Neutral Citation Number: [2024] EWHC 1968 (Comm)

Case No: CL-2023-000422

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
COMMERCIAL COURT (KBD)

Rolls Building, Fetter Lane, London, EC4A 1NL

Date: 31/07/2024

Before :

MR SIMON SALZEDO KC (sitting as a Judge of the High Court)

- -

Between :

GLOBAL STEEL HOLDINGS LIMITED **(a company registered in the Isle of Man)**	**Claimant/Applicant**
- and -	
PRASAN (PTC) LIMITED **(a company registered in the British Virgin Islands)**	**Defendant/Respondent**

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Matthew Hardwick KC and Philip Hinks (instructed by Jones Day) for the Claimant
Stephen Ryan (instructed by Collyer Bristow LLP) for the Defendant

Hearing dates: 17 July 2024
Draft judgment circulated: 25 July 2024

Approved Judgment

This judgment was handed down remotely at 10.30am on 31 July 2024 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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MR SIMON SALZEDO KC (sitting as a Judge of the High Court):

1. I am required to decide a summary judgment application made by the Claimant in these proceedings.

Facts and Evidence

2. The Defendant, Prasan PTC Ltd ("Prasan"), is a private trust company incorporated under the laws of the British Virgin Islands ("BVI"). It is the trustee of a trust whose beneficiaries include members of the family of Mr Pramod Mittal. Prasan owns Direct Investments Limited ("DIL") which is registered in the BVI. DIL owns the Claimant, Global Steel Holdings Ltd ("GSHL") which is incorporated in the Isle of Man. GSHL was the holding company for numerous subsidiaries involved in the steel industry globally. However, GSHL is now in liquidation and the present claim is brought by GSHL acting through its liquidators against its own ultimate shareholder, Prasan.

3. By agreements dated 12 and 18 September 2008, GSHL transferred to Prasan the beneficial interest in the shares of two of its subsidiaries, Meadswell Estates Limited ("Meadswell") and Global Aircraft Limited ("GAL"). A small part of the consideration for these shares was paid in cash, but the majority of it was settled by the entry of the parties into a Loan Agreement. The Loan Agreement was made in writing between Prasan as Borrower and GSHL as Lender and was dated 12 October 2008. It appears to have been professionally drafted and it bears the logo of PricewaterhouseCoopers Legal.

4. The Loan Agreement recorded that Prasan was indebted to GSHL in the sum of USD22,795,021 (the "Loan") pursuant to the share purchase agreements. It is

common ground that this was a reference to the agreements by which the shares in Meadswell and GAL were transferred to Prasan. The Loan Agreement provided that Prasan had drawn down the Loan in full on the date of the Agreement and that it was to be repaid in full on the date falling 15 years later, which in the event was 12 October 2023.

5. Under the Loan Agreement, interest accrued on the Loan at a rate of Libor plus 2% per annum and was payable in arrears at the end of each year after 12 October 2008. It was also provided that: "If requested by the Borrower, the Lender may in its sole discretion agree to payment of any accrued interest being deferred until the Repayment Date upon such terms as the Lender may stipulate." There were other provisions covering such matters as events of default, default interest, notices and so on. The Loan Agreement was expressed to be governed by the law of England and Wales and subject to the exclusive jurisdiction of the Courts of England and Wales.

6. It is common ground that no sums of principal or interest have ever been paid pursuant to the Loan Agreement and in these proceedings GSHL claims repayment of principal and interest. As I explain below, the present application for judgment concerns only the principal sum, though it includes an application for an interim payment on account of interest if the main application succeeds.

7. Following the appointment of liquidators to GSHL, by letters of demand dated 30 July 2018, 10 October 2018, 5 November 2018, 14 February 2019 and 12 March 2019, GSHL required that Prasan pay any and all accrued interest. By a letter of 12 March 2019 GSHL set a final deadline for payment of 26 March 2019. Prasan did not respond to any of this correspondence.

8. By a letter of 28 March 2019, GSHL purported to terminate the Loan Agreement, and subsequently, on 17 April 2019, served a statutory demand on Prasan in the BVI for repayment of the Loan. That demand was set aside on the application of Prasan on the basis that there was a triable issue as to whether there existed an agreement (the "Alleged Deferral Agreement") that had deferred interest and thereby rendered invalid the demands for interest and the subsequent purported termination. The Alleged Deferral Agreement is said to have been made orally in around October 2009 and to have provided, at Prasan's request, that all interest would be deferred until the repayment date on 12 October 2023. Mr Rajib Das, a director of Prasan (and also of DIL and GSHL), gave evidence that the alleged deferral agreement was negotiated between Mr Umesh Somany on behalf of Prasan and Mr Ashok Agarwal on behalf of GSHL.

9. The Claim Form in these proceedings was issued on 26 July 2023 and Particulars of Claim were filed on 10 August 2023.

10. The Defence was filed on 16 October 2023. The Defence was signed as to drafting by counsel, Mr Stephen Ryan, who represents the Defendant in this application. It was signed as to service by Collyer Bristow LLP. As to truth, it was signed by Mr Das.

11. The Defence pleads the Alleged Deferral Agreement by way of denial that there was any default justifying the Claimant's early termination of the Loan Agreement. For the purposes of this summary judgment application, the Claimant accepts that there is a triable issue as to whether the Alleged Deferral

Agreement was made and that the court should therefore assume that all interest was deferred until 12 October 2023.

12. However, the Defence makes further allegations by way of defence to the claim for repayment which had not been advanced in response to the statutory demand in the BVI. The Defence avers that on or around 30 April 2010, a written assignment agreement (the "Alleged Assignment Agreement") was concluded between GSHL, Prasan and DIL, a PDF copy of which was exhibited to the Defence and which provided in its operative terms as follows:

> "1. PTC owes a sum of USD 22,795,021 along with Interest at the rate of Libor plus 2% per annum for a Period of 15 years from 13-10-2008 to Global Steel Holdings Limited pursuant to and in terms of an agreement dated October 13, 2008.
>
> 2. DIL owes PTC a sum of USD 35,000,000 along with Interest of Libor plus 3% per annum pursuant to and in terms of an agreement dated April 25, 2010.
>
> 3. PTC hereby assigns its right to recover a sum of USD 22,795,021 along with Interest at the rate of Libor plus 2% per annum from DIL in terms of the aforesaid agreement dated April 25, 2010 out of the aforesaid sum of USD 35,000,000 to GSHL, and GSHL and DIL hereby accept and/ or acknowledge such assignment.
>
> 4. DIL and GSHL hereby agree that the aforesaid sum of USD 22,795,021 along with Interest at the rate of Libor plus 2% per annum is hereby set-off against the aforesaid sum owed by GSHL to DIL and consequently, GSHL and DIL hereby agree and acknowledge that a balance sum will remain due and payable by GSHL to DIL."

13. The Alleged Assignment Agreement bears three apparent signatures. For DIL, the document appears to be signed by V Singh, who is Mr Vijay Kumar Singh ("Mr Singh"). There is no evidence before me as to the identity of the other signatories, but counsel agreed that the signature for GSHL appears to be of Mr Agarwal and the signature on behalf of Prasan might well be Mr Somany's.

14. Prasan's case in the Defence is that the Alleged Assignment Agreement had the effect of "discharging and extinguishing" all the principal and interest under the Loan Agreement "by means of a legal assignment of part of the DIL Debt." The Defendant's case thus appears to be that GSHL agreed to replace its right to recover USD 22,795,021 plus interest up to the date of the Alleged Assignment Agreement with a right to recover the same sum from DIL, as assignee of Prasan.

15. As GSHL pointed out in the Reply filed on 12 December 2023, the Alleged Assignment Agreement is "incoherent" because clause 4 makes no sense against the background of clauses 1 to 3. It also does not contain any express statement that the assignment in clause 3 was intended to extinguish Prasan's debt to GSHL.

16. By a request served on 1 November 2023, GSHL sought further information about the "agreement dated April 25, 2010" mentioned at clause 2 of the Alleged Assignment Agreement.

17. By a letter of 3 November 2023, Jones Day, solicitors for GSHL wrote to the Defendant's solicitors, Collyer Bristow LLP, pointing out that the Alleged Assignment Agreement had never been referred to before "despite the numerous proceedings where such an assignment, it if existed, would have been relevant". That statement was explained in detail by reference to numerous matters including those I refer to below as the "Seven Points". Jones Day stated that there were serious concerns about the Alleged Assignment Agreement's "authenticity and provenance" and required a full account of the circumstances of the document including why it had not been disclosed previously and the

status of any original documents and where they may be inspected. Jones Day also asked:

> "What steps your Firm has taken, in accordance with your professional obligations (including paragraph 1.4 of the Code of Conduct for Solicitors, given the obvious suspicions your firm must have had regarding the authenticity of the Purported Assignment, when presented with the document at Annex A of the Defence), to verify the authenticity of the Purported Assignment documentation before filing your client's Defence and its statement of truth."

18. By email of 6 November 2023, Collyer Bristow LLP replied that it was not feasible to reply in the timescale requested by Jones Day, but:

> "While we take instructions, we would refer you to the attached pdf of the Assignment, the metadata of which, as you will note from clicking on Document Properties, states that it was created on 30 April 2010."

19. On 22 November 2023, Collyer Bristow wrote on behalf of Prasan declining to respond to the detailed issues raised in Jones Day's letter of 3 November 2023 on the basis that these were matters for cross-examination at trial and that since GSHL had served a Notice to Prove, the question of the authenticity of the Alleged Assignment Agreement would be resolved at trial. The one query to which a substantive response was given was the one about Collyer Bristow's own conduct, which was explained thus:

> "Second, with reference to paragraph 6.3 of your letter of 3 November 2023 (but without waiving privilege):
>
> (i) We obtained, as a preliminary step, written confirmation from one of the signatories to the Assignment that he signed the document on the date stated.
>
> (ii) We satisfied ourselves that the PDF of the Assignment received from our client for the purpose of preparing the Defence (and subsequently served on you) was, according to its metadata, created on 30 April 2010.

> We are, however, instructed that the original of the Assignment and DIL Debt Agreement are no longer in our client's possession or control. This will be addressed in our client's response to your Part 18 Request."

20. On 24 November 2023 responses were served by Prasan to GSHL's formal Request for Further Information. These were supplied above a statement of truth signed by Mr Das. The further information stated that the agreement of 25 April 2010 (the "Alleged DIL Debt Agreement") was made in writing, that the Defendant no longer had the original, but that it did have a PDF copy which had been provided to the Defendant's solicitors.

21. By letter of 30 November 2023, Jones Day pointed out that Prasan had not answered the following question from its earlier letter:

> "Our client, … requires a full account of the circumstances of the Purported Assignment documents, and how it came to be in your client's and your firm's possession, including:
>
> 6.1. Why your client has not previously disclosed a copy of the Purported Assignment at any stage."

22. Jones Day said that if Prasan continued to fail to engage with this issue, then GSHL would ask the court to draw adverse inferences in the context of interim applications and rely on the failure on the issue of costs. The letter pointed out that the Further Information provided by Prasan did not address the fact or reason why the original of the Alleged Assignment Agreement was not in Prasan's possession or control. Jones Day also pointed out that the Alleged Assignment Agreement recorded that it was executed in three originals, one to be retained by each party, so that both Prasan and DIL ought to have original versions. Explanations of all these matters were requested.

23. On 6 December 2023 Collyer Bristow confirmed receipt of Jones Day's letter of 30 November 2023 and stated that they had requested instructions. However, Collyer Bristow never did revert with any substantive responses to these questions.

24. GSHL instructed a forensic investigator, Mr Andrew Bassi, to conduct a forensic review of the PDFs of the two alleged agreements to determine if their dates of creation according to their metadata were accurate. He produced a report dated 11 March 2024, which contains an expert's declaration under CPR Part 35 and which explains in detail his expert opinion to the following effect:

    1. The two PDFs were created by a Hewlett-Packard Multi Function Printer, acting as a scanner, within a minute of each other, on 10 June 2023.

    2. The PDF metadata of the two files indicated that they had been created, respectively, on 25 April 2010 and 30 April 2010.

    3. There were two methods by which such metadata could have come to exist in PDFs that had been created by scanning in 2023: either (i) the computer used to receive the scans had its clock set to the two dates, five days apart, separately when the scans were made one minute apart; or (ii) PDF modification software was used to insert the metadata.

    4. Either method would have required deliberate human intervention.

25. Mr Bassi's report does not purport to demonstrate that the scans made on 10 June 2023 were not of an older original document. Indeed, it might be said that it is inherent in the evidence that the disclosed PDFs were created by scanning

that there must have existed an earlier original. But the report does provide cogent evidence of deliberate tampering to make it appear falsely that the PDFs were themselves created on the dates in 2010 which the documents bore.

26. On 14 March 2024, Jones Day wrote to Collyer Bristow explaining that it had instructed an expert who had concluded that the PDFs of the two alleged agreements were created in 2023 and that they intended to issue an application for summary judgment and they invited engagement on the directions for its resolution.

27. On 18 March 2024, GSHL filed an application for summary judgment in relation to the principal sum of USD 22,895,021 and for "an interim sum on account of interest due on the principal sum, to be set by the Court". On the same date, GSHL also filed an application for permission to rely on Mr Bassi's report. The application for summary judgment was supported by the first witness statement of Mr Dowers, a partner of RSM, a licensed insolvency practitioner and one of the Joint Liquidators of GSHL.

28. Mr Dowers deposed to his belief that the two alleged agreements from April 2010 were documents created in 2023 and did not represent agreements that had actually been made at any material time. If this is right, then I did not understand Mr Ryan to challenge the conclusion that there would be no defence to the claim for the principal of the loan.

29. The reasons set out by Mr Dowers for this belief, over and above the evidence of Mr Bassi, included nine matters of which the first seven have also been relied upon by GSHL's counsel before me, Mr Matthew Hardwick KC and Mr Philip Hinks. These Seven Points are the following:

30. First, the Alleged Assignment Agreement recorded GSHL's registered office as being 3 Auckland Terrace, Parliament Street, Ramsey, Isle of Man, IM8 1AF. Mr Dowers says that a different address was in fact the registered office and that it was changed to the address at Auckland Terrace on 14 October 2010. He further refers to a witness statement dated 21 April 2017 given in criminal proceedings in the Isle of Man by Mr Ben Dutnall, the (then) owner of 3 Auckland Terrace. Mr Dutnall stated that he was contacted by representatives of the Claimant about renting office space at Auckland Terrace for the first time in October 2010 and that is when the Claimant took office space at the property. As Mr Ryan pointed out, Mr Dutnall says that a licence to GSHL was signed on 1 October 2010, which raises a question when set alongside the evidence that he was first contacted in October. Nevertheless, the overall effect of this evidence is that it would be – at the very least – surprising if a document created in April 2010 had identified the Auckland Terrace address as GSHL's registered office.

31. Secondly, GSHL's audited financial statements for each of the years ended 31 December 2010 through to 31 December 2017 showed the Loan as being due from Prasan. These accounts were signed by Mr Das and Mr Mittal at a time when Mr Singh was also a director of GSHL.

32. Thirdly, Mr Das signed a witness statement in Isle of Man proceedings on 13 July 2018 in which he set out GSHL's assets as at 10 May 2018, and stated:

> "The loan from [sic] Prasan PTC wsa [sic] taken on 12th October 2008 for USD 22.79 Million. The Loan agreement is attached herewith as Annexure 14.

> Since the loan has been taken by Prasan PTC long back [sic] in 2008 and no transaction has been made after that, GSHL has not given the declaration in the related party transaction [sic]."

33. Mr Dowers points out that Mr Das was in 2018 a director of all three companies that were alleged to be party to the Alleged Assignment Agreement.

34. Fourthly, Prasan's management accounts as at 31 December 2018 showed a liability to GSHL of USD 27.5m, which Mr Dowers states correlates closely to the amount that was owing at that date including interest.

35. Fifthly, when applying to the BVI Court to set aside the statutory demand based on the Loan Agreement, Prasan did so on the basis of the Alleged Deferral Agreement without mentioning that Prasan believed the Loan itself had been extinguished by the Alleged Assignment Agreement. That application was supported by affidavits from Mr Das and Mr Mittal. Mr Mittal's affidavit filed with the BVI Court on 6 June 2019 stated that he was and remained "GSHL's controlling mind" and that he had been a director and Chairman of GSHL from 1995 onwards. Having made those points, Mr Mittal explained that he instructed Mr Agarwal to negotiate the Loan Agreement and that about a year later, Prasan made a request through Mr Agarwal to defer interest payments pursuant to clause 4.4 and that Mr Mittal instructed Mr Agarwal to accept the proposal and to agree an irrevocable deferment. As Mr Dowers also pointed out, in the Further Information dated 24 November 2023 attested to by Mr Das, Prasan responded "Yes" to the question: "Whether the Defendant was aware of the Assignment Agreement at the time of the BVI statutory demand proceedings."

36. Sixthly, on 7 October 2019, in response to the Claimant's letter before claim, Collyer Bristow wrote on behalf of the Defendant to the Claimant, stating that

Prasan's "case remains as set out in evidence which it filed in the Set Aside Application" in the BVI, and invited GSHL to "refer to the detailed explanation contained in the affidavits of Mr Rajib Das dated 30 April 2019 and Mr Pramod Mittal filed on 6 June 2019 and the documents exhibited to his affidavit by Mr Das (all of which are in your possession)." No mention was made of the Alleged Assignment Agreement and the purported discharge of the Loan. Notably, Collyer Bristow stated that the Defendant's "position remains that nothing is payable to [GSHL] until 13 October 2023".

37. Seventhly, on 27 January 2020, Mr Mittal was questioned under oath about the Loan Agreement at an examination before Deputy ICC Judge Schaffer. In the course of that examination he did not mention the Alleged Assignment Agreement or the Purported DIL Debt Agreement or the purported discharge of the Loan.

38. The transcript of the examination shows that that in at least one answer Mr Mittal appeared positively to confirm that the loan "continued" for "nine or ten years":

> "Your question is [very correct?]. We had the signed the balance sheet, I think, last balance sheet [inaudible] we always provided the trust and we always provided [this but not claimed?]. Until we are in the office of Global Steel, we never asked Prasan to pay the interest, because we believed that money will come together and this loan continued for a time, for nine or 10 years. We never asked Prasan to provide any money and every year we used to sign the balance sheet. [Inaudible] this is I am aware, this is my knowledge and then this is where the balance sheet has been signed, and no claimant letter has been sent from Global Steel to Prasan to [inaudible] the money and on that basis, Prasan got a judgment, the claim made by Global Steel is not correct because it's family money."

39. The summary judgment application was issued a few days before a case management conference which came before HHJ Pelling KC sitting as a Judge of the High Court on 27 March 2024. The transcript of that hearing makes it clear that the order to be made was agreed save only for a dispute about the trial time estimate. In that respect, Mr Hinks for GSHL argued that if the summary judgment application failed, then a five day trial (including one reading day) would be ample time to resolve the dispute. Mr Ryan for Prasan proposed that eight days should be set aside for the trial (also including one reading day).

40. The largely agreed order made on that date provided that the summary judgment application should be listed for a one day hearing, fixed dates for responsive and reply evidence to be served and gave permission to both parties to rely on expert evidence on document forensics and metadata. A recital was included in the following terms:

> "AND UPON the Claimant acknowledging that it is open to the Defendant to argue, should it wish to do so, upon the hearing of the Summary Judgment Application, that the claim is not fit for summary determination notwithstanding the giving of permission in paragraph 2 below to rely upon expert evidence."

41. At the case management conference, the order made in respect of the one disputed issue – trial length – was in the following terms:

> "The claim is to be entered in the Trial List with an estimated length of five days, to include one day Judge's pre-reading time on the first available date convenient to the parties after 3 March 2025 (the 'Trial Window'). The trial is to be listed, if possible, before a fee-paid deputy High Court Judge with the listing to include Friday as a sitting day."

42. I was informed by counsel that the five day trial has been fixed to commence on 31 March 2025, which is approximately eight months after this application was heard.

43. In response to the summary judgment application, Prasan filed a witness statement dated 30 May 2024 from Mr Singh. Mr Singh stated that he was a director of GSHL and had been since 13 June 2013. He explained that in April 2010 he was residing in the Peoples Republic of China and he was still residing there at the date of his statement. He exhibited a copy of the Alleged DIL Debt Agreement and stated as follows:

> "Although it is very old, I recognise this document and recall that I received an unsigned version of it by courier in around 2010 at my house in Beijing, China. I also remember receiving a call from someone in Dubai (but I cannot remember exactly who), during which I was told that DIL needed to borrow the money and would use it for some investment purposes by its downstream companies. I recall signing the DIL Debt Agreement on behalf of DIL and couriering it back to Dubai. Because this happened such a long time ago, I do not recall who I sent it to or the address in Dubai to which I couriered it."

44. He then exhibited a copy of the Alleged Assignment Agreement and stated:

> "As with the DIL Debt Agreement, I recognise this document and recall receiving an unsigned version of it by courier in around 2010 at my house in Beijing, China. I recall signing the Assignment Agreement on behalf of DIL and couriering it back to Dubai. Again, because this happened such a long time ago, I do not recall who I sent it to or the address in Dubai to which I couriered it."

45. This was the sum total of the Defendant's evidence in response to the summary judgment application.

46. On 27 June 2024, GSHL filed an application to rely on an expert report in the field of handwriting analysis from Dr Linton Mohammed, whose report dated 24 June 2024 was served with the application notice. Dr Mohammed's report contains a declaration under CPR Part 35 and it opines that the signatures of Mr Singh on the Alleged DIL Debt Agreement and the Alleged Assignment

Agreement are identical and are therefore likely to be derived from a single source from which they were electronically copied.

47. On 12 July 2024, Prasan served a second witness statement of Mr Singh. This statement was to the effect that Mr Singh recalled signing the two documents with wet ink "in or around 2010", but that it was possible that he might also have applied an electronic signature to a soft copy and transmitted that electronically in addition to the hard copy that was couriered to Dubai.

48. The parties sensibly agreed that I should admit into evidence both the expert report of Dr Mohammed and the second witness statement of Mr Singh.

The parties' submissions

49. Both parties have of course reminded me of Lewison J's famous statement of the approach to summary judgment in EasyAir Ltd v Opal Telecom [2009] EWHC 339 (Ch). It seems to me that the first five EasyAir principles are the most relevant to the present application.

50. Counsel for the Claimant make the submission that on the evidence summarised above the Court can be satisfied that there is no real prospect of the Defendant successfully resisting the claim for the principal sum under the Loan Agreement. That is on the basis that the only defence raised requires the Alleged Assignment Agreement to be a genuine agreement and there is no real prospect of such a finding being made at trial. A secondary argument is also made that even if the Alleged Assignment Agreement did exist, it does not on its true construction provide for the discharge of the relevant debt.

51. The Claimant's submission on the main issue is straightforward. On the evidence I have set out above, it is clear that the PDF which the Defendant has put forward as constituting the Alleged Assignment Agreement was manufactured in 2023. The silence of the Defendant in response to the powerful evidence to this effect is indicative that there is nothing the Defendant can say to dispel that evidence. Accordingly, there is no real prospect (as opposed to a fanciful one, or the hope that something may turn up) that the Defendant will persuade a trial Judge that the Alleged Assignment Agreement was made in or around 2010.

52. As to the law relating to what weight should be attributed to Mr Singh's evidence at this stage, Mr Hardwick KC and Mr Hinks submitted:

> "In Calland v Financial Conduct Authority [2015] EWCA Civ 192, Lewison LJ re-emphasised the need for the Court to carry out a "*critical examination of the raw material*" in order to determine whether a claim has a real prospect of success, noting that "*the fact that some factual or legal* questions may be disputed does not absolve the judge from her duty to make an assessment of the claimant's prospects of success" (at [28]-[29]).
>
> The Court is prepared to grant summary judgment in cases involving allegations of dishonesty, but it will exercise caution before doing so: Foglia v The Family Officer Limited [2021] EWHC 650 (Comm) at [13] per Cockerill J, and King v Stiefel [2021] EWHC 1045 (Comm) at [24] per Cockerill J. The Court is similarly prepared to grant summary judgment in cases where it is alleged that relevant documents have been manufactured: Verdi Law Group PC v BNP Paribas SA [2023] EWHC 1860 (KB) at [91] per Picken J; and Foglia (supra) at [74]-[92] per Cockerill J."

53. In relation to Foglia, both parties relied on this authority, especially on paragraph 107.

54. The Claimant's oral submissions as to interest were made by Mr Hinks. He explained that the total amount of interest now owing on the Claimant's primary

case was around USD 21.4 million. He submitted that the minimum amount of interest that could be due in the light of the parties' disputes would be arrived at on the assumption that the Alleged Deferral Agreement was not entered into and that section 32 of the Limitation Act 1980 did not apply, such that interest could now be claimed for only 6 years up to the date of the Claim Form. That reasoning was explained and on that basis, a sum of approximately USD 7 million was calculated in a letter that GSHL's solicitors sent to Prasan's solicitors late on the evening of Monday 15 July 2024. Thus, the Claimant's case is that if I give judgment on the principal sum, I should also order an interim payment of some USD 7 million on account of interest, leaving over the remaining USD 14 million for argument at a future trial.

55. Counsel for the Defendant relies on the evidence of Mr Singh to show that there is a real prospect that the DIL Debt Agreement and the Alleged Assignment Agreement were made in 2010 and denies that I can or should determine at this stage that it does not extinguish the debt.

56. Mr Ryan for Prasan has reminded me in detail of the numerous warnings of high authority against permitting a summary judgment application to become a mini-trial, and more specifically against giving a summary judgment that requires a finding of dishonesty and the rejection of written witness evidence that has not been tested in cross-examination.

57. First, as the third EasyAir principle states, "in reaching its conclusion the court must not conduct a 'mini-trial'", for which Swain v Hillman [2001] 1 All ER 91 is cited. In that case, Lord Woolf held that the issues of fact arising were

"matters which will have to be considered carefully by the judge at trial", adding:

> "Useful though the power is under Part 24, it is important that it is kept to its proper role. It is not meant to dispense with the need for a trial where there are issues which should be investigated at the trial".

58. In another much cited statement, Lord Hope in Three Rivers District Council v Governor and Company of the Bank of England (No 3) [2003] 2 AC 1 stated at [95]:

> "…The method by which issues of fact are tried in our courts is well settled. After the normal processes of discovery and interrogatories have been completed, the parties are allowed to lead their evidence so that the trial judge can determine where the truth lies in light of that evidence. To that rule there are some well-recognised exceptions. For example, it may be clear as a matter of law at the outset that even if a party were to succeed in proving all the facts that he offers to prove he will not be entitled to the remedy that he seeks. In that event a trial of the facts would be a waste of time and money, and it is proper that the action should be taken out of court as soon as possible. In other cases it may be possible to say with confidence before trial that the factual basis for the claim is fanciful because it is entirely without substance. It may be clear beyond question that the statement of facts is contradicted by all the documents or other material on which it is based. The simpler the case the easier it is likely to be to take that view and resort to what is properly called summary judgment. But more complex cases are unlikely to be capable of being resolved in that way without conducting a mini-trial on the documents without discovery and without oral evidence. As Lord Woolf said in Swain v Hillman [2001] 1 All ER 91, at p 95, that is not the object of the rule. It is designed to deal with cases that are not fit for trial at all".

59. That principle was the subject of consideration by the Supreme Court in Okpabi v Royal Dutch Shell Plc [2021] UKSC 3; [2021] Bus. L.R. 332, in which Lord Hamblen JSC (giving the judgment of the Court), said at [110]:

> "In his judgment at para 190 the Chancellor rejected the complaint that Fraser J had conducted a mini-trial and considered that he was doing no more than subjecting the

> evidence to critical analysis. He cited para 10 of Potter LJ's judgment in ED & F Man Liquid Products Ltd v Patel [2003] CP Rep 51 in which it was observed that factual assertions do not have to be accepted by the court if it is 'clear' that there is 'no real substance' in them, 'particularly if contradicted by contemporary documents' — ie if they are demonstrably unsupportable. That is only going to be so in clear cases. As Carnwath LJ observed in Mentmore International Ltd v Abbey Healthcare (Festival) Ltd [2010] EWCA Civ 761 at [23], referring to both Potter LJ's judgment in the ED & F Man case and Lord Hope's judgment in the Three Rivers case [2003] 2 AC 1:
>
> > 'If Mr Reza was hoping to find in those words some qualification of Lord Hope's approach, he will be disappointed. The Three Rivers case was specifically cited by Potter LJ. He was in my view intending no more than a summary of the same principles. Lord Hope had spoken of a statement contradicted by "*all* the documents or other material on which it is based" (emphasis added). It was only in such a clear case that he was envisaging the possibility of rejecting factual assertions in the witness statements. It is in my view important not to equate what may be very powerful cross-examination ammunition, with the kind of "knock-out blow" which Lord Hope seems to have had in mind.'."

60. Secondly, the need for caution is compounded where the case involves allegations of dishonest conduct. In Wrexham Association Football Club Ltd v Crucialmove Ltd [2006] EWCA Civ 237, Sir Igor Judge P (in a concurring judgment in a case where summary judgment was granted) made the following observations about the need for such caution:

> "57. I do not underestimate the importance of a finding adverse to the integrity to one of the parties. In itself, the risk of such a finding may provide a compelling reason for allowing a case to proceed to full oral hearing, notwithstanding the apparent strength of the claim on paper, and the confident expectation, based on the papers, that the defendant lacks any real prospect of success. Experience teaches us that on occasion apparently overwhelming cases of fraud and dishonesty somehow inexplicably disintegrate. In short, oral testimony may show that some such cases are only tissue paper strong. As Lord Steyn observed in Medcalf v Weatherill [2002] UKHL 27; [2003] 1 AC 120 at [42], when considering wasted costs orders:

> 'The law reports are replete with cases which were thought to be hopeless before investigation but were decided the other way after the court allowed the matter to be tried'.

And that is why I commented in Fashion Gossip Ltd v Esprit Telecoms UK Ltd, unreported, July 27, 2000 that I was:

> 'troubled about entering summary judgment in a case in which the success of the claimant's case involves, as this one does, establishing allegations of dishonesty and fraud, which are strongly denied, and which cannot be conclusively proved by, for example, a conviction before a criminal court.'

> 58. This collective judicial experience does not always, or inevitably, provide a compelling reason for allowing the case to proceed to trial, nor for that matter require the judgment considering the application to reject the conclusion that there is no real prospect of a successful defence of the claim if he is satisfied that there is none. That is not what the Rules provide, and if that had been intended, express provision would have been made. It is however a factor constantly to be borne in mind, if and when, as here, the reason for concluding summary judgment is appropriate is consequent on a disputed finding, adverse to the integrity of the unsuccessful party."

61. Mr Ryan cites as an example of the interplay between these two principles the case of Allied Fort Insurance Services Limited v Ahmed [2015] EWCA Civ 841. In that case, summary judgment had been granted to the claimant on part of its claim. That was overturned by the Court of Appeal for two reasons. First, the claim involved conflicts of evidence against a complex factual background, which "in the ordinary course, would be given and tested by cross-examination at a trial" [80]. Secondly, "the essence of Creation's complaint is that the defendants acted dishonestly" [83], which required that "particular caution should be exercised before depriving a party of the opportunity of rebutting allegations of dishonest conduct" [81], citing with approval Sir Igor Judge's observations in Wrexham. Despite obvious difficulties in the defendants' case, the Chancellor held:

> "79. As I have said, the deputy Judge's judgment is a model of conscientiousness. This is, however, a classic example of the type of case in which the judge should have resisted the siren call to bring the proceedings or a significant part of them to an early end before a full trial, no doubt with the best of intentions to save costs, resources, and the time of the court and of the parties."

62. Thirdly, Mr Ryan submits that a further important and related principle engaged by this application is that, "subject to limited exceptions, the court cannot and should not disbelieve the evidence of a witness given on paper in the absence of cross-examination of that witness": Long v Farrer & Co, [2004] EWHC 1774 (Ch) at [57], per Rimer J. As Rimer LJ formulated the principle in Coyne v DRC Distribution Ltd [2008] EWCA Civ 488 at [58]:

> "it is well-settled practice that if a court finds itself faced with conflicting statements on affidavit evidence, it is usually in no position to resolve them, and to make findings as to the disputed facts, without first having the benefit of cross-examination of the witnesses. Nor will it ordinarily attempt to do so. The basic principle is that, until there has been such cross-examination, it is ordinarily not possible for the court to disbelieve the word of the witness in his affidavit and it will not do so. This is not an inflexible principle: it may in certain circumstances be open to the court to reject an untested piece of such evidence on the basis that it is manifestly incredible, either because it is inherently so or because it is shown to be so by other facts that are admitted or by reliable documents…"

63. That principle was recently considered by the Court of Appeal (Newey LJ with whom, on this issue, Arnold and Stuart-Smith LJJ both agreed) in Kireeva v Bedzhamov [2022] EWCA Civ 35, [2023] Ch 45, in which Mr Bedzhamov had denied signing a personal guarantee and contended that his signature had been forged. In deciding to recognise a Russian bankruptcy order against Mr Bedzhamov, the Judge had relied on a number of significant difficulties with that defence, including a lack of both factual and expert evidence to support it. Newey LJ referred at [34] to the principle set out by Rimer LJ in Coyne, and

held at [38] that because Mr Bedzhamov had stated in a witness statement that he did not sign the document, "what the Judge needed to ask himself was whether Mr Bedzhamov's evidence could be rejected without cross-examination because it was manifestly incredible", which the Judge had not done. Newey LJ went on to hold at [39] that, in any event, it would not be appropriate to reject that evidence, which, despite the various difficulties, "needs to be tested in cross-examination and cannot be discounted at this stage".

64. Mr Ryan also referred to the restrictions and safeguards that apply to expert evidence for which he relied on British Airways v Spencer [2015] EWHC 2477 (Ch) and Layland v Fairview New Homes Plc [2002] EWHC 1350 (Ch). The first of these concerns the circumstances in which expert evidence will be admitted and that does not arise in this case.

65. Finally on the law, Mr Ryan submitted that the fact that there is going to be a trial in any event of a related issue (the question of Prasan's liability for interest) may result in the Court declining to grant summary judgment under CPR 24.3(b), either because there is some "other compelling reason why the case or issues should be disposed of at a trial" or as a matter of discretion. In this respect, Mr Ryan cited Executive Authority for Air Cargo and Special Flights v Prime Education Limited [2021] EWHCA 206 (QB) at [115] and [117(1)] and Re Candey Ltd [2024] EWHC 1398 (Ch) at [23].

66. I summarise Mr Ryan's submissions on the basis of these legal principles as follows:

    1. The evidence of Mr Singh is not contradicted by *all* the documents and is not manifestly incredible. On the contrary, it is supported by the two

alleged written agreements themselves and cannot be summarily dismissed without cross-examination.

2. The Claimant's case requires a finding that Prasan has manufactured and backdated documents and that Mr Singh's evidence is false, which is a finding that demands caution on a summary basis.

3. Expert evidence should not be accepted without being tested in cross-examination.

4. The factual points made by Mr Dowers are issues that may be raised in cross-examination, but are not suitable for summary resolution before disclosure, witness evidence and cross-examination.

5. Even if summary judgment is granted, a trial will have to take place in any event to resolve the question whether the Alleged Deferral Agreement was entered into and whether it is enforceable and which part of the claim to interest is time barred. That issue is worth a significant sum. Based on Mr Hinks' submissions, this issue could be worth some USD 14 million. This therefore provides a compelling reason or a discretionary basis to dispose of the issue of the Alleged Assignment Agreement at trial.

6. As to the construction issue, this has not been pleaded by the Claimant and in any event, the Alleged Assignment Agreement was clearly intended to extinguish the Prasan debt by the assignment.

67. As to interest, Mr Ryan submitted that the application for an interim payment on account of interest had been particularised far too late and that it was

procedurally defective by reference to CPR PD25B paragraph 2.1. Mr Hinks retorted that that paragraph applied only to an interim payment of damages and not to interest claimed as debt.

Analysis

68. The first question I need to determine is whether GSHL has demonstrated that Prasan has no real prospect of proving at trial that the Alleged Assignment Agreement was made.

69. There are a number of important building blocks of the Claimant's case which are established.

70. First, I accept the submissions on behalf of GSHL that the question whether the Alleged Assignment Agreement was actually made in the terms of the written document produced is not a factually complex issue and, to that extent, some of the authorities requiring caution to ensure that the Court at this stage does not conduct a mini-trial are not applicable.

71. Secondly, I accept Mr Hardwick KC's submission that his case on this application does not require me to find that Mr Singh is lying in his two witness statements, because it is perfectly possible that he is mistaken in his recollection.

72. Thirdly, I agree with GSHL that in circumstances where permission has been given for expert evidence to be relied upon and where, as here, that evidence is clear and credible and not answered by contradictory evidence or impugned by submission, the Court is entitled to accept it even on a summary judgment application. Mr Ryan relied on Layland v Fairview New Homes Plc [2002] EWHC 1350 at [33] where Neuberger J said "Provided there is a prospect of the

expert, through cross-examination, or the court, through submissions, being persuaded to a different conclusion, the claim cannot be dismissed on the basis of the expert's view." That sentence read in isolation begs the question whether the prospect of the court being persuaded to a different conclusion is real or fanciful. On the evidence and argument before me, there was nothing advanced by the Defendant to raise that prospect from a mere logical possibility to the level of the realistic.

73. Fourthly, while caution is always required before making a summary finding of dishonesty or that evidence is false, in this case, account must be taken of the silence of the Defendants in the face of repeated requests for an explanation of the Seven Points and of the impact of the evidence of Mr Bassi that appears to show that the metadata of the PDFs of the two alleged agreements have been tampered with. Taking account of that silence in its context in this case, I find that the possibility that explanations will emerge at trial for all of these matters is no more than a theoretical possibility and is not a realistic prospect.

74. Accordingly, I accept that it has been established to the summary judgment standard that:

1. The PDFs produced by Prasan as representing the Alleged Assignment Agreement and, insofar is it matters, the Alleged DIL Debt Agreement, were created by being scanned by a Hewlett Packard Multi-Function Printer on or around 10 June 2023; and

2. A person or persons unknown on the Prasan side interfered with the metadata of the PDFs thus created falsely to make them appear to have been created in 2010; and

3. The signatures of Mr Singh on the PDFs of the two alleged agreements were not directly copies of wet signatures in that at least one of them had been applied electronically before the PDFs were created.

75. However, the more difficult question is whether those matters show that the Alleged Assignment Agreement was not in truth made. As to that, the following points are relevant in my judgment.

76. First, the expert evidence of Mr Bassi demonstrates that some version of the Alleged Assignment Agreement must have existed that has not yet been disclosed, namely whatever was put into the scanner on 10 June 2023. By definition, that must be an earlier version of the document than the PDF that has been disclosed. I have no evidence that would enable me to make a finding about when that earlier version was created.

77. Secondly, the evidence of Mr Singh is direct witness evidence that the Alleged Assignment Agreement was signed by Mr Singh in 2010.

78. Thirdly, at this stage, no criticism can be made of either party for not producing evidence from the other apparent signatories of the Alleged Assignment Agreement. At trial, either such evidence will be produced, or the parties may make submissions about what inferences can be drawn from its absence.

79. Fourthly, Mr Hardwick KC accepted that the tests I am required to apply before rejecting Mr Singh's evidence on a summary judgment application are whether it is "manifestly incredible" and whether it is contradicted by "all the documents or other material on which it is based", with the word "all" emphasised as it was

by Carnwath LJ in Mentmore International, as approved by Lord Hamblen in Okpabi.

80. Fifthly, the Seven Points, and the silence of Prasan in the face of their being advanced, are strong material that suggests that the Alleged Assignment Agreement was never made. But I have to set that strong material in the context of the dictum of Carnwath LJ from Mentmore International, approved by Lord Hamblen in Okpabi: "It is in my view important not to equate what may be very powerful cross-examination ammunition, with the kind of 'knock-out blow' which Lord Hope seems to have had in mind."

81. Sixthly, it seems to me that in the light of the matters that I have accepted as having been established, there is a strong possibility that Mr Singh's evidence will be found at trial to be either false or mistaken. However, it is also a possibility that the Alleged Assignment Agreement was made, as Mr Singh claims to recall, and that the dishonest manipulation of the PDFs will be found to have been motivated by something other than knowledge that the agreements did not exist at all. The parties did not speculate about what other motivations might have existed, but possibilities would include a desire to conceal an earlier version for some collateral reason or a misguided belief that the Court would not accept a truthful statement that the true earlier version could not be found. Of course, GSHL can say that these possibilities are not likely and that it behoved Prasan to put in evidence if they were Prasan's case. That would be fair comment, but it would not change the fact that on the evidence before me, they remain possibilities that would be consistent with Mr Singh's evidence.

82. The existence of these alternative possibilities is relevant because it distinguishes my analysis of this application from Cockerill J's analysis in Foglia upon which GSHL relied. In that case, Cockerill J gave summary judgment to a claimant in a fraud case despite denial by the defendant. She recognised that "very considerable caution" was required before doing so and cited various authorities some of which I have also referred to in this judgment.

83. Both parties referred me to [107] of Foglia, where Cockerill J said:

> "Pausing here, it should be noted that on the Doncaster Pharmaceuticals spectrum, this is not a case where I reach my preliminary conclusion on the basis of assessing conflicts of fact. The conclusion is reached on the basis of testing Mr Cerri's evidence against contemporaneous factual documents, common ground and logic. This is perfectly permissible at the summary judgment stage: ED & F Man Liquid Products v. Patel [2003] EWCA Civ 472 at [10], Three Rivers [95]. This is not a question of evaluating the weight of the evidence or eliding powerful cross-examination material with a knockout blow: Okpabi [110-1]."

84. Before commenting on that paragraph, I set out paragraphs [108] and [111]:

> "The next point to consider is: does the improbability point which was the backbone of Mr Cerri's case make the difference to this preliminary conclusion? I am not persuaded that it does. Ms Scott may well be right that a genuine "battle of improbabilities" should go to trial, particularly when there is issue positively joined on specific underlying factual issues. But here we are looking at improbability (on Mr Cerri's side of the argument) versus a compound which includes not just improbability (phone evidence) but also an element of impossibility (spoofed emails), together with evidence which seems to show clearly a lack of honesty on one basis or another (cui bono). I am therefore not persuaded that the improbability argument itself can be said to provide a reason for taking the case further.
>
> … What is striking about the position which Mr Cerri now adopts is that he has no positive case which even theoretically explains the facts. As to whether such an explanation could exist, two logical possibilities (to which I shall refer as the "X hypotheses") occurred to me, and were accepted by Ms Scott as

> possible explanations in the course of argument. But I have concluded that even bending over backwards to construct such an explanation (which Mr Lowenstein – it seems to me rightly - suggested was going rather further than the Court should do) they do not assist Mr Cerri."

85. While the detailed facts of Foglia do not need to be explained in this judgment, it is significant that Cockerill J took the view that the explanations given by the Defendant were not merely unlikely to be proved right at trial, nor even very improbable, but impossible on the basis of all the evidence before the Court, including in particular on the basis of detailed analysis of the documents. As Cockerill J said, that was not a question of evaluating the weight of the evidence, nor of eliding powerful cross-examination points with a knock-out blow.

86. In the present case, Prasan has not put forward any positive case to explain the appearance that it has engaged in the manufacture of evidence in the form of the PDFs of the two alleged agreements. It may be said to be only by Prasan's choice that I am not in a position to assess the credibility of any such positive case as they might have made. But I do not think that such reasoning would conclude the matter in GSHL's favour because in this case (unlike in Foglia) the issue of dishonesty does not go directly to whether Prasan has a defence to the claim. Of course, the issue of dishonesty is relevant, but by an indirect route: if Prasan has dishonestly manufactured the PDFs then the most obvious motivation for doing so would be to create a defence that Prasan knows does not otherwise exist. That gives rise to a possible inference, but not to a necessary logical implication because it is not the only possible motivation. Given the clear evidence of Mr Singh, it would be safer for such an inference to be drawn at trial than in a summary judgment application.

87. In the light of these considerations, I cannot conclude that Mr Singh's evidence is "manifestly incredible", nor that it is "contradicted by *all* the documents or other material on which it is based". Since it was common ground before me that these are the relevant tests of whether a "real prospect" exists in a summary judgment application where it turns on the credibility of written evidence, I am obliged to conclude that the evidence of Mr Singh does show that the Defendant has a real prospect of showing that the Alleged Assignment Agreement existed.

88. The second issue I must consider is whether the Claimant has demonstrated to the summary judgment standard that the Alleged Assignment Agreement, even if it was made in the terms of the PDF exhibited to the Defence, would not have the effect of extinguishing the Loan. That matter received less attention in the hearing before me and I can state my conclusions shortly.

89. It is tempting for me to say that since this is a matter of the interpretation of a written agreement and neither party has pleaded any particular factual matrix that is said to be material to the issue, this is a nettle to be grasped at this stage. I have concluded that is a temptation I should resist. I accept the Claimant's points that clause 4 is incoherent and that the Alleged Assignment Agreement contains no express statement that the Loan was to be extinguished by set-off or otherwise. However, clauses 1 to 3 make no commercial sense unless a set-off was intended. If the Claimant is right, then they amounted to a gratuitous assignment by Prasan to GHSL of a part of a debt that just happened to equal the amount of the Loan. That is not a conclusion I would be willing to reach at this stage. Equally, I do not think it would be appropriate to reach any conclusion in favour of the Defendant at this stage. The murky circumstances

of the document itself do not inspire confidence that the Court has sufficient knowledge of the commercial background to any agreement that may have been made to resolve safely any dispute as to its interpretation.

90. If I am right in the conclusions I have reached so far, then they are sufficient to dispose of the application. In case I am wrong about the conclusions so far set out, I will consider two further, closely related, points that were raised by Prasan by reference to the partial nature of GSHL's application.

91. Prasan submitted that the fact there is going to be a trial of a related issue even if the summary judgment application succeeds (namely the amount of interest that is outstanding in light of the alleged Deferral Agreement) would be a "compelling reason why the case or issues should be disposed of at a trial", even if I had held that the defence had no real prospect of success. The closely related argument was that as a matter of discretion, the Court should withhold summary judgment because the trial that would occur in any event would involve overlapping witness evidence and would take place in only eight months' time and last for only five days. In relation to witnesses, in an email of 1 March 2024, Collyer Bristow stated that "our client currently plans to call 4 to 5 factual witnesses". This was confirmed in another email of 13 March 2024. As I have noted already, at the CMC, it was submitted on behalf of the Claimant that the trial would take no more than five days on the assumption that the summary judgment application failed and that submission was accepted by HHJ Pelling KC.

92. As I have noted above, Prasan relied on two authorities in relation to the relevance of the trial of related issues to summary judgment.

93. In Executive Authority for Air Cargo and Special Flights v Prime Education Limited [2021] EWHCA 206 (QB), Saini J said the following at [108] to [117]:

> "108. In summary, having conducted a comparison between the terms of the 2015 Agreement and Amended Agreement (paras. 99-104), the Senior Master concluded (para. 108) that Prime Education did not have any real prospect of success in demonstrating that there was consideration given for the Amended Agreement. …
>
> 109. However, in the Additional Judgment, the Senior Master refused to make any declaration making her conclusion on this issue a final decision. It is common ground that the effect of the two judgments was that the Senior Master decided this issue could be revisited at trial, together with the related promissory estoppel issue.
>
> [Saini J then set out the Senior Master's reasons.]
>
> 111. EACS complains that the Senior Master was in error in not making a declaration. Prime Education complains that the Senior Master was wrong to determine that there was no realistic prospect in relation to the consideration issue. I reject both complaints. Prime Education's cross-appeal is unnecessary because no final determination was made (as Counsel for Prime Education accepted at the hearing) and, for the reasons explained below, in my judgment there was no arguable error in the Senior Master's refusal to grant a declaration.
>
> 112. The issue of principle which arises in this part of EACS's appeal may be described as follows. When a judge determining a summary judgment application makes certain findings of fact or law on the evidence presented at that time (such as deciding a party does not have a realistic prospect of succeeding on a sub-issue), but she ultimately concludes not to grant the application itself, is she obliged to make a declaration as to those findings on the sub-issues? The effect of such declarations is intended to be to bind the parties and remove the sub-issues from the proceedings.
>
> 113. In my judgment, a Judge is under no such obligation. Whether she decides to make such a declaration on the sub- issue or simply leaves the issue for the trial judge will be a fact-specific case management decision to be undertaken following assessment in accordance with the Overriding Objective, and as an exercise of discretion.
>
> 114. The fact that a declaration has not been sought in the application is an important but not determinative factor, as well

as the fact that the applicant could have, but did not, seek determination of a preliminary issue on the matter in respect of which it now asks for a declaration. Also relevant is the fact that the sub-issue may be a matter on which the Judge considers there might potentially be more detailed factual and legal argument which was not possible in the CPR Part 24 hearing.

115. I would add that where there is to be a trial in any event, and the sub-issue which the Judge has determined on an interim basis is closely related to other factual or legal issues which the trial judge will examine in more detail, it seems to me that it would be generally unwise for the interim hearing Judge to make any binding declarations. What may seem correct on the evidence and argument on an interim application, may turn out to be wrong following the mature reflection available at trial.

116. As stated above this is a form of case management question involving the exercise of a wide margin of discretion on the part of the Judge. The party complaining on appeal must accordingly show one or more of the following types of error before an appeal court will interfere:

(i) a misdirection in law;

(ii) some procedural unfairness or irregularity;

(iii) that the Judge took into account irrelevant matters;

(iv) that the Judge failed to take account of relevant matters; or

(v) that the Judge made a decision which was "plainly wrong".

117. Applying these general principles, in my judgment, there was no arguable legal error revealed by the Senior Master's reasoning. This was unimpeachable as a discretionary decision in the context of case management. I consider two particular factors were important:

(1) First, given the fact that there is going to be trial of the facts surrounding the Amended Agreement (specifically, the promissory estoppel issue), it was appropriate for the Senior Master not to make a final decision on a closely related issue which would lead to a declaration and which (on fuller investigation at trial of the practical benefits alleged to arise under the Amended Agreement) might be unsafe.

(2) Second, the Senior Master was also right to exercise caution given the way in which the point was raised: it had not been pleaded and identified as a standalone point although it was in evidence. The Senior Master was faced with an unattractive "moving feast" of submissions on points which had not been

> sufficiently prewarned or explored. She was entitled to conclude it was unfair to give summary judgment on this point in such circumstances."

94. The full context of this passage that I have set out above makes it clear that when Saini J said at [115] "where there is to be a trial in any event, and the sub-issue which the Judge has determined on an interim basis is closely related to other factual or legal issues which the trial judge will examine in more detail, it seems to me that it would be generally unwise for the interim hearing Judge to make any binding declarations", he was making the point (which could hardly be controversial) that where a Judge (having refused to grant summary judgment) is asked to decide whether to grant at an interim stage declarations, which are always a discretionary remedy even at final trial, it will be a relevant case management consideration if there is a risk that such declarations will later appear unwise in the light of the examination of closely related issues at trial.

95. The second authority relied upon by Mr Ryan on this issue was Re Candey Limited [2024] EWHC 1398 (Ch) in which Insolvency and Companies Court Judge Greenwood refused an application by the respondents to strike out or grant summary judgment in respect of the whole or parts of an unfair prejudice petition. In the course of his judgment, ICC Judge Greenwood said:

> "22. Applications for summary judgment are governed by CPR Part 24. The circumstances in which the court may grant summary judgment on the whole of a claim or on an issue are set out in CPR r 24.3 : '(a) it considers that the party has no real prospect of succeeding on the claim, defence or issue; and (b) there is no other compelling reason why the case or issue should be disposed of at a trial.'
>
> 23. Both parts of this test must be satisfied before the court has any discretion to grant summary judgment. Moreover, the court is not obliged to grant summary judgment on particular issues or sub-issues even if it concludes that the party has no real prospect of succeeding on that issue: it is entitled to hold, as a matter of

> discretionary case management, that no final determination should be made at an interim stage if there is to be a trial in any event; this was a point emphasised by Ms Staynings: 'where there is to be a trial in any event, and the sub-issue which the Judge has determined on an interim basis is closely related to other factual or legal issues which the trial judge will examine in more detail, it seems to me that it would be generally unwise for the interim hearing Judge to make any binding declarations. What may seem correct on the evidence and argument on an interim application, may turn out to be wrong following the mature reflection available at trial': Executive Authority for Air Cargo and Special Flights v Prime Education Ltd [2021] EWHC 206 (QB) at [114]."

96. I can see why Mr Ryan suggested that in this passage, ICC Judge Greenwood did appear to accept a submission that Saini J's dictum from Executive Air Authority should be taken as supporting a general case management discretion to refuse to grant summary judgment even if the two conditions in CPR Part 24.3 are satisfied. I do not myself think that Saini J's words were directed to that point, which is rather wider than the one I have extracted from his words above.

97. That said, it is clear from its terms that CPR Part 24 provides for a discretion to grant summary judgment, not an obligation, if the two tests are met. The word "may" relevantly appears, not only in the operative CPR Part 24.3, but also in CPR 24.1(a) and CPR 24.2(a). Even so, it is very unusual for a Court to hold that both limbs of CPR Part 24.3 are satisfied but it would nevertheless be right to withhold judgment on case management or other discretionary grounds. Such cases are bound to be rare because it would be contrary to the spirit of the rule, if not its letter, to refuse judgment on a claim or issue with no real prospect of success for a discretionary reason which is, on this hypothesis, less than "compelling".

98. In Iliffe v Feltham Construction Ltd [2015] EWCA Civ 715; [2015] CP Rep 41, the Court of Appeal (Jackson LJ with the agreement of Tomlinson and Floyd LJJ) held:

> "72. When I stand back from the detail and look at this case in the round, I conclude that as at 20 June/3 July 2014 the position as to causation of the fire was not so clear as to justify the grant of summary judgment on liability in favour of the claimants. Also I think it was inappropriate to do so when similar issues remained to be determined at a full trial as between the other parties. In the particular circumstances of this case that constitutes a "compelling reason" not to enter summary judgment within the meaning of CPR r.24.2(b). A judge in multi-party litigation must aim to do justice as between all parties involved in the case.
>
> 73. A further significant feature is that summary judgment in this case achieves much less in terms of saving costs and court time than is normal. There is going to be a trial anyway at which extensive factual and expert evidence will be called in order to establish: (a) what caused the fire; and (b) who is responsible. The claimants will have to participate in the trial, because they need to prove the quantum of their damages.
>
> 74. I wish to emphasise that whilst, after some hesitation, I am differing from the judge in the circumstances of this case, I am certainly not discouraging robust case management or the use of summary judgment under CPR Pt 24 . In appropriate cases Pt 24 provides a valuable mechanism to avoid holding a trial, with all the expenditure of time and costs which that entails. My conclusion is simply that, for a collection of reasons as stated above, this case falls short of satisfying the requirements of CPR r.24.2.

99. In this passage, the Court of Appeal held that neither limb of CPR Part 24.3 was satisfied. Iliffe confirms at [72] that the existence of similar issues which remain to be tried between other parties can be a "compelling reason" to dispose of a subject issue at trial. However, it also confirms that there is no formulaic approach to this possibility, as the judgment falls to be made "in the particular circumstances of this case".

100. That point was made in terms in the judgment of Joanna Smith J in Getty Images (US) Inc v Stability AI Ltd [2023] EWHC 3090 (Ch), [2024] FSR 12 at [38], where she said:

> "On the issue of 'compelling reason', it may be inappropriate to grant summary judgment where similar issues would remain to be determined at a full trial and extensive factual and expert evidence would have to be called, meaning that there would be much less in terms of saving costs and court time than is normal (see Iliffe v Feltham Construction Ltd [2015] EWCA Civ 715 at [71]–[73] per Jackson LJ). However, as the Defendant submitted, the mere existence of other arguable claims which must go to trial cannot, of itself, be a compelling reason why an unarguable claim must proceed to trial."

101. Returning to Iliffe, the consideration at [73] that summary judgment would save much less time and expense than normal was said to be "significant", but Jackson LJ did not state in terms whether it was significant to the assessment whether there was a "compelling reason", or if it was a discretionary factor that would justify refusing summary judgment even if both limbs were satisfied.

102. The question under CPR 24.3(b) is whether "there is no other compelling reason why the case or issue should be disposed of at trial". That question directs attention to an absence, not a presence. In Iliffe, there were two matters that suggested the claim should go to trial: the existence of other claims and the minor nature of the costs and time saving if judgment was given. Together, their existence meant that the court was not satisfied that there was "no other compelling reason".

103. This approach helps to explain why it is rarely necessary or appropriate to consider the wider case management discretion to refuse to grant summary judgment where both limbs of CPR 24.3 are satisfied. If all the pointers to disposal at trial taken together do not amount to a "compelling reason", then it

would be an unusual case indeed where it would still be appropriate to refuse to grant the judgment that is otherwise justified under the rule. As Fancourt J said in Anan Kasei Co Ltd v Neo Chemicals & Oxides (Europe) Limited [2021] EWHC 1035 (Ch), [2021] FSR 24 at [80], explaining the differences between an application for summary judgment and an application that a preliminary issue should be ordered: "A party is free to issue a summary judgment application, subject to compliance with the rules, and the court will determine it, whether it depends on an issue of law, fact or mixed fact and law."

104. Summarising these considerations, it seems to me that the position is this:

1. Both limbs of the CPR Part 24 test must be satisfied before the Court may grant summary judgment.

2. Where there are several matters that suggest that a claim or issue should be disposed of at trial, those matters should be considered together when the court considers whether, overall, there is "no other compelling reason why the case or issue should be disposed of at trial".

3. The existence of related claims or issues that will go to trial can, but need not, contribute to a "compelling reason" within the meaning of CPR Part 24.3(b). Whether or not it does so will depend on the relationship between the different claims or issues as well as the weight to be accorded to any other factors that favour full trial.

4. As to the general discretion represented by the word "may" in CPR 24.3, it will rarely be appropriate to refuse to grant judgment when both limbs of CPR 24.3 are satisfied.

105. In response to this issue, Mr Hardwick KC submitted that I should not assume that the interest claim would go to trial in any event, as that would be a commercial decision for his clients should they obtain judgment as to principal. I reject that submission because (i) it seems to me that the court generally can and should assume that a claim that has been brought will be pursued to trial; (ii) the amount of the remaining interest claim is very significant in the context of this claim. (In some cases there may be reason to believe that overall settlement would be encouraged by the determination of an issue, but that was not Mr Hardwick KC's submission in this case.)

106. Mr Hardwick KC also submitted that it was right in principle to grant judgment on claims which had no real prospect of success and that if that was done, the trial would be shorter and cheaper than the present five day fixture. He submitted that expert evidence would no longer be required and that witness evidence might be reduced. However, as I have noted above, the five day estimate was approved by the Court on the basis of the summary judgment application failing.

107. Applying the principles I have outlined to the facts of the case before me, the appropriate treatment of the points raised by Mr Ryan is to take them together. In other words, I must determine whether the existence of the interest claim, its quantum relative to the claim for principal, and the fact that the trial of that claim is due to be heard over (only) five days in (only) eight months' time, and that the witnesses required for that claim are likely to overlap with those required for the claim for the principal, together amount to a "compelling reason" not to grant summary judgment. Against that, I must bear in mind that

summary judgment now would most likely shorten the trial at least to some extent, though I have rejected the submission that there is any good reason to believe it would do away with the need for a trial altogether.

108. It seems to me that the aggregation of these issues is important. The mere fact that the interest claim is related to the principal claim and is for a significant sum of money would not have amounted in my judgment to a "compelling reason", especially given that the principal claim is itself for a significant sum of money. However, I do think that when existence of the interest claim is combined with the fact that a short trial has been fixed to take place in only a few months' time, it does amount altogether to a compelling reason why the principal claim should be disposed of at trial. Accordingly, I refuse the application for this reason in addition to my earlier conclusion that Prasan has shown a real prospect of success.

109. Since I will not grant judgment for the reasons I have given above, the application for an interim payment on account of interest does not arise. I also confirm that nothing I have said should be treated as a final finding of fact binding the parties or tying the hands of the court that hears the trial.