from the Defendants.

8. Barclays says that a Delaware company, Global Investment Management Holdings Inc ('**GIMH**'), was involved in the third purported restructure by which, in essence, it replaced FTG as the secured lender to the group.
9. Contempt applications are on foot against Mr Scott Dylan, Mr Antrobus and Mr Mason on the basis that the third purported restructure involved breaches of various freezing injunctions. Those applications are due to be heard in January 2024. Otherwise, the Proceedings have reached the close of statements of case but have progressed no further. A hearing to deal with disclosure appears to have been listed on 20 March 2024 and a 15-day trial is listed in a 5-day window opening on 13 January 2025.

Applications for non-party disclosure orders

10. In the circumstances of the third purported restructure, Barclays seeks orders for non-party disclosure pursuant to CPR 31.17. On 2 October 2023, it issued two materially identical application notices (one in each of its claims) against Citibank, NA ('**Citi**').
11. The application was supported by the third witness statement of Thomas Paul Parry made on 2 October 2023 ('**Parry 3**') with exhibit TPP3. Mr Parry is a Principal Associate at Eversheds Sutherland (International) LLP ('**Eversheds**'), Barclays' solicitors.
12. The application notices both recite that Citi has seen a copy of the order sought by Barclays and has provided written confirmation that it does not object to it being made. By letter dated 28 September 2023, Citi confirmed that it had "no objection to the issuance of the non-party disclosure Order" and that the Court should dispose of the application without a hearing.
13. On 3 October 2023, Master McQuail made the non-party disclosure order without a hearing. The Master's order was in the form of the draft which accompanied the applications and provided for Citi to disclose on request:
 - i) account opening forms, 'know your customer' documents, account mandates, and/or account mandate changes relating to GIMH;
 - ii) correspondence between Citi and GIMH and/or any third party relating to account opening and/or operations for GIMH;
 - iii) account statements for GIMH;
 - iv) documents recording or referring to payments made by GIMH and/or to GIMH including without limitation:
 - a) written payment instructions; and
 - b) transaction and beneficiary details;

- v) if any document(s) disclosed under this Order record or refer to a payment beneficiary being ultimately beneficially owned or controlled by any of the Defendants, and Citi holds any document(s) which would be disclosable under paragraphs 1(a)-(d) if those paragraphs referred to that payment beneficiary instead of GIMH, any such documents.
14. I was informed by Mr James Knott on behalf of Barclays that GIMH had objected to the making of the order by email dated 2 October 2023, although I was not shown the email itself. It would appear that its email did not reach the Master. GIMH renewed its objection by further email dated 4 October 2023 which resulted in the Master releasing the matter to be listed before a Judge. I was told that the order made by the Master on 2 October 2023 had not been set aside and that there was a listing process involving three steps. The first was a non-attended appointment and the second were both attended appointments. I was told that at the second in-person appointment, GIMH was represented by Mr Darren Thomas of Barristers4U. As set out in a Notice of Hearing Date dated 27 October 2023, the applications were listed for a one-day hearing in a three-window opening on 29 November 2023.
15. In the meantime, on 12 October 2023, GIMH wrote to Eversheds asking for court documents to be served at its Delaware offices and refusing to accept service by email, although it was prepared to accept copies by email.
16. On 19 October 2023, GIMH wrote to Eversheds, referring expressly to “the witness statement of Thomas Parry” as setting out the basis for the non-party disclosure applications. The inference which I draw from the content of the letter is that, by sometime before 19 October 2023, GIMH had seen at least the application notices, Parry 3 and Master McQuail’s order.
17. On 21 November 2023, so I was informed, GIMH issued an application to adjourn the hearing of Barclays’ applications. Miles J heard that adjournment application on 28 November 2023 when Barclays was represented by Mr Knott and GIMH by Mr Ian Skeate of Counsel. I have seen a transcript of the submissions made to Miles J but not of his judgment (it having not been approved by the time of the hearing before me). Nor have I seen the order made by Miles J but I was told that he dismissed GIMH’s adjournment application and declared it to be totally without merit.
18. In the meantime, so I was told by Mr Knott, a link to the electronic bundle for the hearing before me was sent to GIMH on 22 November 2023 and a hard copy was couriered to its office in Delaware. Whilst there was no evidence before me about the provision of the bundle to GIMH, I have no reason to doubt what Mr Knott told me.
19. On 29 November 2023, Mr Mark Neils Cooper, a partner at Eversheds, made a second witness statement (‘**Cooper 2**’) exhibiting in exhibit MNC9 the transcript of the hearing before Miles J and some further documents in respect of Mr Daryl Dylan who is Mr Scott Dylan’s half-brother.

Hearing of the applications for non-party disclosure orders

20. At the hearing before me on 30 November 2023, Barclays was represented by Mr Knott. GIMH was represented by Mr Philip Galway-Cooper of Counsel, instructed directly; he was attended by Mr Feld, a paralegal instructed by GIMH to assist him. Mr Scott Dylan

attended online for which I had given permission. I asked him whether he wished to say anything to me but he did not. There had been other requests for online access from Inc Advisory which were in unsatisfactory form. I asked for the requests to be made properly, indicating my willingness in principle to allow remote access, but they were not pursued.

21. Mr Galway-Cooper informed me that four witness statements had been filed in the early hours of the morning of the hearing. One of the statements had been prepared by Mr Feld. He told me that the reason why they were so late was because GIMH – which Mr Galway-Cooper described as the “Second Respondent” – had not been served with the application and had only become aware of it in the last few days. Whilst it turned out that it was on this premise that Mr Galway-Cooper was seeking to avoid criticism of the lateness of the witness statements on which he wished to rely, his submission led me to examine with him what GIMH knew about the non-party disclosure applications and when.
22. I have set out above what Mr Knott told me about the listing process for the hearing before me. Having first submitted that he had no instructions whether GIMH took part in the listing process, Mr Galway-Cooper obtained instructions that GIMH had in fact taken part in the listing process. He accepted that Mr Adam West (who describes himself as an “Authorised Officer” of GIMH) had received a link to the bundle for the hearing before me and that it followed that, from 22 November 2023, GIMH was able to access the bundle. He also accepted that the copies of Parry 3 which GIMH had included in the 3,000-odd page bundle it put before Miles J probably came from the bundle the link to which had been emailed to Mr West.
23. Mr Galway-Cooper further accepted during submissions that GIMH must have known about the non-party disclosure applications because on 2 October 2023 it had emailed its objection to the making of the order sought. He told me that Mr West sent that email, having been informed of the non-party disclosure applications by Mr Mason who had seen them on CE-File. Mr Mason then found out from CE-File that Master McQuail had made the order without a hearing. GIMH became aware that the applications had been released to a judge because an email from the court dated 4 October 2023 was forwarded by one of the Defendants to Mr West.
24. Mr Galway-Cooper was at pains to point out to me that being aware of an application was not the same as being (formally) served with it. That begged the question whether GIMH ought to have been served. Mr Galway-Cooper submitted to me that GIMH had been named as the “Second Respondent” to the applications but, it turned out, it was only described as such on the index it had itself produced for the bundle it put before Miles J and on the four witness statements which had been filed in the early hours of 30 November 2023. It had never been named as such by Barclays. Thus there was nothing in that submission, the description of GIMH as the “Second Respondent” being self-serving.
25. Mr Galway-Cooper submitted that a further reason why GIMH should have been served with the applications was that the documents sought were in fact not Citi’s documents but belonged to GIMH. In Mr Galway-Cooper’s submission, they were GIMH’s documents held by Citi. That led me to look with Mr Galway-Cooper at the various categories of documents listed in the Order made by Master McQuail.
 - i) Mr Galway-Cooper conceded that the first category (account opening forms, etc) were “technically Citi’s documents”;

- ii) as for the second category (correspondence), Mr Galway-Cooper submitted that any letters sent by GIMH to Citi remained GIMH's property because GIMH wrote them. He was unable to produce any authority to support that proposition which I reject;
 - iii) as for the third category (account statements), Mr Galway-Cooper submitted that the information about a customer's account was information belonging to the bank and the customer jointly. But, he said, if the information was printed and sent to the customer the documents became the customer's documents. That was at odds with the submission he made in respect of letters sent by GIMH to Citi and with the fact that exhibited to one of the four witness statements were copies of the statements of what GIMH said was its only account with Citi. In any event, Barclays was not seeking account statements from GIMH but from Citi, taken, no doubt, from Citi's electronic records and it was irrelevant that printed statements of account might have been sent to GIMH or that GIMH might have accessed electronically information held about its account(s) by Citi. There was nothing in the objection raised by Mr Galway-Cooper on GIMH's behalf;
 - iv) as for the fourth category (documents recording or referring to payments made by GIMH), Mr Galway-Cooper accepted that they belonged to Citi;
 - v) Mr Galway-Cooper had no objection in respect of the fifth category.
26. Thus, despite the breadth of the initial submission that the documents sought by Barclays were not Citi's but GIMH's documents held by Citi, it turned out that the objection related only to two categories of documents and I have dealt with them above. There was no substance in the submission.
27. As such, GIMH has not demonstrated that it had an entitlement to be formally served with the applications. In any event, it was well aware of the applications and the basis for them. It had taken part in the listing process resulting in the applications coming on for hearing before me. It had applied to adjourn the hearing of the applications without suggesting that it had not been served; Mr Galway-Cooper was unable to assist me when I asked why GIMH had not taken the "non-service" point before Miles J despite having stated in terms in its letter of 12 October 2023 that it would not accept service otherwise than at its Delaware office indicating that it had identified service as a potential issue. It filed (albeit very late) four witness statements going to the substance of the non-party disclosure applications to which I have had regard. I was satisfied that there was no unfairness to GIMH and that I should hear the non-party disclosure applications on their merits.

Evidence on the non-party disclosure applications

28. Until the day before the hearing, Parry 3 was the only witness statement which had been made on Barclays' applications. Mr Galway-Cooper did not object to me considering Cooper 2 and Mr Knott did not object to me considering the four witness statements on which GIMH wished to rely. The four statements were:
- i) Mr Adam West dated 29 November 2023 ('West') without any exhibit. Mr West describes himself as an "Authorised Officer" of GIMH and stated that he presented his witness statement in support of "the Second Respondent's application." I have

assumed that to be an error and to have been lifted from his statement that was put before Miles J. I was told by Mr Galway-Cooper that this statement had been prepared by Mr Feld, the paralegal who attended the hearing with him;

- ii) a second statement of Ms Shirley Kerkhove dated 29 November 2023 (**‘Kerkhove 2’**) with exhibit SK1 comprising some bank statements for an account held by GIMH with Citi; a certified certificate of standing; and Citi’s account confirmation provided when the account was opened. Ms Kerkhove says that she is “a Director” of GIMH, that Mr West “is also a Director of GIMH” and that she is “the only shareholder of GIMH which is registered in the books and records;”
 - iii) a first statement of Ms Julie Chi dated 29 November 2023 (**‘Chi 1’**) without any exhibit. Ms Chi says that she is “a Director and Shareholder” of the two BVI companies involved in the third purported restructure;
 - iv) a first statement of Mr Daryl Dylan (**‘Daryl Dylan 1’**) dated 29 November 2023 without any exhibit. He describes himself as “a Director” of GIMH.
29. I have considered all the evidence being Parry 3, Cooper 2, West, Kerkhove 2, Chi 1 and Daryl Dylan 1.

Principles

30. CPR 31.17 provides:

- “(1) This rule applies where an application is made to the court under any Act for disclosure by a person who is not a party to the proceedings.
- (2) The application must be supported by evidence.
- (3) The court may make an order under this rule only where—
 - (a) the documents of which disclosure is sought are likely to support the case of the applicant or adversely affect the case of one of the other parties to the proceedings; and
 - (b) disclosure is necessary in order to dispose fairly of the claim or to save costs.
- (4) An order under this rule must—
 - (a) specify the documents or the classes of documents which the respondent must disclose; and
 - (b) require the respondent, when making disclosure, to specify any of those documents—
 - (i) which are no longer in his control; or
 - (ii) in respect of which he claims a right or duty to withhold inspection.
- (5) Such an order may—
 - (a) require the respondent to indicate what has happened to any documents which are no longer in his control; and

(b) specify the time and place for disclosure and inspection.”

31. Documents are “likely” (the word used in CPR 31.17(3)(a)) to support the case of the applicant if they “may well” do so; the test is lower than it being “more probable than not” that they will do so. See *Three Rivers DC v Bank of England (No 4)* [2002] EWCA Civ 1182, [2003] 1 WLR 210 at [32].
32. Where a party seeks disclosure of a class of documents, the relevant test must be met for each of the documents to be disclosed. The party seeking the order must show that all the documents fall within CPR 31.17(3). It is not for the non-party respondent to determine which documents to disclose. See *Re Howglen Ltd* [2001] 1 All ER 376 at 382j to 383a. The court must be satisfied that the documents do in fact exist. See *Re Howglen Ltd* at 383b.
33. The concept of necessity in this context is a flexible one and the precise scope of the concept is to be determined in the light of the particular facts of the case in question. See *Sarayiah v Royal and Sun Alliance* [2018] EWHC 3437 (Ch) at [31]-[38]. The question is whether the disclosure is needed to dispose fairly of the claim or to save costs. See *Frankson v Home Office* [2003] EWCA Civ 655, [2003] 1 WLR 1952 at [12].
34. Ordering disclosure against a non-party is the exception rather than the rule. See *Frankson v Home Office* [2003] EWCA Civ 655, [2003] 1 WLR 1952 at [10]. The jurisdiction should be exercised with caution. See *Re Howglen Ltd* at 382h.
35. The court will not make an order for non-party disclosure if it does not have sufficient information from which it can evaluate the necessity of the disclosure sought for the fair disposal of the claim. See *Commissioner of Police of the Metropolis v Times Newspapers Ltd* [2011] EWHC 1566 (QB) at [29]-[30].
36. The criteria of relevance and necessity are thresholds to the exercise of the court’s discretion; there is a three-stage approach. See *Frankson v Home Office* at [13].
37. Even where the criteria of relevance and necessity in CPR 31.17(3) are satisfied, the court still has a discretion whether to order the non-party disclosure sought. See *Mitchell v News Group Newspapers Ltd* [2014] EWHC 1885 (QB) at [14]-[15].
38. It is relevant, but by no means determinative, that the non-party against whom disclosure is sought does not object to an order being made under CPR 31.17. This can be seen from the way the court proceeded in *Anglos Limited v Kent* [2007] EWHC 904 (Ch) at [5].
39. Mr Knott set out some of the principles in his skeleton argument dated 28 November 2023. Mr Galway-Cooper, who had not prepared a skeleton argument, did not take issue with them. The parties did not make any other submission about the principles which apply to Barclays’ present applications.

Master McQuail’s order

40. As I have already observed, Master McQuail’s order has never expressly been set aside although the applications were released to the judge. I have treated that release as having the same effect as if Master McQuail’s order had been set aside and I have considered

Barclays' applications as if they were being made to me for the first time and have applied the principles that I have just set out.

Barclays' case on the applications

41. Barclays relied on Parry 3 and Cooper 2 in support of its application. Mr Knott had prepared a skeleton argument which he supplemented with oral submissions. The points made by Mr Knott in support of the non-disclosure applications were as follows.
42. The documents sought are likely to (may well) support Barclays' case or adversely affect the individual Defendants' cases because:
 - i) Barclays' case is that part of the alleged conspiracy involved an overall scheme to use the monies extracted to purchase assets which were then placed beyond its reach by being restricted out of the group, there being no justifiable commercial purpose for the various restructures;
 - ii) the draft list of issues for disclosure which was put before the court at the case management conference (and which had been agreed by Mr Scott Dylan and not objected to by the other individual Defendants) included the use of what steps were taken in respect of the third purported restructure;
 - iii) the evidence obtained to date suggests that GIMH was involved in the third purported restructure, providing lending to the group (secured by 28 debentures and 68 guarantees) and possibly to the BVI Companies (Mr Scott Dylan having stated in a letter dated 4 July 2023: "It seems to me that GIMH is the funding partner and Investments Holdings [one of the BVI Companies] is the owner of the companies." I also note that on the next page of the letter, he said that: "From companies house, Investments Holdings Ltd owns Inc & Co Group Ltd and GIMH is the funding partner");
 - iv) the documents sought may well shed light on who is ultimately behind and/or connected to GIMH and/or the BVI Companies (including whether it is any of the Defendants), their relationship to the Group, and the nature of and reasons behind the Third Purported Restructure. If and to the extent that the Defendants are involved in the ownership and/or control of GIMH, or the BVI Companies, it will evidence their involvement with, and in, the Third Purported Restructure and, potentially, their economic benefit in relation to the same, and therefore support the Claimant's case regarding the nature of the alleged conspiracy and the relevant Defendant's economic benefit;
 - v) evidence showing the connection between GIMH and at least Mr Scott Dylan and Mr Mason includes:
 - a) Mr Mason being listed at Companies House as the person with overall responsibility for due diligence for GIMH;
 - b) Mr Mason was the statutory director of 21 of the companies when each of them granted debentures in favour of GIMH in April 2022;

- c) documents relating to the out of court appointment of administrators over a company called SKCO Limited in August 2022 including emails from Mr Scott Dylan from his email address at incadvisory.co.uk which refer to “a simple secured charge holder appointment” and “We’re the secured lender under Global Investment Management Holdings Inc under a debenture.” Mr Scott Dylan also obtained the consent of a prior-ranking charge holder and signed the Notice of Appointment, describing himself as “a director of Global Investment Management Holdings Inc;”
- d) the administrators’ report for a company called COLDCO1 Limited, dated 3 January 2023, states that Mr Scott Dylan approached the administrators’ firm on behalf of a secured creditor which intended to call on its security and appoint an administrator. The only secured creditors were Glenville Walker & Partners Limited (a firm of solicitors) and GIMH. Barclays says that it is inherently unlikely that those solicitors would have appointed Mr Scott Dylan to make that approach and it is to be inferred that he did so on behalf of GIMH;
- e) in January 2023, GIMH issued possession proceedings in the High Court against Mr Scott Dylan’s next door neighbour who himself had previously sought to intervene in possession proceedings brought by a mortgage lender in respect of the neighbour’s property. Barclays says that it is implausible that GIMH would have any claim in respect of the property unless Mr Scott Dylan had some form of interest in GIMH;
- f) debentures used in the third purported restructure are in the same template prepared by Glenville Walker & Partners, as used by Mr Scott Dylan, the solicitors themselves and other group companies including, in places, the same unfilled square brackets;
- g) actual or potential lending by GIMH to the individual defendants to provide moneys for legal fees. An email from Mr Mason to Eversheds dated 10 May 2023 refers to negotiations with GIMH “for a high interest facility to fund legal fees. This will be at a 3000% interest rate;”
- h) the bank statements exhibited by Ms Kerkhove show some entries where the beneficiary is recorded as “Glenville Walker Partners” and where the Customer Reference includes “DYL0015”. Barclays says that Glenville Walker and Partners are the solicitors on the record for Mr Scott Dylan from which it is to be inferred that GIMH are making payments directly to Mr Scott Dylan’s solicitors and that such an arrangement is most unusual;
- vi) the information revealed at the hearing before Miles J on 28 November 2023 shows that Mr Scott Dylan and his half-brother Mr Daryl Dylan were (together with Ms Kerkhove and Mr West) directors of GIMH at its incorporation in April 2022 (during the third purported restructure) and that Mr Daryl Dylan was a previous director of two of the subsidiary companies;
- vii) the witness statements produced by GIMH dated 29 November 2023 beg further questions:

- a) the bank statements show a credit entry “By Order Of 185008” which, Mr Knott told me on instructions, is a Citi sort-code suggesting that another unnamed entity (which might be GIMH itself) which holds an account at Citi paid monies into GIMH’s account. I note also that some similar entries bear a Customer Reference which includes “GIMH”;
 - b) the account opening information exhibited by Ms Kerkhove states that the “Citidirect BE Definition” is “Inc (Management Ops) Ltd” and there are other entities with “Inc” at the start of their names which feature in this matter;
 - c) the account opening information shows that the account was opened on 22 November 2022, some six months after GIMH was incorporated;
- viii) an independent expert who resolved a dispute between a third party complainant and GIMH about the ownership of a domain name concluded that Inc & Co Group Limited (of which Mr Mason and Mr Antrobus are the sole statutory directors), Investment Holdings (BVI) Limited (which is one of the BVI Companies) and GIMH were “clearly connected with each other;”
- ix) in some other delivery-up proceedings before HHJ Worster, the judge observed that “there is plainly some link between GIMH and BVI.” It is said in Parry 3 at paragraph 3.8.2 that the reference to “BVI” is to one of the two BVI Companies.
43. Mr Knott submitted that the obverse is true in that if the documents either (i) do not suggest any link between GIMH and/or the BVI Companies and some of the Defendants or (ii) suggest a justifiable commercial explanation for the Third Purported Restructure, it would no doubt be said by the relevant Defendants that the documents support their case that there has been no conspiratorial scheme.
44. Mr Knott went on to submit that disclosure is necessary because:
- i) on the basis that the relevant Defendants claim to have no ownership or control over GIMH, it is not likely that the documents sought will be disclosed by the Defendants in the ordinary course of disclosure in these proceedings;
 - ii) it is in the nature of conspiracies that their origins are concealed from a claimant, and that because it is usually impossible to prove an express agreement between defendants to a conspiracy claim, the extent or scope of the alleged conspiracy will usually be a matter for inference, to be arrived at by scrutinising the actions and evidence relied upon as matters of inference (see e.g. *Kuwait Oil Tanker Co SAK v Al Bader* [2000] 2 All ER (Comm) 271 at 312-313 and *AstraZeneca UK Ltd v Albemarle International Corp* [2011] 1 All ER (Comm) 510 at [78]). To the extent that there are documents in the hands of third parties that enable a case of conspiracy to be evidenced (in relation to a defendant’s involvement in and/or benefit from it), an order for their disclosure in the proceedings ought, in principle, to meet the test of necessity, as the issue in question is one that goes to the heart of the case;
 - iii) further or alternatively, the disclosure is necessary to save costs in the proceedings on the basis that the disclosure of the material sought is likely to reduce the issues

in dispute by providing contemporaneous evidence in relation to one element of the alleged conspiratorial scheme, which may limit the need for further evidence and/or cross-examination at trial.

45. Mr Knott had some observations about the witness statements relied on by GIMH. He said:
- i) Ms Chi had previously submitted a witness statement in insolvency proceedings concerning FTG and ITG in which she claimed to be an authorised officer of one of the BVI Companies but did not say that she was a director or shareholder. I was not shown the other statement and this submission was made on instructions;
 - ii) again on instructions, when a search had been done at the BVI Financial Services Commission, the only director listed as at March 2022 was Ms Kerkhove, not Ms Chi;
 - iii) in paragraph 6 of her statement, Ms Chi referred to herself as “a” shareholder, not “the” shareholder of the BVI Companies. Mr Knott adopted my observation that she made no mention of the beneficial ownership of the shares;
 - iv) it was unclear on what basis Ms Chi’s evidence was tendered and the weight it should have on this application;
 - v) there are mistakes about the assertions made in the Proceedings themselves.
46. Mr Knott then submitted that the threshold tests were satisfied and that my discretion had been triggered and that, when exercising it, I ought to bear in mind the following factors:
- i) another tribunal (Master McQuail) has previously been satisfied that making the order sought was appropriate on the basis of the evidence filed and no further evidence (including in opposition) has been filed;
 - ii) the non-party whose documents are sought, Citibank, has no objection to the order sought being made (and, indeed, was content for the matter to be dealt with on the papers).

GIMH’s case on the applications

47. Whilst he did not take me through them in any detail, Mr Galway-Cooper asked me to have regard to the four witness statements (and I have done so) and I noted in particular the following.
48. As for Ms Kerkhove’s statement:
- i) she describes herself as “a Director” of GIMH (paragraph 1);
 - ii) she states that Mr Scott Dylan was a director of GIMH for a short period of time but has since resigned (paragraph 9);
 - iii) she confirms that she is the only shareholder of GIMH “which is registered in the books and records” and that none of Mr Scott Dylan, Mr Mason, Mr Antrobus, Mr

Gareth Dylan or Ms Glover have ever been a shareholder of GIMH now or in the past (paragraph 10);

- iv) she confirms that no companies associated to Inc & Co Group Ltd are shareholders or “Ultimate Beneficiary Owners” [sic] of GIMH (paragraph 11);
- v) she confirms that Mr Scott Dylan, Mr Mason, Mr Antrobus, Mr Gareth Dylan and Ms Glover are “not the Ultimate Beneficiary Owners” [sic] of GIMH (paragraph 12);
- vi) she says that GIMH has never been involved in an apparent purported restructure and she is unsure how being a secured lender could mean that it had been when it does not hold any shares (paragraph 18);
- vii) she says that the relationship only started nearly a year after the claim was brought (paragraph 19);
- viii) she asserts that GIMH “has never had any monies from Barclays Bank Plc enter its accounts with [Citi] of any other bank” (paragraph 20). Mr Galway-Cooper confirmed that Ms Kerkhove’s meaning was that GIMH has never had any of the £13.7m said to have been extracted from Barclays;
- ix) she confirmed that GIMH had offered high interest loans to the Defendants which, because Barclays will not consent to the granting of the security GIMH requires, have not been drawn down (paragraph 21);
- x) she confirmed that GIMH does not own any shares in the BVI Companies and the BVI Companies do not own any shares in GIMH (paragraph 22);
- xi) she observed that there was no pre-application correspondence with GIMH (paragraph 23) but instead Barclays has “unlawfully conspired” with Citi to gain access to private information through the back door (paragraph 24). She says that the privacy and proprietary rights and the extremely private data of GIMH should not be ignored (paragraph 25);
- xii) she does not believe that Barclays should have access to GIMH’s bank accounts but exhibits copies which show that “the accounts at Citibank do not hold any monies that have come from Barclays Bank, and have never held substantial monies. (paragraph 27);
- xiii) she exhibits account opening information which shows that GIMH only held one back with Citi and the date upon which it was opened, which corresponds with the date of the bank statements (paragraph 28);
- xiv) she asks for the applications to be dismissed (paragraph 32).

49. As for Mr West’s statement:

- i) he describes himself as an “Authorised Officer” of GIMH rather than a director (paragraph 1);

- ii) he directs much of his statement to the underlying Proceedings in which, given its stated position, GIMH is not concerned;
- iii) he himself (as I confirmed with Mr Galway-Cooper) refutes the fact that GIMH has anything to do with these proceedings (paragraph 14);
- iv) he asserts that Citi is no longer GIMH's banker because, he says, of Barclays' interference (paragraph 16);
- v) he himself (as I confirmed with Mr Galway-Cooper) does not believe that Barclays have substantiated anything (paragraph 18);
- vi) he says that full bank statements have been exhibited by Ms Kerkhove for the only bank account that GIMH holds with Citi but then goes on to say that GIMH is quite happy to disclose all the bank statements if asked (paragraph 23). He expresses a grave concern about the misuse of the documents by Barclays and Eversheds;
- vii) he says that the bank statements show that "there has been no monies paid in form Barclays, totally discrediting the claimants claim of a conspiracy" [sic] (paragraph 24);
- viii) he says that GIMH is happy to agree to any disclosure the court orders "in the usual manner" but disagrees with "forced disclosure" from Citi as a way to "short cut a Disclosure hearing ... on 20th March 2024" (paragraph 25);
- ix) he says that GIMH would want strict guidelines to be imposed as to what data would be requested and the manner in which Barclays may or may not disseminate information (paragraph 26);
- x) he asserts that Citi has had access to privileged legal documents from GIMH's solicitors and GIMH would like to ensure that that is also protected (paragraph 27);
- xi) he asks that the applications be dismissed (paragraph 29).

50. As for Ms Chi's statement:

- i) she confirms that she is the director of Investments Holdings BVI Ltd and International Travel Holdings BVI Ltd (the BVI Companies) and that the Defendants are not the directors (paragraphs 2 and 5);
- ii) she confirms that she is "a" shareholder and that she owns three classes of shares in each BVI company (paragraph 6). She confirms that the Defendants are not shareholders of the BVI Companies and that the BVI Companies are the only shareholders of the group companies (paragraphs 7, 8). She makes no distinction between legal and beneficial ownership of the shares;
- iii) she confirms that GIMH has never been involved in the purported restructure and that it would not be something in which they would involve themselves (paragraph 15);
- iv) she says that the relationship is between GIMH as a "funding company to the group and others and no other reason" (paragraph 24);

- v) she suggests that the non-party disclosure order should not be granted as it will serve no benefit to Barclays and will instead simply provide them with access to private information (paragraph 28). It is unclear why she, as a director of the BVI Companies, felt it is appropriate to include this comment in her witness statement.

51. As for Mr Daryl Dylan's statement:

- i) he describes himself as "a Director" of GIMH (paragraph 1);
- ii) he confirms that GIMH is not and never has been a shareholder of the group (paragraph 6) and that its "sole role is as a secured charge holder that provides funds to the group" (paragraph 7);
- iii) he says that he is not aware that GIMH would ever involve itself in any purported restructure (paragraph 8);
- iv) he confirms that GIMH has never received any monies from Barclays (paragraph 11) or from the Defendants (paragraph 12);
- v) he says that the applications are being made in an attempt to cause harm to the commercial relationships that GIMH and the group has with banks and other third parties (paragraph 24).

52. Additionally, I note from GIMH's letter of 19 October 2023 that it considers the scope of the non-party disclosure sought to be excessive but went on to say that:

"GIMH is willing to permit a neutral third party to examine:

1. Bank statements to confirm that no such £13 million deposit has been made to GIMH's account during or after any relevant periods.
2. The Shareholder Register to affirm that the Ultimate Beneficial Owners ("UBOs") are not the Defendants.
3. A copy of the registration documents for GIMH
4. A copy of the certificates of good standing in relation to GIMH signed by the Secretary of State

This will mean that the various parties will not be put to any necessary costs."

53. The Defendants assert in the correspondence included in the bundle that none of them is an ultimate beneficial owner of GIMH.

54. Mr Galway-Cooper's primary submission was that the application was a fishing expedition. He said that this was a case where Barclays provided overdraft facilities to companies which went into administration as a result of their accounts being frozen. He pointed out that the Particulars of Claim referred to money being extracted through 830 transactions between 15 July 2021 and 24 September 2021 which was before GIMH was incorporated in April 2022, six months later. Therefore, he said, the test of likelihood was not satisfied.

55. He also pointed out, by reference to the Certificate of Standing exhibited by Ms Kerkhove, that GIMH was entirely independent. He said that the fact that some of the defendants were at one time but are no longer directors is not a reason to order disclosure.
56. He also submitted that there was “very little” relationship between GIMH and the Defendants. GIMH was the secured lender to the Inc & Co group which relationship started nearly a year after the claim brought by Barclays.
57. He said that the evidence that GIMH held more than one account at Citi was tenuous.
58. He then submitted, on instructions, that a lot of the documents sought by Barclays would contain “commercial sensitive information and privileged information.” He said that GIMH funds “this litigation and it has documents in relation to these proceedings including legal advice and discussions about strategy which Citi has in its possession.” He said that nothing had been included about that in the four witness statements because they had been prepared quickly and without his (Mr Galway-Cooper’s) involvement, GIMH having been hopeful that its adjournment application would succeed. I do note, however, that Mr West, in his paragraph 27, makes a broad assertion that Citi has had access to “privileged legal documents from our solicitors, and we would like to ensure that this is also protected.” He does not give any further detail as to what those documents might have been. In answer to my questions about what exactly was said to be commercially sensitive or privileged, Mr Galway-Cooper said that the only category that included such material was category (b), correspondence between Citi and GIMH or any third party relating to account opening or operations for GIMH. He said that if a non-party disclosure order was made, questions of commercial sensitivity and privilege can be dealt with in the terms of the order.
59. Mr Galway-Cooper submitted in broad terms that Barclays’ arguments on necessity were very weak and do not pass the test.

Barclays’ submissions in reply

60. Mr Knott made brief submissions in reply:
 - i) the applications are not a fishing expedition;
 - ii) there is no basis in the evidence as to what material is said to be privileged or commercial sensitive and it is not clear on what basis privilege would remain in a document which has been sent through a number of parties to Citi. The draft order already includes provision for Citi to identify documents over which it asserts a duty or a right to withhold inspection;
 - iii) the evidence does not say in terms that GIMH never had any of the £13.7m and there remains a degree of ambiguity about what precisely is being said about what if anything GIMH received and from whom;
 - iv) the loans from GIMH to the Defendants are term loans.

Conclusions

61. Bearing in mind the principles that I must apply and considering the evidence available and the submissions that have been made to me (which I have set out at length above), I reach the following conclusions.
62. Save in respect of bank statements to the full extent sought by Barclays (category (c)) and documents relating to other payment beneficiaries (category (e)), I am persuaded that the documents sought are likely to (may well) support Barclays' case or adversely affect the individual Defendants' cases for the reasons advanced by Mr Knott except that I do not take into account the findings made by the domain name expert nor the comments made in other litigation by HHJ Worster. That is because they are findings or observations made by other tribunals in other disputes or litigation which do not bind me or Barclays, Citi or GIMH. I have reached my decision on the basis of the evidence available (including the four witness statements tendered by GIMH) and submissions made to me. I consider it necessary for the documents listed below to be disclosed by Citi because otherwise it is likely that they will not be disclosed.
63. As for the bank statements, whilst the position is quite finely poised, I am not satisfied on the evidence put before me that Barclays have demonstrated that GIMH holds or held more than one account with Citi. I note that the statements exhibited by Ms Kerkhove include an entry in which there are six numbers which might be a sort-code belonging to Citi and that there are the Customer Reference entries which include "GIMH". But that is an insufficient basis for an inference that GIMH holds or held another account and is also an insufficient basis for rejecting what Ms Kerkhove and Mr West say in their witness statements endorsed with statements of truth.
64. As such, it would be inappropriate for me to order Citi to disclose bank statements beyond those for the account the details of which are exhibited by Ms Kerkhove. Whilst I accept that bank statements have been provided through Ms Kerkhove's exhibit, I consider it appropriate for Citi to disclose the statements because the statements so far provided include unexplained redactions on their last page and do not confirm that the account has been closed.
65. As for documents relating to other payment beneficiaries, I consider this category to be too broad and that the evidence does not support its disclosure. The way in which this category of documents is described in the draft order demonstrates that I should reject the application in respect of it; the category is itself described in speculative terms. I am not satisfied on the evidence that such documents do exist and it is not for Citi to determine which documents to disclose.
66. The threshold tests having been satisfied in respect of some of the documents sought, I turn to the exercise of my discretion. I bear in mind that ordering non-party disclosure is exceptional. I note that Citi has not objected but that does not weigh particularly heavily in the balance. When I consider the reasons for ordering disclosure of the categories of documents which pass the threshold tests (likelihood of assisting Barclays and necessity) against the reasons for not ordering disclosure (that the applications are a fishing expedition, which I do not accept), I have concluded that the disclosure sought is justified in respect of account opening forms, etc (category (a)); correspondence, subject to what I say below about privilege (category (b)); bank statements for the account identified in Ms Kerkhove's exhibit for the entire period during which the account was operated

(category (c)); documents recording or referring to payments made by and/or to GIMH (category (d)).

67. If Citi has in its possession documents in category (b) which are or may be privileged it should disclose their existence and then GIMH should have the opportunity to make application for an order preventing inspection of such documents. Whilst it was unsatisfactory that the evidence (Mr West, paragraph 27) did no more than refer in broad and unspecified terms to “privileged legal documents from [GIMH’s] solicitors” it would in my judgment be wrong if the effect of my granting non-party disclosure was to expose privileged material. There is no basis for affording GIMH a similar opportunity in respect of documents which are said to be commercially sensitive, not least because there is no evidential basis for doing so (none of the evidence tendered by GIMH refers to such documents) but also because no authority was cited to me for the proposition that such documents should be excluded.

Disposition

68. For those reasons, I will accede to the applications to the extent set out above.