Neutral Citation Number: [2024] EWHC 975 (Ch)

Case No: BL-2018-000544

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

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

Date: 26/04/2024

Before :

MR JUSTICE ADAM JOHNSON

- -

Between :

(1) TONSTATE GROUP LIMITED (in liquidation)
(2) TONSTATE EDINBURGH LIMITED (in liquidation)
(3) DAN-TON INVESTMENTS LIMITED (in liquidation)
(4) ARTHUR MATYAS

Claimants

- and -

EDWARD WOJAKOVSKI & 11 Ors

Defendant

- and -

GIL WOJAKOWSKI

Respondent

- -
- -

Andrew Fulton KC and Sam Goodman (instructed by **Rechtschaffen Law**) for the **Claimants**
Karishma Vora (instructed by **Fieldfisher LLP**) for the **Respondent**

Hearing date: 10 April 2024

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Approved Judgment

This judgment was handed down at 12pm on Friday 26 April 2024 by circulation to the parties or their representatives and by release to the National Archives.

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Mr Justice Adam Johnson:

Introduction & Overview

1. The Tonstate Group of companies has been the victim of an admitted fraud, involving the unauthorised extraction of company funds by Mr Edward Wojakovski totalling over £13m. The relevant sums have come to be referred to as "*the Extractions*".

2. Zacaroli J entered Judgment against Mr Wojakovski (I will refer to him as Edward) in January 2020. The Judgment of Zacaroli J recognised the Claimants' proprietary interest in the Extractions, which at the time had been calculated as amounting to £13,594,642.43.

3. Since then, the Claimants have been seeking to recover the Extractions. Some of their efforts have been successful, but I was told at the hearing before me on 10 April 2024 that many millions of pounds remain unaccounted for.

4. That being so, this Judgment is concerned with another of the Claimants' efforts to make progress. This involves seeking information and documents relating principally to (i) assets held in an Israeli trust, and (ii) bank accounts outside Israel held in the name of Edward's father, now deceased, Mr Gideon Wojakowski.

5. The Israeli trust, known as the "*Wojakowsi Brothers Trust*", was established under the joint will of the late Gideon Wojakowski and his wife Miriam Wojakowski. Mrs Wojakowski is sadly also deceased. The Trustee, who is also executor of the joint estate of his parents, is the Respondent to the present application, Mr Gil Wojakowski. Gil is Edward's brother. The beneficiaries are Edward, Gil and their two other brothers. The trust assets are understood to include the beneficial interest in a BVI Company called Maxima Corporate Holdings Limited ("*Maxima*"). Edward's position has been that the beneficial interest in Maxima was previously owned by his parents, and so it can be expected to have fallen within their joint estate after the death of the last surviving spouse.

6. The application is brought against Gil on the basis that he can be expected to have access to, and control of, the documents of the Wojakowski Brothers Trust, and access to, and control of, documents relevant to the bank accounts of his late father. The basis for the application is the Court's power to make Orders for disclosure in aid of proprietary claims – that is to say, disclosure Orders to allow a Claimant to find out what has become of his own property: see Bankers Trust v. Shapira [1980] 1 WLR 1274.

7. I should mention that the Claimants' application as originally issued named both Edward and Gil as Respondents. At the hearing on 10 April 2024, however, I adjourned the application as against Edward. That was because of his lack of legal representation, which was a matter of particular concern given that in a Judgment in December 2023, Edwin Johnson J held Edward in contempt of Court and imposed a suspended sentence of 4 months imprisonment on him. The conditions of that suspended sentence include compliance by Edward with all Orders of the Court in the period up to 19 December 2024, which will obviously encompass any new Order made on the Claimants' present application against him. That being so, it seemed to me particularly important that Edward have the benefit of legal representation, if he can procure it, on the hearing of

the application as it affects him. So I adjourned the matter against him to the first available date on or after 7 May. But the application as against Gil continued, and as I mentioned in submissions at the hearing, he seems in any event a more natural Respondent to an application concerning the Wojakowski Brothers Trust and Gideon Wojakowski's bank accounts, given his status as trustee and executor.

8. A particular feature of this case is that Gil was not a Defendant to the original proceedings, unlike Edward. Another important feature is that Gil is an Israeli citizen and is resident in Israel. Likewise the Wojakowski Brothers Trust is an Israeli trust, governed by the law of Israel. These factors have certain consequences, as I will explain, in terms of the Court's power to make an Order affecting Gil, and regulating his conduct outside England & Wales.

Personal Jurisdiction

9. The first point is that the Court needs to be satisfied that it has personal jurisdiction over Gil. By this I mean the jurisdiction to adjudicate on the question whether in principle he should be made subject to an Order directed to him personally and requiring him to act in a particular way – here, to disclose documents and information.

10. There was argument about this at the hearing before me. At that stage, Gil was represented by solicitors and by counsel, Ms Vora. Despite Ms Vora's thoughtful submissions, made both in writing and orally, I determined the question of personal jurisdiction against Gil. That is because Gil is a director of an English company, Keystone MHD (General Partnership) Ltd, and had provided a registered address for service to Companies House under the provisions of s.1140 Companies Act 2006. Although his registered address has now changed to an address in Israel, in December 2023 when the present application was served on him, Gil's registered address for service was at 84 Brook Street, Mayfair, London. That is where the application was served, and service was thus good service and sufficient to establish personal jurisdiction over Gil. It does not matter that the application is not concerned with his business as a director of Keystone MHD (General Partnership) Limited, because s. 1140(3) provides that the section applies, "*whatever the purpose of the document in question*." The Editors of <u>Dicey, Morris & Collins on the Conflict of Laws</u> (16th Edn.) ("*Dicey*"), in dealing with s.1140 at para. 11-048, say that that its effect is that *"... service is good service on the director in his or her personal capacity, whether or not he or she is being sued as a director of the registered company."* So I think that service was certainly good service, and that is enough to give the Court personal jurisdiction in the sense I have described.

11. Ms Vora had other points, however, including an argument that England was not the *forum conveniens* for any dispute affecting Gil in relation to the Wojakowski Brothers Trust or his late father's bank accounts. However, I am not persuaded that the doctrine of *forum non conveniens*, which is concerned with where a case may most suitably be tried for the interests of all the parties and the ends of justice (see per Lord Goff in <u>Spiliada Maritime Corp</u> v. <u>Cansulex</u> [1987] 460 at p. 476C), has relevance in the present context. The action has already been tried. The context now is different: the present concern is about whether disclosure should be required in order to vindicate the Claimants' already established right to reclaim their property (or the traceable proceeds of such property). I do though consider that many of the same points relied on by Mr

Vora are relevant to consideration of what I will describe as the question of subject matter jurisdiction. I will come back to deal with this below.

12. For now though, and before saying something more about the relevant factual background, I should record that at the hearing before me, and after I had indicated my view that the Court did have personal jurisdiction over Gil, Ms Vora and Gil's solicitors, having taken instructions, thereafter played no further part in the hearing. That was because of a concern that by doing so, Gil might prejudice his position as regards recognition and enforcement of any Order in Israel. He did not wish to take any further steps which might, in the eyes of the Israeli Court, amount to a submission for the purposes of recognition and enforcement in Israel. That was, of course, a matter for him.

13. The question of recognition and enforcement abroad is, though, a different question to the question whether this Court should make an Order against a party over whom it has personal jurisdiction. At the conclusion of the hearing on 10 April, and having heard further submissions from Mr Fulton KC, I indicated that I would make an Order against Gil. This Judgment sets out my reasons for doing so. Before moving on to set out the remainder of such reasons, it is useful to summarise certain further points of factual background, which are relevant to the analysis which follows.

Some Additional Background

14. A good starting point is to consider the route the Extractions took, and to look at some of what is known about the efforts made to disguise their destination. This is not straightforward. The evidence is necessarily fragmentary. Nonetheless, a sufficiently clear picture emerges for present purposes. I summarise below what seemed to me the main points arising from Mr Fulton KC's submissions.

<u>Admitted Payments by the EW Companies to Maxima</u>

15. Edward was the owner and/or controller of a number of companies, referred to as the "*EW Companies*". These included Belfast Capital Limited, incorporated in the Isle of Man.

16. In a Witness Statement in the proceedings dated 23 April 2020, Edward accepted that funds representing the Extractions had been paid via the EW Companies to Maxima, which, as I have mentioned above (see at [5]), is the BVI company now believed to be owned beneficially by the Wojakowski Brothers Trust.

17. Once particular example of this which I was shown in argument is a payment by Belfast Capital Limited to Maxima in February 2013, in the amount of £360,000. The documents show payment from the account of Belfast Capital Limited at Barclays Bank in the Isle of Man, to an account of Maxima at Bank Leumi. This is a London account, at Bank Leumi's West End branch. Interestingly, the address given for Maxima on the Account Statement, although it is a BVI company, is "*Attn. E Wojakowski*" – presumably a reference to Edward – at St James's in London.

Funds paid to Mishcon de Reya

18. One of the main initiatives to recover the Extractions has involved a claim in respect of funds paid to Edward's former solicitors, Mishcon de Reya. The sums involved were over £3m. In a judgment dated 19 November 2022, Master Pester decided that the Claimants had properly shown that monies used to pay Mishcon's fees represented the traceable proceeds of Extractions.

19. The funds received by Mishcon came from an account at Bank of Singapore.

20. Master Pester's Judgment at [78] quotes from a Mishcon file note from October 2018, addressed to Edward, in which they said they would not be able to accept payment of any funds traceable back to the Extractions. They referred to funds possibly being transmitted from the EW Companies, "*to your Swiss accounts and to Singapore*".

21. An earlier Judgment of Sir Alastair Norris in February 2022 records some further background, as set out in Mishcon's Defence (see at [19] of the Judgment). This includes their averment that Mishcon were told that the funds paid to them "*derived from an inheritance*", and an averment that Edward had told Mr Gold, a partner at Mishcon, that the Bank of Singapore Account contained monies derived from Edward's deceased father (i.e., Gideon) as well as Edward's personal monies. Mishcon also said:

> "*During oral communications that he had with Kevin Gold, Gil had corroborated that [Edward] had access to family monies derived from their deceased father, as well as [Edward's] own personal monies, including profits derived from gold bullion trading*."

Quastus Holdings Limited and the Tutella Trust

22. Another successful enforcement effort has related to certain properties acquired using the Extractions. Three such properties, in Edinburgh, were acquired via a Jersey company known as Quastus Holdings Limited. In a Judgment dated April 2021, Zacaroli J made orders for the interests held by Quastus Holdings to be transferred to the Claimants, since they represented the traceable proceeds of Extractions (see [2021] EWHC 1122 (Ch) at [118]-[127]). In later Family Court proceedings, DJ Duddridge dealt with the differing accounts given over time by Edward as to the Scottish properties, before the matter was finally resolved by Zacaroli J's Order, and said:

> "*In his Form E, he [Edward] asserted that the Tutella Trust, a trust founded by his father and left to him under his father's second will dated 9 August 2013, held an interest in the Scottish properties. In his evidence to me, he told me that the Tutella trust had provided £2.5 million, amounting to 44% of the purchase price of the Scottish Properties, the balance being funded by extractions. Yet, in the civil proceedings, he has admitted that they were purchased using extracted funds, and allowed them to be transferred to Tonstate*."

23. Others had also been told a similar story. In submissions I was shown a file note recording a telephone conversation between Edward and representatives of Basel

Group, fiduciaries involved in the operations of the Tutella Trust and Quastus Holdings. Those individuals included a Samuel Dustow. The note is dated 13 August 2013, and the purpose of the call was to "*address certain queries on the above structure*" (this is a little obscure but seems to refer to a holding structure involving Tutella Trust and Quastus Holdings). The note continues:

> *"[Edward] began by advising ... that he had arranged for £2,500,000 to be remitted to the account of Quastus Holdings Limited and SD confirmed this had been received. SD referred to previous discussions and queries how much of the funds had been contributed by the settlor, Gideon Wojakowski. [Edward] explained that the funds were from a joint account but were made up entirely of the assets of his Father*."

24. The explanation given reflects a familiar technique of obfuscation, but there is further interest in the point, because at more or less the same time – in early August 2013 – there is also evidence of Gil being involved in arrangements for the setting up of the Tutella Trust and in the acquisition of at least one of the Scottish properties. One sees this in an email from a Ms Hamilton of the Tonstate Group, addressed to Gil, dated 5 August 2013. It is headed, "*Edinburgh property*", and reads as follows:

> "*Edward asked me to relay to you a message I received from Samuel Dustow.*
>
> *Sam rang to say the Company has been incorporated and the Trust is also up and running,*
>
> *The account opening forms are with the bank and he should have account numbers tomorrow so he can transfer funds.*
>
> *The lawyers in Scotland have also confirmed they have all they need*".

25. Samuel Dustow is the same individual from Basel Group who a few days later would participate in the call with Edward mentioned immediately above. Mr Fulton KC submitted, and I accept, that "*the Company*" referred to in the email must be Quastus Holdings, and that "*the Trust*" which was now "*up and running*" must be the Tutella Trust. Both were involved in the acquisition of Scottish properties using Extractions, and the email suggests Gil's involvement as well. Any such involvement was flatly denied by Gil, who said in his Third Witness Statement, "*I was also not involved in the acquisition of the Scottish properties*"; but as a matter of first impression at any rate, this blanket denial is rather difficult to reconcile with the narrative set out above and in particular with Ms Hamilton's email.

26. About two years later, documents in June 2015 show Edward organising a transfer of 250,000 Israeli Shekels to Gil (roughly £53,000 at current exchange rates), from Maxima's account at Bank Leumi (UK) Plc in London, reference "*Estate setup/advance*". In January 2017, Gil sent a letter to First Names Group in Jersey (a provider of corporate a fund services), saying he had been instructed "*by our mutual client*" to present a fee request letter, seeking payment of US$45,000 as fees in

connection with "*certain prosecutions and negotiations including inter alia organising and structure of the Tutella trust …*".

The Claimants' submissions

27. In agreement with the Claimants, I accept that this background shows evidence of the following:

i) the admitted filtering of the proceeds of the Extractions to Maxima, the BVI company believed to form part of the Wojakowski Brothers Trust (see [16] above);

ii) a general pattern of reliance by Edward on inherited monies to disguise the destination of the Extractions;

iii) consistent with that, an apparent commingling of the proceeds of Extractions with "*family monies*" said to have been derived from Edward's father (see the quotes above at [21], [22] and [23]);

iv) the use of offshore companies, trusts and bank accounts including bank accounts in Switzerland and in Singapore (as recorded by Mishcon – see above at [20]);

v) Gil's involvement in communications with Mishcon in England which corroborated the story they were told, and which Master Pester later rejected, that the funds paid to them were all "*family monies*" (see above at [21]);

vi) Gil's apparent involvement in establishing the structure involving Quastus Holdings and the Tutella Trust, which was used to acquire properties in Scotland with funds derived from the Extractions, and then used as part of a misleading narrative before the Family Court in England (see above at [22] and [24]-[25]);

vii) receipt by Gil of funds from Maxima's London bank account, on Edward's instruction, for services described as "*Estate setup/advance*"; and the later receipt of funds by Gil specifically in connection with the "*organising and structure of the Tutella trust …*" (see above at [26]).

Should the Court Make an Order?

The Bankers Trust Jurisdiction

28. Were it not for the fact that Gil is resident abroad, and that the Order seeks access to documents and information held at least partly abroad (it follows from what I have said above that at least some of Maxima's assets appear to be held in London), I would have no real hesitation in making a Bankers Trust Order against Gil.

29. The Bankers Trust jurisdiction is exercised where there is strong evidence that the Claimant's assets have been misappropriated. Where that is so, the Court will not hesitate to make strong Orders to ascertain the whereabouts of the Claimant's property. The present is obviously such a case, because it has already been established by Zacaroli J's Judgment that the Claimants' assets have been misappropriated.

30. As to exercise of the jurisdiction, Warby J (as he then was) set out a useful checklist of relevant factors in his Judgment in Kyriakou v. Christie Manson & Woods Ltd [2017] EWHC 487 (QB), at [14]-[16]. Consideration of such factors in this case leads to the conclusion that relief is justified:

    i) *There must be good grounds for supposing that the money or assets about which information is sought belong to the Claimant*: I think that is the position here, and obviously so, since the information is sought about the destination of the Extractions, and it has already been established by Zacaroli J's Judgment that the Extractions are the Claimants' property.

    ii) *There must be a real prospect that the information or documents sought will lead to the location or preservation of assets*: In my opinion, there is a such a real prospect in this case for the reasons already mentioned above at [27(i)-(iv)]. Information and documents are sought (broadly) about (a) bank accounts formerly held by Gideon Wojakowski, and (b) assets presently in the Wojakowski Brothers Trust. Such information has a real prospect of leading to the location or preservation of assets, because there is clear evidence of "*family monies*" being used to disguise the destination of Extractions, and such monies have been said specifically to include monies derived from Edward's deceased father, whose estate now forms part of the Wojakowski Brothers Trust in Israel. Indeed, it is already known – because Edward has admitted it – that at least some of the Extractions have been paid to Maxima, the BVI company which appears to form part of the Wojakowski Brothers Trust.

    iii) *The order should, so far as possible, be directed at uncovering the particular assets which are to be traced – or at any rate the order should not be any wider than is necessary in the circumstances*: In the present case, the Order sought is a wide one, for example because it seeks a schedule setting out the nature, location and estimated value of all assets over £5,000 owned by Maxima or held subject to the Wojakowski Brothers Trust, as well as copies of all bank statements for Maxima worldwide since 1 January 2000. However, in my opinion such terms are justified in the circumstances, given that (a) the admitted Extractions go back that far, (b) it is already known that some proceeds of the Extractions have been paid to Maxima, (c) the inference that Extractions may well have been commingled with assets of the Wojakowski Brothers Trust is a strong one, and (d) the information provided over time by Edward to various parties has plainly been incomplete and misleading and designed to obfuscate and confuse. A Claimant left in such a situation is in my view entitled to transparency by means of an Order designed to flush out the truth about his assets which has been deliberately withheld from him. He should not be obliged to engage in a game of blind man's buff and be told he must guess more precisely where his assets are, and that he can only have a disclosure Order if his guess is sufficiently accurate to allow narrower terms to be defined. That would be to encourage, rather than discourage, fraud. In short I think that Mr Fulton KC was again correct to say that in light of the lack of co-operation from Edward and the general lack of transparency, it is difficult to think of any workable alternative to the form of Order sought. The same logic applies to the other terms of the Order, going beyond those relating to Maxima's bank accounts.

iv) *The interests of the Claimant in obtaining the Order must be balanced against the possible detriment to the Respondent in complying with it, which may include an infringement or potential infringement of rights to privacy or confidentiality*: There will be some burden associated with complying with the Order, because it requires the collation of information and documents. In the circumstances though I do not see that as unduly burdensome. The issue of privacy and confidentiality is a more sensitive one, but such interests often have to give way to the need for disclosure in litigation, and here the need is a pressing one since there has been a fraud and the disclosure is needed to allow the Claimants to identify funds which have effectively been stolen from them. The Claimants will in any event give an undertaking not to make use of any information or documents obtained except for the purpose of recovering the Extractions.

v) *The applicant must provide appropriate undertakings*: I am satisfied that has been done, including as to paying the costs of compliance and as regards use of any information and documents disclosed (see immediately above).

Subject Matter Jurisdiction

31. All that being so, the principal interest in the case in my view, and the principal difficulty in dealing with it, arises from the fact that Gil is resident abroad and the Order seeks disclosure of information and documents held at least partly abroad, by regulating Gil's conduct outside the jurisdiction. This gives rise to what I have referred to above as a question of subject matter jurisdiction.

32. In Mackinnon v. Donaldson, Lufkin & Jenrette [1986] 1 Ch 482, Hoffmann J (as he then was) was asked to make a disclosure order under the Bankers Books Evidence Act 1879 against an American bank which carried on business in London, and which had caused to be registered in the jurisdiction the names and addresses of persons authorised to accept service on its behalf (p. 493A-B). The disclosure sought was in relation to documents in the United States. The applicant said that did not matter: it had been able to effect service in England and an Order could be made regulating the bank's conduct abroad. Hoffmann J disagreed. He said (p. 493C) this this argument:

> " *... confuses personal jurisdiction, i.e., who can be brought before the court, with subject matter jurisdiction, i.e. to what extent the court can claim to regulate the conduct of those persons*."

33. In making his point about subject matter jurisdiction, Hoffmann J referred to the seminal article by F.A. Mann, "*The Doctrine of Jurisdiction in International Law*", (1964) 111 Recueil des cours 146, in which Dr Mann said the fact that a state's judicial agencies are entitled to subject a person to their personal jurisdiction does not:

> " *... by any means permit them to regulate by their orders such person's conduct abroad. They may do so only if the state of the forum also has substantive jurisdiction to regulate conduct in the manner defined in the order*."

34. On the facts of Mackinnon the order sought was refused. Hoffmann J said that on principle the court should not, save in exceptional circumstances, impose a requirement on a non-party outside the jurisdiction to produce documents outside the jurisdiction concerning business outside the jurisdiction, in particular a foreign bank (p. 493F-G). He went on:

> "*The principle is that a state should refrain from demanding obedience to its sovereign authority by foreigners in respect of their conduct outside the jurisdiction*."

35. At p. 498H-499A, Hoffmann J said that just the same principle applies to cases under the Bankers Trust jurisdiction as to applications under the Bankers Books Evidence Act.

36. Although couched as an argument on *forum non conveniens*, Ms Vora's submissions effectively sought to rely on this principle. Her point was that it would be an excess of jurisdiction for the English Court to make any Order against Gil, even if he was subject to the Court's personal jurisdiction, since it would be wrong for the English Court to seek to regulate his conduct abroad, in relation to documents and information held abroad, relating to business and activities conducted abroad.

37. For his part, Mr Fulton KC argued that the approach in the Mackinnon case was somewhat outmoded, and said that a more expansive approach was justified in the modern environment of international business which is usually conducted electronically. He pointed to the approach of Butcher J in LMN v. Bitflyer Holdings Inc & Ors [2022] EWHC 2954 (Comm), a case involving a cryptocurrency fraud. Butcher J there took the view that the approach in Mackinnon was inapplicable since it was not known where the documents sought to be obtained were located, and said that the court was faced with novel challenges in dealing with cryptocurrency fraud and the approach adopted by Hoffmann J in 1985 in relation to banks was not apposite (see at [37]). Mr Fulton KC encouraged me to regard the question whether to make an order or not as one of general discretion, and discouraged use of the term "*subject matter jurisdiction*", with the implication that this was outdated and inappropriate.

38. For my part, I consider the concept of subject matter jurisdiction is still entirely apposite and indeed important. The question of making Orders against third parties abroad is not a matter of general discretion only. In an article in the Law Quarterly Review in 2010 ("*Jurisdiction in conflict of laws – disclosure, third-party debt and freezing orders*"), Professor Trevor Hartley explains the point in some detail (although he uses the US term "*jurisdiction to prescribe*" to describe the same concept). Professor Hartley puts it as follows (at p. 195): "*The idea behind all these phrases is that one state should avoid trespassing on the sovereignty of another*." To my mind, this expresses clearly why it is inadequate to say that the matter is one of general discretion only. I do not think it is. It is rather a matter of the Court showing appropriate restraint in cases where the exercise of its powers may clash with the sovereignty of another state. That is, properly speaking, a matter of jurisdiction, and in my opinion applying a label to the concept which encourages engagement with that point is entirely appropriate.

39. In Masri v. Consolidated Contractors (No. 2) [2009] 2 W.L.R. 621, Lawrence Collins LJ (as he then was) set out a detailed analysis of what he referred to as "*subject matter*

jurisdiction" starting at [30]. At [32] and [34], Lawrence Collins LJ explained that the existence of a *sufficient connection* with England will usually justify the exercise by the English Court of its powers. Thus, much will depend on the facts and the context. At [34], in discussing the Mackinnon case, Lawrence Collins LJ said (my emphasis added):

> *"That case, like In re Paramount Airways Ltd [1993] Ch 223, shows that what may be a sufficient connection with England to justify an order will vary with the circumstances. It does not decide that the court will never have jurisdiction to make orders under the Bankers' Books Evidence Act 1879 against the London branch of a foreign bank in relation to papers held by head office, nor that it will never be possible to issue a witness summons against the bank's London branch officer in respect of head office transactions. The result might have been different if head office held papers relating to London transactions. What it says is that any power or discretion must be exercised in accordance with internationally recognised principles on the limits of the exercise of jurisdiction".*

40. It seems to me that this provides the answer to the issues in the present case. The Mackinnon decision does not establish a blanket prohibition that inhibits the making of the Order sought in this case. Hoffmann J's finding was only that on the facts of the case before him, there was insufficient connection with England to justify the Court acting on the basis of internationally recognised principles on the exercise of jurisdiction. But that was in a case involving a commercial third party – a bank – which operated wholly abroad in connection with the relevant transactions. Hoffmann J moreover considered that banks fell into a special category, since (see p. 494C-D), *"... their documents are concerned not only with their own business but with that of their customers. They will owe their customers a duty of confidence ... . That duty is in some countries reinforced by criminal sanctions ...*". Even in the case of banks, though, Hoffmann J considered that there might be exceptional circumstances justifying a disclosure order in relation to documents abroad. He gave as an example a decision of Templeman J in London and County Securities Ltd (In Liquidation) v. Caplan (unreported) 26 May 1978, in which an order was made requiring an English bank to procure from its foreign subsidiaries documents concerning accounts connected with the defendant in order to trace assets said to have been embezzled. Hoffmann J said the approach was justified by "*a commercial equivalent of hot pursuit*" (see at p. 498G-H).

41. In my opinion, a number of factors here justify the conclusion that the English Court's power to order disclosure can properly be exercised in accordance with internationally recognised principles on the limits of the exercise of jurisdiction:

    i) I consider there is sufficient connection with England. The narrative set out above indicates that Gil has not occupied the position of an entirely arms-length commercial third party, like the bank in the Mackinnon case. He was involved in making representations to Mishcon, a firm of English solicitors, as to the derivation of the funds paid to them which have now been identified (by means of Master Pester's judgment) as the proceeds of Extractions (see above at [18]-[21]). Moreover, there is evidence he was involved in the setting up of the Tutella Trust and of Quastus Holdings, which were involved in the acquisition

of property in Scotland, and more importantly were then used by Edward in the Family Court proceedings in England in an effort to disguise the true destination of certain of the Extractions (see above at [24]-[25]). It seems that Gil received a fee or fees for his efforts (see [26] above). I should mention here that Gil in his evidence strongly denied any wrongdoing, and should emphasise that I do not make any such findings against him. I merely say that the evidence available at this stage, which I have described, justifies the conclusion that his activities have a sufficient connection to the jurisdiction to warrant the making of the Order sought against him.

ii) I also think it significant that one of the bank accounts of Maxima so far identified is in London (see [17] and [26] above). Thus, at least some of the documents and information sought by the Order relate to assets in the jurisdiction, and there may be others. Granted, other assets will likely be elsewhere, but their whereabouts are not known. In such a case in my opinion, the fact that at least *some* relevant assets (and thus, one would assume, documents) are within the jurisdiction, helps justify the conclusion that there is a sufficient connection with the jurisdiction. Again, the context is an international fraud and the victim should not be disadvantaged by not being able to specify clearly where all potentially relevant assets and related documents and information are located (see the comments made at [30(iii)] above).

iii) It is true that this is not a case of hot pursuit, but like Butcher J in LMN v. Bitflyer, I consider it significant in jurisdictional terms that the case involves a fraud, indeed in this case one which has now been established, and it is important that there should be no further avoidable delay in identifying the whereabouts of the Claimants' assets.

iv) Ms Vora in her Skeleton Argument submitted that any effort to obtain documents or information should be by way of a letter of request under the 1970 Hague Evidence Convention (*cf* Gorbachev v. Guriev [2022] EWCA Civ. 1270 at [90]). As Mr Fulton KC submitted, however, we are now past the stage of seeking evidence for use at trial because liability has already been established. The context is different to that in Gorbachev v. Guriev, which was concerned with a pre-trial application for third party disclosure. What we are now concerned with is giving effect to an existing judgment which has already determined that Edward has defrauded the Claimants of their property. The issue is about exercise of the Court's power to compel production of documents and information designed to reveal the location of that property so it can be recovered. The Court has never hesitated to make strong orders for disclosure in such circumstances (see above at [29]).

v) Finally, I see no real danger of Gil being subject to any risk of complaint by the beneficiaries of the Wojakowski Brothers Trust (*cf* the position of third party banks, described by Hoffmann J in the Mackinnon case). The beneficiaries are his brothers. They obviously include Edward, who is in England and who if necessary can be ordered to provide consent for any relevant disclosures by Gil. It would seem very unlikely that either of the other beneficiaries would wish to object about the disclosure of documents and information which on one view of it will only serve to dispel the inference that their trust fund has been adulterated with stolen monies, or alternatively will assist in disentangling from the fund

assets belonging to someone else which do not properly belong there. In any event, as Mr Fulton KC submitted, there is no evidence of Israeli law which shows clearly that they would have any valid complaint against Gil, or that Gil is likely to be at risk of any sanction or penalty for complying with any Order made by this Court.

Conclusion & Disposition

42. For all the above reasons, I was content to make the Order sought against Gil. The position of Edward must await the hearing now to be scheduled in early May 2024, once he has had further opportunity, as I have already mentioned, to try and secure legal representation.