Neutral Citation Number: [2025] EWCA Civ 369

Case No: CA-2024-002697

IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
HHJ PELLING KC (Sitting as a Judge of the High Court)
[2024] EWHC 2843 (Comm)

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 3 April 2025

Before :

LORD JUSTICE SINGH
LORD JUSTICE MALES
and
LORD JUSTICE PHILLIPS

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Between :

RENAISSANCE SECURITIES (CYPRUS) LIMITED	**Appellant**
- and -	
(1) ILLC CHLODWIG ENTERPRISES **(2) ILLC ADORABELLA** **(3) GEKOLINA INVESTMENTS LIMITED** **(4) DUBHE HOLDINGS LIMITED** **(5) OWL NEBULA ENTERPRISES LIMITED**	**1st Respondent**
(6) PERPECIA LIMITED	**2nd Respondent**

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Paul Lowenstein KC and Edward Gilmore (instructed by **CANDY Limited**) for the **Appellant**
Rupert D'Cruz KC and Douglas James (instructed by **Enyo Law LLP**) for the **Respondents**

Hearing date: 13 February 2025

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Approved Judgment

This judgment was handed down remotely at 10 a.m. on 3 April 2025 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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Lord Justice Singh:

Introduction

1. The main issue in this appeal is whether the Appellant (A), who has entered into a contract containing an arbitration agreement governed by English law, with a seat in London, with another party, B, should be granted an anti-suit injunction ("ASI"), prohibiting B from suing A's affiliate (C) in a foreign jurisdiction, in relation to that contract.

2. This appeal arises in the context of two applications:

   (1) An application by the Appellant dated 30 September 2024, to vary an earlier order made in the Commercial Court by Henshaw J (the "April Order") so as to require the termination/withdrawal of what have become known in this case as "the Russian RRE Proceedings", referring to the "Renaissance Russian Entities", (the "Application").

   (2) The cross-application by the Respondents, dated 28 October 2024, for an order clarifying the April Order so as to make clear that it applies only to proceedings in Russia by the Defendants against the Appellant alone (i.e. only "the Russian RenSec Proceedings") (the "Cross-Application").

3. The appeal is brought against the order made by HHJ Pelling KC, sitting as a judge of the High Court ("the Judge"), dated 6 November 2024 (the "November Order"), which followed a judgment he gave on the same date. By this appeal, the Appellant seeks to set aside para 1 of the November Order by which the Judge dismissed the Application. At para 2 of his order, the Judge stayed the Cross-Application pending determination of this appeal.

4. The Judge refused the Appellant's application for permission to appeal. An application for permission was then made to this Court, in relation to which, on 31 December 2024, Underhill LJ ordered an oral hearing. Following that hearing, which took place before Lewison LJ on 7 January 2025, permission was granted to advance each of the Appellant's four grounds of appeal. Lewison LJ also directed the filing of further evidence for the purpose of this appeal.

Factual Background

5. The Appellant, a Cypriot company and part of the Renaissance Capital Group, entered into six investment service agreements ("ISAs"), one with each of six Russian companies, between 2019 and 2020. Those companies are the six Defendants in the present domestic proceedings. The First and Second Respondents to this appeal are, respectively, the Second and Sixth Defendants in those proceedings.

6. The ISA between the Appellant and the First Respondent was dated 11 April 2019, whilst that with the Second Respondent was dated 23 December 2020. Each of the ISAs is governed by English law and each contains a London Court of International

Arbitration ("LCIA") agreement, governed by English law, which provides for a seat in London. Each agreement is in materially identical terms.

7. A dispute between the parties arose in around June 2023. It was then that the Defendants directed the Appellant to return assets which it held for them pursuant to an ISA between the Appellant, on the one hand, and each of the Defendants severally, on the other. The Appellant refused on the sole basis that it considered that the Defendants are the subject of sanctions, either directly or indirectly, so that it was precluded from complying with the request as a matter of applicable sanctions law. It is common ground that (a) the First Respondent is a directly sanctioned entity under the law of the USA and (b) the Second Respondent is, or at least was, a subsidiary of the First Respondent, making it an indirectly sanctioned entity under that same law.

8. There is a dispute, however, as to whether the ultimate beneficial owner of the Respondents is Mr Andrey Guryev (and/or his daughter), who is a designated person under the law of both the UK and the USA and, therefore, whether the Appellant is obliged to freeze the Respondents' assets by operation of any applicable sanctions regime. It should be noted that:

   (1) The Respondents deny that they are controlled by Mr Guryev and are thereby indirectly subject to UK sanctions.

   (2) In her judgment dated 3 November 2023, Dias J stated that the First Respondent was, via the Fourth Defendant, ultimately beneficially owned by Mr Guryev and his wife and daughter. However, as was noted by Henshaw J subsequently in a judgment dated 30 April 2024, at para 5, any findings in Dias J's judgment are "necessarily provisional in nature".

   (3) In his judgment, at para 3, Henshaw J stated that: the Defendants are ultimately owned as to approximately 85% by two discretionary trusts, the Colorado Trust and the Thames Trust, and approximately 15% by Udivia Limited, of which Mr Guryev is the beneficial owner; the discretionary beneficiaries of the Colorado Trust are Mr and Mrs Guryev, together with their daughter Ms Guryeva-Motlokhov; and the discretionary beneficiary of the Thames Trust is Ms Guryeva-Motlokhov.

   (4) The Judge considered there to be a realistically arguable case that Mr Guryev (and/or his daughter) is the ultimate beneficial owner of the Defendants: see para 3 of the judgment under appeal.

9. In October 2023 each of the Defendants issued a set of proceedings (referred to as the "Russian RenSec Proceedings") in Russia against the Appellant. The claims of the Second Defendant were brought in the Commercial Court of Kaliningrad (where it is domiciled) and those of the Sixth Defendant were brought in the Commercial Court of Moscow. It is common ground that these were materially identical contractual claims seeking the return of the Defendants' assets held under the ISAs, or damages amounting to the costs of those assets, albeit that the Defendants dispute the relevance of the Russian RenSec Proceedings for present purposes.

10. The relevant procedural background to the Russian RenSec Proceedings is as follows:

(1) 3 November 2023: In respect of a without notice application made by the Appellant, Dias J granted anti-suit injunctive ("ASI") and anti-anti-suit injunctive ("AASI") relief, prohibiting each of the Defendants from pursuing the claims in question against it. This was, in summary terms, on the basis that those claims had been brought in breach of the arbitration clauses in the ISAs.

(2) 24 November 2023: Butcher J continued those injunctions.

(3) 23 April 2024: Henshaw J continued the injunctions issued by Dias J and granted further mandatory relief requiring the Defendants to terminate the Russian RenSec Proceedings by way of the April Order.

(4) The Appellant has since, on several occasions, sought clarifications of, and variations to, the April Order.

11. Meanwhile, the Respondents brought proceedings against three Russian affiliates of the Appellant: LLC Commercial Bank Renaissance Credit, LLC Renaissance Capital – Financial Consultant and LLC Renaissance Broker (together the "Renaissance Russian Entities" or "RREs"). Those proceedings relate to delictual claims for damages based on contractual claims that the Respondents have against the Appellant. The relevant steps taken in them are as follows:

(1) 2 November 2023: The Second Respondent petitioned to join the RREs to its existing claim against the Appellant. That petition was granted by the Russian court on 23 July 2024, meaning that the RREs were joined as co-defendants to the Russian RenSec Proceedings.

(2) 3 September 2024: The First Respondent filed a standalone claim in the Court of Moscow against the same RREs, seeking essentially the same relief as the Second Respondent claims against the Appellant in the Russian RenSec Proceedings.

12. The Judge noted that the RREs had "recently" provided letters consenting to the resolution of the Russian RRE Claims by arbitration.

13. Pursuant to the permission granted by Lewison LJ, both sides have filed further evidence in this appeal. The Respondents' evidence is that, shortly following the judgment below, according to publicly available information, two of the RREs (LLC Renaissance Capital – Financial Consultant; and LLC Renaissance Broker) were sold by the Appellant, and that the third now denies affiliation. The Respondents' evidence also states that:

(1) In its defence to the Russian RRE Claim brought by the Second Respondent, which was filed prior to the judgment, Renaissance Credit stated that it "has nothing to do with the group [of companies] Renaissance Capital": Third Witness Statement of Kirill Trukhanov, para 9. The day after the judgment, on 7 November 2024, at a hearing in Russia in relation to the same claim, Renaissance Credit pleaded that it had no affiliation with the Appellant: Third Witness Statement of Kirill Trukhanov, para 10.

(2) Similarly, on 24 December 2024, the other RREs, Renaissance Broker and Renaissance Capital filed their defences to the Sixth Defendant's Russian RRE Claim, in which they pleaded that they were no longer affiliated with the Appellant: Third Witness Statement of Kirill Trukhanov, para 16.

(3) The Russian Trade Register (EGRUL) was amended on 13 November 2024 to reflect the change of the sole shareholder of Renaissance Capital from Onexim Group to JSC "RCIP", a Russian company: Third Witness Statement of Kirill Trukhanov, para 11.

(4) Although the Respondents have sought confirmation of how the RREs were "sold out" of the Renaissance Capital Group, the Appellant has asserted that it does not have access to copies of any of the sale agreements by which the RREs were sold out of the Renaissance Capital Group: Third Witness Statement of Kirill Trukhanov, para 18.

14. The Appellant's evidence in this appeal is that:

(1) On or around 13 November 2024 the RREs "were sold out of the perimeter of Renaissance group": Fourth Witness Statement of Evgeny Letunvosky, para 8.1. This statement was later corrected to make clear that it was Gruppa Onexim LLC that sold Renaissance Broker and Renaissance Consultant to a third party and that Commercial Bank Renaissance Credit was never in fact part of the "Renaissance group" at all, because it was never owned by Renaissance Financial Holdings Limited: Fifth Witness Statement of Evgeny Letunovsky, para 83.

(2) The Appellant was "not involved in any way in the change in ownership in the RREs, and so its knowledge of these matters is necessarily very limited": Fifth Witness Statement of Evgeny Letunovsky, para 76.1. Nevertheless, it sets out its knowledge in this regard, as to the current ownership of the RREs: Fifth Witness Statement of Evgeny Letunovsky, para 81.

The ISAs

15. The governing law and arbitration agreement provisions contained in the ISAs read as follows, under the heading 'Governing Law and Jurisdiction', at clause 43:

> "43.1 This Agreement and any non-contractual obligations arising in connection with it shall be governed by and interpreted in accordance with the laws of England and Wales.
>
> 43.2 If any dispute should arise in relation to the Customer Document Pack and it cannot be resolved within thirty (30) Business Days by negotiation between the Parties, such dispute shall be referred to and finally resolved by arbitration under the rules of the London Court of International Arbitration which are deemed to be incorporated by reference into this Clause 43. Such arbitration shall take place in London and shall be conducted by a single arbitrator appointed by agreement

> between the Parties or, failing agreement, by the London Court of International Arbitration. The language in which such arbitration shall be conducted shall be English. Any award rendered shall be final and binding on both Parties and may be entered in any court having jurisdiction and application may be made to such court for an order of enforcement as the case may require.
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> 43.3 To the extent that you may be entitled in any jurisdiction to claim for yourself or for your property or Assets immunity from service of process, jurisdiction, suit, judgment, execution, attachment or legal process in respect of your obligations or to the extent that in any such jurisdiction there may be attributed to you or your property or Assets such immunity (whether or not claimed), you hereby waive such immunity to the fullest extent under the laws of such jurisdiction."

Grounds of appeal

16. The Appellant advances four grounds of appeal:

(1) The Judge was wrong to hold in law that there is a threshold "forum issue" for granting an ASI on vexatious and oppressive grounds; and failed to address the Claimant's submissions on this point.

(2) In any event, if an alternative forum was required to be identified, the Judge erred in holding that none was available, in that LCIA arbitration is available.

(3) The Judge failed correctly to evaluate and/or to characterise the Russian affiliate claims to determine whether they were vexatious and oppressive; and/or failed to address RenSec's arguments on vexation and oppression.

(4) In any event, the Judge failed properly to interpret the arbitration agreements so that the Russian affiliate claims were within their scope.

17. Ground 4 concerns the contractual basis for an ASI in this case. Grounds 1 to 3 concern the non-contractual basis on which the argument was presented to the Judge. Logically, Ground 4 comes first. It was treated that way before the Judge and in his judgment. I will address it first as well.

18. Before I address the grounds of appeal I will set out the relevant legal framework.

Relevant legal framework

19. The power to grant an ASI is founded upon the general power in section 37 of the Senior Courts Act 1981 ("the 1981 Act"), which, so far as material, provides that:

> "The High Court may by order (whether interlocutory or final) grant an injunction … in all cases in which it appears to the court to be just and convenient to do so."

20. Although the grant of an injunction is ultimately a discretionary decision for the court under section 37(1) of the 1981 Act, there are two main grounds for granting an ASI. The first is that the foreign proceedings are in breach of a clause in a contract between the parties. Where that is so "an anti-suit injunction will be granted unless there are strong reasons not to do so": see *Clearlake Shipping Pte Ltd v Xiang Da Marine Pte Ltd* [2019] EWHC 2284 (Comm), at para 18 (Prof. Andrew Burrows QC (sitting as a deputy High Court judge)), citing the speech of Lord Bingham of Cornhill in *Donohue v Armco Inc.* [2001] UKHL 64; [2002] 1 All ER 749, at para 24.

21. In *Clearlake*, at para 20, Prof. Burrows turned to what he considered to be a "not so straightforward" question:

> "This is the extent to which an exclusive jurisdiction clause in a contract (between A and B) can be enforced (by B against A) by an anti-suit injunction so as to prevent tort proceedings against a third party (i.e. by A against C) (assuming that, subject to this third party point, the tort proceedings would otherwise be covered by the jurisdiction clause)."

22. After consideration of *Donohue v Armco Inc.*, in particular the concurring speech of Lord Scott of Foscote, at paras 60-62, and the judgment of Mr Laurence Rabinowitz QC, sitting as a deputy High Court judge, in *Cavendish Square Holding BV v Joseph Ghossoub* [2017] EWHC 2401 (Comm), at para 82, Prof. Burrows set out the relevant approach at paras 23-24. Ultimately, the issue is one which depends on the true construction of the particular contract in a given case (see para 23(i) and (ii)) but he summarised the position as follows, at para 24:

> "… I accept that Laurence Rabinowitz QC in the *Ghossoub* case was correct that, absent express words as to the jurisdiction clause extending to claims against non-parties, the starting point in interpreting a jurisdiction clause (covering, let us say, 'all disputes arising out of the contract') will be that only the parties to the contract are covered. But I also agree with Lord Scott in the *Donohue* case that, where one has an alleged joint tort committed in relation to a contract by a contracting party and a non-contracting party, the objective interpretation of the jurisdiction clause (covering all disputes 'arising out of the contract') will tend to include a tort claim against the non-party because this will help to prevent forum-fragmentation on essentially the same issues. Such fragmentation is contrary to what the parties are likely to have objectively intended. Ultimately there may be no real conflict between the speech of Lord Scott and the judgment of Laurence

> Rabinowitz QC because the resolution of the issue turns on the interpretation of the particular contract in the light of the particular facts."

23. The second main ground for granting an ASI is that the foreign proceedings are otherwise vexatious or oppressive: this is a non-contractual basis for granting an ASI.

24. An ASI will only be granted where the ends of justice so require: see *Société Nationale Industrielle Aerospatiale v Lee Kui Jack* [1987] AC 871, at 895 (Lord Goff of Chieveley). As Lord Goff made clear in that case, the principles which govern such an injunction are not identical to the principles to be applied when considering the doctrine of *forum non conveniens*, as set out in the classic authority of *Spiliada Maritime Corpn v Cansulex Ltd* [1987] AC 460: see in particular pages 474-478 (Lord Goff).

25. Furthermore, the granting of an injunction preventing a claimant from pursuing an action in a foreign court is a restriction on him personally, and not an interference with the exercise by the foreign court of its own jurisdiction: see *Barclays Bank plc v Homan* [1993] BCLC 680, at 700 (Glidewell LJ). Nevertheless, in *British Airways Board v Laker Airways Limited* [1985] AC 58, at 95, Lord Scarman commented that the approach has to be cautious because an injunction restraining a person within the jurisdiction of the English court from pursuing a remedy in a foreign court where, if he proves the necessary facts, he has a cause of action is, however disguised and indirect, an interference with the process of justice in that foreign court.

26. As Glidewell LJ said in *Homan* at page 701:

> "… The jurisdiction is to be exercised rarely, and with proper recognition of comity, i.e. of the respect owed to the foreign court."

27. In his judgment in the High Court in that case, at pages 687-688, Hoffmann J said:

> "It is the exceptional cases in which justice requires the English court to intervene which cannot be categorised or restricted. But a theme common to certain recent decisions is that the foreign court is, judged by its own jurisprudence, likely to assert a jurisdiction so wide either as to persons or subject matter that to English notions it appears contrary to accepted principles of international law. In such cases the English court has sometimes felt it necessary to intervene by injunction to protect a party from the injustice of having to litigate in a jurisdiction with which he had little, if any, connection, or in relation to subject matter which had insufficient contact with that jurisdiction, or both. Since the foreign court is *ex hypothesi* likely to accept jurisdiction, this is a decision which has to be made here if it is to be made at all. These are cases in

> which the judicial or legislative policies of England and the foreign court are so at variance that comity is overridden by the need to protect British national interests or prevent what it regards as a violation of the principles of customary international law."

28. At page 705, Glidewell LJ said that Hoffmann J had directed himself "correctly in law". The above passage in Hoffmann J's judgment has been regarded as authoritative ever since.

29. In *Airbus Industrie G.I.E. v Patel* [1999] 1 AC 119, at 138-140, Lord Goff classified ASI cases into "alternative forum" cases and "single forum" cases. He said that, as a general rule, before an ASI can properly be granted by an English court

> "comity requires that the English forum should have a sufficient interest in, or connection with, the matter in question to justify the indirect interference with the foreign court which an anti-suit injunction entails."

30. He continued that, in an alternative forum case, this will involve consideration of the question whether the English court is "the natural forum" for the resolution of the dispute. In a single forum case, however, he said that that approach "can have no application." It may still be possible to establish "a sufficient connection with the English forum", in particular this may involve consideration of the extent to which the relevant transactions are connected with the English jurisdiction or it may "involve consideration of the question whether an injunction is required to protect the policies of the English forum."

31. He also said that he was anxious "that the principle which I have stated should not be interpreted too rigidly." Later he said that "there may be extreme cases, for example where the conduct of the foreign state exercising jurisdiction is such as to deprive it of the respect normally required by comity, where no such limit is required to the exercise of the jurisdiction to grant an anti-suit injunction."

32. Against that background of principle, it seems to me that some caution is needed so as not to take certain passages in *Deutsche Bank AG v Highland Crusader Offshore Partners LP* [2009] EWCA Civ 725; [2010] 1 WLR 1023 out of context. In that case, at para 50, in a section headed 'Anti-Suit injunctions and *forum non conveniens* – key principles', Toulson LJ said:

> "Leaving aside the provisions of the Brussels I Regulation and previous conventions, which are not relevant in this case, I would summarise the relevant key principles as follows. (1) Under English law the court may restrain a defendant over whom it has personal jurisdiction from instituting or continuing proceedings in a foreign court when it is necessary in the interests of justice to do so. (2) It is too narrow to say that such

an injunction may be granted only on grounds of vexation or oppression, but, where a matter is justiciable in an English and a foreign court, the party seeking an anti-suit injunction must generally show that proceeding before the foreign court is or would be vexatious or oppressive. (3) The courts have refrained from attempting a comprehensive definition of vexation or oppression, but in order to establish that proceeding in a foreign court is or would be vexatious or oppressive on grounds of *forum non conveniens*, it is generally necessary to show that (a) England is clearly the more appropriate forum ('the natural forum'), and (b) justice requires that the claimant in the foreign court should be restrained from proceeding there. (4) If the English court considers England to be the natural forum and can see no legitimate personal or juridical advantage in the claimant in the foreign proceedings being allowed to pursue them, it does not automatically follow that an anti-suit injunction should be granted. For that would be to overlook the important restraining influence of considerations of comity. (5) An anti-suit injunction always requires caution because by definition it involves interference with the process or potential process of a foreign court. An injunction to enforce an exclusive jurisdiction clause governed by English law is not regarded as a breach of comity, because it merely requires a party to honour his contract. In other cases, the principle of comity requires the court to recognise that, in deciding questions of weight to be attached to different factors, different judges operating under different legal systems with different legal policies may legitimately arrive at different answers, without occasioning a breach of customary international law or manifest injustice, and that in such circumstances it is not for an English court to arrogate to itself the decision how a foreign court should determine the matter. The stronger the connection of the foreign court with the parties and the subject matter of the dispute, the stronger the argument against intervention. (6) The prosecution of parallel proceedings in different jurisdictions is undesirable but not necessarily vexatious or oppressive. (7) A non-exclusive jurisdiction agreement precludes either party from later arguing that the forum identified is not an appropriate forum on grounds foreseeable at the time of the agreement, for the parties must be taken to have been aware of such matters at the time of the agreement. For that reason an application to stay on forum non conveniens grounds an action brought in England pursuant to an English non-exclusive jurisdiction clause will ordinarily fail unless the factors relied upon were unforeseeable at the time of the agreement. It does not follow that an alternative forum is necessarily inappropriate or inferior. (I will come to the question whether there is a presumption that parallel proceedings in an alternative jurisdiction are vexatious or oppressive). (8) The decision whether or not to grant an anti-

> suit injunction involves an exercise of discretion and the principles governing it contain an element of flexibility."

33. It is clear both from the heading of that passage and from the content of para 50(3) that Toulson LJ was considering the question of whether it would be vexatious or oppressive to institute proceedings in a foreign court "on grounds of *forum non conveniens*". It is important to recall that, as Lord Goff had said in *Société Nationale Industrielle Aerospatiale*, the principles on which an ASI will be granted are not the same as those that govern the issue of *forum non conveniens*. Furthermore, it is clear that the particular situation which Toulson LJ was addressing in *Deutsche Bank* was "where a matter is justiciable in an English and foreign court". But as we have seen, where there is a single forum case rather than an alternative forum case, that issue simply does not arise. Yet it is clear from the authorities that the discretion to grant an ASI on grounds of vexation or oppression may still arise even in a single forum case.

34. The jurisdiction of English courts to grant an ASI was summarised by Males LJ in *SAS Institute Inc v World Programming Ltd* [2020] EWCA Civ 599; [2020] 1 CLC 816, at paras 90-91:

> "90. The jurisdiction of the English court to grant an anti-suit injunction is of long standing. The basic principle is that the jurisdiction is to be exercised 'when the ends of justice require it': *Société Nationale Industrielle Aerospatiale v Lee Kui Jak* [1987] AC 871, 892A–B; *Airbus Industrie GIE v Patel* [1998] CLC 702, 708E-G; [1999] 1 AC 119, 133D–E. It was common ground between the parties that established categories of case where an injunction may be appropriate (which may overlap) include cases where an injunction is necessary to protect the jurisdiction of the English court and cases where the pursuit of foreign proceedings is regarded as vexatious or oppressive: *Aerospatiale* at 892G–893D. Equally, it was common ground that the jurisdiction is not confined to these categories and must be applied flexibly: *Castanho v Brown & Root (UK) Ltd* [1981] AC 557, 573 ('the width and flexibility of equity are not to be undermined by categorisation'); *Aerospatiale* at 892G (the cases 'show, moreover, judges seeking to apply the fundamental principles in certain categories of case, while at the same time never asserting that the jurisdiction is to be confined to those categories'). …
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> 91. The English cases, including in particular *Airbus*, emphasise that great caution must be exercised before such an injunction is granted, at any rate in cases where the injunction is not sought in order to enforce an arbitration or exclusive jurisdiction clause, and that this is necessary because of the requirements of comity. …"

35. At para 103, Males LJ said:

> "When an anti-suit injunction is sought on grounds which do not involve a breach of contract, comity, telling against interference with the process of a foreign court, will always require careful consideration. The mere fact that things are done differently elsewhere does not begin to justify an injunction. …"

36. At paras 108-110, Males LJ said the following:

> "108. … comity requires that in order for an anti-suit injunction to be granted, the English court must have 'a sufficient interest' in the matter in question. As Lord Goff explained in *Airbus* at 712H-713A; 138G–H:
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> > 'As a general rule, before an anti-suit injunction can properly be granted by an English court to restrain a person from pursuing proceedings in a foreign jurisdiction in cases of the kind under consideration in the present case, comity requires that the English forum should have a sufficient interest in, or connection with, the matter in question to justify the indirect interference with the foreign court which an anti-suit injunction entails.'
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> 109. Often that sufficient interest will exist by reason of the fact that the English court is the natural forum for determination of the parties' dispute. But as Lord Goff was careful to emphasise at 714B-D; 140B–D, this is only a general rule, which must not be interpreted too rigidly. In a case where the injunction is sought in order to protect the jurisdiction or process of the English courts, the existence of a sufficient interest will generally be self-evident. Indeed, the need to protect the jurisdiction of the court has been described as 'the golden thread'. In *Masri* [2008] EWCA Civ 625; [2008] 1 CLC 887 at [86] Lawrence Collins LJ said:
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> > 'In *Bank of Tokyo Ltd v Karoon (Note)* [1987] AC 45, 58, Robert Goff LJ referred to Judge Wilkey's statement in *Laker Airways Ltd v Sabena Belgian World Airlines* (1984) 731 F 2d 909, 926–927 that anti-suit injunctions were most often necessary (a) to protect the jurisdiction of the enjoining court, or (b) to prevent the litigant's evasion of the important public policies of the forum, and concluded [1987] AC 45, 60:
> >
> > > "without attempting to cut down the breadth of the jurisdiction, the golden thread running through the rare cases where an injunction has been granted

> appears to have been the protection of the jurisdiction; an injunction has been granted where it was considered necessary and proper for the protection of the exercise of the jurisdiction of the English court."'
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> 110. *Shell International Petroleum Co Ltd v Coral Oil Co Ltd (No. 2)* [1999] 2 Ll Rep 606 is an example of such a case. Thomas J was unable to conclude that England was the natural forum for the trial of the claim, but nevertheless held that the English court had a sufficient interest to justify an injunction."

Ground 4

37. The Judge addressed the contractual basis for the ASI sought in this case at paras 23-40 of his judgment.

38. At para 32, the Judge said that the "starting point" is that identified by Prof. Burrows at para 24 of his judgment in *Clearlake*. The Judge said:

> "In essence … it is necessary to read the arbitration agreement as a whole and do so in the context of the contract in which it is embedded, read as a whole, for the purpose of deciding what the arbitration agreement would have meant to reasonable people with all the relevant background knowledge reasonably available to all the parties down to the time at which the contract is concluded."

39. The Judge then set out seven reasons why the arbitration agreement in this case did not have the meaning and effect for which the Appellant contended:

> "34. I start with clause 43.2 itself. I accept that read in isolation, the phrase '… *any dispute ... in relation to ...*' is capable when read in isolation of applying to claims against non-parties. However, that is not to approach the construction exercise correctly. It requires the arbitration agreement to be read as a whole and in the context of the ISA in which it is embedded again as a whole. Adopting that approach, firstly, the arbitration agreement requires the negotiation of any dispute '*between the Parties* …'. Who are Parties is identified at the start of the ISA as being exclusively Renaissance on the one hand and respectively the second and sixth Defendants on the other. There is a contractual expansion of that, but Renaissance has not suggested that the express contractual expansion is relevant to any issue that arises in this case.
>
> 35. Secondly, in my judgment, the requirement to negotiate between the parties means that the dispute to which this

> obligation applies is likely to be confined to disputes between the parties, not one of the parties and a non-party. Any negotiation on behalf of a non-party by a Party would require that Party to be authorised to negotiate on behalf of a non-party The absence of any provisions dealing with that point is inconsistent with the intention of the parties being that the arbitration agreement would apply to claims relating to the contract by a Party against a non-party.
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> 36. Thirdly. the final sentence of the clause is inconsistent with the intention being that the arbitration agreement should apply to claims by or against non-parties, because it refers expressly to the award being binding between both parties. That is consistent with the agreement applying only to disputes between the parties, not a party and a non-party. If the agreement was intended to apply to a claim between a Party and a non-party the final sentence would either not have appeared at all or would have attempted to address finality and enforcement against the non-party concerned.
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> 37. Fourthly, confining the applicability of the agreement to disputes between Parties is consistent with the phraseology of clause 43.3, which applies only to immunities available to the Defendant and not affiliates.
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> 38. Fifthly, the word '*you*' is defined as referring exclusively to respectively the second and sixth Defendants. Clause 43.4 applies only to the defendant as a result of the use of the word 'you' in that clause. This is consistent with the way in which third party issues are addressed elsewhere in the ISA. Sixthly, third party rights under the Contracts (Rights of Third Parties) Act 1999 are excluded. Thus the privity point made by Mr Burrows in [23(iii)] of his judgment in *Clearlake* would apply with full force in this case.
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> 39. Seventhly, the Contracts (Rights of Third Parties) Act exclusion is significant also because it shows that where third party involvement is relevant, it has been addressed by the parties expressly. That point is apparent also from the set-off provisions in clause 26. That point is apparent too from clause 29, where, for example, relevant third parties are identified in clause 29.3(iii) and (iv). This is a non-exclusive list of provisions where the issue of non-party engagement arises but the point that matters is that where the parties considered it appropriate to refer to third parties, they did so expressly."

40. The Judge concluded, at para 40, that, as a matter of construction, the arbitration agreement was not intended to, and does not, apply to claims by or against either party by a *non*-party. He acknowledged that a consequence of this may be that there

will be "forum fragmentation" but he considered that to be unsurprising in the context of this agreement, which was exclusively between this Appellant and the Defendants and was concerned exclusively with services to be provided by the Appellant to the relevant Defendant. The Judge considered that it was highly improbable that, at the time the agreement was entered into, claims by third parties relevant to the ISA, which is the focal point of the arbitration agreement, would ever be made.

41. Ground 4 in this appeal is that the Judge erred in construing the arbitration agreements such that the RRE claims were not within their scope. It is submitted that the Judge should have concluded, on their proper construction, that the arbitration agreements allocated jurisdiction over the claims comprised in the RRE claims exclusively to LCIA arbitration, and that this included a negative promise not to bring claims for which the Appellant is alleged to be jointly and severally liable alongside the Renaissance Russian Entities outside LCIA arbitration.

42. Although a number of detailed criticisms of the judgment below were made in the skeleton argument, it became clear at the hearing before us, in oral submissions ably made by Mr Gilmore on behalf of the Appellant, that the essential focus of Ground 4 is on the negative obligation for which the Appellant contends. Mr Gilmore made clear that the Appellant's case on construction does not require, as the Judge may have thought, that claims against third parties should be arbitrated; it does not involve forcing the Respondents to do anything; it does not require that rights be conferred on third parties; and it does not conflict with privity of contract.

43. Mr Gilmore submits that the Judge's reasoning, which has been adopted by the Respondents in the present appeal, insufficiently fails to distinguish between the positive promise of the parties as to which disputes will be heard in the arbitration, namely disputes between the parties, and the distinct negative promise as to which disputes they will not bring outside the arbitration. Mr Gilmore submits that the construction given by the Judge is contradicted by other clauses in the agreements, in particular clauses 24, 26, 40 and 41.

44. The fundamental difficulty in the way of this line of argument, in my view, is that it requires the court to imply a negative obligation into the terms of the agreements which is simply not there. It may well be that, considered with hindsight, it would have been preferable (certainly from the Appellant's point of view) if the parties had agreed to include such a term in their agreement but the fundamental problem is that they did not. As is well-established, the function of the court is to construe the agreement which the parties have in fact reached rather than to impose an agreement upon them which it might have been better, particularly with hindsight, for them to reach.

45. The principles which govern the implication of terms into a contract are well-known and were set out by the Supreme Court in *Marks and Spencer plc v BNP Paribas Securities Services Trust Co (Jersey) Ltd* [2015] UKSC 72; [2016] AC 742, at paras 14-32 (Lord Neuberger PSC).

46. As Bingham MR put it in *Philips Electronique Grand Public SA v British Sky Broadcasting Ltd* [1995] EMLR 472, at 482, the question of whether a term should be implied almost inevitably arises after a crisis has been reached in the performance of the contract. So the court comes to the task of implication with the benefit of

hindsight, and it is tempting for the court then to fashion a term which will reflect the merits of the situation as they then appear but, while this would be tempting, it would be wrong. It is not enough to show that had the parties foreseen the eventuality which in fact occurred they would have wished to make provision for it, unless it can also be shown either that there was only one contractual solution or that one of several possible solutions would without doubt have been preferred.

47. The position has been recently summarised in *Tesco Stores Ltd v USDAW* [2024] UKSC 28; [2025] ICR 107, at para 35 (Lord Burrows and Lady Simler JJSC):

> "… It is sufficient for our purposes simply to reiterate that, to imply a term by fact, the term must be necessary for business efficacy or the term must be so obvious that it goes without saying; it must be capable of clear expression; and it must not contradict any express term of the contract. Importantly, as Lord Hughes JSC emphasised in *Ali v Petroleum Co of Trinidad and Tobago* [2017] ICR 531, para 7…, the process of implying a term into the contract must not become the rewriting of the contract in a way which the court believes to be reasonable, or which the court prefers to the agreement which the parties have negotiated."

48. In the circumstances of this case, I have reached the conclusion that the Appellant's submissions would require the court to go beyond permissible interpretation of the relevant contracts and would require it to rewrite them.

49. That all said, the fact that, as the Appellant submits, the Respondents are trying to circumvent the spirit of the arbitration agreements is of some relevance, in my view, when we consider the non-contractual basis for the ASI in this case. But, in agreement with the Judge below and the Respondents, I have reached the conclusion that the contractual basis for the ASI does not assist the Appellant.

Grounds 1-3

50. The essence of the Judge's reasoning for rejecting the non-contractual basis for an ASI in this case is to be found at paras 41-44 of his judgment:

> "41. It is necessary, therefore, to turn to the alternative basis for seeking an ASI, that is that the proceedings which the Applicant seeks to restrain are vexatious or oppressive. Where this ground is relied upon, two questions generally arise being (a) are the courts in England clearly the more appropriate forum for the trial of the claim and (b) is it necessary in the interests of justice to grant the injunction taking into account considerations of comity – see in this regard *Clearlake* at [18(2)] following Court of Appeal authority to that effect. As Mr Burrows emphasised in his summary of the principles, the categories of factors which indicate vexation and oppression

are not closed – see *Elektrim SA v Vivendi Holdings* EWCA Civ 1178, [2009] I Lloyds Rep 59 *per* Lawrence Collins LJ as he then was at [83].

42. The Defendants submit that (a) unless the forum issue can be resolved in favour of Renaissance, the enquiry ends at that point; (b) only if the forum in question is or can be resolved in favour of Renaissance is it necessary for the court to decide if pursuit of the foreign proceedings is vexatious or oppressive; (c) the forum issue cannot be resolved in favour of arbitration where it has been concluded that an arbitration agreement does not already exist requiring both parties, that is the Defendants respectively and the RREs to arbitrate.

43. Renaissance did not address these points at all in its skeleton submissions. It confined itself to submitting that if the claims against the RREs '… *do not fall within the arbitration agreements, they should nonetheless be restrained because they are vexatious and oppressive'*. This avoids addressing the forum issue and the implications for it of a conclusion that the claims against the RREs do not fall within the arbitration agreements because on their proper construction, the RREs are not parties there to. At the end of this judgment I refer to one decision that might impact on this issue but which was not relied on by Renaissance or cited to me by either party which for that reason I have left out of account.

44. Renaissance submits that the RRE claims are vexatious because, '(*1) they are a collateral attack on Renaissance's rights under the arbitration agreements and (2) form part of an orchestrated attempt to evade international sanctions by Russian companies with the use of Russian legislation specifically enacted for that purpose*.' This last point is wrong. Whilst the point can undoubtedly be made in relation to a claim against Renaissance by the Defendants because that depended jurisdictionally on Article 248.1 of the Arbitration Procedure Code of the Russian Federation, because that Article was enacted specifically so as to enable disputes to be submitted for determination in Russia rather than to foreign courts or arbitral panels that would apply sanctions law to the extent it was applicable, the claims by the Defendants against the RREs are different. They do not depend on Article 246. They are tort claims brought before the Russian courts by Russian Claimants against Russian registered domicile or resident Defendants for which it is alleged to be an actionable civil wrong according to the laws of Russia. The jurisdiction of the Russian courts in relation to the claims against the RREs is not dependant on Article 248. On the arguments advanced before me there is no answer to the point that there is no alternative jurisdiction available. The arbitration agreement between Renaissance does

> not apply and the fact that the RREs consent to arbitration is nothing to the point unless there is an agreement by all parties to the RRE litigation that the claims be referred to arbitration."

51. In my judgment, that reasoning contains an error of law as to the approach to be taken, in particular at para 41, and also at para 44, where the Judge said that:

> "There is no answer to the point that there is no alternative jurisdiction available."

As the authorities which I have cited above, in particular *Airbus*, make clear, that is not a threshold requirement as a matter of law. This was a single forum case and there is no threshold forum requirement before an ASI can be granted in such circumstances. Logically it makes no sense for there to be a forum requirement because there is only one single forum where a claim could be heard. At the hearing before this Court, Mr Rupert D'Cruz KC, who appeared for the Respondents, conceded that the Judge was wrong in this respect. I would endorse that concession.

52. Since Ground 2 was advanced in the alternative, if the Appellant was wrong on Ground 1, it does not arise and, in my view, no practical purpose would be served by addressing what has become an academic ground.

53. In the light of the concession made on behalf of the Respondents at the hearing before this Court, both parties now agree that it falls to this Court to exercise the discretion whether or not to grant an ASI in this case. In principle there would be the possibility of remitting the exercise to be conducted by the Commercial Court but this was not pressed upon us by either party. We bear in mind that this appeal was conducted on an expedited basis and it would only add to delay and expense if we were now to remit the matter to the Court below. We will therefore proceed to conduct the discretionary exercise for ourselves.

54. For similar reasons, it is unnecessary to address certain aspects of Grounds 1 and 3, in which complaint was made about the manner in which the Judge conducted the hearing below, and in particular that he failed to address some of the Appellant's arguments before him. Since it is now common ground that this Court must itself exercise its discretion to decide whether to grant an ASI, no practical purpose would be served by addressing those complaints, which have become academic.

55. I see some force in the submission made by Mr Paul Lowenstein KC for the Appellant that the proceedings in Russia against the RREs are vexatious and oppressive. Accepting for present purposes that the claims are not in breach of the arbitration agreements (the subject of Ground 4, which I would reject for the reasons given above), they do appear to be designed to circumvent and undermine the effect of those agreements.

56. Accordingly, there seem to me to be three reasons in principle why this Court should be prepared to contemplate granting an ASI in this case:

(1) to protect the integrity of the arbitral process;

(2) to protect the integrity of the orders made by courts of this jurisdiction, in particular the orders of Dias J and Henshaw J; and

(3) to protect the public policy of the United Kingdom in having the sanctions regime which it does.

57. I bear in mind that, as the Judge himself found, at para 3, that:

> "The evidence adduced by Renaissance establishes a realistically arguable case that Mr Guryev is or he and his daughter are the ultimate beneficial owners of the Defendants."

58. I also bear in mind what the Judge said at para 22:

> "On the basis of this material, I accept Renaissance's submission that the delictual claims by the Defendants against the RREs, are claims to recover damages in a sum equivalent to what is alleged to be the value of the assets that that have been frozen by Renaissance and I accept that the claims have been brought in Russia because the Defendants are precluded from recovering their assets from Renaissance, other than in LCIA arbitration proceedings against Renaissance in London, in which the Defendants would have to prove their case that they were not properly to be regarded as subject to any relevant sanctions."

59. I note that, in *Barclays Bank plc v PJSC Sovcombank* [2024] EWHC 834 (Comm), at para 25, HHJ Pelling KC (the same judge as in the present case) said:

> "It might have been said on behalf of the defendants or Sovcombank at any rate that commencing proceedings in England deprives them of a legitimate juridical advantage because the Russian courts will disregard as a matter of public policy the sanctions laws imposed by English law. If and to the extent that is relied upon then, in my judgment, it is a proposition to be rejected. The parties having agreed English law, to attempt to litigate in a foreign jurisdiction where full effect is not given to English law including therefore sanctions law is not to seek to obtain a legitimate juridical advantage but, on the contrary, is to seek to obtain an illegitimate juridical advantage, a point which has been recognised in the case law as a reason for treating a claim brought in such a jurisdiction as vexatious and oppressive."

60. I agree with the principle which lies behind that passage. I do not think that it is confined to cases in which the parties have agreed that English law should apply to their dispute because, in my judgment, for a party to seek to circumvent the sanctions regime of this country is to seek an "illegitimate juridical advantage".

61. On behalf of the Respondents Mr D'Cruz submits, first, that this Court should refuse the ASI sought because it would in effect deprive his clients of effective access to justice. This is because, he submits, their delictual claims are based on Russian law, are brought against Russian defendants and have no connection with this jurisdiction. Accordingly, he submits, there is no forum other than the Russian courts in which their claims can be litigated. If necessary, he invokes Article 6 of the European Convention on Human Rights in support of his argument that the Respondents would be denied a fair hearing if an ASI is granted.

62. I do not accept that submission. Although Mr D'Cruz submits that, were the Appellants' application to be granted, the Defendants would be left with no forum at all in which they could bring their claims, that possibility is inherent in a "single forum" case where an ASI is granted. It provides a good reason to exercise great caution before granting an ASI in such a case but it does not prevent one from being granted at all.

63. Mr D'Cruz then submits that this Court should refuse the application for an ASI for reasons that have arisen since the judgment below, namely:

(1) First, that the RREs have submitted to the jurisdiction of the Russian courts in that:

i. The Russian courts have accepted jurisdiction over the Russian RRE Claims.

ii. The Procedural Motion filed by Renaissance Broker on 3 December 2024 objected to such jurisdiction only on the basis of Russian arbitration agreements in two separate contracts between the Sixth Defendant and Renaissance Broker, not on the basis of any consent to LCIA arbitration or the arbitration agreements between the Appellant and the Respondents.

iii. Renaissance Consultant and Renaissance Credit have not disputed jurisdiction at all, on the basis that Renaissance Broker's challenge had failed.

iv. All the RREs have participated actively in the Russian RRE Claims, including filing defences on the merits and making oral submissions.

(2) Secondly, the sale of Renaissance Broker and Renaissance Consultant following the judgment has two consequences:

i. The affiliation between the RREs and the Appellant upon which the latter's Application was based no longer exists.

ii. The Appellant no longer has a legitimate interest in this appeal: it seeks a discretionary remedy to restrain Russian claims that do not involve it at all.

iii. The Appellant has information that is germane to whether that discretion should be exercised but, despite being given ample opportunity to do so, has failed to explain the change in circumstances following the judgment. That in itself justifies refusal of the relief sought.

64. Through their evidence submitted for the purposes of this appeal, it is the Appellant's position that:

(1) First, the Respondents are wrong because:

i. On 4 October 2024 the RREs issued letters to confirm their consent for their disputes with all Defendants to be heard in LCIA arbitration in London, which is inconsistent with those letters amounting to submission to the jurisdiction of the Russian courts: Fifth Witness Statement of Evgeny Letunovsky, para 13.

ii. Renaissance Broker filed a jurisdictional objection in Russia on 3 December 2024: Fifth Witness Statement of Evgeny Letunovsky, para 14. The other RREs actively supported it in that objection: Fifth Witness Statement of Evgeny Letunovsky, paras 14-15.

iii. After the Russian court dismissed that objection, there would have been no point in the other RREs issuing their own duplicative objections, so that the absence of their doing so does not imply that they submitted to the jurisdiction of the Russian court: Fifth Witness Statement of Evgeny Letunovsky, para 16.

(2) Secondly, the Respondents are wrong in relation to the consequences of disaffiliation because:

i. The Appellant said in *inter partes* correspondence that any changes in affiliation between it and the RREs since the judgment are irrelevant to this appeal because (i) the appeal "falls to be determined by reference to the evidence at first instance (subject to any party making a successful application to put in fresh evidence)" and (ii) such affiliation between the Appellant and the RREs is not a "necessary feature of any of the grounds of appeal": letter from the Appellant's solicitors (Candey) to the Respondents' solicitors (Enyo Law) dated 17 December 2024, para 3.

ii. It is nevertheless the Appellant's position that it does have an interest in restraining claims against the RREs given that (a) the arbitration agreements in the ISAs prevent such claims and (b) the Appellant is said to be – and has been found to be – jointly and severally liable pursuant to the Russian RRE Claims and so is exposed to them: Fifth Witness Statement of Evgeny Letunovsky, para 76.4.

65. I do not accept that the RREs have submitted to the jurisdiction of the Russian court. At best, the evidence on this is unclear but, more fundamentally, it is immaterial because what would matter is whether this Appellant (not the RREs) has submitted to the jurisdiction of the Russian Court. Even then that is not a definitive answer to whether an ASI can be granted: see *SAS*, at para 114, where Males LJ said that the fact that an applicant for an ASI has submitted to the jurisdiction of the foreign court

"may … be an important and sometimes decisive factor, but … is not necessarily fatal."

66. There is more force in the Respondents' argument that the Appellant has no legitimate interest to protect in this appeal.

67. I bear in mind that the original basis of the applications before the High Court was that the three RREs were affiliates of the Appellant. The evidence is that, since the judgment below, on around 13 November 2024, two of the RREs were sold. The third RRE denies being an affiliate although it admits to having the same ultimate beneficial owner as the Appellant.

68. We are informed, and there is no dispute, that the Appellant has refused to provide the sale agreements for Renaissance Broker and Renaissance Consultant, even though that would reveal what provision has been made for liabilities arising from the RRE claims and therefore whether the Appellant is at risk of delictual liability in relation to them (or, as Mr Lowenstein submitted at the hearing before us, on a contribution basis) so as to justify the grant of an ASI.

69. It is important to recall what Lord Bingham said about the foundation of the exceptional jurisdiction to grant an ASI in *Donahue v Armco Inc*, at para 16:

> "The grant of an anti-suit injunction, as of any other injunction, involves an exercise of discretion by the court. To exercise its discretion reliably and rationally, the court must have the fullest possible knowledge and understanding of all the circumstances relevant to the litigation and the parties to it. This is particularly true of an anti-suit injunction because, as explained below, the likely effect of an injunction on proceedings in the foreign and the domestic forum and on parties not bound by the injunction may be matters very material to the decision whether an injunction should be granted or not. Thus although the two main issues before the House cannot be regarded entirely independently of each other, it is preferable to consider the issue of joinder of the PCCs before considering the grant of an anti-suit injunction more generally."

70. In the circumstances which now exist, I do not consider that this Court has "the fullest possible knowledge and understanding of all the circumstances relevant to the litigation and the parties to it." The Court has before it the Fifth Witness Statement of Evgeny Letunovsky, in particular at paras 75-82. The submission for the Appellant is that the change of ownership of the companies is irrelevant to the issues in this case, because the Appellant continues to be exposed to the risk of joint and several liability and the possibility of contribution or recourse claims in Russia. I do not accept that submission.

71. In my judgment, the precise nature of the relationship between the Appellant and the RREs, and what was said about them in the sale agreements which occurred in November 2024 would have material significance for the discretionary remedy which

the Appellant seeks from this Court. Despite the order of Lewison LJ granting permission to adduce further evidence on this appeal, the evidential picture remains far from clear.

72. In those circumstances, I have reached the conclusion that this Court should, in the exercise of its discretion, refuse the injunction sought and dismiss this appeal.

Conclusion

73. For the reasons I have given, which are to an extent different from those of the Judge, I would dismiss this appeal.

74. There is currently in place an interim injunction made by Lewison LJ on 8 January 2025. If My Lords agree, that injunction will be discharged in the light of this judgment.

Lord Justice Males:

75. I would dismiss this appeal on the narrow ground, adopting Lord Bingham's phrase in *Donohue v Armco Inc* [2001] UKHL 64, [2002] 1 All ER 749, at para 16, that the Appellant has not put before this court "the fullest possible knowledge and understanding of all the circumstances relevant to the litigation and the parties to it". In a case where the discretionary remedy of an anti-suit injunction, with its potential implications for international comity, is in issue, this is particularly important. Like Singh LJ, I do not accept that the change of ownership of the RREs is irrelevant to the issues in this case. Nor do I accept that the Appellant is unable to provide the agreements pursuant to which its affiliates were supposedly disposed of or to give a full explanation of what has occurred. I am left with the distinct impression that this court is being invited to grant an anti-suit injunction while being deliberately kept in the dark.

76. In these circumstances it is unnecessary to decide whether an injunction should be granted on the ground that the proceedings brought by the Respondents against the RREs in Russia are vexatious and oppressive. At first sight, there appears to be a powerful case that they are. But the answer may ultimately depend, at least to some extent, on the information which has been withheld from this court.

77. It is likewise unnecessary to decide whether the pursuit of the Russian proceedings by the respondent is a breach of the negative obligation contained in the arbitration clauses of the ISAs. Although the Respondents characterise those proceedings as involving an independent claim between Russian companies under Russian tort laws, closer examination suggests that this characterisation is at best incomplete. The supposedly wrongful conduct on which the Russian claims are founded appears to be the failure of the companies within the Renaissance group to procure the transfer of the assets held by the Appellant to a Russian entity within the group which would not be subject to western (including UK) sanctions. But the Appellant could not have

effected such a transfer without breaching those sanctions. In other words, the Respondents' essential complaint is that the Appellant failed to act in a way which would itself have involved a breach of sanctions (i.e. would have been illegal under English law), and that this somehow gives rise to joint and several liability on the part of other companies within the group.

78. This may be a valid claim under Russian law. I am prepared to assume that it is. But its artificiality, viewed as a matter of English law, which is the law applicable to the relationship between the parties, is obvious. Its only purpose is to circumvent the parties' arbitration clause. It seems to me to be at least arguable in these rather distinctive circumstances that it is necessary for business efficacy, and is so obvious that it goes without saying, to imply a term that the Respondents would not circumvent the arbitration clause in this way. The Judge concluded at para 40 that the arbitration clause does not apply to claims against either party *by* a non-party. But the issue here is whether the clauses apply to artificial claims against one party's affiliate by the other party, whose only purpose is to circumvent the obligation to arbitrate. That is a rather different issue. However, as resolution of this issue cannot affect my decision that no injunction should be granted for the reason already stated, I would prefer to leave this point open for decision, if it arises, in a case where it will be decisive.

Lord Justice Phillips:

79. I agree that this appeal should be dismissed for the reasons given by Singh LJ in paras 67 to 72 above and by Males LJ in para 75 above. The Appellant now contends that the proceedings against the RREs in Russia are vexatious and oppressive, not because they are affiliates of the Appellant (the basis on which the application was originally made), but because those companies have a right to be indemnified by the Appellant against any liability established against them in those proceedings. The entitlement to any such indemnity (or lesser contribution), however, will necessarily be dependent on the terms on which two of the RREs were sold in November 2024 and, more generally, on the relationship between the RREs and the Appellant. The Appellant has not disclosed the documents or provided the information needed to understand those crucial matters when it is a reasonable inference that it could do so. I agree with Males LJ that it is therefore unnecessary to decide whether an injunction would otherwise be justified on the ground that the proceedings brought by the respondent in Russia against the RREs are vexatious and oppressive, or the ground that they are brought in breach of the arbitration clauses in the ISAs. I prefer not to express any view of the merits of those issues, not least because, due to the lack of proper explanation by the Appellant, the facts relevant to their determination are far from clear.