Neutral Citation Number: [2019] EWHC 2364 (Ch)

Case No: E30MA931

IN THE HIGH COURT OF JUSTICE
BUSINESS & PROPERTY COURTS IN MANCHESTER
BUSINESS LIST (ChD)

Manchester Civil Justice Centre
1 Bridge Street West
Manchester M60 9DJ

Date: 18th September 2019

Before:

HIS HONOUR JUDGE EYRE QC

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Between :

SEYED MOHAMMED ZAKI MOUSAVI-KHALKALI	**Claimant**
- and -	
1) MAHMOUDREZA ABRISHAMCHI **2) PARS IRATEL JOINT STOCK COMPANY**	**Defendants**

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Giles Maynard-Connor (instructed by **Addleshaw Goddard LLP**) for the **Claimant**
Thomas Grant QC and Ciaran Keller (instructed by **Grosvenor Law**) for the **Defendants**

Hearing dates: 16th and 17th July 2019

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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.

HH Judge Eyre QC:

Introduction.

1. The Claimant has dual British and Iranian citizenship having become a British citizen in 1991. He owns property in England and it is his case that he is now resident in this country. There is a dispute about how much of his time he actually spends here and the Claimant accepts that his wife lives in Iran in a property he owns in Tehran and that when he is in Iran he lives with her there. The Claimant is the managing director of Fanavaran Amvaj Co ("Fanavaran") an Iranian company which has provided professional services to the mobile phone industry in that country.

2. The First Defendant is an Iranian national living in Iran. He accepts that he spends time in England but says that this is limited and confined to visiting his sons here. The Second Defendant is an Iranian telecommunications company of which the First Defendant is the managing director and majority shareholder (holding 70% of the shares with the balance being held by his wife and eldest son).

3. The Claimant and the First Defendant are related in that the Claimant's brother is married to the First Defendant's sister.

4. The proceedings are in respect of sums totalling £3,478,321 together with interest which the Claimant says are due to him from the First Defendant alternatively from the Second Defendant.

5. In 2006 the Second Defendant entered a series of joint venture agreements with Nokia to develop the mobile phone network in Iran for the Mobile Telecommunications Company of Iran ("MCCI"). The arrangements between the Second Defendant and Nokia fell through and the Second Defendant then continued with the project for developing the network ("the MCCI Project") without the involvement of Nokia. The claims relate to the funding and performance of that project and to work done in respect of a subsequent Swiss arbitration in which Nokia claimed against the Second Defendant with the latter then making a counterclaim against Nokia and which ultimately resulted in an award in the Second Defendant's favour.

6. The key issue before me was whether the court should exercise jurisdiction and permit service out of the jurisdiction in respect of those claims against the Defendants.

The Procedural History.

7. On 28th February 2019 the matter came before HH Judge Halliwell at a without notice hearing. Judge Halliwell gave the Claimant permission to serve the claim form and the Particulars of Claim on the Defendants out of the jurisdiction. He also granted a freezing order in respect of the First Defendant. The freezing order was continued by HH Judge Pearce on 8th March 2019 at a hearing which was on notice but which the Defendants did not attend and at which they were not represented. On 25th April 2019 the Defendants applied for a declaration that the court has no jurisdiction in respect of the claims

against the Defendants and/or that it will not exercise any jurisdiction and for the consequent setting aside of the permission to serve outside the jurisdiction. The First Defendant also applied for the discharge of the freezing orders and the consequent release of the sum of £2.34m paid into court as security in relation to those orders.

8. I need not rehearse the rather unedifying history of the hearings before HH Judge Stephen Davies in relation to extensions of time and relief from sanction. It suffices to say that the applications before me were those of the Defendants as to jurisdiction and the freezing orders together with two amendment applications made by the Claimant. The first of those related to the wording of the sundry orders with a view to correcting errors in the drafting of those and in particular to make it clear that the hearing before Judge Halliwell was without notice. That was uncontentious and I order amendment in the form proposed by the Claimant save for the proposed amendment of the preamble to Judge Pearce's order which is unnecessary the preamble being correct in its current form. The second application related to amendment of the Particulars of Claim and I will set out below my determination in relation to that.

The Claims.

9. The Claimant's case is founded on three claims. It will be necessary to examine the competing contentions further below but at this stage it suffices to identify the basic nature of the Claimant's case.

10. The first element is the "Loan Agreement". The Claimant says that in 2006 the Second Defendant needed funds to continue the MCCI Project. Neither he nor Fanavaran was prepared to lend to the Second Defendant. However, Fanavaran was prepared to lend to the Claimant and he, in turn, was willing to lend to the First Defendant. Accordingly, the Claimant lent $2.4m to the First Defendant on terms that the latter would pay the Claimant a loan fee of 8% per annum of the loan amount by way of profit share.

11. The Claimant says that the relevant agreement was made orally in a conversation he had with his brother on 17th June 2006 with the latter acting on behalf of the First Defendant and with the First Defendant shortly thereafter confirming the arrangement orally and in writing. The agreement was made in Iran and the Claimant accepts that it was governed by Iranian law although he says that the later agreements allegedly made in England were governed by English law. Although payments have been made the Claimant says that the balance of the loan fee is outstanding in the sum of $128,462 and that amount is claimed against the First Defendant alone.

12. The next claim relates to sums said to be due under the "Project Fees Contract". The Claimant was engaged to provide services to the Second Defendant in respect of the MCCI Project. He says that his agreement was with the First Defendant and that the services provided to the Second Defendant were by way of performance of his consultancy agreement with the First Defendant. On the Claimant's case there were two parts to this arrangement. He was to be paid a Project Management Fee of $20,000 per

month and an additional Project Bonus of $1,000 for each mast which was made operational and handed over to MCCI. The Claimant says that he performed his work as consultant under the agreement from August 2006 to July 2009 and that 1,669 masts were made operational and handed over. Some of the monthly fees were paid but the Claimant says that the First Defendant failed to pay twelve of the monthly instalments and that none of the Project Bonus was paid.

13. The Claimant says that following the First Defendant's failure to pay the sums due an oral agreement was made in England. This was made in February 2011 at a meeting in London between the Claimant and the First Defendant. At that meeting the Claimant agreed to the First Defendant deferring the outstanding payment until the outcome of the arbitration between the Second Defendant and Nokia in return for the First Defendant's agreement that he should be paid the outstanding sums together with interest at 7% per annum on the conclusion of the arbitration. The arbitration concluded in May 2016 but the First Defendant failed to pay and the Claimant says that sums totalling $3,009,310 are due. The Claimant's case is asserted primarily against the First Defendant but it is put in the alternative against the Second Defendant if the First Defendant is found to have been acting on behalf of the Second Defendant in engaging the Claimant.

14. The arrangements between the Second Defendant and Nokia had broken down and in November 2010 arbitration proceedings had been commenced between them. The Claimant assisted in preparing the Second Defendant's case in the arbitration. He says that he and the First Defendant orally agreed at their meeting in London in February 2011 that in return for his assistance in the arbitration he would get not less than 8% and not more than 12% of any sums recovered from Nokia ("the Arbitration Contract"). The arbitration resulted in a payment from Nokia but the First Defendant failed to pay the Claimant. The Claimant says that this failure triggered further negotiations and that the "Compromise Contract" was made between him and the First Defendant when both were in England. The Claimant says that there had been meetings between him and the First Defendant in London on 8th and 12th August 2016 which had not resulted in an agreement but that the agreement was made in a telephone conversation on 14th August 2016 when he was in Manchester and the First Defendant was in London. The Claimant says that the agreement was that he would accept payment forthwith of $1.5m in place of the sums due to him in relation to the arbitration. That sum has not been paid and the Claimant says it together with interest remains due from the First Defendant. Again the claim is presented primarily against the First Defendant but with an alternative claim against the Second Defendant if the agreement is found to have been made on its behalf.

The Approach to Service out of the Jurisdiction.

15. Although there were differences of emphasis there was no substantial disagreement between the parties on the approach I am to take to the questions of whether the court should decline jurisdiction and whether Judge Halliwell's order granting permission for service outside the jurisdiction should be set aside.

16. The matter is to be determined in accordance with *CPR 6.37* and *Practice Direction 6B.*

17. Although the matter is now before the court on the Defendant's application for a declaration as to jurisdiction and to set aside Judge Halliwell's order the burden is on the Claimant to establish that the court has jurisdiction and that it should exercise that jurisdiction. Those questions are to be approached afresh and Judge Halliwell's order made without notice does not alter the burden on the Claimant.

18. The Claimant has to show a claim which has a real prospect of success. The test to be applied is that which would be applicable in determining a summary judgment application by the Defendant. The reason for this is that it would not be appropriate to allow service out of the jurisdiction of a claim which does not have such a real prospect and in respect of which a defendant could forthwith obtain summary judgment. The test as to whether the claim has a real prospect of success is that set out by Potter LJ in *ED&F Man Liquid Products Ltd v Patel & another* [2003] EWCA Civ 472 at [8] and [10]. The Claimant must show that he has a real as opposed to a fanciful or notional prospect of success. The court must not conduct a mini-trial and must be alert to the scope for allegations of actions which appear strange or unusual to be established at trial and for explanations which invite scepticism when expressed on paper to be accepted when confirmed after cross-examination. However, the court must not be unrealistic in considering whether a real prospect of success has been shown and it is not bound to accept a party's assertions without analysis or at face value. Such assertions are to be assessed in the light of their inherent credibility; commercial reality (where appropriate); their consistency or inconsistency both internally and in relation to relevant documents; and the presence or absence of documentary support for the assertions. There will be cases where in the light of such an assessment the court is able to conclude that assertions have no real substance.

19. The Claimant must also show a good arguable case that the claim in question is within one of the gateways in *paragraph 3.1* of the Practice Direction. The approach to be taken is that set out at *Brownlie v Four Seasons Holdings Inc* [2017] UKSC 80, [2018] 1 WLR 192 at [5] – [7] as confirmed at *Goldman Sachs International v Novo Banco SA* [2018] UKSC 34, [2018] 1 WLR 3683 [9]. The burden is on the Claimant. If the court can come to a conclusion that a particular gateway applies it should do so. If it is not able to do so on the material available then the requirement is met if the Claimant shows a good arguable case in the sense of having the better of the argument on such material as is available.

20. Then the court must be satisfied that England and Wales is the proper place in which to bring the claim. That question is to be addressed in the way set out by Lord Goff in *Spiliada Maritime Corporation v Cansulex Ltd* [1987] AC 460 at 480F and 481D. Thus the court must be satisfied that England and Wales is "clearly" "the forum in which the case can be suitably tried for the interests of all the parties and the ends of justice". The court has to consider whether England or some other country is the "natural" forum for trial (see *Cherney v Deripaska* [2009] EWCA Civ 849 at [20] per Waller LJ). That is an

evaluative exercise and, as explained by Lord Goff at 480B, it requires the court to take account of "the nature of the dispute, the legal and practical issues involved, such questions as local knowledge, availability of witnesses and their evidence and expense." In that exercise the fact that the relevant contract is governed by English law may be "of very great importance" in some cases but in others "it may be of little importance as seen in the context of the whole case" (per Lord Goff at 481H).

21. Even if another country is the natural forum and would otherwise be appropriate it will not be the appropriate forum if the court is "satisfied, by cogent evidence, that there is a real risk that substantial justice will not be obtainable" in that otherwise appropriate foreign jurisdiction (per Lord Briggs JSC in *Lungowe & others v Vedanta Resources Plc & another* [2019] UKSC 20, [2019] 2 WLR 1051 at [88]). In such circumstances the courts of England and Wales will allow service out and will exercise jurisdiction. A finding of such a real risk is not to be made lightly and there must be both cogent evidence and a real risk. As Lord Briggs explained (at [96]) evidence can be cogent even if it is challenged and disputed but mere assertion is not sufficient.

22. Whether such a real risk has been established will depend on the evidence in the particular case and will potentially be specific to a particular litigant, a particular case, or a particular time. Thus one person litigating about a particular subject in a country at a certain time may be at risk of not obtaining substantial justice when there might be no such risk in relation to a different person litigating in the same country but about a different matter or at a different time. That is so even though the proposition that a particular litigant in a country with an otherwise properly functioning legal system will be at risk of failing to obtain substantial justice is one which it will inevitably be much more difficult to establish than would be the case in relation to a country where it can be shown that the legal system has broken down generally. It is because the issue of whether there is a real risk that substantial justice will not be obtained is fact sensitive in those respects that I derived little assistance from the authorities to which Mr. Grant QC referred. That is so in respect of those addressed that issue in relation to other individuals in respect of litigation in Iran and even more so those authorities addressing litigation in other countries. I also have to remember that the power to permit service outside the jurisdiction is a discretionary one. It follows that the decisions of other judges are examples of how they exercised their discretion in the circumstances of particular cases. Accordingly, as Lewison LJ explained in *Jong v HSBC Private Bank (Monaco) SA* [2015] EWCA Civ 1057 at [18], the relevance of those decisions is limited and they are to be seen in the light of the analysis set out by Millett LJ in *Jaggard v Sawyer* [1995] 1 WLR 269 at 288. The authorities to which Mr. Grant referred do, however, assist to the extent of demonstrating that a finding that there is such a real risk is one which is not to be made lightly and that indications that a particular legal system has flaws or operates differently from that of England and Wales are unlikely without more to be sufficient to establish the necessary degree of risk that substantial justice will not be available.

23. A party seeking permission for service out of the jurisdiction must make full disclosure of all material matters (I consider at [50] – [53] below what are and are not material matters for this purpose). A failure to make such disclosure can cause the court to set aside the permission which was given at a without notice hearing. However, even if doing so the court may then renew permission. The assessment of whether to do so will be fact sensitive and will depend on proportionality and the interests of justice having regard to the nature of the failure and to whether a lesser sanction such as a costs order is sufficient (see for example the approach of Carr J in *Tugushev v Orlov & others (No 2)* [2019] EWHC 2013 (Comm) at [46] – [47]).

24. The relevant assessments are to be made in respect of each claim and each defendant separately.

Amendment of the Particulars of Claim.

25. The Claimant seeks to amend the Particulars of Claim to assert that his brother made the Loan Agreement on behalf of the First Defendant; to allege a subsequent conversation and letter in which the First Defendant is said to have confirmed the Loan Agreement; to assert the First Defendant's denial of the existence of the Compromise Agreement and of his personal liability under any such agreement; and to plead as an alternative to the primary contention that the First Defendant is liable under the Compromise Agreement the contention that the First Defendant made the agreement on behalf of the Second Defendant and that the latter is liable to the Claimant on it.

26. At one point Mr. Grant submitted that the questions of jurisdiction and service out should be determined by reference to the unamended Particulars of Claim. However, he also prayed in aid the proposed amendments as indications of the weakness of the Claimant's case and as showing inconsistencies in the Claimant's contentions and invited me to take account of them in support of his argument that the Claimant had not shown claims which had a real prospect of success.

27. I have to determine questions of permission to amend by reference to the Overriding Objective having regard to the need to deal with the case justly and to the importance of determining the true issues between the parties. I am satisfied that there will be no prejudice caused to the Defendants if I determine the jurisdiction issues by reference to the amended pleading and that the interests of justice require those issues to be determined on the footing of the Claimant's case as he now wishes to present it. Accordingly, I give permission for the amendment of the Particulars of Claim and will approach the matter on the footing of the case as set out therein.

Is there a real Risk that substantial Justice will not be obtainable in Iran?

28. The Claimant contends that he will not get a fair trial in Iran. There are two principal bases for this contention. The first derives from the potential consequences of the Claimant's status as a dual national of Iran and the United Kingdom. The second is based on assertions as to the nature of the Iranian legal system combined with allegations about the conduct and connexions of the First Defendant and his family.

29. The Claimant refers to travel guidance given by the Foreign and Commonwealth Office. The guidance was updated on 17th May 2019 and advised British-Iranian dual nationals against all travel to Iran (though at a later point in the guidance this is said to be advice against "all but essential" travel to Iran). The advice explained that there was a risk that British nationals and even more so British-Iranian dual nationals could be detained arbitrarily in Iran. It explains that the Iranian authorities do not recognise dual nationality and so the FCO's ability to provide consular support to detained dual nationals would be extremely limited. The guidance goes on to express "serious concerns" about the Iranian judicial processes and their compliance with international standards. However, in context this is clearly a reference to the judicial processes relating to those who have been arbitrarily detained and to the availability of consular access to such persons and so is of very limited assistance in assessing how the Iranian courts would address a commercial dispute such as that between the Claimant and the Defendants.

30. In his witness statement the Claimant says that in the light of the FCO advice he had not travelled to Iran since the advice was published. However, I note that the advice was published on 17th May 2019 and the statement was made on 21st June 2019 and so this was a comparatively short period.

31. In his statement the First Defendant says that the advice issued by the FCO on 17th May 2019 was a reiteration of earlier advice which had warned of the potential risk of arbitrary detention without the prospect of consular access faced by British-Iranian dual nationals. He says that there was a warning to this effect from 16th February 2017 which was reiterated in stronger terms in September and October 2018 with the September 2018 guidance already containing advice against all but essential travel. The Defendants say that this is significant because the Claimant has spent time in Iran since the earlier warnings were given and indeed since he intimated a claim against them but has been able to pass to and from Iran and to conduct business there without difficulty. The Defendants identify occasions when the Claimant was in Iran in October 2017, June 2018, and March 2019. The Claimant does not dispute such visits and stated that he has recently been "spending as much time as I can" in Iran to be with his elderly and unwell father.

32. In the affidavit of 29th February 2019 put before Judge Halliwell in support of the without notice application for service out of the jurisdiction and for a freezing order the Claimant gave an address in Manchester as his "home address". In a section entitled "my personal background" the Claimant set out his academic and career history. The only reference in that passage to any continuing connexion with Iran was the statement that the Claimant had created and become the managing director of Fanavaran though the rest of the affidavit does make it clear that the Claimant had spent time in Iran working on the MCCI Project.

33. In his statement of 25th April 2019 the First Defendant said that the picture painted by the Claimant was misleading. He asserted that the Claimant is married to a lady who lives in Iran with whom he lives at a property owned by them in Tehran. The First Defendant identified a number of other properties in Iran which he asserted were owned by the Claimant and a number of business

ventures in which he was involved in that country. The First Defendant also pointed out the Claimant has other investments in Iran and that the First Defendant had entrusted the Claimant with sums to invest on the former's behalf on the Tehran stock exchange.

34. The Claimant does not take issue with much of this account. He accepts that since 2007 he has been married to Elaheh Ansari, an Iranian citizen; that she lives at a property in Tehran which he has owned since 2009; and that he lives there with her when in Iran. The Claimant says that he has been trying to bring his wife to the United Kingdom for a number of years but that this has not been possible. He accepts that he spends time in Iran "on occasions for prolonged periods." The Claimant says that the properties to which the First Defendant refers are owned jointly by himself, his father, and his brother. The Claimant does not accept the detail of the First Defendant's contention about his business ventures in Iran but does accept that he has involvement which is essentially passive in some of them. He accepts that he had made investments on the Tehran stock exchange on the First Defendant's behalf noting that he had referred to this in his affidavit and that this had been in April 2016.

35. The Claimant concludes his response in this exchange of evidence by saying that he is and continues to be resident in England; that he has very strong connexions with England; and that he considers Manchester his home. However, he does not give any explanation for his failure to explain the scale of his Iranian connexions in his affidavit. In particular no explanation is given of why, when saying that his home was in England, the Claimant failed to mention his twelve-year marriage to a lady living in Iran and the time spent with her at a residential property he owns in Tehran. In my judgement that failure is significant. It indicates a degree of unreliability in the Claimant's evidence and that he was content to put before the court an account of himself and his affairs which was not complete. This means that I must exercise caution in attaching weight to assertions made by him to the extent that they lack other support or confirmation.

36. In respect of this limb of the Claimant's argument I conclude that the Claimant's status as a dual British-Iranian national does not give rise to a real risk that he would not obtain substantial justice in Iran. This is a commercial dispute between private individuals (I will consider below the contentions as to the Defendants' connexions and influence). The Claimant has significant interests in Iran and a wife and a home there. On his own account of matters he has spent prolonged periods in Iran and has recently spent as much time as he can there. He does not suggest that any question of detention arising out of or connected with his dual national status has arisen to date. Those visits have not been since publication of the latest FCO guidance but have been since warnings in similar terms were given and since the claim against the Defendants was intimated. In addition I have taken account of the material in the evidence of Dr. Hosseinabadi to which I will refer below. If the Claimant were to fall foul of the Iranian authorities and were to be detained then he would be unlikely to be able to obtain British consular assistance but that is not a sufficient ground for concluding that there is a real risk that substantial

justice will not be done in this dispute by reason of the Claimant's dual national status.

37. I turn to the second limb of the Claimant's contention that there is a real risk that substantial justice will not be available. The Claimant says that there are a substantial number of, often unannounced, court holidays in Iran; that delaying tactics are often a feature of Iranian litigation; and that corruption is "rife". In relation to the last point the Claimant refers to the 2018 Corruption Perceptions Index of Transparency International; a Freedom House report of 2019; and a joint report of the Danish Immigration Service and the Danish Refugee Council. He also quotes a number of members of the Iranian judiciary and government. However, those quotations refer to robust action being taken against judges who are found to have been corrupt and that approach is also apparent from the Danish report.

38. The Defendants have produced an expert report from Dr Amir Hosseinabadi. He speaks from a background of experience as a judge and legal practitioner in Iran. Dr. Hosseinabadi has produced a detailed report in which he explains the operation of the Iranian legal system and the measures which are in place to protect judicial independence and to address judicial corruption. He identifies instances of successful litigation in Iran by dual nationals (including a British-Iranian dual national) and by foreign companies including litigation against governmental entities and explains the arrangements under which commercial disputes are determined. The expert opinion of Mohammed Tavakoli, an Iranian attorney at law, was put in evidence by the Claimant. This primarily addressed the lawfulness under Iranian law of the Loan Agreement but also addressed the procedure for putting evidence of English law before an Iranian court. Mr. Tavakoli said that he anticipated that there would be difficulties in obtaining such evidence though that view derives from Mr. Tavakoli's concern as to the difficulty of finding a suitably qualified expert. However, his opinion does describe the appeals process in the Iranian judicial system giving an account entirely consistent with a functioning and effective legal system. It is also of note that Mr. Tavakoli indicates that he is a member of a law firm engaged, inter alia, in advising multinational companies on their commercial activities demonstrating the availability of such advice in Iran. Moreover, the fact that Mr. Tavakoli has provided a report in support of the Claimant's contentions itself undermines the Claimant's argument that he will be unable to find Iranian lawyers willing to act in litigation against the First Defendant.

39. It is apparent that the Iranian legal system operates differently from that of England and Wales in a number of respects. That is not surprising and of itself does not come close to establishing a real risk that substantial justice will not be available to the Claimant. The existence of court holidays and attempts at delaying tactics by litigants are the commonplace of almost any legal system and the evidence before me does not establish that those have any material impact on the ability of the Iranian courts to provide justice to litigants. It is apparent that there are corrupt judges in Iran but also apparent that such conduct is not condoned; that measures are taken to address it; and that there is a functioning appellate system. It follows that subject to matters arising out of

the position of the Defendants it cannot be said that there is a real risk that substantial justice will not be available in Iran.

40. The Claimant says that the First Defendant's conduct and his family's influence and connexions mean that it will not be possible for him to have a fair trial. I deal first with the allegations as to the First Defendant's conduct. The Claimant says that he had witnessed discussions between the First Defendant and his legal team as to how they might influence the judge sitting on litigation between the Second Defendant and MCCI. He also says the First Defendant managed to make an arrangement with government officials which enabled him to sell rather than return shares he had obtained on the privatization of an Iranian bank but where he had failed to meet the instalment payments due on the shares. The Claimant said that he did not know whether the incidents involved the First Defendant in paying bribes but that he believed that they "demonstrate[d] that the practice is not uncommon". The conclusion asserted by the Claimant simply does not follow from the premise even on the Claimant's evidence. It cannot be said that dealings by the First Defendant which are not known to have involved the paying of bribes show that bribery of officials or judges is common let alone that the First Defendant has engaged in such conduct. The First Defendant denies any impropriety and any suggestion that he was involved in bribery. He says that the discussions in respect of the litigation were about how to present the Second Defendant's case in the most attractive way and is supported in the denial of any impropriety by Dr. Ahmadi a lawyer who was present at the meetings in question. The First Defendant points out that in any event the Second Defendant lost at first instance in that matter. The discussions in question are said by the Claimant to have been between the First Defendant and his legal team. It follows that if plans were being made for any improper actions the lawyers would appear to have been party to them. Any allegation along those lines would need to be made clearly and directly. The Claimant does not do so and I reject any contention that any impropriety in that regard has been shown. Similarly the material put forward by the Claimant does not establish any impropriety in the First Defendant's actions in relation to the shareholding and, as the First Defendant points out, there is no suggestion that this had anything to do with the Iranian judicial system.

41. The Claimant says that in response to his obtaining of the freezing order the First Defendant threatened through his sister to have the Claimant detained in Iran. He also says that following an unsuccessful mediation in October 2018 the First Defendant flew into a rage uttering threats against the Claimant and his family and attempting physically to attack the Claimant. The First Defendant denies this and his denial is supported by statements from his sister and from Dr. Ahmadi who was present at the mediation as mediator. It follows that there is a dispute as to what was said and done on those occasions. That dispute cannot be resolved without cross-examination but the Claimant's contentions even if factually correct do not show a real risk that he will be unable to obtain substantial justice. In that regard it is of note that despite the First Defendant's alleged anger and threats and the family influence alleged by the Claimant (to which I will turn next) the Claimant has been able to travel to and return from Iran unhindered. It is common ground that the Claimant was

in Iran in March 2019 and then returned to the United Kingdom doing so, therefore, after both the failed mediation and the obtaining of the freezing order.

42. The Claimant says that the wealth, connexions, and influence of the First Defendant's family mean that it will not be possible for the Claimant to have a fair trial. He says that this is particularly so as part of his case in relation to the Loan Agreement is likely to involve asserting that the First Defendant or his father or the Second Defendant colluded with a bank official to fabricate documents creating a purported loan involving Fanavaran when none in fact existed. The Claimant contends that the First Defendant's father is reputed to be the sixth richest man in Iran (alternatively one of the eight richest men there) and that he "has close ties to the judiciary". In elaborating the latter point the Claimant says that the First Defendant's father had close ties to Ayatollah Shahroudi and to Ayatollah Yazdi. The former headed the Iranian judiciary from 1999 to 2009 and was chairman of the Expediency Discernment Council (moderating disputes between the Iranian Parliament and the Guardian Council) from 2017 to 2018 but died in December 2018. The latter was head of the judiciary from 1989 to 1999 and head of the Assembly of Experts from 2015 to 2016. The Claimant does not himself explain or amplify the form the alleged ties took. However, Alexander Hogarth of his solicitors has provided a statement in which he says that he was informed that the First Defendant's father was a "close personal friend" of the former ayatollah and a "close friend" of the latter. Neither the Claimant nor Mr. Hogarth identifies any instance where it is said that those ties impacted on litigation involving the First Defendant's family.

43. Mr. Hogarth says he contacted "a well-known and well-regarded global risk consultancy firm" with a view to obtaining a report on the risk that the Claimant would not obtain a fair trial in litigation against the First Defendant in Iran. The firm declined to provide such a report saying that to do so would expose those involved in unacceptable levels of risk including "questioning and detention by security forces". The deciding factor in this was said to be the position and connexions of the First Defendant's family. The instances given of this were the wealth of the First Defendant's father and his friendship with the said two ayatollahs. Mr. Hogarth was told that the First Defendant's father "had access to the very top levels of the Iranian judiciary" and that individuals "did not get to be in such senior positions in the judiciary without being very close to the Supreme Leader of Iran." It went on to say that the "starting point" in respect of litigation by the Claimant against the First Defendant "had to be that the Claimant would not receive a fair trial".

44. The Defendants have countered Mr. Hogarth's evidence with a statement from Mark Hastings of their solicitors. Mr. Hastings contacted four risk management/intelligence agencies. Three of them said that they would have no difficulty in providing a report on the prospects of a fair trial in Iran notwithstanding the alleged connexions of the First Defendant's family. The fourth say that it would not be able to do so but that was because of its ownership being situated in the United States and the limitations on United States businesses having dealings with Iran.

45. The First Defendant says that his father did know the late Ayatollah Shahroudi but that he does not believe that he knows Ayatollah Yazdi and that he himself certainly does not. The First Defendant accepts that his father is a wealthy man but describes him as being an apolitical businessman. The First Defendant denies that he or his family have influence over the Iranian judiciary referring in that regard to the Second Defendant's defeat in litigation arising out of the MCCI Project as indicating the absence of such influence and as indicating that lawyers are prepared to act for those in dispute with the First Defendant's family and its businesses. The First Defendant also points out that in 2010 he was subject to a travel ban arising out of litigation. That appears to have been a consequence of the procedure under Iranian law as explained by Dr. Hosseinabadi whereby a creditor can obtain a travel ban on a debtor.

46. The First Defendant adds that the Claimant's father, Ayatollah Mousavi-Khalkali, is himself a high ranking clergyman in a country where, he says, governmental power rests ultimately with high ranking figures in the religious establishment.

47. The allegations about the standing of the First Defendant's family are in the most general of terms. I accept that Mr. Hogarth was given the response which he records but it is again in general terms and must be seen in the light of the contrary indications given to Mr. Hastings. References to matters such as the wealth of the First Defendant's father and his friendship with a senior judge who is now dead and to an alleged friendship with one who no longer has any official position can carry little weight. As already indicated there is no evidence that any attempt was made to use those connexions to influence the outcome of litigation let alone that any such attempt succeeded. The Claimant suggests that the First Defendant's ability to do a deal in relation to the shares in the privatized bank was the result of the standing of his family but there is nothing of substance to establish that.

48. I accept that the evidence shows that the First Defendant's family is wealthy and well-connected. For that reason there will doubtless be many in Iran who would wish to have good relations with members of that family but the evidence does not take matters beyond that. I remind myself that in order to conclude that a party should not be required to litigate in an otherwise appropriate forum cogent evidence is needed showing a real risk that substantial justice will not be available to the litigant. The material in relation to the First Defendant's family does not even come close to satisfying that requirement. In that regard to the extent that the Claimant is saying that the making of an allegation against officials of Bank Sepah will prevent him obtaining justice I find his argument misconceived. If it is his case that he is exposing wrongdoing by a bank official then one would expect a bank to welcome such exposure rather than to react adversely against the person bringing it to light.

49. Accordingly, I will approach the questions of whether service out should be permitted and whether the court should exercise jurisdiction on the basis that the Claimant has failed to establish a real risk that he would not obtain substantial justice if these matters were to be litigated in Iran. It follows that if Iran is otherwise the natural or appropriate forum the Claimant's contentions

as to that alleged risk will not warrant service out nor the exercise of jurisdiction by this court.

The Claimant's alleged Failure to make proper Disclosure and its Effect.

50. A party seeking relief without notice has an obligation to make full and frank disclosure of all material facts including significant arguments potentially available to the other side against the relief sought. This duty is particularly acute where the relief sought is in any way exceptional or one which the court is to exercise caution in granting such as permitting service out of the jurisdiction or the grant of a freezing order. A party who fails to make such disclosure is at risk of the order being set aside and not renewed even if the relief would otherwise have been appropriate though, as explained at [23] above, the precise consequences will depend on the circumstances of the particular case.

51. The Defendants say that there was material non-disclosure by the Claimant at the without notice hearings which should cause the court to decline to order service out of the jurisdiction even if that would otherwise have been warranted.

52. Many of the alleged instances of non-disclosure relate to what is said to have been a failure to put before Judges Halliwell and Pearce potential arguments and/or matters which should have been identified as counter-arguments to the Claimant's case. To a considerable extent this is a question of degree. It was not incumbent on the Claimant to draw the court's attention to every single point which could be made for the Defendants by assiduous lawyers strenuously contesting the case and taking every potentially arguable point. The proper approach was explained by Slade LJ in *The Electric Furnace Co v Selas Corporation of America (No 2)* [1987] RPC 23 at 29 and by Toulson J in *MRG (Japan) Ltd v Engelhard Metals Japan Ltd* [2004] 1 Lloyds Rep 731 at [23] – [33]. A party making an application for service out does not have to "anticipate all the arguments, or all the points, which might be raised against his case". That party does have to set out such potential defence arguments which are of sufficient weight that their omission could mislead the court by giving a false or incomplete picture or which might reasonably cause the judge to take a different approach to the application. That does not require disclosure of all matters going to the merits of the action nor of every possible defence open to the other party. All concerned have to keep in mind that the question at the stage of the decision as to service out is whether a case with a real prospect on the merits has been shown falling within a relevant gateway and the material to be put before the judge whether by way of supporting the application or of disclosing potentially material counter-arguments is to be focused on that. In that regard it is relevant to note the scale of the material which can be generated the more the parties turn to the details of a case. Here both sides were agreed that the hearing before me was not to be regarded as a mini-trial but nonetheless I was presented with over 2,000 pages of documents; five volumes of authorities; and over 100 pages of skeleton arguments. I heard argument for two full days having undertaken a day's pre-reading. The Claimant's obligation to make full and frank disclosure did not require him to engage in that level of detail at a without notice hearing but it

did require him to ensure that the matter was presented fairly with the judges at those hearings being made aware of the significant potential arguments for the Defendants.

53. In the light of that assessment I will not address every matter which the Defendants say amounted to a breach of the Claimant's duty of full and frank disclosure. However, it is apparent that the potential counter-arguments could have been spelt out more fully than was in fact done and there are two respects in which I find that there was a significant failure of disclosure.

54. The first is, as I explained at [32] – [35] above, the Claimant's failure when describing his personal circumstances to mention his wife and property in Iran. Those were clearly material matters which should have been drawn to the court's attention.

55. The second is the Claimant's failure to refer the court to the "Telegram" exchange of 30th and 31st March 2017. In that exchange the First Defendant referred to a payment of £200,000 having been sent to the Claimant and the Claimant responded saying that he had received that payment but that it was "less than half of outstanding balance. According to above details the balance is approx GBP 450K of which 200K been taken care of today." I will address the effects of that exchange in more detail below but at this stage it is sufficient to say that it was clearly of relevance and at least potentially inconsistent with the Claimant's case in that it appeared to show him saying that only £250,000 or thereabouts remained due at a time when he now says the First Defendant owed him considerably greater sums. The Claimant says that he did not refer Judges Halliwell or Pearce to this exchange because he regarded it as being part of without prejudice negotiations. I do not find that explanation persuasive because in his witness statement of 21st June 2019 the Claimant's account of how the exchange came about is that it was in the context where the Claimant had requested a part payment of £500,000 (having done so because he believed that payment of that was more likely to be forthcoming than if he had demanded full payment of all sums due) and that the exchange related to the outstanding element of the part payment rather than of the total indebtedness. There is no reason why the exchange together with that explanation could not have been put forward at the earlier hearings and in my judgement it should have been.

56. It follows that there was a failure on the part of the Claimant to make the full and frank disclosure of material matters which was incumbent upon him. I will explain below the potential relevance of that to the freezing order. In terms of whether there should be service out of the jurisdiction this failure is not such as to disentitle the Claimant to an order for service out if that is otherwise justified. This is because I am satisfied that in such circumstances the imposition of a costs sanction would adequately address the justice of the matter. The failure of disclosure does, however, have a further consequence. As I explained at [35] it raises a significant question mark over the reliability of the Claimant's evidence and so requires care to be taken before placing weight on unsupported assertions by the Claimant.

Factors supporting and detracting from the Claims generally.

57. There are a number of matters on which the Defendants relied to say that the claims generally lack credibility or substance and others on which the Claimant relied as supporting the credibility of those claims. It is appropriate to consider those and to assess whether it can be said that in general terms the Claimant has shown a case with a real prospect of success or one which lacks substance before turning to the detail of each claim.

58. The Defendants point to the lack of documentary confirmation of the sundry agreements and the failure by the Claimant to press for payment. They say that agreements such as those asserted by the Claimant would have been expected to be recorded in writing. They also say that it is not credible that if the Claimant had been owed the sums alleged he would not have been pressing repeatedly for payment. In that regard they point out that the arbitration between the Second Defendant and Nokia concluded in May 2016 and that on the Claimant's case the sums due under the Project Fees Contract were then due. Moreover, the Compromise Contract was made in August 2016 and provided for payment forthwith. Despite that the Claimant did not, the Defendants say, press for payment. Indeed the Defendants say matters go further than that because the Claimant was making payments to the First Defendant in the period after, on his case, payment was due to him from the First Defendant. The Claimant made payments of substantial sums to the First Defendant in January, February, and March 2018. It is common ground that these payments related to investments on the Tehran stock exchange and in cash which the Claimant had made on behalf of the First Defendant using funds provided by the latter. The Claimant says that he was acting honourably and was returning to the First Defendant the proceeds of investments which he had made on the latter's behalf with the latter's money. The Defendants say that this is unrealistic and that if, as the Claimant says is the case, the First Defendant owed the Claimant very substantial amounts at this time one would have expected the Claimant at least to have sought to set the money repayable to the First Defendant against the sums due to him from the First Defendant or to have accompanied the repayments with pressure for the First Defendant to discharge his indebtedness to the Claimant.

59. The Defendants say that not only did the Claimant not chase for payment when such chasing would have been expected if he was owed the sums alleged but that when a claim was made it was not for the sums now alleged to be due. Thus on 14th August 2018 the Claimant sent an email seeking payment of $1.669m for the Project Bonus and $1.025m for services rendered in respect of the arbitration but making no mention of the Loan Agreement; the Project Management Fee; the Arbitration Contract; nor the Compromise Contract. The Claimant says that this is a misinterpretation of the email at least in relation to the Compromise Contract because that was the source of the figure of $1.025m which resulted from crediting the March 2017 payment of £200,000 against that liability.

60. The Defendants place considerable emphasis on the Telegram exchange of 30th and 31st March 2017 quoted at [55] above. They say that this is a clear assertion by the Claimant that the only amount outstanding was £250,000 made at a time when on the Claimant's current case he was owed more than

fifteen times that amount. The Claimant says that the exchange at the end of March 2017 is to be seen in the light of messages sent earlier that month. He says that it was only in February or March 2017 that he began to doubt that the First Defendant would meet his obligations and having failed in attempts to speak to the First Defendant on the phone he sent a number of Telegram messages. On 2nd March 2017 he sent a Telegram saying "further to our telephone conversation please arrange payment of GBP500k into my account." The Claimant says that he was owed more than £500,000 at that stage but that he was asking for a part payment because he believed that the First Defendant would be more likely to respond positively to this than if he had pressed for full payment. The tactic was, the Claimant says, successful to the extent that it resulted in a payment of £200,000 leaving £250,000 of the proposed part payment outstanding. The Telegram message makes no reference to the sum of £500,000 being a part payment. A further curious feature is that the Claimant says that there had been no telephone conversation in February or March 2017 but that his reference to such a conversation was to a discussion in late 2016 when he had reminded the First Defendant of his liabilities and of the Claimant's need for funds.

61. These are indeed significant factors particularly when seen in the light of the instances of non-disclosure identified above. Subject to the explanations from the Claimant to which I will turn shortly they indicate an inconsistency between the Claimant's past actions and the approach which would have been expected as a matter of common sense and commercial reality if his current case were correct.

62. The Defendants dealt at some length with two matters which did not in my judgement have the same significance. The Claimant sought and I have granted permission for amendment of the Particulars of Claim. One of the amendments was to paragraph 17 where the pleading in relation to the Loan Agreement was that "on 17th June 2006 the Claimant and the First Defendant entered into an oral agreement at the offices of the Second Defendant". That has been amended to read "on 17th June 2006 the Claimant and MM [the Claimant's brother] acting as the authorised agent of the First Defendant entered into an oral agreement at the offices of the Second Defendant". This was combined with a further averment, at 11A, of subsequent confirmation in a conversation between the Claimant and the First Defendant and in a letter from the Claimant to the First Defendant. The Defendants say that this is a very material change of stance and undermines the Claimant's credibility. This contention fails to take account of the context of the original Particulars of Claim. The statement of truth in relation to those was signed on 27th February 2019. The Claimant's affidavit in support of his applications was sworn on the same date. In that affidavit the Claimant says, at [37(b)] that the agreement was made with his brother on 17th June 2006 at the Second Defendant's office. It follows that although the pleading has been amended the substance of the Claimant's case as to how the Loan Agreement was made has not changed.

63. The Defendants also placed considerable emphasis on the evidence which had been put forward on behalf of the Second Defendant in the Nokia arbitration. The Claimant was involved in preparing that evidence and in giving

instructions to the forensic accountants, Sterling Partners Ltd, who prepared the report on which the Second Defendant relied in relation to quantum. That report referred in some detail to the Claimant saying that he had "joined" the Second Defendant; that he had been appointed by the Second Defendant; and seeking to recover the "costs of employing" him. The Second Defendant sought to recover those costs in the arbitration identifying the Project Bonus and the Project Management Fee as being recoverable as costs incurred by the Second Defendant. The Defendants point to this as undermining the Claimant's credibility on the ground that he knew that he was employed by the Second Defendant and that the Second Defendant was liable to pay him but in these proceedings has asserted (they say falsely) that the payment obligation was on the First Defendant. In my judgement this argument simply does not bear the weight which the Defendants sought to place on it. The question of the ultimate liability to pay the Claimant in the event of a failure to recover from others is different from that of the Second Defendant's entitlement to recover from Nokia. Certainly at the stage of determining whether there is a real prospect of success an arrangement under which the First Defendant and the Claimant agreed that the latter would provide services to the Second Defendant with the former being liable as between the Claimant and the First Defendant to make payment is not so necessarily incompatible with the stance adopted in the arbitration as to indicate inconsistency or lack of credibility on the part of the Claimant. Conversely, the report by Sterling Partners supports the Claimant's stance in two respects. It shows that the parties proceeded on the basis that the Claimant was entitled to the Project Management Fee and the Project Bonus notwithstanding the absence of a written agreement to that effect. Moreover, the report records payments of the Project Management Fee having been made to the Claimant by the First Defendant.

64. There are a number of general factors on which the Claimant relies as indicating the credibility of his case. As I have just noted there is no dispute that the Claimant had an arrangement entitling him to the Project Management Fee and the Project Bonus even though there was no written agreement. The Claimant points to this as demonstrating that the nature of his relationship with the First Defendant was that agreements involving substantial sums of money were made orally. It is also clear that the First Defendant did make payment to the Claimant in respect at least of the Project Management Fee from a bank account in his name even though the Defendants say that the Claimant's agreement was with the Second Defendant and that it was the latter who was liable to pay the Claimant.

65. It is not disputed that the Claimant played a considerable rôle in the MCCI Project and in the preparation of the Second Defendant's case for the Nokia arbitration. The Claimant says that as a matter of commercial reality he would have required payment for this. He also says that when account is taken of the Second Defendant's financial position it is consistent with common sense and commercial reality that he would have required comfort as to payment and would not have entered an agreement solely with the Second Defendant. In that respect he points out that in 2006 following the breakdown of relations with Nokia the Second Defendant needed funds to continue with the MCCI Project and had to borrow $2.4m. The Second Defendant was in financial

straits and so it is not surprising, the Claimant says, that he was not prepared to lend to it directly.

66. I have already said that the Defendants rely on the March 2017 Telegram exchange as being inconsistent with the Claimant's case. The Claimant, however, says that it also poses difficulties for the First Defendant. Despite it being the First Defendant's case that nothing was due to the Claimant and that to the extent that payment was due it was due from the Second Defendant he had responded to the earlier Telegram not by denying liability but by making a payment of £200,000.

67. The Claimant relies on a manuscript note made at a meeting between him and the First Defendant in the Royal Garden Hotel, London on 3rd January 2018. The note contains elements written by both the Claimant and the First Defendant. The note consists of columns of figures and short notes in Farsi. The meaning of the figures and the correct translation and interpretation of the notes are disputed. The Claimant says that the meeting was to clarify how much was due. He says that it records in particular the entitlement to the Project Bonus of $1.669m and the Compromise Contract sum of $1.5m together with payments made against the Loan Agreement and that the First Defendant accepted the amounts and his liability to pay. The note records payments which the First Defendant asked to be noted as having been made by him but which the Claimant did not accept as having been made. The First Defendant accepts that the meeting took place and that the note was made at the meeting. He also accepts that the Claimant was saying that the First Defendant owed him very substantial sums. The First Defendant says that he was surprised at this but that a reconciliation of the payments made was then undertaken (and he says recorded in the note) showing that the payments made had exceeded the liabilities. It follows that there is considerable dispute as to the ultimate outcome of the meeting and as to the proper interpretation of the note. It is, however, significant that it is not disputed that in January 2018 in a meeting with the First Defendant the Claimant was saying that substantial sums remained outstanding; that notes were made of the sums alleged; and that the notes include figures referable to at least the Compromise Contract and the Project Bonus.

68. Looking at those matters in the round there is considerable scope for scepticism in respect of the Claimant's contentions. There are a number of aspects where he will need to explain apparent inconsistencies between his current case and the documents and his earlier actions and failures to act. However, his claims are set out with particularity and are not inherently incredible. There are, moreover, matters which are consistent with his stance and not readily compatible with the position of the Defendants. The Claimant's case is not in general terms a strong one and much will depend on the persuasiveness of his explanations of the apparent inconsistencies. It is not, however, a case which can in general terms be said to have no real prospect of success in the sense of being fanciful. It is in the light of that general assessment that I turn to the particular claims.

The Loan Agreement.

69. This claim is made against the First Defendant alone. He denies that there was any such agreement. The Claimant's case is not only that the Loan Agreement was between him and the First Defendant and providing for a fee of 8% but also that one half of the amount advanced was to be deposited with the Claimant as security. The First Defendant says that those terms are so contrary to commercial reality as to demonstrate the unlikelihood of the alleged agreement. He asks what would have been the point of borrowing a sum of $2.4m and paying a fee based on the full sum when only half of the amount would be available and the balance would be held as security. Those terms are indeed surprising. The Claimant points to the Second Defendant's desperate need for funds at the time of the agreement. That is understandable and potentially credible as an explanation of the level of fee and also of the Claimant's insistence that the repayment obligation be that of the First Defendant and not of the Second Defendant. However, it is not persuasive as an explanation of the asserted 50% deposit provision as a term of an agreement with the First Defendant (particularly in light of the assertions which are now being made as to the First Defendant's wealth).

70. I have already explained why I do not accept the Defendants' contention that the Claimant has changed his case as to how the agreement came to be made.

71. The First Defendant says that the documents show that there were dealings in the form of a series of Commandite contracts before the alleged date of the Loan Agreement. He says that the documents show an earlier loan having been made by Fanavaran and more significantly a repayment. The Claimant challenges the authenticity of the documents produced by the First Defendant. He accepts that they appear to show a loan in Fanavaran's name involving that company and Bank Sepah but says that neither he nor Fanavaran had any knowledge of this and that the company was not a party to that arrangement. The Claimant says that there appears to have been the fabrication of documents to create a purported loan involving Fanavaran and suggests that there was collusion involving a manager of Bank Sepah. That is an allegation which will need considerable substantiation if it is to be accepted by a court. However, the question of the proper interpretation of the documents cannot be resolved at this stage and would require further evidence as to the operation of Commandite contracts.

72. It is common ground that the Loan Agreement was made in Iran and the Claimant accepts that it was governed (or at least that it is likely to have been governed) by Iranian law. There is a significant issue as to whether the Loan Agreement is illegal and unenforceable under Iranian law. The Defendants' expert says that it is illegal and unenforceable. The Claimant's expert says that the question will turn on how the court characterises the arrangement. If it is characterised as a loan with the fee being regarded as interest then it would be illegal. Mr. Tavakoli accepts that there is a risk of the court characterising the agreement in that way but believes that it is the less likely alternative and that the agreement is more likely to be characterised in such a way as to be lawful and enforceable. That argument cannot be resolved at this stage. It is sufficient to note that there is a live issue as to the Loan Agreement's lawfulness under Iranian law and that this will turn on the characterisation of the agreement.

73. There are considerable difficulties confronting this claim but as already stated a number simply cannot be resolved at this stage. The claim is not fanciful and has a sufficiently real prospect of success to meet the first requirement for service out.

74. The only potentially applicable gateway is that at paragraph 3.1(4A) of the Practice Direction namely that a claim falling within certain other gateways is brought against the same defendant and the claim in question "arises out of the same or closely connected facts". The claims in respect of the Project Fees Contract and the Compromise Contract fall within the paragraph 3.1 (6) gateway and are against the same defendant. However, the claim in relation to the Loan Agreement does not arise out of the same or closely connected facts. The parties to the claims are the same but that clearly is not sufficient connexion. The Loan Agreement was to provide funding to enable the Second Defendant to continue with the MCCI Project and the Project Fees Contract related to payment for work done on that project with the Compromise Contract deriving from work done in respect of the arbitration arising out of that project but other than that there is no connexion between the claims. That connexion is limited and remote and the facts giving rise to the other claims and those giving rise to the Loan Agreement are neither the same nor closely connected. The fact that the purpose of the Loan Agreement was the funding of the project out of which the other claims derived does not mean that the Loan Agreement arises out of the same or closely connected facts as the other claims indeed it shows that they arise out of different facts. This is particularly so when regard is had to the difference in timing. The Loan Agreement was made in June 2006. The Project Fees Contract was made in February 2011 (albeit that it came out of the Project Management Fee and Project Bonus arrangements which had been made in 2006). The Compromise Contract was made in August 2016 and was a replacement for the Arbitration Contract made in 2011. Accordingly, the Loan Agreement claim does not fall within the paragraph 3.1 (4A) gateway.

75. However, even if I had concluded that this claim fell within the gateway I would not have been satisfied that the courts of England and Wales were the appropriate forum for this claim. The agreement was made in Iran and is governed by Iranian law. There is a live issue as to its lawfulness and enforceability under that law and the answer to that question will depend on the way in which the dealings are characterised. That is a matter which the Iranian courts are much better placed to address than those in England. That is all the more so when account is taken of the fact that there will need to be consideration of the effect of a series of Commandite contracts and banking documents in Farsi and drawn up in accordance with Iranian banking practice. The documents are not only in Farsi but they use Iranian numbering and dating conventions. They are the kind of documents which if they had been in English and drawn up in accordance with English banking practices an English judge dealing with commercial cases would be able to assess at a glance and with which such a judge would be very familiar. That exercise will be markedly more difficult in relation to the actual documents here even with translation and explanation. Conversely one would expect an Iranian judge dealing with commercial cases to be well familiar with documents of this kind

and able to assess their effect quickly. It is also apparent that the evidence of a number of witnesses is likely to be relevant. The case will turn not just on the evidence of the Claimant and the First Defendant and the former's brother but will require evidence from those involved in the earlier dealings (particularly if the Claimant is to maintain that the documents on which the First Defendant relies are fabrications involving collusion on the part of bank staff). The relevant witnesses are based in Iran and are likely to be Farsi speakers.

76. In those circumstances Iran is clearly the natural forum for the resolution of the dispute in relation to the Loan Agreement. I have already explained that the Claimant has not established any real risk that he will not receive substantial justice there and it follows that Iran is also the appropriate forum for that resolution.

77. It follows that in respect of the claim relating to the Loan Agreement the order permitting service out of the jurisdiction is to be discharged and the court will not seek to exercise jurisdiction in respect of the claim.

The Project Fees Contract.

78. The Claimant says that the Project Fees Contract was made orally between him and the First Defendant at a meeting in London in February 2011. The First Defendant denies that there was any such conversation and so no such agreement.

79. The outcome of this claim will depend substantially on the competing evidence of the Claimant and the First Defendant in respect of oral dealings said to have taken place between the two of them. The conclusions in respect of the Project Management Fee and the Project Bonus will have some but only limited impact on that question. It appears to be accepted that the Claimant was entitled to the Project Management Fee and the Project Bonus although the exact amount outstanding under the former is not necessarily accepted. The real dispute in relation to them is whether payment was due only from the Second Defendant or whether the First Defendant was liable to the Claimant for these sums. The answer to that question will have some impact on the conclusion reached as to whether there was an agreement in February 2011 but will be by no means conclusive. Even if those agreements provided for the Claimant to be paid by the Second Defendant and even if this is the source of the contentions in the arbitration that the Second Defendant's losses included the sums payable to the Claimant this would not preclude an agreement in 2011 under which the First Defendant accepted personal responsibility. Even less so would it preclude the alternative of an agreement with the Second Defendant under which payment was deferred on terms that additional sums were to be paid.

80. The Defendants say that the claims are statute barred. That argument would appear to be correct in relation to claims based on the original entitlement to the Project Management Fee and the Project Bonus. However, it cannot operate as a defence to the claim under the Project Fees Contract. The

Claimant's case is that this was a new contract under which payment was to become due on the conclusion of the arbitration. The arbitration did not conclude until May 2016 and on the Claimant's case payment did not become due until then. It follows that if the Claimant succeeds in establishing that the parties entered the Project Fees Contract limitation will not operate as a defence to his claim.

81. The considerations set out at [57] – [68] above are relevant to whether a serious issue has been shown in respect of this claim and I will not repeat that analysis. It is my assessment that in relation to the Project Fees Contract there are significant difficulties in the Claimant's path but his claims against both Defendants are claims which are not fanciful and which have real prospects of success.

82. If the Project Fees Contract was made it was made in England. As such the claim would be within the gateway at paragraph 3.1 (6)(a) of the Practice Direction. I am satisfied that the Claimant has shown a good arguable case that the claim falls within that gateway. Indeed, this was not disputed by the Defendants. The Claimant says that the claim is also within the gateways at 3.1 (6)(c) and (7) as being governed by English law and because payment was to have been made in England. The Defendants do not accept that if there was any agreement it was governed by English law and say rather that it would have been subject to Iranian law. For reasons which will become apparent I need not determine that dispute.

83. The next question, therefore, is whether the courts of England and Wales are the appropriate forum for this claim. Substantially the same considerations in that regard apply to this claim and to the claim in respect of the Compromise Agreement and I will address them both together.

84. The Claimant accepts that the First Defendant resides primarily in Iran but says that he is regularly in the United Kingdom. The First Defendant says that the Claimant has overstated the extent of his activities here but it is clear that the First Defendant does spend at least some time in this country. The Second Defendant is an Iranian company and it is not suggested that it has any connexions with the United Kingdom.

85. The Claimant and the First Defendant are both Farsi speakers but they are both fluent in English. The First Defendant has made lengthy and detailed witness statements in English and he spent some years attending university in the United States.

86. Although resident in England the Claimant has a home and a wife in Iran; he has various interests there; has worked there and spends periods of time there.

87. The Project Fees Contract and the Compromise Contract were made (if such agreements were made at all) in England. However, in my judgement that was really a matter of chance and was because the Claimant and the First Defendant happened to be here when the agreements were made. They could equally well have been made in Iran or by telephone when the Claimant and the First Defendant were in completely different countries. Thus the Claimant

gives evidence about discussions in March 2017. At that time the Claimant was in Iran but the First Defendant was in England and so they spoke on the telephone with the Claimant phoning from Tehran and speaking to the First Defendant who was in London.

88. The central issue in respect of both the Project Fees Contract and the Compromise Contract claims will be the dispute as to the dealings between the Claimant and the First Defendant personally. Were there meetings and discussions as alleged by the Claimant and if so what, if anything, was agreed? Those are questions of fact turning very largely on the assessment of the evidence of the Claimant and the First Defendant and of the conclusions reached as to the credibility of their accounts in the light of the surrounding circumstances and the documents. Those are matters which an Iranian court will be just as well placed to determine as an English one. Indeed in a number of respects an Iranian court will be better placed than an English one. The conversations between the Claimant and the First Defendant were in Farsi. That is a factor of very limited weight given the fluency of the Claimant and the First Defendant in English. However, rather more significant is the fact that very many of the relevant contemporaneous documents and of the subsequent relevant correspondence were in Farsi; in note form; and some (though by no means of all) of them used Iranian numbering and dating conventions. I have already explained the relevance of this in relation to the documents relevant to the Loan Agreement but it also applies here. Many of the Telegrams were in Farsi and in note or abbreviated form as was the note of 3rd January 2018. This is a very significant document which the Claimant says confirms his account and which the First Defendant says confirms that even on the Claimant's figures there is no outstanding balance. It consists mainly of figures in the Western format but there are a number of short annotations in Farsi the meaning and significance of which are a matter of live dispute between the parties. An English court clearly could determine the questions of the making and terms of the Project Fees Contract and the Compromise Contract. It would expect to do so on the basis of agreed translations of those sundry documents though there is already an indication that the parties are at odds as to the correct translation of a number of the documents. The difficulties of translation and of interpreting the effect of what was said are compounded when the court is dealing with text messages, manuscript notes, and similar documents. Those are written in abbreviated form with context being of great importance in determining what an abbreviation meant or was intended to mean and with ample scope for argument about the true effect of a particular abbreviated note. It is already clear that there will be such dispute here. In such cases the outcome can depend on a judge having to make a determination between different nuances of meaning. That can involve a difficult exercise of judicial assessment even when the judge is a speaker of the language used. A judge working from a translation of notes (and in this case an English judge is unlikely to be familiar even with the script in which the notes are written) is in a markedly worse position to decide on a party's contention as to what was meant by a particular abbreviation than a judge who is a speaker of the language in question and who can make an assessment for him or herself of the credibility of a particular account of what was meant by a note. The exercise could be conducted by an English judge but it is one which

an Iranian judge would be able to conduct undoubtedly more quickly and probably with less risk of an incorrect conclusion. In my judgement this is a very significant factor in considering whether the courts of England and Wales are clearly the more appropriate forum.

89. The evidence of witnesses other than the Claimant and the First Defendant will be of very limited relevance to the crucial questions in respect of the Project Fees Contract and the Compromise Contract. It is, however, possible that the evidence of other witnesses about the arrangements for the Project Management Fee and the Project Bonus will be of some relevance by way of background in relation to the dispute about the Project Fees Contract. Those witnesses would appear to be based in Iran and to be Farsi speakers. This is a factor albeit one of very modest weight in favour of the view that Iran rather than England is the appropriate forum.

90. The Claimant says that both these agreements are subject to English law. I have already indicated that the Defendants disagree but for these purposes I will proceed on the footing that it is at least arguable that they are governed by English law. Does that mean that the courts of England and Wales are the appropriate forum? As noted at [20] whether the law applicable to an agreement will be a factor of great or of little importance in determining the appropriate forum will depend on the context of the case as a whole. In my judgement it is of little importance in this case that the agreements were governed by English law. The core dispute in respect of both the Project Fees Contract and the Compromise Contract is not the enforceability or interpretation of what was agreed but whether there were in fact agreements of the kind alleged by the Claimant. That will depend not on matters of English or Iranian law but on whether the evidence of the Claimant or of the First Defendant is preferred on the issues of which meetings and discussions there were and what was said at them. The decision in that regard will turn on the assessment of the witnesses and an Iranian court will be as well-placed to conduct that assessment as an English one.

91. In the light of those factors I am not persuaded that the courts of England and Wales are the natural forum for resolution of this dispute. I have already explained my rejection of the Claimant's argument that there is a real risk that he will not receive substantial justice in Iran. In those circumstances I will discharge the order permitting service out of the jurisdiction in respect of the Project Fees Claim (together with the claims to the extent that they are separately maintained in relation to the Project Management Fee and the Project Bonus) and will decline to exercise jurisdiction in respect of that claim.

The Compromise Agreement.

92. The Claimant says that this agreement was made in a telephone conversation on 14th August 2016 and was an agreement whereby the First Defendant agreed to pay him $1.5m forthwith in settlement of his entitlement under the Arbitration Contract. The First Defendant denies that there was any such agreement

93. Again the factors set out at [57] – [68] above are relevant to whether a serious issue has been shown. The Telegram of March 2017 is a particularly potent factor in the Defendants' favour given that it appears to show the Claimant saying that only £250,000 remains outstanding of a total indebtedness of £450,00 at a time when on the Claimant's current case the Defendants were in default of an agreement under which $1.5m should have been paid in August 2016. Conversely the note of 3rd January 2018 is relied upon by the Claimant as making reference to the figure of $1.5m and attaching the date of August 2016 to it. At the lowest that does support the contention that payment of such an amount had been agreed at that date.

94. It follows that this is again a claim where success for the Claimant is very far indeed from being guaranteed but where the claim cannot be said to be fanciful and where there is a real prospect of success.

95. As with the Project Fees Contract if an agreement was made it was made in England and so the claim falls within the gateway at paragraph 3.1 (6)(a) of the Practice Direction.

96. I have set out at [83] – [90] above the factors which caused me to conclude that the courts of England and Wales are not clearly the appropriate forum for the determination of the dispute in relation to either the Project Fees Contract or the Compromise Contract. In the light of that and my rejection of the contention that there is a real risk that the Claimant will not obtain substantial justice in Iran I set aside the permission for service out of the jurisdiction in relation to the Compromise Contract (and the Arbitration Contract to the extent that it is maintained as a separate claim) and decline to exercise jurisdiction in respect of the same.

The Freezing Order.

97. In the light of my conclusions as to service out and jurisdiction the freezing order falls away. I will briefly explain why even if I had concluded that this was a case where service out of the jurisdiction was appropriate I would not have maintained the freezing order in place.

98. Such an order is to be made if an applicant shows that he has a good arguable case; that there is a real risk of the dissipation of assets such as to cause any judgment to be unsatisfied; and that it is just and convenient for the order to be made in the exercise of the court's discretion.

99. I have explained that the Claimant has shown that he has claims which have real prospects of success in the sense of being more than fanciful. However, there are very significant weaknesses in the Claimant's contentions and it is relevant to note that success will depend on him being able to establish that his account of the dealings was correct notwithstanding the sundry factors identified above.

100. Much of the material on which the Claimant relies to assert that there is a risk of the dissipation of assets by the First Defendant simply does not do so. Much of it amounts to no more than showing that the First Defendant is a wealthy businessman with assets in Iran and in other countries and I need not address

that material in detail. At the hearing it was submitted that in the three month period from 5th December 2018 to 1st March 2019 (so beginning after the Claimant had in August 2018 intimated that he would commence court proceedings) the First Defendant had made payments in excess of £7m out of his account with the London branch of the Qatar National Bank while only receiving credits of just over £200,000 into that account. That was said to be indicative of action by way of dissipation of the First Defendant's assets. In those terms and in the light of that timing it appeared to be a submission with a degree of force. It was discovered after the hearing that this submission was erroneous in that the payments and receipts related to the fifteen month period from December 2017 to March 2019. The error was acknowledged on behalf of the Claimant and the Defendants accepted, as I do, that it was an innocent mistake caused by a typing error whereby the Claimant's witness statement had referred to the period as starting in 2018 rather than in 2017. In the light of that I reviewed the underlying bank statements. Although these do show expenditure out of the account very substantially exceeding receipts into it and although they do so show some large payments out the majority of the payments are in comparatively small sums spread throughout the period. In the light of the First Defendant's admitted wealth that pattern of expenditure over that period is not indicative of the dissipation of assets as a response to the Claimant's claim. The Claimant also relied as evidence of dissipation on payments made by the First Defendant to his sons in sums equating to $6.4m, $525,000, and $4.73m in March 2017, March 2018, and April 2018 respectively. The First Defendant's position is that those payments were made during Eid and were gifts to his children in sums which were considerable but which are not surprising in light of his and his family's wealth. Those payments must be seen in that context. They do give some support to the contention that the First Defendant was disposing of his assets in favour of his sons. However, they pre-date by some time the first intimation that court proceedings were being contemplated and cannot be seen as indicating the improper dissipation of assets in the face of the Claimant's claim. Moreover, the contention that there is a risk of dissipation is materially weakened by the delay on the part of the Claimant. The First Defendant was informed of the Claimant's intention to commence proceedings in August 2018 but the application for a freezing order was not made until the end of February 2019. If the Claimant truly believed that there was a risk of dissipation of the First Defendant's assets he would have been expected to have applied either before informing the First Defendant that he intended to commence proceedings or at the latest soon thereafter.

101. On balance I would have been satisfied that the Claimant had shown a good arguable case. I would not have been satisfied that the Claimant had shown a real risk of dissipation for these purposes. However, even if I had been satisfied of that this is not, in my judgement, a case where it would have been just and convenient to continue the freezing order and it is one where I would have declined to exercise my discretion in favour of making such an order. It is in that regard that the weakness of the Claimant's case; the delay in seeking the freezing order; and the Claimant's failures of disclosure would come most strongly into play. It would not have been appropriate to continue the freezing order in favour of a party who had failed to put matters frankly and fully

before the court; who had delayed in seeking the relief; and whose case would depend on the acceptance at trial of explanations which do not at this stage appear convincing.

Conclusion.

102. It follows that the order of Judge Halliwell permitting service out of the jurisdiction is to be set aside as is the freezing order. Subject to submissions as to the terms of the appropriate relief, the Defendants are entitled to orders in those terms together with a declaration that the court will not exercise such jurisdiction as it has and provision for the release of the sum lodged by the First Defendant at court.