

Judgments

**QBD, COMMERCIAL COURT**

**Neutral Citation Number: [2011] EWHC 470 (Comm)**

**IN THE HIGH COURT OF JUSTICE**

**2010-706**

**QUEENS BENCH DIVISION**

**COMMERCIAL COURT**

St Dunstons House

Fetter Lane

London

EC4A 1HD

24 February 2011

**Before:**

**MR JUSTICE CHRISTOPHER CLARKE**

**BETWEEN:**

**JSC BTA BANK**

Claimant

-v-

**(1) MUKHTAR ABLYAZOV**

**(2) ZHAKSYLYK ZHARIMBETOV**

**(3) GRANTON TRADE LIMITED**

**(4) BRANDEN & ASSOCIATES LIMITED**

**(5) ALDRIDGE VENTURES LIMITED**

**(6) ZAFFERANT PARTNERS INC**

**(7) FOREST MANAGEMENT LIMITED**

**(8) LOGINEX PROJECTS LLP**

**(9) INCOMPRO MANAGEMENT LIMITED**

**(10) PERSPECTIVE COMMUNICATIONS LIMITED**

**(11) AUSTIN UNIVERSAL INC**

**(12) MADEN HOLDING INC**

Defendants

(Transcript of

WordWave International Limited

A Merrill Communications Company

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Official Shorthand Writers to the Court)

**MS DEN BESTON** (instructed by Hogan Lovells LLP) appeared on behalf of the **Claimant**.

**MR S COLTON** (instructed by iLaw) appeared on behalf of the **Defendant**.

Judgment

As Approved by the Court

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1. MR JUSTICE CHRISTOPHER CLARKE: The history of these proceedings is well known to the parties and is set out in my judgments of 24 August and 10 December 2010, and I shall not set it out again.

2. This is the hearing of an application by the claimant ("the Bank") for judgment against the twelfth defendant, Maden Holding Inc, ("Maden") which is one of the Intermediaries, as a result of Maden's failure to comply with the Unless Order made by me dated 24 August 2010 and its further failure to comply with the conditions for relief from the sanction in the Unless Order as set out in my further order of 10 December 2010, the Conditional Order.

3. The Unless Order was made in the light of Maden's noncompliance with the disclosure provisions of the freezing order made by Mr Gavin Kealey, QC, sitting as a deputy judge of this court, on 9 June 2010. The Unless Order provided, amongst other things, that unless the Intermediaries provided the information specified in paragraphs 9(1)(a) and (b) of the order of 9 June 2010 and exhibited the documents referred to in paragraph 9(1)(c) by 4.00 pm London time on 3 September 2010, they would be debarred from defending these proceedings and the Bank would be at liberty to apply for judgment against them.

4. On 3 September, those defendants who were represented, that is to say the third, seventh, ninth, tenth and twelfth defendants ("the Represented Defendants"), served the affidavit of Mr Denis Silyutin, purportedly in compliance with the Unless Order. The information contained in that affidavit was substantially deficient and did not comply with the order. The material deficiencies in the represented defendants' compliance with the Unless Order were set out in letters of 8 September 2010 and 15 September 2010 from Hogan Lovells on behalf of the Bank.

5. On 24 September, the Bank issued its application for judgment against Maden and others on the ground of noncompliance with the Unless Order. On 4 October the Represented Defendants issued a cross-application for a declaration that they had complied with the Unless Order or alternatively for relief from sanctions. The Bank's application for judgment and this cross-application were heard together by me on 10 December 2010.

6. On that date I held that Maden had failed to comply with the disclosure provisions of the freezing order of 9 June and with the Unless Order of 24 August, in particular by failing to account for a sum of US\$2,516,000 ("the untraced sum") which the Bank contended formed part of the proceeds of fraud to which it made a proprietary claim, being part of the funds received by the sixth defendant, Zafferant Partners Inc, from the Bank under what the Bank claims to be a sham loan transaction, and which was paid into an account held with JSC Trasta Komercbanka of Riga in Latvia.

7. I was, however, persuaded to grant relief from sanction on a condition which, as I expressed it orally at the hearing, was that Maden should provide by 17 December 2010:

"A power of attorney in favour of the Bank authorising the Bank to request from the Latvian bank information as to what has become of the monies paid by the Bank to Maden (that may require some tighter definition) and any document which shows such a disposition."

8. I had been invited by the Bank towards the end of the hearing to make that one of the conditions of relief against sanction.

9. Following the hearing on 10 December the parties agreed the exact wording of the condition and the deadline for compliance with the condition was extended. The relevant condition as recorded in paragraph 5.2 of the order for the 10 December 2010 as finally sealed was:

"By 4 pm on Wednesday 5 January 2011 the Twelfth Defendant do execute a power of attorney permitting the Bank's lawyers, Hogan Lovells International LLP in London and/or Sorainen in Latvia, to obtain on that Defendant's behalf and in his name information and documentation from JSC Trasta Komercbanka of Riga, Latvia as to what has become of those monies paid into the account of the Twelfth Defendant which derived from the Claimant and which have not otherwise been accounted for by the Twelfth Defendant (being US\$2,516,000 in total). The Claimant shall produce a draft of the said power of attorney for agreement by the Twelfth Defendant and, in the event the same cannot be agreed, then the parties shall have permission to apply in writing. In the event that the execution of the power of attorney by 5 January 2011 is not possible due to matters beyond the Twelfth Defendant's control, the Claimant shall agree a reasonable extension of time for execution of the power of attorney or alternatively the Twelfth Defendant shall have liberty to apply, provided the Twelfth Defendant can show that it has employed its best endeavours to ensure the timely execution of the power of attorney."

10. The Bank says that the obligation to execute a power of attorney permitting the Bank's lawyers to obtain the specified information obliged Maden to provide a power of attorney which was effective for that purpose as a matter of Latvian law, whatever that law might require.

11. Maden submits, through Mr Simon Colton, that the whole idea of the drafting of paragraph 5.2 was that the Bank should produce a draft so as to avoid any controversy as to what was required in order for there to be compliance with a condition for relief against sanction.

12. That contention raises the question as to whether the reference to "permitting" means that the terms of the power of attorney should have the effect specified or whether they also require that the power of attorney should be authenticated in such a way as to be valid and effective as a power of attorney for the intended purpose under the law of Latvia.

13. It seems to me, in a matter of this kind, where what is being granted is relief against sanction, subject to a condition, failure to comply with which may have very significant consequences, the narrower reading is to be preferred. But in truth, it was not apparent at the hearing that any real question arose as to any difficulty in relation to discovering what was necessary under the law of Latvia and satisfying whatever condition Latvian law required.

14. The extended date of 5 January 2011 came about in this way. On 13 December, Hogan Lovells produced a draft minute of order. On 14 December they produced a power of attorney for execution by Maden. By their letter of that date they explained to iLaw, for Maden, their understanding of the steps that had to be taken to ensure that the power of attorney was legally enforceable in Latvia. These were that the power needed to be notarised by a BVI-qualified notary, who could confirm Maden's status as an existing company in the BVI, and the authority of Mr Timichev, who is said to be the beneficial owner of Maden, as Maden's sole director, to execute the power of attorney under the law of the British Virgin Islands and under the company's articles.

15. Given that Mr Timichev was resident in Belarus, they proposed that Maden's BVI attorney should produce a short opinion vouching for those matters and attaching certified copies of the documents which evidenced Mr Timichev's status as a director and shareholder. The opinion should, they indicated, be scheduled to the power of attorney. Mr Timichev should then execute the power as a deed before a notary.

16. In a subsequent email of 15 December, they indicated that the opinion to which they had referred in the letter of 14 December might not be necessary, provided: (a) that the power of attorney attached (i) a legalised copy of an excerpt from the BVI register showing Maden to be an existing company and (ii) a legalised copy of the register of directors showing Mr Timichev as the sole director; and (b) that the power was itself notarised and legalised. By "legalised" I understand them to have meant that the power should be the subject of an apostille. It is not clear from the letter of 15 December where it was proposed that the notarisation and the making of the apostille should take place.

17. Additionally on 15 December they proposed that the draft power of attorney should be extended to permit the Bank's Latvian lawyers also to obtain information from Trasta as well as themselves.

18. What happened or did not happen thereafter is apparent from the third witness statement of Ms Natalie Davies.

19. On 15 December, iLaw asked Forbes Hare, who are lawyers in the British Virgin Islands, to obtain an excerpt from the BVI companies register showing Maden as an existing company, and a copy of the current register of directors showing Mr Timichev as Maden's sole director, from Maden's registered agents, AMSA Trustees Limited (AMS).

20. iLaw had earlier, on 3 August 2010, written to AMS asking for a certified copy of the register of directors and officers but had received no response. On 16 December, Forbes Hare ordered from the BVI companies register the certificate of good standing in respect of Maden and telephoned a Ms Tracey Stanley of

AMS to request the current register of directors. On the same day she said that she would confirm with her client of record. It is by no means clear who that was. Later still, Forbes Hare told iLaw that the registered agent would not release the current register and that their client of record would not authorise the release. So iLaw asked Mr Silyutin, who holds a power of attorney on behalf of Maden, signed by Mr Timichev, to authorise the release of the register.

21. Also on 16 December, Messrs iLaw indicated by email to Hogan Lovells and to my clerk that their client would require an additional 28 days to complete the steps required to ensure that the power of attorney was enforceable in Latvia. What they said was this:

"In addition, Hogan Lovells also require the power of attorney to be legalised and apostilled. We understand that unless Mr Timichev was to travel to the BVI for this purpose it will be necessary for:

"1 A BVI lawyer to obtain a certificate of good standing for Maden and a copy of the register of directors.

"2 Those documents to be legalised/apostilled and the documents would then be taken to the Deputy Governor's office where it would fix the apostille. This could take up to 48 hours.

"3 The documents then have to be sent to Mr Timichev in Belarus. He will have to attend a notary with the documents and the power of attorney.

"4 The documents would then need to be sent from Belarus to Hogan Lovells.

"Clearly it is impossible to comply with these steps before 4.00 pm tomorrow and, to be fair, neither party was aware of this when before Mr Justice Clarke on Friday of last week. Had they been aware, the parties would have explained to the court that the seven-day deadline was impossible to comply with due to the above.

"If the deadline were extended for 28 days, however, this would give the parties an opportunity to hopefully resolve the matter and for Maden to comply. We would be grateful if you could put this request before Mr Justice Clarke."

22. At no time were the steps proposed by the Bank suggested by iLaw to be unnecessary to obtain a valid and enforceable power of attorney and it is plain that what was proposed was that the power of attorney should be notarised.

23. At a short hearing on 17 December, I granted Maden an extension of time until 5 January 2011 to provide the power of attorney.

24. iLaw's evidence is that the problems which they subsequently encountered and to which I am about to refer were not then known. The parties agreed a form of power of attorney. The agreed form attached, although it did not refer to it in the body of the power, a schedule under which were the words "insert legalised copies of an extract from the BVI company register and the register of directors".

25. The form requires Mr Timichev to sign as sole director of the company in the presence of a witness who is described as "Name of notary or other witness". The form itself does not, however, require notarisation. The power of attorney is subject to English law.

26. Meanwhile, on 20 December Mr Silyutin contacted Tracey Stanley of AMS authorising her to release to Forbes Hare the current register of directors. She told him that once she had received instructions from her client of record she would proceed with his request. Both iLaw and Forbes Hare impressed on her the urgency and the latter provided her with Mr Silyutin's power of attorney. In the end, on Wednesday 22 December, iLaw received from AMS a copy of the register of directors which showed Mr Timichev as the sole director. On the same day, the register of directors and certificate of good standing of the company were notarised and were submitted to be apostilled the following day.

27. iLaw continued to make plain that Mr Timichev was proceeding to secure the necessary authorisation. On 22 December they e-mailed in the following terms:

"Turning to the status of the execution of the power of attorney, we are in the process of having a certificate of good standing and register of directors in respect of Maden apostilled and notarised by our BVI lawyer. The documents will then be couriered to Mr Timichev so that they can be scheduled to the power of attorney. We are also in the process of having the power of attorney translated for the purpose of Mr Timichev having it notarised."

28. On Wednesday, 29 December Forbes Hare told iLaw that it would take about three business days for the now notarised and apostilled documents to arrive in Russia or Belarus. That is to say by about 4 January 2011. They were provided with the address of the law office, SPB Ltd, in Moscow, to which the documents should go.

29. Maden failed to execute or deliver a power of attorney as required under the Conditional Order by 5 January 2011. On that day, being the last available date for compliance, Messrs iLaw indicated by telephone that, rather than providing a power of attorney, Maden was now able to provide information as to what had become of \$2,329,000 out of the untraced sum.

30. Mr Brown of Hogan Lovells, to whom this news was revealed by Ms Davies, indicated that this was unacceptable, not least because Maden was still unable to account for some \$187,000 of the untraced sum. He explained that if Maden wanted further time to provide the power, it should apply to the court.

31. The Bank asked for the information referred to to be disclosed forthwith but Maden's offer was unacceptable to the Bank if it was to be in lieu of a power of attorney for a number of reasons, including (a) the fact that Maden was still unable to account for some \$187,000 (b) Maden was in any event obliged to account for the Untraced Sum under the freezing order and the Unless Order and (c) relief from sanction, conditional upon provision of a power of attorney, had been granted because Maden had previously represented that it was unable itself to obtain this information and documentation from the Bank which excited suspicions as to why it was now able to do so, and at that stage it had not (and still has not) provided any documentation.

32. On the same date, iLaw wrote to the court indicating that an extension of time was required for compliance with the Conditional Order to 12 January because of Mr Timichev's ill-health, coupled with public holidays in the CIS. The letter contained the following paragraphs:

"With regard to paragraph 5.2, the deadline for Maden to provide the claimant with a power of attorney was set at 4.00 pm today. We are instructed that due to Mr Timichev's ill-health, coupled with public holidays in the CIS which run until 11 January 2011, Mr Timichev has not yet been able to execute the power of attorney.

"By way of evidence of Maden's good faith and that it is not simply attempting to 'drag' this matter out earlier today Maden offered to the claimant to disclose information it has now obtained which shows where 2,329,000 of the unaccounted monies went after they left Maden's account.

"Our client also offered to provide information with regard to the final \$187,000 together with documentary proof of all of these payments within the next seven days. The offer was made as a more efficient alternative for the claimant compared with providing the executed power of attorney."

33. The explanation which was given by iLaw, on instructions, that Mr Timichev's ill-health, coupled with a public holiday, meant that he had not yet been able to execute the power of attorney was misleading. The power of attorney, as Mr Colton confirmed to me this morning, was in fact executed upon 5 January 2011. The paragraph to which I have referred was misleading whether it was executed before or after the time when that letter was sent.

34. The Bank's objections to this proposed approach were set out in a letter from Hogan Lovells of 5 January. In any event on 7 January, the court listing office indicated that I would be unavailable to consider Maden's application until 11 January. Maden did not proceed to issue an application for an extension of time for compliance with the conditional order or for relief from sanction at that stage.

35. On 7 January, Hogan Lovells wrote a letter referring to iLaw's letter to me of 5 January in which they observed this:

"We note that you state in your letter to the judge that you are 'instructed to provide information Maden has obtained which shows where 2,329,000 of the unaccounted monies went after they left Maden's account to the claimant as soon as possible'."

"Unaccountably, however, we have not yet heard further from you in this regard. Our client is entitled to see this information under the terms of both the 9 June 2010 freezing order and the 24 August 2010 Unless Order. Without prejudice to our client's rights to be provided with the power of attorney in accordance with the terms of the 10 December order and to apply to enter judgment against Maden for its unremedied breach of the Unless Order, we ask that you (1) provide us with the said information and (2) confirm whether it remains Maden's intention to provide the power of attorney by 12 January."

36. iLaw did not produce any documents. Instead, on 12 January, they sent Hogan Lovells a schedule which purportedly accounted for the untraced sum, save for the sum of \$923, which was attributed either to clerical error or a mistake in the Bank's figures, with details of the payee and the payment references. They asked the Bank to confirm that there was now no need for Maden so execute the power of attorney. The Bank declined to provide such confirmation.

37. On 12 January iLaw wrote to request that the court:

"... now order that all conditions of the order dated 10 December have been complied with by our clients and that the power of attorney need not be executed and provided to the claimant's solicitors."

38. The Bank opposed that in a letter sent to the court on 12 January. On 18 January I stated that I was not minded on the material then before me:

"... to order that all conditions of the order dated 10 December 2010 have been complied with since they have not. If iLaw seek to persuade me to vary my order or to make a further one, that should be dealt with in an inter partes application which I anticipate could be brought on in short order."

39. On the same day Hogan Lovells asked iLaw whether Maden intended to apply for a variation of the order and to have this hearing listed as soon as possible.

40. Hogan Lovells also enquired why the documentary proof which iLaw had apparently been instructed to provide swiftly had not been forthcoming. No response to that letter was received.

41. According to Ms Davies the notarised and apostilled documents were successfully delivered to SPB in Russia only on Wednesday 19 January because public holidays ran until 11 January and because of that office's opening hours. There appears also to have been a delay in delivery possibly due to some misunderstanding as to the address by the courier.

42. On 25 January iLaw indicated that they had been awaiting "SWIFT documentation" in relation to the untraced sum, then said:

"However, we are now able to send you the power of attorney and therefore enclose it by way of service upon you. We have requested that the client send to us an original notarised copy. We then intend to issue an application requesting that it be ordered that all conditions of the order dated 10 December 2010 have been complied with by our clients."

43. The power of attorney had in fact been received, as Mr Colton has confirmed to me, by iLaw on 10 January 2011, but they were without instructions to release it until the date when they did so. It is apparent from the terms that I have quoted that what was contemplated was that a notarised copy would be produced, to be followed by an application for an order that all conditions of the 10 December 2010 order had been complied with.

44. The evidence of Mr Brown is that, as he has been told, this power of attorney signed but not duly notarised is not in a form which is legally enforceable in Latvia. I have, however, no detailed evidence as to what precisely is needed in order for a power of attorney to be enforceable in Latvia if the power of attorney is a power of attorney granted in relation to a BVI corporation pursuant to English law and executed by a resident of Russia or Belarus, in particular, as to what notarisation and effecting of an apostille needs to be done by whom and where.

45. On 26 January Hogan Lovells set out their concerns about the power of attorney in a letter to iLaw and restated the Bank's position that Maden continued to be in breach of the Conditional Order, the freezing order and the Unless Order.

46. On the same day iLaw denied any breach of the Conditional Order on the footing that that order required the power to be executed but did not require it to be notarised. But they said that they had asked their client to send them a notarised copy of the power of attorney, adding, on 28 January:

"If you wish the document in addition to be apostilled we understand that it may be necessary for it to be sent to the BVI for that purpose."

47. On 27 January iLaw, according to Ms Davies's witness statement, were informed by a colleague of Mr Silyutin, who is a lawyer at SPB in Moscow, that the Ministry of Foreign Affairs of the Russian Federation

would not notarise the power of attorney without sight of Maden's original charter, meaning, I think, the Memorandum and Articles. According to Forbes Hare, she recounts, there is no such thing in the British Virgin Islands. What there is is a PDF document which is downloaded and printed off. As a result Forbes Hare provided what she describes as the client, and which I assume to be Mr Silyutin, with a certified true copy of the Memorandum and Articles.

48. On the same day iLaw received confirmation, from (as I take it) Mr Silyutin, that the Ministry could be not apostille the power of attorney either, as Russia is not Maden's country of origin.

49. Ms Davies' statement also records her understanding that Mr Timichev had experienced the same problems with having the power of attorney notarised and apostilled in Belarus, as result of which he attempted to have it notarised and apostilled in Russia. No details are given as to when such an attempt was made and what documents, if any, were attached to the power of attorney.

50. The position as presented in Ms Davies' witness statement is that the power of attorney could be notarised and apostilled in the British Virgin Islands or in London but that Mr Timichev would not travel to either because of ill-health (wholly unspecified), want of a visa, and a risk of incriminating himself in the eyes of the Belarus enforcement authorities. She referred to attempts to arrange to travel to Cyprus to have the power of attorney notarised and apostilled there, or the possibility of appointing Mr Silyutin as a second director of the company which, all being, well might be achievable within a month; and, once done, he would travel to London to have the power of attorney notarised and apostilled.

51. Maden accepts that it did not comply with the condition within the time required. Mr Colton submits that it used its best endeavours to ensure the timely execution of the power. The provision on 25 January of a signed and witnessed power of attorney in the agreed form constituted substantial compliance with the condition. The only failing was that certain documents, not forming part of the agreed form of power of attorney itself, were not scheduled.

52. He also submits that if the Bank is right in what it says about the law of Latvia, production of a power of attorney and a schedule with the documents contemplated as to be contained therein, without the power of attorney having been either notarised or the subject of an apostille would be ineffective; and accordingly no real prejudice has been suffered by the Bank by reason of the omission from the power of attorney which was executed of the schedule.

53. If what was required was a power of attorney executed and authenticated in such a way as would ensure that a Latvian court would recognise it, then, he submits, it is unclear what exactly is required. If it is necessary to have a notarised and apostilled power of attorney, as the email of 15 December indicates, it has become apparent that this is a much more onerous task than the court ever envisaged. Indeed, it may be a task that is impossible of fulfilment unless Mr Timichev was to be required to travel to some jurisdiction where he does not reside. These were problems that the court never contemplated on 10 December.

54. His submission is that the just outcome would be to permit Maden, which has now served a defence in these proceedings and has produced information as to the destination of the Untraced Sum, to continue to defend. To enter judgment in default of a sum in excess of \$1 billion would be disproportionate to Maden's limited failure to comply with the condition. Accordingly, Maden seeks by its cross-application an order which either excuses it from further compliance or removes the condition or extends time for compliance with it.

55. Against that inevitably lengthy background the matter, in my judgment, stands thus. The order of 10 December gave Maden relief from the sanction contained in the Unless Order provided that it complied with the condition specified in paragraph 5(2) which required the execution of a power of attorney in the form

specified by 5 January 2011. That relief was granted, notwithstanding substantial and unacceptable failure on the part of Maden to comply with the court's previous orders.

56. No power of attorney was provided on that date. It follows that if judgment is not to be entered, Maden needs to obtain relief from sanction. Maden has not in fact applied, as it should have done, for relief from sanction, and such applications as it has made were not made until 18 February.

57. The order did not state in terms that the power of attorney should have been notarised or legalised, and if so where and by whom, nor did the agreed draft. But the parties have proceeded on the basis that a notarised power was being obtained and would be provided. Moreover, the court has been notified accordingly, and has granted an extension of time on that understanding.

58. If, as it does, Maden needs and seeks relief from sanction, it does not, in my judgment, lie in its mouth to say that the court should not expect the power of attorney to have been notarised or legalised in the manner which was contemplated and which was explained to the court. If no notarisation was to take place there is no good reason why the power could not have been executed by 5 January. Indeed, the power was executed by 5 January as is now known. The explanation for noncompliance on that date is untrue.

59. Maden has then alternated between offering to produce a notarised power or information and documents. In the event it has produced some information but no vouching documents.

60. In addition, nowhere in the third witness statement of Ms Davies is it explained how Maden has become able to produce the information relating to the missing funds, despite having previously insisted that it was unable to obtain that information in compliance with the original freezing order or the Unless Order. Nor is it explained why the underlying documents evidencing that information still remain undisclosed.

61. In those circumstances I am not minded to grant relief from sanction on the footing that the only matter to be taken into account in determining whether there should be relief against sanction is the failure to attach the contemplated contents of the schedule to the power.

62. That leaves for decision what is now to be done. Ms den Besten submits that the answer is simple: Maden have had their chance. They have failed to fulfil the condition, and the history, both before today and in the events which I have described, is such that they should be afforded no further leeway at all. They have made no timely application for relief for the time for compliance. Their only applications were on 18 February, and it did not include an application for relief from sanction. The reasons why no power of attorney has been given have been shifting, veering between ill-health and Christmas holidays, the time needed to produce the power of attorney appropriately notarised, the delayed receipt of documents in transit, and ending with the submission that they did not need to produce one anyway. As the reasons have shifted, so also have the deadlines, all this against the background of previous breaches. In those circumstances they have no passport to relief.

63. I see the force of all of those.

64. On the other hand, it is tolerably clear that the exercise of procuring an effective power of attorney has proved much more significant than was discussed when the idea was floated towards the end of the hearing on 10 December and more than that I had supposed. It is unclear to me what exactly the law of Latvia requires if the power of attorney is granted by a BVI company under English, or any other law, and executed by a resident of Russia or Belarus, and in particular who has to notarise it, or effect an apostille, and whether it matters where that is done.

65. I have come to the conclusion that despite the history, and despite what are plainly significant failures on Maden's part, it would be unjust to enter judgment now for something above \$1 billion in the light of what has happened and not happened in respect of the power of attorney.

66. The course that I propose to take is this. I propose to grant further relief against sanction, subject to certain conditions. Firstly, it seems to me that it should be a condition that the twelfth defendant provides (within a period which I will specify) documentary proof of the payments specified in the schedule to iLaw's letter of 12 January 2011. On the evidence before me, such proof has been promised on more than one occasion. I decline, in the absence of any evidence whatever to that effect, to accept that that documentation is not available. Mr Colton floated the idea that the letter of 5 January, written upon instructions, may have been written in circumstances in which it was hoped the documentation would be obtained when it was not available. But it seems to me that the representation that was clearly being made, then and thereafter, was that such documentation was available and in the absence of any evidence to the contrary, I intend to proceed upon that basis.

67. Secondly, it seems to me that such relief should be conditional on payment within a time (which again I shall specify) of the costs of and occasioned by this application. In my judgment the behaviour of Maden and the fact that it needs to apply for relief against sanction justify such a course.

68. Thirdly, I propose to make it a condition that:

"Maden should comply within such time as the court may appoint with such further conditions, if any, as the court shall determine to be appropriate, in order to obtain for the Bank a power of attorney permitting ..."

69. And then the condition should broadly follow the wording of the present condition which reads:

"... permitting the Bank's lawyers, Hogan Lovells, and/or Sorainen ... to obtain on [Maden's] behalf and in its name information and documentation from Trasta."

70. Then there will have to be some alteration of the wording because the present wording is:

"... as to what has become of those monies paid into the account of the Twelfth Defendant which derived from the [Bank] and which have not otherwise been accounted for by Twelfth Defendant (being UD\$2,516,000 in total)."

71. Since the twelfth defendant has given an account as to most of that, the wording will have to be altered to effect my intention, which is that the power of attorney shall enable the claimant Bank to discover from the Bank in Latvia information as to what happened to the whole of the US\$2,516,000, whether it is the same or different from that information which has been already provided but not vouched by Maden.

72. The third condition, which in one sense is a condition with a condition, may be regarded as somewhat unusual. My reason for making it is because these are somewhat unusual circumstances. It was suggested that if I was to embark upon this exercise I should make it a condition of relief against sanction that Maden should appoint a director who is within the British Virgin Islands, that a power of attorney should be executed with a schedule attached which contains the notarised and apostilled extracts from the register of directors and the certificate of good standing, and with the power of attorney notarised and apostilled in the British Virgin Islands.

73. It may well be that that is sufficient for the law of Latvia. But I do not propose to embark at this juncture, in the absence of more specific evidence of Latvian law, upon the hypothesis that that is so. It seems to me that, if I do that, there is a risk which cannot be regarded as nugatory that such a condition is imposed, and in a few weeks or months' time the court is told that, contrary to what had been thought was the position, taking the course suggested is not effective for Latvian law purposes.

74. Thus what I contemplate is that Latvian law evidence will be put before the court. So far the Bank has obtained such evidence but has not waived privilege, as is its right. It seems to me it ought to be perfectly possible to obtain evidence as to what is required for the recognition of a power of attorney in Latvia, the revelation of which causes no embarrassment or difficulty to anybody.

75. What is important to know is what precisely are the conditions necessary for recognition, and in particular what will be sufficient for that purpose in terms of the person in whose favour the power of attorney is granted, the person who is the signatory of the power of attorney, the law by which the power of attorney is governed, what documents should be scheduled to the power of attorney, and whether any of those documents, and the power of attorney itself, require to be either notarised or the subject of an apostille and, if so, by what form of person and in what country.

76. Armed with that information, it will be possible for the court to make a more confident view as to what may realistically be required of the twelfth defendant as a condition for relief against sanction. Some time limit needs to be discussed for the purpose of addressing that question. What I apprehend is that the Bank will, if it wishes to do so, procure the necessary advice and put forward an appropriate suggestion. It may be that there are a number of permutations depending on the countries in which, and the persons before whom, the documents may be executed and notarised in order to be valid in Latvia. But when the information is brought forward, it will be possible for the court to decide whether, in effect, to impose a further condition, and if so, what.