Case No: HQ13X03903 & HQ13X03907

IN THE HIGH COURT OF JUSTICE
SENIOR COURTS COSTS OFFICE

Thomas More Building
Royal Courts of Justice
Strand, London WC2A 2LL

Date: 13/05/2020

Before :

MASTER LEONARD

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Between :

(1) Hassan Khan & Co	**Claimants**
(2) The Khan Partnership LLP	
- and -	
(1) Iman Said Abdul Al-Rawas	**Defendant**
(2) Thamer Al-Shanfari	

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Dan Stacey (instructed by **The Khan Partnership LLP**) for the **Claimants**
Lawrence Power (Public Access counsel) for the **Defendants**

Hearing dates: 2 December 2019

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Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 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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MASTER LEONARD

Master Leonard:

1. On 21 May 2019 the Claimants served on the Defendants a bill of costs totalling £305,275.64, representing the amount sought by the Claimants from the Defendants under paragraph 5 of an order of Morris J made on 6 December 2018.

2. The same order of 6 December 2018 provided at paragraph 2 that unless the Defendants made payment of sums payable under previous orders of the court, variously within 14 or 21 days, the Defendants would be "prohibited from contesting any of the extant proceedings until such time as payment including interest is made in full to the Claimants". Payment of those sums plus interest, amounting to £107,113, was not made until 28 November 2019.

3. That was two working days before I heard the Defendants' application of 14 June 2019 to set aside a default costs certificate obtained by the Claimants in respect of their May 2019 bill on 13 June 2019, and the Claimants' application of 25 September 2019 to strike out Points of Dispute that had been sent to the Claimants by the Defendants on 11 June 2019.

4. I took the view that whilst the Claimants were right to say that the prohibition at paragraph 2 of the order of Morris J extended to detailed assessment, on the proper application of CPR 47.9 the Claimants had not been entitled to a Default Costs Certificate, even given the Defendants' failure to pay. They should rather have applied for the Points of Dispute to be struck out and their costs assessed by default in the sum claimed. Such an application, in my view, would have been likely to succeed.

5. Had the Defendant not finally paid £107,113 just before the hearing of 2 December, the Claimants' September 2019 application to strike out the Points of Dispute would have been equally likely to succeed. Payment finally having been made, however belatedly, the Default Costs Certificate was set aside and the application to strike out the Points of Dispute dismissed.

6. On 2 December 2019 I also heard an application for an interim costs certificate, which I allowed at £75,000. The Claimants' application for a *Days Healthcare* order, which would prohibit the Defendants from being actively represented on the detailed assessment of the Claimant's bill, was adjourned for further evidence and submissions.

7. I set a timetable for evidence and submissions with a view to delivering a written decision to be handed down at a hearing at which outstanding matters such as the costs of the applications could be disposed of. The timetable was disrupted by an application by the Defendants, made on 6 January 2020, for an "unless" order requiring Ms Madeleine Binkley of the Claimant solicitors to supplement a witness statement dated 23 December 2019, served in accordance with my directions, to specify the sources of information referred to in her statement, failing which it be struck out.

8. I found that application to be so weak that I dismissed it without a hearing, but given that the Defendant had also sought an extension of time for responding until the alleged defects had been remedied, it was also necessary for me to amend the timetable so that submissions were due by 28 February 2020. The handing down

hearing was listed for 1 April, but that date was vacated following, it would appear, some of the Defendant's filed evidence having gone astray

Conduct Complaints

9. I should at this point address some submissions made in relation to the Defendants' application of 6 January. The Defendant's evidence, in response to that of Ms Binkley, was to be served by that date. A letter from counsel for the Defendant, Mr Power, complaining of the alleged defects in Ms Binkley's evidence, was emailed to the Claimants at 4:32 p.m. on 2 January 2020. The Claimant responded on 3 January confirming that the person with day to day conduct of the matter (as I understand it, Ms Binkley) was away from the office until 6 January, and that they would revert thereafter. A written response rejecting his contentions was emailed to Mr Power at 4:37 pm on 6 January. Mr Power characterises this as deliberate delay.

10. I do not regard the timing of the Claimant's letter of 6 January as open to criticism. Ms Binkley responded to Mr Power's letter on same the day that she returned. By any reasonable standard that is a prompt response. Mr Power complains that her email was sent after close of business, but even if that were a valid criticism (and in my view it is not) he did not wait until close of business to issue his application.

11. The characterisation of the alleged delay as "deliberate" is part of a pattern pervading both Mr Power's submissions and his client's witness evidence, in that they repeatedly accuse Ms Binkley of deliberately unreasonable conduct, in particular in the way in which her evidence is presented.

12. I do not accept that there is any validity in these criticisms. Ms Binkley's evidence seems to me to be fairly and properly presented. As for her alleged intentions, neither Mr Power nor his client could have any insight into the workings of Ms Binkley's mind.

The *Days Healthcare* Application

13. In *Days Healthcare UK Ltd v Pihsiang Machinery Manufacturing and others* [2006] EWHC 1444 (QB), Mr Justice Langley considered the conduct of Taiwan-based defendants who had been ordered to pay damages in excess of £10 million and costs, with £2 million on account of costs.

14. Nothing had been paid. Having regard to the history of attempts to enforce against the defendants' assets in Taiwan, Langley J concluded (paragraph 10):

> " I have no doubt at all that the defendants will not honour any orders which involve payment or of which they otherwise disapprove made by any court in this country and will pay nothing unless and until the legal machinery in a country where they have assets successfully executes an order against those assets. They have, in contrast, paid and no doubt will continue to pay the legal and other costs incurred on their own behalf in this country and in Taiwan in whatever proceedings seem to them to be of benefit to them or damaging to…"(the claimant).

15. His particular concern (paragraph 17) was with:

> "… the defendants' defiance of and yet wish to use the courts of this country."

16. Langley J found that the court had an inherent jurisdiction to control its own processes, and that the inherent powers of the court were expressly preserved by CPR 3.1(1). Furthermore, the power of the court to attach conditions to an order under rule 3.1(3)(a) was not limited to the attachment of a condition to a direction that the court was being asked to make. The wording of the rule was general.

17. So, whilst there had to be an assessment by reference to their Points of Dispute, if the defendants did not comply with the condition of paying the claimant the £2 million payment on account plus interest, they would be debarred from participating in that assessment. An order was made accordingly.

18. In this case the Claimants ask me to make a similar order to the effect that unless the Defendants pay £152,710, half the amount claimed in their bill of costs, the Defendants similarly be debarred from participating in the assessment (although their Points of Dispute will still be fully considered).

19. The application is made against this factual background. The Claimants had acted for both Defendants in substantial litigation and on 1 August 2013, brought proceedings against them for unpaid bills. On 14 March 2018, the Claimants obtained judgment against the first Defendant for £511,458.05 and against the second Defendant for £648,641.19.

20. The Defendants have not paid those judgment debts. The Claimants, seeking to enforce them, applied under CPR 71 to obtain information from the Defendants. Orders were made accordingly on 24 May 2018, requiring the Defendants to attend the court on 6 July 2018 to provide information about their means before Deputy Master Stevens. The orders were accompanied by details of the information the Defendants were to provide, including a very wide and comprehensive list of documents in their control.

21. The Defendants did not attend, and on 25 July 2018 Mrs Justice Cheema-Grubb made committal orders against both Defendants, suspended provided they attended a further hearing before Deputy Master Stevens listed for 31 July 2018. Again the Defendants did not attend, and Deputy Master Stevens referred the suspended committal orders to Cheema-Grubb J for consideration of the grant of a warrant of arrest. He also ordered the Defendants to make payments on account of costs totalling £60,000 by 4 pm on 14 August 2018.

22. On 3 September 2018, the Claimants received a letter from Mr Power confirming that he had been instructed by the Defendants under the Bar's Public Access Scheme. Mr Power confirmed that all correspondence should be addressed to him, but also stated that he and his chambers were not instructed to accept service. The result, for the time being, was that the Defendants (whose previous solicitors had come off the record) had UK legal representation notwithstanding that they had not provided an address for service within the EEA in accordance with CPR 6.23(1).

23. On 13 and 14 September 2018, Mrs Justice Cheema-Grubb ordered that the Defendants attend the court at 3:30 p.m. on 28 September 2018 to assess the

Claimants' costs and deal with payment arrangements. Yet again, the Defendants did not attend, although Mr Power did. Cheema-Grubb J made an order recording Mr Power's confirmation that the Defendants were in possession of all relevant material relating to the CPR 71 proceedings. As the Defendants took issue with the validity of service, Cheema-Grubb J set aside her orders of 13 and 14 September and ordered service of the CPR 71 orders and documentation by email, with a copy to Mr Power.

24. Cheema-Grubb J also ordered that the Defendants, in person, attend a one-day hearing, to be heard by 30 November 2018, for the purpose of providing the requisite information under CPR 71. The hearing was listed for one day in a window between 14 and 15 November 2018. On 13 November 2018 the Defendants notified the court that they would not be attending. In a witness statement the second Defendant attempted to justify this by saying that the court should not have relisted for the CPR 71 hearing an application, made on 1 November 2018, in which the Defendants sought to challenge the Claimants' capacity to bring a claim against them.

25. Mr Martin Griffiths QC, sitting as a Deputy High Court Judge, heard the matter on 14 November 2018. He dismissed the application of 1 November 2018, ordered that the Defendants' address for service would be that of Mr Power's Chambers, ordered the Defendants to attend court in person to provide the requisite information under CPR 71 at a hearing fixed for 4 and 5 December 2018 and ordered the Defendants to pay the Claimants' costs of the hearing of 14 November 2018, summarily assessed at £35,000. His order provided that on attending court they must produce documents about their means and any other matter about which information was needed to enforce the judgment against them, including the very comprehensive list provided for in the orders of 24 May 2018.

26. Mr Griffiths QC also made an order committing both Defendants to prison, suspended provided that they attended the hearing on 4 and 5 December. They attended. The CPR 71 examination took place before Morris J, and was followed by the order of 6 December 2018 to which I have referred.

27. The costs orders made by Deputy Master Stevens and Mr Griffiths QC were two of the three orders for payment referred to at paragraph 2 of that order. The third was an order of Deputy Master Sullivan of 1 March 2018. The total amount due was, at the time, £97,500.

The Claimants' Evidence

28. The evidence produced by Ms Binkley is criticised by both Mr Power and his clients for failing to state sources of information. In fact, most if not all of the key information referred to by her is adequately supported by exhibited documents and public records, and insofar as anything she says is unsupported by reference to specific sources it does not weaken her evidence to any material extent.

29. Her evidence is quite sufficient to establish a number of significant matters, many of which are not really in issue. The Defendants are husband and wife. They are both from wealthy and influential Omani families. The second Defendant has been a prominent businessman and international entrepreneur with diverse business and investment interests. He has also been one of the named subjects of a United Nations Security Council report entitled "Final report of the Panel of Experts on the Illegal

Exploitation of Natural Resources and other forms of Wealth of the Democratic Republic of the Congo", being named as part of an "elite network" of asset stripping State mining companies in that country.

30. The second Defendant does not deny that he has been a very wealthy man. What he says is that the position has changed, due to international sanctions brought against him, so that he and his wife cannot afford to pay the costs claimed by the Defendants.

31. Sanctions were brought against the second Defendant by the Office of Foreign Assets Control Department of the United State Treasury ("OFAC") on the ground that he supported the Mugabe regime in Zimbabwe, extending to financial support from his business holdings. He remained on the OFAC sanctions list between 24 July 2008 and 15 August 2016.

32. For the same reason, the second Defendant's assets were frozen under European Council Regulation (EC) No 77/2009, between 27 January 2009 and 25 February 2010. Annex III to the Regulation put the second Defendant third on a list, headed by Robert Mugabe, of "… natural or legal persons, entities and bodies referred to…"

33. As for whether the Defendants currently have the means to pay the sum of £152,710 suggested by the Claimants as a condition of continuing to participate actively in this assessment, the more detailed evidence referred to by both parties is considered below.

The Defendants' Evidence

34. The second Defendant gives evidence on behalf of both Defendants. He relies upon the evidence given by both Defendants in the CPR 71 examination. He complains (in remarkably legalistic terms for a lay witness) of a failure by Ms Binkley to state the sources of evidence, which he says is insufficient to establish as alleged that he is a "high net worth" individual, which he denies. He says that as a result of the sanctions imposed upon him, he does not control any bank account, has no safe deposit boxes, shares or investments and that no assets are held in trust for his benefit.

35. The second Defendant emphasises that his business relationship with the Claimants ended in 2009. He says that their evidence is 11 years out of date. Before 2008, he was very wealthy but as a result of the sanctions, he had to divest himself of and/or resign from many companies. The sanctions prevented him from being a director of any company and from having a bank account or a credit card. Even after the sanctions were lifted, no bank would give him a loan, let him open an account or offer any facilities. He has no direct or indirect control over accounts, no safe deposit boxes, no shares or investments, and no assets held in trust for his benefit. He enjoys limited support from his family, but his family's and his wife's family's interests are he says quite separate from their own.

36. As for income, the second Defendant says that although his gross income, from working as a consultant and adviser, comes to about US $200,000 and is untaxed, after costs it is less than half of that, and is barely sufficient to cover the cost of his children's education, his living costs, etc. As he does not have capital, he sometimes has to borrow money from his family. The evidence produced by the Claimants, says

the second Defendant, is much too partial, incomplete and out of date to disprove what he is saying.

Concerns about the Second Defendant's Evidence

37. The first concern about the evidence offered by and on behalf of both Defendants as to their means to pay the Claimants is that it is so limited. They do not say what they can afford to pay, leaving the court, as Mr Stacey for the Claimants rightly says, to infer that they cannot afford to pay anything. They focus rather on attacking the evidence of the Claimants. Their case is that it is for the Claimants to show that they can pay, rather than for the Defendants to show that they cannot.

38. At the hearing of 2 December 2019 I said, I believe, that if the Claimants wished to persuade me that the Defendants could, but would not pay sums ordered, then it was incumbent upon them to produce evidence to that effect and that what I had before me at the time was, as I believe I put it, rather thin.

39. The evidence the Claimants have produced since is however quite sufficient to leave the Defendants with the burden of producing some sort of clear evidence to demonstrate that they cannot pay sums they have been ordered to pay. They have not produced such evidence, and the evidence they have produced appears to me to be substantially incomplete, questionable and at least in some respects untrue. I say that for these reasons.

40. I can attach no material evidential weight to the accusations made by the UN Security Council's Panel of Experts. I do however have to take note of the findings of Mr Recorder Mitchell in the Central London County Court 29 June 2007, to the effect that the Second Defendant had conducted his affairs with a lack of clarity.

41. More to the immediate point, the evidence given on behalf of the Defendants in the CPR 71 proceedings, upon which they now rely before me, was promptly followed by Morris J's order of 6 December 2018, which went beyond the scope of a *Day's Healthcare* order to provide that if they did not pay £97,000 they would be prohibited from contesting these proceedings at all. That is scarcely consistent with convincing evidence of inability to pay.

42. I can understand, given the overall weight and content of the evidence before me, why that order was made. In the CPR 71 proceedings the Defendants were ordered to attend court and to provide information and a very comprehensive set of documentary evidence as to their means. Whatever the position might be as to effective service of the court's orders made between July and September 2018, it is evident that they withheld cooperation with that process to the extent that the court was obliged to make committal orders and also to make repeated orders to provide for effective service.

43. When the Defendants finally did attend, under compulsion of suspended committal orders, they produced partial documentation, in my view plainly falling short of what they were required to do by the court's orders. I have seen Mr Power's attempts, in correspondence, to justify this partial disclosure, which I do not find persuasive. Here are some examples.

44. The second Defendant produced a summary listing eight facilities with the new National Bank of Oman and the Bank of Beirut but no statements, records or any other documents relating to those accounts. That is, on the face of it, a breach of the requirements of paragraph 1 of Schedule 2 to the court's order of 24 May 2018 (as referred to in the order of Mr Griffiths QC of 14 November 2018) which required him to produce "any statements, records or other documents and records of your savings, or other type of account, in the UK, Oman, or in any other country maintained any type of financial institution during the past five years".

45. The second Defendant's blanket denial of having any bank account is occasionally contradicted by references to "local" accounts or temporary, special arrangements with banks: his evidence in that respect is vague and inconsistent to the extent that one attach any weight to it. Notably his promises to the court to remedy obvious omissions from his evidence on this respect were not kept. Subsequent written requests by the Claimants were resisted on flimsy grounds.

46. The Defendants occupy an Omani property, built by the second Defendant, at which they employ a driver, two maids and a gardener and which is valued, according to a partially-disclosed valuation produced by them, at 4,500,000 Omani Riyals (in excess of £9 million, I believe, at current exchange rates). Title and mortgage documentation purporting to show that the property had been mortgaged to its full value appears, on the evidence before me, to be incomplete.

47. The second Defendant claimed, in the CPR 71 proceedings, that this documentation evidences a lien taken by the Oman Arab Bank in part settlement of a corporate debt of 8.5 million Riyals dating from 2008 or 2009. No evidence of that claimed liability was produced, notwithstanding the requirement of the order of 24 May 2018 to produce any documents confirming such matters, and the translations produced by the Claimants indicate rather that the charge was taken in return for a banking facility of 4,500,000 Riyals granted to the second Defendant as owner of the property. The second Defendant claimed that he could produce evidence to substantiate what he said but subsequent requests for him to do so were, again, refused.

48. As for a property in Zimbabwe built by the second Defendant, on his own account, at the cost of US $4 million and owned by him through a company, the second Defendant claimed in the CPR 71 proceedings, rather vaguely, that it was in "Negative equity, I think". He then explained that he meant not that there was any mortgage over the property but that, following the collapse of Zimbabwean currency, it had so little value that he would probably have to "pay to sell it". He appears to have produced no documentation in relation to that property.

49. In his witness statement for the purposes of this application, the second Defendant claims that as a result of government attempts to seize his Zimbabwe property he now does not own, control or have shareholding in any entity that owns it (which does not seem to me to follow). In support of this proposition he relies upon a link to a newspaper report which shows only that he took legal action to resist an attempt at seizure, a surprising course of action to take in respect of a property with no value.

50. Similar newspaper reports exhibited to the witness evidence of Ms Binkley indicate, for example, that the second Defendant is enforcing in Zimbabwe a judgment to the

value a judgment debt to the value of US $4.7 million against a Harare-based businessman, Mr Kazi.

51. I can attach limited weight to newspaper reports produced by either party but it would seem that the second Defendant has maintained a remarkably high public profile (particularly but not exclusively in Zimbabwe) for a person who works quietly from home in Oman with no bank accounts or financial resources.

52. I do not find the second Defendant's evidence about his income and overheads to be persuasive. In the CPR 71 proceedings he stated that he works as an adviser out of an office at home and pays no tax. Nonetheless, of a total income of about US $200,000 (purportedly paid entirely in cash because it does not have any bank accounts) he claims to be left, after costs (of which, characteristically, he offers no details) with something between US $80,000 and US $100,000. Even if one includes household staff (which, according to his evidence in the CPR 71 proceedings, comes to about 1300 Rials per month) that is an extraordinary overheads figure for working from home. I do not find it credible. Nor do I find it credible that the second Defendant receives an income at that level entirely in cash and manages it without using a bank account or, for example, a card facility.

53. As for family finances, one must consider Samarahan Deco Design LLC, an Omani company for which, at the CPR 71 hearing, the Defendants produced the Independent Auditor's Report and Financial Statements for the year ended 31 December 2016. That report showed the company to be owned as to 5% by the first Defendant and as to 95% by the Defendants' son, Issa Tamer Al Shanfari. In the CPR 71 proceedings the second Defendant admitted that the company was family-owned and that he was an authorised signatory as guardian for his son, who was at the time 17 years old.

54. The second Defendant claimed, at the CPR 71 hearing, that Samarahan Deco Design LLC is a small interior design company that makes only losses, but the 2016 report records gross profits of 420,000 Rials and total revenue of 850,000 Rials (about £840,000 and £1.7 million respectively, at current exchange rates).

55. In his witness statement produced for the purposes of this application, the second Defendant complains that the Claimants have only produced accounts to the year ending 31 December 2016, which does not, he says, furnish evidence of current means. This is one of several examples of the Defendants' reliance upon their own partial disclosure.

56. The first Defendant, as a shareholder in Samarahan Deco Design LLC, was ordered on 24 May 2018 to disclose two years' balance sheets and profit and loss accounts, current management accounts and any other documents. The Defendants produced information for one year, to the end of December 2016.

57. Mr Power subsequently sought to argue that because paragraph 1.2 of the court's order of 24 May 2018 did not make specific reference to paragraphs of the very clear and comprehensive requirements of paragraphs 1.5 to 1.14, there was no obligation to comply with (at least some of) those paragraphs: that was an excuse offered after the event and has no substance. There was a very clear obligation to disclose, which was not complied with.

58. Ms Binkley has produced evidence demonstrating that an Omani LLC is required to file an annual Report within six months of the end of each fiscal year. It appears to be well within the power of the Defendants to produce more recent evidence of the company's profitability so as to substantiate their assertion that it makes no money: they have not done it.

59. Samarahan Deco Design LLC does not furnish the only example of an apparent blurring of the boundaries between the second Defendant's wealth and that of his family. In the CPR 71 proceedings he insisted, for example, that assets transferred to family members following the sanctions were worthless as a result of the sanctions. This seems to me to invite the court to overlook the fact that the likely reason for the transfers would have been to preserve their value.

60. I am particularly concerned that at least some of the evidence given by the second Defendant in the CPR 71 proceedings, and repeated in the statement produced by him for the purposes of this application, seems on its face to be untrue. The Claimant has produced evidence to the effect that at the time the second Defendant repeatedly asserted, under oath in the CPR 71 proceedings, to the effect that he was not a shareholder in any company or corporation, he was the sole shareholder of a UK company, Pegasus Energy Ltd. He is shown as a shareholder in annual returns between 2000 and the last annual return in 2016, and as at 19 June 2019 he is shown on the register of the company as an "individual person with significant control".

61. Pegasus Energy Ltd's public records, for the three trading years ending on 30 June 2018, shows a secured debt of £3,935,728, which presumably had been repaid before a director filed an application on behalf of the company to be struck off, leading to its dissolution on 15 October 2019.

62. The circumstances in which this debt was incurred and repaid remain unknown, first because the second Defendant first did not disclose details of this shareholding in accordance with the orders made by the court in the CPR 71 proceedings, and second because he denied that he owned any shares at all.

63. The Claimant has also produced documents from Companies House in relation to Open Oman Ltd, a company incorporated on 22 August 2019. The second Defendant is a director and the owner of 500 shares, a 50% shareholding in Open Oman Ltd.

64. At paragraph 26 of his witness statement of 30 January 2020, produced for the purposes of this application, the second Defendant repeats the evidence given by him in December 2018 to the effect that he owns no shares. Plainly that was not the true position then, and it is not the true position now.

65. Mr Power complains that Ms Binkley does not specifically name the person who obtained the requisite information from Companies House (which, in my view, is entirely unnecessary) and argues, remarkably in my view, that the second Defendant's failure to disclose his shareholding in Pegasus Energy Ltd in the course of the CPR 71 proceedings is "solely the fault of the Claimants". I do not hold the Claimants responsible for the second Defendant's inaccurate evidence.

66. Mr Power also complains that Ms Binkley does not provide any evidence as to the value of the Defendant's shareholding in Pegasus Energy Ltd. I can hardly see how

she could, given that the second Defendant's clear breaches of disclosure orders and his untrue evidence in the CPR 71 proceedings deprived the Claimants of any opportunity to put the matter to him.

67. Equally unappealing, to my mind, is Mr Power's submission to the effect that Ms Binkley, by "deliberate" omission fails to mention that the nominal value of each of the 500 shares in Open Oman Ltd owned by the second Defendant is £1.

68. If Mr Power means that the value of the second Defendant's shares in Open Oman Ltd can be no more than £500, then I disagree. The nominal value of a share is the share capital of a company divided by the total number of issued shares. It is not a measure of share value. I am no more able than is Mr Power to know what Ms Binkley was thinking, but she may well have taken the view that the nominal value of the shares (which is perfectly evident from the documents she has produced) is irrelevant.

69. If so, I agree. The point is that the evidence given by the second Defendant both in the CPR 71 proceedings and for the purposes of this application, in relation to his shareholdings, is untrue. He had then, and has now, shareholdings in UK companies the true value of which is unknown.

Conclusion

70. It would appear from the evidence that the first Defendant is largely, if not exclusively, financially dependent upon the second Defendant and her father. The driving force for the purposes of this application is the second Defendant, who has provided the evidence upon which both Defendants rely for the purposes of this application.

71. Mr Stacey for the Claimants points out that in the course of the CPR 71 proceedings the second Defendant asserted that the two judgments obtained by the Claimants were "fake judgments" and that he did not owe the Claimants anything. It would appear that as far as the second Defendant is concerned, judgment debts are only valid if he considers them to be valid. He has also shown a distinct tendency to regard compliance with court orders as optional.

72. It also seems clear that the Defendants have spent and continue to spend large sums of money contesting this litigation in one forum or another whilst protesting that they cannot afford to pay anything in satisfaction of their debts to the Claimants. Given the opportunity to demonstrate that, they have relied upon evidence that is incomplete, unreliable and in certain respects untrue.

73. It is characteristic of the opacity of the Defendants' affairs that I have received no explanation whatsoever for the sudden appearance of the £107,113 which the Defendants needed to pay to overcome the prohibition at paragraph 5 of Morris J's order of 6 December 2018, and failing which their Points of Dispute would probably have been struck out, bringing this detailed assessment to an end.

74. It seems to me that this case has much in common with *Days Healthcare*. The Defendants defy orders made by the courts in this jurisdiction whilst maintaining their right to contest the Claimants' bill of costs in this jurisdiction. It follows that the

Claimants' *Days Healthcare* application should, and does, succeed. The Defendants will not be deprived of judicial consideration of their Points of Dispute, but they will not, until payment of an appropriate sum has been made, be permitted any further representation.

75. For the avoidance of doubt, that order will not extend to preventing the Defendants from being represented on the award and summary assessment of the reserved costs of the applications referred to in this judgment or on any application for permission to appeal from this judgment.

76. I will not, however, make the order sought by the Claimants for payment of half the costs sought by the Claimants in their bill. I have already decided that the appropriate amount of an interim payment pending a Detailed Assessment hearing, is £75,000.

77. The Claimants have submitted an Interim Costs Certificate for approval. I was unable to approve it, as it appeared to identify Mr Power as the paying party rather than his chambers as the address for service. I do not know whether another certificate has been filed, but if it is properly addressed it will be issued.

78. I will be making an order to the effect that if the Defendants do not pay the amount of the Claimants' Interim Costs certificate within 14 days of the date of issue or of my order, whichever is later, then they will be prohibited from any further active participation in these detailed assessment proceedings. The matter will then proceed to a hearing on their Points of Dispute without an advocate attending on their behalf.