Neutral Citation Number: [2009] EWHC 3267 (Comm)

Case No: 2009 Folio 1099

**IN THE HIGH COURT OF JUSTICE**
**QUEEN'S BENCH DIVISION**
**COMMERCIAL COURT**

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 11/12/2009

**Before** :

**MR. JUSTICE TEARE**

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**Between :**

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| **JSC BTA BANK** | **Claimant** |
| **- and -** | |
| **(1) MUKHTAR ABLYAZOV** | **Defendants** |
| **(2) ROMAN SOLODCHENKO** | |
| **(3) ZHAKSLYK ZHARIMBETOV** | |
| **(4) DREY ASSOCIATES LIMITED** | |
| **(5) ANTHONY EDWARD THOMAS STROUD** | |
| **(6) JOHN DOMINIC WILSON** | |
| **(7) SARAH JULIET WILSON** | |

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**Stephen Smith QC and Robert Levy** (instructed by **Lovells LLP**) for the **Claimant**
**Brian Doctor QC, Adam Tolley and Alexander Milner** (instructed by **Clyde & Co LLP**) for the **First to Fourth Defendants**

Hearing dates: 7 December 2009

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# Judgment

**Mr. Justice Teare :**

1. There are before the court two applications. The first is made by the First to Fourth Defendants. It is to correct an accidental slip in an order made by this court dated 12 November 2009 pursuant to CPR 40.12 or to vary that order pursuant to CPR 3.1(7). The Claimant opposes that application but if the order is corrected or varied it makes its own application to vary the order as corrected or varied.

2. The order dated 12 November 2009 was a *Mareva* or freezing order. It was made following an application by the Claimant to continue a freezing order granted *ex parte* or without notice and an application by the Defendants to discharge that order. My judgment on those applications is reported at [2009] EWHC 2840 (Comm). The nature of the case against the Defendants and the nature of the Defence of the First to Third Defendants is summarised in that judgment.

3. The order made without notice followed the standard form of freezing order in the Commercial Court Guide and provided as follows:

> "4. Until after judgment on the next return date (see paragraph 16 below), the Respondents must not, except with the prior written consent of the Applicant's solicitors-
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> a. Remove from England and Wales any of their assets which are in England and Wales up to the value of £175,000,000 (one hundred and seventy five million pounds);
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> b. In any way dispose of, deal with or diminish the value of any of their assets whether they are in or outside England and Wales up to the value of £175,000,000 (one hundred and seventy five million pounds).
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> 7. a. If the total value free of charges or other securities ('unencumbered value') of each of the Respondents' assets in England and Wales exceeds £175,000,000 (one hundred and seventy five million pounds) then that Respondent may remove any of those assets from England and Wales or may dispose of or deal with them so long as the total unencumbered value of the Respondent's assets still in England and Wales remains above that amount."
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> b. If the total unencumbered value of the Respondents' assets in England and Wales does not exceed £175,000,000 (one hundred and seventy five million pounds) then that Respondent must not remove any of those assets from England and Wales and must not dispose of or deal with any of them. If that Respondent has other assets outside England and Wales, he may dispose of or deal with those assets outside England and Wales so long as the total unencumbered value of all his assets whether in or outside England and Wales remains above £175,000,000 (one hundred and seventy five million pounds)."

4. After I had provided a copy of my judgment to the parties in draft on 10 November 2009 counsel for the Claimant provided to counsel for the First to Third Defendants on 11 November 2009 a draft order which they proposed to ask the court to make after judgment was formally handed down on 12 November 2009. Unfortunately and contrary to good practice counsel for the Claimant did not point out the several respects in which the draft order differed from the original order made without notice.

Counsel for the First to Third Defendants noted two such changes but did not note a third change. That third change was to the original paragraph 7, now renumbered 6, and which provided as follows:

> a. If the total value free of charges or other securities ('unencumbered value') of each of the Respondents' assets in England and Wales exceeds £175,000,000 (one hundred and seventy five million pounds) then that Respondent may remove any of those assets from England and Wales or may dispose of or deal with them so long as the total unencumbered value of the Respondent's assets still in England and Wales remains above that amount.
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> b. If the total unencumbered value of the Respondents' assets in England and Wales does not exceed £175,000,000 (one hundred and seventy five million pounds) then that Respondent must not remove any of those assets from England and Wales and must not dispose of or deal with any of them.
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> c. If a Respondent has other assets outside England and Wales, he may dispose of or deal with those assets outside England and Wales so long as the total unencumbered value of all his assets in England and Wales remains above £175,000,000 (one hundred and seventy five million pounds)."

5. After judgment was formally handed down there was a debate as to the appropriateness of the two changes noted and opposed by counsel for the First to Third Defendants. I ordered that the wording of the original order should not be altered. No mention was made of the third change. In approving the order I was unaware, as were counsel for the First to Third Defendants, of the third change. I assumed that there were no changes beyond those to which my attention had been directed though I think I was told that certain parts of the original order regarding disclosure of assets had been omitted because, having been acted upon, they were no longer necessary.

6. Therefore, when the order was sealed on 20 November 2009, it contained paragraph 6 in the form of the draft proposed by counsel for the Claimant although that form had not been in the original order, the change had not been brought to the attention of either the Defendants or the court and the merits of the change had not been considered by the court.

7. On 27 November 2009 the Claimant's solicitors wrote to the First to Third Defendants' solicitors pointing out that the Order prevented the Defendants from dealing with their assets anywhere in the world whilst the value of their assets in England and Wales did not exceed £175 million and commenting that the Defendant's solicitors should make sure that the First Defendant complied with that provision. That was the first occasion on which the change to the wording of the order had been brought to the attention of the Defendants.

8. On 3 December 2009 the First to Fourth Defendants issued their application under CPR 40.12 and/or CPR 3.1(7) for the order to be corrected or varied so that it accorded with the order made without notice. On 4 December 2009 the Claimant issued its own application that, in the event that the court acceded to the Defendants' application, the order should be varied so as to be in same terms as that sealed by the court on 20 November 2009. Both applications were heard on 7 December 2009.

The Defendants' Application

9. The Claimant says that the dispute as to the form of the freezing order raises a point of principle as to the appropriate wording of a world wide freezing order. I agree that it does. It is therefore most unfortunate that the point of principle was not drawn to the attention of counsel for the Defendants on 11 November 2009 or to the attention of the court on 12 November 2009.

10. On behalf of the Claimant Mr. Smith QC (who did not appear at the hearing on 12 November) has accepted that the court was misled on 12 November 2009 into thinking that there were no material changes to the original form of order other than those to which my attention had been directed. I accept that the court was innocently misled in that there was no intention to mislead the court or indeed the Defendants.

11. That being so the court has jurisdiction to correct the order made on 12 November 2009 under CPR 40.12 or to vary the order under CPR 3.1(7); see *Lloyds Investment (Scandinavia) Ltd. v Christen Ager-Hanssen* [2003] EWHC 1740 at para.7 and *Collier v Williams* [2006] 1 WLR 1945 at para.40. Mr. Smith submitted that the circumstances were not such as to engage the slip rule. I disagree. On 12 October 2009 I intended to continue the original order save in so far as my judgment required it to be amended and save in so far as changes had been brought to my attention. The amendment in question was not required by my judgment, had not been brought to my attention and had not been considered by me. It was not therefore an amendment which I intended to make. However, if that is wrong it is accepted by Mr. Smith that I have jurisdiction to vary the order under CPR 3.1(7).

12. Mr. Smith has submitted that although I have jurisdiction to correct or vary the order I should not exercise my discretion to do so because in principle the order as sealed is the appropriate order to make. Again, I disagree. In circumstances where good practice has not been followed and as a result the court has been misled it is, in my judgment, appropriate to correct or vary the order. I shall therefore accede to the Defendants' application. That, however, has no bearing upon the Claimant's application to vary the order so corrected or varied to which application I must now turn.

The Claimant's Application

13. The original order made without notice, which followed the standard wording of a freezing order, permitted the Defendants to deal with their assets outside England and Wales and above the value of £175 million; see paragraphs 4 and 7. By contrast paragraph 6(c) of the form of order now requested by the Claimant permits the Defendants to deal with their assets outside England and Wales only so long as the value of their assets within England and Wales remains above £175 million. This is a significant difference. The effect of the change is that where, as is here said to be the

case, the Defendants' assets in England and Wales are valued at less than £175 million, the Defendants are restrained from dealing with assets outside England and Wales even to the extent that they exceed £175 million. It has been submitted by Mr. Doctor QC on behalf of the Defendants that this form of freezing order goes well beyond the standard form, was disapproved by those responsible for drafting the standard order and is wrong in principle. These submissions were not accepted by Mr. Smith QC who contends that the form of order now sought by the Claimant is consistent with principle and is appropriate.

14. The concern of the Claimant, and the need for the amended wording, is expressed in Mr. Smith's Skeleton Argument as follows:

> "The difficulty arises with the final sentence of sub-paragraph (2) of the standard form. That appears to give a respondent free rein to deal with his foreign assets, so long as the total value of his assets remains above £175m……..That liberty would enable a respondent to move assets from a relatively secure location from the point of view of the enforcement of an English judgment at trial (eg a bank account in Paris) to an entirely insecure location (an individual who is a nominee in a far flung jurisdiction). And (seemingly) the respondent would be entitled to make such a transfer without the consent of the claimant or the court; one infers that that the Defendants contend that they would not even have to inform either the claimant or the court that a transfer had occurred…..Thus the alarming prospect is raised that at the end of a long trial the notional claimant would turn up at the bank in Paris with his judgment and be told that the account disclosed by the respondent at the commencement of the proceedings is empty, the funds having long since been paid to X on whichever offshore island. That cannot be right – it would be an emasculation of the worldwide aspect of a freezing order. The order in reality "freezes" nothing; so long as a respondent says he is (and would remain) sufficiently wealthy overseas, he is free to deal with his assets as he wishes."

15. The form of order sought by Mr. Smith therefore permits the Defendants to deal with all their assets abroad so long as the value of their assets in England and Wales remains above £175 million. He submits that the Defendants have the benefit of the exception recognised in *Iraqi Ministry of Defence v Arcepey Shipping Co. SA (The Angel Bell)* [1981] QB 65 and included in paragraph 9 of the order sealed on 20 November 2009 which permits a defendant to dispose of assets "in the ordinary and proper course of any business". He further submits that, as expressly contemplated by paragraph 4 of that order, the Defendants may ask for permission to deal with any particular asset from the Claimant, or failing such permission, apply to the court for an order permitting them to do so.

16. The concern raised by Mr. Smith QC has been raised by him before. When the standard form of freezing order was being discussed some years ago I am told that he raised this very point. However, his objection to the proposed wording appears to

have been rejected. Since then the point has continued to trouble him and on 14 October 2009, when obtaining a freezing order in the Chancery Division in *JSC BTA Bank v Alexander Stepanov*, he raised the matter with Briggs J. There was no argument because the respondent did not appear and was not represented. But Briggs J. varied the standard form of freezing order in the manner in which Mr. Smith asks me to do in this case.

17. Mr. Doctor has submitted that the revised wording is wrong in principle because it amounts to giving the Claimant security for its claim and it has long been recognised that that is not what a freezing is designed to do; see *Fourie v Le Roux* [2007] 1 WLR 320 at paragraph 2 per Lord Bingham. I do not accept this criticism of the revised wording because the revised wording does not purport to provide security for the Claimant's claim. It does not give the Claimant any proprietary claim on any assets of the Defendants and does not give the Claimant any preference over other creditors of the Defendants with regard to assets caught by the freezing order.

18. But he has also submitted that the revised wording is wrong in principle because it dispenses with the long established principle that the restrictions on dealing with assets imposed by a freezing order do not apply to assets which exceed the value of the claimant's claim plus interests and costs. He further submits that the revised wording is wrong in principle because it seeks to force a defendant to bring assets into England and Wales. That goes beyond the legitimate reach of a freezing order. Finally, he submits that a defendant who has fixed or immoveable assets abroad has no means of moving them to England and Wales and so must remain subject to the freezing order even though their value exceeds the value of the claim plus interest and costs.

19. Before considering these submissions it is necessary to comment upon the amended wording requested by Mr. Smith. The actions which a defendant is restrained from doing are set out in paragraph 4 of the injunction. Paragraph 4(a) restrains the defendant from removing from England and Wales any assets which are in England and Wales up to the value of £175 million. Paragraph 4(b) restrains the defendant from dealing with any asset whether in or outside England and Wales up to the value of £175 million. Paragraph 4(b) does not therefore restrain any dealing with assets outside England and Wales to the extent that they exceed £175 million. Paragraph 7 of the order granted without notice explains how those restraining orders work. Paragraph 7(a) provides that if the value of assets in England and Wales exceeds £175 million then any asset may be removed so long as the total value of assets in England and Wales remains above that amount. That is consistent with paragraph 4. Paragraph 4(b) first provides that if the total value of assets in England and Wales does not exceed £175 million then the defendant may not remove dispose of or deal with them. That is consistent with paragraph 4. Paragraph 7(b) further provides that any assets outside England and Wales may be diposed of or dealt with so long as the total value of assets whether in or outside England and Wales exceeds £175 million. That too is consistent with paragraph 4.

20. Paragraph 6(a) and (b) of the amended wording are to the same effect as paragraph 7(a) and the first part of paragraph 7(b) of the original wording and are therefore consistent with paragraph 4. However, paragraph 6(c) of the amended wording only permits the defendant to deal with assets outside England and Wales so long as the total value of assets in England and Wales exceeds £175 million. It is implicit in

paragraph 6(c) that if the total value of assets in England and Wales does not exceed £175 million then the defendant may not dispose of or deal with any assets outside England and Wales. This is not consistent with paragraph 4 which only restrains the defendant from dealing with assets outside England and Wales up to the value of £175 million.

21. A conflict between that part of the injunction (paragraph 4) which defines the conduct which is restrained and another part (paragraph 6(c)) which appears to widen the conduct which is restrained is unfortunate, especially where the widening is not express but implied. If the implied and widened restraint is to form part of the injunction it must be express and form part of paragraph 4. That will also make clear that the injunction may be varied by further order of the court or with the prior written consent of the Claimant (a matter which was suggested by Mr. Doctor not to be so on the amended wording sought by Mr. Smith). Thus if I decide the point of principle raised by Mr. Smith in favour of the Claimant the wording of the order must be further addressed.

22. I return to the issue of principle. In considering the rival submissions it is helpful to note what was said in the early days of *Mareva* injunctions when the practice of limiting *Mareva* orders to a maximum sum was introduced.

23. In *Cretanor Maritime Co.Ltd. v Irish Marine Ltd.* [1978] 1 WLR 966 Buckley LJ noted that the injunction in that case required assets up to a stated value to be kept within the jurisdiction. He observed: "There must always, in theory at least, be a possibility that the charterers may at some time have assets in excess of that value within the jurisdiction, in which event they would be free to remove from the jurisdiction at their choice any asset representing the excess or part of it."

24. In *Z Ltd. v A-Z and AA-LL* [1982] 1 QB 558 a number of clearing banks challenged the effect of *Mareva* injunctions on innocent third parties. One problem identified by the banks was "maximum sum *Marevas*" which they considered were unworkable. They submitted (see p.563 at F) that one solution was that the courts should return to "the early practice of a total freeze".

25. Lord Denning, at p.576 C-G, noted that it had become usual to insert a maximum sum to be restrained and said

> "This is done in case it should be that the defendant has assets which exceed the amount of the plaintiff's claim. If such should be the case, it is not thought right to restrain him from dealing with the excess."

He then noted that such orders are unworkable for far as banks and other third parties are concerned because banks and other third parties do not know what other assets the defendant may have or their value. In dealing with that problem he said:

> "In some cases the best course may be to omit the maximum sum altogether: and to make the injunction comprehensive against all the assets of the defendant, as we used to do. This would cause the defendant little inconvenience. Because he could come along at once to the court and ask for the excess to

> be released- by disclosing the whereabouts of his assets and the extent of them."

26. Eveleigh LJ said at p.583 C that

> "…….a maximum sum order is very often the appropriate course from the defendant's point of view to be preferred to a general order."

27. Kerr LJ said at p.589 B – E as follows:

> "6. Before considering the form of *Mareva* injunctions in cases where it is intended to serve copies of the order on third parties, in particular banks, I must deal with the vexed problem as to whether it is better in the first instance to freeze the defendant's assets in the jurisdiction generally, or to make what have been referred to as "maximum sum" orders, i.e. injunctions which only freeze the defendant's assets up to the level of the plaintiff's prima facie justifiable claim, leaving him free to deal with the balance. As to this, it seems to me to be plain that the latter alternative must be preferred, unless the case is exceptional, like the present one. There are two obvious reasons for this preference. First, it represents no more than what a plaintiff can justifiably request from the court. Secondly, an order which freezes all assets is, in the ordinary case, bound to lead to an outcry from the defendant and to the need for an adjustment, at any rate if he is resident or carries on business within the jurisdiction. Further, such an order cannot in my view be justified in principle, save in wholly exceptional cases, unless it is clear that (a) his assets within the jurisdiction are insufficient to meet the claim, *and* (b) he is neither resident nor carries on business within the jurisdiction. It therefore follows, in my view, that the norm should be the "maximum sum" order, and that an order applying to all assets should be the exception. "

28. It is apparent from these cases that maximum sum orders are correct in principle. Kerr LJ in particular expresses that principle with great clarity and perhaps greater force than Lord Denning who considered that the older practice of general orders would or might cause little inconvenience. But Kerr LJ also accepted that there might be exceptions. The standard form of freezing order in the Commercial Court provides for maximum sum orders.

29. There are, in my judgment, two features of the amendment requested by the Claimant in this case that run counter to the principle underlying a freezing order. The first is that the effect of the amendment is to restrain the Defendants from dealing with assets above the sum equal to the Claimant's claim plus interest and costs. As Kerr LJ observed in *Z Ltd. v A-Z and AA-LL* [1982] 1 QB 558, the most that a claimant can reasonably request from the court is an injunction up to the limit of his claim plus interest and costs. The second feature is that the effect of the amendment is to put pressure on the Defendants to bring assets to England and Wales (presumably with

the consent of the Claimant since otherwise such dealing with assets may be a breach of the order) so that the value of the assets in England and Wales reaches the maximum sum thereby enabling the Defendants to deal with their other assets abroad. But the purpose of a freezing order is to restrain dealings in assets. It is not to force a Defendant to move assets to this jurisdiction.

30. However, the conduct which the Claimant wish to restrain is conduct which a freezing order is designed to restrain, namely, the removal of assets to a jurisdiction where enforcement of a judgment is difficult. It falls within the second of the two meanings of a risk of dissipation identified by Flaux J. in *Congentra AG v Sixteen Thirteen Marine SA* [2008] EWHC 1615:

> "The relevant legal principle in determining whether for the purposes of granting or maintaining a freezing order a claimant has shown a sufficient "risk of dissipation" is that the claimant will satisfy that burden if it can show that:
>
> (i) there is a real risk that a judgment or award will go unsatisfied, in the sense of a real risk that, unless restrained by injunction, the defendant will dissipate or dispose of his assets other than in the ordinary course of business: *The Niedersachsen* [1983] 2 Lloyd's Rep 600 per Mustill J as interpreted by Christopher Clarke J in *TTMI v ASM Shipping* [2006] 1 Lloyd's Rep 401 at 406 (paragraphs 24-27) or
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> (ii) that unless the defendant is restrained by injunction, assets are likely to be dealt with in such a way as to make enforcement of any award or judgment more difficult, unless those dealings can be justified for normal and proper business purposes: *Stronghold Insurance v Overseas Union* [1996] LRLR 13 at 18-19 per Potter J and *Motorola Credit Corporation v Uzan (No 2)* [2004] 1 WLR 113 at 153 (paragraphs 142-146) where the Court of Appeal was applying the same principle in the context of disclosure of assets by the defendant."

31. In the present case, when deciding to continue the freezing order, I had no hesitation in concluding that the Bank had established a real risk of dissipation.

32. In reaching that conclusion I said (at paragraph 12)

> "……if there is a good arguable case that the First to Third Defendants engaged in the wrongful misappropriation of $295m. such conduct must, as a matter of common sense, be a cogent indicator of a risk that those same persons might seek to dissipate their assets to prevent or hinder enforcement of any judgment which the Bank may obtain. "

33. It appears from the First Defendant's schedule of his assets that most of the First Defendant's assets are overseas. Of the 27 listed only 3 are situated in the UK. They were said to have values ranging from US$250m to US$1.2 billion. The overseas

assets were said to have values ranging from US$200,000 to US$1.2 billion. However, the values given for the assets in the UK were later said to be mistaken. Only one was said to have a value and that was US$38,000. That is a remarkable mistake to have made and suggests that caution should be exercised with regard to the statements of value. Although the First Defendant appears now to be resident in the UK it seems clear that he has contacts and associates overseas.

34. I also said (at paragraphs 14 and 15 of my judgment):

> "14. The information provided by the First Defendant as to the whereabouts of the monies paid to the Fourth Defendant is to the effect that they were paid out within a short period of time to other companies and then paid out by those other companies to yet other companies, to a large extent ending up in accounts at the Bank. No explanation has been provided for these payments. It was suggested by counsel for the Bank that they were consistent with money laundering. The ease and speed with which these payments were made supports the suggestion that there is a risk of dissipation because they illustrated the ease and speed with which the Fourth Defendant, of which the First Defendant admits to be in control, can disperse assets.
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> 15. The information provided by the First Defendant as to his own assets was remarkable in that he declared indirect interests in several companies in jurisdictions such as the Dominican Republic, Cyprus, the BVI, Seychelles, the Marshall Islands and Panama, (in addition to those in Kazakhstan, the Russian Federation, Ukraine and Belarus) but without any particulars as to the nature of his indirect interests. This had every appearance of being evasive. When cross-examined about such matters he indicated that in addition to holding shares in companies which owned valuable assets other companies or persons held assets for him. This latter form of indirect or beneficial ownership of assets also indicated the ease with which such assets could be hidden and dissipated. "

35. The First Defendant's cross examination was resumed on 18 November 2009 after which, on 24 November 2009, his solicitors supplied certain declarations of trust and trusts deeds relating to his assets bearing dates between 20 and 22 October 2009 which was of course after the freezing order had first been made and before the cross-examination as to assets commenced on 27 October 2009.

36. Under the terms of the standard form of freezing order dealings in assets held outside England and Wales are permitted so long as their value exceeds the maximum sum. There is no obligation to disclose such dealings.

37. It is in these circumstances that Mr. Smith submitted that it was "absurd" to contemplate a situation in which whatever work might have been done by the Claimant to identify what the First Defendant owns and how those assets are held such work could be undermined by undisclosed dealings by the First Defendant with his assets.

38. These are powerful considerations in favour of Mr. Smith's submission that the amended form of injunction which he seeks is reasonably necessary to protect the legitimate interests of the Claimant.

39. There is therefore a tension, or even conflict, between, on the one hand, those circumstances of the present case which suggest that the amended form of injunction sought by the Claimant provides that protection which is reasonably necessary to protect the interests of the Claimant and, on the other hand, those circumstances which suggest it is contrary to principle.

40. The court must therefore decide how this tension or conflict can most justly and fairly be resolved. Although maximum sum orders are the general rule it seems there can be exceptions. This was recognised both by Lord Denning and Kerr LJ in *Z Ltd. v A-Z and AA-LL* [1982] 1 QB 558 but, as stated in *Commercial Injunctions* by Gee 5th.ed. at para.4.009, it is now very rare to make an order without a maximum sum. In the present case there is a maximum sum but the proposed amendment will limit is effectiveness in the case of overseas assets.

41. In most cases, it seems to me, the standard wording should be retained for the reasons expressed by Kerr LJ in *Z Ltd. v A-Z and AA-LL* [1982] 1 QB 558. The question therefore is whether the circumstances of the present case are such that there is good reason to amend the standard wording in the manner suggested. In considering that question I have left out of account certain matters adduced in evidence in support of the Claimant's application which the First Defendant and his counsel have not had an opportunity to consider. I have taken into account only the evidence before the court on the application to continue the freezing order, my judgment on that application and the matters arising from the cross-examination of the First Defendant as to his assets.

42. I consider that there is a real risk that the liberty provided in the standard form of freezing order to deal with overseas assets might be used by the First Defendant to put his assets out of reach of the Claimant. That is what freezing orders are designed to prevent. Any prejudice to the First Defendant caused by the amended form can be avoided or at any rate alleviated by his ability to apply to the court for liberty to deal with any particular asset. There has as yet been no evidence that he wishes to deal with a particular asset abroad in such a way as would breach the amended form of freezing order and that to be restrained from doing so would cause him prejudice. On such an application the court would have power to release certain assets from the injunction although any such application would need to be supported by satisfactory evidence of the value of the asset in question and of those other assets which combine to produce a value of $175 million, the maximum stated in the freezing order; cf *Motorola Credit Corpn v Uzan* (No.2) [2004] 1 WLR 113 at para.146.

43. It was submitted by counsel for the First Defendant that the risk of dealing with assets so as to put them out of reach of the Claimant was common to any freezing order application and could not be regarded as a special circumstance of this case making the present case out of the ordinary. It was further submitted that where the Defendant has assets abroad which cannot be moved to England and Wales so as to bring the value of assets here up to £175 million the amended order was unfair.

44. Whether the latter point will in fact cause prejudice cannot be determined now. If it is said to do so the First Defendant will be able to apply to the court to vary the order.

As to the former point it is of course correct that a risk of dissipation is common to all freezing orders. However, this is a case where there are many assets abroad held in an "indirect" manner. The risk of such assets being dealt with in a way which makes enforcement of any judgment more difficult has been clearly demonstrated in this case. These are not perhaps differences in kind from what is found in all worldwide freezing orders but they are nevertheless features of this case which it is difficult for the court to ignore.

45. The jurisdiction to make a freezing order stems from section 37 of the Supreme Court Act 1981 which provides that such an order may be made where it is just and convenient to do so. I have therefore asked myself whether it is just and convenient to amend the freezing order in the manner requested. I have concluded that it is. It is an important part of my reasoning that the First to Fourth Defendants are able to apply to the court for a variation of the order if it is said that particular prejudice is being or will be caused to any of them by the amendment. If and when that is said the matter can be addressed. Until then at any rate the Claimant's interests should be protected in the manner requested.

46. Conclusion:

i) I will correct or vary the order sealed on 20 November 2009 pursuant to CPR 40.12 and CPR 3.1(7) so that paragraph 6 repeats paragraph 7 of the original freezing order.

ii) Subject to counsel providing a satisfactory redrafted version of the amendment sought by the Claimant (see paragraph 21 above) I will vary the freezing order (as corrected and varied pursuant to i) above) to give effect to the issue of principle raised by the Claimant.