EASTERN CARIBBEAN SUPREME COURT
BRITISH VIRGIN ISLANDS

IN THE HIGH COURT OF JUSTICE
COMMERCIAL DIVISION

CLAIM NO. BVIHCM 2013/00160

BETWEEN:

By way of Claim:

[1] **RENOVA INDUSTRIES LIMITED**
[2] **WEDGWOOD MANAGEMENT LIMITED**
[3] **ZAPANCO LIMITED**
[4] **LAMESA HOLDING SA**

Claimants

and

[1] **EMMERSON INTERNATIONAL CORPORATION**

Applicant

[2] **MIKHAIL ABYZOV**

Applicant

[3] **ROMOS LIMITED**
[4] **FRESKO FINANCIAL LIMITED**

Defendants

And by way of Counterclaim:

[1] **EMMERSON INTERNATIONAL CORPORATION**

Applicant

[2] **ANDREY TITARENKO**

Claimants by way of Counterclaim

and

[1] **RENOVA INDUSTRIES LTD**
[2] **WEDGWOOD MANAGEMENT LIMITED**
[3] **ZAPANCO LIMITED**
[4] **LAMESA HOLDING SA**

[5] **VIKTOR VEKSELBERG**

Respondent

[6] **INTEGRATED ENERGY SYSTEMS LIMITED (a company incorporated under the laws of Belize)**

[7] **ODVIN FINANCIAL INC**

[8] **GOTHELIA MANAGEMENT LIMITED**

Respondent

[9] **RENOVA HOLDING LIMITED**
[10] **VLADIMIR KUZNETSOV**
[11] **ALEXEI MOSKOV**
[12] **ALEXANDER KOLYCHEV**
[13] **MIKHAIL SLOBODIN**
[14] **MAKSIM MAYORETS**
[15] **RENOVA MANAGEMENT AG**
[16] **PAO T PLUS**

[17] **INTEGRATED ENERGY SYSTEMS LIMITED (a company incorporated under the laws of Cyprus)**

Respondent

[18] **CLERN HOLDINGS LIMITED**
[19] **STARLEX COMPANY LIMITED**
[20] **SUNGLET INTERNATIONAL INC**
[21] **OOO RENOVA-HOLDING RUS**

Defendants by way of Counterclaim

<u>And by way of Ancillary Claim</u>:

[1] **MIKHAIL ABYZOV**

Applicant

[2] **ROMOS LIMITED**
[3] **FRESKO FINANCIAL LIMITED**
[4] **ANDREY TITARENKO**
[5] **GOLDFORT LIMITED**

Claimants by way of Ancillary Claim

and

[1] **RENOVA INDUSTRIES LTD**
[2] **WEDGWOOD MANAGEMENT LIMITED**
[3] **ZAPANCO LIMITED**
[4] **LAMESA HOLDING SA**

[5] **VIKTOR VEKSELBERG**

Respondent

[6] **INTEGRATED ENERGY SYSTEMS LIMITED (a company incorporated under the laws of Belize)**
[7] **ODVIN FINANCIAL INC**
[8] **FLOPSY OVERSEAS LIMITED**

[9] VLADIMIR KUZNETSOV
[10] ALEXEI MOSKOV
[11] ALEXANDER KOLYCHEV
[12] MIKHAIL SLOBODIN
[13] RENOVA MANAGEMENT AG
[14] RENOVA HOLDING LIMITED
[15] PAO T PLUS

[16] INTEGRATED ENERGY SYSTEMS LIMITED (a company incorporated under the laws of Cyprus)

Respondent

[17] CLERN HOLDINGS LIMITED
[18] MAKSIM MAYORETS

Defendants by way of Ancillary Claim

<u>And by way of Third Ancillary Claim:</u>

[1] EMMERSON INTERNATIONAL CORPORATION

Applicant
Claimant by way of Third Ancillary Claim

and

[1] VIKTOR VEKSELBERG

Respondent

[2] INTEGRATED ENERGY SYSTEMS LIMITED

Respondent

[3] VLADIMIR KUZNETSOV
[4] EVGENY OLKHOVIK
[5] ANDREY BURENIN
[6] YAKOV TESIS
[7] ALEXEI MOSKOV
[8] IGOR CHEREMIKIN
[9] IRINA MATVEEVA
[10] PAVLINA TSIRIDES
[11] IRINA LOUTCHINA SKITTIDES
[12] PHOTINI PANAYIOTOU
[13] ARTEMIS ARISTEIDOU
[14] A.B.C. GRANDESERVUS LIMITED
[15] STARLEX COMPANY LIMITED
[16] RENOVA INDUSTRIES LIMITED
[17] SUNGLET INTERNATIONAL INC.

Applicants
Defendants by way of Third Ancillary Claim

Appearances:
Mr. Philip Marshall, QC with him Mr. Robert Weekes, Mr. Ajay Ratan, Mr. Oliver Clifton, Ms. Colleen Farrington and Mr. Renell Benjamin for the Applicants
Mr. Simon Birt, QC with him, Miss. Arabella di Iorio, Mr. Michael Bolding and Mr. Shane Quinn for the Respondents.

2020: December 15;
2021: January 11;
February 8.

JUDGMENT

[1] **WALLBANK, J. (Ag.)**: On 9th October 2020 Emmerson International Corporation ('Emmerson') and Mr. Mikhail Abyzov ('Mr. Abyzov'), together 'the Applicants', filed an application for an anti-suit injunction against three respondents that are party to this litigation: Mr. Viktor Vekselberg ('Mr. Vekselberg'), Gothelia Management Limited ('Gothelia') and Integrated Energy Systems Limited ('IES Cyprus') (together 'the Respondents'). Entities associated with Mr. Vekselberg shall here for convenience be referred to as 'Vekselberg Parties'. This is the Court's ruling on that application. For the reasons given below, the application fails.

Introduction

[2] The orders sought were that:

(1) Gothelia and IES Cyprus discontinue proceedings commenced on 26th March 2020 by Gothelia, IES Cyprus, and companies called Brookweed Trading Limited ('Brookweed'), CJSC KES-Holding ('KES-Holding') and LLC T Plus Invest ('T Plus Invest') in Cyprus;

(2) Mr. Vekselberg should cause Brookweed, KES-Holding and T Plus Invest to discontinue the Cyprus proceedings;

(3) Gothelia, IES Cyprus and Mr. Vekselberg shall not, without leave of the court of this Territory of the Virgin Islands ('BVI'), commence or continue to take any steps in proceedings in any other court or tribunal other than in the BVI against Emmerson or Mr. Abyzov 'in respect of any of the issues arising for determination in these BVI proceedings'.

[3] The grounds for the relief sought were stated as being that:

(1) The Respondents are amenable to the jurisdiction of this Court;

(2) In bringing the foreign proceedings in respect of issues that are before the BVI Court, or which should properly be before the BVI Court, the Respondents have acted in a way that is vexatious and/or oppressive and/or unconscionable and it is appropriate that they be restrained by injunction in the form applied for;

(3) It is in the interests of justice to grant the relief.

[4] The evidence before the Court is comprised within: (1) the Forty-Second Affidavit of a Mr. Dodonov in support of the application; (2) the Twenty-Fourth Witness Statement of a Mr. Jeremy Andrews in opposition thereto ("Andrews 24"); (3) the Forty-Third Affidavit of Mr. Dodonov, and the exhibits thereto.

THE APPLICANTS' ARGUMENTS

[5] The Applicants submitted the following. I here very largely set out the Applicants' written submissions in their own words because it is important to note how they put their case and also, and in particular, what they do not say. I do so also to indicate that I have taken all these matters into account, which I have, even though I might not address all of them in the discussion section below. Those that I do not address are not, in my view, determinative. The Applicants' oral submissions largely followed their written submissions, but with some additional arguments and adjustments.

[6] To assist the reader in navigating this judgment, the Applicants' submissions are set out (using their own headings and sub-headings) as follows:

Topic	**Paragraphs**
Summary	[8] to [9]
A. Background	[10] to [13]
B. Legal Framework	[14] to [19]
C. Necessity for Relief to protect Court's processes, jurisdiction and judgment	
1. Conflict with Receivership Order	
(i) Interference with the performance of a receiver's functions is a contempt	[20] to [24]
(ii) Conflict with Receivership Order	[25] to [30]
(iii) Respondents' knowledge of the conflict	[31]
2. Impermissible collateral attack on valid and subsisting BVI judgments and orders	[32] to [36]
D. Vexation and Oppression	
1. Cyprus Proceedings are being prosecuted in breach of Mr Vekselberg's assurance to this Court	
(i) Mr Vekselberg's assurance	[37] to [40]
(ii) Mr Vekselberg's control of the Cyprus Claimants	[41] to [42]
(iii) Role of Mr Cheremikin	
(iv) Mr Vekselberg's assurance was given in bad faith	[43]
	[44] to [45]
2. The claims made in the Cyprus Proceedings are hopeless	[46]
3. The matters raised are issues for the BVI Court	[47] to [50]
4. The Cyprus WFO is vexatious and oppressive	[51]
(i) It has extra-territorial effect	[52]
(ii) It lacks protective provisions	[53] to [54]
E. Discretion	[55] to [58]
F. Appropriate Terms of Relief	[59] to [63]

[7] The Respondents' submissions are set out at [64] to [74] and the discussion section runs from [75] to [123].

Applicants' Arguments: Summary

[8] Mr. Vekselberg has caused Gothelia and IES Cyprus (as well as three other companies which are also under his control, namely, Brookweed, KES-Holding and T Plus Invest, but not party to this action, collectively, the 'Cyprus Claimants') to bring proceedings against Emmerson, Mr. Abyzov and a Mr. Titarenko in the District Court of Limassol in Cyprus (the 'Cyprus Proceedings'). Those proceedings are vexatious and oppressive and they amount to a serious

interference with the integrity of this Court's processes and judgments. This is in particular and in summary because:

(1) The subject matter of the Cypriot Proceedings is (i) the conduct of the claims by the Applicants and Mr. Titarenko in this action before the BVI Court; and (ii) orders made by this Court in this action.

(2) The Cyprus Proceedings have nothing whatsoever to do with Cyprus. Rather, they are concerned with this action in the BVI. There is no proper basis for the Cypriot Court having any jurisdiction.

(3) The Cyprus Proceedings are a collateral attack upon orders made by this Court.

(4) In the Cyprus Proceedings, the Cyprus Claimants have obtained an *ex parte* worldwide freezing order against the Applicants and Mr. Titarenko in respect of assets up to a value of EUR 436 million (the 'Cyprus WFO' or 'WFO'). The order is vexatious and oppressive in at least seven respects:

   (a) First, it is in conflict with the receivership order made by this Court in respect of Emmerson's business and assets on 23rd September 2019 (the 'Receivership Order');

   (b) Second, the Cyprus Claimants have exploited weaknesses in the procedure for WFO relief so as to maximise oppression. Thus, the Cyprus WFO does not include any of the basic and fundamental safeguards which would be included in a freezing order made by this Court (or indeed an English court). Thus, it does not include, for example, any provision in respect of the legal expenses of Emmerson or Mr. Abyzov, any cross-undertaking in damages in favour of them, or even any provision for them to make an application to discharge or vary the injunction.

   (c) Third, it is a freezing order, made in respect of these BVI proceedings, which there is no prospect that this Court would ever

have been prepared to make, nor has ever been asked to make (indeed this Court has granted freezing orders against Mr. Vekselberg and companies associated with him and has never been asked by Mr. Vekselberg or those companies to grant any such relief against Emmerson, Mr. Abyzov or Mr. Titarenko);

(d) Fourth, the Cyprus WFO was made entirely without notice to Emmerson or Mr. Abyzov. As a result of weaknesses in Cypriot procedure and the Cyprus Claimants' exploitation of those weaknesses they have had no substantive opportunity to address the Cypriot court in respect of the exorbitant order that has been made.

(e) Fifth, as is confirmed by the Respondents' own expert evidence, the system and procedure in Cyprus in relation to obtaining *ex parte* freezing injunctions is open to abuse by unscrupulous claimants and such abuse may not be capable of easy and timeous correction by the Cypriot courts themselves. In particular, the Respondents' expert confirms that there are opportunities for claimants to derail the expeditious conclusion of further hearings on the injunction (such as by seeking to file supplementary evidence, or to cross-examine the respondent), and that even without any other interim applications being made, the timescales for varying an interim freezing injunction will be upwards of six weeks, and perhaps as much as between four to six months in the event that other applications are issued.

(f) Sixth, the Cyprus WFO was obtained on the basis of an application that involved a series of serious breaches of the duty (which applies in Cyprus, just as it does in this jurisdiction) of the obligation to give material disclosure and present the application fairly.

(g) Seventh, the order is worldwide in scope and contains no proviso to limit its extraterritorial effect. Such assertion of extraterritorial

jurisdiction is exorbitant and contrary to international law on the allocation of jurisdiction between states. This in itself is a sufficient ground for relief: the Cyprus WFO is vexatious and oppressive precisely because it is exorbitant.

(5) The Cyprus Proceedings were (and are being) pursued in breach of an assurance given by leading counsel for the Vekselberg Parties (doubtless properly acting on instructions) to the contrary. The Cyprus Claimants also sought and obtained the Cyprus WFO in breach of that assurance. The assurance was given on Mr. Vekselberg's behalf, precisely for the purpose of seeking to assure this Court that it was not necessary to make an anti-suit injunction. Mr. Vekselberg contended that it was not necessary because he did not intend to bring other proceedings against Mr. Abyzov and Emmerson relating to issues to be determined in these BVI proceedings.

(6) The Cyprus Proceedings are misconceived. Amongst other things, they are founded on an allegation that acts in these BVI proceedings caused negotiations between a Renova Group company, PAO T-Plus ('T Plus', not to be confused with T Plus Invest) and the Russian power company, Gazprom, to collapse. Yet, the freezing orders made in these BVI proceedings included specific carve-outs so that the orders did not apply to those negotiations. Moreover, T Plus has itself publicly announced that its negotiations with Gazprom are continuing.

[9] As the Cyprus Proceedings interfere with the integrity of this Court's processes and judgments, and as they are vexatious and oppressive, anti-suit injunctive relief should be granted. Five further points are made at the outset:

(1) First, this is not a difficult or borderline case. The Cyprus Claimants have brought proceedings which directly attack the integrity of these BVI proceedings and orders made by this Court in these proceedings. They have brought an action in a forum (Cyprus) that is wholly unrelated to the

subject matter of their complaints (the conduct of this action in this BVI Court). They have moreover chosen not to raise those alleged complaints in this jurisdiction. Further, they have used those vexatious proceedings as a vehicle to obtain a highly oppressive freezing order. They have never sought such an order in this jurisdiction and, if they had, it would never have been granted.

(2) Second, the anti-suit injunction is an essential tool to protect the integrity of domestic judicial proceedings. It prevents the pursuit of parallel proceedings which - if continued - could undermine a domestic claim and make it impossible for the domestic court to vindicate a claimant's (or defendant's) rights or for the domestic court to do justice in its own jurisdiction. That risk is particularly stark here: where the Cyprus Claimants are asking the Cypriot court to make findings about (amongst other things) orders made in these proceedings and the Cyprus Claimants have obtained an order that is in direct contravention of the receivership order made in this Court.

(3) Third, it is axiomatic that the principle of comity cannot trump this Court's interest in protecting the integrity of its own processes and judgments.

(4) Fourth, where (as here) an order made in foreign proceedings interferes with the obligations of receivers (officers of the BVI Court) then the grant of injunctive relief is no longer a matter of discretion: the Court has to grant such relief.

(5) Fifth, to decline anti-suit relief and leave it to the Cypriot court to reach its own decision would not only be wrong in principle, it would also deny Emmerson and Mr. Abyzov any – or any effective – relief and leave this Court unable to police its jurisdiction. This position is also entirely of the Cyprus Claimants' own making. They have sought and obtained an order *ex parte*; they have misled the Cypriot court on that *ex parte* application; and they have moreover obtained an order which includes no mechanism

to allow the respondents to such an oppressive order to come promptly before the Cypriot Court, so as to ask it to set the order aside.

A. Applicant's Arguments as to Background

[10] The Cyprus Proceedings are but the latest step in what appears to be an orchestrated campaign by Mr. Vekselberg to bring vexatious and oppressive parallel litigation in other jurisdictions in an attempt to disrupt and frustrate these long-running BVI proceedings and hamper the ability of the Applicants to prosecute them:

(1) This is the third occasion on which Mr. Vekselberg has sought to disrupt the proceedings before this Court by bringing parallel proceedings abroad. The first two occasions consisted of two sets of duplicative proceedings brought by Mr. Vekselberg personally in Russia. Mr. Vekselberg sought in those proceedings to raise the very same issue as to the formation of an oral joint venture agreement which is at the heart of these BVI proceedings, apparently in an attempt to avoid having to give evidence at trial in the BVI on this subject.

(2) In response to the Russian proceedings, Emmerson issued an anti-suit injunction application which came before this Court (in which I was the Judge) on 26th May 2020. Mr. Vekselberg, through counsel, assured the Court at the hearing that (save for the Russian proceedings) he had "not commenced any proceedings in any jurisdiction against Mr. Abyzov or Emmerson which relate to the issues to be determined in the BVI proceedings and that he has no intention to commence any such proceedings". 1 That assurance was provided in order to give the Court comfort as to Mr. Vekselberg's good faith and to dissuade the Court from granting an injunction in wider terms than the undertakings he had (belatedly) offered in respect of the Russian proceedings. The Court

[1] Transcript of 26th May 2020, page 139, lines 18-25.

acceded to Mr. Vekselberg's approach and declined to grant any wider relief.

(3) It has now transpired that Mr. Vekselberg's assurance was highly misleading. Unknown to both the Court and the Applicants, Mr. Vekselberg had in fact already caused the Cyprus Proceedings to be issued (they were commenced on 26th March 2020) but decided to conceal them by deferring service (something that was apparently not even attempted until August 2020).

[11] The following features of the Cyprus Proceedings should be emphasised:

(1) The allegations made in the Cyprus Proceedings bear no connection with Cyprus. The Cyprus Claimants' sole asserted basis for invoking the Cypriot court's jurisdiction is the alleged residence of Mr. Titarenko in Cyprus. However, as the Cyprus immigration department has confirmed, Mr. Titarenko has not obtained Cypriot nationality, does not have any kind of residence permit, and last visited Cyprus between 25th November and 3rd December 2018 (a short stay which long predates the issue of the Cyprus Proceedings).

(2) The claims are founded on the allegation that the Applicants (together with Mr. Titarenko) unlawfully caused the collapse of a proposed merger between T Plus and Gazprom. In particular, the Cyprus Claimants allege that the proposed merger 'collapsed in February 2020, as a result of the [Defendants'] actions'. In point of fact, however, T Plus publicly announced in May 2020 that negotiations over the proposed merger were ongoing and had not been terminated. It is therefore evident that the Cyprus Proceedings are 'bogus' in character. This is the language used by Lawrence Collins LJ (as he then was) in a judgment of the English Court of Appeal upholding the grant of an anti-suit injunction to restrain a

similarly hopeless and disingenuous claim: see **Elektrim v Vivendi**[2] (‘**Elektrim**’) at paragraphs [121] & [145], addressed further below. The Applicants squarely raised this public announcement in their evidence in support of the present application and the Respondents have conspicuously failed to mention or address it in their responsive evidence.

(3) Consistent with the bogus nature of the claim, despite having issued the proceedings some nine months ago, the Cyprus Claimants are yet to file any statement of case in the Cyprus Proceedings setting out the particulars of their claim. Their allegations must therefore be gleaned from the evidence filed on their behalf. The asserted primary source of their factual allegations is Mr. Cheremikin, the effective head of the Renova Group litigation department, who has given an affidavit in the Cyprus Proceedings (‘Cheremikin 1’) and is also centrally involved in the Respondents’ conduct of the present BVI proceedings. Mr. Cheremikin’s allegations are adopted (and substantially repeated) in a further affidavit filed on behalf of the Cyprus Claimants from Ms. Antonia Monoyiou (one of their Cypriot lawyers) (‘Monoyiou 1’).

(4) It appears from this evidence that the Cyprus Proceedings are principally based on two letters sent by Mr. Titarenko in late 2018 (the ‘Titarenko Letters’): the first such letter was sent to LLC Gazprom Energoholding on 2nd October 2018; the second was sent to T Plus and PricewaterhouseCoopers Consulting (‘PwC’) on 9th November 2018. As to these:

(a) The letters refer to publicly available information about these BVI proceedings and attach published judgments and orders. They do not contain any false statements, nor have the Cyprus Claimants even sought to identify any specific statement in either letter that is alleged to be false.

[2] [2008] EWCA Civ 1178; [2009] 2 All E.R. (Comm) 213.

(b) Instead, the Cyprus Claimants make a series of assertions regarding the participation of T Plus as a defendant in the present BVI proceedings: they contend that T Plus was 'improperly joined to the proceedings', was 'not properly served', and was not a party to such proceedings as of the time of Mr. Titarenko's letters. The Cyprus Claimants' case is that the Titarenko Letters amounted to an attempt to produce a misleading impression to the contrary.

(c) All of these matters have already been conclusively determined against the Respondents because they are the subject of valid and subsisting judgments and orders of this Court. T Plus was validly joined as a defendant in these proceedings pursuant to the Order of Justice Chivers dated 21st February 2018 and, for the avoidance of any doubt, Justice Adderley made a further order on 21st February 2019 (supported by a reserved written judgment) specifically declaring that T Plus has been validly served with the proceedings and deemed to admit the claims against it pursuant to rule 18.12, Civil Procedure Rules 2000 ('CPR'). Although T Plus has belatedly sought to challenge Justice Adderley's order, that application only commenced long after Mr. Titarenko's letters and is in any event part heard before this Court (the further hearing is to take place in July 2021).

(5) The Cyprus Proceedings are therefore premised on spurious allegations of falsity which cannot be maintained. Further they raise a matter that has already been determined and, in so far as that determination is challenged, that challenge is actively before this court. The Cyprus Proceedings amount to an impermissible collateral attack on valid and subsisting orders and judgments of this court: a paradigm case for the grant of anti-suit relief. The Cyprus Claimants chose not to disclose any of these matters to the Cyprus Court: they did not even mention the order

or reasoned judgment of Justice Adderley which specifically addresses these issues.

[12] Thereafter, on 22nd July 2020, Mr. Vekselberg caused his companies to go further and seek the Cyprus WFO against the Applicants and Mr. Titarenko on an *ex parte* basis affecting assets up to a value of EUR 436 million. It is prejudicial, vexatious and oppressive for all of the reasons summarised above and developed below.

[13] Further, the Cyprus WFO is in patent conflict with the Receivership Order made by this Court in respect of Emmerson's business and assets on 23rd September 2019. The details of the conflicting provisions are described below but include the fact that no provision is made for the management of the assets of Emmerson under the Receiver's control and the expenditure of funds to preserve the value of those assets. The Respondents were well aware of the terms of the Receivership Order (having obtained a copy days after it was issued) but chose not to disclose the conflict (nor even the potential for conflict) to the Cyprus court when applying for the Cyprus WFO. This is a serious attack on the integrity of this Court's processes and the performance by the Receiver of his functions as an officer of this Court. Such interference amounts to a contempt of court and the Court is entitled (and indeed required) to protect its processes and officers by granting an injunction in this case.

B. Applicants' Arguments as to the Legal Framework

[14] The leading authority on anti-suit injunctions in this jurisdiction is the decision of the Privy Council in **Krys v Stichting Shell Pensioenfonds**[3] ('**Krys PC'**) upholding the unanimous decision of our Court of Appeal[4] ('**Krys CA**') The core principles are as follows.

[3] [2014] UKPC 41, [2015] AC 616.
[4] BVI HCVAP 2011/036.

[15] The ‘fundamental principle applicable to all anti-suit injunctions’ is that the court ‘may act personally on a defendant by restraining him from commencing or continuing proceedings in a foreign court where the ends of justice require’ (**Krys PC** at [17]).

[16] The question is therefore what the ‘ends of justice’ require. This inquiry is guided by the authorities which establish ‘three categories of case which, without necessarily being comprehensive or mutually exclusive, have served generations of judges as tools of analysis’ (**Krys PC** at [18]):

(1) Category 1: “cases of simultaneous proceedings in England and abroad on the same subject matter. If a party to litigation in England, where complete justice could be done, began proceedings abroad on the same subject matter, the court might restrain him on the ground that his conduct was a ‘vexatious harassing of the opposite party’”.

(2) Category 2: “cases in which foreign proceedings were being brought in an inappropriate forum to resolve questions which could more naturally and conveniently be resolved in England. Proceedings of this kind were vexatious in a larger sense. The court restrained them “on principles of convenience, to prevent litigation, which it has considered to be either unnecessary, and therefore vexatious, or else ill-adapted to secure complete justice”.

(3) Category 3: “cases which do not turn on the vexatious character of the foreign litigant’s conduct, nor on the relative convenience of litigation in two alternative jurisdictions, in which foreign proceedings are restrained because they are ‘contrary to equity and good conscience’”.

[17] These categories are neither rigid nor exhaustive. The anti-suit jurisdiction remains a flexible one: “Parameters within which this jurisdiction must be exercised must not be fixed but remain fluid or flexible as equity must adapt and find new solutions to new problems in fulfilling ‘the ends of justice’… The

authorities make it clear that the principles are not etched in stone, nor can a circle be drawn around them outside of which no one must go". (**Krys CA** at [20] & [22]).

[18] There is a further category of case - which does not turn on the question of vexation or oppression – and is highly relevant to this application. An anti-suit injunction may be granted where this is necessary to protect the processes, jurisdiction or judgments of the BVI Court and the due administration of justice. This has long been recognised as a distinct and fundamentally important basis for granting injunctive relief, in this jurisdiction as well as in England. Thus:

(1) The English Court of Appeal identified at an early stage in the development of the anti-suit jurisdiction the following 'golden thread' running through the authorities: 'an injunction has been granted where it was considered necessary and proper for the protection of the exercise of the jurisdiction of the English court': see **Bank of Tokyo v Karoon**[5] ('**Bank of Tokyo'**) per Robert Goff LJ (as he then was) at 60F-G. The Court of Appeal further emphasised the public interest in the finality of litigation and recognised that the courts have granted injunctions 'restraining persons properly amenable to their jurisdiction from relitigating abroad matters which have already been the subject of a judgment of the court of the forum': per Robert Goff LJ at 63F-G.

(2) So too the Privy Council in **Societe Nationale Industrielle Aerospatiale (SNIA) v Lee Kui Jak**[6] gave the example of cases "where an estate is being administered in this country, or a petition in bankruptcy has been presented in this country, or winding up proceedings have been commenced here, and an injunction is granted to restrain a person from seeking, by foreign proceedings, to obtain the sole benefit of certain foreign assets" and concluded that the purpose of injunctions in such cases is to 'protect the jurisdiction of the English court' (at 892H-893A).

[5] [1987] AC 45.
[6] [1987] AC 871.

(3) More recently, the English Court of Appeal has emphasised that 'the English court has power over persons properly subject to its *in personam* jurisdiction to make ancillary orders in protection of its jurisdiction and its processes, including the integrity of its judgments': **Masri v Consolidated Contractors (No 3)**[7] ('**Masri'**) per Lawrence Collins LJ (as he then was) at [26]. Lawrence Collins LJ provided a detailed and helpful analysis of the authorities (see [83]-[88]) and concluded that '(t)here is long-established authority that protection of the jurisdiction of the English court, its process and its judgments by injunction is a legitimate ground for the grant of an anti-suit injunction' (at [100]).

(4) The English Court of Appeal further emphasised in **Harms Offshore AHT Taurus GmbH & Co KG v Bloom**[8] ('**Harms Offshore'**) that '(t)he court should exercise its powers so as to enable the administrators to exercise their statutory functions and to fulfil their statutory duties, so far as necessary in any particular case': see the leading judgment of Stanley Burnton LJ at [27]. On the facts, the Court of Appeal granted an anti-suit injunction requiring two creditor companies to release an attachment order that they had obtained in New York without disclosing to the New York court that the debtor company had been placed into administration in England. The Court of Appeal concluded that such conduct by the creditor companies was vexatious and oppressive, and served to create a 'trap for the administrators' (at [27]-[28]). Such vexation and oppression is (of course) sufficient to ground injunctive relief, but it is not necessary: see **Krys PC** at [24].

(5) The Court of Appeal in this jurisdiction has also recognised the jurisdiction to grant anti-suit injunctions to protect the integrity of the judicial process and the due administration of justice. See **Krys CA**:

[7] [2009] QB 503.
[8] [2009] EWCA Civ 632; [2010] Ch 187.

(a) On the facts of **Krys**, the respondent (Shell) brought proceedings in the Netherlands and obtained an attachment order from the Dutch court in respect of certain assets of a BVI company which had been wound up and placed into liquidation by order of the BVI court. The liquidators applied for an anti-suit injunction to restrain the Dutch proceedings. Bannister J refused relief at first instance. The Court of Appeal allowed the appeal and granted the injunction.

(b) Pereira JA (giving the sole judgment of the unanimous court) emphasised that it would be too narrow to say that an anti-suit injunction may only be granted on the grounds of vexation or oppression ([20]) and concluded that '(t)he anti-suit injunction has, in our view, an equally important additional role to play: that is in protecting the integrity of the judicial process and the due administration of justice' ([21]).

(c) Pereira JA further held as follows (at [32]-[33]):

> "[…] in our view the emphasis on the expressions 'vexatious' or 'oppressive' conduct runs the risk of imposing a rigid formulation in respect of a jurisdiction which must remain fluid in its development and adaption to new challenges precisely for the purpose of meeting the 'ends of justice'. […] It seems to us that both Lord Rix (in the Glencore case) and Lord Goff (in the Airbus case) tacitly recognised that the jurisdiction is available where the conduct of the claimant by pursuing the foreign proceedings would interfere with the 'due process of the court' or where it is required to protect the policies of the local forum, as a separate and distinct consideration although when looked at from the other end of the spectrum, it may very well be viewed as an abuse of process."

(6) The decision of the Court of Appeal in **Krys CA** was then upheld on appeal to the Privy Council. Lords Sumption and Toulson JJSC (giving the judgment of the Board) relevantly held as follows at [24]:

> "The conduct of a creditor or member in invoking the jurisdiction of a foreign court so as to obtain prior access to the insolvent estate may well be vexatious or oppressive, in which case an injunction may be justified

on that ground. An example is provided by the decision of the Court of Appeal in Bloom v Harms Offshore AHT "Taurus" GmbH & Co KG [2010] Ch 187, where a creditor used a foreign attachment order in a manner which the court regarded as amounting to sharp practice. However, vexation and oppression are not a necessary part of the test for the exercise of the court's jurisdiction to grant an anti-suit injunction in a case where foreign proceedings are calculated to give the litigant prior access to assets subject to the statutory trust. In the Board's opinion there are powerful reasons of principle why this should be so. The whole concept of vexation or oppression as a ground for intervention, is directed to the protection of a litigant who is being vexed or oppressed by his opponent. Where a company is being wound up in the jurisdiction of its incorporation, other interests are engaged. […]. In protecting its insolvency jurisdiction, to adopt Lord Goff's phrase, the court is not standing on its dignity. It intervenes because the proper distribution of the company's assets depends on its ability to get in those assets so that comparable claims to them may be dealt with fairly in accordance with a common set of rules applying equally to all of them."

(7) This distinct category of anti-suit injunctions granted to protect the processes, jurisdiction and judgments of the court is also recognised in the leading practitioners' texts on the subject. Examples are Thomas Raphael QC: The Anti-Suit Injunction (2nd edn., Oxford 2019) at [4.66]-[4.70] (section entitled 'Interference with the processes, jurisdiction or judgments of the English Court'); Steven Gee QC: Commercial Injunctions (6th edn., Sweet & Maxwell 2016) at [14-058] (addressing injunctions to protect statutory schemes of distribution and observing that '(t)he purpose of the injunction is to protect the integrity and effectiveness of the English proceedings in achieving the statutory purpose').

[19] The Court's interest in protecting its own procedures, jurisdiction and judgments is **in itself** sufficient to address any asserted concern as to comity:

(1) So held the Privy Council in **Krys PC** at [42]:

"The only substantial criticism made of the way that [the Court of Appeal] exercised their discretion was that as a matter of comity they ought to have left to the Dutch courts the decision whether the Dutch proceedings should be allowed to proceed. The District Court of Amsterdam having rejected Fairfield Sentry's application to lift the attachments, it was said

that the courts of the British Virgin Islands should have respected that decision. In the Board's opinion this submission misunderstands the role that comity plays in a decision of this kind. Where the issue is whether the BVI or the foreign court is the more appropriate or convenient forum, it can in principle be decided by either court. Comity will normally require that the foreign judge should decide whether an action in his own court should proceed […] In the present case, however, there is no room for deference to the Dutch court's decision. In the first place, the question does not turn on the relative convenience or appropriateness of litigation in the courts of the Netherlands and the BVI. Both courts can adjudicate on the substantive dispute, the Dutch courts in Shell's current proceedings, and the BVI court in ruling on a proof if Shell lodges one. But the BVI is the only forum in which priorities between claimants generally can be determined. The question before the Court of Appeal was whether Shell should be allowed to invoke the jurisdiction of the Dutch courts to obtain an unjustified priority in violation of a mandatory statutory scheme in the British Virgin Islands."

(2) The same approach is evident in the recent decision of the English Court of Appeal in **SAS Institute Inc v World Programming Ltd**.[9] The Court upheld the grant of an anti-suit injunction to restrain enforcement orders made in the United States which affected assets in the United Kingdom and were therefore an exorbitant interference with the sovereignty of the United Kingdom. Males LJ (giving the sole reasoned judgment of the unanimous court) held (at [111]-[112]):

"comity is a two-way street, requiring mutual respect between courts in different states. This need for mutual respect means that comity requires a recognition of the territorial limits of each court's enforcement jurisdiction, in accordance with generally accepted principles of customary international law […] Just as it is inconsistent with comity for the English court to purport to interfere with assets subject to the local jurisdiction of another court, so it is inconsistent with comity for another court to purport to interfere with assets situated here which are subject to the jurisdiction of the English court."

(3) This reasoning in SAS is of a piece with the decision of the Privy Council in **Krys PC**: to the extent that the foreign court has itself exercised its jurisdiction in a manner that interferes with the processes of the BVI Court,

[9] [2020] EWCA Civ 599.

it cannot then be suggested that international comity requires the BVI Court to refrain from protecting the integrity of those processes.

(4) The same approach is also evident in the case law dealing specifically with injunctions to restrain interference with the functions of receivers as officers of the court. As further set out below, the Court has a duty to protect its officers in the performance of their functions, and injunctive relief to protect against such interference is therefore required as a matter of duty and not mere discretion.

C. Applicants' Arguments as to the necessity for relief to protect the integrity of the Court's Processes, Jurisdiction and Judgments

1. Conflict with Receivership Order

(i) Interference with the performance of a receiver's functions is a contempt

[20] A receiver and manager appointed by the court is not an agent for any of the parties, but rather is an officer of the court.10 The court by making such appointment 'in effect assumes the management into its own hands': see Gardner v London Chatham & Dover Railway.[11]

[21] Any interference with the performance of a receiver's duties is a contempt[12] and may be restrained by an injunction specifically addressed to the person interfering. The rationale for such injunctive relief was explained by Swinfen Eady J in **Dixon v Dixon:**[13] 'The object of the Court is to prevent any undue interference with the administration of justice, and when any one, whether a partner in a business, a party to the litigation, or a stranger, interferes with an officer of the Court, it is essential for the Court to protect that officer'.

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[10] Aston v Heron (1834) 2 My. & K. 390 per Brougham LC at 393.

[11] (1867) 2 Ch App 201 per Cairns LJ at 211; also Snell's Equity (34th edn., Sweet & Maxwell 2019) at [19-007].

[12] See Arlidge, Eady & Smith on Contempt (5th edn., Sweet & Maxwell 2017) at [11-335].

[13] [1904] 1 Ch D 161 at 163.

[22] The Court must be astute to ensure that its own receivers are not disrupted in the performance of their functions, however novel or unusual the mode of interference. As emphasised by the English Court of Appeal in **Helmore v Smith**:[14] 'Where it is necessary for the protection of its officers or of the property itself the Court must shew that it has a long arm'.

[23] The Court is therefore obliged to protect its officers in the performance of their functions. Injunctive relief is required as a matter of duty and not discretion:

(1) See the important decision in **Aston v Heron**[15] where Lord Chancellor Brougham held as follows (at 393):

> "Wherever the title of its officers, whether receivers or committees, is disputed, the Court has no choice: it cannot allow any proceedings of the kind to go on without abandoning its own jurisdiction; it must restrain as of course, otherwise it permits its own orders to be rescinded, and its jurisdiction to be questioned—its orders to be rescinded indirectly, and not by the Superior Court of Appeal; its jurisdiction to be questioned by Courts of inferior or co-ordinate authority. If, for example, ejectment could be maintained against a receiver, and possession be thereby recovered, what would this be, but to enable the Court and jury to discharge the order for the receiver, or, what is still more absurd, to frustrate that order by preventing its execution?"

(2) The Lord Chancellor specifically held that this approach applies to all cases 'where the jurisdiction of the Court is disputed directly by resistance, or indirectly by obstruction' and that, in such cases, 'the Court has no choice, but must, at all events and at once, draw the whole matter over to its own cognisance' (396). The question of discretion would only arise in circumstances where the receiver's performance of his functions is alleged to be 'irregular or oppressive' (ibid). This approach provides 'a principle which exhausts the whole subject, and which, therefore, rules the present case, as well as all others' (at 396).

[14] (1886) 35 Ch. D. 449 per Bowen LJ at 457.
[15] (1834) 2 My. & K. 390; 39 E.R. 993.

[24] Moreover, the courts have specifically recognised that orders for attachment and sequestration in respect of assets within the scope of the receiver's appointment amounts to an impermissible interference with the receiver's functions (and therefore a contempt of court):

(1) In **Ames v Birkenhead Docks**[16] a receiver was appointed at the suit of the mortgagees of the Birkenhead Docks over the rates and tolls of the dock. A judgment creditor of the trustees of the dock (who constituted a statutory body) proceeded to attach the tolls. This was held to be a contempt, being an interference with the possession of the receiver, and restrained by injunction. The Master of the Rolls (Sir John Romilly) held as follows:

"There is no question but that this Court will not permit a receiver, appointed by its authority, and who is therefore its officer, to be interfered with or dispossessed of the property he is directed to receive, by anyone, although the order appointing him may be perfectly erroneous; this Court requires and insists that application should be made to the Court, for permission to take possession of any property of which the receiver either has taken or is directed to take possession, and it is an idle distinction (which could not be maintained if it were attempted, which it is not by counsel at the Bar although suggested by the affidavits), that this rule only applies to property actually in the hands of the receiver. If a receiver be appointed to receive debts, rents, or tolls, the rule applies equally to all these cases, and no person will be permitted, without the sanction or authority of the Court, to intercept or prevent payment to the receiver of the debts, rents, or the tolls, which he has not actually received but which he has been appointed to receive." (at 353)

"The result is that, in my opinion, an order must be made on the motion, enjoining the Petitioner, his solicitor and agents, from interfering with the functions of the receiver, or intercepting the payment of any rates or tolls now due or hereafter to become due during such receivership, and that the Petitioner must pay the costs of the motion." (at 354)

(2) The same principle was stated and applied in the earlier decision in **Hawkins v Gathercole**[17] ('**Hawkins'**). In that case, a receiver was

[16] (1855) 20 Beav. 332; 52 E.R. 630.
[17] (1852) 1 Drew. 12; 61 E.R. 355.

appointed over the tithes associated with a particular ecclesiastical office. A third party (a Mr. Carrack) obtained judgment against the current holder of that office (being the Defendant, Reverend Gathercole). By way of execution, Mr. Carrack procured the issue of a writ of sequestration which directed the receiver to collect, levy and receive all the profits of the Reverend's living and to apply them for the benefit of creditors. The sequestrator had not yet taken or received any funds. The Claimant (Mr. Hawkins) had a competing claim to these profits and filed a motion to commit Mr. Carrack for contempt of court in having interfered with the possession of the receiver. The Vice Chancellor (Sir R. T. Kindersley) held that Mr. Carrack had indeed committed a contempt:

"..it is quite clear that when the Court has appointed a receiver, it will not allow the possession of that receiver to be disturbed by anybody, however good his right may be; but the party thinking he has a right paramount to that of the receiver, or rather to that of the person who has got the appointment of the receiver, must, before he can presume to take any steps of his own motion, apply to this court for leave to assert his right against the receiver. That is a plain rule and a very necessary rule because if it were otherwise it would be impossible for this Court to administer justice between the parties" (at pp.17-18);

"it appears to me that the act in this case does amount to a disturbance of the possession of the receiver. Any tithe-payer, or any person liable to pay any of those dues which belong to the incumbent of the living, would be in this predicament … that there is a demand made upon him …for the payment by the receiver appointed by this Court, and at the same time a counter demand made upon him by a sequestrate appointed by the authority of the bishop of the diocese under the Queen's writ of sequestration issuing out of the Queen's Bench; and it is quite obvious that the moment the sequestrator appointed does anything whatever in the performance of the duty imposed on him by the sequestration that instant he actually disturbs, in point of fact, the possession of the receiver, and taking steps towards that end appears to me to be doing that which the Court would not permit. It appears to me, then, that Mr Carrack ought, before he issued the sequestration … to the bishop … to have come to the court stating the facts of the case, and asking leave to do it" (at pp.18-19).

(3) The Applicants submit that the Cyprus WFO involves a closely analogous interference because (among other things) it subjects third parties to similarly conflicting imperatives: parties are likely to rely on the Cyprus WFO as a reason not to transfer any assets to Emmerson's receiver.

(ii) Conflict with Receivership Order

[25] The Cyprus WFO prohibits Emmerson from 'alienating in any manner' any of its assets to a value of EUR 436 million. The Applicants submit that such a general and absolute prohibition is patently incompatible with the Receiver's powers and duties under terms of the Receivership Order and section 128 of the Insolvency Act 2003.

[26] The Receivership Order first defines the scope of the receivership to include 'all business, affairs, and assets of the Defendant in or outside of the British Virgin Islands, up to the limit of EUR 120,000,000' (§1). The Receivership Order then confers a number of express powers on the Receiver, each of which explicitly and necessarily entails the power to alienate assets where necessary. In particular, the Receiver is empowered to:

(1) "identify, take into custody or under his control, require to be delivered, get in and receive, collect and preserve, all assets, books and documents of [Emmerson] except that the Receiver and Manager shall have no power of sale unless such sale is approved by the Court" (§3b);

(2) "take control of and exercise all rights which [Emmerson] may have in relation to any of its assets and business […] as may be necessary to obtain control or management of such entities and to take such steps as the Receiver and Manager thinks fit for the purpose of preserving its/their assets and managing its/their business and affairs" (§3c);

(3) "carry on the business of [Emmerson] (and such Subsidiary as is applicable) as far as is necessary for the purpose of preserving its/their assets (and for that purpose thereof, to exercise and assume all powers

and entitlements of [Emmerson's] board of directors to manage the Defendant) and every Subsidiary […]" (§3d);

(4) "discharge outgoings, engage and/or dismiss employees, making and/or authorising payments and entering into contracts in the ordinary course of business" (§3e)

(5) "appoint and/or employ lawyers, accountants, auditors, advisers and/or agents (whether in the British Virgin Islands or outside as may be necessary) to assist the Receiver and Manager in the exercise of his powers and duties herein and authorising payment for such appointment(s) and/or employment" (§3n).

[27] In exercising these powers, the Receiver is subject to the general duties set out in section 128 of the Insolvency Act 2003 which relevantly provides as follows:

"**128 – General duties of receivers**

(1) The primary duty of a receiver is to exercise his powers

(a) in good faith and for a proper purpose; and

(b) in a manner he believes, on reasonable grounds, to be in the best interests of the person in whose interests he was appointed.

(2) To the extent consistent with subsection (1), a receiver shall exercise his powers with reasonable regard to the interests of

(a) creditors of the company;

(b) sureties who may be called upon to fulfil obligations of the company;

(c) persons claiming, through the company, an interest in assets in respect of which he was appointed; and

(d) the company.

[…]"

[28] The Applications argue that the Cyprus WFO is therefore in patent conflict with the terms of the Receivership Order and the Receiver's statutory duties:

(1) The Receivership Order explicitly and necessarily empowers the Receiver to alienate assets in order to exercise each of the express powers identified above. Those powers are contradicted and curtailed by the absolute prohibition in the Cyprus WFO.

(2) Furthermore, due to the total absence of exceptions in the Cyprus WFO, it would prohibit the Receiver from alienating assets (e.g. by exercising his power of sale with the Court's approval) even if the Receiver concludes (in accordance with his duties under s.128 of the Insolvency Act 2003) that such action is in the best interests of the person in whose interest he was appointed. The Cyprus WFO therefore conflicts not only with the express terms of the Receivership Order itself but also the Receiver's duties under the applicable BVI statutory framework.

[29] The Applicants say that the impact of this interference is confirmed by Emmerson's evidence, which further describes the manner in which the Cyprus WFO restricts the Receiver's ability to undertake the necessary work. Mr. Aris Papadopoulos (Emmerson's Cypriot lawyer) says that (§70) the consequences of the Cyprus WFO include that:

(1) "third parties, such as banks and financial institutions, will be reluctant to deal with receivers, let alone receivers appointed by a foreign court, when there is a conflicting Injunction which prevents Emmerson from 'alienating in any manner' its assets. As a result, this would cause significant delays and would prevent the Receivers' of Emmerson from 'take[ing] into custody or under his control' the assets of Emmerson";

(2) "parties previously associated with Emmerson (who either have something to gain by not cooperating with the Receiver of Emmerson or continue to hold Emmerson's assets for their own benefit) can now refuse to deal with the Receiver of Emmerson and challenge the Receiver's standing to secure Emmerson's assets. These parties would likely do so on the basis

that there is now a conflicting Injunction which prohibits them from transferring/alienating Emmerson's assets to the Receiver";

(3) Thus, say the Applicants, the conflicting imperatives placed by the Cyprus WFO on third parties seriously interfere with the Receiver's performance of his functions. Such interference has been specifically considered in the authorities and held to be a contempt of court: see **Hawkins** above.

[30] In these circumstances, the Applicants submit that the Court is duty bound to grant injunctive relief to protect the Receiver's performance of his functions as an officer of the Court. No question of discretion arises in this regard. Alternatively, to the extent that any discretion arises, it can only lawfully be exercised in one direction: as set out above, asserted considerations of comity cannot trump this Court's interest in protecting its own processes and the proper administration of justice: see **Krys PC**. The Applicants also argue that the Respondents have provided no sound basis for resisting the grant of injunctive relief on this basis:

(1) The Respondents have vaguely suggested that the validity of the Receivership Order is 'unclear': Andrews 24 at §§73-74. This suggestion is irrelevant. The Receivership Order is a valid and subsisting order of this Court. It has not been challenged and is not subject to any challenge. Moreover, it is clear that interference with a receiver's performance of his functions cannot be justified by questioning the validity of the order by which he was appointed, so long as it remains in force: see **Russell v East Anglian Railway**:[18]

> "I am of opinion that it is not competent for anyone to interfere with the possession of a receiver, or to disobey an injunction or any other order of the Court, on the ground that such orders were improvidently made. Parties must take a proper course to question their validity, but while they exist they must be obeyed. I consider the rule to be of such importance to the interests and safety of the public, and to the due administration of justice, that it ought, on all occasions, to be inflexibly maintained. I do not see how the Court can expect its officers to do their duty, if they do it

[18] (1850) 3 Mac. & G. 104; 42 ER 201 per Lord Chancellor Truro at 117-8.

under the peril of resistance, and of that resistance being justified on grounds tending to the impeachment of the order under which they are acting."

(2) Mr. Andrews says that he is 'unaware how the BVI Receivers are remunerated' and suggests that 'the Receivers may have been deriving funding for their office from third parties': Andrews 24 at §§75-76. According to the Applicants such speculation over sources of funding is entirely irrelevant, as indeed is the issue of funding as a whole. Such matters have no bearing on the conflict between the Cyprus WFO and the Receiver's express powers under the Receivership Order and statutory duties, as set out above.

(3) Finally, say the Applicants, Mr. Andrews' suggestion that the Receivers' powers are 'limited to the investigation and preservation of Emmerson's assets' (Andrews 24 at §77) is demonstrably wrong, as apparent from all the express powers set out above. The only point that Mr. Andrews makes in support of his suggestion is the fact that the Receiver's power of sale is subject to Court approval. This does nothing to mitigate the conflict. To the contrary, it is a vivid example of the contradiction between the two orders: the Receivership Order expressly envisages the BVI Court becoming directly involved in the process of sale and yet the Cyprus WFO absolutely prohibits the Receiver from carrying out any such sale, <u>regardless of the BVI Court's approval</u>.

(iii) <u>Respondents' knowledge of the conflict</u>

[31] The Applicants' submission is that relief on this ground does not depend on the Respondents' knowledge of the conflict between the Cyprus WFO and the Receivership Order: as set out above, they say that this is a distinct ground that is not based on vexation or oppression; rather, it serves to protect the integrity of the BVI Court's process and the administration of justice. Nonetheless, the Applicants submit that that the Respondents were well aware of the conflict and deliberately chose not to disclose it to the Cyprus court when obtaining the Cyprus WFO:

(1) The Respondents evidently obtained a copy of the Receivership Order shortly after it was made: they referred to it (and exhibited a copy) in evidence filed in these proceedings on **8th October 2019**, being only 15 days after the Receivership Order was made. Accordingly, they have been aware of the Receivership Order and its terms at all material times.

(2) The Cyprus Claimants' evidence in support of their freezing order application referred to the existence of the Receivership Order: see Cheremikin 1 at §§96-99 and Monoyiou 1 at §97. They failed however to disclose or inform the Cyprus court of any of the following:

(a) The terms of the Receivership Order. The Cyprus Claimants did not even exhibit a copy of the order, still less draw the Cyprus court's attention to the express powers of the Receiver under the terms of the order as set out above.

(b) The Receiver's statutory duties under the Insolvency Act 2003. These too pass unmentioned in the Cyprus Claimants' evidence.

(c) The patent conflict between their proposed WFO (on the one hand) and the terms of the Receivership Order and the applicable BVI legislation (on the other). Indeed, the Cyprus Claimants failed even to disclose the potential for conflict: they remained deliberately and entirely silent on this issue.

(3) Having obtained the Cyprus WFO, the Cypriot lawyers retained by the Cyprus Claimants wrote directly to Emmerson's Receivers on 10th September 2020 attaching a copy of the freezing order. This letter (written by the same Cypriot law firm that acted on their behalf in obtaining the order, based on an affidavit sworn by one of their attorneys) refers in detail to the Receivership Order and its specific terms (including the power of sale subject to court approval): see e.g. the section entitled 'Receivers' duties and powers'. This relatively detailed analysis in the Cyprus Claimants' correspondence paints, so say the Applicants, a stark contrast

with their concealment of the terms of the receivership order from the Cyprus court.

(4) The Applicants argue that it therefore seems clear that the Cyprus Claimants' decision not to disclose these matters was both deliberate and dishonest: see Dodonov 43 at §15.2. Accordingly, even if one leaves aside the paramount duty of the Court to protect its officers in the performance of their functions, an anti-suit injunction would in any event be appropriate on ordinary principles, because such conduct on the part of the Respondents renders the Cyprus Proceedings vexatious and oppressive. The Applicants rely, by analogy, on the decision of the English Court of Appeal in **Harms Offshore** (cited above) where the English Court of Appeal granted an anti-suit injunction based on vexatious and oppressive conduct including non-disclosures in respect of an English administration, which the court concluded had established a 'trap for the administrators' (at [27]-[28]).

C2. Impermissible collateral attack on valid and subsisting BVI judgments and orders

[32] The Applicants argue that there is a further reason why injunctive relief is required to protect the integrity of this Court's processes: the Cyprus Claimants are attempting to impugn a series of valid and subsisting judgments and orders of this Court.

[33] As set out in section A above, the Cyprus Claimants found their asserted claim on two letters sent by Mr. Titarenko. The Applicants assert that the Cyprus Claimants have failed to identify any specific aspect of these letters that they allege is false, and instead allege that the letters amounted to an attempt to create a false impression. As set out in Monoyiou 1 at §74:

"As I am advised by Mr. Cheremikin, Gazprom was already aware of the BVI Proceedings and did not seem to be concerned about them, with the result that negotiations were proceeding smoothly. However, Abyzov and Titarenko tried to

create the impression that T Plus was one of the main defendants and that the latter was likely to be called upon to pay huge sums with the issuance of any judgment. In fact, T Plus was irregularly included in the proceedings, it was not properly served and was not part of those proceedings at the date of Titarenko's letters, but only appeared in the proceedings in order to challenge its inclusion in the proceedings and the allegations concerning service was well as the charges against it, as they were raised before the court of the British Virgin Islands."

[34] Thus, the Cyprus Claimants are expressly relying on the allegation that (among other things) T Plus was 'irregularly' brought into the BVI proceedings, was 'not properly served', and was not a party to the BVI proceedings as of the time of Mr. Titarenko's letters. All of these allegations are matters on which the BVI Court is already seised and indeed has already ruled:

(1) T Plus was properly joined to the BVI proceedings with the permission of the BVI Court pursuant to the Order dated 21st February 2018;

(2) The Abyzov Parties were granted permission to serve T Plus out of the jurisdiction pursuant to the Order made on 21st June 2018;

(3) T Plus was validly served with the proceedings at its offices in Russia on 23rd August 2018 and provided a countersigned delivery slip as confirmation of receipt. For the avoidance of any doubt, this Court (by Justice Adderley) made an Order on 21st February 2019 specifically declaring that T Plus had been validly served with the proceedings and deemed to admit the claims against it pursuant to CPR r.18.12. This Order was supported by a reserved written judgment of the same date running to 15 pages.

[35] The Applicants submit that the allegations made by the Cyprus Claimants amount to an impermissible collateral attack on all three of these orders (i.e. joinder, the grant of permission to serve out, and the declaration as to the validity of service). If any dispute is to be raised as to these matters, it must properly be the subject of an application to this Court. Indeed, T Plus has itself chosen to adopt this very course (albeit recently and belatedly). As set out in Dodonov 43 at §13.3:

(1) T Plus has applied to set aside Justice Adderley's declaration and to challenge the validity of service upon it. This application was only issued on 8th October 2019 (being some fourteen months after T Plus was served).

(2) T Plus's application is part heard. It was the subject of partial hearing on 11th -14th November 2019: see in this regard the skeleton argument filed on its behalf for that hearing at §§69-109 and transcript of the hearing on 13th November 2019 at pages 160-188. The balance of the hearing is due to take place in July 2021.

(3) The Applicants consider that T Plus's application is ill-founded. Yet, in any event, the application cannot and does not displace the fact that the Cyprus Proceedings have been issued based on allegations which are directly contrary to a series of valid and subsisting orders of the BVI Court. Moreover, the Cyprus Claimants failed to disclose any of these matters to the Cyprus Court.

[36] Such an attempt to impugn valid and subsisting orders of the Court is, say the Applicants, a paradigm example of a case in which the grant of an anti-suit injunction is appropriate in order to protect the integrity of its processes: see **Masri** per Lawrence Collins LJ at [26] & [100] (quoted in section B above). The grant of anti-suit relief to restrain such collateral attacks is well illustrated by the decision of the English Court of Appeal in **Elektrim**[19]:

(1) In short summary, **Elektrim** arose out of a dispute over bonds. The two applicants seeking an anti-suit injunction were the guarantor of the bonds (Elektrim SA) and the bond trustee (the Law Debenture Trust Corporation Plc). The respondent to the application (VH1) had a substantial bondholding which it had received by way of assignment from a previous bondholder (Everest). In the circumstances set out below, VH1 was restrained from continuing proceedings in Florida on the ground that

[19] [2008] EWCA Civ 1178; [2009] 2 All E.R. (Comm) 213.

(among other things) the Florida proceedings amounted to an impermissible collateral attack on a prior English judgment.

(2) In October 2006, VH1's parent company (Vivendi) wrote to the trustee threatening claims against the trustee in respect of a proposed distribution to the bondholders (see [51]).

(3) In light of these intimated claims, the trustee began Part 8 proceedings in England seeking directions to determine whether any of the intimated claims were a bar to the distribution (see [52]). The English High Court made a representation order in April 2007 appointing two of the bondholders to represent all of the bondholders' interests pursuant to the English CPR r.19.7(2) (see [53]). The representative parties did not include Everest (or its successor VH1) and they did not participate in the Part 8 proceedings. The Court proceeded to give judgment in favour of the trustee on 1st May 2007, holding that the threatened claims had no merit and lacked any reasonable foundation (the '1st May 2007 Judgment') (see [54]).

(4) On 29th May 2007, Everest assigned its bondholding to VH1. Three days later VH1 (in its capacity as assignee) commenced a claim in Florida against Elektrim SA and the trustee (see [56]) alleging that the 1st May 2007 Judgment had been procured by non-disclosure and pleading claims against the trustee for alleged breach of fiduciary duty and breach of trust (among other things) (see [64]-[71]).

(5) Elektrim SA and the trustee both successfully applied to the English High Court for an anti-suit injunction to restrain the Florida proceedings: see the decision of Lewison J reported at [2007] EWHC 2255 (Ch). The High Court granted this relief on a number of bases, including (relevantly for present purposes) that the Florida proceedings amounted to an impermissible collateral attack on the 1st May 2007 Judgment. As Lewison J held at [47]:

"One of the principal purposes of the Part 8 proceedings was to determine whether there were any meritorious claims against the Trustee concerning the receipt from Elektrim of the €525m and the events of October 2006. In the course of the proceedings I made a representation order under which the bondholders (including Everest) were represented by two bondholders. In the course of the proceedings the representative bondholders, through leading counsel instructed on their behalf, argued that the receipt of the monies by the Trustee was lawful and that there was no impediment to distribution. I accepted that argument and gave judgment to that effect. VH1 as assignee of the bonds from Everest is bound by that judgment. Its claim against the Trustee in Miami argues precisely the opposite. Its claim in Miami is therefore a collateral attack on that judgment. In addition the claim that VH1 seeks to advance in Miami is a claim that could and should have been raised in the course of the Part 8 proceedings in this court. If necessary, Everest could have applied to have been separately represented in those proceedings on the ground that there was a conflict of interest between it and the remaining bondholders. It did not; and should not be allowed to do so now."

(6) The Court of Appeal upheld this reasoning (and refused permission to appeal against it on the basis that there was no arguable basis for challenging it). Lawrence Collins LJ, giving the sole reasoned judgment of the unanimous court, confirmed that 'an injunction may be granted to protect the process of the English court, and in particular to prevent the re-litigation abroad of issues which have been (or should have been) the subject of decision in England' (at [85], citing **Masri**) and upheld the Judge's conclusion that the Florida proceedings amounted to an impermissible collateral attack (at [159]).

(7) The Applicants say that the reasoning in **Elektrim** is salient and instructive in the present case. The purpose of Justice Adderley's declaration as to the validity of service on T Plus was precisely to provide certainty and finality regarding T Plus's status as a participant in the BVI proceedings. It is not now open to the Respondents to seek collaterally to challenge Justice Adderley's order (or the orders for joinder and service out that preceded it) in Cyprus, still less so in circumstances where they failed to disclose these matters to the Cyprus Court.

D. Applicants' Submissions as to vexation and oppression

D1. The Cyprus Proceedings are being prosecuted in breach of Mr Vekselberg's assurance to this Court

(i) Mr. Vekselberg's assurance

[37] Mr. Vekselberg through his Leading Counsel gave the court the following assurance at the hearing of Emmerson's previous anti-suit injunction on 26th May 2020, which the Applicants claim the Court took into account in declining to grant the wider world-wide anti-suit relief that had been sought:[20]

> "I can confirm, on instructions, that apart from the two sets of Russian proceedings identified in the application, that Mr. Vekselberg has not commenced any proceedings in any jurisdiction against Mr. Abyzov or Emmerson which relate to the issues to be determined in the BVI proceedings and that he has no intention to commence any such proceedings."

[38] Although doubtless leading counsel was acting on instructions from his clients and did not know the true position, the Applicants allege this statement was false at the time it was made and the BVI Court was thereby misled. In fact, as set out above:

(1) The Cyprus Claimants had issued the Cyprus Proceedings on 26th March 2020 bringing claims against the Applicants for over EUR 436 million. Mr. Vekselberg and the Cyprus Claimants gave the Applicants no notice whatsoever of those proceedings (or any intention on their part to bring such proceedings). At the time of the hearing on 26th May 2020, the Applicants (and the BVI Court) were left completely unaware of them.

(2) Almost two months later, on 16th July 2020, the Cyprus Claimants made an *ex parte* application for a freezing order against the Applicants. Again, Mr. Vekselberg made no mention of the intention to make this further application against the Applicants for draconian injunctive relief.

[20] Transcript of 26 May 2020, page 139, lines 18-25.

(3) Mr. Vekselberg must himself have known that the Cyprus Proceedings had been issued and the freezing order was (or was about to be) sought and therefore that the assurances being given to the contrary were highly misleading.

[39] The Respondents assert that the Cypriot Proceedings do not 'relate to the issues to be determined in the BVI proceedings': Andrews 24 at §60a. This, say the Applicants, is false. As set out above, the Applicants' position is that the Cyprus Proceedings are founded on allegations regarding the content of the Titarenko Letters on which matters the BVI Court has already ruled (and of which the BVI Court remains seised by virtue of the pending application by T Plus to set aside the Order of Justice Adderley). Moreover, (as further set out below), the Applicants complain that the Cyprus Claimants make a series of further allegations regarding matters which are also before the BVI Court. Accordingly, the Cyprus Proceedings directly overlap with the issues in the BVI Proceedings (and on any view 'relate' to those issues).

[40] The Respondents also point out that Mr. Vekselberg is not himself a party to the Cyprus Proceedings: see Andrews 24 at §60a. The Applicants claim this is a bad point. They say (i) it is common ground that Mr. Vekselberg beneficially owns and controls at least three of the five Cyprus Claimants; and (ii) in any event, Mr. Cheremikin is directing the Cyprus Proceedings on Mr. Vekselberg's ultimate instructions in respect of all five of the Cyprus Claimants.

(ii) Mr. Vekselberg's control of the Cyprus Claimants

[41] The Applicants' case is that it is now common ground that Mr. Vekselberg beneficially owns and controls at least three of the five Cyprus Claimants and that Mr. Vekselberg has accepted (albeit belatedly) that he controls the Russian element of the Russian group. The Applicants say that Mr. Vekselberg was driven to make this admission in circumstances which are fully set out in Dodonov 43 at §8. In summary:

(1) Mr. Vekselberg's longstanding prior position (set out in his pleadings and his witness statement filed for the vacated trial in these proceedings that was due to begin in June 2018) was that he denied control over the entirety of the Renova Group.

(2) However, Emmerson then discovered mandatory disclosure by publicly listed Russian companies which directly contradicted Mr. Vekselberg's denial. By way of example, this included a draft valuation agreement published on 19th September 2018 in which the 'Renova Group' is defined as 'legal entities that are controlled by a natural person – a citizen of the Russian Federation Vekselberg Viktor Feliksovich'. Emmerson relied upon this material as part of the evidence supporting its applications to the BVI Court for freezing orders against Mr. Vekselberg and Renova Holding Limited (among other parties) on 19th November and 31st December 2018.

(3) Mr. Vekselberg and Renova Holding sought in response to contend that Mr. Vekselberg had never denied (or at least never intended to deny) that he controlled the Russian element of the Renova Group. That position was first expressed in the first affidavit of a Mr. Michaelides dated 4th December 2018 at §54:

> "The documents relied upon by Emmerson relate to the potential merger between PAO T Plus and GEH. It is correct that those documents (the 'T Plus Documents') define the Renova Group as 'legal entities that are controlled by a natural person- a citizen of the Russian Federation Vekselberg Viktor Feliksovich'. However, the Renova Group referred in the T Plus Documents is not the same group as that defined as the 'Renova Group' in these proceedings […]".

(4) Mr. Andrews swore an affidavit setting out the same position. He described the Russian element of the Renova Group (including Renova Holding Rus ('RHR') and all of its subsidiaries) as a 'distinct and separate corporate group which Mr Vekselberg does not deny, and has never denied, that he controls' (§42). Mr. Andrews further asserted that the

evidence on this point in Mr. Vekselberg's trial witness statement amounted to a 'simple error in drafting' (at §46):

> "Mr Vekselberg went on in that statement to deny that he controls companies within the 'Renova Group'. However, this is obviously a simple error in drafting. Mr. Vekselberg clearly states in that same witness statement (at paragraph 138) that he indirectly owns 90% of the shares in LLC Renova Holding Rus (a subsidiary of LLC Renova)."

[42] The upshot, say the Applicants, is that Mr. Vekselberg (through the affidavit filed by Mr. Andrews on his behalf) now accepts that he <u>does</u> own and control RHR and its subsidiaries, including at least three of the five Cyprus Claimants:

(1) Mr. Andrews confirms that three of the five Cyprus Claimants (Gothelia, Brookweed and IES Cyprus) are subsidiaries of RHR: see Andrews 24 at §52. Accordingly, Mr. Vekselberg's ownership and control of these three claimants is beyond dispute (and indeed common ground).

(2) Mr. Andrews further confirms that RHR had a controlling interest in the other two Cyprus Claimants (KES-Holding and T Plus Invest) up to September 2018, but he suggests that RHR now retains only a minority interest in those companies by virtue of a divestment of shares in KES-Holding effected at that time: see Andrews 24 at §§55-58. The alleged divestment to which Mr. Andrews refers is one of the transactions relied upon by Emmerson in support of its freezing order applications as an instance of Mr. Vekselberg transferring assets away to related parties for no consideration.

(3) For the purposes of this Application, the Applicants contend that the Court need not consider whether Mr. Vekselberg retains any beneficial interest in the other two Cyprus Claimants. This is because (i) the assurance given on his behalf is (plainly) false if he controls three of the companies which are bringing the Cypriot Proceedings (which his solicitor, Mr. Andrews, has admitted); and (ii) in any event, the Cyprus Proceedings are being directed by Mr. Cheremikin on behalf of all five of the Cyprus

Claimants together, and Mr. Cheremikin takes his ultimate instructions from Mr. Vekselberg.

(iii) <u>Role of Mr. Cheremikin</u>

[43] The Applicants' submissions as to the role of Mr Cheremikin are these. As set out in Dodonov 43 at §9, the Respondents make clear in their own evidence that the same in-house Renova legal team (headed by Mr. Cheremikin) is: (a) running the litigation both in Cyprus and the BVI; and (b) taking instructions from Mr. Vekselberg. In summary:

(1) Mr. Cheremikin has described his role and responsibilities as Chief Legal Officer of Renova Management AG ('RMAG') in his witness statement filed for the vacated trial in these proceedings that was due to begin in June 2018. His responsibilities relevantly included 'the rendering of legal support in respect of major projects and litigation proceedings of the Renova Group and overall supervision of the work of RMAG's legal division'. Mr. Cheremikin further described how he headed the Renova Group 'litigation department' which comprised 'up to 17 lawyers reporting to me'. It is precisely this Renova 'litigation department' which coordinates the Vekselberg Parties' participation in the present BVI proceedings; indeed, two Renova Group companies have sought and obtained relief from sanctions in these proceedings on the basis that the relevant knowledge and intentions are those of the Renova litigation department rather than the directors of the companies concerned.

(2) Mr. Cheremikin has suggested that his formal job title changed on 17th October 2018, but it is evident that he remains effectively the head of Mr. Vekselberg's legal team and continues to co-ordinate the Vekselberg Parties' approach in the BVI proceedings. An example is shown in his Second Affidavit dated 18th January 2019 at paragraph 58 where he averred that he was 'responsible for coordinating' the asset disclosure

exercise that Mr. Vekselberg was ordered to carry out pursuant to the Order of this Court dated 29th October 2018.

(3) Mr. Cheremikin is also actively and centrally involved in the Cyprus Proceedings (and indeed he is put forward as the primary source of the Cyprus Claimants' factual allegations in those proceedings). The Cyprus Claimants rely upon an affidavit from Mr. Cheremikin dated 13th July 2020 which makes clear his central role in organising those proceedings. As Mr. Cheremikin explains at paragraphs 3-4, he has 'personal involvement in the facts in [his] capacity as the General Director of Renova-Holding Rus', he has also 'had the opportunity to possess and review a large number of documents concerning the subject matter of this dispute', and he has 'obtained information and advice from the Cypriot lawyer who is handling this case for the Applicants'.

(4) The Applicants therefore argue that on the basis of the Respondents' own evidence, there ought to be no dispute that: (a) Mr. Cheremikin continues to co-ordinate the Vekselberg Parties' participation in the BVI proceedings; (b) he has also played a central role in organising the Cyprus Proceedings; and (c) he remains the effective head of the Renova in-house legal department which reports to (and takes instructions from) Mr. Vekselberg and represents Mr. Vekselberg's interests (along with those of the whole Renova Group, Russian and non-Russian).

(5) Further, in their evidence the Respondents do not deny that Mr. Vekselberg was aware of (and involved in) the decision to commence the Cyprus Proceedings. Mr. Andrews instead confines himself to the following generalised observations (see Andrews 24 at §52):

> "it is correct that Gothelia, Brookweed and IES Cyprus are direct or indirect subsidiaries of RHR. However, as addressed at paragraph 43 of Mr. Vekselberg's witness statement dated 27 March 2018, this does not mean that Mr. Vekselberg himself makes all decisions relating to those companies – Mr. Vekselberg explained that 'decisions are made at the level of the relevant Group company'."

(6) This paragraph, submit the Applicants, has been carefully drafted. The general observation that Mr. Vekselberg does not himself make 'all decisions' relating to these companies says nothing about the relevant issue: Mr. Vekselberg's role in the particular decision to commence the Cyprus Proceedings. Doubtless, if Mr Vekselberg had not been involved in that decision, then Mr Andrews would have said so.

(iv) <u>Mr. Vekselberg's assurance was given in bad faith</u>

[44] The Applicants allege that Mr. Vekselberg provided his assurance in order to give the Court comfort as to his good faith and to dissuade the Court from granting an injunction in wider terms than the undertakings he had (belatedly say the Applicants) offered in respect of the Russian proceedings:

(1) By the time of the hearing, Mr. Vekselberg had effectively conceded the specific element of the application by belatedly offering undertakings not to pursue his Russian proceedings any further. The Applicants submitted to this Court that a worldwide anti-injunction (subject to a proviso allowing for proceedings to be instituted with permission of the Court) was appropriate in the circumstances.

(2) The Applicants relied in this regard on the decision of HHJ Mackie QC in **Masri v Consolidated Contractors International Co SAL**[21] granting a worldwide anti-suit injunction for the following reasons (at [18]):

> "The next question is whether it should be worldwide or not. The factors were relatively balanced until I asked the defendants if they were in a position to say what their intentions were as regards seeking to bring proceedings in other countries. I received the discouraging response, "No instructions". It, therefore, seems to me appropriate, and proportionate, to make it worldwide. If there is some reason for the defendants wishing to sue Mr. Masri in say the Virgin Islands, there is no harm in requiring them, before taking that step, to come here and ask."

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[21] [2007] EWHC 1510 (Comm).

(3) The decision of HHJ Mackie QC was upheld by the English Court of Appeal: see **Masri**[22] per Lawrence Collins LJ at [97]. [23]

(4) Mr. Vekselberg, through his Leading Counsel, provided his assurance in response to the Applicants' arguments, in an attempt - so say the Applicants - to satisfy the Court as to his intentions. Having conveyed the assurance, Mr. Vekselberg's leading Counsel put the point as follows: 'we say that that supplies the assurance that was missing in the Masri case and it is clear that if [HHJ Mackie QC] had received, in that case, a similar assurance he wouldn't have made the worldwide order that he did': see transcript p.139 (line 15) – 140 (line 13).

(5) The Applicants submit that Mr. Vekselberg must have been aware of the Cyprus Proceedings and must have known that his assurance to the BVI Court was false and misleading. They say that he provided this assurance in a (successful) attempt to persuade the Court that no further relief was required and that this is a clear instance of bad faith on the part of Mr. Vekselberg. Such bad faith is a well-established species of vexation and oppression: see e.g., Dicey, Morris & Collins: The Conflict of Laws (15th edn., Sweet & Maxwell 2018) at [12-084] (citing **Re Connolly Bros Ltd** [1911] 1 Ch. 731 at pp.744 & 747; and **Midland Bank Plc v Laker Airways Ltd** [1986] 1 Q.B. 689 per Dillon LJ at p.702D-E).

[45] The Respondents now seek to suggest that Mr. Vekselberg's assurance was immaterial to my decision. The Applicants counter this by submitting that it is not open to Mr. Vekselberg to seek to justify or excuse his false and misleading assurance by speculating as to what decision the Court would have made if he had not misled it and the Applicants. In any event, they say, the provision of such an assurance in bad faith is (plainly) vexatious and oppressive conduct and the

[22] [2008] EWCA Civ 625; [2009] QB 503.

[23] I was addressed in detail on the **Masri** decision (both first instance and appeal) at hearing (see the transcript of hearing on 26 May 2020 at pp 46-52).

assurance was (plainly) material to the Court's decision. If the assurance had not been material, then Mr. Vekselberg would never have given it in the first place.

D2. The claims made in the Cyprus Proceedings are hopeless

[46] The authorities make clear that 'the inherent weakness of a claim, taken together with other matters, may be an important factor in the consideration of whether foreign proceedings are vexatious or oppressive' (see **Elektrim** at [121]) and that the 'hopeless' or 'bogus' character of a claim may be sufficient in itself to render the foreign proceedings vexatious and oppressive (see **Elektrim** at [122]). The Applicants submit that the claims advanced in the Cypriot Proceedings are hopeless (and indeed bogus) in this sense, for seven main reasons:

(1) First, the founding premise of the Cyprus claims is, they say, demonstrably false. The Cyprus Claimants allege that the Applicants (together with Mr. Titarenko) unlawfully caused the collapse of a proposed merger between T Plus and Gazprom. In fact, the negotiations have not collapsed at all. T Plus publicly announced in May 2020 that negotiations over the proposed merger were ongoing and have not been terminated. The Cyprus claims are therefore 'bogus' in the sense that they are based on an artificially constructed and non-existent loss. The Applicants say they squarely raised this public announcement by T Plus in their evidence in support of the present application and the Respondents have conspicuously failed to mention or address it in their responsive evidence.

(2) Second, the Applicants argue that the Cyprus Claimants have failed to provide any proper particulars or evidence in support of their asserted claims against the Applicants and Mr Titarenko. They have not served any statement of claim or particulars of claim. Nor have they provided any direct evidence in support of their claims. Instead, the evidence in support of the Application consists of multiple hearsay: Monoyiou 1 relays information from Mr. Cheremikin and his statement which is attached as

Exhibit 1 to her affidavit, and Mr Cheremikin in turn says that his understanding derives from a Mr. Polienko of Renova Rus.

(3) Third, the Cyprus Claimants' allegations are in any event incomplete and defective on their own terms. The Cyprus Claimants appear to rely solely on two Titarenko Letters, which they allege amounted to an attempt to create a false impression. The Applicants submit that this allegation is without foundation, not least because the claimants have not identified any false statement in either of the letters. Upon reading the Titarenko Letters, it is apparent that they refer to publicly available information about the BVI Proceedings (and provide hyperlinks to published court judgments and orders). This, say the Applicants, is a hopeless basis for a claim.

(4) Fourth, the claim advanced in the Cyprus Proceedings is legally incoherent: (i) the claim for inducing a breach of contract is misconceived in circumstances where, on the claimants' own evidence, no relevant contract existed; (ii) the claim on the basis of alleged fraud is bound to fail in circumstances where the claimants have failed to articulate any false statements made by any of the defendants; and (iii) the alleged conspiracy is based entirely on speculative assertions by way of multiple hearsay evidence and, in any event, the claimants have failed to particularise or provide any prima facie evidence of unlawful means used by the Respondents.

(5) Fifth, Emmerson's conduct serves to demonstrate the lack of credibility in the claimants' allegations. Far from seeking to disrupt the negotiations between Mr. Vekselberg's interests and Gazprom, Emmerson has taken active steps to seek to avoid such disruption being caused by these proceedings: negotiations between any companies within the Renova Group and Gazprom were expressly the subject of exceptions and provisos in the world-wide freezing injunctions which Emmerson obtained against Renova Holding Limited on 19th November 2018 and Mr.

Vekselberg on 31st December 2018. As Mr. Dodonov explains,[24] those provisos were included precisely because the Applicants had no wish to interfere with or otherwise disrupt or prejudice those negotiations, and of course had no wish to be accused of so doing or to be the subject of a claim for losses in relation thereto. Mr. Titarenko expressly confirmed in his Fifteenth Affidavit that 'Emmerson does not seek to inhibit or prevent this transaction proceeding'[25] and the point was reiterated by leading Counsel for Emmerson at the hearing of its first freezing order application on 19th November 2018.[26]

(6) Sixth, the Cyprus Claimants' case on causation is also hopeless. As is clear from their own evidence, the parties to the proposed merger were willing to go ahead both before and after receipt of the Titarenko Letters (and indeed made arrangements for what should happen if the Abyzov Parties were to succeed in the BVI proceedings):

(a) Mr. Cheremikin himself accepts that Gazprom was already aware of the BVI litigation before they received the Titarenko Letters and that 'they seemed not to be concerned about it': Cheremikin §73.

(b) Further, one month after the Titarenko Letters were received, the parties to the negotiations concluded a draft Memorandum of Understanding in respect of the merger: Cheremikin §52. Importantly, the Memorandum of Understanding expressly records the fact that the Parties were aware of the BVI proceedings and that as a result 'the MAA Group may receive an interest in the JV out of the interest which will belong to Renova': see §3.15 of the MoU. Evidently, therefore, the parties' knowledge of the BVI proceedings did not prevent either the negotiations or the proposed merger from progressing.

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[24] Dodonov 42 at §42.
[25] Titarenko 15 at §59.5.
[26] Transcript of 19 November 2018, page 25 (line 19) – page 26 (line 17).

(c) It is therefore evident that the alleged conduct of the defendants in the Cyprus Proceedings did not cause the proposed merger to collapse: to the contrary, as set out above, T Plus has publicly confirmed that the negotiations continued.

(7) Seventh, the Cyprus Claimants' case on quantum is both hopeless and absurd. Their asserted claim is for over **436 million euros** by way of lost profits allegedly suffered as a result of the alleged collapse of the proposed merger: see Monoyiou 1 at §§86-91. This assertion as to quantum is clearly wrong, not least because it fails to account for the fact that the Cyprus Claimants continue to hold the underlying asset (T Plus) and receive dividends from it, and those dividends exceed any expected profits from the proposed merger: see the affidavit of Eleana Poulladou dated 6 November 2020 at §50.

D3. The matters raised are issues for BVI court (if they are to be raised at all) and bear no connection with Cyprus

[47] The Applicants submit that the Cyprus Proceedings are based entirely on alleged conduct (principally by Mr. Titarenko) relating to the conduct of these BVI proceedings and/or in relation to matters which are already before the BVI Court. Even if the allegations had merit (which Applicants say they do not), any claims arising out of such conduct are therefore properly matters for the BVI Court. In summary, the conduct of which the Cyprus Claimants complain concerns:

(1) Allegations in respect of the Titarenko Letters. In this regard the Applicants say:

(a) The allegations raised regarding the content of these letters (which appear to be the key issues) are already the subject of one order of this Court and in so far as that order is challenged, that matter is the subject of an application that is part heard. For the

reasons set out above, these can only properly be matters for the BVI Court.

(b) Moreover, one of the Titarenko Letters is also before this Court in the context of Renova Holding's application seeking to: (a) discharge the freezing order against it; and (b) maintain the confidentiality club imposed in relation to Renova Holding's disclosure obligations thereunder. Both these matters are currently before the Court of Appeal. In particular, Renova Holding makes a similarly baseless allegation about the allegedly misleading character of the letter, contending that it 'appears to be a deliberate mischaracterization of the rule relating to deemed admissions in the BVI Courts designed to affect the auditors' conclusions to the detriment of PAO T-Plus'. The parties have joined issue on this point before the Court of Appeal.

(2) Other allegations in respect of service of these proceedings, which are plainly a matter for this Court. Indeed, these matters are already in issue in these proceedings in the context of applications by various senior Renova Group individuals to challenge service which are part heard and due to be completed at a resumed hearing in July 2021.

(3) Allegations in respect of witnesses in these proceedings, which again would properly fall to be determined in the BVI.

(4) Allegations as to alleged loss caused by the world-wide freezing injunctions which Emmerson obtained against Renova Holdings and Mr Vekselberg which, (a) are undermined seriously by the express carve-outs which were included in the orders, described above; and (b) in any event, are claims which would plainly fall to be brought in the BVI by way of an action on the cross-undertaking.

[48] Moreover, the Applicants submit, the claims made in the Cyprus Proceedings have no connection with Cyprus at all (and there is no jurisdictional basis for making any

claim or seeking any injunction in Cyprus). There is no pending dispute between the parties in Cyprus over which the Cyprus Court has jurisdiction. The only ground of jurisdiction asserted by the Cyprus Claimants is based on the alleged residence of Mr. Titarenko in Cyprus. In fact, Mr. Titarenko was not resident in Cyprus at the time the Cyprus Claimants issued their proceedings in March 2020, nor has he been resident in Cyprus at any time since. The Applicants say this is evident from:

(1) the Cyprus Claimants' own affidavit evidence confirming that they are unable to locate Mr. Titarenko in Cyprus: see Monoyiou 1 at §93;

(2) the fact that, despite their use of Mr. Titarenko's alleged residence in Cyprus as the 'anchor' for the present proceedings, the Cyprus Claimants have more recently sought and obtained permission to serve him by alternative means (by email) on the basis that 'it was impossible to locate him' in Cyprus;

(3) the fact that Emmerson's process server visited both Cypriot addresses stated in Mr. Titarenko's affidavits on 8th October 2020, 9th October 2020, and 10th October 2020 and could not locate Mr. Titarenko at these addresses;

(4) the emails obtained by the Applicants from the Cyprus immigration department which confirm that Mr. Titarenko has not obtained Cypriot nationality, does not have any kind of residence permit, and last visited Cyprus between 25th November and 3rd December 2018 (a short stay which long predates the issue of the Cyprus Proceedings).

[49] In these circumstances, the Applicants submit that the Cyprus Proceedings fall into the first two categories identified by the Privy Council in **Krys PC:** they largely constitute 'simultaneous proceedings… on the same subject matter' (Category 1) and, as to the remainder, constitute 'foreign proceedings […] brought in an

inappropriate forum to resolve questions which could more naturally and conveniently be resolved in [the BVI]' (Category 2).

[50] The correct approach in such cases is illustrated by the decision of the English Court of Appeal in **Glencore International AG v Exter Shipping Ltd**[27]. The court upheld the grant of an injunction against shipowners who were parties to complex and substantial litigation in England and sought to commence parallel proceedings in Georgia. The court emphasised that the 'overlap of issues' was sufficient to 'raise prima facie a case of vexatious conduct' ([67]); it was significant that the shipowners had 'effectively no answer' as to the 'reason for these legal manoeuvres' ([69]); and "where the shipowners have been able to show no legitimate interest in pursuing their claims in Georgia and where no prejudice has been or could be suggested to them if restrained from proceeding in Georgia, the conclusion that they have acted against conscience and against the ends of justice is the proper one to draw" ([70]). The Respondents have similarly provided no justification for advancing their claims in Cyprus.

D4. Cyprus WFO is vexatious and oppressive

[51] The Applicants submit that the Cyprus Claimants have obtained an *ex parte* freezing order which is absolute in its terms and highly prejudicial to Mr. Abyzov and Emmerson. This, they say, is further evidence of the vexatious and oppressive character of the Cyprus Proceedings. The Cyprus WFO is remarkably brief in its terms. The order does not contain any of the following:

(1) Any provision to limit or qualify its extra-territorial effect;

(2) A cross-undertaking in damages whether fortified or unfortified;

(3) Provision for expenditure on reasonable legal costs and expenses;

(4) Provision for ordinary living expenses;

[27] [2002] EWCA Civ 528, [2002] CLC 1090.

(5) Provision for ordinary or recurring business expenditure;

(6) Provisions for an application to discharge or vary either by agreement or at short notice;

(7) Protection for third parties' expenses who may be notified of the order.

(i) Cyprus WFO has unqualified extra-territorial effect and is therefore vexatious, oppressive and contrary to international comity

[52] The Applicants submit that the absence of any provision to avoid extra-territorial effect is a severe defect. It means that the Cyprus WFO offends comity and the international law on the allocation of jurisdiction between states. Thus, the English court will be prepared to make an order against a defendant over whom there is *in personam* jurisdiction, affecting property situated abroad. However, it will only do so subject to such orders being recognised and enforced by the courts in the state where the property is situated (this is the so-called 'Babanaft proviso'). The reason for this limitation is precisely to ensure that their orders do not have exorbitant effect and do not infringe the sovereignty of the state concerned. See in this regard:

(1) The originating decision of the English Court of Appeal in **Babanaft International Co SA v Bassatne**[28] per Kerr LJ:

"there can be no question of such orders operating directly upon the foreign assets by way of attachment, or upon third parties, such as banks, holding the assets. The effectiveness of such orders for these purposes can only derive from their recognition and enforcement by the local courts, as should be made clear in the terms of the orders to avoid any misunderstanding suggesting an unwarranted assumption of extraterritorial jurisdiction" (p.32D)

"Unqualified Mareva injunctions covering assets abroad can never be justified, either before or after judgment, because they involve an exorbitant assertion of jurisdiction of an in rem nature over third parties outside the jurisdiction of our courts." (p.35F)

[28] [1990] Ch 13.

(2) This reasoning was affirmed and applied by the House of Lords in **Societe Eram Shipping Co Ltd v Compagnie Internationale de Navigation**[29] ('**Navigation**') (per Lord Bingham at [23] and Lord Hoffmann at [57]-[59]) and again by the Court of Appeal in **Masri**[30] where Lawrence Collins LJ emphasised the following principles (at [47]):

> **"**First, it is not permissible as a matter of international law for one state to trespass upon the authority of another, by attempting to seize assets situated within the jurisdiction of the foreign state or compelling its citizens to do acts within the foreign state's boundaries.
>
> Second, it would be an exorbitant exercise of jurisdiction to put a third party abroad in the position of having to choose between being in contempt of an English court and having to dishonour its obligations under a law which does not regard the English order as a valid excuse.
>
> Third, an in personam order against a person subject to the English jurisdiction may be contrary to international comity. […]"

(3) Ultimately, Lawrence Collins LJ in **Masri** concluded that the receivership order made in that case was compatible with international comity. However, as the English Court of Appeal has more recently observed, "critical to this conclusion were 'the careful and proportionate limitations on the scope of the receivership order' (as Lawrence Collins LJ described them at [135]), that is to say the modified Babanaft provisos, ensuring that foreign customers of the defendants were not affected by the order except to the extent that the order was declared enforceable by or was enforced by a court in the country or state of the customer concerned": see **SAS Institute Inc v World Programming Ltd**[31] ('**SAS**') at [80].

(4) The Applicants argue that the Cyprus WFO is entirely unqualified in its extraterritorial effect and therefore amounts to an exorbitant assertion of jurisdiction. They say such exorbitance is, in itself, sufficient to render the

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[29] [2003] UKHL 30, [2004] 1 AC 260.
[30] [2008] EWCA Civ 303, [2009] Q.B. 450.
[31] [2020] EWCA Civ 599.

Cyprus WFO vexatious and oppressive: see **SAS** at [124]. This is not a novel complaint. Eminent Cypriot lawyers have expressed serious concerns about the Cyprus court making such unqualified worldwide freezing orders and this evidence is actually adduced by the Respondents themselves, in response to this Application: see the Pirilides report at §39 quoting the concerns raised by two former judges of the Supreme Court of Cyprus regarding the 'abuse' of such worldwide orders.

(a) Absence of protective provisions renders the Cyprus WFO vexatious and oppressive as a matter of fact

[53] The Cyprus WFO does not contain any of the fundamental safeguards and protections – such as a cross-undertaking in damages and exceptions for expenditure on legal, living and ordinary business expenses – that would ordinarily be included in an order granted in this jurisdiction. The Applicants submit that the absence of such provisions is clearly prejudicial to them because if the Cyprus WFO were enforced it would prevent them from spending sums subject to the injunction on legal, living and ordinary business expenses, and it interferes with the work of Emmerson's receivers: see Dodonov 43 at §21.1. This makes the Cyprus WFO vexatious and oppressive.

[54] Further and in any event, the expert evidence obtained by the Respondents actually supports the Applicants' complaint about the oppressive nature of the Cyprus Proceedings and the Cyprus Injunction. Mr. Pirilides' evidence appears to demonstrate that the system and procedure in Cyprus in relation to obtaining *ex parte* freezing injunctions is open to abuse by unscrupulous claimants and that such abuse may not be capable of easy and timeous correction by the Cypriot courts themselves. Specifically, Mr Pirilides' evidence is that:

(1) Cypriot legal commentators have recognised that the forms available in Cyprus for interim injunctions are not sufficient and, in particular, that the absence of a standard form of freezing injunction is unhelpful because the

court can less easily be satisfied that all necessary caveats and conditions are included;

(2) the Supreme Court of Cyprus has approved of the existence of precedents and standard forms for such orders in England and encouraged their adoption in Cyprus;

(3) although the Cyprus courts have a discretion to include carve outs in injunctions, the court 'almost always' will not amend draft orders so as to include such protective provisions, so the onus is therefore on the applicant for an ex parte freezing order to include within the terms of the draft order appropriate caveats and protections. Whether such protections are included therefore 'hinges on the way the draft order is requested by the applicant's lawyer' and, in practice, applicants simply do not ask for such protections to be included in the order;

(4) the burden is therefore on a respondent served with an ex parte injunction to seek thereafter to have appropriate protective provisions included into the order. Yet, Mr. Pirilides' evidence is that there are opportunities for claimants to derail the expeditious conclusion of further hearings on the injunction (such as by seeking to file supplementary evidence, or to cross-examine the respondent), and that even without any other interim applications being made, the timescales for varying an interim freezing injunction will be upwards of six weeks, and perhaps as much as between four to six months in the event that other applications are issued. In the meantime, the respondent may have no legal representation and no resources with which to obtain legal representation, or to meet ordinary living or business expenses. In other words, the effect of the Cypriot system appears to be that, in extremis, the unscrupulous claimant can deliver a 'knockout blow' before any respondent has an opportunity to be heard at an effective hearing before the Cypriot court, by effectively depriving the respondent of legal representation and resources;

(5) two former judges of the Supreme Court of Cyprus have warned extra-judicially of 'abuse' by claimants before the Cypriot courts in drafting worldwide freezing injunctions without suitable protective provisions for the respondents, and have proposed the enactment of a law or regulation that would regulate the issue and form of such injunctions. The Cyprus Claimants have engaged in such conduct in this case.

E. Applicants' Submission as to Discretion

[55] For the reasons set out above, the Applicants submit that the Cyprus Proceedings and the Cyprus WFO interfere with the integrity of this Court's processes and judgments. Injunctive relief is therefore required to protect against this interference. There are no countervailing discretionary factors which could outweigh this conclusion: the Court is required to grant injunctive relief to protect the Receiver's performance of his functions as an officer of the Court, and in any event asserted considerations of comity cannot trump the Court's interest in protecting its own processes: see **Krys PC**.

[56] In relation to vexation and oppression as grounds for injunctive relief, the Court has a wider discretionary assessment to conduct. In the present case, the Applicants rely on the following factors which they say serve to reinforce the conclusion that injunctive relief is appropriate.

(1) The Cyprus Proceedings are being prosecuted in breach of Mr. Vekselberg's highly misleading assurance to this Court, which is clearly the appropriate forum to rule on the consequences of this conduct.

(2) The allegations raised in the Cyprus Proceedings (if they had any arguable basis, which they do not) are matters could only properly be brought before the BVI court, and they have no connection to Cyprus at all.

(3) Mr. Vekselberg himself chose (through his companies) to initiate proceedings against the Applicants in this jurisdiction and thus to submit

to the jurisdiction of this Court in respect of any counterclaims brought in these proceedings.

(4) Further, the BVI proceedings are now highly complex and well-advanced, having been on foot for seven years (since December 2013). The trial of the main proceedings was listed to be heard in June 2018 and only adjourned in late April 2018.

(5) By contrast, the Cyprus Proceedings are at a very early stage (and have not substantively begun): the Respondents have failed to serve any statement of case and the Applicants have applied to discharge the Cyprus WFO and dispute the Cyprus court's jurisdiction.

[57] The Respondents contend that relief should be refused on the discretionary ground of delay. That is wrong.

(1) There has been no delay. In summary:

(a) Emmerson first learned of the Cyprus Proceedings and Cyprus WFO on 19th August 2020, but at that stage it had none of the evidence filed in support.

(b) Despite Emmerson's best endeavours (including writing to the Respondents' legal practitioners in these proceedings and asking them to provide the documents), the evidence filed by the Cyprus Claimants has only been obtained in stages. For example, Emmerson did not obtain the affidavit of Mr. Cheremikin - on which great reliance is placed by the Cyprus Claimants - until 21st September 2020.

(c) Emmerson did not have a completed translated set of all the evidence and exhibits filed in support of the Cyprus Claimants' applications for the Cyprus WFO and for substituted service on Mr. Titarenko until 30th September 2020.

(d) The present Application was issued just 12 days later, on 12th October 2020.

(2) Further and in any event, as a matter of principle, 'the length of delay in itself is of less importance than the extent to which the foreign proceedings have progressed during the delay'[32] and '(t)he touchstone is likely to be the extent to which delay in applying for anti-suit relief has materially increased the perceived interference with the process of the foreign court or led to a waste of its time or resources'.[33] As set out above, the Cyprus Proceedings remain at a very early stage and the Respondents have not even filed a statement of case or any particulars of claim. The time taken to prepare the present Application plainly has not impacted upon the Cyprus Proceedings or their progress, nor led to any waste of time or resources.

[58] Lastly, the Respondents' contention that relief should be refused on discretionary grounds in the absence of positive evidence from the Applicants regarding their means and their ability to meet any cross-undertaking in damages[34] is wrong. The Applicants have confirmed that they are content to provide the usual undertaking to abide by any Order that the Court makes in the event that the relief sought causes damage to the Respondents and the Court considers that they should be compensated for such damage. The Respondents have not articulated any arguable loss that might be occasioned by the grant of anti-suit relief in this case, still less provided any evidence as to what the quantum of any alleged loss might be. The Respondents have therefore fallen far short of establishing any adequate grounds for fortification of the cross-undertaking, still less for their extreme proposal that relief should be refused outright.

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[32] Niagara Maritime SA v Tianjin Iron & Steel Group Co Ltd [2011] Arb LR 54 per Hamblen J at [22](1).

[33] Qingdao Huiquan Shipping Co v Shanghai Dong He Xin Industry Group Co Ltd [2018] EWHC 3009 (Comm) per Bryan J at [29](2).

[34] Andrews 24 at §§90-94

F. Applicants' Submission as to Appropriate Terms of Relief

[59] Each paragraph of the Draft Order sought by the Applicants (before the hearing) is addressed in turn below.

[60] Paragraph 1a requires Gothelia and IES Cyprus to discontinue the Cyprus Proceedings and any applications and appeals in the proceedings. If the Application is granted, this ought not to be contentious.

[61] Paragraph 1b requires Mr. Vekselberg to cause the remaining three Cyprus Claimants (Brookweed, KES-Holding and T Plus Invest) to discontinue the Cyprus Proceedings and any applications and appeals in the proceedings. As to this:

(1) It is common ground that Mr. Vekselberg beneficially owns and controls Brookweed.

(2) Further, Mr. Vekselberg also clearly remains in control of KES-Holding and T Plus Invest (at the very least, insofar as their decisions in respect of the Cyprus Proceedings are concerned).

(3) It is necessary and appropriate that this order should be made to avoid the risk of the interference with the Court's process (and the vexation and oppression of the Applicants) persisting through the continued participation of these companies in the Cyprus Proceedings.

[62] Paragraph 1c is a qualified form of worldwide relief. It provides (in summary) that Mr. Vekselberg, Gothelia and IES Cyprus shall not (without the leave of this Court) commence or continue or take any steps in proceedings against the Applicants in any court or tribunal other than in the BVI in respect of any of the issues arising for determination in the present BVI proceedings. As to this:

(1) The correct approach to whether such an anti-suit injunction is appropriate is that taken by the English Court of Appeal in **Masri** per Lawrence Collins LJ at [98]. Specifically, once it is established that parallel proceedings have been instigated vexatiously (or in a manner that interferes with the

Court's processes), the relevant enquiry is whether there is a real risk that that conduct would be repeated (by the instigation of further parallel proceedings). If there is such a risk then a worldwide order is appropriate.

(2) The Applicants repeat their submission that Mr. Vekselberg was able to resist worldwide relief at the hearing of the Applicants' previous application on 26th May 2020 by providing what they say was a highly misleading assurance to the Court. They further allege that the Respondents have since taken advantage of the absence of such relief by prosecuting the Cyprus Proceedings and obtaining the draconian and prejudicial Cyprus WFO.

(3) [Further, they say, Mr. Vekselberg's two duplicative sets of Russian proceedings must now been seen in light of the new information that is available regarding the Cyprus Proceedings. As the Applicants and the Court can now see, Mr. Vekselberg has issued not just two claims consecutively (being the two sets of Russian proceedings) but, in fact, three claims consecutively (the Russian proceedings, followed by the Cypriot Proceedings). In the absence of worldwide relief, it seems clear that this course of conduct is likely to continue. The time has now come to grant the required protection. The Respondents' interests are fully and adequately protected by their liberty to apply for permission from this Court in the (practically inconceivable) eventuality that there is a legitimate justification for them to engage in parallel proceedings abroad in respect of the same issues that arise for determination in the present proceedings.

[63] The Applicants stressed that they rely not only on (1) Mr Vekselberg having *de facto* control of the operation of KES-Holding and T Plus Invest, at the very least in relation to the merger negotiations and Cyprus proceedings; but also (2) the fact (they say) that the Cyprus proceedings are entirely dependent on evidence and instructions from Mr. Vekselberg and his agents within Renova Rus (Mr. Cheremikin and Mr. Polienko), such that an injunction against Mr. Vekselberg

would serve a useful purpose and would be practically effective to bring the Cyprus proceedings to an end. The continuation of such proceedings without Mr. Vekselberg's and his subordinates' instructions, evidence and support would be unrealistic in the extreme, urge the Applicants. It is also the Applicants' case that an injunction resulting in the discontinuance of the Cyprus proceedings by the remaining three claimants (Gothelia, IES Cyprus and Brookweed) would serve a useful purpose in any event, at the very least by substantially reducing the quantum of the Cyprus claim by approximately 228 million Euros.

THE RESPONDENTS' ARGUMENTS

[64] The Respondents submit that the application is fundamentally misconceived. They argue, in summary, as follows.

[65] The Cyprus claims are different and distinct from any claims pursued by any party in these proceedings in the BVI and there is no proper basis for this Court to require them to be discontinued. The allegations and claims there raised concern alleged unlawful interference with commercial relations and negotiations and these are not factual or legal issues arising in these present proceedings. The Cyprus Proceedings concern different issues and involve different and additional parties.

[66] The Cyprus claims are not vexatious nor oppressive, in that the BVI is not the natural forum for those claims – they have almost no connection with the BVI.

[67] The Respondents rely upon arguments about the jurisdiction of the Cyprus Court, the merits of the claims brought in Cyprus and the terms of a freezing order granted by the Cyprus courts. Those are issues for the Cyprus courts and it would be a clear breach of comity for the BVI court to arrogate to itself the making of rulings on any of those matters. There is no basis for granting an injunction against Mr. Vekselberg, as he is not party to the Cyprus proceedings.

[68] An anti-suit injunction would serve no purpose: KES-Holding, T Plus Invest and Brookweed are not respondents to the application, nor are they parties to these BVI proceedings. The BVI Court therefore has no power to require those parties

to discontinue their claims in Cyprus. Mr. Vekselberg has no control, directly or indirectly, over KES-Holding and T Plus Invest. Thus, the Cyprus proceedings are likely to continue in any event. Consequently, it is not in the interests of justice for an injunction to be granted.

[69] There is no basis for a worldwide anti-suit injunction. Whether proceedings overseas are oppressive or vexatious is a highly fact-specific question and can only be determined by reference to a specific set of proceedings. Granting such an injunction would be a clear case of judicial overreach.

[70] The Respondents refer the Court to a number of other authorities. In particular, they refer to the English Court of Appeal case of **Emmott v Michael Wilson & Partners Ltd** that the 'the touchstone for the grant of an anti-suit injunction, as with any other injunction, is what the ends of justice require'.[35] They observe that the judgment of Sir Terence Etherton MR in that case identified four general principles that govern applications for such relief:[36]

> "(1) The jurisdiction is to be exercised when the ends of justice require it.
>
> (2) Where the court decides to grant an injunction restraining proceedings in a foreign court, its order is directed not against the foreign court but against the parties so proceeding or threatening to proceed. (3) An injunction will only be issued restraining a party who is amenable to the jurisdiction of the court, against whom an injunction will be an effective remedy. (4) Since such an order indirectly affects the foreign court, the jurisdiction is one which must be exercised with caution."

[71] Furthermore the Respondents point out that the principles governing an application for an anti-suit injunction on the 'vexatious basis' were explained by Toulson LJ in the English Court of Appeal case **Deutsche Bank AG v Highland Crusader Offshore Partners LP**:[37]

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[35] [2018] 2 All ER (Comm) 737 at paragraph 36 (Sir Terence Etherton MR).

[36] [2018] 2 All ER (Comm) 737 at paragraph 37 (Sir Terence Etherton MR).

[37] [2010] 1 W.L.R. 1023 at paragraph 50 (Toulson LJ) (emphasis and paragraph breaks added by the Respondents).

"I would summarise the relevant key principles as follows:

(1) Under English law the court may restrain a defendant over whom it has personal jurisdiction from instituting or continuing proceedings in a foreign court when it is necessary in the interests of justice to do.

(2) It is too narrow to say that such an injunction may be granted only on grounds of vexation or oppression, but, where a matter is justiciable in an English and a foreign court, **the party seeking an anti-suit injunction must generally show that proceeding before the foreign court is or would be vexatious or oppressive**.

(3) The courts have refrained from attempting a comprehensive definition of vexation or oppression, but **in order to establish that proceeding in a foreign court is or would be vexatious or oppressive on grounds of forum non conveniens, it is generally necessary to show that (a) England is clearly the more appropriate forum ("the natural forum"), and (b) justice requires that the claimant in the foreign court should be restrained from proceeding there.**

(4) If the English court considers England to be the natural forum and can see no legitimate personal or juridical advantage in the claimant in the foreign proceedings being allowed to pursue them, it does not automatically follow that an anti-suit injunction should be granted. For that would be to overlook the important restraining influence of considerations of comity.

(5) **An anti-suit injunction always requires caution because by definition it involves interference with the process or potential process of a foreign court**. An anti-suit injunction to enforce an exclusive jurisdiction clause governed by English law is not regarded as a breach of comity, because it merely requires a party to honour his contract. In other cases**, the principle of comity requires the court to recognise that, in deciding questions of weight to be attached to different factors, different judges operating under different legal systems with different legal policies may legitimately arrive at different answers, without occasioning a breach of customary international law or manifest injustice, and that in such circumstances it is not for an English court to arrogate to itself the decision how a foreign court should determine the matter.** The stronger the connection of the foreign court with the parties and the subject matter of the dispute, the stronger the argument against intervention.

(6) **The prosecution of parallel proceedings in different jurisdictions is undesirable but not necessarily vexatious or oppressive**.

(7) … It does not follow [from the existence of a non-exclusive jurisdiction clause] that an alternative forum is necessarily inappropriate or inferior. …

(8) The decision whether or not to grant an anti-suit injunction involves an exercise of discretion and the principles governing it contain an element of flexibility." (Respondents' emphasis.)

[72] The Respondents remind the Court that these various principles were confirmed to be applicable in the BVI by the Court of Appeal in the **Fairfield Sentry** litigation[38] and that they have been applied in these proceedings already in a judgment dated 2nd June 2020.

[73] In relation to the Applicants' submissions that this Court must grant an anti-suit injunction to protect its processes from the exorbitant extra-territorial effect of the Cyprus WFO, the Respondents submit that there is no evidence that the Cyprus WFO has in fact prejudiced the Applicants; the most they can and do say is that it might, speculatively, do so.

[74] The Respondents also submit that continuation of the Cyprus Proceedings is not a breach of the assurance given by Mr. Vekselberg to this Court. They submit that that assurance was not misleading and it was not false. They say that the Applicants' submissions in this regard ignore the basic principle of separate corporate legal personality as well as the fact that the issues for the Cyprus proceedings are different from those arising in these proceedings.

DISCUSSION

Preface

[75] I preface what I say below by pointing out that the Applicants might well be right that the Cyprus Proceedings were brought at Mr. Vekselberg's behest in order to put pressure upon Mr. Abyzov, Emmerson and Mr. Titarenko – in other words, and bluntly put, to vex and oppress them.

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[38] UBS AG New York v Krys (BVIHCMAP 2016/0011-16 and 2016/0023-28, unreported, delivered 20th November 2017) at paragraph 57 (Pereira CJ). See also the judgment of the Privy Council in that case: [2019] P.C. 966, at paragraph 19 (Lord Hodge).

[76] Equally, the Applicants may well be right that Mr. Vekselberg 'really' does control all the Cyprus Claimants, or at least that he is sufficiently influential with those persons who conduct their affairs, so as to be the main instructing party and a person, indeed the pre-eminent person, who can cause them to be discontinued.

[77] I understand the Applicants' perspective and am not unsympathetic to it. As far as they were concerned, Mr. Vekselberg had, around the same time or recently before, caused legal proceedings to be brought in Russia in which he sought to obtain rulings from the Russian courts on issues arising in these proceedings. Such rulings would or could compete with rulings this Court might make and indeed they could pre-empt them. The Applicants see the Cyprus Proceedings as being of a piece with this and part of the same plan.

[78] Also, I have to agree with the Applicants that from this BVI Court's perspective, the way the Cyprus Claimants have gone about starting proceedings there and obtaining a WFO from the Cyprus Court appears alarming and raises strong suspicions that those steps were taken with a vexatious and oppressive purpose.

[79] In particular, from this Court's perspective, a failure to make full and frank disclosure of the fact that T Plus had announced negotiations with Gazprom had not terminated is likely to be treated as so serious that the WFO should be discharged in very short order. Similarly, a failure to disclose that T Plus's status in relation to these proceedings had already been pronounced upon by this Court in a manner contrary to what was being asserted in support of the WFO application would probably also have that result. These points would, at least in principle, so seriously undermine the apparent merits of the case as to weaken the Cyprus Claimants' position gravely and, on their face, fundamentally.

[80] Such thoughts might be tempting, but the Court must resist that temptation. This Court does not know the fullness of what the Cyprus court was told, nor how. Nor does this Court necessarily have all the papers before it that were before the Cyprus court. Nor are the legal and procedural requirements and civil procedure rules necessarily the same in Cyprus as here. Moreover, whilst I note that there

have been a number of hearings before the Cyprus court or courts, with the Cyprus Defendants recorded as present (albeit under protest), this Court does not know to what extent, if at all, the Cyprus Defendants are themselves responsible for the length of time it might take to bring on their own application(s) in opposition to the Cyprus WFO for hearing, whether on account of the number of issues they might wish the Cyprus court to adjudicate upon, Counsel's convenience, or otherwise.

[81] I find it rather odd that the Cyprus Claimants seem to have been able to bring on a number of hearings in Cyprus within a relatively short time, at which substantive orders were made, but that the Cyprus Defendants should somehow be prevented from having a discharge or variation application listed reasonably promptly. That does appear off-key to me and there may perhaps be more to the matter.

[82] It would be wrong for this Court to form a view on these matters, because it is at a remove from the proceedings in Cyprus.

[83] There are other features which should inspire caution on the part of this Court.

[84] The first is that the Cyprus Claimants have not yet pleaded or particularized their claims in Cyprus. The Cyprus Claimants have simply issued a summary claim form. It seems to be common ground that there is as yet no procedural requirement for them to file particulars of claim. We do not yet know how the Cyprus Claimants will frame their case. I accept the Respondents' submissions that the Cyprus Claimants' affidavit evidence in support of their application for the WFO should not be treated as definitive in this regard. It would thus be inappropriate for this Court to attempt a definitive assessment of the merits of the Cyprus Claims as is urged by the Applicants.

[85] A second feature that suggests caution is that the claim has been expressed in the claim form in very wide terms. These claims do not on their face require there to have been any false statements on the part of the Cyprus Defendants, as suggested by the Applicants. The claims there expressed are commensurate with

the ancient principles for the English tort of 'trespass upon the case', which had a relatively low standard of unconscionability as their key. This Court should not presume that the modern elements for such a tort (or range of torts) in Cyprus are necessarily the same as under BVI law. They might not be. Neither was I addressed on this aspect, even with reference to BVI law, during submissions. None of the documents I was taken to in relation to the Cyprus Proceedings set out the elements for the legal tests under Cyprus law that the Cyprus Claimants would need to satisfy in order to succeed with their claims, or indeed to demonstrate that they have a good arguable case. Such an omission (if that was indeed an omission in Cyprus) would be unusual for an application for a freezing order brought before this Court. But this Court should not – at this stage at least - try to supply such apparent omissions with assumptions that Cyprus substantive law, practice and procedure are the same as here. The BVI is not Cyprus and justice is administered differently there.

[86] I also have to remember that although the Applicants have concluded that Mr. Vekselberg and his team have set out to vex and/or oppress them, this Court must judge the matters before it on the strength of the available evidence. This is as fundamental as it is primordial. This also means that the Court must be sensitive to those matters on which there is no evidence.

<u>No useful purpose – no evidence of control</u>

[87] This brings me to the first fatal flaw in the Applicants' case. There is no evidence that Mr. Vekselberg controls KES Holding and T Plus Invest, so as to be able to cause it to discontinue the Cyprus Proceedings. That is a fundamental problem for the Applicants, because if the Cyprus proceedings can be continued by one or more of the Cyprus Claimants, there would be no point forcing the other Claimants to discontinue their claims. That is so, because the Cyprus Defendants would ordinarily continue to be troubled by the Cyprus claims and the Cyprus WFO. If an injunction would be pointless, it would not be just or convenient to grant it. Put differently, such an injunction would not serve the ends of justice.

[88] The question of control was raised as an issue by the Applicants themselves. Their case is that Mr. Vekselberg controls all of the Cyprus Claimants and he is able to compel them to discontinue the Cyprus Proceedings. They recognise that in relation to KES-Holding and T Plus Invest Mr. Vekselberg no longer ***formally*** has a controlling interest, whether directly or indirectly. The Applicants say however that it was Mr. Vekselberg who had been *conducting negotiations* with Gazprom on behalf of all the Cyprus Claimants at all times – when he still ultimately controlled KES-Holding and T Plus Invest as well as afterwards.

[89] The Respondents submit that this does not mean that Mr. Vekselberg retained decision making authority or power *to ensure that those who now formally control KES-Holding and T Plus Invest can drop claims*.

[90] The Applicants scathingly suggested that such a notion is unrealistic in the extreme. Nonetheless, authority to bind persons and/or entities in relation to commercial negotiations is conceptually different from authority to take litigation decisions on their behalf, and in particular to forego claims. Discontinuing claims means writing off assets (choses in action) at zero worth, or even converting such assets into a liability if a claimant has to pay the costs of discontinuance. There is no evidence Mr. Vekselberg is authorised to do so.

[91] I can summarise the available evidence as follows.

[92] The Applicants' affiant, Mr. Dodonov, attests at paragraph 11 of his 42nd Affidavit, that it was Mr. Vekselberg who had caused the Cyprus Proceedings to be initiated and that he also caused the Cyprus Claimants to obtain the *ex parte* Cyprus injunction. The Respondents say these are bald, unsupported statements, not supported by evidence. Mr. Dodonov implies, of course, that Mr. Vekselberg can also cause the Cyprus Proceedings to be discontinued, but he does not say this.

[93] Mr. Dodonov suggests at paragraph 10 of his 43rd Affidavit that the reduction in Mr. Vekselberg's indirect shareholding in KES-Holding and T Plus Invest was effected for no consideration, implying thereby that Mr. Vekselberg still retains

control in reality. Mr. Dodonov acknowledges that these are matters which are before the courts and that this Court need not determine these in the present context now.

[94] Mr. Dodonov addressed the divestment and alleged lack of consideration in an earlier, 6th Witness Statement. He there stated, between paragraphs 108 and 118, that Emmerson had been unable to find any evidence of consideration. It should be clear, however, that just because Emmerson has not been able to find evidence of consideration does not mean that there was none. Mr. Dodonov relayed evidence filed on behalf of Mr. Vekselberg/Renova's side that the transfers had been effected for no cash consideration but that the consideration had consisted of equity contributions. Mr. Dodonov then goes through a somewhat convoluted numerical exercise from which he extrapolates that the net effect of the transaction was a transfer for no consideration.

[95] Mr. Dodonov also recounted there (at paragraph 114) that IES Cyprus had reduced its interest in T Plus from 52.87% to 32.37%, with a Cyprus company, Merol Trading Limited ('Merol'), increasing its shares in T Plus from 11.74% to 17.04%. Mr. Dodonov stated that 'Merol is not supported by Renova, but by Israeli investors who are friendly to it'. Those investors are then named in paragraph 115. I refer to this evidence with some specificity because learned Queen's Counsel for the Applicants submitted that Merol was a company closely associated with Mr. Vekselberg and he referred to this 6th Witness Statement as supporting that assertion. The purpose of learned Queen's Counsel's submission was clearly to persuade me that Mr. Vekselberg also controlled or could effectively influence Merol. The evidence – or at least the evidence I was taken to and have here identified – does not go so far. 'Friendly' does not necessarily translate into 'closely associated'. Nor does 'friendly to [Renova]' mean that Mr. Vekselberg could control or effectively influence Merol. I was not taken to any evidence that Merol is associated, let alone closely, with Mr. Vekselberg or that Mr. Vekselberg has any kind of control or influence over it.

[96] The Respondents' witness, Mr. Jeremy Andrews, states in his 24th Witness Statement at paragraphs 55 to 58 that '[t]he disclosure confirms that Mr Vekselberg had 'indirect control' of PAO T Plus up to 7 September 2018 but from that date onwards he was no longer a controlling shareholder and his indirect interest reduced from 57.1% to 39.59%.' Mr. Andrews completes the connection with T Plus Invest by explaining that the Applicants also accept that T Plus Invest is 99.9% owned by T Plus. Thus, Mr. Vekselberg's indirect interest in T Plus Invest dropped well below 50%.

[97] Mr. Andrews similarly gives evidence (at paragraph 56 of his 24th Witness Statement) that it is common ground that Mr. Vekselberg's indirect interest in Kes-Holding was reduced below 50% at the same time.

[98] In relation to Gothelia, Brookweed and IES Cyprus, Mr. Andrews states at paragraph 52 of his 24th Witness Statement that it is correct that these are directly or indirectly subsidiaries of an entity ultimately controlled by Mr. Vekselberg, but that 'this does not mean that Mr. Vekselberg himself makes all decisions relating to those companies', with Mr. Vekselberg himself stating in evidence that 'decisions are made at the level of the relevant Group company'.

[99] The sum total of this summary review of the evidence is twofold:

(1) It is uncontroversial that Mr. Vekselberg has no formal majority controlling interest in KES-Holding or T Plus Invest; and

(2) There is no evidence Mr. Vekselberg has *de facto* control or effective decision making influence over KES-Holding or T Plus Invest.

[100] The Applicants tried a different tack. They urged that Mr. Cheremikin takes his instructions from Mr. Vekselberg and that he was and is running the Cyprus Proceedings on behalf of all the Cyprus Claimants. Therefore, so went the Applicants' argument, if Mr. Cheremikin can no longer obtain instructions from Mr. Vekselberg, then the Cyprus Proceedings too will not continue.

[101] The flaw in this argument is that there is no evidence that it is only from Mr. Vekselberg that Mr. Cheremikin can take instructions. The Applicants' case concept narrowly treats Mr. Vekselberg as the only person who effectively controls all five Cyprus Claimants. I have seen no evidence that Mr. Vekselberg has the exclusive authority of those controlling KES-Holding or T Plus Invest to instruct Mr. Cheremikin to continue or discontinue proceedings on their behalf. Moreover, if it is that all the Cyprus Claimants have delegated their litigation management to Mr. Cheremikin, then, if Mr. Vekselberg is forced to drop out of the communication chain, there would be nothing in principle preventing Mr. Cheremikin from obtaining instructions directly from the Boards of Directors of those companies. Indeed, that is what one would ordinarily expect. In short, there is no evidence that an anti-suit injunction against Mr. Vekselberg would be effective to prevent Mr. Cheremikin from conducting the Cyprus Proceedings in accordance with the instructions of those managing the affairs of the companies that are not formally controlled by Mr. Vekselberg. Consequently, there is no evidence that such an injunction would serve a useful purpose.

[102] Lack of evidence of Mr. Vekselberg's alleged control of KES-Holding and T Plus Invest raises another consideration. Ordinarily, majority shareholders have a majority stake in the value of their companies. There is no evidence that that is not the case here. It would then be seriously high-handed and unjust for this Court to attempt to deprive companies of their potentially valuable assets (causes of action) merely on a presumption, without proper evidence, disclosure or a trial, that those companies are really controlled by someone else. There is no evidence that Mr. Vekselberg retains the authority with respect to KES-Holding or T Plus Invest to write off their potentially valuable asset that is the cause of action in the Cyprus Proceedings.

[103] The Applicants tried to address these difficulties late in the hearing by seeking to change the terms of the relief sought. Their learned Queen's Counsel suggested that I should order Mr. Vekselberg to exercise his *best endeavours* to have the Cyprus Claimants discontinue those proceedings. That is a fundamentally

different form of relief than the Applicants had originally sought. This is not relief that would in my respectful judgment be just or convenient to order. There is no evidence whatsoever that such an order is likely to have the Applicants' desired effect, since there is no evidence that Mr. Vekselberg has *de facto* control or influence over those companies or their owners. Moreover, it would amount to no more than requiring Mr. Vekselberg to ask KES-Holding and T Plus Invest to drop their claims. They would then be at liberty simply to refuse and that would be the end of it.

[104] Such an order would also necessarily assume that KES-Holding and T Plus Invest share Mr. Vekselberg's alleged vexatious and/or oppressive intent. But that is also an assumption that goes too far, where the evidence goes no further than that Mr. Vekselberg holds only an indirect minority stake in those companies. Those companies are not parties to these BVI proceedings and this Court cannot take jurisdiction over them.

[105] I am further not persuaded that an injunction resulting in the discontinuance of the Cyprus proceedings by the remaining three claimants (Gothelia, IES Cyprus and Brookweed) would serve a useful purpose by substantially reducing the quantum of the Cyprus claim. The Applicants suggest that such a reduction would be of approximately 228 million Euros. Whilst they have not shown the Court how that figure has been calculated, the figure is, to my mind, irrelevant. While I can understand that the Applicants would desire the claims against them to be reduced, the Court is neutral about the size of a claim. There is no public policy that I am aware of, either here or in Cyprus, that it is desirable for the quantum of any claims to be kept low. Any such policy would tilt litigation in favour of a defendant and against to the interests of a claimant. That obviously cannot be right. If a claimant is due a certain sum, that is what is due to him in justice, whether it be a high or a low figure.

Injunction to enjoin interference with this court's processes

[106] The Applicants submit that this Court must grant injunctive relief to protect the Receiver's performance of his functions as an officer of the Court and to protect its own processes in the face of an unqualified and exorbitant WFO granted in Cyprus. They say the Cyprus WFO is a contempt of this Court. This Court must act to stop this, they say.

[107] The Applicants have shown that the Cyprus WFO at the very least risks interfering with the Receiver appointed by this Court.

[108] There are, however, several difficulties with the Applicants' position.

[109] The first, as we have seen, is that this Court has no jurisdiction over KES-Holding and T Plus Invest and there is no evidence Mr. Vekselberg has *de facto* control or influence over them. Any anti-suit injunction this Court might make against the other Cyprus Claimants would leave KES-Holding and T Plus Invest free to continue with their claims and their WFO in Cyprus. This Court is powerless to prevent them from doing so.

[110] A second difficulty is that there is no evidence that the Cyprus WFO is in practice causing any prejudice to the Applicants, or the Receiver, as learned Queen's Counsel for the Respondents pointed out at the hearing. As I have mentioned, the value of Emmerson's assets is not in evidence before the Court (which may be more than the freezing order in this jurisdiction and the Cyprus WFO combined), nor is there any evidence of actual difficulties caused by the Cyprus WFO. In other words, there is no evidence that it would be just or convenient to grant the injunction.

[111] A third difficulty is that the anti-suit injunction seeks to have the Cyprus claims discontinued, whereas the alleged mischief derives from an interlocutory order granted in support thereof. What the Applicants are proposing is that this Court should eliminate the risk posed by the WFO by having the entire underlying claims terminated. The Applicants urge that those claims are still at an early stage, so

that termination would be relatively tidy. The Applicants strongly urge that those claims have no value anyway, because, according to them, they are 'bogus', hopeless, contrived and, to use their learned Queen's Counsel's term, 'ridiculous'. However, it would be misplaced and arrogant for this Court to move so quickly to such a conclusion when the Cyprus court (a) is the forum seised of those claims and (b) is clearly being circumspect about striking them out. It would here be a disproportionate use of power for this Court simply to vindicate the principle of protection of its Receiver and its own processes at the expense of collateral damage upon the Cyprus Claimants by suppressing their rights of suit. Embryonic though their claims might be, if they are snuffed out, potentially valuable causes of action will be lost. The Applicants would like that, obviously, but there is a real prospect that this Court would thereby be wreaking an injustice upon litigants in a foreign jurisdiction. This Court should exercise judicial restraint; it should not rush in where the courts seised of the matter adopt a less impetuous approach.

[112] Thus, I reject the Applicants' submission that this Court 'must' grant the anti-suit injunction sought. If the Applicants were to lead evidence that (a) the Cyprus WFO is causing them or the Receiver prejudice and (b) no cure can be obtained timeously in Cyprus, then this Court might act, if it were then to be satisfied that it would be proportionate and appropriate to do so. However, where the WFO is likely to continue anyway because this Court does not have jurisdiction over two of the Cyprus Claimants, this Court cannot take the matter over to itself. Its arm is not long enough. An anti-suit injunction against the other three Cyprus Claimants would send a signal that this Court cannot brook unqualified and exorbitant extra-territorial freezing orders, but such an injunction would not be effective to stop such overreach by the foreign court. Such a signal would be no more than an empty fulmination.

Collateral attack on orders and judgments of this Court – a premature allegation

[113] I respectfully disagree that the Cyprus Proceedings constitute a collateral attack on orders and/or judgments of this Court. Such a concern is premature.

[114] Since the Cyprus Claimants have not yet filed particulars of claim, we cannot yet tell how they will plead their claims. Admittedly, they have intimated to the Cyprus court the factual allegation that T Plus has not been properly joined to these proceedings and only took part in order to challenge jurisdiction. But there is no indication that the Cyprus Claimants intend to ask the Cyprus Court to determine whether T Plus should be treated as having been properly joined to these proceedings. There is no indication that the Cyprus Claimants will attempt to obtain a ruling on that particular question. That is a different question from the purely empirical enquiry of fact whether T Plus has been properly joined to these proceedings. (This is a question of BVI law. Assuming Cypriot law is the same as English and BVI law on this point, from a Cyprus court's perspective questions of BVI law would be questions of fact.) As the matter stands in Cyprus, it remains open for the Cyprus Claimants to plead that, as a question of fact, T Plus was not properly joined to these proceedings. If they were to do that, the orders and judgments of the BVI Courts would evince the position taken by the BVI Courts on those matters. Learned Queen's Counsel for the Applicants submitted at the hearing that there is no evidence either way before this Court now as to how the Cyprus courts would regard the BVI courts' orders. There is thus no reason to suppose that the Cyprus courts would look beyond or behind the BVI Court's orders and judgments and not treat them as determinative.

[115] That said, I accept that I cannot see how the Cyprus Claimants could maintain those factual allegations in light of the BVI courts' existing orders, but this Court, at this moment in time, is not charged with trying the Cyprus claims.

[116] I acknowledge that the Applicants fear or anticipate that the Cyprus Claimants will in due course ask the Cyprus court to rule on whether T Plus should be treated as having been properly joined to these proceedings, on the basis that in Russia Mr. Vekselberg had, according to them, also repeatedly tried to have the Russian courts determine issues which fall to be determined in these proceedings. The Applicants' concerns might thus not be groundless. But they have not as yet materialised in Cyprus. The Applicants see the shadow of what looks like

something similar advancing towards them and they are urging this Court to strike pre-emptively. That would not be appropriate. Shadows are deceptive. By ending the underlying proceedings that appear to cast them, this Court might be terminating a perfectly innocent and *bona fide* cause of action. Before this Court should deploy its nuclear weapons, the target should be solidly within view.

[117] Since the Cyprus Claimants have not yet particularised their case in Cyprus it is a premature assertion on the part of the Applicants that the Cyprus Proceedings make it impossible for this Court to vindicate a claimant's (or defendant's) rights or for this Court to do justice in its own jurisdiction.

No sufficient overlap of issues

[118] I respectfully do not agree with the Applicants' submission that the Cyprus Proceedings 'are based entirely on alleged conduct (principally by Mr. Titarenko) relating to the conduct of these BVI proceedings and/or in relation to matters which are already before the BVI Court'.

[119] As the Respondents have argued and shown, the substantive claims in Cyprus and in this jurisdiction are completely different. They are not parallel proceedings. Nor do the claims made in Cyprus have any real or substantial connection with the BVI. The case of alleged unlawful interference (or some similar tort) with negotiations or commercial relations with Gazprom does not arise in these present proceedings. The Cyprus Proceedings do not, in that sense, concern 'the same subject matter' as these BVI proceedings. It is right that the Cyprus Claimants pray in aid certain aspects of these proceedings by way of allegations of fact in the Cyprus proceedings but it cannot be said that there is a true overlap of issues. At best they are 'related', in so far as some of the parties are the same in both jurisdictions and there is some cross-reference between these proceedings and those in Cyprus. KES-Holding and T Plus Invest have (to the extent that they do in fact have) causes of action which they have the right to pursue in Cyprus independently of these proceedings. This Court has no jurisdiction over these companies. This Court cannot tell them they should bring those claims here or

that they should discontinue their claims in Cyprus. I do not agree that the BVI is clearly the more appropriate or natural forum for the claims advanced in Cyprus. The core issue in the Cyprus Proceedings whether or not the Applicants unlawfully or improperly interfered with T Plus's negotiations with Gazprom do not arise in these proceedings and have very little connection with this jurisdiction. Neither do I agree that justice requires that the claimants in the foreign court should (or in the case of KES Holding and T Plus Invest could) be restrained from proceeding there.

[120] The language used by the Applicants (that the conduct complained of in Cyprus is '**relating to** the conduct of these BVI proceedings and/or **in relation to** matters which are already **before the BVI Court**' (emphasis mine)) is imprecise and superficial. It is perhaps the highest the Applicants can put their case. Merely such 'relation' is insufficient to persuade this Court to exercise its discretionary powers to grant an anti-suit injunction, because even where there are parallel proceedings afoot in different jurisdictions that does not necessarily mean that the foreign proceedings should be treated as vexatious or oppressive.[39]

[121] The same observations can be made about the Applicants' submission that 'one of the Titarenko Letters is also **before this Court**' (emphasis mine). This is a vague assertion that critically stops short of the all-important detail. It begs the questions, what, if any, are/were the issues concerning the letter that the Court is/was required to determine? How do such issues compare with the allegations made concerning this letter in Cyprus? It is for the Applicants to show this Court that the context and issues pertaining to that letter in these proceedings are sufficiently close to those obtaining in Cyprus for there to be vexation or oppression. The Applicants have not done so.

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[39] Deutsche Bank AG v Highland Crusader Offshore Partners LP [2010] 1 W.L.R. 1023 at paragraph 50 (Toulson LJ).

No breach of assurance given on Mr. Vekselberg's behalf

[122] The Applicants submit that Mr. Vekselberg misled this Court in causing an assurance to be given on his behalf that he had 'not commenced any proceedings in any jurisdiction against Mr. Abyzov or Emmerson which relate to the issues to be determined in the BVI proceedings and that he has no intention to commence any such proceedings'. The Respondents deny breach or that the assurance was misleading. The point is, in my view, not determinative, but one amongst several discretionary factors. Nonetheless, strictly speaking the Respondents are correct. Mr. Vekselberg did not act in breach of that assurance, and the Cyprus proceedings had by then already been commenced. The Applicants would regard such a statement as myopic and blinkered, with the big picture being that all distinctions between Mr. Vekselberg and corporate entities he indirectly controls should in reality be ignored. I cannot so lightly ignore or pierce the corporate veil, which is what the Applicants' approach amounts to.

Conclusion

[123] I would summarise the Court's thinking thus. In terms of the principles expounded in **Emmott v Michael Wilson & Partners Ltd**[40]:

(1) I am not satisfied that the ends of justice require anti-suit injunctive relief. An injunction that would prevent some but not all the Cyprus Claimants from pursuing claims would be pointless, because the Applicants would continue to be inconvenienced by the same claims. There is furthermore no evidence that the Applicants or the Receiver are in reality - as opposed to in theory - prejudiced by the Cyprus WFO. I am moreover not satisfied that the Respondents are seeking to mount a collateral attack in the Cyprus Proceedings against orders or judgments of this Court. Such a conclusion is premature. Nor am I persuaded that the BVI courts are the natural forum for determination of the substantive claims brought in

[40] [2018] 2 All ER (Comm) 737 at paragraph 37 (Sir Terence Etherton MR).

Cyprus. The cause(s) of action sought to be advanced in Cyprus form no part of the present proceedings in the BVI. Strictly construed, at least, Mr. Vekselberg is not in breach of the assurance he gave to this Court as was alleged by the Applicants.

(2) Two of the Cyprus Claimants, KES-Holding and T Plus Invest, are not amenable to the jurisdiction of this Court. This Court cannot directly enjoin them from continuing their claims in Cyprus. The Applicants' solution, namely, that this Court should require Mr. Vekselberg to cause KES-Holding and T Plus Invest to discontinue their claims, or that he should at least be ordered to use best endeavours to do so, is not appropriate because there is no evidence that Mr. Vekselberg has any authority or effective influence to do so. Moreover, the very notion of an order to exercise best endeavours contemplates that an injunction might not be an effective remedy.

(3) The matters summarised in the two sub-paragraphs above suffice in my view to compel a conclusion that the application should fail. In addition, this Court must be cautious about reaching conclusions concerning the alleged hopelessness and improper purposes of the proceedings brought in Cyprus, as the Cyprus courts are intrinsically better placed to rule on the matters before them.

Disposition

[124] For these reasons, the application fails. Whilst the Court is of the preliminary view that Costs should follow the event in the usual way, the Court will hear the parties further, should either party so desire, in relation to the incidence, quantum and public policy considerations that a costs order might currently involve. Thus, the issue of costs stands reserved.

[125] I take this opportunity to thank learned counsel for their assistance during this matter.

Gerhard Wallbank

High Court Judge

By the Court

Registrar