HFW LITIGATION

COMMERCIAL LITIGATION CASE UPDATE

EDITION 1 / 2026

HFW LITIGATION

COMMERCIAL LITIGATION CASE UPDATE
EDITION 1 / 2026

We are delighted to present the second edition of the HFW English Commercial Litigation Case Update, a summary of relevant recent key cases.

HFW is a global, sector-focused law firm, with over 700 lawyers working across the Americas, Europe, the Middle East, Asia, and Australia. We pride ourselves on our deep industry expertise and our entrepreneurial, creative, and collaborative culture.

Disputes work is at the very core of our firm, accounting for over 70 percent of our total business. We are recognised by our clients and the legal directories as a leading disputes practice, and were referenced in The Times' latest report as a top commercial disputes practice and a noted "disputes powerhouse – [handling] more commercial litigation in the English Commercial Court than any other law firm".

If you are interested in receiving a bespoke training session on the cases referred to in this Update, or on any other cases or topics of interest, please contact your usual contact at HFW or the editors Andrew Williams and Nicola Gare.

ANDREW WILLIAMS
Partner, London
T 44 20 7264 8364
E andrew.williams@hfw.com

NICOLA GARE
Knowledge Counsel
(Dispute Resolution), London
T +44 20 7264 8158
E nicola.gare@hfw.com

The Commercial Litigation Case Update – Edition 1 / 2026

1. BHP Group (UK) Ltd v PGMBM Law Ltd (t/a Pogust Goodhead) [2025] EWHC 3153 (TCC)
2. Credit Suisse Life (Bermuda) Ltd v Ivanishvili & Others [2025] UKPC 53
3. Various Claimants v Standard Chartered plc [2025] EWCA Civ 1581
4. Salinas Pliego v Astor Asset Management 3 Ltd [2025] EWHC 2968 (Comm)
5. King Crude Carriers SA and others v Ridgebury November LLC and others [2025] UKSC 39
6. JSC Commercial Bank Privatbank v Kolomoisky [2025] EWHC 2909 (Ch)
7. OperaFund Eco-Invest SICAV plc and another v Spain [2025] EWHC 2874 (Comm)
8. Bali v 1-2 Couriers Limited & Anor [2025] EWCA Civ 1413
9. Lakatamia Shipping Co Ltd v Su [2025] EWCA Civ 1389.
10. Bellway Homes Ltd v Occupiers of Samuel Garside House [2025] EWCA Civ 134
11. Process & Industrial Developments Limited v The Federal Republic of Nigeria [2025] UKSC 36.
12. Arcadia v Bosworth, Hurley and Kelbrick [2025] EWHC 2724
13. Advanced Multi-Technology for Medical Industry & Ors v Uniserve Limited [2025] EWCA Civ 1212
14. Commercial Court Transparency Pilot
15. Fang Ankong v Green Elite Ltd (Virgin Islands) [2025] UKPC 47

1. BHP Group (UK) Ltd and other v PGMBM Law Ltd (t/a Pogust Goodhead) [2025] EWHC 3153 (TCC)

Court: Technology and Construction Court

Date: 3 December 2025

Summary

The English High Court refused an anti-suit injunction application, allowing the defendant to continue with its application to order discovery and deposition of a witness in the United States.

Facts

In January 2025 and under Section 1782 of Title 28 of the United States Code (**Section 1782**), Pogust Goodhead (**PG**) obtained a subpoena from the Arkansas District Court against Mr Andre de Freitas for discovery and a deposition from him, in order to assist in their ongoing English litigation against BHP Group (**BHP**).

BHP issued proceedings in the US to overturn the subpoena and, prior to that judgment being published, issued an anti-suit injunction (**ASI**) in the English High Court (TCC). BHP sought to resist the Section 1782 application on the basis that the proceedings were vexatious and oppressive (which would be grounds for discontinuing those proceedings) as they would result in Mr de Freitas being subject to double cross-examination.

What is Section 1782?

Section 1782 is a section of the US Federal Code which allows evidence to be taken in the United States to aid proceedings in other jurisdictions. It is a strategic tool often used in multi-jurisdictional litigation.

In the main action between PG and BHP, BHP was sued by around 613,000 claimants for billions of pounds of losses after the collapse of a dam in Brazil in 2015. These claimants were represented by PG on various alternative fee arrangements. BHP negotiated settlements with some of the claimants directly, without PG's involvement. PG alleged that BHP had knowingly done this to their detriment and claimed £1.3bn in contingent fees under the retainers it had with those clients.

In order to support its case against BHP, PG brought a Section 1782 application in February 2025 against Mr de Freitas, who was resident in Arkansas, as it thought Mr de Freitas had information relevant to PG's main claim.

On becoming aware of the Section 1782 application, BHP sought to oppose the application and filed the application in the TCC in June 2025.

High Court (TCC) Judgment

Waksman J refused to grant the ASI on the basis that PG had not acted vexatiously or oppressively.

Whether there was vexatious or oppressive conduct was held to be a 'highly fact-sensitive question'. It was on this basis that Waksman J distinguished the earlier case of *Omega Group Holdings Ltd & Ors v Kozeny & Ors.* [2002] CLC 132. In *Omega*, the proceedings had already been fully pleaded and all ten subjects of the depositions in the US would also face cross examination in England. This raised the possibility of 'double cross examination'. However, the purpose of deposing Mr de Freitas was to obtain evidence in order to plead the English case and later prove it. Hence the depositions "*serve[d] a distinct and legitimate purpose*" and were "*unlikely to be duplicative*".

The court also found that the risk to BHP of Mr de Freitas being dissuaded from submitting to cross examination in England as a result of the deposition was small or speculative. Earlier cases which had taken similar points into account were in the context of duplicative cross examination, which was not the case here. Furthermore, any potential trial was 2-3 years away so any expressed intention not to attend was purely speculative.

Both BHP and Mr de Freitas offered an undertaking that, if the ASI was granted, he would give evidence. However, these were considered of little value because the undertaking by Mr de Freitas would be unenforceable (since he was then, and would likely be at the date of trial, abroad). Whilst BHP's undertaking was only to exercise 'best endeavours' so it could genuinely say that it tried to have him attend but failed. Finally, if he did

not attend, then PG could not return to Arkansas to depose him because it would be: 1) too late; and 2) possible Mr de Freitas would have since moved.

The judge also expressly outlined that it was not vexatious or oppressive to depose a witness pre-action stating, that "*parties are entitled to make use of litigation advantages such as this*".

Delay in the Proceedings:

Any unjustifiable delay in bringing an ASI application could result (as it did here) with the court rejecting the application, even if the conduct of the other party was unconscionable.

Pursuing the claim on the merits in Arkansas and even threatening the possibility of an ASI in that court, before seeking an ASI in England, was an impermissible attempt at "two bites at the cherry" and wasted the Arkansas court's time. The ASI was said effectively to ask the High Court to tell the Arkansas District Court that the granting of subpoenas was wrong and any judgment on motions to quash those subpoenas was also wrong.

HFW Comment

This case shows the benefits of being aware of how best to utilise local foreign laws to obtain a tactical evidential advantage in order to help prove a case in the English court, and the need to bring the application in a timely manner, or risk losing the option altogether.

Please read the judgment here.

2. Credit Suisse Life (Bermuda) Ltd v Ivanishvili & Others [2025] UKPC 53

Court: Privy Council

Date: 24th November 2025

Summary

On appeal from the Bermuda Court of Appeal, the Privy Council has resolved conflicting authorities on the test for fraudulent misrepresentation, holding that a claimant need not have a conscious awareness of a false representation made by the defendant to establish a claim in the tort of deceit.

Whilst arising from an appeal of a Bermudan court decision to the UK Privy Council, it is likely that the approach in *Credit Suisse Life (Bermuda) Ltd v Ivanishvili & Others* [2025] UKPC 53 will be adopted by English law as there is no (at the time of writing) conflicting appellate authority.

Facts

The appeal to the Privy Council concerned the mismanagement of substantial assets (US$750 million) placed into two life insurance policies issued by Credit Suisse Life (Bermuda) Ltd (**CS Life**), and followed the rulings of the Bermuda court, which upheld the claim and the Bermuda Court of Appeal (**CoA**), which dismissed CS Life's appeal.

In 2015, Mr Ivanishvili discovered that his relationship manager at CS Life (Mr Lescaudron) had been dealing fraudulently with the policy assets. In 2017, Mr Ivanishvilli, members of his family, and two named policyholders (referred to going forward as **the Respondents**) began proceedings against CS Life, claiming damages for breach of contractual and fiduciary duties, and then also claimed damages for fraudulent misrepresentation in October 2020. At the court of first instance hearing in Bermuda, the court largely found in favour of the Respondents. CS Life appealed to the Bermuda **CoA**, who dismissed the breach of contract and fiduciary duty claims, allowing only the misrepresentation appeal.

On appeal, the Privy Council was asked to reconsider the Bermuda CoA decision to uphold the award of damages for breach of contract and fiduciary duty, as well as a cross-appeal on fraudulent misrepresentation. The Privy Council ultimately upheld most of the Bermuda CoA's findings, dismissing CS Life's appeal save for a limited adjustment to the start date for assessing damages, and dismissing the cross-appeal on limitation grounds.

The Privy Council Judgment

The appeal by CS Life and cross-appeal by Ivanishvili was heard in June 2025 and judgment was given on 24 November 2025 by Lords Hodge, Briggs, Leggatt, and Richards, and Lady Simler (the **Board**).

The issues before the Privy Council were:

1. *Misrepresentation and Limitation*

On the cross-appeal, the Privy Council confirmed that awareness of a false representation is not required in order to prove a claim in the tort of deceit and that reliance may be unconscious. However, applying the double actionability rule (that the claim had to be actionable under both Bermudan and Georgian law), it held that the misrepresentation claim was time-barred under Georgian law, which imposed a three-year limitation period.

Accordingly, CS Life's appeal was dismissed save for the adjustment to the damages start date, and the Respondents' cross-appeal on misrepresentation was dismissed on limitation grounds.

2. *Contractual Duties and Investment Mandate*

A central issue before the Privy Council was whether CS Life owed contractual duties to invest the policy assets in accordance with the chosen investment alternative. The Privy Council held that the relevant policy documents

imposed a clear obligation on CS Life to ensure that the assets were invested in line with the selected discretionary mandate.

The Privy Council also rejected CS Life's argument that the signed forms indicated a non-discretionary mandate that superseded any oral agreement. However, it accepted that the Respondents had orally agreed to discretionary management by the Bank's MACS team and that Mr Lescaudron, acting as CS Life's agent, had authority to agree the investment alternatives. His knowledge was therefore attributable to CS Life.

3. *Fiduciary Duties*

The appeal raised the question of whether CS Life owed fiduciary duties after the commencement of the policies.

The Privy Council considered the issue, but noted that although the point was significant, it was not relevant to the outcome of the case.

4. *Assessment of Damages*

Two competing models for assessing damages were presented: the 'Whole Portfolio Model', which assumed that the entire portfolio would have been professionally managed throughout, and the 'Objectionable Transaction Model', which would be adjusted only for identified improper trades.

The Privy Council concluded that the Whole Portfolio Model was the correct approach, as it best reflected the principle of restoring the claimant to the position, they would have been in absent the breach.

HFW Comment

The Privy Council's decision confirms that insurers cannot hide behind broad discretion when managing client portfolios; contractual mandates mean what they say, and the court is prepared to treat them as real, enforceable obligations rather than mere guidelines.

The case also highlights the fragility of cross-border misrepresentation claims. The dismissal on double-actionability grounds is a reminder that clients operating across jurisdictions should understand how limitation rules can quietly shut the door on recovery long before the dispute reaches the court.

Please read the judgment here.

3. *Various Claimants v Standard Chartered plc [2025] EWCA Civ 1581*

Court: Court of Appeal (Civil Division)

Date: 5 December 2025

Summary

The English Court of Appeal (**CoA**) gave judgment on a matter that will have interest to those involved in cross-border litigation.

In essence, the case concerned whether parties can withhold disclosure where documents are covered by foreign regulatory confidentiality, or which may lead to criminal or regulatory action in a foreign jurisdiction.

Facts

Standard Chartered **(SC)**'s appeal arose from a set of consolidated proceedings brought by investors against it pursuant to sections 90 and 90A of the Financial Services and Markets Act 2000 (**FSMA**). SC had previously been subject to regulatory proceedings in the US and subsequently sought to withhold some 250 documents from a disclosure of several thousands. The documents included US Suspicious Activity Reports (**US SARs**), other documents containing information revealing the existence and content of US SARs, and documents containing confidential supervisory information (**CSI**).

SC appealed against the dismissal of its application to withhold specific categories of documents from disclosure, arguing that that disclosure should be withheld unless or until the relevant US regulators granted it permission to disclose them. The High Court had previously dismissed the application by SC on the basis that there was no real risk of either criminal prosecution or regulatory enforcement action.

The three grounds of SC's appeal were as follows:

(a) There was a risk of foreign criminal prosecution or regulatory sanctions if disclosure of US SAR documents was not withheld;

(b) The US SAR documents were of tangential relevance or limited probative value to the proceedings; and

(c) Comity and confidentiality in CSI documents

The Court of Appeal's Judgment

The CA dismissed SC's arguments and upheld the decision of the High Court.

Ground 1 - Risk of criminal prosecution of regulatory sanctions if US SAR documents were disclosed

These arguments were dismissed on the basis that the previous High Court decision correctly concluded that there was no real or actual risk of prosecution or regulatory action if SC disclosed the US SAR documents. The risk of prosecution or other action was held to be too remote. The court agreed with the *Bank Mellat* test applied by the High Court that there must be *"real or actual risk".*

The CoA stated that whilst no actual evidence of intended prosecution is a requirement under English law, the absence of such evidence supported the argument that there was no *"real or actual risk"* of foreign prosecution. This evidential point was not determinative but effectively contradicted SC's argument that prosecution or regulatory sanctions were real and immediate risks if disclosure was not withheld. Additionally, SC had not adequately considered or presented direct evidence of the extent of the risk of regulatory or other civil sanctions being invoked against them. The court held that the High Court had therefore been entitled to use its own experience of scrutinising evidence to conclude that there was no real risk of such proceedings being issued.

Ground 2 - The US SAR documents were of tangential relevance or limited probative value

The CoA noted that documentary disclosure is a requirement under the Civil Procedure Rules (**CPR**) in order to promote fairness and facilitate settlement of disputes under English law. A party seeking to withhold disclosure therefore needs to meet a substantial burden of persuasion for the court to depart from the default CPR position.

The CoA held that the High Court's ruling was correct with respect to the significance of disclosure to the litigation process, and had been correct in following the *Bank Mellat* criteria, which outlined that the risk of prosecution or civil actions, and the extent of the corresponding sanctions, should all be assessed against the relative materiality of the documents to the issues in dispute, to ascertain whether there is a need for disclosure. High risk of legal action and more severe sanctions, as well as the peripheral relevance of documents, would all weigh against disclosure being ordered.

Moreover, SC had not shown that the High Court's assessment of the US SAR documents as potentially highly relevant was unsupportable. This was a further factor in support of upholding the disclosure of the documents. Therefore, SC had not sufficiently discharged their burden of persuasion.

Ground 3 - Comity and confidentiality in CSI documents

The CoA decided that the High Court's conclusions in relation to comity and confidentiality were valid.

It was held that, whilst the English courts do not disregard potential deviations from foreign law when ordering disclosure, comity works both ways. English courts therefore expect foreign authorities to recognise the documentary disclosure requirements outlined within the CPR. The High Court had adequately considered issues of comity and any alleged breaches of foreign law.

As to the confidentiality of the CSI documents, the evidence relied upon by SC was primarily a series of generic correspondence with the US regulator. SC failed to present comprehensive evidence as to the significance of maintaining the total confidentiality of CSI material, nor that it had a clear duty of confidentiality to the US regulator. Additionally, the CoA did not have sight of the documents and US regulators had also not sought to intervene in the proceedings on the grounds of confidentiality. The High Court's decision not to withhold disclosure of CSI documents, and to protect the documents within a confidentiality ring, provided adequate security to US regulators by restricting dissemination of disclosed material, whilst also respecting and upholding English law.

HFW Comment

This case makes clear that any application made in the English courts to withhold disclosure requires a high evidential burden to be met. The grounds for any such application must be fulfilled by the party seeking to withhold disclosure and the threshold required to be met is relatively high.

Issues of comity and confidentiality are relevant and will be considered by the courts. However, in the absence of compelling and specific grounds for maintaining complete confidentiality of documents, English law will prevail over foreign regulations. Disposing of proceedings fairly is the overriding consideration of the courts. Documents will not be immune from disclosure by reason of confidentiality alone.

Please read the judgment here.

4. Salinas Pliego v Astor Asset Management 3 Ltd [2025] EWHC 2968 (Comm)

Court: Commercial Court

Date: 13th November 2025

Summary

This case concerns a summary judgment application by Ricardo Benjamin Salinas Pliego and Corporacion RBS SA DE CV (together **the Claimants**) on the liability elements of their pleaded claims in deceit and contract against the first and fourth defendants (namely Astor Asset Management 3 Limited, and Vladimir Sklarov), or alternatively for a conditional order for security in the sum of US$315 million, and a cross-application by the first, fourth, fifth and sixth defendants (together **the Astor Defendants**) to strike out or stay the proceedings for abuse of process and/or risk of an unfair trial, and to restrict use of information obtained illicitly. The information in question came from a series of meetings, where a private investigator misled the Astor Defendants' solicitor into revealing their litigation strategy – these meetings were secretly recorded, and the recordings were passed on to the Claimants.

In their cross-application, the Astor Defendants argued that these recordings included privileged material and therefore created an unfair advantage for the Claimants. While the Claimants admitted that their methods were unethical, they denied responsibility and invoked the 'iniquity principle'.

Facts

The dispute arose from a stock loan transaction entered into in July 2021, under which the Claimants pledged shares in *Grupo Elektra* as collateral for a substantial loan arranged through the Astor Defendants. The Claimants alleged that the Astor Defendants engaged in fraudulent conduct, by misappropriating or selling the pledged shares without their consent, therefore causing significant financial loss for the Claimants.

After uncovering the alleged misappropriation of their collateral shares, the claimants brought proceedings in the Commercial Court in 2024[1] and obtained worldwide freezing orders (**WFOs**) to prevent the Astor Defendants from dissipating the shares/proceeds worth over US$400 million.

In March 2025 the Claimants applied for summary judgment on the liability elements of their pleaded claims in deceit and breach of contract, or alternatively a conditional order for security of approximately US$315 million. The Astor Defendants then brought a cross-application in June 2025, seeking to strike out or stay the action for abuse of process and/or risk of an unfair trial; and also, for directions as to the admissibility or permitted future use of the illicitly obtained evidence. The Astor Defendants asserted that the Claimants had created an unfair litigation advantage by obtaining the confidential and privileged information through covert recordings of their former solicitor.

In September 2025, the Astor Defendants made a further application, seeking discharge of the WFOs as an alternative to striking out, or staying the action, and also for other relief concerning the Claimants' acquisition of such illicit information, or their freedom to use it.

The Commercial Court Judgment

The judge declined to grant summary judgment on liability for deceit or for breach of contract, finding that the issues raised were not suitable for determination without a full trial. The judge held that this was due to substantial factual disputes concerning the alleged misappropriation of shares and the contractual obligations under the stock loan agreement, which would require both oral evidence and cross examination. Interestingly, the judge determined that, even if the Claimants had satisfied the elevated merits threshold and there was no other justification for proceeding to trial, summary judgment or a conditional order still would not have been granted due to the Claimants' abuse of process.

On the Astor Defendants' cross-application, the judge recognised the seriousness of the allegations regarding the covert recordings with the Astor Defendants' previous solicitor, and the potential breach and misuse of privileged information by the Claimants. While the judge accepted that the Claimants had obtained the recorded

[1] Salinas & Anor v Astor Asset Management 3 Ltd & Ors [2024] EWHC 2522 (Comm))

material in an unethical manner, and that such methods were "*anathema to the norms and values of civil litigation"*, he did not determine that this automatically warranted striking out the claim, stating that it would not be an appropriate or proportionate remedy. Rather, the judge emphasised that the appropriate remedy would need to balance the integrity of the litigation process with the Claimants' right to pursue their claims.

The judge therefore refused to strike out or stay the proceedings at this stage but imposed restrictions on the use of the disputed material pending further consideration.

The judge granted permission to appeal and cross-appeal on the basis that the case engages a series of competing policies that warrant appellate scrutiny. These include the protection of the court's processes, the maintenance of public confidence in the administration of justice, the fundamental importance of legal professional privilege, the need to prevent and properly address large-scale fraud or dishonesty, and the public's trust in the legal profession when advising those accused of serious wrongdoing. These issues were considered to be of wider importance beyond the present dispute.

The Claimants were ordered to pay the costs of the hearing.

HFW Comment

This decision is an important reminder for those involved in commercial disputes that even where a party meets the merits threshold for summary judgment, the court may still refuse that relief if the applicant has acted unethically or in a way that abuses the litigation process. At the same time, the court's refusal to strike out or stay the proceedings shows that such misconduct will not automatically prevent a claimant from pursuing its case where that would be a disproportionate response. The judgment also reinforces the importance of early asset-preservation measures: the worldwide freezing orders remained in place despite the Claimants' misconduct, and the Astor Defendants' efforts to have them dismissed.

Please read the judgment here.

5. King Crude Carriers SA and others v Ridgebury November LLC and others [2025] UKSC 39

Court: Supreme Court

Date: 12 November 2025

Summary

Lord Watson's speech in the House of Lords case of *Mackay v Dick*[2] indicated that there is a principle of law that, where a party wrongfully prevents the fulfilment of a condition precedent to a party's debt obligation, that condition is treated as being fulfilled. This was termed the doctrine of *'deemed fulfilment'* and has since been the subject of debate.

In this decision, which emanates from an arbitration appeal, the Supreme Court held that the *Mackay v Dick* doctrine of deemed fulfilment is not part of English law and overturned the Court of Appeal's decision[3] restoring the earlier judgment[4] of Dias J.

Facts

In this case, the issue of deemed fulfilment arose in the context of contracts for the sale of three vessels on amended Norwegian Saleform 2012. Under the contracts, the Buyers were obliged to lodge a deposit of 10% of the purchase price with a deposit holder three banking days after the deposit holder had confirmed in writing that a deposit account had been opened. The parties were obliged to provide all necessary documentation for the opening of the deposit account.

In breach of contract, the Buyers did not provide the documentation necessary for the opening of the deposit account, the deposit holder did not confirm that the accounts were opened and the Buyers (by reason of their own conduct) could not and did not lodge the deposits. The Sellers terminated the three contracts and commenced arbitration claiming the deposits as debts relying on the *Mackay v Dick* doctrine of deemed fulfilment. The Buyers argued that the Sellers only available remedy was in damages and that no loss had been suffered.

Decision of the Arbitration Tribunal

The arbitration tribunal accepted the Sellers' case based upon *Mackay v Dick* and held that Sellers were entitled to cancel the Memoranda of Agreement and claim payment of the deposits as debts.

Foxton J gave leave to appeal to the Commercial Court in relation to the below question of law:

> *"Where an obligation for payment within a contract is contingent upon the fulfilment by one party of a condition, and that party fails in breach of contract to fulfil that condition, is the condition deemed to be fulfilled with the result that the payment sum can be claimed by the other party in debt? Or must the claim be in damages?"*

Decision of the Commercial Court (Dias J)

Following a detailed review of the authorities relevant to *Mackay v Dick*, Dias J concluded that the doctrine of deemed fulfilment did not form part of English law. Accordingly, Dias J allowed the Buyers' appeal and held that the Sellers' claim must be in damages.

Dias J granted the Sellers' leave to appeal to the Court of Appeal.

Decision of the Court of Appeal

In the leading judgment, Popplewell LJ reformulated what was laid down by Lord Watson in *Mackay v Dick* to the effect that an obligor would not be permitted to rely upon the non-fulfilment of a condition precedent to its debt obligation where it had caused this non-fulfilment by their own breach of contract.

---

[2] Mackay v Dick (1881) 6 App Cas 251

[3] King Crude Carriers SA & Ors v Ridgebury November LLC & Ors [2024] EWCA Civ 719.

[4] King Crude Carriers SA & Ors v Ridgebury November LLC & Ors [2023] EWHC 3220 (Comm)

Popplewell LJ found that this was supported by a consistent body of case law and held that the legal basis behind this rule is that it represents the presumed contractual intention of the parties.

The Buyers appealed the decision of the Court of Appeal to the Supreme Court.

Decision of the Supreme Court

The Supreme Court (Lords Hamblen and Burrows giving the leading judgment) held that the *Mackay v Dick* doctrine of deemed fulfilment is a civil-law fiction which has never formed part of English law.

The court's decision noted that Lord Watson in *Mackay v Dick* did not rely on English law authorities and instead relied on a doctrine borrowed from the civil law. The Supreme Court held that existing English law decisions were inconsistent and could be explained through the application of the law of damages for breach of contract.

Further, the Supreme Court held that adopting a doctrine of deemed fulfilment would create uncertainty and would contradict commercial contracts where conditions precedent to accrual of debt are strictly applied.

The Supreme Court considered that rather than by way of fictional fulfilment of a condition precedent, English contract law proceeds on the basis of the express and implied terms of the contract, which promotes certainty and predictability.

In the alternative, the Sellers argued that the deposits accrued as a debt on contract formation and stipulated that the relevant condition precedent related only to the time for payment of an accrued debt. In considering the Sellers' alternative case, the Supreme Court confirmed the correctness of *The Blankenstein*[5] *case*, which held that the deposit does not accrue until contractual pre-conditions are met. The MOA did not distinguish between accrual of the debt and repayment of the debt, both arose only once clause 2 of the Norwegian Saleform conditions were satisfied**.**

Outcome

Accordingly, the Supreme Court allowed the Buyers' appeal, held there was no debt claim for the deposits, restored the order of Dias J, and confirmed that the Sellers' only remedy was damages for breach of contract.

HFW Comment

Whilst the underlying claim relates to a shipping dispute, this case has application beyond that sector, and the decision provides useful clarification that English law does not recognise any doctrine of 'deemed fulfilment'.

For greater certainty, parties should consider agreeing that deposits will be due in the event of conditions precedent being unfulfilled.

Please read the judgment here.

[5] Damon Compania Naviera SA v Hapag-Lloyd International SA ("The Blankenstein") [1985] 1 WLR 435

6. JSC Commercial Bank Privatbank v Kolomoisky [2025] EWHC 2909 (Ch)

Court: The High Court - Chancery Division

Date: 10 November 2025

Summary

In this case the English High Court addressed matters from an earlier judgment and confirmed the judgment sums, considered the award of pre- and post-judgment interest, and outlined factors which can demonstrate where indemnity costs are appropriate. The case also concerns the reach of post-judgment Worldwide Freezing Orders and the application of the *Babanaft* provisions.

Facts

Mr Kolomoisky and Mr Bogolyubov (**the Individual Defendants**) were former controlling shareholders of JSC Commercial Bank Privatbank (**the Bank**). The Bank alleged that the Individual Defendants misappropriated US $1.9 billion from it in 2013 and 2014 by using sham loans to shell companies to evade currency controls within Ukraine. This contributed to the Bank's insolvency and subsequent nationalisation in 2016. Mr Kolomoisky has been in prison awaiting trial in Ukraine since September 2023.

On 30 July 2025, Mr Justice Trower handed down a judgment on the matter between the Bank and the Individual Defendants regarding compensation for the misappropriation of funds from the Bank. The Individual Defendants were found to be jointly and severally liable to the Bank.

Six BVI-incorporated shell companies (Teamtrend Limited, Trade Point Agro Limited, Collyer Limited, Rossyn Investing Corp, Milbert Ventures Inc, and ZAO Ukrtransitservice Ltd) were also found liable (**the Corporate Defendants**). However, their liability was limited to specific loan drawdowns made by the Bank under the sham loan arrangements that were made less than one month before the date of the associated agreement to which each Corporate Defendant was a party.

The judgment provided directions for a further hearing to determine a number of issues including the precise amount of the judgment sum to be entered against the Corporate Defendants, and the timings for the Individual Defendants to pay the judgment sum. The Bank claimed an award of pre-judgment interest and made submissions on the rate at which it should be paid. The Bank also made an application for costs on an indemnity basis, which was opposed by the Individual Defendants. The Individual Defendants applied for permission to appeal and a stay of execution pending the appeal.

There were also a Consequentials Order (**CO**), a Worldwide Freezing Order (**WFO**), and a Delivery Up and Disclosure Order (**DDO**).

The High Court's Judgment

The High Court confirmed the judgment sums against the Individual and Corporate Defendants. When addressing the judgment sum split between the Corporate Defendants, Mr Justice Trower stated that, since each segment is compensation for the same harm as that which the Individual Defendants are jointly liable to compensate the Bank for, the Individual Defendants are also jointly liable to the Bank, together with each Corporate Defendant.

The Bank was awarded pre-judgment compound interest, a departure from the default award of simple interest. The Bank demonstrated that compound interest reflected the commercial value of the money which it had lost due to the Defendants' actions. The High Court also awarded post-judgment interest at US Prime plus 2%, stating the 2% uplift to be conservative in the context of the Russia-Ukraine war, as borrowing costs had increased significantly since the start of the conflict.

The Bank sought its costs on the indemnity basis, which required them to demonstrate that there was something which took the case outside the norm: whether due to the conduct of the parties or circumstances of the case. The Bank relied on five factors to show this: the nature of the Defendants' wrongdoing; the dishonesty of the

Defendants' defence to the proceedings; evidential failings, belated changes of case; and the conduct of the Defendants' four expert witnesses. In light of these factors, Mr Justice Trower agreed that it was correct to order costs on the indemnity basis. In relation to the evidential failings, he emphasised that neither Individual Defendant gave evidence at trial, and that there was no satisfactory explanation for this. Although this alone would not warrant indemnity costs, it provides important context to the other factors.

Defendants' Applications and the CO

The Individual Defendants' and Corporate Defendants' applications for permission to appeal were denied on all grounds on the basis that each ground had no real prospect of success. Their application for a stay of execution was also rejected, though on the basis that ring-fencing provisions in the CO addressed part of the argument for a stay. The High Court provided the figures included in the CO to be ring-fenced for legal fees and expenses and reduced the monthly funds available to Mr Bogolyubov for living expenses from £151,600, as stated in the WFO made by the Court of Appeal earlier in the proceedings, to £30,000.

WFO

The Defendants accepted that, as a matter of principle, the WFO should continue in force post-judgment. The High Court confirmed that, even after judgment, a WFO is not intended to be a safeguard against insolvency or a means of providing security for the claim. The High Court held that the paragraphs of the WFO relating to the preservation of companies also placed an obligation on the Individual Defendants to use all reasonable endeavours, and may require the Individual Defendants to incur reasonable expenditure to ensure such steps are taken, but also recognises that what is reasonable for Mr Kolomoisky to do may be impacted by his imprisonment.

The Bank sought two changes to the standard *Babanaft* provisions. The first change stated that the WFO would apply to a list of 144 individuals in a country or state outside the jurisdiction of the court. The High Court rejected this amendment on the basis that those individuals may have legitimate concerns of facing proceedings for contempt of court in England if they did not comply with the WFO, which may or may not be enforceable in their home jurisdiction. To include the list of individuals would imply that the High Court had determined that English law regarded them as being affected by the WFO, which was not the case.

The second change declared that the WFO would be enforceable pursuant to Article 39 of Regulation (EU) No. 1215/1212 (Brussels Recast), which enables a judgment given in a Member State to be enforceable in other Member States without the requirement for any declaration of enforceability. The Bank submitted that this inclusion would be justified because there is a lacuna in the standard form wording of the *Babanaft* proviso. The High Court rejected this submission on the grounds that the judgments in *Babanaft* and *Bank of China* were clear that orders are only enforceable against defendants who have been served, and in respect of which the court can exercise *in personam* jurisdiction. As such, it would be inappropriate to adapt the language of the *Babanaft* proviso as submitted by the Bank.

DDO

The High Court held that the Individual Defendants were required to use all reasonable endeavours to deliver share certificates and stock transfer forms to be held by the Bank's solicitors as a form of asset preservation.

HFW Comment

This judgment addresses several important matters, including guidance on what factors the Court may take into account when awarding compound interest in place of simple interest, and where indemnity costs are appropriate. Its key point, however, is that it demonstrates how the court will interpret and enforce a *Babanaft* proviso in WFOs. While the English court is able to give orders which affect non-parties, it can only do so when the court has properly established jurisdiction over them. The court is therefore unlikely to accept amendments to a *Babanaft* proviso, which seek to affect third parties outside of the court's jurisdiction.

Please read the judgment here.

7. Operafund Eco-Invest SICAV plc and another v Spain [2025] EWHC 2874 (Comm)

Court: The Commercial Court

Date: 10 November 2025

Summary

In the case of Operafund Eco-Invest SICAV plc and another v The Kingdom of Spain, The English Commercial Court made a significant decision when it rejected an application to substitute one party for another in proceedings to enforce an ICSID Convention arbitration award.

The Facts

Between 2008 and 2009, Operafund Eco-Invest SICA (**Operafund**) invested in a number of solar energy plants in Spain allegedly relying on representations made on behalf of Spain with respect to minimum tariffs and other incentives to be extended to renewable energy projects. On 31 July 2015, Operafund commenced ICSID arbitration proceedings against Spain alleging that it had breached the terms of the Energy Charter Treaty 1994 (**ECT**) by passing legislation which revoked such tariffs and incentives and caused Operafund substantial losses. On 6 September 2019 Operafund obtained a award in its favour against the Kingdom of Spain in the sum of €29.3m (the **Award**).

In the current proceedings, Operafund (as existing claimants) and Blasket Renewable Investments LLC (**Blasket**) brought an application to substitute the existing claimants in the proceedings for Blasket under the English Civil Procedure Rules (CPR 19.2(4)(a)) which provide that a court can order a new party to be substituted for an existing party where the existing party's interest or liability has passed to the new party. The application was brought on the basis that Blasket and Operafund had entered into an Assignment Agreement dated 31 January 2024 by which Operafund had sought to assign its interests in the Award to Blasket. Spain opposed the application on the ground that the Award was not assignable as a matter of international law.

The Australian Proceedings

A similar issue had previously arisen between Blasket and Spain in proceedings brought before the Federal Court of Australia (the **Australian Proceedings**).[6] In the Australian Proceedings, the FCA resolved the assignability issue against Spain and granted the claimants' substitution application. The ruling of the FCA remains subject to an appeal.

The Estoppel Issue

Operafund and Blasket (together, the **Claimants**) argued that the judgment in the Australian Proceedings created an issue of estoppel preventing Spain from arguing on the same point in this application.

HHJ Pelling KC considered the principles that apply to an issue estoppel based on a foreign judgment as summarised by Males LJ in *Hulley*[7] and Clarke LJ *Good Challenger*[8]*.* For an issue estoppel to arise based on the judgment in the Australian Proceedings, said judgment needed to be entitled to recognition in accordance with English law rules on the recognition of foreign judgments. Spain contended that the FCA judgment was not capable of being registered in England and Wales as the judgment was not final or binding and a final order was yet to be made. HHJ Pelling KC accepted this argument and concluded that the Claimants had failed to establish that Spain was estopped from putting forward arguments on the assignability issue because: (1) the judgment was not final and binding; and (2) by appearing in the Australian Proceedings to assert its state immunity, Spain had not submitted to the jurisdiction of the Australian Courts and thus, section 33 of the Civil Jurisdiction and Judgments Act 1982 was not satisfied.

---

[6] Blasket Renewable Investments LLC v the Kingdom of Spain [2025] FCA 1028.

[7] Hulley Enterprises Ltd v Russian Federation [2025] EWCA Civ 108.

[8] Good Challenger Navegante SA v Metalexportimport SA [2004] 1 Lloyd's Rep 67.

The Assignability Issue

The Claimants argued in the alternative that, if issue estoppel was not available, Spain's objection to the assignability of the Award should be rejected on its merits. The Claimants contended that, absent an express prohibition on assignment in either the ICSID Convention or the ECT and, given that there is no other applicable principle of international law prohibiting assignment, non-parties are entitled to seek recognition and enforcement of ICSID awards. Spain argued that, on its proper construction, the ICSID Convention precludes ICSID awards being assignable without the express permission of the relevant state.

HHJ Pelling KC found that there was no consistent practice establishing a customary rule of international law that rights under treaties or conventions either are or are not assignable.

HHJ Pelling KC next turned to examining the proper construction of the ICSID Convention and the ECT by reference to the rules of interpretation set out in the Vienna Convention on the Law of Treaties 1969, noting first that the ICSID Convention does not contain an express provision permitting or prohibiting the assignment of ICSID Awards.

The Claimants placed emphasis on the wording of Article 54(2) of the ICSID Convention (shown below) and submitted that the phrase *"a party"* is used in said article without limitation and thereby, a person other than a party to the dispute is entitled to seek recognition and enforcement of an ICSID award.

> *"(2)* ***A party*** *seeking recognition or enforcement in the territories of a Contracting State shall furnish to a competent court or other authority which such State shall have designated for this purpose a copy of the award certified by the Secretary-General. (…)"* (emphasis added)

HHJ Pelling KC analysed the use of the phrases *"the parties"* or *"a party"* throughout the text of the Convention and found that this was used interchangeably with the longer form *"party* [or parties] *to the dispute"* where the context in which the phrases are used clearly show that they relate back to or mean the parties to the arbitration in issue. HHJ Pelling KC also found that the requirement within Article 54(2) to furnish a copy of the award to the competent court or authority also suggested that it was not contemplated that any party other than a party to the dispute would seek recognition and enforcement of an award since on the face of the award it could be binding only on the parties mentioned therein. He supported this analysis by reference to commentaries on the text of the Convention and other academic texts.

Additionally, Spain submitted that Article 15 of the ECT was inconsistent with the notion that the ECT allowed the general assignment of claims, awards or judgments. Spain argued that if these rights were freely assignable under the ECT or customary international law, there would be no need for a requirement that the relevant Host Party recognise an assignment. HHJ Pelling KC accepted that this analysis was correct.

HHJ Pelling KC concluded that as a matter of construction of the ICSID Convention, awards made in ICSID arbitrations are not capable of assignment and there is no customary international law rule which provides that such awards are either assignable or not assignable.

The Effect of Registration of the Award in accordance with the Arbitration (International Investments Disputes Act) 1966

Finally, HHJ Pelling KC was asked to consider whether the rights accrued to Operafund from the inception of these proceedings were assignable as a matter of English law. The Claimants submitted that rights accrued to Operafund following registration of the award under Section 2 of the Arbitration (International Investments Disputes Act) 1966 are rights created pursuant to and governed by English law. Spain contended that registration of the Award would not accord to Operafund rights that it did not otherwise have under the Award and therefore, rights arising as a result of registration were not assignable. HHJ Pelling KC found that registration under the 1966 Act was not intended to create new substantive rights and thus, the non-assignability of an Award would not be capable of change by registration.

Please read the judgment here.

8. Bali v 1-2 Couriers Limited & Anor [2025] EWCA Civ 1413

Court: Court of Appeal

Date: 10 Nov 2025

Summary

The English Court of Appeal dismissed an appeal from the High Court rejecting an application to extend time for service of a claim form, confirming that a claim form is "issued" for the purposes of the English Civil Procedure Rules (CPR 7.2 and CPR 7.5) on the date it is sealed by the court, not the date on which it is sent out or received by the claimant's solicitors.

The Court of Appeal also emphasised that, when considering an application for an extension of time for service, the court is entitled to examine the wider procedural background, including steps taken, or not taken, to ascertain the status of a claim once it is ready for issue.

Facts

The claim arose out of a road traffic accident in December 2019. The claimant's solicitors were instructed late and lodged a claim form together with a Help with Fees (**HwF**) application on the final day of the limitation period.

Significant delays followed, including delays relating to the processing of the HwF application. On 13 December 2023, the court processed the court fee, allocated a claim number, and sealed the claim form. However, for reasons never satisfactorily explained, the sealed claim form was not sent out by the court office until 2 April 2024 and was not received by the claimant's solicitors until 15 April 2024.

Under CPR 7.5, the claimant had four months from the date of issue to serve the claim form, starting from the seal date of 13 December 2023, that period expired before the claim form was received by the solicitors. No application to extend time for service was made before the expiry of the service period. The claimant applied for an extension of time after expiry. Deputy District Judge Lenon KC refused the application and struck out the claim. The claimant appealed.

The Court of Appeal Judgment

The claimant argued that the claim form was not "issued" until it was sent out by the court office, on the basis that "issue" should bear its ordinary meaning of distribution or making available. The Court of Appeal rejected that submission. It held that CPR 7.2(2), which provides that proceedings are started when the court issues a claim form at the request of the claimant, can only be referring to the act of sealing by a court officer.

Relying on *Walton v Pickerings Solicitors* [2023] EWCA Civ 602, the court confirmed that issue and sealing cannot occur on different dates. The date stamped on the claim form provides certainty and avoids factual disputes as to when a document was sent out or received. In the absence of evidence that the claim form had been backdated, the judge at first instance was entitled to treat the seal date as determinative of the date of issue.

The claimant further argued that the judge had erred by taking into account events occurring before the claim form came into the solicitors' possession, on the basis that a claim form cannot be served until it is received. The Court of Appeal rejected that submission, holding that when assessing whether all reasonable steps had been taken to serve the claim form in time under CPR 7.6, the court is entitled to consider the entire background. Attempts to obtain the sealed claim form were relevant, even if service was not yet possible. Once the preconditions for issue had been met, there was a foreseeable risk that delay in receipt could jeopardise service. A reasonable solicitor would have checked whether the claim form had been issued and sent. The solicitors failed to do so and made a "dangerous assumption" that issuance had occurred. Lady Justice Andrews stated that the solicitors should have been "far more proactive". The judge at first instance had therefore made no error of principle.

HFW Comment

This decision is a stark reminder of the strict approach taken on service of claim forms and the limited scope for relief where deadlines are missed. It confirms, unequivocally, that the date of issue is the date of sealing, not the date of despatch or receipt, and reinforces the importance of procedural certainty.

Of particular significance is the court's emphasis on proactive case management. Even where a claim form has not yet been received, solicitors are expected to monitor progress once a claim is ready for issue and to take reasonable steps to establish its status. Silence from the court is not a safe assumption that a document has not been issued. Where limitation is tight, practitioners should consider chasing the court and, if necessary, making protective applications to extend time for service.

Please read the judgment here.

9. Lakatamia Shipping Co Ltd v Su & Ors [2025] EWCA Civ 1389

Court: Court of Appeal

Date: 5 November 2025

Summary

In this case, the English Court of Appeal considered the intricacies of unlawful means conspiracy and concluded that Mr Su (the defendant), and two individuals connected to the dispute, were liable for unlawful means conspiracy when they played a role in dissipating funds subject to a Worldwide Freezing Order (**WFO**). The Court of Appeal also briefly considered a secondary claim for inducing a breach of rights under a judgment, known as the *Marex* tort.

Facts

The dispute materialised following the dissipation of funds, which were subject to the WFO. The funds were transferred by Maître Zabaldano (a lawyer) on the instructions of Mr Chang, who was ultimately instructed by Mr Su. Mr Chang was a director of several companies which were ultimately beneficially owned by Mr Su and his family.

Lakatamia Shipping Co Ltd (**Lakatamia**), a Liberian company, entered into an agreement with Mr Su, a Taiwanese businessman, to take over Mr Su's investment in derivatives. Pursuant to the agreement, Mr Su was required to repurchase the derivatives but failed to do so. Subsequently, Lakatamia obtained a WFO against Mr Su and several other companies legally / beneficially owned by him to assist with enforcing a judgment debt owed to Lakatamia, which was still in place at the time of the current proceedings.

In separate proceedings brought by Barclays Bank against a company which Mr Su beneficially owned, the court ordered the sale of two villas in Monaco. Following the sale, part of the proceeds was paid to Barclays Bank, while the remaining portion was paid into Maître Zabaldano's client account. Subsequently, these funds were transferred to UP Shipping, a company to which Mr Chang was a director.

Lakatamia's claim consisted of two parts: (1) damages for unlawful means conspiracy against Mr Chang, Maître Zabaldano and Mr Su; and (2) damages for violating the terms of the WFO.

The court of first instance dismissed the claim as it was not satisfied that Mr Chang had knowledge that Mr Su was bound by the WFO, or that he still owed the judgment debt at the time instructions were given to Maître Zabaldano to transfer the remaining Monaco sale proceeds. Therefore, the conspiracy claim failed.

The court also found that the Maître Zabaldano was not caught by the Babanaft proviso as he was outside of the jurisdiction.

Lakatamia appealed the decision.

The Court of Appeal Judgment

The Court of Appeal considered both aspects of Lakatamia's claim, overturning the court of first instance and ultimately finding in favour of Lakatamia.

Unlawful means conspiracy

The Court of Appeal recounted that unlawful means conspiracy requires a combination, arrangement or understanding between two or more individuals with an intention to injure another individual or legal entity. Importantly, the court highlighted that not all conspirators are required to use unlawful means. Therefore, even if Maître Zabaldano acted legally (as he claimed), this would not prevent a finding of unlawful means conspiracy because Mr Su acted unlawfully by instructing the dissipation of funds.

In relation to Mr Chang, the court concluded that he was liable for unlawful means conspiracy on the basis that he was a director of several of Mr Su's companies, and he knew of or turned a blind eye to the judgment debt and freezing order at the time of the sale of the villas.

In relation to Maître Zabaldano, the court also concluded that he was liable for unlawful means conspiracy. The court considered the defence in the first instance hearing, relying on the *Babanaft* proviso in the WFO issued by the English court which stated that *"Except as provided in sub-paragraph (2) below, the terms of this Order do not affect or concern anyone outside the jurisdiction of this Court."* Contrary to the court of first instance, the Court of Appeal concluded that although Maître Zabaldano (who was based in Monaco) would be entitled to rely on the *Babanaft* proviso as a defence against allegations of contempt of court in English courts, he was not entitled to rely on this as a defence to civil liability under unlawful means conspiracy.

In relation to Mr Su, given that Mr Chang and Maître Zabaldano were liable for unlawful means conspiracy, it followed that Mr Su was also liable.

Violation of a freezing order ('Marex tort')

As a result of the Court of Appeal's conclusion that unlawful means conspiracy did exist, it did not consider the second claim for inducing a breach of rights under a judgment (i.e. *Marex* tort). It noted that this is a new and developing area and determined that the Court of Appeal should rule on its application in future cases. The court adopted a similar view on whether a justification defence could be used to defeat claims of Marex tort, again preferring to leave that to future cases in the Court of Appeal, rather than feeling it needed to make a decision in this case; Maître Zabaldano's assertion that he genuinely believed he could and was professionally obliged to make the transfer was therefore not tested.

HFW Comment

This decision clarifies the elements required to establish unlawful means conspiracy. Although it was not an issue in this case, the court briefly confirmed that not all conspirators need have used unlawful means to be found liable for unlawful means conspiracy. This importantly confirms the wide extent of such a claim.

This case also reiterates that being located outside the jurisdiction may be a defence to contempt of court, but may not prevent a finding of unlawful means conspiracy, confirming the potential limits of the *Babanaft* proviso. Therefore, parties located outside of the jurisdiction of the English courts may still find themselves liable for unlawful means conspiracy.

A permission to appeal application was lodged with the Supreme Court on 18 February 2026.

Please read the judgment here.

10. Bellway Homes Ltd v Occupiers of Samuel Garside House [2025] EWCA Civ 1347

Court: Court of Appeal

Date: 23 October 2025

Summary

The English Court of Appeal held that a defendant is under no obligation to acknowledge service of a claim form or to challenge the jurisdiction of the court in circumstances where the claim form has not been validly served.

Facts

The occupants of a building in Essex (the **Claimants**) brought claims against the developer and constructor of the building (**First Defendant**) and the architect (**Second Defendant,** together, the **Defendants**) following a serious fire. By agreement, the parties extended the deadline for the Claimants to file and serve the claim form and the particulars of claim to 4pm on 21 April 2023. A court order confirmed this extension (the **November Court Order**).

On 21 April 2023, the Claimants' solicitors emailed the First Defendant's solicitors requesting a postponement of the deadline by three months. Seven minutes before the deadline, the First Defendant's solicitors refused to agree to the consent order by email. Following the refusal, the Claimants' solicitors purported to serve the claim form by fax. When the fax transmissions failed, they attempted service by DX and placed the claim form in their office reception for collection by the DX courier before the 4pm deadline.

After receiving correspondence from the Defendants stating that the claim form and particulars of claim had not been validly served and that they would seek to strike out the claim, the Claimants applied to the court for a declaration that the claim form had been validly served, alternatively, relief from sanctions for any failure to serve the claim form and particulars of claim in time, and/or for an extension of time.

The High Court judgment

The judge refused to grant the declaration, relief from sanctions, and the extension of time sought by the Claimants. He nevertheless held that the claim form was not automatically struck out.

The Claimants were correct in their submission that, even if the service of the claim form had been out of time, service had taken place later in April 2023, and the Defendants had failed to file an Acknowledgement of Service (**AoS**) and/or make an application under the Civil Procedure Rules (**CPR**)(CPR Part 11) to challenge the court's jurisdiction, in time.

The First Defendant appealed on three grounds:

> 1. The claim form had been served out of time, and the Claimants were not entitled to an extension; therefore, the action could not proceed against the First Defendant.
>
> 2. The judge was wrong to find that the First Defendant was required to file an AoS in circumstances where both the claim form and the particulars of claim were served outside the relevant period.
>
> 3. The judge erred in holding that the court could find that it had no jurisdiction to hear the claim only if the First Defendant had filed an AoS and a made a valid and timely Part 11 application.

The Claimants cross-appealed, arguing that they had given valid service of the claim form by DX in compliance with the CPR r.7.5 by leaving the claim form out for collection by the DX by 4pm.

The Court of Appeal Judgment

The Court of Appeal dismissed the claimants' cross-appeal, holding that it failed, both on the facts and as a matter of law, to show a valid service of the claim form. Neither the claim form nor the particulars of claim had been served in accordance with the November court order.

In determining the appeal, the court considered:

1. whether a defendant who contends that the claim form was not validly served is required to take positive procedural steps such as filing an AoS and/or issuing an application under Part 11; and

2. whether, in the absence of an AoS and a Part 11 application, a defendant is to be treated as having accepted the court's jurisdiction.

The court held that a defendant is not obliged to serve an AoS in circumstances where the claim form has not been validly served in time, as a defendant's subsequent procedural obligations arise only once the claimant's obligations as to service have been complied with. Lord Justice Coulson relied on his decision in *Robertson v Google* [2025] EWCA Civ 1262, explaining that the CPR provisions governing a defendant's obligation to serve an AoS presupposes that the claim form and/or particulars of claim have been validly served. He further emphasised that each procedural step of the CPR builds upon the premise that the previous applicable rule has been complied with.

On the second issue, the court concluded that where a claimant has failed to serve the claim form in time and no extension has been granted, the defendant is not subject to the court's jurisdiction. In the absence of a validly served claim form and an extension of time, and if the defendant does not accept the court's jurisdiction, the proceedings cannot be pursued against the defendant. The court observed that to require a defendant to engage with the process in such circumstances would be "bizarre, illogical and unfair".

The court therefore allowed the First Defendant's appeal, holding that the court below had erred in concluding that the Defendants were required to serve an AoS and file an application under Part 11.

HFW Comment

This decision clarifies a defendant's position where a claim form has not been validly served in time. In such circumstances, a defendant is not subject to the court's jurisdiction and is under no obligation to serve an AoS or make an application under CPR Part 11 to dispute the jurisdiction, which would otherwise have to be made within 14 days of filing an AoS.

Although this was not an issue in the appeal, the judgment also confirms that where a claim form has not been served in time, and the matter is otherwise out of time, the claimant's only remedy is to seek an extension of time under CPR r.7.6. The relief from sanctions regime under CPR r.3.9., as well as the general power of the court to rectify procedural errors under CPR r.3.10, are irrelevant in such context.

Further, in dismissing the cross-appeal, the court established that the methods of service of a claim form identified in CPR r.7.5 require not only a positive act, but also an irrevocable one that cannot subsequently be amended or corrected. The act of leaving a document at the receptionist's desk for collection by a DX courier therefore fell short of compliance with CPR r.7.5., as it could always be retrieved and further amended.

Please read the judgment here.

11. Process & Industrial Developments Limited v The Federal Republic of Nigeria [2025] UKSC 36

Court: Supreme Court

Date: 22 October 2025

Summary

In dismissing the appeal from the English Court of Appeal's judgment, the UK Supreme Court, in its short but key judgment, has confirmed that legal costs awarded to the Federal Republic of Nigeria (**Nigeria**) should be paid in sterling, not in the Nigerian currency of naira. The court held that costs orders differ fundamentally from damages, they are not intended to compensate for loss but to reflect actual billing and payment. Since Nigeria's solicitors invoiced and were paid in sterling, awarding costs in that currency was correct and consistent with legal certainty.

Facts

This appeal arose from Nigeria's successful challenge to two arbitration awards in favour of Process & Industrial Developments Ltd (**P&ID**). The awards, made in 2015 and 2017, totalled US$6.6 billion plus interest for repudiatory breach of contract relating to a gas processing project.

In 2018, P&ID sought to enforce these awards in England. Nigeria resisted enforcement, alleging fraud and public policy violations. Following an eight-week trial, Nigeria prevailed and incurred legal costs of approximately £44 million. The issue in this case was whether those costs should be awarded in sterling or naira.

Nigeria argued for sterling because its English solicitors billed and were paid in sterling. P&ID contended that costs should be in naira, as Nigeria converted naira into sterling to fund the payments. P&ID claimed awarding costs in sterling would create a "windfall" due to the naira's depreciation from 25 billion naira at the time of payment to 95 billion naira at the time of the Supreme Court appeal.

The Commercial Court and Court of Appeal Judgments

The Commercial Court ruled that costs should be awarded in sterling, reasoning that Nigeria's liability and payments were in sterling. The Court of Appeal upheld this decision, emphasising that the costs order should reflect the currency in which the receiving party incurred and discharged its liability. P&ID appealed this decision to the Supreme Court.

The Supreme Court Judgment

The Supreme Court unanimously dismissed the appeal. Lord Hodge and Lady Simler delivered the judgment, supported by Lord Reed, Lord Stephens, and Lord Richards.
The Supreme Court clarified four key points:

1. **Costs orders are not damages.** They are discretionary contributions to litigation expenses, not compensation for financial loss.
2. **Practicality and discretion.** Courts do not investigate how parties fund their legal fees, as doing so would create unnecessary disputes and increase costs.
3. **Legal certainty.** While there is no statutory requirement to award costs in sterling, the usual practice is to award costs in the currency in which the lawyers billed and were paid.
4. **Exceptions possible.** If a party's choice of currency was abusive or intended to profit from exchange rates, the court could refuse to award costs in that currency.

Since Nigeria's lawyers billed and were paid in sterling, and the litigation was conducted in the English courts, the Supreme Court found no reason to award costs in naira. Currency fluctuations were deemed irrelevant.

HFW Comment

This decision highlights the courts' approach that costs orders are about fairness and practicality, and not intended to compensate for currency losses, particularly important where there are exchange fluctuations and currency depreciation, as in the case of Nigeria at the time of this case. It helpfully provides international parties with clarity that English courts will generally award costs in the currency in which the actual billing and payment was used, ensuring consistency and certainty in litigation.

Please read the judgment here.

12. Alta Trading UK Limited (Formerly Known as Arcadia Petroleum Limited) & Ors v Bosworth, Hurley and Kelbrick [2025] EWHC 2724

Court: Commercial Court

Date: 21 October 2025

Summary

In this case, and following the dismissal of a $325million civil fraud trial against them, and the lifting of the related Worldwide Freezing Order (**WFO**) against them, the court ordered an inquiry into the damages (if any) the defendants had suffered as a result of the WFO.

In the inquiry proceedings, the defendants sought to amend their submissions to argue that the claimants should not be able to rely on their own dishonest behaviour to defeat causation of loss arising from the WFO. The claimants opposed this and sought to strike out the dishonesty allegations.

Mr Justice Henshaw ruled that the defendants' argument had a realistic prospect of success and that it would be fair and just in the circumstances to grant permission for most of the amendments. The claimants' strike-out application was dismissed.

At the time of the decision, the court considered it arguable that a general “own wrong” principle, grounded in public policy, might prevent a party from relying on the consequences of its own dishonest conduct to defeat causation. However, the Supreme Court has since confirmed in *King Crude Carriers*[9]*, that* English law does not recognise a freestanding “own wrong” principle, and that courts should avoid applying legal fictions that are not based on established principles.

Facts

In February 2015, alongside issuing claims against the defendants for fraud relating to 144 crude oil transactions between 2007 and 2013, the claimants obtained a WFO against the defendants.

Following a 10-week trial, in January 2025, Mr Justice Henshaw dismissed the fraud claims and discharged the WFO. He directed the claimants to pay damages for the losses suffered by the defendants resulting from the WFO and ordered an inquiry into damages to assess these losses.

The defendants claimed compensation for various losses they argued would not have occurred but for the WFO. They also argued that the allegations made by the claimants in support of the freezing order were known to be false and therefore, the order was obtained dishonestly.

The claimants disputed that any losses were caused by the WFO, arguing instead that they resulted from reputational damage caused by the allegations of fraud in the underlying proceedings. They applied to strike out the dishonesty allegations.

In response, the defendants sought to amend their submissions to argue not only that the claimant's causation defence was wrong on the facts, but also that the claimants should not be permitted to rely on the reputational damage caused by the underlying fraud allegations, advanced dishonestly, to defeat causation. They argued that a general principle of common law exists which precludes a party relying on its own wrong to secure a benefit: the "*own wrong*" principle (*Coudert Brothers v Normans Bay Ltd*[10]).

The claimants argued that the "*own wrong*" principle is not freestanding and the defendants could not rely on it as it did not apply in this scenario (*King Crude Carriers*).

An interim hearing was held to decide whether the defendants' argument had a realistic prospect of success, as a matter of law, and whether the amendments should be allowed and the strike-out dismissed.

The High Court Judgment

Mr Justice Henshaw held that it is arguable that the "*own wrong*" principle reflected a public policy rule capable of applying in any context the court is required to consider causation of loss. The defendants therefore had a realistic prospect of successfully arguing that the claimants should not be permitted to rely on their own wrongdoing to defeat the claims in the inquiry as to the causative effect of the freezing order. On this basis, permission to amend was granted for most changes, and the strike-out application dismissed.

---

[9] King Crude Carriers SA and others v Ridgebury November LLC and others [2025] UKSC 39

[10] Coudert Brothers v Normans Bay Ltd (formerly Illingworth Morris Ltd) [2004] EWCA Civ 215

The Supreme Court has since clarified in *King Crude Carriers* that English law does not recognise a freestanding "own wrong" doctrine, and that courts should not apply generalised public-policy rules or legal fictions that are not established principles of contract, causation or remedies.

The judge noted that this was a developing area of law, particularly given the differing approaches taken by the judges in *Coudert Brothers v Normans Bay Ltd* and that, at the time of giving his judgment in this case, permission to appeal to the Supreme Court had been given in *King Crude Carriers*.

In addition, Mr Justice Henshaw held that the WFO was a distinct event from the making of the claims in the underlying proceedings; capable of having independent effects.

He also emphasised that assessing loss is an 'evaluative judgment' and more than mere fact finding. Fairness and public policy are relevant. In this context, a party who obtained a WFO in proceedings where they made dishonest allegations, may be held liable for damages caused by that order, even if some damage would also have resulted from the underlying litigation.

HFW Comment

This judgment highlights that the law on causation and the application of the "*own wrong*" principle is still evolving. It suggests that the principle may be applicable beyond its traditional context, particularly where dishonesty is involved and public policy considerations arise. It highlights the importance of fairness and public policy and the significant influence they can have on the analysis surrounding causation.

However, the Supreme Court's decision in *King Crude Carriers* has now confirmed that English law does not recognise a freestanding "own wrong" principle, and that arguments of this kind cannot be decided by reference to public-policy rules that are not based on established legal principles.

While this limits the extent to which a party can rely on a generalised "own wrong" rule, it remains open to the court to take account of dishonesty, abuse of process and fairness when assessing causation and loss, including in claims for damages following the discharge of freezing orders.

Please read the judgment here.

13. Advanced Multi-Technology for Medical Industry & Ors v Uniserve Limited [2025] EWCA Civ 1212.

Court: Court of Appeal

Date: 2 October 2025

Summary

At the height of the COVID-19 pandemic in 2020, the first claimant (**Hitex**) entered into a contract with the defendant (**Uniserve**) for the supply of 80 million Type IIR face masks to be delivered in shipments between April and July 2020 (the **Supply Contract**). A parallel commission agreement was entered into with the Second Claimant (**Caramel**) and the Third claimant, Mr Popeck, who had introduced Hitex to Uniserve (the **Commission Contract**).

The Supply Contract made delivery "*time of the essence*". Hitex claimed that Uniserve was in breach of the Supply Contract by failing to collect and pay for 77 million masks (i.e. 80 million minus 3 million that had been delivered), seeking damages of US$23.1 million. Meanwhile, Caramel and Mr Popeck pursued £19.25 million in unpaid commission under the Commission Contract.

Uniserve's defence included the argument that it had lawfully terminated the Supply Contract due to Hitex's failure to fulfil its delivery obligations, which itself constituted a breach.

The High Court Judgment [11]

The court held that:

- Uniserve was not entitled to terminate the contract in June 2020, as Hitex had met its delivery obligations.
- Uniserve wrongfully terminated the Supply Contract in June 2020, amounting to anticipatory breach.
- Hitex had accepted Uniserve's repudiation by ceasing production in July 2020, thereby terminating the Supply Contract.
- There was an available market for the masks.
- Claims under the Commission Contract failed, as commission was only payable on masks delivered to the UK.

Hitex was awarded US$16.94 million in damages.

Interestingly, the judge's reasoning was based on grounds not pleaded by either party, including a finding that Hitex had terminated the Supply Contract by accepting Uniserve's repudiation by conduct. This was contrary to Hitex's own case, which was that it had continued to perform the Supply Contract.

Uniserve was granted permission to appeal on six grounds, while the claimants were granted permission to appeal on four grounds.

The Court of Appeal Judgment [12]

The Court of Appeal overturned the first instance decision and allowed Uniserve's appeal, on the following grounds:

- The judge was wrong to decide the case on a basis not pleaded or argued by either party.
- In particular, the Court of Appeal noted the following:

[11] [2024] EWHC 1725 (Ch)

[12] [2025] EWCA Civ (1212)

- "*The judge said when refusing permission to appeal that he had taken the view that neither side's pleading or argument met the facts as he found them to be and that it was necessary for him to interpret those facts for himself. However, that was a mistake*."
- Hitex's own evidence showed it did not have sufficient stock to meet cumulative delivery obligations on key dates (i.e. 21 June and 5 July 2020), taking into account the 15% reserve for the Jordanian Government.
- As time for performance of its delivery obligations was of the essence, Hitex was in breach of the Supply Contract, hence Uniserve was entitled to terminate the Supply Contract on 11 July 2020.
- Even if Uniserve was not entitled to terminate the Supply Contract, Hitex could not recover damages for 77 million masks in circumstances where it never had 77 million masks available for delivery in the first place. Hitex advanced a "retendering" argument (i.e. it could retender the same masks for each succeeding shipment), which the Court rejected on the basis that the Supply Contract was not severable and that Hitex had to maintain cumulative total quantities.

A last-minute attempt by Hitex to claim entitlement to damages for specific shipments (where it did have sufficient masks) was too late, as the claimants had never pleaded nor raised this point in the lower court or in their Respondent's Notice, hence this point could not be considered on appeal.

Given that Uniserve was entitled to terminate the Supply Contract, the Court of Appeal dismissed the claimants' cross-appeal on the alleged unpaid commission appeal.

HFW Comment

1. The Court of Appeal re-affirmed the principle that judges must decide cases within the bounds of the parties' pleadings, even if the judge believes an alternative theory better fits the facts. The first instance judge's decision to find that Hitex had accepted Uniserve's repudiation by conduct, despite this being contrary to Hitex's own case that it had kept the Supply Contract alive, was described by the Court of Appeal as a "*mistake*". As the court noted [13]

   "In my view the judge was not entitled to find for the claimant on the basis of the third man theory. It is fundamental to our adversarial system of justice that the parties should clearly identify the issues that arise in the litigation, so that each has the opportunity of responding to the points made by the other. The function of the judge is to adjudicate on those issues alone. The parties may have their own reasons for limiting the issues or presenting them in a certain way. The judge can invite, and even encourage, the parties to recast or modify the issues. But if they refuse to do so, the judge must respect that decision. One consequence of this may be that the judge is compelled to reject a claim on the basis on which it is advanced, although he or she is of the opinion that it would have succeeded if it had been advanced on a different basis. Such an outcome may be unattractive, but any other approach leads to uncertainty and potentially real unfairness "

2. Pleadings matter. Parties must plead all aspects of their case clearly and fully or risk losing the opportunity to do so. Hitex's failure to plead a fallback case seeking damages for specific shipments where it had sufficient stock meant that the Court of Appeal could not entertain the argument on appeal. The same applied to Hitex's attempt to argue that Uniserve's conduct estopped it from insisting on cumulative delivery, when

[13] citing *Al-Medenni v Mars UK Ltd* [2005] EWCA Civ 1041, para 21, in a passage applied in *Satyam Enterprises Ltd v Burton* [2021] EWCA Civ 287, [2021] BCC 640

no such case was pleaded or advanced at the trial. As the Court of Appeal noted in both its postscript and main judgment, "*it is too late for such a claim [or case] to be advanced for the first time on appeal* ".

3. The Court of Appeal's rejection of Hitex's argument that it could "retender" the same masks for successive deliveries is commercially sensible. As the court put it: "…*as a matter of common sense, Hitex cannot recover damages for Uniserve's failure to accept 77 million masks when it never had 77 million masks available for delivery in the first place*".

Given that the Supply Contract was not severable (i.e. each shipment was part of a cumulative delivery obligation), Hitex was required to maintain sufficient stock to meet the total quantity due on each delivery date, not just the next instalment. This meant that undelivered masks from earlier shipments could not be reused to satisfy later ones. This aligns with the principle that loss of bargain damages requires the claimant to be in a position to perform.

The Court of Appeal concluded:

"*That is fatal to any notion that Hitex was entitled to 'retender' the same masks for each succeeding shipment* ". This outcome is reassuring; it prevents sellers from recycling undelivered stock to cover up non-performance.

A HFW team, led by Andrew Williams (Global Head of Commercial Litigation) acted for the defendant, Uniserve, in this case.

Please read the judgment here

14. Commercial Court Transparency Pilot

Period of the Pilot: 1 January 2026 - 31 December 2027

Courts affected: Commercial Court; London Circuit Commercial Court (KBD); Financial List (Commercial Court and Chancery Division).

Summary

The Civil Procedure Rules now incorporate Practice Direction 51ZH – Access to Public Domain Documents, which introduces the Transparency Pilot (**Pilot**), which enables non-parties to access more easily certain documents filed in proceedings in the above-mentioned courts, and which are in the public domain. Whilst it does not change the law regarding the types of documents that can become publicly available, it streamlines the procedure for how non-parties can obtain them.

Clients, and those referred to will wish to review how to protect their confidential data. **Eight categories of document fall within the scope of the Pilot:**

1. Skeleton arguments;
2. Written opening submissions;
3. Written closing submissions;
4. Other written submissions provided to a judge and relied upon in the hearing;
5. Witness statements and affidavits relied upon at trial and application hearings (**excluding** appended documents and annexes);
6. Expert reports relied upon at trial and application hearings (**including** annexes and appendices);
7. Any other documents critical to the understanding of the hearing, ordered by the judge to be a Public Domain Document; and
8. Any documents agreed by the parties to be Public Domain Document.

Definition of "Public Domain Documents"

This Practice Direction only applies to documents which become Public Domain Documents.

A Public Domain Document is a document that has been filed at one of the above-mentioned courts and used, or referred to, at a public hearing.

In addition, where a Public Domain Document refers to another document, provided it falls into one of the categories listed above, that document will also become a Public Domain Document.

Access to documents

Under the Pilot, parties, and non-parties to proceedings can access documents.

Documents are made public by the parties filing them on the courts' E-Filing Platform and designating them "Public". This means they will appear on the "Public Search" section of the E-Filing platform, and available for public viewing.

The timeframe in which parties file the documents depends on the type of document:

(1) Skeleton arguments and opening/closing submissions need to be filed within 2 clear days of being relied upon.

(2) Other categories of documents must be filed fourteen days after the document is used or referred to in a hearing.

If parties do not file the documents, the court can order that they are filed and bring proceedings for contempt of court in the case of continued non-compliance.

Exceptions

1. This Practice Direction does not apply in proceedings where one party is not legally represented and that party has not filed a document using the court's E-Filing Platform.

2. Documents covered by a pre-existing confidentiality order remain confidential and are not affected by this Practice Direction. The court's power to make further confidentiality orders is unaffected by this Practice Direction.

3. The court can make a "Filing Modification Order". The court's power to make such an Order is broad, but examples include:

a. An Order that a non-party cannot obtain a copy of a document; and

b. An order that the document only needs to be filed once it has been edited or redacted.

Such an order can be made on the court's own initiative, upon the application of a party to the proceedings, or a non-party who is named in the document.

HFW Comment

The Guidance note on this Practice Direction makes clear that the intention behind and aim of the Practice Direction is to provide "[e]asier access to documents in the public domain" and is being implemented at a time when there is increasing emphasis on open justice. This Pilot does go some way to enhance transparency and encourage consistency in the availability of Public Domain Documents, especially with regards to non-parties. However, it also places additional administrative burdens on parties to court proceedings and means that they will have to apply enhanced scrutiny to their strategic decision-making about the inclusion of sensitive material in documents that are likely to become Public Domain Documents.

It will be interesting to see if any changes to the scope of the pilot are implemented after the review, anticipated to be conducted in the summer 2026.

Please access the Practice Direction here

Please access the accompanying guidance note here

15. Fang Ankong v Green Elite Ltd (Virgin Islands) [2025] UKPC 47

Court: Privy Council Appeal

Date: 30 September 2025

Summary

The Privy Council dismissed an appeal by a former director (**Mr Fang**) and his BVI holding vehicle HWH Holdings Ltd (**HWH**) against orders requiring them to account to Green Elite Ltd (**Green Elite**) for HK$150m in share-sale proceeds and a further HK$8.7m in dividends that had been diverted away from the company and later paid to "intended beneficiaries".

The Privy Council re-affirmed a first-principles rule of company fiduciary law, namely that directors cannot transfer company assets to themselves or others absent proper authority and any purported reliance on a Duomatic-style[14] informal shareholder understanding must be shown to extend to the specific transactions undertaken. In this case, although Green Elite had been incorporated to facilitate an employee incentive scheme, key implementation terms (including price, lock-up, timing) were expressly left for future agreement and never settled. That was fatal to any claim of Duomatic assent or "proper purpose" authority. Section 175 of the BVI Business Companies Act issue therefore did not need to be determined.

Facts

Green Elite Ltd was established in the British Virgin Islands in 2010 as a joint venture vehicle, intended to facilitate an employee share incentive scheme for three key individuals connected to the principals of a cross-border scrap metal business. The company's shares in Chiho-Tiande Group Ltd (**CT**) were transferred to Green Elite by its two shareholders, Delco (representing the Dutch interests) and HWH (controlled by Mr Fang, a principal in the business), in anticipation of a Hong Kong IPO.

Despite the stated purpose, the essential terms of the incentive scheme, including the price to be paid by beneficiaries and any lock-up period, were left unresolved. In 2014, Green Elite sold its CT shares for HK$150 million. Rather than being paid to Green Elite, the sale proceeds were transferred to Mr Fang's personal account, without board approval or disclosure to Delco. Over the following years, Mr Fang distributed the proceeds, along with approximately HK$8.7 million in dividends, to himself, other directors, and the intended beneficiaries.

Upon learning of the unauthorised distribution, Delco applied to wind up Green Elite on just and equitable grounds, asserting that the company had lost its substratum. The winding-up order was granted, and the joint liquidators commenced proceedings against Mr Fang and the three key employees alleging that the payments were made in breach of fiduciary duty and without proper shareholder authority.

In response, Mr Fang and one of the employees contended that the company's sole purpose was to reward the key employees, and that their actions were consistent with that purpose. Alternatively, they argued that both shareholders, HWH and Delco, had consented to the distributions, amounting to Duomatic assent. The trial judge found in favour of Green Elite, ordering the defendants to account for the diverted funds. The Eastern Caribbean Court of Appeal upheld this decision, leading to the appeal before the Privy Council.

The Privy Council's Judgment

In this case, the Privy Council examined:

1) The "basic tenet"- no self-payment without authority.

The Privy Council upheld the trial judge's application of *In re George Newman*[15] that directors have no right to pay themselves or to make gifts of corporate assets, unless authorised by the constitution or a properly conferred shareholder decision, specifically when Mr Fang personally received the HK$150 million sale proceeds into his own bank account and subsequently distributed them; similarly, dividends were diverted to directors and/or HWH. The burden lay on the directors to show authority but in this case they could not. The judge found no dishonesty, but noted that honest belief does not grant authority, nor cure a fiduciary accounting breach.

14 Re Duomatic Ltd [1969] 2 Ch 365

15 [1895] 1 Ch 674

2) Proper purpose could not be validated from an inchoate scheme.

It was common ground that Green Elite existed to implement an employee share incentive. Crucially, implementation terms were to be agreed later between the two shareholders (Delco/HWH), including (i) any price to be paid by beneficiaries and (ii) a lock-up period. Those were not "mere mechanics" but core terms determining whether, when, and on what consideration value could be extracted. The directors had no unilateral mandate to "fill in" these essentials. Accordingly, diverting proceeds/dividends could not be characterised as exercising general management powers for a proper purpose.

3) No Duomatic assent to the acts actually taken.

The Duomatic principle treats the unanimous consent of all voting shareholders as equivalent to a resolution at a general meeting, provided the matter is intra vires and lawful. On the evidence, the only assent proved was a broad agreement to use Green Elite as a vehicle for a scheme, subject to later agreement on essential terms. There was no assent by Delco to: (i) the director's personal receipt/retention of HK$150m; (ii) the specific distributions to directors/beneficiaries; or (iii) the transfer of dividends to directors/HWH. The Court of Appeal was correct that, even if the first-instance judge was misguided in using contract-formation language, the analysis addressed the right question: did the shareholders intend to bind themselves as if by resolution to these specific steps? The Board found that they did not.

4) Section 175 BCA not applicable.

Given the fiduciary breaches and absence of Duomatic authorisation, the Privy Council found it unnecessary to decide the section 175 point. Consequently, the appeal was dismissed and the orders to account stood.

HFW Comment

This decision reinforces the principle that directors are limited in their authority to distribute corporate property without clear and unanimous shareholder approval.

The judgment is notable for its disciplined application of the fiduciary principles, coupled with a pragmatic approach to informal shareholder consent, making it clear that intentions do not equate to authorisations. The judgment emphasises the importance of documenting both the purpose and the process, not merely the vehicle. Accordingly, where incentives are concerned, parties should agree key parameters in advance and record shareholder consent "as if by resolution" in writing.

Please read the judgment here.

Contacts

ADAM RICHARDSON
Partner, Singapore
T +65 6411 5327
E adam.richardson@hfw.com

ALISTAIR FEENEY
Partner, London
T +44 20 7264 8424
E alistair.feeney@hfw.com

ANDREW WILLIAMS
Partner, London
T +44 20 7264 8364
E andrew.williams@hfw.com

ANNE-MARIE OTTAWAY
Partner, London
T +44 20 7264 8054
E anne-marie.ottaway@hfw.com

BARRY VITOU
Partner, London
T +44 20 7264 8050
E barry.vitou@hfw.com

BRIAN PERROTT
Partner, London
T +44 20 7264 8184
E brian.perrott@hfw.com

CHRISTOPHER FOSTER
Partner, London
T +44 20 7264 8088
E christopher.foster@hfw.com

DAMIAN HONEY
Partner, London
T +44 20 7264 8354
E damian.honey@hfw.com

DAN PERERA
Partner, Singapore
T +65 6411 5347
E dan.perera@hfw.com

DAVID SUTTNER
Partner, Perth
T +61 (0)8 9422 4731
E david.suttner@hfw.com

EDWARD BEELEY
Partner, Hong Kong
T +852 3983 7737
E edward.beeley@hfw.com

GAVIN VALLELY
Partner, Melbourne
T +61 3 8601 4523
E gavin.vallely@hfw.com

GEOFFREY CONLIN
Partner, Rio de Janeiro (CAR)
T +55 (11) 3179 2902
E geoffrey.conlin@hfw.com

GEORGE LAMPLOUGH
Partner, Hong Kong
T +852 3983 7776
E george.lamplough@hfw.com

HFW LITIGATION

GUY MARRISON
Partner, London
T +44 (0)20 7264 8006
M guy.marrison@hfw.com

JAMES JORDAN
Partner, Singapore
T +65 8123 3558
E james.jordan@hfw.com

KAREN CHEUNG
Partner, Hong Kong
T +852 3983 7628
E karen.cheung@hfw.com

KEVIN WARBURTON
Partner, Hong Kong
T +852 3983 7629
E kevin.warburton@hfw.com

MAURICE THOMPSON
Partner, Melbourne
T +61 (0)3 8601 4503
E maurice.thompson@hfw.com

MICHAEL BUFFHAM
Partner, London
T +44 (0) 20 7264 8429
E michael.buffham@hfw.com

MICHAEL BUISSET
Partner, Geneva
T +41 22 322 4801
E michael.buisset@hfw.com

MICHAEL MAXWELL
Partner, Perth
T +61 (0)8 9422 4701
E michael.maxwell@hfw.com

NEIL ADAMS
Partner, London
T +44 7264 8418
E neil.adams@hfw.com

NICK BRAGANZA
Partner, Dubai
T +971 4 423 0587
E nicholas.braganza@hfw.com

NICOLA GARE
Knowledge Counsel
(Dispute Resolution), London
T +44 20 7264 8158
E nicole.gare@hfw.com

OWEN WEBB
Partner, Melbourne
T +61 (0)3 8601 4526
E owen.webb@hfw.com

PAUL BUITENDAG
Partner, Melbourne
T +61 (0)3 8601 4522
E paul.buitendag@hfw.com

PAUL D EVANS
Partner, Perth
T +61 8 9422 4703
E pauldevans@hfw.com

HFW LITIGATION

PETER MURPHY
Partner, Hong Kong
T +852 3983 7700
E peter.murphy@hfw.com

PETER SADLER
Partner, Perth
T +61 (0)8 9422 4702
E peter.sadler@hfw.com

RANJANI SUNDAR
Partner, Sydney
T +61 (0)2 9320 4609
E ranjani.sundar@hfw.com

RENA SOLOMONIDIS
Partner, Melbourne
T +61 (0)3 8601 4501
E rena.solomonidis@hfw.com

RICHARD JOWETT
Partner, Melbourne
T +61 3 8601 4521
E richard.jowett@hfw.com

RICK BROWN
Partner, London
T +44 20 7264 8461
E rick.brown@hfw.com

SARAH HUNT
Partner, Geneva
T +41 22 322 4816
E sarah.hunt@hfw.com

SCOTT CRUICKSHANK
Partner, BVI
T +1 (284) 494 6048
E scott.cruickshank@hfw.com

STEPHEN THOMPSON
Partner, Sydney
T +61 (0)2 9320 4646
E stephen.thompson@hfw.com

SUZANNE MEIKLEJOHN
Partner, Singapore
T +65 6411 5346
E suzanne.meiklejohn@hfw.com

VINCENT BÉNÉZECH
Partner, Paris
T +33 1 44 94 40 50
E vincent.bénézech@hfw.com

hfw.com

Americas | Europe | Middle East | Asia Pacific