Neutral Citation Number: [2022] EWHC 1599 (Comm)

Case No: CL-2009-000709

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
COMMERCIAL COURT (QBD)

7 Rolls Building
Fetter Lane, London, EC4A 1NL

Date: 24/06/2022

Before:

MRS JUSTICE MOULDER

- -

Between :

DEUTSCHE BANK AG	**Claimant/ Applicant**
- and -	
(1) SEBASTIAN HOLDINGS, INC **(2) MR ALEXANDER VIK**	**Defendant Respondent/ Defendant for Costs purposes only**

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- -

Sonia Tolaney QC and James MacDonald QC (instructed by **Freshfields Bruckhaus Deringer LLP**) for **Deutsche Bank AG**
Duncan Matthews QC, Tony Beswetherick QC and Andrew Feld (instructed by **Brecher LLP**) for **Mr Vik**

Hearing dates: 3-5, 9-13, 17-19 May 2022

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Approved Judgment

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THE HONOURABLE MRS JUSTICE MOULDER

Mrs Justice Moulder:

Introduction

1. This is the reserved judgment on the application made on 7 May 2019 by Deutsche Bank AG (the "Bank" or "DBAG") to commit Mr Alexander Vik for contempt (as amended, the "Committal Application") in respect of alleged breaches of an order of the Court in 2015. The alleged breaches are in essence, firstly that Mr Vik deliberately gave false evidence in response to certain questions at a Part 71 means hearing on 11 December 2015 (the "XX Hearing") and secondly that Mr Vik has failed to produce documents as required by the order.

Evidence

2. In support of the Committal Application the court has two affidavits of Mr Andrew Hart of Freshfields Bruckhaus Deringer LLP ("Freshfields"), acting for the Bank, dated 7 May 2019 (the "First Affidavit") and 27 May 2021 (the "Third Affidavit") with certain additional documents which were not exhibited to Mr Hart's affidavits being introduced by way of a further affidavit from Mr Christopher Robinson of Freshfields dated 17 December 2021.

3. Mr Hart was cross examined on his evidence.

4. On 29 July 2021, Mr Vik served an affidavit (the "Affidavit") setting out his evidence in response to the Committal Application. As he was entitled to do, Mr Vik waited until the close of the Bank's case before indicating that he intended to rely on the Affidavit and to submit to cross examination.

5. Mr Vik was cross examined over four days before this Court over video link from France.

Submissions

6. The Court has received and reviewed lengthy oral and written submissions for both the Bank and Mr Vik. In preparing this judgment the Court has also had the benefit of the daily transcripts of the hearing before this Court. In this judgment the Court addresses only those matters which it regards as necessary or desirable to address in order to determine the alleged breaches. The failure to address a specific submission expressly in the judgment should not however be taken to be a failure to consider a relevant submission.

Background

7. Sebastian Holdings, Inc. ("SHI") is a Turks & Caicos Islands offshore SPV which, (until July 2015), was 100% owned and controlled by Mr Vik, described by the parties as a Monaco-domiciled ultra-high net worth individual.

8. In 2009, DBAG commenced proceedings against SHI in this jurisdiction for approximately US$250m and SHI counterclaimed for approximately US$8billion. The subject matter of the claim essentially was (ultimately loss-making) FX, equities and other trading which SHI carried out with and through DBAG.

9. Following a 14-week trial in 2013 before Cooke J, judgment ("the Judgment") was given on 8 November 2013 ([2013] EWHC 3463 (Comm)) in favour of DBAG and Cooke J made a US$243m order (the "Judgment Order") in favour of DBAG against SHI, which was to be paid to DBAG by 22 November 2013 (the "Judgment Debt"). Cooke J also awarded DBAG 85% of its costs to be assessed on the indemnity basis and ordered SHI to make an interim payment on account of costs of approximately £34.5m by 22 November 2013.

10. Following the Judgment Order, the Bank applied for a non-party costs order against Mr Vik (on the grounds, inter alia, that he was personally responsible for SHI's dishonest conduct of the English Proceedings and that he had caused SHI to defend the proceedings and bring its counterclaim for his sole benefit) (the "Non-Party Costs Proceedings"). The Bank also applied for an order that SHI's appeal against the Judgment Order be made subject to conditions (the "Conditions Application"). Both applications were successful. [First affidavit of Mr Hart]

11. Following DBAG's successful application for a non-party costs order against Mr Vik, Mr Vik paid the Interim Payment.

12. SHI has not paid DBAG the Judgment Debt and the Judgment Debt as at 1 January 2022 totalled approximately US$329m including interest. [Agreed Case Summary]

13. DBAG made a without notice application on 20 July 2015 seeking an order pursuant to CPR 71.2 against Mr Vik in his capacity as a (then) director of SHI.

14. In July 2015, Teare J made an order under CPR 71 (the "CPR 71 Order"). In summary, the CPR 71 Order required Mr Vik, in his capacity as (then) director of SHI:

    i) To produce, by 14 October 2015, "*all documents in [SHI's] control which relate to [SHI's] means of paying the amount due under the [Judgment] and the [Judgment Order]"*, including certain specific categories of documents listed in a non-exhaustive Schedule to the CPR 71 Order; and

    ii) To attend an examination before a judge on 28 October 2015 "*to provide information about the judgment debtor's means and any other information needed to enforce the judgment or order*".

15. On 24 August 2015, Mr Vik made an application to vary and/or strike out the CPR 71 Order. On 7 October 2015, Cooke J handed down judgment substantially upholding the CPR 71 Order but providing that the date for Mr Vik's cross-examination should be put back to 11 December 2015.

16. On 14 October 2015, Mr Vik disclosed certain hard copy documents pursuant to the CPR 71 Order. Mr Vik provided further disclosure on 9 December 2015 and 10 December 2015. [Agreed Case Summary]

17. Freshfields wrote to Cooke Young & Keidan LLP, solicitors then acting for Mr Vik, on 27 November 2015 enclosing a list of the topics that DBAG intended to cover at the XX Hearing.

18. Mr Vik's oral examination under CPR 71 took place over the course of one day on 11 December 2015 before Cooke J.

19. Proceedings were brought by DBAG in Connecticut (the "Connecticut Proceedings") seeking a declaratory judgment to pierce SHI's corporate veil to hold Mr Vik liable for the English Judgment and enforcement of the English judgment against Mr Vik. In its judgment handed down on 7 September 2021 (the "Connecticut Judgment") the Connecticut court dismissed DBAG's claim. The Connecticut court stated that the Bank had not established that Mr Vik acted with specific intent to deprive the Bank of its ability to satisfy the margin calls to the Bank.

Committal Application

20. By its Amended Application dated 17 December 2021 (the "Application Notice") the Bank seeks an order pursuant to CPR 81 that for his contempt Mr Vik be committed to prison for a period of six months and the execution of the Warrant of Committal be suspended for a period of six months on condition that Mr Vik complies with the terms set out in the order.

21. The Bank alleges that Mr Vik has been guilty of contempt of Court in failing to comply with paragraphs 1 and 2 of the CPR 71 Order.

22. The specific acts of contempt alleged by DBAG are summarised in the body of the Application Notice.

23. Firstly, in relation to the alleged failure to provide information, it is alleged that:

> "Mr Vik failed to comply with paragraph 1 of the Teare J Order in that, at the hearing before Cooke J on 11 December 2015, he deliberately failed to "provide information about [SHI's] means" and/or "any other information needed to enforce the [Judgment Order]".
>
> In particular, Mr Vik intentionally failed to provide truthful and/or complete information regarding his knowledge in relation to:
>
> (i) the funds and assets of C.M. Beatrice, Inc. ("Beatrice"), a company which received assets of significant value transferred out of SHI, and the CSCSNE Trust, to which the shares in Beatrice were transferred;
>
> (ii) SHI's interest in Devon Park Bioventures L.P. (the "Devon Park Interest"); and
>
> (iii) the alleged sale of SHI's interest in IFA Hotels & Touristik AG (the "IFA Shares") to VBI Corporation ("VBI") in 2012."

24. Secondly, in relation to the alleged failure to produce documents it is alleged that:

> "Mr Vik failed to comply with paragraph 2 of the Teare J Order in that he deliberately did not, by 14 October 2015, "produce

> ...all documents in [SHI's] control which relate to [SHI's] means of paying the amount due under the [Judgment] and the [Judgment Order]" in that Mr Vik either deliberately took steps to put documents beyond his control, or chose not to produce documents within his and/or SHI's control, that were required to be produced by the Teare J Order. In particular, Mr Vik failed to:
>
> (i) produce electronic documents responsive to paragraph 2 of the Teare J Order, in particular electronic documents:
>
> (A) relating to the Devon Park Interest;
>
> (B) relating to the IFA Shares; and
>
> (C) relating to SHI's interests in (i) Carlyle Europe Partners II, L.P., Carlyle Europe Partners III, L.P., Carlyle AZ Partners I, L.P, Carlyle AZ Partners II, L.P and Carlyle Ensus Partners, L.P and (ii) Reiten & Co Capital Partners VI LP and Reiten & Co Capital Partners VII LP (together, the "Partnership Interests"); and
>
> (ii) produce documents held by third parties" [Reamended Application Notice]

25. The body of the Application Notice stated that:

> "The specific grounds of contempt on which DBAG relies are further particularised in the Schedule to this Application Notice."

26. The further particulars are considered below in the context of the specific allegations.

Relevant law

27. The law was largely common ground.

28. As summarised by the Court of Appeal in *Navigator Equities v Deripaska* [2021] EWCA Civ 1799 at [79] (Carr LJ):

> "Contempts of court have traditionally been classified as being either criminal or civil. Proceedings for civil contempt are sometimes described as "quasi-criminal" because of the penal consequences that can attend the breach of an order (or undertaking to the court). They are criminal proceedings for the purpose of Article 6 of the European Convention on Human Rights ("Article 6"). The charges raised have to be clear; the criminal standard of proof applies; and the respondent has a right to silence. There must be a high standard of procedural fairness."

29. In order for DBAG to establish a contempt of court, it is necessary for it to show, to the criminal standard, in respect of each allegation that:

    i) Mr Vik knew of the terms of the order;

    ii) He acted (or failed to act) in a manner which involved a breach of the order; and

    iii) He knew of the facts that made his conduct a breach (*Masri v Consolidated Contractors* [2011] EWHC 1024 (Comm) at [150]).

30. As stated by the Court of Appeal in *BTA Bank v Ereshchenko* [2013] EWCA Civ 829):

> "What the Bank has to persuade the court of, to make out its case of contempt as regards each or any of the statements in question, is that Mr Ereshchenko's statement was not true, and that when he made it, he knew it was not true or did not honestly believe it to be true. That applies to every aspect of Mr Ereshchenko's relevant statements..."

31. Mr Matthews for Mr Vik repeatedly submitted that it was for the Bank to prove its case beyond reasonable doubt and that there was "no evidence" on which the Court could find that the Bank's particular allegation was made out.

32. Whilst it is common ground that the burden of proof lies on the Bank, in considering whether the particular allegation is made out, the Court can take into account not only direct evidence but is also entitled to draw inferences from circumstantial evidence.

33. As the Court of Appeal held in *JSC BTA v Ablyazov* (No 8) [2012] EWCA Civ 1411 (CA), not every single aspect of a criminal case has to be proved to the criminal standard, although the elements of the offence must be and the court should avoid piecemeal consideration of a circumstantial case:

> [51] The error of law alleged is that the judge failed to apply the correct criminal standard of proof because he sometimes adopted the language of a civil trial, saying that something was "improbable", or "likely", or words to that effect. It is true that the judge so expressed himself on occasions. However, the judge overwhelmingly used the language of the criminal standard (of being sure, or of rejecting the possibility that something may be as suggested), and he uniformly did so when reaching his conclusions on any essential plank of the bank's case. Examples of that are so numerous as to be unnecessary to exemplify. Moreover, it is not true that every single aspect of a criminal case has to be proved to the criminal standard, although of course the elements of the offence must be.
>
> [52] It is, however, the essence of a successful case of circumstantial evidence that the whole is stronger than individual parts. It becomes a net from which there is no

> escape. That is why a jury is often directed to avoid piecemeal consideration of a circumstantial case: *R v Hillier* (2007) 233 ALR 634, cited in *Archbold's Criminal Pleading, Evidence and Practice*, 2012 ed, para 10-3. Or, as Lord Simon of Glaisdale put it in *R v Kilbourne* [1973] AC 729, 758, "Circumstantial evidence... works by cumulatively, in geometrical progression, eliminating other possibilities". The matter is well put by Dawson J in *Shepherd v The Queen* (1990) 170 CLR 573, 579—580 (but also passim):
>
> "the prosecution bears the burden of proving all the elements of the crime beyond reasonable doubt. That means that the essential ingredients of each element must be so proved. It does not mean that every fact-every piece of evidence-relied upon to prove an element by inference must itself be proved beyond reasonable doubt. Intent, for example, is, save for statutory exceptions, an element of every crime. It is something which, apart from admissions, must be proved by inference. But the jury may quite properly draw the necessary inference having regard to the whole of the evidence, whether or not each individual piece of evidence relied upon is proved beyond reasonable doubt, provided they reach their conclusion upon the criminal standard of proof. Indeed, the probative force of a mass of evidence may be cumulative, making it pointless to consider the degree of probability of each item of evidence separately." [emphasis added]

34. I also bear in mind the Court of Appeal's statement in *Ereshchenko* that:

> "the case based on inference has to be made out so strongly that the only reasonably possible inference is that Mr Ereshchenko was dishonest."

35. It was submitted for the Bank (paragraph 34 of its Closing Submissions) that Rix LJ's observations in *Ablyazov* at [100] are pertinent in view of Mr Vik's repeated explanations of inconvenient documents as mistaken and his attempts to blame Mr Johansson, his lawyers, and others for supposed non-compliances on his behalf:

> "As this series of coincidences, misfortunes, errors, misunderstandings and inexplicable developments multiply, the court is entitled to stand back and ask whether there is in truth a defence or defences as alleged, even if no burden rests on Mr Ablyazov, and the burden remains on the bank, or whether there is at any rate the realistic possibility of such, or on the other hand whether the court is being deceived."

36. It was further submitted for the Bank that, while every individual contempt charge against Mr Vik must each be proved to the criminal standard, the court must not consider them in isolation. In *Gulf Azov Shipping v Chief Idisi* [2001] EWCA Civ 21, Lord Phillips MR said:

> "It is not right to consider individual heads of contempt in isolation. They are details on a broad canvas. An important question when that canvas is considered is whether it portrays the picture of a Defendant seeking to comply with the orders of the Court or a Defendant bent on flouting them. It is right that the individual details of the canvas should be informed by the overall picture. But, having said that, each head of contempt that has been held proved must be established beyond reasonable doubt." [emphasis added]

Other judgments

37. It is necessary at the outset to make reference to the submissions as to the weight to be given by this Court to the Judgment of Cooke J and the Connecticut Judgment.

38. In my view the question of any issue estoppel in relation to the judgment of Cooke J was not pursued with any vigour by the Bank in oral submissions but for reasons which are set out below the question does not in any event arise for determination.

39. It was accepted for Mr Vik that the other judgments are admissible and it was a question of the weight to be given to the relevant judgments.

40. It was submitted for Mr Vik that:

    i) Cooke J's rejection in a civil trial against SHI of certain of Mr Vik's evidence is not cogent evidence that Mr Vik some years later disobeyed the Part 71 Order and the fact Cooke J found that Mr Vik lied before does not give rise to inference that Mr Vik lied at XX Hearing where a penal sanction attached;

    ii) The issues arising in the Committal Application are entirely different from those that were in issue at the trial. The trial concerned events and agreements between DBAG and SHI in 2008. It obviously had nothing to do with the documents to which Mr Vik had access in 2015; nor what Mr Vik said under cross-examination in 2015;

    iii) The emphasis placed by the Bank on findings made by Cooke J, that certain transfers made by SHI in October 2008 to Beatrice or Mr Vik were made with the intention of putting assets beyond DBAG's reach were obiter, by contrast this was directly in issue between DBAG and Mr Vik in the Connecticut Proceedings. In the Connecticut Judgment the Connecticut court positively held that the transfers to Beatrice and Mr Vik were not made with the intention of depriving SHI of funds with which to satisfy liabilities to DBAG.

41. It was therefore submitted for Mr Vik that the Court should give evidential weight to the Connecticut Judgment in excess of Cooke J's obiter comments.

42. It was submitted for the Bank (among other things) that the Connecticut Judgment went on to hold that Mr Vik's purpose in making the Beatrice Transfers was ultimately irrelevant and his subjective motivations were not an operative part of the decision.

43. For reasons which are set out below it is not necessary for this Court to place reliance on either the Cooke Judgment or the Connecticut Judgment in order to reach its findings on the Contempt Application but the Court is entitled to take into account those findings in support of its conclusions on the detailed allegations to the extent and in the manner discussed below.

44. There was also a strike out application brought by Mr Vik which was heard before Cockerill J. The application failed: Cockerill J held that in the original application there was a clear summary which was enough to enable Mr Vik to understand the case which he had to meet. Cockerill J also rejected (at [134]) a submission for Mr Vik that the CPR 71 Order was unclear. For reasons which will be apparent from what is set out below, in my view it is not necessary to consider in any detail the findings of Cockerill J.

Alleged breaches

45. It was submitted for Mr Vik (paragraphs 6-26 of its Closing Submissions) that the Bank has sought to expand its case to raise a new case that Mr Vik was obliged under the Part 71 Order not only to order questions truthfully but also to provide information beyond responding to the actual question which was asked.

46. It was also submitted for Mr Vik that the Bank was seeking to advance a new case that Mr Vik was in breach of the Part 71 Order if he could have found out about matters by making relevant enquiries prior to the XX Hearing.

47. It was submitted for Mr Vik that it was not open to the Bank to advance a new case and that the particulars of contempt set out in the Schedule to the Application Notice are that the evidence of Mr Vik was "deliberately false".

48. Given my findings below that Mr Vik has deliberately given false evidence, it is not necessary for me to determine whether Mr Vik was obliged to provide information beyond responding to the actual question.

Credibility of Mr Vik

49. Mr Vik's evidence in his Affidavit is that he attended the XX Hearing as required, he answered all questions that were put to him and he gave honest answers. He also suggested in his Affidavit that the topics covered were vague and thus I infer, the questions said to be unclear to him, and that the topics covered a wide time period.

50. It is important to consider at the outset the extent to which, in determining whether the allegations against Mr Vik have been proved to the requisite standard, the Court can take into account its assessment of the overall credibility of Mr Vik in giving evidence to this Court.

51. It is clear on the authorities that on a committal application:

    i) The Court has to weigh up the reliability of the evidence of the alleged contemnor taking into account how far in the view of the Court his evidence is credible (*VIS Trading v Nazarov* [2016] EWHC 245 (QB) at [27]);

ii) The Court should bear in mind that if the Court finds that Mr Vik has told lies on other occasions it does not necessarily mean that he has lied about everything (*Nazarov* at [30]).

iii) The Court does not have to have direct evidence that Mr Vik was not telling the truth in any given respect but can draw inferences on the basis of all the evidence so long as the Court is sure to the criminal standard about the conclusions (ibid);

iv) It is against that background of the overarching conclusions on credibility and reliability that the Court will consider the specific evidence in response to the individual allegations (*Nazarov* at [31]).

52. Therefore, although I consider below the individual allegations of contempt against Mr Vik, it is appropriate and important to form a view on his evidence to this Court in the round in order to assist in determining what weight the Court should give to his evidence in response to the detailed allegations.

53. Although I have been taken by the Bank to the findings of Cooke J, I accept the submission for Mr Vik that even if Mr Vik had told lies in the past, he may take a different view when faced with committal proceedings. I also accept that the standard of proof which governed the findings of Cooke J was the usual civil standard of proof and therefore this Court cannot take any findings of Cooke J as having been made to the criminal standard which applies in these committal proceedings. I approached Mr Vik's evidence to this Court therefore with an open mind and have formed an independent view based on his evidence to this Court.

54. Whilst I do not prejudge Mr Vik's credibility based on the previous findings of Cooke J (or of the Connecticut court) I do take into account his background in assessing the credibility of his evidence particularly when it concerned financial matters and his own commercial interests. It is clear on his own (earlier) evidence (to which I was taken at the start of the cross examination) that he is a highly educated and successful businessman. He studied economics at Harvard, trained at Lehman Brothers and then went on to work as a stockbroker including for Smith Barney. In his witness statement in 2012 Mr Vik accepted that:

> "In this early part of my career, I gained a good general understanding of, and insight into, financial markets generally. As a result, I know how to invest in companies and over the years have done so on many occasions and in many different areas."

55. He also accepted in that witness statement as "*broadly accurate*" a description of him in an internal note prepared by the Bank in 2007 which described him as:

> "...<u>sophisticated and focuses fully on investing his wealth</u> through direct investments in private companies, macro-driven investment themes in listed equities, bonds, FX and commodities, real estate/hotel operations, co-investments with some of the largest private-equity/hedge-fund firms, as well as

> activist value-creating shareholder in large-cap companies." [emphasis added]

56. In his evidence to this Court Mr Vik accepted that by 2007 the value of SHI's assets were worth in the region of US$1 billion.

57. This background is relevant in my view both to Mr Vik's ability to understand the nature and import of the questions which were put to him at the XX Hearing and his evidence concerning his degree of involvement in the various matters at issue: in particular the evidence relating to the oversight of the Trust/Beatrice and the sale of the Devon Park Interest.

58. It was submitted for Mr Vik (paragraphs 27-29 of the Closing Submissions) that in assessing Mr Vik's evidence it was important to bear in mind the context of the Part 71 proceedings. It was submitted that the Part 71 cross examination covered "*a great range of events and transactions spanning a period of at least 8 years prior to the cross examination*". It was submitted (amongst other things) that the matters in respect of which Mr Vik is alleged to be in contempt concern "*a very limited number of events and a small number of documents*" and Counsel for Mr Vik asked rhetorically why there would have been deliberate non-compliance set against the "*extensive compliance"*. It was further submitted that many of the events and documents are "*minor and peripheral*" in the context of Mr Vik's life and business.

59. There are two distinct aspects to the issue of the passage of time: firstly, whether Mr Vik was able to recall the relevant matters at the time of the XX Hearing and secondly whether Mr Vik was able to recall matters when giving evidence to this Court in 2022.

60. As to the former it was unclear at times whether Mr Vik's oral evidence was that he could not remember the relevant matters or (as suggested in the Vik Affidavit) did not understand the question. This is dealt with below in the context of the specific allegations of contempt.

61. As to the latter I note that Mr Vik frequently responded to questions in cross examination before this Court that he could not remember. However, he also repeatedly referred to the fact that the topics raised by counsel for the Bank were matters which he had addressed many times.

> "Q. But we know that Mr Johansson reported to you in everything he did in relation to SHI, didn't he?
>
> A. No.
>
> Q. Well, Mr Vik, you were, as you say, the sole shareholder of SHI, and Mr Johansson had to report to you about the activities he conducted on behalf of SHI, didn't he?
>
> A. No.
>
> Q. Why do you say that, Mr Vik?

> A. This is old ground; we have been over this so many times…" [emphasis added] (transcript day 5, p16)

62. Further Mr Vik demonstrated on occasion a good recollection of detail: for example, when he was being cross examined in relation to the IFA Shares he was able to recollect the previous evidence of Mr Johansson from 2014:

> "Q. In 2012 those shares were worth at face value about US$13.3 million?
>
> A. That sounds about right.
>
> Q. But in fact because their shares amounted to a blocking position, their value was higher?
>
> A. I remember seeing that in Mr Johansson's affidavit. I am not sure that is really true. It didn't turn out that way. But I think in any case that was the (inaudible) ...
>
> Q. You are right, it was in Mr Johansson's affidavit…" [emphasis added] (transcript day 6, p74)

63. Mr Vik also alluded to the fact that he well understood the significance of the questions being put to him before this Court: for example, when questioned about the arbitration proceedings between Devon Park and SHI Mr Vik commented in response to counsel:

> "Q. And you remember detail, don't you, Mr Vik, as we have just seen?
>
> A. I know where you are going I know where you are going with it, you know, sometimes I do, sometimes I don't." [emphasis added] (transcript day 5, p80)

64. Whilst the court takes into account the time that has elapsed in respect of the matters at issue both at the time of the XX Hearing and in 2022 and the lapse of time could be a perfectly acceptable response to some questions of detail, one has to look at the particular occasions when this was his response. For reasons discussed below, in my view the assets of the Trust and Beatrice are significant and cannot be said to be "*peripheral or minor*" in the context of Mr Vik's life and business. The significance of the alleged contempts to the identification of the destination/ location of the assets of SHI in my view provides an answer to the rhetorical question posed by counsel for Mr Vik as to why there would have been deliberate non-compliance set against the "*extensive compliance*".

65. So far as relevant the credibility of Mr Vik's individual responses is considered in the context of the specific allegations below. However, it is relevant to the overall assessment of his credibility to note the occasions in his evidence to this Court where he asserted that he did not recall matters.

66. At the XX Hearing when asked about the Trust Deed, Mr Vik accepted that he was "*generally familiar with it*":

> "Q Are you familiar with the document?
>
> A I haven't looked at it for years, but generally, I was familiar with it, yes."

67. Further at the XX Hearing Mr Vik was taken to provisions of the Trust Deed such as the provision that the trust was revocable, and his wife could revest the trust property:

> "Q. This trust is entirely revocable, isn't it, Mr Vik?
>
> A. Yes.
>
> Q. And your wife can revest property to you just as your spouse, can't she?
>
> A. I don't know.
>
> Q. Let's look at it. It is in Article 2 over the page, subparagraph 2, if you go over the page to the top of the next page you will see: "Grantor's spouse power to revest. Carrie Vik will have the power exercisable at any time and from time to time to revest assets ..." in you.
>
> A. Okay."

68. This evidence at the XX Hearing can be contrasted with Mr Vik's evidence to this Court where he sought to present himself as unfamiliar with even the main trust provisions:

> "Q. Article II, we see the trust is revocable in whole or in part at any time on your instructions, correct?
>
> A. Yes. I read that.
>
> Q. And you agree that the trust is revocable at any time in whole or part at any time on your instruction?
>
> A. That is what it says, yes.
>
> Q. If we go over the page, please to the next provision. This is: "Grantor's spouse [that is Mrs Vik] ... shall have the power, exercisable at any time ... to revest absolutely in the grantor [that is you] ... " Any of the trust property without the approval or consent of anyone else.
>
> A. Shall I read it?
>
> Q. Yes, Mr Vik. I am surprised you are not more familiar, but it is going to take a little while if we are going to have to read the document as if you have never seen it before. But do read it again. (Pause).

> A. Okay, I read it.
>
> Q. Do you accept that is what it says?
>
> A. Yes, grantor's spouse has the power to revest.
>
> Q. Mr Vik, you are acting as though you have never seen this document, but we went through it at the Part 71 hearing, and one of the contempts alleged is in relation to the Beatrice trust, so I assume you are familiar with the topic that was put to you at the Part 71 hearing?
>
> A. I have not looked at this document for many years" [emphasis added] (transcript day 8, p21-22)

69. Mr Vik's manner of giving evidence to this Court in relation to the Trust Deed and his purported ignorance of key provisions was in my view not credible in light of both his previous evidence at the XX Hearing but more significantly the fact that these key provisions were the basis on which he transferred US$700 million of assets to his family through the Trust. He is, as referred to above, a highly educated man with a long and successful background in finance. Although counsel for Mr Vik repeatedly stressed that Mr Vik was not a lawyer and should not be assumed to have acted as a lawyer would have done, it is inconceivable in my view given the financial significance of this transaction both to him and his family, that he was unaware of the terms on which the trust assets had been placed in the Trust and the rights which he had retained over those assets. Further the allegations against him relating to Beatrice and assets transferred to the Trust are and have been central features to this litigation and are a major plank of the committal application which Mr Vik now faces. Accordingly, it is inconceivable in my view that he would have now forgotten the major features of the basis on which the assets were placed in the Trust. In my view Mr Vik was being disingenuous in the manner in which he gave this evidence about the operation of the Trust Deed.

70. Mr Vik's approach to the provisions of the Trust Deed and his purported lack of familiarity with its provisions can be contrasted with his evidence to this Court when he was able to recall aspects of his wife's evidence from her deposition in the Stamford proceedings in July 2015. Counsel for the Bank was asking Mr Vik about his wife's evidence in the deposition of her understanding of Beatrice and her knowledge of the identity of the trustees.

> "A. I notice that on one of the pages you were going very quickly there but she actually answered the question about why she didn't hand over the trust document.
>
> Q. Yes, I was wondering if you were going to pick that up." (transcript day 8, p46)

71. It is unlikely in my view that Mr Vik was able to reread the deposition in the course of that particular exchange in cross examination and thus in my view this was an example where Mr Vik demonstrated that he was fully up to speed with the evidence concerning the issues and able to recall and identify quickly relevant provisions from

supporting documents (even from other proceedings) when he thought they were supportive of his case.

72. Mr Vik's apparent ability to recall his wife's deposition in other proceedings has to be contrasted with his approach when he was being asked about his understanding of the questions put to him at the XX Hearing and which form the basis of the allegations of contempt. Before this Court Mr Vik professed himself unable to follow the transcript of the hearing as Counsel for the Bank took him through it.

> "Q. So you knew, Mr Vik, when you were listening and answering all of these questions, that it was aimed at establishing what you knew about the trust assets and your involvement in its activities, didn't you?
>
> A. Now I am confused here. At the top of 51, those are the ...
>
> Q. No, it's page 52, lines 10 to 14. 3
>
> A. Sorry, 52, 10 to 14 (transcript day 8, p72)
>
> "A. I lost track. Which one of these pages am I supposed to look at? [emphasis added] (transcript day 8, p73)

73. This was in my view an example of Mr Vik seeking to avoid answering direct questions and an attempt to obfuscate.

74. A further example of this is when Mr Vik was being cross examined about the correspondence that has now come to light between Devon Park and Mr Vik:

> "Q. Why did you ask a question, Mr Vik, in an investment that you had no interest in?
>
> A. Because, as I told you before, I was interested that this company suddenly was doing better.
>
> Q. We see the response from Mr Kantesaria telling you about their future plans.
>
> A. Yes.
>
> Q. Again, why would a private equity house do that to somebody who had no interest in the fund?
>
> A. I don't know.
>
> Q. On what basis did you expect a response to your question, Mr Vik?
>
> A. I don't understand the question.

> Q. Well, you were asking about their future plans which could have been confidential. Why did you think that they would respond to you?
>
> A. I really don't remember why or why not or if they would, I have no memory of that." [emphasis added] (transcript day 6, p13)

75. Mr Vik in my view as an experienced businessman with a background in finance would have understood what lay behind the question posed by counsel for the Bank, namely that it was surprising that Devon Park were willing to provide confidential and probably price sensitive information about their future plans to someone who was no longer an investor in the Fund. I find that his evidence in this regard was merely intended to obfuscate and avoid the obvious inference that he/SHI retained an (economic) interest in Devon Park at that time.

76. On occasion when faced with a contemporaneous document which Mr Vik understood was adverse to his case he resorted to giving evidence which was clearly absurd. He was asked about an email form Mr Johansson to Mr Kantesaria of Devon Park after SHI had purportedly divested itself of its/VBI's interest in response to an email in which Mr Kantesaria had objected to "*endless emails and calls*". Mr Johansson wrote:

> "Please understand that the [Devon Park] stake is a significant amount of money for which I am responsible…Please know that it is important for me to know things like this, it is what you would ask about also I think as any good manager would, and that I am not trying to waste your time. [emphasis added]

77. The relevant exchange in cross examination was as follows:

> "Q… Pausing there, why was Mr Johansson responsible? He worked for you, Mr Vik.
>
> A. I am not sure why he said that, but I can imagine that he was getting complaints from the buyer that they had bought an asset and they were not receiving the funds that they were entitled to.
>
> Q. And he says at the bottom of this email: " ... I think as any good manager would ..." So he sees his role as the manager of this asset.
>
> A. Yes, he says that.
>
> Q. That is not consistent with your evidence, Mr Vik, that he was facilitating the transfer of VBI to Universal.
>
> A. I don't know what Per meant or didn't mean, but I am quite certain that this is about solving the problem of Devon Park not paying Universal the money it was entitled to.

> Q. Mr Vik, can you point me to anywhere in your statement that you have given that explanation, your witness statement?
>
> A. You cut out there, I couldn't hear you.
>
> Q. There is nothing in your witness statement with that explanation, it is an explanation that you have come up with this morning as you have just thought about it, as you have seen the emails, isn 't it?
>
> A. No. That is what it was. My witness statement is my witness statement, but I am here for questioning and this is for sure what happened.
>
> Q. It is for sure what happened that Mr Johansson got involved as he thought the manager of the asset because he was worried that Universal weren't getting the distributions; that is your evidence, is it?
>
> A. You know, I am not sure, I think he was, he might have used the word "manager" I am not really sure. Let me just read this a bit more carefully. (Pause) Yes, the manager doesn't even… it relates to management of time, or something like that, it is not the manager of the asset. But he was solving this particular helping solve this particular problem, and unsuccessfully so, but that is what he was doing.
>
> Q. Let me get this absolutely straight. You say the words "as any good manager would" means he was managing time, that is your evidence, is it?
>
> A. If you want to get into technical interpretation of it I will have to read it again.
>
> Q. I think that is what you just said, Mr Vik, I was simply clarifying.
>
> A. (Pause) Yes, I think he is talking about time, time and work." [emphasis added] (transcript day 6, p37)

78. This answer (that it related to "*management of time*") was in my view not credible and clearly a lie when the email is given its natural meaning. It is another example, in my view, of Mr Vik trying to explain away contemporaneous documentation which has now come to light and (as is evident from the transcript reproduced above), when he was pressed on his first explanation, that Mr Johansson was helping Universal to get distributions, on the basis that it was inconsistent with his earlier evidence that Mr Johansson was facilitating the transfer, persisted in a response which was clearly absurd.

79. Although the allegations of false statements in relation to the transfer of the private equity interests held by SHI in two Reiten funds and five Carlyle funds are no longer

pursued by the Bank, questions were put in cross examination to Mr Vik about documents which have now been disclosed and it is relevant to the assessment of Mr Vik's general credibility to note his response to questions when faced with contemporaneous documentation which were adverse to his position.

80. Mr Vik was asked in the course of cross examination about the timing of the transfers of the Reiten interests in the course of which his evidence was that Sarek was Mr Johansson's company:

> "Q. Again, we see you are receiving information as to the value of the Reiten interests, and this is as late as August 2009…
>
> Q. That is not consistent with you having divested yourself of any interest, or SHI having done so a long time prior, is it?
>
> A. You just showed, in fact, that the investment moved from Sebastian Holdings to Sarek.
>
> Q. Right, and you said Sarek was Mr Johansson's company and not yours?
>
> A. It is his company." [emphasis added] (transcript day 7, p90)

81. In an email from Reiten Mr Johansson was asked for confirmation as to the beneficial ownership of Christiana Holdings as the vehicle was said to have a 25% holding in Sarek Holdings. Mr Johansson replied in an email that Mr Vik was the beneficial owner of Christiania.

82. In cross examination when taken to this email, Mr Vik's evidence was as follows:

> "Q. So according to these communications, which involved Mr Johansson, you do have an interest in Sarek Holdings, which is holding the interests stripped from SHI?
>
> A. Yes, I -- yes, I see that it says that. As far as I know, the company is Mr Johansson's company, and if Christiania Holding had an interest in it, I don't know.
>
> Q. Well, Mr Vik, Christiania Holding is your company, and you must have known whether you had an interest in Sarek?
>
> A. I really don't know what Christiania Holding is, I really don't.
>
> Q. So Mr Johansson has got it completely wrong, has he; your right-hand man, who is dealing with all the execution of the transfer agreements, we see, doesn't know who owns Sarek, and Christiania Holding?
>
> A. You know, again, I really don't know where this is going. Christiania Holding is not a name that I recognise" [emphasis added]

83. In my view this was another example of a wholly incredible answer to a question when faced with contemporaneous evidence that clearly undermined his earlier evidence regarding the ownership of Sarek. Even if the Court had been inclined to give Mr Vik the benefit of the doubt concerning his memory of Christiania, his evidence was further called into question by the next document which Counsel for the Bank took him to in cross examination, in which Mr Johansson in his stated capacity as the acting secretary of Sarek Holdings Ltd., certified that as of December 2010 Mr Vik owned 100% of the outstanding common shares of Sarek.

84. Mr Vik's response to this contemporaneous evidence was as follows:

> "A. As far as I am concerned, that is not correct, but I don't know what it is. I don't know what this is, but for me, Sarek is Per Johansson's company, and you know, you are in litigation with -- your receivers are in litigation with Sarek and Per Johansson about this, so it is Per Johansson's company." (transcript day 7, p92)

85. Mr Vik then denied in his evidence to this Court that he was lying but in my view, the contemporaneous documentation which is from 2010 cannot be explained away by any later litigation involving Sarek and Mr Vik provided no satisfactory explanation. His earlier evidence to the Court that it was Mr Johansson's company was in my view false and shown to be false by the documentation.

86. Finally, I have regard to the evidence concerning the deeds of transfer of the Partnership Interests. Whilst the particular documents at issue are not now the subject matter of the alleged false statements in these committal proceedings it is a matter which is relevant to the credibility of Mr Vik's evidence, in particular because in relation to certain of the specific allegations on this Committal Application the genuineness of other documents are in issue.

87. In October 2015 Mr Vik disclosed five purported deeds of transfer recording the transfer of the Carlyle interests from SHI to Delagoa. The version disclosed had the date of 26 September 2008 written in by hand and an effective date also written in by hand of 26 September 2008. On its face it was executed by Mr Vik for SHI in the presence of his wife and executed for Delagoa Bay, Mr Vik's father's company, by Mr Johansson, again with Mr Vik's wife as witness. Each of these transfers required the consent of the general partner but the version disclosed did not contain any signature by the general partner.

88. Subsequently the Bank obtained a Norwich Pharmacal order against certain of the general partners in the Carlyle and Reiten groups. This revealed certain documents that Mr Vik had not disclosed in October 2015. One of those documents was a version of the transfer deeds which, unlike the version disclosed by Mr Vik at the top right-hand corner, had the words "Execution Version" and on the bottom left-hand corner, said "version 6" whereas the reference on the version that Mr Vik disclosed said "version 5".

89. Mr Vik's response in cross examination was:

> "A. I had nothing to do with this, I really don't know anything about it, but --you know, obviously here, it says "v5" or "v6"; more than that, I don't know.
>
> Q. Well, Mr Vik, you executed these documents, so you did have something to do with it?
>
> A. Excuse me?
>
> Q. You executed the documents?
>
> A. Oh, yes, but as I said, I sign all kinds of things, but I had no knowledge of these things." [emphasis added] (transcript day 7, p79)

90. Further differences between the versions were that the later version of the deed was dated 2 December 2009 and recorded that although the assignor and the assignee had agreed that the transfer would be effective as of 26 September 2008, the transfer effective date was treated as being effective as of 30 September 2009 whereas this text did not appear in the versions Mr Vik disclosed. Finally, the versions obtained through the Norwich Pharmacal order had the general partner's signature and consent. The same points applied to all five executed deeds provided to the Bank by the Carlyle/Reiten general partners.

91. Mr Vik denied in cross examination that he had deliberately disclosed a document to support his argument that the transfers had happened in September 2008. He sought to suggest that any fault lay with Mr Johansson:

> "Q. What you disclosed to this court as evidence of the partnership transfers pursuant to the CPR 71 order were drafts where somebody had handwritten in, conveniently, dates in September 2008, and that's all you disclosed pursuant to the Part 71 order.
>
> A. I disclosed what I was given by Mr Johansson. So that was what I was given." [emphasis added] (transcript day 7, p84)

92. Mr Vik's evidence was that he signs documents without reading them and merely disclosed what he was given by Mr Johansson. However, this evidence fails to provide a satisfactory explanation as to why (even if he does not read documents before he signs them) these 5 separate deeds were each signed twice by him (i.e. both versions 5 and 6). The explanation that the documents were given to him by Mr Johansson to disclose does not explain how Mr Vik came to sign five deeds twice.

93. Mr Vik disclosed the earlier versions of the Deeds (and these themselves were amended in manuscript) and the Court would therefore have to infer that it was mere chance that he had retained and then disclosed (only) the earlier versions of each of these deeds with the dates which accord with his case rather than the later version which is adverse to his case.

94. In my view such an inference is wholly implausible and there is no explanation for the manuscript amendments other than they must have been made deliberately.

95. In the circumstances where the later versions have only come to light from third parties, I do not accept any explanation that Mr Vik was unaware of the fact that these documents which were disclosed by or on his behalf were not the final versions. I am sure that this was a deliberate attempt by Mr Vik to mislead by his disclosure and his evidence to this Court that he did not know anything about the different versions and merely disclosed what he was given by Mr Johansson is a deliberate lie. Whilst this allegation is not before the Court on this Application, it is highly relevant to the credibility of Mr Vik generally and to the plausibility of arguments put forward concerning Mr Vik's actions.

96. It was submitted for Mr Vik (paragraph 30 of Closing Submissions) that it is "*plausible*" that Mr Vik did not take an interest in substantial sums in cash or cash equivalents (the assets in Beatrice) and plausible that out of "*curiosity*" that Mr Vik made an enquiry about an investment he had disposed of (the Devon Park Interest) and that these matters do not call into question the accuracy of his answers.

97. Whether something is a plausible explanation in the context of the specific allegation i.e. reasonable or likely depends on the circumstances but also on the Court's assessment of the overall reliability and credibility of his evidence.

98. In reaching a conclusion as to whether the evidence excludes all realistic possibilities consistent with the defendant's innocence the Court is entitled to and does take into account the court's assessment of the overall reliability and credibility of Mr Vik's evidence.

99. My impression of Mr Vik gained from his oral evidence read against the contemporaneous documents is of a man who on his own case has demonstrated a readiness not to tell the truth in his business dealings: on his case it was an unnecessary inconvenience to get the consent of Devon Park to the transfer of the beneficial interest by SHI to VBI.

100. On Mr Vik's evidence little weight should be placed on documents as representing the true position merely because they are signed by Mr Vik.

101. As discussed above, I do not accept as a general proposition that the passage of time is an explanation for his stated inability to recall matters. Rather Mr Vik's approach to giving evidence to this Court was that of someone who had been engaged in litigation over many years and was unfazed by the task of cross examination and giving evidence. It could be said that he appeared to regard it as an intellectual challenge to pit himself against counsel for the Bank.

102. Mr Vik is and I infer was at the XX Hearing, fully abreast of the issues in this litigation and he is sufficiently skilled (in terms of education and background) to understand the import of both the questions put to him both at the XX Hearing and in cross examination before this Court and the potential ramifications of his evidence. I do not accept as genuine the (majority of) occasions in his evidence to this Court where he professed to be confused or lost.

103. More significantly and as referred to above, in my assessment Mr Vik lied to this Court when faced with clear documentary evidence which contradicted his position.

104. For all these reasons I approach Mr Vik's evidence to this Court on individual issues on this Committal Application with considerable caution as to whether he was telling the truth to this Court in relation to the individual allegations of contempt.

105. Lest it be said that the Court has somehow reversed the burden of proof by this finding I would note the findings of the Court of Appeal in *Ablyazov* at [57] where such an argument was rejected:

> "…as is typical of any trial, the evidence of any witness depends critically on his or her credibility and reliability. Just as typically, a judge comments that he is unable to credit the witness save to the extent that his evidence is reliably corroborated by the documents."

106. I note that the Court of Appeal whilst referring to the evidence of the witness being corroborated by the documents (above) refers to evidence which is "*reliably corroborated*" by the documents. In this case it is alleged by the Bank that some documents notably the Sale Agreement are not bona fide documents and thus the extent to which Mr Vik's evidence is "*corroborated*" by the documents also depends on the Court's assessment of whether such documents are themselves reliable.

107. Finally, in relation to the significance of the overall assessment of his credibility to the individual allegations of breach, I note the Court of Appeal's observation in *Ablyazov* at [60] that**:**

> "…ultimately, however much each allegation of contempt needed to be looked at on its own merits, the key question of Mr Ablyazov's honesty with respect to his assets is likely to link the allegations…".

Fairness of the process/abuse

108. It is necessary for the Court to address some preliminary submissions made for Mr Vik on the whether the process was "fair" to Mr Vik.

109. It was submitted for Mr Vik (Closing Submissions paragraphs 2-5) that the "process" is not fair to Mr Vik. The following matters were relied upon (in summary):

i) The time elapsed- the Court has to make findings as to what was in Mr Vik's mind in December 2015 and to why he could not produce emails which in several cases were more than 6 years previously;

ii) It was part of a strategy of putting pressure on him personally even though he is not personally liable for the debt;

iii) The Committal Application was conceived without adequate reflection;

iv) The evidence is advanced in an unbalanced and unnecessarily tendentious manner;

v) The Bank asks the Court to assume that the burden is on Mr Vik;

vi) The case has evolved impermissibly.

110. It was not expressly asserted in this section of the written closings for Mr Vik that the Committal Application is an abuse of process. Rather it was submitted that it merely posed for the Court "*an unnecessarily difficult task of extracting what is relevant and probative*".

111. In his oral and Section E of the written Closing Submissions Mr Vik appeared to go further when it was submitted that the Committal Application was not for the purpose of assisting recovery against SHI but was intended to put pressure on Mr Vik by a threat of imprisonment to obtain a payment from him personally. It was submitted [Day 11 p63] that this was not "*a legitimate purpose of the contempt proceedings*". It was further submitted that it was not "*proportionate*" to seek to pursue "*a collection of redundant documentation which Mr Vik has no realistic prospect of being able to recover against the threat of imprisonment, if he fails to do so, or, which is not going to assist Deutsche Bank in any event".*

112. Further it was submitted (paragraph 206 of its Closing Submissions) for Mr Vik that a large number of allegations had to be discontinued; the Bank proceeded on the basis that the Bank assumes that what is said by Mr Vik is incorrect until proved otherwise; the allegations are not proportionate; the Bank asked questions to which it already knew the answer to try and obtain a substantive response and there is no evidence that there is anything further by way of documentation.

113. In my view the process was "fair":

i) Mr Vik had due notice of the allegations (his application to have the allegations struck out as unclear and lacking particularity was heard and rejected by Cockerill J).

ii) The burden and standard of proof which the Court must apply is common ground.

iii) Mr Vik has been represented throughout by leading and junior counsel.

iv) Mr Vik had an opportunity to respond to the evidence which he chose to do through his Affidavit and by submitting to cross examination. It was clear that counsel had advised him of his right not to file evidence and not to submit to cross examination.

v) Further by permitting Mr Vik to give evidence remotely from abroad, there can be no suggestion that the Court compelled him (indirectly) to enter the jurisdiction in order to defend himself.

vi) The fact that some of the allegations are no longer pursued does not make the process unfair. Mr Vik is able to engage lawyers to deal with the detail of the proceedings and the fact that the number of allegations has reduced assists Mr Vik rather than prejudices him. The issue of the costs of abandoned allegations will be considered in due course but the abandoned allegations do not in my

view render the process unfair. There is evidence in Mr Hart's First Affidavit that goes to the now abandoned allegations but the passages of evidence relied on for the allegations that remain are clearly identified in the Application Notice. The Court is familiar and experienced in the need to focus on the evidence which is relevant and probative and there is nothing of particular concern which would suggest that the Court was unable to do so on this occasion.

vii) The effect of the passage of time is considered above in relation to the credibility of Mr Vik. Further much of the detailed evidence now before this Court largely relate to matters which occurred in 2013-2015. The contemporaneous documents are evidence which is unchanged notwithstanding the passage of time and assists the Court in reaching its conclusions.

viii) The courts are very familiar with having to make findings as to the state of mind of a person at the time of an alleged offence.

ix) The Court has well in mind the precise matters which are alleged and makes findings below by reference only to the matters which are alleged; as set out above the Court also has in mind throughout in assessing the evidence and submissions the burden and standard of proof and there is no unfairness which results in that regard.

x) As to the alleged motive of the Bank to put pressure on Mr Vik personally, in light of the Court of Appeal decision in *Navigator v Deripaska* [2021] EWCA Civ 1799, subjective motive is irrelevant to an application for contempt. (It is not entirely clear from the submissions (paragraph 113 of Mr Vik's skeleton for the hearing and paragraph 205 of his Closing Submissions) whether this decision is accepted for Mr Vik, it is nevertheless binding on this Court). The relevant passage is at [110]:

> "110. I do not agree with this analysis of the authorities. In my judgment, for the reasons set out below, where a civil contempt application:
>
> i) is made in accordance with the relevant procedural requirements;
>
> ii) is properly arguable on the merits (by reference to the necessary constituents of a claim for contempt); and
>
> iii) has the effect (and so at least the objective purpose) of drawing to the attention of the court to an allegedly serious contempt,
>
> then the fact that the application is motivated, whether predominantly or even exclusively, by a personal desire for revenge on the part of the applicant is not a good reason for striking out the application as an abuse of process."

114. Whilst I accept that in *Deripaska* there was reference to a "*legitimate purpose*" or "*motive*", this in my view is satisfied in this case: this is not a case where the proceedings can be characterised as "*hopeless*" or purely technical contempts: in *Deripaska* the Court of Appeal said at [114]:

> "114. Sectorguard was thus "[f]irst and foremost" a case where compliance with the relevant undertaking was found to be impossible at all material times; that set the context for all that followed. I do not consider that the subsequent reference in [53] to "legitimate motive" is a reference to subjective motive but rather a reference to legitimate purpose in the sense identified in [47], where Briggs J had identified the two "legitimate ends" of committal proceedings, namely enforcement or bringing to the court's attention serious rather than technical breaches. The words "ends" and "motives" were being used interchangeably, but the clear thrust of [47] is that proceedings which are hopeless or relate to purely technical contempts are the signs to look for when searching for abuse, not questions of subjective motive." [emphasis added]

115. In my view this Committal Application satisfies the test laid down in *Deripaska*: it is made in accordance with the relevant procedural requirements (including that it was properly served and the allegations are properly particularised); it is properly arguable on the merits and has the objective purpose of drawing to the attention of the court an allegedly serious contempt that is a failure to give truthful information and to comply with the disclosure obligations imposed by a Court order.

Beatrice-Failure to provide truthful or complete information regarding the funds and assets of Beatrice or the Trust

Allegations

116. In the Schedule to the Application Notice the Bank particularised the allegations in respect of Beatrice and the Trust as follows:

> "1. At the Vik XX Hearing, Mr Vik gave evidence (transcript p. 61 1. 23 - p. 63 1. 20), the substance of which was that he did not know and was unable to provide information about:
>
> (a) what assets Beatrice had at the date of the Vik XX Hearing;
>
> (b) what funds of SHI were held by Beatrice at the date of the Vik XX Hearing;
>
> (c) what assets Beatrice had in August 2015; and
>
> (d) what assets the Trust had in August 2015 or at the date of the Vik XX Hearing
>
> (Mr Vik falsely claimed, instead, that the last time he knew what the assets of the Trust were was October 2008).

> 2. Mr Vik's evidence, as summarised in paragraph 1 above, was deliberately false. As at the date of the Vik XX Hearing, Mr Vik did know and/or was able to provide information about:
>
> (a) what assets Beatrice had at the date of the Vik XX Hearing;
>
> (b) what funds of SHI were held by Beatrice at the date of the Vik XX Hearing;
>
> (c) what assets Beatrice had in August 2015; and
>
> (d) what assets the Trust had in August 2015 and at the date of the Vik XX Hearing."

Evidence

117. The Bank's evidence in support of the allegations above is set out in the First Affidavit of Mr Hart (at paragraphs 58-93) and in the Third Affidavit of Mr Hart (at paragraphs 11-16).

118. From that evidence I note in particular the following:

i) Transfers of funds and assets totalling approximately US$ 730 million took place from SHI to Beatrice between 13 and 15 October 2008 (the "Beatrice Transfers").

ii) At the time of the Beatrice Transfers, Mr Vik was the sole shareholder and director of Beatrice.

iii) Mr Vik has given evidence that, having transferred SHI's funds to Beatrice, he then transferred his interest in Beatrice to the Trust "*as of*" 30 October 2008, allegedly as part of his "*estate planning*" (paragraph 59 First Affidavit of Mr Hart).

iv) The Bank notified Mr Vik in advance of the Vik XX Hearing that it intended to question him about the assets of Beatrice and the Trust (paragraph 63 of First Affidavit of Mr Hart). The "List of Topics" (comprising some 13 topics) included the following:

> "8. The assets of C.M. Beatrice, Inc. ("Beatrice"), which may be available to satisfy the Judgment Debt, including:
>
> (a) Transfers from SHI to Beatrice and the current whereabouts of the proceeds of such assets;
>
> (b) The location and control of current assets of Beatrice;
>
> (c) Ownership of Beatrice and the alleged transfer of Beatrice to the CSCSNE Trust; and
>
> (d) Mr Vik's relationship to, and the status, control and trusteeship of, the CSCSNE Trust."

v) Mr Vik was the settlor or grantor of the Trust. Under the terms of the Trust Deed, in his capacity as Grantor of the Trust, Mr Vik: (a) has the power to alter, amend, revoke or terminate the Trust in whole or in part; (b) can have any part of the Trust property revested in him at any time at the request of his wife in her capacity as the 'Grantor's Spouse' (c) has to approve in writing all proposed payments to the beneficiaries of the Trust; and (d) may at any time, and without the consent of the trustees, acquire all or any portion of the Trust property by substituting other property of equivalent value.

vi) Mr Vik was also, until August 2015, the "Protector" of the Trust. Thereafter it appears that the former wife of Mr Vik's brother, Barbara Esparrago was appointed and that she was then replaced in February 2017 by Ms Maria Jesus Lopez de la Torre.

vii) The beneficiaries of the Trust are Mr Vik's children.

viii) Mr Vik's wife and daughter were until 2013 the trustees of the Trust. In Mrs Vik's deposition in the Connecticut Proceedings in July 2015 Mrs Vik's evidence was that she had no understanding as to what the business of Beatrice was, merely stating that she knew it was "*a company with assets*". Her evidence was that she did not know what those assets were and did not know what business it was in.

In that same deposition Mrs Vik also said that she did not know who became trustee when she and her daughter resigned as trustees.

In her deposition in May 2017 Mr Vik's daughter, Caroline Vik, gave evidence that the Trust had *"assets and holdings and investments and debt"* but *"I don't know when and what"*. She then said that she knew the Trust had Beatrice and that she knew it had made investments. [A/4.1/248]

ix) Mr Vik's wife and daughter were replaced as trustees by Maximillian Broquen, the managing director of Mr Vik's family's hotels business, and subsequently in July 2016 by Ivan Gonell Santana, a junior legal assistant at a law firm in the Dominican Republic. Mr Gonell was directed to file an affirmation in New York proceedings. In that affirmation Mr Gonell stated that apart from four documents which related to his appointment as trustee, the resignation of Ms Esparrago and provided a copy of the Trust Deed, he had no documents in his possession pertaining to the Trust or Beatrice and no knowledge of where such documents could be located or whether they existed.

x) The Trust Deed was only disclosed in October 2015; previously Mrs Vik (who was at the relevant time a trustee of the Trust) was not prepared to provide a copy to Ms Asgarian, a lawyer acting for Mr Vik. When asked in the course of her deposition for the Connecticut proceedings why she had refused, Mrs Vik replied;

"A. Because I didn't want to.

Q. Why?

> A. Protect my family from -- I didn't want to. I just didn't think it was appropriate.
>
> Q. To protect your family from what?
>
> A. It's -- my children. I protect my children…"

119. I also note the evidence of Mr Vik in his Affidavit as follows:

i) The Trust was originally set up in October 2008 and Mr Vik settled Beatrice's shares into trust on 30 October 2008.

ii) Shares in a company do not need supervision or maintenance.

iii) Prior to the establishment of the Trust, Beatrice was his "*savings*" company and, as such, it had no "*operations*" or "*business*" to speak of; it was simply an entity that held assets. The assets that it held, in keeping with its use as a savings company, were low-risk and low-maintenance. Prior to the settlement of his shares in Beatrice on trust, Beatrice's assets were, as far as he recalled, primarily, cash, fiduciary deposits or treasury bills.

iv) The nature of Beatrice's assets meant that they did not need much management, at least at the time that Mr Vik settled Beatrice's shares into the Trust. It was in this context that he was content for his wife and daughter, and later Mr Broquen, to act as trustees of the Trust without "*supervision or intrusion*" from him. (paragraph 31)

Mens rea

120. It was submitted for Mr Vik (paragraph 32 of his Closing Submissions) that the substance of his responses should be interpreted as a statement that in December 2015 he did not know "*exactly*" what assets or funds Beatrice, or the Trust had either at the date of the XX Hearing or in August 2015.

> "… the short point is that in giving the answers that he did, Mr Vik stated that he did not know the assets that Beatrice held, though as a matter of asset class, he indicated it had been, and likely remained, cash and cash instruments. He did not know the assets that the trust held, though as to that, he was unaware of anything other than Beatrice shares having been transferred in." [emphasis added] (transcript day 10, p22)

121. As noted above, Mr Vik was given notice of the intended questions and that he would be asked about the assets of Beatrice.

122. In my view Mr Matthews sought to put a gloss on the answers of Mr Vik and to draw a distinction between knowledge of the class of assets and the precise assets which is not warranted. In support of this conclusion, it is important to read the transcript of the XX Hearing and to see the development of the points which were put to Mr Vik concerning Beatrice and the Trust. The answers given by Mr Vik which are alleged to be false must be interpreted in context. Once the questions are read in context it is apparent that the answers which are alleged to be false were in response to questions

which were of a general nature concerning Mr Vik's knowledge of the assets in Beatrice and the Trust and it is wholly implausible that the distinction now being advanced for Mr Vik that the substance of his answers was that he had given answers about the asset class but could not provide the detail was how Mr Vik could reasonably have understood the questions or did understand the questions.

123. The structure of the questions is apparent if one looks at the sequence of the questions put to Mr Vik and how the questions were developed in the light of Mr Vik's answers. It is apparent from the transcript that the questions which were put at this stage of the XX Hearing were directed at the assets in Beatrice and the Trust and were put as a logical progression from the initial transfer of assets to Beatrice and of Beatrice to the Trust in October 2008 through what had happened thereafter. This elicited Mr Vik's evidence that he had resigned as Protector in 2015 and then questions were put about what Mr Vik knew at that point and thereafter in particular what Mr Vik knew from Mr Broquen who was then trustee.

124. The progression of the questions can be seen from the following extracts from the XX Hearing (transcript pages 20-33):

> "Q. Mr Vik, you told the court that your savings company, Beatrice, was transferred by you to the CSCSNE trust on 30 October 2008. Is that right?...
>
> Q. The sum of 4.38 billion Norwegian Krones was transferred by SHI to Beatrice in October 2008…
>
> Q. Then those funds were then transferred into the trust as part of Beatrice' assets.
>
> A. Well, Beatrice was transferred to the trust…
>
> Q. The company held the 4.38 billion Norwegian Krones that you had transferred to it?...
>
> "Q. Mr Vik, your wife said that the trust was simply to hold Beatrice' assets. Is that right?...
>
> A. The trust was simply to hold Beatrice' assets? No…
>
> Q. Have you transferred anything else since then?...
>
> Q. Has your wife?...
>
> Q. Have any of the trust assets been revested in you?...
>
> Q. You are the protector of the trust, aren't you?
>
> A. Not any more…
>
> Q. Your children's inheritance is now managed by Mr Broquen who is the new trustee?...

> Q. And you control what he does with the trust?
>
> A. No…
>
> Q. Mr Vik, you just said that you kept a close eye on the trust, so tell me how you kept a close eye…
>
> Q. …So you do ask Mr Broquen how the trust assets are performing, do you?...
>
> Q. So you have no idea, since 5 August, how the assets are performing. Is that right? …
>
> Q. They could have all been depleted and you would have no concern at all?
>
> A. Of course I would have concern, but I don't -- I haven't asked him…
>
> Q. Well, Mrs Vik says she wasn't, so in practice, Mr Vik, the only person who could have been dealing with Beatrice' assets was you, wasn't it?"

125. The line of questioning then pursued the issue of who would have carried out any dealings in the assets of Beatrice and the specific issue of the transfers disclosed by bank statements between Beatrice and SHI and how such transfers were authorised on behalf of Beatrice (transcript page 33-36):

> "Q. Who do you say was dealing with Beatrice' assets?
>
> A. As far as I know the trust was dealing with Beatrice' assets.
>
> Q. Your wife, as the trustee, said she had no dealings…
>
> Q. …Anyway, we have identified 101 further transfers between Beatrice and SHI between November 2008 and November 2012?
>
> A. Yes.
>
> Q. Do you accept that? Do you accept that there were transfers between them?
>
> A. I am aware now that there were transactions between the two companies."

126. The next stage of the questions was in relation to the loans identified in the witness statement of Mr Johansson (transcript page 52):

> "Q. But you knew about these transfers. We have established that, because you were authorising them on behalf of SHI.

A. Yes. At the time they were happening I was aware of them."

127. Then Mr Vik was asked general questions about transfers into Beatrice (transcript page 59-60):

> "Q. So have you transferred further monies and assets into Beatrice since 30 October 2008?
>
> A. No.
>
> Q. Has any company associated with you transferred further assets or monies since October 2008?
>
> A. Not that I can recollect, no…
>
> A. I don't remember any transfer into Beatrice.
>
> Q. What about the trust?
>
> A. I don't remember any transfer into the trust." (transcript p60 l 8-12)

128. Finally, Mr Vik was asked about the assets of Beatrice leading to the answer which the Bank alleges is false. It is clear from the questions that Mr Vik was being led through a structured set of questions designed to elicit what was in Beatrice and the Trust in 2008, the transfers between SHI and Beatrice, the absence of any other transfers in or out of Beatrice and the Trust and leading to the question whether Mr Vik knew what assets were in Beatrice.

129. It is wholly implausible when the transcript is read as a whole to infer that any distinction was being drawn between the "*class of assets*" and the precise assets or to infer that Mr Vik would have understood the question as now seems to be submitted on his behalf.

> "Q. [Mrs Vik] said that Beatrice' assets were still in the trust in 2013. Is that right?
>
> A. I think that is what she said, yes.
>
> Q. Is it right that they were?
>
> A. I don't know.
>
> Q. Well, you must have known that they had money when you were authorising transfers.
>
> A. 2013?
>
> Q. 2012.
>
> A. I thought you said 2013.

> Q. I did, so I am asking you, are you saying something happened between 2012 and 2013 to change your knowledge?
>
> A. No.
>
> Q. Have you disposed of the monies held by Beatrice since then?
>
> A. No.
>
> Q. Can you tell the court what assets Beatrice currently has?
>
> A. No. [emphasis added] (transcript p61 6-25)

130. Mr Vik was then asked whether he could tell the court what assets Beatrice had in August 2015 when he retired as Protector of the Trust and he answered "*No*".

131. The point was then pursued by Counsel for the Bank, so it was then clear to Mr Vik if he had been in any doubt (which in my view he was not) as to the broad nature of what was being asked or believed that he had somehow already answered the question:

> "Q. Can you tell the court what assets Beatrice had in August 2015 when you retired as the protector of the trust?
>
> A. No.
>
> Q. Why not? You were the protector of the trust. You must have known?
>
> A. I don't know.
>
> Q. Why did you not know, Mr Vik? It was your job to look after the trust and protect it.
>
> A. I just don't know.
>
> Q. Mr Vik, I am sorry, but I don't think you are being candid here?
>
> A. I am being perfectly candid.
>
> Q. Are you really trying to tell the court that when you were the protector of the trust and there was nobody else looking after that money you cannot tell the court in August 2015 what it had?
>
> A. I do not know what it had in 2015, no. I do not." [emphasis added] (transcript p62-63)

132. There is nothing qualified about Mr Vik's answer which would suggest that Mr Vik thought the Bank was only asking for detail which he asserts he did not have. It was a

broad question and having been challenged on his initial response by reference to his role in the Trust, his evidence was that he did not know the position in relation to the assets of Beatrice and the Trust.

133. The Court has to be satisfied to the criminal standard that when Mr Vik made the relevant statements, he knew it was not true or did not honestly believe it to be true. As well as having regard to his answers viewed in the context of the overall line of questioning, I take into account the history of these proceedings.

134. I infer from the history of the proceedings that Mr Vik understood only too well why the Bank was asking questions about the assets in Beatrice and the Trust. In this context the issue is not whether the findings of Cooke J are binding on this court as amounting to a form of issue estoppel or whether the Connecticut court was right when it found that Mr Vik did not transfer the assets out of SHI to Beatrice in order to prevent the Bank from getting those assets. The significance lies in that Mr Vik knows that the Bank's case is that the relevant assets were transferred out of SHI to Beatrice "*with a view to depleting SHI's assets*" and to make it more difficult for the Bank to seek recovery. The Bank has therefore been keen to establish what assets were and are in Beatrice and the Trust in order to assist it in enforce the outstanding Judgment Debt. I am satisfied that this provides a clear motive which explains why Mr Vik would (and did) lie to the Court at the XX Hearing about the assets of Beatrice and the Trust.

135. I note in support of that conclusion the evidence from the XX Hearing that Mr Vik had not mentioned in his earlier witness statements any funds transferred from Beatrice to pay litigation costs. Mr Vik's explanation at the XX Hearing [p55-58] was that this was the fault of his lawyers in drafting the witness statements and/or Mr Johansson was responsible for managing this. Whilst Mr Vik did say at the XX Hearing that Mr Johansson, was in charge of the "*day-to-day operation, the day-to-day litigation and operations of the company from 2008 on*", this was challenged by the Bank at the XX Hearing by reference to his own solicitors' evidence. Further and in any event it does not address the issue of knowledge and overall supervision by Mr Vik. Given the significant sums involved, and the significance of the issue to the proceedings (such that Mr Vik would, as referred to above, have had a motive for wishing to conceal the true position), this explanation for the failure to mention previously the transfers from Beatrice was not credible.

136. To the extent that Mr Vik asserts that he had an honest belief in his answers because he understood the questions to refer to the precise assets rather than the "class of assets" which he had already answered to some degree, I reject that assertion as not in any way credible for the reasons discussed above.

<u>The nature of the Trust and its operation</u>

137. Turning then to consider the falsity of the statements and whether Mr Vik did in fact know the assets of Beatrice and the Trust in 2015. In summary it was submitted for Mr Vik that:

i) Mr Vik was advised to and did distance himself from the Trust;

ii) The trustees did not need to have significant investment expertise given the nature of the assets in Beatrice and the Trust.

138. It was submitted for Mr Vik (paragraph 36 of his Closing Submissions) that there is no basis that the Court can be satisfied to the criminal standard that Mr Vik was lying about his state of knowledge and in particular the trustees did not need to have significant investment expertise given the nature of the assets in Beatrice and the Trust, namely that the assets transferred to Beatrice in October 2008 were cash, fiduciary deposits and Norwegian treasury bills and the shares in Beatrice were transferred to the Trust (paragraph 46-47 of his Closing Submissions).

139. I propose to address the submissions under the following headings:

i) The nature of the Trust;

ii) The role of the Protector;

iii) The trustees;

iv) Whether Mr Vik distanced himself from the Trust;

v) The Beatrice credit line;

vi) The nature of the assets in Beatrice and the Trust.

The nature of the Trust

140. As referred to above, Mr Vik retained considerable legal rights to control the assets in the Trust. Whilst he may not have exercised the rights to approve distributions and to substitute assets, the overall way in which the Trust was set up did not suggest a trust where Mr Vik would not be involved in the decision making of the Trust.

141. It was submitted for Mr Vik that it is "*understandable/appropriate*" that a settlor will lack close involvement with the assets settled into a trust when the settlor is neither a trustee nor a beneficiary. In my view that ignores the fact that this trust was for the benefit of his children, the powers retained by Mr Vik as the settlor and as discussed below, the identity of the particular trustees.

The role of the Protector

142. Mr Vik was until August 2015 the Protector of the Trust. Mr Vik gave evidence to this Court that he did not know exactly what the role of the Protector was, however that evidence was contradicted by other statements in the course of his evidence.

143. For example, Mr Vik's explanation for being comfortable with Mr Gonell being a trustee of the family trust even though he was someone that he did not know, was the role of Ms Esparrago as the protector:

> "Q. So 730 million of assets is in the family trust being managed by somebody you don't know?
>
> A. That is correct.

> Q. And you are comfortable with that?
>
> A. I withdrew from the trust completely and left it in-- I appointed Barbara Esparrago as the protector to take care of the trust.
>
> …
>
> A. I trust Barbara Esparrago to take care of things properly for the trust." [emphasis added] [Day 8 p62-63]

144. This is consistent with Mr Vik's understanding at the XX Hearing where in the course of questions about Mr Broquen Mr Vik made reference to the role of the Protector and described the role as to "*protect the trust, like myself*":

> "Q. You would be very surprised if Mr Broquen transferred those assets without checking with you first?
>
> A. If he transferred the 500 million or whatever the number is, would I be surprised? Yes, I would be surprised.
>
> Q. Because you would expect to be consulted first?
>
> A. In these days I am no longer the protector, there are other people who are protectors, and so their job is to protect the trust, like myself.
>
> Q. Yeah, but you would expect to be consulted before he dealt with the assets, wouldn't you.
>
> A. I would -- I don't really know exactly how this fund works, but I would say that he would have to deal with a protector, first, and I would be shocked if 700 million or 500 million or whatever the exact number is disappeared from the trust…" [emphasis added]

145. This is to be contrasted with Mr Vik's evidence to this Court where he initially said he did not know what the role of the Protector was, alternatively he had been advised not to have anything to do with the Trust, alternatively that he did not actually do anything as Protector:

> "Q. Mr Vik, you were the protector of the trust until at least August 2015, so you were involved?
>
> A. Yes, in that sense I was involved. I was --you know, I was advised to not, as a grantor, not to really have anything to do with the trust, so I didn't have anything to do with the trust. I think it was -- I just didn't and I think -- I don't know if it was my wife or my daughter said that I had nothing to do with the trust.

> Q. But as the protector you had to keep an eye on what was happening with the trust, that was your job?
>
> A. But I --what my job is I am not 100% sure, but I didn't -- wasn't involved with the trust. I let them run the trust.
>
> Q. So do you suggest that --what do you suggest the role of the protector is then?
>
> A. Obviously it's -- I don't really know exactly what the role of protector is, but I didn't take any actions of any kind to protect or unprotect or ... I didn't.
>
> Q. (Inaudible) when you did and appoint somebody else who could fulfil the role?
>
> A. I resigned in 2015, I think it was, and --
>
> Q. So seven years after you were appointed, roughly. Why have the role for seven years?
>
> A. I had -- as I said, I was advised not to be involved. I had no reason to do any protection, whatever that is supposed to mean. I didn't do anything." [emphasis added] (transcript day 8, p10)

146. This evidence was in my view inconsistent with the earlier evidence at the XX Hearing and of itself both inconsistent and not credible. Mr Vik gave no satisfactory explanation as to why he remained as Protector from 2008 until 2015. His evidence was merely that he was advised not to be involved and did not do anything.

147. Further it is in my view not without significance that Mr Vik resigned as Protector at the beginning of August 2015 shortly after service of the CPR 71 Order on 21 July 2015.

148. It was submitted for Mr Vik that the role of the Protector under the Trust Deed was not to "*protect the Trust*" and that as Protector, Mr Vik had power to appoint or remove trustees but had no power to direct the trustees' activities or otherwise control the assets (paragraph 52 of his Closing Submissions).

149. In my view the significance of Mr Vik acting as Protector lies not in his legal powers under the Trust Deed (as to which the Court has no evidence other than the Trust Deed itself) but in asking who in reality was looking after the interests of the Trust and whether Mr Vik's evidence that he distanced himself from the Trust is credible. Whatever the legal position, the evidence of Mr Vik when asked who was looking after the interests of the Trust, was that he was relying on Ms Esparrago as Protector and I infer that Mr Vik regarded himself as carrying out that function (at least) until 2015 whilst he held the role of Protector.

150. Further whether or not Mr Vik sought to discharge his duties qua Protector and irrespective of the person holding that role, someone would have needed to look after the interests of the Trust and it is inconceivable that Mr Vik would not have wanted to keep an eye on such a substantial amount of money intended as a family inheritance

when the trustees clearly had little or no relevant experience and knowledge as discussed below.

The Trustees

151. The trustees were initially Mr Vik's wife and daughter and their evidence was that they had little or no knowledge of the assets and recalled minimal participation. They were replaced by Mr Broquen who was experienced in running hotels. Mr Vik's evidence at the XX Hearing was that he had worked with him for eight years and had faith in him.

> "Q. You have just said, Mr Vik, that you would like to keep a close eye on the trust, have you not, so how are you keeping a close eye on the trust?
>
> A. Obviously I want to know that they are well taken care of, but I am not -
>
> Q. Tell me how you know, Mr Vik. How you keep a close eye?
>
> A. From Mr Broquen, why.
>
> Q. Tell me how you do.
>
> A. In general I have not been involved with this trust. It has really been left to the hands of the various trustees.
>
> Q. Mr Vik, you just said that you kept a close eye on the trust, so tell me how you kept a close eye.
>
> A. Maybe I said that but what I meant is I would definitely want to know, you know, how -- that the trust is in good shape and well run, and yeah, so I -" [emphasis added] (transcript p28)

152. It was submitted for the Bank that Mr Vik at the CPR 71 Hearing accepted that he would have liked to keep a "*close eye*" on his children's inheritance (T25/14-19) and admitted that he would definitely want to know the trust is in "*good shape and well run*" (T28/22-25).

153. It was submitted for Mr Vik that this evidence did not show that in fact Mr Vik kept a close eye on the Trust.

154. However, Mr Vik appeared to accept at the XX Hearing (as set out in the passage above) not only that he "*would*" want to know the trust was "*well taken care of*" but that he got information from Mr Broquen but then appeared to try and back track and denied that he had asked him. Further in seeking to deny that he kept a "*close eye*" on the Trust, Mr Vik did say that he "*would definitely want to know, you know, how -- that the trust is in good shape and well run*" and in my view this is consistent with the inference that someone would have been responsible for the Trust and its assets and the obvious person in the circumstances was Mr Vik. (As to the submission this means Mr Vik had some high level knowledge only that is discussed further below.)

155. It was submitted for Mr Vik (paragraph 47 and 48 of his Closing Submissions) that the Trust did not require management by trustees with "*significant investment expertise*".

156. However in my view the value of the assets in the Trust (represented by the Beatrice Shares) was a very substantial amount of money (US$700m at the time of transfer) even taking account of Mr Vik's wealth, and whilst Mr Vik might be content for such a substantial sum of cash to be held in Beatrice and not require "*close management*" such that the trustees did not require "*significant*" investment expertise, the appointment of trustees who had no investment expertise, casts considerable doubt on this explanation as plausible explanation. It was submitted for Mr Vik (paragraph 48 of his Closing Submissions) that it is "*perfectly normal for fund managers having a discretionary mandate to manage much more complex investments [than those of Beatrice] without the need to consult the legal or beneficial owner of the funds"*. However, there is no evidence to suggest that there were fund managers appointed to manage the assets of Beatrice. Insofar as this is intended to be a reference to Zimmerman & Gauch, the evidence of Mr Vik (as discussed below) is that they were appointed to manage drawdowns under the credit line and there is no evidence that they were appointed to discharge any wider discretionary management role.

157. Further even if the Trust and/or Beatrice by reason of the nature of the assets did not require "*active management*", the Trustees appointed lacked any relevant experience to manage the assets. It seems to me self-evident that US$700m of assets even in the form of cash and "cash equivalents" could not be left without any management or supervision over a period of years by someone who had, at least some, investment experience and when one considers the considerable financial experience of Mr Vik and contrasts this with the lack of experience of the various trustees, the inference is clear that Mr Vik would be the person with knowledge and control of the assets.

158. I also take into account the evidence of Mrs Vik and her daughter and the apparent lack of knowledge of the assets of the Trust and management of Beatrice.

159. It was submitted for Mr Vik (paragraph 49 of his Closing Submissions) that it was "*unsurprising*" that Mrs Vik and Mr Vik's daughter were unable when giving their depositions to recall specifics of transactions and investment decisions carried out by Beatrice and the Trust. The submission seemed to be based on the apparently contradictory alternatives that on the one hand they could not recall such matters given the passage of time and the stress of giving evidence and on the other that there is no reason to expect that there were such transactions and decisions. In my view even allowing for the passage of time, the evidence of the depositions would suggest that Mr Vik's wife and daughter had no real involvement in either Beatrice or the Trust.

160. Mr Broquen, however trusted as an employee or manager of hotels, had no experience of managing a trust and I infer that he had no experience which was directly suited to a role investing and protecting US$700m of assets but as a trusted employee, I infer he would report to Mr Vik and act on his directions as required.

161. Mr Gonell's evidence (in the New York proceedings as referred to above) also demonstrates a lack of knowledge of (and involvement in) the Trust by the trustee

which is unexplained if in reality the trustees were looking after the interests of the Trust.

162. As noted above Mrs Vik refused to disclose the Trust Deed to Mr Vik's lawyer on the basis she wanted to protect her family. It was submitted for Mr Vik in oral closings (transcript day 10, p42-44) that his wife's refusal to hand over a copy of the Trust Deed to Ms Asgarian demonstrated a "*determined woman*" who was taking "*an independent stance on behalf of the Trust*" and that this was "*redolent of Mrs Vik acting as the trustee of a legitimate trust for the protection of her children's inheritance*."

163. Whilst I infer that Mrs Vik was doubtless trying to protect her children's inheritance by her refusal to hand over a copy of the document and as a trustee, she had power to do so, her refusal to disclose a copy of the Trust Deed does not provide evidence that she was either competent to manage the assets of the Trust or actually involved in the management of the Trust. Her evidence as referred to above, was of someone who lacked any real knowledge of firstly, the assets for which she was responsible as trustee and secondly, of who became trustee upon her retirement in her stead (and on Mr Vik's case would thus be responsible for managing the family trust and protecting the family's interests). I infer that she did not know about the assets in the Trust or who became trustee because she was relying on her husband to manage the assets in the Trust and thus in Beatrice.

164. I do not accept the submission for Mr Vik (paragraph 39-40 of his Closing Submissions) that a "*key plank*" of the Bank's case is that the Trust was a "*sham*" and a "*mere device*" to try to hide from the Bank what the Bank alleges were SHI's assets. It was acknowledged by the Bank in its oral closing submissions (Day 9 p55) that no such finding was necessary. In my view the issue of Mr Vik's knowledge of the assets of the Trust and Beatrice is not dependent on a finding that the Trust was a device to shield assets from the Bank.

165. In my view, contrary to the submissions for Mr Vik (paragraph 45 of his Closing Submissions) the Court is entitled to conclude on the evidence referred to above and for the reasons discussed above, that Mr Vik continued to keep a close check on the assets of the Trust and Beatrice without having to infer that the Trust was an attempt to hide SHI's assets from the Bank. It is not therefore necessary for me to consider whether the findings of Cooke J give rise to an issue estoppel (paragraph 42-45 of Mr Vik's Closing Submissions) or to consider the findings of the Connecticut Judgment as to Mr Vik's intent when he made the transfers form SHI to Beatrice in October 2008 (paragraph 43 of Mr Vik's Closing Submissions).

166. Thus, it is not necessary for this Court to find that the trustees were not "*genuine*" (which goes to the sham argument below) but given the lack of knowledge and expertise on the part of the trustees, I do infer that someone else must have been supervising and managing the investments (to the extent deemed necessary) in the Trust and Beatrice.

Advised to keep his distance

167. Mr Vik's evidence to this Court is that he was advised to keep his distance from the Trust:

> "A. …I was advised to not, as a grantor, not to really have anything to do with the trust, so I didn't have anything to do with the trust…
>
> Q. So seven years after you were appointed, roughly. Why have the role [of Protector] for seven years?
>
> A. I had -- as I said, I was advised not to be involved." [Day 8 p10]
>
> "A…I was advised as a grantor not to be involved with the trust, as a proper management of the trust, and that is what I did.
>
> Q. Without going into privileged material, by whom were you advised?
>
> A. Withers" (transcript day 8, p13)

168. It was submitted for Mr Vik that he understood he should distance himself from the Trust, and if the Court accepts that he did so act, or that it is a permissible inference, then all of the rest of the complaint and the oddities flagged up by the Bank fall away.

169. Mr Vik referred the Court (paragraph 55 of Vik's Closing Submissions) to his evidence to this Court in relation to that:

> "A. I have not been involved in the trust at all so I really don't know." (transcript day 8, p9)
>
> "Q. You keep a close eye on your children's inheritance, don't you?
>
> A. I think we went through this in the 71 hearing, and I would like to, but I don't" (transcript day 8, p18)

170. However, the credibility of Mr Vik's evidence that he was advised to distance himself and did so, has to be weighed against the Court's general assessment of his credibility and whether it is plausible when considered in the light of the other evidence:

i) His actions appear inconsistent with this in that he held the role of Protector from 2008 until August 2015; even if as a matter of law, the role of Protector is limited, as is submitted for Mr Vik, to the appointment of trustees, as discussed above, Mr Vik clearly understood it to be a wider role and whether given a narrow or wider interpretation it is inconsistent with the purported advice and/or a desire to distance himself from the Trust;

ii) At the XX Hearing when asked why he had resigned as Protector, Mr Vik's explanation was that he had decided to retire, not that he was following legal advice to distance himself:

> "Q. Why did you stop?

> A. I am trying to resign from various positions throughout -- I am retiring." [p26 l20-22]
>
> He subsequently said in his evidence that he had tried to separate himself "*for a long time*" but there was no reference to acting on legal advice (an explanation advanced to this Court):
>
> "Q. "Yes", or, "No" Mr Vik, you would expect him to consult you first before dealing with the trust assets?
>
> A. No, because I have been -- you know, my family is one thing, and I have been unfortunately involved in all of these very unpleasant activities and they don't want to be involved in that, and I have tried to separate any self as much as possible for a long time, and I am retiring." [emphasis added] (transcript p31)

171. Further in my view it is not credible that if Mr Vik had received legal advice to keep his distance from the Trust that it would have been structured in a way that reserved such significant powers to himself (and his wife as the grantor's wife). The relevance for this purpose of the Trust Deed is not whether Mr Vik actually exercised the powers granted but the fact that the Trust was set up in a way which gave him such powers.

172. If he intended from the outset that he would distance himself from the Trust it is inconsistent with such a proposition that (a) he would appoint trustees who had little or no knowledge of the business and assets (his wife and daughter and Mr Gonell) of the Trust/Beatrice and who had no relevant qualifications or experience to manage and administer the Trust assets; and (b) that he would appoint trustees (his wife, daughter and Mr Broquen) who were clearly connected to him and likely to be regarded as not truly independent of him.

The transfers from Beatrice and the credit line

173. Insofar as it was submitted that the trustees did not need to have any relevant experience or qualifications, I also take into account the fact that the Trust was the director of Beatrice.

174. It was submitted for Mr Vik that Beatrice had no operations and the strategy was simply to maintain the status quo. It was accepted by Mr Vik however that payments were made between Beatrice and SHI.

175. It was Mr Vik's evidence at the XX Hearing that Beatrice had set up a "*general facility"* funding the "*general requirements*" of SHI and some of that money was used to pay SHI's legal fees.

176. Mr Vik's daughter was asked about the operation of this facility in her deposition in May 2017. She was asked who was aware of Beatrice transferring money to and from SHI;

> Q. "…Who was minding the Beatrice store at the time?

A. Well I don't have any recollection of it so the rest it up to…

Q. It wasn't you?

A. …Up to other people to decide

Q. It wasn't you though?

A. Not that I can recall

…

Q. Do you know of an entity Zimmerman and Gauch…?

A. Not to my recollection." [emphasis added]

177. Mr Vik's evidence at the XX Hearing was that he was still a director of SHI between November 2008 to November 2012. It was put to him:

> "Q. Because you were the director, we have established, there was no one else for SHI, so you knew what SHI was sending and receive something during that period.
>
> A. Yes.
>
> Q. So who do you say was authorising the transfers on behalf of Beatrice?
>
> A. The way it worked was this I would make a request to Zimmerman and Gauch and they would take care of matters, shall we say. [emphasis added] (transcript p38)

178. This evidence seemed to accept that Mr Vik would make a "request" to Zimmerman & Gauch apparently on behalf of SHI. However elsewhere in his evidence Mr Vik seemed to suggest that Zimmerman & Gauch would determine when SHI needed funds to be advanced even without a request being submitted:

> "Q. How do you say Beatrice knew how much to pay to meet SHI's capital contributions to Devon Park?
>
> A. Zimmerman & Gauch were managing whatever flows of money were needed.
>
> Q. Who was instructing Zimmerman & Gauch about what money flows were needed?
>
> A. They would see, if there were requests for capital, and the company didn't have -- SHI didn't have it, then they were organising it to manage the credit lines to support that." [emphasis added] (transcript day 8, p33)

179. The basis on which Zimmerman & Gauch would have access to SHI's financial books and records to determine whether SHI needed funds was entirely unclear and wholly implausible.

180. It was submitted for Mr Vik that:

i) His evidence was that there was a pre-existing credit line whereby SHI was able at will to draw down funds and when it had surplus cash to make repayments (paragraph 50 of Mr Vik's Closing Submissions).

ii) The arrangement made "*good sense*" from the perspective of the Trust when it was expected that SHI would recover substantial sums and was analogous to a "*typical sweep account where funds are drawn down automatically*".

181. In oral Closing submissions, having been challenged in relation to the written submission for Mr Vik that the arrangement was "*analogous*" to a "*sweep*" account, Mr Matthews submitted that this was in effect the arrangement described by Mr Vik and referred the Court to Mr Vik's evidence that:

> "… When there wasn't enough and there was requirements for more money that SHI needed to spend on various things, [Zimmerman & Gauch] would draw that money from the credit line."

182. Mr Matthews submitted that Mr Vik "*may have struggled to articulate it particularly well …partly because he considered the matter to be relatively straight forward*" and that transfers were made as and when necessary. (transcript day 11, p32)

183. In my view Mr Vik did struggle to explain how Zimmerman & Gauch could draw down funds on behalf of SHI without being told by SHI that SHI needed money and how Beatrice could have authorised ad hoc payments to SHI for capital calls and litigation costs in advance but I infer not because such an arrangement can be said to be straightforward.

184. Mr Vik was questioned before this Court about the role of Zimmerman & Gauch. In my view he sought to evade the question of who was authorising the payments referring to Zimmerman & Gauch "*managing*" the credit line and "*organising*" the payments:

> "A…I think <u>they were managing the credit line</u>, monies going back and forth, and they were doing that.
>
> Q. Managing is not the same question, as you well know, as authority.
>
> A. I think I testified before that I think I had given them the authority and my wife had given the authority as well. Again, this is going back 14 years. But I think they managed -- when I say managed, <u>they had the authority to send and receive funds</u>.
>
> Q. Your wife, we will look at her evidence, but she says she had nothing to do with anything to do with Beatrice. So the

only person that leaves, Mr Vik, is you, and you were authorising the payments made between 2008 and 2012, weren't you?

A. Again, I think I tried to make that very clear the last 2 time, I think, but Zimmerman & Gauch on behalf of both entities were managing the credit line, and the monies were -- when the money was needed from one direction or the other direction, they were organising that…" [emphasis added] [transcript day 8, p31-32]

"Q. Who was instructing Zimmerman & Gauch about what money flows were needed?

A. They would see, if there were requests for capital, and the company didn't have -- SHI didn't have it, then they were organising it to manage the credit lines to support that.

Q. You said there had been no documents that Zimmerman & Gauch held, and here we are seeing that Zimmerman & Gauch must have had requests, you say, and they were seeing, I think you said, you suggested, a document of what was needed. So, did they have documents?

A. I don't know what they have.

Q. Right. Because you do need to explain I think to this court how you say Beatrice knew how much to pay SHI to meet the capital commitments and other business commitments of SHI.

A. I thought I already did that…" [emphasis added] (transcript day 8, p34)

185. His evidence to the Court at the XX Hearing concerning how the payments were authorised by Beatrice was in my view equally evasive:

"Q. Right, but who at Beatrice -- somebody must have been authorising it on behalf of Beatrice. Who was it?

A. I don't know.

Q. Mr Vik, are you really saying that US$80 million were transferred back and forth, and you had no idea who was dealing with it at Beatrice? Are you telling the court that?

A. Yes. I am telling the court that I was not involved with Beatrice. I didn't speak to anybody by Beatrice about these payments.

Q. I asked you a different question. I said, "Who do you think was authorising the payment and receipt"?

> A. I already told you. I think Zimmerman and Gauch --
>
> Q. No, they were the intermediary. Who at Beatrice was dealing with its affairs?
>
> A. I don't know if they spoke to Beatrice or if they had pre-standing orders, I don't know." [emphasis added]

186. It is unnecessary for me to decide whether Zimmerman & Gauch were acting as an agent for HSBC in managing the credit line as the issue is one of knowledge by Mr Vik of the amounts being paid out between Beatrice and SHI not the issue of any delegated authority to manage the administration of the drawdowns. No documentation has been disclosed in support of any such arrangement described by Mr Vik and in my view it is wholly incredible even with a pre-existing credit line that US$80m would be transferred between SHI and Beatrice without any oversight by Beatrice or any request from SHI.

187. In my view, even if Zimmermann & Gauch was manging the credit line and had been given prior authorisation by Beatrice for amounts to be advanced (notwithstanding the amounts involved), Mr Vik would have been aware of the amounts drawn down by SHI given his role in relation to SHI and the need to identify the amount and timing of funds to be drawn down by SHI.

188. It would appear on the evidence that there were approximately 100 transfers between SHI and Beatrice between November 2008 and November 2012. It would appear from his evidence to this Court that Mr Vik was aware of the amounts:

> "A. If I remember correctly, at first SHI was repaying Beatrice further monies, and that over time there was like US$25 million that Beatrice provided net to -- to SHI.
>
> …
>
> A. As I said, it started as a repayment, SHI paying Beatrice, and over -- and net, in the end, it went the other way" [transcript day 8, p28]

189. Mr Vik accepted that he knew that payments were made and received but his evidence was that he did not know the detail of the payments:

> "Q. Yes, I can tell you, but you accept there were transfers going both ways, and about 101 between November 2008 to November 2012.
>
> A. Again, I don't know the details because that I haven't looked at, but I do know there were transfers back and forth.
>
> Q. Because you were the director, we have established, there was no one else for SHI, so you knew what SHI was sending and receive something during that period.
>
> A. Yes." [emphasis added]

190. However, the credibility of this evidence has to be assessed not only in light of the Court's general assessment of Mr Vik's credibility but also in light of the fact that this was a "*general facility*" used for various purposes including to fund SHI's capital contributions in respect of the Devon Park Interest and the costs of the litigation. These were not therefore regular payments the amount of which could have been known at the outset of the facility but specific payments to meet specific liabilities as and when they arose.

191. Mr Vik's evidence to this Court was that Beatrice was unaware of the uses of the funds:

> "Q. I am putting to you, and you seem to have accepted there, that Beatrice paid SHI money to fund its capital contributions in respect of the Devon Park interest.
>
> A. I think Beatrice was agnostic to what the uses were, unaware of them, but they actually were funding at some point the capital requirements of SHI, for whatever purpose.
>
> Q. How do you know, Mr Vik, that they were agnostic?
>
> A. Because it was a credit line." [emphasis added] (transcript day 8, p33)

192. The purported explanation appears to lack any real justification. It has to be viewed in light of the Court's assessment of Mr Vik's general credibility.

193. Even if there was a pre-existing credit line and, funds were advanced to SHI without any need for specific authorisation to be given by Beatrice to Zimmerman & Gauch, the only reasonable inference in all the circumstances is that Mr Vik would have made the requests on behalf of SHI (or would have been aware of them in his role at SHI) and with his interest and desire to protect the Trust would have been keeping a close eye of the assets of Beatrice and would have had knowledge of the funds being transferred to and from SHI.

The nature of the assets in Beatrice and the Trust.

194. Whether or not Mr Vik sought to distance himself from the Trust by his actions, it does not follow that he had no knowledge of the assets in Beatrice and the Trust.

195. It was submitted for Mr Vik (paragraph 47 of his Closing Submissions) that:

i) There is no evidence that Beatrice held any other sort of asset (than the initial assets transferred to it) or had any "*business*" or "*operations*"; and

ii) There is no evidence that the Trust held any other assets beyond the shares in Beatrice.

196. In my view this supports a finding that Mr Vik would have known and did know precisely what was in Beatrice and the Trust both in August 2015 and December 2015 since on Mr Vik's own case neither Beatrice nor the Trust had any business other than, in the case of Beatrice, the holding of the cash/cash like assets and in the case of

the Trust, the shares in Beatrice. It is a reasonable inference that there had been no change to the assets which might otherwise have occurred had Beatrice had any real business or operations or the Trust had held any other assets other than as a result of the payments to and from SHI as discussed above.

197. It is thus against this context that the Court assesses the submission for Mr Vik that he would have been aware of a "*catastrophic shift*" in the assets but not of the detail. Mr Matthews submitted (in oral closings) that Mr Vik would have known if there was "*some sort of catastrophic shift in the assets*" but that one would not be surprised that it had "*never crossed Mr Vik's mind*" that there would not be available assets, nor would he need to keep detailed knowledge of those assets, in order to satisfy himself of the availability of assets so that Beatrice would be able to continue to fund SHI to the tune of less than US$100 million, in circumstances where it had received assets in excess of US$700 million. (transcript day 10, p52)

198. In my view this was a submission which was ingenious but not consistent with a fair reading of the evidence given by Mr Vik. His evidence was clearly to the effect that he had no control or involvement and thus no knowledge of the assets of Beatrice and the Trust. He was not in my view seeking to draw a distinction between a high level state of knowledge and knowledge of the detail. The relevant passage of his evidence at the XX Hearing was as follows:

> "Q. So you do ask Mr Broquen how the trust assets are performing, do you?
>
> A. I haven't yet.
>
> Q. Have you ever asked Mr Broquen?
>
> A. No.
>
> Q. Right. So you have no idea, since 5 August, how the assets are performing. Is that right?
>
> A. No idea.
>
> Q. They could have all been depleted and you would have no concern at all?
>
> A. Of course I would have concern, but I don't -- I haven't asked him."
>
> …
>
> Q. You would be very surprised if Mr Broquen transferred those assets without checking with you first?
>
> A If he transferred the 500 million or whatever the number is, would I be surprised? Yes, I would be surprised.
>
> Q. Because you would expect to be consulted first?

> A In these days I am no longer the protector, there are other people who are protectors, and so their job is to protect the trust, like myself.
>
> Q. Yeah, but you would expect to be consulted before he dealt with the assets, wouldn't you.
>
> A. I would -- I don't really know exactly how this fund works, but I would say that he would have to deal with a protector, first, and I would be shocked if 700 million or 500 million or whatever the exact number is disappeared from the trust. That would be shocking."

199. Thus the evidence read in context is that Mr Vik was asked about his dealings with Mr Broquen, whether he would seek information from Mr Broquen and whether Mr Broquen would have consulted him before he dealt with the assets. Mr Vik's response concerning his "*shock*" if all or the majority of the assets were to disappear has to be read in that context as well as read in the context of the wider line of questions as described above.

200. In addition, in response to the submissions for Mr Vik, I do not accept as plausible or in any way grounded in reality, that Mr Vik would have regarded transfers up to US$100 million as sufficiently low value in the context of the fund of US$700 million that Mr Vik would not have been keeping track of the amount of the assets in Beatrice. I am strengthened in my conclusion by the evidence before Cooke J who stated at [661] that Mr Vik had "a *keen eye for the numbers*" and noted that one of Deutsche Bank Suisse employees (Mr Brügelmann who was Mr Vik's point of contact for trades) "*held Mr Vik in awe because of his extraordinary faculty for retaining details of his trading positions in his head and his ability to conduct his business on a blackberry, without detailed records in front of him.*"

201. Whilst Mr Vik may have been advised to keep his distance and may have taken steps to do so in order to protect the assets from potential attack by the Bank, such as resigning as Protector albeit belatedly in 2015, it does not follow that he has no knowledge of the assets nor that this is a plausible inference. It is entirely consistent to accept that Mr Vik wanted to distance himself and was advised to distance himself and yet to conclude that he nevertheless has knowledge of the assets.

Conclusion on Beatrice and the Trust

202. I have dealt above with individual submissions made for Mr Vik. However, I reach my conclusion by reference to all the evidence and as referred to above it is "*the essence of a successful case of circumstantial evidence that the whole is stronger than individual parts*".

203. For the reasons discussed above and having regard to all the evidence, I am satisfied beyond reasonable doubt in respect of each allegation set out below that:

    i) Mr Vik knew of the terms of the Order;

    ii) He acted in a manner which involved a breach of the CPR 71 Order; and

iii) He knew of the facts that made his conduct a breach.

204. I find that Mr Vik's evidence was deliberately false in that at the date of the XX Hearing, Mr Vik did know:

i) What assets Beatrice had at the date of the XX Hearing;

ii) What funds of SHI were held by Beatrice at the date of the XX Hearing;

iii) What assets Beatrice had in August 2015; and

iv) What assets the Trust had in August 2015 and at the date of the XX Hearing.

Devon Park- Providing false or incomplete testimony regarding SHI's interest in Devon Park

Allegations

205. As set out in the Application Notice it is alleged that at the XX Hearing, Mr Vik gave evidence that SHI sold the "Devon Park Interest to VBI pursuant to an "Instalment Purchase Agreement" between SHI and VBI dated as of 26 September 2012 (the "Sale Agreement")'.

206. The substance of Mr Vik's evidence at the XX Hearing is said to have been that:

i) SHI sold the Devon Park Interest to VBI pursuant to the terms of the Sale Agreement, and, also pursuant to the terms of the Sale Agreement, subsequently transferred the Devon Park Interest out of SHI to a third party on VBI's instructions (transcript p 16611.3-10, p. 18011. 3-18; transcript p. 193 1.22 - p. 1941. 15);

ii) As at the date of the XX Hearing, Mr Vik did not have any connection to Universal Logistic Matters, S.A. ("Universal") (transcript p. 189, 11. 17-21), Universal being the entity to which SHI purported to assign and transfer the Devon Park Interest pursuant to an Assignment and Assumption Agreement dated 29 August 2014 (the "Assignment and Assumption Agreement"); and

iii) As at the date of the XX Hearing, Mr Vik had "*nothing to do with SHI*" (transcript p. 141 11. 17 - p. 142 1. 9, p. 216 11. 12-19).

207. It is alleged by the Bank that Mr Vik's evidence, as summarised above, was deliberately false. The Bank alleges that:

> "As Mr Vik knew at the date of the Vik XX Hearing:
>
> (a) The Sale Agreement was not a bona fide agreement entered into between SHI and VBI;
>
> (b) SHI did not sell the Devon Park Interest to VBI pursuant to the Sale Agreement, nor transfer it out of SHI on VBI's instructions pursuant to the terms of the Sale Agreement. Instead, the Devon Park Interest remained an asset owned by SHI until 29 August 2014, when it was transferred by SHI to

> Universal pursuant to the terms of the Assignment and Assumption Agreement;
>
> (c) Mr Vik continued as at the date of the Vik XX Hearing to have a connection to Universal, in that (a) Mr Vik continued as at the date of the Vik XX Hearing to have at least a direct (alternatively indirect) economic interest in the Devon Park Interest; and (b) Universal was as at the date of the Vik XX Hearing beneficially owned by Mr Vik's father, Erik Martin Vik; and
>
> (d) Mr Vik continued to have a connection and/or involvement with the affairs or former affairs of SHI, given his continuing interest in the Devon Park Interest as described in paragraph 4(c) above."

208. The Bank by its Application Notice relied on the evidence in support of the allegations in respect of Devon Park set out in Mr Hart's First Affidavit at paragraphs 94-126.

Evidence

Sale Agreement

209. In his Affidavit Mr Vik's evidence was that:

> "I do not understand what DBAG means by its assertion that the Sale Agreement was "not a bona fide agreement entered into between SHI and VBI". However, the Sale Agreement is a genuine document and SHI did indeed sell (but not transfer) the Devon Park interest, along with all its non-cash assets, to VBI by the Sale Agreement."

210. In his evidence to this Court Mr Vik's evidence was that the Sale Agreement was:

> "…a genuine commercial arrangement, an arrangement with over 300 million was paid to Sebastian Holdings for a group of assets which were not worth, you know, a lot more. It was a very fair transaction for both parties and it has been implemented in the way that we typically do business, and the courts have confirmed its validity." (transcript day 6, p65)

211. The Sale Agreement which Mr Vik says was entered into in 2012 was only disclosed in 2014 in response to the application by the Bank that the prosecution of SHI's appeal against the Judgment Order be made conditional upon SHI making a payment into court. Evidence was given by Mr Johansson on behalf of SHI in his sixth witness statement that SHI had transferred all of its remaining non-cash assets in September 2012 pursuant to the Sale Agreement in return for NOK 300 million (approximately £32 million). In his witness statement Mr Johansson stated that the identity of the purchaser had been redacted from the agreement which was then disclosed but that the purchaser was "*not Mr Vik nor a company controlled by Mr Vik*".

212. Mr Vik's evidence to this Court was:

> "…my father was very nice to me and was very helpful in financing Sebastian Holdings and provided a huge amount of money to Sebastian Holdings, you know. Unfortunately, Sebastian Holdings, through the misdeeds of Deutsche Bank and Klaus Said, lost it all, but –– so my father's company lost a lot of money unfortunately." (transcript day 6, p73)
>
> "They paid a lot of money for them"; "over 300 million was paid to Sebastian Holdings."

213. Mr Vik seeks to rely on evidence of fund movements in support of the purported sale (paragraph 69(a) of his Closing Submissions). However, there is no documentary evidence which has been put before the Court which indicates that the transfers which took place were pursuant to an arrangement for the sale of the assets (as opposed to a loan).

214. One of the recitals to the Sale Agreement referred to the fact that some of the assets were "*illiquid*" and would remain in the possession of the Seller for up to four years:

> "The Parties acknowledges that some of the Assets are illiquid and may be time consuming, costly, or otherwise complicated to transfer, therefore as condition of the purchase, the Corporation wishes that the Seller maintain possession in trust, with limited power's, of all or part of the Assets for a period of time not exceeding four years and the Seller has accepted such condition, provided that the Corporation will pay all reasonable out of pocket expenses actually incurred by the Seller in connection with the assets held in trust from December 31, 2013."

215. The Sale Agreement only contained a generic description of the assets that were sold. Subsequently in 2015 a more detailed schedule was produced in response to the requirement to produce such a schedule imposed by the Court (paragraph 96 of Mr Hart's First Affidavit). The detailed schedule was apparently prepared by Mr Johansson. That schedule recorded that the following assets were among those sold pursuant to the Sale Agreement:

    i) 1,920,143 shares in IFA;

    ii) the Devon Park Interest.

<u>The Assignment and Assumption Agreement (the "AAA")</u>

216. On its face the AAA provided for the transfer of the Devon Park Interest by SHI to Universal "as of" 29 August 2014.

217. The recitals to the AAA provided:

> "WHEREAS, <u>Assignor owns a limited partnership interest {the "Interest") in Devon Park Bioventures, L</u>.P ... a Delaware

> limited partnership (the …Partnership"), held by Assignor which is represented by a Capital Commitment of US$25,000,000 and its rights, duties and obligations as a limited partner under the Second Amended and Restated Limited Partnership Agreement of the Partnership dated as of December l, 2006, as may be amended from time to time (the "Partnership Agreement"):
>
> WHEREAS, Assignor desires to assign and convey 100% of the Interest (the "Transferred Interest"} to Assignee…" [emphasis added]

The Assignor and the "owner" of the Devon Park Interest was thus stated to be SHI.

218. Further Clause 3 (c) contained a warranty of title from SHI as to both the legal and beneficial ownership:

> "In connection with the proposed assignment of the Transferred Interest as contemplated herein, and as a material inducement to the General Partner to approve the assignment of the Transferred Interest and the admission of Assignee as a substituted Limited Partner, Assignor hereby represents and warrants to Assignee, the General Partner and to the Partnership as follows:
>
> … (c) Assignor owns <u>all right, title and interest (legal and beneficial) in and to the Interest</u> free and clear of all Liens, and, upon execution of this Agreement, Assignor shall transfer the Transferred Interest free and clear of all such Liens." [emphasis added]

<u>The dealings between SHI and Devon Park after the purported transfer to Universal in August 2014</u>

219. This Court now has evidence before it of correspondence between SHI and Devon Park, documents which were obtained from Mr Johansson pursuant to a subpoena granted in New York proceedings in December 2016. I have set out below some of the correspondence so obtained and the evidence of Mr Vik in relation thereto.

220. In November 2014 Mr Vik was sent a capital call notice by Mr Roseman of Devon Park: the covering email was addressed to Mr Vik personally although sent to both him and Mr Johansson. It attached the capital call notice "*for Universal Logistics Matters SA*". This appeared to be on the basis that Devon Park had not received contact information for Universal as it followed an earlier exchange in which Mr Kantesaria, the General Partner of Devon Park had asked Mr Johansson for the "*contact information*" for Universal. Mr Johansson responded to the capital call notice:

> "…sorry I didn't get you the info. We are sorting out channels, it will be more smoothly soon."

221. Mr Vik's evidence to this Court was that:

> "I ignored these things completely and just erased them, but at some point, they kept sending more and more, and I asked them to stop and my lawyers asked them to stop and they didn't stop. They kept sending them" (transcript day 5, p140)

222. However, the evidence suggests that Mr Vik did not ignore what was sent to him "*completely*" as is evident from the email below sent by him on 2 April 2015 and if he "*asked them to stop*" there is no evidence of any response by Mr Vik to communications sent to him about distributions. (An email was sent by his lawyers in this regard but this was in 2017).

223. On 31 March 2015 Devon Park sent the annual report by email. The email was sent to Mr Vik, Ms Féliz and Mr Johansson but specifically addressed by Mr Roseman to Mr Vik. Mr Vik who gave evidence that he did not read all his emails and ignored the emails from Devon Park, responded to this email on the morning of 2 April 2015:

> "Are there plans to sell the public securities?".

Mr Kantesaria responded the same morning:

> "We have lock-up period and rule 144 volume restrictions in most cases. But yes, we will be focused on liquidity and maximizing returns for the limited partners over the next 12 to 18 months."

224. Mr Vik's evidence in his Affidavit was as follows:

> "I do see that, on occasion, having been sent documents about the performance of the fund, I expressed an interest in what was happening and asked questions. I do not recall doing so, but I expect that this was simply curiosity on my part. In particular, while SHI had held the interest it had performed poorly. After the transfer, it appeared from the information sent to me that performance had suddenly improved, and I was interested to know what had happened." [emphasis added]

225. In cross examination Mr Vik was asked why he asked about an investment that he had no interest in. Mr Vik's response was that he "*was interested that this company suddenly was doing better*" but denied that he had "*any interest*" in Devon Park. (transcript day 6, p12)

226. There was also evidence of correspondence at the end of March 2015 concerning the tax return for Devon Park. A request for information was sent by Mr Roseman to Ms Féliz and Ms Johansson. Ms Féliz responded sending a completed beneficial ownership form signed by Mr Polanco who she said was "*the beneficial owner of Universal*". Ms Féliz and Mr Johansson were asked to provide the address of Universal. Mr Roseman then sent to them both the relevant tax return and asked them to inform him of any changes once reviewed by "*your tax advisor*". The covering letter dated 1 April 2015 from the accountants to Devon Park addressed the letter to

Universal but gave as Universal's address both on the covering letter and on the tax form, SHI's address in Monte Carlo (albeit with the word "Panama" at the end).

227. Mr Vik's explanation to the Court when these documents were put to him and he was asked why Mr Johansson did not correct the address was that:

> "they [Devon Park/the accountants] just made a mistake". (transcript day 6, p19)

228. On 11 May 2015, Mr Roseman sent an email sent to Mr Vik and Ms Féliz copied to Mr Johansson (among others) attaching a distribution notice from Devon Park. The attached notice was addressed "*Dear Alexander*" and was stated to be from Mr Kantesaria and others. It read:

> "You are receiving a distribution in the amount of US$2,503,664…the wire will be initiated on Wednesday May 13, 2015".

229. In cross examination Mr Vik was asked about this:

> "Q. … I asked you, I said to you that we don't see either you, Mr Johansson or Ms Féliz replying to Devon Park or contacting them to tell them that you had no entitlement to this money and that they should address notices for Universal to somebody else. We don't see that.
>
> A. I have no idea.
>
> Q. What we can see from the documents, Mr Vik, that I have shown you, is that at the very least, putting it neutrally, Devon Park clearly think that you are connected to Universal and that you are the holder of the interest and receiving the distributions, don't they? We can see that from these documents.
>
> A. I disagree.
>
> Q. What do you say is the explanation for this document addressed in this form, then?
>
> A. Obviously we already noticed that they made a lot of mistakes, I don't know –– I have no idea what they are doing or not doing, but I just don't know." [emphasis added] (transcript day 6, p22)

230. A further example of Devon Park's apparent belief that Universal was connected to Sebastian is in my view evident from the email exchange between Ms Féliz and Mr Kantesaria in September 2015. It is worth noting in analysing the contemporaneous documentation that although Ms Féliz is said to be the contact for Universal, Ms Féliz was a lawyer in a firm based in the Dominican Republic so clearly was not acting as a principal for Universal. This is illustrated by her email of 17 September 2015 in which she wrote:

> "Please be informed that our client has received an offer to buy his participation in Devon. At this moment he is studying the proposal."

231. The answer from Devon Park's General partner is particularly striking:

> "The General Partner would have to approve the transfer. So we would need to fully understand the nature of this buyer. Can you comment on whether the buyer is affiliated with Universal or Sebastian or is it a true third party?" [emphasis added]

232. It was put to Mr Vik in cross examination that Mr Kantesaria clearly thought Universal and Sebastian are in one "*bucket*" and a true third party is in another. Although the email exchange was between Ms Féliz and Mr Kantesaria Mr Johansson was copied.

233. Mr Vik's evidence to this Court was:

> "I don't know what they are thinking or not thinking, I have no idea." (transcript day 6, p26)

234. Whilst I accept that Mr Vik cannot answer for an email sent by Devon Park, if Mr Vik were correct on his evidence that there was no connection between Mr Vik and Universal and Universal and SHI, it seems odd that Mr Kantesaria did not confine his question to whether the buyer was affiliated with Universal which on Mr Vik's case had purchased the interest in Devon Park. It is also of some note that Mr Kantesaria did not refer to ownership of the buyer but whether it was a "*true third party*" which suggests that he was trying to establish whether there were any connections between the proposed buyer and Universal and SHI.

235. The question of the connection between the buyer and SHI became a significant issue by December 2015. Mr Kantesaria emailed Ms Féliz in relation to the proposed transfer to the new entity asking for more documentation:

> "…We can start drafting the transfer agreement for the limited partnership interest but please understand that there will still need to be AML testing with the new entity before we can finalize the transfer, although I hope it will be much reduced than before.
>
> Although you have sent the LLC Incorporation document and Tax ID for the entity, we still need to see the agreement that governs the LLC entity, the owners of the entity, what relationship the entity has to Sebastian / Universal, passport and driver's license information for the owners, etc." [emphasis added]

236. After a brief exchange of emails Mr Kantesaria emailed Ms Féliz on 9 December 2015 expressing frustration in relation to the details provided for the buyer and directing part of his email expressly to Mr Johansson at this point for an explanation as to the buyer's identity including its "*relationship to Alex Vik and Sebastian*":

> "Laura,
>
> My schedule is too busy to have repeated calls. We have been at this now for many many months. I am trying to be cooperative but I can no longer continue to spend time on this matter. I need a STRAIGHT FORWARD solution from your side. In looking at the address of the gentleman from the driver's license, how is he from the Bronx with a 2400 square foot house with a value of US$475,000 possible going to come to own a US$50+ million partnership position? I find that your solutions continue to be ridiculous and will not pass muster with any AML testing or U.S. authority or our auditors or legal counsel. Two major banks have likely already filed suspicious activity reports. We are not willing to take any AML risk with the distribution of proceeds.
>
> Per, We are three to four weeks away from a major distribution from the fund and none of the proposed solutions are workable. Simply changing a name or a bank account is not going to be satisfactory in solving this problem. We need a real solution that will stand up to strong due diligence. <u>We can't agree to any transfers to other parties unless it is clear cut what the organization is, who owns and controls it, its tax status and the relationship to Alex Vik and Sebastian.</u>
>
> Please let's stop going in circles and provide us with a reasonable path forward." [emphasis added]

237. It is also significant that at around the same time, that is in December 2015, Mr Vik continued to receive distribution notices addressed both to him and Ms Féliz, this time concerning a distribution of US$44 million.

238. Mr Vik was asked about this in cross examination before this Court:

> "Q. When you get a notice like this, again copied to Mr Johansson, of this amount, surely this is the time to say: nothing to do with me.
>
> A. I think, I don't know from this one, but I do remember that I actually replied, wow, 44 million, but I don't remember to which email I replied but I did reply to one" (transcript day 6, p32)

239. There is no evidence before the Court of any response from Mr Vik or SHI and notably Mr Vik in his evidence to this Court did not attempt to explain why he had not responded that he was not entitled to the distribution.

240. Even in March 2016 (some 18 months after the AAA) Mr Vik was still receiving emails from Devon Park. On 28 March 2016 Mr Roseman sent an email to Ms Féliz, Mr Vik and Mr Johansson attaching the annual report for Devon Park for the year to December 2015.

241. In May 2016 in response to an email from Mr Kantesaria who was apparently frustrated about questions raised by Mr Johansson, Mr Johansson wrote:

> "Dev, I also hate wasting time and I am careful not to waste yours. Please understand that the DP stake is a significant amount of money, for which I am responsible, and I simply need to keep myself well updated. For instance, the review has been ongoing for about four weeks and I understood that it could go on for perhaps as little as 6 weeks, which could mean we are as little as two weeks out from finishing. But if not, I would like to understand what is now the realistic time frame and what could possibly cause it to change. Please know that it is important for me to know things like this, it is what you would ask about also I think as any good manager would, and that I am not trying to waste your time." [emphasis added]

Vik submissions

242. It was submitted for Mr Vik that:

i) If you start from the premise that the Sale Agreement was a commercial arm's length transaction between unrelated parties, having no family relationship, then you go down the list of "*oddities*" which the Bank identify, in those circumstances, all of these things are very odd. However, if you start from the wholly different premise, which is that this was an agreement between father and son, by which the father wished to advance cash to SHI to assist his son in exchange for the release of essentially illiquid assets, these are things that are entirely to be expected. (transcript day 10, p67)

ii) Whilst the Sale Agreement was "*not the best in class*" the intention to transfer the economic interest in the illiquid assets was obvious and the agreement can take effect in that way. (transcript day 10, p67)

243. As to the correspondence between SHI and Devon Park after the purported transfer to Universal in 2014, it was submitted for Mr Vik that the Devon Park Interest was a "*volatile investment*" in biotechnology and that Mr Vik was "*sufficiently surprised*" by the performance in 2015 relative to its performance in 2012 to ask questions about how it had come to be performing so much better since his own interest had been disposed of in 2012.

244. It was accepted by Mr Matthews that Mr Vik may have signed documents for the tax authorities where "*he had not appreciated what he was signing*" and which would have the effect of misleading the authorities but it was submitted that the Court had to choose between whether it was more likely that the Sale Agreement took place albeit the information being provided to the tax authorities was inaccurate; or whether it was more likely that the information being provided to the tax authorities was accurate, but Mr Vik has told lies to this Court.

Discussion

245. The allegations by the Bank in relation to the Devon Park Interest are ones where the inferences to be drawn from the contemporaneous documentary evidence need to be weighed against the evidence of Mr Vik.

246. In relation to the Devon Park Interest the evidence relied on by the Bank is largely circumstantial. As noted above, the Court should avoid piecemeal consideration of a circumstantial case. Further as the Court of Appeal in *Ablyazov* cited with approval:

> "…the probative force of a mass of evidence may be cumulative, making it pointless to consider the degree of probability of each item of evidence separately."

As also stated in *Ablyazov*:

> "As this series of coincidences, misfortunes, errors, misunderstandings and inexplicable developments multiply, the court is entitled to stand back and ask whether there is in truth a defence or defences as alleged, even if no burden rests on Mr Ablyazov, and the burden remains on the bank, or whether there is at any rate the realistic possibility of such, or on the other hand whether the court is being deceived."

247. This too in my view is a case where when one should stand back and consider the errors, misunderstandings and happenstance in relation to the Devon Park Interest (and so far as relevant, the IFA Shares) in their totality.

248. However, I will address some of the detailed submissions made in relation to the individual strands of evidence before standing back to consider the overall picture.

Sale Agreement

249. It was submitted for Mr Vik that it was "*not entirely surprising*" that the parties, Mr Vik and his father, would want a formal record of the sale of assets having taken place in an agreement, even if the agreement was intended both to be and to operate in a relatively informal way between father and son.

250. Accepting the premise that Mr Vik wished to advance cash to assist his son, the first issue is why if he needed money in 2012 Mr Vik on behalf of SHI agreed with his father that SHI would sell its non-cash assets to his father's company VBI rather than continuing to borrow money from his father as previously. In this regard the absence of any documentation to support the existence of a sale (other than the Sale Agreement itself), the belated disclosure of the Sale Agreement at a time when it was used to support SHI's position in the litigation and the even later disclosure of a detailed schedule all support an inference that the Sale Agreement was not a bona fide agreement.

251. Although Mr Vik relies on the bank transfers which are accepted to have taken place these are equivocal being equally consistent with a sale or a loan.

252. The second issue is the form and content of the Sale Agreement. Accepting the premise that this was an agreement between father and son and thus a degree of informality may be expected, the question arises as to why it contained the provisions that it did and in turn who drafted this agreement.

253. There is no reason to infer that Mr Vik, SHI and Mr Vik's father did not have access to lawyers at that time and there is no evidence to suggest that they could not have used lawyers to draft the agreement:

> "Q. …you have mentioned that VBI had lawyers involved or let me rephrase that, you mentioned that VBI had access to lawyers. You mentioned a Spanish law firm?
>
> A. Yes" (transcript day 5, p91)

254. Yet Mr Vik and his father decided to document the sale arrangement between them using a form of agreement which on its face largely reflected the formal provisions which might be expected in an arm's-length sale agreement, but also included a specific provision for the assets or some of them to be held in trust and under a law which does not recognise such a trust arrangement.

255. I accept that certain features of the Sale Agreement (e.g. the unenforceable nature of the trust) can be explained away by the informality and the apparent failure to instruct lawyers.

256. However, it is unclear why the trust provision was included. It was submitted for Mr Vik that the Sale Agreement itself contemplated that the assets would not be transferred immediately: the recitals referred to the illiquid nature of the assets and therefore VBI wished the seller to maintain possession of the assets in trust.

257. It was submitted for Mr Vik that**:**

> "…Article 4 of the sale agreement which puts the documents into trust, that, as it were, makes total sense insofar as it is being said: well, I am not going to be able to transfer all of the assets physically, as it were, to VBI straightaway. There is going to be, therefore, a period during which some or all of the assets may be retained by or in the possession of SHI, but the beneficial or the economic interest in them is going to pass as between father –– or son and father, pursuant to that relationship of trust…" [emphasis added]

258. However, the provisions of the Sale Agreement do not appear to contemplate that the assets would be transferred over time to VBI.

259. Section 4.1 provided:

> "The Seller will, unless otherwise requested by the Corporation, following the execution of this Agreement, maintain possession of all or part of the Assets, as the case may be depending upon any request from the Corporation, and will

> hold such Assets in trust on the Corporation's behalf ("Trust Assets"), up to 4 years from the Closing Date."

Section 4.2(d) provided:

> "(d) At any time and from time to time at the Corporation's request, in the Corporation's sole discretion, the Seller will transfer (or take such other action as instructed by the Corporation), all or part of the Trust Assets as instructed by the Corporation. Each Party will bear its own costs in connection with such transfer."

260. Thus, although the Sale Agreement did state that the assets were illiquid and could be time consuming or complicated to transfer there is no provision suggesting that the assets were to be transferred to VBI over time; rather there is only a provision that the assets could be transferred on the instructions of VBI (and I infer it was contemplated to a third party and not to VBI, although this was not excluded).

261. Further whatever the intention behind the trust provisions, the existence of the trust provisions does not establish when the Sale Agreement was executed.

262. It was submitted for Mr Vik that the references in the Sale Agreement to litigation were consistent with the position in 2012 referring only to the litigation of the Seller against the Bank and not the proceedings the Bank commenced in 2013 against SHI. [Day 11 p7] It was also pointed out for Mr Vik that the reference to "Permitted Encumbrance" referred to the Devon Park escrow which was set up in July 2012.

263. However, these references are not conclusive. It was submitted for Mr Vik that it was not "*immediately obvious why it should have been entered into in 2014 or fabricated at some later date*". However as noted above the Sale Agreement was only disclosed when SHI was seeking to resist the imposition of conditions in relation to its appeal.

264. In this regard it is also striking that Mr Vik was unable to identify who had drafted the Sale Agreement: Mr Vik's evidence to this Court was that he did not know who drafted the Sale Agreement.

265. Given the unenforceable trust provisions I infer that external lawyers were probably not used. The credibility of Mr Vik's evidence that he did not know has to be assessed in the light of:

i) The Court's assessment of his credibility generally;

ii) The small number of internal candidates who could have drafted the agreement given that on the evidence there were very few people who worked for him other than Mr Johansson- only one "administrative assistant" was identified by Mr Vik in 2015 (transcript day 7, p131) and a further administrative assistant was identified from 2012 by Mr Hart in his Third Affidavit;

iii) The obvious motive for Mr Vik to conceal the identity of the draftsperson given that the bona fides of the Sale Agreement is in issue.

266. It was submitted for Mr Vik that:

> "Whether it be somebody at VBI, whether it be Spanish lawyers, we don't know, and ultimately, it doesn't matter" (transcript day 11, p25).

267. In my view it does matter in the sense that the failure to identify the draftsperson is one of the pieces of circumstantial evidence that go to the overall picture of whether Mr Vik's evidence that the Sale Agreement is a genuine agreement is to be believed.

268. Further not only are there no documents before the Court to support the fact of a sale but there are also no emails between VBI and SHI instructing SHI, or referring to any instruction, to sell the Devon Park Interest to Universal.

269. It was submitted for Mr Vik that:

> "… the informality of the dealings between the father and the son are more likely, we would suggest, to manifest themselves in the absence of the parties having taken a great deal of time and care over working through the consequent documentation that this agreement in effect indicates might follow in relation to all the subsequent requests and so on, because one might well ask the question, why would it be if either Mr Vik's father or his trusted lieutenant gives instructions to Mr Vik to make the transfer, why should it not be quite sufficient for Mr Vik to do that which he is asked to do and to whom" (transcript day 11, p20).

270. Although Mr Matthews for Mr Vik appeared to seek to downplay the role of Mr Blanco referring to him as the "*trusted lieutenant*" of Mr Vik's father, Mr Blanco was described by Mr Vik in his evidence as the "*President*" of VBI. Mr Vik's evidence was that he reached the agreement in 2012 with his father and Mr Blanco:

> "Q. …How do you say it was agreed that Devon Park would be transferred as it was; when did that happen?"
>
> A. I think it was in 2014.
>
> Q. Tell her Ladyship exactly what happened, who discussed it, how was it agreed?
>
> A. You know, again, that I don't remember exactly, so that's –– I am not capable of doing so. But, you know, the request was to transfer it to Universal.
>
> Q. Whose request?
>
> A. VBI's request.
>
> Q. Who from VBI?
>
> A. I don't remember if it was Mr Blanco, I think it was Mr Blanco, I am not really sure but I think it was Mr Blanco, really

> it was Mr Blanco, me and my father, yes, it could be, but only those two.
>
> Q. Any document recording that, Mr Vik?
>
> A. I don't remember" [emphasis added] (transcript day 5, p54)

271. In my view whilst it may be accepted that Mr Vik had an entirely informal relationship with his father such that there are no emails, it is surprising that there is no correspondence with Mr Blanco who Mr Vik said in his evidence gave instructions to SHI:

> "…I remember, the instructions came from –– from my father and Mr Blanco, but listen, you know, there weren't that many, the IFA and the Devon Park were the main ones, and the other ones, I really don't remember how the process went…" (transcript day 5, p70)

AAA

272. As to the AAA, Mr Vik's explanation was that he did not review the AAA and merely signed it:

> "There is a lot of agreements that were put in front of me by all kinds of different people who I have faith in and trust in, and I sign them. I don't read them, I don't." (transcript day 5, p119)

273. Even if Mr Vik did not read this document, the AAA on its face is inconsistent with his case that a sale of the beneficial interest had taken place to VBI. It therefore begs the question as to who was responsible for the terms of the AAA.

274. It is clear that Devon Park were given to believe that Mr Johansson was responsible for the detail of the AAA. In an email to Devon Park's lawyers on 19 August 2014 Mr Kantesaria wrote:

> "I would like to introduce you by email to Per Johansson, who is coordinating the transfer of the Sebastian interest.
>
> I have asked Per to work directly with you to finalize the agreement to the point where it is ready for signature.
>
> Devon Park has agreed with Sebastian's request to delete section 5(c) from the agreement…" [emphasis added]

275. This contemporaneous email is evidence not only of the role of Mr Johansson but is also evidence of the agreement being negotiated by SHI.

276. The question which arises is whether Mr Vik was giving instructions to Mr Johansson in relation to the AAA. It was striking in my view that in the course of his evidence to this Court, when Mr Vik was taken to the past evidence of his then solicitors stating that they needed more time because Mr Vik was central to the proceedings and decision making, he sought to deny this in his evidence to this Court. In my view not

only was he seeking to contradict the evidence of solicitors who gave a sworn statement to the court, but his denial of this position thus raised the question as to why he would seek now to refute this particular evidence and deny his central role. I infer that he was well aware of the issues that were likely to be raised in the course of the cross examination including the communications with Devon Park (which have only been disclosed since the XX Hearing) and he was therefore trying to head off the questions that suggested that even though Mr Johansson may have dealt with the detail of the transfer of the Devon Park Shares, Mr Vik would have retained a close interest and would have taken the decisions.

277. It was put to Mr Vik that he would have been aware/taken the decision on matters such as the joint liability with the transferee and how to deal with the amount standing in the escrow account (both issues raised in the course of the negotiations with Devon Park). It is notable from the contemporaneous correspondence that the approach of Mr Johansson changed concerning how to deal with the escrow account on the transfer to Universal and I infer this is likely to have been as a result of instructions from Mr Vik (there being no other individuals who appear to have been involved for SHI).

278. It was submitted for Mr Vik that there were "*perfectly understandable reasons*" why SHI would not have told Devon Park that it had privately agreed as between it and VBI that it would hold its partnership interest on behalf of VBI: Mr Vik's evidence was that:

> "… there was no purpose of having a transfer to VBI and then having it transferred again to Universal, no point to that; it would just be more work and more complications." (transcript day5/93/17-23).

279. However, this submission did not appear to be the explanation proffered by Mr Vik in oral evidence to this Court:

> "Q. First of all, did you ever tell Devon Park that VBI now owned SHI's interest in Devon Park?
>
> A. I wasn't involved, so I obviously didn't.
>
> Q. Did you instruct Mr Johansson to do so?
>
> A. I don't remember. He was in charge of making the transfer happen, but -- and he did, right." (transcript day 5, p90)

280. Mr Vik was in effect forced to submit that an agreement which is clear on its face should not be accepted for what it says. In this regard it is relevant to note that the Bank only obtained a copy of the AAA through litigation in New York (First Affidavit of Mr Hart paragraph 113).

281. A further document which on its face was inconsistent with the transfer of the beneficial ownership to VBI was the letter dated 15 September 2014 terminating the escrow arrangements and instructing JPMorgan Chase Bank to pay the amount held to Devon Park. The letter was signed by Devon Park and by Mr Vik for SHI. The material section read:

> "By this Joint Written Instruction, the Parties hereby agree as follows:
>
> 1. The transfer by SHI of its interest in the Partnership to Universal Logistics Matters S.A. shall be deemed a Termination Event pursuant to Section 3(c) of the Escrow Agreement.
>
> 2. All amounts remaining in the Fund after the termination of the Escrow Agreement shall be disbursed to the Partnership within three (3) Business Days of termination.
>
> 3. SHI shall not be entitled to the return of any amount remaining in the Fund, including any interest or other earnings thereon as set forth in Section 3(c) of the Escrow Agreement and SHI waives any right or entitlement to the receipt of such amounts…" [emphasis added]

282. There is no supporting documentation before the Court to support the bona fides of the Sale Agreement and beneficial ownership by VBI of the Devon Park Interest. There is a document which purports to be signed in July 2014 and purports to concern the sale by VBI to Universal of the Devon Park Interest but this is not before the Court. Mr Vik's evidence to this Court was that:

> "I have nothing I can say about that because I know nothing about it." (transcript day 6, p62)

283. The Bank sought to adduce evidence in the form of a witness statement from Mr Robinson of Freshfields concerning that document. Mr Vik resisted the deployment of that witness statement and submitted (Closing Submissions paragraph 75(d)) that the Bank should not be able to make its case based on a document that it is said Mr Vik has not seen. In oral closings (Day 9 p95) Ms Tolaney for the Bank said that the Bank did not rely on the agreement. In my view the Court should take note that the document exists but in light of the fact it is not before the Court gives little or no weight to such a document.

284. In conclusion, there is no contemporaneous documentation before the Court which positively supports the bona fides of the Sale Agreement (as opposed to merely being not inconsistent with the trust arrangement) and there is substantial evidence before the Court which is inconsistent with the beneficial ownership having been transferred to VBI.

285. The plausible explanation in my view is that the contemporaneous documents including both the AAA and the escrow letter reflected the true position that SHI retained ownership both legal and beneficial of the Devon Park Interest until it was transferred to Universal.

Connection between Universal and Mr Vik and Mr Vik and SHI

286. In relation to the transfer to Universal and the alleged "*connection*" between SHI and Universal there are contemporaneous documents which on their face suggest that there was a connection between Mr Vik and Devon Park after the sale to Universal.

287. Mr Vik's evidence to this Court was that he expressed an interest in the business of Devon Park in April 2015 (after the purported transfer in 2014) out of "*curiosity*".

288. For this to be a credible explanation for Mr Vik's specific enquiry to Mr Kantesaria, the Court would have to accept that Mr Vik took the time to look at the annual report that he was sent for a company that he (and I infer SHI) had no interest in, asked a question about its future plans (whilst noting his evidence that he was curious as to the reasons for its improved past performance) and asked for confidential information which he would have had no right to be told.

289. Further not only did Mr Kantesaria reply within a few hours to someone who on Mr Vik's case had no right to information about the Devon Park's future strategy but Mr Kantesaria gave confidential and arguably price sensitive information to Mr Vik about the Fund. I note that elsewhere in his oral evidence to this Court, Mr Vik, in response to a question as to whether he could just have "*dropped [Mr Kantesaria] a line*" if Devon Park was bothering him with correspondence intended for Universal, said:

> "I think I met him once and he wasn't a friend of mine."
> (transcript day 5, p143)

Yet Mr Vik felt able to "drop him a line" and obtain information about the future of the Fund at a time when according to Mr Vik he was no longer invested in the Fund and Mr Kantesaria was prepared to respond within a few hours. In my view the obvious inference is that Mr Vik/SHI retained an interest in Devon Park at that time, April 2015, after the purported transfer by SHI to Universal.

290. Mr Matthews for Mr Vik objected in oral closings (transcript day 10, p63) to the submission in the Bank's written closings (paragraph 12(c)) that Mr Vik "*received distribution notices from Devon Park (which he suppressed) long after the supposed transfer to Universal*" on the basis that receipt of the distribution notices was not part of the allegations of contempt. In my view the significance of the contemporaneous evidence now before this Court concerning the distribution notices does not found an additional allegation but is evidence which the Court can take into account in drawing inferences as to whether Mr Vik had a connection to Universal and whether Mr Vik had "*nothing to do with SHI*" in 2015.

291. Mr Matthews for Mr Vik sought to explain away the distribution letter in May 2015 as a standard form letter and an error. There is however no correspondence in response to that letter which supports the submission that it was an error on the part of Devon Park. Mr Vik was unable in my view to provide a satisfactory explanation to this Court as to why he/SHI was apparently going to receive a distribution of US$2.5m in May 2015 to which he was not entitled and why none of Mr Vik, Mr Johansson or Ms Féliz (who was according to Mr Vik the contact for Universal) apparently raised any objection even though in other correspondence Mr Johansson chased for payment of distributions to Universal.

292. As to the significantly larger distribution in December 2015 as referred to above, Mr Vik's evidence was that he had replied to the email concerning the distribution but not that he had told Devon Park that he was not entitled to receive it.

293. I note that in the course of his evidence to the Court Mr Vik stated that he had "*no contacts with Ms Féliz*" (transcript day 6, p31). This was another somewhat surprising statement by Mr Vik given the fact that she was an addressee of emails concerning distributions which were apparently being mistakenly sent to Mr Vik/SHI and on Mr Vik's case Ms Féliz was the contact for Universal.

294. Devon Park's apparent belief that Universal was connected to SHI is in my view evident from the email exchange between Ms Féliz and Mr Kantesaria in September 2015 (set out above).

295. It was submitted for Mr Vik in oral closing that:

> "It is, of course, equally possible that by 2015/2016, relations between Mr Vik and SHI had deteriorated to the point -- and Devon Park, had deteriorated to the point that they were more minded to be obstructive at that stage than they had been earlier. The fact that issues had arisen and were being raised by Devon Park and that they were being obstructive was a matter that Mr Vik had referred to in his evidence." (transcript day 10, p65)

296. However, the evidence does not support the submission that relations between Mr Vik/SHI and Devon Park had deteriorated by 2015/2016 such that Devon Park was merely being obstructive: in March 2015 Mr Kantesaria responded almost immediately to Mr Vik's enquiry about future plans; in December 2015 although Mr Kantesaria expressed frustration with a lack of information, Devon Park were sending distribution notices for a distribution of US$44 million.

297. The correspondence which is before this Court for the relevant period does not lead to an inference that Devon Park were being in any way obstructive: they were seeking information albeit that Devon Park expressed frustration that information was not being provided but that was clearly linked to money laundering requirements and does not show that Devon Park was being obstructive.

298. It is also notable that, as set out above, Devon Park was of the view that the information they were being given as to the ownership of Universal was not credible:

> "…In looking at the address of the gentleman from the driver's license, how is he from the Bronx with a 2400 square foot house with a value of US$475,000 possible going to come to own a US$50+ million partnership position? I find that <u>your solutions continue to be ridiculous and will not pass muster with any AML testing or U.S. authority or our auditors or legal counsel</u>. Two major banks have likely already filed suspicious activity reports…" [emphasis added]

299. Even in 2016 Mr Johansson was still involved. I have already set out above in assessing Mr Vik's overall credibility the passage from the transcript of Mr Vik's evidence in this regard and found that his evidence concerning the meaning of the words "*as any good manager would*" was absurd. In relation to the substantive point Mr Vik told this Court:

> "A. I am not sure why he said that, but I can imagine that he was getting complaints from the buyer that they had bought an asset and they were not receiving the funds that they were entitled to." (transcript day 6, p37)

Mr Vik said that Mr Johansson was engaged in "*solving the problem of Devon Park not paying Universal the money it was entitled to*." (transcript day 6, p37)

300. It was submitted for Mr Vik in oral closings that the fact that Mr Johansson continued to seek to perfect the transfer of the Devon Park interest ultimately to Universal and to secure payments to Universal would not be "*in the least surprising*" whether pursuant to his role at SHI, under the Sale Agreement and its obligations to VBI, or acting independently.

301. It was submitted for Mr Vik that Mr Johansson was an independent consultant who did not work only for Mr Vik. It was submitted for Mr Vik that Mr Johansson had and felt he had a continuing obligation to make sure that the problems that were arising in relation to the transfer of the interest and the recovery of the distributions in relation to the interests that were supposed to have been transferred economically to VBI, and thence at the request of Mr Vik's father on to Universal, should be fulfilled.

302. In my view the correspondence does not establish any such "*continuing obligation*" felt by Mr Johansson acting for VBI: to the extent that Mr Johansson remained involved to "*solve the problem*", the correspondence does not support an inference that Mr Johansson was working independently for Universal rather than for Mr Vik/SHI. In the email in 2016 Mr Johansson stated that he was "*responsible*" for the "*DP stake*" and simply needed to keep himself "*updated*":

> "Please understand that the [Devon Park] stake is a significant amount of money for which I am responsible and I simply need to keep myself well updated…"

A more natural response if Mr Vik's explanation were correct and Mr Johansson was acting for Universal, would have been for Mr Johansson to refer in some shape or form to a "*responsibility*" vis a vis Universal for the failure by Devon Park to pay the amounts due to Universal, not merely a more passive role to keep himself "*updated*".

303. It is also striking that for example when Mr Johansson was copied in on the email to Mr Vik in May 2015 concerning the distribution about to be paid, Mr Johansson did not respond objecting to the email being sent to Mr Vik or the distribution being sent to SHI. If Mr Johansson at that time was working for Universal rather than Mr Vik/SHI it is surprising that he did not object/intervene.

304. Whilst I accept that on the evidence there appear to have been difficulties with payments being made to Universal these appear to stem from the concerns referred to

in the correspondence before the Court that Devon Park had not received the necessary documentation particularly to satisfy Anti Money Laundering requirements. As discussed above of particular relevance to the allegations before this Court are the references in the correspondence where Devon Park was seeking confirmation that the buyer was independent of SHI and Mr Vik.

305. As to the allegation that Mr Vik had a connection to Universal in that Universal was at the date of the XX Hearing beneficially owned by Mr Vik's father, Mr Vik's in his evidence to this Court was that he did not think that his father had an interest in December 2015 and did not know whether his father had an interest between 2012 and December 2015:

> "Q…when you say "or what my father's connection to Universal might have been", that language, Mr Vik, suggests your father did have a connection to Universal as at the date of the cross-examination hearing. Is that right?
>
> A. No, I don't think so.
>
> Q. What about before then, Mr Vik, prior to, so between 2012 and the date of the hearing?
>
> A. He had an interest in Universal, is that what you are asking?
>
> Q. That is right.
>
> A. No, I don't think so.
>
> Q. You don't think so or know?
>
> A. But I don't know. I mean, I don't know everything, so I don't know it." [emphasis added] [Day 6 p49]

306. As to whether it is credible that Mr Vik's father did not have an interest in Universal, I also note Mr Vik's evidence to this Court that he had no idea why his father was selling the Devon Park Interest to Universal and how much it was sold for:

> "Q. So, Mr Vik, why would VBI, if your father and you had no -- if I can use the word "relationship" as shorthand for the questions that I have just asked, want to transfer a very valuable interest in Devon Park to Universal?
>
> A. They were selling it. I don't know why they were selling it and I don't know for how much.
>
> Q. You can't tell us for how much?
>
> A. Sorry?
>
> Q. You can't tell the court how much it was for.
>
> A. I think you know that but I don't happen to know.

> Q. When VBI gave you the oral instruction in 2014, you claim was given to transfer the Devon Park interest to Universal, what reasons did it give to SHI?
>
> A. I don't remember any particular reason beyond that wanting it transferred.
>
> Q. The instruction, I think you said, was given orally, so nothing in writing?
>
> A. I think so, yes.
>
> Q. Any lawyers involved for VBI?
>
> A. I don't -- I really don't remember, but I -- yes, I do not remember." [emphasis added] (transcript day 5, 76:11-77:7)

307. This evidence in my view was simply not credible when considered against:

i) The Court's overall assessment of Mr Vik's credibility;

ii) The age of Mr Vik's father in 2014 (87) and the evidence that Mr Vik's father did not involve himself in detail;

iii) The inherent implausibility of Mr Vik not knowing how much the assets SHI purportedly transferred to VBI were sold for (viewed against the background that Mr Vik was so curious about the performance of the Devon Park Interest that he wrote to Mr Kantesaria asking about the future intentions of the Fund).

308. It was submitted for Mr Vik that there was no proper basis for suggesting that Mr Vik must have interfered with his father's conduct of his business in the way in which it is being suggested.

309. However, I do not accept the submissions that Mr Vik had to have "*interfered*" in his father's business affairs in order to infer that Mr Vik knew why the asset was to be transferred to Universal. In my view given the close relationship, if the Devon Park Interest had been transferred (beneficially) to VBI it is not credible that Mr Vik would not have known why the asset was then to be transferred to Universal. It seems to me likely that a man of 87 who (according to Mr Vik's evidence) did not involve himself in detail would at the very least have given this information to his son and Mr Vik would have sought this information.

310. Further the ownership of Universal has to be seen against the background that SHI has in the past transferred assets to companies owned by Mr Vik's father.

311. In his evidence to this Court Mr Vik accepted that his father owned Delagoa Bay Agency Company, and that company received transfers of five private equity interests in The Carlyle Group. Although Mr Vik disputed whether it occurred in 2008 or 2009 and Mr Vik also disputed that the assets were transferred for "*no consideration*" (on the basis that there was an ongoing liability transferred), it is an example of assets being transferred by SHI to a company owned by Mr Vik's father when it suited Mr Vik:

> "A. They were transferred. Obviously in 2008, you know, we were in the middle of the financial crisis, so these things were, according to your experts, Deloitte, of nil value to Sebastian Holdings and were mostly liabilities in that you had to continue to fund the future capital calls, so whatever -- so there was consideration in, when they were transferred. There was no payment of cash from Delagoa to Sebastian Holdings at the time.
>
> Q. You suggest that the consideration was your father's company assuming liabilities, is that right?
>
> A. They had very little value at the time and, you know, again for her Ladyship's benefit, Sebastian Holdings at the time was being streamlined into a trading only company so the non-liquid public assets would be transferred out or sold or, and this was part of it."

312. It is also notable that from the evidence of the contemporaneous correspondence that a transfer out of SHI was being discussed in January 2014 with Devon Park although Universal was only identified as "*the entity receiving the Devon Park Interest*" in July 2014. Mr Kantesaria wrote to Mr Johansson on 23 January 2014:

> "…We would like the following points addressed in case of a transfer of Sebastian's interest:
>
> 1. We need full disclosure of the new entity- owner(s), location, etc. and some look into the entity's cash position to feel comfortable that it will be able to make the remaining US$2. 5m in potential capital calls needed beyond the escrow account monies…"

Mr Kantesaria subsequently wrote to Mr Johansson in May 2014:

> "What is the formal legal <u>name of the entity receiving the Devon Park interest?</u> The lawyers need it for drafting the transfer agreement…" [emphasis added]

Mr Johansson replied in July 2014:

> "…The company is called Universal Logistics Matters SA and they will be putting up the escrow."

313. These exchanges do not suggest that Universal was an independent third party entity and this is consistent with the subsequent correspondence from Devon Park concerning anti money laundering referred to above.

314. The evidence concerning the sale to Universal shows that Mr Johansson was dealing with matters on behalf of SHI and Universal and there is no real input from any third party. In an email of 9 September 2014 in the context of the escrow arrangements Mr Johansson wrote:

> "…Both SHI and the new partner are ok with that arrangement."

315. Mr Vik was unable to give a satisfactory explanation to this Court as to how Mr Johansson would have got instructions for Universal:

> "Q. How do you say Mr Johansson knew that the new partner was okay with that arrangement?
>
> A. He probably spoke with him.
>
> Q. Who would have he spoken to?
>
> A. I thought the contact person was Féliz.
>
> Q. That was a lady; you said "him", did you know it was a him?
>
> A. Sorry, her, I guess, her.
>
> Q. But she is the contact person. Do you know if he was taking instructions from anybody else, the beneficial owner, for example?
>
> A. One more time, please.
>
> Q. Laura Féliz was described as the contact person?
>
> A. Yes.
>
> Q. Do you know if Mr Johansson was taking instructions from anyone else at Universal, including the beneficial owner?
>
> A. I mean, I don't know. I don't -- I really don't know." (transcript day 5, 124:2-124:19)

Mens rea

316. In his Affidavit Mr Vik's evidence as to how he understood the question that was put to him concerning the "*connection*" to Universal was as follows:

> "I certainly did not understand that I was being asked whether I had any link, whatsoever and however slight to Universal, and I did not intend to give or believe myself to be giving evidence in that regard. Nor did I understand the question as being directed to whether I had any "direct or indirect economic interest" in the Devon Park interest (as opposed to Universal), or what my father's connection to Universal might have been. None of that was put to me by DBAG's Counsel, and I did not intend to give or believe myself to be giving evidence in that regard. For DBAG now to suggest that I was giving such evidence is a lawyer's contrivance." [emphasis added]

317. In his oral evidence to this Court Mr Vik said:

> "A. The question I think was whether I had a connection, and I don't have a connection, I didn't have a connection. The connection as the way I interpreted it, was whether that I was the owner or director of the company, and I never was, and that was the -- that was all in the context of owning the company
>
> …
>
> A. It was self-evident that I had a connection because SHI had transferred the asset to Universal, had transferred the IFA shares to Universal. It is self-evident that had -- whatever, some other connection that you are trying to invent, but the question I was answering is so that I was not the owner or a director of that company." [emphasis added] (transcript day 6, p44)

318. Thus Mr Vik's evidence was that he did not understand that "*connection*" meant any link and he interpreted the question as meaning whether he was the owner or director of the Company.

319. It was submitted for Mr Vik that if the Bank cannot show that Mr Vik must have understood the question to have the meaning alleged, he cannot be guilty of contempt: he cannot have known or intended that his yes or no answer was untrue.

320. The credibility of Mr Vik's evidence had to be considered in the context of the prior questions which were being put to him:

> "Q …Again, behind the blue, you see a press release of 28 May, and this shows that Universal Logistics now have the shares and the voting rights [in IFA].
>
> A Yes.
>
> Q Then, … we see that the person who holds the right, the individual who exercises for universal is a Mr Carmello Palanco Rondan, and then … we see a press release of 1 July 2014, and we see a yet further transfer to a company called New Invest Assets. ...
>
> …
>
> Q. Right at the bottom the person who can exercise the rights is a Victor Garredo Montes de Occa; yes?
>
> A. Okay.
>
> Q. Now, you know Mr de Occa don't know?
>
> A. No.
>
> Q. You don't know Mr do Occa?

A. No.

Q. No relationship with him?

A. No.

Q. I thought he was your lawyer in the Dominican Republic?

A. No.

Q. None of your companies have engaged him?

A. I don't know. Never met him. Never heard of him.

Q. Tell me; do you have any connection with New Invest Assets?

A. No.

Q. Or Universal?

A. No."

321. It can be seen from the relevant extract above that Mr Vik was being asked about the IFA Shares- he was asked about the change in the voting rights from being recorded as attributed to Mr Vik personally and the evidence that by May 2014 it was recorded as Universal. Counsel for the Bank identified that there were individuals named as being entitled to exercise the voting rights and the clear thrust of the questions was whether Mr Vik was connected to these individuals: he was asked whether he had a relationship with the individual and then when he denied knowing him and denied that any of his companies engaged him was asked the follow up question of whether he had any connection with either New Invest or Universal. Read in context it was clearly intended to be a broad question which was not limited to whether he was a director of Universal or whether he was the owner of Universal. In my view the limited interpretation for which Mr Vik contends is not credible when the question is read in context and I do not accept that Mr Vik's evidence of his understanding is credible in this regard.

322. As to whether Mr Vik had "*nothing to do with SHI*" the relevant transcript extracts are as follows:

"Q. But it appears that, in fact, SHI is still being run by you and Mr Johansson, isn't it?

A. Not by myself. I have nothing to do with SHI any more." {A/4.1/118}

"A. Former officer [of SHI]. Yes. I have nothing to do with that any more, so we have different interests."

323. In his Affidavit Mr Vik's evidence was:

> "…the evidence that I gave was that I was no longer in charge of SHI, no longer running SHI and no longer an officer of SHI. That is how I understood the questions that were asked of me. I did not understand myself to be asked whether I had any link, whatsoever and however slight, to SHI's affairs which would be an absurd suggestion given that I was being cross-examined as a former director of SHI."

324. Again, Mr Vik seeks to justify his answers by reference to the particular questions and without regard to the context. It is clear when the transcript is read in context that the Bank were putting to Mr Vik that he was in effect running SHI even though the Bank was aware that Mr Vik was no longer an officer of SHI:

> "Q. Who, from Rand, is now running SHI as the director?
>
> A. I believe it is Hildik Vamen
>
> Q. Right, and have you had contact with him?
>
> A. It is a woman.
>
> Q. Her.
>
> A. I have not.
>
> Q. So you haven't contacted the current management, then, of Rand?
>
> A. No. That was Mr Johansson.
>
> Q. But it appears that, in fact, SHI is still being run by you and Mr Johansson, isn't it?
>
> A. Not by myself. I have nothing to do with SHI any more. I know you are smiling but it is the truth.
>
> Q. But we know Mr Johansson follows your instructions, Mr Vik. We established that at trial many times.
>
> A. He did in the past when he was working for me, but now he does not…"

Conclusion on the Devon Park Interest

325. It was submitted for Mr Vik that the Court:

> "could not reject as incredible the possibility that the information signed in documents, signed as they were by Mr Vik, was incorrect, but that the evidence that he is giving to the court in relation to the 2012 sale agreement is correct." (transcript day 10, p77)

326. However, that submission ignores a number of matters:

i) the Court's assessment of the credibility of Mr Vik's evidence generally;

ii) the motive for Mr Vik to lie in relation to the Sale Agreement because if it were found to be genuine, it would have removed assets from SHI and thus (potentially) put them out of reach of enforcement by the Bank; and in relation to his evidence to this Court, a way to avoid committal for contempt;

iii) the belated disclosure of the Sale Agreement and the even later disclosure of the detailed schedule;

iv) the absence of contemporaneous documents to support the existence of a sale to VBI, the evidence of payments not being probative in either direction;

v) the terms of the AAA.

327. The Court is also entitled to have regard to the findings of Cooke J in support of the view that the Court has reached independently of Mr Vik's credibility. Cooke J found at [356] that:

> "Mr Vik's evidence about these agreements however bears all the hallmarks of being fabricated in order to make a case and, even in the absence of evidence from Mr Meidal, I reject it."

328. At [386] Cooke J found that Mr Vik had fabricated an agreement:

> "I conclude that what Mr Vik has done is to seize upon the bank's failure to effect margin calculations, to seek to make capital of it and to fabricate an oral agreement with an individual who was once employed by DBS and who may now be sympathetic to his position but who was not, as he knew by the time of his statements, to be called as a witness by DBAG." [emphasis added]

329. Whilst noting that Cooke J was not making findings to the criminal standard this Court is entitled to take into account that evidence in assessing the credibility of Mr Vik's evidence to this Court and the genuineness of the Sale Agreement. To repeat the quotation from *Shepherd* in *Ablyazov* (set out above):

> "the prosecution bears the burden of proving all the elements of the crime beyond reasonable doubt. That means that the essential ingredients of each element must be so proved. It does not mean that every fact-every piece of evidence-relied upon to prove an element by inference must itself be proved beyond reasonable doubt" [emphasis added]

330. It was submitted for Mr Vik that:

> “there is no evidence demonstrating that Mr Vik had the economic direct or indirect interest, once Universal had taken on the interest"

and rejecting other matters as "*straws in the wind*". (transcript day 10, p65)

331. This submission in my view seeks to ignore the circumstantial evidence and inferences which the Court is entitled to draw from that evidence.

332. In assessing the weight to be given to the documents concerning Devon Park which are discussed above and considering the explanations provided by Mr Vik, it is notable that the documents only came to light after Mr Vik gave evidence at the XX Hearing.

333. The evidence of Mr Vik is that the contemporaneous documents now before the Court which on their face are clearly contrary to the purported divestment by SHI to VBI of the beneficial interest were a product of mistake and/or of concealment by SHI of the true position from Devon Park for no good reason other than convenience.

334. For the reasons discussed above I prefer the evidence of the contemporaneous documents and the inferences which can be drawn from them. Whilst considering the submissions advanced by Mr Vik as to why a particular piece of evidence is not compelling or is open to a different rational or plausible explanation, the Court has to stand back and look at the totality of the "*coincidences, errors and misunderstandings*".

335. For the reasons discussed above I do not accept that read in context Mr Vik did not understand the questions that were put to him in this regard. Further he is a highly intelligent man who is fully abreast of the issues in this litigation.

336. The irresistible inference from the contemporaneous documents is that Mr Vik had a connection to Universal in December 2015 and that he had an economic interest in the Devon Park Interest at that time.

337. In the course of the hearing, I raised a question as to whether what was alleged was that Mr Vik had a connection to Universal in that he continued to have an economic interest in the Devon Park Interest and that Universal was beneficially owned by Mr Vik's father.

338. However, I note that Mr Matthews response in oral closings was that "*the true and arguable basis for a connection*" would be if there were a "*continued direct or indirect economic interest in the Devon Park interest on the part of SHI or Mr Vik subsequent to the transfer in 2014 to Universal*". It was submitted for Mr Vik that whether or not Universal was beneficially owned by Mr Vik's father, would not amount to a sufficient connection in any event (although it was denied for Mr Vik that Universal was owned by Mr Vik's father).

339. I accept the submission for Mr Vik that in this context the mere transfer of an asset to another party does not makes the transferee "*connected"* to that party.

340. Given the circumstances discussed above and the evidence I think it is highly likely that Universal was beneficially owned by his father, but I cannot be sure. However, in the light of the submissions for Mr Vik, such a finding is irrelevant to the issue of contempt in relation to the Devon Park Interest, since I am sure that there was a

continued direct or indirect economic interest in the Devon Park Interest on the part of SHI or Mr Vik subsequent to the transfer in 2014 to Universal.

341. Accordingly, I find that Mr Vik deliberately gave false evidence to the Court in relation to Devon Park as follows:

Mr Vik knew at the date of the Vik XX Hearing that:

i) The Sale Agreement was not a bona fide agreement entered into between SHI and VBI;

ii) SHI did not sell the Devon Park Interest to VBI pursuant to the Sale Agreement, nor transfer it out of SHI on VBI's instructions pursuant to the terms of the Sale Agreement. Instead, the Devon Park Interest remained an asset owned by SHI until 29 August 2014, when it was transferred by SHI to Universal pursuant to the terms of the AAA.

iii) Mr Vik continued as at the date of the Vik XX Hearing to have a connection to Universal, in that Mr Vik continued as at the date of the Vik XX Hearing to have at least a direct (alternatively indirect) economic interest in the Devon Park Interest; and

iv) Mr Vik continued to have a connection and/or involvement with the affairs or former affairs of SHI, given his continuing interest in the Devon Park Interest.

IFA Shares

Allegations

342. The Bank alleges that at the XX Hearing, Mr Vik gave evidence that SHI sold its shares in IFA Hotels & Touristik AG to VBI pursuant to the Sale Agreement. The substance of Mr Vik's evidence was that:

i) SHI sold the IFA Shares to VBI in 2012 pursuant to the terms of the Sale Agreement, and, also pursuant to the terms of the Sale Agreement, subsequently transferred the IFA Shares out of SHI to Universal on VBI's instructions in 2014 (transcript p180 11. 3-18, p182 11. 6-10, p1891. 25-p. 1951. 1); and

ii) as at the date of the XX Hearing, Mr Vik did not have any connection to Universal (transcript p189, 11. 17-21).

343. It is alleged by the Bank that Mr Vik's evidence, as summarised above, was deliberately false:

> "As Mr Vik knew at the date of the Vik XX Hearing:
>
> (a) The Sale Agreement was not a bona fide agreement entered into between SHI and VBI; and
>
> (b) SHI did not sell the IFA Shares to VBI pursuant to the Sale Agreement in 2012, nor transfer it out of SHI on VBI's

> instructions pursuant to the terms of the Sale Agreement in 2014. Instead, Vik Beteiligung and Verwaltung GmbH ("Vik Beteiligung") owned the IFA Shares until on or around 29 July 2013, when the IFA Shares were transferred from Vik Beteiligung to Mr Vik personally. Mr Vik subsequently transferred the shares to Universal in or around May 2014.

344. Evidence in support of the allegations above is set out in Mr Hart's First Affidavit at paragraphs 127-141.

Evidence of Hart

345. Mr Hart's evidence (paragraph 128 of his First Affidavit) is that:

> "During the main proceedings, SHI served evidence relating to the IFA Shares. Amongst other things, SHI stated as follows:
>
> (a) in October 2008 SHI held the IFA Shares;
>
> (b) on or around 27 October 2008, the IFA Shares were transferred to Vik Beteiligung und Verwaltung GmbH (Vik Beteiligung) (an entity 50% owned by Mr Vik and of which he was managing director);
>
> (c) despite the October 2008 transfer to Vik Beteiligung, the IFA Shares remained beneficially owned by SHI pursuant to a Securities Lending Contract entered into with Vik Beteiligung dated 20 October 2008;
>
> (d) the beneficial interest in the IFA Shares was sold by SHI to VBI pursuant to the Sale Agreement in 2012."

346. Mr Hart states that since the XX Hearing, DBAG has obtained further documents from IFA (the vast majority of which are signed by Mr Vik himself or on his behalf) and that these documents were not disclosed by Mr Vik pursuant to the Part 71 Order for reasons which have not been explained.

347. Mr Hart in his First Affidavit relies on a number of documents in September and October 2013 that were filed with the German authorities concerning the ownership of the IFA Shares. These included a letter of "*clarification*" from the German lawyers which stated that Mr Vik's share of voting rights in IFA was 29.09% and had "*been held directly by Mr Vik since 29 July 2013*".

348. It is also significant to note in the context of the alleged sale by SHI to VBI and the alleged trust arrangements set up in the Sale Agreement which purported to leave SHI in possession of the IFA Shares, the evidence that in a separate notification of 2 October 2013 the lawyers informed the German authorities that the proportion of voting rights held by SHI in IFA fell below the relevant thresholds (of 25%, 20%, 15%, 10%, 5% and 3%) on 29 July 2013 and as of October 2013 totalled 0% of all the voting rights in IFA.

349. On 7 May 2014 the German lawyers notified the relevant German authorities that on 6 May 2014 the proportion of voting rights of Mr Vik in IFA amounted to 0% of all voting rights of IFA.

Vik evidence

350. At the XX Hearing Mr Vik's evidence in this regard was as follows:

> "Q. So what about the others? Devon Park? Do you say that has been transferred?
>
> A. Yes it has.
>
> Q. Right. IFA?
>
> A. Yes.
>
> Q. To VBI?
>
> A. To whoever they designated, yes.
>
> Q. It has got to be to VBI. You are saying it is VBI's asset. That is what is sold here?
>
> A. It was transferred to them at their instructions, yes." {A/4.1/127}
>
> "Q. You were on the board of IFA, weren't you?
>
> A. I was, yes.
>
> Q. You stepped down in July 2014.
>
> A. Yes.
>
> Q. At around the same time we are seeing these transfers.
>
> A. Yes.
>
> Q. So the truth is, Mr Vik, that actually, you just simply divested yourself of this interest to these companies, and you received money for it, didn't you.
>
> A. I did not. It was sort of a zero consideration.
>
> Q. Well, Mr Vik, I am going to have to put this to you before the break, very frankly; I don't accept what you are telling me because it is very unlikely, Mr Vik, I am putting to you, that you are going to sell shares on oral instructions of VBI, and that there is no written instruction confirming that.
>
> A. I have already said what I said so I don't understand why you --

> Q. This is all a fabrication, Mr Vik. It is why you didn't want to disclose that VBI was the purchaser, and you didn't actually ever sell any of these assets to VBI, did you.
>
> A. Of course they were sold to VBI."

351. At the XX Hearing Mr Vik was taken to the annual reports of IFA and asked why he was reported as holding the shares personally. Mr Vik attributed this to the "*lawyers*". The relevant exchange was as follows:

> "Q. What we see here is that you continue to have a voting right, but that Sebastian Holdings and VBV are said to have no voting right.
>
> A. Okay.
>
> Q. The voting rights attributed directly to you in 2013.
>
> A. Okay.
>
> Q. This is after the sale and purchase agreement where it is suggested that VBI, in fact, has the shares, and therefore ought to have the voting rights, and it is not Sebastian but you personally.
>
> A. I think I stayed throughout the period as the voting person. This is the lawyers who were handling it, I really don't know, but I think I stayed through the period until the other people took over." [A/4.1/129] [emphasis added]

352. In his Affidavit Mr Vik's evidence in this regard was that the IFA Shares were transferred to him personally in July 2013 as the principal shareholder of Vik Beteiligung but that he held the IFA Shares on trust for VBI:

> "66. As was made clear during my testimony at the XX Hearing, I was not sure of the precise legal reason for my holding the voting rights directly. I surmise (as I surmised at the XX Hearing) that this occurred as a result of the dissolution of Vik Beteiligung in or around July 2013. This was a solvent liquidation, and so the assets of Vik Beteiligung, including the IFA Shares loaned from SHI, were returned to me as its principal shareholder. I continued to hold the IFA Shares on the same basis as they had been held previously, i.e. on trust for VBI.
>
> 67. The IFA Shares might have been transferred back to SHI upon the dissolution of Vik Beteiligung. However, at around that time, SHI and Vik Beteiligung had settled litigation against IFA, a condition of which was my appointment to the board of IFA. In order to hold that position, I was required to be a shareholder of IFA, and so it was decided that I should be

> designated to hold the IFA Shares personally - albeit on trust for VBI - and VBI did not object to that arrangement." [emphasis added]
>
> "70 (a) Mr Hart asserts that the documents show that I became the "personal owner" of the IFA Shares in July 2013. I assume he means that I owned the IFA Shares absolutely in a manner that is inconsistent with their having already been sold to VBI. However, as set out above, I believed at the Vik XX Hearing that I held the legal title to the shares upon the dissolution of Vik Beteiligung, but did so on behalf of VBI, who held the beneficial interest pursuant to the Sale Agreement. I believe that to be correct today.
>
> (b) At paragraph 136(c), Mr Hart states that I transferred the IFA Shares to Universal in May 2014, which is correct and consistent with my evidence. He then says: "Contrary to Mr Vik's evidence given at the Vik XX Hearing, there is no indication that this transfer was made on VBI's instruction". The reason that I do not have any documentary evidence of that request is that it was made orally by Mr Blanco. That is consistent with the informal manner in which SHI ran its affairs." [emphasis added]

353. It was submitted for the Bank that:

i) In contrast to Mr Vik's evidence that the IFA Shares were transferred out of SHI to VBI in 2012 pursuant to the Sale Agreement, and then at VBI's instruction to Universal, Vik Beteiligung remained the direct owner of the IFA Shares, and SHI the indirect owner, until 29 July 2013.

ii) VBI never owned the IFA Shares. If the IFA Shares had been sold to VBI in September 2012 then VBI and EMV (as the owner of VBI) would have notified IFA and the BaFin that they held the voting rights attached to such shares, which they did not do.

iii) As of 29 July 2013, Mr Vik became the personal owner of the IFA Shares and the shareholdings of SHI and Vik Beteiligung dropped to zero.

iv) Mr Vik himself then transferred the IFA Shares to Universal on 6 May 2014. Contrary to Mr Vik's evidence given at the XX Hearing, there is no indication that this transfer was made on VBI's instruction.

Discussion

354. In relation to the IFA shares the Bank alleges that:

i) The Sale Agreement was not a bona fide agreement entered into between SHI and VBI.

ii) The evidence of Mr Vik was false in that SHI did not sell the IFA Shares to VBI pursuant to the Sale Agreement in 2012, nor transfer it out of SHI on VBI's instructions pursuant to the terms of the Sale Agreement in 2014.

iii) Instead, Vik Beteiligung owned the IFA Shares until on or around 29 July 2013, when the IFA Shares were transferred from Vik Beteiligung to Mr Vik personally.

355. I have already made a finding that the Sale Agreement was not a bona fide agreement when considering the Devon Park Interest and the evidence in that regard.

356. It was submitted for Mr Vik that the Bank's case on IFA only goes beyond that of Devon Park in its reliance on German regulatory findings and that this is premised on unidentified and unevidenced propositions of German law. It was submitted that Mr Vik's evidence was that he did not understand how the attribution and notification of voting rights worked.

357. In my view there is ample material in relation to Devon Park to justify the conclusion on the bona fides of the Sale Agreement without the need to rely on the additional regulatory notifications in relation to IFA. However, there is additional material and the public filings in relation to the IFA Shares and the IFA annual report which on their face are totally inconsistent with Mr Vik's position that SHI/Mr Vik held the assets for VBI pursuant to the Sale Agreement.

358. As referred to above, Mr Vik's own evidence is that he held the IFA Shares personally from 2013 upon the liquidation of Vik Beteiligung. The notification that SHI ceased to have an interest in the IFA Shares in 2013 would appear to speak for itself and was not contradicted by Mr Vik in his evidence. Accordingly, the crux of the additional evidence in relation to the Sale Agreement and whether the IFA Shares were transferred to Universal on the instruction of VBI lie in the need to reconcile Mr Vik's evidence that he held the IFA Shares personally and not for SHI with the purported position under the Sale Agreement that the assets were held by SHI on trust for VBI and this evidence stands independently of the regulatory notifications.

359. It is not necessary for me to decide whether the Securities Lending Contract was a "*genuine commercial agreement*" and this is accepted for the Bank (Closing Submissions paragraph 216).

360. Assuming that the Securities Lending Contract was effective to transfer the IFA Shares to Vik Beteiligung, the terms of the Securities Lending Contract (which on its face provides for an outright transfer of title and then the return of equivalent securities) are in my view inconsistent with the detailed schedule to the Sale Agreement produced by Mr Johansson which listed the IFA Shares as an asset of SHI. The detailed schedule stated that:

> "SHI held 1,920,143 shares in IFA "

361. Mr Vik's evidence to this Court when asked about the Schedule was initially to blame Mr Johansson and then to assert that the Schedule was correct because SHI had a right to return of the Shares:

> "Q. To be accurate to VBI, that schedule would have to have said that SHI had lent the shares to VBV, in fact transferred the title to them.
>
> A. I mean, I don't know whether it is accurate or not, but that schedule was prepared by Mr Johansson at the order of Mr Justice Teare…
>
> A. I mean, he did this schedule the way that he did, but I think it is very accurate because in fact SHI had held the shares, had a right to them returned in the borrowing, or the lending contract, so it is entirely accurate and correctly reflects all of the assets of SHI at the time."

362. Even if that were a plausible explanation for the Schedule, it would still be relevant that as discussed in relation to Devon Park, the Sale Agreement was only disclosed in 2014 when SHI wanted to assert that it was unable to pay the Judgment Debt and the detailed Schedule later still.

363. Further Mr Vik appeared to accept that he held the IFA Shares personally upon the liquidation of Vik Beteiligung. Mr Vik's attempt to explain to the Court the position with regard to the voting rights which he held, was in my view unsatisfactory varying from an answer that he did not in practice exercise the voting rights to an assertion that he did not remember:

> "Q. So you weren't -- just to clarify, "it" should have been VBI's behalf, you weren't, you say now, exercising the voting rights on behalf of VBI; you were exercising them personally?
>
> A. Yes, I mean, I -- you know, I can't -- you know, I held the shares, they weren't mine, potentially, but I held them, and, you know, I guess the voting rights only get exercised at the annual meeting, and I'm really not sure that that ever happened in the short period that I held the shares, I 'm not even sure I ever exercised the voting rights at all , but -- and this period was --I was exercising them if they were exercised.
>
> Q. But you accept that you were holding the shares and the rights for VBI, don't you?
>
> A. Yes, I mean, obviously VBI had paid SHI for these shares, so they weren't mine
>
> …
>
> Q. So can you clarify for her Ladyship who you say you were holding the voting rights for in 2013; was it SHI or VBI?
>
> A. Well, I am -- you know, again, I don't remember what it exactly was, but I am looking at the letters that you showed me earlier this morning, it seemed to say that I was -- as of July, I

> think you said July 2013, we notified the IFA that I was holding them directly, so far as -- I thought that's what the letter said. And my answer here, this one here it says it is speculation, I am saying okay so maybe, maybe they argued that; I really don't know. I don't know how it was done or what was done, I really don't know; this is like a speculation, I don't know…" [emphasis added]

364. In my view this was another example of Mr Vik trying to obfuscate when faced with evidence which is clearly inconsistent with his case.

365. Unlike the Sale Agreement which purported to create a trust arrangement between SHI and VBI, there is no documentation to support the proposition that Mr Vik personally held the IFA Shares on trust for VBI. When that was put to Mr Vik, he merely responded that he was not a lawyer:

> "A. You know, again I am not a lawyer, so I really should not answer such a question." (transcript day 7, p10)

366. The submissions for Mr Vik (paragraph 120 of his Closing Submissions) concerning the notification and attribution requirements under German law if (i) SHI sold its interest in the IFA Shares to VBI but held it on trust and (ii) whether Mr Vik could have been registered as the direct holder whilst holding the rights on trust for VBI are in my view irrelevant given the key evidence that Mr Vik held the IFA Shares personally. This is wholly inconsistent with the assets being held by SHI on trust for VBI pursuant to the Sale Agreement. This does not flow from an interpretation of German law but from the evidence of Mr Vik which is supported on its face by the regulatory notifications that the IFA Shares were held by Mr Vik and that SHI had ceased to hold the IFA Shares.

367. Mr Vik also places weight on "*the very real fact of the substantial payment*" made by VBI in respect of the assets sold to it by the Sale Agreement (paragraph 109 and 124 of his Closing Submissions). However as discussed above in relation to Devon Park, although there is evidence of bank transfers having been made to SHI these payments are equally consistent with a loan arrangement.

368. As to the transfer of the shares to Universal in or around May 2014, Mr Vik's case is that he transferred out the IFA Shares to Universal on the instructions of VBI. As with Devon Park there is no contemporaneous record of any instruction and again whilst this may have been the position in relation to dealings with his father it is far less obvious why this informality would have been the case with Mr Blanco, whose instructions Mr Vik said (as referred to below) that he had a duty to follow apparently without inquiry.

369. Mr Vik's evidence to this Court was that he was instructed to transfer the asset but that he did not know anything about Universal at the time.

370. At the XX Hearing his evidence was that he was given no explanation for the transfer:

> "Q. Can you tell the court in your own words what you knew about Universal at the time you say you received an instruction to transfer the Devon Park interest to Universal in 2014?
>
> A. I can't remember knowing anything.
>
> Q. And you didn't want to satisfy yourself about the entity in any way?
>
> A. No. I wasn't involved in the whole process at all, besides saying that it should be done, but besides that I had no involvement. I might have been copied on mails and things like that as you were sent, but I had no real involvement." [transcript day 5, p71]
>
> "Q What explanation did VBI give you?
>
> A None in particular. They wanted the shares transferred to this company." [emphasis added]

371. Mr Vik repeated this in his evidence to this Court and once again fell back on the explanation that he could not remember speaking to his father:

> "Q. But, Mr Vik, your evidence is that the shares were owned by VBI, a company controlled by your 87-year-old father, and your evidence is that you blindly followed an instruction from Mr Blanco to deal with a valuable asset without any enquiry, transferring it for free, is that right?
>
> A. Mr Blanco was the managing director of VBI, and it was my duty to follow his instructions.
>
> Q. You must have spoken to your father about it?
>
> A. I don't remember, but whatever was done, everybody was very happy with, and there is no discussion about anything. So I don't know what you are talking about here.
>
> Q. So you can't explain to her Ladyship that you spoke to your father and understood why he wanted to transfer for no consideration this very valuable asset once owned by SHI, to a company … that, you knew nothing about, for free?
>
> A. What you say is completely wrong. As I have tried to explain here at length, the one who didn't get any consideration was myself, because I wasn't entitled to any consideration…" [emphasis added] (transcript day 7, p19)

372. In my view the evidence that Mr Vik knew nothing about Universal in 2014 is simply not credible when viewed against the correspondence which has been disclosed (and is discussed above) in relation to Devon Park and the timing of when Universal was identified as the transferee. I bear in mind the "*mistakes*" said by Mr Vik to have been

made in putting SHI's address as the address for Universal on tax forms, Mr Vik's evidence (and thus knowledge) that Universal was not receiving the distributions it was entitled to in respect of Devon Park and the emails with Devon Park about the transfer to Universal.

373. I also have regard to the relationship between father and son on which counsel for Mr Vik places such reliance in relation to the relative informality of the Sale Agreement. As discussed above, it is not necessary in my view to have evidence that Mr Vik "interfered" in his father's business in order to conclude that in the circumstances it is not credible that Mr Vik received no explanation for the transfer to Universal and merely regarded it as his "duty" to follow the instructions of Mr Blanco.

374. It is also relevant to note the value of the asset in issue. The nominal value at the date of transfer was US$13.3m but in 2014 Mr Johansson had previously told the Court that the true value was significantly higher due to the fact that the shareholding was a blocking percentage:

> "…the value of SHI's position in IFA is significantly higher than a simple multiple of the number of its shares and the stock price, because SHI holds a significant blocking position which exceeds the available float in the stock, making it impossible to build such position in the open market."

375. Somewhat surprisingly before this Court Mr Vik sought to reject the previous evidence given by Mr Johansson on behalf of SHI and deny that the blocking position had any value:

> "I am not sure that it had a blocking position. I am not really sure what that is referring to, maybe I misunderstand but I don't think, I am not sure how 29% is a blocking position, I am not really sure" (transcript day, 6 p75)

376. Whilst the value of the stake may not be the most significant issue, it is part of the overall picture of Mr Vik and the credibility of his evidence that he should seek to deny what had previously been advanced for SHI in circumstances where in 2014, it is to be inferred that it suited SHI to maximise the value of the stake whereas in 2022, I infer Mr Vik wanted to minimise its value given that there was a regulatory filing suggesting that it was transferred to Universal for no consideration.

377. The official notification to the German regulator (BaFin) stated that the transfer was for no consideration although Mr Vik's evidence was that VBI did receive consideration:

> "Q…I am talking about why VBI would transfer for no consideration to a shell company, Universal. Why would they do that?
>
> A. They didn't. They didn't transfer for no consideration. I don't know what they did or didn't do. The no consideration was between me and Universal, because I was not entitled to any money." (transcript day 7, p27)

Conclusion on IFA Shares

378. The evidence in relation to the IFA Shares and the inferences to be drawn have to be taken together with the evidence in relation to Devon Park and the conclusions of the Court on Devon Park. As was said in *Gulf Azov Shipping*:

> "It is not right to consider individual heads of contempt in isolation. They are details on a broad canvas…"

379. For the reasons discussed above I am satisfied that Mr Vik's evidence as alleged by the Bank in relation to the IFA Shares was deliberately false. I find that Mr Vik knew at the date of the XX Hearing:

    i) The Sale Agreement was not a bona fide agreement entered into between SHI and VBI; and

    ii) SHI did not sell the IFA Shares to VBI pursuant to the Sale Agreement in 2012, nor transfer it out of SHI on VBI's instructions pursuant to the terms of the Sale Agreement in 2014.

    iii) Instead, Vik Beteiligung owned the IFA Shares until on or around 29 July 2013, when the IFA Shares were transferred from Vik Beteiligung to Mr Vik personally. Mr Vik subsequently transferred the shares to Universal in or around May 2014.

Disclosure of Documents

Allegations

380. It is alleged by the Bank that Mr Vik failed to comply with paragraph 2 of the Part 71 Order in that he deliberately did not, by 14 October 2015, "*produce all documents in [SHI's] control which relate to [SHI's] means of paying the amount due under the [judgment handed down by Cooke J on 8 November 2013] and the [Judgment Order]*" in that Mr Vik either deliberately took steps to put documents beyond his control, or chose not to produce documents within his and/or SHI's control, that were required to be produced by the Part 71 Order.

381. The Bank contends that Mr Vik failed to produce the following specific categories of documents in breach of paragraph 2 of the Part 71 Order:

    i) electronic documents responsive to paragraph 2 of the Part 71 Order, in particular electronic documents:

        a) relating to the Devon Park Interest;

        b) relating to the IFA Shares; and

        c) relating to the Partnership Interests; and

    ii) documents held by third parties (including but not limited to transfer instructions) which are responsive to paragraph 2 of the Part 71 Order, such third parties being for these purposes:

a) banks with whom SHI held accounts, namely HSBC, HSBC Guyerzeller DNB, Merrill Lynch and J.P. Morgan;

b) Zimmerman & Gauch; and

c) Mr Johansson.

382. It is alleged by the Bank that Mr Vik's failure to produce the documents set out above was deliberate:

i) In the case of each category above, Mr Vik either had, or had the means of obtaining and producing, such documents, since they were:

a) electronic documents which were within Mr Vik and/or SHI's possession;

b) documents which were held by third parties either (a) on behalf of SHI and/or (b) in respect of which Mr Vik and/or SHI has and/or had at the time of the Part 71 Order a right to possession or to inspect or take copies of.

ii) Alternatively, if Mr Vik does not have the means of obtaining such documents, this is because he has taken deliberate steps to make it difficult for him to comply with the order by any one or more of the following:

a) resigning as director of SHI and transferring his shareholding in SHI to Rand AS in around 28 July 2015 in an attempt to put documents of SHI out of his control and thereby impede his ability to comply with the Part 71 Order; and/or

b) permitting Mr Johansson to take possession of documents of SHI and to keep them at Mr Johansson's houses in Connecticut and Colorado, USA.

383. Evidence in support of the matters set out above is set out in Mr Hart's First Affidavit at paragraphs 193-203, 211-262 and 272-326 and his Third Affidavit paragraphs 17-18.

Vik evidence

384. In relation to Mr Vik's evidence in his Affidavit I note in particular the following points:

i) Mr Vik does not say that he could not comply with the Part 71 Order because he had transferred control of SHI's documents to third parties but rather that he complied with the Part 71 Order.

ii) As to emails Mr Vik's evidence in his Affidavit was that he had for many years a policy of deleting emails:

"With the exception of what I say below regarding document retention, and as I have previously told DBAG, my long-

> standing and general practice was to use my email boxes as a to-do list. I would not typically file or otherwise retain emails. Rather, once I had received or sent an email, I would simply delete it. In a similar vein, I would also on occasions delete my "sent messages" box and also my "deleted emails" box. As I have said previously, if I did not do that, it would be automatically deleted from the deleted file after a certain period of time anyway. My email account does not have any "archive" or similar function, so as I have already told DBAG previously once emails have been deleted and are no longer in the deleted file, they are permanently deleted. I have maintained this practice for as long as I can remember, for around 25 years…Occasionally, I retain important emails that I particularly need to keep or retain by filing them in my mailbox. However, that is rare." [emphasis added]

iii) However, he qualified this in relation to documents which were relevant to litigation which he said he retained and in the period between July 2015 and October 2015 when he said he stopped deleting emails:

> "The major exception to the practice set out above is where I have been required to retain documentation for the purposes of litigation. After the possibility of litigation became apparent in around October 2008, I understood that I should refrain from deleting anything that could potentially be relevant to the litigation. From that point onwards I filed anything that I considered could be relevant to the litigation with DBAG… Where, however, emails appeared to me to have nothing to do with the litigation, I carried on with my normal practice of deleting those emails that I had ticked off my "to do" list."
>
> Similarly, when I was served with the Teare J Order in July 2015, I stopped deleting emails. However, I did not receive any emails between being served with the Teare J Order and the production of the documents in October 2015 that responded to the Order." [emphasis added]

iv) As to documents, it was Mr Vik's evidence that SHI relied primarily on its counterparties to retain documents:

> "One example is the relationship with the Deutsche Bank Group itself. SHI retained few records of its dealings with Deutsche Bank at all; most of the records were held by Deutsche Bank itself. I understand that this was a common state of affairs in Swiss banking in particular and that it is common for a client such as SHI to be provided with a "hold mail" service by the bank, whereby all banking documents are held by the bank."

v) In relation to the sources of documents, Mr Vik's evidence was that he had a personal laptop in 2015 but had disposed of an earlier laptop, desktop computer and Blackberry:

> "The only computer used for SHI's business at the time I was served with the Teare J Order was my personal laptop…I did not use that computer to create electronic documents other than email."

vi) As to the laptop which he used in around October 2008 Mr Vik's evidence was that he no longer had this laptop in 2015 when he was served with the Teare J Order:

> "In 2015, when I was served with the Teare J Order, I used a MacBook Air. In any event, as I have already stated, I did not use the old laptop, or any other computer, to store or create electronic documents. I only used them to access emails via my Xcelera account."

vii) His evidence was that he no longer had a Blackberry in 2015 "*and had not had it for quite some time.*"

viii) Mr Vik also said that he no longer had the desktop at 10 Ashton Drive when he was served with the Teare J Order and he believed that it was disposed of at some point in 2014, by which time it was already quite old. However, he said that he searched this computer at the time of the main proceedings and any relevant documents were disclosed to DBAG. {B/1/25} His evidence was that he believed the Server at 10 Ashton Drive was no longer in existence at the time of the service of the Part 71 Order. As to the "New Desktop Computer" he said that too no longer existed in 2015.

ix) In relation to the exercise which Mr Vik carried out to comply with the Part 71 Order, his evidence in his Affidavit was as follows:

> "88. <u>The task of searching for hard copy documents took me the best part of a full week. I also enlisted the help of Per Johansson. He searched for documents in the US</u>, and then flew over and helped me go through the documents in Monaco, bringing what he had found in the US with him.
>
> 89. Once I had finished searching the documents in Monaco, <u>I identified the most obvious gaps</u> - in particular the remaining bank statements that corresponded to the list attached to the order - <u>and asked Mr Johansson to do what he could to obtain those documents</u>. As far as I recall, my requests to Mr Johansson both before and after the search at the Monaco office were by telephone.
>
> 90. This search for documents had to be accomplished in a short time frame and when I was also dealing with lots of other work and other litigation" [emphasis added]

Discussion

385. It was submitted for the Bank (paragraph 249 of its Closing Submissions) that there had been "*extensive non-compliance*" with the Part 71 Order and this was:

> "apparent from documents that have subsequently been obtained by the Bank through other proceedings or processes, including the Johansson Documents (obtained via subpoena in December 2016), the various IFA documents relating to voting notifications which DB obtained from IFA and documents relating to the Partnership Interests (obtained via Norwich Pharmacal orders in the jurisdiction and in Guernsey in June 2016)".

386. The point is made for Mr Vik (which the Bank acknowledged in its Closing Submissions) that the Court is only concerned with documents which were in existence 14 days prior to the XX Hearing/ up to the date of the Order and thus any reliance on documents after December 2015 cannot found the allegations now before the Court (footnote 19 to paragraph 171 (a)).

387. In its Closing Submissions (paragraphs 251 and 297) the Bank submitted that "*there are many other related documents that Mr Vik failed to disclose, which are listed in Appendices 2 to 4 of DB's skeleton*" and that there are "*doubtless swathes of other electronic documents Mr Vik did not produce*".

388. In Appendix 2 to its Skeleton argument the Bank purported "*with the benefit of the Johansson Documents and other public filings…to identify an extensive list of further documents relating to SHI's interest in and disposal of the Devon Park Interest which were not disclosed by Mr Vik.*" The Bank also produced similar Appendices relating to the IFA Shares and the Partnership Interests.

389. The Court did not hear oral argument on these further documents so identified and, in my view, bearing in mind the standard of proof, the issue of whether these documents in the Appendices were responsive to the Part 71 Order, were held electronically by SHI in 2015 and deliberately not disclosed pursuant to the Part 71 Order is not established.

390. However, I do bear in mind the overriding point which emerges from the Bank's submissions which is the absence of disclosure of electronic documents in response to the Part 71 Order.

391. Mr Vik sought to water down this fact by referring to electronic records produced for the trial (primarily) in relation to trading (paragraph 161 of his Closing Submissions) but appeared to accept that there have been no electronic documents disclosed relating to the period after 25 July 2012 which are responsive to the Part 71 Order.

Electronic documents

392. As referred to above in response to a subpoena in December 2016 in the US, Mr Johansson produced the Devon Park documents including those referred to above. As is evident from the emails reproduced above, some of the emails were solely between

Mr Johansson and Devon Park, on other emails Mr Vik was copied, on others Mr Vik was directly addressed.

393. It was submitted for Mr Vik that Mr Vik had a policy of deleting emails using them as a "to do" list and deleting them once he had dealt with them.

394. Mr Vik's oral evidence to this Court was as follows:

> "Q. Why were none of the documents, certainly those that predated December 2015, disclosed by you under the CPR 71 order?
>
> A. I did not have them.
>
> Q. Why didn't you have them, Mr Vik?
>
> A. Why I didn't have them? I am assuming that, I delete, as you know, as policy, emails, using my inbox as a to-do box, so I am sure these were deleted on an ongoing basis, when I really had no involvement in this, and people copying me on it would be irrelevant to me" [emphasis added] (transcript day 5, p97)

395. It was submitted for Mr Vik that the Bank had not established that the emails so deleted were in breach of the requirements to preserve documents either for the English or the US proceedings. It was further submitted that since Mr Vik had deleted emails, he could not be found in contempt for failing to produce documents which by reason of their deletion no longer existed.

396. It was submitted for Mr Vik that the scope of the allegation that he had deliberately taken steps to make it difficult to comply with the order only extended to allegations that he resigned as a director and that he permitted Mr Johansson to take possession of documents; it does not extend to an allegation that he deleted documents.

397. I accept the submission for the Bank that it was not permissible for it to make reference to the deletion of documents in the particulars set out in the Application Notice as this was material contained in Mr Vik's Affidavit which the Bank was unable to refer to prior to a decision by Mr Vik to rely on the Affidavit. For the reasons set out below it is not necessary for me to decide whether the deletion of emails falls within the scope of the allegations in order to decide whether the contempt alleged in relation to the failure to disclose documents is made out.

398. It was submitted for Mr Vik that the evidence (by which I infer the absence of documents) was consistent with the "*manifest informality*" in the operation of SHI. However, the allegation before the Court relates to the failure to disclose electronic documents which includes emails. Even if there was informality in the operation of SHI, it is clear from the Devon Park documents which have now been disclosed that (unsurprisingly in the modern world) SHI used email to communicate with third parties and that informality does not therefore explain the total absence of electronic communications.

399. It was submitted for Mr Vik (paragraph 153 of Closing Submissions) that Mr Vik's evidence was "*credible, consistent and …not challenged*".

400. I do not accept the submission that Mr Vik's evidence was unchallenged. It was submitted for the Bank that the deletion policy was unnecessary given current storage capacity of devices, that it would require time spent manually deleting items and would leave Mr Vik with no record of his communications with counterparties.

401. None of these matters however seem to me to be conclusive as to whether Mr Vik deliberately failed to comply with the obligation in the Part 71 Order to disclose "*all documents in [SHI's] control which relate to [SHI's] means of paying the amount due under the [judgment handed down by Cooke J on 8 November 2013] and the [Judgment Order]*".

402. More significantly I do not find Mr Vik's evidence consistent: in his Affidavit Mr Vik acknowledged that he was obliged to retain some emails and stated that he only deleted emails which appeared to have nothing to do with the litigation:

> "After the possibility of litigation became apparent in around October 2008, I understood that I should refrain from deleting anything that could potentially be relevant to the litigation. From that point onwards I filed anything that I considered could be relevant to the litigation with DBAG… Where, however, emails appeared to me to have nothing to do with the litigation, I carried on with my normal practice of deleting those emails that I had ticked off my "to do" list." [emphasis added]

403. However, in his oral evidence to this Court Mr Vik's evidence appeared to be that he retained emails in the period 2008-2012 but thereafter resumed his practice of deleting emails until he was served with the Part 71 Order:

> "…In the 2012 -- sorry, 2008 to 2012 I created these universes so ... you know, unless I put all of the SHI emails into these universes and hand over to the lawyers …".(transcript day 8, p87)
>
> "A. All the emails that I had at that time that I could find, they were all put in the universes.
>
> Q. So the ones relating to Devon Park and Reiten should have been in the universe then?
>
> A. I don't know.
>
> Q. Mr Vik, I thought your evidence was the reason you didn't have the documents that we were looking at and we have from other sources was because you had a deletion practice, and you didn't keep documents?

> A. That is different from the -- until, what is it -- I forget the date, but middle of 2012, July 2012, then all of those things were put into these universes for the litigation and, subsequent to that, I continued as before" [emphasis added]

404. It was submitted for Mr Vik that the Bank had not established that there was a requirement to preserve documents after July 2012 but that is to ignore the reality that irrespective of any legal requirement, some documents and emails were "*important*" to Mr Vik including I infer the fact that the litigation was ongoing both in the UK and in the US and that to advance its case SHI needed to put forward evidence as it did on the Conditions Application when it adduced the Sale Agreement.

405. There is then the issue of Mr Vik's credibility.

406. It was submitted for Mr Vik that only "*a very small sub-set of documents*" involved Mr Vik, but this submission leads nowhere as it is thus accepted for Mr Vik that some emails relating to Devon Park were sent to Mr Vik and some were copied to him. [Day 11 p58]

407. It was also submitted for Mr Vik that in relation to those Devon Park emails that were copied to him, the Court would have to be satisfied that he had the documents and in particular whether he would have retained them given his deletion policy and his attitude to the relevant communications. [Day 11 p59] It was submitted for Mr Vik (paragraph 152 of his Closing Submissions) that he had stated in his evidence in 2008 that he had a policy of deleting emails and his evidence that he used his email as a "to do" list had "*an obvious ring of truth".*

408. Whilst it is possible to mount a plausible argument as to why certain emails may not have been regarded as necessary to preserve, the Court has to consider the allegation of the failure to disclose electronic documents in the round and not merely by reference to the particular Devon Park emails which the Bank has managed to obtain from Mr Johansson. In this regard it is significant that the Part 71 Order required disclosure of, amongst other documents, documents for the period from January 2008 to 2015 in the following categories:

> "documents relating to any other investments or assets held by SHI in the period from January 2008 to date including, in particular, all documents relating to the disposal of such investments or assets and any consideration received for them"
>
> "documents relating to any other transfers of funds or assets made by SHI to or for the benefit of Mr Vik or companies or entities associated with him in the period from 1 January 2008 to date".

409. Thus, the order covered both the period when Mr Vik said he had in effect suspended his deletion policy and the period when he said he had resumed deleting emails.

410. Further as referred to above, the deletion policy was not in respect of all emails: Mr Vik appears to have accepted that he did retain some emails. This seems to be consistent with his evidence to the Court that when carrying out the exercise to

respond to the Part 71 Order he searched his emails; self-evidently there would have been no need for him to have conducted such a search if all emails were deleted and none had been preserved.

411. Given that on Mr Vik's evidence some emails were preserved, the stark overriding point is that there were no emails disclosed which were responsive to the Part 71 Order.

412. Whilst it can be argued that the failure to disclose older emails can be explained by the disposal of the old computers/laptops this is difficult to reconcile with the evidence that documents relevant to the litigation (at least until July 2012) were preserved. Mr Vik had lawyers advising him throughout and I infer that continuing steps would accordingly have been taken to preserve documents which had been identified as to be preserved given that thereafter an appeal was lodged in the UK proceedings and US proceedings were ongoing.

413. In any event it is clear that there were recent relevant transactions in 2014 and 2015 relating for example to the Devon Park Interest held by SHI so the "age" of emails and disposal of old devices cannot provide a complete answer to the failures.

414. It was submitted for Mr Vik (paragraphs 137 and 138 of his Closing Submissions) that there is an "*obvious oddity*" about the Bank alleging on the one hand that Mr Vik deliberately suppressed electronic documents but not alleging that he suppressed hard copy documents. In my view it is entirely open to the Bank (and proportionate) to focus in its Committal Application on what may be perceived in light of the disclosure obtained from other sources since the XX Hearing to be blatant breaches of the disclosure section of the Part 71 Order.

415. As part of the overall context of considering the allegations against Mr Vik and the inferences to be drawn from the evidence, I do not accept the submission that Mr Vik produced hard copy documents "*effectively*". As held above, there is no explanation for the manuscript amendments to the Carlyle deeds which must have been made deliberately and in my view, this was a deliberate attempt by Mr Vik to mislead by his disclosure and by his evidence to this Court that he did not know anything about the different versions.

416. It was submitted for Mr Vik in oral closings that:

> "… it was quite obvious at all times that the version 5 which was provided by Mr Vik was not the final executed version, because…it had no signature from [Carlyle] on it. So it is not as if one might say, well, this is a fabricated document that somebody had counterfeited, as it were, the [Carlyle] signature on version 5; it was an incompletely executed document on any view". [Day 11 p52]

417. In my view whilst it is true that no one had sought to counterfeit the signature of the general partner on Version 5, this submission ignores the obvious inference that Mr Vik nevertheless put forward documents which had been deliberately altered in a way which would support his case. No mitigation or explanation for the actions of Mr Vik

can be found in the fact that no one had gone so far as to fabricate the signature of the general partner.

418. Finally, in this regard it should be noted that the allegation is a failure to produce electronic documents. It was submitted for Mr Vik (paragraph 163-164 of his Closing Submissions) that the Bank's case was built upon the contention that there must have been "*an extensive pool*" of documents and submitted (amongst other things) that after 2012 SHI was "*largely a spent force"* and this is evidenced by the fact that subpoenas and Norwich Pharmacal orders have produced "*relatively few documents*".

419. Such submissions do not assist Mr Vik: the Devon Park documents are documents which were subsequently shown to exist as they were disclosed by Mr Johansson in the US and the question of whether there was an "*extensive pool*" has no bearing on the failure to disclose these documents.

420. I do not need to make separate findings in relation to the IFA Shares and the Partnership Interests as they are part of the overall allegation that there was no disclosure of electronic documents. In relation to the IFA Shares it was submitted for Mr Vik (paragraph 174 of Closing Submissions) that "*a small handful of emails…sent in 2009 cannot support a conclusion to the criminal standard that Mr Vik retained those emails for up to 6 years and deliberately withheld them*". I note that the documents which were subsequently disclosed include communications in 2013 concerning the arrangement for Mr Vik to hold the voting rights personally so were only 2 years before the Part 71 Order. Further as referred to above, a number of events happened in 2013 according to Mr Vik's evidence in his Affidavit:

> 67. The IFA Shares might have been transferred back to SHI upon the dissolution of Vik Beteiligung. However, at around that time, SHI and Vik Beteiligung had settled litigation against IFA, a condition of which was my appointment to the board of IFA. In order to hold that position, I was required to be a shareholder of IFA, and so it was decided that I should be designated to hold the IFA Shares personally - albeit on trust for VBI - and VBI did not object to that arrangement."

421. It is not plausible that none of these arrangements, namely the dissolution of Vik Beteiligung, the settlement with Vik Beteiligung, the appointment of Mr Vik to the board of IFA and the decision for Mr Vik to hold the IFA Shares on trust for VBI, would have generated electronic documents and whilst considering the arguments concerning deletion, it seems implausible that none of these arrangements generated documents or emails considered by Mr Vik to be "*important*". I take the absence of any electronic documents in relation to all of these matters relating to the IFA Shares into account as part of the overall picture of whether the allegation in respect of electronic documents has been established to the requisite standard. As stated in *Ablyazov* and set out above:

> "It is, however, the essence of a successful case of circumstantial evidence that the whole is stronger than individual parts… the probative force of a mass of evidence may be cumulative, making it pointless to consider the degree of probability of each item of evidence separately."

Devon Park emails in possession of Mr Johansson

422. Turning then to the Devon Park emails which were in the possession of Mr Johansson and subsequently obtained from Mr Johansson.

423. It was submitted for Mr Vik (paragraph 186 of his Closing submissions) that "*the fact Mr Johansson may have had some responsive documents does not prove that Mr Vik was in breach of the Part 71 Order*". It was submitted that the Bank could not prove to the criminal standard or there was "*at least reasonable doubt*".

424. Mr Vik relied on the following:

i) the Johansson documents were obtained under a subpoena in New York addressed to him as a non-party;

ii) that Mr Johansson was "*an independent consultant with a written consultancy agreement and he was assisting Universal*".

425. It was further submitted for Mr Vik that the Bank cannot prove that there was a deliberate decision by Mr Vik and Mr Johansson not to produce the documents.

426. In my view the status of Mr Johansson in the New York proceedings is irrelevant to the question of whether these documents were under the control of SHI for the purposes of the CPR 71 Order.

427. I note that in the course of his evidence to this Court Mr Vik was asked about the process of identifying and obtaining documents for the purposes of the Part 71 Order. Mr Vik described Mr Johansson as one of the people at SHI:

> "Q. So who did the exercise of working out what was responsive to the order? You have just said that they gave you everything that was responsive to the order; who is "they"?
>
> A. SHI.
>
> Q. Who at SHI?
>
> A. It was Mr Johansson and Mr Olav" [emphasis added] [Day 7 p110]

428. Later in his evidence on the same point Mr Vik said:

> "Q. …Am I to understand that "they" -- and you say "they", let 's be very clear , that it is Mr Johansson, Mr Olav, Mr Clarke?
>
> A. Mr Olav was not -- Mr Olav, he was, you know, not -- I don't really remember, it was mostly Mr Johansson, but I think Mr Olav at some point was involved, and it was mostly Mr Johansson.
>
> Q. So -

> A. And then it was Mr Johansson and myself, and then, you know, consulting with the lawyers, being advised by them" [emphasis added]

429. This is in my view consistent with Mr Vik's evidence at the XX Hearing where in the course of questions about the steps taken to locate documents Mr Vik described Mr Johansson's role at SHI:

> "Q. Why did Mr Johansson have them?
>
> A. Because he's representing SHI and I was, at that point, no longer at SHI.
>
> Q. So Mr Johansson represents SHI so you asked him for the documents?
>
> A. Yes." [emphasis added]

430. Mr Vik told the Court at the XX Hearing that Mr Johansson continued to work for SHI:

> "Q. In what capacity is Mr Johansson representing SHI?
>
> A. He, you know, has been for many years, running the litigation, running all of the -- basically running everything associated with the sort of things that you are asking since 2008.
>
> Q. Essentially Mr Johansson's role has continued unchanged since you ran the company. Is that right?
>
> A. Yes."

431. However, Mr Vik appeared to backtrack from this position later in his evidence to this Court when he sought to portray him as an external consultant:

> "Q. Mr Vik, you said that they gave you everything they had, and that you were satisfied about that. So he must have given you access to everything, or alternatively you must have known that he didn't. Which is it?
>
> A. Yes, he was an external consultant to SHI, and he did not give me access to his email, if that is what you are suggesting. That did not happen.
>
> Q. Well, we have established that when Mr Johansson was acting on behalf of SHI, those were documents within SHI's control. And we have also established that Mr Johansson was, as you put it, SHI at the time of the Part 71 hearing. So I want to be clear why it is that we have not seen documents that Mr Johansson has subsequently disclosed, emails and so on, from him. What happened to them?

> A. I don't know, but he wasn't SHI -- the director of SHI was Rand. He was an external consultant as he has been before. What documents he gave me or didn't give me, I don't know" [emphasis added] (transcript day 7, p126)

432. I do not accept this evidence from Mr Vik: it was in my view at odds with his evidence at the XX Hearing and his earlier evidence to this Court that Mr Johansson was acting for SHI in responding to Mr Vik in respect of the Part 71 Order.

433. It is also inconsistent with the evidence Mr Vik gave to this Court as to how Mr Johansson cooperated with him over the identification of the hard copy documents in order to respond to the Part 71 Order. In his Affidavit Mr Vik described the process in relation to hard copy documents and the role of Mr Johansson as follows:

> "88. The task of searching for hard copy documents took me the best part of a full week. I also enlisted the help of Per Johansson. He searched for documents in the US, and then flew over and helped me go through the documents in Monaco, bringing what he had found in the US with him.
>
> 89. Once I had finished searching the documents in Monaco, I identified the most obvious gaps - in particular the remaining bank statements that corresponded to the list attached to the order - and asked Mr Johansson to do what he could to obtain those documents. As far as I recall, my requests to Mr Johansson both before and after the search at the Monaco office were by telephone." [emphasis added]

434. Thus, not only did Mr Johansson carry out the search for Mr Vik in the US, but after Mr Johansson had helped Mr Vik to go through the documents in Monaco, Mr Johansson was then asked by Mr Vik to search for additional documents. I infer therefore that Mr Johansson did not raise any objection that Mr Johansson could not search for and hand over documents as he was not working for Mr Vik or that Mr Vik was not entitled to ask him for the documents.

435. It is not credible in light of that cooperation over the hard copy documents that Mr Johansson would have refused to disclose his emails which related to SHI and to the extent that this was the evidence of Mr Vik I reject it as not credible.

436. The evidence (including that of Mr Vik) indicates that Mr Johansson was working for SHI at the time of the response to the Part 71 Order. I have already addressed above the issue of whether Mr Johansson was acting for Universal and found that the evidence of the contemporaneous documents does not support such an inference. I infer that he was not working for Universal either at the same time as working for SHI when producing documents in 2015 or earlier in 2014/2015 when the Devon Park emails now disclosed were being sent. Accordingly, I reject the submission that the documents were Mr Johansson's documents or Universal's documents.

437. As to whether Mr Vik deliberately failed to produce the documents, I do not accept the proposition for Mr Vik (paragraph 189 of his Closing Submissions) that the Bank

has to have evidence that a conversation took place in which Mr Vik and Mr Johansson "*sat down*" and decided to suppress documents.

438. The evidence which is before the Court is that according to Mr Vik, he searched for hard copy documents in conjunction with Mr Johansson.

439. In his evidence to this Court Mr Vik was asked to explain how Mr Johansson did not disclose the documents:

> "Q. How do you explain that Mr Johansson has disclosed a number of electronic documents in the New York proceedings which we have now looked at, and you say he came to assist you with the search in Monaco, and yet you didn't disclose those documents. How do you explain that?
>
> A. He didn't give me those documents. I don't know if he was the one who disclosed them in New York later. I don't know any circumstances, but Mr Johansson did not give me those documents if he had them." [emphasis added] (transcript day 7, p59)
>
> "A…I asked him to get all the documents that SHI had that were responsive to the order, and he did that, as far as I was told, and he brought many of them to Monaco" (transcript day 7, p124)

440. Thus, it was submitted for Mr Vik (Closing Submissions paragraph 189) that:

> "Mr Johansson simply did not produce the documents to him".

441. Although at points in his evidence Mr Vik sought to portray a picture that he merely passively received the documents which SHI provided, his evidence was that he had carried out a review. At the XX Hearing Mr Vik described carrying out the exercise himself to review the documents to be disclosed:

> "Q. You said you reviewed the documents at SHI's offices.
>
> A. No -- yeah, Mr Johansson came to Monaco with the documents, and, you know, I reviewed some of them, and we looked more through -- I have some litigation documents, litigation that I am still involved in personally, as you know, you have sued me in many places on many different things, so I still have documents, so we went through all of that thing, made sure that there was nothing there that was compliant with the Order.
>
> Q. What electronic and hard copy source were searched, Mr Vik?
>
> A. I searched all of my personal email.
>
> Q. What about documents held on your BlackBerry?

> A. There aren't any.
>
> Q. Computers?
>
> A. That is searching my email.
>
> Q. Who reviewed the documents to determine whether they were required by the Order?
>
> A. I was the one who went through all of them, my personal emails, and I didn't find any emails that were responsive to the Order." [emphasis added]

442. When questions were put to him before this Court, Mr Vik appeared to confirm that he had reviewed the documents to be disclosed:

> "Q. Is that quite right, Mr Vik? I thought you did a relevance exercise yourself?
>
> A. Yes, but I think the documents that he brought, I may be overstating it, but I think the documents that he brought were relevant, and I don't remember any -- discarding any documents, saying this is not relevant. I don't remember that at all." [emphasis added] (transcript day 5, p97)

443. It was submitted for Mr Vik (paragraph 171 of his Closing Submissions) that he could not be in contempt for failing to produce documents that he did not send or receive on the basis that there is no evidence that he knew of their existence.

444. In my view there are two answers to this: firstly, in my view one can readily infer from the communications which were sent to him/copied to him and are before this Court in relation to Devon Park that Mr Vik was aware that communications were taking place and ongoing between Devon Park and SHI/Mr Johansson. I infer that the subject matter of the emails would have been of interest to Mr Vik since they related (at least in part) to the transfer to Universal and the distributions. Mr Vik did not need to know of every email passing between Devon Park and Mr Johansson to have asked Mr Johansson to search for emails with Devon Park.

445. In his evidence for this Court when the point was put directly to him, Mr Vik merely fell back on the oft repeated refrain that he did not remember:

> "Q. Did you ask them where the Devon Park and the IFA documents were, for example?
>
> A. The IFA documents, I didn't, as far as I am concerned, I don't think there are any. As far as the Devon Park documents, I didn't -- I don't remember" (transcript day 7, p121)

446. Secondly not a single email from Mr Johansson was disclosed in response to the Part 71 Order. It is notable from the evidence above that Mr Vik claimed to have searched for his own personal emails so it is striking and, in my view, not credible that it would

not occur to him to ask Mr Johansson to search for emails if none at all had been produced by Mr Johansson.

447. In assessing the credibility of the evidence of Mr Vik in relation to these documents I bear in mind the reliance now placed by the Bank on the Devon Park emails and the extent to which they support the Bank's case concerning the allegations of lies concerning the bona fides of the Sale Agreement and the connection between Universal and Mr Vik. The contents of the documents now disclosed provide a motive for Mr Vik to have deliberately chosen in 2015 not to disclose the emails held by Mr Johansson.

Other third-party documents

448. The Bank also alleges that Mr Vik failed to obtain documents from other "third parties" which were held by third parties on behalf of SHI or in respect of which Mr Vik and/or SHI had a right to possession or to take copies, namely Zimmermann & Gauch and banks with whom SHI held accounts.

449. It was submitted for Mr Vik that:

i) The Part 71 Order was limited to documents in SHI's control, so the Bank will need to establish not only that those additional third parties in fact held documents relating to SHI's means of paying the Judgment Debt in 2015 but also that such documents were within SHI's control.

ii) It will be necessary for the Bank to prove that Mr Vik identified but deliberately chose not to seek to obtain those documents from those particular "third parties" and that had he not done so they would have been obtained.

450. I accept the submission for Mr Vik that it is unclear on the evidence whether Zimmerman & Gauch remained in existence in 2015 and thus do not find that Mr Vik could have obtained documents from that firm in 2015. Mr Hart was cross examined on this point and it was clear that Freshfields had made enquiries but was unable to confirm its existence in 2015. Whilst it is surprising that there is no information about this entity, I do not therefore find the allegation so far as it concerns documents held by Zimmerman & Gauch to be established.

451. As to what documents would have been produced it was submitted for Mr Vik (paragraphs 196 and 197 of his Closing Submissions) that "*it is wholly questionable whether it would even have been possible for Mr Vik to obtain transfer instructions going back that period of time*" and even if it required production of all such documents, it cannot be said that it would have been "*wholly possible*".

452. By its submissions Mr Vik seeks in effect to ignore the following:

i) Mr Vik acknowledged in his evidence to this Court that he was advised by lawyers in carrying out the review exercise; the submissions (paragraph 196 of his Closing Submissions) that he "*did the very best he could to comply with the Part 71 Order*" have to be read in light of the fact that he was being advised throughout so there can have been no misunderstanding as to what was

required or any mitigation derived from any suggestion that he had to perform the disclosure exercise without assistance in a limited period of time;

ii) Although transfers are identified as a category of documents, the essential allegation is a failure to produce any documents held by the banks with whom SHI held accounts and it is in the circumstances of this complete failure, that the allegation falls to be considered;

iii) The point at which any objection to the breadth of the disclosure obligations (including by reference to the date range) was properly taken was when the Part 71 Order was made and it is not an answer now to the failure to produce any third party bank documents;

iv) Mr Vik's own evidence is that he did not keep documents because he relied on his banks to keep documents. It is to be expected that the banks would have records even if it is possible that they may not go back 8 years: the question of whether production would have been "*wholly possible*" fails to address that no documents have been sought from third party banks (other than bank statements).

453. In his oral evidence to this Court Mr Vik seemed to accept that he knew he should contact the banks for documents and did so, at least insofar as bank statements were concerned:

> "A. I asked the banks to provide documents.
>
> Q. Did you do that personally, Mr Vik? Did you personally ask them?
>
> A. Sorry?
>
> Q. Did you personally ask the banks to supply the documents to you?
>
> A. I think Mr Johansson was in charge of it, but I was definitely involved in it; I don't know if I personally spoke to them, but I was definitely involved in it.
>
> Q. Did you instruct Mr Johansson to contact the banks?
>
> A. Well, we were trying to put together all of the bank statements. That was like the number one job, and whenever -- the ones we didn't have, yes, we contacted the banks." [emphasis added] (transcript day 7, p104)

454. This appeared to be in conflict with his evidence at the XX Hearing where Mr Vik had said that Mr Johansson was in charge of contacting the banks and Mr Vik was not involved:

> "Q. What about copies of documents held by third parties? So banks who SHI held accounts with? Did you ask them?

> A. I was not involved in that. Mr Johansson was in charge of that whole process.
>
> Q. What did Mr Johansson do? Did you tell you?
>
> A. Obviously he tried to comply with the order, you know, the list of documents that we requested, or were ordered, and he did, as far as I can tell, you know, the best he possibly could to get all those documents to me so that I could produce them."

455. Mr Vik said that he "*did not know what the rules were*" as to what documents would have been held by the banks but as referred to above, on his own evidence Mr Vik was taking advice from lawyers on the disclosure obligations so I infer that he would have been advised as to the scope of the order and its breadth. Accordingly, I do not accept that in the circumstances Mr Vik believed that he was only obliged to ask the banks for bank statements or that he left the process to Mr Johansson such that he was unaware that no other documents other than bank statements had been sought from the banks.

Conclusion on Disclosure of Documents

456. The allegation in relation to the failure to comply with the Part 71 Order is a deliberate failure to produce documents which related to SHI's means of paying the Judgment Debt in particular (a) electronic documents and (b) third party documents which were in SHI's control.

457. As discussed above, it is important not to look only at those documents subsequently obtained from other sources but to see what inferences can be drawn from that disclosure. For the reasons set out above it is simply not credible that there were no electronic documents in the possession of Mr Vik/SHI in 2015 that were responsive to the Part 71 Order.

458. I find that Mr Vik failed to comply with paragraph 2 of the Part 71 Order and that he deliberately did not produce electronic documents in SHI's control which related to the means of paying the Judgment Debt.

459. In relation to the documents held by third parties I find for the reasons discussed above that Mr Vik deliberately chose not to produce documents held by Mr Johansson and the banks with which SHI had accounts (other than Zimmerman & Gauch) which documents were held either (a) on behalf of SHI and/or (b) in respect of which Mr Vik and/or SHI had at the time of the Part 71 Order a right to possession or to inspect or take copies of that were required to be produced by the Part 71 Order.