IN THE DUBAI INTERNATIONAL FINANCIAL CENTRE COURTS

IN THE COURT OF FIRST INSTANCE

BETWEEN

ROMAN ABRAMENKO

Claimant

and

IGOR CHUPRIN

Defendant

ORDER WITH REASONS OF H.E. JUSTICE ANDREW MORAN

PENAL NOTICE

IF YOU ROMAN ABRAMENKO AND OR YOU IGOR CHUPRIN BREACH ANY OF THE UNDERTAKINGS YOU HAVE RESPECTIVELY GIVEN TO THE COURT IN SCHEDULE A AND SCHEDULE B HERETO YOU MAY EACH BE HELD TO BE IN CONTEMPT OF COURT AND MAY BE REFERRED TO THE ATTORNEY GENERAL OF DUBAI, FINED OR HAVE YOUR ASSETS SEIZED.

ANY OTHER PERSON WHO KNOWS OF THIS ORDER AND THE UNDERTAKINGS GIVEN BY EITHER OF YOU AND WHO DOES ANYTHING WHICH HELPS OR PERMITS EITHER OF YOU TO BREACH THE TERMS OF YOUR UNDERTAKINGS GIVEN HEREUNDER MAY ALSO BE HELD TO BE IN CONTEMPT OF COURT AND MAY BE REFERRED TO THE ATTORNEY GENERAL OF DUBAI, FINED OR HAVE THEIR ASSETS SEIZED.

UPON the Part 8 Claim Form dated 18 December 2024 (the "Claim Form")

AND UPON the Claimant's Application No. CFI-095-2024/1 dated 30 December 2024 as amended on 8 January 2025 for an interim injunction (the "Injunction Application")

AND UPON the Amended Claim Form dated 17 January 2025 (the "Amended Claim Form")

AND UPON hearing Counsel for the Applicant and Counsel for the Respondent at a hearing held on 17 January 2025 before H.E. Justice Michael Black KC (the "Hearing")

AND UPON the Defendant's Application No. CFI-095-2024/2 dated 20 January 2025 for an order for fortification of the Claimant's undertaking (the "Fortification Application")

AND UPON the Order of H.E. Justice Michael Black KC dated 24 January 2025 ordering that the Injunction Application shall be adjourned and determined at the Return Date

AND UPON hearing Counsel for the Applicant and Counsel for the Respondent at the Return Date held on 30 January 2025 before H.E. Justice Andrew Moran (the "Return Date Hearing")

AND UPON consideration of the evidence and relevant supporting documents, filed by the Parties on the Injunction Application and Fortification Application contained in Version 4 of the Hearing Bundle placed before the Court at the Return Date Hearing

AND UPON the Court accepting the undertakings of the Claimant set forth in Schedule A and of the Defendant set forth in Schedule B to this Order as signed by each of them

AND UPON the Order of H.E. Justice Andrew Moran dated 5 February 2025 (the "Order" or "Order dated 5 February")

AND UPON the parties' undertakings filed on 6 February 2025

IT IS HEREBY ORDERED THAT:

1. Upon the Claimant complying with paragraph 2 of this Order and giving the undertakings required in Schedule A hereto within 24 hours of the issuing of the Order dated 5 February; and upon the Defendant also giving the undertakings conditionally offered to the Court at the Return Date, in Schedule B hereto, (if the Court was minded to make any order of injunction against him), within 24 hours of the issuing of the Order dated 5 February, the Injunction Application shall be and is hereby adjourned generally to abide the outcome of the trial of issues ordered in paragraph 3 of this Order, or until any further order.

2. The Claimant shall within fourteen days of the date of the Order dated 5 February, fortify his undertakings given in Schedule A hereto, by depositing the amount of AED 10,000,000 into the Court Account with Emirates NBD. In the event of a failure by the Claimant to give the undertakings required of him in Schedule A hereto in the time granted for him to do so, or his failure to comply with this Order requiring fortification of them, the Defendant shall be released from his undertakings in Schedule B hereto. In the event of the Defendant failing to give the undertakings in Schedule B, the Court will consider whether to make an order of injunction in the terms of the undertakings required.

3. The Claims in these proceedings shall no longer proceed by way of the Alternative Procedure in Part 8 of the Rules of the Dubai International Financial Centre Courts (the "RDC") but shall henceforth proceed in accordance with Part 7 of the RDC and directions to be agreed between the Parties and approved by the Court or ordered by it.

4. There shall be a speedy trial of the issues, presently defined, as (i) whether the Declaration of Trust dated 10 November 2016, is a sham and a nullity; or creates a valid and enforceable trust in accordance with its terms; and (ii) who is the true ultimate beneficial owner of the shares in the companies: Zotobi Management DMCC ("Zotobi") KamaGames International Group Limited ("KGIGL"), and Kama Games Limited ("KGL") (the "Issues").

5. The Parties shall immediately confer by their representatives to agree directions for the speedy trial of the Issues, with suitably foreshortened time lines for pleadings, service of evidence, disclosure, any further necessary procedural steps, and listing for a hearing, to take place (indicatively) not later than three months from the date of the Order dated 5 February; or such other date and time as the Parties may agree and propose and the Court may accommodate; or as may be determined by the Court.

6. In the event the Parties are unable to agree such directions within seven days of the date of the Order dated 5 February, they shall submit their respective proposals for directions to the Court, with short reasons for their approval and adoption by the Court.

7. There will be a further hearing in this matter on a date to be agreed by the Parties and/or fixed by the Court in default of agreement, which will be a case management hearing to perfect (if necessary) the definition of the Issues and give any further directions for their speedy trial as may then be required.

COSTS

8. The costs of the Injunction Application and the Fortification Application are reserved to the Judge hearing the Trial of the Issues.

INTERPRETATION OF THIS ORDER

9. A Party who has undertaken not to do something must not do it himself or in any other way. He must not do it through others acting on his behalf or on his instructions or with his encouragement.

PARTIES OTHER THAN THE CLAIMANTS AND DEFENDANTS

Effect of this Order

10. It is a contempt of court for any person notified of this Order knowingly to assist in or permit a breach of the Parties' undertakings set forth at Schedules A and B to this Order. Any person doing so may be referred to the Attorney General of Dubai, fined or have their assets seized.

Persons outside the DIFC

11. Except as provided in paragraph 12 below, the terms of this Order and the undertakings of the Claimant and Defendant to the Court recorded in it, do not affect or concern anyone outside the jurisdiction of this Court.

12. The terms of this Order including the undertakings of the Claimant and Defendant to the Court recorded in it, will affect the following persons in a country or state outside the jurisdiction of this Court:

(a) the Claimant and Defendant or their servants or agent(s) appointed by power of attorney;

(b) any person who:

i. is subject to the jurisdiction of this Court; and

ii. has been given written notice of this Order and the undertakings of the Claimant and Defendant to the Court recorded in it, at their residence or place of business within the jurisdiction of this Court; and

iii. is able to prevent acts or omissions outside the jurisdiction of this Court which constitute or assist in a breach of the terms of this Order and/or the undertakings of the Claimant and Defendant to the Court recorded in it.

Issued by:
Hayley Norton
Assistant Registrar
Date of issue: 13 February 2025
At: 11am

SCHEDULE OF REASONS

Introduction and Background

1. The relevant alleged background to this dispute before the Court, up to a Declaration of Trust of 10 November 2016, on the validity or nullity of which the dispute turns, can best be taken from the Defendant's account of it in evidence, as summarised in his skeleton argument. The Claimant has provided little in the way of background evidence to explain how and why the allegedly valid Trust came into being, and he advances his case on the simple assumption that the Trust is valid - contrary to the Defendant's case and evidence infra to the contrary, that it is a sham, as explained in more detail below.

2. Mr Chuprin is the sole shareholder of Zotobi, a company registered in the Dubai Multi Commodities Centre free zone ("DMCC"), and KamaGames International Group Limited ("KGIGL") a company registered in Cyprus. These companies are used to operate an online gaming business. Mr Abramenko is a lawyer admitted to practice before the Bar of New York. According to Mr Chuprin, Mr Abramenko has acted as a legal advisor both to the business and to Mr Chuprin personally. See Chuprin 2 12-13 [HB/89].

3. It is the Defendant's case that in May 2016, Mr Abramenko acted as Mr Chuprin's lawyer in relation to a pre-nuptial agreement with his now wife (Chuprin 2 15 [HB/89]). As part of this agreement, Mr Abramenko advised Mr Chuprin to execute, on 10 November 2016, a DIFC law trust deed, pursuant to which Mr Chuprin's shares in Zotobi were said to be held in trust for a Mr Misevich. A Mr Vladimir Sarapulov ("Mr Sarapulov") was said to be Protector of the Alleged Trust, with powers to remove and replace the trustee. [HB/268]

4. It is Mr Chuprin's position that the Alleged Trust was a sham, designed to protect his assets from his wife in the event of a divorce. None of the parties involved intended that Mr Misevich in fact acquire a beneficial interest in the shares (Chuprin 2 16 [HB/90]).

5. In these Part 8 Proceedings, the Claimant has made the Injunction Application before the Court, in which he seeks interim orders of injunction against the Defendant. The orders sought effectively seek to prevent him from exercising any control whatsoever over the management and operations of Zotobi KGIGL and KGL (the "Companies"). They would, as the Defendant correctly contends at paragraph 23.1 of his Skeleton Argument [HB/949], *"effectively function as a mandatory injunction"* requiring positive action to hand over control of the Companies to the Claimant.

6. Mr Chuprin is indisputably the registered legal owner of the shares in the Companies. He has exercised control of the Companies to a significant degree and in significant respects until this dispute arose.

7. The Part 8 Claim itself is founded on an allegation that Mr Chuprin held the shares in Zotobi and KGIGL (although the shares in KGIGL are not included in the definition of the Trust Fund [HB/280]) legally but not beneficially, under an allegedly valid and binding Declaration of Trust entitled the IC Trust [HB/268] as Settlor and Trustee, for the benefit of a sole beneficiary, one Vadim Misevich. As noted above, Viacheslav Sarapulov is named as the Protector of the Trust, with powers (inter alia) of replacement of the Trustee. It is alleged that he has lawfully exercised that power of replacement, to remove Mr Chuprin as Trustee on 4 November 2024 [HB/420], and replaced him with Mr Abramenko. On that basis of authority, Mr Abramenko seeks the following relief in his Particulars of Claim [HB/24-25]:

> "1. Declaration of Trustee Authority: A declaration confirming the Claimant's lawful appointment as Trustee and his authority over the Trust's assets, especially highlighting Zotobi Management Limited DMCC and KamaGames International Group Ltd.
>
> 2. Ownership and Control Transfer: The Claimant seeks: Management Limited DMCC and Kama Games International Group Ltd within 14 days of the Court's order. Alternatively, should the Defendant fail to comply, an order directing the DMCC Authority to update the ownership records for Zotobi Management Limited DMCC autonomously within 14 days from notification by the Claimant, ensuring uninterrupted operational control. Comprehensive orders for the Defendant to transfer all operational and administrative control pertaining to the aforementioned entities to the Claimant within 14 days of the Court's order.
>
> 3. Provision of Records: An order compelling the Defendant t immediately provide all relevant Trust related documents to prevent further governance disruptions, with a compliance deadline of 7 days from the issuance of the Court's order.
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> 4. Judicial Oversight: An order for judicial oversight to enforce compliance within a specified, expedited timeline as outlined above due to the urgent nature of the trust's operational needs."

8. Mr Chuprin's answer to the claim for relief and the Injunction Application, is and from the outset has been, that the trust is a sham and was created for the reasons explained above; and that in consequence it is a nullity and of no effect. It confers no right or interest on Mr Misevich in the Companies or their shares, and no power on Mr Sarapulov to appoint Mr Abramenko as a Trustee entitled to control the Companies, of which he, Mr Chuprin, is the sole legal and beneficial owner. He contends that the Declaration of Trust, made on November 10, 2016, was a sham; created on the advice of Mr Abramenko, in order to protect his assets in conjunction with, and subsequent to, a Pre-Nuptial Agreement entered into with his wife-to-be Maria Eleni Vastou, on 16 May 2016.

9. Consistently with the relief sought in the Particulars of Claim, the Claimant has made the Injunction Application [HB/31] seeking that:

> "1. An interim injunction be issued to restrain the Defendant, Mr. Igor Chuprin, or any third party from:
>
> a. Making any changes to the governance, structure, or operations of Zotobi Management Limted DMCC (DMCC Registration No. 190200) and KamaGames International Group Ltd (Cyprus Registration No. HE307031).
>
> b. Interfering with the admnistration of the IC Trust's assets, pending the final detemination of substantive proceedings under Claim No. CFI-095-2024, filed on Decerrber 18, 2024.
>
> 2. The Defendant be ordered to provide a written undertaking to comply fully with the terms of this injunction.

3. The Defendant be restrained from further interference with Trust governance and operations until the conclusion of the substantive proceedings."

Although the relief sought was modified and expanded in the Claimant's skeleton argument, the Claimant's counsel indicated [T/47] that he would be content with and seeks, orders of injunction in the terms found in a draft order prepared by H.E. Justice Michael Black KC (which was never issued) at [HB/53] viz.

"THAT the Defendant whether acting by himself, his servants, agents, or any of them or otherwise howsoever must not:

i) Make any changes to the governance, structure, or operations of Zotobi Management Limited DMCC (DMCC Registration No. 190200) and KamaGames International Group Ltd (Cyprus Registration No. HE307031), including but not limited to financial transactions, transfer of assets, or decision-making authority

ii) Interfere with the administration, financial management, or day-to-day operations of Zotobi Management Limited DMCC and KamaGames International Group Ltd."

Accordingly, the Court now treats the Injunction Application as an application seeking orders in those terms of the draft.

10. In mandatory support of the Injunction Application, the Claimant has offered the usual undertaking and indemnity as to damages. In response to that undertaking offered, the Defendant has made the Fortification Application on the grounds summarised at Section D of his Skeleton Argument [HB/957].

The unsuitability of the Part 8 Procedure

11. I deal with this important matter at the outset so that these proceedings travel along the proper track.

12. It is plain and obvious, including from all of the evidence filed in the proceedings on both sides, that there are two straightforward issues in these proceedings, which are identified in the order above, that depend upon a determination of a substantial factual dispute between the Parties. It is also likely that this substantial factual dispute must have been plain and obvious to the alleged beneficiary, Mr Misevich, and his legal representatives (and probably to Mr Abramenko and his lawyers), on 9 December 2024, before these Part 8 proceedings were commenced. Mr Chuprin's representatives, Bracewell (UK) LLP, wrote on that date to Mr Misevich's lawyers, Hamdan Al Shamsi, (who had allegedly been involved in the execution of the Declaration of Trust on Mr Abramenko's instructions) stating as follows [HB/452]:

"In relation to the substance of your letter, the Trust Deed, and the trust it purports to settle, are shams and, as such, are unenforceable. Mr Misevich is well aware of this, which is why he has at no point in the past eight years made any requests of our client in relation to the purported trust. Consequently, Mr Misevich has no enforceable rights as the purported Beneficiary of the Trust or otherwise."

13. The allegation that the Trust Deed was a sham could not have been made clearer than it was on the 18 December 2024 (the day the proceedings were commenced) by Bracewell's letter of that date [HB/462] to Mr Abramenko's; lawyer, Kashwani & Co, under the bold heading, **"The IC Trust is a Sham"**.

14. For these reasons, the proceedings should either never have been commenced using the Alternative Procedure under Part 8 of the RDC and/or should certainly not continue under that procedure. Whilst there is a substantial dispute of fact, as just illustrated, it is very closely confined to two issues, which in my clear view, ought to be capable of fair, speedy and efficient determination. The orders at paragraphs 3 and 4 above, have accordingly been made in exercise of the Court's extensive powers of case management, in order to best serve the overriding objective.

The procedural course of the Injunction Application

15. The Claimant's conduct and approach (or that of his Lawyers - if it was their fault) in bringing this application is material to the Court's exercise of its discretion in the granting of an equitable protective remedy by way of an order of injunction. The record speaks for itself and demonstrates an egregious failure on the part of the Claimant, to make full and frank disclosure in the making of the Injunction Application in the first place, on an urgent, without notice basis before H.E. Justice Michael Black KC, on 17 January 2025.

16. The procedural facts are as set out in the Defendants skeleton argument and may be summarised thus.

17. The Injunction Application was first listed for a without notice hearing before H.E. Justice Michael Black KC on 17 January 2024. Due to an error of dissemination in the Registry, Mr Chuprin was sent an invitation link to the Hearing, and he instructed his legal representatives to attend. At the Hearing, it quickly became apparent that there had been a serious breach by Mr Abramenko of his duty of full and frank disclosure - among other things, no mention had been made of the extensive correspondence sent on behalf of Mr Chuprin setting out his defence to the Claim. In addition, as set out below, there is evidence that Mr Abramenko sought deliberately to mislead the Court, by claiming that there had been no response at all from Mr Chuprin.

18. As recounted at paragraphs 12-16 of the Defendant's skeleton argument [HB/947], it seems that on 25 October 2024, Mr Misevich sought to claim an interest under the alleged Trust, requesting the Defendant to hand over claimed trust assets to a new trustee. This was followed by the exercise of the alleged power of removal and replacement of a trustee by the alleged Protector and notice of the fact that he had been removed as Trustee was given to Mr Chuprin. This was followed by the correspondence referred to and described in paragraphs 12 and 13 above.

19. On 30 December 2024 - unbeknown to Mr Chuprin at the time - Mr Abramenko issued the Injunction Application against Mr Chuprin on an urgent without notice basis. Mr Abramenko did not mention, in his evidence, that Mr Chuprin (via Bracewell) had responded to his requests to deliver up alleged trust property, and had alleged that the Alleged Trust was a sham. On the contrary, at Abramenko 1 6 [HB/66], Mr Abramenko stated that in response to his lawyer's request to deliver up trust property to the new trustee, that as of 27 December 2024, *"no contact has been established"* with Mr Chuprin. He bolstered that assertion with a reference to him sending a WhatsApp message requesting compliance with the

law, and stating, *"Mr Chuprin has never replied"*. Even if it was true that Mr Chuprin did not reply to the WhatsApp message, these assertions and omission to disclose the defence that the trust was a sham that had been put forward in detail on behalf of Mr Chuprin by Bracewell, as he must have been well-aware of, would have mislead the Court and as already stated, were an egregious breach of his duty of full and frank disclosure. Other apparent breaches of this duty by the Claimant have been alleged in Gilbert 3 9-15 [HB/100-101] but it is not necessary for the Court to express a view upon them having regard to the serious breach of failing to disclose the advancement of a detailed defence, which has not been contested or refuted by the Claimant.

20. In expansion of what is stated in paragraph 17 above, on 16 January 2025, at 2.30 p.m. GST, Mr Chuprin was accidentally sent an email by the DIFC Registry, inviting him to join the without notice hearing. He urgently instructed counsel to attend on short notice. Mr Chuprin's legal representatives were unaware of the nature of the application (or the identity of the applicant) until after hearing had commenced: Gilbert 3 6-8 [HB/99].

21. At the Hearing before H.E. Justice Michael Black on 17 January 2025, the Judge noted the serious failings of full and frank disclosure on the part of Mr Abramenko, observing that, *"on any return date of the hearing of this application if it had been heard ex parte any order made by this court would simply have been discharged on the basis of material non-disclosure"*: [HB/495].

22. Although H.E. Justice Michael Black KC had indicated he was inclined to make an order of injunction subject to satisfactory undertakings, he did not in the event do so but merely adjourned the Hearing to the Return Date.

The Court's power and approach to making the orders of injunction and fortification of an undertaking sought

Injunction

23. The DIFC Court's power to grant an injunction is established by Article 32 of the DIFC Court Law 2004 and Part 25 of the RDC 2014, provides so far as is material in Rule 25.1 as follows:

> "25. 1 The Court may grant the following interim remedies:
>
> (I) an interim injunction;"

24. There is no dispute that when considering whether to grant an injunction the Court normally considers a three-stage test, based on that set out in American Cyanamid v Ethicon [1975] AC

396. In order to grant an injunction, the Court must be satisfied that:

(a) there is a serious issue to be tried on the merits;

(b) the balance of convenience is in favour of the grant of an injunction; and

(c) it is just and convenient to grant the injunction.

25. No mention was made in their submissions by either counsel of the requirement stemming from *American Cyanamid* that if the Court finds there is a serious question to be tried, it must go on and consider whether damages would be an adequate remedy for a party injured by the court's grant or refusal of an injunction. In the absence of submissions on that possible issue, the Court has disregarded it; and it would normally have proceeded on the basis of the three-stage test propounded by the Defendant, but for what followed as next explained.

26. The Defendant further submitted that in relation to the first question, whether it has been shown there is a serious issue to be tried on the merits, there is conflicting case law internationally as to what must to be shown in this regard. In American Cyanamid, the English House of Lords held at p.407G that, a serious issue to be tried could be demonstrated where the underlying claim was not "frivolous or vexatious" per Lord Diplock at page 407 F-G [HB/612]

> "Your Lordships should in my view take this opportunity of declaring that there is no such rule* The use of such expressions as " a probability," " a prima facie case," or " a strong prima facie case " in the context of the exercise of a discretionary power to grant an interlocutory injunction leads to confusion as to the object sought to be achieved by this form of temporary relief. The court no doubt must be satisfied that the claim is not frivolous or vexatious; in other words, that there is a serious question to be tried."

*(i.e. a rule that the court is not entitled to take any account of the balance of convenience unless it has first been satisfied that if the case went to trial upon no other evidence than is before the court at the hearing of the application, the plaintiff would be entitled to judgment for a permanent injunction in the same terms as the interlocutory injunction sought.)

27. However, in LXT Real Estate Broker LLC v SIR Real Estate [2023] DIFC CFI 050 (27 September 2023), H.E. Justice Robert French noted that a different approach had been adopted by the Australian Courts, at 76-78. [HB/750]. Founding on that difference, explained as follows, it was submitted on behalf of the Defendant that what constitutes a serious issue to be tried depends on the consequences of the order sought.

28. The learned Judge referred in that case to the Australian decision of *Beecham Group Ltd v Bristol Laboratories Pty Ltd (1968) 118 CLR 618*, where the High Court had held that such applications (for interim injunctions) require two main inquiries:

> "The first is whether the plaintiff has made out a prima facie case in the sense that ***if the evidence remains as it is there is a probability that at the trial of the action the plaintiff will be held entitled to relief*.** The second inquiry is . whether the inconvenience or injury which the plaintiff would be likely to suffer if an injunction were refused outweighs or is outweighed by the injury which the defendant would suffer if an injunction were granted."

The Court continued:

> "***How strong the probability needs to be depends***, no doubt, ***upon the nature of*** the ***rights [the plaintiff] asserts and the practical consequences likely to flow*** from the order he seeks." (Court's emphasis added)

29. So, it appears that there is some discrepancy between the English and Australian approaches to the first inquiry, concerning the requisite prospects of the Claimant succeeding at trial and obtaining a final order for the relief sought. In Australia, this depends on the rights the Claimant is seeking to exert, together with the practical consequences likely to flow from the grant or refusal of the order he seeks on an interim basis. Whereas in England, the first inquiry is confined to the threshold question of whether there is a serious question, meaning one that is not frivolous or vexatious, to be tried. If answered affirmatively, the second question of whether the balance of convenience tilts in favour of the grant of an injunction or not is then to be answered. As illustrated below, answering the second question may include further consideration of the merits, when considering whether to grant relief.

30. The learned Judge analysed and explained the Australian approach further at paragraph 77 of his judgment with reference to the decision in Australian Broadcasting Corporation v O'Neill (2006) 227 CLR 57.

31. He observed that in that case:

> "Gummow and Hayne JJ, with whom Gleeson CJ and Crennan J agreed, referred to the expression of various views and assumptions about the relationship between the judgment in Beecham delivered in 1968 and the speech of Lord Diplock in American Cyanamid in 1975. As they observed, Lord Diplock was at pains to dispel a notion which apparently had persuaded the Court of Appeal to refuse interlocutory relief, that to establish a prima facie case of infringement it was necessary for the plaintiff to demonstrate a more than a 50% chance of ultimate success. Their Honours quoted Lord Diplock's remark (at 406) that:
>
> The purpose sought to be achieved by giving to the court discretion to grant such injunctions would be stultified if the discretion were clogged by a technical rule forbidding its exercise if upon that incomplete untested evidence the court evaluated the chances of the plaintiff's success in the action at 50 per cent, or less, but permitting its exercise if the court evaluated his chances at more than 50 per cent."
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> Gummow and Hayne JJ observed that when Beecham and American Cyanamid are read with an understanding of the issues for determination and an appreciation of the similarity in outcome, much of the assumed disparity in principle loses its force. There is no objection to the use of the phrase "serious question" if it is understood as conveying the notion that the seriousness of the question, like the strength of the probability referred to in Beecham depends upon the considerations emphasised in Beecham (at 70). Their Honours identified a difference, however, in the apparent statement by Lord Diplock that provided the court is satisfied that the plaintiff's claim is not "frivolous or vexatious" there would be a serious question to be tried and that would be sufficient. Their Honours held to be inconsistent with the Australian doctrine the statement that:
>
> "So unless the material available to the Court at the hearing of the application for an interlocutory injunction fails to disclose that the plaintiff has any real prospect of succeeding in his claim for a permanent injunction at the trial the court should go on to consider whether the balance of convenience lies in favour of granting or refusing the interlocutory relief that is sought."
>
> Their Honours observed:
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> "Those statements do not accord with the doctrine in this Court as established by Beecham and should not be followed. **They obscure the governing consideration that the requisite strength of the probability of ultimate success depends upon the nature of the rights asserted and the practical consequences likely to flow from the interlocutory order sought.**"
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> 78. Gleeson CJ and Crennan J expressly agreed with Gummow and Hayne JJ that the two stage Beecham test should provide the "organising principles" for the grant of interlocutory injunctive relief in Australian law.

(Court's emphasis added)

32. The learned Judge then referred to the later English decision of Cranston J in Ashworth v Royal National Theatre [2014] 4 All ER 238 [2014] EWHC 1176 (QB) in the following terms:

> "79. That said, the American Cyanamid test continues to be accepted in the United Kingdom and has been reflected in some judgments in the DIFC Courts. A later statement of the test for interim relief appeared in the judgment of Cranston J in Ashworth v Royal National Theatre [2014] 4 All ER 238 [2014] EWHC 1176 (QB). It was closer to the present case as it concerned the disputed construction of a contract. In that case, the claimants were professional musicians who had been engaged by the defendant theatre to play their instruments in one of its plays. The defendant decided to change to a production in which the music was recorded and gave the claimants notice of termination. The claimants sought remedies for breach of contract and applied for interim relief requiring the defendant to continue to engage them until the trial of their claim. The Court held that although there was a serious issue to be tried on the interpretation of the contracts, there was no real prospect that the claimants would obtain specific performance or a final injunction in substantially the form of the interim relief sought. Cranston J at [2] stated:
>
> "The test for interim relief is set out in American Cyanamid Co v Ethicon Ltd [1975] 1 All ER 504 [1975] AC 396. In this case the issues are first, whether there is a serious question to be tried with a real prospect that the claimants will obtain specific performance or a final injunction in substantially the form of the interim relief sought; secondly whether, if there is, damages would be an adequate remedy for them for the interim period; and thirdly, if not, whether the balance of convenience lies in favour of the interim relief they seek."
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> 80. That case, like the present, involved construction of a contract. Its words did not cover the defendant's actions. The defendants in the case contended that a term could be implied conferring power on it to give notice of termination in the event of a creative decision such as

dispensation with an orchestra. The claimants' construction, it argued, would have had a highly unreasonable result.

81. Cranston J held that none of the arguments overcame the plain words of the contract. It expressly set out the circumstances in which the claimants' engagement might be terminated. It did not seem possible to imply any further circumstances in which the giving of notice would be permitted. It was therefore a serious case to be tried on the question whether the defendant was contractually entitled to terminate the claimants' contracts. Cranston J said:

> "Although an authoritative interpretation of the contract can only be given at trial, it seems to me that the claimants' prospects on this aspect of the case are strong. That however is not the position regarding remedy; I am not convinced that on this they have any prospects of success at trial."

82. The strength of the claimant's case seems to have been a relevant factor. It was not suggested that it was sufficient that the case not be hopeless.

83. That judgment then turned to the question whether the claimants had real prospects of obtaining at trial an order for specific performance of the contracts or an injunction to like effect. Cranston J held that it would be inappropriate in the circumstances for the court to enforce the contract by specific performance or analogous injunction. There was clearly an absence of personal confidence on the part of the defendant. The claimants themselves would be affected by knowing that the defendant did not want them and believed that the play would be better without them."

33. It is therefore clear from that illuminating judgment of H.E. Justice Robert French, and the Australian approach he illustrates and explains, that there may be cases where the more demanding (of assessment of the probability of success at trial) Australian approach, to what always remains an exercise of a discretion in deciding whether or not to grant an interim equitable remedy of injunction pending trial, is a more suitable means of approach to making that decision. In particular, where it better serves the interests of justice to correlate, rather than separate, the relief sought on an interim basis and the probability of securing it at trial, on the one hand; and the practical consequences likely to flow from the interlocutory order sought on the other.

34. Finally, in relation to the principles applicable to the grant of an interim injunction, there is the well-recognised objective or purpose of an interim injunction "to hold the position as justly as possible pending trial" as the defendant correctly submits at paragraph 25 of his skeleton argument.

Fortification

35. Part 25 of the RDC 2014 provides, so far as is material, in Rule 25.25 as follows:

> "25.25 Any order for an injunction, unless the Court orders otherwise, must contain:
>
> (I) (save where the applicant is the DFSA or the Registrar of Companies) an undertaking by the applicant to the. Court to pay any damages which the respondent sustains which the Court considers the applicant should pay. Where the applicant for an interim remedy is not able to show sufficient assets within the jurisdiction of the Court to provide substance to the undertakings given he may be required to reinforce his undertakings by providing security:
>
> (a) Security will be ordered in such form as the Judge decides is appropriate but may, for example, take the form of a payment into Court, a bond issued by an insurance company or a first demand guarantee or standby credit issued by a first-class bank."

The Claimant's case and submissions on the Injunction Application

36. It is important to begin this summary with an exposition of what is not contained in the Claimant's submissions and to demonstrate their deficiency.

37. The Court has been provided with virtually no background explanation or evidence by the Claimant, beyond the fact that it exists, for how this dispute has arisen between these parties and their related parties; or how their competing connections with the Companies and beneficial entitlement to the shares in them and their profits and dividends has come about.

38. The affidavit evidence of Mr Abramenko [HB/147148] is deafening in its silence on these issues. His later evidence (Abramenko 5 at [HB/132-136]) is largely a gathering of allegations founded on bald assertions in evidence from others, which is, for the most part, unsupported by documentary evidence. He, and the submissions of counsel written and oral, proceed on the basis that it is established - when it has not been established to the requisite degree of probability to justify the grant of the specific relief sought in the Injunction Application - by what has been placed before me, that Mr Chuprin is not the beneficial owner of the Companies, that the Trust is not a sham and that Mr Chuprin was not entitled to act as he has acted in relation to the Companies.

39. Mr Abramenko has produced some evidence (for example the documents appearing to show Mr Chuprin being on a modest salary from the Companies and seeking a substantial pay rise) which do undermine the claims of Mr Chuprin that he is the beneficial owner of the Companies and the beneficial recipient of tens of millions of dollars in dividends. I have weighed this evidence in applying the relevant tests for the grant of an injunction and found it to be outweighed by countervailing evidence from the Defendant and the lack of other evidence that ought to be available to, and produced by the Claimant, in support of his case - if it is a true one.

40. The Affidavit of Mr Vadim Misevich at [HB/194] makes various assertions denying Mr Chuprin's ownership and foundation of the businesses and alleges he is merely a nominee, but he gives no explanation for how and why the alleged Trust was settled; or how it comes about that Mr Chuprin is a mere nominee legal owner of the shares in the Companies or for why he was purportedly replaced as Trustee by the alleged Protector. Whilst he produces a Nominee Director Declaration at [HB/197] apparently signed by Mr Chuprin dated 13 August 2013, he does not explain how and why this was executed (in contrast, Mr Chuprin does provide something of an explanation for this in his evidence, and refers to

multiple filings in the years since 2013 to contrary effect) and he produces nothing in the way of documents that demonstrate that he is the beneficial owner of the Companies or that he and others unnamed founded them. This is in stark contrast to the evidence of Mr Chuprin (see for example Chuprin 3 [HB/104-112]) where he provides detailed responses to bald assertions made against him, and explanations for the claims he makes concerning his foundation and beneficial ownership of the Companies. It must be stressed first, that all of this may be refuted by a full and proper presentation of the Claimant's case in due course; secondly, that I have made no final decisions on anything in issue; and thirdly, that I am engaged in an assessment of the material before me solely to determine at this stage, whether the applicable tests for the grant of an interim injunction have been satisfied, and whether in my discretion, I should grant the orders sought.

41. The Claimant's case and Injunction Application in his skeleton argument and oral submissions is simply founded on an alleged trust and the mechanics of its operation, by removal of the Defendant from his role as Trustee and replacement with Mr Abramenko, and the Defendant's failure to comply with instructions to hand over control, and the instruments of control, of the Companies. Strikingly, as already noted, there was no explanation or demonstration in the Claimant's skeleton argument or oral submissions, for how and why the Trust was brought into existence; nor for how and why it has come about that the Protector of an allegedly valid trust, was moved to replace the Defendant as Trustee with Mr Abramenko.

42. As already mentioned, there are various assertions, some documentary support in evidence and submissions about the Defendant's role being only nominal. These are, however, flatly contradicted by the fact of, and alleged need for the Injunction sought, the particularisation of his role and duties in the email relied on from Mr Vladimir Avoev, [HB/546] and complaints of alleged failures by the Defendant to carry out vital aspects of his roles and duties in the management and control of the Companies. There has been no answer to my question at the start of the Return Date Hearing to the Claimant's counsel (oft-repeated during it - as no answer came) as to where was the evidence one might expect to be available, to refute the Defendant's case that the Trust was a sham to shield his assets from matrimonial property claims? These are features of the Injunction Application which are troubling, unsatisfactory and give rise to doubt as to its merits and foundation - I stress again - on the evidence presently before me.

43. Whilst, subject to argument to the contrary, it is ultimately for the Defendant, who alleges the Trust is a sham, to lead evidence to prove that fact (and he has already produced some to that effect), it is equally obvious that the Claimant and his associates or those he represents, should in making the Injunction Application, be in a position to convincingly refute the early-noticed allegation that the Trust was a sham. This might commonly be for example, by production of contemporaneous legal instructions, exchanges and materials that led to its creation, for recorded legitimate and explicable commercial reasons (whatever they might have been). The Defendant claims he does not have access to some of these materials, because his access to the Zotobi internal messaging system has been removed. That claim has not been refuted despite my inquiry and concern about the allegation and the Defendant's entitlement to access his messages sent and received. It is also obvious, (of course subject to argument I cannot presently conceive of) that if there are any messages on the system concerning the creation of the Trust, these will be disclosable in these proceedings - but nothing has been produced by the Claimant in support of the case he advances. The suggestion from counsel for the Clamant, that the Defendant cannot rely before me on this Injunction Application on his case that the alleged Trust is a sham, because he should have moved the Court after 4 November 2024 when he was removed as a Trustee and Director, for a declaration of invalidity of the Trust, is patent nonsense and is rejected.

44. It is clear from the evidence that the Claimant was involved in the Trust's creation (for whatever purpose). As correctly submitted by the Defendant's counsel on the evidence before me, Mr Abramenko's fingerprints are all over it. He does not advance any reason why the Trust was established in his evidence and merely deposes to the fact of its establishment. There is some uncontradicted evidence in the correspondence between lawyers for the Defendant and lawyers for Mr Misevich, the alleged beneficiary, which tends to suggest that those lawyers were involved in giving advice in relation to the execution of the Trust and in its execution. If legal advice privilege exists in relation to such materials, it may be joint privilege, common interest privilege or waived - yet there is no such evidence from any of those sources put before me by the Claimant, and only bald assertion to the contrary, that goes to refute the Defendant's case, that the alleged trust is a sham.

45. The only materials that counsel for the Claimant was able to refer to were, a series of emails, starting at [HB/265 and 283] which it was suggested show Mr Chuprin giving instructions to one Stanislav Markov of SGM Consulting about settling a Trust over someone else's assets. This reliance was refuted by counsel for the Defendant who referred to Mr Chuprin's evidence (Chuprin 2 14) at [HB/89] where he explained that:

> "Mr Abramenko asked me to send an e-mail which he wrote to Stanislav Markov of SGM Consulting on 26 October 2016 asking for advice on how to make the trust deed "as official as possible" (page 44 of IC2) and took on responsibility for arranging the signing of the trust, including by liaising with local lawyers and organising a time for an in person signing."

46. Whilst I make no findings whatsoever on what these minimal documents demonstrate at this interlocutory stage of proceedings, they carry little weight by themselves in showing a serious question to be tried and the requisite degree of probability of success at trial, in the absence of a full record of lawyer-client correspondence likely to have been generated in the creation of a Trust - whether genuine or a sham - involving the Claimant and Defendant.

47. The skeleton argument for the Claimant (largely repeated in oral submissions at the Return Date Hearing) paraded a raft of complaints against Mr Chuprin (including theoretical or prospective ones that might arise if he does not hand over control of the Companies). It is not necessary recite the detail of these allegations which are set out at paragraphs 2.4-2.18 of the skeleton argument, which are in writing and were not expanded upon during oral submissions, to any greater effect or purpose. These allegations were concerned with Mr Chuprin's continued exertion of control over the Companies and resisting or taking action to frustrate the Claimant and alleged Protector's efforts to replace him and take control of the Companies. Even assuming for present purposes they are true in fact, they are all without foundation if the trust is a sham, and if Mr Chuprin is the beneficial owner of the shares in the Companies. He would be perfectly entitled to act as he has allegedly done and is doing, to maintain control of, and run his Companies as he sees fit.

The Defendant's case and submissions on the Injunction Application

48. These are contained in a well-constructed and well-reasoned skeleton argument prepared by counsel for the Defendant. They were elaborated in oral submissions which focussed on the lack of evidence in support of the Claimant's case on the fundamental issue of a valid or sham trust, and

the main grounds why the orders of injunction sought should not be granted on an interim basis.

49. In view of the fact that the Defendant's submissions are in writing and/or have been transcribed, it will suffice to summarise the main points shortly as to why an injunction as sought should not be granted, as follows:

(a) Its grant would be contrary to the balance of convenience and there is no need to grant an injunction. There has been delay in applying for one since October 2024, when Mr Abramenko first started threatening action about a change of Trustee and nothing detrimental has been done to the companies by the Defendant in the meantime - any damage done has been due to Mr Abramenko's attempts to interfere in the running of the businesses.

(b) The form of order sought is hopelessly defined and would lead to satellite litigation on its effect if granted.

(c) It would be highly intrusive and damaging to the business of the Companies.

(d) Its grant would not preserve the status quo and instead of holding the ring until trial, it would deliver to the Claimant, his ultimate goal of taking control of the businesses from the Defendant.

(e) Equitable relief ought not to be granted to Mr Abramenko, when he has sought to mislead the Court and engaged in serious breaches of his duty of full and frank disclosure in making the Injunction Application. They are set out section C.3 of the Defendant's Skeleton Argument in full and need not be repeated here.

(f) The claim is inherently implausible and (aside from the purported trust deed) there is a dearth of documentary material to support it. There is no compelling counter narrative advanced for the Claimant's case. The serious weaknesses in Mr Abramenko's case militate firmly against granting an injunction. In respect of Mr Abramenko's case regarding KGIGL, there is no serious issue to be tried. It is not enough to say that this hearing is not concerned with the validity of the trust. That is the foundational point upon which everything else rests.

(g) The injunction sought is unworkable for the collection of reasons particularised at paragraphs 26.1-26.5 of the Defendant's Skeleton Argument, which all go to show the extent of Mr Chuprin's role as a Director and control over the Companies, which could not function without him remaining in control, and without a complete reversal of the status quo. It would leave the Companies "rudderless" and put Mr Chuprin in a position where he would be breaching his duties as a director under the law.

(h) The potential harm to the Companies if the order was granted is significant and risks destroying the businesses.

(i) Conversely, the injunction is not required to protect and preserve the Claimant's claim and the evidence of a risk of harm, wholly fails to justify the grant of the relief sought. The Defendant's skeleton addresses each alleged ground of risk of harm arising at paragraph 29 and refutes each one of them. The removal and replacement of a director is explained and is not shown to give rise to a risk of harm. There was no intimidation or threats of employees/managers - merely an exertion of the control to which the Defendant is entitled and something representing an upholding of the status quo. Any problems with KYC issues, are the fault of the Claimant; and the result of false claims that Mr Chuprin does not really own the businesses.

(j) At paragraph 33 of the Defendant's Skeleton Argument, there is a collection of the obvious deficiencies in the Claimant's case. There is no explanation for why the Trust was established, no reason shown why Mr Misevich would need to use Mr Chuprin as a trustee or nominee. There is no contradiction of public documents showing Mr Chuprin to be the true owner of the Companies.

(k) There is scant documentary evidence produced to show Mr Misevich is the true owner of the Companies - if he was, there would be significantly more documentation available to be produced to prove it.

(l) In particular, there is no evidence to refute the fact that Mr Chuprin has personally and beneficially received circa USD 24m as dividends from the Companies in 2022 and 2023 alone. There is nothing to support the contention that Mr Chuprin has held all dividends on trust as trustee for Mr Misevich - which, having regard to the scale of dividends and the eight year time period, is a completely implausible contention.

(m) As for the claim that the shares in KGIGL, form part of the alleged trust fund, this does not even meet the requisite threshold in American Cyanamid (of showing a serious question to be tried) for an injunction to be granted. This is demonstrated by the compelling (in the absence of refutation of any of them before me) reasons advanced at paragraph 34 of the Defendant's Skeleton Argument. There is no declaration of trust in relation to these shares - a requirement under Article 33 of the DIFC Trust Law at [HB/809]. There is no averment or evidence that the shares of KGIGL are part of the alleged Trust [T/81-83] and what has been put forward is from the hand of Mr Abramenko - based on his own list of assets - and the certificate at [HB/430-431] which are dubious and unreliable.

Discussion and determination of the Injunction Application The optimal approach or test to be adopted

50. In this case, the relief sought by the Claimant on an interim basis if granted, would, if the Trust is a sham, entail, for all present practical purposes, expropriation of very valuable shareholdings and wrest control of highly profitable Companies from their legal and beneficial owner. It would also entail a fundamental alteration of the status quo of essential control (though not practical day to day management which is in the hands of employees) by mandatory means, requiring a handover of the instruments of control of the Companies - one of which companies is not even shown by any evidence from the Claimant, (beyond being included in a self-serving list of assets drawn up by him), to be part of the Trust fund.

51. That draconian interim relief, with obvious dire practical consequences for the Defendant if the Trust is a sham, is presently sought only on the basis of mere assertion that the Trust is not a sham; and a case that is devoid (at this stage) of the type of evidence that would be expected to be available aplenty, to refute the case of sham, and show that the Trust is genuine, valid and binding - if that were the case.

52. If one applies the *American Cyanamid* three stage tests seriatim, it would of course be open to the Court to conclude that the first stage test or requirement of a serious issue (that is not frivolous or vexatious) to be tried, is satisfied on the bases of mere assertion that the Trust is valid and

not a sham, and the rebuttable presumption that a signed instrument of Trust, in apparently proper form, should be given effect to, until it is shown to be a sham. The Court could then move to the next issues to be determined of where the balance of convenience lies, and whether it is just and convenient to grant the injunction.

53. That approach, however, is not, in my view, the optimal approach in the particular circumstances of this case. In my judgment, selection of a fair and just interim course and remedy, requires a more rigorous estimation of the prospects of success (on the evidence put before the Court by the Claimant on the Injunction Application) than the facile conclusion, that on the basis that there is, as it were, *"oath against oath"*, the claim is not frivolous or vexatious. In my judgment, on the facts of this case and having regard to the obvious deficiencies in the evidence presented thus far by the Claimant, on the fundamental issue and basis of the Injunction Application - the validity of the alleged Trust - it is fair, just and appropriate for me, in the exercise of my discretion to be guided by the Australian dictum (supra) and test, namely, that **"the governing consideration [is] that the requisite strength of the probability of ultimate success depends upon the nature of the rights asserted and the practical consequences likely to flow from the interlocutory order sought"**. On the application of that test, I am not satisfied that the probability of the Claimant succeeding as presently demonstrated on the evidence before me, achieves the requisite degree of strength, to grant the rights asserted and sought on an interim basis, having regard to the seriously adverse practical consequences likely to flow from the grant of the relief sought.

54. In contrast, if the Claimant had confined himself in his Injunction application to genuinely seeking to preserve the status quo, instead of trying to reverse it, the outcome of applying the Australian approach to the grant of interim relief would be very different. If, for example, in light of the Defendant's attempt to pay himself a very substantial dividend and its timing, the Claimant had applied for an injunction, with or without notice, to restrain the payment of dividends, and an order that the funds should be retained by the Company until trial of the issues; and/or that the Defendant should not transfer, dissipate or diminish the value of his shareholding; and/or that the Company should not undertake transactions other than in the ordinary course of business, the practical consequences flowing from the grant of those reliefs, would require a significantly different and lower strength of probability of ultimate success, when deciding whether to grant relief or not.

55. In my judgment, in this Court, where practice is influenced by common law principles and practice as developed in jurisdictions beyond, as it is sometimes referred to, the "Mother Jurisdiction" of the common law, it is open to the Court to follow alternative approaches based on high authority from other common law jurisdictions, in its pursuit of doing justice, where the facts and circumstances of a case so require or justify. This is such a case, where a fair and just resolution is more readily apparent upon following the Australian approach to the grant of an interim injunction. That is not for a minute to suggest that the American Cyanamid three stage test should not normally be applied and followed, as it has tended to be applied and followed, in this jurisdiction in most cases. It has not however always been applied in every case. This is clear from the collection of instances where it has not been followed in this jurisdiction, that have been assembled and referred to by the learned editors of the DIFC Court's Practice, Third Edition at paragraph 25.1.5. It is well illustrated there, that in a number of cases, something more than a claim for relief not being frivolous or vexatious may be required to satisfy the merits test for a claim, having regard to the practical consequences of particular relief sought on an interim basis.

Whether the Claimant has demonstrated the requisite strength of the probability of ultimate success having regard to the rights asserted and the practical consequences likely to flow from the injunction sought?

56. By way of prefatory observation to answering the question in the heading above, the Claimant and his representatives have seemingly failed to grasp that it is in relation to the foundational questions of sham or valid trust and beneficial ownership of the Companies, that in order to succeed on the Injunction Application, they must show there are serious questions to be tried with the requisite degree of probability that the Claimant will succeed at trial on these issues. They have taken the cart before the horse, and wrongly proceeded on the basis that it is undisputed and indisputable that there is a valid enforceable trust in existence, without addressing or leading any evidence beyond bald assertion to refute the case that the alleged Trust is a sham and a nullity. In consequence, they have failed to satisfy me that there is the requisite degree of probability that the Claimant will succeed on this issue at trial, to make it justifiable and correct to exercise my discretion to grant the injunctions that are sought in the terms they are sought.

57. This question in the heading of this section of these reasons can now be answered very shortly indeed, by reference back to the summary of the Claimant's evidence and submissions with their manifest deficiencies, (supra 36-47) compared to the powerful assembly of legal, practical and equitable reasons advanced by the Defendant, why the form of injunctive relief sought should not be granted (supra 48-49).

58. On the evidence and submissions before the Court, it is clear and I am satisfied that each and every one of the Defendant's arguments summarised in 49 above i)-xiii), stand together as valid and compelling reasons why the form of injunction sought by the Claimant should not be granted.

59. I find on the evidence before me, that counsel for the Defendant's short and succinct summary of these reasons at paragraphs 7.1-7.3 of their skeleton argument are broadly correct, and may be adopted with re-ordering and some modification in expressing my findings and determination on the Injunction Application as follows:

(a) Mr Abramenko's claim does not have the requisite degree of probability of success, to justify the grant of the injunction sought on the evidence presently before me, and (aside from the purported trust deed) there is a dearth of documentary material to support it.

(b) The serious weaknesses in Mr Abramenko's case, militate firmly against granting an injunction in the form sought. In respect of Mr Abramenko's case regarding KGIGL, (even if the Court were to apply the first American Cyanamid test), on the evidence presently before the Court, there is no serious issue to be tried that those shares are part of the Trust Fund.

(c) The injunction sought is contrary to the balance of convenience. Instead of holding the ring between the parties until trial, the injunction grants Mr Abramenko's ultimate goal of taking control of the businesses from Mr Chuprin. Not granting the injunction sought is unlikely to cause as much (if any) damage as might be caused by granting it.

(d) Granting the injunction would be an unjustifiable intrusion upon the established operations of, and give rise to a serious risk of damaging the businesses of Zotobi and KGIGL, damages for which, Mr Abramenko has not demonstrated an ability to pay (which operations it is the

Court's intention, by the orders it has made, should be allowed to continue until trial, without interference, in the same manner as before this dispute arose).

(e) The form of injunction sought is poorly defined, and likely to lead to disputes and satellite litigation to resolve them.

(f) Mr Abramenko having engaged in serious breaches of his duty of full and frank disclosure and having sought to mislead the Court, in addition to the foregoing reasons, is not entitled to equitable injunctive relief in the draconian form sought.

Whether the court should act of its own motion to grant a form of injunctive relief to preserve the status quo pending trial and to protect the subject matter of the claim?

60. In circumstances where a Claimant applies to the court for particular injunctive relief, which the Court considers to be in a form which is excessive and unjustified, on its application of the legal test it considers to be applicable for the granting of interim injunctions, the relief sought will be refused. However, if the Court is of the view that it should nevertheless grant injunctive relief in an alternative form of order, which it considers to be appropriate and necessary to preserve the status quo and ensure that the process of litigation is not frustrated and that effective justice may eventually be done, it may proceed to make such an order.

61. The requirement for the court so to act in this case is, in my judgment, plain and obvious. Neither party to such adversarial proceedings as these, is likely to advocate action contrary to its vigorously asserted case for and against the relief sought. In those circumstances, the Court may act suo moto, to hold the ring to enable it to do justice between the Parties ultimately at trial. That is the situation in which the Court finds itself in this case.

62. In my judgment, there is a significant area of concern established in the Claimant's evidence and submissions, which required the Court to act to preserve the status quo, and that stems from the ill-advised and ill-timed attempt by the Defendant to pay to himself USD 27m in dividends to which he claims he is entitled as the sole beneficial owner of the Companies. This was at least, a misguided attempt to seriously alter the status quo, at a time when it was plain that his beneficial right to those dividends was strongly disputed, and the dispute was before the Court for its adjudication of restraint of such action, on an interim basis.

63. In my judgment, there was the requisite degree of probability that the Claimant may succeed at trial, to justify the grant of an injunction against the Defendant, to restrain that type of action and similar interference with the shareholding, and/or engaging in transactions outside the normal course of the Companies' business. That judgment was made, having regard to the more limited practical effect (and reduced risk of causing loss compared to the forms of injunction sought in the Injunction Application), that such forms of restraint might entail - especially with fortification of the Claimant's undertaking to indemnify the Defendant in respect of that loss, which the Court has ordered.

64. The court is now satisfied, upon its consideration of all of the materials and submissions before it, that it would be necessary fair and just to make orders of injunction in the terms of the undertakings had they not been offered by the Defendant conditionally at the Return Date Hearing. The Court had made the inquiry of Counsel for the Defendant at the Return Date Hearing, as to what undertakings the Defendant might be prepared to give in order to secure the status quo pending trial, and the undertakings required by virtue of this Order were offered conditionally, which the Court considers to be sufficient and necessary. Those undertakings have now been given unconditionally by the Defendant and accepted by the Court, in the knowledge of the amount of fortification of the Claimant's undertaking for damages of AED 10,000,000.00, that this Court has ordered, as next explained.

The Fortification Application

65. The requirements and principles in accordance with which the Court acts on an application for fortification of an undertaking as to damages given by an applicant for an interim injunction, are simple and stated in the Rule which empowers it so to act and order (supra 35).

66. In the Court's view the approach to ordering fortification of an injunction or undertaking, epitomised in *Phoenix Group v Cochrane* [2018] EWHC 2179 Comm at 14, as quoted by the Defendant at 43 of its Skeleton Argument, is the correct approach, and it has followed that approach in making the order it has made.

67. The Defendant had sought fortification of the undertaking in the amount of AED 50,000,000 but this amount was sought on the basis that the Court might order an injunction in the draconian terms sought in the Injunction Application. The Court has refused to make such an order, and instead has required and been given, a limited undertaking to preserve the status quo. That restraint gives rise to a risk of loss which is of an entirely different type and lower order of magnitude to the loss that might have been occasioned to the Defendant, by an order in the terms the Claimant had sought in the Injunction Application.

68. In my judgment, the risk against which the undertaking and fortification is required, to protect the Defendant from it eventuating, may be described as a risk of loss arising from an inability to draw down, invest and use very substantial dividends, to which he claims to be beneficially entitled, from past years and from times since, which are yet to be declared and made available for distribution. These actual (not merely potential) losses, essentially the loss of use of investment capital for a limited period to trial and judgment, may be the subject of informed and realistic assessment. It is clear they are not in the order of AED 50,000,000.00, which might have been sustainable if the Defendant was wrongfully deprived of his control of the Companies and his dividends earned, and/or to be earned from them; and in addition, the Companies had suffered the reputational and operational damages that such deprivation might have wrought.

69. Having considered the evidence and submissions before me, it is clear that the Defendant's submissions in paragraph 44.3 of his Skeleton Argument are correct. I am not satisfied that Mr Abramenko has sufficient assets within or without the jurisdiction, against which a call upon his undertaking could be enforced. Likewise, I do not consider it to be adequate security for the Court to accept Mr Misevich's assertion that he would meet any claim for damages that might be made in consequence of a wrongful grant of an injunction or requirement of an undertaking. He is not a party to the proceedings; he has not demonstrated possession of any assets within the jurisdiction; and he has not offered to bring or secure any assets within the jurisdiction, to meet losses occasioned by the undertakings the Defendant has been required to give.

70. I have considered the Claimant's submissions as to why fortification should not be granted at 3.15-3.20 of his skeleton argument. They are not targeted at the undertaking that the Claimant has now been required to give, and like the rest of the Claimant's submissions, they proceed on the assumed basis that the Trust is valid, and that the Defendant is not beneficially entitled to the shares in the Companies or the dividends payable in respect of those shares. The suggestion that fortification is not required because the Claimant will undertake to preserve the funds available for distribution of dividends in the Citibank account shown at [HB/561] was unfortunately risible. This was pointed out to counsel for the Claimant, when the submission was made at the Return Date Hearing [T/96], in circumstances where Mr Chuprin claims to be, and might be held to be, the ultimate beneficial owner of these funds. The argument was tantamount to a suggestion that Mr Chuprin should look to his own funds to recoup himself for the losses he might suffer from the wrongful grant of an injunction, or an undertaking wrongfully required. It was a patently absurd submission. What is required is security of recourse to assets of the Claimant who has procured the undertaking, to compensate the Defendant in the event that it was wrongly procured, and the Defendant has suffered loss in consequence of it being given. That security was not offered or provided and that is why the order for fortification was necessary and has been made.

71. The Court has performed the assessment predicated on the authority of the Phoenix Group case (supra) and has come to the view on that assessment, that fortification in the amount of AED 10,000,000.00 is an appropriate amount to order. This is one of those situations which commonly arise in the assessment of damages or of potential losses and damages that might arise, where a court has to do the best it can on the information available to it, to arrive at a figure which is a fair and reasonable assessment of an amount of loss that might eventuate in consequence of an order made, or a requirement to give undertakings. It is not capable of scientific or mathematical assessment, but it is an informed and realistic assessment of the loss that might arise, if (in this case) the Defendant is prevented from having access to, and use of very substantial funds, to which he might be found to be entitled, for a significant period. In addition, there is the less easily predictable or assessable potential for some reputational or transactional loss or damage and consequential loss to the Companies, by what might be seen as a restriction on the Companies' dealing with profits distributable as dividends in the ordinary way; and/or by them being restrained from acting otherwise than in the ordinary course of business. Companies are normally entitled to act otherwise than in the ordinary course of their business and by such means they may increase their profits. Such loss suffered by the Companies may ultimately be visited upon the Defendant through is shareholding or is within the Undertaking at paragraph 4 given by the Claimant. The Court has therefore taken account of the amount of dividends already declared for distribution now restrained by the undertaking and the substantial profitability of the Companies revealed in the evidence before it, to arrive at the figure required for fortification of the Claimant's undertaking.

Conclusion

72. The Court has explained why it has chosen to follow the Australian approach and test for the grant of an interlocutory injunction in this case, considering that it provides the optimal approach to achieving a fair, just and equitable interim holding of the ring or status quo, in order to do justice finally and speedily between these parties.

73. Although the Court has adopted that approach it has by way of cross-check and safeguard, also considered whether the result and outcome would be any different if it had applied the *American Cyanamid* three stage test commonly employed in this jurisdiction. The court is satisfied that it would not have made any difference to the outcome. There is a serious question to be tried. The balance of convenience tilts decisively in favour of refusing the injunction sought but in favour of granting a much more limited restriction by way of the required undertakings given by the Defendant, and it is just and convenient to require only that degree of restraint pending the speedy trial of issues, the Court has directed shall take place.

SCHEDULE A

UNDERTAKINGS GIVEN BY THE CLAIMANT

1. The Claimant shall not cause Zotobi Management Limited DMCC or KamaGames International Group Ltd to undertake any transaction other than in the normal and ordinary course of Business.

2. If the Court later finds that this Order and undertakings given by him has caused loss to the Defendant, and decides that the Defendant should be compensated for that loss, the Claimant will comply with any order that the Court may make.

3. Anyone notified of this Order and the Scheduled undertakings to it, will be given a copy of it by the Claimant's legal representatives.

4. The Claimant will pay the reasonable costs of anyone other than the Defendant which have been incurred as a result of this Order and the undertakings given by the Defendant to the Court, and if the Court later finds that this Order and those undertakings have caused such person loss and decides that such person should be compensated for that loss, the Claimant will comply with any order the Court may make.

5. If this Order ceases to have effect the Claimant will immediately take all reasonable steps to inform in writing anyone to whom they have given notice of this Order, or who they have reasonable grounds for supposing may act upon this Order, that it has ceased to have effect.

6. The Claimant will not without the permission of the Court use any information obtained as a result of this Order for the purpose of any civil or criminal proceedings, either in the DIFC or in any jurisdiction, other than in pursuance of this claim.

7. The Claimant will not without the permission of the Court seek to enforce this Order or the Defendant's undertaking within it, in any country outside the UAE.

SCHEDULE B

UNDERTAKINGS GIVEN BY THE DEFENDANT

1. Not to transfer or otherwise dissipate or intentionally diminish the value of his shareholding in Zotobi Management Limited DMCC ("Zotobi") and/or KamaGames International Group Limited ("KGIGL");

2. Not to take any dividends from Zotobi or KGIGL; and

3. Not to cause Zotobi or KGIGL to undertake a transaction other than in the normal and ordinary course of business.