Neutral Citation Number: [2019] EWHC 1300 (Ch)

Case No: CH-2018-000309

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF
ENGLAND AND WALES
CHANCERY APPEALS

ON APPEAL FROM THE DECISION OF CHIEF MASTER MARSH
OF 29TH OCTOBER 2018
CLAIM NO: HC-2015-001597

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

Date: 22/05/2019

Before :

MR JUSTICE MANN

- -

Between :

MOHAMMED ALI POURGHAZI	**Claimant**
- and –	
(1) SHAHROKH KAMYAB (2) SAYYAD MORTEZA MANAFI (3) HAMID KAMYAB (4) NESHAT MANGILI (ON HER OWN BEHALF AND AS REPRESENTATIVE OF THE ESTATE OF ZARRIN BASIROLOUMI PURSUANT TO CPR R.19.8) (5) IMAN KAMYAB (6) ESTATE OF ZARRIN BASIROLOUMI (7) ARRIANE FARSIAN	**Defendants and Respondents**
(1) HSBC PRIVATE BANK LIMITED (2) INVESTEC BANK (CHANNEL ISLANDS) LIMITED	**Additional Parties**

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Mr Joshua Munro (instructed by **Shepherd & Wedderburn LLP**) for **Investec Bank** as **Appellant**
Mr Michael Pryor (instructed by **Clark Mairs LLP**) for the **Third and Fourth Defendants** as **Respondents**

Hearing date: Friday, 10th May 2019

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Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

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MR JUSTICE MANN

Mr Justice Mann :

1. This is an appeal from an order of Chief Master Marsh made on 29 October 2018 in which he disposed of the remains of a claim made by Investec Bank (Channel Islands) Limited ("Investec") by dismissing the claim and ordering that Investec pay the costs to the respondents to the application (the third and fourth defendants) up to 12 January 2018, being the date on which Investec had assigned its claim and ceased to play any real part in the action. Investec appeals that order, and principally the costs order, claiming that it should not have been made because its action had, in effect, already been compromised on terms which prevented it. The bulk of the argument before the Chief Master turned on questions of construction of a settlement agreement and Tomlin order made and reached between parties other than Investec in the circumstances which appear below.

2. This action has a long and somewhat complex history, but the relevant facts for the purposes of this appeal can be distilled to the following.

3. The claimant, Mr Pourghazi, obtained a judgment and charging orders against the first defendant, Shahrokh Kamyab. Investec also had claims against Shahrokh Kamyab secured by charging orders over the same properties. Various of those properties were also charged to HSBC which had further charges over properties not caught by the Pourghazi and Investec charges. Mr Pourghazi and Investec sought to marshall against HSBC. The properties in respect of which marshalling was sought included properties ostensibly owned by the third and fourth defendants ("the Core Defendants"), but which Mr Pourghazi and Investec said were beneficially owned by Shahrokh Kamyab. Accordingly, in the marshalling claims it became necessary to resolve who the beneficial owners were. It is the claim in relation to that part of the dispute that was settled by the compromise which is said to lie at the heart of this matter.

4. Mr Pourghazi and Investec, acting by different solicitors, each made applications within this action in respect of their marshalling claims, by application notices dated 21 April 2016. However, although they had made their separate applications, on 1 July 2016 they filed joint Points of Claim taking the same points, signed by one counsel though with statements of truth signed separately on behalf of each of the two parties. Another marshalling claim was advanced by a third person, namely Sun Investments Trading Ltd, but it is unnecessary to say anything about that for the purposes of this appeal save for one observation which I make at the end. Shortly thereafter, on 5 July 2016 an offer was made by the Core Defendants to settle the matter on the basis that Mr Pourghazi and Investec would be entitled to £455,716 from the proceeds of sale of the relevant properties. It was not accepted.

5. The proceedings were not progressed particularly expeditiously, but at a case management conference on 5 December 2017 a five-day trial of the proceedings was fixed to take place before the Chief Master on 21 May 2018. By that time it was being mooted there would be an assignment as between Investec and Mr Pourghazi under which the former would assign its claims to the latter. That assignment ultimately happened. Paragraph 3 of the order made on 5 December 2017 anticipated the possible assignment, saying:

> "(3) [Mr Pourghazi] has permission, if so advised, to file and serve Amended Points of Claim reflecting any assignment to him of [Investec's] claims by 12 January 2018 and, in the absence of such amendments, the claim of [Investec] shall be dismissed."

6. Prima facie that order is curious. It seems to presuppose that if no assignment was made, and/or the assignment was not pleaded, then Investec's claim would be dismissed even though it would still have a claim in its own name to pursue; but if an assignment was made and pleaded, then Investec's claim would not be dismissed and it would remain a party even though it did not have a claim to pursue. However, Mr Pryor, who appeared for the Core Defendants, was able to explain that the dismissal sanction was introduced to incentivise Investec to state its intentions in relation to its marshalling claim when it had previously failed to do so in response to a request from the Master. The paragraph is curiously drafted, but makes more sense in that context.

7. In fact, the assignment did take place on 12 January 2018. The Core Defendants (and the court) have been provided with only a heavily redacted version of the assignment agreement. The agreement is between Investec and Mr Pourghazi. Recital (F) records:

> "(F) It is the intention of [Investec and Mr Pourghazi] that following the assignment of the debt by Investec to [Mr Pourghazi] notice of such assignment will be given to [Shahrokh Kamyab] his Trustee in Bankruptcy, HSBC and the [Core Defendants] following which Investec will cease to be a party to the Proceedings."

8. Clause 2 effected the assignment:

> "In consideration for the covenants of [Mr Pourghazi] set out below, with effect from the date of this agreement Investec

> hereby unconditionally, irrevocably and absolutely assigns to [Mr Pourghazi] all Investec's legal and beneficial rights, title, interest and benefits in and to the Debt and the Security, and all its rights to enforce the Debt and the Security, including all its interest in the Proceedings including all its interest in the Marshalling Application whether as against the Kamyab Opponents, the Opponents or otherwise, and all the estate, right, title, benefit, advantage, property, claim and demand whatsoever of Investec of or in any of the aforesaid."

The expression "Marshalling Application" is defined to mean the existing marshalling proceedings of each of the two claimants in the proceedings (both Mr Pourghazi and Investec) in respect of the charges held by HSBC as against the relevant properties as further particularised in the then existing Particulars of Claim.

9. On 12 January 2018 (i.e. the date of the assignment), Investec's solicitors applied on behalf of Investec for a 14 day extension to the terms of the 5 December 2017 order, on the footing that the assignment had not quite been completed but was shortly to be. On 19 January 2018 the application was amended by the introduction of Mr Pourghazi as a joint applicant and to reflect the fact that the assignment had been executed. Its purpose was stated to be "to cover and validate the service of the Amended Point of Claim which has already taken place." In the alternative the application sought relief from sanctions. This act so far as it was done by Investec is relied on by the Core Defendants (and by the Master) as an act done by Investec after the assignment and which demonstrated that Investec did not, after the assignment, just sit back and take no action.

10. An appropriate order must have been made, or I assume it to have been made (it was not in my appeal bundle) because amended Points of Claim were served. The amended version claimed the same relief as the original form, save that it pleaded the assignment by Investec to Mr Pourghazi and the relief sought was claimed by Mr Pourghazi alone (the previous Points of Claim had, inevitably, contained a claim for relief by both Mr Pourghazi and Investec). The Points of Claim were subsequently amended further, pursuant to an order of Deputy Master Bartlett on 6th April 2018, to remove some property references. Nothing turns on those latter amendments. It is sufficient to note for these purposes that in this latter version of the Points of Claim Mr Pourghazi was still advancing both his own claim and the assigned claim. I mention it because it is the version referred to in the agreement to which I now turn.

11. The trial of the Marshalling Application never took place because, on 15 May 2018, an agreement was reached between Mr Pourghazi and the Core Defendants. It is on the terms of this agreement, with its consequential Tomlin order, that the decision below appeal turned. The following terms are material.

12. Recital A reads:

> "On 21 April 2016 party A [Mr Pourghazi] made an application (**the Application**) in Court proceedings (Claim no. HC-2015-001597)seeking to marshall in two properties registered in the names of party B and party C [the Core Defendants] as set out in the Re-amended Points of Claim filed pursuant to the order of Deputy Master Bartlett dated 6 April 2018 (**the Dispute**)"

13. The Master said (paragraph 31) that the application referred to was the application made in 2016 by Mr Pourghazi; I agree.

14. Recital B reads:

> "The parties have settled their differences and have agreed terms for the full and final settlement of the Dispute and wish to record those terms of settlement, on a binding basis, in this agreement."

15. The Chief Master correctly observed that the reference to the "parties" can only mean Mr Pourghazi and the Core Defendants.

16. Clause 2, in effect, contained an agreement by Mr Pourghazi not to challenge the claims of both of the Core Defendants to the properties into which marshalling was sought. In effect, he was abandoning his claims that Shahrokh Kamyab had an interest in them, so that marshalling could not apply in relation to them.

17. Clause 3 provided for a Tomlin order (annexed) to be made in the proceedings. An order in those terms (omitting some declarations which the Master declined to make) was ultimately made. Clause 5 contains a general release as between Mr Pourghazi on the one hand and the Core Defendants on the other. Clause 7 provided that each party would bear its own costs. Other clauses are not relevant. As the Master observed, this was a drop-hands agreement.

18. On 21st May the Tomlin order was made. Its material terms were as follows:

> "UPON the Application of the Claimant dated 21 April 2016 ("the Claimant's Application")
>
> …
>
> AND UPON the Claimant [Mr Pourghazi] and the Third and Fourth defendants [the Core Defendants] having agreed to settle the Application on the terms set out in a confidential settlement agreement dated 15 May 2018 ("the Agreement"), copies of which are held by the parties' solicitors, and to there being no order as to costs
>
> …
>
> [Recital reflecting the agreement not to challenge the beneficial interest of one of the two Core Defendants, in accordance with the preceding agreement]
>
> …
>
> IT IS ORDERED BY CONSENT THAT:
>
> (1) all further proceedings in the Claimant's Application be stayed except for the purpose of carrying the terms of the Agreement into effect;
>
> …
>
> (3) There is no order as to costs between the Claimant on the one hand and the Third and Fourth defendants on the other on the Claimant's Application;"

19. Having set out, or referred to, those provisions in those documents, the Master reflected that it was necessary to focus on the meaning of those core documents rather than taking into account prior exchanges of emails, as proposed by one of the parties. That must be right.

20. It is on what happened next that the current appeal is mounted. Having got that order, the Core Defendants issued an application on 4 July 2018 in which they applied for an order under CPR Part 24 for the dismissal of Investec's application for marshalling dated 21 April 2016, and they applied for an order that Investec should pay the costs of the Core Defendants up to 12 January 2018 (i.e. the date of the assignment). It is

the Master's order on that application that is the subject of this appeal. He considered that he should deal with Investec's position by dismissing its claim, either on the footing of an application under CPR 24.2 or as a case management decision. He considered that there was nothing left in the application and therefore its application should be dismissed. As to the costs of Investec's application, he dealt with those very shortly in paragraph 55 of his decision. He said:

> "55. As to the costs, it seems to me right that costs should follow the event. Investec pursued a claim having rejected what, as it turns out to have been, was a generous offer. The settlement was on a drop hands basis. I can see no good reason to conclude other than that costs should follow the event."

21. In reaching his decision the Master acceded to the submissions of the Core Defendants to the effect that something had to be done about Investec's position and that it was appropriate to dismiss its claim. So far as costs were concerned, the court had a broad discretion and, taking into account the offer that was rejected, it could be seen that the end result was a worse result than that offer. In those circumstances the right order for the court to make was that Investec should pay the Core Defendants their costs up to the date of the assignment (the order which the Master made). He considered and rejected submissions made on behalf of Investec that the proper commercial view of the Tomlin order and settlement agreement was that the Investec claim had already been settled. The argument seems to have been that, on the true construction of those documents, not only was Mr Pourghazi's original claim settled on terms that there should be no order as to costs, the same was true of Investec's claim and application. He also rejected a submission that if that analysis was wrong, then Investec's claim was still alive and could be pursued by Investec.

22. On this appeal, similar arguments were run. Mr Munro, for Investec, submitted that the intention of the settlement documents was plainly to settle "Investec's claim" as well as Mr Pourghazi's. All parties knew, by dint of their having been served with the assignment, that Mr Pourghazi and Investec had agreed that the latter should cease to be a party to the proceedings. On the true construction of the agreement the stay in the Tomlin order also applied to the Investec application as well as Mr Pourghazi's expanded claim (which included Investec's claim). The Master erred in finding that the reference to the Application in the settlement agreement was a reference to Mr Pourghazi's application alone which did not include Investec's. Contrary to paragraph 53 of the Master's judgment (which said that Investec's application, albeit a husk, had not been resolved), Investec's claim was resolved by the settlement agreement; it was stayed. Since it was stayed there could be no application for costs made in it. When asked how the settlement could be an agreement to stay Investec's application when Investec was not a party to the agreement, he submitted that clause 2 of the assignment conferred authority on Mr Pourghazi to agree a settlement of Investec's application on behalf of Investec. Alternatively, if Mr Pourghazi did not acquire that authority in that manner, then there was still an agreement under which the parties had agreed to settle the whole of the marshalling claim, including

Investec's application, with no order as to costs, and it would be unfair, when exercising the costs discretion, to make an order against Investec which did not reflect that agreement. The contrary construction would be one to which no reasonable commercial party could have agreed because it would leave Mr Pourghazi vulnerable to an application for a contribution to costs made by Investec if it were ordered to pay costs, and the whole purpose of the agreement was to leave Mr Pourghazi bearing his own costs and no-one else's.

23. For his part Mr Pryor sought to uphold the Master's judgment, basically for the reasons given by the Master. He submitted that on its true construction the settlement agreement and Tomlin order settled only Mr Pourghazi's mashalling application, and the overall marshalling claim, but not what was left of Investec's own application. The provisions as to costs (which provided for no order as to costs) were particularly clear as to what costs were being dealt with, and they did not include the costs of Investec's application. The settlement agreement and Tomlin order simply did not touch the Investec application and there was nothing in it which prevented the Core Defendants from seeking the dismissal of the application or, more importantly for present purposes, an order for costs on that application. It followed that the Chief Master was right to dismiss the Investec application, to embark on a consideration of the appropriate order for costs in that event and to order Investec to pay the costs up to the date of the assignment of Investec's rights.

24. There was no dispute about the principles of construction in play in this matter. The Master referred briefly to *Sirius International Insurance Co v FAI General Insurance Ltd* [2004] UK HL 54, *Rainy Sky SA v Kookmin Bank* [2011] UKSC 50, *Arnold v Britton* [2015] UKSC 36 and *Wood v Capita Insurance Services Ltd* [2017] UKSC 24. Like the Master, I do not need to set out the principles enshrined in those cases. The only specific authority to which I was taken was to *Sirius* and *PM Law v Motorplus Ltd* [2018] EWCA Civ 1730, in support of the proposition made by Mr Munro to the effect that if an agreement was ambiguous the court should prefer a construction which made more commercial sense over one which made less. I accept that proposition, as did Mr Pryor.

25. In my view the answer to this appeal involves in keeping three things distinct when considering the effect of the settlement arrangements. They are:

(a) The Investec claim. This is the legal claim that Investec claimed to have against the Core Defendants, that is to say its marshalling claim which (as regards the Core Defendants) depended on its establishing that Shahrokh Kamyab, not the Core Defendants, had the beneficial interest in the relevant properties.
(b) The Investec application, which was the application made by Investec in which (for these purposes) it asserted its marshalling claim against the Core Defendants.
(c) The possibility of a costs claim which could be made against (or conceivably by, though that was never the subject of debate as a possible outcome) Investec. As a

matter of potential alternative readings of the settlement, this might fall to be treated as part of the Investec application, but it might also be appropriate to view it as needing to be separately dealt with. It also has to be said that this is what the present appeal is all about. It is not really about whether Investec's application should have been dismissed or not. No-one cares about that narrow issue per se. What this case is really about is the costs.

26. It is necessary to keep those concepts distinct. It is possible to say that the Investec claim was settled, but not the Investec application. Similarly, it might be possible to say that the costs claim was settled, or at least was intended to be covered by the agreement, but not the actual application itself. Mr Munro's submissions did not always keep these concepts (and particularly the difference between the claim and the application) separate – he tended to use the word "claim" in a sense which included both.

27. I turn, therefore, to what the settlement arrangements actually compromised.

28. First, it is necessary to consider whether they settled the Investec claim. This is easy to answer. It is plain that they did, and no-one contended otherwise. The claim that Investec originally advanced (the marshalling claim and the challenge to the beneficial interests of the Core Defendants) was plainly assigned to Mr Pourghazi, and notice of that assignment was given. Thereafter it was under the sole ownership and control of Mr Pourghazi. What he was settling was obviously the totality of what, by then, he was running via the Points of Claim which referred to him as the sole claimant and from which Investec had (by appropriate drafting) been removed.

29. It does not, however, follow that the application was to be settled. It is necessary to read the documentation with that alternative in mind.

30. Mr Munro's starting point for saying that it was settled was recital (F) of the assignment. This, he said, provided important background to the settlement. I agree that that recital, as between Mr Pourghazi and Investec, strongly suggests that Mr Pourghazi and Investec, as between themselves, anticipated that Investec's application would in substance cease to exist. Clause 2 provided for an assignment of the underlying legal rights and the benefit of Investec's own application. Had the parties wished to do so, they could have applied to substitute Mr Pourghazi as the claimant in Investec's application. That would have given effect to recital (F). If that had been done, then an order might or might not have been made dealing with the costs of that application to date. The Core Defendants would have had some say about that if the application had been made. But it was not. Investec remained a party, and, as appears above, itself applied to extend the deadline under the December order at the time of the agreement, though I do not consider that that demonstrated a continuing

anxiety to remain a party in the manner asserted by Mr Pryor. I consider that it demonstrated a desire not to have the whole Investec claim and application brought to a shuddering halt by the December order, which is different.

31. That agreement forms part of the factual background to the construction of the crucial documents in this case, because although the Core Defendants were not a party to it, a redacted copy was served on them, as appears above. The apparent intention of Mr Pourghazi and Investec will have been apparent to them, though of course that does not demonstrate that they shared it. With that apparent intention clear to all parties, they entered into the settlement agreement.

32. The relevant parts are set out above. The second recital (headed "Background") recites the nature of the "Dispute". I consider that this describes the whole subject matter of the dispute. I agree that the "Application" referred to is Mr Pourghazi's own application; in its context it cannot refer to anything else. While it had been expanded in terms of the scope of the claim made in the application, by virtue of the assignment and the resulting pleading of an expanded claim vested in Mr Pourghazi, the "Application" remained his. It was in form a different application from Investec's. He did not seek to be substituted as an applicant under Investec's application; he remained the applicant under his own and expanded its scope. So far as Mr Pourghazi is concerned the position is the same as it would have been had Investec not started its own application but instead had merely assigned its claim – he was pleading an expanded claim within his application. It is that expanded claim that is the "Dispute".

33. The other relevant parts of the agreement reflect an agreement which operates as between the parties to the agreement only. There is no reference to any third party, and clause 14 is an agreement to prevent the settlement agreement operating for the benefit of a third party. Thus far the documentation does not provide any basis for saying that in procedural terms (which is what matters for the purposes of argument, because Mr Munro says the settlement documentation, on its true construction settles the separate Investec application) the agreement does include that Investec application (as a court proceeding) within the settlement. It must be born in mind that the claim is distinct from the application – see above.

34. The settlement agreement has to be read with the Tomlin order for which it provides, and vice versa. In the Tomlin order the crucial words are in paragraph 1 of the operative part of the Order –

> "All further proceedings on the Claimant's Application be stayed except for the purpose of carrying the terms of the Agreement into effect". (my emphasis)

35. If this is capable of describing Investec's procedural application, then Mr Pryor accepted that, even though Investec was not a party to this settlement, he could not contend that it could be ignored in determining what should happen to Investec's application and it would have prevented what ultimately happened.

36. The term "Claimant's Application" is defined in the first recital, which describes Mr Pourghazi's application "dated 21st April 2016". Its use makes it clear that this order was made in his application. That is a good starting point for a submission that the order settles only that application and not any other. The fourth recital recites an agreement to settle "the Application". It does not say "the Claimant's Application", but the normal inference would be that it is talking about the same thing. Then the terms are referred to – they are the terms in the settlement agreement, and as I have already observed those terms indicate that what is being settled is Mr Pourghazi's application as it then was and not Investec's. What is then stayed is "the Claimant's Application", not Investec's application. The provision as to costs operates between the "the Claimant on the one hand and the Third and Fourth Defendants on the other on the Claimant's Application." So the costs provision is equally clear. It is dealing with the costs of the Claimant's Application (not Investec's) and it operates between the Claimant and the Core Defendants and does not involve Investec.

37. There seems to me to be little or no room in this drafting for saying that what was also being settled was Investec's application. Of course, the claim formerly made by Investec was being settled, because by now it was in the hands of Mr Pourghazi. But that is different from Investec's application, which was not. Mr Munro's submissions ignore this crucial distinction. I agree with him that the agreement was to settle all claims, but it was not capable, as a matter of construction, of dealing with all applications.

38. There is also a difficulty over authority. If the settlement agreement is to be treated as settling Investec's application then Mr Pourghazi must have had authority to do so. Mr Munro acknowledged that, and said that that authority was conferred by clause 2 of the assignment. I disagree. That clause contains a wide-ranging assignment, which includes Investec's "interest" in its own marshalling application (which means its commercial and property interests) but it does not confer authority to deal, on Intestec's behalf, with Investec's application. That right remained with Investec unless and until Mr Pourghazi got himself substituted as applicant in that application, which he never did. Contrary to Mr Munro's submissions, there is a distinction between the rights underlying the application and the application itself.

39. Thus far in the argument, therefore, I agree with the Master's construction of the settlement documents. They did not appear to settle the Investec application. I do not

really think that they are ambiguous enough to invoke the principle which leans in favour of a commercial construction, but in any event Investec has not established that this construction is commercially non-sensible. It seems to have been part of Mr Munro's case that to leave Investec exposed to a costs order would be commercially foolish for Mr Pourghazi. But that is true only if Investec could throw that burden back on Mr Pourghazi, and it is not at all clear that that could happen. There may or may not be a term of the assignment which provides for that, but if there is then neither the Core Defendants nor the court knows of that, and it was not part of the common knowledge of Mr Pourghazi and the Core Defendants at the time of the settlement, because it is not apparent from any disclosed clause in the assignment, and Mr Pourghazi chose to redact the assignment before providing the Core Defendants with a copy. Mr Munro sought to say that absent an agreement it would have been apparent to the parties that Investec and Mr Pourghazi were jointly and severally liable for a commonly-run failed claim pursuant to case called *Re Quiet Moments* [2014] EWCA Civ 1536, [2014] 6 Costs LR 1106, and there would be a right of contribution between them if one had to pay an unfair portion of the costs, which would leave Mr Pourghazi exposed again if there were a costs order against Investec. He pointed out that that case was relied on by Mr Pryor himself in his skeleton argument before the Master.

40. There was no development of that case at the hearing before me, but I do not consider that any remedies possibly flowing from the application of that case should be treated as part of the commonly perceived commercial background to the settlement against which commercial sense should be judged. It is not the sort of thing which the parties should be taken as having in mind, particularly as the parties did not have a shared common knowledge of the terms of the assignment. The absence of that shared knowledge was part of the commercial background, which means that statements beginning "Commercially speaking, it made no, or less, commercial sense …" (which are a way of encapsulating the commercial sense point) have to be used much more warily. I do not consider that this point falls with the necessary commonly perceived commercialities of the situation.

41. I observe one further thing in passing on the commerciality of the costs agreement, though it is strictly irrelevant and I do not rely on it for my conclusions. I draw some comfort from one matter which was not prayed in aid by either party but which might be said to demonstrate that a common commercial approach about this, as propounded by Mr Munro, is not plain. One of the other parties to the litigation was Sun Investments Trading Ltd, which was an "Additional Party", like Investec, and which also sought to marshall against other securities. I do not know anything more about its involvement, other than that it was settled by a consent order made by the Master on the same date as the Tomlin order with which I am concerned. That order was made "Upon" Investec's application (specifically referred to as such) and upon Sun's application, and by consent Sun's application was dismissed with no order as to costs. Paragraph 5 refers to the costs of Investec's application, and provides that if the Core Defendants were going to contend that Investec is liable to them for any costs prior to the assignment to Mr Pourghazi then skeletons should be served (including one by Investec). I do not understand anything more about that claim or how it was resolved,

but the express reference to a possible claim that Investec should pay costs does tend to demonstrate that Mr Pourghazi at least did not consider that idea to be commercially absurd. I do not rely on that point as a reason for reaching the decision that I have, but as I have observed I do draw some (theoretically irrelevant) comfort from it. Mr Pryor did not rely on it.

42. It therefore follows that Investec fails on its proposed construction of the settlement documents in this case. Mr Pourghazi and the Core Defendants were not, as a matter of construction, settling the Investec application. I think that what is likely to have happened in this case is that the parties overlooked the need to deal somehow with the Investec application both at the stage of the assignment and on the occasion of the settlement, though there must be a significant degree of uncertainty about the first of those stages because the full terms of the Pourghazi/Investec settlement are not know. But be that as it may, that is no reason for forcing an unjustifiable construction on the settlement agreement and Tomlin order.

43. I therefore respectfully agree with the Chief Master on the construction point. It therefore becomes necessary to deal with the Investec application. The Master did that by dismissing it. There is nothing much wrong with that in itself – something had to happen to it in all the circumstances. The real question is how the costs should have been dealt with.

44. The Master treated them in the manner which I have set out above. Once the construction point falls away, there would seem to be no other basis for challenging the Master's discretion as to costs. The settlement arrangements did not deal with the Investec application; there was no agreement to the effect that there should be no order as to the costs of that application, or any other order about them. The costs fell within the Master's discretion. Judging by the skeleton argument, there was no other argument advanced below other than the construction point, and Mr Munro told me that if he failed on construction then he accepted the Master's judgment should stand. In those circumstances it will stand.

45. It therefore follows that I dismiss this appeal.