Neutral Citation Number: [2023] EWHC 3160 (Comm)

Case No: CL-2023-000787

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: 8 December 2023

Before :

THE HON MR JUSTICE BUTCHER

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Between :

RENAISSANCE SECURITIES (CYPRUS) LIMITED	**Claimant**
- and -	
(1) CHLODWIG ENTERPRISES LIMITED **(2) ADORABELLA LIMITED** **(3) GEKOLINA INVESTMENTS LIMITED** **(4) DUBHE HOLDINGS LIMITED** **(5) OWL NEBULA ENTERPRISES LIMITED** **(6) PERPICIA LIMITED**	**Defendants**

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Andrew Dinsmore and Alexandros Demetriades (instructed by **CANDEY**) for the **Claimant**
Helen Davies KC and Fred Hobson (instructed by **PCB Byrne**) for **Mr Andrey Guryev and Mrs Evgenia Guryeva**

Hearing date: 23 November 2023

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APPROVED JUDGMENT

This judgment was handed down by the court remotely by circulation to the parties' representatives by email and released to The National Archives. The date and time for hand-down is deemed to be 8 December 2023 at 10.00am

Mr Justice Butcher :

1. The hearing before me was scheduled as the return date for an anti-suit and anti-anti-suit injunction granted ex parte by Dias J on 3 November 2023.

2. The nature of the application made to her, and her reasons for granting an anti-suit and anti-anti-suit injunction are set out in her judgment ([2023] EWHC 2816 (Comm)).

3. At the hearing before me, there was no objection by the Defendants to the continuation of the injunction on its then current terms, pending a further hearing at which, they intimated, they intended to apply to discharge it. I made such an order.

4. What was contentious were certain applications made by Mr Andrey Guryev and Mrs Evgenia Guryeva ('Mr and Mrs Guryev'). They are said by the Claimant to be the, or amongst the, ultimate beneficial owners of the Defendant companies.

5. At the hearing, I indicated what order I was prepared to make, and said that I would give my reasons in due course. These are those reasons.

6. To understand the applications made by Mr and Mrs Guryev it is necessary to set out certain parts of the Order made by Dias J. Specifically, the Order contained a Penal Notice in the following terms:

PENAL NOTICE

IF YOU (1) ILLC CHLODWIG ENTERPRISES (2) ILLC ADORABELLA (3) GEKOLINA INVESTMENTS LTD (4) DUBHE

HOLDINGS LIMITED (5) OWL NEBULA ENTERPRISES LIMITED (6) PERPECIA LIMITED DISOBEY THIS ORDER YOU MAY BE HELD TO BE IN CONTEMPT OF COURT AND MAY BE FINED OR HAVE YOUR ASSETS SEIZED

IF (1) ILLC CHLODWIG ENTERPRISES (2) ILLC ADORABELLA (3) GEKOLINA INVESTMENTS LTD (4) DUBHE HOLDINGS LIMITED (5) OWL NEBULA ENTERPRISES LIMITED (6) PERPECIA LIMITED DISOBEYS THIS ORDER, ANY DIRECTOR, OFFICER, SENIOR MANAGER, OR ULTIMATE BENEFICIAL OWNER THEREOF, INCLUDING BUT NOT LIMITED TO (1) ANDREY GRIGORIEVICH GURYEV, (2) YULIA MOTLOKHOV GURYEVA, (3) EVGENIA GURYEVA (4) MR GEORGIA GEORGIOU, (5) SERGEY ALEXANDROVICH TARAKHNENKO, (6) STELLA KONSTANTINOU (7) SERGEY ALEXANDROVICH RYZHIKOV MAY BE HELD TO BE IN CONTEMPT OF COURT AND MAY BE IMPRISONED, FINED, OR HAVE YOUR/THEIR ASSETS SEIZED

ANY OTHER PERSON WHO KNOWS OF THIS ORDER AND DOES ANYTHING WHICH HELPS OR PERMITS THE DEFENDANT TO BREACH THE TERMS OF THIS ORDER MAY ALSO BE HELD TO BE IN CONTEMPT OF COURT AND MAY BE IMPRISONED, FINED OR HAVE THEIR ASSETS SEIZED.

7. Paragraph 4 of the Order then provided that:

Until after the Return Date or further order of the Court, the Court hereby grants by way of interim relief an injunction against the Defendants in order to enforce the Arbitration Agreements and orders the Defendants whether by themselves, their directors, employees, officers, agents or any other person or in any other way:

4.1. Not to pursue, or take any further steps in, or procure or assist the pursuit of, any substantive claim in the Russian Proceedings relating to the Disputes save and for the purpose of (i) adjourning the inter partes hearings in the Russian court room listed for 7 and 13 November 2023 by the Commercial Court of Moscow, Russia, between the Claimant and the Sixth and Fifth Defendants respectively in the Russian Proceedings and adjourning all further or other hearings listed in the Commercial Court of Kaliningrad and Moscow, Russia, between the Claimant and any of the Defendants in the Russian Proceedings, and (ii) any application brought by the Defendants to dismiss the Russian Proceedings;

4.2. Not to commence, pursue, procure or assist the commencement or pursuit of any further claims or proceedings relating to the Disputes or any dispute(s) arising in relation to any of the Agreements in or before any Court or Tribunal other than before an LCIA Arbitral Tribunal validly constituted in accordance with the Arbitration Agreement(s); and

4.3. Not to commence, pursue, procure or assist the commencement or pursuit of any motion, application, claim or proceedings which seeks to restrain, require the termination of, or impose sanctions upon, or otherwise interfere with the pursuit of this Application or this action or any future applications in relation thereto by the Claimant and/or any proceedings that the Claimant may initiate before a LCIA Arbitral Tribunal relating to the Disputes or any dispute(s) arising in relation to any of the Agreements.

8. Paragraph 6 of the Order then provided, in part:

Personal service of this order is dispensed with for the purposes of CPR r. 81.4(2)(c). Service of this order and any related papers is good service for the purposes of CPR Part 81 if done (i) in accordance with paragraph 5 above and/or (ii) by any of the methods below:

…

6.3. Andrey Grigorievich Guryev: delivery in hard copy or by post to Bolshaya Yakimanka Street, h. 22, bld. 3, apt. 84, Yakimanka District, Moscow, Russia.

6.4. Yulia Motlokhov Guryeva: delivery in hard copy or by post to Bolshaya Yakimanka Street, h. 22, bld. 3, apt. 84, Yakimanka District, Moscow, Russia.

6.5. Evgenia Guryeva: delivery in hard copy or by post to Bolshaya Yakimanka Street, h. 22, bld. 3, apt. 84, Yakimanka District, Moscow, Russia.

…

9. This form of order produced objections from Ms Yulia Motlokhov Guryeva, who objected to being named in the Penal Notice on the basis that, *inter alia*, she had no control over nor role in the Defendants. Ms Motlokhov Guryeva applied to vary the Penal Notice of the interim anti-suit injunction and filed a witness statement containing clarifications and undertakings. The Claimant

indicated that it did not oppose that aspect of her application, and in light of this Ms Motlokhov Guryeva withdrew her application shortly in advance of the hearing before me.

10. Mr and Mrs Guryev also objected to the form of the Order made. As developed by Ms Davies KC and Mr Hobson in their Skeleton Argument these objections were three-fold, as follows:

(1) The Penal Notice should be varied so as to remove reference to 'any ultimate beneficial owner' and to Mr and Mrs Guryev. There was, it was said, no basis for Mr and Mrs Guryev to be named in the Penal Notice. Where an injunction is made against a corporate defendant, it is appropriate for the penal notice to be addressed to any individual if, and only if, they are a director or officer of the defendant. In particular, where an individual is a shareholder or UBO of a defendant, that cannot justify their inclusion in the penal notice. In the absence of any case, let alone evidence, to suggest that Mr and Mrs Guryev are directors or officers of the Defendants, reference to them in the Penal Notice was inappropriate.

(2) The provisions relating to service of the Order on Mr and Mrs Guryev were inappropriate and should be set aside.

(3) The Order should include a 'Babanaft proviso'.

I will consider each of these objections in turn.

11. As to the first, the essence of Mr and Mrs Guryev's point was that the second paragraph of the Penal Notice, which I have quoted above, was one which took the form: (i) if a corporate D disobeys the order, (ii) certain individuals may be held in contempt. The purpose of that type of notice is concerned with civil

contempt arising from the corporate defendant's disobedience of the order. It is accordingly appropriate for it to identify only those individuals against whom civil contempt proceedings are capable of being brought by reason of any disobedience by the corporate defendant of the order. Any other approach would involve a misrepresentation as to the effect of the order and would not be appropriate.

12. Mr and Mrs Guryev further say that the only individuals against whom civil contempt proceedings may be brought for a corporate defendant's breach of an order are directors or other officers of the company. Those are the individuals who are within the ambit of what is termed in Olympic Council of Asia v Novans Jets [2023] EWHC 276 (Comm) by Foxton J at [35] 'the Body Corporate Provision'. They submit further, by reference to the decision of Moulder J in Integral Petroleum v Petrograt [2018] EWHC 2686 (Comm) (at [67]-[68]), that for the purposes of the Body Corporate Provision, 'directors' embraces *de jure* or *de facto* directors, but not shadow directors. It was accordingly inappropriate to name Mr and Mrs Guryev in the Penal Notice, given that there is no evidence that they were *de jure* or *de facto* directors, or officers, of the Defendants.

13. Shortly before the hearing in front of me, the Claimant accepted that Mr and Mrs Guryev should not be named in the Penal Notice of the continuation order, although it contended that it would be appropriate for the second paragraph to include, after 'Director, Officer' the words 'SENIOR MANAGER, ULTIMATE BENEFICIAL OWNER, AND ANY TRUSTEE, SETTLOR , PROTECTOR OF THE TRUSTS THAT HOLD SHARES IN THE

DEFENDANTS (INCLUDING ANY OF THEIR DIRECTORS OR OFFICERS)' and the other names who were in the second paragraph of the original order. The Claimant made it clear that it was reserving its position as to whether Mr and Mrs Guryev were *de facto* directors of the Defendants, and that its acceptance that they should not be named was not intended to concede that point.

14. In my judgment, the position of Mr and Mrs Guryev on this point is essentially correct. The second paragraph of the Penal Notice is intended to warn of the possibility of contempt proceedings on the basis of the Body Corporate Provision. It should not refer to classes of persons, or name individuals, other than directors or officers of the corporate defendant(s), for to do otherwise is potentially confusing and misleading as to the effect of the order. I therefore do not consider that the second paragraph of the Penal Notice should either contain the names of Mr and Mrs Guryev, or the wording quoted (in capital letters) in the previous paragraph.

15. That is not, however, to say that persons in those categories (i.e. those in the capital letters quoted in paragraph 13 above) could not be liable to contempt proceedings. They, like other non-parties to the action who have notice of the order, can potentially be in contempt of court if they knowingly assist a party who is restrained by an injunction in doing acts in breach of that injunction. This is what is sometimes referred to as the '*Seaward* jurisdiction', after Seaward v Paterson [1897] 1 Ch 545, and is a species of criminal contempt. It is the third paragraph of the Penal Notice which gives warning of this.

16. In the present case, the Claimant sought that the capitalised words quoted in paragraph 13 above, preceded by 'including but not limited to', should be inserted into the third paragraph of the Penal Notice of the continuation order after the words 'any other person'. This was not resisted by Mr and Mrs Guryev, and appeared to me to be unobjectionable. Whether a person will be potentially answerable under the *Seaward* jurisdiction will not, however, depend on whether they are in one of the categories thus enumerated, but whether they have knowingly assisted a Defendant in breaching the order.

17. The second objection raised by Mr and Mrs Guryev to the terms of the order made by Dias J, at least in their application and Skeleton Argument, was that there should have been no provision for service of the order, or 'related papers' on them, or dispensation with personal service, as they were not parties to the action.

18. At the hearing, Mr Dinsmore made it clear that the only purpose of including a provision for service on Mr and Mrs Guryev had been to preclude a possible argument, based on CPR r. 81.4(2)(c), that in the absence of personal service of the order, Mr and Mrs Guryev had not had notice of the order for the purpose of any subsequent contempt application. It was not intended to affect the question of whether the Claimant is able to establish jurisdiction over Mr and Mrs Guryev in relation to any future contempt application; nor to imply or have the effect that Mr and Mrs Guryev are to be regarded as 'insiders', as that shorthand is used in Olympic Council of Asia loc. cit. at [43]), and thus responsible for breaches of the order by the corporate Defendants under the

Body Corporate Provision, as opposed to 'outsiders' who are treated in the same way as other non-parties.

19. This clarification of the limited intended effect of seeking a dispensation of personal service appears to me to reflect what was actually the effect of its grant. It cannot have had the effect of altering the position of Mr and Mrs Guryev as to the applicability or otherwise of the Body Corporate Provision, nor have affected whether the English court will be able to assert jurisdiction over Mr and Mrs Guryev. Given this, I do not consider that there was anything objectionable about the dispensation having been included in Dias J's interim anti-suit order. As to the continuation order, if, as Mr Dinsmore accepted, the sole purpose of dispensing with personal service was to avoid any argument that Mr and Mrs Guryev had not had effective notice of the terms of the order, that would appear unnecessary, given that they were represented at the hearing by solicitors and counsel. Clearly they have notice of the order I then made. That said, the dispensation does not appear to be prejudicial to them; and, ultimately, given what Mr Dinsmore had said as to its limited effect, Ms Davies did not maintain any serious objection to it.

20. I indicated, however, that I was not prepared for the dispensation contained in the continuation order to extend beyond service of the order, and it would not extend to 'related papers'. If dispensation is sought in relation to other documents, it will have to be applied for.

21. The third matter, an application for a new provision to be inserted in any continuation order, is, on analysis, the most fundamental. Although beguilingly introduced by Ms Davies in her Skeleton Argument as a matter of the interim

order 'missing the standard "Babanaft" proviso', the argument underlying this objection as developed at the hearing is more wide-ranging and significant than this might suggest.

22. The argument made on behalf of Mr and Mrs Guryev, in this respect, can be summarised as follows.

(1) That it is wrong in principle for the English court to grant an injunction which might be understood to have some coercive effect over persons resident abroad and not subject to the court's jurisdiction.

(2) This was recognised in Babanaft International Co SA v Bassatne [1990] 1 Ch 13 and in Derby & Co Ltd v Weldon (Nos 3 & 4) [1990] 1 Ch 65.

(3) Reliance was placed on what was said in the former by Neill LJ at 40G, as follows:

'I am satisfied that it is wrong in principle to make an order which, though intended merely to restrain and control the actions of a person who is subject to the jurisdiction of the court, may be understood to have some coercive effect over persons who are resident abroad and who are in no sense subject to the court's jurisdiction.'

Reliance was also placed on what Nicholls LJ had said at 43-45, especially the following:

'But there is a troublesome point here concerning third parties. An injunction, as an order of the court, can affect the conduct of persons other than the defendant in the proceedings against whom the order is made….

It would be wrong for an English court, by making an order in respect of overseas assets against a defendant amenable to its jurisdiction, to impose or attempt to impose obligations on persons not before the court in respect of acts to be done by them abroad regarding property outside the jurisdiction. That, self-evidently, would be for the English court to claim an altogether exorbitant, extraterritorial jurisdiction….

Thirdly, I do not think that it would be right to attempt to distinguish between third parties who are resident or domiciled or present within the jurisdiction and those who are not. This could give rise, for instance, to a distinction between an overseas bank which has a branch in London and one which does not. More importantly, however, attempting to draw any such distinction is wrong in principle. If it is to be free from extraterritorial vice, the order must not attempt to regulate the conduct abroad of persons who are not duly joined parties to the English action in respect of property outside the jurisdiction.'

(4) Further, reference was made to what was said by Lord Donaldson MR in Derby v Weldon at 82-83, as follows, in relation to a *Mareva* injunction applicable to assets abroad, and in relation to the need for a *Babanaft* proviso:

'The effect on third parties

Here there is a real problem. Court orders only bind those to whom they are addressed. However, it is a serious contempt of court, punishable as such, for anyone to interfere with or impede the administration of justice. This occurs if someone, knowing of the terms of the court order, assists in the breach of that order by the person to whom it is addressed. All this is common sense and works well so long as the "aider and abettor" is wholly within the jurisdiction of the court or wholly outside it. If he is wholly within the jurisdiction of the court there is no problem whatsoever. If he is wholly outside the jurisdiction of the court, he is either not to be regarded as being in contempt or it would involve an excess of jurisdiction to seek to punish him for contempt….

I have no doubt of the practical need for some proviso, because in its absence banks operating abroad do not know where they stand and foreign banks without any branch in England who are thus outside the jurisdiction of the English courts may take, and have indeed taken, offence at being, as they see it, "ordered about" by the English courts.'

(5) In Dar Al Arkan Real Estate Development Co v Refai [2015] 1 WLR 135, the Court of Appeal recognised the distinction, in relation to persons abroad, between those who are answerable for the breaches of an order by a corporate party, under what may be described as the Body Corporate Provision, and others. Reference was made to what was said at 153, in paragraph [49], by Beatson LJ, as follows:

'I also reject Mr Bear's other submissions in support of his argument that CPR r. 81.4(3) does not have extra-territorial effect. This is a very different situation to that considered in the *Derby & Co Ltd v Weldon* litigation. That involved the exercise of the contempt jurisdiction over foreigners with no pre-existing connection with those proceedings. In this case, the director is the director of companies which are subject to the jurisdiction of the English court because they have instituted proceedings here and those companies are in contempt of this court because of their breach of an order of the court in the exercise of that jurisdiction. The rule of attribution in CPR r 81.4(3) is not equivalent to enforcing the penal law of this country in another jurisdiction. What the second defendant is seeking in these proceedings is to enforce, in England, an order made by the English Commercial Court in proceedings against persons, the companies, which are properly before the court.'

(6) In the case of persons who were not parties and who fell outside the ambit of the Body Corporate Provision, and who were abroad, and not subject to the jurisdiction of the court, the order of the court should make it clear that it did not apply to anything which they did abroad.

23. On behalf of the Claimant Mr Dinsmore submitted that, as far as the Claimant had been able to ascertain, there was no authority in which a *Babanaft* proviso had been contained in an order for an anti-suit injunction, or indeed in any type of order other than a worldwide freezing order. It was necessary in that type of order, in particular to protect the position of banks, who would otherwise be put in a difficult position of being required by an order of this court to do one thing, and by the laws of another country, where assets might be located, to do another. The context of an anti-suit injunction was very different. In the present circumstances, the inclusion of a *Babanaft* proviso in the order would be wholly inappropriate. In the present case it would mean, even if the Claimant is right that Mr Guryev effectively calls all the shots in relation to the Defendants, that the order was not applicable to him at all. Under the first paragraph of the

Babanaft proviso, as set out for example in Appendix 11 to the Commercial Court Guide, it would be stated that, as he is outside the jurisdiction, the order did not affect or concern him, unless the second paragraph applied. And the second paragraph would not apply because only (2)(c) would be potentially applicable, but here the anti-suit order would never be declared enforceable by a court in Russia, given that the Russian courts are the very courts which, on the Claimant's case, are assuming jurisdiction in breach of the arbitration agreements.

24. Mr Dinsmore further submitted that it was not objectionable for the English Court to make an order which on its face applied to acts done abroad. The concern about extra-territoriality would arise at the point at which it was sought to exercise jurisdiction over a person alleged to be in contempt of court by reason of aiding or abetting a breach of the order. That would arise here if it was sought to serve a contempt application out of the jurisdiction on Mr and Mrs Guryev. That point had not however arrived, and might never arrive.

25. It is important to recall that the only relevant application here is for the amendment of the order to include the '*Babanaft* proviso'. Ms Davies's submissions raised more general issues of some importance as to whether a non-party abroad can be in contempt of court, or be held to be in contempt of court, by doing acts abroad which have the effect of aiding and abetting a party in breaching an anti-suit injunction. This application was not an appropriate opportunity for the determination of any questions other than those strictly necessary to determine the application, not least because there is at present no case made that Mr and Mrs Guryev have aided and abetted a breach (though the

Claimant's position on that is reserved), and also because I considered that a greater citation of authority would have been required to do justice to the wider submissions made by Ms Davies. Ms Davies herself urged me, if I was minded not to include a *Babanaft* proviso, not to decide, or express a view on anything more than was strictly necessary.

26. The basis on which I considered that I should proceed at this juncture was whether it is just and convenient for the Order not to contain a *Babanaft* proviso. I considered that it will be just and convenient for it not to do so if there is an arguable utility to the Claimant in its not being included, and if it causes no injustice to omit it.

27. In the present case, I do not consider that a *Babanaft* proviso should be included. Neither party could produce any precedent for the inclusion of such a proviso in an anti-suit injunction. Anti-suit injunctions do, however, regularly include the equivalent of both the second and third paragraphs of the Penal Notice here (i.e. ones which warn respectively the directors of a corporate defendant, and other persons who may help or permit the breach of the order by the corporate defendant). There has apparently been no previous suggestion that the order must make it clear that it will not apply to restrict anything which might be done by persons who are not directors or officers of the corporate defendant if that person is not subject to the jurisdiction of the court and does acts abroad. It may thus be sufficient to say that I do not consider that it is appropriate to extend the circumstances in which a *Babanaft* proviso should be inserted in an order to an anti-suit injunction.

28. In any event, it appears to me that there is at least arguable utility to the Claimant in not including such a proviso. If it were included, then the order would, in effect, not, on its own terms, apply to acts of third parties over whom the court had no jurisdiction at the time of the act, if those acts were done abroad. That might diminish the effectiveness of the order, the purpose of which is to prevent foreign proceedings in breach of the arbitration clauses. A third party, even if not, in law, susceptible to a committal application, might be unwilling to help or permit the breach of an English Court order. That would be less likely to be the case, however, if a *Babanaft* proviso were included, which expressly restricted the application of the order so as not to extend to acts done abroad save in the circumstances specified in the third paragraph of the proviso.

29. More generally, I consider it to be at least arguable that there can be committal proceedings in respect of third parties who aid or abet, abroad, the breach of an anti-suit injunction by a corporate defendant. In this regard, the constraint on the English court making an order which has the effect of applying to acts done by third parties abroad is one of comity: see *Gee on Commercial Injunctions* (7th ed), para. 19-057. However, it is apparent that English law does countenance that an order may apply to, and render potentially answerable in contempt, some persons who are not parties to the proceedings, namely directors and officers of a corporate party, even though they are outside the jurisdiction. That is on the basis of the English law rule as to attribution, embodied in the Body Corporate Provision, even though the body corporate may not be an English company (see Olympic Council v Novans Jets at [37(i)]), and even though the director or officer is domiciled and is at all material times outside the jurisdiction. That is not regarded as offensive to considerations of comity.

It is arguable that the same should apply to third parties abroad who have the power to cause a body corporate to breach an anti-suit injunction, which seeks to uphold an arbitration clause mandating London arbitration.

30. I do not consider that the omission, or non-inclusion, of the *Babanaft* proviso can be said to cause any injustice, whether to Mr and Mrs Guryev or to anyone else. There is, at present, no attempt to assert jurisdiction over Mr or Mrs Guryev. Any attempt to do so will require an application to serve a contempt application out of the jurisdiction. At that point, the court will have to consider whether the court can and should grant permission to serve out in relation to what may be, if anything, a criminal and not a civil contempt.

31. Finally and for the sake of completeness, I should record that one of the arguments made in the Skeleton Argument put in on behalf of Mr and Mrs Guryev was that the provisions as to dispensation with personal service upon them should be set aside on the basis that there had been a failure to make full and frank disclosure at the ex parte stage. It was said that Dias J should have been referred to the nature of the Body Corporate Provision as addressed in Olympic Council of Asia, to Moulder J's conclusion in Integral Petroleum v Petrograt that shadow directors do not count as directors for the purposes of the Body Corporate Provision, and to the fact that the Claimant was not contending that Mr and Mrs Guryev were de facto directors.

32. I have already mentioned, in relation to the last of these that the Claimant reserved its position as to whether Mr and Mrs Guryev are de facto directors. In any event, given the limited effect of the dispensation with personal service, I did not consider that the Claimant had gained any material advantage by any

non-disclosure that there was, and I considered that it was appropriate to exercise the court's discretion not to set aside the order dispensing with personal service.

33. For these reasons I made the orders which I communicated to the parties at the hearing.