

BEFORE: MR STEPHEN JOURDAN, QC (sitting as a Deputy Judge of the High Court) IN THE MATTER OF: PPF CAPITAL SOURCE Claimant and (1) BHUPINDER PALL SINGH (2) [REDACTED] Defendants MR P CASEY (instructed by Keystone Law) appeared on behalf of the Claimant MR B PALL SINGH appeared in Person MR M PATEL appeared in Person Judgment (As Approved) Digital Transcript of WordWave International Ltd trading as DTI 8 th Floor, 165 Fleet Street, London EC4A 2DY Tel No: 020 7404 1400 Fax No: 020 704 1424 Web: www.DTIGlobal.com Email MR JOURDAN, QC: 1. On 9 November 2013 the claimant company, which I will call PPF, entered into an agreement with a company which was then called Greenmybusiness Limited, which I will call GMB. Under the agreement GMB agreed to obtain a \$100 million standby letter of credit from Barclays Bank. Under the agreement, in essence, PPF was to nominate a joint signatory for the bank account of GMB and then PPF was to transfer certain monies, called "Asset Issuance Charges" to that bank account, then there was a process which would lead to the issue of a standby letter of credit by Barclays in favour of a company called SD International Trade (Shenzhen) Ltd. Under the agreement PPF paid \$1.5 million to GMB. 2. In this claim, started on 6 April 2016, PPF claims it was induced to enter into the agreement and to pay the \$1.5 million by virtue of a number of fraudulent misrepresentations made to it by Mr Bhupinder Singh, the First Defendant, who controlled GMB and [REDACTED] the Second Defendant, who it is alleged conspired with Mr Singh to defraud PPF. 3. The claim was preceded by a detailed letter of claim in July 2015, to which Mr Patel responded substantively denying any allegations made against him. Mr Singh's only response was to acknowledge receipt. When this claim was started Mr Singh was represented by solicitors, Teacher Stern and Mr Singh sought and obtained extensions of time for service of his defence. 4. The last extension expired on 3 June 2016. On that date instead of serving a defence Mr Singh issued an application to stay the proceedings against him. The ground was that GMB had started arbitration proceedings in Hong Kong under the agreement and the agreement contains a clause requiring all disputes between PPF and GMB about the agreement and its validity to be determined by an arbitrator under the Rules of Arbitration of the ICC and that the arbitration take place in Hong Kong. 5. That arbitration was commenced by a request for arbitration, which was also dated 3 June 2016. The request set out GMB's case in considerable detail. In essence it alleged that GMB had been induced to enter into the agreement by fraudulent misrepresentations made by PPF and that it had taken steps to perform the agreement and it sought a number of declarations about the agreement: a. A declaration that GMB had taken reasonable steps to perform the agreement. b. A declaration that GMB had made a good faith effort to perform the agreement. c. A declaration that the agreement was induced by fraudulent representations made on behalf of PPF. d. A declaration that the agreement had been terminated and that the parties were excused from further performance, or rescission. e. A declaration that PPF's purpose in entering into the agreement was to commit a fraud and the agreement was therefore unenforceable. 6. The witness statement made in support of the application said that there was no truth in the allegations made against Mr Singh in these proceedings and that they have been made solely to evade the arbitration clause in the agreement. The witness statement said that this is really a breach of contract dispute between PPF and GMB. It ought, therefore, to be decided by arbitration under the contract and there was a risk that if the arbitration and the court proceedings proceeded in parallel there might be different conclusions reached by the arbitrator and the court. 7. A statement was made in response to the application by PPF's solicitor, Mr Ferrari of Keystone Law on 26 September 2016. Mr Ferrari explained that enquiries had been made about the progress of the arbitration and it was found that the arbitration fee, \$27,000, had not been paid. The ICC had granted unilateral extensions of time for paying it.

Apparently not in response to a request from GMB but just of its own motion. 8. Keystone were unable to get any information from Teacher Stern, who said they were without instructions. 9. On 5 October 2016 Mann J made an order that Teacher Stern be treated as ceasing to act for Mr Singh and that they would be removed from the court's records as acting for Mr Singh, so from that date Mr Singh has been acting for himself. 10. PPF heard nothing from Mr Singh and was uncertain whether he would even attend today at the hearing of his application to stay the proceedings against him. PPF filed a skeleton argument prepared by Mr Casey which set out PPF's position on the application clearly and helpfully. 11. In the event when the application was called on this morning Mr Singh did appear. Mr Patel had also come to court. Initially he sat at the back and he said he had just attended as an observer, but I invited him to participate in the hearing and he did address me at some length explaining his position. The Law 12. I have been referred by Mr Casey to a number of authorities. I think it is sufficient to take the law from the decision of Henderson J in a decision called *Mabey & Johnson v. Danos* [2007] EWHC 1094 (Ch). In essence that was a case where there was a claim that there had been a conspiracy to defraud the claimant by inflating the level of commission under an agreement and one of the defendants was a company called Deryck A Gibson Limited ("DAG"), which was a party to an agreement with the claimant, which had an arbitration clause in it. The other three defendants were not party to that agreement. One of them was a director of DAG, a Mr Gibson. Henderson J held, that because there was an arbitration agreement between the claimant and DAG, he would stay the claim against DAG under s.9 of the Arbitration Act 1996. 13. The question then arose as to whether he should stay the claim against Mr Gibson and he held that he would not stay that claim. Henderson J set out the law in his judgment. The situation he was considering was that: a. there is a claim by the claimant against a company and an individual; b. there is an arbitration agreement between the claimant and the company, and the dispute between the claimant and the company is going to be determined by arbitration pursuant to that agreement; and c. there is an overlap of the subject matter of the arbitration and of the claim by the claimant against the individual. 14. The law in that situation, Henderson J explained, is that the court has a discretion to stay the court proceedings against the individual, pending the outcome of the arbitration, but it is not a discretion which should be exercised lightly. On the contrary, in the decision of the Court of Appeal in *Reichold (Norway) v. Goldman Sachs* [2000] 1 WLR 174, Lord Bingham of Cornhill CJ, said that in cases of this kind stays would only be granted in rare and compelling circumstances. 15. So it seems to me that the court ought not to stay the claim against Mr Singh unless there are compelling circumstances. 16. Mr Patel's position was that he is a pawn in this litigation, in which unjustified, unsubstantiated and untrue allegations have been made against him. He cannot afford legal representation. He is finding the process of being sued extremely stressful and difficult. He would much prefer there to be an arbitration between GMB and PPF, which he expects will resolve the matter in GMB's favour and that will be the end of it, he will not have to face any more of the stress and difficulty of these proceedings. If Mr Patel is, as he says he is, entirely innocent, then clearly he is entitled to very considerable sympathy. 17. Mr Singh in his submissions focused principally on the merits of the case and essentially he explained to me what is set out in the writing in the request for arbitration. If what is said by Mr Singh and in the request for arbitration is right, then clearly this claim against Mr Singh is unjustified, and when it is eventually determined he will succeed. However, that does not seem to me to have any real bearing on the question of whether there are compelling circumstances which ought to lead me to stay this claim. 18. Mr Casey for PPF had a number of points as to why not only were there no compelling circumstances requiring a stay of this claim, but on the contrary there were good reasons why it was better to try

the case here than to allow this claim to come to a halt while the arbitration in Hong Kong may or may not proceed. 19. Of those point the one which most strongly weighs with me is this. If I do stay these proceedings and the arbitration in Hong Kong does proceed and the arbitrator decides in GMB's favour, then I can see that it is unlikely PPF will pursue this litigation any further. But if the arbitrator was to decide in PPF's favour, then the case here would proceed. In that event it might well be that Mr Singh, as the controlling mind of GMB, would not be permitted to contend for a different outcome on issues decided by the arbitrator. It would likely be an abuse of the process of the court for him as the controlling mind of GMB to ask for those issues to be re-litigated here. Even so that would not resolve the case against him, as it would still be necessary for the Claimant to prove that the misrepresentations it relies on were made out, and that they were fraudulent. But it is fair to say that in that case a lot of issues as between PPF and Mr Singh would not need to be investigated again. 20. But none of that is true in Mr Patel's case. Mr Patel is not an officer of GMB. He would not be involved in any way in the arbitration and he would not have any opportunity of making representations to the arbitrator and would not be remotely affected by anything the arbitrator said. Indeed, it seems to me that anything the arbitrator decided would be inadmissible in evidence against him. It would simply be a decision in a private arbitration between other parties in which he had not been involved and would have no effect on his position whatsoever. 21. So on that basis the claim here would have to proceed in full. All the issues would have to be investigated all over again. I am not saying that it is likely if there is ever an arbitration that the arbitrator would decide the case one way or the other. I do not have anything like enough information to form a view on that nor would it be desirable for me to do so. But it seems to me that, regardless of the merits of the case, it is clearly better for this claim to proceed than to be stayed and therefore, not only are there not compelling reasons to stay this claim, I think there are compelling reasons for this claim to proceed. 22. There are three other points that Mr Casey made that I think also have some force. The first is that we do not know if there will be an arbitration in Hong Kong. So far the arbitration fee has not been paid between June and October this year. Perhaps it will be. Mr Singh says it will, but he said he is having difficulty in getting the funds. I cannot be confident that the arbitration in Hong Kong will proceed. It may do; it may not. That is a factor against ordering a stay. 23. The second point that Mr Casey made is that an important factor in resolving this dispute will be documents held by Barclays Bank. Without going into the details of the pleaded allegations, quite a lot of them turn on what was or was not sent to Barclays and what documents Barclays did or did not produce. Those documents it seems to me, having read the Particulars of Claim, to be likely to shed quite a lot of light on the issues. If this case proceeds here an application for third party disclosure can be made against Barclays. If the Hong Kong arbitration proceeds and this claim is stayed the position will be less straightforward. It may be possible to get the documents. I suppose one possibility would be to lift the stay for the purpose of allowing a third party disclosure application, but it certainly would not be as straightforward. That is another factor against ordering a stay. 24. Mr Patel said it is possible that there are documents that the Bank of China has, which will be easier to get in the Hong Kong arbitration. That was not a point that Mr Singh himself made, it was not made by Mr Singh in his witness statement in support of the stay at a time when he was legally represented and it seems to me that, whereas the Barclays documents are likely to go to the heart of the case, documents from the Bank of China, while they may be relevant, are likely to be less central to the case. 25. The third point that Mr Casey made that I think has some force is the timing of the arbitration, starting as it did on the very last day for Mr Singh to serve his defence after a number of extensions of time and after no communication from Mr Singh about the substance of his case, no indication from him that

he considered arbitration was appropriate. All that 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. Mr Singh 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 this claim was started to say that the case ought to be decided by arbitration in Hong Kong. That is a further factor against a stay. 26. So, for the reasons I have given I am going to refuse the application to stay this case against Mr Singh. 27. I want to emphasise that nothing I have said, either in the course of argument or in the course of this judgment is intended to reflect any assessment on my part of the merits of the case. It may be that everything that Mr Singh and Mr Patel have said is quite right, that they are entirely innocent and if so, then when the case is tried they will succeed.