Neutral Citation Number: [2020] EWHC 3548 (Comm)

Case No: CL-2017-000323

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS
OF ENGLAND AND WALES
COMMERCIAL COURT (QBD)

AND IN THE MATTER OF GERALD MARTIN SMITH
AND IN THE MATTER OF THE CRIMINAL JUSTICE ACT 1988

Date: 21/12/2020

Before :

MR JUSTICE FOXTON

- -

Between :

(1) THE SERIOUS FRAUD OFFICE
(2) MR JOHN MILSOM AND MR DAVID STANDISH
(as joint Enforcement Receivers in respect of the realisable property of Gerald Martin Smith) **Applicants**

- and –

(1) LITIGATION CAPITAL LIMITED
(a company incorporated in the Marshall Islands) and the (2) to (45) Defendants

Respondents

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Daniel Saoul QC, Tim Akkouh and **Richard Hoyle** (instructed by **Harcus Parker Limited** and others) for the Settlement Parties
James Pickering QC and **Samuel Hodge** (instructed by **Spring Law**) for the Twelfth to Fourteen Defendants
David Lord QC and **Sebastian Kokelaar** (instructed by **Richard Slade & Co**) for the Eighth and Ninth Defendants

Hearing date: 11th December 2020
Written submissions: 15th December 2020
Draft Judgment Circulated: 18th December 2020

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Approved Judgment

Covid-19 Protocol: This judgment will be handed down by the judge remotely by circulation to the parties' representatives by email and release to Bailii. The date and time for hand-down will be deemed 21 December 2020 at 14:00.

The Honourable Mr Justice Foxton:

1. This judgment addresses an issue raised but not resolved at the Pre-Trial Review in this case which took place on 11 December 2020. The issue is one which will only be of interest to the parties to the litigation, and therefore I shall refrain from any general summary of the background to the case, which is already familiar to them, and which I have set out in previous judgments.

2. The issue which arises is how to address, in the context of the 10 week trial which begins on 11 January 2021 ("the Directed Trial") issues relating to the question of whether Mr Stevens (who is associated with the Eighth and Ninth Defendants ("Phoenix and Minardi")) was acting as a nominee for a Mr Andrew Ruhan in relation to the Geneva Settlement ("the Geneva Nominee Issue"), in circumstances in which connected aspects of Mr Stevens' relationship with Mr Ruhan – and in particular whether Mr Stevens was acting as Mr Ruhan's nominee in a 2005 transaction involving a company called Cambulo ("the Cambulo Nominee Issue") - do not form part of the Directed Trial.

3. The issue was raised with the Court for the first time on 11 December, with the trial due to commence on 11 January. It raises a number of difficult issues. The argument was reached only in the afternoon of the PTR. I ordered further written submissions from the relevant parties, which were filed on 15 December.

4. To resolve the issue it is necessary to:

   i) review the history of the relevant aspects of the management of the litigation;

   ii) consider the significance of the Geneva Nominee Issue in the context of the Directed Trial;

   iii) consider the potential relevance of the Cambulo Nominee Issue to the Geneva Nominee Issue;

   iv) consider the practical implications of (a) not deciding the Geneva Nominee Issue in the Directed Trial; (b) deciding the Cambulo Nominee Issue as part of the Directed Trial or (c) deciding the Geneva Nominee and Cambulo Nominee Issues separately; and

   v) in the light of those matters, determine the appropriate way forward.

The management of the litigation

5. The litigation concerns competing claims to a variety of assets. An important part of the background to the action is litigation between a Jersey company called Orb arl ("Orb") and Mr Andrew Ruhan and the companies he controlled, which came to be settled in circumstances which are the subject of fierce dispute. The background to the Orb proceedings is set out in Mr Justice Popplewell's judgment in Orb arl v Ruhan [2016] EWHC 850 (Comm), [7]-[19]. The transactions entered into in the aftermath of the settlement of the Orb action include transfers effected by the Geneva Settlement in 2016.

6. As Popplewell J explained in Sodzawiczny v Ruhan [2018] Bus LR 2419, [6]:

> "Following the settlement of the main litigation there have emerged numerous further claims, both in relation to the settlement and in relation to assets of those in the Dr Smith camp including the Arena and non-Arena assets. Amongst the claimants are the SFO; the Viscount of Jersey who has succeeded to the title of Dr Cochrane who is in 'en désastre' (a form of bankruptcy in Jersey); liquidators of various BVI companies which sat at the head of structures within the Arena Settlement…; beneficiaries of the settlement of the main action; various litigation funders; Stewarts Law, Orb's former solicitors in the main litigation; and a number of others. I have been managing those various actions together, which were described before me as 'the Popplewell proceedings', and have ordered a trial of a number of issues in relation to proprietary claims to certain of the assets, which is not due to be heard until 2020."

7. In addition to those claiming rights under the transactions entered into in the aftermath of the Orb proceedings, the 12th to 14th Defendants ("HPII") contend that they had an anterior entitlement to trace into the assets transferred in the aftermath of the settlement of the Orb proceedings. The tracing claim is said to arise from HPII agreement in 2005 to sell various hotels to a company called Cambulo-Comercio Internacional E Services Sociedade Unipessoal Lda ("Cambulo"). I will refer to the transaction as the Cambulo Hotels Transfer. HPII says that when entering into the Cambulo Hotels Transfer, it believed Cambulo to be beneficially owned by Mr Stevens, when in fact Mr Stevens was acting as the nominee of Mr Ruhan, so that the transaction infringed the self-dealing rule. Those allegations are hotly denied by Mr Stevens, including in a witness statement filed on 7 November 2014. In that statement, Mr Stevens also gave evidence that Mr Ruhan had become indebted to him arising out of funding provided for a construction project in Qatar ("the Qatar Project").

8. The scale of the issues raised by the numerous claims to the assets, and the number of parties asserting or affected by such claims, led to a series of hearings before Popplewell J to determine how best to manage the case. At the first hearing, on 6 June 2017, HPII was initially contending that its claims should be heard first, with all other proceedings stayed, but that position was not pursued in the face of a common position among the other parties that the SFO's claims should go first, and Popplewell J so ordered.

9. There was a further hearing on 24 and 25 April 2018. At that hearing, Popplewell J concluded that it would not be feasible to determine all of the issues in a single hearing, and as he noted on 24 April 2018, "there has been little appetite on any side for that". He decided to order a trial – the Directed Trial – which would principally be concerned with proprietary claims in relation to assets dealt with by the Isle of Man Settlement (in 2014) and the Geneva Settlement (in 2016).

10. There was debate at these hearings as to the consequences of trying the status of transactions concerning certain assets (referred to as "the Relevant Assets") which took place in the aftermath of the settlement of the Orb litigation, in circumstances in which disputes as to matters occurring before 2012 were not being resolved – and in particular allegations relating to Mr Ruhan's ownership of and dealing with assets long before the

Orb action was commenced. Counsel for Harbour (now one of the Settlement Parties) invited the Court to list the claims of HPII first. That application was resisted by all the other parties, including HPII and Phoenix and Minardi, and it was rejected by the Judge.

11. In addition to these issues concerning the Relevant Assets, Popplewell J ordered that an otherwise discrete issue – "the Stewarts Discharge Application" – be heard as part of the Directed Trial. That was an application by Stewarts to set aside a freezing order obtained by Phoenix and Minardi over £2m held by Stewarts for various reasons, including that in obtaining the injunction, Phoenix and Minardi had misled the Court by telling Popplewell J that Mr Ruhan had no interest in certain assets which those companies had acquired pursuant to the Geneva Settlement. Popplewell J took this course because this aspect of the Stewarts Discharge Application raised the issue of Mr Stevens' role in the Geneva Settlement and whether he was acting as a nominee for Mr Ruhan, which issue would be decided when resolving the status of the Geneva Settlement in any event. He observed:

> "The issue is one which also arises in the context of the issues I have ordered to be determined in Phase 1 of the SFO's application, and it is highly undesirable that the same issue should be investigated separately, on the one hand between these parties, and on the other with all the parties who are interested in the Phase 1 issues".

As that passage expressly states, and as is clear from the transcript and surrounding documents, Popplewell J's case management order involved the Geneva Nominee Issue being resolved in the Directed Trial.

12. It must have been obvious to all parties, and the Judge, that the chronological split involved in the Directed Trial necessarily had some rough edges, and that it involved the Cambulo Nominee Issue and the Geneva Nominee Issue lying on opposite sides of the divide. In one ruling, the Judge noted that there was "no ideal solution" and that the Court was seeking to identify "the least worst option". However, in circumstances in which no one was seriously suggesting that a single trial of the entire story was viable, this was unavoidable. It is clear that in focussing the trial on the Isle of Man and Geneva Settlements, and on proprietary claims to the assets which were the subject of those arrangements, Popplewell J was seeking, so far as possible, to determine the most economically significant claims, with a view to promoting settlement. As he noted in the course of the June 2017 hearing, there might be little point in trying earlier claims if the reality was that they were trumped by later proprietary claims to the same assets, so that four or five weeks might be spent determining claims which could not, in the event, be enforced.

13. In February 2019, Harbour applied once again to expand the scope of the Directed Trial to include a determination of at least aspects of HPII's "upstream" proprietary claims arising from the Cambulo Nominee Issue – namely, assuming in its favour there had been a breach of fiduciary duty, whether HPII could trace into the assets from the date of the Cambulo Hotels Transfer to the Isle of Man and Geneva Settlements. That application was strongly resisted by Phoenix, Minardi and HPII, and was rejected by Moulder J. HPII's submissions accepted and averred that the issues relating to the Geneva Settlement (which necessarily included the Geneva Nominee Issue) would be determined separately

from, and in advance of, the Cambulo Nominee Issue which HPII was relying on in its own claim against Mr Ruhan and Mr Stevens.

14. The application was briefly renewed before me at a CMC in July 2020, and was once again resisted by Phoenix, Minardi and HPII, and sensibly was not pursued, Mr Akkouh realising with his customary forensic acumen that it was unlikely to succeed.

15. Paragraph 35 of Phoenix and Minardi's skeleton for that hearing stated that the Settlement Parties' proposal "would undoubtedly introduce substantial issues into the Directed Trial which are currently expressly excluded from its scope (such as HPII's tracing claims arising out of the events of 2006-2008"). There was no suggestion at this or any of the other hearings that the Cambulo Nominee and Geneva Nominee Issues were so closely connected that they needed to be heard together, nor that the directions for case management, and in particular disclosure, would not allow the fair determination of the issues which had formed part of the Directed Trial since April 2018.

16. On 19 October 2020, in accordance with the directions of the court, witness statements were exchanged for the Directed Trial. Phoenix and Minard served the witness statement of Mr Stevens, which attached his earlier witness statement of 7 November 2014 to which I have referred above. Mr Stevens' evidence is that the benefits which Phoenix and Minardi received under the Geneva Settlement were in satisfaction of amounts due to Mr Stevens arising from his financial support for the Qatar Project. While HPII suggests that it was this evidence which caused it for the first time to question the trial structure, it should be noted that the reasons why Mr Stevens, Phoenix and Minardi had received the assets they did under the Geneva Settlement had featured in findings made by Mostyn J in November 2017 in divorce proceedings brought against Mr Ruhan by his wife: Richardson-Ruhan v Ruhan [2017] EWHC 2739 (Fam), [63-72] . One of the suggestions made to the Judge in that case was that the amounts received by Mr Stevens or his companies under the Geneva Settlement reflected sums due in respect of his investment in the Qatar Project. It is clear HPII was aware that this explanation had been offered, because it had read (and indeed pleaded) Mostyn J's judgment in its statement of case in this action. It is right to note that Mostyn J rejected this explanation (at [76-77]), and it is his rejection that HPII places reliance on. However, it must have read the entire judgment.

17. One month later, on 20 November 2020, HPII raised the issue of whether the Cambulo and Geneva Nominee Issues could be tried separately, saying that the issue had been brought to their attention as a result of Mr Stevens' witness evidence. HPII raised the possibility of whether the Geneva Nominee Issue should remain part of the Directed Trial. Phoenix and Minardi joined in to support HPII in a letter of 2 December 2020, stating that the Geneva and Cambulo Nominee Issues are "inextricably linked" and that "there has not been formal disclosure … in relation to that issue and some parties may not have addressed it as fully in their evidence as they might have done had it been expressly included". Phoenix and Minardi could not, of course, rely on the contents of Mr Stevens' witness statement to explain why this issue was being raised barely more than a month before trial. When I asked Mr Lord QC why this dog had started barking so late, there was the following exchange:

> "The Judge This has been, on your case, a structural flaw since whatever point it became clear that the Cambulo transfers were not part of this trial and the Geneva nomineeship issue was.
>
> Mr Lord I accept that my Lord, and I was not present and involved in the early stages. But I am going to defend Mr Kokelaar here, because he was always adamant before Mr Justice Popplewell that he couldn't do what he was doing because he couldn't start this exercise half-way through".

18. It is not clear to me which submissions before Popplewell J Mr Lord QC was referring to. The question of why this issue was raised so late remains unanswered, notwithstanding the post-hearing submissions which Phoenix and Minardi have filed.

19. Similarly, HPII now submits:

> "The Geneva Nomineeship issue cannot properly or adequately be addressed without a detailed and full consideration of the Cambulo Nomineeship Issue"

and that "as the Cambulo Nomineeship Issue is to be considered in the Ruhan Proceedings, there is a clear risk of inconsistent and conflicting judgments, and indeed unfairness". However, nowhere in its skeleton for the PTR, at the hearing or in its 22 pages of supplemental submissions does HPII explain why it has never raised this suggestion before, and indeed why in February 2019 and July 2020 it sought to resist issues relating to its proprietary claim against Mr Stevens from being included in the Directed Trial, and expressly accepted that the Geneva Settlement issues would be determined before and separately from the Cambulo Nominee Issue.

The significance of the Geneva Nominee Issue in the context of the Directed Trial

20. The Settlement Parties seek to trace into the agreements which constitute the Geneva Settlement or assert other forms of proprietary rights over them. The allegation that Mr Stevens was acting as Mr Ruhan's nominee in connection with that settlement features in the following pleaded issues.

21. First, in explaining why it is said that any proprietary interests asserted in the subject matter of the Geneva Settlement "remain subject to the pre-existing proprietary claims of HPII", HPII allege that Mr Stevens, Phoenix and Minardi received any assets transferred to them under the Geneva Settlement (which appear to have comprised a Loan Note and rights arising under an agreement known as the "LICSA") as Mr Ruhan's nominees. It is alleged that the Geneva Settlement Agreements were a sham, in that the intention of the parties in connection with them was not to enter into binding obligations in accordance with their ostensible terms but was instead to disguise the division of the Stolen Assets" (para. 97(3) of HPII's statement of case).

22. As to this claim:

i) The suggestion that the Geneva Settlement (which is a shorthand way of referring to the legal and proprietary rights created by the agreements which constitute the

Geneva Settlement) is a sham would, on its face, have potentially significant consequences for those asserting a proprietary interest in those rights and assets.

a) Perhaps for that reason, when seeking to contend that removing the Geneva Nominee Issue from the Directed Trial would not have a significant impact, Mr Lord QC for Phoenix and Minardi sought to characterise HPII's allegation as one which did not involve an allegation that the Geneva Settlement was a sham in the sense defined by Diplock LJ in Snook v London and West Riding Investments Ltd [1967] 2 QB 786, and Mr Pickering QC adopted Mr Lord QC's interpretation of his own pleading.

b) However as pleaded, this paragraph does appear to allege a Snook sham, and Mr Pickering QC has emphasised the significance of this allegation for the proprietary claims of other parties at prior stages in the litigation. For example, he told Popplewell J on 18 April 2018 that "we have tried to expose what we describe as an inconvenient truth, ie the apparent illegality of the Isle of Man and Geneva settlements which, if we are correct, will have a knockout blow for several parties, including, of course, Harbour", and in his skeleton argument for that hearing, he submitted that the sham case was advanced "both negatively, in other words to challenge the SFO's case that the assets were the realisable profits of Dr Smith, and also positively, in other words to assert their own proprietary claim to the assets".

c) It is currently unclear to me whether or not the plea goes any further than arguing that the assets received by Mr Stevens, Phoenix and Minardi are subject to HPII's "upstream proprietary claim". If it does not, then it might be said that it does no more than reflect the issue which has never formed part of the Directed Trial, and to which the proprietary claims of other parties in relation to the Geneva Settlement have always been subject, namely HPII's "upstream" proprietary claim. HPII's letter of 15 December 2020 has offered some clarification in this respect.

23. Second, it is said that if the transferees were not Mr Ruhan's nominees, then the transfers can be set aside under s423 of the Insolvency Act 1986 as transactions defrauding creditors (para. 97A – an allegation first introduced by amendment at the April 2018 hearing before Popplewell J and subsequently amended further following the February 2019 hearing before Moulder J):

i) Once again, if the Geneva Settlement is to be set aside, that could potentially have significant implications for those claiming proprietary interests in the agreements constituting the settlement, although no doubt they would be able to rely on the protection for third parties who have acquired assets in good faith provided for by s425(2) of the Insolvency Act 1986.

ii) Mr Lord QC submitted of this paragraph that:

> "The precise nature of the relief sought remains unclear but whatever form it takes, the court clearly cannot exercise its powers under sections 423 and 425 to deprive the Settlement Parties (or some of them) of rights which they are found to have acquired in good faith and for value pursuant to the IOM Settlement and/or the Geneva Settlement and which are found to outrank the rights of the other Participating Parties".

iii) However, HPII's pleaded case does seek to set aside the entirety of the Geneva Settlement agreements, not simply those to which Mr Stevens, Phoenix or Minardi are parties: see paragraphs 97A(3)(d) and 97A(4)(c) of HPII's statement of case, with a similar allegation being advanced at paragraph 99 of HPII's Identified Underlying Assets statement of case. There has been no sufficiently unequivocal confirmation by HPII that any relief sought under s423 will not affect anyone other than Phoenix, Minardi and Mr Stevens, although it is possible one will be forthcoming.

iv) As matters stand, therefore, HPII's s423 claims appear to be capable of significantly impacting any proprietary claims brought by others in relation to the Geneva Settlement, unless further, unequivocal, clarification is given as to the scope of those claims.

24. Third, a number of parties rely on the suggestion that Mr Stevens was acting as Mr Ruhan's nominee in relation to the Geneva Settlement as a reason for denying Phoenix and Minardi equitable relief under the "unclean hands" doctrine:

i) HPII raises such an allegation at para. 14.4.5 of its position paper of 31 January 2018.

ii) Stewarts has raised such an allegation as recorded in para. 14.3 of the List of Issues, relying on the fact that on 15 December 2016, when Popplewell J asked Phoenix in the context of Phoenix's freezing injunction application whether Mr Ruhan had an interest in Phoenix, Phoenix confirmed orally and on affidavit that he did not.

iii) Dr Smith appears to raise a similar allegation at para. 31 of his consolidated Statement of Claim, although it is said that the terms of the Confidential Settlement Deed concluded between, inter alios, Dr Smith and Phoenix and Minardi, preclude this argument.

iv) The precise claims to which the "unclean hands" argument is said to be relevant – and whether they extend beyond the equitable assignment – are unclear, but the List of Issues would suggest that this argument is concerned with equitable rights arising under the LICSA. I would note that:

a) These arguments raise preliminary legal issues as to whether the conduct complained of is of a kind which, if the facts alleged are proved, could provide a sufficient basis for refusing equitable relief – for example as to whether the allegedly misleading statement made by Phoenix to Popplewell J on 15 December 2016 when seeking injunctive relief could provide a

basis not only for setting aside the injunctive relief obtained, but for refusing judgment on the underlying cause of action as well.

b) It is unclear how far these claims materially add to the issues which arise as a result of HPII's "upstream" claim.

Once again, there is scope for a more definitive identification of the precise claims to which the 'unclean hands" argument is advanced.

25. Finally, the Geneva Nominee Issue arises as one of the grounds of the Stewarts Discharge Application, because it will determine the truth or otherwise of the statement made to Popplewell J on 15 December 2016.

The potential relevance of the Cambulo Nominee Issue to the Geneva Nominee Issue

26. Mr Stevens' witness statement served on 19 October 2020 does not directly link the Cambulo Hotels Transfer to the Geneva Nominee Issue, but rather relies on transactions originating with a 2007 decision to allow Mr Ruhan to use the Cambulo shares as security for the Qatar Project to provide an explanation for the assets received by Phoenix and Minardi under the Geneva Settlement, and as providing consideration for that receipt. The 2007 and subsequent transactions:

i) are said to provide a reason why Mr Stevens was acting for himself rather than Mr Ruhan in relation to the Geneva Settlement; and

ii) are said to constitute the consideration provided (to answer the s423 plea).

27. I also accept that consideration of the Cambulo Nominee Issue is a matter which is relevant to these arguments, because Mr Stevens' arguments in i) and ii) above would be more challenging if he had acted as Mr Ruhan's nominee in the Cambulo Hotels Transfers. However, a scenario in which Mr Stevens had acted as Mr Ruhan's nominee in the Cambulo Hotels Transfer is one which is far more likely to engage HPII's primary case in relation to the Geneva Settlement (i.e. one in which the rights and assets acquired by Phoenix and Minardi under the Geneva Settlement are subject to HPII's "upstream" proprietary claim), rather than the alternative under s423 of the Insolvency Act 1986.

The practical implications of (a) not deciding the Geneva Nominee Issues in the Directed Trial; (b) deciding the Cambulo Nominee Issue as part of the Directed Trial or (c) deciding the Geneva Settlement and Cambulo Nominee Issue separately

28. In its letter of 20 November 2020, HPII identified three ways in which the Court might deal with this issue:

i) first, exclude the Geneva Nominee Issue from the Directed Trial altogether;

ii) second, decide the Cambulo Nominee Issue as part of the Directed Trial; or

iii) third, adhere to the original structure, and decide the two issues separately.

29. As matters currently stand, removing the Geneva Nominee Issue from the Directed Trial could significantly undermine the purpose and intent of the Directed Trial, namely resolving the proprietary claims relating to the Geneva Settlement, subject only to HPII's "upstream" proprietary claims and the SFO's "safekeeping" argument. Not only would it impact on the proprietary claims themselves, but potentially also on the matters raised at Issues 15 to 18 of the List of Issues which concern alleged subsequent attempts by certain parties to undermine the agreements constituting the Geneva Settlement. There are scenarios in which removing the Geneva Nominee Issue from the Directed Trial might have only a limited impact on the extent of finality which the parties asserting proprietary claims to the Geneva Settlement assets will obtain from the Directed Trial, and there are ways in which HPII's claims, in particular, might be formulated which would make the removal of the Geneva Nominee Issue from the Directed Trial much less significant. However, at this stage, there is a very real risk that removing the Geneva Nominee Issue from the Directed Trial altogether would significantly subvert the reasons why Popplewell J ordered the Directed Trial in April 2018.

30. Had I been satisfied that the Geneva Nominee Issue could be removed from the Directed Trial without significantly impairing the finality which the Directed Trial can offer as to the proprietary claims to the Geneva Settlement assets, I would not have regarded the Stewarts Discharge Application as a sufficient reason on its own to retain the Geneva Nominee Issue in the Directed Trial:

    i) It would still be open to Stewarts to pursue the other aspects of the Discharge Application, including the jurisdictional issue referred to in Stewarts' letter of 16 December 2020.

    ii) The sum at issue - £2m – is small in the overall scheme of things, and it is far from clear that success in discharging the freezing injunction would leave Stewarts free to use the money as it wished, in circumstances in which other parties assert proprietary claims to those funds of which Stewarts are on notice, and when there is nothing in Popplewell J's 6 March 2017 order which would prevent other parties seeking their own proprietary injunction.

    iii) The Stewarts Discharge Application was included in the Directed Trial only because the Geneva Nominee Issue was going to be considered in resolving the proprietary clams. If that rationale fell away, there is no sufficiently compelling reason to include the Stewarts Discharge Application in the Directed Trial in the face of case management considerations pointing to another course.

31. I am satisfied that it would not be appropriate to include the Cambulo Nominee issue in the Directed Trial at this late stage, and indeed I do not think it would be possible to do so in the time available. The two have been scheduled to be determined separately since April 2018, both Popplewell and Moulder JJ have rejected applications to the contrary, and the parties now raising this issue – HPII and Phoenix and Minardi – strongly resisted any such suggestion both before Moulder J and before me.

32. That leaves the third option, of proceeding on the current path. Mr Pickering QC for HPII describes this approach as "completely unprincipled (and unattractive)". I agree it is not

ideal, and it brings its own difficulties, although there are realistic scenarios in which it may prove less significant. The tension in the case management structure which arises from treating Mr Stevens' relationship with Mr Ruhan in 2005 separately from the relationship in 2016 is one which has been evident in the case since April 2018, and one which all parties have been aware of and prepared to live with. To the extent that any party wished to rely, in order to establish their case at the Directed Trial, on matters which relate to other aspects of the relationship of Mr Stevens and Mr Ruhan, they have long been aware of the need to do so, and have been free to seek such disclosure and witness evidence for that purpose as they wished. By way of example, HPII's letter of 15 December 2020, sent in response to a request by the Settlement Parties that it clarify its s423 claim, stated:

> "HPII's s423 case is not premised on nomineeship (although the historical relationship between Mr Ruhan and Mr Stevens is relevant to deciding the s423 claim in respect of the Ruhan Recovered Stolen Assets)".

If that was the position on 15 December 2020, it is difficult to see why it was not also the position when the s423 claim was introduced in April 2018 and amended in February 2019, and why HPII's disclosure exercise would not have been conducted accordingly.

33. Indeed HPII has expressly pleaded at least one part of that history itself (the suggestion Mr Stevens had acted as Mr Ruhan's nominee in relation to a £92m payment made in November 2012, referred to at paragraph 97A(3)(b)(ii) of HPII's statement of case). HPII's disclosure indicates it has searched documents going back to 2003 including words designed to elicit responses relating to "Mr Ruhan", "Cambulo" and "nominee". Phoenix and Minardi have given disclosure on the Geneva Nominee Issue (which ought to have reflected their understanding of the matters which they now say are relevant to that question – and which Mr Stevens covers in his witness evidence). The Settlement Parties have also searched documents using "Stevens" (4,000 documents) and "Ruhan" (12,000 documents) as search terms. The fact that disclosure has not been ordered in relation to excluded issues – including the Cambulo Hotels Transfer – is nothing to the point. To the extent that documents are relevant to the included issues, they are disclosable, whether or not they are also relevant to excluded issues.

The appropriate way forward

34. Case management is very frequently an exercise in real time pragmatism rather than applied principle. That is certainly the case here. Popplewell J found himself searching for the "least worst" answer on the material available to him in 2018, and I face a similar task now. In that spirit, I have decided that the appropriate course is as follows:

    i) The Geneva Nominee Issue will remain part of the Directed Trial and the Cambulo Nominee Issue will not form part of the Directed Trial.

    ii) HPII and Phoenix and Minardi can consider the issues raised by the Settlement Parties as to the impact of removing the Geneva Nominee Issue from the Directed Trial, and in particular on the s423 and unclean hands claims. If sufficiently clear commitments as to the scope of the case are obtained then, as I have indicated, the

Stewarts Discharge Application will not of itself be a sufficient reason to keep the Geneva Nominee Issue within the Directed Trial. I would encourage the parties to continue exploring this issue. It may be that the process of case preparation between now and the start of trial will permit a more definitive response than has been possible in the exchanges at and since the PTR.

iii) Any party who wishes to adduce further evidence in relation to the Geneva Nominee Issue in the light of my decision will need to seek the permission of the court. It should be understood that the more focussed any such application is, the less unfavourably it is likely to be received.

iv) The Court will keep the question of whether and to what extent the Geneva Nominee Issue should be determined under review during the Directed Trial. In particular, I am not committing myself now to deciding all of the issues which are currently raised in relation to the Geneva Nominee Issue:

a) It will be necessary to consider how far it remains fair to do so.

b) I will need to consider whether it is necessary to determine any issues raised by HPII to the extent that it is accepted that they stand or fall with its "upstream" tracing claim (with the result that not deciding them would not add to any lack of finality beyond that already inherent in the case management scheme).

c) I will have in mind at all times the importance of only deciding those matters which actually need to be decided, and appropriately caveating any such findings. The precise way in which HPII puts its case at trial may well impact on that consideration.