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Case No: CL-2024-000328

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
COMMERCIAL COURT

Royal Courts of Justice, Rolls Building
Fetter Lane, London, EC4A 1NL

Date: 24 November 2025

Before:
SIMON COLTON KC
SITTING AS A JUDGE OF THE HIGH COURT

Between :

BENEATHCO DMCC
- and -
R.J. O'BRIEN LIMITED

Claimant

Defendant

Rachel Barnes K.C. and Jacob Turner (instructed by Zaiwalla & Co) for the Claimant
Maya Lester K.C., Fred Hobson K.C. and Joshua Pemberton (instructed by Morgan, Lewis
& Bockius UK LLP) for the Defendant

Hearing dates: 28-31 October 2025
Judgment circulated in draft: 17 November 2025

Approved Judgment

This judgment was handed down remotely at 10.30am on 24 November 2025 by circulation to the parties or their representatives by e-mail and by release to the National Archives

SIMON COLTON KC:**Introduction**

1. The Claimant ('Beneathco') has been designated by the United States Office of Foreign Assets Control ('OFAC') as a Specially Designated National ('SDN'), pursuant to President Trump's Executive Order 13846 ('EO 13846'). The Defendant ('RJOL') is an FCA-regulated broker. Prior to Beneathco's designation, Beneathco engaged in derivatives trading through RJOL. That trading resulted in a sum of approximately \$16.5 million being held by RJOL for Beneathco in a client account.
2. Beneathco has given two instructions (the 'Instructions'), seeking payment to it of the sums held by RJOL, but RJOL has refused to make payment. Were these Instructions ones with which RJOL was contractually obliged to comply? Was RJOL entitled to refuse to make payment by reason of the principle in *Ralli Bros v Compania Naviera Sota y Aznar* [1920] 2 KB 287 (CA) ('*Ralli Bros*')?

Factual background

3. The background facts are largely common ground, which I take from the agreed parts of the parties' helpful narrative chronology, supplemented where necessary by reference to the documentary evidence. Inevitably, RJOL and Beneathco acted through individual representatives or agents, but for present purposes the identity of these individuals is unimportant so I refer below to actions as being taken directly by RJOL and Beneathco.
4. Beneathco is a company registered in Dubai, in the United Arab Emirates ('UAE') whose business includes the trading of petroleum products. RJOL is a company incorporated in the UK. RJOL is wholly owned by R.J. O'Brien (Europe) Ltd, another UK company, which in turn is wholly owned by JVMC Holding Corp, a Delaware corporation ('JVMC'). The principal business of RJOL is that of a broker and clearing firm on the world's major futures and option exchanges.

2019: The beginning of the relationship

5. Beneathco became a client of RJOL via an onboarding process which took place over the course of the period from 11 March 2019 to 30 April 2019. As part of that process, on 11 March 2019, Beneathco was sent documents including: a document entitled 'Best Execution Policy Summary – Professional Customers' (the 'Best Execution Document'); a form for selecting an Omnibus Segregated Account or an Individual Segregated Account (the 'Segregated Account Form'); a Declaration to be issued to R.J. O'Brien (MENA) Capital Ltd, an affiliate of RJOL ('RJO MENA'), with respect to a proposed agreement between RJO MENA and Beneathco (the 'RJO MENA Declaration'); a 'KYC and Suitability Assessment Questionnaire for Corporate / Legal Entities'; and an Account Opening Form for Corporation / Partnership / Fund / Trusts etc' (the 'Account Opening Form').

6. On 18 March 2019, Beneathco returned signed or stamped copies of the Account Opening Form, the Best Execution Document, the Segregated Account Form, and the RJO MENA Declaration.
7. On 16 April 2019, Beneathco was sent a document headed ‘Terms and Conditions: Beneathco DMCC’ (the ‘Terms & Conditions’), which Beneathco returned, signed, on 20 April 2019. On 23 April 2019, Beneathco was sent a document headed ‘MiFID Client Categorisation Notification: Elective Professional Client’ (the ‘Classification Form’), which was returned, signed, on 27 April 2019.
8. On 30 April 2019, an email was sent to Beneathco to confirm that Beneathco’s account with RJOL was ‘*now open*’.
9. On 7 May 2019, an email was sent to Beneathco attaching two further documents: (i) a client classification letter confirming that RJO MENA had classified Beneathco as a ‘*Professional Client*’, and (ii) a copy of RJO MENA’s Professional Client Agreement.
10. Beneathco did not commence trading via RJOL for several months, its first trade taking place on 9 December 2019.

2020: Designation, the Original Instruction, and the voluntary self-disclosure

11. On 23 January 2020, Beneathco requested the transfer of US\$8 million to its bank account denominated in Emirati dirhams (AED) at the Commercial Bank of Dubai in the UAE. This transfer was completed that same day, by way of a payment from an account held by RJOL with The Royal Bank of Scotland plc (‘RBS’), via RBS’s correspondent bank (Citibank N.A.) in New York. This is the only payment that RJOL has made to Beneathco.
12. Later that day, in the evening of 23 January 2020, Beneathco was designated by OFAC. The release issued by OFAC, entitled ‘*Iran-related Designations*’, announced:

The following entities have been added to OFAC’s SDN List:

BENEATHCO DMCC (a.k.a. BENEATHCO GENERAL TRADING DMCC), Unit No: 3O-01-1432, Jewellery and Gemplex 3, Plot No: DMCC-PH2-JandGPlexS, Jewellery and Gemplex, Dubai, United Arab Emirates; Additional Sanctions Information - Subject to Secondary Sanctions [IRAN-EO 13846] (Linked To: NATIONAL IRANIAN OIL COMPANY).

...

13. An accompanying press release, entitled ‘*Treasury Targets International Network Supporting Iran's Petrochemical and Petroleum Industries*’, included the following:

In 2019, Dubai-based Beneathco DMCC also ordered the transfer of the equivalent of several million dollars to NIOC. In late 2018, Beneathco DMCC offered to assist NIOC in hiding the origin of Iranian products destined for the United Arab Emirates.

Triliance, Sage Energy, Peakview, and Beneathco DMCC are all designated pursuant to E.O 13846 for on or after November 5, 2018, having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services in support of, NIOC, a person included on the List of Specially Designated Nationals and Blocked Persons whose property and interests in property are blocked pursuant to E.O. 13599.

14. On 24 January 2020, Beneathco requested that its most substantial open trading position be liquidated. RJO MENA liquidated these positions during the course of the day, before closing all positions and cancelling Beneathco's access to its trading account. This resulted in a positive cash balance in Beneathco's account in the sum of US\$16.5 million.

15. In the afternoon of 24 January 2020, Beneathco issued the following instruction to RJOL (the 'Original Instruction'):

[P]lease also transfer the remaining balance as per account statement, USD 16.5 in AED currency into our AED account as per attached details. Please convert the funds into your bank into AED first and then transfer AED directly as it is easier for us to receive. Would appreciate if you effect the transfer by today.
Kindly provide swift copy of transfer once done.

16. The attached details again identified an account, denominated in AED, in the name of Beneathco, with Commercial Bank of Dubai in Dubai, UAE.
17. RJOL replied later that day, saying '*the request has missed the cut-off*'. This was followed by a further request from Beneathco:

Could we possibly ask you to execute all the available existing funds in the account today and convert them into aed and execute by today, and whatever remains to be transferred by next monday.

18. On Monday 27 January 2020, a further email was received from Beneathco:

Would appreciate if you transfer the funds to the attached bank account, since we have decided to change the account to Emirates NBD.
Pls divert in AED currency in your bank and then transfer AED currency directly.

19. There was then ongoing email correspondence, including on 30 January 2020 this email from Beneathco:

A gentle reminder to our subsequent correspondences. We have not received feedback from you since last two days. Please advise next course of action and once again we are demanding immediate return of funds.

Moreover, please be noted that we are also in a position to receive the funds in an official exchange house registered in U.K and acting with U.K central bank work permit, and it can be in any currency as you wish.

20. On 31 January 2020, RJOL emailed Beneathco, stating:

As you know, on January 23, 2020, the US Department of the Treasury, Office of Foreign Assets Control (OFAC) added Beneathco DMCC to its list of Specially Designated Nationals and Blocked Persons pursuant to Executive Order 13846 for having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services in support of, the National Iranian Oil Company. As a result, the Iranian Transactions and Sanctions Regulations administered by OFAC, 31 C.F.R. 560, prohibit U.S. companies from engaging in any transactions involving the property or interests in property of Beneathco unless authorized by OFAC. R.J. O'Brien and its subsidiaries are required to comply with all applicable U.S. laws and regulations, including Executive Order 13846 and 31 C.F.R. 560 and other regulations issued by OFAC. Pursuant to these laws and regulations, we have taken action to block the assets in your account. Therefore funds may not be accessed. In order for us to provide access to the account, you will need to apply for a specific license from OFAC authorizing us to do so.

21. At some point in late January or early February 2020, the bank account nominated in the Original Instruction was closed. The precise date on which this occurred is unclear: on 24 October 2025, Beneathco's solicitors, Zaiwalla & Co, informed RJOL that the account was closed '*shortly after Beneathco was listed by OFAC in January 2020*': see paragraph 44 below. At the trial, I was told on instructions, that this was '*no earlier than 10 days after the sanctioning*', and later '*probably a little bit longer than 10 days*'.
22. On 6 February 2020, Steptoe & Johnson LLP, on behalf of R.J. O'Brien & Associates LLC ('RJOA'), an affiliate of RJOL, submitted an initial voluntary self-disclosure to OFAC. This disclosed a '*possible infraction of the Iran Transactions and Sanctions Regulations*', in relation to the transactions by which RJOL liquidated Beneathco's positions on 24 January 2020. RJOA stated that '*Although the transactions were undertaken at the request of Beneathco, they did not result in the transfer of any funds or other property or interests in property to Beneathco*'. RJOA stated that when legal and compliance personnel in the United States became aware on 24 January 2020 that Beneathco had been added to the SDN List, RJOA '*instructed [RJOL] to prohibit Beneathco from accessing any funds in its account with [RJOL], which instruction has been followed*'. RJOA explained:

The funds are held by [RJOL] as part of [RJOA]'s accounts at a UK financial institution. As a bookkeeping matter, [RJOL] has segregated the funds so that they will not be accessed. [RJOA] has instructed [RJOL] that these funds are to be blocked and must be maintained as such.

In fact, and contrary to what is set out here, I understand the funds were and are held by RJOL as part of RJOL's (not RJOA's) accounts.

23. On 1 March 2020, an additional credit accrued to the Beneathco's account in the sum of US\$14,135, as a result of the contracts for certain derivatives positions held by Beneathco expiring. I refer in this judgment to the total sum held for Beneathco as 'the \$16.5 million'.
24. On 6 April 2020, Steptoe & Johnson LLP (on behalf of RJOA) submitted a supplemental voluntary self-disclosure to OFAC. This explained that RJOA had completed its review and assessment of what had occurred. RJOA's position was summarised in its opening paragraphs:

As explained in our initial notification, [RJOA] is filing this report based on liquidation trades made less than 24 hours after Beneathco DMCC ("Beneathco"), a UAE-based company, was added to OFAC's Specially Designated Nationals and Blocked Persons List ("SDN List") on January 23, 2020. Beneathco maintains a customer account with [RJOL], a U.K. based affiliate of [RJOA] that services clients from the United Kingdom.

Based on our review of the relevant facts, circumstances, and legal framework, including the nature of futures markets, the timing of the liquidation trades related to Beneathco's energy futures positions, the fact that [RJOL] and another [RJOA] affiliate identified Beneathco's status on the SDN List in a timely manner and undertook the liquidation trades with the goal of reducing risk and facilitating sanctions compliance, the fact that Beneathco has received no benefit from the liquidation trades, and the fact the [RJOA] has a strong sanctions compliance program and no history of sanctions infractions, we respectfully submit that OFAC should conclude that a "no action" letter or, at most, a cautionary letter response is appropriate under these circumstances.

2021: Pre-action correspondence and OFAC communications

25. A letter before action was sent on 12 January 2021 by Zaiwalla & Co on behalf of Beneathco. That letter concluded by 'urgently requesting' that RJOL transfer to Zaiwalla & Co's client account in London '*we urgently request you to remit forthwith the amount of £12,627,228.89, which is the Sterling equivalent of the Funds at the exchange rate prevailing on 24 January 2020 (1.3067 USD/GBP), the date on which Beneathco requested RJO to transfer the Funds*'.
26. On 9 February 2021, as part of pre-action correspondence, Steptoe & Johnson UK LLP (on behalf of RJOL) provided Zaiwalla & Co with a copy of a document which was described in the letter as RJOL's Professional Client Agreement ('PCA'). This had not previously been provided to Beneathco.
27. On 21 July 2021, OFAC responded to the letters referred to in paragraphs 22 and 24 above and issued a cautionary letter to RJOA in relation to the liquidation of

Beneathco's trades. OFAC did not impose any sanctions or punishment on RJOA or RJOL. The letter concluded:

This cautionary letter represents a final enforcement response to the above-referenced apparent violations. However, it does not preclude OFAC from taking future enforcement action should new or additional information warrant renewed attention. This letter does not constitute a final agency determination as to whether a violation has occurred. [RJOA's] OFAC compliance history will be factored into any matters that come to our attention in the future, including any apparent violations.

28. On 25 August 2021, RJOA wrote to OFAC seeking a specific licence '*in order for [RJOA] to instruct [RJOL] to release to [Beneathco]*' the \$16.5 million, or alternatively '*interpretative guidance that no license is required*'.

2024: Proceedings commence

29. Following a further letter before action in November 2023, proceedings were commenced by issue of a claim form on 7 June 2024.
30. The Particulars of Claim included the allegations that it was an implied term that '*the Defendant was required to execute the Claimant's instructions to pay monies out of the Claimant's account(s) with the Defendant to a bank account, and in a currency of the Claimant's nomination, net of any obligations owed by the Claimant to the Defendant*' (para 10(a)), and that, as part of fiduciary duties owed to Beneathco, RJOL was specifically required '*to carry out the instructions of the Claimant to pay out sums from the Claimant's account with the Defendant, to an account and in a currency of the Defendant's choosing – provided that such sums paid out are net of any obligations the Claimant owes to the Defendant*' (para 18). Further, insofar as presently material:

(1) At paragraphs 35-37, it was pleaded:

35. On 24 January 2020, RJO Dubai sent the Claimant its account statement, showing a balance in the Claimant's account of US\$16.5 million. The Claimant replied, on the same day, instructing the Defendant to transfer the Liquidated Sum in AED into the Claimant's AED account (the "Instruction").
36. As at the date of the Instruction, the Claimant did not owe any sums to the Defendant. Accordingly, the Claimant was entitled to be paid the entirety of the Liquidated Sum, on demand. However, contrary to the Instruction, the Defendant failed to transfer the Liquidated Sum.
37. On 27 January 2020, the Claimant sent a follow-up email asking the Defendant to comply with the Instruction. The Claimant sent several further requests for the Liquidated Sum to be released between 27 and 31 January 2020. The Defendant failed to reply substantively to these.

- (2) At paragraph 40, it was pleaded:

To date, the Defendant has refused to comply with the Instruction.

- (3) Under the heading ‘Breach of Contract’, Beneathco pleaded in particular:

48. Pursuant to the terms of the Unwritten Contract as pleaded at paragraph 10 above, alternatively the Client Agreement, the Defendant was required to execute the Claimant’s instructions to pay monies out of the Claimant’s account with the Defendant to a bank account, and in a currency of the Claimant’s nomination, net of any obligations owed by the Claimant to the Defendant. The Claimant breached that obligation.

...

53. The contractual breaches as pleaded at paragraphs 48 to 52 above commenced on 24 January 2020 when the Instruction was first refused and are continuing.

- (4) At paragraph 58, Beneathco pleaded that it sought payment in US dollars *‘because that is the currency used by the Claimant and the Defendants to do business and is the currency in which the loss was felt by the Claimant’*.
- (5) Beneathco also pleaded a claim for breach of fiduciary duty, alleging that *‘In breach of the aforementioned fiduciary duties the Defendant has failed to honour the Instruction as directed’*, and pleading that, in light of this, a constructive trust exists with respect to the \$16.5 million.
31. In its prayer for relief, Beneathco sought specific performance *‘of the obligation on the Defendant... to procure the release to the Claimant of the [\$16.5 million]’*, alternatively damages in the principal sum of \$16.5 million with interest; a declaration that there exists a constructive trust over the \$16.5 million; and further or other relief.
32. RJOL pleaded a Defence to the claim, stating that it had *‘no intention of retaining the sum of US\$16.5 million and/or the additional sum of US\$14,135 for longer than necessary’*, but, in light of Beneathco’s designation, denying any obligation to comply with Beneathco’s instruction. RJOL denied that the implied terms pleaded by Beneathco fell to be implied; asserted that the terms of the PCA were included within the contractual relationship between Beneathco and RJOL; and pleaded different implied terms including that *‘RJOL was obliged to pay Beneathco on demand the monies standing to its account in the currency of that account (US\$)’*, subject to various exceptions. RJOL denied that it owed any fiduciary duties to Beneathco. Further:

- (1) At paragraph 36(b), RJOL pleaded:

RJOL did not transfer the sum of US\$16.5 million (or any sum) to Beneathco then or subsequently. However, it is denied that this can properly be described as a failure. For the reasons described in paragraph 45 below, RJOL was and is entitled under English law and obliged under US law to refuse to transfer the monies held by it on behalf of Beneathco.

- (2) At paragraph 40, RJOL pleaded:

Paragraph 40 is admitted. RJOL was and is not obliged under English law to comply with the Instruction.

- (3) At paragraphs 47-48, RJOL pleaded:

47. Paragraph 48 is denied.

48. There was no “Unwritten Contract.” The RJOL Agreement permitted RJOL to act as it did. In particular:

a. There was no obligation to pay Beneathco in AED. The obligation was (subject to the points made in paragraph 18dii above) to pay in the agreed base currency, US\$.

...

e. Further or alternatively, as the payment to Beneathco would have involved the use of a US correspondent bank in the US in converting the US\$ to AED, the payment was illegal under the law where performance was in part required, and therefore by reason of the Unlawfulness Implied Term and/or the Ralli Bros Principle, RJOL was (and is) not obliged under the RJOL Agreement to make the payment and RJOL was and is entitled to refuse to pay the Liquidated Sum in AED (or any sum).

...

- (4) As to paragraph 58 of the Particulars of Claim, RJOL pleaded:

56. ... Subject to the RJOL’s case that it is not obliged to make payment and/or that it should not be ordered to make payment, the correct currency of any judgment is US\$, for the reasons stated in the first sentence of paragraph 58.

- (5) RJOL denied that specific performance was appropriate in the circumstances; denied the existence of a constructive trust; and denied Beneathco’s entitlement to any relief.

33. In Beneathco’s Reply, among other matters, it denied the incorporation of the PCA, and denied the implication of RJOL’s pleaded implied terms.

2025: The Weinstock proceedings, the Amended Instruction and amended statements of case

34. In late 2024 and early 2025, members of the family of Yitzchak Weinstock, who was killed by Hamas in 1993, began to target Beneathco’s assets in the course of seeking to enforce a default judgment they had obtained in the United States against the Islamic Republic of Iran. They brought proceedings in the US District Court against RJOL, JVMC and RJOL’s two US-based board members (the ‘*Weinstock* proceedings’).

35. On 14 March 2025, the Weinstocks filed a motion for an order compelling RJOL to turnover Beneathco's assets held by RJOL. The Weinstocks alleged that Beneathco should be deemed an instrumentality of Iran, such that Beneathco's assets were available for execution of the default judgment against Iran.
36. On 18 April 2025, OFAC responded to RJOA's application of 25 August 2021 (see paragraph 28 above), stating that it had determined that it would be inconsistent with current licensing policy in this case to issue a specific licence authorising RJOA to instruct RJOL to release funds to Beneathco.
37. On 8 August 2025, the US District Court issued an order in the *Weinstock* proceedings, requiring that RJOL turnover to the Weinstocks the sum it holds for Beneathco (the 'August 2025 *Weinstock* order'). On 11 August, RJOL filed a motion to stay that order pending an appeal to the US Court of Appeals. On 3 September, after RJOL had filed such an appeal, the US District Court stayed the obligation of RJOL to turnover the sum until the appeal was decided. The District Court made further orders (the 'September 2025 *Weinstock* order') including:
 - (2) The granting of a stay is expressly conditioned upon the following: Beneathco DMCC's funds subject to the [8 August 2025 order] shall not be disbursed without a further order of this Court allowing the disbursement;
 - ...
 - (6) Within 24 hours of the entry of any court order or decision entered in the U.K. Proceedings that concerns the disposition or encumbrance of Beneathco DMCC's assets, or the filing of any motion or request in the U.K. Proceedings to seize, release, transfer, or place in a constructive trust or otherwise encumber Beneathco DMCC's funds, or to enjoin compliance with this Court's Judgment, R.J. O'Brien Limited shall file a status report with this Court describing such order, decision, motion or request, accompanied by a true and complete copy thereof.
38. On 10 September 2025 Zaiwalla & Co on behalf of Beneathco wrote to the Defendant's solicitors in the following terms:

'We refer to Beneathco DMCC's instruction to R.J.O'Brien Limited dated 24 January 2020 to transfer USD 16.5 million to Beneathco DMCC's account at the Commercial Bank of Dubai ... defined in the Particulars of Claim as the "Instruction". We hereby supplement and amend the Instruction as follows:

 1. The sum subject to the Instruction shall include the full balance of Beneathco DMCC's account with R.J. O'Brien Limited, namely the USD 16.5 million, plus the additional sum of USD 14,135 referred to in paragraph 34.d. of the Defence, plus interest (the "Payment Sum").
 2. The bank account to be credited with the Payment sum shall be amended to: Future Plus Goods Wholesalers LLC; Emirates NBD Bank, Dubai – UAE; AED Account

3. If, which is denied, there is no obligation on R.J. O'Brien to pay the Payment Sum in AED, then (strictly without prejudice to Beneathco DMCC's primary case on the proper currency of payment) R.J. O'Brien Ltd must pay the Payment Sum in USD to the following bank account: Future Plus Goods Wholesalers LLC; Emirates NBD Bank, Dubai – UAE; USD Account
 4. If, which is denied, there is no obligation on R.J. O'Brien Ltd to pay the Payment Sum in AED or USD, then (strictly without prejudice to Beneathco DMCC's primary case on the proper currency of payment) then R.J. O'Brien Ltd must pay the Payment Sum in an alternative currency to be agreed by Beneathco DMCC, with Beneathco DMCC's consent not to be unreasonably withheld.'
39. In these proceedings this has been referred to as the 'Amended Instruction'.
40. On 19 September 2025, the Defendant's solicitors responded. They raised a number of concerns including: the absence of evidence that payment to Future Plus Goods Wholesalers LLC ('Future Plus') would constitute payment to Beneathco; the similarity of name to that of another company, Future Trends Goods Wholesalers LLC ('Future Trends') which was designated by OFAC as an SDN; reported links between Future Trends and an entity (Rah Roshd International Trade Exchanges Development, 'Rah Roshd') designated under both US and UK sanctions; and the complete absence of due diligence information for Future Plus.
41. A substantive response was provided by Beneathco on 29 September 2025. Zaiwalla & Co confirmed on Beneathco's behalf that payment to Future Plus would constitute '*full and valid discharge of the debt owed by your client to our client*'. Beneathco provided a Commercial Licence for Future Plus, stating that the owner of 100% of the shares of Future Plus was Mr Vijayaraghavan Vetrivel ('Mr Vetrivel'). Beneathco's solicitors said that '*Our client has made enquiries, and [Future Plus] has confirmed that Mr Vetrivel is its Ultimate Beneficial Owner*'. A copy of Mr Vetrivel's passport was provided, together with evidence of his address and the company's address. Beneathco confirmed that Future Plus has no directors, and Mr Vetrivel is its manager. On instructions, Beneathco's solicitors stated that their client was unaware of any relationship between Future Plus and Future Trends, or between Future Plus and Rah Roshd.
42. On 6 October 2025, pursuant to a consent order, Beneathco amended its Particulars of Claim to plead the Amended Instruction and RJOL's failure to comply with that Instruction. Beneathco also pleaded that the Original Instruction gave rise to an obligation in debt, which had been '*supplemented and amended*' by the Amended Instruction.
43. On various dates in October 2025, RJOL amended its Defence. In particular, RJOL denied any obligation to comply with the Amended Instruction, and pleaded that it holds the \$16.5 million on trust for Beneathco, owing fiduciary duties only to that extent. RJOL denied that it is a debtor of Beneathco.

44. On 20 October 2025, with the permission of the court, Beneathco amended its Reply. In that amended Reply, Beneathco pleaded that *‘Future Plus is owned by a party known to the owners of Beneathco, and those parties have arranged between them that a payment to Future Plus will discharge RJOL’s debt to Beneathco’*, and that it had *‘explained that the original bank account nominated by it to receive funds in the Instruction has since been closed’*. Further information was sought of these pleas, and a substantive response provided by the Claimant’s solicitors, on instructions, but not verified by a statement of truth, on 24 October 2025. This explained:

The answer to your questions is follows:

1. The agreement was reached orally, and in person, between Mr Vetrivel (owner of Future Plus) and Mr Thirumoorthi Punniyamoorathi (owner of Beneathco). Mr Punniyamoorathi and Mr Vetrivel are old friends, and the agreement was a ‘gentlemen’s’ agreement between two friends.
 2. It was reached around the end of June 2025.
 3. As part of this gentlemen’s agreement, Future Plus is not going to receive any consideration. It is simply a favour that Future Plus is doing for Beneathco as a result of its owner’s friendship, and Beneathco or its owners would ultimately receive the funds or an equivalent benefit in some way.
 4. Beneathco’s account which had previously been nominated to receive the sum was closed shortly after Beneathco was listed by OFAC in January 2020.
45. The precise nature of the agreement described in this response is unclear. The reference to a ‘gentlemen’s agreement’, and the absence of any consideration, suggests something short of a binding contract. Yet, Mr Turner, Counsel for Beneathco, told me that this is a binding agreement. As for consideration, I was told by Mr Turner that *‘it was in the nature of: you do something for me and there may well be something that I will do for you in the future’*. Moreover, he suggested that although Future Plus could satisfy its obligations under the agreement by making payment to Beneathco’s owners (see point 3), this would benefit Beneathco because *‘under the relevant company law, Beneathco would have lost out on the benefit [of the \$16.5 million], and that benefit would need to be made good in some ways by its owners’*. I was told that Future Plus was *‘just a stepping stone for [the money] to get back to [Beneathco]’*, but quite how this would be so is un-pleaded and un-evidenced.

The trial process

46. No factual witnesses were called, no witness statements adduced, by the Claimant.
47. The Defendant called factual evidence from David Russell, who is currently Senior Director of Risk (EMEA & APAC) for RJOL. Mr Russell gave two witness statements. Mr Russell only joined RJOL in February 2020, and was frank that he had relatively limited personal knowledge of the underlying facts leading to the proceedings. Until about May of this year, he had known only that there was litigation, that there was a significant balance attributable to Beneathco that had been frozen following OFAC’s

sanction, and that Beneathco had made a request for the return of those funds. He was not involved in the decision to freeze the \$16.5 million.

48. Mr Russell gave some general evidence, based on his general knowledge of the RJOL business, concerning the clearing services provided by RJOL, and the process for Beneathco's transactions. He also explained how client funds are held by RJOL with a roster of banks, and his experience of what would be involved in making a payment to a client in US dollars or some other currency.
49. In cross-examination of Mr Russell, Ms Barnes K.C. for the Claimant explored the limits of his knowledge. As Ms Barnes submitted in closing, Mr Russell's evidence was limited to how RJOL organises its business; it was not – and did not claim to be – expert evidence of banking law or practice, whether in the UK or in the US. Within the limits of his evidence, however, I have no doubt that Mr Russell was an honest witness, doing his best to answer questions truthfully, and it was not suggested otherwise.
50. Each side also called an expert in US Law. Beneathco instructed Paul Cohen, a member of the New York Bar. RJOL instructed Jason E. Prince, a partner in the Washington D.C. office of Akin Gump Strauss Hauer & Feld LLP and past chief counsel to OFAC. I found the evidence of both Mr Cohen and Mr Prince of great assistance. Each was appropriately qualified, their reports were thorough and clearly-expressed, and when giving oral testimony each engaged helpfully with the questions that were put.

Analysis

Overview

51. As Staughton J held in *Libyan Arab Foreign Bank v Bankers Trust Co* [1989] 1 QB 728 (*'Libyan Arab Bank'*), in the context of a bank's customer bringing a claim in debt (at 749C-F):

They cannot sue on a cause of action in debt without more. They must allege a demand made which Bankers Trust were obliged to comply with. ...

What is the customer entitled to demand? In answering that question one must, I think, distinguish between services which a bank is obliged to provide if asked, and services which many bankers habitually do, but are not bound to, provide. For a private customer with a current account I would include in the first category the delivery of cash in legal tender over the bank's counter and the honouring of cheques drawn by the customer. Other services, such as standing orders, direct debits, banker's drafts, letters of credit, automatic cash tills and foreign currency for travel abroad, may be in the second category of services which the bank is not bound to but usually will supply on demand. I need not decide that point. The answer may depend on the circumstances of a particular case.

52. In the present case, RJOL is not a bank, and the RJOL-Beneathco relationship is not a banker-customer relationship. Indeed, there is a dispute as to whether RJOL owes a

debt to Beneathco in respect of the sums which may (loosely) be described as in Beneathco's account, or whether RJOL holds those sums on trust for Beneathco, or both. However, in my judgment, the same principles apply: in order to determine whether a cause of action has arisen, it is necessary to start by considering whether a demand was made by Beneathco, with which RJOL was obliged to comply.

The contractual terms

53. There is a dispute as to the terms of the contractual relationship between RJOL and Beneathco. In particular, RJOL contends that its standard terms of business, the 'Professional Client Agreement' or 'PCA', were incorporated by reference.
54. RJOL accepts that the PCA was not sent to Beneathco when the account was opened in March-April 2019, and further accepts that the PCA would not bind Beneathco unless and until Beneathco received those terms. However, (i) the account opening form signed by Beneathco confirmed that Beneathco accepted '*the relevant Terms of Business, including any annexes*', and (ii) the PCA was sent to Beneathco's solicitors on 9 February 2021. RJOL contends that, in consequence, from February 2021, Beneathco had notice of the terms of the PCA and those were incorporated.
55. I do not accept RJOL's case in this regard. I can conceive of circumstances in which a person is bound by terms and conditions which are referred to in an account opening form but which, through an oversight, are not included with that form. However, RJOL accepts that in the circumstances of this case Beneathco was not bound by the PCA in March 2019, nor at any time for nearly two years after. That being so, I do not consider that the belated provision of the PCA, in the course of inter-solicitor pre-action correspondence, served to vary the terms of the contract between RJOL and Beneathco. I consider that the PCA was not at any point incorporated into the contract between them.
56. Accordingly, I find that the contractual terms of the relationship are to be found within the suite of documents passing between RJOL and Beneathco in March-April 2019, set in their commercial and regulatory context. Beneathco describes this as an 'Unwritten Contract', requiring as it does an element of gap-filling to deal with matters for which express provision was not made. I am content to adopt that nomenclature, albeit, as I shall come on to, I do not agree with the proposed content.

Trust and/or debt?

57. The next issue with which it is convenient to deal concerns the nature of the obligation owed by RJOL to Beneathco in respect of the \$16.5 million. RJOL says it is trustee of the \$16.5 million; Beneathco says that RJOL is a mere creditor, and owes a debt to Beneathco to the value of the \$16.5 million.
58. In my judgment, RJOL is holding the \$16.5 million on trust for RJOL. As part of the account opening documentation, RJOL gave Beneathco a choice between an '*Omnibus Segregated Account*' or an '*Individual Segregated Account*'. Beneathco selected '*Omnibus Segregated Account*' – such that its funds would be segregated from the assets of RJOL, in an account where those funds would be mixed with other client assets.

59. It is common ground that the CASS 7 (Client Money Rules), to which RJOL is subject, mandate that firms must segregate client money from their own funds unless otherwise permitted under very limited circumstances. The purpose of such segregation is plain from the regulatory context. The guidance at CASS 7.17.1 states:

Section 137B(1) of the Act (Miscellaneous ancillary matters) provides that rules may make provision which result in client money being held by a firm on trust (England and Wales and Northern Ireland) or as agent (Scotland only). This section creates a fiduciary relationship between the firm and its client under which client money is in the legal ownership of the firm but remains in the beneficial ownership of the client. In the event of failure of the firm, costs relating to the distribution of client money may have to be borne by the trust.

60. As Lord Hope explained in *Lehman Bros International (Europe) Ltd* [2012] UKSC 6, [2012] 3 All ER 1 at [3]:

CASS provides for the segregation of client money, and it creates a statutory trust over client money to support and reinforce the purposes of segregation. This ensures that client money is kept separate and not used for the firm's own purposes. It protects the segregated funds from the claims of the firm's creditors in the event that protection is most needed, which is the firm's insolvency. It also enables client money to be returned to the clients without delay, as it is beyond the reach of the firm's creditors.

61. Beneathco's money is in fact held in a mixed pool of client monies, segregated from RJOL's own assets. For the avoidance of doubt, and contrary to what I understood Beneathco to argue, it does not matter for this purpose that Beneathco's funds are pooled with other client money. A trust exists over the entirety of the pool, for the benefit of all clients whose funds are pooled there. As Briggs J summarised in *Re Lehman Brothers International (Europe) Ltd* [2010] EWHC 2914 (Ch) at [225(iii)] (and explained at [227]-[233]):

A trust of part of a fungible mass without the appropriation of any specific part of it for the beneficiary does not fail for uncertainty of subject matter, provided that the mass itself is sufficiently identified and provided also that the beneficiary's proportionate share of it is not itself uncertain.

62. In my judgment, therefore, the \$16.5 million of Beneathco is held on trust for it by RJOL.
63. Mr Turner submitted on behalf of Beneathco that the existence of a trust does not preclude a claim in contract too. Mr Turner cited an observation of the Privy Council in *Prickly Bay Waterside Ltd v British American Insurance Co Ltd* [2022] UKPC 8, [2022] 1 WLR 2087 at [47]:

Claims in contract and for breach of trust can co-exist. The Board recognises that a lender who can establish a trust is not prevented from exercising remedies in contract as well (see *Quistclose* [1970] AC 567, 581-582 and see the passage from the judgment of Mason J in the High Court of Australia cited by Patten LJ in *Bieber v Teathers* [2013] 1 BCLC 248: para 22 above).

64. In response, Mr Hobson K.C., on behalf of RJOL, submitted that *Quistclose* trusts present an unusual case, a particular circumstance where a trust relationship is grafted on to a debt obligation. Mr Hobson cited *The Principles of Equity & Trusts* (5th ed, Virgo) at ¶3.7.2; *Lewin on Trusts* (20th ed) ¶1-018; and *Snell's Equity* (35th ed) at ¶21-037 and ¶21-038. Mr Hobson submitted that while it is possible for a trust and a debt to co-exist, if that is what the parties agree, there was no basis for finding such a position here. That would mean, Mr Hobson accepted, that if one of the banks holding client funds became insolvent, with no breach of duty by RJOL, RJOL would have no liability to make the clients whole, because all that would have happened was that the trust property had been lost.
65. For reasons I shall come on to, I do not consider it necessary for me to decide the question whether RJOL owed a \$16.5 million debt to Beneathco in addition to holding that sum on trust for Beneathco. However, if it were necessary for me to do so, I would hold that no debt is owed. The contractual relationship between the parties assists to define and refine the trust required and created by CASS 7, but does not give rise, in my judgment, to any separate debt obligation.

Content of the Unwritten Contract

66. The challenge for both parties, and for the Court, in this case is that although the relationship between Beneathco and RJOL is one between sophisticated parties, set against a complex regulatory framework, involving cross-border dealings, there are very few express terms in the contract between them. Through an oversight, standard terms which might have governed all aspects of the relationship were not incorporated. It is, therefore, necessary to imply into the relationship sufficient mutual obligations to make the relationship work.
67. While both parties pleaded implied terms, I have well in mind the many judicial observations on the limits of the court's power to imply terms into commercial contracts: see, for example, per Lord Neuberger in *Marks & Spencer plc v BNP Paribas Securities Services* [2015] UKSC 72, [2016] AC 742 at [15]-[31]. The oddity of this case, as I have indicated, is that although the parties are sophisticated commercial parties, there is no detailed commercial contract. Nonetheless, I consider that any terms to be implied should: (i) be implied in light of the express terms, commercial common sense, and facts known to both parties at the time the contract was made; (ii) be limited to those which are obvious and necessary to give business efficacy to the contract; and (iii) if different, go no further than is obvious and necessary.
68. As I have indicated, there were very few express terms in the Unwritten Contract. One such term was that Beneathco's funds would be held in an 'Omnibus segregated account', i.e., it would be segregated from RJOL's funds, but pooled with other client monies. Another such term was that the 'base currency' to apply to Beneathco's

account was USD (one of four options, alongside GBP, EUR and CHF). The meaning of a 'base currency' was explained:

It is a common requirement under the majority of the agreements that you will execute with either [RJOL] or our Execution / Clearing Partners that you give them right of setoff if you default under the respective agreement. You will usually be given certain rights to convert all losses and gains in respect of transactions into a base currency to determine a settlement amount.

69. As for the facts known to both parties, significant facts include that RJOL was an FCA-regulated broker, with regulatory obligations including obligations in respect of the holding of client funds and anti-money laundering and 'know your customer' ('KYC') obligations. Such matters were shown, for example, in the Account Opening Form, and would in any event have been obvious to both parties. It was also known to both sides that Beneathco was registered in the UAE, while RJOL was a UK company. Beneathco's sophistication was also known, with the Account Opening Form describing it as being in the business of trading in petroleum products, having annual turnover of US\$ 22,004,600, and intending to trade with RJOL for the purpose of hedging underlying physical commodities. The Account Opening Form included statements that Beneathco had worked in the financial sector for a year or more, and in a professional position, requiring knowledge of the transactions Beneathco intended to undertake; that Beneathco held an investment portfolio of more than €500,000; and that Beneathco had carried out transactions, in markets comparable to those it wished to trade with RJOL, in significant size and at a frequency of 10 per quarter over the previous four quarters.
70. The first implied term pleaded by Beneathco is that *'the Defendant was required to execute the Claimant's instructions to pay monies out of the Claimant's account(s) with the Defendant to a bank account, and in a currency of the Claimant's nomination, net of any obligations owed by the Claimant to the Defendant'*.
71. By contrast, albeit subject to various carve-outs to which I shall return, RJOL pleads an implied term that *'RJOL was obliged to pay Beneathco on demand the monies standing to its account in the currency of that account (US\$)'*.
72. In the course of oral submissions, I posited that it would be open to me to find a different implied term to the ones proposed, along the lines of an obligation on RJOL to pay out to Beneathco, on demand, such sum as RJOL held for Beneathco. I also raised the possibility that RJOL was contractually entitled to hold client funds any way RJOL saw fit, consistent with its regulatory obligations, and that if Beneathco called for payment of its funds, Beneathco would have to accept that such funds were held in whatever currency, and in whatever location, RJOL was holding them. I am satisfied that both parties had a fair opportunity to address me on these possibilities.
73. Beneathco places reliance on two documents to support its proposed implied term:
- (1) First, Beneathco relies on the Best Execution Document. This notes that the regulatory regime *'requires the Firm to take all reasonable steps to obtain the best possible result for Professional Customers...'*, and that *'If you give us*

specific instructions as to how you wish your order to be executed that we accept, we will follow these instructions'. In terms of the application of this policy, '*Best Execution applies to the execution of orders in relation to Financial Instruments*', both when executing Beneathco's orders on its behalf, and when receiving and transmitting Beneathco's orders.

- (2) Second, Beneathco points to the Terms & Conditions document dated 16 April 2019. This sets out different fees and commission rates which RJOL will charge Beneathco for different transactions. These include rates for credit interest and debit interest. It is stated '*Interest will be calculated on a daily basis, currency by currency...*', and in addition to interest rates shown for USD, CHF, EUR, and GBP, states: '*All other currencies available on request*'. Beneathco says that, to the extent it is ambiguous whether this document covers instructions to pay sums out to Beneathco, the document should be construed *contra proferentem*, since this is a standard-form document prepared by RJOL.
74. RJOL denies that Beneathco's pleaded term is to be implied, and I agree. In my judgment, it is neither obvious nor necessary to give business efficacy to the contractual relationship between RJOL and Beneathco that a term should be implied that RJOL should be obliged to execute any instructions Beneathco might give regarding the return of funds held for its benefit by RJOL. The Best Execution Document covers trading by RJOL on Beneathco's behalf; it does not cover the return of funds to Beneathco. In any event, it is limited to orders '*that we accept*'. The reference in the Terms & Conditions to '*All other currencies available on request*' means no more than that additional fees and commission rates can be provided for transactions in other currencies, not that RJOL is promising contractually to transact in any currency that Beneathco may demand. More generally, and of especial relevance on the facts here:
- (1) It is neither obvious nor necessary that RJOL should be obliged to convert the sums it holds for Beneathco's benefit into any currency Beneathco chooses. Being required to procure – for example – Russian roubles with which to pay RJOL, with attendant cost and foreign exchange risk, could raise commercial, regulatory and legal concerns.
 - (2) Nor is it obvious nor necessary that RJOL should be obliged to pay to any person whom Beneathco might nominate. The contract works perfectly well with RJOL being obliged to pay only Beneathco itself. RJOL might have commercial, regulatory, or legal concerns in dealing with the person nominated which would tell against the implication of such a term.
75. As for RJOL's proposed implied term (see paragraph 71 above), Beneathco argues that the concepts of a '*currency of [Beneathco's] account*' and, as it is put elsewhere, the '*currency of the parties' relationship*', are unduly vague. I have some sympathy with that. In the interests of certainty, and bearing in mind both (i) that RJOL holds sums on trust for Beneathco, and (ii) that I consider RJOL is contractually entitled to hold such sums in whatever way it sees fit, consistently with its regulatory obligations (see paragraph 72 above), I prefer an implied term that RJOL's obligation is to pay Beneathco whatever currency RJOL holds for Beneathco.

76. On the facts, whether the term to be implied is as pleaded by RJOL, or as I prefer, makes no difference. US dollars (USD) is the currency in which RJOL in fact held and holds Beneathco's funds in a segregated account. US dollars is the currency in which RJOL produced statements of account to Beneathco. US dollars is the currency which Beneathco selected as its base currency. US dollars, as pleaded in the Particulars of Claim at paragraph 58, '*is the currency used by the Claimant and the Defendant to do business*'. Beneathco used its account exclusively to trade derivatives denominated in US dollars. All payments to and from the account were in US dollars. Interesting and difficult questions might have arisen if Beneathco had traded in different currencies, or if RJOL held Beneathco's funds in different currencies, or if RJOL had produced statements of account in different currencies, but on the facts those questions are academic.
77. That apart, with the exception of the entitlement for RJOL to net off any sums due from Beneathco (which I understand to be common ground), I find most of the remaining elements of the implied terms proposed by RJOL unjustifiable, being neither obvious nor necessary to give business efficacy to the contractual relationship.
78. RJOL's pleaded case (paragraph 18(d) of its Defence) is:
- i. RJOL was not obliged to comply with an instruction that would require an act to be done in a place where it would be unlawful under the law of that place to carry it out (the Unlawfulness Implied Term).
 - ii. RJOL was obliged to pay Beneathco on demand the monies standing to its account in the currency of that account (US\$), subject to:
 - (1) The payment being net of any obligations owed by Beneathco to RJOL.
 - (2) Its right under clause 1.5 to refuse to carry out an instruction as is necessary to comply with any applicable regulations.
 - (3) Its right under clause 1.6 to take any action which it, in its reasonable discretion, considered desirable to (i) correspond with an action taken by a regulatory body which affects a transaction or (ii) mitigate any loss incurred as a result of such action.
 - (4) The Unlawfulness Implied Term by which RJOL was not obliged to comply with an instruction that would require an act to be done in a place where it would be unlawful under the law of that place to carry it out.
 - (5) The principle derived from *Ralli Bros v Compania Naviera Sota y Aznar* [1920] 2 KB 287 (the Ralli Bros Principle) by which there is no obligation under English law to comply with a contractual instruction that would require an act to be done in a place where it would be unlawful under the law of that place to carry it out.
79. As to these various carve-outs from RJOL's obligations:

- (1) To the extent the general law gives a right of set-off, or suspends obligation by reason of the *Ralli Bros* principle, or suspends or removes obligations where they are inconsistent with English law, there is no need to imply such matters into the Unwritten Contract.
 - (2) To the extent that provisions are merely, from RJOL's perspective, desirable – such as the provisions of clauses 1.5 and 1.6 of the PCA, which, I have found, RJOL through an oversight failed to incorporate expressly – these do not meet the requirements of obviousness or necessity.
80. Accordingly, I find that the contractual obligation of RJOL, and its obligation as trustee of Beneathco's funds, was and is to make payment to Beneathco, on demand, in US dollars. It is and was not to pay in any other currency; nor to pay anyone else; nor to pay otherwise than as instructed.
81. Since Beneathco is a Dubai company, the parties were agreed that, subject to agreement otherwise, its entitlement was to be paid in Dubai. There was some attempt by Beneathco to argue, in closing submissions, that I could and should find that in UAE law Beneathco was entitled to demand payment in the local currency, namely Emirati dirhams (AED), with the effect that if payment in US dollars were prohibited, RJOL was obliged to pay in AED (cf *Libyan Arab Bank* at 766E). That proposition of UAE law was not pleaded, and so there was no evidence concerning this. I have no idea whether UAE law is sufficiently similar to English law that I can presume it to be similar in this regard and I decline to make such a finding.
82. I accept that by agreement between the parties, and subject to its legal and regulatory obligations, RJOL could make payment on Beneathco's instruction to some other person or in some other currency. RJOL's Anti-Money Laundering and Sanctions Policy makes plain that payments may be made to third parties: '*Payments... made to a third parties [sic] will be escalated, with a rationale, to the MLRO [Money Laundering Reporting Officer] for approval. The MLRO may allow exceptions which must be captured and logged*'. But, in my judgment there is and was no obligation on RJOL to make such payments.

The pleaded case on Instructions

83. That brings me to the question whether Beneathco's Instructions were ones it was entitled to make under the Unwritten Contract, such that RJOL was obliged to comply with them. To be clear, I consider that there are only two pleaded Instructions I need consider in this regard: first, the Original Instruction of 24 January 2020 (see paragraph 15 above); and, second, the Amended Instruction of 10 September 2025 (see paragraph 38 above). While Beneathco sought to persuade me in the course of oral argument that I should have regard to other requests for payment, including in the emails of late January 2020 (see paragraphs 16-19 above), and in Zaiwalla & Co's letter before action of January 2021 (see paragraph 25 above), in my judgment none of these requests were pleaded as the basis on which the claim has come to trial. As shown in the extracts from the Particulars of Claim which I have cited at paragraph 30 above, the claim in June 2024 was advanced on the basis of the Original Instruction of 24 January 2020 only, while the amendments in October 2025 added reference only to the Amended Instruction. Zaiwalla & Co's letter of 10 September 2025 in which the Amended

Instruction was given (see paragraph 38 above) is consistent with this analysis, referring to the 24 January 2020 instruction, and no other, as the Instruction defined in the Particulars of Claim.

Original Instruction: Obligation to pay the \$16.5 million in a currency other than USD?

84. Turning, then, to the Original Instruction, in my judgment, RJOL was not obliged to make payment under such instruction. The Original Instruction was for payment in AED while, as I have held, RJOL's obligation was limited to making payment in US dollars.
85. Accordingly, I find that RJOL was not in breach of its obligations to Beneathco, in failing to pay the \$16.5 million to Beneathco pursuant to the Original Instruction.

Amended Instruction: Obligation to pay the \$16.5 million to a different company?

86. As for the Amended Instruction, in my judgment RJOL was, and is, not obliged to make payment under this instruction either. The instruction was for payment to a third party while, as I have held, RJOL's obligation was limited to making payment to Beneathco itself.
87. Accordingly, I find that RJOL was and is not in breach of its obligations to Beneathco in failing to pay the \$16.5 million to Future Plus pursuant to the Amended Instruction.

Conclusion

88. In circumstances where, as I have held, RJOL was under no obligation to make payment under the Original Instruction, and was and is under no obligation to make payment under the Amended Instruction, the claim fails. There is no dispute that RJOL continues to hold the \$16.5 million on trust for Beneathco, and no declaration is needed in that regard. Nor, in my judgment, is Beneathco entitled to any other relief.

Alternative analysis

89. In case I am wrong on my primary analysis, I deal below with the other issues which would arise if RJOL is or was contractually obliged under one or other of the Instructions to make payment as instructed.

Overview of the issues

90. RJOL says that its obligation to perform either Instruction is suspended by reason of the principle in *Ralli Bros*. The *Ralli Bros* principle was summarised by Falk LJ in *Celestial Aviation Services Ltd v UniCredit Bank AG (London Branch)* [2024] EWCA Civ 628, [2025] 1 WLR 196, 221 (*'Celestial'*) as follows:

105 The *Ralli Bros* principle is well-established. It is a limited exception to the general principle that the enforceability of a contract governed by English law is determined without reference to illegality under any other law. The exception applies where

contractual performance necessarily requires an act to be done in a place where it would be unlawful to carry it out: see for example *Dana Gas PJSC v Dana Gas Sukuk Ltd* [2018] Lloyd's Rep 177 at para 79 per Leggatt J and *Banco San Juan Internacional Inc v Petróleos de Venezuela SA* [2021] 2 All ER (Comm) 590 ('*Banco San Juan*') at paras 62, 77 and 79 per Cockerill J.

- 106 A distinction has been drawn in the case law between situations where performance is illegal in the jurisdiction where performance must take place, where the principle applies, and cases where the illegality relates to a preparatory step to performance, or 'equipping to perform': *Banco San Juan* at paras 80-83, where the illegality does not excuse non-performance. Further, it is not in dispute that a party will not be excused if performance would be legal if a licence was obtained, unless that party shows that they either made reasonable efforts to obtain a licence or that any such efforts would have been in vain because a licence would have been refused...

91. RJOL says that, if RJOL were otherwise obliged to make payment pursuant to the Original or Amended Instruction, the *Ralli Bros* principle is engaged in the present case because payment under either the Original Instruction or the Amended Instruction would involve unlawful performance in the United States, by reason of sanctions imposed on Beneathco.
92. I will analyse this defence on the premise that my primary analysis was wrong and that, therefore, RJOL was obliged to make payment to Beneathco either under the Original Instruction, or under the Amended Instruction, or both.

The scope of the Ralli Bros principle

93. As a first stage in this analysis, it should be recalled that the *Ralli Bros* principle does not extend to conduct which is lawful in the place of performance, but unlawful under some other system of law. As MacKinnon LJ expressed it in *Kleinwort, Sons and Co v Ungarische Baumwolle Industrie Aktiengesellschaft* [1939] 2 KB 678 (CA) at 694-695 ('*Kleinwort*') (in a passage cited with approval by Robert Walker LJ in *Ispahani v Bank Melli Iran* [1998] Lloyd's Rep (Banking) 133 (CA) at 140a, '*Bank Melli*')

Suppose the Kingdom or Legislature of Ruritania passed a law that no Ruritanian subject should pay a hotel bill which he had incurred in England. When the Ruritanian subject was sued in the county court by the hotel proprietor the county court judge, if that principle were correct, would have to give judgment for the defendant. That seems to me obviously absurd and I do not think that I need discuss the matter any further.

94. Accordingly, to the extent that RJOL might contend that actions to perform the contract would be unlawful under US law, that contention does not establish the applicability of

the *Ralli Bros* principle unless the United States is the (or a) place of performance of the payment obligation under the contract.

95. The concept of performance is a narrow one. It refers to performance which is required by the contract, not merely acts which, in the factual circumstance of performance, are likely, or even inevitably, to be required. Thus, where, in fact, the payer of a debt in (say) London, is only able to pay the debt if they can first evade currency restrictions in (say) Turkey, that falls outside the scope of performance. In such circumstances, evading currency restrictions in Turkey is merely 'equipping to perform' the contract. See, for example, *Banco San Juan* at [77]-[83].
96. Here the question arises again whether there is a freestanding debt obligation on RJOL to pay Beneathco \$16.5 million, or whether RJOL's obligation is limited to paying to Beneathco the (particular) \$16.5 million that RJOL holds on trust for Beneathco. In my judgment (see paragraphs 63-65 above), RJOL's obligation is only to pay over the particular trust property. If I were wrong on that, I would hold that the *Ralli Bros* principle has no application here, because if RJOL had a freestanding debt obligation to pay Beneathco in Dubai, then there would be no question of such performance being unlawful. Whatever difficulties RJOL might face in getting \$16.5 million to Dubai, whether in USD or in AED, these difficulties would be part of RJOL equipping itself to perform its debt obligation, not part of contractual performance. However challenging it might have been for RJOL to get USD or AED to a bank account in the UAE in the name of Beneathco, or to Future Plus, RJOL was not contractually required to use the US banking system to do so. Just as in *Toprak Mahsulleri Ofisi v Finagrains Compagnie Commerciale Agricole et Financière SA* [1979] 2 Lloyd's Rep 98 (CA) or *Kleinwort*, where paying parties could not in fact make payment without breaching their local laws, RJOL might well have found itself (to use its Counsel's term) between a rock and a hard place. The work-arounds now proposed by Beneathco, such as RJOL opening an account in Beneathco's bank in the UAE, might have been completely impractical. But, if RJOL entered into a contract with Beneathco under which it agreed to pay Beneathco (or some third party), on demand, a debt in the place of Beneathco's incorporation, without some carve-out for US sanctions, then this was a problem of RJOL's own making.
97. Assuming, however, that I am correct that RJOL's obligation would be limited to transferring to Beneathco the particular \$16.5 million that RJOL holds for Beneathco, then a different question arises. Counsel were unable to identify any authority concerning the application of the *Ralli Bros* principle in the context of transferring trust property, rather than paying a debt. However, if, as I consider, RJOL's obligation is to transfer trust property on demand, then getting that money out of RJOL's bank account and into the UAE is not merely a preparatory step; it forms part of RJOL's required contractual performance.
98. That being so, it is common ground that if payment to Beneathco were made from RJOL's bank via the US banking system in the United States, such payment would breach US law. The person who, in such circumstance, would be acting unlawfully within the United States would be the US-based correspondent banks of RJOL's bank and of Beneathco's bank. That raises the question whether the *Ralli Bros* principle applies not only to contracting parties performing their contract within a country where it is unlawful, but also to third parties acting unlawfully as part of the contractually-

required performance (assuming, for now, that such performance is indeed contractually required). I consider that the *Ralli Bros* principle does apply to such activity by third parties, for the following reasons:

- (1) Staughton J in *Libyan Arab Bank* seems to have assumed that such conduct would fall within the *Ralli Bros* principle. While analysing the different forms of fund transfers which could be made in that case, for the purpose of testing the potential applicability of the *Ralli Bros* principle (albeit, he did not call it that), Staughton J considered in each case whether activity in the United States was involved (at 752A-755H), not limiting himself to the question whether such activity was by the defendant itself. Falk LJ in *Celestial* at [117], in the course of some *obiter* observations, appears to have taken the same view, assuming that actions of a (third party) US correspondent bank could engage the *Ralli Bros* principle:

If it is correct that settlement otherwise than by a US dollar transfer to the specified account is precluded, then the *Ralli Bros* principle could be engaged if the act of performance, in this case effecting payment in US dollars to the specified account, would have required the involvement of a correspondent bank in the United States, as UniCredit contend, in what is more than a preparatory step

- (2) The *Foster v Driscoll* [1929] 1 KB 470 (CA) principle, which comes from the same ‘rootstock’ as the *Ralli Bros* principle (per Walker LJ in *Bank Mellie* at 140a) extends to unlawful acts which the parties intend to procure from third parties: *Regazzoni v KC Sethia Ltd* [1956] 2 Q.B. 490, 514 (CA).
- (3) It is relevant here also to consider the underlying public policy for the *Ralli Bros* rule. I adopt, in this regard, the analysis of William Day in ‘*Contracts, illegality and comity: Ralli Bros revisited*’ (2020) CLJ 79(1), 64-90 at 81-83 (with citations omitted):

Rather than frustration or illegality, *Ralli Bros* and most cases which follow it repeatedly invoke comity as the underlying public policy for the rule. It is suggested that comity is the most credible explanation for the rule so long as it is carefully defined, so as to sidestep the criticisms of leading commentators who variously describe the concept as “meaningless and misused”, and “a singular specimen of confusion of thought produced by a laxity of language”. Comity is deeply interconnected with territorial theories of sovereignty. It is not to be confused with reciprocity or deference. And its importance should not be overstated: it cannot justify all of private international law, and it may be overridden by other considerations such as the ensuring justice between the parties. It is best defined in relatively narrow terms. It justifies why a court may, or must, refrain from taking a step which it would otherwise be entitled to take in its own territory out of respect for the territorial sovereignty of another state. Comity is thus a public policy of the *lex fori* which acts as a “self denying ordinance”.

- (4) Mr Turner, Counsel for Beneathco, argued that a distinction was to be drawn between the contracting parties, whose actions the court might compel via an order for specific performance, and third parties who would not be subject to any order of the court. However, in my judgment that distinction does not meet the underlying rationale of the *Ralli Bros* rule as here described. On the hypothesis that the relevant act in the foreign state is required by the contract, to enforce that contract – whether by specific performance, or by the award of damages – will show the same lack of respect for the right of (here) the United States to legislate within its territory whether the person breaking US law would be the contracting party or some third party.
99. In the course of closing submissions, Beneathco advanced a further reason why it said the *Ralli Bros* principle would not be engaged in this case. This was an argument that the *Ralli Bros* principle applies only to unlawfulness which amounts to criminality, not mere civil unlawfulness. In support of this argument, Beneathco cited *Colt Technology Services v SG Global Group SRL* [2020] EWHC 1417 (Ch) at [13], where Joanne Wicks QC, sitting as a Judge of the High Court, explained that in that case the defendant was contending that paying certain invoices would involve the commission of a criminal offence under Italian law. However, I do not read that paragraph as the judge deciding that the *Ralli Bros* principle could apply only where a criminal offence would be committed; just that, on the facts of the case before her, that would be the position. Nor do I consider that unlawfulness under a foreign system of law which did not engage criminal sanctions would necessarily fall outside the scope of the *Ralli Bros* principle. In any case, I consider that the question of the nature and extent of the unlawfulness required to engage the *Ralli Bros* principle makes no real difference in this case: under the applicable provisions of US law, civil penalties for violation of sanctions can range as high as \$377,000 per violation, or twice the amount of the transaction that is the basis for the violation – i.e., in this case, \$33 million; and wilful violations, on conviction, can engage criminal penalties of up to \$1 million per violation, plus a sentence of up to 20 years' imprisonment.
100. Accordingly, I consider that, so far as relates to this case, the *Ralli Bros* principle is engaged if use of a US correspondent bank is contractually required in order to perform RJOL's obligation to pay to Beneathco the \$16.5 million which RJOL holds on trust for Beneathco.

Is use of a US correspondent bank contractually required?

101. This leads into the question whether the use of a US correspondent bank is or was contractually required, in order to satisfy either the Original Instruction or the Amended Instruction.
102. In analysing this question, I note that RJOL is entitled to hold the \$16.5 million any way it sees fit, consistent with its regulatory obligations: see paragraphs 72 and 75 above. RJOL could choose to hold client funds in London branches of US banks, or not; in one account, or many; in one bank, or many. The obligation on RJOL, when an instruction was given by Beneathco, was to transfer funds from wherever the client funds were.

103. The evidence of Mr Russell, which was not challenged and which I accept, is that client funds are held by RJOL in a changing roster of approved banks. Those banks were, on 24 January 2020, three UK-based banks (Barclays Bank plc, Lloyds Bank plc and RBS), and one US-based bank (Barclays Bank plc (New York), a US branch of Barclays). As at 31 December 2022, new roster banks were added, namely Axos Bank, Bank of Hope – both based in the US – and the UK branch of Citibank NA (a US-based bank). Axos Bank and Bank of Hope were subsequently removed from the roster.
104. On that basis, the question is whether the contractually-required performance of paying \$16.5 million from RJOL's accounts with its roster of banks to the instructed recipient in Dubai would necessarily involve use of the US banking system. To be clear, it would not be sufficient in this regard for RJOL to show that use of the US banking system would be the usual, or most convenient, way of making payment. Nor would it be sufficient to show that, if a payment instruction were given to a roster bank, it is more likely than not that the roster bank would choose to use a US correspondent bank. Rather, the question would be whether if a roster bank were instructed by RJOL to make payment, this would necessarily involve the use of a US bank or a US correspondent bank.
105. As to this, the burden of proof is on RJOL, but the evidence I received was somewhat lacking. In *Libyan Arab Bank*, Staughton J had the benefit of a good deal of expert evidence, on the basis of which a range of possible methods of paying sums in US dollars were considered. I received no equivalent evidence, and although submissions were made to the effect that I could treat the findings made by Staughton J in 1989 as continuing to represent the position today, I do not regard that as a satisfactory way of making findings of fact concerning the banking system in 2020 or 2025. RJOL points out that in *MUR Shipping BV v RTI Ltd* [2024] UKSC 18, [2024] AC 675 it was common ground (at [9]) that '*Any US dollar transfer would have had to pass through a US intermediary bank*', but I do not consider that this provides much assistance in deciding the facts of the present case. Mr Prince, RJOL's US law expert, gave some evidence that it would be '*difficult, if not impossible*' to perform payments without involving the US financial system, but Mr Prince is not a banking expert, and was not instructed to give evidence on banking processes. I also received no evidence from any of the roster banks to explain their processes.
106. Nonetheless, I am satisfied, on the balance of probabilities, that payment of the \$16.5 million from any of the roster banks would have involved the use of a US bank. I reach this conclusion for the following reasons:
- (1) Mr Russell's evidence was that, based on his experience, in the case of a payment being made in USD, processing a payment '*would involve our banks passing the payment instruction to their respective USD correspondent banks (which – for our current roster of banks – are all based in New York)*'. His understanding was that '*any form of conversion from USD to AED would unavoidably involve the use of a correspondent bank and the US banking system*'. In oral evidence, he said that '*For any US dollar transfer, it has to pass through the US banking system*'. Although not a banking expert, he had learned this through working for many years for banks and financial institutions interacting with the banking system. He was asked whether his evidence was that any dollar transfers have to

pass through the US banking system, to which he replied: ‘*I have no experience of seeing it happen any other way*’.

- (2) This experience accords with the description given in Law of Bank Payments (5th ed., 2018, ed. Brindle and Cox) at ¶3-008:

SWIFT (Society for Worldwide Interbank Financial Telecommunication) is the international secure messaging system between banks which is almost universally used and underpins many international payment systems, although SWIFT is not itself a payment system. The cross-border transfer of funds is an essential feature of most international business transactions. Outside the Euro clearing and settlement systems considered above, virtually all cross-border transfers involve the inter-bank transfer of funds between correspondent accounts. In the past, such transfers were mainly effected by the use of bankers’ drafts, mail transfers, and telegraphic transfers (by telegram or telex). Today, cross-border inter-bank payment messages are usually transmitted via the telecommunication network operated by SWIFT. In *Dovey v Bank of New Zealand* [2000] 3 NZLR 641, 645, the Court of Appeal of New Zealand endorsed the trial judge’s finding that SWIFT constituted “the almost universal system for transferring funds across international boundaries”.

- (3) As for the underlying transfer itself, the Law of Bank Payments says at ¶3-017

‘Where the transfer is offshore it will usually pass through the country of the currency of the transfer, although this will not always be the case. The transfer will not pass through the country of the currency where the payer’s bank has a foreign currency account with the payee’s bank, and both banks are located outside the country of the currency of the transfer, or where the payer’s bank and the payee’s bank hold foreign currency accounts with a common correspondent bank which is located outside the country of currency. However, an offshore transfer will pass through the country of the currency of the transfer where the payer’s bank employs a correspondent bank in the country of currency to make the transfer to the payee’s bank. The transfer from the correspondent bank to the payee’s bank will be either direct, where it is a mutual correspondent of the payer’s bank and the payee’s bank, or indirect, where it is not. Where the transfer is indirect, the correspondent of the payer’s bank will transfer funds to the correspondent of the payee’s bank in the country of currency over the clearing system of that currency. Where the respective correspondents of the payer’s bank and the payee’s bank are not themselves members of the clearing system, further correspondents, who are members of that system, must be engaged.

- (4) I have no reason to think that in this case the payer’s banks (*viz.*, the roster banks of RJOL) have or had a USD account with Commercial Bank of Dubai, nor with Emirates NBD Bank (the banks nominated in the Instructions); nor that roster

banks and either Dubai bank hold accounts with a common correspondent bank held outside the United States. Even if they did, that would not require the relevant roster bank to avoid the US banking system, only provide a means by which it might choose to do so, and I have no basis for thinking that the roster bank would allow RJOL to dictate such a course on the facts of this case.

- (5) The only previous occasion on which RJOL had paid Beneathco, it did so via a US correspondent bank: see paragraph 11 above.
 - (6) As regards the Original Instruction, this required speedy payment. The Original Instruction read, ‘*Would appreciate if you effect the transfer by today*’, and the bank account nominated was closed within days of the payment being instructed: see paragraph 21 above. Even if, which I doubt, it was open to RJOL to request a roster bank to make payment via a route which avoided the US banking system, and even if a roster bank could have been persuaded to take such course outside what is likely to have been its usual process, it seems to me unlikely that such payment could be approved within the bank, and made, within this time-scale.
107. Accordingly, I conclude that it is more likely than not that, to make the contractually-required transfer of the \$16.5 million from RJOL’s client money accounts to the accounts in Dubai nominated by Beneathco would involve the use of a US correspondent bank. Subject to what follows, this means that, on this alternative analysis, the *Ralli Bros* principle is engaged.

A licence?

108. That leads into the question whether RJOL could or should have obtained a licence, so as to render lawful the activity of the US correspondent bank which would be used to make payment. The burden lies on RJOL to establish that it made reasonable efforts to obtain such a licence, or that even had such efforts been made, a licence would have been refused: *Banco San Juan* at [90]-[104]; *Celestial* at [121]-[124].
109. The evidence relating to this point shows that RJOA (not RJOL) submitted an initial voluntary self-disclosure on 6 February 2020, followed by a supplemental disclosure on 6 April 2020: see paragraphs 22 and 24 above. This disclosure related only to the activity of liquidating Beneathco’s trades on 24 January 2020. This led to a cautionary letter from OFAC more than a year later, on 21 July 2021: paragraph 27 above. On 25 August 2021, RJOA (again, not RJOL) then sought a specific licence to permit RJOL to release to Beneathco the \$16.5 million, or guidance that no licence was required: paragraph 28 above. It took over 3½ years for OFAC to reply, refusing the request: paragraph 36 above.
110. Beneathco, supported by the expert evidence of Mr Cohen, was critical of the application made by RJOA for a licence, because it sought permission for RJOA to instruct RJOL to release the \$16.5 million to Beneathco. RJOL did not and does not need RJOA’s instructions in order to make payment to Beneathco. Mr Cohen’s evidence was that, by formulating the request in this manner, ‘*OFAC was bound to deny that request, since it self-evidently involved a US person controlling a transaction with a SDN. OFAC does not routinely grant licenses on that basis*’. As Mr Cohen expressed it orally, if RJOL itself had made the application, with the only US person

involved being a US correspondent bank as ‘*an ancillary part of the transaction*’, then it was ‘*much more likely*’ to have obtained a licence than RJOA was, but he could not put a probability on that: ‘*I guess the main point is, so far as I know, that was never tried*’. But, if an application had been made by RJOL, the ‘*chances would have been much higher*’, and ‘*OFAC, in a moment of humility, might have conceded that there actually was no jurisdiction over RJOL*’, and so licensed the transaction.

111. On the other hand, Mr Prince was of the clear view that OFAC would not have licensed the payment of \$16.5 million to Beneathco or for its benefit. He based this on the language of OFAC’s refusal in April 2025, which described the request by RJOA as ‘*inconsistent with current licensing policy*’. Mr Prince explained that when there are licence applications submitted to OFAC, OFAC refers the matter to the US State Department and seeks its foreign policy guidance, which forms part of OFAC’s overall determination. Mr Prince noted that on 4 February 2025 President Trump issued a ‘National Security Presidential Memorandum / NSPM-2’, directed at a range of bodies including the Secretary of State and the Secretary of the Treasury. Its subject was ‘*Imposing Maximum Pressure on the Government of the Islamic Republic of Iran, Denying Iran All Paths to a Nuclear Weapon, and Countering Iran’s Malign Influence*’. Section 2 of the memorandum directed the Secretary of the Treasury to:
- (i) immediately impose sanctions or appropriate enforcement remedies on all persons for which the Department has evidence of activity in violation of one or more Iran-related sanctions;
 - (ii) implement a robust and continual sanctions enforcement campaign with respect to Iran that denies the regime and its terror proxies access to revenue...
112. I note that both the ‘*Maximum Pressure*’ memorandum and the refusal of the licence to RJOA, date from 2025. They provide only weak evidence as to the approach that OFAC would have taken in 2020.
113. Overall, as regards the Original Instruction, I am sure that no licence could have been obtained in time to comply with that Instruction. The account to which the Original Instruction sought payment was closed within days of the Instruction being made: see paragraph 21 above. Even if RJOL had used significant efforts to obtain a licence, over and above what was reasonable, it is inconceivable that it would have obtained a positive response from OFAC in such a time-scale, bearing in mind the 3½ years OFAC took to respond to a similar request made in August 2021.
114. Equally, for the Amended Instruction, I consider it highly improbable that RJOL could have obtained a licence since the Amended Instruction was given, in particular given (i) President Trump’s current policy of imposing ‘*maximum pressure*’ on the government of Iran; and (ii) the opaque nature of the relationship between Beneathco and Future Plus described at paragraphs 40-41 and 44-45 above.
115. For these reasons, I conclude that RJOL’s reliance on the *Ralli Bros* principle is not defeated by RJOL’s failure to seek a licence from OFAC.

The Blocking Regulation

116. That brings me to the question, raised by Beneathco, whether the Protecting Against the Effects of the Extraterritorial Application of Third Country Legislation (Amendment) (EU Exit) Regulations 2020 (the ‘UK Blocking Regulation’) prevents reliance by RJOL on the *Ralli Bros* principle.
117. The UK Blocking Regulation came into force on 1 January 2021. From that date, it amends, within the UK, Council Regulation (EC) (No.2271/96) (the ‘EU Blocking Regulation’). The EU Blocking Regulation is retained EU law under the European Union (Withdrawal) Act 2018, now called assimilated law by virtue of section 5 of the Retained EU Law (Revocation and Reform) Act 2023. So far as presently material:

- (1) The UK Blocking Regulation has a number of recitals including:

Having regard to the Treaty establishing the European Community, and in particular Articles 73c, 113 and 235 thereof,
 Having regard to the proposal from the Commission,
 Having regard to the opinion of the European Parliament(1),
 Whereas the objectives of the Community include contributing to the harmonious development of world trade and to the progressive abolition of restrictions on international trade;
 Whereas the Community endeavours to achieve to the greatest extent possible the objective of free movement of capital between Member States and third countries, including the removal of any restrictions on direct investment — including investment in real estate — establishment, the provision of financial services or the admission of securities to capital markets;
 Whereas a third country has enacted certain laws, regulations, and other legislative instruments which purport to regulate activities of natural and legal persons under the jurisdiction of the Member State;
 Whereas by their extra-territorial application such laws, regulations and other legislative instruments violate international law and impede the attainment of the aforementioned objectives;
 Whereas such laws, including regulations and other legislative instruments, and actions based thereon or resulting therefrom affect or are likely to affect the established legal order and have adverse effects on the interests of the Community and the interests of natural and legal persons exercising rights under the Treaty establishing the European Community;
 Whereas, under these exceptional circumstances, it is necessary to take action at Community level to protect the established legal order, the interests of the Community and the interests of the said natural and legal persons, in particular by removing, neutralising, blocking or otherwise countering the effects of the foreign legislation concerned;
 ...

- (2) Article 1 of the UK Blocking Regulation provides:

This Regulation provides protection against and counteracts the effects of the extra territorial application of the laws specified in the Annex of this Regulation, including regulations and other legislative instruments, and of actions based thereon or resulting therefrom, where such application affects the interests of persons, referred to in Article 11, engaging in international trade and/or the movement of capital and related commercial activities between the United Kingdom and other countries.

The Secretary of State may by regulations made by statutory instrument amend the Annex to this Regulation to add laws, regulations or other legislative instruments of other countries having extraterritorial application and causing adverse effects, and to delete laws, regulations or other legislative instruments when they no longer have such effects.

- (3) Article 5 of that Regulation provides, in its first paragraph:

No person referred to in Article 11 shall comply, whether directly or through a subsidiary or other intermediary person, actively or by deliberate omission, with any requirement or prohibition, including requests of foreign courts, based on or resulting, directly or indirectly, from the laws specified in the Annex or from actions based thereon or resulting therefrom.

- (4) Article 11 provides, so far as presently material:

This Regulation shall apply to:

- ...
2. any legal person incorporated in any part of the United Kingdom...

- (5) The Annex to the UK Blocking Regulation begins with a Note:

Note: The main provisions of the instruments contained in this Annex are summarised only for information purposes. The full overview of provisions and their exact content can be found in the relevant instruments.

- (6) There then follows within the Annex a list of laws, regulations and other legislative instruments, including, so far as material for present purposes, from the United States of America, the Iran Sanctions Act of 1996, the Iran Freedom and Counter-Proliferation Act of 2012, the Iran Threat Reduction and Syria Human Rights Act of 2012, and the Iranian Transactions and Sanctions Regulations ('ITSR').

- (7) Under the ITSR heading, the Annex reads:

Required compliance:

Not to reexport any goods, technology, or services that (a) have been exported from the USA and (b) are subject to export control rules in the USA, if the export is made knowing or having reason to know that it is specifically intended for Iran or its Government.

Goods substantially transformed into a foreign-made product outside the USA, and goods incorporated into such a product and representing less than 10 % of its value are not subject to the prohibition.

118. Under Article 2 of the Extraterritorial US Legislation (Sanctions against Cuba, Iran and Libya) (Protection of Trading Interests) Order 1996 (as amended) (the '1996 Order'), any person referred to in Article 11 of the UK Blocking Regulation who commits a breach of the first paragraph of Article 5 of that Regulation, shall be guilty of an offence, and liable on conviction and indictment to a fine; or on summary conviction, to a fine not exceeding the statutory maximum. In England, no proceedings for such an offence shall be instituted except by the Secretary of State or with the consent of the Attorney General.
119. The argument advanced by Beneathco, in summary, is that the Executive Order under which Beneathco was designated, EO 13846, was made pursuant to presidential powers under the various pieces of legislation set out in the Annex to the UK Blocking Regulation (and, previously, the Annex to the EU Blocking Regulation); that it would therefore be a criminal offence under Article 2 of the 1996 Order for RJOL to comply with that designation by not making payment to Beneathco; and that, accordingly, the public policy of comity which underpins the *Ralli Bros* principle must give way to the greater public policy of the court not endorsing criminal conduct by RJOL.
120. These are deep and largely uncharted waters.
 - (1) The parties were unable to identify any previous case in which the interplay between the *Ralli Bros* principle and the Blocking Regulation had been considered. I was shown a single case in which the EU Blocking Regulation was discussed by the CJEU, *Bank Melli Iran v Telekom Deutschland GmbH* (Case C-124/20), in a case from 2021. I was shown no authorities in UK law regarding the Blocking Regulation.
 - (2) Does the UK Blocking Regulation fall to be interpreted in the same manner as the EU Blocking Regulation? I was shown *C G Fry & Son Ltd v Secretary of State for Housing, Communities and Local Government* [2025] UKSC 35, which relates to the 1994 Habitat Regulations, promulgated to implement the Habitat Directive. The Supreme Court held that, in that context, ordinary domestic principles of statutory interpretation were to be applied when interpreting assimilated law; this required a purposive approach, having regard to the context and purpose of the legislation; and that, where the context and purpose was the intention to give effect in domestic law to the regime set out in EU legislation, the object of that EU legislation falls to be considered in interpreting the assimilated law: at [44]-[51]. By parity of reasoning, it would seem that I should interpret the UK Blocking Regulation consistently with the EU Blocking Regulation. However, it was submitted by Ms Barnes K.C. on behalf of Beneathco that, for

example, I would not be permitted to look at *travaux préparatoires* for the EU Blocking Regulation in interpreting the UK Blocking Regulation.

- (3) In this context, I note that the interpretation of the Annex to the Blocking Regulation is not straightforward. Does the Note which introduces the Annex mean that (for example) all of the ITSR are subject to the Blocking Regulations, with the 'Required Compliance' description being merely informational and of no legal effect; or does the 'Required Compliance' description limit the provisions of the ITSR which are targeted by the Blocking Regulations to those which are broadly described there?
- (4) Looking at matters from a US law perspective, if the President issued EO 13846 under powers in the ITSR, but he could have issued the same Executive Order under some other (unblocked) legislation, or if he issued EO 13846 by invoking both blocked and unblocked legislation, does the Blocking Regulation apply to it or not? What if, as was suggested at one point, the President did not have the power at all to make some parts of the Executive Order?

121. Nonetheless, I consider that, in the circumstances of this case, a short answer can be given.

- (1) The *Ralli Bros* principle applies only where contractual performance is unlawful by the law of the territory within which performance is contractually required. Here, that means it applies only if US law makes contractual performance unlawful within the United States. As I have held, the involvement of a US correspondent bank would fall within that unlawfulness.
- (2) The Blocking Regulation, by contrast, is designed and intended to prevent compliance with extra-territorial legislation. Here, that means it applies only if US law makes contractual performance unlawful outside the United States. The Blocking Regulation does not target, and thus the 1996 Order does not criminalise, RJOL not performing its contract by reason of conduct within the United States being unlawful under US law. I understood this to be accepted by Ms Barnes K.C. on behalf of Beneathco, who submitted that this was the effect of Article 1, paragraph 1 of the Blocking Regulation.
- (3) Some provisions of EO 13846 have extra-territorial effect, such as section 8, which targets entities outside the United States if they are owned or controlled by a US Person, as defined. However, having heard the expert evidence of US law, I am satisfied that:
 - (a) The provisions pursuant to which Beneathco was designated, and which would render it unlawful for a US correspondent bank, within the territory of the United States, to be part of contractual performance in this case, are section 1(a)(ii) and 1(b) of EO 13846.
 - (b) The presidential power to make these particular provisions can be found in the International Emergency Economic Powers Act ('IEEPA'), which is not a piece of legislation targeted by the Blocking Regulation. Mr Prince's evidence was that IEEPA was the sole legal basis for section 1(a)(ii). Mr Cohen preferred to describe this as the '*primary building block*', pointing

out that other statutes were more specifically targeted on Iran. However, he accepted that the power to make these provisions could be found in IEEPA, and could point to no other source for these provisions.

- (4) Accordingly, I do not consider that the Blocking Regulation prevents the application of the *Ralli Bros* principle here where (i) EO 13846 is not itself named in the Annex to the Blocking Regulation; (ii) the relevant provisions under which Beneathco was designated do not derive from any legislation identified in the Annex; and (iii) the relevant unlawful activity (*viz.*, the involvement of the US correspondent bank) would take place within the territory of the United States.
 - (5) The US law evidence was that RJOL might itself be committing an unlawful act, as a matter of US law, by instructing the payment to Beneathco, even though RJOL was outside the United States. If this were the sole reason for RJOL not paying the \$16.5 million to Beneathco, then that might engage the Blocking Regulation (a point I need not decide). But, since RJOL's act of instructing the payment would be outside the United States, this activity would not engage the *Ralli Bros* principle.
122. For these reasons, I consider that if (contrary to my primary analysis), RJOL was or remains otherwise bound to make payment of the \$16.5 million pursuant to the Original Instruction or the Amended Instruction, the *Ralli Bros* principle would have nonetheless suspended the obligation to pay.

Other matters

123. Having determined that (i) on my primary analysis, RJOL is and was not obliged to make payment because no instruction has been given with which it is or was obliged to comply; and (ii) on my alternative analysis, RJOL is and was not obliged to make payment because any payment obligation was suspended under the *Ralli Bros* principle, I will not extend this judgment with detailed consideration of further matters raised by the parties.
124. However, I should deal briefly with two arguments on which I was addressed, in case this matter goes further.
125. First, there is the impact of the August and September 2025 *Weinstock* orders (see paragraph 37 above). RJOL argues that the *Ralli Bros* principle applies equally to these orders, such that any payment obligation would be suspended where it would be a breach of either of these orders to make payment to Beneathco. I do not accept this. In *Litasco SA v Banque El Amana SA* [2025] EWHC 312 (Comm), Louise Hutton KC, sitting as a Deputy Judge of the High Court, held at [52]-[58] that the *Ralli Bros* principle does not apply to acts of performance in a foreign jurisdiction which are unlawful in the sense of being a breach of a foreign court order, rather than contrary to the legislation or regulation of that foreign jurisdiction. I am not persuaded that she was wrong so to conclude; on the contrary, I respectfully consider her decision was correct for the reasons she gave. I do not consider that the *Ralli Bros* principle, nor any similar principle of public policy, extends to court orders. The *Ralli Bros* principle is based upon comity (see paragraph 98.(3) above). The respect given, as a matter of comity, to the sovereign acts of a state within its territory, including executive acts, does not

extend equally to court decisions: see, for example, *Deutsche Bank AG London Branch v Receivers Appointed by the Court* [2021] UKSC 57, [2023] AC 156 at [136(3)].

126. Second, there is the question of relief I would have ordered if I were to have found that RJOL is or was in breach of an obligation to make payment under the Original Instruction or the Amended Instruction. As to this:

- (1) If I were to have found that RJOL was in breach in failing to comply with the Original Instruction, then I would have awarded damages in the sum of \$16.5 million, plus interest on such sum. If RJOL were to have complied with the Original Instruction, then, in my judgment, that fairly reflects what Beneathco would have received. No question of specific performance would arise, since Beneathco no longer seeks payment under the Original Instruction, and the account to which any payment would have been made under that instruction has been closed.
- (2) However, if I were to have found that RJOL was in breach of the Amended Instruction, the position is less straightforward. It is not at all clear that Beneathco has suffered any loss as a result of the non-payment of the \$16.5 million to Future Plus, given the opacity of the arrangements in this regard: see paragraphs 40-41 and 44-45 above. Moreover, those same opaque arrangements would have made me reluctant to order specific performance of the Amended Instruction, i.e. to compel the payment to Future Plus, a company about whom so little is known. In the event, however, for the reasons I have given, I need not decide this question.

127. Finally, I should record that RJOL indicated that if in the *Weinstock* proceedings RJOL's appeal were to be dismissed, and the US Court of Appeals were to uphold the order to turnover the \$16.5 million to the Weinstock family, then RJOL intends to comply with such order. RJOL indicated that there would then be arguments as to whether the trust property would be depleted, and/or whether RJOL's payment obligations would be frustrated. However, these are not issues or arguments which have yet arisen, and not ones on which I express any view.

Conclusion

128. For these reasons, I dismiss the claim.