Claim No: ARB 023/2026

THE DUBAI INTERNATIONAL FINANCIAL CENTRE COURTS

IN THE COURT OF FIRST INSTANCE

BETWEEN

Claimant

and

OSHIE

Defendant

RULING OF H.E. JUSTICE MARK PELLING KC

I thank the Claimant for its further written submissions concerning the effect of the first instance decision in *Orabelle v Orzenia* (ARB 7/2026).

It is greatly to be regretted that the judgment in *Orabelle v Orzenia* was not referred to at the hearing on 8 April 2026 of the Claimant's *ex parte* application for a worldwide freezing order (the "Hearing"). The duty of full and frank disclosure arises where applications are made without notice. The reason for that was explained in *Tugushev v Orlov* [2019] EWHC 2031 (Comm), [7(ii)]:

> "It is a high duty and of the first importance to ensure the integrity of the court's process. It is the necessary corollary of the court being prepared to depart from the principle that it will hear both sides before reaching a decision, a basic principle of fairness. Derogation from that principle is an exceptional course adopted in cases of extreme urgency or the need for secrecy. The court must be able to rely on the party who appears alone to present the argument in a way which is not merely designed to promote its own interests but in a fair and even-handed manner, drawing attention to evidence and arguments which it can reasonably anticipate the absent party would wish to make" (emphasis added).

The *"basic principle of fairness"* is that a person whose interests are directly affected by a Court order ought to be given an opportunity to make representations about whether that order should be made or, exceptionally, a chance to make representations about why it should be revoked after it is made. That is a long standing common law requirement. The duty of full and frank disclosure is critical to the expeditious disposal of without notice applications and the faith that Judges can place in the information supplied to them by party representatives at such hearings. The duty is to use all reasonable endeavours to identify relevant material, and it is for the court not the applicant to decide what is material and what is not.

That said, I accept the explanation that the failure to disclose Orabelle v Orzenia was inadvertent. It was not, however, blameless since the Judgment was had been available at the date of the Hearing.

However, more importantly for present purposes, had this authority been drawn to my attention, it would not have made any difference to the outcome in light of the decision of the Court of Appeal in *Trafigura PTE LTD and others v (1) Mr Prateek Gupta (2) Mrs Ginni Gupta* [2025] DIFC CA 001 at [128] - [138]. In light of that decision, I would have held that *Orabelle v Orzenia* was either (i) inconsistent with *Trafigura* which was and is binding on all CFI Judges because it is a decision of the Court of Appeal or (ii) at least realistically arguably inconsistent with *Trafigura* and in any event had been decided *per incuriam* of the Court of Appeal's decision in *Trafigura*. I am less convinced that there is a credible distinction between the two but that does not matter for present purposes given my conclusions as to the binding effect of *Trafigura*.

Given that:

> I accept the non-disclosure was inadvertent; and
>
> *Orabelle v Orzenia* should not be followed as long as *Trafigura* remains authoritative and so would not have made any difference to the decision I reached on the without notice application;

I have decided to take no further action in relation to the non-disclosure.

The Claimant and its advisors are reminded however that where there is a failure to comply with the duty of full and frank disclosure, the usual result will be either that the order obtained at the Hearing where the breach of duty took place will be discharged and not regranted or discharged and regranted with an adverse costs order being made in respect of the hearing at which the breach of duty occurred.

A copy of this Ruling is to be supplied to the Respondent as and when the Order is served on it, together with the Court's email to the Claimant's advisors and the response from the Claimant's advisors.

Issued by:
Hayley Norton
Assistant Registrar
Date of issue: 24 April 2026
At: 10am