Neutral Citation Number: [2020] EWHC 128 (Comm)

Case No: CL-2013-000683

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

Royal Courts of Justice
Rolls Building, Fetter Lane, London EC4A 1NL

Date: 30 January 2020

Before :

MR JUSTICE ANDREW BAKER

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Between :

KAZAKHSTAN KAGAZY PLC and others	**Claimants**
- and -	
BAGLAN ABDULLAYEVICH ZHUNUS and others	**Defendants**
HARBOUR FUND III LP	**Additional Party**
COOPERTON MANAGEMENT LIMITED and other	**Charging Order Respondents**

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Robert Howe QC and Daniel Saoul QC (instructed by **Hogan Lovells International LLP**) for the **Claimants**
Dominic Chambers QC and Joe-Han Ho (instructed directly) for the **Charging Order Respondents**
The **Defendants** and **Additional Party** did not appear and were not represented

Hearing date: 17 January 2020

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Approved Judgment

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

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MR JUSTICE ANDREW BAKER

Mr Justice Andrew Baker :

Introduction

1. In this judgment, where I refer to 'the claimants', I refer to the first to fourth claimants (there were originally seven claimants), they being the active claimants now pursuing enforcement of a judgment dated 28 February 2018 against Maksat Askaruly Arip ('Mr Arip') for US$298,834,593 (plus £8,000,000 by way of payment on account of costs). Whilst their respective precise corporate titles may have been different and may have varied over time, in substance Mr Arip was CEO of the Kazakhstan Kagazy group until his departure from Kazakhstan in 2009 and Shynar Dikhanbayeva was the group's CFO. She was Mr Arip's primary co-defendant in this Claim (CL-2013-000683).

2. Upon the final trial herein, Picken J held that the claimants had been defrauded by Mr Arip and Ms Dikhanbayeva on a massive scale in the years prior to Mr Arip's departure from Kazakhstan: see [2017] EWHC 3374 (Comm). Mr Arip's wife, Sholpan Arip ('Mrs Arip'), and his mother-in-law, Larissa Asilbekova ('Mrs Asilbekova'), are now also judgment debtors for the £8,000,000 costs payment pursuant to s.51 Senior Courts Act 1981: see [2019] EWHC 2630 (Comm) (Jacobs J); and Mr Arip stands sentenced to two years' imprisonment for contempt of court because of his failure to deliver up a valuable collection of wristwatches in part satisfaction of his judgment debts: see [2019] EWHC 2319 (Comm) (Phillips J, as he was then).

3. The subject matter of the current phase of proceedings in this Claim is valuable residential property in Central London, legal title to which is held in each case by one of the charging order respondents. The claimants obtained interim charging orders in respect of each of the properties in question on their claim that it was held for and on behalf of Mr Arip as true beneficial owner. After various case management efforts, a trial of the issue whether Mr Arip has any and if so what beneficial interest in any of the properties was listed to commence on 23 July 2019. The claimants would have sought upon that trial, if successful, final charging orders with a view to realising the value of the properties in part satisfaction of Mr Arip's judgment debts. It is suggested that the properties may be worth, collectively, approaching £60 million.

4. The properties, and their associated charging order respondents, are:

   i) Four apartments (with associated parking spaces) in Burlington Place, Mayfair, one each owned by Fablink Ltd, Waychem Ltd, Standcorp Ltd and Permafast Ltd, Cypriot companies owned 100% by Cooperton Management Ltd ('Cooperton'), also a Cypriot company.

   ii) 19 Wycombe Square, Kensington, owned by Dencora Ltd ('Dencora'), a BVI company. The Wycombe Square property was the Arip family home in London between 2009 and 2018.

   iii) Flat 9, 10 Montrose Place, Belgravia, owned by Unistarel Corp ('Unistarel'), a BVI company.

5. The respondents' case, stated very broadly, is that each of the properties is owned indirectly by or held on behalf of a discretionary trust the beneficiaries of which are members of Mr Arip's family. Thus, they say that:

i) Cooperton owns the owners of the Burlington Place properties in its capacity as trustee of the Jailau Trust, founded by Mrs Asilbekova in April 2014 for the benefit of Mr and Mrs Arip's children, Rabiga, Talal and Khadisha.

ii) Dencora, the owner of the Wycombe Square property, is the only asset of Carabello Holdings Inc ('Carabello'), another BVI company, which is owned in turn by the Wycombe Settlement, founded by Mr Arip in April 2009 for the benefit of Mr and Mrs Arip, their parents and issue. The current trustee of the Wycombe Settlement is Pilatus Trustees Ltd ('Pilatus') in Cyprus.

iii) The owner of the Montrose Place property, Unistarel, is owned by Drez Investments Corp ('Drez'), another BVI company, and Drez is owned in turn by the RaTalKha Settlement, founded by Mrs Asilbekova in January 2013 for the benefit of herself and Mr and Mrs Arip's children (hence, presumably, RaTalKha). Pilatus is also the current trustee of the RaTalKha Settlement.

I shall refer compendiously to the Jailau Trust, the Wycombe Settlement, the RaTalKha Settlement and the WS Settlement (said to be another family trust of indirect relevance to these charging order claims) as 'the Settlements'.

6. Thus, the respondents say that Mr Arip has no interest of any kind in or in connection with the Burlington Place properties or the Montrose Place property, and that as regards the Wycombe Square property he is but one of several discretionary beneficiaries under the Wycombe Settlement with no interest of his own in the property itself, and potentially no valuable interest of any kind depending on what (if any) distributions are made by the trustee.

7. The sole current director of both Cooperton and Pilatus, and thus the individual responsible in practice for the administration of the Settlements, is Andreas Georghiou, who is a Cypriot lawyer practising as principal of A A Georghiou LLC to provide *inter alia* legal and trustee services.

8. Stated equally broadly, the claimants' case in the charging order proceedings within this Claim is that despite the apparent ownership structures involving the various corporate vehicles and the Settlements, the true position is that all this valuable real property is beneficially owned by and held for Mr Arip.

9. There are also now interim charging orders over five properties on Ilford High Street owned by Xyan Holdings Ltd ('Xyan'), another BVI subsidiary of Drez, that are said by Xyan/Drez to be held ultimately for the RaTalKha Settlement and are said by the claimants to be in truth held beneficially for Mr Arip. The Ilford properties are said to be worth more than £10 million. This judgment does not deal with the charging order applications in respect of the Ilford properties and Xyan is not before the court, but the existence of those further charging orders is said to be relevant to the application for relief from sanctions by the charging order respondents who are before the court.

10. The claimants have commenced a further Claim, CL-2019-000494, against all of the charging order respondents before me, plus Mr and Mrs Arip, Ms Dikhanbayeva, Mrs Asilbekova, Carabello, Drez and Pilatus ('the 2019 Claim'). There is an application pending to join Xyan to the 2019 Claim and to amend accordingly to extend the claimants' claims therein to cover also the Ilford properties. The 2019 Claim Form

identifies that as regards the real properties owned by the charging order respondents, the claimants' claims in the 2019 Claim are for:

i) first, declarations that the properties belong in equity to the claimants, being (the claimants allege) the traceable proceeds of Mr Arip's frauds;

ii) second, in the alternative, charging orders and/or orders for sale of the properties if they belong in equity to Mr Arip;

iii) third, in the further alternative, relief under sections 423 to 425 of the Insolvency Act 1986 to reverse the transactions pursuant to which the respective respondents own the properties, those transactions having been (the claimants allege) transactions to defraud Mr Arip's creditors.

The first claim is inconsistent with the second (which is therefore indeed strictly in the alternative); the second claim appears entirely to replicate (as against the charging order respondents) the charging order proceedings in this Claim that give rise to the applications now before me; and the third claim appears to be a different way of possibly breaking through the structure under which the properties appear to be held so as to make their value available for the part-discharge of Mr Arip's judgment debts in this Claim, although I shall not claim to have understood fully what asset(s) the Insolvency Act relief, if granted, would cause to become available, or how, in that regard.

11. The 2019 Claim was commenced on 6 August 2019. Mr and Mrs Arip, Ms Dikhanbayeva and Mrs Asilbekova are not participating; the other defendants have been represented since the end of October 2019 by Mr Chambers QC on a direct instruction. They filed and served a Defence dated 26 November 2019, in response to which the claimants filed and served a Reply dated 23 December 2019. At this hearing, I directed that there be a joint CMC before the end of this Hilary Term (but not before 9 March 2020) in the 2019 Claim and these charging order proceedings, unless rendered moot by this judgment, with the application to join Xyan and amend to be dealt with also then; and that has now been fixed for 26 March 2020.

The Present Applications

12. That somewhat lengthy introduction now enables me to identify and explain the applications determined by this judgment. By paragraphs 5 and 6 of an Order of Jacobs J dated 28 June 2019 ('the June Order'), the charging order trial was adjourned three working weeks before it was due to commence, and associated deadlines for service of witness statements for that trial, agreement of a trial bundle index and provision of the trial bundle were stayed. Paragraphs 1 to 3 of the June Order ('the Unless Order') provided that unless specified steps were taken by 4.30 pm on 19 July 2019, the respective Points of Defence in the charging order proceedings "*shall be immediately struck out and judgment shall be entered for the Claimants in the Charging Orders Applications concerning the [respective] Properties and the Charging Orders in the Claimants' favour over the [respective] Properties shall be made final*". Paragraph 4 of the June Order required (not on 'unless' terms) that Unistarel and Dencora complete various detailed steps by 4.30 pm on 18 September 2019, broadly the intention being, I understand, that they would thereby complete their Extended Disclosure for the adjourned charging order trial.

13. It is common ground that all the respondents failed to comply in full with the steps required of them by the Unless Order and that therefore, unless relief from sanctions be granted, their Points of Defence have been and stand struck out, without the need for further order of the court, and the claimants are entitled, upon making an application under CPR 3.5(5), to have final judgment entered in their favour in the charging order applications, the interim charging orders being made final accordingly. The applications to be dealt with by this judgment are, then:

    i) an application by the claimants issued on 1 November 2019 for a declaration that the Points of Defence stand struck out and for the entry of judgment with the interim charging orders being made final; and

    ii) an application by the respondents issued on 6 November 2019 for relief from sanctions under CPR 3.8/3.9, applying the principles set down by the Court of Appeal in *Denton et al v T H White Ltd* [2014] EWCA Civ 906, [2014] 1 WLR 3926.

14. It was common ground that the application for relief from sanctions was the logically prior application, that if it succeeded the claimants' application fell away (apart from any argument as to costs) and that if it failed the claimants' application was bound to succeed. Thus the respondents were the effective applicants at the hearing and Mr Chambers QC for the respondents opened the argument and had the final word in reply. I am grateful for the care and clarity with which he and Mr Howe QC for the claimants presented their submissions, both in writing and orally.

15. I do however record here my criticism of their time estimate. The applications were listed for argument on a Commercial Court Friday, time estimate half a day, plus reading time of 3-4 hours. The reading estimate was just about adequate, but only because (which the parties could not have assumed when listing) I had a prior familiarity having conducted substantial elements of the case management in the charging order proceedings. More importantly, however, this was not and should never have been listed as a half-day hearing.

16. Under-estimation of the time required to argue applications in the Commercial Court, especially those for which the parties seek a Friday listing, is a significant current problem. In the hope that it may do something to start to turn the tide in that regard, I wish to emphasise that a half-day hearing estimate in this court is supposed to mean that a *maximum of 2½ hours* will be required for *all substantive argument, an oral judgment and the determination (with argument as required) of consequential matters*. As a realistic rule of thumb, therefore, parties should not ask for a half-day hearing unless they are confident, having considered the matter with care, that substantive argument will be completed within 1½ hours maximum. It should not be assumed that judgment will be reserved; and if it is reserved, the final hour or so of hearing time not spent in court can and should be available to the judge to reflect and make key notes, fresh from the argument, for the structure and content of the judgment that he or she will then need to write. In the present case, I question in any event whether it was realistic to think that half a day was sufficient even just for the substantive argument, which took about 3½ hours.

The Defaults

17. As is now well embedded following *Denton*, the court should adopt a three-stage test when considering any application for relief from sanctions:

    i) Is the breach serious or significant? If not, relief should ordinarily be granted.

    ii) Is there a good reason for the default? If so, there will ordinarily be a powerful case for granting relief. Even where there is no good reason, an applicant for relief should be clear and frank in explaining to the court, by evidence, how and why the default occurred. The reason(s) why an applicant defaulted will ordinarily be relevant to the third stage, and may be relevant to the first stage, even when it or they do not amount to any good reason for defaulting, something it has proved very difficult for applicants to demonstrate.

    iii) What does justice require, in the particular case? Weight is always to be given to the need for litigation to be conducted efficiently and at proportionate cost (CPR 3.9(1)(a)) and the need to enforce compliance with rules, practice directions and orders (CPR 3.9(1)(b)). But there is no closed list of relevant factors; all the circumstances of the case must be considered and, specifically, it is wrong in principle to approach an application for relief on the basis that unless a default is insignificant or there is a good reason for it, relief must be refused.

18. In the present case, there was substantial dispute at both first and third stages. At the second stage, the respondents say that the failures to comply with the requirements of the Unless Order were none of them deliberate and that they have all been explained, and apologised for, by Mr Georghiou in his evidence on these applications. The respondents say further that all shortcomings in their compliance have now been rectified. But they do not claim there is any excuse for not having complied fully, and I am clear that there was no good reason for it.

19. I shall determine in this section of the judgment the nature and extent of the non-compliance with the Unless Order. Before turning to do so, I should say that I do not accept a primary submission advanced by Mr Howe QC, for which he did not cite authority in support, namely that if after the additional steps taken since the Unless Order deadline of 19 July 2019 the respondents have still not complied in full with the requirements of the Unless Order, "*the possibility of relief from sanctions does not arise*". The extent to which, if at all, original requirements remain unsatisfied when relief from sanctions is considered will naturally be of interest both at the first stage, in assessing the seriousness or significance of the default that has triggered sanctions, and at the third stage, in assessing the overall justice of the case. It may also be relevant at either or both of those stages, or indeed at the second stage depending on the facts, to consider whether any unsatisfied requirements can be fulfilled after all, if so how quickly and at what cost, if not why not, and in either case with what other consequences. But to my mind there is nothing in the language of CPR 3.8/3.9 to suggest, and it would be contrary to *Denton* to propose, that there is an absolute requirement, as posited by Mr Howe QC's submission, that all non-compliance be fully rectified before relief from sanctions can be granted.

20. By Mr Chambers QC's reckoning, the Unless Order created some 22 separate requirements, all to be fulfilled by the deadline of 4.30 pm on 19 July 2019, almost all

of which were fulfilled on time. To get to that number requires, I think, counting separately down to the level of sub-sub-sub-paragraphs under the paragraph numbering convention in the Unless Order of '1(a)(i)(A)' etc. If one counted instead (the opposite extreme, perhaps) simply at paragraph level, there were 3 unless orders (paragraphs 1, 2 and 3 of the June Order) and there was default under all of them. Neither way of trying to put a number on the extent of the compliance and non-compliance is illuminating or helpful.

21. The full terms of the Unless Order are set out in the Appendix to this judgment, from which it will be seen that:

i) Paragraph 1(a)/(b) required certain steps to be taken to provide fuller disclosure as to the reasons why Quinn Emanuel had ceased to act for the Burlington Place respondents. There was a degree of detail set out, but almost all of what had to be done was for those respondents' then solicitors, Candey Ltd, to do. There was full and timely compliance with paragraph 1(a)/(b).

ii) Paragraph 1(c) required the Burlington Place respondents either to provide "*substantive responses*" to certain particular Requests for Further Information or to "*withdraw the relevant parts of the pleading to which [the given Request] refers*". As I describe below, and in the manner I there identify, the Burlington Place respondents did not comply.

iii) Paragraph 1(d) required the Burlington Place respondents to provide copies of certain documents received by Signature Litigation LLP from Mills & Reeves LLP on 17 October 2018 (Signature having been those respondents' solicitors after Quinn Emanuel and before Candey Ltd) and to do work to clarify any claim to privilege in relation to those documents. As with paragraph 1(a)/(b), that was detailed work that in practice would fall to the respondents' solicitors to undertake, and there was full and timely compliance.

iv) Paragraph 2 required Dencora, the Wycombe Square respondent, to particularise or withdraw a specific pleading point, by reference to certain particular Requests for Further Information, as under paragraph 1(c) for the Burlington Place respondents. Dencora likewise did not comply, as and in the way I identify below.

v) Paragraph 3(a) required Unistarel and Dencora, as Montrose Place and Wycombe Square respondents respectively, to provide a witness statement from Mr Georghiou addressing a number of matters relevant to their Extended Disclosure, in particular as to the identification of electronic documents (or devices on which such documents might be found) that possibly should have been or should be searched. A statement from Mr Georghiou was timely provided the content of which complied with much of paragraph 3(a), but there was not full compliance, as I describe below.

vi) Paragraphs 3(b), 3(c) and 3(d) required Unistarel and Dencora to complete specified particular tasks in respect of their disclosure, namely (paragraph 3(b)) a disclosure review of c.15,000 documents from the computer of Mr Georghiou's PA at A A Georghiou LLC, Ms Lola Champidi, (paragraph 3(c)) a 'hit report' in respect of the search terms applied, and (paragraph 3(d))

disclosure of additional responsive material, if any, obtained after resolution of a data corruption issue identified in a Disclosure Certificate. There was full and timely compliance with all of these requirements.

Paragraph 3(a) – Disclosure Defaults

22. The Unless Order requirement set by paragraph 3(a) was the provision of a witness statement from Mr Georghiou "*addressing the following matters*". At least *prima facie*, therefore, it is no failure to comply with paragraph 3(a) if Mr Georghiou's relevant witness statement be proved inaccurate in some respect in what it said upon one of the matters it was required to and did address. I shall take those matters in turn.

23. As required by paragraph 3(a)(i), the witness statement served addressed how Mr Georghiou's email address at A A Georghiou LLC was operated and more generally how Mr Georghiou conducts his day to day business, given statements in the Disclosure Certificate that he does not use a personal computer, there is no computer in his own office at work, and all emails to and from his work email address are on Ms Champidi's computer.

24. Paragraphs 3(a)(ii) and 3(a)(iii) are awkwardly drafted. As particulars of the primary requirement to provide a witness statement addressing certain matters, they required that Mr Georghiou's statement 'address the matter of confirmation' as to certain matters (3(a)(ii)) or of certain matters (3(a)(iii)). Those matters were: what electronic devices or computers Mr Georghiou owns, holds or uses (whether in a personal or business capacity) and why they were not searched (3(a)(ii)); and "*what other electronic devices, computers and servers or data storage devices are used by … A.A. Georghiou LLC, and/or any employees of his firm that are (or have been) involved with the administration of [the Settlements], and why those … were not searched …*" (3(a)(iii)). The parties have proceeded, perhaps generously to the claimants (i.e. more onerously for Unistarel and Dencora – *cf* paragraph 22 above), on the basis that the Unless Order therefore required that Mr Georghiou state accurately in his witness statement what hardware existed falling within those descriptions, and then explain why it had not been searched as part of Unistarel and Dencora's Extended Disclosure exercise.

25. Even read in that way, there was full compliance with paragraph 3(a)(ii). As regards paragraph 3(a)(iii), however, Mr Georghiou's statement fell short. In that regard, I need to deal firstly with the meaning of paragraph 3(a)(iii) and secondly with the facts (as to which, in turn, two points arise).

26. The meaning of paragraph 3(a)(iii) depends on whether, in the operative words quoted in paragraph 24 above, the phrase "*that are (or have been) involved with the administration of [the Settlements]*" qualifies "*any employees of his firm*" or "*other electronic devices [etc]*". The former might be suggested because there is no comma after "*employees of his firm*". But that would have required Mr Georghiou to identify in his witness statement both electronic hardware of his firm that was never used in connection with the Settlements and, in the case of employees of his firm who had had some involvement in the administration of the Settlements, personal devices of theirs that were never used at all in connection with their employment, let alone in connection with the Settlements in particular. To my mind, that is most unlikely to have been intended. The only legitimate interest in electronic devices in the present context was if they might be sources of disclosable documents. Further, in the case of Mr Georghiou

himself, paragraph 3(a)(ii) made explicit, as paragraph 3(a)(iii) did not, that his devices used only in a personal capacity were to be listed. Finally, any reasonable room for doubt as to what was required should be resolved in favour of Unistarel and Dencora since it goes to define what the court was requiring of them by order, all the more so since it was an unless order. For those reasons, in my judgment the better and correct reading of paragraph 3(a)(iii) is that it required Mr Georghiou's witness statement to identify all electronic devices, computers, servers or data storage devices used (whether by the firm or by any of its employees) in connection with the administration of the Settlements.

27. That means, on the one hand, I reject the submission of Mr Chambers QC that the unless order requirement did not extend to the listing of employees' personal devices at all, but on the other hand I also reject the submission of Mr Howe QC that it extended to the personal devices of employees who had some involvement with the Settlements but which personal devices had never been used in that connection.

28. As to the facts in respect of paragraph 3(a)(iii), firstly the claimants say it was a breach of the unless order requirements that Mr Georghiou did not in his witness statement identify personal electronic devices of his firm's employees used by them only in their personal capacities and not for work. On what I have just held to be the correct reading of paragraph 3(a)(iii), that is no breach. This allegation of breach, however, generated its own body of evidence within these applications, in which, in short, Mr Georghiou stated unequivocally that his firm's employees never use personal electronic devices for work, and that evidence was suggested not to be credible by Mr Lewis of Hogan Lovells for the claimant. But in my judgment, there is no substantial basis for rejecting Mr Georghiou's evidence on this point. There is no contrary evidence. The point is different in kind to the question of which of the firm's computers may have been used in connection with the Settlements, so Mr Georghiou's mistake about that (which is the second point on the facts) does not give rise to an inference that he is or may be wrong about employees' personal devices. Nor is his evidence about that rendered doubtful, as suggested by the claimants, because Mr Georghiou says he never types and sends his own emails yet sometimes his email address corresponds on a weekend. Mr Georghiou gave a credible account for that which has been corroborated by Mr Chambers QC's evidence of working with Mr Georghiou on the case (Mr Chambers QC having provided witness statement evidence, not merely argument, for the present applications since he is acting on a direct instruction). Thus, I am not persuaded and do not find that there was any breach of paragraph 3(a)(iii) in the failure to identify Mr Georghiou's firm's employees' personal electronic devices.

29. Secondly as to the facts under paragraph 3(a)(iii), Mr Georghiou has explained in his evidence for these applications that he understood he was required to identify all his firm's electronic hardware that had been used in connection with work on the Settlements. I accept that evidence. It means that as regards the firm's devices, the unless order requirement was correctly understood. It was not satisfied on the facts, however, by the witness statement provided in July. That witness statement identified the office computers of three of the firm's employees (Ms Champidi, Mrs Kyriaki Siantani and Mrs Alexandrina Buceatchi) and two servers. Mr Georghiou's evidence is that in June/July 2019, he mistakenly thought those were the only devices that had been used in connection with work on the Settlements. In response to the claimants' suggestion that that list was incomplete, Mr Georghiou caused all his firm's electronic

devices to be searched as part of seeking to complete Unistarel and Dencora's Extended Disclosure pursuant to paragraph 4 of the June Order. They included a third server, an external USB drive, and the office computers of a further five employees.

30. The report from the analysts engaged by Mr Georghiou to assist, ISS Information Security Services Ltd, suggests that Angelina Schukina's office computer was a source of documentary material of similar significance for disclosure to those of Mrs Siantani and Mrs Buceatchi; and that it was likely to be a relevant source was in fact tolerably clear from existing disclosure, so there is really no excuse for Mr Georghiou's mistaken belief that it was not. The ISS report also suggests that the computers of Adamos Aristides and Chlore Pharmkalidi (but not those of Alexandra Oikonomou and Charoula Artemiou) are of interest; likewise the external USB drive. It is less clear to me that Mr Georghiou is at fault for thinking that Mr Aristides' and Ms Pharmkalidi's computers, or the external USB drive, were irrelevant; but on the other hand it is not clear to me (certainly Mr Georghiou has not said) what steps, if any, Mr Georghiou actually took to check his own (in fact mistaken) understanding as to which devices should be searched. For example, he does not say in his evidence that as part of the June/July exercise of seeking to comply with paragraph 3(a)(iii) he actually asked his employees the simple question whether their respective office computers might contain any documents relating to the Settlements.

31. The upshot, as regards the nature and extent of breach, then, is that in respect of paragraph 3(a)(iii), three office computers and one USB drive were not identified by Mr Georghiou by witness statement (with associated explanation of why they had not been searched) until 6 November 2019 (the date of Mr Georghiou's witness statement in support of the present application for relief from sanctions), some 3½ months late, although in the meantime all those devices had in fact been identified and searched, and the results provided to the claimants in September 2019 pursuant to paragraph 4 of the June Order.

32. Paragraph 3(a)(iv) required the witness statement from Mr Georghiou to be provided under the Unless Order to 'address the matter of an explanation' (i.e., as I would read that, it required an explanation to be given) of four separate things. The witness statement provided satisfied that requirement for three of the four things (paragraphs 3(a)(iv)(A)/(C)/(D)); but sub-paragraph (B) required Mr Georghiou to explain "*what (if any) steps*" had been taken to preserve data that might be relevant following his firm's involvement and the witness statement provided in July gave no such explanation. It did not ignore or defy paragraph 3(a)(iv)(B), rather it just stated in general terms that material had been and would continue to be preserved, implying that steps had been or may have been taken to preserve data, but did not as required by paragraph 3(a)(iv)(B) explain what those steps had been. That failure has also now been rectified, again by Mr Georghiou's November witness statement in support of the present application; so the final extent of default is that the information required was provided 3½ months late.

33. It will be apparent from what I have just said that I do not accept a submission by Mr Chambers QC that when Mr Georghiou said in July 2019 that material had been preserved, he was saying that since his instruction "*the step he had taken to preserve data was not to destroy data*" such that strictly there was no breach of paragraph 3(a)(iv)(B) at all. To say that data has not been destroyed is merely to say that data has been preserved, i.e. to answer the question <u>whether</u> data has been preserved (yes or no). The subject of interest here, and plainly so, was <u>how</u> data had been preserved, if it had

been; Mr Georghiou was being asked to set out the steps that had been taken with a view to achieving data preservation, not a bare yes/no as to whether he believed data had been preserved; and he really should have appreciated that.

34. Finally (in relation to paragraph 3(a)), as required by paragraph 3(a)(v), the witness statement provided under the Unless Order 'addressed the matter of an explanation' (i.e. gave an explanation) of the hard copy document searches that had been carried out, and there is no complaint that the specific clarifications required were not given.

Paragraphs 1(c) & 2 – Pleading Defaults

35. There is something slightly odd to my mind about an unless order, with default sanction the striking out of a defendant's entire defence and corresponding entitlement in the claimant to apply for final judgment on its entire claim, that requires the defendant to particularise *or withdraw* a pleaded allegation. I shall return to that as part of the third stage under *Denton*.

36. At this stage, it suffices to say that the relevant unless order requirement was indeed to particularise or withdraw certain specific allegations, and that the respective respondents (a) did not particularise them and (b) did not withdraw them (although there is some subtlety to that). They now say that by way of relief from sanctions they should be allowed to pursue those allegations, with permission for particulars settled by Mr Chambers QC in early November 2019 and served with the application for relief. Mr Chambers QC rightly accepted that it would be open to the court in principle, if this were judged to be the fair resolution overall, to grant relief from the striking out of entire defences but not from the striking out of the specific allegations.

37. Paragraph 1(c) required the Burlington Place respondents, firstly, to particularise or withdraw an allegation in paragraph 33(c) of their Points of Defence that it was all of their common intention that legal and beneficial title to each Burlington Place property be held by the legal title-holder. The specific requirement was to identify:

i) (by reference to an original Request 80) the natural person or persons alleged to have had that intention for and on behalf of each of these respondents; and

ii) (by reference to an original Request 81) all facts and matters relied upon in support of each such allegation of intention.

38. That allegation of common intention was an important ingredient of the respective respondents' positive case about ownership interests in relation to the Burlington Place properties. There had been an original response in April 2019, obviously inadequate, denying that the requests were reasonably necessary or proportionate to enable the claimants to deal with the respondents' positive case and stating that matters would be covered in due course in evidence. There was a further response in June 2019, also plainly inadequate, in substance declining to respond on the basis that the answers were not within Mr Georghiou's own direct knowledge. The yet further response in July 2019, provided pursuant to the Unless Order, reiterated with a little more detail the June 2019 non-excuse that Mr Georghiou could not answer from his own direct knowledge and suggested, without any foundation that has been disclosed to the court in evidence on these applications, that the claimants had obtained 'gagging orders' preventing those who might have knowledge from providing information to the respondents.

39. On 6 November 2019, with the application for relief from sanctions, there came an amended version of the response, for which the Burlington Place respondents now seek permission as part of their application, in which all that had been added in July 2019 is struck through and the particulars required all along have finally been provided, thus:

> "*80(a) The natural person on behalf of Cooperton was Cooperton's director, Mr Georgios Vlachou.*
>
> *80(b) The natural persons on behalf of each of the subsidiaries were the directors of those subsidiaries who were Menikos Yiannakou, Michalakis Hadjimichael and Dora Kaskani.*
>
> *81 The facts and matters relied on in respect of each of the individuals identified in the responses to request 80 above are those pleaded in paragraphs 33(a) and (b) of the Points of Defence.*"

40. Secondly, paragraph 1(c) required the Burlington Place respondents to provide particulars by setting out how at trial they would contend that nine specific questions would fall to be answered in respect of a particular allegation, pleaded by an original RFI Response 72(b), that Mrs Arip had at one time considered taking over the purchase of the Burlington Place properties so that certain UK companies of which she was sole shareholder would acquire them rather than the title-holding subsidiaries of Cooperton acting as trustee for the Jailau Trust, that this would have required those subsidiaries' consent, which would have required Mrs Arip to compensate them, and that in the end the Burlington Place respondents and Mrs Arip decided not to pursue that option because of adverse tax consequences. That allegation does not go directly to the basis upon which the Burlington Place properties are in fact owned and held, but I understand it might be said to be of indirect relevance, depending on what were or were not proved about it, as it might cast light on what interest, if any, Mr and Mrs Arip personally were thought or intended to have in the properties.

41. There was again a sequence of responses in April, June, July and November 2019. The April 2019 response was broadly similar to that provided to Requests 80 and 81, save that it was clarified that none of the Burlington Place respondents, on their case, was involved in any decisions that the properties be held by UK companies owned or to be owned by Mrs Arip. The June 2019 response, as with Requests 80 and 81, wrongly refused to give any answer on the basis that Mr Georghiou could not himself speak to the relevant factual matters. The July 2019 response repeated that non-excuse and repeated the baseless suggestion that there were 'gagging orders' hindering the respondents. The November 2019 response, for which permission is now sought, provided what would be proper particulars.

42. In saying that last, I do not accept a submission by the claimants that the Burlington Place respondents, were permission granted, would still not have provided "*substantive responses*" to two or three of the nine individual questions. That argument was that the Burlington Place respondents' case, as it would then be pleaded by the November 2019 responses, would limit them on the issue of 'compensation' to a case that it was raised on 24 August 2017, whereas the claimants would say on the documentary evidence that it was raised, or first raised, on 17 August 2017. That submission is misconceived. It goes to the soundness (factual accuracy) of the respondents' case as it would now be particularised, not to the sufficiency of that proposed particularisation. Nor indeed, even

if it could be said to leave the particularisation incomplete or wanting further detail, would it fail to meet the unless order requirement, since that went no further than the provision of "*substantive responses*" (or withdrawal), in obvious contradistinction, in context, to the provision of (purported) reasons for not responding at all. On any view, what was provided in November 2019 would amount to substantive responses to the questions asked.

43. The July Further Information responses served under paragraph 1(c) of the Unless Order thus openly failed to provide substantive responses. What is more, those responses acknowledged that in those circumstances *prima facie* the allegations not particularised should have been withdrawn. That accorded with how Mr Haque QC, then leading counsel for the respondents, explained the position to Jacobs J on 28 June 2019 (which in turn may explain why the concern I mentioned in paragraph 35 above does not seem to have been aired): "*the issue is whether, after our enquiries have been made we can make good those matters of pleadings by way of evidence. If we can we will provide further substantive responses to the RFIs. If we cannot, well, we will agree for those parts of the pleadings to fall away. It is subject to timing.*"

44. The reason given in the July responses why the relevant allegations were not being withdrawn was the suggestion (I am bound to find, on the (absence of) evidence before me, a phantom suggestion) that the claimants were by 'gagging orders' preventing the provision of information that would allow substantive responses to be given. Thus, both sections of the Burlington Place respondents' responses concluded with the assertion that "*The Respondents expect evidence to arise once the Claimants' position vis-à-vis the existence of gagging orders is clarified. Pending such clarification, it would [be] contrary to the interests of justice that the Respondents withdraw parts of the pleading.*" (my emphasis).

45. The claimants' position was clarified by letter from Allen & Overy dated 25 July 2019. It was and is that the claimants have neither sought nor obtained any potentially relevant order and that to the best of the claimants' knowledge and belief no other party has done so either. There is a real sense in which the original default was thus compounded, not remedied, by the eventual particularisation of the allegations in November 2019. On the logic of the July responses as served, and given the position adopted before Jacobs J when the Unless Order was made, there being no foundation for the 'gagging order' suggestion and in any event the claimants' position as to that having been clarified promptly, the allegations in question should have been withdrawn.

46. Even then, strictly, relief from sanctions would have been required, to undo the automatic striking out of the respective respondents' entire Points of Defence and extend time by the necessary week or so for the withdrawing of the allegations that had not been particularised. That application for relief, if made, would I think have been granted fairly readily; indeed I wonder if it would (or could reasonably) have been resisted. Testing that thought the other way round, if on these pleading points the order had been that unless particularised by 19 July the specific allegations would be struck out without further order, reflecting what seems to me to have been the real intention, *viz.* to give the respondents one final, strictly time-limited opportunity to 'put up or shut up' on those allegations, there would be no basis for granting relief from that sanction (indeed, I wonder whether relief would even have been sought).

47. My preferred interpretation of events, therefore, is that the pleading default under paragraph 1(c) of the Unless Order was not a failure to particularise the relevant specific allegations – after all, there was no obligation to particularise – rather it was the wrongful imposition by the Burlington Place respondents of a condition upon their withdrawal of those allegations in circumstances where they were avowedly not providing the particulars that were supposed to accompany any refusal to withdraw.

48. As regards Dencora and paragraph 2 of the Unless Order, the relevant primary plea was Dencora's allegation that the purchase of Dencora by Carabello, rather than a direct purchase of the Wycombe Square property by the Wycombe Settlement, was an intentional, tax-saving plan, essential to which was the relinquishment by Mr Arip of all legal or beneficial interest in the funds he settled onto the Wycombe Settlement. That allegation was an important element of Dencora's positive case in the Wycombe Square charging order proceedings, like the allegation dealt with by Requests 80 and 81 in respect of the Burlington Place properties. The requests to which paragraph 2 of the Unless Order required substantive responses were Request 18, asking for full details of the tax-saving plan, as alleged, with specific Requests 18.1 to 18.5, and Request 19, asking Dencora to explain the factual and legal basis for the contention that it was essential to that plan that Mr Arip fully give away any funds given to the Wycombe Settlement.

49. By the now familiar sequence of responses: in April 2019, quite unjustifiably, Dencora asserted that the claimants did not reasonably need the particulars sought and all would be dealt with through evidence; in June 2019, the non-excuse of Mr Georghiou's lack of personal knowledge was given as reason for not answering, after a materially unresponsive and uninformative assertion that holding structures involving offshore companies are not uncommon in tax planning; in July 2019, certain provisions in what Dencora says is the contract under which it was purchased by Carabello were quoted that made general statements about Dencora's tax status and affairs, but none of the requests was answered substantively, and Mr Georghiou's lack of first-hand knowledge and the phantom 'gagging orders' were again put forward as excuses; finally in November 2019, what would be substantive responses were pleaded. There is no issue in relation to Dencora whether its November responses, if allowed, would amount to substantive responses as referred to in the Unless Order.

50. The July responses closed with wording identical to that used by the Burlington Place respondents under paragraph 1(c) of the Unless Order. Again, therefore, in my judgment there was, in substance, a conditional withdrawal of the unparticularised allegations, and the true nature of the default is that, having not provided substantive responses to the outstanding Requests, Dencora did not withdraw the allegations in question, i.e. unconditionally withdraw them, but said that withdrawal should be conditional upon clarification of the claimants' position as to the alleged 'gagging orders'.

Conclusion

51. The position overall, therefore, is that the respondents timely complied with the Unless Order in many significant respects, and as regards the many disclosure-related requirements the Burlington Place respondents in fact complied with all of the requirements upon them, whilst Unistarel and Dencora complied fully with almost all of the requirements upon them.

52. The disclosure defaults (Unistarel and Dencora only) were that for two of the many requirements imposed on them under paragraph 3 of the Unless Order, they provided a witness statement from Mr Georghiou fulfilling them only 3½ months after the unless order deadline. The late fulfilment of those two requirements has not, however, affected the population of documents actually disclosed to the claimants, and Unistarel and Dencora's Extended Disclosure was in fact completed on time in September 2019 (subject to any specific application that may yet arise in that regard), i.e. the completion only in early November 2019 of those two particular Unless Order requirements for explanatory witness evidence from Mr Georghiou cannot be said to have limited the disclosure actually given.

53. The pleading defaults (Burlington Place respondents and Dencora) were different in kind to the disclosure defaults and rather more fundamental, as regards the specific allegations not particularised by the Unless Order deadline. Upon the logic of the Unless Order, and the respective respondents' own position clearly articulated before Jacobs J when the Unless Order was made, those allegations ought to have been withdrawn on 19 July 2019. The application required, if those allegations, properly particularised this time, were then sought to be reintroduced, would have been exactly that, an application to amend to reintroduce the allegations. That would not have been an easy application, but it could not be said that the court would have had no jurisdiction to allow it, if made and powerfully enough justified by evidence. That would have required, as a bare minimum, a clear and detailed explanation of the decision taken in July 2019 to raise, and the supposed basis for raising, the 'gagging order' suggestion, the associated decision not to comply with the Unless Order rather than return to court to raise the supposed concern, and the *volte face* by which the respondents were no longer willing to withdraw if the the 'gagging order' suggestion lacked substance. The present application is nothing like that application, and nothing like (any of) those explanations has been proffered.

Denton Stage 1

54. Mr Chambers QC submitted that none of the failures to comply with the Unless Order was serious or significant. In his submission, these were minor aspects of the disclosure exercise together with a delay in answering "*minor and relatively insignificant requests for further information to which [the claimants] knew the answers anyway*". He also submitted, in effect, that if they might otherwise have been serious or significant failings (individually or collectively), they are rendered insignificant by the fact that the charging orders trial listed for July was adjourned by the June Order and will not now be brought on (if relief from sanctions be granted) any later than if all the requirements of the Unless Order had been completed on time.

55. Taking the latter submission first, I am not clear that the conclusion that the defaults were insignificant would follow from the premise, if established, that the failure timely to comply fully with the Unless Order has had no procedural impact beyond the need to deal with the defaults themselves (and thus now this application for relief from sanctions). The notion that the seriousness or significance of defaults is to be judged simply upon their specific impact, if any, on the progress of the particular piece of litigation was rejected in *Denton* at [26].

56. Nor in any event could I say that the premise was established. There were two causes, each sufficient, of the adjournment of the July 2019 trial. One was the degree to which

the case was not ready for trial because of the respondents' failures to complete disclosure properly. That increases the seriousness of the Unless Order defaults as regards disclosure, although those defaults came after the adjournment of the trial, as it means the Unless Order was imposed in respect of prior failures to comply with disclosure obligations that had rendered the trial liable to be lost: see *British Gas Trading Ltd v Oak Cash & Carry Ltd* [2016] EWCA Civ 153, [2016] 1WLR 4350. The other sufficient cause to adjourn the July trial was the claimants' desire at the last hour (relative to the trial listing) to take concrete steps to pursue their stance, which had been consistent throughout the enforcement process, that their case in the charging order applications, to the effect that the properties belonged in equity to Mr Arip and so could be charged by way of enforcement of his judgment debts, was strictly in the alternative to a primary argument that the properties belonged in equity to the claimants. In a case in which there seems always to be another layer to every point, what I have just said is not a criticism of the claimants. They were for a long time seriously hampered in what they could pursue here by injunctions improperly obtained by or at the behest of Mrs Arip – it may be at the ultimate behest of Mr Arip – from courts in Cyprus. This is not the place to rehearse the full detail of that element of the litigation history, but it explains in particular the reference, in the letter to which I refer next, to the claimants being in June 2019 'able to pursue' their logically prior line of attack; and it means, more importantly, that the July trial would have been adjourned even without the concerns about the state of the respondents' disclosure.

57. The claimants' then solicitors, Allen & Overy LLP, were clear in a letter dated 14 June 2019 that "*as a matter of legal analysis the tracing claims which our clients are able to pursue … are … anterior to the claims made by way of the Charging Order Applications …*", that "*To put it at its lowest, there is significant linkage, both factual and legal, between the Charging Order Applications and the Tracing Application and the remedies sought by those Applications, which makes it expedient and appropriate for those Applications to be determined in parallel*", and that therefore "*the sensible course, going forward, is for the Charging Order Applications and the Tracing Application to be case managed and tried together*" and "*what this requires is an adjournment of the trial of the Charging Order Applications, currently listed to commence on 23 July 2019.*" They said that "*Whilst it is never ideal for a trial to be adjourned, in the prevailing circumstances this is plainly the efficient and sensible approach. The issues arising in the Charging Order Applications and the Tracing Enquiry should be determined together.*" Allen & Overy referred to a 'Tracing Application' rather than a fresh Claim because at that time the claimants were proposing to add the claims now made in the 2019 Claim by amendment to the existing proceedings.

58. I am confident, therefore, that if the respondents had timely complied in full with the Unless Order, the 2019 Claim would still have been issued as it was, in early August 2019, and the adjourned charging orders trial would have been re-listed only together with a trial listing for that new Claim. What I cannot say, however, is that the failures to comply in full with the Unless Order have had no impact on the progress of the 2019 Claim and therefore no impact on when the adjourned charging orders trial will in fact now occur if relief from sanctions is granted. Absent the need to deal with the claimants' legitimate concerns that the Unless Order had not been complied with in full (only finally accepted as valid in early November 2019), and the consequent need to deal with an application for relief from sanctions, I see no reason why the 2019 Claim should not

have been pleaded out in good time to be brought before the court for case management, jointly with the adjourned charging orders trial, before Christmas 2019. As it is, that will now only occur (if relief from sanctions be granted) in March 2020, and that only because I have insisted that it be brought on then and not only in May and June 2020 as might have been the listing in the ordinary course if no judge had been looking at the case now in the detail required by the need to deal with the current applications. That delay of three months or thereabouts does not necessarily mean that the re-listed trial, with a trial of the 2019 Claim, will finally take place (if relief from sanctions is now granted) later than if there had been no default under the Unless Order. But I could not find in the respondents' favour, as applicants for relief from sanctions, that it will not.

59. Furthermore, the respondents' defaults are not rendered insignificant, if they be serious or significant otherwise, by the fact that the Unless Order also imposed many important obligations that were performed in full and on time. That does, though, have relevance at the third stage.

60. The pleading defaults were in my view a serious matter. It was important for the claimants and the court to know whether the Burlington Place respondents' and Dencora's respective defences of the case that the charging orders should be made final on the basis that the properties in question belong in equity to Mr Arip extended to or included the important positive allegations that had not been particularised. Setting a condition upon the withdrawal of those allegations, in circumstances where they were not being particularised within the Unless Order deadline, appropriated to those respondents the court's function and, in that sense, defied the court's authority to decide whether any such conditionality was appropriate, none such having been suggested at the hearing when the Unless Order was made.

61. The disclosure defaults cannot be said to be insignificant, but they are much less serious than the pleading defaults. I do not agree with Mr Howe QC's submission that they demonstrate or confirm a disregard for their disclosure obligations on the part of Unistarel and Dencora (in the person of Mr Georghiou). I agree though with the more measured alternative submissions, that when he gave his witness statement in July pursuant to the Unless Order Mr Georghiou had not taken adequate steps to determine, and therefore did not know, what devices should be the subject of the disclosure exercise, and that the failure to explain what steps had been taken by A A Georghiou LLC to preserve data was 'wholesale' although the potential importance of such an explanation is obvious (and Mr Georghiou had been advised by very experienced English litigation solicitors about the nature and importance of disclosure obligations in this court).

62. The significance of the disclosure defaults is tempered by the corrective steps taken by Mr Georghiou, in ensuring that in the event all his firm's electronic devices were searched as part of the Extended Disclosure exercise completed in September, then in supplementing his evidence, after Mr Chambers QC's instruction, so that the court might conclude (as I now do) that the failure to comply fully with the Unless Order last summer was not an attempt to avoid giving disclosure (whether of documents that are available or of reasons why documents are not available, as the case may be). That is so whether or not it might be concluded at trial, not something I can judge now, that there are gaps in the documentation such as may assist the claimants (either just because there is therefore nothing to gainsay some conclusion that is apt to be drawn, all things

being equal, from other evidence, or because a positive adverse inference can be drawn against the respondents on some point).

Denton Stage 2

63. Mr Georghiou raised in evidence a number of matters as part of his attempts to explain why the defaults occurred. Many were rather unworthy of a serious, experienced professional of many years' standing, such as suggestions that he felt under personal attack and so became disinclined to engage with Allen & Overy's August 2019 letter referred to below that set out how the claimants would say the Unless Order had been breached.

64. Mr Chambers QC did not submit, as I understood him, that there was any good reason for the defaults, nor could he realistically do so. He said the "*key take-away from Mr Georghiou's evidence*" was that "*none of the breaches was intentional, and that [the respondents] went to considerable effort and expense in order to comply fully with all parts of the 28 June Order (… and were successful in that endeavour, save to the limited extent of the four breaches …)*". He also invited me to conclude that Mr Georghiou did not appreciate that there had been defaults until after Mr Chambers QC took over from Candey Ltd in late October 2019 and that prompt steps were then taken to remedy the breaches and issue the necessary application for relief from sanctions. None of that amounted to any case that there was a good reason why the defaults occurred in the first place.

65. The various elements of Mr Chambers QC's submission just summarised go to the third stage of the *Denton* analysis, I would have thought, not the second stage. But having identified those elements here, since Mr Chambers QC did so, I shall set out my conclusions on them before moving on:

i) I do not accept that the pleading defaults were not intentional. The July responses speak for themselves. They were, in terms, a deliberate refusal to withdraw the allegations in question whilst openly not responding substantively to the respective Requests. As I described above, a stand was taken on it being inappropriate to withdraw. That stand was wrong-headed (and no attempt has been made to justify it or even explain where it came from), but it was equally, and plainly, quite intentional.

ii) By contrast, as regards the disclosure defaults, I am prepared to accept that Mr Georghiou (a) was making an honest attempt to comply with all of the detailed parts of paragraphs 1 (leaving aside 1(c)) and 3 of the Unless Order, (b) timely complied, in fact, with almost all of them (itself powerful evidence that he was not trying to defy or dodge the disclosure-related Unless Order requirements), and (c) honestly (albeit mistakenly) thought when giving his July statement (i) that he was identifying all relevant electronic devices falling within paragraph 3(a)(iii) and (ii) that he was addressing properly the matter required of him by paragraph 3(a)(iv)(B).

iii) I do not accept that Mr Georghiou only realised that there had been defaults when Mr Chambers QC came on the scene. He authorised the service of the July responses to the Requests for Further Information with their deliberate stance of non-compliance. He acknowledges that he knew within the course of the

Extended Disclosure exercise completed in September, over a month before Mr Chambers QC was first instructed, that he (Georghiou) had been wrong not to identify at least Ms Schukina's office computer under paragraph 3(a)(iii) of the Unless Order. It is not clear to me how anything different can be said (or, to be fair to him, whether Mr Georghiou actually says anything different) for the other devices found in September to hold disclosable documents that were not identified under paragraph 3(a)(iii) in July. The penny though, I accept, does seem to have dropped in respect of paragraph 3(a)(iv)(B) only after Mr Chambers QC's arrival.

iv) I readily accept – and this is principally to Mr Chambers QC's credit –that the present application for relief from sanctions was prepared and issued promptly following his being instructed, with the revised Further Information responses and the further and better witness evidence from Mr Georghiou designed to address the failures of compliance in July that I have already discussed at some length.

Denton Stage 3

66. There was thus, in my judgment, (i) a serious failure to comply with paragraphs 1(c) and 2 of the Unless Order and (ii) a not insignificant failure to comply in two specific respects with paragraph 3(a) of the Unless Order, for no good reason. The third stage of the *Denton* analysis is therefore critical.

67. For the claimants, Mr Howe QC submitted that some nine matters weighed heavily in the balance so as to tip it firmly against the grant of relief. There was a degree of overlap in that presentation and I think the submissions may be reduced, by way of fair summary, to the following five:

i) The defaults were serious or significant, and they came after repeated failures to comply with procedural obligations including prior court orders. No good reason has been shown why the defaults occurred. The need to ensure that litigation is efficient and proportionately costly, and that practice directions, rules and orders are enforced, which are always to carry particular weight, are powerful factors in this case.

ii) The defaults have caused and continue to cause substantial disruption to the proper progress of the proceedings, with significant unnecessary cost, multiple unnecessary hearings and the wastage of court resources.

iii) Mr Georghiou gave evidence as to why Quinn Emanuel came off the record back in October 2018 that he now accepts was wrong and cannot honestly have believed when he gave it. As it is now clear that concerns over the respondents' approach to disclosure, driven by Mr Georghiou, were in fact the reason why Quinn Emanuel ceased to act, the court can have no confidence in the integrity of the respondents' disclosure and no confidence that there can ever be a fair trial, bearing in mind that in practice any disclosure of documents evidencing how and to what extent the Arips were involved in the acquisition of the properties and their subsequent management will have to come from the respondents.

iv) There has been no material change of circumstance since the Unless Order was made and the court "*must proceed on the basis that the sanction of strike out contained in the unless order was properly imposed as a proportionate sanction for failure to comply. It will, therefore, be a comparatively rare case in which the applicant can persuade the court, absent a material change of circumstances, that it would now be appropriate to grant relief from the sanction as being disproportionate.*": *Sinclair et al v Dorsey & Whitney (Europe) LLP et al* [2015] EWHC 3888 (Comm), [2016] 1 Costs LR 19, *per* Popplewell J (as he was then) at [25]. Therefore, the effective forfeiture of the properties against which the interim charging orders will be made final if relief from sanctions is refused should not be regarded as unjust or disproportionate. (That forfeiture is of course no hardship at all if the claimants' claims in relation to the properties are well-founded, so their forfeiture by reason that the respondents do not defend the claims is logical and fair; and the loss of any right to defend claims will often be the natural, appropriate and proportionate consequence of serious procedural default.)

v) The respondents failed to apply for relief promptly. If the respondents needed it to be spelt out, Allen & Overy for the claimants did spell out for them by letter dated 23 August 2019 that they were in default. True it is that the necessary application for relief from sanctions was prepared and issued impressively promptly at the instigation of Mr Chambers QC once he received the necessary files from Candey Ltd on 30 October 2019 after being instructed on 21 October. However, that urgent action should have been instigated immediately in response to Allen & Overy's letter, if not in July without the need to be prompted.

68. I shall come to the first of Mr Howe QC's submissions, as summarised above, later. I agree with the last of those submissions. Mr Chambers QC argued that there was no culpable delay in making the application for relief, but I disagree. His alternative submission, with which I can agree, is that culpable delay is not necessarily fatal, rather it is one factor to weigh in the balance. In that regard, there is some force in his further submission that the delay is less significant here given that these charging order proceedings were in any event on hold to allow what is now the 2019 Claim to catch up. However, the failure to bring a prompt application for relief from sanctions is part of the reason why the respondents' defaults have caused the 2019 Claim to take longer than it should have to be ready for case management and preparation for trial.

69. The second of Mr Howe QC's submissions is in my judgment overstated. Costs have been incurred and court time has been taken up by the need for this one further hearing, and those costs will have been increased (and the length and complexity of this hearing aggravated) by the respondents' failure promptly to accept that they had defaulted and were at the mercy of the court in need of relief from sanctions. That is significant. But beyond that, the Unless Order defaults will have caused (if relief from sanctions is now granted) at most a delay of three months or so in bringing the matter back before the court for the joined-up case management of these charging order applications and the 2019 Claim; and that may or may not mean the matter finally coming back for substantive determination any later than it otherwise would have done.

70. I disagree with the third of Mr Howe QC's submissions. Mr Georghiou's evidence about why Quinn Emanuel came off the record was unsatisfactory, but I am not

prepared absent cross-examination (which was not sought on this hearing) to make a positive finding that it was not honestly given. What matters now is that the episode is historic within the litigation. The Quinn Emanuel concerns related to whether and if so in what terms predecessors to Mr Georghiou in the administration of the Settlements had to be interrogated by the respondents' solicitors about documentary matters for the respondents to discharge their disclosure obligations. That in turn was all dealt with as part of case management in April 2019; the enquiries of those predecessors that were felt to be required were in fact made, upon Mr Georghiou's instructions. There might or might not prove to be issues over the disclosure the respondents have given that have a substantive impact within a final trial on the merits, but in my judgment the Quinn Emanuel episode does not mean the court cannot trust the respondents as regards disclosure, nor do the Unless Order defaults.

71. I also disagree with the fourth of Mr Howe QC's submissions. The substantial extent to which the respondents, at significant cost, did comply with the multiple and varied disclosure requirements of the Unless Order, together with the launch by the claimants of and the parties' significant investment in the 2019 Claim after the occurrence of the defaults, represent a material change of circumstance since the Unless Order was made. I shall not take up time, therefore, considering fully the *dictum* of Popplewell J cited by Mr Howe QC. It came in a case concerning the striking out of a claim in this court under an unless order requiring the claimants to provide security for costs. Such orders may give rise to their own considerations (see *Catalyst Management Services v Libya Africa Investment Portfolio*, [2017] EWHC 3905 (Comm) (*sub nom Catalyst Managerial Services v Libya Africa Investment*), [2018] EWCA Civ 1676 (Court of Appeal)). In any event, Popplewell J was not considering a case like the present in which (as regards disclosure) many individual unless order requirements were imposed, most of which were timely fulfilled and the limited remainder of which were fulfilled after the unless order deadline as part of seeking relief from sanctions. More generally, as Mr Chambers QC reminded me, one of the appeals dealt with in *Denton* was itself an unless order case (the *Decadent Vapours* case, *Denton* at [64]-[65]), and no requirement of material change of circumstance (whether absolute or usual) was imposed by the Court of Appeal.

72. Turning then to Mr Chambers QC's other submissions at the third stage (having already dealt with what he said about delay in making the application for relief), they may be summarised as follows:

    i) The Unless Order defaults would not render the conduct of this litigation overall inefficient or disproportionately expensive, if relief were now granted. The importance of enforcing compliance with rules, practice directions and court orders is accepted and recognised by the respondents, and by Mr Georghiou personally in particular. The extent of compliance with the Unless Order requirements, at significant cost, and the completion in September of Unistarel and Dencora's Extended Disclosure (subject to any particular points that may yet need to be addressed), also at substantial cost, and the sincere apologies the court has received for the failures to comply, should steer the court away from concluding that sticking to the default sanction originally ordered is necessary to promote the public interest in compliance with court orders. These breaches, indeed, were "*at the very low end of the seriousness/significance scale which were quickly remedied when discovered*".

ii) The forfeiture of the respondents' only assets, being very valuable real property, can be seen now to be disproportionate by way of consequence flowing from the actual defaults that occurred.

iii) The commencement of the 2019 Claim, and the mutual investment of time and cost on both sides therein, all after the respondents' defaults, weighs heavily in favour of relief from sanctions being granted. (Mr Chambers QC raised this, if he needed it, to a submission that by commencing the 2019 Claim and/or by one or more of the steps taken in it before 1 November 2019, the claimants had lost, by an election between inconsistent rights or remedies, any right to apply for judgment now to be entered.)

iv) Xyan is unaffected by the Unless Order and defends charging order applications in respect of the Ilford properties raising materially similar defences to those hitherto advanced by the respondents, most particularly those advanced in relation to the Montrose Place property by its sister company, Unistarel. If relief from sanctions is not granted, at all events in the case of Unistarel (although Mr Chambers QC did not limit the submission to Unistarel), there is the prospect of Xyan showing by succeeding in its defence that, on the true substance of the matter, the respondents (again, Unistarel especially) should not have had to give up their properties to answer Mr Arip's judgment debts. The editors of the White Book suggest at Note 3.9.21 that "*Circumstances which favour the grant of relief from sanctions arise where the defaulting party is a defendant wishing to raise defences or counterclaims which his co-defendants will raise whether or not he is allowed relief from sanctions*", citing *Blakemores LDP v Scott* [2015] EWCA Civ 999, and *Kishenin v Von Kalkstein-Bleach* [2015] EWCA Civ 1184.

73. Comparing Mr Howe QC's and Mr Chambers QC's respective first submissions, as summarised above, I do not agree with the latter in its contention that these breaches were at the very low end of significance or that they were promptly remedied. This was a serious and deliberate refusal to comply with the Unless Order for particularisation of important elements of pleaded positive defences, and a not insignificant default as to important, if specific and limited, aspects of Unistarel and Dencora's disclosure obligations that went unremedied for 3½ months. In relation to the pleading default, the revised Further Information responses ultimately provided in early November 2019, whilst in one sense remedial in that had those responses been provided in July there would never have been a default, also represent an unexplained *volte face* from the position adopted by the respective respondents in July that the allegations would be withdrawn if they could not show (as in the event they have not attempted to show) that they were being prevented from giving substantive responses by 'gagging orders' against third parties.

74. As I made clear at the second stage, I agree with Mr Howe QC that there is no good reason why the defaults occurred. On the other hand, it seems to me Mr Chambers QC is right that (i) the defaults will not result overall in these proceedings being conducted inefficiently or at disproportionate cost and (ii) as regards the disclosure defaults, for the reasons he gave, the importance of ensuring that court orders are complied with points rather less strongly than often it will towards a need to insist on the default sanction. That second view does not hold for the pleading default, however. In relation to that default, as will be apparent from what I have already said about it, to allow the relevant respondents now to pursue the specific allegations in question, with the

November 2019 particulars, as part of their positive defences, would be to endorse an unhealthy and cavalier attitude towards the orders of the court in relation to those allegations, culminating in the relevant elements of the Unless Order.

75. That brings me back to the oddity I referred to at paragraph 35 above. For the sanction that has been triggered by the pleading defaults, subject to this application for relief, is not the striking out of the specific allegations, but the striking out of the entire Points of Defence. It follows that granting relief from sanctions does not have to involve permission for the November 2019 particulars and continued pursuit of the specific allegations thus particularised. An order striking out a defence unless the defendant particularises or withdraws a specific allegation is logical only if the court takes the view that there can be a fair trial, in particular fair to the claimant, if the allegation is withdrawn, and not only if the allegation is properly particularised. It is then potentially logical, and might be fair, to contemplate an order striking out the entire defence if the defendant refuses to do either, i.e. refuses to particularise as the court has concluded would be necessary for a fair trial if the allegation were pursued but also refuses to withdraw. Even so, if the court takes the view that a trial will be fair if unparticularised allegations are withdrawn, the better and sufficient order will almost always be one striking out those specific allegations unless they are particularised.

76. As it seems to me, there are two reasons why that was not the order in this case:

i) Firstly, the failure to particularise the specific allegations at issue was not the only or main item on the agenda for any unless order.

ii) Secondly, the logic behind any unless order in relation to the lack of particularisation of those allegations was not considered fully because of the stance adopted before Jacobs J by the respondents. They having by Mr Haque QC given clear reassurance that if they did not provide substantive particulars they would withdraw the allegations, the subsequent combination of a failure to particularise and an ill-founded attempt to justify not withdrawing would not have been within the contemplation of the court.

77. In the circumstances, the claimants would wish me to say that the substance is that the respondents have wilfully refused to do either (to particularise or withdraw), and cannot therefore complain that the default sanction is unfair or disproportionate. But I prefer to see the July responses as, in substance, a conditional withdrawal of the allegations, since they were evidently not being particularised. That was still a default, since the only alternative to proper particularisation permitted by the Unless Order was withdrawal, i.e. unconditional withdrawal. But there is room for the view, stepping back, that justice would be done if the respondents were made to stand upon their withdrawal, stated in July to be conditional but which should have been unconditional and in any event should be treated as having become unconditional since the respondents have not shown (or attempted to show) that the condition for not withdrawing there and then existed.

78. Turning then to Mr Chambers QC's second argument, I agree that the loss of all ability to seek to defend the claimants' claims in relation to the Wycombe Square and Montrose Place properties seems now an excessive sanction for the disclosure defaults, i.e. the two particular failures to comply on time with specific aspects of paragraph 3 of the Unless Order of which Unistarel and Dencora were guilty. The argument of

disproportionate sanction to my mind adds nothing one way or the other to the immediately preceding analysis in respect of the pleading defaults.

79. I do not agree with Mr Chambers QC that the commencement and prosecution of the 2019 Claim, to the extent it advances claims in respect of these respondents' properties, tends to favour the grant of relief from sanctions. No true election arose, precluding the claimant as a matter of law from making their application for judgment. A question of election would arise if and when judgment were entered, not before. Final judgment entered upon the claimants' claims that Mr Arip owns these properties in equity so they may be charged in favour of the claimants to enforce his debts would defeat any claim that the claimants themselves owned the properties in equity. The necessary consequence of entering judgment on the claimants' present claims would be the dismissal of claims advanced upon that inconsistent basis in the 2019 Claim with whatever order as to the costs incurred in that Claim in the meantime as is determined to be just in all the circumstances. Prior to the moment of judgment, however, the claimants are not put to their election between rights and remedies.

80. Further, an election must be unequivocal. Throughout these charging order claims, including in their formal pleadings, the claimants have made clear that they are pursued without prejudice to possible tracing claims – and the respondents have been well aware of the background to that involving *inter alia* Mrs Arip's improper conduct in Cyprus. In parallel with the commencement and prosecution to date of the 2019 Claim, the claimants made it clear in correspondence that they regarded the respondents as in default under the Unless Order and exposed therefore to an application for final judgment unless relief from sanctions were sought and obtained. It is to my mind nothing to the point that the claimants issued such application only on 1 November 2019, having given the respondents (more than) ample time to take the initiative as they ought to have done by applying for relief. In the meantime, the respondents having not indicated unequivocally that they would <u>not</u> seek relief from sanctions and so would submit to final judgment, the claimants could not reasonably assume that their application for judgment would not be contested, as in the event it has been, with associated cross-application for relief, or that it would succeed if contested. Far from it being a matter of criticism, in the context of relief from sanctions, that the claimants started the 2019 Claim and made such progress as they could the while, it is that action that has enabled me to conclude, in the respondents' favour, that the impact of the Unless Order defaults upon this litigation as a whole will have been relatively limited if relief is now granted. If it were nonetheless concluded that there was some possible unfairness to the respondents in having been made to invest time and effort in the 2019 Claim, that could be reflected, so as to do justice, in any costs order made upon the dismissal of that Claim if relief from sanctions were refused in this Claim.

81. Finally, in this discussion of the individual factors relied upon by the parties, I agree with Mr Chambers QC that the likely overlap between the issues that would arise in these proceedings and the 2019 Claim, on the one hand, and those that will arise between the claimants and Xyan in relation to the Ilford properties, on the other hand, is a factor that lends some additional support to the justice in granting relief from sanctions in favour of Unistarel. I am unable to say it assists the Burlington Place respondents and Dencora, as they have not attempted to demonstrate on this hearing that their position is so similar to that of Unistarel/Xyan (and their property ownership structure involving Drez and the RaTalKha Settlement) that the respective claims must

or should (if tried on the merits) go the same way. By contrast, and without purporting to or being in a position to make any final determination on the point, I understand the Unistarel/Xyan structures to be materially identical except as regards when the properties were acquired, such that there is a real risk of an appearance of injustice if Unistarel loses the Montrose Place property on the basis that it is owned in equity by Mr Arip but then the claimants fail to show that the same is true of the Ilford properties held by Xyan. (On this aspect, I thus agree with the substance of the Note in the *White Book* quoted in paragraph 72.iv) above, although I do not think either of the cases cited by the Editors is in fact authority for it: in *Blakemores LDP v Scott*, the Court of Appeal saw an element of injustice about the case against one defendant going by default while co-defendants were free to defend, but that was not analysed by reference to a similarity of independent defences, no doubt because the case concerned fees due and alleged negligence under a joint retainer by the defendants of the claimant firm of solicitors; and *Kishenin v Von Kalkstein-Bleach* was a case in which by error a litigant in person failed to ensure her permission to appeal extended to her corporate vehicle where, in the Court of Appeal's view, she and the company were and were understood by the claimant to be one and the same thing, so far as the subject litigation was concerned.)

82. Where I have indicated measures of agreement with submissions advanced by Mr Chambers QC, they all relate to the possible proposition that justice does not in all the circumstances require that the respondent(s) in question be precluded entirely from defending the claimants' respective charging order claim. None points to any injustice in maintaining the striking out of the specific allegations that ought to have been withdrawn in July, since they were not then particularised as was required if they were not to be withdrawn.

Denton – Summary

83. I now step back to summarise and assess the justice of the case in all those circumstances, although I would hope the destination is now already clear.

<u>Pleading Defaults</u>

84. The Burlington Place respondents and Dencora were guilty of serious pleading defaults in relation to important specific allegations that in the view of the court had to be withdrawn if those respondents were unable or unwilling to take one final, time-limited opportunity to particularise them. It cannot be said that the court had taken the view – and nor do I now take the view – that the only way there could be a fair trial would be if the specific allegations were pursued, but properly particularised.

85. The Unless Order provided that those respondents would lose all right to defend the claimants' claims against them if they did not particularise or withdraw. That is not the natural order to make in the circumstances, but it was made due to particular features of the hearing before Jacobs J that meant that oddity was not explored, and in my judgment the real spirit and intent was just to ensure that the specific allegations were removed if not particularised by the stipulated deadline. I do not think that what the Burlington Place respondents and Dencora in fact did, in response to this part of the Unless Order, was within the court's contemplation.

86. In the event, those respondents openly failed to particularise, in doing so accepting that *prima facie* they ought therefore to withdraw the allegations in question (as they had

told the court at the Unless Order hearing they would in those circumstances), but then sought to put a condition on that withdrawal that they have not sought to explain or justify. No good reason has been shown why the respondents took that course. The application has not been made that in my judgment would be required for the court to be able to consider allowing the specific allegations not to be withdrawn in the circumstances, and the evidence that would be needed to justify such an application (if it could be justified) has not been provided.

87. It would be possible to take the view that the respondents have only themselves to blame and must live with the consequences. That would send a particularly strong message in the public interest that if a party has in mind not to comply with the letter of an unless order it should take the matter back to the court before the die is cast to explain why and obtain (if possible) an appropriate variation. In this case, though, there was a great deal to be done in a short time to comply with the disclosure requirements of the Unless Order that, in truth, were the more significant matters in the overall scheme, and I do not think the court's real intent was to debar the respondents from continuing to defend at all if they did not particularise. On balance, I conclude that it would be unjust for that draconian sanction, as actually triggered, to stand.

88. There should therefore be relief from sanctions in relation to the pleading defaults. But I see no injustice whatever in maintaining the striking out of the allegations that in the circumstances should have been withdrawn in July unconditionally rather than (purportedly) conditionally. To that extent, relief from the striking out of the Burlington Place respondents' and Dencora's respective Points of Defence is refused.

Disclosure Defaults

89. Unistarel and Dencora were guilty of non-trivial failures to comply, but they were proportionately limited failures, in comparison to the many respects in which, at significant cost, they complied in full with the Unless Order as regards disclosure matters. The defaults were rectified, so that ultimately the default is compliance 3½ months late with two particular elements of the disclosure-related requirements of the Unless Order. In the meantime, 2 months after the Unless Order deadline, Unistarel and Dencora completed on time their Extended Disclosure exercise under paragraph 4 of the June Order (which had not been on 'unless' terms), and the Unless Order defaults have had no impact on the disclosure in fact given to the claimants.

90. I cannot say the defaults will not cause any overall delay in the proceedings as a whole, if relief from sanctions is granted, but equally I could not find that there will be any such delay. I have concluded that the defaults, in conjunction with a failure to acknowledge them and move this application more promptly, have pushed back by three months or so the point at which the 2019 Claim and these charging order proceedings can be back before the court, if relief from sanctions is now granted, for joint case management. But other variables will then be in play so I cannot say one way or the other whether any final, conjoined trial will ultimately take place later than it would have done without the defaults.

91. The defaults will have generated their own, self-contained, sets of costs: for Unistarel and Dencora, in putting together the corrective witness evidence that should simply have been part of the original compliance with the Unless Order in July and in respect of the November Further Information responses; for both parties, in the making and

pursuit of these applications (and also in the correspondence leading up to the applications themselves). So far as I can see, they will not otherwise add to the costs of these proceedings overall.

92. The breadth and depth of the disclosure-related requirements under the Unless Order mean that it was capable of being unsatisfied in a wide range of ways. It is therefore a paradigm case for the third stage under *Denton* to have central importance, for the court to step back, having examined carefully the actual defaults, their nature, extent and consequences, and ask whether justice requires the default sanction to be maintained, and in particular to consider whether it is disproportionate to the actual defaults, even bearing in mind the ever-present importance of litigation being conducted properly, i.e. efficiently, at proportionate cost and enforcing compliance with rules, practice directions and court orders.

93. If there had been wholesale or substantial non-compliance, the claimants' more wide-ranging concerns that the respondents were not to be trusted in relation to disclosure and so were frustrating the prospect of a fair trial may have been justified. For that reason, and generally, it would have been highly unlikely that relief from sanctions could have been justified. The actual disclosure defaults are proportionately minor, against the breadth and depth of the disclosure requirements imposed by the Unless Order, even if I cannot say that they are by nature entirely insignificant. They have not given the court any wider or general concern as to the integrity of the respondents' disclosure. The loss of all right to defend the claimants' claims in respect of the Wycombe Square and Montrose Place properties seems out of proportion to the nature and extent of the actual defaults. For Unistarel, there is also, as I have said, agreeing with Mr Chambers QC, something unsatisfactory about disentitling it from defending when its sister company Xyan will be litigating materially the same issues with the claimants on the merits in respect of the Ilford properties.

94. As regards the disclosure defaults, therefore, in my judgment the just outcome is that full relief from sanctions be granted.

Conclusion

95. For the reasons I have set out at some length above, I concluded at the end of the argument – and reflecting on the case further in preparing this reserved judgment served to reinforce my view – that the just result in all the circumstances of this case is that the Burlington Place respondents, Unistarel and Dencora have relief from sanctions, so that the striking out of their respective Points of Defence is set aside, and any necessary permissions or extensions of time for compliance with the Unless Order are granted, except that the pleaded allegations by the Burlington Place respondents and Dencora the subject of paragraphs 1(c) and 2 of the Unless Order respectively shall remain struck out, permission for the November 2019 Further Information responses is refused, and to that extent relief from sanctions is refused to those respondents.

96. The claimants' application was well-founded when issued on 1 November 2019 and they are not to be criticised for 'going first', i.e. issuing before the respondents had issued their cross-application for relief from sanctions. Whilst I do not criticise Mr Chambers QC – to the contrary, I have complimented him already – for the working week or so he took between receiving the necessary papers and ensuring that the cross-application was issued, the respondents should have moved much more urgently well

before that, and the claimants cannot be criticised for concluding that the time had (more than) come to bring matters to a head. Indeed, though I cannot know whether matters in fact played out in this way between Mr Chambers QC and Mr Georghiou, the claimants' application coming in just as Mr Chambers QC was taking up the reins was apt by nature to assist him in getting Mr Georghiou to do the right thing by the respondents, and to do so double-quick, as (to be fair to him) he did then do. Be all that as it may, the relief from sanctions I have now been persuaded to grant trumps the claimants' application, so it will be dismissed.

97. In the normal way, I shall deal finally with costs and any other consequential matters, with the assistance of counsel, when this judgment is handed down. It is right, however, to deal with one point now, without further argument, since it was a submission made at the hearing the soundness or unsoundness of which is just a by-product of the conclusions I have reached on the merits of these applications. That submission, by Mr Chambers QC, was that this was an opportunistic and unreasonable refusal by the claimants to consent to relief from sanctions such that they should answer for all the costs of this interlocutory round, assessed on the indemnity basis. In the light of the rest of this judgment, I think it should suffice for me to say I disagree.

Appendix

The Unless Order (paragraphs 1 to 3 of the Order of Jacobs J dated 28 June 2019)

The Waiver of Privilege Application, the RFI Application and the M&R Application

1. Unless the Burlington Respondents, by no later than 4.30pm on 19 July 2019, carry out the following steps, their Points of Defence dated 27 July 2018 shall be immediately stuck out and judgment shall be entered for the Claimants in the Charging Orders Applications concerning the Burlington Properties and the Charging Orders in the Claimants' favour over the Burlington Properties shall be made final:

(a) In respect of the Waiver of Privilege Application, the Respondents' solicitors, Candey Limited ("**Candey**"), are to obtain from Quinn Emanuel and provide to the Claimants' solicitors:

(i) copies of all the Quinn Documents are defined within the May Order (including those referred to by Mr Khatoun in his email dated 24 September 2018), such documents to be unredacted (save that matters which are entirely extraneous and unrelated to matters concerning Quinn Emanuel's termination of the retainer, and only such matters, may be redacted); and

(ii) an unredacted copy of Mr Khatoun's email dated 24 September 2018;

(b) Also in respect of the Waiver of Privilege Application:

(i) the Burlington Respondents shall instruct Candey to request Quinn Emanuel to provide copies of all of the Quinn Documents to Candey directly; and

(ii) the Burlington Respondents must serve a witness statement from the partner of the Respondents' current solicitors, Candey, (A) explaining the

steps taken by the Burlington respondents and by Candey in compliance with paragraphs 1(a) and 1(b)(i) of this Order and (B) confirming that he has satisfied himself that any redactions applied have been applied in compliance with this Order.

(c) In respect of the RFI Application, either provide substantive responses to the Burlington Further RFI; alternatively to withdraw the relevant parts of the pleading to which it refers;

(d) In respect of the M&R Application, provide to the Claimants' solicitors:

(i) (unless paragraph 1(d)(ii) below applies) copies of the documents with Signature, the Respondents' former solicitors, received from Mills & Reeve on 17 October 2018 (the **M&R Documents**) relating to the proposed acquisition by the Jailau Trust of the properties known as the Holland Park Villas and/or any other property acquisitions (or proposed acquisitions) involving the Jailau Trust which are similar to the acquisition of the Burlington Properties;

(ii) if the Respondents object to the Claimants' inspection of the M&R Documents which have not been produced to the Claimants in the Respondents' supplemental disclosure provided on 18 April 2019 on grounds of privilege, the basis for that assertion is to be set out in an itemised privilege log.

2. Unless Dencora, by no later than 4.30pm on 19 July 2019, provides substantive responses to the Wycombe Further RFI or alternatively withdraws the relevant parts of the pleading to which it refers, its Points of Defence dated 8 March 2019 shall be immediately struck out and judgment shall be entered for the Claimants in the Charging Orders Applications concerning the Wycombe Property and the Charging Order in the Claimants' favour over the Wycombe Property shall be made final.

Extended Disclosure

3. Unless Unistarel and Dencora do, by no later than 4.30pm on 19 July 2019, carry out the following steps, their Points of Defence dated 8 March 2019 shall be immediately stuck [*sic*] out and judgment shall be entered for the Claimants in the Charging Orders Applications concerning the Montrose Property and the Wycombe Property and the Charging Orders over those Properties in the Claimants' favour shall be made final;

(a) Provide to the Claimants' solicitors a witness statement from Mr Andreas Georghiou ("**Mr Georghiou**") addressing the following matters;

(i) In relation to the statement in Dencora and Unistarel's disclosure certificate (the "**Disclosure Certificate**") that Mr Georghiou does not use a personal computer, that his office does not contain a computer, and that all email correspondence to and from his email account is contained only on the computer of his personal assistant and office administrator, Ms Lola Champidi ("**Ms Champidi**"), an explaination of the following:

A. how emails sent from his email address (AndreasGeorghiou@AAGeorghiouLLC.com) are generated and how he monitors emails sent to that email address;

B. how he carries out his day to day business if he does so without using any computers or electronic devices that might be capable of being searched for the purposed of Extended Disclosure;

(ii) Confirmation as to which electronic devices and/or computers he owns, holds or uses (either in a personal or business capacity), and why these devices were not searched for the purposes of Extended Disclosure;

(iii) Confirmation of what other electronic devices, computers and servers or data storage devices are used by his firm, A.A. Georghiou LLC, and/or any employees of his firm that are (or have been) involved with the administration of the WS Settlement, the Wycombe Settlement, the Jailau Trust and the RaTalKha Trust (the "**Employees**"), and why those devices and/or servers or data storage devices were not searched for the purposes of Extended Disclosure;

(iv) In relation to the statement in the Disclosure Certificate that certain electronic documents may have been lost or deleted in the ordinary course of life or business, an explanation of:

A. What is meant by the phrase "*in the ordinary course of life or business";*
B. what (if any) steps were taken to preserve data that may be relevant to any issue in the proceedings following his firm's involvement in the proceedings;
C. what (if any) steps were taken to suspend any relevant document deletion or destruction processes for the duration of the proceedings; and
D. what (if any) steps were taken to search for electronic data and information that is stored on servers and back-up systems and/or electronic data and information that has been 'deleted'.

(v) An explanation of the searches for hard copy documents carried out by the Respondents, including clarification of (a) which repositories of hard copy documents have been searched, (b) where they are located and (c) who searched each such repository.

(b) In so far as disclosure of the c.15,000 documents obtained from Ms Champidi's computer after the application of search terms has not yet been completed, that exercise be completed and disclosure of any responsive material be provided to the Claimants' solicitors in accordance with the Disclosure Order.

(c) Provide to the Claimants a hit report in respect of the search terms applied.

(d) In so far as any additional responsive material was identified as a result of the corruption issue referred to in the Disclosure Certificate, that material be provided to the Claimants' solicitors in accordance with the Disclosure Order.