IN THE HIGH COURT OF JUSTICE **Claim No. HC-2016-001088**
CHANCERY DIVISION

BETWEEN:

PPF CAPITAL SOURCE LIMITED

Claimant

And

(1) BHUPINDER PALL SINGH
[redacted]

Defendants

SKELETON ARGUMENT OF THE CLAIMANT
For hearing on 9 May 2018

References in the format {**x/x/xx**} are to the file, tab, and page numbers of the hearing bundle.

Time estimate for hearing: 1 day

Suggested pre-reading (time estimate 4 hours): Pleadings: Particulars of Claim { }; Defence of D1 { }; Defence of D2 { } Reply to Defence of D1 { }. Evidence: Witness statements of D1 { } and D2 { } in support of their applications for security for costs and the witness statement of Mr Stamp on behalf of the Claimant in reply { }.

INTRODUCTION

1. This skeleton argument is served on behalf of the Claimant ("**PPF**") in advance of the hearing of the Defendants' separate applications for security for costs.

2. It is common ground that the Court has jurisdiction to order security on the grounds that the PPF is a company and there is reason to believe that it will be unable to pay the Defendants' costs if ordered to do so: CPR Rule 25.13 (2) (c). However, PPF submits that the Court should decline to exercise its discretion to order security on the grounds that:

(1) It has brought a *bona fide* claim, which has a high probability of success.

(2) D1's conduct of the litigation has been egregious, such that it would not be just to make an order for security in his favour.

(3) The claim is likely to be stifled if more than nominal security is granted to either defendant.

The case in a nutshell

3. The relevant background can be briefly stated. On 9 November 2013, PPF entered into a written agreement with a company then called Greenbybusiness Ltd ("**GMB**") pursuant to which GMB agreed to procure for PPF a standby letter of credit from Barclays Bank Plc ("**Barclays**") to the value of US$100 million.[1] It is not in dispute that GMB was controlled by D1 at least at the times material to the claim. It is PPF's case (which D2 disputes) that D2 introduced PPF to D1.

4. A copy of the Agreement can be found at { }. Clause 3.5 of the Agreement, when read with Annex 1, provided as follows:

(1) That PPF would transfer the sum of US $1.5 million (the "**PPF Monies**") to GMB's account with Barclays (the "**Account**"). This sum is referred to in the Agreement as the "*Asset Issuance Charges*".

(2) That PPF would be entitled to nominate a mutually acceptable joint signatory to the Account.

(3) That the so-called SWIFT charges, *i.e.* the first US $250,000 of the PPF Monies, would be released to the so-called "*Asset Provider*" upon the provision of a pre-advice document from Barclays (the "*Asset Provider*" was the applicant for the letter of credit and was said to be a confidential commercial contact of GMB).

(4) The balance of the PPF Monies would be released to the "*Asset Provider*" once a letter of credit was obtained.

[1] GMB has since been renamed "Scotmarit Ltd". PPF will refer to the company as GMB throughout this skeleton.

5. Clause 5 (i) provided that if a letter of credit was not received or accepted by the receiving bank (specified to be Bank of China) GMB would return the PPF Monies: see clause 5 (i) of the Agreement. It is PPF's case that the effect of these provisions was that the PPF Monies – which PPF transferred to the Account on 20 November 2013 – were not at GMB's free disposal, but (a) were only to be applied when the performance milestones set out in clause 3.5 were met and (b) were impressed with a *Quistclose* trust.

6. GMB did not, however, obtain a letter of credit or, when it failed to do so, return the PPF Monies in accordance with clause 5 (i) of the Agreement. It is PPF's case this is because the transaction was always nothing more than an advanced fee fraud, and that neither Defendant intended that GMB would procure a letter of credit or comply with the contractual restrictions on the use of the PPF Monies. Its claims in these proceedings are as follows:

   (1) PPF claims against D1 for procuring GMB's breaches of the Agreement and for dishonestly assisting GMB's breaches of the *Quistclose* trust arising from the Agreement.

   (2) PPF claims against both Defendants for conspiracy to defraud and for unlawful means conspiracy/liability as joint tortfearsors. PPF alleges, in this context, that it was induced to enter into the Agreement and/or to transfer the PPF monies to the act by a series of dishonest representations made to PPF director, Mr Stamp, by D1 and/or D2. These included representations by D2 that he was a former partner of Freshfields.

7. Furthermore, PPF claims against both Defendants for unlawful means conspiracy or as joint tortfeasors. PPF alleges, in this context, that it was induced to enter into the Agreement and/or to transfer the PPF Monies to the Account by a series of dishonest representations made to its director, Mr Iain Stamp, by D1 and/or D2 pursuant to a common design between them to defraud PPF. These included representations by D2 that he was a former partner of Freshfields (when in fact he is a former paralegal with no legal qualifications) and representations by both Defendants that D2 had been added as a joint signatory to the Account as PPF's nominee signatory under clause 3.5 of the Agreement.

8. The Defendants deny that they had any common design to defraud PPF or that made the allegedly dishonest representations. D1 furthermore contends that:

   (1) The Agreement was terminated and replaced by an agreement in similar terms between PPF and another company called Lyza Limited ("**Lyza**"), which agreement (the "**Lyza**

Agreement") entitled Lyza to use the PPF Monies to meet the costs of obtaining a letter of credit through Lyza.

(2) GMB and Lyza did everything they could to perform their obligations, and the PPF Monies were used to pay specific legitimate invoices rendered by third parties who were assisting GMB and Lyza to obtain letters of credit.

(3) PPF is not entitled to enforce the Agreement because it was in breach of warranty and because GMB was induced to enter into the Agreement by a false representation by Mr Stamp that there was a current genuine opportunity to invest the proceeds of any letter of credit with BNP Paribas, Geneva.

Procedural history

9. Although the claim was issued in April 2016, it is still very much in the procedural foothills. This is large measure due to D1's consistent attempts to delay the progress of the litigation at every possible stage.

Pre-action conduct of D1

10. The Defendants were sent a detailed letter of claim in July 2015, to which D2 responded substantively. D1's only response was to acknowledge receipt. After the claim was issued and served in April 2016 D1, who was then represented by Teacher Stern solicitors, sought and obtained numerous extensions of time for the service of his Defence. The last extension of time expired on 3 June 2016.

The Stay Application

11. On 3 June 2016, instead of serving a Defence, D1 issued an application to stay the proceedings against him (the "**Stay Application**"). The grounds for the Stay Application were that since GMB had (only some three days beforehand) commenced arbitral proceedings against PPF in Hong Kong, there was a risk that the Court and the Hong Kong arbitration panel could come to different conclusions. GMB had sent no letter before arbitration and Teacher Stern had not even mentioned the possibility of the arbitration or a stay application in their correspondence with PPF's solicitors. The Request for Arbitration was essentially a mirror image of D1's eventual Defence, in that GMB sought declarations that it had taken proper steps to perform the Agreement and that it had only entered into the Agreement as a

result of fraudulent representations by Mr Stamp. The Request for Arbitration was plainly designed to maximise the overlap between the issues to be decided in the arbitration and these proceedings.

12. The Stay Application was dismissed by Stephen Jourdan QC (sitting as a Deputy Judge of the High Court) in an *extempore* judgment dated 13 October 2016, a copy of which is attached to this skeleton. His reasons were as follows:

    (1) The Hong Kong arbitration between the two companies would not necessarily resolve all issues between PPF and D1 and could not resolve any of the issues between PPF and D2. Accordingly, if GMB was unsuccessful in the arbitration, it was likely that the legal proceedings in England would proceed and all of the issues would have to be decided all over again (see paragraphs 19-21 of the judgment).

    (2) It was unclear whether the arbitration would proceed. GMB's claim was already liable to be struck out for the non-payment of fees. The only reason why it had not yet been struck out was because the ICC had granted unilateral extensions of time for the fees to be paid, i.e. not in response to any request for an extension by GMB (see paragraph 23 of the Judgment).

    (3) It was already clear that PPF would be seeking the production of documents from Barclays, and such documents would be easiest obtained by way of an ordinary English order for third party disclosure (see paragraph 23 of the Judgment).

    (4) The Judge accepted that there was force in PPF's submission that D1's conduct "*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. [D1] said that what had happened was due to legal advice, but I find it difficult to see why he did not reply to the pre-action letter or write after the claim was started to say that the case ought to be decided by arbitration in Hong Kong*." (see paragraph 25 of the Judgment).

13. The Judge ordered D1 to pay PPF's costs of the Stay Application in the sum of £18,010.80. That sum has never been paid. Furthermore, GMB's arbitration claim was indeed subsequently struck out for the non-payment of fees. This was despite D1's contention in support of the Stay Application that GMB would continue the Stay Application regardless of whether the English proceedings were stayed or not.

The Barclays Disclosure Application

14. On 4 October 2017, PPF applied for a third party disclosure order against Barclays, seeking:

(1) The statements for the Account between 9 November 2013 to the date of the order;

(2) Documents containing specific information relating to the possible specific transfers from the account mentioned in D1's Defence.

(3) Documents evidencing the name and nature of signatories for the Account (the "**Barclays Disclosure Application**").

15. At the time that the Barclays Disclosure Application was issued, PPF understood that it remained the position that D1 was the principal controller of GMB. Accordingly, in order to comply with a direction made by Master Clark on 22 December 2017 that the application should be served on GMB, PPF's solicitors emailed the relevant documents to D1.

16. On 11 January 2018, GMB's recently appointed director, Mr Ravi Takyar, wrote to the Court and PPF's solicitors to state that the company had not be served with the Barclays Disclosure Application. PPF's solicitor, Mr Ferrari, therefore forwarded to Mr Takyar the email which he had previously sent to D1 attaching the application documents. PPF also attempted to serve the documents by hand at GMB's registered address, which appeared to be empty.

17. GMB attended the first hearing of the Barclays Disclosure Application on 26 January 2018 via direct access counsel. It sought an adjournment on the grounds that (a) D1 had previously been employed by the company as its general manager, but that was no longer the case; (b) GMB knew nothing about these proceedings; and (c) it needed further time to consider and to respond to the application.

18. Master Clark granted an adjournment of the application solely on the grounds that GMB may have had insufficient time since formal service to prepare evidence and submissions. The Master found, however, that it was highly likely that Mr Takyar had been told about the application by D1, and rejected GMB's assertion that it knew nothing about this case. In fact, as set out above, GMB had itself commenced an arbitration against PPF in Hong Kong seeking declarations, amongst other things, that it had used the PPF Monies in order to perform the Agreement.

19. The Barclays Disclosure Application was listed to be heard before Deputy Master Linwood on 9 February 2018. The Deputy Master made an order for third party disclosure from Barclays in the terms sought by PPF, save that disclosure of documents identifying the signatories for the Account was limited to the period 1 November 2013 to 30 September 2014.

20. GMB had submitted to the Deputy Master that disclosure of bank statements should also be limited to the period ending 30 September 2014 on the bases that (a) on the face of D1's Defence, the transfers from the Account which were relevant to the proceedings had finished by September 2014; and (b) that disclosure beyond this date would be intrusive and could damage GMB's commercial interests. The second limb of the submission was based upon Mr Takyar's evidence, in a witness statement dated 2 February 2018, that GMB was a currently trading company and that "*our bank details contain commercially sensitive information such as the names of clients and suppliers and would enable a competitor to ascertain profit margins*." [2] The Deputy Master rejected this submission on the following grounds:

    (1) There was no basis in D1's Defence for a cut-off date of 30 September 2014. Although D1 had pleaded the dates on which GMB had alleged <u>received</u> invoices from third parties who were allegedly working on the project to procure a letter of credit, he did not identify the dates on which the invoices had been <u>paid</u>.

    (2) Although GMB plainly had access to its own bank statements, it had done nothing to assist the Court in terms of how the PPF Monies had been applied, or the date by which the Monies had been fully spent. Thus, although there might be an appropriate cut off date which fell earlier than the date of the order, only GMB knew what that date was, but was unwilling to help the Court to identify it.

    (3) GMB would be adequately protected by an undertaking offered by PPF not to contact any third parties referred to in the bank statements, save with the permission of the Court or GMB.

21. In fact, the bank statements obtained from Barclays show that the <u>only</u> payment into the Account between November 2013 and February 2018 (apart from a single payment of c. US$25,000 in February 2014) was the payment of the PPF Monies, and that the Account has

[2] See paragraphs 6-7 and 22 of Mr Takyar's witness statement at {**3/37/962**}.

essentially been dormant since the PPF Monies were dissipated: see paragraph 52 of Mr Stamp's first witness statement.

22. Two possibilities therefore present themselves: either (a) Mr Takyar was aware of what the bank statements would reveal but deliberately misled the Court; or (b) Mr Takyar did not even know that the statements showed no commercial activity on the part of GMB whatsoever, still less information "*such as the names of clients and suppliers"*. Either way, this was extraordinary conduct on the part of an individual representing a company which was at pains to stress that it had no interest in the litigation and was not aligned with D1. Significantly, one of the facts revealed by the disclosure received from Barclays was that D1 remained one of the two signatories on the Account, even though, according to Mr Takyar, D1 had ceased to have any connection to GMB in 2017: see paragraph 27 of Mr Stamp's second witness statement.

23. It is very difficult to avoid the inference that GMB's intervention in the Barclays Disclosure Application was another ploy, taken in accordance with D1's instructions, to delay the progress of the case, to prevent the bank statements coming into PPF's possession prior to the hearing of the security for costs applications, and to cause PPF to incur unnecessary costs.

PPF's CLAIM IS BONA FIDES AND HAS A HIGH DEGREE OF PROBABILITY

24. At the last hearing, the Court invited PPF to itemise the issues in dispute which it claims are highly likely to be resolved in its favour. These are as follows:

(1) The Agreement provided that the PPF Monies were not at the free disposal of GMB, but could only be transferred from the Account upon the occurrence of the agreed performance milestones.

(2) GMB did not use the PPF Monies in accordance with the Agreement.

(3) There are strong indications this was not a simple breach of contract, but a deliberate fraud.

(4) Contrary to his pleaded case, D2 was not an innocent bystander but an active participant in the fraudulent scheme.

25. None of these points require a mini-trial or depend on the Court taking any view of the relative credibility of D1, D2, or Mr Stamp. They are all points that arise solely from the documents before the Court. It is submitted, in this context, that Cs have overloaded the Court with factual evidence. In particular, they rely on a large number of witness statements obtained, or purportedly obtained from third parties, which have not been properly served, but instead are to be found in the exhibits to the statements of D1 or D2. Many of these statements relate to collateral or non-issues, such as complaints by counterparties of PPF in relation to other transactions. None of this evidence can be tested or even weighed at an interlocutory hearing. This material will not assist the Court and should be ignored.

The PPF Monies were not at GMB's free disposal

26. PPF's case here is that the Agreement speaks for itself. It provided that the first US $250,000 of the PPF Monies would be transferred to the "*asset provider*" upon the issuance of a pre-advice by Barclays, and that the balance of the PPF Monies (US $1.25 million) would be transferred once a letter of credit was obtained. If, however, a letter of credit was not obtained, GMB was obliged by clause 5 (i) to return the PPF Monies.

27. D1's answer to this point appears to consist of a contention that the Agreement was replaced and superseded by the Lyza Agreement, which he claims entitled Lyza to use the PPF Monies at D1's discretion (see paras. 28 to 30 of D1's third witness statement). It is very difficult to see how this argument can succeed:

(1) Contrary to para. 28 (b) of D1's third witness statement, the Lyza Agreement did not state that it superseded the GMB Agreement. In fact, it does not mention the GMB Agreement at all, and D1 has failed to identify any other document terminating the GMB Agreement. There is no such document.

(2) The Lyza Agreement provides in terms that the cost to PPF of Lyza obtaining a letter of credit would be US$ 2 million, and that these funds would be transferred by PPF to Lyza's account after Lyza had procured a ready willing and able ("**RWA**") letter for a letter of credit issued by a bank on its letterhead: see clause 3.5 of the Lyza Agreement.

(3) Accordingly, the express terms of the Lyza Agreement are wholly inconsistent with the suggestion that Lyza would be entitled to draw on the PPF Monies held by GMB. It was entirely separate deal for which PPF would be required to pay more money.

(4) Consistent with the above, the emails between the parties referred to in paragraph 54 of Mr Stamp's second witness statement show that, in January and February 2014, D1 was attempting to persuade PPF to transfer an additional US$2 million for further letters of credit, in addition to the letter of credit that GMB had contracted to obtain.

28. The Lyza Agreement is therefore, on its face, a total red herring. The Agreement was the only agreement which governed the use of the PPF Monies.

The PPF Monies were not used in the manner permitted by the Agreement

29. As stated above, the Agreement permitted only two payments from the PPF Monies: an initial payment of US$250,000 once a pre-advice letter had been obtained from Barclays, and the balance of US$ 1 million once a letter of credit had been procured.

30. The first point to be made is that neither of these conditions was ever fulfilled and, as set out below, D1's case to the contrary is based upon forgeries.

31. A key element of D1's Defence is that, contrary to PPF's case that this was nothing more than an advance fee fraud, GMB and/or Lyza procured genuine banking documents preparatory to the issuance of a letter of credit, and that all of the payments from the Account using the PPF Monies were legitimate expenses incurred in seeking to obtain a letter of credit. Thus:

(1) In paragraph 40 of his Defence, D1 pleads that GMB procured a reading willing and able letter from the Barclays addressed to Bank of China, which was transmitted by an email from Barclays dated 31 January 2014 (the "**First Barclays RWA Letter**").

(2) Paragraphs 44 to 46 then refer to a number of invoices received from third parties in connection with the efforts to secure a letter of credit.

(3) In paragraph 48, D1 contends that Bank of China responded to the First Barclays RWA Letter on 13 February 2014 requesting a reissuance of the document in an amended form. The second RWA letter is said in paragraph 49 to have been issued by Barclays on 17 February 2014.

(4) The remainder of the Defence contains other references to invoices rendered by third parties in relation to the alleged ongoing work to procure a letter of credit.

32. Following the service of his Defence, D1 produced a copy of the email referred to in paragraph 40 of his Defence under which Barclays allegedly sent the First Barclays RWA Letter to Bank of China: see {**2/28/589-35**} The document purports to be an email from the account of Mrs Tahany Taher of the Bank dated 31 January 2014 at 11:31, writing from a barclays.com email address. Her purported email signature also indicates that she worked in London.

33. PPF's solicitors asked Barclays various questions about the genuineness of the document and received the following by reply in a letter dated 13 July 2016: see {**2/28/589-38**}:

    (1) Tahany Taher was an employee of Barclays from 3 December 2007 to 30 January 2014, i.e. the day before she purportedly sent the email produced by D1. Her last position was head of business banking liabilities in the UAE.

    (2) Barclays had carried out a search of Ms Taher's email account for the period 24 January 2014 to 7 February 2014. Barclays had found (a) no emails containing specific words and phrases in the email produced by D1 or the First Barclays RWA Letter, (b) no emails sent by her on 31 January 2014 at 11:31, and (c) no emails sent by her at all after her last day of employment, 30 January 2014.

    (3) Accordingly, it was the view of Barclays that the email produced by D1 was not genuine.

34. Any (remote) possibility that the dating of the email was caused by an IT glitch around the last day of Ms Taher's employment can be excluded by the fact that D1 has produced further emails purportedly from Ms Taher dating from May 2014, i.e. months after her last day of employment with the bank: see e.g. { }. The emails from Ms Taher, the First Barclays RWA Letter, and the allegedly second such letter are bogus, forged, documents. Accordingly, GMB had no contractual right to make any payments from the PPF Monies.

35. The second point is that the Agreement provided that the only two permitted payments from the PPF Monies were to be made to the so-called "*asset issuer*", i.e. the customer of Barclays on whose application the letter of credit would be issued. The table of payments at paragraph 51 of Mr Stamp's second witness statement shows, the PPF Monies were dispersed, in breach of contract, to a variety of parties. However, as set out below, the point about the destination of payments does not end there.

The indications of fraud

36. There are a number of indications in the papers that PPF is correct to characterise the entire transaction as a fraud.

37. First, as stated above, the only documents that D1 has produced which as said by him to evidence negotiations with Barclays for a letter of credit are forgeries. Accordingly, no legitimate or genuine work could have been done to obtain them.

38. Second, two of the entities which allegedly worked on the transaction and invoiced GMB for their services either do not exist or appear unlikely to exist:

    (1) A number of payments are said to have been made to a purported company called "*Medal Global Solutions*" ("**MGS**"), which D1 has claimed in his Defence is an English company (see. para. 52 of his Defence). When confronted with PPF's evidence that there is no record of any such company at Companies House, D1 changed position and stated that it is a Nigerian company with offices in London: see para. 44 of Mr Stamp's second witness statement and para. 52 of D1's third witness statement. Strikingly, all of MGS's purported invoices misspell the address of its London office and get the post code wrong.

    (2) A number of invoices were submitted by a supposed Thai entity called "*Union Global Capital (Thailand) Co. Ltd*" ("**UGV**") which include its supposed company registration number. It is Mr Stamp's evidence (see para. 4 of his third witness statement) that there is no company with this number on the Thailand Company Register. A witness statement purportedly obtained by D1 from a Ms. Sunee Phisutsinthop states that UGV is a business trading name used by a Mr Ashok Akkasaligar – who is said by Phisutsinthop to be an executive of her company, Saluran Fajar Holdings (Thailand) Co Ltd, which worked on the letter of credit transaction.

39. Third, the invoices pleaded by D1 in his Defence, do not correspond to the payment information disclosed by Barclays. As shown by the schedule of payments from PPF Monies attached to Mr Stamp's second witness statement (the "**Schedule**"):

    (1) A Polish company called Management Investment Group ("**MIG**"), which is said to have been the customer of Barclays that obtained the – forged – RWA letters purportedly submitted invoices totalling US$285,000, but was only paid US$175,000.

(2) All of the invoices purportedly submitted by UGV appear to have been paid to personal bank accounts of Mr Ashok Akkasaligar. He is a reputed international fraudster who appears to be a regular business partner of D1: see paras. 45 to 46 of Mr Stamp's first witness statement. One of the payment references, for payment 41 in the Schedule, refers to funding for a gold mine and farm project in Brazil, i.e. nothing to do with the project to procure a letter of credit.

(3) Two large payments, allegedly to settle invoices submitted by MGS, were paid to a Kenyan law firm called Okundi & Co: see payments 30 and 32 in the Schedule. The narrative in the GMB account for the second payment (there is no narrative for the first payment) is "*Payment in escrow for government royalty payment*" – again clearly nothing to do with obtaining a letter of credit.

(4) A number of the payments do not relate to any party identified in any invoice mentioned in D1's Defence. These include:

(a) Payment 2 in the Schedule: US$40,000 to "*Fair Argo*".

(b) Payment 5 in the Schedule: US$5,000 to "*Crystal Pier Tan*".

(c) Payment 35 in the Schedule: US$50,000 to Tri-Star International, a private bank.

(d) Payment 53 in the Schedule: US$12,979 to "*AB Asset Corp*". This appears to be a reference to a now dissolved company previously owned by D1 and Mr Akkasaligar: see para. 52 (d) of Mr Stamp's first witness statement.

(e) A number of other payments consist of transfers to GMB's sterling account, e.g. payments 16, 17, 43, and 63 in the Schedule.

(f) Payments 57 to 77 in the Schedule consist of payments to Lyza, payments to an entity called "*Universal Tech*", and payments referencing an "*E-Payments Plan*".

40. D1 has attempted to explain some of these facts away: see paras. 34 to 59 of his third witness statement. In relation to the forged RWA correspondence from Barclays, D1 states that he was not responsible for obtaining the documents – which were allegedly procured by MIG – but states nonetheless that he believes that they are genuine. In relation to some of

the mismatches between the invoices and the payments, he explains that the party submitting the invoice requested that the payments be split or paid to different accounts than those identified in the invoice. However, he makes no attempt to explain a substantial number of payments (including those mentioned at para. 49 (4) (c) to (f)) above, and some of his explanations he does give are palpably absurd. For example, D1 states in para. 54 of his third witness statement that Mr Akkasaligar did not know what project reference to give for payment 41 and so he suggested to D1 that D1 make the payment using a reference for D1's own project for investments in Brazilian mining and farming.

41. The obvious inference from the above is that D1 used the PPF Monies for his own purposes, in total disregard of GMB's obligations under the Agreement.

Involvement of D2

42. It is D1's pleaded case (see paragraph 94 of his Defence) that D2 was added as a signatory for the Account, in accordance with PPF's wishes. Based on the documents disclosed to PPF by Barclays, this appears to be untrue. The mandate information disclosed by Barclays indicates that D2 has never been a signatory for the Account: see { }. The only signatories for the entire period with which this case is concerned were D1 and Lakhdip Singh, a shareholder and director of GMB who appears to live in the same house as D1.

43. D2's Defence also contains a number of contentions about the mandate for the Account which, in light of the information obtained from Barclays, are also highly likely to be untrue:

(1) In paragraph 11.9, D2 pleads that he attended a branch of Barclays with D1, where he provided Barclays with proof of his identity and was given a mandate form which he understood was intended to add him as a signatory to the Account.

(2) In paragraph 11.10, D2 admits that he sent an email to, *inter alia*, Mr Stamp on 18 November 2013 stating that: "*I am still awaiting confirmation from the bank's officer relating to being joint signatory. He confirmed that they have processed the mandate but were awaiting a credit check*." D2 claims that the terms of email reflected his understanding at the time.

(3) In paragraph 11.12, D2 admits that he sent an email to, *inter alia*, Mr Stamp on 19 November 2013 (pleaded in paragraph 11.5 of the Particulars of Claim) in which he gave an account of an alleged conference call with Barclays. According to D2's email,

the bank "*confirmed that the mandate had been processed and that I was a joint signatory on the account*" but stated that written confirmation would take 5 working days. D2 contends that this email also reflected his true understanding at the time.

44. A development in the case that emerged in D1 and D2's second and third witness statements, is that D1 claims to have obtained further documentation from Barclays – which was not disclosed by the bank to PPF – which they say demonstrates that genuine steps were taken to add D2 to the mandate, and that there appears to have been a mix-up at the bank's end which resulted in D2's signature not being added to the system. PPF has sought to explore the origin of these documents directly with Barclays, but has yet to receive a response.

45. However, D2 is wrong to claim that these new documents, if taken at face value, absolve him completely from involvement in any fraud.

46. PPF derives further support for its case that the entire scheme was a fraud, and specifically that D2 was involved, from a series of telephone conversations with D2 that Mr Stamp recorded. As can be seen from the extracts at paras. 19 to 25 of Mr Stamp's second witness statement, D2 represented to Mr Stamp during these conversations that he had access to and was a signatory to the Account and that he had seen the Account statements which showed that none of the PPF Monies had been spent. PPF submits that these representations were untrue: the statements disclosed by Barclays show that D1 began to make substantial payments from the Account in December 2013. Only two logical conclusions present themselves: either D2 had seen the statements for the Account but decided to mislead Mr Stamp that no payments had been made, or he had not seen the statements but falsely claimed that he had.

47. Recognising this difficulty, D2 asserts (lamely, given that he has not asked for any expert evidence to scrutinise the recordings) that they are not agreed and may be inaccurate, and also that he believes the transcripts were recorded at a far earlier stage than July 2014, i.e. before substantial funds were transferred: see paras. 35 to 36 of his second witness statement. This second argument is obvious nonsense. The transcripts record Mr Stamp's huge cumulative frustration that no progress had been made in obtaining a letter of credit, despite repeated promises by D1 and D2, and can be textually dated by references to (a) a meeting which occurred on 14 July 2014 and (b) the Eid holidays mentioned by D2, which occurred in 2014 in July: see para. 25 of Mr Stamp's second witness statement. The transcripts are also highly adverse to the general thrust of D2's pleaded Defence that he had extremely limited

involvement in the transaction after the Agreement was signed: they are demonstrative that he was intimately involved in the transaction and was assisting D1.

48. Based on the above, PPF submits that:

(1) It is highly likely to succeed in establishing that the Agreement imposed obligations on GMB only to use the PPF Monies for the purpose of performing the Agreement.

(2) GMB did not use the PPF Monies for the purposes of performing the Agreement and was therefore, at least, in breach of contract.

(3) GMB's breaches of contract were procured by D1, who the controller of GMB at all material times.

(4) Overall, all of the indications are that this was indeed nothing more than an advanced fee fraud in which both Defendants were complicit.

(5) It is highly unlikely that PPF will be ordered to make any substantial payment of costs to D1 or D2.

49. Accordingly, this is case in which the merits strongly militate against an order for security for costs: see the judgment of Chief Master Marsh in Gresport Finance Limited v Battaglia [2015] EWHC 2709 (Ch.) at paras. 33 to 35.

CONDUCT OF D1

50. In addition to the submissions set out above, PPF submits that D1's conduct has been sufficiently egregious to render it unjust to make an order for security in his favour. He chose to ignore the letter before action and issued the, deliberately delaying, Stay Application without notice on the very day when his defence was due for service. He then appears to have procured GMB to attempt to defeat the Barclays Disclosure Application on a basis that was plainly misleading. He also failed to pay the costs award made following the dismissal of the Stay Application. He does not claim that he lacks the funds to make the payment, but is simply acting in defiance of a court order. In Gresport Finance Limited v Battaglia, conduct less serious than this was held by the Chief Master to be sufficient to deprive the applicant of an order for security for costs: see para. 51 of the judgment.

STIFLYING

51. PPF accepts that the burden is on it to show on evidence that an order for substantial security would, in probability, stifle the claim. The only relevant glosses to be added to this statement of principle are that (a) it is far easier for claimants to pick holes in defendants' evidence than it is for defendants to prove the negative proposition that they cannot raise funds to meet an order for security: see Gresport at para. 29; and (b) the question is not whether Mr Stamp has the ability to raise funds, but whether PPF has that ability.

52. It is common ground that the Court has jurisdiction to award security for costs because PPF's last filed audited accounts (for the financial year ending 18 December 2014) show that it was balance sheet insolvent, with net liabilities of US$2,039,351. The auditors expressed a concern that the reported assets included the value of a claim in litigation (i.e. this claim) and that, if this item was removed, the company's reported losses would be US$5,009,296.

53. It is Mr Stamp's evidence that the financial standing of the company has not improved since its last accounts were filed. In short, he says that:

    (1) The company did not have sufficient funds both to pay for further audits and to fund the litigation, and that the remaining funds of the company have been spent on legal costs;

    (2) Its current liquid assets consist only of (a) a holding in gold worth £65,693.68 and (b) approximately £2,542.37 in cash: see para. 57 of his first witness statement.

54. The shareholder of PPF is a Belize charitable foundation called the Galaxy Funding Foundation (the "**Foundation**"). Mr Stamp is not a beneficiary or shareholder of the Foundation and plays no role in its management: see para. 80 of his second witness statement. In any event, the Foundation's only cash asset consists of approximately US$93,450.57 held with Benuda Bank. In addition, it holds £35,000 of silver: see para. 84 of his second witness statement.

55. The Foundation is also the shareholder of several UK companies, and the Defendants have identified one of these companies, Integrity SFG Limited, as a source of potential funding. This is because its last filed accounts reported retained earnings of £233,374. However, almost all of this upside is attributable to debts owed by other companies in its group, none

of which have liquid assets, and some of which are in liquidation: see para. 84 of Mr Stamp's second witness statement.

56. Mr Stamp has given evidence of his own means. According to his evidence:

    (1) His assets are limited to a car worth £20,000 and investments in Bitcoin worth a maximum of £25,000: see para. 67 of his second witness statement.

    (2) He has substantial loan liabilities, amounting to over £2 million in total, to the Foundation, his father, a trust entity known as the UK Galaxy Investment Loan, and ICS Holdings Limited. Mr Stamp states that he used these funds to attempt to keep his businesses going and to fund his divorce settlement and that he no longer has the funds: see para. 58 of his first witness statement and paras. 69 to 77 of his second witness statement. As Mr Stamp explains in para. 72 to 76 of his second witness statement, the liability to ICS Holdings Limited should not, in reality, be treated as a loan to him personally but as a corporate transaction.

    (3) He has no regular or substantial income.

57. Mr Stamp also states in his evidence that he asked bondholders who invested with PPF whether they would be prepared to fund the litigation, but that no offers have been forthcoming.

58. The Claimants' positive case that PPF and/or Mr Stamp have access to substantial funds is put two main bases:

    (1) D1 alleges, on the basis of no supporting evidence, that Mr Stamp told him that he needed to hide £5 million in the context of his divorce proceedings. This is simply a scurrilous allegation, which Mr Stamp denies.

    (2) Both Defendants put forward what can only be described as a conspiracy theory that Mr Stamp personally defrauded bondholders who had invested in bonds through PPF of up to millions of pound worth of their money. This can also fairly be described as a scurrilous allegation: first, it is supported by no expert evidence; second, the auditors who conducted the last audited accounts appear to have detected no hint of fraud; third, PPF has obtained a witness statement from its current accountant, Mr O'Reilly. Mr O'Reilly does not claim to have conducted any analysis of PPF's underlying books or

records anew. Instead, he has analysed PPF's expenditure by reference to the contents of the last audited accounts, and can confirm that – based upon that data, about which the auditors had no substantial complaint – all of the money invested by bondholders can be accounted for as legitimate expenditure and that Mr Stamp received no loans from that money.

59. It is submitted, in this context, that there are no funds available to meet any substantial award of security. Furthermore, PPF is entirely right to attribute much of its present financial difficulty to the Defendants' conduct. In circumstances where a new company was defrauded of US$1.5 million, wasted legal costs in anticipation of the deal concluding, and has been obliged to use its remaining funds to pursue the litigation, it is hardly a surprisingly proposition that the Defendants have made a substantial contribution to its inability to meet a substantial award of security.

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