IN THE HIGH COURT OF JUSTICE BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES BUSINESS LIST CHANCERY DIVISION Rolls Building Royal Courts of Justice Fetter Lane London EC4A 1NL Date: Before: Deputy Master Bartlett - Between: 2 PPF Capital Source Limited And (1) Bhupinder Pall Singh (2) [redacted] Claimant Defendants - Mr. Paul Casey (instructed by Keystone Law) for the Claimant Mr. David Simpson (instructed by direct access) for the First Defendant Mr. Kevin Pettican (instructed by Treon Law Solicitors) for the Second Defendant Hearing date: 9 th May 2018 - Deputy Master Bartlett: 1. In this claim I have to determine two applications for security for costs made by each of the Defendants, that of the First Defendant having been issued on 21st September 2017 and that of the Second Defendant on 2nd October 2017. The grounds of those applications are identical, namely that the Claimant company is one in respect of which there is reason to believe that it will be unable to pay that defendant's costs if ordered to do so and it is just to make an order for security (see CPR, Part 25.13). It is accepted by the Claimant that the first of those conditions is satisfied and the contest before me was whether the second is also satisfied. 2. The Claimant is a company incorporated in the Republic of Ireland. Its business is described as engaging in capital markets transactions. The only person who has been a director of the company throughout the events giving rise to this claim and down to today 3 is Mr. Iain Stamp and he has made the witness statements on behalf of the company in relation to these applications. Mr. Simon Marriott and Mr. Nicholas Wallis were appointed directors in October 2013 and Mr. David Jones in December 2013. Mr. Wallis resigned in March 2014, Mr. Marriott in April 2015 and Mr. Jones in January 2016. Mr. Michael Masterson was appointed in April 2015 and resigned in March 2016. Mr. Edward Belbin was appointed in January 2016. Both Mr. Marriott and Mr. Wallis have made statements in support of the Defendants for the purposes of these applications. It is clear that Mr. Wallis left the company because of disagreements between him and Mr. Stamp about the conduct of its business and according to Mr. Stamp the company dismissed Mr. Marriott for misconduct. The issued shares of the company are wholly owned by the Galaxy Funding Foundation, which is registered in Belize as what is called a Belize International Foundation, described in the material before me as a hybrid between a trust and a company. I will revert to the Foundation in more detail later in this judgment. 3. According to the First Defendant he originally qualified as an aeronautical engineer but has over the last thirty years worked in and run businesses in a number of different sectors. During his career he has obtained experience of trade and import financing. Such information as I have about the Second Defendant indicates that at one time he worked for a well-known firm of solicitors, Freshfields, as a paralegal but he has no legal qualifications. He subsequently acted as the head of legal and corporate affairs for a company and appears to have had various business interests. Overview 4. The Claimant's resistance to the applications is mainly on two grounds. First, it is submitted that its case against each of the Defendants is a very strong one, which can be characterised as highly likely to succeed. Secondly, if security is ordered that would be likely to stifle the claim. It also relies on conduct by the First Defendant in the course of this claim which it submits shows that the First Defendant has been deliberately seeking to delay the progress of the action and cause the Claimant to incur costs which it cannot afford. It also says that its lack of funds has been caused by the Defendants' wrongdoing complained of in this action. Mr. Casey did not press that point in his oral argument and in my view for reasons which will become apparent it stands or falls with his point that the claim will be stifled by an order for security. 4 5. The courts have said on a number of occasions that applications for security for costs should be dealt with as far as possible within a limited hearing time and without unduly extensive evidence, particularly as to the merits of

this claim. In this case there have been three rounds of evidence from each side, the hearing bundles ran to some 1250 pages and the oral argument occupied a full day. I certainly make no criticism of counsel, whose arguments were helpful and wasted no time. The evidence did in my view in some respects range beyond what was really necessary but the volume to a significant extent reflects the fact that this is an unusual case and one in which the issue of security is of real importance to all the parties. 6. I regard it as important to emphasise at the outset that the question which I have to answer is whether it is just to order security. In making that decision no single factor is likely to be decisive on its own. The basic principles remain those set out by Peter Gibson L.J. in Keary Developments Ltd. v. Tarmac Construction Ltd. [1995] 3 All E.R. at pp. 539 – 42, which I can summarise for present purposes as follows: (a) The court must balance the injustice to the claimant of being prevented from pursuing a proper claim by an order for security against the injustice to the defendant if no security is ordered, he succeeds at trial and is then unable to recover his costs. (b) The court will have regard to the claimant's prospects of success, but it should not go into the merits in detail unless it can clearly be demonstrated that there is a high degree of probability of success or failure. (c) Before refusing to order security on the ground that it would unfairly stifle a valid claim the court must be satisfied that in all the circumstances it is probable that the claim would be stifled. The onus in that respect is on the claimant. The enquiry relates not only to a company's own resources but also to whether it can raise funds from its directors, shareholders, backers or other interested persons. (d) The court is not bound to order security in an amount which will fully protect the defendant but can order any lesser sum if it considers that just. The claim 7. The Claimant's case is in essence that the Defendants practised on it a form of fraud commonly known as an advance fee fraud. That fraud was carried on through an English company known as Greenmybusiness Limited ("GMB") which was in practice run by 5 the First Defendant. The sole director and shareholder of the company at the relevant time was the First Defendant's mother although the evidence before me shows that he was a signatory on its bank account. Mr. Stamp first met the Second Defendant in about July 2013 and indicated that he was interested in raising funds by a process described as monetising letters of credit. 8. According to Mr. Stamp the Second Defendant told him that he had been a partner in Freshfields and had experience of raising project finance. The Second Defendant completely denies ever having suggested that he had been a partner in that firm or that he was a qualified lawyer. It is not suggested that he made any written representation to that effect. The Second Defendant told Mr. Stamp that he could not personally assist the Claimant with financing but could introduce him to the First Defendant who had considerable relevant experience. 9. There were various meetings between the parties after that although there is some dispute as to exactly when the Second Defendant was present at those meetings. It seems clear that Mr. Wallis was also present at some of those meetings. The First Defendant explained that he had a working relationship with a company called SD International ("SDI") represented by a Ms. Chiu who was able to assist in monetising letters of credit through the Bank of China. He introduced Mr. Stamp to Ms. Chiu when she was visiting England. He also mentioned a contact in Eastern Europe whose identity he was not prepared to disclose. According to Mr. Stamp he insisted that if the Claimant was to pay over any money to GMB he required to nominate a joint signatory to GMB's account with Barclays Bank to protect the Claimant's interest. 10. Late on the evening of 8th November 2013 there was an exchange of emails between Mr. Stamp and the Second Defendant. Mr. Stamp informed the Second Defendant that he was having difficulty in obtaining information about the First Defendant and asked if he had "full DD" (due diligence). The Second Defendant replied setting out some information relating to the First Defendant's business career and stating that he has known him for

twelve years, he is a personal friend and he is a diligent and trustworthy operator and an extremely ethical person. The Claimant's case is that the information given was wrong and was given by the Second Defendant dishonestly in order to induce it to deal with the First Defendant. The Second Defendant accepts that there are 6 inaccuracies in the account of the First Defendant's career but asserts that they are minor errors and the overall picture given is substantially correct. He attributes the errors to being asked to respond Mr. Stamp's email at short notice late at night. He also says that he was not attempting to provide full due diligence in respect of the First Defendant and Mr. Stamp cannot have thought that his response amounted to that. 11. By a written agreement dated 9 th November 2013 the Claimant entered into a contract with GMB (the GMB Agreement). The essence of that agreement was that GMB was to procure a $100 million letter of credit issued by Barclays Bank with SDI named as the beneficiary. The object of this was that SDI would then borrow money from the Bank of China against that letter of credit which would be used by the Claimant for investment purposes. The way in which this was to happen is set out in detail in Clause 3.5 and Annex 1 to the agreement. First, the Claimant was to nominate a joint signatory to be added to GMB's bank account and that was to be done. Secondly, the Claimant was to transfer $1.5 million to that account. Thirdly, GMB was to provide details of the letter of credit to be issued. Fourthly, $250,000 was to be released to GMB as the charges for confirmation and delivery of the letter of credit. Fifthly, GMB was to arrange confirmation and delivery of the letter of credit. Sixthly, upon acknowledgment by both the Claimant and SDI of delivery of the letter of credit the balance of the sum transferred to GMB's bank account was to be released to it. Finally, there was provision for payment at a later date by the Claimant of a further sum of 11% of the face value of the letter of credit. There were also provisions for additional charges payable by the Claimant if it required for any reason reconfirmation or reissue of the letter of credit. The important point here is that the six steps I have set out were clearly intended to be carried out in sequence with each step being conditional on the preceding steps having occurred. The Claimant alleges that the effect of the agreement was that the money which it was to pay immediately was held by GMB to be applied only as provided by the terms of the contract and it was therefore held on a trust of the kind usually referred to as a Quistclose trust. 12. By a further written agreement dated 14th November 2013 the Claimant agreed with SDI for SDI to facilitate the obtaining of funds against the letter of credit. In summary terms the letter of credit to be procured by GMB was to be delivered to SDI. SDI would then within 15 business days finalise a loan with a bank (envisaged to be the Bank of China) for at least 70% of the face value of the letter of credit. It should be noted that the 7 Claimant was not obliged to make any immediate payment to SDI under this agreement. The agreement recites that the purpose of the loan was to raise funds for unspecified projects and the costs and charges were to be paid as a first priority out of the investment profits. 13. The Claimant alleges that it nominated the Second Defendant to be the joint signatory to the GMB bank account and that the Defendants represented on 19th November 2013 that that had been done. It further alleges that in reliance on that it transferred $1.5 million to that account on 20th November and there is no dispute that the money was transferred. The Claimant alleged in the Particulars of Claim that the representation was false and dishonest because the Second Defendant was never added to the account as a signatory. The Defendants' case on this issue is that the Claimant never actually nominated the Second Defendant to be a signatory but in any event as far as they were aware he went through all the necessary procedures to be added and was added. In support of that they produced a letter apparently from Barclays Bank dated 16th December 2013 stating that an unspecified amendment to the signing arrangements on the account would be in place 24 hours after that letter. 14. Both the

Claimant and the Defendants have made a number of attempts subsequently to obtain clarification from Barclays regarding this issue. I regret to have to say that the information provided by Barclays has been unclear and at times contradictory. However the most recent information states that the Second Defendant was added as a signatory to the account on 16th December 2013 but his signature was never uploaded onto the system. It also appears to confirm the Second Defendant's case that he attended at a branch of the bank on 11th November 2013 and went through the necessary procedures to be added as a signatory. It remains unclear whether the signature was not uploaded by mistake or because of a decision within Barclays not to do so for some reason. This explanation may shed light on why the previous information provided by the bank was unsatisfactory. It also raises the obvious possibility that the Defendants honestly believed that the Second Defendant had become a signatory to the account even if he had not. 15. The next important event is that on 21st January 2014 the Claimant entered into another agreement with a company called Lyza Limited controlled by the First Defendant. This is in substance a very similar agreement to the GMB agreement providing for Lyza to 8 procure a letter of credit to the value of $100 million. There was however a significant difference in that no fee was immediately payable by the Claimant. A sum of $2 million was to be payable but only on receipt of a letter from the bank issuing the letter of credit stating that it was ready willing and able to do so. That fee was then to be released to Lyza in two stages in a way similar to that under the GMB agreement. The money raised against the letter of credit was expressed as intended to be invested in the Claimant's projects and Lyza was to receive in addition a share of those profits. 16. There is a fundamental disagreement between the Claimant and the First Defendant about this agreement. The Claimant's case is that it was an additional arrangement quite separate from the GMB agreement and therefore has no direct relevance to this claim. The First Defendant's case is that this agreement was in substitution for the GMB agreement, which was therefore discharged. He says that it was agreed that the payment already made by the Claimant would be on account of the fee due under this new agreement and therefore only a further $500,000 would actually be payable. The money in fact remained in GMB's account because Lyza had no suitable account to which it could be transferred. 17. According to the First Defendant GMB agreed with a Polish company, Managing Investment Group Sp z.o.o. ("MIG"), to procure the required letter of credit and on 31st January 2014 an email was sent apparently from Mrs. Tahany Taher, an executive officer of Barclays Bank, to the Bank of China attaching what purports to be a letter stating that Barclays are ready willing and able to provide such a letter of credit. That email as in the documents before me has been forwarded twice by different parties. It appears to have reached GMB and was forwarded to the Claimant on 2nd February. 18. The Claimant's case is that both the email and the attached letter are forgeries. The purported letter from Barclays contains indications which in my view would make any recipient immediately suspicious. For example, there are obvious oddities about the header and address for Barclays which may suggest that it is not genuinely on Barclays' headed paper. Barclays have stated that it does not appear to be genuine. The email on the other hand looks simply from reading it like a genuine communication from Barclays. However according to Barclays Mrs. Taher, who was employed in their office in Abu Dhabi, left their employment on 30th January 2014 and their system shows no emails sent 9 by her from her Barclays email address after that date. If that information is correct it is at present unexplained how the purported email of 31st January 2014 and a number of subsequent emails apparently sent by her from the same address and forwarded to GMB were created. The First Defendant emphasises that these documents were forwarded to GMB by MIG and says that he believes them to be genuine. His understanding is that the letter of readiness had been sent by Barclays to the Bank of

China and returned by that bank with amendments before being forwarded to GMB. He expresses doubt as to whether the information provided by Barclays regarding Mrs. Taher can be relied upon. 19. Between then and June 2014 the Claimant's case in outline is that it was trying to get GMB to perform its agreement and was met with a series of excuses for delay. A number of further emails were produced purportedly from Mrs. Taher attaching purported revised bank advices and letters of readiness to issue a letter of credit but these were all forgeries. Eventually the Claimant lost patience, cancelled the GMB agreement and demanded the return of its money. The First Defendant's case is that GMB was doing its best to perform the agreement but was hampered by the Claimant changing its instructions as to matters such as the beneficiary to whom the letter of credit was to be addressed. He believes that all the documents submitted to the Claimant were genuine, having been forwarded to GMB as mentioned in the previous paragraph. Although the Claimant did purport to terminate the GMB agreement in June 2014 discussions about the possible provision of a letter of credit continued between the parties until early August 2014. 20. What is now common ground is that the money in the GMB account was spent. An application was made by the Claimant for third party disclosure by Barclays of the bank statements for that account for the relevant period. By an order made on 13th February 2018 Deputy Master Linwood ordered such disclosure. I will revert later to some relevant details of that application. What the bank statements show is that payments out of the account started as early as 23rd December 2013 and continued thereafter until by midJuly 2014 the remaining balance was reduced to $425,344. Further payments continued thereafter until by April 2015 there was only some $2,000 left. Since it is also common ground that GMB never for whatever reason actually delivered any letter of credit to the Claimant it is the Claimant's case that these payments were plainly at the very least in breach of contract and are also clear evidence of fraud. 10 21. The First Defendant's case is that all the sums paid out were in respect of expenses properly incurred by GMB in seeking to arrange the required letter of credit. He has produced a number of invoices relating to these expenses. The Claimant says that these invoices are false in the sense that they have been created specifically as part of the Defendants' fraudulent scheme and are not in respect of any genuine or proper expenses. It also points out that in a number of instances the bank documents relating to these payments appear to show that they were made for purposes completely unconnected with the GMB agreement or the obtaining of any letter of credit. I will comment on this further below. 22. The main thrust of the Claimant's case is that this was simply from beginning to end a conspiracy by the Defendants to defraud it. There never was any genuine intention that GMB would perform its agreement to procure a letter of credit at all. In addition it relies as against the First Defendant on three further causes of action. First, it says that he impliedly represented that GMB genuinely intended to perform its obligations under the GMB agreement when there was no such intention. Secondly, it alleges that he procured GMB to act in breach of the GMB agreement by dealing with the $1.5 million paid by the Claimant in a manner in breach of that agreement. Thirdly, he dishonestly assisted GMB to commit a breach of trust by paying away that money in the manner which I have described. As against the Second Defendant in addition to conspiracy to defraud it relies on specific dishonest misrepresentations which I will discuss further below. It is worth at this point drawing an important distinction between the position of the First and Second Defendants. It may be possible for the Claimant to succeed against the First Defendant without proving dishonesty on his part on the ground of procuring breach of contract by GMB. In contrast the Claimant accepts that it cannot succeed against the Second Defendant without proving actual dishonesty on his part. 23. The First Defendant pleads in his Defence that the GMB agreement is void or unenforceable for illegality, the nature of the illegality alleged being that the

Claimant's purpose in entering into it was to fraudulently procure financial instruments and defraud banks of substantial funds. It is also alleged that the Claimant induced the First Defendant (presumably this should be GMB) to execute the agreement by false representations. It is alleged that Mr. Stamp falsely represented that he had substantial funds available, had previously funded projects to the value of £1 billion and his lawyers were Clifford 11 Chance LLP. He introduced to the First Defendant a purported business opportunity to invest in oil arbitrage through BNP Paribas Geneva and suggested that the funds to be obtained by monetising the letter of credit should be invested in that opportunity. The Claimant would share the profits realised from that investment with GMB and SDI. In fact it is alleged that no such opportunity existed. Furthermore the only funds over which Mr. Stamp had control were funds invested in companies controlled by him by third parties on terms which would not permit him to use them for the proposed purposes. In addition Mr. Stamp represented that the Claimant owned diamonds worth some £122 million when it did not. 24. The Claimant's case on this factually is that the BNP Paribas investment was an apparent opportunity of which Mr. Stamp became aware. It was only ever discussed as one of a number of possible investments for the funds to be raised and there was never any agreement relating to it. 25. There are a number of general points regarding the Defence of the Second Defendant which I need to mention. He emphasises that he had no interest of any kind in GMB and never played any part in the management of that company. It is his case that in late 2013 he was seeking investment in business projects of his own and in that connection was introduced to Mr. Wallis, who in turn introduced him to Mr. Stamp. He says that Mr. Stamp represented himself as being a man with very substantial financial resources and the initial discussions were about Mr. Stamp providing finance both for the Second Defendant's projects and for other projects in which Mr. Wallis was interested. It was only later after a number of meetings that Mr. Stamp claimed that his resources were committed elsewhere and he would need to raise funds on the security of a letter of credit or other bank instrument. The Second Defendant happened to mention this to the First Defendant, who indicated that he could assist in that respect, and he therefore introduced the First Defendant to Mr. Stamp. 26. The Second Defendant says that he only agreed reluctantly to be added as a signatory to the GMB bank account on the basis that an additional signatory was needed in case anything happened to the First Defendant. He denies that he agreed to be added to protect the interests of the Claimant or that he had any responsibility to do so. He was only present at some of the negotiations leading up the execution of the GMB agreement, 12 which were between Mr. Stamp and the First Defendant. When he became aware of the proposed agreement he expressed concern about it to the Claimant's American lawyer, Mr. Robinson, because the identity of the party who was actually going to provide the letter of credit was unknown and the First Defendant was not willing to allow direct contact with that party. 27. The Second Defendant's position regarding events after the execution of the GMB agreement is that he was not directly involved in them and had no responsibility for what happened. He was not involved in the making of the agreement with Lyza Limited. He was not involved in any way with the attempts or purported attempts to arrange a letter of credit and has no knowledge of whether the documents relating to them are genuine or not. He was not in any way responsible for the payments out of the GMB bank account and does not know whether they were genuinely for expenses incurred in relation to procuring a letter of credit or not. These points are of course disputed by the Claimant. 28. The Defendants have in their evidence relating to this application exhibited a number of statements from potential witnesses. Mr. Wallis confirms the Second Defendant's case that Mr. Stamp gave the impression of having access to very substantial funds to finance business projects. He confirms that Mr. Stamp then sought funding

through a letter of credit and the Second Defendant was asked if he knew anyone who could assist in that respect. By that route he and Mr. Stamp were introduced to the First Defendant. He says that initially he wanted to enter into an arrangement with GMB to procure a letter of credit, but Mr. Stamp persuaded him to allow the transaction to be done by the Claimant by promising him a share of the profits to be made with the funds to be raised. He says that Mr. Stamp was very anxious to get the GMB agreement signed quickly even though Mr. Robinson advised it was poorly drafted and needed further consideration. He says that Mr. Stamp told him that this was because he owed a Mr. Chiesa £10 million and was in urgent need of funds to meet that debt. He says that the Second Defendant said that he had worked at Freshfields but not that he was a partner there or a solicitor. In any event before the GMB agreement was signed Mr. Robinson had checked with the Solicitors Regulatory Authority, found that the Second Defendant was not a solicitor and passed on that information to Mr. Stamp. Mr. Wallis says that he wanted execution of the GMB agreement to be delayed for further checks to be made on the First Defendant but Mr. Stamp insisted on going ahead immediately. As far as he was concerned it was agreed 13 that the Second Defendant would be added as a signatory to the GMB account but there was no discussion about the reason for this and it was not an important matter. The subsequent agreement with Lyza Limited was made by Mr. Stamp without his knowledge or consent and he believes that part of its purpose was to shut him out from any share of the profits to be made from investment of the funds to be raised. Around this time he became concerned about the corporate governance of the Claimant and the propriety of its business practices and attempted to raise those issues. In March 2014 he was dismissed as a director of the Claimant. 29. A letter from Mr. Robinson makes a number of points. First, he says that the urgency to enter into the GMB agreement emanated from Mr. Wallis rather than Mr. Stamp. Secondly, he was provided with copies of the GMB and SDI agreements in draft. He discussed them with the Second Defendant and they agreed that they were poorly drafted and needed substantial revision. Thirdly, he and the Second Defendant both told Mr. Stamp that he should not proceed with the agreement without further investigation as to who was actually going to provide the letter of credit, but Mr. Stamp proceeded with it despite their advice. Finally, he also advised against transferring funds to GMB without further evidence as to that company's ability to perform the agreement but again his advice was ignored. 30. There is a short statement from Ms. Chiu confirming the involvement of SDI in the transaction. She says that at one stage Mr. Stamp asked her to send funds that were to be raised to his personal bank account, which she refused to do as in breach of monetary laundering regulations. She says that there was an agreement with MIG for the letter of credit to be procured. Later Mr. Stamp asked for the transaction to be moved to a bank in Hong Kong. She arranged that and entered into a new agreement with a company called Medal Global Solutions to procure the letter of credit. Before that could be finalised Mr. Stamp cancelled the transaction. A Dr. Stephen Kpere-Daibo says that he is a director of Medal Global Solutions. He had had previous business dealings with the First Defendant and in February 2014 he offered to assist with procuring the letter of credit required under the GMB agreement. By the end of April 2014 he had made arrangements for the issue of the letter of credit but was then instructed by SDI to put the matter on hold as the bank involved was being changed. There were various subsequent discussions about the issue of a revised letter of credit but in August 2014 the First 14 Defendant and SDI informed him that the transaction had been cancelled. GMB's bank statements show that four payments totalling $603,500 were made by GMB to Medal Global Solutions between early April and early May 2014. Dr. Kpere-Daibo confirms that that company invoiced for those sums and was paid them in respect of its work in procuring a letter of credit. The First Defendant originally said

that Medal Global Solutions was an English company, but the Claimant's enquiries revealed that there was no such company registered in England. The First Defendant now says that he had misunderstood the position and it is a Nigerian company which carries on business here. The Claimant points out that the address for that company in England on the invoices it purportedly rendered to GMB is misspelt and the post code appears to be wrong. Dr. Kpere-Daibo's statement sheds no light on these points although it gives clear indications that he lives and carries on business here. 31. There is also a statement from Ms. Sunee Phisutsinthop, the director of a company in Thailand. She says that in July 2014 her company agreed with Lyza Limited to procure a letter of credit for 100 million euros and made arrangements to do so. She then says vaguely that due to problems with the Claimant and MIG the transaction was not successful. She says that payments totalling $290,000 were received for this work which correspond to payments out of the GMB account. These payments were in fact made to a manager formerly employed by the company who was responsible for arranging the letter of credit. What she does not explain is why a number of these payments were made months before the agreement in July 2014 to which she refers. Merits – the First Defendant 32. I have already referred to the principle that the court dealing with an application for security for costs should only give weight to the strength or weakness of the claimant's case if it is clear that it is highly likely to succeed or fail. Some further assistance on the application of this principle is contained in the judgment of Chief Master Marsh in Gresport Finance Ltd. v. Battaglia [2015] EWHC 2709 (Ch) at Paras. 34 - 35. The threshold of probability involved is lower than that required for a claimant to obtain summary judgment or the striking out of the defence as showing no reasonable grounds of defence. On the other hand it is plainly not enough for the claimant to be able to say that he is more likely to succeed than to fail. There is at least a similarity to the situation 15 where the court makes a conditional order on an application for summary judgment because the defence may succeed but it is improbable that it will do so. 33. There is one further general point which I should emphasise. It is extremely important that the court should avoid being drawn into conducting any form of mini-trial of the claim at this stage. This is especially so in a case such as the present where there are serious allegations and counter-allegations of dishonesty on both sides. Although the evidence before me is copious it is far from all the documentary evidence that is likely to be before a trial judge. The statements I have are not in the form in which they are likely to be for a trial and there may well be further witnesses. Oral evidence and crossexamination is likely to be very important in determining a number of the crucial issues in this case. The most which I can and should attempt to do is form a general impression of where the probabilities lie on the main issues as matters stand at present. For that reason I have not mentioned above and will not mention by any means all the issues of fact which may arise at trial in this case. 34. There is a simple and powerful argument which lies at the heart of the Claimant's case against the First Defendant. The terms of the GMB agreement spell out clearly and precisely when GMB is entitled to deal with the $1.5 million paid by the Claimant and it follows that the money must remain untouched until those conditions are satisfied. If the letter of readiness sent to the Claimant on 2nd February 2014 is genuine GMB would appear to have been entitled to take $250,000 out of the account. Since on any view no letter of credit was ever delivered it never became entitled to do anything with the balance of the money. This would be so even if the Claimant was responsible for the fact that no letter of credit was ever delivered because it terminated the agreement without good reason. There is no dispute that GMB did in fact pay all the money out of the account. That was a breach of contract even if the money was spent entirely on the expenses of obtaining the letter of credit and the First Defendant procured that breach of

contract. 35. It seems to me that the First Defendant's argument based on illegality faces serious difficulties. The evidence that Mr. Stamp was putting forward the opportunity to invest in oil arbitrage in any way so as to represent that it was genuine strikes me as very thin. It looks much more likely on the material before me that he was himself looking into the possibility of investing in that opportunity and was discussing that possibility with the 16 First Defendant and others. The question whether if the facts alleged by the First Defendant were proved that would in law give him a defence of illegality was not argued before me. I will therefore say no more than that I am not sure that it necessarily would. 36. I also consider that the First Defendant's defence that the GMB agreement was discharged and replaced by the agreement with Lyza Limited faces serious difficulties. As Mr. Casey points out there is nothing in the agreement with Lyza which in any way suggests that it is anything other than a separate and additional contract. What I regard as particularly significant here is the provision in that agreement for payment by the Claimant of $2 million in specified circumstances. This is on its face inconsistent with the sum of $1.5 million already paid by the Claimant to GMB being treated as part payment of the sum due to Lyza. If that was what was intended one would have expected the agreement with Lyza to so provide. I would emphasise that I do not regard this as shutting out the First Defendant from putting forward his case as to what was actually agreed but it does seem to me to present that case with real problems. 37. The Claimant's case on this issue is in my view strengthened by the email correspondence to which I was referred. There are a number of emails in late January and early February 2014 in which Mr. Stamp and the First Defendant refer to the credit to be raised as $200 million rather than $100 million. On 29th January in an email to Mr. Marriott Mr. Stamp said that "we need to transfer $2m for the second 100m". On 31st January in an email to the First Defendant he said that upon receipt of the required documents "I will instruct the $2m transfer". On 2nd February in an email to the First Defendant he said that on receiving the required confirmation "we will then transfer $2 million to the same account as the $1.5 went to". 38. The First Defendant's position is that these emails have nothing to do with the agreement with Lyza Limited. There were discussions between the parties about monetising further letters of credit which were not dealt with by either the GMB agreement or that with Lyza and these emails were part of those discussions. Mr. Simpson on his behalf made the fair point that I do not have before me a complete picture of the communications between the parties at that time or the benefit of oral evidence explaining what was happening. I certainly cannot say that the First Defendant's case on 17 this issue is bound to be rejected. However the terms of these emails do seem to me to make that case appear distinctly improbable. 39. In seeking to prove fraud on the part of the First Defendant the Claimant can point again to the simple fact that the money which it paid to GMB was paid out in circumstances where that was not permitted by the contract. Its case will of course be much stronger if it can establish that the documents produced by GMB in purported performance of its contract were forgeries and that the money paid out was not paid out for proper expenses connected with procuring the letter of credit. 40. In relation to the genuineness of the documents produced the evidence from Barclays Bank regarding Mrs. Taher which I have set out above makes it highly likely that the documents purportedly forwarded by her were forgeries. What I regard as more doubtful at this stage is whether it can be proved that the First Defendant was involved in or responsible for those forgeries. The material before me as far as it goes seems to me to support his evidence that all the crucial bank documents were forwarded to GMB under cover of emails purporting to come from Mrs. Taher. If he was acting honestly he may well have had no reason to doubt the authenticity of the emails. If he believed that the documents had genuinely been sent by Barclays that would tend to encourage him to believe that those

documents were also authentic, and he may have done so even if they showed suspicious signs when considered on their own. 41. In relation to the payments made out of the GMB account I cannot express any view at this stage on many of them. It seems fairly clear that MIG was in some way involved in the procuring and forwarding of the purported letters of readiness which were produced. Whether that company was acting honestly, was part of a conspiracy with the First Defendant to defraud the Claimant or was itself seeking to defraud GMB and the Claimant in my view remains obscure at this stage. In those circumstances I do not see that I can draw any conclusion as to the payments made to it. 42. Certain of the payments however do have troubling features when one looks at the narrative entered on the GMB bank account in relation to them: (a) Payments of $70,000 on 8th April 2014 and $110,000 on 11th April 2014 to Medal Global Solutions. These are both described as payment for goods. 18 (b) Payment of $126,000 on 22nd May 2014 to Okundi & Co., alleged to be made at the request of Medal Global Solutions. This is described as a payment in escrow for a government royalty payment. (c) Payment of $25,000 on 16th July 2014 to Union Global Venture Capital (Thailand) Co. Ltd. said to be for the benefit of Ashok Akasalligar. This is described as being for negotiating and arranging a joint venture agreement on funding gold mine exploration and a farm in Brazil. (d) There are a significant number of payments to companies or trading names whose connection to procuring the letter of credit is entirely unexplained or which are transfers to another account of GMB or to Lyza Limited. 43. The First Defendant's case is that for the purpose of making the payments he had to identify to GMB's bank a project to which the payment was to be attributed and he used these descriptions simply to provide a label which would satisfy the bank. This on his own admission would amount to misleading the bank, which does not assist him as to his credibility. While it seems an unlikely explanation, I do not think it is by any means impossible that that is what happened. I should also point out that even if some of the money was used for purposes other than obtaining the letter of credit it does not necessarily follow that the First Defendant was not genuinely attempting to procure it. 44. Overall it seems to me highly likely that the Claimant will succeed against the First Defendant on the basis that he procured a breach of contract by GMB in paying away the money in the GMB bank account. I am not however persuaded that its case satisfies that test in relation to any of the other ways in which it puts his case against him which I have set out above. The First Defendant – conduct 45. There are two matters relating to the conduct of the First Defendant in this litigation on which the Claimant relies for the purposes of this application. The first arises from the fact that the GMB agreement contained a clause by which the parties agreed to submit all disputes concerning it to arbitration under International Chamber of Commerce Rules to take place in Hong Kong. After service of the claim on him the First Defendant obtained various extensions of time for service of his defence. GMB then without any warning to the Claimant commenced an arbitration under the clause to which I have 19 referred and the First Defendant applied for a stay of this claim. The Claimant submits that in accordance with the basic principles of the Civil Procedure Rules if the First Defendant was going to take that course it ought to have been raised in correspondence promptly either in response to its letter before action or when this claim was served. That is in my view plainly right. 46. The application for a stay was dismissed by Mr. Stephen Jourdan Q.C. sitting as a Deputy High Court Judge on 13th October 2016. His principal reason for doing so was that the arbitration would not necessarily resolve all the issues in the claim as between the Claimant and the First Defendant and obviously could not resolve any of the issues between the Claimant and the Second Defendant. He did not in his judgment suggest that the application was wholly without merit. However he did say that the failure to raise the point in correspondence "strongly suggests that the arbitration may well be a tactical manoeuvre to try and

simply delay the evil day when this case comes on for trial". Following that decision GMB took no further steps to pursue the arbitration and Mr. Casey submits that that reinforces the point that its commencement was only ever a delaying tactic. I do not think that is a good point because I can see that when GMB considered and took advice on the position thereafter there may well have been entirely proper reasons for it to decide not to pursue the arbitration. What I regard as considerably more significant is the position regarding the costs of that application. The First Defendant was ordered to pay the Claimant's costs of that application in the sum of £18,010 and nothing has ever been paid. 47. The second point relates to the application for third party disclosure to which I have referred above. Master Clark directed service of the application on GMB and the Claimant sent it to the First Defendant in the belief that he was in effective control of GMB. GMB by a new director, Mr. Ravi Takyar, informed the Claimant and the court that the First Defendant was no longer its general manager and consequently it needed time to consider the application. As Master Clark observed GMB plainly could not claim to be ignorant of this dispute because of the arbitration proceedings it had commenced in Hong Kong, but she nevertheless granted an adjournment. At the hearing before Deputy Master Linwood GMB opposed the order sought and was only prepared to agree to Barclays being asked to provide answers to certain specific questions. In his evidence for that application Mr. Takyar said that the disclosure sought would reveal 20 "commercially sensitive information such as the names of clients and suppliers and would enable a competitor to ascertain profit margins". When the order was made and the bank statements disclosed it transpired that between November 2013 and February 2018 there was only one payment into the account of $25,000 apart from the receipt of the Claimant's payment. After the money from the Claimant had been paid out in the way I have described there was no activity of any significance on the account at all. 48. I find it difficult to understand how Mr. Takyar could have honestly made the statement which I have quoted in the previous paragraph. In the unlikely event that he did not know what disclosure of the statements would reveal it was entirely wrong for him to make the statement which he did in a witness statement verified with a statement of truth. What also strikes me is that I can see no possible reason for GMB to take this attitude to the application for disclosure other than in the interests of and for the benefit of the First Defendant. There is no direct evidence that it did so at the instigation of the First Defendant but that does seem likely to have been the case. 49. Mr. Casey submitted that these two points regarding the First Defendant's conduct are sufficient of themselves to disentitle him to security for costs. He pointed out that in Gresport Finance the Chief Master said that the defendant's failure to attend a mediation after agreeing to do so was in itself conduct sufficient to justify refusing security. I have to say that I think the court should be very wary of concluding that one particular factor of this kind is decisive. I do not regard the First Defendant's conduct of this litigation as decisive, but it is a factor to which I should give significant weight in my overall assessment of this application. Merits – the Second Defendant 50. I regard the position on this issue in relation to the Second Defendant as simpler and clearer than in the case of the First Defendant. The case against him cannot as I have indicated above succeed without proof of dishonesty on his part. As pleaded that case rests to a large extent on three alleged fraudulent misrepresentations which he is said to have made to induce the Claimant to enter into the GMB agreement. There is also the wider allegation that he was party with the First Defendant to a conspiracy to defraud the Claimant. 21 51. I have already discussed the first of the specific allegations, namely that he falsely represented that he had been added to the GMB account at Barclays as a signatory. The material before me which I have set out above makes it in my view somewhat unlikely that this was a fraudulent misrepresentation. At present it looks as if there was some internal confusion in Barclays

which led to him believing him that he had been added to the account when he had not. 52. The second allegation is that he falsely represented that he was a solicitor and had been a partner in Freshfields. This allegation appears to depend entirely on Mr. Stamp's oral evidence to that effect. It appears that Mr. Wallis will say that Mr. Stamp knew perfectly well that the Second Defendant was not a solicitor before the GMB agreement was executed and that is supported by Mr. Robinson. In those circumstances I find it impossible at this stage to say what conclusion a trial judge is likely to reach as to whether the Second Defendant made any such statement or whether the Claimant was actually under any misapprehension about his status when it entered into the GMB agreement. 53. The third allegation relates to the information provided by the Second Defendant about the First Defendant, which is admitted to have been inaccurate on a number of points. It is certainly a possible view of the Second Defendant's email giving that information that it was a deliberate attempt to bolster the First Defendant's standing in the eyes of the Claimant with overstatements about his business career. The Second Defendant's explanation that the information was given late at night and in haste is not very impressive, particularly coming from an experienced businessman. However I do not consider that at this stage I can say that it is highly likely to be untrue. I also bear in mind that both Mr. Wallis and Mr. Robinson say that they warned Mr. Stamp not to proceed with the agreement without making further enquiries about the First Defendant and that advice was ignored. There therefore seems to me a serious live issue as to whether the Claimant actually relied on the information provided by the Second Defendant. 54. There are two further matters which in my view are material when considering the strength of the case against the Second Defendant in relation to the wider allegation of conspiracy to defraud. Both arise from a series of telephone conversations between him 22 and Mr. Stamp which Mr. Stamp recorded and of which I have transcripts. The Second Defendant does not admit the accuracy of the transcripts but has not so far put forward any positive case for doubting their reliability. Mr. Stamp says that these conversations took place in and around July 2014 while the Second Defendant says that he believes that they probably took place some months earlier. All I can say at this stage is that there are internal references in the conversations, particularly a reference to the Muslim festival of Eid, which seem to support Mr. Stamp on this point. 55. The first point which arises on these conversations is that they contain extensive discussion of various business matters including the letter of credit to be obtained by GMB. In general terms they may suggest that the Second Defendant was more involved in and knew more about the relevant events after December 2013 than he suggests in his Defence and his evidence on this application. It is however fair to say that there are indications that Mr. Stamp was raising the matter of the letter of credit with the Second Defendant at least partly because he was having difficulty contacting the First Defendant and was dissatisfied with the response he was getting when he did contact him. The second point relates to some specific passages in the transcripts where Mr. Stamp and the Second Defendant discussed the money paid by the Claimant to GMB. There are several passages in which the Second Defendant says that the money has not been spent. He makes clear that he is referring to $1.25 million rather than $1.5 million, which makes sense because if the letter of readiness produced at the end of January 2014 was genuine GMB was entitled to take $250,000 from the account. In one passage he says: "I get to see the accounts, that money hasn't been touched". The bank statements show that the balance in the account fell below $1.25 million in April 2014. The Second Defendant could not therefore have seen a statement later than that which showed that that sum remained untouched in the account. There is an obvious inference which can be drawn here that he was deliberately misleading Mr. Stamp but there are other possibilities, for instance that he had seen an earlier statement and assumed or

accepted the First Defendant's word that the position had not changed. 56. Overall for the reasons discussed above I find that the evidence before me falls well short of convincing me that it is highly likely that the Claimant will succeed against the Second Defendant. 23 Stifling the claim 57. I was referred to several authorities regarding the court's approach to this issue, of which the most helpful in my view are the decision of Eady J. and the Court of Appeal in Al-Koronky & anr. v. Time Life Ltd. & anr. [2005] EWHC 1688 and [2006] EWCA Civ 1123 and the decision of Picken J. in Kazakhstan Kagazy Plc & ors. v. Zhunus & ors. [2017] EWHC 1116 (Comm). The correct approach to this case I consider to be that set out by Sedley L.J. giving the judgment of the Court of Appeal in Al-Koronky: "27 This said, it is both clear on authority and requisite in principle that a claimant resident abroad who wants to ensure that any security he is required to put up is within his means must be full and candid in setting out what his means are. True, as Park J. noted in Brimko Holdings v Eastman Kodak Co [2004] EWHC 1343 (Ch) at [12]: "… the court should not press too far the proposition that the burden [of showing that an order in more than a certain sum will stifle the claim] rests on the claimant. It should be recalled that when the claimant has to establish that third parties do not exist from whom security can reasonably [be] expected and obtained, that is to place on the claimant the burden of proving a negative." But this does not relieve the court of the need to scrutinise as much as it is told with a critical eye and to note unexplained gaps in the information which the claimant volunteers or in the documentary support for it. Unless the court were prepared to draw adverse inferences from such lacunae, a claimant would have only to deny that he can find the sum asked in order to avoid an order. 28 It follows that the court, once satisfied that the case is one in which the claimant ought to put up security for the defendant's costs before continuing with his action, is going to find itself in one of two situations. Either it will be satisfied that it probably has a full account of the resources available to the claimant, in which case it can calculate with reasonable confidence how much the claimant can afford to put up; or it will not be satisfied that it has a full account, and so cannot make the calculation. Does it follow in the latter situation that the court must go straight to the amount sought by the defendant and, having 24 pruned it of anything which appears excessive or disproportionate, fix that as the security? Or is there a middle way—for example to set an amount which represents the court's best estimate of what the claimant, despite having been insufficiently candid, can afford? 29 In our judgment there is such a power, but it resides in the court's discretion rather than in legal principle. In the second situation we have postulated, the requirements of the law have been exhausted: what remains is to set a suitable sum. This classically is where discretion fills the space left by judgment: the court has a choice of courses, none of which it can be criticised for taking provided it makes its election on a proper factual basis uninfluenced by extraneous considerations." I need hardly say that the need for full and candid evidence applies just as much to a company from which security is sought as in the present case as to a foreign individual claimant. That is clear from the Kazakhstan Kagazy case where Picken J. said at Para. 15 that the claimant must be full and frank in providing proper and sufficient evidence of its impecuniosity. 58. The normal starting-point in considering the financial position of any limited company is its published accounts. The only accounts ever filed by the Claimant with the Irish Registrar of Companies are for the period from its incorporation on 19th June 2013 to 18th December 2014. Those accounts show assets totalling $6,843,910 consisting of debtors of $3,811,826, investments of $514,201 and cash of $2,517,883. They show current liabilities of $13,440 and debts due after more than one year of $8,869,821. The auditors report that in their view the accounts do not give a true and fair view of the company's financial position because the debts shown as due to it include anticipated receipts of nearly $3 million from ongoing legal claims which are not certain to realise

those sums. The accounts have been prepared on a going concern basis on the footing that as at the date of their signature in August 2016 the company had access to funding which would allow it to fund its operating expenses and 25 financial liabilities and those of its connected companies until at least 31st August 2017. 59. Because of the failure of the company to file subsequent accounts the Irish authorities commenced proceedings to strike it off the register. However on 9th November 2017 at its request they agreed to suspend those proceedings for twelve months. The Claimant has not put in evidence any draft or management accounts of any kind for any later period. Mr. Stamp says in evidence that the reason for no subsequent accounts having been filed is that the Claimant has been unable to afford the cost of having accounts prepared in addition to the costs of this litigation. Given the relatively modest likely costs of having accounts prepared and the obvious importance of doing so I find this unconvincing. In any event I am left with the position that I have no subsequent accounts for the company. 60. Mr. Stamp says in evidence that the only present assets of the Claimant are a holding in gold worth about £65,000 and cash of £2,500. I invited Mr. Casey in the course of argument to direct me to any evidence which sheds light on what has become of the $2.5 million in cash which the company had at 31st December 2014. He was unable to do so, which shows to my mind immediately a serious lacuna in the Claimant's evidence. 61. It is necessary for me to look in some detail at the long-term debts of $8.8 million shown in the Claimant's accounts. The notes to the accounts show that these are all due to three connected Irish companies controlled by Mr. Stamp and for two of which I have seen accounts to 31st December 2014. In both cases those accounts show that the company is entirely dependent on support from the Clamant to meet its current and future liabilities as they fall due. In his first witness statement Mr. Stamp said that these other Irish companies were special purpose vehicles into which investors had invested funds, which had then been transferred to the Claimant because pooling the money in one company would provide better investment opportunities. He said that the terms of the agreements between the Claimant and those companies were such that there was either no loan agreement or there was a loan agreement with a 26 limited recourse provision. The Claimant was only obliged to make payment if and when funds were available to it. Because GMB never procured the required letter of credit and did not return the sum paid to it by the Claimant the intended investments could never take place and therefore there was never any repayment by the Claimant to the connected companies. 62. It seemed and seems to me that in those circumstances it must be very doubtful whether the Claimant actually owes those connected companies any debt at all today on Mr. Stamp's own evidence. When I put this point to Mr. Casey he told me on instructions that I had misunderstood and there was indeed such a liability, but I remain unable to understand how that can be so if Mr. Stamp's evidence which I have recited is correct. What makes the position even more doubtful is that all three of those companies were dissolved between October 2017 and January 2018. 63. The Defendants have put in evidence statements from Mr. Stephen Moors and Mr. Michael Cutts, who are among the investors who put money into the companies which I have mentioned in Paragraph 60 above. It is clear from Mr. Moors' statement that he has been in contact with several other such investors. What he says that he was offered was a loan proposition. His company would put into one of the Irish companies a sum of one-sixth of the amount which he wished to borrow plus £75,000, which would be securely retained in an escrow account with assurances from Clifford Chance as to its security. He would be provided with the promised loan by instalments starting eight weeks after payment and then by five subsequent monthly instalments. No loan ever materialised and Mr. Moors pressed for the return of the money which his company had paid over (£575,000). After numerous delays and excuses he was told that the money could not

be repaid and the investors had no right to repayment. It appears from his and Mr. Cutts' statement that the arrangements offered to other investors varied in some respects but they all involved substantial upfront payments. Mr. Cutts did receive one repayment of a small part of his money and according to Mr. Stamp two other investors were repaid substantial sums, which there is no evidence to dispute. 27 64. On 27th September 2017 Mr. Moors and a number of other creditors sent letters before action claiming the return of their money. On 28th October Mr. Stamp replied saying that the Claimant would be entering into a series of capital market transactions from mid-October with the intention of restoring its balance sheet and the results would be distributed to investors from October. There is nothing in the evidence before me to show that any such restoration of the Claimant's balance sheet has taken place or that any distributions other than those I have mentioned in the preceding paragraph have been made. 65. I regard the evidence of Mr. Moors and Mr. Cutts as of limited significance for my purposes. I cannot express any view on what the investors were offered and whether as they clearly believe they have been defrauded. What is significant is that Mr. Stamp in a letter to Mr. Moors on 5th October 2017 denies that his company has any right of recovery at least at present. This is consistent with Mr. Stamp's evidence which I have set out in Paragraph 60 above and supports my conclusion based on that evidence. He also says in his evidence that any recovery in this action will be applied for the benefit of the investors and that he and the Claimant will not actually benefit at all. 66. The Claimant put in evidence a statement from Mr. Donal O'Reilly, a chartered certified accountant in Ireland, in response to the Defendants' criticisms of its accounts. It is important to understand the nature of the exercise which Mr. O'Reilly has carried out. First, he has made comments based on his understanding of the published accounts which I have discussed. Secondly, he has set out an account of the Claimant's expenditure designed to explain what has happened to the money invested by investors which was transferred to the Claimant. He says that he had previously prepared a draft financial position for the Claimant as at 31st December 2015, although notably this has not been put in evidence. It is clear from the notes added to the account which he has produced that significant parts of the figures in it are based simply on information provided by the Claimant's management. 28 67. A number of points arise on Mr. O'Reilly's evidence: (a) He says that the true amount received by the Claimant from the investors was not $8.8 million but $6.3 million because the auditors recognised in the financial statements that the former figure included an interest charge of $2.5 million. I can find no reference to any such charge in the audited accounts before me. Furthermore none of the other evidence suggests that there was any such liability to pay interest. Mr. Stamp makes no mention of any such liability and it would not appear to be consistent with his description of the rights of the investors for them to be entitled to interest. It may be that Mr. O'Reilly has seen some document which is not before me which sheds light on this but the position in this respect is at best unclear. (b) The expenditure out of the money received includes just over $1 million in expenses incurred prior to 18th December 2014 and the sum of $1.5 million paid to GMB. While this is properly included for the purposes of the exercise which he has carried out it remains the position that the company still had $2.5 million in cash after that expenditure had been incurred. (c) There are sums of just over £650,000 which he was informed by the Claimant's management had been lost as a result of unsuccessful investments. Mr. Stamp confirms this but the only supporting evidence produced is a letter before action sent to one of the five companies in which the Claimant is said to have invested. (d) The Claimant's expenditure according to Mr. O'Reilly includes £350,000 in directors' fees salaries and expenses, £400,000 in management fees and £840,000 in legal and professional fees. This seems remarkable for a company which has never made a profit in its life

according to the evidence which it has put forward. 68. I have no doubt that Mr. O'Reilly has done his best to assist the court on the basis of the material available to him. However because of the limitations on the exercise which he has carried out and the points made in the previous paragraph I do not think that his evidence by any means fully deals with the difficulties which I have regarding the Claimant's evidence on this issue. 29 69. Mr. Pettican invited me to attach considerable importance to the statement in the Claimant's accounts that the directors continue as at August 2016 to have access to funding which will allow it to fund its operating expenses and financial liabilities and those of its connected companies into the future and at least to August 2017. The first point here is that there is no evidence before me as to what that source of funding is. Secondly, it is expressed to be a source which is capable of meeting the expenses and liabilities not only of the Claimant but also of its connected companies. The accounts also state that the Claimant has provided commitments to fund the operational and trading activities of nine companies all under the control of Mr. Stamp. Thirdly, as Mr. Pettican points out by August 2016 this litigation was under way. The claim form was issued in April 2016 and the First Defendant's application for a stay was made in June 2016. The Second Defendant's defence was served in June 2016. The Claimant's directors must therefore have anticipated that the Claimant faced fully contested litigation against both Defendants with all the expense which that would involve. They nevertheless anticipated that it would be able to meet all its commitments for at least the next twelve months. 70. Mr. Pettican also points out that the Claimant has in fact had solicitors and counsel acting for it in this litigation to date despite giving indications at various stages that it would act as a litigant in person. The Claimant's costs budget dated 25th February 2017 shows that at that date it had already incurred costs of just over £150,000 and its total budget was over £400,000. Clearly further costs have been incurred since then but I do not have a figure for this. In his evidence for this application Mr. Stamp says that the Claimant's total assets are as at March 2018 some £67,500. The statement of costs for this application filed on its behalf totals almost exactly that sum. Mr. O'Reilly's calculations show the sum remaining in the hands of the Claimant in April 2018 as £59,000. Mr. Pettican invites me to infer that it is obvious that the Claimant does indeed have some source of funding available to it which enables it to meet its ongoing expenses including the costs of this litigation. I note that in the Kazakhstan Kagazy case Picken J. attached importance to substantially the same point (see Para. 26). 71. My overall conclusion is that the evidence provided by the Claimant falls a long way 30 short of meeting the requirement of candour as to its finances which is expected of a claimant who seeks to resist an application for security for costs on the ground that it would stifle its claim. I do not believe that I have been given a full and frank account of the Claimant's financial position. I accept the Defendants' submission that it is likely that the Claimant has available to it sources of funding which are not disclosed in its evidence. I find it quite impossible to form any reliable view on the material before me as to the extent of those resources at the present time. 72. Given my conclusions in the previous paragraph it seems to me of limited importance whether the evidence before me shows that there are other parties whom the Claimant could call on to assist it with the costs of this litigation and I shall deal with this aspect of the matter more briefly. In relation to Mr. Stamp's own means he says in his evidence that he has no current income and his assets consist of a car and investments worth in total £45,000. He has produced an income tax return consistent with him having no income. He says that he has had loans of £295,000 from the Galaxy Funding Foundation, £65,000 from his father, £516,000 from what is described as a remuneration trust, which he used to fund a settlement on his divorce and the ongoing expenses of his companies, and £1.21 million from a company called ICS Holdings Limited. I find his explanation regarding this loan unclear in its detail

but it is plain that he is saying that he no longer has any of this money. I was told that since he served his evidence he has become engaged in a new business which is paying him £6,500 per month. Whilst there is reason to be sceptical about Mr. Stamp's statement of his means in the light of his evidence as to the Claimant's finances I do not feel able to draw any conclusion that he has personally any significant means with which to fund this litigation. 73. As I stated at the beginning of this judgment the Claimant is wholly owned by the Galaxy Funding Foundation. One would therefore expect that it might well have an interest in funding this litigation. According to Mr. Stamp he is not a shareholder in or beneficiary of that entity and has no control over it. He has produced documents showing that the Foundation has $93,000 in cash and silver worth about £35,000. It has shareholdings in four other companies connected with him which he says are of no significant value. He has produced the registration documents and foundation 31 charter of the Foundation but these documents as produced contain significant unexplained redactions. The governing body of the Foundation is stated to be its Foundation Council but the name of the sole member of that Council has been redacted. The Foundation has a protector who appears to fulfil broadly the same role as a typical protector of a settlement but that name has also been redacted. The charter does confirm that Mr. Stamp was the founder of the Foundation, that he cannot be a member of its governing body and that there are no named beneficiaries, the purpose of the Foundation being stated as the advancement of education to promote, sustain and support the physical education of young people and life skills training. In the absence of any accounts of any kind of the Foundation I can have no confidence that I have a full picture of its ability or inability to fund this claim. Without even knowing who controls it and without any evidence from any such person I have no way of knowing whether the Foundation would be willing to fund this claim. In those circumstances the Claimant has not shown that it could not obtain funding from that source. 74. Mr. Stamp says that this claim is brought for the benefit of the investors whom I have mentioned above. He further says that he has contacted the investors to see if they are willing to assist in the claim but none of them are willing to do so. He gives no details at all of these contacts and produces no documents in support of it. A natural reading of this evidence would suggest that he has contacted all the investors involved. Mr. Moors and Mr. Cutts have both made supplementary statements in which they categorically deny that they have been asked for any such assistance. At the same time they are also emphatic that they would have refused if they had been asked because of their distrust of Mr. Stamp. I was told in argument that the approach was made by the Claimant's solicitors on its behalf and I entirely accept that the solicitors did make an approach of some kind. I do not know whether that was to all the investors or only some of them or what the terms of it were. On the evidence before me I regard it as likely that the investors could provide support for this claim but would be at least very wary of doing so. The Defendants suggested that they may be willing to do so if they have proper assurances that the money will be used for its intended purpose and any recovery will be used for their benefit. I do not think that 32 is more than a speculative possibility and I think that the Claimant has shown that such support is unlikely. Other matters 75. The Defendants' evidence contained a good deal of material seeking to portray Mr. Stamp as a generally dishonest person who habitually conducts his businesses in an illegal or disreputable fashion. Mr. Stamp points out that he has never had any adverse finding made against him personally by any court or regulatory authority on any of the matters raised in this evidence. I consider that it would be entirely wrong for me to attempt to form any view on these allegations at this stage and therefore wrong for me to give them any weight for my purposes. I have ignored them in coming to my conclusions and I shall not set them out here. Conclusions 76. In relation to the First Defendant I have concluded that the Claimant is highly likely

to succeed against him on the ground that he procured a breach of contract by GMB although not on the wider allegations of fraud and deceit against him. I have also found that there are features of his conduct in relation to this litigation which weigh significantly against making an order for security in his favour. As against that I must weigh the injustice to him if he is ultimately successful at trial and is unable to recover his costs from the Claimant. Although I have concluded that the Claimant is likely to have sources of funding available to it I nevertheless regard the First Defendant's chances of actually being able to recover any costs against it as very poor. However it seems to me that that factor has substantially less weight in a case where I regard the Claimant as highly likely to succeed at trial. On balance I have concluded that it would not be just to make any order for security in favour of the First Defendant. 77. The position as regards the Second Defendant seems to me to be very different. I have concluded that the Claimant has fallen well short of satisfying me that it is highly likely to succeed against him. No criticisms of his conduct of this litigation have been advanced. As set out in the previous paragraph I regard it as very unlikely indeed that he will be able to recover his costs from the Claimant if he is successful at trial unless 33 I make an order for security. I regard it as therefore plain that I should make an order in his favour. 78. In relation to the amount of security to be ordered in favour of the Second Defendant I have considered whether I should take the option suggested as appropriate in some cases in Al-Koronky of making the best estimate that I can of what the Claimant can afford. I have concluded that the evidence on that issue is so unclear and unsatisfactory that any such figure would in reality be no more than a guess rather than an estimate based on hard fact. I have therefore started from the Second Defendant's costs budget and sought to arrive at a fair figure which I do not consider will impose an unjust burden on the Claimant. I have concluded that that figure is £150,000. 79. Since the trial of this claim is still approximately a year away I consider that in fairness to the Claimant the requirement for security should be spread out over that period. I have it in mind to order the security to be provided in three equal amounts payable by 31st August 2018, 30th November 2018 and 1st March 2019. I will however be prepared to consider further submissions limited to the dates and amounts of the instalments. If there is any default in payment of any instalment the claim will be stayed as against the Second Defendant until further order of the court. 80. I would invite counsel to submit proposed corrections to this judgment in accordance with the direction at the head of this judgment. They should also seek to agree an order and identify the matters which need to be dealt with when this judgment is handed down. They should liaise with the court to arrange a suitable date for that to be done and provide a time estimate. R. Bartlett Deputy Master