Court No 24
Neutral Citation Number: 2015 EWHC 1124 (Comm)
ROLLS BUILDING
FETTER LANE
London EC4

16 January 2015

Before:

MR JUSTICE HAMBLEN

BETWEEN:

SPL PRIVATE FINANCE (PF1) IC LIMITED AND 17 OTHERS

Claimant

-v-

ARCH FINANCIAL PRODUCTS LLP

Defendant

AND BETWEEN:

SPL PRIVATE FINANCE (PF2) IC LIMITED AND 5 OTHERS

Claimant

-v-

ROBIN FARRELL

Defendant

MR R COLEMAN QC and **MR G WHEELER** (instructed by Stephenson Harwood LLP) appeared on behalf of the Claimants.

MR R FARRELL appeared on behalf of the Defendants.

Friday 16 January 2015

Approved Ruling

MR JUSTICE HAMBLEN:

Introduction

1. This is the return date of a worldwide post judgment freezing order made by Mr Justice Walker on 18 December 2014 without notice against the defendant, Mr Farrell, shortly before he handed down judgment following trial.

2. The claimants apply for a continuation of that order and also for further ancillary orders for (1) specific disclosure; (2) permission to seek a freezing order against Mr Farrell in the courts of Guernsey in relation to assets owned by him there, and (3) permission to use documents disclosed by Mr Farrell pursuant to the terms of the freezing injunction in connection with possible proceedings under section 423 of the Insolvency Act 1986. A cross application is made by Mr Farrell for the setting aside of the worldwide freezing order.

3. Mr Farrell is not represented and has appeared in person but has made extensive submissions in writing and orally and has put two affidavits together with exhibits before the court. The claimants' evidence consists of two affidavits from their solicitor Mr Gwynne and the exhibits thereto.

Factual background

4. The background to the matter is set out in considerable detail in the judgment of Mr Justice Walker, but, in outline, SPL Guernsey IC Limited, as it is now known, is a closed-ended investment company which is incorporated in Guernsey under the Incorporated Cell Companies Ordinance 2006. The claimants are each

incorporated cells of SPL Guernsey. Under the relevant Guernsey legislation each of the claimants is a separate legal entity and holds its own separate assets. The claimants were part of the structure through which investors in the UK invested, doing so primarily through open-ended investment companies ("OEICs"), in investment funds marketed to them by independent financial advisers. The investments made by the claimants were managed by Arch Financial Products LLP (Arch FP) pursuant to terms of materially identical Investment Management Agreements ("the IMAs") entered into between each of the claimants and Arch FP. Mr Farrell is and was the chief executive officer of Arch FP.

5. In the proceedings brought against Arch FP, the claimants made allegations in respect of a number of investments which Arch FP had caused the claimants to make. The claim against Mr Farrell concerned only one investment, namely the investment in Lonscale Limited.

6. The trial took place between November 2013 and February 2014, with judgment being handed down on 18 December 2014. By that judgment both Arch FP and Mr Farrell were ordered to pay to the claimants damages and interest totalling £24,358,169.75. The judge found that Arch FP had acted negligently and in breach of its fiduciary duties to the claimants in causing the cells to invest in the acquisition of the Club Easy group of companies, through Lonscale, an Isle of Man company established for the purposes of that acquisition. In outline, Mr Justice Walker found as follows:

(1) The true reason why Lonscale was created as a vehicle for the acquisition of Club Easy was to assist Mr Farrell and his associate, Mr Barkman, in a plan to extract "what [they] can take out of it" from a total payment which was to be made by the investors [Judgment, 125]. From the outset, Mr Farrell envisaged that the investors in the acquisition of Club Easy would include the Claimants [Judgment, 123].

(2) A total of £21m was invested in Lonscale in connection with the acquisition of Club Easy in October 2007. £20.2m was invested by the Claimants and £800,000 by Foundations Program Plc ("FPP"), an Isle of Man company which was under the control of Mr Barkman [Judgment, 136].

(3) Of the £21m invested in Lonscale, £3m was paid directly to Arch FP, and £3m was held for various corporate vehicles under the control of Mr Barkman of which a further £556,152 was paid to Arch FP at his direction [Judgment, 137].

(4) Walker J found that the Claimants "funded either the whole or a very substantial part of the £3m which Arch FP received. I am sure that it was the [Claimants'] investment which resulted in Arch FP taking what it regarded as a £3m profit" [Judgment, 138] and that "The only reason for the payments of £3m was so that, in Mr Barkman's words, Arch FP and Mr Barkman could 'turn a profit' of such a size that it would 'turn heads'" [Judgment, 139].

(5) The Claimants had not consented to the use of their funds to make the payment of £3m of fees to Arch FP (or any fees beyond those provided for by the IMAs). There may have been some informal disclosure to the then directors of the Cells that Arch FP would be receiving a fee from the transaction but they were not told that the Claimants would be funding the fee in large part [Judgment, 148-149]. Any disclosure that may have

occurred did not amount to full disclosure of all material facts [Judgment, 185].

(6) In profiting from the investment which it arranged for the Claimants to make in Lonscale without fairly managing the conflict of interest between Arch FP and the Claimants to which the investment gave rise, Arch FP acted in breach of its fiduciary duties to the Claimants [Judgment, 244-245].

(7) Mr Farrell assisted Arch FP's breach of fiduciary duty: "he was in charge of the extraction venture on behalf of Arch FP throughout August 2007, and he ensured that it was carried through during the months which followed" [Judgment, 283]. In assisting that breach of fiduciary duty, Mr Farrell acted dishonestly [Judgment, 284-285].

The Issues

Issue 1 - whether the freezing order should be continued or set aside.

7. The relevant principles in relation to the grant of post judgment freezing orders are set out in a number of cases. I have been referred in particular to Orwell Steel v Asphalt and Tarmac [1984] 1 WLR 1097 at 1100 where Mr Justice Farquarson said as follows:

> "There is accordingly, in my judgment, power to grant an interlocutory injunction between final judgment and execution.
>
> If there is such a power, there seems to be no logical reason why a Mareva injunction should not be used in aid of execution. Indeed, in one sense it could be said that there is greater justification for restraining a defendant from disposing of his assets after judgment than before any claim has been established against him. It is true that there is a variety of methods for enforcing execution as set out in RSC Ord 45 r. 1 and once the plaintiff

has obtained judgment it may be said that he should pursue the remedies provided by the rules rather than extend the application of Mareva injunctions still further. The answer to that objection is that, as has been frequently pointed out, the Mareva injunction acts *in-personam* on the defendant and does not give the plaintiff any rights over the goods of the defendant nor involve any attachment of them. In this context it would have the effect of preserving the defendant's goods until execution could be levied upon them; and the remedies of injunction execution can take effect side by side. Such was the views of Robert Goff J in Stewart Chartering Ltd v C & O Managements SA [1980] 1 WLR 460 where he continued a Mareva injunction granted before judgment in aid of execution. Plainly an injunction will only be granted where the plaintiff can adduce evidence of a kind which normally supports an application for a Mareva injunction, namely, that there are grounds for believing that the judgment debtor may dispose of his assets to avoid execution. Perhaps such grounds may be more readily established after judgment than before it."

8. I have also been referred to Camdex v International and Bank of Zambia (No 2) [1997] 1 WLR 632 at 639 and Nomihold Securities Inc v Mobile Telesystems Finance SA [2012] BLR 1166.

9. The claimants stress that it is inherent in the jurisdiction to grant a post judgment freezing injunction that an order can be made even where no earlier freezing injunction has been granted. The basis of the injunction is to assist in the execution of a judgment which has been obtained, rather than to prevent

preemptive avoidance of a future judgment. In this context they refer in particular to what was said at the end of the citation from Mr Justice Farquharson's judgment in the Orwell Steel case.

10. In relation to the applicable principles, of particular importance to the present application is the issue of real risk of dissipation. In that context, I have been referred to the judgment of Mr Justice Flaux in Congentra AG v 1613 Marine SA [2008] 2 Lloyd's Law Reports, 0602, at paragraph 49 in which he said as follows:

> "(i) there is a real risk that a judgment or award will go unsatisfied, in the sense of a real risk that, unless restrained by injunction, the defendant will dissipate or dispose of his assets other than in the ordinary course of business: Ninemia Maritime Corporation v Trave Schiffahrtgesellschaft mBH und co KG (the Niedersachsen [1983] 2 Lloyd's Rep 600 per Mustill J as interpreted by Mr Justice Christopher Clarke in TTMI Ltd of England v ASM Shipping Ltd of India [2006] 1 Lloyd's Rep 401 at page 406 (paras 24 to 27); or
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> (ii) that unless the defendant is restrained by injunction, assets are likely to be dealt with in such a way as to make enforcement of any award or judgment more difficult, unless those dealings can be justified for normal and proper business purposes: Stronghold Insurance Co Ltd v Overseas Union Insurance Ltd [1996] LRLR at pages 18 and 19 per Potter J and Motorola Credit Corporation v Uzan (No 2) [2004] 1 WLR 113 at page 153 (paras 142 to 146) where the Court of Appeal was applying the same principle in the context of disclosure of assets by the defendant."

11. I have also been referred to the decision of the Court of Appeal in Thame

investments v Tomlinson [2003] EWCA Civil 1272, which emphasised at paragraph 21 that there must be "solid evidence" of the likelihood of dissipation. It was also pointed out at paragraph 28 that it is not sufficient to point to a finding of dishonesty without scrutinising whether the dishonesty justifies the inference that there is a risk of dissipation of assets.

12. With that guidance in mind, I turn to consider first the primary submission made by Mr Farrell which is that there is no purpose or justification in continuing the worldwide freezing order in the light of the fact that a stay of execution has been granted by Lord Justice Vos pending the determination of his application for permission to appeal. That has been directed to be heard orally and the present indications are that there will be a hearing date in the summer of this year, although an application for expedition has been made by the claimants.

13. Mr Farrell submits that, in the light of that stay, there is no need for a freezing order to assist in relation to execution, because, as matters stand, there can be no execution. In my judgment that is a false point. The purpose of the freezing order is to preserve such assets as may be available pending the execution process. That process has been held up by the reason of the stay, but the underlying need to preserve the assets remains. The effect of the stay is simply to prolong the period of time over which that protection may be required. Further, it is right to observe that one of the matters relied upon by Lord Justice Vos in reaching his decision that there should be a stay was the existence of the worldwide freezing order.

14. For all of those reasons I do not accept that the grant of the stay of execution provides an overarching reason or indeed any reason why the freezing order

should be set aside.

15. I turn then to consider what is the main ground of dispute in relation to the continuation of the freezing order, namely the issue of real risk of dissipation. In that connection the claimants can and do rely in particular upon the following matters.

16. Firstly, there is the fact that the trial judge himself, who was in an uniquely good position to assess that risk, albeit on a without notice basis, concluded after careful consideration that there was indeed such a risk in this case. In reaching that conclusion he had regard, among other things, to the findings that he had made during the course of the trial, as reflected in paragraph 14 of the note of his ruling.

17. Secondly, there is the fact of the very strong findings of dishonesty made in the judgment and, indeed, the nature of those findings which relate to the extraction of fees for the benefit of Arch with the dishonest assistance of Mr Farrell. In this connection I would refer in particular to the following:

> "233. For the reasons given above I conclude that Arch FP was negligent in relying upon the Storeys property valuations, in committing the Lonscale claimant cells to the October 2007 investments when they knew that a substantial capital injection was needed and that nothing was in place to ensure that the necessary capital injection would be made and in failing to conduct any risk/reward analysis on behalf of the cells. The analysis under each of these three heads identified earlier leads to the same conclusion: no reasonable investment manager could possibly have considered that the October 2007 investments would be in the best

interests of the cells. Mr Farrell knew that they were unjustifiable. He nevertheless ensured that Arch FP committed the Lonscale claimant cells to those investments so as to enable Arch FP and Foundations to extract the substantial sums planned as the second stage of their extraction venture.

283. I have held in section G above that Arch FP was in breach of fiduciary duty in committing the Lonscale claimant cells to the October investments in circumstances where this gave rise to a conflict of interest and in taking the payment of £3 million on 6 November which came about because Arch FP was in a position to ensure and did ensure that the Lonscale claimant cells entered into the October 2007 investments. For the reasons given section G above, I have no doubt that Mr Farrell assisted Arch FP to breach its duty in both these respects. He was in charge of the extraction venture on behalf of Arch FP throughout August 2007 and he ensured that it was carried through during the months which followed.

285. Moreover, even if and on I were wrong to conclude that Mr Farrell was well aware that what he was doing was wrong, in my view it is plain that at the very least he suspected that relevant elements of the transaction were such as would make it wrong and nevertheless took a conscious decision not to make inquiries which would have resulted in him learning things which would have made it wrong to proceed with the transaction."

18. In addition, various findings were made about Mr Farrell's honesty in relation to the evidence he gave at trial. In particular the following:

(1) Walker J was "driven to the conclusion that Mr Farrell knowingly misled the court in what he said in relation to Arch FP's role in 2007, in relation to the suggestion that Mr Barkman paid Arch's £3m fee out of a £6m 'capital gain' made by Mr Barkman, and in saying that Arch FP had complied with advice it had received on the fair management of conflicts" [Judgment, paragraph 86].

(2) The evidence given by Mr Farrell relating to the alleged last minute change to the structure of the "fee" paid to Arch FP and to Mr Barkman's alleged preference to make a capital gain was described by Walker J as "simply incredible" [Judgment, paragraph 161]. The Defendants' written closing submissions on the point are described as making a "*disingenuous*" observation on the inconsistencies in the documents [Judgment, paragraph 161(10)].

(3) Walker J concluded his consideration of the Defendants' evidence on the arrangements for the payment of the "fee" by saying that "…Mr Farrell and Mr Addison consider it vital to keep up a pretence which could barely qualify as a charade. I say that it barely qualifies as a charade because the Lonscale claimant cells are right to say that this account has been 'mired in inconsistency' and beggars belief. I am sure that Mr Farrell and Mr Addison are both well aware that their contention that the sum of £3m was paid by Mr Barkman is utterly untrue" [Judgment, paragraph 163].

(4) As regards Mr Farrell's evidence that the "fees" were financed by AT1, Walker J was "sure that when giving this answer Mr Farrell knew it to be untrue" [Judgment, paragraph 198].

(5) On the question whether Arch FP had carried out a risk/reward analysis before committing the cells to the investment in Lonscale, Walker J rejected Mr Farrell's oral evidence that an analysis had been carried out by

the portfolio managers, stating that "I am sure that in giving this evidence Mr Farrell was telling the court that such an analysis had been produced, when in fact he well knew that no such analysis had been produced" [Judgment, paragraph 226].

(6) As regards whether Arch FP managed conflicts of interest fairly and whether it acted in the manner which satisfied the requirements for fair conduct which were recorded in the note of a meeting with an external advisor which was referred to as "the Symington meeting", Walker J found that "Mr Farrell in cross examination was making points which were obviously false, and I am sure that they were known by him to be false. The notion that this transaction could be brought within paragraph [7] of the Symington note was preposterous" [Judgment, paragraph 257].

(7) Similarly, on the question of whether there was a documented rationale of the transaction, Walker J found that "there was no merit whatever in Mr Farrell's assertion that there was a documented rationale for the transaction" [Judgment, paragraph 260].

(8) Walker J concluded on the question of the management of conflicts of interest that "In each of the above respects I am sure that Mr Farrell gave evidence at the very least without regard to its truth and in most respects knowing it to be untrue" [Judgment, paragraph 262].

19. As Mr Gwynne puts it in his first affidavit at paragraph 57.1:

> "The court can infer the risk of dissipation from the findings made against Mr Farrell in the judgment. I refer in particular to the finding at paragraph 282 that the court had "no doubt that Mr Farrell assisted Arch FP to breach its duty in both these respects: he was in charge of the extraction venture on behalf of Arch FP throughout August 2007 and he

ensured that it was carried through during the months which followed". The court then found, at paragraph 282, that it was "driven to the conclusion that he knew that what he was doing was wrong". Those findings amount to findings that Mr Farrell engaged in the improper extraction of funds from the cells for the benefit of Arch FP and that he was involved in that extraction knowing very well that what he was doing was wrong. Such conduct justifies an inference that Mr Farrell would be willing to manipulate and transfer his own assets for the purpose of avoiding the enforcement of the judgment which has been obtained against him."

20. Those findings do, I accept, provide a strong basis for the claimant's case that it would be appropriate to draw the inference that there is in this case a real risk of dissipation.

21. Thirdly, the claimants rely upon dealings with assets by Mr Farrell during the course of 2009 and the timing of those dealings. They point out that these dealings occurred at a time when, on the basis of the judge's findings, there had been dishonest conduct by Mr Farrell of which he must have been aware. At the end of 2008 there was the global financial crisis and it was clear that the financial circumstances and the financial dealings of Arch and therefore of Mr Farrell were likely to come under scrutiny, both as a result of the financial circumstances which then prevailed, but also because there had been the commencement of inquiries by Capita into conflict of interest issues, which began in January 2009. It is against that background that the claimants refer in particular to the various dealings.

22. The first dealing is the transfer by Mr Farrell of half of his shareholding in

Arch International to his wife for no consideration. There is some issue as to the timing of that. Mr Farrell suggests that it was towards the end of January 2009, but there is a stock transfer form which has a date of 17 February 2009. On either view it was in circumstances of looming if not existing financial difficulties arising as a result of the financial crisis and after Capita's inquiries had begun. As to the latter, Mr Farrell submits that these inquiries were essentially addressed as inquiries made of Capita itself rather than Arch and neither he nor Arch were the focus at that stage.

23. The second dealing in that on 17 September 2009, Mr and Mrs Farrell signed a trust deed pursuant to which they placed their principal residence, which they then held in joint tenancy to be held for themselves as tenants in common, with Mr Farrell having 3 per cent and Mrs Farrell 97 per cent. This amounted to a disposal of 47 per cent of the interest in the property to his wife. That property is a property in Bradbourne Street in Fulham which is currently estimated to have a value in the region of £4 million. Again, the claimants say that the timing of this transfer gives rise to cause for concern and suspicion.

24. Mr Farrell's answer is that this arrangement, like the arrangement in relation to the Arch shares, was done on an advised basis and for proper reasons of tax efficiency and that it has been prefaced by discussions in relation to tax arrangements going back to 2007. In that regard he has exhibited certain documents relating to some of his dealings with financial advisers and solicitors over this period. It is fair to observe, as the claimants do, that these documents do not of themselves show detailed estate planning or concern over CGT arrangements.

25. Against that Mr Farrell says that they have been exhibited essentially to bear out

points of timing rather than details of advice. But even if that be so, the fact of the matter is that they do not bear out the detailed point that Mr Farrell seeks to make in his evidence and his submissions. There do remain question marks about the timing and motivation of the transfer of this substantially valuable asset.

26. The third dealing concerns the creation, also in September 2009, of a family settlement trust, about which few details have been provided, and it is said that this is for Mr Farrell's children.

27. The claimants say that these transfers, coming at the time that they did, indicate a propensity to put assets beyond the reach of potential creditors.

28. Fourthly, the claimants rely upon the fact that Mr Farrell is a man of financial sophistication, having worked in the financial business over a number of years and having knowledge and experience of the financial services sector both here and in a variety of jurisdictions, as is described in more detail at paragraphs 57.2 to 57.8 of Mr Gwynne's first affidavit.

29. Those four grounds in my judgment do provide compelling reasons for justifying the conclusion that there is a real risk of dissipation here, as Mr Justice Walker found. Mr Farrell submits that the court should not so conclude. He points out in particular that the evidence shows that he has no significant assets now and the person in his position who has no significant assets is not a person who is likely to start dissipating such few assets as he has. However, it is clear that he does have some assets. The claimants are entitled to seek protection against dissipation of such assets as he has and furthermore the assertion that those assets are minimal assumes that he has given full and complete disclosure of his assets, which is a matter which is very much in dispute, as I shall address when dealing with the

ancillary application for disclosure.

30. Mr Farrell also points out that there has been delay in seeking a freezing order in this case and that had there been a real risk of dissipation, one would have expected the claimants to take action earlier than they did, which was the eve of the hand-down of the judgment.

31. This was a point which Mr Justice Walker expressed some concern about, but nevertheless felt it did not mean that there was no real risk of dissipation and he explained his reasons for so concluding at paragraphs 20 to 21 of his judgment:

> "20. On 21 December 2006 the IC C was incorporated.
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> Between December 2006 and May 2008 more than 20 cells were incorporated and authorised by the Guernsey financial services commission ("GFSC"). They included the Lonscale claimant cells. Most were listed on the CISX. Most of the shares in the Lonscale claimant cells were held by one or more of the UK sub-funds.
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> 21. The cells also included Arch Treasury IC Ltd ("AT1", now known as SPL Treasury (AT1) IC Ltd). It differed from other cells. Mr Farrell explained that it was established in June 2007 'mainly as a syndications and warehousing vehicle'."

32. In the light of those observations by the trial judge, I agree that this is not a case where delay in seeking the freezing order tells against the issue of real risk of dissipation to any significant extent.

33. For all of those reasons I am satisfied that the claimants can show to the requisite standard a real risk of dissipation for the purpose of the relief that they seek.

34. Mr Farrell had other grounds of opposition. He identified seven grounds in his skeleton argument, although a number of them related to the issue of real risk of

dissipation, which I have addressed already. But there were a category of grounds which may be put under the heading of failure to make full and frank disclosure at the time of the original application. In this connection reference has been made to some shares which were listed as assets of Mr Farrell's in the schedule to the order. Mr Farrell points out, and the claimants are in no position to dispute, that these are not shares which belong to him. However, the fact remains that Mr Farrell has assets regardless of those shares and the fact that they may have been mistakenly included was not a matter that was relevant to the decision that was made by Mr Justice Walker, nor is it relevant to the decision of whether that relief should now be continued.

35. He also refers in this connection to the significance of the Capita inquiries made at the beginning of 2009 and suggests that the court was given a misleading picture about this, because, as he now says, the dealings with the properties and property interests, the interests in 2009, were done for tax and state planning purposes and were not connected to such inquiries as Capita may have been making. I have addressed that already under the heading of real risk. It seems to me on the evidence currently before the court there are questions as to whether that is so or not. I accept the claimant's position that there are reasonable grounds for making the submission which they do.

36. It is also pointed out in this connection that there was a without prejudice meeting between the parties at which the asset position was discussed. However, that was drawn to the court's attention, in particular at paragraphs 29, 60 and 61 of Mr Gwynne's first affidavit, and the judge makes reference to it at paragraph 16 of his judgment.

37. Mr Farrell also questions why it was necessary for the application to be made ex parte, but the answer to that is that relief of this nature, by necessity, has to be made ex parte because the premise upon which it is sought is that there is a risk of dissipation and if the defendant becomes aware of the pending implication, then that risk may eventuate.

38. Having given careful consideration to those various points by Mr Farrell, I do not accept that there was anything materially incorrect or misleading about the application that was made which led to the original grant of relief.

39. Having had careful regard to the submissions and the evidence, I am satisfied that there is here a real risk of dissipation and that the claimants have shown on the evidence that this is a proper case for a continuation of the injunction which Mr Justice Walker granted.

Issue 2 –further disclosure

40. I turn then to consider the ancillary relief which is sought. In paragraph 6 of the order further disclosure is sought. The claimants submit that the disclosure so far provided is unsatisfactory in a number of respects, which can be summarised as follows.

41. Firstly, he has not provided details of the assets which he says settled on trust, in particular the family settlement to which he refers.

42. Secondly, he has not explained how his assets became apparently so significantly reduced in comparison to what the position had previously been. In this connection the claimants refer to a draft letter to Skipton Building Society in June 2008 which disclosed assets, leaving aside the Arch/AIGHL shares, the value of which are now

substantially reduced, of nearly £4 million.

43. In addition to that there is evidence that between 2006 and 2008 Mr Farrell had received income of over £2 million from the sale of shares in Arch UK and that he had, in the past, held significant positions in the financial services industry for which he would no doubt have been well remunerated. The essential point made by the claimants is that there is no sufficient or adequate explanation by Mr Farrell as to how his asset position seems to have changed so radically.

44. Mr Farrell submits that there is nothing in these points. He says that he had lived off capital since 2001, with the exception of 2007 to 2008 and that his outgoings had exceeded his earnings since 2009 and indeed for most of the last 13 years. That is what he says, but there is no detail to bear that out, at least during the later period. He also submits that the letter to Skipton was purely a draft letter involving guesstimates and that it is long out of date. Nevertheless, it does provide some evidence of significant assets other than those which Mr Farrell is said to hold.

45. It is submitted in all of the circumstances and bearing in mind also the dishonesty findings which the judge made, that this is an appropriate case for further disclosure to be ordered as has been sought. In my judgment the claimants have established sufficient grounds to make such an order. Mr Farrell submits that it would be premature to do so while the appeal process is still pending and suggests that this is a fishing expedition or, as he puts it, a hunting licence. However, the disclosure is relevant not so much to enforcement but to assist the worldwide freezing order which the claimants have and which I have held they should continue to have, and in my judgment it would be appropriate to order the fairly limited further disclosure which is sought. It is not suggested that there would be

any particular prejudice or difficulty about dealing with these further requests.

Issue 3 – permission to apply for Guernsey freezing order

46. Permission is sought to seek a freezing order in Guernsey, as set out in paragraph 9 of the draft order. The position is that one of the main assets disclosed by Mr Farrell is shares in AIGHL, which is located in Guernsey. The current order does not bind the Guernsey company or its managing agents and the claimants *wish* to have permission to obtain a like order in Guernsey to obtain that further protection. In this regard I have been referred to the principles set out in Dadourian Group International Inc. v Simms [2006] 1 WLR 2499 at paragraph 25. I have those guidelines in mind and am satisfied that for the reasons given by the claimants it is an appropriate case for them to be allowed to seek further protection.

Issue 4 – use of disclosed documents

47. Finally there is an application that the claimants be allowed to use the documents so far disclosed for a collateral purpose, namely a potential application under section 423 of the Insolvency Act. This is covered in paragraph 8 of the draft order. In this connection, I have been referred to Crest Homes PLC v Marks [1987] AC 829 860, SmithKline Beecham PLC v Generics [2004] 1 WLR 1479 at 37 and Cobra Golf Inc v Rata [1996] FSR 819 at 830 to 872. I have regard to those principles and the importance of the interest of justice and the relationship between the proceedings in which disclosure was given and those in relation to which the documents may be used.

48. In this case there is potentially a close connection. The purpose of any proceedings

under section 423 would be to identify and preserve assets for the purpose of enforcement of the judgment which the claimants have obtained and is therefore entirely consistency with the purposes of the disclosure which has been given in relation to the freezing order. Indeed, as the claimants point out, this is a case in which the pre-action disclosure could well be justified in any event.

49. Further, Mr Farrell would be a party to any proceedings brought under section 423 and would have to disclose documents as part of that application. To refuse the claimants permission to use the documents would, I accept, be contrary to the interests of justice because it would hinder the claimants in being able to put forward any claim under section 423 and/or in advancing such a claim.

50. In my judgment the purpose for which these documents are proposed to be put is entirely consistent with the purpose for which the disclosure was originally given and therefore this is an appropriate case.

Conclusion

51. For all of those reasons I conclude that the claimants should have the relief they seek in their order, subject to questions, of costs.