Neutral Citation Number: [2023] EWHC 3023 (Comm)
Case No: CL-2022-000034

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

Date: 27/11/2023

Before :

MR JUSTICE FOXTON

- -

Between :

LAKATAMIA SHIPPING COMPANY LIMITED	**Claimant**
– and –	
(1) TSENG YU HSIA	
(2) CHIHARU MORIMOTO	**Defendants**

- -
- -

S.J. Phillips KC and **James Goudkamp** (instructed by **Hill Dickinson LLP**) for **the Claimant**
The Defendants did not appear and were not represented

Hearing date: 16 November 2023
Draft Judgment Circulated: 22 November 2023

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Approved Judgment

I direct that no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

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THE HONOURABLE MR JUSTICE FOXTON

This judgment was handed down by the judge remotely by circulation to the parties' representatives by email and release to The National Archives. The date and time for hand-down is deemed to be Monday 27 November 2023 at 2:00pm.

The Honourable Mr Justice Foxton:

INTRODUCTION

1. This is the latest set of proceedings in a long-running dispute between the Claimant (**"Lakatamia"**) and Mr Nobu Su (**"Mr Su"**) in respect of breaches of contract by Mr Su and the Today Makes Tomorrow (**"TMT"**) group of companies. The present proceedings are brought by Lakatamia against Ms Tseng Yu Hsia (**"Ms Tseng"**) and Ms Chiharu Morimoto (**"Ms Morimoto"**), Lakatamia alleging that they were parties to unlawful means conspiracies and unlawfully induced or procured violation of Lakatamia's rights under an earlier court judgment (**"the *Marex* tort"**, see *Marex Financial Limited v Sevilleja* [2017] EWHC 918 (Comm)). Lakatamia seeks a judgment on the merits against Ms Tseng and default judgment under CPR Part 12 against Ms Morimoto.

2. Ms Tseng is an associate of Mr Su's mother, Mrs Toshiko Morimoto (**"Madam Su"**). Ms Morimoto is Mr Su's eldest sister.

THE BACKGROUND

3. The long history of the matter was summarised by Bryan J in his judgment at *Lakatamia Shipping Co Ltd v Su & Ors* [2021] EWHC 1907 (Comm), [5]-[38] (**"the 2021 Judgment"**). I gratefully adopt his summary and will not repeat it here. It suffices to say that Lakatamia obtained a worldwide freezing order against Mr Su (**"the Blair Freezing Order"**), followed by judgment for amounts due undr forward freight ransactions (*Lakatamia Shipping Co Ltd v. Su* [2014] EWHC 3611 (Comm); [2015] 1 Lloyd's Rep 216), but recovering that judgment debt (**"the Cooke Judgment Debt"**) has proved extremely difficult, not least because Mr Su has attempted to dissipate his assets or otherwise move them beyond Lakatamia's reach.

4. A Bombardier Global Express aircraft (**"the Aeroplane"**) alleged to be owned by Mr Su was sold pursuant to an agreement entered into on 19 July 2014. The sale proceeds amounted to at least US$857,328.73 (**"the Aeroplane Sale Proceeds"**). That amount was paid into the bank account of a company called UP Shipping Corp (**"UP Shipping"**) on 4 May 2015, from which onwards payments were made by UP Shipping to various payees. On 28 May 2015, Mr Su asked Madam Su to return US$800,000 from the Aeroplane Sale Proceeds, in circumstances in which Mr Su faced a deadline of 29 May 2015 to meet a security order which was a condition of his right to appeal the Cooke Judgment Debt. Following that request, on 28 May 2015, Ms Tseng transferred US$800,000 into an account in the name of a BVI company called Terraceview Holdings Limited (**"Terraceview"**), although the money was not, in the event, used to provide security, and the security condition was never fulfilled.

5. Mr Su was also linked with two villas in the Principality of Monaco, Villa Royan and Villa Rignon (**"the Villas"**). Documents show that Mr Su had interest in a company called Portview Holdings Limited, which owned another company called Cresta Overseas Limited (**"Cresta Overseas"**), which held legal title to the Villas.

6. When Cresta Overseas defaulted on a loan, Barclays Bank (**"the Bank"**) applied to

attach the Villas, which were the subject of a distressed sale on 21 October 2015. After the Bank was repaid, the balance of the sale proceeds was paid to a Monégasque lawyer, Maître Zabaldano, who transferred €26,712,866.68 (**"the Monaco Sale Proceeds"**) to UP Shipping's account on 23 February 2017.

7. In 2019, proceedings (**"the 2019 Proceedings"**) were brought against Madam Su (but not Ms Tseng nor Ms Morimoto) in relation to dealings with the Aeroplane Sale Proceeds and the Monaco Sale Proceeds (together **"the Sale Proceeds"**) which were alleged to amount to breaches of the Blair Freezing Order and violations of Lakatamia's right to recover the Cooke Judgment Debt. A freezing order was made against Madam Su (**"the Burton Freezing Order"**) on 27 February 2019, which was discharged on 2 May 2019 but restored by the Court of Appeal on 11 December 2019. Between the discharge and restoration of the Burton Freezing Order, Madam Su sold a residential property in Tokyo which was in her name and transferred the sale proceeds (**"the Tokyo Sale Proceeds"**) to Ms Morimoto.

8. Following a trial in which Madam Su gave evidence, Bryan J held in the 2021 Judgment ([810]-[822], [830]-[839], [864]-[875]) that Madam Su was liable for unlawful means conspiracy and the *Marex* tort in respect of her involvement in concealing and dissipating the Sale Proceeds.

9. Lakatamia now contends that Ms Tseng committed the same torts as Madam Su by acting in accordance with Madam Su's instructions in relation to the Sale Proceeds. Lakatamia applied for a worldwide freezing order against Ms Tseng and permission to serve the claim form on Ms Tseng in Taiwan at two different addresses (**"the Nangang Address"** and **"the Zhongshan Address"**). The orders were granted by Butcher J on 25 January 2022 (**"the Butcher Freezing Order"** and **"the Butcher Service Out Order"**). I continued the Butcher Freezing Order on 11 February 2022.

10. As against Ms Morimoto, Lakatamia argues that her conduct concerning the Tokyo Sale Proceeds also amounts to committing the *Marex* tort and unlawful means conspiracy albeit, as I have said, Lakatamia does not seek judgment on the merits against Ms Morimoto.

THE CONDUCT OF THE HEARING

11. Ms Tseng has not engaged with the litigation in any way or complied with the court's orders made for the management of the litigation. In these circumstances, a number of issues arise as to how the court should approach the hearing.

A trial on documents

12. I accept that it is open to Lakatamia to seek to prove its case by reference to witness statements and documents, and without calling oral evidence. In *Lighting and Lamps UK Ltd v Clarke* [2016] EWCA Civ 5, [41]-[42], Vos LJ said:

> "As a matter of principle, the court is perfectly entitled to dispense with the calling of oral evidence under CPR Parts 32.2(2)(b) and 32.5(1)(b) where witness statements have been served. The court does not have to follow a pointless

procedure in an undefended claim. If it were otherwise, undefended cases up and down the country would be delayed and subjected to inappropriate scrutiny when there was no defence raised and no substantive argument about the claimants' entitlement.

In this case the claimants had to prove their case. They did so by presenting both their statement of case verified by a statement of truth, and also their witness statements. There was no need for the judge to require the witnesses to be called."

The conduct of the trial in Ms Tseng's absence

13. In *CMOC Sales & Marketing Ltd v. Persons Unknown* [2018] EWHC 2230 (Comm) (**"*CMOC*"**), [12] HHJ Waksman QC held that where proceedings are undefended the Court "still ha[s] to be satisfied on the balance of probabilities that the claim is made out …". At [13], he added that "where the trial is not attended by one of the parties, there is still an obligation of fair presentation which is less extensive than the duty of full and frank disclosure on a without notice application." Mr Justice Cresswell in *Braspetro Oil Services v FPSO Construction Inc* [2007] EWHC 1359 (Comm) observed that where the defendant had not engaged, the claimant was obliged to draw to the attention of the court "points, factual or legal, that might be to the benefit of [the defendant]".

The significance of the 2021 Judgment

14. It was accepted before me that the findings of liability in the 2021 Judgment do not bind Ms Tseng (*Hollington v Hewthorn* [1943] KB 587). However, that does not mean that the contents of the judgment are without significance. The relevant principles were set out in a judgment of Laurence Rabinowitz KC in *JSC BTA Bank v Ablyazov* [2016] EWHC 3071 (Comm), [24] (which was approved by Henshaw J in *Kazakhstan Kagazy Plc v Zhunus* [2021] EWHC 3462 (Comm), [115]):

> "The application of the principle in *Hollington* has in recent years become substantially diluted. In particular:
>
> (l) Whilst a court cannot rely upon a bare finding of a prior court for example that a party has been negligent, it can rely upon the substance of the evidence which is referred to in the judgment of the prior court, including for example the contents of a document, the evidence given by a witness and the like: *Rogers v Hotle* [2015] QB 265, [40], [55] (Christopher Clarke LJ).
>
> (2) Whilst the bare finding of a prior court is opinion evidence which a subsequent court cannot rely upon because the later court must make its own findings of fact, a reference in a judgment to the substance of evidence is itself evidence which the judge in a later case can take into account "in like manner as he would any other factual evidence, giving to it such weight as he thinks fit" : *Rogers (supra)*.
>
> (3) Moreover, if the judge in a later case concludes that the matters of primary fact recorded in an earlier judgment justify the conclusions reached in that judgment, he is entitled to reach the same conclusion: *Otkritie International*

v Gersamia [2015] EWHC 821 (Comm), [25] (Eder J)".

THE APPLICABLE LEGAL PRINCIPLES

Applicable law

15. In the 2019 Proceedings, Madam Su argued that the law applicable to the alleged torts was not English law, in the case of the Aeroplane Sale Proceeds because "it is impossible for the Court to identify where the asset(s) have been wrongfully dealt with, so as to identify the relevant applicable law", while conceding that she "may have no choice but to address the alleged conspiracy under English law" (2021 Judgment, [824]), and in the case of the Monaco Sale Proceeds, on the basis that Monégasque law applies (2021 Judgment, [75]). Counsel for Lakatamia fairly pointed out that Ms Tseng may, if she was present at this trial, make the same submission.

16. This argument was dealt with by Bryan J in the 2021 Judgment at [75], [824]-[829], and [840]-[861]. The matter is simpler here. As Lord Leggatt stated in *FS Cairo (Nile Plaza) LLC v Brownlie* [2021] UKSC 45; [2021] 3 WLR 1011 at [113], the default rule is that "if a party does not rely on a particular rule of law even though it would be entitled to do so, it is not generally for the court to apply the rule of its own motion." Where foreign law is not pleaded, English law applies. No party has pleaded that foreign law applies nor adduced any evidence to that effect. English law therefore applies to the issues in these proceedings. I can see no reason why a party who chooses not to participate in proceedings should be in a better position than a party who participates, but chooses not to dispute the application of English law, in this respect.

17. In any event, essentially for the reasons given in the 2021 Judgment, [840]-[861], I am satisfied that both claims are governed by English law.

Unlawful means conspiracy

18. The relevant principles were again accurately and comprehensively set out at [76]-[115] of the 2021 Judgment. I gratefully adopt that analysis. In short, Lakatamia must show the elements of unlawful means conspiracy as stated by Cockerill J in *FM Capital Partners Ltd v Marino* [2019] EWHC 768 (Comm) at [94]:

> "The elements of the cause of action are as follows:
>
> i) A combination, arrangement or understanding between two or more people. It is not necessary for the conspirators all to join the conspiracy at the same time, but the parties to it must be sufficiently aware of the surrounding circumstances and share the same object for it properly to be said that they were acting in concert at the time of the acts complained of: *Kuwait Oil Tanker* at [111].
>
> ii) An intention to injure another individual or separate legal entity, albeit with no need for that to be the sole or predominant intention: *Kuwait Oil Tanker* at [108]. Moreover:

a) The necessary intent can be inferred, and often will need to be inferred, from the primary facts – see *Kuwait Oil Tanker* at [120-121], citing *Bourgoin SA v Minister of Agriculture* [1986] 1 QB: '[i]f an act is done deliberately and with knowledge of the consequences, I do not think that the actor can say that he did not 'intend' the consequences or that the act was not 'aimed' at the person who, it is known, will suffer them'.

b) Where conspirators intentionally injure the claimant and use unlawful means to do so, it is no defence for them to show that their primary purpose was to further or protect their own interests: *Lonrho Plc v Fayed* [1992] 1 AC 448, 465-466; see also *OBG v Allan* [2008] 1 AC 1 at [164-165].

c) Foresight that his unlawful conduct may or will probably damage the claimant cannot be equated with intention: *OBG* at [166].

iii) In some cases, there may be no specific intent but intention to injure results from the inevitability of loss: see Lord Nicholls at [167] in *OBG v Allan*, referring to cases where:

'The defendant's gain and the claimant's loss are, to the defendant's knowledge, inseparably linked. The defendant cannot obtain the one without bringing about the other. If the defendant goes ahead in such a case in order to obtain the gain he seeks, his state of mind will satisfy the mental ingredient of the unlawful interference tort.'

iv) Concerted action (in the sense of active participation) consequent upon the combination or understanding: McGrath at [7.57].

v) Use of unlawful means as part of the concerted action. There is no requirement that the unlawful means themselves are independently actionable: *Revenue and Customs Commissioners v Total Network* [2008] 1 AC 1174 at [104].

vi) Loss being caused to the target of the conspiracy."

19. Further, as Bryan J noted in *Lakatamia Shipping Co Ltd v Su* [2023] EWHC 1874 (Comm) at [106]:

"(1) Dishonesty is not itself an element of the tort, see *Arcelormittal USA LLC v. Ruia* [2020] EWHC 3349 (Comm), at [27(3)].

(2) Justification is not a defence, see, for example, *Palmer Birch v. Lloyd* [2018] EWHC 2316 (TCC); [2018] 4 WLR 164, at [192]–[193]; the [2021 Judgment], at [81]; *Seneschall v. Trisant Foods Ltd* [2023] EWHC 1029 (Ch), at [151]–[160]. Justification cannot be a defence since the element of unlawful means connotes the absence of justification, see *JSC BTA Bank v. Khrapunov* [2018] UKSC 19; [2020] AC 727 at [10] …

(3) The combination element requires that 'at least one of' (but not necessarily all of) the conspirators will use unlawful means - see *Revenue and Customs Commissioners v. Total Network SL* [2008] UKHL 19; [2008] 1 AC 1174, at [213]. Thus, there is no requirement that all of the conspirators will use unlawful means. It is also unnecessary that the combination be, for example, contractual in nature, or that it be an express or formal agreement, see *Kuwait Oil Tanker Co SAK v. Al Bader (No.3)* [2000] 2 All ER (Comm) 271 (CA), at [111].

(4) The element of unlawful means comprises conduct lacking 'just cause or excuse' (see *JSC BTA Bank*, at [10]). Contempt of court and steps taken to prevent the enforcement of judgments constitute unlawful means (see at [16]).

(5) The intention to injure need not be the defendant's predominant intention, see *JSC BTA Bank*, at [13]. Nor need he or she act maliciously in the sense that harm to the claimant need not be the end sought.

(6) It is enough that harm to the claimant was the means by which the defendant sought to achieve his or her end, *i.e.*, that the defendant knew (or turned a blind eye to the fact) that injury to the claimant would ensue - see *ED&F Man Capital Markets Ltd v. Come Harvest Holdings Ltd* [2022] EWHC 229 (Comm) 487, [500]. In *The Eurysthenes* [1977] Q.B. 49 (CA) at 68, Lord Denning M.R. said that 'If a man, suspicious of the truth, turns a blind eye to it, and refrains from inquiry – so that he should not know it for certain – then he is to be regarded as knowing the truth'.

(7) The damage requirement calls for proof of '*damage caused by the conspiracy*", *Palmer Birch v. Lloyd*, supra, at [239].'"

The *Marex* tort

20. The *Marex* tort is a relatively new cause of action, but its existence and requisite elements are sufficiently established at first instance, in particular by the 2021 Judgment which I am satisfied I should follow. I gratefully adopt Bryan J's summary of the relevant principles at [116]-[131] of the 2021 Judgment, and at [126] in particular:

"…the elements of the Marex tort are:

(1) The entry of a judgment in the claimant's favour,

(2) Breach of the rights existing under that judgment,

(3) The procurement or inducement of that breach by the defendant,

(4) Knowledge of the judgment on the part of the defendant, and

(5) Realisation on the part of the defendant that the conduct being induced or procured would breach the rights owed under the judgment."

21. "Further principles" are set out at [127]:

> "…the following further principles apply to the Marex tort:-
>
> (1) It suffices that the defendant intended to violate the claimant's rights under the judgment. The defendant does not need also to intend thereby to damage the claimant. As Judge Russen QC stated in *Palmer* at [174]:
>
> 'In order for liability to be established under the inducement tort, the result intended by the defendant must be a breach of contract. But that is both necessary and sufficient and there is no need for the claimant to go further by establishing an intention to cause damage …'
>
> See also, in this regard, *OBG Ltd v. Allan* [2007] UKHL 21; [2008] 1 AC 1 per Lord Hoffmann at [8].
>
> (2) Just as it is unnecessary for a defendant in a claim for inducing a breach of contract to know the details of the contract provided that they had 'the means of knowledge' (*Emerald Construction Co Ltd v. Lowthian* [1966] 1 W.L.R. 691, 700 per Lord Denning M.R.), it is inessential that the defendant to a claim for the Marex tort has actual knowledge of the contents of the judgment.
> (3) In this regard blind-eye knowledge is sufficient. Thus, as was said by Lord Denning in *Emerald Construction* at page 700, 'it is unlawful for a third person to procure a breach of contract knowing, or recklessly, indifferent whether it is a breach or not'.
> (4) *'[A]ny active step taken by the defendant having knowledge of the covenant by which he facilitates a breach of that covenant'* falls within the ambit of the tort: see *British Motor Trade Association v. Salvadori* [1949] Ch. 556, 565 per Roxburgh J.
> (5) There is no need to establish '*spite, desire to injure or ill will'* on the part of the defendant, see Clerk & Lindsell on Torts, at para 23.57."

Approach to the evidence

22. The court must be "satisfied on the balance of probabilities that the claim is made out, and as the underlying allegation is one of fraud, as always, cogent evidence is required in order to satisfy that burden of proof" (*CMOC*, [12]).

23. Given the seriousness of the claims made by Lakatamia, I have also had regard to the statement of Lord Nicholls in *In re H (Minors) (Sexual Abuse: Standard of Proof)* [1996] AC 563, 586 that "the more serious the allegation the less likely it is that the event occurred and, hence, the stronger should be the evidence before the court concludes that the allegation is established on the balance of probability." It follows that "an inference of fraud or dishonesty should only be drawn where it's the only reasonable inference to be drawn" (*CMOC* at [13]). The standard of proof remains the balance of probabilities, but Lakatamia must provide compelling evidence to satisfy the Court.

Adverse inferences

24. Lakatamia has invited the Court to draw adverse inferences against Ms Tseng in respect of her failure to disclose relevant documents and/or give evidence in these proceedings.

25. It is far from obvious to me that a claimant who, in the absence of the defendant, is required to do no more than prove its case by evidence untested by cross-examination should also benefit from an adverse inference from the non-participating defendant's failure to provide disclosure or the failure of the non-participating defendant to give evidence.

26. I can see a stronger basis for drawing an adverse inference from Ms Tseng's failure to provide the disclosure required by the Butcher Order, as this was a coercive order rather than one made under the court's adjudicative jurisdiction. The Butcher Freezing Order required disclosure of Ms Tseng's bank statements from 5 November 2014 to date, which I accept would have been highly relevant material to the allegations. I have assumed, in Ms Tseng's favour, that no such inference should be drawn. Had I been willing to draw the inference, this would have considerably strengthened Lakatamia's case against Ms Tseng.

THE CLAIM AGAINST MS TSENG

Service on Ms Tseng

27. Lakatamia seeks a judgment on the merits against Ms Tseng because, on its evidence, the Taiwanese courts will not recognise a foreign default judgment unless the claim form was served personally on Ms Tseng. I understand that the claim form was not served personally on Ms Tseng for reasons it is not necessary to expand on here.

28. In the Butcher Service Out Order, Lakatamia was granted permission to serve the Butcher Freezing Order and claim form on Ms Tseng at the Nangang and Zhongshan Addresses. When I continued the Butcher Freezing Order on 11 February 2022, I was satisfied that appropriate service had taken place by serving the order at the Nangang and Zhongshan addresses, and that remains my assessment. Both addresses feature on remittance advices generated by Citibank Taiwan Ltd that recorded payments by Ms Tseng to Baker McKenzie's Taipei office. A bank making payment on an individual's instructions can be presumed to know the instructing party's address. I have also seen Ms Tseng's business card, which states her workplace as the Zhongshan Address. I am therefore satisfied that these are appropriate addresses at which service on Ms Tseng could be effected, and that documents served at these addresses will have come to Ms Tseng's attention, absent steps by Ms Tseng to prevent this happening.

29. I note that some packages sent by Lakatamia to the Nangang and Zhongshan Addresses have been returned. The package containing the Butcher Freezing Order and associated documents that had been sent to the Nangang Address was subsequently returned to Lakatamia's solicitors having been stamped "Return to Sender". The stamp sets out several check boxes listing various possible reasons why the package was being returned. A tick had been placed in the check box marked "Unknown". The package containing my order sent to the Zhongshan Address was also returned to Lakatamia's

solicitors. It had been stamped "Return to Sender" and the check box on the stamp marked "Unknown" had been ticked. A customs declaration which was also received had been stamped "No such person at the delivery address". The documents served by courier on both addresses pursuant to the order of HHJ Pelling KC of 28 June 2022 (**"the Pelling Order"**) were also both returned undelivered.

30. However, the other packages sent by Lakatamia (i.e. the Butcher Freezing Order sent to the Zhongshan Address and my order sent to the Nangang Address) have not been returned. Lakatamia states that it has no reason to believe that Ms Tseng has not received them, though there is no positive evidence to that effect.

31. Given the matters at [28] and [30], I am satisfied it is more likely than not that any packages which were returned were returned because Ms Tseng chose not to accept them.

32. Furthermore, Lakatamia obtained the Pelling Order permitting Lakatamia to serve Ms Tseng via email. The relevant email address is stated on Ms Tseng's business card. The claim form and Particulars of Claim were deemed to have been served on 1 July 2022. Lakatamia states that her email address is active, as evidenced by receipt notifications generated by the email server, though no response was received from Ms Tseng.

33. Against this background, I am satisfied that Lakatamia has taken all reasonable steps to notify Ms Tseng of the proceedings and serve documents concerning the proceedings on her. I am also satisfied that Ms Tseng does have notice of these proceedings and has had an adequate time to respond if she so chose. The inference I draw from the lack of any response is that Ms Tseng has decided to avoid engaging with the court process.

34. I am therefore persuaded that the trial should proceed to a determination on the merits in the absence of Ms Tseng in accordance with CPR 39.3(1). It is of course open to Ms Tseng to apply for this judgment to be set aside under CPR 39.3(3), subject to the requirements of CPR 39.3(4) and (5).

The Factual Issues

35. A premise of the claims relating to the Sale Proceeds is that the assets in question fell within the scope of the Blair Freezing Order and were assets which could be rendered amenable to enforcement of the Cooke Judgment Debt (*PJSC Vseukrainskyi Aksionernyi Bank v Maksimov* [2013] EWHC 422 (Comm), [7]). I will use the shorthand "Mr Su's Assets" to embrace both of these elements.

36. In addition to that issue, the same key questions which arose in relation to Madam Su in the 2019 Proceedings (as summarised by Bryan J at [2] of the 2021 Judgment) arise in relation to Ms Tseng here:

    i) Did Ms Tseng know that Mr Su was subject to the Blair Freezing Order (for the purposes of the tort of conspiracy) or owed the Judgment Debt (for the purpose of the *Marex* tort)?

    ii) Did Ms Tseng, Mr Su, Madam Su and the corporate Defendants (and possibly

others) combine to dissipate the Aeroplane Sale Proceeds in breach of the Blair Freezing Order?

iii) Did Ms Tseng, Mr Su, Madam Su and the corporate Defendants (and possibly others) combine to dissipate the Monaco Sale Proceeds in breach of the Blair Freezing Order?

Were the Sale Proceeds Mr Su's Assets?

37. In the 2019 Proceedings, Mr Su's ultimate ownership of the Aeroplane and the Villas does not appear to have been in dispute and indeed it was Madam Su's case that she had told Mr Su he should sell the Aeroplane to reduce his debts (2021 Judgment, [188]), that she hoped Mr Su would use part of the Monaco Sale Proceeds to repay loans he owed (2021 Judgment, [194]) and that Mr Su had purchased the Villas and the sale proceeds were remitted to companies controlled by Mr Su (2021 Judgment, [206]).

38. The position taken by Madam Su is itself revealing, both because she is likely to have been knowledgeable about the ownership of the assets, and because it would have suited her interests to assert that the assets did not belong to Mr Su.

39. Further:

i) Mr Su himself gave evidence at his 2014 trial that he owned the Aeroplane, before seeking to correct the position (transcript of 27 October 2014).

ii) Documents identify Mr Su as the sole shareholder of Bonidea, the company which owned the legal title to the Aeroplane.

iii) Mr Su's economic ownership of an interest in the Monaco Villas is evidenced by documents showing him as the owner of Portview Holdings Limited (which owned shares in Cresta Overseas, the company with legal title to the Villas).

iv) Mr Su asserted such an interest when seeking to refinance a loan taken out in connection with the acquisition of the Monaco Villas.

v) A schedule was found when a search order was granted by Mr Justice Andrew Baker against Mr Su showing the planned distribution of the Monaco Sale Proceeds by Mr Su.

40. At the very least, therefore, both assets were amenable to execution against Mr Su, and fell within the scope of the Blair Freezing Order (which defined assets as including "any assets which they have the power, directly or indirectly, to dispose of or deal with as if it was their own" and where "a third party holds or controls the asset in accordance with their direct or indirect instructions").

Did Ms Tseng know that Mr Su was subject to the Blair Freezing Order (for the purposes of the tort of conspiracy) or owed the Judgment Debt (for the purpose of the Marex tort)?

41. It is clear that Mr Su knew of the Blair Freezing Order and the Cooke Judgment Debt

prior to the payment of the Aeroplane Sale Proceeds and Monaco Sale Proceeds to UP Shipping on 4 May 2015 and 1 March 2017 respectively.

42. What of Madam Su? Bryan J held that she also had that knowledge on the basis of the following facts:

    i) Her close involvement in Mr Su's business, as was apparent from paragraphs 17 and 56(e) of her third witness statement, against a background in which the Blair Freezing Order and the Cooke Judgment Debt were of sufficient concern for Mr Su from a business perspective to merit a press release.

    ii) Mr Su's evidence that Madam Su controlled the family treasury and Madam Su's evidence that she controlled the bank accounts for several of the family companies, and this state of affairs being consistent with an email from Mr Wayne Chin of TMT to Mr Su of 2 May 2015.

    iii) The fact that, as stated in a contemporary document, Madam Su had advanced more than US$44m to Mr Su and the family business including TMT between 30 April 2012 and 30 August 2013.

    iv) Numerous references in contemporaneous documents to Madam Su's involvement in the family businesses and contemporaneous documents showing her being kept appraised of litigation in which the family businesses became involved.

    v) Her involvement, as admitted in her third witness statement, in banking transactions carried out via DNB, from which part payments of Mr Su's liability to Lakatamia were made (DNB having been put on notice of the Blair Freezing Order).

    vi) Her ownership and control of a company called Great Vision as established (i) by various statements by individuals and solicitors in "Know Your Client" and "Anti-Money Laundering" statements, (ii) the fact that a £270,000 payment by Great Vision was treated in a document (**"the Loan Fax"**) as having been advanced on behalf of Madam Su and (iii) the admission by Madam Su that she injected substantial amounts of cash into Great Vision. The sole shareholder of Great Vision, Mr Chang, who held the shares as nominee, knew of the Blair Freezing Order and the Cooke Judgment Debt (as confirmed in an affidavit he swore and letter he wrote for the purposes of an appeal against the Cooke Judgment).

    vii) Her close involvement in Mr Su's affairs through the provision of an unlimited credit card, which the Loan Fax showed had begun in April 2013, which it was to be inferred was intended to circumvent the Blair Freezing Order.

    viii) Madam Su's evidence that it was "possible" that she had been told about the Blair Freezing Order and the Cooke Judgment Debt.

43. Having regard solely to (i) the evidence which Bryan J records as having been given; and (ii) the contemporary documents as set out in the 2021 Judgment, I have drawn the same conclusion as Bryan J.

44. I therefore turn to consider the knowledge of Ms Tseng against a background in which both Mr Su and Madam Su knew of the Blair Freezing Order and the Cooke Judgment Debt before the Aeroplane Sale Proceeds were paid to UP Shipping.

45. First, there is evidence showing significant funds being provided through Ms Tseng to UP Shipping from at least 2010 to 2017 (as is apparent from those bank statements produced in the 2019 Proceedings). Those funds were paid to various companies in the TMT group (2021 Judgment, [201]). Between 10 November 2015 and 8 February 2017, Ms Tseng made 35 separate payments totalling US$1,868,197 to UP Shipping and this was the principal funding of UP Shipping (2021 Judgment, [715]). This is significant for the following reasons:

    i) It shows a close and long-standing involvement of Ms Tseng in the affairs of the Su family.

    ii) I am satisfied that these amounts are likely to have belonged beneficially to Madam Su, not Ms Tseng: the evidence (including Ms Tseng's own business card, and admissions made by Madam Su in the 2019 Proceedings) show that Ms Tseng works as a land administration agent for two firms, Da Dao Land Solicitor Office and Gongming Law Firm, both of which share the Zhongshan Address. Given that, it is improbable that she had significant sources of independent wealth such that she would have advanced significant funds to the Su family businesses on an undocumented and unsecured basis.

    iii) As a result, the payments demonstrate Ms Tseng holding or administering assets for Madam Su and a significant degree of trust on Madam Su's part in Ms Tseng.

46. Second, affidavit evidence filed in proceedings commenced by Cathay United Bank, in the United States District Court for the Southern District of Texas (Houston Division) in February 2013, from Ms Melanie Ho, a Taiwanese lawyer. Ms Ho states that on 7 December 2012 a real estate company linked with the Su family, New Flagship Investment Co, transferred land worth US$2.7m to a trust administered by Ms Tseng:

    i) I have seen a facility agreement dated 27 June 2011 for a substantial loan from Cathay United Bank as lead arranger to New Flagship, which agreement described New Flagship as owned by "Mr Su and his family members".

    ii) The fact of such transfer is confirmed by a Taiwanese court document referring to an application to cancel the ownership transfer registration, to which New Flagship and Ms Tseng were parties, and which records that 6,314 metres squared was transferred.

    iii) The transfer of real estate to a land agent again suggests an unusual relationship between Ms Tseng and the Su family companies, and is wholly consistent with Ms Tseng holding the land transferred for the benefit of the Su family.

47. Third, on 4 May 2015, the Aeroplane Sale Proceeds were paid into a bank account of UP Shipping (as confirmed by a bank statement produced in the 2019 Proceedings) and the following day, US$251,050 was paid to an account in Ms Tseng's name. Beyond a

suggestion that Ms Tseng had made a significant advance to Mr Su of which this was part payment (which seems unlikely for the reasons set out at [45] above), the only other explanation for the payment is that the funds were received by Ms Tseng to hold for the Su family. Another significant amount (US$440,045) was paid by UP Shipping to a BVI company called Sparkle Wood Limited (**"Sparkle Wood"**), also on 5 May 2015, and on the same date US$95,050 was paid to Terraceview.

48. Further:

i) On 28 May 2015, Mr Su sent an email to Ms Lesley Huang of his company in which he wrote: "Send mdm su I need 800k back from airplane money's [sic]". Significantly, this email treated Madam Su as the person who needed to send the US$800,000 "back", on which basis the payments made (to Ms Tseng, Sparkle Wood and Terraceview) were regarded as having been made by Mr Su to Madam Su, but in circumstances whereby he still felt able to ask for the money back.

ii) The Court of Appeal had required Mr Su to pay money into court as a condition of appealing the Cooke Judgment Debt, and the deadline for providing that money expired on 29 May 2015. In these circumstances, the inference can properly be drawn that Mr Su was seeking to get the Aeroplane Sale Proceeds "back" to pursue the appeal.

iii) On the same day, Ms Huang wrote to Mr Su on behalf of Madam Su stating:

"Below messages refered [sic] to Mdn [sic] Su this morning.

Here is outcome!

Ms Tseng will lend you USD 800K but

The premises are that

A. Purely, this is private financing between 'Nobu san' and 'Ms Tseng…'

B. After receiving July repayment from Wisco in early of July 2015, Nobu san must immediately repay back plus interest to Ms Tseng…

C. Nobu San, please confirm your acceptance immediately so that Ms. Tseng … can arrange payment."

iv) The suggestion that Ms Tseng would provide a loan of US$800,000 from her own resources to Mr Su is improbable for the reasons I have given, as is the suggestion that she would immediately relend an amount so recently paid. It is much more likely that this was another example of Ms Tseng acting as a trusted conduit for the movement of funds controlled by Madam Su for the benefit of Mr Su.

v) On 28 May 2015, the day Mr Su asked Madam Su for the US$800,000 Aeroplane Sale Proceeds back, Ms Tseng arranged for US$800,000 to be transferred to Terraceview. That would suggest that Ms Tseng had access to the US$800,000 which had been distributed to her own account, Sparkle Wood and Terraceview

(into which a total of US$786,000 was transferred from UP Shipping on 4 May), or further accounts into which payments had been transferred from those accounts.

49. Fourth, the 2021 Judgment suggests that Ms Tseng was a director of Sparkle Wood (2021 Judgment, [307], [312] and [325]). Even if that is not the case, Madam Su's evidence was that Sparkle Wood was Ms Tseng's company:

i) As to this, a document obtained from a search order executed against Mr Su showed what payments were to be paid from the Monaco Sale Proceeds once received. The planned payments included payment of US$1.1m to Madam Su.

ii) Once the Monaco Sale Proceeds were paid to UP Shipping on 3 March 2017, US$1.1 million was paid from UP Shipping's account to Sparkle Wood (as shown by a bank statement).

iii) This establishes to my satisfaction that Sparkle Wood is Madam Su's company. However it is significant that Madam Su sought to present Ms Tseng as the owner of Sparkle Wood. Madam Su also suggested that the US$1.1 million was being paid to Ms Tseng and that Ms Tseng had discussed this with her. I think it unlikely that Madam Su would have held Sparkle Wood in a manner which could be directly traced to her, or have linked Sparkle Wood to Ms Tseng without some basis for doing so. Having regard to all of the evidence, I think it likely that Ms Tseng had a role in relation to the administration of Sparkle Wood on Madam Su's behalf, and that Madam Su's false claims that the company was Ms Tseng's was a reference to that state of affairs.

50. Fifth, when difficulties were experienced in transferring funds from Madam Su to Mr Su's lawyers in 2019, W Legal expressing concerns about the source of the funds, Mr Su replied "please return money and remit again by my mother friend", which I am satisfied is likely to have been a reference to Ms Tseng and reflects the role Ms Tseng performed generally of dealing with assets controlled by Madam Su where Madam Su wished to distance herself from those assets.

51. Sixth, there was evidence that Ms Tseng was a source through whom funds were transferred to meet Madam Su's legal expenses in the 2019 Proceedings from March 2020 (as confirmed in a letter from Baker McKenzie of 15 January 2021), including three remittances on a single day and a total of US$1m by 15 January 2021. Once again, it seems likely that these funds belonged to Madam Su, but were routed through Ms Tseng against a background of the freezing order made against Madam Su. It is also noteworthy that Madam Su's lawyers identified Da Dao Land at the CMC as a company which assisted Madam Su in "succession planning".

52. Finally, during the trial documents were produced by Madam Su which were said to have been provided by Ms Tseng, after Baker McKenzie Taipei phoned Ms Tseng during the trial. They included a money transfer to Terraceview of US$286,000 on 21 November 2014, US$542,000 on 29 December 2014 and US$800,000 on 28 May 2015. Ms Tseng's willingness to provide these documents at Madam Su's request provides some (limited) further support for Lakatamia's case that Ms Tseng had a general and

continuing role in relation to the management and disposition of assets controlled by the Su family.

53. Standing back, I am satisfied of the following matters:

i) For the period from at least 2010 to at least 2021, Ms Tseng has acted as a conduit through which funds which belong to members of the Su family (including Mr Su and Madam Su) are applied in accordance with their wishes.

ii) That role has involved Ms Tseng being identified as the apparent owner of those funds.

iii) In that role, Ms Tseng was involved in the transfer of the Aeroplane Sale Proceeds.

iv) Ms Tseng can only have performed a role which placed assets of significant value in her apparent control, over such a long period, because she was a trusted confidant and factotum of the Su family, and of Mr Su and Madam Su.

v) It must, at the very least, have been obvious to Ms Tseng that Mr Su and Madam Su's assets were being dealt with a manner which sought to hide their ownership and control of those assets, and that at least one reason for this was to obstruct any attempt by creditors to enforce against those assets.

vi) The significant payments made to UP Shipping from 2010 coincided with a period of severe financial difficulty for the TMT business (see the 2021 Judgment, [10]-[12]), the heavy litigation costs of the Cooke trial, and the adverse judgment. Ms Tseng is likely to have been told of these matters when asked to effect the cash transfers.

vii) In any event, this is one of the obvious purposes of seeking to hide the true ownership of assets, albeit I accept that attempts to evade lawful tax are another.

54. Were matters to stop here, the issue would arise as to whether that was sufficient knowledge for the purposes of the claims brought by Lakatamia. In particular, would participation in a general scheme operated for the purposes of disguising the ownership of assets with a view to impeding creditor enforcement generally be sufficient to allow one creditor damaged by the scheme to bring claims of the kind advanced here? In the context of dishonest assistance, it is well-established that the dishonest assister need not know all of the details of the trust or the identity of the beneficiary, provided that they know that the asset is not at the free disposal of the principal, and that it might be sufficient for them to know that they are assisting in a dishonest scheme (*Twinsectra v Yardley* [2002] 2 AC 164, [135]-[137]). I was referred by Lakatamia to *CMOC* [125]-[126]:

> "In this case, it is said that with those defendants who participated with knowledge that the monies were the proceeds of a fraud, but where the evidence does not establish that they knew of the fraud, it is in the very nature of things that they knew of the existence of a victim of fraud and that their gain from the fraud

> would be the injury of the victim. It is said that there is no principled reason why the precise identity of the victim should be part of the legal test, particularly in the age of cyber-fraud where conspirators can readily conspire together to conceal and then move the money of the victim on without any of the traditional engagements seen in more traditional forms of fraud.
>
> I agree. Suppose that the residual three defendants in this last class knew that they were handling and assisting in the moving of illicit proceeds in a scheme to defraud a company by using false orders enabled by the hacking of its email accounts. Suppose they further agreed to do all of this knowing that their gain is the company's loss. I do not believe that they could avoid liability by saying they did not know the actual identity of the company defrauded or the precise methodology of the conspiracy. It is surely sufficient that they knew that there was a victim and that monies would be procured illicitly from that victim and that they had agreed to play their part."

55. The law on this issue has recently been comprehensively reviewed by Calver J in *ED&F Man Capital Markets Limited v Come Harvest Holdings Limited* [2022] EWHC 229 (Comm), [490]-[528]. He rejected the argument that "a specific intention to target" the claimant was required ([500]), and expressed his agreement with the decision in *CMOC* ([515]-[516]). Calver J also referred to an obiter passage in *Group Seven Limited v Nasir* [2017] EWHC 2466 (Ch), [523], in which Morgan J observed that one defendant would probably have been liable for unlawful means conspiracy even if he had not known the identity of the true owner of the money, noting "Mr Louanjli knew that there was a strong case that Mr Nobre was laundering money which he had obtained dishonestly. It is obvious that such conduct was intended to harm the true owner of the money. Although, in such a case, it was probably not necessary for Mr Louanjli to know who the true owner was, in fact he did know that the money had come from Group Seven to AIC and from it to Larn."

56. I can see ample scope for the argument that knowing participation in a scheme unlawfully to obstruct enforcement by creditors generally should be sufficient knowledge for liability for the tort of unlawful means conspiracy at the suit of a creditor who suffers loss as a result of that scheme, or a judgment creditor who brings claims in relation to the *Marex* tort. The position in relation to claims based on knowing breach of the Blair Freezing Order is more challenging – this involves conduct which might well be thought to be of a different character to obstructing creditor enforcement generally, not least because of the criminal consequences of assisting the breach of an injunction.

57. Fortunately, I do not need to reach a final decision on the issues referred to in the preceding paragraph without the benefit of contrary argument, because of the following facts:

    i) As I have stated, Ms Tseng was involved in funding UP Shipping, and through it various TMT companies, during the period when the defence of Lakatamia's claims would have been consuming significant resources, against the background of the Blair Freezing Order. It is likely, in my assessment, that she would have been told about the litigation, the need to fund it and the complexities which the

Blair Freezing Order presented for such funding.

ii) The request to return the Aeroplane Sale Proceeds was made urgently against the background of the security deadline in the English proceedings, and it is likely that Ms Tseng was made aware of that urgency, the reasons for it and the significant features of the litigation which would have included the Blair Freezing Order. It is the existence of that order which would have explained the importance of preserving the appearance that the Aeroplane Sale Proceeds were not Mr Su's assets but a loan from Ms Tseng.

iii) The treatment of the Monaco Sale Proceeds followed an unsuccessful attempt by Lakatamia to intervene in Monaco court proceedings relating to the sale of the Villas on 20 October 2015. A director of Cresta Overseas, Mr James Garrett – who had been notified of the Blair Freezing Order by letter dated 29 April 2016 – had resigned on 21 February 2017, four days before Maître Zabaldano transferred the Monaco Sale Proceeds to UP Shipping. Madam Su was promptly notified of the transfer and gave Mr Su instructions as to how to proceed. In those circumstances, it is likely that all involved in the distribution of the Monaco Sale Proceeds were made aware of Lakatamia's interest, the Blair Freezing Order and the need for caution and speed.

iv) Those probabilities are reinforced by the close and long-standing role Ms Tseng had performed for the Su family, including for Mr Su and Madam Su, both of whom had the relevant knowledge. There was no reason to keep her in the dark.

58. It follows that I am persuaded that this part of Lakatamia's case is made out on the evidence: at all material times Ms Tseng was aware of the Blair Freezing Order and the Cooke Judgment Debt.

The Aeroplane Sale Proceeds

59. It follows from my findings at [47]-[55] above that Ms Tseng combined with Madam Su, Mr Su, UP Shipping and possibly others to conceal the Aeroplane Sale Proceeds in order to prevent Lakatamia executing its judgment against them, and did so in breach of the Blair Freezing Order:

i) She received payments from the Aeroplane Sale Proceeds on 5 May 2015, both personally and into companies (Sparkle Wood and Terraceview) which she had a role in managing on Madam Su's behalf.

ii) In so acting, she must have known that the amounts formed part of the Aeroplane Sale Proceeds and that the payments were being routed through UP Shipping and onwards to keep them free from execution and in breach of the Blair Freezing Order, and thereby injure Lakatamia.

iii) Her role was to hold those assets for the purpose of making it difficult for creditors generally, and Lakatamia in particular, to enforce against them, and to effect transfers when requested to do so.

60. My attention was drawn to the fact that Ms Tseng might have said, were she represented at this trial, that Lakatamia's claims against her in connection with the Aeroplane Sale Proceeds are time-barred given that the Aeroplane Sale Proceeds were transferred to UP Shipping and hence to Madam Su's control on 4 May 2015. That date is more than six years prior to the date on which the claim form was issued against Ms Tseng (8 February 2022). However, I accept that this provides no answer to Lakatamia's claim:

    i) A limitation defence must be specifically pleaded. The Court cannot raise limitation of its own motion: Andrew McGee, *Limitation Periods*, 9th ed (London, Sweet & Maxwell, 2022), para 21.001.

    ii) The scheme with which I have found Ms Tseng was involved was the concealment of Mr Su's assets from his creditors, and specifically Lakatamia. The conduct which gives rise to the claims against Ms Tseng also amounts to deliberate concealment for the purpose of s.32(1)(b) of the Limitation Act 1980. I am satisfied that this conduct was not discoverable by due diligence more than 6 years before 8 February 2022. Lakatamia has devoted considerable legal and investigate resources to locating Mr Su's assets. I accept that Lakatamia had no knowledge of Ms Tseng's existence until 27 March 2019, which is when Madam Su served her first witness statement in the 2019 Proceedings.

61. On this basis, I am satisfied that Ms Tseng caused loss to Lakatamia in the amount of the Aeroplane Sale Proceeds, which but for the combination to which she was a party, would have been available for execution by Lakatamia (who were "on to" the existence of the Aeroplane), and that Ms Tseng is liable for such loss both in the tort of unlawful means conspiracy and in the *Marex* tort.

Lakatamia's claims in respect of the Monaco Sale Proceeds

62. The evidence of direct involvement by Ms Tseng in the concealment of the Monaco Sale Proceeds is less strong than for the Aeroplane Sale Proceeds. I have had to consider carefully whether it is sufficient to establish Lakatamia's case on the balance of probability, and the issue is not straightforward.

63. I have ultimately concluded that the evidence does establish on the balance of probabilities that Ms Tseng combined with Madam Su, Mr Su, UP Shipping and possibly others to conceal the Monaco Sale Proceeds from Lakatamia in breach of the Blair Freezing Order:

    i) Sparkle Wood, which I am satisfied that Ms Tseng played a role in administering (see [49(iii)] and [59(i)]), received some of the Monaco Sale Proceeds, which were received by way of a plan by Mr Su to pay US$1.1m to Madam Su.

    ii) I am also satisfied that Ms Tseng performed a general role of holding and managing assets on the part of the Su family, this arrangement having been put in place for the purpose of making it difficult for creditors generally to enforce against those assets ([47]-[55]).

    iii) In this context, I am entitled to and do rely on my findings as to Ms Tseng's role

in relation to the Aeroplane Sale Proceeds, both in receiving funds, and being the means by which Mr Su's request to have US$800,000 transferred back was accomplished.

iv) In circumstances in which (a) Sparkle Wood is involved in receiving both the Aeroplane Sale Proceeds and the Monaco Sale Proceeds and (b) both sets of proceedings involved the distribution of assets amenable to execution against Mr Su in an opaque manner, against a background of knowledge of the Blair Freezing Order and the Cooke Judgment Debt, I am satisfied that it is more likely than not that Ms Tseng was involved and played a similar role on both occasions.

64. I am, therefore, satisfied that Ms Tseng caused loss to Lakatamia in the amount of the Monaco Sale Proceeds, which but for the combination to which she was a party, would otherwise have been available for execution by Lakatamia (who were actively seeking to enforce against the Monaco Sale Proceeds), and that Ms Tseng is liable for such loss both in the tort of unlawful means conspiracy and in the *Marex* tort.

65. Lakatamia seeks compensatory damages in the amount of the sum taken out of Monaco (€27,127,855.01), the same figure for which it obtained judgment in the 2021 Judgment: [948]. Madam Su did not seek to challenge the latter figure on the basis that Mr Su was not the sole owner of the Villas, a fact which is itself highly significant because Madam Su would have been well-placed to know if persons other than Mr Su were interested in the Villas.

66. Nonetheless, Lakatamia have raised and addressed that possibility, because Mr Su had previously given evidence that the Villas were acquired with "family money", or statements to similar effect suggesting that they were acquired with Madam Su's money, and that he only had an 8.33% share.

67. I am unable to place weight on uncorroborated statements by Mr Su to the extent that they seek to reduce the extent of his interest in the Villas. He has every incentive to downplay the size of that interest, and he has repeatedly been found (to the criminal standard) to have lied when giving accounts of his assets. As I have stated, it is highly significant that Madam Su made no such suggestion, in a case in which every conceivable point open to her to reduce her liability appears to have been taken. Further:

i) An email dated 20 October 2014 from Giaccardi Avocats in Monaco, which Cresta Overseas had instructed in connection with the Villas, treats Mr Su as the sole owner.

ii) The corporate structure used to hold legal title to the Villas does not involve any family member other than Mr Su.

iii) Financiers involved in Mr Su's attempt to refinance the loans that had been made in respect of the Villas had clearly been led to understand that Mr Su (and only Mr Su) owned the Villas.

CONCLUSION ON THE CLAIMS AGAINST MS TSENG

68. It follows that I am persuaded that Lakatamia is entitled to judgment against Ms Tseng for damages:

    i) in the amount of US$857,329.73 in respect of the Aeroplane Sale Proceeds; and

    ii) €27,127,855.01 in respect of the Monaco Sale Proceeds.

69. I am also satisfied that Lakatamia is entitled to interest on those amounts. I have been provided with interest calculations at LIBOR one month US dollar plus 2.5%. I am satisfied that this does not exceed the appropriate rate to use. Interest is sought from the day after the Aeroplane Sale Proceeds were paid into UP Shipping's account and from the date on which the Monaco Sale Proceeds were ordered to be paid to UP Shipping. Once again I am satisfied that these are appropriate dates to use.

70. Accordingly I hold Ms Tseng is liable to pay interest to Lakatamia in the amount of US$8,296,393.94 to 16 November 2023.

THE CLAIM AGAINST MS MORIMOTO

Service on Ms Morimoto

71. Lakatamia states that Ms Morimoto was served with the proceedings on 13 October 2022 in Japan via the Foreign Process Section in accordance with the Hague Service Convention. The postal delivery report appended to the certificate of service states that an employee of the Shibuya Post Office in Japan "handed over the documents to the recipient". However, Ms Morimoto has failed to give an address in England at which she could be served pursuant to CPR 6.23(3).

72. Furthermore, according to evidence from Mr Jack Redrup of Lakatamia's solicitors, Lakatamia has sent all other relevant documents to Ms Morimoto at her address in Japan as specified in the Butcher Service Out Order. Mr Redrup explains that nearly all deliveries have been returned, with some notifications supplied upon return stating that Ms Morimoto or another person acting on her instructions has refused to accept the deliveries.

73. Nonetheless, I am satisfied that Lakatamia has properly served Ms Morimoto, and has also taken all reasonable steps to notify Ms Morimoto of the proceedings. I am satisfied that Ms Morimoto does in fact have notice of the current proceedings and has had an adequate time to respond if she so chose.

Default judgment

74. Following CPR 10.2, if Ms Morimoto failed to file an acknowledgement of service, defence, or admission within the relevant period after service of the particulars of claim, Lakatamia may obtain default judgment in accordance with CPR Part 12. To date, Ms Morimoto has not engaged with the proceedings and has not filed an acknowledgement of service or any other document.

75. The Claim Form and the Particulars of Claim do not quantify the claim, with the result

that it falls to me to assess the amount of loss when entering judgment in default. The claims comprise:

i) The *Marex* tort and unlawful means conspiracy in relation to the transfer of the proceeds of sale of a Tokyo property.

ii) Conspiracy to injure Lakatamia by unlawful means "in connection with Madam Su's defence" of the 2019 Proceedings, being "a combination to resist the claims that Lakatamia had brought against Madam Su … by improper and unlawful means" (described as **"the Litigation Conspiracy"**). The pleaded unlawful means comprise the production of forged documents which were deployed in the case – Loan Notes said to evidence loans by Ms Tseng to Madam Su.

76. Under CPR 12.12(1), Lakatamia is entitled to "such judgment as the claimant is entitled to on the statement of case". That will not ordinarily involve any review of the merits by the court when asked to enter default judgment. However, it is clear that the court is not always required to accept the asserted characterisation of the pleaded case: see for example *Sloutsker v Romnova* [2015] EWHC 2053 (QB), [84]-[86] and *Charakida v Jackson* [2919] EWHC 858 (QB). It is also clear that the court retains a general discretion as to the relief to be granted where the remedy sought is other than for money: *Lux Locations Ltd v Yida Zhang* [2023] UKPC 3, [56]. However, there are a number of first instance authorities which suggest that it is not part of the court's function to consider the viability of the claim asserted as a matter of law: *Football Dataco Ltd v Smoot Enterprises Ltd* [2011] EWHC 973 (Ch), [16]-[19] and *Otkritie International Investment Ltd v Jemal* [2012] EWHC 3739 (Comm).

77. There is no difficulty in quantifying the amount of damages recoverable so far as they concern the Tokyo sale proceeds - ¥JPY 240 million being the amount of the sale proceeds of a Tokyo property sold by Madam Su during the brief period when no freezing order against her was in place, which Madam Su is alleged to have transferred to Ms Morimoto. I will enter default judgment in this amount. At Lakatamia's request, the default judgment will only take effect if Ms Morimoto does not apply to set it aside within 23 days of service (a step taken in order to make the judgment enforceable in Japan).

78. I will also award interest on this amount from 23 August 2019 at 1.9% compounded on three-monthly rests (being 2% above the Japanese short-term policy interest rate). This produced total interest of JPY 19,982,291 to 9 November 2023, continuing at the rate of JPY 13,533.32 per day.

79. By contrast, I have real doubts as to whether English law recognises a tort of unlawful means conspiracy dishonestly to defend a claim through the production of forged documents in those proceedings. The extension of the tort of malicious prosecution to the initiation of civil proceedings is not without controversy (see the differing views in *Willers v Joyce* [2016] UKSC 43), and there is no tort of maliciously defending proceedings. Even if it is possible to overcome those difficulties through the tort of unlawful means conspiracy, further issues would arise as to whether the deployment of forged evidence at trial can provide the basis for a private law cause of action, or is a matter to be dealt with under the court's jurisdiction (through strike-out or committal) or

under the criminal law (cf. *Marrinan v Vibart* [1963] 1 QB 234).

80. In any event:

i) The Particulars of Claim only seek damages for "additional legal costs" incurred by reason of the Litigation Conspiracy.

ii) No attempt has been made to quantify the additional costs – I have simply been given an overall fee of US$2.4m representing the total costs of the 2019 Proceedings without a breakdown. I would note that the unlawful means relied upon against Ms Morimoto concerned Loan Slips which were only produced on 15 January 2021 – two years after the proceedings were commenced.

iii) In addition, as I have explained, the form of default judgment which Lakatamia seeks requires me to exercise a discretion in its favour.

81. In those circumstances, I am not willing to enter a default judgment in respect of the Litigation Conspiracy.

COSTS

82. I have been provided with Lakatamia's schedule of costs for the claims against both Ms Tseng and Ms Morimoto. I have been invited to divide the costs on a 50%-50% basis as between the two defendants. However, I have concluded that the division should be 65% as to Ms Tseng and 35% as to Ms Morimoto, to reflect both the fact that a judgment on the merits was sought and obtained against Ms Tseng, and the broader scope of the claims against Ms Tseng.

83. The total of the schedule of costs is £648,742. The hourly rates claimed are well within the Guideline rates, although the case has involved a significant number of fee earners with the risk of duplication. Some small reduction is necessary to allow for the fact that the hearing was shorter than the one day anticipated. However, the level of counsel fees is high for proceedings which have been undefended throughout, and in which the prior involvement in the 2019 Proceedings would have given the legal team a considerable head start both in pleading the case and preparing for the hearing. Counsel fees comprise 68% of the total, with claims for three counsel, including a silk and a senior junior (with a silk and junior junior at trial). Even allowing for the freezing order applications, I am satisfied that a significant reduction is required for the purpose of summary assessment.

84. I will summarily assess the costs as follows:

i) Solicitors' costs: £150,000.

ii) Counsel fees: £200,000.

iii) Other disbursements allowed in full: £36,383.16.

iv) Total: £386,383.16.

85. Ms Tseng is therefore ordered to pay costs in the sum of £251,149 and Ms Morimoto to pay costs in the sum of £135,234.