IN THE HIGH COURT OF JUSTICE
QUEENS BENCH DIVISION
COMMERCIAL COURT

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 6th February 2002

B e f o r e :

THE HONOURABLE MR JUSTICE MOORE-BICK

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Mohamad Ali Aoun	**Claimant**
- and -	
Hassan Bahri	**First Defendant**
- and -	
Costas Angelou	**Second Defendant**

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Mr. Nigel Jacobs (instructed by **Jeffrey Green Russell**) for the claimant
Mr. Graham Dunning Q.C. and Mr. Stephen Houseman (instructed by **Constant & Constant**) for the first defendant
Mr. Huw Davies (instructed by **Barlow Lyde & Gilbert**) for the second defendant

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JUDGMENT

Pursuant to the Practice Statement issued by the Master of the Rolls on 9th July 1990 I hereby certify that the attached text records my judgment in this matter and direct that no further record or transcript of the same need be made.

The Hon. Mr. Justice Moore-Bick

Mr Justice Moore-Bick:

1. This is an unusual application for security for costs. The claimant, Mr. Aoun, is a businessman who for some years has been involved in various commercial enterprises mainly related to the operation of vessels carrying liquefied petroleum gas. Until some time in 1999 these enterprises were carried on in conjunction with the defendants, Mr. Bahri and Mr. Angelou. At some point during that year, however, the parties' relationship collapsed and Mr. Aoun has now brought these proceedings against his former business associates to recover very substantial sums by way of damages for breach of contract, breach of fiduciary duty and fraud. It is quite clear that the breakdown of their relationship has given rise to a considerable degree of animosity between the parties.

2. Mr. Aoun was born in Lebanon and is a Lebanese citizen. However, following his marriage in 1987 he and his wife went to live in Australia. He acquired Australian nationality the same year. Until recently he owned a house in Australia, but over the past few years he has lived in various countries including Dubai, Greece and latterly the United Kingdom.

3. The present action was begun on 3rd February 2000, but it is not the only litigation that has been commenced between these parties. In May 2000 Mr. Angelou began proceedings in the First Court of Piraeus against Mr. Aoun which led to the filing by Mr. Aoun on 14th June 2000 of a pleading in which he gave his address as Beirut, Lebanon. On 13th October 2000 Mr. Bahri's solicitors, Constant & Constant, wrote to Mr. Aoun's then solicitors, Clyde & Co., seeking their agreement in principle to provide security for costs. Clyde & Co. responded by saying that Mr. Aoun lived in Athens, not Beirut, but that they would take his instructions. Despite two reminders, no proposals were forthcoming and so Constant & Constant issued their application on 5th April this year. A similar application was issued by Barlow Lyde & Gilbert on behalf of Mr. Angelou on 20th April.

4. The defendants submit that the court has jurisdiction under rule 25.13(2) to order Mr. Aoun to provide security for costs on the following grounds:

   (a) that he is ordinarily resident outside the jurisdiction and is not a person against whom a claim can be enforced under the Brussels or Lugano Conventions (rule 25.13(2)(a));

   (b) that he has changed his address since the claim was commenced with a view to evading the consequences of the litigation (rule 25.13(2)(d));

   (c) that he gave an incorrect address in the claim form (rule 25.13(2)(e)); and

   (d) that he has taken steps in relation to his assets that would make it more difficult to enforce an order for costs against him (rule 25.13(2)(g)).

5. The question of Mr. Aoun's ordinary place of residence assumed a particular prominence in this application and the evidence relating to it developed significantly in the course of preparation for, and even during the course of, the hearing. It was principally because of the apparently unsatisfactory way in which Mr. Aoun had dealt with this issue that when the matter came before me in July I took the unusual step of directing that he should attend the hearing of the application to enable him to be cross-examined. It is fair to say, however, that he did not resist the application; indeed, he seemed very willing to make himself available for that purpose.

6. Mr. Aoun did attend the hearing and was cross-examined at some length. His evidence assisted me in a number of respects, both in relation to the question of his ordinary place of residence and in relation to other issues. For reasons that will become apparent in due course, it became clear in the course of argument that Mr. Aoun's ordinary place of residence is a matter of some sensitivity and I therefore propose to return to it after I have considered the other heads of jurisdiction on which the defendants rely.

Incorrect address given in the claim form

7. It is convenient to begin with the defendants' contention that the address given for Mr. Aoun in the claim form, 112 Agiou Nikolaou Street, Glyfada, Athens, was incorrect. Mr. Dunning Q.C. (whose submissions on this issue were adopted by Mr. Davies) submitted that Mr. Aoun's evidence concerning his address in Athens at and around the time of the issue of the claim form was wholly unsatisfactory and that in the absence of any more reliable evidence I should find that he had left the address in Agiou Nikolaou Street during January 2000 as his first witness statement implied.

8. In that first witness statement Mr. Aoun gave a brief account of where he had lived between his marriage in 1987 and the present time. He said that he had lived in Australia until 1992 when he moved to Geneva. After living there for about a year he moved to Dubai where he remained for a few more years. He eventually moved with his family to Athens in August 1999. He said that from then on he had lived in Greece until he and his family moved to London in early December 2000.

9. Mr. Aoun originally said that he had moved into a house here in London on 2nd December, the date on which the tenancy agreement had been signed. It subsequently became clear from an examination of his passport, however, that he did not enter the United Kingdom until 7th December 2000. This was one of the discrepancies in his evidence that Mr. Dunning relied on, but I am unable to attach a great deal of importance to it. I accept Mr. Aoun's explanation that when he made that statement he checked the date of the tenancy agreement to see when he obtained possession of the house, but did not also check with his passport the date on which he actually entered the country. It may be said that he was less careful in giving his evidence than he should have been, but nothing turns on the precise date and I can see no reason why Mr. Aoun should have wished to pretend that he moved in on 2nd rather than 7th December.

10. In a witness statement made at the end of June in response to Mr. Aoun's evidence Mr. Dickinson of Constant & Constant took issue with much of what Mr. Aoun had said about his place of residence in the period between 1997 and 1999. He pointed out, among other things, that Mr. Aoun had been in Athens on several occasions prior to 1999 and that in 1997 he had given an address in Beirut to the Lebanese police rather than an address in Dubai. I do not attach any importance to the fact that his passport shows that he was in Greece on various occasions before 1999. His statement that he entered Greece for the first time in 1999 (another apparent discrepancy relied on by Mr. Dunning) was made in the context of dealing with his permanent residence, not relatively brief visits for business or other reasons. It is quite clear that for many years Mr. Aoun has travelled a very great deal on business, both to Greece and to many other countries.

11. In a second witness statement Mr. Aoun responded to Mr. Dickinson by giving the various addresses at which he said he had resided in Greece from February 1999. These included the address at 112 Agiou Nikolaou Street, Athens, where he said he had lived between 1st March and about May 1999 and an address at Zaimei Street, Athens, where

he said he had lived from about May 1999 to April 2000. Finally, he said he had lived at another address in Athens, 1 Fillinon Street, between June and December 2000.

12. If what Mr. Aoun said in that witness statement were true, it would follow that he was not living at 112 Agiou Nikolaou Street when the claim form was issued on 3rd February 2000. However, in a statement made on the first morning of the hearing he sought to correct what he said had been a mistake by his solicitors, saying that he had lived at 112 Agiou Nikolaou Street between December 1999 and 28th February 2000. He said that from 1st March 2000 to October or November 2000 he had an apartment at Zaimei Street and from June to December 2000 he had taken a house on Fillion (sic) Street for his family.

13. As Mr. Dunning pointed out, this degree of uncertainty on the part of Mr. Aoun as to his address of two years ago is surprising and does tend to cast some doubt on his veracity. However, I think that one can now see that something did indeed go wrong when his evidence was compiled. Mr. Aoun had exhibited to his first statement rent receipts relating to two apartments at 112 Agiou Nikolaou Street, one on the second floor and one on the third floor. He had put these forward as "a copy of a letter from the landlord" showing that when he left the property all outstanding amounts had been paid. The receipts are both dated 8th December 1999 and record the payment of rent for the second floor apartment and the third floor apartment for the period up to 3rd January 2000. They can scarcely be described as "a letter from the landlord", so I am inclined to accept Mr. Aoun's explanation that at least in this respect there was a mistake. In those circumstances I am unable to accept Mr. Dunning's submission that these documents, when taken together with his statement, are reliable evidence that Mr. Aoun left that address on 3rd January.

14. Mr. Aoun exhibited to his second statement an agreement terminating a lease on the second floor apartment at 112 Agiou Nikolaou Street. It is dated 8th February 2000 and recites the fact that he and a Mr. Tzoutzourakis had entered into a lease of the second floor apartment on 3rd December 1999 and declares that Mr. Aoun thereby terminated the lease and returned the keys. The agreement describes the apartment as "already evacuated". Mr. Aoun had said nothing about the occupation of these two separate apartments in any of his statements, including his fourth statement made just before the hearing began, but he did give the impression that he and his family had moved out of their apartment in Agiou Nikolaou Street at short notice because of his fear of Mr. Bahri. Indeed, on many occasions during his evidence he emphasised that that he and his family had been continually harassed by Mr. Bahri while they were living at different addresses in Athens.

15. In cross-examination, however, Mr. Aoun gave an account of his occupation of the apartments at Agiou Nikolaou Street which differed in at least one important respect from what he had said previously. He said that he and his family had originally occupied the second floor apartment and his parents the third floor apartment, but that he had moved into the third floor apartment when his parents moved out to emigrate to Australia. However, Mr. Aoun's evidence of when his parents had gone to Australia was very vague. At an earlier point in his evidence he had said they had left Greece "very late in 2000", but that clearly would not fit with the evidence of the agreement terminating the lease and he started to bring the date of their departure back to May or even April that year. However, even that was two or three months after the date of the termination agreement. He did not provide a satisfactory explanation for any of these obvious discrepancies.

16. Mr. Dunning submitted that in this matter, as in many others, Mr. Aoun was caught up in his own lies. I would agree that Mr. Aoun is not a witness whose evidence, at least in relation to this matter, can be relied on with any great degree of confidence, though I think that is due as much to his willingness to make ill-considered statements as to any desire to mislead. Mr. Dunning also pointed out that by his own admission Mr. Aoun had not wanted his address to become known to Mr. Bahri and that he knew that the claim form would be served on both defendants soon after it had been issued. All that is quite true, but the fact remains that the documents do tend to support the conclusion that Mr. Aoun rented both apartments at Agiou Nikolaou Street at least until early February 2000 and that he gave one up at about that time. I think that it is more likely than not that he did occupy one or other of them during that period. I am less inclined to accept that he occupied the third floor flat until the end of that month, but that is another matter. For these reasons, despite the fact that the evidence is not wholly satisfactory, I am not persuaded that the address given in the claim form was incorrect at the time it was issued.

Change of address since the commencement of the action with a view to evading the consequences of the litigation

17. It is common ground that Mr. Aoun has changed his address on more than one occasion since the commencement of the action. The only question is whether he has done so with a view to evading the consequences of the litigation. His first change of address occurred when he moved from 112 Agiou Nikolaou Street, but it has not been suggested that that was prompted by anything to do with the present action.

18. It might be thought that paragraph (2)(d) is only concerned with a change of address from that given in the claim form, but it is not expressly limited in that way and I can see no reason to construe it as if it were. Paragraph (2) as a whole is concerned only with establishing the court's jurisdiction to order security for costs; the decision whether to order security in any given case is a matter of the court's discretion and will depend on the particular circumstances of the case. The court can in any event only make such an order if it is satisfied that it is just to do so (rule 25.13(1)). In these circumstances I think Mr. Dunning is right in submitting that paragraph (2) should generally be given a broader rather than a narrower construction. Apart from that, however, paragraph (2)(d) is aimed at the claimant who seeks to go to ground to avoid his obligations and it is quite possible, therefore, for the mischief at which paragraph (2)(d) is aimed to arise on a second or subsequent change of address.

19. For similar reasons I also accept Mr. Dunning's submission that the expression "the consequences of the litigation" should not be construed as being confined to an order for the payment by the claimant of the defendant's costs at the end of the proceedings. Bringing proceedings in this country gives rise to various consequences for a claimant, one of which, depending on the circumstances of the case, is that he may be ordered to provide security for the defendant's costs. This is simply one of the many incidents of litigating in this country under the existing rules of court. A claimant who changes his address during the course of the action with a view to avoiding any of the ordinary consequences of the litigation invites inquiry into whether he is likely to honour a liability for costs if he is unsuccessful at the end of the day. It is consistent with the purpose of the rules, therefore, for the court to have the power in such cases to consider whether, as a matter of discretion, an order for security should be made.

20. Towards the end of 2000 Mr. Aoun left Greece and moved with his family to this country. Mr. Dunning submitted that one, indeed the primary, reason for his doing so

was his desire to avoid providing security for the defendants' costs of these proceedings. But even if that was not the dominant motive, the provisions of paragraph (2)(d) were satisfied if it was a material factor behind his decision.

21. The first request for security for costs was made in October 2000, some two months before Mr. Aoun left Greece. Mr. Dunning pointed out, quite correctly, that Mr. Aoun had no previous connections with this country, whether in the form of a right of abode, a previous period of residence, existing family ties or current business interests. On the contrary, all his connections were with Greece, the Middle East (in particular Lebanon and Dubai) and Australia.

22. Mr. Aoun explained in cross-examination his motives for coming to live in this country and for bringing his family here. They included a desire to live in a safe and congenial environment and to bring up his children in an English-speaking society. He accepted that those particular objectives could have been achieved by moving back to Australia, but he said that he wished to remain in Europe in order to be able to build up his business interests without having to overcome the difficulties posed by a substantial time difference and in order to be able to give his personal attention to the present proceedings. For these reasons this country, and in particular London, was for him an obvious choice.

23. Having heard Mr. Aoun give evidence on these matters I am satisfied that his decision to take up residence with his family in this country was motivated by personal and family considerations rather than a desire to avoid giving security for costs. Despite all the unsatisfactory aspects of Mr. Aoun's evidence about his address in Greece at any given time, it seems reasonably clear that he was living in Athens in the autumn of 2000, although his wife and children returned to Australia at some time during the latter part of the year. I have no reason to think that before the defendants made their request for security in October 2000 Mr. Aoun himself was aware of the court's jurisdiction to order a claimant to provide security for a defendant's costs. When that request was made his solicitors said they would take his instructions and no doubt they did so. It is likely that in the course of doing so they outlined the terms of rule 25.13 insofar as they might relate to him and that they gave him a broad explanation of the circumstances in which the court might be expected to make an order of that kind. Mr. Jacobs submitted that since Greece is a Brussels Convention country, Mr. Aoun, as his solicitors must have been aware, was no better off coming to London than he would have been staying in Athens. That may be so, but moving to Australia would be a different matter altogether. Mr. Aoun said in evidence that his wife and children had returned to Australia towards the end of 2000 and had lived with her brother for a time because their own house had been let, but he did not say that they had left Greece in a hurry or that they had gone to Australia as a temporary measure because they had nowhere else to go. In this connection Mr. Dunning drew my attention to a document filed on Mr. Aoun's behalf in Greek proceedings on 6th December 2000 in which it was stated that his family resided with him permanently in Australia.

24. I think it is certainly possible that, having moved his family back to Australia with the intention of joining them there, Mr. Aoun decided, on receiving advice from his solicitors about the court's jurisdiction to order security for costs, to move to this country rather than Australia. However, there is very little positive evidence to support that conclusion and in the end I do not consider that the evidence justifies drawing that inference. Accordingly, I am not satisfied that Mr. Aoun falls within paragraph (2)(d).

Taking steps in relation to his assets that would make it difficult to enforce an order for costs against him.

25. Mr. Dunning submitted that unlike sub-paragraph (d) sub-paragraph (g) of rule 25.13(2) is worded objectively. It is not concerned with the claimant's motivation, though that may be relevant to the exercise of the court's discretion, but with the effect of steps he has taken in relation to his assets. This is a question of construction that was touched on by Park J. in *Chandler v Brown* (unreported 20th July 2001) but left open for decision on another occasion.

26. In my view Mr. Dunning's submission is correct. The contrast between the wording of sub-paragraph (g) and that of sub-paragraph (d) is marked and I can see no basis for construing sub-paragraph (g) as if it read "with a view to making it difficult to enforce an order for costs against him". If that had been the intention of those who drafted the rules they could very easily have said so. Nor is there any need to construe the provision in that way in order to limit its impact on claimants given the fact that the court can in any case order security only if it is satisfied that it is just to do so.

27. In the present case there is little evidence as to the extent or nature of Mr. Aoun's realisable assets other than the house in Australia. Certainly there is no evidence that he has any significant assets in this country which might readily be made available to satisfy a liability for costs. He says that he has an indirect interest in an office building in Greece and in a number of LPG carriers, but in each case the property in question is owned by a private overseas company with bearer shares. Leaving aside any question of mortgages or other prior interests in the property itself, Mr. Aoun is not the majority shareholder in any of these companies and his shares would not represent assets readily available to satisfy a liability for costs. The company through which he now does business is half owned by his brother-in-law. It is incorporated in the British Virgin Islands and does not appear to own any substantial assets.

28. The only step taken by Mr. Aoun in relation to his assets on which the defendants can rely is the recent sale of his house in Australia. The sale price was the equivalent of about £400,000. A freehold property (provided it is unencumbered) is clearly an asset against which a judgment for costs could be enforced and that remains the case even though the property is situated abroad, though the ease with which that can be done will no doubt depend on the country in which it is situated. Enforcement against property in Australia should not pose undue difficulties. The only question, therefore, is whether the sale of that property has made it difficult to enforce an order for costs against him. In this context it should be borne in mind that if this litigation does not reach a premature conclusion, the costs are likely to be very substantial indeed and that Mr. Aoun does not appear to have other assets readily available to satisfy any order for costs that might be made against him. In these circumstances any step in relation to that asset which makes it difficult to enforce an order for costs against it will, on the evidence currently available, make it difficult to enforce an order for costs against Mr. Aoun.

29. Mr. Aoun says that he intends to put about a quarter of the proceeds of the sale of his Australian house into a new house he is buying in London and to use the balance for the purposes of his business. In these circumstances I have no doubt that the sale of his Australian property has had a significant effect on the ease with which an eventual judgment for costs could be enforced against him. Converting that asset into cash makes it readily disposable, but that by itself is not enough since it might represent nothing more than a step on the way to converting it into other assets of equal value. For example, if the whole of the sale price were reinvested in a new house in this country, it

would be easier to enforce an order for costs against him than it was before. The same would probably be true if his intention were to reinvest the sale proceeds in ordinary securities. In the present case, however, the realisation of the Australian property is the first step towards making use of it to provide capital for his business ventures. There is nothing in the evidence to suggest that the bulk of the proceeds of sale will remain available in one form or another to satisfy an order for costs. In my judgment Mr. Aoun's sale of the Australian house is, therefore, a step in relation to his assets that would make it difficult to enforce an order for costs against him. This is sufficient to give the court jurisdiction to make an order for security for costs.

Mr. Aoun's ordinary place of residence

30. In further witness statements made at the end of June this year Mr. Dickinson of Constant & Constant and Mr. Wise of Barlow Lyde & Gilbert raised for the first time the question of Mr. Aoun's permission to stay in this country, pointing out that neither he nor any member of his family has British citizenship. The introduction of this question, and Mr. Aoun's response to it, have been mainly responsible for the expansion of the issues well beyond the bounds of what might normally be expected on an application of the present kind.

31. Mr. Aoun entered this country as a visitor in December 2000 with permission to remain for up to six months. He was subject to no restrictions other than a prohibition against taking up employment or having recourse to public funds. Since then he has travelled abroad on various occasions and each time he has returned he has been granted a fresh entry permit in the same terms.

32. It was common ground that the test for "ordinary residence" in this country is whether the person concerned is habitually and normally resident here, apart from temporary or occasional absences of long or short duration: see *R v Barnet London Borough Council ex parte Shah* [1983] 2 A.C. 309. By "habitually resident" is meant residence adopted voluntarily and for settled purposes (per Lord Scarman at page 342). Mr. Aoun has been living in this country with his wife and family since December 2000, he is in the course of buying a house here, his children are at school here and his youngest child was born here. There is no doubt that he is living here voluntarily and I have no doubt that he would like to continue living here for the foreseeable future. I think it is clear that he has adopted this country as his place of residence for settled purposes, at any rate for the time being, and he has put in train an application for permission to reside here in order to establish a business. I have no doubt that he is at the moment ordinarily resident here.

33. However, Mr. Davies (whose argument on this issue was adopted by Mr. Dunning) submitted that Mr. Aoun cannot be regarded as ordinarily resident for the purposes of rule 25.13(a) because he is not here lawfully. In support of his argument he relied on another passage in the speech of Lord Scarman in *Shah* at page 343H-344A where he said

> "I unhesitatingly subscribe to the view that "ordinarily resident" refers to a man's abode in a particular place or country which he has adopted voluntarily and for settled purposes as part of the regular order of his life for the time being, whether of short or of long duration.
>
> There is, of course, one important exception. If a man's presence in a particular place or country is unlawful, e.g. in breach of the immigration

> laws, he cannot rely on his unlawful residence as constituting ordinary residence"

34. Mr. Davies submitted that although Mr. Aoun has permission to remain in this country as a visitor, he obtained that permission by misleading the immigration authorities when he entered the country. He also submitted that by reason of his business activities in this country Mr. Aoun is in breach of the conditions attaching to his permission to enter and remain here.

35. These are serious allegations which depend in part on findings as to what took place when Mr. Aoun presented himself at immigration control on last entering this country. They raise issues which in my view are not really suitable to be determined on an application for security for costs, and even though in this case Mr. Aoun has given evidence and so has had an opportunity to respond to the points made against him, I do not think that there has been an opportunity to investigate the matter fully. It would be particularly unfortunate if I were to express any view about Mr. Aoun's immigration status on the basis of incomplete evidence that might have an effect, one way or the other, on his application for a residence permit. That is a matter best left to the Home Office to be determined on its merits in the ordinary way. I do not in any way criticise the defendants for raising this question. However, since I have already reached the conclusion that I have jurisdiction to make an order for security for costs under rule 25.13(2)(g), it has become unnecessary to decide it and in all the circumstances I think it preferable not to do so.

Discretion

36. Mr. Dunning submitted that there are at least three grounds on which it would be appropriate for the court to make a substantial order for security for costs in this case: the shortage of assets readily available to meet an order for costs; Mr. Aoun's lack of any substantial connection with this jurisdiction; and the nature of his response to this application in general and the unsatisfactory and contradictory nature of his evidence in opposition to it in particular. To these he added the limited prospects of success at trial, although he accepted that that is a factor which the court can properly take into account only in clear cases.

37. Although the court's discretion in rule 25.13(1) is quite general, the terms of rule 25.13(2) itself provide some indication of the circumstances which are likely to be relevant to its exercise in the case of a personal litigant. Broadly speaking, these are that there are grounds for thinking that the claimant's assets may be located in a jurisdiction where they are not readily amenable to execution or that the claimant himself may take steps to avoid his liability. In this context Mr. Dunning drew my attention to the decision of the Court of Appeal in *De Beer v Kanaar & Co*. EWCA CIV 1318 (unreported, 9th August 2001) in which the court relied on doubts about the claimant's probity, on the difficulties in enforcing an order for costs over assets abroad and on the ease with which those assets could be moved or otherwise disposed of.

38. I do not propose to analyse Mr. Aoun's evidence at length, but, as I have already indicated, I accept Mr. Dunning's submission that it was shot through with inconsistencies and discrepancies. Many of these seem to me to reflect an exceptionally casual attitude to giving evidence rather than a deliberate intention to mislead; others are less easily explained. Nonetheless, I think that there are more solid grounds in favour of making an order in this case. I have already commented on the nature and extent of Mr. Aoun's assets and on the manner in which he proposes to deal with them.

Apart from the proceeds of his Australian property they are not in a form which makes them readily available to meet an award of costs. Although Mr. Aoun has offered to ensure that shares that he holds are retained by his solicitors pending the outcome of the action, they do not represent assets which the defendants could easily realise, as I have already explained.

39. As far as the proceeds of the Australian property are concerned, there are no strong grounds for thinking that Mr. Aoun would deliberately place these beyond the reach of the defendants, but he has expressed an intention to invest most of them in his business ventures. As far as one can tell, therefore, they will no longer be available to meet a liability of this kind and there is no reason to think that they will in fact generate other assets which might take their place. I do not think it is enough, therefore, for Mr. Jacobs to say that Mr. Aoun is bringing his assets into this country. One is entitled to see what is the likely outcome of the steps he has already taken in relation to those assets.

40. Mr. Aoun says that he intends to invest part of the sale proceeds in a new house which he is currently buying in this country and it has been suggested that that property, which he says is mainly to be financed by an unsecured loan from his brother-in-law, would itself provide sufficient security for any liability to the defendants. I am unable to accept that. Even if the new house were to be conveyed into Mr. Aoun's name alone without any encumbrances, it would be difficult to ensure that it remained available for satisfying an order for costs without formal steps being taken to preserve the defendants' position. In any event, in the case of an asset of this kind it is generally preferable to require the claimant to provide security in the form of a bank guarantee or similar instrument which can be supported by a charge on the property: see *AP (UK) Ltd v West Midlands Fire and Civil Defence Authority* (Court of Appeal, unreported, 16th November 2001). If the claimant is unable to provide a commercial guarantee against the security of the property, it is unlikely that the court will require the defendant to accept security in the form of a charge, though it may do so in an appropriate case. There is nothing, however, to suggest that that would be appropriate in the present case.

41. Mr. Dunning made two further submissions based on the nature of the claim being made by Mr. Aoun in these proceedings. The primary way in which Mr. Aoun puts his case is as a claim for damages for fraud and breach of fiduciary duty in relation to the management and operation of a number of vessels which the parties had agreed to operate as a joint venture. He seeks to recover by way of damages the diminution in value of his beneficial interest in the various companies through which the joint venture was conducted. Recently, however, Mr. Aoun has indicated that he will seek to amend his particulars of claim to allege in the alternative that there was a partnership between himself and the two defendants. The underlying facts on which he relies are the same, however, and it is clear that if this litigation is fought to judgment it will prove burdensome and very expensive because the parties' business arrangements encompassed nine vessels, each separately owned, and a further eight companies.

42. Mr. Dunning submitted that, however it is formulated, Mr. Aoun's claim is manifestly weak. He submitted, therefore, that this is one of those cases in which the court can take into account the merits of the claimant's case as a factor going to the exercise of its discretion. He also submitted that an additional reason for ordering security for costs in the present case is to prevent Mr. Aoun from making expansive allegations against the defendants that can only be countered at great expense.

43. I can well understand why Mr. Dunning makes those submissions, but this is clearly a complex case. On an application of this kind the court does not need to, nor should it in my view, embark on any assessment of the merits. As far as Mr. Dunning's second point is concerned, it is true that the allegations of fraud and breach of fiduciary duty are not pleaded as fully as they might be, but the pleadings were settled by highly respected counsel and I see no grounds for thinking that there was inadequate material to support them. I do not think it appropriate, therefore, to take either of these matters into account in reaching a decision.

44. What seems to me to be most important in this case is the fact that Mr. Aoun is pursuing very substantial litigation against these two defendants who will inevitably be put to a great deal of expense in meeting his allegations. Although he is currently settled in this country, he has few assets here of a fixed nature and he has, moreover, shown that he is eminently capable of making a home for himself and his family in different parts of the world when circumstances make it desirable to do so. In my view there are solid grounds for thinking that if he is unsuccessful in this litigation and is ordered to pay the defendants' costs it will be difficult to enforce such an order against him. Although it appears to be accepted that he is indirectly interested in the ships which he operated with the defendants as a shareholder of the owning companies, the extent of his interest is disputed and the value of the equity in the ships is uncertain. His offer to deposit his shares in the owning companies is therefore of limited value. He has said that he is also willing to deposit with his solicitors his shares in a company which owns an office building in Athens, but again there is the difficulty that Mr. Aoun is not the majority shareholder in the company and there is no reason to think that it would be easy for the defendants to enforce an order for costs against the assets themselves. The fact is that if any of these shares have any realisable commercial value, it would be more appropriate for Mr. Aoun to use them as counter-security for a bank guarantee in favour of the defendants.

45. Mr. Aoun has said that he is unable to put up substantial security, but that assertion does not sit happily with the suggestion that his shares in the various companies to which I have referred should be sufficient security for the defendants. Nor is it supported by any detailed description of his assets or his sources of finance. Moreover, it is clear from other evidence before the court that apart from his commercial interests he has been able to obtain a substantial amount of support from his wife's family. On the material before me I am unable to find that an order for security would have the effect of stifling his claim. In these circumstances I am satisfied that it would be just to make an order for security in favour of both defendants.

46. Mr. Bahri seeks security in the sum of £315,000 and Mr. Angelou in the sum of over £270,000, in each case in respect of the period up to and including the exchange of witness statements. These are very large sums by any standards. I accept that they reflect the nature and magnitude of the litigation, but I think that allowance must be made for the likelihood of a reduction on a detailed assessment and for the possibility that this case may settle at an early stage. I think it also right to ensure that the total amount of security ordered is not so great as to be oppressive. I shall therefore hear counsel further on the amount and form in which security should be provided.