Neutral Citation Number: [2017] EWHC 918 (Comm)

Case No: CL-2016-00495

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
COMMERCIAL COURT

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 25/04/2017

Before :

MR JUSTICE KNOWLES CBE

- -

Between :

MAREX FINANCIAL LIMITED	**Claimant**
- and -	
CARLOS SEVILLEJA GARCIA	**Defendant**

- -
- -

David Lewis QC and Richard Greenberg (instructed by **Mackrell Turner Garrett**) for the **Applicant**
Alain Choo Choy QC and Sophie Weber (instructed by **Memery Crystal LLP**) for the **Respondent**

Hearing dates: 24 – 25 January 2017

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Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

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MR JUSTICE KNOWLES

Mr Justice Knowles :

Introduction

1. In 2013, claims between the Claimant ("Marex") and Creative Finance Limited ("Creative") and Cosmorex Limited ("Cosmorex", together "the Companies") were tried before Field J in the Commercial Court. The claims were in contract, for sums due on an account between Marex as broker and the Companies as its clients in respect of foreign exchange trading.

2. In accordance with regular practice and on terms set out in an endorsement to the draft, Field J released a draft of his judgment ("the Draft Judgment") on 19 July 2013. The Draft Judgment showed that Marex had succeeded in its claims against the Companies for sums in excess of US$5 million ("the Judgment Debt"). The judgment in final form was handed down on 26 July 2013 and an order was made ("the Judgment").

3. A freezing order ("the Freezing Order") was then obtained by Marex against the Companies on 14 August 2013. On 23 August 2013 the Freezing Order was ordered to be continued. The Companies made disclosure of their assets pursuant to the Freezing Order; they stated that assets of only US$4,392.48 were held.

4. The Defendant ("Mr Sevilleja") describes the Companies as, then, his principal trading vehicles for foreign exchange trading. Both of the Companies are incorporated in the British Virgin Islands. It is Marex's case that Mr Sevilleja was the ultimate beneficial owner of the Companies, their controller, their agent, a de facto or shadow director of them and the holder of a power of attorney from them.

5. Marex alleges that Mr Sevilleja took the opportunity, after the Draft Judgment was released, dishonestly to asset-strip the Companies in order that they would be unable to pay Marex.

6. The Companies are now in liquidation in the British Virgin Islands. Marex has pursued various other avenues, but now it has commenced proceedings in this jurisdiction against Mr Sevilleja. It claims from him the value which it alleges he dishonestly removed from the Companies, up to the amount of the Judgment Debt (and after credit for some recovery in enforcement proceedings), and various costs.

7. Mr Sevilleja, who is not resident in this jurisdiction, challenges the jurisdiction of this Court. This judgment addresses that challenge. In the course of his challenge he alleges that someone in Marex's position has no claim in law against someone in his position.

The claim advanced by Marex against Mr Sevilleja

8. The brief details of claim on the Claim Form are in these terms:

> "[Marex] claims damages against [Mr Sevilleja] for inducing or procuring the violation of [Marex's] rights under [the Judgment] dated 26 July 2013, and/or for intentionally causing loss to [Marex] by unlawful means, in particular by dissipating the assets of [the Companies] as more fully set out in the attached Particulars of Claim."

9. The Particulars of Claim allege that Mr Sevilleja procured the transfer of over US$9.5 million ("the Money") out of the Companies' accounts held in England and thereafter out of the Companies altogether and into his personal control, over the period from 24 July 2013 to 12 August 2013. Although the Particulars of Claim add the words "and thereafter" we are at least largely concerned with the period before the Freezing Order. And within the more limited period between the date of the Draft Judgment and the date of the Judgment Marex alleges that he procured the transfer of sums out of accounts held by the Companies in London to accounts held by the Companies in Gibraltar and Dubai.

10. In law, Marex alleges that Mr Sevilleja is liable in tort for knowingly inducing and procuring the Companies to act in wrongful violation of Marex's rights under the Judgment. Marex alternatively alleges that Mr Sevilleja has committed the tort of intentionally causing loss to Marex by unlawful means or by unlawful interference with Marex's economic interests.

Jurisdiction

11. Thus the claims alleged are alleged to be claims in tort. Under Practice Direction 6B paragraph 3.1 the claimant may serve a claim form out of the jurisdiction with the permission of the court under rule 6.36 where:

> "(9) A claim is made in tort where –
>
> (a) damage was sustained, or will be sustained, within the jurisdiction; or
>
> (b) damage which has been or will be sustained results from an act committed, or likely to be committed, within the jurisdiction.

12. Marex argues that the proper construction of "claim … made in tort" is that the liability alleged must simply be shown to be tortious in nature. Mr Sevilleja argues that (as under the wording of the Rule of the Supreme Court, "claims founded on a tort") Marex must address - to the requisite standard - the question whether a tort has been committed: see, for example Briggs, Civil Jurisdiction and Judgments (6th edition, 2015) at [4.71] ff.

13. It is common ground that on this application the facts must be assumed to be as Marex alleges. Mr Sevilleja's opportunity to answer the allegations of fact will lie at a later stage if the Court has or accepts jurisdiction in the case. But Mr Sevilleja contends that there is, in law, no cause of action in tort, either because the alleged cause of action in tort does not exist or because the elements are not made out or because there is not a completed cause of action.

14. The parties differ as to whether I should decide the legal issues involved or instead reach a conclusion on whether Marex has a good arguable case ("the better argument") on those issues. On some points Marex would say the test is lower still; that the test of serious question to be tried applies.

15. "Where a question of law arises in connection with a dispute about service out of the jurisdiction and that question goes to the existence of the jurisdiction (eg whether a claim falls within one of the classes set out in paragraph 3.1 of Practice Direction 6B), then the court will normally decide the question of law, as opposed to seeing whether there is a good arguable case on that issue of law.": VTB Capital plc v Nutriek International Corp [2012] 2 Lloyd's Rep 313; [2012] EWCA Civ 808 at [99].

16. However this will not apply where "there is an exceptionally difficult and doubtful point of law": Lord Collins while summarising the overall effect of the decision in The Brabo [1949] QC 326 when giving the advice of the Board in Altimo Holdings and Investment Ltd and Others v Kyrgyz Mobil Tel Ltd and Others [2012] 1 WLR 1804; [2011] UKPC 7 at [86]. The principle is shared with the general rule "that it is not normally appropriate in a summary procedure (such as an application to strike out of for summary judgment) to decide a controversial question of law in a developing area, particularly because it is desirable that the facts should be found so that any further development of the law should be on the basis of actual and not hypothetical facts": Altimo Holdings (above) at [84]-[86].

Knowingly inducing and procuring the Companies to act in wrongful violation of Marex's rights under the Judgment

17. Marex did not have judgment until 24 July 2013. By that date on its case although the Money had been moved it was still within accounts held by the Companies. It was then that it was taken away from the Companies. The rights that Marex had against the Company when the Money was taken away were rights under the Judgment and no longer under the original contract.

18. Mr Sevilleja denies that there exists a tort of inducing or procuring another to act in wrongful violation of rights under a judgment. Mr David Lewis QC and Mr Richard Greenberg for Mr Sevilleja argued that the Judgment begins a new regime. The rights in contract merge into the Judgment. Whilst non-payment of a contract debt would be an actionable wrong by the debtor, Mr Lewis QC argued that non-payment of a judgment debt is not. The judgment ushers in a new regime, with a range of means of enforcement.

19. Marex contends that the cause of action is within the principle first recognised in Lumley v Gye (1853) 2E&B 216. As the claim on which Marex obtained the Judgment was a claim in contract, Mr Alain Choo Choy QC and Ms Sophie Weber for Marex argued that recognition of the existence of the tort where there is violation of rights under the Judgment would be unsurprising given that the existence of the tort is recognised where the violation is of rights in contract.

20. Non-payment of a judgment debt is an actionable wrong. The Courts have recognised "a principle that where a court of competent jurisdiction has adjudicated a certain sum

to be due from one person to another, a legal obligation arises to pay that sum, on which an action of debt to enforce the judgment may be maintained": per Lord Collins in Rubin and Another v Eurofinance SA; In re New Cap Reinsurance Corpn Ltd [2013] 1 AC 236 at [9], and see further Williams v Jones (1845) 13 M&W 628 at 633 per Pollock CB; ED&F Man (Sugar) v Haryanto unreported 17 July 1996 per Leggatt LJ and Kuwait Oil Tanker v Al-Bader [2008] EWHC 2432 at [8] per Teare J. This is the theoretical basis for the enforcement of foreign judgments at common law, but it is nonetheless a principle and not a fiction confined to that area of common law.

21. The last of the cases mentioned refers to implied contract as the juridical basis. The case was produced by Mr Lewis QC and Mr Greenberg in the course of the hearing in what was, in my view, a textbook illustration of Counsel complying with their duty to draw the attention of the Court to authorities against the case they were arguing.

22. Mr Lewis QC argued that a party does not commit an actionable wrong by making itself judgment-proof before it is enjoined (by a freezing order) from doing so. I appreciate that, on their face, there are passages in Law Debenture Trust Corporation v Ural Caspian Oil Corporation Ltd [1995] Ch 152 which test the view I have just expressed that there can be an actionable wrong. Thus Sir Thomas Bingham MR said at 166B-D:

> "The court will restrain a defendant and potential judgment debtor from making himself judgment-proof by dissipating his assets and may order him to give disclosure of assets in support of the injunction. But the defendant violates no legal right of the plaintiff if he makes himself judgment-proof by dissipating his assets before he is enjoined from doing so and he does not act unlawfully in failing to give disclosure before he is ordered to do so. These are measures the court adopts to protect the efficacy of its orders."

See further Saville LJ at 172 B-H.

23. However I respectfully take the view that the Court of Appeal was there addressing the situation (as with a claim in damages, before judgment) where there was indeed no right of the claimant before a freezing order enjoined the conduct in question. The present case differs in that the claimant had a right before judgment to be paid a contract sum, and a right after judgment to be paid the judgment sum.

24. Mr Lewis QC referred to the distinction drawn by Lord Nicholls in OBG and Another v Allan and Others; Douglas and Others v Hello! Ltd and Others (No 3); Mainstream Properties Ltd v Young [2008] 1 AC 1; [2007] UKHL 21 at [170]-[189] (and see Lord Hoffmann at [25]) between the inducing and procuring required by the tort, and mere prevention or interference. Invoking this distinction, in his reply submissions Mr Lewis QC argued that, on the alleged facts, Mr Sevilleja procured the dissipation of the Money not the non-payment of the Judgment Debt; the non-payment (or, rather, payment) he merely prevented.

25. With respect, I think there is nothing in this. The dissipation and the non-payment were two sides of the same coin. The objective was the wrongful non-payment of the Judgment Debt; on the alleged facts the dissipation was procured in order to procure that objective.

26. Lord Nicholls distinguished inducement cases from prevention cases in these terms (at [178]):

> "There is a crucial difference between cases where the defendant induces a contracting party not to perform his contractual obligations and cases where the defendant prevents a contracting party from carrying out his contractual obligations. In inducement cases the very act of joining with the contracting party and inducing him to break his contract is sufficient to found liability as an accessory. In prevention cases the defendant does not join with the contracting party in a wrong (breach of contract) committed by the latter. There is no question of accessory liability. In prevention cases the defendant acts independently of the contracting party. …"

In the present case, perhaps leaving allegations of theft aside, there is sufficient on the assumed facts and having particular regard to his relationship with and power and control over the Companies to allow the analysis that Mr Sevilleja induced and procured the Companies not to pay the Judgment Debt; and that he actively joined with the Companies to bring about that end through dissipation.

27. Mr Lewis QC also argued that recognition of the tort in the present case would see it widely invoked in relation to judgments generally, was unnecessary given the availability of other remedies, and would alter the basis for granting freezing orders post-judgment. I question whether the facts of the present case are widespread so that the tort would be invoked widely. But in any event I do not accept these arguments would provide a principled reason for declining to recognise the tort where the conditions for its recognition were otherwise met.

28. In my judgment Marex has the better argument for the existence of the tort.

Intentionally causing loss to Marex by unlawful means

29. The existence of this tort is common ground. Mr Sevilleja however contends that the unlawful means relied upon by Marex are not, in law, unlawful means for the purposes of the tort.

30. The present case is not concerned with conspiracy, where the approach may differ. The unlawful means relied on by Marex are set out in this way in the Particulars of Claim at paragraph 46:

> "… during the period 24 July 2013 to 12 August 2013 and following the circulation of [the Draft Judgment] to the parties, Mr Sevilleja wrongfully, and without consent of either [of the Companies] (whether through the Companies' other directors or otherwise) and acting for his own benefit and without regard to the interests of creditors of the Companies (including Marex) removed funds belonging to the Companies and totalling in excess of US$9.5 million out of England, and thereafter removed those funds out of [the Companies] altogether. In doing so, Mr Sevilleja:

a. breached the fiduciary duties that he owed to [the Companies] as those Companies' agent, director and/or attorney, in particular, by:

   i. misapplying and/or misappropriating [the Companies'] funds for his own benefit and/or purposes; and

   ii. allowing his personal interest in preserving the assets of [the Companies] for his own benefit to conflict with the interests of [the Companies] in retaining their funds in order to meet their obligations to creditors, including Marex;

b. breached sections 120(1) and 121 of the British Virgin Islands Business Companies Act 2004 because at all times, as a director of the Companies, Mr Sevilleja could not have acted honestly or in good faith in procuring the aforesaid transfers or honestly have believed that the said transfers were in the best interests of the Companies; nor did he exercise his powers as a director for a proper purpose, in circumstances where (i) the Companies had substantial liabilities to Marex pursuant to [the Judgment] and (ii) the Companies' funds were being removed from their accounts and control for no consideration whatsoever and with their liabilities to Marex being left wholly undischarged;

c. breached section 57 of the British Virgin Islands Business Companies Act 2004 by making unauthorised and unlawful distributions to himself as ultimate beneficial owner of the Companies by procuring the payment of sums out of the Companies to himself or for his benefit in circumstances where the Companies were, or would be as a result of such payment, fail [sic] to satisfy the solvency test; and

d. interfered with the freedom of the Companies to comply with their legal obligations to Marex by preventing them from satisfying the [Judgment Debt] that they owed to Marex pursuant to [the Judgment] and which Marex had a financial interest in the Companies complying with."

31. In OBG v Allan Lord Hoffmann addressed "what should count as unlawful means" for this tort. He put things in this way:

> "49.In my opinion, and subject to one qualification, acts against a third party count as unlawful means only if they are actionable by that third party. The qualification is that they will also be unlawful means if the only reason why they are not actionable is because the third party has suffered no loss. … But the threat must be to do something which *would* have been actionable if the third party had suffered loss. …
>
> …
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> 51.Unlawful means therefore consists of acts intended to cause loss to the claimant by interfering with the freedom of a third party in a way which is unlawful as against that third party and which is intended to cause loss to the claimant. It does not in my opinion include acts which may be unlawful against a third party but which do not affect his freedom to deal with the claimant."

32. Lord Hoffmann's view represented the majority view, with Baroness Hale and Lord Brown agreeing. Lord Nicholls took a different view, with Lord Walker observing:

> "269.Faced with these alternative views I am naturally hesitant. I would respectfully suggest that neither is likely to be the last word on this difficult and important area of the law. ...
>
> 270.I do not, for my part, see Lord Hoffmann's proposed test as a narrow or rigid one. On the contrary, that test (set out in para 51 of his opinion) of whether the defendant's wrong interferes with the freedom of a third party to deal with the claimant, if taken out of context, might be regarded as so flexible as to be of limited utility. But in practice it does not lack context. The authorities demonstrate its application in relation to a wide variety of economic relationships. I would favour a fairly cautious incremental approach to its extension to any category not found in the existing authorities."

33. Mr Lewis QC accepted for Mr Sevilleja that breach of fiduciary duty owed to a company, in the form of alleged asset-stripping, may have a close causal connection to the failure of the company to pay a debt. However he submitted that "it does not interfere with the freedom of the company to deal with the claimant – it only means that, for the time being, the company has fewer assets with which to pay (and it may pay later)". I respectfully disagree. A very point of asset-stripping in this context is to take away from the company the freedom to meet its obligation to the claimant.

34. Mr Lewis QC's objection to the provisions of the British Virgin Islands Business Companies Act 2004 counting as relevant unlawful means is based on the same reasons as his objection to breach of fiduciary duty so counting. The objection meets with the same answer in my view.

35. Marex' statement of case also alleged that theft of the Companies' assets would count as relevant unlawful means. Mr Lewis QC answered that theft is not actionable by the Companies per se and in response Mr Choo Choy QC conceded that the reference to theft could be deleted. But had it remained this might only have been a narrow point, for if monies are stolen the law recognises a number of bases on which the victim may claim their recovery against the person who stole them. With that recognised, Mr Lewis QC's point was not, in my judgment, material in the present case.

36. In my judgment Marex has the better argument that the unlawful means relied upon by it are, in law, unlawful means for the purposes of the tort.

No reflective loss

37. Mr Sevilleja contends that even if a cause of action in tort is otherwise available to Marex, the rule against reflective loss bars its ability to show a completed cause of action in tort.

38. Lord Bingham described the principle in these terms in Johnson v Gore Wood & Co (a firm) [2002] 2 AC 1 at 35E-F:

> "Where a company suffers loss caused by a breach of duty owed to it, only the company may sue in respect of that loss. No action lies at the suit of a shareholder suing in that capacity and no other to make good a diminution in the value of the shareholder's shareholding where that merely reflects the loss suffered by the company. A claim will not lie by a shareholder to make good a loss which would be made good if the company's assets were replenished through action against the party responsible for the loss, even if the company, acting through its constitutional organs, has declined or failed to make good that loss."

39. Mr Lewis QC cited the judgment of Neuberger LJ (with whom Mance LJ and Bodey J agreed) in Gardner v Parker [2004] 2 BCLC 554; [2004] EWCA Civ 781 to meet an argument that the principle applies only to a claim by a shareholder. Neuberger LJ said:

> "70.It is clear from those observations, and indeed from that aspect of the decision, in Johnson that the rule against reflective loss is not limited to claims brought by a shareholder in his capacity as such; it would also apply to him in his capacity as an employee of the company with a right (or even an expectation) of receiving contributions to his pension fund. On that basis, there is no logical reason why it should not apply to a shareholder in his capacity as a creditor of the company expecting repayment of his debt. Indeed, it is hard to see why the rule should not apply to a claim brought by a creditor (or indeed, an employee) of the company concerned, even if he is not a shareholder. While it is unnecessary to decide the point, as BDC was a shareholder in Scoutvale, it is hard to see any logical or commercial reason why the rule against reflective loss should apply to a claim brought by a creditor or employee, who happens to be a shareholder, of the company, if it does not equally apply to an otherwise identical claim by another creditor or employee, who is not a shareholder in the company.
>
> 71.There are observations, which I have quoted, in the speech of Lord Millett in Johnson which appear to me strongly to reinforce the conclusion that the rule against reflective loss does indeed bar BDC's claim against Mr Parker insofar as it is based on the Loan. Thus, in the passage from his speech I have quoted at paragraph 30 above, Lord Millett does not merely refer to "shareholders" but also to "creditors". Secondly, in the passage cited in paragraph 31 above, Lord Millett emphasised that reflective loss does not only extend to "diminution of the value of the shares" and "loss of dividends", but also to "all other payments which the shareholder might have obtained from the company if it had not been deprived of its funds". Similarly, at 67B, he said in terms that the fact that Mr Johnson was claiming, as it were, *qua* employee, rather than *qua* shareholder, made no difference. I can see no basis whatever in logic or principle as to why, if a claim *qua* employee is barred by the rule, a claim made *qua* creditor is not similarly so barred. In most cases where an employee's claim is barred by the rule against reflective loss, the employee will be a creditor of the company. It is hard to see why a creditor who is an employee should be treated differently from any other creditor of the company when it comes to applying the rule against reflective loss.
>
> …

> 74….if a creditor (or employee) whose claim is barred by the rule against reflective loss is not repaid, he is not without remedies. If the company concerned is solvent, he can sue the company for his loss. If the company is insolvent, the creditor (or employee) can put the company into liquidation (if that has not already happened) and can either fund a claim by the liquidator against the defendant or, as Mr Gardner did in relation to BDC, he can take an assignment of the company's claim. Indeed, the creditor (or employee) could probably take an assignment of the company's claim without seeking to wind it up."

40. In Fortress Value Recovery Fund LLC and Others v Blue Sky Special Opportunities Fund LP (A Form) and Others [2013] EWHC 14 at [76]-[82] Flaux J respectfully questioned Neuberger LJ's approach, drawing attention to the position of a creditor who was secured; see also his decision in Erste Group Bank AG v JSC "VMZ Red October" and Others [2013] EWHC 2926 at [96]-[99].

41. The no reflective loss principle is a valuable and important principle. However in my judgment, the better argument is that the no reflective loss principle does not apply where the claimant sues, as here, for a defendant's knowingly inducing and procuring a third party to act in wrongful violation of the claimant's rights, or for the defendant's intentionally causing loss to the claimant by unlawful means.

42. Were the position otherwise these torts would be left with little application in situations where, in my view, they have a principled part to play. The primary focus of these torts is on loss to the claimant, not to the third party (the company in the no reflective loss context). They purposely recognise that the defendant incurs liability to the claimant by what he has caused to be done to the claimant through his actions with or to the third party. I strongly resist the proposition that the claimant is then to be confined to remedies against the third party, perhaps often (as here) remedies in its insolvency. I strongly resist the proposition that the defendant is answerable in law, and for damages, only to the third party for what he has done.

43. In Giles v Rhind [2003] Ch 618 the Court of Appeal discussed an exception to the no reflective loss principle where the alleged wrong has left the company unable to pursue the wrongdoer. I do not consider it necessary to have resort to the exception in the present case.

44. In my judgment Marex has the better argument that the rule against reflective loss does not bar its ability to show a completed cause of action in tort.

Taking stock

45. In the present case I have found myself reaching a clear conclusion that the Claimant has the better argument (meets the test of good arguable case) on all points of law at issue.

46. It is therefore unnecessary to debate whether that test (the test of good arguable case) or the (lesser) test of serious question to be tried applies. It is also unnecessary to debate any difference between "claim … made in tort" and "claims founded on a tort".

47. The points of law that do arise are of some importance. They are points that may benefit from final decision on the basis of actual and not hypothetical facts. Given these considerations, I am persuaded they are not suitable for a final decision at a hearing on jurisdiction. I am however prepared to go as far as to say that, with the benefit of the appreciable argument I have had, my view at this stage is that the three points of law considered at paragraphs 18 to 44 above are very strongly in favour of Marex.

48. These points of law aside, I do not understand it to be challenged - and I consider it obvious - that there is a serious question to be tried on the merits of the claim. I do however next need to consider whether England and Wales is the proper place - the appropriate forum - in which to bring the claim.

Proper place

49. CPR 6.37(3) provides that the Court will not give permission to serve a claim out of the jurisdiction "unless satisfied that England and Wales is the proper place in which to bring the claim".

50. Mr Sevilleja contends that the proper place in which to bring the present claims is the British Virgin Islands. He relies on the fact that Marex has lodged proofs of debt in the liquidation of the Companies, and says (by reference to authority) it has thereby submitted to the jurisdiction of the BVI Courts in relation to all issues arising in the liquidations. He says that Marex is pursuing assets of the Companies when that is for the liquidator to do.

51. I have read and listened carefully to all the points that are made on Mr Sevilleja's behalf by Mr Lewis QC. In my view the proper place for Marex's claim against Mr Sevilleja is, clearly and distinctly, England and Wales. Marex relies on Mr Sevilleja's alleged decision to cause the Companies to move assets out of bank accounts in this jurisdiction in response to a Draft Judgment of this Court in proceedings where this Court had jurisdiction between Marex and the Companies.

52. There is no question of Marex having submitted to the jurisdiction of the BVI Courts as regards claims against Mr Sevilleja. Marex's claims are directed to him and therefore to his assets, not the Companies' assets.

53. Insofar as assets Mr Sevilleja holds are, in the circumstances of their removal, held on trust for the Companies, they may be available to the Companies in liquidation and not to Marex (just as not to Mr Sevilleja). Marex will ordinarily enjoy those assets through the dividend process in the liquidations rather than through this litigation. Insofar as assets Mr Sevilleja holds are not held on trust for the Companies, they will ordinarily be available to Marex if Marex succeeds in this litigation (and unless, for example, Mr Sevilleja himself becomes subject to a personal insolvency process).

A question of contempt of Court?

54. The Draft Judgment contained a statement, headed "In Confidence" in these terms:

> "This is a judgment to which the Practice Direction supplementing CPR Part 40 applies. It will be handed down on Thursday 25 July 2013 … This draft is confidential to the parties and their legal representatives and accordingly neither the draft itself nor its substance may be disclosed to any other person or used in the public domain. The parties must take all reasonable steps to ensure that its confidentiality is preserved. No action is to be taken (other than internally) in response to the draft before judgment has been formally pronounced. A breach of any of these obligations may be treated as a contempt of court. …"

55. I invited and received submissions from Leading Counsel on both sides on the question of contempt of Court where, as here, it was alleged that Mr Sevilleja had taken action in response to the Draft Judgment before it had been formally pronounced.

56. The present case arguably exposes weaknesses in this wording. The thrust of the wording is confidentiality, argued Mr Lewis QC for Mr Sevilleja. I am not sure it is very clear, on the face of the drafting, what lies within the exception "other than internally"? And Mr Lewis QC pointed out the absence of a penal notice, and of the checks and balances (including cross undertakings) when a freezing order is considered if the wording is intended to be directed, at least in part, to the movement of assets. These points all suggest a review of the wording in appropriate quarters is desirable for the future.

57. In circumstances where there has not been a breach of the confidentiality required by the Court, and where Marex has not asked the Court to address Mr Sevilleja's conduct as a contempt, I do not consider the present case is one for the Court to take steps of its own motion. In a future case things may be quite different. Anyone who acts as Mr Sevilleja is alleged to have acted is at risk of serious consequences.

Service by an alternative method

58. Mr Sevilleja contends that there was not good reason supported by evidence for the Court's decision (as it happens, made by me on the documents) to permit service to his last known email address and to the Company Secretary of a brokerage company in England.

59. Mr Sevilleja's position is that Marex had his address in Dubai from the time of the proceedings against the Companies leading to the Judgment. Marex had referred in its evidence to investigations that suggested that he no longer had any connection with that (possibly rented) address, and that he had not been seen there for some time. Mr Sevilleja criticises Marex for not setting out the nature or depth of the investigation and for not providing any reports from the investigators.

60. The Court will exercise with care its jurisdiction in relation to service by alternative means. I can see that more detail might have been desirable, but in my judgment the evidence was sufficient and it provided at the time good reason to doubt the

effectiveness of service at the Dubai address and to indicate that service to his email address (in particular) was a better means.

61. I add that the evidence before the Court included evidence that Mr Sevilleja had removed assets from the jurisdiction and the Companies in 2013. Mr Lewis QC accepted in argument that Mr Sevilleja's alleged conduct was not irrelevant, but argued it was of limited value and that there was no evidence he was seeking to evade service. In my view the evidence of his alleged conduct in 2013 increased the possibility that he would have removed himself from the Dubai address used in 2013 and known to Marex.

Conclusion

62. In the circumstances the applications of Mr Sevilleja challenging jurisdiction and service are dismissed.