IN THE COMMONWEALTH OF THE BAHAMAS

IN THE SUPREME COURT

Common Law and Equity Division

Claim No. CLE/gen/00460 of 2024

BETWEEN

WYNDHAMS PROPERTY BAHAMAS LIMITED

Claimant

AND

(1) EVANS & CO
(a law firm or alternatively a company duly incorporated according to the laws of the Commonwealth of The Bahamas)
(2) MR. THOMAS EVANS KC
(By his Administrator(s) or Executor(s) and as corporate agent for the company North Andros Assets Limited and as "trustee" formerly or otherwise of the escrow disbursements of the Development and Allure (Bahamas) Limited)

(3) NORTH ANDROS ASSETS LTD.
(A company duly incorporated according to the laws of the Commonwealth of the Bahamas, now struck off)

(4) ALLURE (BAHAMAS) LIMITED
(A company duly incorporated according to the laws of the Commonwealth of the Bahamas, now struck off)
(5) CORDELL FUNDING LLLP

(6) JOSEPH SIMMONS
(in his personal capacity and in his capacity as a Director in North Andros Assets Limited)

(7) CONRAD DESANTIS
(in his personal capacity and in his capacity as a Director in North Andros Assets Limited)
(8) ROBIN RODRIGUEZ
(in his personal capacity and in his capacity as a Director in North Andros Assets Limited)

(9) THE PALM WEST BAY LIMITED
(A company duly incorporated according to the laws of the Commonwealth of the Bahamas)

(10) OCEAN TERRACE BY STERLING LIMITED
(A company duly incorporated according to the laws of the Commonwealth of the Bahamas, now dissolved)

(11) FTX PROPERTY HOLDINGS LTD
(A company duly incorporated according to the laws of the Commonwealth of the Bahamas)
(12) PERSONS UNKNOWN
(being persons formerly or now in possession and/or purported ownership under transfer from the above-named entities)

Respondents

Appearances: Osman Johnson with Mark Flowers for the Claimant
Raynard Rigby KC for the First and Second Defendant
Jacy Whittaker with George Missick for the Seventh Defendant
Ferron Bethel KC with Camille Cleare for the Eighth Defendant
Sophia Rolle-Kapousouzoglou and Keath Smith for the Eleventh Defendant

Before: The Honourable Madam Acting Justice Gail Lockhart Charles KC

Hearing Date: On the papers

RULING

Lockhart Charles J (Acting):

Introduction and Background

1. This judgment concerns three applications for security for costs.

2. The Applications are made pursuant to Part 24 of the Civil Procedure Rules, 2022 on behalf of Evans & Co. and the late Mr. Thomas Evans KC ("D1" and "D2"), Mr. Robin Rodriguez ("D8"), and FTX Property Holdings Ltd. "D11" (collectively, "the Applicants").

3. The underlying claim stems from the inability of the Claimant, Wyndhams Property Bahamas Limited ("Wyndhams") to enforce two agreements for sale ("the Agreements for Sale") entered into in 2008 between Wyndhams and the Third Defendant, North Andros Assets Ltd. ("NAAL"), for the purchase of two yet to be declared condominium units ("the Units") proposed to be created on approximately 2.07 acres of land, forming part of a larger parcel of 5.295 acres in Western New Providence (the "Property").

4. In casting its expansive litigation net, the Claimant has included "parties unknown" which is said to capture "persons formerly or now in possession and/or purported ownership under transfer from the above-named entities". The Claimant has also included parties who did not exist at the date of filing and may not exist even now. Amongst the no longer existing parties is NAAL, the company that the Claimant contracted with for the purchase of the Units.

5. Wyndhams pleads, inter alia, that:

> "The Third Defendant, North Andros Assets Limited, (N.A.A. Ltd.) ... at the time of this filing has been struck from the companies register..."
>
> "The Fourth Defendant ('Allure') ...at the time of this filing has been struck from the company's register..."
>
> "The Ninth Defendant ('Palms') ... at the time of this filing has been struck from the companies register ..."

6. The Applicants, who do exist and have been caught in this very wide litigation net, have all expressed the concern that Wyndhams has divested itself of all of its assets in The Bahamas and is now a foreign owned shell that will be unable to satisfy any order of costs made against it.

7. These concerns are heightened having regard to the Claimant's own pleadings. In particular, paragraph 1 of the Amended Standard Claim that "The Claimant, Wyndhams Property Bahamas Limited ("Wyndhams") is and was at all material times a company duly incorporated under the laws of the Commonwealth of the Bahamas and a holding company for the purposes of investment in real estate in the Bahamas: operated through it directors Intertrust and owned and controlled by Mr. Stephen Horn"

8. The Applications are supported by the affidavit of Veronique Evans filed on 15 October 2025 (on behalf of D1 and D2); the Affidavit of Vonisha Rolle filed on 4 March, 2025 (on behalf of D11) and the Affidavit of Mr. Robin Rodriguez filed on 28 April 2025 (on behalf of himself, D8).

9. The Rodriguez affidavit exhibits a search report from Computitle Limited, dated 18 February 2025, which shows that the Claimant's only known significant asset in The Bahamas, a

penthouse at One Ocean Condominium, Paradise Island, was sold in December 2022. The search reveals no other property owned by the Claimant.

10. Noting that the Claimant appeared to have divested itself of its assets in the jurisdiction, counsel for D8 wrote a letter to the Claimant's counsel on 18 March 2025 in the following terms:

> "We have conducted a real property asset search at the Registry of Records and can find no record of Wyndhams Property (Bahamas) Limited ("Wyndhams") presently owning any real estate in the jurisdiction. We further note that your client is a limited liability IBC whose purported beneficial owner, Mr. Stephen Horne, is not resident in the jurisdiction albeit it appears that he is actively participating in and maintaining this litigation.
>
> We are concerned that in the event Wyndham's, which does not appear to be a going concern, is unsuccessful in this litigation it will not be in a position to pay our clients legal costs. In the premises, we hereby request security for costs in the sum of $250,000. We reserve the right to apply for additional security for costs if necessary.
>
> In the event you intend to resist our reasonable request for security for costs having regard to the foregoing, kindly provide:
>
> 1. Evidence of Wyndhams' financial ability to satisfy a cost award;
> 2. Identify any available assets held by Wyndhams in The Bahamas;
> 3. Advise whether Mr. Stephen Horn, given his maintenance of these proceedings, is prepared to provide a Bond in the sum of $250,000 to cover any liability for costs incurred by Wyndhams in these proceedings.
>
> In the event Wyndhams fails to provide security for costs as requested or fails to provide information verifying that it has assets to cover Mr. Rodriguez's legal costs within seven (7) days hereof, we will be constrained to apply to the court for the same."

11. Similar requests were sent to the Claimant by the other Applicants.

12. D1 and D2 wrote on 3 March 2025 requesting provision of security in the amount of $225,000 and expressing their concern that a cost order against the Claimant would be unenforceable as the Claimant has no assets in the jurisdiction. D1 and D2 also raised the issue of the merits of the claim stating: "Our clients should not be prejudiced in having to defend the action, which in our view is meritless".

13. D11 wrote on 25 February 2025 seeking security in the amount of $200,000 and pointing to the residence of the Claimant's beneficial owner, Mr. Stephen Horn, outside of the jurisdiction coupled with the lack of assets within the jurisdiction as justification for the request. The letter states as follows in part:

> Rule 24.3(g)… provides the Court may make an order for security for costs where "*the claimant is ordinarily resident outside of the jurisdiction*"
>
> As your client is a limited liability IBC with its principal and controller, Mr. Stephen Horne, not resident in this jurisdiction and both having nominal or no assets in this jurisdiction there is reason to believe that Wyndhams will be unable to pay FTX PH costs if so ordered
>
> ... our client's costs of defending the claim to trial will likely be significantly higher than the sum sought as security for costs at this time and our client expressly reserves the right to apply for further security for costs as necessary.
>
> If you disagree with our client's position that Wyndhams is incapable of satisfying a costs award against it, please provide evidence of:
>
> 1. Wyndham's financial position;
> 2. Identify any readily available assets Wyndhams holds in The Bahamas; and
> 3. Advise whether Mr. Stephen Horn has agreed to satisfy [any costs orders against Wyndhams]

14. Having received no response to their requests, the Applicants proceeded with the Applications.

15. The Claimant opposes the Applications and relies principally on the Second Affidavit of Nakia Mitchell, filed on 24 February 2026 ("the Mitchell Affidavit"). The Claimant contends, firstly, that when the relevant factors are considered, the Applicants fail to establish that the Claimant is ordinarily resident outside of the jurisdiction; therefore, the CPR 24.3(g) threshold requirement has not been met. Secondly, the Claimant contends that "the Bahamian courts have set an exceptionally high threshold as it relates to proof of enforcement risk," and that the Applicants have also failed to meet this threshold.

16. The Claimant asserts, relying on the Mitchell Affidavit, that when applying the nine-factor test referenced by Madam Justice Simone Fitzcharles in ***Brightmill Inter Corp and KSV Ltd v 17***

ARM Africa and Opportunity Fund Ltd and 17 ARM UAE (FZ) LLC, this Court should find that the "central management and control" of Wyndhams is in The Bahamas. It contends that Mr. Horn acts only under limited, time-bound powers of attorney and that ultimate authority rests with Wyndham's Bahamian corporate directors and managers. The Claimant therefore argues that, as a Bahamian company managed and controlled in The Bahamas, it should not be subject to an order for security for costs.

17. Counsel for the Claimant further submits that the evidence does not establish that the Claimant lacks assets within the jurisdiction. With regard to the amount of security sought, counsel for the Claimant contends there is no evidence that such a sum is necessary to prevent injustice, and that the risk of oppression is manifest.

18. Relying on the judgment of Justice Delancy in **Claim No. 2023/COM/adm/FP/00005** ***In the Matter of an Admiralty action in rem against M.V. "Crystal Symphony"*** Counsel for the Claimant submits : "The Bahamian Courts have set an exceptionally high threshold as it relates to proof of enforcement risk. He argues that the authorities demonstrate that the relevant risk is "nonenforcement" and not "difficulty in enforcement".

Statutory Framework

19. The Court's power to order security for costs is governed by Part 24 of the Civil Procedure Rules 2022 ("CPR"). CPR 24.2 provides as follows:

> **24.2 Application for order for security for costs.**
> (1) A defendant in any proceedings may apply for an order requiring the claimant to give security for the defendant's costs of the proceedings.
> (2) Where practicable such an application should be made at or before a case management conference.
> (3) An application for security for costs must be supported by evidence on affidavit.
> (4) The amount and nature of the security shall be such as the Court thinks fit.

20. CPR 24.3 provides that the Court may order security for costs against a claimant where it is satisfied, having regard to all the circumstances of the case, that it is just to do so and that one

or more of the conditions set out in 24.3 (a) - (g) is met, condition (g) being that the claimant is ordinarily resident out of the jurisdiction. CPR 24.3 states as follows:

> **24.3 Conditions to be satisfied.**
> The Court may make an order for security for costs under rule 24.2 against a claimant only if it is satisfied, having regard to all the circumstances of the case, that it is just to make such an order, and that —
> (a) some person other than the claimant has contributed or agreed to contribute to the claimant's costs in return for a share of any money or property which the claimant may recover;
> (b) the claimant —
> (i) failed to give his or her address in the claim form;
> (ii) gave an incorrect address in the claim form; or
> (iii) has changed his or her address since the claim was commenced;
> with a view to evading the consequences of the litigation;
> (c) the claimant has taken steps in relation to his assets that would make it difficult to enforce an order for costs against him;
> (d) the claimant is acting as a nominal claimant, other than as a representative claimant under Part 21, and there is reason to believe that the claimant will be unable to pay the defendant's costs if ordered to do so;
> (e) the claimant is an assignee of the right to claim and the assignment has been made with a view to avoiding the possibility of a costs order against the assignor;
> (f) the claimant is an external company; or
> (g) the claimant is ordinarily resident out of the jurisdiction.

21. In summary, the Court must be satisfied of two matters: first, that one of the specified threshold conditions has been met; and second, that in all the circumstances of the case, it is just to make an order for security for costs.

22. Determining what is just in all the circumstances requires an understanding of the underlying claim and determining whether the Claimant is ordinarily resident out of the jurisdiction requires an understanding of the Claimant's structure.

The Underlying Claim

23. In his first affidavit, Mr. Stephen Horn deposes that in or about February 2008, the Claimant retained Evans & Co and Mr. Evans KC as legal advisors for the conveyance and purchase of the Units from NAAL. According to Mr. Horn, the retainer was implied.

24. Mr. Horn further deposes: "The sales agreements for the units are dated February 2008 and explicitly created a trust relationship. Evans and Co, the law firm, and Mr. Thomas Evans were designated as stakeholders and trustees of the purchase price funds under the stakeholder trustee clause. These funds were meant to be held in escrow to ensure the developments completion and adherence to the purchase agreement terms..."

25. Premised on these assertions, Wyndhams claims that the defendants, and others, breached fiduciary and trust duties owed to it. It is alleged that the law firm failed to disclose that the vendor, NAAL, could not pass good title to the Property.

26. The claim further alleges a complex series transactions, including transfers of the Property at an alleged undervalue to related entities and ultimately to FTX Property Holdings Ltd., which Wyndhams argues were done contrary to the equitable and proprietary interests that it had acquired in the Property.

27. The relief sought is extensive. It includes claims for damages for breach of duty of care (in negligence and fraud), negligent breach of trust, breach of fiduciary duty and wilful default, unjust enrichment, and conspiracy (both lawful and unlawful means). In addition, Wyndhams seeks specific performance of the Agreements for Sale; declarations of constructive and resulting trusts over funds paid; declarations of fiduciary duty and breach of contract; declarations as to proprietary or equitable interests in the units; proprietary and prohibitory injunctions; an account of monies paid and applied; and tracing relief.

28. It is not in dispute that, in 2008, two agreements for sale (collectively, "the Agreements for Sale") were entered into between the Claimant, as purchaser, and NAAL, as vendor. The Agreements for Sale, which are in substantially the same form, are exhibited to the Mitchell Affidavit.

29. Recital A in both of the Agreements for Sale states:

> "(a) An INDENTURE of a Declaration of Condominium for Allure Bahamas Condominium (hereinafter referred to as 'the Declaration') is soon to be lodged in the Registry of Records in the City of Nassau in the said Island of New Providence constituting the said property to be henceforth known as ALLURE BAHAMAS PHASE 1 CONDOMINIUM which consists of ALL THAT PARCEL OR LOT OF LAND SITUATE ON being a portion of the Two and Seven hundredths (2.07) acres being a portion of the 5.295 acres more or less of **land owned by the Vendor**...to be a condominium property within the meaning of the Law of Property and Conveyancing (Condominium) Act, 1965..." [Emphasis mine]

30. The problem for the Claimant was that NAAL (the vendor) was not the legal owner of the Property at the time the Agreements for Sale were executed, Cordell Funding LLLP ("Cordell") was. Cordell had, on 28 April 2006, acquired a fixed and floating charge over all of NAAL's business assets together with a first demand legal mortgage over the 5.295-acre parcel.

31. In the events that transpired, NAAL never lodged the declaration required to create the condominium units. Indeed, it was never in a position to do so, as it was neither the legal owner of the Property in 2008 at the date of the Agreements for Sale, nor at any time after.

32. Cordell parted with the Property in 2013 when it exercised its power of sale to convey the 5.295-acre parcel in fee simple to the Ninth Defendant, The Palms West Bay Ltd. ("The Palms"). The Property was subsequently conveyed by The Palms to the Tenth Defendant, Ocean Terrace, in 2014, and eventually to D11 in 2022.

33. The central difficulty that Wyndhams faced was that it had contracted with a vendor that did not have legal title to the property the subject of the purchase agreement and was therefore wholly incapable of completing the sale.

34. When viewed in the context of the Law of Property (Conveyancing and Condominium) Act (the "Act"), Wyndham's conundrum is clear. The Act prescribes strict and mandatory requirements governing the creation of units capable of constituting estates in real property which may devolve or be conveyed. Legal title to such units does not arise unless and until a declaration is duly executed and lodged for registration. Such declaration must be executed by the person or persons vested with both the legal and equitable estate in the land to which it relates, must be accompanied by detailed plans duly certified by a qualified architect, and must conform in all respects to the requirements of the Act. It is only upon full and strict compliance with these statutory requirements that legal title to the units comes into existence. None of this was complied with by NAAL. The Property was not legally owned by NAAL, the declaration was never lodged by NAAL, the condominium was never constituted by NAAL and there were never any Units owned or created by NAAL.

35. The Affidavit of Stephen Horn chronicles Wyndhams' and Mr. Horn's futile efforts in 2012 to enforce the Agreements for Sale and gain control of the Property through their attorneys, who were by then Messrs. Michael Scott & Co. and Messrs. Bostwick and Bostwick. Mr. Horn deposes that he and Wyndhams expended approximately US$500,000 in legal fees and associated expenses in these fruitless efforts.

36. Some 12 years later, having failed to enforce the Agreements for Sale or gain control of the Property, the present proceedings were commenced by Wyndhams. It can be noted from the pleaded claim that in the time that elapsed defendants have died, been struck from the register of companies, or placed into liquidation. A limitation defence looms and it also seems thoroughly fanciful that there could ever be specific performance of the 2008 NAAL purchase agreements. Even if NAAL existed: *nemo dat quod non habet* - no one can give what they do not have.

37. Veronique Evans asserts that, in addition to the claim being statute barred, the engagement with D1 and D2 was terminated in 2008 and responsibility for ensuring that the Units were unencumbered and capable of being transferred by NAAL rested with King & Co. as the attorneys acting for the purchaser at the relevant time.

38. Ms. Evans attaches correspondence from King & Co. in 2008 making requisitions on title on behalf of the purchaser, including requisitions in respect of the mortgage affecting the Property. King and Co., and by extension the purchaser who they acted for, were evidently alive to the problem as long ago as 2008, as the requisition letter from King and Co. dated 29 October, 2008 asks "whether (a) the Debenture [from NAAL to Cordell] will be satisfied before Closing, or (b) a Release [would be] granted by Cordell in respect of the Unit or (c) Cordell will join in the Conveyance of the Unit"

39. Wyndhams was not the only purchaser that NAAL had contracted with in 2008 for the sale of property that it had no legal title to. D11 refers the Court to the ruling of McKay J dated 28 May 2019 in the consolidated actions **Leo *International Holdings Ltd. v Allure Bahamas Limited and Sterling Asset Management Limited and Leo International Holdings Ltd. v North Andros Assets Ltd. and Cordell Funding LLP and The Palm West Bay Street Limited and Ocean Terrace by Sterling Limited* (2016/CLE/gen/00965 and 2016/CLE/gen/00807)**.

40. As the ruling in ***Leo*** shows, the claimant in ***Leo*** faced exactly the same problem that Wyndhams faced; namely, NAAL's lack of title and, thus, inability to lodge a declaration of condominium in compliance with the Act in order to constitute condominium units and complete a 2008 purchase agreement. Like Wyndhams, Leo sought to enforce its 2008 purchase agreement with NAAL and it sought orders that it had a proprietary interest in the Property legally owned by Cordell in 2008 that had by the time of the ***Leo*** action been conveyed to The Palm and then to Ocean Terrace, D11's predecessor in title. See ***Leo*** paragraph 4:

> "In April of 2006 the First Defendant North Andros Assets Ltd. purchased a 5.295 acres tract of land in the Western District of the Island of New Providence. Sometime in February 2008 they entered into a joint venture with the Second Defendant Allure Bahamas Ltd. to develop the front portion of the land into condominiums to be known as Allure Bahamas Condominium. In May of the same year the First Plaintiff Leo International Holdings Ltd. entered into Agreements for Sale for the purchase of two units in the Condominium. The Second Defendant

> Cordell Funding LLP took possession of the Property after the First Defendant failed to pay the sums due under a mortgage between the First and Second Defendants. In July 2013 the Second Defendant conveyed the property to the Third Defendant, The Palm West Bay Ltd, and in July 2014 the Second and Third Defendants conveyed the Property to Ocean Terrace by Sterling Ltd. ("the Fourth Defendant"). The Fourth Defendant subsequently conveyed the property to the Fifth Defendant Sterling Asset Management Ltd."

41. Like Wyndhams, the claimant in ***Leo*** sought an equitable proprietary interest in the property it had contracted to purchase from NAAL in 2008, as well as damages for fraudulent misrepresentation and injunctions to prevent the further transfer of the property.

42. The Court in ***Leo*** found that the purchasers claims against NAAL were contractual and amounted to a chose in action and the facts could not give rise to any equitable interest in the property which could form an encumbrance thereon. Consequently, the Court struck out the claim as against the subsequent purchasers (Sterling and Ocean Terrace) holding that there was nothing to suggest that they were anything other than bona fide purchasers.

43. The Court in ***Leo*** also noted that the allegations of fraud and dishonest assistance were not clearly or distinctly pleaded and should be struck out on that ground as well. The Applicants in the present case maintain that Wyndhams' claim should be struck out as against the Applicants for the very same reasons.

44. The litigation here has been vigorously contested and has given rise to numerous interlocutory applications. The Applicants have no doubt incurred considerable expense to date. Anticipating significant further costs and maintaining that their respective defences have a strong prospect of success, the Applicants now seek security for costs.

The Claimant's Structure

45. The following information as to the Claimant and its structure is derived from the Mitchell Affidavit:

(1) Wyndhams is an IBC that was incorporated under the laws of The Bahamas on 18 May 2007 as Company No. 148606 B.

(2) Wyndhams' Memorandum of Association confers upon it wide powers, including "the capacity to engage in any act or activity, business or otherwise, which is not prohibited under the International Business Companies Act 2000 or any other law for the time being in force in The Commonwealth of The Bahamas, …"

(3) The issued share capital of Wyndhams consists of 5,000 shares out of an authorised 50,000 shares, divided into voting and non-voting classes.

(4) All of the shares in Wyndhams are beneficially owned by Stephen Thomas Horn and his wife Jean Victoria Horn, who are non-Bahamian and reside outside of the jurisdiction.

(5) The voting shares (numbers 1 to 3,000) are legally registered in the name of Redcorn Consultants Limited ("Redcorn"), a company incorporated in the Turks and Caicos Islands.

(6) The non-voting shares (numbers 1 to 2,000) are legally registered in the name of Universal Shareholders Company Ltd., a Bahamian company. Both entities act as nominee shareholders pursuant to declarations of trust.

(7) The Declaration of Trust by Redcorn Consultants Limited in respect of the voting shares declares that "the beneficial interest in and ownership of the fully paid-up Voting Shares… in respect of which we are registered as the holder is exclusively jointly vested in STEPHEN THOMAS HORN and JEAN VICTORIA HORN of Mile Path West, Hook Heath, Woking Surrey, GU22 0JX, UK with right of survivorship (hereinafter called 'the beneficiaries')"

(8) The Redcorn declaration further provides: "WE UNDERTAKE AND DECLARE that we will upon request duly account for and pay to the Beneficiaries all the dividends and other money or rights paid or accruing to which we may be entitled by virtue of our holding of the said shares and further undertake and agree that we will execute a transfer thereof or execute or exercise the voting powers thereby conferred or otherwise deal with the said shares in such manner as we may from time to time be directed by the Beneficiaries."

(9) The Declaration of Trust by Universal Shareholders Company Ltd. in similar form declares that the non-voting shares are held by Universal as trustee for Mr. and Mrs. Horn, who are referred to as "the Owners", and that Universal "will execute a transfer of [the shares held] or execute or exercise the voting powers thereby conferred or otherwise deal with the said shares in such manner as [they] may from time to time be directed by the Owners".

(10) The corporate director of Wyndhams is Universal Directors Limited, a Bahamian corporate service entity resident in Nassau. The company's registered agent is CSC Corporate Services (Bahamas), formerly Intertrust (Bahamas) Limited, whose address is 1st Floor Ocean Centre, Montagu Foreshore, East Bay Street, Nassau, Bahamas.

(11) Powers of Attorney dated October 2023, September 2024, and December 2025, have been executed appointing Mr Horn as the company's true and lawful attorney-in-fact. Each power is valid for limited periods and expressed to be for the limited purpose of carrying out "any and all actions required for the settlement or recovery of monies pertaining to property investments undertaken by the Company since its inception".

Factors to determine residence

46. With regard to the factors which must be considered to determine whether an IBC is ordinarily resident out of the jurisdiction, the Claimant and the Applicants have all made reference to the ruling of Madam Justice Simone Fitzcharles in ***Brightmill***.

47. In the course of her ruling in ***Brightmill***, Fitzcharles J commented on a material difference between the Companies Act, Ch. 308 and the International Business Companies Act, Ch. 309 as regards security for costs, saying at paragraphs 50 and 61:

> "50. While, unlike s. 285 of the Companies Act, the International Business Companies Act, Ch 309 ("IBC Act") contains no provision as to the payment of security for costs, there is no express exemption or protection in the IBC Act afforded an international business company from either obeying an order to pay costs or giving security for costs in litigation."
>
> "61. ...Domestic Bahamian companies are most often incorporated to conduct business in The Bahamas or to hold in-country assets. If such companies are susceptible to scrutiny for the purpose of security for costs, why would not an international business company which, (with no assets in the jurisdiction and shares of nominal value), brings an action against others causing them to risk costs to defend themselves? ..."

48. Section 285 of the Companies Act provides protection against the risk that a defendant, forced to defend a claim brought by a limited liability company incorporated under the Companies Act, will be unable to recover their costs from the company upon successfully defending the claim. S. 285 of the Companies Act provides:

> 285. Where a limited liability company is plaintiff in any action, suit or other legal proceedings, a judge having jurisdiction in the matter may, if it appears by any credible testimony that there is reason to believe that if the defendant is successful in his defence the assets of the company may be insufficient to pay his costs, require sufficient security to be given for such costs, and may stay all proceedings until such security is given

49. Although the IBC Act has no equivalent to S. 285 of the Companies Act, CPR 24.3 (g) gives the Court wide discretion to prevent injustice arising from cost enforcement risks, and there is nothing to prevent the Court making an order under CPR 24.3 (g) requiring an IBC to provide security for costs once the court is satisfied that the IBC is ordinarily resident out of the jurisdiction and it is just in all the circumstances to make such an order.

50. Addressing the factors to be applied in determining whether the IBC under scrutiny fell within the ambit of CPR 24.3(g), Fitzcharles J, noted the nine-factor test laid down by Lindsay J in

the case of ***Re Little Olympian Each Ways Limited*** [1995] I WLR 560 said as follows, at ***Brightmill*** paragraph 54:

> 54. In the Eastern Caribbean Supreme Court decision of **Surfside Trading Ltd. v Landsome Group Inc. et al (2006] ECSC J0120-1,** George-Creque J stated at paragraph 3
>
> "[3.] For completeness, however, and given the lack of jurisprudence in this jurisdiction in respect of the aspect of the matter, I think it appropriate, therefore, to deal with the question as to whether the Claimant may be said to be ordinarily resident out of the jurisdiction. The matter may very well arise again and in circumstances of a wholly solvent company. Both sides agree that the test to be applied for the purpose of making this determination of fact is the central control and management test as enunciated in the case of *DeBeers Consolidated Mines ltd. v Howe [1906] AC 448* and further propounded in the case of *Re Little Olympian Each Ways Limited [1995] 1 WLR 560.* Lindsay J in *Re Little Olympian* at pages 568-569 considered the following factors relevant in determining whether a company was ordinarily resident
>
> (a) the objects clause;
> (b) the place of incorporation;
> (c) where the company's real trade or business is carried on;
> (d) where the company's books are kept;
> (e) where its administrative work is done;
> (f) where its directors meet or reside;
> (g) where it "keeps house";
> (h) where its chief office is situate; and
> (i) where its secretary resides."

51. Fitzcharles J also refers in ***Brightmill*** to the ruling of the Barbadian Court of Appeal in ***Copeman Financial Corporation v C Brian Barnes Ltd*** (BS 2000 CA 19) which she commented on as follows at paragraph 57:

> "57. The Court was invited to consider the Barbadian Court of Appeal decision of Copeman Financial Corporation v C. Brian Barnes Ltd. BS 2000 CA 19. Here, the Barbadian Court of Appeal held that a Barbadian High Court judge (Greenidge, J) was correct when he ordered an international business company incorporated under the laws of Barbados to pay security for costs. This is because the company was found to be ordinarily resident out of the jurisdiction. Such finding was made despite the fact that (according to s. 3(2) of the Barbadian International Business Companies Act, Ch 77) international business companies incorporated or registered under the laws of Barbados are statutorily deemed to be resident within the jurisdiction of Barbados for the purposes of that legislation. The Court of Appeal approved the High Court's adherence to the test of the situs of the control and management of the company. It was found that the company possessed no assets in

Barbados and its control and management were not in Barbados. Williams CJ pronounced the following:

> "The residence of an international business company is placed in Barbados because the policy of the legislation is to encourage the development of Barbados as a financial centre and in order to do so incentives by way of tax reduction, exemptions and benefits must be provided. Those administering the relevant law are enabled to deal with international business companies as residents of Barbados and prescribed incentives accordingly...
>
> **The essential question is whether for this purpose the court should pay regard to the statutory residence conferred on the plaintiff for the special purposes of the International Business Companies Act.**
>
> A company incorporated in Barbados must have a registered office: see Form 4 in the Third Schedule of the Companies Regulations, 1984. **But the existence of a registered office is not significant for the purpose of determining where a company is resident.** In Barbados section 75(1) of the Companies Act, Cap. 308... enacts that, unless the articles or by-laws of a company otherwise provide, the directors of a company may meet at any place and upon such notice as the by-laws require. Section 79 enables participation in meetings by the board of directors by means of such telephone or other communication facilities as permit all persons participating in the meeting to hear each other; section 80 enables the directors of a company to appoint a managing director and delegate to him any of the powers of the directors; section 82 provides that when a resolution in writing is signed by all the directors entitled to vote on the resolution at a meeting of directors, the resolution is valid as if it had been passed at a meeting of directors.
>
> **In this case the plaintiff company has three directors. Two of them are international business companies controlled by non-residents of Barbados and the third is a resident of Canada. Its central control and management can be anywhere but nothing is disclosed about how the directors manage the company's affairs. Instead it seeks to say that the residence conferred on it by statute is its ordinary residence for the purpose of deciding whether it should be made to pay security for costs**.
>
> **The learned judge in his discretion thought it just that the plaintiff should give security for costs to the defendant. We see no reason for interfering. The appeal is dismissed with costs.**

[Emphasis added mine]"

52. Agreeing with the reasoning in ***Copeman,*** Fitzcharles J said the following at paragraph 61 of ***Brightmill***:

> "I am persuaded that like the Barbadian courts in **Copeman,** this Court ought to look beyond the place of incorporation of the Second Claimant to determine its ordinary residence for the purpose of this application…"

53. Fitzcharles J in ***Brightmill*** held that the location of an IBC's central management and control was a crucial factor. On the evidence before her, finding that the persons who exercised management and control over the IBC were all resident out of the jurisdiction, Fitzcharles J held: "I am satisfied that the Second Claimant is ordinarily resident out of the jurisdiction for the purpose of giving security for costs and falls within the ambit of Rule 24.3(g) of the CPR."

54. I agree with the observation that this Court ought to look beyond the place of incorporation to determine ordinary residence for the purposes of Rule 24.3(g). In that regard, the residence of the beneficial owners is, in my view, a highly relevant factor to be considered in assessing the ordinary residence of an IBC for the purposes of Rule 24.3(g).

55. This is not novel. In The Bahamas, regulators and other authorities exercising public power very often consider beneficial ownership a key factor when tasked with making a determination as to the status or designation of IBCs. For example, in carrying out the process of determining whether an IBC will be designated resident or non-resident for exchange control purposes, the Central Bank of The Bahamas requires documentation confirming the citizenship and immigration status of each beneficial owner.

56. Another example of the crucial relevance of beneficial ownership is found in the IBC Act itself which calls for consideration of the residence of beneficial owners when determining if an IBC will be exempt from business license fees and other taxes. See S. 187 (2) of the IBC Act which provides that exemption from business license fees and certain other taxes "…shall not apply … to a company incorporated or continued under this Act if a resident of The Bahamas within the meaning of the Exchange Control Regulations Act and the regulations made thereunder is

the beneficial or legal owner of any of the common or preferred shares issued or to be issued by such company …"

57. Similarly, the International Persons Landholding Act 1993 (enacted "to repeal the Immovable Property (Acquisition by Foreign Persons) Act, 1981, and to facilitate the holding of land by non-Bahamians and by companies under their control") looks expressly to beneficial ownership and control when determining whether a company is to be treated as a Bahamian company. S. 14.(1) of the International Persons Landholding Act defines a "Bahamian Company" as "a company incorporated and registered in The Bahamas where all its shares or other capital is beneficially owned by one or more citizens of The Bahamas directly or through another Bahamian company and it is not in any manner, whether directly or indirectly controlled by any non-Bahamians."

58. In light of the foregoing, I see no reason why, in addition to the central management and control test derived from ***Brightmill***, close regard should not also be had to beneficial ownership when determining whether the Claimant is to be treated as resident or non-resident for the purposes security for costs under CPR rule 24.3(g)

Is the Claimant "ordinarily resident out of the jurisdiction" for the purposes of Rule 24.3(g)?

59. The Applicants contend that Wyndhams, while incorporated in The Bahamas, is in fact controlled and managed from outside the jurisdiction. The Mitchell Affidavit resists this, arguing that a detailed application of the nine ***Brightmill*** factors demonstrates that the factual locus of Wyndhams' central management and control is in The Bahamas.

60. I have carefully considered the evidence relating to each of the ***Brightmill*** factors. The following findings are made:

    (a) The objects and nature of the company's business: Wyndhams is an IBC whose object is investment in Bahamian real estate. Its pleaded purpose and actual commercial activity have been confined to the acquisition, holding, management and recovery of Bahamian real estate assets. This factor points to a Bahamian focus, but does not resolve the question of where control is exercised.

(b) Place of incorporation: Wyndhams is incorporated in The Bahamas. This is a relevant but not decisive factor.

(c) Where the real trade or business is carried on: the company's business, i.e. holding and managing Bahamian real estate, is necessarily carried on in The Bahamas. The property is here, and the transactions concerning it occurred here. This factor supports the Claimant's position.

(d) and (e) Where the books and administrative work are kept and done: The corporate registers and records are maintained with local registered agents, including Intertrust and other Bahamian corporate managers. This factor supports the Claimant.

(f) Where the directors meet or reside: The registered director is Universal Directors Limited, a Bahamian corporate entity resident in Nassau. There is no evidence that directors meet or reside outside The Bahamas. This factor supports the Claimant.

(g) and (h) Where the company "keeps house" and the location of its chief office: The company's registered office is in Nassau, maintained by its registered agent. This factor supports the Claimant.

(i) Where the secretary and key officers reside: Secretarial functions are performed by Intertrust (Bahamas) Limited, with offices in Nassau. This factor supports the claimant.

61. On the face of these factors, the administrative apparatus of the company is firmly rooted in The Bahamas. However, as ***Brightmill*** makes clear, the Court must look beyond the administrative facade to determine where "central management and control" actually abides. The determinative question is not where the paperwork is kept, but where the real power to make decisions lies.

62. The answer to that question is found in the two Declarations of Trust. The Declaration of Trust by Redcorn Consultants Limited states in unequivocal terms that Redcorn holds the voting shares "upon trust for the Beneficiaries", namely STEPHEN THOMAS HORN and JEAN VICTORIA HORN. Crucially, Redcorn undertakes to "**execute a transfer thereof or exercise the voting powers thereby conferred or otherwise deal with the said shares in such manner as [it] may from time to time be directed by the Beneficiaries**." (Emphasis added)

63. This is not the action of an independent corporate mind exercising ultimate managerial control from Nassau. It is the action of a nominee holding legal title but obliged to vote at the direction of Mr. and Mrs. Horn in the United Kingdom. The "independent" Bahamian corporate director, Universal Directors Limited, is appointed by the shareholder, Redcorn, which votes as Mr. Horn directs. The entire architecture is designed to ensure that Mr. Horn, the beneficial owner resident in the United Kingdom, is the source of ultimate authority.

64. The Mitchell Affidavit argues that the boards of Universal Directors Limited and Redcorn make "independent management and investment decisions". This assertion is rendered implausible by the plain text of the Redcorn Declaration of Trust. If Redcorn, the holder of all voting shares, is legally bound to exercise its votes as directed by Mr. Horn, then Mr. Horn, not Redcorn, holds the ultimate power. The Bahamian entities are not principals. They are custodians of the legal machinery, awaiting instruction from the true controlling mind in Woking, Surrey. The limited powers of attorney granted to Mr. Horn do not displace this conclusion; they are merely one manifestation of his overarching control.

65. The existence of a layered trust structure, far from proving Bahamian control, confirms that the true beneficial owner and ultimate controller is non-resident.

66. Applying the ***Brightmill*** analysis, the determinative factor is not the location of the registered office or the corporate secretary, but the seat of real power. Here, that power is vested in the beneficial owner, who directs the voting of the shares and, through them, the company itself. Wyndhams is, in substance, a corporate vehicle for Mr. Horn's Bahamian real estate investments, controlled by him from the United Kingdom.

67. I am therefore satisfied that Wyndhams is "ordinarily resident out of the jurisdiction" for the purposes of Rule 24.3(g) of the CPR. The threshold condition is established.

68. I have borne in mind the contrary approach taken by the BVI court in ***China NTG Investments Ltd v Great River Corp Ltd et al*** (BVIHC (COM) 63 of 2012), where, on the evidence before it, the court was unable to conclude that the company was ordinarily resident elsewhere than

in the BVI. The company was incorporated there, maintained its registered office and registered agent there, and owned a significant asset (99.5% of the shares in a subsidiary) situate in the BVI. Its directors were abroad, but the court regarded the residence of the directors of a non-trading BVI company as of little, if any, significance in an age of instant electronic communications.

69. I do not find the reasoning in ***China NTG Investments Ltd*** persuasive in the Bahamian context. As discussed above, in The Bahamas it is common for regulators and other authorities exercising public power to look beyond the place of incorporation and the location of the corporate structure and to consider beneficial ownership as a relevant factor when making decisions as to the status of a company for the purpose of Bahamian legislation or regulations. I am satisfied that it is appropriate to consider the beneficial ownership of the Claimant and the residence of its beneficial owners in determining whether the claimant is ordinarily resident out of the jurisdiction for the purpose of CPR 24.3 (g).

70. I note that 100% of the claimant's shares are beneficially owned by persons who are ordinarily resident out of the jurisdiction. Having considered its beneficial ownership, I am fortified in my view that Wyndhams is ordinarily resident out of the jurisdiction for the purposes of Rule 24.3(g).

71. I now move to consider whether, having regard to all the circumstances of the case, it is just to order Wyndhams to put up security.

Principles Governing the Exercise of the Jurisdiction under CPR Part 24

72. It has been consistently accepted that the court has, in the words of Peter Gibson LJ in ***Keary Developments Ltd v Tarmac Construction Ltd*** **[1995] 3 All ER 534,** "a complete discretion whether to order security, and accordingly it will act in the light of all the relevant circumstances". This formulation is consistent with CPR 24.3, which provides that once a threshold condition has been met, the Court's discretion is unfettered and subject only to the requirement that the Court "is satisfied, having regard to all the circumstances of the case, that it is just to make such an order".

73. The Honourable Mr. Justice Evans, JA of the Court of Appeal in ***Alexandra Henderson v Yamaha Motor Manufacturing Corporation of America and Yamaha Motor Co Ltd*** **SCCivApp No. 153 of 2021** confirmed the wide discretion to order security for costs, stating at paragraph 13: "In my view Order 24 r 5 gives this Court wide discretion in determining whether security for costs should be granted. However, this is subject to the accepted principle that like all discretions it must be exercised judicially...".

74. In ***Maria Iglesias Rouco and others v Juan Jose Sanchez Busnadiego and others*** 2017/CLE/gen/00937 the Court discussed the guiding principles for the exercise of the discretion to order security for costs. See as follows as follows at paragraphs 8 and 10 of the ruling of the Honourable Madam Justice Charles in ***Rouco***:

> [8] Where a plaintiff who is ordinarily out of jurisdiction has no assets within it, he or she may still yet convince the court against ordering security for costs if he or she were able to show that the application was being used oppressively to stifle a genuine claim. The exercise of the court's discretion was considered in Sir Lindsay Parkinson & Co. Ltd v Triplan Ltd [1973] Q.B. 609 in which the Court of Appeal indicated some of the circumstances the court might have taken into account. These included:
> i. The genuineness of the plaintiff's claim;
> ii. The plaintiff's prospect of success, although the court should not embark on an in-depth analysis of the prospect;
> iii. Whether the defendant has made admissions of the plaintiff's claim; iv. Whether the defendant has made a payment into court;
> v. Whether the plaintiff's impecuniosity has been brought on by the defendant's conduct; vi. The stage at which the application is made;
> vii. Whether the application is made oppressively to stifle the plaintiff's claim.
>
> [10] So, an order for security for costs will not be granted merely because a plaintiff is non-resident. The rationale for the order is that the plaintiff, being a non-resident, cannot be compelled to pay a defendant's costs in the event that the defendant defeats the plaintiff's claim and is entitled to its costs. It follows that there must be some evidence to supplement the plaintiff's non-residence for the defendant(s) to demonstrate that they could be unable to recover their costs from the plaintiff.

75. The Honourable Chief Justice Sir Ian Winder in his ruling in ***Clico Life Insurance Company Suriname SV v Clico (Bahamas) Limited (In Liquidation)*** **2009/COM/gen/00019** also provided helpful guidance as to the principles to be applied by the court in the exercise of its

discretion to order security for costs in the case of a company resident out of the jurisdiction, see ***Clico*** paragraphs 4 and 6 as follows:

> 4. It is common ground that the Clico Suriname resides out of the jurisdiction and therefore Order 23(1)(a) permits an application for security for costs. **The basis for the requirement for security does not arise out of the any fact that the plaintiff is foreign but from the intrinsic difficulty which will attend upon a defendant seeking to recover its costs from the non-resident**. The evidence is also to the effect that there are no assets in the jurisdiction other than Clico Suriname's claim to the funds, the subject of this action/appeal. The Eastern Caribbean Court of Appeal in recent case of ***Dr. Martin Didier et al v Royal Caribbean Cruises Ltd***. SLUHCVAP2017/0051 on appeal from St Lucia, provides a very useful discussion on this issue. The respondent in that case, Royal Caribbean Cruises Limited ("RCC"), brought a claim against the appellants. The appellants applied for security for costs of the proceedings on the grounds that RCC is an external company that is ordinarily resident outside the jurisdiction and does not have assets in the jurisdiction. The master dismissed the application and ordered the appellants to pay the costs of the application. The master found, inter alia, that it was a notorious fact that RCC had ships that visited Saint Lucia regularly and that there would be no difficulty enforcing a costs order against RCC's ships. Further, there was no evidence by the appellants that RCC would be unable to honour a costs order, or would fail or refuse to satisfy such an order. The appellants appealed against the master's decision. The Eastern Caribbean Court of Appeal allowed the appeal and set aside the order below ordering the respondent to pay security for the appellants' costs and the costs of the application in the court below and of the appeal. It was found, per **Webster JA**, that the court will not order security for costs solely because the claimant is ordinarily resident outside the jurisdiction. However, a non-resident claimant with no assets in the jurisdiction will, in all likelihood, be required to put up security for the defendant's costs. In light of the circumstances, where RCC has no assets in the jurisdiction and there are potential difficulties and expenses associated with enforcing a costs order against RCC, it would be just to order that RCC provide security for the costs of the appellants.
>
> ...
>
> 6. Having considered these factors and weighing the injustice to the plaintiff if it has to put up security against the injustice towards the defendant if it were to pursue a successful costs order against the plaintiff in its home jurisdiction, I lean towards the grant of security. I am cognizant of the need to ensure that the Order for security is not used as an instrument of oppression to stifle a genuine claim by an indigent company, however Clico Suriname avers that it is a company of considerable means and backing and could easily satisfy an order for costs. In this very same vein I am satisfied therefore that Clico Suriname is not being oppressed or prejudiced by an Order for security."

76. It is well established that, in exercising its discretion and determining whether it is just to make an order for security for costs, the court must weigh the relevant factors and undertake a

balancing exercise. The oft-cited judgment of Peter Gibson LJ in ***Keary*** put it as follows at 539–540:

> "The court must carry out a balancing exercise. On the one hand it must weigh the injustice to the plaintiff if prevented from pursuing a proper claim by an order for security. Against that, it must weigh the injustice to the defendant if no security is ordered and at a trial the plaintiff's claim fails and the defendant finds himself unable to recover from the plaintiff the costs which have been incurred by him in his defence of the claim."

77. The obligation to weigh the injustice to claimant if prevented by a security for costs order from pursuing a legitimate claim is not only rooted in case law, it is a principle enshrined in the constitution. Article 20(8) of the Constitution provides:

> "Any court or other adjudicating authority prescribed by law for the determination of the existence or extent of any civil right or obligation shall be established by law and shall be independent and impartial; and where proceedings for such a determination are instituted by any person before such a court or other adjudicating authority, the case shall be given a fair hearing within a reasonable time."

78. The balance between this constitutional right of fair access and an order for security for costs was recently considered by the Judicial Committee of the Privy Council in ***Responsible Development for Abaco Ltd v Christie and others*** **[2023] UKPC 2.** In that case, the Board made it clear that the right of access to a court is not absolute, but may be subject to proportionate regulation. Lord Sales and Lord Hamblen J, delivering the judgment of the Board, stated:

> "61. The right of access to a court under the Constitution is not absolute, but may be subject to a degree of regulation to promote countervailing legitimate aims by means which are proportionate to those aims and which do not destroy the essence of the right... In terms of a claimant's constitutional right of access to the courts, an order for security for costs may be made provided it does not have the effect of unfairly stifling the bringing of a properly arguable claim."

79. An order for security for costs will be compatible with a claimant's constitutional rights provided it does not have the effect of "unfairly stifling the bringing of a properly arguable claim". The onus is on the claimant to demonstrate that an order would have such a stifling effect. See paragraphs 65 and 67 of ***Responsible Development for Abaco Ltd***, where the Board, approving the principles set out in ***Keary Developments Ltd v Tarmac Construction Ltd*** said the following:

"65. Keary was concerned with the application of section 726 of the (UK) Companies Act 1985, which was the same as section 285 of The Bahamas Companies Act (for the equivalent current provision in the law of England and Wales, see now the Civil Procedure Rules, Part 25.12 and 25.13, in particular rule 25.13(2)(c)). Peter Gibson LJ set out the relevant principles at [1995] 3 All ER 534, 539-540, including the following:

> ... 'Before the court refuses to order security on the ground that it would unfairly stifle a valid claim, the court must be satisfied that, in all the circumstances, it is probable that the claim would be stifled. There may be cases where this can properly be inferred without direct evidence...
>
> However, the court should consider not only whether the plaintiff company can provide security out of its own resources to continue the litigation, but also whether it can raise the amount needed from its directors, shareholders or other backers or interested persons. As this is likely to be peculiarly within the knowledge of the plaintiff company, it is for the plaintiff to satisfy the court that it would be prevented by an order for security from continuing the litigation...'

...

67. As appears from Keary and Goldtrail, the burden is on an impecunious corporate claimant to show that there are no third parties who could reasonably be expected to put up security for the defendant's costs..."

80. If stifling is alleged, the burden is on the Claimant to establish, on a balance of probabilities that it has no realistic prospect of raising the necessary funds, whether from its own resources or from its supporters or other interested parties. A mere assertion of impecuniosity, without supporting evidence, will be insufficient.

81. Another relevant factor when considering the Claimant's ability to meet a cost order against it is the response from the Claimant to requests for disclosure of assets, and any reticence on the Claimant's part to provide disclosure can be regarded as evidence of lack of means. In ***Sarpd Oil International Limited v Addax Energy SA*** **[2016] EWCA Civ 120**, the Court of Appeal considered the position where a claimant company was found to have no discernible assets and declined to reveal its financial position. The court held that this could provide sufficient reason to believe that the claimant may not have the assets to pay a costs order when it fell due, thus justifying an order for security. Lord Justice Sales delivering the judgment of the Court of Appeal in ***Sarpd Oil*** said the following at paragraphs 17 to 19:

"17. ... If a company is given every opportunity to show that it can pay a defendant's costs and deliberately refuses to do so there is, in our view, every reason to believe that, if and when it is required to pay a defendant's costs, it will be unable to do so...

...

19. ... a court can and should take account of deliberate reticence as part of the overall picture. Any evaluation has to be made on the totality of the evidence before the court; part of that totality is the absence of relevant evidence from the only party who is able to provide it. If, therefore, there were to be a practice of the Commercial Court (as to which we cannot express a view from our own experience) that security for costs will often be granted against a foreign company who is not obliged to publish accounts, has no discernible assets and declines to reveal anything about its financial position, our view is that the practice is a sound one and, as Lewison LJ noted, it is an important point of practice which should either be upheld or rejected at appellate level. We would uphold it."

82. The reasoning of the Court of Appeal in ***Sarpd Oil*** has been endorsed and applied in subsequent decisions. In ***Virgo Marine v Reed Smith LLP*** **[2025] EWHC 1157 (Comm)**, the court, citing ***Sarpd Oil***, held that a claimant's failure to provide details of its assets and financial position was sufficient to give rise to a reason to believe that it would be unable to meet a costs order. See as follows at paragraph 31 of ***Virgo***:

> "31. ...Both Virgo and Nixie are foreign companies. They are incorporated in jurisdictions which do not require the publication of accounts, and neither has responded to the request that they provide details of their assets and financial positions. This is a state of affairs which the Commercial Court has long treated as sufficient to justify an order for security for costs, and, following a brief hiatus, the correctness of that practice was confirmed by the Court of Appeal in ***Sarpd Oil International v Addax Energy*** **[2016] EWCA Civ 120.**"

83. The Courts have also accepted that the Claimants prospects of success is a relevant factor. As stated by Peter Gibson LJ in ***Keary*** at page 540 citing ***Porzelack KG v Porzelack (UK) Ltd*** **[1987]**:

> ...In considering all the circumstances, the court will have regard to the plaintiff company's prospects of success. But it should not go into the merits in detail unless it can clearly be demonstrated that there is a high degree of probability of success or failure (see Porzelack KG v Porzelack (UK) Ltd [1987] 1 All ER 1074 at 1077, [1987] 1 WLR 420 at 423 per Browne-Wilkinson V-C).

Is it just in all the circumstances to order the Claimant to provide security?

84. The evidence from the Applicants demonstrates that Wyndhams has no significant assets in the jurisdiction. The Computitle search exhibited by Mr Rodriguez shows that Wyndhams' only known significant asset, a penthouse at One Ocean Condominium, was sold in December 2022. There is no evidence of any other real property, or other assets within the jurisdiction capable of satisfying an adverse costs order. The suggestion in the Mitchell Affidavit that the escrowed funds and proprietary claims, which are the subject of contested litigation, constitute assets within the jurisdiction is inadequate and provides no comfort that the Claimant will be able to satisfy an order of costs against it if it is unsuccessful in the litigation.

85. Additionally, the fact that the Computitle search appears to show that the Claimant, which is said to be "a holding company for the purposes of investment in real estate in The Bahamas", has divested itself of all of its real estate in The Bahamas gives rise to a very real concern that the Claimant may not have any assets at all and that there will be great difficulty in enforcing a cost order against it, as it might be a foreign owned shell.

86. Furthermore, despite specific and reasonable requests for information about its financial standing or for an undertaking from its beneficial owner, Wyndhams has remained silent. The letters from the First and Second Defendants (3 March 2025), the Eighth Defendant (18 March 2025), and the Eleventh Defendant (25 February 2025) all requested evidence of Wyndhams' ability to satisfy a costs award or confirmation that Mr. Horn would provide a bond. No response was received to any of these letters. This deliberate reticence is a factor that the court is entitled to take into account: see ***Sarpd Oil*** and ***Virgo v Reed Smith***.

87. Wyndhams has not provided any evidence of its financial position, has not identified any assets within the jurisdiction, has not explained why no response was given to the requests for information, and has not offered any explanation as to why Mr. Horn, the ultimate beneficiary of any successful claim, would be unable or unwilling to provide security.

88. As to the question of stifling the bringing of a properly arguable claim, thereby breaching Wyndhams' constitutional right of access to the court under Article 20(8), the burden lies on Wyndhams to establish, on a balance of probabilities and with full candour, that it has no

realistic prospect of raising the necessary funds to provide security. The evidence falls far short of discharging that burden.

89. The Mitchell Affidavit does not assert that an order for security would stifle the claim. It merely asserts that the claim is genuine and that the defendants' applications are speculative. At paragraph 49, the affiant states that "any order should be modest, precise, non-duplicative and tailored so as not to stifle the Company's right to have trial..." This is not an assertion of stifling; it is a submission on the form any order should take.

90. The evidence strongly suggests that Wyndhams is, and always has been, funded by Mr. Horn. The purchase agreements for the Units were originally in Mr. Horn's name. The funds for the deposits and stage payments were provided by Mr. Horn. There is evidence that the litigation to date has been funded by Mr. Horn. In these circumstances, it is reasonable to infer that Mr. Horn, a beneficial owner resident in the United Kingdom with the means to have invested over US$1 million in Bahamian real estate and to have spent an additional US$500,000 in legal fees in 2012, has the ability to provide or procure the funds necessary to meet an order for security for costs.

91. I am therefore satisfied that an order for security for costs would not unfairly stifle Wyndhams' claim and would be compatible with the constitutional right of access to the court.

92. In conducting the balancing exercise, the court is entitled to consider the apparent merits of the claim. As the authorities make clear, the court should not enter into a detailed examination of the merits unless it can be clearly demonstrated that there is a high degree of probability of either success or failure. However, where the claim appears to face very significant hurdles, this is a factor that may properly be taken into account.

93. It is clearly demonstrated on the pleadings and evidence before me that there is a high degree of probability of success of the Applicants' defences.

94. There is a powerful reason to doubt the viability of the claim against FTX PH having regard to the issues in the action of ***Leo International Holdings Ltd et al v North Andros Assets Ltd et***

al, where McKay J struck out a similar claim against the immediate predecessors-in-title to FTX PH. The court held that the plaintiffs' claims did not create an equitable interest in the land capable of binding subsequent purchasers. This issue will be a serious hurdle for the Claimant to overcome in the present case.

95. I make the following observations drawn from the pleadings and evidence. Under the heading "Performance of the Contract by the Purchasers", paragraph 20 of the Amended Standard Claim lists payments totalling US$1,079,250.00, of which US$835,000.00 was paid to Evans & Co. The Purchase Agreements name Evans & Co. as "Stakeholder". Clauses 4 and 11 provide for payments to be made to the stakeholder and delivered to the vendor. There is no mention of any express trust nor mention of any trust at all in the Purchase Agreements.

96. The claimant alleges that the performance of payments entitles it "to an equitable and proprietary right and interest in the Development and the Units". The claimant further pleads that it attempted to enforce the Purchase Agreements in 2012, some 12 years before the present proceedings were commenced.

97. I find that the limitation defence will be a formidable one having regard to the facts pleaded as well as the facts disclosed in the claimant's own affidavits. The Claimant filed these proceedings in 2024 which is around 12 years after the unsuccessful enforcement litigation that the claimant embarked upon in 2012. The unsuccessful enforcement litigation strongly indicates that the Claimant was aware of the breaches complained of at least by 2012 and on that basis any causes of action for breach of contract or negligence would have been statute barred by the end of 2018 at the latest. The present claims were filed in 2024 which is well outside of the limitation period.

98. I note that claimant asserts that the causes of action include fraudulent breach of trust, for which there is no limitation period. I find the breach of trust arguments to be tenuous at best. It is settled law that the stakeholder's obligations arise from the terms of the tripartite agreement between vendor, purchaser, and stakeholder, and the relationship is contractual. The authorities establish that, absent express agreement to the contrary, monies paid to a stakeholder are held

on a contractual or quasi-contractual basis, not as trust property. The stakeholder is not a trustee unless the contract expressly provides for this: see ***Various North Point Pall Mall Purchasers v 174 Law Solicitors Ltd*** **[2022] EWHC 4 (Ch).**

99. As to the fiduciary claims against the stakeholder, there is settled law on this point that the Claimant will have to grapple with. In ***Gribbon***, the Court of Appeal considered the nature of a stakeholder's obligations. As Laddie J observed in at paragraph 19 in ***Gribbon***:

> 19. … The payment of a deposit to a stakeholder is not a gift by the purchaser to the vendor and the vendor does not acquire title. Furthermore, this conclusion cannot be avoided by treating the stakeholder as an agent for the vendor. As Millett LJ said in *Manzanilla*:
>
> > The relationship between the stakeholder and the depositors is contractual, not fiduciary. The money is not trust money; the stakeholder is not a trustee or agent; he is a principal who owes contractual obligations to the depositors: *Potters v. Loppert* [1973] Ch. 399, 406; *Hastingwood Ltd. v. Saunders Bearman* [1991] Ch. 114, 123. The underlying relationship is that of debtor and creditor, and is closely analogous to the relationship between a banker and his customer.

100. The pleadings with regard to fraud are also, to my mind, less than adequate. Paragraph 31 of the Amended Statement of Claim alleges that the defendants "knew or ought to have known, and fraudulently or negligently represented" various matters. Unsurprisingly, some of the defendants have filed strike out applications. It would seem to me that these strikeout applications, similar to the ***Leo*** strike out application, have strong prospects of success.

101. As has been set out in ***Three Rivers District Council v Governor and Company of the Bank of England*** **[2001] UKHL 16**, and repeated on countless occasions by the courts, fraud must be distinctly alleged and distinctly proved, and the facts, matters, and circumstances relied upon to demonstrate dishonesty must be clearly pleaded. It is insufficient to plead facts that are consistent with innocence or negligence. The defendant must be given sufficient notice of the case they are required to meet, including the primary facts that will be relied upon at trial to justify the inference of dishonesty. The court will not infer dishonesty from facts that have not been pleaded, or from facts that are consistent with honesty.

102. The pleaded case fails to identify with the requisite particularity the facts said to constitute fraud. The allegations are largely assertions of negligence dressed in the language of fraud. They do not identify, for example, what knowledge the late Mr. Evans KC actually possessed, when he possessed it, or what specific dishonest state of mind is to be inferred. The particulars provided are equally consistent with negligence or oversight as with dishonesty. This falls squarely within the prohibition identified by Lord Millett in ***Three Rivers***: it is insufficient to plead facts that are consistent with innocence or negligence.

103. Taking all these factors into account, including the apparent limitation difficulties, the tenuous nature of the trust arguments, the inadequate pleading of fraud, and the problematic proprietary interest claim, I consider that the claims against the Applicants will face very significant hurdles. While this is not determinative of the security for costs applications, it reinforces the justice of requiring security to protect defendants who are, on the current pleadings, facing a claim of doubtful merit.

104. I have reviewed the draft bills of costs, the submissions, the affidavit evidence mentioned in this judgment, and the pleadings. I have carefully considered the multiple applications before the court in addressing my mind to the likely steps ahead in this litigation. I note that it has been extremely contentious and that, even at this relatively early stage, many applications have been spawned and the correspondence, affidavits, and submissions are voluminous.

105. As to the amount of security sought, D1 and D2 seek $225,000.00, D8 seeks $250,000.00, and D11 seeks $200,000.00. The Claimant, in the Mitchell Affidavit, makes detailed submissions challenging the quantum sought, particularly criticising the bill of costs of Lennox Paton for D11 as inflated and including costs relating to applications in which that defendant has no legal interest. I do not agree that counsel engaged in a matter would have no interest in applications made in that matter. Even if a particular application does not directly concern all parties, it would not be unreasonable for all parties to be present at all hearings through their

counsel, and counsel would be expected to keep abreast of all interlocutory applications, whether they are moving the Court on a particular application or not.

106. The court's task in fixing the amount of security is to arrive at a sum that is just and proportionate, having regard to the likely costs that the defendants will reasonably incur in defending the claim. It is not a taxation, but an estimate. The court must be careful not to set the amount so high that it becomes oppressive, while ensuring it is sufficient to provide meaningful protection.

107. Having considered the draft bills of costs, the nature and complexity of the claim, the number of defendants, and the likely duration of the proceedings, I am of the view that the amounts sought are somewhat higher than is appropriate at this stage.

108. Taking all these factors into account, and bearing in mind the need to ensure that the security ordered is proportionate, I consider that a just and reasonable amount for each of the three Applicants is $90,000.00. This sum reflects a conservative estimate of the costs each defendant is likely to incur up to and including trial, and is sufficient to provide meaningful protection without being oppressive. The total security to be provided by Wyndhams across the three applications is therefore $270,000.00.

109. In reaching this figure, I have had regard to the criticisms made by the claimant of D11's bill of costs. While there is some force in the submission that certain items may be excessive, the Court's function at this stage is to make a broad-brush assessment. The figure of $90,000.00 represents a significant reduction from the amounts sought and in my estimation likely to be incurred by each of the Applicants and takes adequate account of these concerns.

110. Before concluding, it is necessary to address a submission made on behalf of the Claimant that "the Bahamian Courts have set an exceptionally high threshold as it relates to proof of enforcement risk." In support of this proposition, the Claimant relies upon the decision in ***SMS International Shore Operations US Inc v The Owners and Parties Interested in the Motor Vessel "Crystal Symphony"*** **Claim No. 2023/COM/adm/FP/00005.**

111. Since this submission goes to the heart of the applicable legal standard, it is appropriate to set out the relevant passages from ***SMS*** in some detail. In that case, the Court considered an application for security for costs by an intervener. At paragraphs 24 to 31 of ***SMS***, the learned judge stated:

> "[24.] Counsel for the Intervener submitted that it has the right to make an application for security for costs under provisions of Part 24.2. Further it is entitled to an order under Part 24.3(g) that the Claimant is 'ordinarily resident out of the jurisdiction.'
>
> [25.] Both parties relied on the dicta of Parker LJ in the case of Berkeley Administration Inc and others v McClelland [1990] 2 QB at page 415 to assist the Court with the proper interpretation of Part 24.3(g) CPR:
>
> > 'Anyone so resident, be his nationality British, German, Argentinian, Indian, Thai or anything else, is exposed to the possibility of an order for security if, **but only if, the court, having regard to all the circumstances of the case, thinks it just to make such an order**... Moreover, **residence outside the jurisdiction is not itself a ground for making an order. It is merely a pre-condition** to the existence of jurisdiction to make an order.'
> >
> > [Emphasis added]
>
> ...
>
> [27.] Counsel for the Claimant contends that the Intervener's reliance on the fact that the Claimant is resident outside the jurisdiction as a ground for the granting of security for costs in its favour is not sufficient, as based on Berkeley Administration Inc and others v McClelland, supra. Further that at page 963, paras h and j of the Judgment, Parker LJ further observed:
>
> > As to this, the current law of the United Kingdom does not permit of an order for security solely by reason of residence abroad. **As I have already stressed, residence abroad merely confers jurisdiction.** Having acquired jurisdiction the court must then consider whether **in all the circumstances it would be just to make an order**. The English authorities make it plain that residence abroad is not per se a ground for making an order. As to current practice, it is, I accept, common for orders to be made on little, if anything, more than the fact of residence outside the jurisdiction, but this is because **it is also commonly the case that it is obvious from the pleadings that enforcement of any judgment for costs in the event of the plaintiff's action being dismissed would be difficult and costly to enforce**.
> >
> > [Emphasis added]

[28.] Counsel for the Intervener contends that it would have difficulty enforcing an order for costs and relies on the contents of para 13 of the Hanna Affidavit: '[Intervener] the Bank would face significant difficulty and delay in recovering its costs of the proceedings from [Claimant] SMS due to the absence of assets held by SMS within the jurisdiction.' Counsel for the Claimant argues that an assertion of difficulty of enforcement is not sufficient for the Court to make an Order granting security for costs. Further that the authorities demonstrate that the relevant risk is 'non-enforcement' and not 'difficulty in enforcement'. The Intervener must demonstrate that there are obstacles which are sufficiently substantial to amount to a real risk of non-enforcement.

[29.] Counsel for the Claimant drew the Court's attention to the case of Ras Al Khaimah Investment Authority v Azima [2022] EWHC 1295 (Ch) per Green J at para 12 thereof:

> It is well established that **the evidential hurdle in these applications is "real risk of substantial obstacles to enforcement" rather than "likelihood" and that a "real risk" can be equated with a "non-fanciful risk**": see Bestfort at [77], [79] and [86]; and as applied by Hildyard J in Re RBS Rights Issue Litigation [2017] 1 WLR 4635; Butcher J in PJSC Tatneft v Bogolyubov [2019] EWHC 1400 (Comm) at [8]–[9]; and Cockerill J in JSC Karat-1 v Tugushev [2021] 4 WLR 66.
>
> [Emphasis added]

[30.] The Court found the case of Kay Simon v Stephen Hardman et al, GDAHCV 2009/2011, listed in the Supreme Court Civil Procedure Rules Practice Guide, instructive, per Price Findlay J at para 18 where she adopted the dicta of Baptiste J in Rowe v Mark Secrist et al:

> I adopt the reasoning of Baptiste J in Rowe v Mark Secrist et al — Claim No SKBHCV2003/0022 at paragraph 12:
>
> > "In Rowe v Mark Secrist et al Baptiste J reviewed a number of cases and stated in paragraph 12 of his decision that 'the authorities seem to establish the following:
> >
> > 1. The fact of the claimant being ordinarily resident abroad engages the court's jurisdiction but is not in and of itself a ground for making an order for security for costs.
> >
> > 2. Ordinarily resident outside the jurisdiction assumes moment in the context of grounds relating to the difficulties of enforcement. The court has to consider the relevance of the foreign residence in terms of the ability of a successful defendant to enforce an award against the foreign claimant.
> >
> > 3. **The discretion to award costs against a claimant ordinarily resident out of the jurisdiction is to be exercised on objectively justified grounds relating to**

> **obstacles to the burden of enforcement** in the context of a particular individual or country concerned. The absence of reciprocal arrangements or legislation providing for enforcement of foreign judgments does not by itself justify an inference that enforcement would not be possible.
>
> 4. **It behooves an applicant to show some basis for concluding that enforcement would be impossible, or would face substantial obstacles or extra burden**."
>
> [Emphasis added]
>
> [31.] The Court is satisfied that the Intervener has met the pre-condition that the Claimant is resident outside the jurisdiction and has no assets within the jurisdiction. However, no evidence has been adduced, other than the bare assertion contained in para 13 of the Hanna Affidavit, that the Intervener faces significant difficulty and delay in recovering its costs of the proceedings from the Claimant due to the absence of assets held by it within the jurisdiction. The Court finds that the Intervener has not overcome the evidential hurdle of *"real risk of substantial obstacles to enforcement."*"

112. I have set out these passages extensively because they are relied upon by the claimant to support the proposition that the Bahamian courts have raised the evidential bar when it comes to security for costs applications and that it is now an "exceptionally high" bar. With respect to counsel, this submission is misconceived. The court in ***SMS*** was not purporting to lay down a new or higher evidentiary bar; it was simply applying well-established principles to the particular facts before it. The reference to a "real risk of substantial obstacles to enforcement" is not a novel formulation. It is a restatement of the familiar principle that the court must be satisfied that there is a genuine risk that a costs order would be difficult to enforce, not merely that the claimant resides abroad. As Parker LJ made clear in ***Berkeley Administration***, residence abroad is merely the jurisdictional gateway; it is not itself a ground for making an order.

113. It is instructive to contrast the outcome in ***SMS*** with that in ***Yamaha*** and ***Clico***. In ***Yamaha***, Evans JA (sitting as a single judge of the Court of Appeal) stated at paragraph 23:

> "The fact remains however, that the evidence discloses that the Appellant is not ordinarily resident in the Bahamas and there is no evidence that she has any assets within the Bahamas. The Respondents thus in my view have a legitimate concern as to their ability to collect any costs awarded in their favour if they succeed in defending the appeal. That in

my view is a real risk and nothing that the Appellant has proffered indicates otherwise. In all the circumstances of this case there are compelling reasons why I should exercise the court's discretion and I therefore make an order for security for costs in favour of the Respondents."

114. Similarly, in ***Clico*** the Sir Ian Winder, Chief Justice reiterated that residence outside of the jurisdiction alone was insufficient; however, residence outside of the jurisdiction coupled with lack of assets within the jurisdiction could be sufficient to tip the balance in favour of making an order for security.

115. I would also mention that the ruling of Findlay J in the case of ***Kay Simon v Stephen Hardman et al, GDAHCV 2009/2011***, which the Court in ***SMS*** cites and confirms as instructive, supports the position that, contrary to the submission of counsel for the Claimant, the standard remains the same and has not been set "exceptionally high" by the Bahamian courts. In ***Kay*** security for costs was ordered in the case of a claimant who was ordinarily resident out of the jurisdiction but had assets both within and outside of the jurisdiction. An order for security for costs was made in ***Kay*** because the claimant was in the process of selling his assets within the jurisdiction and was advertising its only known asset outside of the jurisdiction for sale. Findlay J in ***Kay*** determined that it was appropriate to make an order for security for costs and he said the following at paragraphs 9 – 15:

> [9] … the Applicant states that the only asset of the Defendant/Respondent that she is aware of is a residential property at 56 Lebanon Park, Twickenham, Greater London. She exhibits an advertisement showing that the property is being offered for sale at a price of £1,540,000.00.
> [10] She also deposes that the Respondents have a mortgage on their property in Grenada to secure the sum of EC$1,222,605.00. There are two Deeds of Further Charge on the same property to secure the following sums, (1) EC$155,500.00 and (2) EC$125,000.00.
> [11] She asserts that the Respondents are attempting to dissipate their sole asset within the jurisdiction as well as the property which the Respondents own at Westerhall Point is also on the market for sale with a reputable real estate firm in Grenada, Altman Aguilar. She wants security for costs. The Respondents do assert that if they succeed in selling the Westerhall Point property they will purchase a smaller property within the jurisdiction.
> …

> [13] Residence out of the jurisdiction will not in and of itself be ground for an order for security for costs to be made, it only allows the Court to start the process of considering whether to grant security for costs. The Court must have regard for all the circumstances of the case. It is but a factor to be considered in addressing the issue. Where the fact that a litigant living abroad presents obstacles to enforcement of an order for costs, the Court will consider making the order for security for costs.
> ...
> [15] There is evidence that the Respondents have taken steps to divest themselves of the property which they own in Grenada, as well as the property which they own in the United Kingdom. I find that there is some merit in the allegation that there may be difficulty in enforcing a judgment or order for costs given the state of the Respondent's affairs. I say this bearing in mind that the Respondents have proffered no more than the statements in the affidavits filed that the first Respondent has other substantial assets in the United Kingdom.

116. I therefore reject the Claimant's submission that the Bahamian courts have set an "exceptionally high threshold". The law remains as stated in ***Clico*** and ***Yamaha***, and the other authorities cited above. Residence out of the jurisdiction is not per se a ground for making an order for security for costs, however, if a claimant is ordinarily resident out of the jurisdiction and is found to have no assets within the jurisdiction the Court can, in the exercise of its discretion, determine in all the circumstances that it would be just to make an order for the claimant to put up security.

Conclusion

117. For the reasons set out above, I find that:

(1) Wyndhams is ordinarily resident out of the jurisdiction for the purposes of Rule 24.3(g) of the CPR.

(2) An order for security for costs would not unfairly stifle Wyndhams' claim. The burden of proving stifling rests on the claimant, and the evidence adduced falls far short of discharging that burden.

(3) It is just in all the circumstances to make orders for security for costs in favour of the First and Second Defendants, the Eighth Defendant, and the Eleventh Defendant.

(4) The appropriate amount of security for each applicant is $90,000.00.

Order

118. I make the following orders:

(1) The Claimant, Wyndhams Property Bahamas Limited, shall provide security for the costs of the First and Second Defendants (Evans & Co. and the Estate of Thomas Evans KC) in the sum of $90,000.00.

(2) The Claimant shall provide security for the costs of the Eighth Defendant (Mr. Robin Rodriguez) in the sum of $90,000.00.

(3) The Claimant shall provide security for the costs of the Eleventh Defendant (FTX Property Holdings Ltd.) in the sum of $90,000.00.

(4) The security shall be provided by payment into court.

(5) The security shall be provided within twenty-one (21) days of the date of this Order.

(6) All further proceedings in this action are hereby stayed until such time as the security is provided in accordance with the terms of this Order.

(7) The costs of and incidental to these applications for security for costs are awarded to the First and Second Defendants, the Eighth Defendant, and the Eleventh Defendant, to be assessed if not agreed.

Postscript

119. The Court has considered the points as to appearance of bias raised in writing by Mr. Johnson on behalf of the Claimant, set out at paragraphs 5 to 9 of his submissions. Although these matters were not advanced by way of a formal recusal application, and are more properly characterised as observations made in the context of submissions on security for costs, the Court responds to them briefly in this postscript so that the record is clear.

120. At the outset, it must be stated that the procedure adopted by the Claimant is irregular. If it was intended to invite the Court to recuse itself, the proper course was to make a formal application at the earliest opportunity, supported by evidence and submissions. That was not done.

121. At the hearing on 13 March 2026, Mr. Johnson stated that he had recently appeared in Court as counsel on an unrelated matter (the other proceedings) in which an attorney from the Acting Judge's firm appeared for the opposing party. None of the parties in the other proceedings are

parties in the proceedings before the Acting Judge. Nor has it been suggested that any of the parties in the other proceedings is related to any of the parties in the proceedings before the Acting Judge. There is also nothing whatsoever to suggest that the Acting Judge is appearing in court as counsel in the other proceedings while sitting as an acting judge. On the contrary, it was made clear to Mr. Johnson at the oral hearing that the Acting Judge is not and would not be appearing as counsel in any court during the term of her appointment.

122. Mr. Johnson nevertheless asserts that the Acting Judge's firm, being the attorneys in the other proceedings, and the acting judge's involvement as Counsel in the other proceedings prior to her appointment, gives rise to an appearance of bias applying the test in Magill v Porter; Magill v Weeks [2001] UKHL 67, and that the circumstances fall within the principles established in R v Bow Street Metropolitan Stipendiary Magistrate, ex parte Pinochet Ugarte (No 2) [2000] 1 AC 119 and Lawal v Northern Spirit Ltd [2003] UKHL 35.

123. The short answer is that the point is totally misconceived. The fair-minded and informed observer, having considered the facts, would not conclude that there was a real possibility of bias.

124. For the avoidance of doubt, had a formal recusal application been brought in the procedurally correct manner, it would have been dismissed. The points raised are without foundation and do not affect the judgment delivered.

Dated this 13th day of March, A.D. 2026.

_____

Gail Lockhart Charles KC (Acting Justice)