Neutral Citation Number: **[2023] EWHC 998 (Ch)**

Cases No: **BL-2022-000913 / BL-2022-001515**

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

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

Date: **21 April 2023**

Before :

Mr Justice Miles
(sitting with Master Kaye)

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Between :

Harrington & Charles Trading Company Limited (In Liquidation) and others	**Claimants**
- and -	
Mehta and others	**Defendants**

Harrington & Charles Trading Company Limited (In Liquidation) and others	**Claimants**
- and –	
IIA Technologies and others	**Defendants**

- -
- -

Mr Ian Wilson KC and Mr James McWilliams (instructed by **Hogan Lovells International LLP**) for the **Claimants**
Mr Thomas Grant KC and Mr Daniel Petrides (instructed by **Withers LLP**) for the **Defendants**
Mr Justin Higgo KC and Mr Paul Adams (instructed by **Howard Kennedy LLP**) for the **Third Defendant**

21st April 2023

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APPROVED JUDGMENT

Mr Justice Miles:

Introduction

1. The application before the court concerns two sets of proceedings in which the claimants allege that various defendants have been involved in or benefited from an alleged fraud concerning many hundreds of millions of dollars. I sat with Master Kaye who is jointly case managing this case with me. This judgment reflects our joint views. I am however responsible for its contents.

2. There have been three claims commenced in the Business List. There are also related insolvency applications which rely on provisions of the Insolvency Act 1986. The Business List claims are:

    a. Claim No. BL-2022-000913 issued on 31 May 2022 (the "May Action"), in which five companies and one LLP (all in liquidation) and their joint liquidators bring claims against four members of the Mehta family (the "Mehta Defendants") who are alleged to have orchestrated the alleged fraud, and another individual ("Mr Obidah"), who is alleged to have acted in concert with the Mehta Defendants;

    b. Claim No. BL-2022-001010 issued on 23 June 2022 (the "June Action"), in which an additional company in liquidation called Docklands and its joint liquidators (who are the same liquidators as in the May Action), bring the same claims against the Mehta Defendants and Mr Obidah as are brought in the May Action; and

    c. Claim No. BL-2022-001515 issued on 23 September 2022 (the "September Action"), in which the same entities and officeholders as in the May and June Actions (together the "Claimant Companies" and the "Joint Liquidators") bring claims against two Singaporean companies connected to the Mehta Defendants, IIA Technologies Pte Limited ("IIA Technologies" or "IIA") and Polishing Technologies Pte Ltd ("Polishing Technologies" or "PT"), and another individual ("Mr Kothari').

3. The claimants' case in all three claims is that there was a complex international fraud. It is sufficient here to give a highly simplified summary of the claimants' case. The claimants contend that the proceeds of gold bullion advanced under bullion facilities by Standard Chartered Bank and other banks to two Indian companies controlled by the Mehta defendants known as Winsome and Forever Precious were misappropriated, laundered and concealed through multiple layers of corporate entities before, ultimately, being paid to, or for the benefit of, the Mehta defendants or entities connected with them.

4. The claimants contend that this caused Winsome and Forever Precious to default on their obligations to the various bullion banks, and that as a result claims were made

under standby letters of credit provided by a consortium of banks by way of security for the advances made by the bullion banks.

5. The claimant companies, which were all UK registered, were all entities in what was known as the Transaction Services Unit or TSU division of the Amicorp Corporate Group, a group of companies which provides company administration and other services.

6. The claimants allege that these companies were wrongfully used as part of a complex structure pursuant to which part of the proceeds of the alleged fraud were misappropriated, and in such a way as to expose the claimant companies to substantial claims from the consortium banks.

7. Between 2021 and 2022 some of the claimant companies were restored to the register of companies on the application of Standard Chartered Bank and the joint liquidators were ultimately appointed over each of them.

8. The claimants allege that the advances made to Winsome and Forever Precious under the precious metals facilities were misappropriated and laundered pursuant to a complex fraudulent scheme orchestrated by the Mehta defendants and others acting in concert with them, including Mr Obidah and Mr Kothari. The claimants allege at all times the first defendant controlled Winsome and Forever Precious and that he was one of the guarantors of Winsome and Forever Precious' obligations.

9. The claimants allege that the payments of the money through these layers of companies was pursuant to a pre-ordained plan, but were disguised via sham derivatives contracts between the various companies.

10. The first alleged layer was a series of UAE companies associated with Mr Obidah – which were parties to distribution contracts with Winsome and Forever Precious. The second layer consisted of the claimant companies and an Irish company which has been dissolved and which apparently could not be restored to the register. The third layer consisted of Docklands, the additional claimant in the June Action. Beneath that were a series of other companies incorporated in various jurisdictions. The claimants contend that large payments were made through these other companies which ended up with some of the monies being received by companies associated with the Mehta defendants.

11. The claimants' case in this respect includes the following. They say that Al Mufied, one of the layer one companies, received payments totalling about US$1.2 billion from a UAE-based refinery called Emirates Gold DMCC. They say that between April 2012 and April 2013, of that US$1.2 billion, sums totalling about US$875 million were transferred away from Al Mufied including by payments to the 13 UAE companies found in layer one.

12. The joint liquidators in their evidence say they are continuing to trace the onward payments from Al Mufied but at the moment they allege that the material part of the

sums received by that company were paid on to entities connected with the Mehta defendants, including payments back to Winsome and Forever Precious. The claimants allege that notwithstanding these material payments, the first defendant and Mr Obidah, falsely told the consortium banks that the layer one companies were unable to pay Winsome and Forever Precious a sum of some US$700 million, and as a result Winsome and Forever Precious did not make full repayment of the sums then due and owing.

13. The claimants say that between about July 2012 and April 2014 the total sum of over US$1 billion derived from the alleged fraud was transferred from the layer one companies to the layer two companies, including the claimant companies. These companies were, at that stage, under common ownership and/or control via the Amicorp Group.

14. The claimants allege that between July 2012 and March 2014 the layer two companies transferred to Docklands, the layer three company, sums totalling just over US$1 billion. Docklands was also part of the Amicorp Group.

15. The claimants allege that proceeds of the fraud were then passed through a series of other entities. These include a company called Al Noora, an entity which received some US$687 million, and which the claimants contend was owned or controlled by some or all of the Mehta defendants. Payments were also made to other entities alleged to have been owned or controlled by various of the Mehta defendants, including a company called Marengo Investments Group, which received some US$163 million. It is not disputed that the defendants had an interest in that company.

16. Specially as to the defendants to the September Action, the claimants allege that IIA received some US$8.42 million, and that PT received a total of over US$13.4 million.

17. The claimants say in their evidence that, of the funds which passed through the claimant companies, a significant portion of the funds - totalling about US$610 million - were paid back to certain layer one companies, and in turn paid on again to the layer two companies, and then to Docklands for onward payment. The joint liquidators currently contend that a sum of approximately US$440 million ultimately exited the laundering scheme and was paid to the ultimate recipients which they say are connected with the Mehta defendants.

18. It is important to record that at the moment the details I have set out are allegations and not facts. The defendants contend that the claim is baseless. They have not however yet put in detailed evidence addressing the allegations that are being made. Nor have they served defences.

19. The claimants bring their claims under a large array of causes of action including for breach of fiduciary duty, dishonest assistance, conspiracy, constructive trust, misfeasance, fraudulent trading, claims under section 423 of the Insolvency Act 1986, and for a contribution.

Procedural history

20. On 27 May 2022 the claimants obtained a worldwide freezing order and proprietary injunction from Mr Justice Edwin Johnson.

21. The May Action was commenced on 31 May 2022, together with a related Insolvency Act application making claims under the 1986 Act.

22. The Mehta defendants were served on 6 June 2022 within the jurisdiction.

23. On 23 June 2022, the June Action and a related Insolvency Act application was issued.

24. On 6 July 2022 the Mehta defendants filed acknowledgments of service in the May Action indicating their intention to challenge jurisdiction and made applications to discharge the freezing order, challenge jurisdiction on forum grounds, and to strike out the May Action.

25. On 2 August 2022 Master Kaye permitted service out on Mr Obidah.

26. On 26 August 2022 particulars of claim in the June Action were served on the Mehta defendants.

27. On 23 September 2022 the September Action was issued.

28. On 28 September 2022 the Mehta defendants filed acknowledgments of service in respect of the June Action, again indicating their intention to challenge jurisdiction, and making applications in the same form as those they had made in relation to the May Action.

29. On 15 November 2022 the claim form in the September Action was amended to remove all but IIA, PT and Mr Kothari as defendants.

30. On 22 November 2022 Mr Justice Edwin Johnson gave a judgment dismissing the Mehta defendants' applications to discharge the freezing order. This followed a hearing over three days in October 2022.

31. On 29 November 2022 the defendants issued an application seeking consolidation of the May and June Actions.

32. On 13 December 2022 Master Kaye granted permission to serve Mr Obidah out of jurisdiction in respect of the June Action.

33. On 14 February 2023 Mr Justice Edwin Johnson gave judgment dismissing the Mehta defendants' applications to challenge jurisdiction in the May Action. That followed a hearing over two days in December 2022.

34. On 6 March 2023 the claimants applied for permission to serve the September Action defendants out of jurisdiction. On 16 March 2023 the Mehta defendants filed acknowledgments of service in respect of the May Action, indicating their intention to defend.

35. On 4 April 2023 the claimants applied for permission to serve Mr Kothari by an alternative method.

36. I have already mentioned in that summary that the Mehta defendants have applied to strike out the claims. They have also recently issued reverse summary judgment applications. The court has listed a substantial hearing for July 2023 in respect of those applications. The claimants have raised the possibility that the applications are at least in part an abuse of process. That has yet to be considered by the court.

Current application

37. The current hearing is concerned with the application of 29 November 2022 by which the claimants seek consolidation of the May Action and the September Action. They also seek an extension of the life of the claim form to enable service to take place. The claimants sought to bring this application on for hearing as soon as possible after issue. The application was opposed by the Mehta defendants, and owing to the non-availability of counsel it was only possible to list it for hearing on 20 April 2023.

38. The application notice of 29 November 2022 has not been served on the September Action defendants. This is because they have not yet been served with the proceedings.

39. The claimants explained in the application notice, and this is reflected in the attached draft order, that if consolidation was ordered they would not seek to assert as against the September Action defendants that the proceedings against them had commenced before 23 September 2023 for limitation purposes. In other words, they would not seek to assert that there was any relation back of the claim form to a date earlier than that date.

40. The claimants also sought agreement with the defendants to the May and June Actions that there should be consolidation of the May and June Actions, and the related Insolvency Act applications. The claimants again agreed to preserve any limitation points by agreeing that the claims made in the June Action would be treated as made on the date of issue despite consolidation. There has been correspondence about this. By the date of the hearing the Mehta defendants had agreed to the consolidation of these proceedings without requiring a formal application notice.

41. I should mention that Mr Obidah has not participated in the proceedings, although some documents were served by a firm of lawyers purporting to act for him. He has not taken part in this application or been involved in the discussions about the consolidation of the May and June Actions or the related Insolvency Act applications.

42. The Mehta defendants have continued to oppose the consolidation of the May and June Actions with the September Action.

43. The claimants were represented by Mr Wilson KC and Mr McWilliams, the first, second and fourth defendants by Mr Grant KC and Mr Petrides, and the third defendant by Mr Higgo KC and Mr Adams. Counsel for the defendants divided the submission between them and adopted one another's arguments and I shall refer to them together without distinguishing between them. I thank all counsel for their helpful and illuminating arguments.

The claimants' position

44. Counsel for the claimants' overarching submission was that the three Actions in the business list were based on the same factual and legal allegations which concern the same overall alleged fraud. They said that the September Action was doing no more than adding further defendants and seeking relief against them.

45. The particulars of claim in the May and June Actions, which are essentially identical, save for the addition of one claimant, included allegations concerning each of the September Action defendants. Mr Kothari was alleged to have introduced Mr Obidah to Amicorp and have, thereafter, been one of the people who gave relevant payment instructions said to constitute the fraud, including by using a specially designated email address. They also allege the payments to IIA and PT. The routes by which such payments were made are pleaded, as are the alleged connections between those companies and the Mehta defendants. The claimants have now produced a draft consolidated particulars of claim which contains these allegations, but which now seeks relief against the three September Action defendants on the basis that they were part of the alleged fraud.

46. I repeat that the claimants have explained that this document reflects further investigations undertaken by the liquidators since last year. I shall have to return to this document below as the Mehta defendants object to parts of it, at least in its current form, but it is sufficient to say at the moment that the bulk of the factual allegations concerning the September Action defendants is contained in the existing particulars of claim. The new feature is the allegation that they are liable under various causes of action in respect of the same alleged fraud.

47. The claimants submit that in substance they are seeking in the September Action simply to join new defendants to the existing claims. They say there was one overall fraud alleged. It is all the same case.

48. This raises a question why the claimants have not simply joined these defendants to the existing proceedings. The answer is found in CPR19.6 which concerns joinder of parties outside relevant limitation period. It is derived from section 35 of the Limitation Act 1980. The case law establishes that where there is at least an arguable limitation defence the proper course is not to add a party to existing proceedings but to issue a new claim.

49. I accept the claimants' submission that had it not been for the provisions of CPR19.6 they would have proceeded by seeking permission to join the September Action defendants in the existing Actions. I also accept their overarching submission that the May and June Actions and the September Actions are in reality a single case. They all arise out of the same alleged fraud. But for the possibility of a limitation defence I see no reason to doubt that the claimants would have applied for permission simply to join the new defendants as parties to the existing case.

50. Counsel for the defendants observed that the claimants have not provided any evidence to explain why the September Action defendants had been joined into the original May Action. Counsel pointed out that their role was pleaded in some detail in the original particulars of claim and suggested that the claimants had chosen not to pursue those defendants at that stage.

51. Counsel for the claimant said that the reason for the defendants not being joined was that the May Action was started in a hurry because the claimants discovered in April to May 2022 that the Mehta defendants were residing in London. That led to the preparation of a heavy application for an injunction and the application itself.

52. Even if the rush to obtain a freezing order is some explanation for the September Action defendants not being joined as parties originally, in my view it does not adequately explain why those defendants were not joined into the June Action, when Docklands was added as a claimant.

53. However, I do not think that anything really turns on this point. These are complex proceedings, and it is commonplace in large fraud cases for further parties to be added from time to time. I certainly do not think an inference can be drawn that the claimants have acted tactically in only deciding to pursue the September Action defendants later. I do not think that there is any reason to doubt that, had they been able to do so, the claimants would simply have sought permission to join the defendants into the existing actions.

54. The claimants submitted that the three Actions naturally go together, and, indeed, that they are only really artificially separated as a result of the provisions of 19.6 of the CPR. They submitted that this is a plain and obvious case for consolidation.

55. The claimants relied on the court's power to consolidate proceedings under CPR3.1(2)(g). This is one of the court's case management powers. It is to be exercised in accordance with the overriding objective.

56. When considering whether to consolidate proceedings, the court will consider a number of factors: first, the extent to which, as an overlap of the parties facts or issues between the claim to be consolidated; second, the extent to which consolidation might avoid the risk of inconsistent findings; third, the cost and delays involved in a multiplicity of

proceedings, of pleadings, of pre-trial steps taken by the parties and of interlocutory applications that might be avoided if consolidation were ordered; fourth, the stage in which the proceedings in which consolidation is sought, it being more likely that consolidation will avoid cost and delay if it is sought earlier rather than later; fifth, the extent to which the advantages of consolidation might be achieved by other means, including but not limited to an order under CPR 3.12(h) for the claims to be tried on the same occasion; and, six, whether the claimants in the consolidated claim can be jointly represented by the same legal representatives: see generally *Atos IT Services UK Limited v Secretary of State for Business Energy and Industrial Strategy* [2022] EWHC 787 (TCC) at [15] to [16].

57. The claimants said in reliance on this checklist that this is a compelling case for consolidation.

The defendants' position

58. Counsel for the defendants did not dispute the principles set out above.

59. They submitted that the real question was whether there was a justification for consolidation **now**.

60. Their wide-ranging submissions included the following broad points:

    a. the court should defer a decision about consolidation until defences have been served, as this would show the true extent of any overlap. Until that point, the issues in the case will not have sufficiently clearly crystallised;

    b. the court should, in any case, defer a decision about consolidation until the conclusion of the hearing of the strike out or summary judgment applications as there may be nothing of the case left;

    c. in any case, the question should properly be addressed at the first case management conference and not before then;

    d. there was a potential increase in complexity concerning case management and costs if the two cases were consolidated. It was at least realistically possible that the September Action defendants would challenge jurisdiction or take other objections to being brought into proceedings, and if consolidation were to be ordered now, the proceedings against the existing served defendants would potentially be held up or disrupted;

    e. it would, in any case, be wrong in principle to entertain the application for consolidation before the September Action defendants had had a chance to advance their arguments. This followed from the fundamental principle of justice that no order affecting them should be made before they had been heard;

f. the claimants were abusing the process of the court or acting procedurally improperly because their sole or primary purpose for seeking consolidation now was to enable them to rely on the necessary or proper party gateway of jurisdiction under CPR PD6 para 3.1(3), and this was a collateral purpose.

Analysis and conclusions

61. I shall return to points (e) and (f) below. I start with the question of whether, leaving those to one side, it would be appropriate to order consolidation of the proceedings - and to do so at this stage, before the summary judgment hearing and strike out hearing and before defences have been served; and, more generally, whether it would be right to do so before the first CMC.

62. In my judgment, the court in the exercise of its case management powers can properly conclude at this stage that there is, indeed, a compelling case for consolidating the Actions. My reasons are these.

63. First, I accept the claimants' submission that in reality and substance the three sets of proceedings issued in May, June and September 2022 represent a single case covering the same factual allegations. I agree with them that by the September Action the claimants are doing no more than joining further defendants to an existing claim.

64. This is not merely a case of some overlap of factual allegations. It goes further than that. The allegations against the September Action defendants are part of the self-same set of allegations made by an identical set of claimants against the other defendants. Mr Kothari's role is already pleaded in the existing case. As for the two corporate defendants, there are already allegations against the Mehta defendants and Mr Obidah concerning the same payments. All those matters will have to be examined in the existing proceedings in exactly the same way as they would have to be examined in relation to the September proceedings. It is alleged both in the existing proceedings and in the September Action that these payments were made as part of the same fraud. I agree with the claimants' submission that the only change of substance is to seek relief against additional parties.

65. I do not think that there is any realistic need for defences to be served before one is able to see all of this. It is already self-evident.

66. Second, in my judgment there are good case management reasons for ordering consolidation now, at the earliest possible stage in the cases. It will save costs and make management of the case materially more efficient if the parties and the court are concerned with a single consolidated particulars of claim, rather than two sets. The court will then not have to refer to more than one set when making case management decisions hereafter. It is commonplace in cases of this kind for there to be amendments, and it will obviously make sense for the amendments to be to made to a consolidated set of particulars of claim rather than having to be made to more than one set of documents.

67. Moreover on the digital filing system it will be simpler and more efficient to have a single case with a single number than to separate filings under different numbers with cross-references. All filings will be in the same single case.

68. Third, I can conceive of no realistically possible world where, supposing consolidation were not to take place, the September Action would be case-managed or tried separately from the May and June Actions. The court would in that event need to give unified or parallel directions in the two cases on such matters as pleadings, disclosure, witness statements, further information and so forth. Indeed counsel for the defendants were unable to suggest any realistic scenario in which the case would, at any stage, be separately managed or tried.

69. Fourth, I was unpersuaded by the defendants' submission that consolidation might lead to a delay to the existing claims. This needs to be seen in context. There is no realistic prospect of a CMC happening soon in either case. As I have said, there is a four-day strike out and summary judgment hearing in July 2023 and judgment is unlikely to be available until the Michaelmas term. The Mehta defendants are also considering an appeal to the Court of Appeal concerning the freezing injunctions. They have also argued that they should not be required to serve defences while the summary judgment application is outstanding.

70. But in any case the defendants were unable to explain coherently why consolidation of the claims would make any real difference. It is commonplace in the management of large scale litigation against numerous defendants for some of the defendants to make applications which others are not involved with. It is also commonplace for further defendants to be joined in such proceedings and for there to be jurisdiction issues concerning them. The court accommodates these kind of events and makes appropriate allowances. If an application by one party does not justify holding things up against another party, the court will act accordingly. It was entirely unclear to me why, if consolidation were to be ordered, the court could not make appropriate case management orders of that kind.

71. As I have already said, there is no serious issue that absent consolidation, the cases would have to be case-managed together, so it would always be necessary for the court to accommodate and take account of the other case anyway. Counsel for the defendants were unable to explain why consolidation would be likely to lead to delay in respect of the cases against them.

72. Fifth, I was unpersuaded that consolidation would increase the costs of existing defendants as compared to the no consolidation world. Counsel said that this was the inevitable and self-evident consequence of consolidation but was, to my mind, unable to explain why this was so. As I have already said, it is clear that the two cases, which are so closely linked, would have to be case-managed together. No coherent reason was advanced as to why consolidation would add to costs for the existing defendants.

73. Indeed I have already reached the contrary conclusion i.e. that consolidation would improve efficiency, and therefore reduce the overall costs of the case and the use of the court's resources.

74. For all these reasons I have reached the view in accordance with the overriding objective that there are, indeed, good reasons to consolidate the claims and to make the order now, at the earliest stage in the case.

75. I turn to the defendants' submission that the court cannot or should not make an order under its case management powers because the September Action defendants have not been served or notified. Counsel for the defendants submitted that it is a fundamental principle of justice in an adversarial legal system that orders should not be made against, or affecting, the interests of parties who have not had a fair opportunity to make representations to the court. They relied on *Moat House Group v Harris* [2006] QB 606 at [71], *Re First Express Ltd* [1992] BCLC 824 at p.828, *National Commercial Bank of Jamaica v Olint Corp Ltd* [2009] UKPC 16 at [13], and *FZ v SZ* [2011] 1 FLR 64 at [32]. Counsel also referred to the provisions of CPR 25, which builds in notification safeguards for respondents.

76. Counsel submitted that these authorities showed that unless an applicant can show that the giving of notice would enable a respondent to defeat the purpose of the order, or that there is literally no time to give notice, the court should not entertain an application. Counsel for the defendants submitted that the ability of a respondent to apply to set aside an order made without notice is not a panacea. The principle is one of fairness and not utility.

77. Counsel for the defendants recognised that applications to serve out of the jurisdiction are generally made without notice, but said that this was a strict exception which arose because such a defendant had, by definition, not been served.

78. Counsel for the claimants argued that the position was more nuanced. He pointed out that most of the cases relied on by the defendants concerned injunctions or analogous orders requiring the respondent to undertake an act of some kind or refrain from taking an act of some kind. CPR 25 was concerned with interim orders of that kind and not with case management orders of the kind in issue here.

79. In relation to case management orders, he pointed out that the court had a power of its own initiative to make orders where it was in accordance with the overriding objective. Where it did so a party affected had the right to apply to set it aside.

80. Counsel also noted that a party may apply without notice under CPR19.4 to join an additional party to proceedings, and said that this situation was closely analogous. The reason in this case why the relevant defendants have not been served or notified is that the court does not yet have jurisdiction over them as they have not yet been served out of the jurisdiction. He said that this was similar to the application for service out itself, which is typically made ex parte.

81. He pointed out that the September Action defendants would not have been able to take part in this hearing because that would have amounted to a submission of jurisdiction.

82. Counsel for the claimants referred to the case of *Arab Monetary Fund v Hashim No. 4* [1992] 1 WLR 553 where Mr Justice Hoffman made an order for consolidation of two closely-related sets of proceedings before it was served or notified to defendant in the second proceedings, who was abroad.

83. I prefer the submissions of the claimants on this point for the following reasons.

84. First, the cases relied on by the defendants all concerned injunctions or similar orders. They required the respondent to act or refrain from acting. They potentially engaged the coercive powers of the court, including its contempt jurisdiction. Here the relevant defendants are not being required to do, or refrain from doing, anything. It is true that an order for consolidation may affect their interests, but they will have the right to apply to set aside the order and will not be required to do, or refrain from doing anything in the meantime. I accept that the right to set aside an order made without notice is not a panacea in the sense of a complete cure. But the ability to apply to set aside an order is nonetheless a relevant factor when considering whether to make a case management order without notice. (I also note in relation to the right of the defendants to apply to set aside any order for consolidation that as I discussed with counsel during the hearing it should be made clear that they should be able to do so without thereby submitting to the jurisdiction of these courts and appropriate wording should be included in any order.)

85. Second, the question whether to consolidate is, as counsel for the defendants put it, a pure question of case management to be exercised so as to further the overriding objective by creating efficiencies and cost savings. It is a power which the court may indeed decide to exercise of its own initiative if this favours the overriding objective. Where it does so, it gives the affected party a right to set aside its order. It is common for the court to exercise its powers of case management without notice to one or other of the parties in furtherance of the overriding objective. It is to be borne in mind that the court itself also has an interest in effective and efficient case management.

86. On the current facts, I consider that the court could have reached the conclusion of its own initiative that consolidation should be ordered at this stage in order to create the efficiencies which I have already mentioned.

87. By contrast, it is hard to think of any case in commercial litigation where a court would choose to exercise a power to impose an interim order of its own initiative.

88. It seems to me that the rules draw a distinction between interim orders of the kind dealt with in the cases cited by the counsel for the defendants and mere case management orders.

89. Third, on the present facts I find the analogy with CPR 19.4 to assist. I have already explained why this application is to be seen as closely analogous to an application for permission to join a party into existing proceedings. If the court may properly make orders for permission to join a party without notice to the affected party, I can see no reason why an analogous result cannot be achieved (in an appropriate case) on an application for consolidation.

90. Fourth, I do not think that the circumstances in which the court may decide to make a case management order without notice are as circumscribed as counsel for the defendants suggested. In the present case there is good reason for not serving the relevant defendants with the application, namely that they have not yet been served with the proceedings, and are therefore not subject to the jurisdiction of the court. It seems to me that their position is similar to those of putative respondents to an application for permission to serve out of the jurisdiction.

91. Fifth, I think the *Hashim* case provides some support for the claimants' submissions. I agree with the submission of the defendants that in that case Mr Justice Hoffman did not actually discuss the ex parte nature of the application. But it is of some significance that nobody in that case, which was unsuccessfully appealed to the Court of Appeal, seems to thought that there was anything objectionable in the procedure or that it infringed a fundamental principle of fairness. I also note that one of the passages on which reliance was placed, *National Commercial Bank of Jamaica*, was from the speech of Lord Hoffmann.

92. For these various reasons I consider that the court may properly entertain the application at this stage. The relevant defendants will have the right to apply to set aside any order made on this application. Any hearing of that application will be a full *de novo* hearing as between the claimants and those defendants and not merely be a review of the order if made.

93. I turn to the submission that the application is an abuse of process or involves procedural impropriety.

94. Counsel for the defendants submitted that the claimants were making the application for the sole or primary purpose of seeking to improve their ability to obtain service out under the necessary or proper party gateway.

95. He drew attention to the claimants' evidence that the effect of consolidation will be to enable the claimants to rely on the May Action defendants as anchor defendants for the purposes of using that gateway as one of the grounds on which permission for service out of the jurisdiction will be sought. Counsel contended that this was the primary or predominant reason why the claimants were seeking consolidation now.

96. Counsel for the defendants argued that the claimants were, therefore, bringing the application for a collateral purpose. They relied on a number of cases, including *Crawford Adjusters (Cayman) Ltd v Sergicor General Insurance (Cayman) Ltd* [2013]

UKPC 17, *JSC VTB Bank v Skurikhin* [2020] EWCA Civ 1337 at [51], *Carter Commercial Developments v Bedford BC* [2001] EWHC 669 (Admin), *Ashraf v Secretary of State for the Home Department* [2013] EWHC 4028 (Admin) and *Nomura International Plc v Granada Group Limited* [2007] EWHC 642 (Comm).

97. On the basis of those decisions counsel submitted that the attempt of the claimants to use consolidation was a procedural ploy so as to justify service out and that this was abusive, or at any rate procedurally improper, so as to make an order for consolidation inappropriate, at least at this stage.

98. The claimants, for their part, candidly accepted that they wanted to rely on the anchor defendant gateway, and that they wanted an order for consolidation now before applying to serve out. They said that there were other possible heads of jurisdiction, but accepted that this was the simplest and most powerful one. They said there was nothing abusive in being able to rely on that head as a result of any order for consolidation. They submitted that consolidation was justified on independent case management grounds and that the anchor defendant gateway was properly open to them. If there was an advantage it was not a collateral one in the sense described in the case law. They relied on the *Hashim* case and on the decision of Mr Justice Mance in *Freemont Insurance v Freemont Identity* [1997] CLC 1428 at pp. 1434 to 1435. In *Fremont* a party obtained an order for consolidation and relied upon it to establish jurisdiction under the necessary or proper party gateway then in force.

99. Counsel for the defendant responded to those cases by saying that neither of them addressed the present argument. He also warned against the use of pre-CPR authority when interpreting the CPR.

100. I prefer the submissions of the claimants.

    a. I consider for the reasons already given that there are independent case management grounds for making an order for consolidation at the present stage in the proceedings. I regard these as compelling. I have also explained why it seems to me appropriate that they should be made now, as it is the earliest reasonable stage for doing so.

    b. If such an order is made, the claimants will be able to rely on it as an additional head of jurisdiction. I can see nothing abusive or procedurally improper in them taking that course. The claimants did not argue that the jurisdictional advantage which they would derive was of itself a reason which justified consolidation. I do not think that any advantage they might thereby obtain is collateral. It would just follow from consolidation.

    c. I also agree with the claimants that *Freemont* provides some support for the claimants' position. In that case, Mr Justice Mance made an order for consolidation which enabled the plaintiffs to seek jurisdiction under the necessary or proper party gateway.

d. Though that case was decided before the introduction of the CPR, it appears to me still to be persuasive on the issue of abuse or procedural propriety; and the present argument does not turn on the interpretation of any the wording of any particular provision of the rules.

e. Mr Justice Mance specifically addressed an argument in that case that the plaintiffs had obtained a limitation advantage because the relation back at the date of the second writ to the first, but did not regard that as abusive or improper. That point does not arise here, as I have already explained. But Mr Justice Mance also addressed the specific submission that the plaintiffs would be able to seek to serve out under the necessary and proper party gateway if but only if the order for consolidation was made. He did not see that as a valid objection to the order for consolidation. That provides some assistance here.

f. As I have said, the claimants have accepted that they wished to pursue their application for consolidation now, as it would improve their position on service out. But it does not follow, it seems to me, that they were acting improperly any more than it did in the case of *Fremont*. I repeat that they have satisfied me on independent grounds that it is appropriate to order consolidation at this early stage in the two cases.

g. Moreover I note that at the time they served the September proceedings on the Mehta defendants the claimants made clear in correspondence that they would be seeking consolidation on the basis that the cases arose from the same factual allegations. I accept the submission of the claimants that they always wished to obtain consolidation and to do so at the earliest possible stage.

101. In all these circumstances, the court will make an order for the consolidation of the three Actions and the related Insolvency Act proceedings.

The application for an extension of time

102. The application was made at the end of November 2022. At that stage the September claim form still had a number of months to run, but since then the September claim form has expired. The claimants seek an extension of the consolidation claim form so as to allow service of the same on the September Action defendants. They have not yet obtained permission to serve out of the jurisdiction, but have issued an application to enable them to do so. The application seeks an extension to 31 May 2023.

103. As I have already mentioned some questions were raised at the hearing as to whether the draft consolidated particulars of claim before the court had inappropriately smuggled in some allegations not found in the earlier particulars of claim, and which would require leave or permission to amend to include in the particulars of claim. Counsel for the defendants contended that there had been wrongful smuggling of this kind. They also said that the consolidated particulars of claim did not make coherent sense on issues of

quantum as it now appeared to be accepted by the claimants that only some US$440 million-odd had been paid to companies associated with the Mehta defendants, on the claimants' own case. These contentions have been the subject of some correspondence.

104. The claimants accepted that some of the changes to the draft consolidated particulars of claim reflect further investigations made since May and June last year. They submitted that there was nothing being wrongly smuggled into the consolidated particulars of claim and that their case on quantum was coherent. They accepted however that it would be sensible for the parties to seek to get to the bottom of any complaints in correspondence, and that if necessary they might need to apply for permission to amend.

105. Neither party sought any direction on this matter at this stage, but the claimants noted they might have to seek a further extension beyond 31 May 2023. If they do apply it will have to be addressed at the appropriate time.

106. So the only application at the moment is for an extension until 31 May 2023.

107. As to the relevant principles, where a claim form is to be served out of jurisdiction, the time for service in accordance with CPR Part 6 is within six months of the date it was issued, see CPR 7.5(2). The court however has a power pursuant to CPR 7.6 to extend the period for complying with CPR 7.5. Where an application is made to extend the time for compliance with CPR 7.5 within the period specific to that rule, before the claim form has expired, the principles have been recently summarised in *ST v BAI (SA) (Trading as Brittany Ferries)* [2022] EWCA Civ 1037 at [62]. I shall follow these principles.

108. I have concluded in the circumstances that it is appropriate to extend time in this case for the following reasons.

109. First, I consider that there is a reasonably good, though not overwhelming, reason on the facts why the claimants have not so far effected service on the September Action defendants. That is, they have decided to await the conclusion of the court on the application to consolidate the September Action with the May Action. The decision on that point will have an impact on the available gateways. It seems to me that it was reasonable for the claimants to await the determination of its application for consolidation before pursuing their application for permission to serve out. This approach would not have justified a significant delay. However, the claimants issued the consolidation application in November 2022, which was well within the lifetime of the September claim form, and the claimants sought to bring on the application with all due expedition. It was not possible for the hearing to take place until now after the expiry of the claim form because of issues about the availability of counsel. It was necessary to have a full hearing because of the opposition of the Mehta defendants to consolidation. Had it not been for that opposition, it seems to me that the consolidation question could have been dealt with simply and quickly and it might well have proved unnecessary for there to be any extension to the claim form.

110. Second, the extension from which the September Action claim form expired, namely 23 March 2023, is comparatively modest.

111. Third it is very unlikely on the evidence before the court and on the submissions that have been made that any limitation defence which might be available to the September Action defendants will be prejudiced by the extension sought.

112. Fourth, it seems to me that, in accordance with the overriding objective, it would be appropriate to grant this extension of time so as to avoid an unnecessary further duplication of proceedings; as already explained it appears to me that there is in reality a single case (which will now be the consolidated case) and it would be appropriate for this to proceed without the need for yet another claim.

113. However, as I have already said, nothing that I have said in this regard should be taken as pre-empting any decision that will have to be made if a further extension of time comes to be sought. That will need to be justified in its own terms at the time it is brought.

Disposal

114. I shall make an order for consolidation and shall extend the duration of the claim form to 31 May 2023.